Looking Forward: Energy and the Environment Through 2012

Jonathan A. Lesser

November's election changed the political landscape, and with it, so have prospects for future environmental regulations being pushed through the 112th session of Congress, which starts this month. Even though new federal legislation, such as the already-ill-fated cap-and-trade legislation, may not see the light of day, numerous other regulatory efforts through the Environmental Protection Agency (EPA) and at the state level are likely to continue.

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CLIMATE CHANGE

With cap-and-trade effectively dead in Congress, a looming question is what the EPA will do to further carbon regulation. The answer appears to be "plenty." In October 2010, the EPA and the Department of Transportation introduced proposed new regulations to reduce carbon emissions from heavy trucks and buses by mandating higher fuel-efficiency standards for those vehicles.[1] These new regulations follow on the EPA's earlier announcement to impose significantly higher fuel standards for light trucks and passenger cars through the so-called CAFE (Corporate Average Fuel Economy) standards.

The EPA's new greenhouse gas (GHG) reporting requirements also take effect this year under its so-called tailoring rule.[2] The new rule, and the lack of a carbon cap-and-trade program, will lead to command-and-control regulations, specifically implementing "best available control technology" for reducing GHG emissions at industrial facilities. These standards will be especially tough for owners of coal-fired power plants, but the standards may impose collateral damage on renewable energy producers, too, specifically biomass facilities.

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Jonathan A. Lesser, PhD, is president of Continental Economics, Inc., an economic and litigation consulting firm, with offices in Washington, DC, and Albuquerque, New Mexico. He can be reached at (202) 446-2062 or at jlesser@continentalecon.com.

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EPA does not exempt biomass facilities from the new tailoring rules and emissions reduction requirements, the economic viability of those facilities may be severely affected.

Biomass is also under attack in some states. In Massachusetts, for example, a July 2010 letter from Massachusetts Department of Energy Resources Secretary Ian Bowles indicated an expected clampdown on new biomass facilities.[3] The change stems from concerns that biomass facilities are not actually carbon-neutral, based on the findings of a study prepared by the Manomet Center for Conservation Sciences.[4]

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Although Massachusetts appears to be restricting biomass development within the state, and the ability of biomass facilities to qualify as renewable energy resources under the state's renewable portfolio standard mandates, other states, such as Maine, are pushing ahead with biomass as an economic development strategy. This interstate battle is important because biomass facilities are not only one of the lowest-cost "renewable" resources for producing electricity, but also one of the few that can produce firm, round-the-clock electricity.

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STATE-LEVEL CLIMATE INITIATIVES

Despite sagging economies, a number of states continue their march to reduce greenhouse gas emissions, regardless of the economic cost. California voters rejected an initiative that would have suspended that state's climate-change goals until the state's unemployment rate fell to 5 percent (it is over 12 percent today).

In New Mexico—which is a member of the Western Climate Initiative along with five other western states (Arizona, California, Oregon, Utah, and Washington) and four Canadian provinces (British Columbia, Manitoba, Ontario, and Quebec)—the state's unelected Environmental Improvement Board voted to impose a cap-and-trade system on major carbon-emitting sources in the state, including coal-fired power plants owned by the Public Service Company of New Mexico. The rules will take effect once there is agreement among a coalition of states whose emissions total 100 million tons of carbon (New Mexico's output is approximately 24 million tons). Agreement is a foregone conclusion.[5]

EPA TRYING TO CLOSE DOWN COAL PLANTS BY WHATEVER MEANS

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Clean Air Interstate Rule

The EPA's Clean Air Interstate Rule (CAIR) is also being revamped. The existing rule, including the market-based cap-and-trade provisions for criteria pollutants regulated under the Clean Air Act, such as sulfur dioxide and oxides of nitrogen, was tossed out by the US Court of Appeals for the District of Columbia Circuit in 2008 but allowed to remain in force while the

EPA developed new regulations.[6] The EPA's new CAIR regulations contain strict command-and-control requirements for these pollutants and require that mercury emissions from coal-fired power plants be reduced by 90 percent.

One likely outcome of the new CAIR requirements will be coal-plant shutdowns, which will inevitably lead to higher wholesale electric prices. Whether the trade-off of reduced emissions for higher electricity prices is beneficial remains to be seen, although forcing businesses and consumers to pay higher electric prices will not help the economic recovery.

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By Land and Sea

Of course, the EPA's focus is not limited to air pollution. After being sued by environmental groups,[7] the agency agreed to propose new rules governing wastewater effluent from coal-fired power plants by 2012, and implement those new rules by 2014. Thus, not only will owners of coal-fired power plants face millions of dollars of expenditures to reduce air pollution emissions, but also they are likely to face significant investments to control wastewater effluent, further accelerating the closure of higher-cost plants and further raising wholesale electric prices.

JOBS, JOBS, AND MORE JOBS

Selling more-stringent environmental regulations is particularly tough in tough economic times. To counter this, expect to see more studies touting the economic benefits of new environmental regulations, including the creation of millions of new jobs and whole new industries.[8] It used to be that environmental regulations were considered on the merits of the benefits they provided, in terms of improved health and better views, or protection of particularly vulnerable population groups, such as children. While one could always debate the specific costs and benefits of those regulations, and reasonable persons could disagree, selling today's environmental regulations is focused on their economic benefits.

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This is economic snake oil.

Forcing energy prices higher through new mandates may improve the environment, and it will certainly benefit "clean" energy providers like wind and solar, but it will hardly help the overall economy. Expect to see increasing fireworks (exploded with carbon offsets firmly in place) as Congress and state legislatures examine those economic claims more closely.

NOTES

1. (2010, October 25). *DOT, EPA propose the nation's first greenhouse gas and fuel efficiency standards for trucks and buses: A win for the environment, economy and energy efficiency.* Retrieved from http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/9b3706622f4ac560852577c7005ea140!OpenDocument.
2. The term *tailoring rule* stems from the EPA's "tailoring" the emissions minimums under the Clean Air Act, which never included carbon dioxide, in ways to limit reporting and emissions reductions to facilities emitting over 25,000 tons of carbon per year. Had the EPA not done this, all facilities emitting more than 250 tons per year would have been affected, which would have forced millions of small businesses to comply.
3. Letter from Ian Bowles to Philip Guidice, Commission. (2010, July 7). Retrieved from http://www.mass.gov/Eoeea/docs/eea/biomass/070710_biomass_sustainablity_carbon_regs_letter.pdf.
4. Walker, T., Cardellichio, P., Colnes, A., Gunn, J., Kittler, B., Perschel, B., . . . Saah, D. (2010, June). *Biomass study and carbon sustainability policy*. Manomet Center for Conservation Sciences. Retrieved from http://www.manomet.org/sites/manomet.org/files/Manomet_Biomass_Report_Full_LoRez.pdf.
5. Although the cap-and-trade proposal was supported by outgoing New Mexico Governor Bill Richardson, it was opposed by both candidates for governor.
6. *North Carolina* v. *Environmental Protection Agency*, No. 05-1244 (D.C. Cir. 2008).
7. *Defenders of Wildlife et al.* v. *Jackson*, No. 10-cv-01915 (U.S. District Court for the District of Columbia).
8. For a discussion, see my November 2010 column, First-mover disadvantage: Offshore wind's false economic promises. *Natural Gas and Electricity*, 27(4), 26–28. See also Lesser, J. (in press). Gresham's law of green energy. *Regulation*.

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