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## Climate Change Policy Update Week of December 15-19, 2008

**Commentary:** *This is our last update of 2008. Many thanks and best wishes to all of our readers. We look forward to working with you in 2009 . . . A common thread among President-elect Obama's recent cabinet appointments – from Labor to NOAA to the Science Advisor – is a concern for and deep expertise in climate change and clean energy . . . The outgoing EPA Administrator sent a letter to the agency's regional offices allowing them to issue permits for coal-fired power plants without CO<sub>2</sub> emission limits. Expect the decision to be revisited by the Obama Administration . . . The RGGI held its second allowance auction. Notably, a report issued this week concludes that the system already is “long”; emissions are below the cap.*

### Presidential Transition

- **Obama Nominees for Interior, Agriculture, Labor, NOAA, and Science Advisor Announced.** President-elect Obama has nominated Sen. Ken Salazar (D-CO) for Secretary of the Interior, former Iowa governor Tom Vilsack for Secretary of Agriculture, Rep. Hilda Solis (D-CA) as Labor Secretary, Jane Lubchenco as head of the National Oceanic and Atmospheric Administration (NOAA), and John Holdren as Science Advisor. All four individuals have been outspoken advocates for addressing climate change.
  - Sen. Salazar worked as an environmental lawyer, directed the Colorado Department of Natural Resources, and served as attorney general in Colorado before being elected to the Senate in 2004. As a Senator, he supported carbon capture and sequestration (and coal-fired power more generally), a federal renewable portfolio standard, rewarding farmers and ranchers who employ land use techniques that store carbon dioxide, and an energy compromise this fall that would have granted offshore drilling concessions in exchange for investment in alternative fuels and energy efficiency.
  - Mr. Vilsack has long been a proponent of climate change regulation and has stressed the importance of green technological development, energy efficiency, green building, and renewable energy and fuels – especially corn-based ethanol. Although his nomination was praised by the ethanol industry, Mr. Vilsack co-chaired a task force on climate change for the Council on Foreign Relations last year that recommended phasing out domestic subsidies for mature biofuels such as corn-based ethanol and shifting towards second generation, nonfood crop biofuel technology. Mr. Vilsack also shares President-elect Obama's belief that investments in renewable energy and energy independence can create good jobs.
  - Rep. Solis has been outspoken on issues of environmental justice and toxic waste in Congress. She is also a proponent of job creation through investments in clean energy and was one of the authors of the Green Jobs Act, which authorized \$125 million to train workers in jobs related to renewable energy development and energy efficiency as a part of the 2007 energy bill. With the incoming administration's focus on green job creation, the Labor Department may play a more significant role in environmental and energy policy than in the past.

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- Ms. Lubchenco, a professor of marine ecology at Oregon State University and former recipient of a MacArthur “genius” grant, has focused much of her research on climate change, ecosystems, and marine reserves. She was also a member of the group of prominent scientists who formed Climate Central, a think tank whose aim is to bring more scientific information on climate change into public debates.
- Mr. Holdren is the Teresa and John Heinz Professor of Environmental Policy and Director of the Program on Science, Technology, and Public Policy at the Kennedy School, as well as Professor of Environmental Science and Public Policy in the Department of Earth and Planetary Sciences at Harvard University. He is also the Director of the Woods Hole Research Center and from 2005 to 2008 served as President-Elect, President, and Chair of the Board of the American Association for the Advancement of Science. His work focuses on causes and consequences of global environmental change, analysis of energy technologies and policies and a recent paper on sustainability.

President-elect Obama also formally announced that Carol Browner, former EPA administrator under President Bill Clinton, will fill the newly-created position of Assistant to the President for Energy and Climate Change and will coordinate related policies for the administration. Heather Zichal, President-elect Obama’s energy and environment policy director during the campaign and a former staffer for Senator John Kerry (D-MA), will work under Ms. Browner as Deputy Assistant to the President.

- **President-elect Obama Stresses Interlinkage of Energy, Security, Economy.** In formally announcing his selections for top energy and environmental positions in his administration this week, President-elect Obama continued to frame energy policy as intimately linked with national security and economic growth. Acknowledging that calls for energy independence were not new, President-elect Obama stated: “This time we cannot fail, nor be lulled into complacency simply because the price at the pump has – for now – gone down from \$4 a gallon. To control our own destiny, America must develop new forms of energy and new ways of using it.” When asked if he would immediately approve California’s request for a Clean Air Act waiver to regulate greenhouse gas emissions from automobiles, which he has supported in the past, President-elect Obama said the matter would be reviewed by his advisors in the weeks to come. The EPA denied the waiver last year. If granted, the waiver would allow California and approximately twenty other states to require new cars and light trucks to emit 30% less CO<sub>2</sub> than current models by 2016.
- **Action Plan May Provide Insight into Energy Secretary’s Priorities.** President-elect Obama’s choice for Energy Secretary, Steven Chu, helped draft a “100 Day Energy Action Plan” for the new administration that was released by the Council on Competitiveness. The plan’s recommendations include 1) rapid adoption of the world’s leading energy efficiency standards including a labeling, measurement, and verification system; 2) leveling the playing field on subsidies for energy sources in the United States; 3) establishment of a \$200 billion National Clean Energy Bank to provide long-term financing for market-deployment of breakthrough products or projects that improve energy efficiency and avoid or sequester GHG emissions; and 4) creation of a \$250 million public-private partnership fund (with matching funds from state and private sector investments) to create R&D test-beds and large scale commercial pilots for clean energy technologies. The full report is available at [http://www.compete.org/images/uploads/File/PDF%20Files/CoC\\_Prioritize\\_090808.pdf](http://www.compete.org/images/uploads/File/PDF%20Files/CoC_Prioritize_090808.pdf).

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## Administration

- **EPA Administrator Issues Memo Responding to Board Decision on CO<sub>2</sub> Limits in Permits.** In a December 18 memo to all EPA regional administrators, EPA Administrator Stephen Johnson said that the regional offices should not require CO<sub>2</sub> emission limits as part of Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permits. The memo responds to a recent decision in which the agency's Environmental Appeals Board (EAB) held that EPA Region VIII must either conduct a best available control technology (BACT) analysis to determine the appropriate level of CO<sub>2</sub> emission limits in a PSD permit for the Deseret Power Electric Cooperative or provide a detailed explanation of why such limits are not necessary. A factor in the EAB decision was that EPA has not adopted a formal interpretation of what constitutes a "regulated NSR pollutant." Under the Clean Air Act (CAA), PSD and NSR permits must contain emission limits for all regulated pollutants; environmental groups had argued in the case that CO<sub>2</sub> is a "regulated pollutant" under the CAA because the Acid Rain Program requires facilities to monitor their CO<sub>2</sub> emissions. Mr. Johnson stated in the memo to regional administrators that "EPA will interpret this definition of 'regulated NSR pollutant' to exclude pollutants for which EPA regulations only require monitoring or reporting but to include each pollutant subject to either a provision in the Clean Air Act or regulation adopted by EPA under the Clean Air Act that requires actual control of emissions of that pollutant." The EAB decision also recommended that EPA take national action to address whether CO<sub>2</sub> limits must be included in PSD and NSR permits. Mr. Johnson's memo noted that the agency has issued an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on possible options for regulating CO<sub>2</sub> under the CAA, and asserted that the December 18 memo was intended to serve as the kind of national action recommended by the EAB until the agency finalizes any regulations that began with the ANPR process.

## States and Cities

- **RGGI Holds Second Allowance Auction.** The Regional Greenhouse Gas Initiative conducted its second auction of emission allowances. All ten RGGI member states participated in the auction, which sold off allowances equivalent to 31.5 million tons of CO<sub>2</sub>. RGGI members have committed to capping their combined emission at 188 million tons of CO<sub>2</sub> from 2009-2014, with the emission cap reduced by 2.5 percent each of the next four years.
- **Virginia Finalizes Climate Action Plan.** The Virginia Commission on Climate Change released a final climate change action plan calling for the state to reduce its GHG emissions by nearly 20 percent by 2025 (but not specifying a baseline against which to measure the 20 percent reduction). The Commission, an advisory group established by Governor Tim Kaine (D), focused on energy efficiency and conservation programs, expanded nuclear power, and increased development of renewable energy sources. The plan proposes a mandatory energy efficiency standard that would require the state to meet nearly 20 percent of its electricity needs through efficiency initiatives by 2025. The Commission avoids calling for a state-wide or regional emission trading program, but instead calls on the federal government to adopt a national cap-and-trade program.
- **New Jersey Releases Draft Climate Plan for Public Comment.** The New Jersey Department of Environmental Protection (DEP) published for public review a draft climate change plan. The plan details the DEP's recommended proposals for reducing the state's GHG emissions to 1990 levels by 2020, and to 80 percent below 2006 levels by 2050. The key recommendations include a ban on new

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coal-fired power plants; expansion of the state rail network; initiatives to promote no- and low-emission vehicles; increased renewable energy generation; implementation of stringent energy efficient standards; and a Garden State Climate Fund to develop GHG offset projects. The state's emissions goals were signed into law by Governor Jon Corzine (D) in 2007. New Jersey is a member of the Regional Greenhouse Gas Initiative.

## Studies and Reports

- **Impact of Energy Sources Ranked in Study.** A study by Stanford engineering professor Mark Jacobson published this month in the Journal of Energy and Environmental Science ranks “clean” energy technologies according to their environmental impact. According to Jacobson’s ratings, the best-to-worst electric power sources are: 1) wind power; 2) concentrated solar power (CSP); 3) geothermal power; 4) tidal power; 5) solar photovoltaic (PV); 6) wave power; 7) hydroelectric power; 8) a tie between nuclear power and coal with carbon capture and sequestration (CCS). The best-to-worst vehicle options are: 1) wind (wind-electric) battery electric vehicles (BEVs); 2) wind hydrogen fuel cell vehicles (HFCVs), 3) CSP-BEVs; 4) geothermal-BEVs; 5) tidal-BEVs; 6) solar PV-BEVs; 7) wave-BEVs; 8) hydroelectric-BEVs; 9) a tie between nuclear-BEVs and coal-CCS-BEVs; 11) corn-E85; 12) cellulosic-E85.
- **Cutting Smog and Soot a Shortcut to Mitigating Climate Change.** A new study released by researchers from NASA’s Goddard Institute for Space Studies found that reducing smog and soot both improves local air quality and provides significant and rapid short-term climate change mitigation. The pollutants that cause smog and soot are very short-lived in the atmosphere relative to carbon dioxide, which has an atmospheric lifetime of centuries. Although CO<sub>2</sub> emissions must be addressed to mitigate climate change in the long term, reducing smog and soot in the short term (primarily through reducing domestic fuel burning) can generate a much quicker cooling effect, buying time for other mitigation strategies. Lead author Drew Shindell suggested that the beneficial local health effects of reducing smog and soot help make efforts to reduce them attractive, even for developing countries that have resisted committing to GHG emission controls. The study is available in the journal Atmospheric Chemistry and Physics at <http://www.atmos-chem-phys.net/8/7101/2008/acp-8-7101-2008.pdf>.
- **RGGI Below Cap.** According to a report by Environment Northeast, recent data indicates that 2008 greenhouse gas emissions in the states participating in the Regional Greenhouse Gas Initiative have been on average 16% below the cap, due to declining electricity use, increasing fuel price diversity, the economic downturn, and increases in non-greenhouse gas emitting generation. The report also predicts that emissions are unlikely to remain as low in 2009, due in part to the drop in oil and coal prices.

## International

- **UN Climate Chief Supports Additional High-Level Meeting in 2009.** Yvo De Boer, Executive Secretary of the United Nations Framework Convention on Climate Change, said that an additional ministerial-level meeting of climate change negotiators next year could be beneficial for achieving progress on a successor treaty to the Kyoto Protocol. There is only one ministerial-level Conference of the Parties – which was held in Poznan, Poland, earlier this month – before the ministers are expected to reach final agreement on a successor treaty in Copenhagen, Denmark in December 2009.

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Mr. De Boer said that an additional Conference of the Parties could allow the Administration of U.S. President-Elect Barack Obama to become more fully involved in the negotiations. Reengagement of the U.S. in the international climate negotiations is seen as a key to the development of an effective international climate treaty. Officials from the European Union have expressed support for the addition another high-level meeting to the climate negotiation schedule.

- **EU Parliament Approves Extensive Climate Package.** The European Union passed a six-part climate package that will guide the bloc's response to climate change. The extensive package includes binding targets for renewable energy generation; revisions to the EU Emission Trading Scheme (ETS); mandatory emission reduction goals for economic sectors not covered by the ETS; new vehicle CO<sub>2</sub> emission standards; geologic carbon capture and sequestration provisions; and transportation fuel quality standards. The climate package was approved last week by the 27 EU heads of state but could not become law until passed by both the EU Parliament and the EU Council. The climate package will now be sent back to the EU Council for formal adoption by the member states.
- **U.S., Germany Announce Climate Partnership.** The United States and Germany announced a climate partnership under which the two nations will cooperate in their response to climate change. The partnership, called the Transatlantic Climate Bridge, will involve cooperation between federal and state officials, business leaders, and academics on issues related to energy efficient buildings and transportation, carbon capture and storage, and emissions trading.
- **Australia Establishes Mid-Term Emissions Target.** Prime Minister Kevin Rudd announced that Australia has adopted a mandatory mid-term GHG reduction target. Under the target, Australia would reduce its emission to 5 percent below 2000 levels by 2020. A more stringent target of 15 percent below 2000 levels would go into effect if an international climate change agreement is reached that would require all major economies to substantially reduce their GHG emissions and advanced economies to make reductions comparable to Australia's. Australia proposes to achieve the emission reductions through a carbon pollution reduction scheme (CPRS) beginning July 1, 2010. The CPRS would be a cap-and-trade program applicable to 1,000 major emitting facilities that would incorporate allowance banking and borrowing, unlimited use of credits created under the Kyoto Protocol's Joint Implementation and Clean Development Mechanism, and a price cap set at A\$40 (US\$26.6) in 2010 that will be phased out completely within five years.

*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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