



## **Executive Director's Report**

**National Association of Clean Air Agencies  
Spring Membership Meeting  
Chicago, Illinois**

**May 23, 2011**

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# Legislative Initiatives I Will Cover

- ❑ H.R. 1 – FY 2011 Continuing Resolution
- ❑ H.R. 910 – Energy Tax Prevention Act of 2011
- ❑ S. 493 – GHG Riders to the Small Business Act
- ❑ Appropriations – FYs 2011 (CR) and 2012 (Obama Request)
- ❑ Utility/AEP Draft
- ❑ Clean Energy Standard
- ❑ Outer Continental Shelf Permitting
- ❑ Transportation
- ❑ Diesel Emissions
- ❑ Congressional Review/Limitations

# H.R. 1 – FY 2011 Continuing Resolution

## □ H.R. 1 – Major Provisions—passed 235-189

- ◆ Poe (R-TX) – prohibits EPA from funding programs to regulate greenhouse gases from stationary sources (e.g., permitting, NSPS, etc.)
- ◆ Rogers (R-KY) – prohibits EPA from approving California’s waivers under Section 209(b) for regulating GHGs from motor vehicles
- ◆ Carter (R-TX) – prohibits EPA from implementing the regulatory program to control toxic pollution from cement kilns (Portland cement)
- ◆ Young (R-AK) – prohibits EPA from funding its EAB to review permits for OCS sources located off the Arctic coast
- ◆ Noem (R-SD) – prohibits EPA from revising the National Ambient Air Quality Standard for coarse particle matter

# H.R. 1 – FY 2011 Continuing Resolution

## □ H.R. 1 – Major Provisions

- ◆ Luetkemeyer (R-MO) – cuts funding for the Intergovernmental Panel on Climate Change (leading scientific body assessing climate change)
- ◆ Pompeo (R-KS) – cuts \$8.5 million from EPA's GHG emissions inventory program
- ◆ Rogers (R-KY) – cuts grants to state and local air pollution control agencies by about \$100 million below FY 2011 requested levels

# H.R. 910 – Energy Tax Prevention Act of 2011 (Upton)

- ❑ House approved H.R. 910 by a vote of 255-172
- ❑ The bill strips EPA’s authority under the CAA to regulate GHGs, repealing or prohibiting, among other rules:
  - ◆ the “Endangerment Finding”
  - ◆ EPA’s GHG permitting program (including the “Johnson Memo” and “Tailoring Rule”)
  - ◆ the NSPS program for GHGs
  - ◆ California’s and other states’ programs to adopt clean car standards for GHGs
  - ◆ EPA’s program to set future fuel economy standards
  - ◆ EPA’s GHG mandatory reporting rule

## S. 493 – GHG Riders to the Small Business Act

- ❑ Baucus (D-MT) – would have raised GHG permitting threshold to 75,000 tpy, restricted to “anyway” sources and also exempted agriculture and land use emissions; failed 7-93
- ❑ Stabenow (D-MI) – would have delayed for 2 years EPA’s authority to regulate GHG emissions, except for certain vehicle standards; exempted agriculture, land use and biomass emissions; failed 7-93
- ❑ Rockefeller (D-WVA) – would have delayed for 2 years EPA’s authority to regulate GHGs from stationary sources; failed 12-88
- ❑ McConnell (R-KY) – identical to Upton bill (H.R. 910); failed by a vote of 50-50 (60 needed for passage)

## Appropriations –FY 2011 and FY 2012

	<b>FY 2010 (enacted)</b>	<b>FY 2011 (requested)</b>	<b>FY 2011 (enacted)</b>	<b>FY 2012 (requested)</b>
<b>State and Local Air Grants (Sections 103/105)</b>	\$226.6 M	\$309.1 M (\$82.5 M over FY 10)	\$236.1 M (0.2% across-the- board rescission from FY10)	\$305.5 M (\$78.9 M over FY 10)
<b>DERA</b>	\$60 M	\$60 M	\$0	\$0
<b>Local Climate Change Grants</b>	\$10 M	\$0	\$0	\$0
<b>Targeted Airshed Grants</b>	\$20 M	\$0	\$0	\$0

# Utility/AEP Draft

- ❑ Would allow existing coal plants to avoid compliance with clean air and environmental regulations by
  - ◆ Committing to permanently retire the plant by 12/31/20; or
  - ◆ Committing to repower/replace the unit by 12/31/20 with natural gas, biomass, renewable fuel or “advanced coal-fueled technology”; or
  - ◆ Complying with specified emission limits for SO<sub>2</sub>, NO<sub>x</sub> and mercury that are less stringent than proposed EPA regulations and for which source can set own timeline for compliance (with some restrictions)
- ❑ Severely constrains EPA ability to set more protective air pollution control requirements for existing coal plants



# Utility/AEP Draft

- ❑ Bars EPA from limiting CO<sub>2</sub> emissions from existing coal plants until 12/31/20 except for efficiency improvements
- ❑ Provides that installation of pollution control technologies and improvements in energy efficiency shall not constitute modifications under the Clean Air Act even if there is an overall increase in the amount of air pollution discharged from the plant

# Clean Energy Standard

- ❑ Senators Bingaman (D-NM) and Murkowski (R-AK) issued “white paper” soliciting comments on the design of a Clean Energy Standard (CES)
- ❑ President Obama expressed support in his State of the Union address for a CES that would require 80% of nation’s electricity to come from clean energy sources by 2035
- ❑ NACAA submitted comments supporting a federal CES that reduces both GHGs and conventional air pollutants and does not preempt state RPS

# Outer Continental Shelf Permitting

- Jobs and Energy Permitting Act of 2011 – Draft bill by Rep. Cory Gardner (R-CO) to amend CAA OCS provisions (sec. 328):
  - ◆ Air quality impacts of an OCS source would be based solely on impacts on corresponding onshore area
  - ◆ Emissions from vessels associated with an OCS source would not be subject to control requirements of PSD program
  - ◆ An OCS source would be established when drilling activity begins and cease to exist when drilling ends
  - ◆ A final permit would be required 6 months after completed application is filed
  - ◆ Final permit action would be considered nationally applicable under CAA sec. 307(b)
  - ◆ Any administrative review or adjudication, including local EAB, would be eliminated; judicial review of a final agency action would be available only under sec. 307(b) and only the applicant would be able to petition for reconsideration
  
- Hearings held April 13 and May 13, 2011

# Transportation

- ❑ No bills introduced in this Congress yet, but House and Senate have held hearings to take testimony on stakeholders' perspectives
- ❑ In FY 2012 budget request, President proposed six-year \$556-billion surface transportation program (vs \$285-billion program under SAFETA-LU)
- ❑ 500-page draft U.S. DOT bill “leaked”
- ❑ At least two items of note:
  - ◆ CMAQ zeroed out and replaced by set-aside in new “Livability Program” (a few hundred million dollars a year vs >\$1.7 billion a year under CMAQ)
  - ◆ MPOs terminated in cities with <200,000 people – What will happen when these areas have a transportation project? Who will do conformity and how?

# Diesel Emissions

- Clean Air Construction Act of 2011 – Introduced by Sen. Tom Carper (D-DE) May 12, 2011
  - ◆ Goal is maximum achievable PM<sub>2.5</sub> reductions from construction of transportation projects in PM nonattainment areas
  - ◆ Would provide existing federal transportation funding to retrofit, repower and upgrade construction equipment
  - ◆ To contain costs, states and public transportation agencies could allocate no more than 1% of a transportation project's cost to upgrade dirty construction equipment
  - ◆ Restricts use of funds to PM nonattainment areas
- Hearing held May 12, 2011

# Recent Mobile Source Bills

- **Advanced Vehicle Technology Act of 2011**
  - ◆ S. 734\* – Senator Stabenow (D-MI); H.R. 1367 – Rep. Peters (D-MI)
  - ◆ To reauthorize DOE’s Vehicle Technologies Program to provide for research, development, demonstration and commercial applicability of vehicle technologies
- **Open Fuel Standard Act of 2011**
  - ◆ H.R. 1687 – Reps. Shimkus (R-IL), Engel (D-NY), Bartlett (R-MD), Israel (D-NY)
  - ◆ To require 50% of new cars in 2014, 80% in 2016 and 95% in 2017 to run on nonpetroleum fuels to increase competition at the pump
- **Electric Drive Vehicle Deployment Act**
  - ◆ H.R. 1685 – Reps. Biggert (R-IL), Markey (D-MA), Eshoo (D-CA), McNerney (D-CA); S. 948\* – Senators Merkley (D-OR) and Alexander (R-TN) *(bills are similar, though not identical)*
  - ◆ To provide for a DOE program of grants to communities that demonstrate a plan for deploying electric vehicles, to identify best EV practices and policies and to otherwise incentivize EVs

*\*Subject of Senate hearing last week*

# Congressional Review/Limitations

- ❑ REINS Act (proposal)
  - ◆ No regulation with impacts greater than \$100 million will take effect unless both chambers of Congress approve the rule and the President signs it into law; not limited to EPA
- ❑ Congressional Review Act (existing law)
  - ◆ Within 60 days of a rule's publication, Congress can take an "up or down" vote to rescind the rule; not subject to filibuster
- ❑ Legislative Riders (can occur anytime)
  - ◆ Riders to constrain/rescind EPA authority could be offered on any major legislative proposals

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