



# **THE COMMITTEE ON ENERGY AND COMMERCE**

## **INTERNAL MEMORANDUM**

June 26, 2012

To: Members, Subcommittee on Environment and Energy

From: Committee Staff

Subject: Legislative Hearing on two (2) bills concerning Data on Recycling and the Application of the Comprehensive Environmental Response Compensation, and Liability Act to Agricultural Operations

---

On Wednesday, June 27, 2012, the Subcommittee on Environment and the Economy will hold a legislative hearing at 10:15 a.m. in 2322 Rayburn House Office Building on two (2) bills: a Discussion Draft entitled “Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012” and H.R. 2997, the “Superfund Common Sense Act.” Witnesses are by invitation only.

### **I. Witnesses**

#### **Panel I**

The Honorable William H. “Billy” Long (MO-07)  
U.S. House of Representatives

#### **Panel II**

The Honorable Mathy Stanislaus  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency

#### **Panel III**

Mr. Charles D. Johnson  
Vice-President, Environment Health and Safety  
The Aluminum Association, Inc.

Ms. Lynn Bragg  
President  
Glass Packaging Institute

Mr. Jonathan Gold  
Senior Vice President, Recovery and Recycling Division  
The Newark Group  
*On behalf of the Paper Recycling Coalition*

Mr. John Skinner  
Executive Director  
Solid Waste Association of North America

#### **Panel IV**

Ms. Susana M. Hildebrand, P. E.  
Chief Engineer  
Texas Commission on Environmental Quality

Mr. Walter Bradley  
Director of Government and Industry Relations  
Dairy Farmers of America

Mr. Ed Hopkins  
Director, Environmental Quality Program  
Sierra Club

## **II. INCREASING MANUFACTURING COMPETITIVENESS THROUGH IMPROVED RECYCLING ACT OF 2012**

### **A. BACKGROUND**

Participation in recycling programs has more than tripled since 1980.<sup>1</sup> Despite the success achieved in the collection of recyclables, there is concern that a substantial portion of these materials are not ultimately being processed and reused. In order to better appreciate and open up solutions to this problem, data on recovered materials are needed to supplement the current collection information.

For decades, the Environmental Protection Agency (EPA) has published a biennial report that shows what products and materials are commonly collected and disposed of. Examples include paper, glass, metal, plastic, textiles, and wood plus organics (food, leaves and grass). All

---

<sup>1</sup> <http://www.epa.gov/osw/nonhaz/municipal/index.htm>.

of these materials are generated by residential and commercial sectors and presently are recycled, reused, combusted, or landfilled. However, EPA acknowledged in an its August 2, 2011, call for information (76 FR 46290) that “[w]hile the structure, content and methodology of the MSW Characterization Report has remained essentially unchanged, the manner in which the report is used has changed dramatically”– prompting further concern from some in the recycling industry about the quality of the information in the report.

## **B. DISCUSSION DRAFT**

The Discussion Draft provides more complete data collection and requires EPA to report to Congress regarding the results of the data collected. It directs EPA to consult with the Secretary of Energy and the Secretary of Commerce to gather and review information pursuant to an information collection request (ICR). Data will be submitted on a voluntary basis by government and private entities.

The Discussion Draft also requires EPA to report to Congress within two years. This report will address each type of recycled material separately and will cover the quantities collected and by what method, the amount recoverable, and amount disposed of in landfills both directly and after collection. Additionally, the report will contain information regarding the energy consumed and the cost expended to collect and recycle each type of recycled material. Finally, the Discussion Draft does not provide authority for federal recycling regulation, nor establish any other recyclable materials collection programs or requirements.

## **III. H.R. 2997 “SUPERFUND COMMON SENSE ACT”**

### **A. BACKGROUND**

Concentrated animal feeding operations (CAFOs) and the environmental releases therefrom are subject to both State and Federal laws. Despite current regulation, there is concern that farmers could face unwarranted or redundant reporting responsibility, increased disposal costs, or liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA).

### **B. CERCLA AND EPCRA**

Section 103 of CERCLA and section 304 of EPCRA both establish reporting requirements for the release, above the reportable quantities, of hazardous substances, as defined under section 101(14) of CERCLA. CERCLA also imposes strict, joint, several, and retroactive liability for the release of hazardous substances under section 107.

EPA proposed in the Federal Register, on October 21, 2011, the National Pollutant Discharge Elimination System Concentrated Animal Feeding Operation Reporting Rule. On page 65446 of the Federal Register from this proposed rule, EPA states it is “on a separate track” to develop a rulemaking to amend reporting requirements for livestock operations on air emissions under CERCLA section 103 and EPCRA section 304.

### **C. H.R. 2997**

H.R. 2997 clarifies that manure is not included in the meaning of “hazardous substance” as defined in section 101(14), or “pollutant or contaminant” under section 101(33) of CERCLA. H.R. 2997 eliminates the reporting requirement for releases associated with manure under CERCLA section 103 and EPCRA section 304. In addition, by changing the definition of “hazardous substance,” “pollutant,” and “contaminant” under CERCLA as it relates to manure, H.R. 2997 also prevents liability for releases of manure under CERCLA section 107 and precludes use of CERCLA sections dealing with response authorities and abatement actions.

H.R. 2997 also makes explicit that the reporting exception for releases associated with manure under CERCLA and EPCRA does not affect the applicability of other environmental law as it relates to the definition of manure, or the responsibilities or liabilities of any person regarding the treatment, storage, or disposal of manure.

### **IV. STAFF CONTACTS**

If you have any questions, please contact Tina Richards or Jerry Couri with the Committee Majority staff at (202) 225-2927.

Attachments: Discussion Draft  
H.R. 2997