

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

October 6, 2005

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

U.S. House of Representatives
Washington, DC 20515

Dear Representative:

As the two national associations of state and local clean air officials from across the country, STAPPA and ALAPCO share in the nation's profound distress over the utter devastation that has been wreaked upon Gulf states by Hurricanes Katrina and Rita, and in the deep commitment to provide immediate assistance to these areas. As a nation, we must focus on the many near-term relief efforts that are so sorely and immediately needed in order for more comprehensive restoration and revitalization to begin in the Gulf region; at the same time, we must ensure against jeopardizing long-term environmental and public health protection. It is for these reasons that STAPPA and ALAPCO are concerned by legislative efforts to affect major changes to fundamental environmental protections.

On Friday, October 7, 2005, in the wake of these national disasters, the House of Representatives will vote on H.R. 3893, the "Gasoline for America's Security Act of 2005." The stated purpose of the legislation is "to expedite the construction of new refining capacity in the United States [and] provide reliable and affordable energy for the American people." However, this bill seeks sweeping and permanent changes to critically important national Clean Air Act programs. Not only do STAPPA and ALAPCO have very serious concerns with these changes, we also believe this bill does not provide any near-term solutions to the urgent health and environmental problems that anguished areas face right now. We are especially concerned by changes related to New Source Review (NSR), ozone attainment date extensions, refinery permitting and fuel blends. We believe these provisions are inappropriate since there is no evidence that environmental requirements, particularly those related to air pollution, have prevented or impeded the construction of new refineries or the major modifications of existing refineries.

First, by codifying the highly controversial NSR rule on "equipment replacement" promulgated by EPA in October 2003 and a "rate-based" test for determining whether an emissions increase has occurred – both of which are the subject of ongoing litigation – the bill would allow many industrial and utility sources of pollution to modify their process equipment and increase emissions of pollutants without the installation of pollution control equipment and a demonstration that the added pollution will not violate health-based air quality standards.

Second, the ozone attainment date extension provision of this bill – the same as that rejected a few months ago in the Energy Conference Committee – is overly broad, lacks clarity and has the potential to result in continued interstate transport and further delay in attaining the health-based ozone standard. STAPPA and ALAPCO do, however, recognize that some states experience problems with overwhelming transport and that existing provisions of the Clean Air Act do not adequately address such areas. We would welcome the opportunity to work with the Committee to craft an alternative approach that avoids the above concerns.

Third, the bill would designate the U.S. Department of Energy as the “lead agency” for coordinating all federal refinery authorizations and environmental reviews – including siting, construction, expansion and operation permits, certifications, opinions and other approvals. The bill also gives the U.S. Court of Appeals for the District of Columbia original and exclusive jurisdiction over any civil action for the review of a state’s order or action. Again, there is no evidence that this preemption of state and local air agencies’ permitting authority is necessary to expedite refinery construction.

Fourth, cleaner fuels are critical to reducing air pollution and protecting public health; over the years states have acted judiciously in adopting such programs. Nonetheless, the recently enacted Energy Policy Act of 2005 contains provisions that curtail the ability of states to adopt fuel programs tailored to meet their specific air quality and public health needs. We strongly disagree with attempts in H.R. 3893 to further restrict states’ authority to adopt clean fuel programs; such programs have been highly cost effective because they can be applied only where needed to address specific local air quality problems.

Not only will the provisions of H.R. 3893 that we have identified obstruct state and local efforts to attain and maintain clean, healthful air, we do not believe they will help achieve the stated goal of the legislation. The revisions being contemplated will not affect refinery construction, since there is no evidence that the provisions they amend have inhibited construction up to now; NSR requirements are unrelated to the stated purpose of this legislation; extending attainment deadlines will harm citizens living in areas with unhealthful air quality; and the ability of states to require special fuel blends has already been restricted by the Energy Policy Act of 2005.

STAPPA and ALAPCO urge you to reject H.R. 3893 and to instead focus on appropriately targeted flexibilities and variances to assist directly the affected Gulf states in rebuilding healthy, livable communities.

Sincerely,



Nancy L. Seidman
President of STAPPA



John A. Paul
President of ALAPCO