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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

With Hurricane Sandy cleanup underway and the November election just two days away, debate over energy and environment issues has been renewed on the campaign trail and during pre-lame duck discussions.

Congress will return next week for the lame duck session, during which it will hammer out as much of a deal on the fiscal cliff as possible, including debating any potential tax extenders inclusions. Other energy-relevant areas of potential debate include the Farm Bill, Defense Reauthorization, and energy efficiency legislation.

The outcome of the Farm Bill, which expired in September, will largely depend on the results of the election. If Governor Romney wins the White House and Republicans capture the Senate, House Republicans are likely to wait until January to vote on the bill, though it continues to remain an election issue. If the Farm Bill does pass during the lame duck session, it will be as a part of a down payment to temporarily ward off sequestration.

Representatives Henry Waxman (D-CA) and Bobby Rush (D-IL) sent a letter October 31 calling on their Republican colleagues in the House Energy and Commerce Committee to hold a hearing during the lame duck session on Hurricane Sandy, extreme weather, and climate change. Two days later, they sent a similar letter urging their colleagues to work on bipartisan energy efficiency legislation during the end of the year session.

Congress

Battery Initiative Expenses

Senators Chuck Grassley (R-IA) and John Thune (R-SD) released an analysis October 31 charging that the Department of Energy's Electric Drive Vehicle Battery and Manufacturing Initiative has cost more than \$158,000 per job created under the program. The \$2.4 billion Recovery Act program awards grants to support development for advanced battery manufacturing for electric vehicles, and has created nearly 13,000 jobs in the past three years. The agency responded that the analysis was flawed and inaccurate.

Department of Energy

Appliance Testing Updates

The Department of Energy established new test procedures October 31 for residential dishwashers and dehumidifiers, and amended the currently applicable test procedure for conventional cooking products under the Energy Policy and Conservation Act.

Biomass RFI

The Department of Energy issued a request for information last week to obtain input from the research community and stakeholders regarding technologies for the deconstruction of lignocellulosic biomass to intermediates and for the upgrading of biomass derived intermediates to hydrocarbon transportation fuels and blendstocks. Although the agency may determine as the result of responses to issue a formal Funding Opportunity Announcement, there is no guarantee that future funding opportunities or other activities will be undertaken. Responses are due November 19.

SERDP Funding

The Strategic Environmental Research and Development Program released solicitations October 25 requesting proposals for fiscal year 2014 funding to perform basic and applied research and advanced technology development. Pre-proposals are due January 8, and proposals are due March 12; funding is limited to not more than \$150,000 and projects will last for one year.

Department of Justice

Ralls Corp. Trial

The Justice Department urged the U.S. District Court for the District of Columbia October 29 to throw out a challenge by Ralls Corp. to a presidential order barring it from moving forward on purchases of four wind farm projects close to military installations in Oregon. The agency contended that the court lacks jurisdiction over the complaint because the president properly exercised his discretion under the Defense Production Act. The company planned to install wind turbines manufactured in China by the Sany Group.

Environmental Protection Agency

Coal Ash Rule Timing

The National Mining Association and the Utility Solid Waste Activities Group asked the U.S. District Court for the District of Columbia October 25 to reject requests from environmental groups and coal ash recyclers for a firm time frame for the completion of the Environmental Protection Agency's rulemaking on coal ash. The groups charge that the agency did not meet a six-year statute of limitations applicable to civil action against the United States and that the agency had met its statutory obligations for review of management practices. Environmental groups filed the lawsuit April 5 asking the court to compel the agency to issue a final rule within six months.

Boiler Rule Reconsideration

The Environmental Protection Agency told the U.S. Court of Appeals for the District of Columbia Circuit October 29 that it was not able to finalize reconsidered emissions standards for boilers in the spring because it is analyzing information it received after issuing the proposed rule. Litigation challenging the boiler rule has been held in abeyance since last August while the agency promulgates reconsidered emissions standards.

Emission Standards Reconsidered

The Environmental Protection Agency October 31 that it is reviewing emission standards for heavy-duty vehicle engines and accompanying fuel sulfur emissions and national emission standards for hazardous air pollutants for reinforced plastic composites production to determine whether changes are warranted to minimize their economic impact of small businesses. The agency will accept comments for 60 days.

Ozone Standard

Environmental Protection Agency's Clean Air Act Scientific Advisory Committee said recently that the agency would be justified in considering an ozone standard between 50 and 70 ppb, but that much of the country would not be able to meet such a low standard. The agency is in the process of reviewing and

potentially revising the ozone national ambient air quality standards and has said it expects to issue a final rule in September 2014. Advisors will discuss the review during a November 5 teleconference.

Diesel Engine Manufacturers Oppose Navistar Ruling

Daimler Trucks North America LLC, Detroit Diesel Corp., Mack Trucks Inc., and Volvo North America LLC sued the Environmental Protection Agency October 26 in the U.S. Court of Appeals for the District of Columbia Circuit after it issued a rule allowing Navistar Inc. to pay nonconformance penalties for truck engines that fail to meet federal NOx standards. The agency issued a final rule September 5 allowing Navistar Inc. to produce heavy-duty diesel engines as it transitions to new emissions control technology in 2012 so long as it pays a \$3,775 per engine penalty.

RIN Protection Draft

The Environmental Protection Agency issued a draft quality assurance plan October 31 for verifying the validity of renewable fuel identification numbers sold to meet renewable fuel standard requirements. The agency announced that the plan would enable program participants to prepare for quality assurance audits in 2013. The agency intends to propose a system in which third parties would verify the validity of RINs by the end of 2012.

RE-Powering America's Land

The Environmental Protection Agency posted a document November 1 identifying renewable energy systems that have been installed at 60 sites on contaminated lands, landfills, and mine sites in 25 states. According to the RE-Powering America's Land initiative report, of those systems, 49 are solar, seven are wind, and there is one each of biomass, geothermal, hydropower, and combined solar-wind. The agency is promoting the use of potentially contaminated lands and landfills for renewable energy generation through a combination of tailored redevelopment tools for communities and developers.

Car Manufacturers Reduce Fuel Economy Standards

The Environmental Protection Agency announced November 2 that Kia Motors America and Hyundai Motor America will decrease most fuel economy estimates for their 2012 and 2013 car models after a review by the agency found significant inconsistencies in data provided by the two companies. The agency tests about 15 percent of new automobile models annually to ensure that vehicles perform at a level consistent with that purported by their manufactures.

International Trade Commission

E-Waste Investigation

The International Trade Commission confirmed November 1 that its investigation into electronic waste exportation is on schedule and it will deliver a final report next February. U.S. Trade Representative Ron Kirk asked the commission January 9 to initiate the investigation into the current market, characteristics, and practices of the electronic waste export industry.

International

Chinese Carbon Market

The Climate Group's China director recommended October 22 that to build a carbon market and develop low carbon industries, China should create a national climate change fund, explore new models for financing projects, and establish an independent committee to monitor carbon emissions and evaluate the trading system's performance. The country is targeting seven industries for accelerated development: advanced equipment manufacturing, biotechnology, energy conservation and environmental protection, new energy, new-energy vehicles, new information technology, and new materials. The group will issue a report this month.

Chinese Shipping Emissions

China's Ministry of Transportation is considering either starting a pilot program for taxing carbon emissions from marine shipping companies or involving them in pilot trading markets. The ministry is

studying what market measures could be used to reduce shipping emissions and would likely restrict marine speed in Chinese waters.

West African Energy

West African energy industry leaders met in Ghana October 29-31 to discuss how the region could secure \$500 billion committed during the Rio+20 conference. The leaders attempted to meet three targets set by the United Nations and the Sustainable Energy for All Initiative. The bloc agreed to double its share of renewable energy in the global energy mix and increase the region's energy efficiency.

Ethiopia's Emissions Goal

Ethiopian leaders began meeting in Addis Ababa October 30 to discuss how the country can meet its zero carbon emissions goal by 2025. The three-day international forum was scheduled to discuss the country's commitment to avoid global warming and focused on the \$150 billion implementation of the 2011 Climate Resilient Green Economy strategy.

Hydropower Increases Reduce CO2

The International Energy Agency released a report October 29 finding that doubling hydropower capacity by mid-century could reduce global CO2 emissions from fossil fuel plants by up to 3 billion MT annually. The joint report with Brazil's Ministry of Mines and Energy, *Technology Roadmap: Hydropower*, surveyed hydro technologies ranging from run-of-river dams to reservoir plants plus pumped-storage hydropower. Hydropower in 159 countries is responsible for 16.3 percent of electricity generation worldwide.

Tire Regulations

The European Parliament finalized tire labeling regulations in 2009 that went into effect November 1 requiring new tires in the European Union's 27 countries to carry labels with energy efficiency, noise, and safety ratings. The rule requires manufacturers to rate their products on an A-G scale; tires can impact vehicle fuel consumption depending on the degree of friction between tires and road surfaces.

Dietary and Crop Changes Needed

Climate Change, Agriculture, and Food Security, one of 15 collaborating research centers working with the International Center for Tropical Agriculture, published an analysis October 31 finding that dietary changes and crops resistant to heat and drought will be needed to help the world adapt to the impacts of climate change. The report, *Recalibrating Food Production in the Developing World: Global Warming Will Change More Than Just the Climate*, concluded that agriculture contributed up to 29 percent of anthropomorphic GHGs.

China Low-Carbon Certification System

As part of the country's efforts to develop a voluntary low-carbon product certification system, China's National Development and Reform Council shall soon release technical requirements for certifying low-carbon products and rules for measuring emissions reductions in such products. The certification standards will cover products such as air conditioners, some types of motors, flat-screen television sets, refrigerators, flat glass products and cement products. Products certified via the new system will be valid for three years and may eventually be eligible for yet finalized tax incentives or other government support.

Chinese Energy White Paper

China's State Council released a white paper October 24 indicating plans to open more of its largely state-controlled energy industry to private investment and market forces. The white paper, *China Energy Policy 2012*, stated that private investment will be encouraged in oil and natural gas pipeline infrastructure, natural resources exploration and development, coal processing, oil refining, the electricity sector, and the renewable energy sector. The paper concluded that China will work to develop non-fossil fuel energy sources with the goal of 11.4 percent of primary energy consumption coming from these sources and a goal of an installed capacity of non-fossil fuel energy sources of 30 percent of its energy portfolio by 2015. China's goal is to reduce energy intensity 16 percent by the end of 2015 compared to 2010 levels.

China's Natural Gas Policy

China's National Development and Reform Council released a natural gas policy October 31 outlining the country's plan to reform natural gas prices and increase the amount of natural gas as a portion of its total energy consumption to 10 percent by 2015. The policy aims to increase natural gas consumption in the transportation sector, with the goal of having 1.5 million vehicles using natural gas by the end 2015.

China Investigates EU Solar Producer Subsidies

The Chinese Ministry of Commerce began an investigation last week in response to claims by Chinese solar companies that European subsidies for solar polysilicon gave European producers an unfair market advantage. The ministry stated that it would issue a ruling on the matter within a year, but that the ruling could be extended until May 1, 2014.

China Solar Integration Encouragement

According to an October 24 report from Xinhua News Agency, a strategy for encouraging the incorporation of solar PV energy into China's national grid by reducing grid connection fees has been submitted to the State Council. The strategy purportedly has the support of State Grid Co., China's main electricity provider.

States

NW Coal Terminal

Opponents of a proposed Puget Sound terminal that would ship millions of tons of coal to Asia called for a broader environmental impact statement October 27 considering impacts from Montana strip mines to Chinese smoke stacks. Over 1,800 people attended the first of a series of seven scoping meetings on the Gateway Pacific Terminal. The terminal, the largest of five proposed in the Northwest, would ship up to 48 MMT annually, and if all five go online, domestic coal exports would more than double.

IA RE Tax Credits

The Iowa Department of Revenue recently adopted regulations for the geothermal heat pump tax credit and the solar energy system tax credit for tax years 2012 through 2016 on qualifying property and equipment installed beginning January 1, 2012. The nonrefundable geothermal heat pump credit is equal to 20 percent of the federal residential energy efficient tax credit allowed for residential pumps, and the solar credit equals 50 percent of the federal residential energy efficient property credit for solar systems.

CA Chemical Regulations

California's Department of Toxic Substances Control announced October 30 that it would revise its Safer Consumer Product Regulations after receiving public feedback. The revised proposal will be circulated for at least another 30 days. The draft regulations are designed to encourage manufacturers to identify safe alternatives to chemicals of concern found in consumer products.

CO Fracking Bans

The Colorado Springs Citizens for Community Rights initiated a petition campaign recently to place a fracking ban on the ballot in either April or November of next year. Voters in Longmont will consider a fracking prohibition within city limits this Tuesday.

UT Fracking Disclosure

The Board of the Utah Division of Oil, Gas, and Mining unanimously passed a rule October 24 requiring state oil and gas producers to publicly disclose the amount and type of chemicals used in fracking. Producers must report the chemicals to the national registry website FracFocus within 60 days of performing the work.

TN AG Argues Green Property Tax Break Unconstitutional

Tennessee state attorney general, Robert E. Cooper Jr., released a legal opinion November 1 indicating that a provision of the Tennessee code that caps the amount of property tax on machinery and equipment used to produce electricity in green energy facilities is likely unconstitutional. Attorney General Cooper argued that the property tax exemption is not founded on any convincing rationale related to valuation of the businesses that receive it, and that thus it is unconstitutional.

MI RES Vote

Michigan voters will vote November 6 on an amendment to the state's constitution that would require that 25 percent of utilities' retail electricity sales come from renewable energy sources by 2025. The proposed initiative would bar utilities from increasing consumer rates by more than 1 percent per year to meet costs associated with satisfying the 25 percent mandate, and would require the state Legislature to pass laws to promote the use of Michigan workers and Michigan-made equipment.

Miscellaneous

Water Efficiency Standard

The American Society of Heating, Refrigerating and Air Conditioning Engineers, the American Society of Pumping Engineers, the American Water Works Association, and the U.S. Green Building Council released a draft standard October 30 on water efficiency for the design of buildings, their mechanical systems, and building sites. It will be open for public comment through December 10.

Corporate Sustainability Increasing

Siemens and McGraw-Hill Construction released a report October 31 finding that sustainability is becoming part of standard operations for more companies in the United States. The report, *2012 Greening of Corporate America*, concluded that the percentage of companies highly engaged in sustainability rose from 18 percent in 2006 to 42 percent in 2012, and 37 percent of those activities are generating revenue, while 63 percent are internal activities.

Coal Ash in Concrete

The National Ready Mixed Concrete Association released a report last week finding that the use of fly ash from coal combustion continues to increase steadily. The report, *The 2012 NRMCA Supplementary Cementitious Materials Use Survey*, concluded that cement and concrete applications offer the greatest potential for increased use of the material. The Environmental Protection Agency is currently considering whether to regulate coal ash under Subtitle C of the Resource Conservation and Recovery Act, subjecting it to hazardous waste regulations, or as a nonhazardous waste under Subtitle D. The agency suggested October 11 that it would take more than a year to finalize the rule on coal ash management.

Corporate Sustainability Measurements Difficult

The Conference Board released a report October 29 finding that variations in the ways companies measure sustainability are making it difficult to compare their performance. According to the study, *Reporting on Corporate Sustainability Performance*, corporate sustainability reports contain a wide variety of performance indicators, and performance is reported in many ways, making it difficult to benchmark companies' performance.

Carbon Tax Opportunity

The Brookings Institution released a paper October 26 finding that the expiration of the Bush tax cuts could provide an opportunity for Congress to replace the Environmental Protection Agency's GHG regulations with a carbon tax system. The report, *U.S. Regulation of Greenhouse Gas Emissions*, concluded that any congressional negotiation to avert the fiscal cliff could include the carbon tax in exchange for replacing or repealing existing taxes.