

Testimony of John Engler, President
National Association of Manufacturers
To the House Committee on Natural Resources
Legislative Hearing on H.R.2337
Energy Policy Reform and Revitalization Act of 2007

Thank you, Chairman Rahall, Ranking Member Young, Members of the Committee, for the opportunity to testify today on H.R. 2337, the Energy Policy Reform and Revitalization Act, and to address the broader issues of energy and manufacturing.

For the record, I am John Engler, president of the National Association of Manufacturers, the largest industrial trade association in the United States. We represent the more than 14 million men and women employed in the manufacturing economy, producing \$1.5 trillion in revenues last year.

Our association devotes great attention to energy policy, because manufacturing is tremendously energy intensive. Manufacturers use more than one-third of the nation's natural gas and almost 30 percent of its electricity. Natural gas is important not just as a fuel and source of electricity, but also as a feedstock for such diverse products as plastics and life-saving pharmaceuticals.

Affordable, reliable energy is essential if manufacturers in the United States are to compete in the global marketplace.

Competitiveness is key. In February, the NAM released a comprehensive energy strategy, addressing both the supply and demand sides of the energy equation. "Energy Security for American Competitiveness" embraces conservation, energy efficiency, and the safe development of our abundant domestic energy resources. We have written model legislation based on that strategy.

This comprehensive strategy comes in response to a critical situation for manufacturers. Since prices began to climb in the summer of 2000, the nation has lost more than 3.1 million manufacturing jobs.

Rising energy costs have seriously hindered U.S. manufacturing and its ability to compete. In your home state of West Virginia, Mr. Chairman, the state lost approximately 20 percent of its 75,000 manufacturing jobs between 2000 and late 2006. These losses reverberated throughout West Virginia's economy, especially because the manufacturing jobs paid approximately 40 percent more than the state's average salary of \$30,500.

Nationwide, manufacturing jobs have an average compensation package of more than \$66,000 per year, which is \$12,000 more than the average job in the U.S.

So in West Virginia and across the country, you cannot separate energy, good jobs and the economy.

The NAM strongly believes that our nation's energy policy should be forward-thinking, and that we should not roll back the policy advances achieved through years of diligent, informed work and policy consensus.

I am speaking specifically – and in strong support of – the Energy Policy Act of 2005. When Congress overwhelmingly passed this bipartisan legislation in late July 2005, it was the first time the federal government had adopted a comprehensive energy plan since 1992.

While by no means an all-encompassing solution to our nation's energy needs, the Energy Policy Act of 2005 represented a positive first step toward addressing the market imbalances that have plagued manufacturing.

You cannot talk with any seriousness about U.S. “energy independence” or “energy security” without embracing the tremendous domestic energy resources available in this nation.

Currently, the United States imports more than 55 percent of its petroleum needs. Taking advantage of the Energy Policy Act's provisions that would expedite permitting of domestic energy projects will go a long way toward reducing the country's reliance on foreign imports.

In addition, last year Congress took the historic step of increasing access to the Outer Continental Shelf (OCS) by opening a small portion of the central Gulf of Mexico for development for the first time in 20 years. For the past two decades, the federal government has imposed restrictions on offshore drilling, creating a market imbalance that has caused natural gas prices to sky rocket.

The Department of Interior's Mineral Management Service estimates that there are 420 trillion cubic feet (tcf) of natural gas on the OCS. To put this figure in perspective, this is enough natural gas to heat 100 million homes for 60 years.

Natural gas prices have quadrupled since the late 1990s and has recently been priced at \$8.11 per million BTUs at the Henry Hub facility on the Louisiana coast. The scarcity of natural gas supplies relative to demand is underscored by the volatility of natural gas prices, which reached a peak of more than \$16 per million BTUs in late 2005.

According to the forecasts from the Federal Energy Regulatory Commission, electricity prices will be approximately 30 percent more during the summer of 2007 than in 2006. This is the direct result of climbing demand for expensive natural gas to generate electricity, according to the FERC Report. Forward prices in the Midwest are expected to reach \$82.75 per mega watt hour (MWh), an increase of 30%, and \$93.35 per MWh in Southern California, reflecting a 29% increase from 2006 actual prices. New York City prices will climb by 20%, to \$134 per MWh. Gas rich Texas is expected to see increases in the 32% range, where prices may reach \$103.50 per MWh.

High natural gas costs have had direct impacts on manufacturing employment. This month, the Manufacturing Institute – the NAM's research and education arm – released a survey of the chemical industry conducted by AMR Research.

Ninety percent of the companies surveyed see chemical costs rising, with 62 percent calling the increase “substantial. At the same time, 43 percent see domestic chemical capacity decreasing.

The most disturbing finding was that a quarter of these companies say they will move large parts of their production – on average, about a third of their production – offshore if things not change.

Chemicals are a critical link in the supply chain for two-thirds of U.S. manufacturers, but America’s chemical industry is threatened by rising domestic natural gas costs. At stake is not only the future health of chemical manufacturing firms, but also the thousands of companies that use their chemicals to make everything from crayons to computers.

Later in my testimony I will address the proposed legislation’s provisions affecting federal consistency appeals as they affect our coastal resources. With natural gas prices have a dramatic, damaging effect on manufacturing in the United States, we need policies that encourage use of our domestic resources available on the Outer Continental Shelf.

Section 103 Energy Corridor Designation Process

We are concerned about Section 103, which would repeal Section 368 of the 2005 Energy Policy Act (EPAAct). Section 368 is a land use planning provision that requires the federal land agencies to anticipate and plan for energy infrastructure needs in the West by identifying “energy corridors” through federal lands for future siting of transmission lines, pipelines or other energy facilities. An energy corridor designation is not approval to construct a facility, but it does say to someone wanting to build a facility that the designated corridor is a preferred location. Should someone subsequently apply for a right-of-way within a designated energy corridor, the application would then be subject to additional environmental review and analysis.

It is well-known that additional transmission infrastructure is required in the West to meet growing demand for electricity, but also to transport potential wind and clean coal generated electricity to population centers. New infrastructure is essential for assuring the long term reliable delivery of reasonably-priced electricity. Much of that infrastructure cannot be built with out at some point crossing federal lands. Planning for the need is the best way to assure that energy infrastructure can be built without compromising the management goals of the affected federal lands. Therefore, NAM strongly supports Section 368 of EPAAct and urges you to strike Section 103 from the {Rahall} bill.

Section 104 Oil Shale and Tar Sands Leasing

The Barnett Shale formation in Texas is home to “enhanced recovery” technologies being used to extract resources that were unrecoverable just a few years ago. Today, the field is the most prolific natural gas field in the country – producing some 1.6 billion cubic feet a day.

Research and development plays an essential part of how we strive for energy security. And a forward-thinking, federal energy policy encourages such technological progress, allowing

environmentally responsible access to the nation's energy resources – certainly including oil shale and tar sands.

The Energy Policy Act of 2005 recognized the vast energy potential in oil shale and tar sands and its provisions encouraged their development to diversify and strengthen the U.S. energy profile.

Yet federal statutes and other restrictions still block access to approximately 94 percent of federal lands, which should be used for economic development and the public benefit.

According to the U.S. Geological Service, the United States has more than 2,118 billion barrels of oil equivalent of oil shale resources. This is more than 20 percent of the nation's total hydrocarbon resources. Seen another way, in oil shale alone we have reserves of more than 10 times the amount of oil already consumed during our 200-year long industrial history.

The Department of Energy also estimates that we have 54 billion barrels of oil equivalent in tar sands.

Deposits of oil shale occur in many parts of the world, ranging in size from small deposits of no economic value to enormous formations, covering thousands of square miles. Most oil shales are fine-grained sedimentary rock containing high amounts of organic matter from which oil and gas can be extracted via a distillation process.

Several oil shale leases on federal lands in Colorado and Utah were issued to private companies in the 1970s. Large-scale mine facilities were developed on the properties and experimental underground "modified in situ" retorting was carried out on one of the lease tracts. However, all work has ceased and the leases have been relinquished to the federal government. The last large-scale experimental mining and retorting facility was operated in the western United States from 1980 until its closure in 1991. This facility produced 4.5 million barrels of oil from oil shale, averaging 34 gallons of shale oil per ton of rock over the life of the project.

Total world resources of oil shale are conservatively estimated at 2.6 trillion barrels, with the largest deposits occurring in the U.S., in the Green River formation in Colorado, Utah, and Wyoming, which is estimated to contain between 1.5 and 1.8 trillion barrels in place, about 0.5 to 1.1 trillion of which are at this stage technically recoverable.

Processes for producing oil shale fall into two groups -- mining followed by surface retorting, or in-situ retorting. There have been some small scale field tests of an in-situ process based on slow underground heating. However, the technical viability of larger-scale operations still needs to be demonstrated, particularly the ability to avoid adverse impact on groundwater. Also, the economic feasibility of oil shale projects must also be considered.

One of the goals of the Energy Policy Act is to encourage the development of oil shale, tar sands, and other strategic unconventional fuels. Section 369:

- Requires the Secretary of the Interior to develop an oil shale and tar sands leasing program as soon as practicable and publish a final regulation to implement the program by December 31, 2006.
- Requires the Department of Interior (DOI) to set up a task force to coordinate and accelerate commercial development of strategic unconventional fuels.
- Establishes an Office of Petroleum Reserves to coordinate federal development of strategic fuels.
- Requires the Secretary to carry out an assessment of U.S. oil shale and oil sands.
- Authorizes the Department of Defense to procure unconventional fuels to meet its fuel needs.
- Requires DOI to initiate a leasing program for conducting research and development activities related to the production of oil shale and oil sands and requires a programmatic environmental impact statement to be prepared.

The NAM regards these provisions as making a strong, positive contribution toward U.S. energy security. Placing these resources off limits makes our nation less secure and more dependent on foreign suppliers of energy.

Section 105 Categorical Exclusions

Critically for manufacturers, the Energy Policy Act of 2005 established an important “categorical exclusion” for National Environmental Policy Act studies of oil and gas drilling permits in sensitive wildlife habitats. The NAM supports such categorical exclusions because they fulfill NEPA requirements by significantly reducing the time necessary to process and review oil and gas permits. When we speak of “energy security,” that certainly must include a predictable, consistent process for developing our energy resources, one that does not allow unreasonable or harassing objections that serve only to add costly delays.

Section 390 of the Energy Policy Act of 2005 identified five types of actions that warrant presumption of categorical exclusion from additional environmental review in accordance with the provisions of NEPA, as a result of either an agency’s prior environmental or project review, or the use of an existing operations footprint. The five categories are:

1. Individual surface disturbances of less than five (5) acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.
2. Drilling an oil and gas location or well pad at a site at which drilling has occurred within five (5) years prior to the date of spudding the well.
3. Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five (5) years prior to the date of spudding the well.
4. Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within five (5) years prior to the date of placement of the pipeline.
5. Maintenance of a minor activity, other than any construction or major renovation of a building or facility.

When federal agencies evaluate an Application for Permit to Drill (APD), a Surface Use Plan of Operations, or a pipeline project, no further NEPA analysis is presumed to be required if it meets one of the five categorical exclusions.

However, regardless of qualifying under a categorical exclusion, the policy of the Bureau of Land Management (BLM) is:

- All APDs are subject to a 30 day posting for public review;
- All APDS are subject to interdisciplinary reviews;
- All APDs are subject to non-discretionary statutes such as the Endangered Species Act, Clean Water Act, Clean Air Act and National Historic Preservation Act;
- In order to qualify for a CX, an APD must be covered by prior Environmental Impact Statements (EISs) or Environmental Assessments which have addressed the type of actions being considered and is subject to full compliance to those NEPA analyses and Risk Management Plan RMP decisions

Categorical Exclusions: 18 percent of new domestic oil and gas supply applications

According to the BLM, 1,361 permits to drill were approved under the categorical exclusion in an eight-month period ending in September 2006. These permits represented 18 percent of all APDs that were filed during this period. Wyoming had the most, 596, followed by New Mexico, 538; Utah, 111; Colorado, 59; California, 37; Arizona, 18; and Eastern states, 2.

Section 107 Federal Consistency Appeals

In 1972, when passing the Coastal Zones Management Act (CZMA), Congress mandated: “coordination and simplification of procedures in order to ensure expedited governmental decision making for the management of coastal resources.”

Unfortunately, expedited governmental decision-making did not take place. Consistency appeals have been contentious and, in some instances, the appeals process has dragged on for long time periods.

The Energy Policy Act amendments were meant to address those delays by establishing some time limits in the statute to avoid unnecessary delays in the process.

The CZMA provisions in the Energy Policy Act established three deadlines for the appeals process by amending section 319 of the Coastal Zone Management Act (CZMA). These provisions limit the overall length of this appeals process to a total of 270 days from the date when an appeal is filed (with options that can extend the process for up to an additional 75 days). The first deadline is for the Secretary of Commerce to publish an initial notice of an appeal in the *Federal Register* within 30 days of when it is filed. The second deadline is that the administrative record is closed after 160 days from the date of that publication. During that time period, the Secretary can receive filings related to the appeal. The Secretary has the discretion to extend this period for up to 60 days under certain circumstances. The final deadline gives the

Secretary up to 60 days to issue a decision after the administrative record had been closed, and gives the Secretary the option of extending that time span for up to 15 additional days.

Benefits of Energy Policy Act Language

- The language improves the CZMA appeals process by removing the uncertainties that have plagued existing appeals. The language directs the Department of Commerce (DOC) to ensure timely appeals decisions. Congress has directed the DOC to ensure expedited appeals decisions before, but the process had become increasingly flawed.
- The language reaffirms a mandate Congress imposed on the Secretary to decide CZMA appeals in a timely manner.
- The language preserves all necessary environmental reviews and procedures as required under the National Environmental Policy Act (NEPA) and other existing environmental and permitting statutes. All state, local, and other federal agencies with interests in any coastal impacts of a proposed activity remain full participants in the federal permit process.
- The language maintains the existing roles and rights of coastal states under the CZMA to comment, consult, and issue objections on federal permit activity proposals that the state deems not consistent with state approved coastal zone management plans. This language does not limit a state's ability to comment or object under CZMA. It does not weaken or modify environmental requirements. This language is procedural only – a time deadline that ensures certainty, and removes interminable delays for controversial projects.

Subtitle D Ensuring Safety of Wildlife with Respect to Wind Energy

The NAM believes that a comprehensive approach toward energy leads to the logical conclusion that the United States must diversify its sources of energy. Wind energy should be part of this mix. The new certification requirements of this section of H.R. 2337, however, would bring wind energy development across the United States to a halt, this despite the fact that the National Academy of Sciences has concluded wind turbines cause less than 0.003 percent of human-caused bird mortality.

Furthermore, the broad mandate directing the U.S. Fish and Wildlife Service to review every existing and planned wind project is far beyond the agency's resources and capabilities.

Carbon Capture and Sequestration

Mr. Chairman, I congratulate you on your leadership in promoting carbon capture and sequestration technology. Among other things, carbon capture and sequestration technologies strengthen energy efficiency, in part by using sequestered carbon to enhance oil recovery.

The NAM welcomes H.R. 2337's provisions to encourage development of these technologies, including creation of a federal regulatory framework for the storage and capture of carbon on

federal lands. Mr. Chairman, we also support the bill's provisions authorizing an inventory of potential locations to store carbon dioxide.

Conclusion

Chairman Rahall, on behalf of the members of the National Association of Manufacturers, thank you for the opportunity to appear before the committee today. Energy ranks at the top of concerns of manufacturers in the United States, who see our competitive edge slipping away every time domestic resources are locked away, and every time new regulations add costs and complications.

The NAM strongly supports a comprehensive energy policy that looks forward, retains the advances enacted with the Energy Policy Act of 2005, and embraces positive approaches toward both the demand and supply side of the energy marketplace.