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ENERGY AND ENVIRONMENT UPDATE **September 30, 2012**

Energy and Climate Debate

President Obama signed the continuing resolution (H.J. Res. 117) September 28, extending federal agency funding through March 27, 2013. The measure was agreed to by House and Senate leadership prior to the August recess, and both chambers passed the measure two weeks ago before recessing until after the November elections.

When Congress does return for the lame duck session the week of November 12, a number of energy issues will be on the schedule. The Senate passed a scaled back energy efficiency package in the early morning hours of September 22, and finalizing work on that measure, as well as a critical materials package, will join tax extenders, the Farm Bill, and defense reauthorization on the energy negotiation agenda.

The Senate unanimously approved energy efficiency legislation (H.R. 4850) with two amendments on September 22 that make time-sensitive reforms, provide regulatory relief to manufacturers of certain appliances and equipment, and clarify the requirements within the industrial efficiency and federal agency energy efficiency programs. An amendment to the Enabling Energy Savings Innovations Act from Senators Jeff Bingaman (D-NM), Roy Blunt (R-MO), Herb Kohl (D-WI), and Jeff Sessions (R-AL) would continue the success of the 25-year old Department of Energy appliance efficiency program, such that it will reduce national electrical demand 12 percent by 2030. It would establish efficiency standards for certain specialized products, consolidate other standards, and provide the agency with flexibility to consider new technologies. An amendment from Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH), which includes a number of noncontroversial measures included in their broader efficiency bill (S. 1000), addresses industrial efficiency and federal agency energy efficiency by coordinating research and development among Department of Energy offices, requiring implementation plans for meeting agency efficiency goals, and expanding the definition of federal renewable energy consumption requirements to include thermal and electric renewable energy consumed. The House passed a version of Representative Robert Aderholt's (R-AK) legislation in June, but will need to act on the amended bill before it could become law.

Congress

House Republicans Oppose PTC

Forty-seven House republicans, led by Energy and Commerce Subcommittee on Energy and Power Chairman Ed Whitfield (R-KY) and Representatives Mike Pompeo (R-KS) and Joe Barton (R-TX), sent a

letter September 21 to Speaker of the House John Boehner (R-OH) urging him to let the wind energy production tax credit expire at the end of the year. House Majority Whip Kevin McCarthy (R-CA) has expressed support for extending the credit for at least one year.

Hazardous Waste Manifest Legislation

David Case, executive director of the Environmental Technology Council, said September 26 that the White House assured him that President Obama will soon sign the Hazardous Waste Electronic Manifest Act (S. 710). The legislation will save hazardous waste handlers tens of millions of dollars when fully implemented, but will take two to three years to implement. The Senate passed the House version of the bill September 21, and it was sent to the president on September 25. Senator John Thune (R-SD) first introduced the legislation in 2007.

Climate and Extreme Weather Linked

Representatives Ed Markey (D-MA) and Henry Waxman (D-CA) released a report September 25 scientifically linking extreme weather with climate change. The congressmen, top Democrats on the House Natural Resources and Energy and Commerce Committees, respectively, outline the high economic costs of such extreme weather events, and call on Congress and the administration to reduce CO2 emissions.

Senate Interior, EPA Funding Bill

The Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies released a draft bill September 25 to increase funding for the Environmental Protection Agency and the Department of Interior in fiscal year 2013. The draft legislation would increase Environmental Protection Agency funding \$22 million from fiscal year 2012 to \$8.5 billion, and Interior Department funding \$146 million to \$10.46 billion. No markups have been scheduled.

Senators Express Concern Over Fracking Guidance

Senators James Inhofe (R-OK), Lisa Murkowski (R-AK), John Hoeven (R-ND), Mary Landrieu (D-LA), and Joe Manchin (D-WV), sent a September 27 letter to Environmental Protection Agency Administrator Lisa Jackson cautioning her that the agency is overstepping its jurisdiction in regards to the scale of its proposed guidance on fracking. The five senators also expressed concerns that the ambiguity of the proposed guidance could conflict with state regulation of fracking and the underground injection of waste fluids.

Legislation Introduced

Senators Olympia Snowe (R-ME), Dianne Feinstein (D-CA), Jeff Bingaman (D-NM), and Ben Cardin (D-MD), introduced the Commercial Building Modernization Act (S. 3591) September 20 to revise and extend the energy efficiency tax deduction under tax code 179D. If passed, the bill would extend the tax deduction from its current expiration date of December 31, 2013 to December 31, 2016.

Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR) introduced the Investment Tax Credit Integrity Act (S. 3610) September 21 to amend the Internal Revenue Code of 1986 to deny the inclusion of any antidumping or countervailing duties in the determination of the basis of any energy tax credit property. Otherwise, consumers who had to pay the duty could add it to the cost of the technology and increase the tax credit to counterbalance the duties.

The same day, Senators Mark Begich (D-AK) and Lisa Murkowski (R-AK) introduced legislation (S. 3613) to promote research, monitoring, and observation of the Arctic.

Representative Rick Berg (R-ND) introduced legislation (H.R. 6501) September 21 to prohibit the Administrator of the Environmental Protection Agency from finalizing certain proposed Clean Air Act rules if a state regulatory authority gives notice that it will lead to a three percent or greater increase in the price of electricity for end-use consumers.

Representative Brian Bilbray (R-CA) introduced legislation (H.R. 6503) to promote the development of renewable energy on certain Federal land.

Representative Chip Cravaack (R-MN) introduced legislation (H.R. 6507) to provide that any state implementation plan submitted pursuant to the Clean Air Act to address impairment of visibility shall apply for the state until 2022 with respect to emissions from taconite ore processing facilities.

Representative Ed Markey (D-MA) introduced legislation (H.R. 6531) to amend the Solid Waste Disposal Act to require a refund value to certain beverage containers, and to provide resources for state pollution prevention and recycling programs.

Representative Jim Sensenbrenner (R-WI) introduced legislation (H.R. 6545) to require the Administrator of the Environmental Protection Agency to use the commercially available volume of cellulosic biofuel in establishing requirements for the renewable fuel standards program.

Representatives John Tierney (D-MA) and Ed Markey (D-MA) introduced legislation (H.R. 6554) September 26 that would prevent the Nuclear Regulatory Commission from relicensing a nuclear plant until the facility has ten years or less remaining on its operating permit.

Administration

GreenGov Community Spotlight

Appearing at the 2012 GreenGov Symposium September 24, Federal Environmental Executive Jonathan Powers announced that the White House Council on Environmental Quality is launching an effort to encourage nearby federal facilities to coordinate on transportation and sustainability initiatives, such as combined power purchase agreements. The GreenGov Spotlight on Communities program will allow regions to self nominate and set goals to become more efficient within the year.

Local Climate Projections

During the 2012 GreenGov Symposium September 24, Susan Ruffo, deputy associate director for climate change adaptation for the White House Council on Environmental Quality, said that the federal government is working to provide climate change projections for small areas that local and state governments can use to make adaptation decisions. A national climate assessment, which is aimed at bringing together the best available science on domestic climate change impacts, is due next year. Two others, one on oceans, and the other on fish, wildlife, and plants, are due before the end of the year.

Climate Data Searchable

While at the 2012 GreenGov Symposium September 25, Kathy Jacobs, assistant director for climate assessment and adaptation in the White House Office of Science and Technology Policy, announced that the federal government will release online, searchable data on domestic climate change impacts next year. Federal agencies, local governments, and the private sector will use the database, the Global Change Information System, which will be released at the same time as the National Climate Assessment.

Chinese Wind Blocked

Acting on the recommendation of the Committee on Foreign Investment, chaired by Treasury Secretary Tim Geithner, President Obama directed Ralls Corp. September 28 to divest its interest in the four wind farms it purchased earlier this year 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. Though the Treasury Department claimed that the decision does not represent a precedent for evaluations of future foreign direct investment from China, some argue that continuing U.S.-China renewable energy trade disputes may have influenced policy makers. Ralls Corp. filed a suit September 26 in the District Court for the District of Columbia against the committee challenging restrictions imposed on it while the committee reviewed the transaction.

Department of Agriculture

Biobased Product Purchasing

Agriculture Secretary Tom Vilsack said September 25 that the agency is working to bolster the manufacturing industry by increasing the number of biobased products available to federal agencies. The Department of Agriculture has increased the number of biopreferred products from 7,000 to 9,300, with the goal of making 18,000 biobased products, ranging from cleaners, to solvent, to clothing, available for federal agency purchase. More than 3,100 American companies, employing over 50,000 people, make nearly 25,000 biobased products. The agency has also added 12 categories of approved biobased products since June, taking to total to 77.

Department of Defense

Energy Spending Up

Pike Research released a report September 24 finding that Defense Department spending on renewable energy and energy efficiency programs is expected to steadily increase over the next 12 years, reaching almost \$1.8 billion in 2025. The figure, an increase from the estimated \$163 million spent in 2013, comes as the military pursues its energy goal of using 3 GW of renewable energy by 2025; the department has identified 9 GW of projects they plan to execute by 2017. The Defense Department is the country's largest energy consumer, spending \$19.4 billion on energy in fiscal year 2011.

Department of Energy

Concerns Regarding Budget Discretion

Clean energy industry groups have expressed concern that the Department of Energy may use the budget discretion it maintains under the continuing resolution and sequestration to eliminate programs that have fallen out of favor with the Obama Administration. The continuing resolution gives the agency the authority to apportion the \$148 million in budget cuts it must make if the sequestration mechanism goes into effect January 2, 2013. The Business Council for Sustainable Energy sent a September 25 letter urging the department's Office of Energy Efficiency and Renewable Energy to allocate funds to its programs at proportionally similar levels to those approved by congress for fiscal year 2012.

Department of Interior

Oil and Gas Leasing

The Department of Interior announced September 25 a 38 million acre oil and gas lease sale – the third major lease in the Gulf of Mexico this year. The area was identified in the agency's five-year drilling plan. The same day, the Bureau of Land Management announced that it would auction off drilling rights for oil and gas properties in Alaska's National Petroleum Reserve, the second time this year. The new sale includes 400 tracts covering 4.5 million acres.

Environmental Protection Agency

Additional CSAPR Case Halted

The U.S. Court of Appeals for the District of Columbia Circuit put a hold on a case September 27 on the Environmental Protection Agency's rule revising state and power plant emissions requirements related to its Cross-State Air Pollution Rule. The court struck down the rule in August, sending it back to the agency for a rewrite. The case now on hold was filed separately by industry groups over changes the agency made to the rule after it was finalized, including some plant emission requirements and state implementation plans in Arkansas, Louisiana, Mississippi, and Texas.

New Fake RINs Identified

Cargill is seeking damages in U.S. District Court for the Southern District of New York from the International Exchange Services for allegedly refusing to replace 1.2 million biodiesel renewable identification numbers that were later found to be fraudulent. The food and agricultural producer is the latest victim of fraud within the Environmental Protection Agency's electronic credit system for tallying renewable fuel production. The agency announced in July that it plans to be more flexible with companies that unknowingly purchase fake credits. The American Petroleum Institute said September 27 that it does

not anticipate that the agency will rule before the end of the year on a final rule that could alleviate concerns about fraud in the program, though it was hoping that it would before a new compliance year begins this January.

WY Coal Plant Objection Denied

The Environmental Protection Agency denied an August 4, 2011 petition September 25 by WildEarth Guardians objecting to the Wyoming Department of Environmental Quality's issuance of a Clean Air Act operating permit for a coal-fired power plant to Cheyenne Light, Fuel & Power.

Air Toxics Rules Review Complaint

A group of environmental community groups, including Air Alliance Houston, California Communities Against Toxics, and the Coalition for a Safe Environment, filed a complaint against the Environmental Protection Agency September 27 in the U.S. District Court for the District of Columbia for its failure to review air toxics standards for petroleum refineries as required by the Clean Air Act. The complaint cites data from the Environmental Protection Agency showing that there are 150 refineries in 32 states that emit 20,000 tons of air toxics a year.

Federal Energy Regulatory Commission

Dodd-Frank Tensions Resume

The Federal Energy Regulatory Commission responded September 27 to a Commodity Futures Trading Commission proposal to exempt from new derivatives rules certain deals on markets operated by a number of regional transmission organizations and independent system operators. The Federal Energy Regulatory Commission told the Commodity Futures Trading Commission that the exemption is unnecessary because the transactions should not be subject to derivatives rules because they fall under their purview.

Commissioner Challenges Proposed EPA Rules

Federal Energy Regulatory Commissioner Phillip Moelle expressed concern in a September 28 statement that electric utilities and other power providers would be unable to meet the Environmental Protection Agency's newly proposed environmental standards without diminishing electric reliability. Mr. Moeller, one of two Republicans on the commission, articulated his worries about the new rules in a concurring opinion to a September 21 order that authorized requests for rule changes submitted by the Midwest Independent System Operator.

Government Services Administration

Workplace Energy Efficiency Savings

The General Services Administration released two studies September 26 finding that workplace-specific lighting and advanced power strips could provide between 26 and 63 percent energy savings in buildings compared to normal lighting. The studies, tested under the Green Proving Ground initiative in cooperation with the Department of Energy's National Laboratories, found that lighting technologies include dimming equipment, occupancy sensors, and lighting management systems, and energy savings depend on how workspaces are used. Lighting accounts for 39 percent of electricity costs in office buildings. Advanced power strips could provide between 26 and 50 percent energy savings.

Government E-Waste

Speaking at the 2012 GreenGov Symposium September 24, Robert Holcombe, director of personal property policy management in the General Services Administration announced that an upcoming agency proposed rule is expected to require that government electronic waste be sent to certified recyclers or refurbishers. A 60-day comment period will follow. The rule will facilitate donations to states and local entities, allow for the sale of functional electronics, and prohibit the bulk sale of nonfunctional federal electronic assets.

International

Chinese Solar Panel Complaint

European solar panel makers, led by EU ProSun, filed their second complaint September 25 against Chinese competitors, calling on the European Commission to impose antisubsidy duties on solar panel products from China. Earlier this month, the commission launched a separate antidumping investigation into Chinese solar panel imports after a similar July complaint. The group charged that China only provides subsidies to Chinese solar panel manufacturers, and that more than \$35 billion in state aid has led to a production capacity 20 times larger than total domestic consumption and double the global demand. The commission has 45 days to determine whether to launch an official investigation, and if it does, it will have nine months to decide whether to impose provisional antidumping duties, followed by 13 months for European Union member states to decide whether to impose permanent duties.

Russian Gas Flaring Penalties

Russia's Federal Service for Supervision of Natural Resources is issuing an increasing number of fines for flaring associated gas at oil wells while agency officials urge policy changes to reduce additional environmental damage from oil and gas extraction. An executive order establishing a 95 percent utilization of associated gas goal went into effect this January, and the agency planned at the beginning of the year to increase monitoring and enforcement for polluters.

Public-Private Sustainable Energy Leaders

U.N. Secretary General Ban Ki-moon named September 24 Kandeh Yumkella as director-general of the United Nations Development Organization, chair of UN-Energy, and chief executive of the Sustainable Energy for All initiative, a United Nations public-private partnership campaign to globally expand renewable energy access. The year-old initiative aims to provide universal energy access, to double the rate of global energy efficiency improvement, and to double the share of renewable energy in the global energy mix.

WTO Rules on Complaint Against Canada

A World Trade Organization dispute panel issued a confidential interim ruling September 20 supporting a complaint filed by the European Union and Japan claiming that aspects of Ontario's green energy program discriminate against foreign suppliers of equipment for renewable energy generation facilities. The EU, Japan, and Canada will each be given the opportunity to comment on the interim ruling before the panel releases its final decision in November. The vast majority of panels have maintained their interim findings in the final ruling in the past.

Miscellaneous

Compost Reduces Heavy Metals

According to scientific research published in the September issue of the *International Journal of Environmental Protection*, a variety of techniques, from chemical additives to the use of earthworms, can reduce the concentrations of toxic heavy metals in composed municipal and industrial solid waste. The report, "Reduction of Heavy Metals During Composting," concluded that the use of biological processes is often favored because of lower costs, and is particularly useful for developing countries, as the United States already follows strict heavy metal concentration standards.

Homeowner Energy Tax Credits Benefits Unclear

The Congressional Research Service reported September 25 that it is unclear whether tax credits impact homeowner investment in high efficiency heat pumps or other efficiency technologies. The report, *Residential Energy Tax Credits: Overview and Analysis*, contests the claims of tax credit extension legislation supporters, who contend that the credits spur homeowners to make the investments.

Unanticipated Consequences of Energy Tax Policy

The Congressional Research Service released a report September 24 finding that federal tax policy aimed at the energy industry is perceived as necessary to correct market failures, but can occasionally exacerbate problems because of necessary political compromises in enacting new provisions. The report, *Energy Tax Policy: Issues in the 112th Congress*, concluded that some of those policies can lead to

unanticipated consequences, like the alternative fuels tax credit that was made available to paper mills using black liquor to power their operations.

Coke's Green Plastic

Coca-Cola announced September 27 that it will build a large facility in Brazil to make the major ingredient in its plant-based plastic bottles. The plant will be the world's largest to produce bioglycol, or monoethylene glycol, and is part of the company's plan to increase production of its PlantBottle plastic, which contains 30 percent plant-based material. The company, which has committed to making all of its plastic bottles from plant-based materials by 2020, will accomplish eight percent of its goal this year.