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## **ENERGY AND ENVIRONMENT UPDATE**

**April 8, 2012**

### **Energy and Climate Debate**

Congress continues its two-week recess this week, and back home, representatives on both sides of the aisle are facing criticism over high gasoline prices as the issue plays in the election debate.

Speaker of the House John Boehner's (R-OH) weekly address began the two week recess in which Republican House members hoped to transform voter anger at President Obama over high gas prices into continued control of the lower chamber in this November's elections. Prior to their departure, House Majority Whip Jeff Flake (R-AZ) distributed a 22-page energy talking point workbook and directed members to spend the recess holding energy-focused business roundtables, visiting gas stations, and writing op-eds focusing on high local gas prices.

At the same time, House Minority Leader Nancy Pelosi (D-CA) scheduled a recess House Democratic Steering and Policy Committee hearing on the issue last Wednesday. With gas prices reaching a national average up 20 cents per gallon from a month ago to \$3.93, Congressional Democrats are calling on federal regulators to rein in speculation in order to address high prices at the pump.

The Obama Administration continues to walk a fine line between casting oil and gas companies as the villain and demonstrating a pro-drilling bent. Last week, Interior Secretary Ken Salazar appeared with North Dakota Senators Kent Conrad (D) and John Hoeven (R) and Representative Rick Berg (R-ND) in the state, which is at the center of the country's new oil boom, to discuss the situation.

### **Congress**

#### **RE Tax Incentives Favored**

On behalf of the National Governors Association, Connecticut Governor Dannel Malloy (CT) and South Dakota Governor Dennis Daugaard (R) sent a letter April 4 to Senate Majority Leader Harry Reid (D-NV), and Senate Minority Leader Mitch McConnell (R-KY), Speaker of the House John Boehner (R-OH), and House Minority Leader Nancy Pelosi (D-CA) urging Congress to pass a long term extension of tax provisions that encourage investment in renewable energy, specifically citing the importance of the production tax credit and the investment tax credit.

### Oil Speculation Hearing

The House Democratic Steering and Policy Committee, led by House Minority Leader Nancy Pelosi (D-CA) held a hearing April 4 to consider high gasoline prices and the impacts of oil speculation. Gene Guilford, president and CEO of the Independent Connecticut Petroleum Association, and Michael Greenberger, former director of the Commodity Futures Trading Commission trading and markets division, reiterated the need for the Commodity Futures Trading Commission to implement new restrictions on speculation.

### Drop-In Biofuels Funding

Senators Jeff Bingaman (D-NM) and Mark Udall (D-CO) will send a letter April 9 to Senate Appropriations Subcommittee on Energy and Water Chair Dianne Feinstein (D-CA) and Ranking Member Lamar Alexander (R-TN) as well as Appropriations Subcommittee on Defense Chair Daniel Inouye (D-HI) and Ranking Member Thad Cochran (R-MS) asking that the committee fully fund the Department of Energy's share of the memorandum of understanding between the agency and the Departments of Agriculture and Defense for drop-in biofuels.

### Letter to Agriculture Leadership on Farm Bill Energy Provisions

On April 5, in a letter to House and Senate Agriculture Committee Chairmen and Ranking Members, Sens. Debbie Stabenow (D-MI) and Pat Roberts (R-KS) and Reps. Frank Lucas (R-OK) and Collin Peterson (D-MI), more than a hundred energy, environmental, academic, and industrial organizations requested reauthorization of the more than \$1 billion of expiring energy provisions in the Food, Conservation, and Energy Act of 2008. The programs provide grants, loan guarantees, and other financial assistance for renewable energy and energy efficiency projects through programs like the Biomass Crop Assistance Program and the Rural Energy for America Program. On March 29, Agriculture committee member Sen. Tom Harkin (D-IA) introduced S. 2270, which would reauthorize, until FY2017, funding for \$1.2 billion of the Farm Bill's core energy provisions.

### Upcoming Hearings

The House Natural Resources Committee will hold a hearing April 26 and is currently considering whether Energy Secretary Steven Chu will testify on a March 16 memo directing the four federally controlled power marketing administrations to cooperate on grid upgrades to accommodate renewable energy sources and improve cybersecurity.

The Senate Finance Committee will hold a month-long series of hearings this June on energy tax policies in the context of overall tax reform.

## **Administration**

### NA Leaders' Summit

President Obama hosted Canadian Prime Minister Stephen Harper and Mexican President Felipe Calderone April 2 for the North American Leaders' Summit. The meeting focused on economic growth and competitiveness as well as energy, climate change, and security issues. Prime Minister Harper has expressed frustration with the Obama administration for rejecting the Keystone XL pipeline, and President Calderone is similarly vexed by United States' failure to enact climate change legislation, especially as Mexico is soon to pass cap and trade legislation.

## **Department of Agriculture**

### Biofuels in RFS Defended

Speaking at the Advanced Biofuels Leadership Conference April 3, Agriculture Secretary Tom Vilsack defended biofuel mandates in the national renewable fuel standard, saying that an increase in the number of biorefineries to produce advanced ethanol are expected soon, and that biofuels create rural jobs and increase energy security. The RFS2, as set forth in the Energy Independence and Security Act of 2007, are facing renewed criticism as producers struggle to meet interim targets for the production of cellulosic ethanol, leading the Environmental Protection Agency to reduce this year's requirement from 500 million gallons to 8.65 million gallons. The regulation requires the country's vehicle fuel supply to include 36

billion gallons of ethanol or other renewable fuel by 2022, including 21 billion gallons of advanced biofuels.

#### Biofuels Roundtable Forthcoming

The Departments of Agriculture, Energy, and the Navy will host an Advanced Biofuels Industry Roundtable on May 18 in Washington, DC. Last March, President Obama directed the secretaries of the three agencies to work with industry to advance drop-in biofuel substitutes for diesel and jet fuel. Last August, the agencies announced plans to invest up to \$510 million in the next three years to produce drop-in aviation and marine biofuels, and in December, the Navy announced the largest purchase of advanced drop-in biofuels to date, for 450,000 gallons.

### **Department of Energy**

#### 20% Energy Cut

During American Council for an Energy Efficient Economy conference April 3, the Department of Energy's Advanced Manufacturing Office announced that the administration has 100 domestic companies and other organizations committed to a 20 percent energy use reduction by 2020. The pledges equal roughly five percent of the total energy footprint of the domestic manufacturing sector, and the participating companies operate 1,400 plants in the country. President Obama's fiscal year 2013 budget request includes a 150 percent increase in the agency's advanced manufacturing efficiency efforts to \$290 million.

#### \$15 Million for Bio-Oils

The Department of Energy announced April 6 up to \$15 million available to demonstrate biomass-based oil supplements that can be blended with petroleum as the country attempts to diversify its energy portfolio and increase domestic energy security. The bio-oils are precursors to fully renewable transportation fuels that could be integrated into the oil refining processes that make conventional gasoline, diesel, and jet fuels without modifications to existing fuel distribution networks or engines.

#### \$170 Million for Loan Guarantees

The Energy Department decided last week to spend \$170 million to subsidize alternative energy loan guarantee applicants, pulling moneys from last April's budget deal. Generally, applicants under the Energy Policy Act of 2005 – the Section 1703 loan program – must pay an upfront fee to compensate the government for the risk it incurs guaranteeing such a loan, but since the fees can be costly, few companies have applied. In an April 5 letter to the Senate Energy and Natural Resources Committee, David Frantz, acting executive director of the agency's Loan Guarantee Program, said that the department expects to issue conditional loan guarantees to clean energy companies in the coming months.

### **Department of Treasury**

#### RE and EE Commitment Reiterated

Department of Treasury Acting Assistant Secretary for Tax Policy Emily McMahon responded March 14 to Senators Olympia Snowe (R-ME), Jeff Bingaman (D-NM), John Kerry (D-MA), Maria Cantwell (D-WA), and Tom Carper (D-DE) who wrote February 10 regarding tax policies to improve clean energy and energy efficiency incentives. Secretary McMahon reiterated the administration's commitment to energy efficiency and clean energy programs and tax incentives.

#### IG Finds Rushed Solyndra Review

A Department of Treasury inspector general found April 3 that the agency's review of Solyndra's \$535 million federal loan guarantee was rushed through on one March day in 2009. Treasury's decision was based on an expedited review request from the Department of Energy so that the administration could issue a press release announcing progress in funding clean energy projects. The report also found that the Department of Energy did not consult with the Treasury Department on the terms and conditions of the conditional loan agreement before or during Energy's own review process, including the review of

Solyndra's credit worthiness. Treasury also was not consulted on the Energy Department's February 2011 restructuring of the loan guarantee.

## **Environmental Protection Agency**

### E15 Permitted

The Environmental Protection Agency approved April 2 the first 24 applications for registration of ethanol for use in making gasoline that contains up to 15 percent ethanol. For the past 30 years, ethanol has been blended into gasoline, but the law limited it to 10 percent for use in gasoline-fueled vehicles. Registration of ethanol to make E15 is a significant step toward its production, sale, and use in model year 2011 and newer gasoline-fueled cars and light trucks. To enable its widespread use, the administration has established a goal to help fueling station owners install 10,000 blender pumps over the next five years.

### Groundwater Contamination

Earthjustice released data April 5 finding groundwater contamination near coal ash disposal sites at 29 power plants in 16 states. The groundwater contained levels of arsenic, lead, and other pollutants typically found in coal ash that exceed federal maximum contaminant levels for drinking water or state regulations. The organization and the Environmental Integrity Project obtained the data from the Environmental Protection Agency through a Freedom of Information Act request. The data release comes as a coalition of 11 environmental and public health groups led by Earthjustice filed a lawsuit in the U.S. District Court for the District of Columbia to compel the agency to complete its rulemaking on coal ash regulations. The agency issued a proposed rule in May 2010 outlining two options for regulating coal ash, and though it has not yet issued a final rule, it expects to do so by the end of the year.

### Job Impact Analysis Improvements

The Institute for Policy Integrity released a report April 3 finding that the Environmental Protection Agency and policy advocates need to do more to incorporate job impact analyses into their assessments of environmental regulations. The report, *Regulatory Red Herring: The Role of Job Impact Analyses in Environmental Policy Debates*, concluded that job impact analyses of environmental regulations need also to better distinguish between short and long-term unemployment impacts.

### Fracking Standards Delayed

On April 3, the Environmental Protection Agency delayed by two weeks the first-ever federal air standards for fracking. The agency was bound by a court-ordered deadline to finalize the rules last Tuesday, but will now release the rules April 17.

### Haze Rule

The U.S. District Court for the District of Columbia approved a consent decree March 30 setting deadlines for the Environmental Protection Agency to take action on state or federal plans to reduce regional haze in 37 states, the District of Columbia, and the U.S. Virgin Islands. The agreement requires the agency to take final action on the remaining federal implementation plans for regional haze, or to have approved state implementation plans, by November 15. The agreement requires the agency to rule by August 15 several state implementation plans that have been submitted by the agency. The National Parks Conservation Association and eight other environmental groups sued the agency last August after it missed a Clean Air Act deadline to approve state plans or issue federal plans to address regional haze at national parks and wilderness conservation areas.

### Industry Permitted to Intervene

The U.S. District Court for the District of Columbia allowed April 2 the National Association of Manufacturers and five California companies to intervene in a case that seeks to require the federal government to set a plan for an immediate cap on greenhouse gas emissions and start lowering emissions six percent a year starting in 2013. Our Children's Trust and other groups filed a lawsuit last May contending that the federal government has a duty under the public trust doctrine to reduce the emissions linked to global warming. The case asks the court to declare the atmosphere a resource protected under the public trust doctrine. The case was transferred in December from the U.S. District

Court for the Northern District of California, and federal agencies filed a, still pending, motion to dismiss the case in October.

#### Standards Could Increase Profits

Citi Investment Research and Ceres released a report April 4 finding that the Environmental Protection Agency and National Highway Traffic Safety Administration's proposed fuel economy and greenhouse gas emissions standards for passenger vehicles could increase profits for carmakers by 5.3 percent per year by 2020. According to the report, *Fuel Economy Focus: Industry Perspectives on 2020*, Detroit manufacturers could see the largest gains, of 6.3 percent, as they compete with foreign manufacturers already subject to more stringent standards. The analysis also found that by 2020, hybrid vehicles will account for 4.1 percent of the market while diesel engines will account for 4.4 percent.

#### CBA of 5 Rules

The Environmental Protection Agency launched a review last week of five existing regulations dating to 1998 in the hope of improving the accuracy of its regulatory cost estimates and its methodologies for determining whether the benefits of its rules outweigh their costs. The cost review, under way at the agency's National Center for Environmental Economics, is expected to provide the agency with a better understanding of the key drivers of compliance costs. The draft, *Retrospective Study of the Costs of EPA Regulations: An Interim Report of Five Case Studies*, was released March 30 and has been sent for review by the agency's Science Advisory Board. The Environmental Economics Advisory Committee is scheduled to review the report April 19-20.

#### 35 Brownfields RE Projects

The Environmental Protection Agency has announced that about 35 renewable energy projects have been completed on brownfields or other contaminated land. In February 2010, the agency began working with the Department of Energy's National Renewable Energy Laboratory to evaluate 12 hazardous sites for renewable energy projects. As of this March, it has mapped out 11,000 potential sites that could be suitable candidates for projects ranging from solar, wind, biomass, and geothermal systems, and is working with the lab to assess the feasibility of developing renewable energy projects at 26 current or formerly contaminated properties.

#### Ozone Advance Program

On April 4, the Environmental Protection Agency unveiled the Ozone Advance program to encourage local air pollution regulators to voluntarily limit ground-level ozone emissions precursors in order to bank credits against later regulations. The rule comes after EPA's nonattainment designations for the 2008 national ambient air quality standards and updates areas not previously covered by EPA's 2001 Ozone Flex program.

#### Vehicle Air Conditioning Substance Rule

On April 5, the White House Office of Management and Budget completed its review of an Environmental Protection Agency final rule allowing R-744 to be used as an alternative to vehicle air conditioner ozone-depleting substances, such as Freon, under the agency's Significant New Alternatives Policy (SNAP) program. Section 612 of the Clean Air Act created SNAP, and the program initially proposed listing both R-744 and R-152a as acceptable alternatives to CFC-12. In 2008, EPA ruled R-152a is an acceptable substitute for CFC-12 in new motor vehicle air conditioning systems, but deferred making a decision on R-744 until now.

### **Government Accountability Office**

#### Military RE Financing Guidance Needed

The Government Accountability Office released a report April 4 suggesting that the Department of Defense develop comprehensive guidance for officials selecting financing terms for military renewable energy projects and that it communicate such information to project officers at installations. The report, *Renewable Energy Project Financing: Improved Guidance and Information Sharing Needed for DOD Project-Level Officials*, concluded that the agency is the largest consumer of energy in the federal

government, spending \$15.2 billion on energy in fiscal year 2010, including \$3.8 billion to provide power at over 500 permanent military installations across the globe.

## **Nuclear Regulatory Commission**

### MA Appeals Commission Plymouth Re-licensing

On April 5, Massachusetts Attorney General Martha Coakley filed an appeal asking that the Nuclear Regulatory Commission delay the 20-year relicensing of Entergy Nuclear Operations' Pilgrim Nuclear Power Plant in Plymouth, MA pending a Supplemental Environmental Impact Statement for Pilgrim that addresses lessons learned from Fukushima and relevant mitigation strategies.

## **States**

### CA Fracking Registry

California issued a notice March 28 requesting the state's oil and gas operators to provide information on all fracking activities via a voluntary registry. The Division of Oil, Gas, and Geothermal Resources is urging the companies to use the Frac Focus registry to disclose the locations and depths of their wells and identify chemicals, fluids, and proppants used in the operations.

### OR Mobile Emissions Toolkit

The Oregon Department of Transportation launched a Greenhouse Gas Reduction Toolkit March 22 to help local jurisdictions determine which actions and programs can be implemented to help reduce mobile source emissions. The toolkit provides comprehensive information on programs, modeling and analysis tools, case studies, and communications.

### SW Climate Report

The Southwest Climate Alliance issued a draft report April 5 concluding that temperatures in the area will continue to increase through the century due to human-caused greenhouse gas emissions. The report, *Assessment of Climate Change in the Southwest United States: A Technical Report Prepared for the U.S. National Climate Assessment*, had 100 contributing authors and considered climate change trends and impacts in Arizona, California, Colorado, Nevada, New Mexico, and Utah, and will be incorporated into the National Climate Assessment to be published in December 2013. An assessment is due to Congress every four years under the Global Change Research Act of 1990. Comments will be accepted until April 11.

### 9 Water Plans

The Natural Resources Defense Council released a report April finding that only nine states – Alaska, California, Maryland, Massachusetts, New York, Oregon, Pennsylvania, Washington, and Wisconsin – governments have taken steps to address the impacts of climate change on water supplies and resources. The report, *Ready or Not: An Evaluation of State Climate and Water Preparedness Planning*, also found that 29 governments have done nothing or very little to prepare for water risks. The nine states have established emissions reduction targets, identified water-related vulnerabilities, developed a plan to address areas of concern, and put the plan into action.

### UT Energy Development

Utah recently passed legislation (H.B. 137) to create the Office of Energy Development, rename the Utah Generated Renewable Energy Electricity Network to the Utah Energy Infrastructure Authority Board, and expand its scope to energy infrastructure projects. The legislation takes effect May 8.

### WA Climate Plan

Washington released April 3 an Integrated Climate Change Response Strategy to provide a broad framework for day-to-day high priority consideration of climate change impacts. As \$10 billion in climate change costs are projected by the end of the decade, the state's Department of Ecology identified a number of challenges ranging from the risks posed by a projected spike in diseases found in warmer climates to increased flooding due to more frequent extreme weather events. The response plan recommends adaptive strategies such as public education and increasing water storage capacity.

### So. CA Transportation Plan

The Southern California Association of Governments adopted a \$524.7 billion land use and transportation plan April 4 designed to reduce by 9 percent per capita vehicle-related greenhouse gas emissions in a six-county area by 2020, and 16 percent by 2035, relative to 2005 levels. Approved in a unanimous vote, the 25 year plan hopes to increase mobility in one of the most congested parts of the country by making significant investments in transit, pedestrian and bike paths, multifamily housing, and rail systems and roads.

### UT Passes Alternative Energy Investment and Manufacturing Credit

On March 26, the Utah enacted SB 65 creating new alternative energy development and manufacturing tax credits starting Jan. 1, 2012, while repealing the alternative energy zone credit has been repealed. The nonrefundable credit, equaling up to 75% of state revenues generated from the project, is now available for utility scale alternative energy projects or the extraction of alternative fuels or, in the case of the manufacturing credit, a project that creates or expands manufacturing machinery or equipment used directly in the production of alternative energy.

### WY Ethanol PTC Repealed

On March 22, Wyoming Gov. Matt Mead (R) signed SF 8 repealing the \$0.40 gasoline tax credit for ethanol producers, allowing the state Highway Fund and local governments to begin collecting millions in fuel taxes ethanol produced in the state. The law will take effect July 1, 2015

## **International**

### EU Emissions Down

The European Commission published initial figures April 2 finding that greenhouse gas emissions from power plants and industrial facilities covered by the European Union's Emissions Trading System fell 2.4 percent in 2011 compared to 2010. The majority of the decrease may be attributed to power plants, which produced 3.1 percent less CO<sub>2</sub> last year; other facilities, including steelmakers and cement plants, had on average 0.5 percent lower emissions. The Commission is planning a May release of figures on the number of carbon allowances surrendered by ETS participants.

### India's Efficiency Targets

India's Bureau of Energy Efficiency set energy efficiency targets March 30 for 478 industrial units across eight heavily polluting sectors. The units account for a third of the 500 MMT of oil equivalent of commercial energy consumed in the country. Within three months, all designated consumers must submit to the agency an action plan to meet its target, its estimated cost, and an implementation plan. Energy reductions will be certified and can be trade between entities.

### 103 Japanese Reforms Spur RE

Japan's Working Group on Regulatory and Administrative Reforms recently recommended 103 regulations to be relaxed or abolished to encourage renewable energy development in the country following the reduction in nuclear power since last spring's nuclear crisis. Changes include simplifying permitting for solar, wind, and hydro projects and requiring smart meters in homes and businesses, and Prime Minister Yoshihiko Noda's Cabinet is expected to approve the plan by the end of the month.

### \$35 Million for Sustainability

During the Planet Under Pressure conference March 28, national research organizations from the United States, Australia, Brazil, Canada, France, Germany, India, Japan, South Africa, and the United Kingdom committed \$35 million in new funds for a research agenda aimed at guiding policy decisions on climate change, resource scarcity, and development to promote global sustainability. The group announced the next day a new project, Future Earth – to be officially launched at Rio+20 in June, aimed at providing innovative research on sustainability to solve difficult policy challenges.

### EU RE Subsidy Cuts

Many European countries are making significant reductions to their renewable energy subsidy programs. Germany voted last week to eliminate its feed-in-tariff for all new solar installations larger than 10 MW. The United Kingdom postponed the second phase of its Renewable Heat Incentive, and Italy is considering even stronger measures to curb photovoltaic installations.

#### Rio+20 Topics

A declaration issued during the March 26-29 State of the Planet conference, a meeting of top environmental academics and policymakers, concluded that the major issues discussed at the U.N. summit June 20-22 in Rio de Janeiro, known as Rio+20, will include public participation and access as well as legal and administrative environmental liability.

#### **Miscellaneous**

##### CA Cap and Trade Funds

Legal scholars from the University of California, Los Angeles, Law School's Emmett Center on Climate Change and the Environment said April 2 that the state's best change for winning legal battles over its use of moneys generated through emissions permit auctions is to spend the proceeds on projects that further the goals of the Global Warming Solutions Act of 2006 (A.B. 32). The state expects to raise \$1 billion in the first auction of allowances under its cap and trade program in November, and subsequent auctions could generate between \$2 billion and \$10 billion annually.

##### Civil Infrastructure Sustainability

The Institute for Sustainable Infrastructure and Harvard University Graduate School of Design launched the Envision Sustainable Infrastructure Rating System April 3 to evaluate the sustainability of civil infrastructure projects. The system evaluates projects based on their environmental, economic, and community impacts over the lifecycle of the project and can evaluate all sizes of civil infrastructure projects, including roads, bridges, water treatment facilities, airports, refineries, buildings, and electricity grids.

##### Fertilizer Increases Atmospheric NO<sub>x</sub>

The University of California, Berkeley, unveiled April 2 a study concluding that the increased use of fertilizers over the last 50 years is responsible for a significant rise in atmospheric nitrous oxide. The report, published in *Nature Geoscience*, confirms previous assumptions about the role of nitrogen-based fertilizers in the sharp increase in NO<sub>x</sub> and climate change. Since 1750, atmospheric NO<sub>x</sub> levels have increased 20 percent, from below 270 ppb to over 320 ppb.

##### ACEEE Efficiency Funding Report

The American Council for an Energy Efficient Economy released a report April 5 finding that energy efficiency funding from public and private sources reached \$1.1 billion in 2010. The report, *Money Well Spent: Industrial Energy Efficiency Program Spending in 2010*, concluded that the funds were spent on industrial sector efficiency improvements and contends that industrial upgrades will continue to drive efficiency spending because it remains the most cost effective way for states to meet rising electricity demands.

##### Total Costs of Energy

Speaking at a forum of the Johns Hopkins Energy Policy and Climate Program April 4, Alexander Ochs, director of climate and energy at the Worldwatch Institute, said that the United States risks falling behind and losing the clean energy race unless it considers the total costs of traditional energy sources and adopts policies to encourage investment in renewables. He estimated that about 50 percent of the world's energy could come from renewable sources by 2030, with China spending \$50 billion on renewable technologies in 2010. He also said that the U.S. needs better assessments of the total costs of using traditional sources, including estimates of pollution and health care costs associated with burning coal, as costs like these that are not reflected in current prices amount to \$120 billion per year.

##### Ernst & Young Shareholder Environmental Proposals

On April 4, Ernst & Young released a report concluding that shareholder resolutions related to

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environmental and social issues, for example tying compensation to sustainability metrics, will remain the most submitted and most voted upon resolutions in 2012.