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Congress of the United States

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March 17, 2008

The Honorable Jeff Bingaman
Chairman
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Bingaman:

I am writing regarding questions that have arisen with respect to the interpretation of section 526 of the Energy Independence and Security Act of 2007. Section 526 addresses government contracts to purchase alternative fuels. As the author of this provision and Chairman of the committee of jurisdiction in the House, I would like to share my views as to how the language should be interpreted.

Section 526 provides:

No Federal agency shall enter into a contract for procurement of an alternative or synthetic fuel, including a fuel produced from nonconventional petroleum sources, for any mobility-related use, other than for research or testing, unless the contract specifies that the lifecycle greenhouse gas emissions associated with the production and combustion of the fuel supplied under the contract must, on an ongoing basis, be less than or equal to such emissions from the equivalent conventional fuel produced from conventional petroleum sources.

This provision ensures that federal agencies are not spending taxpayer dollars on new fuel sources that will exacerbate global warming. It was included in the legislation in response to proposals under consideration by the Air Force to develop coal-to-liquid fuels. As you may know, coal-to-liquid fuels are estimated to produce almost double the greenhouse gas emissions of the comparable conventional fuel.¹ The provision is also applicable to fuels derived from tar

¹ See Robert H. Williams, Eric D. Larson, and Haiming Jin, *Synthetic fuels in a world with high oil and carbon prices*, Table 1., prepared for the 8th International Conference on Greenhouse Gas Control Technologies, Trondheim, Norway, June 19-22, 2006 (estimating that coal-to-liquids fuel produces 1.8 times the greenhouse gas emissions of conventional fuel).

sands, which produce significantly higher greenhouse gas emissions than are produced by comparable fuel from conventional petroleum sources.²

The development and expanded use of these fuels could significantly exacerbate global warming, with highly dangerous effects. Thus, it is important to ensure that the federal government does not subsidize or otherwise support the expanded use of these fuels through government purchasing decisions.

Section 526 applies specifically to contracts to purchase fuels, and it must be interpreted in a manner that makes sense in light of federal contracting practices. The purpose of the provision is to bar federal agencies from spending taxpayer dollars to support the development and expansion of alternative fuels and fuels from unconventional sources, if those fuels have higher lifecycle greenhouse gas emissions than the comparable conventional fuels. It was not intended to bar federal agencies from entering into contracts to purchase fuels that are generally available in the market, such as diesel or jet fuel, that may contain incidental amounts of fuel produced from nonconventional petroleum sources.

Thus, section 526 would clearly apply to a contract that specifically requires the contractor to provide an alternative fuel, such as coal-to-liquids fuel, or a fuel produced from a nonconventional petroleum source, such as fuel from tar sands. The provision also would apply to such a contract where the purpose of the contract is to obtain such an alternative fuel or fuel from a nonconventional petroleum source, even if the source of the fuel is not explicitly identified in the contract. Similarly, a contract that supports or provides incentives for a refinery upgrade or expansion to allow a refinery to use or increase its use of tar sands oils would also be subject to section 526. This provision would not apply to contracts to purchase a generally available fuel, such as a specific diesel or jet fuel blend, if that fuel is not an alternative fuel or predominantly produced from an unconventional fuel source.

Questions have also been raised as to whether the implementation of this provision must await the development of specific lifecycle greenhouse gas emissions profiles for each fuel type. The language of section 526 requires only a determination of whether a fuel has higher lifecycle greenhouse gas emissions than the comparable conventional fuel, not a precise estimate of each fuel's specific greenhouse gas emissions. While there is a range of numeric estimates of the lifecycle greenhouse gas emissions of coal-to-liquids fuels produced without carbon capture and sequestration and fuels derived from tar sands, there is no debate over the fact that both of these fuels have substantially higher lifecycle greenhouse gas emissions than the comparable

² See Adam R. Brandt and Alexander E. Farrell, *Scraping the Bottom of the Barrel: Greenhouse gas emission consequences of a transition to low-quality and synthetic petroleum resources*, forthcoming in *Climatic Change* (estimating that fuel from tar sands produces 1.14 to 1.4 times the greenhouse gas emissions of fuel from conventional petroleum sources).

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conventional fuels. There is no barrier to the immediate implementation of section 526 with respect to these fuels.

I hope this clarification of my understanding of section 526 is helpful as your Committee oversees federal agencies' implementation of the Energy Independence and Security Act of 2007.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, flowing style.

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Member