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ENERGY AND ENVIRONMENT UPDATE **October 31, 2010**

Energy and Climate Debate

As candidates around the country prepare for the outcomes of this week's midterm elections, current Congressmen will ready themselves for the lame duck session, and the Administration and new Congress will begin outlining their priorities for the coming year.

With a majority shift in the House and significant Republican gains in the Senate expected, energy and environmental issues are likely to be reassessed with a mind toward fewer comprehensive approaches and more smaller, piecemeal packages in the coming Congress, though a renewed sense of bipartisanship and a need to compete in an increasingly competitive and rapidly developing global clean energy economy may hasten the passage of several domestic incentive programs as well. Combine those concepts with the need to increase our energy security and boost our energy independence, and Congress may pass one or more energy packages in the new year.

Additionally, the Environmental Protection Agency (EPA) is gearing up to regulate greenhouse gas emissions from stationary sources under the Clean Air Act beginning January 2nd, and several other clean energy regulations will follow shortly thereafter. White House Domestic Policy Council Director Melody Barnes said October 27th that energy policy is integral to broader economic and jobs policies, and that the Administration plans to promote it even in the absence of climate change legislation or direct regulation. Investments in technology, research, and development, math and science education, and green job training are all key to securing American jobs, and to retaining renewable energy companies within domestic borders while they are courted by China and Malaysia with significant incentives and long tax holidays.

Several clean energy pieces may move during the lame duck session, which is scheduled to begin November 15th. An expansion and extension of the 48C Advanced Energy Manufacturing Tax Credit and an extension of the 1603 Grants in Lieu of Tax Credits are possible additions to any tax package. The creation of a federal renewable electricity standard, in line with the proposal from Senators Jeff Bingaman (D-NM) and Sam Brownback (R-KS), as well as funding for a HomeStar energy efficiency home retrofit program are potential inclusions in Majority Leader Harry Reid's (D-NV) natural gas and electric vehicle legislation. Additionally, a delay of EPA's regulation of GHGs under the Clean Air Act could be included in an omnibus appropriations bill or a continuing resolution this November.

Committee positions are liable to shift quite extensively as a result of both retirements and lost elections. Though those details are obviously not yet certain, numerous House Republicans, including those likely to assume leadership of several key committees, reiterated last week that they will require Congress to approve major agency rules before they can be implemented. Such claims, however, face major hurdles because Congress would first have to enact legislation giving Congress such approval authority, which would raise questions of constitutionality.

Regardless of the outcome of Tuesday's election, energy issues are sure to stay front and center in the Congressional debate; we'll just have to wait to see what direction they may take in the coming days, weeks, and months.

Congress

Government Accountability Office (GAO) Says Geoengineering Strategy Needed

The Government Accountability Office released a report October 26th that concluded that the federal government should establish a clear strategy for research into geoengineering. Federal agencies invested about \$100 million in 52 research activities relevant to geoengineering during fiscal years 2009 and 2010, but the GAO found that without a coordinated strategy, it will be difficult to determine the extent of relevant research.

Upcoming Hearings

Congress will be in recess until November 15th.

Administration

Biofuels in Renewable Fuels Standard (RFS) Discussed

Representatives from three advanced biofuels groups met October 27th with staff for White House climate and energy advisor Carol Browner to fend off a push by the petroleum and corn-based ethanol industries for a scaled-back advanced biofuels mandate in the Renewable Fuels Standard for blending renewable fuels with gasoline, weeks before the agency issues a rule setting annual mandates for its national standard. The Biotechnology Industry Organization, Advanced Biofuels Association, and Algal Biomass Organization are concerned that investors could be driven away from the advanced biofuels industry if the EPA lowers its requirements for the fuels' use next year.

Department of Agriculture

U.S. Department of Agriculture (USDA) Endorses Biomass Assistance

The Department of Agriculture's Farm Service Agency published a record of decision October 27th endorsing a broad application of financial assistance to farmers and other landowners switching to biomass energy crops, which will provide the agency with flexibility in implementing the Biomass Crop Assistance Program and help develop a sustainable biomass industry. The program would increase the amount of land used for energy production by 50 million acres by converting traditional cropland to pasture land.

USDA Drops GHG Biofuel Test

The Department of Agriculture decided October 21st to make permanent a pilot program boosting financial incentives for the cultivation of biomass fuel crops. The move jettisons an earlier proposal requiring producers to meet lifecycle GHG standards, raising doubts about whether the program will spur production that qualifies for credit under EPA's renewable fuel standard.

Department of Energy

120 Technical Assistance Projects Completed

The Department of Energy announced October 26th that it has completed nearly 120 technical assistance projects at 16 federal agencies, helping the federal government meet its renewable energy and energy efficiency goals and implement leading-edge clean energy technologies. Over \$13 million in Recovery Act funding has been invested in projects such as energy audit training, energy and water efficiency assessments, smart grid and renewable energy feasibility studies, evaluating potential electricity generation resources, developing strategic energy plans, and providing technical assistance for renewable energy installations, technology demonstration projects, and high-efficiency building upgrades.

\$5 Million for Ocean Energy Research

The Department of Energy, the Department of Interior's Bureau of Ocean Energy Management, Regulation, and Enforcement, and the Department of Commerce's National Oceanic and Atmospheric Administration announced eight joint research awards October 26th totaling nearly \$5 million to support the responsible siting and permitting of offshore wind energy facilities and ocean energy generated from waves, tides, currents, and thermal gradients. The research from these projects will also support the activities of the newly created National Ocean Council.

Department of Interior

Sixth Public Lands Solar Project Approved

The Department of Interior approved the largest solar energy project ever to be built on U.S. public lands October 25th. The Blythe Solar Power Project in Riverside County, California, will produce up to 1,000 MW of solar, and will cover 7,025 acres of public lands. The project was proposed by Palo Verde Solar I, a subsidiary of Solar Millennium, and is expected to create 1,066 construction jobs and 295 permanent jobs.

Department of Justice

Department of Justice (DOJ) Brief Defends EPA GHG Rules

The Department of Justice filed a brief October 28th in the U.S. Court of Appeals for the DC Circuit in which it presented a defense of climate science and the EPA's GHG control decisions. The brief responds to motions to stay EPA regulations controlling GHG emissions from mobile and stationary sources, and the agency's scientific finding underlying those regulations.

Environmental Protection Agency

October Ozone Deadline Delayed

Despite a previous suggestion that air quality standards for ozone would be released in October, the EPA said last week that it is still working on a final rule revising the standards, which will then need to be sent to the White House Office of Management and Budget for review. This would be the second time that EPA has postponed issuing the ozone standards; the first delay in August was created to allow the Agency to analyze information from the public comment period.

49 States Prepared to Issue GHG Permits

An analysis from the National Association of Clean Air Agencies concluded October 28th that state regulators across the country, save for Texas, are prepared to issue Clean Air Act permits for large stationary sources of GHG emissions beginning January 2nd. Thirty-six states have already received federal approval to begin issuing GHG permits, and of the remaining states, which have been required to explain their plans to the EPA, Texas is the only one that will not revise its rules or accept a federal implementation plan.

Domestic Truck Fuel Efficiency Standards Announced

The EPA and the Department of Transportation announced October 25th the first U.S. standards to reduce CO2 emissions and improve fuel efficiency of heavy-duty trucks and buses beginning with the 2014 model year. The standards are projected to reduce emissions by 250 MMT and to save 500 million barrels of oil over the lives of the vehicles produced within the program's first five years; the sector currently emits about 20% of the country's transportation emissions. Combination tractors must achieve 20% reductions in CO2 emissions and fuel consumption by model year 2018; diesel-fueled heavy-duty pickups and vans will achieve up to 15% reductions; gasoline-fueled heavy-duty pickups and vans will achieve up to 10% reductions; and vocation vehicles will achieve up to 10% reductions in fuel consumption and CO2 emissions by 2018 model year.

Panel Finds Risks to Fossil-Fuel Power

The North American Electric Reliability Corporation released an analysis of the impacts that four proposed EPA rules could have on the electricity system October 26th. The report predicted that between 50 to 75 GW of oil, coal, and other fossil fuel-fired power plants could become economically vulnerable by

2015 due to the cost of implementing a host of proposed EPA air, water, and other rules, adding to the growing concerns from industry representatives and Congressmen about massive electric generation losses stemming from agency regulations.

Winners of Building Competition Announced

The EPA's Energy Star Program announced October 26th that Morrison Residence Hall at the University of North Carolina (UNC) at Chapel Hill won the first EPA National Building Competition. The competition challenged teams from 14 buildings across the country to measure their building's energy use and reduce waste with help from the Energy Star program. The UNC Hall reduced its energy use by 35.7% from September 1, 2009 through August 31, 2010, saving more than \$250,000 on its energy bills and reducing more than 730 MT of GHGs. Together, the competitors reduced their energy use by more than 44 million kBtu and saved more than \$950,000 in utility bills.

Energy Star Reforms Still Ongoing

According to an October 28 report from the Environmental Protection Agency's Inspector General, reforms planned in 2009 for the Energy Star program have yet to occur. *The Energy Star Label Needs to Assure Superior Energy Conservation Performance* report concluded that testing of Energy Star products by the EPA has been limited and that the agency cannot even be sure that reported GHG reductions are valid.

Natural Resource Defense Council (NRDC) Analysis Counters Job Losses

The Natural Resource Defense Council released an analysis October 28th concluding that three industry-funded reports predicting significant job losses as a result of EPA proposals to strengthen air quality standards for ozone and to require large boilers to control hazardous air pollutant emissions overstate the rules' economic impact. The analysis faulted the methodology and conclusions in the industry reports and criticized them for being fundamentally flawed and for a lack of serious accounting of economic behavior.

Guide to Address E15 Storage Risks

The Environmental Protection Agency is crafting guidance to address the compatibility of underground storage tanks with gasoline containing up to 15% ethanol. The effort is aimed at addressing concerns that increased use of the fuel could increase leaks because it is more corrosive than current blends.

Federal Trade Commission

EnergyGuide Labels for Televisions

The Federal Trade Commission announced October 27th that its Appliance Labeling Rule will require the EnergyGuide label on televisions manufactured after May 10, 2011. The label will provide customers with more information about different models and how much energy is used by those models, thereby facilitating side-by-side comparisons. The labels have been featured on many home appliances already, such as washing machines and refrigerators.

Miscellaneous

California Releases Cap and Trade Plan

On October 29th, California released its draft plan to cap and trade GHGs within the state beginning in 2012, becoming the first state in the country to do so. As the state prepares to vote on Proposition 32, which would suspend the Global Warming Act of 2006 (AB 32) until the state's unemployment rate falls to 5.5% for at least a year, the California Air Resources Board released its plan to reduce emissions to 1990 levels by 2020, along with a host of other programs like a low-carbon fuel standard, planning guidelines for local governments, and renewable energy targets for the state's utilities.

Truck Driver Port Rule Blocked

The U.S. District Court for the Central District of California barred the Port of Los Angeles October 25th from enforcing a requirement of its clean truck program that trucking companies use only drivers who are company employees and not contractors, pending a trucking industry appeal to the U.S. Court of Appeals

for the Ninth Circuit. At issue in the case pending appeal is whether federal law preempts the port's authority to regulate trucks.

Washington Governor Executive Order Lawsuit Dismissed

A Washington state judge dismissed a lawsuit October 22nd challenging Governor Christine Gregoire's (D) executive order laying the groundwork for a GHG emissions control program. The executive order, issued in May, directed the state's Department of Ecology to contact industrial facilities to determine a baseline for GHGs and to develop information for large facilities to determine how they could help meet state GHG goals in 2020. It also directed the state's Department of Transportation to work with local governments and businesses to estimate current and future statewide levels of vehicular miles traveled and to develop mitigation strategies, and the Department of Natural Resources to develop recommendations for forestry offset protocols and financial incentives for the forest industry.

New Mexico Adopts Heat Pump Credit Rules

The New Mexico Energy, Minerals, and Natural Resources Department recently adopted rules to provide an income tax credit of up to 30% to corporate taxpayers on costs to buy and install a geothermal ground-coupled heat pump on the taxpayer's property between January 1, 2010 and December 31, 2020. The regulations implement the geothermal heat pump credit created by 2009's H.B. 375.

Chicago Climate Exchange (CCX) Exchange to Halt Trading

The Chicago Climate Exchange announced October 21st that it will end its program for trading GHG emissions allowances at the end of the year and will instead become solely a registry for credits from projects that offset emissions. The market has collapsed due to a combination of a down economy, the lack of a national cap and trade program, and easily achievable emissions goals.

Oregon Backs Emissions Reporting

The Oregon Environmental Quality Commission adopted a final rule October 22nd establishing a GHG emissions-reporting system, including fees for major air pollution sources to fund the program. The final rule follows a temporary reporting scheme adopted nearly a year ago and takes effect January 1st.

Wind Installation Declined in Third Quarter

The American Wind Energy Industry (AWEA) released its Third Quarter 2010 Market Report last week in which it found that the amount of wind energy installed in the U.S., 395 MW, plummeted 72% in the third quarter of 2010 compared with the third quarter of 2009. AWEA attributed the drop to a lack of federal and state incentives for utilities to commission wind power.

Great Lakes to Adopt Climate Ready Practices

The National Wildlife Federation released a report October 29th showing that areas bordering the Great Lakes are taking steps to address the effects of climate change in anticipation of such changes as higher temperatures, lower water levels, and changes in wildlife migration patterns. *Improving the Odds: Using Climate Readiness to Reduce the Impacts of Climate Change on the Great Lakes Ecosystem* highlights local efforts to address problems such as rising water levels and the spread of invasive species and suggests tools for municipalities to adopt climate-ready practices.