AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

A DISCUSSION DRAFT PROVIDING FOR A REDUCTION IN THE NUMBER OF BOUTIQUE FUELS

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

JUNE 7, 2006

Serial No. 109-106

Printed for the use of the Committee on Energy and Commerce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

30-039PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND COMMERCE

JOE BARTON, Texas, *Chairman*

RALPH M. HALL, Texas
MICHAEL BILIRAKIS, Florida
Vice Chairman
FRED UPTON, Michigan
CLIFF STEARNS, Florida
PAUL E. GILLMOR, Ohio
NATHAN DEAL, Georgia
ED WHITFIELD, Kentucky
CHARLIE NORWOOD, Georgia
BARBARA CUBIN, Wyoming
JOHN SHIMKUS, Illinois
HEATHER WILSON, New Mexico
JOHN B. SHADEGG, Arizona
CHARLES W. "CHIP" PICKERING, Mississippi
Vice Chairman
VITO FOSSELLA, New York
ROY BLUNT, Missouri
STEVE BUYER, Indiana
GEORGE RADANOVICH, California
CHARLES F. BASS, New Hampshire
JOSEPH R. PITTS, Pennsylvania
MARY BONO, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
MIKE FERGUSON, New Jersey
MIKE ROGERS, Michigan
C.L. "BUTCH" OTTER, Idaho
SUE MYRICK, North Carolina
JOHN SULLIVAN, Oklahoma
TIM MURPHY, Pennsylvania
MICHAEL C. BURGESS, Texas
MARSHA BLACKBURN, Tennessee

JOHN D. DINGELL, Michigan
Ranking Member
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
RICK BOUCHER, Virginia
EDOLPHUS TOWNS, New York
FRANK PALLONE, JR., New Jersey
SHERROD BROWN, Ohio
BART GORDON, Tennessee
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
BART STUPAK, Michigan
ELIOT L. ENGEL, New York
ALBERT R. WYNN, Maryland
GENE GREEN, Texas
TED STRICKLAND, Ohio
DIANA DEGETTE, Colorado
LOIS CAPPS, California
MIKE DOYLE, Pennsylvania
TOM ALLEN, Maine
JIM DAVIS, Florida
JAN SCHAKOWSKY, Illinois
HILDA L. SOLIS, California
CHARLES A. GONZALEZ, Texas
JAY INSLEE, Washington
TAMMY BALDWIN, Wisconsin
MIKE ROSS, Arkansas

BUD ALBRIGHT, *Staff Director*
DAVID CAVICKE, *General Counsel*
REID P. F. STUNTZ, *Minority Staff Director and Chief Counsel*

CONTENTS

Page

Testimony of:

Harbert, Hon. Karen A., Assistant Secretary, Office of Policy and International Affairs, U.S. Department of Energy 27

Meyers, Robert J., Associate Assistant Administrator for Air and Radiation, Environmental Protection Agency 33

Murphy, Edward, Group Director, Downstream and Industry Operations, American Petroleum Institute 53

Dinneen, Bob, President and CEO, Renewable Fuels Association 58

Slaughter, Bob, President, National Petrochemical & Refiners Association 62

Becker, S. William, Executive Director, State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials 70

Hubbard, Sonja, CEO, E-Z Mart Stores, Inc., on behalf of National Association of Convenience Stores and Society of Independent Gasoline Marketers of America 77

Additional material submitted for the record:

Murphy, Edward, Group Director, Downstream and Industry Operations, American Petroleum Institute, response for the record 106

Hubbard, Sonja, CEO, E-Z Mart Stores, Inc., on behalf of National Association of Convenience Stores and Society of Independent Gasoline Marketers of America, response for the record 108

Becker, S. William, Executive Director, State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials, response for the record 111

Harbert, Hon. Karen A., Assistant Secretary, Office of Policy and International Affairs, U.S. Department of Energy, response for the record 113

Slaughter, Bob, President, National Petrochemical & Refiners Association, response for the record 115

Dinneen, Bob, President and CEO, Renewable Fuels Association, response for the record 117

Meyers, Robert J., Associate Assistant Administrator for Air and Radiation, Environmental Protection Agency, response for the record 121

A DISCUSSION DRAFT PROVIDING FOR A REDUCTION IN THE NUMBER OF BOUTIQUE FUELS

WEDNESDAY, JUNE 7, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The committee met, pursuant to notice, at 10:28 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Joe Barton [Chairman] presiding.

Present: Representatives Barton, Hall, Gillmor, Deal, Shimkus, Wilson, Shadegg, Fossella, Blunt, Bass, Walden, Terry, Sullivan, Murphy, Burgess, Blackburn, Dingell, Waxman, Eshoo, Stupak, Green, Allen, Schakowsky, Inslee, and Baldwin.

Staff Present: David McCarthy, Chief Counsel for Energy and Environment; Margaret Caravelli, Counsel; Peter Kielty, Legislative Clerk; Sue Sheridan, Minority Senior Counsel; Bruce Harris, Minority Professional Staff Member; and Lorie Schmidt, Minority Counsel.

CHAIRMAN BARTON. The committee will come to order. Today we are going to do several things. We are going to consider a discussion draft on boutique fuels that would reduce the number of boutique fuels in the country, and it would expand the EPA's authority to waive fuel specifications granted under the Energy Policy Act of 2005, to include unexpected problems with distribution or delivery equipment necessary for transportation delivering fuel or fuel additives. This discussion draft is another step in trying to create a greater energy security for this country.

A month ago the committee held a 2-day long hearing on gasoline supply, price, and specifications, and the reasons why gasoline prices are skyrocketing. Crude oil prices, increased demand, transition from winter to summer fuels, removal of MTBE from the Nation's fuel supply, logistical issues with delivery of ethanol, and the brittleness of the distribution system have all contributed to the increasing price at the pump.

The committee is going to keep looking at the causes, but we are also continuing to look for solutions. Today, we are here to focus on one of the solutions, which would be streamlining in the boutique fuel system. Blending special fuels for different parts of the country serves a good

purpose, there is no question about that, but it adds dramatically to the complexity of the gasoline distribution system if every part of the country chooses a unique fuel.

When gasoline was simply gasoline, it was fungible, it could be sold anywhere. But when we began deciding that Alabama gasoline should be different from Illinois gasoline--you cannot substitute one with the other--we began to set the stage for some of the problems that we have experienced today and the last several years.

There may be a sufficient supply of gasoline generically in the country, but if it is not the exact kind for a specific region of the country, you are going to have a problem in that region.

In the Energy Policy Act of 2005, we took initial steps to simplify the complexity of the boutique fuel system, begin the process by capping the number of fuels allowed to those approved by the EPA as of September 1st, 2004. We also gave EPA the authority to waive fuel specifications in the event of a natural disaster, an act of God, pipeline refinery equipment failure, or any other reasonably unforeseeable event.

EPA utilized this authority 21 days after the signing of the bill, when Hurricane Katrina hit the Gulf Coast. Originally criticized as unnecessary, this authority proved to be vital. Within a month of enactment in staving off even greater price spikes and supply disruptions, we also directed EPA to conduct two studies: one that would examine the harmonization of the Nation's fuel supply; the other that would require the EPA, in coordination with the Department of Energy, to develop a fuel system that maximizes the fuel fungibility and supply, addresses air quality requirements on a regional basis, and reduces fuel price volatility.

The discussion draft before us takes another step forward in the simplification process. The draft would move up the completion of certain elements of the studies, making it possible for the Environmental Protection Agency and the Department of Energy to utilize that information when developing what the draft refers to as the Approvable State Fuels List.

Each of the fuels included on this list of preapproved boutique fuels must satisfy all the prerequisites outlined in the draft. Each fuel must have the ability to reduce emissions, thereby assisting the State in attaining the National Ambient Air Quality Standards, provide net benefits to the United States or a region of the country's fuel supply, and not result in reduction of supply producibility. States in turn may choose from a fuel on the list provided that no more than two of the approved fuels may be used in each Petroleum Administration for Defense District, or PADD.

The fuels included on the Approvable State Fuels List ensure continued protection of air quality, while helping to reduce the strain on the distribution system by eliminating the fuel island effect that makes States vulnerable to supply disruptions today.

Some may ask if the draft would limit the ability of the States to protect their citizens' air quality. I would say the answer to that question is no. Let's keep in mind that boutique fuels are but one tool in a large collection of resources for improving air quality. The language in the discussion draft does not eliminate boutique fuels. It does not eliminate the reformulated gasoline program or the ability of the States to opt in. The language does not eliminate, for example, the State of California's unique carveout under the Clean Air Act to develop and implement its own motor vehicle and fuel emission standards. The language seeks to provide options without putting the Nation's air quality or fuel supply at risk.

The discussion draft is just that, a discussion draft. It is a compilation of ideas to provide a basis from which to learn more about a complicated issue. Today, we are going to ask the witnesses how best to craft the language to reduce the number of boutique fuels. How do we accomplish such a reduction while ensuring air quality, fuel producibility and supply, and lessening price volatility is the $64 question. I have no doubt that each of you will have some valuable input on that question.

In addition, it is my understanding that we are going to learn more about the potential effects State PADD mandates may have on fuel supply. In advance, I want to thank our witnesses today, in particular Karen Harbert who is the Assistant Secretary, Office of Policy and International Affairs at the Department of Energy, and Mr. Bob Meyers, who is a former Committee on Energy and Commerce Counsel who is now serving as Associate Assistant Administrator for Air and Radiation at the Environmental Protection Agency. It is good to see both of you.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF THE HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Good morning. Today the Committee will consider a discussion draft that would do two things:

- provide for the reduction in the number of boutique fuels in this country and
- expand EPA's authority to waive fuel specifications, granted under the Energy Policy Act of 2005, to include unexpected problems with distribution or delivery equipment necessary for transportation and delivery of fuel or fuel additives.

This discussion draft is another step in our plan towards energy security .

Four weeks ago, this Committee held a two-day long hearing on gasoline supply, price, and specifications, and the reasons why gasoline prices have skyrocketed became painfully clear. Crude oil prices, increased demand, transition from winter to summer

fuels, removal of MTBE from the nation's fuel supply, logistical issues with the delivery of ethanol, and the brittleness of the distribution system all contribute to the increase in the price at the pump. Some say that these are penny-ante issues, at least in their effect on the price of a single gallon of gasoline, but as every driver in America can tell you, they add up fast. The Committee is going to keep looking at the causes and solutions, and we're here today to focus on one of them -- boutique fuels.

Blending special fuels for different parts of the country serves a good purpose, but it adds dramatically to the complexity of the gasoline distribution system. When gasoline was simply gasoline, it could be sold anywhere. But when we began deciding that Alabama gasoline should be different from Illinois gasoline, and you could not fill in one with the other, we set the stage for problems. There may be plenty of gas around in America, it just isn't the kind that is permitted to be sold in certain states.

In the Energy Policy Act of 2005, we took initial steps to simplify the complex system of boutique fuels. We began this process by capping the number of boutique fuels allowed to those approved by the EPA as of September 1, 2004. We also gave EPA authority to waive fuel specifications in the event of a natural disaster, an Act of God, a pipeline or refinery equipment failure or any other reasonably unforeseeable event. EPA utilized this authority 21 days after the signing of the bill when Hurricane Katrina hit the Gulf Coast. Originally criticized as unnecessary, this authority proved to be vital, within in a month of enactment, in staving off even greater price spikes and supply disruptions.

We also directed EPA to conduct two studies, one that examines the harmonization of the nation's fuel supply, and another that requires EPA, in coordination with DOE, to develop a fuels system that maximizes fuel fungibility and supply, addresses air quality requirements, and reduces fuel price volatility.

The discussion draft before us today takes another step forward in the simplification process. This draft would move up the completion of certain elements of the studies making it possible for the EPA and DOE to utilize that information when developing what the draft refers to as the Approvable State Fuels List. Each of the fuels included on this list of "pre-approved" boutique fuels must satisfy all prerequisites outlined in the draft. Each fuel must have the ability to reduce emissions thereby assisting the state in attaining the National Ambient Air Quality Standards, provide net benefits to the United States or a region of the country's fuel supply, and not result in a reduction in supply or producibility.

States, in turn, may choose a fuel from the list, provided that no more than two of the approved fuels may be used in each Petroleum Administration for Defense District (PADD). The fuels included on the Approvable State Fuels List ensure continued protection of air quality while helping to reduce the strain on the distribution system by eliminating the "fuel island" effect that makes States vulnerable to supply disruptions.

Some may ask if the draft would limit the ability of States to protect their citizens' air quality. However, let's keep in mind that boutique fuels are but one tool in a large collection of resources for improving air quality. The language in the discussion draft does not eliminate boutique fuels. It does not eliminate the reformulated gasoline program, or the ability of a State to opt in. The language does not eliminate the State of California's unique carve out under the Clean Air Act to develop and implement its own motor vehicle and fuel emission standards. The language seeks to provide options without putting the nation's air quality or fuel supply at risk.

The discussion draft is just that, a compilation of ideas that provide a basis from which to learn more about a complicated issue. Today, I will ask each of the witnesses how best to craft language to reduce the number of boutique fuels. How do we accomplish such a reduction while ensuring air quality, fuel producibility and supply, and lessening price volatility. I have no doubt each of you will be ready to provide such input. In addition, it is my understanding we will learn more about the potential effect state additive mandates may have on fuel supply and price.

In advance, I want to thank our witnesses here today, in particular, the Honorable Karen Harbert, Assistant Secretary, Office of Policy and International Affairs, Department of Energy and Mr. Bob Meyers, a former Committee on Energy and Commerce Counsel, now serving as Associate Assistant Administrator for Air and Radiation, Environmental Protection Agency. Bob, it is good to see you again.

CHAIRMAN BARTON. Mr. Dingell has arrived for an opening statement.

MR. DINGELL. Good morning, Mr. Chairman. Thank you.

I want to thank you and commend you for holding this hearing today. I must note that this process stands in rather remarkable contrast to that used on the refinery bill, which was moved to the House floor without the benefit of consideration by the committee.

I hope today's process will lead us to a more cooperative and a better result.

This discussion draft to reduce the number of boutique fuels raises a number of important questions. Most importantly, what has changed since last August when we enacted the Energy Policy Act of 2005? We agreed to substantive provisions in the bill to address what some believed were problems with State clean air fuels or boutique fuels.

First, in response to the concerns about proliferation of State clean air fuels, we adopted a provision to prohibit any increase in the number of State clean air fuel programs.

Second, in response to concerns about decreased fungibility of the fuel supply, which could exacerbate price spikes or supply disruptions during emergencies, we adopted language that gave the Environmental Protection Agency authority to waive State requirements in emergencies. This new provision was used extensively and proved to be most helpful in the wake of Hurricanes Katrina and Rita.

Third, EPAct 2005 repealed the oxygenate requirement for Federal reformulated gasoline, eliminating one of the main drivers for States to adopt their own clean air fuels--concern about MTBE in the drinking water.

Lastly, the Department of Energy and EPA are required under EPAct 2005 to jointly prepare and send a report to Congress by early August so that we can evaluate the effect of these changes and determine whether further action would be appropriate. The report also would recommend further legislative changes if the Administration deemed that were necessary. EPAct 2005 contained a comprehensive approach to solve many of the known problems of boutique fuels and required reports to evaluate the effect of these legislative changes.

Now we find ourselves in a rather curious position. We are attempting to legislate without the very information we agreed would allow us to evaluate its impact and to legislate in an enlightened fashion.

Have new facts come to light that indicate a need for us to change the law that was passed less than a year ago? Is there evidence that the State clean air fuels have contributed to the run-up in gas prices? Is there evidence that the waiver authority in EPAct 2005 was insufficient? And why is the administration only now beginning to implement these boutique fuel provisions? For example, EPA was directed to issue a list of State clean air fuel programs 90 days after enactment of EPAct 2005. Instead, EPA, some 7 months late, only yesterday published a proposed list for comment.

I suspect that the two matters--that is, that publishing and this hearing--are intimately entwined.

I would also note that within 180 days of enactment, EPA was to publish regulations governing the waiver authority for State clean air fuels in extreme and unusual emergencies. These regulations have not yet been proposed. I must hope and assume that your leadership, in having this hearing today, will stimulate some action on the part of the agency.

EPA has been slow in meeting their responsibilities as set forth by the Congress, perhaps due in part to insufficient congressional oversight. I hope that this oversight will wake up an agency which appears to be rather sleepy on these matters.

But I note that EPA has moved on this matter quickly only when the President became interested in the issue of boutique fuels last April.

I suggest that we take advantage, then, of EPA's awakening and that we spend our time overseeing the implementation of the statute we labored so mightily to enact, and that we do this instead of legislating before we get the information being gathered under the 2005 Act. We do need this information before we can legislate intelligently. And I hope that your leadership in having these meetings will perhaps encourage EPA to do some of the things that they are supposed to do with other government agencies so that we can, in effect, carry out our responsibilities properly. I thank you, Mr. Chairman.

[The prepared statement of Hon. John D. Dingell follows:]

PREPARED STATEMENT OF THE HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, thank you for holding this hearing today. I must note that this process stands in marked contrast to that used on the refinery bill, which moved to the House floor without the benefit of this Committee's consideration. I hope today's process will lead us to a better result.

This discussion draft to reduce the number of boutique fuels raises several important questions, most importantly: What has changed since last August, when we enacted the Energy Policy Act of 2005 (EPACT)? We agreed to substantive provisions in that bill to address what some believed were problems with State clean air fuels or "boutique fuels."

First, in response to concerns about a proliferation of State clean air fuels, we adopted a provision to prohibit any increase in the number of State clean air fuel programs.

Second, in response to concerns about decreased fungibility of the fuel supply, which could exacerbate price spikes or supply disruptions during emergencies, we adopted language that gave the Environmental Protection Agency (EPA) authority to waive State requirements in emergencies. This new provision was used extensively and proved helpful in the wake of Hurricanes Katrina and Rita.

Third, EPACT 2005 repealed the oxygenate requirement for Federal reformulated gasoline, eliminating one of the main drivers for States to adopt their own clean air fuels – concerns about MTBE in drinking water.

Lastly, the Department of Energy (DOE) and EPA are required under EPACT 2005 to jointly prepare and send a report to Congress by early August so we can evaluate the effect of these changes, and determine whether further action would be appropriate. The report would also recommend further legislative changes, if the Administration deemed that necessary.

EPACT 2005 contained a comprehensive approach to solve many of the known problems of boutique fuels and required reports to evaluate the effect of those legislative changes.

Now we find ourselves in the curious position of attempting to legislate without the very information we agreed would allow us to evaluate its impact. Have new facts come to light that indicate a need for us to change the law that was passed less than a year ago? Is there evidence that State clean air fuels have contributed to the run up in gas prices? Is there evidence that the waiver authority in EPACT 2005 was insufficient?

And why is the Administration only now beginning to implement these boutique fuel provisions? For example, EPA was directed to issue a list of the State clean air fuel programs 90 days after enactment of EPACT 2005. Instead EPA, some seven months late, only yesterday published the proposed list for comment. Also, within 180 days of enactment, EPA was to publish regulations governing the waiver authority for State clean air fuels in extreme and unusual emergencies. These regulations have yet to be proposed.

EPA has been rather slow in meeting their responsibilities set forth by Congress, perhaps due in part to insufficient Congressional oversight. But I note that EPA moved on this matter quickly when the President became interested in the issue of boutique fuels last April.

I suggest that we take advantage of EPA's awakening, and spend our time overseeing the implementation of the statute we labored so mightily to enact, rather than rushing to legislate before we get the information being gathered under the 2005 Act.

CHAIRMAN BARTON. We thank the gentleman for his leadership on this issue.

The distinguished Whip, Mr. Blunt, who has been a leader on this issue for a number of years, is recognized for an opening statement.

MR. BLUNT. Mr. Chairman, thank you for holding this hearing today on our discussion draft. As you know, the high price of gasoline is one of the major issues facing the people we work for as they drive to work every day, as they enter the summer driving season. Gas prices have continued to rise at a steady pace. In fact, according to gas-watch.com, the average price of gasoline is 2.86 per gallon, with the highest being $4.09 per gallon in Bridgeport, California.

Gas prices in several cities, including Washington, are well above $3 per gallon. It is my belief that the number of boutique fuels exacerbate this problem. And as you said, this has been an issue that I have been concerned about for some time.

Boutique fuels are specialized blends produced in a specific State or area of the country to meet State and local air quality requirements. I have been very concerned about the proliferation of these fuels. The number of fuels has expanded, and we now have an uncoordinated and overly complex set of fuel rules that I believe is leading to increased cost and price spikes.

In an editorial in USA Today, on May the 5th of this year, that newspaper equated boutique fuels to coffee at Starbucks, unnecessarily complex and pricey, according to the editorial. And while that may be fine for coffee, it is not fine, in my view, for gasoline. We need more fungibility in the marketplace. We need this product to be as much of a commodity as possible.

It is my hope that this hearing will provide us the opportunity to look at the draft, to have the kind of input that your decision to have this hearing on draft legislation would create as we move forward with this issue.

As both you and the Ranking Member have pointed out, last year during the debate on the Energy Policy Act, we worked very hard to secure a cap on existing boutique fuels to ensure that this problem would not worsen. We also gave the EPA authority to temporarily waive certain fuel specifications during unforeseeable fuel supply emergencies.

This was a great first step towards solving the problem, and, Mr. Chairman, as you just stated, these measures were extremely important during the aftermath of Hurricane Katrina. Without this additional waiver authority, refiners would not have been able to redirect fuel supplies to the area. We were able to maximize the supply delivery system by making gasoline a commodity again under the time period that we had given the President in the Energy Policy Act. It turned out to be incredibly important in that review of unforeseeable circumstances.

This also now looks further at the system that develops when you have shortages, whether that is transitioning from one fuel additive to another, or whatever else might create a shortage that is not necessarily created by a natural disaster but clearly impacts the system.

I believe we need to take the next step in simplifying our fuel system. We need to ratchet down on the number of existing boutique fuel blends. While cities clearly can and do have air attainment challenges, it is unreasonable to assume, as we did for the first few years of this act, that every city somehow has a blend of fuel that is perfect just for them.

This Act moves further in establishing a number of fuel blends that cities can choose from, but not allowing the refineries to become the Starbucks of the delivery system. And, Mr. Chairman I really do appreciate your leadership on this issue, the great work that you and your staff have done on this issue, and your decision to have a hearing on this discussion draft today, and I yield back.

[The prepared statement of Hon. Roy Blunt follows:]

PREPARED STATEMENT OF THE HON. ROY BLUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. Chairman, thank you for holding this hearing on our discussion today. As we know, the high price of gasoline is one of the major issues facing our constituents as they drive to work every day. Gas prices have continued to rise at a steady pace. In fact, according to Gaspricewatch.com, the average price of gasoline is $2.86 per gallon, with the highest being $4.09 per gallon in Bridgeport, California. Gas prices in some cities, including Washington, are well above $3 per gallon. It is my belief the number of boutique fuel blends are exacerbating this problem.

Boutique fuels are specialized blends produced for a specific state or area of the country to meet state and local air quality requirements. These unique fuels present serious challenges to the fuel distribution system and, especially in times of disruption, may have the potential to result in local supply shortages. This discussion draft relies on a simple concept: creating a larger market for a greater amount of gasoline.

I have been very concerned about the proliferation of boutique fuels for several years. The number of fuels has expanded and we now have an uncoordinated and overly complex set of fuel rules that I believe is leading to increased costs and price spikes. An editorial in *USA Today*, dated May 5, 2006, equated boutique fuels to coffee at Starbucks – unnecessarily complex and pricy. We need to restore fungibility to the market by harmonizing our fuel system.

It is my hope this hearing will provide us with an opportunity to discuss not only what led to this present situation but, more importantly, to develop a viable solution. Mr. Chairman, I think this is a step in the right direction and I appreciate the effort you and other colleagues on the Committee have given this problem.

Last year during debate of the Energy Policy Act of 2005 we worked very hard to secure a cap on existing boutique fuels to ensure this problem could not worsen. We also gave the EPA the authority to temporarily waive certain fuel specifications during unforeseeable fuel supply emergencies. This was a great **first** step toward solving the problem. Mr. Chairman, as you stated, these measures were extremely important during the aftermath of Hurricane Katrina. Without this additional waiver authority refiners would not have been able to redirect fuel supplies to the area. Without supply to fuel vehicles, emergency responders would not have had the ability to bring needed supplies to Gulf Coast communities nor would buses would have been able to evacuate victims.

I believe we need to take the next step in simplifying our fuel system. We need to ratchet down on the number of existing unique fuel blends. The language in this discussion draft will encourage states to look among an approved list of fuels instead of creating a new unique blend, which would only contribute to price spikes and fuel supply problems. We also need to look at the ability of the EPA to deal with temporary waivers and at enhancing that authority. Additionally, we need to encourage the EPA to finish the studies required by the Energy Policy Act of 2005 in a timelier manner.

Mr. Chairman, once again thank you for opportunity to offer this opening statement and I look forward to working with you and the Committee on this complex issue.

I yield back.

CHAIRMAN BARTON. I thank the distinguished Whip.

Does the gentlelady from California, Ms. Eshoo, wish to make an opening statement?

MS. ESHOO. I do. Good morning, Mr. Chairman, thank you for having this full committee legislative hearing on the discussion draft of legislation to limit the number of boutique fuels.

I have been concerned about the so-called balkanization of the gasoline supply where too many blends of fuels make us susceptible to supply interruptions and price hikes. But I think that at this point the bill is unnecessary and is a somewhat dangerous attempt, I think, to address an issue that is on its way to being resolved. I say "dangerous" because it could limit States' abilities to clean up the air.

I think it is important to recognize what boutique fuels are. They are fuel programs adopted by States or regions, with the approval of the EPA, in order to help them come into compliance with national air quality standards. Boutique fuels are adopted in the interest of protecting public health and they are not chosen frivolously.

States that choose to use them have to demonstrate that no other measure will help them comply with air quality standards in a timely fashion or that alternative measures are unreasonable or impracticable. These fuels have been effective in reducing pollution. The GAO reports that boutique fuels have reduced smog-forming emissions by up to 25 percent.

These benefits have been achieved at less than 3 cents a gallon. I want to repeat that: These benefits have been achieved at less than 3 cents a gallon.

So the issue of boutique fuels, I think--everyone should go back and appreciate this was addressed by the Energy Policy Act that was signed into law by the President last year. The Act capped the number of boutique fuels to the number approved for use in 2004.

Last week, after almost 6 months of delay, the EPA published the list of those fuels. There are seven. Once this list is adopted, there will never be any more than seven fuels.

I don't know what is in the bill that is going to reduce it from seven, or how you are going to come up with that, but that is what is in place now.

During Hurricane Katrina, the EPA's new authority to waive certain clean air requirements for fuel was used more than 30 times and helped get supplies where they were needed.

Now, I have several concerns with this bill, but particularly that we are discussing the bill, I think, without all the facts. Maybe we will get them today, but I am concerned about it.

The EPA, the DOE, and the Governors are studying how to reduce the number of fuels in a way that improves fuel supplies but does not hamper the effort to improve air quality. That report will not come out until next month. The Energy Policy Act requires an even more extensive review by June 2008.

So my question, Mr. Chairman: Wouldn't it make more sense to have at least one of these reports before considering a bill? I am also concerned that arbitrarily limiting the number of boutique fuels will make it more difficult for States to achieve their air quality standards and could force them to undertake other measures that are not as effective or as efficient. We all want to see lower gasoline prices and avoid supply interruptions, but as I read it, this bill could hamper the ability of States to improve air quality.

Thank you, Mr. Chairman and I yield back the balance of my time.

[The prepared statement of Hon. Anna G. Eshoo follows:]

PREPARED STATEMENT OF THE HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for allowing a full committee legislative hearing on the discussion draft of legislation to limit the number of boutique fuels.

I've been concerned about the so-called balkanization of the gasoline supply, in which too many blends of fuels make us susceptible to supply interruptions and price spikes.

However, I think this bill is an unnecessary and dangerous attempt to address an issue that is on its way to being resolved…dangerous because it could limit state's ability to clean up the air.

First, I think it's important to recognize what boutique fuels are. They are fuels adopted by states or regions with the approval of EPA in order to help them come into compliance with national air quality standards.

Boutique fuels are adopted in the interest of protecting public health and they are not chosen frivolously.

States that choose to use them must demonstrate that no other measure will help them comply with air quality standards in a timely fashion or that alternative measures are unreasonable or impracticable.

These fuels have been effective in reducing pollution. GAO reports that boutique fuels have reduced smog-forming emissions by up 25%. These benefits have been achieved at less than three cents a gallon.

The issue of boutique fuels was addressed by the Energy Policy Act signed by the President last year.

> The Act capped the number of boutique fuels to the number approved for use in 2004. Last week, after over six months of delay, the EPA published the list of those fuels. There are seven. Once this list is adopted, there will never be any more than seven fuels.

> During hurricane Katrina, the EPA's new authority to waive certain clean air requirements for fuel was used thirty times and helped get supplies where they were needed.

I have several concerns with this bill, particularly that we are discussing a bill without all the facts:

> The EPA, DOE, and Governors are studying how to reduce the number of fuels in a way that improves fuels supply but does not hamper the effort to improve air quality. That report will not come out until next month.
>
> The Energy Policy Act requires an even more extensive review by June 2008.

Wouldn't it make sense to have at least one of these reports before considering a bill?

I'm also concerned that arbitrarily limiting the number of boutique fuels will make it more difficult for states to achieve their air quality standards and could force them to undertake other measures that are not as effective or efficient.

We all want to see lower gasoline prices and avoid supply interruptions, but as I read it, this bill could hamper the ability of the states to improve air quality.

CHAIRMAN BARTON. I thank the gentlelady.

Mr. Terry.

MR. TERRY. I will waive until we get to the panel.

CHAIRMAN BARTON. Dr. Burgess.

MR. BURGESS. Thank you, Mr. Chairman, and I will be brief.

We have learned through our series of hearings the past several months that there are a number of factors contributing to our high gasoline prices that we see today, including the crude oil price and tight refinery capacity as well as environmental regulations. This morning we are going to examine a discussion draft of legislation that seeks to modify price spikes associated with the environmental premium imposed on the price of gasoline.

In my home State of Texas, we literally produce oil and gasoline to send to our friends elsewhere in the country because they can't make those things for themselves. But we pay more per gallon at the pump because of our generosity. The emissions from our refineries have a negative impact on our air quality, which means that we must fill our tanks with more expensive reformulated gasoline.

Mr. Chairman, again I thank you for holding this hearing this morning and I look forward to the testimony of our witnesses.

[The prepared statement of Hon. Michael G. Burgess follows:]

PREPARED STATEMENT OF THE HON. MICHAEL G. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, thank you for convening this hearing this morning. And thanks to our panelists for coming before us today.

As we have learned through a series of hearings over the last few months, there are a number of factors that contribute to high gasoline prices, including crude oil prices, tight refinery capacity, and environmental regulations.

Last week, we passed legislation on the floor that would increase domestic oil supply by allowing oil and gas exploration in ANWR.

Later today on the floor we will consider legislation that would streamline the permitting process for new fuel refining capacity by eliminating needless bureaucratic delay and giving federal courts the authority to keep projects on schedule.

And here this morning, we will examine a discussion draft of legislation that seeks to reduce price spikes associated the environmental premium imposed on the price of gasoline by boutique fuels in a time of supply disruption.

Non-federal fuel specification requirements reduce the fungibility of gasoline, especially in a supply shortage situation. That means that gasoline that can be used in Lubbock cannot be used in Fort Worth. Gasoline used in Utah cannot be used in Chicago. This limited inability to move gasoline across the country in response to local demand results in increased prices at the pump.

In my home State of Texas, we willingly produce oil and gasoline to send to our friends in the Northeast because they don't make those things for themselves. But we pay more per gallon at the pump because of our generosity. The emissions from our refineries have a negative impact on our air quality, which means we must fill our tanks with more-expensive reformulated gasoline.

Studies have shown that air quality has an impact on public health, and as a physician, public health is paramount to me. I am certainly not suggesting that we reduce our air standards in order to lower the price of gas. But we should employ some common sense. It does not make sense to have 15 different approved fuels in use across the country, as EPA indicated in their May 31st report.

The Government Accountability Office has said that boutique fuels add anywhere between three tenths to 3 cents per gallon of gasoline. While this may not seem like a lot, with gasoline at $3.09, this can add up very quickly.

A supply shortage in one of the "fuel islands" created by the use of boutique fuels, is exacerbated by the area's inability to import fuel from a neighboring area, which can lead to price volatility, commonly referred to as "price spikes".

In addition to increased prices at the pump, the logistical complications of transporting and distributing boutique fuels to the "fuel islands" could intensify supply shortages if the source of the fuel is not nearby.

In North Texas recently, the logistical problems associated with the transition between MTBE and ethanol caused price spikes that make gasoline in the Dallas Fort Worth area some of the most expensive in the country.

In EPAct, we capped the number of boutique fuels to that number already approved by the EPA; with this discussion draft, we are looking to reduce the number of boutique gasoline fuels in use across the country.

I am looking forward to hearing from our panelists about the approach taken in the discussion draft and I'd like to thank you all for taking the time out of your busy schedules to be with us today.

Mr. Chairman, I yield back.

CHAIRMAN BARTON. We thank the gentleman.

Mr. Stupak.

MR. STUPAK. Thank you, Chairman Barton, Ranking Member Dingell, and thank you for holding today's hearing. I would like to thank our witnesses. I am pleased this committee has been holding hearings on the burden of high gas prices. It is encouraging that the Chairman has

finally realized that these hearings are needed, and I hope that Congress can produce real solutions to reduce the high energy prices.

Unfortunately, this committee seems to be relying on the oil companies to provide excuses and scapegoats rather than investing problems and finding serious solutions. Today the excuse is boutique fuels, even though this committee and this Congress has already addressed boutique fuels through the Energy Policy Act of 2005. As part the energy bill approved last summer, Congress has already capped the number of boutique fuels and has directed the EPA to study whether additional boutique fuels need additional regulation. I cannot find any merit in advancing additional legislation until these studies are completed.

Furthermore, it is widely accepted that boutique fuels have not caused the recent increase in gas prices. According to the EPA, boutique fuels only add up to 3 cents per gallon, usually less. Several of our witnesses here today will confirm that this legislation will not have significant effect on the current gas prices.

While there is potential for increased cost should a production or supply disruption take place, Congress has already granted EPA authority to issue boutique fuel waivers should such a situation arise. These waivers have already proved to be efficient and effective.

Instead of boutique fuels, this Congress and this committee should be investigating whether substantial profits currently being made by oil and gas companies are warranted, or whether these profits are a result of unfair pricing and market manipulation. Congress should pass a real price-gouging bill to prevent this.

We should also hold hearings on my legislation, the Prevent Unfair Manipulation of Prices, or PUMP Act, to bring oversight and transparency to over-the-counter trading of energy commodities which are currently unregulated. It is estimated that through the PUMP Act, a barrel of oil could be reduced by $20. Then, as previous hearings have shown, regulate the crack spread and we could lower the price of oil converted to gasoline by another $12. We could lower gas prices in this country by 40 to 50 percent through sound legislative proposals.

Also we could have the foresight to investigate natural gas prices. High natural gas prices are already affecting farmers, manufacturing, the electrical and utilities, among other industries. Rather than wait until this winter for natural gas prices to be even higher, we should address the issue now.

Our constituents are waiting for Congress to address high energy prices. I fail to see how this bill we are discussing today would accomplish this. I welcome our witnesses and yield back the balance of my time.

CHAIRMAN BARTON. Does Dr. Murphy wish to make an opening statement?

MR. MURPHY. Yes. Thank you, Mr. Chairman. I thank you for holding this hearing and continuing your emphasis on providing a number of important directions for Congress moving in lowering fuel prices. It is an ongoing battle; we have to increase the supply. Every American understands the issues of supply and demand. We simply do not have enough supply to meet the demands currently and in the future.

The moves that you and this committee have done to increase such things as conservation are important and we need to be much more vigorous in that. However, several issues, that is, building more refineries in America is important. Every American understands we have lost refineries from the hurricanes and we need more. And yet there is a split in this committee in terms of building those. The boutique fuel issue is also incredibly important because we recognize these plants have to stop and start in building new fuels.

It reminds me, I am one of 11 children, I remember at times all 11 kids would come in the kitchen and ask for something different; and my mom would respond and say, I am not making you all what you want. You are all going to get the same thing. I don't have all night to cook.

And it is a matter here as these issues go on, the oil refineries don't have the luxury of starting and stopping, creating all these things and then be able to keep prices down.

The American people also understand we need to be drilling for our massive oil supplies and natural gas supplies we have throughout our country in the Rocky Mountains, in Alaska, and the Pacific Coast and Atlantic Coast. We have oil around this Nation and we need to be getting it.

So as you put together these packages of things, Mr. Chairman, I think it is important and I support you in continuing to push forward on these issues to lower gas prices, to get our economy moving in these directions to stop the price increases which are destroying our chemical industry, our agricultural industry, as prices of fertilizer go up, et cetera. And I am looking forward to hearing from the witnesses today to hear more ways that we can move forward to increase the supply and lower prices.

Thank you very much.

CHAIRMAN BARTON. I thank the gentleman.

Mr. Green of Texas.

And let me announce that the President of Latvia is addressing a Joint Session at 11:00 a.m. this morning. The results require that we stand in recess while that Joint Session is underway.

I am going to ask unanimous consent in a minute to bend the rules and at least allow everybody here, all Members present, to give their opening statements so that everybody that has waited patiently for an hour gets to give their statement.

Mr. Green.

MR. GREEN. Thank you very much. Thank you, Mr. Chairman. Our committee has been extremely active on fuel supply issues and I hope our members on both sides realize we need to think long term and see the whole field. There are plenty of ways to criticize the current state of fuel content regulations in our country. A complex web of multipurpose regulations on the State and Federal level leads to supply vulnerability in some areas during unexpected events like fires, breakdowns, and hurricanes.

There are also some benefits in the current system, because the multiple fuels allow for flexibility in pursuit of environmental goals while maximizing the overall supplies.

If we are going to move to fewer cleaner fuels, we will probably see more areas using low vapor pressure. And the DOE tells us that fuel supply will decrease in the short run. As a result, the committee should allow for plenty of lead time to adapt to an altered fuel system if we make any further changes.

The fact that we are considering legislation on boutique fuels for the second time in 2 years does cause some regulatory uncertainly. We probably can make some improvements in the patchwork of fuel content standards over the medium term, but we must be careful. If you pull one string of these fuel regulations, you don't know what else may come loose. The Chairman is wise to have thorough hearings on the topic before legislating because we definitely want to do no harm when gas prices are at the levels they are today. And I yield back my time.

CHAIRMAN BARTON. Does Mr. Shadegg wish to make an opening statement?

MR. SHADEGG. I do, Mr. Chairman. Thank you very much for holding this hearing on the draft legislation to combat the proliferation of boutique fuels.

As you know, Mr. Chairman, the committee included provisions in the Energy Policy Act of 2005 to essentially hold the line on boutique fuels, restricting the approval of new blends and requiring several studies of the issue. I strongly supported that legislation as a necessary first step and believe the draft bill before us would further strengthen our efforts to increase flexibility and fungibility to our fuel delivery infrastructure.

While I believe the bill before us is strong, and I support it, I believe we may wish to consider expanding the definition of boutique fuels to truly capture the actual market.

My concern here specifically is diesel fuel. Mr. Chairman, I understand we are all concerned about the price of gasoline and we need to be doing everything we can to ensure that there is a constant supply of gasoline and that it comes to our market at the lowest possible price. I would like to point out that diesel fuel moves our economy. We ship tons of goods every year with diesel fuel. That industry right now, the trucking industry, is embracing ultra-low sulfur diesel. But I am concerned that the definition of boutique fuels adopted or proposed by the EPA will open us to essentially a whole new market of boutique fuels. By categorizing biodiesel as merely an additive, we face the prospect of all 50 States, or at least a substantial number of them, enacting a biodiesel mandate creating an individual market in State after State essentially in a boutique diesel fuel structure.

I think it is important to understand that today's trucks move thousands of miles without refueling, and so this is not so much an issue of local concern, but rather an issue of national concern. A truck fueled in California, for example, only burns one quarter of its tank of fuel before it is out of the State, say back in my State of Arizona and vice versa. So it seems to me the diesel fuel is a national issue. And we need to make sure that we do not damage the market in diesel fuels by essentially, as we are eliminating boutique fuels for gasoline, nonetheless allowing essentially new boutique fuels in the diesel area by embracing biodiesel.

Let me make it clear. I am not opposing biodiesel. What I am doing is expressing concern that as we move to try to create a uniform market, as we move to try to limit boutique fuels because of their impact on the marketplace, we need to be sure we are not causing additional damage in the diesel area by allowing State after State to adopt their own unique and burdensome on-the-market biodiesel requirements.

Indeed, I think it may be that we should be looking at a definition which would embrace biodiesel in the definition of boutique fuels and create, as much as we can, a single clean fuel in the country for the diesel industry, because these are truly interstate trucks.

With that qualification, Mr. Chairman, I appreciate the hearing and look forward to the testimony of the witnesses.

CHAIRMAN BARTON. We thank the gentleman.

The Chair would ask unanimous consent that the committee continue in session to hear the remaining opening statements of the Members present.

Is there objection? Hearing none so ordered.

Gentleman from Maine, Mr. Allen.

MR. ALLEN. Thank you, Mr. Chairman. I should always welcome, I suppose, any hearing on a topic before this committee, but I am having

some trouble understanding why this hearing and this legislation is really necessary at this time.

The Energy Policy Act we passed just 10 months ago addressed most of the major concerns with boutique or State clean fuels. The number of new fuels is capped. EPA has been given authority to grant waivers in the event of emergencies, the oxygenate mandate has been dropped from the Federal reformulated gasoline program. Further, EPA and DOE are preparing an extensive report on State clean air fuels, due to Congress in June of 2008.

The President has convened a task force of Governors to study the issue of State clean air fuels, and it has been working for approximately 1 month. I think we should receive these reports and then decide if further action is necessary.

State clean air fuels allow States to deal creatively with air quality standards and to meet their State implementation plans. The use of these fuels is often the most cost-effective way to meet a State's SIP.

The cost of producing a State clean air fuel adds somewhere between .3 and 3 cents to the cost of a gallon of gasoline, or, at today's prices, between one-tenth of 1 percent and 1 percent.

The American Petroleum Institute's prepared testimony today says, and I quote, "The patchwork of localized boutique fuels is not principally responsible for the recent higher gasoline prices and an enactment and implementation of this legislation would not address the most important drivers of the gasoline price increases we have experienced over the last several months."

I really don't believe that this legislation will help consumers deal with high gas prices, and I do suggest we stop referring to boutique fuels.

That evokes images of costly expensive shopping districts and unnecessary luxury items; even, in the words of our distinguished whip, coffee at Starbucks. State clean air fuels are not expensive, and clean air is certainly not a luxury.

States cannot use a State clean air fuel unless there is no other way to meet this SIP that is reasonable or practicable. So if States are denied the use of State clean air fuels, then they will be forced to resort to measures that would be unreasonable or impractical.

Seven Maine counties, six of which are in my district, are required by our SIP to use a State clean air fuel in the summer. That is not due to traffic on the Maine Turnpike, but because atmospheric conditions transport significant amounts of pollution to Maine. If Maine could not use a State clear air fuel, then it would be forced to meet its SIP with measures that would significantly affect Maine industries in order to address a problem that is largely generated by out-of-state polluters. Or, of course, my constituents could simply settle for dirty air.

We should not act on the issue of State clean air fuels until we have the benefits of the reports this committee asked for in the Energy Policy Act, and we should not sacrifice a useful tool for meeting our clean air goals.

And with that, Mr. Chairman, I yield back.

CHAIRMAN BARTON. The distinguished Chairman of the Energy and Air Quality Subcommittee wish to make an opening statement? Mr. Hall.

MR. HALL. Mr. Chairman, I make a very brief opening statement, and I thank you for holding this hearing and for the work that you have done leading up to it and for the input of the folks that are here. And the first panel is very important that regulate what happens and guide us in what is happening.

I just want to say a word, if I might, about one of my constituents that are going to be on the second panel, Sonja Hubbard with E-Z Mart Stores. And, Mr. Chairman, if you will remember, Bill Douglas, her associate, helped us point out that at one time it was not the convenience stores and other local service stations that caused the escalating cost of fuel, it was at the refinery level. And I think they pointed that out pretty clearly.

Sonja has been named to the Fortune 500, her company, E-Z Mart, and she operates locations in four States: a major one in Texas, of course, and she is serving first term as the Chairman of the National Association of Convenience Stores. I just want to honor her and welcome her to the panel in case I have to run and go like everybody else seems to be doing today. Thank you Mr. Chairman.

CHAIRMAN BARTON. Thank you, Mr. Chairman.

Does the gentlelady from Chicago, Mrs. Schakowsky, wish to make an opening statement?

MS. SCHAKOWSKY. I do, Mr. Chairman, thank you. As American consumers suffer pain at the pump, the committee is again heading down the wrong track, I believe. This legislation is a poor answer to a problem that may not exist. It could prevent States from finding cheap and readily available means of meeting clean air standards and actually raise gasoline prices. In his testimony before the committee on May 10th, EIA Deputy Administrator Gruenspecht said that limiting boutique fuels could raise gasoline prices. The EIA predicted that the Energy Policy Act would raise gas prices, and it did, over last year's record prices.

My constituents who pay an average of $2.96 for a gallon of regular gasoline--although I think over the weekend actually I saw it spike, I can't find a gas station under $3.10, $3.05 right now--will be outraged to learn that instead of limiting profits and bringing down prices, we are considering legislation that could raise the price of gasoline.

Handcuffing the ability of States and localities to develop clean fuels in the cheapest possible way, using local resources, is not sound or sensible policy. The Energy Policy Act limited the number of boutique fuels to seven. This legislation prohibits States from developing their own clean air fuels; instead, limiting their choice to one of two options authorized by the EPA. Allowing States that develop their own clean air fuels in order to meet Federal standards has led to a negligible price increase, on average, 0.3 and 3 cents per gallon. Forcing States to produce a nationally mandated fuel blend or import that blend from another State could lead gasoline prices to increase significantly.

The legislation also gives the EPA authority to grant a fuel waiver in quote "the event of unexpected problems with distribution or delivery equipment that is necessary for transportation and delivery of fuel or fuel additives," unquote.

Since the Energy Policy Act already granted a fuel waiver that dealt with natural disasters, this new waiver authority could allow the Administration to limit the supply and distribution of clean fuels and biofuels for much lesser reasons.

This legislation, flawed in its content, is also premature. After dragging its feet to take action since the Energy Policy Act became law last August, the Bush Administration has recently begun to enact it by directing the EPA to develop an approved list of boutique fuel types and convened a boutique fuel task force. Led by a bipartisan coalition of Governors, we are now considering legislation that would further limit boutique fuels both before the task force has issued its recommendations and before we have seen the effects of limiting boutique fuels to seven.

In the written testimony, our witnesses from the National Petrochemical and Refiners Association and the American Petroleum Institute encouraged the committee to consider limiting State biofuel mandate. Let's be clear. Biofuels such as ethanol are not boutique fuels and they are not responsible for rising gas prices. Biofuels like ethanol actually increase supply. And if we invest in a sufficient supply network, their proliferation could bring gasoline prices down and keep our air clean. That, I believe, is why big oil opposes this.

I plan to ask Mr. Murphy from the American Petroleum Institute who says in his testimony, quote, "Integrating ethanol and other biofuels into the gasoline marketplace is too important to be approached in an individual state-by-state manner."

Well, would he then support stronger Federal clean fuel mandates, like requiring all fuel nationwide to be at least E-10 and supporting making the ethanol supply more readily available? I don't think so.

The use of ethanol expands our gasoline supply by increasing the volume of finished product typically by about 10 percent. According to

the Department of Agriculture, ethanol also increases efficiency. For every unit of energy that goes into growing corn and turning it into ethanol, we get back about one-third more energy as automotive fuel.

This legislation will not bring down gasoline prices. We have seen no economic analysis demonstrating boutique fuels would mean lower prices and no industry representative has said they would lower prices if we pass this bill.

Legislation could also produce a roadblock to keeping our air clean and reducing our oil demand. We must get our arms around the problem before proposing a solution. I look forward to continuing to work with all the stakeholders, including Governors, to determine whether further Federal legislation is necessary, and necessary at this time, to prescribe how States develop clean air fuels. Thank you, Mr. Chairman.

CHAIRMAN BARTON. Thank you.

Does Mr. Bass wish to make an opening statement?

MR. BASS. No opening statement.

CHAIRMAN BARTON. Mr. Sullivan.

MR. SULLIVAN. Thank you, Mr. Chairman, for holding this important hearing today on the discussion draft bill to provide for the reduction in the number of boutique fuels. The Energy Policy Act, which was signed into law in August of 2005, enacted a renewable fuels mandate that will grow by 7.5 billion gallons by the beginning of the next decade. I voted for the renewable fuels standard when it passed through this committee last year, as did many of my colleagues. One of the reasons for this is because flexibility provisions were built into the renewable fuels standard which permit ethanol and biodiesel to be used where it makes economic sense, rather than where the Federal or State government requires it to be used.

This is one of the biggest reasons why I am concerned with the expansion of the State alternative fuel mandates over the past year or so.

In this year alone, 20 States have considered such ethanol or biodiesel mandates and several States have enacted new requirements. These State actions concern me because they undercut the flexibility that Congress purposely built into the renewable fuels standard in the Energy Policy Act. Rather than allow market forces to dictate when renewable fuels are to be used, these State mandates restrict normal market forces and substitute minimum content standards for every gallon of gasoline or diesel fuel sold in the State.

I am not against increased use of biofuels. In fact, there are several companies starting up in my home State of Oklahoma that plan to produce biodiesel. I welcome their innovative business plans and the economic benefits they will bring to Oklahoma. My State legislature has

had conversations about providing incentives for renewable fuel, but I am concerned that the specific mandate could harm other technology.

I am also concerned that these State ethanol and biodiesel mandates undercut the flexibility we built into the renewable fuels standards, and, at the same time, undercut the cap on the number of boutique fuels we adopted under the Energy Policy Act. I look forward to the hearing and testimony today of these States' alternative fuel mandates. Thank you, Mr. Chairman.

CHAIRMAN BARTON. We thank the gentleman from Oklahoma.

Does the gentlelady from Wisconsin wish to make an opening statement?

MS. BALDWIN. Yes, thank you.

Mr. Chairman, a few years ago, in 2001, hardworking Wisconsin families saw a sudden surge in gas prices. Historically, these gas price spikes were attributed to the approach of summer and high demand. But this particular price surge was the result of a pipeline rupture. Unfortunately, this disruption in service could not be easily resolved by simply turning to nearby urban areas for supplemental supply of gasoline. Rather, because southeast Wisconsin opts into the Federal reformulated gasoline program, a special formula had to be pumped from Texas, resulting in price hikes and headaches.

It is because of this unfortunate situation that I am aware of problems caused by varying standards for fuel. And I am concerned about price spikes that occur during times of disrupted service.

However, I am also aware that the Energy Policy Act, which was passed into law less than 1 year ago, addresses a number of ways that we can ease price spikes and limit the number of fuel formulas. For instance, the law grants temporary waivers of fuel requirements in unusual and emergency circumstances, such as the pipeline rupture that effected areas in Wisconsin.

The law also capped the number of State clean air fuels that can be used nationwide, and on June 1st, just 7 days ago, the EPA released a proposed rule on State fuels in compliance with the Energy Policy Act. The agency proposes to limit to seven the number of fuel types.

Further, it proposes the new State fuels cannot be adopted unless the new fuel is already being used within the geographic region.

Despite EPA's new guidelines, we are here today examining a bill that will further restrict State fuels. And I am concerned that the ink on the proposed rule is barely dry, yet we are already trying to alter the underlying law. If we move forward with today's draft legislation and further reduce the number of boutique fuels available, we will never know the effect of our efforts in the Energy Policy Act.

More importantly, we will be taking a step backwards in our efforts to improve air quality standards through clean fuels, and at stake are the millions of Americans who will potentially be exposed to unhealthy levels of air pollution.

Additionally, today's legislation focuses on State clean air fuels. It does not consider Federal fuel formulas such as the reformulated gasoline used in southeastern Wisconsin. As such, reducing the number of boutique fuels will have no effect on lowering prices and increasing supply in regions of the country using federally formulated gasoline programs.

Moreover, the Energy Policy Act helped ease problems that resulted from disruptions in supply, like the pipeline break in southeastern Wisconsin in 2001, through its emergency waiver provisions. Therefore, I urge the committee to reconsider moving forward with boutique fuels reduction legislation now. Let's give the boutique fuel provisions in the Energy Policy Act a chance to operate and let's allow the EPA to move forward with the job that Congress tasked the agency to perform.

Thank you, Mr. Chairman. And I yield back the balance of my time.

CHAIRMAN BARTON. We thank the gentlelady.

If no other Member present seeks to give an opening statement, all opening statements are concluded. All Members not present shall have the requisite number of days to put their written statement in the record at the appropriate time.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF THE HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, thank you for once again focusing our attention on boutique fuels.

Government mandates for specially-formulated gasoline across the country have led to a proliferation of "boutique" fuel requirements -- each region or metro area demanding a different blend in order to meet certain air pollution goals under the Clean Air Act's National Ambient Air Quality Standards, particularly for ozone.

In the Energy Policy Act we passed into law last year, we gave EPA the authority to temporarily waive a control or prohibition for a fuel or fuel additive because of supply problems -- natural disasters, equipment failures, or general unforeseeable events. The legislation we are discussing today further outlines such waiver circumstances, providing more flexibility to the Department of Energy and EPA.

The Energy Policy Act also capped the number of boutique fuels. Today's legislation would continue to constrict the number of such fuels, in order to give States as much flexibility as possible in meeting environmental goals, without unnecessarily driving up the costs of gas and limiting its supply.

Mr. Chairman, it is important that we continue to refine our environmental regulations. However, I also think it is appropriate to pause to appreciate the progress we have already made in environmental equality. For instance, the past three years have been the three lowest-ozone years on record, based on the 8-hour ozone standard. As a result of these three record-low ozone years, the national 8-hour ozone attainment rate skyrocketed from 57 percent of monitoring sites in 2003 up to 88 percent by the end of

2005. While 2005 was one of the hottest years on record, ozone levels remained at historic lows for the third year in a row. The result was an unprecedented increase in compliance with federal clean air standards.

I look forward to hearing from our witnesses today as to how we can best provide States and fuel providers the flexibility needed to build on such successes.

CHAIRMAN BARTON. The President of Latvia is speaking on the floor. We are going to stand in recess until 5 minutes after her speech concludes. I have not seen the text of the speech, but I am guessing that we will reconvene about a quarter to noon, so we stand in recess until approximately 11:45.

[Recess.]

CHAIRMAN BARTON. The meeting will come to order. We need our witnesses.

We are going to go ahead and start now. It is now almost noon time.

So the Chair announces that a quorum is present and welcomes our first panel. We have the Honorable Karen Harbert, who is the Assistant Secretary of Policy and International Affairs of the Department of Energy. We have Mr. Robert J. Meyers, who is the Associate Administrator for Air and Radiation at the Environmental Protection Agency.

Your statements are in the record in their entirety.

STATEMENTS OF THE HONORABLE KAREN A. HARBERT, ASSISTANT SECRETARY, OFFICE OF POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF ENERGY; AND ROBERT J. MEYERS, ASSOCIATE ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

CHAIRMAN BARTON. We recognize you, Ms. Harbert, for 7 minutes and then Mr. Meyers. Welcome to the committee.

MS. HARBERT. Thank you, Mr. Chairman.

I really appreciate the opportunity to come before you to talk about this discussion draft and the status of the gasoline market currently in the United States. It is obviously a topic of great interest to the Administration. We are very concerned about the impact of high prices on consumers, on businesses, on homeowners.

On April 25th, 2006, as you know, the President made a speech, made a proposal and in a 4-Point Plan to Confront High Gasoline Prices; and in that, as part of that 4-point plan, he did direct EPA Administrator Johnson to establish a governor's task force to confront the large problem of too many localized fuel blends.

First, just a teeny bit of background on the fuel distribution system. As you know, the U.S. petroleum supply system is an intricate production, distribution, and storage system designed to carry a limited number of fuels, but over time and as the number of fuels have increased the industry has accommodated the changes in various ways.

Variations in fuel types have strained the distribution and storage systems and have contributed to price spikes when the supply system has been disrupted for a variety of reasons. The number of distinct fuels being used in areas geographically distant from supply sources has strained the motor-fuel distribution system. Concurrently, these systems have also been challenged by the large growth in U.S. gasoline and diesel demand and the limited expansion of pipeline capacity and product storage and lack of investment. The collective result of all of these factors has been an increasingly sensitive supply system that has little room for error. Any supply problem can create a localized motor-fuel shortfall with consequent price spikes.

To date, fuel type proliferation has from time to time created problems during supply interruptions. However, today's high gasoline prices are not the result of boutique fuels but are a result of a variety of a multitude of factors. Boutique fuel problems arise most often during supply disruptions such as a pipeline break or as we saw in the recent hurricanes.

In general, it might be worthwhile to reduce the number of fuel types that can be used to meet local environmental requirements. Moving to fewer fuel types would reduce strain on the distribution system. However, depending on what specific fuel types were required, there is a potential to increase challenges for the refining sector, that sector that we are asking to expand currently.

The consequences of requiring a generally cleaner fuel are not limited to higher fuel costs but also include loss of gasoline blending components that can be used during the peak gasoline season. Given the complexity of this issue, obviously thoughtful and informed solutions are needed; and discussions like today are part of that effort.

The bill that we are here to discuss would broaden the basis for granting fuel waivers and require the reduction in the number of approved boutique fuels, once a previous fuel ceases to be used. Another section of the bill would then change what fuels would be considered to be, quote, unquote, "approvable" as part of a State request for incorporation into a State Implementation Plan. This section, which is Section 3(b), might have uncertain consequences on the resulting boutique fuel requirements by States. While it is possible that it will produce boutique fuels and no additional burden on refiners, it is possible

that the resulting fuel requirements would be more stringent and adversely affect refiners' ability to supply fuel.

Due to the complexity of this issue and the associated complications, it would be helpful to further review this section to better understand its possible consequences to help ensure that it achieves its desired outcomes. As my colleague from EPA will indicate and I would like to indicate, the Administration has not fully analyzed this legislation and is not yet prepared to offer a position on this amendment. And, of course, it is still in the discussion stage, as you pointed out earlier.

A note about regulatory stability. The motor fuel industry has, since the Clean Air Amendments of 1990, responded to a variety of regulatory initiatives including reformulated gasoline, low-sulfur gasoline and diesel fuel, changes in oxygenate requirements, shifts from ethers to biofuels and the proliferation of boutique fuels to meet air quality standards. Over the past 9 months, natural disasters have constrained refinery output and, when combined with a strong economy and a growing demand for U.S. transportation fuels, refiners are hard pressed to keep up with demand.

I don't need to remind the committee the number of challenges which we are facing on the energy front which are straining on the demand situation, but I can address those.

The Department would encourage Congress to consider regulatory stability as a factor that could contribute to greater fuel supplies. An additional factor that should be considered is whether the current system of regulation could be enhanced by accounting for fuel supply and distribution issues in the development and approval of new fuel types.

As you know, the Energy Policy Act of 2005 recognized the fuel harmonization issue is larger than just the boutique fuel issue. Section 1541 will help limit the proliferation of the boutique fuels and also require DOE/EPA to provide a report to Congress this summer that will help determine how to develop a Federal fuel system than maximizes fuel fungibility and supply. Section 1509 requires a more broadly defined Fuel Harmonization Study, which is due to Congress in June of 2008.

The Administration is carrying out the boutique fuel requirements required by EPAct, and we are working both on Sections 1509 and 1541. We will continue to collaborate with EPA on all regulatory matters, especially the evaluation of any fuel supply problems that may require fuel waivers.

Mr. Chairman, the Administration is really focused on addressing our Nation's energy challenges. The current gasoline market is affected by numerous factors, including rising demand, limited spare capacity, a number of planned regulatory changes and lingering problems from last

year's hurricanes. We must address our energy challenge in a multi-faceted manner by increasing supply, increasing refining capacity, and improving efficiency.

The authorities provided in EPAct 2005 have laid out a sequential and thoughtful course to address the number of boutique and unique fuels. We are committed to complying with these provisions.

As indicated above, since the legislation is at an early stage, we have not undertaken a formal review process. But I would like to add that we and the Department are very grateful that the committee is undertaking efforts to improve the Nation's fuel supply; and we, of course, stand ready to assist the committee in the consideration of these important national issues.

Thank you, Mr. Chairman.

CHAIRMAN BARTON. Thank you.

[The prepared statement of Hon. Karen A. Harbert follows:]

PREPARED STATEMENT OF THE HON. KAREN A. HARBERT, ASSISTANT SECRETARY, OFFICE OF POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF ENERGY

Mr. Chairman, and Members of the Committee, I appreciate the opportunity to come before you today to testify concerning draft legislation on boutique fuels. This is a topic of great interest to the Administration. The Department of Energy has been working closely with the Environmental Protection Agency on this issue for several years. More recently, since the enactment of the Energy Policy Act of 2005, we have continued to collaborate with EPA to fulfill the many provisions of the Act affecting motor fuels including the boutique fuel requirements. On April 25, 2006, the President addressed boutique fuels in his *4-Point Plan to Confront High Gasoline Prices* directing Administrator Johnson to establish a Task Force to "confront the large problem of too many localized fuel blends."

Background on the Fuel Distribution System

The U.S. petroleum supply system comprises major refinery centers on the East, West, and Gulf Coasts, as well as some in the upper Midwest. Gasoline, diesel, heating oil and other petroleum products leave these refineries and enter a long and complex network of pipelines that distribute the products throughout the country. Pipelines move different products in separate batches, one right after the other. The separate products are then deposited in separate terminal tanks near to where they will be consumed. Tank trucks pick up the products from the terminals and deliver them to retail outlets, consumer businesses, and even homes in the case of heating oil. This production, distribution and storage system was designed to carry a limited number of fuels, but as fuel types have increased, the industry has accommodated the changes in various ways. For example, at many terminals where premium, midgrade, and regular gasoline were once stored, midgrade gasoline storage was eliminated, and blending equipment was added to combine the appropriate volumes of premium and conventional gasoline into tank trucks or at retail outlets when midgrade gasoline was needed.

Variations in fuel types have strained the distribution and storage systems and have contributed to price spikes when the supply system has been disrupted. The number of distinct fuels being used in areas distant from supply sources has strained the motor-fuel distribution system. Concurrently, these systems have also been challenged by the large growth in U.S. gasoline and diesel demand and limited expansion of pipeline capacity

and product storage. The collective result of all of these factors has been an increasingly sensitive fuel-supply system that has little room for error. Any supply problem can create a localized motor-fuel shortfall with consequent price spikes.

To date, fuel type proliferation has generally been an exacerbating problem to supply flexibility and potential supply problems. However, today's high gasoline prices are not the result of boutique fuels. Boutique fuel problems arise most often during supply disruptions such as a pipeline break or the recent hurricanes. In general, it may be worthwhile to limit or reduce the number of fuel types that can be used to meet local environmental requirements. Moving to fewer fuel types would tend to reduce strain on the distribution system. However, depending on what specific fuel types were required, there is a potential to increase challenges for the refinery sector. The consequences of requiring a generally cleaner fuel (for example, gasoline with a RVP of 7 lbs. instead of 7.8 lbs.) are not limited to higher fuel cost but also include loss of gasoline blending components that can be used during the peak gasoline season. Consequently, if reducing the number of boutique fuels that can be used to meet State Implementation Plans results in a regulatory regime that requires more low-RVP gasoline, this could reduce the availability of gasoline in the short term and thus offset any advantages gained by having fewer boutique fuels. Given the complexity of the fuel system and the factors cited above, then, thoughtful and informed solutions are needed

Fuel Harmonization Involves other Issues besides Boutique Fuels

The Energy Policy Act of 2005 (EPAct) recognized that the fuel harmonization issue is larger than the "boutique fuels" required by State Implementation Plans. Section 1541 will help limit the proliferation of these boutique fuels. This section is discussed in some detail by my EPA colleague. Section 1541 also requires that the Department of Energy and the Environmental Protection Agency submit a report to Congress in August of this year. This study shall be to determine how to develop a Federal fuels system that maximizes fuel fungibility and supply including that which results from a proliferation of boutique fuels and to recommend to Congress what legislative changes are necessary to implement such a system. Section 1509 requires a more broadly defined "Fuel Harmonization Study" that reflects all fuel requirements and requires a broader range of issues to be considered than the Section 1541 report. As defined in EPAct Section 1541, boutique fuels are those distinct fuels required by States to meet their State Implementation Plans. These fuels are a subset of the broader number of distinct fuel types, which will be addressed in the Section 1509 study. This study is due to Congress in June 2008.

State Biofuel Programs

In considering the broader question of fuel harmonization, it will also be important to consider the role of biofuels. As you know, the Administration has long promoted biofuels to achieve reduced oil imports and alleviate fuel-supply problems. We supported the national Renewable Fuel Program in the EPAct. In doing so, we strongly endorsed the flexibility provided by the credit and trading program and considered it to be an essential part of the proposed Renewable Fuel Standard.

Many States are enacting biofuels programs. States should design their programs to consider the potential consequences on State and regional fuel supplies, especially during possible supply interruptions. States should also consider whether State mandates might work to undermine the flexibility provided in credit and trading system specified by EPAct to be incorporated into the federal Renewable Fuels Standard. An additional

factor to be considered is that ethanol-blended gasoline cannot be commingled with other gasolines due to the adverse effect commingling has on vapor pressure.[1]

Fuel Islands

While reducing the number of boutique fuels would tend to reduce the burden on the distribution and storage system, it is also important to consider "fuel islands" that could be difficult to supply during a fuel-supply interruption. The fuel islands, by regulation, are limited in ability to draw supply from nearby surrounding counties due to the variations in product specifications.

Motor Vehicle Emission Technologies and Motor Fuels Have Changed

Following the successful implementation of the many fuel and vehicle programs required in the Clean Air Act, the US market is significantly different than it was in the late 1980s and early 1990s. Changes since 2000, such as the Tier II vehicle and low-sulfur gasoline program and the implementation of the RFS have further changed the national market. When the proposed second phase of the Mobile Source Air Toxics Rule is also considered, conventional gasoline emissions are being reduced to levels much closer to RFG emissions. There is reason to believe that the emissions consequences of RFG and low-RVP fuels in the changing Tier II vehicle fleet may be substantially different than those estimated in the early 1990s. Ongoing research could reveal important relationships between fuels and emissions that might point the way to a more harmonized clean fuel that is easier to produce and distribute.

Regulatory Stability

The motor fuel industry has, since the Clean Air Amendments of 1990, responded to a variety of regulatory initiatives including reformulated gasoline, low-sulfur gasoline and diesel fuel, changes in oxygenate requirements, shifts from ethers to biofuels and, as discussed above, the proliferation of boutique fuels to meet air quality standards. Over the last 9 months, natural disasters have constrained refinery output and, when combined with a strong economy and growing demand for U.S. transportation fuels, refiners are hard pressed to keep up with demand. The U.S. refining industry has announced plans to expand distillation capacity at existing refineries by over 1.5 million barrels per day by 2010. These plans often include increased capacity to use heavier crude oils and increased ability to produce clean light products. Consequently, the Department would encourage the Congress to consider the virtue of regulatory stability as a factor that could contribute to greater fuel supplies. An additional factor that should be considered is whether the current system of regulation could be enhanced by accounting for fuel supply and distribution issues in the development and approval of new fuel types.

Comments on the Discussion Draft Bill to Reduce the Number of Boutique Fuels

This bill would broaden the basis for granting fuel waivers and require the reduction in the number of approved boutique fuels, once a previous fuel ceases to be used. Another section of the bill would then change what fuels would be considered to be "approvable" as part of a State request for incorporation into its SIP. This section (Section III(b)) might have uncertain consequences on the resulting boutique fuel requirements by States. While it is possible that that it will produce fewer boutique fuels and no additional burden on refiners (even enhancement of fuel supplies), it is also possible that the resulting fuel requirements would be more stringent and adversely affect refiners' abilities to supply fuel. Due to the complexity of this issue it would be helpful to further review this section to better understand its possible consequences to help

[1] EPAct allowed for limited commingling of Reformulated Gasoline between June 1st and September 15th to consist of two 10 day periods. EPA has already implemented this provision by rule.

ensure that it achieves its desired outcomes. As indicated by my colleague from EPA, however, the Administration has not fully analyzed the legislation and is not offering a formal position on the legislation.

Administration Plans

The Administration is carrying out the boutique fuel requirements of the Energy Policy Act of 2005. In particular, the Department of Energy is moving forward on the Section 1509 and 1541 studies and reports discussed above. Collaborating closely with EPA we intend to employ detailed analyses of the refining industry, employ new methodologies to estimate the consequences of different supply scenarios and consult with industry and other stakeholders to produce findings and recommendations that could be of use to the Congress. The Boutique Fuel Task Force, described in some detail by my EPA colleague, is part of that process. DOE and EPA will be providing the Section 1541 report, focusing on boutique fuels (resulting from State Implementation Plans) on schedule in August of this year and will continue to study the broader issue of fuel harmonization as required by section 1509. DOE will continue to collaborate closely with EPA on all regulatory matters, especially the evaluation of any fuel-supply problems that may require fuel waivers.

Concluding Remarks

In conclusion, the Administration is focused on addressing our nation's energy challenges. The current gasoline market is being affected by numerous factors including rising demand, limited spare capacity, a number of planned regulatory changes this year and lingering problems from last year's hurricanes. We must address our energy challenge in a multifaceted manner by increasing supply, increasing refining capacity, and improving efficiency. The authorities provided in EPACT 2005 have laid out a sequential and thoughtful course to address the number of boutique and unique fuels. DOE is committed to complying with these provisions. As indicated above, since the legislation is at an early stage in the legislative process and has not been reviewed by our normal interagency procedures, the Department of Energy does not have a position on the proposed bill. I would only add that I would like to thank the Committee for undertaking efforts to improve the Nation's fuel supply system and the Department of Energy stands ready to assist the Committee in consideration of these important National issues.

CHAIRMAN BARTON. We now will hear from Mr. Meyers who, as we pointed out, is a former Counsel for the committee and one of the real experts in the Clean Air Act. Your testimony is in the record, sir; and we recognize you for 7 minutes to elaborate on it.

MR. MEYERS. Thank you very much, Mr. Chairman.

CHAIRMAN BARTON. Say that like you mean it. It's a pleasure to be here.

MR. MEYERS. It really is. It really is a pleasure to be here. I truly mean that.

CHAIRMAN BARTON. All right.

MR. MEYERS. I have my oral statement and my written statement in the record under committee rules, but I want to first start out by pointing out the progress that we made on fuels over the last few years.

You may have noted last week the Bush Administration rolled out the first phase of the Ultra Low-Sulfur Diesel program, and that fuel is a

major accomplishment when you combine it with the technology of the engines to reduce emissions by 97 percent.

We have also promulgated rules on the off-road sector. They will be phased in over time, and they are going to produce similar results in that sector. All of this follows the Tier II program which we have been implementing on gasoline from gasoline standards for sulfur and equipment and for cars like heavier duty trucks.

On top of all of that, the agency has also pioneered a number of voluntary cooperative programs like our diesel retrofit program.

So when you add this all up with stationary programs like the CAIR, the Clean Air Interstate Rule, what we are really doing is producing attainment for a large part of the country with the ozone and particular mass standards. That is no mean accomplishment. That is a major undertaking, and I wanted to point that out before we get into a specific issue.

Now when we look at boutique fuels we have mentioned the President's directive on the task force, and we have set that up with all 50 Governors to participate. That has been important because the views of the States are important to this issue, and that task force has served as a forum for that to happen. The task force has also been open and transparent.

We have developed a Web site that includes presentations on relevant technical issues, handouts, and other information. We are working under an aggressive schedule, but we should have a report to provide to the President by the end of the month.

When you look at EPAct implementation, obviously, the agency had a number of different tasks to do under EPAct, but if I concentrate on the first issue in this hearing, I would first note that when Congress provided for a specific peak fuel subtitle in the Energy Policy Act it put this subtitle under Section 211(c)(4)(C) of the Clean Air Act so that part of the Clean Air Act is where we approve individual State fuels that vary from Federal standards. And I think it was referenced earlier we have operated under that for some time, on the necessity to have a determination that the fuels necessary for timely attainment of national ambient air quality standards are met.

EPAct amended this provision in several important respects.

First, under EPAct, the law that is in place right now, EPA would not approve of boutique fuels if it will cause an increase in the total number of fuels approved in State implementation programs as of September 1, 2004.

Second, EPAct requires EPA to remove a fuel from the list under certain circumstances such as when a fuel is no longer used or becomes identical to a Federal fuel control.

And third, and probably one of the more forceful parts of EPAct, EPA can only approve boutique fuel if the fuel is currently approved and at least one SIP in the applicable petroleum defense district. I know there is a chart number 1 which sort of illustrates the PADD districts outlined in color, and the boutique fuels have border patrol approved by EPA under 222(c)(4)(C). So, essentially, States would be limited to those fuels that are in the colored areas that already exist. So it freezes everything in place, and that is the basic aspect of it.

Now we mentioned earlier and my testimony includes a little more detail on the boutique fuels list which the Administration signed last--I think was published either yesterday or today. We have preferred interpretation of seven fuel types in that list. We are also taking comment.

I have on one slide. Slide 1 is the seven fuels--or slide 2 is the seven fuels. A little bit hard to see. They are distinguished by PADDs and then slide 2 is we are making comment on the alternative interpretation on 15 State individually approved fuels.

But this is the first effort here in terms of going forward and putting the fuels in place as of 2004.

Turning quickly to the discussion draft, basically, this makes several additional changes to the existing law.

With respect to waivers that have been mentioned, the legislation adds a new criteria to the existing law of unexpected problems with distribution or delivery equipment; and with respect to boutique fuels, the legislation amends laws to include a new requirement that EPA reduce the total number of boutique fuels that are authorized to be approved in the event a boutique fuel ceases to be included in a SIP or becomes identical to a Federal fuel.

Now that sounds pretty identical to what I said in terms of what the existing law provides, and, in fact, it actually is almost identical. Because of the operation of the existing law, we cannot approve a fuel that doesn't currently exist.

So, in effect, under existing law there is a ratchet that applies on the situation where States decide not to continually use fuels or fuels become essentially identical to Federal fuels. Since we can't approve a fuel that doesn't exist, obviously, we can't approve a new fuel.

Second, and more importantly, the draft legislation provides for the current boutiques fuels list to be replaced with an Approvable State Fuels List. To implement this provision, EPA and DOE are required to complete several studies within 9 months. The Administration or the agency is required within 18 months to produce an Approvable State Fuels List based on the information contained in the studies.

The legislation then specifies that the list shall consist of no more than three gasoline fuels with different volatility levels, and the legislation then provides the Administrator may not approve more than two volatility controlled fuels in any one PADD.

After promulgation of the new list, the approval of boutique fuels would be limited to the fuels contained on the list; and then this legislation would further require an evaluation of currently approved State fuels as well, State requests that would cause supply or distribution, disruptions in the area that is requesting the fuel, contiguous areas or within the region.

A third major change made by the legislation requires that all boutique fuels essentially conform to the fuels on the new list. Then the legislation requires that EPA inform the States if their fuels are not functionally identical to allowed fuels, and States that don't meet the test will be required to submit a revised SIP with 18 months.

Finally, the legislation provides the opportunity for a governor to request that EPA either add to the Approvable State Fuels List or replace a fuel on the list as long as certain conditions related to air quality, fuel supply, distribution, and producibility are met. Approval of any such fuel, however, cannot result in more than four fuels on the list.

This completes my testimony for the committee; and, again, I want to thank you for being here and for the opportunity. As my colleague from DOE mentioned, since we are at this early stage in the legislative process, we do not have a formal position, but we stand ready to work with the committee on this matter. It is an important and vital issue, and we are happy to be here and assist that effort.

CHAIRMAN BARTON. Thank you.

[The prepared statement of Robert J. Meyers follows:]

PREPARED STATEMENT OF ROBERT J. MEYERS, ASSOCIATE ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, and members of the Committee, I appreciate the opportunity to testify today concerning draft legislation on boutique fuels. As you know, EPA has worked closely with states, industry and other stakeholders to implement a number of federal mobile source programs that will provide cost-effective solutions for states and localities to address air quality. Just last week, the Bush Administration rolled out the first phase of the Ultra Low Sulfur Diesel (ULSD) program with the requirement that refiners begin production of this new clean diesel fuel. ULSD represents a 97 percent reduction in the sulfur content of highway diesel fuel. Once this fuel program and the related emissions standards for heavy-duty diesel trucks and buses is fully implemented, it will reduce 2.6 million tons of nitrogen oxide emissions and 110,000 tons of particulate matter emissions each year.

The Bush Administration has also promulgated rules to reduce air pollutants from off-road vehicles, engines and fuels. These rules will require low-sulfur fuel for off-road engines starting in 2007 to be followed by ULSD in 2010 and fuel requirements for locomotive and marine engines in 2012. These diesel programs follow the

implementation of Tier II standards for gasoline, cars and light and heavier duty gasoline trucks which began its phase-in during 2004. EPA has also pioneered a number of voluntary programs as part of its national clean diesel campaign. This effort, in cooperation with state and local partners, includes promoting the reduction in emissions from existing engines through retrofitting, repair and idling reduction. These efforts, along with stationary source programs like the Clean Air Interstate Rule, will provide federal assistance to states as they prepare local plans to meet the National Ambient Air Quality Standards (NAAQS). The attainment benefits are substantial – these programs will bring most of the country into attainment with the current ozone and PM standards. For areas that will not meet the standards, their burden will be lighter.

My testimony today serves, in part, as a supplement to information that Acting Assistant Administrator William Wehrum shared with this committee at last month's boutique fuels hearing. In this regard, I will first provide an update on the Agency's implementation of certain fuels provisions in the Energy Policy Act of 2005 (EPAct) and our recent action to publish for public comment a draft list of state boutique fuels. I will also address the President's directive to the Agency to convene a Task Force on Boutique Fuels. Against this background of activity, I will then provide some initial analysis of the draft boutique fuels legislation prepared for this hearing, including comparison of the draft bill's provisions to current law.

As a final introductory comment, it is important to note that at the Committee's previous hearing on boutique fuels held on May 10, 2006, Acting Assistant Administrator Wehrum discussed what constitutes a boutique fuel. The simple answer contained in his testimony was that a boutique fuel is a unique fuel specification that is developed by a state or local air pollution control agency and approved by EPA as part of the State Implementation Plan (SIP) for an affected area. In this regard, although states other than California are in many cases preempted from establishing individual fuel standards for purposes of motor vehicle emission control, the Clean Air Act (CAA) has a specific provision, section 211(c)(4)(C), that allows the Agency to approve state fuels as part of a SIP submission if the relevant statutory requirements were met. (Indeed, when Congress provided for a specific subtitle of the Energy Policy Act of 2005 on Boutique Fuels, it was this subparagraph of the CAA that Congress amended). Therefore, boutique fuels do not include other clean fuel requirements that Congress established under other parts of the CAA for other purposes. Boutique fuels do not include the federal reformulated gasoline requirements, the state wintertime oxygenated fuels program, California's clean fuel requirements, and area-specific fuels required by state law for purposes other than air quality (e.g., the State of Minnesota's requirement for a 10% ethanol blend).

Energy Policy Act of 2005

As discussed at last month's hearing, the Agency is implementing the fuel provisions in Subtitle C of Title 15 of the Energy Policy Act of 2005 (EPAct). This subtitle provides new authority for temporary waivers of federal and state fuel and fuel additive requirements. It also amends the CAA provisions governing EPA's consideration and approval of state boutique fuel programs, adding new restrictions on EPA's authority to approve state boutique fuels into State Implementation Plans (SIPs).

Before the EPAct provisions were added, EPA could only approve an otherwise preempted state fuel into the SIP under section 211(c)(4)(C) if the state demonstrated that the fuel was necessary for the timely attainment of a National Ambient Air Quality standard (NAAQS). The state had to show that the emissions reductions from the fuel control would still be needed even after accounting for emissions reductions from all of the reasonable and practicable non-fuel measures available to the state.

EPAct further limits EPA approval of a state fuel control:

- EPA may not approve a state fuel program into the SIP if it would cause an increase in the "total number of fuels" approved into SIPs as of September 1,

2004. That is, EPAct effectively placed a cap on the total number of boutique fuels allowed, based on the number already approved into SIPs as of that date. In order to facilitate the implementation of this cap, EPA is required to publish a list of boutique fuels. Administrator Johnson signed a notice regarding this list last week.

- Second, EPAct allows EPA to remove a fuel from the list under certain circumstances, such as where the state fuel becomes identical to a federal fuel control. EPAct also allows for the approval of new state boutique fuels. However, before EPA can approve another fuel, there must be "room" on the boutique fuel list and EPA has to find that the state boutique fuel will not cause supply or distribution problems or have significant adverse impacts on fuel producibility in the affected area or areas contiguous to where the fuel would be used.
- Third, EPA can only approve a state fuel if the fuel is currently approved in at least one SIP in the applicable Petroleum Administration for Defense District (PADD). That is, if a fuel does not already exist in any state within a PADD, EPA cannot approve this fuel for any other state within the same PADD.[1] In some ways, as I will discuss more fully below, this is the most significant limitation in the current EPAct provisions. It severely restricts EPA's ability to approve new state fuels.

In addition, EPAct required several studies concerning federal, state and local fuel programs and boutique fuels. One joint EPA/DOE study, addressed by Assistant Administrator Wehrum during his testimony last month, requires a report on boutique fuels by this August. A broader study, contained in section 1509 of EPAct, is due June 1, 2008.

Boutique Fuels List

The first step to implement the new EPAct restrictions on boutique fuels is publication of the boutique fuels list. Administrator Johnson signed this notice on June 1st providing a draft boutiques fuel list for public comment. It will be published in the Federal Register shortly. Prior to this notice, EPA conducted extensive outreach with stakeholders to assist in our deliberations regarding the interpretation of the statutory language. EPA also discussed with stakeholders how such an interpretation would impact the fuels system.

EPA has proposed a list of "fuel types" that we believe best balances various concerns that have been expressed concerning the boutique fuels program. This results in a list of seven different fuel types. These seven fuel types were approved in 12 different states as of 2004. EPA's notice also discusses ambiguity that is contained in the statute and the terms utilized. Therefore, our boutique fuels list notice invites comment on another possible interpretation which would rely instead on the number of individual state SIP fuel approvals. This interpretation would effectively result in 15 different state fuels. Charts indicating the fuels contained under both interpretations of the statute are attached to this testimony.

EPA believes that seven different fuel types is the more appropriate interpretation of the statute. This interpretation would consist of four different state fuel types (including one diesel program) that are used in only one state and three fuel types (consisting of different controls on summertime gasoline Reid Vapor Pressure, or volatility) which are used in eight different states.

---

[1] A chart which illustrates both the currently approved state boutique fuels as well as the PADD structure is attached to this testimony.

Interested parties are given the opportunity to comment on this list within a 60-day comment period following publication of the notice in the Federal Register. Once the Agency reviews any comments, we intend to quickly act to complete this action. As noted above, under other provisions of EPAct, states seeking approval of new boutique fuels would be limited to fuel types already in existence within the PADD in which the state was located.

Task Force on Boutique Fuels

On April 25th, President Bush directed Administrator Johnson to convene a Boutique Fuels Task Force. All 50 Governors were invited to participate in the Task Force and since the initial May 4 kickoff meeting, EPA and state representatives, with DOE and USDA, have been working to better understand and characterize the current status of state boutique fuels and develop recommendations and findings for the President from this information. The task force has also heard from a wide range of stakeholders on their views about boutique fuels.

To facilitate public information about the Task Force activities, EPA has developed a web site which includes EPA presentations on relevant technical issues, handouts and information provided by stakeholders, and other information. This collective effort is working under an aggressive schedule, with a report expected to be provided to the President by the end of this month.

We are pleased by the participation we have seen throughout the task force process. States and the stakeholders have been very helpful in characterizing their views on the need, impact and future of state boutique fuel programs. Since deliberations of the task force are ongoing, I am hesitant to project or characterize in any way what final recommendations may result from the work of this group. This being said, task force discussions have mirrored some of the same concerns Congress has reviewed with respect to boutique fuel programs.

For example, there have been concerns expressed regarding the important and cost-effective role of fuels in the achievement and maintenance of air quality standards. There has also been recognition that opportunities may exist to improve the fungibility of the nation's fuel and to avert disruptions in fuel supply. Finally, there has been a general recognition of the need for up-to-date information and technical analysis. Much has transpired since EPA last analyzed this issue in 2001 – such as the removal of the oxygenate standard for RFG, imposition of new gasoline and diesel sulfur rules, market de-selection of MTBE, fleet turnover and operation of fuels in Tier II vehicles, tightened refinery and pipeline capacity margins and experience with the major disruptions in the 2005 hurricane season.

We look forward to working with the task force in the next few weeks to provide additional clarity to the boutique fuel questions. We expect that information from the Task Force Report will provide useful guidance as DOE and EPA continue to address EPAct requirements.

Boutique Fuels Discussion Draft

The draft legislation, the Boutique Fuels Reduction Act of 2006 that was provided to EPA and other witnesses for today's hearing, makes several changes to existing law affecting fuel waivers and boutique fuels.

With respect to waivers, the legislation clarifies the criteria for granting 20 day waivers of certain Clean Air Act requirements. Under the current law, waivers may be granted for extreme and unusual fuel supply circumstances that are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure or another circumstance that could not reasonably have been foreseen or prevented. The legislation would add to the list of circumstances "unexpected problems with distribution or delivery equipment that is necessary for transportation and delivery of fuel or fuel additives."

As the Committee may be aware, EPA, in coordination with the DOE, utilized the new waiver authority granted by the Energy Policy Act on 30 separate occasions following the occurrence of Hurricanes Katrina and Rita. The legislation would clarify the circumstances that could be the basis for the exercise of this discretionary authority.

With regard to boutique fuels, the legislation would make several significant changes to existing provisions enacted as part of the Energy Policy Act of 2005. First, the legislation amends existing law to include a new requirement that the Environmental Protection Agency reduce the total number of boutique fuels that are authorized to be approved by the Agency under section 211(c)(4)(C) in the event that a boutique fuel ceases to be included in a State Implementation Plan or becomes identical to a federal fuel control. Under current law, EPA is required to revise the boutique fuel list in such circumstances, without changing the cap on the total number of fuels allowed. This theoretically makes room for another fuel as long as the cap on the total number of state fuels is not violated. The draft legislation would change this by reducing the number of boutique fuels that are authorized to be included on the boutique fuels list. When a fuel is removed, the cap on the total number on fuels is also lowered, leaving no room for addition of another fuel.

This first change in existing law, however, may not result in any practical difference in what boutique fuels may be approved by the EPA in the future. This is because other parts of current law, as described above in my discussion of EPAct, only allow EPA to approve any state boutique fuel if it is already currently approved in a state SIP in an applicable Petroleum Administration for Defense District (PADD). This provision significantly limits the ability of states to add any "new fuels" to the boutique fuels list since the fuel must, in fact, already exist. Thus, current provisions contained in section 1541(b) of EPAct appear to serve as a de facto reduction in the total number of available state boutique fuels.

Second, and more importantly, the draft legislation provides for the current statutory boutiques fuel list and related restrictions to be replaced with an "Approvable State Fuels List." Under the legislation, EPA is required within nine months to complete certain elements of currently required EPAct studies that relate to boutique fuels. The Agency is then required, within 18 months, to promulgate by rule an Approvable State Fuels List based on the information contained in such studies, an analysis of a fuel's ability to reduce emissions, an analysis of other cost-effective options to attain air standards and analyses by the DOE regarding the fuel supply effects and the potential costs and benefits of a fuel. In selecting fuels for the list, EPA is directed to give preference to fuels previously included on the boutique fuels list.

The legislation specifies that the Approvable State Fuels List shall consist of no more than three gasoline fuels with different volatility levels, one of which is specified to have a Reid Vapor Pressure of 7.0 pounds per square inch. This is a change from current law, as previously described, that effectively limits or "freezes" fuels on the boutique fuels list to those previously approved (i.e., the seven different fuel types under EPA's provisional interpretation of the statutory language). In a further restriction on the approvability of a state fuel, the legislation provides that the EPA Administrator may not approve more than two volatility controlled fuels in any one PADD. This additional restriction is not contained in current law.

The legislation provides that upon promulgation of the new Approvable State Fuels List, previous limitations resulting from the publication of the boutique fuels list would no longer apply. Instead, approval of any boutique fuels by EPA would be limited to those fuels contained on the new list. In addition, a state could only receive approval for a fuel or change from one fuel on the list to another based on an evaluation by EPA, with the DOE, as to whether approval of a state's request would cause fuel supply or distribution disruptions in an area requesting a boutique fuel, contiguous areas or within a region.

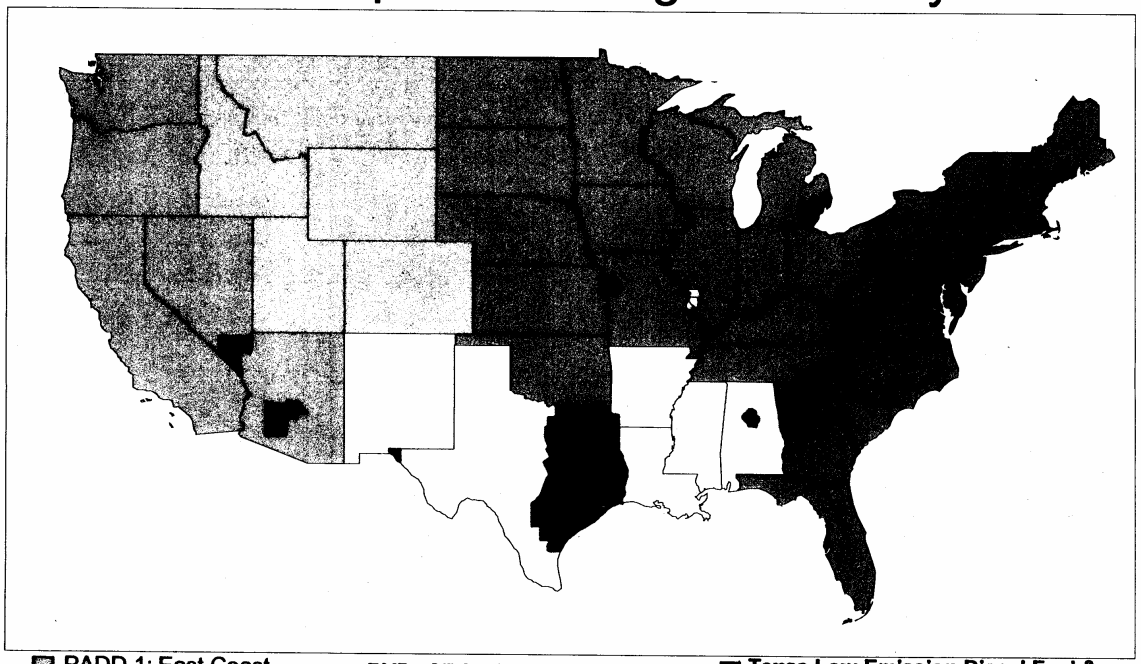
A third major change made by the legislation is the requirement that all boutique fuels essentially conform to the fuels on the new Approvable State Fuels List whether or not they were previously approved into a state SIP. To implement this provision, the legislation requires that EPA inform states if previously approved fuels are functionally identical to the fuels included on the list. If a previously approved fuel is not functionally identical, a state must submit a revised SIP within 18 months. This revised SIP can (but is not required to) include one of the fuels contained on the list. The draft legislation provides exceptions to the requirements pertaining to the new Approvable State Fuels List, including the requirement to revise a state SIP, for three state fuels previously approved by EPA.

Finally, the legislation provides the opportunity for a governor to request that EPA either add to the Approvable State Fuel List or replace a fuel on the list as long as certain conditions related to air quality, fuel supply, distribution and producibility are met. Approval of such a fuel, however, cannot result in more than four fuels on the Approvable State Fuels List. As noted above, this would constitute a change to current law that in effect does not allow for the approval of new fuels.

Concluding Remarks

This completes my testimony before the Committee and I am ready to answer any questions. Since the Boutique Fuels Reduction Act is at an early stage in the legislative process and has not been reviewed by our normal interagency procedures, the Administration currently does not have a position on the bill. EPA and the Administration want to thank the committee for undertaking evaluation of legislation in this area and the Agency stands ready to assist the committee in its consideration of any legislation.

State Boutique Fuel Programs – May 2006



- PADD 1: East Coast
- PADD 2: Midwest
- PADD 3: Gulf Coast
- PADD 4: Rockies
- PADD 5: West Coast

- **RVP of 7.0psi**
- **RVP of 7.0psi w/Sulfur Content**
- **RVP of 7.2psi**
- **RVP of 7.8psi**

- **Texas Low Emission Diesel Fuel & State RVP Controls of 7.8psi**
- **Texas Low Emission Diesel and Federal RFG or RVP Control**
- **Cleaner Burning Gasoline**
- **Winter Gasoline**

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPs) UNDER CAA SECTION 211(c)(4)(C) AS OF SEPTEMBER 1, 2004 (BASED UPON FUEL TYPE INTERPRETATION)

Type of Fuel Control	PADD	Region - State
RVP of 7.8 psi	1	1- ME (May 1-Sept.15)
	1	3 - PA
	2	5 - IN
	2	5 - MI
	3	6 - TX (May 1-Oct. 1)
RVP of 7.2 psi	2	5 - IL
RVP of 7.0 psi	2	7 - KS
	2	7 - MO
	3	4 - AL
	3	6 - TX
	5	9 - AZ (June 1-Sept. 30)
RVP of 7.0 psi with sulfur provisions	1	4 - GA
Low Emission Diesel	3	6 - TX
Cleaner Burning Gasoline	5	9 - AZ
Winter Gasoline (aromatics & sulfur)	5	9 - NV

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPs) UNDER CAA SECTION 211(c)(4)(C) AS OF SEPTEMBER 1, 2004
ALTERNATE APPROACH
(BASED UPON STATE SPECIFIC INTERPRETATION)

Type of Fuel Control	PADD	Area/State
RVP of 7.0 psi	2	Kansas City, MO (3 counties)
RVP of 7.0 psi	2	Kansas City, KS (2 counties)
RVP of 7.0 psi	3	El Paso, TX (El Paso County)
RVP of 7.0; extended summer season from June 1 to September 30	5	Phoenix, AZ (Maricopa County)
RVP** of 7.0 psi; includes a provision addressing sulfur content	1	Atlanta, GA (45 county area)
RVP of 7.0 psi; sulfur content and crediting provision expired in 2004, when overtaken by Federal Tier 2 limit	3	Birmingham, AL (2 counties)
RVP of 7.2 psi	2	E. St. Louis, IL (3 counties near St. Louis, MO)
RVP of 7.8 psi	1	Pittsburgh, PA (7 county area)
RVP of 7.8 psi	2	Clark & Floyd, IN (2 counties near Louisville, KY)
RVP of 7.8 psi	2	Detroit, MI (7 counties)
RVP of 7.8 psi; extended summer season from May 1 to September 15	1	Southern, ME (7 county area)
RVP of 7.8; extended summer season from May 1 to October 1	3	Central & Eastern, TX (95 county area)
Low emission diesel fuel with maximum 10% volume aromatic hydrocarbon content and minimum cetane of 48 required. (Allows substitute Plans w/equivalent NOx reductions)	3	Houston & Dallas, TX
Cleaner Burning Gasoline; similar to Federal RFG or California RFG in summer; in winter similar only to California RFG.	5	Phoenix, AZ (Maricopa County)
Winter gasoline controls on aromatic hydrocarbons and sulfur.	5	Las Vegas, NV

2

CHAIRMAN BARTON. The Chair is going to recognize himself for the first question period.

First, I don't have so much a question as a comment. I noticed that in the report for the Federal Register about the total number of fuels that, after quite a bit of agonized teeth gnashing, the EPA decided to go with

the seven definitions and that there was some concern about the intent of the Congress.

When I was Chairman of the committee and the Chairman of the conference, nobody ever asked me what the legislative intent was. But you can report back to Mr. Johnson that he made the right decision. We did not intend to require an enumeration of the number of SIP-approved fuels. We wanted to know how many fuels were out there by fuel type, which apparently is seven, which is what you all did.

So, in the future, if you have a question about congressional intent, pick up the phone and call us, and call Mr. Dingell, and Mr. Waxman, and not just the Majority side. But certainly the majority of the conferees that signed the conference report, I think we can help the Executive Branch if you will just ask us.

So I think that decision was the right decision.

My first question is to you, Mr. Meyers. Since the purpose of the discussion draft would be to reduce further the number of fuels and we have had a lot of concern that we maybe shouldn't be going further in reduction until we hear what some of these reports that are going to come out this summer are, is it your opinion possibly to reduce the number of boutique fuels further and still give sufficient flexibility for States and local governments to meet their Clean Air Act requirements under the Clean Air Act law if, instead of having seven, we had four or five or three?

MR. MEYERS. As we have indicated, when EPA did look at that issue in 2001, we did a fairly comprehensive review in the boutique fuels report as part of the MTBE at that time. What that report shows, it depends on the option you choose. Smaller fuel slates can result in increased production, although slight, and offer obviously some benefits in terms of fungibility of the fuel.

At the sort of more restrictive end of things, we analyzed an option where we would sell California gasoline across the country. That caused reduction in production of capacity and increases in the price. So the basic answer, it depends on how you do it.

CHAIRMAN BARTON. Let me ask the question a different way. Are there sufficient unique characteristics in different non-air attainment areas that you need a large number of boutique fuels?

MR. MEYERS. Well, I think it was mentioned during discussion earlier that boutique fuels and fuels in general are one portion of the area's approach to nonattainment other controls going on stationery sources and different or other items.

So, basically, they serve a role in terms of providing certain tonnage reductions. If you don't get the nth degree out of the fuels, you will have to get it somewhere else. It is a matter of evaluating all of the fuel

control measures and all of the other measures and try to make the most intelligent choice.

But, instantaneously, I guess I would say it this way: Most of the fuels are RVP controlled. You have 7-0, 7-2, and 7-8. There will be some differences in what you get out of each, and we haven't analyzed how those fuels work in the new vehicles. But the differences may not be astoundingly large between a 7-0 and 7-2 RVP. That is just distinctially a reaction.

CHAIRMAN BARTON. Okay.

Ms. Harbert, you talked about regulatory stability. Do you want to define that?

MS. HARBERT. Yes, Mr. Chairman.

I think as we look at this very important issue we have to look at the back group or the environment in which we find ourselves at the moment. As you pointed out earlier in your opening statement about the razor-thin spare capacity that we have, we have a fairly volatile market and we are looking at where are the structures in our supply system.

We know we need more refining capacity, we know we need more investment, and at the same time we have changes happening. We have MTBE existing in the system, increasing the ethanol, introduction of ultra-low sulfur detail, and we have a changing fleet. All of that adds additional measures of uncertainty into the market. As we are looking for ways to really maintain an environment conducive to investment, those people that are putting capital at risk to make those investments need to look where we are going, and we need to take that into account.

As we look for ways to improve supply, improve fungibility, and really reduce our vulnerability, that has to be taken into account as those investors are looking down the road at these very complex long-term investments, that we need to know where we are going from that point of view. And that was my point, that we have to take these considerations and these competing interests into account.

CHAIRMAN BARTON. Mr. Shadegg in his opening statement was concerned that, by definition, my classifying certain fuels as additives is a loophole that needs to be addressed in this boutique fuel section or the draft discussion. Mr. Meyer, can you elaborate on what is the difference between a specific boutique fuel under the Clean Air Act and an additive?

MR. MEYERS. Sure.

CHAIRMAN BARTON. Is that a concern that, s Mr. Shadegg raised, we need to address?

MR. MEYERS. I am aware that some concerns have been raised in terms of fuel fungibility with a multiplication of State-renewable fuel requirements.

But just to address the specific question, boutique fuels are those who have approved into a SIP. So by definition 222(c)(4)(C) there is administrative action. In this case of some current renewable fuels or biofuels, that action is not required under the Act. They may be registered already.

E-10 is a good example. It is already a registered fuel. If the State is adopting that fuel and it is not for mission control purposes for a motor vehicle, then they are free to do that under the Clean Air Act.

CHAIRMAN BARTON. Could a State use E-10 in its State Implementation Plan proposal and that be classified as a boutique fuel because they view it in that fashion?

MR. MEYERS. If it was approved into a SIP, yes, it could also go that route. A State could request that it be part of the SIP, yes. That would be at the State option.

What I was saying is the presumption in the statute that requires special approval boutique fuels is limited to those situations where we are dealing with emissions for motor vehicles and when a State is preempted generally in that area, but they are not preempted from all fuels generically or from all fuel choices. That is the way the Act is structured.

CHAIRMAN BARTON. I am not sure I understand what you just told me.

MR. MEYERS. There is a preemption of State but it is not for adoption of fuels for any and all purposes.

CHAIRMAN BARTON. Do we need in statute the definition to be more explicit on what a boutique fuel is? And, if so, are these additives like E-10 or E-85 or some of those, are those fuels that we need to define in a specific way for inclusion as a boutique fuel?

MR. MEYERS. That would be a choice of the Congress. Right now, both E-10 and E-85 are legally registered fuels and can be sold in this country.

CHAIRMAN BARTON. But for definitional purposes, if you want to count them, if --

MR. MEYERS. In the concept you want to restrict the ability. Yes, I would have to give you a formal opinion, and I would do that for the record. But, essentially, it would appear, from my understanding of the Act, that additional legislative authority would be required.

CHAIRMAN BARTON. Would be required.

MR. MEYERS. Yes.

CHAIRMAN BARTON. My time has expired.

Mr. Walden is recognized for 5 minutes.

MR. WALDEN. Thank you, Mr. Chairman.

I just wanted to ask both of you in sort of real person's terms, if we approve this legislation as proposed, we will get criticized that somehow we are going to hurt air quality. Do you see that occurring? Do we diminish air quality by the action we are proposing to take?

MR. MEYERS. No. I think a few weeks ago Acting Administrator Warren answered about the same question in the same way. No, we are not affecting air quality.

MS. HARBERT. It depends on how you do it. The intent here is certainly not to harm air quality. It is to improve air quality. It is all about balance and timing and how we do that to maximize the benefits in all of the categories that this legislation and all overall policies seek to address, which is improving supply and, at the same time, preserving air quality.

MR. WALDEN. Because that I think is the Chairman's--I won't presume to speak for him, but it is certainly my goal. I don't want to see dirtier air, but, on the other hand, I have got people who are running out of budget on their farms, their ranches and trying to commute in a very rural and big district; and $3 gas and over is not very becoming to their budgets.

So I am trying to figure out--each of these I look at as individual pieces of a puzzle that got us where we are at, and we need to figure out what can we do to change them, modify them, to try and reduce those costs for our consumers, none of which is going to happen quickly.

Where States have put mandates in place, I guess like Minnesota--I was reading some testimony where they are using far more biofuels which I am an advocate of. Are you seeing any kind of price differential between a State that uses more biofuels and a State that doesn't? Or is it even a fair comparison at that point because of the regional nature of the supply?

MS. HARBERT. I don't have a State-by-State comparison for you, but we can certainly look at what we have available to get back to you. We don't collect data by fuel type in our Energy Information Administration, so we might not be able to answer in a way that would be as helpful to you as possible.

But, that being said, going back to your supply issue, we need to make sure that all along the supply chain that nothing is disrupting that supply chain, which gets to your price issue; and that needs to be taken into account as we progress.

MR. WALDEN. Thank you.

Mr. Meyers.

MR. MEYERS. We defer to the DOE and EIA to get that on the pricing information.

MR. WALDEN. Let me ask you a different question.

I was doing some town meetings last week and someone raised the issue on the ethanol, that it doesn't produce as much energy per gallon as gasoline. What is that ratio and what effect does that have as you enter it into the supply, and compare that if you would against MTBE taken out of the supply. How does all of that work? I was told it was something like two-thirds of the power production of gasoline.

MR. MEYERS. I think two-thirds is a general number. What we are talking about is energy content on a volume metric basis. So I guess the way to think of it is if you--well, the good example is E-85 cars. If you have the same size tank and you put gasoline in it, you are going to go quite a bit further than if you put E-85 in it because of the energy content of 85 percent ethanol blend.

MR. WALDEN. Is that the same information you have?

MS. HARBERT. I was trying to get some exact statistics. When you are switching from MTBE to ethanol, you are losing that 1 percent. You are looking at the BTUs in the fuel. We are talking about two-thirds, really, when you are looking at the difference between ethanol and gasoline.

MR. WALDEN. So, in other words, if we think you can replace sort of gallon for gallon with ethanol versus gasoline, that is not accurate. So as we look at adding ethanol in, you are going to have to buy more fuel overall to get the same energy output as if you bought straight gasoline.

MS. HARBERT. More volume.

MR. WALDEN. And can you --

MS. HARBERT. But it would be less gasoline because ethanol would be displaced.

MR. WALDEN. I have got a 40-gallon tank. It is coming into it at 4 --

MS. HARBERT. You will be filling up more often but using less gasoline.

MR. WALDEN. That is what I am trying to get to. What helps the bottom line here?

MS. HARBERT. We are looking at cost comparisons of ethanol and gasoline. And at the moment, as ethanol is coming into the market and being used more, MTBE is fading out at a price point here where ethanol is above gasoline; and we expect that to be coming down.

There are new ethanol production facilities that are coming on line. The whole supply chain is working out its system as ethanol can't be commingled with other components. So it is a different supply delivery system. That is working itself out; and as it works itself out over the summer I think we will see ethanol, as the supply goes up and the system evens out, we will see the prices come down, and it will make it a more affordable solution.

MR. WALDEN. Of that price decline, how much of that is being subsidized by taxpayers? I know we have got some incentives built into the system.

MS. HARBERT. The tax credit for ethanol is $.51 per gallon.

MR. WALDEN. So at $.51 per gallon subsidy we are still above, with ethanol, the price of gasoline today, but you would expect it to come down.

MS. HARBERT. Correct. Some.

MR. WALDEN. Do you see it getting to the point where it will get below that $.51 subsidy? In other words, by building out, getting the volume, getting the market working and everything else, do you see a day where a price for that ethanol will not need that subsidy? I am not advocating for that, but I am trying to figure out here the dynamics of this economic model.

MS. HARBERT. There is a little bit of hypothetical in there. It is a new market and we certainly--in the Energy Information Administration's Outlook that they published in 2006 they see the production of ethanol exceeding what has been called for in EPAct. So the market forces are at work and there is more supply and there was more demand for this. We certainly do see the price going down; and, ultimately that will then cause some discussion about this subsidy.

MR. WALDEN. Thank you very much.

CHAIRMAN BARTON. The gentleman's time has expired.

The gentleman from Georgia is recognized, Mr. Deal.

MR. DEAL. Mr. Meyers, in looking at your testimony, you had a map attached to it. Do you have that in color here for us? Because, mine, I can't tell what the difference is.

MR. MEYERS. We do have it. We should be able to pull it up on the monitor.

MR. DEAL. Will you tell me what the dark green area is? A 45-county section in Georgia that is the metro area expanded, and it has the 7 PSI sulfur content. Is that correct?

MR. MEYERS. That is correct. That area represents Georgia State fuel, which is a combination of 7-0 Reid vapor pressure and a 30 PPM limit on sulfur.

MR. DEAL. I am going to ask you a technical question that I am going to read in a minute. But before I do that let me ask, as a preface to that, this part of Georgia, as I understand it, has been designated as a nonattainment area. Am I correct on that?

MR. MEYERS. I do not know the exact county barriers--yes, Atlanta--but I am not sure if this area exactly conforms to the current nonattainment area.

MR. DEAL. Being a nonattainment area it puts restrictions on what the State can do in terms of building roads, expanding travel, et cetera.

MR. MEYERS. I guess my answer is yes. The roads and other activities have to conform to the State Implementation Plan, so building a new road, say, can't basically exacerbate the air quality problems.

MR. DEAL. So the point is that the reason that Georgia has this boutique fuel is because it has been designated a nonattainment area by EPA, and a part of the solution to try to get us out from being a nonattainment area, is to use this low sulfur boutique fuel as a part of the overall State Implementation Plan. Is that the general overall view of it?

MR. MEYERS. That is absolutely true. The fuel prices for emissions reductions which are credible in the State Implementation Plan.

MR. DEAL. Now for my technical question that I am going to read to you.

As you note, my home State under our State Implementation Plan uses a boutique fuel with a Reid vapor pressure of 7 and restricts the sulfur content of the gasoline to the average of 30 parts per billion for the 45 county Atlanta area, eight of which are in my congressional district. However, in the discussion draft, the Administrator of the Environmental Protection Agency is prohibited from controlling fuel sulfur, quote, beyond levels otherwise required by regulations of the Administrator in the Approvable State Fuels List.

What would be the impact on Georgia's sulfur provisions if this legislation were enacted is the first question.

Secondly, would Georgia still be allowed to mandate that the gasoline sent to the 45 counties surrounding Atlanta contain an average sulfur content of 30 parts per million or is this considered beyond levels otherwise required by regulations of the Administrator?

MR. MEYERS. That is a technical question, and I would like to respond more fully in writing for the record. But I will give you a general sense of my impression of the answer here.

The way the legislation works is that the Approvable State Fuels List cannot have on it a specific State sulfur control. However, it allows for--in the process where a fuel is functionally identical to one on the list, then that would allow for that fuel to continue to exist would be my current read. And, again, we will provide a written response.

So it depends on the analysis of what happens with respect--since the Federal sulfur level is now 30 PPM, which is generally identical--there are some differences between the way Georgia applies 30 PPM and the Feds do. The question is, really, is a fuel in that area basically identical to the Federal requirement. But we will provide a more fully developed answer for the record.

MR. DEAL. I would appreciate that.

As you can see, we could be in a catch-22 situation where, in order to comply with what the EPA is requiring us to do as a nonattainment area, we then are now undoing that legislatively; and the consequences, of course, are significant to my State and to my congressional district and that is my concern.

Mr. Chairman, thank you very much.

CHAIRMAN BARTON. Mr. Meyer gave straighter answers when he was Counsel to the committee. He has been in the Executive Branch too long. He wrote that Section of the law, too, probably, or drafted it, anyway.

All right, Mr. Walden, do you have any questions for this panel?

I have one generic question for each of you.

In general, if we were to reduce the number of boutique fuels, would that tend to lower prices, raise prices, or stay about the same? Just generally, either one of you. That is not a trick question.

MS. HARBERT. It is still a difficult question, even though it is not a trick question.

It depends on which fuels and the time frame, I think is the right answer. If a certain select few were put into force in a very short time frame and the refineries were forced to make fairly dramatic changes with a significant amount of costs, that very likely could be passed on to the consumer. If it was done in a longer time frame so that they could understand what they were being required of and it would be done in a phased manner and fuels that were easily produced, it would have very little impact on the consumer.

So I think there are a variety of scenarios, which is why certainly this task force report and the study that we are doing with EPA in August and the longer one in 2008 is looking at a variety of certain areas to see what would be the impact on air quality and price.

CHAIRMAN BARTON. Mr. Meyers.

MR. MEYERS. I think the essence of it depends on what fuels replace what is there.

As indicated previously, we are looking at an RVP fuel. We are looking at production cost differential point 323. However, that is just production costs. The cost of other boutique fuels can be higher if you require something approximating the California standards. That is obviously a much more expensive fuel than a simple RVP control in terms of production costs. Additionally, their other costs are not subsumed in that cost which involved the distribution system and an additional package and separation which will not be a production item but will cost the consumer.

When we looked at this issue back in 2001, it depended on the options selected. There were options on 3-fuel, 2-fuel options under

various scenarios that we modeled that showed increase in the production and virtually no price impact. There are other options like the California fuel option across the country which are very expensive and seriously constrained production. So bottom line answer is, as my colleague from DOE said, it depends on the options that you are talking about and depends somewhat on the number of options each State would have and as well as you need to look at the distribution system where fuel is produced, how it is distributed and the pipeline system and a lot of other factors.

CHAIRMAN BARTON. Thank you.

There will be some additional questions for the record for each of you. But at this point in time we are going to release this panel and bring the next panel forward. Thanks each of you for being here.

We would now like our second panel to come forward.

On our second panel we have Dr. Edward Murphy, who is with the American Petroleum Institute. We have Mr. Bob Dinneen, who is the President and CEO of the Renewable Fuels Association. We have Mr. Bob Slaughter, who is President of the National Petrochemical and Refiners Association. We have Mr. William Becker, who is the Executive Director of the State and Territorial Air Pollution Program Administrators, the Association of Local Air Pollution Control Officials; and Ms. Sonja Hubbard, who is Chief Executive Officer of E-Z Mart Stores, who is testifying on behalf of the National Association of Convenience Stores and the Society of Independent Gasoline Marketers of America.

We are going to put each of your statements in the record, and we are going to recognize each of you for 7 minutes to elaborate on your statements.

STATEMENTS OF EDWARD MURPHY, GROUP DIRECTOR, DOWNSTREAM AND INDUSTRY OPERATIONS, AMERICAN PETROLEUM INSTITUTE; BOB DINNEEN, PRESIDENT AND CEO, RENEWABLE FUELS ASSOCIATION; BOB SLAUGHTER, PRESIDENT, NATIONAL PETROCHEMICAL AND REFINERS ASSOCIATION; S. WILLIAM BECKER, EXECUTIVE DIRECTOR, STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS/ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS; AND SONJA HUBBARD, CEO, E-Z MART STORES, INC., ON BEHALF OF NATIONAL ASSOCIATION OF CONVENIENCE STORES AND SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

CHAIRMAN BARTON. We will start with Dr. Murphy. Welcome to the committee.

MR. MURPHY. Thank you very much, Mr. Chairman.

My name is Edward Murphy, and I am Group Director for Industry and Downstream Operations at API. I am testifying on behalf of our more than 400 member companies, and I am delighted to be here today. API welcomes the opportunity to comment on the boutique fuels issue.

Most boutique fuels were meant to address local or regional air quality issues that were well-intentioned, but the laws and system fungibility have occasionally led to serious unintended consequences, including tight supplies and price volatility; and the number of both chief fuels is increasing, especially as the result of State and local biofuel mandates.

It is important to know, however, that the patchwork of localized boutique fuels is not principally responsible for the current recent higher gasoline prices, and this legislation would not address the most important driver of the gasoline price increases we have recently experienced, which is the rising cost of crude oil.

The Energy Policy Act of 2005 required that EPA and the DOE complete two studies regarding boutique fuels, one this year and one in 2008. We look forward to the results of these studies and their recommendation regarding how the number of boutique fuels may be reduced while balancing environmental needs and supply capability.

This legislation does address an issue of critical concern to the petroleum industry and that is reliability of supply. A rigid system of State-specific boutique fuels can reduce that reliability at times when supplies are already short. This legislation recognizes the importance of maintaining flexibility in our fuel manufacturing and distribution system by limiting the number of boutique fuels.

But while limiting the boutique fuels is important, that step alone is not a silver bullet as new areas consider fuels programs. It is critical that EPA should still require a demonstration of a need by States. Also, EPA should be required to review potential supply impacts of any fuel in consideration for approval.

Although reducing the number of fuel choices available will add fungibility to gasoline supplies, it will lead to more stringent formulations as States and localities seek to maintain environmental performance. Thus, a reduction in the number of fuels and possible increased overall stringency could cause some loss of production capacity as some gasoline components are removed in the refining process. This loss in production capacity needs to be closely balanced against the positive effects of fungibility on supply.

The legislation before this committee contains several very positive provisions that would help to increase gasoline supply reliability.

These include grandfathering and walling off the Texas low emission diesel program and the Phoenix, Arizona, and Clark County, Nevada, Clean Burning Gasoline programs, preventing adoption in other States.

It includes, as an interim step, a PADD-specific cap with a ratchet-down feature which would reduce the number of available fuels that may be required once air quality improvements are attained.

Disallowing the inclusion in the State fuels slate of controls for sulfur and toxic parameters beyond Federally required levels; and, lastly, limiting growth in State highway diesel programs to avoid a parallel boutique problem for diesel fuel.

However, the biggest challenge now facing us is the recent proliferation of biofuel boutiques that our justices instructed to supply for the lack of basis in improving air quality. We feel strongly that the addition of provisions restricting State biofuel mandates would substantially strengthen what has been proposed.

Additional State biofuel mandates could undo or offset the benefits of this legislation and the benefits EPAct 2005 promises to provide. Biofuel mandates are increasing in number. Despite the RFS program, several States have either implemented or passed varying forms of biofuel mandates in 2006; these are often justified on the basis of their supposed contributions to energy security. But individual States should not be permitted to force the use of ethanol by devising and mandating the wrong gasoline or diesel biodiesel blends, particularly since they will jeopardize fungibility and thus detract from energy security. We are each to consider extending restrictions on State-mandated fuels to include renewables or biofuels.

Given the existence of the Federal office mandating the use of minimum volume of biofuels each year and a trading program and send it to provide flexibility where the biofuels are used, all State biofuel mandates should be federally preempted. We recommend that this legislation amend EPAct 2005 to require study of the supply distribution impacts of States' biofuel mandates. We also recommend that the legislation be strengthened to further limit diesel boutiques, except for the existing Texas program, by preempting all State diesel programs, including those that address non-road fuels.

Thank you, and I will be happy to answer any questions you may have.

CHAIRMAN BARTON. Thank you, sir.

[The prepared statement of Edward Murphy follows:]

PREPARED STATEMENT OF EDWARD MURPHY, GROUP DIRECTOR, DOWNSTREAM AND INDUSTRY OPERATIONS, AMERICAN PETROLEUM INSTITUTE

Most of the existing boutique fuels were meant to address local or regional air quality issues. They were well-intentioned – but have occasionally led to serious unintended consequences. State and local bio-fuel mandates are rapidly adding to the number.

The patchwork of localized boutique fuels is not principally responsible for the recent higher gasoline prices, and enactment and implementation of this legislation would not address the most important drivers of the gasoline price increases we have experienced over the past several months including the high price of crude oil.

The Energy Policy Act of 2005 (EPACT05) required that EPA and the DOE complete two studies regarding boutique fuels (one this year and one in 2008). We look forward to the results of this study and its recommendation regarding how the number of boutique fuels may be reduced while balancing environmental needs and supply capability.

This legislation contains positive provisions that deal with the air-quality boutiques and builds on measures addressing boutique fuels included in last year's EPACT05. However, the bigger challenge now facing us is the recent proliferation of bio-fuel boutiques that are just as disruptive to supply but lack a basis in improving air quality. Bio-fuels mandates are rapidly increasing in number. Several states have either implemented or passed varying forms of biofuel mandates in 2006.

We urge consideration of extending restrictions on state-mandated fuels to include renewables or bio-fuels. Given the existence of the federal RFS all state biofuel mandates should be federally preempted. Moreover, existing state biofuel mandates should become subject to review by EPA and DOE to determine whether they are likely to adversely impact the supply of fuel to the mandated area, or surrounding areas.

Also, the legislation should be strengthened to further limit diesel boutiques (except for the existing Texas program) by preempting all state diesel programs, including those that address non-road fuels.

We strongly recommend that this legislation amend EPACT05 to require study of the supply/distribution impacts of state bio-fuels mandates. Also, EPA should be required to review potential supply impacts of any fuel under consideration for approval. Simply reducing the number of fuels is not sufficient if it means moving to more stringent formulations that reduce producibility which could also have adverse supply impacts.

Limiting the number of boutique fuels is not a silver bullet as new areas consider fuels programs. EPA should still require a demonstration of need by the state. There also needs to be sufficient lead time to ensure that companies are all able to produce the new fuel. Moreover, supply considerations must be taken into account as a more stringent formulation will result in a reduction in fuel producibility.

My name is Edward Murphy. I am the Group Director for Downstream and Industry Operations at the American Petroleum Institute and am testifying on API's behalf. API is a national trade association representing more than 400 companies involved in all aspects of the U.S. oil and natural gas industry, including exploration and production, refining, marketing and transportation, as well as the service companies that support our industry.

API welcomes the opportunity to comment on the boutique fuels issue. "Boutique" fuels are specialized fuel formulations unique to a particular market, imposed by federal, state or local laws, and that cannot be obtained from other markets in the same regional distribution system.

Most of the existing boutique fuels were meant to address local or regional air quality issues. They were well-intentioned – but have occasionally led to serious unintended consequences. State and local bio-fuel mandates are rapidly adding to the number. Boutiques can contribute to tight supplies and price volatility, particularly in the event of a supply disruption or stress.

Nothing is more important in our business than the reliability of supply, and a rigid system of state-specific boutique fuels can reduce that reliability at times when supplies are already short. This legislation recognizes the importance of maintaining flexibility in our fuel manufacturing and distribution systems

It is important to note, however, that the patchwork of localized boutique fuels is not principally responsible for the recent higher gasoline prices, and enactment and implementation of this legislation would not address the most important drivers of the gasoline price increases we have experienced over the past several months. The rising cost of crude oil has been the dominant factor. At $70 a barrel, crude oil costs account for $1.67 of the price of a gallon of gasoline. Crude costs plus taxes – an average of 46 cents per gallon – account for about three-fourths of pump prices. The boutique fuel problem manifests itself most often as geographically and temporally localized shortage, not always accompanied by price increases.

Nevertheless, the proliferation of boutique fuels, which resulted from the Clean Air Act Amendments of 1990, in recent years has presented significant challenges to U.S. refiners and resulted in a fuel system too encumbered to quickly respond to unavoidable events. That has contributed to fuel unavailability and/or price volatility that has hurt consumers.

It is important to understand that limiting the number of boutique fuels is not a silver bullet as new areas consider fuels programs. EPA should still require a demonstration of need by the state. There also needs to be sufficient lead time to ensure that companies are all able to produce the new fuel. Moreover, supply considerations must be taken into account as a more stringent formulation will result in a reduction in fuel producibility.

Fuel providers need the flexibility to get fuel to where it is most needed and to quickly adjust to changes in demand. Additionally, marketers need some assurance that, if they are unable to secure the type of fuel they need at a particular supplier or terminal, they will be able to go elsewhere for product. However, a rigid system of state-specific boutique fuels reduces the reliability of supply and increases the risk of spot shortages and price volatility.

The Energy Policy Act of 2005 (EPACT05) included a provision setting some restrictions on EPA for approval of states' fuels intended for reducing air pollution. In addition, Congress required that EPA and the DOE complete two studies regarding boutique fuels (one this year and one in 2008). We look forward to the results of this study and its recommendation regarding how the number of boutique fuels may be reduced while balancing environmental needs and supply capability. In particular, we need such a careful study to weigh the impact of increased fuel fungibility from a reduced number of fuels with the reduction in production capability that will occur if the overall fuel specifications are made more stringent in the process of insuring continued environmental performance.

Policy-makers clearly recognized the harmful effects of widespread adoption of boutique fuels. But more needs to be done and we commend the Chairman for his willingness to address the problem.

The legislation before this committee builds on measures addressing boutique fuels included in last year's EPACT05. This legislation contains positive provisions that deal with the air-quality boutiques, however, the bigger challenge now facing us is the recent proliferation of bio-fuel boutiques that are just as disruptive to supply but lack a basis in improving air quality. We feel strongly that the addition of provisions restricting state bio-fuel mandates would substantially strengthen what has been proposed. More state

bio-fuel mandates could undo or offset much of the benefit your legislation as well as EPACT05 promises to provide.

Provisions in the legislation before us today could help further limit the spread of boutique fuels by:

- Grandfathering and walling off the Texas low emission diesel program and the Phoenix, Arizona and Clark County, Nevada Clean Burning Gasoline programs, preventing adoption in other states.
- Including, as an interim step, a PADD specific cap with a ratchet-down feature that would reduce the number of available fuels that may be required once air quality improvements are attained.
- Disallowing the inclusion in the state fuels slate of controls for sulfur and toxics parameters beyond federally required levels, and
- Limiting growth in state highway diesel programs to avoid a parallel boutique problem for diesel fuel.

We think it is important that EPA carefully evaluate the impact of a reduced slate of fuels, in order to prevent a reduction in supply capability resulting from a tightening of fuel specifications without corresponding environmental benefits. Most importantly, this legislation does nothing to limit state-mandated bio-fuel programs.

This is a serious omission. If the issue is fuel fungibility and distribution, boutique fuels include all gasolines and diesel fuels mandated at any government level. Whether the fuel requirement is imposed at the federal, state, or local level, for environmental or other reasons, if the result is a different fuel – conventional or bio-fuel – it adversely impacts the system fungibility and raises the potential for market volatility.

Moreover, bio-fuels mandates are increasing in number.

It was anticipated that the passage of a federal Renewable Fuels Standard (RFS) program, mandating 7.5 billion gallons of renewables by 2012, would eliminate the need for additional state mandates. However, just the opposite has occurred. Despite the federal RFS program several states have either implemented or passed varying forms of biofuel mandates in 2006. Of those, Hawaii's mandate took effect, Washington passed legislation and lawmakers in Missouri and Louisiana have passed bills which are now with their governors for final consideration. Iowa enacted legislation that will have the effect of a mandate, and Colorado's Governor vetoed a mandate bill passed by that legislature earlier this year. Moreover, several other state legislatures have passed a mandate in at least one house and many others have actively considered such legislation. Minnesota already had a mandate in effect, and Montana has passed mandate legislation but it won't be implemented until the state reaches a certain production threshold.

Bio-fuels can contribute to our motor fuel pool and will continue to expand their market share to the extent they meet consumers' needs. Equally important, the federal RFS will ensure continued growth in renewables, especially ethanol.

Unlike potential state mandates, the RFS builds in flexibility. Its credit banking and trading component, when established through regulations by EPA, should allow refiners to use renewables where they are most efficient. This is critical for the reliable supply of fuels.

State mandates undermine that flexibility and create obstacles to the achievement of Congress' goals. Individual states should not be permitted to force the use of ethanol or biodiesel by devising and mandating their own gasoline/ethanol and/or diesel/biodiesel blends. The last thing our nation needs now is an expansion of the boutique fuels patchwork of state-by-state laws mandating ethanol and/or biodiesel use at different concentrations and/or under different terms.

Here are examples of the kind of problems that state bio-fuels mandates could create:

- A per gallon mandate requires that E10 be available at all times. Thus, a shortage of ethanol for any reason means that gasoline could not be sold.
- If the governor has chosen to eliminate the 1 pound waiver or if the state has a low rvp fuel requirement, refiners may need to produce a low RVP blendstock (BOB) for conventional gasoline.
- For areas requiring RFG, refiners would be required to produce a lower RVP blend of RFG, i.e. a reformulated BOB, for blending with ethanol. While most are choosing to do this now, it is possible that in the future some will choose to produce RFG with no oxygenates. This would not be possible in a mandate state.

Integrating ethanol and other biofuels into the gasoline marketplace is too important – and presents too many challenges – to be approached in an individual, state-by-state manner. In order to meet consumer fuel needs, we want to produce more, refine more, and distribute more – but state bio-fuel mandates would make this difficult. For example, ethanol cannot be moved by common carrier pipeline, unlike more than 70 percent of U.S. fuel production, and requires a long supply chain to serve consumers. That means a longer reaction time when problems occur. State ethanol mandates would significantly add to that reaction time. We oppose this patchwork approach, whose adverse impacts are felt most by individual gasoline consumers. This is particularly important as we continue to see record ethanol futures prices. (The Chicago Board of Trade's June 2006 contract set a record on June 2, 2006 of $3.68 per gallon. This is equivalent to $154.56 per barrel.)

This legislation contains provisions that are positive. But we urge consideration of extending restrictions on state-mandated fuels to include renewables or bio-fuels. Given the existence of the federal RFS mandating the use of a minimum volume of biofuels each year, and a trading program intended to provide flexibility in where the biofuels are used, all state biofuel mandates should be federally preempted. Moreover, existing state biofuel mandates should become subject to review by EPA and DOE to determine whether they are likely to adversely impact the supply of fuel to the mandated area, or surrounding areas.

Also, the legislation should be strengthened to further limit diesel boutiques (except for the existing Texas program) by preempting all state diesel programs, including those that address non-road fuels.

At a minimum, we strongly recommend that this legislation amend EPACT05 to require study of the supply and distribution impacts of state bio-fuels mandates. Also, EPA should be required to review potential supply impacts of any fuel under consideration for approval. Simply reducing the number of fuels is not sufficient especially if it means moving to more stringent formulations that reduce producibility which, in turn, could also have adverse supply impacts.

CHAIRMAN BARTON. Welcome, Mr. Dinneen. Your statement is in the record. You are recognized for 7 minutes.

MR. DINNEEN. Good afternoon, Mr. Chairman, members of this committee.

My name is Bob Dinneen. I am President of the Renewable Fuels Association, representing the U.S. ethanol industry, the fastest growing renewable energy resource in the world, and, Mr. Chairman, I am thrilled to be here.

I am also proud to report that just since the last time I testified before this committee our industry has continued to grow. We have opened

four additional biorefineries just in the last 3 weeks, bringing the total number of ethanol plants across the country to 101, with a total capacity of more than 4.8 billion gallons. There are still 32 plants under construction, and we believe we will end the year with more than 115 biorefineries in operation and more than 5.7 billion gallons of production.

I am pleased to be here today to discuss the complex issue of boutique fuels. A boutique fuel is one that reduces gasoline fungibility because its fuel specifications differ from Federal standards. As noted in the EPA's proposed list, examples of boutique fuels include low RVP or low sulfur programs States have adopted as opposed to Federal RFG.

It is important to understand that simply adding ethanol to gasoline does not constitute a boutique fuel. Indeed, ethanol is measured in 40 percent of the Nation's fuel. It is hardly a boutique fuel. Ethanol is an additive that is either blended with a fully fungible RBOB in Federal RFG areas or with a fungible gasoline, which adds volume and octane to the motor fuel supply. Blending ethanol with conventional gasoline requires no unique blend from refineries and does not add to the complexity of the fuel distribution system.

Now I understand that some are indeed concerned about the proliferation of State biofuel programs because they believe these programs may undermine the flexibility intrinsic to the national RFS adopted as part of last year's Energy Policy Act. I am sympathetic to that concern. The RFA worked in good faith with the API and others--and I will suggest continues to work in good faith in the implementation of that program--to pass a national RFS that gives refiners maximum flexibility to blend ethanol and other biofuels wherever the market place determined. To an extent, certainly, State mandates do chip away at that flexibility. But that is an issue affecting RFS implementation, one that States should appropriately weigh when contemplating such programs. It is not a boutique fuel issue.

Even from an RFS implementation standpoint, however, the concerns about State biofuels programs appear to be a bit overstated. First, only two State programs are currently in place, Minnesota and Hawaii, and those areas where such have been adopted or are proposed are largely in areas where refiners would be likely to utilize biofuels to meet RFS requirements in any case, that is, States with significant existing or potential ethanol production capacity. Indeed, several of the proposed State programs wouldn't even become effective until there is meaningful biofuels production in the State.

Second, not all of the State biofuels programs rely upon mandates. Iowa just enacted a very aggressive 25 percent oil displacement program by 2019 that relies squarely on tax incentives to motivate gasoline

marketers to install biofuel infrastructure allowing for greater ethanol, E-85, and biodiesel use. The Iowa legislation had support from the local petroleum industry and is likely to become a model for other States to follow.

EPA's authority to regulate fuels is rooted in the impact fuel specifications have on air quality. EPA has no authority to preempt State programs or other public policy objectives, such as rural economic development or fuel diversity.

Such is the case with State biofuels programs. The State of Minnesota, for example, was the first State to enact an ethanol mandate, and the ethanol program has been a remarkable success. From just one producing about 50 million gallons of ethanol in 1995, the State last year had 16 ethanol refineries producing 420 million gallons of ethanol, generating more than $1.5 billion in economic output and supporting almost 6,000 jobs.

Congress should not impinge upon a State's ability to pursue such economic development.

To the extent that the committee determines that boutique fuels are indeed contributing or could contribute to gasoline price volatility, the RFA supports the Chairman's boutique fuels legislation. The bill would reduce the number of fuels refiners must produce and improve overall gasoline fungibility. That would be helpful in the event of any disruption in any gasoline production or distribution. At the same time, the bill appropriately preserves the ability of States to pursue biofuel programs that do not burden either refiners or the gasoline distribution system. While I will continue to support the flexibility inherent in a national RFS, States should continue to have the right to weigh the concerns of refiners against their own economic development objectives.

Thank you, Mr. Chairman.

CHAIRMAN BARTON. Thank you.

[The prepared statement of Bob Dinneen follows:]

PREPARED STATEMENT OF BOB DINNEEN, PRESIDENT AND CEO, RENEWABLE FUELS ASSOCIATION

Good morning, Mr. Chairman and Members of the Committee. My name is Bob Dinneen and I am president of the Renewable Fuels Association, the national trade association representing the U.S. ethanol industry, the fastest growing renewable energy resource in the world.

In fact, I am proud to report that just since the last time I was privileged to testify before this Committee, less than a month ago, four more ethanol biorefineries have opened, bringing the total number of operational facilities to 101, and annual production capacity to more than 4.8 billion gallons. There are 32 plants under construction, and we anticipate ending the year with at least 115 biorefineries in operation and more than 5.7 billion gallons of production capacity.

I am pleased to be here today to discuss the complex issue of "boutique fuels." A boutique fuel is one that reduces gasoline fungibility because its fuel specifications differ from federal standards. As noted in the Environmental Protection Agency's proposed list, examples of boutique fuels include low RVP or low sulfur programs several states have adopted as alternatives to federal reformulated gasoline.[1]

It is important to understand that simply adding ethanol to gasoline does not constitute a "boutique fuel." Indeed, ethanol is blended in 40% of the nation's fuel. Ethanol today is either blended with a fully fungible RBOB (reformulated gasoline blendstock for oxygenate blending) in federal RFG areas to meet appropriate emissions standards or with a fungible conventional gasoline, which adds volume and octane to the motor fuel supply. Blending ethanol with conventional gasoline requires no unique blend from refiners and does not add to the complexity of the fuel distribution system.

State Biofuels Programs

I understand that some are concerned about the proliferation of state biofuels programs because they believe these programs may undermine the flexibility intrinsic to the national renewable fuels standard (RFS) adopted as part of last year's Energy Policy Act (EPAct). I am sympathetic to that concern. The Renewable Fuels Association worked in good faith with the American Petroleum Institute and others to pass a *national* RFS that gave refiners maximum flexibility to blend ethanol and other biofuels wherever the market place determined. To an extent, state biofuels mandates do chip away at that flexibility. But that is an issue affecting RFS implementation; one that states should appropriately weigh when contemplating such programs. It is NOT a "boutique fuel" issue.

Even from an RFS implementation standpoint, however, the concerns about state biofuels programs might be overstated. First, only two state programs are currently in place (Minnesota & Hawaii); and those areas where such programs have been adopted[2] or are proposed[3] are largely in areas where refiners would be likely to utilize biofuels to meet RFS requirements in any case, i.e., in states with significant existing or potential ethanol production capacity. Indeed, several of the proposed state programs would not become effective until there is meaningful biofuels production in the state.[4]

Second, not all of the biofuels programs rely upon mandates. Iowa just enacted a very aggressive 25% oil displacement program by 2019 that relies entirely upon tax incentives to motivate gasoline marketers to install biofuels infrastructure allowing for much greater ethanol, E-85 and biodiesel use.[5] The Iowa legislation had support from the local petroleum industry and it is likely to become a model for other states to follow.

It is also important to note that EPA's authority to regulate fuels is rooted in the impact fuel specifications have on air quality. EPA has no authority to preempt state programs that are imposed in pursuit of other public policy objectives, such as rural economic development or fuel diversity, particularly when the programs are not included in a State Implementation Plan.

---

[1] Section 1541(b) of the EPAct required EPA to publish a list of boutique fuels. The Agency published its list on June 1, 2006.

[2] Montana, Washington, Missouri and Louisiana have passed various biofuels requirements, but they are not yet in effect.

[3] California, Delaware, Idaho, Illinois, Kansas, Nebraska, New Mexico, and Virginia have biofuels legislation pending in the state legislature.

[4] Idaho, Lousiana, Montana and Virginia have in-state ethanol production requirements before the enacted or proposed biofuels requirement becomes effective.

[5] Iowa provides retail tax incentives for E-10 dependent upon an RFS schedule, retail tax incentives for biodiesel and E-85, and provides grants of up to $30,000 for the installation of biofuels refueling infrastructure. There are no mandates for either ethanol or biodiesel.

Such is the case with state biofuels programs. I certainly understand why states are contemplating programs to stimulate biofuels production and use in their states. They are anxious to capture the tremendous economic benefits local ethanol and biodiesel production will provide. Consider the local economic impact of just one 100 million gallon ethanol plant:

- Generate $406 million for the local community;
- Increase the state's Gross Output by $223 million;
- Increase household income by more than $50 million; and
- Create nearly 1,600 local jobs. [6]

The State of Minnesota was the first state to enact a biofuels mandate, and it remains the most progressive state in terms of promoting renewable fuels today. Minnesota enacted an ethanol mandate ten years ago and implemented a biodiesel requirement earlier this year. Every gallon of gasoline sold in Minnesota today is blended with 10% ethanol. The state's diesel fuel is blended with 2% biodiesel. Ethanol is added to conventional gasoline. Biodiesel is added to conventional diesel. No refinery modifications are necessary with either program and they do not inhibit fuel fungibility. By extending conventional gasoline and diesel supplies, the Minnesota ethanol and biodiesel programs likely reduce consumer motor fuel costs in other states as well.

Minnesota's ethanol program has been a remarkable success. From just one plant producing about 50 million gallons in 1995, the State last year had 16 ethanol biorefineries producing 420 million gallons, generating more than $1.5 billion in economic output and supporting 5,840 jobs.[7] With ongoing expansions, Minnesota anticipates producing more than 550 million gallons of ethanol this year, resulting in even greater economic benefit to the State.

Congress should not impinge on a state's ability to pursue such economic development.

Consider this statement by Missouri Governor Matt Blunt upon the passage of a new state ethanol requirement last month, "I am proud your elected leaders have met my call for an E-10 standard. This important legislation will benefit our farm families, provide a lasting boost to our state's economy, improve our air quality and help secure Missouri's position on the top tier of ethanol production and utilization."

Iowa Governor Tom Vilsack echoed that sentiment as he signed an aggressive incentive-based biofuels program last week, "Today is an extraordinarily important day in the state of Iowa for anyone who cares about economic development, for anyone who cares about the environment, for anyone who cares about energy independence and making more out of what we grow."

Conclusion

If the Committee concludes "boutique fuels" are a contributing factor to rising consumer gasoline prices, the Renewable Fuels Association would support the Committee's draft legislation. The bill would reduce the number of fuels refiners must produce and improve overall gasoline fungibility. That would be helpful in the event of any disruption in gasoline production or distribution. At the same time, the bill appropriately preserves the ability of states to pursue biofuels programs that do not burden either refiners or the gasoline distribution system. While I will continue to support the flexibility inherent in a *national* RFS, states should continue to have the right to weigh the concerns of refiners against their own economic development objectives.

Thank you.

---

[6] Dr. John Urbanchuk, LECG, LLC, *Contribution of the Ethanol Industry to the Economy in the U.S. in 2005*, February 2006.

[7] http://www.mda.state.mn.us/ethanol/plantsreport.pdf

CHAIRMAN BARTON. We now want to hear from Mr. Slaughter, and you are recognized for 7 minutes.

MR. SLAUGHTER. Thank you, Mr. Chairman.

I am Bob Slaughter, and I am President of the National Petrochemical and Refiners Association. We appreciate the continuing interest of this committee in the national energy policy, and we thank the committee for the opportunity to appear today.

The committee draft bill regarding boutique fuels is a reasoned and modest approach to address concerns that have been expressed by many about fuel proliferation. I am looking forward to working with the committee as you consider that legislation. It should be understood, however, that no change further limiting fuel requirements or other fuel specifications is likely to affect the gasoline market situation this summer.

Since Congress enacted other legislation affecting this area as part of the Energy Policy Act, this bill does present the limit that should be considered this year. It would be wise to await the results of the EPA study that is now being conducted pursuant to last year's legislation before taking any additional action.

Further restrictions on the total number of fuels currently allowed by the Energy Policy Act of 2005 could possibly lessen the frequency of episodic fuel challenges. However, this action would result at the cost of a higher average price than currently experienced since the substitute fuel would be required to meet a more stringent environmental specification.

Refiners have made significant capital expenditures in order to comply with the requirements imposed for these particular fuel blends. Last-minute changes will increase uncertainty and upset expectations based on current law.

We do believe that when and if legislation to limit boutique fuels goes forward that it should cover all boutique fuels, including Federal and State mandates as well as CARB gasoline. No potentially problematic fuel should be exempted because of its political constituency, however powerful.

NPRA believes that the emphasis on the impact of boutique fuels on gasoline markets in this and recent years has been overstated, and, in general, we think that attempts to limit the flexibility of the political system to respond to future market conditions are unwise and doomed to fail.

In general, we are concerned that a rush towards judgment on the boutique fuels issue could result in a mandatory unreasonably small fuel slate that fails to reflect the diversity when it comes to geography, climate, population, and air quality.

Howard Greenspeck, the Deputy Administrator of the EIA, appeared before the committee in May and laid out better than anyone else I have seen about this type of legislation and what needs to be taken into account and its consideration. He said, in addition to the difficulty of balancing environmental and fuel supply concerns, actions to ease distribution problems by reducing the number of gasoline formulations could increase average gasoline production costs and reduce overall gasoline supply capacity.

For example, moving the entire country to a single very clean gasoline standard would certainly enhance fungibility, but it would also impact refiners' ability to produce enough gasoline to meet demand. Considerable investment in what might otherwise be devoted to capacity expansion would be diverted to building the system for more intensive processing.

A single product standard for product gasoline, if set at stringent levels, could also choke off imports of gasoline from other sources. Even though greater fungibility would reduce the potential for short-term regional supply shortages and price spikes, consumers could end up facing a higher average national price for gasoline than they would under the present regime. Timing, balance between supply and distribution, potential further fuel specification, and vehicle changes all need to be considered when trying to address this issue.

We agree with the points that were made by EIA in that testimony. We do think that failure to consider and balance supply implications, air quality impacts, and fuel choices together risks making the situation worse and perhaps much worse. A precipitous reduction in the number of boutique fuel blends now could have the unintended effect of actually reducing the overall supply of gasoline.

We do again appreciate the opportunity to appear today, and we look forward to the committee's questions.

CHAIRMAN BARTON. Thank you, sir.

[The prepared statement of Bob Slaughter follows:]

PREPARED STATEMENT OF BOB SLAUGHTER, PRESIDENT, NATIONAL PETROCHEMICAL & REFINERS ASSOCIATION

- NPRA fully understands the impact that higher than usual gasoline and diesel prices are having on the nation's consumers. However, NPRA is concerned that boutique fuels have been taken out of perspective and identified by some as a primary cause of the current fuels market.
- The Congressional interest in "boutique fuels" is understandable. There is little doubt that fungibility of fuel is related to supply. It should be clearly understood that no change further limiting boutique fuel requirements or other fuel specifications will affect the supply situation this summer.

- NPRA believes that the Committee draft is a reasoned and modest approach to boutique fuels representing the absolute limit that policymakers should consider this year.
- The use of low-RVP conventional gasoline rather than RFG represented the environmentally sound, economically justifiable option available for areas requiring additional emissions controls.
- Limiting the number of low-RVP fuels that can be used, may do very little to reduce price volatility.
- Further, restrictions on the total number of fuels currently allowed by the Energy Policy Act of 2006 could possibly lessen the frequency of episodic fuel supply challenges. However, this action would result at the cost of a higher average price than currently experienced since the substitute fuel would be required to meet a more stringent environmental specification.
- Refiners have made significant capital expenditures in order to comply with the requirements imposed for these particular fuel blends. Last minute changes will increase uncertainty and upset expectations based on current law.
- Failure to consider and balance supply implications, air quality impacts, and fuel choices together risks making the situation worse, perhaps much worse. A precipitous reduction in the number of boutique fuel blends now could have the unintended effect of actually lessening the overall supply of gasoline.
- Because the draft legislation intends to improve fuel fungibilty and alleviate adverse air quality impacts, it should also cover other fuels such a state ethanol and biodiesel mandates. At the very least, the legislation should require EPA to study the impact of these mandated fuels.

Chairman Barton, Ranking Member Dingell, and members of the Energy & Commerce Committee, NPRA, the National Petrochemical & Refiners Association, appreciates this opportunity to present its views on the subject of boutique fuels and, more specifically, on draft legislation entitled the "Boutique Fuels Reduction Act of 2006." Our testimony today will concentrate on emphasizing the realities and dispelling certain myths that surround the debate about boutique fuels. We will also discuss the factors impacting the current and projected transportation fuels supply and the specifications which refiners have already met or will be obligated to meet. I am Bob Slaughter, NPRA's President. As you know, NPRA is a national trade association with 450 members, including those who own or operate virtually all U.S. refining capacity, as well as most of the nation's petrochemical manufacturers with processes similar to those of refiners.

HOW WE VIEW THE BIG PICTURE

NPRA fully understands the impact that higher than usual gasoline and diesel prices are having on the nation's consumers. We congratulate the Committee for holding this and other hearings regarding the current transportation fuels market. NPRA believes that the discussion that results will help separate fact from fiction in this important policy area.

We hope that the Committee will keep in mind that there are no short-term solutions to problems that have been building for over a decade. As we stated in our May 11th testimony before the Committee: "Rather than engaging in a fruitless search for questionable quick-fix solutions, or even worse, taking actions that could be harmful, we urge Congress, the Administration, and the public to exercise continued patience with the free market system as the nation adjusts to a volatile global energy market. The nation's refiners are working hard to meet rising demand while complying with extensive regulatory controls that affect both our facilities and the products we manufacture."

OUR VIEW OF THE PROPOSED LEGISLATION

Congressional interest in "boutique fuels" is understandable. There is little doubt that fungibility of fuel is related to supply. However, NPRA is concerned that boutique fuels have been taken out of perspective and identified by some as a primary cause of the current transportation fuels market. We would make three key points: 1) We believe that boutique fuels use resulted from a collision between the need for more state/local emissions reductions and shortcomings in the federal RFG program; 2) It appears unlikely that any change affecting boutique fuel requirements or other fuel specifications will affect the supply situation this summer, and 3) Congress must try to avoid the law of unintended consequences which often afflicts its forays into energy legislation. And while Congress considers this legislation, the U.S. refining industry must and will continue to do its job of optimizing the production and distribution of gasoline and other petroleum products this summer.

Regarding the specific subject of this hearing, NPRA believes that the Committee draft is a reasonable and modest approach to the boutique fuels issue, representing the absolute limit that policymakers should consider this year. We do suggest that it would be wise to add four additional items: 1) to include in the definition of boutique fuels all state ethanol and biodiesel mandates, as well as CARB fuel; 2) to require EPA to make a finding on the impact of state biofuel mandates and CARB fuel on fuel supply fungibility and air quality; 3) to require a study of the impact of a 1-3 fuel national fuel slate on concentration and competition in the U.S. refining industry, and 4) to determine the impact of this bill on the average consumer costs for gasoline, compared to the current system. Beyond that, action on this delicate subject should await completion of the reports mandated by the recent EPACT legislation. Given those reservations, NPRA offers its support for the limited bill drafted by the committee.

BACKGROUND

In past testimony before this and other Congressional Committees, NPRA pointed out that the prime factor increasing the number of fuel blends throughout the nation was The Clean Air Act Amendments of 1990 provision that requires certain areas to use federal reformulated gasoline (RFG). As you know, RFG containing a 2% by weight oxygenate was required in the most heavily polluted areas of the country. Historically, the primary driver leading local areas to opt for boutique fuels was emission reduction needed to attain the 1-hour ozone NAAQS. These areas often sought to avoid RFG when considering fuel controls, due to concerns about 1) its cost, and/or 2) the presence of MTBE or ethanol. As states developed their specific State Implementation Plans (SIPS) to address their particular air quality concerns, some (who were not required to use RFG) realized that they could achieve significant reductions in air emissions by using a low-RVP conventional gasoline, while avoiding the perceived problems associated with RFG. These states usually adopted low-RVP conventional gasoline programs only after consultation with refiners, the environmental community, and other stakeholders. The new fuel requirements went into effect only after approval by EPA. The upshot? Areas adopted boutique fuels only when they offered comparable emissions reductions at a reduced cost to consumers, and many stakeholders and regulators were involved in the process.

WHAT IS A BOUTIQUE FUEL?

A great deal of attention has been given to national maps showing the varied gasoline specifications required across the nation. Those maps were prepared to explain two things: the logistical realities involved in serving gasoline markets, and the fact that certain areas have chosen a special fuel offering the most environmentally sound and economically justifiable approach to their specific clean air and consumer needs.

In the May 11th hearing before this Committee, Acting EPA Assistant Administrator for Air and Radiation, Bill Werhum, offered the following definition: "a boutique fuel is a unique fuel specification that is developed by a state or local air pollution agency and approved by EPA as part of the State Implementation Plan (SIP) for the affected area. It is worth noting that boutique fuels do not include other clean fuel requirements, such as Federal fuel controls (e.g., reformulated gas, winter oxygenated fuels), California clean fuel requirements, and area-specific fuels required by state law for purposes other than air quality (e.g., Minnesota's ethanol mandate)" (emphasis in the original) NPRA believes this is an incomplete definition of boutique fuels. It does not include California's unique gasoline (CARB), RFG, nor mandated federal or state ethanol and biodiesel blends. These fuels walk, talk and act like all other boutique fuels, but they have not been defined as such frankly because of political considerations. Given the history of the past ten years, it seems unlikely that federal statutes will be permitted to recognize the truth about these political favorites. The latest evidence: EPA's recent draft Boutique Fuels list does not include these fuels.

BOUTIQUE FUELS AND PRICE VOLATILITY

Much discussion has focused on the rare occasions in which events such as refinery outages, pipeline failures, or weather related circumstances arise, causing brief supply disruptions in limited geographic areas. In these instances, higher prices serve for a brief period to balance supply and demand while eliciting additional supplies from sources outside the affected area. It is important to note that gasoline meeting stricter specifications than those in the affected area can immediately be supplied to that area in nearly all cases. If the situation requires additional, focused actions, EPA responds by issuing fuel specification waivers. These waivers allow otherwise non-compliant fuel to be used until such time as the initial episode is corrected.

NPRA's position continues to be that these waiver requests should be granted only when a high burden of proof has been met. EPA, in our opinion, has met this burden of proof before acting, and the system has worked. As a prime example, in the aftermath of last summer's hurricanes EPA, with added authority provided to it by EPACT, worked closely with the entire fuels production, transportation, and distribution system to stretch the available supplies of transportation fuels in the affected area. The system operates much the same way in an area using boutique fuels on the very rare occasions when supply problems arise.

EPACT restrictions on the total number of fuels currently allowed should even further reduce the frequency of the need for such actions—actions that are even now strictly episodic in nature. However, since boutique fuels were adopted because they were equally effective in reducing emissions but were cheaper, even the changes under EPACT may result in a higher average fuel price for affected consumers. Under EPACT, a substitute fuel seems to include a more stringent environmental specification. NPRA therefore suggests that Congress should direct DOE to perform such a cost comparison analysis to determine whether this is in fact the case. This analysis should include the economic impact that California's adoption of CARB fuel has had on consumers in that state due to increased fuel costs and supply problems.

FURTHER DISCUSSION OF A LIMITED FUEL MENU

The Committee draft represents a modest, do no harm approach to addressing the concern with the fuel formulations available throughout the nation. Limiting the number of low-RVP fuels that can be used, however, may do very little to reduce price volatility. History shows that the main regions of price volatility have been California and the Chicago-Milwaukee areas made themselves into "fuel islands" due to their own choices. In fact, other than the large area and overall large volumes of fuel involved, California fuel is a classic example of a boutique fuel, although EPA does not characterize it as

such. Refineries outside of California have little or no incentive to make the investments necessary to provide California with additional supplies of CARB fuel on a sporadic basis. Chicago's reliance on ethanol as a blendstock for its RFG requirements, especially at the outset of RFG II implementation, was a major factor in fuel-volatility related problems in the early part of this decade. There have been brief problems in some parts of the country with low-RVP fuels, but far less often than has been the case with California and ethanol-blended RFG.

While the committee draft takes a more balanced approach to the boutique fuels debate and does not suggest adoption of a significantly reduced fuel slate, some propose such an action. Reducing allowable fuels to a very limited (4, 5 or even less) number, as some have suggested, would require adoption of California RFG or Federal RFG. This result would occur since the obvious choice would be the "cleanest" fuel available, not the fuel with higher air emission potential. Adoption of such a strategy could very well reduce price volatility, but significantly increase the cost of gasoline manufacture.

Given current and anticipated requirements facing the domestic refining industry, an additional change to more stringent specifications at this time would undoubtedly be difficult and disruptive. Marginal refineries could be closed if the owners believe that better investments should be made elsewhere, since attractive alternative uses for scarce capital always exist. And imports could be more difficult to attract since additional investments would have to be made by importers to meet new specifications. In short, an "all RFG" or "all CARB" market would make it much more difficult for remaining refiners to produce compliant fuel than it is to produce a combination of RFG and conventional gasoline, and available imports could be affected.

NEED FOR REGULATORY CERTAINTY

Refiners have made significant capital expenditures in order to comply with the requirements for existing fuel blends. These investments were made at a time when refiners also faced the additional regulatory requirements of Tier 2 gasoline sulfur reductions, preparation for implementation of ultra low sulfur diesel regulations for both highway and non-road applications, and implementation of the renewable fuel standard (RFS) in conjunction with the elimination of the 2% oxygenate standard for RFG. Further complicating this picture by adding new programs, or even eliminating existing ones, at this time will not benefit consumers. Last minute changes will increase uncertainty and upset reasonable expectations based on current law.

Also, failure to consider and balance supply implications, air quality impacts, and fuel choices together risks making the current situation worse, perhaps much worse. A precipitous reduction in the number of boutique fuel blends now (so that only the most environmentally stringent fuels would be left) would probably translate into reduced supplies. This is because cleaner fuels require more crude to produce them, given the need for additional processing. This also adds cost to the ultimate product, which consumers who do not need these special fuels should not have to pay. NPRA is pleased, however, to see that Section (3)(B)(II)(aa) through (ff) provide for studies that are at least intended to prevent such occurrences. We are concerned, however, that they may not be effective.

BOUTIQUE OR NOT BOUTIQUE?

The Committee draft attempts to control the total number of boutique fuels as defined in section 211(c)(4)(C) of the Clean Air Act in an effort to minimize fuel marketplace volatility and maintain air quality gains. However, while the draft legislation focuses on the purely legal definition of boutique fuels, it expressly allows the proliferation of state mandated fuels using renewable additives such as ethanol and biodiesel.

The federal preemption provisions in the Clean Air Act preserve a rational motor fuel supply because states are precluded from unilateral adoption of unique specifications unless EPA grants a waiver. EPA explains the merits of federal preemption in the preamble for the federal RFG and anti-dumping final rules, which includes the following statements:

> *"The regulations proposed here will affect virtually all of the gasoline in the United States. As opposed to commodities that are produced and sold in the same area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution suggests that federal rules should preempt State action to avoid an inefficient patchwork of potentially conflicting regulations."*

Because the draft legislation intends to improve fuel fungibility and alleviate adverse air quality impacts, it should also cover other fuels, such as state ethanol and biodiesel mandates—whether or not these fuels fall under the requirements of section 211(c)(4)(C) of the Clean Air Act. At the very least this legislation should require EPA to make findings regarding the impact of these mandated fuels upon fuel supply and fungibility and air quality.

FUELS OF THE (NEAR) FUTURE

It is clear to NPRA that implementation of current and proposed regulatory programs will tend to reduce existing "proliferation" of transportation fuels. For example, EPA published the Mobile Source Air Toxics Phase 2 proposal (71 FR 15804; 3/29/06). The primary feature is a proposed reduction in the average annual benzene content in all gasoline (conventional as well as RFG) to 0.62 vol%. This eliminates a current distinction between conventional gasoline and RFG in toxics control. In addition, recent repeal of the oxygen content requirement for federal RFG narrows the differences between winter RFG and winter CG and between summer RFG and summer 7.0 RVP CG. In addition, the average sulfur content of RFG and CG is identical because of the federal Tier 2 Gasoline Sulfur program. This means that areas requiring VOC and toxics emissions reductions may now be content with RFG or CG rather than a new boutique fuel.

NPRA believes that attempts to limit the number of viable motor fuels in various regions or even nation-wide beyond those already contained in EPACT may prove unnecessary. That is why we think that the draft proposal should be the outer limit of action taken on this issue. After all, why add substantial additional burdens on refiners when the objective of reducing fuel blends will most likely be met in a more rational way in the coming years?

CURRENT STUDIES

NPRA supports the EPA review process and the expansion of the scope of its analysis of boutique fuels in section 1541 of last year's energy bill. Clean Air Act section 211(c)(4)(C) was amended by the Energy Policy Act of 2005 to give EPA and DOE joint authority to review motor fuel control selections by states and require that both agencies consider the regional supply implications of such choices. EPA has expanded the effort to include a "Governor's Task Force" to aid in this process. It seems to us not only premature but also wasteful to short-circuit this process by legislating additional limitations on boutique fuels before the studies are complete.

SUMMARY

NPRA's members are dedicated to working cooperatively with government at all levels to ensure an adequate supply of transportation fuels at reasonable prices. But we

feel obliged to remind policymakers that action should only be taken to improve energy policy in order to increase supply and strengthen the nation's refining infrastructure. We appreciate the invitation to appear at this hearing and look forward to answering the Committee's questions.

CHAIRMAN BARTON. We now want to hear from Mr. Becker.

MR. BECKER. Good afternoon, Mr. Chairman, members of the committee. I am Bill Becker of the State and Territorial Air Pollution Program Administration and the Association of Local Air Pollution Control Officials, which are the two national associations of State and local clean air agencies representing 53 States and territories and more than 165 major metropolitan areas around the country. Thank you for inviting us back today to talk about State clean air fuel programs and the discussion draft your committee has developed.

Given our testimony at last month's hearings, I suppose it should come as no surprise that our associations oppose the discussion draft. We believe that any legislation further restricting the ability of States and localities to adopt their own clean air fuel programs is not only unwarranted but could jeopardize public health and clean air.

We often hear about the so-called proliferation of boutique or State clean air fuel programs. Let's be clear about the facts here. Today, there are just seven State clean air fuels used in portions of 12 States, and most of these were adopted at the urging of the refining industry. Less than a year ago, Congress not only barred States from increasing the number of clean air fuels beyond seven, but also prohibited any State from adopting one of the seven fuels unless the fuel was already in use in another State in the same petroleum district.

On top of these new restrictions, States remain preempted by the Clean Air Act from ever adopting any clean air fuel program unless every other reasonable and practicable measure to attain a health-based air quality standard has been exhausted.

Therefore, it is extremely troubling to us that the discussion draft essentially eliminates what little ability remains for State and local agencies to design and implement innovative clean air fuel programs to protect public health. Air pollution poses a very serious public health problem. One hundred and sixty million people, more than half of our population, live in areas of the Nation with unhealthful levels of ozone and/or fine particulate matter.

Over the next 2 years, States will be developing State Implementation Plans to demonstrate to EPA's satisfaction how these States will attain and maintain health-based air quality standards, and cleaner fuels will continue to be an important regulatory option for States to consider. If authorities to adopt these fuels are further curtailed, States may not be able to submit approvable plans to EPA, which could lead to

sanctions under the Clean Air Act, including the withholding of hundreds of millions of dollars of Federal highway funds and what is, in effect, a ban on new construction.

In addition to these concerns, it is unclear to us what problem this legislation seeks to resolve. Any claims that State clean air fuels contribute to high gasoline prices are totally unsubstantiated. According to EPA, the cost of these fuels are minimal, ranging from three-tenths of 1 cent to 3 cents per gallon.

To the extent that there is concern over potential supply and distribution problems, Congress addressed this in EPAct by authorizing EPA to temporarily waive requirements during supply emergencies.

And finally, as has been discussed, there are several ongoing initiatives analyzing State clean air fuel programs, including two studies under EPAct and a Governors' Fuels Task Force. It is premature to consider further restrictions before these studies are concluded.

Turning to your draft bill, I would like to highlight a few of our greatest concerns.

First, the bill reduces the total number of clean air fuel options available to States from seven to just three. This will force States to choose from among lowest common denominator fuels listed because they are most advantageous for fuel supply and distribution, not because they have the greatest potential for helping an area meet public health standards.

Second, although the bill provides for the potential addition of just one more fuel, for a total of no more than four fuels nationwide, the hurdles for making such an addition are forbidding and subjective, as are those that apply if a State simply wishes to replace one fuel from the approved list with another from the list.

Third, in no case may more than two approvable State fuels be adopted within the same PADD. This will pit States against one another in determining which two of the three fuels will be allowed in their PADD.

And, finally, by establishing a landscape of changing ground rules, the bill creates tremendous uncertainty at the exact time States are developing their State Implementation Plans for meeting air quality and public health goals.

If Congress is interested in taking legislative action, it should expand States' authorities, not limit them, and allow increased flexibility to adopt clean air fuel programs that will meet public health needs in the future.

We recommend that Congress consider expanding the list of clean air fuels available under EPAct to include California clean burning gasoline, allowing all areas of the country, attain and nonattainment, to

opt into the Federal Reformulated Gasoline Program, and facilitating the ability of States and localities to adopt cleaner regional fuels, including allowing attainment areas to participate in such regional programs.

Thanks for the opportunity to testify. I am happy to answer any of your questions.

CHAIRMAN BARTON. Thank you.

[The prepared statement of S. William Becker follows:]

PREPARED STATEMENT OF S. WILLIAM BECKER, EXECUTIVE DIRECTOR, STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS/ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

1. STAPPA and ALAPCO are the two national associations of clean air agencies in 54 states and territories and over 165 major metropolitan areas across the United States.
2. STAPPA and ALAPCO oppose the "Boutique Fuel Reduction Act of 2006." The associations are concerned by assertions that there has been a "proliferation" of state clean air fuels programs and that these programs are responsible for fuel price increases and could potentially compound fuel supply disruptions should they occur. State clean air fuels programs have been wrongly targeted as the cause, and that further curtailment of state and local authorities to pursue such programs could unnecessarily jeopardize public health and clean air. We strongly urge that Congress not further limit the ability of states and localities to adopt state clean air fuels programs.
3. There is widespread agreement that cleaner fuels have been, and will continue to be, critical to reducing air pollution and protecting public health. They are also cheap, ranging from 0.3-3 cents per gallon.
4. The Clean Air Act allows states to adopt their own clean air fuels programs, provided they meet two exceptions. In essence, a state can only adopt a clean air fuel if no other more reasonable or more practicable measure exists, and only if EPA approves. Congress placed additional restrictions on states by prohibiting the number of state clean air fuels from increasing beyond the seven on EPA's proposed list.
5. States and localities have adopted their own clean fuels programs generally at the urging of the fuel suppliers, who were "willing partners."
6. Congress should consider expanding state authorities by 1) including California Clean Burning Gasoline as part of the EPAct fuels list, 2) expanding the eligibility criteria for opting into federal reformulated gasoline, and 3) facilitating the ability of states and localities to adopt cleaner regional fuels.
7. Conclusion--There are safeguards in place that allow EPA to respond swiftly and effectively should fuel supply disruption ever become an issue. EPAct prohibits the number of types of boutique fuels to expand. EPA has yet to report to Congress on the results of its boutique fuels study under EPAct. The President has convened a special task force to study this issue and make recommendations. In light of all this, STAPPA and ALAPCO urge that Congress not further limit the ability of states and localities to adopt clean air fuels programs.

Good morning, Mr. Chairman and members of the Committee. I am Bill Becker, Executive Director of STAPPA – the State and Territorial Air Pollution Program Administrators – and ALAPCO – the Association of Local Air Pollution Control Officials – the two national associations of clean air agencies in 54 states and territories and over 165 major metropolitan areas across the United States. Our associations'

members are responsible for achieving and sustaining clean, healthful air throughout the country and hold primary responsibility under the Clean Air Act for implementing our nation's air pollution control laws and regulations.

STAPPA and ALAPCO were pleased to be invited to testify before this Committee a month ago as you evaluated gasoline supply, price and specification issues, and we appreciate being invited back today to offer our perspectives on the legislation you have drafted. Given the testimony our associations provided at last month's hearing, it should come as no surprise that STAPPA and ALAPCO oppose the draft bill, the "Boutique Fuel Reduction Act of 2006." As we have consistently expressed, our associations continue to believe firmly that any legislation to further restrict the ability of states and localities to adopt clean air fuel programs (often referred to as "boutique fuels") is not only unwarranted, but could unnecessarily jeopardize public health and clean air.

It is important to put the issue of state clean air fuels in the appropriate context.

A state clean air fuel is one developed and included by a state or locality in a State Implementation Plan (SIP) approved by the U.S. Environmental Protection Agency (EPA) to reduce motor vehicle emissions and improve air quality. Authority for these programs is provided under Section 211(c)(4) of the Clean Air Act. As EPA announced last week, there are just seven distinct types of these fuels in 12 states. These include three low-volatility fuels, one low-volatility fuel with sulfur provisions, one low-emission diesel fuel, one cleaner burning gasoline and one wintertime gasoline. State clean air fuels do <u>not</u> include any federal fuel program, such as low-sulfur gasoline, ultra-low sulfur diesel or reformulated gasoline (RFG); they do not include any state-mandated programs for ethanol-blended or oxygenated fuels; and they do not include California's clean-burning gasoline.

States pursue clean air fuels for various reasons.

Some states are not eligible to opt into the federal RFG program and, therefore, adopt a clean air fuel in order to obtain cleaner-than-conventional gasoline in a particular area. Others, who are eligible to opt into federal RFG, have elected to pursue a low-volatility fuel (i.e., one with a low Reid Vapor Pressure, or RVP) instead, as a less expensive alternative to RFG. It is especially significant that in a number of instances, a state or locality seeking to reduce smog-forming emissions pursued a clean air fuel over opting into the federal RFG program at the urging of the refining industry. Although federal RFG would have reduced not only ozone precursors, but toxic air pollutants as well, the industry argued instead for a low-volatility fuel with more limited air quality benefits and a lower price tag. In the President's 2001 National Energy Policy Report, EPA concluded that fuel suppliers were "willing partners" in advancing state clean air fuel programs over the uniform federal RFG program.

It is also important to understand the very limited scope of states' authority with respect to fuels. The Clean Air Act gives primary authority for regulating the environmental impacts of fuels to EPA, preempting states and localities from controlling or prohibiting any characteristic component of a motor vehicle fuel or fuel additive. However, recognizing that there may be extenuating circumstances warranting a state or local fuel program, Congress provided, in Section 211(c)(4) of the Clean Air Act, two specific exceptions to the otherwise general preemption – specifically, if the EPA Administrator finds that a special state or local fuel standard is necessary to attain the National Ambient Air Quality Standards (NAAQS) because 1) no other measures exist to bring about timely attainment or 2) other measures exist, but are unreasonable or impracticable. In other words, a state can only adopt a clean air fuel if no other more reasonable or more practicable measure exists, and only if EPA approves. Congress also placed additional restrictions on these fuels when it enacted the Energy Policy Act of 2005 (EPAct) last summer. In particular, EPAct prohibits the number of state clean air fuels from increasing beyond the seven on EPA's proposed list and restricts states from

adopting any fuels not already adopted in the same Petroleum Administration Defense District (PADD).

So why are clean air fuels so important to states and localities?

Cleaner fuels have been, and will continue to be, critical to reducing air pollution and protecting public health. EPA has concluded these fuels "deliver substantial air quality and public health benefits at minimal costs," and has indicated that "fuel controls can often be implemented quickly and, once implemented, produce benefits immediately, typically reducing emissions from each vehicle in the fleet with no need for vehicle fleet turnover. This fleet-wide impact distinguishes fuels control from most other mobile source emission control options available to state and local areas." In addition, the Government Accountability Office, in a June 2005 study, reported that state clean air fuel programs have reduced smog-forming emissions by up to 25 percent over conventional gasoline.

This is especially important because at least 160 million people – more than half our population – still live in areas with unhealthful levels of 8-hour ozone, fine particulate matter or both. Ozone contributes to lung disease, irritation of the respiratory system and cardiovascular symptoms, while fine particulate matter can lead to damage to lung tissue, impaired breathing, cardiovascular disease and even premature mortality.

To address these health problems, states are required by the Clean Air Act to develop, beginning next year, approvable SIPs for attaining and maintaining the NAAQS for 8-hour ozone and fine particulate matter. And cleaner fuels will continue to be an important regulatory option for states and localities to consider. If authorities to adopt these fuels are further curtailed, states may not be able to submit approvable SIPs to EPA, which could lead to sanctions under the Clean Air Act, including the withholding of hundreds of millions of dollars of federal highway funds and what is, in effect, a moratorium on new construction.

Before providing our specific comments on the draft bill, we wish to raise a fundamental concern with the legislation; namely, that it is unclear what problem this legislation seeks to resolve.

First, any claims that state clean air fuels contribute to high gasoline prices are totally unsubstantiated. According to EPA, the costs of these fuels are minimal, ranging from 0.3 to 3 cents per gallon. The average national price for a typical gallon of regular gasoline today is almost $2.90; state clean air fuels are responsible for only a fraction of 1 percent of this cost. Yet, the price differential between two gas stations supplied by the same fuel company, located just blocks away from each other, can be many times higher than the cost attributed to a clean air fuel. So what does account for a typical gallon of gasoline? According to the U.S. Department of Energy's (DOE's) Energy Information Administration, over half (55 percent) is for domestic and foreign crude oil. About 22 percent is for refining (processing the crude to make gasoline, diesel fuel and other products for sale to refiners). Almost 20 percent goes for taxes or fees that are paid to federal, state or local governments, while 4 percent is for distribution and marketing, including shipping by pipeline, storage at terminals and delivery by trucks to retail stations.

Second, to the extent there is concern over the potential for state clean air fuels to exacerbate a future supply disruption caused by a natural disaster or unexpected circumstance, such as a pipeline break or refinery shutdown, Congress addressed this issue last summer when it adopted EPAct. The law includes a provision that authorizes the EPA Administrator to temporarily waive fuel requirements during supply emergencies. EPA was able to use this authority swiftly and effectively following the devastation of Hurricanes Katrina and Rita.

Finally, it seems premature for this Committee to be considering further restrictions on state clean air fuels before several ongoing studies on this issue are completed. EPAct requires EPA and DOE to undertake two studies and report their results to Congress,

along with recommendations. The first, due in August of this year, is to focus on the effects of state-adopted fuel programs on air quality, the number of fuel blends and the availability, cost and fungibility of fuel; the second, due in June 2008, is to focus on fuel system harmonization. And last month, President Bush directed EPA Administrator Stephen Johnson to convene a Governors Fuels Task Force to review clean air fuels across the country and make recommendations. The Task Force has had several conference calls and expects to issue its report in the next several weeks.

Now that I have explained why STAPPA and ALAPCO oppose any further limitation of states' rights to adopt clean air fuels, I would like to outline some specific concerns with the provisions of the draft bill being contemplated by this Committee, which reduces, even further than EPAct, the number of clean air fuels, and places additional restrictions, beyond those of EPAct and the Clean Air Act, on states' abilities to adopt even the very limited number of fuels to be allowed.

The draft bill reduces the total number of clean air fuels allowed in the nation from seven, under EPAct, to just three – each with a different RVP and none of which may control sulfur or toxics beyond levels already required by EPA. One of the three fuels on the "Approvable State Fuels List" is to have an RVP of 7.0 pounds per square inch (psi), with the remaining two to be determined based on EPA and DOE's consideration of a number of undefined, subjective criteria. Likewise, although the bill provides for the potential addition to the list of just one more fuel – for a total of no more than four fuels nationwide – the hurdles for making such an addition are forbidding and subjective, as are those that apply if a state wishes simply to replace one fuel from the approved list with another from the list.

Keeping in mind that the Clean Air Act requires adoption by a state of a clean air fuel program to be the measure of last resort in meeting the NAAQS, we find it unacceptable that the very short list from which states will be forced to choose will be comprised of lowest-common-denominator fuels listed because they are most advantageous for fuel supply and distribution, not because they have the greatest potential for helping an area meet public health standards.

Also troubling is the bill's requirement that in no case may more than two of the three approvable state fuels be approved within the same PADD, thus pitting states within the same PADD against one another in determining which two of the three fuels will be allowed. Additionally, restricting fuels according to PADD completely ignores the fact that the design of PADDs has nothing at all to do with states' air quality circumstances and that states within the same PADD can have vastly different needs regarding the achievement of clean air goals. Moreover, the draft bill essentially eliminates what little ability remains under EPAct for state and local agencies to design and implement innovative clean air fuel programs that could play a truly meaningful role in meeting those goals.

Further, this bill is not only untenable, it is unworkable. During the exact period of time when states and localities across the nation face the daunting challenge of developing comprehensive SIPs to achieve and sustain clean air and public health goals – 8-hour ozone SIPs are due by June 2007 and fine particulate matter SIPs are due by April 2008 – the draft bill not only severely constricts states' authorities, it creates tremendous uncertainty. In the first 18 months after the bill is signed into law, a state could adopt any of the seven fuels listed under EPAct as long as it is already approved in another state in the same PADD; however, if a fuel is dropped from the EPAct list during this time, the draft bill would prohibit replacing it with another fuel, thus reducing the number of options available to states.

After 18 months, once EPA and DOE promulgate the Approvable State Fuels List under the draft bill, the ground rules change. The number of clean air fuels from which states can choose shrinks to three, no more than two of which would be allowed in the same PADD. Not knowing which three fuels would ultimately be listed under the bill,

states could conceivably adopt a fuel under EPAct, only to find that it is no longer acceptable once the bill takes effect or that there are more than two fuels in place in the same PADD.

In PADD 2, for example, there are currently three different RVP fuels approved in four states – 7.0 psi in Kansas and Missouri, 7.2 psi in Missouri and Illinois and 7.8 psi in Michigan. Although the draft bill stipulates that 7.0 psi fuel will be one of the three listed as approvable, it is unclear whether 7.2 psi and 7.8 psi will be on the final list and, in any event, no more than two of the three can be adopted in the PADD. Thus, at least one, if not two, states in PADD 2 will be compelled to drop their fuel requirement.

Finally, just a word about Section 2 of the draft bill, which expands the circumstances under which EPA may exercise its authority to issue temporary waivers. We question the need for this expansion. In explicitly providing in EPAct for temporary waivers during supply emergencies, beyond the enforcement discretion authority the agency has always had, Congress gave EPA broad authority to waive fuel requirements, including for events "that could not reasonably have been foreseen or prevented" and those that are not the result of "the lack of prudent planning on the part of the suppliers." The draft bill would add language to allow for waivers in the case of "unexpected problems with distribution or delivery requirement that is necessary for transportation and delivery of fuel or fuel additives." We find this language unclear and, given the broad authority already provided to EPA, unnecessary.

STAPPA and ALAPCO oppose any further restrictions on states' abilities to adopt clean air fuels programs and urge Congress to instead take steps to expand states' authorities to pursue the cleanest fuels available today. We offer three recommendations in this regard.

First, Congress should consider expanding the list of clean air fuels available under EPAct to include California Clean Burning Gasoline.

Second, Congress should consider expanding the eligibility criteria for opting into the federal RFG program. Today, areas that violate the 8-hour ozone standard (but not the 1-hour standard) are not allowed to opt into the RFG program. And attainment areas have never been eligible to opt into this program. Since the RFG program was the product of an extremely successful regulatory negotiation over a decade ago, and was supported by every one of the major stakeholders – including the American Petroleum Institute, the National Petrochemical and Refiners Association, the Renewable Fuels Association, the states and the environmental and health communities – Congress should consider expanding the eligibility criteria to allow additional areas (e.g., 8-hour ozone nonattainment areas and even attainment areas) to opt into the RFG program. This would allow for an expansion of the cleaner federal fuels program to more areas of the country, obviating the need for states to adopt their own clean air fuel programs.

Third, Congress should help facilitate the ability of states and localities to adopt cleaner regional fuels. Today, states in the Ozone Transport Region and in the Midwest have been discussing ways in which they can coordinate efforts to adopt cleaner fuels on a regional basis. However, because of statutory limitations, certain jurisdictions (i.e., attainment areas) would not be able to participate in such a regional approach. Allowing attainment areas to participate in regional clean air fuel programs would not only assist in achieving air quality goals, but would also address concerns related to fungibility.

In conclusion, STAPPA and ALAPCO urge the Committee not to pursue this bill or any measure that would place further limits on states' abilities to adopt clean air fuels. We firmly believe these state clean air fuel programs have been wrongly targeted and that further curtailing them will serve only to impede state and local efforts to achieve and sustain clean, healthful air. Claims that these fuels contribute to high gasoline prices or irresolvable supply or distribution problems remain unsubstantiated. Further, EPACT gives EPA specific authority to respond swiftly and effectively should fuel supply or distribution ever become an issue. If Congress is interested in taking legislative action, it

should expand state authorities by allowing increased flexibility to adopt clean air fuel programs that will meet public health needs in the future.

CHAIRMAN BARTON. We now hear from Ms. Hubbard, who is representing the convenience stores. I think this is your first time before the committee, is that correct?

MS. HUBBARD. Yes, sir it is.

CHAIRMAN BARTON. I don't know if you were here, but Congressman Hall was very eloquent in his support of you and your accomplishments, and I wish he were here to welcome you formally to the committee.

MS. HUBBARD. Well, thank you. I did hear that, and it was very much appreciated. And of course I come with a big Texas "Yee Haw," and I am excited to be here.

CHAIRMAN BARTON. We are glad to have you. Your statement is in the record, and you are recognized for 7 minutes.

MS. HUBBARD. Okay. Well, thank you.

Good afternoon, Mr. Chairman and committee. My name is Sonja Hubbard, and I represent E-Z Mart Stores, Inc. I am the CEO. We are a Texarkana, Texas-based operation that has 327 stores in Texas, Arkansas, Oklahoma, Louisiana, and Missouri.

I come here today, as you said, representing NACS and SIGMA, and together our members sell over 80 percent of the fuel used in the country.

For many years, NACS and SIGMA have warned Congress about the fragmentation of the fuels market caused by the spread of boutique fuels. Today, however, we want this committee to understand that we are more concerned than reassured by the prospect of new fuels legislation this year.

The motor fuels industry is working very hard to implement the significant changes to the market mandated by the Energy Policy Act of 2005, and then over the next 6 months we are facing significant challenges with ultra low sulfur diesel introduction.

We appreciate the opportunity to comment on the discussion draft, and we welcome the committee's focus on this issue of boutique fuels, but we believe there will be a healthy debate and that the additional proposals hopefully will help us enact some of the restrictions on the EPAct. However, we do urge the committee to be very careful when considering additional legislation on boutique fuels in light of the impact such legislation could have on the already volatile gasoline and diesel markets.

If the committee feels compelled to consider additional boutique fuels legislation, NACS and SIGMA have three recommendations: First, we recommend that you do not establish the Federal fuels slate until the EPA and DOE have completed their study and reported back to

Congress. Only after completion of the study can we reasonably anticipate the market effect on such legislative proposals.

Second, if the committee determines that we cannot wait for the recommendations, then we recommend that you enact only the first portion of the discussion draft. These provisions would gradually reduce the number of boutique fuels used across the Nation through a so-called ratchet. The ratchet would force the States to confine their existing fuels to a narrow list--or it would not force them to comply to a narrow list. Instead, it would be a logical step in addressing the issue of boutique fuels and would build upon boutique fuels policy enacted by EPAct.

Third, we recommend that you address the issue of State biofuel mandates. We recognize this is a very controversial issue, and I want it very clear that we are not attacking the role of biofuels in this country, but we do strongly believe that Congress must consider the market effects of numerous State mandates. Therefore, we suggest that legislation make the adoption of any State alternative fuel mandate such as ethanol or biodiesel conditional upon the determinations by the Secretaries of Energy and Transportation after they confirm sufficient supplies of such fuel exists and would satisfy the demand and that such mandate will be supported by adequate transportation logistics.

Currently, State alternative fuel mandates are the biggest threat to gasoline and diesel fuel fungibility confronting the motor fuel manufacturing and distribution industries. This first chart we have here graphically shows the proliferation of the new types of boutique fuels that are being considered or adopted throughout the Nation. I think you can see, particularly the ones in burgundy, where things are actually being considered and the others highlight the items or mandates already in effect. These States' boutique alternative mandates are not covered by the EPAct's boutique fuels restrictions, but they should be.

We are also concerned about the supplies of biofuels. The second chart demonstrates ethanol prices currently, and they are trading at over $3.75 a gallon on the spot market, which is double the price they were last year. I think you can see that clearly. There can be no clearer indication that there is not enough ethanol to meet current demand. We experienced that personally within our own company just this past month in the Dallas market and had shortages and price fluctuations.

If State biofuel mandates continue to proliferate, the current situation will only grow worse. Our industry will be required to move ethanol from one market to another based on artificial demand created through State mandates, as opposed to market forces.

The national standards enacted by Congress just last year included important provisions to promote the flexibility for the marketplace. We urge you to stand by these provisions and condition the implementation

of any State mandate upon findings by the relevant Federal authorities that adequate supplies and logistics exist to support the demands created by the State mandates.

In summary, we ask that you not establish the Federal fuels slate until the report from the EPA and DOE have been received so that an informed action can be made.

Secondly, in the meantime, the ratcheted portion of the proposal would help ensure supply without disruption within the marketplace.

And, finally, we feel strongly that there needs to be some address of the proliferation of new State biofuel mandates.

I appreciate the opportunity to testify and would be pleased to answer any questions regarding this testimony.

CHAIRMAN BARTON. Thank you.

[The prepared statement of Sonja Hubbard follows:]

PREPARED STATEMENT OF SONJA HUBBARD, CEO, E-Z MART STORES, INC., ON BEHALF OF NATIONAL ASSOCIATION OF CONVENIENCE STORES AND SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

Good morning, Mr. Chairman, Ranking Minority Member Dingell, and members of the Committee. Thank you for holding this important hearing. My name is Sonja Hubbard. I am the Chief Executive Officer of E-Z Mart Stores, Inc. of Texarkana, Texas. My company owns and operates over 300 motor fuel outlets in five states -- Texas, Oklahoma, Louisiana, Arkansas, and Missouri. Our company sells nearly 200 million gallons of gasoline and diesel fuel each year and we employ over 2,200 clerks, managers, and other personnel in these five states. We sell gasoline under our own brand and, at some locations, under the brand of our refiner suppliers.

I appear before the Committee representing the National Association of Convenience Stores (NACS) and the Society of Independent Gasoline Marketers of America (SIGMA). I currently serve as Vice Chairman for Government Relations on NACS' Board of Directors and my company also is an active member of SIGMA. Together, NACS and SIGMA members sell approximately 80 percent of the gasoline and diesel fuel purchased by motorists in the United States each year.

NACS is an international trade association comprised of more than 2,200 retail member companies operating more than 100,000 stores. The convenience store industry as a whole sold 143.5 billion gallons of motor fuel in 2005 and employs 1.5 million workers across the nation.

SIGMA is an association of more than 240 independent motor fuel marketers operating in all 50 states. Last year, SIGMA members sold more than 58 billion gallons of motor fuel, representing more than 30 percent of all motor fuels sold in the United States in 2005. SIGMA members supply more than 35,000 retail outlets across the nation and employ more than 350,000 workers nationwide.

NACS and SIGMA have for many years warned Congress about the fragmentation of the fuels markets which has resulted from various jurisdictions requiring their own boutique fuel blends. Nevertheless, it is our straightforward message to this Committee today that we are more concerned than reassured by the prospect of new fuels legislation this year. Our industry, and the entire motor fuels manufacturing and distribution industries, are still working very hard to implement the significant changes in the motor fuels markets that have been the result of the legislative mandates contained in the

Energy Policy Act of 2006 (EPAct). Over the next six months, we also face significant challenges with the introduction of ultra low sulfur diesel fuel (ULSD).

Simply stated, the gasoline and diesel fuel markets, and all of the participants in those markets, need time to implement EPAct's renewable fuel standard, to complete the phase-out of MTBE as a gasoline additive, and to make the changeover to ULSD. Given time, gasoline and diesel fuel supplies will stabilize or increase, the nation's motor fuels distribution infrastructure will grow accustomed to handling new fuels and fuel blends, and gasoline and diesel fuel wholesale and retail price volatility should decline.

NACS and SIGMA have reviewed the discussion draft of the "Boutique Fuels Reduction Act of 2006." We welcome the Committee's focus on the continued proliferation of boutique fuels and believe that there should be a healthy debate on any additional measures that may need to be undertaken to build on the boutique fuels restrictions in EPAct. We also acknowledge that this draft includes provisions that represent significant improvements over other legislative proposals that seek to accomplish similar objectives and we appreciate the effort the Committee has made to address many of the concerns expressed by marketers.

However, we urge the Committee to be very careful when considering additional legislation on boutique fuels in light of the impact such legislation could have on an already volatile gasoline and diesel fuel market. If this Committee's intent is to moderate retail gasoline and diesel fuel prices through additional boutique fuels legislation, NACS and SIGMA are not convinced that the discussion draft will have the desired effect.

If this Committee feels compelled to consider additional boutique fuels legislation, NACS and SIGMA have three recommendations.

First, we recommend that you not act with respect to a fuel slate, such as the slate in the discussion draft, before EPA and DOE have completed their study and report required under Section 1541(c) of EPAct. Without this study, Congress simply can not know what effect a fuel slate will have on overall motor fuel supplies and thus on wholesale and retail prices. If, in your desire to moderate motor fuel prices, your actions in enacting a fuel slate actually reduce overall gasoline and diesel fuel supplies and contribute to greater price volatility, then you will have achieved the opposite of your stated goal.

Second, if the Committee feels it can not wait for the recommendations of EPA and DOE before it acts, then we recommend that you enact the first portion of the discussion draft to gradually reduce the number of boutique fuels used across the nation through a so-called "ratchet." The enactment of a ratchet would result in a decline in the number of boutique fuels nationwide over time. Such a ratchet would not force states to conform their existing fuels to a narrow slate of fuels. Instead, it represents the logical next step in addressing the issue of boutique fuels and would build on the boutique fuels policies enacted in EPAct: (1) preserve environmental protection; (2) preserve state flexibility while guarding against random proliferation of boutique fuels; (3) restore fungibility to the nation's motor fuels markets; and, (4) reduce the wholesale and retail price volatility caused by boutique fuels.

Under a ratchet, no state would be forced to change its fuel specifications. Rather, the number of boutique fuels would be reduced only when a state removes the fuel from its state implementation plan or the fuel becomes identical to a federal fuel. New, cleaner, more plentiful, and less expensive fuels would be permitted to enter the market under a ratchet either through action by EPA or by replacement of an existing fuel on the EPAct boutique fuels list.

Third, we recommend that you condition any state's implementation of an alternative fuel mandate, such as an ethanol or biodiesel mandate, upon determinations by the Secretaries of Energy and Transportation that sufficient supplies of such fuels exist to satisfy demand and that such a mandate will be supported by adequate transportation logistics. Currently, state alternative fuel mandates are the biggest threat to gasoline and diesel fuel fungibility confronting the motor fuel manufacturing and distribution

industries. The first chart attached to my testimony graphically shows the proliferation of these new types of boutique fuels that the states are considering and adopting. These state boutique alternative fuel mandates are not covered by EPAct's boutique fuels restrictions, but they should be.

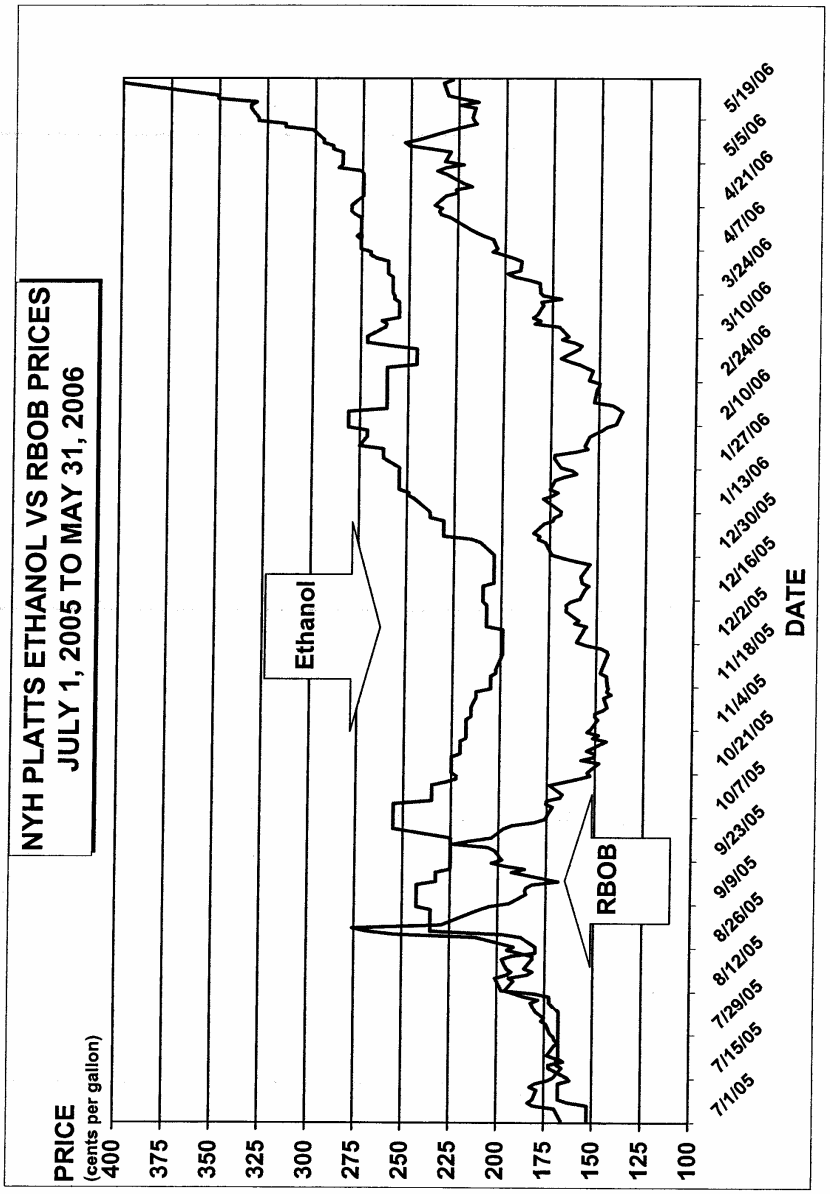
Do not misunderstand NACS' and SIGMA's position on biofuels. We are not attacking biofuels. Our industry is set up to transport and market liquid motor fuels, and ethanol and biodiesel certainly qualify as liquid motor fuels. Just last year, EPAct mandated that the nation use at least 7.5 billion gallons of ethanol and biodiesel by 2012. Our members will be instrumental in meeting that goal and we already are working hard to expand ethanol and biodiesel use. However, state ethanol and biodiesel mandates undermine our efforts and weaken the flexibility that this Committee and this Congress built into the EPAct renewable fuel standard.

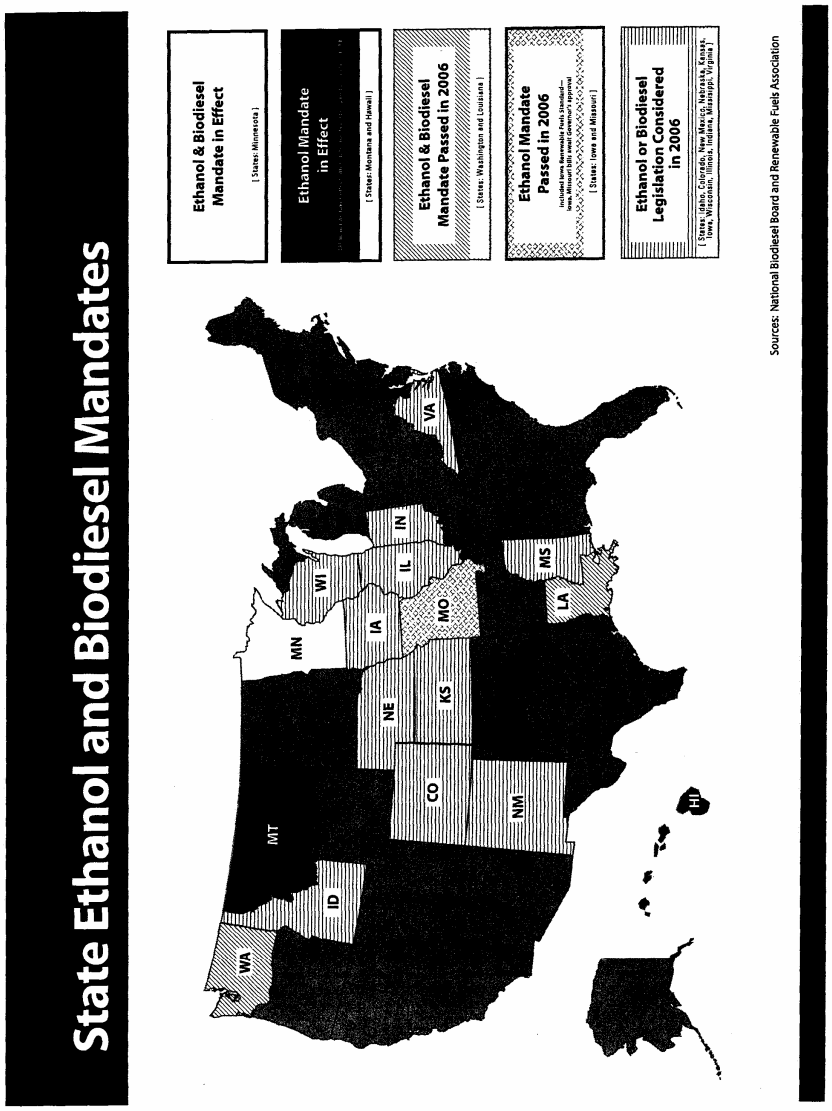
We are also concerned about supplies of biofuels. As the second chart attached to my testimony demonstrates, ethanol currently is trading at over $3.50 per gallon on the spot market -- double its price last year. There can be no clearer indication that there is not enough ethanol to meet current demand. Currently, as the Energy Information Administration has noted on several occasions, supplies of ethanol that have historically been blended into conventional gasoline supplies are being diverted to reformulated gasoline markets to replace MTBE. This is another indication that supplies are currently not sufficient to meet overall national demand.

If state biofuels mandates continue to proliferate, the current situation will only grow worse. Our industry will be required to move ethanol from one market to another, based not on market forces but rather on artificial demand created through state mandates. Even worse, our industry will be prohibited from supplying markets in need, like those reformulated gasoline markets transitioning away from MTBE, because supplies will be held hostage by individual states. Clearly, these state mandates interfere with the efficient flow of interstate commerce of a very important commodity. We urge you to stand by the national renewable fuel standard adopted in EPAct and condition the implementation of any state mandate upon findings by the relevant federal authorities that adequate supplies and logistics exist to support the demands created by these state mandates.

In sum, NACS and SIGMA caution this Committee to move with great care in its consideration of the Boutique Fuels Reduction Act of 2006. If you feel compelled to move boutique fuels legislation, then we urge you to limit your legislation to a boutique fuels ratchet and a restriction on the implementation of state alternative fuel mandates. Once EPA and DOE have completed their EPAct report, their conclusions may lead to new proposals for the enactment of a fuel slate. Until that report is complete, we believe fuel slate proposals are pre-mature.

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


NYH PLATTS ETHANOL VS RBOB PRICES
JULY 1, 2005 TO MAY 31, 2006
PRICE
(cents per gallon)
400
375
350
325
300
275
250
225
200
175
150
125
100
Ethanol
RBOB
7/1/05
7/15/05
7/29/05
8/12/05
8/26/05
9/9/05
9/23/05
10/7/05
10/21/05
11/4/05
11/18/05
12/2/05
12/16/05
12/30/05
1/13/06
1/27/06
2/10/06
2/24/06
3/10/06
3/24/06
4/7/06
4/21/06
5/5/06
5/19/06
DATE



CHAIRMAN BARTON. The Chair is going to recognize himself for the first question round.

Mr. Dinneen, you are, as always, the good news guy and should be. Quite frankly, I am a little bit puzzled. When you make the announcement about these new ethanol refineries, that is definitely good news, but an ethanol refinery is not the same as a petrochemical refinery. When you say an ethanol refinery, what are you really talking about? I am not being negative. I want to get the terminology down.

MR. DINNEEN. It is a facility where you are producing fuel ethanol. But it is a biorefinery, because we are converting biomass into a range of products: fuel ethanol, feed products, CO_2 for the beverage markets, and other things in the future.

CHAIRMAN BARTON. But if I asked Mr. Slaughter what is his raw material, it is going to be crude oil.

MR. DINNEEN. Our raw material is corn. We are extracting the starch from the corn to produce fuel ethanol, and the protein and vitamins and everything else is going into a feed market. And we will be producing other products as well.

CHAIRMAN BARTON. But you take corn and you cook it, crush it, cook it and then you--

MR. DINNEEN. Distill it.

CHAIRMAN BARTON. And then the end product is ethanol and CO_2, and I guess you have some biomass that is maybe recycled?

MR. DINNEEN. The end product is a high-quality, high-octane fuel additive.

CHAIRMAN BARTON. Again, I am very positive that we are creating these new facilities. I am not negative at all.

MR. DINNEEN. I know. That is good.

CHAIRMAN BARTON. Are those subject to the same permitting requirements if Mr. Slaughter's group wanted to do an oil refinery?

MR. DINNEEN. Probably not. Because the process for producing ethanol is much cleaner. But they certainly are subject to stringent air quality standards and permitting.

CHAIRMAN BARTON. I haven't set my clock going. I am sorry.

MR. DINNEEN. I thought your time was up.

CHAIRMAN BARTON. My time is up when I say it is up. Obviously, subject to the other Members here, but I can't be abusive of that.

What would a typical ethanol refinery size be in terms of gallons per day?

MR. DINNEEN. Can I give it to you in gallons per year? Because I got into politics because I was never very good at math.

CHAIRMAN BARTON. Well, an average oil refinery today in this country is probably 300,000 barrels a day. Now some are as small as 50,000 barrels, and there are some as large as 750,000 barrels, but the average I think would be around 300,000 barrels per day. My guess is that an ethanol refinery is going to be much smaller than that.

MR. DINNEEN. Significantly smaller, a fraction of that. Your typical ethanol plant that is being built today is producing about 100 million gallons a year.

CHAIRMAN BARTON. One hundred million gallons a year at 42 gallons a barrel, so maybe 2,000 barrels a day? I would have to convert that. But what is the capital cost?

MR. DINNEEN. The entire industry today is producing about 300,000 barrels a day. That is the entire industry.

CHAIRMAN BARTON. Mr. Slaughter, are there refineries today that are specific to one particular boutique fuel?

MR. SLAUGHTER. Not to my knowledge, Mr. Chairman.

CHAIRMAN BARTON. Is it a true statement or a false statement that any refinery can produce any boutique fuel required for that region? Is that a true statement?

MR. SLAUGHTER. Well, yes, that is pretty much true, Mr. Chairman. One of the things about the boutique fuel area, for instance, even if there is a disruption, I mean, gasoline supplies that have more stringent environmental standards can come in immediately, and I would guess that any refiner that could potentially serve that area could manage to make the same fuel as is used in the boutique fuel area if it chose to.

CHAIRMAN BARTON. We have anecdotal evidence in the past a refinery has shut down that was serving the St. Louis market or the Chicago market and that caused a price spike because no other refinery could meet that particular specification. Are those days pretty well gone?

MR. SLAUGHTER. Well, the particular problems at the genesis of concern about boutique fuel has really involved the Midwest and California, but particularly the Midwest around 2002 and 2001. At that time, Milwaukee and Chicago, their oxygen of choice in reformulated gasoline was ethanol, whereas 87 percent of the program was using MTBE as their option of choice. There were pipeline problems in that area, and because there was a basic difference in even the RFG that was used in that area, there was some problem in resupplying. But, as you know now, that problem is basically going away because, RFG no longer has an oxygenate requirement.

CHAIRMAN BARTON. Mr. Becker, the different vapor pressures for gasoline, my understanding is the higher the vapor pressure, the cleaner it burns. Is that true or not true?

MR. BECKER. The higher the vapor pressure, the higher volatility, the dirtier it burns.

CHAIRMAN BARTON. The dirtier it burns. So I have it exactly wrong. The lower the vapor pressure, the cleaner it burns.

MR. BECKER. Correct. The cleaner it burns.

CHAIRMAN BARTON. So in a perfect world the group that you represent would want a vapor pressure that is clean.

MR. BECKER. Clean.

CHAIRMAN BARTON. Five or four, as opposed to eight.

MR. BECKER. I will remind you we are not the environmental community. We would like a vapor pressure that works. And we work with the refining industry and others to identify those that are technologically feasible, and vapor pressures down around seven and possibly below provide cleaner air than vapor pressures at seven, eight, or at nine.

CHAIRMAN BARTON. So why don't we require in nonattainment areas everybody go to the lowest vapor pressure possible?

MR. BECKER. Well, you actually did that in the 1990 Clean Air Act with the Reformulated Gasoline Program. And that is an interesting thought, because what the Clear Air Act did, to your credit, is you set up this Reformulated Gasoline Program. You set limits on the amount of vapor pressure, on the amount of volatile organic compounds that can be released from gasoline.

EPA initiated a stakeholders process. Every one of us at this table but Ms. Hubbard was part of that. It was unanimously approved. Regulations were set that we all liked. And we all tried to get as many areas in the country to do exactly what you said, to go along with this Federal Reformulated Gasoline Program that capped emissions of VOCs to a certain level. Interestingly, soon after that was completed, it was the oil industry--and I don't mean to be critical of them--

CHAIRMAN BARTON. Nobody is ever critical of the oil industry before this committee. It is high time somebody is critical of them.

MR. BECKER. I won't be on this point. The oil industry came to the States and they said, rather than go forward with this Federal uniform program that would meet your air quality needs, we have a better idea. We have a cheaper idea. Why don't you go forward with a lower volatility fuel--you all call them boutique fuels; we call them State clean air fuels--that will get you the reductions in smog-forming emissions at a fraction of the cost of reformulated gasoline. And we did in many areas, and that is why we have seven, not seventy, but seven.

And the disappointment in all of this is that now, today, there seems to be a semi-widespread belief that government officials have run off wild and developed these so-called boutique fuels that are like the lattes that were brought up this morning, when it was done with our partners, and it was as a cheaper alternative, and now we are being blamed.

CHAIRMAN BARTON. Nobody is blaming anybody. This is a discussion draft and a hearing.

MR. BECKER. I understand. Just to put a fine point on this, so notwithstanding the seven pollutants, the seven fuels, last year, the committee, the Congress capped those fuels at seven, and this discussion draft wants to continue to ratchet down and reduce those seven.

CHAIRMAN BARTON. We are looking at it. I want there to be enough. I want the Clean Air Act to be implemented in the most cost-efficient fashion possible. I want there to be enough flexibility that each nonattainment area can look at a wide variety of alternatives and then decide what is the best fit for that region. Before the EPAct was passed, there could have been as many as--I want to say 43 different boutique fuels. Now there weren't, but you can interpret different provisions so you can have a lot more than seven.

So there is some viability in limiting the number so you can have some fungibility. But you also want to maintain the flexibility so that the local, States, and regions within States can fine-tune without an unlimited number--we don't want to make it so unlimited, to take the extreme case, 160 regions have 160 different fuel standards. There is no magic number. Seven is obviously getting closer to the minimum, and you know we could possibly go lower, but we could possibly not go lower. That is the whole purpose of having a hearing.

MR. BECKER. And that is a very fair point.

The only point I am making is you went to seven. You capped it at seven. A month ago, no one on this panel was complaining about boutique fuels or State clean air fuels being the problem; the next thing we see is a draft, a discussion draft--it is a discussion draft--that seems to be focusing solely on these State clean air fuels and ratcheting them down.

CHAIRMAN BARTON. Don't run off, Mr. Inslee, because you are about to be recognized. You have to stay in the room, though.

My time is way over, so we will continue this. I am going to recognize Mr. Inslee for 5 minutes.

MR. INSLEE. Thank you. I appreciate that, Mr. Chairman.

This may be a little off the subject, but it will lead to a question. I was talking to some scientists from Stanford the other day, and they were telling us they were briefing a bunch of folks in Congress about the acidification of the oceans that are coming from carbon dioxide. And it was new. I thought I knew everything about global warming. It turns out there is this new thing going on called the acidification of the oceans where the CO_2 we put out of our tailpipes is going out of the atmosphere into the solution of the oceans, which is a good thing because that reduces CO_2 for global warming purposes. But it is making the oceans more acidic, which makes it much more difficult for any of the little creatures that form calcium carbonate like coral, shells, plankton to form any of these bony structures.

And they basically projected that in about 75 years, if we continue on the current path we are on, there will be virtually no coral reefs that are healthy, almost on the entire planet, which is pretty startling.

The reason I bring this up is that many of us believe we need to move rapidly into as many alternative fuels as we can to at least reduce CO_2 emissions; and when we do so sometimes it can cause inconvenience, changes, headaches for you all in these industries.

And I guess, in the summer particularly, you cautioned us about biofuel requirements. I don't have and as I understand the draft bill does not require any sort of restriction on biofuels requirement. It doesn't really consider them a boutique fuel as I understand the draft.

Listening to you all, I didn't hear any sort of horror story about a biofuel requirement creating major impediments for access to fuels. I really didn't hear anything like that. Is that a fair statement as to the current play? And how do we characterize what inconveniences, prices would be too much in order to help us move towards more biofuels to try to reduce CO_2 to try to keep a few coral reefs on the planet Earth?

That is a general question. Anyone? Ms. Hubbard, maybe you want to take a crack at that.

MS. HUBBARD. Sure.

First, I would like to address that we talked about the number of fuels. And I think part of the difference, depending upon what list you look at, it is 14 or 15 possibly, but based upon the definition by Congress as to what qualifies a boutique fuel, a lot of the special blends were excluded and certain States' blends were exempted. So there are more fuels out there that we are actually dealing with.

The example I would give as to problems, while we are not contesting biofuels, we want what is best for the country, what is best for consumers in the community, and we are happy to sell whatever is produced that consumers will buy. We are not tied to a specific product.

I will give an example of our area, Texarkana. We are obviously on the State line of Texas and Arkansas. We are within 30 miles of Louisiana and Oklahoma, and we pull product from all those States into all the other States depending upon the price. If every single State developed their own specific mandate--and maybe they are just chemically a tweak off--I still cannot pull it into that State. So then all of a sudden I can't buy the most efficient product. I can't, and then the refineries have to produce certain different percentages and maybe they guess wrong today and have a different blended quantity and then that would produce a shortage maybe in what we needed.

So those are our issues related to multiple State mandates.

MR. DINNEEN. Congressman, if I might, there are only two States that have biofuels requirements in operation now: Minnesota, which has been in place about 10 years, and Hawaii, which just began, but there have been no issues with those programs, and they have been highly successful.

But the reason why I don't think you would see the kind of problems that Ms. Hubbard is talking about is because you are simply adding ethanol to conventional gasoline. You are not asking the refiners to do anything different. The conventional gasoline that would be sold in Arkansas, which say there isn't an ethanol requirement there, could be sold. If Texas were to ever adopt an ethanol requirement, they could blend ethanol on top of that very same conventional gasoline. All it is doing is extending the supply of conventional gasoline that would be available for everybody. So it should be lowering the gasoline price.

States are looking at these programs with their eyes wide open. The programs that are out there are so far very modest. Louisiana is looking at a 2 percent requirement. With a trading program and not required in every single gallon, everything else, what they are trying to do in Louisiana is stimulate ethanol production from sugar cane in that area.

I said in my testimony I understand this complicates the refiners' obligations under the RFS, and I believe that there is significant benefit to a national renewable fuel standard. But I also understand why States are promoting these programs. Washington State is one where they passed a program and may be passed some time soon. They are obviously looking at trying to stimulate biofuels production in that area, because it does have significant economic benefit.

MR. SLAUGHTER. Thank you, Congressman Inslee, just to discuss your official question, difficulties have occurred with some of the biofuel mandates. For instance, the State of Minnesota has a biodiesel mandate. There have been significant cold start problems because that particular mixture of biodiesel and regular diesel tended to gel in the winter. That has had to be worked out. Unfortunately, it had to be worked out in the process of the mandate and created some difficulties.

There are some concerns with quality of biofuels in various States. It is understandable. This is an industry that is growing very fast. There is concern about what is going into the gasoline and is it all of the same quality.

Second, when you put ethanol in particular on top of gasoline, you increase the Reid vapor pressure and you do get increased emissions that are ozone precursors, even on conventional gasoline. Now, traditionally conventional gasoline has gotten a one pound exemption on RVP that has allowed this to happen. That, however, is being called into question now in recent legislation. If there is an RVP problem, the refining industry essentially has to take care of that by creating a special fuel blend for that gasoline, for that ethanol to go into.

So there are many operational concerns that we have with this matter. Particularly when you look at the chart over there; the maroon

States and how many States are considering moving in this direction. The potential problems really are considerable.

MR. INSLEE. I hope we do try to reach some greater national standard regarding purity and quality. I think that would be important.

Just one comment. In your professional endeavors we need your help. This is many of us believe, a planetary emergency, and we are going to have to go through some of these headaches, and we need your help to figure out how to resolve them. I just hope you will help us.

Thank you.

CHAIRMAN BARTON. I thank the gentleman from Washington State. We now go to the Grand Canyon State, Mr. Shadegg of Arizona.

MR. SHADEGG. Thank you, Mr. Chairman.

Ms. Hubbard, I would like to pursue a line of questioning with you to try to bring a greater layman's understanding of this issue. As I understand the discussion, the term boutique fuels or State clean air mandate fuels refers to a State's particular formulation of fuel to meet its air quality requirements. And as I understand this issue, the concerns that you expressed is the concern that I also expressed in my opening statement, which is that more and more States are looking at the issue of biofuels and saying, well, look, we ought to get off our dependence on foreign fuel; we ought to be more reliant on renewable fuels; we ought to be less reliant on foreign suppliers of crude oil; and, therefore, an ethanol mandate or a biodiesel mandate is in the national interest. So why don't we, as a State, impose that as a mandate?

And as I understand your testimony--I want to be sure you and I are both in agreement. We have no opposition to trying to do that, to bringing more biofuels into the marketplace, to increase use of domestically produced ethanol and to increase the, if there is an interest in it, an interest in biodiesel. The concern I had heard you express, and I want to confirm, is that if each of the States were to impose its own ethanol or biodiesel requirement, and those requirements, State by State, were to vary by some significant amount, then will you have, as you mentioned, a border where you have four States coming together, each imposing its own different requirement for biodiesel or for ethanol content? That can create a problem in the marketplace affecting both supply and price and doing damage to consumers in that regard, isn't that correct?

MS. HUBBARD. Yes, sir.

MR. SHADEGG. It seems to me, in discussion with EPA on the outside, as I understand it, if a State moves to an ethanol requirement or moves to a biodiesel requirement but does not do that as a part of its SIP to meet air quality requirements, then that doesn't come in within their jurisdiction, is that correct?

MS. HUBBARD. Yes, sir, that is my understanding.

MR. SHADEGG. So what you were saying in your testimony is perhaps the Congress needs to look at whether or not, if a State is going to impose an ethanol mandate or a biodiesel mandate, that before it would be allowed to do that that someone at the national level, Secretary of Commerce, Secretary of Energy, would be able to examine the marketplace in that area and be able to ensure that the imposition of that ethanol requirement or of that biodiesel requirement separate from their State air quality plan would not cause any market disruption. That is to say, the refiners in the area would be able to supply that fuel and would not cause a market disruption either leading to gasoline shortages or to unwarranted spikes in gasoline as a result of the mandate.

MS. HUBBARD. Yes, sir. No, we would think that, obviously, the supply and distribution and the transportation and pricing costs need to be considered as part of that.

MR. SHADEGG. And that is an issue here. Because, for example, ethanol isn't readily available, I guess, as I understand it, in the Houston area. There were shortages recently.

MS. HUBBARD. We operate in the Dallas area, and Texas does not manufacture ethanol, or on a very, very limited supply, so it has to be trucked in. So getting it to the refineries, even though it is an additive, just getting it there for the blend was very difficult.

MR. SHADEGG. I am going to make this point completely clear. The boutique fuel term or State clean air mandate or State clean air fuels is distinct from this in that those are done to meet air quality standards. This is the issue of ethanol or biodiesel being mandated not necessarily to achieve clean air standards, but rather just to encourage perhaps less reliance on foreign fuel and a greater dependence on domestically produced and, incidentally, cleaner burning fuels.

MS. HUBBARD. And this was done at this time as part of the replacement for the MTBE that was phased out. That is why the ethanol was phased in.

MR. SHADEGG. And it does hold the potential for damaging consumers if such a mandate by 40 different States were to create either a shortage or perhaps a total lack of supply for a period of time and both disrupt supply and increase price.

MS. HUBBARD. Yes, sir. Well, the example within the Dallas market where we operate--and we also operate outside that market--during the month of May and continuing even now the price is higher. There has been a spike in ethanol, so that made the cost higher and, therefore, the retail price, and we have seen an increase in our outlying areas. Our volume is up around 30 percent at all of our locations, and it

is obviously consumers who live outside and work in Dallas they are buying before they go to work.

MR. SHADEGG. And at the opposite side of this the comment was made, well, all you have to do is add ethanol. The problem is, if one State says, well, you must add 2 percent ethanol but a neighboring State says you can't sell gasoline or you can't sell diesel that doesn't have 4 percent ethanol or some other similar requirement, you can create a situation where literally miles apart one fuel is available and a few miles away that same fuel that would run the automobile or run the truck could not be sold, leading to a shortage or a price spike in that adjacent area.

MS. HUBBARD. Yes sir. It is an additive, so the percentages could vary at the rack as it was blended to some extent. But the formulation of that, particularly some of the bioproducts we look at, that the mandates would be different in every State. It absolutely could cause distribution and supply problems.

MR. SHADEGG. Thank you very much. Appreciate the answers.

CHAIRMAN BARTON. Thank you.

The gentleman from California, Mr. Waxman.

MR. WAXMAN. Thank you. Thank you, Mr. Chairman.

Mr. Becker, I want to thank you for your testimony. I wanted to discuss this. Go back to the basics on the Clean Air Act.

Federal, State, and local governments all have to work together in trying to effectively address air pollution problems, and we have established an approach for them to do so. The Federal government sets the standards that determine what clean air is and when it should be attained, and State and local governments have substantial flexibility to achieve air quality standards in the way that makes the most sense for that State or region.

Mr. Becker, have the States generally been satisfied with this approach?

MR. BECKER. Yes.

MR. WAXMAN. I am concerned that the legislation before us violates this approach. The States would still have to meet existing deadlines for achieving healthy air, but this bill would limit their tools to do so. Could you tell us what this will mean for the States as they work hard to clean up the air in the most equitable and cost-effective way as possible?

MR. BECKER. As I mentioned in my opening statement, when States put together State plans, they are examining every opportunity they have that helps them balance their air pollution budget, their State Implementation Plan. And literally a State will array the number of control measures necessary to balance that emissions budget to demonstrate to EPA's satisfaction that the plan shows it is going to attain congressionally mandated standards.

A State is not allowed under law to look at any clean fuel until it has looked at and adopted every other more practicable or more reasonable measure from utilities, from dry cleaners, from coke ovens, from every other source of pollution. Only then can the State or local permitting authority then address clean fuels.

If the opportunity to adopt a clean fuel is taken away from us, then we will have to find some other less effective, costlier alternative, and possibly those don't exist, which is why they could exacerbate air quality. So it removes the choices or removes the tools that we have in our toolbox to meet the standards, to meet the deadlines that Congress imposed upon us.

And, worse, not only will air quality suffer, which will contribute to health concerns, but States get punished. These are mandatory sanctions that Congress has imposed upon the States, and they include, as I mentioned, the withholding of millions of dollars of Federal highway funds and what is, in effect, a ban on construction of new facilities. So it is a very serious problem, and we like the arrangement we have under the Clean Air Act.

MR. WAXMAN. During the last panel, the witness from the Environmental Protection Agency testified that this legislation would not harm air quality. As I understand it, this legislation will make it, as you pointed out, harder for States and localities to cost effectively achieve clean air. Moreover, it may politically undermine support for clean air by promoting unreasonable or impractical pollution controls on small businesses or other sources of pollution if they can find other sources to clamp down on, which may be more expensive and unfair.

As a matter of fact, we even had proposals to extend some clean air deadlines. So making it harder to clean up the air may well lead to more calls to weaken the Clean Air Act. Would you agree with that?

MR. BECKER. I agree with your assessment. Air pollution control is a zero sum calculation. And to the extent that we aren't able, as State or local officials, to adopt the most cost-effective, the most technologically feasible alternative, then we will have to look at less cost-effective, costlier, more impracticable solutions, if they exist.

MR. WAXMAN. Well, this Congress has consistently moved to restrict State and local governments and concentrate more authority in Washington, which I have always found amazing. Because it seems to me the Republicans have always argued that they are more for local decisionmaking, not with Washington having all the wisdom; and I released a report yesterday that documents that, in the last 5 years, the House and the Senate have voted 57 times to preempt State laws and regulations, even at the expense of public safety, health, and the environment.

It is my hope that we are not going to hinder the States in doing their job by further restricting the State authority to address serious public health threats. I fear that is what this bill will do. And we ought to leave it to the States to figure out the most cost-effective ways to achieve the goals that are set out in the Clean Air Act, which I think the American people support.

CHAIRMAN BARTON. Do you have a unanimous consent current request?

MR. WAXMAN. I do have a unanimous consent request to put into the record a statement of the American Lung Association on boutique fuels, the Boutique Fuels Reduction Act of 2006 discussion draft.

CHAIRMAN BARTON. Without objection, so ordered.

[The information follows:]

Statement of the American Lung Association on Boutique Fuels and
The Boutique Fuels Reduction Act of 2006 Discussion Draft
June 7, 2006

The American Lung Association comes to the discussion of boutique fuels from the perspective that the job of protecting Americans from unhealthy levels of air pollution is far from done. Recently, we released our annual report State of the Air:2006.[1] We found that over 150 million Americans live in 369 counties where they are exposed to unhealthy levels of ozone or particle pollution. Included in this population are people who are particularly vulnerable to air pollution including: 16 million elderly, 36 million children, 3 million children and 8.5 million adults with asthma, 4 million adults with chronic bronchitis , 15 million with cardio vascular disease, and over 3 million with diabetes.

We know that states are working hard to revise State Implementation Plans(SIPs) to adopt needed measures to address ozone and fine particulates in order to meet the ozone and fine particulate National Ambient Air Quality Standards (NAAQS). We know also that clean fuels are an important tool that can be effective at reducing both on-road and off-road emissions that contribute to these problems.

EPACT 2005 May Limit State Fuels Too Much Already

We agree with STAPPA/ALAPCO that there is no evidence that state clean fuels requirements have contributed to gasoline cost or availability in the past. To the extent anything needed to be done to curtail state's ability to adopt clean fuel requirements EPACT 2005 has done that with a requirement that limits the adoption of additional state clean fuel requirements. Indeed, we urge EPA to speed its obligations under EPACT to implement and study these provisions so we can examine the question whether EPACT is already too constraining.

In compliance with EPACT requirements, the Administrator on May 31, 2006 signed a Federal Register notice identifying a draft list of fuels approved into all state implementation plans as of September 1, 2004.[2] As explained in this notice the Administrator interpreted EPACT as requiring the indentification of a list of fuel types and the establishment of limitations on the approval of any additional fuel types. Further, the Administrator finds that state fuel programs requiring 9.0 RVP fuels in their current SIP are not intended to be on the list since such requirement is identical with current

[1] Copies available at www.lungusa.org.
[2] See www.epa.gov/otaq/regs/fuels/boutique-fuels-notice.pdf

federal RVP requirements.[3] We agree with EPA that this interpretation of EPACT prevents the establishment of any additional unique fuel "islands" while enabling states developing SIPs to meet the NAAQS for ozone to be able to utilize existing fuel types as a means of attaining the standard and protecting public health.

The alternative interpretation is that every state's fuel counts as a fuel for purposes of listing. Under this interpretation of EPACT, no additional state would be able to adopt a clean gasoline program because no state currently using a clean gasoline program is likely to abandon it which is the only way to make room for another state program. This constraint prevails even if a state seeks to adopt a clean gasoline program identical to one already being used in the Petroleum Administration for Defense District (PADD). Congress should not freeze state authority to adopt clean gasoline programs at this critical time when so much needs to be done to reduce ozone levels.

The American Lung Association supports states having the ability to choose among three fuels: a 7.0 RVP or RFG, 7.8 RVP, or 9.0 RVP. This is the three fuel option considered in the EPA 2001Boutique Fuels Report. States can then choose the clean fuel they need to provide important on-road and off-road emissions reductions needed to meet air quality standards. Under EPA's interpretation of EPACT, states would be able to do this.

The Discussion Draft May Weaken Clean Gasoline Programs Where They Are Needed

Section 3(b) of the Discussion Draft supplants EPACT with a very restrictive State Fuels List comprised of only three gasoline fuels. Under the provision no more than two of these fuels can be used in a PADD. We believe these provisions are unnecessarily restrictive and limit the adoption of clean gasoline fuel programs even though such adoption will not interfere with gasoline distribution or supply. Indeed, some areas, currently using 9.0 RVP fuel may choose not to adopt a clean fuel program if the only choice is 7.0 RVP or RFG, rather than 7.8 RVP. Further, Section 3(b) may require the Administrator to force a state to shift a 7.0 RVP clean gasoline program to a less effective 7.8 RVP in order to meet the highly restrictive 2 programs per PADD requirement. Congress should not adopt legislation that results in weakening clean gasoline programs especially given the lack of solid evidence that these programs are contributing to gasoline price spikes or other supply and distribution problems. The practical effect will be to shift the burden of emissions reduction to local businesses and factories in order to meet air quality standards. In essence, section 3(b) may make Clean Air Act compliance more costly through fuel restrictions which will have no measurable benefit on fuel prices.

Legislation to Control Boutique Fuels Should Not Fail to Address Statewide Ethanol Mandates

A statewide E-10 mandate reduces the effectiveness of clean gasoline programs while creating "islands" of ethanol demand that can interfere with efficient transfer of ethanol from places that have it to those that need it. If Congress believes there is a need to constrain states from adopting clean gasoline programs, it must, on the same basis constrain the adoption of statewide E-10 mandates. Four states have adopted state-wide E-10 mandates and such mandates have been under consideration in a significant number of state legislatures. Such mandates have the potential of having a significant impact by increasing on-road and off-road emissions of VOCs and NOx.[4] These mandates also have

---

[3] ibid, p. 10.

[4] See Final Report, Emission Reductions from Changes to Gasoline and Diesel Specifications and Diesel Engine Retrofits in the Southeast Michigan Area, For: Southeast Michigan Council of

the potential of impeding ethanol distribution and supply by reducing the amount of ethanol available to be moved to an area experiencing an ethanol shortage. Statewide ethanol mandates deserve the same analysis of their impact on the boutique fuel issue as have been given to state clean fuel requirements.

The Benefits of E-85

The best way to avoid the air quality problems associated with low blend ethanol use is to promote high blend ethanol use, namely E-85. E-85 does not have the high volatility problems of E-10 and when used in the flexible-fueled vehicles (FFVs) can meet or exceed the reduced emissions of their gasoline-fueled counterparts. FFVs have the added benefit of improved fuels systems that will reduce the impact of low blend ethanol use when they are operating on conventional gasoline with E-10. Any disruption in the supply of E-85 that may occur in a given area will not interfere with gasoline distribution generally. EPA should evaluate the benefit of widespread E-85 use as a means of using ethanol in an air quality-friendly fashion. There are about 5 million FFVs on the road today but a lack of E-85 pumps destines these vehicles to operate primarily on gasoline. An EPA evaluation of the benefits of E-85 can help in the effort to make E-85 widely available.

The Discussion Draft Waiver Language Is Unnecessary and Weakens the Clean Air Act

The Discussion Draft adds to the Temporary Waivers adopted in EPACT language that would authorize the use of the waiver for "unexpected problems with distribution or delivery equipment". We believe that this language could be interpreted to change the nature of the waiver from one to be used in cases of major disaster or disruption, such as occurred during Hurricane Katrina, to something much more mundane and common place. If the language is not intended to change the nature of the waiver, it is unnecessary and causes confusion. Indeed, adoption of this language would undoubtedly prompt members of the entire chain of gasoline and diesel fuel and fuel additive production and distribution to find it necessary for the statute to identify "unexpected problems" in their activity to assure that it is covered. This will promote much confusion regarding which activities are intended to be covered and which are not. We urge Congress not to reexamine this issue.

No New Limitations to Clean Gasoline Programs

We urge the Congress to let EPACT be implemented as enacted just 10 short months ago. In our view, the adoption of further restrictions can only result in fewer effective clean fuel programs at a time when we need to maximize the effort to reduce on-road and offroad emissions in order to protect the public health.

CHAIRMAN BARTON. And it is always delightful to hear Mr. Waxman use the word "cost-effective" in any statement before the committee. That is a good thing, not a bad thing.

MR. WAXMAN. Mr. Chairman, I don't know what that is supposed to mean. I have always thought we ought to be as cost-effective as possible. We ought to leave more to the local governments. We shouldn't waste taxpayers' money.

Governments (SEMCOG), Alliance of Automobile Manufacturers (Alliance) and American Petroleum Institute (API), February 23, 2005, p. 11, Figure ES-1and p.12, Figure ES-2.

CHAIRMAN BARTON. I just like to hear cost-effective, or cost-benefit analysis would be better.

MR. WAXMAN. I have more trouble saying boutique than I do cost-effective. I want us to be cost-effective; and, unfortunately, I don't think your bill leads us to that result.

CHAIRMAN BARTON. All right. Mr. Shimkus.

MR. SHIMKUS. Thank you, Mr. Chairman.

I appreciate having you all here.

Mr. Becker, real quick, on this whole debate about the boutique fuel issue, I always use this example. I can land in St. Louis at the airport and fill up my vehicle to drive 20 minutes to get across the Mississippi to be in a different fuel mix arena, drive 80 miles up the road to Springfield, the northern part of my district, and be in another boutique fuel arena.

It was 4 years ago when we had huge price spikes, and the price spikes came because of a supply and demand issue on a refinery and a pipeline and the inability to move product to the specific fuel areas because of the SIP and the fuel requirements.

I think that the SIP call using fuel mixture is an easy out for the local governments. It is easiest thing they can do. They don't have to address mass transportation. They don't have to address new highways. They don't have to address other types of concerns. In the place they say, well, let's just put it on the industry and the refineries to make a particular type of fuel.

I can even broaden this in the Midwest and talk about driving from Kansas City to Saint Louis to Collinsville, Illinois, to Springfield. Do you know how many fuel areas there are there? Four. Multiply that by three grades of gasoline. That is 12. And you want to talk about the ease of supply and moving it when you have a disruption in refineries and pipelines?

So, with all due respect, I think that the SIP call in using the reformulated boutique fuels is a recipe for failure and a disaster, and that is why we want to try to simplify this, and I think the consensus will be by the House that we will.

Now my question for Mr. Dinneen.

MR. BECKER. May I comment on that?

MR. SHIMKUS. I would rather just go to Mr. Dinneen.

We have heard from discussions and testimony regarding States mandating renewable fuel use and the effect of that on the ethanol industry. Can you tell what these mandates are doing to your industry? Is it growing too quickly? Do you feel like the ethanol industry can easily keep up with the pressure that is on today? And I know, in fact, we have this huge refinery debate where we can't build any new

petroleum refineries, but we are having a lot of success in the renewable fuel refineries. So can you address those issues for me?

MR. DINNEEN. Well, the industry absolutely is growing extraordinarily fast. Demand is growing far in excess of what the Congress required by the Energy Policy Act last year in which only 4 billion gallons of ethanol was required this year. We will likely sell more than 5 billion gallons this year, 25 percent more than is required. The reason for that is, as was discussed at the hearing a few weeks ago, is that refiners had made the decision to replace MTBE with ethanol, and so the demand has greatly exceeded that which was required by the RFS.

But our industry is growing at an absolutely phenomenal rate. I noted in my testimony that, just since I testified here 3 weeks ago, we have opened 4 ethanol plants and there are 32 more under construction. So I think we are doing a very good job meeting the increased demand and will continue to do so.

The State requirements, there are only two that are currently in place. I don't see them as having a meaningful impact on overall demand at this point. If many more of them get going, it might be a different situation. And I have indicated that I believe a national RFS and the flexibility that it provides is the best approach.

However, I do certainly understand why some States are pursuing these programs to assure that the economic opportunities that result from ethanol production are afforded to those States.

MR. SHIMKUS. And the public by far is in a mood to move to independence of imported crude oil, and this movement is only going to continue to grow unless we have individuals trying to delay it. So let me just ask for a clarification. Do the State mandates--you said there were only two right now. Do they really have any impact on the boutique fuels in this debate?

MR. DINNEEN. None whatsoever. Because they are requiring ethanol to be added to conventional gasoline, and you are not requiring a special blend. You are just adding to gasoline supply. You are not impacting at all the fungibility of the blend stock.

MR. SHIMKUS. Thank you, Mr. Chairman. I yield back.

CHAIRMAN BARTON. I thank the gentleman.

Dr. Burgess.

MR. BURGESS. Thank you, Mr. Chairman.

Let me address this first question to Mr. Slaughter and perhaps Dr. Murphy, too, if you would like to add to it.

The refinery production capacity that currently exists, is it compromised by the number of fuels that a refinery must produce? In other words, if we were going to go from four to three mandated fuels,

would the three fuels production be enhanced because the fourth was dropped?

MR. SLAUGHTER. It would depend on what they had to do. If they were new fuels with tighter specifications, Dr. Burgess, even though there was a reduced fuel schedule to output, a reduced number, there could conceivably be additional capital requirements, and that could effect the total output. It certainty is very important in the industry, and a lot would depend on how much time the affected refiner would have to react to this before he actually had to make the changes.

MR. BURGESS. And the degree of certainty that existed downstream wouldn't change again next year?

MR. SLAUGHTER. That almost never exists, Dr. Burgess.

MR. MURPHY. I think it is important to understand that we are assuming that the overall environmental performance of fuels will be maintained. And if we have a reduced number of fuels that States and localities are going to have access to, at least the same environmental quality of fuel that they do right now, so the effect of that would be an increase in the specifications of restriction and the specifications of gasoline. That would detract from gasoline producibility. And the problem and the balance is that the amount that you lose there and comparing that with the effect on supply that you get from increased fungibility. That is a difficult question to answer and that, in fact, is the exact question that we are looking forward to coming out of EPA from the study that was mandated last year.

MR. BURGESS. Very well.

Mr. Dinneen, and let me include Ms. Hubbard in this question. I have a constituent who lives in Justin, Texas. He said he drove from Fort Smith, Arkansas, to Dallas 2 weeks ago and gas prices went up 40 cents between Fort Smith, Arkansas, and the Dallas-Fort Worth market. He called me and said that has got to be price gouging, Senator. Is he right?

Let me point out that this individual--although he called me Senator--lives in a part of Denton County that has the Barnett Shale underneath it, and he has at least two producing wells on his property. So he is fairly literate in terms of energy policies. So was he correct about his concern about price gouging?

MS. HUBBARD. Well, I operate stores in both of those areas, and I would say, well, obviously they are pulled off of different terminals and racks because of the location. The Dallas market is a containment area, and our product is more expensive right now. As I looked back since May when this was incepted, it would range from 12 to 20 cents. So absolutely it is not gouging.

MR. BURGESS. Let me just ask you a question. Did your industry do anything as sort of a public service to inform people about why there was

a discrepancy in price? We have to assume there are going to be people that would drive from Dallas to Fort Smith and notice that; perhaps some public service as far as educating people as to why the prices were different in different parts of the country.

MS. HUBBARD. I think throughout the markets that were containment areas I know there were both documents released and information. I saw a lot in the newspapers--Dallas Morning News did a big article on that. As far as the industry publishing to people who might be traveling to those areas, that is kind of difficult.

MR. BURGESS. Dallas Morning News, it is in the business section. Not everyone gets that far.

Mr. Dinneen, do you have any thoughts on my constituent's concern driving from Fort Smith to Dallas and seeing price gouging along the route?

MR. DINNEEN. I don't think price gouging is what is going on. It is clearly the marketplace in the Dallas area. It is a different fuel. As MTBE comes out of gasoline and all the things that have happened in that marketplace, there have been some disruptions. But I don't think it is gouging. I think it is of the operation of the marketplace.

MR. BURGESS. In the bill we have under discussion there is a limited waiver for unexpected problems and logistics. Is that going to be helpful?

MR. DINNEEN. I think it would be, yes.

MR. BURGESS. Ms. Hubbard, is it your position it would be helpful as well?

MS. HUBBARD. Yes, sir, I do.

MR. BURGESS. Mr. Becker, you heard my comments in the opening statement; and I appreciated Mr. Waxman saying that States need to bear this burden of clean air equitably. In Texas, we have a lot of refineries. We send a lot of our gas to other places in the country that can't or won't refine gas on their own. But we have to bear the burden of the cleanup of the air from those refineries, and that is reflected in higher gas prices in our State. So we are kind of paying the freight. We are having to pay for our good nature and sending gasoline products off to other parts of the country. Does that comport with Mr. Waxman's idea of there being equity amongst the States?

MR. BECKER. One of the recommendations we have made is to help make reformulated gasoline available to everyone in the country so we don't have to necessarily have these pockets of areas that are able to use the cleaner gasoline or not use the cleaner gasoline. Our position is to provide as many fuels and tools to the States as possible, not to curtail the amount of flexibility the States have, so they have everything at their disposal and they are able--

MR. BURGESS. But my State that is producing one of those tools and then in turn penalized under the Clean Air Act--

MR. BECKER. You are penalized because?

MR. BURGESS. Because we end up paying the high reformulated gasoline prices, because of issues of air quality brought on my refineries, we have to burn cleaner grades of gasoline in our automobiles around metropolitan areas that refine gasoline.

MR. BECKER. If the air in your district is unhealthy, the Clean Air Act requires a partnership between Federal, State, and local agencies to find ways to clean it up.

To get to Mr. Shimkus' point, because it is relevant here, the States don't go willy-nilly into adopting a State clean air fuels program. It is a choice of last resort. We are preempted under the Clean Air Act from doing anything until we have tried everything else at our disposal. Only then, with EPA's approval, can we look at a State clean fuel.

So we are totally preempted--this is before EPAct--from doing anything, unless we have examined every other available opportunity. Only then can we adopt a clean air fuel.

CHAIRMAN BARTON. The gentleman's time has expired.

The gentlewoman from Tennessee, Mrs. Blackburn is recognized.

MRS. BLACKBURN. Thank you, Mr. Chairman, and I thank all of you. I am going to stay right on the same path that Mr. Burgess was on, thinking about cost and how that relates to what our folks are paying when they are at the pump.

And I appreciate, Mr. Becker, what you were saying there. It puzzles me a little bit. Seems like sometimes we create a problem, and then we want to create an answer for a problem and then blame the answer for the problem, for the original problem, and throw our hands up and say it is not our fault, and turn around at look at some of us that sit here and say, figure it out, solve problems.

But I tell you what. Dr. Murphy, I will come to you first. Mr. Becker had mentioned that it is--and this was in his testimony--that it was completely unsubstantiated that clean air fuels contribute to high gasoline prices. And I want to know if you do or do not agree with that statement.

MR. MURPHY. I think the issue we are focusing on here is not the normal run-of-the-day cost impact of cleaner fuels. The cost impact, the refining system right now, is optimized to produce a particular set of fuels. On a normal basis with no interruptions, no pipeline shutdowns, no refinery problems--

MRS. BLACKBURN. So in a perfect world.

MR. MURPHY. The cost of that is pro--

MRS. BLACKBURN. And then if it is not in a perfect world, if we do hit a hitch, then it is an extra tax, if you will.

MR. MURPHY. There was a study which was published last month by the Kennedy School of Government at Harvard, and I quote from there that they estimate that 72, 92, and 91 percent of the price spikes created by refineries in California, Illinois, and Wisconsin could be mitigated with Federal RFG. In other words, in those examples, those cases that were studied, anywhere from 70 to 90 percent of the price spike was due to boutique fuels.

MRS. BLACKBURN. So, you know, when our constituents look at us and say, you all have caused this problem, then they pretty much are right.

MR. MURPHY. Again, I don't think we are finding fault. I think what we are recognizing is the actions of State and local governments in requiring particular types of fuels do have national implications.

MRS. BLACKBURN. Thank you very much.

Mr. Becker, you want to add any comment to that?

MR. BECKER. Thank you, Congresswoman Blackburn.

I would like to add two points. I think Mr. Murphy said in his testimony that boutique fuel program, States' clean air programs weren't principally responsible for the spike hikes. What I cited in my testimony, the three-tenths of 1 cent to 3 cents per gallon estimate for the total of boutique fuels was not my estimate. It was EPA's estimate of the amount of the cost of boutique fuels. And when we compared that to when I was--

MRS. BLACKBURN. Let me interrupt you. So you are saying it is just a little bitty part of the problem, and you are saying it is a larger part of the problem.

Dr. Murphy, let me come back to you, sir. Let me go back to him for just a moment.

What considerations should the committee make in considering how we can reduce refinery capacity issues caused by boutique fuels? And I know Secretary Harbert talked a little bit about that in testimony earlier.

So how do we go about reducing the refinery capacity issues while at the same time trying not to create more problems so that we don't make the problem worse than it is? And do you have any suggestions, any quick comment on that, before my time is gone?

MR. MURPHY. I think we need to carefully study the effect of tighter gasoline specifications which would normally accompany the number of fuels, because we would use blending components as the overall specifications are further restricted, and to balance that against the increased fungibility we would get from being able to have a more

common set of fuels which make it easier to respond to interruptions that are going to occur.

MRS. BLACKBURN. Thank you.

With that, I will yield back and submit my questions to Mr. Dinneen.

CHAIRMAN BARTON. We thank the gentlelady.

The Chair is going to recognize himself for a few follow-up questions, and if Mr. Burgess wants some time, that is fine.

Before we conclude, I want to try to be a little bit more definitive on these prices following up on what both my colleagues just asked, and I am going to use real numbers.

This is the very unofficial Chairman Joe Barton survey of real numbers in the last few weeks. In Waco, Texas, at the HEB and the Wal-Mart right off of Interstate 35 near Lake Shore Drive and Waco Drive, self-serve unleaded regular was $2.529 per gallon. That same day in Arlington, Texas, at the Minard's self-serve outside of a grocery store near where I live, it was $2.82. So we had 30 cents a gallon. Now, Arlington is in a nonattainment area, and Waco, Texas, is not. So Arlington was having to use ethanol additive or reformulated gasoline, and Waco, Texas, was not.

Ms. Hubbard, could a reasonable person assume that 30 cents per gallon difference was because of the added cost in the nonattainment area?

MS. HUBBARD. Absolutely. I mean, I couldn't say.

CHAIRMAN BARTON. Those are real numbers. I am not making these up.

MS. HUBBARD. Actually there were periods where we actually had 40 cents a gallon cost discrepancies.

CHAIRMAN BARTON. But a reasonable person could say someone living in a nonattainment area was paying 30 cents a gallon more per gallon of gasoline than somebody living in a nonattainment area, someone living in Waco, Texas.

MS. HUBBARD. Yes, sir.

CHAIRMAN BARTON. So there is no difference in the taxation.

MS. HUBBARD. No.

CHAIRMAN BARTON. Last week I went to California. I did not see one price on any posted sign less than $3.25 a gallon. I know I saw a point higher. I saw $3.35, $3.45, and this is for self-serve unleaded. This is not for the premium. The cheapest price I saw was $3.25. The average price was really closer to $3.35 to $3.40.

I am going to ask Dr. Murphy and Mr. Dinneen, maybe Mr. Slaughter and Mr. Becker. California has the most stringent requirements for its gasoline. So, again, a reasonable person could assume that the fact that gasoline everywhere in California seemed to be

at a minimum 50 cents a gallon more expensive than anywhere in Texas. Is that because of the more stringent requirements for gasoline in California?

MR. MURPHY. As you know, Mr. Chairman, California has historically had the highest gasoline prices in the country, and that has been because of the very, very tight restrictions on gasoline specifications there. Even before the recent change from MTBE to ethanol, they normally average around 20 cents a gallon higher, and now they are even higher.

CHAIRMAN BARTON. But it is a heck of a lot more than three-tenths of a cent, and California may have a higher State tax. It's possible that they have a higher State tax. That could be part of it. But it is reasonable to assume that a lot of it, and it is not necessarily a bad thing, but it is because of the more stringent requirements on the gasoline because of air quality, which the citizens of California, through their elected officials, chose to impose upon themselves. Again, that is a societal trade-off, not necessarily a bad thing.

MR. MURPHY. I think that is a fair conclusion.

CHAIRMAN BARTON. Does anybody disagree with that?

Mr. Becker.

MR. BECKER. I just want to be a little more precise about this survey.

CHAIRMAN BARTON. It is unofficial.

MR. BECKER. And your conclusion, what a reasonable person might--

CHAIRMAN BARTON. Those are real numbers. Those are not made-up numbers.

MR. BECKER. I understand. What is nice about what you are doing today, you are having a discussion about a problem. And you did this a few weeks ago, and it was done to seek data and information. And if you hadn't done that and you went on to the street and you say, gosh, what is causing this increase in gasoline, and they knew there were special fuels there, a reasonable person might say that the 30 or 40 cents behind the increase must be caused by these crazy States who are adopting boutique fuels.

But you are not only reasonable; you are seeking input from the experts. And what the experts who know more about this than any of us in this room have concluded, the oil industry who knows what is going on, they have concluded that these so-called boutique fuels are not the problem, are not responsible for spike hikes. They may be responsible potentially.

CHAIRMAN BARTON. Price hikes.

MR. BECKER. They may be responsible potentially for supply or distribution problems should there be a catastrophe, but to your credit, you have done something with that under EPAct.

I did my own Becker survey a few week ago when I testified, and what I found is two gas stations literally blocks from one another selling the same exact fuel had a price differential of 20 cents per gallon difference for regular gasoline. Same company, same county, a few blocks from one another.

This is not caused by these so-called boutique fuels. There are many other factors that have nothing to do with boutique fuels that are causing these price spikes. So an uninformed, reasonable person might reach your conclusion, but someone who is informed, a Congressman or woman who is informed--

CHAIRMAN BARTON. Reclaiming my time. I understand that what goes into the final price is a number of complex variables, but I think it is ludicrous to say with a straight face that there is almost no cost to complying with some of these air quality standards.

And I am not saying it is a bad thing that we have to comply. It is a good thing that we comply, and it is a good thing the air is cleaner. That is a good thing. But to act like there is no cost to it, it is just not rational, because these are real-world examples, and there can be a difference within a region.

I can take you to a gas station two or three blocks away that is a little bit more or a little bit less expensive, no question about that, but in California there was no gas station anywhere that was lower than $3.25, and there were a lot that were higher than $3.35. And in Waco, Texas, there were stations that were 5 cents higher and 10 cents higher, you know. But there was no station in DFW that was even close to what the price was in Waco.

And do you have to look at the totality of the evidence and say we are paying considerably more because of these fuels; considerably, not 3 cents or 1 cent? But it looks to me like we are paying anywhere from at a minimum of 20 cents up to considerably more than that, and that may be a very acceptable price.

I am not being negative on the price. To say that it is only three-tenths of a cent is just not--that may be the production cost at one specific refinery, but by the time it gets to what the individual pays, it is considerable.

Now, my last question I want to ask Mr. Dinneen something because he is just a happy fellow, and we want to end this on a happy note.

The MTBE that has been taken out of the market in Texas has caused the price to go up. The MTBE was not taken out by mandate. The market decided voluntarily to take it out. Now, I can disagree with the

market, but they, the people that make the market, the refiners and the pipeliners, decided they weren't going to use MTBE anymore when they were going to give them liability protection until they took it out.

We don't manufacture a lot of ethanol in Texas, so the price has gone up as we tried to get the ethanol into the market. We have got a lot more ethanol capacity coming on line, but in the short term the spot price shown on Mrs. Hubbard's chart was that over $3, $4 a gallon how soon do we get ethanol more in a supply and demand balance.

One of the benefits of ethanol used to be that it was less expensive. That is no longer a benefit. Now, that is great news for the producers of ethanol, but it is not great news for the consumers of ethanol. When do we expect to see ethanol back down to, say, $2.50 a gallon or somewhere where you still make money, but it is more cost-competitive with the gasoline that is being piped in?

MR. DINNEEN. Thank you for asking that question.

More than 90 percent of the ethanol that is sold in this country is sold under long-term contracts that have no relationship whatsoever to the chart that Ms. Hubbard put up, which is the spot market price. Ethanol is sold under contracts of 6 months or a year, and are sold today typically much below the price of gasoline. With the tax incentive, ethanol is going to be a significant savings for gasoline marketers.

CHAIRMAN BARTON. Without being proprietary, these long-term contracts, is there an average price?

MR. DINNEEN. It would range from $1.20 to $2 before the tax incentive, so the tax incentive, then, it is obviously a huge benefit to refiners and marketers and ultimately consumers.

Now, for those marketers that perhaps didn't contract up and had to rely upon the spot market, quite frankly, the spot market price is high. Ironically, it is high today because a lot of the imports that were expected aren't showing up on time. This 45 million gallons that is on its way from Brazil, I expect once that arrives, I expect you will see a much more moderate price on the stock market.

CHAIRMAN BARTON. Mr. Slaughter, do you want to comment on that?

MR. SLAUGHTER. We do not have the price information outside of the spot market on ethanol prices. The contracts are private, proprietary. And we hear this time and time again that people who go out in the market are having to pay spot market prices. And we have the actual empirical evidence that we see on the street corner, which you have been talking about earlier in talking about terms that are used--forced now to use ethanol, to use significantly higher prices.

So I have heard this before. I am glad to hear that imports are on the way. Again, we think that one of the things that need to be done here is

suspension of the tariff at least temporarily to make sure there is some kind of price regulator in the open market everybody can look at for ethanol.

CHAIRMAN BARTON. Okay. Final comments, Dr. Murphy.

MR. MURPHY. I want to point out that the incremental supply for the high-cost supplier is the one who sets the price of the market, so the spot price for ethanol today is having a significant impact on the price of gasoline on the street.

CHAIRMAN BARTON. Well, it certainly has an impact on the creation of more of these ethanol refineries.

MR. MURPHY. That is true, sir.

CHAIRMAN BARTON. At some point in time, enough production should come on line in a free market that the price goes down as the production capacity ramps up to meet the demand. So there is a positive side to a high price if the supply results from the incentive created by that high price.

I am not necessarily negative on a high price for ethanol right now, but I just want the record to show that over time, if it stays that high, there is no cost advantage to ethanol. That is all.

Did you want to say anything, Ms. Hubbard, before we conclude, or are we through?

MS. HUBBARD. The only comment I would have is with our industry, we are ecstatic if the price of ethanol comes down. The price of gas impacts purchases within the store, which actually are where our industry makes money to offset fuel.

CHAIRMAN BARTON. I thought it was interesting that consumers in your market, they are rational, and they are more and more filling up outside of the nonattainment area if they have any opportunity at all as opposed to inside because of this price differential in the DFW area seems to be averaging about 20 cents a gallon.

MS. HUBBARD. Obviously, within the company volume for gallons is down this year to very flat. Just the prices impact that. To see that spike, you know, they range from 25 to 35 percent at different stores.

CHAIRMAN BARTON. Well, I am going to thank this panel. This is a hearing on a discussion draft. We will take the questions and the testimony and cogitate on it and determine whether to change the draft and move to a markup. If we do decide to go to markup, it will probably happen sooner rather than later, as early as next week.

So with that, we are going to adjourn this hearing.

[Whereupon, at 2:20 p.m., the committee was adjourned.]

RESPONSE FOR THE RECORD OF EDWARD MURPHY, GROUP DIRECTOR, INDUSTRY OPERATIONS AND DOWNSTREAM, AMERICAN PETROLEUM INSTITUTE

Edward H. Murphy, Ph.D.
Group Director: Downstream and Industry Operations

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8150
Fax 202-682-8051
Email murphy@api.org
www.api.org

July 14, 2006

The Honorable Joseph Barton
U.S. House of Representatives
Washington, DC 20515-2215

Dear Chairman Barton:

I appreciated the opportunity to testify before the June 7, 2006 House Energy and Commerce Committee hearing on the discussion draft of the "Boutique Fuels Reduction Act of 2006".

Attached are my responses to your additional questions. As always, please don't hesitate to contact me if you have any questions or if you are in need of additional information.

Sincerely,

Attachment

An equal opportunity employer

Attachment
Edward Murphy, API Response to Chairman Barton

1. In your testimony you mention there needs to be sufficient lead time to ensure that refiners are all able to produce a new fuel. Do all refiners, each produce the full slate of fuels in use today? What in your opinion is sufficient lead time? What factors contribute to the time it takes a refinery to switch from producing one fuel to another?

   Response: All refiners do not produce the full slate of fuels in use today. Refinery capabilities vary greatly and reflect the company's efforts to optimize the refinery efficiency for the particular mix of fuels that it produces. Because it will be difficult or impossible for a refinery to change this mix of fuels quickly, boutique fuels can contribute to price volatility by limiting the ability of refineries to compensate during periods when other refiners may experience interruption in supply.

   API and its members have consistently noted that when refinery modifications are required to comply with an environmental standard, the industry will need at least 4 years lead time. In fact, the U.S. Environmental Protection Agency recognizes this and allows a minimum of 4 years lead time when they set new fuel specifications. The actions necessary to comply with the proposed standard will vary, depending on the current operation and configuration of each refinery. Often changes in technology and processing configurations are needed to meet new environmental standards. These 4 years are needed for the concept reviews, design, engineering, permitting and construction of refinery facilities necessary for compliance. Less than 4 years would put undue time pressure on the industry and would not allow sufficient time for optimally developing and integrating environmental changes.

2. Is refinery production capacity compromised by the number of fuels a refinery must produce? For example, if a refinery is producing 4 specific fuels and then only needs to produce 3 due to a reduction in the number of boutique fuels, does that not free up refining capacity for the remaining fuels produced?

   Response: Reducing the number of fuel choices available will add fungibilty to gasoline supplies and, in this manner, increase the capability of the production and distribution system to adjust to an unexpected interruption. However, it will also lead to more stringent formulations as states and localities seek to maintain environmental performance. Thus, a reduction in the number of fuels from 4 to 3 does not mean there will be more production capacity. In fact, the opposite is the likely result. If the number of fuels were reduced from 4 to 3 with no loss in environmental quality, the change would result in an increased overall stringency which would likely cause some loss of production capacity as some gasoline blending components are removed in the refining process. Whether the supply effect of this would be outweighed by the increased fungibilty of the overall gasoline system can only be determined from careful study.

RESPONSE FOR THE RECORD OF SONJA HUBBARD, CEO, E-Z MART STORES, INC., ON BEHALF OF NATIONAL ASSOCIATION OF CONVENIENCE STORES AND SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

NATIONAL ASSOCIATION OF CONVENIENCE STORES
1600 Duke Street
Alexandria, VA 22314

SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA
11495 Sunset Hills Road
Reston, VA 22090

July 18, 2006

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Re: Responses to Written Questions Submitted in Connection with the June 7, 2006 Committee Hearing on "H.R. ____, Boutique Fuels Reduction Act of 2006"

Dear Mr. Chairman:

This letter responds to your letter of June 27, 2006 posing a written question to me submitted in connection with the June 7, 2006 Committee hearing on "H.R. ____, Boutique Fuels Reduction Act of 2006." My answer to this question, on behalf of the National Association of Convenience Stores ("NACS") and the Society of Independent Gasoline Marketers of America ("SIGMA"), is attached.

NACS and SIGMA are pleased to submit this answer to the Committee. If the Committee has additional questions, please do not hesitate to contact us.

Sincerely yours,

Ms. Sonja Hubbard
Chief Executive Officer
E-Z Mart Stores, Inc.
On behalf of
NACS and SIGMA

Attachment

Response to Question from the Honorable Joe Barton

Question: With implementation of the RFS and various state biofuels mandates, the marketers and retailers you represent may need, in order to satisfy consumer demand, to offer products such as E-85 for purchase. What is the average cost of installation and maintenance of an E-85 pump and related infrastructure? Are there properties unique to E-85 that warrant specialized storage and infrastructure? Are there, and if so what, federal or state measures exist or have been proposed that would assist marketers and retailers in covering such cost?

Answer: As an initial matter, a growing number of NACS and SIGMA members are offering E-85 to their consumers and we expect the number to expand as motorist demand grows and the economics of E-85 stabilizes. A review of the Department of Energy's Clean Cities website listing E-85 outlets across the nation reveals that approximately 80 percent of the sites are operated by independent motor fuel marketers -- the core of NACS and SIGMA's retailer membership.

The average cost of installation of an E-85 refueling system, including underground storage tank (UST), piping and dispensing equipment, varies from $50,000 - $200,000 per system. This wide variation in cost is caused primarily by differing state statutes and regulations governing petroleum USTs -- not by the cost of the actual equipment itself. For example, installation of a new E-85 refueling system in downtown San Francisco -- assuming a permit could be obtained to install the system at all -- would entail costs in the upper range of that estimate because of California environmental controls and permitting costs in that state. Conversely, installing a system in rural Iowa would run at the lower end of that range in terms of cost.

There are properties unique to E-85 which generally make it incompatible with most existing motor fuel refueling systems. Ethanol is highly corrosive to many metals and other substances commonly found in motor fuel dispensing systems (copper, brass, and aluminum) when those metals are exposed to ethanol in a concentrated form. Thus, E-85 can not be dispensed from most existing refueling systems because of the corrosion the ethanol in the blend would cause to fittings, piping, and metals in the existing system.[1] Therefore, in order to dispense E-85, a retailer must either overhaul its existing refueling system to eliminate materials which would react to ethanol or install a new UST system free of materials sensitive to corrosion. It is worth noting that the House Science Committee recently adopted legislation (H.R. 5658) directing the Department of Energy to conduct research into the possibility of adding corrosion inhibitors to E-85 as a means of preventing the corrosion difficulties associated with E-85 in existing UST systems.

Finally, the primary federal measure that exists to assist marketers in covering the costs of installing E-85 refueling infrastructure is Section 1342 of the Energy Policy Act of 2005 (EPAct). This section establishes a federal tax credit for the installation of alternative fuel infrastructure, including E-85 infrastructure, at retail outlets. The tax credit is limited to 30 percent of the cost of the installation, or $30,000 (whichever is lower) and will expire, for E-85 installations, at the end of 2009.

Several additional incentives for the installation of E-85 infrastructure have been proposed during the 109th Congress, including grant programs for retailers to cover some or all of the cost of installation, an expansion of the EPAct credit to cover more of the costs, and additional tax incentives to drive down the net taxpayer cost of such installations. None of these proposals, besides the EPAct tax credit, has been enacted.

---

[1] It should be noted that most underground storage tanks themselves, typically made of steel or fiberglass, are not susceptible to such corrosion; rather, it is the piping and fittings between different components of the underground storage tank system that are susceptible to corrosion.

Based on media accounts reviewed by NACS and SIGMA, some states have considered, and a couple of states have adopted, alternative refueling infrastructure incentives and tax credits. NACS and SIGMA do not have the resources to provide the Committee with a survey of those incentives. We recommend that the Committee inquire of the Renewable Fuels Association, the trade association for the ethanol industry, about more information on such state incentives.

It is important to note, however, that while incentive proposals to reduce the cost of infrastructure investment are valuable and most welcome, they are not sufficient to convince all retailers to offer alternative fuels. Retailers are very conscious of consumer demand, which in the case of E-85 is determined by the presence of sufficient flexible fuel vehicles in the market and the price competitiveness of E-85. Currently, many retailers would reach the conclusion that the number of vehicles capable of running on E-85 remains limited, thereby constraining the potential market demand for E-85. Further, many consumer who drive such vehicles are not devoted to refueling with E-85, unless it provides an economic benefit.

For example, retailers with whom I have spoken have reported dramatic declines (as high as 96% in monthly volume) in E-85 sales when its retail price nears that of gasoline. This is complicated by the fact that E-85 provides consumers with more than 20 percent fewer miles per gallon. Therefore, conscientious consumers will determine that E-85 is only competitive with gasoline when offered at a significant discount, a scenario that is not currently possible in most markets due to the inflated cost of ethanol.

Motor fuel marketers like me make an effort to maximize the return on every item we sell and every inch of retail space available. To dedicate a fueling station to an alternative fuel that is in low demand and is not price competitive, even if the government offset were to cover 100% of the investment, does not make sound business sense for many marketers in our channel of trade.

I make this point only to demonstrate that while our industry is appreciative of the incentives Congress has provided and is considering, we caution Congress against inflated hopes for an industry response. Our industry will offer E-85 once there is sufficient demand and a price competitive marketplace for it. Clearly, the incentives under consideration will hasten the attainment of that situation, but a retailer will not take action until it determines that the conditions are appropriate for an alternative fuels dispenser.

RESPONSE FOR THE RECORD OF S. WILLIAM BECKER, EXECUTIVE DIRECTOR, STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS/ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

July 17, 2006

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
2109 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Barton:

Thank you for the opportunity to testify at the June 7, 2006 hearing on the "Boutique Fuel Reduction Act of 2006. Attached is my response to the question Congressman Dingell submitted regarding the permitting status of Arizona Clean Fuels Yuma.

Please feel free to contact me if you have additional questions.

Sincerely,

S. William Becker

444 North Capitol St. N.W. Washington, D.C. 20001 Tel. (202) 624-7864 Fax (202) 624-7863

The Honorable John D. Dingell

I understand that one of your members, the Arizona Department of Environmental Quality, has recently taken action related to a major new source review permit for the proposed Arizona Clean Fuels Yuma refinery. Please provide an update on the status of air permitting for this proposed facility.

Congressman Dingell, the Arizona Department of Environmental Quality (ADEQ), one of the members of STAPPA/ALAPCO, the organization that I represent, informs me that on April 14, 2005, it issued an air quality permit authorizing the construction and operation of a green field refinery near Yuma, Arizona, to Arizona Clean Fuels Yuma, LLC. If constructed, this refinery would be the first built from the ground up in the United States in the last 30 years. This permit, which is also the first of its kind, allows for this proposed refinery to be built while protecting the environment through conditions that require the installation and operation of the best available air pollution control technology.

In March of 2006, Arizona Clean Fuels Yuma, LLC, (ACF) advised ADEQ that the company would be unable to meet the requirement in its permit (and federal and state law) to commence construction of the refinery within 18 months of issuance of the installation permit. The 18-month deadline was to expire in November 2006.

Because the company approached ADEQ prior to the expiration of the 18-month window to commence construction of the facility, ADEQ has been working closely with the company to issue a complete renewal of the air quality permit for the refinery, which would "stop the clock" on the current 18-month deadline and give ACF a completely new 18-month period to commence construction, which would begin to run when the renewal is effective.

On April 28, 2006, ACF submitted its application to renew the permit. According to ADEQ, the renewal permit has undergone a mandatory public comment period that ended on July 6, 2006. ADEQ explained that it is in the process of drafting responses to all public comments, and once the responses are completed, ADEQ will send the permit, supporting documentation, and the draft responses on to EPA Region IX for its mandatory 45-day review period as required by the Clean Air Act.

Under this schedule, ADEQ has determined that the renewed permit can be issued by mid-September, prior to the expiration of the original installation permit. ADEQ says that this would mean that under the new 18-month period in the renewed permit, ACF would have until mid-April 2008 to commence construction. This should give ACF plenty of time to resolve whatever business problems it has been experiencing.

It is important to note that ADEQ has no statutory obligation to renew ACF's permit at this time, but it is working very hard to do so. The 18-month deadline to commence construction applies to every permit issued under Title V of the Clean Air Act. The effort ADEQ is making to help ACF solve its problems by accelerating renewal of the permit to avoid having the l8-month deadline lapse is illustrative of the way ADEQ has worked with ACF from the very beginning of the permitting process to enable the company to build the refinery while meeting all air quality requirements. Any delays experienced by ACF in building its refinery in Yuma, Arizona, have been due to business problems experienced by ACF having nothing whatsoever to do with the regulatory permitting process or ADEQ.

RESPONSE FOR THE RECORD OF THE HON. KAREN A. HARBERT, ASSISTANT SECRETARY, OFFICE OF POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF ENERGY

QUESTION FROM CONGRESSMAN DINGELL

Q1 I would like to understand better what affects the price of a gallon of gasoline. If we were to compare the price of gasoline at two different gas stations in the same State on the same day, and find that a gallon of gas costs more (at the hearing, it was suggested that individual stations could vary up to $0.30) at the station in an area with a State clean fuel program than it does at the station selling conventional gasoline in an area without a State clean fuel program:

a) Assuming normal supply circumstances (e.g., no major refinery or pipeline failures or disruptions), what factors other than the State clean fuel program might account for this price difference?

b) To what extent does each of these factors contribute to the price difference?

c) If you have insufficient information to answer either of the above questions, please explain what additional information you would need to answer them.

A1 Retail gasoline prices can vary significantly between stations in the same State, or even across the street from each other, due to a variety of factors other than State clean fuel programs. These can roughly be divided into two types:

- **Factors affecting dealer cost**: these are items such as supply logistics, taxes, and various costs of operating a retail outlet. A major item is proximity to and type of supply source, such as a refinery, pipeline terminal, or bulk plant. Proximity determines the transportation cost to the dealer, and the type of supply source, as well as its position in the nationwide supply network, will help to determine the dealer's cost of the product. The type of outlet has cost implications, as stations may be owned and/or operated by refiners, jobbers, individual dealers, or any combination of these. Local taxes may be a factor, as well as property values and wages in a particular area. Finally, the volume sold by an outlet is a critical determinant of the per gallon amount needed to cover costs of operation that do not vary with sales volume. The higher the volume sold, the lower the per-gallon charge that is needed to cover such fixed costs.

- **Additional factors affecting retail price**: beyond cost factors, retail prices are affected by local market conditions, including competition and customer income levels. Competitive differences can be substantial between an area with only one or a few outlets, and one with a large number of competitors in close proximity. Geography may be a significant influence, in that consumers in remote or isolated areas may face a trade-off between higher local prices and the inconvenience of driving some distance to a lower-priced alternative. At the local level, a distance of as little as a few blocks can make a significant difference, such as between a station on a well-traveled highway with many competitors, and one in a less-popular location.

Factors other than State clean fuel programs that impact the dealer's costs could theoretically be quantified, although they would vary for each individual outlet, while differences due to competitive conditions are much less quantifiable. However, it is

important to recognize that individual sellers are free to set their prices at any level, irrespective of their underlying costs. Thus, in some cases, one retailer may charge more than another for reasons other than cost, while in other cases a retailer may be unable to fully recapture higher costs, because of competitive conditions.

QUESTION FROM CONGRESSWOMAN ESHOO

Q1. Section 1541(c) of the *Energy Policy Act* requires DOE and EPA to conduct a study of the "effects on air quality, on the number of fuel blends, on fuel availability, on fuel fungibility, and on fuel costs" of state fuel programs. EPA and DOE are required to submit the results of this study to Congress within 12 months of enactment of the *Energy Policy Act* requires (i.e. by August 8, 2006).

(a) What steps have EPA and DOE taken to complete this study?

(b) Will EPA and DOE meet the statutory deadline? If not, when will EPA and DOE provide a final study to Congress to comply with section 1541(c) of EPACT?

A1(a). EPA and DOE are in the final stages of drafting the section 1541(c) study.

A1(b). DOE and EPA have been coordinating closely as we draft the study. While we were not able to deliver the study by the EPACT-specified deadline, we anticipate that we will provide the study to Congress this Fall.

RESPONSE FOR THE RECORD OF BOB SLAUGHTER, PRESIDENT, NATIONAL PETROCHEMICAL & REFINERS ASSOCIATION

July 21, 2006

The Honorable Joe Barton
Chairman
Committee on Energy & Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Barton:

Thank you for the opportunity to appear before the Committee on Energy and Commerce at the June 7, 2006, hearing on a discussion draft of "The Boutique Fuel Reduction Act of 2006." I appreciate the continuing interest that you and your colleagues give to the nation's transportation fuel supplies. As you know, NPRA, the National Petrochemical & Refiners Association, members include more than 450 companies, including virtually all U.S. refiners and petrochemical manufacturers.

NPRA has prepared responses to questions for inclusion in the official hearing record. Please find NPRA's responses attached to this letter.

Again, I thank you for your continued interest in the critical issues surrounding transportation fuels policies. NPRA appreciates the efforts of the Committee to investigate issues of importance to the refining industry.

Sincerely,

Bob Slaughter

Attached: Responses to Chairman Joe Barton's Questions for the Record

Responses to Chairman Joe Barton

1. As reflected in the proposed Boutique Fuels List, the 7 Fuel Types recommended by the Environmental Protection Agency, it seems states often select a Reid Vapor Pressure (RVP) controlled gasoline to be approved as a SIP fuel. Is it more difficult to produce an RVP controlled gasoline versus CARB or RFG? Are the production yields from the same amount of crude oil used to produce RVP controlled gasoline versus CARB or RFG the same?

Is it more difficult to produce an RVP controlled gasoline versus CARB or RFG?

It is <u>less difficult</u> to produce an RVP controlled gasoline versus RFG which in turn is less difficult to produce than CARB.

1. **Both RFG and CARB also have RVP production limits, but the RVP limits are more stringent for RFG and CARB than for an RVP-only controlled gasoline. For example, 2005 RFG Survey Association data showed that the Region 1 RFG average RVP was 6.84 psi. CARB typically averages 6.8 psi while the lowest controlled RVP gasoline has a 7.0 psi maximum specification.**

2. **In addition, CARB and RFG have more stringent limits on benzene, aromatics and olefins than RVP controlled gasoline; this fact also increases CARB and RFG production cost relative to lower RVP gasoline.**

3. **Finally, CARB gasoline has NOx and VOC emission limits, which translate into more stringent distillation limits; these require exclusion of the back end of reformate and FCC gasoline, further increasing CARB's cost and reducing the volume produced.**

Are the production yields from the same amount of crude oil used to produce RVP controlled gasoline versus CARB or RFG the same?

The volume yield of RVP controlled gasoline is higher than for RFG which in turn is higher than for CARB.

1. **The lower RVP limit for CARB and RFG compared to RVP controlled gasoline results in reduced blending of butanes and pentanes in the summer and lower gasoline volumes produced.**

2. **In addition, CARB and RFG's more stringent benzene, aromatics and olefin limits further reduce their gasoline yield compared to RVP controlled gasoline.**

3. **Finally, the exclusion of back-end reformate and FCC gasoline from CARB reduces its volume yield even further.**

RESPONSE FOR THE RECORD OF BOB DINNEEN, PRESIDENT AND CEO, RENEWABLE FUELS ASSOCIATION

July 24, 2006

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Barton and Ranking Member Dingell:

The Renewable Fuels Association (RFA) appreciates the opportunity to respond to follow up questions from the June 7, 2006 hearing on the discussion draft of the Boutique Fuel Reduction Act of 2006.

As I stated in my testimony before the Committee, the use of ethanol does not create a "boutique fuel." Boutique fuels stem from state fuel programs approved by EPA under a state implementation plan that are part of the state's air quality program. Boutique fuels can reduce gasoline fungibility because their fuel specifications differ from federal standards. Blending of gasoline with ethanol requires no unique gasoline blend from refiners and does not add to the complexity of the fuel distribution system.

Attached please find RFA's responses to questions from Members of the Committee. If there is any additional information you would like RFA to provide, please do not hesitate to ask.

Sincerely,

Bob Dinneen
President

Questions from Chairman Barton

1. **You point to the fact that several state biofuels programs would not become effective until there is meaningful biofuels production in the state. If Congress were to seek a uniform model for implementation of state biofuels programs, what elements in your opinion should the model include?**

   The RFA has not advocated state biofuels mandates because of the potential of such efforts to undermine the flexibility of the national renewable fuels standard. Nevertheless, as I stated in my testimony, not all state biofuels programs rely upon mandates. Iowa enacted legislation this spring that relies upon tax incentives to motivate gasoline marketers to install infrastructure and increase the production and use of biofuels. The combination of production, infrastructure, retail and promotion tax incentives will not only decrease Iowa's use of fossil fuels, it will provide flexibility to refiners and blenders, as well as stimulate the state's economy and reduce gasoline prices for consumers.

2. **Various stakeholders recommended that the discussion draft include a study of the supply, distribution and air quality impacts of state biofuels mandates. As you expressed, you are sympathetic to the undermining of the flexibility intrinsic to the Renewable Fuels Standard by the proliferation of state biofuels programs, would you support such a study?**

   RFA would support a study of the supply, distribution and air quality impacts of state biofuels programs, if it was completed as part of a comprehensive effort to analyze the impacts of all fuel marketing and refinery decisions affecting boutique fuels.

Question from Ranking Member Dingell

1. **In the hearing, when asked whether ethanol plants were subject to the same permitting requirements as oil refineries, you stated that ethanol refineries are subject to stringent air quality standards and permitting. I would like to explore the comparison of regulatory requirements a bit further.**

   a) **I understand that the Environmental Protection Agency (EPA) has proposed to change the permitting requirements for ethanol refineries. Am I correct that, currently, ethanol refineries producing ethanol for fuel that emit more than 100 tons per year of any criteria pollutant trigger the major new source review process in attainment areas and that oil refineries are subject to the same threshold? Does the Renewable Fuels Association (RFA) support EPA's proposal to raise the threshold to 250 tons per year for ethanol refineries producing ethanol for fuel? Why or why not?**

   The first part of your question appears to relate to permit requirements under the prevention of significant deterioration (PSD) program known as new source review, and EPA's recent proposed rule of March 9, 2006 published at 71 Fed. Reg. 12,240. Under section 169 of the Clean Air Act, 42 U.S.C. § 7479, whether a facility is a "major emitting facility" subject to new source review depends on whether it is a stationary source in one of 28 listed industry categories and, if so, whether the facility emits 100 tons per year (tpy) of one or more criteria pollutants. Other

industry sources are major emitting facilities subject to new source review if they emit 250 tpy. Petroleum refineries are among the industry categories expressly listed under section 169 as subject to the 100 tpy threshold.

In the March 2006 proposal, EPA proposed to exclude dry and wet corn mills from the definition of "chemical process plants" for purposes of the PSD program. "Chemical process plants" is another industry source category subject to the 100 tpy threshold. Certain dry and wet corn mills that produce ethanol for industrial uses have been included in the definition of "chemical process plants" based on the Standard Industrial Classification (SIC) code of the facility, relying on EPA guidance defining "chemical process plants." Other corn mills that involve virtually the same production processes have not been treated as chemical process plants because they are listed under a separate SIC code.

RFA supports EPA's proposal to revise its guidance and move away from the SIC code to define chemical process plants for corn mills because (a) it is consistent with Congressional intent as supported by legislative history, (b) it harmonizes the treatment of corn mills under the PSD program, (c) it furthers the Congressional purposes of the Energy Policy Act of 2005 and promotes energy security, and (d) it does not compromise air quality. RFA submitted detailed comments on the proposal to EPA, which are available in EPA's docket at http:www.regulations.gov (Docket EPA-HQ-OAR-2006-0089, Document 0086-0086.18). A copy can be provided upon request.

b) I understand that most industrial sources are subject to New Source Performance Standards that set emission limits for new plants, and that the threshold for most of these limits is approximately 100 tons per year. I also understand that EPA has not adopted a New Source Performance Standard for ethanol plants. Is my understanding correct? Does RFA support establishment of a New Source Performance Standard for ethanol plants? Why or why not?

We would like to make two corrections to the underlying premises of the question. First, New Source Performance Standards (NSPS) under Section 111 of the Clean Air Act are not limited to "major emitting facilities," and do not have an emissions threshold that triggers the requirements. 42 U.S.C. § 7411. Each NSPS promulgated by EPA identifies the types of facilities (*e.g.*, in terms of size and type of process) to which the standard applies. Any new or modified sources constructed after a NSPS is promulgated are subject to that standard. Typically the applicability criteria for NSPS are not emissions-based, *i.e.*, not based on the tons per year of pollutant emitted. Instead, EPA develops criteria for each source category, *e.g.*, the volume of a storage tank, the rating of a boiler, the flow rate of a process. EPA has promulgated nearly 75 NSPS, with a variety of applicability criteria tailored to the source category in question.

Second, you ask if your understanding that EPA has not adopted a New Source Performance Standard for ethanol plants is correct. In fact, there *are* several NSPS applicable to ethanol plants. These include those found at 40 C.F.R. Part 60, Subparts Db and Dc (Boilers/Steam generating units); 40 C.F.R. Part 60, Subpart DD (Grain handling and storage facilities); 40 C.F.R. Part 60, Subpart VV (Leaks from VOC equipment); and 40 C.F.R. Part 60, Subparts K, Ka, Kb (storage tanks).

Due to the NSPS already applicable, as well as other federal and state requirements, ethanol plants are largely already utilizing state-of-the-art emissions control technology. Still, the RFA would be open to a dialogue on this issue if others believe additional NSPS are necessary.

RESPONSE FOR THE RECORD OF ROBERT J. MEYERS, ASSOCIATE ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

The Honorable Joe Barton

1. **As you mentioned in your testimony, Congress provided in the Energy Policy Act of 2005 for waivers of federal and state fuel and fuel additive requirements under Section 211(c)(4)(C). Do the States remain responsible for those potential increased emissions that may occur during the waiver period? Is a waiver granted on the federal level sufficient to preempt liability on the part of the State for potential increased emissions?**

The Agency has recently been investigating what authority may be available to address this issue. It is still under consideration and no conclusion has been reached. The Agency is not aware of any instances where an exceedance of the NAAQS has occurred due to the granting of a waiver. Waivers are usually granted for a short period of time.

2. **If the Committee were to draft a bill in such a manner as to satisfy the goal of permitting boutique fuels to reduce through "attrition" how long might it take to get down to just 3? In EPA's opinion would each of the 3 aid in attaining the National Ambient Air Quality Standards (NAAQS) and benefit supply and fungibility?**

In addressing this question, we assume that "attrition" refers to the possible reduction in the number of boutique fuels through the conditions contained in current law; that is through removal of a fuel from the boutique fuels list under section 211(c)(4)(C)(v)(III) when a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation.

EPA faces a number of difficulties in attempting to predict when these circumstances would occur. To date, no fuel has ceased to be included in a State Implementation Plan. In addition, EPA has not proposed any rulemaking which would have the effect of making any approved state boutique fuel identical to a Federal fuel formulation. Therefore, EPA is not aware of current circumstances which would allow for the "attrition" of boutique fuels

With respect to the level of 3 fuels contained in your question and the possible effect of this number of fuels, EPA publication of a boutique fuels list for comment offered a preferred interpretation of statutory language which would specify that there are a total of 7 fuel types that were approved by the Agency pursuant to section 211(c)(4)(C) that were in existence as of September 1, 2004. Since the Agency cannot offer a prediction based on empirical evidence as to when the number of fuel types might, through attrition, be reduced to 3 fuels, it cannot offer an analysis of their benefit in attaining the NAAQS or benefiting fuel supply or fungibility. The original approval of state boutique fuels occurred pursuant to Clean Air Act provisions which required a determination that approval of the fuel was necessary for attaining a NAAQS.

3. **Does the original language in Section 211(c)(4)(C) or as amended by the Energy Policy Act of 2005 require the Environmental Protection Agency or the Department of Energy to take into account fuel supply and fungibility when approving a boutique fuel? Does the language in the discussion draft require such a consideration?**

Section 211(c)(4)(C), prior to amendment by the Energy Policy Act of 2005 (EPAct) allowed the administrator of EPA to approve a state-prescribed fuel control or prohibition

as part of a State Implementation Plan if the Administrator found that the control or prohibition was necessary to achieve a national ambient air quality standard (NAAQS). The Administrator was allowed to make this finding if no other practicable and reasonable measures were available to bring about attainment of the NAAQS. Section 211 (c)(4), prior to amendment, did not affirmatively require either that EPA consult with DOE or make a finding on fuel supply and fungibility with respect to the approval of a state-prescribed fuel.

Section 211(c)(4)(C), as amended by EPAct, placed several constraints and conditions with respect to future approval by EPA of state-prescribed ("boutique") fuels. As indicated during the hearing. EPAct requires EPA to publish a list of boutique fuels that were approved under section 211 (c)(4) prior to September 1, 2004. The statute then provides that the Administrator may approve a "new fuel" subject to certain conditions. One of the conditions provided is that, after consultation with the DOE, a finding is made that a boutique fuel "would not cause fuels supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas."

As I indicated in testimony before the committee, other provisions contained in the amendments to section 211(c)(4)(C) made by EPAct prevent the Administrator of EPA from approving any "new" boutique fuel unless that fuel is – at the time a request for approval is considered – already in existence in the Petroleum Administration for Defense District (PADD) where the state requesting such fuel is located. This provision as outlined in our notice regarding the boutique fuels list and its interpretation regarding "fuel Types", effectively acts to prevent EPA from approving any fuel which did not already exist in a PADD as a September 1, 2004 (with a separate statutory exception being made for a fuel with a summertime Reid Vapor Pressure of 7.0 psi). Since the statute requires DOE consultation as to fuel supply and distribution effects only with respect to the situation where approval is sought with respect to a 7.0 RVP boutiques fuel (if in the future 7.0 RVP were to become a "new fuel"), the statute does not require EPA to consult with DOE or consider supply and fungibility for new programs where the state request is with respect to a fuel that is contained on the list of approval fuels.

The statutory language of the discussion draft amends EPAct revisions to section 211(c)(4)(C) in several respects. With respect to the consideration of fuel supply and distribution in connection with the approval of a "new" boutique fuel that is not contained on the boutique fuels list required by EPAct, the discussion draft, similar to current EPAct provisions, would not require a consultation with DOE or consideration of fuel supply and fungibility. It should be noted that the discussion draft also explicitly provides for a reduction in the number of boutique fuels contained in the boutique fuels list when such a fuel ceases to be contained in a state SIP or becomes identical to a federal fuel control.

The discussion draft, however, provides for the replacement of the boutiques fuel list with an "Approvable State Fuels List" 18 months after enactment. Section 3(b) of the discussion draft then provides that the Administrator, in making determinations to include a fuel on the approvable fuels list, shall consider an analysis by DOE as to "whether the adoption of the fuel as part of the Approvable State Fuels List will result in an adverse impact on fuel supply or producibility, or in a significant disruption of the fuel distribution system." While the discussion draft grants a statutory preference to RVP – controlled fuels that are contained on the boutique fuels list established pursuant to EPAct, the draft requires the determination outlined above with respect to the inclusion of any fuel on the new "Approved State Fuels List."

The Honorable John D. Dingell

1. **I would like to understand better what affects the price of a gallon of gasoline. If we were to compare the price of gasoline at two different gas stations in the same State on the same day, and find that a gallon of gas costs more (at the hearing, it was suggested that individual stations could vary up to $0.30) at the station in an area with a State clean fuel program than it does at the station selling conventional gasoline in an area without a State clean fuel program:**

   a. **Assuming normal supply circumstances (e.g., no major refinery or pipeline failures or disruptions), what factors other than the State clean fuel program might account for this price difference?**

EPA analyzes the production costs of meeting clean air related fuel requirements. For example, EPA has estimated that the production costs associated with low Reid Vapor Pressure (RVP) gasoline are between 0.3 cents/gallon and that the production costs associated with the federal Reformulated Gasoline (RFG) program range from 4 to 8 cents/gallon. The Agency does not track or analyze prices and factors that influence the price of motor fuels. Instead, the Energy Information Agency (EIA) plays a leading role in this regard and provides detailed information on the Agency's website.

It is generally recognized that there are a variety of factors that affect the price of gasoline apart from direct production costs, including crude oil prices, state and local taxes, regional market conditions, etc. EPA does not attempt to perform independent calculations of such factors whether with respect to conventional gasoline programs or "clean fuel" programs.

   b. **To what extent does each of these factors contribute to the price difference?**

According to the Energy Information Agency's July 2006 Gasoline and Diesel Fuel Update, at $2.98 per gallon of gasoline, crude oil costs make up about 52% of the "cost" of refined regular grade gasoline. Federal and state taxes make up approximately 15%, refining costs make up approximately 26%, with distribution and marketing making up the remaining 6%.

The Honorable Anna G. Eshoo

1. **The Energy Policy Act required EPA to publish with 90 days of enactment a list of the boutique fuels that were being utilized as of September 1, 2004. (Once finalized, no state will be able to adopt a clean fuel that is not on this list.) After approximately 300 days of delay, EPA, on June 1, 2006, published a proposed list of fuels opening a 60-day public comment period. Now that a proposed list of boutique fuels has been published, when will EPA publish the final list required under the Act?**

The comment period for the list closed August 7, 2006. We will publish a final list as expeditiously as possible. We will carefully consider all comments, and we expect that such a list will be published within one to three months after close of the comment period.

2. **The Energy Policy Act gave EPA authority to issue waivers of fuel requirements in unforeseeable or unpreventable emergency circumstances.**

EPA has testified that authority was used 30 times in the aftermath of Hurricanes Katrina and Rita. Congress directed EPA, within 180 days of enactment (i.e., by February 2006) to issue regulations governing this waiver authority. EPA has not yet proposed, much less finalized those regulations. When will EPA comply with this obligation?

EPA is actively implementing a number of different requirements contained in the Energy Policy Act of 2005 (EPAct). These efforts involve a number of complex and technical undertakings, including requirements to provide for the implementation of a Renewable Fuel Standard (RFS) applicable to gasoline sold and distributed in the continental United States.

As you note in your question, EPA has already granted waivers under the authority of section 1541 of EPAct in an expeditious manner in order to address emergency situations following Hurricanes Katrina and Rita. The EPA granted such waivers after a review of the factual circumstances underlying the waiver request and in compliance with the statutory provisions of section 1541respecting the determinations to be made by the Administrator. We are considering how best to address the section 1541(a) requirements and have not yet established a schedule for regulatory action.

3. **Section 1541 (c) of the Energy Policy Act requires EPA and DOE to conduct a study of "the effects on air quality, on the number of fuel blends, on fuel availability, on fuel fungibility, and on fuel costs" of state fuel programs. EPA and DOE are required to submit the results of this study to Congress within 12 months of enactment of the Energy Policy Act (i.e., by August 8, 2006).**

   a. **What steps have EPA and DOE taken to complete this study?**

   EPA and DOE are in the final stages of drafting the section 1541(c) study.

   b. **Will EPA and DOE meet the statutory deadline? If not, when will EPA and DOE provide a final study to Congress to comply with section 1541 (c) of EPACT?**

EPA and DOE coordinated closely with respect to this legislative provision and are in the midst of drafting the study. We anticipate that we will be able to provide a final study to Congress in the fall.

○