THE AMERICAN ENERGY INITIATIVE, PART 7: DISCUSSION DRAFT OF H.R. _____, THE JOBS AND ENERGY PERMITTING ACT OF 2011

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MAY 13, 2011

Serial No. 112–47

Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

70–929 PDF WASHINGTON : 2012

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) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND COMMERCE

FRED UPTON, Michigan
Chairman

JOE BARTON, Texas
Chairman Emeritus
CLIFF STEARNS, Florida
ED WHITFIELD, Kentucky
JOHN SHIMKUS, Illinois
JOSEPH R. PITTS, Pennsylvania
MARY BONO MACK, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
MIKE ROGERS, Michigan
SUE WILKINS MYRICK, North Carolina
Vice Chairman
JOHN SULLIVAN, Oklahoma
TIM MURPHY, Pennsylvania
MICHAEL C. BURGESS, Texas
MARSHA BLACKBURN, Tennessee
BRIAN P. BILBRAY, California
CHARLES F. BASS, New Hampshire
PHIL GINGREY, Georgia
STEVE SCALISE, Louisiana
ROBERT E. LATTA, Ohio
CATHY MCMORRIS RODGERS, Washington
GREGG HARPER, Mississippi
LEONARD LANCE, New Jersey
BILL CASSIDY, Louisiana
BRETT GUTHRIE, Kentucky
PETE OLSON, Texas
DAVID B. MCKINLEY, West Virginia
CORY GARDNER, Colorado
MIKE POMPEO, Kansas
ADAM KINZINGER, Illinois
H. MORGAN GRIFFITH, Virginia

HENRY A. WAXMAN, California
Ranking Member
JOHN D. DINGELL, Michigan
EDWARD J. MARKEY, Massachusetts
EDOLPHUS TOWNS, New York
FRANK PALLONE, JR., New Jersey
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
ELIOT L. ENGEL, New York
GENE GREEN, Texas
DIANA DEGETTE, Colorado
LOIS CAPPS, California
MICHAEL F. DOYLE, Pennsylvania
JANICE D. SCHAKOWSKY, Illinois
CHARLES A. GONZALEZ, Texas
JAY INSLEE, Washington
TAMMY BALDWIN, Wisconsin
MIKE ROSS, Arkansas
ANTHONY D. WEINER, New York
JIM MATHESON, Utah
G.K. BUTTERFIELD, North Carolina
JOHN BARROW, Georgia
DORIS O. MATSUI, California
DONNA M. CHRISTENSEN, Virgin Islands

SUBCOMMITTEE ON ENERGY AND POWER

ED WHITFIELD, Kentucky
Chairman

JOHN SULLIVAN, Oklahoma
Vice Chairman
JOHN SHIMKUS, Illinois
GREG WALDEN, Oregon
LEE TERRY, Nebraska
MICHAEL C. BURGESS, Texas
BRIAN P. BILBRAY, California
STEVE SCALISE, Louisiana
CATHY MCMORRIS RODGERS, Washington
PETE OLSON, Texas
DAVID B. MCKINLEY, West Virginia
CORY GARDNER, Colorado
MIKE POMPEO, Kansas
H. MORGAN GRIFFITH, Virginia
JOE BARTON, Texas
FRED UPTON, Michigan (ex officio)

BOBBY L. RUSH, Illinois
Ranking Member

JAY INSLEE, Washington
JIM MATHESON, Utah
JOHN D. DINGELL, Michigan
EDWARD J. MARKEY, Massachusetts
ELIOT L. ENGEL, New York
GENE GREEN, Texas
LOIS CAPPS, California
MICHAEL F. DOYLE, Pennsylvania
CHARLES A. GONZALEZ, Texas
HENRY A. WAXMAN, California (ex officio)

CONTENTS

WITNESSES

SUBMITTED MATERIAL

THE AMERICAN ENERGY INITIATIVE, PART 7: DISCUSSION DRAFT OF H.R. ———, THE JOBS AND ENERGY PERMITTING ACT OF 2011

FRIDAY, MAY 13, 2011

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

The subcommittee met, pursuant to call, at 9:00 a.m., in room 2322, Rayburn House Office Building, the Honorable John Sullivan presiding.

Present: Representatives Sullivan, Shimkus, Terry, Burgess, Gardner, Olson, McKinley, Rush, Inslee, Green, Capps, and Waxman.

Staff Present: Charlotte Baker, Press Secretary; Anita Bradley, Sr. Policy Advisor to Chairman Emeritus; Maryam Brown, Chief Counsel, Energy and Power; Garrett Golding, Leg. Analyst, Energy; Cory Hicks, Policy Coordinator, Energy & Power; Ben Lieberman, Counsel, Energy & Power; Andrew Powaleny, Press Assistant; Lyn Walker, Coordinator, Admin/Human Resources; Alex Yergin, Legislative Clerk; Alison Cassady, Minority Senior Professional Staff Member; Greg Dotson, Minority Energy and Environment Staff Director; Caitlin Haberman, Minority Policy Analyst; and Alexandra Teitz, Minority Senior Counsel, Environment and Energy.

Mr. SULLIVAN. The committee will come to order. I recognize myself for an opening statement for 5 minutes.

Today's hearing is the seventh in a series of our American Energy Initiative. It is also the second hearing in which we will examine a discussion draft entitled The Jobs and Energy Permitting Act of 2012, which has been authored by our colleague, Mr. Gardner of Colorado.

[The discussion draft follows:]

[DISCUSSION DRAFT]

112TH CONGRESS
1ST SESSION

H. R. _____

To amend the Clean Air Act regarding air pollution from Outer Continental Shelf activities.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Clean Air Act regarding air pollution from Outer Continental Shelf activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Jobs and Energy Permitting Act of 2011".

SEC. 2. AIR QUALITY MEASUREMENT.

Section 328(a)(1) of the Clean Air Act (42 U.S.C. 7627(a)(1)) is amended by inserting before the period at the end of the second sentence the following: ", except that

any air quality impact of any OCS source shall be measured and determined solely with respect to the impacts at an onshore location in the corresponding onshore area".

SEC. 3. OCS SOURCE.

Section 328(a)(4)(C) of the Clean Air Act (42 U.S.C. 7627(a)(4)(C)) is amended in the matter following clause (iii) by striking "shall be considered direct emissions from the OCS source" and inserting "shall be considered direct emissions from the OCS source but shall not be subject to any emission control requirement applicable to the source under subpart 1 of part C of title I of this Act. For platform and drill ship exploration, an OCS source is established at the point in time when drilling activity commences at a location and ceases to exist when drilling activity ends at such location.".

SEC. 4. PERMIT APPLICATION.

Section 328 of the Clean Air Act (42 U.S.C. 7627) is amended by adding at the end thereof the following:

"(d) PERMIT APPLICATION.—In the case of a completed application for a permit under this Act for an OCS source—

"(1) final agency action shall be taken not later than 6 months after the date of filing such completed application;

"(2) such final agency action shall be considered to be nationally applicable under section 307(b); and

"(3) judicial review of such final agency action shall be available only in accordance with such section 307(b) without additional administrative review or adjudication, except for a petition for reconsideration filed by the applicant pursuant to section 307(d)(7)(B).".

OPENING STATEMENT OF HON. JOHN SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SULLIVAN. Our first hearing on the discussion draft enabled the committee to receive testimony from the entire Alaskan congressional delegation, citizens, and State officials in Alaska, two clean air experts, and a University of Alaska economist. In that first hearing we were unable to secure a witness from the U.S. Environmental Protection Agency, but today we have an Assistant Administrator, Gina McCarthy, from the Office of Air and Radiation, as well as other State government officials with unique perspectives on the draft legislation. We are glad to host these witnesses and look forward to the discussion.

While our witness panel today is different from the one on April 13th, the facts in Alaska remain the same as they were 4 weeks ago. Up to 27 billion barrels of oil and 122 trillion cubic feet of natural gas are estimated to reside in Alaska's offshore fields. Beginning in 2005, the Federal Government initiated lease sales in an attempt to get this oil and natural gas to the U.S. consumers, but instead exploration companies have yet to drill a single hole in the Beaufort and the Chukchi Seas—I never can say that—after EPA's regulatory roadblocks have delayed any activity for nearly 5 years.

This is an unprecedented process for drilling in America's coastal waters. Many permits in the Gulf of Mexico are issued in a matter of weeks and at most a matter of months. No bureaucratic delays in the Federal Government concerning offshore drilling come anywhere close to the 5 years drilling companies have experienced with the EPA. Indeed, this process is slower than anywhere else in the world, and it is negatively impacting our energy security.

The seemingly endless jungle of red tape created by the Environmental Appeals Board would almost be funny if it weren't so sad. With gasoline prices mounting another destructive attack on the American economy, unrest in the Middle East and North Africa reminding us how vulnerable we are to supply shocks, and declining throughput in the Trans Alaska Pipeline System posing a threat to pipeline safety and the Alaska economy, one would think getting Arctic production online would be an imperative for the U.S. Government.

On that last point, every one of the witnesses at our last hearing agreed the shutdown of the TAPS would be disastrous to the State of Alaska and the U.S. energy security. I simply do not see how we can prevent such an event from taking place if we do not open new areas of production in the Alaskan North Slope.

The discussion draft circulated by Mr. Gardner is a commonsense modification to the Clean Air Act that will right the ship at the EPA so new American sources of energy will come on line in an environmentally responsible manner. It will end the unnecessary bureaucratic quagmire and ensure communities on the Alaskan North Slope will be protected from air pollution associated with offshore drilling.

With that, I yield the balance of my time to Mr. Gardner to speak further on the draft legislation.

Mr. Gardner.

[The prepared statement of Mr. Sullivan follows:]

PREPARED STATEMENT OF HON. JOHN SULLIVAN

• Today's hearing is the seventh in our series on the American Energy Initiative. It is also the second hearing in which we will examine a discussion draft entitled the "Jobs and Energy Permitting Act of 2011", which has been authored by our colleague Mr. Gardner of Colorado.

• Our first hearing on the discussion draft enabled the committee to receive testimony from the entire Alaskan congressional delegation, citizens and state officials in Alaska, two Clean Air Act experts, and a University of Alaska economist. In that first hearing, we were unable to secure a witness from the U.S. Environmental Protection Agency. But today, we have Assistant Administrator Gina McCarthy from the Office of Air and Radiation as well as other state government officials with unique perspectives on the draft legislation. We are glad to host these witnesses and look forward to the discussion.

• While our witness panel today is different from the one on April 13, the facts in Alaska remain the same as they were 4 weeks ago. Up to 27 billion barrels of oil and 122 trillion cubic feet of natural gas are estimated to reside in Alaska's offshore fields. Beginning in 2005, the federal government initiated lease sales in an attempt to get this oil and natural gas to U.S. consumers. But instead, exploration companies have yet to drill a single hole in the Beaufort and Chukchi Seas after EPA's regulatory roadblocks have delayed any activity for nearly 5 years.

• This is an unprecedented process for drilling in America's coastal waters. Many permits in the Gulf of Mexico are issued in a matter of weeks, and at most, a matter of months. No bureaucratic delays in the federal government concerning offshore drilling come anywhere close to the 5 years drilling companies have experienced with the EPA. Indeed, this process is slower than anywhere else in the world, and it is negatively impacting our energy security.

• The seemingly endless jungle of red tape created by the Environmental Appeals Board would almost be funny if it weren't so sad. With gasoline prices mounting another destructive attack on the American economy, unrest in the Middle East and North Africa reminding us how vulnerable the we are to supply shocks, and declining throughput in the Trans-Alaska Pipeline System (TAPS) posing a threat to pipeline safety and the Alaskan economy, one would think getting Arctic production online would be an imperative for the U.S. government.

• On that last point, every one of the witnesses at our last hearing agreed the shutdown of TAPS would be disastrous for the State of Alaska and U.S. energy security. I simply do not see how we can prevent such an event from taking place if we do not open up new areas of production on the Alaskan North Slope.

• The discussion draft circulated by Mr. Gardner is a common-sense modification to the Clean Air Act that will right the ship at EPA so new American sources of energy will come online in an environmentally-responsible manner. It will end the unnecessary bureaucratic quagmire and ensure communities on the Alaskan North Slope will be protected from air pollution associated with offshore drilling.

• With that, I yield the balance of my time to Mr. Gardner to speak further on his draft legislation.

OPENING STATEMENT OF HON. CORY GARDNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. GARDNER. Thank you, Mr. Chairman, for holding this hearing today, and to Administrator McCarthy for being here, and the witnesses, thank you very much for your time.

I think everyone in this room can agree that we have got to do something about high gas prices, and that is a big part of what this hearing and the American Energy Initiative is about, along with energy security and ensuring that the American economy can withstand turmoil in the Middle East and any potential disruption to our oil supply from abroad. We can all agree we want to do that. Even the President has said he wants to achieve energy security and do something about gas prices.

What I don't understand is the lack of action being taken by the administration on something that is so important to the American

people and so vital to the strength of our economy in general, and that is part of the reason I plan to introduce the Jobs and Energy Permitting Act of 2011.

This bill doesn't relate just to Alaska. It has to do with every American who is forced to suffer through pain at the pump. Exploration in Alaska will generate Federal revenue and create tens of thousands of jobs for the rest of the country, while lowering gas prices at the same time.

The President recently said there is no silver bullet that can bring down gas prices right away, and I would agree with him. However, I do not believe that the administration is using all the tools it has at its disposal to even begin to reduce the amount we are paying right now.

My bill, however, would take a major first step in doing so. It would end the practice of stalling air permits from being administered after the EPA has approved them. That is exactly what has happened. In the case of the Shell permit we are all discussing, the EPA administered the permit and then got caught up in a mess of reviews and appeals; and 5 years later they still aren't grilling off the coast of Alaska.

We moved the permitting process along with removing the ability of the Environmental Appeals Board to hold up air permits for offshore OCS rigs. It is absolutely astonishing that the Department of Interior can issue a permit in less than a month in many cases, while the process in Alaska can take years simply because of this one unelected board, a board with no parallel at the Department of Interior.

We have got to act now to help relieve the pain at the pump, and I hope we can move forward on this legislation. Delay is inexcusable.

Thank you, Mr. Chairman.

Mr. SULLIVAN. Thank you.

And now I would like to recognize the ranking member, the gentleman from Illinois, Mr. Rush, for 5 minutes.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Thank you, Mr. Chairman, and thank you all the witnesses for being present here today.

Mr. Chairman, today marks the second hearing on the so-called Jobs and Energy Permitting Act of 2011 which would amend Section 328 of the Clean Air Act that addresses air pollution from Outer Continental Shelf, OCS, drilling activities.

Fortunately, Mr. Chairman, in today's hearing we will hear from the EPA directly to clear up any misunderstanding or confusion on the current permitting process and also to hear how this bill would affect that process if it were to become law. The staffs of the majority and minority have been meaning to try to work out a bipartisan compromise on this bill, and I hold out hope that we will be able to move forward in a collaborative way.

I have said on several occasions that I am not opposed to streamlining the permitting process, provided that we allow for appropriate community input and we do not weaken the air quality controls that the licensing process was implemented to correct.

One of my main concerns with this bill is the impact of eliminating the local administrative appeals process and moving the entire appellate process all the way here to Washington, DC I find it particularly worrisome that this bill would eliminate the right of administrative appeals for everyone except the drilling company. It seems to me that forcing State and local stakeholders to travel all the way to the U.S. Court of Appeals here in Washington in order to air their grievances will provide an unreasonable burden on less-affluent communities and stakeholders.

I am also eager to hear from the EPA on a provision in the bill that will allow the drilling companies to look only at how the drilling would affect our air quality on shore, ignoring any potential impacts to air quality between the drilling rig and the shoreline.

Additionally, I have some concerns over exempting support investments from a VAC team back and permission of significant deterioration of PSD permitting requirements and the effect this may have on local air quality. I look forward to hearing from these witnesses on the impact these provisions may have on air quality standards.

While I understand that my colleagues on the other side of the aisle want to help Shell begin drilling in Alaska's Beaufort and Chukchi Sea regions, it is important that we do not enact legislation that will have significant consequences in the lower 48, whether intended or unintended. And, right now, as the bill is drafted, there are still significant concerns on this side of the aisle, and this bill will do exactly that. In fact, I read that Shell representatives met with the Obama administration officials earlier this week, and they were ensured that they will receive the necessary permits to begin exploration in Alaska fairly soon. So hopefully this issue can be settled without an act of Congress intervening on behalf of a single corporation, and I look forward to hearing from our witnesses and our experts on this important issue.

And, with that, I yield back the balance of my time.

Mr. SULLIVAN. Thank you, sir.

I now recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman.

Assistant Administrator, welcome. We spent time on the phone with Congressman Costello, Congressman Whitfield, and myself on the Prairie State Campus.

It is good to see Laura back there, hiding in the back. We miss seeing her up here, but hopefully you are putting her to good use.

A couple of things. I want to submit for the record this article that came out May 9th. I know my ranking member, Mr. Rush, always teases me about the coal miner poster that I put up all the time.

Well, this is a good story: Coal Plant to Hire 200 More Workers. And, actually, the first paragraph says, about half of the 300 miners and coal miner operators who have been hired at the Prairie State Energy Campus in rural Washington County are at work in

the new mine and another 200 employees will be hired to operate the new power plant and corporate offices.

So I want to submit that for the record.

That goes into the discussion that we have had before. Prairie State has a 1,600 megawatts supercritical new power plant. It is about 75 percent completed. It was moved based upon the premise of under care. Because of the court case, we are moving to the transport rule. And we have had some positive discussions. They are not completed, and I appreciate that effort that we are doing to try to get some clarity.

But the real concern is there is not going to be enough credit under the transport rule, where this 1,600 megawatt new power plant, which is I think where everybody wants to go, newer technology, cleaner technology—I am not a climate change guy, but I am the toxic emission side of the air. And this is by far, unless you talk about gasification, the direction we want—this is what we want to incentivize. Our calculations say that, because of it, they may be only able to turn the plant on about 30 percent, if the credits that we think will get passed on to the power plant gets passed on.

Obviously, this is a public power plant. It is not an evil, corporate, for-profit entity. It has got local municipalities, local regional power companies, municipalities, counties, and the like. So I hope we can continue to have those discussions and conversations, especially with the stakeholders. And those stakeholders also consist of, of course, members of organized labor who are helping to build this new power plant.

So, with that, I also am very supportive of us moving forward in a timely manner to give certainty to people who are investing a lot of capital to get a decision of whether we can move forward on more oil and gas exploration recovery. So thank you for appearing.

I would like to yield the remainder of my time to my colleague from Texas, Mr. Burgess.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. I thank the gentleman for yielding.

Administrator McCarthy, again, welcome back to our committee. I am way over here on the far right. As far to the right from Mr. Waxman as I can get.

I want to thank you for coming back to our committee, and I know we have had several discussions and may even bring up some of the things that we have discussed in the past.

But this morning we are focused on the fact that our Nation's path to energy security appears to be veering grossly off track, and that appears to have occurred over the last 2 years. This administration has done everything, literally everything in its power to hamper the growth of the energy sector of our economy, preventing domestic production of thousands of resources literally underneath our feet.

Under the guise of safety, the Department of Interior, along with the EPA's blessing, has slow-walked permitting for thousands of sites on Federal lands and offshore that could, could, put us on the path to lowering our dependence on foreign oil.

Although much of America's attention has been focused on the Gulf of Mexico recently, the Arctic region has seen a severe hindrance to permits to drill in areas where the water depth can be as shallow as 150 feet, nowhere close to the 5,000 foot depth where the deepwater drilling incident occurred in the Gulf. Yet these permits off the Alaska coast are being held up because of the events taking place at deepwater sites. In areas of the globe with only a handful of people, the EPA is holding up permits due to so-called human health risks.

These are dangerous and costly delay tactics, and they must stop. We know this country has an untold amount of natural resources but for bureaucratic red tape we could be producing.

This subcommittee has already heard testimony that oil and gas jobs pay more and are longer lasting than the so-called green jobs, which are temporary. This administration is preventing people from getting back to work producing domestic energy.

I look forward to hearing the testimony of all of our witnesses today, and I certainly look forward to producing legislation that will help us move this permitting process forward and allow companies to begin hiring Americans and producing American energy from American resources.

I yield back, Mr. Chairman.

Mr. SULLIVAN. Thank you, Mr. Burgess.

And I recognize now the gentleman from California, Ranking Member Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman.

I want to begin by thanking you for holding today's hearing. We held a hearing last month on how air quality permits are issued for oil and gas activities on the Outer Continental Shelf. Today's hearing will let us hear from EPA and State officials—thepeople who administer the current air quality protections—about this issue.

These are the air quality experts who carry out the Clean Air Act and would have to implement any changes we make. Their views are critical to informed decision making, and I hope we listen closely to their advice.

In our first hearing we heard testimony from Shell Oil about the problems they encountered obtaining an air permit in Alaska. I agree with our chairman that the permitting process in Alaska has taken too long and that appropriate clarifications in the Clean Air Act could be helpful.

It is important to recognize, however, that Shell's experience in Alaska doesn't reflect the vast majority of OCS permitting experience. California has been successfully carrying out its program for almost 20 years, and the California process is not broken.

My concern is that, while the draft bill that the subcommittee is considering may help fix some problems in Alaska, it is not an appropriate solution for California, and some provisions would have harmful effects on the whole program. According to the testimony we will hear today, the current draft bill would undermine Califor-

nia's air quality protections and actually make it harder for California to issue defensible permits and impose substantial cost burdens on the State.

That makes no sense. I refuse to believe that we can't address some of the specific problems Shell points to without creating much bigger problems elsewhere.

That is why I have offered to work with the majority on this legislation to come up with a proposal that would address specific problems without breaking what is working well. I can't support the bill in its current form. But I do think we could reach agreement on something that would address the concerns Shell has raised.

As the committee considers this legislation, there are a few key areas that are particularly troubling.

First, I don't think that encouraging more litigation makes any sense. But that is what the bill does by largely eliminating administrative appeals and forcing almost everyone to go straight to court.

The current administrative review process at EPA's Environmental Appeals Board is faster, simpler, and far less costly than going to court. You don't need to hire a lawyer. The board can skip oral arguments, and if it allows for oral argument it is done through video conferencing. The EAB's permit decisions are rarely challenged and almost always upheld by the appellate courts. In fact, this process works so well that the legislation preserves administrative appeals but only for the permit application.

If an administrative process is good enough that Shell wants to keep it for its appeals, it is only fair that we keep it for everyone else. Equal access to justice is a fundamental principle of our system. I am surprised the majority would even consider abrogating that.

It also makes no sense to force all of these local permitting cases to be heard in Washington, DC. A long-standing system and extensive case law governs how judicial value is to be determined. The Clean Air Act judicial review provisions are consistent with these principles, sending local and regional matters to the Court of Appeals for the appropriate circuit. But this proposal would carve out a special exception for a narrow class of cases.

Finally, the committee should distinguish between changes necessary to clarify and streamline the process and changes that are really aimed at weakening air quality protections. Shell told us they don't want to weaken the law; they just want to know what they have to do. If that is the case, we could certainly provide clarifications and speed up the process without weakening air quality protections. But many of the changes in the law proposed to be made by the current draft have the effect of weakening protections. If the goal here is really to let Shell and other oil companies get out of Clean Air Act requirements, that is something I would strongly oppose.

I look forward to exploring these issues in today's hearing and once again thank the chairman for proceeding with today's hearing itself. I yield back the balance of my time.

Mr. SULLIVAN. Thank you, Mr. Waxman.

Now we are going to move to our panelists, and our first panelist today——

Mr. BARTON. Mr. Chairman, is time expired for all opening statements?

Mr. SULLIVAN. Yes, sir.

Mr. BARTON. It is? Great.

Mr. SULLIVAN. Sorry about that.

We move to our first panelist. It will be Ms. Gina McCarthy, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency.

We welcome you here today. Thank you so much for coming. And you are recognized for 5 minutes.

STATEMENT OF GINA MCCARTHY, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. MCCARTHY. Thank you very much, Mr. Sullivan, Ranking Member Rush, members of the subcommittee. I appreciate the opportunity to testify on the discussion draft of the Jobs and Energy Permitting Act of 2011.

The President's blueprint for a secure energy future recognizes the importance of producing domestic oil safely and responsibly while also taking steps to reduce our dependence on oil by leveraging cleaner alternative fuels and greater energy efficiency. We have already made progress towards these objectives. Last year, America produced more oil than we had since 2003.

We also announced groundbreaking fuel efficiency standards for cars and trucks. Over the life of the vehicles, these standards will conserve 1.8 billion barrels of oil and save thousands of dollars for the owners of these vehicles.

Applications for OCS permits have increased in the last few years, largely as a result of exploratory drilling activities, particularly in the Arctic. Permitting these activities can be complex due to a variety of drilling equipment and support vessels as well as the challenges of operating in a climate that is very different than the Gulf of Mexico.

The President's blueprint established an across-agency team to facilitate a more efficient offshore permitting process in Alaska, while ensuring that safety, health, and environmental standards are fully complied with. EPA participates in this team.

My comments on the bill are grounded in the administration's support for a commonsense approach to OCS development that balances the need to explore for and produce energy with the need to protect public health in the environment and the surrounding areas.

Most importantly, I am concerned that the draft bill would mute voices of concerned citizens about matters that affect their communities. For example, currently, if a group of subsistent fishermen were concerned that an EPA permit didn't adequately address the effect of the health of air pollution from nearby drilling rigs, they could appeal the decision to the Environmental Appeals Board. They would not be required to hire a lawyer. They wouldn't have to attend oral arguments. They could participate through video con-

ference. They would know that their concerns are being heard by experts.

The bill would, instead, force appeals into a court system and one that is not even the closest U.S. Court of Appeals. Alaska fishermen would either need to hire a DC Attorney or fly a local attorney all the way to DC.

The board's decision may be challenged in court, which may lead you to assume that the board's review prolongs the permit process. But experience really tells us otherwise. The board is cheaper, faster, and a more expert substitute for the Federal Court. On average, the board decides PSD appeals in just over 5 months from the filing of the appeal, much faster than judicial cases are resolved.

And in almost all cases a board decision resolves the dispute, avoiding protracted Federal Court review. Since 1992, only four of the board's 100 PSD permit decisions have been reviewed by a Federal Court, and not one of them has been overturned. It is unclear how it would serve the public's interest to increase Federal Court litigation in DC. And deprive the citizens of a cheaper, faster way of resolving their grievances.

I also would like to raise briefly several considerations relevant to the draft bill's substantive changes to Section 328.

First, exploration and drilling activities in the OCS can emit substantial amounts of pollution. During the 168 day Arctic OCS drilling season, one exploratory OCS source could emit approximately as much on a daily basis as a large state-of-the-art refinery.

Second, human exposure to pollution from OCS sources does not stop at the shoreline. Substantial human activity occurs between the shoreline and the State seaward boundaries and in some areas may extend into the OCS. Failure to control OCS sources adequately may result in the need for more expensive onshore controls. It was this problem off the coast of California that led Congress to require OCS sources to obtain Clean Air Act permits in the first place.

In closing, EPA supports the use of an efficient permitting process to develop domestic energy supplies safely and responsibly. Our responsibility is to protect the health of Americans, but we know we must do so with commonsense measures that also allow us to strengthen our domestic energy supply.

I look forward to answering your questions.

[The prepared statement of Ms. McCarthy follows:]

Opening Statement of Regina McCarthy
Assistant Administrator for Air and Radiation
U.S. Environmental Protection Agency

Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives

Hearing On The American Energy Initiative

May 13, 2011
Written Statement

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, thank you for inviting me to testify today regarding the draft Jobs and Energy Permitting Act of 2011. I appreciate the opportunity to bring to your attention some of the factors we believe you should consider as you develop this legislation.

On March 30th the President released the Blueprint for a Secure Energy Future, which recognizes the importance of producing domestic oil safely and responsibly, while also taking steps to reduce our dependence on oil, wherever it comes from, by leveraging cleaner, alternative fuels and greater energy efficiency. We have already made progress towards these objectives. Last year, America produced more oil than we had since 2003, and we announced ground-breaking fuel efficiency standards for cars and trucks that, over the life of the vehicles, will conserve 1.8 billion barrels of oil and save thousands of dollars for the owners of those vehicles.[1]

Background on EPA Permitting of OCS Sources

The Clean Air Act (CAA) is one of the tools that helps ensure that oil production proceeds safely and responsibly. Section 328 of the Clean Air Act vests with EPA the responsibility for permitting air pollution sources located in the Outer Continental Shelf (OCS) other than those in the western Gulf of Mexico.[2] Exploration and drilling activities on the OCS can emit substantial amounts of pollution—during the 168-day Arctic OCS drilling season, one exploratory OCS source could emit approximately as much on a daily basis as a large state-of-the art refinery, for example—and that pollution can adversely affect the health of people living and working near and along the coastline. EPA is the primary permitting authority for OCS air permits, but can delegate it to a state or local government.[3] The process and requirements for

---

[1] White House Blueprint for a Secure Energy Future, March 30, 2011
http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf

[2] Air quality impacts associated with the exploration, development, drilling and production of mineral activities in the Outer Continental Shelf (OCS) in the western Gulf of Mexico (i.e., off the coast lines of Alabama, Mississippi, Louisiana and Texas) are under the jurisdiction of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), the former MMS, in the Department of the Interior pursuant to the Outer Continental Shelf Lands Act (OCSLA). Air permitting activities in the eastern Gulf of Mexico and the rest of the OCS are under EPA's jurisdiction.

[3] EPA has issued regulations to establish requirements to address pollution from OCS sources. As required in the statute, EPA's implementing regulations at 40 CFR Part 55 make potential sources within 25 miles of the States'

these OCS permits are essentially the same as for PSD permits for on-shore sources. Air permits are not the only approvals required for off-shore activities, whether in the Arctic or the Gulf, and EPA works closely with the National Oceanic Atmospheric Administration (NOAA), as well as the Bureau of Ocean Energy Management (BOEMRE) and the Fish and Wildlife Service (FWS) within the Department of the Interior (DOI).

After an initial burst of OCS air permit applications in the early 1990's, there was a lull until the last few years. Nine OCS permit applications are currently pending at EPA. Part of this increased interest in OCS permitting arises from exploratory drilling activities, particularly in the Arctic. Permitting these activities can be complex due to the variety of drilling equipment and support vessels. Energy exploration activities in the Arctic, which need to address the challenges of operating in a climatic environment very different from the Gulf of Mexico, are raising a number of issues that EPA and other agencies have not had to address in the Gulf. To help address these issues responsibly and expeditiously, the President's *Blueprint* established a cross-agency team to facilitate a more efficient offshore permitting process in Alaska, while ensuring that safety, health, and environmental standards are fully met. EPA participates in this team, and has also established an intra-agency work group comprised of regional and headquarter permit experts to help expedite resolution of OCS air permitting issues.

Comments on the Draft Jobs and Energy Permitting Act of 2011

The draft bill would amend section 328 both procedurally and substantively. My comments on these changes are rooted in our support for a common sense approach to OCS development that balances the need to explore for and produce energy, with the need to protect the public health and the environment in surrounding areas.

The changes the bill would make to the process of issuing and reviewing a permit are quite significant. They would deprive nearby residents of an important avenue to voice concerns about matters affecting their communities, and increase litigation (and hence extend the length of time when there would be uncertainty about the validity of a permit). The bill is designed to preclude citizens from appealing permit decisions to the Environmental Appeals Board, and thus would force them into a more expensive, lengthier process in the U.S. Court of Appeals for the District of Columbia. In some respects, the change is one-sided, for the bill seems to preserve some ability for the permit applicant, but not other interested parties, to seek reconsideration by EPA of an adverse permit decision.

The EAB review process not only provides a meaningful opportunity for communities who may be affected by these operations to have their concerns addressed, it also expedites the process of obtaining a final, valid permit by facilitating a process that is faster and more certain

---

seaward boundaries subject to the same requirements as would be applicable if the source were located in the corresponding onshore area. EPA regulations also address OCS sources beyond 25 miles of the States' seaward boundaries. EPA regulations provide that OCS sources are subject to federal Prevention of Significant Deterioration (PSD) permitting rules (40 CFR Part 52.21) and the federal Title V operating permit rules (40 CFR Part 71). Under the rules, a State may choose to seek delegation of EPA's authority to implement and enforce the program – either for areas within or beyond the 25 mile limit, or both.

for the applicant in the event of an appeal. That may sound strange or hard to believe, so let me explain.

Currently, if a group of subsistence fishermen were concerned that an EPA permit did not adequately address the effects on their health of air pollution from drilling rigs in or near their fishing grounds, they could appeal the decision to the Environmental Appeals Board. They would not be required to hire a lawyer; they could attend oral arguments via video conference; and they would know that their concerns were being heard by experts. This bill would instead force appeals into the court system – and not even the closest U.S. Court of Appeals. Alaska fishermen would either need to hire a D.C. attorney or fly a local attorney all the way to D.C.

Because the Board's decisions currently may be challenged in court, the Board may seem like it adds an extra step that prolongs the permit process. The actual experience is quite different. Rather than adding a step, the Board usually serves as a cheaper, faster, more expert substitute for judicial review. Since the Board was established in 1992 to review permit appeals, including PSD preconstruction air permit appeals,[4] there have been just over 100 PSD permits (both onshore and offshore) appealed to the Board. On average, the Board decides PSD appeals in just over five months from the filing of the appeal, much faster than judicial cases are resolved.

Although the Board has always expedited PSD appeals, it is working to conclude permit actions even faster. It has recently issued a new Standing Order governing PSD permit appeals (including OCS permit appeals) that will reduce the time allowed for briefing, put limits on the length of briefs, create a presumption against reply briefs and oral arguments, and allow summary disposition of simple appeals without the need for written opinions, including a summary affirmance procedure for cases that have been remanded and are subsequently appealed.[5] When an appeal is filed following an EAB remand, generally the EAB considers only issues arising out of the remand and will not consider any new issues that could have been raised in the initial appeal but were not. Of the PSD permits that have been remanded to the Agency, only five have been appealed back to the EAB after the Agency has responded to the remand.[6]

In almost all cases, the Board's decision resolves the disputes and concludes litigation, avoiding protracted federal court review. Since 1992, only four of the Board's PSD permit decisions have been reviewed by a federal court, and no Board PSD decision has ever been overturned.[7] The process changes in this bill would not only mute the voices of citizens on decisions that affect their communities, it would likely increase federal court litigation, which would lengthen the permit applicants' period of uncertainty about the validity of its permit.

---

[4] 57 Fed. Reg. 5320 (Feb. 13, 1992).

[5] http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/8f612ee7fc725edd852570760071cb8e/a47db3a99cab46698525788000414196/$FILE/NSR%20Standing%20Order%204-19-2011.pdf

[6] An appeal after remand was filed for a sixth PSD permit, but the project was abandoned while the appeal was pending.

[7] Only 3 cases have been appealed and considered by a federal court of appeals. All were affirmed. A fourth case remains pending (Chabot-Las Positas Comm. College Dist. V. EPA (9th Cir. Docketed Mar. 9, 2011)).

In addition to changes described above, which are largely procedural, the legislation also raises serious questions about the scope of compliance requirements themselves. The bill makes three substantive changes to section 328. It would preclude the Agency from requiring OCS sources to demonstrate compliance with health-based air quality standards at any point offshore, regardless of the number of people exposed at offshore locations. It would establish when exploration platforms and drill ships are an OCS source. It also would preclude emission control requirements under subpart 1 of part C of title I of this Act from being set for support and service vessels associated with an OCS source. Although I would be happy to discuss these with you further in response to questions, I would like to raise a few issues now.

In evaluating this and other substantive provisions of the bill, it is important to consider whether the requirements in question are needed to meet the Clean Air Act's broad objectives of protecting public health and the environment, as it has done for more than 40 years. In 2020, Clean Air Act programs adopted since 1990 will provide $2 trillion in benefits – over thirty dollars in benefits for every dollar spent.[8] In just the last year, these programs are estimated to have reduced premature mortality risks equivalent to saving over 160,000 lives; spared Americans more than 100,000 hospital visits; prevented millions of cases of respiratory problems, including bronchitis and asthma; enhanced productivity by preventing 13 million lost workdays; and kept kids healthy and in school, avoiding 3.2 million lost school days due to respiratory illness and other diseases caused or exacerbated by air pollution.[9]

Common sense says that we should avoid requiring pollution controls that are unnecessary. For example, I understand why you would question the value of requiring compliance with health-based standards in locations where there is no obvious human exposure to the emissions. However, not requiring compliance with health-based air quality standards at any point off the shore line, as the draft bill does, could result in significant human exposure to air pollution from OCS sources, including nitrogen dioxide, particles, sulfur dioxide, and pollution that causes ozone. Usually there is substantial human activity between the shore line and states' seaward boundaries (generally three to nine miles offshore). Substantial human activity may also occur on the inner OCS (within 25 miles of the states' seaward boundaries) and, to a lesser extent, on the outer OCS. Off of the coast of Alaska, subsistence hunting and fishing is practiced by native populations. In addition, there are commercial fishing activities along the East and West Coasts; as well as recreational activities such as cruise ships and pleasure craft; commuter ferries; and other sources of human exposure in most of the U.S. Territorial Waters. Islands located within the inner OCS can be permanently populated or have significant recreational activity. Choosing the wrong point of measurement for compliance with the health-based standards could harm the health of the people we should be protecting.

Another factor to consider is how the requirements you set for OCS sources will affect on-shore sources. For example, if OCS sources are not required to use cost-effective pollution controls, any resulting degradation of air quality could result in the need for more stringent

---

[8] USEPA (2011). *The Benefits and Costs of the Clean Air Act from 1990 to 2020*. Final Report. Prepared by the USEPA Office of Air and Radiation. February 2011. Table 7-5.
[9] Id. Table 5-5.

controls for on-shore sources. It was this very concern about OCS sources contributing to air quality problems in California that led to the enactment of section 328.

In closing, EPA supports the use of an efficient permitting process to develop domestic energy supplies safely and responsibly. Our responsibility is to protect the health of Americans, but we must do so with common-sense measures that also allow us to strengthen our domestic energy supply. As part of the Administration's interagency task force on Arctic energy permitting, we are committed to finding ways to improve our processes and better integrate our work with that of other Federal agencies involved in permitting Arctic OCS energy activities.

Again, I appreciate the opportunity to provide the Agency's views as you develop this legislation. I look forward to your questions.

Mr. SULLIVAN. Thank you, Ms. McCarthy.

We will now open it up for questions, and I recognize myself for 5 minutes.

Ms. McCarthy, in your testimony you cited the President's blueprint for a secure energy future and a supposed commitment to producing domestic oil. The insulting thing is that you take credit for current production rates, stating that we have already made progress towards these objectives. Last year, America produced more oil than we had since 2003. Are you really taking credit for current domestic production when those projects took years to develop?

Ms. MCCARTHY. Mr. Chairman, I am simply stating a fact that production is equal to 2003. EPA takes no credit for anything other than an attempt to work with Shell and others to expeditely move those permits forward.

Mr. SULLIVAN. Ms. McCarthy, can you name one significant project that the Obama administration supported that would increase the production of oil? And is the Alaskan Arctic permitting fiasco an example of that kind of work, handiwork?

Ms. MCCARTHY. Mr. Sullivan, let me just challenge a little bit back at you that I don't think there has been a fiasco in the Shell permitting, and I would like to clarify that, if I may.

There were statements made that we have taken 5 years to address Shell permits, and they are still not in place. In fact, every time Shell has applied for a permit, a permit has been issued by the agency within 3 to 6 months of that permit application being complete.

Mr. SULLIVAN. But you don't think 5 years for a permit is not a fiasco?

Ms. MCCARTHY. There has never been 5 years to a permit decision by Shell. We have reached a permit decision, and many of those decisions have been appealed. Shell has consistently revised the request, changed the project, changed what sea they want to drill in. And now I think we are very close to an understanding between us and Shell about where their opportunity is, how they can structure their permit and how we can deliver a solid permit for them in a period of time.

Mr. SULLIVAN. There hasn't been any final agency action for 5 years.

Ms. MCCARTHY. There are many reasons for that, not least of which is that for 3 years Shell sought to obtain a minor source permit——

Mr. SULLIVAN. Do you think that is too long, though? Would you agree that that is too long?

Ms. MCCARTHY. I don't agree that it has been 5 years with the same permit, Mr. Chairman. That is the only point I am trying to make. Each time the permit has been revised, and we have effectively issued a permit.

Mr. SULLIVAN. Well, what about the agency final action hasn't happened?

Ms. MCCARTHY. That is correct. Many of the permits have been withdrawn; many of them have been changed. In the most recent ones, there were two that were remanded by the EAB. We are

working through those issues in a collaborative way, and we expect a solid permit very soon.

Mr. SULLIVAN. A lot of these companies that you talk to, one, can't get through, but, when they do, they are told to redo things, do this. It seems like a real game you are playing with them.

In the private sector they don't deal with that kind of stuff when they are out there. People make decisions and quickly. And they check every box, but it seems to take a very long time.

Ms. MCCARTHY. I think that we are trying to work very effectively with the project developer to get a permit for the project they are developing. If their parameters change and their interests change, we try to adjust to that.

I will tell you that that is one of the reasons why the President has pulled together an interagency group, to ensure that all of the permits are done as expeditiously as possible and we can get these permits accomplished in a collaborative way.

The agency itself is also looking at how the permit standards for these permits in the Arctic relate to the permits we are issuing in the Gulf of Mexico and doing our best to move those forward.

Mr. SULLIVAN. Well, in your statement you say, we have already made progress towards these objectives. Could you name some of the progress you have made?

Ms. MCCARTHY. I am sorry, which objectives are you referring to, Mr. Chairman?

Mr. SULLIVAN. Well, you say here that—you say, we have already—OK, it says, on March 30th, the President released a blueprint. We also are taking steps to reduce our dependence on oil. Wherever it comes from, by leveraging cleaner alternative fuels and greater energy efficiency, we have already made progress towards these objectives. Last year, America produced more oil than we had since 2003. What were the progresses that you have made towards these objectives?

Ms. MCCARTHY. Well, if I might, let me be a little bit parochial and say what EPA has accomplished, because I think it is significant.

We mentioned in my testimony the light-duty vehicle rule, which will actually save 1.8 billion barrels.

Mr. SULLIVAN. I am kind of just talking about domestic oil production, in regards to domestic oil production.

Ms. MCCARTHY. In domestic oil production we have—I do not have specific examples I can offer you. All I can say is, when EPA is working with a refinery——

Mr. SULLIVAN. I understand what you are saying, but why wouldn't you mention it in your opening statement then?

Ms. MCCARTHY. I actually think I was referring to the light-duty vehicle rule when we are talking both about production as well as reducing dependency on oil, which includes reducing 1.8 billion barrels of oil dependency as a result of the light-duty vehicle rule.

Mr. SULLIVAN. Well, I guess we will agree to disagree, because it is not in your statement.

Ms. MCCARTHY. OK.

Mr. SULLIVAN. And I thank you very much.

I would now like to yield to the gentleman from Illinois, Ranking Member Rush, for 5 minutes.

Mr. RUSH. Mr. Chairman, I have an article here dated 5/11/2011 from Greenwire. I would like unanimous consent to enter it into the record.

Mr. SULLIVAN. Do you have a question?

Mr. RUSH. No, I have an article.

Mr. SULLIVAN. Without objection. I am sorry. I apologize.

[The information appears at the conclusion of the hearing.]

Mr. RUSH. Ms. McCarthy, the goal of the Clean Air Act is to protect public health and welfare from harm from air pollution, and the bill that we are discussing today will change the way that EPA and States can address pollution from offshore drilling. Some have argued that this bill is just about streamlining the permitting process, and I want to make sure that in the proposed changes there is no due harm to the public health and to the public welfare.

One provision in the bill will allow the drilling companies to look at how the drilling will affect air quality onshore, ignoring any potential impacts to air quality between the drilling rig and the shoreline. Does the EPA have concerns that this change will allow health impacts to be ignored offshore?

Ms. MCCARTHY. Mr. Rush, there is substantial human activity off the shoreline, as we all know, which means there is a potential, should this bill go through as proposed, of substantial human exposure to air pollution, in particular between the area of the shoreline and the State seaward boundary.

Mr. RUSH. So native Alaskans who breath the air will be potentially harmed while they are fishing or whaling, is that what you say?

Ms. MCCARTHY. That is correct.

Mr. RUSH. OK. With the chairman, you had some discussions regarding the delay, and you maintain that Shell has resubmitted applications. They have moved the goal line. They keep moving the goal post further and further away and keep changing the goal post. Will you kind of elaborate more on what you were trying to express?

Ms. MCCARTHY. Yes, I would, Mr. Rush.

EPA, since 1990 and 1992, has been moving forward with processing these permits in a timely way. We have processed 13 permits. Each of those has been done within 3 to 6 months of the permit application being complete. Some of those since 1992 have been referred to the Environmental Appeals Board. But the Appeals Board itself processes its appeals, on average, within a 5-month period. And what that does is it provides the public an opportunity to be heard, but it also provides an expedited way to ensure that that permit is as strong as it needs to be.

During that 5-year period or the initial 3-year period Shell changed its mind about where it wanted to drill, the types of vessels it would use, the type of project it wanted to pursue.

We have consistently worked with them and issued new permits in a timely way. The good news is that I believe that we are very close to a strong permit that will allow them to have actually three drilling operations going on in the Arctic in a way that is protective of public health and consistent with current law.

Mr. RUSH. So in your opinion then this process is going to come to an end, and it hasn't been the fault of the EPA. This has been the responsibility of the company changing its plan?

Ms. MCCARTHY. It is. But I am not trying to blame Shell anymore, that I think at this point Shell is trying to blame us. These are very difficult projects to pursue. Particularly in Alaska it is even more difficult, because of the weather, because of all of the different technologies you need, the ice breakers, the emergency response. We have little air quality monitoring data. There are hurdles that you need to go through, but we are getting better and better. And as these permits get issued, that it will lay a foundation for the ones that follow.

Mr. RUSH. And it is your opinion that Shell is satisfied really with the process as it has taken place and they are not at odds at all with the EPA in terms of this——

Ms. MCCARTHY. I think they believe that the three permits that we are processing now will be very valuable to them. I think they recognize that they are going to be solid legally because they have been tested through the EAB. And history has shown us that, once the EAB reviews a project and makes a decision, that it is a very solid ground for that permit moving forward in terms of any subsequent court challenge, which almost never follows.

Mr. RUSH. We are all concerned about the timeliness of these permits in this process. But I just want to caution all of us that, you know, in this instance we have to get it right. Haste does make waste in this particular instance.

The fact is that the public health and welfare is solidly at stake, and so we need to do our due diligence. And I think that any reasonable person would agree and understand that these things do take time. We don't want EPA rushing to issue permits for oil drilling, no matter who the company is or where it is located at.

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

Mr. SULLIVAN. Thank you, Mr. Rush.

Now I will recognize the gentleman from Texas, Mr. Burgess, for 5 minutes for questions.

Mr. BURGESS. Thank you, Mr. Chairman.

Ms. McCarthy, I hate to go off topic here for a moment because our opportunity to talk—as much as I cherish the opportunities, we don't get to talk that often. It was about a year ago that you came to a briefing called by Mr. Markey to talk to us off the record about some of the activities that were going on as a result of an energy policy that was passed by the Congress signed by the President December of 2007 dealing with the mandate for blending ethanol into the Nation's gasoline supply. Do you recall that we had that meeting?

Ms. MCCARTHY. Yes, I do.

Mr. BURGESS. I had a number of questions about the type of testing that had been done and where it had been done. It has been extremely difficult for me to get answers on that. I asked many of those questions to Lisa Jackson when she was here, Administrator Jackson, when she was here in February. And my understanding is those answers came yesterday to the committee, but they have not been shared with me yet.

But let me just ask you again about where we are, because there are a lot of questions out there from people about what is happening with the amount of ethanol in the Nation's gasoline supply and the safety of that. Where is the agency right now as far as being able to—where are you in the process of studying this? Where are you in the process of rulemaking with this? What are people to expect this summer as they crank up their lawn mowers and weed eaters and Mantis tillers? What are they to expect from the performance of their engines with this additional ethanol?

Ms. MCCARTHY. Well, first, let me be very clear, E15 is right now not on the market. There are a number of decisions that need to be made before it can be in the fuel supply.

Mr. BURGESS. I am just going to interrupt you for a second. Because, although E15 was not mandated, what Congress did to you—I was against this when it happened, but it mandated that a certain volume of ethanol be incorporated into the Nation's gasoline supply and utilized by, I forget, 2015 or 2020. But in order to meet that blend requirement it is going to require a higher percentage of ethanol in the Nation's gasoline supply, is it not?

Ms. MCCARTHY. It actually required renewable fuel, so not in particular ethanol. And the requirement was in 2022 for 36 million gallons to be replaced with renewable fuels. So I don't think the impetus for E15 was necessarily that 36 million figure.

We actually are required under law to entertain waiver requests which look at whether or not a fuel should be allowed to happen and to be allowed to be brought into the market on the basis of whether or not it is going to pose significant air pollution problems or challenges to the air pollution control equipment that are on vehicles or engines.

And we have received such a request on E15. DOE did do significant testing, and we did it on the newer vehicles, which is 2001 and newer vehicles, because those vehicles have——

Mr. BURGESS. I don't mean to interrupt, but actually I have a letter from Secretary Chu from the Department of Energy February 18th, and he said you all were doing the testing. And this is one of the problems I get into, is this circuitous discussion.

Ms. MCCARTHY. I can look at that and clarify for you.

But DOE did a significant amount of testing. Manufacturers did testing as well that we are privy to. And we look at the full range of testing available to us. The bottom line was there was sufficient testing to indicate that E15 could be used in 2001 and newer vehicles.

We are right now looking at a fuel registration application. That means we are looking at health consequences associated with E15. We are about ready to make a determination on that.

The agency still has to develop a final guidance on what that means for underground storage tanks and dispensing units, and individual States need to make certification decisions.

So there is a lot happening between here and there.

We also have a final rule that we have to get out that looks at how to prevent misfueling. That package will be out shortly.

Mr. BURGESS. Let me reclaim my time, because it is about to run out.

Let me just say it is all great. That is the theory. Let me tell you the application, the application from Lowry's Lawn Mower Repair last Monday when I had an impromptu town hall where I was getting my lawnmower fixed.

And they said, this is great for business. I asked them about ethanol, of course the existing levels of ethanol. He said, it is great for business. We get to rebuild so many of these little engines that it is just keeping us—it is like the President's own jobs program. They have to keep hiring people like me to fix their lawn mower's.

And this is the problem that people all over this country are encountering, and I encourage you to be on top of this and not try to play catch-up.

I yield back, Mr. Chairman.

Ms. MCCARTHY. Thank you, Mr. Burgess.

Mr. GARDNER [presiding.] Thank you.

We have a long series of votes right now, so we are going to suspend the hearing until 11:00 or until the vote series is completed. Thank you.

[Recess.]

Mr. GARDNER. We will call this committee hearing back to order, and I now recognize myself for 5 minutes for Ms. McCarthy.

Ms. McCarthy, just a couple of quick questions for you. Thank you for your time and patience in waiting for this vote series to be over; and, everybody else, I appreciate your time.

Do you believe in fossil fuel energy development?

Ms. MCCARTHY. Yes.

Mr. GARDNER. Do you believe we should utilize the energy we here in the United States?

Ms. MCCARTHY. Yes.

Mr. GARDNER. Do you believe the United States should be energy secure by using our own energy?

Ms. MCCARTHY. I believe we should enhance energy security any way we can.

Mr. GARDNER. Do you believe Alaska provides us an opportunity to move us toward energy security?

Ms. MCCARTHY. I believe that that is clearly the intent of the President, is to utilize domestic supplies as much as we can and ensure that public health is protected as we do it.

Mr. GARDNER. Do you believe the efforts on this matter before us have achieved this goal, Chukchi and Beaufort Sea?

Ms. MCCARTHY. I think we are on a path to success. Yes, I do.

Mr. GARDNER. Five years delay, you believe we are on a path to success?

Ms. MCCARTHY. I actually think it has been 5 years of discussion with Shell where things have changed considerably. But I think at this point we have three permits that I feel very confident that we can issue and that will be legally defensible and protective as well.

Mr. GARDNER. Do you agree or disagree with Administrator Jackson's previous testimony to the Senate Appropriations Committee in the context of the Shell Arctic air permits where she said, and I quote, I believe that the analysis will clearly show that there is no public health concern here, that it is quite likely these activities will not cause air pollution that will endanger health.

Ms. MCCARTHY. I'm sorry. I don't know the context of that comment, so I can't really respond to it. But I can say that I believe that we are on the path to issuing permits that will be protective of public health the way the Clean Air Act intends.

Mr. GARDNER. So you are unfamiliar with Administrator Jackson's testimony before the Senate committee? It was Senator Murkowski's questioning on the issue of Alaska and the Beaufort Chukchi Sea.

Ms. MCCARTHY. I certainly am aware that that happened. I don't know the direct context of that quote. But it seems perfectly reasonable to suggest that we can issue permits that are protective of public health, particularly the way in which Shell is now currently structuring them in their project.

Mr. GARDNER. The transcript right here says—it basically is a question. She talked about the lengthy permit process, the new requirements that have taken place; and Administrator Jackson went on to say that the analysis will clearly show there is no public health concern here. Do you agree with that?

Ms. MCCARTHY. We are completing the modeling analysis now, the way in which the EAB has requested it; and we feel pretty confident that that will prove the Administrator to have been absolutely correct.

Mr. GARDNER. So you would agree with Administrator Jackson then?

Ms. MCCARTHY. I would agree, but I would just caution that we haven't yet written the permit in response to the EAB, so I don't want to presume what that says.

Mr. GARDNER. Did she misspeak then when she was saying there is no public health——

Ms. MCCARTHY. No, I think she was talking in general the fact that we believe that we can write a permit that is protective of public health. And I think we will be doing that.

Mr. GARDNER. In your testimony, you state that preventing appeals to the EAB will limit opportunities for public comment. Are you aware that the public has an opportunity to comment with respect to any and all air and environment issues during the Department of the Interior's 5-year lease plan.

Ms. MCCARTHY. I do.

Mr. GARDNER. Are you aware that the public has an opportunity to comment again with respect to any and all air and environment issues during the regional planning environmental document?

Ms. MCCARTHY. I am well aware that there is an opportunity to have comment in general, not about a specific source.

Mr. GARDNER. And on this one there were public hearings in Nuiqsut, Point Lay, Barrow, Kaktovik, Wainwright, Point Hope, and that is just in one area of public comment. Are you aware that the public has an opportunity to comment with respect to any and all air and environment issues again at the time of the lease sale?

Ms. MCCARTHY. I'm not that familiar with the lease sale issues. I'm sorry.

Mr. GARDNER. Well, they do actually have the opportunity to comment.

And surely you are aware that the public has an opportunity to comment with respect to the air permit itself when EPA Region 10 goes through its review process.

Ms. MCCARTHY. We actually provide that under the Clean Air Act. That is correct.

Mr. GARDNER. And so are four rounds of public comment not sufficient?

Ms. MCCARTHY. I don't believe that the question of whether or not EAB has a role in the process is really directly related to the amount of participation of the public. It is a question of how to handle appeals under the Clean Air Act and whether or not you want to account for that and provide that in a quick and easy way that the EAB does or whether you want to refer that directly to the Federal Court.

Mr. GARDNER. I thought that was one of the reasons you said the EAB is necessary, was for public comment.

Ms. MCCARTHY. It is because, once the permit is finalized, it provides an opportunity for challenge of that permit to the EAB where they look at whether or not it has sufficient legal underpinnings and——

Mr. GARDNER. Well, you have a final action. There is final agency action. That is just another bite at the apple. Don't you think it is best to move this to the courts so they can make a determination?

Ms. MCCARTHY. I think it is entirely up to folks whether or not they want to move it to court. I am not suggesting court isn't adequate.

Mr. GARDNER. After four or five rounds of comment?

Ms. MCCARTHY. What I'm suggesting is that they are much more inefficient, they are much lengthier, they will—in fact, if they take a year and a half and send it back, we will be starting all over again.

I think the EAB provides a service to us, and they are the agency to make sure that our permits are accurate, that they are technically correct, and that they are legally defensible. And, over time, the EAB has not been challenged in Federal Court successfully. So they have eliminated the need to go to a lengthy Federal and expensive process.

Mr. GARDNER. I will ask you this question. I am running out of time. Are you aware that in the central and western Gulf of Mexico after the permit is issued, there is no appeals court?

Ms. MCCARTHY. I am aware that the appeal is to Federal court.

Mr. GARDNER. The public can just go to court and get it resolved. Is that why the Gulf has been more efficient?

My time has expired. I want to be respectful of my time, so I apologize for that.

Mr. Green, 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

First, Ms. McCarthy, I talked to you earlier. Thank you for not only being here today and for our vote schedule but also being in Houston at the end of March. Our subcommittee had a hearing on some of the battles we have in Texas, and I appreciate your time.

This suggested legislation we are working on obviously is of interest, because I'm used to the Gulf of Mexico and Department of

the Interior rules, and so I'm learning a little bit about EPA's authority on the other coast.

In the Federal Register in 1991, EPA explicitly stated that, quote, the intent of Congress in adding Section 328 was to protect ambient area quality standards on shore and ensure compliance with PSD standards. EPA is to accomplish this by controlling emissions of pollutants for which the ambient standards have been set in their precursors from the OCS that can be transported onshore and affect ambient air.

Why has there been a shift in the policy at the EPA where now you interpret Section 328 to mean you must regulate the air impacts offshore?

Ms. MCCARTHY. Actually, the way in which we are interpreting our mission is to protect public health. I think we were given clear direction in the Clean Air Act that that meant that we need to treat these offshore sources as if they were onshore, because there is a great deal of human activity in particular along the shoreline in the States' seaward boundary.

So we do actually apply the Clean Air Act, I think, as the law intended, but we are looking at that in terms of differences that we would see between what is happening in the Arctic and the Gulf of Mexico and attempting to apply that part of the rule in a way that is effective for public health protection but will still allow the permitting to occur in a sensible way.

Mr. GREEN. During the Alaska hearing we heard testimony about ongoing litigation at the U.S. District Court here in the District of Columbia which recently raised the issue of whether the EAB process must be completed within the overall 1-year time limit under the Clean Air Act within which the EPA must issue or deny final prevention of significant deterioration permit. Do you agree that the EAB process should be completed within the overall 1-year time limit?

Ms. MCCARTHY. The position of the agency at this point—and this is actually being litigated—is that the 12-month time limit refers to the completion of the application to the time when the region issues the permit. We do not believe that we are required to complete the EAB process in that timeline. However, I would point out that on these permits we have completed the—between permit application in the region, issuing a permit has been between 3 and 6 months; and, on average, the EAB only adds 5 months to that process.

Mr. GREEN. One of the criticisms of this bill is how it would define a source once drilling activities occurred, exactly like the BOEMRE defines the sources in the Gulf of Mexico. You mentioned how you believe that a source should be defined once anchor is down. But how does the EPA define a source of rigs that are not attached to the ocean floor such as a dynamically positioned one, one that doesn't have the anchor?

Ms. MCCARTHY. Well, actually Region 4 is looking at that issue right now. My understanding is that BOEMRE looks at that issue as being a source when it actually enters into the lease area because it is dynamically positioned instead of anchored. We are looking at the same issue and likely to come out in the same way, but that permit has yet to be issued.

Mr. GREEN. The President's blueprint established a cross-agency team to, quote, facilitate a more efficient offshore permitting process in Alaska, while ensuring that safety, health, and environmental standards are fully met. EPA participates in this team and has established an interagency working group comprised of regional and headquarter permit experts to help expedite the resolution of the OCS air permitting issues.

What is the status of that group's work now?

Ms. MCCARTHY. The work group was started almost a year ago, and we are looking at the permits in the Arctic as well as the Gulf of Mexico, and we are looking at determinations that are consistent for where the point of compliance ought to be and how we make these decisions consistently. So it is very active. We are engaged in the Presidential process to work with the other agencies, and we feel that the decisions we are about to make will be consistent and will provide a standard for other permits that follow.

Mr. GREEN. OK. Thank you, Mr. Chairman.

Mr. GARDNER. The gentleman yields back his time.

The chair recognizes Mr. McKinley for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

Welcome back.

Ms. MCCARTHY. Thank you.

Mr. MCKINLEY. In your opening remarks—and with my hearing issues maybe I didn't hear properly, but in your opening remarks, you refer to, I believe, you were concerned about the pollution from drilling rigs. Do you remember that comment?

Ms. MCCARTHY. Yes.

Mr. MCKINLEY. What pollution from a drilling rig are you referring to?

Ms. MCCARTHY. Actually, the pollution that is associated with the drilling rig itself as well as the vessels that support that rig that are within a 25-mile radius. That is what the Clean Air Act requires us to take a look at. It is substantial amounts of pollution.

Mr. MCKINLEY. By virtue of them being there so——

Ms. MCCARTHY. Well, it is the engines. It is the ships themselves as they sit stationary. So there is significant sources of emissions of particulate matter, of sulfur dioxide, of nitrous oxide. There is significant amounts of pollution, actually, commensurate with——

Mr. MCKINLEY. We have the same quote. Unfortunately, neither of us have the date, and I can't pin you down because I don't have the date where Lisa Jackson said there will be no——

Ms. MCCARTHY. I think she was referring to the fact that when our permit is complete and finalized we will have accounted for that pollution, minimized it in accordance with the Act, and ensure that the national ambient air quality standards are complied with at the point of compliance. And that is one of the issues that is under debate in the law that you are considering.

Mr. MCKINLEY. I'm struggling with that a little bit, because I don't know how you are going to get there. If just the mere presence is going to be a pollutant, I don't know how then we are going to get there. You just don't want us there?

Ms. MCCARTHY. No, we actually treat it the exact same way as we treat onshore facilities; and we look to ensure that they are properly controlled and that they don't significantly impact air

quality in the way in which the standard applies it. That does not mean that we can't issue permits offshore the same as we do onshore.

Mr. MCKINLEY. Let me go back to—I hesitate to ask you to submit to me something in writing about it, because I would like to know more about your position on that. Because back on March 1 when you appeared last before us, we were talking about—you made a comment in your presentation and several of my colleagues on the other side of the aisle said the same thing, and that was subsidies for the coal industry. And I challenged you on that then, and I continue to challenge.

I asked then, and you said, I will send those to you. This is now May 13. We have called your office, and you have not responded. We have e-mailed your office, and you haven't responded. And you haven't responded. We have no record of supporting your statement that coal is subsidized—and how.

It is almost an arrogance here of using that term. And I don't understand where they are coming from. Because I go back to my district in West Virginia and ask coal companies about what their subsidy is, and none of them, to a person, to a company, none of them have any idea what you are talking about. But yet it is used as though it is gospel around here that the coal companies are subsidized.

I ask again, will you please put it in writing, the companies that are subsidized and in what vehicle?

Ms. MCCARTHY. I'm happy to respond, and I do believe I remember the context of my comment if you would like me to explain it now. If not, I am happy to do that.

Mr. MCKINLEY. Just as long as you put it in writing. Everyone talks around here——

Ms. MCCARTHY. I don't think I was referring to financial——

Mr. MCKINLEY [continuing]. With nothing to back up what they are saying——

Ms. MCCARTHY. I don't think I was referring to financial subsidies.

Mr. MCKINLEY. When somebody says coal companies are subsidized, I want to know who it is. Because I don't want to see the coal companies subsidized. I don't want to see the fossil fuel subsidized. I think this is a misrepresentation here with that. So I may be supportive. But I want to know which ones you are talking about or is this just a hit again on fossil fuels coming from this administration.

Ms. MCCARTHY. I don't believe that I was referring to a financial subsidy. I think that I was referring to the fact that many of the coal facilities are not required to meet toxic standards——

Mr. MCKINLEY. You used the term subsidies——

Ms. MCCARTHY [continuing]. That other facilities are required to meet.

Mr. MCKINLEY. Others in the panel have talked about that the coal industry is subsidized. I want to know specifically what do you mean? And so if you are backing off your word, that is fine.

Ms. MCCARTHY. I think that was the context that I was discussing the issue——

Mr. MCKINLEY. You can say that in context, but you don't remember what her context was. Everyone has context——

Ms. MCCARTHY. Well, I was at the first one——

Mr. MCKINLEY. Just please put it in writing to me.

Ms. MCCARTHY [continuing]. Not at the second one.

Mr. MCKINLEY. Just put it in writing if you——

Ms. MCCARTHY. OK.

Mr. MCKINLEY [continuing]. Would. It has been——

Ms. MCCARTHY. We are happy to work with your staff.

Mr. MCKINLEY [continuing]. Ten weeks.

Ms. MCCARTHY. I will make sure that I get you the information——

Mr. MCKINLEY. Put it in writing.

Ms. MCCARTHY [continuing]. That you are looking for.

Mr. MCKINLEY. Thank you.

Mr. GARDNER. The gentleman's time has expired.

Mr. Shimkus—Mr. Waxman is recognized for 5 minutes.

Mr. WAXMAN. Thank you very much.

Ms. McCarthy, the bill sets an extremely tight deadline for issuing an OCS permit, just 6 months before the date a complete application is filed. I support a deadline, but this one may not be realistic. It may sacrifice important elements of the process, such as public participation.

If you just devoted more resources to it, would EPA be able to evaluate a permit application, set source-specific air pollution limits, allow for public comment, and provide for administrative review within a 6-month time frame?

Ms. MCCARTHY. No, that is not possible.

Mr. WAXMAN. What if you eliminated all administrative review?

Ms. MCCARTHY. We still would need time to make sure that the permit was legally defensible and that all of the appropriate technical analysis had been conducted.

Mr. WAXMAN. What happens when EPA doesn't have enough time to do its job properly?

Ms. MCCARTHY. Like anyone else, we can make mistakes, and those can be challenged, and we start again at square one again with the permit process for the applicant and us.

Mr. WAXMAN. Ms. McCarthy, as you know, the Department of the Interior issue permits in the western and central Gulf of Mexico instead of EPA. We have heard the argument that Interior issues permits in 30 days, and EPA should be able to do the same. I would like to ask you about this. Does EPA require air quality modeling and use of best available control technology for every OCS source that would emit at least 250 tons of a pollutant per year?

Ms. MCCARTHY. We do.

Mr. WAXMAN. And the Interior Department, on the other hand, exempts the vast majority of drilling operations in the Gulf from analyzing air quality impacts or applying pollution controls. For example, from 8 miles on out, any source emitting 250 tons per year of a pollutant would be exempt from air quality requirements. And 30 miles out, a source could emit up to a thousand tons per year without regulation. Interior set these exemption thresholds in 1979 and has not updated them since.

Ms. McCarthy, can you tell us a lit bit about how air pollution analysis and standards have changed since 1979?

Ms. MCCARTHY. Let me give you one quick example, Mr. Waxman, and that is we now have a standard for fine particles, PM2.5 particulate matter. That is one of the most serious public healths that we know of, and it is well documented. It actually accounts for tens of thousands of premature deaths annually. That standard came into being after BOEMRE's rules, and they have never been updated to account for that.

Mr. WAXMAN. It is not clear to me that Interior's approach provides any meaningful air quality protection.

Another important difference is that Interior does not allow for any public comment on exploration plans which contain the air pollution estimates. Cutting out public participation certainly saves time. The Interior Department process doesn't provide for administrative appeals either.

Ms. McCarthy, could you comment on the value of public participation in EPA's decisionmaking and the benefits of providing for administrative appeals?

Ms. MCCARTHY. First of all, in terms of public participation, it is enormously important when you are dealing with a source of pollution that can impact public health to get the residents to understand what the project is, how it has minimized any threat to their livelihood, and to understand the context in which the facility is operating.

In the Arctic, you have whaling operations where individuals spend significant time within range of some of these facilities, and you have to account for that, give them an opportunity to be heard so you can understand how best to protect that public interest.

In terms of the EAB, it is by far the fastest, cheapest, and most credible way to get to a permit that is legally defensible. It has historically been shown to be completed within about a 5-month period of time. And only four times have the EAB decisions ever been challenged, and they have never been overturned in Federal Court. So if you are looking to get to yes or no soon, that is the quickest way to do it.

Mr. GARDNER. Will the gentleman yield for a quick question?

Are you saying there is no comment on DOI permitting.

Ms. MCCARTHY. Actually, there is no comment on specific sources. There is, I understand, comment on a 5-year lease——

Mr. GARDNER. On exploration in Alaska.

Ms. MCCARTHY. It is a very general exploration plan.

Mr. WAXMAN. Reclaiming my time, because it is about to run out, there is no comment at DOI in the early part of the process where we do have it at EPA. The Interior Department models what we had prior to 1990. Congress moved the authority to EPA outside of the western Gulf because in areas with air quality problems that model simply doesn't work.

And I would note that this provision was adopted as a floor amendment representing a bipartisan agreement between Representatives Mel Levine, Bob Lagomarsino, Bill Lowery, Mike Bilirakis, and Billy Tauzin, a bipartisan group, none of whom are still here.

I hope as this subcommittee moves forward we will try to improve the current process, not turn back the clock.

Thank you very much, Mr. Chairman.

May I just ask one last question?

If we were going to put a time limit, what would be a reasonable time limit? Because, right now, it is open ended, and that is driving the applicants crazy.

Ms. MCCARTHY. Mr. Waxman, we are happy to work with you on it. I don't have a time line in mind. I know we need to do it expeditiously, but I know that we shouldn't sacrifice public health or provide opportunities for extensive litigation where it doesn't currently exist.

Mr. WAXMAN. Thank you, Mr. Chairman, for that time.

Mr. GARDNER. Thank you.

Mr. Shimkus is recognized for 5 minutes.

Mr. SHIMKUS. Again, I'm glad I made it back. I appreciate your help on the Prairie State thing, as I did in my opening statement; and, of course, that does segue into this. Because it is state-of-the-art technology, and this is a big issue.

Mr. Waxman's final point really highlights why we think there is need for legislation. Because there is no timeline. And when you don't have a timeline and you raise capital to assume risk, these drilling rigs are probably even more expensive up in the Arctic, millions of dollars a month or at least half a million dollars just operating before all the other costs, how can someone make the business case for moving forward if there is no timeline?

And so that kind of segues into some questions that address this. Obviously, you have a great faith and confidence in the EAB, and I respect that. But I think some of the conclusions are difficult for us to accept. Because, for me, it just kind of sounds like the indirect land use debate, when we had how much forest are you going to preserve on renewable fuels and this whole indirect land cost. Because the EAB said that the Clean Air Act excludes nonroad engines like vessels from stationary source regulation. They rejected arguments that vessels should be regulated as stationary source like California and Delaware are advocating.

So our question is, who do you agree with? The EAB or California or Delaware? And what do you really think the Act requires?

Ms. MCCARTHY. Well, first of all, I should have clarified probably when Mr. Waxman raised this that the statute does have a 12-month limit in it between complete application——

Mr. SHIMKUS. Well, I think that is his point.

Ms. MCCARTHY [continuing]. And final permit——

Mr. SHIMKUS. There is statute——

Ms. MCCARTHY. So there is—but——

Mr. SHIMKUS [continuing]. And then we are 5 years.

Ms. MCCARTHY. No. No. We are 3 to 6 months. I think we are getting very confused. In that 5-year process was a series of changed permits and withdrawn permits.

Mr. SHIMKUS. Do you reject that 2007 was the initial start of the process?

Ms. MCCARTHY. It depends on what you—well——

Mr. SHIMKUS. That is our point.

Ms. MCCARTHY. But let me answer your second question. I actually think there is a little bit of confusion over the vessels. The way the Act and the rules require is that we take into consideration the emissions from those vessels as we are looking at what you call a potential to emit, which is the amount of emissions from that source.

We argued in the recent Shell permits that you don't have to apply back to those vessels. The EAB actually agreed with that. So unless——

Mr. SHIMKUS. But, reclaiming my time, you are saying these transportation vessels you want to regulate them in conjunction with the stationary source review.

Ms. MCCARTHY. I'm saying that the Act requires that we look at the emissions from all of those vessels——

Mr. SHIMKUS. And we are saying the past practice of the EAB doesn't support that.

Ms. MCCARTHY [continuing]. In the 24-mile range.

I think the EAB totally agreed with the way we are handling it, and there is no issue remaining——

Mr. SHIMKUS. I think there is not a consistency, and that is part of our problem.

Ms. MCCARTHY [continuing]. With the Shell permits about the vessels.

Mr. SHIMKUS. Now let's just continue this process because this is really—does EAB help or does it hurt? We would argue that it is hurting, because the point is that—is the EAB—you keep saying it eases litigation, but EAB is litigation.

Ms. MCCARTHY. No. It prevents the need——

Mr. SHIMKUS. Do they have——

Ms. MCCARTHY [continuing]. Of a Federal Court.

Mr. SHIMKUS. Judges?

Ms. MCCARTHY. Yes. It does.

Mr. SHIMKUS. Do these judges wear robes? Are there briefs submitted?

Ms. MCCARTHY. Absolutely.

Mr. SHIMKUS. Are arguments heard?

Ms. MCCARTHY. Yes. At times. Oral arguments.

Mr. SHIMKUS. I'm not a lawyer, but that sounds pretty close like litigation to me.

Ms. MCCARTHY. It is a adjudication process without question, but it is a carefully crafted, very narrow——

Mr. SHIMKUS. But in this process——

Ms. MCCARTHY [continuing]. And one in which they have——

Mr. SHIMKUS. EAB and——

Ms. MCCARTHY [continuing]. Even most recently issued——

Mr. SHIMKUS [continuing]. Your action has caused——

Ms. MCCARTHY [continuing]. A standing order for a narrow purpose.

Mr. SHIMKUS [continuing]. Ping-ponging of the permit, and that is where we will—I think we can make a credible argument this has taken 5 years because it gets ping-ponged back to you, back to the EAB, and then we have no resolution.

Ms. MCCARTHY. Well, when the EAB has remanded permits back as a result of inadequacy in those permits and when they have

gone back to the EAB, they have never ping-ponged it back again in the history of the EAB. One bite at the apple. If it comes back to them, they have summarily dismissed it, and it is narrowly about the issues that they raised——

Mr. SHIMKUS. I have 10 seconds left. I would submit that this case, if someone was doing a case study, they would say that this has been ping-ponged back three times. And I would put that into the record.

And I yield back my time.

Mr. GARDNER. The gentleman yields back.

The gentlelady from California, Mrs. Capps, is recognized for 5 minutes.

Mrs. CAPPS. I thank you, Ms. McCarthy, for your testimony and also your patience while we had the lengthy votes on the floor.

I represent a coastal area in southern California. This is an area that has some of the worst air quality in the Nation. So I'm rightly concerned, I believe.

There are 18 oil platforms off my shoreline. I'm concerned about this draft bill that seeks to exempt certain emissions from regulation, especially in an area that needs to reduce pollution like the area that I represent and live in and because of the jeopardizing of human health that is involved.

You have suggested that draft would preclude the EPA from requiring OCS sources to demonstrate compliance with health-based air quality standards at any point offshore. What would be the impact of this pollution on the health of the people who live—not just those who come and work on the rigs or on the platforms but the people who live and work near and along the coastline?

Ms. MCCARTHY. It would clearly allow larger amounts of pollution to enter into the region that you represent and on the shore, and it would then probably subsequently require significant amounts of more onshore reductions to account for those emissions coming forward. That is what led to Section 328 to happen back in 1990, and I think that we would see some of these those problems arise again.

Mrs. CAPPS. So in Alaska and in the areas of concern under discussion today, there are the health impacts to oil production crews but also to commercial fishermen, to recreational users, to the villages that dot the shoreline.

And I know in the second panel one of the witnesses will be someone representing the California Air Resources Board and their testimony with the same concern, about if certain pollution is allowed to exist offshore, then the regulations will have to be more severe for onshore in order to comply with severely strong regulations that the State of California has imposed for the sake of all people living whose air is affected by this.

I'm very aware of how failing to limit onshore emissions from OCS activities can affect onshore activities. In my district, emissions from marine vessels make up the lion's share of our total inventory, and it is not just the vessels transiting the Santa Barbara Channel. Nondrilling marine vessels that support construction, production, and processing of our OCS platforms emit hundreds of tons of pollution each year. These emissions force our air pollution

control district to take drastic steps to limit onshore sources of pollution. So this is a big area of concern for me.

And I want to give you the rest of the time if you will share with this committee how the requirements for OCS sources in this draft bill will affect regulation of onshore sources.

Ms. MCCARTHY. I guess the biggest area of concern I have is the difference between how it is currently regulated and what this would propose, in particular along the State seaward boundary. What we are talking about is an area where there is significant human activity. It is also an area in which your State and others need to regulate to.

Mrs. CAPPS. Absolutely.

Ms. MCCARTHY. The National Ambient Air Quality Standard is applicable at the outside of that boundary. So what you are doing is allowing emissions in that area which you will not be able to regulate effectively, we will not be able to minimize, it will increase human exposure, and you will then have to compensate by forcing additional reductions onshore. That is not, I think, the system that any of us would think would work very well.

Mrs. CAPPS. Mr. Chairman, I would like this to be underscored in this hearing today, I hope it will be underscored in the second panel, that when regulations are imposed in an area like Alaska in mind with a certain population that has—I'm glad my colleague from southern California has joined us. Because the population that we two, the two of us in the San Diego area and I on the central coast, is quite different from that in Alaska. And these regulations will have to be enforced in all of the 50 States with coastal areas, even though the challenge will be quite different, depending on the location.

It is very clear in Santa Barbara, in the channel with our national parks, our marine sanctuary with all the resources we have, that our offshore pollution greatly impacts—even today, under the current regulations, impacts our requirement to meet our standards for air quality and have to be mitigated already by stronger, more stringent standards onshore because of the marine activity that goes on because of our oil platforms offshore.

So I thank you for this testimony, and I believe it is important, this hearing, that we really get all of the information on the table. And I appreciate the opportunity for my 5 minutes.

I yield back.

Mr. GARDNER. Thank you.

The gentleman from California is recognized for 5 minutes.

Mr. BILBRAY. Yes, thank you very much, Mr. Chairman, and I apologize.

First of all, the gentlelady from way up north——

Mrs. CAPPS. It is not that far up north.

Mr. BILBRAY. Well, Santa Barbara to San Diego seems like a world apart sometimes. But she is right that there is obviously different implementations.

But, right now, you have the implementation of the Clean Air Act where the offshore facilities are regulated by the districts. As a former member of the Air Resources Board and 6 years there and 10 years in the district, not only is that the platforms themselves but all of the support vessels and issues like that—this doesn't just

apply to the offshore oil drilling itself, but even the importation of oil is affected through the air district, that the bunker oil used by ships when they enter the south coast air basin actually now is being managed by what kind of oil you burn when you are in that area, as opposed to when you leave the area. So all of these are big challenges that have been addressed or are trying to be addressed.

The biggest issue is giving the flexibility to the local administrators to be able to apply the technologies that work in that part of the area. And it is extraordinary that—when we are talking about international shipping being affected by air basin management and stuff like that.

But I think that one of the things that when we talk about offshore oil that isn't talked about is that this imported oil is 10 times more likely to foul our beaches than what traditional drilling has done in the past. And imported oil has a threat that we don't talk about.

I, for one, always love to point out that anybody who has ever sailed in southern California might know that in the fog the one way you are able to find Newport Harbor is with the oil leaks that are coming out of not the rigs but from the natural seepage that happens there to the point that where the Chumash Indians used the seeping oil to seal their canoes. And it was that much of a culture that they actually used the seeping oil for medicines and other issues.

So this issue of what is the practical challenges that we have in certain areas, I think, need to be reflected, but also the fact that, as somebody who grew up on the beach with that stinking oil sticking to my feet, the tar balls, I always blamed the ships offshore, rather than realizing that they are natural occurring seepage that was just part of the California experience all the way back to ancient Indians and Native Americans.

So I appreciate the fact that somebody is willing to sit down and talk about the facts instead of the fantasies, and I would only ask that we make sure that we work with local communities but do it in a way that understands there is a vested interest to get to yes rather than always playing it safe and getting to no.

And I have run into those structures even when we were working on environmental issues like trying to get a waiver from ethanol mandate in California. We had Federal regulators that would not agree with the Air Resources Board and the local community that there were certain fuel mixers that might be fine for the rest of the country that should not be mandated, and they kept finding reasons to delay, delay, delay. I made sure we were able to work together and find answers to those challenges and find a way to say yes.

Maybe what we sadly have to do is make it as dangerous to say no as it does to say yes.

Your comments.

Ms. MCKINLEY. Well, first of all, let me congratulate California for the work they do in terms of permitting of the platforms and all the work they do to protect the air quality there.

I would say that the system we have in place right now is one that attempts to apply the law, that attempts to use technology, air

modeling, the best technologies we have available. And I think we are well on our way to permitting three Shell applications and an application by ConocoPhillips.

And the only thing I would caution is that to change the rules of the road at this point may cause more uncertainty than certainty they would provide, and you just need to consider that moving forward. And I still believe that the EAB is an opportunity to actually avert lengthy Federal litigation and move these issues forward and know that we have a very secure and legally defensible permit.

Mr. BILIRAKIS. Now let us admit one thing. No matter what we do, no matter what the regs, no matter what the review, there are those out there in our community at large that will find a reason to try to litigate and obstruct any more expanded exploitation of offshore facilities.

Ms. MCCARTHY. That's right.

Mr. BILIRAKIS. And basically the concept is it will never be good enough to avoid their opposition.

Ms. MCCARTHY. And I think that is why—I don't disagree with you particularly where the Arctic is concerned. There are many challenges. Public concern is certainly one of those challenges that we need to be prepared to meet, but that means having the most legally defensible permit.

What we have learned through the EAB process is that when it goes through that process, it is remanded back, it gets strengthened. There are only four times when that returned permit has ever been appealed to Federal Court, and three out of the four it has hands down been upheld.

So if you are really concerned about litigation and that never going away, we think the EAB can help with that process. The fourth time, it hasn't been decided.

Mr. BILBRAY. I know my time has expired, but I would like to point out to my colleagues on both sides of the aisle, southern California—south of southern California which is a little place called San Diego County, 3 million people, we can talk all we want about offshore oil, but actually right off from Coronado Hotel—and some of you may know where Coronado is—the potential for having offshore oil there is right in our face because Mexico actually controls all——

Mr. RUSH. Mr. Chairman, with all due respect, we have got to go.

Mr. GARDNER. Understand. Thank you.

The gentleman from Washington is recognized for 5 minutes.

Mr. INSLEE. Thank you.

We all have an interest in this. I know some of the folks who live up in Shishmera and other places along the coast who are very concerned about air quality. But before I ask you a question, I just want to make a comment about this effort to expedite oil exploration on the North Slope. I think there is something that is—irony, I'm not sure is the right word, maybe something closer to distress about this situation—in that what we are doing is that we are burning oil and gas, and as a result of burning oil and gas, we are destroying the Arctic because we are destroying the Arctic ice cap. And as we are destroying the Arctic ice cap, we are freeing up more space that may be available for more drilling, which means

we will do more drilling, and then we will destroy more of the planet.

There is a certain irony here that it is sort of an encroaching free fire zone that we have, and I'm not sure that is really healthy for a lot of us. And the science on this is very, very sobering.

Two weeks ago or last week, the Arctic Monitoring Assessment Program, which is an international group, very credible community of the eight nations that border the Arctic, came out with a report that the Arctic is melting two to three to four times faster than the IPCC would have predicted a few years ago and that that will result in sea level rise several fold what was predicted. The IPCC had reported predictions of 7- to 23-inch sea rise, but because of the acceleration in the melt in the Arctic and Greenland, this report predicts a 35- to 63-inch rises in sea level by the end of the century.

So we are looking at three to maybe five to 6 feet—5 feet, excuse me, to sea level rise associated with this. And yet, as a response to that, what is our response? We just go look for more places to drill in the place we just destroyed because of our use of these fuels. And here we are today trying to expedite that process, rather than trying to find some alternatives to fossil fuels.

I just think that we should consider that background for this discussion. I don't think it is a healthy one for any of us.

Now, with that in mind, I would just ask Ms. McCarthy if you can just comment on this whole concept. In the clean air law, should we consider these larger issues? Is it appropriate for us to consider these larger issues? Or are those just beyond the realm of this particular statute?

Ms. MCCARTHY. The only thing I would say is that in our effort to look at reducing pollution from these sources, a lot of the pollution that is emitted from an OCS source impacts climate change, and we do our best to reduce those pollutants as we are looking at these individual permit decisions.

I do think you need to look at it in the context of the President's blueprint for energy security where he understands that there is a transition period that would move away from fossil fuel where domestic sources are incredibly important. And part of that challenge is making sure they are the cleanest we can get and that during this type of exploration that we take care of the air pollution as much as is humanly possible.

But I do think you are raising a sobering issue. And the issue is, if we can have the legislature turn their attention to the issue of climate and come up with a backdrop for these decisions that was better informed and looked more long term, it would be a benefit to all of us.

Mr. INSLEE. And we have taken some baby steps. I got the best political event I have ever gone to was in Woodinville, Washington, last October. I got to help dedicate the first electric car charging station in America at a church, at the Wooden Cross Lutheran church. And that happened because of our stimulus bill that helped some infrastructure development of the electric car infrastructure.

We are doing some good things around the country. I wish we could turn our bipartisan attention to those things, rather than just try to accelerate something that is causing so much harm.

Thank you.

Mr. GARDNER. The gentleman yields back.

The gentleman from Texas, Mr. Olson, is recognized for 5 minutes.

Mr. OLSON. Thank you, Mr. Chairman; and thank you, Ms. McCarthy, for coming today and thanks for your patience and your being accessible to this committee. I appreciate it. I want to thank you for coming to Texas for a hearing, a field hearing there. You provide an example for your colleagues.

I read your testimony, and I have to admit I was surprised by something I read. In your testimony, you said that the President's blueprint for a secure energy future recognized the importance of producing domestic oil as safely as possible while also taking steps to reduce our dependence on oil wherever it comes from.

And that last sentence disturbs me. Is it this administration's position that reducing dependence on American oil takes the same priority as reducing dependence on foreign sources of oil? Yes or no?

Ms. MCCARTHY. It wasn't meant to imply either way. That is not what that sentence was intended. I think the sentence was just intended to reflect the fact that the President understands that energy security is enhanced with domestic supplies and that, in general, the more we can become efficient, the more there is a general less reliance on fossil fuels.

Mr. OLSON. Your statement says, will reduce dependence on foreign oil regardless of where it comes from, reduce dependence on oil regardless of where it comes from. We know what this administration is doing to domestic production, the moratorium on the Gulf, now the permitorium, the persistent attacks on hydraulic fracturing, the EPA regulations, just to name a few. Yet we are going out and promising Brazil that we will be their best customer for their oil. And my question is, do you believe Brazilian companies have the same regulatory environment that American companies do? Yes or no.

Ms. MCCARTHY. I can't speak to that. I don't know the regulations in Brazil.

Mr. OLSON. Do you have a hunch?

Ms. MCCARTHY. No.

Mr. OLSON. My guess is they are not quite as stringent as we have here in the United States of America.

And, again, I don't know why we would invest in Brazil. Why not invest this money right here, increase American jobs, reduce our dependence upon foreign oil? And particularly with—the guys here have the most regulatory environment. They are the most economically, environmentally friendly companies that are doing drilling in the world. And why do we want to punish them? I don't understand that. It just seems to me that this administration would rather increase our dependence on foreign oil rather than tap into our American supply and help supply desperately needed jobs.

One more question about a bill I'm going to introduce, ma'am. It is called the Establishing Public Accountability Act. It is H.R. 1341. It is a very short bill, just two pages, and basically what it says is we think—I propose as EPA is going through a rulemaking process that they have to do a study of the impact on jobs here in

America, whether it creates jobs or whether it destroys jobs, and have to do that before the public comment period so the public has an opportunity to review what EPA has done, what they think is going to happen, and they have to tell the source, what you use, was research done internally, or was it some private contractor? Again just more accountability. Let the American public know what is going on.

And would you support that bill?

Ms. MCCARTHY. Actually, I don't know if the administration has taken a position on the bill, but I do know that, in terms of the Clean Air Act regulations that we have initiated of late—because that is all I can speak to. I haven't been here for a great deal of time—that when they directly impact or regulate facilities that we certainly do an economic analysis, including a jobs analysis.

Mr. OLSON. Does that sound like a good idea to you, though, to get the American public a jobs impact right in the bill, right in the proposed rulemaking, before the public comment period, so the American public can look at what EPA is doing and say do some research on their own and say good or not good?

Ms. MCCARTHY. When you have a rule that impacts the economy and can potentially impact jobs directly, I think it is important for us to take account of that in the rulemaking process. And to the extent that we can, where modeling is available and the information is solid, we certainly want to do that.

Mr. OLSON. Good. I appreciate that comment. I'm looking forward to working with you to get H.R. 1341 passed.

Thank you, ma'am.

Mr. GARDNER. The gentleman yields back.

I want to thank the Assistant Administrator for being here and your time today and for hanging in there with us. So I appreciate that. And we will move to the second panel.

Thank you very much for joining us today, and thank you as well for waiting with us through the vote series.

We will be joined on this panel by Mr. Brian Turner, the assistant executive officer for Federal Climate Policy, California Air Resources Board; also Mr. Ali Mirzakhalili, director of the Division of the Quality Delaware Department of Natural Resources and Environmental Control, along with Mr. Bob Meyers, senior counsel for Crowell and Moring; and Mr. Lynn Westfall, executive vice president of Turner, Mason & Company.

STATEMENTS OF BRIAN T. TURNER, ASSISTANT EXECUTIVE OFFICER FOR FEDERAL CLIMATE POLICY, CALIFORNIA AIR RESOURCES BOARD; ALI MIRZAKHALILI, DIRECTOR, DIVISION OF AIR QUALITY, DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL; BOB MEYERS, SENIOR COUNSEL, CROWELL & MORING; AND LYNN WESTFALL, EXECUTIVE VICE PRESIDENT, TURNER, MASON & COMPANY

Mr. GARDNER. Thank you for joining us, Mr. Turner. If you would like to, you have 5 minutes for your statement.

STATEMENT OF BRIAN TURNER

Mr. TURNER. Mr. Chairman, Ranking Member Rush, thank you for the opportunity to testify today on this draft legislation.

My name is Brian Turner. I represent the California Air Resources Board, also known as CARB. It is much easier to say. CARB is the primary body charged with protecting air and quality and air-related health in California and charged with speaking for the State on air quality issues. As you know, California is one of the Nation's largest producers of oil and gas. Unfortunately, California is also especially in regions with significant oil and gas production, endures some of the worst air quality in the Nation.

CARB and our partners in local air quality control districts have a long history of working to ensure that oil and gas development can occur in an environmentally responsible manner that does not exacerbate our severe air quality challenges.

CARB and our local air districts have significant concerns with this draft legislation. We understand the bill is intended to address the perceived shortcomings in two specific permitting decisions. We have no comment on those decision. We do, however, have concerns about trying to change fact-specific individual permit decisions by wholesale changes in the Clean Air Act, which has worked well in our State in regulating OCS activity for almost 20 years. CARB feels the legislation could have far-reaching unintended consequences on existing effective protections for public health in California.

Draft section 328 disenfranchises local citizens and ultimately will prove counterproductive, we feel, by increasing permit disputes, delays and litigation.

Section 328 of the Clean Air Act at issue here today was passed in 1990, largely at the insistence of Californian officials, industry, and union groups because of the failure of previous regulatory systems. Not just environmentalists, but State and local governments, business, industry, and residents across the spectrum were incensed that onshore sources enjoyed more lax air pollution regulation while onshore sources bore the burden of heavier regulation to make up for it.

Section 328 ended not just a decade of litigation between the State and Federal Government, it ended the complicated and expensive fights previously that we were involved in trying to bring adequate regulation of offshore sources from the available regulatory processes.

In contrast, section 328 enshrined the simple but powerful idea that offshore sources of air pollution should be treated the same as onshore, stationary sources. This equity of permitting process and air pollution control requirements is central to the strength and success of OCS permitting in California today.

And the systems worked remarkably well. Air pollution from OCS sources has declined dramatically while industry on and offshore are certain of predictable and a relatively process.

The draft bill unravels this carefully constructed and successful program threatening more pollution and more expense and less regulatory certainty.

I will briefly summarize our concerns. By changing the definition of OCS source, the discussion draft dramatically limits the time

frame for considering emissions from a project. Artificially limiting the time frame in this way reduces the amount of emissions that are counted as part of the project. This will result in some entire projects that would currently be regulated falling beneath regulatory thresholds for PSD, for offsets, or both.

Thus, the entire project would avoid air pollution controls and so substantially increase air pollution.

Second, by prohibiting the application of PSD requirements on vessels, the draft could preempt multiple existing State and local regulations on a variety of nonroad engines. These sources would then be uncontrolled, further increasing emissions. This prohibition on PSD also complicates the enforceability and applicability of CARB's recent important Statewide regulations of harbor craft and ocean going vessels Mr. Bilbray referred to.

Third, by requiring that air pollution impacts of OCS source be measured on an onshore location, the bill increases regulatory burden for industry and government and decreases public health protections for offshore users, including oil and gas production crews, commercial fishermen, tourists and recreational users.

Lastly, by removing administrative and judicial appeals to Washington, DC, the draft completely preempts the existing local administrative review and State court appellate process. This would quash local control, impose stupendous new costs on State and local governments and taxpayers and disenfranchise community groups and local stakeholders, effectively closing the courthouse door to otherwise worthy concerns.

In closing, CARB believes that in California, the amendments made by this draft are unnecessary and will do more harm than good. We encourage the committee to consider, to strongly consider whether such broad legislation is even necessary, or whether the two specific permitting decisions in dispute can be resolved without wholesale changes to an otherwise successful program.

Thank you again for the opportunity to talk.

Mr. GARDNER. Thank you, Mr. Turner.

[The prepared statement of Mr. Turner follows:]

TESTIMONY OF
BRIAN T. TURNER
ASSISTANT EXECUTIVE OFFICER,
CALIFORNIA AIR RESOURCES BOARD

Submitted to the
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives

Hearing On
"Jobs and Energy Permitting Act of 2011"

May 13, 2011

Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee, thank you for the opportunity to testify today on this draft legislation. My name is Brian Turner, and I represent the California Air Resources Board (CARB) on federal issues here in Washington DC. CARB is the primary body charged with protecting the air quality and air-related public health in California, and charged with speaking for the state on air quality issues. We also oversee the air quality permitting programs of local air quality control districts (Districts), and my testimony today has benefitted from the input of staff at Districts adjacent to oil and gas development on the Outer Continental Shelf (OCS) in Southern California.

As you know, California is one of the nation's largest producers of oil and gas and at the same time California, especially in regions with significant oil and gas production, endures some of the worst air quality in the nation. CARB and our local air quality partners have over five decades of experience in regulating the air quality of impacts from oil and gas production.

CARB and our local partners have significant concerns with the discussion draft. We understand that this bill is intended to legislatively address perceived shortcomings in two specific

permitting decisions in Alaska; however it proposes to do so by broadly changing the established implementation of the Clean Air Act in offshore areas that has been successfully used for almost 20 years. CARB feels the legislation could have far-reaching unintended consequences on existing effective protections for public health in California. These include:

- By changing the definition of OCS source, the discussion draft artificially limits the timeframe for considering emissions from a project. Excluding these emissions from analysis will result in some entire projects falling beneath regulatory applicability thresholds, thus avoiding control requirements and significantly increasing air pollution.

- The draft prohibits BACT and other PSD requirements on vessels, which could preempt existing state and local regulations on a variety of nonroad sources that would continue to apply onshore, further increasing emissions. This prohibition also complicates and undermines the enforceability and applicability of CARB's statewide maritime regulations.

- The draft's requirement to measure the impacts of an OCS source solely with respect to the impact at an onshore location both increases regulatory burden for industry and government and decreases public health protections for offshore users, including oil production crews, commercial fishermen, and recreational users.

- The draft completely preempts the existing local administrative review and state court appellate process, instead removing appeals to Washington DC. This would quash local control, impose tremendous new costs on state and local government and taxpayers, and disenfranchise community groups and local stakeholders.

CARB believes that, in California, the amendments made by this draft are unnecessary and will do more harm than good. We encourage the Committee to strongly consider whether such broad legislation is even necessary, or whether the two specific permitting decisions in dispute can be resolved without such problematic changes to an otherwise successful program. If the Committee decides to go forward with proposing fundamental statutory changes, we request that the draft bill be revised to avoid the unintended consequences we discuss below.

Background on air quality regulation of OCS oil and gas development in California

Offshore oil and gas facilities have been operating in California since the late 1800's, and state and local regulators have been working with the oil industry on environmentally responsible resource development on the OCS for just as long.

OCS oil and gas development in California has almost exclusively occurred off the coast of South Coast Air Basin and the South Central Coast Air Basin adjacent to the counties of Orange, Los Angeles, Ventura, and Santa Barbara. The majority of the development has occurred in the Santa Barbara Channel, which contains 18 drilling platforms, 15 of which are adjacent to Santa Barbara County. The air emissions from these sources, especially in these heavily impacted air basins, are significant. For example, current emissions associated with OCS sources adjacent to Santa Barbara account for over 2,000 tons per year of ozone precursors and represent about 4% of Santa Barbara County's entire emissions inventory. Meanwhile, the South Coast Air Basin and Ventura County are designated as non-attainment of the federal ambient air quality health standard for ozone, and Santa Barbara County is non-attainment for the State ozone standard.

California state and local officials and the California Congressional delegation were leading champions in the effort that led to the passage of Section 328 as part of the Clean Air Act Amendments of 1990, the Section that is the object of this draft legislation. Section 328 moved the regulation of air emissions from oil and gas development on the OCS from the Mineral Management Service to the US Environmental Protection Agency (US EPA). US EPA, in turn, was authorized to delegate its enforcement authority to the Corresponding Onshore Area (COA). In California, the COAs are the Air Pollution Control District adjacent to the OCS source.

Section 328 requires that for OCS sources located within 25 miles of a State's seaward boundary (an area which contains virtually all California OCS oil and gas activity), the air pollution control requirements shall be "the same as requirements that would be applicable if the source were located in the [District]." Thus, the Districts are empowered to implement all applicable federal, state, and local air pollution requirements to "OCS sources" that apply to stationary sources in corresponding onshore areas, including Prevention of Significant Deterioration (PSD) preconstruction permits, Best Available Control Technology (BACT) determinations, Title V

operating permits, and state and local air emission standards and operating rules that may be incorporated into PSD or Title V permits.

The adoption of Section 328 represented a dramatic improvement in OCS regulation that continues to work well in California today. Section 328 ended the complicated "consistency determinations" under the federal Coastal Management Act (which required OCS sources to be consistent with the requirements of the adjacent state coastal management program), and so brought to an end years of litigation and frequent standoffs with local jurisdictions and other local entities that sought to prevent any OCS development that was going to exasperate the already serious air quality problems in California.

The resolution in Section 328 was simple, fair, and has worked very well since EPA adopted its OCS rule in 1992. The basic, but powerful, concept is that the requirements for OCS sources shall be "the same" as if these sources are located in the adjacent state. No state can subject any OCS source to any requirements that does not also apply equally to onshore and offshore industry, as well as onshore businesses, citizens, universities, and even U.S. military installations. This principle is fair to both onshore and offshore sources.

When the rules for OCS sources are more lenient that those within the State, California's experience is that the tension between better-controlled onshore industry and stakeholders and the more lax federal OCS regulation will lead to *increased* disputes, project delays and expense, and permit denials. Since Section 328 went into effect, air quality-related issues associated with OCS development have ceased to be significant barriers to oil and gas exploration and development in OCS waters. Industry can and has complied with the state requirements for over 17 years, and they continue to do so every day off of California's Central and South Coasts.

The delegation to Districts under Section 328 of the authority to regulate OCS sources and the applicability of onshore requirements such as BACT and other rules has resulted in significant decreases in air pollution emissions throughout the region. Meanwhile, dozens of OCS exploration and development permits are issued each year.

California Concerns with Draft Legislation

Potential impacts on air quality permitting

California and our local partners have several basic concerns with the proposed CAA revisions. These include:

- By changing the definition of OCS source, the discussion draft artificially limits the timeframe for considering emissions from a project. Excluding these emissions from analysis will result in some entire projects falling beneath regulatory applicability thresholds, thus avoiding control requirements and significantly increasing air pollution.

- The draft prohibits BACT and other PSD requirements on vessels, which could preempt existing state and local regulations on a variety of nonroad sources that would continue to apply onshore, further increasing emissions. This prohibition also complicates and undermines the enforceability and applicability of CARB's statewide maritime regulations.

- The draft's requirement to measure the impacts of an OCS source solely with respect to the impact at an onshore location both increases regulatory burden for industry and government and decreases public health protections for offshore users, including oil production crews, commercial fishermen, and recreational users.

- The draft completely preempts the existing local administrative review and state court appellate process, instead removing appeals to Washington DC, imposing tremendous new costs on state and local government and disenfranchising community groups and local stakeholders.

Change in definition of OCS source and permitting timeframe

The discussion draft proposes to modify the timeframe for which emissions are estimated. The current definition initiates the project at the first attachment to the seafloor and ends the project timeframe when this connection is removed. The discussion draft alters this definition to "...the point in time when drilling activity commences... [to] when drilling ends..." We believe this

change could fail to count substantial pre- and post-drilling OCS activity from the vessels and equipment.

Change of permitting timeframe could exempt entire projects from regulation:

This proposed change to the permitting timeframe would allow days or even weeks of support vessel emissions prior to the commencement of drilling activity and after drilling ends to be excluded from analysis. The result could be that the emissions considered as part of the project are artificially limited in such a way as to bring the project's emissions profile below the applicable PSD regulatory thresholds for BACT, offsets, or both. Since application of BACT has the potential to reduce emissions by up to a factor of ten, and offsets prevent a net decrease in air quality, this change could significantly increase pollution from these projects.

For example, in 2001 a proposed OCS project in the Santa Barbara Channel proposed drilling 2 wells over a 90 day period. The drilling phase of the 90-day project would only be 23 days. The rest of the project included site preparation, casing setting, casing removal, well abandonment, and other set up and take-down activities, during which most of the support vessel trips would occur. This project was estimated to potentially produce 70 tons of nitrogen oxides (NOx). Of that amount 22 tons (31% of the total) would have been attributed to support vessel emissions. It is reasonable to assume that ignoring the non-drilling related support vessel emissions from this project would artificially reduce the emissions by at least 23% (31% of project emissions X 75% of project duration), if not by more given that a greater proportion of vessel activity would occur in set-up and take-down. A reduction in counted emissions of 25% could easily be enough to lower the emissions profile of many projects below applicability thresholds and allow the project to escape the mitigation of BACT and/or offsets, and so to substantially increase total emissions.

Prohibitions on control of vessel emissions

Section 3 of the discussion draft prohibits control of associated vessel emissions under the Clean Air Act PSD program.

Vessel exemption could preempt multiple existing engine standards: Because the draft bill exempts "...emissions from any vessel servicing or associated with an OCS source..." from emission control requirements under the PSD program of the Clean Air Act, California is

concerned the bill could be used to exempt many engines and other emissions sources located on those vessels (other than the engines that move the vessel – the motive engine), from emissions standards that have been incorporated into the PSD program by reference.

Currently, while the motive engines of marine vessels are subject to Section 209 of the Act and therefore not subject to BACT, other engines on marine vessels that service OCS sources may be subject to local district rules and PSD. An example would be crane engines located on a marine vessel associated with an OCS source. Crane engines are regulated as stationary engines under Santa Barbara County Air Pollution Control District Rule 333 and the CARB Stationary Internal Combustion Engine Air Toxics Control Measure. Such engines are subject to permit requirements under PSD and are therefore subject to BACT if their potential to emit exceeds certain thresholds. If it could be interpreted that the emissions from such engines would be considered "emissions from any vessel servicing or associated with and OCS source," then the proposed amendments could have the effect of exempting these engines from BACT and local and state emission limitations, significantly increasing emissions.

Undermines and complicates enforcement of existing statewide regulation: Because of the exemption from BACT and PSD permitting requirements, Districts would not be permitted to incorporate CARB's statewide maritime rules, the Commercial Harbor Craft (CHC) and Ocean-Going Vessel (OGV) regulations, into PSD permits. This could effectively prevent enforcement of these rules for OCS sources beyond state regulatory waters. The unregulated emissions from these excluded vessels and equipment may continue unabated for a long time.

In addition, the bill would preclude more effective and efficient enforcement of CARB's CHC and OGV rules at the District permitting level. CARB can enforce its CHC and OGV regulation only through separate record-keeping and reporting, while currently – i.e., without the bill's restriction – a District can provide a more thorough programmatic review of the OCS source's emissions, incorporate controls into the PSD or Title V permit, and reduce sources' total compliance cost.

Shift in location and method of emissions calculation.

Section 2 of the discussion draft moves the geographic point at which emissions are calculated from the current practice of calculating impacts offshore, near the drilling location, to an onshore point many miles away.

Public health impacts between OCS and shoreline: Shifting the impact measurement to solely consider impacts at an onshore location so disperses the projected impacts that increases in ambient air pollution in the OCS that would normally require offsets would escape detection and mitigation. This procedural change does not remove any of the pollution from actually reaching California and the associated decrement to our ambient air quality, but it does remove the Districts' ability to protect recreational, fishing, and other ocean users from OCS emissions.

The Santa Barbara Channel is widely used for both commercial fishing and recreation. There are large commercial fishing fleets in Santa Barbara, Ventura, and Oxnard harbors, and many of the fishermen harbored in Morro Bay also fish the Santa Barbara Channel. All three harbors contain many recreational boats whose owners primarily sail in the Santa Barbara Channel. Whale watching tours and tours to the Channel Islands leave regularly from the harbors. There are no fewer than 50 recognized surf spots between Point Mugu and Point Conception. Furthermore, the Santa Barbara Channel is a major migratory route for endangered species of whales, the Gray and the Humpback, who must also breathe the air of the OCS. Finally, there are the drilling rig and support vessel crew themselves, as well as other industrial and transient users in the Channel, including shipping and military vessels. Shifting the point of calculation of emissions effectively removes the protection of the Clean Air Act from these populations.

Onshore emissions measurement complicates permitting and increases expense: Currently, District permitting entails relatively simple calculation of emissions attributed to and aggregated at the OCS source – its "potential to emit." For example, Santa Barbara aggregates those emissions and models them for the highest impact off a drilling platform, which is usually somewhere in the ocean not too far from the platform. This calculation methodology is basically the same as is applied onshore – a consistency between onshore and offshore permitting that is precisely the spirit of Section 328.

This bill would complicate those emissions calculations by requiring that emissions be "measured" miles away onshore. This not only reduces the pollution attributed to the source, it will require more time and expense to properly model onshore emissions impacts. Districts may incur added cost and delay to deploy an adequate onshore monitoring network and obtain data sufficient to establish a baseline – costs that would be passed on to permit applicants.

Preemption of local administrative review and shift in appellate venue

Section 4 of the discussion draft preempts all local administrative review of permit decisions, except as requested by the applicant, and moves judicial review to the U.S. Court of Appeals in Washington DC.

Preemption of local review: In California, permit decision appeals are heard entirely within the local and state system – not by EPA or the Environmental Appeals Board. The first appeal is heard by the District's Hearing Board and judicial appeals by the Superior Court of California. The court of final appeal is the Supreme Court of California.

This local permit review is fundamentally consistent with the delegation to state authority and equal treatment of on- and off-shore pollution which is at the heart of Section 328 of the Clean Air Act. It recognizes that the intent of the program is to integrate federal, state, and local air quality requirements, to leverage local environmental, technical, and legal expertise, and to build local relationships and capacity between industry, government, and stakeholders in the region. This intent and these benefits are quashed by preempting local administrative review and removing all appellate action to Washington DC.

Removal of appellate venue: The negative policy effects of this local preemption are exacerbated by removing the venue for judicial appeals to the U.S. Court of Appeals in Washington DC, requiring local Districts to pay significant logistical costs to defend any number of appeals – whether from applicants, community groups, or any other appellant. Forcing cash-strapped state and local governments to travel 3,000 miles to defend their federally-delegated permitting decisions is a serious unfunded federal imposition. It impairs the ability of these governments to conduct the people's business, increases the burden on taxpayers, and takes precious resources from other pressing priorities.

Perhaps more troubling from a democratic perspective, this change in venue presents a major barrier to meaningful participation in basic public decision-making by local citizens. Requiring local businesses, community groups, and other stakeholders to file suit in the U.S. Court of Appeals in DC is tantamount to closing the courthouse door to many otherwise worthy complaints.

Conclusion

The California Air Resources Board appreciates the opportunity to address this draft legislation. California's carefully balanced oil and gas production and air quality regulation is working – dozens of new and modified OCS drilling operations receive permits each year within reasonable time and expense, while the 15 million Californians living in the affected air basins are protected from undue health and safety risks.

The discussion draft short-circuits this process, preempting local control over fundamental issues of health and safety. It increases the administrative burden on the state while decreasing the environmental benefits – certainly the wrong direction for "reform" of the law.

We feel the discussion draft takes a hammer to a pushpin. While we do not comment on the specifics of the permit decisions in Alaska, it is clear to us that the process in California is not broken. Instead, the proposed "reforms" will likely cause more problems than they solve. We urge the Committee to take a strong look at whether legislation is required at all in this case or whether more targeted and case-specific agency actions can resolve the issue. If the Committee does move forward with legislation, we ask that you take a hard look at the concerns that we have raised and take care to ensure that California's existing, effective system of OCS air quality management is not undermined.

Mr. GARDNER. Mr. Mirzakhalili.

STATEMENT OF ALI MIRZAKHALILI

Mr. MIRZAKHALILI. Chairman Gardner, Congressman Rush, and members of the subcommittee, thank you for the opportunity to testify on this draft legislation to amend the Clean Air Act regarding air pollution from outer continental shelf activities.

My name Ali Mirzakhalili, and I am the director of the Air Quality Division for the State of Delaware's Department of Natural Resources and Environmental Control.

We believe the proposed amendments would severely limit Delaware's authority to effectively regulate offshore sources pollution. The proposed constraints placed on States' rights and authorities will adversely affect our ability to protect public health and welfare from harmful effects of air pollution and adversely affect the local economy, particularly Delaware's large tourism industry.

Delaware has an air pollution problem. We failed to meet the 8 Hours Ozone and Fine Particle Standards. We have been successful in implementing pollution control strategies for stationary and area sources. Delaware's major and minor stationary sources are now well controlled and collectively account for only 31 percent of our statewide emission inventory. However, we still face the challenge of attaining and maintaining the health-based air quality standards, our remaining opportunities to reduce emissions are largely related to mobile sources, both on and offroad, including offshore sources.

Through delegation of OCS program, Delaware applies the same requirement to the OCS sources as we do to sources onshore. We have an effective permitting process that includes the ability to issue expedited permits. We find that existing authorities under the Clean Air Act appropriate, effective and workable. If not properly controlled, OCS activities will have an adverse impact on Delaware's air quality, which makes us enormously interested in the fate of these proceedings.

With respect to the specific provisions of the draft bill, I offer the following: Delaware opposes the proposed amendment of the Clean Air Act section 328(a)(1), which could require air quality impact of any OCS source to be measured and determined solely with respect to the impact at an onshore location and the corresponding onshore area. We support retaining the existing language that provides for onshore and offshore sources to be treated same.

The proposed amendment would limit Delaware's ability to protect the national air quality standards in the offshore areas of Delaware, leaving recreational and commercial users of our waters unprotected. The amendment disregards potential visibility or other impact of a Delaware OCS source on any neighboring State.

Moreover, the consideration of the effects of transported pollution on Delaware from OCS activities and neighboring States would be prohibited. This provision will add to the permitting complexity by requiring complicated modeling analysis that may require extensive pre-project monitoring to establish baselines relative to future impact as well as producing an entirely new wrinkle in the applicability examination.

Applicability determinations are often the most controversial and time-consuming element of the permitting process. This amendment, therefore, is contrary to the presumed streamlining objective of this legislation.

Delaware opposes section 328(a)(4)(c), which would establish that a drilling activity commences and ceases to exist based on when the owner commences and ceases the actual drilling operation.

It is a misconception that sources that operate for a short duration of time do not significantly affect air quality. It is noteworthy that much of this discussion may be unnecessary if the proposed sources install and operate tests at a local control technologies, which oil and gas exploration companies can certainly afford.

Finally, we oppose the new Section 328(d) permit application. The language requires final agency action to be taken not later than 6 months after the date of filing of a complete application. While Delaware generally issues stationary resource permits within 6 months, the review times vary based on the complexity of a source's application.

Accordingly, we do not believe it is necessary or appropriate to set a permit review time limit in the bill. Imposing a time limit on the permitting agency is inconsistent with existing land base requirements and is unnecessary. A 6-month timeframe does not provide adequate time for permit drafting, review with permittee and public participation and EPA comment in all instances, and places a one-sided and one-size-fits-all requirement on the permitting agency.

Second, the new language at 2 and 3 subverts existing state due process procedures and forces an agency like ours to argue and defend its decision in Federal Court. Although I am confident that we can aptly defend our permit decisions in any court, the potential cost of such adjudication will serve as a disincentive for maintaining our delegation of this program. We believe such an outcome is, again, contrary to stated goals of this discussion draft and will discourage states from accepting delegation. Once again, thank you for this opportunity to testify and I look forward to answering your questions.

Mr. GARDNER. Thank you.

[The prepared statement of Mr. Mirzakhalili follows:]

TESTIMONY OF ALI MIRZAKHALILI
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER
ON AN AMENDMENT TO THE CLEAN AIR ACT REGARDING AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES

MAY 13, 2011

SUMMARY STATEMENT

Delaware is concerned with the draft bill for the following four key reasons:

1) The proposed amendments will impede states' authority to regulate emissions and create unnecessary burdens on state agencies;
2) By restricting the consideration of air quality impacts solely to an onshore location in the corresponding onshore area, the proposed amendments does not sufficiently protect human health and the environment,
3) The proposed amendments shield a potentially significant portion of emissions from OCS activities from emission control requirements; and
4) The proposed amendments subvert our state's established procedures for due process and replace them with a potentially cumbersome and costly judicial review.

TESTIMONY OF ALI MIRZAKHALILI
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER
ON AN AMENDMENT TO THE CLEAN AIR ACT REGARDING AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES

May 13, 2011

Chairman Whitfield, Congressman Rush and Members of the Subcommittee, good morning and thank you for the opportunity to testify on this draft legislation to amend the Clean Air Act (CAA) regarding air pollution from Outer Continental Shelf (OCS) activities. My name is Ali Mirzakhalili, and I am the Director of the Air Quality Division of Delaware's Department of Natural Resources and Environmental Control and the current Air Director Chair of Ozone Transport Commission. My professional background comprises more than 25 years of managing Delaware's air quality including many years of direct permitting of major and minor stationary sources. For the past 10 years I have been the director of Delaware's air quality program.

As you are aware, EPA has established health-based air quality standards (i.e., National Ambient Air Quality Standards, or NAAQS) for six ambient air pollutants – ozone, particulate matter, nitrogen dioxide, sulfur dioxide, carbon monoxide and lead. Despite the fact that Delaware's air quality has greatly improved over the past 10 years, all of Delaware is currently designated as nonattainment, or out of compliance, with regard to the 8-hour Ozone NAAQS, and our most populated county is designated nonattainment for the $PM_{2.5}$ NAAQS. Improvements in Delaware's air quality are due, in large part, to the successful implementation

of pollution control strategies for the stationary and area sources within our jurisdiction using the authorities granted to us in the CAA. Delaware's major and minor stationary sources, as well as smaller sources and activities, which we refer to as area sources, are now well controlled and collectively account for only 31 percent of our overall statewide emissions inventory. However, we still face the challenge of attaining and maintaining the health-based NAAQS. Our remaining opportunities for reducing emissions are largely related to mobile sources, both on-road and off-road, including offshore sources. Delaware has used the authority granted under the CAA to regulate the emissions associated with on-and-off-road and offshore sources in order to protect public health from harmful effects of air pollution. We have adopted California's Low Emission Vehicle standards and implemented a robust motor vehicle emissions inspection and maintenance (I&M) program. We rely on EPA's off-road standards to address the emissions associated with new engines and have utilized all available Diesel Emissions Reductions Act (DERA) funds to reduce the pollutants associated with older engines.

Relative to off-shore activities, Delaware has adopted a regulation that requires emission control of the crude oil ship lightering operations in the Delaware Bay. Crude oil ship lightering constituted the largest volatile organic compound emitting source in the State. In addition to promulgating emission control requirements we applied all land-based requirements, to include Title V operating permit requirements to the source. Additionally, Delaware requested and received delegation of the OCS program, in order to manage the emissions associated with this sector by applying the same requirements to the OCS source as we would to a source on shore through an effective permitting process that includes the ability to issue expedited permits. We find the existing authorities under the Clean Air Act appropriate, effective and workable.

Accordingly, we believe the proposed statutory amendments included in the draft bill would severely limit Delaware's authority to effectively regulate offshore sources of pollution. Moreover, we are concerned that the proposed constraints placed on states' rights and authorities will adversely affect our state's ability to protect public health and welfare from harmful effects of air pollution and adversely affect the local economy, particularly Delaware's large tourism industry.

In particular, we have four key concerns about the bill as drafted:

1) The proposed amendments will impede states' authority to regulate emissions and create unnecessary burdens on state agencies;

2) By restricting the consideration of air quality impacts solely to an onshore location in the corresponding onshore area, the proposed amendments does not sufficiently protect human health and the environment,

3) The proposed amendments shield a potentially significant portion of emissions from OCS activities from emission control requirements; and

4) The proposed amendments subvert our state's established procedures for due process and replace them with a potentially cumbersome and costly judicial review.

I will discuss each of these issues in more detail in a moment. But first, I need to make it clear that Delaware is interested in exploring its natural resources offshore and strongly support efforts to moving towards energy independence. In particular, we see a tremendous potential for

offshore wind and other clean energy sources off the coast of the Atlantic. The Delaware Department of Natural Resources and Environmental Control has proposed to the Department of Interior that states should have significant input into an exploration or leasing processes, including an ability to opt in or opt or opt in to any OCS program at least within 75 miles of its shoreline. Delaware sees a potential for tremendous growth in future activities in the OCS and would like to maintain its authority to address areas of concern using state authorities. If not properly controlled such activities will have an adverse impact on Delaware's air quality that makes us enormously interested in the fate of these proceedings.

Delaware has historically taken the stance that, when possible, its businesses should work directly, and in cooperation, with the state on regulatory compliance and enforcement issues, rather than with the federal government. We believe it is important for states to take delegation of programs that affect them. The CAA provides for complementary roles for the various levels of government. EPA's role is best served in an oversight capacity. To this end, Delaware received from EPA full delegation of the OCS program on July 21, 2010, and immediately became the permitting authority for the first source to trigger OCS requirements in Delaware waters. We issued this permit on August 20, 2010, less than one month after receiving delegation and five months after receiving an administratively complete application from the source.

Delaware's OCS regulations apply land-based requirements to OCS sources, because OCS sources have the potential to adversely impact our air quality both over land and over

water, which is pertinent since our ocean is used heavily by both recreational boaters and commercial fishermen. We are also concerned with visibility impairment as tourism is Delaware's largest industry. Delaware's air quality is not only dependent on its local emissions, it is significantly impacted by transported pollution. The main transport is from the West, which is the predominant wind direction, but some of Delaware's worst air episodes occur when the wind comes from offshore. Sea breezes cause land-based emissions to "pile up" and combine with offshore emissions, resulting in unhealthy air quality in southern Delaware. In fact, Lewes, Delaware's second highest ozone reading in 2010 was due to an inshore flow that caused unhealthy air quality throughout southeastern Delaware, while areas to the west were clean.

Given the air quality challenges in Delaware, offshore emissions are extremely important to the state. As a result, expanded OCS activities must not cause increases in air pollution without appropriate emission controls. Delaware's land-based requirements are reasonable and appropriate. They are based upon technical feasibility and cost effectiveness. During its 40+ years of existence, Delaware's permitting program has built a record of making appropriate technology determinations and issuing timely permits.

Now, with respect to our perspectives on specific provisions of the draft bill, I offer the following:

First, Delaware believes this draft bill significantly impedes states' authority to regulate emissions and protect air quality and public health. We oppose any amendments that would

preclude or discourage our ability to accept delegation to be the primary authority to implement and enforce requirements for OCS sources that have an impact on our state's air quality.

Second, Delaware opposes the proposed amendment to CAA section 328(a)(1), which would require air quality impacts of any OCS source to be measured and determined solely with respect to the impacts at an onshore location in the corresponding onshore area. Instead, we support retaining the existing language in the CAA that provides for onshore and offshore sources to be treated the same. The proposed amendment would limit Delaware's ability to protect the NAAQS in the offshore areas of Delaware, leaving recreational and commercial users of our waters unprotected, and disregard potential visibility or other impacts of a Delaware OCS source on any neighboring state. Moreover, consideration of the effects of transported pollution on Delaware from OCS activities in neighboring states would be prohibited when those activities are undertaken. Further, this provision will only add to the complexity of the technical review and permit design by requiring complicated modeling analysis that may necessitate extensive pre-project monitoring to establish baselines relative to future impacts, as well as introducing an entirely new wrinkle in the applicability determinations. The applicability determinations are often the most controversial and time consuming element of the permitting process. This amendment therefore is contrary to the stated objective of this legislation.

Third, Delaware opposes section 328(a)(4)(C), which would establish that a drilling activity commences and ceases to exist based on when the owner commences and ceases the actual drilling operation. This would limit the installation of, or operation of, emission control

technology solely because these activities remain and operate in one location sporadically, or for relatively short durations. It is a misconception that sources that operate for a short duration of time do not significantly affect air quality. In Delaware we know this is not true. For example, in regulating our power plants we concluded that emission controls on peaking turbines that operate for only twenty hours per year are necessary and very cost effective. It is noteworthy that much of this discussion may be unnecessary if the proposed sources install and operate best available control technologies, which oil and gas exploration companies can certainly afford. Short duration emissions are important because many of our air quality problems, such as ozone and PM2.5, occur over a short duration. Ozone is based on an 8-hour average period, and PM2.5 is measured on a 24-hour average period. Uncontrolled sources operating for a single day can cause or contribute to exceedances of health based air quality standards. We believe the existing statutory language on this issue should be retained, giving the permitting authority the ability to evaluate and establish when a source commences and ceases operation, and determine control requirements based on a source-specific evaluation.

Finally, we oppose the new section 328(d), Permit Application, of draft bill. First, the language requires final agency action to be taken not later than 6 months after the date of filing of a complete application. While Delaware generally issues stationary source permits within 6 months, review times will vary, both within a state and among states, based in large part on the complexities of the source's application. Accordingly, we do not believe it is necessary or appropriate to set a permit review time limit in the bill. Imposing a time limit on the permitting agency is inconsistent with existing land based requirements and is unnecessary. This six month timeframe does not provide adequate time for permit drafting, review with sources, and public

participation and EPA comment in all instances and places a one-sided and one size fits all requirement on the permitting agency. Second, the new language at (2) and (3) subverts existing state due process procedures and forces an agency like ours to argue and defend its decisions in federal court. Although I am confident that we can aptly defend our permit decision in any court, the potential cost of such adjudication will serve as a disincentive for maintaining our delegation of this program. We believe such an outcome is again contrary to the stated goals of this discussion draft and would serve to discourage states from accepting delegation.

Once again, thank you for this opportunity to testify. I look forward to answering your questions.

Mr. GARDNER. Mr. Meyers, you are recognized for 5 minutes.

STATEMENT OF BOB MEYERS

Mr. MEYERS. Thank you. And I appreciate the opportunity to testify again today. I just want to address a few key points. First, there is a complaint that the draft legislation somehow impedes the ability of States to protect air quality. In particular, California complains that it is concerned about the public health impacts of offshore emissions and that by supposedly preventing the State from implementing its mobile source regulations, the discussion draft would deny health protections to onshore and offshore populations, including crew members on OCS service vessels. As pointed out in my written testimony, it is entirely unclear how refusing to allow mobile sources like vessels to be broadly redefined in the Clean Air Act as stationary sources denies California or any other State any authority it may have to regulate mobile source emissions.

If States have mobile source authority, they can use it. The discussion draft is silent on this point. Indeed, California has been a prime example of exerting such authority in seeking Clean Air Act waivers for its mobile source standards. In fact, in public comments the State has already claimed authority to regulate crew vessels servicing an oil platform under its mobile source authorities.

Again, the discussion draft is limited to exertion of stationary source authority. The argument regarding health protection also seems to fall apart when you realize that California currently exempts 70 percent of in-use harbor craft diesel engines. Under CARB's final regulations, in-use fishing vessels are not subject to requirements to replace in-use engines with cleaner engines. These vessels generate 40 percent of all harbor craft emissions, or 10 times the amount of emissions associated with OCS sources off Santa Barbara County.

Parenthetically, California partially justifies excluding 70 percent of vessel engines and 40 percent of emissions due to the lower health risk from fishing vessels offshore as compared to near shore emissions. Accurately measuring the lower health risk is one of the very concepts the discussion draft advances.

Second, there is a complaint that the legislation won't allow California air quality districts to incorporate CARB's statewide maritime rules and other rules into PSD permits beyond State regulatory waters. Since California currently defines regulated waters to extend 24 miles offshore, the State appears to be arguing that it should be allowed to extend its authority beyond the 25-mile limit in Section 328. I may be wrong on this, but that seems to be what I have read in the written testimony.

Third, there is a concern with regard to local administrative review and process. In this regard, it is unclear from my review of the testimony whether California is arguing that administrative review process exists within its delegated authority from EPA, or outside of this authority. Under either authority no mention is made as to whether California will consider a permit final after issuance or whether as in the AB process, invocation of the process itself would delay finality.

Some of the prime concerns behind the discussion draft are to establish clear deadlines and to recognize that development of OCS sources involves issues of national importance. But apparently, EPA and States do not think there is any reason to hold themselves accountable for meeting any statutory deadlines. EPA has argued in court that the current Clean Air Act requirements for issuing a permit in one year are inapplicable when the EAB, which is part of the EPA, chooses on its own to grant review of permit decisions.

EAB is not subject to any statutory limit on its deliberations since Congress didn't create it. Delaware argues that imposing a time limit on a permitting agency is inconsistent with existing land-based requirements and is unnecessary. It argues that States should be able to determine on a case-by-case basis, when sources begin and cease operation and make source specific evaluations. While I respect the State's perspective, the issue before you today is implementation of Federal PSD requirements, which Congress indicated should be decided within a specific amount of time.

So I don't think you can have it both ways. I don't think you can argue that the present system without effective time limits and with potentially unlimited discretion for administrative review, is a better system than one which attempts to place time limits on review and help define what Congress intended in 1990. I also don't think the arguments are consistent with the structure of the Clean Air Act which makes clear distinctions between mobile stationary source regulation. Instead, what is being advocated is seemingly unfettered discretion to merge two concepts when OCS sources are involved. At a minimum, this presents the issue of double regulation of the same sources.

Finally, there appears to be the impression that this is somehow an Alaska problem. I can't agree with this perspective. Without additional legislative or regulatory direction there is no assurance that the experience with region ten permits and the EAB review of these permits won't be replicated elsewhere. As far as I can see, the only thing that hasn't been offered up is the EAB's new order. But this order itself allows the EAB to hold arguments in appropriate cases where it determines that an argument would assist in decision making.

Further, the EAB explicitly retains the authority to modify its procedures as appropriate on a case-by-case basis. This hardly gives one confidence that the process for the next OCS permit is somehow fixed.

Once again, thank you for the opportunity to be here. And I think the subcommittee's focus on developing legislative solutions in this area is appropriate, and I look forward to answering any questions.

Mr. GARDNER. Thank you, Mr. Meyers.

[The prepared statement of Mr. Meyers follows:]

Testimony of Robert J. Meyers

Subcommittee on Energy and Power

House Energy and Commerce Committee

May 13, 2011

I would like to thank the Chairman of the Subcommittee, Mr. Whitfield, for the opportunity to offer additional testimony on The Jobs and Energy Permitting Act of 2011. Since my testimony for the Subcommittee hearing of April 13, 2011 contained a lengthy analysis of the original discussion draft, I will not repeat all the assessments rendered in that testimony. Instead, my testimony today will center on arguments that have been raised concerning whether to amend Section 328 of the Clean Air Act ("CAA") to clarify how permitting agencies should consider emissions from Outer Continental Shelf ("OCS") sources, how OCS sources should be defined and regulated and what time limits should apply to taking final agency action on a complete permit application.

As Members may know, my law firm, Crowell & Moring LLP represents affiliates of Shell Oil Company that are seeking CAA permits for exploration drilling projects to be conducted offshore Alaska in the Beaufort and Chukchi Seas where Shell holds offshore oil and gas leases. I have also provided legal services and representation to Shell Oil Company. I understand, however, that the committee has requested me to testify on the basis of my experience with regard to CAA legislation and regulatory interpretation and implementation of the Act since approval of the 1990 Clean Air Act Amendments ("1990 CAAA").

I. Measurement of Onshore Impact

My April 13th testimony outlined the development of CAA section 328 in the House and the Senate and its final approval by the conference committee for the 1990 CAAA. As I indicated previously, given the historical context in which Section 328 of the CAA was developed, it seems clear that the overall intent of Congress in enacting this provision was to protect onshore air quality and to ensure that offshore sources were regulated in a similar manner to source located in the "corresponding onshore area."[1]

Outside of any legislative intent, however, the statutory structure of CAA section 328 also centers on onshore air quality. In CAA section 328, Congress did not authorize EPA (or states or localities acting pursuant to a delegation of EPA authority) to regulate OCS sources for

[1] The conference report for the 1990 CAAA mentions only that "A new program is established providing for control of air pollution from Outer Continental Shelf drilling *facilities*." (Emphasis added) H.Rept. 101-952 at 348. Additional contemporaneous statements, however, do lend support to the interpretation that CAA section 328 was focused on onshore air quality. For example, during consideration of the 1990 CAAA conference report, Representative Largomarsino inserted a statement from the Assistant Director of the Santa Barbara Air Pollution Control District into the Congressional Record. This statement indicated in part that "The construction and operation of Outer Continental Shelf (OCS) facilities emit a significant amount of air pollution which can adversely impact *coastal air quality* in the United States. . . . Of primary concern is the fact that OCS air pollution is *causing or contributing to the violation of federal and state ambient air quality standards in some coastal regions*, with the potential that unmitigated OCS pollution will prevent certain coastal regions from attaining federal and state clean air standards." (Emphasis added) 136 Cong. Rec. 35031 (October 26, 1990)." As an additional example, Clean Air Facts (April 12, 1990), a publication circulated to members following the House Energy and Commerce Committee's mark up of H.R. 3030, indicated that a floor amendment would be offered to regulate OCS facilities. After citing the potentially large emissions from a "single uncontrolled facility" this publication stated that "[o]il and gas activities on the outer continental shelf can cause tremendous *onshore air pollution problems*." (Emphasis added) *A Legislative History of the Clean Air Act Amendments of 1990*, Library of Congress at 2564.

any purpose, but for certain defined purposes. Congress did not provide permitting authorities with the authority to regulate all OCS sources generally, but only with reference to certain provisions contained in the CAA. In specific, CAA section 328 provides that EPA establish requirements to "attain and maintain Federal and State ambient air quality standards and to comply with the provisions [of the Clean Air Act pertaining to preconstruction permitting of major emitting facilities]." Thus, EPA is authorized to control OCS sources with respect to attaining and maintaining national ambient air quality standards ("NAAQS"). Attainment and nonattainment designations for NAAQS are promulgated on the basis of land-based, geographic areas.[2] Congress also directed EPA to utilize the CAA provisions for the permitting of stationary sources (e.g., to determine such issues as whether a PSD permit is required and, if required, how air pollution control requirements are to be determined). Sources subject to PSD are required to demonstrate that their emissions combined with other emissions, in addition to not exceeding the NAAQS, will not consume more than the available air quality "increment." The focus of such requirements again is with respect to designated attainment and nonattainment areas onshore and land areas classified for their air quality, i.e., Class I or II.

---

[2] EPA has used Metropolitan Statistical Areas (MSAs) and Consolidated Statistical Metropolitan Areas (CSMAs) as a basis for the designation of nonattainment areas for NAAQS (although the Agency has also issued additional guidance documents which include other factors to be utilized in the designation process). CAA section 107(d)(4) additionally provides that if an ozone or carbon monoxide nonattainment area is located within a MSA or CMSA and is above a certain classification, then entire MSA or CMSA is included within the area by operation of law unless a Governor and EPA agree on a different course of action. State efforts to designate attainment and nonattainment areas through the process in CAA section 107(d) are also based on areas, specifically "areas (or portions thereof) *in the State*." (Emphasis added). Predictably then, most nonattainment areas follow political boundaries and jurisdictions. *See for example* Attachment 1, which includes a map of the nonattainment area for the South Coast of California.

EPA has recognized the overarching purpose of CAA section 328 within the regulations the Agency promulgated in 1992. EPA's OCS regulations provide that, "In implementing, enforcing and revising [the OCS rule] and in delegating authority hereunder, the Administrator will ensure that there is a *rational relationship to the attainment and maintenance of Federal and State ambient air quality standards* and the requirements of [the PSD program], and *that the rule is not used for the purpose of preventing exploration and development of the OCS.*"[3] (Emphasis added). In addition, EPA has explicitly stated that "The intent of Congress in adding section 328 was *to protect ambient air quality standards onshore* and ensure compliance with PSD standards. EPA is to accomplish this by controlling emissions of pollutants for which ambient standards have been set and their precursors (criteria pollutants) from the OCS that can be *transported onshore* and affect ambient air quality."[4] (Emphasis added) Measuring the air quality impact of an OCS source at the shoreline of a state, at the geographic points where NAAQS attainment and nonattainment areas exist and where the general public overwhelmingly resides, is obviously such a rational relationship. It is a relationship that EPA has repeatedly recognized in both promulgating the original OCS regulations and in updating OCS requirements to ensure consistency with state standards. The language within the discussion draft would serve to clarify this historic nexus and provide clear direction to EPA and other permitting agencies on

---

[3] 40 CFR 55.1. In making further determinations with regard to the consistency of state and local regulations with federal regulations on OCS, EPA has indicated that the Agency "review[s] the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment of maintenance of Federal or State ambient air quality standards or part C of title I of the Act , that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1 EPA has also evaluated the rules to ensure they are not arbitrary and capricious. 40 CFR 55.12(e). EPA has excluded rules that regulate toxics, which are not related to the attainment and maintenance of Federal and State ambient air quality standards." 75 Fed. Reg. 15,898, 15,899 (March 22, 2011

[4] 56 Fed. Reg. 63,774, 63,775 (December 5, 1991).

assessing impacted air quality in the course of their consideration of OCS permitting applications.

II. Definition of OCS Source

Concerns have been raised regarding the definition of an "OCS source" within the discussion draft. These concerns appear to be centered on whether during certain periods of time (e.g., when a drill ship is getting in position for drilling activities) a source which is otherwise a mobile source under the CAA should be, but would *not* be, considered to be a "stationary source." The committee has also received comments that set-up and breakdown activities for drilling should also be considered as activities of a "stationary source."[5]

As my previous testimony indicated, the discussion draft would not exempt all such activities from any regulation, or even from regulation under the Clean Air Act (e.g., as Title II mobile sources). Instead, the discussion draft would provide that such activities would not be defined as the activities of a stationary source and thereby potentially subject to standards applicable to "major emitting facilities" under the PSD program. Marine vessels are, in fact, regulated by EPA both as to engines and with regard to fuel.[6] Furthermore, states such as California have acted to regulate both vessels and the fuel used in such vessels within a certain distance from shore. The California Code of Regulations contains provisions to reduce particulate matter ("PM"), oxides of sulfur ("SO_x") and oxides of nitrogen ("NO_x") from harbor

---

[5] Letter to the Honorable Bobby Rush from Thomas P. Walters, Washington Representative, County of Santa Barbara, April 12, 2011.

[6] *See* 68 Fed. Reg. 9,745 (February 28, 2003), 73 Fed. Reg. 25,098 (May 6, 2008), and 75 Fed. Reg. 22,896 (April 30, 2010).

craft by prescribing engine standards.[7] These regulations specifically include the regulation of "any . . commercial . . . vessel"[8] and include requirements for the use of California Air Resource Board diesel fuel or alternative fuel.[9] In addition, California has promulgated "Vessel Fuel Rules" that require ocean-going vessels to use lower sulfur fuels.[10]

Although the PSD program can be immensely complicated, the concept addressed in the legislation is straightforward. When a source is engaged in drilling activity - the actual function that that a drill ship or other mobile offshore drilling unit is designed to serve- it is considered to be a OCS source and thereby subject to stationary source regulation under the CAA. When a source is not engaged in drilling activity, it is not considered a stationary source. "Drilling activity" is a standard that can be applied among anchored drill ships, jack-up drilling units, and dynamically positioned units - all of which involve different procedures for preparing to drill. This would provide direction to permitting agencies as to the point at which the vessel becomes an OCS source. But again, this does not mean that air emissions from the vessel are "unregulated" or incapable of being subject to regulation, instead emissions from vessels may be subject to other federal and state regulation that is focused on mobile sources.[11]

---

[7] *See* 17 CA ADC § 93118.5

[8] 17 CA ADC § 93118.5(d)(36).

[9] *Id.* at § 93118.5(e)(1).

[10] 17 CCR 98118.2. The fuel rules cover vessels greater than 400 feet in length, non-tanker vessels equal or greater than 10,000 gross tons, non-tanker vessels will engines with per-cylinder displacements larger than 30 liters and certain tankers.

[11] In *Pacific Merchant Shipping Association v. Goldstene,* a case in which vessel operators challenged California's fuel standards for certain vessels operating within 24 miles of its coastline, the United States Court of Appeals for the Ninth Circuit recently affirmed a district

(continued...)

EPA has also recognized that the authority to regulate OCS sources is not unbounded. It has clearly stated that "Only the vessel's stationary source activities may be regulated, since when vessels are in transit, they are specifically excluded from the definition of OCS source by statute . . .Section 328 does not provide authority to EPA to regulate the emissions from engines being used for propulsion of vessels. Any state or local regulations that go beyond these limits will not be incorporated into the OCS rule."[12] The legislation therefore provides a "bright line" test to determine when a vessel or other OCS source ceases to be mobile and becomes subject to the narrow authorization of regulation contained in CAA section 328.

III. State Permitting Actions/Administrative Review

CAA section 116 generally provides that states or political subdivisions are not precluded from adopting or enforcing CAA standards and requirements provided that they are not less stringent than federal requirements. Most PSD permits are issued by state or local air pollution control agencies, either under delegation of authority from EPA to implement applicable federal regulations or through approval of an individual state's program under its State Implementation Plan ("SIP").

(continued...)

court denial of a motion for summary judgment on several grounds including that California fuel rules were not preempted by the Submerged Lands Act. Case No. 09-17765 (March 28, 2011).

[12] 57 Fed. Reg. 40792, 40,794-5 (September 4, 1992). Parenthetically, EPA also indicated that "If mobile source emissions from vessels are regulated under future regulations developed pursuant to title II of the Act, the OCS rule will be revised accordingly." *Id.* at 40,795. As related in my April 13, 2011 testimony this regulation of marine vessels has occurred in the years following enactment of the 1990 CAAA and the promulgation of OCS regulations. However, I am currently unaware of EPA regulatory activity in this area.

EPA has delegated OCS air permitting authority in some states and in other states it has retained authority to implement the program. Pursuant to CAA section 328(a)(1), EPA regulations also provide that state and local requirements are applicable to OCS sources within 25 miles of the state's seaward boundaries, and EPA regulations incorporate such requirements by reference.[13] EPA periodically updates the requirements in its regulations to reflect changes to state and local requirements.

In the case of California, EPA delegated its OCS air permitting authority to each of California's coastal air quality control districts in 1994. Some districts (South Coast, Ventura, Santa Barbara and San Luis Obispo) have adopted the federal regulations as their own by cross-referencing the federal regulations within their regulations. An issue has been raised as to the extent to which the discussion draft would interfere with state administrative process on OCS permits.

To the extent a state is implementing the federal PSD program through delegation, changing federal laws and regulations could affect the previous process used in a state to consider and act on OCS permits. For example, I would interpret that the shorter 6 month deadline for granting or denying OCS permits would apply to state and local permitting agencies who are currently delegated authority by EPA. It is a separate question, however, as to the authority of a state to regulate OCS sources under its own authority within state territorial waters, within 25 miles of the shoreline or potentially further from shore, or whether federal preemption would exist that might constrain state action on the OCS.

---

[13] 40 CFR § 55.14

The presumption that the discussion draft might interfere with state administrative process appears to be based on the view that the state authority in this area originally derived from CAA section 328 and/or that amending this authority would necessarily affect state administrative practices or procedures. Without discussing the relative limits of state and federal authority in this area, however, Congress clearly retains the right to adjust requirements contained in the CAA as it sees fit to promote desired outcomes, and consequently to alter the scope of the authority that EPA can delegate to the states. And EPA has unilaterally interpreted its CAA authority to require changes in SIPs and requirements applicable to sources in a state even in cases where a state may object to the changes.[14] Therefore, to the extent that state administrative processes might be changed through enactment of the discussion draft, there would be nothing unusual about such a legislative outcome. Instead, it would fall into the category of Congress' prerogative to amend and revise the laws it has enacted. To the extent that EPA is authorized to delegate its authority, the delegation necessarily follows the contours of the authority that Congress has given the Agency.

Currently, it appears that EPA considers that the administrative process on a PSD permit is not constrained by statutory deadlines contained in the CAA. EPA has taken the position in litigation that the one-year deadline in the CAA for granting or denying a PSD permit based on a

[14] Examples in this area would include "SIP Calls" under the authority of CAA section 110(a)(2)(D) to impose state emission budgets for certain pollutants to address downwind nonattainment and maintenance issues. In addition, in implementing newly established thresholds for the regulation of greenhouse gas emissions ("GHGs") under authority of the CAA, EPA issued Federal Implementation Plans ("FIPs") to impose the higher permitting thresholds on certain states. See 75 Fed. Reg. 82,246 (December 30, 2010) where EPA acted to apply FIPs in seven states that did not file a "corrective" SIP to apply their PSD program to sources of GHGs (although such states did not object to the FIP) and 75 Fed. Reg. 82,430 (December 30, 2010) where EPA promulgated a FIP to establish a PSD permitting program in a state for GHG-emitting sources in a state which objected to this action.

completed application applies only with respect to the actions of the Administrator's "delegate" to make a final permit decision (e.g. the decision of a Regional Administrator with respect to a completed permit application). While I am unaware of similar EPA statements specifically with regard to state administrative process, or any state administrative appeal process, EPA has stated that a permit decision "becomes final agency action for purposes of appeal to a federal court of appeals only after the administrative appeal process is exhausted."[15] Thus, by providing clear direction with regard to consideration of OCS source permits, Congress could achieve the beneficial result of creating certainty in this area. It could ensure that completed permit applications for OCS sources would not linger indefinitely in the administrative review process at either the federal or state level.

IV. Conclusion

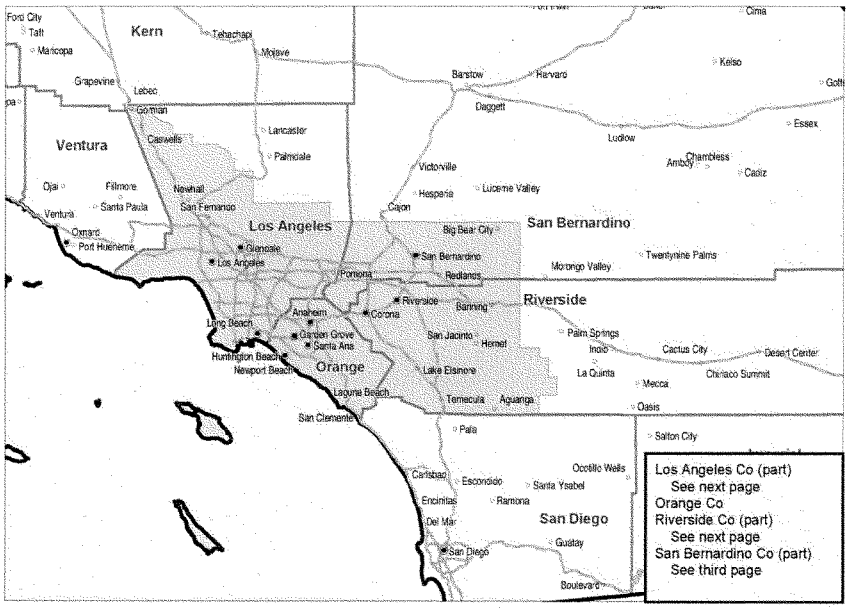
Once again, I appreciate the opportunity to testify before the Subcommittee on this important issue. On the whole, my assessment of the Discussion Draft has not changed since my initial testimony. That is, it will serve to apply CAA requirements to OCS sources in a clear fashion, resolving lingering uncertainties that have surrounded the program. I also think that the legislation could help to fulfill the purposes that EPA originally outlined for its OCS regulations 20 years ago, i.e., to achieve "a more orderly, less burdensome system of air quality permitting for OCS sources."[16]

---

[15] Defendant's Response to Plaintiff's Supplemental Brief Regarding Remedy, *Avenal Power Center, LLC v. EPA*, United States District Court for the District of Columbia (filed 3/1/2011) at 14.

[16] 56 Fed. Reg. at 63,775.

Los Angeles-South Coast Air Basin, CA 8-hour Ozone Nonattainment Area



Boundaries and locations are for illustrative purposes only. This is not a regulatory document.

Los Angeles-South Coast Air Basin, CA 8-hour Ozone Nonattainment Area

Los Angeles Co (part)

That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles - San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.

Riverside Co (part)

That portion of Riverside County which lies to the west of a line described as follows: Beginning at the Riverside - San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside - San Bernardino County line.

San Bernardino Co (part)

That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino - Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino - Los Angeles County boundary.

Mr. GARDNER. Mr. Westfall, you have 5 minutes.

STATEMENT OF LYNN WESTFALL

Mr. WESTFALL. Thank you. Mr. Chairman, members of the committee, it is my pleasure to be here today to discuss the importance of Alaska crude production to the West Coast of the United States. My name is Lynn Westfall. I currently serve as the executive vice president of Turner, Mason & Company, a 40-year old consulting firm to the refining business. Prior to joining Turner-Mason, I spent 36 years in the refining business. Thirty of those years were with companies having significant assets on the West Coast. Fourteen of those years are on the West Coast itself.

In my remarks today, references to the West Coast means the seven-State area comprised of Alaska, Washington, Oregon, California, Nevada, Arizona, and Hawaii. Those defining characteristics of the West Coast market is isolation from the rest of the country. The area only receives 17 percent of its refined product demand from other areas of the U.S. In contrast to an area such as the midwest, which is supplied by pipelines from the Gulf Coast for over two-thirds of its product demand.

In terms of crude supply, there are no pipelines that bring crude into the West Coast from other areas of the country. This means that the West Coast is totally dependent on crude production from California and Alaska with any shortfall having to be made up with foreign imports. This isolation is understandable given the history of crude production in the area. As you can see on my first chart, Alaska crude production peaked in 1988 at just over 2 million barrels a day, and California production peaked in 1985 with slightly more than 1 million barrels a day.

With crude demand of only 2.5 million barrels a day, the West Coast became a major exporter of crude to the rest of the United States. During this time, crude pipeline capacity was built to take crude out of the West Coast but not to bring it in, and shipments to the rest of the U.S. peaked in 1985 at almost 700,000 barrels a day. During the same period, the area only imported 10 percent of its requirements, and Alaska crude accounted for some 84 percent of the area's crude demand.

Since peaking, though, crude production in both Alaska and California has declined by about 4 percent a year. As you can see on the next chart, by 1993, local production had fallen below demand in the area, and by 2001 crude shipments out of the area to the rest of the country ceased altogether. The west coast then began to rely more and more on foreign imports which have grown six-fold since the early 1990s.

As you can see here, in 2010 the West Coast imported about 1.1 million barrels a day of crude, about 48 percent of its demand. I should point out that that number is artificially low due to reduced product demand caused by the recession. At more normal demand levels, the West Coast last year imported over 1.4 million barrels of crude, or about 53 percent of its demand.

So where does the West Coast turn to supply its crude needs? On this next chart, you can see that last year it depended on the Middle East, South America and Canada for 80 percent of its crude im-

ports and about 20 percent from other areas in the world. More importantly, however, is its increasing dependence on OPEC for crude. If you look at the next chart, since 2000, west coast oil imports from OPEC have more than doubled, and OPEC has accounted for over 75 percent of the growth of imports into the area. I think the obvious conclusion from this historical review is that as crude production in Alaska has declined, the West Coast has turned more and more to OPEC for its crude requirements.

For the past 30 years, the West Coast has moved to being a large exporter of crude to being a large importer. This has had the predictable outcome of raising relative prices in the region. As you can see on the final chart, during the 1990s, ANS Crude sold at a discount to crude on the Gulf Coast of about $2.80 a barrel. Since 2005, however, this discount has been reduced to just $0.63 a barrel for an increase over $2 a barrel. This amounts to a crude price increase of about $1 billion per year, or about $0.05 per gallon of gasoline.

Looking forward, the West Coast may become even more dependent on imports and imports from OPEC. Had there been no production of crude from Alaska in 2010, the West Coast would have imported over 73 percent of its crude requirements and over 70 percent of those imports would probably have come from OPEC.

As a final point, you should be aware that the almost 200,000 barrels a day that were imported into the West Coast from Canada are in jeopardy of being reduced by the new California low carbon fuel standard. Under this regulation, crude produced by mining or enhanced recovery techniques, such as oil sands from Canada, will be penalized with a carbon footprint 20 percent higher than conventional crudes. Products refined from this crude then will make it much more difficult for refiners to reduce their carbon footprints and this can divert Canadian oil supplies away from the West Coast.

I think the importance of providing an abundant secure supply of transportation fuels to this part of the country and the lack of infrastructure into the area from other parts of the U.S. seem to make a compelling case for any actions that increase local supplies.

Thank you for your time and attention. I look forward to your questions.

[The prepared statement of Mr. Westfall follows:]

Testimony

Before

U.S. House of Representatives Committee on Energy and Commerce

Subcommittee on Energy and Power

Draft on the Jobs and Energy Permitting Act of 2011

The Importance of Alaska Crude Production

To the West Coast of the United States

May 13, 2011

9:00 a.m.

2322 Rayburn House Office Building

Washington, D.C.

Submitted by:

Lynn D. Westfall

Executive Vice President

Turner Mason & Company

Dallas, Texas

The Importance of Alaska Crude Production
To the West Coast of the United States
Summary of Testimony

- The West Coast of the United States is an isolated market with no access to crudes produced elsewhere in the country.
- Through most of the 80's and 90's the West Coast had a surplus of crude production and had little dependence on foreign imports
- With the decline in production from Alaska and California, the area now imports about 50% of its crude demand
- Of current imports, about 55% come from OPEC countries, which have supplied over 75% of the growth in imports since 2000
- Growing dependence on imports have raised relative crude prices on the West Coast by approximately $2.15per barrel or about 5 cents per gallon
- Without continued production in Alaska, the West Coast will grow more dependent on imports from OPEC

The Importance of Alaska Crude Production
To the West Coast of the United States

In terms of crude oil and refined products markets, the West Coast of the United States is comprised of the states of Alaska, Washington, Oregon, California, Nevada, Arizona, and Hawaii, known as PADD 5. This area of the country is unique in its market dynamics and dependence on domestic crude production. Its most distinguishing characteristic is its logistical isolation due to a lack of pipeline capacity into the area from other parts of the country. The West Coast receives no domestic crude from other areas of the United States, as contrasted for instance to the East Coast which receives over 43% of its crude requirements from other parts of the country. Likewise on refined products, the West Coast only receives 17% of its product demand from other areas, whereas a market like the Mid West receives over two-thirds of its needs from pipelines originating primarily on the Gulf Coast. The isolation of the West Coast from other domestic crude sources is understandable given the history of crude production in the area.

ANS crude production on the West Coast peaked in 1988 at just over 2 million barrels per day and California production peaked in 1985 at slightly more than 1 million barrels per day (see Figures 1 & 2).

Figure 1
Alaska Crude Production

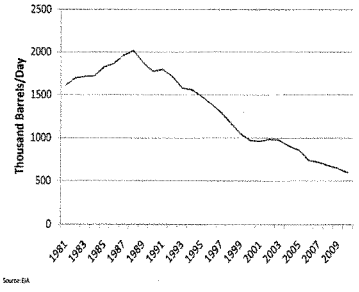
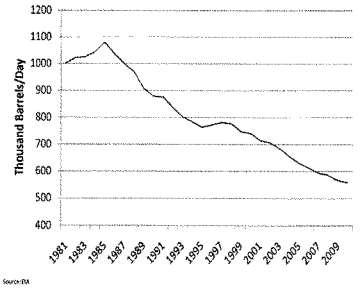
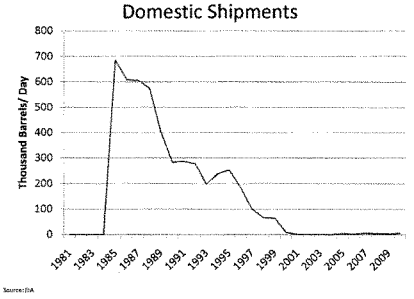


Figure 2
California Crude Production



With a demand for only 2.5 million barrels per day, the West Coast became a major exporting area for crude to the rest of the country through the 1980's shipping some 600,000 barrels per day at the peak (see Figure 3).

Figure 3
West Coast Crude
Domestic Shipments



During this time, the area only imported less than 10% of its requirements from overseas, 35% of which was for use in the two refineries located in Hawaii, and ANS represented some 84% of the areas crude requirements in 1982 (see Figures 4 & 5).

Figure 4
West Coast Crude Imports

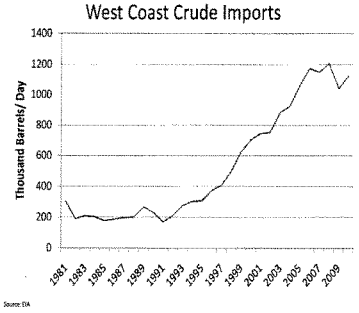
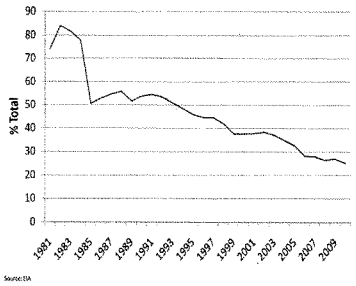
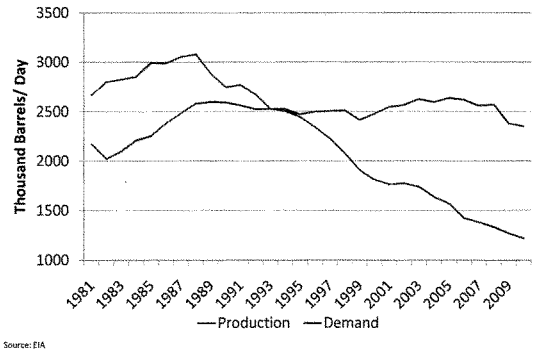


Figure 5
West Coast ANS Crude Runs



By 1993, with production from Alaska and California declining at about 4% per year, domestic supplies of crude fell below refinery demand and the area became a net importer of crude (see Figure 6).

Figure 6
West Coast Crude
Production/Demand



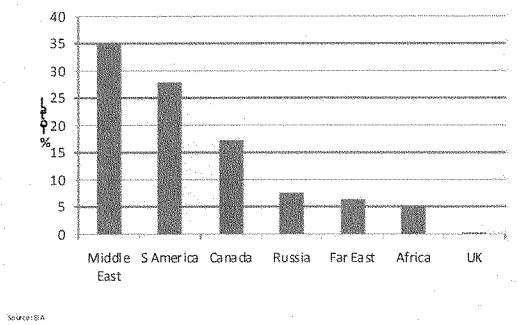
Source: EIA

Exports to the rest of the country fell and by 2001, shipments out of the area ceased altogether. Crude production has continued to decline by about 4% per year so that by 2010, Alaska production has declined to about 600 thousand barrels per day, about 30% of its peak, and California production now stands at about 560 thousand barrels per day, or about 56% of its peak. The West Coast is now heavily dependent on foreign sources for its crude requirements.

Last year, the West Coast imported about 1.1 million barrels per day of crude. This represented almost 48% of its total demand. This number is artificially low, however, since crude demand has fallen due to the effects on gasoline demand of the recent recession. At normal demand levels, the West Coast would have imported over 1.4 million barrels of crude last year or about 53% of its demand. This contrasts to the rest of the county which in 2010 imported over 65% of its needs for crude. The imports into the West Coast have come primarily from the

Middle East, South America, and Canada (80%) with 20% coming from other parts of the world (see Figure 7).

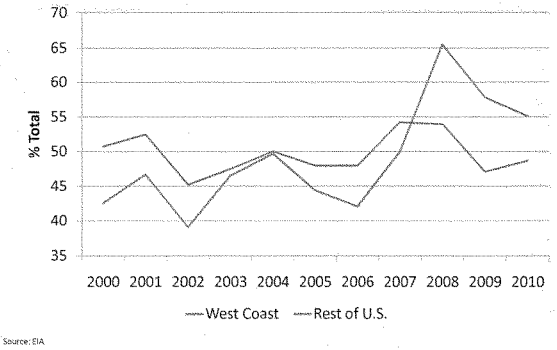
Figure 7
West Coast 2010 Crude Imports



Source: EIA

While the West Coast is not yet as dependent on foreign sources of crude as the rest of the country, it is more dependent on OPEC than the rest of the country as a whole (see Figure 8).

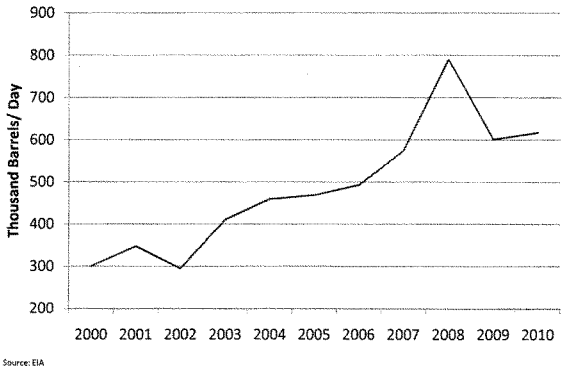
Figure 8
OPEC Crude Imports



Source: EIA

Since 2000, West Coast imports from OPEC countries have more than doubled and these sources have been responsible for over 75% of the growth in imports into the area (see Figure 9).

Figure 9
West Coast OPEC Crude Imports



This trend would have been even more exaggerated had product demand on the West Coast not been affected by the recession. The obvious conclusion from this historical examination is that as crude production in Alaska has declined, the West Coast has turned more and more to OPEC for its crude oil requirements.

So in the past 30 years, the West Coast has moved from being a large exporter of crude to being a large importer. This has had the predictable outcome of raising relative crude prices in the region. During the early 90's, when crude production on the West Coast was in excess of demand, ANS crude sold for an average of $2.78/barrel below the price of the benchmark Gulf Coast crude, WTI. As production and exports of ANS fell, however, this differential declined to $1.75/barrel between 1996 and 2000, and $2.22/barrel from 2001 to 2005. In more recent history, this differential has averaged only $0.63/barrel in the last five years (see Figures 10 & 11).

Figure 10
ANS Crude vs WTI Crude Price

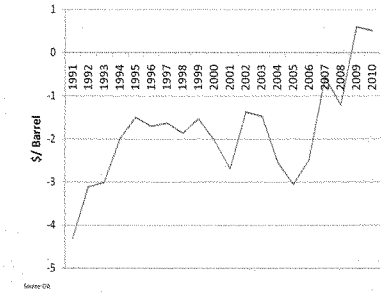
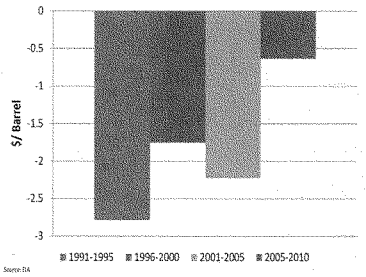


Figure 11
ANS Crude vs WTI Crude Price



The relative increase in price for ANS from $2.78/ barrel below WTI to $0.63/barrel below means that ANS has become $2.15 per barrel more expensive due to production declines on the West Coast. Crude costs, then, have now risen by more than $1 billion/year from the time of abundant ANS crude production and have contributed approximately 5 cents per gallon to the cost of gasoline in the area. In addition to the increase in cost, replacing domestic crude from Alaska with imports has also lowered the security of supplies to the West Coast. Instead of being able to rely on supplies only days away by ship, imports from areas such as the Middle East now take months to arrive and are not easily adaptable to respond to changes in demand or supply in the area.

At its historic decline rate of 4% per year, production of Alaskan crude will fall below the minimum operating rate for the Trans Alaska Pipeline in the early 2030's. The economics of production, however, may cause the cessation of supplies well before that time. As evidenced from the past, declines in ANS crude will likely be replaced by supplies from OPEC countries, which will make the West Coast the most heavily dependent on OPEC supplies of any area in the U.S. . Had there been no ANS Crude in 2010, the West Coast would have imported over 73% of its crude requirements and 71% of those imports would have come from OPEC. In addition, the 194,000 barrels per day of Canadian imports (17% of the total) into the region in 2010 are in jeopardy of being reduced by the California Low Carbon Fuel Standard (LCFS). Under this regulation, crude produced by mining or

enhanced recovery techniques, such as oil sands in Canada, will be penalized with a carbon footprint 20% higher than conventional crudes. Products refined from this crude, then, will make it much more difficult for refiners to reduce their carbon footprints as required. This could divert current Canadian supplies away from the West Coast, making production from Alaska even more critical to supplying the area. The importance of providing abundant, secure supplies of transportation fuels to this part of the country, and the lack of infrastructure into the area from other parts of the U.S., seem to make a compelling case for any actions that can increase domestic supplies on the West Coast.

The Importance of Alaska Crude Production

to the West Coast of the United States

Figure 1:
West Coast Crude Production

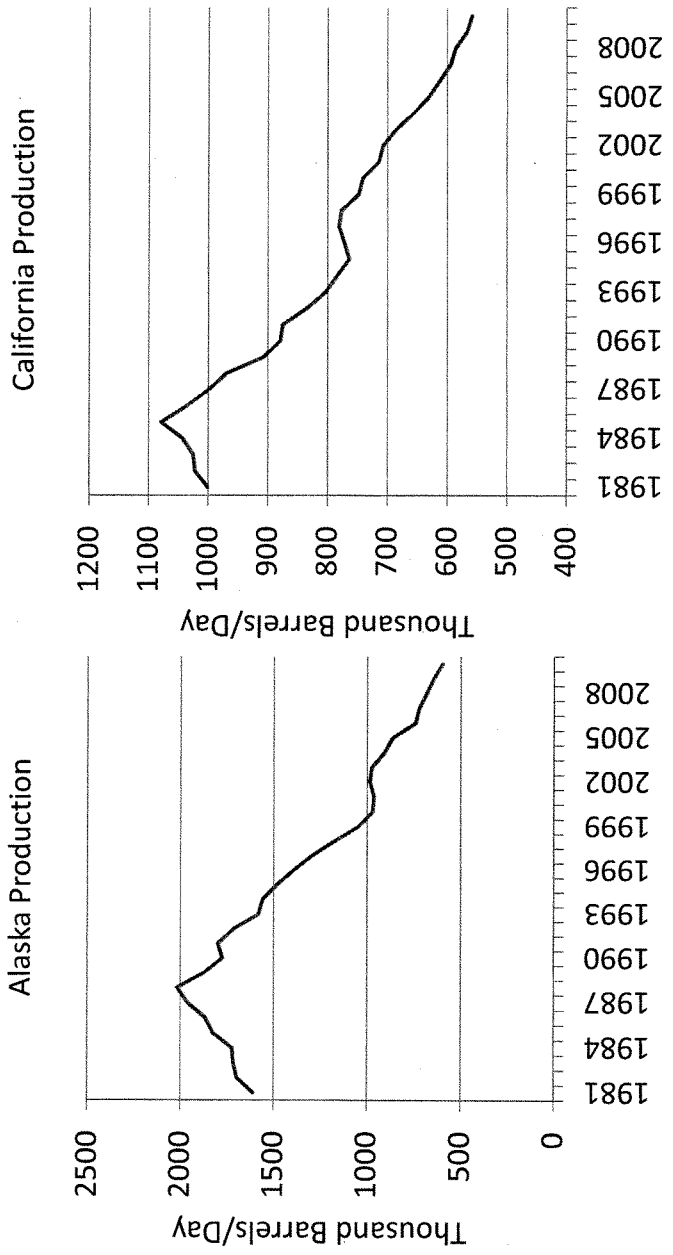


Figure 2:
West Coast Crude Balance/Imports

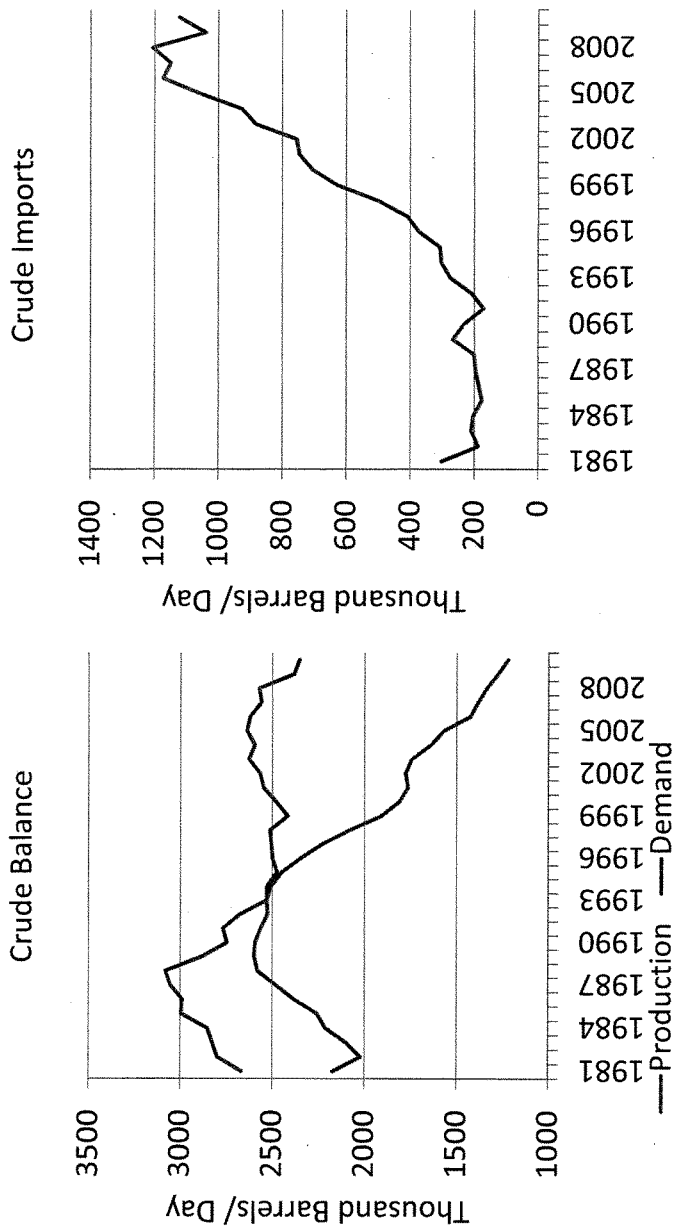


Figure 3:
West Coast 2010 Crude Imports

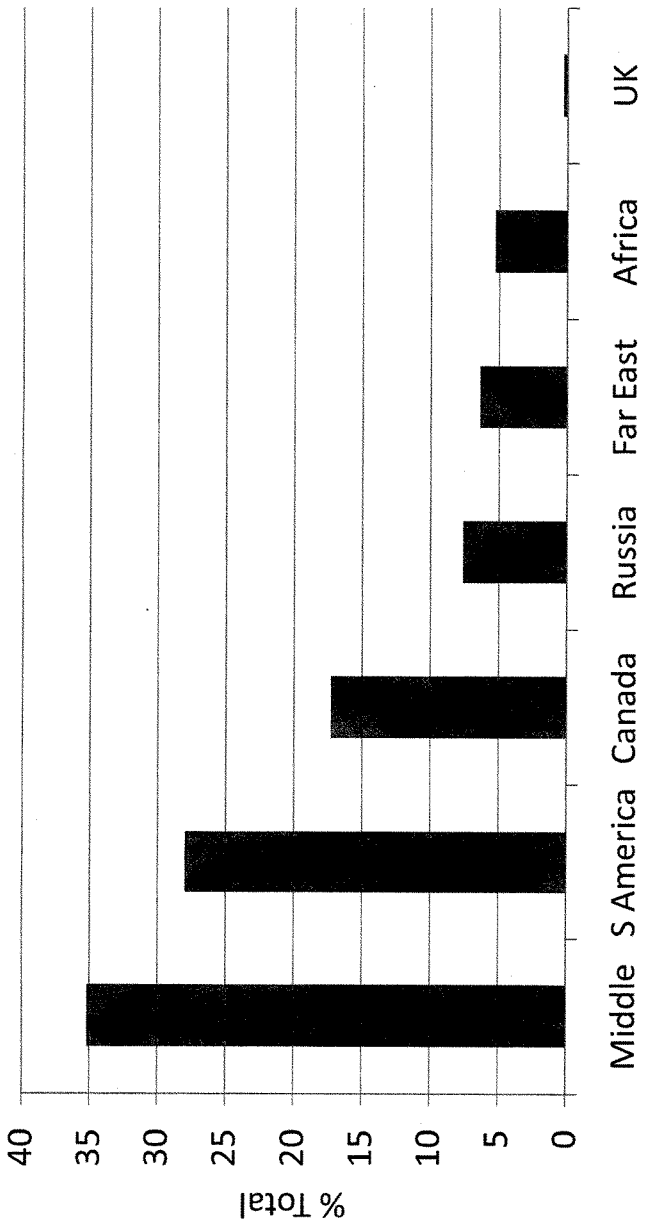


Figure 4:
West Coast OPEC Crude Imports

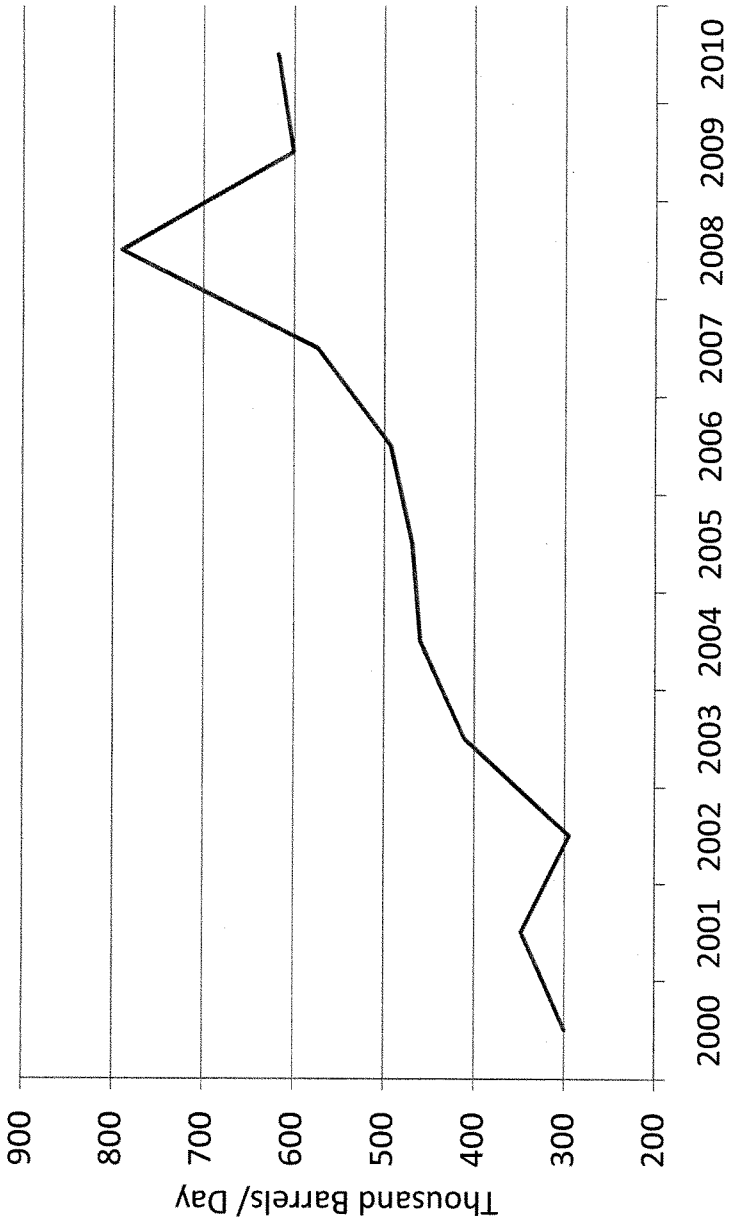
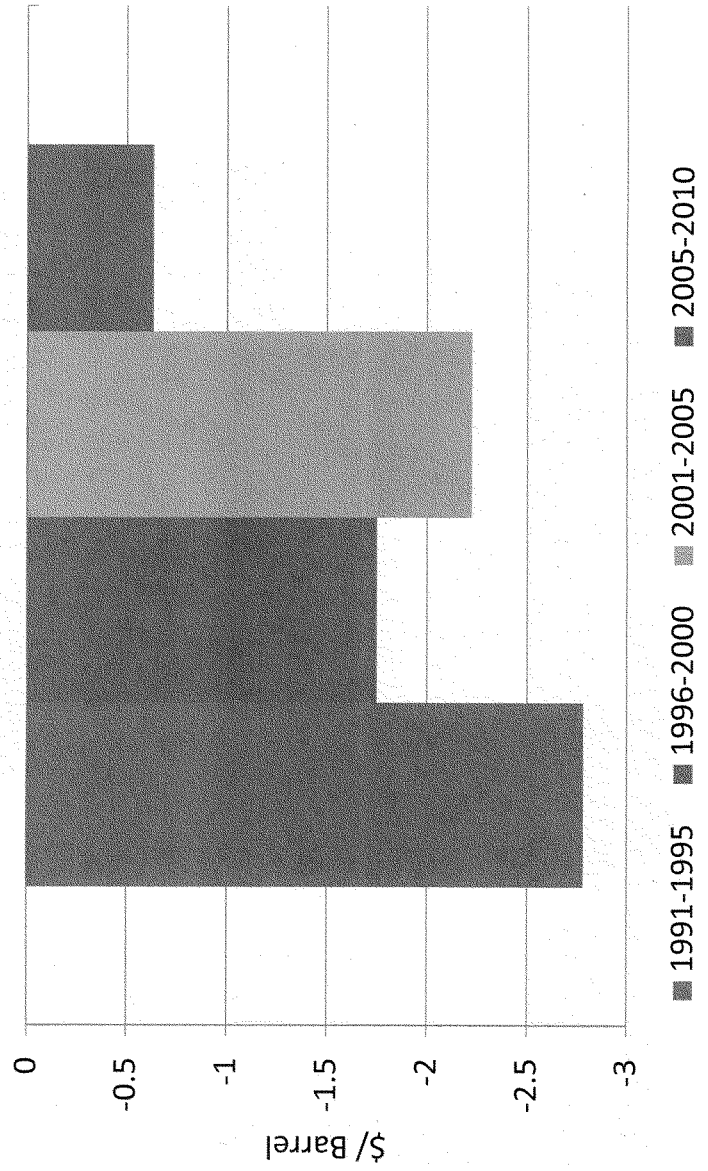


Figure 5:
ANS Crude vs WTI Crude Price



Mr. GARDNER. Thank you, Mr. Westfall. We now move into the question phase of the hearing. And I will recognize myself for 5 minutes.

Mr. Westfall, I will start with you. About the fuel supply, I read in the paper the last couple of weeks where it is talking about fuel supply and its impact on price, yet when certain people ask me a question about what is happening to the price of gasoline at the pump, they will say that the supply of fuel has nothing to do with price. Does the supply of gasoline impact its price?

Mr. WESTFALL. Absolutely.

Mr. GARDNER. If there is more supply of oil, what happens to the price of gasoline?

Mr. WESTFALL. Obviously, if there is enough supply of oil, the price will be reduced. That is what I had in my historical chart there, although it is the reverse. As crude supplies went down, the cost of crude went up on the West Coast.

Mr. GARDNER. So increased supply results in lower prices at the pump?

Mr. WESTFALL. Absolutely.

Mr. GARDNER. Mr. Meyers, I wanted to ask you a couple questions about the testimony earlier from this panel, as well as the assistant administrator of the EPA, specifically dealing with their contention that offshore human exposure to emissions from OCS sources will be unaccounted for under the legislation. And your testimony, though, suggests that Congress' intent with Section 328 of the Clean Air Act is to protect onshore ambient air quality. You went into that a little bit. Could you go a little bit further into the congressional intent on onshore air quality.

Mr. MEYERS. Yes. I mean, the legislation seemed to have been developed over a process of several years. There was legislation introduced in 1987 and leading up to the 1990 Clean Air Act. I think most people say, you know, the reason, as was testified here, was problems of onshore air quality in the nonattainment districts in California that drove this issue.

So the legislation is defining the impact with regard to the nonattainment area onshore. So I think that is consistent with the original intent of the bill.

Mr. GARDNER. And Mr. Meyers, are you familiar with the Department of Interior role in OCS?

Mr. MEYERS. Somewhat. It is not my area of expertise.

Mr. GARDNER. I was just wondering, the comment period that was brought up earlier, there is comment period when it comes to Department of Interior activities?

Mr. MEYERS. I believe so. Again, that is not my area of expertise.

Mr. GARDNER. Thank you. And you stated in your testimony that Section 328 of the Clean Air Act is not intended to be used for the purpose of preventing exploration development of the OCS?

Mr. MEYERS. Right.

Mr. GARDNER. Does applying identical onshore ambient air quality standards to offshore facilities depart from Section 328's intent?

Mr. MEYERS. I think the question that has arisen is what does the—arisen in permit decisions over 5 years what does this section mean, and I think that is the source of the problem. I think California and Delaware have interpreted it one way, I think there are

other reasonable interpretations. So the role that legislation can serve, which I think would actually speed up the process is for clarification, for clarifying what Congress meant at that point in time. The reason it was referred to in terms of the applicability process being the most difficult part, I agree, I agree.

So why wouldn't more clarity by legislation help speed up the process if trying to decide what you are applying the Clean Air Act to is the hardest part of the process.

Mr. GARDNER. And Mr. Turner, in his testimony, stated that the legislation changes the timing for when an OCS source becomes regulated as a stationary source rather than a mobile source. Does the legislation change that time?

Mr. MEYERS. No. I think the legislation—I think it gets confused, frankly.

Mr. GARDNER. So just a clarification to prevent needless litigation?

Mr. MEYERS. Well, clearly, I think Assistant Administrator McCarthy said it correctly, that the Clean Air Act requires that the emissions be accounted for, but there is a difference between accounting for the emissions from the vessels and directly regulating the vessels as a stationary source using stationary source standard language of best control technology. There are authorities in the Clean Air Act in title 2 that are specifically designed for the regulation of on-road and off-road sources. EPA has used those authorities. EPA regulates all marine vessels right now of all three categories. EPA and the United States are entering into emission control areas to control fuel use off the coastline. These are the authorities that have been done. The confusion here is when people are trying to use stationary source regulation and applying it to mobile source on the basis of the provision in 328 that talks just about the emissions.

Mr. GARDNER. When it comes to California, for instance, they have exempted several vessels from the requirements as well, haven't they?

Mr. MEYERS. Yes. I think I mentioned that. There was concern with air quality for people offshore, and I am not disputing that that could be an issue, it depends on where you are. But we have addressed that like we have done for cars, through mobile source regulations. EPA has issued regulations California has. I was saying that there was a reference in the testimony that part of the concern was the crew members of supply ships for OCS sources, and that was one reason why they needed to regulate those vessels.

What I was pointing out is they don't go back in their own regulations on fishing vessels, which are 40 percent of the emissions, and apply the retrofit requirements that they have required, even though fishermen are on those vessels too. So it seems a little bit, you know, uneven. I am sure they have their reasons for doing it, but I think, again, the argument is trying to use the stationary source provisions of the Act to get at something that was not intended.

Mr. GARDNER. Thank you, Mr. Meyers. Ranking Member Rush.

Mr. RUSH. Thank you, Mr. Chairman. Mr. Turner, you seem to have some disagreements with the comments of Mr. Meyers, if I

can read the expressions on your face. Would you care to add some commentary to Mr. Meyers' testimony?

Mr. TURNER. Thank you, Mr. Rush. I am afraid I am a very poor poker player. But I do think we heard some inaccurate information there. One was the definition of an OCS source. And the contention is that this legislation would not change that definition, and I disagree. It would change how—it would change how the definition of OCS source is currently implemented.

As we have done in California for 20 years, we read the legislation one way, and that allows us to regulate the whole of a project as we understand it. Changing that definition now too drastically, and I have some evidence in my testimony of a 25 percent reduction, I have another instance where it calls for 50 percent reduction in the total emissions of a project causing some projects to drop out of regulations completely, dramatically increasing pollution. So it does change the definition of a source with specific tangible air pollution impacts.

The other contention was that we are trying to regulate mobile sources through a stationary source regulation. What this is allowing is using existing nonroad regulatory—sorry. So there is two differences. One, we don't regulate vessels with fact. That is clear in the legislation that we can't do that. What we do do is incorporate regulations that exist on vessels andother nonroad sources into a PSD permit. This legislation exempts all those vessels and potentially all those nonroad engines on those vessels, things like train engines, et cetera, from those existing regulations that we would incorporate into the permit.

So again, those engines would be unregulated offshore very differently than what would happen to them onshore to get us back to the situation we were pre-1992 when there was much more contention over each of these permitting decisions. Thank you.

Mr. RUSH. Mr. Mirzakhalili, in the area of public commentary in Delaware, when you open your process up for public comment, who actually participates in those sessions?

Mr. MIRZAKHALILI. We give opportunity for all public comment through a public notice receipt of application and a public notice available to draft permit. And so the public has an opportunity to review both comment on application and comment on that draft permit before we finalize the permit process. So it is an open process that provides that opportunity.

Mr. RUSH. Mr. Turner, is that a similar process in California?

Mr. TURNER. Yes. I will point out we both have delegated authorities, so this entire process is run by local officials, the local administrative review. We have talked a lot about the environmental appeals board, et cetera, here today. That is not at issue in either of the State-delegated programs.

Mr. RUSH. And so would this bill have an adverse impact on your current status in terms of environmental impact for the State and local stakeholders?

Mr. TURNER. As far as the administrative and judicial review, it would remove it completely from our existing local process. And let me just, when a district makes a permitting decision, the first appeal is heard by the district's appeals board, hearing board, which is made up of local officials, local county supervisors, boards of the

city councils. After that decision, if there is judicial review, and usually that process, because it is much more locally based with local experts and local elected officials, resolves disputes. That is what it is intended to do, and that is what it overwhelmingly successfully does. If there is a permit appeal at that point into the judicial system, it goes into the State court system, the local Superior Court, the court of final appeals, the California Supreme Court. Anyway, it is all kept locally, local control, local experts, local stakeholders.

Mr. MIRZAKHALILI. And in Delaware, we have a similar system. It is an administrative appeals board process that they are not wearing robes, and it is not nonjudiciary, it is administrative, and appeals to that can go to a court system. And this proposal entirely bypasses that.

Mr. RUSH. Mr. Chairman, I yield back.

Mr. GARDNER. The gentleman yields back. The gentleman from Illinois, Mr. Shimkus, is recognized for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. A lot of questions, not a lot of time. Would we all agree that title 1 is for stationary sources, by the Clean Air Act? Title 1 of the Clean Air Act? Would you agree that that is for stationary sources, Mr. Turner, yes or no?

Mr. TURNER. There are other stationary source regs, I believe, in other portions of the Act including in section 3, subtitle 3.

Mr. SHIMKUS. But title 1?

Mr. TURNER. Title 1 deals with——

Mr. SHIMKUS. Stationary sources, OK.

Mr. MIRZAKHALILI. National ambient air quality standards are part of title 1, so it encompasses more than just——

Mr. SHIMKUS. As are hazardous air pollution regulations? Mr. Meyers?

Mr. MEYERS. Yes, I think that is correct.

Mr. SHIMKUS. Mr. Westfall?

Mr. WESTFALL. I am glad to say I don't know the answer.

Mr. SHIMKUS. Neither did I until this morning. No. Title 2 is mobile sources under the Clean Air Act. Mr. Turner?

Mr. TURNER. I believe so.

Mr. SHIMKUS. I can't pronounce your name.

Mr. MIRZAKHALILI. Mirzakhalili. Yes.

Mr. Shimkus. You would agree with that, Mr. Meyers?

Mr. MEYERS. Yes.

Mr. Shimkus. Mr. Westfall?

Mr. WESTFALL. The same answer.

Mr. SHIMKUS. And Mr. Meyers, you mentioned this would be double regulations on the OCS?

Mr. MEYERS. Yes. Going back on the comment here, I mean, I think it is being misconstrued that the mobile sources aren't regulated. They are regulated. California passed a regulation. EPA has regulations. It is not a question of them being regulated.

Mr. SHIMKUS. Would it be illegal to regulate mobile sources under title 1?

Mr. MEYERS. Well, that is not what the—there is not authority.

Mr. SHIMKUS. There is no authority, so that would be illegal? Would it be illegal? I mean, is California breaking the law by regulating mobile sources under title 1.

Mr. MEYERS. I wouldn't go—I don't—I am not going to go that far.

Mr. SHIMKUS. Mr. Meyers, reclaiming my time. Under the Clean Air Act, it states the term "stationary source" means generally any source of air pollutant except those emissions resulting directly from internal combustion engine for transportation purposes, or from a nonroad engine or nonroad vehicle as defined in section 7550. So how do you that?

Mr. TURNER. If I may——

Mr. SHIMKUS. You may, but I think you are on shaky ground here.

Mr. TURNER. I hope to clear something up because I think this is a source of confusion. Section 328 created this new thing called an OCS source. It specifically involves the vessels associated with drilling activity.

Mr. SHIMKUS. Well, I think that is why the clarity of this language is needed to address, because the Clean Air Act here says mobile sources internal combustion engines should be title 2, and that is why we are having this. The EAB also, in essence, agrees with this point. Based upon this judgment, or it is an order, they say you can't regulate mobile sources under title 1. And this raises the issue that we addressed with Administrator McCarthy, which we would like to make sure we address for clarity in the record.

Here is the three court cases or EAB, she wouldn't say they are court cases, I would say they are court cases because they have judges, you have litigants, you have orders. And this one is 2007, ping, right, pong; 2010 ping-pong, 2011 ping-pong. Are these court cases being pushed back and forth in a litigation quagmire to delay taking advantage of our abilities to recover oil and gas? Mr. Meyers.

Mr. MEYERS. Well, I think the Agency stated that they have taken legal position that the EAB, which is part of EPA, doesn't have to obey the 1-year requirement in the Act. So I think the history of this has been in the record. There have certainly been remands from the EAB. But the Agency right now doesn't think that is abounded by the 1-year PSD requirement in the Act. I am unsure what the States think. I think there have been some representations that the State administrative process should be allowed to basically work unfettered. So I think the question for States is do they think they are bound by the 1 year in a PSD under delegation.

Mr. SHIMKUS. And going back to the first ruling or judgment or whatever it is called is where the EAB defines in here that you can't regulate mobile sources under title 1, only stationary sources.

Now, going back. Mr. Westfall, by delaying this how does it affect our reliance on imported crude oil and our energy position for the United States and prices?

Mr. WESTFALL. It does nothing but make us more dependent on foreign sources.

Mr. SHIMKUS. And that is the irony of this whole thing?

Mr. WESTFALL. And particularly a place like the West Coast that has no other supply, domestic supplies can't reach their——

Mr. SHIMKUS. Their exclusion raises gas prices for their own consumers?

Mr. WESTFALL. Absolutely.

Mr. SHIMKUS. Thank you.

Mr. GARDNER. Thank you. The chair recognizes Mr. Bilbray from California for 5 minutes.

Mr. BILBRAY. Thank you. Mr. Turner, one of the things that has been brought up and discussed, and I was just wondering, when we get into the different implementations, the rest of the world may not know about AB 32, but obviously—and I don't know how much you are engaged or ARB has been included in that implementation.

The question is, is that when you look at domestic production, is 32 a consideration at all under ARB under today's strategies?

Mr. TURNER. Two ways that I would say that it is. Oil and gas sources are obviously—the production of oil and gas is a major CO_2emission source. They are regulated as such. Number two is that many of our strategies to reduce carbon emissions will also reduce our petroleum demand. So those are two ways in which they interplay.

Mr. BILBRAY. Well, my question, then, is you do an offset by the fact that if you don't have domestic production or offshore production of fossil fuel in this country, it then creates the issue that we have like in the South Coast Air Basin is the importation. And is there an offset considered of the fact that in lieu of domestic production, there is a major emissions issue of the long transport of imported oil along that? Is that even considered at ARB when they get into it, as a no project option has an environmental footprint?

Mr. TURNER. I am not deeply familiar with their modeling analysis to say whether it shows a dramatic—I don't believe it shows much effect of AB 32 on the domestic production honestly that would curtail it by the action of that program. So I am happy to get you further information on that.

Mr. BILBRAY. One of the biggest things that makes the whole issue of AB 32 and the whole issue with the greenhouse gas is totally so far beyond what the intention of the Clean Air Act was that it has really kind of created a whole new world of reality for those of us that come from the air district background. South Coast is impacted. Who else are you seeing within our nonattainment areas that this is a major issue on?

Mr. TURNER. South Coast, Ventura County and Santa Barbara County.

Mr. BILBRAY. And so it really isn't an issue if we were talking about exploration. My big question when you get into this is that our memorandum of understanding with the military, how enforceable has that been of us requiring them to change operations?

Mr. TURNER. I don't know the answer to that.

Mr. BILBRAY. So in other words, if you are now regulating the crew boats as being a stationary source that are running off. Now, those stationary sources, the platforms, they are within the coastal waters of the territory of California?

Mr. TURNER. Some are and some aren't.

Mr. BILBRAY. Some aren't? So some of this is actually trans—I mean, transterrestrial or jurisdictional, so you are actually regulating platforms that are outside the State of California?

Mr. TURNER. If we are talking about air quality permitting——

Mr. BILBRAY. Yes.

Mr. TURNER [continuing]. We regulate to the 25-mile zone limits, what section 328 does. It allows us to delegate an authority after 25 miles.

Mr. BILBRAY. So in other words, we basically allowed you to come into federal jurisdiction. And the same time, do you regulate the crew boots and the support boats that run out to San Clemente Island or San Nicolas Island, what kind of oversight does the South Coast Air Basin put on the Federal activity that runs between L.A. Harbor and the Federal facilities that are sitting offshore.

Mr. TURNER. The military?

Mr. BILBRAY. Yes.

Mr. TURNER. I don't think those are covered by the harbor craft.

Mr. BILBRAY. Do you a degree of inconsistency here that if we are talking about one operation on Federal territory and another operation on Federal territory, we now pick and choose which is a mobile source that we actually have jurisdiction on and which ones we don't?

Mr. TURNER. Our jurisdiction over oil and gas development on the OCS was—the structure was set up by Congress in section 328, and we were delegated by the EPA.

Mr. BILBRAY. OK. Now let me tell you something. The 1990 Reform Act also required the use of methanol and ethanol, so, you know, my attitude is just because Congress took an action doesn't mean in my book, as a former member that sat on that you know committee for over 6 years and 10 years on air district, doesn't carry a lot of weight with me. But what I get on this is you are talking about regulating these, what everybody would obviously perceive as a mobile source, the crew boats, are being regulated now more like the off-road equipment regs that you are implementing for the terrestrial emission issue with the construction trades?

Mr. TURNER. CARB's regs on the harbor craft and the ocean going vessels is under EPA section 209 like the light duty vehicles. We have got a CARB out there that we are authorized by EPA. California is the only State that is because of its severe air quality issue.

Mr. BILBRAY. Have we been able to implement the bunker fuel issue for vessels coming in from overseas?

Mr. TURNER. I believe. I will get you information on the current status. I believe we are.

Mr. BILBRAY. OK.

Mr. GARDNER. I want to thank the witnesses for joining us today. I appreciate your time and testimony. The record will be open for 10 days to submit questions for the record. And that concludes today's hearing. Thank you very much.

[Whereupon, at 12:55 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

13. OFFSHORE DRILLING: Shell confident Obama admin will grant Alaska permits *(05/11/2011)*

After meeting with the Obama administration's top energy experts, Royal Dutch Shell PLC said it is confident it can secure the permits it needs to begin drilling off the coast of Alaska.

Environmentalists have ardently opposed Shell's plans to drill in Alaska and have asked President Obama to tighten regulations for deep-sea oil exploration following last year's spill in the Gulf of Mexico. At the same time, Republicans and Democrats hailing from oil-rich states have asked the administration to allow more domestic drilling as the country faces skyrocketing gas prices.

Shell has already invested $3.5 billion in its Alaska exploration program, but, due to legal and regulatory setbacks, the company has yet to drill a well there.

The company's last hurdle occurred in December when U.S. EPA revoked an air quality permit it had granted to Shell. A panel of administrative law judges determined the agency had not adequately analyzed the action's effect on residents of Alaska's North Slope.

Shell and Alaskan lawmakers decried the decision.

But the company has since had time to mend its relationship with the government. At its latest meeting, Shell's U.S. president, Marvin Odum, said the administration gave "the strongest indication we've ever had of a coordinated government approach to start drilling in Alaska."

Odum added he was confident Shell would receive the necessary permits to begin exploration.

A senior White House official said the government often holds these sorts of meetings with businesses and other organizations that have questions about federal regulations.

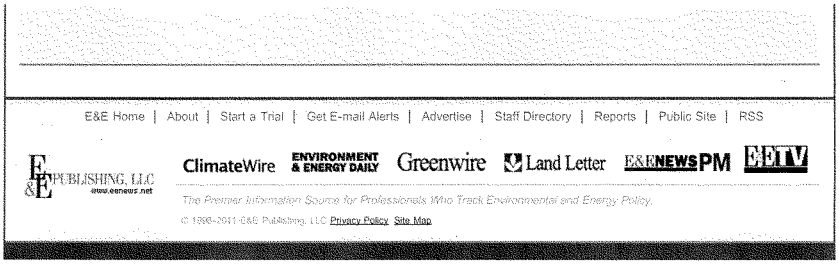
"We don't prejudge or take a position on Shell's project," the administration official said. But, she added, "we're committed to increasing domestic oil and gas supply. This is a potential resource, and we're going to look at it."

Conservationists worry that permit approvals will cause their fears of a devastating oil spill in the fragile region to come true.

"Shell doesn't have its permits for the simple reason that its drilling plans don't comply with the law," said Rebecca Noblin, Alaska director of the Center for Biological Diversity.

To minimize chances of a spill, Odum said Shell has implemented immediate-response capabilities as well as capping and containment systems to handle any discharge. The company emphasized that the drilling in Alaska would take place in shallower waters and at lower pressures than the BP PLC well that exploded last year (Chazan/Power, ***Wall Street Journal***, May 11). **-- PK**

BACK TO TABLE OF CONTENTS


E&E Home | About | Start a Trial | Get E-mail Alerts | Advertise | Staff Directory | Reports | Public Site | RSS
E&E PUBLISHING, LLC
www.eenews.net
ClimateWire
ENVIRONMENT & ENERGY DAILY
Greenwire
Land Letter
E&ENEWSPM
EETV
The Premier Information Source for Professionals Who Track Environmental and Energy Policy.
© 1998-2011 E&E Publishing, LLC Privacy Policy Site Map

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

June 1, 2011

Ms. Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Ms. McCarthy,

Thank you for appearing before the Subcommittee on Energy and Power on May 13, 2011, to testify at the hearing entitled "The American Energy Initiative."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please email your responses, in Word or PDF format, to the legislative clerk (Alex.Yergin@mail.house.gov) by the close of business on Wednesday, June 15, 2011.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

Subcommittee on Energy and Power
"The American Energy Initiative."
May 13, 2011
Additional Questions for the Record

The Honorable Henry Waxman

1. During your testimony, you stated that EPA has not taken five years to process Shell's Clean Air Act permits for its proposed Arctic drilling operations and in fact had issued each permit "within three to six months of that permit application being complete." In response to a question asked by Rep. Sullivan, you also noted: "Shell has consistently revised the request, changed the project, changed what sea they want to drill in." Please provide the Committee with a timeline for the Shell permit applications that includes events external to EPA that affected the agency's processing of the permits, such as changes in Shell's proposed operations, actions by the Department of the Interior, and court decisions pertaining to Shell's exploration plan.

2. During the hearing, Committee members and one of the witnesses, Robert Meyers, noted that vessels servicing the OCS source—such as supply ships and ice breakers—are regulated under Title II of the Clean Air Act. To clarify how Title II applies to the associated fleet in general and associated vessels that are part of the Shell permits in particular, please answer the following questions:

   a. What ocean-going sources does EPA regulate under Title II of the Clean Air Act?

   b. Does Title II apply to foreign flagged vessels?

   c. When regulations are promulgated pursuant to Title II for ocean-going vessels, how are engines built before the effective date of those regulations addressed? Are retrofits required?

   d. What are the applicable EPA and international fuel requirements for ocean-going vessels?

   e. How do regulations under Title II apply to the ice breakers identified in the Shell permit application for the Beaufort and Chukchi Seas?

Attachment

1. During your testimony, you stated that EPA has not taken five years to process Shell's Clean Air Act permits for its proposed Arctic drilling operations and in fact had issued each permit "within three to six months of that permit application being complete." In response to a question asked by Rep. Sullivan, you also noted: "Shell has consistently revised the request, changed the project, changed what sea they want to drill in." Please provide the Committee with a timeline for the Shell permit applications that includes events external to EPA that affected the agency's processing of the permits, such as changes in Shell's proposed operations, actions by the Department of the Interior, and court decisions pertaining to Shell's exploration plan.

There are currently two permits for Shell activities in the Arctic that are at issue; both are for the Discoverer Drill Rig, one for the Chuckchi Sea, one for the Beaufort Sea. Both went from complete application to decision by the Environmental Appeals Board (EAB) in approximately 12 months. In describing how long it has taken Shell to get these permits, some people inaccurately include earlier permitting activity for projects significantly different than the current ones, as this brief timetable highlights. In 2007, Shell wanted permits for two ships, the Discoverer and the Kulluk, in the Beaufort Sea. Then in 2008, they dropped the Discoverer permit activities and focused on the Kulluk in the Beaufort Sea. Then in 2009, they dropped work on the Kulluk and focused on the Discoverer in the Chukchi Sea, but changed the controls on the Discoverer and supporting fleet significantly in the fall of 2009 when new data showed that their emissions would violate the PM2.5 health-based air quality standards. These changes, and the modeling analysis upon which they were based, required EPA to issue a revised proposed permit for public comment. Then in 2010, they again sought a permit for the Discoverer Drill Rig in the Beaufort Sea. Now Shell is in the process of submitting a new application for the Kulluk in the Beaufort Sea.

The major source permit for the Discoverer Drill Ship to operate in the Beaufort Sea went from complete application to final decision from the EAB in less than 12 months. It was originally filed on January 18, 2010. The permit was proposed on February 17 and finalized on April 9, less than 3 months after a complete application was filed. This permit was appealed to the Environmental Appeals Board, which remanded the permit back to Region 10 on December 30. The Region is now in the process of revising the permit consistent with the EAB decision and intends to issue the revised permit in September, 2011.

The major source permit for the Discoverer Drill Ship to operate in the Chukchi Sea also went from complete application to final decision from the EAB in 12 months. (The EAB decision was issued concurrently with the Discoverer Beaufort Sea decision.) Although Shell initially filed an application for this permit on December 11, 2008, Shell delayed the process significantly by submitting a revised incomplete permit application on September 17, 2009, which was not completed until December 22, 2009. This application not only included additional emission controls, but also requested numerous changes to EPA's proposed emission limitations and operational restrictions to reflect changes in how Shell intended to operate equipment on the

Discoverer as well as the support fleet. EPA had to issue a revised proposed permit and put it out for public comment, which it did on January 8, 2010. EPA had to follow this step even though EPA had issued a proposed permit for public comment on August 20, 2009 based on the December 11, 2008, permit application. EPA issued a final permit on March 31, 2010, just over 3 months after Shell submitted the revised, completed application. This permit was appealed to the Environmental Appeals Board, which remanded the permit back to Region 10 on December 30. The Region is now in the process of revising the permit consistent with the EAB decision and intends to issue the revised permit in September, 2011.

When people incorrectly say that Shell has been trying to get these permits for five years, they are starting the clock with two applications for minor source permits that were filed in December, 2006, but were not complete until early 2007. One of these was for the Kulluk Floating Drill Rig, for which Shell is only now working on re-submitting a complete permit application. The other was for the Discoverer Drill Rig to operate in the Beaufort Sea, but Shell asked EPA to defer action on this application in late 2007 (after the EAB had remanded it to the Region) and did not file a new permit application for the Discoverer Drill Rig in the Beaufort Sea until January, 2010.

It is inaccurate to start the permit clock from the date of the first two applications for a variety of reasons, not the least of which is that one application was for a different Drill Rig, neither was for the Chuckchi Sea, and, while one was for the same drill rig/sea combination now at issue, Shell dropped its request for action on this drill rig/sea combination from late 2007 until January, 2010 and is only now working on an application for the other drill rig.

2. Information pertaining to regulation under Title II of the Clean Air Act for vessels that are part of the OCS source's "associated fleet."

During the hearing, Committee members and one of the witnesses, Robert Meyers, noted that vessels servicing the OCS source—such as supply ships and ice breakers—are regulated under Title II of the Clean Air Act. To clarify how Title II applies to the associated fleet in general and associated vessels that are part of the Shell permits in particular, please answer the following questions:

a. **What ocean-going sources does EPA regulate under Title II of the Clean Air Act?**

b. **Does Title II apply to foreign flagged vessels?**

c. **When regulations are promulgated pursuant to Title II for ocean-going vessels, how are engines built before the effective date of those regulations addressed? Are retrofits required?**

d. **What are the applicable EPA and international fuel requirements for ocean-going vessels?**

e. How do regulations under Title II apply to the ice breakers identified in the Shell permit application for the Beaufort and Chukchi Seas?

While it is true that Title II regulations apply to certain vessels which may be used in OCS activities, it is not an accurate representation to say that, in the absence of the OCS permitting process, these vessels would still be regulated under the Clean Air Act. The OCS permitting process for Shell's operations has resulted in permit requirements for the support and service vessels that are, in some instances, more protective of public health than EPA can require under Title II of the Clean Air Act.

Shell's operations include support and service vessels, such as icebreakers, that have not been regulated under Title II of the Clean Air Act. Many of the large vessels, such as icebreakers, are foreign-flagged vessels. Title II engine requirements/regulations do not apply to foreign-flagged vessels. Instead, as part of our comprehensive marine program, we have relied on similar MarPol Annex VI engine standards through the International Maritime Organization (IMO). Those standards, like our Title II CAA standards, apply primarily to new vessels.

Many (if not all) of the vessels that are part of Shell's operations are older, having been built before the effective date of the most stringent marine engine standards. Our Title II regulations and the analogous MarPol Annex VI regulations apply only to new engines, and do not require retrofits of existing engines. Some minor reductions may be required from an existing engine, however, when that engine is undergoing a major engine remanufacturing event or ship survey. The CAA Title II and MarPol Annex VI do not require the installation of controls to achieve significant emission reductions from the existing legacy fleet of vessels, such as those operated by Shell.

Shell's actions in response to the EAB's remand of the Discoverer permits are illustrative of the additional environmental protection provided by the OCS permit process compared to Title II. Since the remand, Shell has agreed to add controls to one icebreaker to reduce both NOx and PM2.5 emissions. These additional controls will reduce NOx emissions from the icebreaker by 96% and PM2.5 emissions by 82%. Additional restrictions requested by Shell for emissions from the Discoverer and other support vessels will further reduce all emissions from the project (for example, total NOx emissions will be reduced by 72%).

As a result of the OCS permit process, Shell is using cleaner fuel than is required under Title II of the Clean Air Act or international law. When the Discoverer drill ship is an OCS source, the permit requires all of the engines on the Discoverer and all of the engines on the service and support vessels to use diesel fuel that contains no more than 15 ppm sulfur. Absent the OCS permit process, vessels in the Arctic using diesel fuel bought outside the United States legally

could have fuel sulfur levels as high as 35,000 ppm until 2020 and 5,000 ppm thereafter under international law. Absent the OCS process, for vessels that buy diesel in the United States, the fuel could contain up to 500 ppm sulfur until 2014, at which time it can contain no more than 15 ppm.

June 16, 2011

Ed Whitfield
Chairman
Subcommittee on Energy and Power
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20001

Dear Congressman Whitfield:

Thank you for providing the opportunity for the State of California, through its Air Resources Board (ARB or Board), to respond to additional questions raised after the May 13, 2011 hearing of the Subcommittee on Energy and Power regarding "The American Energy Initiative." Please add our attached responses to the hearing record.

It was a pleasure appearing before the Subcommittee. If you or others on the Subcommittee have any additional questions or concerns, please do not hesitate to call me at (202) 624-5273.

Sincerely,

Brian T. Turner
Assistant Executive Officer for Federal Climate Policy
California Air Resources Board

cc: The Honorable Bobby Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

Subcommittee on Energy and Power
"The American Energy Initiative."
May 13, 2011
Additional Questions for the Record

The Honorable Henry A. Waxman

1. **At the hearing, it was argued that regulation of support vessels under title I of the Clean Air Act is inappropriate and unnecessary because such vessels are regulated under title II. Please respond.**

There is substantial confusion over the basis of regulation of OCS sources. These sources are regulated under neither Title I nor Title II, but Title III. But there are many parallels between the regulation of stationary sources under Title I and the regulation of OCS sources under Title III. In both cases, regulation of mobile sources, even those that are subject to emission performance standards under Title II, is also included in pre-construction and operating permits of stationary sources and OCS sources. These regulations help ensure that mobile emission sources – which are often responsible for a significant part, and sometimes the majority, of emissions from the construction and operation of major stationary sources – utilize the best engine and emission control technologies and fuels, and are operated in manner that minimizes the public's exposure to pollution.

Title II regulations primarily require emissions standards for *new* vehicles and nonroad engines. Given that a large number of marine vessels and OCS source nonroad engines can be 20 or more years old, were manufactured under standards that were not developed to address today's air pollution problems or before any standards were in place at all, and that many new technologies and operational controls are now available to cost-effectively reduce emissions from these in-use engines, it is absolutely necessary to review these engines' emission profiles and require the application of cost-effective modern technologies and operational controls. It is rather preposterous to assert that regulations designed to address the manufacture of new engines are adequate to address the emissions of old engines, many of which were constructed before these new engine standards were in place.

2. **It also was argued that excluding such vessels from regulation under title I does not affect state authority because states such as California retain whatever authority they may have to regulate such vessels under title II. Please respond.**

Excluding vessels from regulation under Title I weakens or undermines state authority over these sources and/or emissions in several ways:

- If nonroad engines on vessels on the OCS are excluded from preconstruction permitting, they may be exempted from some state and local regulations that are not otherwise applicable on the OCS, but that would apply to the same engines if they were used in an onshore location. This is not only likely to increase the total pollution emitted by the project, but it fundamentally contravenes the "equal treatment as onshore sources" principle that is at the heart of Section 328. Without this principle, onshore sources must be more tightly regulated in order to achieve the same air quality standards, decreasing economic efficiency, eroding industry support, and ultimately undermining the effectiveness of the state's air quality programs.
- Even where state and local regulations would apply to vessels and engines in much of the same territory as they would when regulated as an OCS source, excluding these vessels from controls under Section 328 may still complicate enforcement and increase the expense of state and local regulations. For instance, when CARB's regulations on harbor craft and ocean-going vessels are folded into preconstruction or operating permits, it allows for more effective and efficient enforcement by the local air district as part of enforcing the overall permit. Without this consolidation, these regulations

must be enforced separately, increasing the cost and decreasing the effectiveness for both the state and the equipment operator.

3. **Do OCS sources fit neatly into the traditional divide between stationary source regulation under Clean Air Act title I and mobile source regulation under Clean Air Act title II? How does the intent and application of section 328 reflect that OCS activities involve both mobile and stationary sources?**

That OCS sources do not neatly fit the stationary/mobile divide is reflected in the compromise Congress expressed in Section 328 over 20 years ago and that has worked reasonably well ever since. Congress broadly defined OCS sources to cover both traditional stationary source emissions, such as from fixed production platforms, and mobile source emissions from vessels servicing or associated with the OCS source. As EPA has determined and courts have agreed, this has allowed the emissions from mobile sources normally accounted for entirely under Title II to be tallied under the potential to emit for PSD purposes under Title I, and to be subject to state and local emission controls that would otherwise apply onshore, and even to undergo BACT analysis and requirements in some applications. Legislative history indicates that Congress clearly wanted these vessels' emissions to face this additional scrutiny in preconstruction and operating permitting, regardless of whether these nonroad engines and vessels were also subject to emission standards when they were originally manufactured. Finally, the "...including but not limited to..." language in Section 328 indicates clear intent to have all emissions – stationary, mobile, mobile sources operating upon stationary ones, and more – covered in one comprehensive permitting process.

What are the full impacts of exempting support vessels from the title I PSD requirements?

The full impact of exempting vessels from preconstruction and operating controls will be project-specific. But it is not uncommon for emissions from vessels and their associated engines to compose one-quarter to one-half of an OCS source's emissions, and sometimes more. Applying controls to these sources can reduce emissions from individual engines or vessels by up to 30%. Thus the difference between the projected emissions of a project with and without required preconstruction and operating conditions could be 15% or more overall. Therefore, the effect of removing this authority on the total pollution from OCS sources could be very significant.

In fact, the difference between emissions from proposed and final projects today probably underestimates the impact of a full exemption for these vessels going forward. In the longer term, the gap between current practice and future could actually widen with an exemption. Currently, knowing that vessel-associated emissions will be subject to controls, most projects voluntarily incorporate into their initial application a large number of the controls that are expected to eventually be required. Though some "bargaining margin" of additional controls may be reserved, the applicants' primary incentive is to present a fairly clean project to begin with. Therefore the difference in emissions before and after the permitting agency applies additional controls is actually minimized today. In contrast, if applicants know that vessels are wholly exempted from any controls, they have much less incentive to incorporate any reduction measures either before or during permitting. It is fair to expect that the average emissions of projects proposed with a full exemption for vessels would be worse than projects proposed today.

June 15, 2011

Mr. Ali Mirzakhalili
Director
Division of Air Quality
Delaware Department of Natural Resources
and Environmental Control
Blue Hen Corporate Center
655 S. Bay Road, Suite 5N
Dover, DE 19901

Dear Mr. Mirzakhalili,

Thank you for appearing before the Subcommittee on Energy and Power on May 13, 2011, to testify at the hearing entitled "The American Energy Initiative."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please email your responses, in Word or PDF format, to the legislative clerk (Alex.Yergin@mail.house.gov) by the close of business on Wednesday, June 15, 2011.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

Subcommittee on Energy and Power
"The American Energy Initiative."
May 13, 2011
Additional Questions for the Record

The Honorable Henry A. Waxman

1. **At the hearing, it was argued that regulation of support vessels under title I of the Clean Air Act is inappropriate and unnecessary because such vessels are regulated under title II. Please respond.**

   Applying title I requirements to sources normally regulated under title II of the Clean Air is appropriate, necesarry and not unique to OCS.

   Activities subject to the General Conformity requirements of CAA 176(c) often result in similar outcomes. For instance, the recent Delaware River Deepening project by the Army Corps resulted in the Corps being required to assess the emissions from its dredging ship and support vessels, analyze appropriate control options for those emissions and provide offsets to satisfy the title I requirements which they were required to satisfy. Highway and airport projects often trigger such requirements resulting in application of controls to units that are otherwise regulated under title II of the Clean Air Act.

   In 1994 EPA set new emission standards for nonroad diesel engines. The rulemaking was part of a 3-tiered progression to lower emission standards. Each tier involves a phase in by horsepower rating over several years. Tier 1 standards for engines over 50 horsepower were phased in from 1996 to 2000. More stringent Tier 2 standards for all engine sizes were phased in from 2001 to 2006, and yet more stringent Tier 3 standards for engines rated over 50 horsepower were phased in from 2006 to 2008 (EPA 8/98 Nonroad Diesel). Tier 4 is being phased in from 2008 to 2015. Depending on the year of manufacture, new diesel IC engines must meet the EPA Tier 1, Tier 2, Tier 3 or Tier 4 emission standards. The resulting lower emission rates for diesel IC engines designed to meet the Tier 2 or Tier 3 standards are the result of the intrinsic engine design features built into them by the manufacturer and improvements in fuel quality. Tier 4 standards are met through application of advanced controls and cleaner fuels. These regulations were all adopted pursuant to the aunthorities under title II.

   Diesel engines last a very long time and much of the equipment in service today predate even Tier 1 requirements. Those engines although regulated under title II are substantially uncontrolled. There are no provisions under title II that would require such sources to implement controls. In recognition of this problem with "lagacy fleets", Congress enacted the Diesel Emission Reduction Act which provides funding to the states to address these emissions and their associated public health concerns.

   Support vessels that operate in OCS behave as stationary sources when they use their onboard engines to perform their tasks. These tasks performed onshore by any engine would be subject to title I requirements. If the engines on the vessel are new and meet Tier 4 requirements then there may be little to no additional controls imposed but older engines are likely candidates for highly cost-effective and feasible controls. Emissions from these units could be substantial, as an example one vessel from the Shell's Chukchi application has a potential to emit NO_x at over 800 tons per year which is well over 30 times what would be considered as major source under title I as it is implemented in Delaware. Such an emission source would be required to implement controls and provide emissions offsets.

I would respectfully insist that considering the support vessels as regulated under title II does not address the potentially huge emissions associated with them and relatively cost effective controls that are available to address those emissions. These emissions have health consequences and can and should be remedied.

2. **It was also argued that excluding such vessels from regulation under title I does not affect state authority because states such as Delaware retain whatever authority they may have to regulate such vessels under title II. Please respond.**

   States have very limited to no authority under title II to establish standards for engines or vessels. The states however remain responsible to meet and maintain compliance with the National Ambient Air Quality Standards under title I of the Clean Air Act. Excluding the vessel's emissions from regulation under title I would force a state like Delaware to meet its air quality obligations by offsetting the vessel's emissions on the backs of its already tightly regulated stationary sources. This will have an adverse and unfair economic impact on Delaware and other coastal states. As articulated in my testimony, the burden to reduce emissions should be appropriately placed on the OCS source to include the support vessels.

3. **Do OCS sources fit neatly into the traditional divide between stationary source regulation under Clean Air Act title I and mobile source regulation under Clean Air Act title II? How does the intent and application of section 328 reflect that OCS activities involve both mobile and stationary sources?**

   Unfortunately, we continue to often find the line between mobile and stationary sources blurry even on land applications. We have attempted to define a source as stationary by the length of its intended stay in one location, by whether or not it is on wheels or a number of other definitional distinctions. The reason is that sources do not fit neatly into bins on land, and we face similar challenges with OCS sources. However, I suggest that the focus should remain on the availability and cost-effectiveness of controls, and the air quality impact. Defining the vessels and their emissions as not regulated under OCS does not eliminate or address their air quality impact. It only makes our jobs harder.

4. **How could section 2 of the bill (determining air quality impacts solely with respect to the corresponding onshore area) affect air pollution problems on the Atlantic?**

   Limiting the air quality impact solely with respect to the corresponding onshore area disregards common sense and science. It disregards common sense because corresponding onshore area is established in the OCS process at the time when a source files its Notice of Intent. Such filing is not a full application and does not provide any emissions information or any statement regarding the area of impact. It means a source near Maryland and Delaware line would only calculate its impact on one state or the other depending on which one was declared the corresponding onshore area. This does not make common sense.

   EPA has developed sophisticated air pollution models which can simulate the source's emissions and using actual meteorological data predict ambient air quality impact of that source. Simply defining the area of the impact by legislation deprives the process of valuable available scientific tools and disregards good science. An OCS source off the coast of Delaware could have its maximum impact in

New Jersey or in Maryland and this bill would prohibit such finding and remove state's ability to require mitigation.