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Climate Change Policy Update
Week of September 14-18, 2009

Commentary: *In the not-really-news department: Majority Leader Reid acknowledged that the full Senate is unlikely to take action this year on a cap-and-trade bill and State Department Climate Envoy Todd Stern acknowledged that the Copenhagen meeting is not likely to produce a successor to the Kyoto Protocol . . . A Senate Energy and Natural Resources hearing illuminated unresolved concerns among some Senate Democrats about costs associated with cap-and-trade legislation, and skepticism that offsets alone would be sufficient or appropriate for containing those costs. The hearing gave a boost to "price collar" advocates . . . EPA continues to move closer to release of a first tranche of Clean Air Act-based greenhouse gas regulations. Opinions vary on the significance of an EPA program: A hammer that will generate further interest in a Congressional solution? A necessary, legitimate and effective answer to inaction by a divided, inexpert Congress? Or an alternative reality that will be delayed or rendered toothless by lawsuits?*

Executive Branch

- **EPA and NHTSA Release Proposed GHG / Fuel Economy Standards.** Pursuant to an agreement signed last May between the Federal government, California, and major automakers, the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) released a proposed joint rulemaking setting greenhouse gas (GHG) emission and fuel economy standards for motor vehicles in model years 2012-2016. By model year 2016, the rule will require the nation's vehicle fleet to achieve an average efficiency of 35.5 miles per gallon, and average GHG emissions rate of 250 grams CO_2-equivalent per mile. The White House projected that by 2030, the policy would have the effect of reducing vehicle carbon dioxide emissions by 21 percent. The agencies expect to finalize the rule in March 2010; before the rule can take effect, EPA must finalize its proposed finding – first released in April of this year – that GHG pollution endangers public health and welfare. The standards are available at http://www.epa.gov/otaq/climate/regulations/420f09047.htm.

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

- **OMB Completes Review of EPA GHG Reporting Rule.** The White House Office of Management and Budget (OMB) has completed its review of EPA's final rule for economy-wide, mandatory reporting of GHG emissions, signaling that the rule will soon be published and made legally effective. Issued in March 2009, the proposed form of the GHG reporting rule would require most stationary sources emitting at least 25,000 tons CO_2-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.

- **U.S. Climate Envoy Says International Climate Accord May Be Completed After Copenhagen.** The Obama Administration's Special Envoy for Climate Change, Todd Stern,

acknowledged to reporters last week that delays in Congressional deliberations on climate change legislation could delay the completion of an international climate change accord until after this December's summit in Copenhagen, Denmark. Stern did not specify which portions of the agreement might require further negotiation or when those discussions would take place. The Copenhagen negotiations are intended to lead to a successor treaty to the Kyoto Protocol, whose mandatory emission limits expire in 2012.

- **Interior Department Establishes Senior-Level Climate Change Initiative.** Interior Secretary Ken Salazar signed a secretarial order launching a high-level effort to coordinate the Department of Interior's response to climate change. The order would, among other things, establish a Climate Change Response Council comprised of senior Interior officials to oversee policy within the Department and coordinate with other federal agencies; establish eight Regional Climate Change Response Centers to provide climate change data and impact analysis to agencies within the Department; and create eight Landscape Conservation Cooperatives to develop strategies for addressing regional climate change impacts.

Congress

- **Draft Legislation Aims to Promote CCS, Increase Offsets.** Led by Senator Tom Carper (D-DE), a group of seven Senators making up the so-called "Coal Group", released draft legislation that would provide funding for the development of carbon capture and sequestration technologies and expand the supply of emission offset credits. The proposal would push back deadlines contained in the Waxman-Markey bill for new coal-fired power plants permitted between 2009-2015 to install CCS, and create a CCS early deployment program that would provide $1 billion annually for 10 years. As written, the proposal also would substantially expand the amount of offset credits compared to the Waxman-Markey bill by removing a mandate for EPA to establish performance standards for methane emissions from coal mines and landfills. The Waxman-Markey directive to EPA effectively would prohibit offset projects involving such facilities.

- **Sen. Reid Says Senate Climate Debate May Last into 2010.** In the face of a backlog of Fiscal Year 2010 Appropriations legislation, continued difficulties moving health care reform legislation and the need to address financial reform, Senate Majority Leader Harry Reid (D-NV) acknowledged that the Senate might not pass a comprehensive energy and climate change bill before the end of the year as previously stated. Although he subsequently softened the comments with a pledge to move on the climate change legislation as quickly as possible, Sen. Reid's statements caused concern among supporters of the legislation and raised worries in the international community about the impact of the delay on the international climate negotiations in Copenhagen this December. Some observers speculated that a delay could cause the Senate to pursue passage of an energy only bill and leave the cap-and-trade portion for later action.

- **Senate Energy and Natural Resources Holds One Climate Hearing, Postpones Another.** The Senate Energy and Natural Resources Committee held a hearing to explore the potential costs and price volatility in the energy sector as a result of a greenhouse gas trading program. The panel of witnesses included Eileen Claussen (Pew Center on Global Climate Change), Jason Grumet (Bipartisan Policy Center), Dr. Joseph Mason (Louisiana State University), Dr. Michael Wara (Stanford University), and Brent Yacobucci (Congressional Research Service). Testimony addressed the importance of controlling price volatility in a carbon market and discussed the use

cost-containment mechanisms, such as price ceiling and floors, and strategic allowance reserves. A number of Senators from both parties expressed concern about trading and offsets. In addition to raising doubts about the timing of climate legislation, the busy Senate calendar forced the postponement of another hearing that was to be held by the Committee on the economic implications of global climate change legislation. Aides to Committee Chairman Jeff Bingaman (D-NM) said that the hearing, which was to include testimony from representatives of the Congressional Budget Office, U.S. Environmental Protection Agency, Department of Energy, and the Congressional Research Service, will be rescheduled.

- **Sens. Boxer, Kerry Hold Weekly Strategy Session on Climate Bill.** Senators Barbara Boxer (D-CA), Chairman of the Environment and Public Works Committee, and John Kerry (D-MA), Chairman of the Committee on Foreign Relations, continued their weekly strategy sessions aimed at facilitating passage of the Senate climate bill. Joined by nine other Senators, Sens. Boxer and Kerry reviewed the draft CCS legislation released by Sen. Tom Carper (D-DE) (discussed above) and reviewed recent commercials supporting the climate legislation efforts.

States and Cities

- **California Gov. Signs Executive Order for 33 Percent RPS, Awaits NF_3 Bill.** California Governor Arnold Schwarzenegger (R) issued an executive order that will require the state to acquire 33 percent of its electric power from renewable sources by 2020. The order directs the California Air Resources Board (CARB) to adopt rules to implement the renewable portfolio standard (RPS) by July 31, 2010. Gov. Schwarzenegger issued the order shortly after vetoing a bill passed by the state legislature that would have established a similar RPS standard. According to the Governor, the bill would have unnecessarily raised electricity prices, and possibly violated the Constitution, because it would require the renewable energy to be generated from in-state sources only. The executive order contained no limitation on out-of-state power. Next up for Gov. Schwarzenegger is a bill passed by the California state legislature that would authorize CARB to regulate nitrogen trifluoride (NF_3), a greenhouse gas that is 17,000 times more potent than CO_2. Although California manufacturing facilities emit only small quantities of NF_3 and CARB has already enacted regulations to limit the use of NF_3 in semiconductor manufacturing, bill sponsors indicated that the NF_3 bill is intended raise awareness of NF_3 emissions at the federal level, and to give CARB authority to monitor the use of NF_3 and ensure its proper use. The gas is used primarily in the manufacture of solar panels, microprocessors, and flat-screen televisions. NF_3 was developed as an environmentally preferable alternative to gases previously used in these fabrication processes. It won an EPA award for its development. When commercially available controls are in place, NF_3 is destroyed in use and emissions are reduced to levels that are virtually non-detectable. It remains uncertain whether Gov. Schwarzenegger intends to sign the NF_3 bill.

- **Midwestern Governors Drop Cap-and-Trade, Take up "Complementary Policies".** After releasing design recommendations for a cap-and-trade program in June of last year, the governors of states participating in the Midwest Greenhouse Gas Reduction Accord (MGGRA) announced that they will not pursue the regional emission trading program further. The announcement came while the governors were attending a meeting of the Midwestern Governors Association. Saying the debate has shifted to the federal level, the governors said they will now pursue policies that would be "complementary" to a federal cap-and-trade program, such as more stringent renewable

energy standards, increased biofuel production, and technology development. The MGGRA is comprised of Illinois, Iowa, Kansas, Michigan, Minnesota, Wisconsin and the Canadian province of Manitoba.

Industry

- **Investor Coalition Calls for More Aggressive GHG Emission Reductions.** Three major investor associations – including the Institutional Investors Group on Climate Change, the Investor Network on Climate Risk, and the Investor Group on Climate Change Australia / New Zealand – joined with the U.N. Environment Programme to sign a statement urging that an aggressive global climate change treaty be agreed to at the upcoming summit in Copenhagen. The coalition called for developed countries to reduce emissions to 95% below 1990 levels by 2050, and 25 to 40% below 1990 levels by 2020. These targets are substantially more ambitious than the Waxman-Markey climate change bill passed by the House last June, which calls for the U.S. to reduce emissions to 17% below 2005 levels by 2020 and 82% below 2005 levels by 2050. Notably, the coalition also advocated substantial reforms to the Kyoto Protocol's Clean Development Mechanism (CDM), with attention to streamlining the CDM bureaucracy and encouraging greater CDM investments in energy efficiency, reforestation and afforestation projects. The associations claim to represent 181 separate investment firms with $13 trillion in total assets. The statement is available at http://www.ceres.org/Document.Doc?id=495.

Studies and Reports

- **CBO Study Evaluates Economic Impacts of American Clean Energy and Security Act.** The Congressional Budget Office (CBO) released an economic study of the cap-and-trade provisions of the Waxman-Markey climate change bill. The study found that the bill would reduce GDP slightly from a business-as-usual baseline – a reduction of 0.25 to 0.75 percent in 2020, and 1 to 3.5 percent by 2050. CBO characterized these impacts as "modest," given its projection that real GDP in 2050 will be 2.5 times as large as today. CBO's GDP projections also do not take into account the economic benefits of mitigating climate change. The study also projected that allowance prices would reach $15 in 2012, $23 in 2020, and $118 in 2050. The report is available at http://www.cbo.gov/ftpdocs/105xx/doc10573/09-17-Greenhouse-Gas.pdf.

- **NCEP Report Says Offsets Are Inadequate to Control GHG Compliance Costs.** The National Commission on Energy Policy (NCEP), an independent bipartisan policy organization, issued a report that questions whether the Waxman-Markey bill's offset credit provisions will be sufficient to contain compliance costs during the cap-and-trade program's early years. The report concluded that because of the bill's requirements for host country agreements on international offsets, and administrative procedures for approval of offset projects, it is "unlikely" that more than 300 million tons CO_2-equivalent of international offset credits will be purchased "during the first several years of the program." The report recommended that a trading program include a firm "price collar" to protect against high allowance prices, and that a reserve of 2 to 5 percent of allowances be set aside to allow experimentation with innovative agricultural sequestration projects while protecting the integrity of the emissions cap. The report is available at http://bipartisanpolicy.org/sites/default/files/NCEP%20Domestic%20and%20International%20Offsets.pdf.

- **World Bank Warns of Climate Change Impacts in Developing Countries.** The World Bank's annual report on global development, entitled *World Development Report 2010: Development and Climate Change*, warned that poor countries could experience 75 to 80 percent of the potential economic costs from climate change if global temperatures are permitted to rise more than 2 degrees Celsius over pre-industrial levels. Specifically, the report projected that a warming of 2 degrees Celsius – "the minimum the world is likely to experience" – would result in a permanent 4 to 5 percent reduction in per capita consumption for Africa and South Asia, and could leave 1 to 2 billion people with inadequate access to water. The report also found that annual emission reduction investments of approximately $375 billion – or about 0.2% of projected world GDP – would be required by 2030 in order to prevent average surface temperatures from rising more than 2 degrees Celsius. The report is available at http://siteresources.worldbank.org/INTWDR2010/Resources/5287678-1226014527953/Overview.pdf.

International

- **US, Canada, Mexico Submit Joint Proposal to Add HFC's to Montreal Protocol.** The United States, Canada and Mexico have submitted a proposal that would amend the Montreal Protocol to include a phasedown of the use of hydrofluorocarbons (HFCs), a class of highly potent GHGs. The Protocol is an international treaty that regulates ozone-depleting substances. HFCs are refrigerants often used as replacements for chemicals currently being phased-out by the Protocol. Previously, parties to the protocol debated but did not pass a similar amendment proposed by the island nations of Micronesia and Mauritius.

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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