OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Issue Papers

OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Jack N. Gerard
President and Chief Executive Officer

1220 L Street, NW
Washington, DC 20005-4070
USA
Phone 202-682-8500
Fax 202-682-8110
Email gerardj@api.org
www.api.org

December 2008

Dear President-elect Obama:

On behalf of the American Petroleum Institute and its member companies, we extend our sincere congratulations on your election as the 44th President of the United States.

Your election comes at a time of great challenge for our nation, and all of us will need to work together to put America's economy back on track. In your Chicago speech on election night, you called on the country to "resist the same partisanship and pettiness and immaturity that has poisoned our politics for too long." We could not agree more. Energy is not a partisan issue. Every American has a direct stake in ensuring that the right decisions are made in shaping our nation's energy future. The U.S. oil and natural gas industry – employing 1.8 million Americans directly and responsible for another 4 million indirect jobs – stands ready to work with you and the new Congress to help ensure the future economic prosperity of all Americans.

We cannot meet the economic and energy challenges that face our nation without energy diversity. We will need increasing quantities of all forms of energy, including oil and natural gas. According to government energy projections, oil and natural gas will play leading roles in meeting our nation's energy needs for decades to come, even with greater reliance on alternative energy and increased energy efficiency. Today, the United States is in a global race for energy. The challenge we face is to implement policies to ensure continued adequate and affordable supplies of energy that will help us maintain a strong, globally-competitive, and job-producing U.S. economy. We must also increase our energy efficiency, address global climate change and maintain a maximum effort to protect our environment.

Current and future energy demand will require continued access to domestic oil and natural gas resources if we are to reduce our dependence on imported energy supplies. However, access alone is not enough. Tremendous capital investments by the oil and natural gas industry will be required if we are to continue to match energy supply with demand. Counterproductive policies such as higher taxes targeting the U.S. oil and natural gas industry will undermine our nation's energy security by discouraging new domestic oil and natural gas production, deterring new investments in refinery capacity, and tilting the competitive playing field for global energy resources against U.S.-based oil and natural gas companies.

The enclosed papers address key issues likely to be considered by your administration and Congress as the nation continues its quest to secure its energy future. The subjects include an industry overview, workforce issues, access to energy resources, taxation, global climate change, refining and fuels, oil sands, facility security, international markets and clean air.

API stands ready to serve both as a resource and a partner to help America chart a path forward to secure its energy future.

Sincerely,

Jack Gerard

An equal opportunity employer

OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Table of Contents

Section 1 Overview of the Oil and Natural Gas Industry

Section 2 Energy Sector Workforce

Section 3 Exploration and Production

Section 4 Oil and Natural Gas Industry Taxation

Section 5 Global Climate Change

Section 6 Refining and Marketing

Section 7 Canadian Oil Sands

Section 8 Securing U.S. Oil and Natural Gas Facilities

Section 9 International Oil and Natural Gas Policy

Section 10 Clean Air

OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Overview of the Oil and Natural Gas Industry

Introduction

The U.S. oil and natural gas industry is the backbone of this nation's economy. According to the latest available data, the oil and natural gas industry supports 5.9 million jobs – 1.8 million people directly employed by the industry, with more than 4 million indirect jobs. The oil and natural gas industry is massive and requires huge and often high-risk investments. Its earnings contribute greatly to the American economy and way of life and allow companies to reinvest in the facilities, infrastructure and new technologies that keep America going strong well into the future while generating returns that will meet shareholders' expectations.

Oil and natural gas development on federal lands, both onshore and offshore, help our nation reduce its dependence on foreign sources and provides more revenue for the U.S. Treasury – helping pay for vital programs and reducing pressure on U.S. taxpayers. Oil and natural gas leasing and development has generated more than $200 billion since 1953 through bonus bids, royalties and lease rental payments. The U.S. government received $3.7 billion from company bids in a single Gulf of Mexico lease sale this past March. In fact, revenues from development of all U.S. oil and gas resources could exceed $4 trillion over the life of the resource.

Between 1996 and 2007, the U.S. oil and natural gas industry invested more than $1.2 trillion in a range of long-term energy initiatives compared to a net income of $974 billion. Net income is generally lower than cash flow due to deductions for past and current tangible investments and depletion of oil reserves. The industry's investment in emerging energy technologies between 2000 and 2007 represents 65 percent of the total spent by all of industry and the federal government during this time period. This includes renewables, such as solar, wind and geothermal power, frontier hydrocarbons, such as shale and oil sands, and end-use technologies, such as fuel cells.

Our industry is not immune to the effects of the current financial crisis and some companies have had to reduce their investments; others have not. Time will reveal the full impact of this crisis but our industry is accustomed to up-down cycles. We've gotten through financial crises before and we will get through this one as well.

The financial crisis makes action on all aspects of energy policy more urgent than ever. If we want to bolster the U.S. economy, create jobs, and enhance U.S. global competitiveness, strengthening U.S. energy development is crucial. In poll after poll, the American people have made it clear they favor greater access to America's vast oil and natural gas resources to work for the benefit of this nation.

The U.S. needs a balanced energy policy that promotes energy efficiency, conservation and greater supplies of all sources of energy, including the production of domestic oil and natural gas in an environmentally responsible manner. This policy must not only remove barriers to domestic oil and natural gas production, but must also create an environment that incentivizes the creation of advanced energy technologies. History has shown that government mechanisms that interfere with market forces such as price controls, punitive taxes, and picking winners and losers among competing fuels have been unsuccessful and ultimately, consumers very often pay with increased prices at the pump.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Overview of the Oil and Natural Gas Industry

Global Energy Markets

Crude oil is a globally traded commodity, and natural gas is traded through a handful of regional markets. As with any commodity, the fundamental forces of supply and demand are the primary drivers in determining their market price. There are also other factors that affect the price of crude oil and natural gas, including political instability in oil producing regions of the world, weather related disruptions such as hurricane activity in the Gulf of Mexico, and the decline in the U.S. dollar.

According to the U.S. Energy Information Administration's 2008 Annual Energy Outlook, U.S. total primary energy consumption is expected to grow by 19 percent by 2030. Global energy demand is expected to increase 50 percent in the same timeframe. The world's demand for oil has increased from 77 million barrels per day in 2001 to 86 million barrels per day in 2007. By 2030, world petroleum demand is estimated to grow about 35 percent, to 112.5 million barrels of oil equivalent per day.

The United States alone consumes almost 20 million barrels of oil each day and nearly 57 billion cubic feet of natural gas. Our economy depends on reliable supplies of energy for jobs and manufacturing growth, transportation of goods and people, agriculture and our nation's security. The U.S. produces less than 40 percent of the oil we consume; for the rest, the U.S. relies on the global market. To date, the U.S. has imported oil from more than 80 countries in 2008, with nearly half of those imports coming from the Western Hemisphere; the United States' number one source of imported crude is Canada.

The International Energy Agency says there are sufficient global oil resources to meet world demand for at least the next 50 years. However, in order to meet the world's energy needs, the oil and natural gas industry will have to spend about $9.6 trillion between 2006 and 2030 – $400 billion a year – to develop new fields, build more tankers, pipelines and refineries. In 2008 alone, new investment is expected to reach $197 billion – more than a 12 percent increase over 2007. Despite significant growth of renewables and increases in energy efficiency, more than half of the world's energy demand will be met in 2030 by oil and natural gas, as is the case today.

Today, about 80 percent of the world's oil reserves are owned by the foreign national oil companies; many of these countries have yet to establish stable trade and investment regimes to support this effort. **Only six percent of worldwide oil reserves are held by investor-owned oil companies.** As a result, U.S.-based companies compete for energy projects around the world where competition is fierce. API member companies bring enormous advantages in technology, resources and worldwide experience to this effort. These same member companies also employ many U.S. citizens in their overseas endeavors. However, U.S.-based oil companies are being shut out of overseas investments as more and more projects are in the hands of companies controlled by foreign governments.

In a global environment which favors large state-owned companies controlled by foreign governments, it is imperative that U.S. policy does not further disadvantage U.S.-based companies. Imposing artificial restraints such as unilateral economic sanctions or punitive taxes would make competition

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

against the state-owned firms even more difficult. At home, history has shown, legislation that interferes with market forces such as price controls and windfall profits taxes have unintended consequences that make matters worse, not better, for American consumers. Such actions increase prices to consumers, decrease domestic supply, and can lead to shortages in situations when the American economy needs supplies the most, such as in the wake of a natural disaster or supply disruption in the global market.

Who Owns Energy Companies?

Chances are you do. In fact, tens of millions Americans have a stake in the U.S. oil and gas industry. According to a 2007 study conducted by Dr. Robert J. Shapiro, former Under Secretary of Commerce for Economic Affairs under President Clinton, the majority of the oil and gas industry's shareholders are "middle-class U.S. households with mutual fund investments, pension accounts, other retirement accounts, and small personal portfolios."

Approximately 55 million American households with a median income of under $70,000 have a mutual fund account, and 45 million U.S. households have an IRA or personal retirement account. This study also found that only 1.5 percent of U.S. oil and natural gas company shares are owned by corporate management. This means that 98.5 percent of oil and natural gas company shares are owned by individual investors, IRA accounts or other individual retirement accounts, pension funds, mutual funds and other firms, and institutional investors.

A windfall profits tax targeted at U.S.-based oil and natural gas companies would erode the savings of millions of Americans whose retirement and other investments rely on shares of oil and gas companies. It would also put state public-employee pension plans even further in the hole. The burden of new taxes imposed on U.S.-based oil and natural gas companies is ultimately imposed not only on state taxpayers called upon to keep state pension plans solvent, but every American worker with a pension or retirement account.

Industry Earnings – the Key to Industry Investment

The oil and natural gas industry is one of the world's largest – it is also one of the world's most capital-intensive. Thus, it is critical that U.S.-based oil companies have the fiscal, economic and commercial capability to compete with state-owned oil companies that are fully backed by government coffers. U.S.-based companies routinely invest billions of dollars each quarter into exploration, research, development and technology. Between 1996 and 2007, the U.S. oil and natural gas industry invested more than $1.2 trillion in a range of long-term energy initiatives, compared to the industry's net earnings of $974 billion (Just like consumers with their checkbook, oil and gas companies can use their cash flow in a number of different ways. So over any given period of time, investments will be greater than or less than earnings depending on the balance left in the checkbook.)

OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

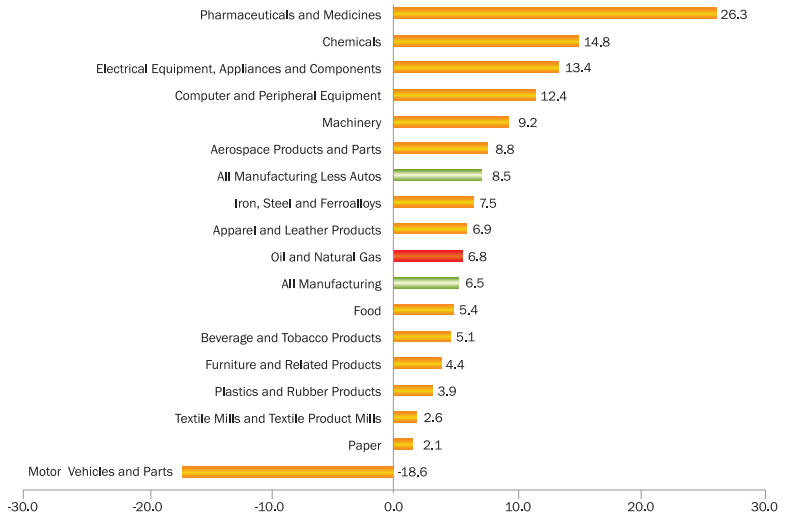
Overview of the Oil and Natural Gas Industry

Consistent with other industries, the oil and natural gas industry strives to maintain a robust earnings capability to ensure it remains competitive, has the capital to reinvest in innovative technologies that will increase production in an environmentally responsible manner, and the ability to locate new sources of energy.

Although earnings by U.S. oil and natural gas companies are in line with all U.S. manufacturing companies, the oil and gas industry pays considerably more in taxes than all manufacturing companies. According to the U.S. Energy Information Administration, the industry's 2006 income tax expenses (as a share of net income before taxes) averaged 40.7 percent, compared to 22.1 percent for all U.S. manufacturing companies.

Data from the second quarter of 2008 show that the oil and natural gas industry earned 6.8 cents for every dollar of sales, compared to 6.5 cents for all U.S. manufacturing, and 8.5 cents for U.S. manufacturing, excluding the auto industry. From 2003 to 2007, average earnings for the oil and gas industry were approximately 8.1 cents on each dollar of sales – a penny above the five-year average for all U.S. manufacturing industries and equal to all U.S. manufacturing excluding the auto industry.

Second Quarter of 2008 Earnings by Industry (net income/sales)



Sources: Based on company filings with the federal government as reported by U.S. Census Bureau and *Oil Daily*.

For more information on industry earnings and related oil and natural gas issues, visit our website at **www.api.org/aboutoilgas**.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Overview of the Oil and Natural Gas Industry

Investment in the Future – Alternative Energy Resources

Between 2000 and 2007, the U.S. oil and natural gas industry invested an estimated $121.4 billion in emerging energy technologies including renewables, such as solar, wind and geothermal power, frontier hydrocarbons, such as shale oil and oil sands, and end-use technologies, such as fuel cells.

This investment represents 65 percent of the total $188 billion spent by all of industry and the federal government combined on emerging energy technologies during this time period, according to an October 2008 study by the T2 and Associates and the Center for Energy Economics.

The U.S. oil and natural gas industry invested $15.9 billion in the North American market from 2000 to 2007 on advanced end-use technologies. Mostly for efficiency improvements through combined heat and power (cogeneration) and for advanced technology vehicles using fuel cell technology. This investment represents 35 percent of the estimated total amount spent ($45.5 billion) by U.S. companies and the federal government combined in this area.

Moreover, publicly announced non-hydrocarbon investment by The U.S. oil and natural gas industry is estimated at $1.7 billion, representing five percent of the total investment approximately $32.7 billion. The industry's top investment is in wind with expenditures also made in solar, geothermal and landfill digester gas.

The total U.S. oil and gas industry end-use and non-hydrocarbon investments are estimated to total $17.6 billion from 2000 to 2007, nearly four times the $4.6 billion invested by the federal government.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Energy Sector Workforce

Energy Sector Jobs

The Department of Labor states (March 2007) that the average age of workers in the energy industry is over 50, and projects significant retirements within 5 to 10 years. Employers will have to hire above replacement levels to keep pace with the nation's energy needs.

Employment growth in the energy industry is anticipated to cover a broad range of positions with a wide range of skills and educational backgrounds. Employment needs will include: engineers; welders; pipefitters; electricians; surveyors; equipment operators, and many other professional skills and trades. It is therefore imperative that the U.S. government encourage high schools, trade schools, colleges and universities to strengthen and emphasize scientific and engineering disciplines, as well as skilled trades, to ensure we can supply the energy sector with qualified workers in the future.

Oil and Natural Gas Industry Jobs

The oil and natural gas industry currently has 1.8 million people directly employed in the sector. There are another 4 million people whose jobs, occupations, and livelihoods are directly tied to the oil and gas industry. Net, there are nearly 6 million people in the United States who are directly employed and indirectly dependent upon the oil and gas industry.

More than 50 percent of the oil and gas industry's current technical workforce will be eligible for retirement within 10 years. This will potentially result in a critical shortage of engineers and scientists in an industry that has a long history of making technological advancements. An API survey in 2004 indicated that as early as 2009 there will be shortages of engineers, geoscientists, instrumentation and electrical workers.

Potential for New High Paying Jobs and Economy-wide Impacts

According to the Bureau of Labor Statistics, the average annual pay for oil and gas exploration, development, and production jobs was $93,541 in 2007. That means that new oil and gas exploration, development, and production jobs created by opening new federal lands to exploration and production will pay more than twice the national average for all jobs in the U.S.

Furthermore, the economic impact of every $1 billion of additional output of domestic oil and gas production is estimated to be an increase in GDP of $620 million and an increase in direct employment of 1,373. The total effects from direct employment are amplified with increased indirect and induced economy wide activity. Each direct job in the exploration and production sector is estimated to produce a total of 5.6 jobs economy wide.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Exploration and Production

Overview

The United States is one of the world's largest producers of oil and natural gas. It is also the world's largest consumer. It is easy to forget that only Saudi Arabia and Russia produce more oil on a daily basis than the U.S., and our nation has the potential to produce even more if our industry is permitted to tap the resources located on non-park federal lands and offshore federal waters. These resources are vital to our nation's energy and economic future, and greater domestic oil and natural gas development would lead to more jobs, billions of dollars to the national economy and enhanced energy security.

America has vast undiscovered resources of oil and natural gas on federal lands – enough oil to power more than 65 million cars for the next six decades and enough natural gas to heat 60 million homes for 160 years, according to government estimates. In fact, this resource base may be considerably greater since government estimates are based on data gathered in the early 1980s using now-outdated seismic survey technologies. When access is provided to areas of geologic potential, our industry's experience is that in many cases exploration leads to discoveries of new resources, and that the systematic development that follows leads to increases in resource or reserve estimates. For example, in 1984 the Gulf of Mexico was estimated by Minerals Management Service (MMS) to hold 6 billion barrels of oil and 60 trillion cubic feet of natural gas. Since that time, reserve estimates for the Gulf of Mexico have increased over 500 percent.

Drilling more is not the sole answer to our nation's energy challenges but certainly it is part of the solution. We know this nation will need increased efficiency and conservation, as well as alternative sources of energy, but a secure energy future cannot be achieved without increased domestic oil and natural gas production. Despite significant growth of renewables and improvements in energy efficiency, the reality is that in 2030 more than half of the world's energy demand will be met by oil and natural gas, as is the case today. As the United States pursues a balanced energy policy that promotes energy efficiency and conservation and greater supplies of all forms of energy, access to new oil and natural gas resources from federal lands and waters will be critical to supplying the energy needs of American consumers, businesses and homeowners.

Oil and natural gas resources on the Outer Continental Shelf (OCS) and on multiple-use, non-park public lands in the Mountain West and in Alaska will be increasingly important to our nation's energy future. The federal government owns nearly one-third of the land in the country, mostly in the Western U.S. Substantial volumes of undiscovered oil and natural gas are believed to underlie these federal lands. According to MMS and U.S. Geologic Survey, total U.S. undiscovered, technically recoverable resources are estimated to be 116.4 billion barrels of oil and 650.9 trillion cubic feet of gas which is enough oil to power over 65 million cars for 60 years and enough natural gas to heat 60 million households for 160 years. However, many of these multiple-use lands are either off limits to exploration and development or subject to restrictions of various kinds that hinder exploration and production of oil and natural gas.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Exploration and Production

Currently in the U.S., approximately 25 percent of crude oil and 15 percent of natural gas production comes from offshore areas. Alaska is currently the source of nearly 15 percent of U.S. oil production. Alaska also has vast natural gas reserves that will make a valued contribution to U.S. supply once a pipeline is constructed to deliver the gas to the broader U.S. market. Moreover, oil and natural gas produced on government lands generates substantial revenue to the government in the form of royalties. Revenues from such development go to both the federal government and to states to help pay for vital programs. These royalties are one of the largest sources of income to the federal government and since 1982, the federal government has collected more than $200 billion in bonus bids, royalties and rentals. In fiscal year 2008, the government collected $23.4 billion from onshore and offshore energy production. This includes the more than $10 billion paid by companies in bonus bids to lease tracts for offshore energy exploration in the OCS in the Gulf of Mexico and Alaska as well as onshore leases.

This industry has proven it can produce oil and natural gas in challenging environments from the deep waters of the Gulf of Mexico, to the rugged mountains of the Western U.S., to the Arctic regions of Alaska. Technology has enabled the industry to explore for and produce oil and natural gas safely, while minimizing the impact on the environment.

Government Lands

Production of resources from multi-use, non-park federal lands is essential to providing the energy resources necessary to grow the U.S. economy, enhancing U.S. energy security, spurring the creation of new high-paying American jobs, increasing revenue to the federal and state governments, and improving the U.S. balance of trade. The U.S. spent $319 billion on imported crude oil and other related petroleum products in 2007, according to the U.S. Census Bureau.

API Position:
The following guidelines should be taken into account when addressing specific land access issues:

- U.S. federal lands should be managed in a multiple-use manner that does not exclude exploration and production of natural resources.
- Land use decisions should recognize that oil and natural gas exploration and production activities have been and can be carried out without adverse consequences to the regional environment. The oil and natural gas industry has demonstrated by its actions a commitment to operate safely and in an environmentally responsible manner.
- Government land use decisions should be based on the best scientific evidence available at the time. It should be recognized that new scientific evidence may justify a change in previously made land use decisions. Moreover, government land use decisions should be made within a specific, well-defined timeframe.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

- Policy initiatives are needed to address the vulnerability of permits to litigation and ensure adequate resources (staff and funding) are made available to the regulatory agencies for environmental studies and issuance of permits.
- Government should ensure that adequate resources (staff and funding) are made available to the regulatory agencies to meet their responsibilities, fulfill their statutory mandates to complete NEPA reviews of projects and regional planning documents, and to issue permits required for exploration and production operations.
- Government should take the steps necessary to ensure coordination between regulatory agencies, thus avoiding inefficiencies and duplication of effort. The Bureau of Land Management (BLM) pilot office program that co-located professionals from U.S. Fish and Wildlife and other agencies with BLM land management professionals in select BLM field offices in the West has increased efficiency in permit decision-making, and should be made permanent and expanded to include all BLM offices.

Access to the Outer Continental Shelf

MMS estimates that total undiscovered, technically recoverable OCS resources are approximately 86 billion barrels of oil and 420 trillion cubic feet of gas. As of October 1, 2008 the presidential and congressional moratoria were removed from a large portion of the Outer Continental Shelf. This portion of the OCS is estimated by the MMS to contain approximately 18 billion barrels of crude oil and 77 trillion cubic feet of natural gas – enough to fuel 60 million cars and heat 116 million households for 10 years.

However, the Eastern Gulf of Mexico remains off-limits under moratoria contained in the Gulf of Mexico Energy Security Act of 2006. The Eastern Gulf of Mexico is a promising area for exploration and it is close to existing infrastructure and traditional markets for natural gas. Keeping this area off limits denies to American consumers, businesses, and households the potential development of an additional 3.7 billion barrels of oil and 21.5 trillion cubic feet of gas.

The industry does not know the resource potential of a particular area until it starts developing that area so increased access is necessary. Although, companies do recognize the importance of developing known resouce rich areas such as the Gulf of Mexico and are ready to make the needed investments to develop these fields. In fact, the lease sales held by the federal government in 2008 for the Central and the Eastern Gulf of Mexico garnered over $7 billion in bonus bids thus, proving that industry will invest in those known resource rich areas.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Exploration and Production

API Position:

- The comprehensive five-year leasing process mandated in the Outer Continental Shelf Lands Act (OCSLA) should be continued. The OCSLA process provides an effective, efficient mechanism for achieving the compatible national interest objectives of identifying and developing OCS petroleum resources in a timely manner, while simultaneously protecting valuable coastal and marine environments.
- The Department of Interior (DOI) should continue with the current five-year planning process started in 2008 and it should propose leasing in all OCS areas, including those areas that were previously subject to the moratorium but prioritizing lease sales held in those areas which are known to have the highest resource potential.
- All available areas of the OCS previously subject to moratoria should be open to leasing and development of oil and natural gas.
- Congress should repeal Eastern and Central Gulf of Mexico moratoria imposed under the Gulf of Mexico Energy Security Act of 2006 and authorize the issuance of leases in the Eastern and entire Central Gulf of Mexico beginning with the 2010 to 2015 Five-Year Plan now under development.

Coastline Buffer Zones in Moratoria and Non-moratoria Areas

The petroleum industry has exhibited sound environmental performance and an ability to operate safely in all coastal and marine environments. A thriving marine environment coexists today with oil and natural gas operations in the Outer Continental Shelf. For example, platforms, some in operation for more than four decades, serve as “artificial reefs” beneficial to many species of fish. Significant resources are expected to be found in areas near shore. Based on MMS estimates nearly 8 billion barrels of oil and 18 trillion cubic feet of gas are estimated to be within 25 miles of shore. The industry's environmental safety record has demonstrated that OCS development and environmental protection are compatible national objectives. In fact, during the severe 2005 and 2008 hurricane seasons, nearly all of the 3,500 offshore platforms in the Gulf of Mexico were exposed to hurricane force winds, but according to the MMS and U.S. Coast Guard there were no significant spills from offshore production facilities.

API Position:

- Coastline buffer zones that restrict areas available to leasing, such as those passed by the House in September (HR6899), should not be established as they place off limits significant critical supplies of oil and natural gas.
- Strong oversight, technology, and a demonstrated commitment to safety, prevention and training equip the industry to address concerns of coastal residents and visitors about the environmental effects associated with offshore platforms and structures.
- Under the OCSLA and its regulations, MMS already possesses the authority to develop lease or permit conditions to address the effects of exploration and production activities on human, marine and coastal environments.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Exploration and Production

Access to ANWR

The coastal plain of the Arctic National Wildlife Refuge (ANWR) is one of the most promising areas for future U.S. oil and natural gas exploration and development. According to the USGS, ANWR is estimated to hold 10.4 billion barrels of oil and 8.6 trillion cubic feet of gas. The oil and natural gas industry has been operating safely within the Arctic environment for decades. Over this same time period wildlife populations in the vicinity of current North Slope operations have remained healthy and stable. The population of the Central Arctic Caribou herd has increased by a factor of five. The surface area required for drilling and production operations has steadily decreased while the ability to reach and produce oil and natural gas resources below the surface over a greater geographic area has increased. Industry's record of environmentally responsible operations in the Arctic environment demonstrates that the valuable oil and natural gas resources in ANWR can be produced safely if industry is given the opportunity.

API Position:
The coastal plain of the Arctic National Wildlife Refuge should be opened to environmentally responsible exploration and development of its significant oil and natural gas resources.

Due Diligence Requirements

During the energy debate that took place during the summer of 2008, many legislators asserted that oil and natural gas companies were not diligent in producing oil and natural gas on federal oil and gas leases should "use it or lose it." This statement betrays a lack of knowledge about industry's operations in the quest to find and develop America's oil and natural gas resources.

Companies are developing their leases in a diligent manner. Federal lease rights are purchased through lease bonus payments that can equal tens of millions of dollars for some offshore leases. It the takes several years for a lessee to analyze the underlying geology, perform the necessary technology and engineering assessments, and arrange the logistics of an exploration or development project on federal lands before a company can determine if a lease contains commercial quantities of oil and natural gas. The reality is that the vast majority of leases do not contain commercial quantities of these resources. Leases not producing by the end of their term are given back to the government, which can then re-lease them. All the money spent by the company to acquire and keep the lease is lost if the lease is returned to the government, thus a significant incentive exists for companies to expeditiously develop these leases if sufficient oil and natural gas is found.

API Position:

- The existing regulatory process is adequate to ensure that leases are developed in a diligent manner, and efforts to change this process could actually discourage, not encourage, needed oil and natural gas development.
- We already have a "use it or lose it" federal leasing system. Federal leases grant federal lessees the right, and impose the obligation, to explore, develop and produce commercial quantities of hydrocarbons, and a federal lease terminates if the lessee is not performing diligent drilling operations on or for the benefit of the lease during the primary term.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

- Any effort to re-examine federal onshore and offshore leasing programs must be deliberative, thorough, and open to participation by all stakeholders including the oil and natural gas industry.

Environmental Controls

Questions have been raised recently about the adequacy of federal and state environmental controls for exploration and production activities. Industry practice has changed dramatically in the past 50 years, even the past 10 years. The U.S. oil and gas industry has invested more than $160 billion since 1990 toward improving the environmental performance of its products, services and operations, $539 for every man, woman and child in the United States. Advancements in technology allow the industry to conduct many aspects of its operations far more efficiently than just a few years ago. This efficiency translates into smaller "footprints" (the amount of surface area disturbed), less waste generated, cleaner and safer operations, and greater compatibility with the environment. Today's producers are applying a host of new technologies and strategies to minimize the environmental impact of oil and natural gas operations to safely supply the U.S. with the resources it needs to fuel our economy.

API Position:
The current state and federal regulatory structure ensures protection of the environment during the essential development and production of oil and natural gas, including the following:

- *Air Quality at Offshore Facilities* – Current Department of the Interior authority for air quality regulation at offshore facilities, as prescribed under the Outer Continental Shelf Lands Act and the Clean Air Act, should be retained.
- *Exploration and Production Wastes* – The disposal of wastes from oil and gas exploration and production is adequately regulated under existing federal and state programs. These wastes, when managed properly, pose no threat to human health or the environment. Additional federal regulation is unwarranted.
- *Wetlands* – The existing authority under the Clean Water Act is sufficient to protect wetlands. To this end, the no net loss of wetland concept, with emphasis on the unique conditions in Louisiana and Alaska, is appropriate.

Hydraulic Fracturing

Hydraulic fracturing is a technique used to allow natural gas and crude oil to move more freely from the rock pores where it is trapped to a producing well so it can be brought to the surface at higher rates. Application of hydraulic fracturing techniques, to increase oil and gas recovery, is estimated to account for 30 percent of U.S. recoverable oil and gas reserves and has been responsible for the addition of more than 7 billion barrels of oil and 600 trillion cubic feet of natural gas to meet the nation's energy needs.

Current industry well design practices ensure multiple levels of protection between any sources of drinking water and the production zone of an oil and gas well. Existing well construction practices that are standard in the industry

and that are required by virtually all states, effectively protect underground sources of drinking water from impacts related to oil and gas exploration and production activities, including hydraulic fracturing.

Studies of the environmental risk of hydraulic fracturing performed by the U.S. Environmental Protection Agency (EPA) and others concluded that there were no significant environmental risks as a result of proper hydraulic fracturing. Further, the U.S. Department of Energy's (DOE's) Strategic Center for Natural Gas noted that more restrictive regulation of hydraulic fracturing, which may not increase the protection of underground drinking water, could have a deleterious effect on the supply of natural gas in the U.S.

API Position:

- State regulation of hydraulic fracturing began over 50 years ago. These regulations created a control system that has effectively protected ground water and drinking water sources. As reaffirmed by state regulators in October 2007, the current regulatory approach retains the effective state regulatory programs that protect the environment.
- Additonal federal regulation of hydraulic fracturing is not needed.

Government Take and Royalty Policy on the OCS

Recent discussions have centered on whether or not the U.S. government is receiving an adequate portion of revenues generated from the production of oil and gas on federal lands. According to DOI, attempts to increase the government 'take' could have an adverse impact on the development of oil and natural gas resources on federal lands. A comprehensive energy policy that encourages (rather than discourages) production of domestic resources is essential.

API Position:

- A federal severance tax on existing oil and natural gas reserves should not be implemented as it would discourage needed oil and natural gas production.
- A transparent and auditable process for the federal revenue management program is critical both to the government and the oil and natural gas industry, and efforts to improve oversight and management of the program should continue. The royalty-in-kind program should be maintained as an alternative to collection of royalties in cash value because it provides for certainty, simplicity and ease of administration.
- If it is determined that a study to reassess the current royalty regime is needed, the scope and objectives of such a study must be clearly defined and industry stakeholders should be involved in the process.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Oil and Natural Gas Industry Taxation

Overview

Federal tax policy significantly affects the efforts of the U.S. petroleum industry to secure energy resources for our nation. Existing tax rules allow oil and gas companies to address some of the substantial financial risks associated with large, domestic offshore investments. But other rules hinder the industry's ability to compete for foreign projects that produce energy supplies necessary to supplement domestic resources. In the end, the industry is subjected to a complex and unique set of tax rules that shape how companies invest their capital in new projects.

The oil and natural gas industry has consistently been a substantial taxpayer. Based upon information produced by the Energy Information Agency (EIA), the top 27 energy companies incurred over $200 billion in income tax expense from 2004 through 2006. The worldwide effective tax rate of these companies was 40.7 percent in 2006, which exceeded the top corporate income tax rate of 35 percent as well as the average effective rate for all manufacturing companies of 22 percent. In addition to these amounts, tax legislation enacted during the last three years specifically targeting the industry is expected to increase these tax charges by about $10 billion.

While the need for revenue offsets in recent years has led policymakers to focus on the U.S. oil and natural gas industry as a source of these revenues, any potential revenue raised must be considered in relation to the impacts such increases might have on the ability of these companies to help with other potential objectives. For example, increased taxation on these companies could undermine the development of U.S. oil and natural gas resources or the ability of these companies to compete for foreign projects by restricting capital otherwise available for investment. This in turn could curtail efforts to increase America's energy security. A broader perspective of the existing tax burden incurred by the industry is necessary before additional or specifically directed taxes are imposed.

Tax Policy and Domestic Production

Domestic energy production is influenced by federal tax policy. Domestic investment credits and deductions can lower production costs, mitigate operational risks and make domestic projects attractive when compared to foreign opportunities. Such policies are important because most of the growth in our domestic production focuses on risky and expensive deep-water off-shore projects, which cost several times more to develop than wells on land. For example, according to the Energy Information Agency, approximately half of the exploration wells drilled offshore in 2006 were dry holes and the average cost of such wells was more than $45 million. The current tax treatment of intangible development costs help companies manage the risk and cash flow constraints of these large, capital-intensive investments that may not come to fruition for a number of years. Altering the way these costs are recovered would likely eliminate a number of marginal domestic projects and would render some of the costly, high-potential prospects economically unattainable – especially compared to many foreign projects. In addition, any investment in new exploration and development from the cash-flow generated by currently deducting these drilling expenditures would be lost.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Oil and Natural Gas Industry Taxation

API Position:
U.S. tax policy should encourage new capital investment rather than inhibit the investment necessary to guarantee our nation's future energy supply. New taxes are counterproductive to that goal.

Tax Policy and Foreign Competitiveness

The oil and gas industry has little freedom to choose the locations where it conducts much of its business, because it depends on where the oil and natural gas is located. With respect to non-U.S. prospects, current international tax rules can put U.S.-based companies at a competitive disadvantage when trying to access new reserves. U.S. tax rules have been specifically crafted and restructured over the past 30 years to limit how oil and gas companies may use foreign tax credits generated from the foreign operations. This has created a substantial risk that foreign oil and gas income will be subject to double taxation – once by the country of origin, and a second time by the United States. In fact, the 110th Congress recently enacted legislation further constraining the ability for U.S. companies to apply foreign tax credits. As a result, the projected after-tax rates of return on foreign exploration and development projects continue to be lower for U.S. oil and gas companies than the projected rates of return for their foreign-based counterparts. Further, these complex rules produce added compliance and administrative costs on the industry. Consequently, U.S.-based companies have to factor these additional burdens in bids for overseas investments against global competitors not subject to such complex rules, which can put such companies at a competitive disadvantage.

API Position:
Keeping U.S.-based petroleum companies internationally competitive benefits this nation in several ways. The continuous and strong foreign presence of U.S. oil and natural gas companies supports the foreign employment of U.S. personnel and utilization of U.S. oil field equipment and technology in foreign markets. International competitiveness also means more domestic employment in activities that support those foreign operations. And perhaps most importantly, it secures the supply of energy resources that our nation needs to support our economy. Additional tax increases imposed on the industry can only undermine the realization of these benefits.

Tax Policy and Excise Taxes

The U.S. petroleum industry is among the largest non-governmental collectors of taxes. From 2003 to 2007, companies within this industry collected and remitted more than $200 billion in excise taxes for use in the Highway Trust Fund. The 111th Congress will likely take up legislation to reauthorize both the Highway Trust Fund and the Aviation and Airport Trust Fund, and in that regard, it can be expected that Congress will examine alternatives for increasing revenues for these funds. Potential sources for additional revenues include an increase in the fuel excise tax rates and anti-fuel tax evasion proposals. The oil and gas industry has an ongoing partnership with federal and state authorities to help identify and prevent motor fuel tax evasion schemes. Excise tax evasion

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

creates a competitive disadvantage for honest taxpayers and undermines the legitimate distribution of petroleum products. API is committed to assisting efforts to shut down motor fuel tax evasion where evidence exists.

API Position:
Tax revenues from motor fuel tax rate increases should be reserved for Highway Trust Fund or Aviation and Airport Trust Fund (as the case may be) purposes. Motor fuel tax rate increases that generate funds for non-transportation related uses are inappropriate.

Anti-fuel tax evasion legislation is justified where there is evidence of evasion activity or where IRS lacks the requisite enforcement tools under current law to shut down the alleged evasion scheme. With respect to anti-evasion proposals in the upcoming Highway Trust Fund and Aviation and Airport Trust Fund reauthorization bills, Congress should consider the following: whether there is hard evidence of evasion; whether the alleged evasion activity is illegal under current law; and, whether such proposals would impose unreasonable compliance costs on legitimate taxpayers.

Windfall Profits Taxes

Over the past few years, the increasing price of oil has been felt by the consuming public in a number of ways. U.S.-based oil and gas companies have, during this time, seen a rise in their income that has caused some to call for a separate “windfall profits tax” on some of those profits. There have been previous efforts to tax excess or windfall profits, but these taxes were quickly repealed as being unsound. For example, a windfall profits tax was specifically imposed in 1980 on oil to ensure that oil companies did not benefit unduly as domestic price controls were removed in a period of relatively high crude oil prices (driven by the Iran-Iraq war). However, this tax was subsequently repealed in 1988 and, based upon an analysis conducted by the Congressional Research Service, it was found to have failed to raise the revenues predicted due to declining oil prices in the 1980s and to have decreased U.S. oil and gas production and increased the nation’s reliance on imported oil.

API Position:
A new windfall profits tax would be problematic and counterproductive for a number of reasons. First, the oil and natural gas industry has not been earning “windfall profits.” The reality is that the industry’s earnings have been very much in line with other industries, and often are lower. Over the past five years (2003 to 2007), the oil and natural gas industry earned 8.1 cents for every dollar of sales compared to an average of 7.1 cents for all U.S. industry. Second, it is very difficult to define and capture “windfall profits” without undermining the incentive to invest and expand a business. These taxes take away the benefits of better times and offer no help to oil and gas companies during bad times, which stifles investment in domestic production. Third, windfall profits taxes rarely address the dynamic in the marketplace that would allow it to capture windfall profits. The windfall profits tax of the 1980s failed to raise any significant revenue because the marketplace corrected itself and prices went down. A similar market correction seems to have been taking place recently as crude prices have fallen significantly from their highs.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Oil and Natural Gas Industry Taxation

Superfund Taxes

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), otherwise known as Superfund, is the federal program created to pay for the cleanup of "orphan" waste disposal sites – those either abandoned or whose owners are bankrupt. Until they expired in 1995, taxes on industry funded 74 percent of government expenditures under the Superfund program. However, in the period that taxes have not been imposed, the program has continued to carry out its mission for a number of reasons. First, with respect to petroleum companies, the 1990 Oil Pollution Act separately makes petroleum companies responsible for cleaning up potential oil spills and a separate excise tax on crude oil is imposed for a trust fund to ensure that any such cleanups occur. In a similar manner, a separate 0.1 cent-per-gallon excise tax on gasoline has been used to ensure the cleanup of leaking underground storage tanks. In addition, private industry has demonstrated the ability to pay for cleaning up the vast majority of Superfund sites, and the EPA projects that it will continue to do so. Only about 11 percent of total Superfund program spending has actually paid for the cleanup of abandoned hazardous waste sites, the program's original and primary intent. More than half of Superfund monies have paid the clean-up costs incurred on problem sites that have not been abandoned, and a substantial portion of the fund has paid for non-site-specific EPA management and administration costs.

API Position:
As the American economy continues its recovery, new taxes are not the answer to ensure that the Superfund program continues to carry out its mission of cleaning up those sites where no solvent responsible party can be found. A reinstatement of funding of the program through the petroleum tax, the chemical tax, and the corporate environmental tax would generate a number of concerns. First, the old tax was inequitable, because the petroleum industry paid almost 60 percent, of all Superfund taxes prior to their expiration, yet its share of the liability for cleaning up Superfund sites was less than 10 percent. Second, superfund taxes are a cost of doing business for those industries affected, and at least a portion of these taxes are ultimately paid by consumers in the form of higher prices for products such as gasoline. Finally, resumption of the Superfund taxes will not guarantee an increase in the level of the program's clean-up activity. As an "on-budget" trust fund, expenditures from the Superfund trust fund are subject to federal budget rules and the annual appropriations process, regardless of whether the taxes are reinstated. Future cleanups are not in jeopardy, and responsible parties will continue to pay for site clean-up for which they are responsible, thereby ensuring the continued application of the "polluter pays" principle.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Global Climate Change

Overview

The U.S. oil and natural gas industry believes in the importance of addressing the risk of global climate change and managing greenhouse gas (GHG) emissions. These energy companies have made the largest investments in new low- and zero-carbon technologies – 45 percent of the total investments from private and government sources since 2000. New mandates for measuring and reporting GHG emissions will be implemented in June 2009. Fuel producers must also comply with future EPA requirements for reduced GHG emissions from advanced biofuels over the next 14 years.

Existing environmental laws, including the Clean Air Act, the Endangered Species Act, the National Environmental Policy Act, and the Clean Water Act, are fundamentally ill-suited to manage greenhouse gas emissions. These regulatory programs were designed to address local or regional pollutants within the U.S., while GHGs are dispersed globally and their atmospheric concentrations are affected by countries around the world.

Regarding new climate change policies, all approaches should be considered with a realistic evaluation of costs and the effects on energy supply, especially at this time of economic uncertainty. Policies should balance cost burdens, encourage private investment in low-carbon technologies, provide a uniform national policy, and find the most environmentally and cost-effective ways to reduce emissions without choosing "winners" and "losers." The oil and gas industry is committed to working with President Obama and executive agencies on national climate change policies that are environmentally effective, economically sustainable and fair.

Update on Industry Actions

We all have a role in addressing the risk of global climate change. That includes America's oil and natural gas companies, which have invested over $40 billion in low-greenhouse gas technologies since 2000 – that's 45 percent of all spending on these technologies by U.S. companies and the federal government combined.

Oil and natural gas companies are addressing climate change in diverse ways, taking action to reduce GHG emissions now, and investing in technologies that will reduce them even more in the future. In one year alone, the energy savings from improving refinery energy efficiency was equivalent to taking 525,000 cars off the road.

The Energy Information Administration has reported that even with increased efficiency and more renewable energy supply, our growing population and economy will need an estimated 28 percent more oil and 19 percent more natural gas in 2030 than in 2005. Any climate change policy must begin with increasing our domestic supplies of energy, including natural gas, which has the lowest emissions per Btu of any fossil fuel.

The oil and natural gas industry is not only investing in a portfolio of efficiency improvements and alternatives. It also has developed software tools for tracking emissions at all segments of the oil and natural gas supply network. This unified methodology is essential to measure before you can manage. On carbon capture and storage, oil and natural gas companies have four decades of experience capturing and storing carbon dioxide (CO_2) to enhance domestic

oil production and reduce our reliance on imports. Virtually 100 percent of the natural gas produced by API members is from companies participating in EPA's Natural Gas STAR program, demonstrating a commitment to efficient natural gas supply and greenhouse gas reduction.

Oil and natural gas companies must also comply with existing mandatory climate change requirements. Over the next 14 years, fuel producers will invest heavily to meet future EPA standards on renewable, low-carbon fuels under the Energy Independence and Security Act (EISA) of 2007. The law launched unprecedented mandates for renewable fuels and automobile efficiency. The new fuel standards under the EISA are multi-year, increasingly stringent and estimated to make significant contributions in addressing greenhouse gases from transportation.

However, these fuel standards will require industry engineers and scientists to make technological breakthroughs, and require major investments from both the fuel production and automotive industries. Specifically, the new Renewable Fuels Standard in the EISA requires specific 50 percent and 60 percent life-cycle reductions of greenhouse gas emissions on advanced fuels, in addition to the existing environmental fuel requirements. EIA estimates that these efforts will reduce greenhouse gases from petroleum transportation fuels by 1.2 billion tons through year 2022[1], equivalent to emissions from 18 coal-fired power plants operating through year 2022.

API Position:
Any climate legislation should meet some basic criteria for a robust, cost-efficient national policy for economy-wide long-term reductions in greenhouse gases. These criteria include balancing reasonable cost burdens, encouraging low-carbon technologies, providing a uniform national policy, and finding the most cost-effective ways to reduce emissions without choosing "winners" and "losers."

Climate change policy must be environmentally effective; promote a positive investment environment that allows for rapid development and deployment of energy-efficient and emission-reduction technology; provide access to all domestic energy sources, including natural gas which will face increased demand; be transparent and understandable to consumers and all stakeholders; avoid severe damage to the U.S. economy; and keep U.S. energy production competitive in the global marketplace.

API supports the following principles as elements of a sound approach to the long-term challenge of potential climate change:

- Promote advanced, energy efficient technologies and sequestration options as part of a long-term, cost-effective strategy, without government selection of winners and losers;
- Encourage the rapid development and adoption of energy-efficiency technologies and enabling accelerated capital stock turnover by addressing legal, fiscal and regulatory impediments to such technologies;

1 API calculations from EIA's Annual Energy Outlook 2008 reports (with and without the Energy Independence and Security Act).

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

- Identify and expand cost-effective, near-term voluntary actions to mitigate GHG emissions;
- Provide assurance that companies will not be disadvantaged later for their current voluntary actions;
- Support economic growth and avoid damage to the economy posed by ineffective policies involving unrealistic near-term emission targets and timetables;
- Export advanced, energy-efficient technologies to the developing world through financing incentives and reduced export barriers, while protecting property rights;
- Promote global participation, including by developing countries, to address this challenge cost-effectively;
- Carefully weigh the potential consequences of any policy that would make energy producers responsible for emissions outside their control (i.e., consumer emissions);
- Equitably treat the emissions from all sources of greenhouse gases economy-wide, and ensure that the burden of legislation does not fall disproportionately on any particular industry, source or group of sources of greenhouse gases;
- Continue to advance scientific understanding of global climate change in order to calibrate and adapt future policies appropriately and effectively;
- Build into any long-term policy a process for periodic reviews and reauthorization to provide for responses to uncertain economic costs, developments in technology, increased understanding of climate change risks, and international competitiveness issues;
- Pre-empt the use of existing environmental laws, such as the CAA, CWA, Endangered Species Act, and NEPA, for GHG reductions. These laws and regulations are inappropriate for GHG reductions and would be costly and ineffective;
- Recognize and mitigate the international competitive disadvantages created by domestic legislation. Without mitigation, the result could be the reduction in domestic oil and natural gas production and the shift of refinery operations and job overseas;
- Educate decision-makers on the critical role that natural gas could play in reducing greenhouse gas emissions; and
- Advocate policies which do not disadvantage the production, processing, or delivery of domestic natural gas.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Global Climate Change

Use of Existing Environmental Requirements

Any policy must avoid regulating greenhouse gases under existing environmental laws including the Clean Air Act, the Endangered Species Act, the National Environmental Policy Act, and the Clean Water Act. These laws are fundamentally ill-suited because they are designed to address local or regional issues within the U.S. while greenhouse gases are dispersed globally and remain in the atmosphere for decades.

Use of the Clean Air Act (CAA) would broadly impose dated rules that would be exceedingly complex and burdensome. The number of stationary sources emitting GHGs above the levels regulated by the Clean Air Act is enormous. CAA regulation of stationary sources would be a mammoth, expensive and intrusive undertaking and would adversely affect many millions of Americans.

Policy makers should review the grave concerns raised in EPA's Advanced Notice of Proposed Rulemaking which include, but are not limited to, the following.

- The ANPR would broadly impose dated command and control requirements that would be exceedingly complex, elaborate, burdensome, and expensive, and would not encourage innovation.
- The difficulty and arbitrariness of trying to force-fit existing Clean Air Act provisions to address GHGs would be fraught with technical and legal uncertainties, provoking legal challenges that prevent the stability needed for long-term energy investments.
- The likely outcome will be counterproductive: slowing down permits for efficiency upgrades that could lower the GHGs per unit of production, and delaying production and use of clean-burning natural gas.
- Regulating GHG's under the CAA could significantly delay and even jeopardize investments refineries need to make to expand U.S. supplies of ultra-low-sulfur diesel.
- The ANPR ignores current regulatory initiatives already underway, such as the rulemakings on fuel economy and fuel specifications authorized by EISA.
- The ANPR's misuse of the CAA would likely harm America's international competitiveness. A regulatory regime that jeopardizes U.S. competitiveness would likely result in fuel production moving overseas, taking with it jobs and earnings, and increasing America's dependency on foreign sources of refined fuel products. The inevitable regulatory delays would slow or stop investment for many small and large businesses – something this country clearly does not need in these trying financial times.
- The ANPR fails to promote a meaningful discussion of the broad policy and economic context in establishing a national climate change policy with an economy-wide scope. The path forward must include a comprehensive public discussion of potential solutions and their impacts on the national economy and energy security.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

In short, managing greenhouse gases and ensuring energy security for consumers will require policy attributes that the Clean Air Act cannot deliver.

Executive branch actions must set a consistent national climate policy. Without a consistent national policy that avoids entanglement in existing federal regulations and the emerging state and regional greenhouse gas programs, economic activity could slow down nationwide with little long-term progress towards advanced technologies. As one example, under the Endangered Species Act, the Fish and Wildlife Service could determine our national climate change policy.

Near-term climate policy should support the deployment of readily available energy technologies and sources such as clean-burning natural gas. In both the near term and the longer term, policy should enable the market to develop and select these technologies – not arbitrarily pick winners and losers. A sound approach to managing greenhouse gas emissions involves investment, equitable costs, consistent national policies and understandable market signals.

OBAMA-BIDEN TRANSITION PROJECT

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Refining and Marketing

Overview

The primary objective of the refining and marketing operations (also referred to as the "downstream" segment) of the U.S. oil and natural gas industry is to meet consumers' desires for plentiful, reliable and affordable fuels and other petroleum products while satisfying societal expectations regarding health, safety and the environment. In doing so, the industry attempts to inform the public and decision makers with the best scientific, economic, environmental and risk analysis information regarding the impacts of potential legislation, regulations and government policies on our industry.

Price Gouging Legislation

The refined product supply disruptions resulting from Hurricanes Katrina and Rita renewed debate about the need for federal price gouging legislation. In 2007, the 110th Congress held several hearings on price gouging, and legislation was passed in both the House and the Senate that would establish federal authority to regulate the price of refined products either on a temporary or permanent basis. The 2007 Senate bill went beyond traditional notions of "price gouging" legislation and would impose vague price caps on gasoline, other petroleum distillates and crude oil. The House bill did not apply to crude oil but had similar vague language. Both bills would have imposed criminal penalties including prison time and exorbitant fines as well as significant civil penalties for operators convicted of price gouging.

API Position:
Federal price gouging legislation is unnecessary for the following reasons:

- Price gouging legislation, by introducing price controls, interferes with normal market forces that efficiently address supply/demand imbalances and is nearly always counterproductive where commodities such as petroleum products are concerned.
- The Federal Trade Commission (FTC) investigated whether price gouging, as Congress defined the term, occurred anywhere in the country in the wake of Hurricanes Katrina and Rita. The FTC had full access to internal company documents and data and concluded that refined product pricing at all levels of distribution was justifiable in nearly every situation examined.
- The U.S. is not self-sufficient in crude oil or refined petroleum products and must rely on imports for incremental supply. It therefore cannot afford to ignore market forces outside of its borders by creating an artificial pricing regime within.
- Year-round, vague, floating, price caps of the type found in proposed legislation create a compliance trap for all sellers at all levels of distribution.
- Federal price gouging legislation is not neccessary because a majority of states already have statutes in place. Federal legislation would only be useful if it expressly preempted all state price gouging laws and created a level and clearly-defined playing field.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Implementation of the Renewable Fuel Standard (RFS)

Our industry is the nation's largest user of ethanol and is increasing the volume of renewable fuels in America's transportation fuel portfolio. 6.85 billion gallons of ethanol was used in 2007 – exceeding the 4.7 billion gallons required in the Energy Policy Act of 2005 RFS. The Energy Independence and Security Act of 2007 (EISA) creates a significantly increased RFS containing four interrelated parts. The RFS requires annually increasing minimum volumes of renewable fuels to be included in transportation fuel sold or introduced into the United States. The U.S. oil and natural gas industry is committed to fully implementing these very challenging requirements. However, the mandated four-tier approach that includes various carve-outs is very complicated, and could lead to boutique blend requirements and inefficient credit markets.

API Position:
There is no need for legislation or regulations that add a low-carbon fuel standard to the RFS.

- API supports a realistic and workable RFS and seeks to avoid or limit fuels requirements that will have a significant and unjustified adverse impact on supply. Our industry will work with EPA during the rulemaking process to make this program as workable as possible. The RFS under EISA is designed to result in significant reductions in greenhouse gas emissions.

The government E10+ research program should be accelerated and receive significantly increased government funding.

- In just a few years, compliance with the expanded RFS will require a ramp up in high-concentration ethanol blends, such as E85, for use in flexible-fuel vehicles, or increasing the level of ethanol in gasoline for all cars beyond 10 percent (E10+). Because of the small percentage of flexible fuel vehicles and the large fuel economy penalty associated with E85, research into E10+ is being conducted.

There must be cooperation and agreement on greenhouse gas (GHG) life cycle modeling between EPA and California.

- The GHG life cycle emissions estimate methodology must be robust, based on sound science and that it addresses both direct and indirect land use changes.

States (and their political subdivisions) should be preempted from setting state or renewable fuel mandates or low-carbon fuel standards.

- Many states are considering enactment of ethanol blending laws that will make compliance with the federal RFS difficult for refiners. Also, state biofuels mandates create additional boutique fuels and interfere with flexible compliance with the federal mandate. As EISA does not contain federal preemption, compliance with the expanded mandate will be further complicated. Flexibility is critical for the reliable supply of fuels. The proliferation of state mandates will likely make it much more difficult for our industry to deal with tight supplies and to get fuel to where it is most needed during those times of tight supplies. EPA should be directed to review state fuels requirements and biofuel mandates to determine whether RFS compliance is hindered.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Refining and Marketing

Refinery Process Safety

Safety is the top priority for refiners. The refining industry works to continuously improve process safety by measuring and stewarding process safety performance, sharing best practices and incorporating lessons learned from process safety incidents into operating practices. Our industry outperforms the broader manufacturing sector in worker safety with an injury rate of about 25 percent of U.S. manufacturing. Over the past few years, Chemical Safety Board (CSB) investigations of incidents have resulted in several recommendations to API to revise certain API Compliance Standards and Recommended Practices. This work is underway with the active participation of organized labor. In addition, OSHA is implementing a National Emphasis Program (NEP) to inspect process safety management programs at 81 of the 144 refineries by the end of 2009.

API Position:
Any potential changes in legislation and/or regulations regarding process safety must be based on sound science and risk management principles.

- Comprehensive regulations are already in place to regulate process safety in the U.S. refining industry (i.e., OSHA Process Safety Management and EPA Risk Management Plan).
- In addition to the Federal regulatory programs, regulatory requirements often exist at the state and even local levels.
- Use of API standards and recommended practices provides an additional layer of safety guidance to further enhance safe and reliable operations.

Refinery Capacity

According to the Department of Energy's Energy Information Administration (EIA), U.S. refiners plan to add somewhere between 800,000 and 1 million barrels of new refining capacity per day by 2010 – the equivalent to adding four new, medium-sized refineries – through the expansion of existing refineries. This would outpace the expansion rate that occurred over the past decade of adding 1 million barrels of refinery capacity per day (equivalent to ten new, medium-sized refineries). In addition, there are plans to build a new 150,000 barrel per day refinery in Arizona (3,000 construction and over 600 permanent jobs) and another 400,000 barrel per day refinery in South Dakota (8,000 construction and 1,800 permanent jobs). The expansion plans underway, or under strong consideration, will help our industry continue to provide reliable fuel supplies to U.S. consumers.

API Position:
Energy policies must encourage greater investment and not discourage investments to expand our nation's refinery infrastructure.

- To meet our nation's energy challenges, we need more supplies of all energy sources. Refined petroleum products will be a part of that equation for the foreseeable future so energy policies must encourage greater investment and not discourage investments to expand our nation's refinery infrastructure.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Canadian Oil Sands

Overview

Canadian oil sands offer a reliable source of energy that can be transported safely and securely by pipeline to U.S. refineries. In fact, Midwestern refineries have been producing fuels from Canadian oil sands-derived crude oil for years while meeting strict U.S. environmental standards. Crude oil derived from Canadian oil sands has characteristics similar to crude oil produced from Venezuela and certain parts of Mexico that has been refined at U.S. refineries for years.

Oil sand deposits in western Canada hold an estimated 173 billion barrels of recoverable oil – the world second largest reserve behind Saudi Arabia. Canada is the United States' number one supplier of oil and natural gas. About half of the Canadian crude oil brought into this country is derived from oil sands. By 2020, Canadian oil sands production is expected to increase from 1.2 million barrels per day to 3.4 million barrels per day. U.S. crude oil demand is expected to increase slightly by 2020.

U.S. Energy Security

The United States needs more oil and natural gas, including oil produced from Canadian oil sands, in addition to alternative energy sources like wind, ethanol and other renewables. Canadian oil sands represent a vast energy source close to the U.S. that is reliably supplied by a friendly neighbor. Some parties have chosen to interpret the Energy Independence and Security Act of 2007, Section 526 as being applicable to fuels produced from Canadian oil sands.

API Position:
Energy policies should encourage the use of all types of energy including oil derived from Canadian oil sands.

- Using more of this nearby, reliable crude oil supply should make Midwest and other U.S. refineries less vulnerable to supply disruptions caused by geopolitical upheaval or storms that affect gulf coast refineries.

Section 526 should be repealed because it creates unnecessary uncertainty about how the government can procure the fuel it needs.

- In order to make the fuels that consumers (including the federal government) need, refineries must process crude oil from a variety of available sources. Crude oil derived from Canadian oil sands is combined with other Canadian crude oil when transported by pipeline to the U.S. Therefore, it is not possible for refiners to "tag" fuels based on the origin of the feedstock.

- Section 369 of the Energy Policy Act of 2005 declares that domestic oil shale and oil sands are important resources that should be developed for energy security purposes and directs the Department of Defense to develop a strategy to use fuel from these resources extracted and processed in the U.S. Assuring the continued flexibility to produce fuels derived from Canadian oil sands would be consistent with EPACT 2005's intent toward use of similar domestic resources.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Canadian Oil Sands

Refinery and Pipeline Capacity

To process increasing oil sands-derived supplies from Canada, U.S. refiners must construct or expand the special processing units and environmental control equipment needed to make more fuel and refined products from this type of crude oil. In addition, pipeline capacity between Canada and the U.S. must also be added.

API Position:
Energy policies should encourage refinery and pipeline expansion projects that create well-paying domestic jobs for Americans and bring additional tax revenue and other economic benefits to the U.S.

- U.S. refineries are currently undertaking or planning for over $30 billion worth of expansion. Investments in pipeline infrastructure to secure crude supplies to many U.S. refining markets exceed $11 billion dollars in committed and potential investments.
- Construction projects on pipelines and refineries to transport and process more crude oil derived from oil sands will produce well-paying jobs for Americans. For example: the new $10 to 12 billion Hyperion Resources Elk Point, South Dakota refinery project is expected to create 8,000 construction jobs and 1,800 well-paying permanent positions and the ConocoPhillips Wood River, Illinois 100,000 barrel per day expansion will create a total of about 3,000 jobs during construction and 100 additional full-time refinery jobs. Approximately 4,000 pipeline-related construction jobs are expected to be created in the next 2 to 3 years.
- Refineries and pipelines require numerous state and federal environmental permits before they can be expanded. Recently, a lack of coordination between federal permit writers and federal enforcement officials has introduced uncertainty into construction plans of some refineries and pipelines.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Securing U.S. Oil and Natural Gas Facilities

Overview

The U.S. oil and natural gas industry, which has developed security expertise through operations in unstable regions around the globe, has made major investments to meet new federal security requirements and industry standards on facilities, personnel, control systems, business continuity plans, and government communications. The protection systems cover the supply system from wellheads, offshore platforms, tankers, ports, pipelines, refineries, storage tanks and most importantly, the protection of employees and their communities.

Public policy to enhance the protection of this network should adhere to the tenets of homeland security. First, the adaptive nature of terrorist and criminal threats requires non-static programs and frequent communication between the public and private sectors. Second, security policies should help protect the supply system, not disrupt supply through proposals to change energy operations or liability. Third, critical asset protection should be risk-based and prioritize protection of sensitive site information. Finally, government security efforts should be consistent with ongoing security operations to avoid conflicting with other government programs, security law and industry operations.

Five specific areas of security policy that are the top priorities to the industry are detailed below: regulations for chemical facilities (CFATS), regulations for worker identification (TWIC), security of control systems (SCADA), business continuity plans, and government communications.

Chemical Facility Anti-Terrorism Standards (CFATS)

This Department of Homeland Security (DHS) regulatory program classifies industry facilities according to their level of security risk, then requires appropriate assessments and security protections. For the oil and natural gas industry, the CFATS program complements other federal security requirements under the Maritime Transportation Security Act, the hazardous materials requirements, the pipeline security protocols, and other government programs. While the oil and natural gas industry supports the risk-based approach of the program, it has had a great deal of concern regarding the "fuels mixture" portion of the regulation. This section mischaracterizes the low-risk nature of facilities such as gasoline distribution terminals, and results in less attention and resources being given to those facilities that pose the highest risk to the nation.

API Position:
Gasoline terminals should not fall under the "high-risk" category of CFATS and therefore the fuels mixture language should be removed from the rule. With this exclusion in place, CFATS should be allowed to progress without further modification by the new administration. This would give the program time to mature and allow the industry to begin implementation. Currently, security metrics are being developed that will enable the public and private sectors to track and measure CFATS effectiveness.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Securing U.S. Oil and Natural Gas Facilities

Transportation Worker Identification Card (TWIC)

API communicates and interacts with the U.S. Transportation Security Administration (TSA) and the U.S. Coast Guard to ensure the universal TWIC regulations and subsequent implementation are consistent with petroleum industry security and business principles.

API Position:
Dialogue between the oil and natural gas industry and the public sector must be maintained to ensure that any legislative or regulatory initiatives are consistent with the practices of the industry and do not disrupt its on-going security programs. As with all security programs, Federal preemption should exist with TWIC to avoid a patchwork of security regulations that become difficult to administer by companies whose operations span state and country lines.

SCADA and Cyber Security

Federal entities continue to undertake efforts to build upon the current security of Supervisory Control and Data Acquisition (SCADA), which are the industrial systems that operate many refinery and pipeline systems. Both SCADA technology and the adaptability of terrorist and other criminal threats are evolving, so communications on SCADA – and more broadly cyber security – must be ongoing and collaborative, with the oil and natural gas industry as a stakeholder.

API Position:
The petroleum and natural gas industry recognizes the threat of terrorist exploitation over potential vulnerabilities in this area but believes that industry's current models are sufficiently robust and adaptable to manage the threat.

Overly prescriptive regulations in this area could significantly disrupt these time-intensive business systems. Any programs that are developed should not be overly prescriptive or conflict with current industry models, but rather should buttress or further augment existing programs.

Business Continuity Initiatives

Continuity plans are key to any business, particularly to keep oil and natural gas facilities operating during times of disruption. Currently, the U.S. Department of Homeland Security is initiating a voluntary business continuity program for the critical infrastructure/key resource (CI/KR) industries, which includes the oil and natural gas industry. While DHS has not yet identified the particular business continuity standard(s) it would like to incorporate for compliance, the agency has made known that the companies in the oil and natural gas industry will be required to comply with the final model. The Emergency Management (EM) workgroup to the Oil and Natural Gas Sector Coordination Council (SCC) has crafted a general oil, natural gas and chemical business continuity technical document.

API Position:
Government programs should be flexible enough to allow businesses to construct and implement their own plans. Any government program to ensure that companies within the CI/KR framework have sufficient business continuity plans should not conflict with the models currently being used by the industry.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Every effort should be made to identify programs already underway by the private sector – such as the API business continuity document currently in development – such that there is limited, if any, conflict with these practices. Furthermore, active communications should be established and maintained between the public and private sector to ensure that any government led program does not adversely impact the industry programs currently in place.

Government Communications

The petroleum and natural gas industry participates in regular classified briefings given by the Department of Homeland Security. These government sponsored classified briefings are extremely important for industry security personnel to understand the current threat scope relevant to their operations.

API Position:
The classified briefing program continues to demonstrate a great deal of value and should be retained. The federal government should seek industry input on numerous security programs, and every effort should be taken to ensure the protection of facility-specific vulnerability assessment as well as security and operating information.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

International Oil and Natural Gas Policy

Overview

The need to import oil – and increasingly natural gas – presents challenges for U.S. energy security. Foremost among them is addressing the certain and daunting task of planning and investing for the long-term development of adequate energy supplies. It is in the best interest of the United States for its energy, trade, and investment policies, to ensure the global competitiveness of U.S.-based oil and natural gas companies and not hinder their ability to make the investments necessary to develop new supplies, at home and abroad. By 2030, world petroleum demand is estimated to grow about 35 percent, to 112.5 million barrels of oil equivalent per day.

Tax Policy

U.S. tax policy plays a critical role in a company's decision whether to invest capital in new energy resource development, and whether U.S.-based oil and gas companies are able to compete without disadvantages in the global marketplace. U.S. tax rules should not subject the foreign income of U.S.-based companies to double taxation – once by foreign governments and again by the United States. Double taxation only benefits international competitors. Those overseas energy resources would still be produced, but without the security of supply that would be realized with U.S.-based oil and gas companies producing the energy, and with little or no benefit to the U.S. economy, U.S. employers, their shareholders, or to American workers.

API Position:

- U.S. tax policy should not place U.S. oil and natural gas companies at a competitive disadvantage with foreign producers. It should avoid double taxation of foreign earnings and encourage new oil and natural gas investment.

Extractive Industries Revenue Disclosure

Finding a workable solution to the issue of resource revenue transparency – one that does not jeopardize the global competitiveness of U.S.-based companies – is important. Significant progress has been and is being made through the G-8's Extractive Industry Transparency Initiative (EITI), a voluntary, collaborative approach involving industry, host governments, NGOs, and other interested parties.

With EITI, the process of designing and implementing the voluntary disclosure creates engagement and discourse among various stakeholders while protecting the sovereign rights of participating host governments. Governments learn how to be accountable to these stakeholders, and the process helps create a culture of accountability in those governments. This enhancement to the culture of accountability would be missing if a mandatory approach to disclosure targeting only certain – mostly U.S. – companies were imposed without taking into account the wishes of those governments.

In 2008, legislative proposals were made that would mandate unilateral disclosure by U.S. companies. Such mandatory disclosure would be harmful to U.S. competitiveness by putting U.S.-based and other investor-owned firms at a disadvantage in the development of global energy resources. Many of the largest global competitors would not be subject to the disclosure requirements.

These entities could benefit from disclosures of payments made by their U.S.-based competitors to the same state-run entities and foreign governments they may be doing, or trying to do, business with. If companies see a competitive advantage from not having to comply with this legislation, they could choose to delist from U.S. exchanges, particularly national oil companies (NOCs) and foreign companies listed as American depositary receipts (ADRs). Furthermore, if such legislation were enacted, the host country – as a sovereign government – could choose to dissolve its contracts with companies subject to the reporting requirements and refuse to negotiate new contracts with companies that would be required to disclose such information, thus putting U.S. based companies at a significant disadvantage. Ultimately, the proposed legislation may apply only to a few U.S.-registered international oil companies – further undermining domestic energy security.

API Position:

- A voluntary approach to extractive industries revenue disclosure such as that embodied in the G-8 supported EITI, is more effective than a mandatory approach that would only be enforceable by the U.S. government on U.S.-based companies, and not sovereign host countries. Host countries could choose to do business with companies not subject to a mandate to the disadvantage of U.S.-based companies.

Unilateral U.S. Economic Sanctions and Divestment

Unilateral U.S. economic sanctions against individual countries harm American workers, businesses and agriculture while accomplishing few improvements in the behavior of those countries. Sometimes, when diplomacy and other efforts fail, multilateral sanctions may be needed, but the record of unilateral sanctions is mostly negative and often counterproductive:

- U.S. firms and workers disproportionately bear the cost of unilateral sanctions.
- U.S. sanctions reward foreign competitors, who fill the void left by U.S.-based firms.
- U.S. global leadership requires global engagement, not isolation.

The U.S. should develop a wide range of alternative responses to objectionable behavior by foreign regimes. These should include diplomatic and economic tools, and should emphasize multilateral mechanisms that the U.S. and its allies may be willing to impose for such purposes.

Should the U.S. government determine that unilateral sanctions are appropriate as a last resort, any sanctions imposed should be for a specified period of time and periodically reviewed to determine if they are still warranted. States should not impose trade sanctions regardless of whether federal sanctions have been enacted.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Forced divestment is an ineffective way to address international social and political problems. It imposes immediate transaction costs on pension funds, which primarily harms retired police, firefighters, teachers and other retired state employees whose pension funds suffer financially when forced to divest millions or even billions of dollars of investments. In some cases, divestment may force fund managers to seek lower quality investments.

- Florida government officials estimate that divestment would cost its state pension funds $800 million a year in lost financial returns.
- California government officials estimate that a broad Iran divestment mandate would put their fund's $163.5 billion portfolio in jeopardy.

Divestment interferes with capital market sanctions. It also alienates important U.S. allies whose cooperation may be needed to successfully resolve difficult international situations. Divestment at the state levels, which raises serious constitutional issues, could create a patchwork of state and municipalities making their own foreign policy, impeding the President's ability to conduct diplomacy.

The most effective way to address foreign policy concerns is multilateral engagement at all levels – political, economic, religious, educational and cultural. U.S. companies can help countries where divestment might otherwise be targeted by providing goods and services that alleviate human suffering. While doing business in these countries, U.S. companies can also aid in their economic development, which may also benefit the citizens of those countries.

API Position:

- Unilateral sanctions are ineffective at changing objectionable behavior and may harm U.S. companies and their employees.
- Divestment may force pensioners to switch to less productive investments.

No Oil Producing and Export Cartels Legislation (NOPEC)

The Act of State Doctrine – which states that a nation is sovereign within its own borders and courts of another country should not be questioned in the courts of another sovereign nation – has long been recognized by the U.S. federal court system. NOPEC legislation would open the door to antitrust suits against OPEC countries by removing the sovereign immunity exemption. The implementation of such legislation would have the exact opposite effect that its drafters intended and would be devastating to security of U.S. oil supplies, potentially increase prices at the pump for consumers, and create an unstable market.

This legislation – which singles out the oil and gas industry for different treatment under U.S. antitrust laws – would have a chilling effect on industry operations and investments around the world. It would impede the industry's ability to gain access to overseas energy resources, thus potentially jeopardizing our nation's security of supply. Furthermore, the environment of ambiguity and uncertainly the legislation would create would interfere with

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

legitimate business decisions that must be made by individuals in the oil and gas industry related to supply which could ultimately have an adverse impact on consumers.

API Position:

- Legislation that subjects oil producing countries to U.S. antitrust laws should be avoided on the grounds that it could have an adverse effect on consumers, jeopardize our nation's energy security by causing a chilling effect on industry operations and investment concerning foreign energy resources.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

energy API®

Clean Air

Overview

The Clean Air Act (CAA) includes requirements for criteria air pollutants, hazardous air pollutants, mandatory control technology for new facilities, as well as permit programs for new construction and operation of facilities.

The CAA requires that EPA set National Ambient Air Quality Standards (NAAQS) for each criteria air pollutant, at levels "requisite to protect" human health and welfare. NAAQS are established for six specific criteria pollutants (ozone; particulate matter (PM) and fine PM which are 2.5 microns or smaller; sulfur dioxide (SO_2); nitrogen dioxide (NO_2); lead; and carbon monoxide). The standards set to protect human health are called the primary standards, while the standards established to protect welfare impacts, such as those on vegetation and visibility, are called the secondary standards. The primary standards have mandatory deadlines for attainment, whereas the secondary standards must be met as soon as is practicable.

States are required to develop State Implementation Plans (SIP) that demonstrate how areas within each state will attain NAAQS by using a combination of "state" and "federally" imposed controls and measures affecting emission sources. Depending on how far out of attainment a county or area is determined to be, different deadlines to reach attainment may be set. Each SIP must be submitted to EPA for formal approval.

Over the years, the CAA has been supplemented with federal regulations implementing the terms of the Act. In addition, the CAA has been extensively litigated, resulting in added judicially-imposed requirements. Because Congress has not reviewed the law since 1990, what exists today is largely a result of administrative and judicial decision-making.

API Position:
Policy makers should consider a number of items to improve the process of clean air regulation:

- Implementing regulations have resulted in many established Clean Air Act programs since the enactment of the Act. The administration should consider these programs as a whole when looking at individual sources. Many times, the same source/facility must balance its requirements under New Source Performance Standards (NSPS), New Source Review (NSR), the Maximum Achievable Control Technology (MACT) standards, the Residual Risk program – just to name a few.

- In any NAAQS rulemaking, the decision to revise or retain a NAAQS should be that of the EPA Administrator. Recently, the Clean Air Scientific Advisory Committee (CASAC) has tried repeatedly to usurp the policy role that the CAA expressly gives the Administrator. This is inappropriate and should be resisted.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

- The statutory requirement to review each NAAQS every five years has proven in practice to hamper the ability of EPA to properly finalize and implement revisions. The tight timing also limits the ability to complete a reasonable evaluation of the benefits and any adverse impacts from the implementation of a revision before the Agency must undertake *another* cycle of review. The Administrator should not be compelled to change a standard simply because a deadline has arrived. If further scientific study is required to assure the Administrator that a change is necessary, the change should wait until the science is clear and the uncertainties are resolved.

- The new EPA NAAQS review process is an improvement over previous standard review processes. It uses an ANPR to express agency policy views earlier in the process with an opportunity for public comment. This process should be carried forward in a new administration as opposed to reverting back to previous methods that predetermined results before the public could comment.

- The administration should conform to the spirit and intent of the Information Quality Act (IQA). The Information Quality Act promulgates procedures to ensure the "quality, objectivity, utility, and integrity" of information disseminated by each federal government agency to the public. The use of IQA procedures to address concerns about the quality of information on which EPA seeks public comment has been largely ineffective to date. EPA generally treats the submission of a Request for Correction (RFC) during the public comment period for a rulemaking as a public comment to be taken into consideration along with all other submitted public comments, or it grants itself multiple extensions for considering the RFC and then denies the request. Requests for Reconsideration typically meet the same fate.