

**Testimony of Eric Schaeffer**  
**Director, Environmental Integrity Project**  
**Before the Senate Environment and Public Works Committee**  
**October 18, 2005**

Thank you, Mr. Chairman, for the opportunity to testify today about S. 1772, the “Gas Petroleum Refiner Improvement and Community Empowerment Act.” My name is Eric Schaeffer, and I am director of the Environmental Integrity Project, a nonprofit organization dedicated to improving enforcement of the Clean Air Act and other environmental laws.

S. 1772 is aimed at increasing the supply and reducing the price of gasoline and refined products by fast-tracking environmental permits. While this legislation tries to address a real problem, the solutions it offers could increase environmental risks without making much difference to the availability or cost of gasoline. More specifically, I am concerned that S. 1772 would:

- Result in poorly written permits that could increase the likelihood of accidents that could shut down refinery capacity;
- Delay refinery startups by encouraging litigation over vague new standards;
- Shut communities out of decisions that affect their health and property values;
- Subsidize the construction of refineries on government property for some of the richest companies in America;

- Reward refineries that locate or expand in hurricane zones;
- Have little effect on refinery investment decisions that are ultimately driven by profit margins and conditions in the world market.

I would like to address each of these concerns in turn.

### **Haste Makes Waste: Badly Written Permits Increase the Risk of Shutdowns**

Refineries are inherently hazardous operations, and I have nothing but respect for the men and women who work hard to keep these facilities safe while meeting America's need for fuel. But setting artificially short deadlines for reviewing applications to build or expand refineries will only increase the likelihood of accidents or violations that could ultimately lead to shutdowns. And after seeing how vulnerable our refiners are to hurricanes and high winds, we ought to take more time reviewing their design, not less.

It is also a mistake to assume, as S. 1772 does, that refinery expansions are relatively minor events that should require only a few days to permit. Such projects are a major enterprise, requiring the commitment of hundreds of millions of dollars in capital. Motiva is reportedly considering doubling the size of its existing refinery in Port Arthur, increasing current capacity by 325,000 barrels a day. An expansion on that scale is equivalent to adding two brand new refineries to the nation's capacity. The engineering judgments required to complete such projects successfully are extremely complex, especially when they involve retooling existing capacity to process sour instead of sweet crudes, as most U.S. refiners are doing today.

Permit reviews provide a critical opportunity to make sure these modifications meet environmental and safety requirements, and don't make air pollution worse in surrounding neighborhoods. Requiring hard-pressed federal and state regulators to approve or deny every permit for a major refinery expansion in ninety days is just not realistic. S. 1772 does not even require that permit applications be complete before the 90 day review period begins, which may force agencies to rubber stamp permits that are plainly inadequate.

Nor would S. 1772 give regulators the time for careful review of accident-prone or particularly hazardous operations. For example, in March of this year, an explosion at BP's Texas City refinery killed fifteen workers and injured many more. Why should regulators face an artificial deadline for approving the next expansion of this plant, unless they can be sure that it will be more safely managed? Many refiners are investing in coking capacity that allows processing of higher sulfur crudes into gasoline. But cokers are prone to accidents, which require lengthy shutdowns for repair. Rubber-stamping such operations only increases the likelihood of malfunctions that can injure or kill workers while curtailing gasoline supplies.

### **Rushed Permits Could Mean More Litigation and Delayed Startup**

Poorly written permits seem likely to spawn the kind of legal challenges that this bill seeks to avoid. The problem is compounded when vague language is used that implies a shift in legal standards. For example, S. 1722 says that EPA "shall use State permitting and monitoring procedures to satisfy substantially similar Federal requirements under this title." Speaking from experience, I can testify that lawyers love

to fight over what words like, “substantially similar” really mean. The bill requires participating agencies to consolidate permits, but then appears to allow piecemeal approval of components, which could further add to the confusion. Permits that are rushed through review with ambiguous language left unresolved are more likely to face court challenges, which could add to the delay in starting up new capacity.

### **The Public Needs a Voice in Permitting Decisions that Affect their Health and Property**

Refineries are major sources of pollution and, with few exceptions, are situated right in the middle of heavily populated residential neighborhoods that must breathe the exhaust from the refining process every day. Communities like Port Arthur, Texas, and Lake Charles, Louisiana, suffer from chronic air pollution and high asthma rates, and are already overwhelmed with refinery expansions. In 2002, more than 207,000 children in Texas attended school within two miles of a refinery or chemical plant.

These are the very people hardest hit by Hurricanes Katrina and Rita which, in Louisiana alone, spewed more than 8 million gallons of oil across the state. The recent spill from the Murphy oil refinery contaminated as many as 1,000 homes, some of which may have to be bulldozed. The USEPA’s own sampling shows that sediments in some neighborhoods are soaked with diesel oil and gasoline far above the state of Louisiana’s cleanup standards.

The Clean Air Act has always allowed for public review of major permitting decisions, on the reasonable assumption that those who live next to large refineries have

an obvious stake in decisions that affect their health and property. These communities are not against refineries, but do expect that they will be built and managed as safely as possible. The rubber-stamp permit process authorized under S. 1722 will eliminate any real public involvement, especially among those people still digging out after the hurricane. There is something fundamentally unfair about telling residents still scraping oil off their houses, some of whom may be suffering from asthma, that they had better make way for an even bigger refinery and be quick about it.

### **Oil Companies Do Not Need our Tax Dollars to Build Refineries**

S. 1722 would shift tax dollars to some of the richest industries in America, by subsidizing the construction of refineries on military property. The top five oil companies have reported a quarter of a *trillion* dollars a year since 2001. While the stock market has been flat for almost everyone else this year, at least three refiners (Valero, Conoco-Phillips and Sunoco) have offered stock splits in the last six months. Valero, now the nation's largest refiner, has reported eight successive quarters of record earnings, and Citgo paid its shareholders a \$400 million dividend earlier this year. I would respectfully suggest that this is not an industry that ought to qualify for a handout from hard-working taxpayers.

### **Will our Refineries Stand Up to the Next Hurricane?**

Almost half of the nation's refining capacity is in Gulf Coast states, which is also where the largest expansions are underway. In fact, Citgo and Murphy Oil in Louisiana

had just completed such expansions before the recent hurricanes forced their shutdown. Katrina literally ripped oil tanks off their moorings, spewing their contents for miles around. The government of Jamaica recently announced that the expansion of a major aluminum refinery in that country would have to meet construction standards designed to withstand hurricanes and high winds. If Jamaica has figured out that its energy infrastructure must be designed for its climate, why can't we?

Even if you don't believe global warming is the cause, meteorologists agree that we are entering a weather cycle in which tropical storms and hurricanes will be more severe. If Congress is going to encourage construction of more refineries, surely we should ask whether so much of our energy infrastructure ought to be situated where natural disasters are most likely to strike. S. 1722 does not address this problem.

### **Profit Margins Determine Refinery Capacity, Not Environmental Rules**

Ultimately, the bill may rest on a shaky premise, as Clean Air Act permitting provisions seem to have only a marginal effect on decisions by oil companies to invest in new refining capacity. The President of the American Petroleum Institute informed Congressman Barton's subcommittee last year that, "We have not said that environmental costs are responsible for the higher prices." The Department of Energy tells us that low sulfur gasoline and diesel fuels are not expected to affect refining costs over the next few years. Industry and government analysts alike agree that profit margins are the most significant factor, and record profits from high gasoline prices have encouraged a major investment in added refining capacity. Projects already reported or announced are

expected to add nearly 600,000 barrels a day to our existing capacity over the next several years.

### **The Public Wants a More Fuel-Efficient Economy**

Of course, the surest way to secure enough gasoline at a reasonable price is to reduce our consumption. New automotive technologies, even for heavier vehicles, are achieving much higher fuel efficiency without compromising safety. Data from the Department of Energy shows demand had begun moderating in response to high prices even before the hurricane, as consumers shop for more energy efficient choices. Last December, energy analysts at Booz-Allen cautioned refiners that demand for gasoline would “plummet” below supply as easily as 2007, if inflation adjusted prices remained at \$2 per gallon, well above today’s levels.

A recent poll by the Pew Charitable Trusts shows that eighty-six percent of respondents would support tighter fuel economy standards. I hope that Congress will find time to consider a solution that the public is so clearly ready to embrace.