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## **ENERGY & ENVIRONMENT UPDATE**

### **January 6, 2014**

#### **ENERGY AND CLIMATE DEBATE**

Now that 2013 has come and gone, and with the second session of the 113<sup>th</sup> Congress scheduled to begin shortly and President Obama beginning the second year of his second term, ML Strategies looks forward to providing you soon with an overview of the legislative and regulatory efforts we anticipate for 2014. In the meantime, please see below our brief forecast of energy and environmental action on the federal level in the new year.

Climate change policies are prepared to reenter the national debate as significant features of President Obama's climate plan are executed. The Environmental Protection Agency is expected to announce an historic rule in June aimed at reducing CO<sub>2</sub> emissions from the nation's power plants, but not before Congress and industry groups debate the issue for several months. The agency is expected to finalize its greenhouse gas emissions rule for new power plants this year, though it has not yet published a draft rule in the Federal Register, and it is scheduled to release its draft regulation for existing power plants this summer.

Another regulation from the Environmental Protection Agency will garner additional attention as the Supreme Court will hear in February a limited challenge to the agency's authority to regulate greenhouse gas emissions. While the court heard arguments in a challenge to the Cross-State Air Pollution Rule in December, rulings on both cases will come by June. Another case involving a revoked mountaintop mining permit may also get some debate time. Additionally, regulations on coal ash and cooling water towers are facing January deadlines.

The State Department is poised to release its final environmental impact statement on the proposed Keystone XL pipeline early in the new year, and as the country attempts to lead other countries toward stronger climate standards in 2015, our own Arctic oil exploration expansions will garner significant debate this year, as will exports of liquefied natural gas.

In addition to holding its first climate hearing of 2014 on January 16, the Senate Environment and Public Works Committee plans to address reform of the Toxic Substances Control Act and oversight of the Nuclear Regulatory Commission and the renewable fuel mandate early this year.

While preparing for a committee leadership shuffle, the Senate Energy and Natural Resources Committee has listed its top priorities for the first part of the year as a markup of a bipartisan nuclear waste bill and readdressing an amended energy efficiency bill from Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH).

Debates over tax reform, whether it is comprehensive or not, will score additional time in Congress, as will several energy-specific tax pieces, such as the now-expired Production Tax Credit and various other tax extenders pieces.

On the nominations front, President Obama will have to start anew on filling open posts across the agencies, including at the Environmental Protection Agency, the U.S. Chemical Safety and Hazard Investigation Board, and the Interior Department. The Senate Environment and Public Works Committee said last week that more than ten nominations already cleared by the committee can not be carried over to the second session of the 113<sup>th</sup> Congress because the Senate did not approve them before recessing for the holidays, and was unable agree to hold them at the desk on December 20.

## CONGRESS

### **House Coal Caucus Letter**

Representatives Andy Barr (R-KY), Nick Rahall (D-WV), Ed Whitfield (R-KY), Shelley Moore Capito (R-WV), Robert Latta (R-OH), Larry Bucshon (R-IN), Bill Johnson (R-OH), Mike Kelly (R-PA), David McKinley (R-WV), Jim Renacci (R-OH), Keith Rothfus (R-PA), Rodney Davis (R-IL) and Steve Stivers (R-OH) sent a letter December 20 to Representatives Hal Rogers (R-KY), Nita Lowey (D-NY), Ander Crenshaw (R-FL), Jose Serrano (D-NY) and Kay Granger (R-TX) charging that Export-Import Bank and Treasury Department policies to limit domestic financing of coal-fired power plants overseas are directly opposed to the fundamental missions of these organizations, and, ultimately, that they will fail to achieve their intended environmental goals. The group urged House appropriators to consider their concerns as they draft funding legislation for fiscal years 2014 and 2015.

### **Murkowski to Discuss Energy Trade Issues**

On January 7, Senate Energy and Natural Resources Committee Ranking Member Lisa Murkowski (R-AK) will discuss with the Brookings Institution's Energy Security Initiative the future of U.S. energy trade and its implications on the domestic economy and national security. The senator will release a white paper on energy exports the same day.

### **EPW Climate Hearing Scheduled**

The Senate Environment and Public Works Committee will hold the first climate change hearing of 2014 on January 16 and will focus on regulatory actions in the absence of congressional action. Environmental Protection Agency Administrator Gina McCarthy will testify, as will other, yet-to-be-named federal agency representatives who are working on the president's climate action plan.

## DEPARTMENT OF COMMERCE

### **Fukushima Forum Announced**

The Department of Commerce's International Trade Administration announced December 26 that U.S. and Japanese officials will hold a forum February 18-19 on the decommission and remediation of the Fukushima nuclear power plant.

### **Renewed Solar AD/CVD Case**

SolarWorld [petitioned](#) the Department of Commerce and the U.S. International Trade Commission December 31 to close a loophole in the tariffs the federal government applied to crystalline silicon solar imports from China last year. The company alleges that China has been skirting them by assembling and exporting to the U.S. solar panels out of solar cells manufactured in other countries.

## **DEPARTMENT OF ENERGY**

### **Set-Top Box Standards Amended**

The Department of Energy, the pay-TV industry, and energy efficiency groups agreed December 23 on an updated set of voluntary energy efficiency [standards](#) for set-top boxes that could save consumers \$1 billion annually. The standards went into effect the first of the year.

### **Efficiency Standards Revised in Accordance with Social Cost of Carbon**

The Department of Energy revised December 30 the economic benefits of energy efficiency standards for residential appliances and industrial equipment based on the administration's new social cost of carbon estimate. At the same time, the agency said that the minor revisions would not impact agency decision making on the standards. The following day, the agency [denied](#) a petition from the Landmark Legal Foundation to reconsider energy efficiency standards for microwaves, finding that it provided sufficient notice and public comment opportunities about its use of the social cost of carbon in its rulemaking.

### **\$261 Million for LA CCS**

The Department of Energy [provided](#) \$261.4 million in cost-shared funding to Leucadia Energy LLC December 30 for a proposed carbon capture and sequestration project in Louisiana. The \$436 million project would use gasification technology to manufacture methanol and other products from petroleum coke, capture roughly 90 percent of the CO2 emissions, and transport the gas through a connector pipeline to an existing CO2 pipeline already used in enhanced oil recovery in Texas.

### **Energy Efficiency Compliance Certification**

In an effort to reduce manufacturers' testing burden, the Department of Energy [revised](#) December 31 voluntary standards that allow manufacturers of some commercial and industrial equipment to use alternative methods for certifying energy efficiency compliance.

### **Nuke Fee Rehearing Sought**

The Department of Energy filed a petition in the United States Court of Appeals for the District of Columbia Circuit January 3, challenging the court's decision to instruct the agency to get rid of the nuclear waste fee. The agency requested an en banc rehearing because the ruling violates the Nuclear Waste Policy Act of 1982 and because it is in direct opposition to the court's requirement last summer that the Nuclear Regulatory Commission renew its work on Yucca Mountain.

## **DEPARTMENT OF STATE**

### **Climate Action Report Released**

As Secretary of State John Kerry works to shift the agency's focus on climate change, the Department of State submitted its [2014 U.S. Climate Action Report](#) to the United Nations January 1. The report includes recent legal precedent on climate regulations as well as estimated carbon mitigation broken down by federal program.

## ENVIRONMENTAL PROTECTION AGENCY

### **6 Governors Oppose Ethanol Requirement Reduction**

The governors of Iowa, Kansas, Minnesota, Nebraska, North Dakota, and South Dakota sent a [letter](#) December 20 to President Obama asking him to reject the Environmental Protection Agency's proposed changes to the renewable fuel standard that reduces the ethanol requirement for 2014. The governors charged that the rule could force corn prices below production prices for some farmers and could cost 44,500 renewable fuels-related jobs.

### **HCFC De Minimis Exemption**

The Environmental Protection Agency [proposed](#) December 24 a de minimis exemption for some hydrochlorofluorocarbons used as solvents for as long as needed under a proposed rule. Section 605(a) of the Clean Air Act prohibits the use of HCFCs beginning next year, with limited exceptions, to conform with the Montreal Protocol, but the agency has proposed exempting stocks of HCFC-225ca and HCFC-225cb because they are used minimally by the aerospace and electronics industries as solvents.

### **Backup Generator Rule Opposed**

Delaware and environmental and industry petitioners [filed briefs](#) December 26 in the U.S. Court of Appeals for the District of Columbia Circuit asking the court to vacate an Environmental Protection Agency rule allowing backup generators to run for up to 100 hours a year for emergency demand response without emissions controls. The Electric Power Supply Association filed as similar [brief](#) January 2. The agency's brief is due March 11.

### **Light Bulb Requirements**

The Environmental Protection Agency's phase out of traditional 60- and 40-watt incandescent light bulbs began went into effect January 1. Under the new requirements, the bulbs may not be manufactured or imported into the country, and bulbs of those wattages must be 27 percent more efficient. The standards were included in the Energy Security and Independence Act of 2007, which also phased out the use of incandescent 100-watt bulbs in 2012 and incandescent 75-watt bulbs in 2013. The standards will result in electricity bill savings of almost \$13 billion a year, power savings equivalent to the output of 30 large power plants, and CO2 emissions reductions of roughly 100 MMT a year.

### **Tentative Coal Ash Deadline Settlement**

The Environmental Protection Agency, environmentalists, and recyclers reached a tentative agreement January 2 requiring the agency to complete its long-awaited Resource Conservation and Recovery Act, or coal ash standards, by the end of 2014.

### **Hazardous Waste Management Final Rule Published**

The Environmental Protection Agency published the [final rule](#) for the Hazardous Waste Management System: Conditional Exclusion for Carbon Dioxide Streams in Geologic Sequestration Activities January 3. The rule revises regulations for hazardous waste management under the Resource Conservation and Recovery Act to conditionally exclude carbon dioxide streams that are hazardous from the definition of hazardous waste, provided that the streams are captured from emission sources and injected into Underground Injection Control Class VI wells for geologic sequestration, and that they meet certain other conditions. The rule is intended to clarify that sequestration is not a waste management activity.

### **Wood Stoves and Heaters Standards Proposed**

The Environmental Protection Agency proposed [emissions standards](#) for new wood stoves and heaters January 3. The [standards](#) would require that wood stoves, fireplace inserts, indoor and outdoor wood boilers, forced air furnaces, and masonry heaters manufactured in 2015 be 80 percent cleaner than they are now. The proposed rule is aimed at reducing soot pollution, carbon monoxide, volatile organic compounds, black carbon, and air toxics such as benzene.

## **INTERNATIONAL**

### **Australian Climate Plans**

Australia released a [green paper](#) December 20 outlining how an Emissions Reduction Fund could operate. The national government is expected to release a detailed design of the Direct Action policy in March, and is likely to wait to finalize greenhouse gas emissions baselines for large emitters until 2015. The country has already committed to a mid-2014 start date for a fund that will purchase carbon units from projects that reduce emissions at low cost.

### **UN Climate Envoys Announced**

United Nations Secretary General Ban Ki-moon said December 23 that John Kufuor, former president of Ghana, and Jens Stoltenberg, former prime minister of Norway, will serve as envoys to help mobilize international support for addressing climate change.

### **Brazilian Wind Sales Up**

Brazilian wind developers sold a record 4,667 MW at three government-held auctions in 2013, principally because of the lack of other available types of energy. Developers offering future power to utilities at the lowest prices below the government-set ceiling sign 20 to 30-year contracts with the first distributors that agree to buy.

### **Japan's Climate Plans**

Japan submitted a biennial report to the United Nations December 27 outlining its plans to address climate change. The country plans to have smart meters in every home and factory by the early 2020s and 5.3 million fuel cells in homes by 2030. The nation will also promote renewable energy as much as possible over the next three years, and nuclear reactors will be restarted after their safety is confirmed and thermal power generation efficiency will be enhanced.

### **Northern China Carbon Trading Cheaper than Southern China**

Tianjin, China started carbon trading prices December 27 at less than half of what companies in Guangdong are paying. Five trades for 45,000 MT/carbon were completed for as much as \$4.61/MT on the Tianjin Climate Exchange; permits on the China Emissions Exchange in Guangdong, the world's largest exchange after the European Union, sold for \$10.08.

### **Chinese Environmental Standards Increased**

China's Ministry of Environmental Protection announced December 27 that the nation would raise environmental standards for the production of cement, batteries, leather, and heavy metals as part of its efforts to reduce air, soil, and water pollution. The country announced earlier in the week that it was struggling to meet a number of key environmental targets for the 2011-2015 period as a result of faster than anticipated economic expansion.

### **Climate Tracking Satellite to Launch in February**

The National Aeronautics and Space Administration and the Japan Aerospace Exploration Agency announced December 27 that they would launch a climate-tracking satellite February 27 from the Tanegashima Space Center that will be able to monitor global climate changes. The Global



Precipitation Measurement satellite will provide advanced information on rainfall and snowfall several times a day to enhance global understanding of water and energy cycles that impact the world's climate.

### **U.S.-Russia Energy Collaboration Report**

Energy Secretary Ernest Moniz and Russian Minister of Energy Alexander Novak released the 2013 [U.S.-Russia Bilateral Presidential Commission Joint Report](#) December 30. The two countries will continue to pursue pilot programs and knowledge sharing opportunities in an attempt to drive innovations in energy efficiency, black carbon reductions and cleanup initiatives, improved electrical grid reliabilities, and clean energy technology investment.

## **STATES**

### **NY Mercury Thermostat Law**

New York Governor Andrew Cuomo (D) signed [legislation](#) December 18 requiring that thermostat manufacturers create a program for the state's collection, transportation, recycling, disposal, and proper management of out-of-service mercury thermostats. The Mercury Thermostat Collection Act (A. 8084) requires manufacturers to establish the program by July 1, with the goal of collecting at least 15,500 out of service mercury thermostats next year.

### **Entergy and VT Reach Tentative Nuclear Plant Agreement**

Entergy Nuclear Vermont Yankee LLC and the state of Vermont reached a [tentative agreement](#) December 23 to decommission the power plant after it ceases operation at the end of its current fuel cycle, by the end of the year. The agreement would resolve ongoing federal and state litigation among the parties and includes \$45 million in community economic development and site restoration payments.

### **NYC Energy Efficiency Program to Expand**

Then-New York City Mayor Michael Bloomberg (I) announced December 30 that the PlaNYC's [Carbon Challenge](#) building energy efficiency program will be expanded as the city's greenhouse gas emissions continue to decrease from 2005 levels. Citywide emissions have decreased 19 percent since 2005 and are on track to reach a 30 percent reduction level by 2020.

### **\$1 Billion for NY Storm Projects**

New York state and city officials announced a proposed rate-setting [agreement](#) December 31 that would require Consolidated Edison Company of New York to spend \$1 billion over four years for storm hardening and resiliency projects to prepare for severe weather. The agreement requires approval by the state Public Service Commission and contains provisions to reduce greenhouse gas emissions.

## **MISCELLANEOUS**

### **Coal Plant Efficiency Improvements**

Congressional Research Service released a report December 20 finding that energy efficiency improvements at existing coal-fired power plants could be encouraged by using a federal efficiency standard that becomes more stringent over time, contributing significantly to CO2 reductions. CRS recommends that the federal efficiency standard be combined with other legislative approaches, such as federal tax incentives, to promote plant efficiency upgrades. The report considered ways to improve coal-fired power plant efficiency if the Environmental Protection Agency proposes efficiency as an option for state consideration in its upcoming existing plant regulations.

### **Fracking Saves Water**

The Bureau of Economic Geology at the University of Texas [found](#) December 26 that fracking conserves water, when compared to other energy-generation methods such as coal-fired power plants.

### **State Efficiency Scorecard Released**

The American Council for an Energy Efficient Economy released its 2013 [scorecard](#) last week, ranking the most energy efficient states based on policy and program efforts to improve home, business, industry, and transportation efficiency. Massachusetts retained the top ranking for the third year in a row, while North Dakota came in last.

### **Previous Climate Models too Optimistic**

A *Nature* journal study found January 2 that CO2 levels are expected to increase more quickly over the next century than expected. The team of researchers concluded that the findings show that some climate models have been too optimistic and previous estimates of a minimum temperature rise of only 1.5 degrees Celsius could be discounted, while temperatures rises of at least 3C are more realistic.