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## Climate Change Policy Update Week of April 14-18, 2008

**Commentary:** *President Bush made an entry into the climate change policy debate this week with a Rose Garden speech outlining a set of “principles” for the design of domestic and international programs, and a national goal to stop the growth of U.S. GHG emissions by 2025. After rumors swirled about the possibility that he would propose a cap-and-trade program focused on the U.S. electric power sector, the President’s less specific speech became something of a non-event, appearing to have little influence over discussions in Washington or in Paris (for the meeting of the Major Economies process) . . . Governors of 18 states signed a declaration seeking a federal-state partnership to address climate change. With a federal program now looking inevitable, though not necessarily imminent, the question of how a federal economy-wide cap-and-trade program should interact with the multiple state and regional programs now under development looms larger and larger . . . The Wall Street Journal ran two front-page articles highlighting problems experienced by the Kyoto Protocol’s Clean Development Mechanism. These articles come at a time when policy-makers at the federal and state levels are considering the extent to which regulated entities should be allowed utilize international offsets for compliance purposes.*

### Administration

- **President Bush Announces National Goal to Stop Growth in U.S. Greenhouse Gas Emissions by 2025.** President Bush gave a speech from the Rose Garden on Wednesday in which he announced a national goal to stop the growth of U.S. greenhouse gas (GHG) emissions by 2025. The President also urged other major emitters to develop their own national goals and plans to reduce GHGs. He placed heavy emphasis on the development and demonstration of new technologies to meet the U.S. goal. Notably, President Bush said that existing statutes, including the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), and the Clean Air Act (CAA), are not the appropriate framework within which to regulate GHG emissions. States and environmental groups have pursued each of these statutes as potential avenues for forcing the federal government to regulate GHG emissions in the absence of federal legislation, and the Supreme Court held in *Massachusetts v. EPA* that EPA has the authority to regulate GHGs under the CAA if the Agency determines GHG emissions endanger public health or welfare. The President further described a “right way” and a “wrong way” to approach GHG reductions. He asserted that the “right way” includes not placing unreasonable cost burdens on the American economy, protecting U.S. national security, and encouraging investment in new clean energy technology through incentives that make lower-emitting power sources more attractive than higher-emitting power sources. The statement came before this week’s session of the Major Economies Meeting in Paris (see below discussion under **International**), and in anticipation of the Senate’s June debate about the Lieberman-Warner bill.

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)

### Congress

- **House Subcommittee Holds Hearing on Cancellation of FutureGen Project.** The House Science and Technology Committee’s Energy and Environment Subcommittee held a hearing on

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the cancellation of the FutureGen project by the Department of Energy (DOE). As originally conceived, the FutureGen project was a public-private partnership to construct a zero-emissions coal-fired power plant using carbon capture and sequestration. Earlier this year, the DOE announced that, in light of rising project costs, it would cancel the project and redistribute the funding to several smaller-scale projects. The cancellation came after the partnership already had selected a site in Illinois for the project. Subcommittee members questioned a DOE official on the motives for the project's cancellation. Some asserted that the cancellation was due to the selection of the Illinois site rather than cost overruns. Rep. Shimkus (R-IL) mentioned that he may seek legislation to reverse DOE's decision to cancel the project, but that it would be "challenging."

- **Ranking Minority Members of the House Energy and Commerce Committee Request Investigation of Offsets.** Rep. Joe Barton (R-TX), the Ranking Minority Member of the House Energy and Commerce Committee, and Rep. John Shimkus (R-IL), the Ranking Minority Member on the Subcommittee for Oversight and Investigation, sent a letter to Committee Chairman John Dingell (D-MI) and Subcommittee for Oversight and Investigation Chairman Bart Stupak (D-MI) requesting that the Subcommittee open an investigation and hold hearings on the offset industry and offset programs. They asked that the investigation focus on "issues raised concerning the project developers, the auditors, and the ability to regulate these marketing schemes, especially in connection with international agreements." The Barton/Shimkus letter cited this week's articles in the *Wall Street Journal* on recent problems with the Kyoto Protocol's Clean Development Mechanism and the difficulties encountered by some leading companies in the offset industry (see discussion in **Industry** section below). Their letter states that a "key concern" is that "carbon 'offsets' that would have happened anyway are being sold as additional reductions, undercutting the whole point of the program. If this is the case, the only additional greening taking place may be in the bank accounts of the people selling these offsets."

## States and Cities

- **California Legislation Would Require Corporate Climate Disclosure, Independent Verification of Voluntary Offsets.** A pair of bills before the California legislature would augment California's expanding GHG emissions regulatory structure. SB 1550, which the state Senate's Environmental Quality Committee has approved, would require public corporations operating in the state to disclose information related to their risks and opportunities from climate change and related regulation beginning December 1, 2008. Required disclosures would include the corporation's GHG emissions, the physical impacts of climate change on its operations, and the potential impact of climate change regulations. AB 1851, which the state Assembly's Natural Resources Committee approved on April 14, is aimed at reducing fraud in the voluntary GHG offset market. The bill would require offset marketers to have all voluntary offsets independently verified by third-parties and to disclose certain information in offset advertising materials. The California Air Resources Board would be charged with developing and enforcing the offset verification protocols, which would become effective January 1, 2011.
- **California Regional Regulator Nears Decision on CO<sub>2</sub> Emissions Fee.** The Bay Area Air Quality Management District (BAAQMD or District) held a hearing to discuss the details of a proposed CO<sub>2</sub> emissions fee for the District. Under the proposal, BAAQM would assess a fee of 4.4 cents per ton of CO<sub>2</sub> emissions on large emitters to recover the District's costs of developing

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and implementing CO<sub>2</sub> controls. The proposed fee would apply to approximately 850 facilities within the nine Northern California counties (including San Francisco) under BAAQMD jurisdiction. Approximately 90 percent of revenues from the fee would come from refineries, power plants, and cement plants. If approved at a May 21 hearing, the fee will go into effect July 1.

- **CCAR Launches Voluntary Offset Tracking Platform.** The California Climate Action Registry, a nonprofit organization formed by the State of California to serve as a GHG registry, launched an online platform to track voluntary GHG offsets. The new “Climate Action Reserve” is intended to allay fears about the legitimacy of the voluntary offset market by providing a means of tracking, listing, registering and retiring offset credits. The Reserve will contain detailed information on offset projects, including the quantity of credits generated, the project location, the owner of the credits, the name of the independent third-party verifier, and verification reports. All offsets listed on the Reserve must be verified by a third-party verifier and will be assigned a unique serial number for tracking purposes.
- **State Environmental Regulators Seek Federal Assistance with Climate Efforts.** The Environmental Council of the States (ECOS), a group composed of state environmental agency heads, passed a series of resolutions calling for federal assistance with their efforts to address climate change. The resolutions urged additional financial and policy support and guidance from the executive and legislative branches of the federal government. One resolution called for a national climate plan and asked Congress and the Executive Branch to permit states to implement programs that are more stringent than any future federal GHG emissions requirements. Another resolution asked the Environmental Protection Agency (EPA) to use GHG emissions reporting protocols and platforms developed by The Climate Registry as the basis for federal GHG reporting standards. The Climate Registry is a voluntary organization providing measurement and reporting protocols for voluntary and mandatory GHG emission reductions. Its membership includes 39 U.S. states, seven Canadian provinces, six Mexican states, three native tribes, and the District of Columbia
- **Florida Legislature Considers Cap-and-trade Legislation.** The Florida Senate took up energy legislation containing provisions that would establish a cap-and-trade program for the state’s electric utility industry. A bill currently before the state House would also provide for a state cap-and-trade program. Both bills would charge the state Department of Environmental Protection (DEP) with implementing the program and DEP staff has already begun reviewing the Department’s options for implementing a cap-and-trade program. DEP officials have stated that they hope to make the state cap-and-trade program complementary with any future federal program.
- **Governors Call for Greater Federal-State Climate Cooperation.** Eighteen U.S. governors signed a declaration calling for a federal-state “partnership” to reduce GHG emissions. Governors Arnold Schwarzenegger (R-CA), Rod Blagojevich (D-IL), Jon Corzine (D-NJ), Jodi Rell (R-CT), and Kathleen Sebelius (D-KS) presented the “Governor’s Declaration on Climate Change” at a conference at Yale University where they discussed their states’ own GHG reduction policies.

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- **Quebec Becomes Third Canadian Province to Join WCI.** Quebec announced that it will become the third Canadian province to join the Western Climate Initiative, a regional GHG emissions cap-and-trade program. In joining the WCI, Quebec joins British Columbia and Manitoba, as well as the states of Arizona, California, New Mexico, Oregon, Washington, Montana and Utah. Members of the WCI commit to reducing their GHG emission by fifteen percent below 2005 levels by 2015. Quebec has previously pledged to meet Canada's Kyoto Protocol obligation to reduce emissions 6 percent below 1990 levels by 2012 and, in that effort, has already imposed a province-wide carbon tax on fossil fuels.

## Industry

- **Coalition Aims to Reduce U.S. CO<sub>2</sub> Emissions through Change in Building Codes.** A group known as the Energy Efficient Codes Coalition is increasing efforts to encourage the adoption of more energy efficient building codes. The coalition supports a package of changes it calls the "30 percent solution" that would reduce energy use in new homes by 30 percent. The International Code Council will vote on the proposal in September of this year, and, if adopted, individual states could choose to use the new standards as a template for state action. The National Association of Home Builders announced that it does not support the changes because the payback time for the increased cost of the changes extends beyond 10 years.

## Studies and Reports

- **EPA Releases Final Inventory of U.S. GHGs.** EPA released its final inventory of U.S. GHG emissions for 1990-2006, and reported a decrease in emissions of 1.1 percent in 2006 from 2005. The decrease in emissions, attributed to a warmer winter and increased fuel prices, is smaller than reported earlier due to revised data. The final report is available at <http://www.epa.gov/climatechange/emissions/usinventoryreport.html>.

## International

- **Major Economies Process Reconvenes with Climate Summit in Paris.** The third Major Economies Meeting on Energy Security and Climate Change took place in Paris this week with representatives of the 17 largest emitting economies in attendance. The Paris talks focused on a variety of issues including using a sectoral approach to reducing GHG emissions, intermediate- and long-term national emissions targets, technological cooperation, finance, forestry, adaptation, measurement of emissions, and future steps for the process. Participants did not expect the Paris meeting to lead to any specific agreement, but rather merely to move the climate change debate forward. The U.S.-backed major economies process is complementary to negotiations occurring under the United Nations Framework Convention on Climate Change under the "Bali Action Plan." The goal of the Bali Action Plan is to reach agreement by the end of 2009 on a long-term global emissions reduction plan. The Paris meeting followed talks in Honolulu in January and New York in September.
- **Wall Street Journal Articles Highlight "Turmoil" with Clean Development Mechanism, Offset Providers.** In two front-page articles, the *Journal* reported on findings that the CDM has credited a significant number of projects that achieved emission reductions that would have occurred even without the incentive of credits, *i.e.*, projects that should have failed the CDM

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“additionality” test. Current and former CDM officials have concluded that the problem resulted from an approach in which the CDM’s main approval body, the Executive Board, was thinly staffed and relied extensively on accredited private companies to undertake project verifications. According to the articles, these accredited reviewers became too close to project developers, and relaxed their level of scrutiny. In response, the CDM is in the midst of a reform effort to centralize the review and approval process, and is rejecting project proposals at a higher rate. These reform efforts, however, have severely impaired the market valuation of leading developers and traders of CDM projects and Certified Emission Reductions (CER).

- **World Bank Pursuing Clean Technology, Adaptation Funds for Developing Nations.** Representatives from thirty nations met to discuss the design of two World Bank funds intended to help developing nations respond to climate change. Collectively called the Climate Investment Funds, the funds will each focus on a different aspect of climate change. The \$10 billion clean-energy technology fund will use funds donated by Japan, the US, and the UK to help developing nations deploy low-carbon energy technologies. The \$500 million adaptation fund will assist developing country governments in creating strategies to adapt to the changing climate. The funds are part of a nascent World Bank effort to lower the carbon intensity of its investment portfolio.
- **Costa Rica, Iceland, New Zealand, Norway Aim for Carbon Neutrality.** The four nations have each pledged to achieve carbon neutrality, but face numerous challenges in pursuing their goal. Although all four nations benefit from a heavy reliance on renewable electricity generation, they will each face difficulty in reducing transportation sector emissions. Norway will attempt to reach carbon neutrality by 2030. Costa Rica’s multi-pronged strategy will reduce GHG emissions by using biofuels instead of petroleum, reducing agricultural burnoff, restoring forests and planting trees. In a related effort, U.N. officials are crafting tools and methodologies to assist these and other countries in their efforts to reduce GHG emissions.

*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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