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ENERGY AND ENVIRONMENT UPDATE **August 12, 2012**

Energy and Climate Debate

Congress is in recess until after Labor Day, but energy issues continued to make news last week.

Senate Majority Leader Harry Reid (D-NV) said August 7 that he is very confident that the Senate will pass an extension of the wind Production Tax Credit before it expires at the end of the year as part of a broad tax extenders package.

When the two chambers return from the August recess and political conventions September 10, they will need to work quickly to pass a six month continuing resolution to fund the federal government as the fiscal year comes to a close at the end of the month. The Senate may also resume work on a tax extenders package and the cybersecurity bill. Though progress has been made on all three measures, with political officials departing just a few weeks later for final campaigning, debate and final passage of legislation besides the continuing resolution may have to wait until the lame duck session.

Congress

Gillibrand Urges Light Bulb Standard Enforcement

Senator Kirsten Gillibrand (D-NY) sent a letter August 9 to Senate Appropriations Committee Chairman Daniel Inouye (D-HI) and Energy and Water Development Subcommittee Chair Dianne Feinstein (D-CA) urging them to reject language in the House 2013 Energy and Water Appropriations bill (H.R. 5325) that would prevent the Department of Energy from enforcing a 2007 law that establishes federal efficiency standards for light bulbs. The Senate has not acted on its version of the bill (S. 2465) since the Appropriations Committee reported it out in April.

26 Senators Request RFS Waiver

Twenty-six senators led by Senator Kay Hagan (D-NC) sent a letter August 7 to Environmental Protection Agency Administrator Lisa Jackson asking the agency to reduce the requirement for blending corn ethanol into gasoline because of the effects of the drought. The senators join 19 industry groups and 156 House members who have already asked the agency to waive the renewable fuel requirement.

Platinum Reconsideration Sought

Senators James Inhofe (R-OK), David Vitter (R-LA), Jeff Session (R-AL), Tom Coburn (R-OK), and Lindsey Graham (R-SC) sent a letter August 3 to Environmental Protection Agency Administrator Lisa Jackson asking her to reconsider the toxicological assessment of halogenated platinum salts and platinum compounds and revise it to a more realistic estimate – one that is more easily measured –

before it is finalized. The senators contended that the agency should not use its Integrated Risk Information System to assess the platinum as fuel additives for diesel engines. The International Platinum Group Metals Association expressed similar concerns in a May 24 letter to Bob Sussman.

NV Clean Energy Summit

During his annual Clean Energy Summit in Las Vegas August 7, Senate Majority Leader Harry Reid (D-NV) argued that there is overwhelming evidence linking rising temperatures to human activities such as fossil fuel combustion. Senator Reid said that it is time for climate science skeptics to stop denying that man-made climate change exists and that it is harmful. House Natural Resources Committee Ranking Member Ed Markey (D-MA) added that recent temperature data illustrate the need for Congress to address climate change by adopting renewable energy legislation; he specifically cited the soon to expire wind Production Tax Credit.

WA Members Support Navy Biofuel Efforts

Washington Senators Patty Murray (D) and Maria Cantwell (D) and Representatives Norm Dicks (D), Rick Larsen (D), and Adam Smith (D) stood along the chief of naval operations August 7 to proclaim their support for the Navy's biofuel initiatives. The legislators portrayed the Navy's efforts as imperative for reducing the military's dependence on foreign oil, protecting it from oil price spikes, increasing national security, reducing greenhouse gases, and generating jobs.

Committee Criticizes Administration's Fuel Standards

The House Oversight and Government Reform Committee Republican staff released an August 10 report which argues that the Obama Administration's joint greenhouse gas emissions standards for cars and trucks increase vehicle cost, limit consumer choice, and reduce safety. The report, entitled A Dismissal of Safety, Choice, and Cost: The Obama Administrations New Auto Regulations, alleges that the White House pressured the automobile industry into accepting stricter fuel economy standards as failing car manufacturers lobbied for a federal bailout. The report also expresses concern about the California Air Resources Board's role in setting standards.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a field hearing August 17 to examine the current and future impacts of climate change on the Intermountain West, focusing on drought, wildfire frequency and severity, and ecosystems.

Administration

White House to Expedite 7 RE Projects

The White House announced August 7 that it will expedite the permitting and review process for seven large scale wind and solar energy projects on public lands under a March 22 executive order requiring federal agencies to hasten significant infrastructure projects. The proposed projects in Arizona, California, Nevada, and Wyoming could produce nearly 5,000 MW of electricity. The largest project, the Chokecherry and Sierra Madre Wind Energy Farm, would use 1,000 turbines to generate 3,000 MW on two sites totaling 230,000 acres in Wyoming. The permits are scheduled to be finalized between this December and October 2014.

OBM Reviewing Navistar Penalties

The White House Office of Management and Budget began reviewing a final rule August 4 that could provide nonconformance penalties for Navistar Inc. The Environmental Protection Agency proposed a rule in January to allow the company to produce heavy-duty diesel engines that do not meet a NOx emissions standard if it pays penalties. At the same time, the agency issued a parallel interim final rule, but the U.S. Court of Appeals for the District of Columbia Circuit struck it down June 12 because the agency did not provide sufficient notice and comment. The final rulemaking is expected to satisfy those requirements.

Department of Agriculture

\$105 Million Loan Guarantee

The Department of Agriculture granted last week a \$105 million loan guarantee, an 80 percent guarantee through the Rural Development Biorefinery Assistance Program, to Fulcrum Sierra Biofuels to finance construction of an advanced biofuels production facility in Nevada. The Storey County facility will have the annual capacity to convert 147,000 MT of municipal solid waste into 10 million gallons of advanced biofuels. The agency has funded seven other biofuel projects around the country.

Department of Commerce

Electric Vehicle Meter Standards

The National Institute of Standards and Technology convened August 7 a work group to develop proposed standards for meters to measure and sell electricity for vehicles. The group will include representatives from government, industry and trade associations, and consumer organizations and will review draft methods of sale requirements for the metering equipment and propose necessary changes. The group will hold a conference August 29.

July the Hottest

The National Oceanic and Atmospheric Administration reported August 8 that July was the hottest month on record for the contiguous United States since 1895. July's average temperature, 77.6 degrees, exceeded the previous record set in July 1936, and the last 12 months have been the warmest since modern temperature data collection began 118 years ago. The average national July temperature was 3.3 degrees above the 20th century average for the month.

Department of Defense

\$7 Million for RE PPAs

Working toward the Department of Defense's goal to increase energy security, the U.S. Army Corps of Engineers, through its Engineering and Support Center, issued August 8 a Multiple-Award Task Order Request for Proposal for \$7 million in total contract capacity to procure reliable, locally generated, renewable and alternative energy through power purchase agreements. The \$7 million capacity would be expended for the purchase of energy over 30 years or less from renewable energy plants that are constructed and operated by contractors using private sector financing.

Department of Interior

Floating Wind Turbine Review

The Bureau of Ocean Energy Management announced August 10 that it has begun an environmental review of a Statoil North America floating wind turbine project on the Outer Continental Shelf off the coast of Maine. The company has requested a commercial wind lease that covers 22 square miles about 12 nautical miles off the Maine coast for a four-turbine 12-MW project called the Hywind Maine pilot project. The project follows on a 2.3 MW demonstration project off the coast of Norway.

16 Million Acres for Military RE

The Departments of Interior and Defense announced August 6 a plan to release 16 million acres of federal land previously withdrawn for military use to renewable energy projects. The projects, ranging from solar, geothermal, biomass, and onshore and offshore wind, will primarily supply military bases with energy, though some energy may be sold back to the grid as well. The agencies hope to supply each military installation with 1 GW of renewable energy by 2025, and most projects will be privately financed.

Department of the Treasury

IRS Addresses Biofuel Blender's Income From RIN Sales

The Internal Revenue Service ruled on the treatment of a biofuel blender's income from the sale of renewable identification numbers (RIN) in private letter rulings released on August 10. In particular, the agency determined that income earned by a terminal operator and biofuel blender from the sale of RINs is considered qualifying income under Section 7704(d)(1)(E).

Environmental Protection Agency

Nonroad Engine Appeal

The American Road and Transportation Builders Association appealed August 8 a district court ruling to the U.S. Court of Appeals for the District of Columbia that the court lacks jurisdiction to hear a lawsuit against the Environmental Protection Agency over California emission standards for nonroad engines. The association sued the Environmental Protection Agency last September asking the district court to review the agency's refusal to repeal rules implementing Section 109 of the Clean Air Act.

DfE-Approved Chemicals Posted Soon

The Environmental Protection Agency will post in September the names of chemicals that are acceptable for use in products that qualify for the Design-for-the Environment Safer Product Labeling Program. The agency will debrief DfE partners, including retailers, chemical makers, household product manufacturers, and environmental and consumer advocates on August 16.

Haze Curbs Challenged

The Texas Commission on Environmental Quality and Luminant Generation filed petitions August 6 in the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Court of Appeals for the Fifth Circuit to review the Environmental Protection Agency's Cross-State Pollution Rule to reduce regional haze. The agency determined that the cross-state rule, which allows 28 states to use the emissions trading program instead of requiring best available retrofit technology for power plants in order to reduce interstate transport of nitrogen oxides and sulfur dioxide.

Border 2020 Signed

Environmental Protection Agency Administrator Lisa Jackson and Mexico's Secretary for the Environment and Natural Resources Juan Elvira Quesada signed the Border 2020 U.S.-Mexico Environmental program agreement August 8. The eight-year program works to reduce air, land, and water pollution, reduce exposure to chemicals from accidental releases or terrorism, and improve environmental stewardship. The program will work for the next eight years to improve

Revising Renewable Fuel Program Top Industry Priority

The American Petroleum Institute released an analysis August 8 concluding that revising the Environmental Protection Agency's renewable fuel program to protect refiners who inadvertently purchase fraudulent credits is the industry's top priority. The report, *The U.S. Renewable Fuel Standard: How is it Working?* is critical of the agency's management of the credits program, its cellulosic ethanol requirements, and the increasing mandate to blend more ethanol into gasoline.

Challenge to CO2 Rule

The Environmental Protection Agency filed an August 9 motion with the U.S. Court of Appeals for the District of Columbia Circuit requesting that the court dismiss challenges to the agency's proposed carbon dioxide performance standards for new power plants. The agency argued that because it has not yet taken action on its proposed standards, they are not yet subject to judicial review. The agency argued further that the court forgoing its examination of the case until the agency completes its review of the standards would pose no significant harm to the challengers as they will have the opportunity to resubmit their petitions once the agency takes action on the standard. According to Clean Air Act requirements, the agency must take action on the standards within a year of the date they were proposed, April 13. The new standards would limit new fossil fuel-fired plants to 1,000 pounds of carbon dioxide emissions per megawatt-hour.

Confidentiality Granted for Greenhouse Gas Reporting

The Environmental Protection Agency has granted confidential business information determinations to 10 industries required to report their greenhouse gas emissions. While the final rule, to be published in the Federal Register on August 13, requires industries to report data on their greenhouse gas emissions, throughputs and outputs, pertinent unit and process characteristics, and calculation and calibration test

methods, the agency will not publicly disclose information it receives regarding the composition of materials used in production, supplier and vendor information, and process-specific vendor data.

Nuclear Regulatory Commission

Nuke Licenses Frozen

The Nuclear Regulatory Commission decided August 7 that it will not renew licenses for existing nuclear power plants or issue licenses for new reactors until the issue of safe radioactive waste storage is resolved. In a response to petitions by 22 environmental groups and two individuals, the determination pertains to final licenses, and all licensing reviews and proceedings should continue to move forward.

States

MA Vetoes Brownfields Extension

Massachusetts Governor Deval Patrick (D) vetoed an extension August 7 of the Brownfields Tax Credit from 2013 to 2015 that would have cost \$27.8 million each year without adequate analysis. He noted that the credit will continue to be available for another year, and the administration will analyze its effectiveness and make a recommendation before its August 5, 2013 expiration.

RGGI States Reduce CO2

The Regional Greenhouse Gas Initiative published a report August 6 finding that member states have been able to reduce CO2 emissions and meet their energy needs without buying more power from outside the region. The report, *CO2 Emissions from Electricity Generation and Imports in the Regional Greenhouse Gas Initiative: 2010 Monitoring Report*, concludes that average annual electricity generation from fossil and nonfossil sources in the 10-state region decreased by 4.6 percent in 2009-2010, compared to the 2006-2008 average. CO2 emissions from RGGI sources declined by 12.9 percent in 2009-2010, compared with 2006-2008, while non-RGGI sources remained the same.

OK Court Allows Keystone Construction

The U.S. District Court for the Western District of Oklahoma rejected a motion August 5 by the Sierra Club to block segments of TransCanada's Keystone XL oil pipeline, holding that the environmental group did not establish a likelihood of success on the merits of the case. Construction was scheduled to begin August 6. The group may appeal to the U.S. Court of Appeals for the Tenth Circuit.

Tougher RGGI Standards Urged

A coalition of 300 environmental groups and other organizations delivered letters August 9 to nine governors in the Northeast urging them to strengthen limits for the Regional Greenhouse Gas Initiative and take other steps to improve the cap and trade program. The coalition is urging RGGI governors to reduce CO2 emissions by 20 percent below current levels by 2020 and by 80 percent by 2050 and to ensure that auction revenues are used only for energy efficiency and renewable energy programs. RGGI is undertaking a comprehensive review and is expected to make changes to the program design by the end of the year; the key item under consideration is whether the emissions cap should be lowered.

NY Alternative Fuel Tax Exemptions Extension

The New York State Department of Taxation released a guidance memo on August 3 which summarizes a newly passed state law that extends the sunset dates for tax exemptions for E85, compressed natural gas, hydrogen, and B20 from August 30, 2012 to August 30, 2014.

International

Canada Halfway to 2020 GHG Goal

Canadian Environment Minister Peter Kent said August 8 that the country has achieved 50 percent of its goal of reducing greenhouse gas emissions 17 percent from 2005 levels by 2020. According to *Canada's Emissions Trends 2012*, the country's sectoral approach has put it on target to meet its Copenhagen Accord commitment. Minister Kent released an action plan in June to help the aviation industry reduce its emissions by 2 percent per year through 2020.

US-South Africa RE Agreement

The United States Export-Import Bank signed August 7 a \$2 billion deal with South Africa to fund renewable energy exports to the country. The 18-year loans will be applicable to wind, solar, and thermal power projects and could benefit United States clean energy companies.

UK EE Infrastructure Fund

The United Kingdom's Department of Business, Innovation, and Skills awarded Sustainable Development Capital £50 million August 6 to invest in energy efficiency infrastructure projects. The UK Energy Efficiency Investments Fund will raise at least £50 million more to support a £100-200 million investment program.

China Improving Environmental Cases

Speaking at a conference sponsored by the Woodrow Wilson Center's China Environment Forum, the Environmental Law Institute, and Vermont Law School August 9, a panel of Chinese judges said that the country is working to improve the way its courts decide environmental cases as it continues to also prioritize economic development. China has 3,700 courts, including 94 that deal solely with environmental cases.

Miscellaneous

Climate Change Causing Extreme Weather

An August 6 study in the Proceedings of the National Academy of Sciences concluded that climate change is causing a significant increase in the number of hot summers. According to the study, *Perception of Climate Change*, while 0.2 percent of the Earth's surface experienced extremely hot summers between 1951 and 1980, about 10 percent has experienced them in the last few years. The likelihood of unusually hot summers and accompanying extreme drought conditions in the absence of global warming is very small, and the report found that rising temperatures are causing unusually heavy rain and floods, extreme drought, and changes in the geographical and seasonal range of animals, birds, and insects. The report cautioned that reducing CO2 emissions to a degree that would limit global temperature is possible, but would require a high price on emissions to transition to cleaner energy.

Coal Ash Impoundments Damage Wildlife

Scientists released a study July 27 finding that surface impoundments that store coal ash are responsible for 21 damage cases and \$2.3 billion in damages to wildlife over the last 45 years. The report, *Wildlife and Coal Waste Policy Debate: Proposed Rules for Coal Waste Disposal Ignore Lessons From 45 Years of Wildlife Poisoning*, advises that regulating coal ash under Subtitle C of the Resource Conservation and Recovery Act could save \$3.85 billion in ecological damages over the next 50 years. The Environmental Protection Agency will issue a final rule on coal ash management within the year.

Air Toxics Down

The Natural Resources Defense Council released a report August 9 concluding that air toxics emissions from power plants were 19 percent lower in 2010 than in the previous year due to utilities installing pollution controls on coal-fired power plants and switching some plants to natural gas. Ninety-two percent of the nation's air toxics emissions from the power sector came from 20 states, with Kentucky, Ohio, and Pennsylvania emitting the most.

\$150 Billion from Opening Federal Lands to Drilling

In response to a request from Representative Paul Ryan (R-WI), the Congressional Budget Office released a report August 9 finding that almost \$150 billion could be raised over ten years from royalties, rents, and bonus payments received from opening most federally owned lands to oil and gas drilling. About \$93.3 billion could be raised from offshore lease royalties and rents from 2012 through 2022, with another \$21.8 billion from bonus payments.