EPA'S EXPANSION OF 112(r) OF THE 1990 CLEAN AIR ACT AMENDMENTS TO INCLUDE PROPANE

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

WASHINGTON, DC, JULY 29, 1999

Serial No. 106–26

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE

61–131 WASHINGTON : 1999

COMMITTEE ON SMALL BUSINESS

JAMES M. TALENT, Missouri, *Chairman*

LARRY COMBEST, Texas
JOEL HEFLEY, Colorado
DONALD A. MANZULLO, Illinois
ROSCOE G. BARTLETT, Maryland
FRANK A. LOBIONDO, New Jersey
SUE W. KELLY, New York
STEVEN J. CHABOT, Ohio
PHIL ENGLISH, Pennsylvania
DAVID M. MCINTOSH, Indiana
RICK HILL, Montana
JOSEPH R. PITTS, Pennsylvania
JOHN E. SWEENEY, New York
PATRICK J. TOOMEY, Pennsylvania
JIM DEMINT, South Carolina
EDWARD PEASE, Indiana
JOHN THUNE, South Dakota
MARY BONO, California

NYDIA M. VELAZQUEZ, New York
JUANITA MILLENDER-MCDONALD, California
DANNY K. DAVIS, Illinois
CAROLYN MCCARTHY, New York
BILL PASCRELL, New Jersey
RUBEN HINOJOSA, Texas
DONNA M. CHRISTIAN-CHRISTENSEN, Virgin Islands
ROBERT A. BRADY, Pennsylvania
TOM UDALL, New Mexico
DENNIS MOORE, Kansas
STEPHANIE TUBBS JONES, Ohio
CHARLES A. GONZALEZ, Texas
DAVID D. PHELPS, Illnois
GRACE F. NAPOLITANO, California
BRIAN BAIRD, Washington
MARK UDALL, Colorado
SHELLEY BERKLEY, Nevada

HARRY KATRICHIS, *Chief Counsel*
MICHAEL DAY, *Minority Staff Director*

CONTENTS

	Page
Hearing held on July 29, 1999	1

WITNESSES

Makris, Jim Director, Chemical Emergency Preparedness & Prevention Office, U.S. Environmental Protection Agency	4
Blunt, Roy, a Representative in Congress from the State of Missouri	22
Densmore, Mary and John, Geldbach Petroleum Co	24
Lindsey, Paul, CEO, All Star Gas Company	26

APPENDIX

Opening statements:	
Talent, Hon. James M	33
Velazquez, Hon. Nydia	37
Sweeney, Hon. John E	38
Prepared statements:	
Makris, Jim	39
Blunt, Roy	50
Densmore, Mary and John	57
Lindsey, Paul	60

THE ENVIRONMENTAL PROTECTION AGENCY'S EXPANSION OF 112(r) OF THE 1990 CLEAN AIR ACT AMENDMENTS TO INCLUDE PROPANE

THURSDAY, JULY 29, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to notice, at 10:47 a.m., in room 2360, Rayburn House Office Building, Hon. James M. Talent (Chairman of the Committee) presiding.

Chairman TALENT. The hearing will come to order. Good morning. Today, the Committee will examine how the Environmental Protection Agency's inclusion of propane within the Clean Air Act Amendment of 1990 impacts small businesses. The Committee will also focus on Congressman Blunt's bill, H.R. 1301, and S. 880, which the Senate and House passed, which remove propane from the list of covered chemicals.

In December 1984, a storage tank in Bhopal, India, accidentally released a toxic chemical into the atmosphere. This accidental release killed over 3,000 people and injured more than 200,000 individuals. In response, Congress amended the Clean Air Act to require the EPA to promulgate a "list of 100 substances which in the case of accidental release are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment." Congress required EPA to include 16 chemicals on the list.

These chemicals all share a similar characteristic—they are all toxic. The intent to include flammable, but non-toxic, materials in the regulated list is conspicuously absent from the legislative history. Recently, Senator Max Baucus, a conference committee member to the 1990 Clean Air Act Amendments, noted that, "Congress did not intend that propane or flammables used as fuels would be listed. Congress was focused on preventing major toxic catastrophes, such as occurred in Bhopal, not the type of accidents that are covered by existing Federal or State fire safety or transportation laws."

Nevertheless, in 1993, the outgoing Bush administration EPA proposed expansive regulations that brought flammables, including propane, within Section 112(r) of the 1990 amendments, and the EPA has continued its attempt to promulgate those regulations for the last six years, at least up until very recently.

It is uncontested that propane is not toxic or poisonous, while all the chemicals Congress listed are toxic. In fact, the EPA has commented that methyl chloride, one of the Congressionally mandated listed chemicals, "is extremely toxic. Acute exposure to high concentrations of methyl chloride in humans has caused severe neurological effects, including convulsions, coma, and death. Methyl chloride has also caused effects on the heart rate, blood pressure, liver, and kidney." Propane, however, presents no such threat. In fact, as Mr. Blunt's bill recognizes and S. 880 recognized, the Clean Air Act and the Energy Policy Act of 1992 list propane as a clean alternative fuel. In other words, it is a fuel that is favored under our other environmental laws.

All of this would be of little concern if the burden caused by the proposed regulation was a minor one. However, the EPA regulation as originally drafted would have covered any business that stored more than 10,000 pounds or 2,300 gallons of propane, which would have included the average family farmer, greenhouse, or restaurant using propane, as well as small propane dealers. These businesses would have been required, at a minimum, to develop a worst-case scenario impact of a propane explosion and a plan for dealing with that scenario and to bring equipment and personnel up to EPA standards for executing such a plan. The draft risk management program guidance for propane storage facilities, I hold in my hand. The Committee can take a look at the size of it.

The use of propane is already regulated by OSHA, the Department of Transportation, and every State, as well as local fire departments. The additional EPA regulation would have given propane users the perverse incentive to do one of two things, either switch to an environmentally unfriendly fuel, but unregulated fuel, like fuel oil, or store less than the threshold 10,000 pounds on site, which would have required more frequent deliveries of propane to replenish the smaller amount that was being stored and, therefore, more transportation of flammable fuels on the highways.

As a result of these obvious problems with the regulation, after six years and under extreme Congressional pressure, EPA raised the threshold for application of its regulation from 10,000 pounds to 67,000 pounds, thus exempting most small business end users. This welcome change, however, may be too late to save the regulation, as both the House and the Senate have unanimously passed bills clearly removing propane from the list of covered chemicals. That bill is in conference and, of course, we expect it will come out of conference and be passed.

I appreciate the EPA's responsiveness to Congressional inquiries and to this Committee. I participated in informal meetings with the EPA in which they did make an effort to respond to the concerns of small business people and, I think, did so in a cordial and responsive fashion and I am grateful for that. That has not always been the case in dealing with agencies.

I have to say, however, that this whole regulation is another example of the kind of wasted time and effort that is the least damage done by regulations which would hurt small businesses without accomplishing anything. I want to repeat what I have often said in this Committee. The whole problem can be avoided if agencies will take the procedures mandated by SBREFA to heart, if they will lis-

ten to the small business stakeholders early in the process, credit them with being genuine and having some understanding of the impact on their small business, and then try to be responsive to concerns expressed through that process.

Had the agency done that four or five years ago and simply raised the threshold, the regulation would probably be law now whether it is necessary or not. I think it probably would be. I think it is the unanimous judgment of both bodies that propane is adequately regulated by other regulatory schemes and probably does not need to be included here. But it is a shame that we have spent six years and it looks like we are going to come up with nothing.

I am happy now to recognize my friend, the gentlelady from New York.

[Mr. Talent's statement may be found in the appendix.]

Ms. VELAZQUEZ. Good morning and thank you, Mr. Chairman, for holding this hearing today. This hearing is a continuation of this Committee's ongoing review of government regulations and its effects on small businesses. Let us keep that in mind as we examine how EPA's inclusion of propane within the Clean Air Act Amendments and associated regulations affects small businesses. It is an issue well worth looking at and reviewing.

Mr. Chairman, what we have before us are small businesses that may have fallen victim to the law of unintended consequences, consequences that small businesses have had to live with for some time now and a solution is long overdue. This issue came into light over a decade ago when a disastrous escape of toxic gases killed and injured thousands of Indians. Unfortunately, it took a tragedy to look for better management of toxic substances.

However, in response to this disaster and bipartisan Congressional legislation, President Bush on his last day in office proposed new regulations. I believe that these regulations, while written to protect the public, disregarded how small businesses will be affected, and that is at odds with our purpose here on the Small Business Committee and in Congress. We need to look at the challenges that entrepreneurs face and make it easier, not harder, for them to succeed. I believe that these regulations, while drafted in good faith, have hurt small businesses, but they have also shown all of us how important and necessary the SBREFA process is.

EPA was not always a part of the SBREFA process. As a matter of fact, I would like to remind my colleagues that it was not until 1996 that this Committee expanded SBREFA to require the EPA to sit down with small businesses on this rule. Had there been a quicker response to small business needs, we might not be here today. But we are, and we are fortunate to have Congressman Blunt with us. He has introduced legislation to protect small businesses from these indiscriminatory rules. His legislation will exempt propane from EPA regulations, thereby protecting those small businesses.

I thank the Chair for holding this hearing and I look forward to hearing from today's witnesses. Thank you, Mr. Chairman.

[Ms. Velazquez' statement may be found in the appendix.]

Chairman TALENT. I thank the gentlelady.

Mr. Blunt is going to be testifying. The markup ran longer than I thought, so I released him to go to another markup or meeting

he had and he will be coming back in a few minutes. We will just put him on the second panel, which will actually save the time of the Committee anyway.

The first witness is Mr. Jim Makris, who is the Director of the Chemical Emergency Preparedness and Prevention Office in the Office of Solid Waste and Emergency Response of the U.S. Environmental Protection Agency.

Mr. Makris, I want to welcome you, and I do want to say again, from my perspective, that when I dealt with your people in your office, they were always very cordial and very responsive. I am grateful for that and I want to compliment the agency on that. Obviously, I disagree with the amount of time it took to adjust the regulation, but your people were always very good and I want to compliment you on that. Welcome to the Committee.

STATEMENT OF JAMES MAKRIS, DIRECTOR, CHEMICAL EMERGENCY PREPAREDNESS AND PREVENTION OFFICE, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. MAKRIS. I hope I can live up to the reputation that my staff has already established with you. I do remember the meeting that we had in Congressman Emerson's office where we set up the meeting that we later held in the Midwest. I think that it is an important point, and I think that, as you recall, during that discussion, the law of unintended consequences did emerge. There were some issues that came to much of our surprise.

My name is Jim Makris and I direct the Chemical Emergency Preparedness Intervention Office. My responsibilities include the implementation of the Accidental Release Provisions of Section 112, implementation of several sections of the Community Right to Know Act of 1986, SARA Title 3. I also serve, incidentally, as EPA's emergency coordinator for issues such as national security and counterterrorism.

I am accompanied today principally by my Director of Program Development, David Speights, and also behind me is Senior Chemical Engineer Craig Matthiessen.

I am really pleased to be able to talk about the importance of chemical safety, accident prevention, and community right to know. I ask that my written testimony be included in the record and I will summarize and try to tell a fairly short story that takes us to where we are.

The Chairman mentioned the issue of the world's largest chemical accident in Bhopal, India, which led quite promptly to the creation of a series of activities both within the agency and within the chemical industry to finally recognize the right of people to know that they are exposed to risk. It is pretty hard to recognize that for generations in this nation, there was no specific program geared to providing people, the public, with data on risks that may be confronting them. But SARA Title 3, the Community Right to Know Act of 1986, modified that. It immediately said that companies that had one of a list of 400-and-some-odd hazardous substances or had inventories of hazardous substances or had inventories of a substantial nature of substances that might be dangerous in the workplace had, indeed, to provide this information to the general public.

It is really shocking that until 1986, the entire reliance of information on risk in manufacturing facilities was either dependent upon disclosure by the company itself or protection under the labor laws, for worker protection under OSHA. It is important to remember, Bhopal did not injure or kill workers. Bhopal went outside the fence line and went into the community.

So it was quite a different situation, and, frankly, it changed the paradigm of how we all thought about risks. Originally, we felt if we protected the worker with good workplace safety laws and good process safety management, we, indeed, were protecting the community, but Bhopal modified that.

A few years after the passage of SARA Title 3, the Congress took another major step with Section 112, the Clean Air Act, where it recognized the need for facilities to develop or improve their planning or accident prevention programs to reduce the risk of accidents. It also again recognized that citizens should have access to information about hazards that these facilities presented. It assured that the public would have much more information on risk with extensive details on the company's, large and small, obligation to deal with process safety. It provided accident history and information on contingency planning.

Chairman TALENT. Go ahead. This happens all the time here.

Mr. MAKRIS. I do not want to get in your way of doing other business.

EPA finally issued final regulations that dealt with the risk management planning. We followed the processes that were required on submission to the Congress in advance. Keep in mind that throughout this effort, we were dealing with the issue of risk. Whether it was a large company or a small company, if the issue was a chemical that could cause harm in accordance with the definition of the law, we felt that we had an obligation to put it on the table and let the community understand that the risk was there and cause the company to take such steps as were necessary to assure that the populations were protected.

It is the very people in these communities that have the jobs, that work in the facilities, that are also at risk, and we felt that the intention of 112(r), and the legislative history supports it, was to provide the broadest amount of information on the listed chemicals to the community and to cause companies to introspect on their safety practices.

It was not a casual determination. As you know, one of the most costly and devastating vapor cloud explosions in the United States was at the Phillips Petroleum Plant in Pasadena in 1989, where 23 deaths occurred, the plant was destroyed, and business interruption costs were in excess of $700 million. That was an explosion of ethylene and isobutane, both of which have flammable characteristics similar to propane.

The United States has experienced devastating accidents due to propane, and, of course, the second largest accident in industrial chemical industry history was the event in Mexico City, where 650 people died as a result of an explosion and a fire at a propane terminal. Six-hundred-and-fifty people died and 6,400 were injured.

In the United States, on New Year's Eve in 1998, an accidental propane release and fire near Des Moines, Iowa, resulted in the

evacuation of 10,000 people. Two firefighters were killed. At an Albert City, Iowa, poultry farm in 1998, a propane storage tank exploded, and seven other major accidents occurred during 1998 involving four deaths, 22 injuries, and thousands of dollars of property damage.

We listened. We had thousands of letters from the propane industry asking us to reconsider. We listened carefully, and eventually, after we got some further insight and recognized that perhaps there was an unintended consequence, we tried to draw a line between the facilities that warranted Federal regulation and those that did not. We issued a six-month administrative stay. The stay applied to any process that did not contain more than 67,000 pounds of the fuel, which is the maximum amount you can hold in an 18,000-gallon tank, does not manufacture flammable hydrocarbons, does not contain more than a threshold quantity of another non-fuel-related substance, is not connected or collocated. We also issued a notice proposing to revise the RMP rule to exempt processes that met that criteria.

In our effort to lessen the burden for the small and medium-sized enterprise, we worked with the State of Delaware to devise guidance, and you showed guidance that was thicker than the one I am going to show. It is a little narrower. We also developed some automated methods of completing the RMP for facilities that were burdened by this issue.

To ease the burden, we prepared model plans for a number of industrial sectors, including large propane distributors, users, and small propane users. The models make compliance with risk management program rules relatively easy. They recognize the safe practices embodied in existing industry standards, such as NFPA 58, and encouraged propane facilities to take credit for those practices.

To the extent that companies were in full compliance with NFPA 58 in its latest form, with the exception of providing information to the public and publishing accident history, the completion of an RMP would not have been a very substantial burden. The allegations go from $1 billion to the industry. Our records say it is more like a couple hundred dollars per company, unless there were deficiencies that in the inspection of the facility they needed to fix, in which case it would cost more.

But to fundamentally complete the obligations of the RMP for a small user would not have been the substantial burden that some have indicated that it was, and we went the extra mile to provide consulting services, assistance, meetings in the field. We have asked lots of people to come in and provide advice and guidance to them and to try to, in many ways, make it easier for a small and medium-sized enterprise using propane or other flammable fuels to comply.

We began the rule like everything at EPA. One size fits all. We immediately changed to a phased situation, where if somebody presented a small amount of propane that did not create a risk, their activity was relatively small. If you had a huge production facility that was manufacturing substantial amounts of propane, obviously, that was a large risk. That is what happened in Mexico City, a large propane producer and distributor. Six-hundred-and-fifty peo-

ple died. We tried to scale it so that we would have a much heavier burden on that larger organization than the smaller organization.

I think that risk management programs that are implemented by facilities will improve safety in two ways. They will encourage facilities to identify and address the hazards posed by their handling of flammable substances, and it will provide information to the public about the potential risk of accidental releases and facilities' efforts to prevent and mitigate any other releases.

From the beginning of this program following Bhopal, our emphasis has been almost Jeffersonian. Jefferson said, people are inherently capable of making proper judgments when they are properly informed. It was our view, I think it was the view of the Congress as expressed in the SARA Title 3 EPCRA legislation and in the 112 legislation, that the agency should not say what companies specifically should do. The laws said and the agency implemented a program which provided information to a public that might be affected by the possibility of an accident, an accident that could be the release of a toxic or the release of a blevy or a vapor cloud explosion.

With those ideas in hand, providing this information to a public allowed a dialogue to take place, keeping pressure on businesses large and small to comply with what is regarded as safe practice. We responded to small business concerns. We issued regulations recognizing existing industry standards. We produced tailored and detailed guidance, model plans, free RMP software, and working with the small business community to ease the compliance concerns.

We believe the efforts have eased the reporting burden. Our goal remains, has been, hopefully will continue to be to protect human health and the environment by providing information to populations that might be affected by an accident that could be prevented through careful process safety practices. Thank you, Mr. Chairman.

[Mr. Makris' statement may be found in the appendix.]

Chairman TALENT. Thank you for your testimony.

We have got a vote on and I think it is probably better just to recess, pending the vote. Mr. Makris, by the way, has put Thomas Jefferson in play, so members who want to think of counter-Jeffersonian quotes have the recess in which to do it. We will come right back and then get to the question period.

[Recess.]

Chairman TALENT. We will reconvene the hearing. I think I will hold my questions for a couple of minutes and recognize the gentlelady from New York for her questions.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Makris, welcome to this Committee. I understand that these regulations were promulgated prior to the effective date of the small entity review process under SBREFA. My question to you is if you were proceeding in this area today, do you believe that the SBREFA process would have been appropriately invoked?

Mr. MAKRIS. Absolutely. We did follow the fundamental process of REG FLEX, but we did not have an obligation under SBREFA. We did send the bills up, though. We did send the regulations up.

Ms. VELAZQUEZ. Do you believe that the SBREFA process might have helped in the formation of the regulations and the means through which they would be implemented?

Mr. MAKRIS. We consulted with an awful lot of small business entities as we went through this process. We had an advisory committee that included small business. We had a lot of national meetings and small businesses were invited to attend. There are several actions that we took over the period of time involved in the development of this rule, including completely changing it from, as I said earlier, a one-size-fits-all to trying to tailor it. I think we got a lot of input. No doubt, the SBREFA process would have focused specifically on a few of the unintended consequences.

Ms. VELAZQUEZ. Mr. Makris, I understand that a propane terminal explosion in Mexico City in 1994 was one of the events which was cited as a reason for the United States to pay more attention to hazardous substances and to preventing or alleviating the harm they might cause. To your knowledge, did Congress take that event into account in fashioning its approach to this manner?

Mr. MAKRIS. It was a very, very well publicized propane event and I think the language of the law and then some of the legislative history, including the idea that ethylene oxide and vinyl chloride were included, suggests that people were concerned with flammables. Clearly, even S. 880 does not take all flammables out. It just takes the fuel flammables out. So the debate about why do we have flammables is not even totally being addressed because there are explosives and flammables which are not even being touched by the S. 880 legislation.

Ms. VELAZQUEZ. Did EPA take that into account when including propane among the substances to be covered by its regulations?

Mr. MAKRIS. I am sorry, would you repeat that?

Ms. VELAZQUEZ. Did EPA take that into account, that event in Mexico City?

Mr. MAKRIS. It was pretty hard to ignore the second largest chemical industrial accident in history. One of the concerns we have, and, frankly, if there was anything that I could redo, it would have been to avoid the possibility that large facilities having substantial amounts of propane might now become exempt as a result of S. 880.

Ms. VELAZQUEZ. Does the NFPA have the same requirements as EPA's regulation? If not, what are the major differences?

Mr. MAKRIS. First, NFPA is largely not a maintenance standard. It is a standard by which the propane systems are installed. It does not deal with maintenance. It does not deal with regular reporting. It does not have formal information to publics. And, I guess most of all, there are several NFPA 58s. It sounds as if NFPA 58 is some magical thing that is in place in States throughout the country. It turns out that NFPA 58 is in various forms based on how various State legislatures have inserted it. So there are several NFPA 58s. And, in addition, as you may have noted from the Chemical Safety Board's review of a propane accident, there is pretty casual enforcement of NFPA 58 in a lot of jurisdictions.

Ms. VELAZQUEZ. In your testimony, you mentioned a propane accident in Iowa where two firefighters were killed. I understand that the Chemical Safety Board has done a report on that accident in

which they cite low enforcement at the State level as a problem. Would you care to comment?

Mr. MAKRIS. No, I think that is right. I think the CSB report noted that the fire marshal did not detect the deficiencies in the design and the installation, nor did they have a program to monitor and to come back on a regular basis to see if the systems are being maintained.

A lot of users, it is kind of like the way we use propane barbecues at home. You assume that the tank is intact, that the systems are right, that the fittings are working, and, therefore, there is not going to be an explosion. But if you allow them to get rusty or if you do not attach them correctly, then there is one, or if there is a deficiency in the tank itself, you are going to possibly have an accident.

For example, a few weeks ago, I had a propane tank for my barbecue and it was cross-threaded. So when I turned it on, not only did the gas go into the barbecue but it also was coming out the side. All of those things are very unlikely, but any of them could occur, and, obviously, the larger amount of chemical or propane you have, the more likely they are to have devastating consequences.

Ms. VELAZQUEZ. Why do you list propane on this regulation but not other flammables, such as gasoline?

Mr. MAKRIS. Gasoline is one step lower in the NFPA standards. We just took gasoline off the EPCRA list because we used to have gasoline stations covered, and one of our efforts to help small business, for example, was to take gasoline stations off the obligation to report under the Community Right to Know Act of 1986. Believe it or not, we believe that most people knew that gas stations had gas and it probably was not necessary for them to report in that that was their situation.

However, when we were trying to deregulate gasoline from the EPCRA rule, when you are trying to say gasoline stations have gas and we do not need to have a report on it, some people came back and said that there were disadvantages to deregulating it. One was that it was not obvious that there were 24-hour contacts, who they would call in case there was an accident at night. It was not clear how much gasoline were at each of these stations. Some States argued that they were collecting revenues from the reports of gasoline stations. So there was a tremendous amount of resistance when we decided that gasoline reporting under EPCRA was a burden to small business and worked with the Small Business Administration to take it off the EPCRA list.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman TALENT. Thank you. I will follow up a little bit on that line. When I looked at the NFPA evaluation of propane, they give it as a health hazard, which I think is their word for toxicity. They give it a one on a scale of one to four. On flammability, they give it a four, and reactivity, which in my lay person's understanding means can it join with some other substance and become something poisonous, they gave it a zero. That is about your evaluation of propane, too, is it not?

Mr. MAKRIS. Yes, and if Mr. Matthiessen is nodding his head yes, it is an even better one.

Chairman TALENT. Then when you look at natural gas, its health hazard or is toxicity is one, like propane. Its flammability is four, like propane, and its reactivity is zero, like propane. So you would agree with that, too, right?

Mr. MAKRIS. Yes.

Chairman TALENT. And yet your regulation covers propane and does not cover natural gas. You may want to look behind you.

Mr. MAKRIS. Yes. Methane is covered.

Chairman TALENT. Now, wait a minute. Methane and natural gas are different, are they not?

Mr. MAKRIS. Craig?

Chairman TALENT. Why do you not just come on up and testify, sir, if you want to, and just state your name for the record.

Mr. MATTHIESSEN. My name is Craig Matthiessen, EPA. Methane is natural gas, or natural gas is methane, predominately.

Chairman TALENT. This is a real fundamental misunderstanding, because my understanding is that natural gas includes methane but it also includes other substances, so that a natural gas storage tank would not be covered under the regulation, is that correct?

Mr. MATTHIESSEN. No, that is not correct. A natural gas storage tank would be covered because it is an NFPA four flammable on that list. It includes predominately methane. It may also have propane and butane, ethane, all of which are listed substances under the RMP rule.

Chairman TALENT. I have a Federal Register here which says, explain, then, what this exemption is. EPA considers the transportation exemption to include storage fields for natural gas, where gas taken from pipelines is stored during non-peak periods to be returned to the pipelines when needed.

Mr. MATTHIESSEN. Right, because——

Chairman TALENT. For purposes of this regulation, this type of storage is incident to transportation and, therefore, is not subject to the RMP rule.

Mr. MATTHIESSEN. That is correct. In other words, naturally occurring hydrocarbon mixtures, the material that comes out of the ground from exploration wells, for example, that is held and then distributed interstate, is covered by the Department of Transportation and so we sought not to double-up on that. The transportation requirements, we are not subjecting facilities that are already covered by those transportation regulations to the RMP requirement.

Chairman TALENT. So the exemption covers the transportation of natural gas but not the storage of it?

Mr. MATTHIESSEN. Well, if you are storing it for use other than transportation, then you are covered.

Chairman TALENT. Okay.

Mr. MATTHIESSEN. So, for example, if you are a chemical facility or a fuel distributorship and you have large amounts of natural gas, propane, butane, common fuels, you are covered by the RMP.

Chairman TALENT. So a farmer who used natural gas instead of propane would be covered by this regulation to the same extent as if he was using propane?

Mr. MATTHIESSEN. That is correct, if he had more than the threshold quantity.

Chairman TALENT. I will recognize Ms. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman. I have a couple of questions here. On page three in your testimony, you estimate that about 33,000 propane facilities nationwide would be affected by the regulation, is that correct?

Mr. MATTHIESSEN. Yes, ma'am.

Mrs. KELLY. Just out of curiosity, I looked in the 19th Congressional District in New York. We have estimates there that there are about 25,000 to 30,000 commercial and residential propane users in my district. Now, if we have about 30,000 commercial people in my district and they are using it for agriculture and so on, we also have a number of gas marketers that will have fairly large tanks.

My concern is we also have some fairly large greenhouses. We also have a situation where we are constantly losing energy and people are beginning in residences, because I live in an area where there are very large homes and there are a lot of outbuildings and there are other golf courses and things like that and they are putting in very large propane tanks because then they run generators off these tanks and they run their kitchens off these tanks and they do not have to worry about power outages, which we do have.

I am thinking that this 33,000 figure may be very low and I just would like to test that figure with you a little bit. Are you talking about only those people that have tanks of, what——

Mr. MAKRIS. Ten thousand pounds or more.

Mrs. KELLY. Ten thousand or more?

Mr. MAKRIS. Ten thousand pounds or more.

Mrs. KELLY. What about joined tanks? What if somebody has a tank, like a series of three tanks?

Mr. MAKRIS. Part of our effort to try to ease the burden on primarily users who might have had two or three under-10,000-pound tanks connected, we put out a revision or a discussion and guidance on the separation distance. So if they were separated by an amount that would not cause them to interact, they would be counted as individual under-10,000-pound tanks.

Mrs. KELLY. So if there is some sort of, for want of a better use, I am going to say a firewall, some kind of a way that they are walled off from each other, they are individualized tanks and the succession of tanks does not count as a unit, one unit, is that correct?

Mr. MAKRIS. Yes, when we began, but we moved, certainly after Mr. Talent and others raised issues with us. It was one of the early steps that we could take within our own authority to simply say that separation distance assisted in easing the regulatory burden for those who had multiple tanks of small size.

Mrs. KELLY. When you looked at this regulation, obviously, the security risks were a problem. Are they still a problem? I am going to ask this in a generalized way because I think we can get into the specifics without having it public forum.

Mr. MAKRIS. Propane tanks usually contain propane. Certainly, the small propane tanks, disclosure of that was not going to create a major security risk different than what mischief makers might have gone to anyway. In our judgment, we are very concerned with the issue of terrorism and environmental crime and mischief mak-

ers and hoodlums, as the FBI calls them, who are anxious to do harm to us all. I also have the counterterrorism responsibility in EPA and so I live that side of the world most of the time, as well.

Mrs. KELLY. And have you built things into this that are comfortable? I mean, who in Congress knows what you have built in? Is there any Congressional oversight that you have built in into the security aspects of this?

Mr. MAKRIS. No. As a matter of fact, that was one of the issues that we have been working under Presidential Directive Decision No. 63, which is dealing both with cyber and physical security. As you know, S. 880 does require that actions be taken—that a study be done on the security of the facilities that are covered by this rule. In addition, we have made it very clear to the chemical industry that security of their facility is consistent with their obligation under general duty requirements of this law. It is also pretty clearly under their obligations under common law that they need to attend to the issue of security.

We have not laid down standards and there is no direct oversight. There have not been any efforts of direct oversight on our security action at chemical facilities to this time. Our concern is that the companies have got to recognize that they are creating a risk, and that is not only propane companies but that is big guys and small guys, in the same way as if I have a—it is not a great story, but if I have a swimming pool, I am obligated to build a fence to keep people out of it. If I have a risky, hazardous substance, I need to protect people from being able to get to it to do harm. Similarly, I guess, if I have a dangerous dog, I have to build a fence to keep him in, and I think, similarly, the chemical companies have an obligation, large and small, to protect their facilities.

Mrs. KELLY. Since you brought up the issue of small, the small dealers, how many small businesses would fall into the regulated category? What are we talking about here?

Mr. MAKRIS. I cannot give you the final answers, but I can tell you, based on what we have got so far, as of this week, we have 14,250 facilities that have submitted RMPs, keeping in mind now that we have told propane they do not have to submit. Sixteen-hundred-and-thirty-three facilities did report fuels. Of all of the facilities that came in, 10,637 out of the 13,445 would be regarded as a small business. So it is a substantial number of small businesses that are affected here, 79 percent of the database.

Mrs. KELLY. What did you calculate their cost is to comply with the rule? What is your calculation on cost?

Mr. MAKRIS. A few hundred to a few thousand dollars.

Mrs. KELLY. A few hundred to a few thousand dollars?

Mr. MAKRIS. Yes.

Mrs. KELLY. Okay. Did you——

Mr. MAKRIS. That is assuming, if I may, and I made this comment earlier in my testimony and I will just restate it, if you do not mind, a few hundred to a few thousand dollars, particularly if you want to say the propane industry, with the facilities that are already in compliance with NFPA and their only obligation would have been to review their system, to check out the offsite consequences, be sure that there is no probability of a vapor cloud explosion or a release that would affect them, and there were no defi-

ciencies in their systems that they would have to fix before they could certify that they were safe. I mean, that is the big package.

Now, obviously, if any of these facilities have major failures in safe practice, if they do not have adequate prevention measures as has been established by the normal codes of practice of NFPA and the chemical industry and the Center for Chemical Process Safety and others, then they have got work to do and that is going to cost a lot more money before the CEO or the owner puts his signature on the piece of paper saying, "We are in compliance." We are not sure how much that might cost. We do know that, hearing from large companies and small, they have said as a result of their activity under this program, they have improved their safety.

Mrs. KELLY. But you really have not kind of given me an idea about what the cost of their documentation might be. In a small business, the business owners themselves or somebody who works as a secretary, somebody who works in the office is going to have to document all this stuff. Did you figure that in as a part of the cost?

Mr. MAKRIS. It is part of our economic analysis, but let me comment on what three propane industry consultants have told us, that they charge propane facilities from $200 to $700 to complete a program one RMP and up to a couple thousand for a program two RMP. That is experts speaking to us. Our own input suggests that that is about the range of time and our economic analysis talked about how many hours we felt it would require. We gave them free software. We gave them free guidance.

Mrs. KELLY. Wait a minute. Small business owners do not all have computers.

Mr. MAKRIS. And if they did not have——

Mrs. KELLY. Free software does not help somebody who does not. What have you done for them?

Mr. MAKRIS. First, we were surprised to find out how many small and medium-sized enterprises do have computers, because a relatively small amount, I think about five percent of the 14,000 that were submitted, were not submitted electronically. But we also provided in our regulation that if a company or firm, large or small, was unable to do it electronically, they could do it in paper and we would put it into the computers at the Federal level. But we did provide software tools, guidance tools, guidance manuals, and, frankly, reduced it to a largely question and answer format.

Mrs. KELLY. One other—I am sorry. Go ahead.

Mr. MATTHIESSEN. Thank you. I just was going to add that for a company that does not have a computer, if they were to take this guidance and walk through it, and, in fact, our regional offices have done this with a number of States and a number of small business owners in those States who have come in to what we call a session that is plan in hand, and at the end of that session, in roughly a half an hour, companies have been able to fill out their RMP and either leave with a completed RMP or a nearly complete RMP using this guide right here without a computer.

We think, on the basis of that information, with people that are actually operating facilities coming to the session and leaving with a completed RMP, that the process is not all that difficult. Again, I think the key point, as Jim mentioned, is it is building on what

they are already doing. It is not creating anything new. It is capturing what they are already doing and making sure that it is being done right.

Mrs. KELLY. I want the United States population to be safe and I understand what you are trying to do here, but I also know, as a former small business owner, that if you are calling me out of my business and you are making me sit down for a half an hour of my time to learn how to fill out one more form, I had better be sure that that form is something that is really essential to the United States of America because you are taking my time and that is cost.

I want to say that we are going to have some people come to speak to us, John and Mary Densmore, and I, in reading their testimony, realized something when they said that they are going to testify that their drivers have had to make more deliveries and they drive more miles if they have to use this new EPA rule. Now, my question to you, when I ask you about the figures of this, did you figure the cost of the air quality to have those people making those extra trips?

Mr. MAKRIS. I suspect that we did not figure the cost of emissions from automobiles or trucks making extra deliveries. Yes, I think we did not do that.

Mrs. KELLY. But you are the EPA. You are supposed to be in charge of our air quality.

Mr. MAKRIS. That is right. I would guess we blew that one. I doubt very much if our economic analysis would have included—and I am saying that intuitively. Did it?

Mr. MATTHIESSEN. No, and you are exactly right. The issue was not considered because it was our belief that a company that is already complying with all these requirements under NFPA 58——

Mr. MAKRIS. There is no change, really.

Mr. MATTHIESSEN. Yes. There is very little additional information other than providing facts to the community that they are operating safely. The concern that there would be a risk around this facility is minimized and, in fact, a number of small companies have said, as Jim mentioned, that the idea of preventing an accident saves a considerable amount of money.

Mrs. KELLY. Are you saying—I do not mean to interrupt you, but I have been talking for a little time here and I do not want to dominate when other people need to talk, but what you are looking at is from one direction and what I am looking at is from the small business owner's direction, which is you are going to put more people on the roads driving probably diesel fueled trucks putting particulate matter in the air and you have not calculated that factor in because you are having those drivers make more trips and they are going to have to drive more miles in order to comply with what your new regulation has done. That is an overlaying within your own organization and I just simply would ask you, please, to take a look at the net effect. Too often in an agency as large as the EPA, one hand does not know what the other hand is doing, and I think this is an example of it right here.

Mr. MATTHIESSEN. If I might add, we think that our new proposal to raise the threshold minimizes the number of extra deliveries because there will not be deliveries to small facilities that often. There would only be deliveries to large facilities. And again,

we just believe that it is possible to achieve safety and environmental protection at the same time.

Mrs. KELLY. I would ask you to read the Densmores' testimony yourself and then come back and make that statement, because I think they are very clear on the face of their testimony, and unless they have something more, and they probably will have a lot more to say about this, I think they are exactly the kind of people that we need to try to help maintain their family businesses, and one way we have to do that is to take a look at this cost versus benefit analysis.

The other thing I wanted to ask you, and this is my last question to you, is are you holding back and waiting until the court decides on the case or are you just going to go ahead and promulgate this rule and put it into law before the courts make their decision?

Mr. MAKRIS. At the moment, of course, S. 880 takes it pretty much out of the jurisdiction. If S. 880 stays in either of the forms that it has passed the House and Senate, it would render a good much of what the court did as moot.

We are very happy to proceed with a detailed study, and I think S. 880 is going to require us to take a close examination of some of these issues that have been put forward, but we are not hanging around just waiting for the court to make its final ruling and then we are going to follow through. We have legitimately raised, not because we do not think anything under 67,000 pounds is safe, it is not inherently safe, but we have listened, we have heard, and we have found a practical place to which we can go.

Now, let me just say that I would suggest that the small and medium-sized enterprise, whether or not they are covered by this regulation, would still benefit from reviewing the material that is in this and just not reporting it to me but introspecting on the safety that they have at their location. I think that would be a terrific voluntary activity for us all to work on, because I think there is some useful information in the material that we put out as part of our regulatory package for propane users that would still benefit them.

Mrs. KELLY. I thank you, and I understand what you are saying. I would also suggest that people who deal with flammable and the types of materials you are talking about here are people who do not want to have accidents and they are going to do this anyway. My only question here is whether or not it is an efficient use of their time and of government's time and whether or not we put in all of the cost-benefit factors here before this rule becomes actual law. I thank you for your testimony.

Mr. MAKRIS. Thank you for your questions.

Chairman TALENT. I will go to Mr. Sweeney.

Mr. SWEENEY. Thank you, Mr. Chairman. I would like to ask unanimous consent to submit into the record a formal statement in an effort to expedite my questions.

[Mr. Sweeney's statement may be found in the appendix.]

Mr. SWEENEY. I want to thank Mr. Makris and Mr. Matthiessen for their testimony. I wanted you to know first that I am a former regulator of probably the largest regulatory agency in the State of New York, the Department of Labor. Different health and safety issues were attendant to the work that I did and the work I oversaw. Oftentimes, there was interaction with EPA, there was

interaction with my State Department of Environmental Conservation. As I understand, your charge and your mission is to place the highest priority on safety and I respect and thank you for that.

I also, as a former regulator and someone who oversaw, a vast agency with huge responsibilities, recognized that we never have enough regulators. We never have enough personnel to absolutely ensure health and safety. I do not know if it is humanly possible to guarantee the kinds of safety that we all would like to see, which is a totally risk-free environment. I also know that one of the management tools that we often used to ensure we were focused where we needed to most be focused, so we could fully meet our charge and our obligations, was to look where duplication occurred and existed with other State agencies, with the Federal Government, within our own agency, and within departments and bureaus. I know that is a never-ending job that you absolutely have to be diligent about.

In your testimony, as I came into this process, I was going to focus on the duplication issues. I understand DOT regulates the transportation end of this. I understand OSHA has responsibilities. I understand the States, through the NFPA, have their obligations, as well. So I would like to focus, very specifically, on those areas and look where I think my disagreement with your position exists.

You mentioned in your testimony, and in your questions and answers, the RMP requirements. I am interested to know, as it relates to toxicity, has the EPA conducted further studies on toxic levels of any substances and is that an ongoing process? How do you manage that?

Mr. MAKRIS. Well, we have not. The agency is continuously in the process of reviewing toxic substances, toxics endpoints. We have a major project within the Environmental Protection Agency going right now with the National Academy of Sciences that is international to try to come to grips with toxicity at certain endpoints of ubiquitous chemicals.

Mr. SWEENEY. That answers the question, because——

Mr. MAKRIS. Do we do it fast enough? Heck, no.

Mr. SWEENEY. My follow-up question was going to be, out of those studies, are there specific studies as it relates to propane? Has there been a new bit of research or empirical data established that says propane, while it is listed on the RMP requirements as a one grade for toxicity, we believe it could, indeed, possess certain elements that present—but you do not have that kind of data?

Mr. MAKRIS. We do not.

Mr. SWEENEY. That leads me to the next question, at what point does the EPA make its determination as to what level of toxicity must exist before you would regulate in this regard? I am confused, because I, frankly, think you have overstepped here and that it is OSHA who has the kinds of responsibilities. I listened to you very carefully explain the safety issues you were concerned about and those are OSHA issues, not EPA issues necessarily. They may be connected in a cause and effect way, and OSHA and EPA probably ought to be together on those issues. What toxic threat does propane provide that raises it to the level that it is, other than its flammability?

Chairman TALENT. John, will you yield for just a second?

Mr. SWEENEY. I certainly will.

Chairman TALENT. That was a question that I was going to ask, so let me piggyback just a second.

Mr. SWEENEY. Okay.

Chairman TALENT. The distinction here between toxicity and flammability, it seems to me—I was not in the Congress in 1990, but what Senator Baucus said recently makes perfect sense to me, because what Congress is saying in that law, it seems to me, is we are concerned not so much about the effects of the explosion itself, which we understand is already regulated by other agencies, but the effect of the explosion in putting into the air and in the surrounding environment toxic or poisonous agents which may hurt people in a way that the explosion would not have. I think that is what John is getting at, and he said it better than I said it, but just answer both of our questions in that.

Mr. SWEENEY. No, Mr. Chairman. I do not——

Chairman TALENT. I can also see, if this came up now, why I would, as a Congressman, want the effects of the explosion maybe to be regulated by DOT or by OSHA or by some kind of fire-oriented agency, which might be local, whereas the toxicity and the poison, I would say, yes, that is an EPA job. So you see what we are getting at here, and answer us both, if you would.

Mr. MAKRIS. And that might be a reason why you would have wanted to have another agency than EPA do this. On the other hand, nobody is doing it.

I guess, first, the bill and the history talked about the obligation for acute effects. There clearly is an acute effect from an explosion like Phillips Petroleum, which basically had the equivalent of ten tons of TNT and is probably eight times the 10,000-pound threshold we are talking about and it destroyed the whole building. It did have offsite effects from glass, but not toxics.

None of this was toward long-term health effects. This was all toward immediate effect on surrounding populations, not only for workers but for offsite consequences, and we felt that the history and discussions with those who drafted the bill—not Senator Baucus, obviously, and I am not sure that we are all coming up with some unintended consequences, perhaps, to some of the things we said—would not recognize that there is an important issue around explosivity and flammability.

I must say, and I want to say it again, even S. 880 does not take all that away. S. 880 does not now limit the coverage of 112(r) only to toxics. It leaves explosives and flammables still covered. So even a new thought about the issue is putting us in the same place.

Mr. MATTHIESSEN. Thank you for allowing me to add that in the discussion of general duty in the legislative history under the Clean Air Act, under Section 112(r)(1), there is a clear statement that says that there is a presumption that a chemical that by virtue of explosion or fire causes adverse health effects in the community, and it is not the combustion products of that explosion or fire, it is the explosion or fire itself. That is a presumption confirming that that chemical is extremely hazardous.

That, in combination with a couple of chemicals that, by virtue of their accident history were added to the list of substances that Congress said must be on the list, told us that flammability was

a concern in addition to toxicity that we ought to consider for protection of the public.

Mr. SWEENEY. Is your interpretation, Mr. Matthiessen, that any one of those elements can elusively exist and that triggers the EPA purview and authority over regulating in that area? Is that what you are saying?

Mr. MATTHIESSEN. Yes. We are saying if there is——

Mr. SWEENEY. What products, that we could distinguish from propane, would then not be covered by the EPA, that the EPA has determined are not flammable and/or toxic enough for your review?

Mr. MATTHIESSEN. Well, for example, gasoline was not put on the list because it is not flammable enough, and the concern here is not fire. The concern——

Mr. SWEENEY. So flammability is the primary element that triggers——

Mr. MATTHIESSEN. Yes, that triggered propane, and fire is not the concern. I mean, if you burn your plant down and do not have any offsite consequences, that is your problem, and OSHA, DOT, and the fire services all cover that problem. What we are worried about is the large-scale vapor release in the middle of the night——

Mr. SWEENEY. Under what authority, though? I am so confused. Under what authority do those elements, that level of flammability, trigger the EPA response? My fundamental disagreement with you is that while an imminent health and safety risk might exist, it is entirely a different debate, a different discussion, and a different issue if OSHA is involved in that oversight, which I believe is accurate and proper.

Mr. MATTHIESSEN. They are.

Mr. SWEENEY. If OSHA is not carrying out those duties for whatever reason, whether it is funding or it is other priorities, that ought to be more accurately focused upon rather than the notion that a different Federal agency comes in and requires additional paperwork and additional regulatory responses.

Mr. MATTHIESSEN. I would just say that our reading of the statute and the legislative history tells us that flammability is a concern that can have an acute health effect offsite, while OSHA is predominately concerned with within the fence, and we have been working very closely with OSHA. In fact, our regulation builds on OSHA. It only builds on to the extent that we are trying to protect the public and the environment from the risks of a vapor cloud explosion or fire.

Mr. SWEENEY. Let me conclude, and I will yield back to the Chairman. Mr. Makris, you made a great example in which you said, if I had a pool, I would have to have a fence around it for safety concerns. I agree with you. It is not the EPA that is responsible for enforcing that regulation, however, it is another entity. I think that is the core of our dispute here in terms of on what we agree. I yield to the Chairman the balance of my time.

Chairman TALENT. I thank the gentleman. I am going to try and be brief, in part because I think you both have been very responsive and I very much appreciate it. You clearly know what you are doing and you have thought about all this stuff. We have been arguing, in essence, a point of law that nine years ago was a point

of policy, and I respect your interpretation of it, although I tend to disagree, as well.

But let me go back to the question of the burden and try and get at what Ms. Kelly was getting at. We constantly repeat this in this Committee because we understand that you all are doing your jobs. Your job is not to run small businesses. We do not blame you for not instinctively understanding where the average small business person is coming from unless you happen to have run one.

Here is a letter which the Committee has and it was sent on January 14 to a propane dealer in California by an Orange County agency which is responsible for enforcing this kind of a requirement. I do not want to read it all, but I want to read enough of it so you can get the flavor, and put yourself in the shoes of the small business person getting this.

"Your business has been identified as subject to the requirements of the California Accidental Release Prevention Program found in Chapter 6.9," and so on. "In addition, your business is also subject to the Federal program found in Section 112(r) of the Clean Air Act. Your business is required to develop and implement a risk management program to prevent accidental releases of regulated substances that can cause serious harm to the public and the environment. You are also required to develop and submit a risk management program which includes a summary of your risk management program. The RMP must be submitted to this agency and an electronic version submitted to U.S. EPA by June 21, 1999."

"We are requesting that your business contact this agency to schedule an RMP compliance meeting during the month of January 1999. These meetings are required pursuant to California regulatory requirements and to ensure that your business meets the Federally mandated time line."

"Should your business so choose, you may implement one of the following options in lieu of developing an RMP: Eliminate or replace the regulated substance with a non-regulated substance; reduce the amount onsite to below the Federal threshold quantity. If one of the above options is chosen, you will be required to verify compliance prior to the June 21 deadline."

"This agency is dedicated to assisting your business in meeting these new regulatory requirements. In the near future, we will be providing technical regulatory assistance, as well as RMP guidance documents. However, failure to develop and submit an RMP as required will subject your business of penalties of up to $10,000 per day. In addition, failure to contact and work with this agency during the development of your RMP could cause costly revisions to be made during the agency review and evaluation period."

Now, I am not criticizing this letter——

Mr. MAKRIS. I am just glad my signature is not at the end of that letter.

Chairman TALENT. I am really not criticizing it. In fact, they are outreaching here. We know you have a problem. We want to give you plenty of time to deal with this. This is not a bad letter. But you are a small business person and you are trying to stay in business, and propane is a highly competitive business. Ten thousand dollars a day, I mean, you do not make that much money in a month in profits.

So you get this letter, and you are not thinking that this is only going to cost you four to five hours and $200 to prepare this plan, because what you are thinking is, I have got to make certain I am in compliance. So even if somebody who is already totally familiar and comfortable with the plan could do it in four to five hours—this person, if they are serious, if they are the kind of honest person that we want, they are going to react and say, I have got to be in compliance. The first thing you do is call your lawyer, probably, and say, what about this? What is going on here? Or maybe the trade association. Then you are going to worry. If all you look at is that workbook, what if there is something that is not in the workbook that I have got to do, because it is not like you guys would say, "Well, it was not in the workbook and, therefore, we are not going to enforce it."

This is what we are getting at here. I cannot believe the $200 estimate. I think it is going to cost a lot of money just to determine whether they are in a program one or program two phase.

I try and be measured in chairing this Committee and recognize when agencies have made an effort, but I also try and get their culture to change to understand that the average small business person, just to be safe, is going to spend a lot more than this. These people have spent an enormous amount of time and money lobbying against your rule, and they are not doing that because they think that your rule is only going to cost them $200.

I also do think the transportation questions that Ms. Kelly was getting at, what I think, too, is they are going to have less than the threshold amount, which means there are going to have to be more deliveries, which means there are going to be increased costs. Do you see what I mean? Tell me what you think in response to that.

Mr. MAKRIS. I think I agree with virtually everything you said. First, it was not a very user-friendly letter and it was not an inducement to cause folks to really want to not be afraid of the jackbooted thugs coming in and stomping on their company.

Small and medium-sized enterprises are becoming even more of a concern to us because a lot of the big companies are easing off some of their more toxic activities to small and medium-sized enterprises and, I think in some ways, shifting the risk from those who are better able scientifically and technically to deal with it to a smaller guy, where the liability will then be carried. We are pretty nervous about small and medium-sized enterprises perhaps having a more dangerous condition in the future as big guys try to avoid some of these risks.

In terms of the $200, $400, $600, $800, I guess it depends upon how one proceeds to evaluate the obligation that is put in here. I am far more interested in the company reviewing its operation under acceptable standards and concluding that they are operating safely and then reporting on that than I am in the reporting on it. The report is the way the Congress and the Federal Government and State Governments assure compliance.

If we knew that everyone in small and medium-sized and large enterprise was constantly and vigilantly pursuing safe practice, using industry standards like NFPA 58, and were maintaining those standards always, then we would not need any of this. We

would not probably be having some of the accidents that we have been having.

But we do not know that, and so the Congress said, not specifically to propane but said generally, let us cause the American industrial sector dealing with chemicals that provide risks to communities to fess up. Do not tell EPA that they are or are not meeting an EPA standard because there is no EPA standard. What they are only doing is they are saying, we have reviewed what is a safe practice and we have shared this with our community. We have told the people that are possibly within the area of risk that we have checked it over, we are in compliance with the regulation that requires safe practice, and we are telling you what the risk is.

That does not sound like an unreasonable burden. It becomes unreasonable when it becomes a regulatory program. It is not an unreasonable burden to just do it. Maybe we can figure out a way to just do it.

Chairman TALENT. So what we are saying is what we want is common sense on the part of people. What we encounter in this Committee is that trying to legislate or regulate common sense, one of the problems with it is you see that the kind of people who would not do on their own what common sense would tell them to do are precisely the kind of people who would ignore this letter.

This is the other problem. We tend to overregulate the people who do not need the regulation, as a practical impact, and underregulate that small layer of people who probably do need it.

I am not saying I have the answers to this. We are not going to end big government tomorrow. It is going to be here, and should be, for some purposes. But what I am saying is there have got to be ways, and we are groping for them and finding them in some contexts, to achieve what we want without presenting this jackboot approach to people that demoralizes them, that causes a lot of extra costs none of us want. I am not exactly sure how to get there.

I think what you are were trying to do was sincere. I think Congress is right in pulling you off propane for now and then we will see where we go with some other things. I mean, that is my view and I guess it is probably the view of most of my colleagues, because the bill has been passed.

Why don't you get the last word in, and then we will bring the next panel up, because we have other witnesses who have been waiting.

Mr. MAKRIS. Mr. Matthiessen has something he must say on this.

Chairman TALENT. Sure.

Mr. MATTHIESSEN. At the risk of making a commitment without checking with the boss first, you mentioned about our proposal and going forward blissfully without consideration of input. I would submit that we are going to get comment on that proposal to raise the threshold and reconsider what we are doing.

I would offer once again, as we did with you in the past, we would welcome the opportunity to get outside the beltway and go to some facilities and find out what it is that strikes fear and chill in the hearts of small business operators when letters like that come, that take away their self-confidence to be able to comply with something they are already doing. That way, then, we can find out

if we really are wrong and try to improve our guidance so that it is not so intimidating and that what we do really has meaning for safety, as opposed to just a blatant, blind regulatory approach. If that has any value at all, we will certainly commit to going and doing that.

Chairman TALENT. The other thing that we have to get into the process is a consideration of at least some indirect costs or effects. I understand there is a certain point where you have to cut it off, because you have more people out driving to deliver more things and then they are going to stop and have to eat lunch more and they are going to build that. I mean, there is a certain point where you have to cut off the chain of estimation. But, obviously, if indirect effects are to be considered under SBREFA, and when you have a bill or regulation which is so directly or so emphatically encouraging people to drop the amount that they have got stored, they are going to have more deliveries and they are going to have to pay for more deliveries and it is going to be a cost.

I did not see Mr. Bartlett come in. He has some more questions and this is certainly a field where his scientific background would be of great use and I am happy to recognize the gentleman.

Mr. BARTLETT. Thank you, Mr. Chairman. I do not have a scientific question, I have a Jefferson quote that I thought was particularly appropriate for our discussion here, and this was not an offhand quote because it is in the Declaration of Independence. When I read it, I thought, I could not have better described our regulatory agencies. It says, "He has erected a multitude of new offices and sent hither swarms of officers to harass our people and eke out their substance."

Mr. MAKRIS. I like mine better. [Laughter.]

Chairman TALENT. I thank the gentleman and I thank you all and appreciate your patience. We will have the next panel of witnesses, then. If Mr. Blunt would not mind, perhaps he could just testify first on the next panel, because I know he needs to go. So everybody else who is left, come on up and sit together and we will have Mr. Blunt go first.

STATEMENT OF HON. ROY BLUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. BLUNT. Mr. Chairman, if you do not mind, I will go ahead and go first while everybody else is coming to the table.

Chairman TALENT. Go ahead. I appreciate the gentleman's being willing to wait on the Committee.

Mr. BLUNT. I am pleased to wait. I appreciate you having this hearing. I will proceed for any number of reasons. One is I have a vote downstairs in a couple of minutes, and two is I think it is very important, as Ms. Kelly mentioned earlier, that we hear from the folks here at the table with me who really are affected by these regulations in ways that you just described.

I just want to thank the Chairman for not only being an original cosponsor of my legislation, of H.R. 1301, but also for holding this hearing, for looking at the process of how we approach these topics of regulation, and, I think importantly, looking at the process of the regulating agency deciding that there is a meritorious reason to regulate, and no matter what the law said or what the Congres-

sional intent was, that we are going to stretch that intent to cover some other area that that agency thinks needs to be covered.

That is not the job of these regulatory agencies. Their job is to come to the Congress and say, we know the law says toxic substances. We think it should also say, toxic substances and something else, and if the Congress agrees with that, then they should regulate. If the Congress does not agree with that, that is our job. The EPA is right now fighting a significant case about whether they had the authority to do what they did with clean air standards because they wanted to both set the goal and figure out how to achieve the goal. That is not their job.

I also want to say, at the same time, I want to acknowledge that they have worked closely with us to try to solve this problem. I think Mr. Makris and his staff have really done a good job of trying to come forward, be willing to rethink and discuss what they did, why they did it, what their thought process was, and, obviously, we would not be at the point we are today with S. 880 and the House bill that I sponsored, H.R. 1301, that had 145 cosponsors in the House, if it had not been for the willingness of this agency, of this part of the agency, to look at this again. So I have some appreciation for where the agency has been. I also think that this problem is largely created by a misinterpretation of not only the law, but their authority to decide what the law should say, and that is our job, not their job.

You had some discussion while I have been sitting here about whether or not there was already regulation, and I would like to submit for the record a regulatory duplication chart of all the various regulations that already cover these areas. In fact, I think I heard in some immediately previous testimony that if some of these regulations were enforced, that this action might not have been necessary. Well, enforce the regulations. Do not decide to legislate and regulate at the same time.

I am glad that, even though we seem a long way toward the final determination on the propane issue, that you decided, Mr. Chairman, your Committee has decided to take how we got to this point so seriously. I think it is an important area of Congressional oversight. I think it is a constitutional area, Mr. Bartlett, of Congressional responsibility, as opposed to the responsibility of regulators, and I am certainly grateful you are having the hearing and grateful that you have asked this panel to come in, who really know what happens when they get that letter in the mail and see the $10,000–a-day fine as one of the consequences, and one of the other alternatives is no longer distribute or use this substance, which if you are in the propane business is not a very satisfactory alternative, I would think. So thank you, Mr. Chairman.

Chairman TALENT. Yes. When one of the alternatives is to end your business, it is not much of an alternative.

I appreciate your testimony. I know you need to leave, Mr. Blunt, and we will just let you go. I do not think there are probably any questions for you.

[Mr. Blunt's statement may be found in the appendix.]

Chairman TALENT. Our next witnesses, we will start on my left and the panel's right, are John and Mary Densmore, who represent Geldbach Petroleum from the wonderful town of Valley Park, Mis-

souri, and it is only a coincidence that they are from the Second Congressional District. Mr. and Mrs. Densmore, whichever of you wants to go ahead with the testimony.

STATEMENT OF JOHN AND MARY DENSMORE, GELDBACH PETROLEUM, VALLEY PARK, MI

Mrs. DENSMORE. We would like to thank the Chairman and the Committee for listening to our views on this issue. Geldbach Petroleum is a family-owned business located in St. Louis County in Valley Park, Missouri. We have several other plants located in eastern Missouri. We market mostly in eastern Missouri. We are not in Illinois or any other State. Geldbach is one of the few remaining independent propane marketers. Other independents, many others, have been taken over by large companies and they are now nationally owned.

Geldbach has been in continual operation since 1920. Herbert Geldbach, my father, began the business by building his first truck in his daddy's wagon shop. His father was a wagonwright and a blacksmith. Herb first started as a one-man operation until he became large enough to buy more trucks and hire drivers. He continued in the business by being competitive and resourceful. He drove a truck every day while expanding the business into serving gasoline stations and residences with fuel oil. He owned a few gas stations and he delivered to approximately 40 independent gas stations over the years.

Herb Geldbach expanded into propane gas in 1957. He saw the advantages of propane for the consumer. Propane is a very versatile, clean-burning fuel that has many applications in business and in the home. It is used in manufacturing plastics, providing temporary heat on construction sites, as well as powering forklift trucks in manufacturing and warehouse industries. It has also been designated a clean air alternative fuel by the Department of Energy. Propane gas is the rural residents' choice of fuel when you compare it to a more expensive or an alternative fuel, such as electric or fuel oil. Our farmers use propane to dry their crops and operate their field equipment, such as generators.

After Herb Geldbach died in 1982, the family has continued the operation and expanded into new locations in order to remain competitive.

In 1985, the EPA's stage two vapor recovery regulation had a devastating effect on our gasoline operation. Our independent service stations were forced out of business by the regulation and, due to the aforementioned legislation, in 1991, we sold our service stations to another oil company.

In 1997, we were forced to sell the entire fuel oil and gasoline division due to the Underground Storage Tank Insurance Fund, which all tanks are required to be relined and/or removed. So after 71 years, we are now out of the oil business.

The propane industry is currently regulated by the National Fire Protection Association Pamphlets 54 and 58. Our local reporting authority is the Division of Weights and Measures under the Department of Agriculture. We also submit Tier Two reports to the Missouri Emergency Response Commission under the Department of Natural Resources. Our trucking operation falls under the De-

partment of Transportation. Our plant operations and facilities are covered by OSHA.

Now we are faced with the EPA under 42 U.S.C. 7412(r), which has plans to duplicate much of the aforementioned regulatory reporting information, plus add to it. The EPA's risk management plan is grossly over-burdening to the propane industry. The RMP will put us into a non-competitive position. The hours of preparation and the staff involved would detract from our other safety considerations, which are consumer education and plant safety. Realistically, we would have to hire another non-revenue employee to comply with the proposed regulations that we are discussing here today.

We have heard from many of our customers regarding the RMP. One greenhouse customer told me that he would refuse any more propane than is required to stay below the threshold quantity. This would mean more deliveries and more road miles for our trucks and drivers.

Some customers have told us that we will have to keep and maintain their RMPs or they will switch to an alternative fuel.

The larger customers that I am aware of are taking out their stand-by systems. Natural gas, during peak usage, at times will cut off to manufacturing facilities to provide home heat. To quote a letter directed to Ms. Carol Browner, Administrator of the EPA from the Director of the Missouri Department of Agriculture, John Saunders, he says, "Currently, because of the forthcoming risk management plan requirement, many large bulk storage facilities are being removed and smaller ones put into place. The redesign of these systems will create performance and safety problems because the systems' capacity is too small for the load placed upon it. Extremely cold winters are of a major concern if this trend continues."

Propane plants are designed to prevent accidents and to remain in safe operation. The annual inspections from the Division of Weights and Measures are all inclusive. We work very closely with the Department of Weights and Measures to keep all of our equipment running safely and properly. The percentage of fires and/or explosions occurring at a propane plant or a storage facility are a fraction of what this legislation will cost companies like Geldbach Petroleum and the industry in general, but the taxpayer, as well.

We do not believe it was the intent of Congress through the Clean Air Act to include a clean-burning home heating fuel while putting additional burdens on small business.

This regulation will stop our expansion into new areas. We will not add another propane plant to our business if the RMP is implemented. If we cannot expand, we cannot acquire new customers. Our existing customer base will eventually diminish through competition with natural gas and electric.

In addition to not expanding, adding another compliance cost to our margin of profit will put us into a non-competitive position. We have absorbed many of the regulatory costs over the years in the interest of supplying safe and prompt service to our customers. However, adding another non-revenue employee will prohibit any hopes of remaining competitive with the larger, nationally-owned conglomerates. We will become another statistic of how the government has squeezed out the small businessman. It is imperative to

our company's viability that H.R. 1301 is enacted to exempt propane from EPA's risk management plan. Thank you, ladies and gentlemen.

Chairman TALENT. Thank you, ma'am. That about says it all.

[Mr. and Mrs. Densmore's statement may be found in the appendix.]

Chairman TALENT. Our next witness is Paul Lindsey, who is the Chief Executive Officer of the All Star Gas Company, headquartered in Lebanon, Missouri. We are glad to have you and appreciate your patience, Paul. Please go ahead.

STATEMENT OF PAUL LINDSEY, ALL STAR GAS, LEBANON, MO

Mr. LINDSEY. Thank you, and good afternoon. My name is Paul Lindsey and I am the CEO of All Star Gas Company based in Lebanon, Missouri. My company is primarily in the business of retail marketing of propane gas to thousands of residential, agricultural, and commercial customers.

Today, I appear before you as the immediate past Governmental Affairs Committee Chairman of the National Propane Gas Association, NPGA. The NPGA membership includes approximately 3,700 companies that market propane gas and equipment in all 50 States and in nearly every Congressional district. The majority of our members are small, independent business men and women. Propane gas is widely used for home and commercial heating, cooling, and agricultural and industrial processing, and as a clean air alternative engine fuel for vehicles and forklifts. It is often the fuel of choice for rural consumers.

My statement today reflects the impact EPA's recent risk management program, RMP, would have had on thousands of propane businesses, the majority of whom are mom and pop businesses with well under 100, even under 20, employees. The EPA's recent RMP would have had serious consequences for consumers and farmers, as well. I ask that my written statement and other materials be entered into the record.

To summarize, the RMP rules duplicated an extensive, incredible safety infrastructure that already exists in all 50 States. The RMP rules would have decreased safety in the propane industry because customers would have demanded more smaller deliveries to stay under EPA's threshold. The RMP rules would have stifled clean air technology because of these new burdens upon propane. The RMP rules would have harmed the environment because customers would have switched to less environmentally sound alternatives. And, the RMP rules would have harmed the economy, especially in rural communities. Small businesses would have been hesitant to come into these areas, since they normally do not have access to natural gas.

Mr. Chairman, we are grateful for Congress' recent activity on this issue. I know you helped organize and participate in an industry forum in Missouri with the EPA on this issue. We are also grateful for Representative Blunt's introduction of and your support of H.R. 1301, which addressed our concerns.

Last week, the House passed legislation by unanimous consent that closely tracked the intent of H.R. 1301. In June, the Senate passed similar legislation with the full consent of the Senate, the

support of NPGA, the International Association of Fire Chiefs, the International Association of Fire Fighters, and the National Fire Protection Association. A recent letter of fire organization support is attached, as well as a letter of support from a host of farm and business organizations throughout the nation.

First, I would like to speak to our industry's safety infrastructure. It might be important to understand a distinction about our product. Propane is derived from natural gas processing and crude oil refining, and in a natural state is odorless, does not contain any odor. When it is used as a fuel for retail purposes, an odor is added for the purpose of safety. I think it is important to understand that even though S. 880 that has been passed will eliminate propane from RMP, that is propane in the odorized state. Propane that is still in the unodorized state, such as the Phillips plant incident that was referred to earlier, is still very much under the RMP requirements.

All propane facilities are subject to regulation in all 50 States through building and fire codes. These codes, without exception, adopt or incorporate the substance of National Fire Protection Association Safety Standard 58. NFPA 58 contains strict requirements on the design, installation, inspection, approval, and operation of propane facilities. State agencies, code inspectors, and fire marshals require propane storage facilities to be designed, constructed, and operated safely.

I might add, and it is my understanding that the NFPA rulemaking committee consists of 30 members and that that will soon perhaps be expanded to 31 because I understand that EPA has asked for a seat on that committee. I appreciate their efforts in doing that. That is, in my opinion, absolutely a great role for EPA to be involved with and to take part in the rulemaking process that deals with NFPA 58.

The propane industry also complies with the following Federal requirements: DOT hazardous material requirements and regulations, OSHA's workplace safety rules, and EPA's community right to know rules.

Unfortunately, accidents do occasionally happen, and in our industry, more often than not, these are caused by or occur during transportation activities—loading, actual transportation, unloading activities—which would not have been covered by the RMP rules. EPA's own data demonstrate this.

This industry is concerned about safety, the environment, and the impact on consumers and the economy, particularly small business owners. This industry voluntarily spends time and money training local fire departments all over the nation. Emergency responders need to be as highly trained as possible, and we are putting our money where our mouth is. We are proud to report today that the industry is spending just over $1 million this year alone to develop a comprehensive training program for emergency response personnel.

The main or primary text of this training program, entitled "Propane Emergencies," is being distributed to every fire department and fire academy this summer, and I believe that members of Congress have also received a copy of this program. Perhaps if this program had been in place, part of the problem that was encountered

in Iowa in the incident that was referred to a few moments ago would not have occurred.

Our industry is also proud to report completion this year of a negotiated rulemaking with the Department of Transportation to address the safety of our industry's delivery trucks and operating procedures for the safe unloading of propane at the consumers' tanks. The improvements include new equipment, technologies on our vehicles, and enhanced safety operations and procedures. Over the next five years, we estimate this will cost the industry over $50 million.

Second, many propane customers would have sought to reduce the quantity of propane they stored to levels below the EPA's threshold for coverage. This would not, however, have reduced their demand for timely deliveries. Our industry delivery trucks would have faced making many more small deliveries rather than the safer alternative of making fewer larger deliveries. Complicating this situation would have been the bad weather that often accompanies the industry's busiest time, the winter heating season.

Customers also face the choice to switch to all the other consumer fuels which were not on EPA's RMP list. Unfortunately, this choice often led to less environmentally desirable fuels. Companies who used propane began switching fuels because the RMP rules were very complex and because they come with a high public relations price tag. These are the real-world impacts of the RMP rules.

Third, the reduction in air quality may be the most ironic aspect of the RMP rules. Legislative and regulatory consistency are very important to small business. Unfortunately, EPA's RMP rules were anything but consistent for propane. EPA's RMP rules would have stigmatized the use of clean burning, non-toxic propane as an alternative engine fuel in the very same law approved by Congress that held it up as a clean burning fuel.

Finally, I want to address the costs we believe the RMP rules would have had on our industry. Huge numbers of agricultural and commercial facilities use propane in sufficient quantities to be covered by the RMP rules. The EPA compliance threshold for propane was 10,000 pounds of fuel stored. At this level, we estimate the total number of RMP-covered facilities was over one million for propane alone. Using a conservative $1,000-per-site estimate, the RMP rules would have cost $330 million to the farm sector, $675 million to all other covered propane customers, and $12 million to propane marketers.

The National Propane Gas Association sought to prepare a risk management program services directory for the benefit of its membership and the customers of its membership. Twenty-three of the consultants involved would not specify a particular charge. Two of the consultants indicated that the fee would be less than $2,000. Eleven indicated more than $2,000, with one of them indicating $20,000. The billing ranges were from $25 to $140 per hour, or $500 to $2,000 per day.

Recently, EPA proposed to raise the RMP threshold level for propane up to 67,000 pounds. This change still would not have helped many agricultural consumers or those larger commercial accounts most able to switch to other fuels.

The bottom line is that the RMP rules were an expensive, duplicative paperwork exercise that would have had little or no discernible impact on safety but which would have drained a total of $1 billion out of the pockets of our customers and our industry.

In closing, EPA's RMP rules never should have covered propane. These rules would have been bad for consumers, particularly small business owners, bad for the environment, and did nothing to improve safety.

Mr. Chairman, members of this Committee and other members of Congress, I want to thank you again for unanimously passing S. 880 and thank you for your efforts to pull back the regulatory yoke from this industry and its customers. We are grateful to Congress for the swift action to bring consistency and common sense to regulations affecting small business throughout the nation, and we ask the Committee's support to see that the legislation before the Congress moves swiftly to the President. Thank you.

Mrs. KELLY [presiding]. Thank you very much, Mr. Lindsey.

[Mr. Lindsey's statement may be found in the appendix.]

Mrs. KELLY. I want to thank both of you, Mr. and Mrs. Densmore and Mr. Lindsey, for staying with us for as long as you have. I have a couple of questions that I would like to ask you.

Mr. and Mrs. Densmore, you heard me, I am sure, questioning the EPA about your statement about having more drivers making more deliveries. That is caused by—I just want you to say again what I think I read in your testimony—by what?

Mrs. DENSMORE. By the fact that they would not receive any—we would have to deliver propane only so they could remain below the threshold. We have one customer who has, like, 5,000 gallons in storage tank capacity and he would only take a 2,000-gallon delivery from us. We would have to go twice and make sure he was not over the threshold.

Mrs. KELLY. So you are saying that this would result in customer avoidance so they will not have to file this. It is possible for schools, universities, shopping centers, commercial buildings, it would be possible for them, also, to reconstruct their tanks, if I understood the answer from the EPA to my earlier question to be correct, if they firewall off, they can just string out a whole lot of these tanks in a sequence and, thus, avoid the EPA rule.

Mrs. DENSMORE. I think that is correct, yes.

Mr. DENSMORE. What you would have to do, you would have to make some type of fire barrier or explosive barrier, which would be ridiculous, also. Basically, what you are looking at a high peak time in the industry—December, January, February, where demand for the product is high—our larger facilities that have standby heat, our nursing homes or hospitals, they have up to 30,000–gallon storage tanks in their facilities. We count on that storage, so at peak times, we can deliver them transport loads and we do not run our smaller trucks.

Now, if we have to drop their storage quantity to a smaller tank which would go into—well, to explain a little bit about propane, most heating facilities all work on vapor, so a smaller tank cannot handle the BTU load of that facility, so you would have to go into a liquid transferal if you went to a smaller tank, which common sense will tell you, if you are dealing with vapor and you are going

to liquid, there is a little more danger there. I feel that is more dangerous. Then you need a vaporizer to heat that propane up to where it could vaporize enough to take care of that facility.

So, usually, 30,000 is enough to get them through the month of January and we do not have to worry about them, because we get allocated during those peak seasons. We are only allowed so much from our suppliers at that time. So the nursing homes, the factories, the hospitals, the greenhouses, everybody that counts on these larger storage tanks, they are taken care of through this peak time. We can demand all our concerns to residential heat and the average customer.

If we have to deplete these storage facilities in our area, then that means we are going to have to make more trips, we are going to have to hire more drivers, we are going to have to build a larger storage facility ourselves to compensate. It would be more trucks on the road. Forty percent of our vehicles are diesel vehicles, like you said, but most of our vehicles are propane, clean air, or are powered by propane. But we would have more trucks on the road.

Like you said about the point of which you transfer liquid, dispersing it from your plant to your truck, that is your biggest hazard, whenever you go from your storage tank to your truck or your truck to your storage tank. That is when you have the most probability of an accident. So any time you increase that, then you are really increasing problems.

As far as the EPA was explaining about Pamphlets 54 and 58, different States have different concerns on that. You cannot go below the restrictions put in 58 or 54, but you can increase upon them. Most cities or municipalities have higher regulations than 58. It is up to the fire department in that area. They can increase the regulations to see fit, and most of them do. So we are getting more restrictions at that point.

As far as toxin, it is not a toxin. Their definition of a toxin, I guess if you poured enough water on your head, eventually, you drown. I guess that would be a toxin. That is the only thing I want to say about the toxin end of it. I cannot see where we fall into any of this compliance.

Mrs. KELLY. So you agree with Mr. Lindsey that, in a sense, what they are doing is they are degrading the safety, in a sense.

Mr. DENSMORE. Actually, they are degrading the safety at a higher level. When you have to put these bigger operations on vaporizers, whenever you add more toys, you are going to have to have more responsibility, which alleviates more problems. You are not dispersing vapor anymore, you are dispensing liquid, and if you had liquid dispersion, you are putting out more product than you are with a vapor product because it expands it 240 times. If you are dumping out liquid, well, a gallon of liquid will expand 240 times versus vapor, it would take an amount of time for that vapor to expand 240 times. You might have an opportunity to stop a situation with the vapor problem.

Mrs. KELLY. Thank you. Mr. Lindsey, how accurate do you think the EPA's cost estimates for completing an RMP were?

Mr. LINDSEY. Based on our study, as I indicated a moment ago, I think they were certainly low, because our indications are that

we are going to be looking at—11 of the consultants said it to be in the range of $2,000 or more.

Mrs. KELLY. And they were factoring in the amount of money that it is going to cost for the person to go and learn and then continually have to fill these things out, is that correct?

Mr. LINDSEY. That is correct.

Mrs. DENSMORE. I believe, is that not per location?

Mr. LINDSEY. That is per location.

Mr. DENSMORE. Per location.

Mrs. KELLY. Per location.

Mr. LINDSEY. And the real problem you will find here is you will find that a lot of the customers will probably say, you are going to add $2,000 of cost to my using this fuel? Then they have to begin looking at the cost comparisons of does it make more sense for them to switch to another fuel, or say to us as a propane supplier, I am either going to be switching to another fuel unless you bear the cost and burden of completing this. Then that adds one more challenge, particularly to the small propane company.

Mrs. KELLY. Do we know the average profitability of the average person dealing in propane? Are you working at a 10 percent, 20 percent, 50 percent markup, just margin? Usually, in small businesses, the margin of profitability is so small that if you talk about $2,000 per location, you are eating into a big chunk of the profitability of that corporation. I look at you, Mr. and Mrs. Densmore, knowing that regulatory problems have actually moved you out of two ancillary businesses. I am very, very concerned that the cost of this might move you out entirely.

Mrs. DENSMORE. One reason we are concerned about it is because it is an ongoing cost. Every time something changes in the zone of receptors, you have to submit a new plan. This is an ongoing cost. We cannot just put it in place, spend the money, and be done with it. It is ongoing for the rest of your life.

Mrs. KELLY. Thank you. Mr. Bartlett, I am sure you have a couple of questions.

Mr. BARTLETT. Thank you. Mrs. Densmore, you skipped one brief paragraph in your written testimony. I was wondering if you skipped that because you no longer believe it or because you were trying to shorten your testimony to stay within our time limits.

Mrs. DENSMORE. Regarding the vapor cloud explosion?

Mr. BARTLETT. Yes.

Mrs. DENSMORE. No. I thought we had already covered that, so I just thought I would hop over it.

Mr. BARTLETT. Okay. But for the record, you still believe that the premise the EPA is using, a vapor cloud explosion, is so far fetched that, to coin a phrase, we could all be struck by lightning simultaneously?

Mrs. DENSMORE. Yes, I do believe that.

Mr. BARTLETT. They have about the same odds of occurring, you believe?

Mrs. DENSMORE. Yes.

Mr. BARTLETT. Thank you very much.

Mrs. KELLY. I guess there are no more questions. We really appreciate your being here. I think you have added a lot of information for all of us, and thank you very much.

Mrs. DENSMORE. Thank you.

Mrs. KELLY. I would like to leave the record open for ten days for additional questions and comment, and I thank you very much. The hearing is adjourned.

[Whereupon, at 12:57 p.m., the Committee was adjourned.]

Statement of Chairman James M. Talent
Committee on Small Business
Environmental Protection Agency/Propane Oversight Hearing
July 28, 1999

Good Morning. Today the Committee will examine how the Environmental Protection Agency's inclusion of propane within the Clean Air Act Amendment of 1990 impacts small businesses. The Committee will also focus on Congressman Blunt's bill, H.R. 1301, and S. 880, which the Senate and House passed, which remove propane from the list of covered chemicals.

In December, 1984, a storage tank in Bhopal, India accidentally released a toxic chemical into the atmosphere. This accidental release killed over 3000 people and injured more than 200,000 individuals. In response, Congress amended the Clean Air Act to require the EPA to promulgate a "list of 100 substances which in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment." Congress required EPA to include 16 chemicals on the list. These chemicals share a similar characteristic - they are all toxic. The intent to include flammable, but non-toxic materials in the regulated list is conspicuously absent from the legislative history. Recently, Senator Max Baucus, a conference committee member to the 1990 Clean Air Act Amendments, noted that "Congress did

not intend that propane or flammables used as fuels would . . . be listed. Congress was focused on preventing major toxic catastrophes, such as occurred in Bhopal, India, not the type of accidents that are covered by existing Federal or State fire safety or transportation laws." Nevertheless, in January 1993, the Bush Administration EPA proposed expansive regulations that brought flammables, including propane, within section 112(r) of the 1990 Amendments.

It is uncontested that propane is not toxic while all the chemicals Congress listed are toxic. In fact, the Environmental Protection Agency has commented that methyl chloride, a Congressionally mandated listed chemical, "is extremely toxic; acute (short-term) exposure to high concentrations of methyl chloride in humans has caused severe neurological effects including convulsions, coma, and death. Methyl chloride has also caused effects on the heart rate, blood pressure, liver and kidney." Propane, however, presents no such threat. In fact, as Congressman Blunt's bill recognizes, the Clean Air Act and the Energy Policy Act of 1992 list propane as a clean alternative fuel.

All of this would be of little concern if the burden caused by the proposed regulation was minor. However, the EPA regulation as originally drafted would have covered any business that stored more than 10,000 pounds or 2,300 gallons including the average family farmer, greenhouse, or

restaurant using propane as well as small propane distributors and dealers. These businesses would have been required, at minimum, to develop a "worst-case" scenario impact of a propane explosion and a plan for dealing with that scenario, and to bring equipment and personnel up to EPA standards for executing such a plan. The use of propane is already regulated by OSHA, the Department of Transportation, and every state as well as local fire department. The additional EPA regulation would have given propane users the perverse incentive to do one of two things: switch to an environmentally unfriendly fuel, like fuel oil, or store less than the threshold 10,000 pounds on site, which would have required more frequent deliveries of propane and therefore more transportation of flammable fuels on the highways.

As a result of these obvious problems with the regulation, and under six years of extreme Congressional pressure, EPA finally raised the threshold for application of its regulations from 10,000 pounds to 67,000 pounds, thus exempting most small business end users. However, it may be too late anyway for the regulation as both the House and Senate unanimously passed bills clearly removing propane from the list of covered chemicals.

I appreciate EPA's responsiveness to Congressional inquiries and this Committee; but, this is another example of the kind of wasted time and effort that is the least damage done by proposed regulations which would hurt small

businesses while accomplishing nothing. I will repeat what I have often said. This whole problem can be avoided if agencies will take SEBREFA to heart and really try to be responsive to concerns expressed through that process by small business.

We have two panels of witnesses who have agreed to appear before the Committee today. Before we turn to the first panel of witnesses, I will recognize the distinguished ranking member for any statement she may wish to make.

JAMES M. TALENT, MISSOURI
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
106th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

Hearing on EPA Regulations on Propane
U.S. House Small Business Committee
The Honorable Nydia Velázquez
July 29, 1999

This hearing is a continuation of this committee's on-going review of government regulations and its effects on small businesses.

Let's keep that in mind as we examine how EPA's inclusion of Propane within the Clean Air Act amendments and associated regulations affects small businesses.

And it is an issue well worth looking at and reviewing. Mr. Chairman, what we have before us are small businesses that may have fallen victim to the law of unintended consequences.

Consequences that small businesses have had to live with for a some time now. And a solution is long-overdue.This issue came into the light over a decade ago when a disastrous escape of toxic gases killed and injured thousands in India. Unfortunately it took a tragedy to look for better management of toxic substances.

However, in response to this disaster and bi-partisan congressional legislation, President Bush, on his last day office, proposed new regulations.

I believe that these regulations, while written to protect the public --- disregarded how small businesses would be affected. And that is at odds with our purpose here on the small Business committee and in Congress. We need to look at the challenges that entrepreneurs face and make it easier -- not harder for them to succeed.

And I believe that these regulations --- while drafted in good faith --- have hurt small businesses. But they have also shown all of us how important and necessary the SBREFA process is.

EPA was not always a part of the SBREFA process. As a matter of fact, I would like to remind my colleagues that it was not until 1996 that this committee expanded SBREFA to require the EPA to sit down with small businesses on this rule.

Had there been a quicker response to small business needs, we might not be here today. But we are, and we are fortunate to have Congressman Blunt with us. He has introduced legislation to protect small businesses from these indiscriminatory rules. His legislation would exempt propane from EPA regulations, thereby protecting those small businesses.

I thank the Chair for holding this hearing and I look forward to hearing from today's witnesses.

Statement by Rep. John E. Sweeney
before the Small Business Committee
July 29, 1999

Chairman Talent and Members of the Committee, thank you for opportunity to speak about EPA's inclusion of propane as a toxic substance.

Propane is a clean alternative fuel that is non-toxic. Currently all 50 states have regulations regarding the storage of propane and are required to have risk management plans. Unfortunately, EPA feels the need to duplicate state regulations and require additional restrictions.

There are approximately 24 million small business owners and this unnecessary, tedious and duplicative regulation will no doubt hinder small business. We should offer our assistance to small business so they will be productive and generate profit. Our economy depends upon small business as its backbone. It is imperative that small business is afforded every consideration to ensure their operation is not burdened with government regulations.

Congressman Roy Blunt has authored good, common sense legislation that would exclude propane from the list of regulated flammable materials and it is unfortunate the EPA does not have the foresight to avoid this imposition on small business. I urge Chairman Talent and other Members of this Committee to support this legislation.

Chairman Talent, thank you for the opportunity to speak about EPA's regulation to include propane into the Clean Air Act amendments. I look forward to hearing from the witnesses on this important matter.

TESTIMONY OF JIM MAKRIS,
DIRECTOR, CHEMICAL EMERGENCY PREPAREDNESS AND PREVENTION OFFICE, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS

July 29, 1999

Mr. Chairman, and Members of the committee, I am Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office in the Office of Solid Waste and Emergency Response at the U.S. Environmental Protection Agency. My responsibilities include the implementation of the Accidental Release Prevention Provisions under Section 112(r) of the Clean Air Act (CAA) and federal implementation of several sections of the Emergency Planning and Community Right-to-Know Act (EPCRA). These responsibilities provide an opportunity to assist in development of a coordinated and cooperative Federal, State, and local effort to prevent chemical accidents from occurring.

I am pleased to have this opportunity to present information about the importance of chemical safety, accident prevention, and community right to know.

Following the world's largest chemical accident in Bhopal, India, Congress passed the Emergency Planning and Community Right-To-Know Act in 1986. The law enhanced community planning and provided significant new information on chemical handling and releases to the public. Because of the public availability of chemical information, awareness of

the potential danger from chemical use and production has grown. We have seen many facilities, including many small businesses, take steps to implement safety practices that prevent accidents. Government also has taken steps to improve emergency preparedness and accident prevention. But, much work remains to be done.

Risk Management Program

Through passage of Section 112(r) of the CAA in 1990, Congress recognized the need for facilities to develop or improve their planning and accident prevention programs to reduce the risk of accidents and allow local communities to enhance emergency preparedness and reduce risks. The law also recognized that citizens should have access to information about the hazards these facilities present.

In June 1996, EPA issued final regulations that required facilities handling certain hazardous substances to implement a risk management program and to file a Risk Management Plan (RMP) with EPA by June 21, 1999. This rule applies to a wide variety of facilities that manufacture, store, or use large quantities of toxic and flammable substances, including propane retail and distribution facilities.

The Small Business Regulatory Enforcement Fairness Act of 1996, under its Congressional Review provisions, provides that before a rule takes effect the agency promulgating the rule must submit a copy of the rule to each House of the Congress. As

required, EPA submitted these documents to the U.S. Senate and the U.S. House of Representatives prior to publication of the final regulations in the *Federal Register*.

Propane was covered because it is one of 63 substances that meet the listing criteria. In fact, propane is just one of 140 RMP-regulated substances, although it does account for more facilities covered by the rule than any other listed chemical. EPA estimated that about 33,000 propane facilities nationwide would be affected. EPA focused on substances that are known to cause death, injury, or serious adverse effects to human health or the environment. In addition to toxic chemicals, EPA listed only those flammable gases and volatile flammable liquids assigned the National Fire Protection Association's (NFPA) highest flammable rating, NFPA-4. While fire is the major on-site concern associated with all flammable substances, EPA is concerned about explosions that have an impact on the public outside these facilities. Highly flammable substances with an NFPA-4 rating have a greater potential to generate disastrous vapor cloud explosions than substances that are less flammable, for instance, gasoline, which is rated NFPA-3.

One of the most devastating and costly vapor cloud explosions in the United States occurred at the Phillips 66 plant in Pasadena, Texas, in 1989. The explosion of ethylene and isobutane, both of which have similar flammability characteristics as propane, was equivalent to the detonation of 10 tons of TNT. The accident destroyed the plant, caused 23 deaths and business interruption costs were reported to be in excess of 700 million dollars.

Accident Data

EPA found accident data indicating that flammables were responsible for many accidents including several that resulted in deaths, injuries, and large scale evacuations and property damage in the United States and around the world. In fact, the second largest industrial chemical accident in history involved an explosion and fire at a propane terminal in Mexico City; 650 died and 6,400 were injured.

The United States also has experienced devastating accidents related to propane. On New Year's Eve 1998, an accidental propane release and fire at a facility near Des Moines, Iowa, resulted in the evacuation of 10,000 nearby residents and the closure of a major interstate transportation route. Two firefighters were killed and seven other emergency responders were injured when a propane storage tank exploded at an Albert City, Iowa, poultry farm on April 9, 1998. At least seven other major accidents occurred at propane facilities in 1998. In total, these accidents involved at least 4 deaths, 22 injuries, many thousands of dollars of property damage, community evacuations, and other offsite impacts.

The core elements of process safety management required by the Risk Management Program rule directly address such accidents. Therefore, EPA expects that this regulation will ultimately reduce the number of accidents, injuries, and fatalities.

Exemption of Small Propane Users

EPA listened and responded to concerns that the RMP may cover propane users too small to pose a significant risk to the surrounding community. Such propane users may include hospitals, farms, restaurants, and hotels, as opposed to larger commercial or industrial users.

In an effort to draw a proper line between those facilities that warrant federal regulation and those that do not, on May 21 EPA issued a six-month administrative stay of the effective date of the RMP rule for most small users as it applies to all listed flammable hydrocarbon fuels, including propane, butane, ethane, propylene, and methane (natural gas). EPA's action, in effect, eliminated most of the small businesses that handled relatively small quantities of propane from filing Risk Management Plans.

The stay applies to fuels stored in any process that:

- Does not contain more than 67,000 pounds of the fuel (the maximum amount stored in a 18,000 gallon propane tank);
- Does not manufacture flammable hydrocarbons;
- Does not contain more than a threshold quantity of another (non-fuel) regulated substance; and
- Is not connected to, or co-located with, another (non-fuel) covered process at the facility.

On May 21, EPA also issued a notice proposing to revise the RMP rule to exempt fuel processes that meet the above criteria. The Agency took this action not because they are inherently safe, but because flammable fuel processes with this criteria pose less of a threat to the public for two reasons: there is a lower likelihood of accidental release at facilities that use or store small amounts of fuel; and there is a lower risk of a vapor cloud explosion following an accident. EPA continues to believe that large manufacturers, distributors, and users of flammable fuel need to comply with the Risk Management Program to prevent accidents and to inform the public of risks in their community.

It is also important to note that prior to EPA's rulemaking, on April 27, the U.S. Court of Appeals granted a request from the National Propane Gas Association (NPGA) to exempt propane facilities from the Risk Management Program until further action by the court.

The current stay is not a final ruling. While the Court's stay is in effect, facilities will not have to file RMPs for their propane processes. The Court plans to hear oral argument on the case in the Fall of 1999. If companies met the criteria for the stay, they did not need to report by the June 21, 1999, reporting deadline. The Agency plans to issue a final rule on the proposed exemption by the time the stay expires on December 21.

Compliance Assistance

EPA labored to lessen the regulatory burden of 112(r) on industry and in particular small businesses. At the same time, EPA has been mindful of the fact that even a small business, if it handles more than a threshold quantity of a hazardous chemical or flammable material, can have an accident that harms the public and the environment if it is not used safely. Chemicals and flammable substances present the risk, not the size of the company.

To ease the regulatory burden on these facilities, EPA prepared model plans for a number of industry sectors, including large propane distributors and users and small propane users. These models make compliance with the Risk Management Program rule relatively easy. These guides recognized the safety practices embodied in existing industry standards, such as the National Fire Protection Association Standard 58, and encouraged propane facilities to take credit for those practices when implementing their risk management program and preparing their risk management plan. EPA also distributed free software to reduce the difficulty of preparation and submission of Risk Management Plans easy. EPA Regional offices and trade associations, such as the Chemical Manufacturers' Association also held workshops to help small businesses answer compliance concerns.

EPA is working with NFPA to strengthen Standard 58, as the current version does not capture all of the Risk Management Program elements. For example, conducting an assessment of the off-site impacts associated with accidental releases and communicating this information to first responders and the local community are not addressed by any other rule, code, or standard. On the other hand, some RMP requirements are satisfied by NFPA 58 and can be used to satisfy

those RMP elements.

Regulatory oversight of NFPA 58 may fall short. On June 29, 1999, the U.S. Chemical Safety and Hazard Investigation Board (CSB) issued a report following an April 9 propane explosion in Iowa that determined that regulatory oversight of NFPA Standard 58 by the State Fire Marshal's Office was inadequate. The CSB report noted that the State Fire Marshal did not detect the deficiencies in the design and installation of the propane tank nor did they have a program in place to adequately monitor or inspect large propane facilities.

Cost of Compliance

EPA also was mindful of the resources available to small businesses when it developed the rule with three Program levels to reflect different levels of risk and levels of effort needed to prevent accidents. Program 1 is a minimal set of requirements for processes, such as those found at many small businesses, that have a very low risk of affecting the public in the event of an accident. Program 1 propane facilities needed to budget four to five hours and about $200 to prepare their plan and any supporting documentation. Program 2, a streamlined set of requirements for facilities not eligible for Program 1 or Program 3, would require between 18 to 44 hours and from $231 to $1679. These estimates could increase if facilities were not in compliance with NFPA Standard 58 or failed to use EPA's free guidance and software. Most propane users will either be eligible for Program 1 or Program 2.

Risk Still Exists

Propane still is an issue for CAA section 112(r)(7)(1), which establishes a general duty on all stationary sources using, handling or storing extremely hazardous substances to operate safely. Extremely hazardous substances include, but are not limited to, the substances EPA has listed under section 112(r)(3). The general duty clause requires companies to identify hazards that may result from their releases using appropriate hazard assessment techniques; to design and maintain a safe facility, taking steps to prevent releases; and to minimize the consequences of accidental releases that do occur, using all industry codes, standards, and good practices.

And while EPA intends to exempt most small propane users from Section 112(r) requirements, the Agency believes that some small businesses, such as propane distributors and retailers that handle quantities of propane above 67,000 pounds, should still report under Section 112(r).

Judging from the accident history, accidental releases of several of the listed toxic or flammable substances have left a harmful impact on the public and the environment. Consequently, EPA still believes that facilities that handle these highly toxic or flammable substances in large amounts should take action to prevent chemical accidents in the future.

The hazard associated with propane and other highly flammable substances is very real.

Accidents at propane facilities have occurred nearly every year, and they have been directly related to poor hazard control. The core elements of process safety management required by the Risk Management Program rule directly address such causes in an effort to reduce accidents.

Risk Management Programs implemented by facilities will improve chemical safety in two ways. First, they will encourage facilities to identify and to address the hazards posed by their handling of flammable substances. Second, and equally important, they will provide information to the public about the potential risk of accidental releases and facilities' efforts to prevent and mitigate any releases. The availability of these plans is expected to stimulate communication among industry, local governments, and the public to improve accident prevention and emergency response practices.

We must not lose sight of the real improvements in chemical safety the RMP program as a whole hopes to achieve. Since the RMP rule was issued nearly three years ago, industry already has invested much time and effort to achieve risk reduction at their facilities. Many facility representatives told us that while they were at first skeptical of the benefits of the accident prevention program, completing a RMP led to many unexpected safety improvements at their facilities.

Conclusion

The principal intent of regulations issued under Section 112(r) is to prevent and mitigate accidents at industrial facilities that present the most risk to the public. While accidental releases involving as little as 10,000 pounds of propane can easily effect workers, EPA took action to only cover releases that generally constitute a serious risk to the public beyond the fence line. However, EPA continues to believe that facilities storing large quantities of propane, such as propane distributors and other industrial facilities, should submit Risk Management Plans. Accidents at these types of facilities have ranked among the most severe industrial accidents on record.

As I described earlier, we have responded to small business concerns by issuing regulations recognizing existing industry standards; producing tailored and detailed guidance, model plans, and free RMP software; and working with the small business community to ease compliance concerns. We believe that these efforts have eased the reporting burden and expense associated with the regulation. Our goal remains to protect human health and the environment.

Congressman Roy Blunt
Testimony before the Committee on Small Business
July 29, 1999

Mr. Chairman,

First I would like to thank Chairman Talent for holding a hearing on this important topic, the decision by the EPA to include propane in the Risk Management regulations for toxic substances. The simple truth of the matter is that propane is not toxic and should never have been included in a regulatory program for toxics in the first place.

This hearing is important because I believe that too often, Congress does far too little oversight over regulatory agencies and the decisions they make. The regulations issued and enforced by the federal government directly affect the lives of American families and merit our attention and review. How an administrative policy was constructed and why a regulatory decision was made are important factors that Congress must also consider when drafting future legislation.

At the same time, I need to acknowledge that the EPA and the Administration have worked in good faith with the House and Senate on legislation encompassing this and a problem regarding the availability of the worst case scenario database. The result was passage of S. 880, which is the companion bill to legislation I introduced (H.R. 1301) to remove propane from the Risk Management Plan. H.R. 1301 has 145 cosponsors, and both the Senate and the House recently passed S. 880 by unanimous consent.

But the question before us today is how did we get here and why was legislation necessary?

The EPA's Risk Management Program is authorized under Section 112 (r) of the Clean Air Act Amendments of 1990. By adopting section 112 (r) Congress specifically sought to reduce the risks associated with the accidental release of toxic chemicals.

While it is true that the threshold quantity for listed substances is determined by criteria that includes flammability and combustibility, because propane is not toxic is should not have been on the list of covered substances in the first place. This is a classic example of circular bureaucratic logic: the regulations are intended for toxic substances - a certain quantity of the toxic substance is required before the regulations are enforced - the quantity of the toxic substance required for regulation is partly influenced by it's flammability and combustibility - propane is flammable - therefore, propane should be regulated under a program intended for toxic substances.

Again, I would note that propane is not a toxic substance, and that is a fact that has not gone unnoticed by the Courts. In April, the United States Court of Appeals issued a stay on the compliance deadline for propane facilities. In order to obtain the stay, the National Propane Gas Association was required to establish that 1) it is substantially likely to prevail on the merits of its appeal; 2) that it will suffer irreparable injury without relief; 3) that other parties interested in the proceedings would not be substantially harmed if a stay is granted; and 4) it is in the public interest to grant the stay. The court agreed that the NPGA motion met these standards.

Even before the court's decision, the EPA took steps to exempt a portion of the propane community from it's regulations by increasing the amount of exempted storage to no larger than 18,000 gallons. However, they specifically stated that they would not provide any relief to industrial users or fuel retailers, marketers or distributors.

While the larger storage thresholds exempted most propane customers, the farm community is a major consumer that has maintained its support for removing propane from the RMP because they will inherit its costs. Chairman Combest and Ranking Member Stenholm of the Agriculture Committee made our colleagues aware of this situation and expressed their concerns in a letter sent to each Member of Congress at the end of April. They are both among the 145 cosponsors of H.R. 1301.

I'll say it again: propane is not toxic. The Clean Air Act did not intend for non-toxic substances to be included in the Risk Management Program. In fact, what the Clean Air Act did was list propane in section 241 as a clean alternative fuel. We should not degrade air quality by stifling development of propane as an alternative fuel or causing propane users to switch to less environmentally desirable fuels.

The inclusion of propane in the RMP also duplicated the extensive safety infrastructure in all 50 states through building and fire codes. Specifically, facilities storing propane are already regulated in all 50 States by Safety Standard 58 of the Liquefied Petroleum Gas Code, published by the National Fire Protection Association.

Mr. Chairman, we have other witnesses here today who can testify about the impact of the EPA regulations and the uncertainty needlessly created by the proposal to include propane in the RMP. I thank you for continuing to pursue this matter and hope that these proceedings can shed some public light on this important issue.

RMP REGULATORY DUPLICATION CHART

EPA'S RMP PROGRAM ELEMENTS	NFPA 58	INDUSTRY SAFETY BULLETINS	FEDERAL OSHA, CSB, DOT, EPA	OTHER STATE REGULATIONS
Information submission			X	X
Hazard assessment (worst case, alt case, 5-year accident history)	X	X	X	
Emergency response plan	X	X	X	
Safety info and hazard review	X	X	X	
Written operating procedures		X	X	
Training	X	X	X	
Maintenance	X	X		
Compliance audits			X	X
Incident investigation		X	X	X

RMP REGULATORY DUPLICATION CHART – reference notes

EPA'S RMP PROGRAM ELEMENTS	NFPA 58	INDUSTRY SAFETY BULLETINS	FEDERAL OSHA, CSB, DOT, EPA	OTHER STATE REGULATIONS
Information submission			1	2
Hazard assessment (worst case, alt. Case, 5-year accident history)	3	4	5	
Emergency response plan	6	7	8	
Safety info and hazard review	9	10	11	
Written operating procedures		12	13	
Training	14	15	16	
Maintenance	17	18		
Compliance audits			19	20
Incident investigation		21	22	23

facility is going to respond to a release. However, NPGA Safety Bulletin 207-94 (Guidelines for Developing Plant Emergency Procedures) appears to address these requirements.

6. NFPA 58 – Section 3-10 (Standard for the Storage and Handling of Liquefied Petroleum Gases – Fire Protection).

7. Industry Safety Bulletins – We previously identified 12 NPGA Safety Bulletins as applicable, including NPGA Safety Bulletin 207-94 (Guidelines for Developing Plant Emergency Procedures).

8. Federal (OSHA, CSB, DOT, EPCRA) – CSB will frequently respond to chemical accidents.

D. **Safety Information and Hazard Review**[1] -- EPA admits in its letter to Congressman James Talent that NFPA 58 satisfies this element of the RMP Program 2 Prevention component.

9. NFPA 58 – Sections 2, 4 and Appendix B (recognized by EPA to meet this element).

10. Industry Safety Bulletins – We previously identified 81 NPGA safety bulletins and NPGA CETP as meeting the requirements of the safety information and hazard review elements of the RMP Program 2 Prevention Program component. Examples of relevant NPGA safety bulletins include 106-83 (LP-Gas Bulk Storage Safety Inspection Checklist) and 302-92 (Safe Practices at Bulk Plants).

11. Federal (OSHA, CSB, DOT, EPCRA) – OSHA, 29 C.F.R. § 1910.1200(d), (e), and (g) (mandates MSDSs for hazardous chemicals).

E. **Written Operating Procedures** – EPA claims that neither NFPA 58 or OSHA's Propane Standard require written operating procedures. They dismiss NPGA Safety Bulletins and the CTEP program as not being mandatory. In the context of the settlement between IME and EPA in a legal challenge to the "RMP List Rule", however, EPA recognized industry practices. Also, what is the added safety benefit to requiring a propane facility to reinput the NPGA Safety Bulletins?

12. Industry Safety Bulletins – We previously identified 84 NPGA safety bulletins and NPGA CETP as meeting the requirements of the written operating procedure element of the RMP Program 2 Prevention Program component. Examples of

---

[1] Items D through I are the elements for a RMP Program 2 process. The most overlap between existing regulations, NFPA 58, and industry bulletins is found in this section. It is likely that EPA will not question our assertions here regarding overlap.

relevant NPGA safety bulletins include 129-89 (Protection of Transfer Areas) and 107-91 (LP-Gas Cargo Tank Truck Inspection Checklist).

13. Federal (OSHA, CSB, DOT, EPCRA) – OSHA, 29 C.F.R. § 1910.110 (specifies procedures for handling propane).

F. **Training** – EPA recognizes the NPGA CETP, but states that it is not a requirement. In the context of the settlement between IME and EPA in a legal challenge to the "RMP List Rule", however, EPA recognized industry practices.

14. NFPA 58 – NFPA 58, 1-5 (Standard for the Storage and Handling of Liquefied Petroleum Gases – Qualification of Personnel).

15. Industry Safety Bulletins – NPGA CETP.

16. Federal (OSHA, CSB, DOT, EPCRA) – DOT, 49 C.F.R. Part 172, Subpart H (HAZMAT Training).

G. **Maintenance** – EPA confirms that NPGA Safety Bulletin 106-83 fulfills this element of the RMP Program 2 Prevention Component.

17. NFPA 58 – NFPA 58, 3-2.4.1(f) (Standard for the Storage and Handling of Liquefied Petroleum Gases – Installation of Containers).

18. Industry Safety Bulletins – We previously identified five NPGA Safety Bulletins, including NPGA Safety Bulletin 148-90 (Internal Valve Operation and Maintenance) and Bulletin 106-83 (LP-Gas Bulk Storage Safety Inspection Checklist).

H. **Compliance Audits** – EPA states that it is impossible for any other regulation, NFPA 58, or industry bulletins to comply with this requirement because "it would be impossible for another code or standard to address RMP compliance unless that code of standard adopted the RMP elements." This simplistic argument overlooks the intent of the RMP – to prevent, or minimize the impact of, accidental releases. The periodic inspections under NFPA 58 and inspections by insurance carriers and local authorities are meant to ensure safety by preventing, or minimizing the impact of, an accident release.

19. Federal (OSHA, CSB, DOT, EPCRA) – OSHA will assess a facility's compliance with 29 C.F.R. §§ 1910.110 and 1910.1200.

20. Other State Regulations – Insurance carriers conduct periodic inspections of facilities and retain records. Also, periodic site inspections are conducted pursuant to state regulations by the authority having jurisdiction.

I. **Incident Investigation** – EPA has indicated that insurance carrier inspections and NPGA Safety Bulletin 202-93 satisfy this element of an RMP Program 2 Prevention Program component.

21. Industry Safety Bulletins – We previously identified three relevant NPGA Safety Bulletins, including NPGA Safety Bulletin 202-93 (After Accident Procedures).

22. Federal (OSHA, CSB, DOT, EPCRA) – CSB investigates certain accidents.

23. Other State Regulations – Insurance carriers conduct periodic inspections of facilities and will frequently visit the site after an accident.

GELDBACH PETROLEUM

GELDBACH PETROLEUM COMPANY, INC.

GENERAL OFFICES & PLANT
P.O. BOX 157 • 100 BECKETT MEM. DR.
VALLEY PARK, MO 63088-0157
314/225-3601 • 800/798-4107

As a matter of introduction John and Mary Densmore will represent Geldbach Petroleum Co., Inc. at the Committee on Small Business on Thursday, July 29, 1999 in Room 2360 of the Rayburn Office Building. RE: HR-1301

Geldbach Petroleum is a family owned business located in St. Louis County in Valley Park, Missouri. Geldbach Petroleum markets propane gas in eastern Missouri. Geldbach is one of the few remaining independent propane marketers. Other independents have been taken over by the large conglomerates that are nationally owned and operated.

Geldbach Petroleum has been continually in operation since 1920. Herbert Geldbach began the business by building his first truck in his father's wagon shop. His father was a wagon wright and a blacksmith. Herb first started a one-man operation until he became large enough to buy more trucks and hire drivers. He continued in business by being competitive and resourceful. He drove a truck every day while expanding the business into serving gasoline stations and residences with fuel oil. He owned a few gas stations. He delivered gasoline in bobtail loads to approximately 40 independently owned full service gas stations.

Herbert Geldbach expanded into propane gas in 1957. At that time he bought new trucks and employed about 20 people. He saw the advantages of propane uses for the consumer. Propane is a versatile, clean burning fuel that has many applications in business and in the home. It is used in manufacturing plastics, providing temporary heat on construction sites, as well as powering forklift trucks in manufacturing and warehousing industries. It is also been designated as a clean air alternative fuel source by the department of energy. Propane gas is the rural residents' choice fuel to the costly and less efficient heat source available in electric. Our farmers also use propane to dry their crops and operate field equipment.

After Herbert Geldbach died in 1982 the family has continued the operation and expanded into new locations in order to remain competitive.

In 1985, the EPA's stage II Vapor Recovery regulation had a devastating effect on our gasoline operation. Our independent service stations were forced out of business by the regulations. Due to this aforementioned legislation, in 1991 we sold our service stations to another oil company.

OLD MINES
Rt. 2, Box 287, Hwy 21 & 47
Cadet, MO 63630
438-2033 • 800/242-0975

FARMINGTON
573/756-1460

IRONTON
203 North Main St.
Ironton, MO 63650
888/546-7256

SERVING THE ST. LOUIS METRO AREA SINCE 1920
RESIDENTIAL PROPANE GAS • FORKLIFT & CONSTRUCTION CYLINDERS • TEMPORARY HEAT

GELDBACH PETROLEUM

GELDBACH PETROLEUM COMPANY, INC.

GENERAL OFFICES & PLANT
P.O. BOX 157 • 100 BECKETT MEM. DR.
VALLEY PARK, MO 63088-0157
314/225-3601 • 800/798-4107

In 1997, we were forced to sell the entire fuel oil and gasoline division due to the Underground Storage Tank Insurance fund, where all tanks are required to be re-lined and or removed.

After 71 years, we are out of the oil business.

The propane industry is currently regulated by the National Fire Protection Association Pamphlets 54 and 58. Our local reporting authority is the Division of Weights and Measures under the Dept of Agriculture. We also submit Tier Two reports to the Missouri Emergency Response Commission under the Dept of Natural Resources. Our trucking operation falls under the Dept. of Transportation. Our plant operations, and facilities are covered by OSHA.

Now we are faced with the EPA under 42 US C.7412®,which has plans to duplicate much of the aforementioned regulatory reporting information plus add to it. The EPA's Risk Management Plan is grossly over-burdening to the propane industry. The RMP will put us into a non-competitive position. The hours of preparation and the staff involved would detract from our other safety considerations, such as consumer education and plant safety. Realistically, we would have to hire another **non-revenue** employee to comply with the proposed regulations you see before you.

We have heard from many of our customers regarding RMP. One green house customer told me that he will refuse to receive any more propane than is required to stay below the threshold quantity. This would mean **more** deliveries and **more** road miles for our trucks and drivers.

The larger customers are taking out the stand-by systems. Natural gas, during peak usage times, will cut off large draw manufacturing facilities in order to provide home heat. To quote a letter directed to Ms. Carol Browner, Administrator EPA, from the Director of the Missouri Dept of Agriculture, John Saunders, "Currently, because of the forthcoming Risk Management Plan Requirement, many large bulk storage facilities are being removed and smaller ones put into place. The "re-design" of these systems will create performance and safety problems because the systems' capacity is too small for the load placed upon it. Extremely cold winters are of a major concern if this trend continues."

The premise the EPA is using-- a vapor cloud explosion-- is so far fetched that (to coin a phrase) we could all be struck by lightning simultaneously.

Propane plants are designed to prevent accidents and to remain in safe operation. The annual inspections from the Division of Weights and Measures are all inclusive. We work very closely with the Department of Weights and Measures to keep all of our

OLD MINES
Rt. 2, Box 287, Hwy 21 & 47
Cadet, MO 63630
438-2033 • 800/242-0975

FARMINGTON
573/756-1460

IRONTON
203 North Main St.
Ironton, MO 63650
888/546-7256

GELDBACH PETROLEUM
GELDBACH PETROLEUM COMPANY, INC.

GENERAL OFFICES & PLANT
P.O. BOX 157 • 100 BECKETT MEM. DR.
VALLEY PARK, MO 63088-0157
314/225-3601 • 800/798-4107

equipment running safely and properly. The percentage of fires and/or explosions occurring at a propane plant and/or a storage facility are a fraction of what this legislation will prove costly not only to independently owned companies like Geldbach Petroleum and the industry in general, but the taxpayer as well.

We do not believe it was the intent of Congress through the Clean Air Act to include a clean burning, home heating fuel while putting additional burdens on small businesses.

This regulation will stop our expansion into new areas. We will not add another propane plant to our business if the RMP is implemented.

If we cannot expand, we cannot acquire new customers. Our existing customer base will eventually diminish through competition with natural gas and electric. In addition to not expanding, adding another compliance cost to our margin of profit will put us into a non-competitive position. We have absorbed these costs over the years in the interest of supplying safe, prompt service to our customers. However, adding another non-revenue employee will prohibit any hopes of remaining competitive with the larger, nationally owned conglomerates. We will become another statistic of how the government has squeezed out the small businessman. It is imperative to our company's viability that HR 1301 is enacted to exempt propane from the EPA's Risk Management Plan.

Geldbach Petroleum does not receive any federal grants, contracts or sub-contracts or any subsidies of any kind.

Thank you Ladies and Gentleman of the Small Business Committee for your time and consideration in listening to our views. We implore you to heed our requests.

OLD MINES
Rt. 2, Box 287, Hwy 21 & 47
Cadet, MO 63630
438-2033 • 800/242-0975

FARMINGTON
573/756-1460

IRONTON
203 North Main St.
Ironton, MO 63650
888/546-7256

TESTIMONY
ON EPA's RMP REGULATIONS
BEFORE THE SMALL BUSINESS COMMITTEE
PRESENTED BY PAUL LINDSEY, ALL STAR GAS CO., MO
JULY 28, 1999

Good morning, Mr. Chairman. My name is Paul Lindsey and I am Chief Executive Officer of All Star Gas Company headquartered in Lebanon, Missouri. My company is primarily in the business of the retail marketing of propane to thousands of residential, agricultural, and commercial customers.

I would like to thank you and the members of the Committee for holding this hearing. I can not think of a better issue to discuss than the one before us today to highlight the problems faced by small businesses in this country.

I am also the immediate-past Governmental Affairs Chairman of the National Propane Gas Association and appear before you today in this capacity.

NPGA is the national trade association representing the propane gas industry. The association's membership includes around 3,700 companies that market propane gas and equipment in all 50 states and in nearly every congressional district. The single largest group of members are retail marketers of propane gas, the majority of whom are small, independent business men and women. The association also includes propane producers, transporters, manufacturers and distributors of equipment, containers, and appliances. Propane is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and forklifts.

In my former role as chairman of NPGA's governmental affairs committee, I closely followed federal issues that directly affect the thousands of small business members that make up our association. My comments today will focus on the damaging effects that the EPA's Risk Management Program would have had on thousands of small businesses if Congress and the Courts had not intervened in EPA's risk management program regulation.

We are grateful for Representative Blunt's introduction and your support of H.R. 1301 which addressed our concerns. This legislation had strong, bipartisan support from over 140 members of the House, including more than 40 Democrats. Last week, the House passed legislation that closely tracked the intent of H.R. 1301. In June, the Senate passed similar legislation with the full consent of the Senate, the support of the National Propane Gas Association, the International Association of Fire Chiefs, International Association of Fire Fighters, and the National Fire Protection Association. A recent letter of fire organization support is attached, as well as letters of support from a host of farm and business organizations throughout the nation.

Our concerns are that EPA's rules would have:

- Jeopardized the viability of thousands of small businesses;
- duplicated an extensive and credible safety infrastructure that has existed for decades in all 50 states without exception through state building and fire codes;
- reduced safety in the propane industry by causing customers to demand more deliveries in smaller quantities rather than the safer alternative of fewer large deliveries;
- degraded air quality by stifling development of propane use as an alternative fuel;
- caused propane users to switch to less environmentally desirable fuels not similarly covered; and,
- cost the propane marketers and customers vast sums of money for little or no increase in safety.

BACKGROUND ON EPA's RISK MANAGEMENT PROGRAM RULES

On November 15, 1990, President Bush signed the Clean Air Act Amendments of 1990 into law. Section 112(r) of the Act requires EPA to publish regulations to prevent and minimize the consequences of accidental releases of hazardous substances. EPA was to publish a list of at least 100 hazardous substances and implement a program whereby facilities using listed substances would make detailed risk management plans available to EPA and the public. EPA finalized its list of substances, which included propane, on January 31, 1994, and its Risk Management Program (RMP) regulations applicable to listed substances on June 20, 1996. Since NPGA comments were largely ignored by the Agency in both rulemakings, NPGA sued the EPA on August 18, 1996 seeking relief from the regulations.

The RMP regulations established three increasingly rigorous compliance paths for facilities having listed hazardous materials on site in greater than threshold quantities. For propane facilities, the threshold quantity was 10,000 pounds or 2,381 gallons at 60°F. EPA's RMP rules covered *all* facilities, whether they were industrial, commercial, agricultural, or residential, having more than the threshold quantity of 10,000 pounds of propane on site. Two thousand three hundred and eighty one gallons of propane is typically the amount that a small commercial facility would have; there are residences that have this amount also.

Program 1 participants were to develop a worst-case scenario and analyze all releases over the past five years, and coordinate emergency efforts with local responders. Propane marketers would have qualified for Program 1 if their worst-case scenario demonstrated that there were no "public receptors" within range of the worst-case scenario and if their five-year accident history showed no deaths, injuries, or offsite restoration activities. The term "public receptor" means offsite residences, institutions such as schools and hospitals, industrial, commercial and office buildings, parks, or recreational areas inhabited or occupied at any time without restriction where members of the public could be exposed to radiant heat or overpressure as a result of an accidental release.

Program 2 required more detailed hazard assessments and implementation of prescribed accident prevention steps. Program 2 participants were to have prepared at least one

alternative release scenario that was no more likely to occur than a worst-case scenario. In addition, Program 2 participants were required to: (1) ensure that up-to-date safety information was available; (2) conduct a detailed hazard review of each facility; (3) prepare written operating procedures; (4) ensure each employee had been trained in the operating procedures; (5) maintain the mechanical integrity of all equipment; (6) complete compliance audits every 3 years; and, (7) investigate each incident.

Program 3 was the most rigorous and would have affected those propane marketers who are covered by OSHA's Process Safety Management (PSM) regulations (*i.e.*, do not qualify for the retail exemption). Program 3 facilities were required to perform the same tasks as Program 2 facilities *plus* many others that are analogous, but not necessarily identical, to OSHA's PSM requirements.

The Clean Air Act imposes both civil and criminal penalties for violations of EPA rules. For civil violations, EPA listed monetary penalties of no more than $25,000 per day per violation. For knowing violations of the Act, criminal monetary penalties of up to $25,000 per day per violation and/or up to five years in prison were required.

PROPANE FACILITIES ARE ALREADY CLOSELY REGULATED AT THE STATE AND FEDERAL LEVELS

Propane facilities, whether they be bulk storage plants owned by marketers or smaller storage facilities operated by customers, are subject to regulation in all 50 states through building and fire codes. These codes without exception adopt or incorporate Safety Standard 58, *Liquefied Petroleum Gas Code*, published by the National Fire Protection Association (NFPA).

NFPA 58 contains strict requirements on the design, installation, inspection, approval and operation of propane facilities. It is adopted by state agencies either *by reference* or *by direct incorporation*. Forty-eight states have adopted NFPA 58 by reference, which means that the state agency's rules require propane facilities to be designed, constructed, and operated in accordance with NFPA 58. The remaining two states (Texas and Arkansas) have adopted NFPA 58 by direct incorporation, which means that they have taken the substance of the standard and written it into their own building or fire codes. Both methods allow for code inspectors to determine compliance with NFPA 58, thereby ensuring they are operated as safely as possible.

As a service to its members, NPGA recently published a new edition of the *State Laws and Regulations Handbook*, which summarizes the status of propane regulation in all 50 states.

The propane industry also complies with the following federal regulations:

- DOT's hazardous materials regulations, which as of October 1, 1998 apply to both interstate and intrastate operations;
- OSHA's workplace safety rules, including the Process Safety Management (PSM) rules where applicable; and,

- EPA's rules implementing the Emergency Planning and Community Right-to-Know Act of 1986 which requires facility data to be available to emergency responders and to the public.

PROPANE MARKETERS ACTIVELY PROMOTE SAFETY

The propane industry takes its safety responsibilities very seriously. Indeed, NPGA is proud to have recently completed participation in a negotiated rulemaking with the Department of Transportation to address the safety of our industry's delivery trucks and operating procedures for the safe unloading of propane at the customer's tank. The results of this reg-neg will be a significant jump in safety, taking full advantage of both new technologies and the industry's commitment to safety. In fact, over the next five years the improvements to our delivery systems could cost the industry over $50 million dollars.

Also, the propane industry voluntarily spends significant time and money training local fire departments all over the nation. Emergency responders need to be as highly trained as possible, and we are putting our money where our mouth is. This industry has spent nearly $1 million this year alone to develop a comprehensive training curriculum for emergency response personnel. The curriculum, entitled *Propane Emergencies*, is being distributed this summer, free of charge, to every fire department in America. The text is just one piece of a comprehensive set of safety training materials that includes a teacher's guidebook, an instructional video, a CD-ROM covering a broad range of emergency scenarios, and an interactive website. These materials are also being provided by the propane industry to firefighter training academies across the nation.

Congressional Fire Caucus Chairmen Curt Weldon, Robert Andrews, Steny Hoyer and Rep. Tauzin recently distributed a copy to their House colleagues earlier this week. I also would like to provide the Committee with a copy for the record.

EPA's RULES DEGRADE SAFETY AT PROPANE FACILITIES

EPA's regulations would have had the unintended consequence of actually reducing safety. The unfortunate thing is that this unintended consequence was entirely foreseeable, as we repeatedly pointed out to the agency.

It goes without saying that many propane customers would have sought to reduce the amount of propane they store to levels below the 10,000 pound threshold for coverage by the RMP rules. This would not, however, have reduced customers' demands for timely deliveries of propane from their suppliers. Many more over-the-road deliveries of smaller volumes would have been required to meet a steady consumer demand. Therefore, one of the major unintended consequences of EPA's RMP rules would have been that propane delivery would have been made much less safe. And since the industry's busiest time is during the winter heating season, our industry's delivery truck drivers would also have had to dealt with winter driving conditions that can be particularly challenging.

Not only were customers deciding on their own to keep their storage low or switch fuels, they were being counseled and might ultimately have been forced to do so by government

agencies. Two particular cases arose in California. First, the Orange County Certified Unified Program Agency stated in a letter to businesses, "Should your business so choose, you may implement one of the following options in lieu of developing an RMP: (1) Eliminate or replace the Regulated Substance with a non-regulated substance, or (2) Reduce the amount onsite to below the federal threshold quantity." Secondly, California Assembly Bill 172 was introduced by Assembly Member Firebaugh on January 15, 1999. The bill would prohibit after January 1, 2000 any person from commencing any process involving propane or any other regulated substance that is located adjacent to a school. Notwithstanding the fact that the bill lumps propane – a non-toxic substance – in with many other exotic and lethal toxic substances, many schools use propane themselves and would have been forced to switch to other fuels.

Consumers began fuel switching as a result of the rule. Information from the North Carolina Propane Gas Association showed that propane marketers in the state had already lost 213 customers, which is a demand loss of almost 5 million gallons. Furthermore, the state estimated 360 customers were expected to downsize their storage capacity to avoid compliance.

While in the end the EPA "saw the light" and proposed to raise the RMP threshold to 67,000 pounds, this still would not have helped many agricultural consumers or large commercial accounts most able to switch to other energy sources.

While the industry prides itself on its excellent safety record, accidents do occasionally happen. But more often than not accidents are caused by or occur during transportation activities, which were not covered by the RMP rules. EPA's own data demonstrate that many more accidents occur during transportation than when propane is held for storage at a stationary site covered by the RMP rules. Conversely, EPA's data showed that: (1) only a small minority of incidents occur at facilities targeted by the RMP rules; and, (2) the majority of incidents are related to transportation activities not covered by the RMP rules.

NPGA reviewed the data that EPA placed in the RMP rule docket to justify its decision to cover propane. The EPA data obtained by NPGA was an undated printout of 112 incidents logged by the Major Hazard Incident Data Service (MHIDAS) and 52 pages of reprinted news articles covering propane incidents. EPA's data included incidents going all the way back to 1951, and even included an incident from Japan. Of the 157 incidents reviewed:

- Only 31 incidents (19%) could be confirmed to have occurred at what would have been an RMP-covered facility. Of the remaining incidents, 89 incidents (57%) could be confirmed to have occurred at a facility <u>not</u> covered by the RMP rules. The record was too incomplete to make a judgement on 37 incidents.
- Of the 31 incidents that occurred at RMP-covered facilities, only 16 incidents could be confirmed to have not been caused by or during transportation activities.
- Of the 16 non-transportation related incidents at RMP-covered facilities, only 11 incidents (nearly 70%) could be confirmed to have had offsite consequences. This is a critical figure because prevention of offsite consequences was the fundamental reason for the entire RMP regulation. Moreover, offsite consequences included such

purely precautionary measures as evacuations, so actual damage did not occur in all cases.

- Finally, EPA's record justifying the RMP rules included 8 incidents (5%) where propane was either not involved or was found not to have leaked.

EPA's RMP RULES DEGRADE AIR QUALITY BY BURDENING A CLEAN ALTERNATIVE FUEL

As adopted in their final form, EPA's regulation would have made air quality worse. Propane is a federally-approved alternative fuel under Section 241 of the Clean Air Act and Section 301 of the Energy Policy Act of 1992. NPGA strongly supported enactment of these provisions by Congress.

EPA's RMP rules would have affected air quality in two ways. The first way is through actual fuel switching by customers to less environmentally desirable fuels that either are specifically not covered by RMP, such as fuel oil and electricity, or that are typically not stored in bulk quantities, like natural gas. Customers considered switching fuels for a variety of reasons. First, the RMP rules are very complex and burdensome. Not only do they require a substantial initial investment to get into compliance, they require continuing allocation of resources to ensure continued compliance in the future. Remember, too, that companies were urged in no uncertain terms by agencies like California's Orange County Certified Unified Program Agency that fuel switching was a viable alternative to compliance. Second, companies considered switching fuels because the RMP rules come with a high public relations price tag. What facility will feel its position in the community has been enhanced by the publication of information showing that an accident could devastate its neighborhood? Such information is a powerful incentive to switch fuels.

The second way EPA's rules degraded air quality is through stigmatizing the use of propane as an alternative engine fuel. Propane is widely used as an engine fuel. Due to the low pollution characteristics of propane, more than 300,000 forklifts and other indoor vehicles use this fuel. In addition, over 80,000 bus, taxi, and delivery services and fleets are powered by propane. It is common knowledge that the alternative fuel vehicle industry remains in its infancy, and needs all the help it can get, especially in these times of unprecedented low gasoline prices. The RMP rules added just one more burden that propane needs to overcome as the industry strives to make widespread acceptance and commercialization a reality.

Congressional interest in removing impediments to usage of alternative fuels has been strong and consistent. For example, on August 5, 1997, President Clinton signed the Taxpayer Relief Act of 1987 into law which included a provision to remove tax-related burdens on propane use as an alternative fuel. Specifically, the Act included a provision providing propane and other alternative motor fuels federal excise tax parity with gasoline. Under this provision, the effective rate of the federal excise tax on these fuels was adjusted to a level equal to the rate on gasoline. Unfortunately, the RMP as applied to propane would have sent a very contradictory signal.

EPA VASTLY UNDERESTIMATED THE REACH OF THE RMP PROGRAM

EPA estimated in its final RMP rule that only 66,100 stationary sources would be covered by the entire RMP rule, *which applies to 140 different toxic and flammable substances*. EPA initially estimated that 28,000 facilities would be brought into the RMP program specifically because of propane storage. This number was eventually increased to 33,000.

NPGA believes even EPA's increased estimates to be spectacularly low. In 1991, NPGA commissioned a statistical survey of the propane industry, and the responses were compiled by the independent accounting firm Baldwin & Brooks. That study shows that 660,000 farms, 350,000 industrial and utility sites, and over 1 million commercial facilities use propane on their sites. Of these use sectors, we believe that the RMP would have covered 100% of the industrial facilities, 50% of the farms, and 30% of commercial facilities. *This totals over 1 million RMP sites just for propane alone.*

Another indicator of the vast underestimation of the regulated community comes from North Carolina's Department of Environment and Natural Resources. The Department sent a letter to EPA on November 9, 1998 stating that in North Carolina, approximately 11,000 farms use propane to cure tobacco. In other words, *a single propane user sector -- farmers-- of a single propane use -- curing tobacco-- in a single state totals nearly 33% of EPA's entire national estimate for propane.* Add in the 12,000 marketer facilities that exist across the nation, and you've already accounted for over 80% of EPA's national estimate.

EPA ALSO VASTLY UNDERESTIMATED THE COSTS OF THE RMP PROGRAM

Many propane marketers and customers would have had to rely on outside assistance to comply with the RMP rules. EPA protestations to the contrary, the RMP rules are complex and take significant amounts of time and effort to comply. A marketer may have numerous bulk storage facilities, or may have numerous customers who ask for help and advice. Most customers would have been unable to comply from a technical standpoint.

NPGA sought information on the fees being charged by 36 engineering consulting firms. Twenty-three consultants declined to give figures. Of the 13 firms who did provide fee estimates for RMP preparation, only two came in below $2,000, while 11 firms were equal to or greater than $2,000. Hourly fees ranged from $25-$140, and daily fees ranged from $500-$2,000. One firm said that RMPs could cost as much as $20,000! Most recently, a consultant stated during his presentation to the New York Propane Gas Association that a Program 2 RMP takes 30-70 hours to complete and costs from $3,000 - $5,000, depending on the amount of site-specific preparation that has taken place.

Even if a marketer or user would have chosen to avail himself of the EPA's free RMP submittal software or other compliance assistance tools, compliance with the RMP rules would have drained scarce resources away from other activities that increase safety. For

example, one propane marketer in Wisconsin sends its drivers to a special driving track where they learn how to handle their delivery trucks on frozen pavement. This is not a free activity, of course, and may well have needed to be dropped if the money was to be spent complying with the RMP rules.

NPGA has quantified the probable costs of the RMP program to propane marketers and customers had Congress not intervened. Our estimate does not include any fees assessed by those states that have taken over RMP enforcement from EPA, which can be hundreds or even thousands of dollars per site. While compliance with EPA's rules does not entail a fee, EPA explicitly recommended that all states adopt fees for administering the program for EPA.

Using a conservative estimate of $1,000 per site in compliance costs, which includes direct costs such as consulting fees or computer software and also indirect costs such as company staff time, the RMP rules would have cost:

- $330 million to the farm sector;
- $675 million to all other covered propane customers;
- $12 million to propane bulk storage plants.

The bottom line is that, as promulgated, the RMP rules are an expensive and duplicative paperwork exercise that would have had little or no discernable impact on safety, but which would have drained more than $1 billion away from marketers and their customers.

APPEALS COURT INTERVENES

While the EPA continued to turn a deaf ear to the concerns of thousands of small businesses, the Judicial branch of our government was not so dismissive. On August 19, 1996, NPGA filed suit in the U.S. Court of Appeals challenging the Agency's authority to list propane as a covered substance under its Risk Management Program. In the Spring of this year, when it had become clear that a hearing on the case could not be held prior to the original June 21, 1999 RMP deadline, we petitioned the court for immediate relief. On April 27, the court stayed the effective date of the rule pending further order of the court.

CONCLUSION

Mr. Chairman, NPGA, the agricultural community and firefighting organizations agree with the unanimous endorsement of both the House and Senate that that EPA's RMP rules should not cover propane. Congress' recent legislation on this issue further acknowledges that it is not right to pick winners and losers in the energy marketplace in this way; to put the thousands of independent propane business and users at a competitive disadvantage; to cause customers to switch to other less environmentally friendly fuels; or to decrease safety by increasing the number of small deliveries on America's roads.

Further, if EPA's rules had been allowed to stand, they would have caused confusion in the marketplace by duplicating safety standards that have existed in all 50 states for many

years. They would have diverted scarce resources away from real safety initiatives into a paperwork exercise with few benefits. The rules were an expensive paperwork burden that were clearly not justified.

Congress' swift action regarding EPA's misapplied rule to a common, clean-burning consumer fuel like propane is greatly appreciated. The EPA's rule was finalized before Congress passed important initiatives like the Congressional Review Act and regulatory reform measures that work to streamline the endless compliance burdens on million of small businesses. I am grateful for all of the effort that Congress has put forward to address these concerns and ask for this Committee's support to see that this important legislation moves forward to the President for his signature. Mr. Chairman, thank you for this opportunity to testify and for your efforts to pull back the needless regulatory yoke from this industry and its consumers.

END