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Climate Change Policy Update Week of August 11-15, 2008

Commentary: *In an otherwise slow August, the staff of the House Energy and Commerce is drafting climate change legislation . . . A study in Energy Policy finds that a third of China's GHG emissions come from exports. The study might give further fuel to interests that are advocating that any Federal climate change legislation require submission of allowances for imports of energy-intensive goods from countries that do not have an emissions cap . . . A new report suggests that concern about climate change has dimmed in the U.S. public.*

Administration

- **Automakers Argue for EA, not EIS, on Climate Implications of Fuel Economy Standards.** At a hearing on the draft Environmental Impact Statement (EIS) issued by the National Highway Traffic Safety Administration (NHTSA) examining the climate impacts of new fuel economy standards, the auto industry urged the agency to instead complete a less-comprehensive Environmental Assessment (EA). In November 2007, a three-judge panel of the 9th Circuit Court of Appeals held that NHTSA must follow the procedures of the National Environmental Policy Act (NEPA) and consider the climate change impacts of fuel economy standards before issuing new standards. The Department of Justice has appealed the ruling, seeking *en banc* review of the decision by the full 9th Circuit. The automakers noted that proceeding with an EIS would moot the petition for review. The industry also has argued that the “functional equivalence” doctrine – which allows a federal agency to avoid the NEPA process if it is subject to other, more specific environmental requirements – should apply in this instance. The automakers noted in comments on the draft EIS scoping plan that the Energy Policy Conservation Act (EPCA) of 1975, which established the Corporate Average Fuel Economy (CAFE) program, and the 2007 energy bill, which raised CAFE standards to 35 mpg by 2020, are more specific than NEPA. Under this rationale, NHTSA would be exempt from the requirement to prepare a full EIS. The 9th Circuit Court of Appeals did not address the “functional equivalence” doctrine in its opinion.

States and Cities

- **New York Finalizes RGGI Regulations.** New York state's Environmental Board finalized regulations implementing the state's participation in the Regional Greenhouse Gas Initiative (RGGI). Under the regulations, New York will miss the first RGGI emissions allowance auction on September 25, but will participate in the second auction on December 17. Although New York is not participating in the Sept. 25 auction, New York entities regulated under the RGGI rules may participate. New York is the largest of the 10 RGGI members, which also include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont.
- **South Carolina Advisory Committee Recommends Emission Targets.** A climate change advisory committee appointed by South Carolina Governor Mark Sanford recommended that the state adopt a voluntary emission reduction goal of five percent below 1990 levels by 2020. To meet the goal, the committee recommends a 5 percent renewable portfolio standard, increased

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reliance on nuclear power, energy efficiency programs, new vehicle emissions standards, and subsidies for renewable energy. The report did not include a recommendation that South Carolina join one of several regional cap-and-trade programs in the United States.

- **21 U.S. Cities Start Pilot GHG Emission Reporting Program.** A group of 21 U.S. cities have started a pilot program under which they will voluntarily report their GHG emissions. As part of the program, the cities will submit quantitative data on the amount of emissions from city government activities and qualitative data on their climate change policies. Participating cities include Denver, Las Vegas, New Orleans, and New York.

Studies and Reports

- **Exports Associated with One-third of China's GHG Emissions.** A report published in the journal *Energy Policy* concluded that nearly a third of China's GHG emissions in 2005 resulted from export-related activities, with 60 percent of those emissions associated with production of goods shipped to developed nations. The proportion of emissions related to exports grew from 12 percent in 1987 and 21 percent in 2002. The 1.7 billion tonnes of CO₂ associated with Chinese exports represents 6 percent of global GHG emissions. The report concluded that "China's exports thus play a more important role in its environmental profile compared with other countries."

International

- **UN Climate Head Says "Time is Short" to Develop Post-Kyoto Agreement.** As international negotiators prepare to meet in Accra, Ghana from August 21-27, United Nations (UN) Climate Change Secretariat Yvo de Boer noted that only a year remains to develop the details of an international agreement on climate change to take effect in 2013. Mr. de Boer noted that only vague proposals have been floated thus far and that specific options will have to be on the table at least six months prior to the December 2009 meeting in Copenhagen, which parties hope to conclude with a post-Kyoto agreement. He added that the collapse of World Trade Organization (WTO) talks last month should not affect the climate negotiations, and that it was unclear how the G8 declaration in July supporting a 50 percent reduction in GHG emissions by 2050 would affect UN discussions.

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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