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Climate Change Policy Update Week of May 18-22, 2009

Commentary: *The American Clean Energy and Security Act of 2009 was reported out of the House Energy and Commerce Committee by a vote of 33-25 and with a long list of endorsements from major industry trade associations and environmental organizations. What next? One question is how other House committees will play. The Ways & Means Committee is eager to get into the issue of distributing the allowance value. More uncertain is the role of the Agriculture Committee. The agriculture community felt poorly used by the Energy & Commerce Committee and is looking for the Agriculture Committee to address its interests in ethanol and offsets. However, the Committee's Chairman, Collin Peterson (D-MN), has said he would vote against any climate change legislation. Also, Chairman Waxman committed to holding a hearing on allowance allocations. Will this provide an opportunity for interests left out of the big allowance allocation deal to find a way in? . . . The White House ironed out a landmark deal between the Administration, California and other states, and the auto industry to rationalize standards for new vehicles – tying together state and federal interests, fuel economy improvements, and GHG emissions. At the same time, in a message of respect for state authority, the White House issued a memorandum to federal agencies directing them to think twice before using federal regulations to preempt state action.*

Executive Branch

- **Presidential Nominations and Appointments.**

- President Obama nominated Robert Perciasepe to serve as Deputy Administrator of the Environmental Protection Agency (EPA). Currently Chief Operating Officer at the National Audubon Society, Perciasepe previously held the positions of Assistant Administrator for Water and for Air and Radiation during the Clinton Administration.
- President Obama nominated Scott Fulton for General Counsel of EPA. Fulton's nineteen-years tenure at EPA included service as the Principal Deputy General Counsel and as a judge on the agency's Environmental Appeals Board.
- The Senate confirmed Gary Gensler to serve as Chairman of the Commodity Futures Trading Commission (CFTC), following the release of a procedural "hold" placed by Sen. Bernie Sanders (I-VT). The CFTC is a strong contender to obtain jurisdiction over the growing market for derivative contracts linked to greenhouse gas (GHG) allowances and offset credits.
- The Senate confirmed David Hayes for Deputy Secretary of the Interior; Ines Triay for Assistant Secretary of Energy for Environmental Management; Kristina Johnson for Under Secretary of Energy at the Department of Energy (DOE); Steven Koonin for Under Secretary for Science at DOE; and Scott Blake Harris for General Counsel of DOE. All five nominations had been delayed by holds placed by various Republican senators.

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- Cass Sunstein’s nomination to serve as Director of the Office of Information and Regulatory Affairs at the White House Office of Management and Budget won approval from the Senate Homeland Security and Governmental Affairs Committee.
- The Senate Commerce, Science and Transportation Committee voted to send the following nominations to the full Senate for approval: John D. Porcari for Deputy Secretary of Transportation; J. Randolph Babbitt, for Administrator of the Federal Aviation Administration; Aneesh Chopra, for Chief Technology Officer at the White House Office of Science and Technology Policy; Lawrence Strickling, for Assistant Secretary of Commerce for Communications and Information; and Rebecca Black, for Under Secretary of Commerce for Economic Affairs.
- **White House Announces Comprehensive Agreement on Fuel Economy, Vehicle GHG Standards.** A five-year long legal battle over vehicle GHG regulation came one step closer to a conclusion with President Obama’s announcement of a comprehensive agreement between EPA, California, and major automobile manufacturers. Under the agreement, EPA and the National Highway Traffic Safety Administration (NHTSA) would pursue coordinated Clean Air Act and Corporate Average Fuel Economy (CAFE) standards for vehicles in model years 2012 through 2016. These unprecedented harmonized standards would raise the fuel economy of new passenger cars and trucks by 5% each year from 2012 to 2016 – reaching 35.5 miles per gallon in model year 2016. The new standards would save an estimated 1.8 billion barrels of oil and prevent 900 million tons of GHG emissions. A crucial pillar of the agreement was California’s commitment to defer to these new national standards through model year 2016 rather than seek to impose its own GHG emission requirements, thereby averting a potential “patchwork” of state-level GHG emission standards. In exchange, automakers promised to dismiss litigation against California and the thirteen other states seeking to implement California’s proposed GHG emission standards. California has pursued an EPA “waiver” under the Clean Air Act since 2005 that would allow the state – and others – to implement California vehicle GHG standards.
- **White House Memorandum Discourages Administrative Preemption of State Law.** The Obama Administration issued a general memorandum last week instructing administrative agencies to refrain from preempting state laws without giving “full consideration” to the “legitimate prerogatives” of state governments. The memorandum also asked agencies to review the justification for preemption in regulations promulgated over the last ten years. The memorandum praised the leading role of states in key policymaking areas, stating: “Throughout our history, state and local governments have frequently protected health, safety and the environment more aggressively than has the national government.”
- **DOE Expands Funding for Smart Grid Projects, CCS.** In a bid to attract applications for larger-scale “smart grid” projects, Energy Secretary Steven Chu announced that the maximum award for DOE’s smart grid grants program would increase from \$20 million to \$200 million. DOE also increased the award limit for smart grid demonstration projects by 250%, to \$100 million. The program is financed by the \$4 billion appropriation for smart grid projects included in the economic stimulus package enacted earlier this year. Chu also announced that the National Institute of Standards and Technology had finalized 16 “interoperability” standards for smart grid applications addressing issues such as cybersecurity, distributed generation, and smart meters. The standards are expected to promote compatibility and durability of smart grid technologies. In a separate announcement last week, Chu revealed that DOE would also draw on \$2.4 billion in

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stimulus funding to increase support for carbon capture and sequestration (CCS) projects. Approximately sixty percent of these funds will be used for a two-part competitive solicitation for large-scale industrial CCS projects; \$800 million of the new package will be channeled to the existing Clean Coal Power Initiative.

Congress

- **Energy & Commerce Committee Reports ACES to House.** Fulfilling the vow of Committee Chairman Henry Waxman (D-CA), the Energy & Commerce Committee reported the American Clean Energy and Security Act of 2009 out of Committee before Congress left town for the Memorial Day recess. The 33-25 vote came early Thursday evening. Chairman Waxman agreed to hold an additional hearing to discuss the bill's distribution of emission allowances.

Notable amendments passed during mark-up included:

- Language proposed by Rep. John Dingell (D-MI) that would revise the Department of Energy's loan guarantee program and create a "clean energy bank" to fund advanced clean energy technologies (including nuclear) deemed too risky to attract sufficient private-sector investment. The proposal largely tracks legislation recently passed by the Senate Energy and Natural Resources Committee, although unlike the Senate proposal, the Dingell amendment would cap the share of clean energy funds available for any one clean energy type at 30%. Passed 51-6.
- Language proposed by Rep. Betty Sutton (D-OH) that would establish a "cash for clunkers" program to provide vouchers worth up to \$4,500 to consumers who turn in old cars and trucks and purchase new, more fuel efficient vehicles. Passed 50-4.
- Language proposed by Rep. Bart Stupak (D-MI) that would give the Federal Energy Regulatory Commission "cease and desist" authority to stop actions it believes are or may constitute illegal market manipulation in natural gas and carbon markets. Passed 33-20.

The Democrats defeated a Republican amendment that would have required all allowances to be auctioned and another amendment that would have prohibited consideration of international land use changes triggered by U.S. biofuel production in GHG lifecycle analysis of the fuels. The Democrats also rejected Republican amendments that would have nullified the climate provisions if China and India failed to adopt equivalent emission reductions, coal fired power plants were shut down, jobs were lost, or energy or gas prices increased.

The legislation is facing criticism from both the left and the right. Some environmental groups are upset about the weakened renewable electricity mandates for utilities and a revised definition of renewable energy biomass that now includes trees from federal lands and from privately owned non-plantation forests. Republicans are charging that allowance distributions to industry constitute a massive corporate welfare system and that the bill will raise prices and cost U.S. jobs. In addition, a coalition of state regulators, public power entities, and consumer groups is pushing to eliminate the bill's free allocation of allowances to merchant coal generators, arguing that the unregulated generators will not pass through the value to customers. The bill received public

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endorsements, however, from a long list of utilities, energy companies, environmental groups, labor organizations, non-governmental organizations, and other corporations – including entities as diverse as the Edison Electric Institute, the United Auto Workers, and the Sierra Club. The legislation also attracted the Committee vote of a lone Republican - Rep. Mary Bono Mack (R-CA). The bill, amendments, and supporting letters are available at <http://energycommerce.house.gov>.

The House Parliamentarian has referred the bill to eight other committees, and both the Ways and Means Committee and the Agriculture Committee are expected to exercise their jurisdiction and develop substantive climate change provisions of their own. Speaker Nancy Pelosi (D-CA) has promised that the climate legislation will be voted on sometime this year.

- **Energy and Natural Resources Continues Mark-Up.** The Senate Energy and Natural Resources Committee tackled the controversial renewable energy standard (RES) bill this week as part of a pro-longed mark-up of comprehensive energy legislation. The RES survived a Republican amendment to strike the title, with Sens. Sam Brownback (R-KS) and Bob Corker (R-TN) voting with the Democrats and Sen. Evan Bayh (D-IN) voting with the Republicans. Under the RES, utilities would be required to supply 15% of their electricity from renewable sources by 2021, although more than a quarter of the mandate could be satisfied through energy efficiency improvements. The proposal also incorporates an “off ramp” allowing utilities to ask the Energy Department for a one-year waiver if compliance would increase electricity prices by more than 4% in that year. As many as 49 amendments to the RES proposal could be considered when Congress returns from recess next month.

The Committee also passed Senator Bingaman’s nuclear waste provisions, which would create a commission to recommend new approaches for dealing with the nation’s nuclear waste. Sen. Lisa Murkowski (R-AK) offered a narrowly defeated amendment that would have provided federal support for two nuclear waste reprocessing facilities and provided \$1 million for locales willing to site a temporary storage area for used nuclear fuel.

Sen. Maria Cantwell (D-WA) has announced her intention to work with Majority Leader Harry Reid (D-NV) to amend the energy legislation on the floor to prevent GHG-intensive generation, such as coal-fired power plants, from accessing the new high-voltage transmission lines to be developed under the comprehensive bill.

- **Boxer Steps Back From House Bill.** In remarks to reporters, Sen. Barbara Boxer, Chairman of the Environment and Public Works Committee (EPW), said she intends to hold a series of workshops on the ACES legislation and then will look at previous legislation considered by the Senate and “we’ll put together what’s the best consensus bill.” These statements seem contrary to Sen. Boxer’s earlier suggestion that the House cap-and-trade legislation could be adopted in conference with the Senate. Sen. Boxer and Senate Foreign Relations Chairman John Kerry (D-MA) have been hosting weekly gatherings of senators to discuss climate change policy and the strategies for enacting cap-and-trade legislation, with most of the EPW Democratic Committee members in attendance.
- **Wyden Introduces Renewable Energy Package.** Sen. Ron Wyden (D-OR) introduced eight bills this week to reduce fossil fuel consumption and improve the competitiveness of renewable

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energy sources. The bills would create a “low-carbon fuel” standard, provide tax incentives for non-electricity producing renewable energy, equalize the value of production tax credits received by different types of renewable energy, establish a tax credit for fuel-efficient vehicle purchases, provide zero-interest revolving loans for energy efficiency improvements by families and small- or mid-sized businesses, provide investment tax credits for energy storage facilities, support the development of regional energy research consortia at colleges and universities, and support the standardization of anti-idling equipment for trucks.

- **Peterson Introduces Ethanol Bill.** House Agriculture Committee Chairman Collin Peterson (D-MN) has introduced legislation (H.R. 2409) to repeal a provision in the Energy Independence and Security Act of 2007 (EISA). The EISA provision targeted by H.R. 2409 requires EPA, when analyzing the GHG intensity of a biofuel, to analyze GHG emissions produced by land-use changes (including tropical deforestation) caused by the use of food grains for U.S. ethanol production. The Peterson bill also would expand EISA’s definition of renewable biomass to include biomass from public lands. Both the House Agriculture Committee and the Small Business Committee held hearings on biofuels this week.
- **Alternative Clunkers Proposal Floated.** Senators Diane Feinstein (D-CA), Susan Collins (R-ME), and Charles Schumer (D-NY) have circulated a “cash for clunkers” proposal as an alternative to the agreement included in the ACES mark-up. The proposal would require purchased vehicles to have above-average fuel economy for the vehicle class and require the trade-in vehicle to have a fuel economy of 17 mpg or less, compared to 18 in the House version.

States and Cities

- **Bipartisan Governors Group Agrees to Support Federal GHG Emission Caps.** Thirty governors have signed an agreement under which they will work together to urge Congress to pass comprehensive climate change legislation. Although the agreement did not specifically mention the Waxman-Markey legislation passed this week by the House Committee on Energy and Commerce, the agreement included a statement of principles for federal climate change and energy legislation. Among the principles endorsed by the governors are the passage of a science-based cap on GHG emissions and an increased focus on energy efficiency and clean energy. The group included 23 Democrats and 7 Republicans.
- **MGGRA Advisory Group Releases Recommendations.** An advisory group for the Midwest Greenhouse Gas Reduction Accord (MGGRA) released a set of recommendations for the development of the regional cap-and-trade program. The advisory group said a federal cap-and-trade program is preferable to a regional program, but that MGGRA states would continue developing the regional program until federal climate legislation is passed. The group’s recommendations included mid- and long-term emission targets of 18-20 percent below 2005 levels by 2020 (the ACES bill calls for a 17 percent reduction) and 80 percent below by 2050 (the ACES bill calls for an 83 percent reduction); an implementation date of January 1, 2012; the initial auction of 50 percent of emission allowances, with the remaining allowances sold for a small fee of \$2-\$4; and a limit on offset credits of 20 percent of a capped source’s compliance obligation. MGGRA signatories include Illinois, Iowa, Kansas, Michigan, Minnesota, Wisconsin, and the Canadian province of Manitoba.

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- **Montana Passes CCS Legislation.** Montana Governor Brian Schweitzer (D) signed into law two bills aimed at facilitating the developing of carbon capture and sequestration projects in the state. One bill absolves well operators of liability for sequestered carbon after ten years and grants ownership of underground pore space to the owner of the land's mineral rights rather than to the surface landholder. The other bill designates as common carriers owners of CO₂ transportation pipelines.

Industry

- **Vehicle Manufacturer Associations Praise Fuel Economy Agreement.** Two major trade associations representing vehicle manufacturers – the Alliance of Automobile Manufacturers (AAM) and the Association of International Automobile Manufacturers (AIAM) – hailed the first-ever national vehicle GHG emissions program unveiled last week. Dave McCurdy, president of the AAM, called the agreement “a new beginning” ushering in an “era of cooperation” between automakers, the states, and the federal government. McCurdy noted that the “broad outlines” of the agreement would be followed by continued discussions over the detailed mechanics of coordinating NHTSA and EPA rulemakings. AIAM president Mike Stanton welcomed the prospect of a national vehicle GHG program, saying that the agreement “begin[s] the process of aligning EPA, DOT and California requirements, an action that AIAM has been urging for the past several years.”
- **Petroleum Industry Presses for Greater Allowance Distribution.** ConocoPhillips issued a statement last week protesting the 2% share of allowances that domestic petroleum refiners would receive under the current Waxman-Markey climate change bill. The company declined to specify its desired proportion of allowances, but argued that domestic refiners should receive sufficient allowances to cover compliance costs that cannot be passed on to consumers. In addition, the company maintained that the petroleum sector's share of allocated allowances would leave it exposed to competition from foreign competitors operating in countries with more lenient GHG regulations. Similarly, the president of the American Petroleum Institute, Jack Gerard, argued last week that the Waxman-Markey bill should treat refiners in a manner similar to the electric sector, which would receive free allowances in a proportion commensurate with the sector's share of national GHG emissions. Gerard called for distributional “balance” so as to avoid “shift[ing] the cost to one particular source or one particular sector.”
- **American Farm Bureau Federation Opposes Waxman-Markey Climate Bill.** In a letter to the House Energy and Commerce Committee, the American Farm Bureau Federation (Federation) called on committee members to reject the ACES legislation. Specific features of the bill that drew criticism included the uncertain role of agriculture and land-use offsets; the lack of commensurate action from other major GHG emitting countries such as China and India; and the bill's likely effect of increasing the cost of agricultural inputs. The National Corn Growers Association (NCGA) echoed the Federation's criticism of the bill's silence on agricultural offsets in a letter to the Committee. NCGA's President, Bob Dickey, commented that “Without the opportunity to generate revenue from GHG reductions, our growers will be unable to bear the burden of increased prices for diesel, fertilizer, steel, electricity.”
- **Industry-Environmentalist Coalition Issues Principles for Deforestation Offsets.** A broad coalition of major corporations and environmental organizations including Duke Energy,

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American Electric Power, Environmental Defense Fund, and the Natural Resources Defense Council released a set of 14 principles for deforestation offsets that should be reflected in climate change legislation now being considered by Congress. The coalition called for 5% of GHG allowances in a cap-and-trade program to be dedicated to reducing international deforestation. Other notable elements of the coalition agenda include full interchangeability of international forest offsets with other GHG instruments; requirements that international forest offset projects respect the rights of indigenous peoples and meet other social criteria; generous near-term foreign aid packages to assist major developing countries in establishing national deforestation baselines and preparing for offset investments; and a requirement that offsets from major developing countries only be recognized if those countries have adopted national deforestation baselines.

Studies and Reports

- **U.N. Report Paints Grim Picture of Future.** The United Nations has released The Global Assessment Report on Disaster Risk Reduction, based on thirty years of studies of droughts, floods, cyclones, and other disasters, as well as country-level data relevant to communities' capacity to withstand and recover from disasters. The report finds that climate change will magnify poverty, natural disasters, hunger, conflict, and mortality throughout the world. According to the report, unplanned urban development, poverty, and degraded ecosystems intensify the effects of disasters, and climate change increases the number and severity of disasters while reducing the resiliency of affected communities. The authors recommend increased investment in development to mitigate disaster risk. The report is available at <http://www.preventionweb.net/english/hyogo/gar/report/index.php?id=1130&pid:34&pih:2>.

International

- **UN Releases Negotiating Draft of Post-Kyoto Climate Treaty.** The United Nations climate change secretariat has released the draft negotiating text for this December's talks on a successor treaty to the Kyoto Protocol. The draft incorporates submissions from a number of member countries and offers options for various aspects of a future climate treaty. The text still lacks some important details, including specific emission targets for developed countries and possibly for developing countries. The text is available at http://carboncontrolnews.com/ccndocs/may09/ccn05222009_awglca.pdf.

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