Testimony of Richard D. Otis,
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I. Introduction

Mr. Chairman and Members of the Subcommittee, good morning and thank you for giving me the opportunity to appear before you today. My name is Rick Otis, I am the Deputy Associate Administrator of the Office of Policy, Economics, and Innovation (OPEI) at the EPA. Located in the Office of the Administrator, OPEI is the primary policy arm of EPA and we work with all other parts of the Agency and federal government on regulatory policy, the development of new innovative approaches to environmental protection, and economic analyses. In recent years, OPEI has been specifically charged by the Administrator to improve the quality of the science, policy, and economics that underlie EPA's regulations, including the assessment of small business impacts. These vital functions give OPEI a central focus in the development of regulatory policy and innovation. As a senior managing official of OPEI, I have a personal interest in ensuring that the commitments to regulatory improvement made by the Agency are successfully fulfilled.

My primary purpose for appearing this morning is to discuss the Environmental Protection Agency's regulatory initiatives included in the Office of Management and Budgets (OMB) 2005 report entitled Regulatory Reform of the United States Manufacturing Sector. I also want to take this opportunity to touch on two other important and closely related topics. March of this

year marked the 10th anniversary of the passage of the Small Business Regulatory Enforcement Fairness Act (SBREFA), so I will take a few moments to describe some of EPA's efforts to address small business concerns in the context of the main subject of this hearing. And lastly, I will outline a few key innovative actions we are taking to move EPA beyond simply producing better regulatory actions, but take us towards new ways of achieving environmental protection.

When nominating Administrator Steve Johnson, President Bush challenged him and the Agency to accelerate our nation's environmental progress while maintaining our economic competitiveness. This is a clear recognition by the President of two very important points. First, it recognizes that as a nation we have a core, underlying set of values that lead us to provide our children with a healthier, safer world. Second, it recognizes that we face significant and growing global economic competition. At EPA, we are critically aware of the role we play in both these issues and join the President in ensuring our children inherit a safer, healthier, more economically vibrant future.

The manufacturing sector is a cornerstone of our nation's economic vitality and provides American's with excellent products, job opportunities, and a better quality of life. However, the challenges confronting American manufacturers, particularly those in the small business sector, are urgent. U.S. manufacturers compete with businesses from both developed and developing countries in an increasingly global economy. This global economic challenge influences American businesses, and makes it imperative that regulatory agencies, such as EPA, seek regulatory options that achieve environmental results and economic success.

Small businesses represent 99.7 percent of all employer firms, employ half of all private sector employees, pay 45 percent of the total U.S. payroll, and have generated 60 to 80 percent of new

jobs annually over the last decade.[1] To keep this part of our economy vibrant, and growing, we must seek cost-effective, innovative, and practical environmental solutions. As such, our work on innovative approaches to achieve environmental results often focuses on small business. We are pursuing innovative strategies that can lead us to a more results-oriented system of environmental regulation and that harness the growing needs in environmental stewardship.

Just over a year ago, Ms. Stephanie Daigle, Acting Associate Administrator of EPA's Office of Policy, Economics and Innovation testified before this subcommittee on our commitment for regulatory reform of the manufacturing sector, and the vitality of EPA's small business programs. I believe that the subcommittee will be pleased to hear that the Agency has made significant progress in meeting our commitments and continues to be a leader in federal small business programs.

II. Manufacturing Initiative

In 2004, in a report entitled *Manufacturing in America*, the Department of Commerce recommended regulatory reform as a key activity government can undertake to ensure the continued competitiveness of U.S. manufacturing in a global market. This report became the driving force behind the Administration's initiative to reform regulations that place unnecessary or counter productive requirements on the manufacturing sector. EPA shares that interest, and recognizes that more targeted, flexible, and appropriate regulatory requirements will help accelerate the pace of environmental protection in a manner that is more consistent with our

[1]Ths information comes from the Small Business Administration Office of Advocacy October 2005 Frequently Asked Questions Fact Sheet. The Office Of Advocacy defines a small business for research purposes as an independent business having fewer than 500 employees. For EPA's RFA/SBREFA uses definitions codified at 13 CFR 121.201.

national responsibility to maintain a strong economy, including manufacturing. We believe that smarter regulations enable manufacturing facilities to focus their resources on higher priority environmental issues and result in better environmental protection.

Since 1997, OMB has submitted an annual Report to Congress estimating the total costs, benefits, and impacts of federal rules and paperwork. OMB publishes a draft report each spring and solicits public comments on the content of the report and on any regulatory actions or guidance documents the public believes should be nominated for reform. In 2004, OMB focused their Report to Congress on regulatory reforms relevant to the manufacturing sector. OMB requested public nominations of specific regulations, guidance documents, and paperwork requirements that, if carefully modified, may reduce costs, increase effectiveness, enhance competitiveness, and increase flexibility. One hundred and eighty nine responses were submitted to OMB from 41 different commenters. Most of the nominations pertained to regulations promulgated by EPA and the Department of Labor. In December 2004, OMB referred 90 reforms to EPA for our review and consideration. EPA evaluated the merits of each of the reform nominations and, in January 2005, submitted its reform recommendations to OMB. EPA carefully examined each and every reform suggested by the public and considered:

- if the action was based on sound science;
- if implementation of the action was the most effective way to manage for environmental results;
- and, whether the same, *or better*, environmental outcome could be achieved through a cooperative partnership rather than command and control regulation.

Applying those criteria, EPA and OMB agreed to pursue 42 reforms that were included in the report. EPA's commitments cover a wide range of issues, most of which will reduce the burden

of monitoring and reporting requirements, while still protecting human health and the environment. This is particularly important for small businesses which often face a disproportionate share of the regulatory burden.

Our review of the nominations has helped to either confirm the Agency's initial approach or recognize the need for revision or clarification. It has also highlighted other opportunities for us to accelerate the pace of environmental protection through cooperative partnership and stewardship.

III. Progress on Regulatory Reform Nominations: Completed Actions

OPEI is responsible for overseeing the Agency's efforts to meet the Manufacturing Initiative milestones, and I am pleased to report that we have almost completed our commitment. We developed and maintain a database to track the milestones for each regulatory initiative, and the Agency's progress is presented to the Administrator on an on-going basis. Overall the Agency has made significant progress. We have completed our reform commitments for 22 of the 42 nominations, more than half of the commitments identified in the March 2005 OMB report. We are on track to complete several additional actions that we expect to finalize by the end of 2006, including four for which we are in the process of confirming with OMB whether our commitments are fully complete. Many of these nominations focus on reducing the frequency and burden of reporting requirements, but still maintain the Agency's emissions and risk exposure limits. These considerable modifications effectively protect the environment and human health at a level above, or at least equal to, our current standards but at a lower cost. While we are close to completing our work on the Manufacturing Initiative, there are a few remaining nominations for which the Agency is still considering the best approach to address the outstanding issues raised by commenters.

I would like to highlight our progress on two reforms that illustrate the meaningful steps the Agency has taken in responding to OMB.

Pretreatment Streamlining

The National Pretreatment Program is part of the Clean Water Act's (CWA) water pollution control program. The program is a joint regulatory effort by local, state, and Federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called "Publicly Owned Treatment Works" or "POTWs"). Control of pollutants prior to discharge of wastewater to the sewer minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

Although adoption of the General Pretreatment Regulations has resulted in more consistent implementation of the Pretreatment program on a national basis, many individual POTWs and industrial users have experienced problems implementing certain requirements. As a result, EPA promulgated a rule in June 2005, which streamlined and clarified certain provisions of the General Pretreatment Regulations for Existing and New Sources of Pollution. The rule allows Control Authorities to better focus oversight resources on industrial users with the greatest potential for affecting POTW operations or the environment. One example of the benefits of the changes is that local governments which implement the pretreatment program are no longer required to sample for pollutants that are not present at the industrial users facility. This change will substantially reduce the costs to facilities, while still holding those facilities to the same federal discharge limits currently in place.

This rule reduces the overall burden from technical and administrative requirements that affect industrial users, local control authorities and approval authorities, providing more flexibility to achieve environmental protection. If POTWs adopt the regulatory flexibility option, the estimated savings in annual burden hours and costs to the affected respondents could be as much as 240,000 hours or $10.1 million.

Title V Operating Permits

The 1990 Clean Air Act Amendments require that all states develop operating permit programs under Title V of the Act. Under these operating permit programs, every industrial facility that is a major source of air pollution must apply for an operating permit. In addition, some industrial facilities that release smaller quantities of air pollutants, known as “area sources”, must also obtain operating permits unless EPA specifically exempts them from permit requirements through federal rules. As a result, some minor stationary sources have been required to file for operating permits under the Title V program. Stakeholders expressed concern that the growing number of requirements under Title V, coupled with the growth of state permit programs created confusion and additional unnecessary burden on some small entities. EPA was requested to review the permitting process and seek approaches that would reduce costs.

EPA has successfully addressed both of these concerns. On December 9, 2005, the EPA issued a final rule to permanently exempt from the requirement to obtain federal operating permits small facilities in five industry sectors: dry cleaners, halogenated solvent degreasers, chromium electroplaters, ethylene oxide sterilizers, and secondary aluminum smelters. This rule reduces the economic impacts on small entities by exempting certain categories of “non-major” industrial sources from the permitting requirements. For toxic air pollutants, the Clean Air Act defines "major" industrial sources as those emitting 10 tons per year or more of any one hazardous air

pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Sources emitting less than that are "non-major." Only facilities that are "area sources" would receive the exemption, and permits are still required for larger (major) sources of air toxics in these industry categories. The final rule also prohibits states from issuing federal operating permits to these sources once the Agency has exempted them from the national permitting program. States may continue to issue other types of air permits for such sources, such as state operating permits. We have estimated that this action will reduce the burden for over 38,000 sources, many of which are small entities. While we have not calculated specific cost savings for area sources from these exemptions, we estimate that average annual Title V costs per source at $7,300. In addition to the 2005 rule, we are taking other actions to reform the Title V program that go beyond the commitments we made in response to OMB's Manufacturing Initiative. The Clean Air Act Advisory Committee (CAAAC) recently formed a task force -- made up of stakeholders from a variety of interests -- and charged it with studying the Title V program and developing a series of recommendations on how to improve the implementation of the program. The task force has now completed their work; EPA is reviewing the recommendations and developing an implementation plan, which will be presented to the CAAAC at their next meeting in September 2006.

IV. EPA's Commitment to Small Businesses.

Mr. Chairman, the Manufacturing Sector Report issued by OMB and EPA's related actions are just one aspect to our overall efforts to enhance environmental protection while addressing the unique issues associated with small business and manufacturing. Through a variety of Agency programs and policies, we are working as partners with America's small businesses to further improve our regulatory processes and develop other non-regulatory approaches to achieve environmental protection.

EPA is a government leader in implementing the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Although EPA has a long history of considering the concerns of small business, certainly one factor that sharpened EPA's attention to small businesses is the Small Business Advocacy Review Panel provision of SBREFA. Along with OSHA, EPA is required to convene a panel unless it certifies that a rule, if promulgated, will not impose a significant economic impact on a substantial number of small entities.

Here on the 10th anniversary of SBREFA, EPA has so far completed 29 panels with over 450 small-business, small-government, and small non-profit representatives providing regulatory input to the Agency. The panels, conducted in partnership with SBA's Chief Counsel for Advocacy and OMB's Administrator of the Office of Information and Regulatory Affairs, ensure meaningful small business input in the early stages of rule development and result in excellent suggestions on how our regulatory actions can implement less burdensome and environmentally protective regulatory approaches for small businesses.

There has been real benefit from the SBREFA process to small businesses. The panels conducted to date have produced recommendations that would reduce the potential burden on small businesses and communities while achieving environmental objectives. For example, this past year we completed a panel for a proposed rule on the control of hazardous air pollutants from mobile sources. EPA's proposed rule generally adopted the panel's recommendations on regulatory flexibility to minimize impacts on small businesses. The panel recommended that we include hardship provisions in the rule for small refiners that would enable small businesses to apply for an extended compliance date. The panel believed that while all refineries are allowed some lead time before the proposed program begins, they believed that small refiners would be disproportionately challenged. In keeping with this recommendation, the proposed rule included

a four year delay for all small refiners, plus a hardship provision providing additional time in case of extreme hardship, to help mitigate these challenges. The proposal also included numerous other flexibilities for small businesses including provisions that limit small entity certification and testing burden, extend compliance deadlines, and allow hardship-based extensions for gas can manufacturers.

Panels represent only one facet of EPA's full commitment to consider small businesses in the rulemaking process. EPA conducts outreach and seeks accommodations for small entities in regulations to which they will be subject. In the ten years since SBREFA's passage, EPA has issued many regulatory proposals that may have imposed some level of regulatory requirement on at least one small business or community. Most of these did not undergo SBREFA Panel review, but EPA nevertheless worked with small businesses to minimize their burden while meeting the requirements of environmental statutes.

Small business and manufacturers concerns are a key priority for this Administration, but I should also note that EPA has compiled a record of responsiveness to small business from the very first. EPA recognized early on the need to institutionalize small business practices and formally established the Office of the Small Business Ombudsman (SBO) in 1982. The SBO works with EPA personnel to increase their understanding of small businesses in the development and enforcement of environmental regulations. The SBO also serves as a liaison between the small business community and the EPA to promote understanding of Agency policy and small business needs and concerns -- providing a convenient way for small business to access EPA through correspondence and many thousands of phone calls and numerous web site "hits" each year. SBO stays in regular contact with over 45 key national trade associations representing several million small businesses and with state and regional ombudsmen who serve small businesses on the local level.

In addition, EPA has long standing programs and policies designed to recognize the special needs of the small business community and to increase the delivery of information about EPA's regulatory requirements to small business. EPA has a history of developing authoritative materials to aid the regulated community in its compliance efforts. EPA makes these and other related resources readily accessible to small businesses through several channels.

V. Innovations in Environmental Protection

Accelerating the pace of environmental protection while maintaining our nation's economic competitiveness has challenged us at EPA to think creatively and outside our traditional regulatory framework. We are pursuing innovative strategies that can lead us to more results-oriented systems of environmental regulation that harness the growing interest in environmental stewardship. By necessity, our work on innovative approaches for improving environmental results often focuses on small business.

We are exploring innovative approaches to meet that need as efficiently and effectively as possible and within the existing confines of the law. For example, working with industry, academic institutions, environmental groups, and other agencies, we have set up web-based Compliance Assistance Centers that address the requirements of specific sectors, many of which have major small business membership. Each Center provides businesses, local governments, and federal facilities with information and guidance on environmental requirements and ways to save money through pollution prevention techniques. We are also working with small business to explore alternatives to conventional regulations. One example is the Environmental Results Program (ERP), which was first piloted in Massachusetts and is now being implemented in 16 states. This program takes an integrated approach to environmental management, combining compliance assistance, self-certification procedures, and performance measures for certain small

business sectors, such as dry cleaners, printers, and auto body shops, that can be difficult to address with traditional permitting. We've found this to be a smart approach to working with these sectors. In Rhode Island, ERP improved the overall environmental performance of auto body shops by 37 percent while compliance went up by 46 percent. Delaware saw similar results – overall environmental performance for auto body shops improved by 29 percent while compliance increased by 18 percent. Based on these and other results, we're now working other states and small businesses to see if this same approach might be useful in other sectors or settings.

The National Environmental Performance Track is another program that is changing how we regulate. This first-of-its kind federal program rewards facilities that go beyond compliance with regulatory requirements to attain levels of environmental performance that benefit the workforce, communities and the environment. Facilities that earn membership receive public recognition, and regulatory and administrative incentives such as reduced inspections. Small businesses are among the facilities that have been benefitting from the Performance Track program. For example, this year performance partnership members can request expedited CWA permits where their competitiveness in the international marketplace depends on the ability to expand their facility or operate a new facility in a quick time period.

VI. Conclusion

If sensitivity to the needs of small businesses and communities has been important up until now, it will be absolutely critical in the years to come. On behalf of EPA, I want you to know that we are working to create a system that works for small business by providing better and earlier access to the regulatory process, developing alternative approaches to regulations, and increasing the transparency and clarity of our decisions.

In concluding this testimony I would again like to state that I am personally committed to finalizing our remaining reform initiatives. Our attention to the Manufacturing Initiative has resulted in heightened attention to scientific, economic, and policy issues in EPA's action development process and reinforced the importance of working collaboratively with our stakeholders to ensure that the solutions to environmental problems are efficient and effective.

Thank you for the opportunity to testify today. I would be happy to answer any questions that you may have.