THE NEED FOR REGULATORY REFORM

HEARINGS

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

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THE NEED FOR REGULATORY REFORM

MONDAY, APRIL 17, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Indianapolis, IN.

The subcommittee met, pursuant to notice, at 10 a.m., at the War Memorial, 431 North Merridian, Indianapolis, IN, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives Gutknecht and Peterson.

Staff present: Mildred Webber, staff director; Karen Barnes, professional staff member; David White, clerk; and Bruce Gwinn, minority professional staff.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, National Resources, and Regulatory Affairs, is called to order. As chairman of the House Subcommittee on Regulatory Affairs, I would like to welcome you all to our subcommittee's first field hearing.

Congressman Collin Peterson of Minnesota, the ranking member of the subcommittee, and Congressman Gil Gutknecht, also of Minnesota, join me today in this hearing. Let us give them a great big Hoosier welcome.

Thank you. I would like to also acknowledge my wife, Ruthie, who has been kind enough to come down.

The mission of our subcommittee is to cut back on unnecessary, burdensome and sometimes just plain stupid regulations. Red tape and excessive regulation are a hidden tax on the American middle class. They are choking America's competitiveness, cost workers their jobs, force families to pay more for everything from cars to food, causing farmers to lose their property, and forcing local taxpayers to foot the bill.

Congress is committed to putting a hold on new regulations and cutting back on unnecessary red tape. We will force the bureaucracies to consider the loss of jobs and competitiveness, use good science, and protect private property rights.

It is fitting today that we are meeting in the Patton Room. The view of this subcommittee on Federal regulations is a lot like General Patton's view on fighting a war. Take no prisoners and go until you have won the battle. So, I am pleased that we were able to be here today.

In last November's election, Hoosiers and Americans everywhere made it clear that they want to change the way business is done in Washington. In the first 100 days of this Congress, my col-

leagues and I made this message our mission. Our subcommittee, working in a bipartisan fashion with Mr. Peterson and Mr. Gutknecht, introduced a bill to put a freeze on new regulations.

We are also committed to working with the rest of Congress in changing the way we write regulations. Your suggestions today will be particularly useful as we identify regulations which need to be addressed through Corrections Day. Corrections Day is Speaker Newt Gingrich's plan to convene the House of Representatives once every other week specifically to repeal onerous rules and regulations. He has appointed me to be on a steering committee to help implement this new process.

By holding field hearings, as Members of Congress, we will be able to hear directly about regulations that have posed the greatest burdens on you and take them to Washington, so that we can address them in the Corrections Day process.

Significant regulatory reform is needed to stop the growth of big government. Currently, there are over 110 agencies with over 130,000 employees, who issue, write and enforce regulations everyday. In 1994, alone, the Federal Register was nearly 65,000 pages, the largest it has been since 1979. It has increased every year during the current administration from 57,000 in 1992 to the 65,000 pages today.

Further, the cost of regulations has skyrocketed. The Clinton administration's National Performance Review stated that compliance cost by Federal regulations on the private sector were at least $430 billion a year, 9 percent of the gross domestic product.

Other economists have estimated that the burden is even higher, between $600 and $800 billion a year. That is $6,000 for every family in Indiana.

The burden of regulation does represent a tax on the middle class. Companies are forced to comply with regulations and raise their prices in doing so, passing along the cost to the consumer. In fact, about 10 percent of the average grocery bill can be attributed to the cost of regulations.

Moreover, regulations cost jobs and economic growth. Time and time, I hear from Hoosier businessmen and businesswomen about lost opportunities being forced to reduce or scale back on their plans to expand their businesses. The bottom line is that we have fewer good paying jobs in Indiana as a result.

Let me thank you again for coming and participating in this hearing. Your views are what will become part of the official record in Congress. Also, let me again thank the members of the subcommittee who have traveled from their homes, both in Minnesota. I would like to take a moment to thank the staff, who have worked very hard to put this together, Mildred Webber, David White, Karen Barnes, who are all from the subcommittee and from my staff in Washington, Chris Jones. From here in Indiana, Steve Austin, David Holt, Kim Orlaski, and I believe, Scott Bauers is here. So, we have a lot of folks working on your behalf to cut back these regulations.

Also, before we continue, let me apologize that we do not have more time to hear your views at length. I may ask you to end up summarizing your proposals, but any written documents you have

will become a full part of the record. Our goal today is to allow as many people as possible to come forward and testify before us.

Now, before we start with the official panel, although if you want to start coming forward, let me pause a moment and ask all of you to join me in taking an oath. The chairman of the full committee, Mr. Clinger, has asked that we swear in witnesses, but rather than do that for each witness, I think I will just ask everyone to join me in doing that.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show that all of the witnesses were sworn in.

Our first panel of witnesses are Mr. Kemper, Mr. Baird and Mr. Dye, all of them reflecting the views of the farming community here in Indiana. Mr. Kemper, if you could lead off for us.

STATEMENT OF ALAN KEMPER, FARMER

Mr. KEMPER. Thank you, Congressman. I believe you have a tremendous task ahead in reforming regulations that negatively affect the very productivity of which this country was founded. I am Alan Kemper, a fourth generation farmer and agri-businessman and owner of Kemper Farms, a 1,700 acre grain and livestock farm near Lafayette in West Central Indiana.

Mr. Chairman, today I want to address my thoughts to the areas that affect everyone in this room, and that area is regulations. Regulations relate to everything we do, from breathing to eating to the clothes we wear. I want to share only about the ones I have to directly deal with as a farmer and an agri-businessman.

Let me start by mentioning some of the Federal and State agencies and departments I must deal with to stay in business. The U.S. Department of Agriculture, the Environmental Protection Agency, the Food & Drug Administration, the Internal Revenue Service, Department of Transportation, Federal Aviation Administration, Department of Commerce and others.

It would not be so bad if you just had one or two regulations, or one or two people at each agency to deal with, but a farmer has a multitude of different staff and regulations to deal with. Take the USDA, for example. You have the Consolidated Farm Service Agency, which used to be the Agricultural Stabilization & Conservation Service, which as a Commodity Credit Corporation which puts out dozens of regulations and forms to comply with each year.

Also in USDA, you have the Natural Resources Conservation Service, which used to be the Soil Conservation Service, the U.S. Forestry Service, Food Safety & Inspection Service, Federal Grain Inspection Service, which has more forms to complete, most of them written only so a lawyer could understand them.

The Natural Resources Conservation Service must sign off on all repairs. For example, I have a field which has been continuously farmed since the 1800's, when my grandfather put in a drainage tile. He put it in in the 1920's and it is a 4-inch tile. This spring, I noticed a small hole in it. To legally repair this tile, I had to go to the Farm Service Agency, get a proper form, fill it out, take it to the National Resources Conservation Agency, where the staff must make a determination and then recommend to the National Resources Conservation Committee to approve the small repair.

The committee then approves and sends in writing to me the approval. This process can take up to a month or more. Once I get the approval, I can take a shovel, and in 30 minutes to an hour, fix the tile. Once again, I get the approval.

This is one example why productivity is falling in the United States. Another example of over-regulations is in the drying field part. In the drying process, part of the corn plant called "bees wings" come off the kernels. For this, Mr. Congressman, I have a sample of "bees wings." As I mentioned, it is part of the corn plant that comes off in the drying process.

As you can see, they are small red pieces of the corn plant. They are no more dangerous than grass clippings from your own yard. They are not nuclear waste, but the Environmental Protection Agency regulations say these "bees wings" must be contained. This is not realistically or economically possible on the farm.

It seems to me that when regulations are written for even the best laws, like the Clean Air Act, which the above example was from, common sense was left out.

I could go on with several other examples of overburdening regulations, but I must move on. There must be some reform in the respective agencies. It seems to us in small business and agriculture that these agencies have an agenda of their own, not the public wishes. You can build a strong case that the regulations are out of control.

Let me at this point name a few acts that need refining: Clean Air Act, Endangered Species Act, Worker Protection Safety Act, American Disabilities Act, Clean Water Act, Wetland Provisions and Conservation Provisions of the National Food Security Act, referred to as Farm Belt, Planning and Community Right to Know Act, the Federal Insecticide, Fungicide Act.

It is my belief when it comes to regulations, most businessmen, including myself, are running on information overload. Federal regulators and policymakers must realize that a highly productive modern agriculture cannot be turned on and off on a day's notice with often conflicting regulations and the lack of common sense in the decisionmaking process.

Federal, State and local governmental officials must allow the latitude in the decisionmaking process for their field staff. On my farm, I did a small study and found out that it takes 28 to 32 hours a month of my office time to comply with all Federal, State and county regulations. These hours are really non-productive time for me.

Farmers and small businessmen need to once again feel comfortable when a Government car pulls in the driveway, that the Government is here to help them find solutions, not find violations and impose fines and give more mandates.

Mr. Chairman, in summary, I have only three recommendations. Have less regulations, or at least slow down the pace of new ones; keep regulations small business/farmers' regulations to regulations that are easily understood; and keep common sense as one of the first priorities of all regulations. Thank you, Mr. Chairman.

Mr. McINTOSH. Thank you, Mr. Kemper. I appreciate you coming today. I might add, when we get to the question period, that you

bring up that notebook that you had earlier. I will tell people about it.

Mr. Dye, I have read about your case in some of the testimony that was coming before us when we were considering regulatory reform. Could you share with us your experience of Federal regulation?

STATEMENT OF BART DYE, FARMER

Mr. DYE. Yes, sir, I would be very happy to, and I appreciate the opportunity to be here with you gentlemen today. I will be brief, and I would endorse Mr. Kemper's remarks, in that those are the same ones that I have to contend with, also, but I would extend mine in this respect.

In 1984, Farmers Home Administration, a governmental agency, came in and illegally seized my farm, despite congressional laws, court orders and FMHA regulations. They kept me from that farm for 7 years, and destroyed it. I finally got the place back, but only with Fish & Wildlife and Corps of Engineers' and everybody else's regulations on it, that took 300 acres of my 1,000 acre. That will prevent me from farming the rest of the farm.

Because of those regulations, I cannot get an operating loan, or I cannot get a market loan. So, I cannot get my farm back.

The total extent of those regulations are one, they say that I have potential habitat. I do not have any endangered species on my part. One of the potential habitats is for bats. Their reference is that they are some place in southern Indiana, so therefore, they need to take my farm for habitat for those bats. They might want to land there sometime in the next 100 years.

The other one is for eagles. I do not have any eagles. Again, it is potential habitat. They also want it for mussels that are in the river.

Now, White River, that goes by my farm, north of Shoals, the upper watershed of that covers 16 counties and over 1,200 miles of stream banks, and all of that has to come back past my farm. I do not feel that my farm is the total problem of the mussels.

Congressman, these inane regulations have just totally devastated my family, and we need some help. We appreciate the opportunity to be here. It is not only the regulations, but the arrogant, belligerent attitude that the agencies involved in this use. We do not have any appeal process to these people or anything.

I have been told that if I complain, they are going to come back and do something else. I am a combat veteran, sir, and we did not go to combat to have to come back to this kind of stuff. We need some help.

[The prepared statement of Mr. Dye follows:]

Bart H. Dye

17 April 1995

U.S. House of Represenatives
Subcommittee Hearing
National Economic Growth, Natural Resources, Regulatory Affairs.
Indianapolis, Indiana
Title: Need for Regulatory Reform.
Honorables:
Congressman, David McIntosh--In., Chr.
Congressman, Gil Gutknecht-- Minn., member
Congressman, Collin C. Peterson-- Minn., member

Congressmen,

I am Bart Dye, a farmer from Shoals, In., and I greatly appreciate the opportunity to meet with you today and discuss the urgent need for regulatory reform.

Excessive regulations effect every segment of our society, from business's who perhaps might be able to pass on a expense increase to increased prices. Other business's and farmers who must absorb the cost of regulations, depriving them of needed funds for the rest of their operation. Home owners and renters pay increased cost of goods and services down to and including property taxes and decreased property values.

The current excessive regulations as it relates to [so called] Conservation Easements has caused direct catrophsic economic hardship and severe distress to thousands of private property owners in this country.

Just via FMHA there are as of Oct. 94 1,942 Farms, with FMHA/FWS imposed conservation easements directly encompassing in excess of 283,482 acres. This doesn't include the collertial affected areas of untold number of private property owners and acres.

An example of collertial damage is my own situtation: My farm, which has been in my family since 1865, and chattles were illegally seized by FMHA in 1984. Without due process, in violation of Congressional laws, FMHA Regulations and Federal Court Orders. We then found an under the table agreement between FMHA and Hoosier National Forest for a land swap between the two agencies. FMHA further violated Congressional Laws and their own regulations in excepting me personally of lease/buy back for 7 years. FMHA mismanagement has caused major damage to my farm.

06 June 91 I finally got my farm leased back but with a proposed FWS easement attached if I should try to Purchase my farm, encompassing 1/3 or 300 acres of my farm, for potential habitat for Bald eagle, Indiana Bat and mussels. None of these are on my farm, by FWS documation --just in the area or proximity. Also no run off of rain water. There were several repeated assurances by FMHA Officials prior to my signing the lease that the easements would not be imposed on me. However, much to my dismay, when I tried to purchase my farm on 8 Jan. 1993

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Bart H. Dye

HURRICANE FARMS

— SINCE 1865 —

the same FMHA Officials reniged on their prior assurances about imposing the easements. After I further complained about the easements invented wet lands were added, when just 6 months previous FWS documents stated that there were no wet lands. None of the other 14 farms seized by FMHA in 1984 had any easements proposed or placed on them. Some were within 2 miles of my farm and along the same stream.

Due to the Proposed Permanent easements and potential further restrictions to my normal farming operation the remainder of my farm will be unusable as a farm and have no value.

A more detailed example of problems that could occur: If an underground tile line should become clogged, water would back up and stand on top of the ground. Then I would be required to get approval of SCS, Corp. of Engineers, and FWS, to repair the damage. To get one agency to agree is a task not to mention all three. Two of which want wet lands to began with.. If I should get approval the time required would result in the loss of a crop and income to pay expenses. Not to mention out of pocket expenses in the appeal process. If it were not approved I then have lost more, important unreplaceable land for which I must pay for and not use.

I have been told the reason for all of these restrictions are: How I voted, That I Sued FMHA for Contempt of Court, I have no rights. And, if I complained they would come back and take more land.

As a result of these excessive regulations I have been unable to acquire operating and mortgage funds on my farm.

Congressmen, this situtation of mine as well as thousands of other private property owners violates the very precepts on which this country was founded and has thus far survied. However if this unwarranted excessive land grab contiues we are all on a very slick , steep down hill slope to a meager country. I therefore urge you and your colleagues to quickly and extensively remove this yoke of burden from our backs.

I am a combat veteran, with the U.S. Air Force, and I assure you that I and thousands of other veterans did not go into combat to come back and have our property stolen from us by the same Government for which we went into combat.

I will be pleased to furnish any additional information you might require.

Respectively submitted,

Bart H. Dye

Attachments;

R. R. 3, Shoals, IN 47581

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Mr. MCINTOSH. You wonder what happens to freedom when that starts happening in this country.

Mr. DYE. It is gone.

Mr. MCINTOSH. Thank you for sharing that with us, Mr. Dye. We will come back at the end for some questioning.

I would like to now ask Mr. Warren Baird to share with us his testimony.

STATEMENT OF WARREN BAIRD, FARMER

Mr. BAIRD. Thank you. I am a farmer from Tipton County and also a member of the Soil & Water Conservation Districts, supervisor in that, and I would like to share with you my concerns about some of the regulations that face farmers and private property owners in my county, which is Tipton.

The Drainage Board has been trying to do reconstruction on what they call the Round Prairie Ditch, and I believe you have probably heard of this project before. But, the drainage ditch is one of many ditches in central Indiana farming community that are so vitally important for crop production.

Many of these ditches were installed in the 1800's and early 1900's by farmers who had the wisdom to realize that by draining the excess water from the rich soils, crop production would be much improved. These drainage ditches were not natural drains but were put in by local farmers. These open drains are part of a network, including tile drains, that are very successful in draining the soils.

This particular project has been through several delays that have been imposed by many agencies that are issuing permits and regulations. It used to be that the local drainage boards and land owners could get together and agree on what should be done and get the project done, without all the red tape and permits.

These delays in permits cost the land owner by one, not having improved drain for use, and two, the additional maintenance fund required to do the project. Today, we have the U.S. Army Corps of Engineers, U.S. Fish & Wildlife, IDEM and the IDNR all serving authority of various degrees on these small, man-made drains.

I suggest at most we need only to have Federal and State regulations that controls the quality of these waters that flow downstream, and may be used by others for drinking water and so forth. I question why the Corps has jurisdiction of these small, man-made drains. It would seem to me that they should concentrate their efforts on the larger, natural drains. All these drains should be identified and labelled as to whom has the jurisdiction of them.

I suggest that this can best be done on a drain per drain assessment by Federal, State and local people, as the determination is made, the maps can be labelled, and in the future, there will be no question where the responsibility lies.

Requirements should be realistic and make sense. In other words, do not impose requirements that have nothing to do with the objective of draining the land. When these drains were first installed, there were no trees and shrubs along either side of the ditch. Why should that be a requirement now? This should be an alternative that is determined by the local drainage board and the landowners. The landowner should have the right to determine

whether he has trees or shrubs or grass drip along the ditch on his property, as long as it meets the requirements of plain water.

It makes no sense to require trees to be planted along a ditch during reconstruction, if it is not required that they be retained after the project is completed. How the dredge material is handled, on what side of the drain the work is done, and the design of the project is once again something that can best be determined by the local drainage board, the Salt Water Conservation District, the contractor and the landowners.

When these drains were first installed, wildlife and aquatic life were not a primary objective, but a secondary benefit that developed over the years. Why is it now important to go to the extra expense and pretense that these drains are the major supporter of wildlife and aquatic life? Many of these drains are bone dry in the summer, fall and in times of low rainfall. After the reconstruction is completed, in a short time, wildlife will take their place along the drains as the supporting habitat develops.

Some of the requirements imposed by these agencies may even prevent these drains from functioning properly, especially if trees and shrubs are left in the slope of the channel of the ditch. Another concern I have as a landowner is the wetland restrictions and the delineations that have been imposed at various times.

I currently do not know who or what agency has control, and I am not sure anyone else knows. I class this as one of the most wasteful and confusing issues to face area farmers that fall under some of the concerns that need to be addressed.

I am not opposed to preserving wetlands that are truly wetlands, and are serving a significant purpose. However, I do not believe that the areas that have been farmed, whether you call them farm wetlands or prior converted wetlands, should be considered as wetlands, or have any restrictions placed on them.

I suggested using what I call "common sense" would many times solve these issues. If early settlers had never drained the central Midwest wetlands, food production as we know it today would not be possible, and the consumer would no doubt be spending more of their income for food. Many farmers have farmed these areas with the intention that as finances became available, they would improve the drainage to make a more profitable and efficient operation. Farmers should not be denied this opportunity.

Small, insignificant wetlands under 2 acres should not be regulated. This allows a farmer flexibility in making a more efficient operation.

Developers can mitigate wetlands. The farmer should have the same option available.

My last comment has to do with the Endangered Species Act, and I see it as a wolf in sheep's clothing. Let me ask, what is the Government's role? I say it is to provide a healthy, safe and economically sound place for a man to live and raise his family. Protection of plants, animals and other creatures of God's creation can best be served by the private sector whose interest is at stake. Government tax money should not be used to force the saving or protection of an endangered species, unless there is scientific proof that protecting a species is beneficial to all mankind.

Species that have become extinct will not be a detriment to society. If society believes strongly enough that an area of species needs to be protected, then the ones that are interested should buy the area and compensate the owner of the area for the protection right.

Government officials should not have free access to one's property without permission. This right is protected by the fourth amendment to the Constitution.

Things change over time, and the needs of man changes also. I have noticed lately that there are no dinosaurs. However, I am also aware that I have no immediate need for one. In fact, if one was to show up, I am not sure what I would do with it.

In the future, there will be other examples of species that have served their purpose and will no longer exist. Do not misunderstand me. I am a true believer that we should do all that is in our ability to preserve the existing species as long as it does not interfere with the management of man's own quality of life. There are examples in other parts of the country where operations have been shut down for the protection of a species, and we just heard of one a while ago, without any compensation for the loss of value or income. This is not right.

In some cases, the species that are being protected are in conflict with the farmer's management, and may inflict loss of crops. I would like to take this opportunity to express my gratitude to Congressman McIntosh and his very efficient staff for the invitation to express some of the concerns of the farmers and private property owners in this great United States, in particular, the State of Indiana. Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Baird. Before we start questioning, let me just point out a book that Mr. Kemper brought in earlier. It was a copy of one that was given to me by the Farm Bureau in Washington, and it is a list of all the different regulations that farmers have to live under in this country and it is not the entire regulation. It is a common sense summary of a couple pages for each one.

It was impressive to me that there was this degree of regulation that if somebody was trying to earn their living farming their land, they had to become familiar with and make sure they were on the right side of all of these conflicting and often counterproductive regulations. So, thank you for bringing that copy with you.

I want to go on with the questioning but first—to my colleagues—I did not give them a chance to have an opening statement and I apologize for that. But, if you would like to make any comments, please go forward.

Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. I appreciate the invitation to come to Indiana. I think it is the second time or third time I have been here. I want to tell the folks here in Indiana that I found the chairman is someone I have been able to work with.

We have a group of what are now referred to as Blue Dog Democrats in the House. He has read about us in the Wall Street Journal, who agree with a lot of what Mr. McIntosh and some others are doing. Our group was formed to try to end some of the partisanship that goes on in Washington, and you cannot believe some

of the stuff that goes on. It is this kind of attitude that if the Republicans are for it, the Democrats have to be against it and vice versa.

The truth of the matter is that neither side is right all the time. In fact, most of the time, one side or the other is wrong, and we are just trying to put aside all of this partisanship and try to get down to doing what we think makes sense and not worry about who gets credit, who gets blamed, and just try to move things ahead.

So, we have worked, and I have worked a number of different areas, but particularly on the Regulatory Affairs Subcommittee here. We did not get everything we wanted, but I think we did improve legislation as it moved along, and we have been able to work together. We look forward to doing that in the future.

I would just say that there are a number of Democrats who feel like this regulatory process has gotten out of control. I think we had, what, somewhere between 50 and 75 Democrats that supported most of the regulatory reform issues, and we hope that we are successful in halting the successive regulation.

I represent a farming area in northwestern Minnesota. My district runs 300 miles long from north of the Twin Cities up to Canada. We have, we like to think, the most productive agricultural land in the world. I am sure you think you have it down here in Indiana. But, my farmers have the same problems that you folks do, and we sympathize, and we have been trying to work on these issues—wetlands.

Last week the Transportation Committee passed a clean water bill that is going to start to address the 404 parts of the wetlands law and some other areas. I think we had 60 to 65 percent of the Democrats on that committee supported those changes.

The farm bill, which we are going to start having hearings tomorrow traveling the country—I serve on the Agriculture Committee, we are going to be looking at the wetlands and other issues in the farm bill, and hopefully, we are going to get some common sense brought to some of these things.

Frankly, if we are not able to resolve this, I think you are going to see a lot of producers who are just going to drop out of the farm program and go their own way. We are hoping that this time we can move some of this stuff back the other direction.

Do I have time to ask?

Mr. MCINTOSH. Yes.

Mr. PETERSON. Mr. Dye, I was just curious how you got into this? You probably like my position, because I have been saying for the last couple of years that we should abolish the Farmers' Home Administration. You probably support that, I would say?

Mr. DYE. Yes, sir.

Mr. PETERSON. I was just wondering why you were not able to get an appeal?

Mr. DYE. We were never even advised we had an appeal.

Mr. PETERSON. So, the time ran before you knew you could——

Mr. DYE. They just backed up to the door and loaded everything up and went down the road with it.

Mr. PETERSON. Were you in some kind of a conflict on payments with them?

Mr. DYE. Yes, sir. They had messed me up the year before. I needed a little money to dry some corn, and they went to the banks and told the banks not to loan me any money, so I could not get the gas to dry the corn. So, the corn stayed in the bin while the river came out and the river took the whole corn crop down the river. So, I lost a whole year's crop, and they could not understand why I could not pay the bill.

Then, the next year we had a drought, in 1983, and you do not raise much in a drought, as you are well aware. So, I was very much behind that year. I asked for a year that we could get something worked out. They said, that was fine, then they switched personnel and the next guy came in and backed up and loaded everything up and went down the road with it.

Mr. PETERSON. You never got to appeal?

Mr. DYE. No, sir.

Mr. PETERSON. They were never willing to open it up?

Mr. DYE. No, sir. Well, the other reason that they put these on, I was told, I sued Farmers' Home because of their contempt of court and this sort of thing. They said, one was because I sued them, two was how I voted, and there is a whole litany of reasons. Every time you talk to them, there is a different reason.

Mr. PETERSON. They do have the right under the way the law is constructed to go in and they have first right to buy these wetlands and so forth, which is something I think we need to look at.

Mr. DYE. Yes, sir. In my particular case, they held my farm back from me for 7 years. They took out 14 farms in the county that 1 year, and by their own documentation, they excepted me personally, and would not lease that farm back to me until they put the easements on.

Mr. PETERSON. Yes, I have had similar situations. When people call my office and ask for my help to get a Farmers' Home loan, the first thing I ask is if they are currently involved with Farmers' Home, and if they are not, I tell them, absolutely, under no circumstances, should you get involved with those people, because what is going to happen to you is this sort of thing.

They tie you up, tie your collateral up, and if you get on the wrong side of them, you are just out of business, is apparently what happened to you.

Mr. DYE. Right.

Mr. PETERSON. Well, we are going to work on that and see what we can do.

Mr. DYE. We appreciate it very much, sir.

Mr. MCINTOSH. Thank you, Collin. Another example where the private sector can do a better job.

Let me also now recognize one of my colleagues in the freshman class on the Republican side of the committee. Mr. Gil Gutknecht is from Minnesota, and I am delighted you are able to join us.

Mr. GUTKNECHT. Thank you, Chairman McIntosh. It is a pleasure to be here. I have been to Indiana before, but I have never been here when it is so warm. I usually come through in the winter. I have never been to Indianapolis before.

I just want to say that in the long light of history, I think the work that this subcommittee and the full committee do in terms of

regulatory reform may have more of an impact on the general economy than most people would ever give it credit for.

As the chairman mentioned in his opening remarks, and I have been astonished at the overall costs of regulations to the American economy, we have had some interesting discussions in the full committee with some of our colleagues, like Representative Waxman from the State of California. There are other Members that have completely different viewpoints. I would have to say that among the three of us, we are generally in agreement that historically, and what has happened over the last several years, is the Federal Government has begun to impose more and more $50 solutions to $5 problems.

I love the comments of Mr. Kemper relative to having more farmer friendly type regulations that relate to farming. I had not seen this, and I do hope that I get my own copy of the environmental laws. I must say that we had a hearing in my district, and my district, as well, is very dependent on agriculture in southeastern Minnesota. We had a farm forum about a couple of months ago. I really expected the people who had come to testify to talk mostly about farm price support programs and the milk program and a lot of the other things the Federal Government was doing.

But, I must say, as I mentioned to several of you before the hearing, at least two-thirds of the time was taken up by farmers talking about the unbelievable mountain of regulations that they have to deal with everyday. If you tend to be a relatively large farm operation, it is manageable. But, if you are trying to run a 300 acre dairy operation in southeastern Minnesota and you have to deal with all these regulations, day by day and month to month, and you are dealing with attorneys and bureaucrats from Washington or St. Paul, it becomes just almost impossible, particularly to the small operators.

We talked about wanting to help the small family farmer, but in many respects, I think regulations alone are making it next to impossible for them to stay in business.

So, I appreciate the opportunity to come to Indianapolis. I appreciate this testimony and I am doubly appreciative of the fact that we led off the hearing with some of the people in agriculture.

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht. I will forego any further questioning. Mr. Kemper, did you have one other statement you wanted to make?

Mr. KEMPER. Just one other, Mr. Congressman. I appreciate the book that you gentlemen have held up. It only addresses, however, the environmental regulations.

Let me suggest to you that a lot of farmers, small businesspeople and other people in this country deal with financial, taxing and other regulations that could equal mountains of regulations.

Mr. MCINTOSH. So, there is another book out there?

Mr. KEMPER. The only other thing I would suggest to you is that there is the old adage out in agriculture that taxes could put you out of business someday, but regulations could put you out of business by lunchtime. So, that is a fear that not only agriculture, but a lot of the business community lives with when they wake up in the morning, as well as when they go to sleep at night. Thank you, Mr. Congressman.

Mr. MCINTOSH. Thank you. Thank you all for joining us today. I appreciate hearing from you.

I am going to try to keep this on a tight schedule, so we get a chance to have the open mic at the end. Let me call forward the next witness. Ms. Jean Ann Harcourt is president of Harcourt Outlines, and I have known Jean Ann for a good while now, and want to say that she is one of the most dynamic businesswomen that I have had a chance to meet. I was excited when she offered to come and testify today.

I have been through her facility in Milroy, and I can tell you, they have one of the sharpest operations around. No wasted time there and every effort to be productive and do a good job and have a good record on safety and environmental issues. So, it is a privilege to be able to welcome you here today, Jean Ann.

As we were driving in from the airport, Mr. Gutknecht told me that he used to sell school supplies. So, perhaps this is going to do some good for business.

Mr. GUTKNECHT. Matter of fact, Mr. Chairman, I sold crayons, mats and globes. I think they are here in Indianapolis.

Mr. MCINTOSH. That is great.

Welcome, Jean Ann. Thank you.

STATEMENT OF JEAN ANN HARCOURT, PRESIDENT, HARCOURT OUTLINES, INC.

Ms. HARCOURT. Mr. Chairman and distinguished panel members, thank you for traveling to Indiana to hear our concerns about business.

I am Jean Ann Harcourt, and I am the co-owner of two small family businesses located in rural Rush County, or Milroy, which is approximately 50 miles from here. Harcourt Outlines was established in 1956 by my parents and the primary purpose was to manufacture and distribute school supplies. The No. 1 product, as I have put on the table for you, are the wood case pencils. I have also given you a brochure of our family business.

In 1993, my brother, Joe Harcourt, and I started a pencil manufacturing facility in order to better serve Harcourt Outlines. Today I offer testimony about the burden of over-government regulation. However, I first wish to preface that we do not consider all Government regulation bad. Regulations requiring employees in the pencil factory to wear headgear, that is good, because it is very loud. Regulations that require when you are cutting the magnesium slugs to print the pencils to wear eye goggles, that is very good. So, we are not totally negative on Government regulation.

However, we do object to the volume of regulation, the cost of these regulations and we question the necessity of some of these regulations. I submitted to you last week a clever satire published in the June 1993, Indiana Policy Review entitled, Pencils, Killers of the 1990's. It is humorous. It is very humorous, but it is not far from the truth about the over-government regulation.

Since 1981, there have been volumes of regulations placed on small business. The number provided to me by the Indiana Manufacturer's Association has over 80,000 regulations. I actually brought one volume here today to show you. It is not as big as the other volume you have there, but this is only one of many volumes.

I wanted to point out that we use this book. It is highlighted. We look at the regulations. We try to follow the regulations. We have all those pages marked in there of things to comply with.

However, the regulations are too numerous for small businesses to track, or even understand what they mean, if you look in here. It would take several full time employees to catalog and track, let alone implement, all these regulations.

With my limited time today, I wish to concentrate on only two areas involved in our new, 1993 pencil manufacturing company. The No. 1 area is the Title V Operating Permit Program, which is part of the 1990 Clean Air Act. The other is the Building Inspection Programs, however, administered by the State, it is still a major regulation we have to comply with.

Back to the Clean Air Act and the permitting program. The Government, or you gentlemen, are requiring us at our pencil company to calculate our annual emission rate for the lacquer fumes which we are emitting into the air after we have painted the pencils. All the paints and lacquers that we are using now are non-toxic. They are safe for children. Children can chew on these pencils. We are selling directly to schools. I have here just a few of the binders that have the MSDS sheets in them that covers every single lacquer and any type of raw material that comes into our facility, that documents everything and everything is non-toxic.

Therefore, that is where the confusion comes in. If we already have documentation that the paint is non-toxic when it is being applied to the pencils, I cannot understand how it becomes so dangerous when we are taking the fumes and emitting them out in the air. It just really has us confused.

The other point we need to talk about today, too, is that we have to prove to the State that we are emitting less than 25 tons of regulated pollutant into the air in a single year. I readily admit that I do not understand this program. So, I instructed our Safety Director, Jay Evans, to get advice from an environmental consulting firm, because we do not have in our facility a technical staff person or do we have the equipment required to test emissions of paint fumes going in the air.

Well, the quote came back from a Columbus, IN, company, and it would cost us up to $5,000 to provide the documentation to the State. We believe that with our purchase records of the paints and lacquers that we bring in and the raw materials, that we are not going to be anywhere near that 25 ton level. Therefore, we do not understand how emissions could possibly be much greater than what the raw material is that we are putting on the pencils. Therefore, we feel that this is a very unnecessary expense, and would be very time consuming for us to calculate. But, we do not see anyway around it, and we are going to have to comply.

The last thing I would like to talk about in my opinion is the excessive burden in the building industry. We built a brand new facility in rural Rush County for a pencil factory, 6,100 square feet. It is a metal building, just like this here. We had 13 inspections on this building. We thought that was a little excessive.

When business was good in the pencil industry, we turned around in 1994, we doubled the size, built another full building identical to it, designed to add onto it, and had another five inspec-

tions. We felt like 18 inspections on this type of facility was just an overburden. We felt like it was a harassment, and it cost our maintenance man up to $500 in labor time. I did submit to you last week the documentation of how I did arrive at that figure, using his benefit sheet.

So, I would just like to wrap up today and say I am very frustrated. I join the farming community in saying that we appreciate you being here. It is nice to have somebody listen to us. Hopefully, we can get something done. I feel real positive with my Congressman, David McIntosh, in Washington doing that, that we could do that.

I would just like to say that this regulation, it is hurting our business and it is hurting our employees. A lot of their raises for the next couple of years are going to be tied up in trying to comply with some of these regulations. So, again, thank you very much for being here today.

Mr. MCINTOSH. Thank you very much, Jean Ann. Let me ask you a question about your MSDS, material safety data sheets, which has come up in other context. Are those ones that you have to keep on file there in the plant for materials that you use?

Ms. HARCOURT. Yes, and we are in violation today, cause they are here. I am going straight home from here. [Laughter.]

Mr. MCINTOSH. You better get there before OSHA does, right?

Ms. HARCOURT. That is right.

Mr. MCINTOSH. Let me ask you this. How often do you have employees come in and ask to read through those for a concern about safety?

Ms. HARCOURT. In 20 years that I have been running the company, I have had one employee ask to see one of these, but safety is No. 1 with us, and we train them about it. I have never been asked to see it.

Mr. MCINTOSH. All of that paperwork does not help you increase your safety or healthiness of the employees at all in your plant, because they do not look at that?

Ms. HARCOURT. That is right, absolutely.

Mr. MCINTOSH. I have heard a lot of complaints about those sheets. Do you send any out with your pencils, as well?

Ms. HARCOURT. No.

Mr. MCINTOSH. That would be next step on disclosure on pencils.

Ms. HARCOURT. Yes.

Mr. MCINTOSH. I was impressed by your statement on the safe fumes that are from paints that can be chewed by children, and yet they are worried about them being toxic if they are released into the air.

Ms. HARCOURT. Right. We have an elaborate venting system that pulls the fumes, what limited fumes there are.

Mr. MCINTOSH. You keep them away from the employees?

Ms. HARCOURT. Right.

Mr. MCINTOSH. Vent them out into the atmosphere?

Ms. HARCOURT. Right. They do have a little odor to them outside.

Mr. MCINTOSH. Thank you. I appreciate you coming today. I think your statement is exactly on point.

Let me ask any of my colleagues if they have any questions for you?

Mr. PETERSON. Thank you, Mr. Chairman. Has anybody ever looked at those sheets?

Ms. HARCOURT. Our safety director looks at these sheets.

Mr. PETERSON. No, I mean, has OSHA ever looked at them?

Ms. HARCOURT. Not recently.

Mr. PETERSON. Are they required——

Ms. HARCOURT. Yes, they are required. We have not seen OSHA recently, knock on wood.

Mr. PETERSON. But, when they come in, do they look at them?

Ms. HARCOURT. Yes, it is part of the inspection process.

Mr. PETERSON. Just to see if they are there?

Ms. HARCOURT. Yes, and they were there.

Mr. PETERSON. We are so hung up in this country on quality process and filling out forms. I do not know how we change that mentality, but it does not seem like we are accomplishing a whole lot.

Maybe the Governor of Florida had the best idea. He is going to eliminate all the regulations I read about a month ago. He is going to abolish all the rules and regulations and he is just going to have guidelines and his commissioners are going to use common sense. Now, I do not know how it is going to work, but it sounds like a good idea.

Ms. HARCOURT. I think that is what we need, a little more common sense.

Mr. PETERSON. Thank you.

Mr. MCINTOSH. Thank you, Mr. Peterson.

Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. I do not have a question, just if I might add to that. I think I sent a note to Mildred, if she has not received it yet, request that this subcommittee go together and buy a bunch of reprints of the Reader's Digest from about a month ago, which is a shortened version of a book that is out now called The Death of Common Sense, and there are some great examples. I think this subcommittee ought to make them available to more people.

I had not heard about the Governor of Florida, but I think that is a great idea. I think that is all the American people want. I think, as you said, not all regulations are bad, and I think most businesspeople want to do the right thing. Most businesspeople, whether they are farmers or in the pencil business or whatever business they are in, want to do the right thing, and they do appreciate some guidelines, I think, from the Government regulators, but it just seems like we have gone from the ridiculous to the sublime in the last 10 or 15 years. Somehow, we have to slow that whole process down and get back to common sense.

Ms. HARCOURT. That is all we are asking today.

Mr. MCINTOSH. Thank you very much for joining us. I appreciate that.

I will also share the satire that Jean Ann brought with, at some point, Gil, and I will send it around to all the different committee members, because it points out the ridiculousness of some of the lengths to which we go at regulation.

Let me call the next witness for our panel, Mr. Malcolm Applegate, who is the president and general manager of the Indianapolis Newspapers. Mr. Applegate, we appreciate your input. You work

with the side of the newspapers that the general public does not get to see as often, how they are produced and some of the problems that you have to deal with in the regulatory side.

STATEMENT OF MALCOLM APPLEGATE, PRESIDENT AND GENERAL MANAGER, INDIANAPOLIS NEWSPAPERS

Mr. APPLEGATE. We are out there everyday for everybody to critique, as a matter of fact.

Chairman McIntosh and members of the subcommittee, I do appreciate the opportunity to appear before you this morning, to give the views of the Indianapolis Star and the Indianapolis News on over-burdensome regulations that affect the newspaper business.

Believe me, we appreciate and applaud your subcommittee's mission, as you clearly stated, Congressman McIntosh.

Given the brief amount of time I have before you today, I am going to limit my statement to the proposed rules recently published by the Federal Trade Commission related to telemarketing fraud. First, the outcome of this rulemaking is absolutely critical to the newspaper business in several ways, not only us, but newspapers around the country.

Newspapers, on average, obtain about 50 percent of their subscriptions from telemarketing, much of which includes simple reminders to subscribers to renew their subscriptions. The Indianapolis Star, for example, secures 39 percent of its home delivery subscribers from telemarketing. Our afternoon paper, the News, 52 percent, and the Sunday Star, 29 percent. These percentages represent only starts from our sales operation. We have about as many through a voluntary kind of restart.

Telemarketing really has become central to building and maintaining our circulation, the lifeblood of our newspaper business. Mr. Peterson, I think my friend in St. Cloud, Sonja Sorenson, the publisher there, would support these remarks.

Likewise, we use telemarketing to sell classified advertising, both for new runs, as well as to elicit continuous ad runs. Classified advertising comprises about 30 to 40 percent of our total advertising revenue.

The last Congress, as you know, passed telemarketing fraud legislation and ordered the Federal Trade Commission to write regulations to prevent fraud and abuse in telemarketing. The intent was to prevent con artists from scamming senior citizens and unsuspecting victims, and then packing up shop before law enforcement officials would catch up with them.

We certainly support the thrust of this law. But, the FTC's proposed rules would virtually label all telemarketing practices as deceptive or abusive. Contrary to the clear intent of Congress, we do not believe that that is necessarily the case. Let me give you a few examples of how the FTC's proposed rules would cripple two core functions of our business, circulation and advertising.

First, the definition of telemarketing as proposed by the FTC would include inbound calls, calls made by the public to the business in response to advertising. There is just no evidence that Congress intended these types of calls to be covered.

It hits newspapers in two ways. Any advertisement in the newspaper that receives a call from the public in response to an ad

could be deemed by those proposed rules to be a telemarketer. If the unsuspecting advertiser, who had merely placed a telephone number in his or her ad, arranges a sale during the course of that phone call, he or she must then make a litany of disclosures to the caller that are both unnecessary and a nuisance. The advertiser must comply with a host of recordkeeping requirements that make no sense whatsoever.

It should be rather obvious what this rule would do to newspaper advertising of virtually any kind. This rule also would affect our efforts to build and maintain circulation. There is no way to know for sure whether or not an incoming call is the result of one of our ads. We get hundreds of voluntary subscriptions and to comply with the proposed regulations, would have to treat all inbound calls as telemarketing.

Therefore, if the newcomer to Indianapolis phones the paper to request a home delivery subscription, we have to treat that as a telemarketing call, although we did not solicit the subscription. Let me tell you what that would entail. A host of disclosures involving total cost, terms and material restrictions, limitations or conditions of receiving any goods or services, quantity of goods or services, and material terms and conditions of refunds, cancellations, exchanges or repurchase policies.

This is probably a 2 or 3 minute recitation that is nothing but a nuisance to the caller. The Commission's proposed rules would also require these disclosures repeated during a subsequent verification of the sale, even if it takes place in the same phone call. These disclosures would also apply to us when we answer telephone advertising calls.

In addition to oral disclosures, we would have to maintain records for 2 years of who took the call, including name, address and title, even after they had left our employment, the date the goods or services were purchased and the date the goods or services were delivered. With respect to our regular advertisers, this becomes an absolute recordkeeping nightmare.

Please understand that almost everything I have described to you does not involve what most people consider telemarketing, where a business calls a potential customer. All of this would happen when the customer, on their own, calls us or the advertiser.

The proposed rules would also bar us from calling our subscribers for renewal reminders until their subscription had actually lapsed. I can only hope that this is not an intentional prohibition, because that is no way to run a business.

Some of our subscribers depend upon us for reminder calls prior to their subscription expiring. What the FTC calls abuse, we simply call customer service.

Likewise, we would be prohibited from calling classified advertisers to see if they would like to extend the run of their ad until it had expired. The result is missed opportunity for both the advertiser and the newspaper. Another portion of the FTC's proposed rules with unintended yet disastrous consequences for the newspaper industry is a prohibition on sending a courier to pick up a payment which would prevent your newspaper carrier from collecting on the route. Delivery route collections are a longstanding and worthy service we offer our subscribers. This method of payment is

most frequently used by and particularly useful to home bound individuals, inner city residents and the elderly. We want to make it easier for our readers to obtain the newspaper, not more difficult.

Another practice that would be off limits if the proposed rules are adopted is a prohibition on calling a resident more than once in a 3-month period, without the called party's consent. This prohibition would wreak havoc on the time tested tradition of selling newspapers in 8 week packages. It is bad customer service to leave new subscribers hanging for weeks without calling to see if they are enjoying their subscription, have had any delivery problems, have any questions, or would like to continue receiving the newspaper.

Even the fact that we already maintain company wide do not call lists pursuant to rules enforced by the Federal Communications Commission in which we support, the FTC's proposed 3 month rule is unnecessary. There is already a mechanism in place to accommodate persons that object to telephone solicitations from newspapers or anyone else. The FCC rule stems from another telemarketing law passed by Congress in 1991, the Telephone Consumer Protection Act.

Mr. Chairman, members of the committee, the bottom line is that the Congress charged the Federal Trade Commission with stopping fraudulent schemes and abusive practices in telemarketing. But, the FTC has responded by proposing rules that make telemarketing virtually impossible for every business, large or small, in this company. Telemarketing is the way newspapers compete with each other, with magazines, with billboards, with radio, television and cable TV. Telemarketing is relied upon for the circulation for advertising by the Indianapolis Star and the Indianapolis News, and papers such as the Muncie Star and the smaller market Noblesville Daily Ledger.

No business will survive today unless it takes marketing and customer service seriously. In our business, we try to do much of it by phone.

Our industry is so concerned about what these rules could do to us that we have asked the FTC for an exemption for newspapers when final rules are issued in August, but we have no reason to believe or to be encouraged by FTC actions to date.

I want to be very clear. Our industry and hundreds of other businesses, large and small, believe it is wrong for Congress to allow a Government agency to effectively eliminate a legitimate business practice, especially when we follow the present rules of the road, and there is no record of anything approaching fraud or abuse. I appreciate the opportunity to present our views and I will look forward to working with you and the subcommittee in the future to make sure that rationality becomes a part of this process and common sense, we hope. I will be happy to answer any of your questions.

Mr. McINTOSH. Thank you very much, Mr. Applegate. Let me just say in listening to your testimony today, I had heard a little bit about this rule, but not very many of the details, and it seems like an excellent example of something we should consider for Corrections Day. It is a case where the agency has gone way beyond the intended mandate of Congress.

As Mr. Gutknecht pointed out, they came up with a $50 solution to a $5 problem, and it is causing enormous headaches in your industry, and I am sure, others.

One quick question. The exemption you referred to for newspapers, would it not make sense for us to perhaps go through and change the program for all businesses that are legitimate users of the telemarketing?

Mr. APPLEGATE. I am sure there are a lot of businesses out there that would make equally as strong a statement, and would indicate that it would hurt them as much as it would us, yes.

Mr. MCINTOSH. I appreciate you coming today and I appreciate you coming forward. I really do think it would be a great example of something to correct on Corrections Day.

Any quick questions?

Mr. PETERSON. Well, I am inclined to get to the point where I do not dare vote for anything anymore that goes through Congress. I voted for this particular bill and I was promised that we were not going to get into this kind of situation. It seems like every time we vote for one of these ideas, we end up with a regulation that is way beyond what anybody supports or makes sense, and it happens time and again with cable TV or whatever it is we are trying to regulate.

I do not know what we do about this sort of taking away the regulatory power of the agencies and doing it ourselves. I am not so sure whether that would work, either.

I think the one thing, if we could get the moratorium bill through, that would put a hold on this regulation until December, and we could maybe talk some sense into them, or the 45 day legislative veto that passed through the Senate. The best idea, I think, would be to put those two together, and give us some kind of ability to get at this.

I mean, we were promised—I mean, I specifically asked the author of the bill before this passed if we were going to get into this kind of situation. No, we were just going to go after these bad apples in telemarketing, selling time shares and doing some of this stuff that I think all of us agree needs to be controlled. It seems like every time we turn around, we get off in some other antic.

By the way, your colleagues in Minnesota have been in contact with me and have done their work.

Mr. APPLEGATE. I bet they have.

Mr. PETERSON. I am with you all the way and we are going to do what we can.

Mr. APPLEGATE. Great. We certainly recognize that there is some deception and some fraudulent telemarketing going on out there. But, on the other hand, there is a lot of business that is done in a very legitimate way through telemarketing, and a lot of businesses, as you have pointed out, Congressman McIntosh, that literally would be crippled in many ways, if these restrictions were approved.

Mr. MCINTOSH. I appreciate that. Gil, would you have anything?

Mr. GUTKNECHT. Mr. Chairman, I would just say, and this has been excellent testimony, and it is kind of interesting to see that some of the people in the media are caught in the net this time, as well. I would say that I hope we would not give exemptions to

this, because I think, in fact, rather than granting exemptions, I think we ought to be more inclusionary.

As a matter of fact, I think there is one group that is excluded from this law, and it is politicians. Frankly, I think if we had to live by some of the telemarketing rules and regulations, my suspicion is, we would probably have much more reasonable regulations. We were involved in the very first day of this Congress, passing the Congressional Accountability Act, which makes Congress abide by most of the employment laws that everybody else has to abide by. I think this is one that we may have escaped.

Perhaps rather than giving exclusions for your group, maybe we ought to offer an amendment that would make certain Members of Congress abide by some of these, because telemarketing is a big part of politics today.

Mr. APPLEGATE. We certainly would not prefer to be an exempt group, as a matter of fact, and we realize that certainly there are businesses that would be affected as much as we, but we certainly are also concerned about our businesses if these regulations are passed. Thank you very much.

Mr. MCINTOSH. Thank you. I like that idea a lot, Mr. Gutknecht. Perhaps we will give Congress a choice of either abolishing the law or applying it to themselves. We will definitely be able to win on Corrections Day if we do that.

Thank you very much for coming, Mr. Applegate.

Our next witness today is Mr. Jeff Bowe. I appreciate you coming today. Mr. Bowe is with the Indiana Water Co.—no. I will let you introduce yourself. The purpose here today is to give people a chance to testify and then open it up for the general audience. So, Mr. Bowe, thank you for coming, and let us hear.

STATEMENT OF JEFF BOWE, PRESIDENT, BENHAM PRESS

Mr. BOWE. Congressman McIntosh and members of the committee, I would like to welcome you to Indianapolis, also, and thank you for the opportunity to address you this morning. I supplied copies of my comments, gave you the background for my comments, and also gave you a list that I have that I will be referring to in a minute.

My name is Jeff Bowe and I am president of Benham Press, Inc. We are a medium sized printing company here in Indianapolis, producing roughly $5 million worth of customized printing products a year, employing roughly 45 moderately to highly skilled employees.

I am also immediate past president of Printing Industries of Indiana. I am informed that our industry employs almost 20,000 people in this State and about 1,000 companies, making us an industry of small businesses. Nationally, we employ around 800,000 people, which makes us the third largest industry, again, with an average company size of around 12 people, the prototype of a small business industry.

However, small does not mean unaware, nor does it mean uncaring. I am willing to talk about Government regulations of environmental matters. While no one in our industry recommends the abolishment of EPA or the other agencies commissioned to protect and preserve our delicate environment, we do feel their goals could be met with less cost, less paperwork and less confusion.

In 1993, our national association, Printing Industries of America, conducted a study to determine how many different Federal reporting requirements might apply to the small business. We determined upfront that we would not limit our research strictly to those that would apply to the printing company, because we felt that first there might not be that many, and second, we were hoping to supply the study to other groups.

However, when the study was completed, we were amazed to find 47 different Federal reporting requirements on environmental regulations. Those 47 fell primarily into the following acts, some of which were mentioned earlier: the Clean Air Act, Emergency Planning and Community Right to Know Act, Toxic Substances Control Act, Occupational Safety and Health, which is OSHA, RCRA, Resource Conservation Recovery Act, CERCLA, Comprehensive Environmental Response Comprehensive and Liability Act, the Clean Water Act and the Safe Drinking Water Act.

If some of these acronyms sound familiar and the names sound repetitive, that is exactly our point. I have included the results of a study and the corresponding one line description of each in my comments, and that is eight pages long. When I reviewed the list, I found more like 65 requirements, but I could not contact the author over the weekend to clarify 47 versus 65, but either way, it is an amazing number.

I will not try to mislead you that any one printing company or any company would be subject to all 47. However, our company is subject to around 19 of them. The only way to know whether you are subject to all 47, however, is to read them, evaluate them and perform the calculations and evaluate those results. Which leaves the only thing not doing in filing a report, however, I am not suggesting that I would like to file an additional 28 reports.

Which brings me to my main point, is how many people, companies, organizations are actually in compliance with all these requirements? I really could not say, although I have repeatedly estimated compliance with the Clean Air Act to be around 20 percent, because of the difficulty in reading and applying those regulations, as was testified to by the lady a few minutes ago.

I would have to claim that we are in compliance, although I really could not guarantee that, because I am not sure if my level of technical knowledge would allow me to make such a judgment. Like most small business people, in addition to having to be a market guru, human resources specialist, financial accounting expert, coach, counselor and personal financial bank to my employees, I now also have to be a process engineer, chemical engineer, purchasing agent, inventory control specialist and hazardous waste disposal technician.

I cannot adequately judge or nowhere even expect to know what some of these chemicals are just by looking at their cast number or generic chemical name, let alone how these chemicals interact during our process, whether we can change any of them or still come up with the same results, or know exactly how much we purchased when and had on hand at any one time and how every single drop was disposed of. It is simply an impossible task.

There are two ways we can try. We use a combination of both from time to time. First, because my signature is on those reports,

I end up digging out how much we bought, when, how we used it and how we disposed of it. The problem is, those 47 requirements all want the information in a slightly different format over different periods of time, and calculated or tabulated in a slightly different manner, which means that on average, I spend about 4 work weeks per year learning these requirements and collecting and evaluating this information.

I work on a committee here in Indiana that is writing the Clean Air Act statement of notation plan, and have been working on that committee for 2 years. So, I am more familiar with that program than probably 60 to 80 percent of the people in business out there. To you, spending 4 weeks a year might not seem like a whole lot of time, but it represents 8 percent of my total time available to my business, and that is time I cannot spend increasing sales, researching new technology or creating more jobs by investing that time and money into increasing our capabilities and output.

As for competitiveness between companies, those who play by the rules are severely limited and restricted because of doing what we feel is right. Even though there are penalties and they are severe for failure to report, it is still not fair that we would be subject to the same penalties as someone who did not report at all.

I was talking to a group of fellow printers a few weeks ago, actually was making a presentation on the Clean Air Act that is going into effect over the next 18 months, and we were discussing how to calculate VOC emissions for the permit applications, which will be due sometime in the next 15 months, but we do not know when, because EPA has not yet approved our plan. So, we do not know exactly what timeframe for the application, even though they are due in the fairly immediate future.

I made a misstatement during my presentation. However, it was not because I was unfamiliar with the regulations. I was familiar with the regulations. What I was not familiar with was one paragraph in a document prepared by a third party on another matter, which stated how much of the VOC's are actually absorbed and retained by the paper. That one paragraph made a 400 percent difference in my calculations.

I estimate that cost of a mistake in my company would be about $5,000 a year permit fees, and probably would require about 500 man hours of work per year, depending on how that calculation went. Again, it is my opinion and the opinion of my peers that I know these regulations, because I spend time with them.

One of my suppliers at that meeting said if it takes me 4 hours to fill out the report, it probably takes most of his customers 25 to 30 hours for each report, and again, I am subject to 19 of them.

There is, of course, another answer which is mentioned earlier, to hire a consultant. That is easy to do, and I have looked at that also. You can pick up a telephone book or call the trade association or use your law firm, but this is expensive.

I found, also, that the basic consulting contract, and by basic, I mean, they quickly review your product, your material safety data sheets, which I could not carry in here, because I have four books which are about that tall—that is about $3,000, just to review the products to see which programs you might be subject to. If you want them to prepare the reports for all the programs, including

researching your records, to know in a more definitive manner which ones they think you are still subject to, the estimates are around 10 times that, or around $30,000.

That still does not account the man hours to maintain the reporting records for the next cycle, after you are now subject to the requirements. As a comparison, most small businesses did not make $30,000 last year.

As I said earlier, no one thinks this information is unimportant and certainly, no one is opposed to reasonable control to protect our environment. But, 47 different departments on the same information is nothing but replication, duplication and excess paperwork.

I would like to point out one bright side that our national trade association is working on two products to address this. The first is the great printers project being done in connection with the EPA, and the second is the common sense initiative. Both projects have the same goal, unified reporting form, which would be one form per company with the same information for all projects.

Now, again, that form would be larger and more complex than any one form we currently produce. However, if I had to mail one form to 19 or even 47 different places, it would represent a reduction in paperwork of probably 90 percent, and I have estimated about 75 percent in time.

So, it is this type of innovative yet simplistic thinking that is required to free American business and the American businessmen and women to do what we do best, which is to grow our business, grow our employee force, and to grow the national economy.

[The prepared statement of Mr. Bowe follows:]

Comments to House Subcommittee on
National Economic Growth, Natural Resources and Regulatory Affairs
April 17, 1995

Congressman McIntosh and members of the committee, I would like to welcome you to Indianapolis and thank you for the opportunity to address you this morning. I have supplied a copies of my comments at the back table giving the background for my comments and to minimize the scribbling of acronyms which might take place over the next few minutes.

My name is Jeff Bowe, and I am President of Benham Press Inc., a medium sized printing company located in Indianapolis. We produce roughly $5 million worth of customized printing products per year, and employ roughly 45 moderately skilled to highly skilled employees. I am also Immediate Past President of the Printing Industries of Indiana, and am happy to inform you that our industry employees almost 20,000 residents of this state in almost 1000 companies--making us an industry made up of small businesses. Nationally, we employ around 800,000 people, making us the third largest industry in the country, with average company size mirroring that of Indiana at around 12--the prototypical small business industry.

Small does not mean unaware, nor does it mean uncaring. I am going to talk about government regulation of environmental matters, and while no one in our industry recommends the abolishment of EPA or the other agencies commissioned to protect and preserve our delicate environment, we do feel the goals could be met with less cost, less paperwork, and less confusion.

In 1993, our national association, Printing Industries of America, conducted a study to determine how many different federal reporting requirement might apply to a small business. We determined up front that we would not limit our research strictly to those requirements that might apply to a printing company, because, first, we felt surely there weren't that many, and second, we were anticipating supplying the study to other groups. But, when the study was completed, we were amazed to find 47 different reporting requirements.

The 47 fell primarily into the following acts: Clean Air Act, Emergency Planning and Community Right to Know, Toxic Substances Control Act, Occupational Safety and Health (OSHA), Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Comprehensive and Liability Act (CERCLA), Clean Water Act, and the Safe Drinking Water Act. If some of those acronyms sound similar, or the act names sound repetitive, that is exactly the point. I have included the results of the study and the corresponding requirements as an attachment to my comments in the back. When I reviewed it, I found more like 65 requirements. I was unable to contact the sponsor of the study over the weekend, but his name and phone number are at the bottom of my comments.

Now, I would not try to mislead you and state that any one printing company or for that matter, any company at all, would be subject to all 47 reporting requirements. Our company is subject to around 19 of them. But, the only way to know if one is subject, is the read the appropriate documentation, perform the appropriate calculations, and evaluate the results. This means you've

done everything except file the report. I am not suggesting, though, that we anyone would want to be subject to all requirements since we are all supposedly already doing the work.

And that brings me to my main point. How many people, companies, organizations, are actually in compliance with all the applicable requirements? I really couldn't say, although I have repeatedly estimated compliance with the Clean Air Act to be around 20% because of the difficulty in reading and applying the regulations. I would have to claim that we are, but I could not guarantee it, although I am by law required to do just that. I do not even know if my technical knowledge allows me to make such a judgment. Like most small business people, I am not, in addition to being a marketing guru, human resources specialist, and financial accounting expert, coach, counselor, and personal financial bank to my employees, also a process engineer, chemical engineer, purchasing agent, inventory control specialist, and hazardous waste disposal technician. I could not adequately judge or know or even expect to know what these chemical are just by looking at their CAS number or generic chemical name, let alone how these chemicals interact, if we can change what we use in our process and still come up with the same result, exactly how much we purchased and when and had on hand at any one time, and how every single drop was disposed of. It is simply an impossible task.

So, how do we try? There are two methods, and neither is absolute. First, I personally complete these reports. My signature is on the report, so I dig up how much we bought, and how we used and disposed of it. The problem is, these 47 requirements all want the information in a slightly different format, over a slightly different period of time, and calculated or tabulated in a slightly different manner. Which means that, on average, I spend about 4 work weeks per year learning about these requirements and then collecting and evaluating this information. I work on a committee here in Indiana that is writing the Clean Air Act State Implementation Plan, and have been working on that committee for two years. So, I am more familiar with that program than probably 60-80% of the business people out there. To you, spending that amount of time on these issues may not sound unreasonable. But to me, it represents 8% of my time--time I cannot spend increasing sales, researching new technology, or creating more jobs by investing my time and money into increasing our capabilities and output. As for competitiveness between companies, those of us who play by the rules are severely restricted in our time and resources because we are doing what we feel is right. Sure, there are penalties, severe penalties, for failure to report, but that is part of the problem. I can report, make an honest mistake, and be subject to the same penalty as the person who does not report at all.

I was talking a few weeks ago to a group of fellow printers, actually making the presentation along with three other people. We were discussing how to calculate VOC emissions for Clean Air Act permits applications, which will be due sometime during the next 15 months. We don't know for sure when these applications are due because EPA has not yet approved our State Implementation Plan. And, I made a misstatement during my presentation--a very big misstatement. Why? Because I missed one paragraph. Not in the regulation, or the directives attached to the regulation, but in another document prepared by a third party regarding VOC absorption to the paper, the was one paragraph. One paragraph from a document written for a different purpose. This one paragraph changed my calculations 400%. One paragraph. The cost of that mistake? In this state, about $5000 per year in permit fees, and probably 500 man hours of work per year. And, I should state again, I am considered by my peers to know these regulations, which I do. What I didn't know was

what one study found regarding the percentage of VOC in ink that is retained by paper. One of the suppliers to our industry told me at that meeting that if it takes me 4 hours to prepare one report, he estimates it would take someone doing it for the first time 25-30, because I am already familiar with the program and he knows many of his customers are not.

There is of course another answer--hire a consultant. Easy to do. Pick up the telephone book, or call your trade association for a reference, or use your law firm. But this is expensive. I have found that a basic consulting contract for these programs--and by basic I mean they quickly review your product, your material safety data sheets, do a walk through inspection, and tell you what programs you are probably subject to--is $3,000. If you want them to prepare the reports, for all the programs, including researching your records, usage, etc., to know in a definitive manner which programs you are subject to--figure ten times that, or $30,000. After all, the consultant has to review 47 different requirements. And that still does not count the man hours to maintain the records for the next reporting cycle. Just for a comparison, most small businesses didn't make $30,000 last year. And, I the business owner still have strict unlimited liability that those reports and the handling of the material, is accurate and proper.

As I said earlier, no one thinks this information is unimportant, and no one thinks reasonable control isn't expected to protect our environment. But 47 different requirements on the same information is nothing but replication, duplication, and excess paperwork, pure and simple.

I would like to point out the bright side. Our national association is working on two projects to address this. The first is the Great Printers Project, being done in conjunction with the EPA. The second is the Common Sense Initiative. Both projects have the same goal--a unified reporting form. One form, per company, with all the information, in standard format, that every agency can access. Yes, it would be larger and more complex than any one form or report currently done. But, even if I had to mail the form to the 19 or even 47 different required places, it would still represent a reduction in paperwork of probably 90% and a reduction in time of probably 75%. It is this type of innovative yet simplistic thinking that is required to free the American business person to do what he or she does best--grow the business, grow the employee force, and grow the national economy.

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SUMMARY OF FEDERAL ENVIRONMENTAL REPORTING LAWS TO WHICH SMALL BUSINESS MAY BE SUBJECT

CLEAN AIR ACT

Emissions of Air Pollutants
Reporting Requirements:

- A business which operates a major source, affected, or any other source subject to the Clean Air Act must obtain a permit, and the permit must contain a condition which requires the business to submit the results of any required monitoring at least every six months.

- Some states have more stringent requirements. For example, California requires permits for any source which emits "air contaminants." The permit can require the permittee to keep records of hours of operation for each source and materials used as well as monitor emissions.

Emissions of Substances Which Deplete Stratospheric Ozone
Reporting Requirement:

- A business which imports a "Class I" or "Class II" substance must periodically file a report with EPA.

Accidental Releases of Hazardous Air Pollutants
Reporting Requirement:

- Accidental releases of "hazardous air pollutants" above a threshold quantity must be reported (Note: direct reporting to the National Response Center will satisfy this requirement.)

Emissions of Toxic Air Contaminants
Reporting Requirement:

- Some states have additional reporting duties. For example, California requires businesses which emit "toxic air contaminants" to prepare emission inventories and conduct risk assessments.

Notice of Demolition or Renovation of Asbestos Containing Construction Materials (ACCM)
Reporting Requirements:

- A business which (1) owns or leases a building being demolished or renovated or (2) operates a building demolition or renovation project must give notice to EPA of the presence of friable ACCM above certain thresholds.

- Some local laws require notice similar to the above but more broadly define the type of ACCM to be reported and have lower thresholds than in EPA regulations. (e.g. South Coast and Bay Area Quality Management Districts.)

CLEAN WATER ACT

Notice Prior to Discharge of Pollutants from any Source to Waters of the United States
Reporting Requirement:

- A business which proposes to discharge wastewater to waters of the United States must apply for a permit at least 180 days before the discharge is to commence. The business must characterize its effluent and submit these data and other information required by EPA.

Information Which EPA May Request
Reporting Requirement:

- A business which discharges wastewater from a point source to waters of the United States must submit information which EPA may request to determine (1) if cause exists to modify, revoke and reissue, or terminate the permit; or (2) compliance with the permit.

Monitoring, Submission and Recordkeeping Requirements for Discharge of Pollutants to Waters of the United States
Reporting Requirement:

- A business which discharges wastewater to waters of the United States must monitor and submit reports as required, and must keep required records for up to five years.

Compliance and Noncompliance Reports on Discharges of Pollutants to Waters of the United States
Reporting Requirement:

- A business which discharges wastewater to waters of the United States must submit scheduled compliance or noncompliance reports.

Planned Changes of Discharges of Pollutants to Waters of the United States
Reporting Requirement:

- A business which discharges wastewater to waters of the United States must give notice to EPA as soon as possible of (1) planned physical alterations or additions which may determine if the facility is a new source or (2) significantly change the nature or increase the quantity of pollutants.

Anticipated Noncompliant Discharge of Pollutants to Waters of the United States
Reporting Requirement:

- A business which discharges wastewater to waters of the United States must give EPA advance notice of any planned changes which may result in a noncompliant discharge.

Report of Any Noncompliant Discharge of Pollutants to Waters of the United States Which May Endanger Health or the Environment
Reporting Requirement:

- A business which discharges wastewater to waters of the United States must report orally within 24 hours and in writing within 5 days of becoming aware of any noncompliant discharge which "may endanger health or the environment." The notice requirement includes any (1) unanticipated "bypass" which exceeds effluent permit limitation; (2) "upset" which exceeds any effluent permit; and (3) violation of maximum daily discharge limitation.

Report of Other Noncompliant Discharge of Pollutants to Waters of the United States
Reporting Requirement:

- A business must notify EPA of all instances of noncompliance not otherwise reported when it submits its monitoring report.

Relevant Omitted or Submitted Incorrect Information in Permit or Report on Discharge of Pollutants to Waters of the United States
Reporting Requirement:

- A business which discharges wastewater to waters of the United States and which becomes aware that it either failed to submit any relevant facts or submitted incorrect information on a permit application or report must promptly submit or correct same.

Notice of Anticipated Bypass
Reporting Requirement:

- A business which discharges pollutants to waters of the United States must notify EPA ten days in advance, if possible, of a known need for a bypass.

Report by Current or New Source or Proposed Discharge of Wastewater to a Publicly Owned Treatment Works
Reporting Requirements:

- Within 180 days of the effective date of categorical pretreatment standard or a final administrative determination, a business which is discharging or scheduled to discharge to a Publicly Owned Treatment Works ("POTW") must submit a baseline report as specified to the POTW.

- At least 90 days before discharge, a new source subject to a Pretreatment Standard must submit a baseline report.

Report on Compliance With Categorical Pretreatment Standard Deadlines
Reporting Requirement:

- Within 90 days of a deadline (1) for final compliance with the applicable Pretreatment Standard or (2) for a new source, after commencing the discharge, a business discharging wastewater to a POTW must submit a compliance report.

Recording, Monitoring and Reporting for Discharge of Wastewater to POTW
Reporting Requirement:

- A business which discharges wastewater to a POTW must keep records, monitor discharges, and prepare and submit periodic monitoring reports.

Notice of POTW of Discharge of Wastewater Which Cause Problems
Reporting Requirement:

- A business which discharges wastewater to a POTW must immediately notify the POTW of all discharges that could "cause problems" to the POTW.

Notice to POTW of Changed Discharge of Wastewater
Reporting Requirement:

- A business which discharges wastewater to a POTW must give prompt notice of the POTW if there is a significant change in the discharge.

Notice to POTW of Upset
Reporting Requirement:

- A business which discharges wastewater to its POTW must notify the POTW orally within 24 hours and in writing 5 days of becoming aware of an exceptional incident in which there is an unintentional and temporary noncompliant discharge because of factors beyond the reasonable control of the business ("Upset").

Notice to POTW of Bypass
Reporting Requirement:

- A business which discharges wastewater to its POTW must notify the POTW (1) ten days of the known need for an intentional diversion of wastewater streams ("Bypass"), if possible, or (2) orally within 24 hours and in writing 5 days of becoming aware of a Bypass.

Notice to POTW of Discharge of Hazardous Waste
Reporting Requirement:

- A business which discharges hazardous waste to its POTW must give a one-time notice to the local sanitary district, EPA and the appropriate state agency unless exempted.

Notice to POTW of Violation
Reporting Requirement:

- A business which discharges wastewater to its POTW must notify the POTW within 24 hours of becoming aware that it is in violation of a legal requirement.

Emergency Notification of Releases of Oil or Hazardous Substances
Reporting Requirement:

- A business which releases "reportable quantities" of oil or "hazardous substances" to navigable waters of the United States must report the release to the "appropriate federal agency."

Stormwater Discharges
Reporting Requirements:

- A business which is subject to the stormwater regulations must obtain permits, monitor and report stormwater discharges.
- Some states (e.g. California) will more broadly define which businesses are subject to stormwater permits.

Discharge of Dredged or Fill Material into Navigable Waters
Reporting Requirement:

- A business which intends to discharge dredged or fill material into navigable water (e.g. a business which intends to build on "wetlands") must submit a permit application with all required information.

Above-ground Storage Tanks Containing Petroleum
Reporting Requirements:

- A business which owns or operates above-ground petroleum storage tanks above a threshold which could reasonably be expected to discharge petroleum to navigable waters of the United States must prepare Spill Prevention Control and Countermeasure Plans.
- Some states, e.g. California, require businesses which own or operate above-ground storage tanks above certain thresholds to register and pay fees.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPREHENSIVE AND LIABILITY ACT

Releases of Hazardous Substances
Reporting Requirement:

- A business who knows of a release of a "reportable quantity" of a "hazardous substance" must report the release to the National Response Center.

EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

Presence of Extremely Hazardous Substances
Reporting Requirements:

- A business at which "extremely hazardous substances" are present at or above "threshold planning quantities" must notify the "state emergency response commission." This is a one-time notice unless an update is required.

- Some states have more stringent requirements. For example, California requires businesses which handle "acutely hazardous materials" (at or below federal thresholds) to file a registration form and may require the business to prepare a risk management prevention plan.

Emergency Notification of Releases of Extremely Hazardous Substances
Reporting Requirement:

- A business which releases a "reportable quantity" of an "extremely hazardous substance" to the environment must notify the "local emergency planning committee" and the "state emergency planning commission."

Production, Use and Storage of Hazardous Chemicals
Reporting Requirements:

- A business which produces, uses or stores "hazardous chemicals" at or above "threshold planning quantities" must submit (1) material safety data sheets or equivalent; and (2) annual inventory reports as to the appropriate local emergency planning commission, state emergency response commission and local fire department.

- Many states and some communities have similar laws but with lower threshold planning quantities and additional reporting requirements. For example, California requires a business which handles "hazardous materials" (at lower thresholds than those set by EPA) to prepare business plans. Some cities regulate any amount of a hazardous chemical which businesses handle.

Emergency Notification of Releases of Hazardous Chemicals
Reporting Requirements:

- No federal requirement.

- Many states and local laws require a business to notify appropriate government agencies of release of hazardous chemicals to the environment.

Releases of Toxic Chemicals
Reporting Requirements:

- A business which manufactured, processed, or otherwise used a "toxic chemical" in excess of the "established quantity" must annually file a Toxic Chemical Release form.

- A business which files a Toxic Chemical Release form must keep supporting records for three (3) years.

Suppliers of Toxic Chemicals
Reporting Requirement:

- A business who imports, sells or otherwise distributes a product which contains a toxic chemical must provide notice as specified to recipients of the product.

SAFE DRINKING WATER ACT

Failure of Drinking Water to Meet Statutory Provision
Reporting Requirement:

- A business which owns or operates a public water system must give notice to persons it serves (e.g. its employees) if its drinking water fails to meet certain statutory provisions.

Monitoring and Analytical Requirements
Reporting Requirement:

- A business which owns or operates a public water system monitor its water for coliform bacteria, turbidity inorganic and organic chemicals.

Reporting, Public Notice and Record Maintenance
Reporting Requirement:

- A business which owns or operates a public water system must (1) report to the appropriate agency (a) monthly and (b) within a shorter time as specified if there is a failure to comply with a drinking water regulation; (2) provide public notice of violations and (3) keep records as required.

Transmission of Notice from a Public Water System
Reporting Requirement:

- In California, a business which receives a required public notice must pass on that notice to its employees and lessees.

TOXIC SUBSTANCES CONTROL ACT

Submission of Test Data
Reporting Requirement:

- A business which must give notice to EPA on a new chemical substance or new chemical use (see below), may be required by EPA to submit test data.

Pre-Manufacturing Notice
Reporting Requirement:

- A business which imports a new chemical substance or uses chemical substance for a new significant use must notify EPA at least 90 days before importing or using same.

Reporting and Recordkeeping for Identified Chemical Substances
Reporting Requirement:

- A business (except a "small business") which imports or uses chemicals identified by EPA must keep records and reports as required.

Notice to EPA of Intent to Import or Export as Identified Chemical Substances
Reporting Requirement:

- A business which intends to import or export a substance identified by EPA for testing must give notice to EPA.

Records of Significant Adverse Reactions to Health or the Environment
Reporting Requirement:

- A business which imports, uses or distributes chemical substances and mixtures must keep records of significant adverse reactions to health or the environment as specified.

Notice of Substantial Risk of Injury to Health or the Environment
Reporting Requirement:

- A business which (1) imports or distributes in commerce a chemical substance or mixture and (2) obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must report as required to EPA.

RESOURCE CONSERVATION RECOVERY ACT

Hazardous Waste Manifests
Reporting Requirement:

- A regulated business (one which generates more than 100 kilograms of "hazardous waste" in a month) must complete a manifest form for each off-site shipment of hazardous waste which manifest must be kept for three years.

Hazardous Waste Exception Report
Reporting Requirement:

- A regulated business which ships hazardous waste off site must file an Exception Report if it does not receive a copy of the hazardous waste manifest signed by the designated facility within 35 days of a shipment.

Hazardous Waste Biennial Report
Reporting Requirement:

- Every two years, a regulated business which generates hazardous waste must file a biennial report with EPA.

Exports of Hazardous Waste
Reporting Requirement:

- A regulated business which exports hazardous waste must notify EPA of its intent to export hazardous waste.

Restricted Hazardous Waste Notice
Reporting Requirement:

- A regulated business which generates hazardous waste determines that its waste is restricted must so notify the treatment or storage facility.

Report of Leaks or Spills of Hazardous Waste from Tank Systems
Reporting Requirement:

- Within 20 hours of detection, a regulated business must report a leak or spill from a tank which contains hazardous waste unless reported under 40 C.F.R. *302.6 or otherwise exempted.

On-Site Treatment, Storage or Disposal of Hazardous Waste
Reporting Requirements:

- A regulated business can store hazardous waste on site for 90 days (180 days if it generates less than 1000 kilograms a month) must obtain a permit and comply with several burdensome requirements including demonstration of financial responsibility.
- In states such as California which regulate business which generate any amount of a hazardous waste, a business must arrange to have even small amounts of a hazardous waste shipped off-site to avoid the permit regulations.
- A regulated business which "treats" hazardous waste must obtain a permit and comply with several burdensome requirements including demonstration of financial responsibility.
- In states such as California define the term treatment and hazardous waste, businesses which are otherwise exempt from such federal requirements must obtain state permits.

Notice of Installation of Underground Storage Tanks
Reporting Requirement:

- A business must notify the designated state or local agency if it installs a new underground storage tank.

Reporting Releases from Underground Storage Tanks
Reporting Requirement:

- A business must report releases of regulated substances from underground storage tanks to the environment.

Submit Release Report, Corrective Action Plan and Permanent Closure of Underground Storage Tanks
Reporting Requirement:

- A business must submit to the implementing agency notice of underground tank, release reports, corrective action plans and investigation, notice of permanent closure or change in service.

Maintain Records of Underground Storage or Closure of Tanks
Reporting Requirement:

- A business must maintain records on monitoring and closure of underground tanks for three years.

OCCUPATIONAL SAFETY AND HEALTH ("OSHA")

Records of Compliance with OSHA
Reporting Requirement:

- Employers must prepare and maintain records as required regarding the causes and prevention of occupational accidents and illnesses.

Written Plan for Respirators
Reporting Requirement:

- Employers must have a written procedure on the safe use of respirators and a written standard operating procedure governing the selection and use of respirators.

Posted Notices
Reporting Requirement:

- Employers must inform employees of protections and obligations under OSHA through postings and other appropriate means.

Written Notification of Monitoring
Reporting Requirement:

- Employers must provide written notice to employees if employers monitor the employees' exposure to asbestos or other "toxic and hazardous substances."

Notice of Serious Concealed Defect
Reporting Requirement:

- California requires businesses and managers to notify the Director of Industrial Relations if a workplace practice or product poses a "serious concealed defect" to employees or the public.

Hazard Communication Standard
Reporting Requirement:

- Employers must have a written Hazard Communication Standard which details how the employer will inform and train its employees on the "hazardous chemicals" which they may be exposed to and the safe methods of handling such hazardous chemicals.

Errors or Omitted Information on Materials Safety Data Sheets
Reporting Requirement:

- California requires employers to report errors or omissions identified in material safety data sheets if the supplier fails to correct same in a timely manner.

Illness and Injury Prevention Program
Reporting Requirement:

- California requires employers to have a written Illness and Injury Prevention Program which requires recordkeeping for workplace inspections and training.

Notice of ACCM
Reporting Requirement:

- California requires that businesses provide individual, written notice to employees about the presence of ACCM in the workplace.

Mr. MCINTOSH. Thank you very much, Mr. Bowe. Let me ask you very quickly on the Clean Air Act, the permitting process, especially since you spent a lot of time working here in Indiana on the State implementation plan, is it necessary in order to get the emissions reductions under the Clean Air Act, or could we eliminate the permitting requirements, and just have people abide under the different emissions controls?

Mr. BOWE. In my opinion, the Clean Air Act really does nothing to reduce emissions. There are, at this point in the State legislation regulations, no requirements to actually reduce pollution or emissions. It is just a matter of how much do you want to pay to be allowed to emit whatever level you wish.

Mr. MCINTOSH. So, this regulation does not help us get cleaner air. It is simply an extra burden, both a fee and paperwork requirement.

Mr. BOWE. At this point, right, there are no strict requirements to reduce emissions in the Clean Air Act.

Mr. MCINTOSH. Under Title V?

Mr. BOWE. Under Title V.

Mr. MCINTOSH. Thank you very much. Any questions?

Mr. PETERSON. Mr. Chairman, I would like to ask—I do not often quote from news magazines, but there was this article in Newsweek on April 10 where Robert Samuelson wrote this kind of editorial, I guess, and he said that, "The modern environmental movement is a parable of our times. It is a huge success that is mainly unrecognized and a source of continuing alarm which is mainly unjustified."

He talks about this book that was written by an environmentalist who basically says that we have vast groups of problem solvers, Government officials, professional advocates, scientists and journalists, whose very being requires that they perpetuate the problems they purport to solve.

The perverse result is to create a false reality in which almost nothing good ever happens. I think we ought to get a copy of this book here by Greg Easterbook, A Moment on Earth, the Coming Age of Environmental Optimism. I think this guy is right on, and is a lot of what is driving this problem.

We get all wrapped up in the minutiae of these rules and it drives us nuts on these little points, but if we do not back off enough and look at the big picture, basically what this article says is that we are trying to—you know, that they have looked at who has looked at this, and this guy is an environmentalist, and he finds dramatic progress and few impending calamities. They kind of manufacture these crises and try to come up with solutions to problems that do not exist. The result is all this stuff that drives you nuts.

We are not really accomplishing anything, other than keeping all these bureaucrats in business and keeping——

Mr. BOWE. Correct. The thing I would add on top of that is that we end up trading new program and another set of regulations for the same situation, before the first one actually takes effect. So, before the Clean Air Act fully becomes in effect, which will take anywhere in the next 5 to 8 years, we will see another set of regulations on top of that.

Mr. MCINTOSH. Thank you.

Mr. Gutknecht, did you have any questions?

Mr. GUTKNECHT. No, Mr. Bowe has done a great job, and I know there are a number of other people that want to testify, so I will let them come up and share with us.

Mr. BOWE. Thank you.

Mr. MCINTOSH. Thank you. Thank you very much.

For our next witness, we are going to change the order slightly. Mr. Miles Brand, president, the new president of Indiana University. I appreciate you joining us today. I know there are a lot of IU fans in the audience and throughout Indiana. Thank you for joining us, and please share with us some of your experience on costs of regulations in providing higher education.

STATEMENT OF MYLES BRAND, PRESIDENT, INDIANA UNIVERSITY

Mr. BRAND. Thank you. I very much appreciate the opportunity to be here. Thank you, Representative McIntosh, and also the distinguished panel members. I appreciate the opportunity.

Before I begin, I would like to personally commend Representative McIntosh for his leadership in addressing the problems of overregulation and the need for bringing prudence and common sense into the Federal regulatory arena. I thank you gentlemen, as well.

Regulatory reform is absolutely essential to improve administrative efficiency within the Federal Government to streamline regulatory activity outside the Government and eliminate duplicative process. My comments this morning will focus primarily on the State Post-Secondary Review Program, or SPRE, an egregious example of onerous regulation imposed by the Federal Government.

I have also submitted a 17 page document from Indiana University that illustrates the areas in which we have additional strong regulatory concerns. When the SPRE program was approved, the intent was to control fraud and abuse in the use of Federal student financial aid moneys. I fully support the intent of the Congress, but 4 year, degree granting institutions are adversely affected in a number of areas by the new regulations issued by the U.S. Department of Education, which implements the SPREs.

Since Title IV funds are involved, the statute covers all post-secondary institutions receiving those funds, including proprietary and 2 and 4 year degree granting institutions. It is widely agreed that the fraud and abuse in question are found primarily among proprietary institutions, particularly in regard to repayment for Federal student loans.

Thus, my colleagues and I believe that the inclusion of a broad spectrum of colleges and universities in the program distorts the original intent of Congress. Moreover, regulations adopted by the Department of Education have broadened the scope of the SPREs beyond the statutory authorization by intruding into academic affairs in a way not required by the statute, and imposing significant and counterproductive burdens in recordkeeping and reporting, and causing needlessly high compliance costs. For Indiana University, estimates for compliance run as high as $500,000 to $1 million a year, incremental moneys.

Let me illustrate three specific examples of the adverse effects for 4 year institutions overburdened by SPREs.

First, SPREs receive power to monitor academic matters that are properly under the jurisdiction of faculty, administrators and boards of trustees, and that have never been the province of external Government agencies.

For example, some SPRE standards seek to monitor faculty credentials, course content and frequency of course offerings.

Second, SPREs require recordkeeping of a magnitude that is not cost effective, and may in some cases not even be feasible for 4 year institutions. An illustration is recordkeeping regarding the rate at which graduates find employment in their occupationally specific programs.

While we can often, though not always, track initial employment of our students, once they leave campus, it is inordinately difficult to follow the career paths of our former students. Meeting such recordkeeping requirements would require a financial outlay disproportionate to any potential benefit to students, the institutions or the government.

Third, SPRE has imposed inappropriate measurements that may interfere with an institution's ability to serve students of varied backgrounds and educational objectives, which would create a potentially false picture of the institution's quality. Illustrations are the minimum standards and acceptable percentages for graduation withdrawal rates.

Graduation rates are directly dependent upon the population that an institution serves. For example, those institutions with a commuting adult student population will have a lower graduation rate than one serving tradition 18 to 24 year olds in a residential setting.

The original intent of Congress is clearly correct in its effort to curb abuses in student financial aid programs. However, it is widely held that 4 year institutions such as Indiana University are generally not guilty of such abuses, and that existing audit and program review processes in the U.S. Department of Education are adequate to resolve compliance problems at such institutions.

I am pleased to note that the U.S. House of Representatives is taking action on this matter in the recently passed rescission bill. Unfortunately, the Senate continues to recommend funding for SPREs that will yield the problem cited as well as others. The right course, it would seem, is to forthrightly address the problems with proprietary institutions, and not cast the regulatory net so wide that it creates more problems than it solves.

Elsewhere at the college and university level, the burden posed by over-regulation is tremendous. I have submitted a two page summary of regulatory challenges we face, and these range from 60 new regulations issued by the Department of Education since 1994, alone, to increased encroachment by the Internal Revenue Service in taxes, income and benefits. Other instances of over-regulation include myriad environmental, safety and health regulations and overzealous certification procedures for research.

I welcome the opportunity to work with you and others to identify these areas and to propose appropriate remedies. Let us be clear that my intention is not to absolve colleges and universities

from appropriate oversight, compliance and audit activities by the Federal Government.

I am simply urging that these regulatory activities not exceed reasonable bounds in achieving the overall desired outcomes. I thank you, and I am happy to answer any of your questions.

Mr. MCINTOSH. Thank you very much, Dr. Brand. I appreciate you joining us here today. Two things, really, one fairly specific on the SPRE and one general.

The specific on the SPRE, if we simply address it as a funding matter, would you not still have a problem with the statute being in place and possibly providing an opportunity at some future date to see these regulations be resurrected or have a legal mandate to still follow through with many of them? So, we may need to go in and change the organic statute on that.

Mr. BRAND. I agree entirely. I think that as a stop gap measure, no funding would be the best course, but I believe over the long run, you are exactly right, Congressman, that the regulation itself is overburdening, and suggests inappropriately to State, as well as Federal agencies, that this kind of regulation is productive. It is not.

Mr. MCINTOSH. The other question which is more general and may be difficult to give us an empirical answer, but as these regulations are applied to your university and other institutions of higher education, is the ultimate effect that tuition needs to be increased, or you have got to find sources of funding to be able to pay for the overhead to comply with a lot of these?

Mr. BRAND. Congressman, you are exactly right on that count, as well. As you know, States for various reasons, understandably, but for various reasons, are backing out of their commitments to supporting public higher education. As a result, more of the burden is being shouldered by students.

Here in Indiana, we have gone from about less than a third or approximately a third of a cost of public education in the State on students' shoulders up to 43 percent, and that is increasing. One of the reasons it is increasing is needless regulation. You are absolutely right, sir.

Mr. MCINTOSH. So, if we can address this problem of needless regulation, students can expect to see some benefit in the amount of tuition they would have to pay?

Mr. BRAND. It will decrease the rate of which we have to increase tuition.

Mr. MCINTOSH. That is known as a cut in Washington. Thank you very much, Dr. Brand.

Mr. BRAND. Thank you.

Mr. MCINTOSH. Any questions?

Mr. PETERSON. I hesitate to put you on the spot, but we get put on the spot all the time. You said that the Department of Education put 60 regulations on you just recently?

Mr. BRAND. Yes.

Mr. PETERSON. Does your university or the group that you are associated with have a position on abolishing the Department of Education?

Mr. BRAND. I do not have a position on that, but I should note in the last couple of years, that the Department of Education,

under the current leadership in the Department of Education, has accelerated the regulatory burdens, without question.

Mr. PETERSON. Your association of universities has not—I had not thought about it until we were sitting here——

Mr. BRAND. From my own personal view or from Indiana University's point of view, I do not have a position on that.

Mr. PETERSON. You are not aware of whether your overall group has taken a position on that? You are a land grant university?

Mr. BRAND. Excuse me, sir?

Mr. PETERSON. You are a land grant university?

Mr. BRAND. No, we are not.

Mr. PETERSON. Oh, you are not?

Mr. BRAND. No, but we are members of the Association of American Universities.

Mr. PETERSON. Have they taken a position on it?

Mr. BRAND. I do not know. Probably, they would support the Department of Education, but I have not—my guess is, they would continue to support it.

Mr. PETERSON. Even though they are putting 60 new regulations on you?

Mr. BRAND. We have seen in the last couple of years, the Department of Education, unfortunately, enhance that. I think, with a much more common sense approach, we can bring things back to reason.

Mr. PETERSON. Thank you.

Mr. MCINTOSH. Thank you, Dr. Brand. Very well done.

Mr. GUTKNECHT. I know you want to run and we have other people to hear from, but I just wanted to commend you for coming forward and testifying today. I could not help but think as you were testifying, first we heard from a newspaper publisher, someone from the media, and now from academia. I think perhaps now we are finally reaching a critical mass here, so we can really launch a real offense relative to this over-regulation.

I think when you have even university presidents saying enough is enough, then clearly we have reached that point. I appreciate your coming forward.

I would also echo the comments of Congressman Peterson, that I think perhaps the University Association should look at the whole issue, because the Department of Education is a classic example, in my opinion, of bureaucratic inertia, where it just continues to grow, where it reaches a point where I think, my observation is in terms of value added for the average student, for the average family, it is hard for me to argue that we are getting real value for the student from that department. It is one that is high on our list to at least examine whether or not it should continue to exist. I think the universities ought to ask themselves that question, are they really adding value to the students in the long run?

Mr. BRAND. Fair enough. We will. I want to thank you and the entire subcommittee for looking at the issue of over-regulation. I am pleased to learn it was a critical mass building to be able to deal with this quite important issue, and thank you again for the opportunity.

Mr. MCINTOSH. Thank you. I appreciate that very, very much, Dr. Brand.

As you can see, the freshman and the Blue Dog Democrats are stirring things up in Washington, and asking the questions that heretofore have not been put on the table.

Let me now go back to the order we were in, and call forward Mr. John Keach and Mr. Jerry Baumgartner. Mr. Keach is president of Home Federal Savings Bank and Mr. Baumgartner is president of Tri-County Bank and Trust Co.

Thank you both for joining us today. Many consumers of your product do not realize the amount of paperwork and cost that the regulatory process imposes ultimately on them, as they have to pay for the services that you provide, so I appreciate you coming forward and sharing that with us.

Mr. Keach, would you like to lead off?

STATEMENT OF JOHN KEACH, JR., PRESIDENT, HOME FEDERAL SAVINGS BANK

Mr. KEACH. I would. I just wish that we could have kept those binders here probably for the whole day. We could all just kind of swap them around, because what I am going to talk about also pertains to that a little bit.

I am John Keach, president of Home Federal Savings Bank, $570 million savings bank, focusing on consumer and business banking services in certain markets in south central portions of Indiana.

The bank does business through 15 full service offices and one loan production office. Home Federal Bancorp is organized as a unitary savings and loan holding company, and owns all the stock of Home Federal Savings Bank.

The Federal Deposit Insurance Corporation Improvement Act of 1991, FDICIA, is a far reaching regulation that touches on many facets of the financial industry. My remarks today will focus on only two pieces of this cumbersome legislation.

Section 112 of FDICIA, the Congress added Section 36, Early Identification of Needed Improvements in Financial Management, to the Federal Deposit Insurance Act, as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Section 112, which became law in December 1992.

The rule intended to facilitate the early identification of problems in financial management through annual independent audits, more stringent reporting requirements and internal controls. Institutions with assets greater than $500 million are required to take the following actions: conduct annual independent audits, appoint independent audit committees of outside directors, report on and assess management's responsibilities for preparing financial statements and establishing and maintaining internal control structure and procedures for financial reporting and compliance with designated laws and regulation.

We must also have an independent accountant attest to and report on the assertions of management's reports concerning internal controls.

The requirement that an independent accountant must perform an examination level attestation audit has proven to be expensive, as I am going to explain. It is time consuming and in many instances, redundant. I say redundant, because we are already subject to the Office of Thrift Supervision examination covering safety

and soundness, compliance, data processing and CRA. Three years ago, we had three of the four of these examinations going on at the same time.

In addition, we have the FDIC, and of course, our external auditors coming in annually to oversee our work. We also employ an internal audit department of four people.

The cost to comply with this attestation requirement is $47,000 for us in our first year of implementation to the outside auditors, plus $20,000, which is estimated at about 15,000 man hours in staff time.

This increased the cost of last year's audit by 80 percent over what it would have been without the FDICIA mandates. Here is what we received. A four paragraph letter from our auditors, three paragraphs of which were honestly written by their attorneys to take them off the hook if they missed something, and one paragraph that says we comply in all material respects. That was it. That was the $67,000 worth.

Copies of this letter were sent to the FDIC and OTS. I assume they were reviewed by someone, although I do not know for sure, because we have never been asked by the FDIC or the OTS to comment on this part of the audit.

The point is this. We are audited and examined so much that it is becoming increasingly difficult for us to find time to focus on new products and technologies that can truly benefit our customers and consumers in general.

Another piece of this FDICIA was the Truth in Savings Act, another integral part, very complex, and it was intended to provide the consumer with appropriate information to make informed decisions about accounts at depository institutions. One important point, though. The brokerage industry remains exempt from the burdens of truth in savings, as they continue to offer similar products to the general public, the same products, some regulated, some not.

One might ask, why is this regulation necessary for one industry, but not for another? A major part of the legislation which I had submitted to you in advance as an example had to do with the changing of the calculation on an annual percentage rate or annual percentage yield as it is now referred to, and I did submit this to you. There is an example that is provided by the Federal Reserve Bank in March 1993, and I would challenge any of you to attempt this without a cheat sheet, and that is what the consumer has if they are truly trying to compare rates of one institution to those of another. While the attempt may seem simple and good, in reality, it just does not work.

Recent banking publications have indicated that changes are now in the process of being revised again in this APY calculation, so from the first standpoint or bank standpoint, we do the disclosures, we do the advertising, and before we even get to really see how it works, now they are changing it again. The cost of these regulations are not so much in dollars, but in energies that are directed to areas that are not productive for the company or the economy in general.

There are many cases of dollars invested with no return. When that happens, we can either increase our product's cost to consum-

ers to make up for the lost revenues and opportunities, or simply absorb the expense, which results in reduced capital, therefore, in conflict with the intentions of FDICIA. So, there is a cycle that we are dealing with.

One other piece that I would just like to touch on briefly in closing, RESPA, which was the Real Estate Settlement Procedures Act started in 1974, was to provide effective advance disclosures to borrowers, settlement disclosures to buyers and sellers, eliminate kickbacks and direct escrow requirements of banks and others who take the payments.

There is some new legislation that is out now pertaining to this area. The latest change of RESPA, which takes effect this May, will require banks to use what we call aggregate accounting for escrow accounts. Aggregate accounting specific procedures for collecting monthly escrow account deposits, provides specific arithmetic steps to calculate escrow and mandates additional disclosure requirements, as you would expect.

These additional regulatory burdens disincent the community bank from offering this optional escrow service, therefore giving the first time or low income home buyer less opportunity for home ownership. This is required in a lot of the low downpayment types of programs, which are targeted to first time home buyers or low income areas.

This scenario would be counterproductive to the Community Reinvestment Act efforts of most financial institutions.

Additional potential burdens may be borne by municipalities due to the collection of property taxes currently being collected by local financial institutions. Needless to say, this latest change has potential expense ramifications on our local communities.

According to an April 6, 1995 article in the American Banker, a bill has been proposed in Congress that would shift responsibility for the enforcement of RESPA from HUD to the Federal Reserve Board. While I cannot speak to the benefits of transferring the oversight responsibilities of RESPA, I would encourage Congress to insure that any additions to this regulation are consistent with the original intent of the law. Just by switching it to another area, I hope they just do not reinvent the whole wheel.

Last year HUD said 90 percent of the RESPA related complaints it received about lenders' actions came from other lenders. Lenders complaining about other lenders is not benefiting the consumer.

Mr. Chairman, I applaud you and your committee for your proactive approach in combating the continued onslaught of government regulations. Thank you for allowing me to be part of the process.

[The prepared statement of Mr. Keach follows:]

Committee on Government Reform and Oversight

Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Chairman David M. McIntosh
Congressman Gil Gutknecht
Congressman Collin Peterson

Presented by John Keach, Jr., President and CEO
Home Federal Savings Bank

April 17, 1995

The cost to comply with the attestation requirement was $47,000 to outside auditors plus $20,000 I staff time (1,500 hours). This increased the cost of last year's audit by 80% over what it would have been without these FDICIA mandates.

The results of this effort: a four paragraph letter from our auditors, three paragraphs of which were obviously written by their attorneys to take them off the hook if they missed something, and one paragraph that says we comply in all "material respects".

Copies of this letter were sent to FDIC and OTS - I assume they were reviewed by someone, although I don't know for sure because we have never been asked by the FDIC or OTS to comment on this part of the audit.

The point is, we are audited and examined so much that it is becoming increasingly difficult for us to find time to focus on new products and technologies that could truly benefit our customers and consumers in general.

Truth In Savings

The Truth in Savings Act, another integral and complex section of FDICIA, was intended to provide the consumer with the appropriate information to make informed decisions about accounts at depository institutions. The brokerage industry remains exempt from the burdens of Truth in Savings as they continue to offer similar products to the general public. One might ask why is this regulation necessary for one industry but not for another?

A major part of this legislation centered around changing annual return calculations that the financial institution would advertise and then subsequently pay. In an effort to standardize consumer information, new calculation methods, disclosure rules and advertising requirements were developed. The mathematical calculation of an Annual Percentage Yield (APY) is an extremely complex routine as demonstrated by an example published by the Federal Reserve Bank of St. Louis in a March 24, 1993 bulletin.

APY Earned =

$$100 \left\{ \left[1 + \frac{\text{(Interested earned / Balance)}}{\text{Days in period}} \text{(Compounding)} \right]^{(365/\text{Compounding})} - 1 \right\}$$

Assume an institution calculates interest for the statement period using the daily balance method, pays a 5.00% interest rate, compounded annually, and provides periodic statements for each monthly cycle. The account has a daily balance of $1,000 for a 30-day statement period. The interest earned is $4.11 for the period, and the annual percentage yield earned (using the special formula above) is 5.00%.

$$\text{APY Earned} = 100 \left\{ \left[1 + \frac{(4.11/1{,}000)}{30} (365) \right]^{(365/365)} - 1 \right\}$$

APY Earned = 5.00%

Recent banking publications have indicated that changes in the now prescribed APY formula are being reviewed for additional revisions.

The cost of these regulations is not so much in dollars, although that can be significant, but in energies that are directed to areas that are not productive for the company or the economy in general. They are in many cases dollars invested with no return. When that happens, we can either increase our products' costs to consumers to make up for the lost revenues and opportunities, or simply absorb the expense, which results in reduced capital, therefore in conflict with the intentions of certain sections of FDICIA.

RESPA

The purpose of the Real Estate Settlement Procedures Act of 1974 (RESPA) was to provide effective advance disclosures to home buyers, and settlement disclosure to buyers and sellers. Elimination of kickbacks and escrow requirements were also part of the original RESPA.

What has resulted is the following :

At application, consumers are given

- Disclosures of the lender's right to assign, sell or transfer the loan
- A listing the approximate settlement costs
- A copy of the "Settlement Procedures" Special Information Booklet

At closing, they are given

- A completed HUD-1 settlement statement

Within 45 days of closing

- Disclosures regarding the administration of escrow accounts

Annually thereafter

- Disclosures regarding the administration of escrow accounts

We are giving consumers so many disclosures, the relevance of the information is lost.

Originally, RESPA applied to purchase money transactions only. In 1994, changes were effected which brought junior or subordinated liens under RESPA's scope.

The latest changes to RESPA which take effect May 24, 1995, will require banks to use "aggregate accounting" for escrow accounts. Aggregate accounting requires specific procedures for collecting initial monthly escrow account deposits, provides specific arithmetic steps to calculate escrow and mandates additional disclosure requirements. These addition regulatory burdens disincent the "community bank" from offering this optional escrow service, therefore giving the first time or low income home buyer less opportunity for home ownership. This scenario would be counterproductive to the Community Reinvestment Act (CRA) efforts of most financial institutions.

Additional potential burdens may be borne by municipalities due to the collection of property taxes currently being collected by local financial institutions. Needless to say, this latest change has potential negative expense ramifications on our local communities.

According to an April 6, 1995, article in The American Banker, a bill has been proposed in Congress that would shift responsibility for the enforcement of RESPA from HUD to the Federal Reserve Board. While I cannot speak to the benefits of transferring the oversight responsibilities of RESPA, I would encourage Congress to insure that any additions to this regulation are consistent with the original intent of the law.

Last year, HUD says, 90% of the RESPA-related complaints it received about lenders' actions came from other lenders. Lenders complaining about other lenders is not benefiting the consumer.

Mr. Chairman, I applaud you and your committee for your proactive approach in combating the continued onslaught of new government regulations. Thank you for allowing me to be a part of this process.

Mr. MCINTOSH. Thank you very much, Mr. Keach. Mr. Baumgartner.

STATEMENT OF JERRY BAUMGARTNER, PRESIDENT, TRI-COUNTY BANK AND TRUST

Mr. BAUMGARTNER. I would like to thank the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs for giving me the opportunity to speak to them today and for coming to the State of Indiana to listen to our concerns.

I am president of a community bank located in west central Indiana by the name of Tri-County Bank & Trust Co. with assets of $86 million. Our earnings last year were $1,191,000 and our tier one leverage capital to average assets stood at 10.1 percent. We serve communities that are anywhere from 400 people to 20,000 people in population, with the largest community being Crawfordsville, IN.

Four years ago, when the FDIC came in to do an exam, they had six examiners here for a period of 2 weeks. When they came back in late 1994 to examine us, they had two examiners in for a period of 3 weeks to do a compliance exam, seven examiners in for 3 weeks to do a safety and soundness exam, and then in January, two more examiners came back and spent an additional 4 days doing an EDP exam of the bank.

Generally, whenever an exam team is in, you can assume that one of our officers and many times it is usually a senior officer, is tied up talking to one of the examiners for the entire time the exam team is here. This is almost never productive time for our shareholders, because we cannot be providing services to our customers during that time.

In the last exam, one examiner spent approximately 2 days calculating the tax liability on earnings up in the holding company to see whether or not the holding company was paying its quarterly tax assessment to the bank. Total investment income in the holding company through the first 9 months had only been $2,161. The examiner then wrote this up as a violation, as an unsafe and unsound practice, because we had been making a loan to the holding company according to the examiner, without a note, a promise to pay, signatures of those obligated to pay or an interest rate.

Our policy, which had passed all previous exams since 1986, states that the estimated taxes will be borne on an appropriate split between the companies, except when an immaterial amount of $5,000 or less is due on the estimated payment dates. With total income of only $2,161, we thought we were well within our policy, and that it was not a significant item, considering that we had $9 million in capital.

We are a one bank holding company. Regulations need to have some common sense to them. If it is not a significant amount of money and it does not materially affect the overall situation of the bank, why then would anyone spend any time and write up such an insignificant complaint and waste an hour of my time discussing it with me?

Also, when the examiners were doing the CRA exam, one of the comments they made was that CRA really was not expensive to the bank. It could not have cost the bank more than $7,500 or $8,000

to maintain this file and do the paperwork. I questioned this figure in my own mind, and quickly decided that what we would do would be to keep track of our time and the effort that would go into putting together the CRA report for the board of directors for the first quarter of 1995.

In calculating the cost for the quarter, we took all the time and effort of all of our officers and employees and multiplied it by a figure of four. Our cost for the year 1995 for CRA will be $79,481. In the CRA Act, it states that the bank will maintain a file that customers can come in and look in your CRA report.

Mr. MCINTOSH. Mr. Baumgarten, can I ask you to just go ahead and summarize, so we can make sure we can get everybody in?

Mr. BAUMGARTEN. OK. During that time, in the last 11 years, we have never had a customer come in and ask whether or not they could look at our CRA report, and they have never filed a complaint.

It has become an extremely expensive process, and what we really need to do is get rid of the CRA. It does not serve our community, and I would much prefer to take that $80,000 expense and either pay it out to my depositors in added interest, or reduce the expense to my borrowers, because they are ultimately paying the costs.

[The prepared statement of Mr. Baumgartner follows:]

RE: Jerry Baumgartner's Speech to the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs on the Community Reinvestment Act on April 17, 1995.

Good morning, I would like to thank the Subcommittee on National Economic Growth, Natural Resources & Regulatory Affairs for giving me the opportunity to speak to them today and for coming to the state of Indiana to listen to our concerns.

I am President of a community Bank located in West Central Indiana by the name of Tri-County Bank & Trust Company with assets of $86 million dollars. Our earnings last year was $1,191,000.00 and our tier one leverage capital to average assets stood at 10.1%. We serve communities that are anywhere from 400 people to 20,000 people in population, with the largest community being Crawfordsville, In.

Four years ago when the FDIC came in to do an exam of the Bank they had six examiners here for a period of two weeks. When they came back in late 1994 to examine us they had two examiners in for a period of three weeks to do a compliance exam, seven examiners in for three weeks to do a safety and soundness exam; and then in January two examiners came back and spent an additional four days doing a EDP exam of the Bank. Generally, whenever an exam team is in you can assume that one of our officers, and many times it is usually the Senior Officer, is tied up talking to one of the examiners for the entire

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time the exam team is here. This is almost never productive time for our shareholders; because we cannot be providing services to our customers during this time.

In this last exam, one examiner spent approximately two days calculating the tax liability on earnings up in the holding company to see whether or not the holding company was paying its quarterly tax assessment to the Bank. Total investment income in the holding company through the first nine months had only been $2,161.00. The examiner then wrote this up as a violation and an unsafe and unsound practice; because we had made a loan to the holding company (according to him) without a note, a promise to pay, signatures of those obligated to pay or an interest rate. Our policy, which had passed all previous exams since 1986, states "the estimated taxes will be born an appropriate split between the companies except when an immaterial amount of $5,000.00 or less is due on the estimated payment dates. With the total income of only $2,161.00 we felt we were within our policy and it was not a significant item considering that we had $9 million in capital. We are a one-bank holding company. Regulations need to have some common sense to them. If it is not a significant amount of money and it does not materially affect the overall situation of the Bank, then why would anyone spend any time and write up such an insignificant complaint and waste an hour of my time discussing it with me?

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Also, when the examiners were doing the CRA exam one of the comments that they made was that "CRA really wasn't very expensive to the Bank, it couldn't have cost the Bank over $7,500.00 to $8,000.00 to maintain this file and do all the paperwork!". I questioned this figure, in my own mind, and very quickly and decided that what we would do would be to keep track of the time and effort that would go into putting together the CRA report for the Board of Directors for the first quarter 1995. In calculating the cost for the quarter, we took all of the time and effort put into it by all of the officers and employees, and then multiplied that figure by four (4). Our cost for the year of 1995 for CRA will amount $79,481.00. In the CRA Act it states that the Bank will maintain a file that customers can come in and look at your CRA report. Furthermore, customers can file any complaints that they have with the Bank, so that the examiners can see the complaints. In the eleven (11) years that I have been at this Bank, we have yet to have the first customer to come in and ask to see the exam or file a complaint. When you look at the cost that is being spent to comply with CRA by my Bank and then you look at what are the benefits that are derived from the spending of this money, it seems to me that this is a terrible waste of good resources. I feel that the CRA Act has not produced any real value for our community. Therefore, my recommendation would be that you do away with the act instead of trying to rewrite it. The Chairman of the Board of our Bank, I feel summed it up best when he told the examiners in the exit interview that the real examination of our Bank is done everyday by our customers as they walk through the door and

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receive service from us. Should they not like the service that they are receiving, they can go to the competition very easily. If we are not putting the money back into the community and servicing the community, we would not be growing at the rate of 11% as we did in 1994. In a market driven economy, people try to go where they receive good service. We, at Tri-County Bank, try to provide that for them. I would much prefer to take that $80,000.00 expenditure and either pay it in additional interest to my depositors or lower their borrowing costs by that sum, so that it could create new jobs and economic growth in our community.

I would like to thank you for the time you have given me, and should you have any questions please feel free to ask them and I will do the best I can to answer them. Thank You!

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Mr. MCINTOSH. Thank you. I would appreciate hearing from both of you. One of the things I noted was that a lot of the costs are borne by the smaller institutions, much more disproportionately, and often times, you are the ones who really serve a lot of our smaller communities and rural areas, which is where I represent, and all three of us have a lot of that in our districts.

One thing Mr. Keach mentioned was that sometimes it is your competitors who end up filing the complaints and reviewing the process, and you wonder if Government is really being set up to interfere with the competitive marketplace, and I appreciated you noting that to us, Mr. Keach.

Thank you for coming. Any questions?

Mr. PETERSON. Well, I would just say I am a CPA and I used to audit banks, but I am also in favor of a flat tax and abolishing the IRS.

Mr. KEACH. We have nothing against our CPAs.

Mr. PETERSON. I understand. You must feel, did you go through the whole debacle with the savings and loan?

Mr. KEACH. We did.

Mr. PETERSON. And you survived?

Mr. KEACH. We did, as did all in Indiana. Indiana is a very strong State from the capital standpoint.

Mr. PETERSON. It is kind of ironic when the Government on one hand tells you to change your accounting rules so they do not tell the truth, then they turn around and put all this burden on top of you. A lot of us also support getting rid of the CRA. We are trying to get rid of it.

Mr. KEACH. Thank you, good.

Mr. MCINTOSH. Thank you both for coming. I appreciate that, particularly mentioning the CRA and getting rid of it.

Now, we will get to Mr. Jeff Robinson, who is with the Indiana American Water Co. Is Mr. Robinson here? Great. I know because he came in to see me in Richmond, they have a facility there, but they also have a very effective presentation on a lot of the work you are doing to make sure we have clean water and a clean environment, but also the highest standards of health in our safe drinking water.

I appreciate you coming here today and sharing with us your company's experience in some of these regulatory areas.

STATEMENT OF JEFF ROBINSON, DIRECTOR OF WATER QUALITY, INDIANA AMERICAN WATER CO.

Mr. ROBINSON. I appreciate the opportunity. My name is Jeff Robinson and I am with the Indiana American Water Co. Indiana American Water Co. is a water utility serving approximately 500,000 people in the State of Indiana. We are a subsidiary of the American Waterworks Co., the largest investor owned water utility in the United States, serving 6 million people in 21 States.

As director of water quality for Indiana American, I am able to speak personally about the company's commitment to meet all safe drinking water regulations. We take pride in the quality and reliability of our operations.

Indiana American is fortunate to have the resources to cope with the myriad of regulations and requirements set by the U.S. Envi-

ronmental Protection Agency. Drinking water regulations are technically complex. Many public water systems, especially the small ones, have difficulty meeting the regulations and often do not know what is required of them.

There is a proposed drinking water legislation that adds significantly to the cost of treating water, but provides marginal, if any, benefit to the customer. Proposed regulation for radionuclides is a very good example of this. There is widespread agreement among State health and radiation protection agencies, the scientific community, water suppliers and other Federal agencies that the EPA has overestimated the incremental benefits associated with a proposed maximum contaminant level while underestimating the cost of compliance.

A study published in the American Waterworks Association Journal estimates the cost of installing and operating radon removal technologies across the United States will amount to $2.5 billion per year, with more than two-thirds of those costs being borne by very small water systems that serve 500 or fewer people.

A report to the EPA Science Advisory Board in 1993 states that, "The overall risks associated with radon in drinking water are small compared with the average radon exposures due to indoor air, and the drinking water risks should be placed in context with other radon risks." Setting a maximum contaminant level of 3,000 pic/L would result in water contributing no more radon to indoor air than is currently present in outdoor air.

Proposed legislation for arsenic demonstrates another example of extreme legislation. The USEPA has discussed lowering the MCL to a point between 2 and 20 parts per billion. USEPA estimates that the initial compliance cost for a level of 20 parts per billion could run $140 million, while a lower MCL could run as high as $6.2 billion, and affect 60 percent of all public water systems.

Furthermore, current technology does not allow us to accurately quantify arsenic at 2 parts per billion. This is an example of regulating beyond the capabilities of current technology.

There are three other rules proposed that concern us. These are the Disinfectant/Disinfection By-Products Rule, the Enhanced Surface Water Treatment Rule and the Information Collection Rule. These three rules address complex and interrelated issues. They attempt to balance the risk of microbial disease, such as the Milwaukee Cryptosporidium outbreak, against the risk associated with disinfectants and their by-products. I might mention that Cryptosporidium and Giardia are two of the primary concerns with drinking water industries throughout the United States. They are microscopic parasites, and they are of very significant health importance.

At this point, little is known about the occurrence of most disinfectant by-products and the lack of knowledge regarding treatment effectiveness for disinfection by-product control inhibits sound regulatory decisionmaking. For this reason, the rule is implemented in two stages.

American Water Systems oppose the implementation of stage two of the Disinfectant/Disinfection By-Product Rule. We believe that there are not enough health effects data currently available to justify the levels being proposed. Setting a disinfection by-product

standard too stringent may compromise the ability of many water systems to effectively treat for Cryptosporidium and Giardia.

The proposed Information Collection Rule is intended to provide data to further support regulatory development of the proposed Disinfectant/Disinfection By-Product Rule and the Enhanced Surface Water Treatment Rule. This rule is perhaps the most significant nationwide effort ever proposed to compile water quality data over a fixed time period.

Public health is better protected by spending resources on improving water quality than on performing the tests required by the Information Collection Rule. The test for Cryptosporidium is poor and cumbersome, and not all labs can perform it reliably. Utilities using a poor lab may receive inaccurate results, because finding oocysts is very unlikely with inaccurate techniques. Testing does not protect public health. Treatment does. The EPA should concentrate efforts on developing the proper treatment method, and not proceed with the Information Collection Rule.

Experience being gained by the American Waterworks Systems and others reveals that certain treatment changes can improve removal of Cryptosporidium. American Water subscribes to the Partnership Program, a voluntary agreement between USEPA and public water systems throughout the USA. The program is designed to address concerns surrounding Cryptosporidium and Giardia. EPA's goal was to enhance the treatment of surface water provided to a population of 75 million people.

Concerned water utilities serving over 79 million people, signed on to support the program prior to the public announcement. This illustrates the commitment of the water industry to continuously provide the highest quality water possible to the public without regulatory mandates.

Legislation such as the examples I have cited have a monetary cost, but there is another cost, as well, the cost of lost opportunity. Every moment we spend treating, testing or otherwise complying with unneeded regulations, we lose the opportunity to direct our time and energy toward efforts which truly enhance the quality of our water. Thank you very much.

Mr. McINTOSH. Thank you very much, Mr. Robinson. Let me make sure I understand the implication of what you are saying, because I think it is quite significant. The current regulations in safe drinking water misdirect much of the cost that you have, so that it is not spent on addressing one of the major health threats that we potentially could have in this country, Cryptosporidium?

Mr. ROBINSON. That is correct, especially with the Information Collection Rule, which is a very complex rule. That is designed to collect data nationwide to address Cryptosporidium and Giardia, and the point is, there is enough research available to show that there are Cryptosporidium and Giardia in all surface waters throughout the United States, and our treatment and our focus needs to be on what does it take to effectively treat for Cryptosporidium and Giardia, rather than do a nationwide, very expensive survey.

Mr. McINTOSH. So, a company that might not have as much resources as your company, more limited resources, would end up by law having to spend them to comply with that regulation, and may

not do the most effective job they otherwise would be able to in combating that health threat?

Mr. ROBINSON. That is exactly right. They will spend their time and resources toward doing this nationwide survey, and we know that the Cryptosporidium are there. They need to direct their attention toward what does it take to treat this organism.

Mr. MCINTOSH. So, it is kind of a classic example of where a Government regulation potentially makes it less safe for the consumer?

Mr. ROBINSON. Well, very possibly, especially when there are inaccurate techniques involved, and even detecting Cryptosporidium. What you are going to have, you are going to have a nationwide survey looking at Cryptosporidium in source waters and finished waters. They are not going to find it, because of the inaccuracy of the results, and they are going to gain a false sense of security.

Mr. MCINTOSH. I really appreciate your coming today, because we have been attacked a lot in Congress for trying to cut back on these regulations, and one of the claims was that we would create unsafe drinking water in the country. I have always been suspicious that the current Government regulatory apparatus in that area and in food safety misdirected a lot of the effort and the resources, and your experience and information there would be helpful to us in letting the public know exactly what has been going on.

Mr. ROBINSON. I appreciate sharing it with you.

Mr. MCINTOSH. Thank you. Any questions from any of the other panel?

Mr. PETERSON. During the subcommittee hearings on the moratorium bill, we got into quite a discussion about these Cryptosporidiums or whatever they are called, and some members of our subcommittee told us that unless the EPA was able to go ahead with this rule, and unless the EPA passed the rule, we were not going to be able to fix the problem.

In other words, if you at the local level could not do this, that you had to have the EPA do it, and you are disputing that?

Mr. ROBINSON. Unfortunately, most of the information that is being required to be collected by the Information Collection Rule has already been collected, and we know the occurrence of Cryptosporidium and Giardia. What we need to do is focus on what does it take to provide adequate treatment for Cryptosporidium and Giardia.

Mr. PETERSON. I wish you could have been at the hearing and straightened out Mr. Waxman for us.

Mr. ROBINSON. I would not mind sharing that information with you.

Mr. MCINTOSH. I always suspected that if we could have these things out of Washington, we would get better information. Thank you.

Any comments, Mr. Gutknecht? Thank you very much for coming, Mr. Robinson.

Mr. ROBINSON. Thank you very much.

Mr. MCINTOSH. At this point, we are going to turn over to the next segment in the hearing process, something that I have been looking forward to and think will be quite valuable. It is what I think of as the open mic part of our field hearing. I would like to

invite anybody from the audience to come forward and discuss or address any regulatory issue that you may have or think that we have forgotten.

Karen Barnes, who is there with the microphone, can come to you and make sure that you will be heard and recorded, so that testimony will be taken back with us to Washington. If you would be sure and let us know what your name is, so that we can get it for the official record and I might ask you afterwards to go over and make sure they have spelled it correctly and everything, so that they can take that back to us.

Mildred tells me that the best thing is just to raise your hand and Karen can go to you, and if you could stand up as you are making your statement, I think that will help everybody hear you.

Yes.

STATEMENT OF BOB SARGENT, MAYOR

Mr. SARGENT. My name is Bob Sargent, and I am the mayor.

Mr. MCINTOSH. How do you do, Mayor? Good to see you.

Mr. SARGENT. Good morning. Appreciate your coming here. I do not know, I guess, what a Blue Dog Democrat is.

Mr. MCINTOSH. We think a Blue Dog Democrat is one that has been squeezed till they turn blue. A yellow dog—we feel like that sometimes.

Mr. SARGENT. In the late 1970's and early 1980's, going into Bramfield, a four county landfill was located out in Fulton County. We hauled sewage. We had permits to do that. The landfill was permitted. Then, they decided to close that facility and then they made us a PHP—potentially harmful——

Mr. MCINTOSH. Go ahead and explain to everyone else. That is under the Superfund Act?

Mr. SARGENT. Yes.

Mr. MCINTOSH. You could be potentially held liable for the entire clean up as a result?

Mr. SARGENT. Yes, but they decided that they would do it by volume, and we put tons of sludge in there, which was really inert material, used as fertilizer.

So, they wanted us to pay $160,000 a year. We were looking at over $2 million for the city of Kokomo for closure of this landfill. We wanted to take the leaching from that landfill, bring it to Kokomo and run it through our sanitation plant, which legally you can do under EPA regulations.

In fact, we ran some hazardous material through our sanitation plant for EPA, when they were cleaning up the—steel plant. Now, we wanted to take that leaching, run it through our wastewater treatment plant, which we did have, and they said we could not do that.

Now, the manhole they wanted to dump it in was offsite the sewer plant. That would be OK. I mean, it is just absolutely ridiculous. It would be humorous, really, if it did not cost us a couple of million dollars and maybe more.

Mr. MCINTOSH. Let me make sure I have that correct. You could take that leaching and you could dump it into the manhole or if it were in the manhole, you could process it?

Mr. SARGENT. We do that all the time with the leaching from the landfill in Rochester, and it helps us offset our costs, and they say we cannot do that.

Mr. MCINTOSH. They will not let you take it directly to the plant to be able to treat it?

Mr. SARGENT. No, and we tried just outside the plant, and they said no——

Mr. MCINTOSH. Let me ask you this, Mayor, if you have to comply with the clean up costs in that area, who ends up paying that bill?

Mr. SARGENT [continuing]. Kokomo is the largest employer. I cannot recall the other PRT's in that.

Mr. MCINTOSH. If the city has to pay any part of that bill, then ultimately, it would be the taxpayers of Kokomo?

Mr. SARGENT. Sure, we are paying $160,000 a year right now. A minimum of $2 million, that is less sewers we can build, police officers we can hire, you know, all the things that people need. They are taking the leaching from the four county landfill, putting it in a truck, and hauling it to Ohio, at a cost of $275,000 a year, and are putting it in a hole in the ground in Ohio, untreated. We call it the—of Ohio. That is absolutely ridiculous.

Mr. MCINTOSH. I will tell you, it makes you a lot more sympathetic to Senator Coat's proposal to not allow interstate transportation of this.

Mr. SARGENT. Absolutely. Thank you very much.

[The prepared statement of Mr. Sargent follows:]

SPEECH BY THE HONORABLE ROBERT SARGENT,
MAYOR OF THE CITY OF KOKOMO, INDIANA

Congressman McIntosh, I am Robert Sargent, Mayor of Kokomo, Indiana. I appreciate the opportunity to speak to you today about a situation in which more than $2 million in local tax revenues are going to be wasted as a result of an arbitrary and illogical application of an EPA rule.

This situation involves the cleanup of the Four County Landfill in Fulton County, Indiana. For about a three year period beginning in the late 1970s, Kokomo disposed of its sewage sludge at this location. The sewage sludge was not classified as hazardous waste, and, in fact, could have been used as fertilizer. At the time, the landfill was properly licensed, and its use by the City for the disposal of sewage sludge was approved by the State of Indiana. Several years after the City ceased sending material to the landfill, the landfill was ordered closed. Because of the fact it sent material to the landfill, although the material was non-hazardous, the landfill properly licensed, and its use approved by the state, the City has found itself among the group of businesses ordered by federal and state environmental authorities to conduct a "cleanup" of the site. Because of the volume of waste contributed to the site by the City, the City stands to be responsible for about 12% of the total cleanup cost, which is currently—and I emphasize the word *currently*—estimated to be in excess of $15 million.

While I could, I suppose, argue the equity of being dragged into the cleanup at all, given the fact the City's contribution was non-hazardous, the landfill properly licensed, and the use of it approved, that is not my purpose here today. Rather, I wish to bring to your attention what I consider to be an utterly fantastic result brought about by a mechanical application of the current regulatory scheme.

A significant cost, in addition to the cost of cleanup, involves the disposal of leachate from the landfill. Leachate is rainwater that has seeped through the landfill contents. Currently, the leachate is hauled by tanker truck to an EPA permitted disposal site in Ohio. There, with EPA's blessing, it is pumped untreated into a deep hole in the ground. In previous correspondence to my Congressional delegation, I have referred to this as the "golden hole in Ohio." The cost of leachate disposal using this disposal method will be about $275,000 per year. Under current laws, the parties' obligation to dispose of leachate from the landfill will continue forever, and thus, cost millions of dollars.

The City of Kokomo has come up with an innovative alternative for disposing of leachate from the landfill that would cost next to nothing and would actually be much better for the environment. Unfortunately, however, EPA has refused to allow it.

Kokomo's proposal is to treat the leachate at its own wastewater treatment plant. In return for doing so, the City would receive a credit from the other cleanup participants for some or all of its roughly $2 million share of the other cleanup costs. The City's plan would also save it and the other participants the $275,000 per year which they will otherwise have to spend, for eternity, to haul the leachate to Ohio for disposal. Obviously, the City's proposal would save taxpayers and industry millions and millions of dollars.

There is no doubt that the leachate can be treated safely by the Kokomo wastewater treatment plant. The only hazardous constituents in the leachate are in concentrations similar to those found in the industrial waste and sewage that are treated at the plant every day.

There is also no doubt that the City's proposal is legal. Federal law contains what is known as the "domestic sewage exclusion", which basically says that when any hazardous waste

is mixed with domestic sewage before it is treated at a public treatment plant, the waste is no longer considered hazardous. It is because of the domestic sewage exclusion that the Kokomo treatment plant, like all such facilities throughout the country, is able to treat the industrial wastes that are put into sewers by local businesses.

EPA has arbitrarily decided that the leachate disposal plan proposed by the City of Kokomo will not qualify for the domestic sewage exclusion. In EPA's view, the domestic sewage exclusion would apply only if the leachate were put into a sewer manhole located *outside* the boundaries of the wastewater treatment plant. In other words, according to EPA, if the very same leachate is put into the very same sewer *inside* the treatment plant fence, which is the only practical way it could be done in this instance, the domestic sewage exclusion will not apply.

The irony of this situation is that when EPA and the State of Indiana were in the process of cleaning up the Continental Steel Superfund Site several years ago, *they* came to the City of Kokomo and asked if the City's wastewater treatment plant would accept and treat hazardous waste from that site. The City agreed. There is technically no difference between what was done with the Continental Steel waste and what we have proposed to do with the Four County leachate. The only physical difference is that the manhole which received the Continental Steel waste was outside of the treatment plant fence. Now, it appears that simply because EPA is not footing the bill for *this* cleanup, it is unwilling to approve essentially the same arrangement proposed by Kokomo.

EPA's position that application of its domestic sewage exclusion rule depends upon the location of a manhole would at least have some humorous value if not for the fact that it is going to cost the citizens of Kokomo more than $2 million. No benefit whatsoever will result from

that expenditure. Moreover, no benefit will result from the additional millions of dollars which will be spent disposing of leachate in years to come. Distinctions like the one drawn by EPA may have some importance for government bureaucrats. For the rest of us, though, it is an example of government at its worst. On behalf of the citizens of Kokomo, I ask for your help.

If you have any questions or would like further explanation, our environmental attorney is present with me to provide more detailed information.

Mr. MCINTOSH. Thank you very much, Mr. Mayor. Appreciate it. Any comments.

VOICE ONE. Thank you. My name is—we currently have 18 sewers and over 3,300 associates and—cardboard bailer. We have had two instances of hazardous complying by OSHA. One of the problems I have had is that as a means of their investigation, what happens, I am visited by a labor representative, a representative, and they proceed to call the people—even throwing the boxes away instead of operating the bailer.

Based on the number of responses I get back, they do a little bit more investigation, then they come to us saying, these paper or cardboard, we are going to view these as signs of OSHA violations.

In 1991, the first cite from this 6 of the 14 individuals that they cited us for were among our employees at that time, and one of them had—for over 5 months previous to their investigation. At that time, our fine started at $32,000. We went to OSHA, had a hearing, and we were fortunate to have it reduced to $17,000, $1,000 of that for—$16,000 for compliance.

Recently, $1,000 for an occurrence, up to $10,000 for occurrence. Three months ago, we were cited again and we were fortunate to be fined only $1,200 a person.

One of the things we do at our company is safety. A lot of the 16 and 17 year olds we have employed are part of our work force, employee orientation and all that.

Over 3,300 people, some of them teenagers, there is no way we can have someone follow them around, check and make sure they are throwing boxes or not. I really appreciate you coming.

Mr. MCINTOSH. Thank you very much. Let me just make sure, if you have somebody who is 18 years or older, then you will not get fined if they——

VOICE ONE. If they are over 18 and they throw something, they are not—it is not a violation.

Mr. MCINTOSH. So, if I were you, I would start not hiring people who are 16 and 17 year olds, because I would not want to pay the fines. But, then, our high school kids would not have a chance to have a job after school. It seems like it is kind of misdirected in some of the efforts there.

VOICE ONE. Yeah, like I said, we have to keep our doors open.

Mr. MCINTOSH. I know Steven Austin who works for me started out his life as a check boy at one of the stores in Muncie, and look where he has gotten. But, I think he survived OK, and I am sure had to operate some of that machinery. I appreciate you bringing that forward.

I remember reading before we left on break that one of the Members of Congress had introduced a bill to try to get that corrected, and I will look into that. Any suggestions or comments from my colleagues? That is a good example of something maybe we can take up on Corrections Day. Thank you.

I appreciate all of the enthusiasm, and probably will not ask too many questions so we can get to as many people as possible.

Mr. HEDDERICH. Good morning. My name is Tom Hedderich and I am currently serving as president of the Indiana Association of Mortgage Brokers. We are an affiliate of the National Association

of Mortgage Brokers, which is responsible for the origination of about 49 percent of all home mortgages last year.

I would like to speak to you about the Home Ownership and Protection Act, more commonly known throughout the industry as the act, the rules were published October 1, and it is written—lending in a high risk market. The act amended the Truth in Lending Act, the purpose of which is—consumer created disclosures and not in terms of costs.

This act should be repealed. It obstructs the flow of credit by—Truth in Lending has specified that this regulation does not govern charges for consumer credit. Yet, by setting arbitrary, high cost rates, we have established—many lenders who have attempted to—disclosure requirements and various—others will leave the industry and invest their capital elsewhere.

The makers of this act presume the credit terms found in federally subsidized conforming programs are the norm. Government is imposing restrictions on lenders that are willing to take risks the Government will not take. This act eliminates the whole recourse status. Mortgage capital flows through the country by a secondary market. One of the inefficiencies of the system is—they ask owners—eliminates the whole recourse status. The result will be the elimination of a majority of secondary funding sources, increase in the cost of capital, and a decrease in the funds available to consumers that the act is intended to protect.

Since Congress amended RESNA in October 1992—and most mortgages on residential properties, including those that become high cost. These are now subject to RESNA and the disclosures that RESNA requires. Additional regulation is redundant.

Also, this act—standard business practices, such as balloon mortgages, which will be severely limited by the act. These have been used in many contracts for many years. They are commonly used by bridge loans or short term notes to renovate a financial property, such as stopping a foreclosure, or moving equity from one property to another for repurchase.

The prohibition of balloon mortgages hinders consumers who need a short term remedy to accommodate their immediate financial need. Furthermore, this act is ambiguous. There are numerous ambiguities in the proposed regulations. These demonstrate a lack of understanding of the business practices of the mortgage finance industry and a further reason for repeal of the program.

I would like to tell you also that our association supports the following bills currently before Congress. The first one is House bill 1362 from Congressman Bereuter of Nebraska. The bill will transfer authority of RESNA from HUD to the Fed, streamline RESNA and truth in lending. It takes certain—out of RESNA and lets truth in lending take care of problems. All of these things are very good for investors.

Second, we support the Senate bill 660, which is the Chevy—bill dealing with regulatory relief matters of this magnitude.

Last, we also support House bill 1380, which is sponsored by Congressmen McCullom and Gonzalez and is a truth in lending class action of 1995. This act also calls for more—I also would like to commend you for having your hearings in the field, and would like to thank you for the opportunity to speak.

Mr. MCINTOSH. Thank you very much. Appreciate you bringing that forward to our attention. It sounds like it is making homeowners more difficult to be able to get their mortgages.

Mr. HEDDERICH. Absolutely.

STATEMENT OF EDWARD PROBST, PHYSICIAN

Dr. PROBST. Thank you, also, for coming to the field. I am Edward Probst. I am a physician here in Indiana, and I have been impacted and you have been impacted adversely by the—Laboratory Improvement Amendments, and I want to talk just about four things that we try to do in our offices, which are for the benefit of our patients.

One is—preps. Preps for fungal diseases, fungal cultures, and reading slides. I will drop the slides, because those are prepared and brought back and read. What normally would be required if a patient came in and had a condition that required one of these studies, it would be a part of that evaluation, as an area. We would take a little slide, take it to the laboratory in the next room, look at it under the microscope, see what we saw, go back to the room, write in the record, tell the patient what we found, and give them their therapy.

Under the new act, and I might mention that this is being administered by the Indiana State Department of Health, and the administrator said there has never been a single complaint of a dermatologist on any of these three subjects. Nonetheless, it is the law, and they will make us subject to it.

So, what we have to do now, we have to create a manual that would explain everything in detail about how we did this procedure, how we had changed the light bulb should it burn out and—we were written up for that because we did not have a policy manual on what we would do if a light bulb would burn out. We never worried about it. We had a light bulb in the drawer for the microscope, but we were written up because we did not do that.

The American Academy—sent us the booklet, which is—in order to help us write the manual that we need in order to be able to perform three studies that are necessary for you to receive adequate care at the time of your visit.

So, what we now are required to do is that we have to be registered, we have to have a manual which is over 360 pages and took over 200 hours of a physician's time to put together, as well as secretarial time. We estimate probably $6,000 to $8,000 that we have invested in order to be able to do procedures that we charge $20 for, and we do not accumulate more than $2,000 in a year.

Also—$10,000 for taking on compliance. What I have to do is, in order to do that procedure, I have to write a request to myself, cause no one else does that, I am required to fill out the request with specific information, hand it to me, re-enter the patient's name, identification number, eight sets, requesting physician, which is me, laboratory, which is me, date of collection, time of collection, and then receive my ticket, and clinic location, all written on a separate piece of paper.

This, then, has to be taken to the laboratory, where there is a laboratory test requisition and report log, also on each patient. Every patient who has a laboratory test that is done by us, which

is simply looking under the microscope and writing this down. Then, we have to rewrite the patient's name, the doctor, the specimen collected, date and time, patient identification number, test to be done, laboratory test, when it was performed, time of receipt and time it was done, at the same time, and who it was performed by, which is me, and then the results of the tests and the action I might take.

Then, after I have done that, then I have to fill out the test request, the second part of this resultant test. Then, I can go back to the patient and I can then write it in the chart which I would normally have done, take the extra piece of paper, stick it in the chart because they require that it be there, and then I can go ahead and finish my evaluation of the patient and inform them what I have found they could do.

If I do not decide to be under this regulation, then I have several choices, and they are all bad for me, they are bad for the patient. That is to take a sample, send it to the hospital laboratory where, in the process of straightening of the small pieces they are diluted and dried out, there is a lag in time, it can be lost, and there is a greater chance of a negative result, because of all the time lost and the way the sample is carried by the hospital.

If the patient takes it there, he will probably get it there within an hour. If it is sent by courier, it would probably get there within 4 or 5 hours, which really complicates the problem.

What then happens is that the pathology department of the hospital will send a report back to me. I will receive it the next day. I then have to reschedule the patient back in the office to go over them with a report of what you found and then go ahead with your procedure, not necessitating extreme expense to the patient, frustration for me, any—for general health care, decreasibility of the likelihood of getting a positive result, and the correct diagnosis. This is in the area where there has not been a single complaint ever, based on any of those three procedures.

We have a law, we abide by the law, it is very difficult. We have one partner who does a half a day practice in another community. This regulation does not cover that. He has to redo all these in the other location. The law makes efficient, less expensive, better quality and more accurate office care illegal in Indiana. Please help to repeal this and get us out of this burner, so we can do what we need to do.

Mr. McINTOSH. Thank you very much, Dr. Probst. This was one thing we had looked at right at the end of my time with Vice President Quayle at the Competitiveness Council, and because of a change during the election, we were not able to forestall that.

It is also a classic example of where we are made less healthy as a result of these Government regulations. Finally, this reminded me that we may need to now update the old joke about how many EPA officials it takes to screw in a light bulb. Ten—one of them to screw in the bulb, and nine of them to fill out the environmental impact statement. So, you now have pointed out another example of how Government just creates busy work for us.

STATEMENT OF NANCY FENNEY, MEMBER, INDIANAPOLIS CITY COUNCIL

Ms. FENNEY. Thank you, Congressman. I am Nancy Fenney, a member of the Indianapolis City Council, but today I am here—I do not want to take a lot of time to read all of this, but I would like to say that we feel regulations backfire on the intent of the original law, and it is costly and burdensome and inflexible mandates on the Government.

Something I would like to share is that when you are looking at funding or past—local level, please remember those of us at the local level. The local government is the one that has to do the job, and we are the ones that sometimes never receive the money. It has to go to the State first, and local government means different things to different people. So, I hope you will take that message back, if you do not take any other message back today. Local government is right here, but basically, I think we have to keep in mind, if they are going to get recommended by local government, please send it to us.

May I comment on the flexibility in the regulations? Here in Indianapolis, we have different scales and cycles of—to put up with these inflexible regulations, and we think that we should be encouraged to find the most innovative solution, as long as we can meet the bottom line. I think that should be the whole thing right there.

When you are making these regulations, if you would involve local government in some of the discussion before—for instance, in some regulations, EPA did listen to a group, a partnership, and this partnership did make a difference, because EPA changed the regulations from 1989 to 1994, and we were able to remain flexible. This is going to make a lot of difference here in Indianapolis on what we spend. We are estimating $300 million for combined overflows. We could save about a tenth of that, if we are allowed to do things that are bottom line.

Also, the one thing I really would like to decide, before you do decide on regulations, if you would—and have scientific evidence that these hazardous fumes, before you come up with something, sometimes something is hazardous, but it is not hazardous unless you get a certain amount.

The other part is, we have had great success with—let us assess the most serious areas to put our dollars, before we do little things that are popular and leave big rifts untouched. I think that is terribly important.

Basically, I can just tell you that I wanted to be sure my testimony is heard, because I—and what is sad is EPA mandated—our plant for solid waste, reduces—but after this mandate, many of us felt like we were guaranteed of certain amounts of—solid waste and flood control. My last question is, is there any congressional help or do we have—catch 22 between mandated action and judicial prohibition? I hope you will. Thanks for listening.

Mr. MCINTOSH. Thank you. I also want to commend you for actually traveling out to Washington to bring that flow control problem to my attention. I appreciate it when local officials are willing to go that extra effort to try to get what is best done for the community. I appreciate you coming today.

STATEMENT OF PAUL BLACK, EENC POULTRY ASSOCIATION

Mr. BLACK. Thank you, Mr. Chairman and members of the committee. I am Paul Black of the EENC Poultry Association and I will be very brief. There is a new regulation this year that relates to us in the meat processing industry. It is known as a megareg. This is the attempt to regulate the size, taste and control to insure food quality.

I can see for the poultry industry the same—what we are concerned about is that the—will be instituted on top of the current regulations which make it look small. The current regulations are more public in measure and determinance, to examine—and so forth.

The science based approach is certainly correct in the way it should be going, but in terms of sheer volume, we need to peel off the first layer, first several layers before we institute the new layer. Thank you.

Mr. MCINTOSH. Thank you. I appreciate that. Something called a megareg is scary.

Mr. GUTKNECHT. Let me just say that coming from Minnesota, both Collin and I have a lot of turkey processors and producers, and we have been briefed on some of the influence.

Mr. PETERSON. I serve on the Livestock Subcommittee and I am going to be going to six hearings in the next couple of weeks, but we held a meat inspection school to try to get other folks to understand what is going on. We are trying to move on legislation so what you are saying does not happen. We are going to try to hold up the finalizing of the rule and try to see if we can get a legislative solution, so we do not lay one on top of the other.

Mr. BLACK. The members will appreciate it.

Mr. MCINTOSH. We will take your testimony, and I will send it over to that group who is doing it, so they can put it in their official records, as well.

Thank you. We have time, unfortunately, for just one more person. Let me ask everyone else, if you have anything in writing, we will be able to take that, or if you could give your names to one of the staff members, we will be sure and make sure your views get included.

STATEMENT OF JOHN GRUNWALD, PRESIDENT AND CEO, ENDEBURG, IN

Mr. GRUNWALD. Mr. Chairman, Representative Peterson and Gutknecht, my name is John Grunwald, and I am the president and CEO of the—Company in Edenburg, IN, a manufacturer of—and lumber to be used in manufacturing furniture and architectural—I would like to talk to you about two mandates, the reorganization and administration of the Clean Water Act of 1970 and the contradiction between the attempt of the environmental legislation and the rendition of the law.

On November 29, 1994, the David L. Rek Co. plea bargained as the U.S. Department suggested, regarding a violation of the Clean Water Act, because of an illegal discharge of industrial wastewater into the Big Blue River near Edenburg, Justin County, IN.

The company denied the violation, but it cannot prove as a result of laboratory tests, that we did not do any damage to the river and

its ecosystem, as improper discharge was first of all minuscule in quantity, and second, contained no hazardous waste whatsoever.

The discharge was caused by an unpermitted connection of the drain from a long pipe to the storm sewer of the city of Edenburg. When this charge first caused concern in 1991, instead of picking up the telephone and directing an inquiry to top management, he initiated an undercover investigation. As it turned out, the investigation did nothing but extend the duration of the unpermitted discharge into the river.

The Conservation Office said the investigation would only end in Federal criminal charges, surge water and raids on our facility by FBI and other Federal and State agencies in 1992. Prior to the raid, top management had no knowledge of the violation. As soon as top management was informed, the discharge was stopped, modifications were made to provide the discharge into the sanitary sewer, and we reached an agreement.

Had the Government agency informed top management upon discovering the discharge, the entire matter would have been resolved quickly and effectively. I do not disagree that some sort of fine was in order, although the people who ordered the unpermitted connection were not aware of the fact that there actually was a requirement.

Nevertheless, the combination of fines, restitutions and probations which resulted in the agreement with the U.S. Department of Justice—the result of the plea bargain agreement was $1,100,000, while the company was put on a 2-year probation. In addition, the company was ordered to pay $2,500 to the United States of America, $250,000 to the Indiana Department of Environmental Management and $250,000 to the Fish & Wildlife Division of the Indiana Department of Special Resources, altogether, payments of $625,000. This is an inordinately high amount of money for such a small company, considering the extent of the violation, and the fact that the violation itself was extended due to the cops and robbers game played by the Conservation Office, the Indiana Department of Environmental Management, the Indiana Department of Natural Resources and the U.S. Justice Department.

I might add that the only reason why the company agreed to settle was to prevent the possible incarceration of one or more of its supervisors. The explicit threats made by the Office of the U.S. Attorney, documented in a letter dated July 1, 1994 by the Assistant U.S. Attorney——

Mr. MCINTOSH. Sir, let me just interrupt you there, because we have to close up. It sounds to me like much of the problem could have been avoided if the Government had actually been trying to work with you to solve the problem.

Mr. GRUNWALD. That is exactly my point. Exactly. Or, instead of playing cops and robbers, instead of attacking the problem.

Mr. MCINTOSH. What would have happened had a requirement to give you notice and an opportunity to correct the problem before pursuing criminal sanctions?

Mr. GRUNWALD. The problem would have been resolved, as it was resolved after management found out about it.

Mr. MCINTOSH. I appreciate you coming and sharing that with us today. If I could ask you to just make the rest of your testimony available and any summarizing or closing statement.

Mr. GRUNWALD. Thank you very much.

Mr. MCINTOSH. Thank you. I appreciate everyone coming today, and I apologize to those who we were not able to participate in the session. Please do make your views available to us and we will include them in the written part of the record.

To me it is striking that we can be here 2½ hours and still have a dozen or so people who have other regulatory problems that we need to address. It shows the magnitude of the problem.

We have had everything from pencils to bits of corn to drinking water, as heavily regulated and often counterproductive in ways that do not add any safety or health or environmental protections and in some cases, may detract from that effort.

So, I appreciate the effort of the public in participating today, and this subcommittee will stand adjourned.

Your views will be taken back with us to Washington. Thank you.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Mr. Chairman, Representative Peterson, Congressman Gutknecht:

My name is John A. Grunwald and I am the President and CEO of the David R. Webb Company in Edinburgh, Indiana, a manufacturer of wood veneers and hardwood lumber for use in manufacturing of furniture, panels, and architectural woodwork.

I should like to talk to you about three matters

1. **The reauthorization and administration of the Clean Water Act of 1970**
2. **The contradiction between the intent of environmental legislation and the implementation of the letter of the law**
3. **Completely impractical--I would almost say impossible--testing requirements for rain water run-off into storm sewers**

The Reauthorization and Administration of the Clean Water Act of 1970
On November 29, 1994, the David R. Webb Company reached a plea bargain agreement with the United States Department of Justice regarding a violation of the Clean Water Act, 33 USC, Paragraph 12-51, because of an illegal discharge of industrial wastewater into the Big Blue River near Edinburgh, Johnson County, Indiana. The company never denied the violation, but it can prove as a result of laboratory tests that we didn't do any damage to the river and its ecosystem as the improper discharge was, first of all, minuscule in quantity and, secondly, contained no hazardous substances. The discharge was caused by an unpermitted connection of a drain from a lumber steaming vat into the storm sewer of the city of Edinburgh.

The discharge was first discovered by a conservation officer in 1991. Instead of picking up the telephone and directly inquiring from top management, he initiated an undercover investigation. As it turned out, this investigation did nothing but extend the duration of the unpermitted discharge into the river. The conservation officer's investigation culminated in a federal criminal search warrant and a raid on our facilities by the FBI and other federal and state agencies in May of 1992. Prior to the raid, top management of the David R. Webb Company had no knowledge of the violation. As soon as top management was informed, the discharge was stopped and modifications were made to tie the discharge into the sanitary sewer with the permission and agreement of local and state authorities. Had the government agencies informed top management of Webb upon discovery

of the discharge, the entire matter would have been resolved quickly and effectively.

I do not dispute that some sort of a fine in the order of $100,000 might have been in order because although the people who ordered the unpermitted connection were not aware of the fact that their action was illegal, it did violate the law. Nevertheless, the combination of fines, restitutions, and probations which resulted from the plea bargain agreement with the U.S. Department of Justice was excessive compared to the gravity of the offense. The result of the plea bargain agreement was a fine of $1,100,000 with all but $100,000 of the fine suspended while the company was put on a two year probation. In addition, the company was ordered to pay $25,000 to the United States of America, $250,000 to the Indiana Department of Environmental Management, and $250,000 to the Fish and Wildlife Damage Account of the Indiana Department of Natural Resources. Altogether, payments of $625,000 were made by the company. This is an inordinately high amount of money for such a small company, considering the extent of its violation and the fact that the violation itself was extended due to the "cops and robbers" game played by the conservation officer, Indiana Department of Environmental Management, the Indiana Department of Natural Resources, and the United States Justice Department.

I might add that the only reason why my company agreed to such a settlement was to prevent the possible incarceration of one or more well-intentioned but misinformed supervisors. The explicit threats made by the office of the United States Attorney can be documented from a letter dated July 1, 1994, by the Assistant United States Attorney.

I do not wish to reopen the case, but I feel very strongly that the purpose of the law should be to keep our water clear and to end any inadvertent violations as soon as possible, rather than to carry on lengthy and expensive investigations or sting operations in order to assign guilt while extending the duration of the alleged violation.

The law should also refrain from prescribing statutory incarcerations and inordinately exorbitant daily fines, especially when the violation results in no environmental damage.

Another way to eliminate unnecessary criminal prosecution would be to make notification of top management a prerequisite to any criminal investigation.

The Contradiction Between the Intent of Environmental Legislation and the Implementation of the Letter of the Law

The next matter I would like to talk about covers our trials and tribulations in putting in a new, modern boiler. On April 28, 1992, the David R. Webb Company applied to the Indiana Department of Environmental Management for a construction permit to install a new boiler. We received the construction permit only on November 25, 1992. During this time the company made repeated contacts with the Indiana Department of Environmental Management in attempts to have the permit issued in a timely manner. Eventually, the boiler was built and started in early 1993. As required, a stack test was performed in July 1993. As it turned out, the test was done under the most difficult and unfavorable conditions. The boiler failed the test. Nevertheless, the new boiler was designed to meet the standards and still put out approximately 1/5 of the amount of particulate emissions as our old boiler, which did not have to conform to the new standards. The Indiana Department of Environmental Management made us shut down the new boiler and forced us to operate the old one, which as previously stated put approximately five times as much particulate matter into the air as the new one.

After a long negotiation and another fine, the boiler was allowed to be fired under the condition that the company install an electrostatic precipitator which would reduce the particulate emissions well below the allowable limits. We feel that the fine is unjust because the boiler was designed to operate within the permitted emission limits and the fact that it didn't conform to specifications was really not our fault, and we shut it down immediately when this became known, necessitating the renewed firing of the old boiler.

There should be some provisions in the law which allow some latitude in situations like this when the renewed firing of an old boiler creates considerably more particulate matter emission than the new one, which by no fault of its owner does not meet new and stringent standards. In such a case, first consideration should be to protect the environment and not necessarily to abide by the letter of the law. In the meantime, we agree that expeditious action should be taken to bring the new equipment into compliance, but without an obligatory fine to the innocent victim.

Storm Water Sampling Requirements of the National Pollutant Discharge Elimination System

I would also like to discuss the 1987 revisions to the Clean Water Act which added Section 402(p) to address storm water under the National Pollutant Discharge Elimination System (NPDES). This program requires storm water sampling and monitoring of discharges associated with industrial activity. Affected facilities

must apply for an NPDES general permit which includes a specific notice of intent for coverage under an NPDES permit and development of a storm water pollution prevention plan.

The David R. Webb Company filed for an NPDES general permit because storm water run-off from roof areas, log storage areas, and debarking operation might be contaminated by these processes. Coverage under the general permit requires that a Storm Water Pollution Prevention Plan be developed within 365 days of the Notice of Intent submission. After implementing the Pollution Prevention Plan, Webb must conduct storm water sampling during two rain events within the first year. Sampling potentially contaminated discharges of storm water may sound simple enough; however, the following qualifications must be met:

(1) The two sampling events must be three months apart
(2) A total of 0.25 - 0.75 inches of rain must fall
(3) The rain event must last between 4.5 and 13.5 hours
(4) The qualifying rain event must occur no earlier than 72 hours after a previous rain event.

In order to meet the sampling requirements the David R. Webb Company has two options: (1) collect samples by hand, or (2) hire a contractor to set up automatic samplers. Manual sample collection would require at least eight employees to leave their jobs, assemble all of the necessary equipment, and get to the sampling points within the first 15 minutes of the storm. Total time for sample collection is three hours. Because the David R. Webb Company cannot afford to allow eight employees to leave their duties at the whim of nature and does not wish to subject employees to the hazards of thunder showers, the Webb Company has elected to hire a local laboratory to set up automatic samplers. This option requires that the laboratory representatives visit the facility to set up the auto samplers every time there might be a qualifying rain event. This option results not only in considerable cost but scheduling difficulties as well.

Obviously there are several problems with the storm water sampling requirements. First of all, there is no way of knowing ahead of time if a rain storm is going to be at least 0.25 inches or if it is going to rain at all. Because of this uncertainty, a substantial time and financial investment has to be made every time there is a chance of rain. Considerable time and money is wasted because rain events do not "qualify." Secondly, weather pattern prediction has come a long way from the *Farmers' Almanac*, but there is still no accurate way to predict exactly when a rain storm will begin or how intense it will be. When it rains on a Sunday afternoon or at three o'clock in the morning a sampling team cannot be activated within the

required time and three days must pass without rain before sampling can be tried again.

The intent of the storm water sampling requirement must be reviewed. The Storm Water Pollution Prevention Plan describes the Best Management Practices (BMPs) in place at the facility. These practices are put in place solely for the prevention of storm water contamination. The sampling of storm water run-off is supposed to indicate the success and effectiveness of these management practices. Why not, then, approve BMPs specific to each industry which are known to successfully prevent or limit storm water pollution? It should not be left up to each individual business, regardless of size, to prove that a BMP is effective by enforcing arduous, complicated sampling procedures. A single first flush grab sample of one storm event might be reasonable. Qualifications of duration and time are ridiculous requirements for something as unpredictable as the weather.

JAG:cc
April 17, 1995

Paid Advertisement

On November 29, 1994, in the United States District Court at Indianapolis, Indiana, David R. Webb Co., Inc., entered a guilty plea to an Information filed by the United States Attorney for the Southern District of Indiana charging that on 220 days between April 12, 1990 to on or about May 20, 1992, we knowingly violated the Clean Water Act by discharging, without a permit, a pollutant, to-wit: industrial wastewater into a storm sewer that emptied into the Big Blue River.

The facts are that in Webb's lumber facility located in Edinburgh, Indiana, we maintain a steam box in which walnut lumber is steamed as a part of the veneer manufacturing process. This process creates a wastewater which is a hot, dark liquid with a pungent odor, which is acidic, and contains residues of dirt, bark, resins and dissolved and suspended solids from the wood.

In April, 1990, two of our supervisory employees caused this steam box to be connected to a storm sewer by a six-inch diameter plastic pipe buried beneath the ground. This pipe permitted gravity-fed drainage of the steam box into the storm sewer, which empties into the Big Blue River. Although top management was not aware of this diversion until notified by federal and state authorities on May 20, 1992, this was a violation of the Clean Water Act for which the David R. Webb Co., Inc. is responsible.

We hasten to assure the public that the wastewater was not hazardous or toxic, but a discharge containing large concentrations of dissolved and suspended solids can represent an environmental threat to any body of water, because of the possibility of depleting its oxygen content.

We at Webb deeply regret this incident and assure our neighbors that we are committed to protecting our environment.

Of course, we have terminated this improper discharge and have undertaken measures to avoid a repetition of this incident. We will also clean out the storm sewer from the point at which we diverted the wastewater into it.

By way of restitution for this matter, Webb will pay $25,000 to the United States of America, $250,000 to the Indiana Department of Environmental Management, and $250,000 to the "Fish and Wildlife Damage Account" of the Indiana Department of Natural Resources. In addition to the restitution, Webb has also paid a fine of $100,000 to the United States of America.

We apologize to our neighbors and fellow citizens, and assure you that we are committed to the preservation, protection and restoration of our environment.

INDIANAPOLIS STAR
SATURDAY
DECEMBER 17, 1994

Reduced To 64% of original adv. size

The People's Voice

The TRICOUNTY NEWS welcomes your letters. Send them to: The People's Voice; P.O. Box 158; Edinburgh, IN 46124. You may also FAX them to 526-4379, or use our Internet address, G.STORE@GENIE.GEIS.COM. Letters should be as brief as possible. We reserve the right to edit letters for brevity or clarity. Opinions expressed in this column are those of the writer. All letters must be signed before they can be published. Please include a daytime phone number.

Did Webb company get raw deal?

Today everyone is concerned about crime, loss of social and moral values, and the government gradually disenfranchising our freedoms as Americans. Just last week there was a case of robbery and extortion carried out right in full view of everyone in this community and no one lifted an eye brow or came to the defense of the poor scapegoat who just happened to run afoul of the the alphabet soup we call our many governmental agencies. (FBI, DNR, EPA, CIA, ETC)

The treatment of the David R. Webb Company by our government makes me sick.

See LETTERS, page 3

Letters...

from page 2

The very idea that State and Federal officials can and did legally extort in excess of $650,000 from this company for dispensing a non-toxic, non-damaging substance into Blue River reeks of financial Gestapo tactics, in my opinion. I don't blame Webb for wanting to bring this thing to an end, in other countries people have been shot for a lot less and I sure don't want to give any of our agencies any new ideas!

The David R. Webb Company is among the largest employers in Southern Johnson County. Whenever there has been a need in this community, they, (the people and the management at Webb) have always been among the first to step forward to open their pocket books, their hearts and their hands to support Edinburgh. I feel that we need to be reminded of that now in light of the publicity that has surrounded this case, and to remember that Webb has been a good neighbor and a good friend to this community for many years and hopefully will be for many to come.

The next time someone sees a black-brown stain floating down Blue River, we all need to check very closely. It may be the ink being bled from the Constitution and The Bill of Rights by some over zealous government agency. If you think I'm being a little cynical, just remember, these are the same wonderful folks that brought us Viet Nam, Watergate, and Waco.

George Irish Carpenter III

STATEMENT
by
DAVID R. WEBB CO., INC.

Several articles have appeared in the local press concerning a plea agreement between David R. Webb Co.. Inc. and the Department of Justice covering violation of the Federal Clean Water Act.

We entered into this plea agreement because there was admittedly an unpermitted discharge and we wanted to resolve a long-standing controversy without going through an expensive and long trial. We wanted to get the problem behind us. In addition, several of our employees were at risk of criminal prosecution that could have resulted in possible jail sentences. The plea agreement avoids this risk for them.

By way of clarification, we want to emphasize that the unpermitted discharge did not involve any toxic or hazardous substances, nor did it cause any harm to fish or wildlife. We also want to clarify that the 220 violations referred to in the plea agreement in fact involved the continuation of a single violation for 220 days. The law provides that each day is considered as a separate violation.

We also want to emphasize that the top management of this company was not aware of the violation and that we took immediate steps to correct the problem when it was called to our attention.

The David R. Webb Company is dedicated to being a good corporate citizen and is taking every possible step to comply with the law and to respect the environment.

c:jag.envstmt2

THE NEED FOR REGULATORY REFORM

MONDAY, APRIL 17, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Muncie, IN.

The subcommittee met, pursuant to notice, at 3:05 p.m., in the Ball Community Room, Ball Corp., 345 South High Street, Muncie, IN, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives Peterson and Gutknecht.

Staff present: Mildred Webber, staff director; Jon Praed, counsel; Karen Barnes, professional staff member; David White, clerk; and Bruce Gwinn, minority professional staff.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is called to order.

This is our first day of field hearings in what we plan to have as a national effort to try to gather information from people around the country about problems of Government regulations.

We have a big agenda today and a lot of people want to talk. At the end of the hearing, I want to open it up in an open mic format and hear from people who do not have prepared testimony, necessarily, but just are citizens who wanted to come here today.

And, so, in the interest of time, I am going to dispense with my prepared statement. There are copies of it which you can get from the staff.

Let me just quickly say that I want to thank two of my colleagues for coming here today.

One of them is Collin Peterson who is the ranking Democratic member of the subcommittee. He is from Minnesota.

The other is—Gil Gutknecht—excuse me, Gil; I owe him one there. [Laughter.]

He is one of my freshman colleagues, also from Minnesota.

And let us give them a big Hoosier welcome. [Applause.]

I will say that we had a hearing earlier this morning and found an incredible array of problems with the regulatory system as citizens came forward. We are going to take these ideas and use them in Washington as this Congress moves forward in tackling the regulatory problem.

Newt Gingrich has decided that there will be a new procedure called Corrections Day, through which Congress has a chance to

undo some of the problems that have been created with legislation over the past.

The issues that are brought forward today will be considered by this subcommittee as recommendations to go forward on that calendar.

We will also pass on the information to other committees who have jurisdiction and use it in our work in some of the general regulatory issues such as the bill that we passed out of committee putting a moratorium on new regulations.

So, thank you for coming. I really appreciate the input and the ability to hear from American citizens. And all of your comments will be put on record.

The chairman of the full committee has asked that we swear in all of the witnesses. Rather than do that one by one, I am going to ask everybody today to join me in taking the oath. And then all of the witnesses will be duly sworn in.

So, if you could all stand and raise your right hand.

[Witnesses sworn, en banc.]

Mr. MCINTOSH. Let the record show that all the witnesses were duly sworn in. [Laughter.]

And, now, let us proceed with our first witness.

Would you like to testify from there, Betty, or would you like to come up here?

Ms. DEVOE. Whatever you would like me to do.

Mr. MCINTOSH. I think they would like you up here for the court record.

By the way, we apologize for the slow start, but the court reporter here was the same person who was down in Indianapolis and he had to tear down everything before he could come up here.

So, he was not, like all of us, where we could leave immediately and get up here and have a chance for lunch. And I appreciate your hard work in that area.

Our first witness today is Ms. Betty Devoe, the executive director of Westminster Village.

Ms. DEVOE. Thank you.

Mr. MCINTOSH. Betty came to me and said, you know, health care costs are increasing dramatically in this country and we take care of a lot of people who have Medicare as the means of payment for their health care. Let me tell you some of the regulations that increase the cost of the services that we have been providing.

And I asked her if she would come here today and share some of those with us.

So, let me turn it over to you. Thank you.

STATEMENT OF BETTY DEVOE, EXECUTIVE DIRECTOR, WESTMINSTER VILLAGE

Ms. DEVOE. David and members of the subcommittee, it is my pleasure to be here today.

Previous to moving to Indiana, I lived nine——

Unidentified VOICE. Turn it up.

Ms. DEVOE. Previous——

Unidentified VOICE. Turn it up. We cannot hear.

Mr. MCINTOSH. Can we turn up the volume? OK.

Ms. DEVOE. Try it again? How is that?

Unidentified VOICE. That is better.

Mr. MCINTOSH. There is feedback.

Ms. DEVOE. OK.

Mr. MCINTOSH. Thank you.

Ms. DEVOE. Thank you for letting me be here today.

Previous to moving to Indiana, I lived 9 years in Minnesota. So, I know what your weather is like.

My name——

Mr. GUTKNECHT. It is almost spring. [Laughter.]

Ms. DEVOE. Yes, I know. I talked to my daughter yesterday.

Before he begins my time, I do have part of my staff here in the room and also my board chairman and there may be other board members.

My name is Elizabeth Devoe. I am the executive director of Westminster Village, Muncie. We are a continuing care retirement community serving the needs of approximately 270 elderly citizens.

Two hundred of those residents live and are residing in the residential apartment complex which is licensed by the State.

We also have a 76-bed Medicare-certified health care unit or a skilled nursing facility or a SNF, which is what it is commonly referred to in the industry.

Our clients' needs are important. They eventually are the people who will pay for the increasing demands of regulatory reform in our facility.

The Medicare SNF regulations were revised with a nursing home reform bill known as OBRA, which was passed in 1987. It was implemented in the Nation in 1990.

And I want to bring to your attention that regulations passed by the Federal Government have increased the paperwork and labor costs for paper compliance listed by that reform.

I can only speak for our facility, but we saw the costs of the health care center increase by $166,000 in 1 year. That was between 1990 and 1991. Approximately $100,000 of that would have been additional staff and staff time to implement paper compliance.

As a licensed health facility administrator of Westminster, I have watched my staff devote more and more time to computer programs required by OBRA.

The majority of that time is required—2 minutes remaining—is required for MDS.

Mr. MCINTOSH. If you would like to summarize it, we can put the full written text into the record.

Ms. DEVOE. All right. OK. I am asking that you look into the HCFA requirements for MDS. They are trying to get them implemented by January 1996 and they will require computer changing across the Nation and new programs.

Also, I would like you to put a regulatory freeze on Government regulations, the interpretive guidelines and enforcement rules that were issued in the Federal Register, November 10, 1994 and, therefore, the name is the Survey Certification of Skilled Nursing Facilities and Nursing Facilities, the Medicare/Medicaid Programs.

Thank you very much.

[The prepared statement of Ms. Devoe follows:]

TO: David McIntosh, Chairman
House Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

FROM: Elizabeth (Betty) DeVoe
Executive Director, R.N., H.F.A.
Westminster Village Muncie, Inc.

RE: Regulatory Reform, Long Term Care
Field Hearing - Ball Corporation Community Room

DATE: April 17, 1995

RETIREMENT APARTMENT LIVING and MEDICARE APPROVED HEALTH CENTER
5801 Bethel Ave., Muncie, IN 47304-9499 (317) 288-2155

My name is Elizabeth DeVoe. I am the Executive Director of Westminster Village Muncie, Inc. Westminster is a Continuing Care Retirement Community serving the needs of approximately 270 elderly citizens. We have 200 residents residing in the Village licensed residential apartment complex and also a 76 bed Medicare certified Health Care Unit or Skilled Nursing Facility (SNF) as its commonly referred to in the industry. Our residents' needs are important - they eventually are the people who will pay for increasing demands of regulatory reform in our facility.

The Medicare SNF regulations were revised with nursing home reform - known as Omnibus Budget Reconciliation Act of 1987 or OBRA. OBRA was implemented in October of 1990. I want to bring to your attention that the regulations passed by the Federal Government have increased the paper work and labor costs for the paper compliance enlisted by that reform. I can only speak for our facility - but we saw our costs for the Health Center increase by $166,000 from 1990-1991. Approximately $100,000 of that would have been additional staff and staff time to implement paper compliance.

As the licensed Health Facility Administrator of Westminster Village Muncie, Inc., I have watched my staff devote more and more time to the computer programs required by OBRA. The majority of that time is required for MDS or Minimum Data Sheets.

Please consider the following two issues regarding mandated/Federal request:

1. HCFA is now in the process of revising the requirement of the MDS form to MDS - 2.0 which will require even more details. I doubt if anyone will be able to intervene to stop the mandatory computer programs to meet the MDS - 2.0 that will soon be required by the Federal Government. They expect to publish the final issuance of the state operations manual in the near future. Target date for that requirement is January 1996. Again we will have to scrap all previous computer programs - maybe even computers that aren't compatible with new programs. People or facilities are not given a choice anymore. Government is mandating financial requirements that eventually the residents have to pay for. HCFA - MDS - 2.0 requirements should be reviewed.

2. I would like to request your attention to HCFA's draft copy of the long term care survey interpretive guidelines. Our national trade association for the not-for-profit American Association of Homes and Services for the Aging in Washington D.C. has been diligently working to have the Long Term Care Survey interpretive guidelines enforcement rule included in the regulatory freeze on government regulations.

According to a Regulatory News Brief published by our state trade association for not-for-profit Indiana Association of Homes for the Aging dated April 1, 1995:

> "No one, either the provider community or the state, is ready for the new enforcement regulations. HCFA recently announced that revisions are still taking place in the survey process protocol and in the state operations manual. It is anticipated that these will not be fully developed when the training process starts later this month for the state survey staff and HCFA regional offices in Baltimore. The hoped delay by Congress did not materialize. Although the House was ready to pass legislation, the Senate has put the matter low on their priority list, meaning nothing will probably happen in Congress. Plans are now being made for provider training in Indiana in July".

Again we are being forced to comply. The new interpretive guidelines for survey process being revised by HCFA seem overly punitive and will result in an increase in deficiency citations without necessarily increasing the quality of care.

On behalf of our residents, board, and staff and as a facility participating in the Medicare SNF program, we urge you to put a regulatory freeze on: "Medicare/Medicaid Programs, Survey and Certification of Skilled Nursing Facilities and Nursing Facilities" - Final Rule published November 10, 1994 Federal register, effective date for the regulations is July 1, 1995 with possible extension to December 1995.

It is not cost effective or prudent to implement these requirements at this time. The Residents' quality care issues are number one priority and they are not improved by requiring more and more staff time being devoted to paper and computer compliances.

Mr. MCINTOSH. Thank you. Betty, if you have a few seconds, let me see if we have any questions for you.

You mentioned you thought that almost all of that cost could be avoided and, therefore, lower the cost of your operations out there?

Ms. DEVOE. Well, I do not know that we can stop anything that has been implemented. You cannot go back and change OBRA, but they just keep pushing more and more on us and someone has to say, we cannot participate in this anymore.

And our national not-for-profit association has been working with HCFA trying to get some of this stopped. And right now, evidently, the House was ready to go on this, but the Senate did not consider it a priority.

But we have you gentlemen in town, so I know you can help us.

Mr. MCINTOSH. Thank you. Yes, we are discovering that.

Let me just see if my colleagues have any questions for you.

Mr. GUTKNECHT. Just one quick question, Mr. Chairman. To put this in context. You said it would cost about an extra $100,000?

Ms. DEVOE. $100,000, because when——

Mr. GUTKNECHT. What is your total budget? I just want to——

Ms. DEVOE. What is our total budget?

Mr. GUTKNECHT. Yes.

Ms. DEVOE. $5 million, but, remember, I am running an apartment complex and then I am running a health care facility. So, the total budget for the health care center, that year, might have been $2.5 million.

Mr. GUTKNECHT. Thank you.

Ms. DEVOE. Mmm-hmm.

Mr. MCINTOSH. So, quickly, about 4 or 5 percent of your costs——

Ms. DEVOE. Right.

Mr. MCINTOSH [continuing]. Are directly related——

Ms. DEVOE. Right.

Mr. MCINTOSH [continuing]. To that.

Ms. DEVOE. And it was paper compliance. And now they are going to do it all over.

Mr. MCINTOSH. OK. Well, thank you.

Ms. DEVOE. All right.

Mr. MCINTOSH. I appreciate you coming. And that will be very helpful to us in going forward with that. We will share it with the Senate as well.

Ms. DEVOE. All right.

Mr. MCINTOSH. Our next panel includes two members of the agriculture community. I would like to call forward Joe Russell and Wayne Townsend. Is Joe here?

Joe was over to our house the other night telling stories on his colleagues in the Farm Bureau. We will not have any of those put on the record, but I appreciate you coming by today, both of you, and welcome to the subcommittee hearing.

I will let each of you discuss your statements and then see if we have any questions.

Joe, do you want to go first?

Mr. RUSSELL. OK, thank you.

STATEMENT OF JOE RUSSELL, FARMER

Mr. RUSSELL. I want to thank you for coming to Muncie, IN where we work. It is not always convenient for us to make it to Washington to air some of our concerns.

My name is Joe Russell and I farm 1,150 acres of corn and soybeans near Muncie, IN. My roots in Indiana and agriculture go back six generations to 1810 when Indiana was still a territory and my great-great-great-grandfather carved a farm out of the wilderness.

This will be my 20th year to farm and I have seen an increasing number of regulations applied to an increasing number of aspects of my family farming operation. I have survived weeds, insects, floods and droughts, but probably the greatest threat to my farming operation is out-of-control regulations.

As my forefathers planted their crops, they never had to worry about the impact of wetlands, Endangered Species Act, Clean Water Act, Clean Air Act, OSDA, NRCS, CFSA, OSHA, EPA, FDA, FIFRA, the Delaney Clause, Fish and Wildlife Service and the Army Corps of Engineers. Regulations cost agriculture and consumers billions of dollars annually.

Production in agriculture employs less than 2 percent of the people, but utilizes 44 percent of the land. Thus, agriculture is on the front lines of any regulatory implementation.

There is a saying that a well-fed nation has many problems and a hungry nation only has one. The United States is a well-fed Nation. In fact, we are the best fed nation in the world. Yet, we worry about every aspect of my farming operation. Not only do we worry about, but we have a multitude of Government agencies to regulate those worries.

The recently completed agricultural handbook, Environmental Laws and Regulations for Indiana, summarizes regulations governing agriculture. It condenses thousands of pages of rules and regulations into 20 chapters using layman's terms to better help today's farms attempt to comply with agricultural regulations.

It scares me to death to read it. And most of the farmers are not aware of all the regulations that they are forced to comply with today.

I jokingly told my children a few years ago that if they wanted to farm some day, they better get a degree in law to cut through all the red tape necessary to be a farmer in tomorrow's world. Today, that joke is becoming a reality.

How do the rules and regulations affect my farming operation today? I spend more time complying with or learning about regulations than I spend planning my crops! Compliance costs time and money, while non-compliance could lead to expensive fines, criminal charges or putting me out of business.

As part of the 1985 and 1990 farm bills, all farm land was reevaluated using aerial photographs and soil maps to assess its potential for erosion and identifying wetlands. Several Government agencies sitting in offices far from my farm made these determinations.

Some of my land was classified highly erodible and because of that classification, I had to purchase a no-till planter costing $13,000.

After several years of urging soil conservation officials to field verify my highly erodible land, it was determined that my land was not highly erodible.

The interpretation of one soil conservation official said it was highly erodible and the other said it was not highly erodible. Who am I to believe?

A few years ago I took some of Representative Phil Sharp's legislative assistants around showing them the inconsistencies of wetland classifications. We saw wetlands that were not even close to being wet. In fact, two of the wetlands were gravelly hill tops. Yet, they were classified as wetlands. It restricts lands use and is a nightmare to get it changed to a proper classification.

Let me summarize here. If I am to survive in the NAFTA and GATT world we live in today, I must compete with farmers from all over the world. Because the cost of land, machinery and labor is high in this country, we must have access to new technology.

The United States leads the world in agriculture science and technology, but I am afraid that unnecessary regulations may prevent or delay this new technology from reaching my farm.

In summary, regulations are necessary. However, Government, by regulation, has become the fourth branch of Government. Unelected regulators make the law, enforce the laws, serve as judge and jury for the violators of their laws and assess penalties and fines for the guilty. This is not what the original framers of the Constitution envisioned.

Regulation needs to be based on good science, not emotions or the whims of radical environmental groups. Peer review, risk assessment and cost-benefit analysis should be an integral part of all regulations.

And I think that I am out of time.

[The prepared statement of Mr. Russell follows:]

APRIL 17, 1995

BALL CORPORATION COMMUNITY ROOM
345 S. HIGH STREET
MUNCIE, IN

HOUSE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

FIELD HEARING FOR: CONGRESSMAN DAVID McINTOSH
CONGRESSMAN GIL GUTKNECHT
CONGRESSMAN COLLIN PETERSON

THE NEED FOR REGULATORY REFORM

MY NAME IS JOE RUSSELL AND I FARM 1,150 ACRES OF CORN AND SOYBEANS NEAR MUNCIE, INDIANA. MY ROOTS IN INDIANA AND AGRICULTURE GO BACK SIX GENERATIONS TO 1810 WHEN INDIANA WAS STILL A TERRITORY AND MY GREAT GREAT GREAT GRANDFATHER CARVED A FARM OUT OF THE WILDERNESS. THIS WILL BE MY TWENTIETH YEAR TO FARM AND I HAVE SEEN AN INCREASING NUMBER OF REGULATIONS APPLIED TO AN INCREASING NUMBER OF ASPECTS OF MY FAMILY FARMING OPERATION. I'VE SURVIVED WEEDS, INSECTS, FLOODS, AND DROUGHTS BUT PROBABLY THE GREATEST THREAT TO MY FARMING OPERATION IS OUT OF CONTROL REGULATIONS. AS MY FOREFATHERS PLANTED THEIR CROPS, THEY NEVER HAD TO WORRY ABOUT THE IMPACT OF WETLANDS, ENDANGERED SPECIES ACT, CLEAN WATER ACT, CLEAN AIR ACT, OSHA, EPA, FDA, FIFRA, THE DELANEY CLAUSE, FISH AND WILDLIFE SERVICE, AND THE ARMY CORP OF ENGINEERS. REGULATIONS COST U.S. AGRICULTURE AND CONSUMERS BILLIONS OF DOLLARS ANNUALLY.

THERE IS A SAYING THAT A WELL FED NATION HAS MANY PROBLEMS AND A HUNGRY NATION ONLY HAS ONE. UNITED STATES IS A WELL FED NATION, IN FACT WE'RE THE BEST FED NATION IN THE WORLD, YET WE WORRY ABOUT EVERY ASPECT OF MY FARMING OPERATION. NOT ONLY DO WE WORRY ABOUT IT, BUT WE HAVE A MULTITUDE OF GOVERNMENT AGENCIES TO REGULATE THOSE "WORRIES." I AM HOLDING UP A THE RECENTLY COMPLETED FARM BUREAU PUBLICATION, ENVIRONMENTAL LAW AND REGULATIONS-INDIANA AGRICULTURAL HANDBOOK WHICH SUMMARIZE REGULATIONS GOVERNING AGRICULTURE. IT CONDENSES THOUSANDS OF PAGES OF RULES AND REGULATIONS INTO TWENTY CHAPTERS USING LAYMANS' TERMS TO BETTER HELP TODAY'S FARMERS ATTEMPT TO COMPLY WITH AGRICULTURAL REGULATIONS. I JOKINGLY TOLD MY CHILDREN A FEW YEARS AGO THAT IF THEY WANT TO FARM SOME DAY, THEY BETTER GET A DEGREE IN LAW TO CUT THROUGH ALL THE RED TAPE NECESSARY TO BE A FARMER IN TOMORROW'S WORLD. TODAY, THAT JOKE IS BECOMING REALITY.

HOW DO RULES AND REGULATIONS AFFECT MY FARMING OPERATION TODAY? I SPEND MORE TIME COMPLYING WITH OR LEARNING ABOUT REGULATIONS THAN I SPEND PLANTING MY CROPS! COMPLIANCE COST TIME AND MONEY WHILE NONCOMPLIANCE COULD LEAD TO EXPENSIVE FINES, CRIMINAL CHARGES OR PUTTING ME OUT OF BUSINESS.

AS PART OF THE 1985 AND 1990 FARM BILLS, ALL FARM LAND WAS REEVALUATED USING AERIAL PHOTOGRAPHS AND SOILS MAPS AS TO ITS POTENTIAL FOR EROSION AND WETLANDS. SEVERAL GOVERNMENT AGENCIES SITTING IN OFFICES FAR FROM MY FARM MADE THESE DETERMINATIONS. SOME OF MY LAND WAS CLASSIFIED HIGHLY ERODIBLE LAND (HEL) AND BECAUSE OF THAT CLASSIFICATION I HAD TO PURCHASE A NO-TILL PLANTER COSTING $13,000. AFTER SEVERAL YEARS OF URGING SOIL CONSERVATION OFFICIALS TO FIELD VERIFY MY HIGHLY ERODIBLE LAND, IT WAS DETERMINED THAT MY LAND WAS NOT

HIGHLY ERODIBLE. THE INTERPRETATION OF ONE SOIL CONSERVATION OFFICIAL SAYS IT IS HIGHLY ERODIBLE AND THE OTHER SAYS IT IS NOT HIGHLY ERODIBLE--WHOM AM I TO BELIEVE? A FEW YEARS AGO I TOOK SOME OF REPRESENTATIVE PHIL SHARP'S LEGISLATIVE ASSISTANTS AROUND SHOWING THEM THE INCONSISTENCIES OF WETLAND CLASSIFICATIONS. WE SAW CLASSIFIED WETLANDS THAT WERE NOT EVEN CLOSE TO BEING WET, IN FACT TWO OF THE WETLANDS WERE GRAVELLY HILL TOPS. YET ONCE CLASSIFIED AS A WETLAND, IT RESTRICTS LAND USE AND IS A NIGHTMARE TO GET IT CHANGED TO THE PROPER CLASSIFICATION. I FARM FOR A RETIRED COUPLE IN THEIR EIGHTIES AND SOMEONE REPORTED A WETLAND VIOLATION ON THEIR FARM. BEFORE THE AREA IN QUESTION WAS INVESTIGATED TO SEE IF IT WAS REALLY A WETLANDS VIOLATION, THE COUPLE RECEIVED A THREATENING PHONE CALL SAYING THEY COULD BE FINED $10,000 A DAY, THUS CAUSING A LOT OF UNNECESSARY STRESS ON THE ELDERLY COUPLE. THEY WERE GUILTY UNTIL PROVEN INNOCENT. THE PROBLEM WAS SIMPLY THAT THE HIGHWAY DEPARTMENT FAILED TO FIX A BROKEN DRAINAGE TILE UNDER THE ROADWAY WHICH FORCED WATER TO TEMPORARILY POND ON THEIR FARM. MANY FARMERS HAVE HAD SIMILAR EXPERIENCES WITH HIGHLY ERODIBLE LANDS AND WETLANDS. IT'S IRONIC THAT MANY FARMERS CHOOSE TO NOT PARTICIPATE IN BENEFICIAL FEDERAL FARM PROGRAMS BECAUSE THE RULES AND REGULATIONS ARE TOO CONFUSING (THERE WERE 1,180 AMENDMENTS TO THE 1994 PROGRAM ALONE) AND FAILURE TO FOLLOW ALL RULES COULD LEAD TO SERIOUS CONSEQUENCES.

REGULATIONS INDIRECTLY AFFECT MY FARM. FARM SUPPLIERS AND PROCESSORS ALSO MUST COMPLY WITH UNNECCESSARY REGULATIONS AND THE COST OF DOING THIS IS PASSED ON TO ME. I WILL HAVE TO SPEND $5,000 NEXT YEAR FOR SECONDARY CONTAINMENT FOR TEMPORARY STORAGE OF PESTICIDES AND BULK FERTILIZER, YET I MUST ABSORB THE COST BECAUSE I CAN'T PASS IT ON TO THE CONSUMER BY ASKING A HIGHER PRICE FOR MY CORN OR SOYBEANS. MOST OF MY PRODUCE IS USED FOR LIVESTOCK FEED. IF REGULATIONS FORCE THE LIVESTOCK PRODUCER OUT OF BUSINESS, THEN I TOO AM OUT OF BUSINESS. A GOOD EXAMPLE OF CONFLICTING REGULATIONS FOR A NEIGHBORING HOG FARMER IS THAT ONE REGULATORY AGENCY SAYS TO INJECT ALL MANURE INTO THE SOIL WHILE ANOTHER REGULATORY AGENCY SAYS THAT YOU CAN NOT DISTURB THE SOIL BECAUSE IT IS CLASSIFIED AS HIGHLY ERODIBLE. WHICH AGENCY IS RIGHT OR HAS THE MOST AUTHORITY?

DUE TO REGULATORY PROCEDURE, THE WIDELY USED CORN HERBICIDE ATRAZINE IS CURRENTLY BEING REVIEWED BECAUSE OF CONCERNS FROM ENVIRONMENTAL GROUPS. THIS PRODUCT HAS BEEN SAFELY USED FOR THIRTY YEARS IN MY COUNTY AND RECENT WELL WATER TESTING PROGRAM OF 139 SUSPECTED WELLS SHOWS LEVELS BARELY DETECTABLE (LEVELS WERE LESS THAN 0.05 PPM WHILE 3 PPM ARE ALLOWED--I WOULD HAVE TO DRINK 22,000 GALLONS OF ATRAZINE TAINTED WATER AT 3 PPM PER DAY FOR SEVENTY YEARS TO HAVE A ONE IN ONE MILLION CHANCE OF CANCER). YET WE COULD LOOSE THE USE OF THIS VALUABLE HERBICIDE BECAUSE OF EMOTIONAL TESTIMONY AND REGULATORY REVIEW. THE ALTERNATIVES TO TRIAZINE ARE COSTLY AND LESS EFFECTIVE IN CONTROLLING WEEDS.

IF I AM TO SURVIVE IN THE NAFTA AND GATT WORLD WE LIVE IN TODAY, I MUST COMPETE WITH FARMERS FROM ALL OVER THE WORLD. BECAUSE THE COST OF LAND, MACHINERY AND LABOR IS HIGH IN THIS COUNTRY, WE MUST HAVE ACCESS TO NEW TECHNOLOGY. UNITED STATES LEADS THE WORLD IN AGRICULTURE SCIENCE AND TECHNOLOGY, BUT I'M AFRAID THAT UNNECESSARY REGULATIONS MAY PREVENT THIS NEW TECHNOLOGY FROM REACHING MY FARM.

ONLY IN THE LAST FEW YEARS HAS UNITED STATES AGRICULTURE ACHIEVED ENVIRONMENTAL AND AGRONOMIC SUSTAINABILITY. THIS IS THE RESULT OF GOVERNMENT'S WISE INVESTMENT INTO BASIC SCIENCE AND APPLIED TECHNOLOGY. ACHIEVING SUSTAINABILITY WAS NOT THE RESULT OF LIVING

UNDER THE THREATS OF REGULATIONS. I DISAGREE WITH THE ARGUMENT THAT REPEALING REGULATION WILL LEAD TO MORE AGRICULTURE POLLUTION AND LESS SAFE FOOD. THE FAMILY FARMER IS THE BEST PERSON TO VOLUNTARILY REGULATE HIS OWN OPERATION, AFTER ALL, WE DRINK THE WATER, BREATHE THE AIR, EAT THE PRODUCE, AND RAISE OUR CHILDREN ON OUR FARMS. ALSO, PROTECTING THE RESOURCES, ESPECIALLY THE SOIL, PRESERVES THE FARM'S FOOD PRODUCING ABILITY FOR FUTURE GENERATIONS.

IN SUMMARY, SOME REGULATIONS ARE NECESSARY. HOWEVER, REGULATIONS NEED TO BASED ON GOOD SCIENCE, NOT EMOTIONS OR THE WHIMS OF RADICAL ENVIRONMENTAL GROUPS. PEER REVIEW, RISK ASSESSMENT AND COST-BENEFIT ANALYSES SHOULD BE AN INTEGRAL PART OF ALL NEW REGULATIONS. AND LET'S NOT FORGET COMMON SENSE IN THE REGULATORY PROCESS.

THE FUTURE OF MY INDUSTRY IS IN THE HANDS OF PEOPLE FAR REMOVED FROM PRODUCTION AGRICULTURE. REFORMING THE OUT OF CONTROL REGULATORY PROCESS IS A STEP IN THE RIGHT DIRECTION TO GUARANTEE THAT UNITED STATES AGRICULTURE WILL NOT ONLY SURVIVE, BUT ALSO CONTINUE TO FEED THE HUNGRY OF THE WORLD.

IF YOU HAVE ANY QUESTIONS, I WOULD BE GLAD TO TRY TO ANSWER THEM.

JOSEPH M. RUSSELL
12100 N. STATE ROAD 3
MUNCIE, IN 47303
PHONE 317-289-1330
244-6036

Joseph M. Russell 4-10-95

Mr. MCINTOSH. Great. I appreciate that very much. Thank you, Mr. Russell. We will get back to you with some questions.

Mr. Townsend, I thank you for joining us today.

STATEMENT OF WAYNE TOWNSEND, FARMER

Mr. TOWNSEND. Thank you, Chairman McIntosh. Thank you for coming to Muncie. I deeply appreciate this. And thank you for the invitation to appear to discuss the concerns that we have about regulation and agriculture.

I am Wayne Townsend. I am 68-years-old. I have farmed all my life in Grant and Blackford Counties near Hartford City. We raise corn, soybeans and wheat and specialize in hog production.

Twenty-two of those 68 years, I spent as a State legislator in Indiana, actively participating in the lawmaking process.

As a legislator, if I fail to respond to the public, they have an opportunity to pass judgment on me at the ballot box.

My observation of regulation writing and rulemaking is that it is a bit different. I am not sure what constituents say that I respond to.

In September 1988, we purchased an adjoining farm of 535 acres at a public auction from a State university. That farm had been used for 50 years in experimental pasture research.

Although some drainage work had been done in that time, there were a few trouble areas that were a concern to me because of an outlet problem that had not had attention. The previous owner, years before, had ditched the farm, but the outlet had not been cleaned.

Prior to the purchase in August 1988, I asked a local office of SCF to come to the farm and assess the potential wetland problems we might have. And upon that visit, three areas were noted totaling 4.4 acres, which 2.6 acres were uncultivated land.

In December 1988, after the purchase, another technician from the same office officially noted seven areas totaling 14 acres in size and later expanded that to 22½ acres instead of the original 4.4.

In the spring of 1989, I began an appeals process through the area, State and Federal offices of Soil Conservation. A final determination was made in the summer of 1989. Each level had a different approach or different findings.

We have had, at this point, one failed litigation procedure where we offered to develop permanent water pools, but that was rejected.

Since the final appeal, we have farmed around three spots—one 2.2 acres in size, one .4 of an acre and another .4 of an acre in size. These are out in the middle of a 135-acre field.

Now, what is to be learned from this? Well, in the first place, there has got to be a better way.

There has been no real agreement on what constitutes a wetland. We thought it took the presence of water. We were wrong. [Laughter.]

And I quote from the letter from more than one official, "The water pool, if any, of a wetland does not determine the boundaries of a wetland. A wetland boundary is determined by the presence of hydric soils and hydrophilic vegetation."

Now, if that is the criteria, I have 1,200 acres I am really concerned about because it is hydric soil and occasionally you find hydrophilic plants.

Today, 10 years after the passage of the 1985 farm bill, the first mention to wetland issue, there seems to be no generally accepted agreement on what a wetland really is among the EPA, the Corps of Engineers, the Fish and Wildlife, National Academy of Science and the Natural Resources and Conservation Service.

The present policy is driving a wedge between the Natural Resources and Conservative Service and the farm people of this country. For years, the SCS and farmers have been partners in progress and worked closely together to accomplish very much in the way of being better stewards of our soil, but this role that the SCS has been placed in makes them an unwelcome guest on many farms.

Finally, we are involved in a very competitive global economy where it is terribly important that we make wise decisions in public policy not only in agriculture but elsewhere as well if we are to be competitive with the rest of the world.

Too often we have rejected economically sensible ways of deciding environmental problems. We cannot continue to a $50 benefit for $1,000 costs. We can accomplish what the environmental community would like with regulations that farmers could live with if we would try and use a stick—or, rather, a carrot instead of a stick.

The idea of free market environmentalism is not new. We can achieve the goal protecting valuable wetlands without the dead weight of protecting wetlands of no environmental significance.

Gentlemen, we need to bring order out of chaos. We need your help.

Mr. MCINTOSH. Thank you. We appreciate that. I appreciate you also keeping your oral statements brief so we can get to hear as many people as possible.

We struggled a lot when I was working with Vice President Quayle on the definition of a wetland and tried very hard to establish what I thought was a common sense principle that you had to have water involved with a wetland but the Government agencies think they know better.

There is legislation that is moving through the committees and we will be discussing it on the floor in the coming months that, I think, will greatly improve that situation.

Let me ask you one question. Did you ever receive any offer of compensation for the lost value of your land when it was declared to be a wetland?

Mr. TOWNSEND. No.

Mr. MCINTOSH. Do you think if the agency had to do that, they would have been more reasonable in defining what a wetland was?

Mr. TOWNSEND. Well, there has to be some reasonable judgments in the process. The land in question is of no value to me. We farm around it. We get no production from it, yet we pay taxes, we pay interest on the mortgage, we pay the mortgage, but it sits there.

I doubt that it is of much value to the environmental community as well. We need to make a judgment between what is important in this area and what is not. You have not done that.

Mr. MCINTOSH. I appreciate that. Thank you both very much. Let me see if my colleagues have any questions.

We have heard a lot of people from the agriculture community and they both have very large farming interests in their districts.

Mr. PETERSON. Thank you, Mr. Chairman. You think that you have got wetlands, you ought to come to my district. Now it is totally under water, just about.

Mr. TOWNSEND. There are about as many wetlands in Minnesota as there are Petersons.

Mr. PETERSON. That is right. [Laughter.]

We are hoping that they all fly over and take pictures right about now because we will be out of business.

My district, by the way, is from 300 miles along north of the Twin Cities up to Canada. Part of my district, you have to go through Canada in order to get there. You cannot get there through the United States. [Laughter.]

Anyway, it is great fishing up there, if you ever want to.

I serve on the Agriculture Committee and we are going to be taking up this issue. I want to commend your Congressman and the chairman here for the work that he has been doing in the regulatory reform area. We have been working together.

Myself and some of our group of conservative Democrats agree that are over-regulated, along with some members of the other party.

But the one thing that I want to say with this wetlands issue is that we are going to try to change the law; try to do something about type 1s and try to get some of the nuisance problems solved.

But, frankly, part of the problem, in my judgment, is with the folks that are administering the law. And in my area where I have tons of wetlands and I have been dealing with this when I was in State legislature and now here in Congress, I have a county where because of the people that were administering the law, they worked out every single wetland issue. We had no problems. They just used common sense and they worked it out.

If you went over to the next county, the same type of land, the same situation. You have the biggest hornet's nest you ever saw because the folks that were running it over there did not want to work it out.

So, to some extent, I mean, with all of the good work that we are going to do in regulatory reform, part of this problem is just with the people that are running or that are administering the law. I am not sure what we do about that because we have a difference of opinion about what these things are worth.

But we are looking at some solutions. And one of the things that we are looking at right now is using the CRP as a way to maybe try to deal with these issues using a carrot instead of a stick like you were talking about.

I have been working with your Senator, Senator Luger, on this. In fact, we have been communicating with his offices last week. They are putting that CRP stuff together right now and we are going to send it next to the staff level.

So, we are going to look at some other ways to come at this and hopefully we can resolve this issue and make it more workable.

But we have the same kind of problems. I had a gentleman that had the exact same story that you had. Bought a piece of property.

He had been told there were no wetlands. Right after he bought it, they came in and found 26 acres of wetlands.

And what happened in my district is we now have 3,500 people on a private property, landowners rights groups, that are storming the capital because of it.

And that is helping us to change some of this regulation. So, we appreciate your testimony and, hopefully, we can make some changes that will take care of some of the problems.

Mr. TOWNSEND. Thank you.

Mr. MCINTOSH. Thank you very much, gentlemen. Let me check. Do you have any questions?

Mr. GUTKNECHT. Mr. Chairman, let me just say that I first saw this three-ring binder from the Indiana Farm Bureau and I think that is excellent. And I just want to compliment the Farm Bureau for putting that together.

I would also say—and as I mentioned in Indianapolis this morning—I had a farm forum and I represented a farm district in Southern Minnesota.

We had a farm forum a couple of months ago and I was surprised. I expected to hear a lot from the farmers about dairy price supports and the various Government programs, but they spent fully two-thirds of the time of that hearing talking about various environmental regulations that they had to deal with.

And it really has become a big problem, particularly for small farmers. Now, the big farms, the big chunks of land that can afford some of the legal work and everything that goes into it, you know, they complain, but they can deal with it.

But if you are trying to make a living on 300 acres of hilly land in Southern Minnesota, it is tough.

Mr. RUSSELL. And this is the first time in 10,000 years that we are approaching sustainability on the farm because of applied science and technology. Yet, we are so overburdened by regulations that it may do us in.

And that came because of basic research, not from that regulatory whip that is held over us.

Mr. MCINTOSH. Let me mention one thing. We have a hearing in Washington with our subcommittee on possibly sunsetting regulations and a colleague of yours—I know you know and work with her, Joe—Kaye Whitehead came out and testified that for her facility where she has to dispose of the hog manure that her pork-producing facility produces as a byproduct, if you will, that she has two choices. She can spread it on the field or she can till it into the ground.

One agency has required that she spread it on the field without tilling it into the ground. And another agency requires her to till it into the ground. She really does not care which one she does, but she reported to us that she could not get the two of them to agree. And, so, she was stuck with a choice of violating one or the other's dictates under their regulations.

And I was wondering if you all were familiar with those type of situations where you get conflicting results, depending on who you talk to.

Mr. RUSSELL. Between the result and the bigger thing, the interpretation of the law. And you hear both sides of it, just like as

Wayne said and I see it in my operation, too, but who do you believe.

Mr. TOWNSEND. I had not heard about the hog manure study, but I am going to satisfy my neighbors first, Congressmen.

Mr. MCINTOSH. And that is what she said, when I asked her which one she did. The neighbors had a clear preference on that. [Laughter.]

Thank you both for coming.

Mr. TOWNSEND. Thank you.

Mr. RUSSELL. Thank you.

Mr. MCINTOSH. Let me call forward our next group of witnesses.

Tom Miller is vice president for commercial lending with American National Bank and Lowell Williams is senior vice president of First Merchants Bank.

We appreciate you both coming and speaking with us today. I know that all of us have bank accounts and many of us do not realize the amount of regulation that you have to contend with in order to maintain those accounts in your lending operations.

Mr. Miller, do you want lead off?

STATEMENT OF THOMAS MILLER, VICE PRESIDENT, COMMERCIAL LENDING, AMERICAN NATIONAL BANK

Mr. MILLER. Yes, thank you. We appreciate the opportunity to be here and speak with you, Mr. Chairman.

My name is Thomas Miller. I am vice president of commercial loans and compliance officer for American National Bank and Trust Co. in Muncie.

American National Bank is a subsidiary of ANB Corp. with assets totaling approximately $320 million. The bank has 152 full time equivalent employees and 13 banking centers servicing Delaware County and the community of Portland in Jay County.

As you may be able to tell by my title, being a compliance officer is only a portion of the responsibilities that I have assumed at the bank. My primary function is as a commercial lender.

The compliance function was bestowed upon me in 1983 when I was placed in charge of our Consumer Loan Department. In community banks of our size or smaller, I think you will find that that is the rule rather than the exception. This is simply a result of economics.

Hiring in-house legal representation is not practical or cost effective. As a result, the compliance function becomes decentralized within most institutions whereby bank supervisors and officers all become part of the compliance staff, responsible for administering regulatory guidelines within their respective departments.

My function is to coordinate and oversee that the bank is complying with the spirit and the letter of the law. Approximately 20 percent of my day is dedicated to dealing with some aspect of regulatory compliance. As a result, that time is taken away from lending money to prospective customers.

Three specific areas of concern regarding the regulatory burden by which banks are expected to comply are the cost, constant change and uniform administration.

A prime example of the added cost burden occurred with the passage of regulation DD or better known as Truth-In-Savings. Amer-

ican National Bank incurred approximately $100,000 in additional software and hardware expenses alone to automate the new account function just to comply with one regulation's mass of paper disclosures and mathematical calculations.

This figure does not take into account the man hours for training, programming or the additional storage allocation necessary to retain the required information. By implementing Truth-In-Savings, most community banks had to take a long hard look at the products offered to the consumers pre-regulation DD to determine if it was reasonable to continue to offer them post DD. I suspect fewer products are currently being offered and marketed due to the additional disclosure burden.

One of the main factors driving the costs of compliance is the constant change. Each modification or revision to existing regulations creates additional programming, administration and training expense. The ultimate result is that somebody has to pay that expense.

Shifting that cost to the consumers only drives away individuals that are already utilizing alternative financial services in record numbers.

Many of them are not subject to the same regulations that banks must adhere to. Examples include credit unions and security brokers and dealers.

Absorbing the cost only drives margins down and expenses up, weakening the profit potential for banks. If regulations were written so that all financial institutions and those offering financial products must comply, then banks could compete on a level playing field.

When we have to invest substantial dollars into compliance when others offering similar services do not, it places us in an unfair advantage with our competitors. The continuing cost associated with implementing and administering new and revised regulations undermines the stability that the regulations are attempting to promote and forces unwanted documentation and expenses on the very people that they are attempting to protect.

As a community bank, it is imperative that we remain up front and honest with the public that we serve. These customers are our friends, neighbors and relatives. We cannot afford to deceive them when depositing or borrowing funds.

We believe, too, that consumers have a right to know the true cost of borrowing funds and the interest earned on deposits. However, constant change and excessive disclosure are not what our customers want.

Eight 8½ by 11 sheets of disclosure material are currently required for a new checking account. That is too much for the average consumer to digest.

Fifteen to 20 pages of documentation to close a real estate mortgage does not allow the consumer the freedom to review and analyze documents. Typically, the consumer only wants to sign in the appropriate place and to be done with the transaction.

Service and convenience are truly the only distinction between community banks and large regional conglomerates, but regulatory burdens have all but eliminated some competitive advantages in this area.

We ask that consideration be given to the non-mega, non-super regional banks when new and changing regulations are debated. Our customers want to trust their local banker, but find it difficult to not be suspicious when burdened with a sea of paperwork to accomplish simple transactions.

[The prepared statement of Mr. Miller follows:]

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One of the main factors driving the costs of compliance is the constant change. Each modification or revision to existing regulations creates additional programming, administration and training expense. The ultimate result is that someone has to pay the expense. Shifting that cost to the consumers only drives away individuals that already are utilizing alternative financial services in record numbers. Many of them are not subject to the same regulations that banks must adhere to. Examples include credit unions and security brokers and dealers. Absorbing the cost only drives margins down and expenses up, weakening the profit potential for banks. If regulations were written so that all financial institutions and those offering financial products must comply, then banks could compete on a level playing field. When we have to invest substantial dollars into compliance when others offering similar services do not, it places an unfair advantage with our competitors. The continuing cost associated with implementing and administering new and revised regulations undermines the stability that the regulations are attempting to promote and forces unwanted documentation and expenses on the very people that they are attempting to protect.

As a community bank it is imperative that we remain up front and honest with the public that we serve. These customers are our friends, neighbors and relatives. We cannot afford to deceive them when depositing or borrowing funds. We too believe that consumers

have a right to know the true cost of borrowing funds and the interest earned on deposits, however, constant change and excessive disclosure are not what our customers want. Eight 81/2 x 11 sheets of disclosure material for a new checking account is too much for the average consumer to digest when opening a new account. Fifteen to twenty pages of documentation to close a real estate mortgage does not allow consumers the freedom to review and analyze documents. Typically, the customer wants only to sign in the appropriate space and be done with the transaction.

Service and convenience are truly the only distinction between community banks and large regional conglomerates, but regulatory burdens have all but eliminated our competitive advantage in these areas. We ask that consideration be given to the non-mega, non-super regional banks when new and changing regulations are debated. Our customers want to trust their local banker, but find it difficult to not be suspicious when buried beneath a sea of paper work to accomplish simple transactions.

Mr. MCINTOSH. Thank you very much.

Mr. Williams.

STATEMENT OF LOWELL WILLIAMS, SENIOR VICE PRESIDENT, FIRST MERCHANTS BANK

Mr. WILLIAMS. I would have brought our regulatory manuals over, but Allied Van Lines did not have a van available today. [Laughter.]

It is a privilege and a pleasure to appear before you today and speak on behalf of community banks.

Let me begin by saying that I and community bankers all over the country appreciate the efforts of this Congress to do something about the over-regulated banking industry.

Fair Lending has always been a practice of our bank even before it might have been popular to do so or the attempt to mandate the practice by the Federal Government.

A community bank's existence depends on people doing business in that bank. A good loan knows no difference who it is made to regarding sex, race or national religion. Good loans are good loans.

I or a member of my staff review every consumer and mortgage loan made or rejected to see that everyone is being treated fairly.

A few years ago, a Federal examiner brought me an application of a minority that had been rejected as it should have been. The examiner then spent hours going over approved loans to see if he could find a similar situation of a white applicant that had been approved. And he found none.

This action by a Federal examiner is very scary after the Department of Justice's actions against Chevy Chase, Shawmut and Vicksburg.

Our bank has some 40 loan officers and there will be isolated instances of loans that could have or maybe should have been made. If there is not a pattern of violations of Fair Lending by a bank, the threat of actions by the Department of Justice should not be held over a bank's head for isolated instances.

The Home Mortgage Disclosure Act was enacted in June 1976 and was not a large burden until the changes by FIREA in November 1991.

Until 1991, reporting was rather simple. Since 1991, the collection of data and reporting of the data has become very complex and expensive for the banking industry.

I am sure you are aware that the Grant Thornton study showed that the annual costs to Community Banks as defined by the Independent Bankers Association of American for HMDA reporting was $17,463,692. The estimate of our bank, for annual HMDA compliance, was $200,000 as part of the study.

The form of data reporting has again been changed and we have just spent $2,200 for new software. The system we previously used was provided by the Federal Government and our bank feels the system is no longer adequate to give a proper and accurate report that the Government requires. I am not sure the results justify the costs.

The reports are required to be available to the general public. Since enactment in 1991, our bank has had six requests for the re-

port. It appears to me the report could easily be misinterpreted and the total cost for information received is not justified.

This act is one of the most costly and burdensome on every banker's list, including mine. And the best answer to the act is probably to repeal the act. This has even been suggested by a highly respected former Comptroller of the Currency, Robert Clark.

The Community Redevelopment Act was first established in 1977. Very little attention was given to the act until the late 1980's when the Federal Government became serious concerning the act.

It has become the most burdensome and costly of all acts concerning banking. The Grant Thornton study estimates that the annual cost for community banks for CRA is $1,032,466,852. The estimate of our bank on an annual basis is $250,000.

Our bank, like other banks, has file after file of documents and paper to support our CRA efforts. There is one person in our marketing department that spends 80 percent of her time with CRA documentation.

Our bank has long been a lender to the minority churches to finance new churches in the minority community. This has given the bank a very good relationship with the minority ministers who have helped us with the educational programs and many other good loans in the minority communities. We are extremely proud of this relationship at our bank.

The Coalition of Concerned Clergy, a group of black ministers, has presented two of our officers the annual Martin Luther King Award for outstanding dedication and leadership in the community.

Our bank does these things not because of CRA, but because of our concern and dedication to the community. The Federal Government has painted our bank and other community banks with the same brush as the larger "Too big to fail" metropolitan banks which is not necessary.

While I support CRA, the system needs to be streamlined. There should be a tiered system of CRA. For banks under $250,000 and other banks up to $1 billion should be allowed to use a streamlined procedure, not to be held to the same CRA qualifications as our big city brothers.

In conclusion, the banking industry is over regulated. Other providers of the same financial services that banks offer such as credit unions, do not work under the same regulatory burden, nor do they pay any State or Federal taxes. I would hope this could be another subject at another time.

Thank you for the opportunity for this testimony and I would be glad to answer any questions.

[The prepared statement of Mr. Williams follows:]

Testimony by Lowell E. Williams
Senior Vice President
First Merchants Bank, N.A.
Muncie, IN 47305

For: The House Subcommittee on National
Economic Growth, Natural Resources and
Regulatory Affairs
April 20, 1995

It is a privilege and an a pleasure to appear before you today and speak in behalf of community banks concerning Fair Lending, The Community Re-Investment Act and Regulation C, The Home Mortgage Disclosure Act.

Let me begin by saying that I and community bankers all over the country appreciate the efforts of this Congress to do something about the over regulated banking industry. Fair Lending has always been a practice of our bank even before it might have been popular to do or the attempt to mandate the practice by the Federal Government. A community bank's existence depends on as many of the people in the community to be customers of their bank. A good loan knows no difference who it is made to regarding sex, race or national origin. Good loans are good loans. I or a member of my staff review every consumer and mortgage loan made or rejected to see that everyone is treated fairly. A few years ago a federal examiner brought me an application of a minority that had been rejected as it should have been. The examiner then spent hours going over approved loans to see if he could find a similar situation of a white applicant that had been approved. He found none. This action by a

federal examiner is very scary after the Department of Justice's actions against Chevy Chase, Shawmut and Vicksburg. Our bank has some forty loan officers and there will be isolated instances of loans that could have or maybe should have been made. If there is not a pattern of violations of Fair Lending by a bank the threat of actions by the Department of Justice should not be held over a bank's head for isolated instances.

The Home Mortgage Disclosure Act was enacted in June of 1976 and was not a large burden until the changes by FIREA in November of 1991. Until 1991 reporting was rather simple. Since 1991 the collection of data and reporting of data has become very complex and expensive for the banking industry. I am sure you are aware that a Grant Thorton study showed that the annual costs to Community Banks as defined by the Independent Bankers Association of America for HMDA reporting was $17,463,692. The estimate of our bank for annual HMDA compliance was $200,000 as part of the study. The form of data reporting has again been changed and we have just spent $2,200 for new software. The system we previously used was provided by the Federal Government and our bank feels the system is no longer adequate to give a proper and accurate report that the government requires. I am not sure the end results justify the costs. The reports are required to be available to the general public. Since enactment in 1991 our bank has had six requests for the report. It appears to me the report could easily be misinterpreted and the total cost for information received is not justified. This act is one of the most costly and burdensome on every bankers list,

including mine, and the best answer to the act is probably to repeal the act. This has even been suggested by a highly respected former Comptroller of The Currency, Robert Clarke.

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There should be a tiered system of CRA. Banks under $250 million in assets should be exempt from a total CRA program and only be required to have a reasonable loan-to-deposit ratio for the area served and the majority of its loans in its service area. Banks and holding companies up to $1 billion should be allowed to use a streamlined procedure and not be held to the same CRA qualification as their big city brothers.

In conclusion the banking industry is over regulated. Other providers of the same financial service that banks offer such as Credit Unions, do not work under the same regulatory burden nor do they pay any state or federal taxes. I would hope this could be another subject for another time.

Thank you for the opportunity for this testimony and I would be glad to answer any questions.

Mr. MCINTOSH. Thank you very much, Mr. Williams.

Let me ask both of you two questions, really. The first is what impact do these regulations have upon people who either borrow money or depositors?

Are you able to or have you seen in the literature any indication of whether you have to raise the rates or the fees on both of those?

Mr. WILLIAMS. Certainly, you do.

Mr. MCINTOSH. Do you have any estimate of the magnitude of that?

Mr. WILLIAMS. I do not have an estimate of the fees or cost, but I do have an estimate of the public's perception of this. They do not care about it.

They do not care about Truth-In-Lending. They do not care about Truth-In-Savings. They do not care about the Real Estate Settlement Procedures Act. They want to get the job done and they trust you; let us get on with it and give me my money and we will go on our way.

I cannot tell you the cost, but it is burdensome.

Mr. MCINTOSH. But you do have to pass on that——

Mr. WILLIAMS. Certainly.

Mr. MCINTOSH [continuing]. In higher fees?

Mr. WILLIAMS. Certainly. We are not going to absorb it.

Mr. MCINTOSH. And the other question, is do these regulations make it more difficult for locally owned banks to stay in business?

There has been an increasing tendency toward mergers and I realize a lot of banks have tried to keep a lot of local affiliation and guidance and control over the decision, but would you say that it is harder and harder for the small banks to stay in business?

Mr. WILLIAMS. The big banks have batteries of people to handle the same regulatory burden that community banks have. And, certainly, they have got a leg up on us.

Mr. MILLER. One of our affiliates has only eight staff members. If one of those individuals spends all of his time doing compliance, that leaves the other seven people to carry on the burden.

So, absolutely. The difference is, as Mr. Williams stated, the larger banks have people and they can afford to have people on staff to do it.

Smaller banks have to distribute that throughout the whole staff.

Mr. MCINTOSH. And as a result, if you want to have a loan, you have to go oftentimes to get approval from far away, depending on the structure——

Mr. MILLER. Absolutely.

Mr. MCINTOSH [continuing]. Of the particular bank.

Mr. MILLER. Absolutely.

Mr. MCINTOSH. Thank you both for coming. Let me see if my colleagues have any questions for you.

Mr. PETERSON. Were you just being nice when you said that you did not want to repeal CRA?

Mr. WILLIAMS. No, I think CRA, properly tiered, properly structured is not a bad act, as long as it is not so burdensome and costly. I do not have a problem if we are in a proper tier reporting.

Mr. PETERSON. I thought they were up to trying to get $500 million exempt.

Mr. WILLIAMS. Well, I have read and read and read. It has been $1 billion. It has been $500 million. It has been $750 million. It has been $250. And it has been as low as $50.

I think $250 is right for the low tier. I think maybe $500 billion to $100 billion is a proper tier for a bank with—they do not need to be under the same regulatory burden as big banks.

Mr. PETERSON. Well, I hear what you are saying, but I just have a real question that if we keep it in place, whether it is ever going to get simplified.

Mr. WILLIAMS. No.

Mr. PETERSON. I mean, I am for getting rid of it because I agree with you. I do not think that people——

Mr. WILLIAMS. I will go along with you.

Mr. PETERSON. I do not think—[laughter]—I do not think people care about it.

Mr. WILLIAMS. They do not.

Mr. PETERSON. And I do not think that it is accomplishing anything, that I can see. It is not in my district. It just causes people to spend a whole bunch of money for no good reason.

Mr. MILLER. I think Mr. Williams made a good point and we are in the same boat since the act has been enforced. We have probably had less than a dozen people that have requested the information that is being garnered on a yearly basis.

Mr. PETERSON. You have had more examiners in your office than you have had——

Mr. MILLER. Absolutely.

Mr. PETERSON [continuing]. People in there that have been——

Mr. MILLER. Absolutely.

Mr. PETERSON [continuing]. In there asking about it.

Mr. WILLIAMS. But there would not be a thing wrong, you would not break our heart if you repealed it.

Mr. MCINTOSH. One other quick question. You had mentioned, Mr. Miller, that you thought a lot of times the problem was uneven playing fields.

Is it your sense that some of these regulations are in place in order to give certain institutions an advantage over the others?

Mr. MILLER. I am not sure that they are put in place to give someone an advantage, but they certainly give the banks a disadvantage.

Mr. WILLIAMS. The results are that.

Mr. MCINTOSH. You say you do not have an uneven playing field in terms of the cost of delivering similar services?

Mr. MILLER. Certainly not. Based on the regulations that we have to adhere to, they are more in number than some of the others.

Mr. WILLIAMS. The credit unions do not adhere to the minute amount of regulations than we do. And as I say again, they do not pay any Federal or State taxes. It is hard to compete on that basis.

Mr. MCINTOSH. Yes, when your competitors have a different structure.

Thank you both for coming. I appreciate that.

Mr. MILLER. Thank you.

Mr. WILLIAMS. Thank you.

Mr. MCINTOSH. Our next panel has to do with regulations in the health care delivery area. I would like to invite forward Dr. Eugene Roach who is the medical director at the Anderson St. John's Hospital; James Currier who is a radiation oncologist; and Robert Brodhead, the president of Ball Hospital; and George Brannum who is the head of Pathologists Associated.

Is George here?

Welcome. I appreciate you all joining us here today. We had health care issues come up in Indianapolis and, in fact, some of the people who did not have a chance to provide testimony were interested in those. So, I am glad that we are able to hear from all of you today.

Let me just start out with you, Dr. Roach.

STATEMENT OF DR. EUGENE ROACH, MEDICAL DIRECTOR, ANDERSON CENTER OF ST. JOHN'S

Dr. ROACH. Thank you, Mr. Chairman and members of the committee.

My name is Dr. Eugene Roach and I am a board-certified psychiatrist. And I am currently medical director of the Anderson Center of St. John's in Anderson, IN.

I arise today to speak about an issue that has plagued my ability to render good high-quality medical care to my patients since 1983.

Under the Medicare and Medicaid guidelines there are two types of hospitals and units within hospitals. Attached to my testimony today is a regulation which will be available to you.

For reimbursement there are exempt and non-exempt units under the DRG prospective payment. Traditionally, psychiatry units and psychiatric hospitals have been exempt. Reimbursement issues are not my main concern today, but medical care is.

What is the regulation when a patient is admitted to an exempt unit and is transferred to a non-exempt unit? The HFCIA regulations demand that the patient be discharged and re-admitted.

From a practical standpoint, this means when a patient is moved from a medical surgical unit to a psychiatric unit or vice versa the medical record is broken down, a new history and physical is required, as well as a discharge summary from the previous unit.

This little process may seem to be no big deal, but let me share with you some of the horror stories where patient care and welfare have been compromised by this regulation.

When a patient enters the hospital, there are series of procedures and processes that are done. The medical record becomes the major document in guiding and caring for the patient.

It documents all contact with the patient. It documents all procedures done and the results; nursing and medical observations; allergic reactions; and, really, everything that is known about the patient is contained in that document.

For this data to be separated from the patient and sent to medical records for processing can be a hazard to the patient and can be an economic hardship.

I have seen duplication of tests run, failure of allergic reactions to be transferred with the patient, and, under this regulation, it deprives the new units the experience of knowledge of this patient's total care and their response to previous interventions.

To interrupt the medical chart during a patient's spell of illness, regardless of what services are needed, I believe is dangerous. I feel this regulation needs to be revised or to be rescinded. It is a bureaucratic decision made by someone who has never cared for a patient within a hospital setting.

Mr. Chairman and members of the committee, I respectfully submit these comments and will be glad to answer any questions that you have later.

[The prepared statement of Dr. Roach follows:]

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Mr. Chairman and members of the committee, my name is Dr. Eugene G. Roach, I am a board certified psychiatrist and am currently the Medical Director of the Anderson Center of Saint John's, Anderson, Indiana.

I rise today to speak about an issue that has plagued my ability to render good, high quality medical care to my patients since 1983.

Under the Medicare and Medicaid guidelines there are two types of hospitals and units within hospitals. Attached is a copy of the regulation. For reimbursement there are exempt and nonexempt units under the DRG prospective payments -- traditionally psychiatric units and psychiatric hospitals have been exempt. Reimbursement issues are not my main concern -- what is, is the regulation when a patient is admitted to an exempt unit and is transferred to a non-exempt unit. The HCFA regulations demand that the patient be discharged and re-admitted. From a practical standpoint this means when a patient is moved from a medical/surgical unit to a psychiatric unit or vice versa, the

medical record is broken down and a new history and physical is required, as well as a discharge summary is required. This simple little process may not seem a big deal, but let me share with you some horror stories where patient care and welfare have been compromised by this regulation.

When a patient enters the hospital there are a series of procedures and processes that are done. The medical record becomes the major document in guiding and caring for a patient. It documents all contact with the patient, it documents all procedures done and their results, nursing and medical observations, allergic reactions and everything known about that patient. For this data to be separated from the patient and sent to Medical Records for processing can be a hazard to the patient and can be an economic hardship. I have seen duplication of tests run, failure of allergic reactions to be transferred with the patient, and under this regulation it deprives the new units the experience and knowledge of this patient's total care and their response to previous interventions.

To interrupt the medical chart during a patient's spell of illness, regardless of what services are needed, is dangerous. I feel this regulation needs to be revised or rescinded. It is a bureaucratic decision made by someone who has never cared for a patient within the hospital setting.

Mr. Chairman and members of the committee, I respectfully submit these comments. I will be glad to answer any questions you might have.

[¶ 4263] EXCLUDED HOSPITALS AND EXCLUDED UNITS (Prov. Reimb. Man., Part I, § 2803)

Excluded hospitals and excluded hospital units (located in the 50 States and the District of Columbia) that meet the requirements outlined in this section are not subject to prospective payment for inpatient care but will be paid on the basis of reasonable costs subject to applicable target rate ceilings provided for by § 1886(b) of the Act.

The following hospitals and hospital units are excluded from the prospective payment system:

A. Psychiatric hospitals

B. Rehabilitation hospitals

C. Children's hospitals

D. Long-term hospitals

E. Alcohol/Drug hospitals

F. Psychiatric, rehabilitation, and alcohol/drug units of general hospitals.

The exclusion in not optional on the part of the provider, but is required if the hospital or unit meets the criteria for exclusion.

A hospital's exclusion applies to all units of the hospital, but does not apply to facilities that may be physically adjacent to the excluded hospital but have been separately certified as hospitals and have been assigned separate provider numbers. For example, if an excluded psychiatric hospital has a medical-surgical unit, that unit will be excluded on the same basis as other parts of the hospital. However, a medical-surgical facility that is separately certified as a hospital and has been assigned a separate provider number will be treated separately in applying the criteria for exclusion even though it is located in space that is adjacent to an excluded psychiatric hospital.

Hospitals (except those now certified as psychiatric hospitals) that believe they (or their units) meet the exclusion criteria of this section should notify in writing the Health Care Financing Administration regional office serving the State in which the hospital is located. Such notification should include the following: name of hospital, type of hospital/unit(s), address, current provider identification number, name of contact person, fiscal intermediary and a statement that the hospital/unit meets the criteria for exclusion. As noted in § 2803.61 [¶ 4266], a notice relating to a unit should identify the particular areas designated as the unit and specify the number of beds and square footage included in the unit. Room numbers or bed numbers must be used to identify the designated space. When possible the notification should be made no later than 5 months before the date the hospital would otherwise become subject to prospective payment. The regional office will then determine, based on information obtained by the State survey agency and the intermediary, whether exclusion is appropriate. If the regional office disapproves the exclusion, it will notify the hospital of the decision. If the regional office approves the exclusion, it will notify the hospital and the Medicare fiscal intermediary of excluded status and provider identification numbers. The hospital's self-identification on meeting applicable criteria is subject to verification. Hospitals and hospital units that have already been excluded, including psychiatric hospitals, will be reevaluated annually to determine whether they meet the exclusion criteria, and the results of each evaluation will be used in determining each facility's status for the next cost reporting period.

Generally, an identification of excluded or nonexcluded status for a hospital or hospital unit will apply to the entire cost reporting period for which the identification is made. If a change in meeting applicable criteria occurs during a cost reporting period, the status already determined for that period will remain for the duration of the period, and the change in the hospital's or unit's status (e.g., from excluded to not excluded) will take effect only at the start of the next cost reporting period. However, any change in status resulting from the beginning or end of a hospital's participation in an approved demonstration project or State reimbursement control program will be effective on the date the change occurs, whether or not that date coincides with the start of a cost reporting period.

.01 Source:

As adopted, Trans. No. 294 (Aug. 1983, effective for cost reporting periods beginning after September 1983), and amended by Trans. No. 319 (Feb. 1985).

Trans. No. 319 revised Sec. 2803 by redesignating the major provisions of that section as new Secs. 2803-2803.65 (see ¶ 4263 *et seq.*) in order to reflect new policies required by the prospective payment

"b. The unit must have written admission criteria that are applied uniformly to both Medicare and non-Medicare patients.

"c. The unit must have admission and discharge records that are separately identified from those of the hospital in which it is located and are readily retrievable. The unit's policies must provide that necessary clinical information will be transferred to the unit when a patient of the hospital is admitted to the unit.

"d. If State law provides special licensing requirements for psychiatric or rehabilitation units, the unit must be licensed in accordance with those requirements.

"e. The hospital's utilization review plan must include separate standards for the type of care offered by the unit.

"f. The beds assigned to the unit must be physically separate from (i.e., not commingled with) beds not included in the unit.

"g. The unit and the hospital in which it is located must be serviced by the same fiscal intermediary.

"h. The unit must be treated as a separate cost center for cost finding and apportionment purposes.

"i. The accounting system of the hospital in which the unit is located must provide for the proper allocation of costs and maintain statistical data that are adequate to support the basis of allocation.

"j. The cost report for the hospital must include the costs of the unit, must cover a single fiscal period and must reflect a single method of cost apportionment."

[¶ 4266A] Specific Criteria for Psychiatric Units (Prov. Reimb. Man., Part I, § 2803.62)

A. The unit must admit only patients whose admission to the unit is required for active treatment, of an intensity that can be provided only in an inpatient hospital setting, of a psychiatric principal diagnosis contained in the Third Edition of the American Psychiatric Association *Diagnostic and Statistical Manual*, or in Chapter 5 ("Mental Disorders") of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM).

B. The unit must furnish, through the use of qualified personnel, psychological services, social work services, psychiatric nursing, occupational therapy and recreational therapy. Psychological, social work, occupational therapy, and recreational therapy services may be furnished either by hospital employees or under a contract or other arrangement with the hospital.

C. The unit must maintain medical records that permit determination of the degree and intensity of treatment provided to individuals who are furnished services in the unit, and that meet the following requirements:

1. *Development of assessment/diagnostic data.*—Medical records must stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the inpatient is treated in the unit.

a. The identification data must include the inpatient's legal status.

b. A provisional or admitting diagnosis must be made on every inpatient at the time of admission, and must include the diagnoses of intercurrent diseases as well as the psychiatric diagnoses.

c. The reasons for admission must be clearly documented as stated by the inpatient or others significantly involved or both.

d. The social service records, including reports of interviews with inpatients, family members, and others must provide an assessment of home plans and family attitudes, and community resource contacts as well as a social history;

e. When indicated, a complete neurological examination must be recorded at the time of the admission physical examination.

2. *Psychiatric Evaluation.*—Each inpatient must receive a psychiatric evaluation that must:

a. Be completed within 60 hours of admission;

b. Include a medical history;

c. Contain a record of mental status;

d. Note the onset of illness and the circumstances leading to admission;

e. Describe attitudes and behavior;

f. Estimate intellectual functioning, memory functioning, and orientation; and

g. Include an inventory of the inpatient's assets in descriptive, not interpretative, fashion.

Mr. MCINTOSH. Thank you, Dr. Roach. That sounds like a catch–22 situation where you want to provide the best health care possible, but the regulations will not let you or make it a lot harder for you to do that.

Let me allow each member of the panel to submit their testimony before we have questions.

Dr. Currier.

STATEMENT OF JAMES CURRIER, MD, RADIATION ONCOLOGIST

Dr. CURRIER. I appreciate presenting this to you this afternoon.

My contention this afternoon is that the Nuclear Regulatory Commission regulation of the medical use of radioactive materials is not needed at this time and that much of the $528 million budget for this agency could be better spent.

We now have alternative methods of ensuring the safety of use of radioactive materials—to a degree, unmatched by other branches of medicine and most other industries.

Currently, the adversarial method of regulation used by the Nuclear Regulatory Commission is probably contributing more to the detriment of quality patient care in the United States than to protection of the population.

It is also a contributor to the increasing costs of health care in America. In one study I have read, there are an average of 60 misadministrations reported each year to the Nuclear Regulatory Commission. A review of 66 such misadministrations found only four cases in which there may have been a significant adverse affect.

In contrast, a study of 1984 New York State hospitalizations found about 6,900 deaths through negligence. I find significant the regulatory effort to prevent four injuries or deaths nationally due to radiation misadministrations compared with 6,900 deaths in one State due to negligence in other aspects of patient care.

To support my contention that NRC medical oversight is now unnecessary, I would like to quote Dr. Ivan Selin, the NRC chairman, who recently wrote that his successors, "Should get the NRC out of the business of regulating the medical use of radioactive materials."

There are, of course, many anecdotes one could share. One of my associates had an experience with one misadministration in which there was a calculation error. The calculation error was discovered in time to prevent any injury. The patient was treated more quickly than prescribed and, therefore, was a misadministration.

After reporting it to the NRC and after over a year of effort—including at least 8 days of physician efforts, 9 days of PhD physicist time, 2 days of hospital administrator time, in addition to two NRC physician advisor visits and quite a great deal of paperwork—it finally was agreed that there was no cause for a fine and they censured the department for allowing it to happen in the first place.

Other stories could easily be given. And if you are interested, I would be glad to provide additional names and phone numbers and such.

Again, I would hope that the advice of the NRC chairman that the NRC be gotten out of the business of regulating the medical use of radioactive materials, not be delegated to his distant successors.

[The prepared statement of Dr. Currier follows:]

P.O. Box 4042
Anderson, IN 46013
April 17, 1995

The Honorable David McIntosh
2900 West Jackson St.
Muncie, IN 47304

As it has been described to me, the NRC is a 3185 member agency of the government with a 528 million dollar budget regulating 108 aging nuclear power plants and a limited number of waste sites and other facilities, and a declining number of medical facilities. An NRC representative told me that the number of NRC licensed cobalt units has decreased by about 60-70% over the last 15 years or so. Though some of this is due to attrition of old units and changes in agreement states, I believe that much of this change is in large part due to the oppressive regulatory environment and to the recent dramatic increases in the cost of licensure.

It is my contention that though it is important to regulate carefully those facilities that have a potential for great hazard to large populations, the NRC regulation of the medical use of radioactive materials is not needed at this time. We now have alternative methods of ensuring safety of use of radioactive materials to a degree unmatched by other branches of medicine and most other industries.

Currently, the adversarial method of regulation used by the NRC is probably contributing more to the detriment of quality patient care in the USA than to protection of the population. It is also a contributor to the increasing cost of health care in America. There are an average of about 60 misadministrations reported each year. A review of 66 reported misadministrations found only 4 cases in which there may have been any significant adverse effect. In contrast, a study of 1984 New York State hospitalizations found about 6900 deaths through negligence. I find significant the regulatory effort to prevent 4 injuries or deaths nationally due to radiation misadministrations compared with 6900 deaths in one state due to negligence in other aspects of patient care.

To support my contention that NRC medical oversight is now unnecessary, I would like to quote Dr. Ivan Selin, NRC Chairman, who wrote that his successors "should get the NRC out of the business of regulating the medical use of radioactive materials."

As example of how oppressive the current regulatory system is, Dr. John Marvel, one of my associates, had a misadministration in which a patient received treatment more rapidly that he had prescribed due to a calculation error. This was discovered during a routine chart check, and the patient had his treatment terminated in time to prevent excessive exposure or injury. But since it was a misadministration, the NRC was notified. It took over a year, with approximately 8 days of physician efforts, 9 days of Ph.D. physicist time, and 2 days of hospital administrator time in addition to two NRC physician advisor visits before the NRC finally conceded that there was no cause for a fine, and only censured them for allowing the incident to happen. This represented excessive needless expenditure to say nothing of the stress it placed upon staff, especially since the NRC required notification of the family of the misadministration. It is hard to convince family members that there has been no harm done to their loved one when they know that a federal investigation is underway.

Another physician[1] had his ability to use all radioactive substances removed because he used a Sr-90 source to treat superficial skin lesions. He had understood that this was within his NRC license specifications, and believes that his position will be upheld by the courts. It is my understanding that there is not a question of harm to patients, but rather whether or not he met the technical specifications of the license. This appears to be an example of overregulation and supports my statement that the NRC should not be regulating the medical use of radioactive byproduct materials. The physician encouraged me to give you his name and number.

I am submitting a letter from Dr. Philip O. Alderson that I feel gives support to this position, and statements of Dr. Ivan Selin, NRC Chairman. Additional materials and personal contacts are available if desired.

Thank you for your attention to these matters.

Sincerely,

James E. Currier, MD

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[1] James Bauer, MD, Indiana Regional Cancer Center, 877 Hospital Road, Indiana, PA 15701
(412)465-8900

Mr. MCINTOSH. Thank you. I appreciate that very much, Dr. Currier.

Mr. Brodhead, thank you for joining us today.

STATEMENT OF ROBERT BRODHEAD, PRESIDENT, BALL MEMORIAL HOSPITAL

Mr. BRODHEAD. You are welcome. Mr. Chairman and distinguished members of the committee, my testimony is entitled "Time Is Up for Peer Review Organizations."

Peer Review Organizations were created by Congress in 1982 to ensure that services provided to Medicare recipients were medically necessary, met professionally recognized quality standards, and were provided in the most suitable setting.

Also with the implementation of the Prospective Payment System, whereby hospital reimbursement for Medicare was based on set fees, there was a perception by the Government that hospitals would discharge patients "quicker and sicker" to protect themselves financially.

Under the PRO system, which, today, includes 54 PROs, contracts are given at the State level to conduct reviews. At Ball Memorial Hospital, we feel the PRO system is no longer effective, nor is it needed.

The PRO is finding utilization problems in only 1 percent of the cases reviewed at our hospital. You have to ask the question, is this worth the expense and effort.

In a recent report on results of the PRO system nationwide, PROs completed more than 4 million hospital reviews over a 2-year period.

According to the report, only 3,358 quality problems were found. This is approximately one-half of 1 percent of the cases reviewed. And it is estimated that the cost of these reviews is nearly $74 million.

Looking solely at the hospital's cost in providing Medicare and PRO review services, our direct and indirect expenses are approximately $116,000 a year. If you take just a portion of that—let us say $50,000—and multiply it by the 5,000 hospitals nationwide, the price tag to hospitals alone is $25 million.

At Ball Hospital our physicians have internally established mechanisms to look at quality and utilization on both a case-by-case and overall basis.

Those of us in health care today agree that recipients are entitled to oversight to ensure an acceptable level of care, but we do not believe that the current PRO program and its multimillion dollar price tag is the most cost effective way to do it. Thank you.

[The prepared statement of Mr. Brodhead follows:]

BALL MEMORIAL HOSPITAL

Time Is Up For Peer Review Organizations (PROs)

Peer Review Organizations (PROs) were created by Congress in 1982 under the Social Security Act to ensure that services provided to Medicare recipients were medically necessary, met professionally recognized quality standards, and were provided in the most suitable setting.

The program was initiated, in part, because of the government's perception that county and state medical societies and hospital quality assurance committees were not doing their jobs well enough. Also, with the implementation of the Prospective Payment System, whereby hospital reimbursement for Medicare was based on set fees as determined by Diagnostic Related Groups (DRGs), there was a perception by the public and the government that hospitals would discharge patients "quicker and sicker" to protect themselves financially.

It was felt that hospitals and physicians needed a watchdog to look at quality and utilization and make sure Medicare patients were not being pushed out the door.

Under the PRO system, which today includes 54 PROs under contract to the Health Care Financing Administration (HCFA), contracts are given at the state level to conduct reviews of the appropriateness and quality of hospitalization of the Medicare population. If any problems are confirmed as part of the review, the results may include denial of payment.

Initially, the PRO system was good and welcome. For physicians and hospitals, it was their first exposure to having someone watch over them and question the freedom they were used to having. But as the healthcare system has evolved and hospitals have become more and more accountable, not only to the government but to other payors, consumers, their own boards of directors and physicians, and as a result, have developed their own internal peer review systems, the need and the usefulness of the present PRO system must be questioned. Is the cost of the PRO system to both the government and the providers worth the expenditure? Is the program effective in meeting its primary goals of improving quality and utilization?

At Ball Memorial Hospital, we feel the PRO system is no longer effective, nor is it needed. PRO practices are inconsistent, time-consuming and require an astronomical amount of health care dollars particularly when weighing the system's results.

First, let's look at the cost issue.

Between October 1, 1993 and June 30, 1994, our PRO, Indiana Medical Review Organization, reviewed 190 cases for utilization concerns. Of that 190, only 3 concerns were

confirmed for a rate of 1.58 percent. During that same period, 232 cases were reviewed for quality concerns and 5 quality concerns confirmed for a rate of 2.16 percent. Of 149 cases reviewed for unjustifiable procedure, there were no confirmed concerns. Similar numbers are reported for the hospital's peer group and statewide. And, when you look at one of the main reasons PROs were formed-premature discharge-since January 1994, Ball Hospital has received only one letter questioning this issue.

If the PRO is finding utilization problems in only 1 percent of the cases reviewed, are they doing their job and is it worth the expense and effort?

In a report on results of the PRO system nationwide, from April 1, 1989 to March 31, 1991, PROs completed more than 4 million hospital reviews. Quality problems were identified in 64,338 cases, only 1.6 percent of the cases they reviewed. Many of the problems cited were irrelevant to the outcome of the patient's care. According to the report, only 3,358 confirmed quality problems with significant adverse effects were found. This is approximately .5 or one-half of 1 percent of the cases reviewed. Each review of an identified problem cost about $1,150, not including the government's administrative costs or related costs born by physicians and hospitals, for a total of nearly $74 million.

From 1988 to 1989, the PRO program funds dedicated to Medicare review grew 56 percent, from $418 to $652 million. If government administrative costs and hospital and physician reporting and defense costs had been factored in, the 1989 total would have likely exceeded $1 billion.

Looking solely at the hospital's costs in providing Medicare and PRO review services, Ball Hospital's average cost both in direct and indirect expenses is approximately $116,000 a year. If you take just a portion of that, let's say $50,000, and multiply that by the 5,000 hospitals nationwide, the price tag to hospital's alone is $25 million.

Now, let's look at the process.

The PRO system today is viewed by staff at Ball Hospital as nothing more than a paper chase. We question the validity of the process and the information they send us.

Here's a routine scenario:

- The PRO requests a copy of a patient's medical record.
- Hospital staff pull the patient chart, copy it, box it and mail it to the PRO and hope that it gets to its destination.

• At this point, the PRO may issue a "technical denial," in other words they didn't receive the record, or a portion of the record.

• If a "technical denial" is issued the hospital must repeat its steps to pull the chart, copy, box and mail again.

• Next, the PRO reviews the chart and defines any proposed issues (problems with utilization, quality, documentation, appropriate procedure)

• Issues come back in letter form to the hospital and physicians, including any and all involved in the particular case. Please note that at this point, the patient record being reviewed may be as much as a year old.

• The hospital and physicians must respond to the issues in writing. The hospital staff must again pull the chart, uses clinical hours to review the chart to collect data and then compiles a response. Staff also contact physicians for their input and coordinate all responses.

• Responses are then dictated, typed, edited, retyped and mailed.

• The hospital then waits for a response from the PRO. It usually takes 2 months to respond to a year old case. If the response is a denial, the hospital and physicians can go through an appeal process, but staff often question whether it is worth the time or the effort.

We have one recent case that, because the physician felt strongly the problems reported by the PRO were not valid, took 7 months before it was resolved by the PRO.

When you weigh the time involved versus the costs versus the results, is there any value to the system, especially when you look at the progress hospitals are making with their own internal peer review activities?

At Ball Hospital, the Clinical Staff is structured to have its own peer review committees at the department level. Our physicians have internally established mechanisms to look at quality and utilization on both a case-by-case and overall basis. These committees also look at physician specific data which is fed into the hospital's credentialing process.

As the private sector has moved to utilization review through precertification and other requirements, our staff has in place internal processes to look at all patient data, not just for Medicare. We are able to compare ourselves with other hospitals in length of stay, cost, severity, mortality, and so on.

We strongly believe that hospital performance improvement and physician peer review committees improve patient care more effectively than PROs. We are convinced that those

responsible for performance improvement are bringing about desirable change and improvement.

The accountability is there! Payors, other than Medicare, are holding us accountable with their own utilization review programs. Physicians are looking at quality issues and reviewing themselves. Consumer awareness continues to grow and the public is asking questions about mortality, outcomes and questioning their own physicians. Our Board of Directors also hold us accountable and want to know regularly about length of stay, utilization of services and quality concerns and improvements. As we prepare for managed care, we will be expected to continue to lower our length of stay, provide outcome data and become committed to keeping people well.

We have to be prepared to answer to these constituents. If the PRO were gone tomorrow, we will still be working to make improvements.

There is a perception that hospitals do not monitor themselves. This is not true.

Those of us in health care today agree that recipients are entitled to oversight to ensure an acceptable level of care. But we strongly disagree, however, about whether the current PRO oversight program and its multi-million dollar price tag is encouraging health care professionals to provide high-quality care or to focus more on possible penalties to the detriment of high-quality care.

Resources

Health Progress Magazine, July-August 1992, "Providers Question PROs Effectiveness"

Indiana Medical Review Organization Report #FDB013SI, Confirmed Concerns by PRAF Category and Documentation Review for Reviews Selected and Completed Between 10/1/93 and 6/30/94, Ball Memorial Hospital

Ball Memorial Hospital, Average Cost of Providing Medicare PRO Review Services

Interviews: Karen Wells, Performance Improvement Coordinator, and Tonee Paul, Utilization Review, Ball Memorial Hospital Medical Records Department

BALL MEMORIAL HOSPITAL
AVERAGE COST OF PROVIDING MEDICARE PRO REVIEW SERVICES

SALARIES:			
REGISTERED NURSE	$34,112		
PRO CLERK	18,221	$52,333	
BENEFITS:			
26% OF SALARIES		13,607	
OFFICE & ADMINISTRATIVE SUPPLIES		684	
REPAIRS & MAINTENANCE		3,293	
PRINTING		1,424	
OTHER DEPARTMENTAL DIRECT EXPENSES (PHONE, DUES & SUBS, TRAVEL & EDUCATION ETC.)		$1,775	
TOTAL DIRECT EXPENSES			$73,116
INDIRECT COST ALLOCATED FROM OTHER DEPARTMENTS			43,709
TOTAL DIRECT & INDIRECT COST			$116,825

08-03-1994

Indiana Medical Review Organization
Report #FDB013SI
Confirmed Concerns by PRAF Category and Documentation Review
for Reviews Selected and Completed Between 10/1/93 and 6/30/94
Facility: 089, BALL MEMORIAL HOSPITAL

				---Hospital Peer Group----			---------Statewide--------		
Category of Concern	Cases Reviewed	Confirmed Concerns	Rate	Cases Reviewed	Confirmed Concerns	Rate	Cases Reviewed	Confirmed Concerns	Rate
1. Utilization	190	3	1.58%	4,594	55	1.20%	10,218	148	1.45%
2. Prohibited Actions	17	0	0.00%	483	0	0.00%	990	0	0.00%
3. Quality Concerns	232	5	2.16%	4,791	110	2.30%	10,456	317	3.03%
4. DRG/Coding Concerns	215	8	3.72%	4,589	127	2.77%	9,842	286	2.91%
5. Unjustifiable Procedure	149	0	0.00%	3,090	2	0.06%	6,464	4	0.06%
6. Documentation Review	232	14	6.03%	4,818	460	9.55%	10,513	1,103	10.49%

Note: an asterisk (*) indicates that the observed rate is significantly greater than the hospital peer group rate and a plus (+) indicates that the observed rate is significantly greater than the state rate. Statistical significance has been determined using a value of $p < .02$ for Utilization, $p < .04$ for Prohibited Actions, $p < .05$ for Quality Concerns, $p < .01$ for DRG/Coding Concerns, $p < .10$ for Unjustifiable Procedures, and $p < .01$ for Documentation Review. Where the number of reviews is less than 30 in a given category, no statistical significance has been computed.

Mr. MCINTOSH. Thank you very, very much. Thank all of you for joining us here today.

We are hearing a lot about the increasing costs in health care and one of the proposals that was not talked about very much during the health care debate was the effort to standardize the reporting requirements; and, in particular, the claims report both for the private and government-provided claims.

Would that be an area where, if we could reach a standard claim report and use that across-the-board, that that would save costs?

I think probably, Mr. Brodhead, you deal with that particularly at the hospital.

Mr. BRODHEAD. Well, I think it would save significant costs. And I think, certainly, a goal ought to be to standardize and eliminate a lot of the paperwork. It would definitely reduce costs.

And there have been studies done that it is anywhere from 10 to 25 percent of the costs in the health care system.

Mr. MCINTOSH. Which reaches a magnitude of nearly $1 trillion that are estimated in the next few years. So, 10 percent of that would be $100 billion dollars of savings. That is phenomenal if we are able to do that.

Do any of my colleagues have any questions?

Mr. PETERSON. I do not know if you are aware of it, but there is, in the last 2 or 3 weeks, a real serious effort started in trying to do a bipartisan health care reform bill that takes care of the things that everybody agrees on, including the one form and that and getting it done, which we tried to do the last time and were unsuccessful, but I really feel hopeful that we are going to get something done in short order here and get part of the things fixed. Hopefully, some of the regulatory overkill that we are doing.

But it is my judgment, in the long run, that we just have to look at some other kind of system for Medicare and Medicaid. It just seems to me that this thing is beyond hope and we have to look at totally revamping it.

Do you agree with that, No. 1. And, No. 2, do you have a solution as to what the alternatives should be?

I see you are shaking your head there in the middle, but—No?

Dr. ROACH. It was someone in Indiana who has put forth the concept of the IRA for medical care. And I think that is very viable.

Mr. PETERSON. Do you think we can replace the whole Medicare system?

Dr. ROACH. Right. Exactly, with an IRA kind of concept. And you get to keep what you do not spend.

Mr. PETERSON. What about the folks that are 65 now and have never had an IRA? What do we do with them?

Dr. ROACH. Well——

Mr. PETERSON. You know, that is part of the problem, I guess, is getting——

Dr. ROACH. Yes, right.

Mr. PETERSON [continuing]. To a new system. Has anybody done that within your group?

Dr. BRANNUM. Well, I think within the State of Indiana, they have started a managed Medicaid program. That started last year and I think managed care, the attractiveness of that is that it tends to drive down costs without impacting quality.

So, my feeling is I do think that the system needs to be reformed. And my suggestion would be that both for Medicaid and Medicare, that we look at a managed care type of approach.

Mr. MCINTOSH. Thank you. Or do you have any questions?

Mr. GUTKNECHT. Well, yes. Mr. Chairman, health care is a big issue to me because I represent a little town called Rochester, MN. Two brothers started a little clinic there a few years ago and it has grown and grown.

I was curious, though, Dr. Currier, you had talked about $528 million. Is that the total budget of the NRC or is that just what they spend to regulate nuclear medicine?

Dr. CURRIER. The quote I had, it sounded like that was the total budget. And that is in my papers here that I will be giving you, but that was my understanding that that is the total budget.

In 1990 or 1991, I believe, they required, as I understand it, that the NRC get the funds from those it regulates. And, as a result, there has been a rather steep increase in the fees for licensure because a lot of people are dropping out. So, there is a smaller group supporting the larger bureaucracy.

Mr. GUTKNECHT. Let me see what you think about this. And we had a problem with an ice cream maker in Minnesota and a number of people got sick from eating that ice cream. OK?

But that was in an USDA-inspected plant. The Government inspectors, everybody was there. And people still got sick.

Nobody went back and sued the Government inspectors; the regulators. And my suspicion is that if something goes wrong with any of your machines, that they are not going to go back to the NRC anyway. They are going to go back to you.

And, ultimately, it is you that bears the responsibility. And that is where, I think, this whole debate—whether we are talking about health care reform, whether we are talking about welfare reform or whether we are talking about regulatory reform—really gets back to, basically, an issue of responsibility. Who really is responsible?

And we have an awful lot of people in Washington who think that they are responsible, but, ultimately, it is those small business people, it is the doctors, it is the people who we are hearing testimony from today who bears the responsibility of guaranteeing whatever it is they do, will do what they say it will do.

And somehow we have got to get back to that basic notion of personal responsibility and this idea that somehow you can protect.

We have had this debate with—and I am sorry that he is not here today—one of our colleagues, Mr. Waxman, from California. And I told the story then and I will share it with this group, too.

Last year I was invited to the Governor's Mansion in Minnesota. And they served pineapple at this little breakfast reception. And a bunch of us got violently ill after that.

And I told Mr. Waxman, I said, You know, I got sick; that was USDA-inspected pineapple and we got sick despite all those Federal regulations.

In fact, he looked at all the regulations and the inspections that went on from the time that pineapple came into the United States.

We got sick in spite of the Federal regulations and, surprisingly enough, we got well in spite of all the Federal regulations. [Laughter.]

And I think there is a theory that has persisted and broadened in Washington over the last 3 or 4 years that somehow if we have enough Federal regulation and rules and guidelines and books and all the rest, that you can create a risk-proof society.

And the truth of the matter is you cannot. Bad things happen. Sometimes things go wrong despite the best regulations.

And now what we have, more and more—and I am sorry, I am lecturing now more than asking questions—but I think, as we have said earlier, and I state often, we create these $50 solutions to a $5 problem.

And yours is the best example, Dr. Currier. I like that. If those are the numbers and my staff—I will get into this—if it is $528 million because there were four potential cases where there may have been danger to the patients——

Dr. CURRIER. In roughly a year.

Mr. GUTKNECHT [continuing]. That is a huge cost per patient. And in spite of regulations, there may have been four that actually slipped through the cracks anyway. Thank you very much.

Mr. MCINTOSH. Thank you all for coming. I appreciate it. It sounds like we have yet another good idea for Corrections Day. Thank you for coming.

We will take those materials and go ahead and put them into the official record.

Let me move on to the next panel. This panel represents manufacturing concerns and has several individuals on it. One is Gary Bartlett, president of G.W. Bartlett Co.; Richard Brown, who is sales manager of Beckett Bronze; Robert Kersey, president of—they have down here Rochester Metal Products. I think of it as Indiana—have you changed your name, Robert?

Mr. KERSEY. No, we did not. It is another company.

Mr. MCINTOSH. Another company. Oh, I see. OK. Robert Anderson, plant manager of Delphi Interior and Lighting Systems and Richard Sullivan, vice president and division manager of New Venture Gear.

Thank you all for joining us. Let me kick it off by turning to Gary Bartlett, who just handed us this thick booklet. I will let you tell us about this, Gary.

STATEMENT OF GARY BARTLETT, PRESIDENT, G.W. BARTLETT CO.

Mr. BARTLETT. Actually, it is a little difficult to squeeze 5 or 6 years of regulatory problems into 5 minutes, so I thought that I would give you a 5-minute talk and then also give you just a little idea of some of the problems that we have run across with regulations, I would give you that.

Thank you for asking me to testify at the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs field hearing.

Unidentified VOICE. Cannot hear anything.

Mr. BARTLETT. We will try it again. Is that a little better now?

Mr. MCINTOSH. Is that mic working? Is the witness' mic——

Unidentified VOICE. That is not the mic. This is the mic.

Mr. BARTLETT. Oh. There is a difference?

Unidentified VOICE. It should pick up the whole thing.

Mr. BARTLETT. Unless I can scoot over.

Unidentified VOICE. This is the cord for the court reporter.

Mr. MCINTOSH. It looks like we can only handle a couple of problems at a time. [Laughter.]

Unidentified VOICE. That is the one.

Mr. BARTLETT. OK.

Mr. MCINTOSH. Thank you.

Mr. BARTLETT. We will try it again.

Mr. MCINTOSH. All right.

Mr. BARTLETT. Now, can we hear better back there?

Unidentified VOICE. Speak up a little more.

Mr. BARTLETT. Still cannot hear.

Mr. MCINTOSH. Just talk into the flower plant. [Laughter.]

Mr. BARTLETT. As I mentioned, it is a little difficult to squeeze 5 or 6 years of regulatory problems into a 5-minute talk. So, what I thought I would do would be put together a book that has more information than I can give you in 5 minutes about a problem that we have had ongoing for 5 or 6 years. So, that is what the book is.

Thank you for asking me to testify at the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs field hearing.

I am Gary Bartlett, president of G.W. Bartlett Co. of Muncie, IN.

I started G.W. Bartlett Company in October 1975, while working for my dad and uncle at their tire store on Broadway here in Muncie. Before and after their normal working hours, my brother and I rented space and equipment from them to perform the necessary duties for my newly formed company. We did mechanical work on foreign cars that my dad and Uncle Ed otherwise would have chosen not to work on.

The new business moved to 1912 Granville Avenue here in Muncie in October 1976. Although the business started primarily to work on foreign cars, it has evolved over the years into a manufacturer of high end interior trim components for use in the automotive aftermarket and the automotive original equipment market. Our market place is evenly split between Europe and America.

We have grown from two people in 1975, to about 100 here in American and 10 in our office in Kempston, England.

Of the Government created regulatory problems that I have experienced in the past 9 years—not the 19½ that I have been in business, but just the latter part of that—including frivolous EEOC claims and non-existent OSHA infractions, an EPA (or IDEM, Indiana Department of Environment Management) problem that I have has been unsolvable.

The problem started in March 1986 when I received a letter from the State Board of Health asking me to report any underground storage tanks that were on my property. And all of the documenting evidence is in the book as well.

Being a good citizen and a responsible business owner, I duly reported a partially submerged 275 gallon crankcase waste oil tank.

When we would change the oil in a car, we would pour used oil into a big funnel that was inside of the building. The used oil would go from the funnel through the wall via a three-inch pipe into this partially submerged 275 gallon tank.

In October 1989, a heavy rain caused the tank to "float" up from its position. And this was just a partially submerged tank. It was only halfway under the ground.

As the tank was no longer used, I made the second mistake. I decided to have it removed by the book.

At that time, October 6, 1989, I had no idea of the test procedures and requirements necessary. Subsequent soil testing required showed hydrocarbon soil contamination around the tank or waste oil around the tank. Over the years, there were times that the tank did overfill and oil did escape. These times were rare and were caught and rectified quickly.

I thought that a minor excavation would correct an otherwise insignificant problem. After the monitored excavation, I was instructed to fill in the hole by IDEM field rep, Phil Eley. I thought that the problem was behind me.

By August 1991 approximately, I had not received a "No Further Action Required" letter from IDEM and discovered that IDEM would not approve or disapprove my actions to date. And, again, the letter is in there from Anne Black from IDEM. And further to my dismay, Phil Eley and the others that I had worked with were no longer with IDEM.

In February 1992, I needed to expand part of our building over the contaminationsite. The clean-up process began all over again.

I hired Ontario Environmental to do a Phase II Environmental audit to determine the exact location of the remaining contamination. After numerous calls and letter to local, State and Federal officials, including President Bush, Kathy Prosser the Commissioner of IDEM did finally respond and sent Clean-Up Project Manager Michael Anderson to oversee our project.

We partially demolished the building in question and excavated yet more soil.

In May 1994, after rebuilding the partially demolished old building and building over the contaminationsite, Ashlee Insco from IDEM misread an engineering report and reclassified as from "Special Waste" to "Hazardous Waste". Even with test results to the contrary, she refused to back off.

Mike Penning from IDEM's Hazardous Waste Compliance Section drove up to Muncie to inform me that IDEM was in the process of filing criminal charges against me.

This time, I had to hire another consulting firm, Hydrotech, of Anderson, to utilize the services, once again, of Kerimeda Environmental and Barnes and Thornburg to defend myself against these charges.

Ashlee Insco still refused to back off. And had it not been for Mike Anderson of IDEM and his intervention, I do not know where this case might have gone.

We did prevail, but the engineering report is an engineering report. The results are the contaminated soil is still there. There is no ground water contamination. It is not migrating and there are no threats to humans, plants or animals.

I would guess that the contamination did not come from our waste oil tank, but, rather, the 1950's and 1960's when a print shop was in the building.

It will cost me an additional $90,000 to $150,000 to complete a useless clean up. I have wasted $55,919.11. I have wasted hundreds of unproductive hours.

And I own this building. I have $400,000 of my own money invested in the real estate. And at this time, we need to sell this property to finance construction of a new building, but, unfortunately, banks will not finance property if you have got an environmental problem. They will not loan money to anybody if you have an environmental problem.

The biggest cost to me, though, is now how I view my own Government. After years of continual attacks, I have come to look at them as the enemy.

Small business people, like me, have many major obstacles to constantly overcome. These can include foreign competition, changing market trends or hundreds of others, but, for me, the largest impediment to growth is the current adversarial posture of the Federal Government. Thank you.

[The prepared statement of Mr. Bartlett follows:]

G. W. Bartlett Co., Inc.

HOUSE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS
MONDAY, APRIL 17, 1995
TESTIMONY OF
GARY W. BARTLETT
PRESIDENT OF G. W. BARTLETT COMPANY, INC.

Thank you for asking me to testify at the House Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs Field Hearing.

I am Gary Bartlett, President of G. W. Bartlett Co., Inc. of Muncie, Indiana.

I started G. W. Bartlett Company in October 1975 while working for my dad and uncle at their tire store on Broadway. Before and after their normal working hours my brother and I rented space and equipment from them to perform the necessary duties for my newly formed company. We did mechanical work on foreign cars that dad and Uncle Ed otherwise would have turned down.

The new business moved to 1912 Granville in October of 1976. Although the business started primarily to work on foreign cars, it has evolved over the years into a manufacturer of high end interior trim components for use in the automotive aftermarket and the original equipment market. Our market place is about evenly split between Europe and America.

We have grown from two people in 1975 to about 100 here in America and 10 in our office in Kempston, England.

Of the government created regulatory problems that I have experienced over the last 9 years (not the 19 1/2 that I have been in business) including frivolous EEOC claims and non-existent OSHA infractions, an EPA (or IDEM) problem that I have has been unsolvable.

In March of 1986 I received a letter from the State Board of Health asking me to report any underground storage tanks that were on my property (see first letter in IDEM letter section). Being a good citizen and a responsible business owner, I duly reported a partially submerged 275 gal. crankcase waste oil tank. When we would change the oil in a car we would pour the used oil in a big funnel inside of the building. The used oil would go from the funnel through the wall via a 3 inch pipe into this partially submerged 275 gal. tank.

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317-289-1251: Facsimile

G. W. Bartlett Co., Inc.

In October of 1989 a heavy rain caused the tank to "float" up from its position. As the tank was no longer being used, I made the 2nd mistake. I decided to have it removed by the book (see first letter, G. W. Bartlett Co. to IDEM). At that time (October 6, 1989), I had no idea of the test procedures and requirements necessary. Subsequent soil testing required showed hydrocarbon soil contamination around the tank. Over the years there were times that the tank overfilled and oil did escape. These times were rare and were caught and rectified quickly.

I thought that a minor excavation would correct an otherwise insignificant problem. After the monitored excavation I was instructed to fill the hole in by IDEM Field Representative, Phil Eley. I thought that the problem was behind me.

By August, 1991 (approximately) I had not received a "No Further Action Required" letter and discovered that IDEM would not approve or disapprove my actions to date (see Anne Black letter of September 11, 1991) and further to my dismay Phil Eley and the others that I had worked with were no longer with IDEM.

In February of 1992, I needed to expand part of our building over the contamination site. The clean up process began to repeat itself. I hired Ontario Environmental to do a "Phase II" Environmental audit to determine the exact location of the remaining contamination. After numerous calls and letters to local, state and federal officials including President Bush, Kathy Prosser, Commissioner of IDEM did respond and sent Clean Up Project Manager, Michael Anderson to oversee our project.

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In May of 1994 after rebuilding the partially demolished old building and building over the contamination site Ashlee Insco from IDEM misread an engineering report and reclassified us from "Special Waste" to "Hazardous Waste". Even with test results to the contrary she refused to back off. Mike Penning from IDEM'S Hazardous Waste Compliance Section drove up to Muncie to inform me that IDEM was in the process of filing criminal charges against me.

This time I had to hire another consulting firm, Hydrotech, of Anderson, Indiana, utilize the services of Kerimeda Environmental again and Barnes and Thornburg to defend myself against these charges.

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Ashlee Insco still refused to back off. And if not for Michael Anderson's intervention I don't know where it would have gone.

The Results

The contaminated soil is still here. There is no ground water contamination. It is not migrating, and there is no threat to humans, plants or animals. I would guess that the contamination did not come from our waste oil tank, but from the 1950's and 60's when a print shop was in the building. It will cost me an additional $90,000.00 to $150,000.00 to complete a useless clean up. I have wasted $55,919.11. I have wasted hundreds of unproductive hours. I own this building. I have $400,000.00 invested in the real estate. I need to sell this property to help finance a much needed new facility, but unfortunately banks won't finance property with environmental problems, therefore, virtually eliminating any potential buyers.

The biggest cost to me, though, is how I now view my own government. After years of continual attacks I have come to look at them as the enemy. Small business people like me have many major obstacles to constantly overcome. Those can include foreign competition changing market trends or hundreds of others. But, for me the largest impediment to growth is the current adversarial posture of the Federal Government.

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Mr. MCINTOSH. Thank you very much, Mr. Bartlett.

Let me go all the way through the panel and then we will ask questions at the end of it.

Mr. Brown, would you like to present your testimony?

STATEMENT OF RICHARD BROWN, SALES MANAGER, BECKETT BRONZE

Mr. BROWN. Well, primarily, Beckett Bronze Co. is a small business, as you know. I know the chairman has visited our plant and shook the hands of practically everybody in there.

We operate both a foundry and a machine shop. And since we produce bronze products, including leaded bronze, environmental laws, rules and regulations are a costly problem for our company as they are for everyone in our field.

With domestic competition, we are all in the same boat. With foreign competition, competitiveness can be a serious problem. However, environmental problems are just a part of the competitive problem. As a small business, we are faced with all kinds of rules and regulations from the Federal Government.

I chose to take a look at an inquiry which we received from the Navy because I think that it sort of indicates the kind of regulations that are going on.

This inquiry lists 51 applicable FAR and DEFAR clauses or regulations to which the supplier must conform. These are all from the bills promoted by the President and/or Members of the Senate and/or House.

Just attempting to keep up with the regulations is an almost impossible task for small businesses. We just do not have the staff and legal departments to do so.

They are sure these bills are introduced to right a perceived wrong or some ethnic or disadvantaged citizens, although there are times when we suspect the author may give some thought to the voting possibilities from their constituents.

There is one of the FAR regulations that I would like to read in its entirety. It is FAR 52–215–7:

> Unnecessary elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. The elaborate artwork, expensive paper and bindings and expensive visual and other presentation aid are neither necessary nor wanted.

It is rather ironic that this came in a 49-page request for a bid on four pieces of bronze. [Laughter.]

I find that the Government might listen to what they write up.

I think that we have to take a look at competitiveness from the standpoint of our Nation's ability to compete in the world market place and our own domestic market. As the national debt continues to grow, we come closer and closer to the kind of calamity that Mexico is experiencing.

The major contributor to our problems is government bureaucracy which is absorbing too much of the Nation's wealth. Government agencies have a tendency to continue uncontrolled growth in spite of other needs.

The exponential growth of regulations, protection for any kind of minority and perceived social problems always seem to result in

new bureaus and programs to correct the problem—no matter what the cost—and old programs never die. Nor do the size of the bureaus ever seem to be reduced.

In the meantime, business, which provides the jobs and income of the working people of the Nation, as are the working taxpayers taxed for more and more money to carry the bureaucracy which generates no wealth, but, unfortunately, supports this maze of rules and regulations which is a serious problem for the competitiveness of our business and Nation.

The bureaucracy likes to blame programs as social security for the problems of high Government expenditures. This is the same group who collected the money withheld for social security ever since its inception and spent the money for social security and other purposes.

Somehow, they reason that the Government is giving away this money, when, in fact, the Government used the money when the politicians spent it to cover the cost of the bureaucracy and its other programs.

Had the money been invested outside the Government in mutual funds, stocks, property or practically any wealth-producing area, there would be no shortage of funds for social security.

I will stop at this point.

Mr. MCINTOSH. If you would like to go ahead and summarize any other points.

Mr. BROWN. Yes. I think I would just present a list of all these regulations that we are expected to read and study when we try to quote something to the Government, because the Government lists them all.

[The prepared statement of Mr. Brown follows:]

Richard Brown
Beckett Bronze

We should address Competiveness from the standpoint of our nations ability to compete in the World marketplace and our own domestic market. As the national debt continues to grow, we come closer and closer to the kind of calamity which Mexico is experiencing.

The major contributor to our problems is Government Bureaucracy which is absorbing too much of the Nations wealth. Government Agencies have a tendency to continue un-controlled growth in spite of other needs. The exponential growth of Regulations, Protection for any kind of Minority and Perceived Social Problems always seems to result in New Bureaus and programs to correct the problem, no matter what the cost, and Old Programs Never Die! Nor does the size of the Bureaus ever seem to be reduced.

In the meantime, business which provides the jobs and income of the working people of the nation, as are the working taxpayers, taxed for more and more money to carry the Bureaucracy which generates no wealth.

The Bureaucracy likes to blame programs such as Social Security for the problems of high Government expenditures.. This is the same group who collected the money withheld for Social Security eversince its inception and promptly spent the money for other purposes. Somehow they reason that the government is giving away this money when in fact the government used the money when the polititions spent it to cover the cost of the Bureau- cracy and its other programs. Had the money been invested outside the Government in mutual funds, stocks, property or practically any wealth producing area, there would be no shortage of funds for Social Security.

Business, the wealth producing part of our economy, is faced with trying to control costs and show profits in the face of taxes and regulations. I am not a strong cheerleader for large wealthy Corporations, but very few business people are in that area. Most of us are in small businesses and the rules and regulations heaped upon us by Government Bureaucracy is a heavy load to carry in time and people. We are expected to compete for Government contracts (which most of the time is orders for a limited number of parts or units). It is pointed out that Minority owned, Disadvantaged Business, Woman Owned and Small Business Companies get special consideration for Government orders. Beckett Bronze is a small family owned business with fifty to sixty employees. This results in having to file forms stating our status, not only to the government but also to every Company we quote on any parts or orders where that Company or any Div. of that Company supplies parts or material to the Government. This is an annual ritual for every company.

I brought in two examples of Government Military Inquiries with the LIST OF APPLICABLE FAR/DFARS CLAUSES INCORPORATED BY REFERENCE IN THE CONTRACT.
The first is from the Navy, Bremerton, WA. It is an invitation to bid on one piece each of four parts. The package covers forty-nine pages filled with special requirements etc. Thirteen of the pages pertain specifically to the parts involved. The balance lists all of the applicable clauses mentioned above. There are fifty-one of these regulations on all of the laws covering everything that the Government in their ultimate wisdom has decided they should have a law to protect or promote. In addition, another twenty pages cover inspection and shipping information for the parts which will only be needed by the successful bidder.

The second example is from the Rock Island Arsenal. This one is not as many pages and actually includes a print of the part involved, which spells out exactly what is needed in size, tolerances, material etc. This is unusual in Government inquiries as for some reason it seems to be the practice to make the game more fun by spelling out all of this information over several pages and avoiding a print (Which our commercial customers would not ever consider doing). The strange thing with this inquiry is that we received two copies complete with 15 pages of other information.

While we are in one of the favored groups, as a Small Business, we would rather not get all of this special attention with the accompanying paper work. We could probably be more competitive if we could eleminate all the time needed to be sure we conform to all of the extra regulations we must look up and review, to insure we are in compliance with all Government Mandates.

Quite honestly, we do not even quote on many government inquiries, or on inquiries from other Companies quoting on Government inquiries, where we must certify we are not breaking any of these laws, since we do not have sufficient information or personel to review them. This is a job for the legal profession and we cannot afford it. It really should not be a problem of this magnitude.

In addition, the environmental group is always anxious to add to our duties in reviewing their rules and regulations.

We are sure many other small companies are in the same situation. We seldom make any effort to quote on Government needs since it involves so much time and cost that we believe we are better off without the business. If this is true of other firms, the Government is probably paying more than they should for a large portion of their requirements. More than they would be without the overkill in regulations.

I would like to suggest that the Government consider having every company file all of the necessary forms for all of the special minority, disadvantaged, woman owned and small business programs, plus any others resulting in constant paperwork, once a year with the Federal Government under their Company Federal Tax Number. This could eleminate all companies involved in Government Contract work and the subsidiaries of those companies from having to obtain signed notices of conformance from all suppliers. All that would be necessary would be to place your Tax I.D. Number on quotations. Should you be the winning bidder, they could check the Government to see that your papers were properly filed.

Thank you for your time and the opportunity to express some of my opinions.
If you have any questions I would be pleased to discuss them.
Richard H. Brown

Mr. MCINTOSH. I appreciate that. And thank you for bringing that.

One of the complaints that we have had in our efforts to cut back on regulations is that we may be putting the Government through a few too many hoops in order to write new regulations.

And I find this highly ironic since they are quite willing to come up with regulation after regulation for the private sector, but do not want to have to go through any procedures themselves.

You often think maybe if they live with many of the things that they write, then you would have a lot better results.

Thank you very much.

Let me call now on Mr. Kersey representing Rochester Metal Products. Why not trade places?

STATEMENT OF ROBERT KERSEY, PRESIDENT, ROCHESTER METAL PRODUCTS

Mr. KERSEY. Right, Rochester Metal Products. We also make lawnmowers, but under a different name. This is a foundry operation that grew out of the lawnmower operation and moved to Rochester many years ago.

I want to thank you for allowing me to testify. And I am testifying about Title V, the Clean Air Act.

As president of the Rochester Metal Products Corp., and also as a director of the Indiana Cast Metals Association that represents 45 foundries in the State of Indiana, I am particularly hopeful that what I have to say will be useful.

Title V is, first, overburdensome. In States already having to comply, such as Wisconsin, foundries are reporting that permits require 700 to 900 written pages.

Sensing a huge handling and storage problem due to paperwork, Ohio's Environmental Protection Agency has announced that it will disallow "hard copy" applications, but its "on-line" electronic permitting system is said to consist of 1,400 data screens.

Indiana initially is setting up an electronic system. Our people attended the first conference and the system did not work.

Title V is unreasonable in the sense that it requires foundries to specify "alternative operating scenarios" in all aspects. You have got to predict what you are going to do for the next 5 years.

Failure to identify the "right" alternative will require filing an amendment to the permit and loss of the valuable "permit shield". And isn't that kind of a humdinger of bureaucratic jargon; we have a bureaucratic permit shield.

We are faced with a no-win situation. We do not want to be constrained by our permit restrictions from taking advantage of future economic expansion, so we must assume maximum capacity for this period, but this will result in higher potential emissions, higher permitting fees and increased regulations.

Title V is costly. And I am speaking strictly of the paperwork part of it. This is before anything is ever done about cleaning up pollution.

Grede Foundries, Inc. in Milwaukee, a large and a well-respected competitor, estimates that permits will cost them over $58,000 for each facility. That is over $1,000 a week.

This is a lot of money in our industry. And rather than being spent on preparing a massive document to satisfy the act's bureaucratic requirements, should go for better control equipment.

Our costs would be very close to Grede's and this does not cover the added permitting fees that are going to be charged by IDEM to try to control or handle this.

The act is redundant. The States already have permitting procedures.

And, finally, it is nonsensical in many ways. Let us assume that every major emission source submits permit applications completely and timely. We are talking about close to 1,000 pages. How will this information be used? Can it be used?

One of the questions deals with how much "fugitive dust" goes airborne when trucks pull into a parking lot. Now, is that during a rain? Is that during a wind storm? Is that—you know.

They are impossible questions to answer. Environmental agencies will be required to process unprecedented amounts of information. Does anyone honestly believe that the governing agencies will be able to process this information, let alone put it to good use.

The Ohio EPA could not effectively handle the NPDES—that is the stormwater permitting—permit submissions because of the complexity and volume. And we had people waiting around for rains and timing them to take samples of runoff to do that kind of work.

As a foundryman, I believe that the Clean Air Act was born of a good idea, less emissions, but has been transformed into a bloated administrative nightmare with emphasis on the permitting process, not on improvement of the environment.

We need help. We need delay and review and cuts in those requirements. And I am certain that if others who are still unaware understood what is required, you would be getting hundreds of letters objecting to this, but many of us—I do not claim to understand all of it. Thank you.

[The prepared statement of Mr. Kersey follows:]

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Testimony to be Presented at the
Hearing for the House Subcommittee on
National Economic Growth,
Natural Resources and Regulatory Affairs

HEARING TOPIC
THE NEED FOR REGULATORY REFORM

Monday, April 17, 1995
345 S. High Street
Muncie, IN

Testimony by:

Robert E. Kersey
President
Rochester Metal Products Corp.
Director of
Indiana Cast Metals Association

Gentlemen:

I want to first thank you for allowing me to testify.

I'm testifying about Title V of the Clean Air Act as President of Rochester Metal Products Corp., which employs nearly 250 people in Rochester, Indiana and 15 here in **Muncie**. I'm also a director of the Indiana Cast Metals Association which represents 45 foundry companies in the State of Indiana.

I am particularly hopeful that what I say will be useful to the House Subcommittee here today.

We strongly object to Title V because it is:

1. Overburdensome

In states already having to comply (e.g. Wisconsin), foundries are reporting that permits require 700 to 900 written pages. Sensing huge handling and storage problems due to paperwork, Ohio's Environmental Protection Agency (OEPA) has announced

it will disallow "hard copy" applications, but its "on-line" electronic permitting system is said to consist of 1,400 data screens.

2. Unreasonable

Title V requires that foundries specify "alternative operating scenarios" in regard to processes and production rates over the next five years. Failure to identify the "right" alternative will require filing of an amendment to the permit and loss of the valuable "permit shield" (isn't that a "humdinger" of bureaucratic jargon!). We are faced with a "no-win" situation: we don't want to be constrained by our permit restrictions from taking advantage of a future economic expansion period, and, thus, must assume maximum expansion of capacity for this period but this will result in higher potential emissions, higher permitting fees, and increased regulation over time.

3. Costly

Grede Foundries, Inc., Milwaukee, a large and well-respected competitor, estimates that permits will cost them $58,000 for each of their facilities. This is a lot of money in our industry, and, rather than being spent on preparing a massive document to satisfy the Act's bureaucratic requirement, should go for better control equipment to reduce emissions and improve safety. Our cost would be very close to Grede's, and this doesn't cover the increased yearly permit fees.

4. Redundant

The states already are active in regulating air-pollution emission sources. Indiana has an air permitting system in place. Title V will require, in general, additional and separate permitting of the same sources.

and,

5. Nonsensical

Let's assume that every major emission source submits permit applications completely and timely. How will this information be used? Can it be used? (One of the questions deals with how much "fugitive dust" goes airborne when trucks pull into your driveway!). Environmental agencies will be required to process unprecedented amounts of data. Does anyone honestly believe that the governing agencies will be able to process this information, let alone put it to good use? (OEPA, for

example, could not effectively handle NPDES ("stormwater") permit submissions because of the complexity and volume of permits.)

As a foundryman, I believe that the Clean Air Act was born of a good idea (less emissions), but has been transformed into a bloated, administrative nightmare, with emphasis on the permitting process, not improvement of environment.

We need help! We need delay, review, and deep cuts in those requirements. I'm certain that if others who are still unaware understood what is required, you would be getting hundreds of letters objecting to this law.

Thank you.

Mr. McINTOSH. Thank you very much, Mr. Kersey. I appreciate that.

The next witness is Robert Anderson, plant manager at Delphi Interior and Lighting System. Welcome.

STATEMENT OF ROBERT ANDERSON, PLANT MANAGER, DELPHI INTERIOR AND LIGHTING SYSTEMS

Mr. ANDERSON. Good afternoon, gentlemen. My name is Bob Anderson. I am the plant manager at the Delphi Interior and Lighting Systems plant in Anderson.

I appreciate the opportunity to briefly address this audience regarding the growing impact of the Government regulation on plant operation.

Delphi Automotive Systems is a business sector of the General Motors Corp. Delphi Interior and Lighting Systems has been in business in Anderson since 1929.

Our 3,800-person team designs and manufactures exterior lighting for cars and trucks—including signal lamps, tail lamps, turn signals, parking lamps and high-mounted stop lamps.

Our plant is actually the largest manufacturer of vehicle lighting products in the world. Our Anderson team supplies over 95 percent of the signal lighting used in vehicles produced by General Motors—over 5 million vehicles in 1994 alone.

At Delphi we have persevered over the years to reach our present position and we are committed to working even harder in the future to retain our status as the No. 1 producer of quality lighting products.

There has been great progress made in protecting human health and safety and the environment and we are pleased to be a part of that progress. In fact, our lighting business was started 89 years ago based on products to make cars and trucks safer.

Now, each and every product we make is totally regulated, and regulatory requirements facing manufacturing facilities in the United States today are increasingly complex and costly.

By example, over the last 20 years the number of environmental regulations with which plants must comply has grown phenomenally. According to one estimate, the pages of the Code of Federal Regulations devoted to plant environmental regulations alone increased from 450 pages in 1972 to 9,200 pages in 1988.

The EPA regulations alone take up 15 volumes similar to this one (holding up EPA regulations book). One analysis of the cost of reporting showed that at our plant alone, we spent over $5.8 million in 1994 to comply just with environmental regulations.

At our plant we have five professional employees who spend most of their time on environmental regulation conformance and reporting. We deal with a number of regulatory agencies at the national, State and the local level.

Obtaining permits from regulatory agencies is a costly and time-consuming process. In one case, the process to obtain a hazardous waste storage permit took 10 years and required several submissions and revisions due to inefficiencies in the review system.

Nearly $200,000 was spent to modify a drum storage area to meet rigid regulations, even though the area was being properly managed and had no documented releases to the environment.

These stationary source requirements are pervasive and regulate virtually every phase of manufacturing activity. As you know, manufacturing plants comply with a myriad of regulation and reporting requirements generated from laws such as the Community Right to Know, Resource Conservation and Recovery, Clean Water and Clean Air Acts.

Today we operate in the increasingly competitive international lighting market by focusing on producing quality products at a reasonable price. Our engineers develop innovative designs that are cost effective as well as providing an added benefit to the customer in terms of safety and efficiency.

Delphi Interior Lighting, Anderson Operation, has invested over $100 million in research and development over the last 5 years and another $40 million in capital improvements in our plant over the same time period. This included multicolor molding equipment, toolroom and other production equipment—19½ single-spaced pages in this computer printout of capital improvements in the last 5 years.

These types of expenditures are necessary in order to improve our ability to compete as we look to expanding our markets nationally as well as overseas.

We produce lighting not only for the U.S. market, but also for vehicles exported to other countries. The intense competition that has developed as our market has become global means we have to eliminate every bit of waste from our operations. We have to have the best products in the world, but we also have to be price competitive to be able to sell them.

It certainly defeats the purpose of and wastes our internal efforts to be competitive when the Federal Government imposes regulations which, though well intentioned, have not been adequately considered from a cost benefit standpoint or which unnecessarily complicate operations or which require continuous or detailed compliance which no one is likely even to read.

Although reasonable review of business practices is beneficial, the Government's regulator role has exploded in the last 4 years. Regulatory reform, such as the legislation recently passed by the House, offers a reasonable approach to begin looking at the cost-benefit ratio of the many regulations.

Regulations that promote a benefit should be retained. Those that do not meet the criteria should be flushed out. In fact, this concept is not different than the scrutiny American enterprise faces every day in today's global marketplace.

Again, thank you for providing a forum to begin discussions on the important subject of bringing unnecessary regulation under control. I assure you, it is one of the keys to our ability to compete globally. Thank you.

[The prepared statement of Mr. Anderson follows:]

Statement

Bob Anderson, Plant Manager
Delphi Interior & Lighting Systems
Anderson, Indiana

Field Hearing
US House Government Reform & Oversight Committee
Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs
Indianapolis, Indiana
April 17, 1995

My name is Bob Anderson. I am the plant manager at the Delphi Interior and Lighting Systems plant in Anderson, Indiana. I appreciate the opportunity to briefly address this audience regarding the growing impact of government regulation on plant operation.

Delphi Automotive Systems is a business sector of the General Motors Corporation. Delphi Interior and Lighting Systems has been in business in Anderson since 1929. Our 3,800-person team designs and manufactures exterior lighting for [redacted] cars and trucks — including signal lamps, tail lamps, turn signals, parking lamps, and high mounted stop lamps. Our plant is actually the largest manufacturer of vehicle lighting products *in the world*. Our Anderson team supplies over 95 percent of the signal lighting used in vehicles produced by General Motors — over five million vehicles in 1994.

At Delphi lighting, we have persevered over the years to reach our present position — and we are committed to working even harder in the future to retain our status as the *number one* producer of quality lighting products.

There has been great progress made in protecting human health and safety and the environment and we have been pleased to be part of that progress. In fact, our lighting business was started 89 years ago, based on products to make cars and trucks safer. Now, each and every product we make is totally regulated, and regulatory requirements facing manufacturing facilities in the United States today are increasingly complex and costly.

Over the last 20 years the number of environmental regulations with which plants must comply has grown phenomenally. According to one estimate, the pages in the *Code of Federal Regulations* devoted to plant environmental regulations *alone* increased from 450 pages in 1972 to 9,200 pages in 1988.

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Again, thank you for providing a forum to begin discussions on the important subject of bringing unnecessary regulation under control. I assure you, it is one of the keys to our ability to compete globally.

Mr. MCINTOSH. Thank you very much, Bob. We appreciate it.

Let me turn now to Mr. Richard Sullivan, vice president and division manager for New Venture Gear. Welcome.

STATEMENT OF RICHARD SULLIVAN, VICE PRESIDENT AND DIVISION MANAGER, NEW VENTURE GEAR

Mr. SULLIVAN. Good afternoon. First, I would like to thank you for the privilege of speaking here this afternoon.

The Muncie Transmission Division of New Venture Gear is a manual transmission supplier located on the southwest side of Muncie. We are a joint venture formed and owned by Chrysler Corp. and General Motors. Our facility has been producing transmission components at this location since 1919. Throughout these years, we have been a major provider of jobs for Hoosiers and a major consumer of goods and services from the area.

During the last few years, competitive pressures have caused business loses, resulting in downsizing. Our employment has fallen from a maximum of 3,000 in the early 1980's to its current level of 1,300.

Our plant lost $52 million last year and will lose about $40 million this year. Our board of directors have told NVG it must make the Muncie plant profitable. Obviously, to do that, we have to have aggressive cost-cutting reduction measures implemented.

And although our business losses are not a direct result of the added regulatory burden, they do impact our profit picture.

Environmental and health and safety spending, on a one-time basis, from 1989 to 1994, was over $3.2 million with ongoing annual recurring costs of grown to over $1.3 million.

We ask you to consider the financial impact regulations may have on American competitiveness and that the proposed benefit be weighed against the cost.

While we acknowledge that the workplace and the environment are definitely safer and cleaner than ever before, we also stress the need to be cost competitive. Thank you.

Mr. MCINTOSH. Thank you very much. I appreciate that.

That leads to one of the general questions that I would like to ask each of you. And I appreciate you all being here. We have a good variety of smaller businesses to larger businesses—GM being a major employer in both Anderson and Muncie; and the small businesses, really, generating a lot of the job growth opportunities historically.

But let me ask you to think about the impact of these regulations and others on the ability to create new jobs or sustain the existing jobs.

And if you could give me either a quantitative sense of what the job loss due to regulations is or the job gain, if there is one—if you have to hire more people for some reason on the paperwork—that would be helpful to us.

And I would appreciate it also if, as you are thinking about that, regulations have an impact in particular on decisions to expand and invest in new equipment.

I noticed Mr. Anderson and Mr. Sullivan both had fairly large sums of cost of regulation and I did some quick math. Over at the Delphi plant, if you had employees making $50,000 a year and

taxes and benefits package of another $25,000 in cost, you could take that $5.8 million and hire an additional 75 people.

And, so, the numbers are significant and do have a significant impact on employment. Now, obviously, you might not be able to translate all of that into that many jobs, but that, I think, gives you an idea that you are spending the salaries of 75 people to comply with those regulatory costs.

So, let me ask each of you to comment generally on the impact on jobs of these and other Government regulations. Gary, do you want to lead off?

Mr. BARTLETT. In 1994, we had—at the end of 1993, rather—we had about 50 employees in our American facility. And through an aggressive sales program, we doubled our employees over 1994. And we are trying to hire people and train them.

We do our own training—of course, in-house—as fast as we can, but we have reached the limits that our building will allow us to grow.

And, certainly, this building in Muncie will continue to be here and maybe even be our home office, but we have had an offer from a company in England—since we sell so much in England—to expand our operation and participate in a joint venture in England.

And when you are faced with things like that and you work in the international marketplace, certainly it does make things like that attractive.

It would be one of the last things I would want to do because I am an American. I like the idea of selling American parts in Europe, but, yet, if the Government continues this type of an approach to small business people like myself, what do you do when you are faced with something like that?

So, in terms of real jobs, it could, realistically, cost in 1995 and 1996, 100 jobs here; that we would hire foreign employees.

The jobs that we have here will stay here, but the expansion will take place somewhere else.

Mr. MCINTOSH. I appreciate that. That would be a tragedy, I think, if our Government regulations end up creating incentives for you to have to expand overseas.

Yes, Mr. Brown?

Mr. BROWN. Yes. We employ 50 to 60 employees. It varies up and down.

Our biggest problem with the regulations is the cost of ending these problems. In fact, as a small company, we do not have the people to stay on top of these things. And the Government just keeps piling them on.

We spend a great deal of money complying with all of the regulatory issues. Being a foundry, using leaded bronzes, gives us all kinds of problems. And lead in the air, lead in blood, water off the roof tops—which is some of our environmental problems.

I am sure that there is not much lead on the roof top, but the government is worrying a great deal about it.

So, whether we would expand any great amount? I could not say, really. That is the management of the company.

Mr. MCINTOSH. Are you in the marketplace where there is severe competition from overseas?

Mr. BROWN. We are in a marketplace where there is competition from overseas. Whether I would call it "severe"; in some cases, yes. When we lose business to overseas, we definitely consider it severe.

The majority of our business is still domestic business. And we are fighting the battle here.

Mr. MCINTOSH. Do you find that the overseas competitors have the same concerns with lead on the roof or with regulatory agencies that are concerned about that?

Mr. BROWN. No, I am afraid that most of them do not pay a bit of attention to these problems.

Mr. MCINTOSH. Thank you.

Mr. Kersey.

Mr. KERSEY. It is very difficult to put a number of people that you might have hired.

I think one of the aspects that Gary mentioned that needs to be emphasized and that is as a small business, we really are all living in fear of having something happen like it happened again because we, frankly, do not have the people who can really get their arms around these new regulations.

This Title V is so big that we have nobody in our organization, so we rely on lawyers and consulting firms to do that kind of thing.

It takes dollars that we would use for other things and it generally takes people in our operation, who are really key, from the important things that they would be doing otherwise.

So, where we lose it is just lack of the kind of growth that we would get otherwise. And, so, I would say that I do not know how to put a number to it, but economic growth of our particular company is definitely much slower because of the regulatory burdens just because we have to spend so much time on it.

Mr. MCINTOSH. Thank you. I appreciate that.

Mr. Anderson.

Mr. ANDERSON. To try to quantify the magnitude of regulation and what it can mean to employment in our business—specifically, in automotive lighting—I touched on just one small slice of regulation.

We see regulation from all levels of Government dealing with our people, our products and our processes. Just in my operation—$5.8 million last year—just dealing with one small slice of process regulation dealing with the environment.

Not touching health and safety. Not touching transportation. Just environment. That explodes into a large number of people. If we look at that whole overall impact, its tens of millions of dollars.

As I touched on earlier, our business is primarily within General Motors. So, the opportunity for growth is staggering.

We have our own internal challenges to take waste out, as I mentioned, but the Government regulation is another opportunity for us to remove waste from our operation and excess cost from our business that could give us the opportunity to compete in a more global basis.

So, the opportunity within just our little piece of business of signal light—although very, very big within our company—could be many times as big as it is today if we are able to be truly globally competitive.

And the effort that you gentlemen are working on is an area that can help us in that.

Mr. MCINTOSH. So, if we are able to tackle some of these regulatory costs, you would foresee the possibility of being able to expand operations and to increase job opportunities?

Mr. ANDERSON. Absolutely. We have the capacity. We are just not globally competitive yet.

Mr. MCINTOSH. Thank you.

Mr. Sullivan.

Mr. SULLIVAN. As Delphi mentioned, we probably have six to seven full-time people to keep up with the regulatory burden. And, obviously, those are unproductive people in terms of providing a payback to the company.

So, in our position where we are losing money and we have got to get profitable, obviously, we want everybody to be productive.

And if we do not get productive, then we have to what we call a "survival mode" which is maintenance only, which is going to mean quite a reduction in terms of people at our plant.

We do not want to get to that point, obviously, but the thing that this adds to us is cost. When we go out and bid product, that is part of our cost. We make what we call a profit that allows us to pay salaries, but we cannot cover all the burden that a plant our size generates.

And this is one of those contributors to the burden. We cannot cover these fixed-type costs that are overburdening our manufacturing operations.

So, we look at it in terms of a cost that is really not contributing to our being competitive. If we reduce that cost, we could be more competitive as we go out for new business.

Mr. MCINTOSH. And did I understand you correctly? In the case of New Venture Gear, that is critical at this stage because you have received word that——

Mr. SULLIVAN. Well——

Mr. MCINTOSH [continuing]. Perhaps——

Mr. SULLIVAN [continuing]. We have two divisions. The other division is extremely profitable. And we are not profitable. So, obviously, there is a contrast there and the pressure is on us to get profitable.

Mr. MCINTOSH. And reducing regulatory costs is one way to assist in that?

Mr. SULLIVAN. Well, it is one of the costs for the plant.

Mr. MCINTOSH. What would you say it is as a percentage of the costs in the plant?

Mr. SULLIVAN. Not a big percent.

Mr. MCINTOSH. Not big?

Mr. SULLIVAN. Probably 5 percent.

Mr. MCINTOSH. Five percent? OK. Thank you. I appreciate that.

Are there any questions from my colleagues? I have one other for Mr. Barlett.

You mentioned that a lot of this effort is to clean up waste. What percent of the costs that you have incurred have gone to actual clean-up activities of removing the waste or containing it?

And what percent has gone to either legal fees or consultant fees?

Mr. BARTLETT. Probably on waste removal, I would—in fact, all of the invoices are in your book—but I would say to haul the material away and construction, probably $25,000 consulting and legal fees; probably $34,000, $35,000.

Mr. MCINTOSH. So, well over half of the money has been spent on things other than actually cleaning up the environment.

That is typical from what we have seen in a lot of the Superfund and clean-up activities around the country; that it is a tremendously wasteful program and ends up not getting us all the benefits that we would expect from the money being spent on it.

I appreciate you particularly putting together that book for us. It will be very helpful.

Mr. BARTLETT. I think one of the keys, though, that all of us hit on while we were here is that we all believe in a clean environment. We all want clean water. We all want clean air.

But the way that the Government goes about enacting some of this regulation, I just do not understand what the motive is.

Is the motive to punish people in business? Is the motive really to clean up the environment because I see some of the things that they do that really does not clean up the environment. It just simply is wasteful.

Mr. MCINTOSH. I hear from people over and over again that it is simply that business seems to be the enemy and not a real means for getting a cleaner environment or a safer workplace. And that is an unfortunate attitude when you encounter that.

Thank you all very much. I appreciate that.

Let me move on to our next witness. He is someone whom all of you know, if you have watched cable television here in Delaware County. Mike Lunsford, who is one of our local realtors, will talk with us a little bit about some of the regulations that affect his business.

Thank you very much, Mike. I appreciate your appearing with us here today. Please tell us what your experience has been.

STATEMENT OF MIKE LUNSFORD, REALTOR

Mr. LUNSFORD. OK, thank you. Thank you very much. I am Mike Lunsford. My primary business is the real estate business, both commercial and residential.

And I wanted to speak of three or four issues, a couple of which have happened and a couple of anticipated regulations that are coming down the road.

Increasingly, the real estate transaction process has become a trigger point for imposing a myriad of regulatory burdens. While many of those are well intentioned, administratively they are very, very cumbersome, as many people have shared today.

One example is the Lead-Based Paint Act that was enacted in 1992. It is disclosing the presence of lead-based paint for sales of any properties pre-1978. For the sales of pre-1978 properties, the seller or agent of any property leased or sold must provide a lead hazard pamphlet, disclose any known lead hazards and provide a 10-day or mutually agreement period of time for a lead paint assessment or inspection.

Just recently, in November 1994, the EPA and HUD issued new proposed regulations to be sure that this was being complied with

and it included a host of new paperwork requirements ensuring that compliance.

This would affect, potentially, 2.9 million sales and 9.3 million rental transactions annually at an estimated cost—and these are EPA and HUD's estimates—of $75 million in the compliance paperwork in the real estate industry.

It appears to me as though this is largely necessary at the Federal level because right now there are 25 States that currently have a property disclosure requirement on sellers. Indiana enacted one July 1, 1994 and 15 other States are currently in the process of setting up that kind of a disclosure requirement already.

In addition, last year the House passed legislation that would have imposed a similar disclosure requirement for radon. This would only have exacerbated the regulatory burden.

As an example, radon testing in Muncie, IN, if I want a radon test today, I have to go to Indianapolis and the cost is about $150 to get that done.

The test results are, at best, inconsistent. An example is that if I went up to almost any house sealed up in this area and took a radon test, that radon test would come back positive.

If I aired the house out, kept it open and kept a lot of ventilation in the house, in all likelihood I could provide a negative report.

The bottom line is that it is so inconsistent, depending on who takes the test, you never know what the results are going to be.

If it comes up positive, the remediation costs can be anywhere from $1,500 to $3,000 as a direct cost to the seller or the buyer or a combination. Generally, it would be the seller.

It is a very, very inconsistent test. Does our Federal Government need to be involved in that? It does not appear to me as though they need to be.

Coming down the road is computerization in the real estate transaction. Currently when we have a buyer, they ask for mortgage rates information and we will give them several lenders. They will look at that information and they will make a decision as to where they want to go.

Right now there is currently computerized lending operations that are now coming into effect whereby in my office I might have a computer that says that I can pull up a series of rates. We can do comparisons of those rates and the buyer can then make a decision as to who they want to use.

Recently, the Clinton administration issued a proposed rule in 1993 that will increase the Government intrusion. It will require that a computer system have any 20 lenders that wanted to be on it.

In addition to that, if anyone used that system, the origination fees would need to be paid up front. They are currently paid at the point of closing. A tremendous burden on the buyer.

The goal of the real estate industry is to provide more services at less cost. We can do that if we are allowed to offer some of these services. In the future, we will have increasingly larger bundling of services that will become very, very important.

I also was going to touch on environmental rules and regulations. I think Mr. Bartlett has covered that very, very well. From my perspective, we run into a lot of testing that increases cost and the

reason it does is because of the fear of what happened with Gary and some of the superfund clean ups.

Anything that even smells as though there may be a problem with environmental issues, scares buyers and it scares the banks and rightfully so. It scares them to death because of the way in which many of those rules and regulations are enforced.

Thank you very much. I really appreciate your coming to Muncie and taking some time to talk with us.

[The prepared statement of Mr. Lunsford follows:]

REGULATORY BURDENS FOR THE REAL ESTATE BUSINESS

Submitted by Michael O. Lunsford

My primary business is real estate sales. The real estate professional is faced with a growing number of regulations, both federal and state, which they must comply with when completing the real estate transaction. There are numerous areas where government intrusion into the real estate business has complicated the transaction and increased the cost to all parties. I will outline two of the most onerous federal burdens and two anticipated burdens on the horizon.

LEAD BASED PAINT AND RADON DISCLOSURE

Increasingly, the real estate transaction process has become a trigger point for imposing a myriad of regulatory burdens. While well intentioned, many of these requirements are administratively cumbersome and add to the cost and delays in completing real estate transactions. **And, many of the federal requirements are of marginal utility and confusing to the consumer since they are duplicative of disclosure requirements imposed by the states.** In fact, mandatory property condition disclosure laws, requiring disclosure of property characteristics by the seller, currently exist in 25 states. An additional 15 states are considering imposing some sort of property disclosure requirements. I am happy to say that Indiana enacted its law in 1993, which became effective July 1, 1994.

In 1992, Congress enacted into law the Residential Lead-Based Paint Hazard Reduction Act (Title X of Public Law 102-550). Section 1018 of Title X sets forth the procedures to be followed in disclosing the presence of lead-based paint for sales of pre-1978 properties.

For sales of pre-1978 properties, the seller or agent must distribute a lead hazard pamphlet, disclose any known lead hazards and provide a 10-day, or mutually agreeable, period of time for a lead paint assessment or inspection. For pre-1978 leased properties, the lessor must provide a lead pamphlet and disclose any known lead hazards. Sales contracts must contain a standard lead warning statement on a separate sheet of paper.

On behalf of the seller, real estate professionals will be required to distribute lead hazard pamphlets to potential purchasers and renters. In addition, they will also have to disclose any information provided to them by the seller concerning the presence of known lead-based paint on a

property. They will also have to insure that the lead disclosure provision in the sales contract is executed by the purchaser.

In November 1994, the Environmental Protection Agency and the Department of Housing and Urban Development issued proposed regulations to implement the lead law, which included a host of new paperwork requirements to ensure compliance with the above. EPA and HUD estimate that 2.9 million sales and 9.3 million rental transactions will be affected annually by these new paperwork requirements. EPA and HUD also estimate that this will impose an additional $75 million annual compliance burden on the real estate industry. This time and paperwork only increases cost to the homebuying consumer.

In addition, last year the House passed legislation that would have imposed similar disclosure requirements for radon. This would have only exacerbated the regulatory burden. An example: If radon testing were required, the closest testers are in Indianapolis. The cost is $150. Test results are inconsistent. In the event a home is sealed up tightly it would probably require remediation at an average cost of $1,500-3,000. In the event any home is left open prior to testing, results would most likely be negative. Is this a regulation which should come from the federal government?

COMPUTERIZATION OF THE REAL ESTATE TRANSACTION

An area of recent focus is the use of computerized loan origination systems (CLO's) to assist homebuyers with finding a home mortgage. While the marketplace has developed well to this point, government bureaucrats have decided to get involved with the direction of the marketplace.

For purposes of discussion, let us say the real estate agent shows the buyer the rate sheets/products of five or more lenders with whom he/she has successfully transacted business in the past. It was then incumbent upon the borrower to go to each lender and fill out an application -- a time consuming and expensive process. Upon getting a conditional commitment from a lender, it would not be unusual to wait up to a month to actually close the loan. Such a system was inefficient and a waste of the consumer's time.

Now, using a CLO, a borrower can view the rates/products of as many lenders as are on the system without leaving the real estate agent's office. Trained loan counselors can assist buyers through the process, answering questions about products and submitting the application when the best mortgage "fit" is located. Loan commitments are received in a matter of hours and borrowers can track the progress of the loan by computer.

Real estate professionals believe several requirements for CLO's as proposed by HUD will actually hinder the development of CLO systems and create consumer confusion in the residential mortgage process. In our view, consumers are looking for ways to save time and money. **CLO systems offer consumers a way to save time in searching for mortgage loans from numerous lenders.** Consumers, with proper disclosure, are in the best position to determine the proper value of those services.

The 1992 Bush Administration final rule on computerized loan originations took a practical consumer disclosure approach in order to let mortgage delivery technology naturally develop.

The Clinton administration issued a proposed rule in 1993 which would increase Government intrusion in the development of this fast growing area. Under the government controlled approach each computerized system will be required to accept any 20 lenders offering services. This will require consumers to pay these closing cost fees up-front when obtained on a computerized loan origination system. The present practice is to permit these fees to be paid at the closing when the traditional paper based mortgage origination process is utilized. Government should not step-in to create artificial differences between new technologies and traditional paper-based methods of closing home loan transactions.

The real estate service industry has created new and innovative computerized mortgage loan systems based on the final regulations since that time, and many other mortgage programs are in the final stages of development.

Real estate service providers are combining a wide variety of services surrounding the transfer of property. One-stop-shopping also entails bundling of other settlement services such as title, insurance, settlement, appraisal and moving in addition to matching buyers with mortgage products.

ENVIRONMENTAL RULES & REGULATIONS

The myriad of rules and regulations are at best vague which leads often to unnecessary expense and regulation. Much could be said about this topic. However, I would like to share one situation in which I am currently involved regarding construction of a Hooks REVCO drugstore at the corner of Madison and Memorial.

This is a project which we have been working on for 2 years. It is now close to fruition. We are involved in a land lease on the corner. We have already had soil borings at an adja-

cent site that showed some contamination and that site has been abandoned. However, that contamination had not migrated to the present subject property. On the subject, we have already invested $1500.00 in a Phase I survey which shows the site clean, however, it is indicated there was a spill across the street several years ago which has not been cleaned. In order to provide what is deemed a clean bill of health on the subject property even though the spill was well over 100 feet away, we will have to take 4 borings on this site at a cost of $2880.00 before the property can be financed and in the event there is migration in the future through the water table of any contamination to this property, we will again have to contend with the situation in the future. On this project, the total invested in testing will exceed $12,500 which is pure cost and adds nothing to the value. It is done mostly because of the concern of what might happen should there be any contamination and the all-powerful EPA requires remediation which can be whatever they deem appropriate.

It is the uncertainty as to what the consequences of any contamination might be that creates an aura of fear among lenders and developers. This, in some way, needs to be addressed as it adds significant cost to all projects.

Mr. MCINTOSH. Thank you very much, Mr. Lunsford. I appreciate that. And thank you for sharing those examples with us.

Let me ask you one question from some testimony that was given earlier today in Indianapolis and you did not have the benefit of hearing it, but let me summarize it briefly for you.

It essentially had to do with an additional requirement that borrowers would have if they used a mortgage broker in a transaction; that they would have to lay over for, I think it was a period of 3 or maybe 5 days and have an option of rescinding the loan.

This person essentially said that this would lead to the elimination of the holder in due course and make many of these notes unmarketable unless you could demonstrate that that person had not exercised those rights.

It seemed, at the time, an example of a regulation that was well intended, giving people a chance to maybe rethink the process.

But is it your experience that when you are selling somebody a home or a piece of property that they would, on the whole, want to have the option of 3 or 5 days later rescinding the deal—knowing that that might mean that they could not really close on it for that period of time?

Mr. LUNSFORD. I think that could create a significant problem in that right now we do so many things today to structure our transactions so that the buyer has as much disclosure as possible.

They have the ability to ask for all the tests, the inspections, all those kinds of things that they would like to have to satisfy themselves as to the nature of the property that they are acquiring.

All the lenders information is disclosed well in advance of closing—from the closing expenses, the Truth-In-Lending form—all of those kinds of things.

And by the nature of the transaction with all of the title work and all of the other things that come together, an additional 3 days before disbursal of funds, I think would be very detrimental to the transaction in general. I do not think that it is necessary because of all the other due diligence that happens.

Mr. MCINTOSH. As a result of that. So, the result is that it would make it more difficult to engage in the transaction. And, so, although it appears to help people, it may make it harder for them to buy a home——

Mr. LUNSFORD. Exactly.

Mr. MCINTOSH [continuing]. Or actually engage in many of these transactions.

Mr. LUNSFORD. I mentioned the seller disclosures that are occurring now. Indiana used to be a buyer-beware State. And I think today, disclosure is important in all cases.

It is a fact that whenever you buy a used piece of property, something is going to happen to it after you close it.

I mean, it is 10, 15, 20 years old. Some buyers are buying a property expecting it to be like it was brand new and that it will last for 5 or 10 years before something happens to it. That is an impractical expectation.

I think when the Government steps in and continues to try and make sure that what you and I do with our money and investments and protects us, I do not think that it is necessary.

Mr. MCINTOSH. It sometimes has unintended negative consequences.

Mr. LUNSFORD. Absolutely.

Mr. MCINTOSH. I am getting the stop sign from the timer.

Would any of my colleagues like to ask any questions? OK.

Mr. LUNSFORD. OK.

Mr. MCINTOSH. Thank you very much.

Mr. LUNSFORD. Thank you very much.

Mr. MCINTOSH. I appreciate that.

Let me call forth our next witness, Terri Quinter, who is the supervisor of Rose View Transit Co.

Thank you very much, Terri, for joining us.

STATEMENT OF TERRI QUINTER, ROSE VIEW TRANSIT

Ms. QUINTER. Thank you Mr. Congressman and panel. It is a privilege and an honor for me to be here today to represent the Municipal Government of the city of Richmond, IN.

My name is Terri Quinter and I am currently serving as supervisor of our Rose View Transit System. I am here to share with you one instance of many situations that face our Municipal Government on a regular basis as a result of Federal regulations.

Our community of 38,000 people operates a public transit system which is composed of six fixed routes served by nine buses. In addition, we operate a paratransit system for the exclusive use of the handicapped and our senior citizens.

This system has five fully equipped vans that provide on-call service 12 hours a day from 6 a.m. to 6 p.m. 6 days a week. These vehicles are all equipped with wheelchair lifts and other amenities to satisfy the requirements of their constituents: senior citizens and the handicapped.

The 1995 operating budget for this entire system is $968,000. Based on 350,000 rides this year, the expected collections from the users is $126,000. This then creates a subsidy by the Federal Government to operate this system of $842,000.

In 1993, it became necessary to replace some of the buses for the fixed routes. As a result of the new Federal regulations under the Americans with Disabilities Act, the new buses had to be equipped with wheelchair lifts even though we were operating fully equipped paratransit system. The additional cost per bus to provide this equipment was over $6,500 per unit.

So, far, we have received five buses for an additional cost of over $32,500 with a sixth bus on order and, ultimately, all nine buses will be converted for a total cost of over $58,500. The total cost of all nine buses is $414,900—80 percent of which is paid by the Federal Government.

So far, one citizen has used the lifts on the fixed route buses. Even though this is not a tremendous amount of money, it is an example of an unnecessary expenditure in our community because of the "one size fits all" mentality.

In the future, we will have to modify the sidewalks wherever the bus stops to allow for a level spot to land the lift. It makes no sense to spend the great amount of money necessary to comply to this additional requirement when only one citizen is unnecessarily using the equipment.

There is no question that we, in our community, could run this system more effectively with less cost if we had more freedom to act in a manner that is more appropriate for our community and our citizens.

Mr. MCINTOSH. Thank you very much, Ms. Quinter. [Applause.]

I appreciate your coming forward with that. And it is certainly a classic example of where the Government had tried to do good and has failed in terms of being cost effective in its approach.

But that is mind boggling that one citizen used it. Let me ask you one thing that came to mind. You had mentioned that you had to change the sidewalks. Is this after recently having to modify all of the curbs in order to make them slope so that they would be wheelchair accessible?

Ms. QUINTER. Right.

Mr. MCINTOSH. And, so, now, you have to come back and make them level so that the lift would work?

Ms. QUINTER. That is correct. And above and beyond what our budget can hold, the city of Richmond will have to pick up the additional cost. The engineer's department is not very happy about that.

Mr. MCINTOSH. Do you sometimes wonder who comes up with these ideas?

Ms. QUINTER. Yes. It is obviously a person who does not ride on a city bus. [Laughter.]

So, it is just a duplication of services. And the wheelchair lifts, we have to operate them daily so that the hydraulics do not freeze up. And the drivers just come in and let it down and put it back up and then they go on.

Mr. MCINTOSH. And you are confident that you could fully satisfy all of the needs of the handicapped community in Richmond——

Ms. QUINTER. Yes, sir.

Mr. MCINTOSH [continuing]. Through your paratransit service?

Ms. QUINTER. Yes, sir.

Mr. MCINTOSH. I have no other questions. Thank you very much for coming.

Ms. QUINTER. Thank you.

Mr. MCINTOSH. Do either of you have any questions?

Mr. GUTKNECHT. I do not think that there is anything that we could add to that testimony. [Laughter.]

Ms. QUINTER. Thank you so much.

Mr. MCINTOSH. Thank you. I appreciate that. Believe me, that will be made known in Washington.

Ms. QUINTER. OK, thanks.

Mr. MCINTOSH. Let me call forward our final scheduled witness, Katherine Kleber with ABATE and Dan Conaway with ABATE of Indiana. Welcome.

Dan and I have met here and also in Washington.

I appreciate you coming, Katherine. I have not had a chance to meet you. I appreciate your coming and sharing with us your testimony. I will let you lead off.

STATEMENT OF KATHERINE KLEBER, ABATE OF INDIANA PAC

Ms. KLEBER. OK. Can you hear me?

Mr. MCINTOSH. Yes.

Ms. KLEBER. OK. Chairman McIntosh, Mr. Peterson and Mr. Gutknecht, I would like to thank you for this opportunity to express my concerns before your subcommittee.

My name is Katherine Kleber and I live in Seymour. I represent ABATE of Indiana which is American Bikers Aimed Toward Education.

I requested permission to address you today because the focus of this subcommittee is regulatory issues and I am very concerned about a matter which is regulatory in nature, yet it does not focus on one single law or rule. I come to this committee to request an investigation into the policy and procedures being practiced in the operation of a Federal regulatory agency, the National Highway Traffic Safety Administration.

The laws governing virtually every aspect of the activity that takes place on our roads—including automobile travel, bicycles, motorcycles, school buses and pedestrians—depend heavily on recommendations and information supplied by this agency. Highway trust fund programs, law enforcement procedures, road design, safety equipment, educational programs and skills requirements are only a few of the areas of their influence. Therefore, every citizen in this country is affected on a daily basis by this agency known as NHTSA.

The magnitude of the decisions made and the vast influence represented by this Federal regulatory agency places it in a position of responsibility that calls for leadership that is trustworthy and above reproach.

So many daily activities of U.S. citizens are restricted and regulated that honesty and integrity of the people who are in positions of control is demanded or no person can be assured of the fair and equal consideration that is their right as a citizen of this country.

My request is based on 3 months of personal investigation into questionable practice and, most recently, having witnessed firsthand, a blatant attempt to manipulate information which was requested by the President to help determine a need for reviewing regulatory practices.

In December 1994, I witnessed a large group of professional people—including emergency medical services and children's safety program administrators—use documentation provided by NHTSA to justify the need for legislative regulation of bicycles, motorcycles and equestrians.

Most of the documentation was derogatory and renounced by NHTSA itself as long ago as 1991. Yet, the accusations and inflammatory statements had proved to be such an effective tool, not only do they continue to release the information already confirmed by them to be false, they also provide instructions explaining how to use this information to give credibility to their fight for legislative regulation.

On March 29, 1995 an acquaintance of mine from Washington, DC sent me a notice that, at the request of President Clinton, the National Highway Traffic Safety Administration would be holding public hearings to listen to the opinions of the people regarding regulatory measures which are obsolete or ineffective. One of the meetings was to be held in Indianapolis, IN on April 4th at 7:30 a.m. However, this meeting was not publicized. On the contrary, it

was so well hidden, that the hotel where it was scheduled did not even know about it.

I arrived with 11 motorcyclists who, at great effort and personal expense, travelled from all corners of the State to speak for the 20,000 members of ABATE of Indiana. These 20,000 members of the public are also members of a motorcycle safety and education organization which did have their voice heard that day.

However, that voice was heard only because a friend of mine thought I might be interested. There are many voices and opinions in Indiana who were not heard and are still unaware that the hearings took place.

It was obvious to all that the voice that was intended to be heard at this covert meeting and presented in Washington to the President of the United States as the voice of the people was actually the voice of professional speakers skilled at presenting the recommendations of those same self-acknowledged regulatory advocates who were at the symposium in Iowa that I previously mentioned.

Obvious, because the public hearing—unknown to the public—was a part of the annual safety meeting held by this same group which is sponsored by NHTSA called Lifesavers 13.

Questionable ethics, manipulation of facts and use of our Federal tax dollars to promote the lobbying efforts of a handpicked group of associations representing the monetary interest of big business and a personal agenda of the administrator are sufficient reasons for an investigation into the National Highway Traffic Safety Administration.

I am one person who, in December last year, stumbled into a culture whose philosophy threatened my values and freedoms. Two weeks ago, I saw enough to convince me that the agency which was created to protect our interest and assist us in questions of highway safety and awareness is not protecting me, representing me or even interested in hearing the voices who would speak for me.

Regulatory decision based on this type of practice is a violation of the trust of the American people and an insult to the integrity of our country.

I thank you again for this opportunity to speak before this committee and I wish you success in the endeavors of your subcommittee.

Mr. MCINTOSH. Thank you very much. We endeavor to allow people to know where we are meeting and encourage participation.

So, I will make those views known back there. I will transmit them to the President myself.

Mr. Conaway.

STATEMENT OF DAN CONAWAY, ABATE OF INDIANA PAC

Mr. CONAWAY. Mr. McIntosh, Mr. Peterson and Mr. Gibenich——

Mr. GUTKNECHT. Gutknecht.

Mr. CONAWAY [continuing]. Gutknecht. That is a hard one, sir.

Mr. GUTKNECHT. It means "good guy".

Mr. CONAWAY. "Good guy", I believe that. [Laughter.]

I thank you for this opportunity to testify before your subcommittee to express the views of American Bikers Aimed Toward Education.

I am here today primarily to ask this subcommittee to review the effectiveness of regulations created by Section 153 of Title 23 of the U.S. Code enacted by the Intermodal Surface Transportation Efficiency Act of 1991, which required States to pass mandatory seat belt and helmet laws by October 1, 1993.

Those States without both laws in effect would face financial penalties. The first year 1.5 percent of the Department of Transportation funds would be removed from the construction budget and transferred to safety programs. The following year, the percentage would double.

This is nothing short of the Federal Government using blackmail tactics against the States using the States own tax dollars.

The authors of Section 153 had the wisdom to foresee continued reluctance of some States to sell their rights for a small quantity of highway money. The incentive grant program provided the States that came into compliance with an opportunity to apply for grant money available for additional safety program funding.

These additional funds would be available beginning fiscal year 1992 and continue through the end of fiscal year 1994 when the penalties of Section 153 came into effect.

In our opinion, it has been proven these sanctions are not only ineffective, but have undermined the stated goal which would implement universal mandatory motorcycle helmet laws.

From 1989 to the summer of 1991, five States—Oregon, Nebraska, Washington, Texas, and California—passed helmet laws. Section 153 offered incentive grants without threat of sanctions until 1993.

In 1992, one State—Maryland—passed a helmet law. So, in the 4 years before the Federal Government started penalizing States for not having motorcycle helmet laws, six States passed helmet law on their own initiative.

But, in the 3 years of being threatened with Federal sanctions on their highway construction funds, not one State has passed a helmet law.

Not only have the Section 153 penalties failed to force more States to pass helmet laws, it has stopped what appears to have been a trend of States passing helmet laws on their own.

Twenty-five States have stood up to 3 years of sanctions. We feel this is a significant message from the States that not only is this type of Federal blackmail unacceptable, but also the determination of safety issues are the rights of the individual States.

In support of this subcommittee's goal to overhaul the Nation's regulatory system, we request elimination of the penalties in Section 153 of the 23 U.S. Code.

In closing, I would like to thank the three of you for co-sponsoring H.R. 899 which would repeat these penalties and for allowing me this opportunity to speak to your committee.

Mr. MCINTOSH. Thank you very much, Mr. Conaway. As you indicated, I think you will see a lot of support for allowing the States to make those determinations from us here.

Let me ask my colleagues if they would like to make any comments.

Mr. PETERSON. Amen. [Laughter.]

Mr. GUTKNECHT. Well, Mr. Chairman, I would just say that both Representative Peterson and myself came from the State legislature.

And I remember a number of years ago when the Federal Government wanted us to pass a 21-year-old drinking age law, I sent a letter to President Reagan, who I was a big supporter of, and reminded him of what he had said many times and that is that the Federal Government is the creation of the States; not the other way around.

And, somehow, we have got to re-instill that basic notion that there has been entirely too much of this nanny states coming from the Federal Government trying to intimidate and use blackmail to get the States to do something that they think is a good idea. Thank you.

Mr. MCINTOSH. Thank you both for coming. I greatly appreciate it.

Now, for the remaining period of time, I would like to open up the microphone to any of the people who have come here today.

Before we got started, I wanted to ask if either Robert Marquis or Shelby Upchurch were here. They wrote a letter to the editor requesting that we hear from dissenting viewers. And I would be happy to give you the first opportunity in the open mic.

Let me ask everyone to be sure and give your name and see the reporter afterwards so we get it spelled correctly. I appreciate your coming, though.

Mr. REDWINE. On behalf of a group of concerned workers from Muncie, IN we would like to thank the representatives, David McIntosh and his committee for their attention.

We are citizens who have been neglected by lack of Government rules and enforcement of existing regulations. A lack of Government interest and the working citizen has been overridden by special interest groups who manipulates or interferes with legislature's ability to represent the best interest of our country and its people.

The founding fathers of this Nation established this country and set up our Government through rules and regulations. We still believe today that the Constitution and the Bill of Rights are the best set of rules in this world.

The Constitution was written so that it could be improved upon at later times during the history of this country. Therefore, it should be done for the improvement of its people and all of its people—rich and poor.

This country should be governed for the improvements and safety of the citizen's work place, home and environment.

If the corporations are not governed and commerce by rules and regulations, they will run rampant to obtain profit with disregard to life and welfare of the citizens of this country.

We submit to you, as an example, a real story. In the worse interest of commerce, a list of citizens who, we believe, have been cheated of their representations. Their numbers and death is a statistic that should never be accepted.

Chemical exposures to the workers, families and communities cause injury to mind, body and future generations of America.

And I will leave with this here, sir. And if you have any questions, I would like for you to type them up and send them to me and I will gladly answer them for you.

Mr. MCINTOSH. Good. Let me just ask you one question at this point.

Many of the folks who testified today indicated that they saw the regulations as not really accomplishing the stated goal.

The lady from the Richmond Transit Authority indicated that they could take care of all of the people who were disabled and did not have to spend the money to change their buses in order to serve just one individual.

Do you not think that it would be better to allow local government and people working in their own work places to accomplish those goals without some of the counterproductive regulations that we have heard about today?

Mr. REDWINE. Well, if you could keep corrupt politicians out of it, we could do it.

Mr. MCINTOSH. Fair enough. [Laughter.]

Thank you for your views. I really appreciate that.

Are there any comments or questions from my colleagues? No?

Thank you. And we will stay in contact.

Be sure and state your name for the microphone and also see the reporter afterwards to make sure that we have it spelled right.

Now, I understand that Dr. Brannum is here. He was scheduled to testify earlier. We will let him speak.

And then, Karen, if you could take the microphone around to some of the other folks.

You could talk from right there if you would like to, Dr. Brannum.

STATEMENT OF GEORGE BRANNUM, MD, PATHOLOGISTS ASSOCIATED

Dr. BRANNUM. Thank you. Hello? It works.

I would like to apologize to this panel. I appreciate the opportunity to be here. And to my medical cohorts who were here earlier, I live too close, so it was hard to get here on time.

But I do appreciate this opportunity to share some experiences which I think would illustrate some need for regulatory reform.

I would like to skip through some of the ideas that I have had because of the interest of time and focus on just a couple of them.

One of them has to do with the factor that laboratories, I think, are a worry. We have anywhere from two to eight inspections a year that involve the FDA and the American Association of Blood Banks, the Indiana State Board of Health, the Clinical Laboratory Improvement Act of 1967 and 1988, the College of American Pathologists and the Joint Commission for the Accreditation of Hospitals organizations. All of these involve the laboratory to a great extent.

There is a lot of duplication and overlap. And in addition, we are subject right now to inspections by OSHA where we occasionally have Medicare.

We estimate the cost of this is roughly around $200,000 a year, not only in the direct certification and registration expenses, but in the actual work that is required to meet those regulations.

Another area is the so-called "medical necessity requirements" which, I understand, are currently under review, but this is an effort in order to control expenditures for laboratory work in which they had decided that the laboratory should be replaced, which, I suggest is an impossible thing because laboratories have received blood from the doctor's offices, other hospitals and situations where there is absolutely no contact with the patient.

And, yet, they are required in the laboratories or they propose to require the laboratories to document for the payor or the carrier the medical necessity of the test which has proved absurd because we do not have access to the patients.

The third thing that I would like to mention is the fact that the Government has made or are instituting requirements with respect to cytology proficiency testing. And that involves the so-called Pap smear—which I think most everybody is familiar with—to detect cancer of the cervix and the uterus.

And because of the implementation of regulations a few years ago, the wage for cyber technologists have roughly doubled from approximately $25,000 to $30,000 to twice that amount in the span of 6 months because what they did was require certain things be done that were obviously very expensive.

On the other hand, they turned around and tell us that they are not going to pay us anything other than what appears to be a relatively small amount for the work.

So, we just think basically that the regulatory efforts that Congress and some of the agencies have imposed upon health care are ineffective, they interfere with our ability to do a good job.

I was interested in some of the other comments that people were making about the burdensome requirement of the regulations, but now not only are we required to comply with the regulations, then they tell us what they are going to pay us.

Mr. MCINTOSH. The ultimate in regulations—price controls.

Thank you very much, Dr. Brannum. I appreciate that.

Has it been your experience that there are regulations that sometimes make it either difficult or downright impossible to offer the best possible health care to people?

Have you ever encountered a regulation that made you choose an option that was, perhaps, not best for the medical indication that was needed?

Dr. BRANNUM. A lot of these regulations come about as a result of adverse publicity about some isolated events that serve as a crisis mentality that says, Gosh, we have got to rush out and protect the public from something.

And when, in fact, they investigate a situation, very often they will find that there are ways of coping with the problem that would not impose, on a total field, an enormous cost.

And since they have not done that in some areas, the total cost is getting to be so much for certain things that I believe that there will be a diminished access to good quality care.

And I think particularly with respect to laboratories, it requires that you draw blood or take a specimen from a patient, examine it, get a report back usually in some timely way and cost efficient manner.

And I think that, over time, these increasing costs will diminish significantly the access to that kind of care.

Mr. MCINTOSH. So, the regulatory costs could have a real burden, not only on medical costs, but access to good health care?

Dr. BRANNUM. I think so.

Mr. MCINTOSH. All right. I appreciate your coming today and participating.

Dr. BRANNUM. Yes, I am sorry that I was late.

Mr. MCINTOSH. That is all right.

Dr. BRANNUM. Thank you for asking me.

Mr. MCINTOSH. Karen, I will let you. Please just raise your hand and Karen will bring you the microphone.

STATEMENT OF CHRIS HYDE

Mr. HYDE. Thank you gentlemen. I appreciate your patience today. I know that you have heard a lot of testimony through the course of the day between Indianapolis and here.

My name is Chris Hyde and I appreciate being given an opportunity to share with you some of my experiences with certain Government entities.

Let me briefly state that in the latter 1970's, my father pioneered in a program of developing subsidized apartment projects for the U.S. Department of Agriculture, the farmers owned administration.

The purpose was to provide low to moderate income families in rural communities decent housing. Back then, the paperwork requirements were relatively simple.

In the latter 1970's, it took maybe about half a dozen pages of paperwork to complete the Ag requirements for the FMHA.

In 1988, there was maybe a dozen pages. And in 1994—and it is not even complete yet.

Mr. MCINTOSH. Good grief. Now, is that what has to be filled out by an individual who wants to take advantage of this loan?

Mr. HYDE. No. This is an ongoing management—not just the initial loan arrangements or any of the initial buildings. This is just an ongoing year-to-year reporting requirements of existing projects.

Bear in mind that we were one of the original developers in this State in this program. I do not know when it was actually initiated, but I think sometime in the latter half of the 1970's.

Over the passing years, the Government attitude has basically progressed from a trust between the owners, the agents and the Government to a situation of one complex legal hurdle after another.

And the general attitude has developed that every move and every effort that the owners or their agents take in managing these projects are scrutinized under the auspices of being fraudulent.

Since 1990 or shortly thereafter, all you hear preached within the workshops and the communications with the Government is fraud and waste, fraud and waste.

And I think that the other issue that I want to get on the record—because I know that I am being asked to stop here—is the fact that we have come to the resolve that the bureaucracy and the red tape has become so extreme that the Government itself cannot even perform the most basic tasks.

In other words, they require reports from us within 30 to 60 days, yet they cannot even get to the reports in the course of years.

Just 30 days ago I was given a report for 1993. And after we had already worked through 1993 and then the budgets of 1994, 1993 had been disapproved. Which is absolutely ridiculous.

Mr. MCINTOSH. It was long gone, huh?

Dr. HYDE. Right.

Mr. MCINTOSH. Well, I appreciate that. I am sorry for the time restrictions. I want to try to get to as many people as possible.

Dr. HYDE. I appreciate the opportunity.

Mr. MCINTOSH. And we will put the full written testimony into the record.

Dr. HYDE. Thank you.

Mr. MCINTOSH. Mr. Peterson, you had some interesting comments this morning on that program on how you advised some of your constituents.

Mr. PETERSON. Well, I was talking about the county Farmer Lender part, although I am pretty familiar, I used to own one of these buildings.

And one of the good things about being elected to Congress, they made me sell it. [Laughter.]

That was 1990 before I had to fill out all that paperwork, but I used to do the books for it. I am also a CPA.

And I guess I would be interested, before I leave, in seeing what it is they have added to this since I——

Mr. HYDE. May I make on additional comment relative to that?

I think something you said earlier today hit upon it, was that a majority of the problem lies with the people that administer the law. And that is my immediate problem right now.

We have put in for a prepayment on this. And the original loan agreement stated in one sentence that we were allowed to prepay it.

When I asked for the request to prepay, they sent me an 108-page——

Mr. PETERSON. I tried to do that once, too.

Mr. HYDE [continuing]. A 108-page requirement to prepay this loan.

Now, this is not a Government project. This is, as you know, self-owned.

Mr. PETERSON. I tried to do that, too.

Mr. HYDE. So, they put in front of you an impossible hurdle to get out from underneath it, yet they make it an impossible hurdle to comply. So, it is like you are damned if you do and you are damned if you do not.

So, right now as it stands, we have been working without any management plans, any management agreements for the past several years.

And, of course, they threaten from 1 minute to the next to withhold the subsidies and what have you. I have got letter after letter after letter threatening. And I asked——

Mr. MCINTOSH. And all you want to do is to get out of the program at this point?

Mr. HYDE. Well, that is what we had come to resolve. That we just wanted to get out of the program. And, basically, what it gets

down to, after probably another 1,000 pages of documentation, then they sit down and a Government official will make a decision whether he is going to let you get out or not.

Mr. PETERSON. Well, Mr. Chairman, there is a lot of pressure from different forces trying to keep these from being converted because they want to keep them for low income housing and so forth.

So, there is a lot of things that play into, and pressure that comes out of these folks and so forth.

Mr. HYDE. Right. And if somebody thinks that I do not care about those 46 families that are being subsidized, I certainly do. The last thing in the world I want to see happen is——

Mr. PETERSON. I understand.

Mr. HYDE [continuing]. Is that.

Mr. PETERSON. These so-called advocates and legal aid societies and all of that will end up getting involved.

Mr. HYDE. Yes. This meeting was brought to my attention because I called Mr. McIntosh.

Mr. MCINTOSH. I really appreciate that. Thank you, Mr. Hyde.

Karen, who——

Ms. BARNES. Could we have people sit here so that the court reporter can get them?

Mr. MCINTOSH. Oh, OK. A change in the procedure slightly. If you would come forward.

Mr. BRYAN. Thanks.

Mr. MCINTOSH. Welcome. State your name for the record if you would.

STATEMENT OF MARK BRYAN, TERRITORY MANAGER, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. BRYAN. I am Mark Bryan, territory manager for NFIB, the National Federation of Independent Business. Thank you Congressman McIntosh and distinguished committee co-members for having us here today to testify briefly.

And as I mentioned to my new business interviews, I will be brief.

As you have heard today, the American free enterprise system is in danger. I hear those comments daily from 10 to 15 business owners that I will personally see on an individual basis.

You have heard testimony from many of our members today on many issues. And I wanted to inform this committee that I hear these words coming from most owners that their biggest fears are not accounts receivables or sales numbers, but compliance. State and Federal regulations that are putting them into a regulatory nightmare.

I have a very wonderful couple that I know from Indiana that are dry cleaners sitting directly behind me. They are reaching retirement age and are wondering about selling their business because they do not know if the people taking over their business can meet Federal regulations and let them continue on to a brighter day.

Many business people feel that America's most endangered species is small business. And the American free enterprise system is the greatest system in the world if allowed to work. And when allowed to work, it is successful. Thank you.

Mr. MCINTOSH. Great. Thank you very much, Mr. Bryan. I appreciate that.

STATEMENT OF GARY VAN MIDDLESWORTH, VAN'S RESTAURANT SERVICE, RICHMOND, IN

Mr. VAN MIDDLESWORTH. Mr. Chairman, members of the panel, my name is Gary Van Middlesworth. I am the owner of Van's Restaurant Service in Richmond, a small State inspected meat processing plant and purveyor, started by my father in 1947.

The business is located just 3 miles from the Indiana/Ohio State line, but is not permitted to do business in Ohio because of the 1967 Federal Meat Inspection Act. This act requires State meat and poultry inspection programs to be at least equal to the USDA's Federal inspection program, but denies small processors the right to compete against large corporations and foreign producers by denying them the right to sell their products in States other than their own.

Here in Indiana, the State inspection program is more efficient and less costly than the Federal program for small processors. Without it, many small family owned meat processing facilities would go out of business.

Four States—Arkansas, Idaho, Kentucky and Michigan—have given up their State programs in recent years. According to the documentation presented to the House Agriculture Subcommittee on Livestock last year, these plants have lost 947 of the 1,409 plants operating under State inspection at the time of their State's change to Federal inspection.

With the passage of the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, meat processors from Canada, Mexico and other countries can legally sell their products in all 50 States.

And, yet, as the owner of a State-inspected plant in a country with the most stringent inspection system in the world and as a tax paying American and Vietnam era veteran, I am not permitted to sell my company's products 3 miles away in Ohio.

I urge Members of Congress to show their support for small business and free enterprise by eliminating the inequities caused by the outdated 1967 Federal Meat Inspection Act. Thank you.

Mr. MCINTOSH. Great. I appreciate that, Mr. Van Middlesworth.

Let me ask if my colleagues have any questions or comments.

Mr. PETERSON. I served on the Livestock Subcommittee and we are trying to legislatively overhaul that law this year.

There is also a regulation that is pending that is mixed up in this, but we are going to make a serious attempt. We understand what the problems are and we are going to try to do something about it.

Mr. VAN MIDDLESWORTH. Thank you.

Mr. MCINTOSH. Thank you very much for coming.

Welcome. Thanks for coming all the way up here.

STATEMENT OF JOHN WHEATLEY, DELTA FAUCET CO., GREENSBURG, IN

Mr. WHEATLEY. Thank you. My name is John Wheatley and I represent the Delta Faucet Co. in Greensburg, IN.

In the 20 years that I have worked for Delta, I either worked at, advised or supervised the environmental services department.

During that 20-year period of time, I have seen the regulations at the local, State and Federal levels grow at almost an exponential rate year after year.

The regulations are usually so lengthy and so complex that a company's responsibility under any given regulation is often hard to determine without the help of outside consultants or lawyers.

Our regulatory system is out of control and needs to be overhauled. It needs to become more efficient, more effective and more responsible to the taxpayers.

The American public is under the mistaken impression that all the government regulations are there to protect and benefit the country. This is not the case.

Under our present regulatory system, everyone loses. Due to the high cost of regulations, we have weakened our international competitiveness. This results is lost jobs and lower productivity.

Businesses lose because the talent, time and resources of workers must be spent complying with extensive regulations and paperwork requirements, rather than doing activities that create products or services that are beneficial to society.

Consumers lose because businesses are forced to transfer the cost of compliance to the prices they charge for their goods and services.

This last point is very interesting. The Clinton administration recently estimated the cost of Federal regulations to be $430 billion per year. Private studies have projected the cost to be even higher; perhaps as much as $600 billion per year or about $5,900 annually for every family in America.

An example of costly and unneeded regulations are the Metal Products and Machinery effluent guidelines, also known as M.P.&M.

These new categorical limitations and standards will cover facilities that manufacture, rebuild or maintain finished metal parts, products or machines.

Tens of thousands of indirect water discharges will be regulated by M.P.&M., including facilities that are covered under existing categorical standards for metal finishing, electroplating and 14 other metal effluent guidelines.

M.P.&.M. would nearly double the number of regulated indirect discharges by adding 10,300 to the 12,000 existing sources.

While existing effluent guidelines are sector specific, M.P.&M. would apply across numerous diverse industries that only have certain unit operations in common.

Delta Faucet would be responsible for compliance under this new regulation. We think this is unnecessary and an unreasonable burden since our operations are already covered under existing regulations.

At Delta, we pride ourselves in being exemplary stewards of the environment and the communities where we are located. We have taken a pro-active approach to managing our environmental affairs, but we do not think the M.P.&M. regulations are in the best interest of business, the environment or the general public.

The impact on local industry and local treatment works would be enormous. According to EPA, the majority of the M.P.&M. popu-

lation is estimated to indirectly discharge the publicly owned treatment works.

This would significantly increase the number of discharge permits required to be written by publicly owned treatment works. M.P.&M. could be considered yet another unfunded mandate and State and local POTWs will be required to bear the cost.

In closing, I would urge the Congress to undertake a thoughtful, prudent approach to regulations and regulatory reform so that the American public truly gets the benefits that they pay for.

Mr. MCINTOSH. Thank you. I appreciate that.

If we could have the full testimony for the record, that would be great.

Mr. WHEATLEY. Sure.

[The prepared statement of Mr. Wheatley follows:]

Submitted by John Wheatley

In the twenty (20) years I have worked for Delta, I either worked in, advised, or supervised the Environmental Services Department. During that twenty (20) year period of time, I have seen the regulations at the local, state, and federal levels grow at almost an exponential rate year after year.

The regulations are usually so lengthy and so complex that a company's responsibility, under any given regulation, is often hard to determine without the help of outside consultants or lawyers.

Our regulatory system is out of control and needs to be overhauled. It needs to become more efficient, more effective, and more responsible to the tax payers.

The American public is under the mistaken impressions that all the government regulations are there to protect and benefit the country. This is not the case. Under our present regulatory system, everyone loses.

Due to the high cost of regulations we have weakened our international competitiveness. This results in lost jobs and lower productivity.

Businesses lose because the talent, time, and resources of workers must be spent complying with extensive regulations and paperwork requirements, rather than doing activities that create products or services that are beneficial to society.

Consumers lose because businesses are forced to transfer the cost of compliance to the prices they charge for their goods and services. This last point is very interesting. The Clinton administration recently estimated the cost of federal regulations to be $430 billion per year. Private studies have projected the cost to be even higher, perhaps as much as $600 billion per year or about $5,900 annually for every family in America.

An example of costly and unneeded regulations are the Metal Products and Machinery (MP&M) effluent guidelines.

These new categorical limitations, and standards, will cover facilities that manufacture, rebuild, or maintain finished metal parts, products, or machines. Tens of thousands of indirect water discharges will be regulated by MP&M, including facilities that are covered under existing categorical standards for metal finishing, electroplating, and fourteen (14) other metal effluent guidelines.

- MP&M would nearly double the number of regulated indirect discharges by adding 10,300 to the 12,000 existing sources. While existing effluent guidelines are sector-specific, MP&M would apply across numerous, diverse industries that only have certain unit operations in common.

Delta faucet would be responsible for compliance under this new regulation. We think this is unnecessary and an unreasonable burden since our operations are already covered under existing regulations. At Delta, we pride ourselves in being exemplary stewards of the environment and the communities where we are located. We have taken a pro-active approach to managing our environmental affairs, but we do not think the MP&M regulations are in the best interest of business, the environment, or the general public.

- The impact on industry and local treatment works would be enormous. According to EPA, a majority of the MP&M population is estimated to indirectly discharge to Publicly Owned Treatment Works (POTW). This would significantly increase the number of discharge permits required to be written by publicly owned treatment works (POTWs). MP&M could be considered yet another un-funded mandate and state and local POTWs will be required to bear the costs.

- Since most of the sources that will be covered are already successfully regulated, we must questions why the far reaching, expensive MP&M effluent guidelines and standards are necessary when it would have little or no increased environmental benefit.

The last point I want to make concerns one effect of excessive regulation that is not often discussed: the possible increase of world-wide pollution due to regulation.

Over the past few decades, we have seen a steady erosion of jobs in the United States as companies move manufacturing operation out of the country to take advantage of lower labor costs. This transfer of jobs is an outcome of being a participant in a global economy.

One major effect of excessive and costly regulation is that they add to the cost of doing business in the United States, and add to the justification for moving highly regulated operations, such as metal finishing, to a less regulated environment. The effect of this move can be a net increase in world-wide pollution. Many foreign countries have weak or ineffective environmental regulations when compared with the United States. It is unlikely that businesses moving their operation to these countries will do any more than the local laws require.

I do not condone, or advocate, this behavior on the part of companies; however, it is one outcome of living in a free-market economy.

If anyone has any doubt that excessive regulation can cause businesses to move their operation, one only has to look at the State of California.

In closing, I would urge the congress to undertake a thoughtful, prudent approach to new regulations and regulatory reform so the American Public truly gets the benefits they are paying for.

Mr. MCINTOSH. You had mentioned when I was at a town meeting down in Decatur County an example of how the copper requirements that you have for your wastewater would make it illegal for you to run a hose from the tap to the wastewater line because the requirements are so stringent.

Mr. WHEATLEY. Right. During a period of excessive algae growth in the Greensburg reservoir, they treated the reservoir with copper sulfate and it would have been illegal for us to discharge city tap water into the city sewer. [Laughter.]

Mr. MCINTOSH. So, you get a completely absurd result as a result of the regulations that you are working on in your plant down there.

Mr. WHEATLEY. Unfortunately, yes.

Mr. MCINTOSH. Well, I appreciate your coming forward.

Mr. WHEATLEY. Thank you.

Mr. MCINTOSH. And, please, please make the rest of your remarks available and then we will get them into the record.

Mr. WHEATLEY. Thank you.

Mr. MORGAN. Good afternoon.

Mr. MCINTOSH. Good afternoon. Welcome.

STATEMENT OF WILLARD MORGAN

Mr. MORGAN. Mr. McIntosh, my name is Willard Morgan. Members of the panel, I would like to thank you for having the opportunity to address you.

I am a retiree from Westinghouse Large Power Transformer Division. Back in 1992, a reporter from WTTV, Channel 4 in Bloomington, IN—Wendy Stamp—came to Muncie and interviewed myself, Wendell Stevens, Dave King, and a Mr. Baker.

I have been diagnosed as having PCBs. This is from being exposed to polychlorinated biphenyl or PCBs. As you know, in 1979 both Houses banned the use of PCBs unless it was a closed circuit or system.

But Ms. Stamp came down and interviewed myself and, like I said, Mr. Baker, Mr. King and Mr. Stevens. The next day, she was taken off the air.

She called me the next morning and advised me and said, Mr. Morgan, after today, after tonight's interview, WTTV news will not be able to report; they are not going to be on the air anymore.

And she called me back again and related the information that they would not even be able to do that evenings news.

Westinghouse—now ABB, whichever—has laid off completely just about everyone. A large number of layoffs. The plant is being shelled out.

They said on these tapes—and I have them and they are available to you and your committee at any time—that they had no toxic chemicals in their plant. Although documents from your predecessor, Congressman Phil Sharp, were made available to me and we did not learn of this until 1992 or 1993.

And these documents show that Westinghouse, indeed, had PCBs in their factory. They had a problem with PCBs. They had leakage. They had citations issued for records violations.

And this is a case where we have a case pending down in the southern district of Indiana in Superior Court, District Court Seven

or something like that. And this is a case where, the law itself, has not been enforced. The Delaware County Board of Health of Delaware County found out what the problem was and put a stop to it.

The State of Indiana, why did they not bring it to their attention. I tried to get them to see Evan Buyh without any luck whatsoever.

I did not come here to make a speech. I came here to let you know that I had no funny stories to tell you today, sir. My daughter has severe pain, joint pain. She has been run through the MRIs. It is pain that they cannot explain. They do not know why she is hurting. She cannot move. She crawls up and down the hall, sir, crying.

And I have worked out there for quite some time. My father passed away from malnutrition.

As I said, I have proved beyond a shadow of a doubt that the water out there, some rain water has been tested—well, some of the parts—well, I will not go into the parts, sir, because it is in litigation. I will not go into that, but it is way over the—I think anything over 50 parts per million is considered a hazardous waste.

Mr. MCINTOSH. Now, I appreciate your coming forward because there are, in fact, serious problems.

And although we have heard about a lot of problems in regulations here, that does not mean that we should not take seriously when there are hazards that are in there in the work place.

I do not know the details of the particular facility out there. As you mentioned, there is a court case that is pending in that area.

But I do not think that anybody should misunderstand our effort to say that there are not serious problems that need to be addressed by these safety and health regulations. We just want to focus the effort in what we are doing at the Federal level into those, as you are indicating, that sometimes those are overlooked in favor of some of the things that maybe are not as important or pressing because they are easier.

So, I do very much appreciate your coming forward today and sharing that with us.

Mr. MORGAN. I might also say that—I do not know. I agree that people need to work. We need jobs. But these people need to be acting in a responsible manner. You cannot just go in and systematically poison people and walk away with clean hands. I thank you, gentlemen.

Mr. MCINTOSH. Thank you very much for coming.

We have time for about one more person—he is letting me know. I apologize to everybody else.

If you have things in writing, which you could make available to the staff, we will put it into the record. And, also, we would be glad to set up a meeting for you later. We have to get my colleagues back to the airport. Yes, sir?

STATEMENT OF MICHAEL SHAM, RESIDENT, DELAWARE COUNTY

Mr. SHAM. I will be as brief as possible. My name is Michael Sham. I am a resident of Delaware County.

I really applaud you gentlemen for coming in with your subcommittee hearings. And I think that these hearings and the sub-

sequent action by the Congress very much is needed, but it is more of a compos mentis, sort of a competency hearing on our society.

What I am hearing here today disturbs me a great deal. It is not that I do not believe in a smaller government. I believe in a smaller government but also in an effective government.

I think that as we go through time—and just to tell you something, I am qualified to say this—I look back at the development of not only this country, but the industry of this country and the technology and I see that there has been continually a need for regulation.

These regulations did not come into being by spontaneous generation. They came in by a reason of need.

Now, I agree that they are, at times, overburdensome. I believe that many of them could be focused and there could be many duplications and subsequent reduction of these regulations, but I am leery not to throw out the baby with the bath water, folks.

I lived in Muncie at a time when White River was an open sewer. When it was not safe to have your children play in the yard because of particulate matter in the air. Now, I have been here long enough and I am old enough to have seen what the Clean Air and Water Act has accomplished in this country.

My son is an environmental scientist, so I do understand the implications of not only national, but international.

What I am finding, this is not a segment to any of the people on the panel, nor the people who have participated in the hearing because I know many of these people and find them to be good and competent people.

But the idea that we take and always use a cost effective manner, you know, on business, bothers me a great deal. I am not as concerned—look. You go to Mexico City. Look at the pollution problems there. Other places in the Third World where we are sending our manufacturing jobs and bringing the product back in, that is very good, but we are not getting the benefit of those cost reductions.

I have not seen the bill of my replacement parts, nor my other things go down. All I have seen is their countries becoming the sewer that we do not want ours to become and we have tried to stop that by regulation.

I think we need to maybe make a little bit more effort in our ties with other countries, to bring them up to our standards.

We have the best system in the world for the production and distribution of goods and services without question. So, let us help the rest of the world come up to our standards. Let us not go down to theirs. Thank you very much, gentlemen.

Mr. MCINTOSH. Thank you. I appreciate that. Let me just say in general, I think our challenge is to use some of the new technologies that we now have and new approaches and better understanding of how markets work that have been successful in creating economic wealth and now apply these to some of the regulatory challenges in the environmental and health and safety areas.

And, so, I welcome your caution that we cannot just throw out the entire system or return to a completely unregulated state where these problems would reoccur.

Mr. SHAM. How about a little bit of streamlining on oversight.

Mr. MCINTOSH. Yes.

Mr. SHAM. I think that would help us a great deal.

Mr. MCINTOSH. I think that is right. Use some market approaches. Use better technology as we learn more things. Use good science.

Mr. SHAM. But it is not cheap, remember that.

Mr. MCINTOSH. OK, thank you. I appreciate your coming. I appreciate everybody coming today and I apologize to those whom we were not able to get to. We will include your remarks in this and I will be back. So, I will be able to hear from you directly.

Let me, before we leave, thank a couple of people. First of all, let me thank Ball Corp. for letting us use this meeting facility.

I also want to thank my colleagues, Collin Peterson who is here and Gil Gutknecht for traveling from Minnesota.

And I want to thank the staff of the subcommittee who have travelled here today: Mildred Webber, David White, Karen Barnes, Jon Praed—were all here and were participating in it, as well as my staff: Steve Austin and Jeff Cox, Kim Orlosky, Scott Bowers and David Holt. They have worked very hard to make this happen and I appreciate all of their hard work.

So, thank you all for coming and we will take all of these back. We have a lot of good ideas for Corrections Day.

[Whereupon, at 5:50 p.m., the subcommittee was adjourned.]

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