

An inconvenient state?

California's climate change legislation marks a dramatic step forward in US efforts to tackle greenhouse gas emissions. **Douglas Smith** considers its implications

At the end of August, the California legislature approved a statute establishing an aggressive economy-wide cap on emissions of greenhouse gases (GHGs) for the state. Governor Arnold Schwarzenegger, who agreed to Assembly Bill 32 (AB32) as it was passed by the legislature, is expected to sign the bill into law soon. The new statute will require reductions in GHG emissions to 1990 levels by 2020 – a 25% reduction against 'business as usual'.

Given the sheer size of the California economy – it would rank sixth in the world among national economies – these emission reductions are significant. Moreover, the California initiative may encourage actions by other states and regions, and could accelerate the debate in Washington DC, where the Bush administration remains dead set against mandatory carbon controls.

So what does AB32 require? The bill vests authority in the California Air Resources Board (CARB), an administrative agency, to develop and enforce regulations to meet the cap; the regulations must be in effect beginning in 2012, with restrictions tightening over time to reach the 2020 cap.

The bill directs the CARB to develop a "scoping plan" for its regulation by no later than 1 January 2009, and to promulgate the regulations by no later than 1 January 2011. The board's programme must achieve "maximum technologically feasible and cost-effective" reductions to meet the 2020 limit. The cap applies to the state's overall emissions – AB32 gives the CARB great discretion in allocating emission reduction obligations among different sources.

AB32 authorises – but does not require – the CARB programme to include market-based mechanisms, such as allowance trading and offset crediting, after considering factors such as "localised impacts in communities that are already adversely impacted by air pollution". Schwarzenegger pushed for the inclusion of market-based mechanisms and, if he remains governor during the development of the regulations (he is up for re-election in November), he can be expected to advocate market-based approaches.

In addition, at the request of Schwarzenegger, AB32 includes a "safety valve" provision, under which the governor may push an



individual emissions reduction deadline back by one year in the event of "extraordinary circumstances, catastrophic events, or threat of significant economic harm".

AB32 also directs the CARB to ensure that entities that have voluntarily reduced their GHG emissions prior to implementation of the programme "receive appropriate credit" for those early reductions.

Notably, the limit on "statewide greenhouse gas emissions" applies not only to emissions from in-state sources, but also to emissions associated with out-of-state generation used for electricity imports. Accordingly, AB32 appears to contemplate a regulatory approach for the electric power sector along the lines of that already under development by the California Public Utilities Commission (CPUC) – and the extension of that approach to municipal utilities.

Instead of regulating power plants directly on the basis of their emissions, the CPUC has proposed that retail sellers of electricity meet an "emissions performance standard" for the electricity they sell – irrespective of whether the electricity is generated from in-state power plants or from plants in other states. The aim of this approach – as opposed to an approach that regulates in-state power plants on the basis of their direct emissions – is to avoid creating incentives to import power from out of state.

The bill also references California's existing GHG emissions standards for motor vehicles. Those standards, enacted in 2002, are currently subject to a challenge in federal court claiming that they are pre-empted by federal Corporate Average Fuel Economy (CAFE) standards. AB32 provides that if the California vehicle standards are invalidated, the CARB "shall implement alternative regulations" that "achieve equivalent or greater reductions".

The bill acknowledges that national and international actions will be necessary to fully address the issue of global warming, and says that "action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act". Notably, the bill directs the CARB to consult with other states and nations, and to "facilitate the development of integrated regional, national, and international programs". In a recent high-profile announcement, for example, Schwarzenegger and UK Prime Minister Tony Blair agreed that their governments would collaborate on GHG issues.

Indeed, given its size, California could have a substantial impact on developing markets for emissions trading and clean energy technologies. Moreover, in the past, environmental and energy policies implemented first by California have often been precursors to development of similar policies in other states and at the national level. The sponsors of AB32 clearly want to drive the development of an economy-wide federal programme.

AB32 could also spur further action by other states, including giving further momentum to a number of the initiatives already under way. California officials have consulted actively with officials from the states of Washington and Oregon on climate policies. In addition, there have been discussions between California officials and state officials involved with the Regional Greenhouse Gas Initiative (RGGI), a cap-and-trade scheme covering electricity sector emissions under development by seven states in the northeastern US.

Whether other states will take action as far-reaching as AB32 is not yet clear. Notwithstanding the stated aspiration for coordination, there are concerns that the different state and regional efforts could lead to 'patchwork' regulation, complicating business and compliance planning for companies with facilities across a number of states, and failing to achieve the full potential efficiencies of a cap-and-trade approach.

This dramatic new commitment in California leaves many important details unresolved, deferring to future regulatory decisions in the CARB administrative process. However, the passage of AB32, with the support of Republican governor Schwarzenegger, could signal an important watershed in the politics of the US climate debate. The next key event at the federal level will be the November Congressional elections, when decisions about control of Congress will likely shape the content and pace of future debate on federal GHG policy.

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