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ENERGY AND ENVIRONMENT UPDATE **August 15, 2010**

Energy and Climate Legislation

Despite White House energy and environmental advisor Carol Browner saying early last week that the Senate might pass climate legislation during a lame duck session, nearly all Senators and clean energy experts have declared climate legislation dead for this Congress. Additionally, passage of a large energy package or even an oil spill bill is unlikely during the September work period. As legislative possibilities become increasingly unclear, the Environmental Protection Agency is gearing up with a host of new regulations to address greenhouse gas emissions.

Beginning next year, projects that increase heat-trapping emissions substantially will require a Clean Air Act permit. Last week the EPA issued two rules, discussed in more detail below, that set the stage for next year's requirements. The EPA is requiring 13 states to change their implementation plans to ensure that their emissions are covered, and the agency will take charge of large GHG emitters in those states in the meantime. The EPA will hold a hearing on the second rule August 25 and hopes to have everything in order by January 2 of next year.

As the EPA continues to push forward, industry groups, various states, and two environmental groups have filed lawsuits related to the EPA's actions, and when it returns, the Senate may vote on Senator John Rockefeller's (D-WV) plan to delay the EPA from regulating greenhouse gases under the Clean Air Act by two years. Even if the Rockefeller measure fails, it is also possible that appropriators could include a one year delay as a rider to upcoming legislation.

Though they have spent the last year pressing Congress to pass comprehensive climate and energy legislation, several leading energy and environmental groups are shifting their attention and funding toward defending the EPA's authority to regulate greenhouse gas emissions under the Clean Air Act. Other groups are hoping to expand state and regional climate laws and agreements in order to cover more emissions across the nation. And though many of the groups join Senators such as John Kerry (D-MA) and Joe Lieberman (I-CT) in continuing to hope for comprehensive legislation, most believe that the next window may not open until 2013. In the meantime, passage of smaller, but still significant, energy pieces, such as a renewable electricity standard, an expansion of the Advanced Energy Manufacturing Tax Credit and the 1603 grants in lieu of tax credits, and funding for the HomeStar program and a green bank, as well as protecting the EPA's authority to regulate greenhouse gas emissions, are likely to be their go to methods for protecting a developing domestic market, increasing jobs, and addressing climate change.

Congress

House Approves State Aid

The House briefly returned from recess last Tuesday to vote on a \$26 billion state aid bill that was partially paid for with \$1.5 billion from the Energy Department's renewable energy and transmissions loan guarantee fund. The bill passed (247-161), though Speaker of the House Nancy Pelosi (D-CA) issued a note of regret about the use of loan guarantee funding. She reiterated Senate Majority Leader Harry Reid's (D-NV) call to reinstate the loan guarantee funding, including an additional \$2 billion that was

rescinded last year to pay for an extension of the Cash for Clunkers program. President Obama signed the bill into law on August 10 and the Administration reaffirmed its commitment to return the \$3.5 billion to the loan guarantee program eventually. Additionally, the Department of Energy is expected to issue an additional solicitation for loan guarantee funding in October.

Senators Ask EPA to Retain Ozone Standard

In an August 6 letter to EPA Administrator Lisa Jackson, Senators George Voinovich (R-OH), Evan Bayh (D-IN), Dick Lugar (R-IN), Mary Landrieu (D-LA), David Vitter (D-LA), Claire McCaskill (D-MO), and Kit Bond (R-MO) urged the agency to retain the existing national ambient air quality standard for ozone. The EPA plans to establish more protective standards that would require industrial facilities to install pollution controls, and the Senators object to the move because they believe more health studies need to be completed before the EPA issues new regulations that could be costly to the industry.

Legislation Introduced

On August 10 Congressman Bill Cassidy (R-LA) introduced legislation (H.R. 6094) to establish the National Commission on Outer Continental Shelf Oil Spill Prevention. The 10 member Commission would examine and report on the causes of the Gulf Coast oil spill, compare those with previous government findings, and report conclusions and recommendations for corrective measures to the President and Congress.

Upcoming Hearings

The Senate will be in recess until September 13 and the House will be in recess until September 14.

Administration

CCS Dependent on Carbon Price

A federal inter-agency panel sent final recommendations to President Obama last Thursday that outlined the barriers to widespread, cost effective carbon capture and storage deployment within 10 years. The task force, comprised of representatives from 14 federal agencies, found that large-scale CCS is viable, and no technical, institutional, legal, or other hurdles are insurmountable, but that widespread adoption will require a price on carbon. The task force will provide final recommendations by late 2011.

OMB Completes Permitting Enforcement Review

Last Tuesday the Office of Management and Budget completed a review of an EPA proposal for a federal implementation plan to ensure that GHG permitting requirements for new and modified stationary sources will be enforced across all states. The Federal Implementation Plan would make permitting requirements enforceable in a state even if it does not have authority to implement the tailoring rule under current state laws and regulations. EPA is scheduled to impose GHG emissions control and permitting requirements under prevention-of-significant-deterioration provisions of the Clean Air Act on stationary sources January 2, 2011, and the tailoring rule limits those requirements to large emissions sources.

Department of Energy

Feed-In Tariffs Dominate Deployment

According to a report issued by the National Renewable Energy Laboratory last week, feed-in tariffs are responsible for 75 percent of the global PV market and 45 percent of global wind deployment. The report, A Policymaker's Guide to Feed-in Tariff Policy Design, said that successful FIT policies have allowed Australia, Brazil, China, Turkey, India, and South Africa to implement stronger renewable energy policies, and deployment is extending in developed and emerging countries while several US states and municipalities experiment with implementing FIT policies.

Possible Stimulus Spending Failure

According to a recent audit by the Department of Energy's inspector general, the agency is in jeopardy of losing billions in stimulus funding by missing the September 30 deadline. The Department will need to overcome a number of significant challenges in order to obligate the remaining \$3.4 billion of its \$32.7

billion in Recovery Act dollars, and the \$1.8 billion for carbon capture and storage projects is most at risk because of delays in its reward process.

Independent Advisory Board Reestablished

Energy Secretary Steven Chu announced the reestablishment of the Energy Advisory Board on August 10. The Board was originally chartered in 1990 to provide the Secretary advice on issues ranging from research and policy to DOE operations and former Secretary Samuel Bodman disbanded the board in 2006. The 12 member multi-industry board, chosen by Secretary Chu, is expected to form several subcommittees and meet twice a year.

\$43 Million Loan Guarantee Finalized

The Department of Energy finalized a \$43 million loan guarantee for a 20 MW energy storage plant in upstate New York last Monday. Beacon Power Group, which aims to complete construction on the \$69 million site in early 2011, will develop the first facility to use a flywheel frequency regulation system to store electricity as kinetic energy in a matrix of discs for use when the grid supply outstrips demand.

IL Country Won't Host FutureGen Project

After an August 5 Department of Energy announcement that it would provide \$1.2 billion to redesign the FutureGen 2.0 project, the Illinois county slated to host the prototype CCS-fitted coal-fired power plant withdrew its offer to host the project last Wednesday. Local leaders in Mattoon, IL, decided to pull out of the project after learning that proposed changes would scrap plans to build a new power plant in the town. Many nearby communities have access to the same geology and have expressed their interest.

Environmental Protection Agency

EPA Sends Underground CO₂ Storage Rule to OMB

The Environmental Protection Agency sent the Office of Management and Budget a final rule August 6 on a CO₂ sequestration program that the EPA will regulate under the Safe Drinking Water Act through the Underground Injection Control Program. EPA issued a proposed rule in 2008, sought additional public comment in 2009, and now, once the OMB reviews the rule, the EPA expects to issue the final rule in December 2010.

SAB Committee to Consider EPA Research

The EPA's Science Advisory Board Committee on Environmental Engineering will host a public teleconference August 16 to discuss the agency's current and planned research on biofuels, sustainable technologies, and carbon sequestration.

13 States Required to Enforce GHG Requirements

Following the White House Office of Management and Budget's review earlier in the week, the Environmental Protection Agency proposed a rule August 12 to require 13 states to modify their regulations to enable them to enforce GHG emissions permitting requirements at new and modifying stationary sources. The states would be required to submit to the EPA revisions to their state implementation plans that enable them to enforce the requirements. At the same time, the agency announced a second proposal to establish a Federal Implementation Plan that would apply in states that have laws or regulations that prevent them from enforcing permitting requirements beginning in January of next year.

GHG Reporting Rules Sent to OMB

On August 10 the EPA sent final rules that would establish GHG emissions reporting requirements for oil and gas wells and related facilities to the Office of Management and Budget. The facilities were not included under the final economywide mandatory reporting rule for GHG emissions that the agency issued last October. That rule applies to sources that emit more than 25,000 MT CO₂e per year, and facilities were required to begin measuring emissions this past January and must file their first reports by the end of this coming March.

EPA Defends RFS

In a legal brief filed August 9, the EPA rejected the refining industry's claim that the agency illegally applied its renewable fuel standard biomass-based diesel requirements retroactively. Lawsuits from the National Petrochemical and Refiners Association and American Petroleum Institute have been consolidated in the US Court of Appeals for DC, and last week's EPA response concluded that the agency had no choice but to require biodiesel volumes for periods before the rule was issued and that the 2007 Energy Independence and Security Act gave it the authority to take that approach. Oral arguments are scheduled for September 17.

CCS Injection and Reporting Rules Sent to OMB

The EPA sent two rules to the Office of Management and Budget August 6 for final review that would detail how the administration plans to regulate CCS injection and reporting rules. The first rule would use the agency's Safe Water Drinking Act authority to create a new class of underground injection control wells to ensure that carbon is safely sequestered underground and does not contaminate underground sources of drinking water. The second would require facilities to report GHG emissions from CCS as part of the agency's recently finalized registry.

Cement Factory Pollution Regulations Unveiled

The EPA unveiled the first US limits on mercury air pollution from cement factories last week. The rules would reduce mercury emissions and particulate matter by 92 percent a year beginning in 2013, and would yield between \$6.7 billion and \$18 billion in environmental and health benefits and cost companies up to \$950 million a year.

Miscellaneous

9 Barriers for Renewable Energy

The Post Carbon Institute released a report last week that outlines nine barriers that hinder the emergence of renewable and alternate energy as a substitute for fossil fuel. The report, which examines biodiesel, ethanol, electric cars, wind, solar, and tar sands, concludes that the first, and perhaps most difficult obstacle, is that alternative energy is bound by a fossil-fuel based supply chain that would require fundamental changes for a market shift. The nine barriers to overcome are scalability and timing, commercialization, substitutability, material input requirements, intermittency, energy density, water, the "Law of Receding Horizons," and energy return on investment.

China to Launch Energy Investment Plan

China announced last week that it will soon publish an investment plan that will provide roughly \$739 billion for developing energy sectors, including wind, solar, biomass, and nuclear power, by 2020. The National Development and Reform Commission's program will be sent to the State Council for approval. The program will also provide more than \$14.8 billion for promoting energy efficient vehicles in the coming decade.

Renewable Energy for Texas City

Under a new energy purchase contract with TXU Energy, Dallas will adopt more forms of energy efficiency and renewable energy projects and provide Energy Efficiency Rebate funds. The contract, which will account for 2.2 million MWh of electricity and will save the city up to \$7 million per year, will make Dallas the second largest municipal purchaser of green power in the US.

Japanese Emissions Reductions through Exports

Japan issued plans last week to offset some of its carbon emissions by funding 15 low-carbon energy projects in China, India, Indonesia, Vietnam, and the Philippines. Japanese firms, including Mitsubishi Corp, J-Power, Marubeni Corp., Tokyo Electric Power, and Nomura Research Institute will export technology and equipment to build the projects.

TX Adopts Sequestration Tax Rule

The Texas Comptroller of Public Accounts recently adopted a rule (R.S. 3.326) to implement legislation (H.B. 469), which would create a sales and use tax exemption for certain components of tangible

personal property installed in connection with a clean energy or advanced clean energy project, specifically clean coal projects for which Texas law provides tax incentives.

Sustainability Panel Named

United Nations Secretary General Ban Ki-moon announced August 9 the creation of a High Level Panel on Global Sustainability to guide preparations for a 2012 sustainable development meeting. The 21-member panel, comprised of leading international policymakers and scientists, will develop a blueprint for sustainable growth and low-carbon prosperity in an increasingly difficult climate. The panel is expected to release a final report by the end of 2011 to be used during the 2012 meetings in Rio.

Reductions will not Endanger Reliability

An industry report on behalf of an electric company coalition, Ensuring a Clean, Modern Electric Generating Fleet While Maintaining Electric System Reliability, predicted last Monday that the Environmental Protection Agency's pending interstate emissions transport rule for power plants and national emissions standards for hazardous air pollutants, which will replace the Clean Air Interstate Rule, will not endanger the reliability of electricity production and delivery. The report shows that the rule would curb SO₂ and N₂O emissions from at least 31 states and DC beginning in 2012, with a second round of reductions in 2014.

CA Proposes Urban Emissions Targets

The California Air Resources Board proposed GHG emissions reduction targets for 18 urban planning organizations August 9, taking the first step toward implementing the state's smart growth law. CARB's proposal calls for the four largest urban areas – Southern California, Sacramento, San Diego, and the San Francisco Bay Area – to develop land-use and transportation strategies that would reduce GHG emissions by 7 to 8 percent, per capita, by 2020 and 13 to 16 percent, per capita, by 2035.

Chinese Provinces and Cities to Pioneer Low Carbon Development

China's National Reform and Development Commission announced August 10 that it has designated five provinces and eight cities to implement a pilot project for low carbon development during the 12th Five Year Plan to help the country reduce its carbon intensity. Plans include increasing energy efficiency, controlling GHG emissions, adjusting industrial and energy structures, and introducing carbon sinks. China recently set a goal to reduce its carbon intensity by 40 to 45 percent by 2020.