

Energy and Environment Law Update - October 14, 2013

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ENERGY AND CLIMATE DEBATE

As the federal government shutdown continued last week, Congressional debates continued over a continuing resolution and the debt ceiling. The impact of the shutdown continues to progress at the agency level with the Energy Information Administration and the Nuclear Regulatory Commission announcing that they would furlough employees as leftover funding was spent last week. Only the Department of Energy continues to run at a near-normal level, but questions remain as to how long the agency and its national labs will be able to maintain their operations. General energy and environment discussions have halted as the country approaches the debt ceiling. The week ended with some optimism that a deal to increase the debt limit before the “x-date” of government default could be reached.

When he delivered his first [speech](#) on the Senate floor on September 18, Senator Ed Markey (D-MA) commented that he was drafting two energy bills. Once the government reopens, Senator Markey is prepared to introduce his renewable energy standard and energy efficiency standard bill. Senator Markey is already a co-sponsor of the Senator Udalls’ renewable energy standard bill, but he wanted to introduce his own language, similar to language he put forth in the House, as well. He is also working on what will probably be two bills aimed at addressing the natural gas distribution line leaks issue. The first bill is likely to require state regulators to consider “quick cost recovery” and the harmonization of reporting standards. The second bill would create a revolving fund, modeled after the Safe Drinking Water Revolving Fund, that would assist local governments in upgrading leaky distribution systems.

As we reported last Monday, Deputy Assistant to the President for Energy and Climate Change Heather Zichal announced that she would soon step down from her position. Possible replacements include Zichal’s deputy Dan Utech, Natural Resources Defense Council President Frances Beinecke, White House Council on Environmental Quality Deputy Director Gary Guzy, former Deputy Secretary of the Interior David Hayes, and Department of Energy Chief of Staff Kevin Knobloch.

CONGRESS

Vitter Urges Administration Official at Upcoming Hearing

An October 7 [letter](#) from Senate Environment and Public Works Ranking Member David Vitter (R-LA)

to President Obama urged the administration to send an official to testify at an upcoming committee hearing on climate change. Chairman Barbara Boxer (D-CA) previously announced that she intends to hold a hearing this month on climate change, specifically the President's Climate Action Plan, the recent Environmental Protection Agency new source performance standards, and the U.N. Intergovernmental Panel on Climate Change's Fifth Assessment Report, but has not yet invited anyone from the administration to testify.

RFS Letter to Congress

44 groups sent a [letter](#) to the House Energy and Commerce Committee October 7, urging members to address the corn ethanol mandate while they review the renewable fuel standard. The groups, which include the Clean Air Task Force and Oxfam America, said the corn-based ethanol requirement has proved detrimental to the livestock and poultry industries, food retailers, and consumers. While other issues like the blend wall and renewable identification numbers also need to be addressed, the problems imposed on the food industry take precedence.

ENR Approves Connor, Robinson

The Senate Energy and Natural Resources Committee approved the nominations of Michael Connor to serve as Deputy Interior Secretary and Elizabeth Robinson to be Under Secretary of Energy on October 8 by a voice vote. The full Senate will now consider the nominations.

McConnell Letter Urges KY Listening Session

An October 10 [letter](#) from Senate Minority Leader Mitch McConnell (R-KY) urged Environmental Protection Agency Administrator Gina McCarthy to hold a listening session for the upcoming emissions rule for existing power plants in Kentucky. He said that the agency should hold more meetings to collect public comment in coal-producing areas because those locations will be significantly impacted by the regulation.

House Committee Forum on LNG Exports

Republican members of the House Energy and Commerce Committee held an informal forum on liquefied natural gas exports on October 10. Chairman Fred Upton (R-MI) commented that the domestic shale gas boom can improve relationships with key allies. The forum was broken up into three focuses on exports to Asia, Europe, and the Caribbean, and representative countries included the Czech Republic, Haiti, Hungary, India, Japan, Lithuania, Singapore, South Korea, and Thailand as well as Puerto Rico.

House Farm Bill Conferees Named

The House named 17 Republicans and 12 Democrats to a conference committee with the Senate on the farm bill October 12. The group will join the 7 Democrat and 5 Republican Senators to reconcile [H.R. 2642](#).

Bills Introduced

- On October 9, Representative Shelley Moore Capito (R-WV) introduced [H.Con.Res. 59](#), a concurrent resolution stating that the Environmental Protection Agency should hold public listening sessions for existing power plant carbon emissions regulations.

ADMINISTRATION

OMB Finishes Reviewing Carbon Storage Final Rule

The Office of Management and Budget finished reviewing an Environmental Protection Agency final rule on carbon dioxide underground storage on September 30. The rule, submitted by the agency in April, is expected to exempt geographic sequestration from being considered a hazardous waste under the Resource Conservation and Recovery Act. Due to the shutdown, it is unclear as to when the agency will sign the rule.

Court Grants Motion to Dismiss in Ralls Case

The U.S. District Court for the District of Columbia granted the Obama Administration's motion to dismiss a case filed by Ralls Corp., a company owned by Chinese nationals that attempted to acquire wind farms in the U.S., on October 9. The company claimed that the president should have disclosed the information he used when issuing presidential orders in September 2012 preventing the acquisition of four wind farms. The court found that Ralls had not alleged it was deprived of a protected interest and that, even if there was a protected interest, the company received sufficient process prior to deprivation.

DEPARTMENT OF ENERGY

DOE Guidance on Renewable Fuel Handling

The Department of Energy's [*Handbook for Handling, Storing, and Dispensing E85 and Other Ethanol-Gasoline Blends*](#) was released in September and provides new guidance for handling gasoline blends containing more than 10 percent ethanol. The handbook addresses aboveground tanks, availability of fuels, compatible vehicles, and infrastructure.

EIA Projects US as World Hydrocarbon Production Leader

An October 4 [*analysis*](#) by the Energy Information Administration projected that the United States would be the world leader in combined crude oil and natural gas production this year. The rate is expected to reach 24.4 million barrels per day of oil equivalent, surpassing the 21.3 million in Russia and the 12.8 million in Saudi Arabia. In 2008, the U.S. produced 18.8 million barrels per day. The agency said the 30 percent boost in domestic energy production could be linked to oil production in the Bakken oil fields and natural gas production in the Marcellus shale.

EIA STEO Released

[*The Short-Term Energy and Winter Fuels Outlook*](#) was released by the Energy Information Administration on October 8, projecting that carbon emissions from energy production would rise 1.7 percent this year and 0.9 percent in 2014. The agency said the increase is connected to a rise in electricity demand and higher natural gas prices that will ramp up coal-fired generation. The report said coal generation will increase 6.1 percent and natural gas generation will fall 9.8 percent in 2013. It also anticipates an increase of 14 percent in non-hydropower renewable generation.

DOE Loan Guarantee Project Operational

Abengoa announced October 9 that its Solana project, which received a \$1.446 billion Department of

Energy loan guarantee, is operational. The 280 megawatt project, the first U.S. large scale solar project using thermal storage technology, is able to store heat in molten salt in order to generate electricity at night.

Moniz on Clean Tech Companies

Addressing the October 10 Global Cleantech 100 Summit in a video message, Secretary of Energy Ernest Moniz said clean technology companies and the Obama Administration must work together to advance a low-carbon future. He said that private sector involvement is essential in deploying energy technologies, while the government focuses on researching and developing technologies not yet ready for private investment through programs such as the Advanced Research Projects Agency-Energy.

EIA Ends Normal Operations

The Energy Information Administration announced October 11 that it had ceased operations and begun furloughing staff due to the government shutdown. Data and analyses will not be published until the shutdown ends.

DEPARTMENT OF STATE

Schedule of Keystone SEIS Uncertain

In an October 10 statement, the State Department said the federal government shutdown is making it difficult for the agency to coordinate with others on finalizing the Keystone XL pipeline draft supplement environmental impact statement, but did not say whether its release will be delayed.

ENVIRONMENTAL PROTECTION AGENCY

API Files RFS Suit

In an October 8 filing, the American Petroleum Institute asked the U.S. Court of Appeals for the District of Columbia Circuit to review the Environmental Protection Agency's renewable fuel standard 2013 volume requirements. The agency released the requirements in August, nine months after its deadline.

Court Denies Navistar Case Delay

The U.S. Court of Appeals for the District of Columbia Circuit denied October 8 the Environmental Protection Agency's request to postpone oral arguments for a case involving diesel engines. The case, which has oral arguments scheduled for October 22, involves a 2012 agency decision to allow Navistar Inc. to pay nonconformance penalties for diesel engines for nitrogen oxides standards.

Wood Heater Suits Filed

Two suits were filed with the U.S. District Court for the District of Columbia October 9, charging that the Environmental Protection Agency has failed to update new residential wood heater particulate matter air pollution standards for 17 years. The suits said that the Clean Air Act requires the agency to update pollution limits every eight years and that the agency failed to do so in 1996, 2004, and 2012. One suit was filed by environmental and health groups including the American Lung

Association and the Earthjustice, and the second was filed by the Puget Sound Clean Air Agency and the states of CT, MA, MD, NY, OR, RI, and VT.

Democratic Letter on NSPS

410 current and former Democratic elected officials sent a [letter](#) to President Obama October 9, urging him to instruct the Environmental Protection Agency to revise the recently released new source performance standards. Organized by CoalBlue, the letter said the new rules will be costly. It urged the administration to invest in carbon capture and storage technology.

AFPM Files RFS Suit

The American Fuel and Petrochemical Manufacturers, in an October 10 suit in the U.S. Court of Appeals for the District of Columbia Circuit, alleged that the Environmental Protection Agency used data not available for public comment when setting the cellulosic renewable volume obligations for 2013. It urged the agency to waive the 2013 cellulosic requirements in advance of the pending release of the 2014 requirements.

First Two Existing Plant Regulations Listening Sessions Postponed

Citing the shutdown, the Environmental Protection Agency [announced](#) October 10 that it has cancelled the first two listening sessions for yet-to-be-proposed greenhouse gas regulations for existing power plants. Scheduled for October 15 in Boston and October 18 in Philadelphia, the agency will reschedule the meetings.

2014 Draft RVOs Leaked

An Environmental Protection Agency draft rule setting renewable volume obligations for 2014 was leaked October 11, and showed that the agency is considering general reductions in requirements and an increase in cellulosic biofuels. The draft requirements for 2014 are 15.21 billion gallons of renewable fuel, 23 million gallons of cellulosic biofuel, 1.28 billion gallons of biomass-based diesel, and 2.21 billion gallons of advanced biofuel. It is unclear if any changes have been made since the draft was sent to the Office of Management and Budget on August 30. Later that day, Administrator Gina McCarthy commented that no final decision has been made. The leaked draft rule is attached.

NUCLEAR REGULATORY COMMISSION

NRC Ends Normal Operations

The Nuclear Regulatory Commission, which had been using leftover appropriations since the shutdown began October 1, ended normal operations October 9. Certain programs, such as emergency preparedness exercises and non-emergency reactor licensing, ceased the following day. Approximately 300 of the 3,900 staffers will not be furloughed.

Waste Confidence Meetings Postponed

In an October 9 [announcement](#), the Nuclear Regulatory Commission postponed two public meetings on new waste confidence rules. The meetings were originally scheduled for October 15 in Ohio and October 17 in Minnesota. The agency will review other meetings on the rule, proposed in September, on a week-by-week basis.

INTERNATIONAL

Energy, Industrial Groups Meet in Warsaw

From October 2 to 4, the Polish Ministry of the Environment organized a set of talks with energy producers and private sector companies in preparation of the November 11 through 22 Conference of the Parties. The groups, which come from 40 countries, will serve as advisors for the November climate talks.

Canada Light Bulb Energy Efficiency Amendments Announced

Canadian Natural Resources Minister Joe Oliver announced proposed [amendments](#) to replacement light bulbs' energy efficiency standards on October 4. The amendment, which is designed to better align Canadian and American standards, would allow the use of incandescent halogen bulbs. Oliver said the changes would reduce the administrative burden and would improve competitiveness of Canadian companies by not requiring two different light bulb standards. Comments on the changes will be accepted through December 19.

Lagarde, Kim on Climate Action

International Monetary Fund Managing Director Christine Lagarde and World Bank Group President Jim Yong Kim discussed challenges posed by climate change at the October 7 joint event, the Economic Case for Climate Change Action. The pair said climate action should be a high priority for nations, and Lagarde called for a concerted global effort. She also said the IMF is working on a new study on a potential U.S. carbon tax; the report is due next year.

EU Set to Meet Emissions Reduction Goals Early

The European Environment Agency, in its October 9 report [Trends and Projections in Europe 2013: Tracking Progress Towards Europe's Climate and Energy Targets Until 2020](#), said the European Union is close to achieving its greenhouse gas emissions reduction target eight years ahead of schedule. The EU reduced emissions 18 percent from 1990 levels by 2012, and the report projects the emissions could be cut 21 percent by 2020 with existing policies. Should additional policies be implemented, the reduction could be 24 percent by 2020.

OECD Secretary General on Carbon Pricing

Organization for Economic Cooperation and Development Secretary-General Angel Gurría, giving a lecture in London on October 9, advocated for setting carbon pricing measures such as a carbon tax or an emissions trading scheme. He said fossil fuel consumption must be eliminated by the second part of this century in order to avoid serious climate change impacts. Gurría launched the organization's policy paper [Climate and Carbon: Aligning Prices and Policies](#) at the lecture.

British Columbia Plant Carbon Capture Requirements

The British Columbia Environmental Assessment Office and Ministry of Natural Gas Development, in an October 9 joint press release, said the province is requiring the Quicksilver Resources to use carbon capture technology at its proposed Fortune Creek Gas Plant. The offices said the environmental assessment certificate will include a requirement for the technology. Other permit conditions include using gas turbine generators with heat recovery, reducing salvageable timber

burning, and developing a Wildlife Protection and Monitoring Plan with aboriginal groups.

French Court Upholds Fracking Ban

An October 11 decision by France's highest constitutional court upheld a ban on hydraulic fracturing that was challenged by Dallas, TX-based Schuepbach Energy. In July 2011, France banned fracking through the Law Aimed at Banning the Exploration and Exploitation of Hydrocarbon Mines by Hydraulic Fracturing, citing environmental concerns. Schuepbach Energy filed a suit after the law halted three fracking permits held by the company.

Minamata Convention Signed

The Minamata Convention, a United Nations Environment Programme [treaty](#) to curb industrial mercury use, was signed by 110 nations in Japan on October 10. Should at least 50 of the signatories ratify the convention, it will enter into force. Brazil, China, Germany, Japan, Mexico, South Africa, and the European Union are some of the signers.

STATES

CA Governor Supports Fracking

Addressing an American Chemical Society regional meeting on October 4, California Department of Conservation Director Mark Nechodom commented that Governor Jerry Brown (D) supports fracking.

CA Utility Information Bill Signed

California Governor Jerry Brown (D) signed into law [A.B. 1274](#), a bill limiting access to utility bill data, October 7. The legislation prevents businesses from buying or selling information about utility bills. Smart grid technology advancements meant consumers' personal data was at risk, and the legislation was crafted to prevent third-party companies from sharing this information.

KS Court Reverses Coal Plant Permit Decision

The Kansas Supreme Court reversed a Kansas Department of Health and Environment permitting decision October 4 for the Sunflower Electric Corp.'s Holcomb Station power plant. In 2010, the department issued a prevention of significant deterioration permit for the coal-fired power plant. The Sierra Club filed a lawsuit, and the Supreme Court ruled that the agency failed to consider the federal Clean Air Act and the Kansas Air Quality Act when issuing the permit.

NJ Committee Looks Into Rejoining RGGI

The New Jersey State Assembly Telecommunication and Utilities Committee held a hearing October 10 to explore opportunities to rejoin the Regional Greenhouse Gas Initiative. In 2011, Governor Chris Christie (R) pulled the state out of the carbon-trading system; he has vetoed two bills on the state rejoining the program. Committee Chairman Upendra Chivukula (D) commented that the state is in a better position to rejoin because Hurricane Sandy showed the need to address climate change.

SUSTAINABILITY

Target Sustainable Product Standard Unveiled

Target Corporation unveiled October 7 the Target Sustainable Product Standard, designed to create common definitions and qualifications for sustainable baby care, household cleaner, and personal care products. The 100 point scale was created over the past two years with help from nongovernmental organizations and vendors. The company will create a similar standard for cosmetics next year.

Multinational Companies Push Lead-By-Example Approach

Participants at the October 7 to 8 Ethical Corporation's 8th Annual Sustainable Supply Chain Summit said multinational companies should lead by example when persuading suppliers to use environmental and sustainable goals. Unilever NV Vice President for Procurement Ingredients and Sustainability Dirk Jan de With said the company opened its own palm oil plant to ensure the source is traceable. Mitsubishi Electric Group European Logistics Head Mark Foscoe said the company is working to reduce carbon emissions and waste.

WWF Climate Savers Program Sustainability Pledge

An October 10 workshop in Mexico City yielded a pledge by Catalyst Paper Corp., Coca-Cola Co., Hewlett-Packard, Johnson & Johnson, and the National Geographic Society to reduce greenhouse gas emissions and energy use through the World Wildlife Fund's Climate Savers Program. Hewlett-Packard pledged to cut transportation emissions by 20 percent from 2010 to 2020 while Johnson & Johnson agreed to reduce all emissions by 20 percent from 2010 levels by 2020.

MISCELLANEOUS

C2ES's Claussen to Step Down

Center for Climate and Energy Solutions President Eileen Claussen, who has served in the role for 15 years, announced October 7 that she would step down once a replacement is named. The think tank hopes to fill the position in the first quarter of 2014.

Potsdam Report on Water Scarcity, Global Warming

An October 8 [press release](#) by the Potsdam Institute for Climate Impact Research said an additional 8 percent of the world population could face water scarcity issues should global temperatures rise 3.6 degrees Fahrenheit. If there is a 9 degree Fahrenheit rise in temperatures, the number affected could reach 13 percent. The report said over one billion people already live in water-scarce regions, identifying parts of Asia, the Mediterranean, the Middle East, and North Africa as particularly vulnerable regions.

Report on Climate Change Temperature Impacts

[*The Projected Timing of Climate Departure from Recent Variability*](#), an October 9 article by University of Hawaii at Manoa scientists published in *Nature*, reported that global temperatures would rise at an unprecedented rate by 2047 if greenhouse gas emissions remain steady. Should an emissions stabilization scenario take place, the date would be delayed to 2069. The report said that tropical and low-income areas will be the first impacted.

Business Groups' Keystone Letter

An October 9 [letter](#) from 168 business groups to President Obama explained that the environmental concerns associated with the Keystone XL pipeline are manageable. The letter, led by the U.S. Chamber of Commerce, the Business Roundtable, and the National Association of Manufacturers, found that the pipeline could be managed by government regulation and business stewardship.

Fracking Voluntary Practices Guidance

The Marcellus Shale Coalition unveiled [guidance](#) on fracking safeguards on October 9. The group recommended voluntary practices such as alternative water supply considerations, high-pressure surface equipment testing, spill containment measures, and traffic minimization. The guidance also suggested companies capture flowback during drilling and gas during completion.

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