On May 25, 2000, U.S. Senator Christopher S. Bond of Missouri, introduced the Small Business Relief Act of 2000. The bill sought to exempt small businesses with 100 or fewer employees from liability for cleanup costs imposed by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA/Superfund). Under CERCLA, persons, including small businesses, incur this liability when they are found to have contributed, or “arranged for disposal” of, hazardous substances to a Superfund site requiring cleanup. In the 20 years of the Superfund program, liable parties have contributed to costs of cleaning up 1,450 sites and helped fund emergency response to more than 6,400 chemical spills or explosions. However, the history of the Superfund program also provides examples of small businesses unfairly pulled into costly and prolonged Superfund litigation without a showing of their liability or that their contribution of hazardous substances would have material impact on the environment.

In introducing his bill, S. 2634, Senator Bond said that he hoped the legislation would “provide a lifeline for the thousands of small business owners threatened by lawsuits and litigation under the broken Superfund liability system.” Sen. Bond cited the example of Quincy, Illinois, just across the Mississippi River from Missouri. There, “160 small business owners were asked to pay the EPA more than $3 million [in cleanup costs] for garbage legally hauled to a dump more than 20 years ago.” Those small businesses were “restaurant owners, mom-and-pop convenience store operators, and other small business owners who have legally disposed of their trash and cannot afford the tab that comes with Superfund legal bills.” Sen. Bond stated that “the situation in Quincy, is just one example of the very real, ongoing Superfund legal threat to small business owners across the nation.”

S. 2634 was referred to the Senate Committee on Environment and Public Works without further action. By the end of the just concluded 106th U.S. Congress, attempts to reform Superfund liability provisions for small business achieved no better outcome. This article will review the legislative attempts over the past two years at Superfund liability relief for small business, the stakeholder positions concerning those proposals, and the legislative outcome of the 106th Congress. Hopefully, the 107th Congress will not repeat these experiences.

Superfund and Its Explosion of Litigation

It is important to briefly review the fundamental features and impacts of CERCLA to help illustrate the legal quandary faced by small businesses threatened with Superfund liability. The purpose of CERCLA is to provide for the cleanup of hazardous waste sites. CERCLA accomplishes this by: establishing hazardous substance release notification, information gathering and reporting requirements; providing authority to the federal government to respond to hazardous substance releases or threats of release with cleanup or other remedial activities; creating a fund (Superfund) financed by industry taxes and cleanup fees to pay for cleanup; and imposing a strict liability for cleanup costs on...
CERCLA imposes this powerful strict and joint and several liability scheme on a wide array of PRPs including: current and former owners and operators of facilities that become Superfund sites, anyone who generates hazardous substances disposed of at Superfund sites, and transporters who deliver hazardous substances to Superfund sites. Therefore, current site owners who played no role in the prior contamination of the site may face Superfund liability. Additionally, any person who sent hazardous waste to the site, no matter how small an amount, may be liable for the entire cost of cleanup at a Superfund site regardless of the relative amount of harm contributed by that PRP to the site. It also follows from basic tort law—and courts affirm—that defendant PRPs seeking to limit their liability on the grounds that the harm is capable of apportionment bear the burden of proof of apportionment.

An example from Gettysburg, Pennsylvania, illustrates how the litigation web from a single Superfund site can spread rapidly to engulf hundreds of PRPs. In 1982, residents of the Gettysburg-Hanover area of Pennsylvania became aware of water supply contamination from the local Keystone Landfill. In 1984, EPA conducted a field investigation. In 1987, EPA formally declared the Keystone Landfill a Superfund site, although both EPA and the Commonwealth of Pennsylvania permitted dumping at the landfill until it closed, filled to capacity, in 1990. In 1993, EPA filed suit against site owners and 11 original generators of hazardous waste sent to the landfill. In 1994, the 11 original generator PRPs filed suit against 180 third party small businesses, boroughs and school district PRPs. In 1995, the third party defendants filed suit against over 550 other small businesses and individuals as PRPs. Between 1996 and 1997, a total of 550 parties settled with EPA and the original generator PRPs. As of 1999, the legal liability for close to 200 additional parties remained unresolved.

The ability of CERCLA to allow litigation against numerous parties does not ensure that they are treated fairly.

Need for Small Business Reform

The ability of CERCLA to allow litigation against numerous parties does not ensure that they are treated fairly. The plight of a single small business owner, Barbara Williams of the Sunny Ray Restaurant, brought the Gettysburg, Pennsylvania, case to national attention. Sunny Ray Restaurant utilized the trash hauler approved and licensed by the local borough government to dispose of its table scraps from menu items such as a $1.99 breakfast. In this regard, Sunny Ray Restaurant was sued as a PRP waste generator for $76,253.71 in cleanup costs. Barbara Williams contended that the restaurant shipped no hazardous substances to the landfill, only food scraps such as unwanted potatoes. However, like many small businesses, Sunny Ray had no documentation to support its assertion. Potentially more debilitating, as a small business Sunny Ray possessed limited financial resources to pursue litigation to defend its position. While a medium- or large-sized corporation might choose settlement as a financially reasonable outcome, the $76,000 settlement contribution threatened to bankrupt the family owned small business.

A similar and more recent example of the impossible position faced by small businesses in Superfund litigation is highlighted by the Quincy, Illinois, Superfund site. As mentioned briefly above, Quincy is a small community of approximately 46,000 people located on the banks of the Mississippi River 150 miles north of St. Louis. Between 1967 and 1978, the 56 acre Adams County Quincy Landfill operated under a license granted by the State of Illinois. In 1986, contamination from the site was discovered and investigated by the Illinois EPA. EPA listed the landfill as a Superfund site in 1990. EPA identified six large corporations and the City of Quincy in its first search for PRPs. On February 10, 1999, EPA sent letters to 149 small businesses, individuals, and school districts requesting payment of $3 million towards site cleanup costs. EPA sent an Administrative Order on Consent to each PRP with requests for settlement for amounts ranging from $40,000 to more than $100,000. Recipients included Catholic grade schools, the local university, bowling allies, restaurants, small mom and pop trash haulers, furniture stores and the local McDonalds. EPA provided a deadline of 45 days for the PRPs to make a settlement decision.

While the majority of waste sent or hauled to the site by the 160 small PRPs was only trash and legally disposed of at the time, the liability and litigation provisions of CERCLA allowed for each of the 160 PRPs to be drawn into litigation. Each of the small businesses faced the choice of pursuing litigation and its attendant transaction costs to disprove or divide its liability, or agree to settlement in the face of their innocence. A meeting between an EPA attorney and Quincy PRPs illustrating this dilemma was described by a participant:

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On February 24, 1999, EPA sent one of their attorneys to Quincy to help explain its letter and answer questions. The meeting lasted for over two hours. The EPA attorney tried to answer questions and comment on how the law was being applied. Many people stood up and pleaded their situation and how unfair and un-American this whole situation was. [The EPA attorney] admitted to everyone that the law was probably unfair and very harsh. He said it was intended to be harsh, but he couldn’t do anything about its unfairness. Even though the law seemed unfair, he said that it was all he had to work with. EPA and the 6 major PRPs weren’t concerned about the waste that was sent to the landfill as being hazardous. The make up of what we sent there was irrelevant. It was the volume that we sent to the landfill that they cared about, even if the trash was not dangerous. They knew many of us didn’t send hazardous waste and they knew we couldn’t afford to fight them. We became an easy money source for them because of the real threat of litigation by the major PRPs. And when you think about it, what small company can take on 6 large corporations and the EPA alone and win? If we didn’t accept the settlement offer, the major PRPs would sue us for the entire cleanup cost. We were stuck. Pay up or be wiped out. The attorney for the EPA admitted that it would cost us more to fight them in court to prove we didn’t haul hazardous waste to the landfill than to just go ahead and settle. It all came down to money . . . and they had more than we did.20

From these horror stories developed a loose consensus in Congress around the need to reform the Superfund program and include liability relief for small business. Congressional leaders concluded, “the current Superfund program promotes litigation and stifles cleanup. The time to reform Superfund is long overdue.”21 Similarly EPA Administrator Carol Browner, stated the administration’s support for some type of small business liability relief. “We all want to fix the very real problems of the small parties [that are caught up in Superfund],” Browner indicated in testimony before Congress. “We want to protect the ‘little guys’—the small businesses, the mom-and-pop operations—that we all agree have become unfairly entangled in Superfund litigation . . . . The owner of the diner who sends mashed potatoes to the local dump should not have to worry about being sued by large corporate polluters who are responsible for the contamination of that site.”22 Unfortunately, despite these stated desires for reform, relief for small business has proven elusive.

SARA and Attempts at Administrative Reform

Congress reauthorized and amended CERCLA with the Superfund Amendments and Reauthorization Act (SARA) of 1986.23 In an effort to speed settlements and reduce transaction costs of litigation, SARA included EPA-developed tools designed to provide incentives for PRPs to negotiate cleanup settlements.24 SARA specifically permitted EPA to enter into de minimis settlements with PRPs if the settlement involved only a minor portion of the total response costs at the facility and their contribution of hazardous substances was minimal in comparison to the total site contamination.25

In addition to the legislative reforms of SARA, EPA began implementation of 62 administrative reforms to the Superfund program which EPA could take under its existing authority.26 According to EPA, the initiatives covered virtually every aspect of the Superfund program to make it “faster, fairer and more efficient.”27 EPA characterized fourteen of the initiatives as having significantly and measurably improved the program including: encouraging greater use of alternative dispute resolution; promoting “enforcement first” to get private parties (v. the Superfund) to fund most of the cleanups; EPA funding of “orphan share” costs of insolvent or defunct parties; promoting de minimis settlements with parties that contributed relatively small amounts of waste; and guidance for de micromis parties which contributed miniscule amounts of waste.28

EPA intended the de micromis and de minimis reforms to help small business by reducing litigation and associated costs, increasing the program’s fairness, and encouraging more, early and expedited settlements.29 The 1996 de micromis guidance expanded the number of parties eligible for de micromis settlements, offered no-cost protective agreements removing de micromis parties from the liability process, streamlined and simplified the settlement process, and clarified and emphasized EPA’s intent to protect such parties.30 The guidance has shown no measurable increase in de micromis settlements.31 Through fiscal year 1999, EPA completed de micromis settlements at only six sites using the 1996 guidance. Since 1993, EPA completed a total of only 16 de micromis settlements at 11 sites.32 EPA claims that despite the small number of de micromis settlements, they are successful in deterring PRPs from filing third-party contributions against small parties.33 Since the 1996 de micromis guidance, the experiences of the hundreds of small business third and fourth generation PRPs from Gettysburg, Pennsylvania, and Quincy, Illinois, show that this assertion is not based upon reality.

While the de micromis guidance generated relatively few settlements, thousands of parties have entered into de minimis settlements with EPA. According to senior EPA officials, “EPA has aggressively sought to promote fairness in the liability system by reaching [de minimis] settlements with more than 18,000 small volume waste contributors, more than 65 percent of these settle-
ments occurring in the last four years."\textsuperscript{34} Administrative reforms to promote de minimis settlements included: simplifying requirements for determining parties’ eligibility for de minimis settlements, streamlining the settlement process, and guidance to EPA Regions to encourage de minimis settlements.\textsuperscript{35}

Despite the large number of de minimis settlements EPA reached with PRPs, the experience of small businesses shows that these settlements are neither fair nor cost-reducing. As seen in the Quincy, Illinois, example above, EPA sought de minimis settlements from nearly 150 small parties for over $3 million in cleanup costs. However, EPA admitted that many of the parties were not guilty of sending hazardous substances to the site.\textsuperscript{36} Additionally, EPA admitted to the lack of bargaining power the resource poor small businesses possessed in the choice between hefty settlement amounts and the threat of continued litigation.\textsuperscript{37} One of the Quincy small businesses articulated its predicament at a Congressional hearing:

If you’re the EPA, and I’ve talked with the people at EPA that have been involved with us who say, yes, it was a successful settlement, in that they did get us to settle. From our perspective, though, it wasn’t a success, because 149 companies in Quincy were not responsible for the hazardous waste that caused the site to be declared a Superfund site. We had a process that basically, and I used in my testimony the word “forced,” and we were forced into it . . . we were basically told that if we did not settle with the amounts they gave us, then we would be hauled into Federal court and our cost would be way beyond anything we could ever imagine . . . they point to Quincy as being a success story. For the small business and those of us in Quincy, we had to be involved. It was a disaster and a very difficult for our companies.\textsuperscript{38}

Small businesses in the Gettysburg, Pennsylvania, case also felt undue force to reach a settlement with EPA. The Littlestown School District, a PRP of the Keystone Landfill, faced a $40,000 settlement offer from EPA. “I don’t think we should pay it,” stated school board Vice President N. Thomas Miller during discussion of the offer, “it’s just plain extortion.”\textsuperscript{39}

**Legislative Proposals from the 1st Session of the 106th Congress**

The failure of previous legislative and administrative reforms to protect small businesses in Gettysburg, Pennsylvania, and Quincy, Illinois, drove Congress to take up the issue of Superfund reform in the 106th Congress. The frustration felt toward the existing Superfund program was summarized by House Commerce Committee Chairman Tom Bliley (R-VA), “The Superfund law is a prime example of a broken environmental program. It is unjust, costly, unrealistic, and poses barriers to cleanups all across the Nation. Its liability scheme has created a litigation nightmare which has hurt individuals, small businesses and communities, and has delayed the cleanup of toxic waste sites. States, local governments, cleanup engineers, dozens of experts, and Republicans and Democrats alike agree on the need for substantial reform.”\textsuperscript{40} Hearings on legislative reform proposals abounded. Indeed, over the course of the last seven years, the House Commerce Committee conducted 27 hearings with 275 witnesses appearing before its Hazardous Materials Subcommittee.\textsuperscript{41} With these hearings, the 106th Congress produced major legislative proposals to reform the entire Superfund program as well as measures targeted specifically to small business liability relief.

The 1st Session of the 106th Congress produced comprehensive Superfund reform proposals from the majority on each of the major committees with jurisdiction: House Commerce (H.R. 2580), House Transportation and Infrastructure (H.R. 1300), and Senate Environment and Public Works (S. 1537).\textsuperscript{42} The comprehensive reform proposals addressed issues such as brownfields revitalization, community participation, liability reform, remedy selection, and other general provisions.\textsuperscript{43} Each also contained provisions specifically designed to provide liability relief to small businesses which met the legislation’s criteria.\textsuperscript{44} All three proposals, as well as nearly every proposed piece of Superfund liability relief legislation, limited liability relief to generators or transporters of waste to a site and the proposed legislation did not offer relief for current or former site owners.\textsuperscript{45} Each of the leading comprehensive reform proposals set the size of an eligible small business at no more than 75 employees, and limited annual revenues to no more than $5 million.\textsuperscript{46} Additionally, each provided additional requirements, including no relief for those who contributed to the harm through gross negligence or intentional misconduct;\textsuperscript{47} failed to comply with EPA information requests;\textsuperscript{48} impeded response actions at the site;\textsuperscript{49} or generated waste which contributed significantly to cleanup costs.\textsuperscript{50}

Reform proposals sponsored by minority members differed in a fundamental respect from majority proposals.\textsuperscript{51} While both sought to limit liability only to those who contributed small amounts of waste, the minority placed the conditions on the type of waste, not the size of the business or the cost to cleanup whatever waste contributed. Each minority bill restricted small business liability relief only to those who contributed municipal waste to a site.\textsuperscript{52} Waste is considered to be municipal solid waste if it is essentially the same as waste normally generated by a household or is collected and disposed of with other municipal waste or sewage sludge.\textsuperscript{53} Minority proposals did not set business revenue or personnel ceilings to screen out large companies or establish exclusions for those whose waste contributed significantly to cleanup costs.\textsuperscript{54} The only relief for those who may have contributed some type of hazardous substance applied
The Sierra Club asserted majority reform proposals “contained a raft of inappropriate and overly broad liability carveouts, each of which undercuts the polluter-pays principle and shifts more cleanup costs to the general public.”

EPA opposed the majority-sponsored Superfund reform proposals. Their substantive reasons for opposition included fears that the small business liability exemptions would increase litigation and transaction costs, remove accountability for those who contributed large amounts of toxic waste to a site, and shift costs of cleanup from polluters to the taxpayers. EPA interpreted majority proposals as moving from the defendant to the government or third parties the burden of proof on the level of waste contributed to site. EPA feared that it would incur increased costs in attempting to prove that a small business’ wastes actually contributed significantly to the cost of cleanup. Indeed, EPA feared that given the “toxic soup” of wastes at most sites, it would be difficult if not impossible for EPA to make this determination. However, inability to divide the harm is the main, if not unassailable, handicap for small business. Opposition to this provision by EPA would represent a fundamental inability to agree to relief for small business.

Other stakeholders opposed the majority sponsored legislation as well. The Department of Justice shared EPA’s concerns on the shifted burden of proof. DOJ also believed that the bills would grant exemptions to a large group of small businesses, which could include businesses that contributed large amounts of highly toxic wastes. States also feared the liability exemptions of majority proposals, arguing that unfunded cleanup costs of exempt small businesses would be borne by the federal Superfund and the states through their 10% cost share obligations.

The Sierra Club asserted majority reform proposals “contained a raft of inappropriate and overly broad liability carveouts, each of which undercuts the polluter-pays principle and shifts more cleanup costs to the general public.” The Sierra Club noted that legislation included exemptions for small businesses with up to 75 full-time employees and $3 million in gross revenues even though almost 90% of the nation’s businesses have fewer than 20 employees. However, environmentalists were not united on this front. Representatives from the Environmental Defense Fund felt that “it is inefficient to sue a bunch of companies that will clearly be unable to make any significant contribution to cleanup costs; doing so merely increases transaction costs for all concerned without providing funds for actual cleanup, and leads to delays in decision making.”

Members of Congress in the majority expressed frustration at the lack of EPA support for their legislative Superfund proposals after the EPA administrator’s previous support for relief. Members noted that the bills sponsored by the majority had actually received bipartisan support. Near the end of the 1st Session of the 106th Congress, H.R. 1300 had 60 Democrat and 60 Republican cosponsors and had been reported out of the Transportation and Infrastructure Committee by a vote of 69-2. Perhaps frustration ruled when the chair of a subcommittee hearing EPA testimony said, “I have heard your testimony and there is simply no evidence in my mind that any of the Administration’s actions in the 106th Congress indicates that the Administration is getting the message. Sixty Democrats from the House are sending you a message. They no longer want to pursue this strategy where the Administration can only say nice things about purely Democrat bills and otherwise oppose meaningful bipartisan efforts.”

Without sufficient support, none of the legislative proposals of the 1st Session of the 106th Congress were considered by the full House or Senate.

Legislative Proposals from the 2nd Session of the 106th Congress

Proponents of small business Superfund liability relief tried a more focused approach in the 2nd Session of the 106th Congress by abandoning efforts at comprehensive Superfund reform and focusing solely upon targeted relief for small business. In the Senate, Sen. Bond introduced S. 2634. As described previously, the proposal would have provided liability relief to small business waste generators or transporters with less than 100 employees. The liability relief would not have applied to those whose waste the government or a third party demonstrated contributed significantly to the cost of site cleanup. The legislation also contained a provision to prohibit relief for costs or damages as a result of gross negligence or intentional misconduct. The proposal purposely did not, however, establish limitations on the revenue size of relief recipients or the amount of waste contributed to the site. Drafted as an initial negotiating position, the measure was referred to the Senate Committee on Environment and Public Works to await House passage of its version.

In the House, Rep. Oxley (R-OH) introduced H.R. 5175, the Small Business Liability Relief Act. That measure limited liability relief to generators or transporters of waste with no more than 100 employees and annual revenues of $3 million. The bill also prohibited liability relief for those whose waste significantly contributed to the cost of site cleanup, failed to comply with information requests, or who impeded response activities. The bill also provided liability relief for small businesses who contributed municipal solid waste and expedited settlement procedures for those with a limited ability to pay cleanup costs. Most importantly, the legislation responded to critical concerns with previous reform attempts by imposing a ceiling limiting the liability relief to those who contributed less than 110 liquid gallons or 200 pounds of hazardous waste.
H.R. 5175 seemed to follow the suggestions of environmentalists who “agree that many small businesses and minimal waste contributors have been unfairly subjected to harassment under the CERCLA statute . . . . We suggest an exemption for parties who only contributed household-type wastes, liability waivers for those who sent tiny amounts of hazardous materials, and aggressive settlements with parties who sent small amounts of hazardous substances.”

On September 14, 1999, Rep. Oxley introduced his legislation “in order to provide long overdue liability relief to individuals, families, and small business owners unfairly trapped in the litigation nightmare of the Superfund program for over two decades.”

In addressing the issue of the shifted burden of proof contained in the bill, Oxley said, “I do not believe that small businesses should be presumed guilty and be forced to hire and pay for attorneys to prove their innocence. This is fundamentally wrong and unfair. In America, you are innocent until proven guilty. The government or larger businesses should have the burden of providing evidence—solid evidence—that small businesses are liable before demanding cash settlements.”

On September 26, 2000, nearly two weeks after H.R. 5175 was referred to both the House Commerce Committee and the House Transportation and Infrastructure Committee, Oxley moved to bring his bill to the floor for a vote under a suspension of House rules. With very few days anticipated remaining in the legislative session, he called for the measure to be allowed to travel expeditiously to the floor for consideration without making an additional stop at the Rules Committee. However, under this procedure the measure required a two-thirds majority for passage.

In the vote on the floor, the bill failed to achieve that majority at 253 to 161.

Opposition to the measure centered around the limited discussion afforded the bill on the floor, opposition by certain environmental groups, and opposition by EPA. Majority members discounted minority allegations of a lack of debate, noting the “46 hearings [in the House] on Superfund with testimony from 416 witnesses.” Instead, majority members held EPA largely to blame for the defeat. Supporters claimed that EPA decided not to support the bill, even after [EPA] played a key role in drafting the legislation and having its concerns addressed in the language you promised to deliver on behalf of EPA.

However, EPA failed to meet the agreed upon deadline. EPA had failed to submit draft legislation as of an October 19, 2000 letter from the House Committees on Commerce and Transportation and Infrastructure to EPA’s chief Superfund official. In a further expression of Congressional frustration over EPA’s failure to provide a proposal it would support, the letter said, “The Administration’s broken promises are evident to the Committee and certainly will not be forgotten by the innocent small business owners that have been misled. The Administration has played politics with Superfund reform for years now, and your most recent promise is now weeks overdue. Where is the language you promised to deliver on behalf of EPA?”

This letter produced a legislative proposal from EPA on October 24, 2000. While EPA asserted the proposal “represented[ed] a response from EPA,” the draft did not have the agreement of other federal agencies or the required endorsement from the White House Office of Management and Budget. The proposal also placed the burden of proof squarely on PRPs, making the practical effect of the draft inconsequential to small businesses facing impossible litigation costs and evidentiary hurdles. Procedurally, the proposal came too late in the session for Congress to act. “EPA ‘ran out the clock’,” according to a Congressional source. “It does no good to receive this language until two days before the end of Congress.” Congress took no further action on H.R. 5175 or any other small business Superfund liability relief proposals in the 106th Congress.

Like the 1st Session of the 106th Congress, the 2nd Session failed to produce small business Superfund liability relief. A change of strategy from comprehensive reform proposals to targeted relief aimed at areas of relative consensus failed. In the end, the administration remained opposed to legislation which would

**Proponents of reform remained convinced that such a burden, including its resulting crippling transaction costs for the small business, were the very reason for reform.**
Epilogue

The election of President George W. Bush and the retention of Congress by the Republicans brightened, although did not assure, prospects for small business Superfund liability relief. Sen. Bond, at the confirmation hearing for incoming EPA Administrator Christine Todd Whitman, indicated that he will continue to push for Superfund liability relief for small business.93 A description of the internal disagreements within the Republican caucus over Superfund reform strategy would require another article. However, the largest roadblock to reform, an opposing administration, is now removed and some form of Superfund liability relief for small business is now likely. 94

Endnotes
3 See CERCLA §107, 42 U.S.C. §9607 (2000). Liability is also imposed on persons who owned or operated the facility either at the time hazardous substances were disposed there, or at the time the cleanup costs were incurred, and on persons who transported hazardous substances to the site, if they selected the site for disposal. Id.
6 Id.
13 Id.
22 Id. at 42 (statement of Administrator Carol Browner, U.S. Envtl. Protection Agency).

52 H.R. 2940 §2(a); H.R. 2956 §901(a); S. 1105 §201.

53 See, e.g., S. 1105 §801 (“Examples of municipal solid waste include: food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste and household waste . . . [It] does not include combustion ash generated by resource recovery facilities or municipal incinerators or waste material from manufacturing or processing (including pollution control) operations that is not essentially the same as waste normally generated by households”).

54 H.R. 2940; H.R. 2956; S. 1105.

55 H.R. 2956 §901(a) (55 liquid gallons or 200 pounds of solid material); S. 1105 §201 (110 liquid gallons or 200 pounds of solid material).

56 Commerce Comm. Hearing (1999), supra note 21, at 159 (statement of Tim Fields).

57 Id. at 167 (statement of Steve Herman).

58 Id.

59 Id. at 155 (statement of Jon P. Jennings, Acting Assistant Attorney General, U.S. Dept. of Justice).

60 Id. at 278 (statement of Winston H. Hickox, Secretary, California Dept. of Envtl. Protection).

61 Id. at 219 (statement of Jane Williams, Chair of the Waste Committee, Sierra Club).

62 Id.


65 Id.

66 Id.

67 Id. at 169.

68 S. 2634, §3.


70 Id. §2.

71 Id.

72 Id.

73 Id.


76 Id.


83 Id.

84 Hearing on The Role of the EPA Ombudsman in Addressing Concerns of Local Communities, House Comm. on Commerce and House Comm. on Transportation and Infrastructure, 106th Cong., 2d Sess. (2000).

85 Preston, at 1.

86 Id.


88 Id.


90 Id.


92 Inside EPA, supra note 90, at 3.