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## Climate Change Policy Update Week of April 28 - May 2, 2008

**Commentary:** *What will be in the Manager's Amendment? The Boxer, Lieberman, and Warner offices are working on an overhaul of the Lieberman-Warner bill to gain additional votes. Previously, Sen. Boxer has said she would reject any changes that would "weaken" the bill, but pressure is rising on Midwestern Senators due to economic concerns. Will the amendment reflect some version of the cost containment compromise published recently by the staffs of the Nicholas Institute and National Commission on Energy Policy? . . . The Energy Information Administration published its analysis of the Lieberman-Warner bill, and it shows allowance prices in the range of \$30/ton in 2020, rising to \$60/ton in 2030 . . . . Senate Republicans may push an alternative in the form of a bill from Sen. Voinovich, which would rely on tax incentives and other subsidies for clean energy technologies; the bill would impose a cap-and-trade program in 2030 only if certain emission milestones are not met.*

### Congress

- **Sen. Voinovich Drafting Alternative Climate Change Legislation.** Sen. George Voinovich (R-OH) is preparing draft legislation that would provide tax breaks and other incentives for reducing U.S. GHG emissions to 2006 levels by 2020 and to 1990 levels by 2030. The draft would set a mandatory emissions cap in 2030 if the incentives failed to reduce emissions to the target of 1990 levels. The bill would be offered by Senate Republicans as an alternative to the Lieberman-Warner measure that is expected to be scheduled for floor debate during the first week of June. The Voinovich proposal would preempt state and local legislation that sets mandatory emissions reduction targets and would allow the EPA to delay implementation of the legislation if the agency determines that emissions reduction technologies are not yet cost-effective. Finally, the draft will include a provision clarifying that EPA does not have the authority to regulate CO<sub>2</sub> under the Clean Air Act (CAA).
- **Three House Democrats Work on Multibillion CCS Fund.** Reps. Rick Boucher (D-VA), John Murtha (D-PA), and Nick Rahall (D-WV), all from coal-intensive states, are drafting legislation that would create a multibillion dollar fund to encourage the use of carbon capture and sequestration (CCS) technology at power plants. Under the plan, a small fee would be imposed on electricity users and the proceeds would be kept outside of the Congressional appropriations process. Rep. Rahall said that one of the main issues yet to be resolved regarding CCS is the legal liability for the project, but that the drafters have not yet decided how to address this issue. According to Rep. Boucher, the proposal is expected to be introduced in the "near term."
- **Update on Senate Consideration of Lieberman-Warner Cap-and-Trade Legislation.** As the Senate moves closer to its announced early June floor consideration of S.2191, Lieberman-Warner Climate Security Act, Senate staff are working on a "Manager's Amendment" that will contain changes to the proposed legislation that are acceptable to the bill's authors. The changes can be expected to reflect both refinements supported by the authors and other members of the Senate Environment and Public Works committee, as well as new issues of interest to those

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)

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Senators and staff who did not have the opportunity to have input up to this point in the legislative process.

## Administration

- **EPA Will Not Regulate GHG Emissions from Petroleum Refineries.** EPA did not include GHG emission limits in its revised new source performance standards (NSPS) for petroleum refineries. NSPS are intended to limit regulated pollutants from new and reconstructed stationary sources; EPA is required to review the standards for each source category every eight years. In the final rule issued this week, the agency said that it is not obligated under § 111 of the CAA to regulate GHGs or any other pollutant not already covered by the existing NSPS for refineries. However, EPA also noted in the final rule that it will request comment on regulating GHG emissions from refineries and other stationary sources in its upcoming Advance Notice of Proposed Rulemaking on GHG regulation.

## States and Cities

- **California Regulators Consider Lieberman-Warner-Style Carbon Market Oversight Board.** During a review of cost-containment options for a prospective state-wide GHG emissions cap-and-trade program, regulators at the California Air Resources Board (CARB) said they would consider a proposal to use a Carbon Market Oversight Board to control costs of the cap-and-trade program. The oversight board could use a number of tools to prevent allowance price volatility and market manipulation. CARB is scheduled to release draft rules for the emissions reduction program later this summer, and is expected to adopt a final plan by November.
- **Wisconsin, United Kingdom Pursuing Climate Pact.** Wisconsin and the United Kingdom are developing a Memorandum of Understanding (MOU) aimed at increasing cooperation on climate change. Wisconsin Governor Jim Doyle (D) met with top UK climate officials to discuss the details of establishing a formal Wisconsin-UK working relationship on climate change. The MOU will focus on research and development related to new low-carbon technologies. The UK has previously signed similar agreements with California and Florida.
- **Connecticut House Passes GHG Targets.** The Connecticut House passed by a nearly unanimous vote legislation that would create mid- and long-term GHG emission targets for the state. The bill would require Connecticut to reduce its GHG emissions to 10 percent below 1990 levels by 2020 and to 80 percent below 2001 levels by 2050. The bill would task state regulators with implementing the caps for the electric sector as part of the state's commitment under the Northeast Regional Greenhouse Gas Initiative (RGGI). Gov. M. Jodi Rell (R) stated that she generally supports the bill but will not decide whether to sign the legislation until a final bill is passed by both houses of the state legislature.
- **Arizona Legislature Moves to Block Cap-and-Trade Regulations.** The Arizona Senate passed legislation intended to prevent the state Department of Environmental Quality (DEQ) from implementing an executive order imposing state-wide GHG emission caps. The 2006 executive order, signed by Gov. Janet Napolitano (D), called for the DEQ to adopt regulations to reduce the state's GHG emissions to 2000 levels by 2020, and to 50 percent below 2000 levels by 2050. The

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new legislation would prohibit DEQ from implementing any GHG reduction program that exceeds federal standards or is not expressly authorized by federal legislation. The legislation now moves to the Arizona House, which has previously passed similar legislation.

- **California Legislator Abandons “Feebate” Bill.** Faced with rising gas prices and a slowing economy, California Assemblyman Ira Ruskin (D) has dropped efforts to pass a bill that would establish a “feebate” program to reduce GHG emissions from the transportation sector. As drafted, the bill would have provided rebates to consumers purchasing low GHG emission vehicles and imposed a fee on purchasers of high GHG emission vehicles.

## Studies and Reports

- **Energy Information Administration Releases Analysis of Lieberman-Warner Bill.** The Energy Information Administration (EIA), the statistical agency of the Department of Energy (DOE), released its analysis of S. 2191, America’s Climate Security Act of 2007 (Lieberman-Warner). Unlike a similar analysis issued by the EPA in March, the EIA analysis took into account federal energy legislation passed in December 2007, which, among other things, established a low carbon fuel standard for the petroleum sector. Therefore, the EIA analysis found that a smaller quantity of reductions would be needed to comply with the Lieberman-Warner caps, which translates into relatively lower allowance prices and costs attributable to the program. The analysis evaluated the Lieberman-Warner bill under several scenarios, and reported the following key findings:
  - a reduction in GHG emissions of 45-56 percent in 2030 compared to the business-as-usual scenario;
  - 80-90% of the near- to mid-term emissions reductions would occur in the electric power sector, with new nuclear, renewable, and fossil plants with CCS serving as the major compliance technologies (and if the compliance technologies are not deployed, increased use of and higher prices for natural gas);
  - significant reductions in coal consumption, even if new generation uses CCS;
  - the price of electricity is projected to increase by 11-64 percent in 2030;
  - total GDP losses of 0.1-0.8 percent in 2030 compared to business-as-usual;
  - allowance prices between \$30-\$76 per ton in 2020, and \$61-\$156 per ton in 2030;
  - if regulated entities cannot use international offsets for compliance, allowance prices are 40% higher in 2020;
  - a relatively greater impact on industrial activity compared to the economy overall; and
  - significant revenue from the allowance auctions and allowance sales of free allowance distributions, ranging from \$326-852 billion in 2030.

Senators Lieberman (I-CT) and Warner (R-VA) released statements praising the analysis. Senator Warner said, “I am pleased that the Energy Information Administration has confirmed what Senator Lieberman and I firmly believe: Americans can make significant reductions in our greenhouse gas emissions in a manner that does not harm the economy.” The Lieberman-Warner bill is scheduled for debate in the Senate in early June. The analysis is available at <http://www.eia.doe.gov/oiaf/servicerpt/s2191/index.html>. Opponents of Lieberman-Warner have already signaled they will use both GDP and electricity price concerns to assert that passing this legislation would be a serious blow to the U.S. economy and competitiveness.

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- **Report Analyzes Allowance Distribution Scenarios under Cap-and-trade Legislation.** A new report, *Benchmarking Air Emissions*, uses data from the 100 largest U.S. electricity producers for 2006 to evaluate environmental performance and progress in the electricity sector. The report also evaluates the financial impacts of different allowance allocations under two leading Senate cap-and-trade proposals, the America's Climate Security Act (Lieberman-Warner) and the Low Carbon Economy Act (Bingaman-Specter). The report finds that an allocation of allowances to electric distribution companies benefits consumers through reduced prices, and states that "[r]esearch indicates that an over-allocation of free allowances to electricity generators can lead to excessive profits for companies, while providing limited benefits in terms of reducing electricity price impacts for consumers and funding energy efficiency and other programs that reduce overall greenhouse gas emissions." The report was released by the National Resources Defense Council (NRDC), the investor group Ceres, and two utilities, PG&E Corporation and Public Service Enterprise Group (PSEG), and is available at <http://www.ceres.org/NETCOMMUNITY/Document.Doc?id=333>.
- **Government Accountability Office Reports on Implications of Fuel-Switching.** The U.S. Government Accountability Office (GAO) released a report to Congress on the implications of fuel-switching from coal to natural gas at the Capitol Power Plant and nationwide. The fuel-switching strategy is part of the "Green the Capitol" initiative which aims to have the House of Representatives operate in a carbon-neutral manner by the end of this year. Based on estimates in the report, adjusting the fuel mix at the Capitol Power Plant from 47% coal use to 31% coal use, and replacing that use with natural gas, will produce CO<sub>2</sub> reductions of almost 10,000 metric tons per year, at an average cost of \$139/ton of CO<sub>2</sub>. The report also found that fuel-switching would have significant economic costs, with limits on the ability to switch due to high natural gas prices, supply constraints, and infrastructure challenges, resulting in higher electricity costs.

## International

- **Russia Will Not Accept Binding Emissions Cap in Post-Kyoto Treaty.** Vsevolod Gavrilov, the Russian official in charge of Kyoto Protocol implementation, announced that Russia will not accept an emissions target under the successor treaty to the Kyoto Protocol. While Russia was subject to a cap under Kyoto, the steep decline in the Russian economy during the 1990's meant that the nation's business-as-usual emissions were not affected by the commitment. The Russian announcement means that the world's four largest emitting countries, the U.S., China, India, and Russia, are all currently opposed to binding emissions targets.
- **Montreal Climate Exchange Approved To Begin Trading.** Canadian regulators issued final approval for market rules for the Montreal Climate Exchange (MCEX). MCEX will begin trading on May 30 and will be the primary market for environmental products in Canada.

*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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