

**Exhibit 26**

**Article on Congressional Activities Relative to the CAIR**

**“Seeking CAIR Consensus,” *InsideEPA.com* (August 22, 2008),  
< [www.insideepa.com/secure/docnum.asp?docnum=8222008\\_blogcair&f=epa\\_2001\\_ask](http://www.insideepa.com/secure/docnum.asp?docnum=8222008_blogcair&f=epa_2001_ask) >.**



THE INSIDE STORY - FRIDAY, AUGUST 22, 2008

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## Seeking CAIR Consensus

The House Energy & Commerce Committee is floating draft legislative language to codify the first phase of EPA's vacated clean air interstate rule (CAIR), in a bid to gather consensus for the plan among lawmakers, states, activists, industry and the Bush administration.

"Based on discussions with representatives of States, environmental groups, the electricity industry and other Hill staff, it appears that there is a broad range of preferred outcomes ranging from no legislation this year to full codification of CAIR," Democratic energy panel staff wrote in an Aug. 22 e-mail to various stakeholders, attaching [draft language](#) that would codify the first phase of the rule vacated last month by the U.S. District Court of Appeals for the District of Columbia Circuit.

States, environmentalists and some energy companies favor a bill to codify just the first phase of CAIR, a cap-and-trade program for reducing power plant emissions. However, the White House Council on Environmental Quality (CEQ) and some utilities, including Southern Company, reject that idea and favor an approach that would revive and codify all phases of the rule. CAIR would have mandated nitrogen oxide and sulfur dioxide cuts starting in 2009 and 2010 respectively, with a second, more stringent phase for both pollutants beginning in 2015.

The email notes the limited timetable Congress has to pass such a measure into law, making a broad consensus imperative for such an effort succeed. "Given the very short time remaining, any CAIR legislation would have to be passed on the suspension calendar in the House (which requires a two-thirds majority) and by unanimous consent in the Senate. Having your feedback will be very helpful as we seek to determine whether such consensus exists and as we prepare to best inform the members on this issue upon their return," the e-mail from Lorie Schmidt, House energy senior counsel on air quality and climate change, and Laura Vaught, policy coordinator for Rep. Rick Boucher (D-VA), chair of the energy committee's panel on air quality.

As expected, the draft language also includes a provision that would block EPA from finalizing until Feb. 1, 2009, its proposed change to the emissions test used to determine whether facilities trigger Clean Air Act new source review requirements.

A CEQ spokeswoman says the White House is considering "legislative and legal options to immediately and fully restore" CAIR.

An environmentalist says consensus among stakeholders remains elusive. "The fly in the ointment continues to be Southern Company and the White House, who insist on full codification of CAIR or nothing," the source said, adding, "They're not going to get phase two."

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**Exhibit 27**

**Article on White House and Congressional Activities  
Relative to the CAIR**

**Andrew Childers, "Air Pollution: White House, Congressmen Offer Alternatives to Interstate Rule Vacated by Appeals Court," *Daily Environment Report* (August 25, 2008), BNA, Inc., < [www.pubs.bna.com/ip/bna/DEN.NSF/eha06b6z2c861](http://www.pubs.bna.com/ip/bna/DEN.NSF/eha06b6z2c861) >.**




**BNA, Inc.**

# Daily Environment

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**REPORT**

No. 164  
 Monday, August 25, 2008  
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## News

### Air Pollution

#### White House, Congressmen Offer Alternatives To Interstate Rule Vacated by Appeals Court

The White House and Democrats on the House Energy and Commerce Committee are circulating separate draft proposals to codify the Clean Air Interstate Rule—either in whole or in part—to respond to a federal court decision that threw out a major Environmental Protection Agency regulation to curb air pollution in the eastern United States.

The draft legislative language offered by the House Democrats would simply extend a portion of CAIR requiring the first phase of emissions reductions to begin in 2009, which would give Congress time to draft comprehensive legislation to address the court ruling.

The White House approach would enact CAIR in its entirety, effectively writing into law the rule that was vacated by the U.S. Court of Appeals for the District of Columbia Circuit.

Copies of the draft legislation were provided to BNA Aug. 22.

CAIR, issued at 40 C.F.R. Parts 51-52, would have used an emissions trading scheme to curb ozone and fine particle pollution from power plants in upwind states in order to help downwind states attain EPA air quality standards.

The rule would have required 28 states and the District of Columbia to revise their state implementation plans to reduce emissions of sulfur dioxide and nitrogen oxides, which are precursors of particulate matter and ozone, respectively.

Nitrogen oxide reductions were scheduled to begin in 2009, with sulfur dioxide reductions to follow in 2010; secondary reductions for each were slated for 2015.

The rule was challenged by North Carolina, which advocated stricter protections for downwind states, as well as several energy companies that disputed EPA's authority to set new emissions caps under the provisions of CAIR.

The D.C. Circuit July 11 struck down the agency's method for allocating emissions allowances for upwind states and its interpretation of protections for downwind states, leading the court to vacate the entire rule (*North Carolina v. EPA* D.C. Cir., No. 05-1244, 7/11/08; (134 DEN A-6, 7/14/08)).

EPA has not yet decided how it will respond to the decision, spokesman Tim Lyons told BNA Aug. 22. However, the agency did receive an extension of the deadline to file an appeal from the court to Sept. 24.

#### House Looks at Temporary Fix

The draft language offered by the Energy and Commerce Committee Democrats would codify the first phase of CAIR, which would have taken effect in 2009, carrying the requirements through either 2011

or 2012 while Congress can address a longer-term response. The cutoff date has not been finalized while the draft is being circulated for comment among industry and environmental groups.

That intermediate approach is favored by both Committee Chairman John Dingell, (D-Mich.) and Rep. Rick Boucher (D-Va.), chairman of the Subcommittee on Energy and Air Quality, according to committee staff.

The committee's proffered language would omit Minnesota from the CAIR requirements after that state successfully sued to be removed from the rule and would also bar EPA from following through on a proposal to redefine when new source review provisions of the Clean Air Act applies at power plants (153 DEN A-2, 8/8/08 [link](#)).

Since 1980, EPA regulations have defined emissions increase as an increase in a plant's actual emissions measured on an annual basis. However, the agency is trying to narrow the definition, which would restrict the circumstances under which new source review applies at power plants.

The Senate Environment and Public Works committee held a public hearing on the CAIR decision July 29 where most members favored a legislative fix to deficiencies in the rule raised by the court. Brian McLean, director of EPA's Office of Atmospheric Programs, also told the committee he would favor a legislative solution to CAIR rather than another rulemaking that could be challenged in court (146 DEN A-6, 7/30/08 [link](#)).

The Environment and Public Works Committee has not yet offered any legislation in response to the decision, a spokesman said. Sen. Tom Carper (D-Del.) has used the CAIR decision to push his long-stalled Clean Air Planning Act, which would stipulate even deeper emissions cuts, including new limits on mercury, but his staff said he would be "open" to supporting the House language for a two-year fix.

#### **White House Would Adopt Whole Rule**

The draft legislation being circulated by the White House Council on Environmental Quality would adopt CAIR wholesale rather than simply codifying the first phase.

"This is one draft option being explored," CEQ spokeswoman Kristen Hellmer said in a statement. "We are looking at both legal and legislative options that will immediately and fully restore the rule--any delay or half measures will come at a significant cost to public health, the environment, economic development, and good jobs."

But environmental groups say the draft legislation presented to them by CEQ Chairman James Connaughton during a recent telephone conference call would prevent EPA from further strengthening CAIR until all court challenges and appeals have been resolved.

The language would "handcuff a future administration," Natural Resources Defense Council Clean Air Program Director John Walke told BNA.

Though she has not thoroughly read through the Energy and Commerce Committee language, Amy Royden-Bloom, senior staff associate with the National Association of Clean Air Agencies, told BNA the short-term approach is generally favored by the association.

The group also has concerns about the language circulated by the White House, Royden-Bloom said, because it fails to address many of the concerns raised by the judges who overturned CAIR.

"We're not in favor of this language," she said, adding that there are "problems with this approach."

#### **Desire to Move Quickly**

Edison Electric Institute spokesman Dan Riedinger told BNA the power trade group was still

discussing both proposals, but the industry hopes Congress and EPA can reach a quick resolution.

"There's a common desire to move relatively quickly," he said.

Though CAIR was largely supported by both industry and environmental watchdogs, Walke said the court decision opens the door to pushing for deeper emissions reductions in future years.

"We believed it was the best we'd get out of the Bush administration, but the status quo has changed," Walke said.

*The draft legislative language codifying CAIR circulated by the White House is available at <http://pub.bna.com/ptcj/DraftLanguage.pdf>.*

*The draft legislative language partially codifying CAIR circulated by House Energy and Commerce Committee Democrats is available at <http://pub.bna.com/ptcj/DraftCAIR.pdf>.*

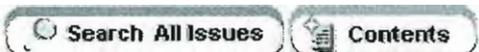
*By Andrew Childers*

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**Free-Standing Legislation**

Notwithstanding any other provision of the Clean Air Act, the Clean Air Interstate Rule and the Federal Implementation Plans for the Clean Air Interstate Rule as promulgated and modified by the Administrator of the Environmental Protection Agency (70 Fed. Reg. 25,162 (May 12, 2005), 71 Fed. Reg. 25,288 (April 28, 2006), 71 Fed. Reg. 25,328 (April 28, 2006), 72 Fed. Reg. 59,190 (Oct. 19, 2007)) are hereby authorized as consistent with the requirements of sections 110, 301 and Title IV of the Clean Air Act. Those rules shall remain in force and effect except as they may later be revised by the Environmental Protection Agency following notice-and-comment rulemaking and affirmed by a court of competent jurisdiction if judicial review of any such revised rule is sought in accordance with the provisions of 42 U.S.C. 7607. Nothing in this Act shall abridge any other right or remedy under the Clean Air Act, 42 USC 7401-7671q, including Section 126 ("Interstate pollution abatement") and/or the right to petition for rulemaking under the Clean Air Act, nor shall anything in this Act limit EPA's discretion to entertain such petitions or to promulgate such rules and regulations as are consistent with the requirements of the Clean Air Act, as modified hereby.

[White House]

**DRAFT LANGUAGE**

**SECTION 1. EPA CAIR rule and new source review.**

(a) Interim legal effect of CAIR rule.—

(1) In general.—The Clean Air Interstate Rule and related Federal implementation plans promulgated and modified by the Administrator of the Environmental Protection Agency on May 15, 2005 (70 Fed. Reg. 25162), April 28, 2006 (71 Fed. Reg. 25288 and 25328), and October 19, 2007 (72 Fed. Reg. 59190) shall remain in force and effect to the extent that such rule and plans—

(A) require control measures (and State implementation plan revisions containing control measures) to eliminate emissions of oxides of nitrogen and sulfur dioxide before [2011? 2012? ???]; and

(B) require or allow participation in specified trading programs before [2011? 2012? ???].

(2) Exception.—Paragraph (1) shall not apply with respect to the State of Minnesota or sources within the State of Minnesota nor shall paragraph (1) affect the Administrator's decision regarding the petition of the State of North Carolina under section 126 of the Clean Air Act.

(3) Credit for emission reductions.—For purposes of State implementation plans under section 110 of the Clean Air Act, any State may take credit for emission reductions required to be implemented before [2011? 2012? ???] under the Clean Air Interstate Rule or Federal implementation plan provisions referred to in paragraph (1) and the Administrator may approve State implementation plans based on such credits. Approval under the preceding sentence shall cease to apply unless emission limitations or other control measures or techniques that permanently require at least equivalent emission reductions after [2010? 2011? ???] are adopted or submitted.

(b) New source review and new source performance standards.—Until after February 1, 2009, the Administrator of the Environmental Protection Agency shall not promulgate a final rule based on the rule proposed on Oct. 20, 2005, entitled “Prevention of Significant Deterioration, Nonattainment New Source Review, and New Source Performance Standards: Emissions Test for Electric Generating Units” (70 Fed. Reg. 61,081 et seq.) or based on the rule proposed on May 8, 2007, entitled “Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units” (72 Fed. Reg. 26,202 et seq.), and the Administrator shall not promulgate any other rule under the Clean Air Act revising the time period for which emission changes are calculated for purposes of determining whether there has been a modification of an existing electric generating unit requiring compliance with new source review programs under that Act.

(c) SAVINGS CLAUSE.----Except as specifically provided in this Act, nothing in this Act shall change or modify the authority or obligations set forth in the Clean Air Act.

**Exhibit 28**

**Editorial on the Strange Alliances Created by the CAIR Vacatur**

**Christine Tezak and K. Whitney Stanco, "CAIR Update – Odd Bedfellows," editorial, *Washington Electricity/Environmental Bulletin* (August 25, 2008), StanfordGroup Company, < [www.standordinstitutional.com](http://www.standordinstitutional.com) >.**



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Washington Electricity/Environment Bulletin

Christine Tezak / K. Whitney Stanco  
202-298-6226

## CAIR Update – Odd Bedfellows

**Summary:** Six weeks have passed since the emissions credit markets were upended by the unexpected vacatur of the Bush Administration's Clean Air Interstate Rule (CAIR). So far there has been a smattering of informal meetings, a Senate hearing, an extension of the appeal deadline for the Environmental Protection Agency (EPA), revival sought for a lawsuit held in abeyance, some lobbying by the administration and finally, some legislative language on the House side. The path to regulatory clarity threatens to be slow and bumpy for the electric utility industry and pollution control vendors. **There are easily more reasons to expect that resolution will be slow than quick.**

There is the possibility that something constructive could happen before Congress recesses before the elections – but that would be heavily dependent on a consistently diverse utility industry coming together with a plan that could be supported by environmental advocates. That may be the easy part. A plan would need to win the support of two-thirds of the House and possibly 100% of the Senate. That is a very tall order, and given partisan election year politics, rather unlikely. If Congress returns for a lame duck session, there would be another shot; but, at this point **we think it is far more likely than not that the industry slides into 2009 with little change from today's uncertain status quo.**

That being said, the multi-faceted requirements of the Clean Air Act across different programs, combined with the reality that states can drive emissions level at stationary sources like utilities are likely to keep the focus on the deployment of equipment to generate emissions reductions, and **we don't think that the short-term uncertainty substantially disturbs the long-term prospects for continued investment in cleaner utility plants.** The International Brotherhood of Electric Workers has been vocal in Washington of late about the short-term disruptions in the absence of a fix, and we'll be watching to see if the electric industry unions can be the glue that holds disparate interest groups together.

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Strange circumstances create odd bedfellows. Ironically, environmentalists and state regulators are equally upset by the Court of Appeals for the D.C. Circuit's decision to vacate the Clean Air Interstate Rule as the utility sector seems to be. A path to resolution will depend almost exclusively on these two different constituencies agreeing in a way and in a consensus they never have to date. There does not seem any real alternative short of the proverbial "act of Congress."

The interest in a fix is considerable. Even environmentalists are chagrined to think that vacatur of CAIR could suggest that power plants would be able to sidestep planned reductions in emissions, at least temporarily. Many environmental advocacy groups support some kind of "reinstatement" of the CAIR targets for the Phase I, but advocate that new (stricter) targets be developed for years beyond 2010. The original Phase II of CAIR set the next set of emissions reductions for 2015 and the years that follow.

The EPA was granted its request to extend the Aug. 25 appeal deadline to Sept. 24, ensuring that the court will not rule in an *en banc* review before Congress plans to adjourn on Sept. 26.

*What Constitutes a "Fix"*

The Bush administration, specifically Council of Environmental Quality Chairman James Connaughton, has been advocating a full "codification" of the CAIR program – e.g. a legislative fix that would give the entire vacated program (for both Phases) the force of law. Somehow, we just cannot bring ourselves to believe that the Democratic majority in Congress would – here in the waning hours of the Bush Administration – provide legislative salvation to a Bush administration environmental initiative, especially when it was the second of three significant air quality rulemakings tossed by the court in 2008.<sup>1</sup> The language from CEQ reads:

Notwithstanding any other provision of the Clean Air Act, the Clean Air Interstate Rule and the Federal Implementation Plans for the Clean Air Interstate Rule as promulgated and modified by the Administrator of the Environmental Protection Agency (70 Fed. Reg. 25,162 (May 12, 2005), 71 Fed. Reg. 25,288 (April 28, 2006), 71 Fed. Reg. 25,328 (April 28, 2006), 72 Fed. Reg. 59,190 (Oct. 19, 2007)) are hereby authorized as consistent with the requirements of sections 110, 301 and Title IV of the Clean Air Act. Those rules shall remain in force and effect except as they may later be revised by the Environmental Protection Agency following notice-and-comment rulemaking and affirmed by a court of competent jurisdiction if judicial review of any such revised rule is sought in accordance with the provisions of 42 U.S.C. 7607. Nothing in this Act shall abridge any other right or remedy under the Clean Air Act, 42 USC 7401-7671q, including Section 126 ("Interstate pollution abatement") and/or the right to petition for rulemaking under the Clean Air Act, nor shall anything in this Act limit EPA's discretion to entertain such petitions or to promulgate such rules and regulations as are consistent with the requirements of the Clean Air Act, as modified hereby.

With the Bush administration and some industry members advocating for a total "codification" of CAIR, a shorter term fix (Phase I only) may be feasible as the Democrats wouldn't actually be giving the Bush Administration what it "wants."

Anti-Bush rhetoric aside, more consensus appears to be coalescing around the concept of a legislative codification of Phase I of the CAIR program, but not the full program. This would involve reinstating the compliance deadlines, targets, and reestablishing the validity and usefulness of the state budgets and associated emissions credits that would be used in 2009 and 2010, and possibly even for a year or two longer. This would provide time for a new EPA to develop a new Phase II or different program would set lower targets than currently planned under Phase II of the CAIR for the years that follow 2015.

**So far, House Energy & Commerce Committee Chairman John Dingell (D-Mich.) and Energy and Air Quality Subcommittee Chairman Rich Boucher (D-Va.) are the first in Congress to float a legislative fix specifically related to the court decision.** How long the fix would be in place is still clearly open for negotiation as the text below demonstrates. The legislative proposal is complicated slightly with a provision that would prohibit the Bush EPA from issuing a pending rule in the New Source Review program. That provision is considered a concession to environmental advocates to lure their support, but so far it hasn't been greeted warmly by industry.

SECTION 1. EPA CAIR rule and new source review.

(a) Interim legal effect of CAIR rule.-

(1) In general.-The Clean Air Interstate Rule and related Federal implementation plans promulgated and modified by the Administrator of the Environmental Protection Agency on

<sup>1</sup> The Clean Air Mercury Rule (CAMR) was vacated by the federal appellate court in February, and last week, an attempt by EPA to preempt state air monitoring requirements was overturned.

May 15, 2005 (70 Fed. Reg. 25162), April 28, 2006 (71 Fed. Reg. 25288 and 25328), and October 19, 2007 (72 Fed. Reg. 59190) shall remain in force and effect to the extent that such rule and plans-

(A) require control measures (and State implementation plan revisions containing control measures) to eliminate emissions of oxides of nitrogen and sulfur dioxide before [2011? 2012? ???]; and,

(B) require or allow participation in specified trading programs before [2011? 2012? ???].

(2) Exception.-Paragraph (1) shall not apply with respect to the State of Minnesota or sources within the State of Minnesota nor shall paragraph (1) affect the Administrator's decision regarding the petition of the State of North Carolina under section 126 of the Clean Air Act.<sup>2</sup>

(3) Credit for emission reductions.-For purposes of State implementation plans under section 110 of the Clean Air Act, any State may take credit for emission reductions required to be implemented before [2011? 2012? ???] under the Clean Air Interstate Rule or Federal implementation plan provisions referred to in paragraph (1) and the Administrator may approve State implementation plans based on such credits. Approval under the preceding sentence shall cease to apply unless emission limitations or other control measures or techniques that permanently require at least equivalent emission reductions after [2010? 2011? ???] are adopted or submitted.

(b) New source review and new source performance standards.-Until after February 1, 2009, the Administrator of the Environmental Protection Agency shall not promulgate a final rule based on the rule proposed on Oct. 20, 2005, entitled "Prevention of Significant Deterioration, Nonattainment New Source Review, and New Source Performance Standards: Emissions Test for Electric Generating Units" (70 Fed. Reg. 61,081 et seq.) or based on the rule proposed on May 8, 2007, entitled "Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units" (72 Fed. Reg. 26,202 et seq.), and the Administrator shall not promulgate any other rule under the Clean Air Act revising the time period for which emission changes are calculated for purposes of determining whether there has been a modification of an existing electric generating unit requiring compliance with new source review programs under that Act.

(c) SAVINGS CLAUSE.—Except as specifically provided in this Act, nothing in this Act shall change or modify the authority or obligations set forth in the Clean Air Act.

### *High Hurdles, and Difficult Timing*

**We think that a two-year fix for the CAIR program is possible; it just may not materialize quickly.** One would have to suspend disbelief that in addition to environmentalists and industry, Republicans and Democrats could work *in unison* in the three scant weeks they plan to be in session in September for this to be resolved ahead of the elections. House Energy and Commerce Staff suggested that the short September calendar pretty much requires that this language be passed by the House under suspension of the rules (two-thirds majority).

<sup>2</sup> The State of North Carolina has filed to restart its court appeal on its Section 126 petition against upwind sources, including those in Alabama. The EPA denied the Section 126 petition by North Carolina that sought source specific reductions at power plants in neighboring states in 2005, reasoning that the emissions reductions under the CAIR would meet the needs of North Carolina in terms of attainment. That appeals case, although well into the briefing stage was held in abeyance in February 2008 pending the court decision on the CAIR.

**We can actually envision passage in the House, but the Senate looks much more problematic.**

The fastest way to move a bill in the Senate is under unanimous consent. That is a very high bar, especially given the possibility that some market participants are pushing heavily for a reinstatement of the entire program. Sixty votes may be possible, but as we saw with Housing legislation, a single Senator (in that case John Ensign (R-Nev.)) tripped the consensus housing bill up for weeks forcing procedural vote after procedural vote even when there were enough votes for cloture. The second fastest mode to passage is a clear majority for cloture and willingness by the Senators that oppose to waive the associated maximum 30 hours of debate and not gum up the works of the Senate completely.

**Prospects for the “fix” – even if it were agreed to – become substantially less favorable, in our opinion, if the relevant provisions wind up attached to the star-crossed “energy legislation” that is on tap for early September.** The outlook for an “energy bill” looks very cloudy, even if it is some kind of consensus package. A consensus bill in the house has attracted over 100 cosponsors, but House Speaker Nancy Pelosi (D-Calif.) is promising her own version of a bill that “includes drilling” but is also likely to still contain the poison pills of higher taxes on oil companies and/or a renewable electricity standard, both of which have failed in the Senate this session. If Pelosi’s “compromise” energy bill (promised soon) has too many non-starters on it, energy-related legislation may not move in September at all.

If Congress returns for a post-election lame duck, there’d still be a chance to move a fix. We have heard concern about the fact that although many parties endorse a reinstatement of the CAIR Phase I program by legislative fiat, every advocate seems to be asking for some “little thing...” All those “little things” may make it impossible to drive the needed consensus. However, if the legislation can be kept “clean” then it’s got a shot.

On Aug. 28, the Edison Electric Institute – the nation’s investor-owned electric utility trade association – plans to hold a meeting to discuss how to manage the vacuum created by the court decision on CAIR. Already, a group of twelve Senators wrote EEI’s President, Tom Kuhn, asking for member utilities to “pledge” to operate existing sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) control equipment and to “continue” their plans to install additional planned systems to meet the now defunct targets and deadlines that were established under the CAIR. **After that meeting we hope to have a better sense of whether a consensus can be reached and better handicap prospects for a fix this year.**

While at first blush, several Washington sources are encouraged by the discussion and the release of discussion language from the House Energy & Commerce Committee, we’re not yet optimistic that this can get done in 2008, and the mess may slide until 2009. The environmentalists seem to like the NSR provisions included in the House version, but if it doesn’t stay in, their enthusiasm may wane, and they may prefer to take their chances in the new Congress. Some industry sources worry that it won’t get addressed in 2009 either, calling into question the investments that have already been made and the plans for more.

The longer the uncertainty persists, the more lumpy environmental spending by utilities could become – especially for work that has not started yet. This is where the unions have the potential to make a difference. The threat of job losses can be a potent argument on Capitol Hill, can they bridge the gap between these disparate constituencies and pull off a fix? We continue to believe that the long-term trend for more spending on utility pollution control systems remains strong – as a more heavily Democratic Congress and a possible Democratic EPA could push for stricter regulations in the future, especially on coal plants.

We expect this complex issue to remain below the radar of the presidential race, and remain a messy conversation in the Congress.

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Institutional Research

August 25, 2008

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**Exhibit 29**

**Article on Current Status of House Action on GHG**

**Dean Scott, "Climate Change: With End of Congressional Session in Sight, House Unlikely to Act on Capping Emissions," *Daily Environment Report* (September 10, 2008), BNA, Inc., < [www.pubs.bna.com/ip/bna/DEN.NSF/eh/a0b7b0p1t3](http://www.pubs.bna.com/ip/bna/DEN.NSF/eh/a0b7b0p1t3) >.**

BNA, Inc.

# Daily Environment

REPORT

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## News

### Climate Change With End of Congressional Session in Sight, House Unlikely to Act on Capping Emissions

House action on broad legislation to cap greenhouse gas emissions probably must wait until 2009, with congressional leaders hoping to focus debate on another energy package and several must-pass measures before adjourning Sept. 26 for the campaign trail.

House Energy and Commerce Committee Chairman John Dingell (D-Mich.) and an energy subcommittee chairman, Rep. Rick Boucher (D-Va.), who are expected to take the lead on climate legislation in the House, plan to release a draft bill before the end of September, a committee aide told BNA Sept. 9. They hope release of the draft will spur public input on the climate bill and further revisions in anticipation of House action in the next Congress, which convenes in January 2009, the aide said.

"The draft will by no means be the final word on this, but it will provide a solid starting point in terms of the actual legislative language as we move into next year," committee aide Jodi Seth said. This fall, committee staff will continue to release policy papers that tackle in detail specific issues that will have to be addressed in any comprehensive climate legislation, Seth said.

#### Focus on Energy Package

Democratic leaders in the House and Senate are not expected to take up any climate legislation in the remaining months of 2008, although they plan another round of votes on an energy package later this week that could extend expiring tax credits for wind and solar power, and includes other provisions that could help trim overall greenhouse gas emissions.

House Speaker Nancy Pelosi (D-Calif.) told reporters Sept. 9 that Democrats were still discussing the specifics of the energy package, but that the measure could be brought to the House floor as early as Sept. 11. Senate Majority Leader Harry Reid (D-Nev.) said he plans to bring a Democratic-led energy proposal to the floor next week, but he warned of coming clashes on other measures, including a continuing resolution needed to fund federal programs at least through the next several months to avert a government shutdown. (See related story in this issue. [16](#))

"That is a pretty compressed time schedule," one House committee aide told BNA. "We could go out [adjourn] as early as Sept. 26 if all of this gets done, but they have to pass a funding resolution" before then, he said.

The climate bill being prepared by Dingell and Boucher is expected to call for cutting greenhouse gas emissions 60 percent to 80 percent by 2050 from current levels using an emissions trading system, which would require U.S. companies to hold an allowance, or permit, for each ton of greenhouse gases they emit.

Those cuts are in the range of a Senate proposal (S. 3036) originally introduced by Sens. Joseph Lieberman (I/D-Conn.) and John Warner (R-Va.) that was defeated in a procedural vote in June (116 DEN A-7, 6/17/08 [16](#)).

### Dingell-Boucher Will Have Competition

In the absence of any formal proposal from Dingell and Boucher, other Democrats—including Rep. Edward Markey (D-Mass.), chairman of the House Select Committee on Energy Independence and Global Warming—have stepped forward with their own bills in recent months. Markey, who is also a senior member on Dingell's committee, called for even deeper emissions reductions under a bill he introduced in May (H.R. 6186; 103 DEN A-6, 5/29/08 [ENR](#)).

Three members of the House Ways and Means Committee—Reps. Lloyd Doggett (D-Texas), Christopher Van Hollen (D-Md.), and Earl Blumenauer (D-Ore.)—also have introduced a cap-and-trade bill in hopes of advancing their measure through the chamber's chief tax-writing committee (117 DEN A-8, 6/18/08 [ENR](#)).

A Doggett aide told BNA the Ways and Means Committee has scheduled a hearing on the measure for Sept. 18.

Eben Burnham-Snyder, a spokesman for Markey's committee, said Democrats' plans to bring a new energy package to the floor later this week could help pave the way for action on broad climate legislation in 2009. As part of this week's debate, the House is likely to focus on whether to require states to meet a percentage of their energy needs with renewable sources and incentives for local areas to adopt energy-efficient building codes—all policy issues related to the climate change debate, he said.

"From a standpoint of advancing the ball on clean energy issues, it would obviously make passing a climate bill a little easier if you've already done the important work on energy issues," he said. 

*By Dean Scott*

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