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## **SUPERFUND REAUTHORIZATION AND REFORM LEGISLATION**

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**(105-44)**

HEARING BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, HOUSE OF REPRESENTATIVES, ONE HUNDRED FIFTH CONGRESS, FIRST SESSION

OCTOBER 29, 1997

Mr. **BOEHLERT**. Mr. Weichsel, you may proceed.

Mr. **WEICHSEL** [John Weichsel, Town Manager, City of Southington, Connecticut]. Mr. Chairman, I'd like to thank you—and of course Nancy—and other Members of the Subcommittee, for the opportunity to testify on Superfund. Having appeared before you subcommittee in the past, and hearing your previous public statements on the municipal owner/operated problem, I must admit I'm somewhat surprised, and a little disappointed, that H.R. 2727 does not provide adequate relief for the municipal co-disposal situation.

For anyone to characterize this as a carve-out would not be accurate. Our members are public agencies who provide a public service in accordance with the law. While of course we prefer comprehensive liability reform for all parties—both private and public—we would respectfully request that you at least reinsert the co-disposal exemption that has been contained in your previous Superfund discussions, and I believe in previous drafts.

Moreover, it would be simply inequitable to relieve generators and transporters of municipal waste from liability without providing similar relief to the owners and operators who are willing to provide a public service in taking the waste. Unfortunately, your legislation does not solve our liability problem.

For some reason the concept of eliminating retroactive liability is not politically correct in this city, so we have to deal with what is acceptable, and we're prepared to do it, and your bill goes a long way to doing that, a very long way. And I want to personally

commend you and your colleagues, who I know are working on a bipartisan basis. And there is a few little steps that we have to go forward with.

Congress should guarantee every citizen who lives near a Superfund site, a law that will remove the risk from the site in an expeditious manner. Seventeen years of clean-up delays, inefficiencies, and enormous transaction costs resulting from Superfund's retroactive strict joint and several liabilities system should be enough to convince everyone of the need for comprehensive reform.

The present site-by-site fundraising system is at the heart of the problems with Superfund, and any legislative proposal that fails to address this key element will allow the blame game to continue for people who obey the law, as Congresswoman Johnson just indicated, at the time of their actions.

For example, actions undertaken by a local government, such as our own, such as operating a dump/landfill, may cost the government, and in turn its local taxpayers, millions of dollars, even though it was in the public interest for the government to provide that waste disposal facility. People in our situation did not make money as the administrator said—millions of dollars. We didn't make any money; we spent money to maintain it. We never charged—and my colleagues, Hutchinson, Kansas, Hastings, Nebraska, and throughout the country, they ran open dumps, as you know going back historically, and then landfills, and I doubt one in a thousand charged. So we were not, "making money" as the administrator seems to think owner operators were doing. Munis must be viewed differently.

I would like to briefly share with you the experiences that we in Southington have faced with Superfund. We have a population of 38,000. We operated a traditional open burning, and then later a state-monitor sanitary landfill on a 10 acre site, called Old Southington Landfill. It was just an orphan site for about 30 years. In 1949 our ancestors took it over, and it was closed in 1967; closed in 1967. That was 13 years before Superfund was passed.

In the later years the State of Connecticut Health Department made quarterly inspections, and indicated everything was in order. As the town dump, the site received all residential, commercial, and industrial waste products. Obviously in those days there was nobody thinking of splitting up that type of waste. It was a dump, and everybody brought their refuse there, including Pratt-Whitney, as Nancy has mentioned, and little people.

By today's standard, no municipality accepts some of the industrial waste Southington did, however, the town did a public service that accepted waste products from local employers and the public at large at no charge, while complying with all applicable laws. The dump/landfill closed 13 years before there was a Superfund law, and Southington is now being presented with grandiose clean-up schemes that may ultimately cost in the range of \$35 to 95 million; \$35 to 95 million. I know in this building that's probably not a

great deal of money, but where I work, that really is a lot of money. You had a Senator who made a comment about the size of money many years ago.

Consultants hired by Southington have indicated that it would be impossible to clean up the water below the old dump to drinking water standards for centuries. In addition, the area has been classified GB, so that it could not be used for drinking water in any event. But that's not only Superfund being applied retroactively, but it may cost tens of millions of dollars, and will not achieve one of its main alleged purposes, making the groundwater safe for human consumption.

Future land use has not been considered, and I know in your bill I'm delighted to see you're talking about that, and that's excellent, that's excellent. But as we stand today, the PRPs have indicated that the 10 acres involved will remain vacant, forever wild. Nonetheless, the EPA claims that the land could be rezoned residential; someone could build a house on this Superfund site. Yeah, right. After millions of dollars on pollution, someone would build a house there; sure. And a private well, of all things, could be illegally drilled—never mind the health officials—drilled instead of legally connecting to the water system; the public water system. The town protestations that this would never be allowed are simply ignored. In other words, we have terrible unreality in the remedy selection. And again, in your bill, Mr. Chairman, you have good indication that the EPA will be directed to be more flexible. Now we're hearing from the administrator that she says they are. So far we have not seen that, but your bill would go a long way to doing that.

In addition, I must say Superfund has spawned third party lawsuits. The PRPs are being sued by on-site homeowners, off-site neighbors for diminution of value. All of this happens because since 1987—10 years—that's why Nancy thinks I'm an expert. I've been at this 10 years. When Old Southington landfill was designated as a Superfund site, no clean up has occurred. Instead millions have been spent on consultants and lawyers. Southington followed all applicable laws and rules. It is inconsistent with the polluter-pay principle to call a town like Southington a polluter.

Thank you very much for your courtesy. I know I'm a little bit over.