

# Bryan Cave Energy Update

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Issue 31

## **White House**

### **Chamber of Commerce Urges EPA to Reconsider Endangerment Finding**

The U.S. Chamber of Commerce is petitioning the EPA to reconsider its finding that greenhouse gases “endanger” public health and welfare. The determination enables the EPA to move forward with climate change regulations. “The Chamber believes that the right way to reduce greenhouse gas emissions in the atmosphere is through bipartisan legislation and comprehensive international agreements,” reads a statement released by the nation’s largest business lobby. “The wrong way is through the EPA’s endangerment finding, which triggers Clean Air Act regulation.” The Chamber requested that the EPA stay the endangerment finding until it acted on the petition. The petition is the latest in a number of the Chamber’s efforts against the endangerment finding. The Chamber has also filed a lawsuit in federal court challenging the endangerment finding.

### **EPA Considering Carbon-Trading System**

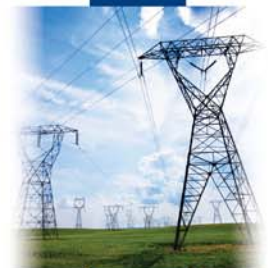
If Congress does not pass cap-and-trade legislation, the EPA is considering a carbon-trading system under the Clean Air Act to reduce carbon dioxide and other

gases linked to climate change. Anna Marie Wood, a senior policy analyst at the EPA said the agency would prefer that Congress pass legislation to address greenhouse gases but that “we think that there’s a lot of progress that can be made using certain tools under the Clean Air Act.” For example, the EPA may establish emissions trading for greenhouse gases under a set of “new source performance standards” for power plants, oil refineries and cement plants. Last week, EPA Administrator Lisa Jackson said that the administration did not have plans to establish a cap-and-trade program in the absence of legislation.

## **Congress**

### **Senate Negotiations Continue on Climate Change Legislation, Details Emerge**

Details of the climate and energy legislation being drafted by Sen. John Kerry (D-MA), Sen. Joe Lieberman (I-CT) and Sen. Lindsey Graham (R-SC) were released during a meeting the senators had with industry representatives. The legislation includes a “cap-and-refund” approach to reduce greenhouse gases. While the details of the mechanism were not defined, the senators said at the industry meeting that half of the revenues would be returned to customers. The legislation would require utilities to reduce their



emissions in 2012 and other industries would reduce their emissions by 2016. Overall, the bill sets a reduction target of 17 percent below the 2005 levels by 2020 and 80 percent by 2050.

#### *Offshore Drilling, Fracturing Addressed*

Under the bill, states that agree to oil and gas drilling in federal waters off their shores would be offered 25 percent of the revenue. Another 10 percent would be earmarked for the Land and Water Conservation Fund. The remaining 65 percent would be used for federal deficit reduction.

The legislation also reportedly would not allow the EPA to regulate hydraulic fracturing, which environmentalists have said can contaminate groundwater. The bill also will include assistance for utilities to retrofit coal-fired power plants with carbon capture and storage technology.

#### *Renewable Electricity Standard Still Debated*

The negotiators have yet to determine if the bill will require renewable energy or clean energy to supply a percentage of the total electricity supply. At issue is whether nuclear power will count toward the standard. Sen. Lieberman said the issue is “still a work in progress.” Earlier legislation included a renewable electricity standard that would require utilities to supply 15 percent of their power from renewable sources such as wind and solar by 2021. However, Republicans want the standard to be a “clean energy standard” that would include nuclear power, natural gas and coal with carbon capture and storage technology.

#### *Gas Fee Considered*

As a way to win the support of the oil industry, the Senate negotiators are proposing to levy a carbon tax on each gallon of gasoline that would be passed onto consumers. The fee would be linked to the market price of carbon emissions. Supporters of the idea think it will encourage consumers to lower their fuel consumption; oil companies think this approach is fair as it puts the onus to lower emissions on consumers rather than producers. Revenue from the tax would be used to subsidize “clean” transportation initiatives.

#### *Environmentalists Object to Industry Involvement*

While details of the bill are still emerging, environmentalists criticized the effort because the Senate negotiators are working too closely with the industry. For example, the decision to pre-empt the EPA’s climate regulations under the Clean Air Act, which mirrors the House-passed language, was criticized. Bill Snape, senior counsel for the Center for Biological Diversity, said, “Some senators still don’t get it. The American public wants real action on climate change, not backroom deals that gut laws with 40 years’ worth of success such as the Clean Air Act.” He added, “It’s hard to imagine what that the Senate thinks it is receiving in return for pandering to the likes of the American Petroleum Institute and Chamber of Commerce with a convoluted and speculative legislative proposal that won’t come even close to solving the problem of global warming.”

#### *Health Care Debate May Derail Obama’s Climate Agenda*

Graham (R-SC) said the partisan push to pass health care reform will harm chances to enact President Obama’s climate and

energy agenda. “If they do [enact health care reforms via budget reconciliation procedures], it’s going to poison the well for anything else they would like to achieve this year or thereafter,” Graham said. Instead, Graham said that to achieve bipartisanship, the President should “get a field goal” on health care and then “let’s go to energy and climate.” He added that the President “has been great” on energy issues. “He’s saying all the right things to give us a chance to become energy independent, clean up the air and create jobs.”

### **Senate Turns to Clean Energy Tax Credits**

Senate Democratic leaders are hoping to move a small energy bill that includes clean energy manufacturing provisions and on energy-efficiency retrofit program as part of an effort to promote job creation. For example, Sen. Debbie Stabenow (D-MI) said she wants to extend the 48C clean energy manufacturing tax credit. In addition, senators are interested in moving forward with the “Home Star” program, also known as “Cash for Caulkers,” and the “Building Star” program that is designed to subsidize energy efficiency improvements for commercial properties. “No decisions have been made, but I am hopeful that we will see a strong bill related to manufacturing, making things and creating jobs through energy efficiency,” Stabenow said.

### **Industry**

#### **Wall Street Analysts Bet on Coal, not Solar**

Eighty percent of Wall Street analysts are recommending investments in Peabody Energy, the nation’s largest coal producer,

while only 44 percent of analysts are recommending investments in solar panels. According to the analysts, the disparity in investment strategies will likely widen until the government indicates it favors renewable energy and places caps on carbon dioxide emissions. “Until government policies favor renewable energy over dirty coal, solar may seem too risky now for some investors,” Kevin Landis of the Firsthand Alternative Energy Fund said. Still, photovoltaic sales are expected to increase due to foreign demand. For example, Germany may install up to 3,000 megawatts this year and the Czech Republic may install about 900 megawatts.

### ***Climate Change***

#### **NOAA Cites Need for Climate Change Education**

National Oceanic and Atmospheric Administration Administrator Jane Lubchenco said that the scientific community needs to do a better job of explaining climate change to the American public. “I think scientists have seriously underestimated the importance of explaining what we know about climate change and climate variability in ways that are understandable to most people.” She added that there is a “well-orchestrated and fairly sophisticated effort under way to confuse and sometimes cherry-pick or distort information.” In response, Lubchenco said that a proposed new NOAA climate service, which first must be approved by Congress, would provide information to communities and business to address climate shifts.

## More Information

If you have any questions regarding any of these issues, please contact:

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