

Appendix K

Legislation and Regulation of Climate Change

Recent proposed regulation and legislation addressing climate change are discussed below.

Legislation

Waxman-Markey bill (H.R.2454) Entitled the American Clean Energy and Security Act of 2009, (Also Known As Cap-and-Trade Climate Legislation)

According to the sponsors, the bill is intended to create clean energy jobs, achieve energy independence, reduce global warming pollution, and transition to a clean energy economy.

The 1,427-page bill would restrict greenhouse gas emissions from industry, and mainly carbon dioxide from the combustion of coal, oil, and natural gas. The Heritage Foundation (2009) states that the bill would burden families with thousands of dollars per year in direct and indirect energy costs. A new study forecasts severe consequences, including crushing energy costs, millions of jobs lost, and falling household income. The proposed cap-and-trade tax “is disguised as environmental legislation when it would have little impact on global temperatures. In fact, it is a massive energy tax that promises soaring household energy bills, major job losses, income cuts, and a sharp left turn toward big government.” (The Heritage Foundation, 2009)

Status: The bill passed in the House in 2009, and is awaiting action in the Senate. This bill does not have support in the Senate, and therefore a new Senate bill is in the works (Kerry-Lieberman).

New Senate Climate Legislation, Kerry-Lieberman Climate Bill

Senators John Kerry (D-Mass.) and Joe Lieberman (I-Conn.) have been conducting climate bill negotiations across the Senate. In their bill, an economy-wide cap-and-trade system has been dropped in favor of a more specific sector-by-sector approach to the bill (Lerer 2010). The bill would cap greenhouse gas emissions and may offer increased incentives for oil and gas drilling as well as nuclear power (Scott 2010b). According to Kerry, consumers will get two-thirds of the revenue raised through auctioning of carbon allowances to U.S. industries in order to shield consumers from rising energy costs that could be triggered by the legislation (Scott 2010d).

Kerry has told business groups that the bill would require U.S. industries to cut their emissions 20 percent by 2020 from 2005 levels, and roughly 80 percent by 2050 (Scott 2010d). A news report on May 5, 2010, notes that “the bill is expected to call by 2020 for a 17 percent cut in emissions below 2005 levels, with the emission limits applying to different sectors of the economy at different times. Trade-sensitive manufacturers, for example, would start in the

climate program six years after power plants, Kerry said on May 5. The legislation is [still] also expected to promote increased domestic production of nuclear power and offshore oil and gas” (Samuelsohn & Voorhees 2010).

Status: Sen. Lindsey Graham (R-S.C.) withdrew his support for the bill at the end of April 2010. The specific contents of the bill are still being determined (Scott 2010c). Chris Miller, senior policy adviser on energy and climate change for Senate Majority Leader Harry Reid (D-Nev.), acknowledged that the bill faces an uncertain future, particularly given the lack of Republican support (Scott 2010d). Some see the most likely GOP supporters to be Sens. Graham, Susan Collins (R-Maine), Olympia Snowe (R-Maine), Scott Brown (R-Mass.), George LeMieux (R-Florida), Judd Gregg (R-N.H.), and George Voinovich (R-Ohio) (Samuelsohn & Voorhees 2010).

Sens. Kerry and Lieberman released a draft of their climate bill.¹ USEPA has presented an analysis² of the impact of the Kerry-Lieberman bill, showing that by 2050 consumers would continue to use oil in volumes that are only slightly less than without the legislation.

Inhofe NEPA Certainty Act (S. 3230)

The bill specifies that federal agencies should not take into account greenhouse gas emissions when assessing the environmental impact of federally supported projects under the National Environmental Policy Act (NEPA). Supporters say that the bill would block “unnecessary, costly practices to predict whether specific federal projects may impact global warming. The bill will also diminish the backlog of litigation from activists trying to use NEPA as a way to push global warming initiatives.” (Kovski 2010)

Status: The bill has been introduced and referred to the Senate Committee on Environment and Public Works on April 20, 2010.

Stationary Source Regulations Delay Act (S. 3072) (H.R.4753)

Companion bills introduced by coal-state Democrats in the House and Senate seek to bar the EPA from regulating greenhouse gas emissions from power plants and other stationary sources for two years (Scott 2010a). In the Senate, the bill was introduced by Sen. Rockefeller, who chairs the Senate Commerce, Science, and Transportation Committee. Senators expressed concerns that EPA's regulations would unfairly affect their states and added that Congress, not a regulatory agency, should decide how to limit carbon (Scott 2010a).

Status: The bill has been introduced and referred to the Senate Committee on Environment and Public Works on March 4, 2010.

¹ <http://kerry.senate.gov/imo/media/doc/APAbill3.pdf>

² http://www.epa.gov/climatechange/economics/pdfs/EPA_APA_Analysis_6-14-10.pdf

Regulations

EPA's Endangerment Finding Declared That CO₂ and Five Other Greenhouses Gases Are Pollutants

EPA's endangerment finding exercises EPA authority under the Clean Air Act to regulate greenhouse gases. EPA's attempt to regulate CO₂—in addition to being the most expensive and expansive environmental regulation in history—would bypass the legislative process completely (Loris 2010). The finding took effect in January 2010.

EPA's Advance Notice of Proposed Rulemaking in July 2008 details the types of entities that could be regulated under the Clean Air Act: schools, farms, restaurants, hospitals, apartment complexes, churches, and anything with a motor—from motor vehicles to lawnmowers, jet skis, and leaf blowers (Loris 2010).

Status: The attorneys general from Virginia and Alabama asked a federal appeals court on April 15, 2010 to order EPA to reopen its finding that greenhouse gas emissions from cars and light trucks endanger public health and welfare (Cook 2010c). The motion seeks to compel EPA to hold public hearings on the science it used to back up the endangerment finding (Cook 2010c).

During investigations of EPA's endangerment finding, Sen. Inhofe was quoted, as saying “Lisa Jackson, Obama's EPA administrator, admitted to me publicly that EPA based its action today (issuing its finding) in good measure on the findings of the U.N.'s Intergovernmental Panel on Climate Change, or IPCC. She told me that EPA accepted those findings without any serious, independent analysis to see whether they were true” (Investor's Business Daily 2010).

On April 28, 2010, EPA Administrator Lisa Jackson defended the EPA finding that greenhouse gas emissions from cars and light trucks endanger public health and welfare. She said the endangerment finding provided the legal underpinning for these greenhouse gas emissions limits. She cautioned against moves to overturn the finding, saying that would nullify the federal standards and lead to California and other states setting their own limits (Cook 2010e).

EPA Final Standard to Limit Greenhouse Gas Emissions From Vehicles

Under the first nationwide greenhouse gas emissions limits to be adopted by the U.S. government, greenhouse gas emissions from cars and light trucks will be limited to an average of 250 grams per mile of carbon dioxide in 2016 (Cook 2010b). EPA and the National Highway Traffic Safety Administration released the final rule, which also requires an increase in fuel economy for cars and light trucks. The requirements will add about \$950 to the cost of a vehicle, Jackson said (Cook 2010b).

Status: Final rule released. The standards would be phased in starting in 2012.

EPA Rule on Economy-Wide Greenhouse Gas Emissions Reporting

The economy-wide greenhouse gas emissions reporting rule was issued in October 2009, and applies to sources that emit more than 25,000 metric tons of carbon dioxide-equivalent greenhouse gases (Cook 2009). EPA estimates the rule will require reporting from about 10,000 facilities, including suppliers of coal-based liquid fuel, petroleum products, natural gas, industrial greenhouse gases, and carbon dioxide, plus facilities that use those resources, such as stationary fuel combustion sites, electricity generators, manure management sites, waste landfills, and multiple manufacturing plants—including lime, iron, steel, lead, cement, and aluminum (Cook 2009). These sources had to begin measuring emissions January 1, 2010, and must file their first reports by March 31, 2011.

Status: On April 29, 2010, EPA withdrew a direct final rule that made technical changes to the economy-wide greenhouse gas emissions reporting requirements. EPA said it withdrew the rule because the agency received adverse public comments (Cook 2010f). EPA plans to address the comments under a new final rule.

EPA Seeks To Require Emissions Reporting For Three Additional Facilities

EPA proposed three rules on March 23, 2010 to require greenhouse gas emissions reporting for the following additional sectors that were not included under the economy-wide rule (Cook 2010f):

- Oil and natural gas wells,
- Carbon sequestration facilities, and
- Facilities that produce and use fluorinated gases.

EPA Seeks To Require Emissions Reporting For Four Additional Facilities

Under an EPA draft final rule on April 30, 2010, facilities in four additional industrial sectors would be required to report greenhouse gas emissions that were not included under the economy-wide rule (Cook 2010g):

- Wastewater treatment facilities,
- Industrial landfills,
- Underground coal mines, and
- Magnesium production.

EPA Phase-In of Requirements to Control Emissions From Stationary Sources of Greenhouse Gases

Starting January 2011, an EPA final rule will phase in greenhouse gas emissions control requirements for new and modified stationary sources under the Clean Air Act's prevention of significant deterioration (PSD) program (Cook 2010a).

EPA Greenhouse Gas Tailoring Rule

EPA is working on the greenhouse gas tailoring rule, which would limit greenhouse gas emissions control requirements for new and modified sources to only the largest stationary sources, and would limit permitting requirements under Title V of the Clean Air Act to the largest sources of greenhouse gas emissions (Cook 2010d). The tailoring rule is intended to prevent thousands of new sources from having to comply with prevention of significant deterioration provisions of the Clean Air Act (Cook 2010d). Because greenhouse gases, particularly carbon dioxide, are emitted at levels far above those of other pollutants, applying PSD to greenhouse gas emissions at the 250-ton threshold would sweep thousands of new sources into the PSD program (Cook 2010d). Title V permitting requirements apply to sources with emissions greater than 100 tons per year. According to EPA, applying that threshold to emitters of carbon dioxide could pull potentially millions of new sources into Title V permitting requirements (Cook 2010d).

Status: EPA plans to issue a final tailoring rule by the end of April 2010, according to Gina McCarthy, EPA assistant administrator for air and radiation (Cook 2010d).

Department of Agriculture and EPA Expand Their Existing Agstar Program to Reduce Greenhouse Gas Emissions

The Department of Agriculture and EPA have an interagency agreement with the goals of promoting renewable energy generation (primarily biogas-generated energy) and reducing greenhouse gas emissions from livestock operations (Valverde 2010). In May 2010, the agencies agreed to expand their existing AgStar program by providing up to \$3.9 million over the next five years to help farmers overcome obstacles to biogas recovery and use (Valverde 2010).

Activities of EPA's Climate Ready Water Utilities (CRWU) Work Group of the National Drinking Water Advisory Council (NDWAC)

EPA's charge for the Climate Ready Water Utilities (CRWU) work group is to evaluate the concept of "Climate Ready Water Utilities" and provide recommendations on the development of an effective program for drinking water and wastewater utilities, including (1) How to use available information for climate change adaptation and mitigation strategies, (2) Identify climate change-related tools, training, and products that address short-term and long-term needs;

and (3) Incorporate ways to provide recognition or incentives that encourage broad adoption of climate change adaptation and mitigation strategies by the water sector using existing EPA Office of Water recognition and awards programs or new recognition programs.

The third meeting of the CRWU working group is May 5 - 6, 2010, and will include a presentation on the Northeastern Illinois Water Supply/Demand Plan by the Chicago Metropolitan Agency for Planning and a presentation on the International Water Association's Cities of the Future Initiative.

The second meeting of the working group on February 3 - 4, 2010, focused on defining the concept of a climate ready utility and how to create an environment to help utilities become climate ready.

At the February meeting, the managing director of a large public Australian water utility presented information on the Australian government's approach to responding to climate change, which has involved their federal government now exerting substantially more control over water resources. Related to the type and extent of the climate adaptation Australia has undertaken, Australia has recently seen the biggest increase in water bills in its history, with bills nearly double what they were a decade or so ago. In an effort to curb the impact to low income communities, the government has provided support to the water sector for programs in this area. The speaker cited an example (indirect potable water use in communities) where strong community opposition existed, but the government used executive powers (rather than a public vote or consensus building) to implement the program, believing there was no viable alternative available. (Experience with the program and the absence of the feared health consequences has, over time, turned community opposition to support, as the benefits of the program have become apparent.)

Additional water-sector restructuring measures dictated by the Australian federal government included the following:

- Restructuring the relationship between small and larger systems – the government required small systems (struggling under the pressure created by severe and prolonged drought conditions) to merge with larger systems, while the government paid for the value of the small system assets.
- Requiring an alteration of agricultural water use – approximately 80 percent of water in Australia is used for agricultural purposes generating a focus on the part of government to shift agricultural and irrigation practices including altering the types of crops produced (e.g., moving from monsoon crops such as cotton and rice to those more conducive to growing in arid climates).
- Establishing a national water trading and marketing program – this effort created “high” and “low” security water. (High security water comes with a strong guarantee of availability, while low security water is subject to cyclical availability). High security water is sold at ten times the cost of low security water.

EPA's Office of Research and Development and the Center for Disease Control gave a co-presentation on public health impacts of climate change impacts within the water sector. By the end of this spring, EPA will have a new, robust five-year plan for their research program. Working group members noted that the presentation emphasized all the important factors the water utility sector needs to focus on and to set a catalyst for why the sector needs to deal with climate change.

Discussion topics of CRWU group members also included:

- The biggest underlying capacity issue for implementing climate change options is financial. One option considered: in the same way sustainable communities currently receive higher bond ratings, EPA could establish a rating system for climate responsive utilities that would result in cheaper money for those utilities falling higher on the rating scale. Another approach is for the federal government to stop rewarding "bad" behavior, and instead use those funds to support utilities undertaking actions to prepare for climate change.
- A key is education at all levels, from school children to training future utility leaders at the university level.
- The overarching importance of strengthening partnerships between water utilities and interdependent entities, and of creating an overall culture of acceptance in the community.
- At the highest level, the regulatory ideal would be to align all the existing water regulations into a new bill that also incorporates climate change.

References

Cook, S. 2009. EPA Publishes Final Rule Requiring Greenhouse Gas Emissions Reporting. BNA Daily Environment Report. November 2, 2009.

Cook, S. 2010a. EPA Announces Phase-In of Requirements To Control Stationary Source Emissions. BNA Daily Environment Report. March 30, 2010.

Cook, S. 2010b. Agencies Announce Final Standard to Limit Greenhouse Gas Emissions From Vehicles. BNA Daily Environment Report. April 2, 2010.

Cook, S. 2010c. Virginia, Alabama Seek Court Order Reopening EPA Endangerment Finding. BNA Daily Environment Report. April 19, 2010.

Cook, S. 2010d. EPA Sends Greenhouse Gas Tailoring Rule To OMB for Review by White House, Agencies. BNA Daily Environment Report. April 22, 2010.

Cook, S. 2010e. Jackson Defends Endangerment Finding At House Hearing as Underpinning EPA Rules. BNA Daily Environment Report. April 29, 2010.

Cook, S. 2010f. EPA Withdraws Direct Final Rule That Made Technical Changes in Reporting Requirements. BNA Daily Environment Report. May 3, 2010.

Cook, S. 2010g. EPA Seeks to Require Four More Sectors To Report Their Greenhouse Gas Emissions. BNA Daily Environment Report. May 4, 2010.

Investor's Business Daily. 2010. Editorial - We, The EPA. March 15, 2010.
<http://www.investors.com/NewsAndAnalysis/Article.aspx?id=527361&Ntt=Inhofe>

Kovski, A. 2010. Inhofe Bill Would Bar Climate Impact Analysis Under National Environmental Policy Act. BNA Daily Environment Report. April 28, 2010.

Lerer, L. 2010. Senators tiptoe on climate deals. Politico. March 16, 2010.
<http://dyn.politico.com/printstory.cfm?uuid=64DC6390-18FE-70B2-A86FCB0BAA0BE835>

Loris, N. 2010. The EPA's Global Warming Regulation Plans. The Heritage Foundation. January 20, 2009.
<http://www.heritage.org/Research/Reports/2010/01/The-EPAs-Global-Warming-Regulation-Plans>

Samuelsohn, D. & Voorhees, J. 2010. Senate cap-and-trade bill coming out next week – Boxer. E&E News. May 5, 2010.

Scott, D. 2010a. House, Senate Bills Call for Two-Year Delay of EPA Greenhouse Gas Emissions Rules. BNA Daily Environment Report. March 5, 2010.

Scott, D. 2010b. Kerry Says Setback Will Not Halt Climate Bill; Senators Moving Forward With EPA Analysis. BNA Daily Environment Report. April 28, 2010.

Scott, D. 2010c. Nelson Calls Offshore Plan 'Dead on Arrival'; Spill Shows Need for Climate Bill, Reid Says. BNA Daily Environment Report. May 5, 2010.

Scott, D. 2010d. Two-Thirds of Revenue From Climate Bill Would Benefit U.S. Consumers, Kerry Says. BNA Daily Environment Report. May 6, 2010.

The Heritage Foundation. 2009. Waxman-Markey Global Warming Tax Kills More Jobs and Kills the Economy. May 20, 2009.
<http://www.heritage.org/research/factsheets/waxman%20markey%20global%20warming%20tax%20kills%20more%20jobs%20and%20kills%20the%20economy>

Valverde, J. 2010. Agencies Join to Reduce Greenhouse Gases, Promote Biogas Energy Generation on Farms. BNA Daily Environment Report. May 5, 2010.