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## **ENERGY AND ENVIRONMENT UPDATE** **January 30, 2011**

### **Energy and Climate Debate**

President Obama outlined his energy priorities for the 112th Congress during his State of the Union address last Tuesday, January 25. In addition to calling for an end to annual tax subsidies for oil, gas, and other fossil fuels, the president called on the nation to generate 80 percent of its electricity from clean energy sources by 2035, and to put one million advanced vehicles on the road by 2015.

In his State of the Union address, President Obama referenced a clean energy standard that would include traditional renewable energy resources such as wind, solar, geothermal, and hydropower, as well as other sources such as nuclear, clean coal, and natural gas. Senator Lindsey Graham (R-SC), who proposed a clean electricity standard last year, is expected to reintroduce legislation that would establish a CES, and the president's backing likely would add momentum to that effort. Since last Tuesday, all eyes have been on Senate Energy and Natural Resources Chairman and Ranking Member Jeff Bingaman (D-NM) and Lisa Murkowski (R-AK), as the legislation will go through their committee. Senators Mark Begich (D-AK), Amy Klobuchar (D-MN), Dick Lugar (R-IN), and Tom Carper (D-DE) who have previously expressed support for a CES this Congress, were cautiously joined by a diverse set of their colleagues in applauding the President's plan, potentially bringing together Senators as well and energy interests that have previously shied away from working too closely together. Should the Senate be successful in passing legislation through the upper chamber, it remains to be seen what will happen in the House. House Republicans remained unimpressed with the proposal last week; Energy and Commerce Chairman Fred Upton (R-MI) said that decisions about energy resources should be made by the free market rather than the government.

While avoiding the terms "climate change," "global warming," and "cap and trade," and forgoing any mention of last spring's Gulf Coast oil spill, President Obama pivoted toward a focus on clean energy and regulations to reduce emissions and focused on what may believe to be the best chance he may have for securing clean energy legislation this Congress: a clean energy standard and a number of modest pieces that could have a fairly significant impact on domestic GHG reductions over time.

In order to jump start those goals, the president will propose on February 14 increasing funding for clean energy technology by one-third in his fiscal year 2012 budget, to \$8 billion. The funding would be used to expand clean energy innovation through research and development, specifically, by expanding the Advanced Research Projects Agency-Energy, doubling the number of energy innovation hubs, doubling investments in energy efficiency, and increasing renewable energy investments by more than 85 percent. The president's budget will also include a new effort to support electric vehicle manufacturing through consumer rebates, research and development spending, and competitive programs to encourage investment in electric vehicle infrastructure.

### **Congress**

#### **Senate EPA Legislation Underway**

Senator John Barrasso (R-WY) is drafting legislation to strip the Environmental Protection Agency of its authority over GHG emissions rules. The legislation, which will be introduced by the end of February, would also affect the agency's ability to regulate vehicle emissions and would leave the National Highway Traffic Safety Administration as the sole authority over vehicle economy standards. Currently the EPA has authority over mobile emissions, and is working with the NHTSA to develop rules covering those emissions and fuel economy. The NHTSA has had authority over Corporate Average Fuel Economy standards since 1975, but the EPA and California also have authority under the Clean Air Act to regulate mobile emissions. Meanwhile, Senator Jay Rockefeller (D-WV) is crafting a less stringent measure that would impose a two-year delay on EPA's GHG rules. Energy and Natural Resources Ranking Member Lisa Murkowski (R-AK), who has expressed support for Senator Barrasso's plan, is mulling modifications to Senator Rockefeller's language that would take into account necessary changes since the rules are now in effect. Environment and Public Works Ranking Member James Inhofe (D-OK), who has initial support from Senator Mary Landrieu (D-LA), is expected to focus on removing EPA authority under the Clean Air Act altogether. At least 123 House members from 25 states are now supporting legislation to either delay EPA regulation under the Clean Air Act or strip funding from agency efforts to implement such regulations.

#### Energy Efficiency Legislation Underway

Senator Jeanne Shaheen (D-NH) is planning to introduce energy efficiency legislation in mid February. Though the legislation may not include spending measures such as HomeStar and Building Star, other provisions that receive the blessing of Senate Energy and Natural Resources Chair Jeff Bingaman (D-NM) and Ranking Lisa Murkowski (R-AK) are under consideration.

#### Funding Bill to be Considered Mid February

House Majority Leader Eric Cantor (R-VA) said January 25 that his chamber plans to take up a short-term government funding bill during the week of February 14, the same day President Obama is expected to release his FY 2012 budget and three weeks before the current continuing resolution expires March 4. The House's consideration of the measure could last longer than usual by allowing an open amendment process. The House GOP is expected to cut \$55 to \$60 billion from the remaining seven months of the 2011 fiscal year. Prior to election the party had promised to reduce spending by \$100 billion.

#### Gingrich Vows EPA Changes

Former House Speaker Newt Gingrich, who is considering a 2012 presidential run, proposed January 25 replacing the Environmental Protection Agency with a new Environmental Solutions Agency which would have a limited role that is focused on coordinating efforts with states. He said that the new role of federal regulators would be more akin to the National Institute of Health or the National Science Foundation.

#### Energy Priorities Outlined

Senate Energy and Natural Resources Committee Chair Jeff Bingaman (D-NM) will address the New Democratic Network January 31 to outline his energy priorities for the new congress.

#### Spill-Response Legislation Planned

During the first congressional hearing with the leaders of the presidential panel that investigated last April's Gulf of Mexico oil spill, Senate Energy and Natural Resources Chairman Bingaman announced his plans to introduce new oil spill-response legislation this Congress. Last June, the committee reported a measure from Senators Bingaman and Murkowski that would codify organizational changes made at the Department of Interior last summer, increase the safety requirements for drilling wells, establish new research programs, create an independent advisory board for the department, create a fee on companies to pay for inspections, increase the penalties on bad operators, and increase the time the department has to carry out reviews before approving exploration plans.

#### Senators Send Boiler Letter

Thirteen freshman Senators sent a letter to EPA Administrator Lisa Jackson January 27 urging the agency to reconsider pending air pollution rules for industrial boilers and incinerators, contending the regulations would have a significant impact on manufacturers. EPA has a court-ordered deadline to finalize the rules by February 21.

### Committee Assignments

The lists of Democratic and Republican proposed committee assignments for the 112th Congress were approved January 27.

Senator Jeff Bingaman (D-NM) will serve as chairman of the Senate Energy and Natural Resources Committee, and Senator Lisa Murkowski will retain her Ranking Member slot. New committee members will be Senate Democrats Al Franken (MN), Chris Coons (DE), and Joe Manchin (WV), and Senate Republicans Rob Portman (OH), Dan Coats (IN), John Hoeven (ND), Rand Paul (KY), and Mike Lee (UT).

Senators Boxer and Inhofe will retain their leadership positions on the Senate Environment and Public Works Committee. Democratic Senators Max Baucus (MT), Tom Carper (DE), Frank Lautenberg (NJ), Ben Cardin (MD), Sheldon Whitehouse (RI), Tom Udall (NM), Jeff Merkley (OR), Kirsten Gillibrand (NY), and Bernie Sanders (I-VT), and Republican Senators David Vitter (LA), Barrasso, Jeff Sessions (AL), Mike Crapo (ID), Lamar Alexander (TN), Mike Johanns (NE), and John Boozman (AR) round out the committee membership.

### Legislation Introduced

Senate Majority Leader Harry Reid (D-NV) introduced a placeholder energy bill (S. 4) January 25, the substance of which will be filled in later. The bill is one of 10 placeholder bills Majority Leader Reid introduced last Tuesday as he begins the legislative work of the 112th Congress. Senators Bingaman, Sherrod Brown (D-OH), Dick Durbin (D-IL), John Kerry (D-MA), Michael Bennett (D-CO), Gillibrand, Coons, Boxer, Lautenberg, Shaheen, and Daniel Akaka (D-HI) cosponsored the legislation to make the US the world's leader in clean energy.

Senator David Vitter (R-LA) introduced legislation (S. 15) to prohibit the regulation of CO2 emissions in the US until China, India, and Russia implement similar reductions.

Senate Environment and Public Works Chair Barbara Boxer (D-CA) introduced legislation (S. 77) to create an EPA grant program to fund efforts to cut buildings' GHGs in exchange for verifiable, additional, and enforceable emissions reductions January 25. The Building Pollution Reduction Program language is similar to that contained in the climate-energy bill Senator Boxer co-sponsored with Senator John Kerry (D-MA) last Congress.

Senators Tom Harkin (D-IA) and Dick Lugar (R-IN) introduced bills (S. 152 and S. 187) to expand the market for ethanol by requiring 90 percent of the vehicles for sale in 2016 to be flex-fuel vehicles capable of running on higher ethanol blends.

Congressman Michael Burgess (R-TX) introduced legislation (H.R. 424) January 25 to repeal amendments to the Clean Air Act relating to the expansion of the renewable fuel program.

Congressman Jeff Flake (R-AZ) introduced legislation (H.R. 426) the same day to repeal certain incentives and subsidies for renewable fuels.

Congressman Anthony Weiner (D-NY) introduced legislation (H.R. 438) to amend the Energy Policy and Conservation Act to provide further requirements for the Energy Star program.

Representative Sandy Levin (D-MI) and Senator Carl Levin (D-MI) introduced companion legislation (H.R. 500) last Wednesday that would more than double the number of vehicles per manufacturer eligible for a \$7,500 tax credit for plug-in hybrid and electric vehicles. Currently the tax credit is phased out over six quarters after a manufacturer sells 200,000 vehicles, but the bills would raise that cap to 500,000.

Congressman Ed Markey (D-MA) introduced oil spill response legislation (H.R. 501) January 26 that marries portions of the Democratic spill-response bill that passed the House last year with recommendations made by the presidential commission that investigated last spring's Gulf Coast oil spill.

Senator Robert Menendez (D-NJ) introduced two pieces of legislation (S. 214 and S. 215) that amend the Oil Pollution Act of 1990 and the Internal Revenue Code of 1986 to require oil polluters to pay the full cost of oil spills.

#### Upcoming Hearings

The Senate will meet this week to begin consideration of legislation authorizing the Federal Aviation Administration.

The House adjourned January 27 to allow representatives to begin a week-long work period in their districts and will return February 8.

EPA Administrator Lisa Jackson will appear before the Senate Environment and Public Works Committee February 2 for a hearing on public health and drinking water issues.

The Senate Environment and Public Works Subcommittee on the Superfund, Toxics, and Environmental Health meets February 3 for a hearing on the effectiveness of the Toxic Substances Control Act.

The Senate Energy and Natural Resources Committee will meet February 3 for a hearing on the energy and oil market outlook for the 112th Congress.

#### **Department of Defense**

##### No Military Benefit from Alternative Fuel

Research group RAND published a report January 25 that found that an increase in the Department of Defense's use of alternative fuels would have no direct benefit for the military. The Alternative fuels for Military Applications report is the result of research requested by the department after Congress directed it to conduct a study on alternative and synthetic fuel use in the military.

#### **Department of Energy**

##### Chu Echoes State of the Union

Previewing President Obama's February 2 visit to Penn State University, Energy Secretary Chu said last week that U.S. leadership in developing more efficient and cleaner energy technologies is in danger. Echoing the president's State of the Union address, he warned that Europe, Japan, South Korea, and China are overtaking the US in new energy technology, and reiterated the need for a 80 percent clean energy standard by 2035. Secretary Chu will join the President at Penn State University to visit an innovation hub where research is being carried out on energy-efficient buildings. Earlier in the week, Secretary Chu said that the Department of Energy will focus on technology research that could be picked up by the private sector and implemented without additional government subsidies. The president's 2012 budget proposal is expected to include \$8 billion for research, development and deployment investments in clean energy technology programs, including funding for DOE's Energy Innovation Hubs and ARPA-E.

##### DOE and DOC Sign MOU

The Departments of Energy and Commerce announced a new partnership January 24 to further cooperation on renewable energy modeling and forecasting. The MOU, signed by Acting Under Secretary of Energy Cathy Zoi and Under Secretary of Commerce for Oceans and Atmospheric and Administrator of the National Oceanic and Atmospheric Administration Jane Lubchenco, will encourage the two agencies to work together to develop and disseminate weather and climate information needed for renewable energy technologies that are dependent on short-term weather and longer-term climate trends.

##### Biomass Webinars Scheduled

The Department of Energy's Biomass Program is hosting a series of webinars February 1-3 associated with its biennial Peer Review of Integrated Biorefinery technology and Biofuels Distribution Infrastructure and End Use projects.

##### GM Withdraws Loan Application

Citing significant improvement in its business and a desire to keep its debt low, General Motors withdrew its October 2009 application for \$14.4 billion in loans from the Department of Energy to produce fuel-efficient vehicles January 27. The department's Advanced Technology Vehicles Manufacturing Loan Program provides automakers with direct loans to help them make vehicles and components that improve fuel economy.

## **Department of Interior**

### Offshore Wind ROI Issued

The Department of Interior issued January 26 a request for competitive interest in an offshore wind farm near Delaware after having received only one qualified proposal in response to an earlier request for interest. The request for competitive interest is a mandatory additional step in the federal process for developing a wind farm on the OCS.

### Rule to Eliminate Leasing Step Eliminated

The Department of Interior announced January 24 that it is abandoning a fast-track rulemaking and will go through the conventional steps for a rule intended to eliminate redundancy in leasing at least some offshore sites for renewable energy. DOI's Bureau of Ocean Energy Management, Regulation and Enforcement withdrew a direct final rule that would have helped shorten the time it takes to develop offshore wind farms at sites where no competitive interest has been expressed.

### First Deepwater Application Accepted

The Interior Department accepted the first application, from Shell Offshore Inc., for deepwater exploration since last spring's Gulf of Mexico oil spill, triggering a 30-day window during which regulators must approve or return the plan. Once the plan is approved, the operator can begin applying for permits.

## **Environmental Protection Agency**

### MPG Standard Not Final

EPA's Office of Transportation and Air Quality cautioned automobile manufacturers and dealers January 27 not to infer too much from an administration analysis that suggested fuel economy standards could be set as high as 62 MPG by 2025. A technical assessment that reviewed fuel economy standards, ranging from 47 to 62 MPG is part of the administration's preliminary evaluation.

### Listening Sessions Scheduled

The Environmental Protection Agency announced last Friday that it will hold five listening sessions on updating the Clean Air Act's pollution standards for power plants and refineries. The listening sessions will be open to the public and will help the agency develop a common sense approach to reduce GHGs from two of the largest industrial pollution sources, which are responsible for nearly 40 percent of the GHG pollution in the US. The agency is in the process of gathering information and seeking important input and, as part of a settlement agreement announced at the end of last year, will propose GHG standards based on existing technologies for power plants in July 2011 and for refineries in December 2011. The agency will issue final standards in May 2012 and November 2012, respectively.

### Federal Government and CA to Coordinate Proposals

Federal regulators and the California Air Resources Board agreed January 34 to release their proposals for emissions standards and fuel efficiency for the next generation of new vehicles by September 1. The announcement ensures the joint proposal being developed by the Department of Transportation and Environmental Protection Agency to curb emissions and set fuel economy standards for 2017-2025 model-year cars and light-duty trucks coincides with CARB's proposal.

### EPA Sends OMB GHG Data Rule

The Environmental Protection Agency sent the White House Office of Management and Budget a final rule January 21 that would make public certain information on GHG emissions from all facilities reporting emissions, but withhold other information as confidential business information.

## **Personnel**

Carol Browner announced early last week that she will soon leave her post as director of the White House Office of Energy and Climate Change Policy. Ms. Browner, who had previously served as EPA Administrator during the Clinton Administration, served as the president's energy czar, and was a key White House proponent of cap and trade legislation, which Congress failed to pass in 2010.

White House Chief of Staff Bill Daley announced a long list of personnel shifts and new appointments among senior staff and aides to President Obama January 27, including Ron Bloom to serve as assistant to the president for manufacturing policy at the National Economic Council. Mr. Bloom will provide leadership on policy development and strategic planning for the President's agenda to revitalize the manufacturing sector in his new role of senior counselor for manufacturing policy.

## **Miscellaneous**

### Electric Drive Action Plan Released

The Electric Drive Transportation Association released an action plan January 24 in which it calls on the federal government to create an interagency task force to unify electric car efforts. The association lays out five steps for the country to adopt more electric vehicles, including calling for more incentives for drivers and industry, more education for consumers, and government policies to accelerate electric drive technology.

### EU ETS Trading to Resume

Following the January 19 suspension of the EU Emissions Trading System due to fraud, the European Commission announced January 24 that EU member states will not be permitted to resume emissions trading until they can prove that their carbon credit registries are secure against fraud. A phased resumption of trading began January 26, though it is unclear when all members will be able to resume trading.

### WA Transportation Report Unveiled

The Washington State Department of Transportation recently submitted to Governor Christine Gregoire (D) the *2010 Sustainable Transportation Report*, which details the agency's response to mandates from the governor's 2009 climate change executive order (No. 09-05). The report found that a series of aggressive strategies to reduce transportation-related emissions could achieve a 10 percent statewide reduction for all of the state's emissions compared with a 2050 baseline. Four categories of action, including operating the transportation system more efficiently, advancing vehicle technology, improving fuels, and reducing vehicle miles traveled were suggested.

### MD Governor Promotes Offshore Wind Purchases

Maryland Governor Martin O'Malley (D) announced January 24 that his 201 legislative priorities include passage of a bill that would direct the Public Service Commission to require electric utilities to award long-term contracts to procure between 400 and 600 MW of offshore wind energy in the next 20 years. The legislation could be introduced this week.

### China Leads Wind Capacity

China surpassed the U.S. as leader in wind energy capacity. Wind installations in the US dropped to half of what they were in 2009 due to an unpredictable forecast for domestic renewable energy grant and low natural gas prices competing with wind development.

### CA Sets Capacity Record

The California Public Utilities Commission announced January 25 that the state had set a new renewable energy capacity record in 2010. More than 650 MW of new renewable power came online last year under contracts from the state's three investor owned utilities, nearly doubling the amount of clean energy that became operational the previous year.

### NM Supreme Court Orders Rules Published

The New Mexico Supreme Court ruled (*New Energy Economy Inc. v. Martinez*, NM, No. 32,806) January 26 that Governor Susana Martinez's (R) administration must publish rules in the state register, including a GHG emissions cap rule passed by the Environmental Improvement Board last year. The Republican governor had issued an executive order on her first day in office halting for 90 days the publication of the rules.

#### Hungary Pledges Climate Action

Hungary's Minister for National Development announced January 26 that the nation will publish an international climate agreement and a more ambitious emissions reduction target for the European Union during its six-month term as president of the Council of the EU, which began January 1.

#### EC Highlights Efficiency

The European Commission published a policy paper January 26 in which it claimed that the EU should aim for greater "economic and ecological" security by redirecting its economy to become more resource efficient. The paper was intended as a precursor to a roadmap for a more efficient Europe, which will be published in the second quarter of 2011, which is likely to include an action plan to achieve energy efficiency savings of 20 percent by 2020, a review of biodiversity policy, a review of the monitoring and reporting of emissions, and a review of legislation on water-threatening pollutants.

#### Climate Negotiations in Bangkok

Climate negotiators will hold an extra session in Bangkok in April as they negotiate a successor to the Kyoto Protocol. The meeting, to be held April 3-8, adds to the previously scheduled June meeting in Bonn, Germany, and the annual talks among environmental ministers set for the end of 2011 in Durban, South Africa.

#### Intangible Assets Not Factored

The Wyoming Department of Revenue and Duke Energy continue to discuss the issue of how intangible assets should be factored into wind farm property tax valuations. Duke and the department resolved the tax dispute in December, and the settlement was signed by Governor Dave Freudenthal (D); the state agreed to reduce the assessed values it had assigned to the company's four wind farms in 2009, but the treatment of intangible assets was not addressed in the settlement.

#### MT to Increase Wind Development

Montana Governor Brian Schweitzer (D) called for an increase in wind energy development during his State of the State address last week. The state House Federal Relations, Energy and Telecommunications Committee easily passed a bill that would grant private power line builders and public utilities the power to take private land for transmissions lines just hours before the governor's speech.

#### Canadian Oil Sands GHGs Rise

Evaluate Energy and CanOils released a report January 24 showing that total emissions from Canadian oil sands operations have grown as production as increased in recent years, but emissions per barrel have recently fallen. The report found that total emissions were 42.5 percent higher in 2009 than in 2004, but that lower per-barrel emissions represented hard won efficiencies for oil sands project operators.

#### NC Aligns GHG Regs

North Carolina Governor Bev Perdue (D) ordered (Executive Order No. 81) permit regulations for large GHG sources to take effect January 28. The executive order aligns the state's requirements with the Environmental Protection Agency's tailoring rule, which took effect January 2. State conforming regulations had been delayed because a threshold number of objections were filed.

#### Clearinghouse Launched

A coalition of nine states formed a clearinghouse January 26 to promote the reduction in use of toxic chemicals. The Northeast Waste Management Officials Association's announcement of the Interstate Chemicals Clearinghouse comes as manufacturers hope the federal government, rather than individual state regulators and legislatures, retains the reins of managing U.S. chemicals.