

**Testimony of Mathy Stanislaus
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Before the
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
United States House of Representatives**

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Mr. Chairman, Ranking Member Green, and Members of the Subcommittee, thank you for the opportunity to testify today on H.R. 2997, which would amend the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and on a legislative proposal regarding recycling data collection and a report to Congress. My testimony will first include a brief overview of federal reporting requirements related to releases from animal waste under CERCLA and the Emergency Planning and Community Right-To-Know Act (EPCRA) before turning to H.R. 2997. I will then address the Agency's current recycling data efforts and issues identified by the Agency related to the draft bill "Increasing Manufacturing Competitiveness Through Improved Recycling Act."

FEDERAL REPORTING REQUIREMENTS: EMISSIONS FROM ANIMAL WASTE

In December 2008, EPA issued a final rule "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms." The exemption became effective on January 20, 2009 and exempts farms from reporting under CERCLA section 103. The final rule also exempts farms that release hazardous substances from animal waste to the air from reporting under EPCRA section 304 if they stable or confine *fewer*

than the number of animals to be considered a large concentrated animal feeding operation (CAFO) threshold as defined in Clean Water Act regulations. That final rule is currently under EPA review to address issues raised by a range of stakeholders. In reviewing the final rule, we will take into account concerns raised by the agricultural community as well as address the statutory objective of public transparency.

To help inform future Agency decision making based on the best science, EPA, initiated a two-year National Air Emissions Monitoring Study. The study, funded and conducted by certain operators in the agriculture sector, gathered air emissions and process data from farms in nine states. The Agency is currently reviewing data from the study as well as other relevant data submitted in response to the Agency's 2011 Call for Information, and we have developed two draft emissions estimating methodology (EEM) reports. In March 2012, the EPA requested the Science Advisory Board (SAB) to review the draft EEMs and also made the draft EEMs available for public review and comment¹. In developing the final emissions estimating methodologies, the EPA will consider public comments submitted to EPA and the Science Advisory Board panel recommendations which will be made through an open and public process. The EPA public comment period and the SAB review are concurrent but independent processes that will provide the agency with independent scientific and technical advice from the SAB panel of experts while also providing all stakeholders an opportunity to review and comment via an open transparent public review process.

¹SAB Review: <http://yosemite.epa.gov/sab/sabproduct.nsf/0/ae6639dd6b79360e852579a4004e5529!OpenDocument>

Draft EEMs: <http://www.epa.gov/airquality/agmonitoring/techdocs.html>

H.R. 2997

H.R. 2997 would amend CERCLA to specifically exempt manure from the definitions of hazardous substance and pollutant or contaminant under Section 101 of the Act. EPA has concerns with the bill. Let me be clear: EPA has never designated manure as a hazardous substance nor has the Agency ever designated a farm a Superfund site and has no plans to do so. As discussed above, we believe EPA's 2008 final rule ("CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms") has addressed concerns raised by the farm sector related to air release reporting under CERCLA and EPCRA without removing important CERCLA response authorities.

Manure is not a hazardous substance. However, there are substances associated with manure, such as ammonia and hydrogen sulfide, which are by definition hazardous substances and can threaten public health and the environment. The effect of the bill would be to prevent the EPA from using CERCLA response authorities to respond to releases to the environment when manure is the source of those hazardous substances, even if the release, for instances such as the failure of a large manure waste lagoon, presented a substantial danger to the public health and the environment. It would also prevent the Agency from issuing CERCLA abatement orders to require response to damaging releases. Therefore, we have concerns with the broad impacts of this bill.

EPA's CURRENT RECYCLING DATA COLLECTION EFFORTS

EPA continues to recognize the positive environmental and economic benefits that can result from the reuse/recycling of used industrial, commercial and residential materials, including reduced air emissions, reduced need for disposal, and reduced use of virgin resources, when

these activities are conducted in a protective manner. For instance, increasing the safe and effective management and handling of used electronics in the United States is one of the goals of the *National Strategy for Electronics Stewardship*, the federal government's plan to enhance the management of electronics throughout the product lifecycle. Mismanagement of used electronics is not only potentially harmful to human health and the environment, it is a missed opportunity to recover valuable, often scarce resources that can be returned to the electronics supply chain to make new products.

Consistent with the actions identified in the Strategy, EPA is currently developing an Electronics Challenge that will increase responsible recycling through the use of certified refurbishers and recyclers in the U.S., increase transparency and accountability through public posting of data and commitments, and engage stakeholders across the electronics sector (including manufacturers, retailers, state and local governments, and recyclers).

In addition, in an effort to realize the many benefits associated with materials management, we have launched a broader effort to advance the concept and practice of sustainable materials management. Reducing waste and increasing recovery and reuse of materials in lieu of virgin materials are critically important for the future of the environment and our economy. Without looking at waste as a potential valuable commodity and capturing its value and thereby reducing the environmental footprint from materials use, we will travel down a path that is unsustainable both economically and environmentally.

Today, there are limited aggregate data to evaluate the success of recycling programs at the local, state, regional or national level. The EPA's annual *Municipal Solid Waste (MSW) Characterization Report*, was designed to provide a snapshot of the U.S. municipal solid waste stream and is the primary data source at the national level. The report includes data and trends

since 1960, and analyzes the composition and amounts of municipal solid waste in the U.S., and how those materials are recycled, incinerated, and landfilled. It is used by a broad range of entities including local, state, and federal governments, NGOs, the public, academia, and industry for a variety of progressively more complex and specific purposes, some of which were not anticipated or designed for in the original Report and methodology. For this reason, EPA issued a *Federal Register* Notice in September of 2011, and received public comments on potential revisions to the Report. Currently, EPA is evaluating new methodologies and will continue to publish the report annually, with incremental changes over time.

EPA has found that while some states have financial incentives tied to their recycling rates, and either report or require that such data be collected, most states do not have the data necessary to provide accurate recovery rate information. Other barriers to data collection include business-to-business recycling where large streams of recycled commodities go from retailers and manufacturers directly back to recycling market end users, as well as market competition and privacy concerns. In addition, there are large construction and demolition and non-hazardous materials recycling enterprises that are not included in conventional MSW generation or reporting protocols.

As discussed above, the EPA is shifting its emphasis from waste management to life cycle-based, sustainable materials management. Data and metrics are the foundation for a sustainable materials management program, as well as the basis for reporting the EPA's performance which includes recovery rates achieved by U.S. recycling programs. For this reason, EPA plans to begin to revise and expand the next *MSW Characterization Report* to reflect the shift to sustainable materials management. We believe that the data to be collected for the *MSW Characterization Report* would help inform the public and private sector on current

recycling trends and practices and identify areas needed to be addressed to support increased recycling and support sustainable materials management efforts.

THE INCREASING MANUFACTURING COMPETITIVENESS THROUGH IMPROVED RECYCLING ACT

While EPA supports the goals of the draft bill, we have several concerns. The bill should provide EPA the authority to require the various sources referenced in the draft bill to provide the specified information to EPA. While the draft legislation intends for the information collection to be voluntary, it may fall short of its goal to provide the enhanced data needed to help more informed decision-making among policy makers and government officials and help the private sector increase the use of recyclable materials.

First, as noted above, EPA is revising and expanding the *MSW Characterization Report* to reflect the shift to sustainable materials management. EPA believes that this increased data collection will help inform the public and private sector about sustainable materials management. However, as I noted, there are constraints with obtaining more information due to lack of consistency in data collection and reporting. The draft bill notes that the information collected by EPA is intended to be voluntary; however, this appears contrary to the provision which states that information submitted to EPA from private entities shall be considered confidential business information (CBI). Current law already provides protections to confidential business information and private entities may designate information submitted to EPA as CBI. Applying CBI protection to all recyclable materials information submitted to EPA seems unnecessary and would limit the information the Agency could include in a report to Congress. Finally, the bill

provides two years for the data collection and report to Congress. This timeframe may be insufficient for both the extensive data collection and analysis and resulting report to Congress.

CONCLUSION

EPA has concerns with H.R. 2997 and with the draft “Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012,” bills. EPA’s CERCLA authority to respond to releases of hazardous substances and pollutants or contaminants and to compel parties who caused or contributed to releases to respond or to pay for the cleanup of damaging releases is an important statutory tool to help protect public health and the environment. EPA has already addressed the perceived burden to farmers related to air release reporting under CERCLA and EPCRA through rulemaking. In addition, while EPA supports the goals of the “Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012,” EPA has concerns with how these goals would be met.