David Leiter
Sarah Litke
DJLeiter@mlstrategies.com
SLitke@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

ENERGY AND ENVIRONMENT UPDATE
October 21, 2012

Energy and Climate Debate

With Congress in recess until after the looming November elections, energy issues continue to make headlines both on the campaign trail and during preparations for the lame duck session.

One of the biggest end-of-the-year debates will be over the tax extenders package, and its potential inclusion in some sort of fiscal cliff avoidance package. The Senate Finance committee has already reported out legislation (S. 3521) that would extend the wind energy production tax credit and other expiring energy incentives that may be included in that broader package. The Family and Business Tax Cut Certainty Act of 2012, approved August 2 by the Senate Finance Committee, includes more than $18 billion in energy-related tax incentives that could be extended; $12.1 billion would fund a one-year extension of the 2.2 cent per KWh production tax credit and pay for a change that allows wind projects that are under construction by the end of next year to be eligible for the credit. Other energy tax incentives in the package include a production tax credit for other renewable energy projects, credits for energy-efficient homes and appliances, and tax incentives for cellulosic biofuels and other alternative fuels.

If Congress and the White House do not embrace a grand compromise in order to avoid the fiscal cliff during the lame duck session, automatic spending cuts and tax increases totaling about $606 billion are scheduled to occur January 2.

Congress

Waste-Coal Plan Exemption Sought

Pennsylvania's senators and eight House members sent a letter October 15 to Environmental Protection Agency Administrator Lisa Jackson asking the agency to revise mercury and air toxics standards to protect power plants that burn coal waste. The delegation contends that the standards should include a subcategory for hydrogen chloride emissions from waste-coal plants, as the plants will be able to meet the mercury and particulate matter limits but not the hydrogen chloride limit. The agency issued a final rule in December setting numeric emissions limits for mercury, filterable particulate matter as a surrogate for toxic metals, and hydrogen chloride as a surrogate for acid gases.

Tax Status Questioned

Senator Tom Coburn (R-OK) released a report October 16 urging the elimination of tax credits for electric vehicles. The report, *Wastebook 2012*, highlights 100 examples of misused tax breaks, fraud, or federally funded projects that he charges cost the federal government $18 billion without providing substantial public benefit.

Balanced Fracking Review Panel Sought
House Science, Space, and Technology Committee Chair Ralph Hall (R-TX) and Representatives Dana Rohrabacher (R-CA) and Andy Harris (R-MD) sent a letter to Environmental Protection Agency Administrator Lisa Jackson October 16 expressing their concerns about balance and expertise in an upcoming review of the agency's study of the risks fracking may pose on drinking water. Specifically, the representatives hope to ensure that the agency considers these issues when selecting the Science Advisory Board panel that will conduct the review.

Fine Particulate Exposure Inspections
House Science, Space, and Technology Subcommittee on Investigation and Oversight Chair Paul Brown (R-GA) requested October 18 that Environmental Protection Agency Inspector General Arthur Elkins investigate agency studies that exposed people to fine particulate matter and diesel exhaust. In particular, Representative Brown requested that the inspector investigate by April 2013 whether or not the agency had been authorized to expose people to particulates, had obtained informed consent from those exposed, and had dealt with negative externalities. Senator James Inhofe (R-OK) argued September 28 for congressional oversight of the studies.

Administration

Green Infrastructure Critical
Speaking October 15 before the Urban Water Sustainability Leadership Conference, White House Council on Environmental Quality Nancy Sutley said that green infrastructure is critical to cities' economic and environmental success, but that it will take innovation and ingenuity to green the nation's infrastructure. She encouraged communities to forge public-private partnerships and integrate projects together to increase funding opportunities. To date, the administration has awarded $1.7 billion in green infrastructure partnership grants to 550 communities.

Department of Agriculture

Rural Energy Grants
The Department of Agriculture announced October 19 grants for 244 projects designed to help farmers and rural small businesses reduce energy consumption and costs as part of the Rural Energy for America Program. Among other things, the projects include the installation of wind and solar power and the replacement or installation of grain dryers.

Department of Commerce

Warm September
The National Oceanic and Atmospheric Administration released data October 15 showing that the global average temperature for last month tied with September 2005 as the warmest on record for the month. This September also marked the 36th consecutive September and the 331st consecutive month with a global temperature above the 20th century average.

Japan Roundtable
The Department of Commerce and Japan's Ministry of Economy, Trade, and Industry will hold a roundtable December 3 in conjunction with the Department of Energy's Energy Policy Dialogue. U.S. companies will have the opportunity to ask questions to Japanese policy-makers and gain a deeper understanding of where the policy environment in Japan is headed in the coming years. Following the discussion, the delegation will travel to Fukushima Prefecture and Sendai for site visits to hear from local officials about the role of renewable energy in Japan's rebuilding efforts. The application deadline is November 9, 2012.

Department of Defense

Impact of Clean Energy Investment

The Information Technology & Innovation Foundation released a report October 16 finding that $5 billion in Department of Defense clean energy spending since 2009 could be critical to accelerating the national commercial scale deployment of new energy technologies. The study, *Lean, Mean, and Clean II: Assessing DOD Investments in Clean Energy Innovation*, concluded that the agency's investment in advanced alternative fuels, power electronics, and energy storage could have the highest chance of advancing commercialization outside of the military.

Department of Energy

Coal-Fired Electricity Increases
The Energy Information Administration released data October 19 demonstrating that coal-fired electricity was up this summer because of hot weather. Coal produced 39 percent of domestic electricity in August, an increase from the 32 percent low coal hit in April in the wake of low natural gas prices. The agency predicted that coal's share of generation may continue to increase through the fall if natural gas prices remain higher than in the spring.

A123 Files Chapter 11
Electric vehicle battery manufacturer A123, which received a $249 million stimulus grant from the Department of Energy, filed for Chapter 11 bankruptcy protection October 15 in the U.S. Bankruptcy Court for the District of Delaware to facilitate an agreement in which Johnson Controls will purchase its automotive business assets for $125 million. The company has drawn down roughly $131 million of its grant, and has faced problems with batteries supplied to Fisker as well as low demand for electric vehicles. The previous day, the company announced that it could default on some debt agreements and that it was considering strategic alternatives.

EERE Reorg
David Danielson, new assistant secretary of the Office of Energy Efficiency and Renewable Energy, said last week that the office will be reorganized to focus on transportation as well as renewable power and end-use efficiency. The agency was appropriated $2.2 billion in fiscal year 2011, making it the second-largest nondefense-related agency in the department. The agency will hire a new deputy assistant secretary for transportation to supervise biomass, fuel cell, and vehicle technology programs.

Department of the Interior

Environmental Groups Challenge Northeast Transmission Line
A group of environmental advocacy groups, including Earthjustice and the Eastern Environmental Law Center, filed a lawsuit October 15 in the U.S. District Court for the District of Columbia challenging the Interior Department's decision to allow construction of an upgraded high-voltage transmission line. The line would run through three national parks in Pennsylvania and New Jersey. The groups argue that the National Parks Service failed to conduct an adequate environmental analysis, thus violating the National Parks Service Organic Act and the Wild and Scenic Rivers Act. The utilities planning to construct the transmission line contend that the line is necessary to meet growing energy demand in the Northeast.

Department of State

Energy and Environmental Involvement Crucial
During an October 18 speech at Georgetown University, Secretary of State Hillary Clinton said that the United States must be actively involved in energy and environmental issues around the world in order to advance economic development and political stability, particularly as fundamental global changes, such as rising energy demand in developing countries and climate change, continue to unfold. Her speech came one year after the opening of the State Department's Bureau of Energy Resources.

Department of Transportation

Electric Vehicle Safety

During a third annual summit October 18 sponsored by the Society of Automotive Engineers and the National Fire Protection Association, the National Highway Traffic Safety Administration's Office of Crash Avoidance Standards said that government, industry, and public safety professionals are working to ensure safety concerns are not lost as carmakers increase production of battery-powered and hybrid vehicles. The three groups have worked together to issue interim guidance on how to handle batteries in cars that have been damaged by fire or crash, and industry groups are working with the agency to develop safety standards for electric vehicles. The Department of Energy is partnering with Argonne National Labs to develop additional guidelines.

Environmental Protection Agency

Electronics GHG Calculation Methods Updated
The Environmental Protection Agency published a proposed rule October 16 detailing new methods for electronics makers to calculate their greenhouse gas emissions as part of the mandatory reporting rule, beginning in 2014. The revisions would give electronics manufacturers more options for calculating emissions and streamline reporting requirements for semiconductor manufacturers. Comments are due December 17.

Mercury Standards Reconsideration Progress
The Environmental Protection Agency submitted a status report to the U.S. Court of Appeals for the District of Columbia Circuit October 12 showing that it has made significant progress on a proposed rule to reconsider mercury and air toxics standards for new power plants. The agency has prepared a draft rulemaking package, and is completing the preamble, regulatory text, and technical support documents. Agency officials are on track to issue a final rule by March 2013. The court held in abeyance September 13 litigation over mercury standards for new power plants while the agency completes an administrative reconsideration of the standards, and the agency is required to file status reports every 30 days.

Ozone Assessment Review
The Clean Air Scientific Advisory Committee released a draft review October 15 of the Environmental Protection Agency's first draft policy assessment of the ozone air quality standards, finding that the agency has provided a strong rationale for considering standards at 60 to 70 parts per billion, and adequate justification for a lower standard between 50 and 60 ppb. The committee will hold a teleconference November 5 to discuss the policy assessment as well as a draft integrated science assessment and draft risk and exposure assessments.

Efficient E-Data Collection
Environmental Protection Agency assistant administrator for solid waste and emergency response Mathy Stanislaus said October 18 that the agency will continue to develop electronic data collection services to improve program efficiency as it addresses reduced budgets. The agency is working on an e-enterprise system that will enable better quality data collection more efficiently.

Biocides in Fracking
The Association of American Pesticide Control Officials asked the Environmental Protection Agency last week to clarify some regulatory issues related to the use of biocides in oil and natural gas fracking. The association will discuss the issue during its annual meeting March 18-20 in Arlington, VA.

TX Revisions Approved
The Environmental Protection Agency approved revisions October 11 to the Texas permitting program for major air pollution sources under the new source review program of the Clean Air Act. The plan approval allows existing, major permit holding, facilities to operate under sitewide emission caps called Plant-Wide Applicability Limits. The caps require continuous air monitoring for individual emission sources within a plant so that the entire facility does not violate its state-issued permit.

NO2 Near-Road Monitors
The Environmental Protection Agency proposed a rule October 5 that would allow states up to four more years to install required NO2 monitors near busy roadways. The rule would require states to phase in

operation of the new monitors between January 1, 2014 and January 1, 2017. The standard will require the placement of 126 NO_2 monitors in 102 urban areas.

Fracking Standards Challenged

Environmental groups, industry associations, and the state of Texas filed nine separate petitions October 15 in the U.S. Court of Appeals for the District of Columbia challenging the Environmental Protection Agency's first air pollution standards for natural gas fracking. The agency released the rule in April and published it August 16. The final rule, which took effect October 15, impacts 11,400 fractured and 1,400 refractured wells as well as storage tanks and other equipment. The new source performance standards are expected to reduce emissions of volatile organic compounds, CH_4, and air toxics, but do not directly regulate CH_4.

Particulate Matter Standards Questioned

During oral arguments October 17, the U.S. Court of Appeals for the District of Columbia questioned the stringency of Environmental Protection Agency rules implementing fine particulate matter standards. Specifically, Judge David Tatel asked why the agency would set more stringent standards for fine particles than coarse particles but implement the former through a less rigorous process. Petitioners argue that the standards should be implemented through a different section of the Clean Air Act, which would require tougher controls.

Environmental Justice Grants

The Environmental Protection Agency announced a request for proposals October 15 under the Environmental Justice Small Grants Program from local organizations and tribal governments for $1.5 million in environmental justice small grants to be awarded next June. The program offers communities financial assistance for conducting research, providing education, and developing solutions to local health and environmental issues. Grants are available for up to $30,000 each.

Federal Energy Regulatory Commission

Transmission Rule Reaffirmed

The Federal Energy Regulatory Commission reaffirmed October 18 its transmission planning rule and denied requests for a rehearing, moving the process closer to legal action by the electric industry that opposes key parts of the rule. Order 1000 requires companies owning transmission infrastructure in wholesale electricity markets to participate in regional transmission plans, to incorporate public policy goals like renewable generation, to remove barriers to new entries, and to more broadly allocate costs within a region.

CA Submits Order 1000 Compliance Details

Detailing how it will comply with Order 1000, the California Independent System Operator Corp. submitted a compliance filing to the Federal Energy Regulatory Commission October 11 proposing few changes to current rules for building new transmission line and asserting that reforms to increase renewable energy generation have been made over the past two years. The operator's changes would be effective October 1, 2013. The four remaining regional grid operators have requested more time to make their filings; in response, the commission has extended their filing deadline to October 25.

Government Accountability Office

Energy-Water Policy Coordination Needed

At the request of House Science, Space, and Technology Ranking Member Eddie Bernice Johnson (D-TX), the Government Accountability Office released a report October 15 finding that with domestic demand for energy and water projected to rise in the coming decades, the Department of Energy and other federal agencies need to coordinate their policies. The report, *Energy-Water Nexus: Coordinated Federal Approach Needed to Better Manage Energy and Water Tradeoffs*, said that the agencies currently research the issues separately. The Energy Policy Act of 2005 directed the Energy Department to form and implement a new program focused on research, development, demonstration, and other actions needed to address the issues, but the agency has not established the program.

Most Cleanup Projects Complete
The Government Accountability Office released a report last week finding substantial progress in Department of Energy cleanup projects through $6 billion in Recovery Act funds. The report, *Most DOE Cleanup Projects Are Complete, but Project Management Guidance Could be Strengthened*, shows that the Office of Environmental Management has reduced the footprint of nuclear, chemical, and other hazardous wastes at contaminated sites by 75 percent using the funds, far exceeding the program's original goal of 40 percent. According to the report, 78 of the 112 cleanup projects had been completed as of April 30, and 54 percent of those were finished at more than 10 percent below their cost targets. The report offered recommendations for improved project efficiency and performance metrics, which the agency has accepted.

International

Canadian Business Climate Action
The Carbon Disclosure Project and Accenture released a report October 16 finding that most large Canadian companies improved transparency on climate issues during the past year, but that only one company is taking significant action to mitigate emissions. The groups surveyed the 200 largest publicly traded Canadian companies on carbon-related governance, climate change strategy and initiatives, targets, communications, climate change-related risks, and greenhouse gas emissions, and mirrored the findings of September's *CDP Global 500 Climate Change Report 2012*.

EU GHG Reductions
The Environmental Defense Fund released a report October 17 finding that the European Union has significantly reduced GHG emissions using its Emissions Trading System while keeping the cost low. The report, *The EU Emissions Trading System: Results and Lessons Learned*, concluded that the system, which covers power plants and manufacturers, was launched in 2005 and has sparked innovation in low carbon technologies at a cost of 0.01 percent of the EU's gross domestic product over that period. The European Union is relying primarily on trading to meet its Kyoto Protocol target to reduce emissions 8 percent below 1990 levels, and has pledged to reduce emissions 20 percent below 1990 levels by 2020.

World Bank Ups RE Lending
The World Bank announced October 16 that it allocated a record 44 percent of its annual energy lending to renewable energy projects during fiscal year 2012, 43 percent of that to hydropower. The bank's $3.6 billion investment represents an eight percent jump from the previous fiscal year, and attributes the increase to growing demand for renewable energy financing, especially in Asia. The bank is a partner to the United Nations' 2011 Sustainable Energy for All initiative, which has a goal of doubling the share of renewable energy in the global energy mix by 2030.

EU Biofuel Contribution
The European Commission proposed October 17 limiting crop-based biofuels' contribution to European Union renewable energy targets for the transport section because it found that they are driving up food prices and not contributing to GHG reductions. The proposal would limit ethanol and biodiesel's contribution to 5 percent; the EU set a goal to have renewable energy provide 10 percent of the transport fuel mix by 2020. Member states and the European Parliament must approve the proposal.

Argentina Drops WTO Case Against Spain
Argentina's Foreign Ministry announced October 17 that it has dropped a dispute with the World Trade Organization against Spain's plans to curb biofuels imports. The Spanish Ministerial Order IET/2199/2012, published the previous day, drops an April order implementing the European Union's renewable energy directive into national law. The previous order specified that biofuel quotas used in transportation must be met exclusively with EU fuel.

Apparel Co's Environmental Responsibilities
Five Chinese nongovernmental organizations released a report October 8 finding that some well known apparel brands, including Marks & Spencer, Disney, JCPenney, Polo Ralph Lauren, and Tommy Hilfiger,

are inadequately managing the environmental responsibilities of their supply chains in the country. The report, *Sustainable Apparel's Critical Blind Spot: The Second Phase Green Choice Alliance Cleaning up the Fashion Industry Report*, concluded that many international brands have started moving garment processing out of the country, but it continues to be the world leader in dyeing and finishing, which accounts for more of the water and energy consumption as well as pollution discharges in the life cycle of producing apparel.

GEF Mobilizing for Environmental Goals
The Global Environment Facility announced October 17 that it is developing a strategy to help mobilize resources to meet international environmental targets. The GEF 2020 Strategy will be geared toward meeting global goals related to biodiversity, climate change, and forest preservation by promoting valuing natural capital, encouraging biodiversity, and helping to mobilize resources to expand programs that support global environmental goals. The facility was established in 1991 to provide environmental grants to developing countries, has 182 member nations, and serves as the financial mechanism of several environmental conventions.

New EU GHG Reduction Measure
The European Union Climate Change Committee agreed October 17 to set annual limits on GHG emissions produced by sectors not covered under the emissions trading system, including agriculture, road transport, constriction, and waste. The agreement came as part of the committee's effort to achieve a 10 percent reduction in emissions outside of the trading system by 2020 compared to 2005. The Committee's decision will become effective if the European Parliament does not challenge it during a three-month review period.

States

Economic Impacts of Offshore Wind
Atlantic Wind Connection, a Google-backed developer hoping to build an offshore wind energy transmission system from Virginia to New York, released a study October 9 finding that if the mid-Atlantic region develops a large-scale offshore wind industry, it could create up to 170,000 jobs and provide significant economic advantages to the area. If 7,000 MW of offshore wind capacity were developed in the region, the study, *Assessment of the Economic Benefits of Offshore Wind in the Mid-Atlantic*, projected that it could increase Gross Domestic Product by $19 billion and increase federal, state, and local revenues by $4.6 billion; the new capacity could power up to 2 million homes.

LA Fracking Protections
The South Coast Air Quality Management District announced plans October 5 to develop rules to ensure fracking at oil and gas fields in Los Angeles do not adversely impact air quality. The agency's governing board directed staff to initiate a rulemaking that could include requirements for reporting chemicals used in fracking, and to review existing district rules to determine if they are sufficiently protective and an evaluation of currently available control technologies.

Toxic Substances in NC Drinking Water
Duke University researchers announced October 15 that they had found high levels of arsenic, selenium, and other toxic substances from coal ash downstream from coal-fired power plant settling ponds in North Carolina. According to the study, published the following day in the *Journal of Environmental Science and Technology*, some of the highest levels of contamination above federal drinking water standards were found in coal ash pond effluents flowing into Mountain Island Lake, a primary drinking water source for Charlotte, NC. Additionally, high levels of cadmium, antimony, and thallium were detected in wastewaters affecting the state's waters, and contaminants remain in high concentrations in solid waste residue and wastewater from the coal plants.

CA Fracking
The Center for Biological Diversity, Earthworks, the Environmental Working Group, and the Sierra Club filed a lawsuit in the Alameda County Superior Court October 16 to force the California Division of Oil, Gas, and Geothermal Resources to conduct environmental impact analyses for oil and gas fields before

fracking occurs. The groups said that the division is violating the California Environmental Quality Act by issuing permits for oil and gas drilling without analyses of fracking risks.

CA Plans for Heat-Related Health Risks
California's Climate Action Team intends to release this spring final guidance detailing plans to address heat-related health risks associated with climate change. The Climate Action Team, a partnership of 14 state agencies that manage California's efforts to address global warming, will accept comments on a draft version of the guidance through December 31. August 31 interim guidance presented 24 recommendations, including promoting heat-resilient communities, improving heat preparedness and emergency response, expanding research on extreme heat in the state, expanding urban greening and green infrastructure, restoring urban streams, and using lighter-colored porous materials for pavement and roofing. The draft plan also recommends that the Natural Resources Agency attempt to keep air conditioned cooling centers running even when extreme heat strains the power grid.

RI Clean Energy Expansion
At a Center for American Progress forum on regional energy needs October 19, Rhode Island Governor Lincoln Chaffee (I) expressed strong support for policies and incentives that help to encourage growth in energy production from wind, solar, and hydropower. Governor Chaffee argued that despite the expense of wind and solar energy compared to oil and gas, fossil fuels will only increase in scarcity over time.

Personnel
Mayor Michael R. Bloomberg has appointed Sergej Mahnovski director of the New York City Office of Long-Term Planning and Sustainability. While director of energy policy, Mr. Mahnovski led efforts such as the city's Clean Heat financing program. The office of Long-Term Planning and Sustainability is responsible for work on climate change, green buildings, and other environment and energy projects.

Miscellaneous

Destinations of Used Computers
Researchers at the Rochester Institute of Technology and Peru's Pontificia Universidad Catlica published a study in the October edition of the *Resources, Conservation and Recycling* journal finding that 40 million used computers in the United States were recycled, reused, or sent to landfills in 2010. The study, "Materials Flow Analysis of E-waste," concluded that 30 percent were reused, 20 to 47 percent were recycled, and 17 to 21 percent were sent to landfills; between 6 and 29 percent were exported for end-of-life management.

Industry Sustainability Performance Up
Brandlogic and CRD Analytics released a report October 15 finding that sustainability performance by top global companies has increased significantly over the past year, though the perception of company performance has worsened. The analysis, *2012 Sustainability Leadership Report*, concluded that 93 of 94 companies increased their performance in 2012 compared with 2011; the report measures waste, energy, water, emissions, and risk mitigation performance.

Green Computers
The Electronic Product Environmental Assessment Tool announced October 12 that a new class of ultra-thin computers will remain on the global registry of green electronics after it concluded an investigation finding that they meet strict environmental standards. An independent product verification committee evaluated five computers from Apple Inc., Lenovo Group Ltd., Samsung Electronics Co., and Toshiba Corp.

Energy Security Index
The U.S. Chamber of Commerce unveiled October 15 its first international energy security risk index, placing oil-rich Mexico at the top and the United States in seventh place. Countries that do well in the index tend to have a large domestic energy supply, a diverse power sector, and improving efficiency. Emerging economies do not fare well because of their rapid economic growth and resulting increased energy demand that has to be met by imports.

<u>Investment Property GHG Reductions</u>

The Urban Land Institute Greenprint Center for Building Performance released a report October 17 showing that a group of more than 1,600 global investment properties reduced their energy use by more than 4 percent and their CO_2 emissions by more than 8 percent last year, compared with 2010. The *Greenprint Performance Report* concluded that energy savings totaled more than 140 million KWh, and the emissions reduction was equivalent to not consuming almost 1.06 million barrels of oil. The properties also reduced water consumption by 3 percent and increased investment in renewable energy by almost 11 percent. The organization has set a target to reduce overall emissions in its portfolio by 50 percent by 2030, compared to a 2009 baseline.

<u>CAP Releases Clean Energy Report</u>

The Center for American Progress released a report October 19 reviewing regional clean energy strategies in the U.S. The report, *Regional Energy, National Solutions: A Real Energy Vision for America*, examined various regional approaches including support for wind projects off the Atlantic Coast and modernizing the power grid in Southeastern states that tend to depend more on fossil fuels.