

**David Leiter**

**Sarah Litke**

*DJLeiter@mlstrategies.com*

*SLitke@mlstrategies.com*

## **ENERGY AND ENVIRONMENT UPDATE** **October 17, 2010**

### **Energy and Climate Debate**

Though it would be nearly impossible for Congress to pass climate change legislation this year, the Obama Administration, while preparing to regulate greenhouse gas emissions under the Clean Air Act, has not given up on the prospects for eventual passage.

Environmental Protection Agency Assistant Administrator for Air and Radiation Gina McCarthy said during a panel discussion at Columbia University last week that though it has been difficult to move forward with comprehensive legislation during a difficult economic time and in an increasingly partisan climate, the Administration is committed to acting on climate change significantly in the near future.

In the meantime, as federal action will take time to develop, states are increasingly beginning to address climate change for both environmental and economic reasons. Climate action plans have been adopted by 38 states, with more pending, and a voluntary Climate Registry for emissions measurement and reporting has drawn participation by 41 states, 10 Canadian provinces, six Mexican provinces, and four native sovereign nations. Additionally, three regional GHG emissions trading programs include 33 states as participants or observers.

Both U.S. companies and states and international corporations and nations are looking to the United States for leadership on the issues. As the U.S. prepares for the annual climate negotiations in Mexico this November and December, the results of the November midterm elections will also signify how the U.S. may lead the climate efforts.

Once the elections are over, Congressional committees will begin the scramble over both membership and leadership positions. Though decisions won't be made or finalized for several weeks, some are beginning to vie for the potentially open seats. Last week, Congressman Joe Barton (R-TX) petitioned the House Steering Committee, which awards chairmanships, to clarify whether the party's six-year term limits apply to time served in the minority, as he begins his quest to lead the House Energy and Commerce Committee. Should Republicans take the House, Congressmen Fred Upton (R-MI), Cliff Stearns (R-FL), and John Shimkus (R-IL) are also possible contenders to lead the committee.

### **Congress**

#### **Carper Emissions Bill on Hold**

Senator Tom Carper (D-DE) recently dropped plans to mark up his Clean Air Act Amendments of 2010 (S. 2995), which would create a cap and trade program to reduce power plant emissions of NOx and SO2 and set a hard limit on mercury emissions after it became clear that the bill would only pass out of the Environment and Public Works Committee with one Republican supporter and no support from key Eastern Democrats. He and others are expected to revive the legislation in the 112th Congress, though action on the bill is unlikely until the EPA reveals how it intends to revise its proposed Clean Air Transport Rule that would establish a similar, but smaller trading program. EPA anticipates issuing a final version of the rule, which covers 31 Eastern states and DC, in the coming months.

### Upcoming Hearings

Congress will be in recess until November 15<sup>th</sup>.

## **Administration**

### Adaptation Plans to Be Included

The Interagency Climate Change Adaptation Task Force released a report October 14<sup>th</sup> that directed U.S. government agencies to incorporate adaptation plans whenever possible. The *Progress Report of the Interagency Climate Change Adaptation Task Force: Recommended Actions in Support of a National Climate Change Adaptation Strategy* is the result of a year of research and public meetings conducted by more than 20 federal agencies. The White House Council on Environmental Quality will issue instructions to individual agencies on how to implement the report's recommendations within 120 days.

## **Department of Agriculture**

### Forests Capture One-Tenth of Industrial Emissions

According to data released by the Department of Agriculture's Forest Service October 15<sup>th</sup>, U.S. forests absorb approximately 11% of annual domestic industrial carbon dioxide emissions. Forests in the U.S. store 4.14 billion MT of CO<sub>2</sub>e per year, with national forests sequestering 77.8 MT per acre, other public lands sequestering 68.3 MT, and private forest land sequestering 60.7 MT.

## **Department of Energy**

### \$1.3 Billion for Wind Farm

The Department of Energy announced a partial guarantee for a \$1.3 billion loan October 8<sup>th</sup> for the construction in eastern Oregon of what it calls the world's largest wind project. The loan guarantee will help finance the Caithness Shepherds Flat wind project, an 845 megawatt wind-powered electricity generating facility from Caithness Energy LLC and General Electric Energy Financial Services. Caithness has secured the rights to 32,000 acres south of the Columbia River near Arlington, Oregon as well as the transmission rights and material permits required for construction. The facility is expected to be operational by September 2012.

### Federal Buildings bans Fossil-Fuel by 2030

Complying with the Energy Conservation and Production Act as amended by the Energy Independence and Security Act of 2007, the Department of Energy released a proposed rule October 15<sup>th</sup> that would require federal buildings to be 100% free of fossil fuel-generated energy consumption by 2030. The proposal would require federal commercial buildings, multifamily high-rises, and other buildings to reduce fossil fuel-generated energy consumption by 55% from fiscal year 2010 through 2014, and the department will hold a public meeting November 12<sup>th</sup> on the issue.

## **Environmental Protection Agency**

### \$4 Million for Brownfields

The EPA awarded \$4 million to 23 communities to develop area-wide plans for the reuse of brownfields properties October 15<sup>th</sup>. The plans will integrate site cleanup and reuse into coordinated strategies to lay the foundation for addressing community needs such as economic development, job creation, housing, recreation, and education and health facilities.

### Renewable Energy on Contaminated Land Draft Plan Released

As part of its RE-Powering America's Land Initiative, the EPA released a draft plan October 14<sup>th</sup> to promote development of renewable energy facilities on contaminated lands instead of green space. The draft management plan proposes what EPA will do over the next two years to advance the initiative, which is exploring ways to provide incentives and technical assistance for those interested in cleaning up and reusing contaminated land for renewable energy generation facilities.

#### Groups Clash over EPA Proposal

Responding to a joint regulatory proposal from the EPA and Department of Transportation, environmental organizations and auto manufacturers expressed opposing perspectives October 14<sup>th</sup> on the use of letter grades under a proposed labeling system that aims to better inform consumers about the fuel economy and GHG emissions characteristics of new motor vehicles. Environmental groups expressed strong support for, and auto manufacturers opposed the use of, letter grades as part of a redesigned scheme for expressing fuel economy and emissions information on labels affixed to new vehicles.

#### Petroleum Industry Requests Relaxation of Rule

During a series of meetings with White House economists over the past two months, some of the nation's largest oil and gas producers have asked to delay or pare down regulations that would require them to submit annual GHG reports to the EPA. The first annual reports are due in March 2011, but the oil and gas exploration and production sector was given a one-year reprieve so agency officials could process a flood of comments from stakeholders. The EPA intends to finalize the rule this month.

#### EPA Approves Higher Ethanol Blend

The EPA announced October 13<sup>th</sup> that it is approving 15% ethanol blends in gasoline for model year 2007 and newer cars and light trucks. Since 1979, 10% has been the highest level of ethanol allowed in gasoline. Additionally, the ethanol industry has united around a proposal to reform the tax credits the industry receives, calling for the extension of the volumetric ethanol excise credit, repealing the \$0.54 per gallon tariff on imported ethanol in 2012, providing funding for new ethanol blender pumps, and providing loan guarantees for new ethanol pipelines.

#### Pollution Cooperation Agreement Signed

EPA Administrator Lisa Jackson and Chinese Minister of Environmental Protection Zhou Shengxian signed a memorandum of understanding (MOU) October 10<sup>th</sup> pledging cooperation between the countries on a range of environmental issues. The MOU establishes a joint committee co-chaired by the two representatives that will review progress made as well as plans for future cooperative endeavors, and under the new agreement, they will work together to prevent and manage air and water pollution and pollution from persistent organic pollutants and other toxics.

### **Federal Energy Regulatory Commission**

#### Comments Submitted to Federal Energy Regulatory Commission Transmission Proposal

Following a June 17<sup>th</sup> proposed rule from the Federal Energy Regulatory Commission (FERC), approximately 150 renewable energy developers submitted comments urging federal regulators to issue a strong rule in the next few months that will promote construction of high-voltage electric transmission lines stretching across the country, but many states and large utilities are not ready to relinquish local control over big-ticket projects that could hit their ratepayers in the pocketbook. Reply comments are due November 12<sup>th</sup>, and a final rule is expected sometime after the first of the year.

### **Miscellaneous**

#### Solar Census Released

The Solar Foundation released the first ever U.S. solar jobs census last week. The report found that as of August 2010, the domestic solar industry employed roughly 93,000 solar workers, and more than half of existing solar companies expect to add jobs over the next year.

#### Hawaii Provides Renewable Energy Credit Guidance

The Hawaii Department of Taxation issued a letter ruling recently that provides guidance on the application of the renewable energy technologies income tax credit for solar PV systems serving multiple single-family residences.

#### Developer Plans Undersea Transmission Line

Trans-Elect Development Company, with the financial backing from Google and others, announced October 12<sup>th</sup> that it intends to construct a 350-mile transmission line under the sea floor off the mid-Atlantic to bolster the wind farm industry. The \$5 billion Atlantic Wind Connection project would form the backbone of a transmission system that could connect 6,000 MW of power from the multiple wind farms off the coasts of Virginia, Maryland, Delaware, and New Jersey. Construction will start in 2013, with completion estimated in 2021.

#### Appliance Labeling to Reduce Emissions

The International Energy Agency said October 11<sup>th</sup> that effective appliance energy efficiency labeling across the globe could reduce worldwide CO2 emissions by 1.6 GT per year by 2030, a reduction equivalent to one-third of current total U.S. emissions.

#### Think Tanks Call for Carbon Price

The Brookings Institution, the American Enterprise Institute, and the Breakthrough Institute joined together October 13<sup>th</sup> in recommending a consensus compromise path to developing clean energy and reducing domestic GHG emissions. In their *Post-Partisan Power: How a Limited and Direct Approach to Energy Innovation Can Deliver Clean, Cheap Energy, Economic Productivity, and National Prosperity*, the groups proposed, among other things, a relatively modest \$5 per ton carbon price, and called for reducing existing energy subsidies that favor increased fossil fuel production and offering more incentives for innovation in breakthrough energy technologies.

#### Renewable Energy Spending Increases

According to a recent report from the American Council for an Energy-Efficiency Economy, state energy efficiency budgets nearly doubled in 2010 from the previous fiscal year, increasing from \$2.5 billion to \$4.3 billion. Reported electricity savings from the programs increased 8% between 2007 and 2008.

#### Aviation Organization Sets Efficiency Goals

The 190 member states of the International Civil Aviation Organization approved a resolution October 8<sup>th</sup> to work to improve fuel efficiency and limit the growth of CO2 emissions from the aviation sector. The resolution commits member states to achieving global improvement in fuel efficiency of 2% per year through 2020, with an aspirational goal to continue the 2% annual improvement through 2050. Additionally, the resolution established a goal to achieve carbon neutral growth in the sector by 2020 and to develop a CO2 standard for aircraft engines by 2013.

#### South Korea to Boost Exports

South Korea's Ministry of Knowledge Economy said October 13<sup>th</sup> that it will invest \$36 billion between 2011 and 2015 to develop clean energy technology into one of the nation's major export industries. The five-year plan was announced at a meeting of the Presidential Committee on Green Growth to set industrial policy priorities for green energy development.

#### Japan Resubmits Climate Bill

The Japanese Cabinet of Prime Minister Naoto Kan resubmitted legislation October 13<sup>th</sup> to the Japanese Diet to establish a global warming mitigation program. The proposed law would establish ground rules for the country to reduce its GHG emissions 25% from 1990 levels by 2020, primarily through the use of renewable energy and energy conservation. Passage of the legislation is uncertain.

#### Hong Kong Announces Environmental Priorities

During his annual policy address to the Legislative Council of the Hong Kong Special Administrative Region October 13<sup>th</sup>, Hong Kong's Chief Executive Donald Tsang announced that the city's 2011 environmental priorities include designating low-vehicle-emissions zones in heavily trafficked areas, replacing polluting buses with cleaner ones, and reducing carbon intensity.

#### China Develops Incentive Plans

China announced multiple incentive plans last week to encourage fuel efficiency. The Ministries of Environmental Protection, Industry, and Science and Technology announced a fuel-efficient vehicle

subsidy plan, an electric and hybrid vehicle subsidy policy, and an old-for-new trade-in policy to encourage sales of newer, less polluting vehicles and to spur the growth of its domestic auto industry.

North Carolina Approves Trees as Renewable Energy

The North Carolina Utilities Commission ruled October 13<sup>th</sup> that Duke Energy may burn whole trees to meet state renewable energy requirements. The state enacted a law in 2007 that requires public utility electricity generators to meet a renewable energy and efficiency portfolio standard of 12.5% by 2021.

EU to Meet Kyoto Targets

The European Commission's annual report on the EU's GHG emissions confirmed October 12<sup>th</sup> that the 27-country bloc is likely to meet and even exceed its Kyoto Protocol emissions reduction targets. According to the report, emissions from the EU as a whole in 2008 were 14.3% below the base year, compared to a Kyoto target of an 8%reduction.

New York Designer Files LEED Lawsuit

New York City building designer Henry Gifford filed a lawsuit October 8<sup>th</sup> against the U.S. Green Buildings Council claiming that the council's Leadership in Energy and Environmental Design certification program monopolizes the market through false claims and anticompetitive behavior.