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## **ENERGY AND ENVIRONMENT UPDATE**

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### **Energy and Climate Legislation**

Though the Senate will consider the small business tax package and war supplemental funding this week, and the House will prepare two pieces of oil spill legislation for the floor (all three with some provisions of interest to clean energy), the real action in Congress will continue to be behind the scenes in the Senate as Majority Leader Harry Reid (D-NV) and Senators John Kerry (D-MA), Joe Lieberman (I-CT), Jeff Bingaman (D-NM), Max Baucus (D-MT), and others cobble together the four part energy and climate bill that will likely be before the full Senate next week.

On Tuesday, July 13, Majority Leader Reid announced that he plans to move forward with a four part energy, oil spill, energy tax incentives, and a carbon price on utilities only, with legislation expected on the Senate floor the week of July 26. As Senate Democratic leadership and the Obama Administration seem intent on trying to get another big win with this comprehensive legislation, they are gearing up for an election season in which they can point to the change they promised: in passage of a stimulus bill, health care reform, and financial services reform, and perhaps an energy package as well. Majority Leader Reid is likely to release a draft version of the bill for review sometime this week.

Though the four titles of the bill have been identified, much is left to be determined, not only in content, but also how to proceed forward in composition. The oil spill portion is likely to be comprised of bipartisan legislation passed out of the Energy Committee several weeks ago as well as some sort of lifting or eliminating the liability cap. The Senate Finance Committee is working on energy tax language, which is likely to include some combination of incentives for advanced energy manufacturing, biofuels, and other pieces totaling up to about \$20 billion. On a related note, the House Ways and Means Committee released a list of possible items, along with their \$22 billion Joint Committee on Taxation price tag, to include in a green jobs energy tax package that may move through the House in the coming weeks and months.

The energy portion will likely begin with language approved by the Energy Committee last summer, but with some sections added to and changed. One of the most important, and most controversial pieces, will be the Renewable Electricity Standard. Senator Bingaman's legislation (S. 1462) includes an RES of 15 percent by 2020, with 4 percent from energy efficiency, and many Senate Democrats, clean energy, and environmental groups are working to strengthen the RES, while other groups are more interested in broadening the definition to include other sources such as nuclear energy, CCS, and more energy efficiency, similar to Senator Dick Lugar's (R-IN) Clean Energy Standard.

The final piece, climate, is likely to be a utility only, or utility-first approach, and will garner the most debate. Early last week a March draft of utility only bill Senator Bingaman drafted leaked, though the Senator does not plan on introducing the measure unless there are 60 votes for it. Senators Kerry and Lieberman are working with Senator Olympia Snowe (R-ME) on another utilities-first piece that would begin in 2013, reduce emissions 17 percent by 2020 within the utility sector, and preempt the EPA in regulating GHGs under the Clean Air Act. After spending months in negotiations with industry and environmental groups discussing their American Power Act, Senators Kerry and Lieberman spent much

of last week doing the same thing on the utility-specific language, though no final agreements have yet to surface. As always, distribution of emissions allowances has been one particular point of contention, but last week utilities began requesting exemptions on traditional pollutants such as lead, mercury and ozone as a trade off, and health and environmental groups vehemently oppose this move.

All 12 freshman Democratic senators called in a letter to Majority Leader Reid for the inclusion of carbon pricing in the energy bill last week, yet leaders of several manufacturing organizations last week came out in opposition to a utilizes-only cap.

On Thursday, President Obama spoke at a groundbreaking ceremony at Holland, Michigan battery plant about the need to quickly transition to a clean energy economy. Additionally, two separate groups met with the White House last week to discuss the measure and message. As the debate in the Senate continues on energy policy, the Administration will need to demonstrate increasingly strong leadership on the necessity to craft and pass clean energy legislation this Congress.

If the debate does start on July 26, or the week of the 26th, it is still uncertain whether the Senate will be able to conclude the debate before they leave the second week of August. With many details still to be nailed out and numerous amendments likely, in addition to the fact that other issues are certain to occupy some of the time for debate, it is possible that the debate may continue into the fall.

## **Senate**

### CCS Legislation Introduced

On Wednesday, Senators Jay Rockefeller (D-WV) and George Voinovich (R-OH) introduced a formal piece of legislation on clean coal technology that they first presented in draft form in March, and that they hope that Senate Majority Leader Reid includes in his energy and climate package. The Carbon Capture and Storage Deployment Act of 2010 creates a \$900 million, 15 year program within the Department of Energy that facilitates a public-private partnership to develop carbon capture and sequestration technologies.

### Bingaman Argues Against Ethanol Credits

Last week Senator Jeff Bingaman (D-NM) referred to a new report from the Congressional Budget Office that outlines the actual cost of the expiring ethanol blenders' tax credit as he argued against extending the credit past this year. The CBO found that the credit, which cost nearly \$5.2 billion in FY2009, delivers 73 cents to ethanol producers for an amount of fuel with an energy content equal to a gallon of gasoline. Reducing gasoline consumption by one gallon and replacing it with an ethanol blend costs taxpayers \$1.78, and it costs \$750 to reduce GHG emissions by one MT through that gasoline reduction. The credit is likely to cost \$7.6 billion this year, adding to the \$41.2 billion taxpayers have spent on ethanol incentives since 1980.

### Small Business Bill on Floor

Now that the financial regulation reform bill (H.R. 4173) has passed, the Senate will consider the Small Business Lending Fund Act (H.R. 5297) and its \$12 billion in tax cuts on July 20. The bill includes a provision to prohibit companies from claiming the \$1.01 per gallon biofuel production credit on crude tall oil.

### Legislation Introduced

Early last week Senator Bill Nelson (D-FL) introduced legislation (S. 3569) to improve the ability of the National Oceanic and Atmospheric Administration to respond to releases of subsea oil and gas.

On July 13, Senators Amy Klobuchar (D-MN) and Tim Johnson (D-SD) introduced legislation (S. 3576) to strengthen the renewable portfolio standard and provide incentives for ethanol and other biofuels.

The same day, Senator Lisa Murkowski (R-AK), Ranking Member of the Energy Committee introduced two bills to boost federal support for hydropower. The first (S. 3570), cosponsored by Senators Patty Murray (D-WA), Maria Cantwell (D-WA), and Mike Crapo (R-ID), would create a \$50 million Energy

Department hydropower research and demonstration program designed to generate up to an additional 75,000 MW of electricity, and the second (S. 3571) would redefine "renewable resource" under federal programs to include hydropower.

On July 14, Senate Majority Leader Reid introduced two bills to overcome barriers to siting and developing renewable energy projects. The first (S. 3587) would create a pilot competitive leasing program on public lands for solar and wind energy development projects, and the second (S. 3586) would establish a loan fund through 2020 to provide funds for geothermal exploration and drilling costs. Senator Jon Tester (D-MT) cosponsored both bills, and Senators Jeff Merkley (D-OR), Mark Udall (D-CO), and Mark Begich (D-AK) cosponsored the geothermal bill. Representative Dean Heller (R-NV) has introduced companions to both bills.

The same day, Senator Begich introduced legislation (S. 3580) to amend the Oil Pollution Act of 1990 to permit funds in the Oil Spill Liability Trust to be used by the National Oceanic and Atmospheric Administration, the Coast Guard, and other Federal agencies for certain research, prevention, and response capabilities with respect to discharges of oil, for environmental studies, and for grant programs to communities affected by oil spills on the OCS.

Senator Begich also introduced legislation (S. 3584) to direct the NOAA Administrator to institute research into the special circumstances associated with oil spill prevention and response in the Arctic waters.

Senator David Vitter (R-LA) introduced legislation (S. 3588) to limit the moratorium on certain oil and gas permitting and drilling activities.

On July 15, Senator Merkley, along with Senators Tom Carper (D-DE), Tom Udall (D-NM), and Michael Bennet (D-CO) introduced the Oil Independence for a Stronger America Act (S. 3601) to end oil imports from beyond North America within 20 years by increasing the production and use of electric vehicles, developing alternative transportation fuels, and reducing the use of heating oil.

On the same day, Senator Cantwell introduced legislation to amend the Oil Pollution Act of 1990 to establish the Federal Oil Spill Research Committee and to amend the Federal Water Pollution Control Act to include in a response plan certain planned and demonstrated investments in research relating to discharges of oil and to modify the dates by which a response plan is required to be updated.

Senator Rockefeller introduced legislation (S. 3605) to invest in research and development to improve innovation and competitiveness.

#### Upcoming Hearings

The Senate Commerce Subcommittee on Oceans, Atmosphere, Fisheries, and the Coast Guard will hold a hearing July 21 to examine the Gulf of Mexico cleanup efforts, specifically strategies to restore the habitat to its condition prior to the oil spill.

On Wednesday, July 21, the Senate Energy and Natural Resources Committee will mark up nine energy bills, some of which may ultimately be included in Majority Leader Reid's larger energy package. They include legislation related to vehicle technologies, solar energy, nuclear energy, and energy research.

Representatives from the BP Oil Spill Victim Compensation Fund and Anadarko Petroleum Corporation will testify before the Senate Homeland Security and Governmental Affairs Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security during a July 22 hearing.

The same day, the Senate Health, Education, Labor, and Pensions subcommittee on Employment and Workplace Safety will hold a hearing on safety policies at BP.

#### **House**

#### Oil Spill Legislation before Recess

House Democrats are working to bring up oil spill reform legislation in the two weeks before the August recess. Yet after a series of meetings last week, Speaker Nancy Pelosi (D-CA) said that she and relevant committee chairmen have not reached agreement on how to proceed with the bills. The most controversial measure, Natural Resource Chairman Nick Rahall's (D-WV) CLEAR Act (H.R. 3534), would reorganize the former MMS into three separate leasing, enforcement, and revenue-collection entities, allocate more funds to the Land and Water Conservation Fund, and, because of an amendment from Congressman George Miller (D-CA), prevent companies that have repeated violations of federal safety standards from bidding on federal oil and gas leases. A two-day markup of the bill was completed late last week. The House Energy and Commerce Committee marked up and approved legislation (H.R. 5626) last Thursday that would establish new standards for blowout preventers used in drilling operations and would require third party certification for well design. The first two bills that could be brought to the floor are H.R. 2693 and H.R. 5716, which update research programs on oil spill cleanup and drilling technologies. Five House committees have been working on related measures and holding hearings and markups.

#### Rural Efficiency Legislation Approved

The House Agriculture Committee approved legislation (H.R. 4785) last Wednesday to create a loan program to help rural communities retrofit homes with energy efficiency improvements. The Rural Star program would establish a \$5 billion consumer loan program administered by rural electric cooperatives to provide micro loans to consumers for energy efficiency upgrades to their homes at interest rates no higher than 3 percent.

#### Legislation Introduced

On July 13, Congressman Bart Gordon (D-TN) introduced legislation (H.R. 5716) to provide for the enhancement of existing efforts in support of research, development, demonstration, and commercial application activities to advance technologies for the safe and environmentally responsible exploration, development, and production of oil and natural gas resources.

The same day, Congressman Bill Shuster (R-PA) introduced legislation (H.R. 5727) to amend the Federal Water Pollution Control Act to provide for the establishment of a process for quickly and effectively soliciting, assessing, and deploying offshore oil and hazardous substance cleanup technologies.

On July 14, Congressman Dean Heller (R-NV) introduced legislation (H.R. 5735) to require the Secretary of the Interior to establish a competitive leasing program for wind and solar energy development on Federal land.

On July 15, Congressman John Yarmuth (D-KY) introduced legislation (H.R. 5744) to amend the Internal Revenue Code of 1986 to extend the credit for energy efficient appliances.

The same day, Congressman Martin Heinrich (D-NM) introduced legislation (H.R. 5759) to amend the Mineral Leasing Act to require an operator to compensate a surface owner for damages resulting from the oil and gas operations of the operator on land affected by the operations.

Also on the 15th, Representatives Jared Polis (D-CO) and Linda Sanchez (D-CA) introduced legislation (H.R. 5763) to amend the Internal Revenue Code of 1986 to increase for two years the residential energy credit and the investment tax credit with respect to solar property with a nameplate capacity of less than 20 KW.

Congressman Mike Thompson (D-CA) was joined by 30 cosponsors in introducing legislation (H.R. 5766) to ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements.

Congressman Chris Van Hollen (D-MD) was joined by Representatives Betty McCollum (D-MN), C.A. Dutch Ruppersberger (D-MD), Allyson Schwartz (D-PA), Jared Polis (D-CO) in introducing the Innovative Technologies Investment Incentive Act of 2010 (H.R. 5767). The legislation is expected to accelerate the innovation of products and medical breakthroughs, invest in quality products that meet rigorous standards, and reward long-term investments that will create jobs and ultimately improve our economy.

#### Upcoming Hearings

The House Ways and Means Subcommittee on Oversight will meet July 20 to explore the need for charitable assistance in the Gulf Coast region.

The House Energy and Commerce Subcommittee on Oversight and Investigations and the Subcommittee on Energy and Environment will meet July 20 for a joint hearing to examine the role of the Interior Department in the efforts to stop the oil spill and aid in recovery efforts.

The House Judiciary Committee will hold a July 21 hearing on ensuring that victims of the Gulf of Mexico oil spill disaster are compensated for damages resulting from the spill.

#### **Administration**

##### CEQ Releases Draft Reporting Guidance

The White House Council on Environmental Quality released draft guidance July 16 for greenhouse gas emissions reporting by federal agencies. The guidance establishes government-wide calculation and reporting requirements for all federal agency operations, including both direct and indirect emissions. The report follows President Obama's October 5 executive order requiring federal agencies to measure, report, and reduce GHG emissions to the CEQ.

##### GAO Says CCS Hindered by Cost and Technological Obstacles

The Government Accountability Office released a report, Coal Power Plants: Opportunities Exist for DOE to Provide Better Information on the Maturity of Key Technologies to Reduce Carbon Dioxide Emissions, July 16 that concluded that commercial deployment of carbon capture and storage technologies will take 10 to 15 more years because of significant cost and technology obstacles. The GAO also criticized the Department of Energy for not using a common set of benchmarks for measuring the maturity of CCS technologies.

##### Loan Guarantee Program Needs Work

The Government Accountability Office released a report last Monday that concluded that the Department of Energy failed to articulate policy goals and develop a consistent and fair application process to administer the loan guarantee program. The report, Further Actions Are Needed to Improve DOE's Ability to Evaluate and Implement the Loan Guarantee Program, suggests that DOE provide clear and consistent guidance for administering the program. Though DOE's loan guarantee authority is near \$77 billion, the Department has only issued guarantees for \$535 million and made nine other conditional commitments.

##### Ex-Im Bank Falls Short on Targets

The Government Accountability Office said in a report July 15 that the U.S. Export-Import Bank fell short of the 2008-10 congressional targets that call for it to allocate 10 percent of its annual financing to renewable energy and environmentally beneficial products and services.

#### **Department of Agriculture**

##### USFS Approves CA Transmission Line Construction

Last Tuesday the U.S. Forest Service approved the construction and operation of a 19 mile high-voltage transmission line on Cleveland National Forest lands in Southern California. The project, part of San Diego Gas and Electric's Sunrise Powerlink, seeks to move electricity, including from desert-based renewable resources, from the Imperial Valley substation to metro San Diego. USFS's decision adopts

the final environmental report and impact statement already approved by the CPUC and the BLM, but a final approval of the 120-mile line is still needed.

## **Department of Energy**

### \$30 Million to Small Business Technology Commercialization

Energy Secretary Steven Chu announced last Wednesday that the Department of Energy, through its Small Business Innovation Research Program, would provide \$30 million to small businesses to commercialize technologies that reduce energy consumption and pollution. The Department will accept applications for the \$3 million grants through August 4.

### \$92 Million to ARPA-E

On Monday, July 12, the Department of Energy announced \$92 million in Advanced Research Projects Agency-Energy (ARPA-E) awards. 43 projects for large-scale energy storage, power electronics, and building efficiency received this third round of awards.

### DOE Files Briefs with NRC

The Department of Energy and seven other entities filed briefs recently with the Nuclear Regulatory Commission regarding the legality of withdrawing an application to build the nation's first geologic repository for high-level radioactive waste. The Atomic Safety and Licensing Board ruled June 29 that DOE cannot withdraw the application, and appeals were due July 9, and a three-judge panel had until July 16 to begin responding to the briefs.

### Technical Assistance Program to Support Recovery Act Projects

The Department of Energy announced Thursday the launch of a technical assistance program that will support projects funded under the Recovery Act through the Department's State Energy Program and Energy Efficiency and Conservation Block Grant Program. The \$25 million program will provide states, cities, and tribes with the tools and resources they need to implement successful and sustainable renewable energy projects.

## **Environmental Protection Agency**

### Cellulosic Biofuel Target Proposed Lower than Required

The Environmental Protection Agency proposed July 12 the 2011 standards for four fuel categories, biomass diesel, advanced biofuels, cellulosic biofuels, and total renewable fuels, under the agency's Renewable Fuel Standard program (RFS2). The Energy Independence and Security Act of 2007 established annual renewable fuel volume targets, which reach an overall level of 36 billion gallons in 2022. The proposal for 2011 includes a lower target for cellulosic biofuels than required by law with a range between 6.5 million and 25.5 million gallons because the market is not producing enough ethanol to meet the legal requirement.

### Water Conservation Campaign

The Environmental Protection Agency kicked off a national "We're for Water" campaign last week to encourage Americans to practice water-efficiency habits and use approved water-saving products and bathroom appliances, especially those with WaterSense labels.

## **Federal Trade Commission**

### Light Bulb Rule Revised

In response to public comments last week, the Federal Trade Commission announced that it will amend some of its proposed light bulb labeling rules. The final amendments are to take effect Monday, July 19, 2011, except for one amendment, which will take effect next week. Most of the proposed amendments are technical clarifications.

## **Personnel**

On July 13, President Obama announced that he planned to nominate Jack Lew, who headed the White House's Office of Management and Budget during the second Clinton Administration, to replace the outgoing Peter Orszag in the post.

On Tuesday, July 20 at 10 a.m. Carte Goodwin will be sworn in to fill the seat of the late Senator Robert Byrd (D-WV). West Virginia Governor Joe Manchin, who is expected to run for the Senate in 2012, selected his former counsel to fill the seat until a statewide election is held.

## **Miscellaneous**

### Germany Announces Electricity Plan

The German Federal Environment Agency announced July 7 that by 2050 it may receive all of its electricity from renewable energy. Jochen Flasbarth, president of the Federal Environment Agency said recently that as Germany currently generates 16 percent of its energy from renewable power sources and is the largest producer of solar power and the second largest producer of wind power, it plans of reducing GHG emissions by 40 percent from 1990 levels by 2020 and 80 to 85 percent by 2050 by transitioning completely to renewable energy.

### CA Suspends Solar Incentive Program

Due to budget constraints, California regulators last week halted the popular California Solar Initiative for some applicants. The Initiative launched in 2006 with a \$2.2 billion budget and a goal of 1,940 MW of solar capacity by the end of 2016. It is currently 37 percent of the way to its goal but has spent about 67 percent of its funding. The CPUC will not accept new applications while it decides whether to lower the incentive rate.

### Carbon Allowances Trading Declined

The Regional Greenhouse Gas Initiative released a report July 9 that showed that the volume of futures trading declined significantly in the fourth quarter of 2009 for CO2 allowances available under RGGI.

### Low Carbon Fuel Standard for Some States and Provinces

The members of the New England Governors' Conference and five eastern Canadian premiers agreed last Monday to consider adopting a regional low carbon fuel standard. The group also agreed to set a goal of reducing energy use in buildings by at least 20 percent by 220 and to adopt high energy efficiency building codes to promote energy savings. The NE governors separately agreed to petition the DOE to establish a 90 percent efficiency standard for natural gas and propane furnaces in the region, as well as to work together to promote the solar industry.

### Italy Opens Hydrogen Plant

A small Italian town near Venice opened the world's first hydrogen plant last Monday. Enel SpA invested \$63 million to build the 16 MW plant, which will produce enough energy to power 20,000 homes.

### GE Announces Grant Opportunity

General Electric announced last week the opportunity for five entities to receive \$100,000 grants as well as larger equity-based investments from GE and its venture collaborators. The GE Ecomagination Challenge will accept applications in renewable energy, grid efficiency, and eco homes and buildings.

### IL Extends Wind Energy Property Assessment

Illinois Governor Pat Quinn (D) signed legislation (H.B. 4797) last Wednesday amending the property tax code to ensure statewide uniformity for assessments of wind energy installations through 2016.

### Renewable Energy Investments Resilient

The United Nations Environment Program and the Renewable Energy Policy Network for the 21st Century released two reports last Thursday that said that global market trends reflect strong investments in renewable energy, specifically transportation, electricity, and heating and cooling, even through the recession. The reports also show that future investments in new renewable energy capacity will exceed that in new fossil fuel capacity.

#### EU Ministers Urge 30 Percent Target

In order to meet their 2020 target for reducing greenhouse gas emissions, environment ministers from France, Germany, and the UK published a joint statement last Thursday urging the EU to unilaterally boost its reduction target to 30 percent, up from the current 20 percent.

#### China May Not Host October Climate Talks

A scheduling conflict may prevent China from hosting an October round of climate change talks in Tianjin. South Korea is likely to host the talks instead.

#### Carolinas Enact Renewable Energy Laws

South Carolina enacted legislation (H.B. 4478) June 23 that would create a renewable energy tax credit that provides incentives to companies in the solar, wind, geothermal, and other renewable energy industries who locate or expand their business in the state. North Carolina enacted legislation (S.B. 388) June 7 that amends the Renewable Energy Property Credit to make projects funded with Recovery Act grants eligible for the credit.

#### Private Revenue May Fund Climate Adaptation Fund

U.N. Officials said July 13 that in order to meet the goal of providing \$10 billion per year to help poor countries adapt to climate change through 2012, and \$100 billion per year by 2020, they will require significant participation from the private sector. The panel has started considering private sources of income for the initiative.