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ENERGY AND ENVIRONMENT UPDATE **May 8, 2011**

Energy and Climate Debate

Though it is too early to tell what, if any, impact Osama bin Laden's death will have on global energy markets, and even with much of the Congressional debate shifting to foreign policy last week, significant work was undertaken last week on energy legislation, and the weeks between now and the Memorial Day recess will bring much of the same.

Though the Senate still needs to finish work on a small business package, Senate leadership may opt to bring a bill to the floor this week to repeal tax breaks for large oil and natural gas companies. The Senate legislation, which has not yet been introduced, will likely resemble the blueprint Senate Finance Committee Chairman Max Baucus (D-MT) released April 28. Senator Baucus' plan would exempt the largest oil and gas companies from the Section 199 tax deduction for domestic manufacturers and create an excise tax for some leases in the Gulf of Mexico, using the increased revenue for investments in clean energy infrastructure and to promote the use of fuel efficient vehicles. It is unlikely Senate Democrats will be able to hit the necessary 60 vote threshold, as proposals to raise oil industry taxes has drawn near-unanimous opposition from Republicans and seven Senate Democrats have already voted against ending oil tax breaks earlier this Congress. Even so, supporters of the legislation hope that by pushing the language, they can begin to reshape the energy debate by addressing gas prices.

After passing one offshore drilling bill (the Restarting American Offshore Leasing Now Act, H.R. 1230) last week, the House of Representatives this week will consider the Putting the Gulf of Mexico Back to Work Act (H.R. 1229), legislation that would set firm time-limits for the federal government to consider applications for offshore drilling permits and require the Department of Interior to review proposed drilling projects to ensure that they meet safety requirements. The House is also scheduled to consider the Reversing President Obama's Offshore Moratorium Act (H.R. 1231), which was reported by the House Natural Resources Committee May 2. That bill would instruct the secretary of the interior to make available for leasing areas within the Outer Continental Shelf that are estimated to contain more than 2.5 billion barrels of oil or 7.5 trillion cubic feet of natural gas and would direct the secretary to set a domestic strategy production goal that would increase daily domestic energy production by at least 3 million barrels of oil and 10 billion cubic feet of natural gas by 2027. Both measures are expected to pass the House but not be considered by the Senate.

During a May 6 visit to an Indiana manufacturer of fuel efficient heavy-duty vehicle transmissions, President Obama continued his call to repeal oil industry tax breaks and invest more in clean energy technologies. He is expected to reiterate this call in the coming months as debate over the fiscal year 2012 budget heats up.

Congress

House Passes Offshore Leasing Legislation

The House passed (266-149) the Restarting American Offshore Leasing Now Act (H.R. 1230) May 5. The legislation would require the interior secretary to conduct offshore oil and gas lease sales in the central and western Gulf of Mexico and off the Virginia coast under statutory deadlines. Specifically, the legislation would expedite four offshore oil and gas lease sales, three in the Gulf of Mexico and one off the coast of Virginia. House Republicans easily defeated an attempt by Democrats to force a vote on repealing the Section 199 oil industry tax breaks. Democrats on the Ways and Means Committee also set a letter May 3 to committee Chairman Dave Camp (R-MI), asking him to schedule a markup in the near future to consider legislation to end tax breaks for the five biggest oil and gas companies.

Pipeline Safety Reauthorization Clears Commerce Committee

The Senate Commerce, Science, and Transportation Committee approved the Pipeline Transportation Safety Act of 2011 (S. 275) May 5. The legislation authorizes pipeline safety programs, including stiffer penalties for violators, fines for obstructing pipeline investigations and fees for reviewing pipeline designs. House Republicans have indicated that they will craft their own bill this summer.

Packed Schedule for ENR Committee

Senator Jeff Bingaman (D-NM) said last week that the Senate Energy and Natural Resources Committee will mark up drilling reform legislation in response to last spring's Gulf of Mexico oil spill by the end of May. Additionally, he said that legislation to create a Clean Energy Deployment Administration, or green bank, to finance clean energy projects deemed too risky by traditional lenders will be introduced in the committee and may be marked up by the end of May. He also said that he hopes to have a hearing on the clean energy standard in the coming weeks. Other legislative candidates for markup in the coming weeks include legislation related to small modular nuclear reactors, hydropower, and hydrokinetic and marine renewables.

MI Senators Concerned about China

Michigan Democratic Senators Debbie Stabenow and Carl Levin sent a letter April 28 to U.S. Trade Representative Ron Kirk asking him to take all possible actions, including filing a World Trade Organization case, against Chinese rules that could discriminate against American clean energy vehicles. China is drafting new regulations as part of its New Energy Vehicles plan, which seeks to advance hybrid and battery electric vehicle production in China.

Hydropower Hearing Held

The House Natural Resources Subcommittee on Water and Power held a hearing May 4 at which several members of Congress and Western regional utility officials contended that regulation and litigation have been driving up the cost of hydroelectric power and threatening the existence of many dams without protecting endangered species. The hearing also provided a forum for stressing the need for hydroelectric dams or natural gas fired power plants to counterbalance intermittent surges of power from wind farms.

Legislation Introduced

Congresswoman Candice Miller (R-MI) introduced legislation (H.R. 1677) May 2 to direct the Administrator of the Environmental Protection Agency to convene a task force to develop recommendations on the proper disposal of unused pharmaceuticals.

Senator Jon Tester (D-MT) introduced legislation (S. 870) May 3 to amend the Federal Water Pollution Control Act to modify oil and hazardous substance liability.

Senators Tom Coburn (R-OK) and Dianne Feinstein (D-CA) introduced a bipartisan measure (S. 871) to repeal the Volumetric Ethanol Excise Tax Credit.

Senator Frank Lautenberg (D-NJ) introduced a bill (S. 875) to amend the Safe Drinking Water Act to require additional monitoring of certain contaminants.

Congressmen Ed Markey (D-MA) Jerry McNerney (D-CA), Anna Eshoo (D-CA), and Judy Biggert (R-IL) introduced legislation (H.R. 1685) May 3 to hasten the development of electric vehicles and plug-in hybrids by offering as much as \$300 million to help communities develop and install infrastructure such as public

charging stations. The legislation would offer consumers incentives such as tax credits for buying electric vehicles and charging equipment and encourage domestic production of the vehicles' components.

Congressman Mike Ross (D-AR) introduced legislation (H.R. 1682) to promote alternative and renewable fuels and domestic energy production.

Congressman John Shimkus (R-IL) introduced a bill (H.R. 1687) that would require 95 percent of new automobiles to be compatible with nonpetroleum fuels by 2017. The Open Fuel Standard Act would require vehicles to be able to operate using fuels such as ethanol, natural gas, biodiesel, methanol, and other fuels to be determined, with interim targets of 50 percent by 2014 and 80 percent by 2016.

Congressman Tim Bishop (D-NY) introduced legislation (H.R. 1689) to amend the Internal Revenue Code of 1986 to disallow the deduction of income attributable to domestic production activities with respect to oil and gas activities of major integrated oil companies.

Congressman John Carney (D-DE) introduced a bill (H.R. 1693) to amend the Internal Revenue Code of 1986 to make the research credit permanent and to increase the alternative simplified research credit.

Senators Chuck Grassley (R-IA) and Kent Conrad (D-ND) introduced the Domestic Energy Promotion Act of 2011 (S. 884) May 4. The legislation would extend the Volumetric Ethanol Excise Tax Credit through 2016, setting the rate at 20 cents per gallon in 2012 and 15 cents per gallon in 2013, down from the existing rate of 45 cents per gallon; the bill would phase out the credit as crude oil prices rise.

Congressman John Sullivan (R-OK) introduced legislation (H.R. 1705) to require analyses of the cumulative and incremental impacts of certain rules and actions of the Environmental Protection Agency.

Congressman Michael Burgess (R-TX) introduced a bill (H.R. 1710) to authorize the Secretary of Energy to establish monetary prizes for achievements in designing and proposing nuclear energy used fuel alternatives.

Congressman Steny Hoyer (D-MD) introduced legislation (H.R. 1716) to amend the Workforce Investment Act of 1998 to establish a pilot program to facilitate education and training programs in the field of advanced manufacturing.

On May 5, Congressman Tim Bishop (D-NY) introduced legislation (H.R. 1748) to provide consumers relief from high gas prices.

Congressman Jo Bonner (R-AL) introduced a bill (H.R. 1759) to amend the Gulf of Mexico Energy Security Act of 2006 to increase the amount of Gulf of Mexico oil and gas lease revenue shared with Gulf States.

Upcoming Hearings

The Senate Energy and Natural Resources Committee meets May 10 for a hearing on new developments in upstream oil and gas technologies.

The Senate Committee on Commerce, Science, and Transportation will hold a hearing May 11 titled "Manufacturing Our Way to a Stronger Economy." The hearing is the second in a series of Commerce Committee hearings focused on manufacturing in America and the ways in which the government and industry can strengthen the sector and promote job growth.

The House Natural Resources Committee will hold a hearing May 11 called "American Energy Initiative: Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters." The hearing will consider policies and actions, including permitting delays that have blocked or hindered the development of renewable energy sources.

The House Science, Space, and Technology Committee will hold a hearing May 11 to examine hydraulic fracturing, specifically new technologies and practices.

The Senate Energy and Natural Resources Committee will hold a hearing May 12 to receive testimony on carbon capture and sequestration legislation, including the Department of Energy Carbon Capture and Sequestration Program Amendments Act of 2011 (S. 699) and a bill (S. 757) to provide incentives for the development of CCS technology.

The Senate Finance Committee will convene a hearing May 12 to discuss ending tax breaks for the largest multinational oil and gas companies, specifically Committee Chairman Max Baucus' (D-MT) proposal to repeal or modify tax incentives for large oil and gas companies and use increased tax revenue to invest in clean energy programs.

The Senate Environment Subcommittee on Clean Air and Nuclear Safety meets May 12 for a hearing on federal efforts to protect public health by reducing diesel emissions.

The House Small Business Subcommittee on Oversight, Investigations, and Regulations meets May 12 for a hearing on whether EPA regulations are harming small businesses.

The House Science Subcommittee on Energy and the Environment will hold a joint hearing May 13 with the Subcommittee on Investigations and Oversight to examine nuclear energy risk management.

Department of Energy

\$47 Million for Biomass R&D

The Departments of Agriculture and Energy awarded \$47 million May 5 to fund eight research and development projects to support the production of biofuels, bioenergy, and high-value biobased products from a variety of biomass sources. The projects are funded through the Biomass Research and Development Initiative.

Fracking Advisory Group Announced

Secretary of Energy Steven Chu named a group of seven advisers May 5 to make recommendations on improvements that can be made in the safety and environmental performance of hydraulic fracturing as part of natural gas drilling in shale formations. The group will identify within 90 days immediate steps that can be taken to improve fracking, and will develop consensus recommendations within six months for state regulatory agencies on best industry practices.

Department of Interior

MA Wind Area Halved

The Department of Interior's Bureau of Ocean Energy Management, Regulation, and Enforcement announced May 2 that it had reduced by more than half the area under consideration for wind energy leasing on the Outer Continental Shelf off the coast of Massachusetts. The decision followed concern expressed by Massachusetts officials, the fishing community, and the state's congressional delegation in comments made to a 2010 Request for Interest.

Federal Lands Energy Development Assessed

The Department of Interior's Bureau of Land Management and Agriculture Department's Forestry Service released a report May 6 that summarizes the status of energy development of federal lands. The report, *New Energy Frontier: Balancing Energy Development on Federal Lands*, brings together information the administration has been releasing over the past year, with particular emphasis on the 245 million acres managed by the BLM and the 193 million acres managed by the Forest Service, plus the Department of Interior's oversight of federal offshore areas. Federal lands account for 6 percent of domestic renewable electricity generation and 0.1 percent of the nation's total energy supply.

BLM Holds Scoping Meeting

Industry representatives said at a May 4 public scoping meeting that the Department of Interior's Bureau of Land Management's commercial oil shale and tar sand plans in 2008 were sufficiently protective of the

environment. In February, Interior Secretary Ken Salazar announced a review of commercial rules for the development of oil shale resources on public lands in Colorado, Utah, and Wyoming, saying that an update may be necessary based on the water demands of the West.

Department of Transportation

Updated CAFE Standards on Track

Transportation Secretary Ray LaHood said May 5 that the administration is on schedule to announce new fuel economy standards this fall for cars and light trucks for model years beyond 2016. Secretary LaHood did not provide details on what the new corporate average fuel economy standards would be. A proposed rule will be released by September 30 of this year, and a final rule will be published by July 31, 2012.

Environmental Protection Agency

Boiler MACT Challenged

Thirteen industry groups that recently petitioned the Environmental Protection Agency to delay implementation of rules requiring industrial boilers and incinerators to control pollutant emissions filed lawsuits April 29 in the U.S. Court of Appeals for the District of Columbia Circuit challenging the rules. The lawsuits challenge the EPA's national emissions standards for hazardous air pollutants for major source industrial, commercial, and institutional boilers and new source performance standards for commercial and industrial solid waste incinerators.

Mercury Rule Released and Power Plants Request Withdrawal

The Utility Air Regulatory Group sent a letter to Environmental Protection Agency Administrator Lisa Jackson May 6 urging the EPA to withdraw a proposed rule that would require power plants to control emissions of mercury and other toxic pollutants. The power plant trade group cited numerous and significant errors in the analysis of power plant emissions, and said that the calculations significantly overstated the reductions being achieved. The agency proposed national emissions standards for hazardous air pollutants for coal and oil-fired power plants under Section 112 of the Clean Air Act May 3 and revised new source performance standards for steam-generating units at power plants under Section 111, finding that the proposed rules would prevent 91 percent of the mercury in coal burned at power plants from being emitted.

\$2.5 Million for UN University

The Environmental Protection Agency granted \$2.5 million to United Nations University May 1 to fund a program for tracking used electronics that are shipped overseas and to help nations in Africa and Asia manage imported electronic waste. The Solving the E-Waste Problem initiative aims to characterize the flows of used electronics, unite international efforts to track and share e-waste data, support demonstration projects on refurbishing and disposing of e-waste, and address border enforcement issues for illegal shipments of e-waste.

TX Takeover Extended

The Environmental Protection Agency published a final rule May 3 that will allow the agency to continue to administer the greenhouse gas permitting program for industrial facilities in Texas. The final rule revises the EPA's approval of a state implementation plan for the prevention of significant deterioration because the plan submitted by Texas did not include provisions to address pollutants that have been newly subjected to regulation. Texas challenged the ruling May 4 in the U.S. Court of Appeals for the District of Columbia Circuit.

Battle of the Buildings Announced

The Environmental Protection Agency announced a competition May 2 among commercial, medical, educational, and public buildings to reduce energy use. Owners, operators, and managers of 245 buildings around the country will compete in the Energy Star's Battle of the Buildings by improving energy efficiency and attempting to reduce the most energy usage. A winner will be recognized in November.

Permit Objection Requested

The Sierra Club and the Louisiana Environmental Action Network asked the Environmental Protection Agency May 3 to object to the first air permit to include greenhouse gas emissions limits, which was approved earlier this year by the Louisiana state government. The Nucor Corp. permit, issued by the Louisiana Department of Environmental Quality for a proposed iron and steel mill in St. James Parish, includes an energy efficiency standard for the plant as a surrogate for GHG emissions, which comports with guidance issued by the EPA in November 2010 that said that prevention-of-significant-deterioration permits would probably emphasize energy efficiency.

Federal Energy Regulatory Commission

Power Plant Regs to Drive Clean Generation

The Federal Energy Regulatory Commission told the Bar Energy Association May 4 that regulations requiring power plants to control emissions of mercury, nitrogen oxides, and sulfur dioxides are long overdue and will drive investment in cleaner generation technologies. The regulations are expected to force the closure of 1 percent of the generation fleet, and affected units are often 50 to 60 years old, operating for short periods each year.

Nuclear Regulatory Commission

Nuclear Safety Rules Face Transparent Development Process

While expressing his continued confidence in the U.S. fleet of 104 commercial nuclear reactors, Nuclear Regulatory Commission Chairman Gregory Jaczko said May 2 that he hopes to create a wide-ranging stakeholders group to work with the agency to strengthen safety rules in the wake of the Japanese nuclear disaster. He also said that the commission will go through an open and transparent rule-making process to avoid making hasty decisions.

Supreme Court

Supreme Court Asked to Review Appellate MACT Requirement Ruling

Sandy Creek Energy Associates asked the U.S. Supreme Court last week to allow continued construction of a \$2 billion coal-fired power plant outside Waco, Texas. The U.S. Court of Appeals for the Fifth Circuit held in November 2010 that the company lacked a required determination that it would meet Clean Air Act maximum achievable control technology standards for hazardous air pollutants (Sandy Creek Energy Associates L.P. v. Sierra Club Inc.).

Personnel

Kathryn D. Sullivan, Ph.D. was sworn in May 3 as Assistant Secretary of Commerce for Environmental Observation and Prediction and Deputy Administrator for the National Oceanic and Atmospheric Administration.

Miscellaneous

OCS Coalition Formed

Four Republican governors, Sean Parnell (AK), Bobby Jindal (LA), Haley Barbour (MS), and Rick Perry (TX) formed the Outer Continental Shelf Governors Coalition May 2. The charter members will promote and discuss offshore drilling.

RGGI Emissions Rise

According to a May 2 report from Environment Northeast, CO2 emissions from power plants in the ten Regional Greenhouse Gas Initiative states increased by 11 percent in 2010 but remained below the cap. The report found that emissions totaled 137 MMT in 2010, which is 27 percent below the RGGI cap of 188 MMT, and attributed the increase to a hotter summer and higher electricity demand for air conditioning.

Alberta Issues CCS Rules

The Alberta Canada government announced regulations April 28 detailing how permitting for large-scale carbon capture and sequestration projects will proceed in the energy-rich western province and who owns rights to use subsurface porous space. The regulation establishes a five year evaluation permit to determine a site's suitability for storage, and creates a 15 year sequestration lease for longer term needs.

Japan to Meet UNFCCC Pledge

Japan's new ambassador to the U.N. Framework Convention on Climate Change, Kenji Hiramatsu, said last week that the country will honor its pledge of \$15 billion to help Africa and other developing areas fight global warming. Despite the March 11 earthquake, tsunami disaster, and subsequent nuclear explosion, Japan intends to meet its pledge.

South Korea Outlines Export Incentives

South Korea's Ministry of Environment said April 28 that its efforts to further its environmental technology sector as a growing export industry will be renewed under the country's Environmental Technology and Environmental Industry Support Act. Under the law, environmental businesses will become eligible for a broad range of government support in the form of industrial complexes that specialize in environmental business, research funding, and other financial support.

GCCA Stages Contest

The Global Cleantech Cluster Association is holding a contest to encourage investment in renewable energy and other environmentally friendly technologies. The contest for the GCCA Later Stage Award will select the most impressive companies working in clean technology sectors, gaining exposure to a group of companies and investors worth billions of dollars.

NC Certification Authority Upheld

The U.S. Court of Appeals for the District of Columbia ruled May 3 that a North Carolina regulatory dispute that delayed the effective date of a Clean Water Act compliance certification for a power company did not negate the state's certification authority. Alcoa Power Generating Inc. had petitioned the Federal Energy Regulatory Commission for a declaratory order that the state had waived its certification authority in the case, and FERC maintained its policy of staying its own proceedings on a relicensing request pending conclusion of the state proceedings.

Indirect Land Use Criteria May Threaten Biofuels

The European Renewable Ethanol Association and the European farm trade group COPA-COGECA warned May 3 that plans under consideration by the European Commission to add indirect land use criteria for biofuel production would severely harm the industry. The groups contended that models used to draw the criteria covering issues such as biofuel production impact on deforestation, food production, and emissions were not based on sound science. The European Union has a legally binding goal to produce 10 percent of all transportation fuels from biofuels by 2020. The Commission will decide by July whether to add the criteria to the EU law.

April Car Sales Up

Vehicle manufacturers reported May 3 year over year gains in sales for April. According to the reports, higher gas prices are spurring demand for fuel efficient compact, subcompact, and small crossover vehicles.

Mayors May Support Gas Tax Increase

The U.S. Conference of Mayors released a survey May 3 that found that a vast majority of mayors around the country oppose an increase in the federal gas tax unless more money is sent directly to cities and metropolitan planning organizations. The *Metropolitan Transportation Infrastructure Survey* found that 93 percent of respondents support policy changes that would increase the metro share of transportation funding.

Arctic Shows Accelerated Climate Change

The Arctic Monitoring and Assessment Program released a report May 4 on ecosystem change in the Arctic and other ice-covered areas, concluding that the pace of change is accelerating, with projections for up to a 30 percent reduction in mountain glaciers and ice caps by the end of the century. The report, *Snow, Water,*

Ice, and Permafrost in the Arctic, found that the documented rate of change outpaces the predictions of the U.N. Intergovernmental on Climate Change in its 2007 assessment report.

Youth File Public Trust Lawsuit

A group of young environmentalists filed a lawsuit (*Loorz v. Jackson*) in the U.S. District Court for the Northern District of California May 4 contending that the atmosphere is a public trust resource and, as such, the federal government has a fiduciary duty to protect it. The complaint is among dozens of lawsuits and administrative actions expected to be brought on behalf of young people in the coming weeks and months to compel federal agencies and all fifty states to curb emissions. This specific lawsuit requests a court order requiring the federal government to take all necessary actions to reduce emissions by 6 percent a year beginning in 2013.

Loopholes and Nonbinding Targets Threaten EU Goals

The Climate Action Network Europe published a study April 29 that found that the European Union's binding 2020 goals of a 20 percent cut in GHG emissions and for 20 percent of energy to be provided from renewable sources could be jeopardized by the lack of a binding energy efficiency targets and by uncertainties over enforcement. The *Accountability of European Renewable Energy and Climate Policy* study concluded that the renewables target if nonbinding energy efficiency measures were also established.

Climate Change Challenges Asia

The Asian Development Bank released a draft report May 4 that concluded that to continue its recent trajectory for economic growth through mid-century, Asia must be able to manage numerous challenges, including intensive competition for finite natural resources and threats posed by climate change. The ADB released a separate report at the same time detailing the broad range of measures it has taken in the last two years to promote environmental sustainability, inclusive growth, and improved governance in Asia and the Pacific.

Canada's Northern Territories Propose Adaptation Plan

The Canadian territories of Northwest Territories, Yukon, and Nunavut released a pair of documents April 28 outlining their commitment to work together to adapt to the effects of climate change and to inventory their current and future renewable energy resources. The *Pan-Territorial Adaptation Strategy: Moving Forward on Climate Change Adaptation in Canada's North* identifies six approaches to adaptation in the territories, and the *Paths to a Renewable North: A Pan-Territorial Renewable Energy Inventory* report outlines current and future renewable energy resources.

MA Proposes New Biomass Criteria

The Massachusetts Department of Energy Resources proposed regulations May 3 that would revise eligibility criteria for biomass facilities to receive financial incentives under the state's renewable energy program. The regulations would require large wood-burning electricity generators to meet strict GHG standards to be eligible for clean energy financing, while paving the way for smaller, more efficient biomass plants to earn renewable energy credits.

Sao Paulo Emissions Increasing

Brazilian Sao Paulo state Energy Secretariat released a report recently that found that CO2 emissions in the state, which is the nation's industrial hub, are on pace to increase 64.4 percent over 2005 levels by 2020, despite the state's goal of reducing emissions 20 percent by that time.

Mercury Reductions Needed

A May 6 comprehensive assessment of mercury accumulation in the Arctic has found that the levels of the toxic substance are rising at the top of the world, reaching critical levels that increasingly threaten human and animal populations. The report, *Mercury in the Arctic*, was released in connection with the Arctic Monitoring and Assessment Program conference, which was held May 3-6.

India to Relax Plastic Waste Rules

India's Ministry of Environment and Forests recently proposed changes in its plastic waste management rules to bring the law into conformity with industry demands. The draft Plastic Waste (Management and

Handling) Amendment Rules 2011 specified that use of multilayered plastic packaging in small pouches and sachets would be allowed for exports, though their use will be tightly regulated. The draft rules, issued in February, were considered progressive and broad-based, though their implementation was in doubt given the limited capacities of state level pollution control boards.

CA Passes Benefit Class Legislation

The California Assembly's Judiciary Committee passed legislation (A.B. 361) May 3 to create a classification for corporations that want to make a legal commitment to benefit society and the environment. The bill, approved on a 702 vote, would have California follow Maryland, New Jersey, Vermont, and Virginia in authorizing the formation of benefit corporations – companies with a fiduciary duty to have a positive impact on society and the environment as well as produce shareholder value.