

109TH CONGRESS
1ST SESSION

H. R. 3836

To expedite the construction of new refining capacity in the United States.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2005

Mr. SHADEGG (for himself, Mr. BARRETT of South Carolina, Mr. BISHOP of Utah, Mrs. BLACKBURN, Mr. BROWN of South Carolina, Mr. CANTOR, Mr. CHABOT, Mr. CHOCOLA, Mr. DOOLITTLE, Mr. FEENEY, Mr. FLAKE, Ms. FOXX, Mr. FRANKS of Arizona, Mr. GARRETT of New Jersey, Mr. GINGREY, Mr. GOHMERT, Mr. GOODE, Ms. HART, Mr. HENSARLING, Mr. ISTOOK, Mr. SAM JOHNSON of Texas, Mr. KENNEDY of Minnesota, Mr. KIRK, Mr. MCHENRY, Mrs. MUSGRAVE, Mr. PENCE, Mr. PITTS, Mr. SENSENBRENNER, Mr. SULLIVAN, Mr. WAMP, Mr. WESTMORELAND, Mr. WICKER, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Resources, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To expedite the construction of new refining capacity in
the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fuel Supply Improve-
5 ment Act of 2005”.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

3 (1) Hurricane Katrina, which struck the Gulf
4 Coast and New Orleans, Louisiana, on August 29,
5 2005, substantially disrupted petroleum production,
6 refining, and pipeline systems in the region, impact-
7 ing energy prices and supply nationwide.

8 (2) In the immediate aftermath of Katrina,
9 United States refining capacity was reduced by more
10 than 2,000,000 barrels per day. While some capacity
11 was restored within several days, 4 refineries with a
12 total capacity of 879,000 barrels per day, roughly 5
13 percent of pre-Katrina capacity, remain offline.
14 These refineries sustained major damage and will
15 not reopen for an extended period of time.

16 (3) Within a week of the hurricane's landfall,
17 the national average retail price for motor vehicle
18 gasoline rose by 46 cents to \$3.069 per gallon.
19 Prices of other refined fuels also rose quickly in re-
20 sponse to the hurricane.

21 (4) Before Katrina, United States refining ca-
22 pacity was already significantly strained, with indus-
23 try average utilization rates of 95 percent of capac-
24 ity or higher.

25 (5) No new refinery has been constructed in the
26 United States since 1976. There are 148 operating

1 refineries in the United States, down from 324 in
2 1981. Total capacity at operating refineries is
3 17,000,000 barrels per day, while total United
4 States demand averages nearly 21,000,000 barrels
5 per day. This growing gap is met by an increasing
6 amount of imports of refined products from foreign
7 sources.

8 (6) A growing reliance on foreign sources of re-
9 fined petroleum products impairs our national secu-
10 rity interests.

11 (7) It serves the national interest to increase
12 refinery capacity for gasoline, heating oil, diesel fuel,
13 and jet fuel wherever located within the United
14 States, to bring more supply to the markets for use
15 by the American people. Production and use of re-
16 fined petroleum products has a significant impact on
17 interstate commerce.

18 (8) Refiners are subject to significant environ-
19 mental and other regulations and face several new
20 Clean Air Act requirements over the next decade.
21 New Clean Air Act requirements may benefit the en-
22 vironment but will also require substantial capital
23 investment and additional government permits.

24 (9) More regulatory certainty for refinery own-
25 ers is needed to stimulate investment in increased

1 refinery capacity. Required procedures for regulatory
2 approvals need to be streamlined to ensure that in-
3 creased refinery capacity can be developed and oper-
4 ated in a safe, timely, and cost-effective manner.

5 **SEC. 3. EXPEDITED FEDERAL PERMITTING.**

6 (a) IN GENERAL.—Except as provided in subsection
7 (b), an application for a permit under a law described in
8 subsection (c) to construct or expand a petroleum refining
9 facility in the United States shall be approved not later
10 than 90 days after a complete application is received. If
11 such permit is not approved within 90 days, the Secretary
12 of Energy, in consultation with the Office of Regulatory
13 Assistance, shall issue the permit. The Secretary of En-
14 ergy shall coordinate Federal implementation of this sub-
15 section.

16 (b) PRESIDENTIAL DETERMINATION.—A permit
17 shall not be approved under subsection (a) if the President
18 determines that the benefits to the United States of in-
19 creased refinery capacity that would be provided by the
20 proposed construction or expansion are outweighed by the
21 costs of approving the permit. A decision by the President
22 to not make a determination under this subsection shall
23 not be subject to judicial review.

24 (c) COVERED LAWS.—This section applies only to
25 permits under the Clean Air Act, the Federal Water Pollu-

1 tion Control Act, the Safe Drinking Water Act, the Com-
2 prehensive Environmental Response, Compensation, and
3 Liability Act of 1980, the Solid Waste Disposal Act, the
4 Toxic Substances Control Act, the National Historic Pres-
5 ervation Act, and the National Environmental Policy Act
6 of 1969.

7 (d) APPLICABILITY.—This section shall apply to any
8 refinery repair or reconstruction at an existing refinery
9 undertaken in the area affected by Hurricane Katrina and
10 undertaken as a result of Hurricane Katrina. This section
11 shall not apply during a period with respect to which the
12 Secretary of Energy has certified to Congress in writing
13 that United States domestic petroleum refining capacity
14 is sufficient to serve the needs of the United States, ac-
15 counting for the possibility of natural disasters, terrorist
16 attacks, fires, routine maintenance, the effects of unique
17 fuel blends, or other potential events.

18 **SEC. 4. LITIGATION.**

19 (a) DIRECT LEGAL REPRESENTATION.—At the re-
20 quest of the applicant, the Secretary of Energy shall pro-
21 vide direct legal representation for a person who has filed
22 an application described in section 3(a) for any lawsuit
23 brought against such person or the Federal Government
24 under such a law with respect to the permit approval pro-
25 cedure or construction or expansion of the facility to which

1 the application relates, if the Secretary believes the lawsuit
2 lacks merit, is brought solely to delay the completion of
3 the facility, or will have the effect of delaying the comple-
4 tion of the facility in a period when United States domes-
5 tic refining capacity is insufficient.

6 (b) ATTORNEYS' FEES.—Any party in an action with
7 respect to the approval of an application described in sec-
8 tion 3(a), or the construction or expansion of the facility
9 to which the application relates, shall be awarded attor-
10 neys' fees in proportion to the amount of the original claim
11 that is awarded or denied by the court.

12 **SEC. 5. OFFICE OF REGULATORY ASSISTANCE.**

13 The Secretary of Energy shall establish an office
14 whose sole purpose is to assist applicants in developing
15 permit applications, planning, and otherwise pursuing the
16 construction or expansion of a petroleum refining facility
17 in the United States. This assistance shall include—

18 (1) serving as an advocate for the applicant to
19 the permitting agencies;

20 (2) ensuring that permitting agencies are re-
21 sponsive to applicants;

22 (3) ensuring that permits are issued by statu-
23 tory deadlines; and

24 (4) consulting with the Secretary of Energy to
25 offer advice relating to issuing a permit for an agen-

1 cy that has not met deadlines contained in section
2 3(a).

3 **SEC. 6. STANDBY SUPPORT FOR CERTAIN PETROLEUM RE-**
4 **FINING FACILITY DELAYS.**

5 (a) CONTRACT AUTHORITY.—

6 (1) IN GENERAL.—The Secretary of Energy
7 may enter into contracts under this section with
8 sponsors of 6 new petroleum refining facilities, each
9 with an output of at least 150,000 barrels per day,
10 in accordance with paragraph (2). The Secretary
11 shall give preference to new refineries that will in-
12 crease the geographic diversity of existing United
13 States domestic refining capacity.

14 (2) REQUIREMENT FOR CONTRACTS.—

15 (A) DEFINITION OF LOAN COST.—In this
16 paragraph, the term “loan cost” has the mean-
17 ing given the term “cost of a loan guarantee”
18 under section 502(5)(C) of the Federal Credit
19 Reform Act of 1990 (2 U.S.C. 661a(5)(C)).

20 (B) ESTABLISHMENT OF ACCOUNTS.—

21 There is established in the Department of En-
22 ergy 2 separate accounts, which shall be known
23 as the—

24 (i) “Refinery Standby Support Pro-
25 gram Account”; and

1 (ii) “Refinery Standby Support Grant
2 Account”.

3 (C) REQUIREMENT.—The Secretary shall
4 not enter into a contract under this section un-
5 less the Secretary deposits—

6 (i) in the Refinery Standby Support
7 Program Account established under sub-
8 paragraph (B), funds appropriated to the
9 Secretary in advance of the contract or a
10 combination of appropriated funds and
11 loan guarantee fees that are in an amount
12 sufficient to cover the loan costs described
13 in subsection (c)(5)(A); and

14 (ii) in the Refinery Standby Support
15 Grant Account established under subpara-
16 graph (B), funds appropriated to the Sec-
17 retary in advance of the contract, paid to
18 the Secretary by the sponsor of the petro-
19 leum refining facility, or a combination of
20 appropriations and payments that are in
21 an amount sufficient cover the costs de-
22 scribed in subsection (c)(5)(B).

23 (b) COVERED DELAYS.—

24 (1) INCLUSIONS.—Under each contract author-
25 ized by this section, the Secretary shall pay the costs

1 specified in subsection (c), using funds appropriated
2 or collected for the covered costs, if full operation of
3 the petroleum refining facility is delayed by—

4 (A) the failure of the appropriate Federal
5 agency to comply with schedules for review and
6 approval of inspections, tests, analyses, and ac-
7 ceptance criteria; or

8 (B) litigation that delays the commence-
9 ment of full operations of the petroleum refin-
10 ing facility.

11 (2) EXCLUSIONS.—The Secretary may not
12 enter into any contract under this section that would
13 obligate the Secretary to pay any costs resulting
14 from—

15 (A) the failure of the sponsor to take any
16 action required by law or regulation;

17 (B) events within the control of the spon-
18 sor; or

19 (C) normal business risks.

20 (c) COVERED COSTS.—

21 (1) IN GENERAL.—Subject to paragraphs (2),
22 (3), and (4), the costs that shall be paid by the Sec-
23 retary pursuant to a contract entered into under this
24 section are the costs that result from a delay covered
25 by the contract.

1 (2) INITIAL 2 FACILITIES.—In the case of the
2 first 2 facilities on which construction is commenced,
3 the Secretary shall pay—

4 (A) 100 percent of the covered costs of
5 delay; but

6 (B) not more than \$500,000,000 per con-
7 tract.

8 (3) SUBSEQUENT 4 FACILITIES.—In the case of
9 the next 4 facilities on which construction is com-
10 menced, the Secretary shall pay—

11 (A) 50 percent of the covered costs of
12 delay that occur after the initial 180-day period
13 of covered delay; but

14 (B) not more than \$250,000,000 per con-
15 tract.

16 (4) CONDITIONS ON PAYMENT OF CERTAIN
17 COVERED COSTS.—

18 (A) IN GENERAL.—The obligation of the
19 Secretary to pay the covered costs described in
20 subparagraph (B) of paragraph (5) is subject to
21 the Secretary receiving from appropriations or
22 payments from other non-Federal sources
23 amounts sufficient to pay the covered costs.

24 (B) NON-FEDERAL SOURCES.—The Sec-
25 retary may receive and accept payments from

1 any non-Federal source, which shall be made
2 available without further appropriation for the
3 payment of the covered costs.

4 (5) TYPES OF COVERED COSTS.—Subject to
5 paragraphs (2), (3), and (4), the contract entered
6 into under this section for a petroleum refining facil-
7 ity shall include as covered costs those costs that re-
8 sult from a delay during construction and in gaining
9 approval for full operation, including—

10 (A) principal or interest on any debt obli-
11 gation of a petroleum refining facility owned by
12 a non-Federal entity; and

13 (B) the incremental difference between—

14 (i) the fair market price of refined pe-
15 troleum products purchased to meet the
16 contractual supply agreements that would
17 have been met by the petroleum refining
18 facility but for the delay; and

19 (ii) the contractual price of refined pe-
20 troleum products from the petroleum refin-
21 ing facility subject to the delay.

22 (d) REQUIREMENTS.—Any contract between a spon-
23 sor and the Secretary covering a petroleum refining facil-
24 ity under this section shall require the sponsor to use due

1 diligence to shorten, and to end, the delay covered by the
2 contract.

3 (e) REPORTS.—For each petroleum refining facility
4 that is covered by a contract under this section, the Sec-
5 retary shall submit to Congress quarterly reports summa-
6 rizing the status of regulatory and other actions associated
7 with the petroleum refining facility.

8 (f) REGULATIONS.—

9 (1) IN GENERAL.—Subject to paragraphs (2)
10 and (3), the Secretary shall issue such regulations as
11 are necessary to carry out this section.

12 (2) INTERIM FINAL RULEMAKING.—Not later
13 than 270 days after the date of enactment of this
14 Act, the Secretary shall issue for public comment an
15 interim final rule regulating contracts authorized by
16 this section.

17 (3) NOTICE OF FINAL RULEMAKING.—Not later
18 than 1 year after the date of enactment of this Act,
19 the Secretary shall issue a notice of final rulemaking
20 regulating the contracts.

21 (g) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as are nec-
23 essary to carry out this section.

1 **SEC. 7. NEW SOURCE REVIEW UNDER THE CLEAN AIR ACT.**

2 Part A of title I of the Clean Air Act (42 U.S.C. 7401
3 and following) is amended by adding the following new
4 section at the end thereof:

5 **“SEC. 132 NEW SOURCE REVIEW.**

6 “In promulgating regulations respecting new source
7 review under this Act, the Administrator shall include in
8 such regulations provisions providing that routine mainte-
9 nance and repair shall not constitute a modification of an
10 existing source requiring compliance with new source re-
11 view requirements. Such provisions shall provide that
12 equipment replacement shall be considered routine mainte-
13 nance and repair if it meets each of the following require-
14 ments:

15 “(1) It does not increase actual emissions of
16 any air pollutant by more than 5 percent.

17 “(2) It does not increase actual emissions of
18 any air pollutant by more than 40 tons per year.

19 Notwithstanding any other provision of this Act, no State
20 may include in any State implementation plan any provi-
21 sions regarding new source review that are more stringent
22 than those contained in the regulations of the Adminis-
23 trator under this section.”.

1 **SEC. 8. DISCOUNTED SALES OF ROYALTY-IN-KIND OIL TO**
2 **QUALIFIED SMALL REFINERIES.**

3 (a) REQUIREMENT.—The Secretary of the Interior
4 shall issue and begin implementing regulations by not
5 later than 60 days after the date of the enactment of this
6 Act, under which the Secretary shall charge a discounted
7 price in any sale to a qualified small refinery of crude oil
8 obtained by the United States as royalty-in-kind.

9 (b) AMOUNT OF DISCOUNT.—The regulations shall
10 provide that the amount of any discount applied pursuant
11 to this section in any sale of crude oil to a qualified small
12 refinery—

13 (1) shall reflect the actual costs of transporting
14 such oil from the point of origin to the qualified
15 small refinery; and

16 (2) shall not exceed \$4.50 per barrel of oil sold.

17 (c) TERMINATION OF DISCOUNT.—This section and
18 any regulations issued under this section shall not apply
19 on and after any date on which the Secretary of Energy
20 determines that United States domestic refining capacity
21 is sufficient.

22 (d) QUALIFIED SMALL REFINERY.—In this section
23 the term “qualified small refinery” means a refinery of
24 a small business refiner (as that term is defined in section
25 45H(c)(1) of the Internal Revenue Code of 1986) that

1 demonstrates to the Secretary of the Interior that it had
2 unused crude oil processing capacity in 2004.

3 **SEC. 9. CONSTITUTIONAL AUTHORITY.**

4 The Constitutional authority on which this Act rests
5 is the power of Congress to regulate Commerce among the
6 several States as enumerated in Article I, Section 8,
7 Clause 3 of the United States Constitution.

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