S. HRG. 109–703

THE REFINERY PERMIT PROCESS SCHEDULE ACT

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

H.R. 5254

TO SET SCHEDULES FOR THE CONSIDERATION OF PERMITS FOR REFINERIES

JULY 13, 2006

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

31–099 PDF WASHINGTON : 2006

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

PETE V. DOMENICI, New Mexico, *Chairman*

LARRY E. CRAIG, Idaho
CRAIG THOMAS, Wyoming
LAMAR ALEXANDER, Tennessee
LISA MURKOWSKI, Alaska
RICHARD M. BURR, North Carolina,
MEL MARTINEZ, Florida
JAMES M. TALENT, Missouri
CONRAD BURNS, Montana
GEORGE ALLEN, Virginia
GORDON SMITH, Oregon
JIM BUNNING, Kentucky

JEFF BINGAMAN, New Mexico
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
TIM JOHNSON, South Dakota
MARY L. LANDRIEU, Louisiana
DIANNE FEINSTEIN, California
MARIA CANTWELL, Washington
KEN SALAZAR, Colorado
ROBERT MENENDEZ, New Jersey

BRUCE M. EVANS, *Staff Director*
JUDITH K. PENSABENE, *Chief Counsel*
BOB SIMON, *Democratic Staff Director*
SAM FOWLER, *Democratic Chief Counsel*
JOHN PESHKE, *Professional Staff Member*
DEBORAH ESTES, *Democratic Counsel*

CONTENTS

STATEMENTS

	Page
Allen, Hon. George, U.S. Senator from Virginia	2
Becker, S. William, Executive Director, STAPPA and ALAPCO	22
Bingaman, Hon. Jeff, U.S. Senator from New Mexico	4
Domenici, Hon. Pete V., U.S. Senator from New Mexico	1
Feinstein, Hon. Dianne, U.S. Senator from California	52
McGinnis, Glenn, CEO, Arizona Clean Fuels Yuma, Phoenix, AZ	15
Meyers, Robert J., Associate Assistant Administrator, Office of Air and Radiation, Environmental Protection Agency	6
Natchees, Maxine, Chairman, Business Committee, The Ute Indian Tribe of the Uintah and Ouray Reservation	53
Pirog, Robert, Specialist in Energy Economics and Policy, Resources, Science and Energy Division, Congressional Research Service	46
Salazar, Hon. Ken, U.S. Senator from Colorado	5
Slaughter, Bob, President, National Petrochemical and Refineries Association	26

APPENDIX

Responses to additional questions	57

THE REFINERY PERMIT PROCESS SCHEDULE ACT

THURSDAY, JULY 13, 2006

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:14 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Pete V. Domenici, chairman, presiding.

OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. Good morning, everyone. Welcome. Senator Allen, welcome to you. This morning we're going to receive some testimony and do some discussing on H.R. 5254, the Refinery Permit Processing Schedule Act. We have four witnesses scheduled.

At the outset, let me say that I believe one of the most constructive things that Congress could do to ease some of our energy woes would be to facilitate the construction of new refineries and additions to capacity at existing refineries. Now, quietly and unobtrusively, additions to capacity are taking place, but clearly not in its totality the kind of things America needs for our future. No new refinery has been constructed in the United States since 1976.

In 1981 there were 324 operating refineries in the United States. Today there are 149. While the number of refineries has dwindled, we have maintained much of the domestic refining capacity needed to meet our demand through efficiency improvements and capacity additions at existing refineries. There is no limit to how much we can accomplish in this manner, and that continues year-by-year.

We are now on a path that means greater dependence on imports of finished petroleum products like gasoline, diesel fuel, and lubricating oil. The EIA estimates that refined petroleum products are projected to grow from 7.9 percent of total demand today to 10.7 percent of the total demand by 2025.

Furthermore, about 47 percent of the U.S. refining capacity and 28 percent of our crude oil production is concentrated in the Gulf of Mexico, which we have already experienced in terms of how imprudent it is for that concentration to exist with us doing nothing about it. Hurricanes Katrina and Rita demonstrated how an act of God can cripple our ability to produce fuels needed for our economy, at least in part because of the way in which our basic infrastructure has been built.

Finally, increasing demand worldwide for finished products, petroleum products, coupled with insufficient domestic refining capac-

ity, means that the United States must compete with finished product on the world market.

Today we will have before us a bill that seeks to streamline and accelerate our ability to site and build new refineries. The committee is interested in the views of our witnesses on H.R. 5254, as well as suggestions for addressing this problem through this bill or similar legislation, or we are interested in similar ideas that might be implemented in one way or another.

Senator Bingaman will be here shortly, and has suggested that we proceed in his absence because he too was delayed because of Senate business here on the Hill.

With that, I would now yield to you, Senator, for opening remarks or observations before we go to Mr. Meyers for his testimony.

STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. I very much commend and appreciate your leadership on so many issues that are important for the energy security of this country. This measure here before us is one we need to move forward on.

I have introduced a measure, we call it "Bolster Energy Security for Tomorrow"—it's very similar—working with Congressman Boucher as well as Congressman Barton. Senator Inhofe has a measure over in his committee. I thought we ought to have one as well. It's very similar in its purpose. There is one difference, that as we move forward on this—if it is to move forward—the request would come from a Governor. Having been a Governor, I think it's important that you take into consideration the views and the sentiments of the people in communities.

And all the facts that you stated, Mr. Chairman, at the outset are true. The overall situation, why we have high gas prices, part is supply. We need a greater supply of petroleum products. We need to develop more oil and natural gas in this country. But even if you look at the increased supply of oil worldwide, whether it's from Kazakhstan, Russia, countries in Africa, South America and elsewhere, there is an increasing supply. The demand is of course increasing, particularly with free people in Central Europe and expanding economies in India and China.

Our problem in this country, as you stated, is when Hurricanes Katrina and Rita hit, they hit a concentrated area of our refineries. Our refinery capacity is at its maximum. It's stressed out. Every spring we see prices go up because they're switching from winter fuel blends to the summer fuel blends, and that affects the pipelines and refineries, and so there's a restricted supply for the demand. And even though the demand stayed high, as it did after Katrina and Rita, even with the refineries back in line, we still have high prices.

So what's the solution? We need more refinery capacity in this country. It's absolutely necessary. Everyone agrees that this is essential. It will help reduce the price of gasoline, which is so important for individuals, for families, for businesses, for their trucks, their equipment, and their motor vehicles.

There are going to be military bases being shut down. Why not use those closed military bases, if it is the desire of the people in those communities for refineries? So my measure, as well as the one we're going to consider here, says that—and the way my bill is, if the Governor petitions to the facilitator that they would like that assistance for building a refinery on that closed military base, that's the way that that would be done. There would be three of them built: One would be a biomass facility and two of them would be for petroleum refining.

I could foresee certain jurisdictions, in places where a military base has been closed because of the BRAC process, that would say, "Hey, this is a way to get in some investment, some more jobs, some more vitality and opportunity in our communities." And while we have a strategic petroleum reserve, Mr. Chairman, America also needs to have a strategic refinery capacity policy for our country. So I look forward to the testimony of our witnesses here.

This is a measure that just makes a great deal of sense, and I'm very hopeful that we can get this. Whether it's done as a single bill or adopted with others, I think this is absolutely essential for Americans, so that we have more energy being refined here in this country for American jobs, American competitiveness, and ultimately, of course, American security.

So I thank you for holding this hearing, for our witnesses, and I hope that we can work on a bipartisan, bicameral basis to get the job done for the American people. Thank you.

[The prepared statements of Senators Allen, Bingaman and Salazar follow:]

PREPARED STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Thank you, Mr. Chairman. I appreciate that the Chairman and Ranking Member convened this hearing to consider this important issue. I very much look forward to hearing the testimony of the witnesses today. I strongly support this legislation because it addresses one of the crucial bottlenecks in the domestic transportation fuel supply system that has contributed to high gasoline prices in the last year: refining capacity.

In the wake of Hurricanes Katrina and Rita people across the country experienced the tight marginal capacity of the refining industry within the United States. Because of the limited capacity of the 150 or so[1] domestic refineries, when many of the Gulf coast refineries were knocked offline by the storms the remaining refineries were unable to adequately increase production which resulted in an insufficient supply of gasoline for the demand of Americans, for their cars, trucks and equipment. Certainly it is understandable that two significant natural disasters would increase the price of gasoline regardless of the refining capacity in the country, but at some point the price should stabilize and return to a reasonable level. We just have not seen that yet.

This isn't just a problem that threatens national security and competitiveness when Mother Nature throws two enormous hurricanes into the wheelhouse of our oil and natural production in America. The Energy Information Agency (EIA) forecasts "that refined products supplied will increase from 19.6 million barrels per day in 2001 to 26.4 million barrels per day in 2020 and 28.3 barrels per day in 2025." If those projections are going to be met by domestic refineries we would need to construct additional capacity of approximately 400,000 barrels per day, per year.[2] That means that every year the industry would have to build a new refinery equal to the size of largest refineries currently operating in the country. A new refinery of significant capacity (200,000 barrels per day) has not been constructed in the United

[1] As of 2003 there were 149 refineries operating in the U.S. (*Petroleum Refining: Economic Performance and Challenges for the Future,* CRS Report, page 11).

[2] *Petroleum Refining: Economic Performance and Challenges for the Future,* CRS Report, page 21

States since 1977.[3] The only viable alternative to meet this demand is the increased importation of refined product from overseas, a solution that makes the country even more dependant on the whims of foreign governments.

If the refining industry fails to meet increased domestic demand the price of gasoline, jet fuel and other refined products are destined to rise. Runaway fuel costs will stifle our domestic economy and destroy the ability of American industries to compete on the world market. High gasoline prices will force American's especially those who live in rural areas and those with low to middle incomes, to make choices between driving to work and being able to fully provide for their families. As the country makes efforts to reduce our dependence on foreign oil through clean coal technologies, biodiesel, corn-based and cellulosic ethanol, advanced nuclear, nano-tech enabled lithium-ion batteries and solar photovoltaics, Congress must do its part to ensure that companies interested in increasing refining capacity can enter the permitting process with certainty that their applications will be heard and resolved in a timely fashion. Gasoline is already expensive enough without the government limiting the amount a new capacity coming into the market.

I have been working with my colleagues in the House to address this very problem. I have introduced a bill similar (S. 3649) to Congressman Bass' (H.R. 5254) that directs the President to appoint a federal coordinator to facilitate the authorization of new refineries and increased refinery capacity. Governors from interested States will be able to request financial assistance to hire additional personnel to assist the State with expertise in fields relevant to consideration of federal refinery authorizations from the Administrator of the Environmental Protection Agency (EPA). The legislation maintains all existing environmental protection laws and is not a means of circumventing any statutorily established review.

These refineries will not be limited to processing petroleum and petroleum derivatives. This legislation includes biomass refineries, coal to liquids refineries, as well as traditional refineries. These advanced technologies are crucial to ending our dependence on foreign energy sources. In my view *diversity of supply is security of supply*. This must include increased domestic energy production both on private and public lands—including American oil, and American coal (America is the Saudi Arabia of the world in coal). *We need energy produced and refined IN America FOR Americans, American jobs, American competitiveness and American security.*

The legislation also instructs the President to designate at least three closed military installations as potentially suitable sites for the construction of a refinery. At least one of these sites must be designated as potentially suitable for development of biomass refinery aimed at producing biofuel. There is an opportunity—with the BRAC mandated closing of military bases—to turn economically—depressed areas into potential refinery areas if the local citizens support such an initiative.

I again thank the Chairman for holding this important hearing and the witnesses for taking their time to speak to us today. I look forward to hearing your thoughts on this issue. I also look forward to working with my colleagues on the Energy Committee to address the lack of domestic refining capacity.

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Good Morning. Thank you, Mr. Chairman, for holding this hearing which enables us to talk about (a bill that lies before us on) the topic of refining. I understand that the authors of H.R. 5254 are seeking to increase refining capacity by way of their bill. I believe there may be some reason to believe that it will not do exactly that however.

Contrary to what we may hear here today, refiners do not appear to be eager to build new Greenfield refineries in the U.S. I have not been informed by any state permitting authority that they have received a request for a permit to build a new refinery. As far as I know, the most recent application is that of the Arizona Clean Fuels Yuma company in Arizona.

We have heard from several experts that the reason we are facing high prices at the pump stems from underlying supply issues. The amount of global excess capacity to produce oil has declined. Experts claim that it has entered 'the red zone' and coupled with other threats to energy output (Nigeria, Venezuela, Iraq and Iran), a 'perfect storm' has been created.

Certainly we saw the kind of an effect storms can have on our own ability to refine oil last year with the damage sustained from Hurricanes Katrina and Rita. Re-

[3] This was the Marathon refinery in Garyville, Louisiana. In 1993, a refinery with 38,000 barrels per day capacity was opened in Valdez, Alaska by Petro Star.

fineries were shutdown last year in July as you may recall, adding pressure to supply and prices just before the hurricanes hit.

In light of the effect that our already constrained domestic refining system was under, and given the shutdowns with the hurricanes (and potentially more such incidents this year), I think that it makes sense to ask the Secretary to ask the EIA Administrator to conduct a study of the impact refinery shutdowns have on the price of oil and gasoline. I will ask the Secretary for this today.

While there are many problems (objectionable matters) with the bill before us, I do not think that creating a special coordinator housed within the administration with direct links to the President makes sense at this time. The Department of Energy if anyone has a role to play here in helping to oversee the supply of motor fuels. Thank you Mr. Chairman. I look forward to what the witnesses here have to say.

PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Thank you, Mr. Chairman and Ranking Member Bingaman. I appreciate you holding this hearing today.

We have two refineries in Colorado, both in Commerce City, near Denver, and they produce around 87,000 barrels of oil per day, some of which is from Canadian oil sands, believe it or not.

I am pleased that we have this opportunity to explore what effect the shortfall in refining capacity is having on gas prices. Hurricane Katrina laid bare the vulnerabilities of our energy infrastructure when it took 29% of our refining capacity off-line, pinching supplies for months. Our refining infrastructure is still recovering from that disaster.

But even when there are no disruptions from weather, American refining capacity is 4 million barrels a day short of demand. This is problematic because it leaves us vulnerable to future disruptions to our refining infrastructure, and it can inflate prices at the pump.

I wish I could say that immediate investments in refining infrastructure will help bring gas prices down right away, but, realistically, it will take several years to expand domestic refinery production. Expanding our refinery capacity is clearly not, as the President claimed last week, a short-term solution.

Economists will tell you that the refining market will likely respond on its own to the current high profits in the oil business, but that it will respond slowly. Economists will also report that to really lower gas prices in the short term, we need to be addressing the demand side, not just the supply side, of the refining issue. An analyst with Deutsche Bank recently testified in the House that, from a policy standpoint: "it would be better to address demand, which, if it could be reduced, would alleviate the problems of U.S. refining."

If we were to take some simple steps to reduce our oil consumption—by driving less, by encouraging more fuel efficient vehicles, by increasing biofuel production and use—American demand would come back in line with refinery capacity, and gas prices would come back under control. We need the President's leadership on energy conservation, and we need the commitment of all Americans.

Nonetheless, over the long term, our refinery infrastructure will need to grow and modernize. I am heartened to hear that energy companies are promising significant investments in refinery infrastructure and that new capacity will come on line within the next 2-3 years.

Congress, too, can play a role in assisting with refinery expansion. Mr. Chairman, I think we took a positive step last summer in the Energy Policy Act when we created a mechanism to improve coordination among federal, state, and local permitting processes. We lowered barriers for refinery expansion in a balanced way that upholds environmental protections, the rights of states and local governments, and the public's opportunity for comment.

The bill before us today, H.R. 5254, would abandon this section of the Energy Policy Act. This seems hasty to me. Have we given the refinery provisions in the Energy Policy Act enough time to yield benefits? Has this section of the Energy Policy Act even been implemented yet?

I agree that we should be coordinating local, state, and federal permitting processes—but we should not do so at the expense of state and local permitting authorities. Furthermore, I have questions about the citing of new refineries at realigned military bases. Is this an economically sensible approach, and will the local communities who may be affected have a role in deciding whether a refinery should be built?

We should remember that expanding our refinery capacity is a long-term, not short-term, goal, and we should be very wary of knee jerk solutions that compromise environmental protections and the health of local communities.

I think the Energy Policy Act includes some well-written and balanced provisions that, when properly implemented, will streamline and simplify the permit process. I am hesitant to abandon our good, bipartisan work from last summer.

Thank you again, Mr. Chairman, for holding this hearing. I look forward to hearing the testimony of the witnesses.

The CHAIRMAN. Thank you, Senator.

Now, Mr. Meyers, we are all aware of your expertise and your role in government. Would you please give us your testimony? Your remarks will be made a part of the record as if you read them, and you use your own good judgment on how much of them you want to use orally for the committee.

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

Mr. MEYERS. Thank you, Mr. Chairman. I will try to keep things brief. I appreciate the opportunity to appear before the committee today to present testimony concerning H.R. 5254.

The Bush administration strongly supports efforts to speed up the process for refinery construction and expansion. Our country now imports about a million barrels of gasoline every day, and this means that about one out of every ten gallons of gas that Americans buy at the pump is refined in a foreign country.

In addition, as Senator Allen mentioned and the chairman mentioned, following Hurricanes Katrina and Rita about a quarter of our Nation's refinery capacity was shut down for a period of several days, and even today part of our Nation's production refining infrastructure is still being restored. Therefore, there is a continuing need to think strategically about our long-term refining needs, and the Bush administration is committed to expanding domestic refinery capacity and stands ready to work with Congress on this vital matter.

This issue is hardly new, as has been noted. It has been repeatedly noted that the refinery construction of new facilities has not occurred in over three decades. But conditions in 2006 are a little bit different than those faced in earlier years, as mentioned, with the global demand for refinery oil products having grown, and with many refineries operating at very high capacity levels right now. In layman's terms, at this point in time, even though there are some projects in the works, there is not much slack in the system.

So these conditions have naturally turned a focus to the process requirements that are applicable to construction of refineries. I won't go through all the detailed permitting requirements, that would take a considerable amount of time, but to summarize, in order to build a refinery right now, requirements and permitting actions may be required under the Clean Air Act, the Clean Water Act, the Resource Conservation Recovery Act, and depending on circumstances, the National Environmental Policy Act. In addition, States and localities have their own authorities that are applicable in these situations and may define substantive procedural requirements applicable to refinery construction and modification.

In terms of the Clean Air Act, in terms of major programs that would affect refineries, we have new source review permit requirements, title V operating permit requirements, new source performance standards, emission standards for hazardous pollutants, and compliance assurance monitoring requirements.

With regard to the Clean Water Act, refineries, like other facilities, may need to obtain a national pollution discharge elimination system permit, and under RCRA, refineries can be subject to other regulations depending on generation of hazardous waste and maintenance onsite.

In most cases, the Federal environmental requirements have been delegated to the States and implemented at the State level. And as I mentioned, too, apart from just environmental requirements, you can run into other local issues: conditional use permits; local fire, building, and plumbing codes; connections to sewer systems; and construction approvals that are necessary, if you're going to build a facility that has the magnitude of a refinery.

So, getting to the act that's before you, this bill sets forth a number of provisions that are intended to coordinate and expedite the refinery permitting process. My written statement contains more detail in this regard, so I'll just center on a few points.

Probably one of the major points of the bill is the appointment of a Federal coordinator. The legislation specifies on the request of an applicant seeking a refinery authorization, the Federal coordinator must convene a meeting of the relevant Federal and State agencies in order to establish a memorandum of understanding setting forth the most expeditious coordinated schedule possible. This MOU is then established and the Federal coordinators ensure that the parties carry out the MOU in good faith.

The legislation also specifies venue, standing review, the remedy for civil actions brought under the terms of the legislation, and the district court in which the refinery is located.

In summarizing—and ending here, so we can get to any questions the committee might have—I would say three things: First, the President has repeatedly called on Congress to simplify and speed up the refinery permitting process and to reform the new source review regulations; second, the administration has supported House passage of H.R. 5254, and is also encouraging the Senate to act on refinery legislation; and, third, the administration, as I said at the beginning, stands ready to assist this committee and the Congress with this legislation or other legislative efforts to provide appropriate technical assistance.

[The prepared statement of Mr. Meyers follows:]

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

Mr. Chairman, members of the Committee, I appreciate the opportunity to appear before you today and to testify on H.R. 5254, the "Refinery Permit Process Schedule Act." I am pleased to be here representing the Environmental Protection Agency. My testimony will address EPA's statutory responsibilities affecting refinery construction and expansion, some of the Agency's ongoing efforts to streamline the refinery permitting process, and the legislation being considered by the Committee.

It is self-evident that domestic refineries are a vital part of the nation's energy infrastructure and a powerful contributor to the U.S. economy. As last year's hurricanes demonstrate, however, the nation needs to expand and diversify its modern refining capacity. Following Hurricanes Katrina and Rita, about a quarter of our na-

tion's refinery capacity was shut down for a period of several days, and even today, parts of our nation's production and refining infrastructure are still being restored. The entire country felt the impact of the hurricanes on retail gas prices. There were short-term shortages of fuel. Some facilities received millions of dollars in damage. Although we have largely been able to recover from these exceptional natural disasters, the need remains to think strategically about our long-term refining needs. One component of our approach should be investigating ways to streamline the process for permitting construction of new refineries and expansion of existing facilities.

The issue of domestic refinery construction, overall capacity and the refinery permitting process is hardly new. Conditions in 2006, however, are different from those faced in earlier years, as global demand for refined oil products has grown as a result of increases in both domestic and international demand. Many refineries are also operating at such high capacity levels that additional disruptions could lead to a rapid impact on consumer and industrial access to affordable energy. New refining capacity would help alleviate the strain on our current fuel system. While overall refinery capacity has increased through facility modifications, as the Committee well knows, no new refinery has been constructed in the United States in over 30 years.

As indicated above, domestic refining capacity has increased through steady expansion of operations at existing refineries, even as smaller, less efficient refineries have closed. Today, there are 149 refineries compared with 205 refineries in 1990. Total capacity over this same period of time, however, has increased from 16.5 million barrels per day to 17.3 million barrels per day.

REFINERY PERMITTING

Because most permits are issued by state and local authorities, EPA does not routinely track permitting activities for refineries and cannot provide precise numbers concerning such activity. However, based on information we currently have in technology clearinghouses and a recent survey of refinery activities, we estimate that approximately 100 permits have been issued to refineries since 2000. Many of these permits involved upgrades in order to comply with new EPA regulations such as those requiring new sulfur limits for gasoline and diesel—approximately 60 of the permit applications in 2000-2003 involved projects to comply with Tier 2 gasoline requirements. Many of the projects, however, also added to increased capacity, whether or not the project was initiated or primarily designed to meet new fuel standards.

A broad scope of environmental issues may be present in siting a new facility or expanding the capacity of an existing one. Such an action may trigger requirements or permitting actions under authority of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the National Environmental Policy Act and other federal, state and local environmental laws. Substantial "up front" work is also required regarding site and design factors prior to the submission of an application for a new refinery. In addition, the various approval processes usually are not coordinated, and often do not occur at the same time, which adds to the overall time. While many refinery permits can and have been issued in a matter of months, depending on the complexity of the refinery and the issues involved in siting, the permitting process can take between one and two years *after* a complete application is filed. Not all of this time is consumed due to requirements imposed by EPA or the states—those seeking to construct refineries may revise their applications after they have been submitted engendering some additional delays in the permitting process. However, it is also apparent that administrative appeals during the permitting process and judicial review of permitting decisions can add substantially to the time before construction or expansion can begin.

States may also impose separate or additional requirements on refineries that can be more stringent than those required for compliance with federal law and regulations. Apart from the requirements of federal environmental law, state and local decision-making with respect to refineries and other large industrial and commercial facilities can frequently involve land use and other local issues, such as conditional use permits, local fire, building and plumbing codes, connections to sewer systems and construction approvals. Thorough and appropriate review of these matters obviously can add to the complexity of the permitting process and has the potential to involve further commitments of time on the part of the applicant, relevant approval bodies and stakeholders.

CLEAN AIR ACT

Currently, a number of Clean Air Act permitting requirements apply to construction of a new refinery or major expansion of an existing refinery, though most of these provisions are delegated to the States and therefore implemented at the State

level. For example, a New Source Review (NSR) permit must be obtained before construction starts. States typically take 12-18 months to issue NSR permits for large facilities, although this time period can vary significantly and does not include the additional time needed if an administrative appeal is filed. Depending on the location of a refinery, the 12-18 month NSR permitting process may include obtaining emission "offsets" based on the facility's emissions.

A Title V "operating permit" is also required for a refinery that constitutes a major source. This program was added to the Clean Air Act in the 1990 amendments to consolidate in a single document all federal and state regulations applicable to the source, but the program does not create any new substantive requirements. Once it submits a complete application, the facility can operate under an "application shield" while the Title V permit is being processed. States must take final action on the permit application within 18 months. If the permit applicant or an interested stakeholder disagrees with the permit terms or conditions, they may file an administrative appeal or petition. This adds additional time to the process, although the facility can continue to operate during the appeals process.

Applicants for a new refinery would also need to comply with other Clean Air Act regulations including New Source Performance Standards, emission standards for hazardous air pollutants and Compliance Assurance Monitoring Requirements. New Source Performance Standards, or NSPS, set a minimum level of control for new or modified sources of air pollution, and various process units within a refinery, including sulfur recovery units, fuel gas combustion devices, or catalyst regenerators, are subject to such standards. Another set of regulations requires petroleum refineries, which are sources of toxic air pollutants, to meet emission standards reflecting application of the maximum achievable control technology, or MACT, for a given source. Overall, air emissions from refineries have declined in recent decades.

It should be mentioned at this juncture that while EPA has taken steps intended to help streamline the permitting process for refineries and other industrial sectors, certain legislative measures would have a more significant and beneficial effect in the long run. The President's Clear Skies cap and trade approach to reducing air emissions from electric generating utilities would give our states a powerful, efficient and proven tool for meeting health-based air quality standards for fine particles and ozone.

EPA has projected that Clear Skies, in conjunction-with Bush Administration rules cutting diesel engine pollution by more than 90 percent and other Clean Air Act programs, would bring most of the more than 500 nonattainment counties into attainment with the new standards without having to take any new local measures beyond Clear Skies. Thus, to the extent Clear Skies provided for attainment of Clean Air Act health-based standards, states and local governments would have a lighter burden in putting together their local control strategies to attain the National Ambient Air Quality Standards (NAAQS). This could result in an increased ability at the state and local level to accommodate new or expanded manufacturing or refining activities within plans to meet the NAAQS.

CLEAN WATER ACT

Refineries, like other facilities, are required to obtain a National Pollutant Discharge Elimination System (NPDES) permit if they discharge pollutants from a point source into waters of the U.S. Similar to our Clean Air Act programs, EPA has authorized states to issue NPDES permits with a few exceptions. The state programs closely mirror the federal program, but some have additional requirements such as public notice and comment periods or technical requirements that go beyond the federal requirements. The federal program provides a number of permitting flexibilities.

Last year, EPA finalized the pretreatment streamlining rule, which amends certain provisions of the General Pretreatment Regulations regarding oversight of industrial users that discharge to Publicly Owned Treatment Works (POTWs). The pretreatment streamlining rule. will reduce the regulatory burden on both indirect industrial dischargers as well as POTW Control Authorities without adversely affecting environmental protection. It will also allow POTW Control Authorities to better focus oversight resources on industrial users with the greatest potential for affecting POTW operations or the environment. The reduction in regulatory burden is applicable to both existing industrial users and to any new Industrial Users, including any new refineries which choose to discharge pollutants to a POTW, rather than directly to surface waters via a NPDES permit. One change to the regulations specifically benefits refineries and organic chemical manufacturers. POTWs are allowed to use concentration-based standards rather than calculate mass limits based

on a facility's wastewater discharge. This revision will make it easier for POTWs to implement the standards and for facilities to monitor their own performance.

The changes EPA recently adopted also provide another type of flexibility to POTWs by authorizing them to use general permits instead of an individual permit in certain circumstances. General permits cover multiple facilities within a specific category. This type of permit provides a cost-effective option for POTWs and permitting agencies because of the large number of facilities that can be covered under a single permit. For example, a large number of facilities that have certain elements in common may be covered under a general permit without expending the time and money necessary to issue an individual permit to each. of these facilities. In addition, using a general permit ensures consistency of permit conditions for specific facilities.

RESOURCE CONSERVATION AND RECOVERY ACT

Refineries and other regulated entities that generate hazardous waste are subject to waste accumulation, manifesting, and record-keeping standards. Facilities that treat, store, or dispose of hazardous waste must obtain a permit either from EPA or, more likely, from a state agency that EPA has authorized to implement the permitting program. States may have more stringent requirements than the federal Resource Conservation and Recovery Act (RCRA) program.

It has been the EPA's experience that more recent petroleum refineries generally are designed to only store materials in secure containers and tanks for less than 90 days, so that they are most often classified as generators only, and thus are not subject to RCRA permitting. However, a few petroleum refineries do have RCRA permits and in circumstances where a refinery expansion results in a change in hazardous waste management, a permit modification may be required. The modification process depends on the significance of the modification and obtaining a permit can take 1-2 years, depending on complexity. A temporary authorization (to start constructing the changes while awaiting the modification approval) may be allowable in certain circumstances.

The Agency has already taken steps to streamline the RCRA permitting process. Specifically, in September of last year, EPA issued the RCRA standardized permit rule, which allows certain waste facilities to submit an abbreviated permit application. These newly streamlined permitting requirements result in a shorter permitting time line and shorter time lines for any subsequent permit modifications. It is estimated that the standardized permitting process will save the states and industry more than three million dollars a year.

H.R. 5254, THE REFINERY PERMIT PROCESS SCHEDULE, ACT

The Refinery Permit Process Schedule Act sets forth a number of provisions intended to coordinate and expedite the refinery permitting process. Section 2 of the legislation, the definitional section, helps to define the scope of the law. The bill defines a "federal refinery authorization" to include any authorization required under Federal law relating to the siting, construction, expansion, or operation of a refinery and includes all permits, licenses, and other relevant official approvals. "Refineries" are defined to include facilities involved in the production, storage, and transportation of crude oil, coal, and biomass to the extent they are used to make gasoline, diesel, or biofuel.

Section 3 of the bill authorizes the EPA Administrator, upon the request of a Governor, to provide financial assistance to hire personnel with technical, legal, or other expertise relating to the permitting process under a federal refinery authorization. The section also provides that upon a Governor's request, a federal official with responsibility for such processes shall assist the State with its consideration of the refinery authorization.

Section 4 of H.R. 5254 requires the appointment of a "Federal coordinator" who is then made responsible to carry out certain duties associated with refinery permitting. First, the Federal Coordinator—at the request of a party seeking approval of a refinery—is required to convene a meeting of relevant federal and state agencies responsible for permitting or otherwise approving the refinery project.[1] Second, the Federal coordinator, with the participants at the meeting, is to establish a Memorandum of Agreement (MOU) setting forth the "most expeditious coordinated schedule possible" for completing refinery authorizations. Third, if a state or federal agency is not represented at the coordination meeting, the Federal coordinator is to en-

[1] Federal and state officials are required to cooperate with the Federal coordinator, however, section 4 (b)(2) contemplates the possibility that not all such officials may participate in the coordination meeting.

sure that the MOU schedule accommodates the necessary Federal authorizations. Fourth, the Federal coordinator is to ensure that all parties carry out the MOU in "good faith." Finally, the Federal coordinator is required to undertake certain administrative duties to include publishing the MOU in the Federal Register and maintaining a consolidated record of all decisions.

Section 4 also authorizes the refinery applicant or a party to the MOU to bring a civil action in federal district court if a federal or state agency fails to act on a Federal refinery authorization in accordance with the schedule in the MOU where that failure would jeopardize timely completion of the entire schedule. If, after reviewing the actions of the parties, the Court finds such a failure, the section provides that the Court may establish a new schedule for completion of the permitting process, "consistent with the full substantive and procedural review required by Federal law." The. bill requires expedited review of any such civil action.

Section 5 of the bill instructs the President to designate at least 3 military installations as potentially suitable for construction of a refinery, and requires that at least one of the sites be specifically designated for development of a refinery that processes biomass into biofuel. Section 6 of the legislation provides that nothing within H.R. 5254, if enacted, affects the application of any environmental statute or other law or bars the commencement of litigation under any environmental statute or other law. Section 7 provides that H.R. 5254 serves to repeal the refinery revitalization subtitle approved as part of the Energy Policy Act of 2005.

CONCLUSION

The Administration supports House passage of H.R. 5254. As part of his four-part plan to confront high gasoline prices, the President has, called on Congress to simplify and speed up the permitting process for refinery construction and expansion. H.R. 5254 includes measures to simplify and expedite the refinery permitting process while maintaining strong environmental standards, although the Administration notes that the bill does not include codification of New Source Review rules that would enable accelerated investments in efficiency at refineries. The Administration encourages Congress to continue moving forward on refinery legislation, and EPA stands ready to assist the Committee and its Members in its review.

The CHAIRMAN. Right, Mr. Meyers. Just back up and talk to the committee just a minute. Now, what does this bill—how does this bill work? Outline for us what happens.

Mr. MEYERS. Essentially, under the bill, if an applicant is seeking a Federal refinery authorization, which is defined within the act, there are several mandatory measures that flow from that. The Federal coordinator is required first to convene a meeting of representatives from Federal and State agencies who are responsible for the refinery authorization, and then at the meeting they shall establish a memorandum of agreement which is to set forth the schedule. And then, after that, this memorandum is published in the Federal Register and a coordinator ensures that the parties working under the agreement operate in good faith.

So what's really, I think, intended by the legislation is that you have a central focus for permitting. You have a Federal official who—as I mentioned, we have a number of multimedia requirements that are applicable to refinery permitting and construction, so it gives us a central locus at the Federal level for consideration of those permit requirements and establishment of a coordinated schedule for all those requirements, which should hold. And if it doesn't hold, then there is a court remedy to seek enforcement of that.

The CHAIRMAN. Now, is the court remedy the part of it that is contentious, because it's Federal court?

Mr. MEYERS. It may be contentious, depending on your view of the proper venue. I think it should be seen most probably as a contingency measure. Theoretically there is no need to resort to court if the Federal coordinator establishes a schedule and everything

goes as planned. It happens in cases where the schedule is not being adhered to, that's what gets you into court.

The CHAIRMAN. In your own view, would this have a real potential for getting this job done?

Mr. MEYERS. I think the administration has supported any effort which would help coordinate the process and simplify the process, so we support this bill and we think it would be a helpful addition to the current state of affairs regarding permitting.

The CHAIRMAN. Are any laws protecting health waived under this act?

Mr. MEYERS. The statute contains a savings clause in this regard, to provide that they are not affected by the passage of the legislation.

The CHAIRMAN. I didn't hear that.

Mr. MEYERS. There is a savings clause, I think, under the—section 6 of the bill says "nothing in the act shall be construed to affect the application of any environmental or other law." So essentially I think that's an attempt to preserve the vibrancy of the Federal environmental statutes.

The CHAIRMAN. So the answer to my question is, there is no obvious intent to violate, vitiate, or alter substantially any Federal laws?

Mr. MEYERS. No, no. The entirety of the legislation does not amend any black-letter Federal law. It doesn't amend the Clean Air Act, it doesn't amend RCRA, it doesn't amend the Federal water act, so it has no direct amendment. And in addition to that, it contains a savings clause saying that it should not be construed to—

The CHAIRMAN. Got you. Now, based on that conclusion right up front, do you believe that time will be saved if this is done, as compared with following the existing law?

Mr. MEYERS. Yes, we are supportive. We believe it could allow for expedited consideration of permitting actions. We're talking about a very complicated process. Since we haven't had a green field or a new refinery application before us—there is an exception to that in Arizona, obviously, and you will hear testimony on that.

The CHAIRMAN. Yes.

Mr. MEYER. But it's not like we have years of experience on how long it takes to permit a new refinery. However, we do know that major modification and NSR permits can take on the order of 12 or 18 months. They can be shorter and they can be longer than that period.

Senator ALLEN. Say again?

Mr. MEYERS. A major Clean Air Act NSR permit for a major industrial facility generally takes 12 to 18 months. Now, they can happen shorter than that, and many do, and in some cases they can happen after that, but the thing to understand is, that's after the complete application is submitted, and in the case of several facilities, the time period—the pre-application process is very important. A lot of work goes on before the application is even submitted.

So I guess my point would be this: One shouldn't judge how long it takes to permit a refinery from the time at which a complete application is received. You have to consider the entirety of the period and the burden that's put on the applicant from day one when they're seeking to comply.

The CHAIRMAN. Right. Now, Senator, you mentioned in your remarks and observations that as an ex-Governor you felt a favor toward the Governor being a kind of a representative, seeing to it that the application's made, that he's the leader in the application. Now, that's not a fact present in the House bill that's before us, correct?

Senator ALLEN. That is correct, Mr. Chairman.

The CHAIRMAN. You would rather have us change that, I take it?

Senator ALLEN. I think it's an added precaution to make sure that you are—clearly whenever a base is closed down, what usually happens is there is a redevelopment authority and they'll have all sorts of different ideas as to what to do. Generally the communities are devastated because they're losing a lot of jobs.

The CHAIRMAN. Correct.

Senator ALLEN. But I think it's very important, since we will be dealing with State agencies also, and sometimes working with Federal agencies, and as you said, you defer to the States or the States to actually enforce Federal laws, so I think if the Governor is in favor of it and makes that petition, that ensures that the Federal Government is not coming in and running over or supplanting its will over the will of the people in that State.

The CHAIRMAN. Let us make sure, Senator, for the record here, that the bill before us, as contrasted with yours, is not a bill that is primarily devoted to former military bases, so we would have a merging of things here. We could have a military base location, as per your desires, as one aspect of this bill, and then we could have a general one which is not military sites, but rather just locating a site, which is what this bill is; correct, Mr. Meyers?

Mr. MEYERS. This bill actually has both elements. It does have provisions with respect to identification of military bases.

The CHAIRMAN. But not exclusively?

Mr. MEYERS. No, it's not exclusive. It has section 4, which I have mentioned before. In terms of the Federal coordinator, it is apart from the Federal military base provisions of the bill.

The CHAIRMAN. In any event, Senator, if we got around to this, we could accommodate your wishes, too, I would believe, if that's what the committee wanted.

Senator ALLEN. I believe so, yes.

The CHAIRMAN. I now yield to you, Senator, if you have any further questions of Mr. Meyers.

Senator ALLEN. Yes. Mr. Meyers, the chairman asked most of the questions that I was going to ask; however, let me just follow up on some of them.

This legislation—and you haven't probably had a chance to read mine, but regardless, this legislation does not circumvent or weaken any existing Federal environmental protections with regard to refinery permitting or regulation; is that correct?

Mr. MEYERS. H.R. 5254, yes, it doesn't directly amend, and it has a savings clause.

Senator ALLEN. All right. On permitting and the promptness of permitting and air permits—this is again as Governor, Mr. Chairman—we were able to get and recruit a semiconductor fabrication facility, billions of dollars of investment, into Virginia. They needed to get an air permit. We were able to get it done in 28 days. That

mattered to them. If somebody has billions of dollars to invest, to be waiting a long time—they said the best they had seen before was 90 days in Texas, and they said if we were in California it would have taken a year and a half, maybe, to do so.

Now, one of the ways to reduce the permitting time—you were talking about how it all is done sequentially, would you envision, with this memorandum of understanding—let's assume this is on a closed base and the community said, "We would like to have a refinery here." And the refinery, by the way, would not be paid for by the Federal Government. The Federal Government would not be running a refinery. The Federal Government has no expertise or competence in running refineries. It would be a private company that would invest on that site, run the refinery, and there might be several applications.

However, would you envision, as opposed to the sequential way that a lot of permitting is done, that you could have a lot of the permitting and decisions being made concurrently, as a way of reducing the length of time for a permit while complying with all environmental and health laws and regulations?

Mr. MEYERS. In terms of H.R. 5254, I clearly think that's the intent, is to have a coordinated schedule. I would say that there is coordination now, depending, project by project, and there is a more informal process. This sets up a specific process with one locus, the Federal coordinator, to run that process.

Senator ALLEN. I think, Mr. Chairman, as a practical matter, if we get this passed and in effect, what you'll have out of the regulatory agencies, State and Federal, working together, rather than a—sometimes permitting processes are a "gotcha" approach. Somebody makes a proposal and they say, "No, that doesn't make it." There will be more collaboration, saying, "To meet this requirement, you will need to do this," so that when their permits are done and the different requirements are done in a concurrent manner, that really does reduce the time for approval of a permit. As opposed to just a hit-and-miss approach, this would be one where there is more of a concerted effort.

In your written testimony, Mr. Meyers, you mention that most permits for refineries are issued by State and local authorities. In your opinion, does EPA have the resources that, if shared with the States and localities, could significantly expedite the technical aspects of the permitting process?

Mr. MEYERS. A lot of the permitting actions obviously are coordinated at EPA at the regional level. The regional offices which are down in the area, you know, region 6, region 4, that have a lot of the petrochemical facilities, have staff and experience in that regard, and they currently work in cooperation with the State agencies.

We don't have—since they're down at the regional level, we don't have a full list to give you of all the permitting actions. Our estimate in the last 5 years is about 100 permit actions with respect to refineries that have occurred, and they have occurred in cooperation at the State and regional level.

Senator ALLEN. Well, let's assume this happens. Does EPA have the resources to assist?

Mr. MEYERS. I guess I should have been more specific. We have been able to address the workload of about 100 permit applications in the last 5 years, so I would anticipate we would be able to handle, on an ongoing basis, that workload in the future.

Senator ALLEN. Thank you, Mr. Meyers.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Meyers, we're finished with your testimony. You are excused, and we thank you very much. We may be looking to you for further advice as we move along.

Mr. MEYERS. And, as I said, the administration stands ready and would be happy to provide any technical assistance to the committee.

The CHAIRMAN. We thank you.

Senator, let me just suggest to you that it's obvious to me that your notion of more Governor involvement fits nicely in this, and it's not in it now. Need not I talk about what you should do, but clearly to me you ought to be prepared to suggest how that might better fit if that's what you think the bill ought to be. It makes pretty good sense to me. I'm willing to listen, so right off, let me tell you that would be—to me it seems like to have a Governor in it right up front in some strong capacity would be good. That's what you're saying, right?

Senator ALLEN. Exactly, exactly. I think that the request would come from the Governor. Seeing how as these are State agencies that have the responsibility, I think that would make a stronger memorandum of understanding as well.

The CHAIRMAN. OK. Now we're going to go on to the next witnesses. Again, I want to thank the witness from the Federal Government who just left us, and go on to panel two: Glenn McGinnis, CEO of the Arizona Clean Fuel Yuma, Phoenix, AZ; S. William Becker, executive director of STAPPA/ALA—how do we say that?

Mr. BECKER. ALAPCO.

The CHAIRMAN. ALAPCO, Washington, DC. Mr. Becker, welcome. And Bob Slaughter, president, National Petrochemical and Refineries Association. Thank you, all three.

First, I want to welcome the very broad-shouldered Mr. McGinnis. Not really, but I say it figuratively, right? You're the one who has been trying to build some new facilities, and that makes us happy. Whether you succeeded yet or not is another question, but we're going to listen to you today about the bills and about the problems out there. So you're first.

Let's be as brief as we can, so we can talk a little. We'll start with you, Mr. McGinnis, and then we're going to go right on to you, Mr. Becker, and then to you, Mr. Slaughter, from the National Petrochemical and Refineries Association.

Mr. McGinnis.

STATEMENT OF GLENN McGINNIS, CEO, ARIZONA CLEAN FUELS YUMA, PHOENIX, AZ

Mr. MCGINNIS. Thank you very much, Mr. Chairman. First of all, I'd like to thank the committee for providing the opportunity to provide both written testimony and the opportunity to address the committee and clarify my company's position on two issues: First, on the chronology of events related to the issuance, in April 2005,

of the air permit for our proposed refinery; and, second, on the key points addressed by H.R. 5254, which is the subject of the committee's deliberations today.

In my written testimony I address the critical issues related to the development and approval of a new oil refinery project, those being economics, technology choices, public acceptance, and the permitting process. I will address only one of these: namely, the process of permit review and approval today.

First, let me address the chronology of the air permit for our project, since I understand that there has been some confusion on this item. A predecessor company of Arizona Clean Fuels Yuma, the Maricopa Refining Company, developed a project in the late 1980's and was issued an air permit for a small oil refinery near Phoenix, AZ, in January 1992. For various reasons, including changing fuel product standards, crude oil pipeline supply issues, demand growth increases, and market uncertainty, this permit was allowed to lapse.

During the mid and late 1990's a different and larger scope project was developed for a site near Mobile, AZ. Discussions with the Arizona Department of Environmental Quality began in 1998, and culminated in the submission of the initial permit application in December 1999. This is the event that triggered the extensive technical reviews and negotiations involved in the development of the permit.

Identification of best available control technology for each potential emission source, modeling of the ambient air impacts of these potential emissions, and agreement on the level of each identified pollutant is a lengthy process for a facility with many potential emission sources, including large furnaces, compressors, storage tanks, pumps, and even every valve in some specific services. This process took until September 2002, when the Arizona Department of Environmental Quality deemed the permit to be administratively complete.

In the summer of 2003, the ADEQ advised the company that a draft permit was nearing completion and would be issued shortly. During this period, the extent of the ozone nonattainment area for the Phoenix metropolitan region was under review, and in the late summer of 2003 the Environmental Protection Agency and the Arizona Department of Environmental Quality expanded it to include large portions of Maricopa County, including the proposed refinery site. This decision, coupled with the growth of population in and around the town of Maricopa, led the company to look at alternative locations for the refinery.

In late 2003 the company proposed an alternative site and agreed with the Arizona department to relocate the refinery to Yuma County. The ADEQ agreed to transfer the bulk of the permit work to date to the new site, and the company updated all of its air modeling and airshed impacts for the new proposed site.

In April 2004 the company granted an extension in the permitting time to ADEQ, who again deemed the technical revisions and data complete. The company then documented all of the final agreed-upon bases in the final permit application. The draft permit was issued in September 2004, public meetings and hearings held

during the fall, and the Class I operating permit issued in April 2005.

As I hope this demonstrates, there are several stages to the application and permit development process that require extensive technical reviews and negotiations among all of the parties involved. The resulting permit is a complex document of specifications, controls, monitoring requirements, and reporting and compliance obligations. Throughout this entire process, the ADEQ consults with many other Federal and State agencies for input, reviews, and approval of the permit requirements.

The Arizona Clean Fuels Yuma permit process was lengthy and complex, but to be fair to those involved, it was extended by mutual agreement between the company and the ADEQ due to the relocation of the refinery site.

The second issue I would like to address briefly is the content of the proposed bill, H.R. 5254.

During the development and finalization of our air permit, the ADEQ consulted with and requested comment and approval from many other agencies, Federal, State, and local. These agencies also have full-time activities related to day-to-day requirements, and review of a permit as complex and lengthy as a new refinery air permit does not necessarily receive the highest priority. Although the ADEQ attempted to coordinate these inputs and reviews in a timely manner, many were delayed.

Also, the ADEQ's prime mandate is one of permit content. That is, they must ensure compliance with all of the requirements of the Clean Air Act, and local and State statutes and considerations. Focus on the schedule of permit development is not the primary function of any agency at this time.

As in any complex work process, having an individual responsible for the process, its scheduling and resourcing, is critical to success. The proposal within this bill to provide this schedule focus through appointment of a Federal coordinator and mandating a 90–day period for agreement to a schedule will substantially improve the process of developing and issuing permits. Certainly, although it is not spelled out in the bill, it is assumed that the permit applicant and its consultants are a party to the commitment to the schedule and also carry obligations to meet these commitments.

The second key issue addressed in the bill is the need for establishing and providing the resourcing required at the State level. This provision of either funding or direct capability will significantly help State agencies deal with conflicting priorities when their staff time and experience are limited, and will improve the State's ability to meet its schedule obligations.

Finally, the provisions for enforcement when the schedule and therefore the project are in jeopardy should provide accountability to the process.

This proposed bill, H.R. 5254, includes these key provisions which will improve the processes used to develop and issue Federal permits related to new refinery projects in the United States, and our company, Arizona Clean Fuels Yuma, strongly endorses these provisions. Thank you.

[The prepared statement of Mr. McGinnis follows:]

PREPARED STATEMENT OF GLENN MCGINNIS, CEO, ARIZONA CLEAN FUELS YUMA, PHOENIX, AZ

NEW REFINERY PROJECT PERMITTING CONSIDERATIONS AND ISSUES

The objective of this paper is to briefly highlight the key considerations and issues involved in the corporate, government and public decisions that must be made prior to the implementation of a new oil refinery project in the U.S. and will focus on the process for the development and issuing of Permits. Arizona Clean Fuels Yuma strongly endorses the proposals in the Bill H.R. 5254, specifically:

1. The appointment of a Federal Coordinator who will act as "Project Manager" during the permitting process.
2. A mandated period of 90 days for establishment of a schedule for the permit development work involving all agencies with the Federal Coordinator ensuring compliance to this schedule.
3. Analysis of the resources required by both Federal and State Agencies to perform the required development and reviews within the schedule—and the provision of Federal financial support for agencies to meet their schedule obligations.

Background

The refining industry has successfully gone through a major effort over the past decade to respond to changes in product fuel quality mandated by Clean Fuels requirements. During this time, the industry has met the growing domestic demand for petroleum products by limited capacity expansions of existing refineries, and by imports. No new major refineries have been built in the U.S. in over thirty years and product imports have reached over 3.5 million barrels per day. Economic growth in other countries has reduced the availability of products to U.S. consumers and increased competition for imports. Major natural disasters, such as Hurricanes Katrina and Rita of late summer 2005, can have a major impact on the domestic supply and distribution of products resulting in both shortages and price increases. Recent petroleum product prices have reached and sustained record highs, driven by a growing world-wide shortfall in petroleum products supply. There are a number of reasons that this shortfall is a major concern for the U.S., most of which have been documented in abundance recently in the press. It is perhaps sufficient to state that shortfalls create economic hardship and slow the economy. It is also a strategic issue for the U.S. as the growth in imports increases the threat of shortages and embargos.

One of the major solutions to this growing shortfall is to provide additional domestic refining capacity. The Energy Policy Act of 2005 provided economic incentives for domestic refiners to both expand existing refineries and to develop new refineries. The Bill under consideration by the Senate Committee on Energy and Natural Resources (H.R. 5254) addresses the key issue of permit development and approval which will assist in the advancement of new projects.

The problems and impediments preventing the growth and investment for new refining capacity in the U.S. are significant and will be discussed briefly below with particular focus on permitting and the current proposed Bill. Despite this, a new refinery project, the Arizona Clean Fuels Yuma (ACFY) project, has been under development for many years and is currently finalizing engineering design consistent with the final Air Quality Class I Permit issued by the Arizona Department of Environmental Quality in April of 2005. This project will be used below to highlight specific costs and permitting requirements.

New Refinery Construction Considerations

There are four general areas of consideration that drive the feasibility and timing of new refining projects:

1. Overall Project economics driven by product values, feedstock costs, operating costs, and the uncertainties introduced by long lead times for engineering, permitting and construction,
2. Technology choices driven by crude slate, target product mix, legislated and target product quality requirements (and projected changes)—a lengthy process of project development, engineering and construction,
3. Public Acceptance—significant reluctance in most areas of the U.S. to allow a new refinery "in my back yard". Public communication and hearings processes are lengthy and often confrontational,
4. Permitting processes for environmental permits, access permits, construction permits and zoning, etc.—driven by federal, state, and local legislation and zoning.

Refining Economics

Long term historical refining margins in the U.S. have, *on average and in general,* not been adequate to support new refinery construction. Returns on Capital Employed have been in the 5% to 7% range. Capacity expansions and modifications have been economic due to leverage on base infrastructure and facility investments. Recent refining margins 2 have been significantly above the long term averages with the impacts of the hurricanes of 2005, but especially because of the world-wide competition for refined products. Current and proposed projects in the U.S. and world-wide are expected to increase supply and may reduce refining margins in certain areas in the medium to long term.

Refineries are, by their nature, very costly facilities which require long lead times for engineering, permitting and construction. The uncertainties of timing and cost, the major investments in planning and early engineering, and concerns over protracted permitting process and public opposition have deterred most companies from considering new refinery projects.

The proposed Arizona Clean Fuels Yuma refinery which will produce about 150,000 barrels per day of gasoline, diesel, and jet fuel products, will cost over $2.5 billion with an additional $600 million required for crude oil and product pipelines. Rapidly growing demand for petroleum products in the southwestern U.S. and limited supply alternatives make this project economic.

Technology Choices

The refining industry is not traditionally viewed as "high tech". However, the need for high quality products and significant flexibility to process wide ranges of crude oils, and the need to implement state-of-the-art environmental controls, has led to the development of very sophisticated processes. There are several process licensors and choices for each type of facility that a refiner needs. Also, due to the high cost of each process facility, extensive studies and comparisons are required to match a refiner's products and processing objectives.

One area where the industry has led in major technology developments is in the "Best Available Control Technology" for emissions as defined in and required by the Clean Air Act. Every refinery modification and new process unit has required the development and application of specific control technology.

The development of the Arizona Clean Fuels Yuma project included an extensive analysis of emission sources and inclusion of the Best Available Control Technology. This will be the first refinery where all sources will be addressed at the same time in this manner.

Public Acceptance

A major hurdle to the construction of a new oil refinery is to overcome the historic negative public perceptions of oil refineries and to obtain public acceptance. Generally, the public has a "not in my back yard" attitude to facilities such as oil refineries. Certainly, refineries of the past have, to some extent, earned this reaction from the public. Modern facilities have overcome the shortcomings of these previous refineries. The refining industry has developed and implemented emissions controls, operating practices, and outreach programs to address the concerns of both government agencies and the public. Certainly these programs and projects have increased costs, but have been viewed by the industry as necessary.

Refineries have significant benefit to the public by generation of both direct and indirect jobs and economic activity. Local communities can benefit significantly from the operation of a refinery.

A new refinery, such as the Arizona Clean Fuels Yuma project, with the control and monitoring required by current regulations will have minimal impact on the surrounding environment with permitted emissions less than half those of the best current refinery in the U.S. The proposed location in Yuma County, Arizona, is remote from population concentrations. The project has gained support from local and state politicians and business leaders.

Permitting Processes

Certainly the most-often noted issue in new refinery construction is that of the extensive permitting that is required. Generally, permits are required from multiple agencies at the federal, state and local levels. Also permits are required not only for the refinery but also for pipeline and utility services to and from the site. The permitting processes are lengthy and costly. Project developers are also not in control of the pace and timing of permit review and issue and this uncertainty can lead to project delays, cost escalation, and uncertainties in financing.

The most extensive and important permit is often the "Air Permit" that is usually issued by the relevant state agency and outlines all requirements for compliance to

the Clean Air Act and New Source Performance Standards with emission levels, reporting and Best Available Control Technology requirements. The extensive scope of this permit requires detailed air modeling, technical review of all facilities, and agreement on the Best Available Control Technology. For example, the Arizona Clean Fuels Yuma permit application was submitted to the Arizona Department of Environmental Quality on December 22, 1999, and the Final Permit issued on April 14, 2005—a time period of over five years. This period was protracted by both the extensive reviews and negotiations for the permit and by a relocation of the project site. The following timeline demonstrates the complexity of both the siting decisions and permit reviews that were involved.

Timeline of the Arizona refinery project:

Summer 1998: work began on a Class 1/Title V air permit for a large oil refinery to be located near the community of Mobile, Arizona. The Arizona Department of Environmental Quality (ADEQ) was advised of the work and negotiations began.

December 23, 1999: Arizona Clean Fuels Yuma submitted the initial air permit application to ADEQ.

1999-2002: Negotiations on all the technical details of the application (e.g. Best Available Control Technology, emission modeling basis and requirements, performance monitoring and reporting) occurred between Arizona Clean Fuels Yuma and ADEQ and their consultants.

September 4, 2002: ADEQ deemed the application to be "administratively complete."

Summer 2003: ADEQ advised Arizona Clean Fuels Yuma that work on the application and a Draft Permit was nearing completion.

Fall/Winter 2003: State of Arizona expanded the ozone non-attainment area for metropolitan Phoenix and included the area of Mobile and the proposed refinery site in the expansion. As a result of the expansion and new population growth, Arizona Clean Fuels Yuma agreed with ADEQ to relocate the proposed refinery to a new site in Yuma County, Arizona and transfer the bulk of the permit work that was begun in 1999.

April 6, 2004: Arizona Clean Fuels Yuma agreed with ADEQ to extend its permitting process and that the technical revisions and new data for the Yuma site were complete. The company submitted the Final Permit Application documenting all of the technical basis, air quality monitoring results, and control technology as agreed with ADEQ.

September 14, 2004: ADEQ issued a draft permit and began a public hearing and review process. Meetings and Hearings were held in Phoenix, Yuma and Tacna, Arizona during the October to December, 2004 period.

April 14, 2005: ADEQ issued the final permit.

As the above demonstrates, the process of preparing such an extensive permit as that required for a major oil refinery is lengthy. Also there were factors involved with this specific project that extended the time period even further.

One of the key issues in the development and finalization of an Air Permit for a major facility is the review of the proposed project emissions, controls, and impacts by other federal and state agencies. For example the EPA, the U.S. Forest Service, the National Park Service, the Bureau of Land Management, and the Arizona State Department of Historical Preservation were consulted by ADEQ. Fortunately many of these federal and state agencies review and comment on the permit and project coincident with the preparation of the Final Air Permit. However, all of these agencies have seen increased demands on their time and reviews don't always meet the expected timeframes thereby extending the permitting schedule.

In the western United States, for example, EPA Region IX encompasses the most dramatic growth seen anywhere in the country. However, large projects that would support and provide jobs and energy supplies for that growing population can be held up for years by the air permitting process alone. This Regional EPA office has a limited number of technical staff members who must review and approve the air permits for every project in California, Nevada, Arizona, Hawaii, and Guam. Similarly, the National Park Service, Bureau of Land Management, and U.S. Forest Service must compete for the services of only a few federal staff members who have the technical expertise and responsibility to review all proposed major source air permits for projects across the entire western half of the country. This coupled with the lack of regulated or recommended timing requirements for permit issue leads to significant delays.

Finally, although industry recognizes the statutory requirement for these agencies to ensure compliance with all regulations, there often appears to be more attention

paid to the concerns of a small minority of constituents rather than a balanced review.

Although the Air Permit is one of the most important permits for any project, there are many other rigorous permits that must be obtained for both refinery and pipeline projects from a multitude of agencies. For example:

- NEPA Compliance from a controlling agency such as the Bureau of Land Management
- Land Use Permits from controlling agencies and jurisdictions
- National Historic Preservation Act Compliance with reviews by the State and related tribes
- Access permits from Bureau of Land Management, U.S. Army Corps of Engineers, and State Land Commissions as well as private land owners.
- Military Agency approvals if military facilities involved.

A listing of permits required by the Arizona Clean Fuels Yuma refinery and pipeline projects shows about thirty permits required excluding local zoning, access and construction permits. The majority of these permits are not initiated until the Air Permit is issued, since this permit finalizes the basis for the project. The timing of these can be extensive and is estimated to be about eighteen to twenty-four months. Although design engineering can be done in parallel to these permitting activities, no significant construction can begin until they are in place. Construction of a large refinery such as ACFY proposes takes about three years. This sequential process results in long lead times for project development and completion.

Specific Observations on H.R. 5254

With the above as background, the key observation is that the permitting processes are extensive and involve multiple agencies at various government levels. Several critical issues have been addressed by the proposed bill and Arizona Clean Fuels Yuma strongly endorses the following:

4. The appointment of a Federal Coordinator who will act as "Project Manager" during the permitting process.

5. A mandated period of 90 days for establishment of a schedule for the permit development work involving all agencies with the Federal Coordinator ensuring compliance to this schedule.

6. Analysis of the resources required by both Federal and State Agencies to perform the required development and reviews within the schedule timeframe—and the provision of Federal financial support for agencies to meet their schedule obligations.

Conclusions

The refining industry in the U.S. has not constructed a new grass roots refinery for over thirty years. Refining economics have generally not supported new refinery costs and the industry has focused on expansions of existing refineries. Major investments in Clean Fuels production and regulatory programs have also absorbed much of the industry capital. The total capital cost of an economically-sized facility of about 150,000 barrels per day is approaching $3 billion.

The complexity of the refining processes and technology choices results in lengthy project development times which can be one to two years. Following this project definition, corporate strategic decisions, public reviews, local government discussions, and multi-level permitting process typically take four to five years before a final "go-decision" can be made. Expediting these permit processes by ensuring timely development and review is critical to progressing these final decisions to meet the growing energy needs of the U.S. The proposed Bill, H.R. 5254 will provide a focus on the schedule and resource requirements to ensure timely completion of Federal permits.

The CHAIRMAN. Thank you very much, Mr. McGinnis. I'm having a little bit of difficulty following you.

Mr. MCGINNIS. Sorry.

The CHAIRMAN. I don't know why that is. It's probably my fault.

Now, Mr. Becker, will you talk into the machine and talk as loud as you could, please?

STATEMENT OF S. WILLIAM BECKER, EXECUTIVE DIRECTOR, STAPPA AND ALAPCO

Mr. BECKER. Good morning, Mr. Chairman, Senator Allen. I am Bill Becker, executive director of STAPPA and ALAPCO. These are two national associations of clean air agencies in 54 States and Territories and over 165 major metropolitan areas across the country. We are very pleased you're having this hearing today on H.R. 5254, since this marks the first time that Congress will hear stakeholders' views on this bill, especially from State and local governmental agencies responsible for issuing permits to refineries.

While our associations understand the Congress's desire to take swift action of some kind to address high fuel prices in this country, we strongly believe that environmental permitting requirements have been wrongly targeted.

The CHAIRMAN. Have been what?

Mr. BECKER. Have been wrongly targeted.

The CHAIRMAN. In this bill?

Mr. BECKER. In this bill. Not only is new legislation not needed for expediting the permitting of refineries, we are very concerned that the bill could have the opposite result and delay the issuance of permits, as well as present other serious consequences. Accordingly, Mr. Chairman, we oppose its passage.

Before addressing our specific concerns with H.R. 5254, we wish to make two observations. First, we must challenge the premise of this bill: namely, that State or local air pollution permitting requirements are preventing new refineries from being built or existing refineries from expanding. We believe the facts prove otherwise.

According to the results of a recent survey, no State or local agency has received a major air permit application for a new refinery in the last 10 years, and according to EPA, only one refinery has sought an air pollution permit in the last 30 years, and we've heard a little about that. With respect to existing refineries, the survey found that once agencies received complete applications, all but two of the major permit actions for refinery expansions were completed within 1 year, and half were completed within just 7 months.

These findings are consistent with those of the Environmental Council of the States, which stated recently—and I'm quoting—it was "unaware of any credible report that concludes that the time States take to review environmental permits has been, or is, a significant impediment to the issuance of refinery permits. We do not believe such documentation exists." And even the refinery industry has testified that environmental regulations are not interfering with the construction of new, or the expansion of existing refineries, and I have cited examples in my written testimony.

What the evidence appears to substantiate is that the reason that new refineries are not being built in this country is because of economic considerations, not environmental permitting processes. In fact, the industry's preferred choice for increasing refinery capacity is to expand existing refineries, and as noted above, State and local agencies are issuing permits for expansions in a matter of months, not years.

Our second observation, Mr. Chairman, is that Congress just 11 months ago took steps to address perceived refinery permitting issues in title II of the Energy Policy Act. Yet rather than allow this new program the chance to work, H.R. 5254 repeals most of its provisions.

I'd like now to offer some of our specific comments on the bill. First, we are deeply troubled by the bill's new layer of permitting bureaucracy under section 4, and believe it could undermine the State and local permitting process and delay our review and approval of refinery permits, perhaps by many months.

For example, the bill requires the President to appoint a Federal coordinator who is allowed to take up to 3 months just to negotiate a schedule for issuing a permit. And because the schedule is judicially enforceable, State and local agencies will need to devote many more staff and involve several other offices, including the attorney general, in developing an appropriate timeline, which could further delay permit issuance.

In addition, if a party misses one of the judicially enforceable milestones in the agreement, rather than working the issue out cooperatively, as is typically done at the State and local level, the bill encourages a cause of action to be filed before the U.S. District Court, leading to a new court-ordered schedule. This will undoubtedly create an adversarial environment and lead to more delay and uncertainty.

All of these unnecessary procedural requirements will take away time that refinery and agency staff could otherwise be spending on the substantive issues of the refinery permit.

Second, we are very concerned that the bill preempts State and local authorities, particularly providing the Federal district courts, rather than the more appropriate State courts, with exclusive jurisdiction over civil actions for failure to meet a schedule.

Section 5 of the bill, which authorizes the President to designate at least three closed military bases as potential sites for constructing a refinery, also presents significant problems. At issue is the extent to which the bill allows the Federal Government, in this case the Secretary of Defense, to force communities to accept construction of a refinery when the community objects. We believe the decision to place an oil refinery must be determined by the community, not the Federal Government.

In conclusion, H.R. 5254 is unnecessary, will delay the issuance of refinery permits, preempts State and local authorities, and forces new refineries in communities that may not want them. We oppose this bill, and urge you to do so as well.

Thank you. I will be happy to answer your questions.

[The prepared statement of Mr. Becker follows:]

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

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

out the country and hold primary responsibility under the Clean Air Act for implementing our nation's air pollution control laws and regulations.

STAPPA and ALAPCO commend you for convening this hearing to examine H.R. 5254, the "Refinery Permit Process Schedule Act," recently passed by the House of Representatives. We are pleased you are having this hearing since this marks the first time that Congress will hear stakeholders' views on this bill, especially from state and local governmental agencies responsible for issuing permits to refineries. As you know, the House passed this bill without holding public hearings on this issue.

While our associations understand the Congress' desire to take swift action of some kind to address high fuel prices, we strongly believe environmental permitting requirements have been wrongly targeted. Not only is new legislation not needed for expediting the permitting of refineries, we are concerned that H.R. 5254 could have the opposite result, and delay the issuance of permits, as well as present other serious consequences. Accordingly, we oppose its passage.

Before addressing our specific problems with H.R. 5254, we wish to make two observations.

First, we must challenge the premise of this bill, namely that state or local permitting requirements are preventing new refineries from being built or existing refineries from expanding. We believe the facts prove otherwise.

According to the results of a recent survey (June 1, 2006) of state and local air pollution control agencies conducted by Congressman John Dingell, Ranking Member of the House Energy and Commerce Committee, "the environmental permitting process is not preventing new refineries from being built or existing refineries from being expanded." Based upon responses from 20 states, representing 77 refineries—or about half of those in the United States—the survey summary revealed that:

> None of the State and local agencies . . . had received a major air permit application for a *new refinery* in the last 10 years. This is consistent with previous information from EPA. EPA previously said that they were aware of only one proposed refinery seeking an air permit in the last 25 years. According to information from the Arizona Department of Environmental Quality, two air permits have been issued for this proposed facility. The State issued the initial air permit in 1992, but the applicant let it lapse when financing could not be obtained. The State issued a new air permit in April 2005, nine months after a complete application was filed for the refinery at a new location in Yuma, Arizona.

With respect to *existing refineries,* 12 of the 20 states reported receiving requests for approximately 35 major New Source Review permits for expansions to their refineries in the past 10 years. Once the agencies received complete applications, "all but two of the major permit actions for refinery expansions were completed within one year . . . and half were completed within seven months." This is also consistent with previous EPA testimony (House Government Reform hearings, September, 2000) that half of major permit modifications for refineries were issued within five months and most others within a year.

The Environmental Council of the States has reached similar conclusions. In a letter (May 9, 2006) to Chairman Barton of the House Energy and Commerce Committee, ECOS indicated it is "unaware of any credible report that concludes that the time States take to review environmental permits has been, or is, a significant impediment to the issuance of refinery permits. We do not believe such documentation exists" (May 9, 2006).

Even the refinery industry has testified that environmental regulations are not interfering with the construction of new or the expansion of existing refineries. In Senate testimony before the Congress (November, 2005), the Chief Executive Officer of Shell stated, "We are not aware of any environmental regulations that have prevented us from expanding refinery capacity or siting a new refinery." In addition, Conoco's CEO testified, "At this time, we are not aware of any projects that have been directly prevented as a result of any specific Federal or State regulation." Finally, BP's CEO-concluded "it does not believe that any Federal or state environmental regulations have 'prevented us' from expanding refinery capacity or siting a new refinery."

We believe the reason that new refineries are not being built in this country is because of economic considerations, not environmental permitting processes. In fact, the industry's preferred choice to increase refinery capacity is to expand existing refineries, and as noted above, state and local agencies are issuing these permits in a matter of months, not years.

The second observation is that Congress, just ten months ago, took steps to address this issue. Subtitle H of Title III (Refinery Revitalization) of the Energy Policy

Act authorizes the EPA Administrator, at the request of a Governor, to enter into a refinery permitting cooperative agreement with the state. Each party would be responsible for identifying steps, including timelines, which it will take to streamline the consideration of Federal and state environmental permits for a new refinery. The new law allows the Administrator to 1) accept from a refiner "a consolidated application for all [EPA] permits," 2) enter into agreements with other federal agencies to consolidate refinery permits, and 3) enter into an agreement with a state under which federal and state review of refinery permit applications will be coordinated and concurrently considered. According to Energy Secretary Bodman, (World Energy, Volume 8, No. 3) this new Title of EPAct "eases the constraints that have strangled new refinery construction." Yet, rather than allow this Subtitle the chance to work, H.R. 5254 repeals most of its provisions.

Now I will turn to H.R. 5254.

Section 4 of the bill appoints a "Federal coordinator" for refiner permitting. This person is responsible for convening a meeting of all federal and state agencies responsible for a refinery permit and establishing a schedule for reviewing and taking final action on the refiner's permit application, whether it is for a new refinery or a modification to an existing one. The bill also requires the Federal coordinator to maintain a complete consolidated record of all decisions made with respect to the refinery. The bill provides the federal district court in which the proposed refinery is located "exclusive jurisdiction" over any civil action resulting from failure to meet a deadline within the prescribed schedule.

STAPPA and ALAPCO have several concerns with this section of the bill.

First, we are deeply troubled by the bill's new layer of permitting bureaucracy and believe it could undermine the state and local permitting process and delay our review and approval of refinery permits, perhaps by many months. For example, Section 4 requires the President to appoint a Federal coordinator who is allowed to take up to three months just to negotiate a *schedule* for issuing the permit. And because the schedule is judicially enforceable, state and local agencies will need to devote many more staff and involve several other offices (e.g., attorney general) in developing an appropriate timeline, which will cause additional and substantial delay to the issuance of permits. Furthermore, if a party misses one of the judicially enforceable milestones in the agreement, rather than working the issue out cooperatively—as is typically done at the state or local level—the bill encourages a "cause of action" to be filed before the U.S. District Court, leading to a new court-ordered schedule. This will undoubtedly create an adversarial environment and lead to more delay and uncertainty. All of these procedural requirements will take away valuable time that refinery and agency staff—managers, professional and legal—could otherwise be spending on the substantive issues of the refinery permit.

Second, we and other state and local organizations are very concerned with the preemptive elements of this bill. Last fall, for example, six groups—the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the Council of State Governments, and the International City/County Management Association—wrote the House Energy and Commerce Committee asking that "any proposed energy legislation exclude provisions that would preempt state and local governments' permitting processes for energy facilities and related infrastructure, including refineries."

Unfortunately, H.R. 5254 preempts state and local governments in at least two areas. First, as described above, the bill provides the Federal district courts, rather than the more appropriate state and local courts, with "exclusive jurisdiction" over civil actions for failure to meet a schedule. In addition, the bill preempts state and local governments by establishing that memoranda of agreements setting forth the coordinated schedule be "consistent with the full substantive and procedural review required by Federal law," irrespective of state or local procedures. If, for example, an existing state or local law or regulation provides for a slightly longer public comment period than the Federal coordinator deems appropriate (e.g., 60 days vs. 30 days), the state or local requirement would be preempted.

We are also concerned with Section 5 of H.R. 5254, which authorizes the President to designate at least three closed military bases as potential sites for constructing a refinery, and requires the local redevelopment authorities to consider the feasibility and practicability of siting a refinery on the installation. At issue is the extent to which this bill allows the federal government—in this case the Secretary of Defense—to force communities to accept construction of a refinery when the community objects. We support the statement of the Association of Defense Communities (May 25, 2006) that H.R. 5254 "does not give deference to the community's choice. H.R. 5254 makes no distinction between communities that would like an oil refinery and those that don't. The decision to place an oil refinery must be determined by the community, not the federal government."

In conclusion, STAPPA and ALAPCO believe that environmental permitting requirements have been wrongly blamed for preventing new refineries from being built or existing refineries from expanding. Congress just recently enacted provisions under EPAct to help expedite the permitting of refineries and should give the new law a chance to work. Our associations oppose the passage of H.R. 5254 because it is not necessary, will delay the issuance of refinery permits, preempts state and local authorities, and forces new refineries in communities that may not want them.

Thank you for this opportunity to testify and I will be happy to answer your questions.

The CHAIRMAN. Thank you, Mr. Becker.

We have about 5 minutes or 6 minutes before we have to vote, before the votes close, but we're going to see if we can get you in, Mr. Slaughter, before we recess and come back and then inquire of all three of you. So would you proceed, please.

STATEMENT OF BOB SLAUGHTER, PRESIDENT, NATIONAL PETROCHEMICAL AND REFINERIES ASSOCIATION

Mr. SLAUGHTER. Sure, I will. And thank you, Mr. Chairman, for the opportunity to be here today. Senator Allen, Senator Salazar. NPRA is a trade association of the Nation's refiners. Our members are basically all U.S. refiners, plus petrochemical manufacturers.

We support this bill. We agree with you that the Nation needs more refining capacity. We believe that the committee should approve this bill. It's a modest but significant step toward increased U.S. refining capacity.

I would just point out that the industry has had a lot on its plate. We have redesigned all of our fuels. We have spent billions of dollars for environmental improvements. At the same time, although no new refinery has been built, we have added a significant amount of U.S. refining capacity in the last 10 years. We have added 1.4 million barrels per day. It's the equivalent of adding 10 average-size refineries over that period. That has been added as expansions at existing sites because you can do that more cheaply and economically and have the product available earlier than you can with a new refinery.

We believe that the Government should do everything possible to encourage people who want to take the risk to build new refineries, and we're very happy that Mr. McGinnis and his company are proceeding to do just that. One of the things I will just say is there has been a lot of controversy about issues affecting the refining industry this year. I have testified at many hearings. But there is a general consensus on the point that we need new refining capacity, which is what this bill directly addresses.

I know you know as well, Mr. Chairman and others, that the industry has already announced plans to bring on 1.8 million barrels of additional capacity in the United States. Some say it will be as many as 2 million barrels. Those are the plans at this time. That will be a 12 percent increase, at the highest number, of our U.S. refining capacity. Those additions at existing sites will have to be permitted.

It seems prudent to us that reasonable action be taken to discourage unnecessary delays in permitting new capacity additions. This will encourage investment and speed its completion. We think the important point isn't to debate whether permitting delays have actually stopped projects. They have slowed them.

The important thing is that there is room for improvement in this business of granting permits, as there is in any business, and it would be very helpful to have a statement from the Congress that the national interest really requires additional refining capacity, and there should be encouragement for efficiency and timeliness in granting permits. That's essentially what we're for. Several of our members have told us of times in which they were trying to do things to expand capacity, even put in an ethanol tank to comply with the mandates now in reformulated gasoline, and faced significant delays.

The good thing, as you have pointed out, is this bill does not override State authority and does not change existing environmental requirements. It is an optional procedure. If a person trying to build a refinery or add capacity does not choose to trigger this mechanism, it will not be triggered. It's optional.

Two other points I would just mention very quickly. One, the Governor certainly has to be involved, but I would ask you to question whether Governors should have an outright veto authority over use of this. They should be major participants, particularly over the siting on military bases, but somewhere the Federal interest in having additional refineries needs to be placed before the States, and there has to be something done to push that process along.

I look forward to your questions, Mr. Chairman.

[The prepared statement of Mr. Slaughter follows:]

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

Chairman Domenici, Senator Bingaman and other members of the Committee, NPRA, the National Petrochemical & Refiners Association, thanks you for the opportunity to appear today to express our support for H.R. 5254, the Refinery Permit Process Schedule Act. I am Bob Slaughter, NPRA's President. The Association's members include virtually all U.S. refiners and petrochemical manufacturers. As you know, H.R. 5254 passed the House of Representatives on June 7, 2006, by a bipartisan vote of 238-179 and has been referred to this committee. NPRA believes that this committee should approve the bill, which takes a modest but still significant step towards increased domestic refining capacity.

NPRA also appreciates the bipartisan efforts of the Committee to enact S. 2253, legislation that instructs the Department of the Interior to sell oil and gas leases in Lease Area 181. Lying 100 miles off the Florida coast and comprising 2.9 million acres, this area is anticipated to provide the addition of much-needed domestic petroleum and natural gas production. The nation's refiners and petrochemical producers rely on predictable supplies of oil and gas to carry out their operations, and increased supplies of domestic energy will help provide natural has for use in refineries as fuel and in petrochemical plants as feedstock. NPRA believes the Committee has approved a sensible approach to offshore leasing that will increase domestic supplies of oil and gas for the benefit of all the nation's consumers.

A RECAP OF RECENT EVENTS

During the past few years the refining industry has been the focus of much greater attention than ever before from federal, state and local policymakers, as well as the media and general public. Most of the public seems to be aware of the fact that our nation's demand for refined petroleum products has grown considerably as a result of the widespread economic expansion that has characterized our economy for more than a decade. The fact that the nation's ability to meet this increased demand from domestic resources has declined is also well appreciated. Many congressional hearings have heard testimony from various stakeholders discussing the reasons for the resulting tight supply/demand balance in fuels market. Those who testified have also recommended various policy changes that might address public concerns about refined product supplies and prices.

At the same time, a multitude of state and federal investigations have exhaustively reviewed gasoline market activities, either in whole or in part, to ascertain whether any relevant price and supply concerns can be attributed to illegal industry practices. They have found no such behavior. The results of these studies have been controversial, and policymakers have mostly taken sides according to their preexisting views of the petroleum industry. Policymakers' views about the wisdom of continued reliance on market mechanisms to assure sufficient energy supplies have greatly affected their reaction to the investigative findings.

Today marks the twelfth time that NPRA has appeared at congressional hearings regarding fuels market in the past year and one-half. We have also participated in many media and third-party discussions of the nation's energy problems. Based on that experience, I would like to share on behalf of the association a few observations about fuels issues. They seem highly relevant to your consideration of H.R. 5254.

MARKET FORCES AT WORK

First, the overwhelming number of federal and state investigations into gasoline market activities at various times and in various places over the past few years have reached the same conclusion: adverse market conditions result from situations beyond industry's control. Most often, price movements and supply concerns have been attributed to (1) the impact of the international oil market on crude supply and prices, (2) refinery equipment or pipeline outages, or (3) acts of nature such as last year's two destructive hurricanes. Sometimes one factor has been identified, often several. But these studies and investigations have unanimously found that industry engaged in no illegal activity. Exceptions are extremely rare and usually involve isolated behavior by individuals at the retail level.

INDUSTRY FACES MANY CHALLENGES

Second, thorough consideration of the role of the refining industry in these hearings and investigations has led to a general understanding that the industry has greatly exerted itself to manufacture vast quantities of refined products such as gasoline and diesel for the domestic market while facing many challenges. What are these challenges? For example, strong economic growth in this country over the past decade and one-half has led to significantly increased demand for transportation fuels and continues to do so. At the same time, the industry faced a need for massive capital investment to meet environmental regulations requiring emission reductions at our facilities. The industry also had to launch the equivalent of a modern Manhattan Project to redesign the entire fuel slate, resulting in significantly cleaner fuels with sharply reduced emissions.

Many tens of billions of dollars have been invested in the U.S. refining industry in the past two decades to meet increased demand and achieve these important environmental objectives. Especially in the decade of the 1990s, massive investments were made despite the fact that the expected return on investment was only 5 to 6% at best, with even less or no return on many environmental expenditures to meet environmental requirements. New environmental specifications also result in reduced volumes of products and higher refining and crude costs.

As indicated on the attached charts, the industry still faces a "regulatory blizzard" of significant proportions in this decade as it continues its contribution to environmental progress. NPRA estimates that the industry will spend at least $21 billion this decade to meet the environmental requirements on these charts. (Attachments 1 and 2)*

INDUSTRY HAS ADDED SIGNIFICANT REFINING CAPACITY

Despite these challenges, and very slim returns on investment compared with other industries, U.S. refiners added significant capacity in the past decade. Between 1996 ands 2005, U.S. refining capacity increased by 1.4 million barrels per day, the equivalent of adding 10 average-sized refineries over that period. This capacity was added in the form of capacity expansions at existing sites, which can be constructed with much greater certainty and in a shorter period of time than a new grassroots refinery. The latter requires many more years to obtain necessary regulatory approvals, and investors must be able to count on a much higher rate of return to offset the regulatory uncertainties and delays that face such a project. The experience of Arizona Clean Fuels (ACF) in this regard will be extensively discussed by Glenn McGinnis at this hearing.

*All attachments have been retained in committee files.

ACF is the only current new refinery project in the United States. NPRA believes that public policy should help, not hinder, the efforts of any entrepreneur who assumes considerable risk in seeking to build a new refinery. But it is also necessary to recognize that capacity additions at existing facilities offer a more predictable method to provide greater supplies of transportation fuels in a reasonable time frame.

INCREASED DEMAND RESULTED IN HIGHER PRICES

In recent years explosive economic growth in much of the world, particularly Asia, has led to sharply increased demand for crude oil, resulting in tighter worldwide supply and near-elimination of excess crude production capacity. This factor, together with geopolitical uncertainties affecting many producing countries, has resulted in sharply higher crude prices over the past year.

Because the price of crude is responsible for roughly 55-60% of the cost of making gasoline, the rise in crude prices has led to significantly higher prices for gasoline as well. This fact, combined with continuing strong demand for gasoline and other fuels in the United States, has resulted in a tight U.S. gasoline market and a higher price level for gasoline and diesel than has been the case in recent years. The U.S. market has also been affected by logistic al difficulties involved with the replacement of MTBE by ethanol in most reformulated gasoline areas; ethanol prices that are significantly higher than projected, and in the case of diesel, uncertainties about the smoothness of the transition to new ultra low sulfur diesel (ULSD) that began June 1. (Attachment 3)

The domestic refining industry confronting these challenges is one that is still recovering from the effects of hurricanes Katrina and Rita on the Gulf Coast heartland of our industry. Those storms adversely affected operation of nearly one-third of the U.S. refining capacity over the past year. As of January 1 of this year, 800,000 barrels of capacity were still idle due to the impacts of the hurricanes. Some of the damage remains to be totally repaired, although the industry has been largely successful through Herculean efforts to return refining operations to normal.

PROFITS IN PERSPECTIVE

Higher product prices have resulted in significantly increased profits for refiners in 2005 and 2006. Transportation fuel demand is relatively inelastic, meaning that it is difficult for consumers to reduce demand or find substitutes for those products, even when prices increase. Studies show that consumers will eventually reduce demand in response to higher prices, but it takes some time for this response to kick-in. Analysts disagree as to how much, if any, reduction in demand for transportation fuels we are seeing now or will see as a result of current price levels. But given the size of the U.S. gasoline market, the most important result is that transportation fuel demand has remained quite strong and may remain so.

Higher profits for refiners and other sectors of the petroleum industry have met with a firestorm of controversy, they do not appear to be a subject of this hearing. Suffice it to say that NPRA believes that the increased profitability of the refining sector in the past two years will encourage new domestic capacity additions and help the industry maintain its role as a major contributor to environmental progress. This will involve highly desirable, but expensive, refinery upgrades and expected fuel reformulations.

A CONSENSUS OF OPINION SUPPORTS U.S. REFINERY EXPANSIONS

Given these events, which have generated considerable controversy and interest among policymakers and the public, it has been difficult to identify a consensus of opinion on any issue—with one significant exception. NPRA believes that there is a widespread consensus that the U.S. needs more refining capacity, and that public policy should encourage capacity additions. The remainder of our testimony concentrates on that subject

INCREASING U.S. REFINING CAPACITY

The refining industry is responding to the current supply situation as well as significantly improved industry economics during 2005 and 2006. Refining companies have announced plans to add considerable additional capacity to U.S. refineries in the near future. Secretary of Energy Bodman recently stated that he expects at least 2 million barrels per day of new capacity to be added to U.S. refineries. Industry estimates are currently closer to 1.8 million barrels per day, still a very significant number. This clearly indicates a likely increase in U.S. capacity of between 8 and 12%, the latter of which would bring total U.S. refining capacity to 18.6 million

b/d. Much of this capacity could be on line by the end of 2010. (NPRA has attached a chart showing projected capacity increases and a list of announced capacity additions. See Attachment 4

Interestingly, 18.6 million b/d was the total U.S. refining capacity in 1981, when 341 refineries operated here, compared to 148 today. (Attachment 5) Don't be fooled by the higher 1981 numbers, however. Most of the refineries that have closed since that time were inefficient, unsophisticated facilities. Many of the small refineries operating in 1981 were unable to produce any significant supplies of gasoline because they lacked more sophisticated units needed for this purpose. These facilities continued to operate only so long as the 1970's crude oil allocation and price control system was in effect. The U.S. abandoned that program in 1981. The modern refining industry has undergone extensive renewal since that time, fueled by billions of dollars in new investment. And the current average refinery size is roughly 115,000 b/d, compared to an average refinery size of about 55,000 in 1981.

In addition to new investment in capacity expansions, refining investments also enable other significant projects. Some of these allow facilities to handle sour and heavy crudes. These feedstocks are more prevalent than light, sweet crude in today's market and result in cost savings that can be reflected in product markets. Other investment in processing units increases the yield of highly desirable products like gasoline, jet fuel and diesel from each crude barrel

THE DOMESTIC REFINING INDUSTRY IS COMMITTED TO ADDING CAPACITY

The high level of refining investment in the past decade and planned refinery expansion projects demonstrate the commitment of the U.S. refining industry to serving American consumers. Given this fact, it is strange that some have accused the refining industry of a lack of commitment to industry expansion. The truth is that the companies that own U.S. refineries have spent and will continue to spend many billions of dollars to expand their ability to use those facilities to provide an adequate supply of transportation fuels to consumers at reasonable, market-based prices.

Given the demonstrated commitment of the industry to expansion of U.S. facilities and the consensus that exists regarding the need for increased capacity as soon as possible, the question remains whether anything can be done to further those objectives. Modest encouragement for increased expansion and other investment, even perhaps in new refineries, is clearly in the national interest. Additional U.S. capacity, whatever form it takes, increases the supply of secure, domestically-produced products to the American consumer.

Although product markets are increasingly global in nature, there is a high probability that domestically-produced gasoline and other fuels will be used in the United States. Currently only about 2 million of the 20.5 million barrels of product consumed daily in the U.S. comes from imports. The current points of origin for most of these are the Caribbean, South America and Western Europe. These are relatively secure sources of supply. In the years to come, however, many countries around the world will experience higher rates of demand growth for petroleum products than the United States. This will put considerable pressure on the world market for petroleum products, leading to a situation similar to that we face in today's crude market, where the U.S. faces vigorous competition from China, India, and others for a limited supply of available crude.

In the future, the U.S. will rely at least partially on imports of gasoline and other refined products from the Middle East, particularly Saudi Arabia, to meet demand. That country is currently planning to construct two 400,000 b/d refineries, at least some of the output of which will be sent to Europe and the United States. Obviously, Saudi Arabia could easily decide to sell its products elsewhere, since it is also well located to serve Asian markets. This possibility is just one illustration of why it makes sense to retain a significant amount of refining capacity in the United States, limiting our need for gasoline and diesel imports. It is probably not necessary or advisable to meet all U.S. product demand from U.S. refineries. But maintaining U.S. refinery production adequate to meet between 80-90% of U.S. product demand could prove a challenge in coming years, depending on the rate of growth in demand for gasoline, diesel and jet fuel.

ACTION IS NEEDED TO STREAMLINE THE PERMITTING PROCESS

Given these considerations, it seems prudent that reasonable action be taken to discourage unnecessary delays in permitting new capacity additions or refineries. This will both encourage investment in new capacity and speed its completion. Current uncertainties about the time it takes to permit and actually construct refinery additions do affect investment decisions.

Some steps have already been taken to eliminate uncertainties about New Source Review (NSR) requirements that have had a chilling effect on U.S. refinery investment in the past. EPA's 2002-2003 reform package offered significant relief to refining projects with no increase in actual emissions. Plant-wide applicable limits (bubbling), appropriate treatment of repair and maintenance projects and adoption of a more realistic test for measuring emissions impacts are important components of that NSR package.

NSR REFORMS COULD HELP ADD CAPACITY

Unfortunately, the se provisions are still subject to judicial challenge, limiting their positive impact to date. Concern about NSR interpretation still has an adverse impact on energy supply. For example, opportunities to increase gasoline supply are lost because the 12-18 month NSR permitting timeframe is too long to allow companies to take advantage of opportunities that arise to construct additional product units during turnarounds. A major refinery in a non-attainment area will have to seek approximately 2-4 major NSR permits a year. These permits are necessary for preventative maintenance projects such as replacing a tank or a pump, and may take 3 to 9 months to obtain. More significant projects such as process debottlenecking and major unit upgrades can take 2 years or longer to obtain the necessary permit. Thus, a continuing commitment to NSR reform is necessary to facilitate and encourage refinery expansions and other improvements.

A TIMELY PERMITTING PROCESS IS ESSENTIAL

Considerable discussion and debate has taken place regarding the importance of timely permitting to the refining industry and whether or not precious time is lost due to bureaucratic delays during the permitting process. Obtaining permits on a timely basis is essential to the business of running a refinery, as it is to making improvements or expansions or even building new facilities. The important point is not to debate whether permitting delays have actually prevented completion of certain projects. There is obvious room for improvement in the permitting process, as in many government activities. The time required to obtain a permit greatly impacts the cost of a project, first when the project is under consideration by the company and later after the decision to go forward has been made and the permitting process actually unfolds.

It would be very useful to insert into the permitting process a recognition of the fact that it is in the national interest to enable refinery expansions and other projects to be implemented on a reasonably expedited basis. Encouraging an efficient process makes sense, especially when it can be done without changing any existing environmental requirements and with due respect to the rights of state and local government, as in H.R. 5254.

In our opinion, H.R. 5254 strikes the appropriate balance between respect for federalism and encouraging efficiency in handling permitting applications. Under this legislation anyone who has decided to move forward with a refinery expansion project or even a new refinery project may decide to take advantage of the federal coordinator's help—or not to do so, as he or she chooses. The coordinator merely acts as an expediter, establishing a reasonable and coherent schedule for handling federal, state and local permitting requirements for that project if asked.

States and localities cannot be forced to participate if they choose not to do so. The coordinator cannot force any regulator to decide whether or not a permit should be issued.

The coordinator also maintains a consolidated record to facilitate judicial review of the activities undertaken pursuant to the agreed-upon schedule. If a complaint pertaining to a particular schedule is brought in federal district court, the behavior of all parties to the MOU come under review, including that of the applicant. The court can do no more than establish a new schedule if it agrees with the complaint after reviewing the consolidated record.

A FINAL NOTE—PLEASE DO NO HARM

As previously stated, the refining industry is striving to add significant capacity in efforts to meet the ever-increasing consumer demand for refined products, and this body is contemplating legislation to perhaps streamline those and similar efforts. It must be noted, however, that any additional costly and unnecessary burdens placed on the refining industry will negate any benefits from permit streamlining. More specifically, attempts to either increase the volume of the renewable fuel standard (RFS) or accelerate the time frames for compliance as enacted in the Energy Policy Act of 2005 would create more uncertainty in an already volatile marketplace. Blending 7.5 billion gallons of renewables into the gasoline supply requires

considerable modification of the nation's supply, transportation and distribution structure. The refining industry has already committed significant resources and efforts into compliance with the government mandate, and much more needs to be accomplished in the very near future. Moving the goal posts and/or shortening the time periods is neither sound policy nor fair.

In addition, requiring inclusion of E-85 pumps throughout the nation's retail gasoline centers through legislative mandate as some have suggested is simply bad public policy. The limited supply of ethanol in today's market has resulted in rapid and significant escalation of ethanol prices. See attached chart. When combined with the many logistical and technical concerns of E-85 that must be addressed before any widespread use is feasible, NPRA urges the Committee to use extreme caution before requiring such a sweeping policy change.

H.R. 5254 HELPS ENSURE A REASONABLE PERMITTING PROCESS

To summarize, the process established by this bill appears quite reasonable to us. It may well be the irreducible minimum that can be done if Congress is to take any action to demonstrate concern about and support for additions to domestic refining capacity. We note as well that a portion of the House bill would require the President to designate three closed base sites as possible locations for new refineries (including one biorefinery). The Local Redevelopment Agency in question is required to do a feasibility study of having such a refinery on the site, but the clear intention of the legislation is not to force refineries on areas that do not really want them.

It is unlikely in any case that a refinery owner would want to locate a facility worth several billion dollars in an area in which the facility is unwelcome. NPRA does not view this provision of the bill as troublesome. Rather, it appears merely to emphasize the importance to the nation of an increased supply of domestically-produced petroleum products. In NPRA's opinion, the House-approved bill requires no one to perform an action that either faces significant opposition or makes no economic sense.

The nation's energy security can be advanced by encouraging timeliness in decisions affecting refinery permits, even at the local level. One NPRA member waited 14 months to obtain city approval of an ethanol tank that was needed for a new fuels project. The process required 5 public hearings, 3 of which were appeals. And the use of ethanol in this instance was required by federal law, clearly necessitating the ethanol tank. This is but one situation clearly demonstrating that polite and respectful encouragement of responsible and timely permitting could pay important dividends in the form of increased energy supply. Accordingly, NPRA recommends and hopes that this Committee will approve legislation similar to that recently passed by the House.

I look forward to answering your questions.

The CHAIRMAN. Yes. Senator, did you want to ask a question now, before we recess?

Senator SALAZAR. I think I had better go vote.

The CHAIRMAN. All right. We're going to do that. I think Senator Allen will return before we do because of the way he has planned it. If he does, he has permission to get started. It may take us a little longer. In my case, I must attend an off-the-floor meeting to vote, but I will return. In case I don't and you come, you proceed. Is that all right with you?

Senator SALAZAR. Yes, Mr. Chairman.

The CHAIRMAN. All right. Thank you all, and please stay here because we have to finish out our record with a few questions. Thanks very much.

[Recess.]

Senator THOMAS [presiding]. We will try and get started again. As you know, we're being interrupted by this voting business. I can't imagine why. In any event, why don't we go ahead. Senator Allen has been here, so why doesn't he go ahead with his questions, and then we'll move forward.

Senator ALLEN. Thank you, Mr. Chairman.

Mr. McGinnis, in your testimony you were giving the perspective of a business investor, and I know you are supportive of the legislation. If you, from your perspective, and not all business investors think alike, but if this were signed into law, this measure or something close to it, do you think that potential industry investors would be more likely to construct new domestic refining facilities?

Mr. MCGINNIS. I think it would help remove the uncertainties. Mr. Meyers from the EPA mentioned earlier, one of the key issues has always been the economics, and the economics are driven by not only the marketplace as it exists today but also people's perception of what it would be in the future when they get their facility completed. And these facilities take a long time to engineer, develop, construct, et cetera, and the permitting process as it becomes protracted can extend that period, and just increases the uncertainty.

So the more that can be done to reduce the time period between the decision to actually consider a refinery project and complete it, the less the uncertainty, the more probable that someone, a business organization or person, is going to consider actually spending the billions of dollars required to put in these facilities. So it's not the onerous task of developing the permit, it's the uncertainty around the time it's going to take to reach a conclusion on the permit and actually be able to progress to the next step.

Senator ALLEN. Mr. McGinnis, one of the other reasons undoubtedly, and I think you have kind of mentioned it, was one of the four factors to deter construction of a new refinery project was people simply didn't want them near where they live. To put a refinery near a residential area, people are not going to want to have a refinery near a residential area. They are probably more likely to be accepted in a place where it's not residential or it's not developed.

The measure that I have introduced focuses on designating military bases that are closed through the BRAC process, and with the Governor applying and so forth, and one of the things about the sites of military bases—not all military bases, but many of them usually have the roads in place, they have infrastructure to facilitate the base. The redevelopment authority for a closed military base may want to negotiate a long-term lease. They may want to maybe even deed the land over. But some of the costs would be less.

And in some cases, not all, where the military bases have been closed, the military base, particularly in some cases that was a major economic factor and impact in a community that has supported the base, and now they're concerned—what is this going to do to jobs in their area? It can affect everything from stores to restaurants to everyone in the whole community.

Do you think that if a BRAC community received a designation as a potential site from the President, again in accordance and agreement with the Governor that they really wanted to have that there, a well-managed, environmentally-responsible refinery, do you think that that sort of an approach would draw interest from investors to say, well, here is a facility in whatever the town is, a nearby town in such-and-such a State—do you think that that would draw interest from investors?

Mr. MCGINNIS. I think it would. I mean, to me the decision to site a refinery in a specific location is not based on the price of the property or whether it's available or not. Usually it's based on a lot of other criteria, one of which is obviously the impact on the local community and acceptance.

Military bases tend to be large facilities, so that the actual property near a refinery on that kind of facility can be controlled in terms of not having people build right next to refineries, which from personal experience they do, and then they complain about the refinery being there. So having some control over the local property around the facilities is worthwhile.

The economic impact is obviously very beneficial. If people have lost a significant economic opportunity through that, from my point of view, they could or should perceive that there is an economic opportunity in this.

Certainly the technology exists today to build a very, very environmentally acceptable refinery. We have one of those permitted in the permit here. It's a very low emission facility and is very acceptable.

The key concern or the key issue that comes up with military sites is, the decision to locate a refinery is based on logistics and market accessibility, not land being available. It needs pipeline access, it needs rail access, it needs the ability to acquire and house skilled people to operate the facility, et cetera. It's more the logistics and the accessibility to marketplace that drives the location.

Certainly there are many, many military establishments in this country. There must be some that meet those kinds of criteria, and when they are found, I think they should be identified and investors given the opportunity to do that.

Senator ALLEN. Thank you, Mr. McGinnis.

Mr. Slaughter, let me ask you the same question I did Mr. McGinnis. In your opinion as a representative of the refining industry, will this legislation, if it were signed into law, or something close to it, make current refiners and potential industry investors more likely to construct new domestic refinery capacity?

Mr. SLAUGHTER. Yes, I believe it will, Senator. It removes some uncertainties in the process. The problem now is that you undertake tremendous risks if you want to build a new refinery. You don't know—you get your investors together, there are up-front things you have to do with your money, and you don't know whether you are going to get a permit and be able to have a refinery built for 10 years or more. And the schedule that is put together under this process will eliminate some of the uncertainties, and should be an encouragement.

Senator ALLEN. Now let me refer back to the—

Senator THOMAS. Your time has expired.

Senator ALLEN. My time has expired? All right. Well, on the second round, then, I guess.

The CHAIRMAN. Senator Thomas?

Senator THOMAS. Thank you. Mr. Slaughter, I have a couple of questions for you. You discussed the successful efforts of increasing the capacity despite closing a quarter of the refining facilities; do we run into a diminishing return at some point? What are the upper limits of what we can do with the current operational sites?

Mr. SLAUGHTER. Well, you know, technological change is a marvelous thing, and some folks in the industry think there's almost an unlimited amount of things you can do in an existing site, but obviously I think you would have to say it is limited at some point.

But the difficulty with getting new sites for new refineries has been significant. One of the things that I mention in my testimony is, a new refinery you know is going to be worth $3 to $5 billion. It's very difficult to put something like that somewhere where the public doesn't want it.

So a lot of these things have to be taken into account. But I do point out in my testimony, Senator Thomas, that the refineries we have today, albeit fewer in number than we had in 1981, are far more sophisticated, the most sophisticated refining industry in the world. But we think also that you should be able to build refineries in the United States if you're willing to take the risk and do so, as Mr. McGinnis has been willing to do that, and we think public policy should encourage it.

Senator THOMAS. Good. Well, I hope so. I think the fact is that, according to one of these charts, the capacity in 1981 was greater than it is now.

Mr. SLAUGHTER. That's correct.

Senator THOMAS. And the demand is much higher, and it's having some impact, for instance in Wyoming, selfishly. It's having something to do with the cost of producing and selling the oil that we have available. And part of it is the capacity of pipelines, part of it is the capacity of refineries.

Mr. SLAUGHTER. Yes. You know, the industry, as I mentioned in my testimony, has announced about 1.8 million barrels a day in new capacity that they plan to bring on. That will take us right back up to that 18.6 million barrels per day capacity that we had in 1981. We had a lot of spare capacity then because our demand wasn't nearly that high. And that was a less sophisticated industry and wasn't able to do what our refineries can do today. But clearly I think it shows that we do need additional refining capacity, whatever form it takes.

Senator THOMAS. Right. I think so. I think in his testimony Mr. Becker cites the lack of applications for new refining construction. Do you believe that's an accurate measure of the desire to build these facilities?

Mr. SLAUGHTER. I don't think it is. I think that if there were a feeling that there was a process that was more responsive to the needs of someone who wanted to take that risk, some more applications would be filed. I've been around a long time. I remember people were trying to build a Hampton Roads refinery in the 1970's. Public opposition killed that, really. And then there was a long hiatus because it's just—I mean, the feeling has been that it is impossible to site large industrial facilities in much of the United States.

Senator THOMAS. Yes. My understanding is part of it was that there were less environmental restrictions on expanding than there was on a new plant.

Mr. SLAUGHTER. That might be true in some cases, but most of the expansions are going to have the best available control technologies. A new plant, certainly like Mr. McGinnis's, will be completely modern, the very latest.

Senator THOMAS. Sure.

Mr. SLAUGHTER. But the industry takes very seriously the responsibility to have the latest controls on the capacity expansions.

Senator THOMAS. Are there opportunities to stimulate construction, perhaps, that are not included in today's legislation? Can you give us some examples of regulatory or tax or financially related measures that would be more conducive to refinery building?

Mr. SLAUGHTER. Well, one of the big problems has been what do you do that is in keeping with federalism requirements and also environmental restrictions. I mean, we have suggested other things. People have always said we don't want environmental restrictions to be waived, and we want the role of the States to be taken into account. That limits you in what you can do, and perhaps this legislation is as much as you can do in that regard.

Now, as part of the Energy Act of 2005, there was a provision in that that allows expensing of investments in refining for a limited period, which is very helpful.

Senator THOMAS. Yes.

Mr. SLAUGHTER. And that, with this provision, should do a lot of good.

Senator THOMAS. You know, one of the frustrating things for some of us is we hear, and properly, about the cost of energy and the cost of oil, but the fact is we have some oil being produced, we have oil that can be produced at less expense than what we're seeing on the marketplace, and it's because of restrictions on pipeline capacity and refining capacity. We're able to produce more, and much of it in our State is selling for much less than that market price that you see because there's not a process for doing it. So that's kind of a challenge, it seems to me. If we look at what's causing the price to be as high as it is, you have to consider that some of it is the operations between production and retail.

Mr. SLAUGHTER. Yes, sir, and I think the point you made earlier, that the fact that no permit applications have been made for a new refinery really doesn't indicate that one would not be if there were a better environment for them.

Senator THOMAS. For the permitting.

Mr. SLAUGHTER. Regulatorily. Yes, for the permitting. Because, for instance, Motiva, one of our members, is going to add 325,000 barrels a day at its existing facility in Port Arthur, TX. That is the biggest of all the capacity additions. It's the equivalent of building a whole new refinery.

And just this week, three environmental groups in that area announced that they were going to challenge the petition. The fellow behind it, his quote is, "Permit approval is quite a long process without a challenge. With a challenge, the permit just goes to the bottom of the pile and stays there for a long time."

Senator THOMAS. Yes, understood.

Mr. SLAUGHTER. I think that speaks volumes.

Senator THOMAS. It does. Thank you, sir. Thank you, Mr. Chairman.

The CHAIRMAN. It looked like you wanted to comment, Mr. Becker.

Mr. BECKER. Thank you, Mr. Chairman. I can't let this conversation end without addressing this issue of uncertainty.

The CHAIRMAN. Of what?

Mr. BECKER. Of uncertainty, as Mr. McGinnis and Mr. Slaughter have mentioned. There is an uncertainty with refinery expansion and construction concerning public health, and it's incumbent upon government, not just the Federal Government but State and local governments, to ensure that the air that the public breathes is safe. That is why you all passed an incredibly successful Clean Air Act in 1970 and in 1977 and 1990, and included in it a process that required industries, only if they increased pollution significantly—only if they increased pollution significantly—to go through a process that the data—not rhetoric, but the data—shows takes months, not years.

The reason that the Yuma facility did not go forward was not because the agency didn't act promptly on the permit, it's because the industry yanked the permit. It's because the industry didn't have an appropriate air quality analysis. And once the State received all the appropriate information required under the Clean Air Act, the State proceeded very quickly.

And if I can just quote one article, a newspaper article, Mr. McGinnis was quoted as saying in the newspaper article in Arizona that the Arizona Department of Environmental Quality "has been very cooperative in working with us to make sure the project does proceed," and the article quoted Mr. McGinnis as saying, "The biggest delay has been securing title to the land." And so it's really not fair to say that there is evidence that permitting new refineries or permitting expansions is interfering with this industry's expansions.

One final point, if I may. The biodiesel industry hasn't had the problems that the refining industry here has had. They have built. They have permitted 18 new expansions in the last 2 years. They have gone through the same process that the industry would go through, and they were successful because they came in with the appropriate applications and the States responded accordingly.

The CHAIRMAN. Now, Mr. McGinnis, in your testimony you indicate that the long-term historical refining margins in the United States have, on average and in general, not been adequate to support new refining construction. We all understand that. That had been the case for a long, long time. That has also been the case in many other aspects of the industry on the down side, but that has changed. That condition is changing, is it not?

Mr. MCGINNIS. Yes. Current margins—

The CHAIRMAN. Are economic conditions more favorable now to the investment in new refineries?

Mr. MCGINNIS. Very much so, yes.

The CHAIRMAN. So that's no longer—for those who say—as we look for some reasons to expedite, that's no longer an excuse, that we don't need them or that the economics aren't there. That's gone, so we're now looking head-on to what is holding them up aside from that; right?

Mr. MCGINNIS. Well, the fundamental issue is, margins are good today. They were not good 10 years ago, and they may not be good 10 years from now when the facilities startup. I mean, it's again the timing risk associated with the uncertainty of what will be the future.

The CHAIRMAN. All right. Now, in your discussion of "public acceptance"—public acceptance, which is the whole issue—you state that your project has gained support from State and local politicians and business leaders. Do you believe that you also have the support of the general public? And if so, how did you go about achieving that so-called acceptance which is so necessary?

Mr. MCGINNIS. Well, we have had a lot of public meetings in Yuma County. The local community worked with the business leaders, worked with the local farm community, et cetera. When we held public meetings, people came to the meetings wearing buttons that said "I support the refinery." The majority of speakers speak in favor of the refinery.

We have pointed out very clearly the economic benefits. We have also pointed out the fact that this is the cleanest refinery ever designed. We have stated very clearly we accept the responsibility to build it in compliance with the permit and to operate it in compliance with the permit.

We have, with the ADEQ, done a complete analysis of the impacts of our facility and its potential emissions on the local agricultural community, which is one of the big concerns they have there. We have addressed the public concerns very, very openly, at all of the public meetings that we have had.

That doesn't mean everyone stands up and cheers. There are people who are against having an oil refinery in that area, but the majority of people speak in favor of our project.

The CHAIRMAN. So, through a process of getting the facts out as to what's going on, you have convinced what you think to be the majority of the people that this is a good economic add-on, just like any other growth adds to the economic environment of that area; is that correct?

Mr. MCGINNIS. That's correct.

The CHAIRMAN. Now, how are you proceeding at this point? Can you report to the committee how things are going?

Mr. MCGINNIS. Yes. The air permit that was issued last year is being reissued by the Arizona Department of Environmental Quality.

The quote that Mr. Becker said that I made around the land is true, but that was a quote of several months ago related to a situation that developed after the permit was issued. We have been unable to secure the property because of a delay in its transfer from the Federal Government to the local irrigation district. That is still not completed, and it should have been completed many years ago.

The DEQ has been very cooperative with us in reviewing the permit. It has been completely rewritten, gone through again, all of the requirements have been resubstantiated, and it will be reissued hopefully by the end of September. We had a public hearing in the local community last week. The majority of people spoke in favor of the permit renewal at that point in time. So that process is underway.

We are currently in negotiations, discussions with several groups to fund the project. We've completed our technical updates, and we're proceeding toward engineering next year and start-up in 2011.

The CHAIRMAN. Doesn't it seem like an awful lengthy, long, extended process at best, sir?

Mr. MCGINNIS. It is a major undertaking. I've had the opportunity to do something similar to this, previously. I rebuilt a refinery in Louisiana, a project where we completely refurbished and restarted a facility in the late 1990's. It's a major undertaking. We had the finance community behind us, and we had the local community behind us. We were able to secure the kind of people we needed to execute the project and build it, and today that's a highly successful refinery. So it is a very lengthy and extensive undertaking.

The CHAIRMAN. Are you confident you're going to get there, sir?

Mr. MCGINNIS. I am, yes.

The CHAIRMAN. Nonetheless, can you, as an experienced hand, look at the proposed new law and suggest to us whether it might be helpful if we had this new law in existence instead of the one you had to operate under?

Mr. MCGINNIS. Well, as I said, to me the key issue is commitment to the schedule.

The CHAIRMAN. Commitment of what?

Mr. MCGINNIS. Commitment to a schedule for the issuing of a permit. There are a lot of obligations in the Clean Air Act and all the other acts that need to be reviewed for permits that need to be issued. And what's critical to industry, and I believe critical to government agencies, is ensuring that there is certainty around what's going to happen, who is going to do it, and when.

To me, that is a failing of the process today, that there is nobody who acts as project director, project manager, who drives the schedule. That doesn't mean compromises will be made in the requirements. That's not the intent behind the law. That's not the intent behind my support, our industry's support for this bill. It's very clearly support that we believe that someone needs to be accountable for driving the process to ensure that it's done in a timely manner.

The CHAIRMAN. Now, having heard that, Mr. Becker, why would you oppose that?

Mr. BECKER. Because Mr. McGinnis—and I don't think he's doing this intentionally—seems to be suggesting, or one might infer that this uncertain process is almost totally due to State and local permitting uncertainty.

And if I may, Mr. Chairman, I would like to submit a chronology. I'm not an expert on his refinery, or I hadn't been until the last 6 weeks, but I now have a chronology of events from the very beginning until now that not only documents the amount of time that the permitting authorities have spent on this permit, but it also documents the amount of time that the refinery—for very good reasons, for securing financing, for securing land, for doing things that have nothing to do with your bill—have spent on this.

And I know Mr. McGinnis isn't directly suggesting that these delays are entirely on the shoulders of permitting authorities, but we don't need Federal legislation to deal with the kinds of permitting issues—not land or other issues, but environmental permitting issues—that this does.

So, if I may, I would like to submit this for the record, because I think it really is helpful in understanding where the delays are actually occurring.

The CHAIRMAN. Of course.

[The information referred to follows:]

CHRONOLOGY OF DOCUMENTS FOR ARIZONA CLEAN FUELS (A.K.A. MARICOPA REFINING COMPANY)

Document Title	Issuance Date
Air Quality Installation Permit Number 1228	January 16, 1992
Synopsis: Permit issued to Maricopa Refining Co. (a.k.a. Arizona Clean Fuels) allowing construction and installation of equipment.	
Class I Permit Application Cover Letter	December 23, 1999
Synopsis: Cover letter from Dames and Moore (now URS Corporation, a.k.a.Arizona Clean Fuels' contractor, applying for a new air quality installation and operating permit.	
Permit Application Incompleteness Letter	January 31, 2000
Synopsis: Letter from Arizona Department of Environmental Quality (ADEQ) to Arizona Clean Fuels requesting additional information in support of the December 23, 1999, permit application.	ADEQ time: 39 days
Memorandum Regarding Preliminary BACT Review	March 17, 2000
Synopsis: Comments from RIP Environmental Associates TP), ADEQ's contractor, to ADEQ, Arizona Clean Fuels and URS regarding the Best Available Control Technology (BACT) review performed in the December 23, 1999, permit application.	ACF time: 46 days ADEQ time: 46 days
Revised Sections of Permit Application Cover Letter	June 29, 2001
Synopsis: Letter from URS to Arizona Clean Fuels and ADEQ responding to some of the comments in RTP's March 17, 2000, memorandum.	ACF time: 469 days
Memorandum Regarding Preliminary BACT Review	August 2, 2001
Synopsis: Additional comments from RTP to ADEQ, Arizona Clean Fuels, and URS responding to IRS's June 29, 2001, submittal.	ADEQ time: 39 days
Permit Application Addendum Cover Letter	October 31, 2001
Synopsis: Cover letter for a new application addendum submitted by URS, containing some responses to RTP's August 2, 2001, comments, as well as some information requested in ADEQ's January 31, 2000, incompleteness letter.	ACF time: 90 days (639 days since 1/31/00)
Permit Application Addendum Cover Letter	November 16, 2001
Synopsis: Cover letter for a new application addendum submitted by URS, containing additional responses to RTP's August 2, 2001, request for information.	ADEQ time: 116 days
Permit Application Addendum Cover Letter	March 14, 2002
Synopsis: Cover letter for a new application addendum submitted byMIS, containing additional responses to RTP's comments, as well as some information requested in ADEQ's January 31, 2000, incompleteness letter.	ACF time: 118 days (773 days since 1/31/00)
Response to Comments Letter	April 24, 2002
Synopsis: Letter from URS to RTP supplementing the October 2001, November 2001 and March 2002 permit application addendums.	ACF time: 41 days
Permit Application Completeness Letter	September 4, 2002
Synopsis: Letter from ADEQ to Arizona Clean Fuels, indicating that, based on all the information received on or before August 23, 2002, the application was deemed complete.	ADEQ time: 133 days

CHRONOLOGY OF DOCUMENTS FOR ARIZONA CLEAN FUELS (A.K.A. MARICOPA REFINING COMPANY)—Continued

Document Title	Issuance Date
Letter Regarding Predicted Impacts on Nearby Community.	September 5, 2003
Synopsis: Letter from Gallagher and Kennedy, Arizona Clean Fuels' attorneys, explaining the company's willingness to relocate a local school and community center in order to minimize predicted impacts on the nearby community.	ADEQ time: 366 days Work stops at ACF's request
Draft Permit ready for proposal by ADEQ	September 5, 2003
Letter Regarding Relocation of Proposed Refinery	October 30, 2003
Synopsis: Letter from Gallagher and Kennedy to ADEQ explaining Arizona Clean Fuels intent to relocate the proposed project to Yuma, Arizona, and that a new, site-specific permit application would be resubmitted in the future.	ACF time: 55 days
Letters Regarding Licensing Time Frames	April 5-6, 2004
Synopsis: Letters between ADM Arizona Clean Fuels, Office of the Attorney General, and Gallagher and Kennedy, agreeing to restart the permitting timeframes upon receipt of a new permit application.	ACF time: 159 days
New Application Cover Letter	July 14, 2004
Synopsis: Cover letter from URS Corporation on behalf of Arizona Clean Fuels, submitting a new application for an air quality installation and operating permit.	ACF time: 99 days
Letter Regarding Public Notice of Proposed Permit	September 10, 2004
Synopsis: Letter from ADEQ to ACF notifying the company that the start date of public notice would be September 14, 2004. The letter indicates that the end of the public notice would be November 29, 2004. In response to public request, the public notice period was subsequently extended to January 10, 2005.	ADEQ time: 58 days
E-mail Transmitting Proposed Permit to EPA	February 4, 2005
Synopsis: E-mail transmitting the permit and supporting documentation to EPA for the 45-day review period.	ADEQ time: 25 days Public Notice: 118 days
Commitments for ACF Air Quality Permit Number 1001205.	March 18, 2005
Synopsis: Letter from ADEQ to EPA Region IX committing to make changes the permit as discussed during the 45-day review period.	EPA time: 45 days
Letter Regarding Issuance of Permit	April 14, 2005
Synopsis; Letter from ADEQ to ACE notifying thecompany that the permit has been approved.	ADEQ time: 27 days

The CHAIRMAN. Well, Mr. McGinnis, you make a very good point. In fact, you win the day when you suggest that even though you have been able to proceed, that the value you see is that we need somebody in charge of scheduling and seeing to it that we will meet the schedule.

And obviously when we say that, nobody is suggesting that the schedule cannot be changed even under those kinds of circumstances when required by the facts. It's just that you have the reverse of what you have now. The facts are not, obviously, there to be changed. The schedule is there to be met. And that's what you're saying, maybe that would be helpful, and maybe that's what is missing, if I read into your testimony. Am I reading you correctly?

Mr. MCGINNIS. Yes, I think that is correct. I would agree with Mr. Becker, there are a lot of other issues that come up in developing something this complex.

The CHAIRMAN. Sure.

Mr. MCGINNIS. This is only one of them. But this needs to be addressed, and the others need to be addressed as well.

Mr. BECKER. And just a quick comment. I hadn't thought of this until we sent the bill out to one of our members, a Western conservative member, and the comment on the coordinator and the timing negotiation came back as: "Why in the world would the industry want this? Because it's going to force us, the State, to hire attorneys. If we are going to be engaged in a judicially enforceable schedule and be sanctioned, if somehow a deadline is delayed, why would we do this? Why would the industry want this? We're going to have to build extra time into this just to cover ourselves. We're going to have to hire more attorneys. It's going to be passed on to the permitting fees of the industry. And things are working pretty darn well now. We don't need it."

And this came from a very conservative Western State. And I thought, good question. Why is it necessary, when it seems to be working now? The data, the evidence shows that it's being done in a matter of months, not years.

The CHAIRMAN. Senator, do you have anything further?

Senator ALLEN. Yes, I do, Mr. Chairman.

The CHAIRMAN. Please proceed.

Senator ALLEN. Let me follow up with Mr. Becker there. This was from a—who was the source of this commentary?

Mr. BECKER. It was one of our Western State permitting agencies.

Senator ALLEN. OK. Let me ask you this, then, Mr. Slaughter. In the event that our domestic industry, refining industry, does not increase capacity to meet the demands in this country, and Senator Thomas and Senator Domenici and all of us recognize that the refining capacity is presently not meeting demand, what will happen to the price of gasoline? Let's just get to, instead of all this process, what's going to happen to the price of gasoline and other refined products. Where are we going to get it from, if things stay the way they are right now?

Mr. SLAUGHTER. We don't like to make price projections, but let me just say that you——

Senator ALLEN. I'm asking you, what's going to be the impact?

Mr. SLAUGHTER. What happens is—the impact is, we become more and more dependent on products that have been refined somewhere else.

Senator ALLEN. And how much more is that than if it's refined domestically?

Mr. SLAUGHTER. Well, you are subject to the vagaries of the world market. And the illustration, I think, Senator Allen, is what has happened in the crude oil market today, where we face intense pressures from folks like India and China, people who are developing their economy. Imports in China—we saw numbers today—went up 15 percent.

We're having to compete voraciously against these other people for crude in today's market. We will be doing the same thing for

gasoline and diesel in the future if we don't build more domestic capacity. A lot of the other areas in the world, for instance, their demand for gasoline, particularly diesel, is going to increase much more than the United States. They're going to be bidding for the same products in that international market that we will, and that obviously has an impact on price.

Senator ALLEN. Higher prices, right?

Mr. SLAUGHTER. Your words, not mine, Senator.

Senator ALLEN. Well, you're the witness here. In the event that we continue the path that we're going in this country—and it's not just presently, we've seen it for the last several decades—will that not result in higher prices for gasoline? Since we do not have the refining capacity to meet the demand of this country, much less process the crude that we get from overseas, which is increasingly from another country other than here, would that not just—it's just basic economics that the price of gasoline will be higher.

Mr. SLAUGHTER. Because we will be competing against other countries for a set supply of crude, of products, you would assume that prices would go up, yes, Senator.

Senator ALLEN. All right. Now, Mr. McGinnis, in your quest to build this refinery, you say that the land title issue has been solved. One thing on a military base—not that you are always going to have those titles on a military base set, but generally the Federal Government has been on that, whether it has been the Army or the Marines or the Air Force on a base, and possibly a naval facility would be closed as well—you would end up with the title probably being easier to solve on such a matter, but not always the case.

Generally speaking, the military bases are very big. They're thousands of acres in many cases. What is the footprint—if we were going to get a significant refinery sited, what is the footprint of a 200,000-barrels-per-day-or-more refinery? Can you state it in acres, what you need, not just for it, but what you need for all the peripheral aspects of it, and also the added need for security, and what infrastructure would be important, whether it's roads, rail, pipelines, or security? I'm trying to just get an idea of what the requirements would be. I know you're not building on a military base, but that's one of the options for siting that we'd like to be advocating.

Mr. MCGINNIS. A 200,000-barrel-a-day refinery would require 750 acres, something like that, for the facilities, plus the tankage, tank farms, blending facilities, et cetera, required, the buildings and all of those kinds of facilities. You obviously need road access for people and goods and materials to come in. You would need pipeline access for crude oil to come in and products to go out. There is no other economic way to move finished products than by pipeline.

You need electrical supply systems which use a lot of electricity, so you have high voltage supply lines which bring with them their own siting and environmental concerns as they get sited. You need rail access for some of the goods or some of the materials that come and go. You need to really think through all of the logistics of those kinds of things.

The security, I think today there is expanded security attention at all facilities, existing refineries. A new facility would be laid out, I would suggest today, a little differently than the facilities that were laid out 30 or 40 years ago when security was much less of an issue in terms of who could enter what areas and how controlled environments would be established and regulated and controlled, which would dictate some of how the rail and road access works, et cetera.

Senator ALLEN. Thank you. All of those will be important as we are talking about it. Some facilities may or may not meet all those criteria. In others, pipelines could be added to it, or electricity. Security generally is pretty good at military bases, so that would be a saving. So I could imagine some base having a refinery in it, and planting white pines or trees all around it so you actually would have it fenced off with more land in residue.

Mr. Becker, I very much respect the rights and prerogatives of the people in the States, and you also have obviously become conversant and you are knowledgeable about this issue. In your judgment, are the new refineries that are being—there aren't any new refineries being built. Mr. McGinnis is going through his very long procedures. But as far as new refineries compared to refineries when they were last built—what was it the chairman said, 30 years ago?—and even the additions that are being put on, are the technologies that are now being incorporated and utilized cleaner than the old methods of refining petroleum?

Mr. BECKER. Yes, and that's because the Clean Air Act demands it, and it's because of the permitting processes and the air quality analyses that are required of it. So yes, they generally are much cleaner than they were 30 years ago.

Senator ALLEN. All right. Just a final question to you, Mr. Becker. It seems that one of the essential or paramount—you have several concerns, but one of the essential ones—these are just jurisdictional issues or concerns that you have, and that of your association—is that the legislation, that the House measure preempts State and local governments.

And I know you haven't had a chance to read the legislation I have just introduced having to do with refineries, but would some of your concerns be addressed if the Federal coordinator that is proposed in all this legislation would only become involved at the request of a Governor of a State? Would that not mean that the Governor who was elected by the people of that State says, "We want to go through this process. We want to have this opportunity in our State or our Commonwealth."?

Mr. BECKER. It would be an improvement, but I was listening carefully to your justification in your bill, which I had not read, as to why you thought it was inappropriate for the Federal Government to intrude into State jurisdiction with regard to locating a refinery at a military base, and I thought, "What about that poor community who had the same concerns about the Governor making that unilateral decision and not consulting, perhaps, with the local community?"

Senator ALLEN. Well, you would have to. Just so you understand, you would still work with the local redevelopment authority. When a base is closed, what is created is a local redevelopment authority,

and those people are very important. But since you're going to be dealing with the State, and maybe the State will deal with local, but for the most part you're dealing with a department of environmental quality for an entire State, and they may have regional folks in different parts of the State.

But if the Governor agrees—you were talking about all the litigation, some of this—if the Governor signs off, and it's only done with the Governor petitioning or agreeing or making the request, it would seem that at least, you said, there would be an improvement. I think that that would cure some of those jurisdictional concerns that you have.

And of course you could say, "Gosh, these are controversial," and public servants, elected leaders, are elected to make tough decisions and determine what's in the best interests of the people of their State or their communities, but I think having an elected person doing it, a Governor of a State, would be, from my perspective, an appropriate respect for the rights and prerogatives of the people in the States and the State agencies that serve in that administration.

Mr. BECKER. I direct an association of not only the State permitting authorities but the local permitting authorities, and I know a number of them who may not agree if the Governor requested the coordinator, because they would lose the jurisdiction of issuing a permit themselves. So it's an improvement, but it's still not necessary.

Senator ALLEN. Not enough to get you on board?

Mr. BECKER. It's not necessary.

Senator ALLEN. Well, at least you said it was an improvement, and I appreciate that.

And I appreciate this hearing and all our witnesses, and I look forward, Mr. Chairman, to working with you and our colleagues to get this improvement made.

The CHAIRMAN. Thank you. We'll do something in this area.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for coming, Senator. We're glad to have you.

Senator WYDEN. I thank you for your thoughtfulness, Mr. Chairman. This is just, even by Senate standards, a hectic day with all of the committees. I thank you, and my apologies to the witnesses for being tardy.

I wanted to start, if I could, with you, Mr. Slaughter. First, I think it's all understood that we need more refinery capacity. Nobody questions that. The folks at Arizona Clean Fuels deserve a lot of credit in terms of being able to expedite things through their process, I gather, in 9 months.

I think what I would like to do with you, Mr. Slaughter, is begin through a new report that the Congressional Research Service gave me this Monday, because I think it relates to some of the comments that you have made in the past. And what I asked the Congressional Research Service to do is essentially tell me where they think the industry is putting this big gusher of money that has come in in the last few years.

And what the Congressional Research Service found is that the return on equity of the major oil companies has gone up about six times in the last few years. The amount of cash reserves at the major companies have gone up, over the same period of time, six times. But the amount of money that has been devoted to exploration and capital investment has only doubled. So what you have is equity up six, cash reserves up six, and essentially exploration only up a third of that.

Now, you wrote us on September 9 that—I will just quote here—"The refineries have made and will make significant investments in expanding capacity at existing refineries." Given what the Congressional Research Service found Monday, that the industry is only putting a fraction of this big gusher of money that has come in, do you want to make a change in that September 9 statement? Because it certainly doesn't seem to me to square with what the Congressional Research Service has said.

Mr. SLAUGHTER. Thank you for the question, Senator Wyden. As I mentioned in the testimony and earlier in my remarks, the industry has announced roughly 1.8 million barrels a day in additional refining capacity in the United States that it intends to add over the next several years. That represents a significant commitment of investment dollars.

At the same time, many participants in the refining industry also are participants in exploration and production and other parts of the business. They basically have got to make allocation decisions for their investments, as to what the investment is that makes the most sense at that time. Many of the exploration and production investments, for instance, may take years to mature.

And you know the other thing that corporations do with money: some money has been returned to stockholders. I know that the ExxonMobile Corporation has returned I think $55 billion to stockholders in the last 2 to 3 years. A similar number is probably true of a number of the other bigger players in the industry.

So it's difficult, I think—I understand your point and I appreciate it, but I think it's difficult to take any snapshot in time and say that this indicates what the industry is going to do, when our projects are long-term projects that take many years to plan and to implement.

Senator WYDEN. I would just ask, Mr. Chairman, if the Congressional Research Service report to me that looked at equity and cash reserves over the last 6 years could be made a part of the record.

The CHAIRMAN. Absolutely.

Senator WYDEN. I thank you, Mr. Chairman.

[The information referred to follows;]

CONGRESSIONAL RESEARCH SERVICE MEMORANDUM FROM ROBERT PIROG, SPECIALIST IN ENERGY ECONOMICS AND POLICY, RESOURCES, SCIENCE AND INDUSTRY DIVISION

This memorandum is written in response to your request for financial data for selected oil companies for the period 1999 to 2005. The companies for which you requested data are ExxonMobil, BP, Shell, Valero, Chevron, ConocoPhillips, Sunoco, and Total SA. The analysis is complicated by reason of mergers and acquisitions among the selected firms, differences in U.S. and international accounting standards, currency exchange rates, differences in the size of the selected companies, and differences in the extent to which the selected companies participate in all aspects

of the oil business.[1] The likely effects of these factors will be noted in the appropriate sections of this memorandum.

PROFIT RATES

Profit rates are usually expressed as net income as a percentage of a relevant base; usually revenue, shareholder equity, or assets. Each profit rate provides a different measure of the success of the firm. Profit relative to revenue shows how well the firm translates revenue into net income. Profit relative to shareholder equity shows how effective the firm is in utilizing the capital invested in the firm by its owners, the shareholders. Profit relative to assets shows how effective the firm is in utilizing its total asset base to generate net income.

Table 1 shows the average return on revenue and the return on equity for the eight selected oil companies. The averages are simple averages; they do not assign weights to account for the different sizes of the firms in the group. ExxonMobil, the largest company in the group, has total revenues over ten times as large as Sunoco, the smallest company in the group. However, a weighted average would still not account for the fact that the sample of eight companies is only a fraction of the industry. For example, the Oil and Gas Journal includes over 130 companies in its oil and gas firms' earning report.[2]

Table 1.—RATES OF RETURN FOR SELECTED OIL COMPANIES

[Percentages]

Year	% Return on Revenue	% Return on Equity
1999	2.88	4.64
2000	5.79	24.85
2001	5.36	16.67
2002	3.89	8.11
2003	5.23	18.47
2004	6.45	26.18
2005	7.10	29.38

Source: Security and Exchange Commission Forms 10-K and 20-F, Company Financial Reports.

Over the seven year period, the average return on revenue was 5.24%, while the average return on equity was 18.32%. Both profit measures increased when the recent increases in the price of oil began in 2003. Two of the companies in the data set, Valero and Sunoco, are refiners and marketers with no crude oil production. These two firms were not, therefore, positioned to benefit directly from increases in the price of crude oil.

CASH RESERVES

Companies might accumulate cash reserves in anticipation of a major merger or acquisition, before a share re-purchase, or before a capital investment expenditure. In the case of the selected oil companies, these reasons might be augmented by the rapid expansion of sales revenues associated with the increases in the prices of crude oil and products from 2003 through 2005. Large investment projects take time to plan and execute, and it may be that the rapidly increasing revenues these firms realized could not be efficiently allocated in the available time.

Both upstream (exploration and production) and downstream (refining and marketing) investments in the oil industry tend to cost billions of dollars and take years to plan, complete, and realize returns from. Investment decisions are based on company estimates of the long-term, expected, price of oil. It may not be that the current market price of oil is equivalent to the companies' long-term expected price of oil. If the long-term planning price of oil is significantly lower than the current market price, it might appear that the companies have not increased investment in capacity to a degree commensurate with increased market prices.

[1] Total SA reports its current and historical financial data in Euros. For this memorandum, the Euro/dollar exchange rate of 1.28 dollars per Euro, observed on July 3, 2006 was used.

[2] Radler, Marilyn, and Bell, Laura, "Price, Production Increases Boost First-Quarter Earnings," *Oil and Gas Journal,* Vol. 104.23, June 19, 2006, p.19.

Table 2.—CASH RESERVES OF SELECTED OIL COMPANIES

[Millions of dollars]

Year	Cash Reserves
1999	9,495
2000	27,185
2001	23,875
2002	20,908
2003	24,764
2004	41,323
2005	57,828

Source: Security and Exchange Commission Forms 10-K and 20-F, Company Financial Reports. Note: Shell, Valero, and ConocoPhillips data could not be obtained for 1999. Shell data could not be obtained for 2000.

Table 2 shows that the cash reserves of the selected oil companies have more than doubled from 2001 to 2005, the period of complete data. In 2005, three companies, ExxonMobil, Shell, and Chevron accounted for over 87 % of the total cash reserves.

EXPLORATION AND CAPITAL INVESTMENT

Exploration expenses are undertaken to locate and develop new commercially viable deposits of crude oil and natural gas. Two of the eight companies in the data set, Valero and Sunoco, have no exploration expenses since they operate only in the downstream portion of the industry. Since oil fields deplete over time and production tends to decline, oil producers must carry out a successful exploration program to keep their reserve and production positions constant. However, it cannot be determined from financial data which exploration expenses are "net" in the sense of increasing production and reserves, and which are "gross", including depletion replacement. As a result, increasing exploration expenses are not necessarily tied to increased production capability or reserves. Most of the firms also report dry hole expenses in exploration. Dry holes do not add to either production capacity or reserves.

Capital investment expenditures were drawn from the companies cash flow statements. These values represent actual outlays made during the year. As a result, the values for capital investment reported in *Table 3* represent gross investment, rather than investment net of depreciation. In the current economic environment, it is likely that all investments, new, as well as those that replace depreciated assets, must pass a profitability test to be undertaken. As a result, gross investment is likely to represent well the companies investment decisions.

Table 3.—EXPLORATION AND CAPITAL INVESTMENT EXPENDITURES OF SELECTED OIL COMPANIES

[Millions of dollars]

Year	Exploration Expense	Capital Investment
1999	1,794	32,835
2000	3,114	36,417
2001	3,843	52,798
2002	4,231	55,577
2003	5,018	56,558
2004	5,318	58,304
2005	4,704	68,884

Source: Security and Exchange Commission Forms 10-K and 20-F, Company Financial Reports. Note: Shell and ConocoPhillips exploration data was not available for 1999. ConocoPhillips capital investment data was not available for 1999.

CONCLUSION

The oil industry operates in a volatile, short run market in which many decisions have long term implications. The upstream portion of the market is increasingly controlled by national oil companies, not private firms. The market is also affected by political forces.

The private oil companies have the responsibility of making decisions in the best interests of their shareholders. However, because their products are important to the functioning of national economies, their decisions are also of interest to the public. This dual responsibility must be balanced by the companies.

Senator WYDEN. Mr. Slaughter, I think that's a fair comment. I will just tell you that when there is that kind of spread between equity, reserves, and investment, it certainly is going to cause our constituents to say, "Look, we're getting clobbered by these prices. Is the money going back into development?" And the Congressional Research Service report certainly raises a troubling question in my mind about whether it's going back into the development that's necessary.

Let me also ask you about the—

The CHAIRMAN. Senator, might I ask—I mean, it's obvious that those facts are very big, important facts. What was the relationship here, since we're talking about investing in refineries? You're trying to make the point that they're not investing enough in refineries?

Senator WYDEN. What happened, Mr. Chairman—and I think Mr. Slaughter's point is a fair one as well. It's a snapshot in time. It's over a 6-year period, so I think Mr. Slaughter's point is a fair one as well.

The CHAIRMAN. OK.

Senator WYDEN. But what the Congressional Research Service found is that cash reserves over the 6-year period went up six times, return on equity went up six times, but development and exploration only went up twice. So it is correct, as Mr. Slaughter said, it's a snapshot in time, but I think that's the kind of thing that concerns our constituents and that's why I go into it.

Mr. Slaughter, one other question. On the timetable for getting a new refinery on line, as I understand what happened in Arizona, they spent about 4 years kind of traipsing around looking at a place to put it, but once they made a decision to do it, they got it in 9 months. Now, we're talking about a whole new operation and the like, and I just wonder why we can't essentially pick up on what was done in Arizona rather than all of what is being proposed at the Federal level, which strikes me as pretty hard to follow, pretty confusing, pretty convoluted.

We all want a win-win situation. We want refineries. We want them to be out there as quickly as possible, sensitive to environmental laws. I suspect if we don't do this carefully here in Washington, we're going to lose-lose. We won't get the refineries. We won't get the help for the consumers and all the rest. Why can't we just duplicate the Arizona model?

Mr. SLAUGHTER. First of all, I think it's a very good point. We don't want to make things worse.

Senator WYDEN. I'm sorry?

Mr. SLAUGHTER. I think you have a very good point, that we don't want to make things worse. We want to make things better. And everyone agrees we need more refining capacity.

Mr. McGinnis has gone into the history of that project in some detail. It's been going on for a number of years. The project has been moved once. There was a lot of work that was done, I think, before the final permit—they actually filed it, so there was a lot of

work that was already in the ground, so to speak, there that you might not have with other applications.

I think the clear intent of this legislation is not to overrule Federal environmental statutes, but merely to say that there is a Federal interest, to inject into the process that there is a Federal interest in having new refineries, and certainly not overruling States. I do have a bit of a concern about giving a Governor a veto over the application process. They should clearly be involved. But the way I read it now, it's optional on the part of the person who is trying to build a refinery. Some may elect not even to trigger this program. But we think the clear intent—you know, the Arizona situation is unique. It has gone on for several years. My members tell me that if they're trying to get a new source review permit for a major project, that that can take 2 to 4 years. So I think there is a reason for some additional transparency here on the permitting process, and I think that's all that this bill intends to do, sir.

Senator WYDEN. One last question, if I might, Mr. Chairman. You have been very—

The CHAIRMAN. Senator, before you do that, might I just say before you arrived—and again, no aspersions, delighted to have you, and very important, the point you're going to make—but Mr. McGinnis on the left here is the actual gentleman who has gone through the misery of finally locating a refinery in the State of Arizona, and has talked with us here today about it. And while he would come along with you in your last remarks, he would conclude nonetheless that he sees no reason why we shouldn't be interested in having somebody that is in charge of seeing that the schedule is followed, other than the applicant themselves.

That's the issue. It has almost boiled down to that. Should we have a bill that nationally says there will be a scheduler established under this statute, and that scheduler will set the schedule with all the participants and then will be the one that says let's stick to it, and when it falls behind, have some rights. And even though he is finally going to get a refinery without this, having gone through 4 years of whatever one might call it—I would call it hell, but he might call it learning, I don't know—that's about where we ended up before you arrived.

And I wanted to just put that on the table and make sure that you knew that we have a businessman. We thank him, don't we, for coming up here and spending the whole day with us?

Senator WYDEN. Unquestionably so.

The CHAIRMAN. Thank you very much, Senator.

Senator WYDEN. And I think, Mr. Chairman, as usual, you make a thoughtful point, and it really leads into my next question. Because I think I sort of pummeled this question of, if a little guy in Arizona can do it in 9 months, what are we talking about with respect to the major companies? Chairman Domenici has raised the point with respect to, why not have a Federal coordinator and somebody who could be on the ground, and I wanted to ask you a point on that question specifically, Mr. McGinnis.

From your testimony, which I read, you basically indicated that one of the biggest problems out there is the "not in my back yard" kind of proposition, that it's the NIMBY. You know, somebody else can do it, and let somebody else pick it up. My understanding of

NIMBY, though, "not in my back yard," is that it's primarily a local issue. I mean, it automatically says, "I don't know what they're up to in Washington, DC. I'm caring about my neighborhood."

How do you foresee somebody coming in at the Federal level, which is often what people are objecting to, and now suddenly getting around what you have said in your testimony is one of the great hurdles, that the local opposition is a big part of the problem? I would like to hear your thoughts, how you would deal with those and reconcile the two.

Mr. MCGINNIS. It's a good question, Senator. The NIMBY issue is alive and well pretty well everywhere. It is a very, very local issue, as you point out. There are processes that are available to deal with that. There are hearing processes, public meeting processes, as part of the permit approval and review, public comment, the responsiveness documents to public comment. There are a lot of processes that exist today to identify those issues, to deal with those issues, to air those issues in public and in the general forum.

The intent of this bill is not to put someone, the Federal coordinator, in charge of the content of what's going on within the processes. In other words, they don't mandate or change or dictate anything relative to Clean Air Act requirements, new source process requirements, or the hearing obligations or the public responsiveness obligations, et cetera.

What they are responsible for, as I understand it, is having the agencies, and I would include the company and their consultants, et cetera, all in this process as well, having that group of people who have a stake in the permit mutually discuss and agree on a schedule, what has to be done, who needs to review and have input, and what's a reasonable time to complete that work in.

And then that individual takes away a responsibility to not only ensure commitment or drive commitment to that schedule, but also to ensure the resources are available in the agencies to meet those schedule obligations where they may not be available. For example, the Arizona Department of Environmental Quality has worked with us very, very closely on this permit for many, many years. This was obviously their first look at, or review of, a complex oil refinery permit. They have none operating.

And those individuals are—they're very competent people and they're very committed people, but they really needed a lot of outside resources to help them understand all of the implications of generating a permit for an oil refinery. This bill would help that organization get those resources to be able to do that in an expeditious manner.

Senator WYDEN. Well, you all have been an excellent panel, and obviously this whole question of refinery capacity, after you start with the basic proposition that we need more of it and that is not a matter for dispute, gets much more complicated. And you get it down into the real world and it does intertwine national considerations and regional issues and local ones.

I was very concerned, as were a number of other elected officials from the West Coast, about Shell's proposal to essentially close the Bakersfield refinery, which could have just clobbered all of us on the West Coast. They said they really couldn't make a go of it, and the next people came in and they did, which essentially contra-

dicted what Shell had been saying all those many months, but that was a combination of Federal and local kind of considerations.

You all have been an excellent panel, and laid out the fact that there are matters that we need to take up at various levels of government.

And I think everybody here knows that I have enormous respect for my chairman, Senator Domenici. We have fairly spirited discussions about these matters from time to time, and I know we will——

The CHAIRMAN. This one could be close.

Senator WYDEN. The chairman knows that I am always anxious to work with him and I will continue to do it. I think this has been a good panel, Mr. Chairman, and good witnesses, and I appreciate your letting me come in late and making the new CRS report a part of the record. And we'll continue the discussions.

The CHAIRMAN. I wanted to say, in closing, that I have here before me, from Senator Feinstein, the issuance of an internal communication that she puts out to the public. Senator Feinstein asked Governor Schwarzenegger to streamline the permits for oil refineries to bring down gas prices. And we have a good, solid Democratic member of our committee recognizing that the State should get its house in order and streamline the permitting for oil refineries, because the current process, which is the opposite of streamlined, is causing prices to be high.

I would like to put that in the record. I know that my good friend, Mr. Becker, would find some way of explaining that away too. I don't have time to wait, but you are free to do that at your leisure.

[The information referred to follows:]

PRESS RELEASE FROM HON. DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

SENATOR FEINSTEIN ASKS GOVERNOR SCHWARZENEGGER TO STREAMLINE PERMITS FOR OIL REFINERS TO BRING DOWN GAS PRICES

Washington, DC—U.S. Senator Dianne Feinstein (D-Calif.) today urged California Governor Arnold Schwarzenegger to help streamline the refinery permitting process in an effort to relieve gas prices in the State which have climbed to record levels, partly due to the shortage of refining capacity. Following is the text of the letter sent Thursday:

"I am writing to ask for your attention to the permitting problems associated with petroleum infrastructure projects. As you know, the Energy Information Administration reported that on Monday, May 10, 2004, gas prices in California averaged $2.27. There are several causes of this price spike, including rising global demand for crude oil, the federal oxygenate requirement and the boutique fuel problem, and limited refining capacity. It is my hope that we can work together to increase California's energy production while protecting the environment.

I have spoken with both Shell and ChevronTexaco regarding refining capacity. Both companies have told me that one step California could take to help the gasoline supply situation is to streamline the permitting process for refinery upgrades and expansions. I understand you met with the Chief Executive Officer of ChevronTexaco, Dave O'Reilly, who spoke with you about this as well. When I met with him last week, he shared with me how difficult it is to get permits for expansion and upgrade projects. He also talked about project delays caused by overlapping and conflicting agency and local authorities. I can see where a cumbersome permitting process, with uncertain outcomes, would make it difficult to plan and implement projects.

In your California Performance Review, you have asked state agencies to look for ways to make California run more efficiently, to be more supportive of businesses, and still protect the environment. I encourage you to improve the speed and predictability of the permitting process, and believe that this will allow business and gov-

ernment to focus their limited resources on actions that most benefit the environment.

Please let me know if there are things at the Federal level that I can do to help. I look forward to working with you."

The CHAIRMAN. In any event, I think the round-up by the Senator was right. You have been a good panel. I was just thinking that with the Senate doing voting on the floor, every committee in the Senate having hearings, we've had five Senators, and that's pretty good. Senator Bingaman could not make it, but he knows what's going on. He has had his staff here.

I think the reason that Senator Bingaman is not here is because the question of what we're going to do, if anything, in this area is still up in the air. I mean, if I were saying, "We're going to do this bill, along with five others," he would be here, because that would be very important. But I haven't made that decision yet. I don't know if we're going to do this this year or not.

I understand the issue much better because of the three of you. Mr. McGinnis, I do hope you succeed. And as a total outsider, but a neighbor, put me on the invitation list. I might just come to the opening. I might. Would you welcome me there?

Mr. MCGINNIS. Consider it done.

The CHAIRMAN. I'll join you there, and when you cut the ribbon, I'll be over on the side applauding you, saying you are a gutsy guy. I didn't ask you, or I forgot, what's the capacity of your refinery going to be?

Mr. MCGINNIS. 150,000 barrels a day.

The CHAIRMAN. Tell us what that means. Is that—that's a little refinery?

Mr. MCGINNIS. On a world scale, it's on the small side, but it's a world-scale facility. It's big enough to capture the economies of scale, but it will make a very small dent in the imports into this country and a lot more is required.

The CHAIRMAN. You've got it.

Senator WYDEN. I want to join you as well, Mr. Chairman, if I can get an invitation. I don't know if I will make it, but I want to be associated with your comments.

The CHAIRMAN. Good. If I go and you go, we will be Mutt and Jeff; right?

Senator WYDEN. A team.

The CHAIRMAN. A team. Thanks, everybody. We stand in recess until the call of the chair.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

[The following statement was received for the record:]

STATEMENT OF MAXINE NATCHEES, CHAIRMAN, BUSINESS COMMITTEE, THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION

The the Indian Tribe of the Uintah and Ouray Reservation (the "Tribe") appreciates the opportunity to submit testimony before this Senate Energy and Natural Resources Committee in support of H.R. 5254, the Refinery Permit Process Schedule Act. The Tribe urges prompt passage of H.R. 5254, as amended by the proposed amendment described below extending the benefit of the bill to Indian Tribes. The recent weather-related disruptions to the Nation's refinery capacity on the Gulf Coast, and limitations on refinery capacity elsewhere in the U.S. highlight the constraints on the ability of the oil and gas industry to refine the products of increased domestic oil production. The topic of this hearing is thus timely and of immense importance to the Tribe and the Nation as a whole.

Our Tribe, like all other Indian Tribes in the United States, faces a very difficult and unique challenge of being a government, and providing all of the essential services associated with being a government, without a significant tax base. Without a tax base, our Tribe must generate its own revenue base in order to provide for the health, safety and welfare of its members. Recognizing the difficulties posed by this unique situation, the Tribe decided to take an active part in determining its financial destiny and furthering its self-determination and sovereignty. In 2000, by tribal ordinance and by a referendum of the Tribal membership binding on its leaders, the Tribe adopted a Financial Plan designed to enable us to achieve our goals of self-determination and financial independence. The Financial Plan is based on a proven strategy of controlling expenses and enhancing revenues through proactive financial management including investment and reinvestment of our existing capital to ensure financial growth in perpetuity, and active development of our natural resources.

Our Reservation is located in northeastern Utah in the middle of the Uintah oil and gas basin. We have been leasing out oil and gas resources for many years. Energy resources are the cornerstone of our Tribal resource base and moving from passive to active participation in the development of these resources is a key part of our Financial Plan. To that end, instead of just leasing our lands to outside companies, we have begun to partner with such companies to take an active position in the exploration and development of our resources.

One of the emerging impediments to fully developing our resources is inadequate refining capacity to handle production from Tribal oil assets. A large portion of the crude oil produced on the reservation is "black wax" crude oil. There are two main constraints that complicate obtaining refining capacity sufficient to enable the Tribe and other operators on the Reservation to move this significant resource to market, each based on certain unique characteristics of black wax crude. First, because of these characteristics, the four refineries are operationally limited in the amount of black wax etude they can refine at any one time without expending significant capital investment on new facilities. These same refineries have access to Canadian crude delivered via pipeline that is easier for them to refine. Canadian crude oil is increasingly displacing domestic production from the Uintah basin and deprives the refineries of any economic incentive to make the capital investment necessary to process greater portions of Uintah basin black wax crude. Second, the characteristics of black wax crude make it impossible to transport via pipeline and uneconomic to transport long distances to refineries capable of handling larger volumes of black wax crude in Wyoming, New Mexico or California.

The intersection of these factors could result in a shut down of production of the Tribe's significant oil resources at a time when the Nation needs to increase its domestic oil production. This would be devastating to the Tribe as royalty and other oil and gas proceeds are the main source of revenues for the Tribe's essential government services, including health and safety services to the Tribe's most vulnerable members: our children and our elders. Shut down would also have adverse effects on the State of Utah and area county and local governments, as they also derive significant revenues from oil production in the Uintah Basin. The only way to prevent stranding this major energy source is to build new refining capacity in the Uintah basin that is capable of handling black wax crude oil.

To that end, the Tribe seeks to amend H.R. 5254 to make available to Indian tribes the same federal assistance with refinery permitting as would be available to States under the existing bill. The Tribe's Reservation is strategically located for refining purposes because of its close proximity to oil and gas resources. The Tribe and the other energy Tribes, as sovereign entities with substantial land bases close to oil production, are in a unique position to address the shortage in refinery capacity, In addition, refining capacity on tribal lands should also aid the potential development of unconventional hydrocarbon sources in the Rocky Mountain west, such as oil shale and tar sands. Our proposed amendment would increase the effectiveness of H.R. 5254 in increasing refinery capacity while furthering the dual aims of Title V of the Energy Policy Act of 2005: (1) encouraging the efficient development of energy minerals on Tribal lands and (2) promoting Tribal self-determination. In fact, Title V of the Energy Policy Act of 2005 explicitly contemplates construction of refineries on Tribal land. Amending H.R. 5254 as we have proposed would result in the following five benefits to Indian Tribes and the Nation as a whole: (1) provide Indian Tribes with access to the same federal assistance as States to implement the aims of the Energy Policy Act; (2) enable Tribes to better navigate the refinery permitting process; (3) enhance revenue and prevent economic hardship for both State and Tribal governments; (4) increase refining capacity; (5) strengthen the nation's long-term energy security by locating refining capacity outside of the weather-threatened Gulf Coast region.

The text of the Tribe's proposed amendment reads as follows:

"Insert within Section 2 of the Bill the following two definitions and replace Section 3 of the Bill in its entirety:

(5) the term "Indian Tribe" has the meaning given the term in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);

(8) the term "Tribal Organization" has the meaning given the term in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Sec. 3. State and Tribal Organization Assistance

(a) Financial Assistance—At the request of a Governor of a State, or at the request of a Tribal Organization, the Administrator is authorized to provide financial assistance to that State or Indian Tribe to facilitate the hiring of additional personnel to assist the State or Indian Tribe with expertise in fields relevant to consideration of Federal refinery authorizations.

(b) Other Assistance—At the request of a Governor of a State, or at the request of a Tribal Organization, a Federal agency responsible for a Federal refinery authorization shall provide technical, legal, or other nonfinancial assistance to that State or Indian Tribe to facilitate its consideration of Federal refinery authorizations.

The Tribe looks forward to working with you on these very important issues, and asks that you seriously consider the attached proposed amendment to H.R. 5254, and promptly pass the bill as amended.

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF ROBERT J. MEYERS TO QUESTIONS FROM SENATOR DOMENICI

Question 1. Is it fair to say that the bulk of investment in refineries over the last several decades has been for the purpose of capacity expansion and for the purpose of producing cleaner fuels required by both law and new regulations?

Answer. The U.S. Environmental protection Agency (EPA) does not track investment patterns of refineries and it is therefore difficult to state definitely whether the bulk of such investment over the last several decades has indeed been for the purposes cited in your question. Information published by the Energy Information Administration indicates that domestic refineries, which have decreased in number over the past twenty-five years, have simultaneously increased overall capacity levels. At the same time, EPA recognizes that many operators have also made investments in their refineries for the purpose of producing cleaner fuels, as required by laws and new regulations enacted at the federal or state level. EPA has detailed such costs in its Regulatory Impact Assessments for these rules.

Question 2. You note in your testimony that this bill does not include codification of "New Source Review Rules that would enable accelerated investments in efficiency at refineries." While modification of the New Source Review Rules is not within the jurisdiction of this Committee, I am interested in knowing precisely how EPA believes those rules should be altered and how such alteration might speed investment in refinery capacity.

Answer. Since the early 1990s, numerous parties have called for improvement and simplification of the New Source Review (NSR) program, particularly as it applies to existing facilities. In 2002, EPA completed a review of the NST program that concluded that improvements were warranted. In particular, it concluded that the program has an adverse impact on the willingness and ability of owner/operators (e.g., of refineries) to invest in equipment and technologies that will expand and preserve capacity, or improve energy efficiency.

Refiners seeking to expand capacity or ensure reliability through additional investment are hindered by a number of NSR-related factors, including: (1) regulatory uncertainty resulting from confusion about the NSR program's requirements; (2) the added costs and delays imposed by the NSR process; and (3) the possibility that activities necessary to assure the safety, reliability and efficiency of a plant may not be able to be undertaken without an NSR permit.

EPA has sought to reform the current NSR process and address these concerns by reducing regulatory complexity and providing proper incentives for reducing air pollution. Providing increased clarity regarding NSR would ultimately expedite the process for those refiners hoping to increase capacity or make improvements in reliability or energy efficiency.

EPA has issued a number of rules that make specific changes to NSR to achieve these goals, but some of these rules have been halted by litigation. This Administration has called on Congress to codify EPA's December 2002 changes to the NSR program, and we believe the regulator certainty offered by legislating these changes would expedite investment in refinery capacity.

Question 3. Are there other legislative vehicles or administrative measures that could be useful in encouraging the siting of new refineries or expansion at existing facilities?

Answer. This Administration supports efforts to simplify and expedite the permitting process for construction of new refineries and expansion of existing refining facilities and believes such steps could help strengthen the nation's energy infrastructure. Given the broad scope of economic, land-use, and environmental issues involved in the siting of new refineries or expansion of existing facilities, there are potentially multiple legislative or administrative vehicles by which such processes could be improved. The Administration supports enactment of H.R. 5254 and also

stands ready to work with the Senate and Congress on additional legislative vehicles.

EPA's Office of Air and Radiation has taken regulatory steps to help streamline the permitting process for refineries and other industrial sectors; perhaps the most important of these have been our NSR reform rules, as mentioned in the response to you r previous question. In addition to codification of NSR reforms, there are other legislative measures that would also have a significant and beneficial effect in the long run. The President's Clear Skies cap and trade approach to reducing air emissions from power plants gives our states a powerful, efficient and proven tool to help meet air quality standards for fine particles and ozone. To the extent the Clear Skies emission reduction requirements for the power sector can help provide emissions reductions towards attainment or partial attainment of Clean Air Act health-based standards, states and local governments will have a lighter burden in putting together their local emission control strategies to attain the National Ambient Air Quality Standards (NAAQS). This may result in an ability at the state and local level to accommodate new or expanded manufacturing or refining activities within plans to meet the NAAQS.

RESPONSES OF ROBERT J. MEYERS TO QUESTIONS FROM SENATOR THOMAS

Question 1. In Wyoming, many refineries have stopped producing asphaltic oil because of policies put in place to reduce sulfur emissions. This has resulted in a significantly reduced supply of this product for companies in the paving business. Are you aware of the consequences that this otherwise desirable environmental improvement has had on the construction industry? Did the Environmental Protection Agency look into what the more peripheral consequences of changing that standard would be prior to implementing the regulatory change?

Answer. As part of the Ultra Low-Sulfur Diesel (ULSD) rulemaking, PEA analyzed, the impact of desulphurizing the diesel stream and the associated changes in refinery operations. In general, in normal refinery operation, product used for asphalt production is removed during the initial stages of processing crude before the bulk of LSD and ULSD diesel processing occurs. Thus, producing low-sulfur diesel (LSD) and ULSD production should have little or no direct impact on asphalt production.

There are many indirect factors, however, that influence refiner decisions with respect to the products produced, including hardware, crude inputs, demand for specific product slates, economics and environmental requirements. Any overall noticeable impact on production of asphalt could result from such factors and would vary from refinery to refinery, with some decisions tending to increase asphalt and others to decrease it. To meet the ULSD quality standards, some refineries may be shifting the most difficult inputs to process streams out of diesel production, which could increase heavier product streams, including asphalt volumes. However, other refineries may switch to a lighter, sweeter crude, which may result in a decrease in asphalt output.

In addition, it is likely that the biggest driver currently impacting asphalt production is the overall economic situation affecting all refined products, rather than any direct or indirect impact of ULSD production. Quite simply, with diesel fuels and gasoline prices at record and near-record levels, refineries are finding it economically attractive to upgrade the heavier product streams into gasoline and diesel fuel. This results in relatively less production of asphalt.

Question 2. Under Section 392 of the Energy Policy Act a Governor could request assistance with the refinery permitting process. This bill would repeal those provisions and replace them with a new set of guidelines for permit streamlining. Aside from the inclusion of closed military installations as possible refinery sites, can you discuss in greater detail what EPA interprets as the most significant differences between the EPACT language and the bill we are discussing today?

Answer. There are several significant differences between the refinery provisions of Energy Policy Act (EPAct) and the refinery bill under consideration (H.R. 5254). In general, the legislation is considerably more detailed than section 392 of the Energy Policy Act and extends to environmental permits required "under Federal law, whether administered by a Federal or State administrative agency or official" as opposed to section 392's references to "permits required from the Environmental Protection Agency."

Other significant differences between section 392 and H.R. 5254 include the following: (1) The streamlined permitting process authorized by EPAct is triggered by a request from a Governor, while under H.R. 5254, the streamlined permit process review may be initiated by the applicant for a refinery permit. (2) H.R. 5254 directs the President to appoint a "Federal Coordinator" to facilitate the permitting process,

while EPAct indicates that the Administrator of EPA is authorized to accept a consolidated refinery permit application. (3) H.R. 5254 requires the federal coordinator and relevant agencies to take several specified actions, including the convening of a meeting on the refinery authorization, the establishment of a memorandum of agreement (MOA) that sets forth the most expeditious coordinated schedule possible for completion of all federal refinery authorizations and the maintenance of a consolidated record. EPAct does not contain this level of detail, but rather authorizes the EPA Administrator to enter MOUs with other federal agencies and with a state. (4) In addition to the procedural requirements, H.R. 5254 additionally assigns duties to the Federal Coordinator including ensuring good faith cooperation of the MOU participants and ensuring that a refinery schedule accommodates relevant authorizations. Section 392 of EPAct contains no similar duties. (5) H.R. 5254 also specifically authorizes court actions to be brought in U.S. District Courts to establish an enforceable schedule for completing the permit process if the court finds that a failure to act by a government agency jeopardizes the schedule set forth in the MOA. Section 392 of EPAct does not contain any similar provision.

Question 3. Without naming particular states, can you share with the Committee if any Governors have approached the Environmental Protection Agency, preliminarily or in a more official capacity, to request assistance with the construction of a refinery under the authorities established in the Energy Policy Act of 2005?

Answer. To date, EPA has received an official request from the Governor of Oklahoma to negotiate a refinery permitting cooperative agreement with the state under the relevant provisions of the Energy Policy Act of 2005. THe Agency is responding to the Governor and developing a process for negotiating a cooperative agreement.

Question 4. Section 1838 of the Energy Policy Act required an investigation of recycling used oil products into the refining process and improving the ability to collect those materials for further use. Where does that study stand and do you have any preliminary findings to report on the potential for greater utilization of these oil products?

Answer. Section 1838 of the Energy Policy Act directs the Secretary of the Department of Energy (DOE), in consultation with the Administrator of the EPA, to conduct the study cited in the question. EPA's Office of Solid Waste and Emergency Response has worked with DOE on that study, and I understand that a final report on the study has been sent to Congress.

RESPONSES OF ROBERT J. MEYERS TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Last year, in Subtitle H of the Energy Policy Act of 2005 (EPAct 05), Congress streamlined the permitting procedures for refineries. These provisions are similar to those that are included in the proposed legislation, yet they would not create any conflicts with existing environmental laws. Additionally, the proposed legislation would repeal subtitle H. Acting Assistant Administrator Wehrum testified before the Environment and Public Works Committee in October 2005 that EPA was reviewing its new authority under that law. What is EPA now doing to implement these provisions? Is there any factual record that shows that we should change these provisions less than a year after they were passed? Has anyone even sought to use them yet?

Answer. EPA staff from various regional offices, the Office of Air and Radiation, Office of general Counsel, and Office of Federal Activities have met on a number of occasions to review and analyze the requirements of Subtitle H. As a result of these efforts, EPA stands ready to cooperate with states and our sister federal agencies to implement the permitting process for new refineries under Section 392. To date, EPA has received an official request from the Governor of Oklahoma to negotiate a refinery permitting cooperative agreement with the state under Section 392. The Agency is responding to the Governor and developing a process for negotiating a cooperative agreement.

EPA believes that H.R. 5254 would offer several improvements to the EPAct provisions that have already been approved by Congress. The legislation provides more detailed procedural and substantive requirements than EPAct and includes specific measures for enforcement of permitting timetables. There, EPA believes this legislation could act to further encourage private sector investments geared towards expanding domestic refining capacity. As indicated during the Energy and Natural Resources Committee hearing, EPA stands ready to work with the committee and Congress on this matter.

Question 2. In your testimony, you state that approximately 100 permits have been issued to refineries since 2000—many for upgrades to comply with new EPA regulations and many which have added to increased capacity not related to new fuel standards. This would suggest that a considerable number of permits were

issued in a relatively short amount of time. How do you see the proposed legislation facilitating this process?

Answer. It is important to note that, with the exception of one permitting action for a new refinery, the 100 permits referenced in my testimony have been with respect to New Source review air permits issued for expansions or upgrades of existing facilities. Therefore, the scope of the permits varied considerably. Many "narrow" NSR permits can be evaluated and approved within a matter of months. However, NSR permits for new refineries or major modifications to existing facilities can take considerably longer.

Furthermore, Clean Air Act permits comprise just one part of all the state and federal permits that are typically necessary for refineries. As indicated in my testimony, when refinery construction is involved, permits may be required under the Clean Water Act, the Resource Conservation and Recovery Act, and other federal, state and local environmental laws.

EPA believes it is logical to work together to identify potential efficiencies that could be achieved by coordinating the permitting process. The legislation provides for this coordination and provides specific direction with respect to the process for developing enforceable MOUs. The Agency believes that the legislation could therefore provide additional incentives for the expansion of domestic refinery capacity.

Question 3. Has EPA issued any regulations or taken any action to implement Subtitle H? If yes, how would passage of this bill affect that process? If no, when do you anticipate you will begin and how long will it take?

Answer. Subtitle H of Title III of EPA ("Subtitle H") does not specifically require that EPA issue regulations in order to implement the authority conveyed by the subtitle and, to date, EPA has not taken any action to promulgate such regulations. With respect to your second question, since H.R. 5254 acts to repeal Subtitle H, its enactment would remove the legal basis for regulations based on the subtitle. With respect to your third question, EPA does not presently have plans to propose regulations implementing Subtitle H. EPA has experience in cooperative permitting frameworks, however, and we anticipate that we can draw on this experience quickly to assist a state and other stakeholders in effectively implementing the provisions of Subtitle H.

Responses of Robert J. Meyers to Questions From Senator Wyden

Question 1. Most states fund their air quality permitting programs from a combination of state general funds and fees. If H.R. 5254 was enacted and a Governor requested additional EPA or other federal agency assistance in obtaining a federal refinery authorization would the project applicant reimburse the federal government for their additional assistance? Does H.R. 5254 give applicants an incentive to request federal assistance in lieu of having to pay state permitting fees?

Answer. We do not anticipate that project applicants, such as refineries, would reimburse the federal government for federal assistance provided under H.R. 5254, since there are no provisions in the bill that provide for such a mechanism. With regard to the possibility that H.R. 5254 would provide an incentive for applicants to request federal assistance in lieu of having to pay state permitting fees, the proposed legislation neither authorizes an applicant to make such a request nor alters the state permit fees structure. Under the legislation, only the Governor of a state may request federal assistance.

Question 2. Does H.R. 5254 create a bad precedent in that petroleum and other fuel refining and production facilities are given preferential, expedited permitting and project reviews while other energy production facilities (that could also dampen demand for additional fuel or energy supplies) continue to be permitted in a "business as usual" way? Shouldn't all energy production facilities such as wind farms, geothermal, solar and wave energy be eligible for the same fast-track treatment as long as they help to meet national energy supply goals and reduce the cost of energy or fuel to consumers?

Answer. The Administration is committed to securing the production of reliable energy from all practical sources. EPA does not generally issue permits associated with renewable sources such as wind, geothermal, solar and wave energy. H.R. 5254 specifically addresses petroleum and other fuel refining and production facilities that fall under the jurisdiction of several environmental statutes administered by EPA.

Responses of Robert J. Meyers to Questions From Senator Salazar

Question 1. The Energy Policy Act addressed this same issue of expediting the oil refinery permit process. Sections 391 and 392 include a balanced, straightforward way to speed up review of refinery permits: they allow for the federal government

to enter into cooperative agreements with states on refinery permitting, enable the Administrator to provide financial assistance to states in reviewing refinery permits, and empower the Administrator to accept consolidated permit applications to speed up the process. H.R. 5254 would eliminate these sections.

Have these sections of the Energy Policy Act been proven to be inadequate improvements to the refinery permitting process? Or is it possible that we have not give the provisions in EPAct enough time to take hold?

Answer. EPA is currently implementing Subtitle H of Title III of EPAct in response to a request from the Governor of Oklahoma to enter into a refinery permitting cooperative agreement. EPA believes, however, that H.R. 5254 offers additional authority and additional ability for the federal government to streamline the refinery permitting process. As indicated during the hearing, EPA stands ready to assist Congress in its consideration of H.R. 5254 or other refinery streamlining legislation. The Agency would certainly offer any requested technical assistance in order to resolve implementation issues between the existing provisions of Subtitle H and any new legislative authority.

Question 2. H.R. 5254 gives a considerable amount of responsibility to the "Federal Coordinator" to expedite and coordinate the permit process.

Is this not adding another level of bureaucracy that may slow permitting down?

How much weight will the state agencies be given in the process?

Answer. Because refinery construction is subject to permitting by multiple agencies for multiple purposes, it only makes sense that the relevant permitting agencies work together to identify potential efficiencies that could be achieved by coordinating the permitting process. State agencies are in many, if not most, cases the primary permitting agency for refineries, and as such EPA expects they would play a substantial role in the process laid out in the bill.

Question 3. Section 5 of H.R. 5254 allows for closed military installments or portions of closed military installments to be used as refinery sites.

Does this mean that any closed military installation including, for example, Lowry Air Force Base in Denver, could be designated a refinery site?

Answer. Section 5 of the bill would authorize the President to designate closed military installations as "*potentially* suitable" for construction of a refinery (emphasis added). Following designation, the redevelopment authority for each designated installation would be required to consider "the feasibility and practicability of siting a refinery on the installation." The Secretary of Defense would then be required to "give substantial deference to the recommendations of the redevelopment authority . . . regarding the siting of a refinery on the installation." In sum, the bill would provide a mechanism for identifying and considering closed military bases for use as a refinery site, but it would not explicitly mandate that a closed base be used for that purpose.

Question 4. In considering new sites at closed military installments, the redevelopment authority is instructed to consider the "feasibility ad practicability" of the site prior to the development.

What does feasibility and practicability entail under this bill?

Does it include consideration of surrounding communities?

What opportunity will the public have to comment on this process?

Answer. Under the bill, the President and Secretary of Defense would exercise the authority to designate closed military bases for consideration as potential refinery sites. Accordingly, the Environmental Protection Agency is not in a position to speak authoritatively to the appropriate interpretation or application of this section of the bill or the process that would be used to implement it.

Question 5a. Section 4 of H.R. 5254 allows an applicant for a permit, or a party to a memorandum of agreement on permitting, to bring a cause of action if a party does not take prompt action on a permit.

Does this mean that the federal government could take a state or local government to court if a permit review is not completed within the timeframe approved by the federal government?

Answer. The language of the bill would appear to authorize such a suit, but the principles of federalism embodied in the U.S. Constitution and the federal-state relationship created by the relevant federal permitting statutes would counsel against it. Under federal environmental laws, state and local governments agree to implement federal permitting requirements at their discretion, and they remain free to return those responsibilities to the federal government. Federal agencies have a strong interest in states taking a leading role in the implementation of many environmental programs, including permitting, and so ave a strong incentive to work cooperatively with state programs to implement federal requirements. In this regard, as indicated in my testimony, we would be happy to work with Congress prior to

any final action on H.R. 5254, to address any concerns regarding the proper balance to be struck between federal and state programs.

Question 5b. Will this bill not erode the authority of state and local governments to review proposed refinery projects?

Answer. The bill addresses federal refinery authorizations, which are defined as those authorizations required under federal law. It specifically provides that any schedule developed under its provisions be "the most expeditious coordinated schedule possible for completion of all federal refinery authorizations with respect to the refinery, consistent with the full substantive and procedural review with respect to the refinery, consistent with the full substantive and procedural review required by Federal law." The legislation does not contain an explicit provision with respect to non-federal laws and requirements. In addition, the legislation contains a savings clause. Section 6 of H.R. 5254, which provides that nothing in the legislation "shall be construed to affect the application of any environmental or other law . . ."

RESPONSES OF GLENN MCGINNIS TO QUESTIONS FROM SENATOR DOMENICI

Question 1. In your testimony you state that "long term historical refining margins in the U.S. have, on average and in general, not been adequate to support new refinery construction." Is that condition changing in your view? Are economic conditions more favorable now to investment in new refineries? If so, do you expect those conditions to be sustained for the foreseeable future?

Answer. During the period from the mid 1980's until early 2004, average refining margins in the U.S. were in the 5-6% range and below the cost-of-capital for the industry. Product pricing was driven by imports from surplus refining capacity in the Caribbean, Europe, and the Far East. Over the past two years economic activity overseas has removed the surplus capacity increasing competition and raising prices for refined products. This shift has led to higher margins for U.S. refiners and is now adequate to support significant expansions—both grass roots and at existing refineries. Most industry observers expect the current higher margins to be sustained for an extended period (at least 5 years) due to the time required to permit, engineer and build refineries, both in the U.S. and overseas. Many projects are in the planning stages, however, rapid economic growth is likely to continue to put upward pressure on margins.

Question 2. How many jobs will the construction and operation of your refinery bring to Arizona?

Answer. The ACFY refinery will generate many high skilled jobs in the Yuma County area. During construction it is expected that about 3000 people will be required for a 3 year period. Ongoing operation will require about 600 people including local contract support. These jobs will all be in Yuma County with professional and highly skilled operations and maintenance positions.

Question 3. You state in your testimony that the Yuma project has modern control and monitoring equipment as required by current regulations and allows the plant to have "minimal impact on the surrounding environment" and thus helps siting and public acceptance of the project. You also state that "the industry has led in major technology developments" in Best Available Control Technology for emissions as required by the Clean Air Act. Would you agree that in this case environmental requirements have actually been beneficial to the project?

Answer. Processing technology and process control have reached a high level of sophistication as have measuring and monitoring. The sophisticated controls required by the permit will aid in optimization and both minimizing losses and maximizing product values. The controls on "fugitive emissions" are very beneficial as they permit recovery and minimization of losses of very expensive hydrocarbons. As the operational management practices are developed and implemented they will include a critical focus on all environmental requirements and will also improve operational monitoring and incident reduction. Yes—the critical focus on environmental controls and requirements will assist the operations in other areas and be beneficial to the refinery.

[Responses to the following questions were not received at the time the hearing went to press:]

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, July 20, 2006.

Mr. S. WILLIAM BECKER,
Executive Director, STAPPA/ALAPCO, Washington, DC.

DEAR MR. BECKER: I would like to take this opportunity to thank you for appearing before the Senate Committee on Energy and Natural Resources on Thursday, July 13, 2006 to give testimony regarding H.R. 5254, the Refinery Permit Process Schedule Act.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Friday, August 4, 2006. Thank you in advance for your prompt consideration.

Sincerely,

PETE V. DOMENICI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR DOMENICI

Question 1. I too am concerned that efforts to speed refinery construction not interfere with state authorities and procedures. But I also am concerned about finding ways of meeting the nation's need for refined products. Please summarize for the committee why your organization favors the approach contained in Subtitle H of Title III of the Energy Policy Act of 2005 over the approach contained in H.R. 5254.

Question 2. In your testimony you suggest, as does Mr. McGinnis, that the primary reason for the lack of new refinery construction has been due to the economics of the reining industry. Do you see those conditions changing with new domestic requirements for the production of cleaner fuels and with the tremendous growth in world wide demand for finished petroleum products-especially for diesel and motor gasoline?

Question 3. Are not environmental compliance matters a "cost" issue? Don't the length, uncertainty, and cost of the permit process act as a deterrent to new refinery construction?

QUESTIONS FROM SENATOR BINGAMAN

Question 1. What do you think the effect of Section 4 will be of changing the court of jurisdiction?

Question 2. In your testimony, you express concerns about how H.R. 5254 would preempt states' rights in several areas: 1) providing exclusive jurisdiction to Federal district courts rather than state and local courts over civil actions for failure to meet a schedule, 2) setting the coordinated schedule to be consistent with procedural review required by Federal law irrespective of state or local procedures and 3) allowing the federal government to make communities accept construction of a refinery. Do you think that this proposed legislation would have a negative impact on the ability of states to handle important environmental issues at the local level?

Question 3. Can you expound on why you believe it would be preferential for industry to increase refinery capacity by expanding existing refineries rather than building new ones?

Question 4. It has been said that the bill does not alter the substantive environmental requirements of federal and state law. The bill does establish permitting deadlines and new judicial review requirements for participating states, would you agree that those changes, at a minimum, do result in a substantive change in the procedural requirements of federal and state law?

QUESTIONS FROM SENATOR WYDEN

Question 1. Most states fund their air quality permitting programs from a combination of state general funds and fees. If H.R. 5254 was enacted and a Governor requested additional EPA or other federal agency assistance in obtaining a federal refinery authorization would the project applicant reimburse the federal government for their additional assistance? Does H.R. 5254 give applicants an incentive to request federal assistance in lieu of having to pay state permitting fees?

Question 2. Does H.R. 5254 create a bad precedent in that petroleum and other fuel refining and production facilities are given preferential, expedited permitting and project reviews while other energy production facilities (that could also dampen demand for additional fuel or energy supplies) continue to be permitted in a "busi-

ness as usual" way? Shouldn't all energy production facilities such as wind farms, geothermal, solar and wave energy be eligible for the same fast-track treatment as long as they help to meet national energy supply goals and reduce the cost of energy or fuel to consumers?

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, July 20, 2006.

Mr. BOB SLAUGHTER,
President, National Petrochemical and Refineries Association, Washington, DC.

DEAR MR. SLAUGHTER: I would like to take this opportunity to thank you for appearing before the Senate Committee on Energy and Natural Resources on Thursday, July 13, 2006 to give testimony regarding H.R. 5254, the Refinery Permit Process Schedule Act.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Friday, August 4, 2006. Thank you in advance for your prompt consideration.

Sincerely,

PETE V. DOMENICI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR DOMENICI

Question 1. You testified that establishing and optional federal coordinator for permitting might bring some of the announced refinery capacity additions on line more quickly. Do you know of any attempts at this time to delay any of those needed refinery expansions?

Question 2. In 2005, ICF Consulting produced a report on worldwide refining capacity which concluded that growth in new refining capacity will be insufficient to meet world wide demand for finished petroleum products, especially for new cleaner gasoline and diesel fuel. Are you aware of that report? Do you agree generally with the report's conclusions? If so, what does the projected worldwide shortage in refinery capacity mean for fuel availability and for fuel prices in the U.S. if we are unable to enhance our refining capacity?

Question 3. Is it possible that domestic requirements for cleaner and cleaner fuels could reduce this country's ability to obtain such fuels from foreign sources? Or is it likely that foreign refiners will adjust their production to accommodate U.S. demand for fuels?

Question 4. Over the past several years we have heard from a number of different sources that the domestic petroleum industry's infrastructure is such that even minor outages at product pipelines, crude and product storage facilities, crude oil delivery facilities at our ports, and, of course refineries, can result in very serious consequences for domestic fuel markets. Would you take a few minutes to provide the committee with your thoughts on how we might be able to alleviate these infrastructure problems?

Question 5. Are not environmental compliance matters a "cost" issue? Don't the length, uncertainty, and cost of the permit process act as a deterrent to new refinery construction?

Question 6. There is much interest in building new biomass to ethanol plants and coal to liquids plants to produce more transportation fuels. Do we need to include these facilities in an effort to improve the permitting process?

Question 7. Tesoro reports that it is scrapping a coker project at its Washington refinery due to "higher than expected costs." Can you shed any light on what "higher than expected costs" means?

QUESTIONS FROM SENATOR BINGAMAN

Question 1. How many jobs would be created in the United States if we built (and operated) an additional 3 million barrels per day of refining capacity to try to offset the imports of petroleum products that we receive each day into this country?

Question 2. What is the average level of compensation for an average worker in the refining industry?

Question 3. The refining industry has testified that environmental regulations are not interfering with the construction of existing or the expansion of new (Greenfield) refineries. CEOs have noted the steady capacity increases historically from expansions at existing refineries and in your testimony today you provide a list of an-

nounced expansions for the future. Today's Oil Daily reports that Tesoro will not go forward with a 25,000 bpd expansion at its Anacordes refinery due to an "increase in costs." Do the projects on the list that you provide, totaling some 1.8 million bpd, also face such potential impacts? Please explain.

Question 4. Does your organization represent all of the refining companies in the U.S.? If not, who (which refiners) is not a member? Do you have reason to believe that these non-members have opinions different than that which you presented today?

Question 5. Based on your testimony about the proposed legislation, is it NPRA's view that, under Section 4(b)(2) the designated federal coordinator has the authority to establish a schedule governing federal, state and local permitting actions, even when relevant permitting agencies do not participate in meetings called by the coordinator? If not, does NPRA support modifications to the bill's language to ensure all permitting requirements, federal, state, and local, are included in a Memorandum of Agreement (MQA).

Question 6. The proposed legislation would authorize the refinery applicant or a party to the MOA to bring a civil action in federal district court if a federal or state agency jeopardizes the timely completion of the schedule. It appears the bill's judicial review standard does not provide for expedited review in the event of disagreement over substantive issues such as compliance with environmental standards. Why is such a distinction beneficial in NPRA's view?

Question 7. For Memoranda of Agreement reached under this bill, there would also be a required change to the venue in which cases involving the MOA's permit processing schedule are litigated under federal and state environmental law. Under this bill, cases would now have to go to the federal district court in which the refinery is located or proposed to be located. Litigated outcomes are always difficult for companies to predict, isn't there some benefit to companies to staying within the current judicial forums, rather than changing them, because of judicial precedent?

Question 8. In your testimony, you state that U.S. refining companies will add considerable additional capacity by 2010—approximately 1.8 million barrels per day. In addition, you state that there is 800,000 barrels per day of capacity still idle as a result of hurricanes. How much additional capacity do you project will be needed to meet U.S. demand? Why not continue to expand existing refineries in order to increase capacity rather than build new ones, given that the permitting is faster, and the economics are preferable?

Question 9. Last year, in Subtitle H of the Energy Policy Act of 2005 (EPAct 05) Congress streamlined the permitting procedures for refineries. These provisions are similar to those that are included in the proposed legislation, yet they would not create any conflicts with existing environmental laws. Does NPRA support Subtitle H of EPAct 05?

QUESTIONS FROM SENATOR WYDEN

Question 1. Refining capacity may not increase as much as your chart shows . . . . NPRA's testimony contains a chart showing that the Tesoro company plans to increase their refining capacity by 223,000 barrels/day. *Oil Daily* however, reports that the company will not proceed with their plant expansion due to higher costs. What does this mean for the rest of the projected capacity shown in the NPRA chart? Are there other planned expansion projects that will not pan out?

Question 2. Your chart claims that an additional 1.8 million barrels/day capacity is due to be on-line by 2011. Would any additional capacity be brought on-line with the passage and enactment of H.R. 5254? If yes, how much additional fuel supply would be added and how much faster would it be added?

Question 3. Your testimony projects that an additional 1.8 million barrels/day of refined oil products would be added to our national supplies by 2011. Yet, the Department of Energy's, Energy Information Administration projects that the demand for petroleum fuels will continue to grow by 1.2%-1.9% annually from now until then. How much additional petroleum will be needed to meet or exceed demand by 2011? What effect will this have on gas prices at the pump? If current domestic refining capacity does not help to satisfy projected demand in 2011, how much additional supply or imports will we need to have available before prices will decline? Do we really have to wait five years before seeing a decline in gas prices?

QUESTIONS FROM SENATOR SALAZAR

Question 1. People often cite the statistic that no new refineries have been built in the U.S. since 1976 as evidence that environmental protections and the permitting process has caused the industry's growth to remain stagnant.

Is it true that refiners have not been adding capacity? According to your own testimony before the House, Valero recently announced that it will be investing $5 billion dollars in refinery expansion, resulting in over 400,000 barrels per day of new capacity. ExxonMobil's Baytown refinery is currently under expansion of 75,000 barrels per day, and Marathon Ashland Petroleum has also plans to expand.

Question 2. Furthermore, major refiners have been consolidating and closing refineries to increase their margins over the last several years, resulting in greater profits and more capital on-hand. Is this legislation even necessary, if refining companies have the resources and means to invest in added refinery infrastructure?

Question 3. What other economic forces affect the growth of refinery capacity in the U.S.?

Question 4. Under the current regulatory framework and the provisions passed in last summer's Energy Policy Act, how much new refinery capacity will be added in the U.S. within the next five years?

Question 5. Have you found the sections of the Energy Policy Act that pertain to refinery permitting to be inadequate improvements to the regulatory process? Or is it possible that we have not given the provisions in EPAct enough time to take hold?

○