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Kirkland Alert

Manchin-Schumer Inflation Reduction Act: Proposed Environmental and Climate Policy Initiatives

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Senate Democratic leaders plan to begin floor debate this week on the proposed Inflation Reduction Act ("IRA" or "the Bill"), a broad 725-page budget reconciliation bill based on an agreement negotiated by Senate Majority Leader Chuck Schumer (D-NY) and West Virginia Senator Joe Manchin (D-WV) that sets aside $369 billion for climate-related incentives and investments. In a previous *Alert*, we analyzed some of the key proposals on renewable energy tax incentives included in the Bill.

This *Alert* focuses on the IRA's proposed investments to increase environmental justice funding; curb methane and other emissions with incentives and fees; speed carbon capture, utilization and storage; improve the efficiency of federal review and permitting; and otherwise accelerate the development of renewable energy sources and low-carbon technologies in line with President Biden's target to cut greenhouse gas emissions by 50–52% from 2005 levels by 2030.

Environmental Justice

As we noted in our update on the Biden administration's announcement this spring, environmental justice[1] has been a focal point of President Biden's policy agenda since his first week in office, when he directed federal agencies to work proactively toward achieving environmental justice in Executive Order 14008 (Tackling the Climate Crisis at Home and Abroad). As currently drafted, the IRA expands funding for environmental justice by allocating over $60 billion to drive investments into disadvantaged communities. The bill proposes funding across several different categories of grants:

- ***Environmental and Climate Justice Block Grants*:** The IRA proposes a $3 billion investment in community-led projects in environmental justice communities and capacity building centers to address disproportionate harms related to pollution and climate change.
- ***Neighborhood Access and Equity Grants*:** The IRA proposes a $3 billion investment to support neighborhood equity, safety and affordable transportation access with grants to reconnect communities split by infrastructure barriers, mitigate the negative impacts of transportation facilities or construction projects on disadvantaged communities, and support equitable transportation planning.
- ***Grants to Reduce Air Pollution at Ports*:** The IRA proposes a $3 billion investment to support the purchase and installation of zero-emission equipment and technology at ports.
- ***Clean Heavy-Duty Vehicles*:** The IRA grants $1 billion in funding for low or zero-emission heavy-duty vehicles like buses and garbage trucks.

In addition to the funding above, environmental justice is also a focus of certain "clean energy" tax credits and allocation incentives for solar and wind facilities in the Bill. Special rules for certain solar and wind facilities placed in service in connection with low-income communities directly address environmental justice concerns.[2] The Bill directs establishment of a program to allocate amounts of environmental justice solar and wind capacity limitation to qualified solar and wind facilities, including procedures for efficient allocation. The annual capacity limitation for environmental justice solar and wind capacity is set at 1.8 gigawatts of direct current capacity for calendar years 2023 and 2024, and zero thereafter, with carryover permitted for unused allocations from the preceding calendar year. Significant 10–20 percentage point increases for "clean electricity" investment credits also favor facilities qualifying for an allocation of environmental justice capacity limitation.[3]

The proposed reconciliation package reinforces the escalating significance of environmental justice in the Biden administration's policy goals, with important funding to reinforce those policies. The Senate Appropriations Committee's Fiscal Year 2023 appropriations bills further highlight the environmental justice funding emphasis, with $3.57 billion set aside for environmental programs and management explicitly "*[p]rovided*, That funds included under this heading may be used for environmental justice implementation and training grants, and associated program support costs."[4]

In the backdrop, the White House Environmental Justice Advisory Council met on August 3–4, 2022, to discuss draft recommendations related to environmental justice, including implementation of the Biden administration's Justice40 Initiative aimed at providing federal funding to environmental justice communities, as well as the Climate and Economic Justice Screening Tool.[5]

Methane Emissions Reduction Program

The IRA also proposes a Methane Emissions Reduction Program, amending the Clean Air Act in an effort to reduce methane emissions from the production and distribution of oil and natural gas. The program provides for funding and imposes fees intended to serve as incentives to improve monitoring and mitigation of methane leaks and is intended to complement the expected Environmental Protection Agency ("EPA") oil and gas methane standards, which would cover emissions from production, processing, transmission and storage of oil and gas. The EPA rulemaking on oil and gas methane standards was discussed in a prior *Alert*.

Fees play a significant role in the proposed methane emissions reduction program. For offshore and onshore oil and gas production, processing, storage, transmission and gathering facilities that emit more than 25,000 metric tons of carbon dioxide annually, if annual methane emissions exceed (1) for petroleum and natural gas production facilities, either (A) 0.2% of the natural gas sent to sale from the facility or (B) 10 metric tons of methane per million barrels of oil sent to sale from the facility, (2) for nonproduction petroleum and natural gas systems, 0.05% of the natural gas sent to sale from the facility or (3) for natural gas transmission facilities, 0.11% of the natural gas sent to sale from the facility, the facility will be assessed a fee for each ton of methane above the limit. For 2024, the fee is set at $900 per ton, increasing to $1,200 in 2025 and $1,500 in 2026.[6] An exemption is available based on a determination by EPA that a facility is subject to previously proposed emissions plan standards. The IRA also allows for netting of emissions for facilities under common ownership or control, by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments.

The proposed Bill combines the above fees with an incentives program, including a proposal to provide fiscal year 2022 appropriations for EPA of $850 million to monitor and reduce methane emissions and an additional $700 million focused on emissions from marginal conventional wells.[7]

Carbon capture, utilization and storage (CCUS)

Investment in CCUS technologies and infrastructure is central to the Biden administration's efforts to address climate change. In June 2021, the White House Council on Environmental Quality ("CEQ") issued a report outlining a commitment to improving capacity and generally streamlining permitting for CCUS projects, further developing CCUS technologies, and leveraging existing and developing new incentive programs for CCUS. The IRA builds on this commitment and other guidance from the Biden administration by significantly increasing the value of the Section 45Q tax credits available to CCUS projects that satisfy certain wage and hour requirements, as shown below. The IRA also extends the deadline for commencing construction of CCUS projects and lowers the capture thresholds for eligibility to generate credits.

	Current Law	IRA Bill
$/Metric Ton (Carbon Utilized, e.g., enhanced oil recovery)	Up to $35	$60
$/Metric Ton (Carbon Not Utilized)	Up to $50	$85
Direct Air Capture (Carbon Utilized)	Up to $35	$130
Direct Air Capture (Carbon Not Utilized)	Up to $50	$180

Further information on the Section 45Q amendments in the IRA is described in our previous *Alert*.

Speeding Up Environmental Permitting

The Bill also contains a number of provisions intended to achieve "efficient, accurate and timely" federal agency reviews for proposed projects. This includes dedicated funding to increase agency permitting resources and improve stakeholder engagement, including: (1) the hiring and training of permitting personnel to complete reviews; (2) the development of programmatic decision documents, which would minimize the need or complexity for project-specific reviews; (3) the procurement of technical or scientific services to facilitate timely agency reviews; (4) the development of environmental data or information systems; (5) stakeholder and community engagement; (6) the purchase of new equipment for environmental analysis; and (7) the development of geographic information systems and other analysis tools, techniques and guidance to improve agency transparency, accountability and public engagement. To support these activities, agencies are allocated the following amounts:

- $150 million to the Department of the Interior, available through 2026;[8]
- $100 million to the United States Forest Service available through 2026;[9]
- $125 million to the Department of Energy, available through September 2031;[10]
- $100 million to the Federal Energy Regulatory Commission, available through September 2031;[11]
- $100 million to the Federal Highway Administration "for the purpose of facilitating the development and review of documents for the environmental review process for proposed projects;"[12]
- $20 million for NOAA, available through 2026;[13] and
- $40 million for the EPA, available through 2026.[14]

In addition to this agency-specific funding, the Bill provides for $70 million in funding per year to the Federal Permitting Improvement Steering Council, an independent body established under the FAST-41 Act, to coordinate and streamline federal permitting.

These additional resources are intended to address long-term criticisms that agencies often lack the adequate staffing, technical expertise or tools to facilitate efficient federal reviews.

There have been reports[15] that Senate Democrats have agreed to take up additional legislation to fast-track the federal permitting process in a separate bill this fall, including considering changes to the process and deadlines for completing federal reviews.

Potential Contribution to the Energy Transition and Federal Climate Goals

If it passes, the Bill will be a significant source of funding for the development and manufacturing of renewable energy sources and transportation technologies, totaling $369 billion, including for the tax credits discussed in our prior *Alert* and the methane reduction and CCUS proposals discussed above.

The Bill could further spur a transition to increased use of renewable energy sources and emissions reductions at existing facilities, and play a role in mobilizing the trillions of dollars of private capital that would be required to decarbonize the economy. If passed, it would also potentially offer a path forward for the Biden administration to advance its climate goals after the Supreme Court's decision in *West Virginia v. EPA*, which called into question the Biden administration's ability to use executive authority to advance its climate goals without further congressional action.[16] Further, in 2021, the Biden administration set a target to cut emissions by 50–52% from 2005 levels by 2030. And research by Rhodium suggests that the Bill could put the U.S. on a pathway to cut emissions by 40% by 2030, rather than the 24–35% reduction on the U.S.'s current trajectory.

The Bill also includes provisions that would allow leasing on federal lands for oil and gas development wherever renewables are permitted and provide credits for the carbon capture, biofuels and hydrogen technologies that oil and gas developers have invested heavily in as part of their corporate climate strategies.

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1. The term "environmental justice" is defined by EPA as follows: "Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."↩

2. *See* IRA Bill at Sec. 13103.↩

3. *See* IRA Bill at Sec. 13702(h).↩

4. Senate Appropriations Bill FY 2023 at 78–79, available at https://www.appropriations.senate.gov/imo/media/doc/INTFY2023.PDF (released Jul. 28, 2022). ↩

5. *See* White House Environmental Justice Advisory Council; Notification of Virtual Public Meeting, 87 Fed. Reg. 40529 (Jul. 7, 2022); *see also* https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5.↩

6. *See* IRA Bill at Sec. 60113(f).↩

7. *See* IRA Bill at Sec. 60113(a).↩

8. *See* IRA Bill at Sec. 50303.↩

9. *See* IRA Bill at Sec. 23001(a)(3).↩

10. *See* IRA Bill at Sec. 50301.↩

11. *See* IRA Bill at Sec. 50302.↩

12. *See* IRA Bill at Sec. 60505.↩

13. *See* IRA Bill at Sec. 40003.↩

14. *See* IRA Bill at Sec. 60115.↩

15. *See*, e.g., https://thehill.com/policy/energy-environment/3583262-democratic-leaders-to-take-up-environmental-permitting-reform-for-manchin-vote/.↩

16. We discussed the *West Virginia v. EPA* decision in detail in a June 2022 *Alert*.↩

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Suggested Reading

- 10 February 2025 - 14 February 2025 Speaking Engagement Oxford Private Equity Programme
- 04 February 2025 Speaking Engagement Private Funds CFO Network New York Forum
- 22 January 2025 Press Release Kirkland Advises KKR on Financing for Acquisition of Dawsongroup