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Draft Global Warming Response Act Recommendations Report Summary

On Monday, December 15, the New Jersey Department of Environmental Protection (“DEP”) released its long-awaited draft Global Warming Response Act Recommendation Report and announced a series of public meetings in January 2009 designed to solicit stakeholder input on the report. The Global Warming Response Act (“the Act”), enacted in 2007, calls for greenhouse gas emissions in New Jersey to be reduced to 1990 levels by 2020 and to 80 percent below 2006 levels by 2050, and requires DEP to issue reports listing recommended actions in order to achieve these levels. Below are some of the highlights of the recently released draft report that will undoubtedly be the subject of much discussion over the next few months.

2020 Limit Core Recommendations

The draft report asserts that three already existing programs, if fully implemented on schedule, will allow New Jersey to achieve the 2020 limit: the Energy Master Plan (“EMP”); the State’s Low Emission Vehicle (“LEV”) program; and the Regional Greenhouse Gas Initiative (“RGGI”).

The EMP, which was issued in final form in October 2008, sets forth five goals related to energy usage and generation in New Jersey. These goals include:

- targets for increased energy conservation and efficiency;
- a reduction in peak electricity demand;
- a recommendation to meet 30 percent of New Jersey’s electricity needs from renewables by 2020;
- improvements to New Jersey’s energy infrastructure; and
- additional investment in clean technologies and businesses.

The EMP also recommends twenty actions to achieve these goals that include items such as enhanced building codes for new construction, incentives for reducing peak electricity demand for commercial and industrial customers, increases in solar, wind and biofuels resources, and the development of 1500 MW of new cogeneration capacity in New Jersey.

New Jersey's LEV program, which was adopted in 2005, essentially requires all new vehicles offered for sale in New Jersey to be certified as meeting California GHG standards beginning January 1, 2009. California GHG standards, which require fleetwide GHG reductions of 30%, have been the subject of much litigation and regulatory action. Most recently, in February 2008, the United States Environmental Protection Agency rejected California's pending request for a waiver from certain Clean Air Act mobile source provisions necessary to adopt its vehicle standards. The denial of California's waiver request prompted a lawsuit by California and other states that had adopted the standard (including New Jersey). It is widely anticipated, however, that once President-elect Obama takes office and his choice for EPA Administrator—former DEP Commissioner Lisa Jackson—is put in place, EPA will revise its decision and grant the waiver, clearing the way for New Jersey to adopt the LEV program.

RGGI is a coalition of ten Northeast and Mid-Atlantic states that have agreed to implement a regional GHG cap and trade system for all electrical generating units with a generating capacity of 25 megawatts or more. In October 2008, New Jersey adopted final regulations that will allow New Jersey to participate in the RGGI program as of its effective date, January 1, 2009. The regulation also clears the way for New Jersey to participate in the next RGGI allowance auction set for December 17, 2008.

2020 Limit Supporting Recommendations

In addition to the three core recommendations, the draft report includes over three dozen “supporting recommendations” that DEP recommends taking action on within the next 18 months. According to the draft, each of these supporting recommendations are already under consideration by New Jersey, and are therefore more likely to result in near term emission reductions. These supporting recommendations cover a wide range of sectors including building and construction, industrial sources, electric generating units, the waste disposal industry, forestry and agriculture, transportation and land use. Some of these specific near-term recommendations are:

- green building requirements for new construction;
- additional authority for municipalities to establish local “green” standards;
- new emission standards for EGUs;
- an approach and schedule (within the next six months and after a stakeholder process) for regulatory action to address GHG emission reductions from industrial sources, such as refineries and glass manufacturers;

- new landfill closure regulations that require flaring and/or energy recovery systems;
- programs that require increased protection for forests and wetlands for purposes of terrestrial carbon sequestration;
- requirements for minimum tillage/no tillage farming; and
- encouraging smart growth and transit oriented development.

2050 Limit Framework

In addition to providing recommendations on achieving the 2020 limit, the draft report provides a “framework” for meeting the more ambitious 2050 limit. According to the report, some progress on this framework is necessary now if the 2050 limit is to be reached.

An initial review of this proposed framework indicates the sweeping changes that could be put in place as part of New Jersey’s effort to achieve the 2050 limit. The framework focuses on four sectors: land use planning and transportation; terrestrial carbon sequestration; energy efficiency and renewable energy; and new technologies and markets that support a climate-friendly economy. The draft report also includes long term indicators that illustrate the immense scope of the fundamental changes DEP believes are necessary to achieve the 2050 limit. These indicators include:

- all vehicle miles traveled in New Jersey to be “green” (*i.e.*, in vehicles exceeding 33 MPG);
- 90 percent of development in New Jersey to occur in areas already served by public infrastructure and 99 percent of that development to be redevelopment;
- 90 percent of all buildings to be fully occupied;
- all new buildings constructed after 2030 to have net zero energy consumption;
- all sources of electricity generation in New Jersey to come from carbon neutral sources; and
- zero waste production by 2050.

Adaptation

The draft report also includes a section on adaptations, under the premise that even achieving the 2050 limit will not suffice to mitigate the effects of climate change in New Jersey. In the end,

the report recommends engaging experts from academia, non-governmental organizations, government and the business community to develop policy recommendations regarding adaptation. These adaptation policies, as illustrated by a table in the draft report, could cut across a number of sectors including water supply, energy, land use, agriculture, and finance and economics. Examples include:

- Design standards and planning for roads, rail and other infrastructure to cope with floods and other likely effects of increased temperature and precipitation;
- Land acquisition and creation of marshlands/wetlands as buffers against sea level rise and flooding;
- “Rolling easements”, that is public easements that “roll” landward as the shoreline moves landward;
- Retrofit of existing buildings to address floods and higher temperatures;
- Adapting commercial and industrial facilities located in vulnerable areas, including areas with significant source water manufacturing intakes; and
- Regulatory and insurance changes to discourage rebuilding in flood-prone areas.

As illustrated above, the draft report and the upcoming stakeholder process have the potential to set in motion climate change policies and regulations in New Jersey that could have significant effects on a wide range of businesses in New Jersey. Some of these changes could be put in place over the next 18 months. Accordingly, entities that are potentially affected by the recommended actions set forth in the draft report should seriously consider following and possibly participating in the stakeholder process beginning next month.

If you have any questions about the draft report, the Global Warming Response Act, or other climate change issues please contact Todd Kantorczyk at tkantorczyk@mgkflaw.com; (484) 430-2359 or Bruce Katcher at bkatcher@mgkflaw.com; (484) 430-2320.