

June 29, 2009

## Climate Change Policy Update Week of June 22-26, 2009

*Commentary: ACES passes the House by a vote of 219-212. Passage of the bill provides a potential roadmap for appealing to agriculture-state and cost-sensitive moderates in the Senate. The ACES victory also provides the Obama Administration with an incrementally stronger negotiating position in Copenhagen . . . Eight Republicans crossed party lines to support the bill (according to Congressional Quarterly, seven are from districts carried by Obama), but 44 Democrats voted against the bill. Many of the nay-saying Democrats cited the experience with the 1993 BTU tax, in which House Democrats were pressured to support an energy tax only to have the Senate demur. Senate action left the Democrats exposed to an election-year trauma, which ended up sending many of them out of office. At the end of the ACES vote, House Republicans chanted “BTU, BTU, BTU . . .” . . . Intending perhaps to dispel such concerns, Senate Majority Leader Reid and Environment & Public Works (EPW) Committee Chairman Boxer announced that the EPW Committee would consider cap-and-trade legislation in July with the aim of passing a bill in the Senate this fall. It is not clear that the rest of the Senate is prepared to move on such an aggressive timetable . . . The final House deal reflected various modifications sought by the agriculture community. The bill vests authority in the U.S. Department of Agriculture to oversee agriculture and forestry offsets. Yet, the bill did not remove EPA’s general authority over the offsets program. As a result, the bill leaves many questions to be resolved by the Senate and the Obama Administration.*

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)

### Congress

- **House Passes Climate Bill.** The House of Representatives passed the American Clean Energy and Security Act (ACES) by a vote of 219 to 212, with 8 Republicans voting in favor and 44 Democrats voting against. The legislation includes a cap that will limit greenhouse gas (GHG) emissions from covered sources to 3 percent below 2005 emission levels in 2012, 17 percent below 2005 levels in 2020, and 83 percent below 2005 levels in 2050. This history-making vote marks the high water mark of federal climate change mitigation efforts, and was the culmination of a week of intensive lobbying by the bill’s advocates in Congress and the White House. The final bill reflects a number of compromises made to attract the necessary votes:
  - After extensive negotiations, ACES sponsor and Energy and Commerce Chairman Henry Waxman (D-CA) and Agriculture Committee Chairman Collin Peterson (D-MN) agreed to add a new title to the bill providing the Department of Agriculture with oversight over forestry and agricultural “offsets” – projects to reduce or sequester GHG emissions in uncapped sectors of the economy. In addition, new language prohibits EPA from considering indirect land use changes

June 29, 2009

triggered by the use of food crops to produce biofuels when analyzing the GHG intensity of the fuels for five years, with future methodologies to be based on a National Academy of Sciences Study and agreed to by the EPA Administrator and the Secretary of Agriculture. The language also loosens the definition of “renewable biomass” from public and private lands that can be used to produce biofuels and electricity.

- Chairman Waxman and Rep. Sander Levin (D-MI), Chairman of the Trade Subcommittee of the Ways and Means Committee, agreed to incorporate provisions requiring the president to impose, starting in 2020, a border adjustment charge on energy-intensive goods imported from countries without emission caps comparable to the U.S. cap. The charge must be imposed unless the president determines that the charge is not in the national interest and Congress passes a resolution agreeing with that determination.
  - Small petrochemical refiners will receive .25 percent of emission allowances between 2014 and 2026.
  - Language incorporated from a proposal authored by Rep. Bart Stupak (D-MI) would place new restrictions on over-the-counter energy derivatives. The language provides that the provisions will be repealed upon passage of subsequent legislation addressing regulation of the financial sector.
  - The allocation of emission allowances to local distribution companies has been revised to provide that no utility will receive more emission allowances than it needs to meet the direct and indirect costs of complying with the bill’s emissions cap. In the event that there are extra allowances, the surplus will be distributed among utilities based on the historic GHG emissions intensity of utilities’ generation.
  - Electric local distribution companies that deliver less than 4 million megawatt hours of electricity annually will receive .5 percent of emission allowances between 2012 and 2025 and slightly fewer allowances for the 2026 through 2029 period. The allowances are to be used for energy efficiency, renewable electricity, and low income ratepayer assistance programs.
  - Chairman Waxman and Transportation and Infrastructure Chairman Rep. James Oberstar (D-MN) agreed to incorporate provisions directing EPA, in consultation with the Secretary of Transportation, to establish national transportation GHG reduction goals. The provisions would also allow states to use up to 10 percent of their allocated emission allowances for clean energy and energy efficiency projects, including GHG-reducing transportation projects, and would require metropolitan planning organizations to establish GHG emission reduction targets and strategies as a condition of receiving federal transportation funds.
- **Senate GOP Releases Energy Bill.** The Senate Western Caucus, a group of Republicans from western states, released the Clean, Affordable, Reliable Energy Act (CARE). The comprehensive energy bill includes provisions that would open up areas in the outer continental shelf and the Arctic National Wildlife Refuge to oil and gas drilling, remove limitations on oil shale development, promote the recycling of spent nuclear fuel and nuclear power development, and provide incentives for alternative fuel and plug-in vehicles and energy efficiency improvements.

June 29, 2009

- **Reid Promises Senate Climate Vote in Fall.** Senate Majority Leader Harry Reid (D-NV) told reporters that the Senate would be able to vote on a climate change bill in the fall. Environment and Public Works Committee Chairman Sen. Barbara Boxer (D-CA) said that she expects to introduce a climate bill in July with the goal of passing it out of committee by the August recess. Sen. Boxer said that Sen. Reid had asked the chairmen of all of the relevant committees to finish their work on climate legislation by Sept. 18<sup>th</sup>.

## Executive Branch

- **White House Lobbies in Favor of ACES.** White House officials – including the President – made public and private efforts to support the passage of ACES. President Obama touted the bill’s economic and employment benefits and said, “We’ve been talking about this issue for decades, and now is the time to finally act.”
- **U.S. Climate Envoy Rejects 40% Near-Term Emission Reductions Target.** At a meeting of the Major Economies Forum, President Obama’s lead climate negotiator, Todd Stern, informed delegates that the U.S. would not support an aggressive emission reduction target of 40% below 1990 levels for the year 2020. Stern said that the proposed target is “not necessary and not feasible given where we are starting from.”
- **DOE Awards \$8 billion in Low-Interest Loans for Clean Vehicle Technology.** Three automobile manufacturers – including Ford Motor Co., Nissan North America, and Tesla Motors – received \$8 billion in low-interest loan commitments from the Department of Energy (DOE) to manufacture electric and fuel-efficient vehicles. Of the total, the largest share (\$5.9 billion) will go to Ford, primarily to implement incremental improvements in fuel economy in mass-market products produced in five states. A \$1.6 billion loan to Nissan will be used to modify an existing vehicle plant in Tennessee to produce advanced batteries and electric vehicles; the company plans to release its first electric vehicle in Japan next year. Finally, Tesla will use a \$465 million loan to help produce its first electric sedan. Funding for the loan program was appropriated last fall.
- **Update on Administration Personnel.**
  - President Obama nominated Kerri-Anne Jones to serve as Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs. Jones, who holds a doctorate in molecular biophysics, is director of international science and engineering at the National Science Foundation and previously worked in the White House Office of Science and Technology during the Clinton Administration.
  - Interior Secretary Ken Salazar appointed Liz Birnbaum, currently staff director of the House Committee on Administration, to serve as Director of the Minerals Management Service (MMS). The MMS is the lead agency for the leasing of renewable energy projects in the Outer Continental Shelf.
  - The Senate Environment and Public Works Committee held confirmation hearings for Paul Anastas, President Obama’s nominee for Assistant Administrator for Research and Development at the Environmental Protection Agency (EPA); and Colin Fulton, nominee for General Counsel of EPA.

June 29, 2009

- The Senate confirmed William Brinkman to be Assistant Secretary of Energy for Science.

## States and Cities

- **States Discuss Linking Regional GHG Programs.** Representatives from California, the Midwestern Greenhouse Gas Reduction Accord (MGGRA), the Regional Greenhouse Gas Initiative (RGGI), and the Western Climate Initiative (WCI), which collectively represent 23 states and 50 percent of U.S. GHG emissions, formally met for the first time on June 23rd to discuss linking the regional cap-and-trade programs in the event that Congress fails to pass climate change legislation. Officials from California and the states in the RGGI told reporters that in calculating lifecycle GHG emissions from biofuel production under the low carbon fuel standards they are drafting, they will consider indirect emissions from land use change triggered by the use of food crops to produce biofuels. EPA's proposal to account for such indirect emissions was a significant issue in Congressional deliberations on the ACES bill. The approach aroused the ire of agriculture-state legislators – including Rep. Collin Peterson (D-MN), Chairman of the House Agriculture Committee – because it has the effect of disqualifying ethanol produced from corn.
- **State and Local Air Pollution Control Agencies Support ACES.** In a letter to Congress dated June 23rd, the National Association of Clean Air Agencies (NACAA), an association of air pollution control agencies in 53 states and territories and more than 165 metropolitan areas, praised ACES for “protecting the rights of states and localities to exercise leadership in responding to global warming by enacting more stringent GHG reduction policies and programs.” However, the letter also registered concern that the bill preempts state and local cap-and-trade programs from 2012 through 2017.
- **California Drops GHG Lawsuit Against Major Automakers.** Citing the Obama Administration's landmark agreement to establish federal GHG emission standards for automobiles, the state of California petitioned the 9th Circuit Court of Appeals for a voluntary dismissal of a pending lawsuit against the world's six largest automakers – General Motors, Ford, Chrysler, and the North American outlets of Toyota, Honda and Nissan. In the suit California alleged that GHG emissions from vehicles sold by the automakers constituted a public nuisance by contributing to the degradation of the state's Sierra snowpack, increasing air pollution, and harming wildlife.

## Industry

- **BCSE Urges Passage of ACES.** The Business Council for Sustainable Energy (BCSE), whose members include Pacific Gas & Electric Corporation and Wal-Mart, sent a letter to House Speaker Nancy Pelosi (D-CA) and Minority Leader John Boehner (R-OH) advocating swift passage of ACES. The letter also called for legislators to strengthen near-term targets for renewable energy and energy efficiency resource standards; provide direct allowance allocations to renewable energy generators, consumers, and clean energy

June 29, 2009

project investors; and remove the discount on international offset credits. The letter is available at <http://www.bcse.org/images/pdf/bcse/trhr2454.pdf>.

- **Chamber Petitions EPA for “On-the-Record” Hearing for Endangerment Finding.** Citing the potential legal and economic implications of EPA’s recent proposed “endangerment finding” concerning GHG emissions, the U.S. Chamber of Commerce petitioned EPA to proceed with the finding via a formal “on the record” hearing. In a notice released April 17th, EPA proposed to find that six GHGs endanger public health and welfare as those terms are used in the Clean Air Act. The finding is a precursor to issuing vehicle GHG emission standards under Section 202 of the Act, and could trigger other regulatory actions under the Act. The Chamber’s petition claims it was an “abuse of discretion” for EPA use standard rulemaking procedure, in which agencies release a proposed finding or regulation and take public comment, rather than a trial-type process before a “neutral party.” The petition is available at <http://www.uschamber.com/co2/default>.

## Studies and Reports

- **EPA Analysis of ACES Finds Minimal Costs.** An EPA analysis of the version of ACES reported out of the Energy and Commerce Committee found that average household costs of the legislation will be in the range of \$84 to \$105 a year in 2020. These cost projections are below those previously released by the Congressional Budget Office, which projected an average annual household cost of \$175 in 2020. The EPA analysis projects emission allowance prices of \$13/ton in 2015 and \$16/ton in 2020. If international offset credits are unavailable for the first ten years, the report suggests that emission allowances prices will increase by 3%; if international offset credits are permanently excluded, allowance prices are projected to increase by 89%. The report also projects that by 2025, 65 percent of new electricity generation will be renewable and 92 percent will be low carbon, with carbon capture and sequestration technology coming on line between 2015 and 2020. The analysis is available at [http://www.epa.gov/climatechange/economics/pdfs/HR2454\\_Analysis.pdf](http://www.epa.gov/climatechange/economics/pdfs/HR2454_Analysis.pdf).
- **New Polls Show Support for Climate Regulation.** A Washington Post-ABC News poll found that 75 percent of respondents supported regulation of GHG emissions to address climate change. Support came from significant majorities of Democrats, Republicans, and Independents. Only half were in favor of a cap-and-trade program, with 56 percent supporting cap-and-trade if told that it would increase their utility bill by \$10 a month and 44 percent supporting cap-and-trade if told it would increase their utility bill by \$25 a month. A different bi-partisan poll conducted by the Mellman Group and Public Opinion Strategies similarly found that 78 percent of voters support action to reduce GHG emissions and that 72 percent support the basic principles of the ACES legislation. Half of voters believe that climate change mitigation efforts will produce jobs and 15 percent believe it will have no effect on jobs.

## International

June 29, 2009

- **UNFCCC Releases Plan to Reduce GHG Emissions in Developing Countries.** The United Nations Framework Convention on Climate Change (UNFCCC) has released a proposal for developing countries to reduce their GHG emissions by 15 to 30 percent by 2020. The proposal includes an ultimate goal of a 50 to 85 percent reduction based on 2000 levels by 2050. The UNFCCC proposal is to be discussed at the December climate change summit in Copenhagen. The plan is available at [http://carboncontrolnews.com/ccndocs/jun09/ccn06232009\\_unfccc.pdf](http://carboncontrolnews.com/ccndocs/jun09/ccn06232009_unfccc.pdf).
- **Russia and Scotland Announce Plans for Emissions Reduction.** Russia has announced a plan to reduce its emissions by 10 to 15 percent relative to 1990 levels by 2020. Although this announcement represents a formal shift in Russian policy toward preventing climate change, critics point out that Russia's 1990 emissions were higher than its current emissions and therefore the plan would allow an increase in emissions from present levels. Scotland also announced a plan to reduce its CO<sub>2</sub> emissions by 42 percent from 1990 levels. Scotland's is the most aggressive plan to date among developed countries.
- **U.N. Secretary-General Announces Climate Change Summit in September.** U.N. Secretary General Ban Ki-Moon announced a climate change summit for international leaders to be held on September 22<sup>nd</sup>, the day before a U.N. General Assembly debate on climate change. The summit is intended to accelerate the negotiations toward an international climate change agreement in advance of the December summit in Copenhagen.

*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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