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## **ENERGY AND ENVIRONMENT UPDATE**

**October 9, 2011**

### **Energy and Climate Debate**

As the Administration continues to take heat for the Solyndra bankruptcy, and the President continues to defend loan guarantees as a tool that allows the United State to compete in an increasingly global and fast-paced market, clean energy issues as a whole are struggling to come out from under the politicized negative media attention. In the coming weeks, energy and climate issues will face a number of hurdles and have several opportunities to succeed as Congress continues to focus on appropriations, deficit reduction, and jobs.

Senate Majority Leader Harry Reid (D-NV) announced October 5 that the Senate would take up President Obama's American Jobs Act (S. 1549) very soon, and that he would replace its offsets with a new 5.6 percent surtax on millionaires. The following day, Majority Leader Reid said that he will open the legislation to amendments, and is making plans to vote on the bill as soon as October 12.

The surtax, which has the blessing of the White House, would raise about \$445 billion, replacing the politically unpopular offsets currently in the legislative language. The bill would halve payroll taxes for workers and employers in 2012, eliminate payroll taxes for businesses that hire people who have been unemployed for more than six months, extend unemployment insurance benefits, and provide extra funding for transportation, energy, and school modernization projects.

The Senate also will take up the Currency Exchange Rate Oversight Reform Act (S. 1619), while the House will consider the U.S.-Colombia Trade Promotion Agreement Implementation Act (H.R. 3078), the U.S.-Panama Trade Promotion Agreement Implementation Act (H.R. 3079), and the U.S.-Korea Free Trade Agreement Implementation Act (H.R. 3080). The free trade bills will move in conjunction with legislation to renew Trade Adjustment Assistance, per a deal made between the White House and Congressional Republicans.

The House also will, under suspension of the rules, continue consideration of the EPA Regulatory Relief Act (H.R. 2250), delaying the implementation of air pollution standards for commercial boilers and incinerators, and providing at least an additional five years for industry to comply with the rules once finalized. Democrats offered several amendments to the bill, all voted down, including Rep. Henry Waxman's (D-CA) amendment instructing the EPA administrator to press ahead with rules designed to reduce emissions from petrochemical refineries, chemical facilities, and large factories. Later in the week,

the House takes up the Coal Residuals Reuse and Management Act (H.R. 2273), which would allow implementation of coal combustion residuals permit programs at the state level, with EPA providing permitting in states lacking a system.

## **Congress**

### House Passes Cement Rule Delay

The House passed by a vote of 262-161 legislation (H.R. 2681) October 6 to delay compliance with Environmental Protection Agency air pollution rules for cement kilns until at least 2018. The bill requires the agency to revise air pollution rules for cement kilns and provide industry with additional time to comply. Democrats offered amendments to the measure, many of which focused on the health benefits of the rules to limit emissions of hazardous air pollutants, but they were rejected. The same day, the House rejected several Democratic amendments to similar legislation that targets EPA regulations for boilers and incinerators; the House will resume consideration of the boiler rule this week. Despite Republican amendments offered to the currency exchange rate bill (S. 1619) last week, the Senate is not expected to pass similar legislation, but if it does, President Obama has threatened to veto it.

### Clean Energy Progress Letter Sent

Twenty-two senators led by Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) sent a letter October 5 to Energy Secretary Chu asking for an update on the country's progress in clean technology deployment and job creation. There is significant concern that due to heightened focus on the loan guarantee program, tax credits that are beneficial to the clean energy and energy efficiency technology industries may be overlooked and allowed to expire.

### Loan Guarantees Face Natural Resources Scrutiny

The House Natural Resources Committee approved legislation (H.R. 2915) to repeal the \$3.25 billion in borrowing authority granted to the Energy Department's Western Area Power Administration under the recovery act. The loans were to be used for building, planning, or maintaining the operation of new or upgraded electric-power transmission lines. The legislation exempts from the repeal three projects already approved by the Energy Department.

### Boxer to Resist Deregulation Efforts

Senate Environment and Public Works Committee Chairman Barbara Boxer (D-CA) released a report October 6 that concluded that she and other Senate Democrats should resist House Republican efforts to delay or halt Environmental Protection Agency regulations. The majority committee report, *EPA Protects Our Health and Promotes Economic Growth*, contends that the country's public health and environmental laws support an annual \$300 billion clean technology sector that employs 1.7 million workers.

### Legislation Introduced

Senator Dick Lugar (R-IN) introduced the Rural Economic Farm and Ranch Sustainability and Hunger Act (S. 1658) October 5. While the overall legislation allocates about \$40 billion less than the 2008 Farm Bill does, it provides \$835 million over the next ten years for the energy titles, with a specific focus on biofuel and energy efficiency programs that are refocused from grants to loans. Representative Marlin Stutzman (R-IN) introduced companion legislation in the House.

The same day, Congressman Bob Goodlatte (R-VA) introduced two pieces of legislation that have to do with the renewable fuel standard. The first (H.R. 3097) partially waives the standard when corn inventories are low, and the second (H.R. 3098) repeals RFS2 entirely.

Representative Richard Hanna (R-NY) introduced legislation (H.R. 3122) October 6 to establish procedures to advance the use of cleaner construction equipment on Federal aid highway and public transportation construction projects to make the acquisition and installation of emission control technology an eligible expense in carrying out such projects. The bill makes it easier and more cost-effective to upgrade construction equipment to meet diesel soot emissions standards.

### Upcoming Hearings

On October 12, the House Natural Resources Committee will hold a hearing to review the end of the Gulf of Mexico's drilling moratorium and the lingering impact on jobs, energy production, and local economies.

On October 13, the House Natural Resources Committee will hold a hearing on the Bureau of Ocean Energy Management, Regulation, and Enforcement's Deepwater Horizon oil spill report, and that of the U.S. Coast Guard's Joint Investigation Team.

On October 12, the House Science Subcommittee on Energy and Environment will hold a hearing on advancing coal research and development.

On October 13, the House Energy and Commerce Subcommittee on Energy and Power will hold a hearing on the American energy initiative which will focus on electric transmission issues.

On October 12, the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending will hold a hearing on the Obama administration's green energy policies impact on small business and consumers.

On October 13, the Senate Environment Subcommittee on Green Jobs and the New Economy will hold a hearing on innovative practices to create jobs and reduce pollution.

On October 12, the House Energy and Commerce Committee will hold a hearing on cutting spending at the Environmental Protection Agency.

## **Department of Energy**

### Seven Projects Fast-Track Transmission Siting Process

Capping two years of interagency negotiations following the signing of a memorandum of nine federal agencies in 2009 to streamline the approval process, the Obama Administration announced plans October 5 to expedite the permitting and construction of seven interstate electric transmission projects that would total over 2,500 miles of high-voltage transmission lines across 12 states. The seven projects, five in the West, one in the Midwest, and one on the East Coast, will serve as pilot demonstrations for accelerating the siting of future transmission projects that cross federal lands. The National Parks Conservation Association cited concern October 6 that the move fails to protect several National Park Service sites.

### First AC Challenge Entry Received

The Department of Energy announced October 4 that it has received the first entry by a manufacturer to a voluntary challenge for a new generation of high-efficiency cost-effective air conditioners for commercial buildings. The agency will soon begin testing the Daikin McQuay's Rebel unit to determine whether it meets the high energy-efficiency performance levels outlined by the challenge.

### Geothermal Loan Guarantee Recipient Faces Difficulties

Nevada Geothermal Power Inc. released a financial statement September 27 in which it disclosed a multimillion dollar deficit and said that it may not be able to continue operations. The company received a \$78.8 million loan guarantee from the Department of Energy in September 2010 and more than \$65 million in federal grants to expand its 36 MW Blue Mountain Faulkner plant.

### States Should Improve Shale Gas Regulations

Members of the Shale Gas Subcommittee of the Secretary of Energy Advisory Board testified before the Senate Energy and Natural Resources Committee October 4 that industry practices for extraction of natural gas from shale need constant improvement and a systemic spread of best practices to protect the environment, but that states should lead improvements in the regulation of shale gas, including the associated hydraulic fracturing. The advisors said the same thing to Energy Secretary Steven Chu in August and will issue another report with more detail on their 20 recommendations in the next six weeks.

## **Department of Interior**

### Fracking Endorsed

Interior Secretary Ken Salazar endorsed the controversial practice of hydraulic fracturing October 5. He said that fracking is a necessary part of expanding U.S. energy supplies and cited several scientific reports that the practice is safe and does not contaminate ground water supplies.

## **Department of State**

### Keystone XL Challenged

The Center for Biological Diversity, the Western Nebraska Resources Council, and Friends of the Earth filed a lawsuit October 5 against the Departments of State and Interior challenging construction of the Keystone XL oil sands pipeline that they believe is taking place before a federal permit has been issued. Representative Earl Blumenauer (D-OR) and six other House Democrats sent a letter the previous day to Secretary of State Hillary Clinton urging her to reject TransCanada's permit request, noting that the agency failed to consider alternative routes that would bypass the Ogallala Aquifer in its final environmental impact statement. The Department of State held a public meeting about the proposed pipeline project on October 7.

## **Environmental Protection Agency**

### Suits over Ozone Standards Forthcoming

The American Lung Association, the Environmental Defense Fund, the Natural Resources Defense Council, the National Parks Conservation Association, and the Appalachian Mountain Club said in a notice of intent to the Environmental Protection Agency October 6 that they plan to sue the agency within 60 days if it does not designate ozone nonattainment areas. The agency issued the designations in 2008, but recently announced it would abandon plans to set more protective standards.

### NOx Standards Proposed

The Environmental Protection Agency proposed more stringent nitrogen oxides performance standards for nitric acid plants September 30 but said that it will not seek greenhouse gas emissions standards for them. The proposed rule would revise the new source performance standards by limiting nitrogen oxides to 0.5 pound per ton of acid produced, calculated as a 30-day rolling average. The Fertilizer Institute, which represents 90 percent of nitric acid plants, is concerned that the industry will be able to meet the standard.

### School Siting Report Released

The Environmental Protection Agency recommended October 3 that all sites under serious consideration as locations for schools undergo an initial screen and preliminary environmental analysis, and more comprehensive assessments if potential problems are discovered. The agency said in a report, School Siting Guidelines, that local education agencies select alternate sites or perform comprehensive studies to ensure that environmental concerns are identified and addressed.

### Budgets May Increase

According to observers of the agency, the Environmental Protection Agency is considering increasing state emissions budgets in the Cross-State Air Pollution Rule. Reports suggest that the agency may increase some states' budgets by 1 to 4 percent. The White House Office of Management and Budget is reviewing a proposed rule that would revise the cross-state rule, although the content of the proposal is uncertain.

### IG Report Inclusion Requested

The Coalition for Responsible Regulation filed a petition September 30 in the U.S. Court of Appeals for the District of Columbia Circuit asking it to include an Office of Inspector General report criticizing the Environmental Protection Agency's peer review process in the court record in three lawsuits challenging the greenhouse gas regulations. The industry groups and Congressional Republicans contend that the

report demonstrates that the agency failed in its statutory duty to exercise independence judgment in making its endangerment finding.

#### Ozone-Depleting Substitutes Expanded

The Environmental Protection Agency approved October 4 five new substances as acceptable alternatives for ozone-depleting refrigerants, fire suppressants, and solvent cleaners as part of the Significant New Alternatives Policy. The program determines acceptable substitutes and transitional substitutes for ozone-depleting substances like Freon and other chlorofluorocarbons.

#### Carmakers Support Mobile Regs

The Alliance of Automobile Manufacturers and Association of Global Automakers said in an amicus brief filed September 30 in the U.S. Court of Appeals for the District of Columbia Circuit that the Environmental Protection Agency is required under the Clean Air Act to regulate greenhouse gas emissions from cars and trucks after it determined that related emissions endanger the public. The carmakers said that a single, national standard for vehicles was preferable to regulating emissions state by state.

#### Biomass Emissions Measurement Framework Underway

The Environmental Protection Agency released a report last week that unveiled the agency's plan to develop calculations to account for greenhouse gas emissions from biomass-based fuels burned by industrial facilities. The report, *Accounting Framework for Biogenic CO2 Emissions from Stationary Sources*, details the agency's framework for addressing biogenic emissions, and the Science Advisory Board's Biogenic Carbon Emissions Panel will review the framework.

#### **Personnel**

Jonathan Silver, head of the Department of Energy's loan guarantee program, resigned his position effective October 7. He had informed the agency this summer that he intended to leave shortly after the end of the fiscal year, and he will join Third Way as a distinguished visiting fellow.

The Senate Commerce Committee favorably reported the nomination of John Bryson as Secretary of Commerce October 6 to the full Senate. Forty-four GOP senators had previously blocked all of the president's trade nominees until he submitted implementing legislation for the pending free trade agreements with Colombia, Korea, and Panama. The president submitted implementing legislation for the pending FTAs to Congress on October 3 and floor action is anticipated this coming week.

#### **Miscellaneous**

##### PA Gas Proposal Unveiled

Pennsylvania Governor Tom Corbett (R) unveiled a proposal October 3 that would subject the state's shale gas drilling industry to more stringent regulations, steeper bonding requirements, stiffer penalties for environmental violations and an annual impact fee to fund natural gas drilling related expenses incurred by local governments. The proposal incorporates most of the recommendations his Marcellus Shale Advisory Commission provided in July.

##### EU Biofuel Policy Clouded

A scientific committee of the European Environment Agency concluded in a recent report that miscalculations were made when the European Union agreed in 2008 to include biofuels as a key to achieving a goal built around having ten percent of all transportation fuels come from renewable energy by 2020. The European Commission's plans to establish the biofuel production criteria designed to ensure that the use of plants and trees as a renewable energy source does not harm ecosystems and increase the cost of food are now in disarray because the study challenges the basic assumption that growing plants for fuel use is carbon neutral.

##### Panama Talks Take Place

The third incarnation of the 14th meeting of the Ad hoc Working Group on Long-term Cooperative Action and the 16th meeting of the on Further Commitments for Annex I Parties under the Kyoto Protocol took

place in Panama City last week as international climate negotiators hope to reestablish momentum in the weeks leading up to the November 28 opening of the 17th Conference of the Parties in Durban, South Africa. The Panama negotiations focused primarily on technology transfer, capacity building for the poorest countries, and standards for measuring and verifying greenhouse gas emissions reductions from all countries.

#### Large Canadian Emitters Must Report

Environment Canada published a notice October 1 directing industrial facilities that produce 50,000 MT CO<sub>2</sub>e must report their greenhouse gas emissions from the 2011 calendar year by next June.

#### Fuel Economy Cash Saved

The Natural Resources Defense Council and the Union of Concerned Scientists released a state-by-state breakdown on gas pump savings October 5. The report also included an average savings figure per household as a result of the new fuel economy standards that require automakers to achieve a fleet fuel economy average of 54.5 MPG by 2025.

#### CCS Progressing

The Global Carbon Capture and Storage Institute released a report October 4 that identifies eight large-scale carbon capture and storage projects in operation around the globe. The report, *The Global Status of CCS: 2011* found that six other CCS projects are under construction and 10 others are expected to receive final investment status in the next year. The 14 projects in operation or under construction can accommodate more than 33 MMT annually.

#### Lawful to Include US Airlines in ETS

European Court of Justice Advocate-General Juliane Kokott released a court opinion October 6 that is expected to play an important role in the international policy dispute over whether U.S. airlines will be included in the European Union greenhouse gas emissions trading system: that inclusion of U.S. airlines in the trading program is lawful. The scheme will go into effect for airlines on January 1, 2012. The 13 members of the Grand Chamber will begin their deliberation after receiving the opinion, and the court is expected to issue a decision by early 2012.

#### Cellulosic Goal Unattainable

The National Research Council said in an October 4 report that the United States is unlikely to meet its goal of producing 16 billion gallons of cellulosic ethanol in 2022. The report, *Renewable Fuel Standard: Potential Economic and Environmental Effects of U.S. Biofuel Policy*, finds that the nation lacks the refining capacity necessary to meet the production goals and the fuel needs stronger market signals such as subsidies or a price on carbon to compete with petroleum.

#### Measurement Standards Issued

The World Resources Institute issued a set of standards October 4 to help companies measure, report, and manage carbon emissions along their supply chains and throughout the life cycle of their products. The Greenhouse Gas Protocol, a project led by WRI and the World Business Council on Sustainable Development developed the standards.

#### China to Increase Anticipated Emissions

The Potsdam Institute, Climate Analytics, and Ecofys sustainable energy lobby group released an analysis October 4 that concluded that China, the world's largest GHG emitter, is likely to have higher-than-anticipated emissions going forward even though it is on pace to meet or surpass some of the climate-related pledges it made at last year's U.N. climate summit in Mexico. The country is expected to fulfill its pledge to reduce its carbon emissions intensity by 40 to 45 percent by 2020, but due to higher than anticipated economic growth, overall emissions are likely to be higher as well.

#### Reviews and Permitting Streamlined

California Governor Jerry Brown (D) signed legislation (S.B. 226) October 4 to streamline the environmental review and permitting processes for infill development and renewable energy projects. The legislation removes barriers to development projects that will help create jobs and boost the state's economy.

#### Efficient Construction Eligible for Italian Incentives

Italy's Ministries of Environment and Economic Development announced October 4 plans to extend the reduction in tax payments by 55 percent on solar refraction technology and expand it to include a broader group of energy efficient construction projects. The original eight month plan, announced February 8, allowed the reductions for solar projects that sold power back to the grid and were capped at \$80,000 per array. The new plan expands the same level of incentives to individual and corporate projects that involve heating, energy distribution, renewable energy generation, or water use.

#### DC Stormwater Permit Renewed

The Environmental Protection Agency approved the District of Columbia's renewed municipal separate storm sewer system permit October 5, requiring dynamic stormwater management techniques such as vegetated roofs and rainfall retention on properties for at least 24 hours. The new permit conditions are necessary because impervious surfaces in the city channel stormwater into impaired local streams and rivers, and, eventually, the Chesapeake Bay.

#### MN Ag Waste as Fuel

Minneapolis' Avant Energy recently submitted environmental air permits to the Minnesota Pollution Control Agency for the creation of a biofuel project that could supply the city of Le Sueur with electricity. The plant, to be operational as early as 2013, would use agricultural processing waste to create energy through anaerobic digestion.

#### Oil Sands GHG Intensity Rating

The European Commission triggered a potential dispute with Canada October 4 by proposing that EU legislation consider fuel derived from oil sands to be 22.3 percent more GHG intensive than fuel from conventional crude oil. The rating is part of the commission's implementation of the EU's 2009 Fuel Quality Directive, which requires the transportation fuel life-cycle emissions by be reduced by 6 percent by 2020.

#### Canada Won't Meet Climate Goals

Canada's environmental auditor released a report to Parliament October 4 concluding that the country's actions to reduce GHG emissions are insufficient to meet the nation's commitments under the Kyoto Protocol. The *Report of the Commissioner of the Environment and Sustainability Development* called for an appropriate management accountability and reporting framework for efforts to reduce emissions as Canada has pledged a 17 percent from 2005 level reduction by 2020.

#### Russia Funding Triggers Arctic Launch

Russia signed onto and provided funding for a new financial mechanism for environmental projects in the Arctic October 4. The country agreed to support the Arctic Council's Project Support Instrument and pledged \$13.4 million to finance projects.

#### Progress Seen at UN Climate Talks

On October 7, the United Nations concluded seven days of informal climate change meeting in Panama with officials declaring progress on technical, but not political issues. These meetings are a precursor to the November 28 – December 9 17th Conference of the Parties to the United Nations Framework Convention on Climate Change to take place in Durban, South Africa. The signatory nations are scrambling to sign an accord to replace the Kyoto Protocols, which expire at the end of 2012. The Ad-hoc Working Group on Long-term Cooperative Action and the Ad-hoc Working Group on the Kyoto Protocol sought to lay the groundwork on developed country mitigation targets, verification schemes, and legal and financial issues.

#### California Governor Signs Several Environmental Bills

On October 6 and 7, Gov. Jerry Brown (D) signed A.B. 341 into law which seeks to reduce the level of solid waste going to landfills by adding a 75% voluntary target to the existing law mandating local governments need to divert 50% of their solid waste to generation by 2020. Brown also signed A.B. 631, easing permitting for electric vehicle charging facilities; A.B. 1149, providing five years of funding for

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plastic beverage bottle container reuse; and S.B. 570, authorizing the San Joaquin Valley Unified Air Pollution Control District's voluntary program for replacing or retrofitting high-polluting school buses.