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## Climate Change Policy Update Week of February 25-29, 2008

**Commentary:** *This week saw continued activity at the state and regional level in the U.S., including consideration by Florida as to whether to link its planned state climate program to the state and regional programs in other parts of the country. In addition, California electric power company PG&E made a milestone purchase of in-state forestry offsets in anticipation of the state's regulatory program. At the same time, the House of Representatives Energy and Commerce Committee issued a new "white paper" on climate policy, which explores the question of what is a "rational" and "appropriate" distribution of local, state, federal, and tribal efforts once a federal, economy-wide program comes into place. The paper looks beyond a scenario of simple, across-the-board preemption of state programs; indeed, it concludes that there is an appropriate continuing role for state programs. However, the paper also indicates that the debate on preemption will focus on whether certain kinds of state programs increase the cost or complexity of the national effort, or impose burdens on other states, without contributing additional environmental benefits.*

### Congress

- **House Passes \$18 Billion Renewable Energy Tax Package.** The House of Representatives passed renewable energy tax incentive legislation that repeals tax benefits for oil and gas companies in order to pay for the extension of tax credits to support investment in renewable energy technologies. The bill extends the tax credit for wind, solar and other renewable energy generation, and creates incentives for plug-in hybrid vehicles, biofuels, and consumer energy efficiency. The legislation repeals a manufacturing tax deduction for five major oil and gas companies, and changes the way energy companies' foreign earnings are taxed. The bill is similar to language that the Senate stripped from the energy bill enacted in December 2007. There is almost no chance this legislation in its current form will be enacted into law by Congress and signed by the President.
- **Representatives Dingell and Boucher Release Third Climate Change White Paper.** The latest white paper released by Representatives John Dingell (D-MI) and Rick Boucher (D-VA) focuses on identifying the responsibilities and roles for each level of government in responding to climate change. The paper raises questions about the balance among emissions reduction programs at the federal, state and local level, and what distribution of responsibilities is necessary to achieve substantial economy-wide reductions at reasonable cost. The series of white papers is intended to generate feedback, which the two Representatives will take into account when drafting cap-and-trade legislation to be introduced and acted upon in the coming months.

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)

### Administration

- **EPA Releases Notice of Decision on California's Clean Air Act Waiver.** The Environmental Protection Agency (EPA) released a Notice of Decision denying California's request for a waiver under the Clean Air Act in order to implement its vehicle GHG emission regulations. In the notice, EPA Administrator Stephen Johnson explained his rationale for finding that compelling and extraordinary conditions did not exist that would justify California's vehicle CO<sub>2</sub> standards. He found that Congress intended the Clean Air Act (CAA) waiver process to allow

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California to set vehicle emission standards to address local or regional air pollution problems caused by the unique geography and other circumstances in the state. Given that climate change is a global issue by nature, Administrator Johnson concluded that the CAA does not authorize the state to issue emission standards to address such problems. Further, Administrator Johnson found that the effects of climate change in California are not “compelling and extraordinary,” particularly when compared to the impacts that will be felt by other states. EPA sent a letter to California Gov. Arnold Schwarzenegger (R) on December 19, 2007, setting forth its intent to deny the waiver in favor of a national solution for vehicle greenhouse gas emissions. California’s Congressional delegation has been extremely critical of the EPA Administrator’s decision and questioned EPA Administrator Johnson about the waiver denial at several recent Senate committee hearings. Earlier this week, Senate Environment and Public Works Committee Chair Barbara Boxer (D-CA) vowed to subpoena documents from EPA relating to the waiver decision. Some news publications have said that there was dissension within the agency about the Administrator’s decision to deny the waiver.

## States and Cities

- **Washington State Likely To Pass State-Wide GHG Reporting Bill.** A bill headed for passage in the Washington state legislature this year would require all major economic sectors in the state to report their GHG emissions. The bill would charge the Washington Department of Ecology with creating a system for monitoring and reporting the GHG emissions from all sources emitting greater than 10,000 metric tons of CO<sub>2</sub> equivalent GHGs. Other provisions in the bill would require the Department of Ecology to create a plan for reducing GHG emissions through a market-based mechanism and establish a green jobs training program. The bill has been passed by the state House and is before the Senate for consideration. The state legislature is also considering legislation that would require GHG emissions labels for new vehicles sold in the state and that would task the Department of Ecology with creating a climate change adaptation plan.
- **Florida Cap-and-Trade Designers Focus on Linkage With Other Programs.** Florida’s Action Team on Energy and Climate Change (Action Team), a group created by Governor Charlie Crist (R) to issue recommendations on the design of a state-wide cap-and-trade program, is exploring methods of linking the state’s program to other state and regional cap-and-trade programs around the country. Stephen Adams, Action Team staff director, said that linkage can help reduce the cost of compliance for regulated industries and noted that Action Team members have already met with officials from the northeastern Regional Greenhouse Gas Initiative (RGGI) to discuss linkage with that program. The Action Team’s final recommendations on the design of the cap-and-trade program will be issued on October 1, 2008.
- **Ohio Prepares for Carbon Regulation, but Will Refrain From Binding Targets.** The state government, currently an observer to the Midwestern Greenhouse Gas Reduction Accord, says it has not adopted binding emissions targets and is unlikely to do so. According to Michael Jung, of the Ohio Air Quality Development Authority, Ohio will not adopt binding emissions targets but instead will focus on preparing for regulation under federal cap-and-trade legislation. Toward that end, a bill has passed the state Senate and is under consideration in the state House that would require power producers to obtain at least 25 percent of their energy production from low-carbon energy sources such as renewables, clean coal, or nuclear power. The bill would also require all new and existing power plants to measure and report their GHG emissions.

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- **Nation's Governors Seek Increased Federal Funding for Renewables, Clean Coal.** At its annual meeting in Washington, DC, the U.S. National Governors' Association (NGA) called on federal legislators to increase support for "clean energy." As part of the NGA's year-long theme focusing on "securing a clean energy future," the NGA issued a report reviewing state programs aimed at increasing the use of alternative energy sources to reduce GHG emissions and seeking federal support for these programs. The report noted that seventeen states have already adopted binding emissions targets.

## Industry

- **Pacific Gas & Electric Purchases First Offsets in California Voluntary Market.** The utility Pacific Gas & Electric (PG&E) announced the purchase of over \$2 million of emissions credits from two forestry projects in northern California. The deal for 214,000 tons of emission reduction credits was done under PG&E's ClimateSmart program, which allows utility customers to balance consumption with offset credits. The credits were verified by the California Climate Action Registry, which recently established verification protocols for forestry projects.
- **California Companies Form Renewable Energy Partnership.** Fourteen of California's largest energy purchasers announced the formation of the Green Power Group – California Affiliates, to share best practices for purchasing and developing new sources of renewable energy. The participants include Advanced Micro Devices Inc., Apple Inc., Google Inc., Intel Corp., and Wal-Mart Stores Inc. The partnership was convened by the World Resources Institute.

## Studies and Reports

- **Carbon Markets Forecast to Grow in 2008.** Two reports project large growth for regulatory and voluntary carbon markets in 2008. The consultancy Point Carbon released a report, *Outlook for 2008*, which projects a global regulatory carbon market worth \$92 billion in 2008, with 4.2 billion tons of CO<sub>2</sub> equivalent traded. This represents a 56% increase in volume from 2007, with growth attributed in part to the tightness of the cap in the second phase of the European Union Emissions Trading Scheme (EU ETS). Separately, consultant group ICF International released its *2008 Voluntary Carbon Offsets Market Outlook*, which projects continued growth in 2008, with the voluntary carbon market expected to grow from 20 million tons of CO<sub>2</sub> in 2006 to 220 million tons in 2012.

## International

- **International Traders Seek Fewer Trading Restrictions in U.S. Climate Bill.** At a carbon trading conference this week, carbon market experts called on U.S. legislators to refrain from placing restrictions on trading in a U.S. cap-and-trade program. Climate change bills introduced in the U.S. Congress have included such measures as a safety-valve that allows regulated firms to purchase additional allowances if prices exceed a set amount, limits on the amount of international emission credits that can be used to meet compliance obligations under a domestic cap, and prohibitions on the use of European offset credits. Panelists at the conference stated that these trading restrictions would increase the cost of compliance for regulated industries and reduce the opportunities for creating emission reductions.
- **Canada Allocates C\$815 M to Emission Reduction Initiatives.** The budget issued by Canada's Conservative government provides C\$815 million (US\$830 million) for an array of programs aimed at

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reducing the nation's GHG emissions. The budget provides C\$250 million (US\$255 million) for the development of carbon capture and sequestration technology and C\$66 million (US\$67 million) for a national GHG emissions trading program (see next item for further details).

- **Offsets Portion of Canadian Carbon Market to Begin Trading in January 2009.** The Canadian government announced that the offset system of its domestic emission trading program will begin operations early next year. The Canadian government has not announced when other aspects of the trading scheme will come online. Legislation passed last year aims to reduce Canadian GHG emissions to 1990 levels by 2020 by requiring regulated industries to reduce their GHG emissions intensity 18 percent by 2010 and by 2 percent annually thereafter through 2020. Industries can comply with these targets by reducing their own emissions, purchasing credits from domestic GHG emission reduction projects, or purchasing a limited amount of Certified Emission Reductions (CER) created under the Kyoto Protocol's Clean Development Mechanism.
- **Australia on Track to Meet Kyoto Compliance Target.** Analysis by Australia's Department of Climate Change (Department) shows that the nation will likely meet its interim emissions target under the Kyoto Protocol (Protocol). In ratifying the Protocol, Australia committed to reducing its GHG emissions to 8 percent above 1990 levels for the period 2008-2012. The Department's report noted that while the Australian energy sector will have increased GHG emissions by 50 percent over 1990 levels during that period, those emissions would be more than offset by reductions from reduced deforestation and increased use of renewable energy. The report did not include the impacts of Australia's planned emissions trading scheme, which is supposed to reduce GHG emissions further.
- **UNEP Adopts Climate Change as Major Focus Area for Next Two Years.** At the United Nations Environment Program's (UNEP) 10<sup>th</sup> Special Session of the Governing Council and Global Ministerial Forum, representatives from over 140 countries adopted climate change as one of six themes that will guide UNEP's agenda for the next two years. Climate change discussions at the event centered on emissions trading under the Kyoto Protocol and how the Protocol's cap-and-trade program could be designed to ensure a sufficiently high and stable carbon price to promote capital investment in emission reductions.

*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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