

June 28, 2010

Climate Change Policy Update Week of June 21-25, 2010

Commentary: *At a “revival”-like meeting of the caucus, Senate Democrats talked about a legislative strategy of linking climate provisions to presumably popular oil spill provisions, thereby creating a more difficult-to-oppose package . . . The gathering also discussed the idea of assigning a group of 10 or so Senators the role of deciding what goes into the package . . . The upcoming Tuesday morning meeting in the White House between the President and a bipartisan group of Senators may yield further details on a path forward . . . There is continued talk about a utility-sector-only cap-and-trade program . . . An initiative to suspend California’s A.B. 32 program obtained sufficient signatures to go on to the November ballot . . . The writers of the Climate Change Policy Update pay tribute to the memory of the late Senator Robert C. Byrd (D-WV).*

Executive Branch

- **White House Reschedules Strategy Session with Key Senators for June 29.** A meeting between President Obama and a bipartisan group of Senators to discuss strategy for moving energy and climate change legislation through the Senate was postponed until the morning of Tuesday, June 29. The meeting was pushed back to accommodate the President’s last-minute meeting with General Stanley McChrystal, the now-former top military commander in Afghanistan. Among the topics scheduled for discussion is the prospect of a cap-and-trade bill that would regulate only the electric utility sector.
- **OMB Approves Final Rule Expanding Scope of GHG Reporting Regulation.** The White House Office of Management and Budget (OMB) has completed its review of four direct final rules that would expand the scope of the Environmental Protection Agency’s (EPA) mandatory greenhouse gas (GHG) reporting program to four new source categories. Underground coal mines, landfills, industrial wastewater, and magnesium production sites would all be required to report under the new rules. Because EPA originally proposed to require reporting of GHG emissions from these sectors in March 2009, but refrained from including those requirements when it finalized the GHG reporting rule in October 2009, the new regulations are expected to be released in final form instead of being subjected to a new round of public notice and comment.
- **EPA Inspector General Clears Official of Wrongdoing Regarding Murkowski Resolution.** EPA’s acting Inspector General concluded that David McIntosh, Associate Administrator of EPA’s Office of Congressional & Intergovernmental Relations, did not violate any laws, regulations or policies when he contacted several industry parties last fall regarding a resolution

About Van Ness Feldman

With 80 professionals in Washington, DC and Seattle, WA, Van Ness Feldman focuses on law and policy relating to:

- Electricity & Energy Efficiency
- Environment
- Climate Change & Emissions Trading
- Renewable Energy, Cleantech, & Biofuels
- Coal & CCS
- Natural Gas
- Nuclear Energy
- Hydropower
- Infrastructure Development
- Indian Law
- Oil & Products Pipelines
- Public Lands & Natural Resources
- Transportation

Learn more at www.vnf.com.

June 28, 2010

(S.J. Res. 26) introduced by Senator Lisa Murkowski (R-AK) that would have disapproved of an EPA finding pursuant to the Clean Air Act that GHG emissions endanger public health and welfare. The investigation, initiated in response to a request from Senator Murkowski, arose from contact McIntosh made with Shell Oil Company and the Alliance of Automobile Manufacturers to discuss possible unintended consequences of the Murkowski Resolution. The Senate rejected the Murkowski Resolution by a count of 53 to 47 earlier this month on procedural vote that prevented the resolution from proceeding to the Senate floor for an up-and-down vote. The report containing the Inspector General's conclusions is available at <http://www.epa.gov/oig/reports/2010/20100621-10-N-0148.pdf>.

Congress

- **Democrats Hold a “Revival;” Next Step Unclear.** The Senate Democratic Caucus met for a second time to discuss whether and how to pursue energy and/or climate legislation this year. “We had a revival,” Sen. Kay Hagan (D-NC) said. “There was this atmosphere of a lot of people coming together on the need now to move forward.” Other senators described the gathering as “inspirational”, “motivating,” “thrilling,” and “a rank and file uprising.” The party reportedly united around the principle of “polluters pay,” to apply to both a response to the Gulf oil spill and carbon mitigation. It remains unclear, however, what climate measures the legislation will contain. Reportedly Sen. Charles Schumer (D-NY) suggested creating a group of 10 senators to develop a consensus package. Sen. Joseph Lieberman (I-CT) told CNN that there are “about 50 senators who want to vote for a strong comprehensive energy bill that puts a price on carbon pollution,” with 30 senators opposed and 20 undecided. Sen. Lieberman said that he and Sen. John Kerry (D-MA) have “a fighting chance” at convincing 10 of the undecided senators to vote for comprehensive climate legislation.
- **Senators Considering “Utility-Only” Emission Cap.** In the wake of comments by White House Chief of Staff Rahm Emanuel signaling openness to legislation that would place a cap on utilities but not other emission sources, Senator Joe Lieberman (I-CT) stated that he too was open to a utility-only approach. Sen. Lieberman explained that a utility-only approach is not his first choice, but he would consider it if that route was necessary to achieve 60 Senate votes. Republican Senators Olympia Snowe (R-ME), George Voinovich (R-OH), and Judd Gregg (R-NH) – one or more of whom could provide a crucial swing vote for legislation – all signaled that they would consider such a plan. Jim Rogers, Chairman, President, and CEO of Duke Energy, and Eileen Claussen, President of the Pew Center on Global Climate Change, authored an op-ed published in *Politico* advocating a utility-only bill as a first step on climate legislation that would reduce emissions, create jobs, and improve air quality. The op-ed is available at <http://www.politico.com/news/stories/0610/38851.html>. Other utilities, however, including American Electric Power, have opposed a utility-only approach.

States and Cities

- **California Referendum to Suspend Climate Change Law Qualifies for November Ballot.** Proponents of a measure that would suspend California's climate change law, A.B. 32, until state unemployment dips to 5.5 percent or below for four consecutive quarters have collected the signatures necessary to put it on the state-wide ballot this November. The state's unemployment

June 28, 2010

rate is currently over 12 percent. A.B. 32 requires that California reduce its emissions to 1990 levels by 2020 and generate a third of its electricity from renewable sources by the same year. The California Air Resources Board (CARB) is crafting regulations that would become enforceable starting in 2012. California Governor Arnold Schwarzenegger (R) has supported A.B. 32, and opposes the industry-backed referendum.

- **California Air Agency Holds Cap-and-Trade Workshops.** CARB, the state agency in charge of implementing California's A.B. 32 climate change law, held a workshop to collect stakeholder feedback on potential cost containment mechanisms within the proposed cap-and-trade program and on proposed rules to govern offsets usage and linkage with other offsets or cap-and-trade programs. The staff presentations on offsets are available at <http://www.arb.ca.gov/cc/capandtrade/meetings/meetings.htm#publicmeetings>. CARB also held a workshop to discuss the offset protocols currently under development for destruction of ozone destroying substances, forestry, urban forestry, and livestock manure digesters. If approved by CARB, offsets generated under these protocols will be usable for compliance in the California cap-and-trade program. The staff presentations on the protocols are available at <http://www.arb.ca.gov/cc/protocols/protocols.htm>.
- **Alaska Governor Signs RPS and Energy Efficiency Bills.** Alaska Gov. Sean Parnell (R) signed into law H.B. 306, which establishes a state energy policy that includes a goal of generating 50 percent of statewide electricity from renewable sources by 2020. Gov. Parnell also signed S.B. 220, which promotes energy efficiency within the state by creating an energy efficiency revolving loan fund to finance energy-conservation retrofits of public facilities; disbursing grants for demonstrations of new energy technologies; exempting from local taxation residential properties that are powered by renewable sources; and directing the state Department of Transportation to study the feasibility of using compressed natural gas as a fuel for its vehicle fleet.
- **Northeastern States, DC Sign GHG Transportation Agreement.** Regulators from 11 Northeastern states and the District of Columbia signed an agreement establishing the Transport and Climate Initiative (TCI), which will foster collaboration among the signatories on transportation policies aimed at reducing GHG emissions. The agreement establishes a working group and a three-year work plan to facilitate the TCI's goals of reducing traffic congestion; promoting job growth through interstate commerce; developing land use strategies to encourage increased density; improving the performance of existing infrastructure; and promoting mixed-use development to support alternatives to driving. The transportation sector currently contributes approximately 30 percent of GHG emissions in the Northeastern states. The group's Declaration of Intent is available at <http://www.georgetownclimate.org/state/files/TCI-declaration.pdf>.

Industry and NGOs

- **Environmental Organizations Petition EPA to Regulate Waste Methane From Coal Mines.** The Sierra Club, the Center for Biological Diversity, WildEarth Guardians, and the Environmental Integrity Project petitioned EPA to establish New Source Performance Standards under the Clean Air Act for emissions of waste methane from coal mines. The petition, which was filed on behalf of the organizations by Earthjustice, alleges that coal mine methane accounts

June 28, 2010

for 10% of the nation's anthropogenic emissions of methane – a potent GHG. In addition, the petition states that the health benefits of reducing coal mine methane emissions would more than compensate for the cost of such regulations. Although EPA currently regulates methane emissions from municipal solid waste landfills, EPA has not established New Source Performance Standards for GHGs from stationary sources on the basis of climate change impacts. The petition is available at <http://www.earthjustice.org/news/press/2010/coalition-calls-on-epa-to-set-national-limits-on-air-pollution-from-u-s-coal-mines.html>.

- **APPA Supports Legislation Deferring EPA Regulation of GHGs.** The American Public Power Association (APPA), which represents over 2,000 publicly owned utilities nationwide, adopted a resolution at its most recent national conference reaffirming the organization's general support for climate change legislation and asking Congress to intervene to prevent EPA regulation of GHG emissions from the utility sector under the existing CAA. The resolution describes the CAA as "particularly unsuited" for the task of regulating GHG emissions because it calls for source-specific regulations and cannot address the "likely high and disparate costs" of GHG mitigation in different regions of the country. APPA also expressed support for two bills introduced by Sen. Jay Rockefeller (D-WV) (S.3072) and Rep. Richard Boucher (D-VA) (H.R. 4753) that would prevent EPA regulation of GHG emissions from stationary sources under the CAA for a period of two years. The resolution is available at <https://appanet.cms-plus.com/files/PDFs/Resolution2yearDelay6410.pdf>.

Studies and Reports

- **Study Finds Few Skeptics Among Top Climate Researchers.** Research published by Stanford University researcher Stephen Schneider and colleagues in the *Proceedings of the National Academy of Sciences* analyzed the publication records of 1,372 climate scientists. They found that 97.5 percent of the 200 most-published climate researchers agreed with the Intergovernmental Panel on Climate Change's finding that it is very likely that GHG emissions from anthropogenic sources have produced most of the observed warming over the past half-century. The researchers also found that 80 percent of the climate skeptics they identified had published fewer than 20 papers on climate change, but that the skeptics were vocal and received substantial media attention. The article is available at <http://www.pnas.org/content/early/2010/06/04/1003187107.full.pdf+html>.
- **RFF, NEPI Assess Cost-Effectiveness of Climate Policies.** A two-year research effort by Resources for the Future (RFF) and the National Energy Policy Institute (NEPI) compared the cost-effectiveness of different energy and climate policy options in reducing oil consumption and CO₂ emissions. The study found that transportation policies (such as mandating the use of natural gas in heavy-duty trucks; or using a combination of a phased-in oil tax, a fee on very inefficient vehicles, and rebates for efficient vehicles and hybrids) were the most cost-effective means of reducing oil consumption, although carbon pricing options also reduced oil consumption considerably. The research also indicated that a cap-and-trade or carbon tax program, with offsets, is the most cost-effective means of reducing GHG emissions. In addition, the results indicated that adding a renewable portfolio standard to a cap-and-trade program would result in redundancy and increased costs. The executive summary of the study is available at <http://www.rff.org/toward-a-new-energy-policy>.

June 28, 2010

International

- **G-20 Summit Focuses on Economy, Yields Little Progress on Climate.** Meeting in Toronto, Canada, the heads of states of the Group of 20 (G-20) nations made little progress on addressing climate change. Focusing primarily on economic issues during the two-day summit, the world leaders' only specific reference to the on-going international climate change negotiations in a declaration issued following summit was a reiteration of support for the Copenhagen Accord by countries that had previously expressed support for the non-binding agreement. In addition, the world leaders also reaffirmed a commitment first made last year at the G-20 meeting in Pittsburgh, Pennsylvania to end "inefficient" fossil fuel subsidies by calling for "full implementation of country-specific strategies" to phase them out. The G-20 declaration is available at http://www.g20.org/Documents/g20_declaration_en.pdf.
- **World Bank Appoints Climate Envoy.** World Bank (Bank) President Robert Zoellick has appointed former World Bank Director of Environment Andrew Steer as a Special Envoy to act as the Bank's "point person" on climate change. Steer will represent the World Bank in the on-going international climate change negotiations. As Special Envoy, Steer will also oversee the Bank's Climate Investment Funds.
- **New Australian PM to Revive Cap-and-Trade Legislation.** Newly-elected Australian Prime Minister Julia Gillard has committed to reviving cap-and-trade legislation in Australia after former Prime Minister Kevin Rudd failed to pass legislation addressing the issue. Rudd, who was elected in 2007 after promising to take action on climate change, delayed plans to implement a carbon-trading scheme until 2013 after several failed attempts to pass a bill.
- **Canada Commits to Phase Out Coal-Fired Power Plants.** Canadian Environment Minister Jim Prentice said that the Canadian government will publish regulations next year that will phase out many of Canada's 51 coal-fired power plants. Coal-fired power generates 13 percent of Canada's GHG emissions, and 33 of 51 coal-fired plants are slated to reach the end of their useful lifespan by 2025. Prentice also outlined a regulation that will require gasoline to contain 5 percent renewable content.

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.

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.

© 2010 Van Ness Feldman, P.C. All Rights Reserved.

For more information

With 80 professionals in Washington, DC and Seattle, WA, Van Ness Feldman is recognized as a leading law and policy firm in the areas of traditional and renewable energy regulation and project development, climate change regulation and greenhouse gas emissions trading, environmental and natural resources regulation, and infrastructure development. Van Ness Feldman's Climate Change practice has received top recognition by *Chambers USA* and *Chambers Global*.