April 13, 2009

Climate Change Policy Update
Week of April 6-10, 2009

Commentary: *This week provides news that officials from the Obama Administration are reaching out to Democratic Senators comprising the moderate "Gang of 16." It is perhaps not a coincidence that there is also news this week that the President continues to make small steps away from his absolute 100%-auction position on distributing allowances . . . The Bonn international negotiating sessions closed, as expected, without a major breakthrough. However, negotiators continue to discuss formulations by which key developing countries could adopt some pathway to emission limits . . . Rep. Doyle of Pennsylvania, a key moderate Democrat on the Subcommittee on Energy & Environment, predicts that deliberations on the Waxman-Markey bill will focus on renewable electricity standards, emission targets, and allowance allocation . . . State officials from California and the RGGI states assert that they are OK with the Waxman-Markey draft's preemption provisions.*

Executive Branch

- **Administration Negotiating Allowance Allocations With Congressional Leadership.** The White House has engaged Congressional leaders in a discussion of how emission allowances should be allocated in a cap-and-trade program, a critical issue left unaddressed in the Waxman-Markey draft climate legislation released last week. Joe Aldy, an aide in the Executive Office of the President, stated that using allowance revenues to assist "vulnerable households and communities and businesses" was a Presidential priority in these negotiations. Aldy also noted that the White House had "reached out" over the last few weeks to the moderate Senate Democrats known as the "Gang of 16," whose votes would be crucial in overcoming an anticipated Republican filibuster of climate legislation. Separately, White House science advisor John Holdren indicated that President Obama would consider compromising on his original proposal to fully auction all allowances under a cap-and-trade program.

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

- **President Says Developed Countries Must Lead on Climate Change.** During a town hall meeting in Strasbourg, France, President Obama said that "the effects of climate change are now in plain sight" and that greenhouse gas (GHG) emissions are "slowly killing our planet." Although the President urged major countries including China and India to "do more" to curb GHG emissions, he emphasized that developed countries such as the United States have the responsibility to take the lead. The President said: "You cannot expect poor countries, or relatively poor countries, to be partners with us on climate change if we are not taking the lead, given that our carbon footprint is many times more than theirs per capita."

- **Administration Nominations and Appointments.** President Obama nominated Charles Hurley, the CEO of Mothers Against Drunk Driving, to serve as Administrator of the National Highway Traffic Safety Administration (NHTSA), the agency that sets Federal fuel economy standards. An automobile safety advocate, Hurley once held a position at the Insurance Institute for

Highway Safety, an organization that has opposed higher fuel economy standards. The White House also announced that it would nominate Peter Rogoff, a 22-year veteran of the Senate Appropriations Committee staff, to serve as Administrator of the Federal Transit Administration. Rogoff was Staff Director of the Transportation, Housing and Urban Development Appropriations Committee for fourteen years. Interior Secretary Ken Salazar appointed Ned Farquhar, a former advisor on energy and environmental issues to New Mexico Gov. Bill Richardson, to the post of Deputy Assistant Secretary for Land and Minerals Management. Farquhar, whose new position does not require Senate confirmation, will oversee the Bureau of Land Management, Minerals Management Service, and Office of Surface Mining Reclamation and Enforcement. Lastly, Martha Johnson will be nominated to lead the General Services Administration, where she will oversee the expenditure of approximately $4.8 billion in stimulus funds designated for improving the energy efficiency of Federal buildings and the motor vehicle fleet.

- **Interior Department and FERC Execute Offshore Leasing Agreement.** The Federal Energy Regulatory Commission (FERC) and the Department of Interior have signed a Memorandum of Understanding (MOU) settling a long-standing jurisdictional dispute over responsibility for siting and licensing renewable energy projects on the Outer Continental Shelf (OCS) of the United States. The new arrangement will give the Minerals Management Service (MMS) exclusive jurisdiction over wind and solar generation projects, and associated transmission facilities, located on the OCS. The MMS will also administer necessary property rights (leases, easements, and rights-of-way) for wave, tidal, and ocean thermal energy projects, but leave the environmental review and licensing of those projects to FERC. FERC and MMS will both have authority to inspect offshore wave, tidal, and ocean thermal facilities for compliance with lease and license conditions. The agreement is expected to resolve administrative uncertainty and delays that have posed a key obstacle to offshore renewable energy development. The MOU can be accessed at: http://www.doi.gov/news/09_News_Releases/FERCMMSDOI-FERCMOU.pdf.

- **EPA Holds Public Hearing on Draft GHG Reporting Rule.** At a public hearing last week, various stakeholders offered their views on the Environmental Protection Agency (EPA) draft GHG Reporting Rule. Laurie Burt, Commissioner of the Massachusetts Department of Environmental Protection, urged EPA to require independent verification of GHG emissions reports; the draft rule requires reporting entities to "self-certify" their data submissions. Industry participants offered mixed reactions. The Edison Electric Institute and Clean Energy Group, which both represent major utilities, approved of the rule's compatibility with existing Clean Air Act emission reporting requirements. However, both organizations agreed that EPA should clarify the purpose of the rule and ensure that it satisfies potential GHG regulations in the future. The draft rule was published in the Federal Register on April 10, initiating a 60-day period for public comment.

- **Energy Secretary Expresses Optimism Regarding CCS, Efficiency.** At the Energy Information Administration's annual conference last week, Secretary of Energy Steven Chu stated that Federal investment in carbon capture and sequestration (CCS) technology was "absolutely worthwhile" but that commercial deployment of CCS is still eight to ten years away. Chu said that the most promising near-term avenue for reducing GHG emissions is energy conservation and end-use efficiency. He asserted that U.S. energy consumption could be reduced 20% using existing technology. Chu took an "agnostic" view of T. Boone Pickens' proposal to expand the use of natural gas as a transportation fuel, voicing concern that such a shift would strain the supply of gas needed for heating, process uses and power generation.

Congress

- **Senate Staffer Sketches Path of Climate Bill.** Senate staffer Joe Goffman, a top aide to Senate Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA), predicted this week at an Energy Information Administration conference that Senate procedural rules enabling individual Senators to block legislative initiatives will lead to "interesting legislative formulation" on the Senate floor, rather than in committee, as climate bill proponents try to garner 60 votes. Goffman also suggested that President Obama may need to take a more active role in developing climate legislation "as a matter of both basic politics and technical resources."

- **Rep. Doyle Discusses Markey/Waxman Draft.** Rep. Mike Doyle (D-PA), the number two Democrat on the Energy and Commerce Committee's Energy and Environment Subcommittee, chaired by Rep. Ed Markey (D-MA), predicted in an interview with *Carbon Control News* that the period following the Easter recess will be one of intense negotiation within the Subcommittee. Rep. Doyle expects allowance allocation, the renewable electricity standard, and the emissions target itself to be major subjects of negotiation. Rep. Doyle also said that a group of approximately 30 Democratic representatives from agricultural regions, coal states, and manufacturing areas has been meeting to get up to speed on climate issues and to try to forge consensus positions in key areas.

States and Cities

- **California and RGGI Officials Supportive of Waxman-Markey Preemption Approach.** Officials from two jurisdictions that have been most active on climate change reacted favorably to the approach to preemption in the Waxman-Markey discussion draft. The draft would prohibit state or regional cap-and-trade programs from 2012-2017, but would allow entities holding allowances under a state or regional program to use those allowances to comply with a Federal program. Noting that Regional Greenhouse Gas Initiative (RGGI) officials have long expected Federal preemption, Peter Iwanowicz, chair of the regional cap-and-trade program's auction committee, suggested that RGGI supports preemption by a Federal program that includes stringent emission caps. Mary Nichols, Chair of the California Air Resources Board, expressed similar sentiments, while cautioning that it is important for a Federal climate change program to continue to allow states to lead the way.

- **New Mexico Gov. Richardson Vetoes Bills Aimed at Delaying Vehicle GHG Rules.** New Mexico Governor Bill Richardson (D) vetoed two bills that would have delayed implementation of vehicle GHG emission regulations in the state. Based on California's vehicle GHG regulations, the regulations were approved by the state Environmental Improvement Board (Board) in November 2007 and are set to be implemented in 2011. The bills would have delayed implementation of the regulations by two years. In vetoing the bills, Gov. Richardson left open the possibility of delayed implementation, but stated that such decisions should be left to the state Environment Department. In other New Mexico action, a vote by the Board found that GHGs are "air pollutants" under the state's Air Quality Control Act. The decision means that GHGs are subject to regulation by the Board and gives the Board authority to promulgate rules to implement the Western Climate Initiative (WCI). The WCI is a regional cap-and-trade program whose members include, in addition to New Mexico, six other Western states and four Canadian provinces.

Industry

- **International Airlines Call for GHG Trading.** The Aviation Global Deal Group – a group of international airlines that includes Air France, British Airways and Virgin Atlantic – proposed last week that international climate negotiators establish a special cap-and-trade system for the global airline industry. The proposal calls for revenues from allowances auctioned to airlines to be dedicated to subsidies for renewable jet fuels, and investments in research and development. The aviation sector accounts for approximately 3% of global GHG emissions, but is not covered under the Kyoto Protocol. The Air Transport Association, an industry organization representing U.S. airlines, criticized the proposal as "disappointing" and unnecessary, claiming that improved air traffic control systems could reduce airline fuel use by about 10% at little cost.

- **U.S. Power Sector Emissions Declined in 2008.** According to a report by the nonprofit organization the Environmental Integrity Project, GHG emissions from U.S. power plants declined by 3.1% in 2008. The report attributed the emissions reduction to reduced demand for electric power resulting from the recession and relatively mild weather.

- **Exelon Corp. Reports 35% GHG Reduction Since 2001.** One of the nation's largest utilities, Exelon Corporation, reported a 35% reduction in its corporate GHG emissions since 2001. The reduction was verified by EPA as well as a third-party independent verification firm. Specific strategies that aided Exelon in reaching this goal included controlling sulfur hexafluoride leakage from natural gas systems and electric transmission equipment; increasing building energy efficiency; increasing the fuel efficiency of the corporate vehicle fleet; and retiring older, less-efficient power plants in Massachusetts, Pennsylvania and Texas. Exelon is the parent company of Commonwealth Edison, and owns significant generation resources in the Midwest and the Mid-Atlantic states. Exelon has a strong emphasis on nuclear power for electric generation.

- **Market Analyst Scores Mutual Funds' "Carbon Risk."** British firm Trucost PLC released a ranking of the GHG "footprints" of 75 United States mutual funds and 16 "socially responsible" investment funds. Trucost estimated the footprints by calculating the GHG emissions of companies whose securities were owned by the funds, weighted by each fund's level of exposure. The report found wide variation in the GHG intensity of funds: the footprint of the most GHG-intensive fund was 38 times the magnitude of the least GHG-intensive fund. The least GHG-intensive funds in the study avoided investments in basic resources and concentrated in sectors such as banking and health care. However, the funds' selection of individual stocks within sectors – as opposed to overall sector allocations – was the main determinant of GHG risk exposure. More information about the study is available at http://www.trucost.com/pressreleases/CarbonCountsUSA2009.html.

Studies and Reports

- **Analysis Says Climate Bill Will Not Create Gas Price Spikes.** An analysis of the Lieberman-Warner climate bill by Duke University's Climate Change Policy Partnership (CCPP) found that passing comprehensive climate legislation would not lead to significant increases in the demand for natural gas. The analysis predicted that, if renewable energy sources develop rapidly, there will be a 9% decrease in natural gas prices; if renewables development were to remain limited, the study predicted that gas prices would increase by 20% by 2030. The study's lead author, David Hoppock, argued that policymakers should prioritize investments in low-carbon electricity sources if they are concerned about the impact of climate legislation on future natural gas prices. The study is available at http://www.nicholas.duke.edu/ccpp/ccpp_pdfs/natgas.pdf.

- **Antarctic Ice Bridge Collapses.** Satellite images released last week documented the disintegration of an enormous ice bridge holding the Wilkins ice shelf against the Antarctic Peninsula. Scientists predicted that the collapse of the bridge is likely to accelerate the disappearance of the ice shelf, a structure the size of Jamaica. David Vaughan, a scientist at the British Antarctic Survey, cited these developments as another indication of the effects of warming in the Antarctic, and stated that they may further accelerate the flow of inland glaciers and contribute to sea level rise caused by the loss of ice in Antarctica.

- **Blue-Ribbon Panel Urges Action on Coastal Protections.** The Joint Ocean Commission Initiative presented a report to Congress and the Obama Administration calling for stronger Federal coastal protections in response to threats posed by climate change and coastal development, including offshore energy production. The report states that the lack of a rational management strategy and weakened ocean science have severely affected the oceans, coasts, and Great Lakes and the goods they provide, and warns that climate change could have grave economic effects in coastal areas. It advocates ratification of the U.N. Convention on the Law of the Sea legislative changes to control pollution from nonpoint sources, regional and ecosystem-based management strategies, and expedited implementation of the Magnuson-Stevens Fishery Conservation and Management Act. The report is available at http://www.jointoceancommission.org/resource-center/1-Reports/2009-04-07_JOCI_Changing_Oceans,_Changing_World.pdf.

- **CBO Report Finds Ethanol Had Small but Real Effect on Food Prices.** An analysis of food prices by the Congressional Budget Office found that increased use of corn for ethanol production contributed 10 to 15% of the recent cost increases, but that higher energy costs had a greater effect. The report also noted that the extent to which use of corn-based ethanol mitigates GHG emissions is unclear because of the associated conversion of carbon sinks such as forests and grasslands to corn production, which releases stored carbon. The report is available at http://www.cbo.gov/ftpdocs/100xx/doc10057/04-08-Ethanol.pdf.

International

- **Bonn Talks Clarify Issues, But Achieve Little Substantive Progress.** At a meeting of parties to the United Nations Framework Convention on Climate Change in Bonn, Germany, representatives achieved little progress on substantive issues, but clarified many of the issues that remain to be addressed before parties can agree to a successor treaty the Kyoto Protocol. In addition to finalizing the negotiation schedule for the rest the year, representatives discussed a wide range of issues, including inclusion of aviation and shipping emissions in the climate change regime, emissions targets for developed nations, and financing mechanisms. One novel proposal for including aviation and shipping emissions would create a "virtual country" for each source of emissions that would receive an emissions cap. Companies that operate internationally in each sector would receive sub-allocations from the virtual country and would be permitted to trade allowances to meet their target. Airlines and shipping companies that operate in only one country would be covered by their national emissions cap.

- **Secretary of State Clinton Urges Climate Protection for Polar Regions.** At the first-ever joint session of the Antarctic Treaty Consultative Meeting (ATCM) and the Arctic Council, U.S. Secretary of State Hillary Clinton urged that participants protect the North and South poles from the impacts of climate change. The annual ATCM meetings are designed to promote implementation of the Antarctic Treaty (Treaty), a 1961 agreement that designated Antarctica as an area for peaceful, scientific exploration. The Arctic Council is an intergovernmental group focused on fostering cooperation between countries bordering the Arctic. In seeking further protection for the poles, Secretary Clinton called for the adoption of the Annex to the Protocol on Environmental Protection, which would establish rules addressing environmental emergencies, and touted the Treaty as a model for the international negotiations on a successor treaty to the Kyoto Protocol.

- **Chinese Economic Professor Proposes Reclassification of Emitters Under Climate Treaty.** Chinese economic professor Hu Angang, an advisor to Chinese President Hu Jintao, proposed a revised system for classifying emitters under a new international climate change treaty. The proposal would discard the Kyoto Protocol's paradigm of developed versus developing nations, and would replace it with system of classification based on the United Nation's Human Development Index. The proposed classification system would take into account current and historical emissions, as well as per capita emissions. If applied today, China would initially accept only voluntary GHG targets under the revised classification system, but based on its development could join 70 other nations subject to binding targets by as early as 2010.