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Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Hearing on “H.R. 4345, The Domestic Fuels Protection Act of 2012”
Subcommittee on Environment and the Economy
April 19, 2012

Thank you, Mr. Chairman, and I want to thank our witnesses today for their presentations. I know that, Mr. Chairman, you indicated that you're going to changing some of the bill and that the drafting was flawed. You particularly commented about changes in the MTBE area for contaminated drinking water supplies. I appreciate that, but I think that this bill is flawed beyond just the drafting. But with all due respect, the flaws of this legislation would eliminate all recourse for communities that have lost their drinking water supply to MTBE contamination.

There are over 1,500 registered fuels and almost 7,500 registered fuel additives. This legislation would remove all liability for harm caused by these fuels and fuel additives.

Some of these additives are rarely used because the oil companies understand that they are powerful contaminants and if they enter the ground water, they can do harm. They can damage small engines. They can have an impact on public health. We don't know on this committee the facts for each of these 9,000 fuels and fuel additives. But under this bill, oil companies can now use them with impunity.

Consider ETBE, which has many of the same chemical characteristics that have made MTBE such a difficult contaminant to clean up. This bill would exempt oil companies from liability for ETBE contamination.

MMT is a fuel additive that can severely damage engines and potentially endanger the public health. We should not eliminate liability for harm caused by MMT, but that's what this bill does.

MTBE rarely contaminates water by itself. It is usually part of an underground plume of gasoline from leaking underground storage tanks. If we remove the liability shield for MTBE, what about the other constituents in gasoline, such as benzene that can also contaminate a community's water supply?

I certainly welcome greater clarity from the Chairman on how he plans to modify the bill. But the point is, to have this Committee pick and choose among the 9,000 fuels and fuel additives, providing liability protections for some and not others, sounds like the ultimate case of the government picking winners and losers.

If we exempt all of these 9,000 fuels and fuels additives, we're only picking losers. One point is for sure: if we pass this law and absolve ExxonMobil of any liability for selling unsafe, dangerous, or defective fuels, we will remove the incentive for responsible corporate behavior.

There are many other reasons why this legislation is pretty bad.

Section 2 provides that if a convenience store owner determines that his or her underground storage tanks are compatible with a fuel, then the owner is exempt from liability if leaks pollute the neighbor's drinking water.

Section 3 says that if someone sells you fuel that damages your car or destroys your boat engine, you are on your own.

And section 4 has a safe harbor provision for all fuels and fuel additives that is similar to the one that Reps. Barton and Bass proposed for MTBE in 2005. Then it adds a provision to throw out civil actions that are already in court. And on top of that, it prohibits even filing certain civil actions. Making it against the law to turn to the courts for justice runs contrary to our basic values.

I may be making some factually incorrect statements because the Chairman is revising this bill, but the essence of this bill is to provide exemption from liability. And I'm troubled by exempting from liability people who ought to be held accountable.

This bill is Washington at its worst. There are trade associations that couldn't agree on this bill. There are real challenges associated with implementing the renewable fuel standard mandated by Congress. But the only thing these trade associations could agree to is to shield themselves from any liability and shift the costs of harm from their product to the consumers and the taxpayers.

This is not going to solve problems. It will only enhance them.

Mr. Chairman, I regret to say that I have such troubles with this bill. I still hold out on the chance that we can work on a bipartisan basis on some of these issues, such as reauthorizing the Safe Drinking Water Act's State Revolving Loan Fund. That needs to be reauthorized, and it should be done so in a bipartisan manner.

I'm disappointed that we've gone in the opposite direction with this legislation. Rather than working to ensure our communities have safe and affordable drinking water, we are considering legislation to allow oil companies and others to pollute groundwater with impunity.

That is very disturbing to me and I hope that my fears are not going to be realized.