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ENERGY AND ENVIRONMENT UPDATE
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Energy and Climate Legislation

When the Senate returns from the Memorial Day recess on June 7, Senate Majority Leader Harry Reid (D-NV) will meet with the six Committee chairs with jurisdiction over climate legislation to determine the best path forward on comprehensive climate and energy legislation. Following that meeting, Senator Reid is planning on focusing primarily on energy and climate legislation with the Democratic caucus for the next week in the hope of bringing comprehensive legislation to the Senate floor this summer.

About two weeks ago, Senators John Kerry (D-MA) and Joe Lieberman (I-CT) unveiled their American Power Act in an attempt to strike a deal that would garner the necessary, but elusive, 60 votes. But time is running out for the climate debate in 2010, with numerous issues lined up ahead of energy, and a difficult election season coming up in November. Some senators have suggested scaling back the effort to an energy-only approach, and even allowing the climate measure to be addressed via an amendment to the energy bill, but even that move may be difficult with the oil spill further complicating the situation.

Some studies this week have shown that the Kerry-Lieberman Act will create up to 200,000 jobs per year and reduce foreign oil imports by 40% while driving the growth of domestic renewable energy, and there are a number of potential Republican supporters, from Maine Senators Susan Collins and Olympia Snowe to Ohio Senator George Voinovich, who are viewed as possible yes votes on a measure that is sure to lose a few votes from Democrats from energy intensive or manufacturing states.

With January 2, 2011 nearing on the horizon, measures to halt or delay the EPA's regulation of greenhouse gas emissions are beginning to gather more speed. Senator Lisa Murkowski (R-AK) said last week that she hopes to move on her legislation before June 7, and other Senators are beginning to express support for Senator Jay Rockefeller's (D-WV) two year EPA delay.

Furthermore, Senators Tom Carper (D-DE) and Bob Casey (D-PA) last week began publically discussing legislation that would shield small businesses and other small sources from having to comply with EPA limits on GHG emissions. An alternative to the Senators Murkowski and Rockefeller delay measures, the legislation would restrict emission limits on new stationary sources to those that emit more than 100,000 tons per year of CO₂e when stationary source emissions limits take effect January 2, 2011. Emission limits on modified sources will be restricted to those emissions above 75,000 tons per year. The EPA plans to decide by the end of April 2016 whether to regulate smaller sources.

On the international front, Christiana Figueres has been chosen to replace Yvo de Boer as Executive Secretary of the U.N. Framework Convention on Climate Change. Ms. Figueres was previously a Costa Rican diplomat, and she will assume her new position when Mr. de Boer steps down in July.

Senate

EPW Approves Cleanfields Legislation

The Senate Committee on Environment and Public Works approved by a voice vote the Cleanfields Investment Act of 2010 (S. 3374) last Thursday, May 20, to establish a \$50 million per year grant program to encourage production of electricity from renewable energy sources on brownfield sites. The committee also approved an amendment from Senator Jeff Merkley (D-OR) to add renewable energy manufacturing facilities as eligible candidates for cleanfields grants.

Finance Subcommittee Holds 48C Hearing

The Senate Finance Committee's Subcommittee on Energy, Natural Resources, and Infrastructure held a hearing last Thursday on the widely oversubscribed Advanced Energy Manufacturing Tax Credit (48C). The Departments of Energy and Treasury awarded \$2.3 billion in tax credits to 183 projects in 43 states, and the Administration has called for an additional \$5 billion to be added to the program. Senator Jeff Bingaman (D-NM), Chairman of the subcommittee, and a bipartisan group of senators introduced legislation (S. 2857) late last year to add \$2.5 billion to the program, and the recently-released climate bill includes an additional \$5 billion for the program.

Oil Spill Hearings Continue

Several Senate committees held hearings related to the Gulf of Mexico oil spill last week. The Homeland Security, Energy, Commerce, Environment and Public Works Committees hosted Administration officials as well as industry leaders, including Lamar McKay, Chairman and President of BP America, at hearings to examine the cause of and response to the rig explosion and subsequent oil spill in the Gulf of Mexico April 20.

Legislation Introduced

On May 17, Senator Barbara Boxer introduced legislation (S. 3379) to amend the Clean Air Act to reduce carbon pollution and create energy jobs.

The same day, Senator Max Baucus (D-MT) introduced legislation (S. 3381) with Senators Mike Crapo (R-ID) and Jon Tester (D-MT) to modify the term "renewable biomass" to be consistent with the 2008 Farm Bill for the purposes of the renewable fuel standard, a future Renewable Electricity Standard, and other statutes.

On May 20, Senator Mary Landrieu (D-LA) introduced legislation (S. 3391) to provide for accelerated revenue sharing of Outer Continental Shelf revenues to promote coastal resiliency among Gulf producing states.

Upcoming Hearings

On May 25, the Senate Energy and Natural Resources committee will hold a hearing on the liability and financial responsibility issues related to offshore oil production, including legislation that would increase the limits on liability under the Outer Continental Shelf Lands Act.

On May 27, the Senate Small Business and Entrepreneurship Committee will hold a hearing on the Small Business Administration Disaster Assistance Program and the impact of the Gulf Coast oil spill on small businesses.

House

Legislation on the House Floor

The American Jobs and Closing Tax Loopholes Act (H.R. 4213), which includes an extension of tax credits for new energy efficient homes, biodiesel and renewable diesel production, and other clean energy activities, may be considered on the House floor this week. The Senate is expected to take up the legislation after it considers a war supplemental funding bill (H.R. 4899).

Select Committee Holds Hearing on Climate Change Causes

During a May 20 hearing in the House Select Committee on Energy Independence and Global Warming, the president of the National Academy of Scientists told the committee that global warming is occurring

due to human activities such as fossil fuel burning. A day before the hearing, the National Academy released a report saying that climate change is occurring and is caused primarily by human activities.

More Challenges to GHG and Fuel Economy Standards

Fourteen House Republicans, the Southeastern Legal Foundation, and a number of businesses sued the Environmental Protection Agency and the National Highway Traffic Safety Administration May 11 to challenge their recently issued greenhouse gas emissions limits and increased fuel economy standards.

Legislation Introduced

Congressman Rob Bishop (R-UT) introduced legislation (H.R. 5342) May 19 to prohibit the use of the National Environmental Policy Act of 1969 to document, predict, or mitigate the climate effects of specific Federal actions.

The same day, Congressmen Stephanie Herseth Sandlin (D-SD) and Paul Hodes (D-NH) introduced legislation (H.R. 5343) to provide an investment tax credit for advanced biofuel production property.

Upcoming Hearings

Several House Committees will hold hearings this week on issues related to the Gulf Coast oil spill. On Wednesday, the Natural Resources Committee will hold a hearing, and on Thursday, the Interior, Environment, and Related Agencies Appropriations Subcommittee, the Judiciary Committee, the Natural Resources Committee and the Energy and Environment Subcommittee of the Energy and Commerce Committee will hold hearings.

Administration

On Friday, May 21, President Obama directed the Environmental Protection Agency and the Department of Transportation to begin the first ever rulemaking for medium and heavy duty truck standards for model years 2014-2018. He also instructed the agencies to develop new fuel economy and greenhouse gas emissions standards for cars and light trucks for model year 2017; current rules extend through model year 2016. The President also told the agencies to reduce emissions of conventional pollutants, such as nitrous oxides, from motor vehicles. He followed his Rose Garden address with a memo to EPA Administrator Lisa Jackson, Transportation Secretary Ray LaHood, Energy Secretary Steven Chu, and National Highway Traffic and Safety Administration director David Strickland.

Department of Energy

\$2 Billion Loan Guarantee Awarded

The Department of Energy announced Thursday, May 20, the conditional award of a \$2 billion loan guarantee to Areva SA's nuclear fuel enrichment facility in Idaho. The first approved for a facility on the front end of the fuel cycle, the guarantee will support the Eagle Rock Enrichment Facility and create 1,000 jobs and cost about \$3.3 billion. The Nuclear Regulatory Commission must still provide the project with a combined construction and operation license.

\$38 Million for Nuclear Energy R&D

The Department of Energy awarded Wednesday, May 20, \$38 million for university-based research and development of nuclear energy. Over thirty projects will receive funding through the department's Nuclear Energy University Program to advance both the state of science and education of young nuclear engineers.

Department of Interior

Department of Interior Secretary Ken Salazar announced last Wednesday that he will split the Minerals Management Service into three agencies. The three bureaus will oversee offshore energy development, enforce safety and environmental protections, and collect revenue from oil and natural gas development. They will be called the Bureaus of Ocean Energy Management and Safety and Environmental

Enforcement and the Office of Natural Resources Revenue. The Secretary's staff will provide him with a restructuring strategy within the next month.

Environmental Protection Agency

The George Washington Journal of Energy and Environmental Law will soon publish an article that calls on the EPA and others to more accurately estimate the emission reduction benefits of renewable energy and energy efficiency. The analysis finds that current approaches could underestimate the benefits by at least 65 percent.

Federal Trade Commission

In response to a request for comments, the Federal Trade Commission advised the Federal Energy Regulatory Commission May 21 that it is useful to consider demand response programs as giving customers the rights to power and allowing them to decide whether to use it or resell it in the wholesale market.

Miscellaneous

\$44 Billion for Global Advanced Vehicle Technology Grants

Deloitte Touche Tohmatsu's Global Manufacturing Industry Group released an analysis last week that shows that the development of alternative fuel and advanced technology vehicles has benefitted from nearly \$44 billion in economic stimulus funds and incentives globally. The US is leading in terms of government incentives, and the study estimates that by 2020, green vehicles will represent up to a third of total global sales in developed markets.

NM Issues Proposed Cap and Trade Rule

The New Mexico Environment Department released a proposed rule for a cap and trade program to reduce greenhouse gas emissions on May 17. The proposed rule, which would take effect in January of next year, would initially only apply to sources that emit 25,000 MT or more of CO₂ per year, and it would define conditions under which New Mexico would implement a program as part of the Western Climate Initiative regional program.

CARB Seeks More Input

The California Air Resources Board launched a new round of workshops May 17 to gather additional feedback on its multi-sector greenhouse gas cap and trade program. The agency unveiled a preliminary draft rule in November, but the document lacked a section on allowance distribution. The Economic and Allocation Advisory Committee recommended in January that CARB should auction all of its permits and return funds to households and businesses to offset costs.

China Issues Air Quality Guidance

China's State Council and nine ministries issued a guidance document May 14 instructing local, municipal, and provincial governments to improve regional air quality controls as soon as possible to address increases in smog and acid rain. The document called for joint prevention and control of regional air pollution and the formulation of regional air pollution laws, regulations, and standards by the end of 2015.

New British Coalition Government Pledges GHG Reductions

England's new Conservative-Liberal Democrat coalition government said May 14 that it aims to reduce the central government's CO₂ emissions by 10 percent over the next year. The government plans to establish a working group chaired by the Department of Energy and Climate Change to oversee emissions reductions and publish the government's energy use in real time online.

MD Requires Electric Utilities to Use More Solar Power

Maryland Governor Martin O'Malley (D) signed legislation (S.B. 277) May 20 that increases the percentage of solar power that electric utilities must include in their energy portfolios from 2011 (0.05

percent) through 2016 (0.5 percent). Current law requires at least 2 percent of energy be derived from solar power in 2022.

EU Makes Energy Efficiency Key

The European Parliament voted May 19 to establish new categories for energy efficiency projects using the most advanced technology and to create a new labeling scheme that will apply to a range of products that reduce energy consumption, such as windows and roofs. The new law will expand the labeling system from four to seven categories.

Regional GHG Programs Recommend Standard Offset Guidelines

The Regional Greenhouse Gas Initiative, the Western Climate Initiative, and the Midwestern Greenhouse Gas Reduction Accord issued a paper May 19 recommending that they, and eventually the federal government, create standardized offset guidelines to simplify what could be a difficult accounting situation.

Canada Aims to Align Truck Emissions Standards with US

Environment Canada is planning to propose GHG regulations from heavy-duty vehicles in the near future, and to align them with US standards. The government will work with the trucking industry to develop the regulations under the Canadian Environmental Protection Act. The country has also recently established an Automotive Innovation Fund to provide roughly \$235 million over five years for large-scale research and development projects to build green vehicles.