REGULATORY REFORM

HEARING

BEFORE THE

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

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

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REGULATORY REFORM

FRIDAY, FEBRUARY 9, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Des Moines, IA.

The subcommittee met, pursuant to notice, at 9:03 a.m., in the Hotel Fort Des Moines, 1000 Walnut Street, Des Moines, IA, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, and Gutknecht.

Also present: Representatives Latham and Ganske.

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

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

Welcome. This is our 12th field hearing and it is great to be here in Des Moines. Let me say thank you to Tom Latham for a great field hearing he helped us organize yesterday and to Greg Ganske for helping us put this together and hosting this field hearing today.

As the first order of business, I ask unanimous consent from Gil Gutknecht, the other subcommittee member, that Representative Latham and Representative Ganske can join us as members of the committee today.

Mr. GUTKNECHT. Without objection.

Mr. MCINTOSH. So ordered.

This is the 12th field hearing of the Subcommittee on Regulatory Affairs. We decided early on we wanted to get outside of the beltway and listen to real Americans about problems in our regulatory system and boy, have we heard an earful in these subcommittee hearings. People who have lost their jobs, people who do not understand why they have to raise their prices and make more costly products all because of regulations that do not make sense, are counter-productive, coming out of Washington, DC.

Oftentimes, we have heard from people who sincerely want to follow the regulations and do the best they can to comply and still engage in their business or farm their land, and they tell us, you know, we hear different things from different agencies. I will never forget a farmer in my home State of Indiana. A young lady named Kay Whitehead came and testified that she ran a fairly good sized pork production facility and disposed of the manure that her pigs

produced by spreading it out on her fields. The State Soil and Conservation Service would come to Kay and say, you know, you really need to spread it on top of the fields but not plow it in because we are worried about erosion and we want to protect the soil. Then the State EPA would come by and tell Kay it is fine for you to spread the manure but you really have to plow it in because we are worried about runoff and what that will do for the streams. Now, Kay said she did not really care which regulation she followed, but she knew whatever happened, she would be breaking the rules of one of those two agencies. She did confide that her neighbors had a strong preference for plowing it in. [Laughter.]

And those are the types of problems that average Americans are encountering in our regulatory system. We are taking an inventory of that. The testimony that will be given here today will be taken back to Washington and become part of the official record.

Speaker Gingrich has created a new procedure in the House of Representatives called Corrections Day where he allows Members to bring forward bills to correct these problems in the regulatory process. It is an expedited provision. You do not have a lot of amendments and debate but you do get the chance to vote on the bill on the House floor. And many of the ideas that we heard yesterday, and I anticipate today, would be excellent examples for Corrections Day legislation.

Now before we begin hearing testimony from our panels, I would like to recognize the Secretary of State of Iowa, Paul Pate, to make a few opening remarks. Secretary Pate invited us to come in early on. He mentioned that he had been going around the State and hearing from a lot of businesses and farmers about the problems of regulations here. I appreciate your help in facilitating this. Thank you for welcoming us today and having us up to the State Capitol earlier this morning.

Secretary Pate, could you share a few words with us?

STATEMENT OF PAUL PATE, SECRETARY OF STATE, STATE OF IOWA

Mr. PATE. Thank you very much, Congressman. It is a pleasure to have you in Iowa. I think the hearings yesterday in Sioux City were a great beginning and I appreciate the support of Congressman Latham and Ganske and Congressman Gutknecht by coming here and joining us.

The fact that we are here to share some stories and some experiences of Iowa small businesses and what their concerns are I think is very important. While I might be involved in politics, I feel I am very well grounded in the real world because this is the third generation of my family being involved in the construction industry. I own a small business of my own, a construction asphalt paving firm in Hiawatha, IA and I know firsthand these struggles and the frustrations that many of us go through in the business world and that is what brings us here today, to make a genuine effort in trying to make a difference in working for a better government and a better system.

I have filled out those boxes of government forms to get through a contract. In this case, it was an Army Corps of Engineering project, a very small contract. But literally boxes full of forms, if

you can picture these, and the paperwork that was involved in that and the months of waiting for payment. I went through the challenge of meeting a payroll, and operating that same company, you had to make the same tough decisions many business people do in operating that company. And it makes it difficult if business becomes one of those burdens or one of those barriers—I mean—excuse me, government becomes that burden or that barrier because we are trying to deal with our day-to-day operations. We are trying to deal with how can we survive in the free market system, and government needs to be a partner. And that is why I believe government can work together and become a team. I think government can wear the white hat. I think they can be the good guy.

This past year, I have traveled the State meeting with business owners and these business owners are community leaders. They are very active in their own backyards and in over 50 meetings, I have heard the frustrations of these real people in the real world and I have listened to their commonsense solutions. The folks I have met with are leaders in those communities and they are not just evil business owners as some might want to paint them. They do not want to destroy the environment; they do not want to hurt their employees and they are not fly by-night owners working out of a pickup truck or in some back alley. In many cases, they are second or third generation owners hoping they can pass their business or their farm on to their children. They are volunteers and they are active in their communities, and I hope that someday that they will have the opportunity to say that Iowa is truly the best State to operate in and that is part of our efforts here.

Many of them have shared a common concern, a common frustration and even a common fear. They are honest and they want to provide jobs at good wages. They want their communities to grow and they want to hire more people. But they are also frustrated by the government rules that do not make sense. They want to follow those rules, and they understand the need for government's role, and they cannot quite figure out why government sometimes acts the way it does. And we are hoping through your hearings here and through the efforts we are doing on the State level, we can put some rationale in that process. Today's hearing should provide some key insights on these issues and I want to give you a couple of examples that I have heard from business owners.

The first example comes from a small business in western Iowa. It is a crematory and they applied for an air permit and one of the questions the agency asked this business was for them to put together a projection on air emissions for this new permit and they had to do their projections based on 24 hours a day, 7 days a week, 365 days a year. Well, the crematory responded back by saying wait a minute, I have already cremated everybody in Council Bluffs, Sioux City and I am working my way toward Des Moines and we are not even going to dent this one. I ask you, where is the common sense? That is what we want to bring back to this process.

Another interesting story is about two small towns in Rome and Hillsboro, IA. Now they worked with the Federal Government to bring sewage services to their small towns of about 60 or 70 homes. Engineers wanted to use several innovative designs, including a 6-inch sewage pipe which could handle about 150 to 200 homes. The

Iowa DNR insisted they use an 8-inch pipe which could service 400 homes. Now, if they could have been allowed to use the new design standards which other States including Nebraska, the two small cities could have saved up to $200,000.

Now on a positive note, DNR has set up a pilot system to explore alternative designs in 13 communities that are members of the rural water system. Now, DNR has not agreed yet to allow towns outside that system, like Rome and Hillsboro, to use these designs and there are over 220 communities without sewers that could save substantial money. This is an area where we at the State level want to work with them to try to get that accomplished. The Federal Government has done the right thing. We need to deal with our part of the challenge.

Now some have criticized my efforts in the regulatory reform at the State level. They said that if a business operated honestly the owner has nothing to fear. Well, I have met with hundreds of honest business owners. These are stalwarts in their communities. These are the business owners that want clean air because they breathe the same air as their employees. They want clean water because they drink the same water as their employees. They do not want to hurt their employees. Their children play together; they go to the same schools and attend the same churches and in many cases, these owners work right alongside their employees under the same conditions.

What can government do to become more user friendly? That is part of this process here today. Let me share a few suggestions that Iowans have expressed to me.

One, consult with business owners before administrative rulemaking.

Two, establish a rules review process 5 years or sooner after implemented.

Three, with industry review the Federal rules already on the book.

And four, which I think is of particular interest from my background of business—customer service training for bureaucrats. Let them see how their regulations affect business. Have them view a part of their jobs as growing the economy.

Five, Iowa Department of Natural Resources and Department of Economic Development have started to work together to assist new Iowa businesses with environmental regulatory hurdles. We have also gone to accelerated permitting process for basic air quality permits and more general permitting. Please continue to let States develop these innovative programs. These are working. Our State government has partnered. They are wearing the white hat to try to be the good guy in this case and I think they ought to be recognized for that and encouraged to keep doing those things.

Six, while I am not an advocate for increasing government programs, in Iowa, we do have two very successful programs that work with small business. The first helps a business fill out air permits. The second works with businesses to cut down their waste. Both of these successful programs are not run out of a bureaucratic government agency. They are run out of a State university. They are not threatening to business and they are designed to work with the businesses. They cannot fine or penalize. I think we should con-

sider using this successful model to restructure other Federal mandated programs. In Iowa, we are working together in an effort to have jobs environment that promotes a partnership between government and business. I believe that government can wear the white hat and with your help and the work we are going to do here in Iowa, we will accomplish that.

I thank you for the opportunity to visit with you and hope your stay here is very positive and very beneficial. Thank you.

Mr. MCINTOSH. Thank you very much, Secretary Pate. I appreciate your good work and hard efforts to tackle this problem here in Iowa. It sets a good example for what can be done nationally.

Mr. PATE. Thank you.

Mr. MCINTOSH. Let me now call on our host, my colleague who is a good friend. I must say the folks in Des Moines should be very pleased and proud of Greg's work on your behalf and the freshman class and the Republican Congress. Thank you for helping us organize this hearing and share with us your thoughts, Greg, on this problem of regulatory relief.

Mr. GANSKE. Well thank you, Mr. Chairman. The Secretary of State had to leave, but I did want to thank him also.

We need to have cooperation between the Federal Government, the State government and the local governments. Just a few days ago in Washington something unprecedented happened. The Nation's Governors, both Republicans and Democrats, unanimously agreed on a welfare and Medicaid reform package in consultation with Congress. We will be dealing with that in the next couple of weeks. That is the type of cooperation we need to have in the environmental and the regulatory areas as well.

Mr. Chairman, I want to thank you for calling this important hearing. It is important because Iowans will get a chance to give their testimony without having to go to Washington.

Nationally, the cost of complying with Federal mandates has skyrocketed. Estimates of the cost to the economy in 1994 is in the range of, conservatively, $300 billion, possibly as much as $6,000 for every household in the United States. I do not think we should be misunderstood. Government regulations are necessary. We need to have clean water, we need to have clean air, we need to have good conservation practices. Nobody argues with that. There is definitely a function for Government. The question, in some cases is, have we lost common sense? Have we gone too far? This hearing will give Iowans an opportunity to give some specific cases.

I think this is an educational process for us and for you. If anyone in the audience has not read—I am not usually in the habit of recommending reading material like the Speaker of the House does. But there is a very good book called "The Death of Common Sense" by Philip Howard that I think everybody should read who is interested in this area.

There are three general areas where I think we need to look. We need to look at the issue of unfunded Federal mandates in which State and local governments are forced to pay to implement the rules that we send from Washington. This is a little bit like—the mayor of Columbus once remarked that an unfunded mandate is like having Uncle Sam take us out to dinner, order our food and

then hand us the check. We frankly appreciate the meal, but it is kind of hard to pay the bill.

There is an area that I, as a member of the Commerce Committee, am especially interested in, and that is in the area of risk assessment which seeks to ensure that regulations are based on sound science and are justified both in the areas of cost and benefit. There is rarely anything that we do in our lives where we do not do a cost/benefit analysis. In our personal relationships, in our businesses, this is part of the decisionmaking process. Unfortunately, we have examples in the Federal Government where no cost/benefit analysis is allowed by law, where there is a zero risk assessment standard. I think, this is contrary to being able to focus sometimes scarce Federal funds into the areas where they can do the most good.

We also need to look at private property issues which work to guarantee that the Federal Government cannot take property rights away from individuals unless they are fairly compensated.

So, I will keep these remarks short, Mr. Chairman. I thank you very much for having this hearing and for allowing Iowans to participate in a very important governmental process.

Mr. MCINTOSH. Thank you. Your work is going to be critical on the Commerce Committee as they address many of these regulatory problems. Thank you for helping us set it up and procure the great witnesses we are looking forward to hearing today.

Let me now turn to one of the full-time committee members, a colleague from Minnesota, Gil Gutknecht, who shared with me earlier that he was originally from Iowa. So, I am in good company up here with three people who are from Iowa. Perhaps your State has been able to actually get their sixth Congressman back again. [Laughter.]

Gil, any opening remarks for us?

Mr. GUTKNECHT. Well, Mr. Chairman, I just might add that when you look at the entire Congress, it is amazing how many Members were born and raised in Iowa. An awful lot of Members. I think Jon Kyl was born and raised in Iowa. I forget the rest of the names. There are about half a dozen who were educated here and went on to other States and have been elected to Congress. It is great to be back.

Let me just reiterate a couple of points. I want to be brief because we have got some great testimony lined up today. But a couple of points that Greg made.

First of all, that the estimates of the needless regulations, the cost on our economy is astronomical, and we have seen various estimates. But I think it is reasonable to say that it is probably costing the average family about $6,000 a year in higher cost for everything that they buy just because of the needless regulations. What we have heard—this is our 12th field hearing, and we literally have had field hearings from Maine to Minnesota. I am not sure how far west we have gone, but we have covered pretty much most of the United States. We are going to have additional field hearings to just hear from citizens who have to deal with the Federal Government.

There are in Washington and scattered around the United States approximately 65,000 Federal employees whose job it is to write,

interpret, or enforce Federal regulations. And each year, those employees—and some might call bureaucrats—turn out some 65,000 pages in very fine print of new Federal regulations. We have heard from business owners, large and small. We have heard from farmers. We have heard from people who—we have heard from fire departments. We have heard from school superintendents. As a matter of fact, in Indianapolis, I said that I think we have finally reached the critical mass because we had both the editor and publisher of the largest newspaper in the State of Indiana, as well as the president of the University of Indiana coming before us saying uncle, that they had had enough of Federal regulations. I said now, we finally have the media and academia coming and saying that we need some common sense in regulation.

I also want to underscore a couple of things that Greg said in that we are not talking about no regulations. I think everyone understands there is a need for some Federal regulation. What we are really asking for, and what I think the charge of this subcommittee is, is to come up with commonsense solutions, because altogether too often what we see coming from Washington are $50 solutions to $5 problems. And what we are finding out out here in the great breadbasket of the United States is there is still an awful lot of common sense. Most Americans do want a clean environment and a safe workplace and all the other things that we say that we want, and I believe that to be true.

The other point that we are looking for is good science. Because, I think, as we look at some of the facts, and you begin to examine what the real dangers of different things are, the dangers have been grossly exaggerated by certain groups. I think if we work together, we can come up with some commonsense solutions to some of those problems.

I am delighted to be here in Des Moines and I thank Congressman Ganske and Congressman Latham for all the work that they have done to try and bring some common sense back to Washington.

Mr. MCINTOSH. Thank you, Gil. I appreciate your coming down and joining us both yesterday and today.

Also with us is the other Iowa freshman who helped us set up a similar field hearing yesterday in Sioux City, Tom Latham. Do you have any opening remarks to share with us?

Mr. LATHAM. I will be very brief. I want to thank you, Mr. Chairman, for bringing this hearing to Iowa. Greg, thank you very much for all the work putting this together today.

Yesterday up at Sioux City, we heard testimony ranging from an individual—a small business owner who had 18 EPA people come into his office with guns drawn, cocked, with a secretary. This is a free country, folks. Things like that simply should not happen. We had the Sioux City Fire Department, which were the heroes of the United Flight 232, now held in somewhat contempt, I think, by individuals who because they went to help out in an adjoining community and because they did not go into that jurisdiction and take over the situation, even though it is not their responsibility or their right to do so, they were fined by OSHA. I mean, a fire department that is held in such esteem and was honored nationwide to be treated like that.

This whole idea of regulations I think gets back to the basic concept of first of all cost/benefit analysis. Is what we are paying justified? Or the reverse, do the benefits justify the cost? Is there actually a risk out there? Risk assessment to find out whether we are just like Gil talked about, you know, a $50 solution to a $5 problem.

I see a couple of people here have the same concerns I do as far as wetlands. Once again, getting back to the idea of respect for individual private property rights. It is in the Constitution but it has been totally ignored by many bureaucrats.

Once again, I just thank you very much for bringing this hearing to Iowa and I look forward to the excellent testimony. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Tom. I appreciate you joining us here today.

Let me now call forward our first panel which is a panel of small businessmen. Wes Houston, Don Beale, and Loren Duchman. If you would please come forward and take a seat, we will be able to begin with your testimony.

While they are coming forward, let me take a moment to say thank you to Katherine Willis on Representative Ganske's staff for helping coordinate a lot of this. I appreciate that effort. And also point out some of the full committee staff members. Mildred Webber who was taking names at the beginning; David White who will be keeping the time for us and Karen Barnes have worked very hard to make this possible.

Let me apologize in advance to this panel of witnesses and the subsequent panels. I am going to need to keep very strict time to keep it flowing because we have a lot of people who have asked to sign up and participate in the open microphone section. So if you have additional remarks, we will be able to put those in the record, but I will be asking you to be brief and keep them in summary so we can have an exchange in some of the question and answer period.

Thank you all for coming. I appreciate the effort and the time that you are taking to be here with us.

Mr. Houston, why do you not begin today with this panel. Welcome.

STATEMENTS OF WES HOUSTON, HUMAN RESOURCES MANAGER, JOHNSON MACHINE WORKS, INC.; LOREN DUCHMAN, CONSULTANT, JAMES B. MEEHAN, PE, PC; AND DON BEAL, PRESIDENT, BEAL DEVELOPMENT CORP.

Mr. HOUSTON. Thank you. I do appreciate the opportunity that you Congressmen have provided for us.

I am Wes Houston, the Human Resources, Safety and Hazard Control Manager for Johnson Machine Works. We are a steel fabricator and we fabricate steel for buildings, sewage treatment plants, dam gates, and navigational locks. We do get into a lot of Government subcontract work which gets into a lot more regulations. We currently employ 133 people and we do try to be a good corporate citizen. We have been in that community for quite a number of years and we will continue to be there. We do try to pro-

vide a safe workplace for our employees and keep an environmentally sound facility.

In 1995, I spent almost $26,000 on safety. Much of it was on mandated safety meetings and safety training. The OSHA regulations have from the very beginning been burdensome to me. Much of my time is spent in studying the regulations, writing the required written programs, revising them from year to year instead of actually being out in the shop where the work is being done and seeing that the people are working safely. In 1994, two of the top five most cited standards in Iowa were paperwork violations, which has nothing to do with my employees working safe out in the shop.

I have had an Iowa OSHA inspector come to our facility several times in recent years. Each time, a record search was done at the start of the inspection and each time my required written programs were found to be in order and the records found to be in order. So the inspector signed off on the inspection and left. I know my luck is not going to hold out forever. When a complete inspection is done, the intention of Iowa OSHA will be with finding items of non-compliance and setting fines. While I will try to cooperate with the inspector, I know there will be confrontation and there will be litigation. My safety records shows I am trying to provide a safe workplace for our employees.

Mr. MCINTOSH. Mr. Houston, excuse me for interrupting. Mildred is telling me that it is difficult to hear you in the back. I do not know if it is possible to just take the microphone and maybe speak into it.

Mr. HOUSTON. Is that better?

Mr. MCINTOSH. Yes.

Mr. HOUSTON. OK.

Mr. MCINTOSH. Thank you.

Mr. HOUSTON. I have a problem understanding why OSHA could not come with the intent of trying to help me instead of trying to confront me. The Consultation Division of Iowa OSHA will come but they will only come by invitation. Why do I have to invite them to come help? Why can they not come with the intent of helping me when they come for an inspection?

In 1995, I spent almost $30,000 trying to comply with the EPA regulations. The number and extent of regulations in the environmental area is absolutely amazing. Really, I find it hard to believe there are people that can actually think up some of these regulations. There is no way as a small employer that I can try to comply with the Clean Air Act, the Storm Water Discharge, RCRA, SARA and whatever else is out there without the help of an environmental attorney and an environmental engineer. This, of course, runs the cost of compliance up considerably. The Clean Air Act is about the most bizarre thing I have ever tried to understand. EPA, I think, is having a great deal of difficulty understanding it themselves. Fortunately for me, every deadline they have set has been pushed back because they are having difficulty trying to figure it out.

There are three—well at least a couple of experiences that I would like to relate to you, specific situations. While at a seminar on the Clean Air Act amendments, the DNR was explaining how to figure total potential emissions. In using a spray paint gun as

an example, the employer—this was alluded to earlier by one of the speakers. But we have to figure that we are going to use that paint gun 24 hours a day, 7 days a week, 365 days a year, and it is physically impossible to do but that is what we have got to figure. An employer in the group objected to this because you just cannot do that. The DNR representative agreed that it is impossible and that it does not make any sense but then said that does not matter. I wonder how ridiculous our Government can really get. Business cannot look at something and say it does not make any sense, but that does not matter. Maybe Government can but business cannot get by with that. In my situation, I can agree to not paint on Sundays. The only way we could get out of the problem is to take a voluntary—a Title V voluntary permit and you do that by agreeing to restrict your operation. We could agree to not paint on Sunday, which we do not do. But the amount of paperwork and figuring which the environmental engineer had to do for us to get to that point to say we will not do something that we are not doing anyway was ridiculous. It just makes no sense whatsoever. Regulations seem to be written in such a way that common sense is removed from the process.

I had 387 gallons of a material that I needed to dispose of. A treatment method is diluting it with water because it is neutralized with water. The chemical company did not want it back, so I took some samples and some MSDS sheets and went to our local water plant and told them what my problem was. They had agreed to work with me on it and were going to be in touch with me later about it. Then, to my surprise, I received a letter from the DNR saying the local treatment plant will not be given authorization to help and I had 30 days to tell the DNR how I was going to dispose of the material. I did this and I disposed of it in the proper manner at the cost of $3,820.

While at the treatment plant, I learned of another company which had left our community, had hired someone to come in and clean up after they were gone. The clean-up committee—or company dumped some chemicals down the drain, when it hit the water plant, it just about blew the pH process at the water plant. I talked to the city manager who talked to DNR and several years later nothing has been done about it.

I tried to do the right thing and it cost $3,820, plus I received a letter from DNR mandating certain things from me. Why could not DNR have said to me, we appreciate what you are trying to do and we will help you accomplish it? They did say this afterward, but after I had jumped through all of the hoops and done all of the work. Why could they not have helped at the beginning?

One of the greatest ways to help in the area of regulations would be to remove the confrontational posture of the regulations. If OSHA were truly about safety and not about the Government making the employer do something, OSHA would be a consultation agency instead of an enforcement agency.

While growing up as a boy in a small rural school about an hour's drive from here, I was taught the Government was here to serve the people. Little did I know that years later I would be working in a position dealing directly with excessive, ridiculous, expensive Government regulations and learning that Government is

not here to serve and to help but is here to over-regulate, restrict, mandate, fine, and treat me like an enemy, and that my only recourse for protection is to litigate against my own Government. It just does not make any sense.

Thank you.

Mr. MCINTOSH. Thank you. You are absolutely right. [Applause.]

You get a lot more done working together than fighting each other.

What I think we will do is hear from all the members of the panel and then have some questions for them. So now, let me call on Mr. Don Beal who is with Beal Development Corp.

[The prepared statement of Mr. Houston follows:]

p. 1
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs
Public Testimony
9 Feb 96

I am Wes Houston, the Human Resources, Safety, and Hazard Control Manager for Johnson Machine Works, Inc. We fabricate steel for buildings, sewage treatment plants, dam gates and navigational locks. We currently employee 133 people. We do try to be good corporate citizens in our community, providing a safe work place for our employees and keeping an environmently sound facility.

In 1995 I spent $25,600 on safety, much of which was on mandated safety training. The OSHA regulations have from the very beginning been burdensome to me. Much of my time is spent in studying the regulations, writing the required written programs, revising them from year to year, instead of actually being out in the shop making sure employees are working safely. In 1994, two of the top five most cited standards in Iowa were paper work violations, which have nothing to do with the employee working safely.

I have had an Iowa OSHA inspector come to our facility several times in recent years. Each time a record search was done at the start of the inspection, and each time my required written programs and records were found to be in order. The inspector signed off on the inspection and left. I know my luck will not hold out for ever. When a complete inspection is done, the intention of Iowa OSHA will be finding items of non-compliance and setting fines. I will try to cooperate with the inspector, but I know there will be confrontation, followed by litigation. My safety record shows I am trying to provide a safe work place for our employees. Why could not Iowa OSHA come with the intent of helping me, instead of confronting me? The consultation division of Iowa OSHA will come only by invitation. Why do I have to invite them to come help me? Why can they not do that at the time of the inspection?

In 1995, I spent $29,602 trying to comply with the EPA regulations. The number and extent of regulations in the environmental area is absolutely amazing. I find it hard to believe there are people that can actually think up some of this stuff. There is no way I can try to comply with the Clean Air Act, Storm Water Discharge, RCRA, and SARA, without the help of an environmental attorney and an environmental engineer. This of course greatly inflates the cost of compliance. The Clean Air Act is about the most bizarre thing I have ever tried to understand. EPA can't even get it figured out. Every deadline they have established has been pushed back several times, which is to my benefit. I think it is virtually impossible to be in full compliance with the environmental and OSHA regulations, and I think the regulations are written with this purpose in mind.

I have three experiences that I want to relate concerning EPA:

1. In 1994 an EPA contracted inspector came to our facility with the purpose of gathering information regarding the impact of

the 1993 flood on waste management activities. It is impossible for our facility to be impacted by a flood. I had to go through the inspection any way. In my opinion the flood of '93 was just a good excuse for EPA to access some extra money from Congress to get into every place of business they possibly could. The inspector looked at my hazardous waste disposal paper trail, walked through the entire facility, and at the end of the inspection told me he did not see anything that concerned him and he would so indicate in his report to EPA. Over the next year I received three letters from EPA, each stating I was not required to submit anything to EPA at this time, but they wanted to bring certain items to my attention.

I did not appreciate having to go through the inspection even after the inspector agreed I was not impacted by the floods of '93. I do not like being treated as though I may have been doing something wrong, and because of the '93 flood EPA now had a way of finding out without having to go through the normal inspection channels. I object to this kind of treatment.

2. While at a seminar on the Clean Air Act Amendments, DNR was explaining how to figure total potential emissions. Using a spray paint gun as an example, the employer is to figure the amount of potential emission as operating the gun 24 hours a day, 365 days a year. An employer objected to this because it is physically impossible to do, and said this makes no sense at all. The DNR representative agreed but then said that doesn't matter. How ridiculous can our government get? If the result of potential emissions is a certain tonnage, even though it is an impossibility to do, the employer has to voluntarily restrict it's operations to be in compliance. In my situation, I could agree to not paint on Sundays, which I don't do anyway. But the vast amounts of paperwork and figuring to arrive at what I already know and am already not doing, is ridiculous. Regulations seem to be written in such a way that common sense is removed from the process.

3. I had 387 gallons of material to dispose of that could be diluted with water. The chemical company did not want it back and told me to just put it down the drain. While I could have done this, I did not want to without the approval of the local water treatment plant. I took samples of the product along with MSDS sheets to the treatment plant and discussed it with them. They indicated they would work with me on getting it disposed of, and thanked me for not just dumping it down the drain. To my surprise I received a letter from DNR saying the local treatment plant will not be given authorization to help me and I had 30 days to tell DNR how I was going to dispose of the material. This I did, and disposed of the material at the cost of $3,820.00. While at the treatment plant I had learned another company, which had left our community, hired someone to clean up their facility after they were gone. The clean-up company dumped some waste chemicals in the sewer system and when it hit the treatment plant it almost destroyed the ph of the treatment process. I talked to the city

manager about this; he contacted DNR; but several years later nothing has been done. I tried to do the right thing, and it cost me $3,820.00, plus I received a letter from DNR mandating certain things of me. Why could DNR not have said to me "We appreciate what your are wanting to do and we will help you accomplish it"? Why did they have to treat me as though I was not to be trusted? After the process was over, DNR did express their thanks to me for not just dumping the material. Why could they not have worked with me on this at the start?

One of the greatest ways to help in the area of regulations would be to remove the confrontational posture of the regulations. If OSHA were truly about safety and not about the government making the employer do something, OSHA would be a consultation agency instead of an enforcement agency.

While growing up as a boy in a small rural school about an hours drive from here, I was taught that government was here to serve the people. Little did I know years later I would be working in a position dealing directly with excessive, ridiculous, expensive government regulations and learning that government is not here to serve and help but is here to over-regulate, restrict, mandate, fine, treat me like an enemy, and that my only recourse for protection is to litigate against my own government. It is rediculous that I have to protect myself from my own government.

Mr. BEAL. Let us get the microphone straight first. Can everybody hear me?

Mr. MCINTOSH. No, they cannot.

Mr. BEAL. How is this?

Mr. MCINTOSH. That is better.

Mr. BEAL. Mr. Chairman and members of the committee, I want to thank you for the opportunity to speak here today on the important issue of regulatory reform. I would also like to thank and congratulate all of you on your efforts in passing comprehensive regulatory reform legislation earlier this year and we hope the U.S. Senate will follow suit.

For the record, I would also like to compliment Secretary Pate. I know he had to leave, but he has been a real ally of our industry in the State of Iowa.

I would like to hit a couple of highlighting issues here in the interest of time. First of all, I am a very small home builder in the Des Moines area. I am here today representing the Home Builders Association of Greater Des Moines together with the Home Builders Association of Iowa.

The building industry recognizes the need for certain regulations; however, even the most necessary regulation should be administered in a fair and efficient manner. In the last 10 years, as increased Federal regulations have layered upon existing State and local requirements, the cost of these regulations has increasingly been felt by the new-home buyer.

Overlapping and conflicting regulations are a major part of the problem. Federal regulations govern everything from infrastructure and workplace employment related issues to financing, particularly if the mortgage revenue bond and tax credit programs are involved.

Environmental regulations in particular often have unintended consequences of making housing less affordable and preventing Americans from obtaining home ownership. Inflexible rules and overlapping jurisdictions of Federal agencies often prevent commonsense solutions that could better protect the environment. Environmental regulations, including those related to endangered species and wetlands can increase the cost of housing directly by limiting the amount of land available for residential construction or even prohibiting construction in some areas. They can also increase the cost of housing through extensive review and permitting delays and require fee, land dedications and other expensive actions by developers. Equally important, groups that oppose development often use environmental issues to mask the true intention, exclusionary zoning or the complete halt to residential growth. I would just pass some information that our National Association of Home Builders has estimated that the cost of Federal regulations contribute some 20 percent to the cost of housing today.

Now in the interest of time—you have my written testimony—I would like to dwell on a couple of issues if I could—occupational Safety and Health in the residential arena and the Davis-Bacon Act.

First of all, I would like to stress that none of my comments should be interpreted to give the impression that the residential builder is at all against safety regulations. Just the tragic accident

here in Des Moines yesterday brings forth the need for safety on the job.

I will now present my written testimony. Although regulations are necessary to protect workers safety and health on construction sites, home builders must follow the rules that were designed for large commercial construction projects rather than residential construction.

In recent years, State and Federal OSHA officials have placed emphasis on enforcement within the residential sector and home builders are now subject to inspections once focused on large commercial construction projects as well as onerous fines that do not reasonably reflect significant violations. True, the agency can apply less than the maximum fine commensurate with the size of the business, but all too often, 50 percent of the maximum fine is assessed against a very small business owner with assets far, far, far below those of the corporate employer receiving the legal limit.

What I would like you to do, if you could, is refer—I have given you several OSHA citations. Bear in mind, in the State of Iowa, we are—Iowa OSHA administers the Occupational Safety and Health program in Iowa. Basically they are doing this in line with Federal regulations. So we still feel that the Federal regulations is where the problem stems.

If you would bear with me here a minute, please look at Ames Home Improvement, page 1 of 2. This employer received a $5,000 fine three times for the breach——

[Bell rings.]

Am I over? Sorry.

Mr. MCINTOSH. No, go ahead. I would like to hear your explanation of this. I will grant you 2 more minutes as they say on the House floor.

Mr. GUTKNECHT. Without objection. [Laughter.]

Mr. BEAL. Thank you very much.

This is a tube of caulking. I bought it at Payless. All of you could buy it, use it and keep it around your children. This employer received a citation for $5,000 for an improper hazardous communication program regarding that tube of caulking; $5,000 for no MSD sheet involving that tube and $5,000 for alleged no training of his employees because that tube of caulking was on his job.

We would respectfully submit that reform in the—reform in this legislation based upon more emphasis on consultation than enforcement. Two, tailor the fines and the breach to the size of the employer and three, develop a separate standard for residential housing work.

Thank you very much.

Mr. MCINTOSH. I appreciate that. Thank you for your full testimony. There were a number of things in there I noticed that will be very helpful to us. I look forward to following up in the questioning period.

Mr. BEAL. Thank you.

Mr. MCINTOSH. And now for the third witness in this panel, Mr. Loren—am I pronouncing it right, Dutchman?

Mr. DUCHMAN. Duchman.

Mr. MCINTOSH. Duchman. Welcome, Mr. Duchman. Share with us your testimony.

[The prepared statement of Mr. Beal follows:]

STATEMENT OF

DONALD M. BEAL, JR.

PRESIDENT, BEAL DEVELOPMENT CORPORATION
7166 DAKOTA DRIVE
WEST DES MOINES, IOWA 50266

BEFORE THE

SUB-COMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS

Mr. Chairman and members of the subcommittee:

I want to thank you for the opportunity to speak before you today on the important issue of regulatory reform. I would also like to thank and congratulate all of you for your efforts in passing comprehensive regulatory reform legislation earlier this year, and would hope that the U.S. Senate will feel compelled to mirror the action of the House of Representatives.

I would like to highlight several issues of interest to the building industry in an attempt to illustrate how excessive regulations on a number of levels can have an adverse effect on the cost of housing.

The Regulatory Environment

Efforts to reform the regulatory process in the U.S. are not new. Unfortunately, in many instances, past attempts have only led to increased layers of regulation and more bureaucracy.

The building industry recognizes the need for certain regulations. However, even the most necessary regulations should be administered in a fair and efficient manner. In the last 10 years, as increased federal regulations have been layered upon existing state and local requirements, the cost of regulation has been increasingly felt by the new home buyer.

Overlapping and conflicting regulations are a major part of the problem. Federal regulations govern everything from infrastructure and workplace/employment related issues to financing, particularly if the mortgage revenue bond and tax credit programs are involved.

Environmental regulations, in particular, often have the unintended consequence of making housing less affordable and preventing Americans from attaining homeownership. Inflexible rules and overlapping jurisdictions of federal agencies often prevent common-sense solutions that could better protect the environment. Environmental regulations, including those related to endangered species and wetlands, can increase the cost of housing directly by limiting the amount of land available for residential construction or even prohibiting construction in some areas. They can also increase the cost of housing through extensive review and permitting delays and by requiring fees, land dedications and other expensive actions by developers. Equally important, groups that oppose development often use environmental issues to mask their true intention--exlusionary zoning or a complete halt to residential growth.

Federal Regulations

OCCUPATIONAL SAFETY AND HEALTH (OSHA)

Although regulations are necessary to protect worker safety and health on construction sites, home builders must follow rules that were designed for large commercial construction projects rather than residential construction.

In recent years, state and federal OSHA officials have placed an emphasis on enforcement within the residential sector, and home builders are now subject to inspections once focused on large commercial construction projects as well as onerous fines that do not reasonably reflect the significance of violations. True, the agency can apply less than the maximum fine commensurate with the size of business, but all too often, 50% of the maximum fine is assessed against the small business owner with assets equaling 1/1000th of the size of a corporate employer receiving the legal limit. (See attachments).

It has proven difficult, very costly and sometimes impossible for home builders to comply with some OSHA standards--particularly those relating to excavations, stairways and ladders, trenching, fall protection, and scaffolding--during some phases of new home construction.

DAVIS-BACON ACT

The Depression-era Davis-Bacon Act requires construction workers on publicly-funded projects to be paid a government-determined prevailing wage. Its effect has been to inflate project costs and decrease the number of builders interested in doing federal work. A General Accounting Office report found that Davis-Bacon raised total construction costs on federally-assisted housing projects by an average of 3.4 percent and added significant costs to HUD Section 8 low-income housing programs. In 1982, Oregon State University found that Davis-Bacon drove up residential and infrastructure construction costs in rural areas by an astonishing 26 to 37 percent. Most residential projects in which the Federal Government is involved, target low and medium income families. Therefore, artificially raising the overall project cost puts a Federal budget burden on all of us which seems to be counter productive.

LUMBER COSTS

Timber cutting in the national forests of the Pacific Northwest has been severely limited for the last three years due to a legal morass created by conflicting laws governing national forest management, including the Endangered Species Act, The National Forest Management Act, and the National Environmental Policy Act. The cutbacks have occurred even though tree growth has exceeded harvests every year for nearly half a century. The decreased timber supply caused lumber prices to double from 1991 to 1993, raising the cost of lumber and wood products for a typical 2,000-square-foot single-family home by as much as $4,500. Although lumber prices have since moderated, they remain more than 50% higher than in the 1980's.

CLEAN WATER ACT AND REGULATIONS

Builders and developers must follow myriad regulations set forth in the Clean Water Act, including rules relating to wetlands, storm water, non-point source discharges and citizens suits. Each provision may require the builder to take scores of steps, with the home buyer eventually paying the costs. Wetlands regulations in particular, cause significant delays, in large part because of the lack of a workable wetlands definition. Land classified as

"wetlands" may not be wet at all and may have no significant environmental function or value as an aquatic ecosystem.

Completion of the U.S. Army Corps of Engineers individual permitting process takes an average of 373 days and can cost hundreds of thousands of dollars. Cutting the permit approval time to six months could have saved from $500 to $1,000 in finance costs for each average-priced lot in 1993.

ENDANGERED SPECIES ACT

The Endangered Species Act (ESA) sets lofty goals to protect America's rich plant and wildlife resources. Unfortunately, the ESA's success stories have proven much more rare than the plants or species it was designed to protect. The success of the current law seems to be in its ability to catalogue, rather than to protect species. However, the ESA has been extremely successful in stopping development once a species is listed as threatened or endangered. At that point, even if there is no scientific evidence to justify the listing, the species habitat may not be modified in any way, even if the species is not present in the area. The complicated process for permitting requires years and usually thousands of dollars to complete, and even then the builder has no assurances that another "endangered" species won't be found, or more delays encountered. Currently, 854 U.S. species are listed as endangered or threatened. Since Congress adopted the act in 1973, only 16 species have been removed from the list, six due to extinction, five because it was later determined that they were not endangered or threatened, and five due to species recovery.

Conclusion

I hope I was able to give you an idea of the real impact of government regulations on small business, particularly within the building industry. On behalf of builders across the state of Iowa and nationwide, I would like to reiterate my strong support for regulatory reform efforts, and hope meaningful reform measures can be enacted this year. I am happy to answer any questions you may have. Thank you.

Attachments - IOSHA Citations

-End-

Mr. DUCHMAN. Thank you. On behalf of my employer, James B. Meehan, I would like to thank you for the opportunity to address this panel.

My name is Loren Duchman, and by way of introduction, we are an engineering consulting firm whose practice includes assistance to clients for industrial safety, OSHA compliance, contest of OSHA citations and abatement of citations. We apply the reasonable and consistent interpretations of the regulations. Clients and their employees have benefited from our services for almost 18 years.

We have served hundreds of private sector clients who have thousands of employees. Thousands of citation items have been resolved by their being vacated, reasonably modified or abated. One client, an attorney, has estimated that his efforts using our services as safety experts has resulted in OSHA prevailing in less than 20 percent of the citations.

Let us relate a few of the problems that over-burdensome OSHA rules and regulations have caused.

First, a manufacturer was cited for not tagging a defective ladder when his two employees had disposed of the ladder by placing it in a garbage dumpster for construction debris. OSHA attorneys and the inspector argued that the regulations called for tagging a defective ladder and did not specify disposal as an alternative. The citation was vacated at the manufacturer's cost for defense.

Second, a plumbing contractor was cited for trenching violations on a job site and a university professor was named as a complainant who observed the violation and whose referral was used as the justification for obtaining an inspection warrant. The citations were vacated when it was discovered that the professor was in Alaska at the time that the alleged violations were observed in Iowa. [Laughter.]

Third, a small manufacturer was faced with alleged violations for which OSHA required engineering or administrative controls for air contaminants when respirators provided adequate protection. The controls urged by OSHA would have ruined a high-gloss finish and caused the manufacturer to go out of business. Settlement negotiations, extending over 6 months, resulted in changes in OSHA demands so that the company is still in business.

Fourth, during one inspection, I witnessed an IOSH inspector turning to face the owner of a company and stating, "I am not here to help you." What a damning statement for a Government employee. This confrontational and arrogant attitude by both State and Federal OSHA personnel has been witnessed many times. At best, this behavior is condoned by OSHA management; at worse, this behavior appears to be encouraged and in fact practiced by OSHA management.

We have found the policies and the behavior of OSHA personnel to be abusive and activist with little regard for real hazards. Our compliance inspections have consistently resulted in the abatement of a substantial number of hazardous conditions never identified or cited by an OSHA inspector.

Lower fines and OSHA recommendations will not solve the problems facing the private sector. This will simply force unnecessary acts at the whim of OSHA and the same regulatory nightmares

will continue. People will continue to be injured, will continue to injure themselves and fatalities will still occur.

We recommend that equal access to justice be made a real remedy for the abuses of the system. Each and every cited employer should be reimbursed when OSHA has been proved wrong. Any bureaucratic excuse involving reasonable cause to cite or any other term describing an excuse for inappropriate OSHA action must be eliminated.

Exemption from programmed inspections provides little relief from the bureaucracy. We have seen no programmed inspections among our clients for several years. Our clients have, however, experienced numerous ex-employee or employee complaints as vengeance for imagined slights.

OSHA prevails and continues abuses simply because they can. The private sector cannot afford to fight for what is right with limited funds, and yes, the costs of unreasonable OSHA compliance does cost jobs.

Give us equal access to justice.

We further suggest that Corrections Day elimination of over-burdensome regulations include 29 CFR 1910, Occupational Safety and Health Standards for General Industry. A majority of these standards were adopted from then-existing National Consensus Standards. OSHA adopted them, never revised them, and continues to attempt to apply these outdated standards.

Few people realize that these National Consensus Standards were never written to become regulations and have other special characteristics. The most important of these is that they are subject to regular review and revision or validation. A revised, current standard replaces the previous version. OSHA persists in attempting to apply National Consensus Standards which are nearly half a century old in some instances.

More than three-fourths of the 732 pages of 29 CFR 1910 could be eliminated and the current version of the National Consensus Standards used.

Please contact me or my office if we can further explain or clarify these comments. We encourage and support you in your efforts at regulatory reform.

Thank you.

[The prepared statement of Mr. Duchman follows:]

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LOREN F. DUCHMAN

Area Code 319
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February 2, 1996

Congressman Greg Ganske
Washington, D.C.

RE: Congressional Hearings on Regulatory Reform
Comments for the Official Record

Dear Congressman Ganske:

By way of introduction, we are an engineering consulting firm whose practice includes assistance to clients for industrial safety, OSHA compliance, contest of OSHA citations, and abatement of citations. We apply the reasonable and consistent interpretations of the regulations. Clients and their employees have benefited from our services for almost eighteen years.

We have served hundreds of private sector clients who have thousands of employees. Thousands of citation items have been resolved by their being vacated, reasonably modified, or abated. One client, an attorney, has estimated that his efforts using our services as safety experts has resulted in OSHA prevailing in less than twenty per-cent of citations.

Let us relate a few of the problems that over burdensome OSHA rules and regulations have required our clients to use scarce resources to resolve:

1. A small manufacturer received multiple citations which would require prohibitively expensive paint spraying equipment, a paint booth, additional permitting for emission equipment from the DNR, and more. The citations were vacated upon proof that the operations involving the application of contact adhesive were not a paint spraying operation, did not present the same hazards, and OSHA Regulations did not apply to the adhesive operations.

2. A manufacturer was cited for not tagging a defective ladder when his two employees had disposed of the ladder by placing it in a garbage dumpster for construction debris. OSHA attorneys and the inspector argued that the regulation called for tagging a defective ladder and did not specify disposal as an alternative. The citation was vacated at the manufacturer's cost for defense.

3. A plumbing contractor was cited for trenching violations on a job site and a University Professor was named as the complainant who observed the violation and whose referral was

used as the justification for obtaining an inspection warrant. The citations were vacated when it was discovered that the Professor was in Alaska at the time the alleged violation was observed in Iowa.

4. A metal spinner was cited for not having the metal spinning lathes guarded. The citation was based upon a vague and generalized regulation that required that the point of operation of all machines shall be guarded. The citation was vacated because the employer called upon the entire metal spinning industry to prove that metal spinning lathes have never been guarded, are guarded to the fullest extent possible, and that guarding as OSHA would have required would prevent the metal spinning operation from being performed. More than thirty people would have been put out of work if OSHA had prevailed for impossible guarding.

5. Three different manufacturers, within the time span of approximately one year, were alleged to have violated three different electrical regulations - for the same "hazardous condition". They had used an electrical handy box on an extension cord, formerly a common means of making a multiple-outlet extension cord. OSHA prevailed in all three of these inconsistent allegations simply because they lowered the severity of the violation and amended the fines to make abatement a business decision.

6. A small manufacturer was faced with alleged violations for which OSHA required "engineering or administrative controls" for air contaminants when respirators provide adequate protection. The controls urged by OSHA would have ruined a high gloss finish and caused the manufacturer to go out of business. Settlement negotiations, extending over six months, resulted in changes in OSHA demands so that the company is still in business.

We have found the policies and the behavior of OSHA personnel to be abusive and activist with little regard for real hazards. Our compliance inspections have consistently resulted in the abatement of a substantial number of hazardous conditions never identified or cited by an OSHA inspector.

Lower fines and OSHA "recommendations" will not solve the problems facing the private sector. This will simply force unnecessary acts at the whim of OSHA and the same regulatory nightmares will continue. People will continue to be injured, will continue to injure themselves, and fatalities will still occur.

We recommend that equal access to justice be made a real remedy for the abuses of the system. Each and every cited employer should be reimbursed when OSHA has been proved wrong. Any bureaucratic excuse involving reasonable cause (to cite) or any other term describing an excuse for inappropriate OSHA action must be eliminated.

Exemption from programmed inspections provides little relief from the bureaucracy. We have seen no programmed inspections among our clients for several years. Our clients have, however, experienced numerous ex-employee or employee complaints as vengeance for imagined slights.

OSHA prevails and continues abuses simply because they can. The private sector cannot afford to fight for what is right with limited funds. And yes, the costs of unreasonable OSHA compliance

does cost jobs.

Give us equal access to justice.

We further suggest that "Corrections Day" elimination of over burdensome regulations include 29 CFR 1910, "Occupational Safety and Health Standards for General Industry". A majority of these Standards were adopted from then-existing National Consensus Standards. OSHA adopted them, never revised them, and continues to attempt to apply these out-dated standards.

Few people realize that these original National Consensus Standards were never written to become regulations and have other special characteristics. The most important of these is that they are subject to regular review and revision or validation. A revised, current standard replaces the previous version. OSHA persists in attempting to apply National Consensus Standards which are nearly half a century old in some instances!

More than three fourths of the 732 pages of 29 CFR 1910 could be eliminated and the current version of the National Consensus Standards used.

Please contact me or my office if we can further explain or clarify these comments. We encourage and support you in your efforts at Regulatory Reform.

Very truly yours,

James B. Meehan, PE

JAMES B. MEEHAN, PE, PC

jbm:jm

Mr. MCINTOSH. Thank you, Mr. Duchman, I appreciate that. And I want to followup with you on that suggestion because it is a very good one.

I neglected to ask the panel to be sworn in before giving your official testimony. I assume you have no problem with being sworn in now and having it apply to the written remarks you have given us. If you could join me and please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show each of the witnesses answered in the affirmative. Mr. Clinger, who is the full committee chairman, has asked as a policy that we swear in all witnesses regardless, so do not think that it is picking on you or any of the other witnesses here.

This was very moving testimony and I think very compelling in the argument that we need to redirect our focus, particularly on safety regulations, and seek greater cooperation, a greater ability to work with businesses toward a common goal of providing a safe workplace for the workers.

One of the things that I wanted to follow up on was a comment you made toward the end of your testimony, Mr. Duchman, that without that—and using the old standards and imposing unnecessary costs, that it did lead to job losses. That has been one of the things that I have wanted to focus on because oftentimes the debate about regulations can become fairly dry in the context, but when you start showing people how it affects the ability to be competitive in the world marketplace and keep good jobs and allow employers to expand jobs—and I was wondering if you could expand on that in any regard or any examples that you might be familiar with in your work as a consultant with some of these businesses.

Mr. DUCHMAN. Yes. We deal with a lot of companies, and primarily smaller companies that do not have full-time safety staff members. And in the instance that I mentioned, this company was in the process of using a solvent-based paint, and its competitors, in order to comply with EPA and other rules and regulations, had switched to a latex paint, and the competitors' product was unsafe due to some chemical characteristics of the paint. And this company that we were working with, when OSHA cited them and said in order to come in compliance with us, you must increase the ventilation in your system. Well, increasing the ventilation in this system would not have allowed them to produce the quality product that they needed, and in fact they would have had to produce an inferior and possibly unsafe product.

What we are looking at is a company in this case that employed about 30 people in a very competitive market. If they would have been forced to comply with the OSHA rules and regulations, at least the way OSHA interpreted them, they would have literally been out of business, they could not have competed.

We run into many instances when companies are forced—and again usually smaller companies—if they do incidental painting, which the rules and regulations make reference to incidental painting—OSHA would say that if you do any painting at all, according to some of the rules and regulations, you must have a paint booth, and along with this paint booth, you must have the fire protection to go along with it, you must store your paints outside this room

and the companies just literally do not have the financing or the physical capabilities of complying with these, and they should not need to comply with these, because it is incidental to their business, it is not—they are not painting, they might do touch-up on a vehicle if it gets dinged or damaged.

And we are again here talking about a company that probably employs 50 or 60 people. If they have to spend their resources to build an outside storage unit for a small quantity of paint or change a maintenance garage into literally a paint booth, then they are going to have to build another maintenance garage because they cannot do maintenance in their garage that now is a paint booth, but they are in compliance for painting, incidental painting, because they have a paint booth. It does not make sense. And this company, to expend those resources, would probably or possibly go out of business. And again, there would be 40 to 50 people in a small Iowa community that would be looking for jobs or employment otherwise.

Mr. MCINTOSH. And that is the very real human cost that often is overlooked by the regulators when they come up with the rules and regulations.

One other quick thing—would you be willing to submit to us for our record the more updated National Consensus Standards for that 29 CFR section 1910?

Mr. DUCHMAN. While we could, what I was referring to is often the American National Standards Institute, ANSI, standards are used, and they are readily available. We have many of them, we do not have them all, and for our company to supply you with all those standards would be a considerable—many thousands of dollars.

Mr. MCINTOSH. Oh, OK, maybe you can give us a referral and we can talk with the Institute.

Mr. DUCHMAN. Sure, that would be no problem at all.

Mr. MCINTOSH. But let me make sure I understood what you were saying, which is that sometime in the past, OSHA codified the existing standards that were developed by this outside group as a consensus across the country, and they failed to update their regulations as new knowledge and experience has been gained in the private sector?

Mr. DUCHMAN. Yes, sir. In the early seventies, OSHA just adopted the ANSI standards, which had been—many of them had been in existence for many years. ANSI, the American National Standards Institute, regularly reviews their standards and updates those. The 1910 regulations, their source standards are the standards that were in existence back then. At this point in time, if a citation was cited, they could refer to the older standards and say, according to these older standards, this is the citation, because 1910 is based on the older standards, they have never updated them as the new standards have been accepted.

Oftentimes, OSHA, when it is brought to their attention that, based on the newer standards, there is no citation or is no violation, it is dropped. But all this costs money and companies—you know, they look at the old OSHA standard and the old OSHA standard says that they are supposed to do it one way where the new updated standards, which most companies would have no

knowledge of or access to, would tell them maybe a safer way to do it or at least a different way than what is cited in the book.

Mr. MCINTOSH. So it is possible if they tried to follow the OSHA standards, they actually would be doing something that is less safe than maybe the modern standard would arrive at.

Mr. DUCHMAN. Yes, sir.

Mr. MCINTOSH. OK. Thank you very much, all of you, for your testimony. Let me now turn to Congressman Ganske, if you have got any questions for our panel.

Mr. GANSKE. Thank you, Mr. Chairman.

I suspect that throughout the testimony today, we are going to hear a lot of examples of interpretations of the regulations that most of us here in the room would say are unreasonable and lack common sense—everywhere from a $400 fine for finding a wrapper in a first aid kit, to some of the examples you have given today.

I do not think the purpose, of this committee is to bash bureaucrats and regulators. These are our neighbors, these are people that are trying to do their job. Were we in the same situation I think that they were in, there but for the grace of God go we, because they are dealing with mandates and job descriptions that have come from Washington.

So I am going to ask this panel the same question that I am going to ask every panel. And if you will bear with me for a minute, I want to read a paragraph from this book, "The Death of Common Sense." I would like to get some opinions from you. For the other people that are going to testify, you may be thinking about this. What we are dealing with is regulators from these agencies who have been given very detailed descriptions of how to interpret the rules and the laws that Congress has passed—9 feet of it every single year. And they are prescribed to do that by law. I want you to think about this for a minute.

Do we want to allow those regulators more leeway in the interpretation of achieving the goals that all of us want to get to; i.e., safety in the workplace, safe products, safe food, et cetera. And let me just read this for you: Making rules as precise as possible has become almost a religious tenet in Washington. "Only precise specific guidelines," said Herbert Kaufman of the Brookings Institute in 1977, "can assure common treatment of all like cases." So you need to think about this. If you give a regulator more leeway to enable him to become a facilitator and a helper without very, very precise, specific guidelines, is there a chance that there could be abuse in the interpretations?

"Only precise, specific guidelines can assure common treatment of all like cases. Otherwise," he said, "programs lose all consistency". "As nearly as possibly", another scholar wrote, "legal rules should be self-executing, and aimed toward solutions that can be carried into effect without discretionary administration."

I really think that this is the crux of the type of decisionmaking that Congress is going to have to deal with. I would like some brief comments from you. Common throughout your testimony, was the feeling that I am getting that when a regulator comes in, they are being a policeman instead of a facilitator and a helper. Would you like to see our Government regulators have more flexibility and lee-

way to interpret a broad goal of a regulation for safety? Mr. Houston?

Mr. HOUSTON. Over the past 10 or 15 years, I have served on the Iowa Association of Business and Industry's Occupational Safety and Health Committee and we meet with the division of labor, the labor commissioner and his staff, every year and we talk about some of these problems, and I personally believe that in Iowa, we have a State plan which is much to the benefit of Iowa employers.

Mr. MCINTOSH. Mr. Houston, if you could speak slightly louder, they are telling me they are having difficulty in the back of the room.

Mr. HOUSTON. OK. I think Iowa OSHA, IOSH, has good managers managing that program for Iowa employers, but I think if—and I think you can work with them, you can sit down and talk with them, you can work with them. But I think where the problem comes in in Iowa is they are pushed by Federal OSHA, by Washington, and if they could be left alone to do their job, I think in Iowa at least we would have a lot better program.

Mr. GANSKE. You would like to see more local flexibility.

Mr. HOUSTON. Yes.

Mr. GANSKE. Mr. Duchman.

Mr. DUCHMAN. I would be in favor of more local flexibility, and that is assuming that maybe we take it a step further. The Mining Safety and Health Act requires that an inspector in the Mining Safety and Health Act area have 5 years experience in the mining area. In Iowa, there are many inspectors that have absolutely no experience in construction, absolutely no experience in manufacturing; however, they are going out and inspecting these. They have a 2-week training course in Illinois and that makes them qualified. So I think if we are going to give them more flexibility, we must also make sure that those people are qualified to take a look at a problem. I have oftentimes gone into businesses where something very trivial has been cited and walked right by a definite hazard that was not even addressed by the OSHA inspector, primarily because they were not aware what the hazard would be.

Mr. GANSKE. So, you would be in favor of more flexibility, as long as you are comfortable in dealing with somebody who is knowledgeable about the problem.

Mr. DUCHMAN. Yes. And I think the inspector, along with the management of the company, can come up with a workable decision. Probably the most often asked question of me by people that I deal with is how was I supposed to know that—they do not know that from the regulations. But if you say this looks like a problem, they will address it and solve the problem.

Mr. GANSKE. Don, would you care to comment on this?

Mr. BEAL. Yes, I would.

I think in Iowa here, we have a certain amount of flexibility right now. As I pointed out in my testimony, they are not obligated—they being the inspectors—are not obligated to assess maximum fines. They do have flexibility. They also have some flexibility, I understand, in converting some of their enforcement personnel to consultation. We have heard this across the panel this morning, if you call and say I am very interested in job safety, could I have a consultation, would you advise me, they do not have the staff to do

that, but they have the staff in a moment to go out and cite an individual for some of the things that I referred to in my testimony.

Now to answer your——

Mr. GANSKE. Let me just followup. Do you think that it is necessary to have that kind of division; that is, between the consultative services and the "enforcement inspection" services or can you merge that together and have the same individual doing both?

Mr. BEAL. I think you can merge those together and have the same individual doing both, as long as they can move back and forth.

Now to answer your philosophical question, that scares me a little bit, to give anybody that kind of power without—power corrupts in certain instances, and unless there is a constant monitoring of the attitude of those people, and as my colleague here pointed out, an experience level that would allow them to make those decisions, I would be a little leery of that.

Mr. GANSKE. And this, of course, is the tough line that we are going to have to walk in doing this——

Mr. BEAL. Absolutely.

Mr. GANSKE [continuing]. To allow some common sense, but allow some uniformity and lack of arbitrary decisions also. Thank you.

Mr. MCINTOSH. Thank you very much, Congressman Ganske and the panel.

Before turning to my other colleagues, let me mention there is also a third option in that philosophical debate, and it is more easily understood in the environmental context but I think would apply in safety regs too. And that would be for the Washington regulations to supply a goal or a standard and then allow some of the details to be met either by the regulated entity or local enforcement. For example, you could have a rule that said if you have a safety record that goes beyond a certain level, you get a certain number of accidents, then we are going to trigger a very close scrutiny and very detailed controls. But if you have a company that has no accidents year after year after year, you would have a different approach and much less scrutiny and detailed plans. That type of approach I think then gets you a good combination of the flexibility, yet specificity and different outcomes trigger different events in the regulatory process.

Let me now turn to our colleague from Minnesota, Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I will be brief and I want to thank the panel for the excellent testimony—more important, for the excellent documentation. I used to use the $50 solution to the $5 problem, this sounds like a $15,000 solution to a $5 problem.

But I just want to say that Congressman Ganske, I think, has really nailed this issue more than maybe we even stop to think about. I just want to share a story. When I was in the State legislature back in Minnesota several years ago, I was invited in to meet with one of the older judges and spent the day, and he said, you know, when I went on the bench 20 years ago in Albert Lea, MN, there were 20 police officers in town. And today, he said I think they have 50 in Albert Lea. And he said back then, their job was

to keep the peace. Today, their job is to enforce the law. Now if someone has had too much to drink, they have to take him to detox now and there is a huge amount of rigmarole and all that goes with it. He said 20 years ago, if somebody had had a little too much to drink, many times they would put them in the back of the car and take them home.

The question we really do have to wrestle with is how much latitude—and that was in the days when police officers had a huge amount of latitude in terms of how they were going to deal with a fight at the local bar or how they were going to deal with whatever. And I do think we have to come to grips with that basic question of how much latitude we need to give these people. And it does require Congress, it seems to me, being willing to say OK, we really are not as concerned how you get to the goal. We do want a clean environment, we do want safe workplaces, but we do not want $15,000 solutions to $5 problems.

So I do not really have any questions for you, but I think it is something we all have to think about as we begin down this path of sort of bringing the pendulum back to the center. We are going to have to allow some latitude with these different agencies and give them, you know, fairly specific guidelines, but a different charge in terms of how you get there. Are they going to be out there to help keep the peace or just to enforce the law? And right now, the truth of the matter is, many of them are out there and they see their job as to strictly enforce the letter of the law. And it gets very difficult from a congressional perspective, how do you rein in on that without giving them a lot of flexibility.

So with that, again, I just thank you all. I think this has been excellent testimony and the documentation is even better.

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht. Mr. Latham.

Mr. LATHAM. I will be very brief, Mr. Chairman, I know we have several panels to go through here.

But I am one, I think like Gil here, that believes that safety in the workplace, a clean environment, job growth, small business growth, are not exclusive of each other. I mean, I think we need to insert some common sense into the system, and that seems to be what the problem is.

Your comment about you heard an OSHA inspector say that "I am not here to help you," is just mind-boggling as far as I am concerned, because that was the intention of OSHA to begin with, was to work in cooperation and now it has become a punitive agency, it appears anyway. Can anyone tell me when it changed? I mean, you know, is there something 5 years ago or whenever? When did it change from being——

VOICE. Day one.

VOICE. Day one is right. [Laughter.]

VOICE. Basically I think it changed in our area when the Congress allowed the increase in the fine structure, when it went from the $1,000 fine per accident up to a $7,000 fine per accident, and then it went up to $10,000 for a second violation, et cetera. That happened about 2 years ago, perhaps 3.

Mr. LATHAM. And the panel here. Do you have any——

Mr. DUCHMAN. I cannot put a specific year on it, but I would respectfully state that I believe it probably started to occur much before 2 or 3 years ago, I think it was probably maybe 2 or 3 years after the inception of OSHA that it began.

Mr. LATHAM. Mr. Houston.

Mr. HOUSTON. I would think that it started when the rules were promulgated in 1974 and it began as an enforcement agency instead of—if it had started as a consultation agency, we would be a long ways from where we are today.

Mr. LATHAM. Mr. Beal.

Mr. BEAL. All I can speak for is our particular industry, and I think we felt the impact of it toward the early part of 1992.

Mr. LATHAM. Was there a change in law or just attitude somehow?

Mr. BEAL. I could not answer that.

Mr. LATHAM. OK. And that is all I have. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Latham, very good question.

Let me again say thank you to all of the panelists. This has been very helpful and one of the most informative panels we have had. So I appreciate it. Items like this where we have got real examples of citations for something you can go out and buy at the hardware is something that I think most Americans would understand is patently ridiculous. So thank you again for coming, and we will include your entire remarks into the record, and the staff may be following up with you on a couple of other items that we talked about.

Let us move on now to our next panel. This is a group of people who are involved in the agriculture industry. They are Mr. Harvey Johnson, who is a farmer; Mr. David Whiton, who is an owner of a feed and milling company; Richard Siegle, also a farmer; Howard Alff, a farmer here in Iowa; Bill Willis, a soil conservation consultant and Curly Holtz, who I believe is also a farmer. If you could all please come forward, I think we have got seats for everybody, and we may ask you to share the microphones as we move down the line.

If all of the witnesses would please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show that each of the witnesses answered in the affirmative.

Thank you all for coming today, and let me, by way of introduction, say I appreciate the effort of the farming community. One of the things that I heard from farmers in Indiana was, you know, David, we would be able to make ends meet even in cases where prices start to go down on some of our products if we did not have to spend so much money year after year complying with new and additional Federal regulations. And so I worked with some of the folks, particularly in the Indiana Farm Bureau, to list out those. They sent me a book this thick [indicating] of regulations—this was not even the full regulation, it was just a two-page summary of each one that they had to comply with in the State of Indiana, almost all of them Federal regulations. We have been working with Senator Lugar over in the Agriculture Committee in the Senate, to try to include some regulatory relief provisions as we move forward with different legislative vehicles in Congress.

So I appreciate you all coming here and why do we not start with Mr. Johnson, if you could lead off our testimony today on this panel.

STATEMENTS OF HARVEY JOHNSON, FARMER; DAVID WHITON, OWNER, WHITON FEED AND MILLING CO.; RICHARD SIEGLE, FARMER; HOWARD ALFF, FARMER; BILL WILLIS, SOIL CONSERVATION CONSULTANT; AND ROYAL "CURLY" HOLTZ, FARMER

Mr. JOHNSON. Good morning.

Mr. MCINTOSH. Good morning, welcome.

Mr. JOHNSON. I am Harvey D. Johnson of Forest City, IA. I am grateful for the opportunity to testify on behalf of our situation and all the farmers of northern Iowa and southern Minnesota. I wish I could have brought all my neighbors along with me this morning, many of whom could also tell you horror stories of their coercion and harassment with the SCS and their conservationists.

I have in my hand 1,000 signatures on petitions stating that they want this wetland nonsense stopped immediately.

This wetland confiscation by designation without compensation is the most ruthless, vicious, coercing, harassing assault on private property rights of the 20th century. It is also the most unfair, unjust and unconstitutional governmental land-grab theft of a magnitude that has ever occurred since the founding of America. It is not about saving wetlands, it is about destroying people's lives.

I never thought we would ever see the day when we would have to fight the Federal Government in court to protect our private property, when the fifth amendment to the Constitution is supposed to do that for us.

It is pure blackmail and fascism when the regulators, which include the SCS, Corps of Engineers, EPA and the Fish and Wildlife, can apply an eternal—and I emphasize eternal—designation to private property without the owner's consent—and I emphasize again, without the owner's consent—and then take your Government payments away.

We have also been accused of violating the 404 Clean Water Act, which is also very unfair. The Government will pay farmers in southern Iowa to build terraces which create wetlands and then pay them to drain them.

Our neighbors can all tile without permits. The water is all the same, and it all goes into the same ditch, so why are we as individuals in violation of the Clean Water Act when these other farmers are not. This is not fair.

Our fiasco started 3 years ago when our son purchased 82 acres of property which the SCS had placed a 49-acre wetland designation on. It is nothing more than an absolutely level piece of prime northern Iowa soil. I do not know why we have wetlands when none of our neighbors have any. We have appealed the unjust designation to the State level. It is very hypocritical to have to appeal to the thieves to get your property back. They only reduced the wetland designation by 10 acres.

Mr. Dan Sulky, the Hancock County conservationist, trespassed twice on our property and proceeded to turn us in to the Corps of Engineers. We have received two registered cease and desist orders

plus several threatening phone calls which ordered us to break all the tile and return the property to its pre-project condition. If we did not abide by their whims and orders, they would fine us $25,000 per day.

Last spring, the local ASCS office requested that we write them a letter stating exactly how we were farming the 82 acres of our son's property, of which he is not receiving any Government payments. If we did not respond with a written statement, they would not let us sign up for the 1995 farm program. We thought everything was finally settled until a fellow by the name of Martin Dahlke, who is representing Mr. Charles Gillum, Office of Inspector General of the USDA, walked into our local bank in Forest City, IA and told them that the USDA was going to subpoena all of our family's bank records clear back to 1992. Needless to say, we all about had heart attacks and you would have also been upset if the Government did this to you and your family and your only crime was trying to protect your personal property and farming your own land and paying property taxes, interest and principal.

The subpoena notice has accused us of fraud. They have been to the county courthouse plus other places of business, and they know absolutely everything about our business for the last 4 years, trying to justify their actions. All of this nonsense and we as property owners have absolutely not had one thing to say about anything they are doing to us as a family.

This terrible assault on our lives and property will eventually cause death in our family because of all the stress on us. Again, all of you would also respond the same way if the Government stole your property by designation. It is no wonder I had liver cancer and many sleepless nights. My wife and son have ulcers and our daughter is on the verge of anorexia because of the many unknowns of what will happen to us in the future in this fiasco.

I am sorry, I cannot finish.

[The prepared statement of Mr. Johnson follows:]

HARVEY D. JOHNSON
1665 - 310
Forest City, Iowa 50436
515-581-3997 - phone
515-581-4997 - fax

TO: Congressman Tom Latham
Congressman Greg Ganske

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This terrible assault on our lives and property will eventually cause death in our family because of all the stress on us as individuals. Again, all of you would also respond the same way if the government stole your property by designation. It is no wonder I had liver cancer and many sleepless nights. My wife and son have ulcers and our daughter is on the verge of anorexia because of the many unknowns and what the future holds in this fiasco.

If the government thinks wetlands are so valuable, let them buy them and let all the taxpayers pay for them, not just a few select farmers.

The DNR has purchased 4,800 acres within 20 miles of our farm. These acres will all be wetlands and conservation areas. How much more wetland do they want?

Dennis Avery of the Hudson Institute in Washington, D.C. stated it best when he said what a waste to not utilize our good productive Clarion-Webster soil with the ideal rainfall and the proper sunshine.

Farmers all across northern Iowa and southern Minnesota are mad at the SCS and all their conservationists, plus all the other regulatory agencies. We have had enough of this wetland confiscation nonsense and we are not going to stand idly by and take it any longer.

If this confiscation of private property by designation without compensation is not stopped dead in its tracks, it will continue to affect land values, transfers and business transactions from now to eternity. Why own property, if the federal government can come in at any time and confiscate it by designation? It is not fair to provide $92 million to pay farmers to reinvent wetlands, but not pay

or compensate a farmer for a designated piece of property.

Thank you for this opportunity. I would like to close by reading and submitting these petitions for your consideration. They have already been given to Congressman Latham, Senator Grassley and Senator Harkin.

It reads as follows:

We, the undersigned farmers of northern Iowa and southern Minnesota, are sick and tired of this wetland confiscation nonsense. We are fed up with the government putting an eternal designation on our property without our consent and/or just compensation.

Please stop wetland determinations immediately and rescind all the wetland determinations as set forth in the 1985 and 1990 farm bills. We want our land back.

We strongly object to the regulatory agencies using our tax dollars for wetland designations. Therefore, stop and/or reduce all the wasted taxpayer funding to the NRCS, the Corps of Engineers, the EPA, the Fish and Wildlife, and any other agency involve din this wetland taking by designation.

We also strongly urge you to eliminate all the swampbuster, sodbuster, and wetland language in the 1995 farm bill unless the government obtains the landowner's permission and properly compensates the property owner for their taking and designations.

Thank you for your immediate action on this critical wetland designation fiasco.

Respectfully submitted,

Harvey D. Johnson

Mr. MCINTOSH. Well, thank you very much, Mr. Johnson. It is a tragedy when our Government inflicts that kind of pain on a family and thank you for coming here today and sharing with us, I know it takes a lot to do that.

We will do something about this in this Congress. Mr. Latham mentioned earlier this new Congress is dedicated to restoring the Constitutional right to your property and redressing those wrongs. We are not quite a majority in all of the bodies to get that done, but we will get it done for you and your family. So thank you very much for coming today and sharing with us.

Mr. JOHNSON. I guess if I may make one statement, I wish something could be done because it is going to cause death in our family if this thing is not stopped immediately. It has got to be stopped and stopped immediately.

Mr. MCINTOSH. Thank you, and thank you for bringing forth your testimony in a very powerful way.

Let me turn now to Mr. Whiton, who is the owner of Whiton Feed and Milling Co.

Mr. WHITON. Thank you and I appreciate the opportunity to be able to speak. I can start out, when they first contacted me to speak, they said Dave, do you mind getting in a room and talking to a few guys about some of the things that are bothering you, and pretty soon I get a formal fax from Washington, DC explaining exactly what we are going to do and the magnitude of it. So again, I thank you.

What I would like to do is give you a little history of myself—I guess what I am trying to get across, and I think a few other people can go along with me. I just consider myself pretty much an average U.S. citizen and average Iowan that has worked hard.

In the mid-1950's, my father Jack, and Uncle Bill and my grandfather George started a small feed store called Whiton Feed. At this time, Dad only sold bag feed for another large manufacturer. They also continued to raise corn, beans, swine and cattle on the family farm located 4 miles north of Perry.

In the early 1960's, my father, and grandfather purchased the Perry mill and from here is the real beginning of Whiton Feed. The business grew, my uncle decided to stay and run the farm and my father Jack wanted to operate the feed mill. My grandfather spent his later years helping us out at both places and from that point until now, Whiton Feed has updated and added new manufacturing equipment.

This is how I fit in the picture. I was born in 1951, I graduated from Perry High School in 1970, graduated from Iowa State in 1974. After Iowa State, I took a job with a large bank in Atlanta, GA. After 2 years there, the midwest and Whiton Feed beckoned me to return and I became involved with the business. About this same time, my younger brother Marc also became involved in the business. Like me, he graduated from Perry, and he graduated from the other university, the University of Iowa.

Dad kept working with us until the mid-1980's, then he retired. He was honest, fair, had strict business attitude and practices and these are still the foundations of Whiton Feed and they are still deeply ingrained in my business values.

What and who is Whiton Feed & Milling Co.? We are—and one of the few left—a family owned, independent feed manufacturer. Simply put, we buy ingredients from the local farmers and processors, put these ingredients together in meal-pellet-crumble form to make complete and balanced rations for all type of livestock.

What I have got here is a picture of our mill, if you would not mind showing the Congressmen this. I want to show you that we are from a very small town, a small feed mill, we are not a mega mill.

We have seven employees, that includes my brother and myself. We take care of our employees. We have full health care for them provided by Whiton Feed, which is through Blue Cross & Blue Shield, which at the expense of Whiton Feed Co. We contribute to a Whiton Feed profit sharing plan for their retirement, with no matching contribution, we will contribute up to 15 percent to their retirement. We also provide vacations, a loose atmosphere of letting employees be able to be involved with their families like conferences and athletic events.

In a nutshell, we make feed, put it in a bulk truck and we deliver it to the farm. We manufacture about 100 tons of feed a day, that is about 25,000 tons a year.

Our most important asset, I feel, is our customer, the farmer. My father always said he never worried about the money the farmers owed him because he never dealt with dishonest people, he always dealt with his customers, the farmers.

Our niche in the feed business is to take care of the small producer. We gear ourselves to be able to take out 1 or 2 tons, whereas the competition demands large loads and will not deliver. We honestly feel we have been able to keep some of the smaller family farmers in business within a 20- to 30-mile radius of Perry.

Ladies and gentlemen, Whiton Feed is nothing but an average successful family business in an average and normal town dealing with nothing but average and normal suppliers and customers. I guess you could say we are the epitome of the hardworking American citizen.

But my biggest hurdle and frustration is over government regulation. I can always fix my machinery problems, but I cannot do battle with the government regulations that keep me in daily fear and at the same time try to continue to operate my business. We have to perform, comply, obey and be threatened of our livelihoods to obey the following county, State, and Federal regulations.

Let me list a few of them, just to keep seven employees, including the two owners, in business: The FDA, the DNR, the EPA, OSHA, DOT, weight and measures, workmen's comp, unemployment regulations, wastewater management, hazardous material management, bankruptcy laws, drug and alcohol tests, commercial drivers licenses, grain tax, feed tax, machinery tax, unemployment tax, workmen's comp insurance, scale license, both State and private, incorporation license, property tax, tag labeling regulations, Americans with Disabilities Act, annual truck inspections—and I could go on. In fact, Agricom, which we are—and Agribusiness is an association that we belong to, they have put out a calendar to help me keep track of all these regulations. Of course, I had to pay

for this, but these are listed in here—this is for 1995, and they list most of these in here.

I could go on, but I think most of my time is up. If I could just give a few short examples—are you going to let me go ahead and finish?

Mr. MCINTOSH. Perhaps—you have some interesting testimony that Mr. Ganske is pointing out on an OSHA inspection, if you could share that with us.

Mr. WHITON. Being a small employer, OSHA I guess you could say does not really bother us. But the one time they did, or the several times they have inspected us—this has been years ago—we had a few minor violations, a few guards not on augers, a few handrailings, that type of thing. But the one that impressed me the most was in our restroom, they tagged our restroom because we did not have a toilet paper holder, the toilet paper sat on the back of the stool, so we had to run down to the hardware store, put a toilet paper holder up and install the toilet paper, but to this day, the toilet paper is still on the back of the stool, but we do have a holder. [Laughter.]

Mr. MCINTOSH. They did not care where the toilet paper was, they just wanted to make sure you had a holder.

Mr. WHITON. Exactly, exactly.

One other quick one is with the Department—DOT—I have got another picture. This is a brand new truck we just bought, $62,000, a beautiful truck. I cannot drive this truck, I have to have a CDL, which requires me to go to a special testing and take a test to get the CDL. We drive within 30 miles of Perry, IA. They have mandated these laws for interstate transportation, these huge mega-companies that drive trucks all over the Nation, and I as an owner cannot drive it. You know, these are the kind of regulations that one size just does not fit all. I am not up there with the Cargills, the Continental Grains, the Purinas. I am trying to survive and I cannot do it being nicked every single day.

I cannot complain about fines, we have never been in violation of any kind of rules or anything, but each day—I mean I spend 3 to 4 weeks a year trying to comply and filling out paperwork and I do not have the resources to hire a compliance officer. So it is a challenge.

Mr. MCINTOSH. Or a fleet of lawyers.

Mr. WHITON. Or a fleet of lawyers, correct.

Mr. MCINTOSH. Thank you and thank you for your full testimony, Mr. Whiton, I appreciate that.

I have got a couple of questions for you when we get to the question period.

The next witness that we have got is Mr. Richard Siegle, who is also a farmer.

[The prepared statement of Mr. Whiton follows:]

Testimony: February 9, 1996
Dave Whiton, Perry, Iowa

In the mid 1950's, my father Jack, Uncle Bill, and Grandfather George started a small feed store-Whiton Feed. At this time Dad only sold bag feed for another large manufacturer. They also continued to raise corn, beans, swine, and cattle on the family farm located 4 miles north of Perry.

In the early 1960's my father and grandfather purchased the "Perry Mill" and from here the real beginning of Whiton Feed. The business grew. Uncle Bill decided to stay and run the farm and my father, Jack, wanted to operate the mill. My grandfather spent his later years helping out at both places of business. From that point until now, Whiten Feed has updated and added new feed manufacturing equipment.

This is how I fit into the picture. I was born in 1951, graduated from Perry High School in 1970 and from Iowa State University in 1974. After Iowa State, I took a job with Trust Bank of Georgia in Atlanta, Georgia, the nations 63rd largest bank. After two years of banking, the Midwest and Whiton Feed beckoned me to return and I became involved with the business. About this same time, my younger brother Marc, also became involved. Like me, he graduated from Perry and went on the graduate from the "other university" the University of Iowa.

Dad kept working with us until the mid 1980's and then retired. His honest, fair, and strict business attitude and practices are still the foundation of Whiton Feed Co. and still deeply ingrained into my business values.

What and who is Whiton Feed & Milling Company? We are a (and one of the few left) family owned, independent feed manufacturer. Simply put - we buy feed ingredients from local farmers and processors and put these ingredients together in meal-pellet-crumble form to make complete and balanced feed for all types of livestock, but mostly for swine and poultry.

We have (7) seven employees, including my brother and myself. We take care of our employees. We provide full healthcare coverage through Blue Cross and Blue Shield at Whiton's expense (including dental). We also contribute 15% to their Whiton Feed Profit Sharing Plan - not any matching - not a 401K - but we put the full 15% in for their retirement. We also provide paid vacation and a loose atmosphere of letting the employees be able to be involved with their families. (i.e. time off for school conferences, ballgames, etc.)

In a nutshell, we make feed, put it in one of our bulk delivery trucks and deliver it to the farm. We manufacture (in one shift - 9 hrs.) about 100 ton of feed a day or about 25,000 ton a year. This comes to about 4-5 million dollars in sales per year. We have four bulk delivery trucks which deliver our products. We have 3 - four ton mixers, a 100 horsepower pellet mill, a crumbler and a grinder (hammermill) to grind the corn we purchase.

Our most important asset we have is our customer - the farmer. My father always said he never was worried about the money the farmers owed him because he only dealt with honest people - our customers.

Our niche in the feed business is to take care of the small guy. We gear ourselves to be able to take care of one or two tons of feed, whereas the competition demands large loads or they won't deliver. We honestly feed we have been able to help keep some of the smaller family farmers in business within a 30 mile radius of Perry. Of course, we have some very large accounts we take care of also.

Ladies and gentlemen, Whiton Feed Co. is nothing but an average, successful family business in an average and normal town dealing with nothing but average, normal suppliers and customers. I guess you could say we are the epitome of the normal hardworking American citizen.

Looks like a pretty picture doesn't it? We have our own problems - we have sick employees, -30 degree weather, frozen gear boxes, gelled up diesel trucks, burned in two elevator legs, frozen pipes and many more headaches. These problems, I can handle.

But my biggest hurdle and frustration is over government regulation. I can fix the machinery problems, but I can not continue to battle government regulations that keep me in daily fear and at the same time continue to operate my business. We have to perform, comply, obey, and be threatened of our livelihoods to obey the following county, state, and federal regulations.

Let me list the compliances I have with only 7 employees just to stay in business:
FDA - DNR - EPA - OSHA - DOT - weight and measures - workman's comp
unemployment regulations - wastewater management - hazardous material management -
bankruptcy laws - drug and alcohol test - commercial drivers licenses -
grain tax - feed tax - machinery tax - unemployment taxes - workman's comp insurance
scale licenses (both state and private) - incorporation licenses - property tax -
tag labeling regulations and annual truck inspections and I've probably missed a few.

Let me further explain some of my frustrations:

Let's start with the Department of Transportation - I own 4 delivery trucks. I cannot drive any of them unless I go through a bunch of "red tape" and baloney to receive a CDL. Regulations have lumped a little company that travels no further than 50 miles from home into a bunch of regulations and laws set for interstate transportation. Who - or what persons - actually design and make up this type of regulation? What do they intend to accomplish? Obviously, it is a group of people NOT involved in trying to run a small business. I would suggest that these rules come from an agency "created" by the government to "create more government jobs or further justify the ones they have". The DOT can - at will - stop my trucks with no regard to my work schedule or payroll- pull them over for inspection for anywhere from 15 minutes to 1 hour and nit pick very minor potential problems from a dim brake light to being over weight. There is no due process - the DOT officer is the sole judge and jury. We drive very good equipment, 1991 - 1995 trucks. It's a simple business decision - if we drive junk, they will break down and the repair time costs money. If that continues I would be out of business and I don't feel I need government to tell me how to maintain my trucks.

Let's talk about OSHA. The threat of all business owners. I would suggest that the agency is set up all wrong. OSHA should be there to help us! Their whole purpose should not be to put me out of business with fines and shutdowns but OSHA should be structured to come in and tell me what it would take to help me operate more safely and meet the needs of my employees and business. Shutting me down only hurts my employees, my customers, they town and ultimately my company. If this makes sense - I am a taxpayer, part of which funds OSHA. Why shouldn't they be geared to help me succeed rather than to shut me down? It is beyond my comprehension - I would suggest that any government operation should have "help" as their motto - not penalty or shutdown.

Let me give you one example of an OSHA inspection. Upon inspection, my inspector cited me for not having a toilet paper "holder" in or restroom. And we are paying money for this type of inspection?

Let's move onto the EPA - IDNR. As you may be aware, this last year the IDNR has been trying to saddle us with a "mega form" to control air emissions. The potential to emit - I ask you to look at this form that had to be filled out. (Which incidentally the IDNR disposed of the following year) I am no engineer and did not have the expertise or time to learn all of the things involved to do this so we had to hire someone to fill this encyclopedia out. (Display forms)

My question to you is who - I mean what actual person because it had to start with someone - who could have possibly dreamed up such a needless regulation. This person obviously did not take the time to research the difference between potential to emit and actual emissions, they did not think through the ramifications of the emissions which come from an operation such as mine and to put it bluntly - one regulation does not fit all.

With the help of Senator Grassley, I think there has been some reprieve on this ridiculous regulation but I would also suggest that before any regulation is implement, there is a cost analysis to the regulation, a cost benefit done to justify the regulation and that 10% of all regulated business compliance efforts be first done by the EPA/DNR before the other 90% of us must comply. That will give the regulator actual experience in compliance and an understanding of the costs involved before full implementation is required. Now that is government helping people. First of all a regulator must know what a feed mill looks like and what it does!

The Federal Drug Administration is an agency that basically controls feed manufacture. They throw me in with the Cargill's, Continental Grains, Purinas and all of the mega feed manufacturers. How can I, as small as I am, have the time or resources to comply with the lengthy inspections and regulations? Is it the goal of government to make us all mega operations?

Slowly the government is taking control of our business. They are telling me how to mix feed, when to grease my machinery, when to inspect my mixers. Again, let me remind you that as a business owner, if I fail to maintain my equipment I will fail. I do not need the regulators, that I am paying for, telling me how to run my business.

I could continue but my time is getting short. If I can remind you once more, I am being bogged down with my government regulation. I cannot afford to hire someone to just handle government regulations. It is hard to tell you how many days I alone have to spend to comply with these regulations but I estimate 3 - 4 weeks a year and that is ever growing. I know there are other days spent by my employees.

I have been at this for over twenty years and the last ten years have become progressively more frustrating. As you might be able to tell - I am getting tired, almost worn out, trying to keep up. I love what I do - let me do what I do best - let me keep my men working with a good wage & benefits - let me help keep the small family farmer in business and let me leave you with one last thought - or should I say plea....."One size does not fit all". My government cannot continue to make "blanket" regulations.

Mr. SIEGLE. Thank you. I have been in DC, I have seen your faces and I am pleased that you are here. Thank you for being here so we cannot have to go such a long distance and for you taking your time to listen to some of our problems.

I happen to be Richard Siegle. I have lived in this vicinity that I am going to be speaking about all my life. I am 61 years of age and I would just like to relate to you that I am concerned about one issue. I happen to be chairman of a drainage district.

If you can take the palm of your hand—I will give you the background. It is too bad I have not got a map—you take your four fingers and I will call them drainage ditches which drain water from the upland and from seep water from the two adjoining rivers, the Iowa and the Mississippi. The palm of your hand, you can call it the Iowa slough, as I have called it a slough in my testimony. By your wrist then I have a pumping station with three pumps, we pump the water from this 17,000 acres in this district, into the Mississippi River. This 17,000 acres is a portion of 50,000 acres in the whole district—we have several drainage districts.

We have run into a problem since 1993. We did not flood but we drowned internally, we had a lot of water depth because we were not able to pump it off, a lot of auxiliary pumps and we were not able to pump the water off of the land. It in return caused a lot of sediment to be in our drainage ditches and also in the Iowa slough. From that point on, we cleaned our drainage ditches, starting in the fall of 1993, continued and we have all the drainage ditches completed as of now.

Since 1993, we have tried very hard to get our 1.1 mile of slough area dredged out. It has to be dredged hydraulically. We have asked all the environmental agencies if we may place it on the side of the slough. We had all of them there, took them in a boat, we walked over all the property. It is wetlands, but we told them that we would put the material there and we would put it back to native grass and we would create much more habitat than what there is now. It is not farm ground, it will never be farm ground and the farmers welcome the material there and will just leave it at that.

Since then, we have been searching what to do. We had to rent 47 acres of prime farm ground, agriculture, which I had to prove or we had to prove it was not wetland—prime farm ground. Then we were asked to—I am running out of time, I have got a big story—see if there were any artifacts on this piece of property. In turn, we had to furnish an archeologist to do this, we had to furnish all the machinery to do this. After weeks of searching, they found one artifact, one artifact. They have taken 5 acres, approximately, of this 47 and are going to make us put a 10 foot high levee around this. We are not able to even drive a pickup truck on this ground. We are not even allowed to get our machinery over across this ground, artifact ground, to our 40 some acres that we have to use to build the levee to put the dredge material on. I do not know what we are going to be able to do. We just received this the last week. And please bear with me, we need help—common sense. Please, it is common sense.

I have much more, but thank you.

Mr. MCINTOSH. Thank you for your story, Mr. Siegle, and we will make sure we get the rest of it into the record and make sure

somebody gets there to help you sort through that. What a morass of conflicting regulation. Thank you for coming today.

Our next witness is Mr. Howard Alff. Thank you for coming.

[The prepared statement of Mr. Siegle follows:]

STATEMENT OF RICHARD SIEGLE

TO: SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS ON FRIDAY, FEBRUARY 9, 1996 IN DES MOINES, IOWA

GOOD MORNING. MY NAME IS RICHARD SIEGLE. I AM A FARMER RESIDING NEAR OAKVILLE, IOWA, WHICH IS A SMALL COMMUNITY LOCATED IN THE MISSISSIPPI RIVER BOTTOM AREA IN SOUTHEAST IOWA. I PRESENTLY OPERATE 1,100 ACRES OF PRIME AGRICULTURAL LAND. I AM A MEMBER OF THE IOWA AND NATIONAL CORN GROWERS ASSOCIATION AND I AM ALSO ON THE TRANSPORTATION TASK FORCE AT THE NATIONAL CORN GROWERS ASSOCIATION.

THE LAND WHICH I FARM IS LOCATED WITHIN 50,000 ACRES OF BOTTOM LAND PROTECTED BY A 54 MILE LEVEE SYSTEM RUNNING FROM NORTH OF OAKVILLE TO BURLINGTON, IOWA. THERE ARE 3 DRAINAGE DISTRICTS BEHIND THE LEVEE SYSTEM; I AM IN LOUISA-DES MOINES DRAINAGE DISTRICT NO. 4 AND SERVE AS CHAIRMAN OF THE BOARD OF TRUSTEES OF THAT DISTRICT. I HAVE HELD THIS POSITION FOR 15 YEARS. AS A POLITICAL SUBDIVISION OF THE STATE OF IOWA, OUR DRAINAGE DISTRICT IS SUBJECT TO THE DRAINAGE LAWS OF THE STATE OF IOWA AND SEVERAL STATE AND FEDERAL REGULATORY AGENCIES. IN MY TESTIMONY THIS MORNING I WILL ATTEMPT TO GIVE YOU MY VIEWS AS TO HOW SEVERAL OF THESE FEDERAL REGULATORY AGENCIES AFFECT MY SMALL BUSINESS AS A FARMER AND TRUCKER AND AS AN ELECTED PUBLIC OFFICIAL SERVING THE DRAINAGE DISTRICT.

THE GREAT MISSISSIPPI RIVER FLOOD OF 1993 HAD A DEVASTATING IMPACT ON THE AREA IN WHICH I FARM. I WAS INVOLVED IN FLOOD FIGHTING EFFORTS STARTING IN APRIL OF 1993 AND CONTINUING THROUGH THE REST OF THE YEAR. AT

THE TIME MY NEIGHBORS AND MYSELF THOUGHT NOTHING COULD BE WORSE THAN OUR EXPERIENCE WITH THE FLOOD. SINCE THE FLOOD WATERS RECEDED, HOWEVER, AND AFTER GOING THROUGH A LONG AND EXPENSIVE FLOOD RECOVERY EFFORT, WE ARE NOT SURE WHICH WAS WORSE AS BETWEEN THE FLOOD OR THE AFTERMATH. AS I SPEAK TO YOU TODAY, I WOULD PROBABLY CHOOSE THE FLOOD OVER THE AFTERMATH.

WHY IS THIS SO? I WILL TRY TO SUM UP THE REASONS FOR MY FEELINGS AND GIVE YOU AN EXAMPLE OR TWO OF WHY I BELIEVE THE WAY I DO.

I AM NOT HERE TO POINT THE FINGER AT ANY PARTICULAR FEDERAL REGULATORY AGENCY OR ANY PARTICULAR INDIVIDUALS WITHIN THOSE AGENCIES. I WILL SIMPLY SAY THAT THERE ARE SOME AGENCIES WHICH HAVE BEEN MUCH EASIER TO DEAL WITH THAN OTHERS. FOR INSTANCE, THE OLD ASCS, NOW NRCS, WORKED CLOSELY WITH MY DISTRICT AND OTHER AFFECTED DISTRICTS IN EFFORTS TO CORRECT SOME LONGSTANDING PROBLEMS WITH OUR MAIN MISSISSIPPI RIVER LEVEE WHICH HAD BEEN PRESENT FOR YEARS AND WORSENED CONSIDERABLY BY THE 1993 FLOOD. THIS AGENCY EXPEDITED THE FLOOD RECOVERY PROCESS BY PUTTING EMERGENCY REGULATIONS INTO EFFECT AND WORKING CLOSELY WITH THE REPRESENTATIVES OF OUR DISTRICTS. A SUBSTANTIAL PROJECT WAS COMPLETED IN LESS THAN A YEAR BY OUR DISTRICTS WORKING IN COOPERATION WITH THE FEDERAL AGENCY ON A COST SHARE BASIS. FROM OUR POINT OF VIEW, THE PROJECT WAS A HUGE SUCCESS AND IS AN EXAMPLE OF HOW GOOD THINGS CAN COME OUT OF THE REGULATORY PROCESS IF PEOPLE KEEP THEIR PERSPECTIVE AND WORK TOWARDS A COMMON GOAL.

ON THE OTHER SIDE OF THE LEDGER IS A PROJECT THAT OUR DRAINAGE DISTRICT COMMENCED IN 1994, BUT STILL DOES NOT HAVE FULL REGULATORY CLEARANCE TO PERFORM. THE PROJECT INVOLVES REMOVING SILTATION FROM DRAINAGE DITCHES WHICH WERE SILTED IN DURING THE 1993 FLOOD. THIS IS NECESSARY SO THAT THESE DITCHES CAN FUNCTION AS THEY WERE ORIGINALLY DESIGNED AND CONSTRUCTED TO DO. WE STILL DO NOT HAVE CLEARANCE TO COMMENCE OUR PROJECT. THESE SPECIFIC AREAS WE HAVE HAD EXTREME PROBLEMS IN DEALING WITH INVOLVE THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 OR NEPA AND THE CLEAN WATER ACT OF 1977 AND THE PERMITTING REQUIREMENTS THEREUNDER.

THE PROCESS TO WHICH WE HAVE BEEN SUBJECTED LACKS COMMON SENSE AND CONSISTENCY. IN MANY INSTANCES THE PEOPLE WE ARE DEALING WITH ARE UNINFORMED AND DO NOT TAKE THE TIME TO CONCERN THEMSELVES WITH THE FACTS. THEY ARE UNWILLING TO COME TO OUR PROJECT SITE TO UNDERSTAND OUR PROBLEMS. EVEN AS ELECTED PUBLIC OFFICIALS IN THE STATE OF IOWA, WE FEEL AS THOUGH WE HAVE VERY LITTLE LOCAL CONTROL OVER THE THINGS THAT HAPPEN IN OUR DISTRICT DUE TO THE FACT THAT WE ARE SUBJECT TO THE DICTATES OF THESE REGULATORY AGENCIES.

IN MANY CASES WE ARE SUBJECT TO INCONSISTENT, NON-EXISTENT, OR HARD TO UNDERSTAND RULES AND MYSTIFIED WHEN THESE RULES ARE UNEVENLY APPLIED TO US. WE DEAL WITH FEDERAL AGENCY REPRESENTATIVES WHO APPEAR TO BE MORE INTERESTED IN PUSHING THEIR OWN AGENDAS THAN THEY ARE IN THE PUBLIC GOOD. SOMETIMES THESE PEOPLE FORGET WHO THEY ARE WORKING FOR AND SEEM MORE INTERESTED IN CREATING PROBLEMS THAN SOLVING THEM.

IN OUR PERMIT PROCESS WE HAVE RUN INTO INDIVIDUALS

WHO NOT ONLY WILL NOT COME TO OUR SITE IN ORDER TO ASSIST US, THEY WILL NOT TALK WITH US OVER THE TELEPHONE OR MEET AT THEIR OWN OFFICES TO DISCUSS PROBLEMS AND SOLUTIONS. THE ONLY WAY WE HAVE BEEN ABLE TO GET THE REGULATORY PROCESS MOVING IS TO ENLIST THE AID OF CONGRESSMAN LIGHTFOOT AND HIS AIDES IN BURLINGTON AND TO HIRE A LAWYER TO DEAL WITH THESE REGULATORY AGENCIES. THIS IS UNNECESSARY, TIME CONSUMING, AND EXPENSIVE. AND THE BURDEN OF ALL THIS FALLS ON THE PEOPLE WHO ARE THE TAXPAYERS OF THE PUBLIC BODIES THAT WE REPRESENT, WHO CONTINUALLY EXPRESS THEIR FRUSTRATION TO US AS THEIR ELECTED REPRESENTATIVES.

FROM MY POINT OF VIEW, THE PROCESS WE HAVE BEEN FORCED TO GO THROUGH IN GETTING A PERMIT TO CLEAN OUT OUR DRAINAGE DITCHES IS FAR TOO COMPLICATED, THERE ARE TOO MANY AGENCIES INVOLVED, THE RESULTS ARE TOO UNCERTAIN, AND IT IS TOO EXPENSIVE AND TIME CONSUMING. IT SHOULDN'T TAKE OVER ONE YEAR TO GET A PERMIT TO DO THE WORK NECESSARY TO REPAIR DAMAGE DONE IN 1993. WE SHOULD NOT BE SUBJECT TO THE WHIMS OF A BUREAUCRAT WHO SEEMINGLY IS NOT ACCOUNTABLE TO ANYONE. SOME FORM OF ACCOUNTABILITY NEEDS TO BE PUT INTO THE REGULATORY PROCESS FOR THOSE PEOPLE WHO CANNOT OR WILL NOT DO THEIR JOB PROPERLY OR EFFICIENTLY. WE HAVE FOUND THAT THERE IS VERY LITTLE THAT WE CAN DO IF ONE OF THESE PEOPLE DO NOT DO THEIR JOBS PROPERLY BECAUSE THERE IS NO ACCOUNTABILITY BUILT INTO THE SYSTEM AND WE HAVE NOT BEEN ABLE TO FIND OTHER PERSONS WHO WILL TAKE THE RESPONSIBILITY OF TRYING TO DEAL WITH THE PROBLEM. THUS IT BECOMES A FRUSTRATING PROCESS.

WE HOPE THAT OUR DISTRICT WILL GET FINAL REGULATORY CLEARANCE THIS SPRING TO COMPLETE OUR DITCH CLEAN-OUT, BUT WITHIN THE LAST WEEK ANOTHER

ROAD BLOCK HAS BEEN PUT INTO OUR WAY BY THOSE PERSONS ADMINISTERING NEPA. THE ADDITIONAL REQUESTS THEY ARE MAKING AT THIS TIME ARE COMPLETELY UNREASONABLE, ARBITRARY, AND WILL COST THE DISTRICT MORE TAXPAYERS' DOLLARS TO SATISFY SOMEONE WITHIN THE REGULATORY AGENCY ON A MATTER WHICH IS HIGHLY QUESTIONABLE FROM THE STANDPOINT OF NECESSITY. BEING REASONABLE AND USING COMMON SENSE DO NOT APPEAR TO APPLY TO THIS PROCESS. I AM NOT ASKING YOU TO ASSIST US IN ABOLISHING THE PROGRAMS OR REGULATORY AGENCIES THAT WE WORK UNDER, BUT SOME RELIEF IN THE FORM OF SIMPLIFICATION AND RESTORING LOCAL CONTROL WOULD BE APPRECIATED. AT THIS POINT IT MIGHT BE A BETTER FAITH TO BE DROWNED BY THE WATERS OF THE MISSISSIPPI RIVER RATHER THAN DROWNED BY THE ACTIONS OF SOME OF THE REGULATORY AGENCIES WE HAVE TO DEAL WITH.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

OUR DRAINAGE DITCHES DRAIN WATER FROM UPLAND AND SEEP WATER FROM TWO RIVERS (THE IOWA & MISSISSIPPI) TO A LARGE BODY OF WATER CALLED THE SLOUGH. THE WATER FROM THE SLOUGH IS THEN PUMPED INTO THE MISSISSIPPI RIVER.

THE 1993 FLOOD FILLED THE DITCHES WITH SOIL AND ALSO FROM PRESSURE FROM HIGH RIVERS, PUSHED THE BOTTOM OF THE DITCHES AND SLOUGH UPWARD. THAT STOPPED THE WATER FROM FLOWING INTO THE SLOUGH SO WE COULD PUMP IT OUT INTO THE RIVER. AT THIS TIME, ALL DITCHES HAVE BEEN CLEANED EXCEPT THE 1.1 MILES OF SLOUGH.

WE TRIED SEVERAL OTHER PLANS TO DREDGE THIS SLOUGH BUT WAS STOPPED BY ENVIRONMENTAL RULES, SUCH AS PUTTING ON WETLANDS.

WE ARE RENTING 47 ACRES OF PRIME FARM LAND TO CAST THE DREDGE MATERIAL THAT WE REMOVE. HOWEVER, BEFORE DOING THIS WE HAD TO HIRE AN ARCHEOLOGIST, WHICH WE DID. WE WERE REQUIRED TO SUPPLY ALL MACHINERY NEEDED TO SEE IF THERE WERE ANY ARTIFACTS ON THIS LAND. AFTER WEEKS OF SEARCHING ONLY ONE ARTIFACT WAS FOUND.

WE ARE NOW REQUIRED TO LEAVE 5 ACRES. NO MATERIAL MAY BE APPLIED TO THIS PIECE OF LAND AND NOTHING CAN BE DRIVEN ON IT. (NOT EVEN A PICK-UP). ALSO WE MUST BUILD A 10 FOOT LEVEE AROUND THIS 5 ACRES. WE ARE HAVING A DIFFICULT TIME TRYING TO GET THE MACHINERY TO THE REMAINING ACRES TO BUILD THE LEVEE WHEN WE ARE NOT ALLOWED TO DRIVE ON THE THIS GROUND.

THE COST IS GETTING HIGHER AND HIGHER.

2 YEARS HAVE PAST AND WE STILL DON'T HAVE THIS SLOUGH PUMPED OUT SO THAT WE CAN KEEP THE 17000 ACRES OF PRIME FARM LAND IN PRODUCTION AS WELL AS PROTECT A TOWN OF 500.

LETS HAVE COMMON SENSE!

Mr. ALFF. Thank you for inviting me and I appreciate your concern over these problems.

The subject I would like to address is the whistleblowers on the regulations and why we as U.S. citizens do not have the right to know who the whistleblowers are.

I have a farm in Cass County, and on this farm I have some CRP ground. But it was not all eligible for CRP, so part of it is in pasture.

In the spring of 1993, I received a letter from the ASCS office saying that I had cattle running on my CRP ground. I work at the local elevator, I am the assistant manager, so I deal with these people every day, so I called them, I know them personally. And I told them that I rent this pasture to a friend of mine. So they said OK, we will acknowledge that and we will take care of it.

A few days later the ASCS called again—this time they called me, and said that they had two more calls that my cattle were still on the CRP ground. I said well, I explained to you—and we went out and checked and the tenant has checked the fence and everything is fine and there is no cattle on there. They said they would acknowledge this again.

About a week later, the field man from ASCS stopped in at the co-op, and I know him personally too. He said he had been out looking and that he could not find any evidence that cattle had been on this ground. I said no, they have not been and we have kept close watch because we have been turned in four or five times already. He said well, I am just going to go back and report it.

So time went on awhile and about 2 weeks later, my tenant came in and he said the field man was back out and he happened to be there at the same time when he came and he told him that this person had called again several times and he had told him, well, I have been out and checked and there is no cattle on the CRP ground. He said well this guy says that he is running them on there overnight and on weekends when you are not working. And he admitted to my tenant that he was out there at 6:30 a.m., 11 p.m., and twice on Sunday and he said he had never found any cattle on the CRP ground. He said as a matter of fact, I walked the whole fence line and he said the fence looks real good. He said yes, it has, because I went and fixed it because Howard is getting tired of getting harassed about this fence. He said well, we are going to end our investigation.

I saw him 2 weeks later and he said they got at least three or four more calls and he said in all, they got between 12 and 20 calls. I had asked him more than once, I said who is calling. Well, he says, I do not know, the office just sends me out. So I called the office several times and they said we cannot tell you who is doing this.

I have another example. A friend of mine owns a farm right across the road from my farm. He is a diabetic and on total disability and lives in Storm Lake, IA. He called me last summer and he said that he had called down to the ASCS and said what about the CRP ground, are we going to be able to put it in because it comes out this year. He was asking about that and while he was talking to them, they said oh, by the way, we have had a call that you have

cattle on your CRP ground. And he said I do not have any cattle. She said well, that does not matter——[Laughter.]

Mr. GUTKNECHT. Do not confuse me with the facts.

Mr. ALFF. So, as a friend, I have been watching his land, I get no compensation or anything for it, but I sort of watch it and make sure the thistles are down, whatever.

Anyway, he called me and told me this and I said I will go out and check. Well, this was a Friday, I called my nephew who lives on my farm and he said that he goes fishing down there like three or four times a week and he said yes, I saw some cattle in there, there was three or four head of calves and he said they were there between 1 and 2 days and he said but now they are not there any more.

I was working, so on Sunday, my day off, I went out and I took my pickup and drove around the fence. Well, I found where the fence was bad and where they had came through, and it was neighbor's cows, neighbor's fence. And they had an electric fence up by then.

OK, so I called over at the ASCS and told the gal and she said well, I am sure glad you did this and now I will put this in his file.

A week later, I got a call from my friend and he said, Howard, they sent me a bill and they are fining me $2,200.

[Bell rings.]

Mr. ALFF. Can I finish? It is only going to take a few seconds.

Mr. MCINTOSH. Yes, I would like to hear the rest of this.

Mr. ALFF. I said well that does not make sense because I said there are only 12 acres there that it was on and if they fined you the whole thing it would only be $900 if they took away all your payment on the 12 acres. And he said well, I have got to go to a hearing, would you go with me. And so I went with him to the hearing, and they said that he was responsible, it did not matter whose cows, whose fence or whatever, he was responsible, he signed the contract, that is the way it was.

My question is, the person that accuses us, if they are justly accusing us, they should not be afraid to face us. And if they are falsely accusing us, we should be able to defend ourselves and get just compensation for the problems they are causing us.

I thank you.

Mr. MCINTOSH. Thank you. Next they will be seeing cows with wings. [Laughter.]

Gil, you had a comment?

Mr. GUTKNECHT. Well, one of the things—great idea, and one of the nice things about these field hearings, in Sioux City a gentleman who testified yesterday talked about the possibility of a bill of rights, a regulatory bill of rights. And I talked to David about this, and I think this is one thing that if we can put this together, it would be an excellent inclusion, some way of knowing who your accusers are, particularly if you are falsely accused.

Mr. ALFF. Exactly.

Mr. GUTKNECHT. Excellent point, thank you.

Mr. MCINTOSH. It is in the bill of rights right now. We ought to get it applied to regulations.

Let us continue on with the panel and then we will all have some questions for you. Our next witness on this panel is Mr. Bill Willis

who is a soil conservation consultant. Mr. Willis, thank you for coming.

Mr. WILLIS. Thank you for the opportunity. I am beginning to get real nervous sitting where I am sitting. I am a former SCS employee in Atlantic.

Mr. MCINTOSH. We chose wisely, I think.

Mr. WILLIS. And Howard is a lot bigger than I am. [Laughter.]

I thank you for the opportunity because I am going to show you the opposite side of the coin, a very definite opposite side of the coin, and a side of the coin that I do not think that anybody has really wanted to tell you about.

VOICE. Bill, you need to speak up more. I am his wife. [Laughter.]

Mr. WILLIS. And that is why you see I am in real trouble.

Mr. MCINTOSH. Do not feel bad, Mr. Willis, my wife does that for me as well. [Laughter.]

VOICE. I want him to get his point across and have everybody hear it.

Mr. MCINTOSH. Please continue.

Mr. WILLIS. And I want to read my statements simply so that I can get the whole point across, and I will be glad to answer any questions that you have.

A forced retirement in 1993 prematurely ended my career with the USDA Soil Conservation Service.

My career began in 1966 in Missouri and by 1970, I found myself in Decorah, IA, charged with cleaning up a program that had become a regular mess, simply by gross mismanagement on the part of a former district conservationist.

Three and a half years later, I was sent to Cass County at Atlantic, IA, to rebuild a program that had lagged far behind anything that you would consider as average in the State of Iowa. For example, I brought that program from 20,000 feet of terraces a year to over 300,000 feet of terraces a year. Computer design of terrace construction was actually invented in my office by myself and my staff.

Throughout my career, I gained a reputation of being energetic, aggressive, and hard-working, and I had absolute insistence for professionalism, honesty, technical excellence, and above all, strict adherence to ethical standards. I also enjoyed the ability to work effectively and easily with people.

But in 1992, it became very clear to me and to a number of fellow district conservationists that the USDA Soil Conservation Service had absolutely no intention to enforce the conservation compliance provisions of the 1985 and the 1990 farm bills. A negative determination on the part of a field office staff would not be upheld in the appeal process. It was plain that farm subsidy payments were then going to continue without justification. And documentation of these facts and my allegations have been—documentation has been accumulated by myself, by the Environmental Working Group in Washington and by the Office of the Inspector General.

Such actions by USDA SCS are not limited to Iowa, they are happening all across the Nation, and it constitutes a multi-billion dollar example of waste, fraud, and abuse. And this offense is also

being committed by the Federal agency that is charged with the first line of enforcement.

On June 13, 1993, I was forced to retire by coercion, and extensive documentation has been assembled to verify that fact also.

I want to call your attention to the Des Moines Register and what it has said in the past about this very issue. There was an editorial where they talked about conservation compliance, and they referred to the problem as erosion ticket-fixing. A Register feature article on January 30, 1994, that talked about my particular situation, the State conservationist at that time was quoted as saying that Willis was following the letter of the law instead of the spirit of the law.

The man is saying stop.

Mr. MCINTOSH. If you could go ahead and summarize the rest of it, but I need to keep going so we can hear everybody.

Mr. WILLIS. Well, without going on, I do have some suggestions and I will make it real quick. I have four.

Whenever I bring you a complaint, or when any of my employees ever brought me a complaint, I had one thing that I always asked for—bring me an idea for improvement or suggestion or change. And I have four ideas for change.

First, eliminate the practice of making agency heads or administrators, whatever you want to call them, political appointees.

Second, grant serious prosecution authority to such agencies of the Office of Special Counsel, the Merit Systems Protection Board and OIG, where they have documented evidence that they can prosecute without political intervention.

Third, prosecute offenders of waste, fraud and abuse to the maximum extent of the law. And I guarantee you, the word will get out throughout the whole entire Government work force, real fast.

Fourth, and last, streamline the Whistleblower Protection Act so that it can move quickly and effectively when documented violations are identified and people like myself will not have to wait 2½ years to accomplish nothing, and people like Bob Kreuger in Missouri will not have to spend 8½ years doing the same.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Willis, I appreciate you coming today and sharing your experience and would like to explore it with you further when we are at the questioning period. Your whole testimony will be put into the record so it will be made available for the committee.

Our final witness on this panel is Mr. Royal Holtz. They indicate to me you go by the nickname Curly. Welcome and please share your testimony with us.

Mr. HOLTZ. Thank you, Mr. Chairman, and thank you for the invitation to come here today. I recognize at least one old friend and farmer in the Congress there and I know that Tom is working to get these things alleviated.

The former Soil Conservation Service, now called the NRCS, has been referred to as the farmer's friend. They still claim to be the farmer's friend, but in practice, they have become productive agriculture's worst nightmare.

Since 1993, the State office of the NRCS has embarked on policies that are so restrictive they have practically eliminated any im-

provement in agricultural drainage. In my district, Charles Gunn had his converted wetlands grow each time he appealed it. He was finally forced to permanently idle 28 acres. In my testimony, I have documented several other tragic cases as to—similar to Charles'.

Landowners in our district have spent $425,000 improving their main drainage outlet, yet the State NRCS will not allow the laterals to be improved without mitigation, because of the possibility that it might be taking water away from farm wetlands. This is in spite of the fact that the proposed improvements would not go through any farm wetlands. If a lateral serviced 800 acres and only 40 acres of it was considered farm wetlands, the other 760 acres of prior converted would have to do without drainage needed to maximize its production.

In our district in 1995, inadequate drainage cut corn production from 20 to 120 bushels per acre on the best prior converted land. This type of policy is insane, considering our corn stocks carryover will likely be the lowest in history. While the best land is having its production restricted, the Government is calling back into production fragile, highly erodible CRP land to meet the current grain shortage. Should administrative policy be to restrict drainage on 95 percent of the land in order to ensure poor drainage on 5 percent of the land?

In 1993, the NRCS dictated lateral tile in farmed wetlands had no significance. Many of these so-called farmed wetlands have numerous strings of tile on spacings from 50 to 120 feet. It is impossible for such fields to ever act as wetlands with so much drainage capacity.

It was never the intent of Congress to regulate farmland as wetland. The Senate and House Committees on Agriculture dated July 31, 1985, and September 30, 1985, and published interim rules dated June 27, 1986, verify the intent of the bill was to give jurisdiction over true wetland, not cropland. The final rules, published September 17, 1987, added jurisdiction over farmed wetland. The public never had a chance to comment on this great expansion of jurisdiction. The USDA has no legal farm bill jurisdiction over so-called farmed wetlands under production prior to December 23, 1985. This is especially true for wetlands previously drained.

Congress' intent that if drainage had commenced on farmland or if substantial funds were spent, it would be considered as prior converted farmland, not wetland. Bureaucrats have used administrative discretion to change the intent of Congress to gain control over farmland, calling it wetland. Yet the public has never been allowed to comment on the change. In addition to violating the Federal law, it is no doubt a violation of the landowner's rights guaranteed in the U.S. Constitution. Labeling farmland as wetland decreases its value and qualifies the action as a constitutional taking.

Not a single page of the National Food Security Act manual has been subjected to public input. Since the idea of farmed wetland was added to the regulatory mix after the interim rules of the farm bill were published in the Federal Register, it, by law, would have to have been subjected to public input. Thus the NRCS is in violation of the Administrative Procedures Act. Then all of the policies and procedures concerning farmed wetland should not be valid until NRCS complies with the Administrative Procedures Act.

Other ridiculous policies applied to farmed wetlands are calling velvet leaf, smart weed and foxtail wetland vegetation when any farmer knows they grow prolifically anywhere. [Laughter.]

Another—and Tom recognizes this—is that pressurized tile lines from miles away——

[Bell rings.]

Mr. HOLTZ. I have just got a couple more sentences.

Mr. MCINTOSH. Yes, go ahead and please summarize.

Mr. HOLTZ. Another is that pressurized tile lines from miles away are making some areas much wetter than they naturally would be.

Not just farmers, but all Americans, are the losers as we cut productivity and lose our Constitutional freedoms. We have been praying to our Almighty God for justice. Hopefully, those prayers are being answered today.

Thank you.

[The prepared statement of Mr. Holtz follows:]

Testimony of Royal H. Holz II
to
U. S. House of Representatives' Committee on Government Reform & Oversight

The former Soil Conservation Service, now the N.R.C.S., has been referred to as "the farmer's friend". They still claim to be the farmer's friend, but in practice have become productive agriculture's worst nightmare.

Since 1993 the Iowa state office of the N.R.C.S. embarked on policies that are so restrictive that they practically have eliminated any improvement in agricultural drainage. Anyone who attempted drainage improvement was met with severe penalties. In my drainage district, Charles Gunn had his converted wetland grow each time he appealed it. He was finally forced to permanently idle 28 acres.

The landowners in our drainage district spent $425,000 improving their main drainage outlet. Yet, the state N.R.C.S. will not allow the laterals to be improved because of the possibility that it might be taking water away from farmed wetlands. This is in spite of the fact that the proposed improvements would not go through any farmed wetlands. If a lateral serviced 800 acres and only 40 acres of it was considered farmed wetlands, the other 760 "prior converted" acres have to do without the drainage needed to maximize production. In our district in 1995, inadequate drainage cut corn production from 20 to 120 bushels per acre on the best "prior converted" land. This type of policy is insane, considering our corn stocks carryover will likely be the lowest in history as per cent of usage. To add to the irony, while the best land is having its production restricted, the government is calling back into production the fragile, highly erodable C.R.P. land to meet the current grain shortage. Should administrative policy be to restrict drainage on 95 % of the land in order to insure poor drainage on 5% of the land?

In 1993, Jeffrey Vonk, [redacted] Iowa State Conservationist, dictated that proving the existence of lateral tile in land classified as farmed wetland

could not be used as a criteria to have that land reclassified as "prior converted" farmland. Many of these so called "farmed wetlands" have numerous strings of lateral tile of spacings from 50 to 120 feet apart. It is impossible for such fields to ever act as wetlands with so much drainage capacity.

Probably the most important point is that it was never the intent of Congress to regulate farmland as wetland. The report of House Committee on Agriculture (page 419) dated July 31, 1985, the report of Senate Committee on Agriculture (pages 303 - 304) dated September 30, 1985, and published interim rules dated June 27, 1986 verify that the intent of the bill was to give jurisdiction over true wetland, not cropland. The final rules, published September 17, 1987, added jurisdiction over farmed wetland. The public never had a chance to comment to this great expansion of jurisdiction. The U.S.D.A. has no legal farm bill jurisdiction over so-called "farmed wetland" under production prior to December 23, 1985. This is especially true for wetland, previously drained.

Congress' intent that if drainage had commenced on farmland or if substantual funds were spent, it would be considered as "prior converted" farmland not as wetland. Bureaucrats have used administrative discretion to change the intent of Congress to gain control over farmland by calling it wetland. Yet the public has never been allowed to comment on the change. In addition to violating the federal law, it is no doubt a violation of landowners' rights guaranteed in the U.S. Constitution. Labeling farmland as wetland decreases its value and qualifies the action as a Constitutional taking.

Not a single page of the National Food Security Act Manual, its 7 ammendments, 15 Iowa ammendments, or any part of the 3rd addition have been subjected to administrative rulemaking and public input. Since the idea of farmed wetland was added to the regulatory mix after the interim rules of the farm bill were published in the Federal Register, it, by law, would have to have been subjected to public input. Thus the N.R.C.S. is in violation of

the Administrative Procedures Act. Then all of the policies and procedures concerning farmed wetland should not be valid until the N.R.C.S. complies with the Administrative Procedures Act.

Other ridiculous policies applied to farmed wetlands are calling velvet leaf, smart weed , and foxtail wetland vegatation, when any farmer knows they grow prolifically anywhere. Another is not recognizing that pressurized tile lines from miles away are making some areas much wetter than they naturally would be.

I could go on for a long time about the illegal and insane practices of the N.R.C.S. in taking our lands' productivity. Not just farmers, but all Americans are the losers as we cut productivity and lose our Constitutional freedoms. We have been praying to our Almighty God for justice. Hopefully, those prayers are being answered.

Mr. MCINTOSH. Thank you very much, Mr. Holtz. I appreciate your appreciation of the Administrative Procedures Act, which is a critical instrument in all of this process.

Let me back up—we have heard a lot about wetlands today—and share with you how I learned about wetlands, which is when I was a young staffer with Vice President Quayle. He came back from a trip here to Iowa where he had met with several people in the farming community and somebody spoke up—I do not know who that was—and said you know, our biggest enemy right now is a guy named Bob Grady in the White House. It turns out Bob Grady is the guy who wrote the wetlands policy for President Bush. Vice President Quayle came back and said what is going on here, can you look into it.

We started a process of reversing some of the worst parts of that wetlands policy, where they had defined a wetland to be any land that had one of the three things—water for 7 days, could be dry the rest of the year; one of the plants that you mentioned; or the soils from hydric soils which turned out to be a lot of the muck soil—we have got a lot in Indiana and I think you do here as well. You did not have to have all three of those. You could have perfectly dry land and they would still define it as wetland. This greatly expanded the power grab in Washington over control of the property in our country.

We were able to get some of those changed, but from your testimony here today, I see that we have still got a lot more work to do in applying the notion of property rights. If the government had to compensate when it defines your land as wetland and therefore restricts its use, I think that would lead to much better results in the regulatory process because Washington would realize it would have to pay every time it expanded its jurisdiction in this area.

So I appreciate those comments.

The other notion I wanted to mention was we are hearing a lot about the farm bill, and Tom and Greg have been taking the lead in making sure that that stays on track, really corralling a lot of us in the freshman class—Gil has too—to make sure that we have a farm bill. But the one that passed in the Senate and the one that I think will pass in the House will phaseout a lot of those subsidies, and I think that then changes the dynamic and perhaps the problem that Mr. Willis indicated might exist in government not enforcing its regulations tied to the subsidies. If you do not have those, you do not have that hook to lead to some of the consequences of these regulations.

The thing we have got to make sure though is if we move in that direction, that we do not keep the regulations that make it expensive to farm, and raise the cost, and remove the government support structure for people.

So, these are all very critical issues and a lot of them intersect with what the subcommittee is doing in terms of finding out about regulatory problems. And I appreciate you coming here today and sharing your histories and your examples with us.

One quick question. Mr. Whiton, could we get a copy of that calendar that you showed us? I would like to introduce that into the record in particular. Maybe you can tell us where to get one and we will go out and buy one for ourselves so that we can show to

people that you now have to publish calendars just to keep up with the different regulatory components.

Let me turn now to Mr. Ganske. Do you have any questions for our panel?

Mr. GANSKE. Thank you, Mr. Chairman, I do.

I want to followup a little bit on a line of questioning that I gave the first panel. I think this panel really shows, how difficult it is to do a proper, fair and just balance in this.

Mr. Whiton, I think your statement summed it up in a sense, and that is, "one size does not fit all." Mr. Beal on the last panel had the same concern when I posed this line of questioning. And Mr. Johnson, I must say that you very movingly talked about the problem or the concern that one would have with increasing leeway with regulators, because the regulator can find you guilty, and in carrying the force of government has resources that no single family has and can basically put you through hell. And you are now in the position where you have to prove that you are innocent.

So, I guess I would like to ask Mr. Willis this question, because you worked in the system, and I think my sense is that you have a strong feeling of wanting to work with farmers and still at the same time achieve a goal of a good environment. How can we change the system so that you, as a government regulator, can work with every one of the other members on this panel in a fair and a just way? How would you change what you have had to do in the past?

Mr. WILLIS. Senator Ganske, I think there are two things that have to happen. No. 1 is if you are going to be a Federal employee, then tell us what the rules are. For example, the wetland rules were changed about as fast as most people change their socks. And as a government employee at that time, if you had asked me what a wetland was or to identify whether a piece of ground was a wetland or whether it was not, I would have probably opted to tell you I really do not know. And if I had a source of information to go to at a higher echelon in that bureaucracy, I do not believe I could have found an answer.

When government employees go out onto a farm and have to address the questions that these people have addressed today as far as wetlands, whether it is or whether it is not, or what is the implications of if I do or if I do not, you are going to get as many different answers as there are Federal employees.

When it comes to instances like conservation compliance, I am not here today to debate whether or not the environmental interests ought to be satisfied as a result of making farm subsidy payments. That is not my business, that never was my business. The Congress said it was, they said it was in 1985 and they said it was in 1990 and I think they are thinking a little bit about that in 1995 as far as the farm bill is concerned. There are 7 more years of payments that are coming down the pike and I think there are probably still going to be some strings attached. And if we are going to be in the business of tying conservation to farm subsidy payments, then let us enforce it and let us make a very, very strong message to the Federal employee out there—we do mean enforce it.

Mr. GANSKE. Let me interrupt for a minute because our time is running out. I think I detected in your answer this—and as this

panel was talking, I was thinking about this—part of the problem is that Congress could make law better than it has in the past.

Mr. WILLIS. I think that is exactly correct.

Mr. GANSKE. OK. And part of the problem with the fact that Congress has not made law very well is that it has not used good science definitions that are realistic. Would you agree with that?

Mr. WILLIS. In terms of the wetlands, I would have to agree. In terms of CRP and conservation compliance and some of the other provisions, I think Congress was very, very, very explicit in exactly what they meant. After it passed into the rules and regulations departments and became interpreted and then affected by I do not know what, political pressure—I do not know what affected that.

Mr. GANSKE. Would you, as an administrator, like to see the process changed to this—let us say Congress passes a law of some type, it goes through the regulatory process, but the regulations are not enforced until there is time period where Congress can review how the agencies regulate, so that we can get input back in from the communities and groups that are affected directly by the regulations that come out of the law. Would that be a reasonable thing to do?

Mr. WILLIS. Exactly. And I think there is a responsibility out here with us, beyond what your responsibilities are. I think it is a two-way street. If we are going to write rules and regulations, then let us not hide them. Let us put them out there in the open and let people take a shot at them. And if they are not right, then let us be responsive to the changes. And if it takes a long time to compromise some kind of a solution, then let us take the time and compromise it.

Mr. GANSKE. Thank you, Mr. Willis. And I will close by just saying that I think in general, my impression of Congress is that it has made work for itself in the past and has legislated in a lot of areas where things were working quite well in the past; that is, the old NRCS. Thank you very much.

Mr. MCINTOSH. Thank you, Mr. Ganske. Let me also just note your earlier point about the tension between discretion and specific rules came up in spades with the wetlands manual, where earlier they had given people discretion to go out and see whether it really was an environmentally sensitive area. They switched over to very detailed rules and the soil and conservation officer might come up with one conclusion and the fish and wildlife officer will come up with a different one, and it became a morass for everybody included. And Mr. Willis is right, that was done in secret, nobody knew what was going on and it created a huge problem for us. So there is a lot we can learn about the problems in the regulatory and legislative process in that area. Chief among these is that wetlands is not anywhere in statute. It may be when we pass our Clean Water Act, finally codified that there is a wetlands program. But this has been made up all by the regulations.

Mr. GANSKE. Mr. Johnson, would you care to comment?

Mr. JOHNSON. Yes, I got to the place where I had to stop, but I would like to make one or two last statements. And that is that if the government thinks wetlands are so valuable, let them buy them and let all the taxpayers pay for them, not just a very select few of us.

And No. 2, the DNR has purchased about 5,000 acres within 20 miles of our place and a lot of this is good Iowa prime farmland. How much more wetland do they want? You know, enough is enough. Farmers have had enough of this nonsense and we are not going to take any more. We have been harassed and coerced long enough and the farmers are mad and they are not going to take any more.

Thank you very much.

Mr. MCINTOSH. Thank you, Mr. Johnson.

Let me turn to Mr. Gutknecht and then recognize you.

Mr. GUTKNECHT. I would yield to Curly, apparently he has got a point at this point.

Mr. HOLTZ. The point I wanted to make is that most of the land in Congressman Latham's district and probably your district up there in Minnesota is what they call prior converted farmland. We are trying to service the productivity on this prior converted land and we cannot do anything because 5 percent of the land stops any productive improvement on 95 percent of the land. And this has to be changed, because obviously all Americans want production. So we have offered in our district to go around the wetlands and whatever, but still no dice. You guys, if you want to do this drainage, give us some land. They call it mitigation, but that is the policy.

Mr. GUTKNECHT. Mr. Siegle, did you want to—I am sorry.

Mr. MCINTOSH. Go right ahead.

Mr. SIEGLE. Yes, I would like to make two final statements.

We wish to work with everyone on this situation that we have, and it is only to keep our ground in productivity to feed the world. Please bear with me—and please let us use common sense. Put that on your notes, put it on your minds, carry it back to Washington, DC—common sense, please.

Thank you.

Mr. GUTKNECHT. Mr. Chairman, I really do not have any specific questions. I think this has been interesting testimony and I appreciate Mr. Willis coming forward as well because there are several dimensions to all of this, but it seems to me that one of the threads—and Mr. Johnson, especially thank you to you—a lot of Americans know that you are not required to testify against yourself, that is the fifth amendment, we have seen people in front of Congress literally take the fifth amendment. But most Americans have forgotten that the fifth amendment also says that the government cannot take your property without just compensation. I mean, that is not a law, that is the Constitution. And one of the first things that you do when you become a Member of Congress is you swear to uphold the Constitution. Not just parts of it that you agree with, but that certainly is an important part, and I think it is one thing that has been forgotten by the Congress, it has been forgotten by the Federal Government and unfortunately it has been forgotten by the American people. And if we can do nothing else in the next several years, at least we ought to reinforce the just compensation clause of the fifth amendment. It is part of the Constitution, it is not somebody's suggestion, it is not just an idea that has come up recently.

Let me also say, for the benefit of all you who are farmers and I am glad that we have a panel of people mostly in the ag business,

you may not remember this either, but when Congressman Latham and Congressman Ganske were elected to the Congress, I do not know what the price exactly was here in this part of Iowa, but up where I came from, the price at the elevator for a bushel of corn was $1.89. I checked on my way down, it was $3.24. Coincidence? Maybe. [Laughter.]

Mr. MCINTOSH. I like you Gil, taking credit for the freshman class, that is great.

Let me now call on Mr. Tom Latham.

Mr. LATHAM. I thank the chairman.

I do not know where to start on this issue as far as the wetlands.

I want to say, Harvey, I have known you and your family for years and years, and it is simply outrageous what is being done to you. And Curly, we go back to college—had a little more hair back then, it actually was curly at that time. [Laughter.]

But I think we have kind of got to lay out a little bit the importance of this issue. In Iowa, we have 25 percent of the prime farmland in the world—not in the United States, but in the world. In 1993, with the rains that we had, the floods, virtually all of that prime farmland could have been determined by a bureaucrat to be a permanent wetland, and taken out of production on a permanent basis. I mean, this is where we have gone.

I have been going back, as we go through the farm bill debate, trying to get some common sense into the wetland provision. And reading the intent in the record back in 1985, you have people who are now totally on the other side of this issue like Senator Daschle, the minority leader who, in the record, talks about it has never been the intent to have prior converted farmland taken out of production, that maybe there was a reason that a wetland should have some relationship to water, which it does not have to have.

And when we talk about giving relief in agriculture in wetlands, they talk about are you going to do away with 60 percent of the wetlands in the country. The fact of the matter is, by definition, they increased it by 60 percent to begin with, which never was a wetland.

And Curly and Harvey, I know you have the same situation I do. My family has been on a farm for over 105 years, it has tile that was hand dug at the turn of the century and put into production to feed the country. And now a bureaucrat is coming in and saying that you can no longer farm that, because they have gone way beyond the scope and the intent of the law. But I will tell you how difficult it is to bring some common sense, if anyone saw an editorial in the Des Moines Register last August, you know, where we were called the filthy five because we tried to insert some common sense into the whole argument. I am not going to get into calling names, that is their business apparently, but things like that are not constructive and you can tell maybe that I have very strong feelings on this issue.

But I will just ask anyone here—in addition to serving on Agriculture, I serve on Transportation and Infrastructure and the Water Resources and the Environment Subcommittee there, and we are trying to address problems with the EPA as far as wetlands. And the point was made earlier, it is not just, you know, the USDA, we are dealing with Fish and Wildlife, Army Corps of Engi-

neers—there are four agencies that we have to deal with when you address wetlands. Why we cannot get it into one agency and maybe have one place where we can go and talk about these issues is way beyond me.

But I would ask anyone who has stories, the impacts, say of Harvey and Curly—I have been on the Gunn place with you—please submit that to me, to bring some common sense to this, because we need to make a record, we need to tell the bureaucrats that we are going to take back control of this country and take back control of Congress. They have gone way beyond the intent.

And I guess I will not ask any questions, but I appreciate the time, Mr. Chairman.

Mr. MCINTOSH. I appreciate your hard work in that area, Tom, it is very, very important.

Thank you all very much for participating. Mr. Whiton, did you have one——

Mr. WHITON. Yes, just back to Mr. Ganske. You asked the first panel a question about giving the inspector some latitude. I would like to back up a little bit back to when the law or regulations actually thought of, dreamed of or whatever the case may be—you know, this DNR, this emission control thing. Here is what we had to fill out, my little feed manufacturing plant. My question is who, what person—it has to start somewhere, who starts the process? Who says all right, my gosh, that feed mill is putting out too much dust, let us make them fill out this form and everything. Maybe I am ignorant on the process. You know, they are not consulting me, they are not consulting an agribusiness about a problem, I have never heard of anything like this. So who comes up with this? Is it somebody from Maine, is it somebody from Florida, is it somebody from Missouri?

Mr. GANSKE. I sit on the Commerce Committee and we deal with a lot of this. My subcommittee will deal with a lot of this regulation. There has actually been written into some of the law a prohibition against people who have expertise in these areas providing the information or consulting with the regulators when they write the laws—for fear that it might be corrupted by, "special interests."

We have already had some hearings in my committee on this. And yet, if you do that, you may have excluded the very people who have the closest insight into what would work and what does not work. So, it is one of the things that we are going to have to look at.

I do believe though that—well, No. 1, we have to just be much, much more careful about passing more law unless we have done a cost/benefit analysis.

And No. 2, I think Congress should review those regulations, because for every page of law that we pass, the regulators will build about 50 pages of regulations off that—or more in some cases.

The intent may be good, but then it gets adulterated by the regulations that come out of it. I firmly believe that Congress should do a better job reviewing those regulations before they take the force of law and can arbitrarily make somebody guilty of something.

Mr. WHITON. Thank you.

Mr. MCINTOSH. Thank you.

There may be some hope for that. In fact, there is a bill that Senator Nickles has been pushing that would require, or allow at least, Congress to—any Member bring up one of the regulations after it has passed, and have the Congress vote on it before it went into effect. And that would force the Representatives and the Senators to be more accountable on what is going on in the regulatory area. I think that would be good.

Thank you all very, very much for coming today, I really appreciate it. Sorry I had to shorten some of your testimonies but we will make the entire testimony part of the record.

If I could call forward the third panel, which is a panel of people who are working in the public sector.

If the mayors could join us, that would be great. Mayor Gray of Manson, Mayor Reel of Missouri Valley, Dean Torreson, city administrator of the city of Atlantic, L.D. McMullen, who is CEO and general manager of Des Moines Water Works, Robert Layton, city manager of the city of Urbandale, and Mayor Hanafan of the city of Council Bluffs.

Thank you all for joining me today. We will ask you to summarize after 5 minutes, and we appreciate you taking the time. The entire testimony and anything else you think we should have in the record will be made part of the record. And I particularly appreciate you taking time out of your busy schedules to join us for this hearing. You are the level of government that is closest to the people and I think we can learn a lot from you in Washington.

Let me call now on Mayor Joe Gray. Oh, thank you—Mildred is reminding me I should be sure and swear you all in. If you would please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show that each of the witnesses answered in the affirmative.

Our first witness on this panel will be Mayor Joe Gray of the city of Manson. Mayor Gray.

STATEMENTS OF JOE A. GRAY, MAYOR, CITY OF MANSON, IA; FLETCHER REEL, MAYOR, CITY OF MISSOURI VALLEY, IA; DEAN TORRESON, CITY ADMINISTRATOR, ATLANTIC, IA; L.D. MCMULLEN, CEO AND GENERAL MANAGER, DES MOINES WATER WORKS, DES MOINES, IA; ROBERT LAYTON, CITY MANAGER, CITY OF URBANDALE, IA; AND THOMAS HANAFAN, MAYOR, CITY OF COUNCIL BLUFFS, IA

Mr. GRAY. Good morning, Congressmen and subcommittee members. Thank you for this opportunity to address you today on the important issues of how environmental mandates and regulations are squeezing the economic life out of many small rural communities.

I am the mayor of Manson, IA, a relatively small community, of approximately 1,900 people in west central Iowa. In 1,990, the city of Manson was issued an administrative order by the Iowa Department of Natural Resources to reduce the level of fluoride in the public drinking water supply. At that time, the fluoride level of our water was 4 to 5 milligrams per liter, while the Federal regulations required 4 milligrams per liter.

For 75 years, the city has been pumping water from the same wells, approximately 1,400 feet deep. During this time, the makeup of the water has remained consistent. To my knowledge, the public had been using it with no health problems. Our water was naturally soft and required no treatment. However, due to Federal regulations, we were mandated to reduce the fluoride level.

Manson was forced to install a reverse osmosis treatment plant to remove the 1 milligram or less per liter of fluoride. The cost of this plant was $700,000. Since the city did not quality for any grants to assist with construction, the money was obtained by the sale of general obligation bonds. This large indebtedness restricted the city's bonding capacity for repairs of sanitary and storm sewers and much needed street work.

Water rates were raised by 45 percent, strictly to cover the operational costs of the plant. Property taxes were raised and now approximately 24 percent of these taxes are allocated to paying off the water bonds. These expenses do not include future maintenance, depreciation or the additional cost of going from a Grade 1 Distribution Operator to a Grade 2 Treatment Operator.

One of the more serious problems we have encountered has been maintaining an adequate water supply to meet both the demands of the people and the reverse osmosis system. Approximately 50,000 gallons of water are rejected through this treatment plant daily. This has put a major strain on the wells and pumps, which have been lowered to the maximum depth possible. New wells may have to be drilled to meet demands.

Providing safe drinking water is one of our objectives. However, through processing, we are wasting a tremendous amount of a precious natural resource—water. We have come from using natural, raw well water to a system that adds five chemicals daily to our drinking water.

I have told the story of how one community has dealt with the government's burdensome regulations. Regulations that are inflexible and enforced by bureaucrats who have no idea of the struggles and challenges that rural American communities face today—an ever-shrinking dollar having to stretch further and further.

In my opinion, the Government needs a common sense approach to regulating our water systems—one that is health-risk based, not mandated without proper scientific methods being applied, and that provides the necessary financing for sanctioned improvements. A system based on local, State and Federal Governments working together to solve environmental problems, not as adversaries. The Safe Drinking Water Act recently passed by the U.S. Senate and currently being contemplated by the U.S. House of Representatives, will provide a regulatory system to enable the government to function in the best interests of its citizens for the century to come.

I want to thank you again for taking the time to hold these meetings. Thank you.

Mr. MCINTOSH. Thank you, Mayor Gray. Your testimony, I am sure, will elicit some questions when we finish with the panel there.

Let me now turn to Mayor Fletcher Reel, who is the mayor of the city of Missouri Valley. Thank you for joining us, mayor.

[The prepared statement of Mr. Gray follows:]

TESTIMONY OF THE CITY OF MANSON, IOWA BEFORE THE HOUSE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

Respectfully Presented and Submitted by

Joe A. Gray, Mayor
City of Manson, Iowa

Good morning Congressmen and Subcommittee members.

Thank you for this opportunity to address you today on the important issue of how environmental mandates and regulations are squeezing the economic life out of many small rural communities.

I am the Mayor of Manson, Iowa, a relatively small community of approximately 1900 people in west-central Iowa. In 1990, the City of Manson was issued an administrative order by the Iowa Department of Natural Resources to reduce the level of fluoride in the public drinking water supply. At that time, the fluoride level of our water was 4 to 5 milligrams (mg.) per liter, while federal regulations required 4 mg. per liter.

For 75 years, the city has been pumping water from the same wells (approximately 1400 feet deep). During this time, the make-up of the water has remained consistent. To my knowledge, the public had been using it with no health problems. Our water was naturally soft and required no treatment. However, due to federal regulations, we were mandated to reduce the fluoride level.

Manson was forced to install a Reverse Osmosis treatment plant to remove the 1 mg. or less per liter of fluoride. The cost of this plant exceeded $700,000. Since the city did not qualify for any grants to assist with construction, the money was

obtained by the sale of General Obligation Bonds. This large indebtedness restricted the city's bonding capacity for repairs of sanitary and storm sewers and much needed street work.

Water rates were increased by 45% strictly to cover the operational costs of the plant. Property taxes were raised and now approximately 24% of these taxes are allocated to paying off the water bonds. These expenses do not include future maintenance, depreciation, or the additional cost of going from a Grade 1 Distribution Operator to a Grade 2 Treatment Operator.

One of the more serious problems we have encountered has been maintaining an adequate water supply to meet both the demands of the people and the Reverse Osmosis System. Approximately fifty thousand gallons of water are rejected through this treatment plant daily. This has put a major strain on our wells and pumps, which have been lowered to the maximum depth possible. New wells may have to be drilled to meet demands.

Providing safe drinking water is one of our objectives. However, through processing, we are wasting a tremendous amount of a precious natural resource--water. We have come from using natural, raw well water to a system that adds 5 chemicals daily to our drinking water.

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I want to thank you again for taking the time to hold these meetings. Thank you.

Mr. REEL. Thank you.

Mr. Chairman, Members of Congress, distinguished colleagues, ladies and gentlemen, it is an honor for me to be here to testify before you today to tell you the story of our small town and how the Americans with Disabilities Act has unfairly altered our civic priorities. It has forced us to look past money which could have been spent on critical needs.

Missouri Valley is a town of about 3,000 people situated in the Loess Hills of western Iowa. It is a good town with good people. When Thomas Jefferson envisioned the agrarian/egalitarian communities which would make America great, he envisioned Missouri Valley. In Missouri Valley, the poorest kid in town can be friends with the richest kid and no one takes notice. By the same token, the best athlete in town can be best friends with a handicapped kid, and likewise, no one takes notice. In Missouri Valley, we take care of each other.

At present, I share a house with a good friend who has been handicapped since birth. I am personally familiar with the challenges he faces every day and every night. And I understand his difficulties go well beyond the physical barriers he faces.

Missouri Valley's annual budget is less than $2 million a year, as is its bonding capacity. We do not have working margins necessary to bring our facilities into compliance, and the people simply do not understand why hundreds of thousands of dollars are necessary to solve problems that could be solved by simple, practical solutions.

Let me relate our community situation in regard to ADA and how the problems could have been solved. Two years ago, every city-owned facility, our middle school, our post office were all out of ADA compliance. Not much had been done to march toward the ADA deadlines.

Last year, the post office spent about $100,000 to build a ramping system to its front door. I have never seen anyone use it. However, I know that my 95-year-old grandmother used it once. She went back to the steps because all the winding back and forth made her dizzy and the extra distance she had to walk seemed a much greater task to her than just walking up the steps.

At present, we have three public buildings which need to be brought into compliance. The first is our city hall. This multi-level structure was built in 1931. It houses our council chambers, magistrate's office, city clerk's office, police station and fire station. It also is utilized regularly by our Boy Scout troop, a senior citizen's card club and a host of other users. The facility was built to last another 100 years, it is extremely efficient for our needs and requires only modest maintenance.

We recently received a cost estimate of what it would take to bring city hall into bare bones compliance with ADA. The price tag was $200,000. The appraised value of the building is less than $100,000. We have a very thoughtful and conservative city council. They do not see wisdom in spending that kind of money on a 70-year-old building, which leaves us with only the option of building a new structure with a price tag conservatively beginning at half a million dollars.

We have a wonderful progressive library, built shortly after city hall. To meet compliance standards, it will take an elevator to move between floors and a few other modifications, price tag starting at $100,000.

The final building is our middle school. It was built as a high school at the turn of the century. It is sound and functional, but is deficient in a host of Federal compliance standards, not limited to ADA. We will need to build a new structure at the cost of $5.5 million.

The updating of our city hall and middle school would become a necessity someday, we know this. However, allowing us to save and plan would have given us the opportunity to remain functional and keep costs down. Roughly one fourth of all of our city sewer and water lines were put in the ground before 1930. In practical terms at present, they are a much more critical priority than bringing these buildings into compliance.

If we commit the roughly $6.6 million it will take to meet all these compliance standards, and move very near our bonding capacity for both city and school district, what would we do in an emergency? My greatest fear is that a spring thaw following a hard winter, such as the one we are in now, could cause a major collapse of our sewer and water lines. We would have nothing left with which to face this crisis.

We do not want to see our physically challenged citizens limited in their access to our public buildings or events. Let me explain a simple solution to the problem we could have implemented had the ADA given us the simple mandate of providing access rather than detailing to us how it would be provided.

For less than 10,000 a year, we could have developed a messenger system which could have picked up and delivered items to our post office, city hall, library, et cetera. And they could have done more as well. We already have the video capability set up to broadcast closed circuit television of city council meetings, school events, et cetera. And it could also be two-way communication. Ultimately, we could have provided comprehensive public services and event participation to every handicapped citizen in Missouri Valley at a dramatically lower cost than meeting current ADA compliance standards.

In conclusion, I would like to say that it is good and right for government to safeguard the freedoms of our handicapped citizens, but it is an impossible task for government to restore the freedoms which God has taken away.

Mr. Chairman, Congressmen, thank you for the opportunity to speak before you today.

Mr. MCINTOSH. Thank you, Mayor, very powerful testimony and I appreciate you coming forward on that. I am sure we will have questions for you in the next phase.

Our third witness in this group of witnesses is the city administrator for the city of Atlantic, Mr. Dean Torreson. Thank you for coming today.

[The prepared statement of Mr. Reel follows:]

Testimony Before the
United States House of Representatives
Committee on Government Reform & Oversight

by

The Honorable W. Fletcher Reel
Mayor of Missouri Valley, Iowa

February 9, 1996
Hotel Fort Des Moines
Des Moines, Iowa

Page One.

ADA Parting With Common Sense:
A Small Town's Story

Mr. Chairman, Members of Congress, Distinguished Colleagues, Ladies, and Gentlemen, it is an honor for me to testify before you today to tell you the story of our small town and how the American Disabilities Act has unfairly altered our civic priorities. It has forced us to look past money which could have been spent on critical needs.

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If we commit the roughly $6.6 million it will take to meet these compliance standards and move very near our bonding capacity for both city and school district, what would we do in an emergency? My greatest fear is that a spring thaw following a hard winter, such as the one we're in now, could cause a major collapse of our sewer and water lines. We would have nothing

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For less than $10,000 a year we could have developed a messenger system which could have picked up and delivered items to the Post Office, City Hall, Library, etc. We already have the video capability set up to broadcast closed circuit television of City Council Meetings, school events, etc. Ultimately, we could have provided comprehensive public services and event participation to every handicapped citizen in Missouri Valley at a dramatically lower cost than meeting current ADA compliance standards.

In conclusion I would like to say, that it is good and right for government to safeguard the freedoms of our handicapped citizens, but it is an impossible task for government to restore the freedoms which God has taken away.

Mr. Chairman, Congressman, thank you for the opportunity to speak before you today.

# # # # #

Mr. TORRESON. Thank you.

Mr. Chairman, members of the subcommittee, I will relate a situation that currently exists in the community of Atlantic, IA, a community of 7,500 people, and cite the public policies that contribute to our inability to resolve the situation.

In late November 1995, we had a fire on Main Street, a newly renovated Main Street, in Atlantic. It destroyed 75 frontage feet of buildings comprising three businesses. Each building was insured for full value plus $5,000 each for cleanup of debris after the fire. This $5,000 figure is standard for a 25 frontage foot building. Also, one renter had available $5,000 for cleanup of debris. That is a total of $20,000.

The property owners decided to pool their money and hire someone to clean up. Bids ranged from $45,000 to over $100,000. The low bid did not include disconnection of utilities, which would add another $3,000 or so. An adjacent building owner, whose building was smoke-damaged, was interested in constructing a new building in the 75-foot space, but was willing to pay only $15,000 at most for the vacant land after all debris was cleaned up. This left more than a $12,000 gap that would have to be absorbed by the three property owners. Thus, over 2 months later, the situation is still stalemated with no resolution apparent. The businessman who was interested in the site has lost interest and is looking to build elsewhere. He perceives that neither the timing nor the economics are in his favor. Our concern—how many years before someone else is willing to build there.

How does this situation relate to this congressional subcommittee? Federal law and regulations provide a framework of standards and expectations for State governments in the area of landfills and solid waste reduction. The State governments then pass statutes and adopt regulations that directly affect local governments. The State of Iowa mandates that each landfill reduce its waste stream, a 25 percent reduction by 1995 and a goal of 50 percent reduction by the year 2000.

The only way to reach these reduction levels is by recycling, which is done to one extent or another by virtually every jurisdiction in the State and across the Nation.

Recycling is expensive in and of itself, and the fact that it reduces the waste stream into the landfill pushes up landfill fees to pay fixed costs. It is an upward spiraling cycle of costs. The Cass County landfill, of which the city of Atlantic is part owner, started a recycling program 4 years ago. During that period of time, landfill fees have increased from $7 per ton to $60 per ton. Much of this increase is attributable to their reduced waste stream. In addition, the net cost of recycling each year is about $100,000. This is considerable for a county of 15,000 people.

In a 1995 book titled "Time to Dump Recycling" by three professors from Carnegie-Mellon University, the authors contend that recycling is both extremely uneconomical and detrimental to the environment. The book cites the fluctuation of demand for recycled glass, plastic, metal, and newsprint. According to a recent study, the price of a typical set of recyclable materials dropped from $107 per ton in 1988 to $44 per ton 4 years later.

A bigger problem is the cost of collecting recyclables. In Pittsburgh, for example, it costs $94 per ton in 1991 to collect regular garbage, but $470 per ton to collect recyclables. Recycling is also environmentally costly. Every mile of truck travel in pursuit of cast-off newspapers, plastics, or aluminum cans, adds carcinogenic particles, carbon monoxide, oxides of nitrogen, and rubber particles to the environment. It also uses energy and other limited resources. Overall, the authors suspect recycling consumes more resources than it saves.

[Bell rings.]

Mr. TORRESON. Just another minute or so, please.

Mr. MCINTOSH. If you could go ahead and just summarize the rest of it, that would be great.

Mr. TORRESON. Back to Atlantic, IA. The cost of landfill fees is a factor in the problem we have in cleaning up the burned out buildings, not the whole reason, but a factor. Some say that the property owners were underinsured, and they were. But it is understandable when one considers that landfill fees have increased over eightfold in 4 years.

The city has attempted to help by applying for a special permit from the Iowa Department of Natural Resources, to remove the burnable material to another site and burn it under controlled conditions. The request was denied by the State agency working under a State law meant to implement the Federal Clean Air Act. There is an inconsistency in the State law, however, that allows rural buildings to be buried or burned onsite without any State approval. I am not sure this makes sense.

This is not a disastrous problem for the Atlantic community, the mess will get cleaned up one way or another. Either someone will or will not eventually build back into the empty space. The point I would like to make is that governmental regulations have affected this situation and made it more difficult to resolve quickly and economically for the good of the community.

Thank you.

Mr. MCINTOSH. Thank you very much, we appreciate your testimony.

Our next witness on this panel is Mr. McMullen, who is the CEO of the Des Moines Water Works. Thank you for joining us.

Mr. MCMULLEN. Thank you, Congressman, and thanks for coming out into the field and being here in Des Moines and hearing from us kind of in the grassroots.

I would like to take this opportunity to talk to you primarily about the Safe Drinking Water Act, which was passed in 1974 and amended in 1986, that is currently up for reauthorization. And it is really an opportunity of a lifetime to make significant changes in the drinking water industry as well as providing safe and healthful water to all of our consumers.

The current bill, as you probably are well aware of, required 83 contaminants to be regulated with an additional 25 every 3 years thereafter. That list was originally put together in the original bill, or as part of the amendments of 1986, and have been worked on by EPA. They have recognized, in the process of doing their work, that many of the contaminants are not found very frequently within the actual drinking water of the Nation, and as a result have

gone through a redirection process within EPA to be able to make it more reasonable and sensible and responsible to meet the health needs of the drinking water consumer. However, in being able to do that in a reasonable, sensible, responsible way, changes need to be made in the legislation. Otherwise, they will not be able to fulfill their mission of the redirection.

To give you some examples, at the Des Moines Water Works, we test currently for the 23 contaminants that are regulated—I am sorry, the 83 contaminants that are regulated. And of those 83, we only find 5. And those are pesticides, trihalomethanes, nitrates, and a few other things that happen to come along the way. Now you say, why on earth do you have to do all of this, and we have to do it every year even though we do not find 78 of the contaminants that are presently regulated. That cost is somewhere in excess of $350,000 per year of our operating costs. We made an investment of $750,000 for a new laboratory and $1 million worth of equipment to be able to monitor for things that we never find.

That is very common across the Nation as a whole and it results in a cost that is being distributed to our customers for an investigation and hunting trip for things that we cannot find.

The 104th Congress has this opportunity to correct the problem. Senate bill 1316, that passed unanimously in the Senate, reauthorized the Safe Drinking Water Act to correct some of the problems that are currently in the Safe Drinking Water Act. The corrections that they put in is they removed the 25 contaminants every 3 years and basically have directed EPA to establish standards only when they find them occurring in drinking water, and when they pose a significant risk to health. We think that both of those things are positive and need to be implemented in a revision of the Safe Drinking Water Act. The other thing that is also included in the reauthorization of the Safe Drinking Water Act going through the 104th Congress is to set standards based on a risk-benefit formula. The idea is that why should you invest billions of dollars in the treatment equipment to save $100,000 worth of risk? Those benefits are also extremely important. A perfect example of that is the city of New York that is looking at having to build $14 billion worth of filtration system at minimal benefit of health to the consumers. In fact, it is such a big risk to the city of New York that they have made the determination not to do it as a community, but to give it to private business because they cannot raise the money to be able to do it. These are significant issues that are impacting the industry that I think can be easily corrected—at least from my chair, with changes in the Safe Drinking Water Act.

In closing, I really, for the Des Moines Water Works, really again appreciate the opportunity to be able to give you these comments about the Safe Drinking Water Act. Again, I want to compliment you for coming out to Iowa and doing the hearing, and to tell you that the water industry is truly seriously dedicated to providing safe, clean, and affordable water to its customers.

Mr. MCINTOSH. Thank you very much, Mr. McMullen, and during our questioning period, I want to ask you about an issue that was in the paper a few years back on Cryptosporidium and some of the regulatory issues relating to that.

Our next witness is Mr. Robert Layton, who is the city manager, city of Urbandale. Thank you very much.

Mr. LAYTON. Thank you.

Chairman McIntosh, members of the subcommittee, like L.D., I would like to thank you for coming out to visit with us and giving us an opportunity to talk to you here in the field. My comments today will concentrate on two specific areas of regulation, the Americans with Disabilities Act and wetlands preservation. I have also submitted written comments on federally mandated drug and alcohol testing which I would ask you to review at a later time.

Regarding the Americans with Disabilities Act, as you know, it was adopted by Congress in 1990 to establish civil rights protection for individuals with disabilities. This protection applies to the areas of employment, public accommodations, local government services, and telecommunications. The ADA became effective for local governments in January 1992.

I should state up front that the city of Urbandale does not object to the purpose and intent for the Americans with Disabilities Act. The goal for full accessibility to city programs and services is shared by the mayor, the city council, and city staff. However, compliance with the ADA has been time-consuming and costly. Additionally, the ADA has introduced an element of liability for the city since it now may be sued for non compliance. Legislation that was less stringent in its timetables and more flexible in its execution would have better served local taxpayers.

In order to conform with the ADA, city staff members were required to conduct a self-evaluation of all the city's facilities during 1992. The survey identified various items in each facility that could limit access to programs or activities. It took our staff several months to prepare the 177-page document to comply with the ADA requirements. The plan's scope and length were driven by the liability concerns that were introduced through the ADA.

The implementation of the city's ADA plan has been somewhat costly. For instance, it was determined that over 550 new sidewalk ramps were needed to meet the requirements of ADA. The estimated cost for the construction of these ramps was $235,000. In order to integrate this work into the city's capital improvements program, which is our annual planning document for our public infrastructure improvements, it was necessary to phase the ramp construction over several years. Unfortunately, the ADA did not give us that flexibility. We were required to meet all of the ramp requirements by July 1995. Obviously, this deadline did not recognize the magnitude or expense of such a project in a municipality. Although the intent of the legislation is sound, the implementation regulations became onerous for many local governments in Iowa.

It has also been difficult for the city to receive reliable advice regarding the implementation of the ADA and that has been extremely frustrating. In fact, experts in the field have disagreed over the interpretation of the act, creating additional apprehension and nervousness for city officials. For instance, the city's administrative offices are housed in a building that was constructed in 1961. In order to comply with the Federal Government's previous accessibility requirements, a chair lift was installed in city hall. However, it now appears that the chair lift does not meet the new require-

ments of ADA and if the city were to stay in this building for an extended period of time, an elevator would have to be constructed. When that elevator would be required is the subject of interpretation, and we have had different opinions from different groups regarding whether that should be now or something that we could do at the time that we were to remodel the building.

In total, it is estimated that the city's compliance efforts with the ADA will cost $275,000, excluding any significant building improvements or modifications like the elevator. Cities throughout Iowa have experienced similar costs and I have detailed those in my written message.

One last item on ADA, I wanted to note that cities throughout the State have been required to improve the accessibility of playground equipment and other park facilities in order to comply with ADA. Again, a noble objective; however, it has been very difficult for us to retrofit playground equipment and even to determine what the intent of the legislation was regarding neighborhood parks, instead of just regional service parks.

In the area of wetlands preservation, another Federal regulation of increasing concern to us does pertain to wetlands. The Army Corps of Engineers was given the responsibility for the preservation of wetlands through the Federal Water Pollution Control Act amendments in 1972. Under section 404 of this act, the Army Corps of Engineers was authorized to formulate regulations for the protection of navigable waters in the United States. However, over a period of time, the Corps' responsibilities have extended beyond the country's main waterways.

Once again, it is difficult to argue with the legislative intent of wetlands regulation. This legislation was designed to reduce flooding and siltation, replenish aquifers and result in cleaner water. However, its application has become extreme over a period of time.

[Bell rings.]

Mr. LAYTON. And if I could just give an example and then I will conclude.

Mr. MCINTOSH. That would be great.

Mr. LAYTON. In Urbandale, a local property owner in the 1960's installed a 1-acre pond on land in the center of the city. Although this land was eventually to be used for residential and commercial development, it essentially served as a family recreational area. The pond was installed by the owner to serve as a fishing location for his children and grandchildren.

A few years ago, the owner finally decided to sell the property for a commercial office project. Much of the land was cleared and the owner took steps to fill the pond. However, the Iowa Department of Natural Resources, acting under the Federal wetlands regulations, would not allow the filling of the pond. Instead, the pond was designated as a wetlands area and the owner was informed the area was to be preserved. After almost a year of negotiation, the issue was finally resolved and the owner was required to provide a financial contribution to a group that was developing a wetlands area north of the city. The State deemed that this was a replacement wetlands and that the pond could be filled.

Hopefully, this example shows the problems created for cities by wetlands regulations. The waterway in question was not a natural

body of water, but a manmade fishing pond. It was never intended to be a permanent facility and was relatively small in size. Obviously the mitigation that was required of the developer was expensive and the developer lost a year of opportunity for the development of the property.

In summary, again, I would like to thank you for the opportunity to speak. The city of Urbandale recognizes the need for certain Federal policies and laws to advance national priorities. However, the development of regulations to enforce Federal legislation does not always accurately reflect congressional intent. Instead, regulations can introduce the element of uncertainty or provide a framework for unyielding enforcement. We believe that congressional priorities can be met through the adoption of flexible guidelines and regulations and not through the use of specific restrictions and punitive regulations.

Again, thank you for the opportunity to speak.

Mr. MCINTOSH. Thank you, Mr. Layton, and additional remarks in your testimony will be included in the record and we will review that.

Our final witness on this panel is Mayor Tom Hanafan of the city of Council Bluffs. Thank you, Mayor for joining us.

[The prepared statement of Mr. Layton follows:]

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February 6, 1996

The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth, Natural Resources,
and Regulatory Affairs
Congress of the United States
House of Representatives

Chairman McIntosh and Members of the Subcommittee:

I wish to thank you for this opportunity to visit with you regarding the impact of federal regulations on municipal governments. My comments will concentrate on two specific areas of regulation, the Americans with Disabilities Act and wetlands preservation. Additionally, my written testimony will address the impact of federally mandated drug and alcohol testing.

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was adopted by Congress in 1990 to establish civil rights protection for individuals with disabilities. This protection applies to the areas of employment, public accommodations, local government services and telecommunications. Under the ADA, a city may not exclude or deny a qualified individual with a disability from participating in its services, programs or activities. Additionally, a city must make reasonable modifications to its policies, practices and procedures to eliminate discrimination on the basis of disability, unless such modifications would fundamentally alter the nature of the activity. The ADA became effective for local governments on January 26, 1992.

I should state up front that the City of Urbandale does not object to the purpose and intent for the Americans with Disabilities Act. The goal for full accessibility to City programs and services is shared by the Mayor, City Council and City staff. However, compliance with the ADA has been time consuming and costly. Additionally, the ADA has introduced an element of liability for the City since it may be sued for non-compliance. Legislation that was less stringent in its timetables and more flexible in its execution would have better served local taxpayers.

In order to conform with the ADA, City staff members conducted a self-evaluation of the City's facilities during 1992. This survey identified various items in each facility that could limit access to programs or activities. The self-evaluation also determined the accessibility of sidewalks and parks. Additionally, the survey identified corrective measures for any facility, sidewalk or park found to be in non-compliance. It took staff members several months to prepare this 177 page document. The plan's scope and length was driven by the liability concerns introduced through the ADA.

The implementation of the City's ADA plan has been somewhat costly. For instance, it was determined that over 550 new sidewalk ramps were needed to meet the requirements of the ADA. The estimated cost for the construction of these ramps was $235,000. In order to integrate this work into the City's Capital Improvements Program, it was necessary to phase the ramp construction over a few years. However, the ADA provided little flexibility for cities in this regard. Under the provisions of the Act, the ramps were to be constructed by July, 1995. Obviously, this deadline did not recognize the magnitude or expense of such a project in a municipality. Although the intent of the legislation is sound, the implementation regulations are onerous.

It has also been difficult for the City to receive reliable advice regarding the implementation of the ADA. In fact, experts in the field have disagreed over the interpretation of the Act, creating additional apprehension and nervousness for City officials. For instance, the City's administrative offices are housed in a building that was constructed in 1961. In order to comply with the federal government's previous accessibility requirements (Section 504 of the Federal Rehabilitation Act of 1973) a chair lift was installed in City Hall. However, there has been some discussion that this chair lift does not meet the accessibility requirements of the ADA. If the City were required to install an elevator, the cost would be approximately $70,000. Since the City plans to eventually move city hall to a new location, it does not appear that the construction of an elevator would be a wise use of tax money. Additionally, it is not even clear if such an improvement is required by the ADA, unless the building is remodeled. Again, the City has not been able to obtain reliable information regarding this requirement.

In total, it is estimated that the City's compliance efforts with the ADA will cost $275,000, excluding any significant building modifications. Cities throughout Iowa have experienced similar costs. For instance, the City of Carroll estimates that over $205,000 will be needed to address the sidewalk ramp requirements of the ADA. The City of Iowa City has allocated $100,000 annually for its sidewalk ramp program.

In Burlington, the city improved accessibility to its police headquarters, airport terminal, library and municipal auditorium in order to comply with the ADA. Finally, cities throughout the state have been required to improve the accessibility of playground equipment and other park facilities in order to comply with the ADA. The review of park facilities has been especially difficult due to the scope of the legislation. In Urbandale, we have wrestled with the concept of accessibility for neighborhood parks. Must every park facility be accessible or only those serving a broader population? We continue to struggle with this issue as park projects are planned for the future.

Wetlands Preservation

Another federal regulation of increasing concern to local governments pertains to wetlands. The Army Corps of Engineers was given responsibility for the preservation of wetlands through the Federal Water Pollution Control Act amendments of 1972. Under Section 404 of this Act, the Army Corps of Engineers was authorized to formulate regulations for the protection of navigable waters in the United States. However, over a period of time, the Corps' responsibilities have extended beyond the country's main waterways. In fact, the Corps is now responsible for the protection of most wetland areas in the United States.

Once again, it is difficult to argue with the legislative intent of wetlands regulation. This legislation was designed to reduce flooding and siltation, replenish aquifers and result in cleaner water. However, its application has become extreme over a period of time. The wetlands regulations are especially burdensome in urban settings. A city wetland could be something as simple as a man-made pond. Such bodies of water are common in urban developments and do not appear to be consistent with the original wetlands definition.

A story of wetland regulation in Urbandale may help to illustrate the problem. In the 1960's, a local property owner installed a one acre pond on land in Urbandale. Although this land was eventually to be used for residential and commercial development, it initially served as a family recreation area. The pond was installed by the owner to serve as a fishing location for his children and grandchildren. A few years ago, the owner finally decided to sell the property for a commercial office project. Much of the land was cleared and the owner took steps to fill the pond. However, the Iowa Department of Natural Resources, acting under the federal wetlands regulations, would not allow this action. Instead, the pond was designated as a wetlands area and the owner was informed that the area was to be preserved. After almost

a year of discussion, the issue was resolved. The owner was required to provide a financial contribution to a group developing a wetlands area near Ankeny. The state deemed that this was a "replacement" wetlands and that the pond could be filled.

Hopefully, this example shows the problems created for cities by wetlands regulations. The waterway in question was not a natural body of water but was a man-made fishing pond. It was never intended to be a permanent facility and was relatively small in its size. The mitigation allowed under the federal regulations proved to be expensive to the developer in two ways. First, the contribution for the construction of a replacement wetland was costly. Second, the development of the land for office use was delayed by almost a year. It is difficult to see the public purpose served by this action.

Drug and Alcohol Testing

My last issue of concern involves the Federal Department of Transportation's requirements for drug and alcohol testing of Commercial Drivers License (CDL) holders. Under the Omnibus Transportation Employee Testing Act of 1991, a national prohibition on the use of alcohol by operators of commercial motor vehicles was adopted. Prior to this regulation, the enforcement of such a motor vehicle restriction rested with state and local authorities. It is difficult to say that existing laws have not adequately addressed the situation. In most states throughout the country, laws involving the use of a motor vehicle while under the influence have become more comprehensive and punitive in their scope. For this reason, there does not appear to be a need for the introduction of this new federal regulation.

More importantly, the drug and alcohol testing regulations adopted by the Federal Department of Transportation have placed financial and administrative burdens on local governments. Cities are now required to annually test 50% of its Commercial Drivers License holders for drugs and 25% of its license holders for alcohol. These tests are to be conducted on a random basis. Additionally, all license holders must attend a one hour training session each year and supervisors must attend two hours of annual training. This training must deal with the impact of drug and alcohol use on the operation of a motor vehicle. Additionally, contractors and subcontractors doing work for the city must have a drug and alcohol policy and the city must develop a similar policy. These requirements became effective on January 1, 1996.

In order to meet these requirements, the City has joined a drug and alcohol testing alliance. This organization consists of over 350 cities, counties, public utilities and transit

agencies, representing over 5,150 covered employees. In order to participate, Urbandale has paid a $50 enrollment fee and must pay $45 per employee for drug and alcohol testing. It is estimated that the first year cost for Urbandale's testing of employees will be $770 and that the ongoing annual expense will exceed $700.

Although the direct cost for the CDL drug and alcohol testing is not significant, it does represent an unnecessary burden for local governments. It would have been more helpful if enabling legislation had been adopted by Congress to allow cities more flexibility in designing their drug and alcohol policies and testing programs.

Conclusion

The opportunity to address the impact of federal regulation on city governments is greatly appreciated. As noted above, the City of Urbandale recognizes the need for certain federal policies and laws to advance national priorities. This concept of federalism is one of the most important building blocks for our form of government. However, the development of regulations to enforce federal legislation does not always accurately reflect Congressional intent. Instead, regulations can introduce an element of uncertainty or provide a framework for unyielding enforcement. We hope that the Subcommittee will consider ways to work with local government in the formulation of future regulations. We believe that Congressional priorities can be met through the adoption of flexible guidelines and regulations, not through the use of specific restrictions and punitive regulations.

Thank you again for the opportunity to testify today.

Robert Layton
City Manager

Mr. HANAFAN. Good morning. Thank you for allowing me to join you today.

I am going to deal with the Fair Labor Standards Act. I have some written comments on the ADA.

On February 19, 1995, the Supreme Court, in the landmark case of *Garcia* v. *San Antonio Metropolitan Transit Authority* made the body of law known as the Fair Labor Standards Act of 1938 applicable to the State and local governments. At face, the immediate ramifications to Council Bluffs did not appear overwhelming, since we already were paying minimum wage, overtime and complied with all the child labor relations contained within the act. Nevertheless, the problems associated with taking legislation originally intended for the private sector and applying it to government functions were quick to surface.

Because the application of the law was new to State and local governments, problems began to arise immediately in the public safety sector that require varying work schedules. Section 7(K) of the law recognizes the different work schedules required of law enforcement and fire personnel. Unfortunately, the treatment of ambulance personnel who work at the same fire station during the same work schedules was left open to interpretation.

Section 7(K) allows cities to pay overtime after 53 hours of work rather than the 40 hours specified for non–7(K) jobs. Most cities, including Council Bluffs, have paid ambulance personnel under the 7(K) exemption. Numerous Federal District Court decisions have attempted to further clarify application of this section with the end result of a myriad of conflicting results. Despite the fact that this law has been applicable to State and local governments since 1986, it was not until the Supreme Court case of December 1994 that this was resolved. In the case of *Chicago* v. *Alex*, the Supreme Court let stand a U.S. Court of Appeals decision that found that paramedics are not subject to the 7(K) exemption because their duties are not related to fire protection or law enforcement activities.

What does this mean to Council Bluffs? Our city will be subjected to paying current and past ambulance employees 2 years of back wages for overtime after 40 hours rather than 53. This is estimated to cost the city in excess of $65,000. We will now have to begin paying ambulance personnel who work 24 hour shifts overtime after 40 hours. This means that they will be paid more than the firefighters they work with.

As a result of this decision, as well as the inability of Congress to provide corrective legislation to this issue, we must now reassess the manner in which we provide this service—if we are going to continue providing the service. This is yet another example of a well-intended legislation evolving into an uncontrollable myriad of regulations that eventually results in a detrimental effect on the very services that benefit the citizens we represent.

Thank you.

[The prepared statement of Mr. Hanafan follows:]

Mayor Tom Hanafan

On February 19, 1995, the Supreme Court, in the landmark case of Garcia vs. San Antonio Metropolitan Transit Authority, made the body of law known as the Fair Labor Standards Act of 1938 applicable to state and local governments. At face, the immediate ramifications to Council Bluffs did not appear overwhelming since we already were paying minimum wage, overtime, and complied with all child labor regulations contained within the act. Nevertheless, the problems associated with taking legislation originally intended for the private sector and applying it to governmental functions were quick to surface.

Because the application of the law was new to state and local governments, problems began to arise immediately in the public safety sector that required varying work schedules. One problem that Council Bluffs is currently dealing with is the issue of the application of section 7(K) as set out in 29 Code of Federal Regulations, Section 553.215(a). It is this section of the law that recognizes the different work schedules required of law enforcement and firefighter personnel. Unfortunately, the treatment of ambulance personnel who work at the same fire station during the same work schedules was left open to interpretation.

Section 7(K) allows cities to pay overtime after 53 hours of work rather than the 40 hours specified for non 7(K) jobs. Most cities, including Council Bluffs have paid Ambulance personnel under the 7K exemption. Numerous Federal District Court decisions have attempted to further clarify application of this section, with the end result of a myriad of conflicting results. Despite the fact that this law has been applicable to state and local governments since 1986, it was not until the Supreme Court case of December 1994 that this was resolved. In the case of Chicago vs. Alex the Supreme Court let stand a U.S. Court of Appeals decision that found that paramedics are not subject to the 7(K) exemption because their duties are not related to fire protection or law enforcement activities.

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As a result of this decision, as well as the inability of Congress to provide corrective legislation to this issue, we must now reassess the manner in which we provide this service; if, we are to continue providing the service. This is yet another example of well intended legislation evolving into an uncontrollable myriad of regulations that eventually results in a detrimental effect on the very services that benefit the citizens we represent.

ADA

As we all know local governments are covered by the Americans with Disability Act and are responsible for making all of our programs and activities accessible to persons with disabilities.

Title 11 of ADA prohibits public entities from discriminating against or excluding people from programs, services or activities on the basis of disability. Title II falls into four broad areas (1) general non discrimination, (2) equally effective communication, (3) program accessibility, and (4) employment - ADA utilizes a three-pronged definition of disability. For purposes of coverage under ADA, a person with a disability is defined as an individual who: (1) has a physical or mental impairment that substantially limits one or more major life activities; or (2) has a record or history of such an impairment; or (3) is perceived or regarded as having such an impairment. It also needs to be noted that local governments receiving federal funds are required to meet similar requirements of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination in all entities that receive federal financial assistance. However, because of the fact that Section 504 has been in effect for 23 years design criteria and regulation have made some changes obsolete.

Considering how local government must meet ADA requirements in responding to physical barrier, the following example reflect action that the City of Council Bluffs, Iowa has taken or will take over the next ten years.

Public Works Department - ADA Handicapped Ramps

Due to the ADA regulations requiring cities to install all intersections with handicapped ramps, the City of Council Bluffs has been forced to forego its normal sidewalk inspection and repair program and channel its resources and monies to the ramp program.

As a result, the City completed an inventory of all intersections in 1993 and has now established a program of reconstruction/replacement. Areas of high pedestrian traffic have been identified and targeted for new ramps. This program, which is now costing an estimated $150,000 per year, will continue until every intersection has been addressed.

The Department has estimated that it will take ten years to complete this program.

Equal to the curb replacement program is the cost to install ramps in new or recontruction of streets. Total cost for both programs over 10 years is estimated at $3.5 million.

Unfortunately, the ADA regulations are so inflexible that compliance of design standards are sometimes impossible. Standards call for ramps to be constructed at a slope of 12:1 or 8.33% grade. The City of Council Bluffs has over 75 miles of streets that exceed this minimal grade requirement with several streets having grades double the 8.33%.

Public Buildings

The City has evaluated it public buildings and is actively pursuing a program to make them handicapped accessible. Examples of this work is the construction of a unisex handicapped restroom in City Hall. It was determined that the existing restrooms could not be retrofitted. Doorways and stalls were too narrow. The cost was prohibited. Therefore, a new restroom was constructed at a cost of $3,000. To date, the restroom is not utilized.

Another example is the construction of ramp, restrooms and doors for a community meeting place. The building was constructed in 1973. It was considered to be handicapped accessible. However, it did not meet ADA design criteria and the City spent over $31,000 to bring the meeting room into compliance.

Parks and Recreation facilities

Constructing park and recreation facilities to meet ADA requirements is difficult. Part of the problem is the lack of design standards. Examples of the effect of ADA on future programs include:

Playground Equipment

The City has identified a playground replacement program for its existing 25 parks. $150,000/year for the next 5 years has been allocated for this program. Approximately 30% of the cost of each unit is estimated for handicapped accessibility.

Swimming Pools

The city has two outdoor swimming pools. One needs to be accessible. Estimated cost is $15,000 to meet accessibility standards.

Portable Restrooms

The City utilizes portable restrooms at many of the parks. A handicapped accessible portable restroom costs $130/month more than the "standard" portable restroom. We currently place 14 restrooms in our parks between April and November.

The aforementioned are examples of what the City did or is doing to meet ADA requirements. While we understand the need to provide accessibility, we do not need standards that may not work in our environment. We need the ability to be flexible and be able to adapt to our local environment.

Mr. MCINTOSH. Thank you. Let me just mention that I predict you will see a greater receptivity in Congress for relief in this area because as of January all of our Congressional offices are now under those same standards. [Laughter.]

For the first time. I have always said the best benefit of that law will be that we will get much better laws out of Congress when we have to live under the same ones that everybody else does.

Thank you all for coming and testifying today. I appreciate that and I want to make sure we have time to ask some questions from the panel.

I wanted to check with you, Mr. McMullen, on an issue that—when I talked with some of the water companies in Indiana, they were expressing frustration with the Federal regulation in an area where the public had a real concern about the safety of the water, and that was with the incident in Wisconsin with the Cryptosporidium. And they were frustrated because the requirement was that they do tests rather than identify where there might be a problem and research on ways to actually eliminate that blight. But I wanted to check with you on what your experience has been in that area and the intersection of the Federal oversight.

Mr. MCMULLEN. Well, I think that the whole arena of microbiological contamination of water is an extremely important issue, and Cryptosporidium is a very serious organism, especially for the amino-compromised subgroup of the population.

The frustration that really enters on Cryptosporidium is the ability to be able to detect it. The current methodologies to be able to find it are somewhere in the range of about a 10 percent recovery. So you can—about all that you can really tell when you test for it is that if you find it, you definitely have it; if you do not find it, you do not know whether you do not have it or whether it is there and you just did not find it because of only a 10 percent recovery.

It seems frustrating to the water industry in particular when you are regulating a contaminant that you really cannot test for. It is very difficult to try to communicate that appropriately to our customers as well as the cost to be able to do this monitoring, which the end result is you do not know what it really means.

The EPA currently has this Partnership for Safe Water Initiative that is a voluntary program between utilities and the drinking water industry. Des Moines, as one of those partners in this partnership, is really focused on the Cryptosporidium issue. And in fact, what it is working with is turbidity or the fogginess of the water, to minimize that and maximize the efficiency or the effectiveness of the treatment plant. That approach is far more effective in being able to address the microbiological risks of drinking water than it is to test for Cryptosporidium. And that is really the frustration that is in the water industry with that particular organism.

I think it is only going to be compounded, because as we look at more and more of these same type of critters, we run into the same problem of having to test for them.

Mr. MCINTOSH. And so in your case, you have spent the resources on focusing on areas where you do see a potential impact on this problem, rather than just testing periodically?

Mr. MCMULLEN. Well, Des Moines Water Works has done both. We have monitored for Cryptosporidium in all of our rivers, in all

of our raw water sources as well as our finished water. We find Cryptosporidium in the rivers—I mean it would be a surprise if we did not, because of their common involvement with cattle, in particular, in our watershed. But we have never found it in our finished water. So we think that the treatment systems that we have set up within the treatment plant and by optimizing these even more, that is a better defense for that particular organism than to just test for it.

Mr. MCINTOSH. Thank you. I appreciate that. That is something that has come up in previous cases and I wanted to check with you on it.

I will defer to my colleagues and do not have any further questions.

Mr. Ganske, do you have any?

Mr. GANSKE. Thank you.

I want to thank the members of this panel for taking some time out from their busy days and also in some cases for traveling from the other side of the district. I am very happy to see you here.

Mayor Gray, I was astounded by your testimony. You know, it was about 35 years ago or so, maybe L.D., you can tell me this, that a correlation was found between areas in the country that had low rates of tooth decay. There were some places in the country where nobody had any cavities, and they tried to figure that out. They finally found out that it was because there were naturally occurring fluorides in water.

So you are telling me that because your community was one of those fortunate ones that had the fluorides in it that prevented everybody from having tooth decay—and probably lives being lost because of dental abscesses and other problems—that you had possibly 1 milligram per million more than an arbitrary allowance, and now you were having to remove it when most of the other communities in the country were having to add it. Is that right?

Mr. GRAY. That is right, and then we have to—our biggest expense now, you know, after the plant is in operation, is $50,000 a year just to maintain it, just to operate it. And I realize, you know, if we are talking about a bigger community, $50,000 is not a great deal, but we are only talking about like 850 services, which is a great deal.

Mr. GANSKE. Do you have any knowledge of scientific evidence that there is any harm, to the people of your community at the level at which the fluoride naturally occurs?

Mr. GRAY. No, we do not.

Mr. GANSKE. Nor do I, and I have looked at that issue. I thank you very much for your testimony.

As I listened to everyone on the panel, clearly there are water concerns, areas having to do with safe water reenactment, that I am very glad to hear about. Also, I think at least in the written testimony, Mayor Hanafan has it in his testimony, there have been, some unintended consequences of ADA. I feel very, very strongly that we need to make sure that the disabled have access to public buildings, in particular. But I will tell you that as I have traveled throughout the fourth district, especially in the small towns, we have had some unintended harmful consequences that have not been addressed. If you go to a town, for instance, like

Oakland, you have a Main Street there, beautiful brick buildings with lentils of sandstone, steps of sandstone, that are empty. And you can repeat that story all throughout my district. Because the original grandfathering exclusion in that bill is no longer in place, because the property has passed into somebody else's hands, in bringing those buildings into compliance would cost more than the buildings are worth. So we have had a withering of our main streets in many of the small towns in this district. I thank you very much for bringing that to our attention.

It is clear that it is not just a problem in Atlantic that we are dealing with in terms of cleanup problems. I know of this problem in Red Oak, in Villisca, in Corning, in Stuart—we have a situation where, Mr. Torreson, if that building had been sitting just outside of our city limits, you could burn all the charred timber, significantly reduce the volume that you would then take to your landfill, and you would not have to be dealing with the seeking of variance like you are dealing with right now. That is an indirect consequence of the regulations that have come from Washington.

I want to thank the panel. I really do not have a specific question right now, but it seems to me that what you have been telling us is that you have been suffering under a lot of unfunded mandates from Washington. I will see what I can do to help.

Mr. MCINTOSH. Thank you, Congressman, we appreciate that and look forward to working with you in your spot on the Commerce Committee. We identify a lot of regulations often that your committee can help with and we will be making sure we get you that information.

Let me turn now to Mr. Gutknecht. Do you have any questions for this panel?

Mr. GUTKNECHT. Well, Mr. Chairman, no real questions. I want to thank the panel for coming forward. For the benefit of Mayor Gray, we had in Minneapolis at one of our hearings—or in St. Paul, I should say—one of the gentlemen who helped develop the technology for the spectrometer which enables us to measure parts per million and now parts per billion, which we could not measure before. And he said he has mixed feelings about that development, because he did not really realize what he had wrought when they began to develop that technology.

I especially want to thank you and congratulate you. It takes a special amount of courage as a public official to come and talk about the problems that have been created, especially in some of these areas that are related to clean water, recycling, the ADA and the Fair Labor Standards Act. In many respects, those are considered, especially inside the beltway in Washington, sort of the politically correct issues that you cannot even talk about. As a matter of fact, on the full committee when we had a bill to just have a moratorium on new rules and new regulations proposed by the Federal bureaucracy, some of us on this subcommittee were accused of wanting to kill people, and that people would die. In fact, the Cryptosporidium example was used several times, that if you had a moratorium on new Federal regulation, that people would die. And I want to especially thank you, Mr. McMullen, for coming forward to talk about the facts and the actual science about Cryptosporidium and other things.

I do want to ask you, Mr. McMullen, one question, because just about everything you said was in plain English and I understood it completely, but when you said the amino subgroup of the population, would you please tell me what you meant? [Laughter.]

Mr. MCMULLEN. I meant amino-compromised subgroup of the population.

Mr. GUTKNECHT. OK, whatever it is.

Mr. MCMULLEN. This is a subgroup that the amino system has been compromised to the point that the natural antibodies will not counter the microbiological contaminant Cryptosporidium. And at least to the best of my knowledge at this moment in time, I still do not think that we have a drug to get rid of the critter. You just have to wear it out by natural immunities.

Mr. GUTKNECHT. So what you are saying is there is a certain element of the population that is much more susceptible or this is a more dangerous bacteria.

Mr. MCMULLEN. Cryptosporidium, to a sensitive subpopulation, could mean death.

Mr. GUTKNECHT. OK. Well listen, again I want to thank you. But I think the overriding point, and I particularly liked the Jeffersonian comments, Mayor Reel, that you made, because it just struck me how far we have come from the vision of Thomas Jefferson and the observations of de Tocqueville about what really makes this country work, its communities like Missouri Valley and all the other communities that you represent, where I think people in those communities and I suspect, Mr. McMullen, you probably care more about the health and safety of the water supply in Des Moines, IA than most of the Federal bureaucrats in Washington, DC, even though sometimes that is not the attitude that is taken. And it really is about communities caring more about what is happening in their communities than the compassion that is doled out—or at least the regulations which are doled out in the name of compassion. And it struck me how far we have come from those days when we really believed that the best government was that government which governed least.

Listen, thank you so much, you were great.

Mr. MCINTOSH. Thank you, Mr. Gutknecht.

Mr. Latham, any questions for this panel?

Mr. LATHAM. Just very briefly.

And you should probably be aware, Mr. Chairman, and Gil, that in 1993, Mr. McMullen was probably the most famous person in Iowa and there are probably some candidates out there running in the caucus next week that are very fortunate he is not in the field, because he would probably take the Iowa caucus next Monday.

I just want to briefly—Mayor Gray, I just did some math here and the facility is about $368 for every man, woman and child when you built it and ongoing costs would be somewhere around $28 or something like that for every man, woman and child in Manson. What, in addition, as far as the testing cost that you have to go through in addition to this, do you know what the number is as far as what it costs you? You probably have quarterly——

Mr. GRAY. I think it runs us about $1,200 a year in additional costs.

Mr. LATHAM. Do you have just one well?

Mr. GRAY. No, we have two wells.

Mr. LATHAM. Two wells.

Mr. GRAY. Right.

Mr. LATHAM. I know in some—and I come from a town of 168 people and that type of cost goes up greatly per person and especially a town like mine, you simply cannot afford to—you cannot raise taxes enough in my home town to pay for the testing that is going on. And I really appreciate your testimony here.

I will conclude. I know we have a lot of people that want to testify before the committee.

So thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Latham.

Thank all of you for joining us today. I really appreciated your comments and your testimony, it will be very helpful to us in looking at a lot of these regulatory problems. I know you have got busy schedules and a lot of responsibilities, so thank you for coming and joining us.

At this point, we are going to switch over to our open microphone section. Mildred Webber, who is the staff director, was taking names from people who wanted to testify and I think some people have indicated they had to leave or left, but I am going to call out the names who are still on the list, and if you could come forward to the mic there. What I will do is call out three or four names at a time so we can have some people on deck as we get ready to go forward. We did have a total of about 48 people signing up, so I am going to ask that everybody keep their remarks to 3 minutes. If you have additional materials that you would like us to include in the record, we will definitely do that. And I will also be asking everybody to state your name for the record.

If I could ask everybody in the room who wants to participate or thinks they might want to participate in the open microphone section to please stand and I will administer the oath en masse. Just about everybody, that is great.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you, I appreciate that. Let the record show that each of the forthcoming witnesses answered in the affirmative. I hope you caught that, recorder over there. [Laughter.]

David, is he back—someone will come up and give you a timing on the 3 minutes to help, and I do apologize, I know that sometimes interrupts, but that will let us hear from everybody if we keep going.

The first person on the list who is still here is Mr. Douglas Betts. Then Larry Carl, John Houston and Bill Logan. If you guys could come forward and if you get out of line, that is fine, just state your name for the mic. Welcome.

STATEMENT OF DOUGLAS BETTS

Mr. BETTS. Thank you.

My name is Douglas Betts, I am an engineer. I have two points I would like to make to this committee.

First is the tremendous burden of regulatory paperwork that has been placed on businesses and small communities by the Environmental Protection Agency and the OSHA groups. And the second is the distrust that industry has grown to have for these agencies.

I represent a small manufacturing company here in Iowa. My sole job is to interpret, implement and mandate the OSHA and environmental regulations for that company. When I started with that firm 6 years ago, the equivalent of that job was done by the personnel manager and comprised only 20 percent of his time. It is now my full time job. This is for a facility that only employs 200 people. Our costs of compliance have risen 500 percent in 6 years. It is pretty hard for an industry with only 200 people to support a full time engineer just for these issues.

I feel the emphasis on paperwork has overshadowed the true goals of the regulations, which is the protection of the employee and the environment. Of the 25 most cited OSHA violations for 1994, 55 percent or 24,238 violations, related to paperwork. Written plans, posters, labels and other documents were somehow found to be substandard. Citations issued by the EPA also show an increasing number of cases involving clerical type discrepancies. My point to you is that no one was directly injured by these errors, nor was the environment placed in danger. I acknowledge evidence that proper procedures and planning can reduce accidents. However, resources expended on paperwork violations do not alleviate the situation or attempt to solve the problems. Inspectors and regulatory rulemakers are the least prepared to pass judgment on the programs created by the individual industries, by the people that work in them every day. I understand that Congress is looking at eliminating the threat of fines for paperwork violations, and I would support doing so.

This brings me to my second point, distrust and animosity toward the regulatory people. I know you have heard many cases today, and bear with me for one more. Each day without fail I read in the newspaper where some industry or individual is defending themselves against an unreasonable or ridiculous regulation. Much money and effort is being expended on these cases, none of that money going to make conditions better.

I have had an example of this, where a regulatory official passed judgment on compliance obviously and totally ignorant of their subject matter, and I would like to share it with you.

Several industry engineers and myself attended a voluntary OSHA class this past year. This class' purpose was to educate industry on handling inspections. During the class, the OSHA inspector explained that when she was on an inspection, an item she looked for was taped circuit breakers, claiming that the breaker would not trip. Anybody who understand electric knows that a breaker is going to trip regardless of that, and it shows she did not understand her material.

Thank you.

Mr. MCINTOSH. Thank you, Mr. Betts, I appreciate you coming forward on that.

The next person on the list is Mr. Jim Houston—or John Houston. Is he here?

[The prepared statement of Mr. Betts follows:]

Doug Betts

Presentation at Congressional hearings on regulatory matters.

My name is Doug Betts, and I am an engineer. I have two points I would like to make to this committee, **first** the tremendous burden of regulatory paperwork on small business and **second,** the distrust that industry has grown to have for regulatory agencies.

I represent a small manufacturing company here in Iowa. My job is to interpret and implement regulatory measures, specifically OSHA safety rules and EPA environmental rules. When I started with the firm 6 years ago, this function was performed by the Personnel Manager, and occupied about **20% of his workload. Today, it is my full time job.** This represents almost exclusively the paperwork, research, and monitoring required to maintain compliance. This is a tremendous burden for an employer of only 200 people to support a full time engineer just for regulatory compliance. **Our costs of compliance in this area have increased 500% in the past 6 years.**

I feel the emphasis on paperwork has overshadowed the true goals of these regulations, protection of the employee and the environment. Of the top 25 most-cited OSHA violations in 1994, 55% or 24,238 violations related to paperwork problems. Written plans, posters, labels, and other documents were found to be substandard in some way. Citations issued by the EPA also show an increase number of cases involving clerical type discrepancies. **My point to you is that no one was directly injured by these problems nor was the environment in danger**. I acknowledge evidence that proper procedures and planning can reduce accidents, however resources expended on paperwork violations do not alleviate the situation or solve the true problems. Inspectors and regulatory rule makers are the least prepared to pass judgment on programs created by the people who work in the industry every day. Yet they are in a position to fine those industries based solely upon this paperwork shuffle. **I understand that Congress is looking at eliminating the threat of fines for paperwork problems and I strongly support doing so.**

This brings me to may second point, distrust and animosity towards regulatory people. Each day without fail, I can read in the newspaper where some industry or individual is defending themselves from unreasonable or ridiculous regulation. Much money and effort is being expended in these cases, none of which improve working conditions or the environment. I have an example of this, where a regulatory official passed judgment on compliance obviously and totally ignorant of their subject matter, and I would like to share it with you.

Several industry engineers and myself attended a voluntary OSHA class on compliance this past year. **This class was to educate industry on handling inspections.** During the class, the OSHA inspector explained that when she was on an inspection, an item that she always looked for was tape on the handle of a circuit breaker. I am sure you have seen circuit breakers in your office that have been taped in the "on" position to prevent someone from inadvertently shutting off a computer or other important piece of equipment. Most electrical apparatus makers even provide little metal clips for this purpose. **This inspector claimed that this was an easy violation to cite because the tape would prevent the breaker from tripping in the event of an circuit overload.** This statement instantly told me three things...first, the inspector had absolutely no knowledge about electrical equipment she was inspecting. All circuit breakers approved

for use are internal trip, the securing of the handle has no effect upon the operation. Second.... the inspector knows that in every office she will be able to find this condition and be able to use it as a compliance issue with that business. It will automatically place the business on the defensive. And thirdly, when this attitude is presented at a training session sponsored by a regulatory agency, it must therefore be acceptable to that agency. When several people in this class, including myself, pressed this issue with the inspectors present at this class, we were made very aware that it was improper for us to question their presentation or their knowledge of the subject.

This is only one example of how industry has been alienated by the regulatory community. These people need to be held accountable for their statements and actions, and properly trained in the area to which they are inspecting. Many of the "voluntary" programs offered by these agencies are not used because the public simply feels they cannot trust the agency.

In conclusion, I would like to offer suggestions for improvement. First, I feel paperwork-type enforcement actions must be limited to written reprimands. Acceptable, approved written procedures should be published by the agencies as a guide to business. Some of these examples already exist but are to my knowledge untested in a enforcement situation. Secondly, I feel there should be some type of industry committee, whose qualifications are suitable for the job, to oversee the inspection and consultation services offered to the public. This will insure that someone with direct, irrefutable knowledge of the technology, has had an opportunity to pass judgment on these services and has the ability to hold the agencies accountable for their performance. In turn, the managers of these agencies must hold their employees accountable for their actions with the public.

Thank you for this opportunity to express my opinions and I will take any questions you may have.

To further demonstrate my mistrust of these situation
I hope my presentation does not invoke a retaliatory
attitude with these agencies

Doug Betts
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work Knowa
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STATEMENT OF JOHN HOUSTON

Mr. HOUSTON. I want to briefly talk about some of the banking issues. There are so many of them, I cannot possibly talk about all of them, but I have four real quick ones I will simply summarize.

One is the prohibition of collection of data concerning applicants for a loan based on race, color, sex, religion and national origin. I want to talk briefly about the right of rescission, the Home Mortgage Disclosure Act and the Truth in Savings Act.

The Federal Reserve has suggested that we waive regulation B, which would allow and enforce banks to collect data on all types of loans, not just HMDA loans. I strongly oppose this. To collect information on someone's religion or national origin has no basis whatsoever to the quality of the loan and as of now, no final decision has been made. I ask that you do what you can to stop the Federal Reserve from allowing this information to be released.

On the second point, the right of rescission. I have been in banking 22 years, and not one of my customers has exercised the right of rescission, but many of them have been very angry that they have to wait an additional 3 days to get their loan proceeds after they have signed the documentation. Frequently they do not know this. For example, if they order a car and it comes in early, they go to the dealer, they write the check, they come to the bank and we tell them no, you have to wait 3 days for the right of rescission. They are very unhappy and it is time that we end the right of rescission.

The third point I want to talk about is the Home Mortgage Disclosure Act [HMDA]. A lot of studies have been made in Washington and the attempt on that was to prove that banks discriminate against lenders. Many studies have been done and it has been proven that HMDA does not prove discrimination whatsoever in credit analysis. And I think it is time that we end HMDA, end this expensive collection of data, 7, 8, 10 people in every bank have to spend a great deal of time collecting this kind of foolish data, that has nothing to do with the quality of the loan.

And the final issue is the Truth in Savings Act. That should be done away with entirely as soon as possible. Since the regulation came into effect June 21, 1993, there have been three proposals by the Federal Reserve saying that their formula was wrong, they need to change it, and each time banks have overwhelmingly responded as well as the public, that this is ridiculous and terribly costly to the public. Truth in Savings does not give good direction to the public as far as what is the best account for them to study. I have a copy of our disclosure which is extremely difficult to read. You would need—I need a magnifying glass to read it—it is two pages long and every time they change, we have to print another 25,000 of these. I have read this twice and I am the compliance officer, I doubt whether any of our customers have read it at all.

Thank you very much.

Mr. MCINTOSH. Thank you, I appreciate that. I also heard that the rescission makes most of your customers frustrated because they have to wait an extra 3 days before they can close on their home.

Mr. HOUSTON. That is correct, if it is a refinance that is correct, they have to wait 3 days to get their funds, as well as, say for ex-

ample, they have a builder out and the builder needs their money, they come into the bank, they know they have been approved, and we tell them you are going to have to wait 3 days. They say the builder is there, he has got his material, he is demanding his money. In some cases, I have written my check and he has already deposited it, I have got problems—you are right. The right of rescission should be waived.

Mr. MCINTOSH. Thank you for your testimony.

Mr. HOUSTON. You bet.

Mr. MCINTOSH. The next three people would be Mr. Bill Logan, Cecilia Gaudineer and Edward Swanson. If you can line up there, Karen will show you where to stand. Mr. Logan.

STATEMENT OF LARRY CARL

Mr. CARL. No, my name is Larry Carl, I was part of the first three that you called.

Mr. MCINTOSH. Great.

Mr. CARL. My name is Larry Carl, I am the executive director of the Iowa Chiropractic Society, the professional association representing the chiropractic profession in the State of Iowa. Our staff has already made available to the subcommittee staff a publication from the Cato Institute under their banner Policy Analysis, entitled "The Medical Monopoly: Protecting Consumers or Limiting Competition?" What I would like to do is read a quick excerpt from that.

> Another approach to limiting health care competition used when licensure and scope of practice restrictions fail is to restrict or limit substitute providers' services from payment by government health programs. That approach has been used, for example, to limit access to chiropractic treatment. Medicare regulations prohibit reimbursement to chiropractors for services they are licensed to perform in all 50 states. The federal reimbursement regulations appear not to be based on empirical evidence. In fact, the federal government's Agency for Health Care Policy and Research recently released national guidelines that recommends spinal manipulation as a safe and cost-effective treatment for acute back pain.

This document represents one of the most outstanding presentations of the current U.S. health care industry and the restrictive Federal regulations resulting in less patient choice and higher prices for consumers.

On the subject of Medicare Part B and its administration in Iowa, the Iowa Chiropractic Society board of directors has asked me to present the committee with a sampling of the administrative nightmare that faces the chiropractic profession. The one that I want to key in on is the prepayment screen system. This automatic system has resulted in an unprecedented number of denied chiropractic claims based on medical necessity. The problem with the prepayment screen is that doctors' records have not been submitted at this early point in the process and therefore that automated prepayment screen system has no objective criteria to judge medical necessity of the denied claim. The doctor is then presented with a difficult system of denied claim review, which generally results only in both physician and Medicare recipient frustration.

IASD, the Federal carrier that administers the Health Care Financing Administration's rules may argue that it is simply exercising good oversight by auditing claims at the prepayment level. In truth, the review process is so discriminating it has been decided

by the carrier that telephone reviews to correct simple clerical errors is time-consuming for denied chiropractic claims.

The Iowa Chiropractic Society requests that this subcommittee set a high priority for review of the Health Care Financing Administration regulations which allow, or worst yet, promote the continuing administrative nightmare perpetuated by HCFA regulations.

On a personal note, Congressman McIntosh, I applaud you for utilizing the Boy Scout sign to administer the oath this morning. Thank you.

Mr. MCINTOSH. Thank you. It is an old habit I guess. Thank you Mr. Carl, I appreciate your testimony. One of the great things about our freshman class is that we now actually have three doctors in Congress, and I know they have experienced some of the same frustrations that you do in your profession. I understand there are also some questions about discrepancy in how they are administered. But one of them is Dr. Ganske. Did you have anything?

Mr. GANSKE. Sure. My understanding is that the IRS currently allows chiropractic care expenses as a deduction, as a regular part of health care, is that not correct?

Mr. CARL. I believe that to be true.

Mr. GANSKE. OK. And the reason that I asked that is that under the Medicare reform bill that Congress has just passed, there is an option for medical savings accounts. Basically, allowable health expenses would be the same as what the IRS allows. So there would be a provision in the Medicare reform bill that will at least partially address some of your concerns.

Mr. CARL. Thank you.

Mr. GANSKE. I will talk to you more about that later.

Mr. MCINTOSH. That is an interesting point. And I know we saw it in those other regs, but the point that Mr. Ganske is making is if we get out of this regulatory morass on reimbursement and go to these savings accounts, then we solve a lot of the problems.

Mr. GANSKE. There is no question that the way that HCFA, the Health Care Financing Administration, has basically tried to control cost has been through price control and overwhelming bureaucratic control. So, the question in terms of moderating health care inflation is not whether choices are going to be made. Choices will be made either by a government bureaucrat, by a health insurance executive or by a patient. What we are trying to do is to devise some options for patients in the Medicare Program that would allow them more flexibility in terms of their choosing which of those options they would have.

Mr. CARL. Thank you.

Mr. MCINTOSH. Thank you.

Our next witness is Mr. Bill Logan.

STATEMENT OF BILL LOGAN

Mr. LOGAN. Yes, that is correct.

Gentlemen of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, my name is Bill Logan. I come to you today as the president of a $140 million bank on the banks of the Mississippi in Keokuk, IA—some of you might not

know that name, southeast 200 miles. It is a family owned bank since 1893, my great grandfather purchased it and we have been running it ever since. I am the fourth generation, I have two sons in the bank with me. I started in 1958 after graduating the University of Iowa and Chairman McIntosh, I am reminded we used to worry about the State of Indiana with some of those great teams you used to have in the fifties, particularly those two back-to-back NCAA champions, they were tough.

You will have in your hands a document on a recent dialog with a regulator, which I have subheaded "Bureaucratic overkill of the community bank." I liken the monster that has been created to the historical problems of a government gone amok. The conversations relate to people who have administrative powers above and beyond what is necessary at this time in the banking industry. Regulators are destroying reputations of long-standing banks for obviously no reason. The savings and loan industry, thanks to congressional liberalism and counting paper as capital, caused the downfall of that industry at a huge cost to the taxpayers. And with this power that was created for the S&L industry, millions of regulators are branching out from Washington to cause the problems that I have outlined in these documents.

Community banks are at a threshold of full interstate banking in 1997 and are being crushed out of existence by faceless bureaucrats using laws promulgated for the S&L industry. Crushed, in spite of comparisons that show outstanding banking being done in the State of Iowa.

I urge you to carefully review my dialog, which I will turn over here in a moment, with a regulator, from the perspective of a family owned bank, small bank in the town of Keokuk, IA, population 11,000. I urge you to support my language in this document for Corrections Day, with this question: What is happening in this country? We have got to give these banks some relief.

Thank you very much.

Mr. MCINTOSH. Thank you very much, Mr. Logan.

Mr. GANSKE. Mr. Logan, before you leave, may I ask you a question?

Mr. LOGAN. Certainly.

Mr. GANSKE. You played basketball at the University of Iowa?

Mr. LOGAN. Yes, I did.

Mr. GANSKE. Were you on Don Nelson's team?

Mr. LOGAN. No, he came a little bit later, but my roommate Sharm Sherman coached——

Mr. GANSKE. Sharm Sherman.

Mr. LOGAN. He was our guard, Sharm was our guard and Carl King, who is here in Des Moines, was our forward, and Bill Schulte and Bill Siever. But that Indiana team was the tough team.

Mr. GANSKE. Well, I just wanted to let you know, I remember as a kid listening to your team's exploits, and I think I have a picture, an old college picture that the University of Iowa sent out with your picture on it.

Mr. LOGAN. Well, thank you. It is nice to be remembered.

Mr. GANSKE. I would have never thought at that time that you would be giving testimony before me. [Laughter.]

Mr. LOGAN. Well, we appreciate you coming out and listening to us.

Mr. GANSKE. Thank you.

Mr. MCINTOSH. Mr. Logan, you would appreciate the analogy that I often use on where we are at in Congress in solving some of these problems, including the problems of over-regulation. Coming from Indiana, I tell them about the movie Hoosiers and that we are sometimes like the small town Milan team up against the big city team but we are determined to be victorious in the end. So thank you for coming today.

Mr. LATHAM. Mr. Chairman, I would like to tell the gentleman I know exactly where your town is, I was there Tuesday evening, spent a glorious evening, stayed overnight there, very nice. Thank you. We know were Keokuk is.

Mr. LOGAN. We are going to have riverboat gambling. [Laughter.]

Mr. MCINTOSH. Thank you for your proposed Corrections Day bill. We will take that up.

Our next witness is Ms. Cecilia Gaudineer. Welcome.

STATEMENT OF CECILIA GAUDINEER

Ms. GAUDINEER. Thank you for this opportunity.

I cannot believe I am up here. I am not a speaker but I feel very strongly about what I have to say.

I am a roofing and sheet metal contractor, I work with my husband and son. We are a fourth generation company, one of the oldest in Des Moines. My husband has been there 36 years and myself 22 and our son 11, so we are not youngsters in the business.

We face the same issues discussed earlier concerning the environmental and safety, and not only is it increasingly difficult to remain in business but it is discouraging as well.

I have not been able to get answers to questions concerning the 8(a) set-aside program. After a hands-on experience with one of these contractors, I can honestly say that the Government is promoting discrimination against authentic, knowledgeable contractors and costing the government, and in essence the taxpayers, thousands and maybe millions of dollars.

I had a contractor come to me for an extensive project, 20 different roofs. I spent much time on this and I broke it down many times for him. He wanted—he had no knowledge of the industry, I had to sit and explain to him every facet of the job for every roof and so forth. He—then out of my breakdown, he picked out 15 percent that he said he was going to do, but really he was not, he was going to sub it back. So not only did he mark my quote up 10 percent or whatever it was, he marked the 15 percent he claimed to be doing up an additional amount.

I just cannot believe that the government has such a program where a person can only do paperwork and get all this money. This is not fair and I feel so strongly about it. You are discriminating against me and we are the hard core working people.

He was not honest with me and told me different things, and I am just asking that I be treated as an equal.

Mr. MCINTOSH. Thank you very much, Ms. Gaudineer, for coming forward. Oftentimes you do not have to be a good speaker to have a very good point. All of us believe in President Kennedy's goal of

a color-blind society, but when you start having regulations that do not use color-blind tests but reverse discriminate, then we have moved the pendulum too far and are going in the wrong direction again. So thank you for coming forward and talking with us about that.

Our next witness is Edward Swanson.

Tom indicated he has got to go to a conference on the farm bill. I know that is important. I appreciate you coming. Thank you.

Mr. Swanson.

STATEMENT OF EDWARD SWANSON

Mr. SWANSON. Yes, thank you. My name is Edward Swanson, I am with a small pest control company, I manage it here in central Iowa and I am also on the Board of Directors of Iowa Pest Control Association which is about 150 pest control companies here in Iowa.

On behalf of the Iowa Pest Control Association, we want to thank you for giving us the opportunity to discuss with you today some concerns that we have regarding regulation by congressional and Washington bureaucrats. Rather than discuss a far range of concerns today, I would like to discuss the U.S. Department of Transportation Hazardous Material regulations specifically.

I would like to put it in perspective. We do not believe there is any set of Federal regulatory requirements which imposes a more onerous burden on a broader segment of the small business community, without any corresponding benefit to human health, safety or the environment.

Pest control operators, for example, typically transport small quantities of fairly benign chemicals, most of which are identical or nearly identical to pest control products which are sold to homeowners in home supply stores, lawn and garden stores. Yet PCOs are subject to a wide range of DOT regulatory requirements, including container marking, shipping papers, record retention, drug and alcohol testing, commercial drivers license, insurance and training. Worse than the requirements themselves is the difficulty in knowing how to comply. The Federal regulations are voluminous and confusing.

The cost of complying with these regulations is staggering and imposes an especially large burden on small businesses. We have calculated the approximate cost to just our industry for complying only with the shipping paper, recordkeeping, marking and training requirements. And I gave you a copy of that. Conservatively, we estimate the annual cost at $135 million, close to 3 percent of the industry's annual gross receipts. Despite the high costs, we have seen very little benefit to anyone. For instance, DOT requires that PCOs maintain a 24-hour emergency response telephone number. National Pest Control Association contracts this service through a company called INFOTRAC. In a year, INFOTRAC has received only two phone calls for incidents relating to the pest control industry, and neither was related to the transportation part of it.

[Bell rings.]

Mr. SWANSON. I just have a couple more sentences.

Mr. MCINTOSH. Certainly.

Not included in the estimates are the costs incurred by requiring all service technicians and managers have a commercial drivers license, as the gentleman from the farm panel also said. These costs include 2 year physicals, drug and alcohol testing, random drug and alcohol testing throughout the year of 50 percent of the company. Direct costs and lost production time taken up with all that increased regulation is substantial to the private sector.

In summary, the Hazardous Material Transportation Act was intended to regulate large interstate carriers of hazardous materials, such as truck lines and railroads and airlines that transport across State lines. The regulations impose a monumental burden on small businesses which only incidentally transport small quantities of hazardous materials.

We would suggest that the small quantity carriers, trucks under 10,000 pounds, be excluded from these regulations.

Quite frankly, just real simply, we will go to get our guys license—because we drive pickups now—and even the people at DOT are like what are you guys doing in here for a commercial drivers license, even they do not know that, you know, we need to have these types of licenses.

Mr. MCINTOSH. It does not make sense to them either.

Mr. SWANSON. It really does not.

Mr. MCINTOSH. Thank you.

Mr. SWANSON. Thank you. I appreciate your time and appreciate you listening.

Mr. MCINTOSH. Thank you for coming forward.

The next three people I am going to call forward are Nancy Onstat, Kristi Herschman and Nancy Donley. Nancy, welcome, good to see you again.

STATEMENT OF NANCY ONSTAT

Ms. ONSTAT. I am Nancy Onstat, a real estate loan officer with Homeland Bank in Indianola.

I started with the bank in 1980 and had no idea what I was in for in the lending area. The seventies were the days of the good ole boy lending era with very limited paperwork requirements and also limited cost to the consumer to obtain a home mortgage loan.

In the late seventies, a real estate note was a real simple promise to pay on a half sheet document that basically stated the repayment terms and collateral for the loan. The mortgage was a one-page instrument signed and recorded, and the total fee averaged only a few hundred dollars to get a mortgage loan.

Then came the eighties and updates and new regulations. The revision of the Truth in Lending Act, the Real Estate Settlement Procedures Act and the updated appraisal requirements was the onset of paperwork to complete a mortgage loan. What used to take very little time and expense has exploded into a paperwork nightmare for lenders and homeowners.

It has become so complicated that most compliance agencies are producing long matrix guides as to which forms are required with each type of loan by purpose or by collateral. We occasionally find discrepancies in these guides as the regulations are confusing and interpreted in different ways.

Current RESPA and Reg C requirements require many disclosures to be given to the borrower at application day and others within 3 days of application. This set of papers includes early Truth in Lending disclosures which is the most confusing document to a consumer. They are always uneasy to sign this document along with the other eight or nine required pre-disclosures that need to be given under the RESPA regulations. These include good faith estimates of closing costs, transfer of servicing disclosures, adjustable rate program disclosures, notice of right to receive a copy of appraisal, equal credit opportunity notices, settlement cost booklet, adjustable rate booklet, required use notices and controlled business notices. These are just pre-disclosures given at time of application.

Then to close a loan, you basically duplicate all the same information on a note, mortgage and HUD settlement statement along with a final Truth in Lending form. To obtain a loan, our borrowers have had to at least sign 20 forms, many of which are duplication of the very same information.

In my opinion, all of these required forms have not strengthened our loan portfolio or the credit quality of our borrowers in any way. They have not even served the purpose of protecting the borrower by making them feel better informed. Instead, they have only served to confuse, frustrate and cost the borrower more fees to obtain a mortgage loan. Today, the average fee, which used to be only a few hundred dollars, is now closer to $2,000 per loan. I do not think the average consumer can afford any more of this protection.

Thank you.

[Applause.]

Mr. MCINTOSH. Thank you, we appreciate that and I look forward to including that entire list in our hearing record.

Our next witness is No. 12.

Ms. HERSCHMAN. Kristi Herschman. I did not think my writing was that bad.

Mr. MCINTOSH. My contacts need correcting.

STATEMENT OF KRISTI HERSCHMAN

Ms. HERSCHMAN. Thank you for the opportunity to speak. My name is Kristi Herschman, I am a born and bred Iowan, raised in northwest Iowa and for the last 17 years my husband and my family have lived in Winterset. And you should all know where Winterset is.

I work for the Iowa Citizens Aid Ombudsmen's office. Our office provides free confidential services to anyone with a complaint against State and local government in Iowa. Many of the State and local regulations we get complaints about are a direct result of Federal legislation. My official title is assistant for environmental affairs. I started work November 13, 1995.

The need for my job is testimony to how difficult environmental regulations have become for small businesses. Having been a small business owner in both the ag and environmental sector for the last 18 years and having dealt with increasingly difficult and questionable environmental regulations over the last 18 years and being the mother of three children, I can say with some experience that two of the most over-rated activities of the United States today are

natural childbirth and owning your own small business. [Laughter.]

Ms. ONSTAT. Owning your own business is still the American dream and small businesses, including farmers, are the backbone of the Nation and Iowa. Because of the confidentiality of my complainants, I cannot go into specifics at this time, and I encourage you to contact me if you have any questions. But I also urge you to change the system so my job can be eliminated some day.

And Representative Ganske, for your information, Santa Claus brought us something for Christmas, and the author of the book will be speaking at the National Ombudsmen's Conference in St. Louis in May.

Thank you.

Mr. MCINTOSH. Ms. Herschman, I want to commend you on one thing. I have never heard anybody who has an official office come to Congress and ask us to do the steps it would take to abolish it. And I appreciate that. [Laughter.]

Ms. HERSCHMAN. You are welcome. Part of that is selfish, I do not like getting up in the morning that early. Thank you. [Laughter.]

Mr. MCINTOSH. Thank you. We look forward to working with you in the future, we will take you up on your invitation to get more information.

Our next witness, No. 13, has been a witness before this committee in Washington, Ms. Nancy Donley.

STATEMENT OF NANCY DONLEY

Ms. DONLEY. Starting off with No. 13 is really starting off on a terrific foot.

I am Nancy Donley and I am from Chicago. I took a day off work today specifically when I heard about this hearing being conducted, and my concern that of the three panels, that consumers were not being represented at all. I was not invited today, I just invited myself. Congressman McIntosh knows I do that from time to time.

I want to speak today—I am here representing the voice of 4,000 people who died this past year from meat and poultry contaminants and for the 5 million that have been sick this past year just again from meat and poultry contaminants. Most personally, I am here as the voice for my dead child, my 6-year-old son, Alex, who died 2½ years ago from E. coli 015787 poisoning. Just as a matter of statistics here, just in the State of Iowa this past year, 54 documented, known cases of E. coli poisoning have occurred.

I want to be the first to say I do not view regulatory reform as necessarily a horrible, horrible thing. There are areas that frankly need some work. There are silly things. But deregulation is not the answer. I am very, very concerned with the direction that the bill, as it is written now, that what is going to happen is that it is going to deregulate the public's health and safety. We have heard many things today about cost-benefit and risk analysis and what happens in this bill is that this has been a part of legislation, any sort of regulation that has been proposed before. This stuff is already being done. This new bill is calling for very excessive and impractical and unavailable information to make determinations of what

sort of regulations to go through. And what it will successfully do is stall any sort of very needed and necessary regulatory reforms.

We talk about cost analysis, risk benefit. I defy anyone, anyone in this room, to put a price of what their child's life is worth.

[Applause.]

Ms. DONLEY. I cannot put a price on my son's head and I cannot imagine anyone else telling me what his life would have been worth. My son wanted to be a paramedic to help others and he cannot do that. So society has lost by the death of my son. Put a price on the——

[Bell rings.]

Ms. DONLEY. May I just kind of wrap up here?

Mr. MCINTOSH. Sure.

Ms. DONLEY. Put a price on what I have had to go through these past 2½ years, the grief, my lost productivity. Get all of those into statistics, and it just makes analysis impossible.

Again, let us use common sense in this, let us look at some industries as needing more regulation, not less. There are some—I look at government, and please if you have heard this before, you people are in such a huge, huge seat of responsibility, you are the parents, industries are the children. You cannot treat all your children the same. You have got the child who is the grade A student who comes home every night right on time and returns the car filled with gas. The other one is out drinking all night long. You have to regulate your children differently.

But when it comes to something, and particularly in my own area here with meat and poultry, something that goes back to 1906, we need more, not less. So yes, let us use common sense.

Mr. MCINTOSH. Thank you, Ms. Donley.

Your testimony earlier this year in our subcommittee was very, very forceful and I appreciate you coming forward again. I know you are dedicating your own time to bring these issues forward, and in some cases it is not even a case of more or less, just frankly better or updated regulations. As you point out, meat and poultry dates back to 1906. We have had a lot of scientific breakthroughs since then.

Your point is very well taken and very much appreciated. Thank you.

Our next witness is—oh, I have got to call out some names. No. 15, Mr. Chet Redman, No. 16, Mr. Ralph Christiansen, No. 17, Dick Rice.

And let me just ask you to go ahead and line up by numbers if you feel so inclined, that would be great.

Mr. Redman.

STATEMENT OF CHET REDMAN

Mr. REDMAN. Thank you, Mr. Chairman, Congressmen. I want to take this opportunity to thank you for giving us a few minutes to voice our opinions and our concern about government rules and regulations.

My name is Chet Redman and I represent three banks about an hour and a half south of here. We are small country banks, $32 to $78 million in assets.

We get bombarded. There is not a day that goes by that we do not have a new regulation proposal that hits my desk. I have not conversed with any of the others and I do not want to be repetitious, just a little more emphasis.

The first thing on my list was abolish Reg D, Truth in Savings. It has caused huge amounts of paperwork for opening new accounts, renewal notices with special language for renewing those time deposits, created special interest rate sheets with special language for all interest-bearing accounts. It has been really costly. We have spent thousands and thousands of dollars for all these forms, training, periodic update training. Customers really do not care about all these costly disclosures. And customers really do not understand APY—neither do some other people. They just want to know how much that monthly, that quarterly interest check is going to be. And we are still getting technical amendments to correct Truth in Savings, they are still coming down. So there are still some problems. Let us just abolish it. They still have not got it right.

The next point I would like to make, and the young lady from Indianola, I did not know she was going to mention this, but I have been in banking for 27 years and all we needed to do to close a real estate loan 20 years ago was just a little note, mortgage and a little disclosure statement and we were all done, and just a little promise to pay. Now that customer has to sign a series of papers like she reiterated, a pile of—a series of papers at application and then a great big pile at closing. And I have had customers at all three banks that have just, you know, reiterated that it is ridiculous the number of documents that have to be signed, either for refinancing or for purchase. And we have to keep these loan officers updated all the time in training whenever any new regulations come down.

[Bell rings.]

Mr. MCINTOSH. Go ahead and summarize.

Mr. REDMAN. There is a new regulation coming out April 1, 1996 on wire transfer recordkeeping rules that is going to cause a lot of paperwork, really cumbersome. We cannot spend $8,000 to $10,000 for a software program to monitor this thing and keep it in compliance. Let us reassess that student loan program, the Federal direct lending. We could not make it fly the first time back in the sixties and seventies because they did not train and did not have an effective communications program.

There is not a level playing field and we make four or five other points here. But let us leave it in the hands of the experts who have made it a success up to now.

Mr. MCINTOSH. If you could please go ahead and submit the notes you have, we will make sure they are included. Thank you very much.

No. 16.

STATEMENT OF RALPH CHRISTIANSEN

Mr. CHRISTIANSEN. My name is Ralph Christiansen. I am a county supervisor representing Pocahontas County and I am also the president of the Iowa Drainage District Association. I want to express my gratitude for being here today and I want to commend you gentlemen on the knowledge you have of our wetlands problem.

It really does my heart good to know that people are this knowledgeable.

Most of my comments have been said already, so I am just going to shorten my presentation. I have forwarded 15 copies to your office, Mr. McIntosh.

Mr. MCINTOSH. Thank you.

Mr. CHRISTIANSEN. The Iowa Drainage District Association was organized in 1990 in reaction to the U.S. Department of Agriculture regulatory abuses of Iowa's drainage district laws and landowner property rights. We represent the interest of more than 3,000 Iowa drainage districts which serve the owners of more than 6 million acres of prime Iowa farmland.

Like I said, most of my thoughts have already been stated, so I will not go over that again.

I would just like to take this opportunity to volunteer any help our organization or information that we can give to you folks. We have a very, very competent drainage engineer on our staff, one of the best in Iowa, and I am sure he can give you some down-to-Earth help.

Also, I have kind of a homespun rule of thumb on identifying wetlands. In north central Iowa where I come from, Pocahontas County is probably 95 percent drained wetlands, which now they call farmed wetlands. OK, the way I would identify a wetland is it would be a wetland if it is not being farmed now because this land has been drained in the past and so that would—I know there are very scientific explanations, but this is my thought.

Mr. MCINTOSH. Commonsense rule.

Mr. CHRISTIANSEN. So anything that I can do, I would sure be glad to help. Thank you much.

Mr. MCINTOSH. Thank you, Mr. Christiansen, we will take you up on that offer and work with Mr. Ganske's office in facilitating that.

STATEMENT OF DICK RICE

Mr. RICE. Yes. My name is Dick Rice and I am a small independent wholesale petroleum distributor here in central Iowa. I do appreciate the opportunity to be here today and I am going to speak on behalf of the Petroleum Marketers of Iowa and the Petroleum Marketers Association of America. The Petroleum Marketers of Iowa have approximately 1,500 members here in the State of Iowa and the PMAA represents about 11,000 marketers across the Nation. Nearly all of these businesses are small businesses using the SBA Administration definition.

Because many of the marketers that I represent face regulatory excesses every day, I am here to present two of the examples of troubling regulatory issues that marketers face in Iowa with regard to overregulation. I commend you, Congressman Ganske, and your fellow Congressmen, for your efforts in gathering information to help propel the regulatory reform agenda.

The first issue that I would like to discuss is the burden of paperwork required by the Government. My small business was required to submit 14 information surveys and reports just this last year, each requiring a substantial commitment of time and labor to complete. I might add, one of those reports had 14 pages of in-

structions with it. And for what purpose? These forms were in addition to the normal business paperwork that we complete for the Government every day such as tax preparation and employee information.

I would like to share with you those 14 reports: No. 1 is wage survey, fringe benefit surveys, industry verification statements, energy information, commodity flow surveys, occupational employment report, Federal contractor veterans employment report, report of organization, census of distribution trades, census of retail trade, economic census, survey of occupational injury, annual fuel oil and kerosene sales report, DOT registration and licensing. And I am sure I have missed at least 10.

Allow me to expand on the nuisance of one of them.

[Bell rings.]

Mr. RICE. I do not have a whole lot left here.

We received from the U.S. Department of Labor a veterans employment report. This information requested dealt with whether we employed any special disabled or Vietnam-era veterans and how we identified them. In the very instructions, it detailed that you cannot ask an employee if he is disabled. But yet the instructions demonstrated various ways for us to get this type of information out of them. Where is the common sense in this Government regulation?

One other glaring example is the Clean Air Act which others have already mentioned. We received by mail a package of forms to complete. The postage alone on this package was $5.10. The forms were stacked 1 inch thick. Fortunately our State association was able to hire a computer programmer and a professional engineer to decipher the information in the report. The errors in the Government formulas and the processes that these two people found would make an Edgar Allan Poe horror story. But to top it off, the compliance was based on our potential to emit, not on what we were actually emitting. Our association found that all of the members that completed these forms, of which there was more than 400, less than 1½ tons of hydrocarbon emissions were being emitted in the whole State of Iowa. Thank goodness our association was able to solve this matter in this way so that we could all share this cost. As a group, we spent $12,000 on the engineer and the computer programmer. Otherwise, I would have had to spend that on my little business.

Mr. MCINTOSH. Thank you very much, Mr. Rice, I appreciate you bringing that forward. Maybe the nightmare movie would be titled "Nightmare on Pennsylvania Avenue." [Laughter.]

If you could just go ahead and give us a concluding statement so we can get to the others.

Mr. RICE. The bottom line is we are losing our bottom line. And it is time that the bureaucrats started listening to the very people that they regulate. And I thank you very much for this time.

Mr. MCINTOSH. Thank you. And please submit any additional materials for the record.

Mr. Ganske.

Mr. GANSKE. Mr. Chairman, if you would just let me interject a comment, because we have been talking primarily this morning about agriculture, small business, local government concerns. I had

to shift gears a little bit when Ms. Donley came up and gave some very moving testimony. I have three children, I was a practicing physician, I never knew exactly how to convey condolences to a parent of a child who had died. It must be the most difficult thing in the world to bear.

It is clear that the status quo did not serve your child well. We need to do a better science, we need to look at proper regulations on refrigeration of foods in transit to help prevent problems and tragedies such as yours. We will be doing that. There are many outdated methods of meat inspection, that we have been using, visual examination, for instance. If a piece of meat carcass looks dirty you trim it off a little bit. You have no real idea whether there are those invisible bacteria that still remain on the carcass. And I just want to let you know that my committee will have something to do with that, as will Congressman Latham's committee. We will certainly try to improve the food inspection laws and try to do something that is sensible.

I do want to thank you for coming.

Mr. MCINTOSH. Thank you, Mr. Ganske, we appreciate that. And I appreciate the role of your committee in looking into that.

The next group of four people would be No. 18, Mr. Don Rowan of Bradlint; No. 19, Kathy Loeckle; No. 20, Mr. Saul Herscovici; and No. 21, Mr. Kenneth Coffman.

Mildred is reminding me, if you will go ahead and state your name for the record.

Mr. ROWAN. Mr. Chairman, I am No. 18 and the young lady beside me is No. 37, and she has to leave. So if you do not mind, I will just exchange those two, I will be No. 37.

Mr. MCINTOSH. That sounds wonderful, thank you. Come on forward.

STATEMENT OF SHARON MEANS

Ms. MEANS. My name is Sharon McDonald Means for the record.

I come to you today both as a physician and member of the Sierra Club in advocacy for reauthorization of a strong, improved Endangered Species Act. Our health as human beings, both individually and collectively, depends upon and is directly linked to the health of our environment. The relationship between biologic diversity of plant and animal species and our future health is clear and vital. Diversity is the fundamental light ray of life sciences.

We would like reform of regulations of the Endangered Species Act as it currently exists, and we would like more cost-effective, efficient ecosystem-based protection.

Specifically in the area of prevention, health care has taught us—the health care industry has taught us a valuable lesson, that the most cost-effective and productive way to prevent disease—to take care of disease, is to prevent it rather than to treat it. We would like specific programs that prevent species from ever needing recovery and protection. We would like this program organized around ecosystems rather than State or national boundaries, thereby moving resources, decisionmaking, and need closer together, a concept which I am sure appeals to you.

We would also like a clearly mandated recovery process that includes recovery targets, specific actions to achieve recovery, and deadlines for action.

We would also like technical informational assistance to be provided by the U.S. Fish and Wildlife Service to private landowners.

Fourth, we would like increased positive incentives for protection, particularly to private landowners. A suggestion would be tax credits. And decreased disincentives which often come from Government programs that make protection less likely.

The state of best scientific art currently is that harm inflicted on a species can occur in at least two ways. One, through direct destruction; and second, through destruction of critical habitat. Witness the Supreme Court decision this summer of *Babbitt* v. *Sweetholm,* to see the legislative support for that concept.

So, in our efforts in looking at the Endangered Species Act, let us move forward in our thinking and our actions.

And last, we would like that act to be adequately funded.

I, and I certainly hope we, of environmental priority, intend to speak out over and over again what we know, believe to be true, and want. And hope to listen to other priorities with ears to hear our common ground so that we can move forward, for I suspect our future is tied to our willingness to achieve a balance and work together.

I urge you to accept the challenge to provide us with a strong Endangered Species Act that will help us to move forward.

Thank you.

Mr. MCINTOSH. Dr. Means, I appreciate that, and this issue will be coming up in this Congress and probably subsequent Congresses and I am particularly interested in comments like "let us use incentives," because I think that is a smarter way to go a lot of times.

A couple of priorities that I have heard that you should think about and how you would recommend we address them, and that is, how do you prioritize among species and the other is how do you balance out the cost to people if it costs jobs and so forth?

Ms. MEANS. I shared earlier with Congressman Ganske's office a packet of material on that and would suggest referring to the National Academy of Science summary statement and also the Keystone Conference that establishes some priorities with regard to incentives.

Mr. MCINTOSH. Thank you for coming today and participating.

Ms. MEANS. You are welcome.

Mr. MCINTOSH. No. 19.

STATEMENT OF KATHY LOECKLE

Ms. LOECKLE. Hello. My name is Kathy Loeckle and I am a human resource and safety manager at Holnam Cement located in Mason City, IA. Holnam is one of the largest manufacturers in the United States and cement companies throughout the Nation have long been committed to environmental quality and our contribution to a better environment is considerable.

Holnam is very interested in regulatory reform and appeals to you to hear all of the testimony today, to eliminate unnecessary, outdated regulations and redtape. The safety and health of our employees, our customers, and our communities are our first consider-

ation in the production and distribution of our products. We have a strong track record of achievements in this area.

Our industry as a whole actively seeks ways to manage waste in a responsible and environmentally sound manner. We continually implement effective controls that reduce or eliminate the release of pollutants to the air, land, and water. We pursue effective improvements in energy, promote conservation of resources, and are committed to waste minimization by recycling. We participate with the lawmakers and the regulators and are good corporate citizens.

Our industry provides essential and high-quality infrastructure products and an excellent wage and benefit package to its employees and are generous contributors within our community where we live and where we work.

Regulated industries such as the cement industry must be allowed to petition Federal and State agencies to review outdated, unworkable regulations. There are too many rules for employers to keep up with, they place unreasonable demands on employers, are often out of touch with present technologies as well as have a significant and negative impact on our businesses.

Our industry works very hard to comply with the regulations and do not intentionally set out to break the rules. Implementation of regulations that have a negligible risk to human health and the environment have a significant impact on employers. No person today lives in a zero risk environment. Agencies should not be able to require that the business community produce such an environment.

We support the concept that State and local regulations in the environmental area follow the State regulations so as not to further mandate more restrictive regulations on employers.

Mr. MCINTOSH. Thank you for coming. I know your industry has worked hard to figure out ways of using some of the waste products in an efficient way so that there is economic benefit and it is also environmentally sound.

Ms. LOECKLE. I just wanted to make one last comment also. I just received a 60-page supplement to interpret the Family Medical Leave Act and I could barely read it, barely interpret it. I hesitate to bring it up because that is a whole new area, but environmental law, the ADA, they are so interpretive, I have manuals this thick [indicating] to interpret. And if employers are to comply with the regulations that are mandated on us, they definitely need to be simplified.

Thank you very much.

Mr. MCINTOSH. Thank you for coming today.

Our next witness is No. 20.

STATEMENT OF SAUL HERSCOVICI

Mr. HERSCOVICI. Good afternoon.

If you detect an accent in the English, it is because I was born in Rumania. I grew up under the Nazi system and then subsequent to that, I grew up under the Communists and I am set to tell you that for the third time in my life I wake up under OSHA. [Laughter.]

I made it my determination that not only will I leave my company creating jobs and goods, but I will also dedicate a lot of my

time to freedom. That is the reason why I am here and I am delighted, and thank you again.

I would like to look at page 2 on the two sheets that I passed on to you. This is a citation issued by our illustrious Iowa OSHA. Waterloo Water Works was fined $1,000 for not adding the number of injuries on the OSHA Form 100 and OSHA Form 200.

In their ultimate wisdom and high skills and medical profession, they determined that not adding the number of injuries leads to a hazard that may increase the potential for illness.

On the same page at the top, it is written page 1 out of 2, and at the bottom it states that this is the last page. So my simple question is who is the criminal here? Is Waterloo Water Works the criminal because it did not add the number of injuries, or is it OSHA because it extracted $1,000 from the citizens, or is it OSHA because they do not know the difference between page No. 1 and page No. 2. [Laughter.]

So there is a double kind of crime of OSHA.

And I would like to direct your attention to page 1 which is statistics put out by the National Safety Council of the United States. Simply put, this is a chart that shows the number of workers, the number of people working in the United States since 1933 to 1992. It shows the number of people who died on the job and it shows the death rate per 100,000 people. If you will look very carefully, you will see that since 1945 to 1992, the death rate is declining at a constant rate, an absolute constant rate. It is a phenomenon that can be explained by this effect. Also apparent is that in 1970, OSHA was started. So if OSHA would have been effective at all, any minute amount of effectiveness in saving lives, then the rate of death would have declined much faster. However, as if OSHA was absent, no further decline was present.

[Bell rings.]

Mr. HERSCOVICI. I am sorry I am so slow. I would like to have a minute or two.

Mr. MCINTOSH. Yes. In fact, if you can let me interject 1 second and then I will let you continue. I now have to turn over the gavel to my colleague, Mr. Gutknecht and go to catch a plane back to Indiana. I apologize to the other witnesses, but Mr. Gutknecht has offered to stay here and continue to keep the hearing going so everyone will have a chance to participate, and as one of the committee members, he will make sure that record is available.

I appreciate you coming and thank you very much. Thank you all, thank you to my colleagues for making this frankly the best set of field hearings that we have had. I think you all in Iowa should be very proud of the Representatives that you have and the fact that they have done a great job in facilitating the work of this committee. Thank you.

[Applause.]

Mr. HERSCOVICI. Thank you very much for the extended time. I am sorry.

This chart also shows that by the year 2008, the industry will arrive at near zero deaths at work. It is very unfortunate that even one death should occur; however, the mission of OSHA has failed. We are spending $350 million in 1995 in order to keep all the

OSHA officers around the country, but they failed their ultimate mission of saving lives.

In 1984, they confiscated $182 million from the American people. Perhaps OSHA should be changed to IRS.

I submit to you that OSHA, from my point of view, having grown up under the Nazi and Communist tyranny, reminded me of some bad dreams. I felt that I was under arrest when OSHA came on my premises. In my eyes, OSHA is nothing but a terrorist organization. It took the constitutional rights away from us, it mandates fines for no reason at all, and it is also testimony that when the government fails, it resorts to tyranny. OSHA is an arm of the government.

I think that we should keep in mind that the country belongs to the American people and not to the regulators and I am requesting that OSHA be abolished and the regulators impeached.

Thank you very much.

[Applause.]

Mr. GUTKNECHT. Thank you, Saul.

I would say to all of the witnesses that we have, and if you ever watch C–SPAN you will see Members stand up and at the end of their remarks, they will say "Mr. Chairman, could I revise and extend my remarks." You will all have the opportunity if you want to send in written comments to become a part of the transcript of this hearing. I will keep that open, and I do not know if they can still hear me, for 10 business days. So if you will mail something in, just mail it in care of the Government Reform Subcommittee, Washington, DC, 20515, we will get it. So if you would like written comments put into the record of this hearing, just send them in. Or you can send them in care of Congressman Ganske or Congressman Latham as well.

And I am not sure where we are on the number here, but if you would just tell me.

STATEMENT OF KENNETH COFFMAN

Mr. COFFMAN. No. 21. My name is Kenneth Coffman and I am the Cass County engineer in western Iowa, and I had a few things that I wanted to bring up about over-burdensome and unnecessary regulations.

We just spent $9,000 this year on analysis for scour for our bridges. This is supposedly a one-time thing but probably will develop into more. We have 243 bridges in the rolling terrain of Cass County and the analysis brought up that there were possibly 14 bridges that would need some kind of looking at in the event of a flood. The sad part of it is that we had to pay someone $9,000 to tell people what we already knew. There are certain bridges we look at after we get high water and those bridges were all on that particular list.

Some of those, by the way, are on dirt roads with five vehicles per day and the highest on some paved roads with about 1,000 vehicles per day. So in terms of people, there is not that very many.

The other thing that I would like to talk quickly about is the functional classification system. We have two maps for functional classification system. That defines which roads are on the Federal system, which roads are on the local system, which roads are on

the farm to market system. One is our State map, one is our Federal map. They are identical, but we have to have two maps. And it seems strange that we would have to have two maps to do things like that.

The other thing is the Intermodal Surface Transportation Efficiency Act. Since that came along, we have had to participate in regional planning agency [RPA], to plan projects that we had already planned before. So we have another layer of bureaucracy to go through and documents to submit, and I am sure there are people who have been hired in the State of Iowa to watch our actions so that we can do the same thing that we were always doing before. And it also sets aside 10 percent of Federal funds for enhancement projects. And when you do submit for an enhancement project, if you are an agency, like in Atlantic, IA, I am on a group that has the depot and we want to restore it. One of the questions they ask you for restoring your railroad depot is how close are you to an airport. Who cares? We are doing everything inside, it is restoration of walls, floors and things like that. But those are things that we have to deal with.

Some of the other things that I wanted to talk about real quickly is contracts and the Federal Government furnishing money—we have to pay Davis-Bacon wages. On every other contract, where it is local money or State money, we pay the local wages, whatever the contractor bids. But on those others, we pay higher wages, the higher paperwork, the extra people to look it over, and there is really not that much difference in western Iowa where we are at. We are not in a big metropolitan area where we have to pay the higher wages and it costs the taxpayers more.

[Bell rings.]

Mr. COFFMAN. Do I have a little bit more?

Mr. GUTKNECHT. Yes.

Mr. COFFMAN. And the last issue is commercial drivers license. Our motor grader operators drive a truck on occasion, snow plows, things like that. We have to get licenses and now we have to go drug testing just because they occasionally drive a truck.

Mr. GUTKNECHT. Mr. Coffman, Representative Ganske has a question.

Mr. GANSKE. Thank you, Mr. Coffman. One thing that we have not talked about this morning is asbestos. I sincerely hope you do not run into that problem as you renovate your railroad station, but this has been an unbelievably expensive regulation from Washington that just about every school district in the congressional district has had to deal with, and in many cases for minimal, minimal health benefit.

Mr. COFFMAN. That is what we run into all the time. I am also the landfill manager in Cass County, so I am aware of some of the asbestos problems and some of the costs that they have had to go through.

This is just an inkling of all the things that we have to go with. Businesses run into the same thing as the local government also.

Thank you very much.

Mr. GANSKE. Thank you.

Mr. GUTKNECHT. Thank you, Mr. Coffman.

No. 22, Jim Melton.

[No response.]
Mr. GUTKNECHT. No. 23, Roberta Till-Retz.

STATEMENT OF ROBERTA TILL-RETZ

Ms. TILL-RETZ. I am from Iowa City but I drink Des Moines water, I buy it in Iowa City, that is how much I like it.

I was asked to serve last summer on a task force set up by the Iowa legislature, a focus group actually, to look at OSHA inspections and how the businesses investigated by OSHA inspections felt about them. The businesses that were looked at were those that had been inspected in the previous 12 months. And that is part of who I am. I am also a union president and I teach workers, I am a wife and a mother, I have been a small farmer, and I am a Democrat.

To my mind, one of the things that has come out in today's testimony is that there is a danger to the commonwealth when public policy is made based on anecdotes. And I would like to mention but one example of that I think in today's testimony.

Mr. Whiton, and God bless his family and his wonderful feed company, it sounds like a really wonderful idea of a small business. But he got a great laugh from this audience when he mentioned his OSHA citation for what is really a minor sanitation issue—I mean it would appear to us to be so—the missing toilet paper holder. But he passed over, and so did all of you, the citations that he did get for another issue, which was "a few guards not on augers." Now I would urge you to look into those kind of anecdotes as well as the others when you are making your report.

It was very tempting today for me to come here and read you off a list of Iowa workers killed and injured on the job. In fact, I am preparing such a list as we speak. But it seems to me that what we need to look at is the bigger issue, and that is what kind of society, what kind of State, what kind of country do we want to live in. And I am here to say I think we need more regulations, not less.

The fact is that the history of our country has led us as a society to fear unregulated competition and to attempt to apply social controls to that. Yes, OSHA is there to protect workers, it is not there to help business. We have the Commerce Department and you name it, there to help business. The Consumer Protection Agency, the Environmental Protection Agency are there to protect those exact issues. Why? Because we cannot trust market forces alone to create a livable society, we need government forces. And that means regulations and enforcement agents out there.

Government mandates such as the ones that you all here today decry create a floor of standard practice on which businesses compete. Remove or weaken those mandates and there is no bottom to which our business practices will not sink in the competitive struggle. Do we really want to compete with Pakistan——

[Bell rings.]

Ms. TILL-RETZ. Can I have a little more time?

Mr. GUTKNECHT. Yes.

Ms. TILL-RETZ [continuing]. Which has children working in rug factories or Chinese slave labor? Businesses, especially small businesses, I would argue, need to know that for all of them, for the

Whitons as well as for the fly by-night businesses that Mr. Pate is familiar with, there is one set of practices which must be followed, and that failure to follow those will mean weighty, severe and certain penalties.

Thank you.

Mr. GANSKE. Let me make a comment. Your testimony just now reminded me an awful lot of what goes on on the floor of Congress. To infer that this hearing would—that anyone on the panel or up here would like to take us to the conditions in a Third World country is simply an exaggeration and not the truth. I do not know how you can listen to the testimony that was here today where you have a grown man break down and cry because his property and his livelihood is being taken away by an arbitrary decision and not have some sympathy. I do not know how you can listen to somebody who has lost a child because of an outdated regulation and not have some sympathy.

If what you are saying is that the status quo is perfect, then I am sorry. What I have gathered from the testimony today is that there needs to be some reasonable, rational, scientific change in the way that government interacts with the private citizens. That is simply what this hearing is about today.

Thank you.

[Applause.]

Ms. TILL-RETZ. Could I respond?

Mr. GUTKNECHT. Sure.

Ms. TILL-RETZ. Let me suggest that perhaps it is important—I am certainly not in favor of the status quo. I think we need stronger OSHA, I think we need new updated standards, for example an ergonomic standard. I certainly think we need many more inspectors out there and workers empowered to inspect their own workplaces. I am not in favor of the status quo.

Let me suggest that you check into the incidence rate of Iowa workers injured on the job and see how that compares to the national incidence rate over the past 2 years. Do either of you or Mr. Latham know that number? Do you think it is higher or do you think it is lower? It is obviously higher or I would not have mentioned it. And I think we need to do something about that.

Let me also suggest that you look at a scientifically validated survey conducted by IOSHA by legislative mandate that found that most of these employers that were inspected approved of the OSHA inspection process and actually felt that it helped them build a stronger safety and healthy workplace and that helped their productivity.

Mr. GANSKE. I would agree with you 100 percent that we need to improve the communications between OSHA inspectors, so that they can work with the employers, and use some common sense in improving the workplace. What clearly we have and what has been demonstrated today—this is not my opinion, this is what I have heard from the majority of the people at this hearing today, is that there is an adversarial relationship in many cases, not in all. I think that we are trying to do something to improve that.

Ms. TILL-RETZ. Thank you.

Mr. GUTKNECHT. Thank you.

Next, we have No. 24, Maria Groenendyk, is that right?

STATEMENT OF DEBBIE NENSTADT

Ms. NENSTADT. My name is Debbie Nenstadt. I have exchanged places with someone because I am a teacher at East High School and I have to get back to my 7th hour class.

Mr. GUTKNECHT. OK.

Ms NENSTADT. I also belong to the Sierra Club. Secretary Pate mentioned the waste reduction center at UNI. I served on that center's citizen advisory panel and I agree with him that this is a good example of how the regulated community can be helped to protect the environment.

I have given testimony at USDA hearings on the farm bill in 1994. Each panel consisted of a member of a professional society such as the Soil and Water Conservation Society, a producer and a representative from non-profits involved with environmental advocacy. Yesterday, I was on a panel set up by DNR with a toxicologist from the University of Iowa, consultant from industry and I served as the representative of the Iowa Environmental Council.

I told them what I am telling you. There is common ground. There is common ground. The way the panels were set up today, there is no chance for common ground to be found.

Representative Ganske, when I saw you in Washington, DC at the beginning of the year, I came to you to talk about CRP because my family has CRP. You shared with me your views on risk assessment and I want to make sure that I understood you correctly. You told me that there are greater chances for getting esophageal cancer from eating red meat than there is from getting cancer from second hand smoke. When I tell people that, they do not believe me, they do not believe that is true. But I really do believe that is true.

Mr. GANSKE. May I interject for a moment? Congressman Henry Waxman, last year, on the Environmental and Health Subcommittee, requested that the Congressional Research Service do an analysis on secondary smoke. They recently came out with that. Basically, their determination—this is an independent research organization was that the risk, health risk from secondary smoke, except in very specific instances, for instance an enclosed room where you may have an asthmatic child—is very, very, very small. In fact, that there are other risks that we do in our normal everyday life, for instance, eating high cholesterol foods or other things, that may be more risky than that. That is the type of cost-benefit analysis that I think we need to do so that we can direct our resources in places where it will do the most good.

Ms. NENSTADT. I contend this example shows how relying on just numbers is not common sense. People can choose to eat red meat, often a person cannot choose the air they breathe.

Sierra Club believes H.R. 9 is a one-size-fits-all mandatory full-blown risk assessment approach where a shorter process may suffice. One of the problems Superfund has is that the money for cleanup is being spent on litigation. This could also happen with H.R. 9 with major rules. Major rules could end up in court and the programs could be tied up in court.

Science has determined that there is no threshold for substances that cause cancer. I believe no amount of education will convince

the public that they should accept carcinogenic compounds in their water, air, food.

Thank you for giving me the opportunity to speak.

Mr. GUTKNECHT. Thank you.

Now let me use the power of the gavel, it is my turn.

Do you know there are more carcinogenic materials in a strawberry than there are in a lot of the things that you were talking about? When you say there is no acceptable level, that means you cannot eat or drink anything.

Ms. NENSTADT. I said science has determined, yes.

Mr. GUTKNECHT. You said science has determined, but you denied the facts that have been brought together by a congressional study—you said well those facts do not matter. You know, this is the difficult thing we have because if facts do not matter, what does matter?

Ms. NENSTADT. I do not think I ever said that facts did not matter.

Mr. GUTKNECHT. Well, listen, thank you very much. There is an honest difference of opinion about what the acceptable level of risk is in this country.

The next person on our list I believe is John Murphy. Is John here?

STATEMENT OF JOHN MURPHY

Mr. MURPHY. I am No. 25.

Mr. GUTKNECHT. John, you are No. 25, and you are up.

Mr. MURPHY. OK. John L. Murphy, I am an Iowa boy and I spent 30 years in the sales—medical field. And the absence of the medical field in this forum today indicates the fact that it is the most subsidized industry in the United States today.

Farmers have been criticized for years for being subsidized but the medical industry truly has been. And it all started with a 1,200 page book sent out in August 1964, that I took the time, as I waited for administrators, to read it. All the administrators laughed about that book and what it would cost. Many of them thought that the highest a hospital room rate would go—as an example, I was paid basically on what percentage of the hospital room cost I would get, so I was very familiar with that figure. In Iowa in 1964, if we averaged every hospital in the State of Iowa, it was $22.50 a day. Many people, including Neal Smith, said that it would never possibly go over $100 a day. I wrote to him and I suggested that it would be $100 a day within 10 years if the 10 year phase in program was instituted. I had many gentlemen's bets with administrators that knew that I loved to look at that book, because I had the time to go through it step-by-step.

If that book was reviewed by administrators that are very familiar with true costs, even though I retired 6 years ago, the savings that we are looking for could come about because many, many of the things that were discussed today are part of the hospital climate. Total waste in paperwork, time—as an example, when I started in the industry, an administrator wore many hats. Because of that book, an administrator has many vice presidents today and most of them are doing administrative functions as a result.

Thank you very much for your time, and I hope that that area could be looked at very seriously for saving money for everyone in this country.

Mr. GUTKNECHT. Thank you, Mr. Murphy, that is one of the reasons we are trying to reform the Medicare system, because we have created that monster you were talking about in 1964. You were absolutely right.

Mr. MURPHY. In 1965, I wrote to Neal Smith and requested what you are doing here today and got turned down 100 percent. He pointed out that everything in that book was necessary.

Mr. GANSKE. May I make a comment? I think that you are right. There is certainly waste and in some cases fraud in, for instance, the government health programs. One of the things that we are trying to do in the Medicare reform bill is to address that issue. The status quo has not worked very well by the Health Care Financing Administration. Just one example is the fact that for many, many years, the commercial insurance carriers have had computer software that can cross-check billing and eliminate duplicative charges. HCFA has refused to purchase the same type of program that Blue Cross-Blue Shield and other private insurers have used to eliminate waste for years. Only now, only in January, after significant prodding from Congress, are they beginning to address that. You are absolutely right, we need to look at that, and I thank you.

Mr. MURPHY. And I limited my comment to the hospital, but actually if we took that same thing and projected, what you are talking about, into the nursing home, you would find multiple double billings.

Mr. GANSKE. You can do that. It is a program that can be done across the board for all types of providers. Thank you.

Mr. GUTKNECHT. Congressman Latham, did you——

Mr. LATHAM. I just wanted to make one point about the urgency of this situation. We just had a report become public this week with the Medicare trust fund, that was supposed to have a $4.7 billion surplus this year and in fact, we went into the red for the first time in 23 years in the Medicare trust fund. And it is going to be broke—we thought initially in 2002 but it is 2 years ahead of where it was expected to be and it is going to be probably 1999 or 2000. So we have got to act on this issue immediately.

Mr. GUTKNECHT. OK. We are up to No. 26, Steve Oriatt and then perhaps if Bill Beutke, if you could be in line and Amy Christensen on deck, if you will.

STATEMENT OF STEVE ORIATT

Mr. ORIATT. Thank you. My name is Steve Oriatt, I am an employee at AAA Roofing here in Des Moines. We are a residential steep roofing company.

I would like to express my concern regarding the current fall safety requirements. We started wearing safety harnesses when the new laws regarding fall safety went into effect. The result was extremely negative. The ropes from these harnesses were constantly being tripped over and slipped on. Your mobility was so drastically reduced, you could not even walk across the roof to get to your material. At the end of the day, the amount of work that

was done was reduced about 60 percent. When you have got guys that are getting paid by what they put on, this is an extremely large number.

My fellow employees and I were extremely irritated and we all threatened to quit. I have been working for 5 years and I have never experienced the slipping, tripping, falling the way that I did while I was wearing these safety harnesses.

I came here today to give you an employee's opinion rather than always hearing from the owners that are always griping about it. I agree a safety system is necessary and I hope we can find a system that provides sufficient safety and still allows us to do our job adequately with as little resistance to mobility as possible. I think my biggest question is, for me, they say OSHA is supposed to be protecting the employee, making sure the employer is making it safe for you to work. My question is if the employers offer it to you, should you not have the right to refuse it as long as it is there, so that it is easier for you to work. I was just wondering if that would be possible.

Thank you. That is all I have.

Mr. GUTKNECHT. Thank you. That is a great question, because right now many employers get sued—or get fined, I am sorry, by OSHA because they have guards on certain equipment and sometimes employees, to make their job easier, will actually remove the guards or not use them, or some of the other safety equipment. The employer is placed in a very difficult situation. But I think—I would appreciate it if you would spend some time and send us a letter if you have got some better ideas because this is a serious issue and we all are concerned, and particularly in Des Moines after apparently a construction worker fell to his death yesterday, what we can do that would make sense that would work to help protect people. And I admire you guys who want to go up in high places.

Mr. LATHAM. Just one question, how far off the ground is it that you are required now to——

Mr. ORIATT. I think they recently did change it, it was I believe 6 feet and I think it has went up, I think it is—I am guessing, like 15–16 feet now I believe. And the same thing over a relatively low pitch also.

Mr. LATHAM. I did not know whether that had been changed. I know I had a lot of complaints not too long ago when it went to 6 feet. I mean you pass that going through the——

Mr. ORIATT. Thank you very kindly.

Mr. GUTKNECHT. Thank you, Steve.

Bill Beutke.

STATEMENT OF BILL BEUTKE

Mr. BEUTKE. Yes. My name is Bill Beutke and I am with Zeneca Ag Products. We employee about 200 people in the State of Iowa—Council Bluffs, Coon Rapids, Slater, Muscatine and Des Moines. I live in Ankemy, and I wanted to address the committee and thank them for coming out and listening to people in Iowa, and particularly Mr. Ganske for his help in getting the government to look at science-based decisions when it comes to some of these regulations.

I would like to talk specifically about section 313, the Toxic Release Inventory. This is an example of an unnecessary regulation. This was part of an expansion of the list of 286 chemicals, approximately doubling the number of chemicals listed. In addition to listing additional chemicals, including pesticide active ingredients, the EPA Administrator is considering expanding the reporting requirements and additional standards, bringing additional industries into the process, which would be all the dealers and distributors in the State of Iowa. Reports must be submitted accounting for releases of any of these chemicals into the environment during the manufacture.

While sensible efforts to ensure a clean environment are important, listing pesticide active ingredients on TRI serves no useful purpose. Under FIFRA and State regulations, pesticides are among the most regulated chemicals in the country. More than 120 different types of tests are required before a product can be registered for use. These tests include determination of toxicological activity and ecological effects. Thus, the further regulations of pesticide active ingredients on TRIs seems unnecessary.

Perhaps more to the point, pesticides are specifically designed and registered to be released into the environment in normal use and the EPA has determined that their release poses no unreasonable effects on the environment. These chemicals are released into the environment in quantities of tens to hundreds of tons per year, to protect crops, control pests such as termites, rats, ants, flies and roaches. By contrast, manufacturing releases are likely to be in the range of a few pounds to a few hundred pounds.

The regulation places an onerous burden on industry. There are more chemicals for plants to monitor and report. MSDS and product labels must be modified to reflect the current regulatory status of the chemicals. In some cases, there is a knock-on effect; for example, products placed on 313 would make it easier to go on California's Proposition 65. The public may be unnecessarily alarmed, the information provided by TRI is not risk-based and the public will be unable to distinguish chemicals that really potentially cause harm from those that pose no real threat.

Mr. GUTKNECHT. Thank you.

No. 29, Amy Christensen. And then on deck, Keith Kuennen, Chip Eagle, if you want to take your spots, please.

Welcome to the committee, Amy.

STATEMENT OF AMY CHRISTENSEN

Ms. CHRISTENSEN. Thank you.

I am Amy Christensen. I work with a rural electric cooperative and other businesses when they are trying to comply with environmental and OSHA law.

I know that 25 years ago, it was important to pass major environmental legislation. I know that it served a lot of worthwhile purposes. But the problem is we have created a system of laws that is so complicated, so detailed, so ever-changing, that it is impossible to tell what those laws require, much less comply with them.

The solution to the problem is not to gut environmental and safety law, it is to fundamentally change the way that the regulatory agencies function and their relationship with the business commu-

nity. We need to change the major focus of EPA and OSHA from enforcement to compliance assistance. They need to directly be out there helping us do the things that we are required to do under the law.

If we have Federal agencies, State agencies, the regulated community and the public all pulling together, we will be able to figure out what is necessary to make our workplaces safe and to have a clean environment. And we can do it in ways that make sense. As we are working through the process together, we will be able to see which laws do not make any sense and which need to be modified and which are of value.

We can make this change. You must lead us to this change. It is a critical time right now. We can do this if we all work together. We have to treat each other as though we are respected partners, not government versus the regulated community versus the public. That is not the way that we can continue to function. We have come as far as we can with the old system, and it is time now for you to change things fundamentally and get us working together in figuring out what we have to do to make our workplaces safe and our environment clean.

Thank you. I have submitted written comments that give you specific suggestions for compliance assistance, things that you could do. And I gave those to your staff, I assume that will be in the record.

And my answer to the question of: Do we want to give the regulators flexibility? Is, if you have a regulator with their major focus being helping us comply with the law, then you bet, I want them to have flexibility, and I want my businesses to have flexibility too, to do what makes sense.

Mr. GUTKNECHT. Thank you.

Ms. Christensen, I could not have said it better. That was excellent and we appreciate your testimony and your written suggestions. They will not only be a part of the record, hopefully they will be part of our recommendations to the 105th Congress. Thank you very much.

Ms. CHRISTENSEN. Thank you.

Mr. GUTKNECHT. Next, Keith Kuennen. Am I saying it right?

STATEMENT OF KEITH KUENNEN

Mr. KUENNEN. Kuennen.

First I would like to say I totally agree with her.

My name is Keith Kuennen, I am the safety and maintenance officer for four companies here in Des Moines—Ecotech Contractors, National Concrete Services, Crown Ready Mix, and Midwest Ready Mix.

I feel that the Iowa Occupational Safety and Health Administration is becoming inefficient and ineffective by wasting valuable time on frivolous things or missing the mark on very important things that the agency originally set out to do, such as saving lives and preventing occupational injuries and illnesses.

Because of recent history and statistics, I believe that they are not doing what they originally set out to do. For instance, in 1993, hazardous chemicals caused only 1.8 percent of occupational deaths. Exposure to harmful substances accounted for only 5 per-

cent of the occupational injuries. Yet, hazardous communication ranks the No. 1 most frequently cited serious violation. And in fact, it accounts for almost 33 percent of the most frequently cited violations in construction.

The No. 1 cause of occupational injuries was over-exertion and the No. 1 cause of occupational deaths was highway accidents. Both these are not addressed by OSHA regulations, yet they are the No. 1 causes of injuries and deaths in occupations.

I am the safety officer for four companies with very good safety records. We feel our safety program is adequate and we strive to meet or exceed all State and Federal regulations. We are constantly reviewing our program and improving it. But it becomes very frustrating when an OSHA inspector comes to our job site and does an inspection. There are no major violations onsite but yet there is always some little minor detail such as paperwork, hazardous communication or something that they can find to cite us for because if they come onsite and do not cite us for anything, they are basically looked at as not doing their job. Hazardous communication is almost impossible to be 100 percent compliant with.

When I was in Kansas City a couple of weeks ago at the OSHA training institute getting clarification on some of the complicated regulations, I witnessed inspectors in the class themselves questioning the regulations. Now how can they be out inspecting our sites when they do not know the regulations themselves. One person there was training to be an OSHA inspector and yet she did not even know what welding was. How can you go out to a construction site, inspect the site and not even know what welding is. She never heard of the word before. I question their competency.

Iowa OSHA's current inspection procedure is to treat employees in a certain industry alike regardless of their individual safety and health performance. Each employer is subject to the same enforcement inspection regardless of their safety record or willingness to cooperate. In any industry, there are some companies who operate in an unsafe manner without any regard to their employees' safety.

I propose the State of Iowa adopt a new OSHA workers safety and health program that the Federal Government has put out and also adopt some sort of a main 200 program where they adopt the total quality management approach where it says that 80 percent of your problems are caused by 20 percent of your people. In this situation, what you do is you find out in each State who is causing the deaths, the injuries, and you go after them. Do not do random inspections where you are wasting your time and money on people that are complying with the laws, have excellent safety records and all you are doing is frustrating them and really getting them mad because you are citing them for things when they think they are doing a good job and they are really trying.

But using this approach Iowa OSHA would be able to focus their enforcement toward employers of most concern, thereby getting bigger results from more effective inspections. This will make their inspection procedure more efficient and effective and continue to reduce occupational deaths and injuries as they originally set out to do.

In the past, in the nineties, injuries and deaths have come to kind of a plateau. They were reducing pretty steadily as far as oc-

cupational injuries and deaths but in the nineties they have come to a plateau and in fact they are starting to increase again. Something needs to change.

Thank you. I appreciate it.

Mr. GUTKNECHT. Thank you, Keith.

Chip Eagle.

STATEMENT OF CHIP EAGLE

Mr. EAGLE. Thank you. My name is Chip Eagle. I am with Budget Marketing here in Des Moines. I would like to thank the committee for making this forum available to us and I would like to thank Congressman Ganske for hosting this, bringing this to Iowa and giving us a chance to speak, and making this truly a representative democracy.

My father started selling magazines door-to-door in the fifties, was one of the innovators of telemarketing in the fifties, and today Budget Marketing is celebrating its 25th year with customers in every State and every jurisdiction and we work hard to keep those customers for their whole lives and take care of that little part of their lives that is magazines.

I would like to explain some of the laws that we have to comply with. Of course, we have to comply with every consumer law in every jurisdiction, which would include the District of Columbia, Puerto Rico and any place where there is military personnel. Just that file, as you might guess, is impossible to keep up with. We are almost constantly out of compliance with say exactly how a contract would look because one State may require it be 10-point print, another require that it be 6-point print—they are very specific. We are working very hard to do that, we try very hard to be in compliance with local regulations.

On the Federal level, the latest regulation is from the FTC, that is the telemarketing sales rule that has now empowered all of the attorney generals in every jurisdiction to enforce that rule. I expect I will see at least 20 to 30 different versions of what that rule is then, by the way the various attorney generals enforce that. This is a burden and it is going to be tough. We are going to have to deal with it and learn how it is interpreted in every jurisdiction.

What I would like to do is urge the committee to support a bill, the Nickles bill or something like it, where we can review and consider some of the cost-benefit analysis and the risk to businesses. We are not a Third World country, we are trying to create jobs for people, for Iowans, so they can move forward and make our State a better and richer place to live. We do not need more regulation. If you could help us with that, I would sure appreciate that. And if Congress just reviewed the regulations as they are enacted and made sure that there is a good reason for them and that what you wanted done by the agencies was indeed done, I think that would help all of us.

Thank you very much.

Mr. GUTKNECHT. Thank you, Chip.

Jerome Skeers, James R. O'Neill, and Vic Aprahamian—I am not sure I said Vic's name right, but if you want to get lined up here.

Mr. Skeers, welcome to the committee.

STATEMENT OF JEROME M. SKEERS

Mr. SKEERS. Thank you, Chairman Gutknecht, Congressman Ganske and Congressman Latham, I appreciate you holding these hearings in Iowa.

My name is Jerry Skeers. I am an employee of the division of labor of the State of Iowa. In Iowa, that means we do OSHA. I am here to reiterate what Commissioner Orton told you yesterday with regard to his interest in working with all employers and employees, all interested groups from throughout the State. He would have been here to tell you that himself, but as he mentioned, he is going to the fatality investigation which is currently ongoing here in Des Moines.

I would remind all of you that much has already changed in OSHA in the recent time period. Next week, I will be doing training for all of our people on a negotiated rulemaking change that allows a different set of fall protection measures for people engaged in residential construction. I would mention, as an aside, that that was negotiated some time in early December between the U.S. Department of Labor and the U.S. Homebuilders Association. One of the things which I do not know for sure but I believe held up that arrival of that document here in Iowa was the shutdown of Government which caused many things to not be issued or done.

I would say to you that an extensive directive on paperwork violations that have no relationship to safety and health is already in effect. Recently Iowa has adopted an additional penalty reduction measure beyond the good faith, size, and past history reductions that are already provided to all employers.

The reason I am mentioning these things and some of the other things such as citations from 1976 that have been mentioned here today, is that as you address the status quo, please remember that the status quo of OSHA, like any other organization, is constantly changing, and I hope you would address the current status quo.

I would also like to thank Congressman Ganske for his comments early in the hearing with regard to the feelings and efforts of what many may refer to as bureaucrats, but who are really employees of an organization that was a creation of Congress and intends to do what the mission was called for.

I remain available for any questions that you or anyone in the room may have. And that goes for not just today, but for any day when something comes up with regard to OSHA or our activities in the State of Iowa.

Mr. GUTKNECHT. Thank you, Mr. Skeers. You did a good job yesterday and a good job today.

Mr. LATHAM. I appreciate what you are saying. I think the laws many times are so unworkable, and very, very dedicated people trying to do the best job possible with a bunch of laws that simply do not make sense or have mandates in them that are un-do-able. I appreciate very much what you do and the position you are in. I will have to say, I mean, we are not concerned with the issues from 1976. The Sioux City Fire Department situation was last year and where you referred to that department as being incompetent when they were nationally recognized for the job they had done in the United Flight 232. I think that is very unfortunate.

Mr. SKEERS. Excuse me, Congressman. I have to once again reiterate what the commissioner said yesterday. No one from our agency referred to that organization as incompetent. We believe exactly the opposite. That organization is composed of brave, courageous, well-trained firefighters, and they were well-led with regard to the activities. That does not mean necessarily that everything was perfect and there was no room for improvement.

Mr. LATHAM. Well, you say you did not make that—the fire chief and other senior officials did not demonstrate competency—this is your citation. And to say that you did not make that accusation is simply not true.

Mr. GUTKNECHT. We can continue this debate afterward. There are about 20 more people who want to testify.

You are Mr. O'Neill?

STATEMENT OF JAMES R. O'NEILL

Mr. O'NEILL. Yes. I am Jim O'Neill, and thank you for the opportunity to testify.

Mr. GUTKNECHT. From O'Neill Angus Farm.

Mr. O'NEILL. Yes. We operate O'Neill Angus Farm in western Iowa. Logan is our address, we are 25 miles northeast of Council Bluffs. I have come here today to speak about what I feel are some unfair rules in the farm program, the current one and the one you are about to really pass.

We own 600 acres of land and most of our land has been ceded down since the late fifties and early sixties. We have taken care of our land and at times we were in the farm program. Our need for pasture encouraged us to put more and more land into grass while most of our neighbors farmed fence row to fence row and built large farm bases which were eligible for payments. This was during a time when corn was in surplus. Our base was only 96 acres, yet I was told I could not change this, the only way we could increase our base was to stay out of the program and plant more acres of corn. Still, we did not abuse this but had had 195 acres of corn on 600 acres. With the new farm program, which is titled "The Right to Farm" bill, we will not be eligible for the farm program because we have not been in the program the last 5 years.

Six months ago, I had to have a hip replacement and was told by my doctor I had to change my lifestyle. In November, we dispersed most of our cattle, as we had no members of our family that wanted to continue the operation.

I feel that the land history corn base is a very unfair program. It discriminates against those who have taken care of their land by having cattle and awards those who have planted fence row to fence row and abused the land. These rules discriminate against our operation and our rights as citizens of the United States. It drastically devalues our land as it is worth much less because we cannot get into the program when we have a small corn base.

Also, I understand that as a rule if your land has not been farmed or broken up in the last so many years, you are not eligible for assistance—for as much assistance in building terraces, discriminating again.

I am 58 and am looking toward retirement and the possibility of selling the property, but our land and our rights have been badly

discriminated against, making our property worth much less. I think the 1995 farm bill does need some reform. Why should payments be the same regardless of prices? I draw no government subsidies, yet no one worries about the livestock man.

Please take a look at NAFTA. Cattle imports are up from Mexico 50 percent, while exports to Mexico are down 50 percent, besides the disease problems that are coming into our country from Mexico. Cattle pouring in from Canada and Mexico are distressing the cattle market, yet packing plants enjoyed record profits. I feel that the real reason for NAFTA was for big business——

[Bell rings.]

Mr. O'NEILL. I just have a little more, if I could finish. To build factories in Mexico for cheap labor and export the products back to the United States. The long-term effect will be devastating for the United States in the future.

To address the young lady who lost her son, my sympathy is with her, my heart goes out to her. I would like to see more inspection of imported meats coming into the United States. I had the pleasure of taking some Australians to the IBP plant at Denison 2 years ago and was very impressed with their cleanliness. I feel a lot of our problem—not all of it—does come from some of the foreign meats that come in here without as much inspection as ours.

In summary, I only ask that you take a look at this unfair restriction which vastly takes away the value of our land, just because of the history of land dictates this. Every operation changes. Do not make us operate under restrictions of the farm program as it is.

Thank you.

Mr. GUTKNECHT. Thank you, Mr. O'Neill. Any questions?

[No response.]

Mr. GUTKNECHT. Vic Aprahamian, thank you and welcome to the subcommittee.

STATEMENT OF VIC APRAHAMIAN

Mr. APRAHAMIAN. Thank you very much for this opportunity. I am Vic Aprahamian and I am a partner in Homestead Farms, Inc. We package vegetable oils.

Recently we have been successful in providing the Federal Government oil packed in 8 ounce bottles. We have two refineries in Des Moines which provide vegetable oil, and there has been a new change in the small business set-aside procurement which says that the domestic side, which is about 7 million pounds per month that the Federal Government buys, it used to be 50 percent set aside and 50 percent nonset aside. And we were participating in the nonset aside. We are a small company, with only five people. Now the new regulation is that 100 percent has to be set aside, which means that they can never buy oil from the two refineries that we have here, to provide let us say oil that goes to Sioux City or Kansas City. There are only three small refineries in the United States that qualify to be small and that is one in Kentucky, one in Oklahoma and one in Rhode Island. Because of this change, we totally cannot participate in this program.

The second thing, because of this change, the prices have gone up because we have seen, the last bid that they came out, the suc-

cessful bidders' price had gone up about 5 cents a pound. Not only that, the first prices that came in, the USDA decided to reject it because it was too high. So what happens is, when they request that it be open market, somebody comes and dumps, comes down about 10 cents below what the normal price is. So that means somebody is trying to choke out the small business so they will not participate in this market.

So I would recommend that somehow somebody look into this. Although I should say that you will probably hear from Ganske's office, we gave him this problem and he was very gracious to organize a conference call and we talked with Kansas City, they answered some of the questions but they have not answered some of the other questions.

One problem I have is this, the definition of a small business, they say 750 members or less—that is not enough. There are companies who have less than 750 and they are doing million, millions of dollars of business with the Federal Government. So the volume of the dollar should be also factored in. If the intent is to help small business, we are the first casualty.

Thank you very much.

Mr. GUTKNECHT. Carla Pope, please. And behind Carla, we have Sharon Means—Sharon traded places with No. 18, Don Rowan, and then No. 38, Thomas Juckette, and I am sorry, I am not a very good reader.

STATEMENT OF CARLA POPE

Ms. POPE. My name is Carla Pope and I am the director of governmental affairs for Iowa Health Care Association. We represent 320 long-term care facilities here in the State of Iowa.

I am here to share long-term care industry's problems with overburdensome and unnecessary Federal regulation. I am not here to state that the nursing home industry should not be regulated, but it should not be over-regulated either.

Iowa nursing homes are regulated currently by 7 Federal and 15 State agencies. When the Omnibus Budget Reconciliation Act of 1987 passed creating national nursing home reform, the Federal Government introduced the concept of an outcome-based survey. Nursing home professionals were pleased to be judged on the outcomes of care, with promises that the focus of the annual survey would be on how a resident looks and feels, and not on how the nurse completed the paperwork. Unfortunately, the promise of an outcome-based survey quickly became a myth.

We thought that the people of Iowa had it within their grasp to solve this problem by moving quality oversight of nursing home facilities to the State. But unfortunately for you too, block grants have lost their momentum.

The biggest paperwork nightmare that facilities face is an assessment tool developed by the Health Care Financing Administration, called the Resident Assessment Instrument. This instrument, so you can get the picture, is seven pages long, two columns wide with the smallest print you can imagine. It lists 153 separate items that the nursing home staff must assess when a resident is admitted to a nursing home, annually and any time the resident experiences a change, whether that change is positive or negative, that impacts

more than one area of the resident's health status. And a copy of this assessment form is going to be attached to your written testimony. In addition, every 3 months, the nurse must complete a 2 page assessment which covers 77 separate items.

It takes a team of health professionals approximately 8 hours to complete a full assessment on each resident, and this does not include the time to write the actual plan of care. Compare the time needed to complete the nursing home assessment with, Dr. Ganske, a comprehensive physical that a patient receives in a doctor's office. The Federally mandated assessment forces the staff to consider every possible health issue, whether or not the resident has a complaint in this area or whether the nurse has observed that it may be an area of concern. For example, every resident must be checked for fecal impaction every quarter, without regard for medical signs or symptoms.

Although originally intended to make the assessment process more thorough, the Federal Government has succeeded in taking away nursing judgment, physician involvement and the time with the actual resident, and has replaced it with full time nurses writing assessments and care plans to satisfy a survey team.

No one, not advocates, families, residents or staff believe that paperwork improves the quality of care—no one except the bureaucrats. Our dedicated, caring staff needs to spend time with residents instead of with government manuals and forms. By returning the responsibility of developing standards of care to the State, health professionals who are actually providing the care, can work with the State inspection agencies to develop an assessment system that is both comprehensible and usable. Please return the care of Iowa's long-term care residents to those most qualified to determine their needs—the residents, their families and the health care team.

Thank you.

Mr. GUTKNECHT. Thank you.

Mr. GANSKE. Let me just make a comment and maybe ask for a comment.

I think this goes back to what the theme of this entire hearing is about. I mean, I know that you feel that regulations are necessary in the nursing home industry.

Ms. POPE. Yes, I do.

Mr. GANSKE. The nursing home industry is probably one of the most heavily regulated industries in the country. We really need to get into that, with some of the other examples we had today. Your example of needing to check everybody for a fecal impaction is an anecdote.

Ms. POPE. Yes.

Mr. GANSKE. I agree with the testimony from a gentlelady a little while ago that it is not a good thing to legislate on anecdotes. In my opinion, the purpose of the hearing today is to send up some red flags. Unfortunately, what we have had from Congress over the last 30 years has been legislation based on anecdote. That is why we are trying to change the debate. It is very difficult to determine the validity of statistics, or in some cases to tell how widespread an anecdote is. But I believe that we should at least attempt to improve the science and the facts behind the legislation that we do

in Washington. I have only been there a year, but I will tell you that frequently there is a tendency for a victim to come into a congressional hearing, and, it can be the most heart-rending, sad case in the world. Yet if one legislates based on the compassion that is generated out of individual stories only, then unfortunately sometimes I think in terms of being compassionate to one group, you may end up being mean to another group, unintentionally.

This, in my opinion, is why we need to do a much better job in examining the consequences of the effects of some of the things that we are trying to do in the regulatory areas. I know that this is something of concern to the nursing home. If your nurses' aides are tied up for an hour and a half doing a checklist, they may not be able to go and provide care, good caring service, to somebody who is down the hallway. It is simply a matter of trying to do a reasonable balance. And if you have any comments, I would be glad to have them.

Ms. POPE. Well, I think that is correct and certainly we do not have a lot of extra help in the nursing home industry. In fact, we are quite short-staffed in some facilities. And I would like to see how we could more effectively use the employees that we do have to provide hands-on care rather than complete paperwork.

And to share with you just my own personal view of this, my position was added to the Association this year because my sole responsibility is to study regulations and explain it to nursing homes.

Mr. GANSKE. Thank you.

Mr. GUTKNECHT. Thank you. Congressman Latham.

Mr. LATHAM. Well, I just want to tell you, I am going to have to leave because of an appointment I have, and I just wanted to thank Greg for putting this all together here, and Gil, for your patience in spending the day down here, and Chairman McIntosh, although he has left, for holding the hearing here. These have been very, very productive the last 2 days and I think it has given me a greater insight as to a lot of the concerns people have. And I just want to thank you and apologize to everyone. I thank everyone for their testimony, it has been tremendous.

Mr. GUTKNECHT. Thank you.

Next, we have Don Rowan from Iowa Citizen Action Network.

STATEMENT OF DON ROWAN

Mr. ROWAN. Good afternoon. My name is Don Rowan, I am a member of the Board of Directors of the Iowa Citizen Action Network, a statewide public interest organization. I am pleased to make this statement.

Regulatory reform is of keen interest to the groups in our coalition and among our members. Regulatory reform—sounds as American as apple pie and motherhood. But the so-called regulatory reform bill that passed the U.S. House of Representatives last year was rotten to the core and bitter fruit to our kids.

Let me give you just one example of how our children might be adversely affected by this. A few years ago the Environmental Protection Agency forced refineries to remove lead from gasoline, based on threats to children's health. At the time of the initial rule, little was known about health risks at lower doses of lead in the body. If EPA had been forced to do a detailed comparison of costs and

benefits, it might not have been able to prove what amount of additional health benefits would result from the full phase out of lead from gasoline. Industry probably would have shown that a partial reduction would be much cheaper to implement and EPA would have had no data to prove the amount of health risk that would remain. If EPA did have data on poisoning effects at low levels, for example loss of IQ, the agency would then have had to assign a dollar value to preventing such losses. Industry might have argued that this monetary calculation should be based on lost earnings potential, a calculation that would have been highly discriminatory against children from poor neighborhoods, who were at great risk.

Although it has been given a high sounding name, regulatory reform has so far been nothing more than an assault on government programs that safeguard workers, protect the environment and public health. Its true impact would be to roll back years of existing safeguards and prevent government agencies from acting promptly and effectively to adopt new added protections. Something so grotesque should be called deform, not reform.

Why has the horror of regulatory reform been visited upon the American people? Purely and simply, money and politics—lots of it. Project Relief, a super consortium or corporate special interests has banded together to bring the nightmare of regulatory reform to an unsuspecting public. According to Citizen Action, Project Relief members are responsible for more than $3.5 million of PAC contributions to sitting Members of Congress in just the first 9 months of 1995.

We ask you not to accept any additional contributions and stop pushing to gut environmental, public health, worker and consumer protections.

Thank you.

Mr. GUTKNECHT. Thank you, Mr. Rowan, for your perspective.

Mr. GANSKE. And Mr. Rowan, if you would just wait for a moment. We certainly share the same concerns for the health care of our citizens. In the example that you gave concerning lead, it has been well known in the medical journals, and medical literature for a long, long time the ill health that can result from that and the fact that lead is a cumulative heavy metal in the body. And this is one situation where I seriously do not think that it would have been very difficult to have established a cost-benefit—a benefit to the regulation involved with lead. The problem with pica, which is children eating paint lead chips around homes, has been exceedingly well documented. I want to thank you for your testimony.

Mr. ROWAN. Thank you.

Mr. GUTKNECHT. Thomas Juckette and David Kroeger, you are on deck and in the hold is Trent Berhow. Thank you and welcome.

STATEMENT OF THOMAS JUCKETTE

Mr. JUCKETTE. Mr. Chairman, Representative Ganske, I am here representing the Iowa Council for Health Care Centers, a trade association that represents approximately one-third of the nursing beds in Iowa.

I am going to try real hard not to repeat anything that Carla Pope said. I would echo and agree with everything that she pre-

sented to your committee. I would underscore this one concern that I have.

As we move into the nineties, we have an ever-increasing number of citizens over 65 needing long-term care and we have a dramatically diminishing number of young people described as practitioners in the work force to deliver that long-term care. That is posing a problem that creates staffing difficulties throughout the State. That problem is being exacerbated by the regulatory atmosphere. The atmosphere for these practitioners is so negative and so fraught with excessive regulations that they can see as they try to perform their tasks that more and more health care, hands-on type health care, is being robbed from the patients by bureaucrats imposing more and more paperwork from the Federal level.

We then have a regulatory agency at the State level trying to achieve and win back hands-on health care for residents and the staff feels like they are caught between those two agencies. It is very difficult for them to have job satisfaction, dignity, some of those kinds of issues. It is frankly leading to an increasing difficulty in staffing our facilities. Most of the paper compliance that they see adds nothing to the safety and care of the patients that they are concerned about.

Thank you very much for your time.

Mr. GUTKNECHT. Thank you.

Mr. David Kroeger of the Midwest Council of Food Inspection Locals.

STATEMENT OF DAVID KROEGER

Mr. KROEGER. Yes, I am David Kroeger. I represent all of the food and poultry—meat and poultry inspectors in Iowa, Missouri, Kansas, and Nebraska.

The foodborne illness problems which may derive from the meat and poultry industry—Congress has mandated more meat and poultry inspection which includes microbiological testing and HACCP, which stands for hazard analysis, critical control points.

When first presented by FSIS, it was understood that HACCP would be an industry tool, used to keep their processes and procedures in control to enable the industry to produce an acceptably clean, wholesome product. However, now because of various influences, HACCP is now being presented as a regulatory program which will take the place of real consumer protection.

Congress has mandated HACCP in meat and poultry inspection which is to be in place in several years. However, in the meantime, Congress has not given HACCP the funding needed to maintain proper consumer protection, and as a result we are extremely short of inspectors. This also results in inspectors being assigned to 11 plants and more to cover in a day. Under such conditions, there is not time to do pre-operational and operational sanitation duties, nor the many other needed duties, and the public is at risk.

HACCP as a regulatory tool is questionable. Although there are to be periodical USDA inspector checks on meat and poultry plants' activities, FSIS now says that the regulatory process will be dependent on company-generated records of the company's processes. These records are proposed to be used as evidence in the case of legal actions concerning a company's activities. The idea that a

company will send one of its employees out in the plant to keep accurate records, records that, depending on their accuracy, could be used to close down the plant, appears ludicrous at best.

As stated by Dr. Ed Menning of the National Association of Federal Veterinarians, "If the agenda is to move from organoleptic inspection of carcasses to organoleptic inspection of paperwork, the public is at risk."

We need HACCP as an enhancement to inspection, but we also need to implement it with common sense. And that means having enough trained Federal inspectors in the plants doing what they are hired to do—enforce the rules and protect the health and safety of the American people.

Thank you.

Mr. GANSKE. Mr. Kroeger, if you would not mind answering a few questions. My sense is that the meat inspectors are doing the best job that they can, and that—would you agree that basically the meat, as it leaves the packing plant, is—well, let me ask this a different way. We had some cases of food poisoning around the country that were tragedies. Where do you think is the most likely breakdown in contamination? Is the meat clean when it is leaving the meatpacking plant? Is it being adequately refrigerated or do the statistics show that the majority of food contamination actually happens at the place of preparation?

Mr. KROEGER. At the place of preparation.

Mr. GANSKE. At the place of preparation?

Mr. KROEGER. I believe the Centers for Disease Control could confirm this.

Mr. GANSKE. Thank you very much.

Mr. GUTKNECHT. Thank you, David.

Mr. Trent Berhow. We also have Dale Brentnall, would you be on deck please?

STATEMENT OF TRENT BERHOW

Mr. BERHOW. Thank you. My name is Trent Berhow and I am employed as a food inspector for the USDA Food Safety Inspection Service in Denison, IA, which I was happy to hear referred to earlier by the gentleman from Logan, as being a clean plant. That made me feel OK.

I am here to address the issue of meat and poultry inspection regulations and the safety of the American food supply. I have worked in the meat and poultry industry for the past 15 years, 10 years as an industry employee and the past 5 years as a Federal Government employee with responsibility for regulating the meat and poultry industry. In the past 15 years, I have worked in approximately 20 different packing plants in the States of Nebraska, Iowa, and Minnesota and over that time, I feel I have acquired a special insight needed to address the committee about our country's need to maintain and improve its current system of meat and poultry inspection.

The U.S. Congress is currently mandating that new regulations be implemented by the Food Safety Inspection Service over the next several years. These new regulations are being proposed under HACCP, Hazard Analysis and Critical Control Point. These new HACCP regulations in their purest application will deregulate

the meat and poultry industry to the point that food safety and the health of the American public will be seriously compromised.

HACCP regulations in their original form were intended to be an enhancement to the current system of meat and poultry inspection, and as food inspectors, we fully support any program which is designed to enhance food safety and improve consumer protection. However, HACCP regulations, in their current form, have been diluted, changed, and rewritten to the point where HACCP would now replace the current system of meat and poultry inspection and seriously jeopardize food safety and the health of the American public.

The changes in the proposed HACCP regulations have been designed in conjunction with industry demands for less Government regulation, the resulting effect of which would be greater profits for the meat and poultry industry. However, while industry profits obviously will increase, the incidence of foodborne disease outbreaks, often with deadly results, will also increase.

In an attempt to enlighten the committee as to the potential danger involved with the implementation of new HACCP regulations, I would like to make mention of a book entitled "The Jungle" written by Upton Sinclair and published in 1906. Within his book, Mr. Sinclair described the horrific conditions which existed in the poorly regulated packing plants of Chicago during the early 1900's. The graphic accounts described in that book led to such intense public outrage that in 1910 the Federal Meat and Poultry Inspection Act was enacted by the Congress of the United States.

In closing, I would like to state that our current meat and poultry regulations have delivered us from the conditions described in Mr. Sinclair's book to our current status of having the safest food in the world. Let me point out that we would be taking a serious step back toward the jungle with the wholesale elimination of the current regulations and the initiation of the industry-created HACCP regulations. This new HACCP jungle will be a jungle of deadly bacterial contamination and a new and much more deadly jungle, given the emergent strains of bacteria not yet known in Mr. Sinclair's day. This new HACCP jungle will put a complete and dangerous end to our country's claim of having the safest food supply in the world.

Thank you.

Mr. GUTKNECHT. Thank you. Dale Brentnall and then Darrell Klua. Welcome to the subcommittee, Mr. Brentnall.

STATEMENT OF DALE BRENTNALL

Mr. BRENTNALL. Congressman Gutknecht and Congressman Ganske, it is a pleasure for me to make a presentational statement here this afternoon. You know, the mind usually does not retain any more than the seat can endure——

Mr. GUTKNECHT. We are testing those limits right now.

Mr. BRENTNALL [continuing]. And we all have empty stomachs.

I would like to make a statement concerning the current conservation policy and also some farm bill priorities.

My name is Dale Brentnall and I am a past national president of the Izaak Walton League of America. I live at 429 25th Street

in Ames, IA, and I was happy to have you come to our fair city last——

Mr. GUTKNECHT. Yes, I was going to say we have met somewhere.

Mr. BRENTNALL. Yes, we have.

Mr. GUTKNECHT. And I know where it was now.

Mr. BRENTNALL. I would like to make these brief statements on behalf of the Izaak Walton League, the national conservation organization that represents more than 6,000 members in Iowa and 50,000 members nationally. Our organization has a long record of involvement on issues—in fact, over 74 years—issues related to conservation of soil, water, wildlife, and wetlands.

We appreciate the changes in the Freedom to Farm Act that are being considered to improve the bill's environmental impacts. This especially pertains to the Conservation Reserve Program. We enthusiastically support maintaining the CRP and allowing new enrollments of environmentally sensitive land. We also support restricting early outs, except for the most farmable land. And if early outs are allowed, any savings should be used for new enrollments.

However, we have a number of concerns about the provisions of the House bill that are very negative from an environmental standpoint. We ask that you: First, protect the Conservation Compliance and Swampbuster. That is the wetlands provisions. These are not regulations, per se. Instead, they are reasonable acknowledgements that public support should be based on basic conservation standards.

Second, do not prohibit permanent easements under the Wetlands Reserve Program, which is the WRP. This program has been a great success with farmers and the public. In the long term, permanent easements are more economically sound than short-term contracts.

Third, do not allow Livestock Environmental Assistance Program, known as LEAP, to become a cash cow for large confinement operations. The concept is good, but the House's version of the program are lax, payments are high, and herd-size limits would benefit very large, factory-type operations. Most people across this State would resent having their tax money subsidize factory operations. In addition, assistance should be based on a farm plant that serves as a guide for farmers and agency officials.

Fourth, finally, please give farmers the same flexibility for soil conservation rotations that are being allowed for program crops. Farmers who want to rotate crops to enhance soil, protect water, and reduce pesticide use should no longer be penalized by farm programs.

Thank you for holding this hearing this afternoon in Des Moines and the opportunity to express these concerns to you. Thank you.

Mr. GUTKNECHT. Thank you, Mr. Brentnall, and we appreciate all that the Izaak Walton League has done over the years.

Mr. Klua, and if Mr. Mark Dickey could be on deck and Mr. Jim Boyt in the hold please.

STATEMENT OF DARRELL R. KLUA

Mr. KLUA. I always thought I wanted to run for Congress, but I cannot sit that long.

My name is Darrell Klua, I am the director of environmental affairs for Rockwell International. And I would like to thank the U.S. Congress and U.S. EPA for terrific job security. [Laughter.]

Today, I have been listening to all the testimony of this negative government, this nonproactive, nonflexibility. You opened your initial comments talking about common sense in enforcement and they do not fit into the same sentence, or very seldom do they.

I came forward today because I want to share with you some positive issues that I have had with the U.S. EPA. In 1982, the Superfund Act contacted Rockwell International as to its activity of disposing of any hazardous materials in and around before they were declared hazardous materials. Rockwell International answered the response and said that in fact they did have a landfill in the Cedar Rapids area. In 1990, the EPA finally got around to reviewing the site and in 1992, Rockwell entered into a consent order under Superfund with Region VII of the U.S. EPA.

When you get into Superfund, it is written by a bunch of lawyers, it is very documented, very regimental and one criticism of applying Superfund right now is nothing ever happens because it always winds up in court. We were fortunate and asked if we would like to participate in a pilot project called the Superfund Accelerated Cleanup Model. It is sponsored as a pilot program by the U.S. EPA. Rockwell decided to join the pilot project. We, as well as a team of EPA officials, EPA consultants, and Rockwell staff, spent 3 days locked up in a room doing brainstorming sessions on how to remediate this site, set forth a program, went out and did some initial investigations, got back together, did some more discussions. Basically what happened was that we took a 10-year process and turned it into a 2-year project.

Mr. GUTKNECHT. Did you not have to spend 75 percent of the money on lawyers?

Mr. KLUA. Right. And they are all crying—they are all crying.

To date, in the spring of 1995, our remediation activities started. We are anticipating that we will have the site cleaned up before we would have even reached an agreement under the old Superfund.

I guess the intent that I would have, and I would support being involved in sharing with anyone else the positive actions that we have had. I think that the actions and the results that we have initiated with region VII could be utilized in other places within EPA. As a customer, and I was a customer of EPA in this particular instance, I found them extremely flexible with a lot of common sense—I would like to use the words common sense. It is still a legal document but it is something that we have actually worked out together. It does work.

Mr. GUTKNECHT. Thank you. This is excellent testimony. In fact, I would love to have you send me a letter. I do not need a mountain of documents, but just describing it. This is I think exactly what Ms. Christensen earlier talked about.

Mr. KLUA. Exactly.

Mr. GUTKNECHT. And this is the kind of thing we want to see more of and we are trying to figure out how to change this paradigm from where we are now, enforcing the letter of the law, to keeping the peace. We all want to clean up—but I did not use that

number without thinking about it. We are told that 75 percent of the money so far that the Federal Government has appropriated for Superfund cleanup has gone to either attorneys or consultants. That is not what I think the Congress wants to have happen.

Mr. KLUA. You would not believe the studies mandated underneath the old law, and basically what we did is we looked at this site and we said so what is so unique about it than any other site, hydrogeological, et cetera. We are not talking rocket science here. Under the old system, you go through a regimented process of engineering documents, legal documents, review, you know, et cetera. As a matter of fact, they are in the final phases of designing a format where we will not even get into Superfund, this project will be run outside of Superfund because Rockwell has agreed to pay for the environmental oversight before it is built. We basically do not want the site to end up on a Superfund list.

Mr. GUTKNECHT. Representative Ganske did you have a question?

Mr. GANSKE. Were it not for the fact that it is getting a little late today, getting into Superfund could take an hour.

Mr. KLUA. Right.

Mr. GANSKE. But we have a lot of testimony before my committee. It is fair to say that I do not care what side of the issue you are on with Superfund, whether you are representing a citizens group, an environmental group, business group, the way that the law has worked has just not accomplished the purpose of getting these sites cleaned up. In State sites with some increased flexibility, we have seen a much more rapid cleanup of those toxic sites than we have when the scheduled sites have gotten tied up in the litigation.

Mr. KLUA. The States are more flexible because they are more hands-on.

Mr. GANSKE. So, we will continue to work on Superfund reform this year. I expect that there will be a Superfund reform bill because it is important to move on and get these sites cleaned up.

Mr. KLUA. I guess what I am also challenging is not only just within Superfund, but other segments of the EPA. I mean it is back to dialog again, get the dialog going with the people and get out of the enforcement mode, or less out of it, with responsible parties I guess.

Mr. GANSKE. I think it is a matter of balance. If, for instance, there is an auger that does not have a guard, it needs to be corrected.

Mr. KLUA. Exactly.

Mr. GANSKE. If there is a roll of toilet paper that is sitting on the back of the tank, maybe you are wasting your inspector's time.

Mr. KLUA. Right.

Mr. GANSKE. Thank you.

Mr. GUTKNECHT. Thank you, Mr. Klua.

I must apologize, Mark Groenendyk traded his place earlier. If he will take his place in line, we will—are you Mr. Dickey?

Mr. DICKEY. Yes, I am.

Mr. GUTKNECHT. OK. Then you go ahead. Mark, good to have you with us.

STATEMENT OF MARK DICKEY

Mr. DICKEY. I will tell you what, I am going to make this very brief because you have been sitting there for a long time. Thank you, Congressmen, for allowing me to speak.

I want to talk about the Safe Drinking Water Act. Mayor Gray, Dr. L.D. McMullen spoke eloquently on that today. I have worked with both of those gentlemen, my testimony is much the same. Instead of me going through and speaking on the testimony, you are going to get a copy of it in written format. I hope that gives me extra consideration by you for not taking your time here at the podium, to get you out of here quicker. I do not know how you guys have sat there all this time and listened to all this and not even gone to the restroom, or your stomach growling like mine has.

So I will turn mine over——

Mr. GANSKE. We have plenty of practice. [Laughter.]

Mr. DICKEY. I did want to say one thing. I do want to thank Congressman Ganske for coming to our annual banquet and speaking before us on the Safe Drinking Water Act this past January. The 400 people there that listened to your speech, Congressman, every one of them agreed wholeheartedly with what you had to say.

Thank you very much.

Mr. GANSKE. I appreciate that.

Mr. GUTKNECHT. Let us go to Mark Groenendyk. Is Mark still here? I am sorry we skipped you, but thank you for joining us. You are a farmer from down around Oskaloosa, is that right?

STATEMENT OF MARK GROENENDYK

Mr. GROENENDYK. Yes. It is kind of ironic, I swapped with the lady who said she was a teacher, it turned out she was from the Sierra Club. [Laughter.]

In 1989, I bought a 285-acre river bottom farm, some of it was farm ground, some of it was timber. When I first farmed it, I had dreams for it, I did some research on it, I could do some tree clearing and I proposed to put in a levee system. I got my research information from the SCS, now the NRCS, and the Iowa Department of Natural Resources.

Well, I went ahead and applied for the levee permit and I started doing the tree clearing where my levee was proposed to go in. Everything was fine until November 1989 when the Corps of Engineers stepped in. They wanted to call 10 acres wetland. Well, that 10 acres was where the levee was going to go. So to get the permit, I had to—Fish and Wildlife had to do an inspection and the Department of Natural Resources again had to do another inspection. Well they got done with their inspection and 100 acres of my farm was a wetland.

Mr. GUTKNECHT. You are losing ground, pal.

Mr. GROENENDYK. It gets better. The Corps of Engineers did another inspection, so they fly—you can see I am a little bit nervous—two people up from Mississippi, their top experts on wetlands, along with a couple of other people from their agency and they spent about 2 days around my area and my farm doing their research. They were supposed to have their determination to me within 3 weeks, this was September 20 and 21, 1990. I finally get their determination, which they say due to lack of funding, finally

in March 1991. In the meantime, before they can tell me it is wetland, they did not have enough information from these people from Mississippi that put their information into it, what they found, they send me in to this wetlands initiative that the EPA was proposing already in February. And the Corps of Engineers personnel was going to these quality water meetings, you know, with the SCS and other agencies on wetlands, and they could promote my pictures of what I had done as being criminal for destroying wetlands but yet they did not have the funding to notify me, a 32 cent stamp is too expensive.

But before they sent me a determination, Representative Jim Leach suggested I go to the SCS and file for a determination. So I did that——

[Bell rings.]

Mr. GUTKNECHT. You have waited long enough. You can have as much time as you need. Go on.

Mr. GROENENDYK. As it turned out, I spent 5 years in monkey court with the SCS and the last appeal was before an independent agency, had nothing to do with the NRCS or farmers, and he ruled 100 percent in my favor.

Mr. GANSKE. Did you handle this entirely on your own or did you get legal counsel?

Mr. GROENENDYK. I have got legal counsel and I have got a hydrologist working with me.

Mr. GANSKE. How much has that cost you?

Mr. GROENENDYK. I worked 6 years, it's is about $500,000 now from loss of income and what I paid out to the hydrologist and engineer and my lawyer.

It is kind of ironic, 10 days before I went to this last hearing——

Mr. GUTKNECHT. And you won.

Mr. GROENENDYK. I won. The ironic part of it is I walked into the local SCS office unexpectedly and demanded to look at my file. Right on top about three pages under, the previous owner in 1988 had requested a wetland determination and it was not a wetland.

Mr. GANSKE. So, you bought this property from somebody else who had already had a determination that it was not a wetland.

Mr. GROENENDYK. Right. Before I bought it, I went into this office and asked if I could do this and they said there was no problem. I did not have it in writing, which is my fault, I found out now. Ironically enough, as it turns out the Corps of Engineers and the SCS had been under the table trying to get it as wetlands. People have been coming to me now from these other meetings with this quality water and these people have been talking—I will not give so much detail, but as it is now, I have got two government documents saying my farm is not a wetland, yet the government is taking me to court in August, suing me because it is a wetland.

Mr. GANSKE. We talked earlier about not legislating on anecdotes. But when you begin to add one story after another onto another onto another, a pattern emerges. It seems to me that a pattern has emerged in this particular area and we need remediation—justice.

Mr. GROENENDYK. The irony of this whole thing is, if your pop can is my fence line, during the whole time they were in this process, my side of the pop can is on wetland and your side of the pop

can is on upland, according to the SCS. This is the same soil, same elevation, same flood plain.

I am confident I will win. It is just that it takes time. But you know, you proposed maybe more flexibility in the regulators. I think that would be good, but I think at the same time, if the regulators are wrong, the agency itself and the regulators should be held responsible.

Mr. GANSKE. I actually asked for advice as to whether this was the way that we should go.

Mr. GROENENDYK. I support that as long as they are held responsible rather than taxpayers held responsible for the damages.

Mr. GUTKNECHT. Which is one of the points that you made, Mark, and I think it is a significant point, and again, I do not want to legislate based on anecdotes, but when there seems to be a clear agenda by various groups, which you allege and I have no reason to not suspect that from the very beginning they wanted that area declared a wetland. So what chance do you have—what we are talking about, what we are considering, and I think it was mentioned earlier, we talked about it in Sioux City yesterday, is some kind of a bill of rights. Because right now, I mean, you have had to go through all of this legal expense and will have additional expense and you have no chance for recovery even if you win. Is that not right?

Mr. GROENENDYK. Well, my attorneys think that I do. The money that I paid to them. I can show the income because I have farmed—some of the ground has been farmed since at least the 1900's. The Corps of Engineers was insisting that this was a wetland, my predecessors paid drainage taxes to the Corps of Engineers to straighten that river back in the thirties. They paid drainage taxes which amounts to 10 times more than property taxes on that farm, for years. The Corps of Engineers says it comes from the river, the SCS——

Mr. GUTKNECHT. We heard from a gentleman yesterday in Sioux City who had amassed over a quarter of a million dollars in legal fees and essentially told us he had really no way to recover. So that is something we are looking at. Keep us posted on exactly what happens in your case. Just write us in care of the committee. Would you please?

Mr. GROENENDYK. Sure.

Mr. GUTKNECHT. Thank you, Mark.

Next, we have Jim Boyt. Is Jim here?

[No response.]

Mr. GUTKNECHT. George Kappos.

[No response.]

Mr. GUTKNECHT. Lyle Krewson.

[No response.]

Mr. GUTKNECHT. Barbara Easler. Barbara, thank you and welcome to the subcommittee.

STATEMENT OF BARBARA EASLER

Ms. EASLER. Thank you for the opportunity to talk. I know I am probably last on the list, so I will try and hurry with this.

As I have listened to all of the comments today, we have been talking about the ADA and as everybody knows it is the Americans

with Disabilities Act. I know that it is a costly thing for consumers or people that are employers and things like that. And I am sorry that that has happened. But all that the ADA has asked is that we have equal rights. It is not—you know, it is not a mandate, it is equal rights for persons with disabilities.

All I am asking is that I can get into any place that anybody else would get into, anybody that is able to walk into a building, those rights. That is all I am asking for.

I know that it looks like it is really hard to understand, and it has been in effect for 5 years. That is what people are complaining about. If they had gone through the process when they were supposed to go through the process of changing things over—and I understand the cost of it—then we would not be fighting with the fight that now they are thinking they are going to get sued. That I understand. But we have asked for it for 5 years. We are almost on 6 years now.

So it needs to stay as not just something that you can throw away. I want the rights that anybody else has. And just because I am sitting down or cannot reach something, does not mean I do not have those rights.

Mr. GANSKE. I appreciate your testimony. Were you here earlier to hear the city manager of Urbandale?

Ms. EASLER. Yes. I was listening to it and I understand what he said about it.

Mr. GANSKE. As an example, they have a very good building, structurally sound. They do have a lift in it, so that you can get from one floor to another, but it is not an elevator. So, technically it does not meet ADA qualifications. Do you think that it would be reasonable to allow somewhat more flexibility, after listening to some of the testimony that we have had today?

Ms. EASLER. Yes, I do. Flexibility is good. If I can get into it, if it is a chair lift, is it going to be able to deal with the electric chairs that are coming in and out of these buildings? We are looking at a 150 to 200 pound chair and that is not counting the person that is in the chair. So that is why the elevators are safer and I think that is probably why ADA is looking at safety reasons. But if I can get into a building and get where I need to and the same rights that everybody else has, then I am not going to complain a whole lot. I just want to be able to do what everybody else is doing.

Mr. GUTKNECHT. And we certainly agree. The ADA really has opened all of our eyes. What we are beginning to consider though is, you know, are we coming up again with more expensive solutions than are really needed to get to the conclusion that you and I think all Americans really want.

Ms. EASLER. Most of the cost for accommodations, except for building kind of things, are under $50 to $100, is the information that I have.

Mr. GUTKNECHT. Well, let me give you an example, and this is something that we have heard some testimony about, particularly from smaller cities that still have bus lines. For example, they are in the process now of putting the lift equipment—or buying new buses with lift equipment on it, even though, for example, I think we heard from one city manager, there are only like two people in the community who regularly ride the bus, who would avail them-

selves. So the cost per ride, they said it would be far cheaper for us to send two people out in a cab to pick them up, than buy these very expensive buses. And yet, because of Federal mandates, they feel compelled to spend literally hundreds and hundreds of thousands of dollars in that community.

This is the kind of thing where I think we do have to work together with the folks in the disability community, as well as city managers and others to try and come up with solutions to the problem. But at the same time, cost-effective solutions.

Ms. EASLER. Right. I do not think a lot of them are asking the persons that are disabled for the information that they need. We do not want the world, we are not asking for it on a silver platter, not everybody is. But I would be willing to give any information or any help that I can on any of the ADA accessibility type of things and do it in a way that is not—I do not want to put anybody out of business, I do not want to put the government out of business, you know, because they have got to put so much money into things. But they have to look at giving me and anybody else that wants to go someplace, you know, bus, whatever, the same rights as they would give anybody else.

Mr. GUTKNECHT. Good. Any other questions or comments?

[No response.]

Mr. GUTKNECHT. Barbara, you were the last name on our list and not the least, and we appreciate you spending the time and your patience to be here.

Is there anyone else who would like to offer any last comments?

[No response.]

Mr. GUTKNECHT. Congressman Ganske.

Mr. GANSKE. I just want to thank the people at the end of the list for staying.

I think this has been a very interesting hearing. I appreciate the fact that we could have this in Iowa. I think it facilitates people like yourself being able to come and testify before Congress.

Ms. EASLER. And it would have been almost impossible right now to get to Washington.

Mr. GANSKE. Absolutely.

Ms. EASLER. It was nice to know that this was happening, to be able to get here.

Mr. GANSKE. I thank you for coming.

Ms. EASLER. Thank you.

Mr. GANSKE. And everybody else too.

Mr. GUTKNECHT. I would like to thank Congressman Ganske for helping to put this meeting together and all of his staff. But particularly I want to thank our House stenographer who has not only had to sit here for the entire length of time, but has dutifully taken down every single word of the testimony.

I would remind those who are still present that we do have the potential to revise and extend your remarks. If you have particular comments, concerns, additional items you want inserted in the official record of this hearing, please send them to us within the next 2 weeks and we will make certain that they are.

Also, I would also share with you we get lots of mail and we do read the mail, we do pay attention to the mail. So if you have particular concerns, you can always write either in care of the commit-

tee or you can contact Congressman Ganske either here in Des Moines or in Washington.

With that, I thank everyone for joining us and this meeting is now adjourned.

[Whereupon, the subcommittee was adjourned at 2:49 p.m.]

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