

**STATEMENT OF MARK LEWON**  
**VICE PRESIDENT FOR OPERATIONS**  
**UTAH METAL WORKS, INC.**  
**SALT LAKE CITY, UTAH**

**JULY 22, 2009**

**2:30 PM**

**UNITED STATES SENATE JUDICIARY COMMITTEE**  
**SUBCOMMITTEE ON CRIME AND DRUGS**

***Introduction***

Good afternoon Madame Chairman, Senator Hatch and Members of the Subcommittee. My name is Mark Lewon. I am Vice President for Operations of Utah Metal Works, a scrap recycling business located in Salt Lake City, Utah. Our business, which has been run by my family since my grandfather bought it in 1955, purchases and processes non-ferrous metal scrap. Copper is the primary focus of our company.

Thank you for the opportunity to testify before you today. I am here representing the more than 1,550 member companies of the Institute of Scrap Recycling Industries (ISRI) that process and industrially consume scrap paper, glass, plastic, ferrous and non-ferrous metals, textiles, rubber and electronics. Scrap is literally the first link in the global manufacturing supply chain. It is estimated that scrap commodities are responsible for satisfying 40% of the world's raw material needs each year. The scrap recycling industry in the United States is an \$86 billion per year industry that employs over 85,000 workers. Last year, scrap recyclers in this country processed over 360 million pounds of copper, and more than 1.1 billion pounds of scrap aluminum into specification grade raw materials consumed by industrial manufacturers in the United States and around the world. In fact, the United States exported more than 44 million metric tons of scrap commodities worth more than \$28 billion to steel mills, copper refiners, foundries, paper mills, and other industrial consumers in over 150 nations throughout the world, creating in the process a positive balance of trade in recyclable commodities for our nation.

We are an industry comprised of companies ranging in size from primarily small to medium sized, family owned facilities, like mine, to a growing number of large, multi-national companies that are publicly traded. Our products also achieve impressive Green House Gas (GHG) emission avoidances

that are equivalent to 4% of the total GHGs that our nation produces, annually. That is because when manufacturers choose to use recyclable materials in their products rather than virgin materials, significant amounts of energy are saved and natural resources are conserved.

Madame Chairman and Senator Hatch, the scrap recycling industry appreciates your leadership in trying to develop an effective national metal theft law. We fully recognize the difficult problem of metal theft and the toll it takes on its victims. It is for this reason that we – and I do mean both the industry as a whole and my own company - have been actively working to be part of the solution to this problem since we recognized the global spike in metal theft which paralleled the global increase in commodity prices that began more than four years ago.

Our experience has led us to the conclusion that the most effective way federal legislation can address the problem of metal theft is through a comprehensive strategy focusing first on efforts to prevent metal theft to the maximum extent practicable and second on assisting law enforcement and prosecutors in their efforts to catch, prosecute, and penalize those who perpetrate these thefts to the extent necessary to dissuade their colleagues from a similar path. Rather than simply restating state laws that have been enacted over the past few years and which have not proven to be effective<sup>1</sup>, we support efforts to craft legislation that builds on successful strategies including cooperation and communication amongst all stakeholders. Ultimately focusing efforts on preventing the crime will serve victims and communities far better.

As scrap recyclers, our practical, everyday knowledge can assist you as you work to solve the metal theft problem. We want this problem addressed effectively as much as anyone else. You see, we are victims too. Fifty-six percent of ISRI's members have been victims of metals theft in the last year whereby metals from our own facilities have been stolen, and more than half of those members have been victims multiple times. Tragically, we have even had employees in our industry shot and killed during the commission of these crimes. Despite this, and despite our industry's aggressive efforts at trying to address the problem of metal theft, we are very often the focus of negative news stories about metal theft.

Unfortunately, every industry has its share of bad actors, but that is not a reason to penalize the entire industry. We accept our role and responsibility in this fight and do not shrink away from it. That is why we support a federal solution that will raise the bar for all recyclers-- requiring everyone to adhere to a basic set of standards-- and which will eliminate the ability of thieves to take advantage of different state laws that create forum shopping opportunities, allowing those thieves to look for the path of least resistance to resell their purloined goods.

### ***The Scrap Recycling Industry is on the Metal Theft Front Lines***

As the industry on the front lines combating metal theft, we appreciate this opportunity to describe what scrap recycling facilities, nationwide, have been doing on a daily basis to address the metal theft problem.

---

<sup>1</sup> Much of the decrease in the incidents of metals theft over the last 10 months is attributable to the dramatic decline in scrap commodity prices that began in September 2008. There is a proven correlation between metal prices and the number of metals thefts. In fact, the whole issue of metals theft is not a new one. It is a problem tied to the cyclical nature of commodity prices. The last time this problem arose was in the period 1994 - 1996 when prices were also high relative to previous market values.

The impact of metal theft on the scrap recycling industry is significant. Recyclers have become both the victims of theft and the target for well intentioned, but ineffective legislative efforts to solve the theft problem. ISRI, the nation's trade association for the scrap recycling industry, is actively working to help solve the problem of metal theft and, as part of this effort, provides scrap recyclers and community leaders with helpful resources that they can use when confronting this issue.

With nearly 90%, by volume, of the scrap processed annually in the United States being handled by ISRI's members, we are and have been a crucial part of the solution to the metal theft problem. There is no better proof of the commitment of ISRI members to vigorously address metal theft than the numerous proactive initiatives we have undertaken to successfully address the matter, including:

- ***Recommended Practices:*** In 2006, ISRI developed, and distributed to its members, recommended practices to help recyclers identify and recover stolen property, to assist law enforcement by documenting all of their scrap purchases, and by actively assisting in catching thieves. These practices include:
  - Requiring photo identification for every retail transaction and recording the license plate of the vehicle the seller is driving;
  - Maintaining transaction records so useful information can be provided regarding metals purchases should police suspect certain metals may have been stolen;
  - Keeping a list of suspicious materials and consistently questioning the ownership of these materials if they are brought to a scrap recycling facility;
  - Requiring the seller's signature on a receipt for each transaction when paying cash, and including a certification on the receipt that the seller is the owner or the authorized seller of the materials;
  - Utilizing video systems with time stamps to help track transactions;
  - Requiring a contract or letter of authorization for the purchase of certain items such as new production scrap, manhole covers, guardrails, historical markers, certain types of electrical cables used only in high voltage transmission lines, etc.; and
  - Training of employees on how to identify suspicious materials.
  
- ***Metal Theft Alert Information System:*** Over twenty years ago, ISRI developed a system we called "FaxNet," to alert recyclers of stolen materials reported to police. At the outset, fax machines were such new technology that in some areas recyclers actually purchased fax machines for law enforcement agencies so that they could take advantage of the new program. When ISRI received a report, an alert was faxed to member recyclers in the community. This methodology was a useful tool in helping to catch metals thieves for nearly two decades. In 2006, as thefts began to increase along with the rising prices for scrap metals, ISRI revamped the FaxNet system to take advantage of email; we created an email alert system that sent reports to members in the state where the theft occurred, as well as all surrounding states. We expanded the distribution area because it became evident that thieves were sometimes traveling as far as 250 miles to sell their metals. The system required human intervention for each and every alert that was transmitted. This resulted in a strain on ISRI staff resources as the incidence of metal theft grew and sometimes also meant a loss of precious time in distributing the alert. In 2008, ISRI invested a significant sum of money in the development of an expanded program that relies

upon a Web-based interface called ScrapTheftAlert.com, which allows law enforcement officers who subscribe to the system to post alerts on the web and to send the email alert to all subscribers within a 250 mile radius of the theft, regardless of membership status with ISRI. This system, which no longer requires ISRI staff intervention, is maintained by ISRI free-of-charge to law enforcement and recyclers. The theft alerts contain a description of the property and any other information provided by the investigating officer that may help lead to its recovery.

Not only has the system effectively helped to locate stolen property, it has also given ISRI members the opportunity to provide an effective tool for police, state troopers, sheriffs, prosecutors, etc. Today, over 700 law enforcement officers are registered with ScrapTheftAlert.com, and more are registering each day. This effort has led to cooperative efforts between law enforcement and recyclers, a better understanding within law enforcement of recyclers' operations and recordkeeping procedures, and demonstrated how law enforcement and recyclers can work together to mitigate metals theft. [For examples of some of these efforts see the attached Appendices]. The theft alert system has been praised by police departments around the country. In one region alone (Macon, Georgia) ISRI's cooperative efforts with law enforcement has resulted in a drop in metal theft from approximately 80 reports in December of 2006 to under 10 reported thefts per month, today.

Recyclers have also used ScrapTheftAlert.com, local media, and other methods to provide information in reverse when they have been offered materials that, while not reported as stolen, raise questions as to why such material would be offered as scrap material. For example, not long ago, a scrap yard in Ohio was offered a 12-ton slab of aluminum that clearly was intended for a rolling mill. This type of material would never be destined for a scrap yard. The scrap yard reported it to the local police but the local authorities had no record of a theft. However, after two weeks of investigative work by the recycler and ISRI staff, it was determined that the material had been stolen while in transit to a mill in West Virginia.

In another instance, a scrapyard in Texas was offered several hundred pounds of precision stainless steel valves and pipe. Workers at the scale recognized that this material was likely stolen and contacted police and the local media. A story on the local television news that night helped recyclers locate the victim. The material was returned, saving the victim tens of thousands of dollars. (The video can be viewed at <http://www.click2houston.com/video/17115083/index.html?taf=hou>)

- ***Creating Local/Regional Collaborative Coalitions:*** Recyclers working with law enforcement and victims have found that open communication is the only effective solution to metal theft. Collaborative efforts around the nation are realizing success in combating crime, recovering property and catching thieves. These local/regional collaborative coalitions deliver meaningful results, bringing the criminals, the thieves who steal the material, to justice. More and more, scrap recyclers, local law enforcement agencies, public officials, legislators, victims and other stakeholders are forming local coalitions to successfully combat metal thefts in their own communities. Collaborative coalitions like these have emerged around the country and are reporting significant success in combating metal theft. These collaborative efforts exist in places like Salt Lake City/County, UT; Ocala, FL; Macon, GA; Augusta, GA; Phoenix, AZ; and, others.
  - ***Salt Lake City and County, Utah.*** As part of the collaborative effort in which my company participates, the West Jordan Police Department has assigned an employee to receive information about stolen materials in our region and distribute that information

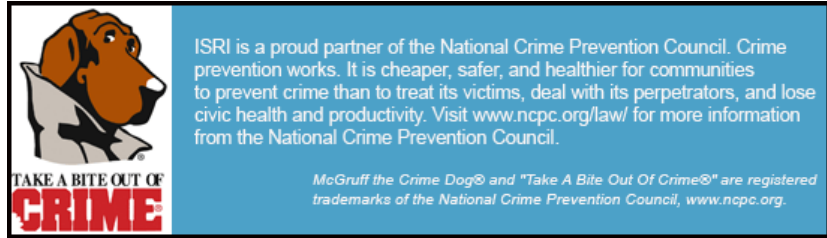
as alerts to the scrap yards and to law enforcement in our area. Employees, who are our first line of defense, those who are at the scales or at other points of entrance, are trained to study the alerts and to inspect incoming loads of scrap for contraband material. However, the Salt Lake system only works if everyone cooperates. As an example, two thieves tried to sell stolen copper to Utah Metal Works. Upon inspection, the material was suspected of having recently been stolen from a nearby Home Depot. The police arrived and arrested the suspected thieves. The Home Depot was contacted. Unfortunately, a decision was made at Home Depot not to press charges. Had the suspected thieves not been wanted on other charges, they would have walked away without penalty.

The lesson of this story is simple. *All* stakeholders have a role to play. If there is a weak link anywhere in the chain, progress cannot be made to solve the problem. Thus, potential victims must assess their risks and appropriately secure their property and, when theft occurs and the thieves are caught, victims must be prepared to prosecute. Police agencies must be prepared to enforce the law. If police agencies insist that state and local government(s)- or the Federal Government – enact metal theft laws, then police agencies have a responsibility to enforce those laws. Similarly, prosecutors have to be willing to prosecute these crimes to the fullest extent of the law. Fortunately, in Salt Lake, law enforcement and prosecutors are doing their job, as are recyclers. Unfortunately, in too many jurisdictions, prosecutors claim to be so overwhelmed by other crimes that they do not have the time or inclination to prosecute metal theft crimes. As a result, thieves often act without concern for prosecution.

- ***Macon, Georgia.*** Created in September 2006, the Macon/Middle Georgia Metal Theft Committee was initiated by a local family-owned scrap recycling company and now includes more than 36 local organizations representing local law enforcement and public agencies, utilities, homebuilders, public officials, and local scrap recyclers. With regularly scheduled meetings and regular email updates to share information, training, and coordinating strategies, this coalition has made a significant impact on the metal theft problem in their region. Within months of the committee’s formation metal thefts in Macon, Georgia dropped from approximately 80 reports in the month of December 2006 to just 21 in March of 2007. Since then, thefts have continued to buck the national trend, with fewer than 10 reported thefts at the peak of the copper market last year (see graph in Appendix).
- ***Ocala, Florida.*** Ocala Recycling, with two sites and more than 100 employees, is the largest scrap recycler in the Ocala (Marion County), Florida area. Mike Bianculli, co-owner of Ocala Recycling, developed the company’s “Team BOLO (Be On the Look Out)” with a group of 17 employees trained specifically to look for suspicious transactions or individuals, as a way of being a good corporate citizen. This initiative, working closely with the Ocala Police Department and the Marion County Sheriff’s Office, has achieved significant results...more than 80 individuals arrested for materials theft and the recovery of stolen materials.

See the Appendices for discussion of other successful efforts, including those at Lake Village, Arkansas; Jackson, Mississippi; Winston-Salem, North Carolina; Jackson, Michigan; Indianapolis, Indiana; Sedalia, Missouri; Los Angeles, California; Worcester, Massachusetts.

- Law Enforcement Outreach and Training on the National Level.** On a national front, ISRI is leading the way by providing numerous innovative approaches designed to train law enforcement. In addition, ISRI is working with contractors, farmers, utilities and other victims of property theft to assist in materials theft prevention efforts and helping to better identify stolen materials. ISRI has also attempted to reach out to the National Sheriff's Association (NSA) and the International Association of Chiefs of Police to work collaboratively on metal theft at the national level, but thus far to no avail. ISRI recently participated in the NSA convention, but was told that the issue of metals theft was not an NSA priority. We hope to work cooperatively with both of these associations in the coming months and would welcome support of these efforts.



In the meantime, ISRI has not stood still in its attempts to reach out to the law enforcement community and more aggressively push for proven successful strategies. The Ocala, Florida collaborative effort was highly successful because law enforcement, including the Marion County Sheriff's Office and the Ocala Police Department, worked closely not only with Ocala Recycling but with other scrap recyclers in the region. As ISRI considered how best to communicate to law enforcement agencies throughout the nation the techniques that worked to prevent crime or catch thieves, we quickly realized that someone from the law enforcement community, who could speak with fellow law enforcement officers in a language they both understood, would be the most effective method. After searching for a candidate for some time, ISRI realized Detective Bush of the Marion County Sheriff's Office was well known in the industry for catching metal thieves. Detective Bush stood out because of his willingness to communicate with, and learn from, recyclers, and at the same time teach recyclers things we needed to know about evidence and apprehending thieves.

Presented with the opportunity to share his successful experience in working collaboratively, and his more than 32 years of law enforcement experience, Gary retired from the force and became an ISRI employee last October. His primary job function is to communicate with law enforcement throughout the nation about the need for the recycling industry and law enforcement to work together to address the plague of metals theft and to make sure that law enforcement was aware of the range of resources the industry has available to use in tackling this crime, including ScrapTheftAlert.com. Since coming aboard, Gary has logged many miles in the air and many hours on the phone, talking with law enforcement agencies around the country about the success he enjoyed through collaborative efforts. He has participated in law enforcement metal theft conferences around the nation, including those in Utah and Minnesota.

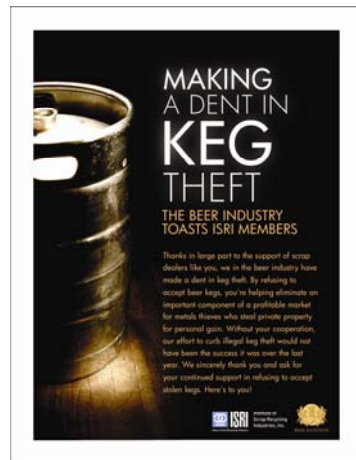
ISRI has learned from Gary Bush that many in law enforcement are skeptical about scrap recyclers, essentially viewing them as part of the problem, rather than part of the solution. His belief is that those officers who voice this viewpoint are more often those who do not know, and have not made an effort to get to know, the recyclers in their community. He thinks that those who have become familiar with the recyclers are generally more likely to accept them as good citizens and work with them on metal theft issues in a collaborative mode. Gary Bush recently

submitted an article for an August 2009 publication in Sheriff's Magazine specifically addressing the effectiveness of stakeholder coalitions as the most effective tool to combat metal theft

ISRI is also well aware that many law enforcement agencies are underfunded. This seems to be especially true in rural areas where crimes against farmers and their equipment occur. No Federal, state or local law alone will defeat metal theft. Legislators must come to realize that the enemy is the thief, not the recycler. Where recyclers, law enforcement and prosecutors have teamed up, we have seen good things happen--thieves get caught and crime goes down. A law need not, indeed should not, mandate collaborative coalitions. But, it must encourage such efforts with something more than words. A small amount of funding, perhaps on a "pay go" basis (for instance, forfeiture of a thief's property, which is then sold to pay for coalitions where they are most needed), is an option worthy of the Congress' consideration.

- **Outreach to Other Affected Industries.** Over the last several years, our industry has reached out to a broad range of industries affected by metals theft to develop joint efforts at stemming this crime.

- **Beer Industry.** ISRI has worked with the Beer Industry to address the problem of keg theft. The scrap value of stainless steel kegs at one point far exceeded the deposit that people pay to get the keg. As a result, kegs were increasingly finding their way to scrap yards. Beer kegs belong to the brewers, not to the wholesalers who distribute the beer, to the retailers who sell the beer, or to the customer who rents the keg. Until two years ago, ISRI was not aware of the ownership situation. However, once the beer industry contacted ISRI, we worked jointly with the Beer Institute, and the Brewers Association on an education campaign aimed at educating members of the recycling industry not to accept kegs unless they were being sold by the rightful owner of those kegs. We worked together to send out educational information to all ISRI members, including a decal that you see in blue, above. This effort has been very successful, significantly reducing the number of kegs that end up in the recycling stream.



- **Dairies/Bakeries.** Last year, ISRI began working with the dairy and bakery industries on an education campaign focused on plastic milk crates and bread trays.
- **Utilities** – electric, water, telephone and cable. Our efforts with these groups have focused on reciprocal educational activities with the hope that scrap recyclers will be more likely to recognize utility materials that may be brought in by unauthorized parties and that utilities might consider improved security measures to protect their valuable materials. Additionally, there have been discussions relating to the

identification of new technologies that can be useful in helping scrap processors to recognize utility materials.

More than a year ago, in an attempt to further address the problem through a broader industry approach, ISRI created a coalition of trade associations to share intelligence regarding metal theft problems and to develop well reasoned ideas to combat the crime. The initial meeting of this associations group included representatives from electric and telecommunications utilities, the construction industry, and law enforcement as well as representatives from the National Crime Prevention Council and the U.S. Department of Justice. The group developed the following consensus mission statement:

*“The Associations Task Force on Material Theft was created to address at the national level the problem of theft of commodity materials, including ferrous and nonferrous metals, plastics, and paper, that has become a serious problem for communities, businesses and individuals across the country. The Task Force provides a network for information sharing on theft prevention and enforcement activities, and a resource for connecting local stakeholders building community networks with a goal of strengthening prevention efforts.”*

### ***The Scrap Recycling Industry Supports an Effective Federal Solution***

ISRI supports legislation that incorporates specific concepts proven to effectively deal with the issues surrounding materials theft. Our experience with this issue clearly demonstrates that collaborative efforts and open communications between scrap processors, local law enforcement, and victims of metals theft is ***the*** single most effective approach to reducing these crimes and prosecuting the thieves that commit them. Laws requiring recordkeeping while ignoring prevention have been largely ineffective in fighting materials theft. In the end, partnerships are far more effective than mandates.

***ISRI supports a national solution that relies on proven strategies to effectively combat metal theft.***

Based upon ISRI’s experience in dealing with metal theft, the following are what we believe should be key considerations in any federal metal theft legislation:

- ***The source of the problem, metal thieves, must be addressed:*** Legislation must specifically address the role of thieves in metal theft. Thieves must be held accountable for their actions. Federal penalties for metal thieves are imperative and the penalty must not be only for the value of the metal, but also for the repair of the damage caused during the theft.
- ***Incentives for local law enforcement training:*** Providing incentives for voluntary law enforcement training to combat metal theft would help increase awareness of the issue by the law enforcement community, train officers to identify and prosecute metals thieves and allow law enforcement the opportunity to work with scrap recyclers to reduce metal theft.
- ***Incentives for collaborative efforts:*** The demonstrated best way to decrease the incidents of metal theft is through a collaborative approach incorporating scrap recyclers, law enforcement, prosecutors, local governments and victims in the process.



- **Pay-Go Provision:** So as not to burden the Federal taxpayer, funding for law enforcement training and creation of collaborative coalitions could be paid for by fines or forfeiture provisions imposed on metal thieves.
- **Exemptions for Recycler-to-Recycler Purchases:** There is no need to require documentation for metal purchase after the initial “retail” transaction. Thus, wholesale transactions between scrap processors should be exempt from regulation.
- **Check Writing Requirements:** First and foremost, ISRI is unaware of any other commercial transaction in which the payment by cash for the purchase of tangible goods is prohibited. ISRI recognizes that certain reporting requirements exist when cash in excess of \$10,000.00 is involved, but we are unaware of thresholds below that amount. Notwithstanding the foregoing, the concept that forbidding the use of cash in the purchase of scrap metals will lead to an end to metal theft is a fallacy. Indeed, the net effect of such a prohibition may well be a greater harm to legitimate recycling than any positive results it may have in stopping metal theft. Scrap recyclers engage daily in a tremendous number of small-scale transactions with peddlers. The overwhelming majority of these transactions are with legitimate sellers of scrap metals. A requirement for payment by check may also drive thieves into an underground market for stolen scrap materials. Furthermore, requiring scrap recyclers to write checks in lieu of paying cash is burdensome, very costly, and unnecessary. Indeed, one medium size recycler in Minneapolis, MN pays on average, \$84,000 per year in bank transaction fees alone for scrap purchases (MN requires ALL purchase transactions to be paid by check)!!
- **Rational Regulatory and Enforcement Authority:** Any grant of rulemaking authority should avoid “boilerplate” language and clearly set the scope of authority so that it is limited to the scope of the Act. Similarly, penalties and enforcement authority should be rationally related to the nature of the offense. Unintentional or unknowing acts should not be penalized in the same manner as knowing or intentional actions. “Bad actors” deserve to be punished appropriately, but those who are merely culpable of an oversight should not be treated in a similar manner
- **Definitions:** Only metals *of concern* should be subject to the provisions of the bill. It makes little sense to regulate materials that are not typically the focus of theft thereby creating unnecessary burdens upon lawful businesses.
- **Preemption:** In the final analysis, federal legislation seeking to address the issue of metal theft requires preemption of state or local laws or regulations on metal theft. Currently, 46 states and an extremely large number of local governments have enacted laws to address metal theft, resulting in an unwieldy patchwork of statutes – most of which are not really designed to deter theft. Furthermore, since thieves can simply travel across jurisdictional lines to sell stolen property under more lenient regulations, this patchwork only serves to complicate law enforcement’s efforts to capture thieves. The only effective means of fully addressing this issue is federal preemption. Preemption would create a uniform standard throughout the nation, giving law enforcement a useful tool that does not unduly burden recyclers who operate multiple facilities in various jurisdictions, while also punishing thieves in a consistent manner. Indeed, states such as California and Ohio have included preemption provisions in their state laws to avoid these problems within their states..

## ***Conclusion***

We will utilize the expertise of our industry in working with you to address metal theft issue. We ask you to encourage all stakeholders to work collaboratively to solve this problem. I speak on behalf of ISRI and the scrap recycling industry in saying that we look forward to working with the Committee and all stakeholders in a manner of mutual trust and respect to develop an effective national solution towards combating metal theft. Please, look at the scrap industry as part of the solution.

Thank you.