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## **ENERGY AND ENVIRONMENT UPDATE**

**August 26, 2010**

### **Fall's Legislative Forecast**

After a year of significant work and progress on climate and energy legislation, Congress entered recess this August with little finalized and much left to be accomplished. Though the House passed comprehensive climate and energy legislation last summer, and the Senate Energy and Environment Committees held numerous hearings, and even approved pieces of climate and energy packages, no legislation in the energy agenda has yet become law.

When the Senate returns in September, they will have roughly a month to move some combination of clean energy and oil spill language through the chambers so that it has time to be conferenced with the House, either before Congress leaves for the midterm elections or when they return for a lame duck session. Even in this limited time, however, there are a number of meaningful steps they can take to begin addressing domestic clean energy in a significant way this year.

At a fundraiser on the west coast August 16, President Obama reiterated his call to put a price on carbon, and noted that while the Administration is willing to compromise on a number of energy issues, it is important to move forward with a clean energy agenda as soon as possible. Though the prospects for climate legislation this Congress are grim, there are a few groups who still suggest that Congress could use the lame duck session to cap carbon emissions this year. The same day President Obama called on Congress to pass energy legislation soon, the BlueGreen Alliance launched a three-week, nationwide tour aimed at urging Senate action on comprehensive clean energy legislation, and the National Resources Defense Council last week began running ads that prod several moderate senators to pass a comprehensive climate bill.

Most supporters of climate policy, however, are refocusing their energies on the EPA, and, in the meantime, are hoping that the Senate will move forward on a number of other energy issues this fall. Senator Mary Landrieu (D-LA) said last week that she and Senator Mark Begich (D-AK) are nearing a consensus on oil spill liability language after offering two separate proposals earlier this month, both alternatives to the language in Senate Majority Leader Harry Reid's (D-NV) energy and oil spill response package (S. 3663).

It is uncertain whether or not Majority Leader Reid will take up his oil spill legislation, the most recent language on energy policy, when the Senate returns, but momentum is building on several other clean energy pieces that may garner the necessary 60 votes for passage. Likely candidates include an extension and recapitalization of the 48C Advanced Energy Manufacturing Tax Credit as well as an extension of the 1603 Grants for Energy Property in Lieu of Tax Credits. Clean energy advocates are working closely with a growing number of Senate offices to pass a renewable electricity standard along the lines of the 15% seen in Senator Bingaman's energy bill last year. Other possibilities include an extension of the Volumetric Ethanol Excise Tax Credit and the biodiesel tax credit, the creation of a HomeStar Energy Efficiency Retrofit Program, the restoration of \$3.5 billion to the Department of Energy's Loan Guarantee Program, and the establishment of a green bank like the Clean Energy Deployment Administration. These provisions could move forward as standalone measures, or could be included in a

bill to extend expiring tax provisions, an amendment to a bill to extend the Bush tax cuts that expire at the end of this year, or FY 2011 appropriations bills.

The other piece of the puzzle will be any potential regulation of greenhouse gas emissions. As promised earlier this summer, Senator Jay Rockefeller will get a vote on his two-year delay of the EPA regulating GHGs under the Clean Air Act if the Senate does take up energy legislation. A vote on the measure is likely to be close, but even if it does not pass, it is possible, some even say likely, that a one-year delay would be attached to the EPA's FY 2011 appropriations.

As with all legislation this fall, Congress and the Administration will need to demonstrate significant leadership if they hope to move any energy pieces forward. As the fall elections near, numerous Republican candidates are increasingly doubting the idea of man-made global warming, leaving environmental and clean energy groups to worry that Congress' already hyper-partisan climate debate could grow even worse after the November elections.

One final note: though we do not usually report on politics, this week's primary contests are adding an interesting, if unexpected, addition to the post-November forecast. The results of Senator Lisa Murkowski's (R-AK) primary race are currently too close to call, but if she is defeated, Senator Richard Burr (R-NC) would likely become the Ranking Member on the Senate Energy Committee. Either way, the Energy Committee is going to look fairly different after November, as Senators Byron Dorgan (D-ND), Evan Bayh (D-IN) Sam Brownback (R-KS), and Jim Bunning (R-KY) are retiring, Senator Bob Bennett lost his primary this year, and Senator Blanche Lincoln (D-LA) is in a tough election.

It's going to be a busy few months.

## **Congress**

### Markey Returns for Oil Spill Hearing

Congressman Ed Markey (D-MA), Chairman of the Energy and Commerce's Energy and Environment Subcommittee, held a hearing last Thursday, August 19, at which he pushed the Obama administration to release scientific data showing how much oil spilled into the Gulf of Mexico as a result of the April oil rig explosion. The National Oceanic and Atmospheric Administration and other federal agencies recently released a report saying that 4.9 million barrels of oil had been released into the Gulf of Mexico, but a NOAA official testified last week that the administration now estimates that 14.1 million barrels were spilled. Congressman Markey urged the administration to release the scientific underpinning for the report for independent evaluation and also questioned how much oil remains after the cleanup efforts. During a C-SPAN interview this past weekend, Congressman Markey predicted that the Senate would eventually pass a cap and trade bill similar to the House language, and that Senators who opposed the measure would face backlash during this fall's mid-term elections.

### Upcoming Hearings

The Senate will be in recess until September 13 and the House will be in recess until September 14.

## **Administration**

### Report Shows Recovery Act Impact

Vice President Joe Biden unveiled a report August 24 that demonstrated the impact the Recovery Act's \$100 billion investment in innovation on the domestic energy industry. The analysis, "The Recovery Act: Transforming the American Economy through Innovation," concludes that the US is on track to achieve three major energy innovation breakthroughs because of the law: reducing the cost of solar power by half by 2015, reducing the cost of batteries for electric vehicles by 70% between 2009 and 2015, and doubling domestic renewable energy generation and renewable manufacturing capacity by 2012.

## **Department of Commerce**

### Report Finds BIS Export Licenses Unused

The Department of Commerce's Bureau of Industry and Security issued a report August 16 that found that most green technology items do not require a BIS export license. The Office of Technology Evaluation's report, Critical Technology Assessment: Impact of U.S. Export Controls on Green Technology Items, examined projected receiving grants from the Recovery Act and loans from the Department of Energy's Loan Guarantee Program that may be affected by dual-use export controls. The report found that some of the high-technology parts, materials, and equipment used to produce green technology items, especially in the wind, solar, alternative fuel vehicle, water purification, and energy efficiency industries, would likely require an export license. The Bureau is expected to develop a green technology working group to identify emerging technologies that can support green technology initiatives, and will work with the Department's International Trade Administration to harmonize export promotion efforts for the energy sector.

## **Department of Energy**

### \$122 Million for Energy Efficient Building Hub

The Department of Energy announced the creation of the Energy-Efficient Building Systems Design Energy Innovation Hub on August 24 at the Philadelphia Navy Yard Clean Energy campus. The hub team, led by Pennsylvania State University, will bring together leading researchers from academia, two national laboratories, and the private sector over the next five years to develop building designs that will save energy, reduce pollution, create jobs, and position the US as a worldwide industry leader in both retrofits and new construction.

### Loan Guarantee Solicitation News

The Department of Energy announced on August 20 that it will extend the application deadline for the July 2009 energy efficiency, renewable energy, and advanced transmission and distribution technologies solicitation so that more companies can participate. The new Round 8, Part I application deadline is October 5, 2010, which will give companies an additional six weeks to apply for a loan guarantee under Section 1703, and if qualified, under Section 1705, of the Recovery Act. Part II of the application is due at the end of December.

On August 12, the agency announced a new loan guarantee solicitation for renewable energy manufacturing projects including components for solar and wind energy. The solicitation covers manufacturing of commercial technology systems, wind turbine blades, and solar PV equipment and uses \$750 million in Section 1705 Recovery act funds to cover the credit subsidy costs of the loan guarantees. Part I of the application is due at the end of this month, Part II is due at the end of October, and final applications for Parts I and II are due at the end of November and January.

### EECBG Recipients Not Spending

An Inspector General audit of the Department of Energy's Energy Efficiency and Conservation Block Grant Program revealed August 11 that grant recipients have only spent 8.4% of the \$3.2 billion authorized for the program. The Block Grant Program, which was funded by the Recovery Act, provides funding for projects that improve energy efficiency and reduce energy use and fossil fuel emissions. Most funds were awarded through a noncompetitive, population-based formula.

### \$2 Billion for Nuclear Cleanup

On August 16, the Department of Energy awarded a \$2 billion contract for the next phase of decontamination and decommissioning at the Portsmouth Gaseous Diffusion Plant in southern Ohio to Fluor-B&W Portsmouth.

### \$120 Million for Weatherization

Energy Secretary Steven Chu awarded nearly \$120 million to 119 organizations in 34 states and the District of Columbia on August 19 to drive innovation under the agency's Weatherization Assistance Program. The investments will enable successful weatherization agencies to expand their programs and support new pilot projects to demonstrate innovative weatherization delivery and financial models and new technologies.

#### \$15 Million for Geothermal Heat Recovery

The Department of Energy's Geothermal Technology Program announced on August 20 a \$15 million funding opportunity to research and develop innovative methods of extracting heat from geothermal resources. The FOA seeks applicants to expand geothermal power generation into geologically diverse environments and calls for a reduction of the levelized cost of electricity for new methods of geothermal energy production. An initial pre-application concept paper is due October 1 and full applications are due at the end of November.

#### Appliance Efficiency Standards to be Updated

The Department of Energy proposed August 20 to complete a full fuel-cycle analysis for future appliance efficiency standards that would provide more information on the energy consumed by and the carbon footprint of appliances. The current standards are mostly limited to point-of-use measurements, which consider only the energy consumed to operate the appliance, and not the energy required to extract, process, and transport fuels to run the appliance. The agency will collaborate with the Federal Trade Commission to make energy and GHG emissions data available to the public. Comments on the proposal are due within 60 days of the notice, and the agency will hold a public meeting October 7.

### **Department of Housing and Urban Development**

#### \$100 Million for Housing Efficiency Retrofits

The Department of Housing and Urban Development awarded over \$100 million in Recovery Act funds August 19 to complete energy efficient renovations of 100 affordable housing developments in 31 states and the District of Columbia. The awards, which include over 8100 residences, are part of the department's Green Retrofit Program, which is providing \$250 million across the nation to reduce energy costs, improve indoor air quality, and reduce water consumption. The remaining awards will be rolled out through the end of September.

### **Environmental Protection Agency**

#### Lawsuits over SO<sub>2</sub> Standards Filed

Texas and North Dakota filed suits in federal court August 23 over the EPA's newly tightened limits on SO<sub>2</sub> pollution, joining industry groups in challenging the rule before the August 30 deadline. The states and several business and trade groups are asking the U.S. Circuit Court of Appeals for the District of Columbia to review the health-based standards for SO<sub>2</sub>, which were updated in June for the first time since 1971. EPA set a new limit of 75 ppb per hour and revoked the previous daily limit of 140 ppb and the annual limit of 30 ppb.

#### Ozone Standards Delayed

The EPA told a federal court August 20 that it will not meet its goal of releasing new nationwide standards for ground-level ozone this month. In a filing with the U.S. Circuit Court of Appeals for the District of Columbia, the agency said that finalizing the standards has taken longer than expected, and hopes to move forward by the end of October. In a draft rule released last January, EPA proposed lowering the air quality standard for ozone between 60 and 70 ppb.

#### Administrator Releases International Priority List

During an address to the Council of the Commission for Environmental Cooperation August 16, EPA Administrator Lisa Jackson outlined her international priorities for the EPA, including enforcement, climate change, electronic waste management, clean air and water, and reducing exposure to toxic chemicals. The following day, Administrator Jackson released a memo to agency staff detailing the priorities that serve as extensions of the seven EPA priorities she set earlier this year, including taking action on climate change, improving air quality, assuring chemical safety, cleaning up brownfields and superfund sites, improving water quality and protecting vulnerable waterways, addressing environmental justice, and improving partnerships with state and tribal authorities.

#### Carbon Sequestration's Impact on Drinking Water

During a briefing on the current status of EPA's vision for innovative, sustainable technologies, agency officials told members of the EPA Science Advisory Board August 16 that studies and modeling from the EPA and its research partners show that the injection of the CO<sub>2</sub> deep into the earth could result in the mobilization of certain pollutants. The Lawrence Berkeley National Lab found that aqueous concentrations of arsenic and lead could exceed maximum contaminant levels for drinking water in aquifers near carbon sequestration wells. The White House Office of Management and Budget is reviewing a rule on CCS under the Safe Drinking Water Act's Underground Injection Control program, and the EPA is expected to publish a final rule by the end of 2010 or early 2011.

#### Heavy-Duty Vehicle GHG Rule Sent to the Office of Management and Budget

The Environmental Protection Agency sent a proposal to regulate GHG emissions from heavy-duty trucks and buses to the White House Office of Management and Budget for review August 13. Unlike light-duty cars and trucks, medium- and heavy-duty trucks are not currently subject to fuel economy or GHG emissions standards, though they are subject to limits of other pollutants, including N<sub>2</sub>O and particulate matter. The standards are expected to require the vehicles to use easily available technologies, many of which are already required in EPA's voluntary SmartWay truck efficiency program, in the rule, which will take effect in model year 2014. Senator Dick Lugar (D-IN) introduced legislation (S. 3464) in June that would extend fuel economy requirements to these heavier-duty vehicles as part of a larger package of energy efficiency requirements to reduce GHG emissions 20 percent by 2030.

#### Industrial Engine Standards Released

On August 16, the EPA released final national emissions standards for hazardous air pollutants from existing natural gas-fired engines at industrial facilities that are less stringent than those proposed in 2009. The standards cover gas-fired stationary spark ignition reciprocating internal combustion engines built before June 2006, and require operators of the engines to control emissions of air toxics, including formaldehyde, acetaldehyde, acrolein, methanol, and benzene.

#### Proposal Could Classify Fuel as Waste

Responding to a proposed rule that outlines what materials are considered fuel and regulated under boiler standards and which are solid waste under the Resource Conservation and Recovery Act, industry groups cautioned the EPA last week that a proposed rule outlining which nonhazardous secondary materials burned to generate power are solid wastes could unfairly classify some legitimate fuels as wastes. The groups, including wastewater treatment facilities, wood products companies, and the National Slag Association, encouraged the EPA to make the determination that the materials they combust are fuels, but environmental groups argue that the proposal is actually too permissive.

### **Miscellaneous**

#### NJ to Promote Offshore Wind

New Jersey Governor Chris Christie (R) signed into law the Offshore Wind Economic Development Act August 19. The law will promote the development of offshore wind renewable energy by requiring the New Jersey Board of Public Utilities to establish a program that enables the operators of offshore wind farms to sell offshore renewable-energy certificates based on the amount of electricity they generate. The law also allows the New Jersey Economic Development Authority to provide financial assistance to companies establishing offshore wind farms and to those making and assembling equipment for the facilities.

#### Chinese Vehicle Investments Underway

As part of their plan to put more than a million electric and hybrid vehicles on the road over the next few years, the Chinese government announced last week that it plans to spend \$15 billion over the next few years to develop the vehicles. A group of 16 state-owned companies has agreed to form an alliance to conduct the research and development and to create standards of the vehicles.

#### Illinois Adopts Solar Development Legislation

Illinois Governor Pat Quinn (D) signed two laws August 17 to boost the state's commitment to solar energy and increase state renewable energy purchases. The Solar Ramp-Up Bill (H.B. 6202) establishes

procurement targets under the state's renewable energy portfolio to ensure that Illinois electric utilities purchase at least 6% of their load from solar sources by June 2015 as it works to meet its RES goals of procuring 25% of its power from renewable sources by 2025. The Illinois Homeowners' Solar Rights Act (H.B. 5429) prevents homeowners' associations from prohibiting home or condo owners from erecting solar panels on their property.

#### GHG Measurement Standards Tested

The World Resources Institute announced August 17 that 60 domestic and international companies completed test runs of standards to measure the GHG emissions from the product and supply chains as a part of the Product Life Cycle Accounting and Reporting Standard. The Standard is designed to help measure GHG emissions associated with the life cycle of a product, and the Scope 3 Accounting and Reporting Standard is designed to measure the indirect emissions of a company based on its supply chains and the way its products are used. Most of the companies found that the standard requirements were manageable, but that some recording methods needed additional guidance.

#### Iowa Adopts Wind Innovation Zone

The Iowa Utilities Board adopted rules this summer providing the procedure for designating small wind innovation zones authorized by recently enacted legislation. The rules take effect September 1 and provide the model ordinance and interconnection that made small wind energy systems operating within such zones eligible for the state's renewable energy tax credit.

#### CEC Five Year Plan Proposed

During the annual meeting of the Commission for Environmental Cooperation August 17, environment ministers of Canada, Mexico, and the US laid out three priorities under a proposed Strategic Plan for 2010-2015: health communities and ecosystems, climate change and low carbon economy, and greening the North American economy. The Commission proposed to improve controls on electronic waste, the environmental health of children and the comparability of data on GHG emissions.

#### Capacity Available for Steel Production

The Steel Manufacturing Association said August 16 that the US has enough capacity to make wind towers domestically. SMA representatives reinforced the need to reinvigorate domestic manufacturing and cautioned that too many wind farm constructors are moving to Chinese manufacturers who sell steel and much lower prices.

#### New Mexico Holds GHG Hearings

New Mexico's Environmental Improvement Board kicked off hearings August 16 on two proposals to restrict GHG emissions from power plants and the oil and gas industry. The first hearing focused on a petition from the New Energy Economy group to reduce CO2 emissions from large polluters 3% per year from 2010 levels beginning in 2012. The second hearing, to begin September 20, will consider an Environment Department proposal to establish a cap and trade program as part of the Western Climate Initiative. The Board will issue findings on both issues this fall.

#### Clean Energy Investment Boosts Economy

In an August 16 report, Texas' Clean Energy Economy, researchers found that increased state commitments to wind and other renewable energy sources could garner \$2.7 billion per year in gross state product for Texas, as well as produce nearly 23,000 jobs and \$279 million in additional state and local tax revenues each year.