

# Senators Lieberman and Warner Release Detailed Outline of Climate Change Legislation

August 3, 2007

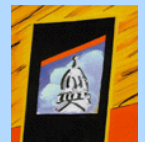
A Professional Corporation

1050 Thomas Jefferson Street, NW  
Washington, DC 20007-3877  
(202) 298-1800  
(202) 338-2416

The Millennium Tower  
719 Second Avenue  
Suite 1150  
Seattle, Washington 98104  
(206) 623-9372  
(206) 623-4986

[www.vnf.com](http://www.vnf.com)

I  
S  
S  
U  
E



A  
L  
E  
R  
T

On August 2, Senators Joseph Lieberman (I-CT) and John Warner (R-VA) released a detailed outline for a federal greenhouse gas (GHG) cap-and-trade bill. The Senators are seeking comment on the outline in order to inform their effort to draft legislation to be introduced in the fall.

The Lieberman-Warner proposal draws ideas from earlier climate change bills, including the recently-introduced Bingaman-Specter bill (S. 1766). The bill also incorporates a cost-containment provision based on a bill introduced in July by Senator Mary Landrieu (D-LA) and co-sponsored by Senators Warner, Lincoln (D-AR), and Graham (R-SC) (S. 1874).

## Targets and Timetables

The proposal would establish a limit on GHG emissions beginning in 2012. The 2012 limit would be the 2005 emissions level. The emissions "cap" would be a 10% reduction from the 2005 emissions level in 2020, a 30% reduction in 2030, a 50% reduction in 2040, and a 70% reduction in 2050.

### Points of Regulation: Upstream for Transportation, Downstream for Electric Power and Industry

The Senators propose to regulate facilities in the electric power, industrial, and transportation sectors, which they assert account for 80% of US GHG emissions.

The proposal would regulate the transportation sector "upstream," *i.e.*, by requiring petroleum or coal-based refineries to submit allowances equal to the carbon content of the fuels they produce for transportation uses. The proposal also says that, especially for the transportation sector, the "bill will find that policies external to a cap-and-trade program may be required."

Except in the case of some non-CO<sub>2</sub> GHGs, the electric power and industrial sectors would be regulated "downstream," *i.e.*, by requiring covered facilities to submit allowances for their direct emissions. The Senators propose to regulate any fossil fuel-fired electricity generator greater than 10 MW. The industry regulations would reach any industrial facility that emits more than 10,000 metric tons of CO<sub>2</sub>-equivalent GHGs per year.

### Allowance Allocation Provisions

Senators Lieberman and Warner outlined a detailed system for the annual distribution of allowances by the Environmental Protection Agency (EPA). Under their system, a portion of allowances would be allocated without cost and a portion would be auctioned. The portion allocated would be 76% in the first year of the program, declining to 48% by 2035.

**Allocations.** In the first year of the program, the Senators propose to allocate:

20 %	Industry	20 %	Electric Power	10 %	Load Serving Entities
8 %	Early Emission Reductions	4 %	State Governments	4 %	Coal Mining
7.5 %	Agricultural and Forestry	2.5 %	Transportation Sector		

**Electric Power Sector Allocation.** The proposal would direct EPA to allocate allowances to individual electric power generators based on heat input with fuel-adjustment factors, with a set-aside for new entrants. The share of allowances for power generators would remain constant for the first five years of the program, but decline to 0% by 2035.

Load-serving entities, on the other hand, would receive a constant share of the allocation, with allocations to individual entities determined on the basis of electricity delivered. However, load-serving entities could only use their allowances to reduce energy-cost impacts on low- and middle-income customers, and to promote demand-side efficiency measures.

**Auction.** The percentage of allowances to be auctioned would begin at 24% in 2012, and rise to 52% by 2035, through the gradual elimination of early action allowance allocations and the allowance allocations to electric power generators. The allowance auction would be conducted by a nonprofit corporation, the Climate Change Credit Corporation. The Climate Change Credit Corporation would utilize the allowance auction proceeds for various public-private partnerships to promote technology development, including geologic CO<sub>2</sub> sequestration. The Corporation would also use auction proceeds to mitigate the environmental impacts of climate change and to assist disadvantaged or distressed domestic and international populations with the impacts of global climate change.

### **Offset and International Credit Provisions**

The Lieberman-Warner proposal would allow covered entities to meet up to 15% of their annual allowance submission requirement with credits from emissions offset projects, subject to “detailed, rigorous requirements.” In addition, another 15% of allowances could come from EPA-certified foreign GHG markets.

### **Cost Containment Mechanisms: Allowance Borrowing and a Carbon Market Efficiency Board**

To protect covered entities from higher than expected costs, the proposal would permit a covered entity to borrow up to 15% of its annual allowance requirement from its future allocation, at a determined interest rate, for periods of up to five years.

In addition, the proposal would create an oversight board, modeled after the Federal Reserve, to oversee the market for allowances. The Board’s responsibility would be to ensure that the allowance market functions efficiently. The Board would be given authority to set the default interest rate and other terms for allowance borrowing. Furthermore, in “extreme economic circumstances,” the Board could expand the quantity of available allowances, provided that the expansion is accompanied by a further reduction in the GHG cap in future years.

### **Measures to Address Impacts on Trade and Competitiveness**

The proposal would direct the President to encourage efforts of other nations to lower their GHG emissions. To mitigate trade impacts from countries that are not taking comparable action to the United States to lower GHGs, the proposal would authorize the President to require importers of “GHG-intensive manufactured products from that nation to submit emissions allowances of a value equivalent to that of the allowances that the U.S. system effectively requires of domestic manufacturers.”

### **Carbon Sequestration Development**

The Lieberman-Warner proposal would direct the EPA to establish an advisory committee to develop regulations for permitting of commercial-scale CO<sub>2</sub> injection and storage sites. In addition, a private task force would be formed to propose a legal framework for the federal assumption of liability with respect to closed geologic storage sites.

### **Implications**

Senators Lieberman and Warner have said they aim to achieve bipartisan and private sector support for their legislation. To that end, they are actively seeking input and have expressed openness to modifications in the design of their program.

Senator Barbara Boxer (D-CA), Chairman of the Senate Environment & Public Works Committee, has said that she intends the Lieberman-Warner proposal to be the “starting point” for consideration of climate change legislation in her committee. Accordingly, the Lieberman-Warner bill – along with the Bingaman-Specter bill – now appear likely to be the key cap-and-trade legislative vehicles in play in the Senate. The bills could also influence deliberations in the House of Representatives, where Reps. John Dingell (D-MI) and Rick Boucher (D-VA) are taking the lead in developing a bill for consideration in the fall.

### **For Additional Information**

Van Ness Feldman has an experienced climate change and emissions trading team, which has been assisting a wide range of clients on policy, transactional, strategic and advocacy issues. The firm has been actively involved for its clients in the development of cap-and-trade programs, including the Lieberman-Warner proposal and the Bingaman-Specter bill. We are in a strong position to provide expert analysis and advice on the bills, the surrounding policy and political debate, and the implications for your organization. If you would like more information, please contact Kyle Danish, Doug Smith, Robert Nordhaus, Stephen Fotis, or any member of the firm's Climate Change and Emissions Trading Practice group at (202) 298-1800.

# # #

Founded in 1977, **Van Ness Feldman** helps clients in a variety of industries achieve their business goals by designing and complying with the nation's energy and environmental laws. Many of the firm's more than 80 attorneys and public policy professionals served as chief legal counsel to key congressional committees and Members of Congress; high-level officials in the Department of Energy, the Federal Energy Regulatory Commission, the Environmental Protection Agency, The White House, and the Department of the Interior; or as high-ranking officers in major trade associations.