

## Washington Watch

### Changing of the Guard: Implications of the Democratic Mid-Term Election Win on Environment, Energy, and Resources Legislation

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The November 2006 mid-term elections portend a number of significant Congressional changes. There is no doubt that Democratic leadership in both the House and Senate will shake things up. Some in the business community are buckling their seat belts and preparing for a bumpy ride. Here are a few thoughts on the shape of things to come.

#### The Big Picture

##### *New Committee Leaders in Congress*

With the Democrats in control of Congress, many are preparing for a surge in the oversight of all federal environmental, energy, and resource-related activities among the various Senate and House Committees.

For example, Representative Henry Waxman (D-CA) will chair the House Government Reform Committee and will have at his disposal a staff of approximately 60 investigators with jurisdiction over the entire U.S. Government. Congressman Waxman has already stated that oversight of the brownfields program is high on his list of priorities.

Representative Bart Gordon (D-TN) will chair the House Science Committee, and is also likely to schedule oversight hearings on a variety of topics. Given Representative Gordon's strong interest in scientific research and homeland security, he may seek oversight hearings on the Department of Homeland Security's technology research. Other potential hearing topics include scientific research priorities generally (including those related to the federal government's investment in nanotechnology research) and issues pertinent to federal researchers' freedom to discuss research concerning controversial topics, including climate change and related science policy debates.

In the Senate, Senator Joe Lieberman (I-CT), who is functionally again a Democrat, will lead an equivalent committee with a similarly large staff of investigators. Senator Lieberman has a history of interest in pesticide and chemical regulation. So with talk of Toxic Substances Control Act (TSCA) reauthorization, the 110<sup>th</sup> Congress could prove interesting.

Senator Barbara Boxer (D-CA) will chair the Senate Environment and Public Works (EPW) Committee. As discussed below, she has already reorganized the committee, and will almost certainly schedule hearings on climate change early in the new Congress.

## ***Impact on EPA***

What goes on in Congress will have both direct and indirect implications for the U.S. Environmental Protection Agency (EPA) -- and hence for private interests with business before the Agency. At the most direct and immediate level, EPA senior management will likely be overwhelmed (at least initially) by a deluge of information requests, threatened subpoenas, and the need to prepare for program oversight and legislative hearings.

As a result, EPA's ability to manage ongoing issues and conduct new business may be limited in the early months of the new Congress. At the least, people need to anticipate a "distraction factor" that could impede the flow of business as usual.

## ***Prospects for Environmental Legislation***

With Democrats in control, environmental legislation that stalled out in the 109<sup>th</sup> Congress will most likely regain attention and consideration. For example, passage of legislation to control emissions of greenhouse gases will move from being almost unthinkable to being a strong possibility.

In addition, there is expected to be significantly more traction for initiatives such as the Stockholm Convention on Persistent Organic Pollutants (POPs), which is the subject of several bills up for consideration that would amend both TSCA and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

In large part, the possibilities for POPs passage and other legislation will be controlled by the new chairs of congressional committees with relevant jurisdiction. In the 110<sup>th</sup> Congress, Senator Jeff Bingaman (D-NM) will chair the Senate Energy and Natural Resources Committee and (as noted previously) Senator Boxer will chair the Senate EPW Committee. Senator Boxer has already expressed her desire for "vigorous oversight and legislation" to ensure that the Senate is "once again an environmental leader in protecting the health of our families and our children and addressing pressing concerns like global warming."

Other Senate bills may also gain traction. Senators Bingaman, Boxer, Dianne Feinstein (D-CA), John McCain (R-AZ), and Lieberman all have made climate change-related proposals. Senator Tom Carper (D-DE) is the author of legislation (S. 843) that would reduce carbon dioxide emissions to 2006 levels by 2010, and to 2001 levels by 2015, using emissions trading. In addition, incoming Senate Commerce Committee Chair Daniel Inouye (D-HI) is a co-sponsor of legislation (S. 3543) that would require an increase in corporate average fuel economy (CAFE) standards for automobiles and light trucks.

Senator Boxer has named Senator Frank Lautenberg (D-NJ) to chair the Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality. This subcommittee has jurisdiction over issues related to drinking water, chemicals, and wastewater security, and thus could play a pivotal role in certain legislative initiatives.

In the House, although energy and climate issues are a high priority for Speaker Nancy Pelosi (D-CA), the overall outlook is less clear. Representative John Dingell (D-MI), the incoming Chair of the House Energy and Commerce Committee, has indicated that he will support energy legislation, but only so long as it does not disproportionately shift the global burden to the United States.

Nevertheless, the change in House leadership will bring renewed attention to climate change legislation, including various Democratic proposals that would place a mandatory cap on greenhouse gas emissions. Representative Waxman is likely to press for adoption of his proposal to freeze total U.S. greenhouse gas emissions at 2009 levels beginning in 2010, followed by two-percent annual reductions through 2020. This proposal, introduced in June 2006, has already garnered 110 co-sponsors.

In the next Congress, Representative Collin Peterson (D-MN) will chair the House Agriculture Committee. Representative Nick Rahall (D-WV) will take over control of the House Resources Committee, replacing former Chair Richard Pombo (R-CA), an outspoken anti-environmentalist who lost his re-election bid in November. Representative Rahall has been in Congress since 1977 and has worked to pass mine safety legislation, among other accomplishments.

The Democratic takeover of Congress will also result in leadership changes on several subcommittees of the House Resources Committee: Representative Frank Pallone, Jr. (D-NJ) will chair the Fisheries and Oceans Subcommittee. Representative Grace Napolitano (D-CA) will lead the Water and Power Subcommittee. Representative Raul Grijalva (D-AZ) will head the Energy and Mineral Resources Subcommittee.

In addition, Representative Tom Udall (D-NM) will chair the Forests and Forest Health Subcommittee. Congressman Udall has earned a 95 percent pro-environment rating by the League of Conservation Voters. In the past, he has voted to preserve Alaska's Arctic National Wildlife Refuge (voting against drilling within the refuge). He also voted against deauthorizing critical habitat for endangered species, and against speeding up approval of forest thinning projects.

As noted above, Representative Gordon will chair the House Science Committee, which has expressed significant interest in nanotechnology (both its implications and applications). Representative David Wu (D-OR) will chair the Committee's Environment, Technology, and Standards Subcommittee.

### **Probable Legislative Priorities**

On November 13, 2006, in a post-election program sponsored by the American Bar Association's Section of Environment, Energy, and Resources, a group of House and Senate senior environment, energy, and resource committee staff members from both sides of the aisle speculated on what the 110<sup>th</sup> Congress would address early in the new congressional year. Several themes were specifically noted: climate change, chemicals management/nanotechnology, energy, and Farm Bill reauthorization.

## *Climate Change*

Global warming was not a major issue in the Republican-led Congress of the past few years, especially since outgoing EPW Committee Chair Senator James Inhofe (R-OK) was an outspoken critic of mandatory greenhouse gas controls.

This will change under Senator Boxer's leadership. A number of Democratic and bipartisan bills dealing with climate change have already been introduced. In June 2005, the Senate defeated a measure introduced by Senators Lieberman and McCain that would compel reductions in greenhouse gas emissions to 2000 levels by 2010. Senator Boxer may well rely upon her home state's new law capping greenhouse gas emissions as a model for future federal legislation.

In the House, Representative Udall and Representative Tom Petri (R-WI) have introduced the Keep America Competitive Global Warming Policy Act of 2006. While modest in scope, it portends a much more active legislative life for climate change initiatives.

Senator Boxer has indicated that climate change legislation will be a top priority. She advocates tougher U.S. climate change policies and has been critical of President Bush's emphasis on voluntary efforts to control emissions.

Senator Boxer has already reorganized the EPW Committee's design to achieve her stated goal of addressing global warming. She has created two new subcommittees, both of which will have jurisdiction over climate change. Senator Boxer herself will chair the Subcommittee on Public Sector Solutions to Global Warming, Oversight, Children's Health Protection, and Nuclear Safety. Senator Lieberman will chair the Subcommittee on Private Sector and Consumer Solutions to Global Warming and Wildlife Protection.

Senators Boxer and Lieberman both have demonstrated a strong commitment to climate change legislation over the years. The creation of two new climate change-related subcommittees -- headed by themselves -- telegraphs in a not-too-subtle way the direction the EPW intends to take in this regard. Senator Boxer intends to begin by holding hearings on climate change, perhaps as early as January 2007.

## *Chemicals Management/Nanotechnology*

Under Republican leadership, the 109<sup>th</sup> Congress was no stranger to nanotechnology. Both the House Science Committee, under the leadership of Representative Sherwood Boehlert (R-NY), and their counterparts in the Senate convened hearings on a variety of nanotech issues. These included a House of Representatives Committee on Science hearing (November 17, 2005); a Senate Committee on Commerce, Science and Transportation hearing (February 15, 2006); a Senate EPW Committee roundtable discussion with the business sector, the environmental community, and the federal government (April 6, 2006); a Senate Commerce Committee Subcommittee on Trade, Tourism and Economic Development hearing (May 4, 2006); a Senate EPW Committee oversight hearing on TSCA and chemicals management programs at EPA (August 2, 2006); and a House Science Committee hearing (September 21, 2006). Most of these

hearings centered on research priorities involving nanotechnology, with some focus on the environmental and human health implications of nanotech.

Now that Representative Boehlert is retiring and Representative Gordon is ascending to the role of House Science Committee Chair, it is reasonable to speculate that the committee will be even more active on nanotechnology issues. While neither Senator Boxer nor Representative Dingell includes nanotechnology among their top legislative issues, the implications of nanotech may well be among the topics considered within the context of TSCA reauthorization legislation, which is one of Senator Boxer's top priorities.

It is interesting to note that Senator Hillary Clinton (D-NY) will chair the Superfund and Environmental Health Subcommittee of the Senate EPW Committee. This subcommittee's jurisdiction includes (among other hot-button chemicals management issues) TSCA reauthorization legislation.

Given that Senator Clinton is a likely candidate for president in 2008, it remains to be seen whether she will want to take on TSCA reauthorization in earnest in 2007, or instead will convene oversight hearings -- and thus avoid having to take positions on the difficult science policy issues that chemicals management legislation necessarily entails. Any such hearings would almost certainly include discussion of TSCA's adequacy and the health and safety implications of nanotechnology.

### ***Energy***

In the House, energy issues fall within the ambit of the powerful Energy and Commerce Committee. The incoming chair of this committee, Representative Dingell, is no stranger to the position he will be holding. He previously served as committee chair from 1981 to 1995, and has since been the panel's ranking minority member.

The committee's jurisdiction -- which is among the broadest in Congress -- covers telecommunications, consumer protection, food and drug safety, public health, air quality, environmental health, energy issues, and interstate and foreign commerce. Representative Dingell has indicated that he intends to address environmental and energy issues along with a number of other topics -- including health care and communications policy.

On the environmental side, Representative Dingell has stated that leaking underground storage tanks and problems with brownfields and Superfund are priority issues, along with trash importation from Canada and global warming. On the energy side, the country's dependence on foreign oil, vehicle efficiency, and alternative fuels are expected to be considered first.

### ***Farm Bill Reauthorization***

With the current Farm Bill set to expire in 2007, the 110<sup>th</sup> Congress will need to reauthorize it. Particular aspects of the legislation are unclear at this time. With the change in leadership, however, we can expect more emphasis on conservation, energy, and research.

Senator Tom Harkin (D-IA) and Representative Peterson -- who are, respectively, chairs of the Senate Agriculture Committee and the House Agriculture Committee -- both supported the current Farm Bill. Senator Harkin also was chair of the Senate Agriculture Committee when the current bill was passed in 2002. Thus, passage of a new Farm Bill would appear probable. The real question is what other provisions the reauthorization legislation might incorporate in order to advance the pro-environment views of the new Congress.

## **Conclusion**

The new Congress will present challenges and opportunities for all stakeholders in the environment, energy, and resource areas. There will be no dearth of congressional oversight hearings on a wide variety of subjects, including environment, energy, and resource-related topics.

EPA political appointees can be expected to spend quite a bit of time on the Hill explaining why things were done the way they were over the past few years -- and why certain things were not done at all. This could compromise the Agency's capacity to undertake significant new initiatives, and even hamper its ability to keep up with the pace of usual business.

With the 2008 presidential election campaign already underway, it is entirely unclear whether the first session of the 110<sup>th</sup> Congress will produce any new legislation, or merely serial oversight hearings and investigations -- which, albeit interesting and perhaps enlightening, are not needed as much as new laws.

Democratic leaders have repeatedly stated that climate change, energy, and chemicals management will be priorities for them. What legislation will actually emerge from Congress -- given the complexities of these issues and the short time available before the 2008 elections -- is another matter altogether.

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