

December 21, 2007

## Climate Change Policy Update December 17-21, 2007\*

### Commentary

*This week, President Bush signed an energy bill that significantly increases fuel economy standards for cars and light trucks, mandates greater biofuels production, and creates efficiency standards for buildings. Although the bill was not as comprehensive as earlier versions – which included a renewable portfolio standard and tax incentives for renewable energy production – it addresses a number of energy issues facing the U.S. The enactment of the bill and its increased fuel economy standards also contributed to EPA’s landmark decision to deny California’s request for a waiver to implement its vehicle CO<sub>2</sub> emission standards. The denial marks the first time that EPA has denied such a waiver and sets the stage for a showdown between the state and the agency. The denial, and EPA’s reasoning for denying the waiver, may have important implications for the future of GHG regulation at the agency.*

### Congress

- **President Signs Energy Bill.** President Bush signed the *Energy Independence and Security Act of 2007* (H.R.6) this week. The bill, which was passed by the House of Representatives in a vote of 314 to 100 and 86 to 6 in the Senate, raise fuel efficiency standards for automobiles, will require a significant increase in the production of biofuels, and will raise efficiency standards for commercial and residential buildings. The bill was passed after weeks of negotiations between Democrats and Republicans. Bipartisan approval came last week after Senate Majority Leader Harry Reid (D-NV) removed the tax component of the package.
- **Omnibus Spending Bill Directs EPA to Establish GHG Registry.** A provision in the omnibus spending bill approved by Congress this week directs EPA to publish a draft rule on a mandatory federal GHG emission registry within nine months of the bill’s enactment. The proposed registry must contain thresholds for when industries must report emissions and specify how often reports must be submitted. The bill also directs the EPA Administrator to determine the extent to which the carbon content of fossil fuels should be reported.
- **House Committee Holds Hearing on Bali Negotiations.** The House Select Committee on Energy Independence and Global Warming this week held a hearing to discuss the results of the U.N. Climate Conference in Bali. Experts that attended the conference in Bali presented testimony regarding the “Bali Road Map.”

If you have questions about topics covered in this Update, please contact Kyle Danish, head of the Climate Change and Emissions Trading Practice, at [kwd@vnf.com](mailto:kwd@vnf.com)

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\* Due to the upcoming holidays and the Congressional recess, the VNF Climate Change Policy Update will not be issued for the week of December 24-28. An update will be issued for the week of December 31 – January 4 only if warranted by events.

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## Administration

- **EPA Denies California Waiver for Vehicle GHG Standards; Senate Leaders Call for Oversight of Decision.** EPA Administrator Stephen Johnson denied California's request for a Clean Air Act (CAA) waiver for its vehicle GHG emission standards on the same day that President Bush signed the energy bill, discussed above, into law. Under the CAA, California must demonstrate that "compelling and extraordinary conditions" exist in the state that require the implementation of vehicle emission standards that are more stringent than the federal standards. Administrator Johnson said that due to the global nature of climate change, California did not have such an interest, in contrast to emissions of other pollutants that have localized health and environmental effects. Furthermore, he noted that the increased fuel economy standards contained in the energy bill would achieve equivalent CO<sub>2</sub> emission reductions to the California standards, while providing greater environmental, economic, and energy security benefits due to their national applicability. EPA has not yet issued a formal decision document that fully explains the agency's rationale for denying the waiver. Senate Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA) and House Oversight and Government Reform Committee Chairman Henry Waxman (D-CA) said this week that they will call Administrator Johnson to testify before their respective committees early in the new year to explain the decision to deny the waiver. Chairwoman Boxer also said that she will seek a legislative strategy to overturn the decision.
- **Site of FutureGen Project Chosen in Illinois.** Mattoon, Illinois was selected as the site for the FutureGen project, which will be the first U.S. coal-fired power plant to capture and store its CO<sub>2</sub> emissions. The project is a public-private partnership between the Department of Energy and 12 electricity and coal companies. The federal government will provide 74 percent of the project costs and the private sector will contribute the remaining amount. Construction of the facility is expected to begin in mid-2009, with operations starting in 2012. Van Ness Feldman serves as general counsel to the FutureGen Industrial Alliance.

## International

- **European Commission Proposes Fines for Failure to Meet Auto CO<sub>2</sub> Limits.** The European Commission proposed a plan that would impose fines on manufacturers whose car and van fleets do not meet a new CO<sub>2</sub> emission standard. The limit of 130 grams of CO<sub>2</sub> per kilometer (approximately 209 grams per mile) would apply to model year 2012 and subsequent vehicles. Fines would begin at €20 (US\$22.80) per g/km above the limit per vehicle in 2012, and rise to €95 (US\$136.70) in 2015. It is estimated that current vehicle CO<sub>2</sub> emissions are around 160 g/km, meaning that manufacturers could face billions of dollars of fines if they are unable to quickly reduce emission levels.
- **CCX and Chinese National Petroleum Corporation to Examine Emissions Trading.** The Chicago Climate Exchange (CCX) and the Chinese National Petroleum Corporation (CNPC) signed a memorandum of understanding on the creation of a joint venture company to examine the feasibility of an emissions trading program in China. CCX and CNPC will release further details on the joint venture and a possible trading program in the next few months.

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- **Japan to Cut GHG Emissions 20 Percent by 2020, Signs Framework Trading Agreement with Hungary.** Japanese Environment Minister Ichiro Kamoshita announced that the nation will reduce its GHG emissions to 20 percent below 1990 levels by 2020, noting that unless Japan cuts emissions at the same rate as the European Union, it “cannot take leadership in the world.” Japan also signed a memorandum of understanding with Hungary that will create a framework for the two nations to trade carbon credits under the Kyoto Protocol. Under the agreement, Japan will purchase Assigned Amount Units from Hungary. A framework for Japanese government and private investment in Joint Implementation projects in Hungary also is created under the agreement.
- **Brazil Announces Domestic Carbon Fund.** The Brazilian national development bank launched a 220 million real (US\$110 million) fund to support Certified Emission Reduction (CER) projects under the Kyoto Protocol. The fund will begin operation by the end of 2009. Investments in the carbon fund will be placed in mutual funds, which will in turn invest in companies with Clean Development Mechanism (CDM) projects.

*The Climate Policy Update is intended as a general summary of major climate change-related policy developments that we judge to be of interest to a broad range of our clients and friends. We welcome your comments and suggestions. Coverage in, and selection of topics for, the Update is not intended to reflect the position or opinion of Van Ness Feldman or any of its clients on any issue. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.*

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