



David Leiter DJLeiter@mlstrategies.com
Sarah Litke SLitke@mlstrategies.com
Jean Cornell JKECornell@mlstrategies.com
Bryan Stockton BStockton@mlstrategies.com
Jordan Collins JMCollins@mlstrategies.com
Neal Martin RNMartin@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

ENERGY AND ENVIRONMENT UPDATE September 23, 2013

ENERGY AND CLIMATE DEBATE

Climate change was the Obama Administration's message of the week. Leading the news was the Environmental Protection Agency's New Source Performance Standards announcement. In his Climate Action Plan, President Obama called upon the agency to release carbon emissions standards for new power plants by September 20. On Friday, Administrator Gina McCarthy unveiled the new rules. The [standard](#) sets a cap of 1,000 pounds of carbon dioxide emissions per megawatt hour for natural gas power plants; 1,100 pounds per megawatt hour for smaller natural gas power plants; and 1,100 pounds per megawatt hour for coal-fired power plants. Additional flexibility is provided for coal plants if they wish to average emissions over multiple years by meeting smaller limits. In her announcement, Administrator McCarthy said technologies exist for plants to meet this standard. She continued that the agency is not making a statement with this rule about fuel choice; it is not an effective ban on coal.

Following the announcement, proponents and opponents of the rule voiced their opinions. Deputy Assistant to the President for Energy and Climate Change Heather Zichal, in a [blog post](#), praised the rule and the administration's work on climate change. Secretary of Energy Ernest Moniz said that the rule was a significant step and that his department will continue to support carbon capture technology and clean energy. Environmental groups, like the League of Conservation Voters and the Environmental Defense Fund, praised the rule while industry members, including the National Association of Manufacturers, said the rule effectively banned on coal. Congress was divided, mostly along party lines, although Democratic Senators Joe Donnelly (D-IN), Heidi Heitkamp (D-ND), Mary Landrieu (D-LA), and Joe Manchin (D-WV) came out against the proposal. Senate Minority Leader Mitch McConnell (R-KY) said he will introduce a resolution of disapproval under the Congressional Review Act against the rule, essentially vetoing the rule. However, the resolution, if passed, can only be effective once the rule is finalized. House Energy and Commerce Chairman Fred Upton (R-MI) said he will hold hearings on the rules.

Just two days prior to the announcement, Administrator McCarty and Energy Secretary Ernest Moniz appeared before the House Energy and Commerce Subcommittee on Energy and Power to defend the President's Climate Action Plan.

The Senate's consideration of Shaheen-Portman energy efficiency bill this past week was delayed by non-germane amendments. The future of [S. 1392](#) is unclear: Congress is not expected to consider it this week, and there is no sign as to when it will pick up the bill again.

Instead, Congress will focus this week on funding issues in an effort to prevent a government shutdown. [H.J.Res. 59](#), the House's continuing resolution, would sustain operations through December 15 but would defund Obamacare. The Senate will pick up the continuing resolution this week as the House, which approved it 230-189 on Friday, will move onto another issue at hand: the debt ceiling. House Republicans met Friday to discuss a plan for raising the debt ceiling, and participants told reporters following the meeting that tax reform will be tied to the strategy. Over in the Senate, Environment and Public Works Chairman Barbara Boxer (D-CA) on Wednesday promoted a possible carbon tax as part of tax reform.

CONGRESS

Murphy Drafting Legislation on Short-Lived Climate Pollutants

Addressing a September 16 Environmental and Energy Study Institute panel, Senator Chris Murphy (D-CT) announced he is currently drafting legislation with Senators Al Franken (D-MN) and Bob Menendez (D-NJ) to address short-lived climate pollutants. At the same event, U.N. Environment Program Executive Director Achim Steiner said that the world notices the problem when the U.S. is proactive on an issue. He said short-lived climate pollutants are low-hanging fruit on which the international community can act.

Alaska Letter on GHG Regulations

Senator Lisa Murkowski (R-AK) and Representative Don Young (R-AK), in a September 16 [letter](#) to the President, asked the administration to work with Congress before the Environmental Protection Agency imposes greenhouse gas reduction regulations. The letter said the country can use coal and reduce emissions at the same time. President Obama has stated previously that he cannot wait for Congress to act on climate change.

Senate ENR Considers Binz

The Senate Energy and Natural Resources Committee considered three nominations on September 17: Ron Binz to serve as Chairman of the Federal Energy Regulatory Commission, Elizabeth Robinson to serve as Under Secretary of Energy, and Michael Connor to be Deputy Interior Secretary. The majority of the hearing focused on Binz's nomination, with several of the members questioning his stances on coal, combined heat and power, renewable energy standards, and transmission costs. Following the hearing, many members of the committee—including Ranking Member Lisa Murkowski (R-AK) and Senator Joe Manchin (D-WV)—said they would vote against Binz. Deputy White House Press Secretary Josh Earnest said the administration stood by the nomination.

Republican Letter to EPA on Social Cost of Carbon

Seven Republican sent a [letter](#) to Environmental Protection Agency Administrator Gina McCarthy September 17, asking the agency to elaborate on its involvement in the calculation of the administration's social cost of carbon. The letter asked which officials were involved in the calculation, whether the models used were peer reviewed, and what future rules the agency intends

to use the cost. The members who signed the letter were Senators David Vitter (R-LA), Roy Blunt (R-MO), Jeff Sessions (R-AL), John Barrasso (R-WY), Jim Inhofe (R-OK), Roger Wicker (R-MS), and John Boozman (R-AR).

Markey Drafting Two Energy Bills

In his first speech on the Senate floor, Senator Ed Markey (D-MA) announced September 18 that he plans to introduce two energy bills. One bill would improve the natural gas infrastructure in Massachusetts. Another would set a 25 percent target for clean energy and energy efficiency by 2025. His speech also included his opposition to liquefied natural gas exports and his commitment to climate change legislation.

Yarmuth Joins E&C

The Democratic Caucus approved September 18 the proposal to have Representative John Yarmuth (D-KY) take now Senator Ed Markey's (D-MA) seat on the House Energy and Commerce Committee. The move had been approved by the House Democratic Steering and Policy Committee the previous day.

Senate Passes Helium Bill

The Senate approved [S. 1513](#), the High Technology Jobs Preservation Act, by a vote of 97-2 on September 19. Introduced by Senate Energy and Natural Resources Chairman Ron Wyden (D-OR) and Ranking Member Lisa Murkowski (R-AK), the bill would allow the Federal Helium Reserve to continue operations in three phases: the current system through the end of September 2014, an auctioning of the helium beginning in fiscal year 2015, and operation serving only federal customers.

House E&C Considers Keystone

The House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade held a hearing on September 19 on the five year anniversary of the first submission of the Keystone XL pipeline permit. Several of the members, mostly Republicans, advocated for the construction of the pipeline. Environmental witnesses expressed concerns about the safety of the project and associated carbon emissions.

Boxer Creates Climate Hero Award

Senate Environment and Public Works Chairman Barbara Boxer (D-CA) announced September 19 the [establishment](#) of the Climate Hero Award to recognize energy conservation work by individuals, localities, organizations, and other institutions. The first recipients will be the William J. Clinton Presidential Center and the George W. Bush Presidential Center. Chairman Boxer praised their energy efficiency, renewable energy use, and sustainability.

GAO Report on State Department Climate FSF Reporting

In its September [19 Climate Change: State Should Further Improve Its Reporting on Financial Support to Developing Countries to Meet Future Requirements and Guidelines](#), the Government Accountability Office recommended the State Department improve efforts to monitor climate change assistance in developing nations. \$7.5 billion was allocated in fast-start financing for climate change adaptation projects in developing countries from FY10 to FY12. Fast-start financing reporting will be required starting in 2014; it has been voluntary to date.

EPW Majority Staffer Departs

Senate Environment and Public Works Majority Deputy Staff Director Jeremy Symons announced September 19 that he will leave the committee to become Senior Director for Climate Policy at the

Environmental Defense Fund. He had served in this position since the beginning of the year, and he cited working hours that kept him from being home as the reason for his departure. Prior to joining the committee, he served as National Wildlife Foundation Senior Vice President.

Bills Introduced

- On September 17, Senators Ben Cardin (D-MD), Barbara Boxer (D-CA), and Harry Reid (D-NV) introduced [S. 1508](#), the Water Infrastructure Resiliency and Sustainability Act of 2013. The bill would allow for Environmental Protection Agency matching grants to local communities for 50 percent of projects designed to address the impacts of extreme weather events tied to climate change.
- The same day, Senators Ron Wyden (D-OR) and Lisa Murkowski (R-AK) introduced [S. 1513](#), the High Technology Jobs Preservation Act. The bill would amend the Helium Act to complete the privatization of the federal helium reserve in a competitive market fashion.
- The same day, Senator Mitch McConnell introduced [S. 1514](#), the Saving Coal Jobs Act. The bill would require the Environmental Protection Agency New Source Performance Standards be approved by Congress.
- On September 18, Senator David Vitter (R-LA) introduced [S. 1519](#), the Nuclear Regulatory Commission Reorganization Plan Codification and Complements Act. The bill would redistribute authority from the Nuclear Regulatory Commission Chairman to all five members. Representative Lee Terry (R-NE) introduced [H.R. 3132](#), the House companion version.
- The same day, Representative Bill Enyart (D-IL) introduced [H.R. 3125](#), the Biofuels Development Act of 2013. The bill would create an Air Force pilot program to research a bio-based aviation fuel.
- On September 19, Senators Susan Collins (R-ME) and Tom Carper (D-DE) introduced [S. 1528](#), the Comprehensive National Mercury Monitoring Act. The bill would establish a national mercury monitoring program.
- The same day, Representatives Keith Rothfus (R-PA), Charlie Dent (P-PA), Lou Barletta (R-PA), and Glenn Thompson (R-PA) introduced [H.R. 3138](#), the Satisfying Energy needs and Saving the Environment (ENSE) Act. The bill would provide that hydrogen chloride and sulfur dioxide limits set up by the Mercury and Air Toxics Standards (MATS) rule do not apply to existing circulating fluidized bed facilities.
- The same day, Representative Shelley Moore Capito (R-WV) and 9 cosponsors introduced [H.R. 3140](#), a bill to prohibit Environmental Protection Agency carbon dioxide emissions standards for fossil fuel units from taking effect until the Administrator makes certain certifications.
- On September 20, Representatives Sensenbrenner James (R-WI) and Eddie Bernice Johnson (D-TX) introduced [H.R. 3157](#), a bill to ensure public access to published materials concerning scientific research and development activities funded by federal science agencies.
- The same day, Representative Nick Rahall (D-WV) introduced [H.Con.Res. 57](#), a concurrent resolution expressing opposition to the Environmental Protection Agency's proposed rule on new source performance standards.

Upcoming Hearings

- On September 24, the Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety will host a hearing on the health impacts of black carbon as well as policies and technologies designed to reduce emissions.

ADMINISTRATION

Obama Signs Denali Park Bill

President Obama signed [S. 157](#), the Denali National Park Improvement Act, into law on September 18. The bill provides several authorities to the Department of the Interior related to the Alaskan park: to permit micro-hydropower projects, to exchange land with land owned by Doyon Tourism, and to permit a natural gas pipeline. It had been approved by unanimous consent by the Senate and by voice vote in the House.

DEPARTMENT OF COMMERCE

Record Setting August Temperatures

The National Oceanic and Atmospheric Administration reported September 17 that last month tied with August 2005 as the fourth hottest August on record. The average global land and ocean surface temperature was 61.22 degrees Fahrenheit, and the global land temperature was the eleventh warmest on record for the month of August. Southeastern America experienced cooler than average temperatures, but no area had a record cold.

DEPARTMENT OF ENERGY

Clean Tech Report Released

In its September 17 report [Revolution Now: The Future Arrives for Four Clean Energy Technologies](#), the Department of Energy investigated the markets for electric vehicles, LED lighting, onshore wind, and residential solar technologies. It found that cost reduction and product improvement have led to increase consumer demand. The study concluded that the four industries are on track to improve the economy and reduce the U.S.'s vulnerability to unstable international oil markets.

DOE, Georgetown MOU Signed

The Department of Energy and Georgetown University signed a memorandum of understanding September 17, and the two will collaborate on the Georgetown University Energy Prize, a [competition](#) designed to reduce energy usage. The winning community will be awarded \$5 million to improve energy efficiency. The Buildings Technology Office will provide technical guidance, and the Better Buildings Residential network will assist communities in becoming more knowledgeable about opportunities.

ECotality Files for Bankruptcy

ECotality, an electric vehicle charging station manufacturer and a recipient of 2009 stimulus package Department of Energy grants, filed for bankruptcy on September 17. The company received \$100.2 million in grants, but the Department froze the remaining \$2.5 million in grants on August 8.

Fisker Loan Obligation to be Auctioned

The Department of Energy [announced](#) September 17 that it will auction the remainder of the Fisker Automotive loan obligation. The company had been awarded an Advanced Technology Vehicles Manufacturing Program loan worth \$528 million, but the Department had only disbursed \$192 million before stopping payments in June 2011. \$28 million has been recouped. The deadline to submit initial bids is October 7, and the competitive auction will be held October 11.

EPSA Senior Staff Announced

The Department of Energy announced September 18 the senior staff for the Office of Energy Policy and Systems Analysis, a new office created during the restructuring of the department. Senior staff includes Director Melanie Kenderdine; Principal Deputy Director Jonathan Pershing; Deputy Director for Finance, Incentives, and Program Analysis Hugh Chen; Deputy Director for Energy Security Carmine Difiglio; Deputy Director for Climate, Environment, and Energy Efficiency Judi Greenwald; Deputy Director for Systems Integration and Senior Advisor to the Secretary William Hederman, Jr.; and Deputy Director for State and Local Cooperation Karen Wayland.

Cybersecurity Funding Announced

The Department of Energy, in a September 19 [announcement](#), awarded \$30 million to 11 projects designed to strengthen the electric grid and oil and natural gas infrastructure. The agency said the awards are tied to Executive Order 13636, Improving Critical Infrastructure Cybersecurity. The funding for the cybersecurity projects, which will have cost-sharing agreements, is still subject for negotiation.

ARPA-E Transportation Funding

ARPA-E Deputy Director Cheryl Martin [announced](#) September 19 the awarding of \$66 million to 33 projects devoted to improving the transportation sector. The projects fall under two overarching topics: lightweight vehicle energy efficiency and liquefied natural gas transportation fuel technologies.

DEPARTMENT OF JUSTICE

RIN Fraud Indictments Filed

In a September 18 [filing](#), the Department of Justice indicted six individuals and three companies in Indiana, alleging they sold fraudulent renewable identification numbers. The 88 counts allege the defendants sold 35 million gallons of biofuels at inflated prices between 2009 and 2012, costing consumers more than \$55 million and reporting \$35 million in false claims.

DEPARTMENT OF TREASURY

OCC Guidance on PWI and Wind Energy

In its September 4 [guidance](#), the Office of the Comptroller of the Currency discussed how federal savings associations and national banks can invest in select wind energy projects. Under their public welfare investment authority, they may make investments in renewable energy facilities if they promote public welfare, including low- and moderate-income communities.

IRS Releases Begin Construction Supplemental Guidance for PTC, ITC

The Internal Revenue Service issued on September 20 new guidance clarifying when construction has begun on a qualified energy facility for taxpayers planning to utilize the Sec. 45 renewable energy production tax credit or to elect an investment tax credit in-lieu of the PTC. The guidance addresses construction completion, ownership changes, and the master contract provision. A legislative alert and the guidance are attached.

ENVIRONMENTAL PROTECTION AGENCY

ND, NV, SD, TX Suit on Sulfur Dioxide Nonattainment Areas

A suit was filed in the U.S. District Court for the District of North Dakota by four states on September 12 against the Environmental Protection Agency for failing to meet a statutory deadline

to designate nonattainment areas for sulfur dioxide. North Dakota, Nevada, South Dakota, and Texas alleged that the failure has prevented the states from making Clean Air Act permit decisions. The agency had designated 29 areas on August 5 but said it is waiting for more data before making additional designations.

S.S. Badger Revised Proposed Consent Decree Filed

In a revised proposed consent decree [filed](#) September 13, the Environmental Protection Agency asked the U.S. District Court for the Western District of Michigan to compel Lake Michigan Carferry Service Inc. to stop releasing coal ash after 2014 and to reduce emissions from the S.S. Badger. The proposed consent decree was revised following a public comment period.

INTERNATIONAL

China Anti-Subsidy Duties to US Polysilicon

In a September 16 announcement, the Chinese Ministry of Commerce said it will apply anti-subsidy duties to solar-grade polysilicon made by two American companies. Imported products made by AE Polysilicon Corp. and Hemlock Semiconductor Corp. will face anti-subsidy duties of 6.5 percent. The Ministry said subsidized imports have created substantial damage to the country's domestic polysilicon industry.

EU Parliament Committee Rejects Climate Resolution

In a 32-27 vote, the European Parliament Environment Committee rejected a proposed resolution to strengthen the Emissions Trading System and to adopt a climate policy package for 2030. The proposal would have expressed the opinion of the Parliament on a carbon-market report released last year. Committee head Matthias Groote said the rejection was the worst case scenario.

Sustainable Development Commission Final Meeting

The United Nations Commission on Sustainable Development met for the last time September 20 in New York. Established by the 1992 Earth Summit, the Commission was designed to promote economic development and environmental protection. The UN High-Level Political Forum on Sustainable Development, set to succeed the Commission, will meet on September 24.

STATES

CA, China MOU on Climate Change

California Governor Jerry Brown (D) joined China's top climate official, National Development and Reform Commission (NDRC) Vice Chairman Xie Zhenhua, on September 13 to sign a first-of-its-kind agreement on climate change between the NDRC and a subnational entity. The [memorandum of understanding](#) seeks to enhance cooperation through a range of activities, including: mitigating carbon emissions; strengthening performance standards to control greenhouse gasses; designing and implementing carbon emissions trading systems; sharing information on policies and programs to strengthen low carbon development; exchanging personnel and jointly organizing workshops and training; and researching clean and efficient energy technologies.

CA Governor to Sign EV Bills

Addressing a September 16 California Plug-In Electric Vehicle Collaborative event, Governor Jerry Brown (D-CA) announced he will sign two electric vehicle bills. A.B. 8 would extend existing car emissions reduction programs from 2015 to 2024. S.B. 359, meanwhile, would allocate \$30 million for a clean vehicle rebate program and for a hybrid truck and bus voucher incentive program. A.B.

8 was approved by the Senate 29-6 and by the Assembly 54-19 on September 11; S.B. 359 was approved the next day by the Senate 27-10 and by the Assembly 53-20.

ECOS Support EPA Web Initiative

The Environmental Council of the States, in a unanimous vote on September 16, endorsed the Environmental Protection Agency's E-Enterprise, an electronic portal to share environmental data. The agency and the council signed an agreement to develop the system. Addressing the meeting, Administrator Gina McCarthy said the portal could save up to \$75 million annually. McCarthy continued that work will need to be done to address the Toxic Substances Control Act in the wake of the West, Texas explosion.

CA Court Upholds LCFS

The U.S. Court of Appeals for the Ninth Circuit [upheld](#) the California Low Carbon Fuel Standard 2-1 on September 18, saying the rule does not discriminate against out-of-state ethanol producers. The ruling said that the state should continue to support efforts to lower carbon emissions and that work to encourage alternative fuels development will ease climate risks.

MISCELLANEOUS

UT Study on Natural Gas Methane Emissions

[Measurements of Methane Emissions at Natural Gas Production Sites in the United States](#), a September 16 report by the University of Texas at Austin, found that natural gas methane production well leaks are lower than past estimates. Compared to a 2010 study that found domestic leakage at .6 to 3.2 percent, the University of Texas study found that .42 percent is emitted. The report continues that when burned for electricity, natural gas production emits half the carbon dioxide of coal.

AEP Announces Tanners Creek Plant to Shut Down

In a September 17 announcement, American Electric Power said it will now close the four generating units at the Tanners Creek coal plant. It had announced in June 2011 that it would only close three of the units at the Indiana plant in 2015. The company cited the age of the plant, environmental regulations, and the fact that additional generation is not needed as reasons why the plant will close entirely by mid-2015.

Natural Disaster Threats to Urban Areas Report

[Mind the Risk: A Global Ranking of Cities Under Threat from Natural Disasters](#), a September 18 report by reinsurance company Swiss Re, listed the areas at greatest risk to experience natural disasters. Measuring population size and possible impact on local economies, the report found that the Tokyo-Yokohama region is at the greatest risk. Coastal Asian cities were the most threatened. An associated news release by the company said the report can be used to promote urban resilience.