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## **ENERGY AND ENVIRONMENT UPDATE** **July 31, 2011**

### **Energy and Climate Debate**

As the White House and Congressional Leaders seek to end the debt debate with non-stop weekend meetings, the Senate and the House will continue debate on a debt limit compromise during the first week of August, which will be the final week before the annual August recess. Both chambers are scheduled to adjourn until September 6 for the traditional month-long August and Labor Day break.

The story in energy and environment continues to consist of a Republican drive (being led by the House) to eliminate or alter most energy efficiency, renewable energy and climate change programs as the Democrats (led by the Senate) seek to maintain energy efficiency, renewable energy and environmental protection programs. The House is expected to resume consideration of the Fiscal Year 2012 Interior Appropriations Bill (H.R. 2584). The bill is likely to fail in the Democratic controlled Senate, where the abundance of controversial riders make the entire bill a non-starter. Also due for consideration in the Senate, but unlikely to go anywhere, is the House bill (H.R. 1938) calling for an expedited review of the Keystone XL pipeline.

### **Congress**

#### **House Republicans Pass Bill Expediting Keystone XL Decision**

On July 26, the House voted 279-147 in favor of the North-American made Energy Security Act (H.R. 1938) that would require the Obama administration to make a decision within 30 days of the environmental impact assessment (to be issued no later than November 1) on the \$7 billion Keystone XL crude oil pipeline. The bill, however, faces an uncertain future in the Democrat-controlled Senate. Three House Republicans voted no while 47 House Democrats cast "yes" votes, and though the White House considers the bill unnecessary, it has not said it would veto. The State Department already plans on deciding by Dec. 31 and expects to issue the final environmental review in mid-August.

#### **No Repeal of Ethanol Tax Credit Soon**

On July 26, hopes began to recede for a bipartisan agreement to repeal a production tax credit for ethanol production when Senate Majority Leader Harry Reid (D-NV) excluded the provision from a debt-reduction announced the previous day. Sen. John Thune (R-SD), Sens. Dianne Feinstein (D-CA) and Sen. Amy Klobuchar (D-MN) formulated a plan that would repeal the \$0.45/gallon Volumetric Ethanol Excise Tax Credit (VEETC), or blenders' tax credit, and the \$0.54/gallon tariff on ethanol imports as of

July 31. There are few other legislative vehicles for the proposal before recess, which means the provision will have to wait until after the recess.

#### Durbin Questions Government Calculation of Natural Disaster Risks

July 28, at a Senate Appropriations Subcommittee on Financial Services and General Government, Sen. Richard Durbin (D-IL) said the federal government needs to reassess the way it plans for natural disaster relief and analyzes the risks of natural disasters covered by federal insurance. Senator Durbin suggested cooperation with private insurers risk calculation methods which would free up funds to be appropriated for the National Flood Insurance Program, the Small Business Administration's disaster loan program, and other programs. Global warming will mean more frequent and more violent storms and droughts, as well as threats to coastal communities from rising sea levels, said witnesses testifying to the committee.

#### House E&C Committee New Ozone Standards Hearings

On July 28, in a letter to EPA Administrator Lisa Jackson, the House Energy and Commerce Committee members Reps. Fred Upton (R-MI), the committee chairman, Ed Whitfield (R-KY), the Energy and Power Subcommittee chairman, and Cliff Stearns (R-FL), the Oversight and Investigations Subcommittee chairman announced that the committee intends to hold hearings later this summer examining EPA's ozone air quality standards reconsideration. This comes after EPA's July 26 announcement that it would not issue a final version of the revised ozone national ambient air quality standards by July 29 as originally planned. EPA will issue the final rule after OMB completes a regulatory review that began July 11.

#### House Votes Down Air, Water Pollution Regulations Amendments

Over the course of last week, the House rejected several amendments to the FY2012 Interior, Environment, and Related Programs Appropriations Bill (H.R. 2584), which is expected to be debated further in the coming week. On July 27, Two Republicans and two Democrats offered amendments. Rep. Marsha Blackburn (R-TN) offered an amendment to remove \$30 million from EPA's Diesel Emissions Reduction Grants program, Rep. Laura Richardson (D-CA) offered an amendment to add \$5 million to EPA's Clean Air Grants program, Rep. Timothy H. Bishop's (D-N.Y.) amendment to increase the Clean Water State Revolving Fund (SRF) by \$1.4 billion, and Rep. James Lankford (R-OK) offered two amendments removing \$2.6 million in funding from the White House Council on Environmental Quality and capping the ability of the clean water SRF to forgive principal or offer negative interest loans at 30 percent. Several Republican members also offered an amendment to undo the agency's recently promulgated final interstate air pollution rule. All amendments were either voted down or rejected on procedural grounds.

#### Subcommittee Passes Bill Cutting Funding For International Climate Change Programs

On July 27, by voice vote, the House State, Foreign Operations, and Related Programs Appropriations Subcommittee reported out the FY2012 State and Foreign Operations Appropriations bill that would eliminate the Clean Technology Fund and the Strategic Climate Fund, reduce funding for the Global Environment Facility, and eliminate all funding for the U.N. Framework Convention on Climate Change and the Intergovernmental Panel on Climate Change. The bill would provide \$70 million to the Global Environment Facility (\$90 million less than FY2011 and less than half the FY2012 request), an organization that offers grant money for environmental and climate-change research and projects. The bill eliminates the Clean Technology Fund and the Strategic Climate Fund, which finance clean energy technology development and implementation as well as climate change adaptation in developing countries. The FY2011 budget included \$185 million for the Clean Technology Fund (\$400 million requested in FY2012) and \$50 million for the Strategic Climate Fund (\$190 million requested for FY2012).

#### Legislation Introduced

On July 25, Senator Ron Wyden (D-OR) introduced legislation (S.1413) to amend the Internal Revenue Code of 1986 to temporarily increase the investment tax credit for geothermal energy property.

On July 26, Senator Charles Schumer (D-NY) introduced legislation to improve the tax credit for fuel cell-powered industrial vehicles, the legislation is designed to compliment that of Congressmen Paul Tonko

and Chris Gibson in the House of Representatives, to modify these existing tax credits. The legislation would amend section 30B of the Energy Policy Act of 2005 – the Alternative Motor Vehicle Credit (AMVC) – to change the definition of “fuel cell motor vehicle” to include fuel cell-powered material handling vehicles.

On July 28, Reps. John Sullivan (R-OK), Mike Ross (D-AR), and eight other members, introduced the Cement Sector Regulatory Relief Act of 2011 (H.R. 2681) to force EPA to develop less burdensome emissions regulations for cement producers that would not go into effect for at least five years, in addition to addressing other agency rules. In August 2010, EPA issued the cement kiln pollutant rule, known as National Emission Standards for Hazardous Air Pollutants, requiring major-source cement, and smaller area-source, kilns to tightly control emissions of mercury, hydrocarbons, and particulate matter. The bill requires EPA to publish new “achievable” requirements at least 15 months after the bill's enactment, and those rules would be enacted 5 years later. The bill also calls for the redrawing of two other cement industry rules published this year by EPA. One sets new source performance standards for hazardous air pollutants from solid waste incinerators, and the other revised procedures for nonhazardous material regulated waste handling as currently outlined in the Resource Conservation and Recovery Act. This comes soon after a July 28 letter from two dozen senators, led by Sens. John Barrasso (R-WY) and Joe Manchin (D-WV), Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) urging them to halt or significantly alter the same rules. The letter argues that the rules threaten not only the cement industry as well as dependent sectors of the economy like construction.

#### Upcoming Hearings

On August 2, the Senate Environment Committee will hold a hearing on the Nuclear Regulatory Commission's report on enhancing reactor safety, which will be a review following the Fukushima Dai-ichi accident in Japan.

On August 3, the House Ways and Means Subcommittee on Select Revenue Measures and Subcommittee on Oversight will hold a joint hearing that will “focus on the dual priorities of comprehensive tax reform and a sustainable energy policy that address our economic, security, and environmental needs.”

On August 3 the House Appropriations Committee will convene for a business meeting to consider the fiscal 2012 funding measure for the Department of State, foreign operations, and related agencies.

#### **Administration**

##### Congress and Administration Unite Against EU Airline Emissions Standards

On July 27, Top officials from the U.S. Federal Aviation Administration, State Department, and Transportation Department testifying before the Aviation Subcommittee of the House Transportation and Infrastructure Committee joined Republican and Democratic members in criticizing an EU plan to cap GHG emissions from international flights to or from Europe beginning in 2012. Some of the experts told the committee that the plan violates U.S. sovereignty and undermines international efficiency and safety cooperation. The Obama administration officials would not endorse H.R. 2594, a bill introduced on July 20 by House Transportation Committee Chairman John Mica (R-FL) and several Democrats that would exempt U.S. airlines from the proposed EU scheme.

##### Plans to Increase Average Fuel Economy Standards for Cars and Light Trucks

On July 29, President Obama announced an initiative, as part of an agreement with automobile manufacturers and unions, to increase the average fuel economy requirements to 54.5 miles per gallon by 2025 for cars and light-duty trucks which would reduce demand for oil imports by 6 billion barrels and save the economy \$1.7 trillion in fuel costs. Additionally, the standards would reduce carbon dioxide emissions by 6 billion metric tons. The agreement would require automakers to increase the fuel economy of cars by 5 percent annually. However, light-duty trucks would be allowed to increase

corporate average fuel economy (CAFE) more slowly, by 3.5 percent per year through 2021 and then by 5 percent annually through 2025.

## **Department of Energy**

### DoE and Engineers Promote Efficiency Standards for Buildings

On July 25, DoE and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) released an MoU announcing they will work together to develop energy efficiency standards and cooperate on energy programs. The two will cooperate on the following issues; design of low-rise residential buildings, ventilation and indoor air quality in all buildings, energy efficiency in existing buildings, design of high-performance green buildings, and a smart grid information model.

### DoE and Centerpoint Energy Announce Results of Energy Efficiency Study

CenterPoint Energy and U.S. Deputy Secretary of Energy Daniel B. Poneman released the results of a survey covering a 500 smart meter pilot program begun last fall. According to the survey, 71% of customers reported that they have changed their electricity consumption behavior as a result of the energy use data displayed by smart meter. The survey also stated that 93% of respondents reported they are satisfied with their in-home display, and 97% of respondents reported they will continue using it.

## **Department of Interior**

### DoI and DHS Sign Accord on Offshore Renewable Projects

On July 27, DoI signed an MoU announced it will "invite" the U.S. Coast Guard to serve as a cooperating agency for reviewing offshore renewable energy projects on the Outer Continental Shelf under the National Environmental Policy Act. The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) will utilize the Coast Guard's maritime safety, security, mobility, and national defense expertise to aid its NEPA review. Under the terms of the MoU, BOEMRE also will invite the Coast Guard to participate in the bureau's yet-to-be-established State Renewable Energy Task Forces as well as collaborate with the Coast Guard on navigational risks assessments related to renewable energy projects in the OCS.

## **Environmental Protection Agency**

### EPA Says Air Rules Give Power Plants Certainty, Create New Jobs

On July 26, EPA Deputy Administrator Robert Perciasepe before the House Oversight and Government Affairs Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending defended the agency's efforts to require coal-fired power plants and other power generators to use maximum achievable control technology (MACT) to curb emissions of mercury and other air toxics. Perciasepe said that delaying the rules would drive utilities and companies "to keep cash on the sidelines instead of spending it putting people to work modernizing their facilities," but the US does "not have to choose between the significant public health benefits from reducing air pollution from power plants and a robust, reliable electric grid" needed for a healthy recovery. Perciasepe also claimed the rule would support an estimated 31,000 jobs, including 9,000 highly skilled, long-term utility jobs.

### Different Aspects of EPA Cement Kiln Rules Defended

On July 22, in briefs filed in the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA's new cement kiln standards, environmental groups are defending the EPA's air pollution standards, while industry is supporting the agency's decision not to require GHG controls. EPA issued final rules in August 2010 revising new source performance standards and setting national standards for hazardous air pollutants emissions for cement manufacturers. The lawsuits were originally filed in November 2010, with industry and environmental groups are challenging different aspects of the rules. On October 11 of this year, oral arguments will be heard.

## **Federal Aviation Administration**

### FAA Plans to Set Goal of 1 Billion Gallons Of Alternative Fuel Use by Aviation in 2018

On July 28, the FAA announced it will set an “aspirational” target in a yet-to-be-published strategic plan, Destination 2025, for the U.S. aviation industry to use 1 billion gallons of alternative jet fuel per year by 2018. The plan also sets a goal of developing an alternative replacement fuel for leaded aviation gasoline “that is usable by most general aviation aircraft” by 2018. In testimony before the Commerce, Science and Transportation Subcommittee on Aviation Operations, Safety, and Security, an FAA official indicated that the agency has been working with industry to address barriers to the use of “drop-in” jet fuels. The airline industry, which expects to spend \$53 billion on fuel in 2011 (\$39 billion more than the previous year) supports alternative fuel efforts.

## **Personnel**

President Obama announced his intent to nominate David Danielson, a program director at the Energy Department’s Advanced Research Projects Agency-Energy (ARPA-E) on July 27 to be assistant secretary for the office of Energy Efficiency and Renewable Energy at the Department of Energy. Prior to working at ARPA-E, Mr. Danielson was clean energy venture capitalist at General Catalyst Partners in Boston, where he co-founded the firm’s clean energy investment practice.

## **Miscellaneous**

### VT Governor Confirms Smart Grid Technology Project

On July 20, Governor Peter Shumlin (D-VT) announced an ambitious Smart Grid Technology Project. The agreement between Green Mountain Power, Central Vermont Public Service Corporation, and Vermont Telephone Company will deploy smart grid technology to give the residents of Vermont more control over energy consumption, create new jobs, and expand access to broadband.

### EU Commission Adopts Law to Offset Carbon Targets

On July 25, the European Commission implemented a law that informs automakers how to use “eco-innovations,” for cars sold in the European Union, in an effort to meet vehicle emissions reduction targets. Automakers can offset their carbon emissions target by as much as 0.4 ounces per mile if automakers fit new cars with an emissions-cutting device or technology that helps cut CO2 emissions and is not taken into account in determining the level of CO2 emissions from vehicles. Eco-innovations include devices that reduce vehicle electricity requirements and thus fuel consumption, enhanced energy storage systems, or devices that use solar or wind energy.

### Businesses Seek to Increase Support and Strengthen RGGI

A coalition of businesses including many renewable energy companies sent a letter July 25 to the governors of the states participating in the Regional Greenhouse Gas Initiative asking the governors to support and strengthen the program. The letter was signed by 225 businesses and was sent to the governors of all 10 RGGI states, including New Jersey. Governor Chris Christie (R-NJ) said in May that New Jersey would withdraw from the program by the end of 2011.

### Measure on Limiting Environmental Rulemaking Procedures Becomes Law in North Carolina

Legislation (S.B. 781) which limits environmental rulemaking procedures in North Carolina became law after legislators on July 25 overrode a veto by Governor Bev Perdue (D-NC). Under the new law state regulatory agencies are required to only issue regulations that are necessary, clearly written, and authorized by state or federal law with additional restrictions placed on environmental rulemaking. The bill also requires agencies to try to lower the burden on regulated entities and write rules in a manner that achieves their objectives in a cost-effective and timely manner.

### Report Cites Numerous Water-related Impacts from Climate Change

The Natural Resources Defense Council released a report July 26 which noted that cities across the U.S. face a range of water-related effects from climate change and need to plan accordingly. The report entitled, “*Thirsty for Answers: Preparing for the Water-Related Impacts of Climate Change in American Cities*,” profiled 12 cities facing various impacts on their water systems and precipitation patterns. Most cities that have begun to address the water-related effects of climate change have assessed their vulnerabilities but are only now beginning to address them. The report recommended that all cities

conduct vulnerability assessments to understand climate related water risks, and it advised specific actions such as developing updated stormwater management plans.

#### Brazilian Council Intends to Take Action Against Advertisers

The Brazilian Council of Self-Regulatory Advertising (CONAR) will take action on August 1 against advertisers that claim company operations are sustainable without explaining why in their ads and without being able to substantiate that claim. Companies that claim sustainability to appeal to consumers should explain, in their ads, the environmental benefits of their practices, products, and services, and should be able to provide evidence of their sustainability if criticized for misleading the public

#### New Mexico Supreme Court Upholds Right Of State Board to Decide Emissions Rule

New Mexico's Supreme Court upheld an appellate court decision on GHG emissions sending the case to the State Environmental Improvement Board for resolution rather than have it play out in state courts. The high court also allowed an environmental group the right to intervene in the case brought by the state's largest utility and other energy entities, which seek to repeal greenhouse gas emissions rules. The action marks the latest in an ongoing battle over whether New Mexico should carry out greenhouse gas reduction rules. The GHG reduction measures were sought by Governor Bill Richardson (D-NM), who left office January 1 before the rules took effect. Governor Susana Martinez (R-NM) attempted unsuccessfully to block the rules from being implemented in January as part of a statewide review of new and pending regulations. When the courts ruled against her, Governor Martinez sought unsuccessfully to have the New Mexico Legislature undo the standards legislatively.

#### CBO Says Clean Energy Standard Would Reduce CO2 Emissions and Raise Electricity Prices

The Congressional Budget Office (CBO) released a study July 26 entitled, "*The Effects of Renewable or Clean Electricity Standards.*" According to the study, a 25 percent Clean Energy Standard (CES) could increase electricity prices by as much as 3 percent between 2020 and 2030. While the CBO said a CES would increase electricity prices, it also found that it would reduce carbon dioxide emissions, although specific reductions would depend on how the policy was designed. The study was prepared at the request of Senator Jeff Bingaman (D-NM) and Senator Lisa Murkowski (R-AK).

#### Report Says Renewable Sources Account for One-Fourth of Worlds Power Capacity

A report from the Renewable Energy Policy Network for the 21<sup>st</sup> Century (REN21) noted that renewable sources supplied 20 percent of the world's final energy consumption by the end of 2010 and one-quarter of global power capacity from all sources by early 2011. The "*Renewables 2011 Global Status Report*" said Global capacity of renewable energy technologies—photovoltaic cells, wind power, solar energy, and biofuels—grew at average rates of 15 to 50 percent annually. In addition, the report noted that renewable energy accounted for approximately half of the estimated 194 GW of new electric capacity added globally in 2010. The number of countries with policies that support renewable energy generation increased to 119 by early 2011, up from 55 in 2005. In the United States, renewable energy accounted for 10.9 percent of domestic primary energy production in 2010, the report said. According to the U.S. Energy Information Administration, renewable energy made up 8 percent of total consumption that year. By comparison, energy from nuclear power made up 11.3 percent of U.S. energy production, the report said. In China, the report noted that renewable energy sources accounted for about 26 percent of the country's total installed electric capacity.

#### Renewable Energy Resource Zones Eligible for Tax Credits in Missouri

Missouri passed legislation (H.B. 737) on July 27 making renewable energy resource zones eligible for incentives under the enhanced enterprise zone program. The measure provides tax credits for new or expanded business facilities that hire at least two new employees and make new investments in an enhanced enterprise zone of at least \$100,000. The bill will take affect August 28.

#### Australia Plans to Set Price on Carbon

On July 28, the Australian government released 14 proposed bills that aim to introduce a price on industry's carbon dioxide emissions. The critical measure is a Clean Energy Bill that would establish a carbon price regime to begin in mid-2012 with a three-year fixed price period. The clean energy bill would

establish industry assistance measures. The other 13 bills would establish the scheme's administering agency, known as the Clean Energy Regulator, and to create an independent Climate Change Authority, which would advise on carbon price scheme caps and on progress toward meeting national targets. The government plans to have the final version of the bills through parliament by the end of the year.

#### California Public Utilities Commission Implements Smart Grid Privacy Rules

On July 28, the California Public Utilities Commission enacted privacy rules requiring California's investor-owned utilities to limit access to customer's electricity usage tracked by smart meters. The rules are limited only to investor-owned utilities. The ruling follows S.B. 1476 which restricts an electrical or gas corporation from sharing, disclosing, or making accessible to any third party a customer's electrical or gas consumption data. The second phase of the commission's smart grid proceeding considers whether the policies should also apply to community choice aggregators and electrical service providers, non-utility entities that offer electric service to customers within the service territory of an electric utility.

#### U.S. Chamber Establishes Lobbying Strategy to Ensure Keystone XL Oil Pipeline is Built

The U.S. Chamber of Commerce launched a new initiative, the Partnership to Fuel America, which will lobby, and litigate, to ensure that TransCanada Corp.'s Keystone XL oil sands pipeline from Canada to Texas receives federal and state approvals and is actually built. Meanwhile, the environmental activist group 350.org is setting up international climate change rallies in September, including in Washington, D.C., to oppose TransCanada's Keystone XL project. The group is also rallying public support for reducing carbon dioxide levels in the atmosphere to 350 parts per million, the level considered safe by climate scientists. Meanwhile, the House passed a bill (H.R. 1938) July 26 calling for a decision by Nov. 1, but it will not be taken up by the Democratic-controlled Senate.