



## ML Strategies Update

David Leiter, [DJLeiter@mlstrategies.com](mailto:DJLeiter@mlstrategies.com)  
Sarah Litke, [SLitke@mlstrategies.com](mailto:SLitke@mlstrategies.com)  
Bryan Stockton, [BStockton@mlstrategies.com](mailto:BStockton@mlstrategies.com)  
Jordan Collins, [JMCollins@mlstrategies.com](mailto:JMCollins@mlstrategies.com)  
Neal Martin, [RNMartin@mlstrategies.com](mailto:RNMartin@mlstrategies.com)

FOLLOW US ON TWITTER: [@MLStrategies](https://twitter.com/MLStrategies)

ML Strategies, LLC  
701 Pennsylvania Avenue, N.W.  
Washington, DC 20004 USA  
202 434 7300  
202 434 7400 fax  
[www.mlstrategies.com](http://www.mlstrategies.com)

JUNE 30, 2014

## Energy & Environment Update

### **As EPA Considers Required 2014 Biofuel Levels, CBO Analyzes Gas and Food Price Impact**

By Bryan Stockton

*From time to time the Energy and Environment Update will focus on the legislative and regulatory developments facing a particular energy sector.*

With legislative efforts to reform or repeal the Renewable Fuels Standard (RFS2) on hold after the Environmental Protection Agency proposed paring back required blended levels of biofuel (renewable volume obligations or RVOs), all eyes are on the EPA as to what those closely guarded final volume levels will be.

The rule, already several months overdue, had most recently been targeted for a June release, but that deadline slipped by without the rule even going to the Office of Management and Budget for final review. EPA Administrator Gina McCarthy testified last week that the agency wants to “get this right” and hopes “to get that out soon.” Even if the EPA sends the rule to OMB in July, as is now expected, OMB likely will review it for 30-60 days before the final rule is promulgated.

As the EPA’s review drags on, the non-partisan Congressional Budget Office released a [report](#) evaluating the impact of several possible outcomes: 1) keeping volumes consistent with the proposed rule, 2) raising volumes to the higher levels required by statute, or 3) repealing the law entirely through an act of Congress. The report contained some conclusions that undermined the arguments of both RFS opponents and supporters. Interestingly, the report eviscerated one of the largest policy arguments against the RFS--that the RFS increases food prices. Even though roughly 40 percent of the U.S. corn supply is used to make ethanol, the study found that food prices would stay the same whether the RFS remained as is or was repealed. Even if the EPA increased required levels of corn ethanol by 15 percent (2 billion gallons), the overall increase in food prices would only amount to one quarter of one percent.

CBO thought that cellulosic biofuel producers could not meet the production levels called for in the statute. However, the report recognizes that the EPA’s reduction in cellulosic targets also undermines new investment in that sector. The report concluded that infrastructure limitations—namely the lack of blending and vehicle infrastructure for E85 and high ethanol blends—make it difficult for the nation to utilize higher volumes of ethanol. Prices of E10 blended gasoline would increase 4 to 9 percent by 2017 if the EPA required refiners to blend the volumes of biofuel specified in statute, rather than the lower waived volumes in the proposed rule. However, the price of E85, which is sold at less than 2% of filling stations, would drop by 37-51 percent by 2017 if the EPA imposed the higher volumes called for in the statute.

Biofuel supporters said the report did not address the benefits of the RFS, such as the value of reduced

emissions and displaced foreign petroleum imports.

After the RVO rule is sent to OMB, the EPA will then need to finalize another rule amending RFS pathways—as the EPA must approve each feedstock and technological process or pathway used to create biofuels before the fuel can generate credits under the RFS. The proposed pathway rule would allow additional feedstocks and processes to qualify as cellulosic fuels, helping the EPA to meet the already reduced targets for cellulosic fuels. Currently, cellulosic production is not on track to meet the goal of 16 billion gallons by 2022 that the bipartisan Energy Policy Act of 2007 codified. The American Petroleum Institute and the American Fuel and Petrochemical Manufacturers claim that the EPA's desperation to show progress in cellulosic production is causing it to violate the statute and classify as cellulosic fuels that do not entirely contain cellulosic feedstocks. While refiners otherwise argue that the effective non-existence of cellulosic biofuel justifies the repeal of the RFS, they are opposing the agency's efforts to allow new cellulosic fuels such as landfill biogas, which has an existing production capacity equivalent to multiple millions of gallons. The groups support other aspects of the rule.

Based on previous RIN fraud cases, the EPA is trying to tighten reporting regulations, and it is imposing a host of new reporting requirements on foreign and domestic producers alike. Foreign biofuel producers will not be able to generate credits under the RFS unless they fully comply with the regulations. The government of Canada considers unduly burdensome the new reporting requirements the proposed pathway rule would impose on fuel exporters shipping into U.S. markets. Canada recently met with OMB and the EPA to convey its concerns.

## ENERGY AND CLIMATE DEBATE

Celebrating the one-year anniversary of President Obama's Climate Action Plan, the White House released June 25 a [progress report](#) touting its efforts to improve energy efficiency, increase renewable energy development, and address climate change through proposed Environmental Protection Agency regulations.

Speaking that evening at the League of Conservation Voters annual dinner, President Obama called addressing climate change a “generational project,” promised to continue protecting the Clean Water Act from Republicans who want to dismantle it, and promoted the flexibility states will have in complying with the Environmental Protection Agency's proposed CO2 standards for power plants. He warned environmental advocates against ignoring the concerns many Americans have about rising electricity and gas prices. The president also repeated attacks on congressional Republicans who question climate science or cite their lack of scientific expertise as a reason to not weigh in on climate change, and urged the country to demonstrate climate leadership as developing nations prepare to address climate change as well.

The U.S. Supreme Court's June 23 decision that greenhouse gas emissions alone cannot trigger requirements for large industrial sources to obtain Clean Air Act permits for their emissions means that the U.S. Court of Appeals for the District of Columbia Circuit can move forward with permitting cases. The court had been waiting to hear or consider rehearing challenges to various aspects of the Environmental Protection Agency's GHG permitting programs until the Supreme Court made its decision. Pending lawsuits include challenges to the third step of the agency's tailoring rule as well as potential requests to rehear suits over whether facilities burning biomass must obtain GHG permits or whether states must update their air pollution implementation plans to include GHGs. The Supreme Court's decision likely renders moot an American Petroleum Institute case the challenges a third step of the tailoring rule.

Congress is in recess for the Independence Day holiday, but will return next week for a July work period full of unfinished business, including appropriations, highway funding, terrorism risk insurance, and Veterans Affairs care legislation. The House is likely to vote on the Energy and Water Development spending bill (H.R. 4923), followed shortly thereafter by Financial Services, and potentially Agriculture-FDA appropriations measures later in the month. The Senate Appropriations Committee plans to move forward with Defense, Energy-Water, Financial Services, Interior-Environment, and Labor-HHS spending measures as well. Senate leaders are working to overcome an impasse over a proposed minibus measure, which bundled Agriculture-FDA, Commerce-Justice-Science, and Transportation-HUD appropriations bills. Senate Majority Leader Harry Reid (D-NV) pulled the legislative vehicle (H.R. 4660) from the floor earlier this month when he and Senate Minority Leader Mitch McConnell (R-KY) could not agree on amendments.

## CONGRESS

### House Approves Propane, Efficiency Bills

The House approved legislation ([H.R. 2086](#)) June 23 to minimize shortages of propane and other heating fuels, sending the measure to the president for his signature. The House approved also two bills to increase energy

conservation in schools through energy efficiency retrofits ([H.R. 4092](#)) and to require the Department of Energy to evaluate potential energy savings available to federal agencies through greater use of thermal insulation on energy and water use systems ([H.R. 4801](#)).

### **Committee Approves Regalbuto**

The Senate Armed Services Committee approved June 24 the nomination of Monica Regalbuto to serve as the Department of Energy's assistant secretary of energy for environmental management. Ms. Regalbuto currently serves as deputy assistant secretary for fuel cycle technologies within the Office of Nuclear Energy.

### **House Approves Pipeline and Transmission Bill**

The House passed, 238-173, legislation ([H.R. 3301](#)) June 24 to eliminate the need for presidential permits to construct energy projects that would cross the United States' border with Canada or Mexico. Though the Senate is not expected to take up the bill, the White House has threatened to veto the measure.

### **SolarWorld Won't Drop Complaint**

SolarWorld sent a letter June 24 to House Democrats who urged the White House in May to pressure the company to drop its complaint against Chinese solar manufacturers saying that it is not interested in dropping its complaint and entering negotiations.

### **Short-Lived Pollutants Targeted**

Senators Chris Murphy (D-CT) and Susan Collins (R-ME) unveiled [draft legislation](#) June 25 requiring the Environmental Protection Agency to adopt new rules on the disposal of hydrofluorocarbons and servicing of the compounds used in vehicle air conditioning and refrigeration. The Super Pollutants Act of 2014 targets short-lived climate pollutants, including HFCs, methane, and black carbon.

### **House Approves LNG Bill**

The House passed, 266-150, June 25 Representative Cory Gardner's (R-CO) [legislation](#) ([H.R. 6](#)) to expedite the Department of Energy's approval of liquefied natural gas export permits.

### **Senate LNG Export Markup Forthcoming**

Senate Energy and Natural Resources Committee Chair Mary Landrieu (D-LA) said June 25 that the committee is likely to mark up this summer Senator Mark Udall's (D-CO) legislation (S. 2494) that would require the Department of Energy to expedite the review of pending liquefied natural gas export permits. The House approved similar legislation ([H.R. 6](#)) June 25. Senator Landrieu said that the committee might also hold hearings on the Department of Interior's next five-year offshore oil and gas leasing plan and high gas prices and potential market manipulation.

### **Scott Joins SEEC**

The House Sustainable Energy and Environment Coalition announced June 25 that Representative Robert Scott (D-VA) joined the coalition. The coalition now has 57 members.

### **ENR Considers Energy-Water Nexus**

The Senate Energy and Natural Resources Subcommittee on Water and Power held a hearing June 25 to consider the Nexus of Energy and Water for Sustainability Act of 2014 ([S. 1971](#)). Department of Energy Office of Energy Policy and Systems Analysis Principal Deputy Director Jonathan Pershing and Department of Interior Deputy Assistant Secretary for Water and Science Tom Iseman testified that they support the intentions of Ranking Member Lisa Murkowski's (R-AK) measure, and want to work with the committee to reach the legislation's goals. The measure would encourage federal agencies and Congress to coordinate better the interconnecting challenges of energy and water supplies, including by gathering better data.

### **House Approves Oil and Gas Exploration**

The House passed legislation ([H.R. 4899](#)), 229-185, June 26 to expand onshore and offshore oil and gas exploration and expedite drilling permits on federal lands. The Senate is not likely to take up the Lowering Gasoline Prices to Fuel an America That Works Act of 2014.

### **Senate Confirmations**

The Senate confirmed June 26 Joe Handelsman to be an associate director of the White House Office of Science and Technology Policy and Esther Kia'aina to be assistant secretary of Interior for insular areas.

### **Action on EXPIRE Urged**

302 companies and associations sent a letter June 26 to Congress June 26 calling for urgent action on the EXPIRE Act to extend tax policies critical for the development of clean energy technologies, such as the production tax credit, investment tax credit, and commercial building efficiency and advanced biofuel tax credits.

### **FERC Nominee Vote Forthcoming**

Senate Majority Leader Harry Reid (D-NV) said last week that the Senate will vote on Federal Energy Regulatory Commission nominees Cheryl LaFleur and Norman Bay when the Senate returns from its Fourth of July recess. As part of a compromise between the White House and Senate, Acting Chair LaFleur will continue to lead the commission for nine months following Senate confirmation of her nomination to a second term, at which point Mr. Bay will assume the chairmanship.

### **Ukrainian Energy Letter**

Senators Ed Markey (D-MA), Ron Wyden (D-OR), Jeanne Shaheen (D-NH), and Chris Murphy (D-CT) sent President Obama a letter June 27 encouraging him to work closely with new Ukrainian President Poroshenko to confront security and economic concerns while also addressing the nation's reliance on Russian energy supplies.

### **Legislation Introduced**

Senator Jeff Flake (R-AZ) introduced the Ozone Regulatory Delay and Extension of Assessment Length Act (S. 2526) June 25 to extend the Environmental Protection Agency's timeline for reviewing and updating National Ambient Air Quality Standards from five years to ten years. The measure would prevent the agency from enforcing new ozone standards until 2018.

The same day, Representative Pete Olson (R-TX) introduced the Common Sense Legislative Exceptional Events Reform Act (H.R. 4957) to reform the process under which the Environmental Protection Agency can provide waivers to states for pollution events that are beyond their control.

Representative Robert Hurt (R-VA) introduced the Supporting Home Owners Rights Enforcement Act (H.R. 4976) June 26 to require the Federal Energy Regulatory Commission to take into consideration private property ownership rights when exercising its authority over hydropower projects at Smith Mountain Lake and similar areas.

## **DEPARTMENT OF DEFENSE**

### **Climate Adaptation Procedures**

The Government Accountability Office released a [report](#) June 30 urging the Department of Defense to establish clearer procedures for adapting to climate change impacts. The agency has already begun assessing installations' climate vulnerability, and has directed agency officials to incorporate climate concerns into installation planning.

## **DEPARTMENT OF ENERGY**

### **Furnace Fan Efficiency Finalized**

The Department of Energy made public a final [rule](#) June 25 requiring mandatory energy efficiency standards for residential furnace fans. The rule, which manufacturers oppose, would save \$9 billion by 2030, and would require the average furnace fan to be about 46 percent more efficient by 2019.

## **DEPARTMENT OF INTERIOR**

### **Court Upholds BLM Western Solar EIS**

The U.S. District Court for the Southern District of California [upheld](#) June 25 the Bureau of Land Management's environmental statement guiding the development of utility-scale solar projects in Arizona, California, Colorado, Nevada, New Mexico, and Utah.

### **CA Wind Granted Take Permit**

The Fish and Wildlife Service published a [notice](#) in the Federal Register June 27 granting EDF's 102.5 MW Shiloh IV wind project in California the wind industry's first take permit for golden eagles under the Bald and Golden Eagle Protection Act. The wind farm has been operational for a year and a half.

## DEPARTMENT OF STATE

### Arctic Council Chairmanship Priorities

Deputy Assistant Secretary of State for Oceans and Fisheries David Balton said June 25 that climate change will be a key issue for the United States as it assumes chairmanship of the Arctic Council. Reducing black carbon and methane emissions is also expected to be a top priority. The United States will present its desired 2015-2017 agenda to senior Arctic officials from other countries during an October meeting.

## DEPARTMENT OF TREASURY

### Low Sulfur Diesel Credit Comments Sought

The Internal Revenue Service issued a Federal Register notice June 26 seeking public comment on a tax form, Form 8896, that small refiners use to claim the low sulfur diesel fuel production credit.

## ENVIRONMENTAL PROTECTION AGENCY

### CSAPR Stay

The Environmental Protection Agency [asked](#) the U.S. Court of Appeals for the District of Columbia Circuit June 26 to lift immediately its stay of the agency's 2011 cross-state air pollution rule and extend compliance deadlines by three years. Responses to the motion are due July 10.

### AGs Seek to Block GHG Regs

Nine state attorneys general filed an amicus [brief](#) June 26 in the U.S. Court of Appeals for the District of Columbia Circuit in support of Murray Energy Corporation's June 18 lawsuit seeking to block the Environmental Protection Agency's proposed CO2 standards for existing power plants. The group contends that the Clean Air Act prevents the agency from regulating sources under Section 111(d) if they are already regulated under Section 112.

### Stringent Ozone Standard Recommended

The Clean Air Scientific Advisory Committee [recommended](#) June 26 that the Environmental Protection Agency consider a range of 60 parts per billion to 70 parts per billion for revised ozone standards. The recommendation concurs with the range the agency identified in a draft policy assessment that the advisory committee reviewed, but advised that the agency set the standard lower than 70 ppb. The agency must propose to either retain or revise the existing 75 ppb standard by December 1.

### Biofuel RFS Requirement Reductions Likely

The Congressional Budget Office released a [report](#) June 27 finding that the Environmental Protection Agency is likely to continue reducing the amount of biofuels required under the renewable fuel standard for the next several years.

### HFC Alternates Identified

The Environmental Protection Agency [proposed](#) June 27 approving the use of five new refrigerants – HFC-32, ethane, isobutene, propane, and R-441A – with less global warming and ozone depleting potential than other hydrofluorocarbons currently in use. President Obama directed the agency to identify lower warming potential refrigerants as part of his June 2013 climate action plan. The agency will accept comments on the proposal for 60 days after it is published in the Federal Register.

## INTERNATIONAL

### Russia to Join Mercury Convention

The Russian Ministry of Natural Resources and Environment said June 19 that the government would sign the Minamata Convention on Mercury before the October 9 deadline. The global convention is aimed at phasing out mercury and taking steps to clean up mercury pollution.

### Annual UNEP Report Released

The United Nations Environment Program released its [2013 Annual Report](#) June 23, calling climate change the “major, overriding environmental issue of our time.” The report chronicled progress in fostering natural resource use efficiency improved environmental governance, and better chemical and waste handling practices.

### World Bank Encourages Climate Smart Policies

The World Bank released a [report](#) June 23 finding that adopting climate smart policies, such as shifting to more

public transit and reducing residential and commercial building energy use, could increase the global gross domestic product by at least \$1.8 trillion per year by 2030, a 1.5 percent increase over a business as usual scenario. Benefits could total \$2.6 trillion, or 2.2 percent additional GDP, by 2030 if financing and technology investment increased.

### **UNEA Holds Inaugural Meeting**

The United Nations Environment Assembly held its first meeting June 23-27 in Nairobi focusing on environmental issues as central to questions about international affairs. The meeting launched the UNEP [Year Book 2014](#), and released a joint [report](#) with the Plastic Disclosure Project about ways to reduce the world's increasing use of plastics in products and packaging.

### **UNEP Urges Short-Lived Pollutant Reduction**

Addressing delegates at the inaugural meeting of the United Nations Environment Assembly in Nairobi June 24, United Nations Environment Program Executive Director Achim Steiner called on countries to reduce short-lived climate pollutants such as black carbon, methane, tropospheric ozone, and other hydrofluorocarbons.

### **Environmental Crime Threatens African Security and Growth**

The United Nations Environment Program and INTERPOL released a [report](#) June 24 finding that transnational environmental crime, worth about \$213 billion a year, is financing criminal and militia terrorist groups and threatening security and sustainable development in sub-Saharan Africa.

### **German Solar Record**

German Trade and Invest renewable energy expert Tobias Rothacher said last week that Germany produced 50 percent of its electricity from solar power as of the beginning of June – a new world record. 90 percent of solar panels in the country are on individual rooftops, rather than in large solar farms.

### **Mexican Energy Overhaul**

Facing increased debate and negotiations, Mexico will likely wait until late July to pass legislation overhauling its energy policy. The government decided in February to not enforce a new energy efficiency rule, spurring criticism by advocates of the program.

### **SIDS Suffer Climate Damage**

Small Island Developing States presented a position [statement](#) during the United Nations Environment Assembly June 27 finding that the states, home to 63 million people and custodians of most of the world's marine biodiversity, are increasingly under pressure from climate change impacts. The statement finds that climate change is a new driver of migration in the states, and calls for urgent climate mitigation efforts.

## **STATES**

### **CA Extends Solar Tax Exemption**

California Governor Jerry Brown (D) signed into law June 20 legislation ([S.B. 871](#)) extending to January 2025 a property tax exemption for solar energy systems installed on new construction. The tax exemption was scheduled to expire in 2017.

### **\$53 Million CA Nuclear Waste Dispute Settled**

The U.S. Court of Appeals for the Federal Circuit [reinstated](#) June 20 a prior judgment covering the storage of spent nuclear fuel rods through December 31, 2003. The court ordered the Department of Energy to execute immediately the payment to the Sacramento Municipal Utility District. The court vacated the award from 2004-2009 and remanded that part of the decision for further consideration.

### **NE Keystone Lawsuit**

Plaintiffs in a Nebraska lawsuit challenging the constitutionality of a state statute that paved the way for approval of the Keystone XL route through Nebraska filed an opinion brief and cross appeal with the state Supreme Court June 20, arguing that a district court ruling striking down the statute should be affirmed. The court is tentatively scheduled to hear oral arguments in September.

### **Mayors to Address Climate Issues**

The U.S. Conference of Mayors [voted](#) June 23 to take local action to reduce energy use, prepare for climate impacts, and support grassroots conservation efforts. Mayors of both parties are taking steps to address climate change's impacts on their communities rather than arguing over the science of climate change.

### **DC Universities Purchase NC Solar**

George Washington University, American University, and the George Washington University Hospital announced June 23 a 20-year agreement with Duke Energy Renewables to purchase more than half of their power from three new solar power farms in North Carolina. Construction on the Capital Partners Solar Project will begin this summer, and the farms are expected to generate 123 million KWh/year once fully operational in 2015.

### **\$53 Million CA Nuclear Waste Dispute Settled**

The Supreme Court decided June 30 to not hear a trio of cases challenging California's Low Carbon Fuel Standard. The U.S. Court of Appeals for the Ninth Circuit ruled that the standard does not violate the Commerce Clause. One lawsuit had appealed the decision; another questioned whether Clean Air Act language bars Commerce Clause challenges to the standard; and a third alleged that the standard discriminates against out of state fuels. The Environmental Defense Fund lauded the court's decision.

### **NE Energy Plan Favors Industry**

The Conservation Law Foundation found June 27 that [records show](#) that a New England energy plan favors large gas pipeline and electricity transmission line expansion projects at the expense of the environment.

## **SUSTAINABILITY**

### **Sustainability Guidelines for Resources Sector**

The Sustainability Accounting Standards Board released June 25 voluntary [guidelines](#) for helping companies in the resources sector to report on how climate change regulations and other sustainability issues could impact their value in annual findings with the Securities and Exchange Commission. The standards identify environmental and social issues that could have a material impact on shareholder value for companies in the nonrenewable resources sector.

## **MISCELLANEOUS**

### **Vehicle Fuel Efficiency**

The Consumer Federation of America released a study June 23 finding that drivers are buying more fuel-efficient cars. The report concluded that the average miles per gallon of new cars purchased in the United States has increased from 21 MPG in 2008 to 25.6 MPG this year. As a result, domestic drivers who own 2014 model year cars will spend about \$300 less per year on gasoline than owners of 2008 model year cars.

### **Risky Business Report Unveiled**

A bipartisan group of political and financial leaders a [report](#) June 24 finding that the United States could face hundreds of billions of dollars in economic losses by the end of the century from rising seas, higher temperatures, and other climate change effects. The Risky Business report quantifies for the first time climate risks to specific regions and sectors of the economy and calls for new policies to reduce the odds of catastrophic outcomes from climate impacts.

### **CDP Climate Questionnaire**

American Electric Power and other electricity providers told CDP via an annual climate change [questionnaire](#) June 27 that the company uses an internal carbon price to help guide long-term investments and avoid stranded assets.

### **Green Bonds Help to Curtail Climate Impacts**

During the Renewable Energy Finance Forum June 26, American Council on Renewable Energy founder Michael Eckhart said that green bonds may help provide the \$1 trillion in clean energy annual investments that environmental groups believe is necessary to limit climate change impacts. The bond market could top \$40 billion this year and reach up to \$100 billion in 2015.

\* \* \*

---

**View ML Strategies professionals.**

---

