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ENERGY AND ENVIRONMENT UPDATE **October 7, 2012**

Energy and Climate Debate

With Congress in recess until after the November elections, energy issues continue to make headlines on the campaign trail.

When Congress does return the week of November 12, lame duck negotiations will center on tax extenders, energy efficiency legislation, the Farm Bill, and defense reauthorization, among other issues.

Congress

Ship Emissions Trading Opposed

Representative Jim Sensenbrenner (R-WI) called on the administration October 3 to act against the European Union's proposal to include greenhouse gas emissions from the shipping industry in its cap and trade program, calling it "illegal foreign taxation." The European Commission initially planned to extend the Emissions Trading System to cover ship emissions this year, but said last week that it would delay any action until 2013.

Intentional Exposure Claim

Senator Jim Inhofe (R-OK) sent a letter September 28 to Senate Environment and Public Works Committee chair Barbara Boxer (D-CA) calling for congressional scrutiny of Environmental Protection Agency studies that the American Tradition Institute claims have exposed vulnerable people to fine particulate matter and diesel exhaust. The institute sued the agency September 21.

Legislation Introduced

Representatives Ralph Hall (R-TX), Dan Benishek (R-MI), Andy Harris (R-MD), and Dana Rohrabacher (R-CA) introduced legislation (H.R. 6564) September 28 to limit the Environmental Protection Agency's Science Advisory Board in offering policy advice and recommendations to the agency. The EPA Science Advisory Board Reform Act of 2012 would change the panel's composition, expand public participation in the advisory process, and encourage dissenting board members to voice their views.

Administration

Ralls Corp Sues President

Ralls Corp. filed a lawsuit October 2 in the U.S. District Court for the District of Columbia against President Obama, the Committee on Foreign Investment, and Treasury Secretary Tim Geithner for

blocking the firm from owning or building four wind farm projects near the Naval Weapons Systems Training Facility Boardman's restricted airspace in Oregon. The company is owned by Chinese nationals and is affiliated with a Chinese construction equipment company that manufactures wind turbines.

ESP Scoring

The Office of Management and Budget issued guidance October 3 on how they would score Energy Savings Performance Contracts and Utility Energy Savings Performance Contracts for the purposes of Federal budgeting. Agencies will now be able to pay for their contracts out of annual appropriations.

CHP Could Save Billions

Speaking before the U.S. Clean Heat and Power Association's annual meeting October 4, Jason Miller, special assistant for manufacturing policy, said that the industry needs to work with states and utilities to advance President Obama's goal of installing 40 GW of new generating capacity by 2020. Expanding the use of combined heat and power could save the manufacturing sector \$100 billion in energy costs.

Department of Energy

EV Cost Reduction Goals

Patrick Davis, head of the Department of Energy's Vehicle Technologies Program, said October 2 that the agency will roll out the EV Everywhere Grand Challenge this winter to reduce the cost of plug-in electric vehicles. The agency plans to reduce the cost of electric vehicle batteries from \$500/kWh to \$300/kWh by 2015, and aims to reduce the cost of batteries to \$125/kWh.

Clean Energy Manufacturing Innovation

The Energy Department's Office of Energy Efficiency and Renewable Energy announced October 5 that it will launch an initiative in early 2013 that will bring a clean energy perspective to existing efforts to restore the country's global manufacturing edge. The program will promote innovation in plants that manufacture equipment for clean energy generation by building on funding initiatives for technological advancement in manufacturing.

Department of Interior

Transmission Construction Approved

The National Park Service approved construction October 2 through 4.5 miles of national park lands for a 146-mile, high-voltage transmission project that utilities claim is needed to reduce transmission congestion and lower electricity prices in the mid-Atlantic. Disagreements over routing for the 500-kv Susquehanna-Roseland transmission project, which would upgrade an existing line between Pennsylvania and New Jersey, has stalled the project for three years. The project is one of seven major transmission projects designated as high priorities in October 2011 by the Rapid Response Team for Transmission.

Environmental Protection Agency

CHP Growth

Jessica Bridges, executive director of the U.S. Clean Heat and Power Association, said October 3 that the industry is anticipating significant growth due to Environmental Protection Agency rules targeting toxic air emissions from industrial facilities as well as Executive Order No. 13,624, which calls for a 50 percent increase in system use. The Department of Energy is planning a series of public discussions about best practice policies in 2013.

Renewable Fuel Waivers Forthcoming

Larry Elworth, chief agriculture counselor to Environmental Protection Agency Administrator Lisa Jackson, said October 3 that the agency plans to decide by mid-November which states will receive renewable fuel waivers due to the Midwest drought. Five states have asked the agency for waivers for ethanol in gasoline, and one has requested a waiver for biodiesel. The Governors of Arkansas, Delaware, Georgia, Maryland, and North Carolina asked the agency to waive the mandate in August.

Complying with Next CAIR Phase

Utilities are beginning to consider whether they will need to install additional pollution controls in order to comply with the next phase of the Environmental Protection Agency's Clean Air Interstate Rule. The rule is scheduled to require additional emissions reductions of SO₂ and NO_x in 2015, and utilities are weighing whether to install expensive pollution controls or invest in an emissions trading program in order to meet the new emissions budgets.

Internal Combustion Engine Air Toxic Standards

The Environmental Protection Agency is reopening the public comment period for a proposed rule to update air toxics standards for reciprocating internal combustion engines. The agency is seeking comment through November 2 on whether the engines that are on offshore drilling vessels on the Outer Continental Shelf have the technological feasibility to meet numeric emissions limits or whether they should be subject to management practices. The agency published the proposed rule June 7 and accepted comments through August 9.

Sulfured-Diesel Production Permitted

The Environmental Protection Agency will publish a direct final rule October 9 allowing petroleum refiners to continue producing diesel fuel containing up to 500 ppm of sulfur for use in older locomotive and marine engines beyond 2014. The rule clarifies the timeline for locomotive and marine diesel and heating oil companies to transition away from a yellow marker added to some fuels to distinguish between different product categories and allows home heating oil producers to produce renewable fuel credits for fuel from biomass. The direct final rule will take effect December 10.

CSAPR Decision Appealed

The Environmental Protection Agency asked the U.S. Court of Appeals for the District of Columbia Circuit October 5 for a rehearing of an August 21 decision to vacate the Cross-State Air Rule. If the full court preserves the rule, power plants in 28 states would have to reduce SO₂ and NO_x emissions to help downwind states meet air quality standards. A group of nine states and six cities that intervened in the case on behalf of the agency filed a separate petition for rehearing the same day, as did a group of environmental and public health intervenors.

Federal Trade Commission

Green Guides Updated

The Federal Trade Commission issued revised Green Guides October 1 to help marketers of environmentally friendly products avoid making false or misleading environmental claims. The version updates the existing guides and contains new sections on carbon offsets, green certifications and seals, free-of claims, nontoxic claims, and renewable energy and renewable materials claims.

General Accountability Office

Federal Alternative Technology Initiative Coordination

The Government Accountability Office released two reports October 1 finding that federal initiatives to develop or deploy solar energy technologies and battery and storage technologies overlap but also have key differences and are guided by efforts to avoid duplication. The report *Solar Energy: Federal Initiatives Overlap but Take Measures to Avoid Duplication*, concludes that 65 solar-related initiatives in six federal agencies received \$2.6 billion for the 1,506 solar projects in fiscal years 2010 and 2011. The office found similar results in a review of initiatives for its *Batteries and Energy Storage: Federal Initiatives Supported Similar Technologies and Goals but Had Key Differences* report.

International Trade Commission

Solar Trade Case Testimony

In the final injury phase of investigations on Chinese solar dumping, the International Trade Commission heard conflicting testimony October 3 on whether the American solar industry has been materially injured

by low-priced imports of solar cells and modules from China. The testimony in trade cases brought by SolarWorld AG comes as trade tensions between the United States and China escalate. The Commerce Department will release its final dumping and final subsidy determination October 10.

Nuclear Regulatory Commission

IG Annual Report

The Nuclear Regulatory Commission's inspector general released its annual report October 5 on the most serious management and performance challenges the agency faces. The report lays out issues in seven categories, including commission oversight of security programs and nuclear materials, and recommends fixes that were mostly included in reports for earlier this year.

International

U.S. Companies at Disadvantage

Speaking at Carbon Forum North America October 1, Christiana Figueres, executive secretary of the U.N. Framework Convention on Climate Change, said that the United States is at a significant disadvantage in the global transition to a low-carbon economy because the government has not adopted a comprehensive emissions reduction plan. The International Emissions Trading Association sponsored the conference.

Common Carbon Market Standard Urged

The International Emissions Trading Association released a report October 1 finding that CO2 trading systems in developed and developing countries could result in a fragmented market if countries do not adopt a common standard. The report, *Greenhouse Gas Market 2012: New Markets, New Mechanisms, New Opportunities*, highlighted recent developments in emissions trading programs in Australia, California, China, Quebec, and South Korea.

EU Fracking Concerns

Speaking at the European Gas Policy Forum 2012, Carina Vopel, head of the strategy unit in the European Commission's Environment Department, said October 3 that public fear about the environmental risks of shale gas extraction in the European Union is more likely than any regulatory obstacle to hinder the use of fracking. A forthcoming European Commission survey found that 74 percent of people in EU countries would be concerned about nearby fracking.

European Nuke Safety

The European Commission will propose new nuclear power safety standards and rules requiring all 143 European power plants to obtain liability insurance after recent stress tests showed widespread safety deficiencies. European Energy Commissioner Gunther Oettinger presented the results of the tests October 4, finding that almost all of the plants need a safety retrofit and that the costs for the upgrades will range between \$13 and \$35 billion.

EU Motorcycle Emissions

European Union negotiators provisionally agreed September 28 to strengthen emission standards for motorcycles, scooters, and some categories of off-road vehicles sold in the region after 2014. Under the agreement, which begins January 2016, mopeds would be required to meet the Euro 3 standard, and heavier motorcycles the Euro 4 standard. Motorcycles would have to conform to the Euro 5 standard in 2020.

States

NY Fracking

The New York State Supreme Court in Binghamton ruled October 2 that the city did not follow three procedural steps when it enacted a moratorium on fracking in 2011. The state is conducting a public health study of fracking's impact before it issues rules.

CA Credits Potentially Insufficient

Speaking at the Carbon Forum North America conference October 2, Belinda Morris, California director for the American Carbon Registry, said that the number of credits available to offset emissions through 2020 in California's cap and trade system is likely to be fewer than needed. There will be almost enough offsets to meet demand from 2013 through 2014, but the state will encounter a large gap between supply and demand starting in 2015. The California Air Resources Board will hold its first auction November 14, with the first compliance period beginning January 1.

OR Tax Credit Auction

The Oregon Department of Revenue announced last week that it will hold a tax credit auction October 8-12 to benefit the Renewable Energy Development Fund. Any business or individual with Oregon income tax liability may submit a bid; 3,000 increments of \$500 tax credit certificates will be available.

CA Solar Property Tax

The California State Board of Equalization issued recently final draft guidelines explaining the new construction property tax exclusion for active solar energy systems. An active system that uses solar energy to produce electricity includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. The new exclusion exempts 100 percent of the system's value from property tax assessment, or 75 percent if it involves dual-use equipment.

Emissions Protocol Released

The ICLEI-Local Governments for Sustainability USA issued the U.S. Community Protocol for Accounting and Reporting of Greenhouse Gas Emissions October 4 to help cities and counties track and report greenhouse gas emissions from transportation, electricity use, landfills, and other sources.

CA Resource Shuffling Enforcement Postponed

California Air Resources Board Chairman Mary Nichols said October 2 that the state's decision to postpone enforcement of a provision against resource shuffling in its greenhouse gas trading program has alleviated Federal Energy Regulatory Commissioner Phillip Moeller's concerns. The board adopted a resolution September 20 that would revise the state's program to address potential impacts on waste to energy operations and combined heat and power facilities.

CA Energy and Environment Measures Signed

California Governor Jerry Brown (D) signed a number of environment and energy bills September 30, including a two-bill package (A.B. 1532 and S.B. 535) to create a process for spending revenue from the state's GHG emissions allowances auction. A.B. 1532 requires all funds to be used to help meet the state's mandate to reduce emissions linked to global warming 20 percent by 1990. S.B. 535 guarantees that a portion of the money goes to disadvantaged communities. The governor also signed S.B. 1409 to strengthen the clean energy partnership between California and the U.S. military.

CA May Link to Other Trading Programs

Speaking at Carbon Forum North America October 1, California Air Resource Board Chairman Mary Nichols said that the state is interested in linking its cap and trade system to other CO2 trading programs, including one in Australia. California's first CO2 allowance auction begins November 14, and free allowance distribution begins in two weeks; 90 percent will be given to companies, leaving 60 million credits for auction in November. The first compliance period starts January 1.

Miscellaneous

State Energy Efficiency

The American Council for an Energy Efficient Economy released a report October 3 concluding that Democratic and Republican governors are both embracing energy efficiency measures. The group's *2012 State Energy Efficiency Scorecard* found that utility spending on electric and natural gas efficiency measures increased 27 percent to nearly \$7 billion nationally in 2011 compared to 2010. Annual savings from customer-funded efficiency programs topped 18 million MWh in 2010, 40 percent more than 2009, and 24 states have adopted and funded energy efficiency resource standards, while 10 states have created codes that exceed voluntary commercial and residential building efficiency standards.

Ethanol Contamination Corroding Storage Tanks

Battelle Memorial Institute recently released a study finding that ethanol contamination is a potential cause of severe, rapid underground storage tank corrosion. The report, *Corrosion in Systems Storing and Dispensing Ultra Low Sulfur Diesel Hypotheses Investigation*, concluded that low levels of contamination fed bacteria produced acetic acid and corroded the tanks.

LEED v4 Released

The U.S. Green Building Council has included incentives for the use of building materials and provisions to protect human health and increase energy efficiency in the latest draft of the Leadership in Energy and Environmental Design. LEED v4, released October 2, offers incentives for the use of products from manufacturers that are transparent about how their product is made. Comments are due December 10. A final version is expected to be up for a ballot vote next June.

Grocery Plastics Recycling

The Association of Postconsumer Plastics Recyclers launched October 3 a nationwide effort to recycle 350 million pounds of rigid plastic waste annually generated by groceries for use as feedstock in recycling facilities. The association announced the effort after completing a trial program at two grocery chains representing nearly 10 percent of mid- to large-size groceries, and will focus on plastics used to store products in the deli, bakery, fish, meat, and pharmacy sections, thus generating revenue and promoting responsible environmental stewardship.