

## Energy & Environmental Law Update - June 2, 2014

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### Energy and Climate Debate

The Environmental Protection Agency proposed today CO<sub>2</sub> standards for existing power plants under Section 111(d) of the Clean Air Act. The proposed rule would require the nation's fleet of existing power plants to reduce CO<sub>2</sub> emissions 30 percent by 2030 from a 2005 baseline. The flexible Clean Power Plan would grant states up to three years to submit plans to meet the goal.

The Clean Power Plan, one of the central tenets of President Obama's Climate Action Plan, will be implemented through a federal-state collaboration under which states identify a path forward using either current or new electricity production and pollution control programs to meet the goals of the proposed program.

The agency intends for the rule to take into account state's diverse policy considerations, from various emission reduction opportunities using energy efficiency, renewable energy, and advanced energy technologies; to already existing state programs and measures, including state renewable portfolio standards and multi-state trading programs such as the Regional Greenhouse Gas Initiative. The agency also recognizes that the nation's electricity systems, including utility regulatory structures, generation mixes, and electricity demands, differ widely across the country, and offers flexibility to states to organize plans that best suit their unique situations.

By 2020, each state will have a rate goal establishing the future carbon intensity of that state. States are then required to meet a "Best System of Emission Reduction" based on four standards of current activity to reduce CO<sub>2</sub> emissions. The building blocks of the plans are:

- Making fossil fuel power plants more efficient
- Using low-emitting power sources more frequently
- Expanding zero- and low-carbon power sources

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- Using electricity more efficiently

States may also switch from rate-based to mass-based goals within their state plans. Mass-based plans establish an overall tonnage CO<sub>2</sub> cap that can be used for a trading program.

The agency has engaged directly with state, local, and tribal governments, industry and labor leaders, non-profits, and other experts to develop the proposal and further confirm that states have been leading the way in reducing power plant emissions while increasing efficiency and protecting the electric grid. Already, 47 states have utilities that run demand-side energy efficiency programs; 38 states have renewable portfolio standards or goals; 27 states have energy efficiency standards or goals; and 10 states are involved in market-based greenhouse gas emissions programs.

Neither Vermont nor Washington, D.C. is included in the rule because they do not have any fossil fuel-fired power plants. However, 1,000 plants with 3,000 units across the country are covered under the proposed rule. The agency contends that the rule will drive innovation in an aging power market, where the average coal unit is 42 years old, the average oil unit is 36 years old, and the average natural gas combined cycle unit is 14 years old.

Power plants account for about a third of all domestic greenhouse gas emissions in the United States. While limits exist for arsenic, mercury, sulfur dioxide, nitrogen oxides, and particulate matter emissions from power plants, there are currently no federal limits on CO<sub>2</sub> pollution levels. The agency estimates that the proposed rule will lead to climate and health benefits worth an estimated \$55 billion to \$93 billion in 2030, including avoiding 2,700 to 6,600 premature deaths and 140,000 to 150,000 asthma attacks in children. The agency estimates that the plan will reduce electricity bills by about eight percent by 2030.

The agency will accept comments on the proposal, specifically the chosen emission reduction options, the state-specific targets, and methodologies for determining state-specific goals, for 120 days after publication in the Federal Register and will hold four public hearings on the proposed plan during the week of July 28 in Denver, Atlanta, Washington, DC, and Pittsburgh. The agency is also taking comment on two of the four building blocks: making plants more efficient and using low-emitting sources more frequently.

Based on this input, which follows more than 10,000 already-received comments, the agency will finalize standards next June according to the schedule laid out in the June 2013 Presidential Memorandum. Once the final goals have been promulgated, states will no longer be allowed to request that the agency adjust its CO<sub>2</sub> goal. Initial compliance plans will be due June 30, 2016. Some states, however, will be allowed a one-year extension, and states that join multi-state plans are eligible for a two-year extension, with final plans due in June 2017 and 2018, respectively.

The proposed reductions are intended to encourage the power industry to continue the already sizable reductions it has achieved since 2005, due in part to decreased reliance on coal, inexpensive natural gas, and reduced electricity demand. The draft rule has already become a campaign issue for Republicans, who are touting it as the latest play in the Obama Administration's war on coal. Following Environmental Protection Agency Administrator Gina McCarthy's mid-morning announcement, President Obama joined a telebriefing with the American Lung Association and other public health groups, and he spent much of the weekend touting the proposed rule's benefits. The president meets this week with Polish President Bronislaw Komorowski and Ukrainian President-elect

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Petro Poroshenko and will attend a G-7 meeting, where energy and climate issues will be a major point of discussion.

Legal challenges from some states and industry groups are considered inevitable, but the agency has won a string of recent court victories, and Administrator McCarthy is lauding the rule as “legally defensible.”

Reactions to the rule have flown in the hours since its release. Statements from the Obama Administration have been supportive, calling it a critical step toward addressing climate change, and protecting human health. White House energy advisor Dan Utech dismissed several “myths” about the regulation.

Congressional Republicans and coal-state Democrats, including those in tough election battles, have lambasted the proposed rule. Senate Minority Leader Mitch McConnell (R-KY) called the rules a “dagger in the heart of the American middle class,” and said last week that he intends to propose legislation blocking the rule’s implementation. The Government Accountability Office issued a report May 29 finding that Congress cannot vote down the proposed rule under the Congressional Review Act, which only provides procedures for eliminating rules in their final form, so Senator McConnell will have to adopt another approach. Senate Energy and Natural Resources Committee Chair Mary Landrieu (D-LA) said that Congress, rather than the Environmental Protection Agency, should set terms, goals, and timeframes by which to reduce that nation’s CO<sub>2</sub> emissions. Senator Ron Wyden (D-OR) reiterated that inaction on climate change is “no longer an option,” Senate Environment and Public Works Chair Barbara Boxer (D-CA) praised the rule’s flexibility, and Senator Sheldon Whitehouse (D-RI) hailed the proposed rules as an important step in combatting climate change and protecting public health. Senator Ed Markey (D-MA) and Representative Henry Waxman (D-CA), whose failed climate legislation last Congress led in part to the administration establishing CO<sub>2</sub> standards under the Clean Air Act, praised the proposed rule as a step in the right direction. The House Sustainable Energy and Environment Coalition praised the rule in light of Congress’ inability to sufficiently address climate change.

While commending the agency’s effort to address climate change, many environmental groups are pushing for stronger requirements. Industry representatives are expressing an array of views, ranging from the American Coalition for Clean Coal Electricity saying that the rule will create America’s next energy crisis, to the National Association of Manufacturers warning that the rule could eliminate American energy’s competitive advantage, to American Electric Power warning of substantial plant closures as a result of the rule. Other electric utilities favor the proposed rule, as it could benefit their investments in nuclear, renewable, and advanced energy technologies. As a whole, power companies’ view of the proposed rule depends on the mix of fuel they use to generate electricity, and many companies contend that they want to help shape the rules rather than prevent them.

Both sides have issued dramatically different estimates of the rule’s likely impact in the past week. The Chamber of Commerce warned that it could suppress the national gross domestic product by \$51 billion annually and cost the country 224,000 jobs every year through 2030, while reducing households’ disposable income by \$586 billion a year. The Natural Resources Defense Council countered that the rule would create 274,000 jobs tied to energy efficiency and reduce Americans’ energy bills by \$37 billion. Administrator McCarthy criticized the Chamber’s study, saying that agency critics have long overestimated the cost of environmental regulations, but that the cost of inaction posed a real threat to the domestic and global economies, as well as public health. White House counselor John Podesta reiterated that the proposed rule’s net benefits would be quite substantial.

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Rule supporters are hopeful that the international community will applaud the proposal, and that it will enhance the United States' negotiating position at next year's international global climate talks in Paris.

On the Congressional front, House Ways and Means Committee aides said last week that the committee expects to work on additional tax extenders in June and July. The House is in recess this week, but the Senate returns from the Memorial Day recess to address delays in medical care for veterans, debate fiscal 2015 bills – including Transportation-HUD and Commerce-Justice-Science – and consider several nominations. Off the floor, senators may make another attempt at reaching a deal over amendments to a package of more than \$80 billion in tax break extensions (S. 2260).

## **CONGRESS**

### **White House Involvement in Solar Case Sought**

Twenty-three House Democrats sent a letter to President Obama May 28 asking the White House to get involved in the ongoing solar trade disputes with China.

### **Loan Guarantee Oversight**

Department of Energy Deputy Inspector General Ricky Hass told a House Energy and Commerce subcommittee May 30 that the department has completed four of 12 recommendations made by an independent consultant the White House appointed in the wake of Solyndra's bankruptcy. The agency is seeking to restart the stalled loan guarantee program, but has yet to strengthen internal oversight, clarify authorities, incorporate lessons learned into policies and procedures, and develop a formal adjudication process for resolving differences of professional opinion. The program has about \$45 billion in loan guaranty authority remaining.

### **CSAPR Legislation**

Representative Pete Olson (R-TX) will introduce legislation today to give states more time and control over plans to meet the Environmental Protection Agency's Cross-State Air Pollution Rule standards. The measure would prevent the agency from adding a state to a clean air rulemaking if it was not included in the proposed rule and given an opportunity to comment on it, and would require the agency to give states an opportunity to craft their own State Implementation Plans to meet the requirements.

### **Upcoming Hearings**

The Senate Environment and Public Works Subcommittee on Green Jobs and the New Economy will hold a hearing June 3 on climate change's impacts on farming, fishing, forestry, and hunting.

The same day, the Appropriations Committee's transportation panel marks up its 2015 spending bill while the Commerce, Justice, and Science Subcommittee markets up its 2015 appropriations.

The Senate Environment and Public Works Committee will hold a hearing June 4 on the Nuclear Regulatory Commission's implementation of Fukushima near-term task force recommendations. All five commissioners will testify.

The Senate Appropriations Committee will mark up its 2015 transportation and Commerce-Justice-Science spending bills June 5.

The House Energy and Commerce Subcommittee on Energy and Power will hold a hearing the week

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of June 16 to consider the Environmental Protection Agency's proposed greenhouse gas standards for existing power plants.

## **ADMINISTRATION**

### **Climate Spending Reductions**

The White house released May 28 a Statement of Administration Policy criticizing the House's proposed fiscal year 2015 budget cuts for climate change research in its science spending bill.

### **Commencement Climate Remarks**

President Obama delivered the commencement address at West Point Military Academy May 28. During his address, the president called the issue of climate change, and those who deny that climate change is occurring, threats to national security. He said that the United States should lead by example during international climate negotiations.

### **Energy Strategy Report**

The White House released a [report](#) May 29 updating the Obama Administration's all of the above energy strategy. The report summarizes administration proposals ranging from efforts to reduce greenhouse gas emissions to promoting natural gas, to embracing low-carbon energy sources.

## **DEPARTMENT OF AGRICULTURE**

### **RUS Grants**

The Department of Agriculture is soliciting applications for small grants to reduce the cost of energy in rural locations where residents pay energy prices more than double the national average. The agency is offering \$7 million in grants, with individual grants capped at \$3 million, but smaller grants of \$250,000-\$500,000 more likely. Private companies and local communities can apply for the grants so long as projects have a community benefit of reducing the cost of delivered on-grid or off-grid power.

## **DEPARTMENT OF COMMERCE**

### **NIST Meeting**

The National Institute of Standards and Technology will host a public meeting of the Smart Grid Advisory Committee June 3-4. The committees will discuss the updated Framework and Roadmap for Smart Grid Interoperability Standards, updated Guidelines for Smart Grid Cyber Security, Smart Grid Testbed activities, and interactions between Cyber-Physical Systems and Smart Grid.

## **DEPARTMENT OF ENERGY**

### **Commercial Fridge Efficiency Standards Challenged**

The Air-Conditioning, Heating, and Refrigeration Institute and Zero Zone, Inc. challenged May 27 the Department of Energy's March 28 energy conservation standards for commercial refrigeration equipment in the U.S. Court of Appeals for the Seventh Circuit. The petitioners claimed that the final rule was not neither economically justified nor technologically feasible.

### **LNG Export Licensing Process Revised**

The Department of Energy revised May 29 the liquefied natural gas export licensing process, shifting the focus to Federal Energy Regulatory Commission environmental Reviews. Comments will be

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accepted for 45 days. The agency will no longer issue conditional approvals, and will defer final approvals until the commission completes environmental reviews. The agency will conduct an updated economic study on the domestic impacts of natural gas exports of up to 20 billion cubic feet per day. The agency released two environmental reports at the same time, considering unconventional natural gas production and LNG export GHG impacts.

### **RPS Compliance Cost**

Lawrence Berkeley National Laboratory and the National Renewable Energy Laboratory issued a study last week finding that renewable portfolio standards in 24 states with the necessary data had average compliance costs of one percent of retail electricity rates. The report concluded that recent costs ranged from a savings of \$4 per MWh to a cost of \$44/MWh, but noted that additional benefits exist beyond cost savings.

## **DEPARTMENT OF INTERIOR**

### **NY Offshore Wind**

The Bureau of Ocean Energy Management published May 28 a Notice of Intent to prepare an Environmental assessment along with a Call for Information and Nominations to obtain nominations from companies interested in commercial wind energy leases within a proposed area eleven nautical miles south of Long Beach, New York.

### **OR Floating Offshore Wind**

The Bureau of Ocean Energy Management began its review May 28 of Principle Power Inc.'s plan to install five 6-MW floating wind turbines about 18 miles off the coast of Coos Bay, Oregon. The agency will hold two public meetings June 17.

## **ENVIRONMENTAL PROTECTION AGENCY**

### **LA Ozone Strategy**

The Environmental Protection Agency proposed May 23 approval of revisions to California's state implementation plan designed to bring Los Angeles into attainment with the federal one-hour and 1997 eight-hour standards for ground level ozone.

### **Court Rejects Haze Challenges**

The Supreme Court declined May 27 to hear two lawsuits from states challenging Environmental Protection Agency requirements to reduce regional haze. Both Oklahoma and North Dakota had petitioned the Supreme Court to hear challenges to the agency's decision to invalidate portions of their visibility plans for meeting Clean Air Act regional haze requirements.

### **Climate Change Indicators**

The Environmental Protection Agency released May 28 the third edition of the Climate Change Indicators [report](#), naming four new indicators of climate change: Lyme disease, warmer and cooler days, wildfires, and water level and temperature of the Great Lakes. The report also contains features connecting data to local communities and areas of interest. The report concluded that global emissions of greenhouse gases from human activities increased 35 percent between 1990 and 2010.

### **Ozone Limit Economic Analysis Needed**

Former Environmental Protection Agency Assistant Administrator for Air and Radiation Jeff Holmstead told the Clean Air Scientific Advisory Committee May 28 that federal law requires them to evaluate economic and energy impacts of national ambient air quality standards. The committee is

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reviewing agency documents on the review and potential revision of ozone standards, which the agency expects to propose this December. The committee will hold a teleconference June 4 to discuss the agency's draft policy assessment for ozone standards.

### **Efforts to Meet Tailpipe Standards**

Speakers at a National Association for Business Economics conference in Detroit May 29 said that automakers will need to consider a range of options for reducing vehicle weight and improving engine efficiency as they work to meet new Environmental Protection Agency standards for tailpipe emissions. The agency's updated corporate average fuel economy standards, federal greenhouse gas standards, and California Air Resources Board rules requiring a move to zero-emissions vehicles will spur necessary innovation.

### **Lower RFS Could Reduce Emissions**

The Environmental Working Group released a report May 29 finding that the Environmental Protection Agency's proposed 2014 ethanol blending requirement reduction would reduce CO2 emissions by three million tons, the equivalent of taking 580,000 cars off the road for a year.

### **Freeport LNG Environmental Assessment Potentially Insufficient**

The Environmental Protection Agency sent a letter May 29 to the Federal Energy Regulatory Commission raising concerns about the rigor of its draft environmental assessment of the Freeport liquefied natural gas export terminal, saying the analysis lacks sufficient information in several areas.

### **Contracting Management Risks**

The Environmental Protection Agency's Inspector General released a report May 30 finding that weak climate change services contract management creates risks that the agency did not receive the services for which it paid.

## **FEDERAL ENERGY REGULATORY COMMISSION**

### **Options Following Demand Response Ruling**

Federal Energy Regulatory Commission Acting Chair Cheryl LaFleur said May 28 that the commission is beginning to assess the overall impact of a May 23 court ruling that invalidated a widely used program designed to reduce electricity usage during periods of peak demand. Regional power pools await the commission's guidance.

## **NUCLEAR REGULATORY COMMISSION**

### **Spent Fuel Transfer Debate Over**

The Nuclear Regulatory Commission voted 4-1 May 27 to end debate about whether to expedite the transfer of spent fuel from pools into dry casks.

### **Nuclear Plant Life Extension Considered**

The Nuclear Regulatory Commission and Federal Energy Regulatory Commission met May 28 to discuss nuclear power and grid reliability. The Nuclear Regulatory Commission is considering extending the life of the current commercial nuclear fleet from 60 to 80 years, but the first extension application is not expected until 2018. By the end of the year, 38 reactors, more than a third of the commercial fleet, will have entered a period of "extended operation," meaning that they will have been operating for more than 40 years.

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## INTERNATIONAL

### IEA Chemical GHG Reductions

The International Energy Agency issued two reports May 19 finding that the global chemical and petrochemical industry could reduce energy consumption by at least 20 percent and reduce CO2 emissions by implementing best practices in core chemical processes.

### Indian Solar Trade Case

The World Trade Organization Dispute Settlement Body announced May 23 that a panel will consider whether India's solar energy program violates international trade laws, as the United States charges.

### Chinese Vehicle, HFC Reductions

China announced May 26 that it would reduce hydrofluorocarbons by 280 million metric tons CO2 by the end of 2015 and would remove almost six million high-emissions vehicles from the road in 2014.

### More Efficient Vehicles Needed for EU Compliance

Transport & Environment said May 27 that several Asian automakers would need to improve significantly the fuel economy of their vehicles if they plan to comply with a European Union cap on CO2 emissions from private cars, which starts to apply in 2020. The European Union formally adopted a regulation in March requiring automakers to reduce emissions on average of passenger cars sold in the bloc to 95 grams per kilometer, compared to a limit of 135 g/km that started in 2012.

### Carbon Pricing Trends in Jeopardy

The World Bank published a report May 29 finding that recent announcements in Australia, Japan, and Russia are hurting the global greenhouse gas emissions trading market.

### Mexican Solar Market Growing

The Asociacion Mexican de Energy Solar Fotovoltaica stated May 29 that Mexico, which already have large-scale solar projects worth about \$2.3 billion will see investments rise once the government passes planned clean energy rules. Private developers operate, are building, or have permits for 36 PV plants with almost 1,000 MW.

## STATES

### OH REES Freeze

The Ohio Legislature passed legislation (S.B. 310) May 28 to freeze for two years the state's renewable energy and energy efficiency standards.

### CA Fracking Moratorium Stalls

The California Senate failed May 28 to muster the votes needed to set a moratorium on fracking (S.B. 1132) until a study determines that it does not pose a public health risk.

### Zero-Emission Vehicle Plan

California, New York, Connecticut, Maryland, Massachusetts, Oregon, Rhode Island, and Vermont released a [plan](#) May 29 to put 3.3 million battery, plug-in, and fuel cell vehicles on the road by 2025.

### NC Fracking Legislation

The North Carolina Legislature approved a measure (S.B. 786) May 29 to allow fracking in 2015. Governor Pat McCrory (R) is expected to sign the bill.



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## Urban Cities and Climate Preparations

The Massachusetts Institute of Technology released [results](#) of a global survey May 30 finding that cities are doing a better job of incorporating climate change preparations into their urban planning than they have in the past, but they still fail to link environmental objectives and economic growth. About 75 percent of cities worldwide are pursuing climate change mitigation and adaptation efforts as part of their planning across multiple agencies. Only 21 percent of surveyed cities see tangible connections between responding to climate change and achieving other local development goals, particularly those related to economic growth.

## SUSTAINABILITY

### GRI Reporting Standard

The Global Reporting Initiative announced May 26 that it is working to become formally recognized as a standard setter to better fit into sustainability reporting policies and regulation. The initiative is seeking public comments on the shift from guidelines toward standards through July 9.

## MISCELLANEOUS

### Wind Reduced CO2

The American Wind Energy Association released a report May 27 finding that domestic wind turbines reduced CO2 emissions by nearly 127 million tons last year.

### Climate Advocacy Liability

Greenpeace International, World Wildlife Fund, and the Center for International Environmental Law [warned](#) executives of 32 energy and cement companies May 28 that they could face personal liability if they are found to have been involved in funding climate denial or opposing policies to fight climate change. The organizations asked the companies to respond to specific questions about their legal risks within four weeks.

### Solar Capacity Increases

The Solar Energy Industries Association released a report May 29 finding that the United States added 1,330 MW of photovoltaic solar capacity in the first quarter of this year, the industry's second-best quarter ever. The industry projects a total of 6.6 GW of new solar capacity will be installed this year.

### Climate Terminology

The Yale Project on Climate Change Communication released a [report](#) last week finding that the terms "global warming" and "climate change" activate different sets of beliefs, feelings, and behaviors, as well as different degrees of urgency about the need to respond. "Global warming" generates stronger negative feelings, greater certainty that the phenomenon is happening and that human activities are the primary cause, and a greater sense of threat.

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