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Sent: Wednesday, November 03, 2010 6:01 PM
To: janice.adair@ecy.wa.gov
Subject: RE: From Greenwire -- EPA: Republican victories boost effort to block climate rules

Fuckers.

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From: janice.adair@ecy.wa.gov [mailto:janice.adair@ecy.wa.gov]
Sent: Wednesday, November 03, 2010 1:14 PM
To: Phillips, Keith (GOV); Sturdevant, Ted (ECY); Rupp, Mark (GOV)
Subject: From Greenwire -- EPA: Republican victories boost effort to block climate rules

This Greenwire story was sent to you by: janice.adair@ecy.wa.gov

Personal message: I think this is an important article because it demonstrates without trying to why the environmental community will be pushing so hard on the states to do something with their existing authority to regulate greenhouse gases. I think that push will be particularly hard in those states with democratic governors, except for W Virginia that is. The courts will likely be setting ghg policies for the US



AN E&E PUBLISHING SERVICE

EPA: Republican victories boost effort to block climate rules *(Wednesday, November 3, 2010)*

Gabriel Nelson, E&E reporter

Along with the Democrats, one of the biggest losers on Election Day was U.S. EPA, which is expected to be the target of bruising congressional attacks once the Republicans take control of the House and gain several seats in the Democratic-controlled Senate.

In the run-up to the election, Republicans campaigned against EPA Administrator Lisa Jackson, pointing to her agency's new regulations as proof that President Obama and the Democrats are stifling the struggling economy.

Those types of attacks seemed to resonate yesterday in the Rust Belt, where supporters of climate legislation lost in droves. One of the few bright spots for Democrats was the victory of West Virginia Gov. Joe Manchin, who had campaigned for the state's open Senate seat by vowing to challenge

EPA regulations and airing a commercial in which he fired a rifle at the House-passed cap-and-trade bill.

Counting the 'Ayes'

Based on previous stances and the results of yesterday's election, a measure to prevent EPA from regulating greenhouse gases under the Clean Air Act would be likely garner at least 57 votes in the Senate during the next session, close observers say. That number includes the entire bloc of 47 Republican senators, the eventual winner of the Senate race in Alaska and at least 9 Democrats who have already pledged their support for one or more proposal. They are:

Voted for Murkowski resolution (4)

Mary Landrieu (D-La.)

Ben Nelson (D-Neb.)

Mark Pryor (D-Ark.)

Jay Rockefeller (D-W.Va.)

Co-sponsored Rockefeller bill (6)

Jay Rockefeller (D-W.Va.)

Kent Conrad (D-N.D.)

Tim Johnson (D-S.D.)

Claire McCaskill (D-Mo.)

Ben Nelson (D-Neb.)

Jim Webb (D-Va.)

Critical newcomers (1)

Joe Manchin (D-W.Va.)

-- *Gabriel Nelson*

regulations say it is a foregone conclusion that the Republican-controlled House will pass such a bill during the next session. And in the Senate, where Democrats have spent the past two years bemoaning the rule requiring 60 votes to defeat a filibuster, that threshold appears to be the only thing that could stop such a measure from passing.

After yesterday's election, there appear to be at least 57 votes in the Senate for a measure to delay the agency's climate rules. That is 10 more votes than a similar measure had in June, when 47 senators supported a proposal from Sen. Lisa Murkowski (R-Alaska) to strip EPA of the authority to regulate greenhouse gases.

Scott Segal, an industry attorney at Bracewell & Giuliani, said it is now a "virtual certainty" that both houses of Congress will adopt a delay on the onset of EPA regulatory authority for greenhouse gases. President Obama, who has said he wants Congress to address energy in "chunks" during the next session, might be forced to accept limitations on greenhouse gas regulations as a compromise, Segal said.

"If Congress is going to advance the ball in the direction of the deployment of clean technology, then the EPA cannot at the same time set a regulatory standard for greenhouse gases that is so

Once the power shifts on Capitol Hill, experts say, the agency will face intense pressure as Republicans wield their newfound power and seek to set the tone for President Obama's re-election bid in 2012. The Obama administration will need to make tough choices once it is faced with hostile oversight hearings in the Republican-controlled House and efforts to block controversial regulations, experts say.

"If the Republicans had only picked up 30 or 40 seats in the House, I don't think it would have impacted [Obama's] regulatory agenda at all," said Andrew Wheeler, a former Republican staff director for the Senate Environment and Public Works Committee who is now at B&D Consulting. "With such a large victory, it wasn't just that people were upset with the direction of congressional legislation. It was people upset with Obama's regulatory priorities, and in the Midwest at least, those people are upset with EPA."

For the Republicans, the first order of business could be legislation to stop EPA from regulating greenhouse gases under the Clean Air Act.

Supporters of measures to block EPA's climate

intensive that there's essentially no capital left to invest in clean technology," Segal said. "You have to be balanced."

Environmental groups, smarting from the Senate's failure to pass energy legislation this year, will likely spend the next two years playing defense on climate change. The expectation of gridlock in Congress makes EPA even more important, said Tiernan Sittenfeld, legislative director at the League of Conservation Voters.

"We knew when we weren't able to pass a comprehensive climate and energy bill through the Senate that it was going to be tough in the next Congress, and the results from last night confirm that," Sittenfeld said.

"It's critical that [EPA] move forward with the authority that they have," she added. "We anticipate that there's going to be a fight over that, and it's going to be a priority for us."

Murkowski resolution redux?

It remains to be seen what form a measure to block EPA's greenhouse gas regulations would take.

After the defeat of the Murkowski resolution, which would have nixed the agency's entire climate program, EPA critics shifted their attention to a bill from Sen. Jay Rockefeller (D-W.Va.) that would force the agency to wait two years before controlling greenhouse gas emissions from stationary sources such as power plants, refineries or factories. That proposal would have spared regulations on cars and light-duty trucks, which have been supported by the auto industry.

Senate Majority Leader Harry Reid (D-Nev.) has promised the Rockefeller bill a vote during this fall's lame-duck session, but because Democratic leadership has kept similar proposals from reaching the House floor, the campaign to block EPA would need to restart next session.

In the Senate, where the Democrats would decide whether to schedule a vote on a bill, a measure to block or delay EPA's rules could be tacked onto almost anything. Influential industry groups such as the U.S. Chamber of Commerce and the American Petroleum Institute recently asked Congress to strip funding for EPA's climate program from a bill that would fund the federal government for the remainder of fiscal 2011 ([E&ENews PM](#), Oct. 28).

Wheeler said Republican leadership in the House would be able to pass a bill with support from some moderate Democrats. If a proposal comes up on the Senate side, he does not expect any Republicans to walk away from their vote on the Murkowski resolution during the next Congress.

"They're all on record as agreeing with the Murkowski resolution, which is a little further to the right than the Rockefeller bill," Wheeler said. "There's just broad agreement and concern on the Republican side."

But a proposal to block EPA would splinter Democrats in the Senate, pitting moderates against their party leadership.

In addition to at least 47 Republican votes, a measure to limit EPA's regulatory authority could enjoy support from four Democrats who supported the Murkowski resolution, four additional co-sponsors of the Rockefeller bill and Manchin, who has been critical of the agency's rules. The

looming 2012 election could swing more Democrats during the next Congress, said an industry source who is tracking the issue.

Despite the outcome on Election Day, relatively few Democratic incumbents in the Senate faced tough re-election battles this year. The senators to watch will now include Debbie Stabenow of Michigan, Sherrod Brown of Ohio, Bob Casey of Pennsylvania and Jim Webb of Virginia, all of whom must stand for re-election in 2012, the source said.

Environmentalists have sought to downplay the relationship between environmental regulations and the results of yesterday's election. Joe Mendelson, director of global warming policy at the National Wildlife Federation, said he expects challenges to EPA's climate rules to dissipate once they take effect and Congress sees that the "sky's not falling."

"While the numbers in Congress may have shifted, when the issue is not an election season piñata, members are going to be faced with a pretty stark choice," Mendelson said. "Are you gutting foundational public health and environmental protection laws, or are you going to side with more pollution?"

The White House has vowed to veto any effort to hamstring EPA's regulatory authority. But that would force President Obama to make tough choices, especially if the measure is tacked onto a crucial piece of legislation like an appropriations bill.

Democratic operatives will be scrutinizing the election results from coal-dependent states like Indiana, Ohio, Pennsylvania and Virginia, all of which Obama won in 2008. If the people in charge of Obama's re-election campaign see those states going Republican, "they've got to figure out how to get those voters back," Wheeler said.

One way could be ceding ground on a measure to limit EPA's authority to regulate greenhouse gases.

"If they do lose a lot of seats, I expect the Obama administration to take a good hard look at that, and say, 'If Congress sticks it on another bill, we won't veto it,'" Wheeler said. "Right now, it's the environmental people who say the president will never support that, but I don't think the political people have started looking at it yet."

Other rules under pressure

Environmental groups are worried that the shift in Congress could have an impact beyond climate change, endangering EPA's new standards for smog, industrial boilers and coal ash.

Conventional wisdom says Congress would be unlikely to pass legislation that would block clean air and water regulations, but the House's new Republican leadership will likely keep Jackson and other EPA officials busy justifying those costly rules on Capitol Hill.

Most of the agency's work is overseen by the House Energy and Commerce Committee. And the two leading candidates to lead the committee -- Reps. Joe Barton (R-Texas) and Fred Upton (R-Mich.) -- have both touted their *bona fides* by promising that the committee would be tougher on EPA under their leadership.

Upton, who is seen as the front-runner for the post, wrote in a *Washington Examiner* op-ed that he would shed "additional light on the regulatory beast" and work to rein in the Obama administration's "job-killing" environmental rules.

"At least a half-dozen committees have a slice of the jurisdiction," said Rep. Frank Lucas of Oklahoma, the top Republican on the House Agriculture Committee, in September. "When it comes to an agency like the EPA, I could see where once a week, we could each take our turn" ([*E&E Daily*](#), Sept. 30).

Claudia O'Brien, an industry attorney at Latham & Watkins, said EPA's boiler standards -- not the greenhouse gas regulations -- will be the bellwether for the new Congress' stance on EPA. While the climate program will initially cover only the very largest emissions sources, the proposed standards for toxic air pollution from boilers would challenge many smaller facilities that rely on boilers for power, she said.

Forty-one senators, including 18 Democrats, signed a letter this summer urging EPA to scale back the rules. Worried about the impact of the standards on paper mills and other industry sectors, members of Congress may try to head off the regulations before EPA finalizes them next year, O'Brien said.

"If they succeed in doing that, I think you may see more similar reactive legislation -- what I would call 'rifle shot' legislation -- to deal with rulemakings that Congress and the Republicans in particular consider to be problematic," O'Brien said. "There are a number of different angles Congress could take, and I'm confident that industry will be thinking about the simplest line-item fixes."

The dynamic in Congress will depend on the broader strategy chosen by Republican leadership. While it remains to be seen whether the Republicans will try to move environmental legislation or focus on stopping the Obama administration's initiatives, the party would be wise to recognize the fate of tea party favorites in yesterday's election, environmental groups say.

Voters rejected the candidates that were most vocal in their criticism of climate science and environmental regulations. Many analysts have suggested that the Republicans would have won the Senate had they not nominated tea party favorites like Sharron Angle in Nevada, Christine O'Donnell in Delaware and Ken Buck in Colorado.

Those candidates' losses, as well as the defeat of a proposition to roll back California's landmark global warming law, show that environmental regulations are more popular than critics suggest, said Sittenfeld of the League of Conservation Voters.

"It all makes clear that people continue to care very much about having a clean energy economy," Sittenfeld said. "People still want that, and we will continue to fight for it -- especially on the administration side."

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