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DIRTY FUEL INCENTIVES IN THE BAILOUT BILL

By Rand Robins & Janet M. Hager*

The current dependence on oil in the United States cannot be supported in the future. The issue is how the United States will confront the growing problem of meeting its need for transportation fuel. One option is to develop unconventional fossil fuels derived from oil sands, oil shale, and liquid coal. However, this is an option that could come at a great cost to the environment. The question facing Congress and the American people is whether, and to what extent, the government should subsidize these environmentally devastating energy sources with tax incentives, direct financing, loan guarantees, or purchasing agreements.


The rate of consumption of oil in the United States is unsustainable.¹ The world uses twelve billion more barrels of oil each year than is discovered.² Yet, the United States is expected to continue to increase its consumption of oil by forty-four percent by the year 2025.³ Thus, there will not be enough supply to match the world's demands for oil.⁴ Furthermore, the United States consumes eleven percent of the world's production of oil, but only has three percent of the world's oil reserves.⁵ This dependence on foreign oil threatens the country's economy and national security.⁶ It is estimated that the oil dependence results in a penalty to the economy of \$297 to \$305 billion each year, so the threat to the economy is great.⁷ The threat to national security is also substantial, considering that much of the oil that is imported into the United States comes from hostile areas of the world.⁸

Because of these widespread problems with oil, it is not surprising that the United States is looking for new solutions. However, a transition to unconventional fossil fuels will only exacerbate the devastating problem of climate change. The threat to the global environment as a result of the continuing widespread use of fossil fuels is great.⁹ The global increase in carbon dioxide in the atmosphere is primarily the result of the increase in the use of fossil fuels like oil, and potentially these new unconventional fuels.¹⁰ The effect of the increase of greenhouse gases from fossil fuels has already been felt.¹¹ The sea level is rising, glaciers are decreasing, and extreme weather events have become more frequent.¹² It is expected that the surface temperature will increase by 3.2 to 7.2°F beyond levels in the 1990s by the end of the century.¹³ The United States must decrease, not increase, its use of fossil fuels if it is to combat the growing problem of climate change.¹⁴

There is evidence that unconventional fossil fuels will not just maintain the status quo, but will actually increase the rate of emissions of greenhouse gases in the United States.¹⁵ The two most viable unconventional fossil fuels are synthetic crude oil derived from oil sand ("SCO") and fuel made from coal liquefaction ("CTL").¹⁶ The production of these fuels emits more

greenhouse gases than conventional oil.¹⁷ The use of SCO emits twenty percent more carbon dioxide than lighter crude oils.¹⁸ The use of CTL would result in twice the emissions of conventional fuel.¹⁹ Additionally, mining for oil sand is similar to mining coal; these operations will require the addition of roads, pipelines, and other infrastructure, and will displace plant and animal life.²⁰

Despite the questionable nature of these unconventional fuels, Congress has still taken steps to promote them. The tax code has been modified by the recent financial bailout bill, enacted in October of 2008, to subsidize CTL in three ways. First, the code reduces the cost of constructing expensive CTL plants by providing tax credits for capital investment.²¹ Second, the code reduces the cost of operating dirty fuel facilities by providing tax deductions for the operating costs of oil shale and tar sands refineries.²² Third, the code reduces the risk that falling oil prices will suffocate the market for non-traditional transportation fuels by applying the alternative fuel credit (originally intended for ethanol production facilities) to coal-based facilities.²³

Although advocates for these unconventional fossil fuels promise energy independence, economic development, and improving environmental impacts, there is scant evidence to determine the likelihood of success on any of these promises.²⁴ Moving forward with commercialization of any of these unconventional fossil fuels will lock the United States into more dependence on carbon-based transportation fuel at a time when the nation should be focusing on clean forms of energy.²⁵ Lawmakers presented with this energy legislation in the recent bailout bill found themselves between a rock and a hard place: to vote for a bill with broad public backing that also gives support to dirty fuels, or to risk their political position by voting against the legislation.²⁶ In the end, lawmakers chose to support the bill, despite its shortcomings in energy policy.²⁷ In future legislation Congress should focus its efforts on deploying clean fuels, clean vehicles, and sustainable patterns of growth, rather than subsidizing fuels that contribute to global environmental problems. 

Endnotes:

¹ Natural Resources Defense Council, *Safe, Strong and Secure: Reducing America's Oil Dependence*, <http://www.nrdc.org/air/transportation/aoilpolicy2.asp> (last visited Feb. 27, 2009).

² *Id.*

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³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ LENNY BERNSTEIN ET AL., INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT 26, 45 (2007), available at http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf (last visited Feb. 28, 2009).

¹⁰ *Id.* at 37.

¹¹ *See id.* at 30 (explaining that eleven of the past twelve years rank among the twelve warmest years in instrumental record).

¹² *See id.* (indicating that heat waves and heavy rainfalls have become more common).

¹³ Environmental Protection Agency, Basic Information: Climate Change, <http://www.epa.gov/climatechange/basicinfo.html> (last visited February 27, 2009).

¹⁴ *See* BERNSTEIN, *supra* note 9, at 56 (giving adaptation and reduction of greenhouse gases as the two solutions to climate change).

¹⁵ Natural Resources Defense Council, Repower America with Clean Energy: Don't Choose Dirty Fuels Such As Tar Sands, Oil Shale or Liquid Coal, <http://www.nrdc.org/energy/dirtyfuels.pdf> (last visited February 27, 2009).

¹⁶ Toman et al., *Unconventional Fossil-Based Fuels: Economic and Environmental Trade-Offs*, 2008 RAND i, xiii, available at http://www.rand.org/pubs/technical_reports/2008/RAND_TR580.pdf (last visited Feb. 28, 2009).

¹⁷ Natural Resources Defense Council, *supra* note 15.

¹⁸ Toman, *supra* note 16, at 27.

¹⁹ *Id.* at 44.

²⁰ *Id.* at 23.

²¹ *See* 26 U.S.C. § 48B, amended by H.R. 1424, 110th Cong. (2d Sess. 2008) (raising the amount of creditable investment to \$350 million, plus \$250 million for gasification projects that include equipment for separating and sequestering at least 75% of the project's total carbon dioxide emissions).

²² *See* 26 U.S.C. § 179C, amended by H.R. 1424, 110th Cong. (2d Sess. 2008) (providing a tax deduction of up to fifty percent of the cost of facilities refining tar sands or oil shale into transportation fuel).

²³ *See* 26 U.S.C. § 6426, amended by H.R. 1424, 110th Cong. (2d Sess. 2008) (extending the alternative fuel credit to coal-based fuels produced at a gasification facility that separates and sequesters a certain percentage of carbon dioxide emissions).

²⁴ *See id.* at xvi-xvii (finding that uncertainties remain regarding the benefits of SCO and CTL).

²⁵ *See* Natural Resources, *supra* note 15 (arguing that the United States needs to focus on clean and renewable fuels rather than dirtier fossil fuels derived from unconventional sources).

²⁶ *See* Jad Mouawad, *In Bailout Plan, Senate Binds House With Non-Renewable Energy Credits, Too*, N.Y. TIMES, Oct. 2, 2008, available at [http://](http://greeninc.blogs.nytimes.com/2008/10/02/in-bailout-plan-senate-binds-house-with-non-renewable-energy-credits-too)

greeninc.blogs.nytimes.com/2008/10/02/in-bailout-plan-senate-binds-house-with-non-renewable-energy-credits-too (last visited Feb. 28, 2009) (describing the conflict between the Senate and the House over the Senate's addition of tax credits for non-renewable unconventional fuels).

²⁷ Gret Hitt & Deborah Solomon, *Historic Bailout Passes As Economy Slips Further*, WALL ST. J., Oct. 4, 2008, at A1, available at <http://online.wsj.com/article/SB122304922742602533.html> (last visited Feb. 28, 2009).
