

**WRITTEN STATEMENT OF
THE AMERICAN PETROLEUM INSTITUTE**

Before the

**SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
SUBCOMMITTEE ON SUPERFUND, TOXICS, RISK & WASTE
MANAGEMENT**

Hearing on S.1602

NOVEMBER 15, 2001

Introduction

API is pleased to provide a statement for the record on S.1602, the Chemical Security Act of 2001. The American Petroleum Institute (API) is the leading national association for the domestic U. S. petroleum industry. API's membership includes over 400 companies involved in all aspects of petroleum operations including exploration and production, refining, pipeline, marine and on-road transportation activities.

API opposes S.1602. It will have an adverse impact on the petroleum industry and on the American economy. It will misdirect critical resources that should be applied to real security-risk reduction activities and it would not improve the safety or the security of our nation's energy supply or the welfare of our citizens.

The bill covers all petroleum facilities in the U.S. Oil and gas production facilities, pipelines, refineries, bulk terminals and storage facilities, service stations and all other installations that produce, refine, process, transport, store or handle petroleum, crude oil or chemicals will be covered by this bill. In addition to stationary sources, the bill covers containers, vessels, tanks trucks, rail tank cars, and marine vessels. This overly broad bill adds yet another unnecessary and overlapping layer of regulations on the energy infrastructure at a time when our industry is operating at full capacity to address short and long term adequacy of fuel supplies for this nation.

Background

The petroleum industry is a critical part of our nation's energy infrastructure and continues to make a significant contribution to America's economic growth and national security. In addition to manufacturing consumer fuel products such as natural gas, gasoline and home heating fuel, our industry provides the feedstocks used to make everything from the clothes we wear, to the military equipment that helps protect our American way of life. We do this in a safe and environmentally compatible manner. Over the past 10 years, the demand for energy products has pushed capacity to record levels, while providing the consumer with affordable products at near record low prices. During this same time, the safety record in the industry has improved by over 50 percent. In fact, Bureau of Labor Statistics data show that the petroleum industry is one of the safest industries in America.

The petroleum industry has a long history of developing effective security practices to protect its critical infrastructure. The recent events of September 11th have further increased the industry's awareness of the importance of security. Along with many private initiatives, the industry has developed a trusted partnership with federal, state and local safety and law enforcement authorities. The industry has recently engaged in an increased level of cooperation with the federal government to evaluate and develop effective security practices. However, in this environment of heightened sensitivity, we must all avoid overreacting. Any new laws or regulations should address the right issues, focus resources, and provide real security benefit. This statement discusses the current security initiatives our industry is implementing and the shortcomings of S.1602.

Since September 11th, API member companies have tightened security practices in the United States. API members include petroleum companies and service and supply companies with international operations. These companies have expertise in operating in high-risk parts of the world. U. S. facilities have benefited from that experience by incorporating these security practices into their own operations. Some examples include: increased perimeter security at fixed-facilities through additional security guards and surveillance equipment; restricted vehicle access to and from facilities; and more extensive background checks.

API is also working with several federal agencies to establish a security network to streamline communications. Individual companies have established an Energy Information Sharing and Analysis Center (ISAC) that will enable our industry and members of the intelligence community to share information on incidents, security practices and near real-time credible threat information in a secure environment.

Shortcomings of S.1602, the Chemical Security Act of 2001

When addressing security in the petroleum industry, security experts from the Department of Energy, Department of Transportation, Department of Justice and the Office of Homeland Security should be assembled to consult with members of the petroleum industry. Following are some of the specific shortcomings of S.1602:

- S.1602 reverses the roles of government and industry by providing the EPA with the authority to dictate appropriate manufacturing practices, while industry is mandated to prevent terrorism. S.1602 makes it a crime to be a victim of a terrorist attack or criminal act.
- S.1602 focuses on chemical hazards and not risk scenarios posed by terrorism. September 11th taught us that terrorists select targets based on a number of objectives, not solely on public impact. Principally their targets have included symbols of American economic and military strength.
- S.1602 focuses on accidental release prevention practices that are already addressed in existing regulations such as the EPA's Risk Management Rule, OSHA's Process Safety Management Rule, and DOT Hazardous Material Regulations.
- S.1602 relies on the concept of mandated "Inherent Safety." Although "Inherent Safety" sounds good in theory, in practice it is mostly impractical to apply to existing facilities. Changes to part of a petroleum process can have unintended consequences in other parts of the process. Risk shifting has been a common problem of mandated Inherent Safety. For example, by mandating a reduction of product inventory at a fixed-facility, more product deliveries are needed. While you may reduce the risk of a release to the local community around the facility, you may in fact increase the overall risk by increasing the number of on-road transportation activities required to maintain the required product feed needed for production.

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- S.1602 mandates product substitution for petroleum products. Product substitution is not practical in our industry. Petroleum products are capable of heating our homes and powering our vehicles because of their flammable and combustible properties. At this time, there are no substitutes that do not have similar chemical properties. Mandating Inherent Safety will not change the flammable/combustible properties of these products.
- S.1602 could mandate the use of buffer zones to protect against terrorist attacks. Establishing buffer zones does not prevent terrorism. Buffer zones are a local government land use practice. In fact, it is not practical in most cases to establish buffer zones around existing facilities.
- S.1602 could mandate transportation buffer zones that virtually exclude the movement of petroleum products anywhere within the United States. Though the bill uses the words “to extent practicable,” it opens the door to local interpretation of where gasoline transportation could take place and result in impacts to the supply of product to gasoline stations that could be near the “buffer zones.”
- DOT must maintain jurisdiction over transportation safety and security issues. Hazardous materials are moved with a high degree of safety, which can be attributed to the uniform authority of the Hazardous Material Regulations (HMR) across the country and the expertise of the DOT in writing and enforcing those rules. S.1602 would create confusion and duplicative roles for EPA and DOT regarding transportation of hazardous materials and would disrupt the national uniformity of current DOT regulations. The negative impact on interstate commerce resulting from variations among state and local regulations would significantly disturb industry operations and complicate compliance obligations while not significantly decreasing the threat of terrorism or criminal acts.

Conclusion

S.1602 is too broad. It identifies all petroleum products as a covered "substance of concern", and all modes of surface transportation (truck and rail) and all containers (drums, pails, plastic bottles, etc.) as "chemical sources." The bill extends the definition of a “substance of concern” to a whole new set of petroleum products that are not currently regulated as hazardous materials. The legislation would cover such petroleum products as engine oils and waxes that would not be attractive as a terrorist target. The expansive nature of this proposal unnecessarily imposes federal law on industry and does not improve security or public safety.

API opposes S.1602 because it would have a significant negative impact on the energy industry and the American economy; would misdirect resources that should be focused at real security risk reduction; and would not improve the safety or security of our nation’s energy supply or the health and well being of our citizens.