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## ENERGY AND ENVIRONMENT UPDATE

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### Energy and Climate Debate

The Environmental Protection Agency's much-anticipated regulations for power plants and large industrial emitters took effect January 2nd across the country, save for Texas, which was granted a temporary delay just days before implementing the first-time requirements under a ruling by the U.S. Circuit Court for the District of Columbia. Under the federal climate rules, the largest new and modified facilities are now required to use the best available technology to limit their greenhouse gases (GHGs).

All states but Texas, including 12 others that have filed separate challenges to the regulations, have implemented the new rules already or worked out a deal with the Environmental Protection Agency (EPA) to ensure that businesses can apply for permits. Without federal intervention, the EPA said last Thursday in a filing with the District of Columbia Circuit court, large projects in Texas will be unable to obtain valid permits.

The EPA urged a federal court on January 6th not to block its plan to push state officials aside and issue GHG permits in Texas. Texas Governor Rick Perry (R) and his appointees have refused to implement EPA's new climate rules, arguing that they violate the Clean Air Act and will impose excessive costs on industry. After the EPA opted to issue the permits itself, Texas asked the court to intervene as a final effort to stop the GHG regulations that took effect on January 2nd.

Numerous environmental and industry groups have filed both responses and friend-of-the-court briefs on behalf of both the EPA and Texas. The National Association of Manufacturers, American Chemistry Council, American Petroleum Institute, National Oilseed Processors Association, and National Petrochemical and Refiners Association are on the record in opposition to the regulations, while the Sierra Club, Environmental Defense Fund, and numerous other environmental organizations side with the EPA.

Rep. Marsha Blackburn (R-TN) and more than 40 other representatives, including one Democrat, Oklahoma's Dan Boren, as well as influential Republicans Joe Barton (TX) and Darrell Issa (CA) introduced a bill last Wednesday that would amend the Clean Air Act to declare that GHGs are not subject to the law. Also last week, Rep. Shelley Moore Capito (R-WV) introduced legislation (H.R. 199) to suspend the EPA from regulating GHGs under the Clean Air Act for two years, and Rep. Ted Poe (R-TX), with nearly 20 of his colleagues, proposed legislation that would block funding for the EPA to implement or enforce a cap and trade program. Rep. John Carter (R-TX) also introduced a resolution to block the agency's new regulations for toxic air pollution from cement kilns.

Rep. Capito's legislation is seen as the most likely to move forward this Congress, as it is similar to language put forward in the Senate last session by Sen. Jay Rockefeller (D-WA), and imposes a two-year delay on regulations for the largest industrial plants but not on fuel-economy rules for cars and trucks. All of the proposals are vying for attention and support from new House Energy and Commerce Committee Chairman Fred Upton (R-MI), but he has not yet endorsed any specific proposal as he plans his strategic approach to slowing EPA regulations across the board.

Senate Environment and Public Works Committee Chair Barbara Boxer (D-CA) called Rep. Upton out last week, saying that she would use every tool available in the upper chamber to stop his efforts, including his potential use of the Congressional Review Act to rescind new climate regulations. Sens. Tom Harkin (D-IA), Frank Lautenberg (D-NJ), Sheldon Whitehouse (D-RI), and Ben Cardin (D-MD) joined Sen. Boxer in her criticisms of the House's early efforts to block the EPA regulations.

Not all Senate Democrats have joined in these criticisms. Sen. Sherrod Brown (D-OH), who had been undecided on Sen. Rockefeller's two-year delay effort, is exploring a one-year delay, and other moderate Democrats, especially those up for reelection in 2012 may be seeking a similar compromise that allows them to retain White House favor and stave off pressure from the constituents and potential opponents in their 2012 reelection bids. Additionally, Sen. Rockefeller said last Wednesday that he plans to reintroduce the same version of his delay legislation (S. 3072) as soon as any bills can be introduced. Majority Leader Harry Reid (D-NV) has set January 25th as that date.

Another central energy issue for the 112th Congress will be debate over a renewable or clean energy standard. After several versions of a renewable electricity standard ultimately failed to pass last Congress, there is growing consensus for a clean electricity standard that would include an all of the above alliance between renewable, nuclear, and clean coal energy. Though numerous Republicans, including new Speaker of the House John Boehner (R-OH) are resisting conversations about clean energy, others ranging from freshman Rep. Rick Crawford (R-AK) to Rep. Kristi Noem (R-SD) and Sen. John Hoeven (R-ND), are expressing their interest in the policy, and some Democrats, including Senate Energy Committee Chair Jeff Bingaman (D-NM) and Sen. Tom Udall (D-NM) are increasingly opening the door to the conversation. A likely starting point for the conversation will be a draft proposal Sen. Lindsey Graham (R-SC) floated in 2009. Sen. Joe Lieberman (I-CT) is also likely to work with Sens. John Kerry (D-MA), Graham, and Lamar Alexander (R-TN) on legislation that includes incentives for nuclear power, natural gas, electric vehicles, and a clean energy standard.

## Congress

### Legislation Introduced

Rep. Joe Barton (R-TX) was joined by 12 of his Republican colleagues in introducing legislation (H.R. 91) on January 5th that would repeal a "de facto ban" on incandescent light bulbs that was included in Subtitle B of Title III of the Energy Independence and Security Act of 2007. The Better Use of Light Bulbs Act would repeal the law, which requires a 30 percent efficiency improvement in 100W light bulbs starting in 2012, 75W light bulbs by 2013, and 40W and 60W by 2014, and directs the Department of Energy to establish more stringent standards by 2020.

### Senators Seek E15 Advice

Sens. Olympia Snowe (R-ME) and James Inhofe (R-OK) sent a letter to EPA Administrator Lisa Jackson last week asking that the agency consider what effect the availability of E15 will have on supplies of gasoline for non-road vehicles and machines. The agency published a final rule on November 4th that would allow for use of the 15 percent blend in cars and light trucks for model years 2007 and later.

## Department of Agriculture

### \$75 Million Loan Guarantee for Waste to Energy

The Department of Agriculture awarded a \$75 million loan guarantee on January 5th to a joint venture that aims to produce 8 million gallons of advanced biofuels per year and 6 MW of renewable power from yard, vegetative, and wood wastes and municipal solid waste. INEOS Bio and New Planet Energy will begin construction of a facility in Vero Beach, Florida, soon, with production anticipated next year.

## Department of Defense

### Energy Independence Prioritized

The U.S Navy recently released a road map that places increased emphasis on energy security and independence and provides new detail on the service's energy reform plans. The Navy is on track to meet or exceed its established goals, which include sailing an all-alternative energy fleet by 2016, reducing petroleum use, and increasing alternative energy use.

## **Department of Interior**

### Thirteen NEPA Reviews Waved

The Department of Interior determined on January 3rd to waive additional environmental reviews for 13 Gulf of Mexico projects that were halted by the federal ban on deepwater drilling last summer. The Department's Bureau of Ocean Energy Management, Regulation, and Enforcement told the relevant companies that they may restart their projects if they meet enhanced security requirements.

## **Environmental Protection Agency**

### Sierra Club Requests Boiler Extension Rejection

The Sierra Club filed a memorandum in the U.S. District Court for the District of Columbia recently asking the court to reject an EPA request for more time to issue hazardous air pollutant rules for industrial boilers and incinerators. Pointing to the fact that the agency has had more than three years to work on the rules, the Sierra Club found the requested 15-month delay unwarranted. The EPA has a court-ordered deadline of January 16th to issue final national emission standards via maximum achievable control technology for hazardous air pollutants for industrial, commercial, and institutional boilers under Section 112 of the Clean Air Act and new source performance standards for commercial and industrial solid waste incinerators under Section 129 of the Act. The EPA asked the court in early December to extend its deadline to issue the final rules until April 13, 2012, and July 15th of this year, respectively, arguing that it needed additional time to evaluate new emissions data received during the comment period.

### Petroleum Groups Sue Over Ethanol Rule

The National Petrochemical and Refiners Association sued the EPA on January 3rd over a rule to allow the use of as much as 15 percent ethanol in gasoline for vehicles from model year 2007 or later. The NPRA was joined by the International Liquid Terminals Association and the Western States Petroleum Association in arguing before the U.S. Court of Appeals for the District of Columbia Circuit that the Clean Air Act does not authorize a partial waiver for 15 percent ethanol in later model-year cars. The agency announced a decision mid October to allow E15 in late-model vehicles and published a final rule on the partial waiver on November 4th of last year.

### New Ethanol Labels Proposed

In comments filed on January 3rd on the Environmental Protection Agency's proposal for labeling 15 percent ethanol, the Renewable Fuels Association and Growth Energy proposed new labeling for fuel pumps to prevent drivers from filling vehicles built before model year 2007 with gasoline containing E15. The ethanol groups' proposed label is similar to the EPA proposal, but includes language that is more informative to drivers.

## **Federal Energy Regulatory Commission**

### Smart Grid Conference Scheduled

The Federal Energy Regulatory Commission will conduct a technical conference on January 31st on the first set of smart grid standards that are soon to undergo a rulemaking process. The technical conference will assist the commission in determining whether there is sufficient consensus among stakeholders to move forward with regulations for the electric utility industry. Charged with developing the technical standards, the National Institute of Standards and Technology submitted the first set of standards, which includes five families of basic interoperability standards, to the Commission in October 2010. The Administration designated \$11 billion in stimulus funds for electric grid modernization, including smart grid implementation.

## **Personnel**

President Obama selected William Daley, a former commerce secretary, to replace interim chief of staff Pete Rouse last week. Mr. Rouse, who did not want to stay in the job formerly held by Rahm Emanuel, recommended Mr. Daley for the position, and will remain at the White House in a senior position as counselor to the president.

Dr. Ramamoorthy Ramesh replaced John Lushetsky last week as manager of the Department of Energy's Office of Energy Efficiency and Renewable Energy Solar Energy Technologies Program. Dr. Ramesh was previously with the University of California Berkeley. Mr. Lushetsky will become deputy solar program manager

Lorie Schmidt will return to the Environmental Protection Agency on January 17th to serve as deputy director of the Office of Air and Radiation's Office of Policy Analysis and Review. Ms. Schmidt was previously with the House Energy and Commerce Committee, and served a principal role in writing the 2009 House climate-change bill.

Nathaniel Keohane, an energy and climate analyst for the Environmental Defense Fund, will replace Joseph Aldy as a top advisor to President Obama on energy and environmental policy in the White House's National Economic Council. Mr. Aldy will return to Harvard's Kennedy School of Government as assistant professor of public policy.

## Miscellaneous

### CCX Closes Cap and Trade System

The Chicago Climate Exchange, the nation's first carbon cap and trade program, completed its second commitment period for member companies on December 31st, and closed the cap and trade system. The exchange will remain open to allow Carbon Financial Instruments to continue as a strictly voluntary GHG-emissions offset system. CCX's sister institutions, the European Climate Exchange and the Chicago Climate Futures Exchange, will continue as long as there is corporate and state government interest.

### California Postpones Green Chemistry Rules

California postponed last week final adoption of its green chemistry rules pending additional review to address stakeholder concerns. The California Department of Toxic Substances Control released the proposed regulations on November 16th, and industry and environmental groups, as well as the author of the enabling legislation (the Safer Consumer Product Alternatives Act, A.B. 1879), have since strongly criticized the proposed regulations.

### Fifth Brazilian State to Enact Climate Law

The incoming governor of Brazil's Rio Grande do Sul is expected to sign a climate change bill in early January to establish principles and policy objectives for developing a low-carbon economy. The state legislature approved the bill on December 7th, outlining a series of proposals, including creating a voluntary public GHG-emissions registry, support for energy conservation, increased use of renewable energy and energy-efficient products, reduction of slash-and-burn land-clearing practices, and slowing deforestation in mining areas.

### Virginia Plant Approved

Virginia's Air Pollution Control Board approved a Dominion Virginia Power plan to construct a 1,300MW power station fueled by natural gas and retire a small coal-fired power plant in mid December. The company will now be required to obtain a certificate of public convenience and necessity approved by the State Corporation Commission to proceed with the project, which they hope to open in late 2014 or early 2014.

### Pennsylvania Utility Announces Pricing Plan

A Philadelphia, Pennsylvania, utility company will soon begin a new time-of-use pricing plan that gives residential customers 34 percent off power costs during off-peak hours. Pennsylvania law requires utility companies to switch to time-of-use pricing rather than flat rates to boost energy efficiency.

North Carolina Delays GHG Regulations

North Carolina's Department of Environment and Natural Resources delayed state regulations on January 6th that would limit operating permit requirements for GHG-emission sources only to the largest sources. The rules, which took effect January 2nd, have been put on hold for review by lawmakers for 30 days, when they return to session at the end of this month, after more than 10 letters of objection were filed soon after their adoption.

China Reduces Energy Use

The Chinese National Development and Reform Commission announced on January 6th that the country had met a five-year target by dropping energy consumption per unit of GDP by 20 percent. Energy targets for the next five years are still under discussion, but are expected to be around 17 percent.

Yard Trim Ban Protection Sought

A coalition of environmental organizations and cities published an open letter to Waste Management and the National Solid Wastes Management Association on January 4th asking them to abandon their efforts to repeal bands on sending yard trimmings to landfills. The Sierra Club, Friends of the Earth, and City and County of San Francisco, and several other environmental organizations and cities said that the waste industry is threatening to reverse environmental gains made by recycling and composting programs since bans on yard trim began increasing popularity more than 20 years ago. The industry does not oppose all yard trimmings bans, but does not support bans where there is no program to recycle or process the waste.