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Power Politics
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EPA's GHG Ruling Going to Court

Three states (Texas, Alabama and Virginia), fifteen members of Congress, industry groups, and think tanks all filed court challenges to U.S. EPA's "endangerment" finding for greenhouse gases before yesterday's deadline, setting the stage for a legal battle over federal climate policies.

They are asking the US Circuit Court of Appeals to review the U.S. Environmental Protection Agency's ruling in December that greenhouse gases is a health risk under the Clean Air Act, reports Business Week. Opponents to the "endangerment finding" say it will hurt the economy and eliminate jobs, according to the article.

At the same time, a coalition of 16 states and New York City have petitioned to intervene in support of the EPA decision because they claim "a direct and substantial interest" in the outcome of the court's action. The states seeking to intervene are: Arizona, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington. These states had been involved in the Massachusetts vs. EPA lawsuit that led to EPA's ability to make the endangerment finding.

"Today the Chamber is filing a formal petition indicating it will challenge EPA's decision to trigger Clean Air Act regulation, based on lapses in EPA's process in making that decision," stated Steven J. Law, chief legal officer and general counsel of the U.S. Chamber of Commerce, in a press release.

In January, Donohue said the House-passed legislation, which would create a greenhouse gas emissions cap-and-trade system and set renewable energy targets, would result in a double-dip recession and eliminate jobs.

Industry officials and analysts say that because of the way the Clean Air Act is written, state, local and federal regulators and courthouses may be flooded with new permit applications and legal cases, reports the Wall Street Journal. They say that up to six million facilities could be subject to the potentially costly greenhouse gas controls, according to the article.

The Obama Administration has used the threat of EPA regulation to spur Congressional action. The EPA decision will allow the agency to regulate carbon-dioxide emissions from industrial sources such as power plants and factories, reports Business Week.

In January, it was reported that U.S. Sen. Lisa Murkowski (R-Alaska) was expected to introduce an amendment that would prevent the EPA from regulating greenhouse gas emissions (GHG) under the Clean Air Act. Three Democrats - Senators Blanche Lincoln of Arkansas, Mary Landrieu of Louisiana and Ben Nelson of Nebraska - joined her last month, reports Business Week.

The EPA has proposed a "tailoring rule" that would limit the new regulations to large emitters for at least the first half-decade, reports the Wall Street Journal.

Reid Pulls Biodiesel Tax Credit, Other Tax Provisions from Jobs Bill

Last week, a bipartisan compromise jobs bill was voted from the US Senate Finance Committee, which extended a number of existing tax credits and provisions that would aid the energy sector, including reinstatement of the biodiesel blenders' credit.

The White House signaled its support of the legislation, and said the President looked forward to

working with members from both parties on this bill and on the additional job creation measures he identified, including incentives for energy efficiency investments and increased access to credit for small businesses.

But the next day, Senate Majority Leader Harry Reid (D-Nev.) said he would move a scaled down jobs package, that does not include the extensions. Reid's editing of the jobs bill cut approximately \$70 billion from the Baucus-Grassley draft.

ERG has been told that Reid now may lack the votes to begin debate on his version of the targeted jobs bill. Reid needs 60 votes to open debate on the \$15 billion jobs bill. But Senators from both parties have expressed disappointment with the handling of the Baucus-Grassley legislation. The vote is scheduled for Monday, when Congress returns from recess.

The biodiesel tax incentive has been written into at least three bills since November that have never gotten to a Senate vote. Controversy aside, the current episode is a real setback for the biodiesel industry, which must now find a new legislative vehicle to move its excise tax incentive through the voting channels as soon as possible.

The National Biodiesel Board says loss of the credit has caused 29,000 jobs to be lost since the provision lapsed on Jan. 1.

Senate Appropriations Committee Discusses Ethanol, Biodiesel Production

This week the Senate Appropriations Committee held a budget hearing with Russell Redding, Pennsylvania Secretary of Agriculture. The Ag Department's scope of responsibilities is expansive, covering everything from farmland preservation to horse racing, the Department also oversees and tests for alternative fuels production.

Redding said there has been a lot of work on cellulosic ethanol, noting it is tied to research on the Chesapeake Bay. He opined it is the next big opportunity for Pennsylvania agriculture.

The state's first ethanol plant opened in January in Clearfield County. He said a new federal biodiesel mandate will have a huge impact and be a great opportunity for producers. Senator Wozniak asked if the plant is self-sufficient, to which the secretary replied, "Hopefully."

When asked about biodiesel production in state, Redding explained PA is producing and has met the first trigger of the law, 40 million gallons of biodiesel production on an annual basis. He said the state has an existing 100 million gallon capacity for biodiesel production, and that farmers could conceivably grow sufficient feedstock here. But Secretary Redding noted the state is currently a net importer of grain.

Senator Mary Jo White asked if biodiesel production levels are sustainable, commenting that when they were first certified by the department that was a spike and not sustainable. Redding agreed production was certified during a spike, but he said the capacity is there. Hero BX, in Erie, PA, is in full production at an annual rate of more than 45 million gallons per year. White, who also serves as Chairman of the Senate Energy & Environmental Resources Committee, proposed meeting with Redding to further discuss the issue of renewable fuels.

White also asked about the Chesapeake Bay nutrient management regulations and nutrient credit trading. She commented the trading program is little utilized because of its complexity, cost, and the lack of a trading mechanism, but said huge costs could be avoided if properly utilized. Secretary Redding agreed it is part of the answer to nutrient reduction, noting there have been eight trades in recent months. He discussed a federal proposal for bay-wide trading and also noted that PENNVEST has indicated it is will to undertake the "banker" role in trading.

When asked how Marcellus Shale affects Clean and Green status, Redding said that there is some confusion right now and that different approaches are being taken on that issue. He said that legislation, such as that introduced by Senator Yaw, could provide a good solution to the question.

Erickson to Introduce BioHeat Legislation

Senator Edwin "Ted" Erickson (R-Delaware) is planning to introduce legislation to incorporate oil heating fuel and off-road diesel into the state's on-road biodiesel mandate legislation. A second provision in the bill would limit the amount of sulfur contained in heating oil sold in the state.

More than 1.1 million homes and thousands of commercial entities utilize oil heating fuel in Pennsylvania, with nearly one billion gallons of heating oil consumed annually. Pennsylvania is the second largest heating oil consumer in the nation.

Erickson's legislation would build on the provisions of SB 901, which passed the Senate and is currently in the House Appropriations Committee. That legislation provides an extension from the biodiesel mandate provisions for small refineries using 100 percent Pennsylvania grade crude oil, and establishes enforcement provisions for the PA Department of Agriculture relative to the two percent biodiesel mandate which begins May 1.

Erickson's bill would require oil heat fuel in Pennsylvania to contain five percent biodiesel by May 1, 2011, and 10 percent biodiesel by May 2013, reducing the use of petroleum in the state by about 100 million gallons annually.

The bill would also require heating oil sold in the Commonwealth to have a sulfur content of no more than 15 parts per million by May 2011.

The legislation is being strongly supported by Pennsylvania's biodiesel producers and the Pennsylvania Petroleum Marketers. Associated Petroleum Industries of Pennsylvania, along with the state's small oil refiners are opposing the legislation, citing the cost, time frame and market issues that would result from moving all oil heat fuel to 15 ppm of sulfur.

Federal law does not require any sulfur reduction for heating oil, but has adopted a step program to reduce sulfur content in various other motor fuel uses including the construction and agricultural sectors this year, locomotive and marine engines in 2012, and in all cases, by June 2014.

DCED Grant Programs Under Scrutiny

As with each year, the budget is based on projected numbers – for deficits and revenue – as well as projections as to what the federal government will authorize in spending for Pennsylvania. While numbers remain iffy, all programs undergo scrutiny.

This week, Department of Community and Economic Development Secretary George Cornelius told the House Appropriations Committee that the state's grant programs have helped to keep jobs in state, and as critical links to reducing the state unemployment rate, are in desperate need of continued and, in some cases, additional funding.

DCED has proposed a \$6.7 million increase to the Opportunity Grant program, and said the level funding in Gov. Ed Rendell's spending plan for the Ben Franklin Technology Development Authority Fund does not reflect what the administration would like to spend on that area.

That grant fund increase is part of a \$21.5 million increase in DCED's state funding in Rendell's budget proposal, which would expand the department's appropriation to \$297.3 million.

The Opportunity Grant program, which saw one of the largest increases in the governor's request, provides incentives to existing state businesses to preserve and expand jobs. Companies can use the money for a variety of purposes, including job training, infrastructure updates, and purchasing land, buildings and equipment.

Several lawmakers asked Cornelius about the grant program's proposed increase - to \$25 million from last year's \$18.3 million - and why that program was chosen over others for a funding boost.

Cornelius said the department needs additional Opportunity Grant funds to meet existing award

offers and to pay for new awards. Those awards can be "enough to tip the balance" for companies deciding whether to locate in Pennsylvania or somewhere else, he said.

"If you're hoping to create jobs to pull us out of this recession, these programs are key," Cornelius said.

DGS Reaches Energy Reduction Goals, Pushes Toward Additional Improvements

The state Department of General Services has already reached and raised its goal for alternative energy use but is asking for an increase to cover rising utility costs. That increase is mostly preparation for rate negotiations, especially with the supplier of the steam for the Capitol's system under Soldier's Grove, said DGS Secretary James Creedon.

Creedon said the state already met its goal of reducing energy use in DGS-controlled buildings by 20 percent, and had raised that target to 25 percent. In electricity, Creedon said his department goal is to raise energy purchases from renewable sources from 40 percent to 50 percent.

The total cost of that renewable energy commitment, Creedon said, is "a couple of hundred thousand dollars more" than it would cost without purchasing the energy from renewable-source providers.

Senate Appropriations Committee Chairman Jake Corman (R-Centre) asked if the state had considered switching over to using more natural gas, because the state was just starting to tap its vast natural gas resources in the Marcellus Shale.

Creedon said the state was mandated by law to use coal as a first source of energy, and that it was important to use various sources of energy.

Budget Secretary: Economic Outlook Beginning to Improve; Senators Want Numbers

Budget Secretary Mary Soderberg this week told the Senate Appropriations Committee that new projections from Global Insight – the economic advisor for the commonwealth – indicate the state will experience 3 percent growth in gross domestic product (GDP) by the end of the current fiscal year. Soderberg said that's an increase from a December projection of 2.2 percent and a January projection of 2.6 percent.

Projected increases in the GCP, coupled with recent drop in national unemployment rate (from 10 percent to 9.7 percent), are signs that Pennsylvania is slowly improving, however, the Secretary warned that there is a long way to go. And, it is still unknown how significantly the small uplift will impact the projected \$525 million shortfall estimated to occur by June 30.

Soderberg wouldn't say that potential turnaround would make unnecessary Gov. Rendell's proposal to impose and hike various taxes to create a reserve fund. That fund, called the "Stimulus Transition Reserve Fund," would be used beginning in July 2011 to help deal with the loss of federal stimulus funds and the looming increase in pension costs.

"In our models that we're looking at, we're projecting we're going to be facing a shortfall of \$2.4 billion in 2011-12," said Soderberg. "If we see our revenue growth growing above what we're anticipating, yes we'll revisit those assumptions, but there would have to be some significant growth in order to close that \$2.4 billion gap."

Rendell's proposed budget contains provisions to remove 74 sales tax exemptions and lower the state sales tax rate by 2 percentage points, down to 4 percent; to require companies to report profits from all of their subsidiaries – called "combined reporting" - to prevent them from shifting profits to Delaware or other low-tax states; and to impose new taxes on natural gas extractions and tobacco products. Overall, Rendell estimates the package of new taxes and tax changes will bring in an additional \$874 million in the upcoming budget year and \$1.4 billion in 2011-12.

Rendell's proposed spending increase of \$1.2 billion in the 2010-11 state budget depends on nearly \$950 million in federal welfare funding that has yet to be approved by Congress, and \$472

million from tolling Interstate 80, assuming federal highway officials approve the plan.

"I think you're going to have a very difficult time getting us to pass a budget based on speculation of revenue," said Corman, who echoed the governor's stated hope that a budget can be completed on time or earlier. But he said that won't be able to happen without hard numbers.

Biodiesel Conference Focuses on Government Policies

ERG joined more than 500 fuel and biodiesel industry executives including more than a dozen Pennsylvanians in Dallas last week for the National Biodiesel Conference, where much of the focus was on the impacts of state and federal biofuels policies. A series of seminars, sessions and panels led by EPA staff outlined the new rules and regulations proposed to implement the Renewable Fuels Standards (RFS2) established by the Energy Independence and Security Act of 2007.

Other sessions related to federal tax policies' impact on the industry, relative values of mandates and incentive programs, and a series of sessions relating to development of second and third generation feedstocks for biodiesel production.

The RFS 2 Program sets volume requirements for renewable fuels, including ethanol, biomass based diesel and advanced biofuels, establishes standards, and grandfathers biofuels made from some current feedstocks, but not others. Additional changes in lifecycle emissions modeling were explained, and the overall impacts of the RFS2 Program were outlined. According to the EPA, these include replacing about seven percent of the expected US gasoline and diesel consumption by 2022, decreasing oil imports by \$41.5 billion, reducing greenhouse gas emissions by the equivalent of 27 million passenger vehicles, and expansion of markets for US agricultural products for biofuels by an estimated 36 percent in the next 12 years.

The Industry's Outlook on Renewable Energy

Last week, a diverse group of energy executives met to discuss the future of renewable energy. They stressed that if certain policies are not enacted, the renewable energy sector could face a downturn in investment and jobs in 2010.

The renewable energy leaders called for Congress to pass a strong national renewable energy standard (RES) with clear near- and long-term goals, along with expansion and extension of credit incentives, and comprehensive legislation. These policies will maintain American competitiveness and attract tens of billions of dollars of investment in clean energy production and manufacturing facilities. A major new study conducted by Navigant Consulting, Inc. reveals that a 25% by 2025 national RES would result in 274,000 more renewable energy jobs than a no-national RES policy scenario.

Click [here](#) to see the full press release from American Wind Energy Association.

EVENTS

[Pittsburgh Energy and Environment Week](#) - POSTPONED

Of the 16 billion US dollars allocated to renewables and energy efficiency by the American Recovery and Reinvestment Act some 450 million dollars will be spent on projects in the Keystone State. Pennsylvania hosts the "Energy and Environment Week" (EEW), to be held in Pittsburgh – LOOK FOR NEW DATES TO BE ANNOUNCED. EEW will bring together stakeholders from North American and Europe to talk business and new ventures.

Click [here](#) to view additional renewable energy events.

NEWS CLIPS

[ARRA funds bring three PA wind farm projects back online](#)

[Nike, Starbucks, other Northwest businesses push Congress for 'clean energy economy'](#)

[Obama offers nuclear plant loan guarantee](#)

[US House committee investigates fracking drilling practice](#)

[Defections Shake Up Climate Coalition](#)

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