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**before the
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform**

**and
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business**

U.S. House of Representatives

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Good afternoon. Thank you for the opportunity to testify about the Environmental Protection Agency's (EPA's) implementation of the Small Business Paperwork Relief Act of 2002 (P.L. 107-198). I appreciate having this opportunity to appear here today to discuss this important issue.

EPA is responsible for implementing and enforcing seven major environmental statutes: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Superfund law, which includes the Emergency Planning and Community Right-to-Know Act. Over the last three decades, these laws have dramatically improved human health and the environment in this country. Citizens are able to drink, swim, and fish in thousands of miles of formerly contaminated rivers and streams. Industrial waste areas have been cleaned and returned to productive use. Enforcement of the environmental laws by both the federal government and states has been critical to these achievements.

The environmental laws seek to protect human health and the environment in two basic ways: by bringing pollution discharges to within legal parameters and by putting preventative measures into place. Requirements which on their face may seem like only so much paperwork are actually cornerstones to protecting our environment. For instance, the strong preventative requirements contained in the Solid Waste Disposal Act, such as those which require tracking hazardous waste “from cradle to grave” have largely eliminated the creation of new Superfund sites. Violation of the environmental laws can range in scale from the contamination of the drinking water source for an entire town to the failure to file an oil spill prevention plan. Resolution of the violations often includes remedying the environmental harm caused, as well as the payment of a penalty.

EPA Enforcement Actions and Penalties in Fiscal Year 2003

While compliance with environmental statutes will always require reporting on the part of the regulated community, EPA always seeks to balance this burden with the need to protect human health and the environment. The Small Business Paperwork Relief Act (SBPRA) requires that federal agencies publish an annual report in 2003 and 2004. EPA’s recent Report to Congress Under the Small Business Paperwork Relief Act of 2002: Enforcement Actions and Penalties in Fiscal Year 2003 provides information Congress has requested in three specific areas: 1) the total number of enforcement actions taken in a fiscal year in which a civil penalty is “assessed,” both in total and with respect to small entities; 2) the number of actions in which the penalty in each of these categories is reduced or waived; and 3) the total monetary amount of the reduction or waiver for each category.

The data included in EPA’s Report reflects that out of a total of 1,902 civil enforcement settlements for all regulated entities, 202 civil actions were taken against small businesses in

which a penalty was sought, or just 11%. A total of \$7,569,255 in civil penalties were proposed in the 202 civil actions. The penalty was reduced or waived in 89 of the actions, resulting in a total penalty reduction of more than \$4.8 million for small business. In addition to the \$4.8 million, the Agency reduced or waived civil penalties for small businesses by \$457,721 in cases where small businesses made a good faith effort to comply by discovering violations as part of government-sponsored compliance assistance program or a voluntary audit. For fiscal year 2003, EPA's compliance assurance and enforcement program resulted in an estimated 600 million pounds in pollutants reduced, treated, or properly managed. I have provided the full report for review by the Subcommittee following this testimony.

EPA Actions to Assist Small Business

In April 2003, the Agency officially announced its "smart enforcement" approach to ensuring compliance with the environmental laws, to place greater emphasis on providing compliance assistance to regulated entities and to help prevent violations of the environmental laws. For example, we established thirteen sector-based compliance assistance centers, published information alerts regarding compliance solutions and reached more than 700,000 entities with other compliance assistance efforts. Small businesses are a specifically targeted audience for these assistance services.

The great majority of EPA's enforcement actions are not taken against small businesses. Where the actions do concern small businesses, there are numerous benefits and protections built into the enforcement process. EPA's Small Business Compliance Policy provides guidelines for the reduction or waiver of civil penalties to be paid by small businesses for environmental violations whenever a small business makes a good faith effort to comply with environmental requirements by discovering violations as part of a government-sponsored compliance assistance

program or a voluntary audit. (EPA's Report identifies nearly \$458,000 in penalties that were waived or reduced for small businesses under this or a similar self-disclosure policy.)

In addition, EPA recognizes and accommodates the frequently limited financial resources of small businesses in its various statute-specific policies for determining the appropriate penalty in settlement of an enforcement action. Virtually all of these penalty policies have provisions which respond to the financial concerns of small businesses, such as consideration of the size of the business in terms of its ability to pay a penalty. The Agency does not seek penalties in settlements which, combined with the cost of coming into compliance and remedying the harm caused, would be beyond the financial capacity of the violator to pay. EPA's calculation of the economic benefit a violator gained by avoiding the costs of compliance makes two assumptions that may result in significant savings for small businesses. As explained in our Report, EPA assumes that all businesses have the same tax rate and access to capital.

I would also like to highlight that, with one minor exception, all environmental statutes call for penalties of "up to" \$27,500 per day per violation. This means that, unlike many other laws and regulations, there is no automatic penalty amount "assessed" for a particular violation. Penalties are either ordered by a court or reached in settlement, based on factors unique to each situation, such as the violator's ability to pay, and the costs of coming into compliance. As explained in more detail in our Report, when EPA sits down to negotiate a settlement, we work with the violator to determine elements of the agreement for example, which type of control equipment should be installed. The cost of these elements may significantly impact a violator's ability to pay a penalty. As a practical matter, EPA often delays determination of a target penalty until these pieces of information are in place.

There are only limited circumstances in which EPA's enforcement program may make predetermined penalty assessments. As discussed in the Report, the Agency has developed some

expedited settlement programs that provide some discounted, nonnegotiable penalties which are predetermined based upon the type of violation. All violators that meet the program-specific eligibility criteria receive the same discounted penalty, regardless of the size of the violator. As a rule, these programs address only minor violations.

Reductions in Reporting and Recordkeeping Requirements for Small Business

In June 2003, EPA issued the final Small Business Strategy aimed at: integrating an awareness of small business needs and issues into all core functions, paying special attention to the potential impact that our regulatory activities may have on small businesses; continuing to address improvements in our collection and delivery of information and assistance in a way that makes sense for small businesses and, in conjunction with our co-regulators, improving the coordination of program activities that may potentially impact small businesses.

The Strategy was developed by the Small Business Workgroup, which includes representation from all EPA program offices and several regions, based on extensive feedback received from all internal and external stakeholders, including trade associations and actual small business owners. Currently, the Small Business Workgroup is in the final stages of developing the Strategy Implementation Plan, which is expected to be finalized in late Spring of this year.

Within the context of EPA's overall Small Business strategy, EPA is concentrating its efforts on the information collection burden that many small businesses face. EPA's Small Business Ombudsman, who is also the Director of EPA's Small Business Division, has been designated as EPA's point of contact for SBPRA. The Small Business Division is now organizing an Agency-wide workgroup that will find ways to further reduce the information collection burden on small businesses and identify quantifiable measures for reporting these reductions.

While strategy and coordination are important and necessary, real action is what counts. The Agency has undertaken specific initiatives that assist small businesses with various regulatory requirements, including reporting and recordkeeping.

Toxics Release Inventory (TRI)

The Toxics Release Inventory (TRI) Program, is actively engaged with stakeholders on a number of burden reduction options, including:

- ▶ establishing higher reporting thresholds for small businesses;
- ▶ modifying the eligibility requirements of the “Form A Certification Statement,” which would expand the number of facilities that can skip reporting by raising the minimum quantity reportable and/or raising the threshold a facility can manufacture, process, or use before reporting is required; and
- ▶ creating a new reporting form allowing facilities meeting certain criteria to certify “no significant change” in reporting in the current year as measured against a designated baseline year rather than completing a full report that is essentially the same as one submitted the previous year.

Our goal is to reduce burden associated with TRI reporting while maintaining the practical utility of the data. At the conclusion of the public comment period, we will begin our internal decision-making process on which of these options, or other options suggested by comments, will provide the most opportunity to meet our goal.

Other areas such as the TRI lead rule will be addressed through different initiatives. There is currently an Agency-wide initiative focused on the scientific approach to assessing the hazards and risks associated with metals. A Metals Action Plan has been completed, and we are now developing a framework for evaluating metals, with stakeholder and Science Advisory

Board involvement at each phase. When finalized, we will apply them to the TRI program in an appropriate way.

Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative

Another area of concrete action focuses on information collection burden associated with the Resource Conservation and Recovery Act (RCRA). This burden reduction initiative is an EPA effort to significantly reduce or eliminate recordkeeping and reporting burden associated with the nation's hazardous waste program. By only asking for the information actually needed to run the nation's hazardous waste program, we are ensuring that environmental expenditures are devoted to environmental protection rather than generating unnecessary paperwork. With the final rulemaking scheduled to be published late this Spring, we estimate that we will save States and the regulated community \$120 million in annual compliance costs associated with the federal hazardous waste program. As part of these cost savings, we estimated the elimination of 929,000 person hours spent annually complying with our hazardous waste regulations.

While the rule will have benefits for small businesses across the board, there is one particular provision that will provide relief specifically for small business. We will be changing the self-inspection frequencies from daily to weekly for hazardous waste tanks at small quantity generator facilities, many of which are small businesses. The burden hour savings would be tremendous, ranging from 200,000-600,000 burden hours a year (depending on the percentage of small quantity generator facilities assumed to have tanks). These hours would be in addition to the 929,000 hours we are already estimating.

EPA's enforcement actions protect human health and the environment by requiring violators to correct their violations promptly and to remedy, as appropriate, the harm caused by the violations. Through all of our activities, we recognize small business as an important partner

in our efforts to maximize environmental and public health results.

Again, thank you for this opportunity to testify. I would be happy to answer any questions you may have.