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## Climate Change Policy Update Week of August 31-September 4, 2009

**Commentary:** *Senators Boxer and Kerry announced a delay in the release of their draft climate bill until later in the month. It is unclear whether Majority Leader Reid will accept a corresponding delay in his September 28 deadline for accepting legislative efforts from all six committees with jurisdiction. In any event, it is looking increasingly likely that there will not be consideration of a climate bill by the full Senate this year – though there might be consideration of the energy bill reported out of the Senate Energy and Natural Resources Committee . . . On the same day as the Boxer/Kerry announcement, the EPA let it be known that it had sent a draft proposal to the White House Office Management and Budget for regulation of large sources of GHG emissions under the Clean Air Act’s Prevention of Significant Deterioration and Title V programs. Notably, the Agency has set a size threshold for regulation that is 100 times higher than the threshold that is in the Clean Air Act. It is unclear whether EPA has a legal basis for this approach.*

### Executive Branch

- **EPA Sends Proposal to Regulate Stationary GHG Sources to OMB.** On August 31, the Environmental Protection Agency (EPA) transmitted a proposal relating to Clean Air Act regulation of stationary greenhouse gas (GHG) sources to the White House Office of Management and Budget (OMB). According to the trade press, the proposal recommends that an emission threshold of 25,000 tons CO<sub>2</sub>-equivalent per year serve as a “trigger” for two Clean Air Act requirements applicable to stationary sources: Prevention of Significant Deterioration (PSD) preconstruction permits and Title V operating permits. Under the Clean Air Act, the PSD and Title V programs automatically would apply to GHGs once the agency finalizes regulation setting tailpipe GHG emission standards for new passenger vehicles. The passenger vehicle rulemaking, the proposed form of which is also under OMB review, is expected to be completed by early 2010. OMB’s review signals that the agency may soon release a notice of proposed rulemaking and take public comment on the proposal. Setting the regulatory threshold at 25,000 tons may cause legal controversy, however; the statutory threshold for the PSD and Title V programs is 250 tons per year.
- **EPA to Finalize GHG Reporting Rule This Month.** The EPA stated that its final rule for mandatory reporting of GHG emissions, which was sent to OMB for review in mid-August, will be signed by the end of this month. According to the agency, signature by the end of September is necessary in order to allow the rule to become effective January 1, 2010. Issued in March 2009, the proposed form of the GHG reporting rule would require most stationary sources emitting at least 25,000 tons CO<sub>2</sub>-equivalent per year to submit annual emissions reports to EPA. Emissions monitoring would begin in 2010, with the first emission reports due in 2011. Approximately 13,000 facilities around the country would be affected, representing about 85% of U.S. GHG emissions.

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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- **Green Jobs Adviser Resigns.** White House green jobs czar Van Jones announced his resignation over the Labor Day weekend. Jones had been working at the Council on Environmental Quality, designing and implementing programs aimed at job creation and energy efficiency. Jones became a target of conservative commentators, bloggers and Republican Senators over the past several weeks after a group he founded after Hurricane Katrina pressured advertisers on the FOX television network to drop their ads. In addition, Jones' name was found on a petition calling for investigations into whether Bush Administration officials may have allowed 9/11 to happen, "perhaps as pretext for war." Jones issued a statement saying that the petition "does not reflect my views now or ever."

## Congress

- **Boxer, Kerry Delay Climate Bill Release.** Senate Environment and Public Works Committee Chairman Barbara Boxer (D-CA) and Foreign Relations Chairman John Kerry (D-MA) announced that they will be releasing a draft of their comprehensive climate bill later in September rather than on September 8<sup>th</sup> as previously planned. The delay was attributed to Senator Edward Kennedy's death, Senator Kerry's hip surgery, and the ongoing focus on health care legislation in the Senate. Majority Leader Senator Reid (D-NV) said in a statement that he expects the Senate to have "ample time" to consider comprehensive energy and climate legislation by the end of the year. It is unclear whether Majority Leader Reid's September 28<sup>th</sup> deadline for Senate committees to finish their work on climate legislation is still in effect.
- **Crist Names Former Staffer to Senate Seat.** Florida Governor Charlie Crist (R) named his former chief of staff, George LeMieux, to the U.S. Senate seat vacated by Sen. Mel Martinez (R). Gov. Crist has been an advocate of aggressive action to address climate change, and is running for the Senate seat in 2010. Although LeMieux's positions on climate change are largely unknown, he stated while representing Gov. Crist that climate change is an issue and that "We cannot afford to ignore it and be wrong."

## States and Cities

- **Five State AG's Urge Senate to Strengthen Climate Bill.** The Attorneys General from Arizona, Connecticut, California, Delaware and New Jersey sent a letter to Senate leaders seeking passage of strengthened climate change legislation. In their letter, the Attorneys General state that the House-passed Waxman-Markey climate bill should be used as a foundation, but that the Senators should make several important changes, including preserving EPA authority to regulate CO<sub>2</sub> emissions from coal-fired power plants; preserving the right of states to implement regional cap-and-trade programs; strengthening federal oversight of carbon markets; and adding provisions for citizen lawsuits against polluting companies.
- **Massachusetts Considering Legislation to Temporarily Fill Seat of Late Sen. Kennedy.** In Massachusetts, the legislature is considering whether to pass legislation that would allow Governor Deval Patrick (D) to nominate someone to fill Senator Edward Kennedy's vacant seat until a special election is held, as Sen. Kennedy had requested before his death.

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## Industry

- **RGGI Monitor Reports That Allowance Market is Increasingly Liquid and Stable.** Potomac Economics, the market analysis firm that performs independent monitoring for the Regional Greenhouse Gas Initiative (RGGI), released a quarterly report on September 4 indicating that the program's secondary market for allowances is growing quickly and shows "no evidence of anti-competitive conduct." The report found that the total volume of RGGI allowances traded through futures contracts had increased by almost 550% over the last quarter alone, from 33 million to 214 million. The price of futures and options in RGGI allowances also exhibited much less volatility over the second quarter of 2009 than in the last quarter of 2008, with the average daily change in closing prices equaling about 4 cents per day. However, Barclays Capital announced that it would no longer use full-time traders based in New York to trade RGGI allowances, because of what Barclays claimed was the small size and low volatility of the RGGI market. Barclays will continue to trade RGGI allowances from its London offices.
- **Missouri Utilities Send Climate Policy Recommendations to Policymakers.** A group composed of all the investor-owned, municipal, and cooperative utilities in Missouri sent a joint letter to Rep. Roy Blunt (R-MO) containing the results of an analysis of the American Clean Energy and Security Act of 2009 (ACES), as well as recommended changes to the legislation, which passed the House at the end of June. The analysis examined the impact of ACES on electricity rates in Missouri – which currently derives over 80% of its electricity from coal - through 2020, under low-cost, medium-cost, and high-cost scenarios. The Missouri utilities offered six recommendations to mitigate rate impacts, including delaying the phase-out of allowance allocations to electric utilities (scheduled for 2030 in the House-passed version of ACES); loosening restrictions on the availability of offset credits; establishing a firm cap on allowance prices; increasing the total quantity of allowances under the cap; and providing a larger quantity of allowances to utilities in areas with high concentrations of electric vehicles. The letter is available at [http://www.missourienergy.org/pdf/co2\\_legislation.pdf](http://www.missourienergy.org/pdf/co2_legislation.pdf).

## Studies and Reports

- **Polls on Climate Bill Show Some Support, Uncertainty.** A Benenson Strategy Group poll of registered voters from 16 swing states found that 63 percent support the House climate bill while 30 percent oppose it. Fifty-nine percent of Independent voters support the bill, along with 85 percent of Democrats and 43 percent of Republicans. Sixty percent of respondents said they would be more likely to reelect their Senator if he or she voted in favor of the bill, while 26 percent would be less likely. Fifty percent believe the bill will increase jobs; 26 percent say jobs will be unaffected; and 26 percent say jobs will be lost. The poll was funded by the Center for American Progress. A national Rasmussen poll, however, found that only 35 percent of those surveyed support the bill, 40 percent oppose it, and 24 percent are unsure. The Rasmussen poll also found that 15 percent of respondents believe the climate bill would help the economy, 21 percent believe it would have no impact, and 35 percent believe it would hurt the economy. The Rasmussen poll results are available at [http://www.rasmussenreports.com/public\\_content/politics/current\\_events/environment\\_energy/climate\\_change\\_bill\\_gets\\_mixed\\_reviews](http://www.rasmussenreports.com/public_content/politics/current_events/environment_energy/climate_change_bill_gets_mixed_reviews).

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- **Arctic Warming Overwhelming Natural Trends.** Research published in *Science* provides the most detailed analysis of summer temperatures in the Arctic over the past 2,000 years available to date. The research indicates that Arctic summer temperatures in the 1990s were the warmest of any decade during that period. The study also shows that during the past 2,000 years, summer Arctic temperatures have been cooling at a rate of .2 degrees Celsius every thousand years due to changes in the Earth's orbit. Although the orbital cycle has continued – which should have produced continued cooling – the rapid increase in greenhouse gas emissions during the 20<sup>th</sup> Century has reversed and overwhelmed the cooling trend, producing summer temperatures in 2000 that were approximately 1.4 degrees Celsius higher than would have been expected. The abstract is available at <http://www.sciencemag.org/cgi/content/abstract/325/5945/1236>.

*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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