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## Climate Change Policy Update Week of January 28 - February 1, 2008

**Commentary:** *Developing countries, carbon capture and sequestration (CCS) technology, and voluntary offsets dominated the news this week . . . John Dingell, Chairman of the House Energy and Commerce Committee, predicted that a climate change bill will go to the President for signature by the end of this year. A subcommittee of the Energy and Commerce Committee issued a “white paper” outlining ways that U.S. climate change legislation could address trade and competition issues associated with developing countries that do not have emissions caps . . . There is growing agreement in policy-making circles on the need for substantial funding for deployment of CCS technology. However, the timing, source, and form of such funding remain under debate. This week, the Bush Administration Department of Energy moved to withdraw funding for the FutureGen project – a signature plank of the Administration’s climate change policies – and distribute a smaller amount of money to support multiple commercial IGCC projects. At the same time, a multi-stakeholder working group convened by EPA called for the development of a \$1 billion fund to support CCS projects, with the money to be generated through a wires charge on fossil-fired electricity . . . The retail voluntary market for GHG offsets in the U.S. continues to draw scrutiny. A number of state attorneys general asked for action from the Federal Trade Commission to protect consumers from bogus offset and “carbon neutral” claims, and a front page article in the Washington Post called into question the sourcing of offsets obtained by the House of Representatives.*

### Congress

- **Key House Democrats Issue White Paper on Climate Change Legislation and Competitiveness Issues.** House Energy and Commerce Chairman John Dingell (D-MI) and Rick Boucher (D-VA), Chairman of the Subcommittee on Energy and Air Quality, issued a 16-page “white paper” outlining significant competitiveness issues that must be addressed by a U.S. climate change bill. The Congressmen said that developing countries are of particular concern because they are projected to contribute more than half of global greenhouse gas (GHG) emissions by 2050 and have not yet agreed to impose mandatory emissions controls. The white paper suggested three potential legislative solutions: (1) requiring emerging economies to establish emissions policies or pay a tariff on goods imported into the U.S.; (2) requiring all emission-intensive goods sold in U.S. markets to meet an emissions standard; or (3) imposing conditions on other countries’ access to a U.S. carbon market. Chairmen Dingell and Boucher have indicated that they will issue several more “white papers” in the coming weeks, which will be followed by the introduction of climate change legislation and at least one legislative hearing. In a memorandum accompanying the white paper, Chairman Dingell said that he expects that Congress will send a climate change bill to President Bush for his signature before Congress adjourns at the end of the year. House Majority Leader Steny Hoyer (D-MD) has said that the full House could take up a climate bill as early as this summer. [Click to read the entire \*Climate Change Legislation Design White Paper PDF\*.](#)
- **House Oversight Committee Chair Asks Pentagon to Comply With CTL Ban.** House Oversight and Investigations Chairman Henry Waxman and Ranking Member Tom Davis (R-VA) requested that Defense Secretary Robert Gates explain to the Committee how his department will comply with Section 526 of the newly-passed Energy Independence and Security Act of 2007. The section bars federal

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agencies from procuring alternative fuels, including coal-to-liquids (CTL), that are more carbon-intensive than traditional fuels. The Air Force has a synthetic fuels testing program and has sought to use fuel made from domestic coal reserves.

- **Senate Bill Would Delay Controversial Alaskan Oil Lease.** Senator John Kerry (D-MA) introduced legislation that would delay an oil lease/sale in the Chukchi Sea off the coast of Alaska until the Department of the Interior determines whether polar bears should be listed under the Endangered Species Act (ESA). The Fish and Wildlife Service are in the process of responding to a petition by environmental groups that the ESA should extend to polar bears due to habitat loss caused by global warming. Rep. Ed Markey (D-MA) introduced similar legislation in the House in early January.
- **Senate Energy Committee Investigates Policy Options for CCS.** The Senate Energy and Natural Resources Committee held an oversight hearing this week to discuss different policy options regarding carbon capture and sequestration (CCS). The hearing centered around two bills. Senator Norm Coleman's (R-MN) bill (S. 2144) focuses on expanding the existing CO<sub>2</sub> pipeline infrastructure, while Senator John Kerry's legislation (S.2323) focuses more broadly on subsidizing CCS research, development and demonstration projects.

## Administration

- **DOE Drops Support for FutureGen Project.** The Department of Energy (DOE) this week announced that it will distribute resources away from the FutureGen project to CCS technology projects at multiple commercial-scaled power plants. The five year old project, which was a public/private partnership between 13 utilities and coal companies and the federal government, included the construction of a coal-fired power plant that would sequester captured carbon in underground storage sites. DOE Secretary Samuel Bodman said that the new approach will provide more capacity for CCS than would be provided by the planned FutureGen facility. The agency cited costs of the FutureGen project as the driving factor of the decision. Costs for the planned 275-megawatt plant had risen to \$1.8 billion. According to reports, the Administration's Fiscal Year 2009 budget request will include \$648 million for clean coal technology, with \$156 million dedicated to the revamped FutureGen program.
- **President Bush Commits \$2 billion to Fund Clean Energy Projects in Developing Countries.** In his State of the Union Speech this week, President Bush announced that the U.S. will commit \$2 billion in funding for a new international clean energy fund that will deploy clean energy technologies to developing countries. The funds will be deployed over a period of three years. President Bush also stated his support for increased funding for the development of technologies such as CCS.
- **EPA Panel Recommends \$1 Billion-Per-Year Fund for Early Deployment of CCS at Coal-Fired Power Plants.** EPA's Clean Air Act Advisory Committee (Committee) adopted a report by the Committee's Advanced Coal Technology Work Group (Work Group) calling for a \$1 billion-per-year fund for CCS technology at coal-fired power plants. The fund would operate over a period of five to ten years and could finance the installation of CCS technology at five to ten coal-fired power plants. Money for the fund would be paid by ratepayers through a fee imposed on fossil fuel-generated electricity. One member of the Work Group – which is composed of representatives of industry, government agencies, and environmental groups – said that the proposal has the support of the power

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and coal industries. The fund's proponents are seeking to pass Congressional legislation creating the fund during 2008.

- **Republican Candidates Support California Emission Waiver.** During a debate in California this week, the remaining four Republican contenders for the White House endorsed the state's effort to gain a waiver from the Environmental Protection Agency to regulate vehicle CO<sub>2</sub> emissions. Senator John McCain (R-AZ), former Massachusetts Governor Mitt Romney (R), former Arkansas Governor Mike Huckabee (R), and Rep. Ron Paul (R-TX) each said that they favor the state's position in the matter. California is a highly sought-after state in the presidential primaries, as it carries a large number of delegates, and holds its primary on February 5.
- **House Republicans Call for GAO Investigation of Offsets Purchase by House of Representatives.** Reps. Joe Barton (R-TX) and John Shimkus (R-IL) asked the Government Accountability Office (GAO) to investigate an \$89,000 purchase of GHG emissions offsets by the House Chief Administrative Officer last year. The House purchased the offsets for emissions associated with lighting and heating as part of Speaker Nancy Pelosi's (D-CA) \$4 million "Greening the Capitol" initiative. A portion of the money went to farmers in North Dakota to support no-till farming practices, but critics reported that some of the recipients already were using these practices. Proceeds from the purchase also were directed toward a power plant test project in Iowa, and critics said the project had ended more than a year before the House offset purchase. The House of Representatives used the services of the Chicago Climate Exchange to assure the quality of the offsets. The Climate Exchange's CEO, Richard Sandor, vigorously defended the offset purchases.

## States and Cities

- **Nation's Governors Planning to Merge Regional Programs into a Nationwide Cap-and-Trade Program.** Minnesota Governor Tim Pawlenty (R), chairman of the executive committee of the National Governors Association (NGA), announced at the Electric Utilities Environmental Conference a plan to combine several existing regional GHG cap-and-trade programs into a single, nationwide system. The affected regional programs would include the Regional Greenhouse Gas Initiative, the Western Climate Initiative, and the Midwestern Greenhouse Gas Reduction Accord. The combined programs cover 23 states, with an additional 12 states and the District of Columbia signed on as observers. A major obstacle for the plan is reconciling the different schedules and regulatory approaches used by each of the regional programs.
- **States Urge Increased FTC Oversight of Voluntary Retail GHG Offset Markets.** Ten states joined the call for expanded Federal Trade Commission (FTC) oversight of the growing voluntary retail GHG emissions offset and renewable energy credit (REC) markets. The states' letter to the FTC stated that the lack of common standards and definitions for offsets poses a pressing consumer protection issue. The states stressed that the need for consumer protection is particularly acute for representations made by companies about their carbon footprint or the carbon footprint related to their products or services. The public comment period for the FTC environmental marketing guidelines on offsets closed on January 25.
- **Midwestern Program May Include a Price Ceiling.** The design of the Midwestern Greenhouse Gas Accord (Accord) may feature a price cap on the price of carbon, according to an announcement by Minnesota Governor Tim Pawlenty (R). He stated that the price cap, also called a safety valve, would likely be a temporary solution to potential price volatility and would be removed once the price of allowances stabilized. The final design of the regional program, including specific emission targets, is

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expected by July of this year. Under the Accord, the region's governors pledged to reduce regional GHG emissions by 60 to 80 percent from 1990 levels by 2050.

- **States Petition EPA to Regulate CO<sub>2</sub> Emissions From Nonroad Engines.** The Attorneys General from California, Connecticut, New Jersey, Oregon, and Pennsylvania filed a petition with EPA requesting that the agency issue a rule regulating CO<sub>2</sub> emissions from millions of nonroad engines. Filed along with a similar petition by several environmental groups, the petition seeks a finding from EPA on whether GHG emissions from nonroad engines endanger public health and welfare, a threshold requirement for regulation of a pollutant under the Clean Air Act. EPA has 180 days to respond to the petition. The U.S. nonroad sector, – which includes farm and construction machinery, outdoor power equipment, and lawn and garden equipment – accounts for over 220 million tons of CO<sub>2</sub> equivalent GHG emissions, an increase of almost 50 percent since 1990.

## Industry

- **Suppliers to be Included in Corporate GHG Emission Questionnaire.** The Carbon Disclosure Project, an organization that surveys over 1,000 participating companies' on their GHG emissions and corporate climate policies, announced that several large companies will also survey their suppliers. A new subgroup, the Supply Chain Leadership Collaboration, consists of 11 large companies, including PepsiCo, Dell, Proctor & Gamble, and Unilever. These companies will inquire about suppliers' energy usage and GHG emissions in an effort to more fully understand overall corporate life-cycle emissions. The subgroup was started after Wal-Mart announced that it was developing its own questionnaire for suppliers similar to that used by the Carbon Disclosure Project.
- **Draft Protocol for Verifying GHG Emissions Data Released.** The Climate Registry, an emissions reporting organization made up of over 54 state and local governments, Canadian provinces, and corporations, released a draft General Verification Protocol that outlines the process for verifying GHG emissions. This release follows The Climate Registry's release earlier this month of draft GHG reporting guidelines. After the protocols are finalized, The Climate Registry will begin accrediting third-party verifiers to track members' emissions. The Climate Registry will be holding several public workshops to receive input on its reporting protocols.
- **Duke Energy Wins Permit for New Coal-Fired Power Plant, but Must Offset Emissions.** The North Carolina Division of Air Quality announced that it had approved plans by Duke Energy Carolinas to construct a new 800-megawatt coal-fired boiler, but will require the company to offset the CO<sub>2</sub> emissions from the new facility. Under the terms of the new permit, Duke must install best available control technology (BACT) on the new boiler, close four older units, and use a scrubber on a fifth boiler. Additional emission offsets will be achieved by the shut down of units at other facilities in the state. If the closures do not completely offset the emissions from the new boiler, the company must obtain additional offsets.
- **States Oppose Permit for New Coal Facility in South Carolina.** Attorneys general from seven states and the District of Columbia sent a letter to the South Carolina Department of Health and Environmental Control opposing a permit for Santee Cooper's planned 1,320 megawatt coal-fired power plant in Florence County, unless the facility is required to use BACT to control CO<sub>2</sub> emissions or to capture and sequester CO<sub>2</sub>. California, Connecticut, Delaware, Massachusetts, New York, Rhode Island, and Vermont joined several environmental groups in opposing the permit for the proposed

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facility, noting that its CO<sub>2</sub> emissions would negate the reductions required by the Northeast Regional Greenhouse Gas Initiative.

- **Commercial-Scale Cellulosic Ethanol Plant to be Built in Southeast U.S.** Verenium Corp. announced that it will begin construction in 2009 of a commercial-scale cellulosic ethanol plant, expected to produce 30 million gallons a year of fuel within a price range of \$2-3 per gallon. The company owns the first demonstration-scale facility in the U.S. in Louisiana, which is expected to begin operation this spring.

## Studies and Reports

- **U.N. Reports that Investments of \$15-20 Trillion May be Necessary to Address Climate Change.** A new report authored by U.N. Secretary General Ban Ki-moon estimates that worldwide investments totaling \$15-20 trillion may be necessary over the next 25 years “to place the world on a markedly different and sustainable energy trajectory.” The report was prepared in advance of a General Assembly debate on climate change scheduled for Feb. 11-12. The report urges the U.N. “to be more than merely the sum of its parts” by “providing a neutral negotiating forum, establishing trust and galvanizing high-level political support.”
- **World Energy Council Reports that Power Generation Efficiency Improvements Could Avoid 1.3 Billion Gt of CO<sub>2</sub> per Year.** A comparison of power generation energy efficiency across the globe released by the World Energy Council shows that efficiency improvements could result in large CO<sub>2</sub> emissions reductions. As an example, the report notes that if the entire world were to achieve the energy efficiency for thermal power generation of the EU (40% average), 1.3 gigatonnes of CO<sub>2</sub> would have been avoided in 2006. The worldwide average power plant efficiency is 34%. The study also found broad differences in CO<sub>2</sub> emissions per capita, with one fifth of the world’s population responsible for producing 60% of global CO<sub>2</sub> emissions. The study revealed that “CO<sub>2</sub> emissions from energy use are increasing slower than economic activity in most global regions.” The authors recommend a range of policies to improve energy efficiency including incentive pricing, a stable institutional framework, public/private partnerships, and innovation. [View the full-text version of The World Energy Council report.](#)

## International

- **Major Economies Discuss Technology Funding and Sectoral Limits For Developing Nations.** The Major Economies Meeting held this week in Hawaii focused on establishing sectoral limits on GHG emissions and providing funding for emerging economies, such as China and India, to purchase clean energy technologies. The current meeting focused on reviewing options for a future agreement, rather than on achieving any major commitments from participating countries. Although a consensus on long-term emission reductions was not reached, White House Council on Environmental Quality Chair Jim Connaughton said that the U.S. would consider a 50 percent reduction below 1990 emission levels if certain caveats were included. Specifically, Mr. Connaughton said that any such agreement should acknowledge that technological breakthroughs will be required to meet this goal, which he continued to describe as “aspirational.” The meeting of the seventeen largest national economies continues the U.S.-led series of negotiations on climate change that has become a parallel track to negotiations under the United Nations Framework Convention on Climate Change. The next meeting of the major economies process will likely take place at the July G8 meeting.

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- **U.S. Ambassador Warns of Prospect for Carbon Tax on Imports.** The U.S. Ambassador to the European Union, C. Boyden Gray, said that the U.S. and E.U. could be forced to impose carbon taxes on products from China, India, and other developing countries unless those countries agree to sectoral limits on GHG emissions. The carbon tax would be aimed at protecting the developed nations' competitive position in the global economy. Ambassador Gray said that cap-and-trade programs are preferable to carbon taxes, but said the EU program is incomplete because it only covers 50% of the region's GHG emissions. The Ambassador's statement comes one week after the U.S. warned the E.U. not to impose a similar tax on countries that refrain from participating in international agreements to cap GHG emissions.
- **Japanese Prime Minister Commits to Halve Country's Emissions by 2050.** Japanese Prime Minister Yasuo Fukuda committed to cutting Japanese GHG emissions in half from current levels by 2050. The pledge builds on the Cool Earth 50 campaign, an initiative created last year by former Japanese Prime Minister Shinzo Abe. The Prime Minister's commitment to reduce Japan's GHG emissions follows his announcement last week at the World Economic that Japan would provide developing nations with \$30 billion to acquire Japanese clean energy technologies and \$10 billion in grants and loans to incentivize their support of a post-Kyoto Protocol GHG emissions reduction agreement.

*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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