

March 28, 2008

Climate Change Policy Update Week of March 24-28, 2008

Commentary: *With Congress recessed and the Easter holiday, the pace of activity on climate issues temporarily slowed this week. After several weeks of intensifying Congressional pressure, EPA notified the Congress that the agency's response to the Supreme Court's finding in Massachusetts v. EPA that the Clean Air Act provides EPA with authority to regulate the emission of greenhouse gases will be to issue an Advanced Notice of Proposed Rulemaking later this spring. The ANPR will request comments on the science and implications of regulating GHG emissions from motor vehicles. Although the announcement may be seen by some as a step in the right direction for EPA, it also indicates that the rulemaking process is moving slowly – and perhaps more slowly than many in Congress would prefer. Once Congress returns from recess, the focus is likely to turn to negotiations in the Senate over the Lieberman-Warner cap-and-trade legislation in hopes of finding 60 votes in support of the bill.*

Administration

- **EPA to Request Public Comments on Regulation of GHGs.** In letters to Senators Barbara Boxer (D-CA) and James Inhofe (R-OK) and Representatives John Dingell (D-MI) and Joe Barton (R-TX) this week, EPA Administrator Stephen Johnson announced plans to issue an Advance Notice of Proposed Rulemaking (ANPR) that will ask for comments on regulating greenhouse gas emissions from stationary and mobile sources under the Clean Air Act (CAA). Any proposed rule for regulating GHGs would not be released for several months after the closing of the comment period for the ANPR, in effect ensuring that no official Administration action to act on the U.S. Supreme Court's *Massachusetts v. EPA* decision will occur during this President's term of office. In that case last year, the Supreme Court held that EPA has the authority under the CAA to regulate GHG emissions from motor vehicles, and ordered the agency to regulate such emissions or explain why it is not necessary to do so. Recently, Congress has been pressuring EPA to comply with the Supreme Court ruling. Congressional attention to the issue increased in recent weeks after senior EPA officials testified before congressional committees that in December 2007, the agency sent an endangerment finding to the White House and a proposed vehicle GHG regulation to the Department of Transportation, but all work on the project has ceased since then.

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

States and Cities

- **CARB Releases Draft Low-Carbon Fuel Standard.** The California Air Resources Board (CARB) released a preliminary draft of a low-carbon fuel standard designed to reduce the carbon intensity of fossil fuels used in the state by 10 percent beginning in 2010. The draft standard would regulate different points of the economy depending on the different fuels covered. The draft included a credit provision that would allow companies to use credits earned under the low-carbon fuel program to meet their obligations under other state GHG reduction programs.
- **Amended GHG Reduction Bill Heads Back to Maryland House After Passage by Senate.** The Maryland Senate passed a bill to reduce state-wide GHG emissions this week, making

March 28, 2008

amendments to several key provisions of the House-passed version in the process. The Senate version retains the House's interim reduction mandate of 25 percent below 2006 levels by 2020, but uses a non-binding "target" of 90 percent reductions by 2050 as the long-term goal. Other Senate amendments included in the bill would grant the governor authority to delay implementation of reduction measures if the bill causes significant harm to the economy and to defer reduction deadlines in the case of extraordinary circumstances or catastrophic events. The bill now returns to the House for debate on the Senate amendments.

Industry

- **Consulting Firm Ranks Climate Change Risk as Largest Business Uncertainty for Insurers.** Global consultancy Ernst & Young identified climate change as the greatest strategic risk for the property and casualty insurance industry for 2008. The Global Director of Insurance Services stated that, "Strategic risks vary for individual companies, but for the insurance sector as a whole these are the threats the experts say will have the greatest and most far reaching consequences."

Studies and Reports

- **Study Finds Black Carbon to Have Greater Impact on Warming than Expected.** A study published in the journal *Nature Geoscience* concluded that black carbon, or soot, has a greater impact on climate change than estimated by the U.N. Intergovernmental Panel on Climate Change (IPCC). Instead of the 0.2 to 0.4 watt per square meter estimate by the IPCC, researchers from the Scripps Institute and the University of Iowa concluded that the warming potential could be as high as 0.9 watt per square meter. The study recommended programs to reduce the use of coal and wood for cooking in Asia, and the use of cleaner diesel vehicles in Europe and North America, as means of reducing emissions of soot.

International

- **Carbon Price Key to Post-Kyoto Agreement.** The head of the U.N. IPCC, Rajendra Pachauri, stated that international negotiators should seek to reach an agreement that would place a price on carbon. Pachauri noted that it is vital for negotiators to make progress toward that end at the 14th Conference of the Parties to the Kyoto Protocol, which takes place in Poznan, Poland in mid-December of this year. A carbon price could be achieved through an agreement that either creates a global carbon pricing system or that allows countries to establish individual domestic carbon-pricing systems. The two primary mechanisms for placing a price on carbon are an emissions trading scheme or a carbon tax.
- **Four More Nations Join Methane-to-Markets Partnership.** EPA announced that Mongolia, Pakistan, the Philippines, and Thailand have joined the Methane-to-Markets partnership to capture and use methane emission from landfills, oil and gas production, and agricultural projects. The public-private partnership now has 25 member nations, plus the European Commission, and intends to reduce methane emissions by 50 million metric tons of CO₂-equivalent by 2015.

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

March 28, 2008

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