

Bryan Cave Energy Update

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White House

White House Clears EPA Indirect GHG Rule

The Office of Management and Budget on February 1 approved an EPA rule that would finalize the agency's renewable fuels standard (RFS) that was required in a 2007 energy bill. The legislation expanded the RFS and established goals for the increased use of ethanol and other biofuels in transportation fuels. The level of biofuel use is supposed to increase each year and reach 36 billion gallons annually in 2022. Draft EPA regulations to implement the standards were criticized by biofuel advocates who maintained the rules were unfair to ethanol due to the requirement to measure emissions from "indirect" land-use changes when farmers produce fuel instead of food. Biofuel advocates and environmentalists have lobbied OMB on the rule. In addition, members of the congressional agriculture committees have said it will be too difficult to link corn grown in the United States and international deforestation.

EPA Renewable Fuel Standard May Increase Costs

An EPA renewable fuel standard that requires refiners to blend an increased amount of biofuels with gasoline may result in higher costs for consumers, according to the American Petroleum Institute. "While the U.S. oil and natural gas industry recognizes and appreciates the role of ethanol and other biofuels in the fuel marketplace, we are deeply concerned that the announcement today could result

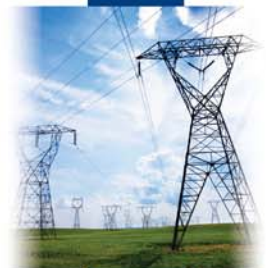
in higher consumer costs," API said in a statement. "By setting retroactive requirements, refiners, and ultimately consumers, will be penalized for EPA's inability to get this rule out on time as directed by Congress."

President Obama FY 2011 Budget Focus on Clean Energy

President Obama this week proposed his FY 2011 budget, which includes a number of changes for the energy industry. For example, the proposal would increase taxes on fossil fuels and increase investments in clean energy projects. The budget plan would spend \$6 billion in clean energy projects and eliminate tax preferences for oil, gas and coal companies to generate \$40 billion in federal revenue over the next 10 years.

Plan Would Eliminate Yucca Mountain Nuclear Waste Site

The budget request would eliminate the separate funding stream for the Yucca Mountain nuclear waste repository and combine DOE's Office of



Civilian Radioactive Waste Management and the Office of Nuclear Energy. With the elimination of the Yucca storage site, the Department of Energy would convene a “blue ribbon” panel to investigate alternatives to nuclear waste storage. However, under current law, Yucca is still the country’s nuclear waste storage facility and there is debate on how the facility can be eliminated without the government becoming liable for billions of dollars in breach of contract payments to utilities. However, Sen. Majority Leader Harry Reid (D-NV) praised the decision. “This is great news because it not only prevents Nevada from becoming the nation’s nuclear dumping ground, it also protects hundreds of communities through which the waste would have had to travel in order to get to Yucca,” Reid said.

Rockefeller Critical of Proposed Elimination of Coal Tax Breaks

Sen. Jay Rockefeller (D-WV) criticized President Obama’s FY 2011 budget proposal as inconsistent on the future of coal development. Specifically, Rockefeller cited the budget request’s elimination of four tax breaks for the industry and the EPA’s recent decision on mountaintop-removal coal mining and regulations to control greenhouse gases. While the President has voiced his support for coal in his speeches, Rockefeller said that he “doesn’t say it” in his budget request and through the EPA’s actions. “He’s beginning to not be believable to me,” Rockefeller said. Rockefeller also said the budget request is not sufficient to support the widespread use of clean coal technologies.

Salazar Defends Proposed Oil and Gas Proposals

Interior Secretary Ken Salazar defended the administration’s proposed budget, which would eliminate 12 tax breaks for oil, gas and coal companies. Ending the tax breaks would raise an estimated \$40 billion over 10 years. “All you have to do is look at the record profits of the oil and gas world in the last several years,” Salazar said. Salazar also said production levels in the oil and gas markets would be influenced by market conditions and not the tax breaks. The Interior Department also is moving to implement royalty reforms, which the budget

proposal estimates will increase federal oil and gas revenues by \$1 billion over the next 10 years. For example, the budget would impose a \$4-per-acre-per-year boost in the fee on nonproducing federal leases to incentivize companies to either begin production or relinquish them.

The budget also includes a proposal to continue a \$6500 fee for processing drilling permits that would generate an estimated \$45.5 million.

While environmental groups praised the decision to eliminate taxpayer “giveaways” to the oil industry, the industry criticized the plan. For example, Independent Petroleum Association of American President and CEO Barry Russell said that “virtually no industry” pays more in taxes, royalties and revenues.

Cap and Trade Reflected in Plan

The budget plan acknowledges Congress’ attempt to pass cap-and-trade legislation rather than relying on it’s passage. The budget request shows a “net zero effect” on the government’s cash flow. This is a change from last year’s plan, which assumed a cap-and-trade program would generate \$650 billion over 10 years through an auction of emissions credits.

Obama Remarks Indicate Senate May Pass Energy-Only Bill without Cap-and-Trade

Speaking at a town-hall meeting this week, President Obama said the Senate may pass energy legislation without a cap-and-trade program. “The only thing I would say about it is this: We may be able to separate these things out. And it’s conceivable that that’s where the Senate ends up.” He added, “But the concept of incentivizing clean energy so that it’s the cheaper, more effective kind of energy is one that is proven to work and is actually a market-based approach.” He also said his agenda is focused on energy efficiency and clean energy technologies. His comments sparked speculation that he is retreating from an earlier commitment to a cap-and-trade system just as Senate negotiations have reached a critical juncture. Sen. John Kerry (D-MA), Sen. Joe Lieberman (I-CT) and Sen. Lindsey Graham (R-SC) are continuing their effort to draft legislation that caps emissions and could win support of Senate moderates by providing incentives for nuclear power and oil and gas production. Graham has dismissed moving forward with an energy-only bill.

Browner Reiterates Administration Support for Cap-and-Trade

White House climate and energy adviser Carol Browner defended a cap on emissions a day after the President suggested Congress might move an energy bill without such a provision. “We need comprehensive energy and climate legislation that will not only allow us to lead the world ... but also enhance our national security,” Browner said. She said that President Obama was simply commenting on the Senate process and that he later empathized there needed to be a price on pollution. Browner declined to specifically advocate for a carbon trading system with a cap and acknowledged there are some politicians who are “not so sure about this climate change thing.”

Obama Seeks Widespread CCS Use Within 10 Years

President Obama has signed a memorandum creating an interagency task force led by EPA and the Department of Energy to develop a plan within six months to address the obstacles to widespread implementation of carbon capture and sequestration

(CCS) technology within 10 years. The presidential memo calls for the task force to “explore incentives for commercial CCS adoption and address any financial, economic, technological, legal, institutional, social or other barriers to deployment.”

EPA Hotline Solicits Tips on Suspicious Oil and Gas Activity

The EPA has created a hotline for the public to report non-emergency “suspicious activity” involving oil and natural gas development. Dubbed “Eyes on Drilling,” the hotline will be available for the public to report possible illegal disposal of waste or other suspicious activity. The EPA is concerned about an increase in activity in the development of the Marcellus Shale formation and possible violations of its waste disposal regulations. The EPA said the hotline will be used to gain a better understanding of what the public is witnessing as result of the drilling. The hotline is 1-877-919-4EPA. Email reports may be sent to eyesondrilling@epa.gov.

Senate Aide Nominated as Energy Department’s Congressional Liaison

President Obama on February 1 nominated longtime Senate aide Jeffery Lane to be the Energy Department’s assistant secretary for congressional and intergovernmental affairs. Lane is the former chief of staff for

Sen. Michael Bennet (D-CO), Sen. Ken Salazar (D-CO), Sen. John Edwards (D-NC) and a senior aide to Sen. Tom Daschle (D-SD). Lane also was the legislative director for Sen. James Sasser (D-TN). If confirmed, Lane will work to promote DOE policies and programs with Congress and state and local governments.

Congress

Carper, Alexander Introduce Pollutant Power Plant Bill

Sen. Tom Carper (D-DE) and Sen. Lamar Alexander (R-TN) have introduced legislation that would mandate cuts in electric utilities' emissions of mercury and soot- and smog-forming pollution. The bill would reduce soot-forming sulfur dioxide (SO₂) by 80 percent by 2018, smog-forming nitrogen dioxide (NO_x) by 53 percent by 2015 and mercury by 90 percent by 2015. From 2012 through 2014, the bill would limit total nationwide SO₂ emission allowances to 3.5 million tons per year. The limit would drop to 2 million tons annually from 2015 through 2017. From 2018 to 2020, the limit would be set at 1.5 million tons and would remain there beyond 2020 unless the EPA administrator determines that further reductions are required. The bill also would set national NO_x caps at 1.8 million tons from 2012 until 2014 and would drop to 1.6 million tons beginning in 2015. The bill would create two "zones" for the NO_x trading program. Zone 1 includes 32 Eastern states and the District of Columbia; Zone 2 includes the remaining 16 contiguous states. Environmental groups and utilities expressed support for the bill and said it would help ensure emission reductions and regulatory clarity.

Congress Responds to EPA Greenhouse Gas Regulations, Agency's Budget Request

Three prominent House members this week introduced legislation to block the EPA from regulating greenhouse gases. Sponsored by Rep. Collin Peterson (D-MN), chairman of the House Agriculture Committee, Rep. Ike Skelton (D-MO), Chairman of the House Armed Services Committee, and Rep. Jo Ann Emerson (R-MO), Ranking Member

of the House Financial Services Appropriations subcommittee, the bill would prevent the EPA from calculating land-use changes in other countries for determining U.S. renewable fuels policy. The legislation also would prevent the EPA from regulating greenhouse gas emissions unless explicitly authorized to do so by Congress. Skelton said the bill "represents a responsible way to move forward on energy legislation, gets the EPA under control, provides good things for American farmers and builds upon bipartisan objectives that will help curb climate change and make our nation more energy independent."

Feinstein Voices Support for EPA GHG Regulations

Sen. Dianne Feinstein (D-CA), chairwoman of the Senate Interior Appropriations Subcommittee, however, defended the administration's effort to reduce greenhouse gas emissions. "I would support it. There's no question about greenhouse gas in my mind," she said.

President Obama's funding request for the EPA includes \$56 million for the agency and states to reduce greenhouse gas emissions through a regulatory approach. Congressional Republicans may attempt to block the EPA climate funding. For example, Sen. James Inhofe (R-OK), ranking member of the Senate Environment and Public Works Committee, questioned

the need to fund a program that may be halted by the courts. In addition, a spokesperson for Sen. Lisa Murkowski (R-AK), who has introduced a resolution to prevent the EPA from regulating greenhouse gas emissions, said, "The specific funding levels proposed for EPA climate regulations are irrelevant. The EPA shouldn't be regulating greenhouse gases."

Climate Change

Obama Pledges \$1.4 Billion in Climate Change Aid

President Obama has promised \$1.4 billion to help developing nations address climate change. The funding is a 38 percent increase over the current fiscal year and represents a major aspect of the country's commitment to the Copenhagen Accord. Most of the funds would be provided to the World Bank through a series of clean energy, adaptation and forest protection programs. \$400 million is allocated for a clean energy technology program, \$90 million for adaptation, \$95 million for a forest investment plan and \$50 million for renewable energy production in developing nations. The funding also includes \$104 million for U.S. agencies to plan for the possible effects of climate change, such as food security and disaster protection. The pledge, however, would continue to ban such funds for China.