

Climate Change Legal Issues

Where we are and where we
may be

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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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Legal Developments Coming From All Sides

□ Multi-jurisdictional

- Regional State and Local
- Federal

□ Multi-discipline

- Clean Air Act
- Energy
- Land Use/Green Building
- Corporate Disclosure



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Federal Developments

□ EPA Proposed GHG Reporting Rule

- Mandatory monitoring and annual reporting for stationary sources that emit 25,000 metric tons of CO₂e in any year starting in 2010
- Annual reporting for fossil fuel suppliers and engine manufacturers
- Focus on stationary fuel combustion sources and list of industry specific sources that emit GHGs
- EPA estimates applies to 13,000 facilities, but an additional 17,000 will need to calculate emissions to determine whether they fall under rule



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Federal Developments

- EPA Proposed GHG Rule (con't)
 - Notable items
 - Perpetual 114 information request
 - Facility level reporting for stationary sources
 - Once in, always in
 - 30 mmBtu/hour presumption
 - CEMS; default values
 - “Emergency generators” don’t count
 - Reporting requirements under rule may kick in before federal or state emission reduction programs – how does this affect compliance approach?

Federal Developments

□ EPA Proposed Endangerment Finding

- Latest EPA Response to *Mass. v. EPA*
- 6 major GHGs are reasonably anticipated to pose a danger to public health and welfare
- Finding under 202(a), but could it have effect on other CAA programs?
- Message to Congress: “if you don’t do something, we will”



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Federal Developments

- Obama February Budget Proposal
 - Economy – wide cap and trade
 - 14% below 2005 levels by 2020
 - 83% below 2005 levels by 2050
 - 100% allowance auction
 - \$646 billion in revenue between 2012 and 2019

- Congressional agreement creates a “reserve fund” to implement cap and trade program



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Federal Developments

- American Clean Energy & Security Act of 2009 (Waxman – Markey)
 - Clean Energy
 - Federal RPS; 6% by 2012, 25% by 2025
 - Carbon capture and storage and coal plant performance standards
 - Energy Efficiency
 - Buildings, appliances, transportation
 - Mandatory demand side management for utilities
 - Transition to Clean Energy Economy
 - Green jobs, consumer assistance



Federal Developments

- ACES Act of 2009 (con't)
 - Cap and trade program for GHGs
 - 20% below 2005 levels by 2020; 83% below 2005 levels by 2050
 - Stationary sources emitting 25,000 tons per year CO₂e; producers and importers of petroleum fuels; natural gas sellers and other GHG producers
 - Offsets allowed – 1 to 1.25; 1 billion tons domestic, 1 billion tons international
 - Carbon market oversight by FERC
 - Excludes regulation of GHGs as HAPs, criteria pollutants or under NSR
 - State and regional trading programs suspended between 2012 and 2017
 - Auction vs. allocation to be decided later
 - Hearings last week; markup postponed

Federal Developments

- Cap and Dividend (Van Hollen)
 - capped at 2005 levels in 2012; 85% below 2005 levels by 2050
 - Cap is on fossil fuel suppliers, not emitters
 - 100% auction
 - proceeds distributed to US citizens
- Republican response?



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State and Regional Developments

- State and Regional Developments
 - Regional Greenhouses Gas Initiative (RGGI)
 - Cap and trade program for EGUs in 10 Northeast and Mid-Atlantic states
 - Effective January 1, 2009
 - Offsets: initially limited to 3.3%; only 5 types
 - Landfill methane capture and destruction
 - SF6 reductions
 - Afforestation
 - End-use efficiency
 - Agricultural manure management
 - Auctions began in September 2008
 - Price between \$3.05 and \$3.51



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State and Regional Developments

- Pennsylvania Climate Change Act (Act 70)
 - Establish Voluntary GHG Registry
 - Emissions: Climate Registry
 - Offsets: Climate Action Reserve, Voluntary Carbon Standard, Gold Standard
 - Impacts Assessment
 - Draft report released April 17; 30 day comment period
 - Annual Inventory and Baseline
 - Due with Climate Change Action Plan
 - Climate Change Advisory Committee



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State and Regional Developments

- Act 70 Climate Change Action Plan
 - Study dozens of proposed “work plans”
 - 5 subcommittees
 - Electricity Generation, Transmission and Distribution
 - Industry and Waste
 - Residential and Commercial
 - Land Use and Transportation
 - Agriculture and Forestry
 - Contractor: Center for Climate Strategies
 - Public review and schedule remain issues
 - SB 829 (White)

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State and Regional Developments

- New Jersey Global Warming Response Act
 - 1990 levels by 2020; 80% below 2006 levels by 2050
 - DEP charged with producing a report on actions needed to achieve 2020 and 2050 limits
 - DEP issued draft report in December 2008
 - 3 programs in place – EMP, LEV program & RGGI – will achieve 2020 limit
 - Lists additional statutory, regulatory and policy efforts to be taken over next 18 months to ensure 2020 limit is met and set groundwork for 2050 limit
 - Outlines “framework” that should be moved forward to achieve 2050 limit
 - Comment period closed; final report pending



Carbon Capture and Sequestration

- Capture and compression
 - Supercritical liquid
- Transport via pipeline to storage site
- Injection into storage formation
 - Unused oil and gas wells
 - Unmineable coal seams
 - Deep saline groundwater formation
 - 800 meter bgs
- CO₂ has been injected for commercial EOR since 1972

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Carbon Capture and Sequestration

- Number of operational, regulatory and legal issues are unresolved
 - Commercial feasibility
 - SDWA UIC proposed rule
 - Other regulatory programs
 - Pore space ownership
 - Tort liability/protection



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Carbon Capture and Sequestration

- States are moving forward
 - Wyoming, Illinois
 - PA Act 129
 - DCNR reports due in May and November 2009
 - CCS commercial-scale network in PA by 2015
 - New Jersey
 - PureGen project
- Federal and state incentives



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Litigation

- Permit Challenges
 - In re Deseret
- Actions to force or stop government action
 - Center for Biological Diversity v. DOI
- Corporate Disclosure
 - Xcel Energy and Dynegy
 - SEC petition for guidance
- Tort claims



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