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Climate Change Policy Update Week of May 5 - May 9, 2008

Commentary: *Chairman Boxer is tempering expectations about the Lieberman-Warner bill. "To tell you the truth, we don't know if we'll wind up getting 60 votes this time," she said in an interview. "But we do believe we're making tremendous progress and we're going to start the debate." Democratic Senator Sherrod Brown (D-OH) has said he currently is a "No" vote, and there may be other Democrats from manufacturing states who share his status . . . Republican Presidential candidate John McCain (R-AZ) will make a climate-related speech in Portland, OR, this Monday . . . It is possible that provisions allowing the use of Clean Development Mechanism credits and credits from activities to reduce deforestation in developing countries will find their way into the Manager's Amendment . . . The Pew Center on Global Climate Change issued a report assessing the European Union Emissions Trading Scheme and its lessons for the design of a U.S. program.*

Congress

- **Senators Plan Changes to Lieberman-Warner Bill, Might Include Tropical Forestry and Clean Development Mechanism.** Senators Joe Lieberman (I-CT), John Warner (R-VA) and Barbara Boxer (D-CA) are working on a Manager's Amendment to the Lieberman-Warner climate change bill that was reported by the Environment and Public Works Committee in December. It is being reported that at least pieces of the amendment will be circulated to Senate offices next week. The amendment will likely include provisions making the bill budget-neutral and providing increased oversight of carbon markets. In remarks at an emissions trading conference in Germany, Ken Connolly, a former senior staffer for the Senate Environment & Public Works Committee, said that the amendment might allow covered facilities to meet up to 5% of their compliance obligations with credits from the Kyoto Protocol's Clean Development Mechanism, and up to 10% from activities that reduce deforestation in developing countries.
- **Senator Reid (D-NV) Introduces "The Consumer-First Energy Act of 2008."** Majority Leader Reid, along with 19 Democratic cosponsors, introduced S.2991, which would establish a 25 percent tax on major oil-producing companies that do not reinvest their profits in increased capacity or renewable energy technologies; the bill also would repeal a tax deduction provided to the companies as manufacturers of oil and gas products. The sponsors said that the legislation would raise \$17 billion over 10 years that would be used for new consumer price protections, renewable energy development, and energy efficiency technologies. The bill also includes provisions aimed at preventing companies and countries from price-gouging and preventing traders of U.S. crude oil futures from routing transactions to offshore markets.
- **House Democrats Plan Renewable Energy Tax Credit Legislation.** At a recent press conference, House Speaker Nancy Pelosi (D-CA) and other House Democratic Party leaders said they will bring to the floor before the Memorial Day recess legislation that extends certain renewable energy tax credits currently set to expire at the end of 2008 as well as tax credits that expired at the end of 2007. The credits include the research and development tax credit, the

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deduction of state and local general sales tax, and the above-the-line deduction for qualified tuition and related expenses.

Administration

- **EPA's ANPR to Address Regulation of GHG Emissions from Additional Vehicles.** EPA will request public comments through an advance notice of proposed rulemaking (ANPR) on regulating GHG emissions from mobile sources, such as ships, heavy-duty vehicles, aircrafts, and trains. Previous comments by EPA only mentioned light-duty vehicles as part of the ANPR, but EPA decided to include additional vehicles in the ANPR based on petitions from environmental groups, states and localities.
- **Department of Energy (DOE) Regional Carbon Sequestration Partnership Announces Two New Awards.** DOE announced awards totaling \$126.6 million to two large-scale carbon capture and sequestration (CCS) projects in Ohio and California. The awards are granted to the Midwest and the West Coast Regional Carbon Sequestration Partnerships, which also involve industry participants who are providing cost-shared funds. The projects join four others already underway as part of DOE's broader Regional Sequestration Partnerships.

States and Cities

- **Colorado Prepares for Launch of State Carbon Offset Fund.** As part of Governor Bill Ritter's (D) climate action plan, Colorado is preparing to launch the Colorado Carbon Fund (CCF), a voluntary carbon fund that will allow private parties to purchase emission reduction credits from in-state emission offset projects. Offset provider The Climate Trust will implement the fund by identifying emission reduction projects within the state and creating a registry to track and retire the offset credits. The fund is expected raise \$3 million annually to fund offset projects that will reduce Colorado's annual GHG emissions by approximately 150,000 tonnes. Gov. Ritter's climate action plan calls for the state to reduce its GHG emissions by 20 percent by 2020.
- **Michigan Advisory Group Establishes Preliminary Reduction Targets.** An advisory group to Michigan Governor Jennifer Granholm (D) issued a preliminary report outlining potential future GHG emission targets for the state. The Michigan Climate Action Council (Council) report suggested that the state reduce its emissions 10-20 percent below 2002 levels by 2015, 25-35 percent below 2002 levels by 2025, and 80 percent below 2002 levels by 2050. The report also recommended that the Governor establish a "Michigan Climate Challenge" to promote actions by individuals, businesses and local governments within the state to reduce emissions. The Council is also reviewing the best mechanisms for the state to meet those targets, including a cap-and-trade program and carbon taxes. The Council will issue its final report at the end of this year.
- **Washington State Environmental Reviews To Include Climate Impact Assessment.** The Washington Department of Ecology (WDE) is beginning efforts to include an assessment of climate change impacts in environmental reviews conducted under the State Environmental Policy Act (SEPA). WDE will determine how to incorporate climate change into environmental reviews prepared as a part of government planning decisions and construction of public facilities and private projects. WDE is seeking to provide local governments with clear guidance on

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including climate change in environmental reviews in an effort to avoid litigation that has affected local governments in other states.

- **New York Issues Revised RGGI Implementation Rules.** The New York Department of Environmental Conservation announced revised rules to implement the Regional Greenhouse Gas Initiative (RGGI). Under the revised rules, New York would not participate in the first RGGI allowance auction, which will be held September 10 of this year. Instead, New York would participate in the second auction taking place December 17. The revised rules establish an allowance auction reserve price of \$1.86, prohibit the sale in secondary markets of allowances freely allocated to regulated entities, and clarify that the state may retire any allowances not purchased at auction. In related action, the New York State Energy Research and Development Authority issued revised regulations that will create an account to use RGGI allowance auction revenues to fund energy efficiency and clean energy technologies.
- **Connecticut Senate Sends GHG Targets to Governor.** Following the Connecticut House's passage of similar legislation in late April, the Connecticut Senate approved legislation that would establish state-wide GHG emission targets. The bill now heads to Connecticut Governor M. Jodi Rell (R). The legislation would require the state to reduce GHG emissions to 10 percent below 1990 levels by 2020 and 80 percent below 2001 levels by 2050. The climate legislation also includes GHG emission reporting requirements and a mandate that state agencies investigate ways to meet state energy efficiency goals and GHG emission targets.

Industry

- **Exchange to Offer First RGGI Futures Contract.** The New York Mercantile Exchange, Inc., announced that it plans to launch a futures contract for CO₂ allowances under RGGI in the third quarter of this year, just before the first RGGI allowance auction is scheduled to take place. According to a NYMEX statement, the RGGI futures contract "is expected to be the first exchange-traded contract for compliance with a government cap-and-trade program in the U.S."
- **ExxonMobil Announces \$100 Million Investment in Commercial Demonstration Plant to Remove CO₂ from Natural Gas.** The oil company announced plans to build a commercial demonstration plant near LeBarge, WY, that will treat "sour" natural gas to remove CO₂ and other components, including hydrogen sulfide. The company anticipates that the single-step technology being commercialized will allow it to expand natural gas production into new areas and reduce the costs of CO₂ removal. The plant is expected to begin operations in 2009.

Studies and Reports

- **Pew Center Issues Report on European Union Emissions Trading Scheme.** The Pew Center on Global Climate Change commissioned two MIT researchers, A. Denny Ellerman and Paul Joskow, to assess the EU ETS. Ellerman and Joskow concluded that, in light of the rapid start-up of the EU ETS, the system has "performed surprisingly well." They cautioned that it is important not to over-interpret results from the Scheme's 2005-2007 phase, which was intended as a pilot. Ellerman and Joskow identify a series of "useful lessons" that can be drawn from the EU ETS experience in designing a program for the United States, including careful attention to the

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interaction of allowance distribution and the extent to which electricity markets are regulated or deregulated. The report is available at <http://www.pewclimate.org/eu-ets>.

- **CBO Releases Study on Nuclear Power.** The Congressional Budget Office (CBO) released a study this week focusing on the competitiveness of nuclear power with other new sources of electricity generation, taking into account incentives in the Energy Policy Act of 2005 (EPAct 2005) and possible charges for GHG emissions. The study, *Nuclear Power's Role in Generating Electricity*, compares nuclear power with technologies that can be used as base-load capacity in most parts of the U.S. The analysis concludes that the incentives in EPAct 2005 “would probably make nuclear generation a competitive technology for limited additions to base-load capacity.” The study also found that nuclear power would be competitive with conventional fossil-fuel technologies as a source of new capacity if GHG policies resulted in a price of approximately \$45 per metric ton of CO₂. The study is available at <http://www.cbo.gov/ftpdocs/91xx/doc9133/05-02-Nuclear.pdf>.
- **Report from American Petroleum Institute (API) Predicts Increased Fuel Costs and Decreased Investment in U.S. Refining under Lieberman-Warner.** API released an addendum to an earlier analysis of congressional climate change proposals focusing on the Lieberman-Warner bill. The report evaluates the effect of the Lieberman-Warner bill on U.S. oil and gas operations, predicting that oil and natural gas companies would be required to spend almost \$23 billion for allowances to cover emissions from their facilities in 2020, and almost \$183 billion to cover allowance submission requirements for the carbon content of consumer fuel usage. The report estimates allowance costs of \$41 per metric ton of CO₂ in 2012 and \$57 per ton in 2020. The report is available at http://www.api.org/ehs/climate/new/upload/IA_ICF_L_W_REPORT_FINAL_2008_4_29_corr_5_1.pdf.pdf.
- **Environmental Group Report Criticizes CCS.** Greenpeace released a report this week sharply criticizing CCS technology. The report, *False Hope: Why Carbon Capture and Storage Won't Save the Climate*, was released in advance of a large CCS conference in Pittsburgh, PA this week. The report highlights concerns about the timeframe in which CCS technology will be available, parasitic power losses required for CCS operation, economic costs, and risks of CCS technology, while advocating for increased investment in renewable generation.

International

- **Japan, China Sign Bilateral Climate Agreement.** Chinese President Hu Jintao and Japanese Prime Minister Yasuo Fukuda signed a climate change agreement under which the two countries agreed to cooperate to reduce GHG emissions. In the agreement, China acknowledged Japan's proposal for a sectoral approach to reducing emissions as an important tool for addressing climate change and committed to make contributions to reducing the impacts of climate change by enforcing its national climate program. Japan's sectoral approach for a post-Kyoto Protocol treaty would place emissions limits on individual industrial sectors. In turn, Japan agreed to fund emission reduction projects in China and to help China develop and deploy energy efficiency and clean energy technologies.

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- **Canada Announces Support for a North American Carbon Market.** The Canadian official in charge of trading regimes for Environment Canada, the Canadian environmental agency, stated that the Canadian government would support development of a North American emission trading scheme (ETS). The potential North American ETS would include Canada, the United States, and Mexico. Mexico has previously expressed support for a North American carbon market.

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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