TESTIMONY BY SCOTT SLESINGER

LEGISLATIVE DIRECTOR OF

THE NATURAL RESOURCES DEFENSE COUNCIL

FOR THE HEARING ENTITLED “MODERNIZING THE BUSINESS OF ENVIRONMENTAL REGULATION AND PROTECTION”

BEFORE THE COMMITTEE ON ENERGY AND COMMERCE

THE SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

JULY 23, 2014

Mr. Chairman and members of the Committee, Thank you for the opportunity to testify today. My name is Scott Slesinger, and I am the Legislative Director for the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has over 1.4 million members and online activists nationwide, served by more than 350 lawyers, scientists and other professionals from offices in New York, Washington, Los Angeles, San Francisco, Chicago, and Beijing.

Before becoming the legislative director of NRDC, I spent about a decade promoting the e-manifest concept as the lobbyist for the hazardous waste disposal industry. My remarks reflect that experience as well as my years before that as a regulator at EPA and my current perspective at NRDC.

Moving to electronic manifests

One of the largest paperwork burdens of the federal government was, and is, the tracking of hazardous waste under the Resource Conservation and Recovery Act (RCRA). RCRA tracks waste from cradle to grave, often with six or more paper copies. The striking lesson trying to move towards electronic manifest was how new technologies gradually put to rest concerns over security and costs.

There was plenty of resistance at the outset. The Justice Department had serious concerns about anything but a handwritten signature, based on hundreds of years of American and common law jurisprudence. This concern about new-fangled technology in some ways echoed a mortgage

bankers' magazine article from 1947 that talked about signature problems spawned by a new technological invention that they said was made for counterfeiters, the ball point pen.

Another issue holding up the manifest was cost to industry. When we started the campaign, companies were concerned about the costs of purchasing computers. Declining prices made this concern vanish, as all those companies ended up having to buy computers for other reasons anyway. When I left the industry in 2009, the major technology problem was how to allow waste haulers to confirm delivery by use of a landline; the idea that virtually everyone would have smartphones was not contemplated.

Another problem was how and who should pay for the reduction of paperwork burden on companies. This was finally compromised and the bill authorizing electronic manifests passed this committee and was signed into law on October 5, 2012.

Lessons Learned from Manifests

The state-federal partnership for E-Enterprise has and will learn lessons from the e-manifest history, not only going forward during its implementation but also from the legislative history. A key lesson learned through this process is that technology keeps changing. The goal of finding a platform and using it over and over again, which is contemplated in the E-Enterprise Principles, must be done with care and eyes wide-open – tomorrow's technology may make today's cloud tomorrow's VCR.

The other hurdle to get e-manifest authorized was how hard it was to pass even minor changes to basic environmental laws. Environmental statutes and the implementation of these laws have been under significant attack for years. Requiring changes to move forward electronic commerce may require minor changes. However, such a legislative process allows for mischief that many

would like to avoid. Many more of the advances in electronic reporting will not require legislative changes but regulatory amendments. However, regulatory process through executive orders and required impact statements is so convoluted it often takes the agency more than six years to do a simple regulatory change; enough time to make a rule dealing with new technologies obsolete before it is even final. Proposals to expand these processes for guidance documents and adding on top of that something like the REINS Act, places epic hostile artificial barriers in the path of EPA modernization.

The Need for E-Enterprise to improve the environment

Some of the examples of new technologies under E-Enterprise, NRDC heartily endorse. Many states have taken the lead that others will surely copy. Some of the new technologies that some states have used making inspections easier, cheaper and more efficient have had great environmental benefits. Some states, such as Massachusetts, have been able to map its wetlands lost better through the use of overflights. Expanding these technologies should be broadly supported. Citizens using new technology for measuring pollution levels are also welcomed.

Moving towards E-Enterprise, to make the interaction with EPA and the public and industry better, is an admirable goal. Making it easier for companies to find out what the requirements are and making it easy to fill out forms and permit application is a worthy endeavor. Letting companies easily go online to find out the status of their applications is helpful.

But these benefits come at a price to develop while this Congress continues to eviscerate the EPA budget. The "E-Enterprise Vision states that "improv[ing] environmental outcomes" and "dramatically enhance[ing]services to the regulated community and the public" are equal

principles. We believe the number one goal of E-enterprise should and must be striving for better environmental outcomes. Reducing paperwork, as with the manifest, is a nice outcome. And the fact that the major beneficiaries of this rule will be the users and the users will eventually be paying for establishing and operating the e-manifest system, not the taxpayers, is proper. But EPA should not be investing its few dollars – now at a long-time low -- for anything that does not advance EPA mission of improving the environment and public health. Improving the interactive experience of the regulators and even the public must come second to EPA's core responsibility of improving the environment. We urge that the principles reflected this point.

The public and public health and environmental groups support greater transparency, better monitoring, real-time monitoring, electronic reporting, greater use of the Internet, apps etc. We are impressed with some of the technologies; many tested by states that have increased the efficiency and number of inspections. But we should all acknowledge candidly that the greatest resistance to many of these things, such as citizen reporting, have come from regulated industries and trade associations. It has been our experience that the lowest common denominator among these groups does not want local communities and the public to have better and timelier access to pollution data, especially not in real time over the Internet.

E-Enterprise and Enforcement

The movement towards E-Enterprise in enforcement is positive because it could lead to more and cheaper inspections and enforcement. However, because of the budget cuts E-Enterprise is helpful but insufficient. Cuts in environmental enforcement inevitably lead to less protective outcomes and unfair competitive disadvantage to responsible companies who play by the rules. With unprecedented cuts in EPA's budget, EPA recently announced plans to significantly scale

back traditional enforcement of environmental law but couched it with a positive spin of using new technologies. In its strategic plan for fiscal years 2014-2018, the Agency expects to conduct about 25% fewer compliance inspections and initiate approximately 20% fewer civil enforcement actions, as compared to recent years. Specifically, EPA is reducing its five-year cumulative inspection and evaluation goal from 105,000 inspections to 79,000 inspections. The agency expects to initiate fewer civil judicial and administrative enforcement cases, setting its initiation goal at 14,000 compared to an earlier 19,500. EPA plans to aim its enforcement at the greatest threats, but how can they tell where these threats are with its acknowledged reduced capacity?

EPA states that this so-called "next generation compliance"—relying more on industry self-reporting, advanced monitoring, and notifications by communities—will not diminish compliance with laws or successful enforcement against violations. These are untested, and we think based on the state of available information, suspect claims. We currently lack an adequate network of advanced monitoring allowing real-time reporting. Concentrating on the largest sources ignores the real experience that many times, such as the recent spill in West Virginia or the kepone spill that closed the James River that very small companies, can cause substantial harm. Recent amendments[1] and proposals[2] that essentially take low-profit margin recyclers of

[1] One appropriation rider in the House bill exempts hazardous waste recycling operations under RCRA. This special interest prohibition would block the EPA proposed rule applicable to scrap metal and shredded circuit board recyclers, exempting them from requirements to (1) formally notify EPA of activities (thereby giving the state, affected communities and EPA information regarding location, quantities and nature of materials being handled); (2) demonstrate recycling is "legitimate" (unlike sham recycling which has led to Superfund sites); (3) comply with containment requirements to prevent the release of hazardous materials; and (4) comply with requirements regarding recordkeeping so that waste is not speculatively accumulated for extended periods of time, thereby increasing the risk of releases and abandonment. EPA has identified more than 200 cases of damage to human health or the environment from hazardous waste recycling, and 96% were at facilities operating under RCRA exemptions like the one proposed in this rider.

[2] EPA's Definition of Solid Waste rule, (proposed in 2011 at 76 Fed. Reg, 44,094) which details the reach of RCRA, proposes to exempt toxic waste recyclers under a false premise that their contractors are responsible for any environmental harm these subcontractors cause. These companies ship hazardous waste (e.g. solvents, organic chemicals, steel mill waste) and return it to generators in a usable form. They are essentially off-site reclaimers, but EPA proposes to exempt them from permitting and financial assurance under the false notion they are exempted as "under the control of the generators." There are at least two sites

toxic hazardous materials off the grid –companies under tremendous pressure to cut corners--worry the environmental community and these companies local communities--at least in those communities that even know what these companies are doing.

Conclusion

The benefit of using our digital technology to make regulators and enforcement personnel more efficient is something we strongly support. However, as the environmental community continues to defend environmental safeguards from a seemingly endless legislative onslaught, the movement to E-Enterprise will be a low priority for us. I think everyone would agree that future input from the environmental community and particularly environmental justice communities will be lacking without substantial outreach by the states and EPA. And moving forward without these key customers will adversely affect the final product. I believe EPA and state assistance to those communities to participate in the process would be a useful endeavor.

---

involving tolling contractors that are already Superfund sites, including one is currently subject to a Unilateral Administrative Order under RCRA for cleanup of more than a thousand containers of hazardous waste and hazardous waste releases (Docket No. RCRA-05-2012-0014, *available at* http://yosemite.epa.gov/oa/rhc/epaadmin.nsf/Filings/4A01728D22E9D8DA85257A87001B852E/$File/RCRA-05-2012-0014%20UAO%209-27-2012.PDF.