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COVER STORY: ENERGY AND ENVIRONMENT

Climate Impasse Won't Stop Regulations

Industry is bracing for an avalanche of new environmental rules.

By Margaret Kriz Hobson

Climate change will be the dominant environmental issue in Washington for the rest of 2010, whether or not Congress adopts legislation to control green-house-gas emissions.

Last weekend, Senate efforts to pass an energy and climate-change bill hit a wall when Sen. Lindsey Graham, R-S.C., withdrew his support for the proposal that he had spent months crafting with Sens. John Kerry, D-Mass., and Joe Lieberman, ID-Conn. In a letter to supporters of the broad goals of the legislation, Graham said he was stepping away because of "what appears to be a decision by the Obama administration and Senate Democratic leadership to move immigration instead of energy." Graham asserted, "I will not allow our hard work to be rolled out in a manner that has no chance of success."

Once Graham bailed, Kerry and Lieberman canceled the April 26 unveiling of their package, further diminishing the chances that climate legislation will become law this year. Nevertheless, Lieberman says he is confident that Graham will come back on board eventually and that the measure will finally make its long-awaited debut.

If a climate bill does reach President Obama's desk, it would probably strip the Environmental Protection Agency of its authority to regulate carbon dioxide emissions and would also block state action. EPA is already working toward issuing regulations next year to curb greenhouse-gas emissions from cars and trucks, and it is planning to limit emissions from the nation's largest corporate polluters as well.

Should the current legislative standoff continue, Republican senators and their conservative Democratic counterparts will attempt to block EPA in other ways. The Supreme Court ruled in 2007 that EPA has the power under the Clean Air Act to regulate global-warming pollution -- provided that the agency finds that such pollution endangers human health and the environment. In December, EPA Administrator Lisa

Jackson formally issued the required "endangerment finding." Sen. Lisa Murkowski, R-Alaska, has introduced a bill to override that decision. On the other side of the aisle, Sen. Jay Rockefeller, D-W.Va., has introduced legislation to impose a two-year moratorium on EPA's power to control greenhouse-gas pollution from manufacturers or power companies.

To be sure, climate-change regulations are far from the only EPA mandates that worry corporate America. Industry officials say they are bracing for the Obama administration to issue an avalanche of rules aimed at controlling industrial pollutants. Federal regulators are drafting proposals that would tighten pollution controls on coal-fired power plants and mountaintop mining. EPA is writing tougher health standards for ozone and soot in urban regions, regulations that could force some state and local governments to impose stricter pollution controls on businesses.

Business lobbyists charge that environmental controls in the executive branch pipeline amount to a "regulatory assault" on industry. At an April congressional hearing, Ohio Coal Association President Mike Carey argued, "Through a diverse set of new rules improperly promulgated using the Clean Air Act and other statutes, the domestic coal industry is facing challenges that make it nearly impossible to see a successful domestic future." John McManus, the environmental services vice president at American Electric Power, said at a March hearing that the potential cost of proposed regulations "is raising concern about the economic viability of a large number of coal-fired units, as well as potential impacts to the [electric power] grid reliability. And this is without consideration of the impact of legislation or regulation to limit carbon emissions."

Jackson counters that her agency's actions will be good for the national economy in the long run. In a March speech at the National Press Club, she argued against the "misconception that we must make a choice between cleaning up our environment and growing our economy." She said, "The

laissez-faire and anti-government crowd must understand that ever-expanding economic opportunity is not possible without [environmental] sustainability. Without protection for the water, air, and land that people depend on, we can only go so far.”

Stricter Requirements

The EPA’s endangerment finding was its first step on the long road toward regulating greenhouse gases under the Clean Air Act. In April, the administration completed standards requiring car and truck manufacturers to produce more-efficient vehicles. Those rules will impose the nation’s first federal greenhouse-gas emissions limits next year.

Now the agency is working on rules that would control greenhouse gases from power companies and manufacturers. Jackson has indicated that those controls, expected to be proposed in the near future, will require greenhouse-gas emission cuts that would begin in 2011 and be phased in over several years.

At the same time, the agency is considering whether to regulate greenhouse-gas emissions under the Clean Water Act, after agreeing to study climate-related water pollution in a March settlement with the Center for Biological Diversity. A recent report from the National Research Council, part of the National Academies, concluded that global warming is changing the chemistry of seawater, making oceans more acidic and interfering with the ability of marine life to build reefs, skeletons, and protective shells. The settlement gave the agency a November 15 deadline for deciding how to tackle the problem.

The administration plans to issue a host of additional environmental controls to address other pollution problems. EPA, for example, is working on a proposed rule aimed at reducing the sulfur dioxide and nitrogen oxide emissions from coal-fired power plants in the Midwest that are linked to the smog and soot in the Northeast. The agency is rewriting the Clean Air Interstate Rule because a 2008 Appeals Court ruling on a Duke Energy lawsuit tossed out the Bush administration’s regulations. The proposed revisions are due in the coming weeks, with final regs planned for early 2011.

Bush-era regulations controlling power-plant emissions of mercury through a cap-and-trade program were also overturned in 2008 when a federal court decreed that the Clean Air Act did not authorize the administration to take that approach. Obama’s EPA is developing a new mercury-control program that would identify the best technologies for reducing emissions of mercury and 200 other hazardous air pollutants. In researching how to proceed, the agency has asked the electricity industry to provide data on a wide variety of coal-fired power plants.

The court gave EPA until March 2011 to propose a new mercury-control regime. John Kinsman, senior director for

environment at the Edison Electric Institute, said that EPA’s rapid timetable for completing the massive information-gathering effort and writing the proposal “is really pushing it.” Mercury exposure, which most often occurs when people eat fish from contaminated waters, can cause severe neurological damage, especially in young children and fetuses.

On another front, the Obama administration is setting tougher health standards for soot and ozone under a program that requires federal regulators to set national safety standards and obliges states to oversee compliance. EPA issued a proposed ozone standard in January and is expected to release its final rules in August. A proposed tougher standard for soot is due in November. Stricter soot and ozone requirements will likely force “the vast majority of states” to impose more-stringent air-pollution regulations, Kinsman said.

Ozone, which is a major component of smog, causes or exacerbates respiratory illnesses and heart problems. Smog is created when pollution from coal-fired power plants, vehicles, and manufacturing and from paints, solvents, and cleaners mixes in the presence of sunlight. Soot, or fine particulates, can lodge deep within the lungs, causing asthma, bronchitis, and heart problems. Fine particulates come from cars and power plants that burn fossil fuels, from industrial processes, and from wood burning.

The administration is also aiming at several other environmental targets.

- **Coal ash.** In 2008, a Kentucky coal ash pond operated by the Tennessee Valley burst during a flood, causing chemical-laden sludge to pour into waterways. Since then, EPA has been crafting rules designed to reduce the pollution associated with coal mining. In the coming weeks, the agency is expected to release proposed regulations, which are likely to prohibit utility companies from storing coal ash in wet holding areas.

- **Mountaintop mining.** EPA and the Interior Department are separately developing new mandates to limit water pollution from the strip-mining techniques that remove the tops of mountains. In April, the agency released guidelines for pollutants that run off into streams and rivers. The guidelines are open for public comment until December. Meanwhile, Interior’s rules would impose even tougher stream-protection requirements on mining companies and require firms to restore dynamited areas to their original contours.

- **Natural-gas extraction from shale.** EPA scientists are studying whether new methods of extracting natural gas from underground rock formations contaminate water supplies. The technology, called hydraulic fracturing, forcefully shoots chemical-laced liquids into rock miles beneath the surface. Proponents say that this “fracking” can tap massive amounts of otherwise inaccessible natural gas from beneath the Northeastern states.