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ENERGY AND ENVIRONMENT UPDATE **May 13, 2012**

Energy and Climate Debate

The Senate will debate ExIm Bank reauthorization this week, while the House will focus on Defense authorization over the next five days.

President Obama called on Congress May 8 to pass five pieces of legislation that would create jobs and strengthen the middle class. Speaking from the College of Nanoscale Science and Engineering's NanoTech Complex in Albany, New York, the president included on his to do list five proposals that he has previously supported, including tax credits for companies that hire and bring jobs back to the United States, a student loan bill, the pending transportation measure, a Veterans Job Corps, and clean energy credits. With respect to clean energy tax incentives, the president called specifically for an extension of the Production Tax Credit and an extension of the Advanced Energy Manufacturing Tax Credit.

Even in the face of partisan gridlock on energy and other legislative issues in Washington and an already contentious election battle, some in the nation's capitol have hope yet for the passage of a significant energy bill this year. Senate leaders are seeking a path forward for energy efficiency legislation from Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH). Senior aids for the Senate Energy and Natural Resources Committee and in both party leadership offices met with the two senators last week to discuss procedural ways to bring the legislation to the floor. The Senate Energy Committee approved the measure last July on an 18-3 vote. Representatives Charlie Bass (R-NH) and Jim Matheson (D-UT) have introduced companion language in the House.

As the House-Senate highway bill conference continues, environmental provisions such as the Keystone XL pipeline and coal ash management endure as sticking points in the debate, with both Democrats and Republicans insisting that the disagreements will not stall approval of the transportation reauthorization measure. At the same time, it is uncertain what progress has been made toward a compromise on the issues.

Senate Finance Committee staffers are working on a set of proposals addressing a package of expired and expiring tax breaks prior to the lame-duck, and the hope remains strong among staff that members themselves will soon take up these negotiations and find a solution with a reasonable chance of success in the full Senate. Meanwhile, in the House, staff is writing legislation that will extend the Bush tax cuts, in preparation for the lame duck session.

Congress

House Passes Commerce Appropriations

The House voted, 247-163, May 10 to approve its first appropriations package for fiscal year 2013 – for the Commerce, Justice, Science, and related agencies. The spending bill sets a funding level for the National Oceanic and Atmospheric Administration just short of the current \$5.1 billion level, and well below the \$5.5 billion the president requested for fiscal year 2013. The measure also would reduce funding for the agency's climate change website, Climate.gov. The House voted earlier in the week to include an amendment from Representative Andy Harris (R-MD) to cut \$542,000 for the site, retaining its current funding level. The House also approved an amendment from Representative Michael Grimm (R-NY) to transfer \$18 million from the agency's climate and weather programs to the Justice Department and an amendment from Representative Chip Cravaack (R-MN) to bar the National Science Foundation from spending money on climate change education programs. The bill also included Rep. Bill Flores' (R-TX) amendment that would prohibit the use of the bill's funds to enforce section 526 of the Energy Independence and Security Act of 2007, and thus allow the federal government to use alternative or synthetic transportation fuels with greater greenhouse gas emissions than traditional fuels. The bill also prohibits any funding from being used to implement the National Ocean Policy, created through a July 2010 executive order, which calls for nine regional committees over the next three years with the purpose of streamlining the permitting processes related to the nation's oceans and Great Lakes. Despite the many cuts, an amendment offered by Rep. Michael Turner (R-OH) and approved on May 8, increased funding for Commerce's International Trade Administration by \$5 million, which is housed in the Commerce Department, and is the primary mechanism for investigating unfair trade practices – including the recent solar trade dispute with China.

Biofuels Briefings

The Senate is expected to soon convene a series of briefings on biofuels issues in the near future. A group of senators is planning on hosting an ad hoc study group that will facilitate substantive staff discussion about a series of issues on biofuels and the renewable fuels standard that cross at several Senate committees' jurisdiction, including the Committees on Energy and Natural Resources, Environment and Public Works, Agriculture, and Finance. Issues to be discussed include RIN trading; feedstock supply; the blend wall; drop-in fuels; and soil, air, and water impacts.

Environmental Impact Streamlining Markup Delayed

Last week, the House Judiciary Committee delayed a May 8 markup of the RAPID Act (H.R. 4377). The measure would streamline reviews of the environmental impacts of projects that receive federal funds or must satisfy federal permitting requirements. Representative Dennis Ross (R-FL) unveiled a substitute amendment just before the delayed hearing that made relatively minor changes to his original bill, which was introduced April 18 and co-sponsored by Committee Chairman Lamar Smith (R-TX).

DOD Energy Funding

The House Armed Services Committee approved an amendment May 9 to the fiscal year 2013 National Defense Authorization Act (H.R. 4310) that would restrict the Department of Defense' alternative fuel procurement, endangering an interagency agreement to invest \$510 million in drop-in biofuels. The amendment, which was approved 32-29, would limit the agency's ability to produce or procure alternative fuels if the cost exceeds the price of traditional fuels. The committee approved also an amendment that would exempt the agency from a measure that bars federal agencies from procuring synthetic and alternative fuels that have a larger lifecycle carbon footprint than conventional fuels.

Green Buildings Hearing

During a House Science Space and Technology Subcommittee on Investigations and Oversight hearing May 8, Congressman Paul Broun (R-GA) criticized the Leadership in Energy and Environmental Design. As the Department of Energy and the General Services Administration prepare to decide whether to continue the use of LEED or select a new certification system, Chairman Broun questioned whether the program, a third-party building rating system selected by the government to certify federal buildings as environmentally friendly, is superior to other programs. The 2007 Energy Independence and Security Act

requires the two agencies to choose a certification system, with reviews occurring at least every five years. The federal government owns or leases more than 3 billion square feet of building space.

Emergency Power Hearing

Appearing before the House Energy and Commerce Subcommittee on Energy and Power May 9, the Environmental Protection Agency's top air official, Gina McCarthy, said that legislation (H.R. 4273) that aims to relieve power plants from choosing whether to comply with environmental regulations or operate during emergencies is unnecessary because the dilemma has occurred only once since 1978. Section 202(c) of the Federal Power Act allows the Department of Energy to issue emergency orders directing power plants to generate additional power to meet increased demand.

Ex-Im Reauthorized by House

The House passed, 330-93, a compromise measure (H.R. 2072) May 9 that would reauthorize the United States Export-Import Bank through September 2014 and would increase its lending cap. The Senate still needs to consider a reauthorization bill before the bank's charter expires on May 31.

Light Bulb Amendment

Representative Michael Burgess (R-TX) confirmed May 7 that he plans to introduce an amendment to the upcoming House Energy and Water Appropriations Bill that would effectively bar the Department of Energy from enforcing energy efficiency standards for light bulbs. The amendment comes in spite of opposition from environmental and manufacturing groups, who have already spent millions of dollars to comply with the standards and are concerned that it would make it possible for inexpensive light bulb imports that do not comply with the standard.

Energy Security Report

Responding to a request from Senate Energy and Natural Resources Committee Chair Jeff Bingaman (D-NM) last week, the Congressional Budget Office released a report finding that policies that promoted increased domestic energy production would not be likely to protect American consumers from extreme global increases in oil prices stemming from supply disruptions around the world. Instead, the analysis concluded that lower prices might further encourage oil use and make consumers more vulnerable to price spikes.

House EPA Appropriations Unlikely to See Floor

On May 10, Rep. Michael Simpson (R-ID), chairman of the Appropriations Subcommittee on Interior, Environment, and Related Agencies said that panel's FY2013 appropriations bill is expected to get a mark up by the full House Appropriations Committee in June, but is unlikely to receive any floor time. The full committee set aside \$28 billion for the bill, nearly \$1.7 billion below President Obama's request and \$1.2 billion less than 2012 funding levels.

Legislation Introduced

Senator Bernie Sanders (I-VT) and Representative Keith Ellison (D-MN) introduced legislation May 10 that cuts \$110 billion in fossil fuel tax incentives and research and development programs. Specifically, \$39 billion in tax breaks would be eliminated by abolishing the intangible drilling deduction and the percentage depletion deduction and repealing a 2004 law that allows fossil fuel corporations to claim deductions previously reserved for manufacturers. Another \$2.4 billion would be gained by forbidding companies to invest through Master Limited Partnerships. The bill would close the Department of Energy's Office of Fossil Energy for an estimated \$3.7 billion saved and would recoup \$13 billion in lost royalties for offshore drilling in public waters by ensuring that companies pay for producing on public lands.

On May 9, Senate Environment and Public Works Committee ranking Republican James Inhofe (R-OK) introduced the EPA Regional Oversight Act of 2012 (S. 3053), along with 21 Republican co-sponsors, which would require Senate confirmation of all Environmental Protection Agency regional administrators.

Hearings Scheduled

On May 16, the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies will hold a hearing on the Environmental Protection Agency's FY2013 budget request.

On May 16, the Senate Environment and Public Works Committee scheduled a hearing on corporate environmental responsibility as it relates to reducing environmental footprint and waste.

On May 17, the Senate Energy and Natural Resources Committee will hold a hearing to consider the Clean Energy Standard Act of 2012 (S. 2146). Witnesses include Department of Energy Assistant Secretary for Policy and International Affairs David Sandalow, Energy Information Administration Acting Administrator and Deputy Administrator Howard Gruenspecht, Resources for the Future Research Director and Senior Fellow Karen Palmer, Center for Climate and Energy Solutions Vice President for Technology and Innovation Judi Greenwald, Delaware Department of Natural Resources and Environmental Control Secretary Collin O'Mara, American Iron and Steel Institute President and CEO Thomas Gibson, Duke Energy Group Executive and President Commercial Businesses Keith Trent, and Jacksonville Electric Authority Managing Director and Chief Executive Officer James Dickenson.

On May 18, the House Agriculture Subcommittee on Conservation, Energy, and Forestry will hold a hearing on energy and forestry programs in the 2012 farm bill.

Department of Commerce

Small Solar Exemption Sought

Small Steps Solar asked the Commerce Department last week to exempt solar panels lower than 5 watts from upcoming tariffs on solar products from China, calling the duty a "significant burden." The American company imports low-wattage solar powered lamps from China, and fears that the new rule will be particularly burdensome for small companies.

Department of Energy

\$5 Million for Alternative Fuel Vehicles

The Department of Energy announced May 8 that up to \$5 million is available this year to help expand the use of alternative fuel and electric vehicles in cities and towns across the country. The funding will help communities streamline and hasten permitting processes; coordinate alternative fuel and electric vehicle infrastructure deployment across state, regional, and local governments; and provide training for mechanics and first responders. The agency anticipates awarding 10 to 20 projects this year to be completed within two years; applications are due June 18.

Advanced Energy Design Guide

The Department of Energy released May 8 the final installment in a series of four 50% Advanced Energy Design Guides. The most recent guide will help architects, engineers, and contractors design and build highly efficient hospital buildings, helping to save energy and reduce facility operational costs. The guides provide a practical approach for designers of and builders of large hospitals and other major commercial building types to achieve 50 percent energy savings compared to the building energy code used in many parts of the country as part of the president's goal to reduce energy use in commercial buildings 20 percent by 2020.

RE Price Disparities

The Energy Department Office of Inspector General released an audit report calling for better training for department personnel on purchasing renewable energy and renewable energy credits in the most cost-effective manner. The report, *The Department of Energy's Renewable Energy Efforts*, cited wide disparities in prices paid for renewable energy credits and renewable energy, ranging from 44 cents per MWh for renewable electricity credits to \$26.67 MWh for electricity from renewable sources. The report criticized also the agency for relying almost exclusively on purchases of renewable energy rather than using electricity generation on federal land, which receive double compliance credits under the Energy Policy Act of 2005.

Department of Interior

Public Land Solar Up and Running

Department of Interior Secretary Ken Salazar flipped the switch May 7 to start the first large-scale solar energy facility on U.S. public lands delivering power to consumers. Silver State North is a 50 MW plant located 40 miles south of Las Vegas that will use photovoltaic technology to generate enough power for roughly 9,000 homes. The plant was built by First Solar and Enbridge on 618 acres of Bureau of Land Management land. Prior to 2009, there were no solar energy projects permitted on public lands; since then the agency has authorized 29 large-scale renewable energy projects on public land, including 16 solar facilities, 5 wind farms, and 8 geothermal plants.

Environmental Protection Agency

Vapor Capture Requirements

The Environmental Protection Agency updated May 10 Clean Air Act requirements for gas stations to reflect new vehicle technologies. The agency has determined that the systems used at gas station pumps to capture gasoline vapors while refueling cars can be phased out because 70 percent of all vehicles are equipped to capture those emissions. The final rule, part of the president's effort to eliminate duplicative and overly burdensome regulations, will ensure that air quality and public health are protected while saving 31,000 gas stations more than \$3,000 each year.

Particulate Matter Standards Delayed

The Environmental Protection Agency issued a declaration May 4 to the U.S. District Court for the District of Columbia saying that it needs until next August 15 to finalized revised air pollution standards for particulate matter. The agency had set a timetable earlier this year that included proposing the rule by this June and finalizing it by June 2013.

Kids vs. Global Warming Suit

On May 11, in a hearing on a motion to dismiss the environmental advocacy group Kids vs. Global Warming's suit against the Environmental Protection Agency, and five other federal agencies, the judge intimated agreement with the motion to dismiss. The lawsuit seeks to require the federal government, by having the atmosphere protected under the public trust doctrine, to develop and implement a plan for an immediate cap on greenhouse gas emissions, while lowering emissions 6% a year starting in 2013.

Dimock Well Water OK

On May 11, the Environmental Protection Agency released a set of test results for 12 water wells in Dimock, PA, bringing the total number of well tests released to 59 out of the 61 conducted, all of which found no violations of drinking water regulatory standards. EPA began testing the wells after methane found in Dimock groundwater was blamed on nearby natural gas drilling by Cabot Oil & Gas Corp. So far, none of the wells have tested negative.

Nuclear Regulatory Commission

VT Court Challenge

A three-judge panel of the U.S. Court of Appeals for the District of Columbia questioned May 9 whether Vermont exhausted its administrative remedies before suing the Nuclear Regulatory Commission over a new 20-year nuclear power plant license for the Vermont Yankee Nuclear Power Station. A ruling in favor of Vermont could stall the plant license and a commission permitting policy.

NRC Denies NH Public Interest Group Request

On May 11, the Nuclear Regulatory Commission denied a request by several New Hampshire public interest groups that the Commission modify its license renewal guidelines to limit the timeframe to ten years, and apply that standard to all pending applications. The filing was targeting New Hampshire's Seabrook Station Nuclear Power Plant.

Personnel

Dr. Arun Majumdar, the Department of Energy's acting undersecretary and director of the Advanced Research Projects Agency—Energy will resign June 9. David Sandalow, the agency's assistant secretary for policy and international affairs, will immediately take over Dr. Majumdar's position as acting undersecretary. Eric Toone, ARPA-E's deputy director of technology, will take over leadership of the office in June.

President Obama nominated Kristine Svinicki May 8 to a second term on the Nuclear Regulatory Commission. She holds one of two Republican seats on the five-member commission. Under commission rules, she cannot serve a day beyond June 30 unless she is confirmed by the Senate. Senate Environment and Public Works Committee Chair Barbara Boxer (D-CA) said May 10 that she plans to hold a confirmation hearing before her current term expires.

Bob Abbey, the director of the Department of Interior's Bureau of Land Management, announced May 11 that he is retiring after 34 years of public service. Mike Pool, who is deputy director of the bureau, will serve as acting director.

States

TN Fracking Standards

Tennessee's Department of Environment and Conservation proposed rules May 4 that would subject oil and gas companies to new requirements covering fracking activities in the state. The proposed changes, which stemmed from environmental groups' requests for tighter standards, include a requirement that a 15-day public notice and comment period be provided for every new well that would use more than 200,000 gallons of water in the fracking process, as well as one that would require drilling plans to include a statement of the intent to fracture a well and the volume of fluids to be used.

CA Fracking

California's Department of Conservation's Division of Oil, Gas, and Geothermal Resources released a road map May 3 outlining its plan to re-examine the state's oversight of underground injection wells to better protect drinking water supplies and workers. The regulators are planning to propose new fracking regulations by the end of the summer. The agency will hold a series of public workshops to gather input for the new regulations and will commission an independent study of the impact of fracking in the state.

California's \$100 Million for Green Vehicles

On May 9, the California Energy Commission approved a plan to encourage development and use of biofuels, hydrogen cell fueling, electric charging stations, etc., and will allocate \$100 million over fiscal year 2012-2013 for the project. The commission will draw on funds provided for by the state's 2007 A.B. 118 program, or the Alternative and Renewable Fuel and Vehicle Technology Program. The program is partially funded through vehicle and vessel registration, license, and environmental fees.

CA Bill Passes Expediting Utility Scale Solar Approval

On May 10, the California legislature approved AB 1073, expediting the approval of a Mojave Desert utility-scale solar-power project, the 663 MW K Road Calico Solar Project, slated for construction on public lands and staunchly opposed by environmentalists. The bill will be sent to Gov. Jerry Brown (D), and would hand all of the local and state permitting and review processes to the California Energy Commission.

CARB Rules Align with Quebec

On May 9, the California Air Resources Board released proposed changes to the economy-wide emissions trading program begun in January, which will all work to create a joint carbon market with Quebec. Quebec is a member of the Western Climate Initiative, along with British Columbia and Ontario, but other provinces have backed away from the cap-and-trade scheme recently. CARB's emissions trading scheme is set to begin in 2013, the same year as Quebec's similar program.

International

EU Chemical Sustainability

The European Chemical Industry Council announced May 8 that it will monitor its environmental sustainability by tracking indicators like greenhouse gas and acidifying gases emissions and waste generation. Releasing its first sustainability report, the council said that environmental indicators make up eight of 17 performance indicators that the group will track, including fuel consumption, energy intensity of production processes, emissions of non-methane volatile organic compounds, and water quality. The second industry sustainability report will be issued in 2014.

Gothenburg Protocol Amendments

Parties to the U.N. Economic Commission agreed May 4 that fine particulate matter and black carbon could be added to the list of pollutants controlled under the Convention on Long-range Transboundary Air Pollution. Amendments approved by the treaty's Executive Board would enter into force when two-thirds of the parties to the protocol ratify them. The group also agreed on flexibility mechanisms for Eastern European states and tighter emissions ceilings for SO₂, NO₂, and volatile organic compounds.

World Bank on Sustainable Development

The World Bank released a report May 9 finding that countries could grow more sustainably without significantly raising development costs by eliminating subsidies that encourage more pollution and taking new approaches to measuring the complete cost of development. The report, *Inclusive Green Growth: The Pathway to Sustainable Development*, concluded that it is a myth that sustainable development is an unaffordable luxury.

British Energy Plan

Queen Elizabeth II told Parliament May 9 that legislation that could help the United Kingdom move away from fossil fuels and toward green energy will go before the government within the year. The energy bill aims to reform the electricity market through incentives for low-carbon power generation, and will place a cap on power plant emissions to encourage coal plants to use carbon capture and storage technology, in total stimulating roughly \$323 billion in investments into the country's low-carbon energy infrastructure over the next decade.

Tar Sands Life Cycle Study

The Alberta Petroleum Marketing Commission released a study, conducted by Jacobs Consultancy, finding that, owing to advances in technology, Alberta's oil sands product has a lower life cycle carbon footprint than previously suggested by the European Union. The province was worried that the labeling of tar sands production as dirtier than traditional oil would create a discriminatory market.

Chinese Heavy Metals Tax

Guangdong province in South China is mulling a tax on industries that emit heavy metals, after being named among 14 "critical areas" in China's 12th Five-Year Plan (2011-15) in the area of heavy metal emissions. Guangdong, where half of Chinese battery production takes place, has immense soil remediation problems linked to these emissions.

Miscellaneous

Climate Policy Support Drops

Stanford University researchers and Ipsos Public Affairs unveiled a survey May 7 that concludes that public support for climate policies has dropped an average of 5 percentage points a year between 2010 and 2012. However, a majority of Americans continue to support specific government actions to mitigate the effects of global warming, though most remain opposed to consumer taxes to reduce electricity and gasoline use. The study is a follow-up to a 2010 Stanford survey that found 72 percent of the respondents favored government action on climate change.

EIA EV Report

On May 5, the International Energy Agency released the EV City Casebook: A Look at the Global Electric Vehicle Movement arguing that building battery-charging and other infrastructure is key to reaching the

goal of 20 million electric vehicles on the road worldwide by 2020. In 2009, transportation had a 20% share of overall global energy use, with a 25% share of carbon dioxide emissions, and the growing of today's miniscule electric vehicle market is vital to lowering those percentages, the report concludes.