SUMMARY OF TESTIMONY FROM STEVE COUSINS
VICE PRESIDENT, LION OIL COMPANY
EL DORADO, ARKANSAS
BEFORE THE
HOUSE ENERGY AND COMMERCE COMMITTEE'S
SUBCOMMITTEE ON ENERGY AND POWER
HEARING ON
"THE ENERGY TAX PREVENTION ACT OF 2011"
February 9, 2011

- Lion Oil is headquartered in El Dorado, Arkansas, and has been in business for more than 88 years. We operate a single oil refinery in El Dorado and our main products are gasoline, diesel fuel and asphalt, which we sell to customers in seven states. Lion Oil is not a giant international corporation, just a small American manufacturer of gasoline, diesel fuel and asphalt.

- We provide jobs for 600 American employees in a unionized plant in an Arkansas county with nearly 10 percent unemployment. The jobs of more than 1,800 people – most with families – are supported indirectly by our company, making Lion Oil a leading economic engine in southern Arkansas.

- Congress should pass the Energy Tax Prevention Act of 2011 to stop EPA from moving forward with its harmful greenhouse gas regulations. One of the biggest problems with EPA's current plan to regulate greenhouse gases (GHGs) is the uncertainty it creates for the business community. In our industry, expansions in our manufacturing capacity take years to design, permit, finance and construct. With the breakneck pace at which EPA is spewing out new regulations, seeing a clear and feasible path five years into the future is impossible.

- Lion Oil undertook a major expansion costing several hundred million dollars and creating 2,000 construction jobs at our El Dorado refinery beginning in 2007, but has delayed completion of the project due to the recession and several other factors. The uncertainty and potentially prohibitive costs associated with possible cap-and-trade legislation and EPA's greenhouse gas regulations were a critical factor leading us to delay the completion of the expansion.

- EPA's proposed GHG regulations for both refinery expansions and existing facilities will likely have a devastating effect on Lion Oil's refinery and all of our nation's fuels producers. The result of these regulations will be to ship more fuels manufacturers overseas without reducing global GHG emissions.

- This is why it is so important that Congress approve the Energy Tax Prevention Act of 2011 and stop EPA's GHG regulations from moving forward. The bill would allow our elected representatives in Congress – not EPA – to create a balanced and workable energy policy that does not disadvantage American workers in the competitive global economy.

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Chairman Whitfield, Ranking Member Rush and Members of the Subcommittee, my name is Steve Cousins. I am a chemical engineer by training and I serve as a Vice President of Lion Oil Company, where I have worked for 33 years.

Thank you for giving me the opportunity to talk to you about the threat to our company's survival, to our employees' jobs and to our community's economic health created by the Environmental Protection Agency's moves to regulate greenhouse gas emissions under the Clean Air Act. We believe these actions by EPA are contrary to the plain wording of the Clean Air Act, are unwise, and endanger America's economic and national security. On top of this, EPA's greenhouse gas regulations will have zero positive impact on our global environment, bringing the American people enormous pain and no gain. These regulations are not about environmental protection – they are about job destruction. This is why it is so important that you approve the Energy Tax Prevention Act of 2011 to stop EPA from moving forward with its harmful greenhouse gas regulations. This legislation is vital to enable our company to expand our operations, to maintain existing jobs and create new ones, and ultimately to survive in the competitive global marketplace.

Lion Oil is headquartered in El Dorado, Arkansas, and has been in business for more than 88 years. We operate a single oil refinery in El Dorado and our main products are gasoline, diesel fuel and asphalt, which we sell to customers in seven states. Our refinery has been expanded and enhanced by hundreds of millions of dollars in capital expenditures to deliver increased production capacity and superior performance, and to adhere to new environmental standards. Bearing these costs has been extremely challenging for a small refiner like Lion Oil, but we are committed to enhancing environmental protection while maintaining the high quality that consumers expect from our products.

Lion Oil is not a giant international corporation, just a small American manufacturer of gasoline, diesel fuel and asphalt. We can't offset the costs of greenhouse gas regulation through profits from other lines of business, such as upstream oil production or retail. Our refining operation has to pay for itself or the plant cannot continue to operate. This is true not just for Lion Oil, but for the domestic refining industry as a whole. We operate on a low profit margin, just like the rest of the U.S. manufacturing sector. We're a high-tech American manufacturer providing proven and reliable fuels and other products that make modern life possible for millions of people. We provide jobs for 600 American employees in a unionized plant in an Arkansas county with nearly 10 percent unemployment. Our hourly workers earn an average of more than $23 an hour – not a fortune, but enough to raise a family and be part of America's middle class. The jobs of more than 1,800 people – most with families – are supported indirectly by our company, making Lion Oil a leading economic engine in southern Arkansas. We and our employees paid about $15 million in local, state and federal taxes last year, even though our company barely broke even during the year. We also purchased more than $500 million in goods and services from other Arkansas companies as part of our general operating expenses.

Our company is working hard to climb out of the recession. We're doing all we can to compete with foreign refineries that pay their workers a fraction of what we pay ours, and with our domestic competitors. For example, the highest paying jobs at refineries in India pay only about $5 an hour – less than a quarter of what our average hourly employee earns.

We're not asking you for a handout or subsidies, even though producers of non-petroleum sources of energy are collecting billions of taxpayer dollars in this way. We're simply asking you to act decisively to halt EPA's attack on our nation's manufacturing base. EPA's actions endanger not just the future of our company's lone refinery, but the future of the entire petroleum refining industry in the United States. We're asking you to allow us to compete on a level playing field in a global marketplace, and not allow EPA to pick winners and losers to determine our nation's energy future. And beyond my own industry, EPA's destructive regulations would threaten the future of millions of manufacturing and other jobs in the United States, reducing our exports and increasing our imports. This is a prescription for continued high employment and economic weakness, rather than for the job creation our country so desperately needs to speed our return to economic health.

One of the biggest problems with EPA's current plan to regulate greenhouse gases is the uncertainty it creates for the business community. In our industry, expansions in our manufacturing capacity take years to design, permit, finance and construct. With the breakneck pace at which EPA is spewing out new regulations, seeing a clear and feasible path five years into the future is impossible.

Let me give you an example of how EPA's current regulatory path on greenhouse gases has already had real costs and inflicted real pain on the good people in our small town. Lion Oil undertook a major expansion costing several hundred million dollars at our El Dorado refinery beginning in 2007. The project was planned to increase output at our refinery from 70,000 to 100,000 barrels per day. This expansion project created 2,000 construction jobs – a real shot in the arm for our local economy. Unfortunately, the recession and several other factors prevented us from reaching our goal, leaving us for now with an output of 80,000 barrels per day. The uncertainty and potentially prohibitive costs associated with possible cap-and-trade legislation and EPA's greenhouse gas regulations was a critical factor leading us to delay the completion of the expansion.

Ironically, at the same time construction jobs were lost in Arkansas due to the delay of our project, in India more than 75,000 workers labored on a three-year project constructing a new state-of-the art refinery that is 15 times larger than our refinery. And while our implementation of the most efficient cutting-edge technology has been delayed, their giant refinery has the best technology money can buy. Adding insult to injury, the refinery in India is designed almost exclusively for export purposes. Almost every drop of gasoline and diesel fuel it produces is aimed at U.S. and European Union markets.

If greenhouse gas regulations were the only regulations the U.S. refining industry was facing, it might be slightly easier to see a way through the future. However, in the last 20 years we have had to stand against a tsunami of EPA regulatory initiatives. I have attached a chart at the end of this testimony prepared by the National Petrochemical and Refiners Association illustrating the blizzard of stationary and mobile source regulations, along with the new greenhouse gas regulatory requirements, that Lion Oil and the rest of the industry have faced over the past two decades.

At Lion Oil we are proud of the improvements we've made in our environmental performance. Since 1996 Lion Oil has reduced emissions by 73 percent, while actually increasing plant throughput. This has carried a very high economic cost. During the same period, expenditures at our one small refinery topped $200 million in new environmental equipment and more than $19 million in increased operating costs. These are costs that for the most part foreign refiners do not have to bear. Paradoxically, the EPA initiatives to reduce emissions have required all American refineries to significantly *increase* greenhouse gas emissions, because we must perform extra processing steps on our products. So EPA is ordering us to comply with different sets of environmental regulations that are in conflict, demanding we increase and reduce greenhouse gas emissions at the same time. This is like being told by a doctor that you have to both gain weight and lose weight.

Under EPA's greenhouse gas "tailoring rule," the El Dorado refinery would need to obtain a new EPA permit for greenhouse gas emissions for any future expansions. The permit would have to show how Lion Oil plans to implement best available control technology (BACT) for controlling greenhouse gas emissions. However, it is unclear what technology constitutes BACT. EPA's federal guidance on what defines BACT is far too broad and confusing regarding what measures our refinery would be able to employ to control emissions, and whether permits would actually be approved and issued in certain circumstances. Such uncertainty is also likely to generate costly litigation over whether a permit will result in the use of "best" available control technology, as well as compliance-related costs and issues.

For example, although it would take a crystal ball to determine exactly how EPA will enforce greenhouse gas regulations on refiners based on the lack of useful data in their BACT guidelines, it seems likely that efficiency standards may be created that refiners will be forced to achieve. This sets up a scenario where the efficiency of a very small facility, such as our 80,000 barrel-per-day refinery, will be compared to the efficiency of a refinery five to ten times that size. Economies of scale almost always favor larger plants when it comes to efficiency measurements, in the same way that a 747 aircraft uses less fuel per passenger than a Piper Cub.

If Lion Oil were forced to comply with efficiency standards that might be easily attained by a larger plant, we would likely find them impossible to achieve at any cost. In the past, EPA has not shown the kind of flexibility it would take to allow small refiners to survive under these circumstances. Small refiners are typically located in underserved rural areas of the country, making them a critical part of the agricultural infrastructure. If small refiners are forced out of business, competition will suffer and American motorists, truckers and farmers will be increasingly reliant on foreign refiners to supply our nation's gasoline and diesel fuel.

EPA's greenhouse gas regulations give rise to additional concerns. Just like the failed cap-and-trade legislation considered in the last Congress, EPA's current greenhouse gas regulations will drive up the cost of virtually everything we must purchase to operate our business. Electricity, for instance, is likely to see extreme price increases. Refiners use a significant amount of electricity, and while our foreign competitors will not see increased prices for this necessary part of the refining process, domestic refiners will. This will just add to the already impressive list of advantages our foreign competitors have. It is no accident that not a single refinery has been built in the United States in the last 30 years while many have been built in China, India and the Pacific Rim.

EPA is also planning to regulate greenhouse gas emissions at existing refineries, regardless of whether or not they expand. As you know, EPA announced December 23rd that it will regulate greenhouse gas emissions from power plants and oil refineries. EPA is scheduled to propose new source performance standards (NSPS) for power plants in July and for refineries in December of this year, with final standards for power plants in May 2012 and for refineries in November 2012. EPA announced that this was necessary because together power plants and refineries account for 40 percent of greenhouse gas emissions. Although refineries are the second-largest GHG-emitting sector, all refinery emissions are still less than 4 percent of total GHG emissions, compared with 36 percent for power plants. The relatively small size of refinery emissions should be taken into account as EPA determines its approaches to reducing sector emissions.

Reducing greenhouse gas emissions through the NSPS process poses several concerns and could be extremely costly for Lion Oil. First is the fact that, as with BACT under the greenhouse gas tailoring rule, industry does not know what will constitute “Best Demonstrated Technology” (BDT), the standard under NSPS, to control greenhouse gases. Lion Oil has already installed state-of- the-art, highly efficient equipment at our refinery. Additional gains could be extremely difficult to achieve and the cost may be prohibitive. While EPA does have to conclude that BDT is actually economically feasible, the statute allots EPA a fair amount of discretion on this front. These BDT determinations may result in significant costs to a company, but may not result in significant emission reductions.

And as I have stated, the tremendous economic pain caused by EPA’s greenhouse gas regulations has no environmental benefit. This is because greenhouse gases emitted anywhere on Earth go into the common atmosphere that every nation shares. So if EPA imposes greenhouse gas limits on U.S. manufacturers, it will shut down manufacturing facilities here and send them to India, China and other nations. The foreign facilities will then simply emit greenhouse gases within their own borders that have the same impact as greenhouse gases emitted in the United States. Those facilities will also emit pollutants that are strictly regulated in our country but lightly regulated abroad. The end result will be that our nation will export more good American jobs – and import more manufactured products like gasoline and diesel fuel. And shipping all those products to the United States will generate even more greenhouse gases.

So ironically, instead of reducing GHG emissions, EPA's actions could end up increasing them. Doing this makes absolutely no sense. Only action taken at the international level through a binding international agreement – with participation by every nation on the planet – can have a real impact on greenhouse gas emissions, and only international action can ensure that the economic costs of such restrictions are shared equally and fairly by all parts of the world.

In addition, it is important to understand that a great deal is already being done on the national level to reduce greenhouse gas emissions, particularly in the transportation sector. These existing greenhouse gas regulations pose great challenges and come at great cost to the refining sector. Federal fuel mileage standards approved for new cars and light-duty trucks require them to be able to go an average of 36 miles on a gallon of fuel by 2016. That alone will save billions of gallons of gasoline and diesel fuel each year, sharply reducing carbon emissions. This reduction in gasoline demand will also pose significant financial challenges for refiners, who are already facing tight credit markets and high crude oil prices.

Additionally, the Energy Independence and Security Act of 2007 (EISA) will require American refiners to mix 36 billion gallons of biofuels (such as ethanol) with gasoline and diesel fuel each year by 2022. EPA's own data indicate these measures will reduce transportation sector greenhouse gas emissions 26 percent by 2030. While challenges must still be overcome to achieve this level of biofuels production, both the federal government and individual states must be careful to ensure that costly and counterproductive rules are not superimposed on these efforts.

In 2009 I testified before the Energy and Environment Subcommittee, a predecessor to the Energy and Power Subcommittee, that the cap-and-trade legislation in Congress at the time would in all probability drive Lion Oil to close our El Dorado manufacturing facility, wiping out most of the few remaining good- paying jobs in our part of Arkansas. The math was simple – the penalty costs for producing carbon dioxide were higher than our profits, so we were going to become unprofitable. That, of course, would very quickly lead to our shutting down forever. Congress did the right thing and did not pass the legislation.

However, now as we begin 2011 we appear to face the same wolf draped in a softer wooly disguise. From where Lion Oil stands, the teeth are just as sharp and the intent is just as malevolent. It is our fear that left unchecked, EPA will use the Clean Air Act to drive to exactly the same goals as the defeated cap-and-trade legislation that Congress so wisely chose not to pass. And in that pursuit, EPA will inflict the same damage on our company and our nation's economy.

It is no mistake that EPA has chosen the oil industry as one of its first targets, because we are not popular. Everyone thinks the price of gasoline is too high, and many people think it is our fault. I'm not going to try to change anyone's mind on that score, but only ask you to consider that the oil industry is not one monolithic entity. It is composed of everything from the largest integrated multinational corporations in the world to small companies like mine that have been providing good-paying jobs to Americans for almost a century. Is the EPA justified in targeting us? Greenhouse gas emissions from the operation of U.S. refineries are just under 4 percent of the total U.S. greenhouse gas emissions. Lion's emissions only represent two one-hundredths of 1 percent of the U.S. total. And for that insignificant amount, we face possible extinction. How do you justify this to the people who will lose their jobs if my small company goes out of business?

It makes no sense to destroy existing jobs held by hard-working Americans today in hopes of creating new so-called "green" jobs that may not materialize for several years, if at all. We need to grow our economy and increase the number of jobs, not simply try to shift jobs from one sector to another, leading to a net loss in total employment.

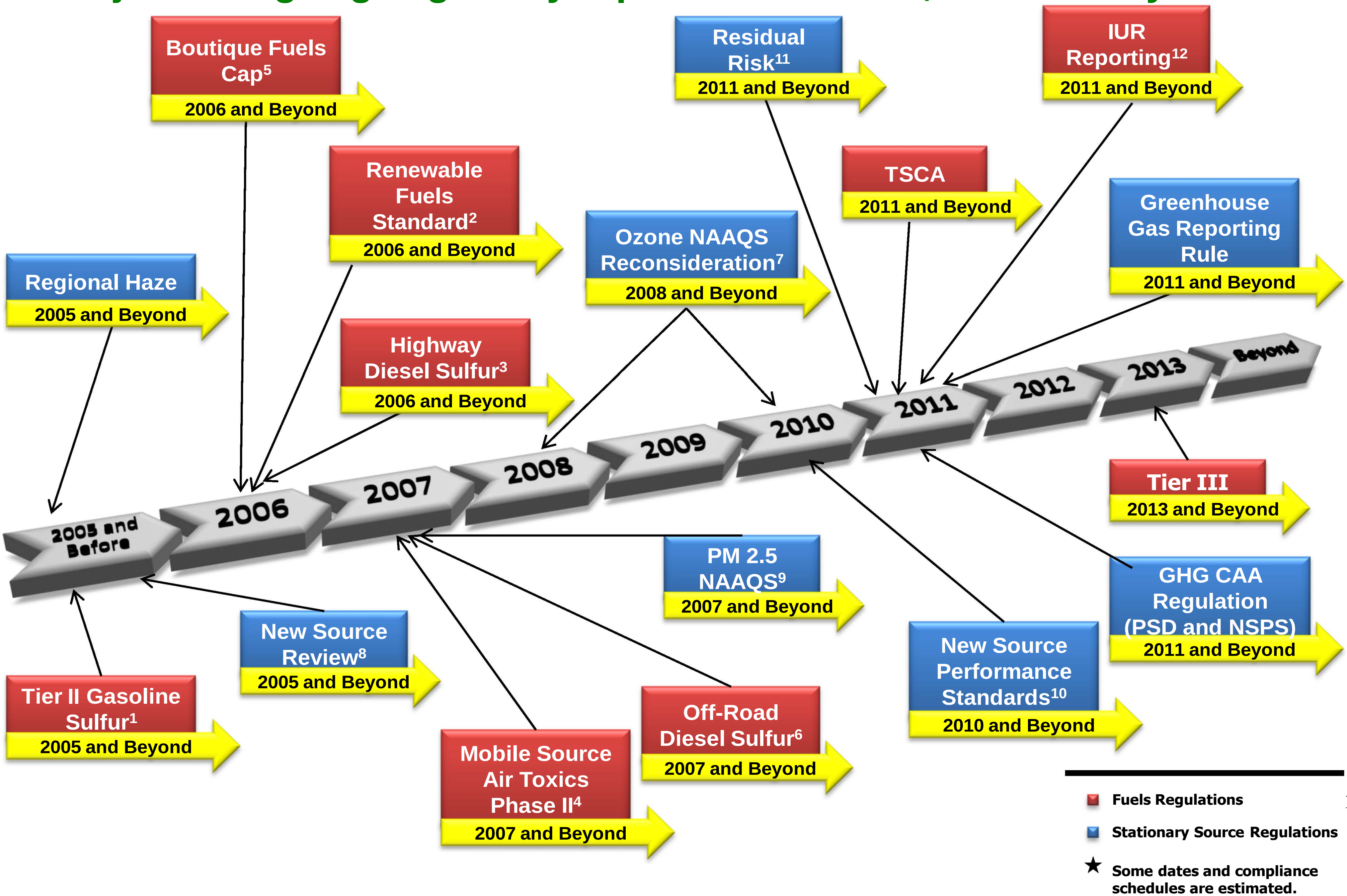
While defending some regulations, President Obama recently wrote in an op-ed in the Wall Street Journal that "we are also making it our mission to root out regulations that conflict, that are not worth the cost, or that are just plain dumb." EPA's greenhouse gas regulations meet all these criteria. We're asking you to take a long, hard look at these greenhouse gas regulations and the devastating harm they will cause. We believe if you do that based on objective facts and science, and do a cost-benefit analysis of these regulations, you will come to the same conclusion we have reached: EPA must be stopped from regulating greenhouse gases. As members of Congress, you have the power to do this.

The Clean Air Act, enacted 40 years ago, was designed to deal with pollutants that are inherently harmful to human life. The Clean Air Act was not designed to regulate greenhouse gases. Members of Congress who sponsored the legislation have said that loud and clear. In fact, carbon dioxide – the principle greenhouse gas – is a necessary part of the world's ecosystem and a necessary ingredient of life. We exhale carbon dioxide as we breathe, and every human being emits about 300 kilograms every year. EPA is trying to do by regulation what Congress refused to approve by legislation. No agency – no matter what the policy, no matter what political party controls the White House – should be able to replace the people's elected representatives in writing laws for our nation. This sets a dangerous precedent that could have repercussions of enormous proportions.

This is why it is so important that Congress approve the Energy Tax Prevention Act of 2011 in its current form, to reverse EPA's effort to impose regulations never authorized by legislation. Under the Energy Tax Prevention Act of 2011, our elected representatives in Congress would have the ability to create a balanced and workable energy policy that does not disadvantage American workers in the competitive global economy. This bill should also be passed in its current form to protect the domestic refining industry and the quality jobs we provide to individuals across the country. The legislation is also necessary to protect consumers, farmers and truckers from higher gasoline and diesel fuel prices. Finally, enactment of this bill is necessary to continue manufacturing transportation fuels here in the U.S. and to protect our nation's energy security.

Thank you again for giving me this opportunity to present my testimony. I would be happy to take any questions.

Projected Ongoing Regulatory Impact on Refineries, 2005 and Beyond ★



Notes:

1. Longer compliance time for refineries in Alaska and Rocky Mountain states as well as small refineries covered by the Small Business Regulatory Enforcement and Flexibility Act (SBREFA). Additional compliance time is available for these refineries if they produce ultra low sulfur highway diesel beginning in 2006.
2. The Energy Policy Act of 2005 includes a renewable fuels standard (RFS) which mandates the use of 4 billion gallons of renewable fuels starting in 2006. The Energy Independence and Security Act of 2007 increased RFS volumes.
3. Longer compliance time for small refiners covered by SBREFA.
4. Phase II Mobile Source Air Toxics Rule was promulgated on February 26, 2007 (72 FR 8428).
5. The Energy Policy Act of 2005 caps the number of motor fuels available for use in State Implementation Plans at the same level as those already in use as of September 1, 2004. EPA promulgated rules on December 28, 2006 (72 FR 78192).
6. The first phase of the off-road diesel sulfur program was effective in 2007 and the second phase was effective in 2010.
7. Ozone non-attainment designations made April 2004. Due to litigation, the deadline for State Implementation Plans (SIPs) was extended to February 2008. Compliance, depending upon classification, is required between 2008 and 2022. In March 2008, EPA tightened the ozone NAAQS in accordance with the 2008 ruling, but is reconsidering the rule and will announce a new and likely tighter Agency standard by summer 2011.
8. NSR Reform rules were litigated, with the emissions increase test being upheld by the Court, the equipment replacement rule being voided and other rules being remanded. 2008 NSR reforms like debottlenecking and aggregation will suffer the same fate leaving NSR compliance confusing for refiners, and operators vulnerable to enforcement by EPA, States, and citizens for the next several years.
9. EPA set a new PM 2.5 NAAQS in 1997 and designated nonattainment areas in December 2004. In September 2006, EPA issued new fine particulate standards, strengthening the 24-hour standard and retaining the current annual standard. Due to litigation, the Agency has not yet promulgated implementation standards for the 1997 rule.
10. A final refinery NSPS will be completed by the end of 2011.
11. Final refinery residual risk rule expected in January 2009 was withdrawn. EPA will re-propose the refinery residual risk rule in 2011-2012 timeframe.
12. EPA published its proposed Inventory Update Reporting (IUR) Modification in the Federal Register for 2011 reporting, leaving very little time for companies to become familiar with the new requirements. EPA has proposed to lower or remove certain reporting thresholds, which will substantially increase the reporting burden. In addition, EPA is seeking retroactive information from 2006 through 2010 that companies were never told to collect. It would also require a greater amount of substantiation for confidential business information claims.