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## Climate Change Policy Update Week of November 16-20, 2009

**Commentary:** *President Obama left China with a raft of agreements for cooperation on clean energy . . . After a meeting with the chairmen of committees of jurisdiction, Majority Leader Reid made it official: the Senate will not vote on climate legislation until Spring . . . With the further slide of the legislative timetable, the bite of Clean Air Act regulation could become more pronounced. Within industry, the disruption that will be caused by the EPA regulatory program – even with the “tailoring rule” – is slowly sinking in. Major infrastructure activities, in particular, could slow substantially or grind to a halt as companies have to queue up with delegated state agencies to obtain permits and install currently unknown “Best Available Control Technology.” . . . Senators Alexander (R-TN) and Webb (D-VA) introduced the Clean Energy Act of 2009 (S. 2776) with the goal of doubling nuclear energy production in 20 years.*

### Executive Branch

- **CFTC Chairman Calls for Tight Regulation of GHG Markets.** Gary Gensler, Chairman of the Commodity Futures Trading Commission (CFTC), backed stringent regulation of over-the-counter (OTC) derivatives – including derivatives based on GHG allowances and offset credits – in testimony before the Senate Agriculture Committee. Gensler said that all derivatives that use standardized terms should be traded on regulated exchanges, and that all derivative contracts should be mediated through transaction insurance organizations known as clearinghouses wherever possible. He also urged that transactions not cleared through a clearinghouse be reported to federal regulators. Although Gensler stated that GHG markets should have the same regulatory protections as other commodity markets, he acknowledged that the GHG market “would be a far larger market and might present new issues.” Under the Waxman-Markey climate change bill, CFTC would exercise regulatory authority over derivative and cash markets for GHG allowances and offset credits.
- **EPA Holds Public Hearing on Tailoring Rule.** The Environmental Protection Agency (EPA) held a public hearing in Alexandria, Virginia, to take comment on its proposed “tailoring rule,” which was published in the *Federal Register* in late October. The “tailoring rule” would establish an emission threshold of 25,000 tons CO<sub>2</sub>-equivalent per year for the Clean Air Act’s New Source Review and Title V programs, which is an increase over the statutory threshold of 100-250 tons per year. Both programs are expected to apply to greenhouse gas (GHG) emissions once EPA finalizes its motor vehicle GHG standards in spring 2010. At the hearing, representatives of the American Petroleum Institute and the National Petrochemical and Refiners Association recommended that EPA

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delay finalizing the motor vehicle standards in order to give Congress more time to enact climate change legislation. Carl Pope, Executive Director of the Sierra Club, argued that EPA should not defer to Congress and said that the agency was obligated to act as a result of the Supreme Court decision in *Massachusetts v. EPA* (2007).

- **Administration Wants Comprehensive Climate Legislation.** Speaking at a conference in Washington, Carol Browner, Director of the White House Office of Energy and Climate Change Policy, affirmed that the Obama Administration still expects to sign comprehensive legislation that addresses both climate change and clean energy. Browner rejected proposals for a more limited bill that would cap emissions only from the electric power sector, or that would focus on deployment of low-carbon energy sources. Said Browner, “I talk to a lot of people every day in the business community, and what they keep saying to me is they want comprehensive legislation. If we only solve a little piece of the problem, you’re not going to give industry the predictability and certainty needed to make large investments.” Browner called climate legislation “one of the most important things [President Obama] wants to accomplish as president” and said the President was “fully engaged” with Congress on the issue “and will continue to be so.”

## Congress

- **Senate Climate Bill Slides to Spring.** Senate Majority Leader Harry Reid (D-NV) met with five of the six committee chairs with jurisdiction over elements of a cap-and-trade bill passed by the Environment and Public Works Committee. Foreign Relations Committee Chairman John Kerry (D-MA) told reporters that climate change legislation would be considered in the spring, after the Senate has voted on health care and financial services regulation bills. Sen. Kerry also said that he hopes to deliver the compromise climate legislative package he is creating with Sens. Lindsey Graham (R-SC) and Joe Lieberman (I-CT) to Sen. Reid in early spring. Agriculture Committee Chairman Blanche Lincoln (D-AR), who did not attend the meeting, said she has not yet decided whether her committee will hold hearings on the bill.
- **Webb, Alexander Introduce Nuclear Measure.** Senators Jim Webb (D-VA) and Lamar Alexander (R-TN) introduced the Clean Energy Act of 2009 (S. 2776) with the goal of doubling domestic nuclear energy production in 20 years. The bill would provide \$100 billion in loan guarantees for carbon-free electricity sources and \$150 million annually for ten years to each of five “mini-Manhattan” projects. The projects would research carbon capture and sequestration, advanced biofuels, advanced batteries, solar power, and reprocessing and recycling used nuclear fuel. Sen. Alexander said he views the bill as an alternative rather than an amendment to cap-and-trade legislation, which he opposes. Sen. Webb said he has told Sen. Kerry that “as it presently exists, I oppose cap and trade, although I am willing to sit down and listen to him if he can bring other arguments to the table.” Sen. Graham praised the bill, telling reporters that “you’d hope to see a title like that” in the final climate package.
- **Bingaman Holds Hearings; Announces New Bill.** Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) held two hearings on climate legislation. The hearings considered the management of federal forests in the context of climate change and the relationship between domestic and international efforts to mitigate climate change. At the forest hearing, Senator Ron Wyden (D-OR) said he will advocate for the inclusion of national forests and other public lands in an offsets program established under cap-and-trade legislation.

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“Offsets” are projects to reduce or sequester emissions in uncapped sectors of the economy or in developing countries. Sen. Bingaman also announced in a speech that he intends to introduce a bill that would require the Department of Energy to develop and demonstrate two designs for small, modular nuclear reactors under 350 MW. The aim of the bill will be to make nuclear energy more cost effective.

- **Senators Seek Reduced Tariffs on Low Carbon Goods.** Senators Ron Wyden (D-OR), Mike Crapo (R-ID), John Kerry (D-MA), and Debbie Stabenow (D-MI) wrote to U.S. Trade Representative Ron Kirk to encourage trade negotiators to seek reductions in the tariffs that other countries impose on U.S. technologies that reduce GHG emissions.

## Judicial

- **Proposed Consent Decree Would Compel EPA Decision on NSPS for GHG Emissions.** In the case of *Environmental Integrity Project v. EPA*, EPA filed a proposed consent decree with the United States District Court for the District of Columbia under which the agency would decide by November 10, 2010 whether to establish New Source Performance Standards (NSPS) for GHG emissions from nitric acid plants. NSPS is a Clean Air Act program that requires EPA to establish maximum emission rates for various types of stationary sources of air pollutants. EPA’s existing NSPS for nitric acid plants, which are major sources of the potent GHG nitrous oxide, were last revised in 1984 and do not address GHG emissions. Standards for GHG emissions from nitric acid plants would be the first such exercise of EPA’s NSPS authority over GHGs, and could presage the establishment of GHG emission standards for other major categories of stationary sources. Importantly, NSPS can reach not only new, but also existing sources.

## Industry and NGOs

- **Coalition Advocates Greater Role for Building Retrofits in Climate Bill.** Rebuilding America, a coalition that includes the Center for American Progress, Energy Future Coalition, AFL-CIO, and other business, labor, and energy groups, released a detailed set of proposals to be included in climate change legislation for the purpose of stimulating energy efficiency retrofits in 50 million buildings by 2020. Senators Sherrod Brown (D-OH) and Jeff Merkley (D-OR), and Rep. Peter Welch (D-VT), endorsed the proposals at an event announcing the new initiative. Among other things, the proposals encourage Congress to mandate that one-third of allowances allocated to electric utilities be used for energy efficiency projects; allocate a larger quantity of allowances to state governments for renewable energy and efficiency programs; and establish an “energy efficiency resource standard” separate from a Renewable Portfolio Standard. Information about the coalition and its policy proposals is available at <http://www.energyfuturecoalition.org/What-Were-Doing/Energy-Efficiency/Rebuilding-America>.

## Studies and Reports

- **Ocean CO<sub>2</sub> Absorption Pace Slowing.** New research published in *Nature* calculates the rate at which the Earth’s oceans absorbed CO<sub>2</sub> during the industrial era. Oceans act as a major carbon “sink.” The study found that the rate of uptake has increased sharply since 1950 (as CO<sub>2</sub> atmospheric concentrations increased), but the rate of increase in uptake has declined slightly in

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the last few decades. The study's lead author attributes the decline to an increase in the acidity of the oceans caused by increased CO<sub>2</sub> levels. The abstract of the study is available at <http://www.nature.com/nature/journal/v462/n7271/full/nature08526.html>.

## International

- **U.S., China Sign Clean Energy- and Climate Change-Related Agreements.** During a visit by U.S. President Barack Obama to China to meet with Chinese President Hu Jintao, the U.S. and China entered into various agreements aimed at reducing GHG emissions through technology development. The governments agreed to establish a U.S.-China Clean Energy Research Center, which will be developed by the United States Department of Energy, the Chinese Ministry of Science and Technology, and the Chinese National Energy Administration. The Center will invest \$150 million to facilitate joint clean energy research and development. The governments also agreed to develop a U.S.-China Electric Vehicles Initiative intended to expand the deployment of clean vehicles in both nations; a U.S.-China Energy Efficiency Action Plan ("Efficiency Plan"), which will pursue cost-efficient energy efficiency improvements; a GHG reporting agreement through which the United States will assist China in developing a national inventory of its GHG emissions; a U.S.-China Renewable Energy Partnership; and a U.S.-China Energy Cooperation Program.
- **Preliminary Meeting Sets Stage for Copenhagen.** Environment ministers from 44 nations held a two-day meeting in Copenhagen, Denmark to prepare for the December climate change negotiations that are to be held in that city from December 7-18. The closed-door talks were aimed at further developing the draft treaty text for the comprehensive discussions in December. While the ministers suggested that the agreement text should be comprehensive in its coverage, it is expected that any agreement reached in Copenhagen will be a high-level political agreement, rather than a detailed and legally-binding one.
- **African Leaders Finalize Position on Climate Financing.** A committee of leaders from 10 African nations have developed a negotiating position on the amount of climate change financing African nations will seek in Copenhagen. Meeting in Addis Ababa, Ethiopia, the Committee of African Heads of State and Government on Climate Change (Committee) decided on the common position for all African nations. The Committee will not announce the amount of financing sought until the Copenhagen talks begin.
- **Brazil, Russia, South Korea Announce Reduction Targets.** In the run-up to Copenhagen, the three nations announced their proposals for a climate change treaty. Brazil has announced that it will accept a voluntary reduction target of 36-39 percent below business-as-usual (BAU) emissions by 2020. The range of targets provides for flexibility depending on the amount of financing Brazil receives under an agreement. The government expects to achieve most of its objective through reduced deforestation. South Korea, also a developing nation not subject to an emissions target under the Kyoto Protocol, announced its proposal for a voluntary 30 percent reduction target from BAU emissions by 2020. For its part, Russian proposed a binding target of a 25 percent reduction from 1990 levels by 2020. Due to the significant decline in the Russian economy following the collapse of the Soviet Union, the 25 percent target would actually permit Russia to increase its emissions from current levels.

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**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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