Climate Change Regulation: Here and Now

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DEFINING SUCCESS TOGETHER

Agenda

- Pending federal legislation
- Meanwhile, federal and state agencies are exercising authority under existing law to require –
  - Greenhouse gas (GHG) reductions
  - GHG monitoring and reporting
  - Disclosure of climate change business risk
  - Consideration of climate change in project permitting
- What to do now

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Federal Legislation

- Federal legislation is in the ditch, but may not stay there thanks to BP (think healthcare and financial reform)
- Kerry-Lieberman May 12 draft bill is the operative document, but Senator Reid seeking a new legislative package by July 4 recess
- Tomorrow, Senate votes on Murkowski resolution of disapproval of EPA regulations

Federal Legislation

- Reduction goals: 4.75 percent by 2013, 17 percent by 2020, 42 percent by 2030, and 83 percent by 2050
- Covers large industrial emitters, electric and gas utilities, and transportation fuels
- Cap-and-trade allows emitters to either reduce their own emissions or buy allowances from another emitter who can do so more cheaply
- Preempts state and regional cap-and-trade programs

Federal Legislation

- Retail utility customers will not be directly regulated
- Free allowances in early years will mitigate retail price increases, but transition to auction will likely cause retail price increases over time
- Auction price is “collared” (floor and ceiling) and will escalate over time
- Goal of retail utility customers should be to lower their dependence on GHG-emitting activities before the free allowances run out

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Reductions under Clean Air Act

- EPA PSD/Tailoring Rule takes effect on January 2, 2011
- Applies initially only to large emitters already regulated under CAA, but soon applies to new construction emitting 100,000 tons per year (tpy), or modifications increasing GHG emissions by 75,000 tpy
- Requires use of best available control technology (BACT)
- Litigation may dramatically lower threshold because CAA actually says 100 and 250 tpy; hence the “tailoring”

Monitoring and Reporting

- EPA reporting rule became effective 1/1/10; first reports due 4/11
- Limited to facilities over 25,000 tpy (about equal to a 15 MW natural gas-fired facility)
- States and Western Climate Initiative are working on their own monitoring and reporting programs
- Early next month, WA Department of Ecology will issue draft rule with 10,000 tpy threshold
- Failure to comply with EPA rule is a violation of the CAA; potential civil and criminal penalties

SEC Disclosure Guidance

- In January, the SEC provided "guidance" to public companies regarding disclosure of regulatory and business risk relating to climate change
- Required disclosures:
  - Impact on company of current and future climate regulation (federal, state, and local)
  - Effect of climate change on the company (e.g., water supply and quality, rising sea levels, changing weather patterns) This includes impacts on company's entire supply and customer chain

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Permitting Under NEPA and SEPA

- Covers all development and/or expansion projects that need either a federal or state permit
- National Environmental Policy Act (NEPA) requires assessment of environmental impacts of "major Federal actions significantly affecting the quality of the human environment"
- WA's State Environmental Policy Act (SEPA) mirrors NEPA **except SEPA is substantive**
- Council on Environmental Quality (CEQ) and Ecology have each issued draft guidance on analyzing climate change-related impacts under NEPA/SEPA

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Permitting Under NEPA and SEPA

- Like any other form of pollution, GHGs must now be considered in terms of:
  - Adverse environmental effects (cumulative impacts)
  - Alternatives that emit fewer GHGs
- Must also consider effect of climate change on the proposed project

Permitting Under NEPA and SEPA

- If GHG emissions from a proposed project are "significant," the proponent must either mitigate the emissions to a level of non-significance or do an EIS
- So, what is significant?
  - EPA-recommended threshold for analysis is 25,000 tpy
  - Ecology "welcomes further discussion;" maybe 10,000 tpy
  - In CA, local governments decide

Permitting Under NEPA and SEPA

- What counts toward “significant”?
- Ecology GHG worksheet supplements the SEPA checklist, and includes emissions from:
  - Construction
  - All mobile and stationary sources;
  - Purchased electricity and steam;
  - Extraction, processing, and transportation of purchased materials;
  - Waste management (including wastewater)
  - Product use

Permitting Under NEPA and SEPA

- CEQ says mitigation measures to reduce emissions must be:
  - Permanent
  - Verifiable
  - Enforceable
  - Additional (more than otherwise would have occurred)
- Ecology very skeptical of offsets

Permitting Under NEPA and SEPA

- Turning to the impact of climate change on the project, what kinds of impacts are they worried about?
  - **Extreme weather events (flooding, windstorms, droughts, heat waves)**
  - **Water availability (changes in precipitation patterns)**
  - **Water quality (particularly temperature and stormwater runoff)**
  - **Urban infrastructure (particularly due to increased stormwater runoff)**
  - **Energy supply and demand**
  - **Coastlines (direct and indirect impacts from sea level rise)**

Permitting Under NEPA and SEPA

- The level of analysis of climate change impacts on the project depends on:
  - Vulnerability of the project (see preceding slide)
  - Vulnerability of the affected environment
  - Project timeframe
- No “exorbitant research” of impacts needed; existing scientific literature may be included by reference

Permitting Under NEPA and SEPA

- SEPA's substantive authority means that WA State agencies can require mitigation as a condition of the permit, including:
  - Low impact development
  - Develop projects along reliable and convenient public transit
  - Water recycling or gray water system
  - On-site renewable energy production
  - Charging stations for plug-in electric vehicles
  - Locally sourced and reused building materials
  - Energy efficient industrial processes

What to do now

- No. 1: Make reducing GHGs part of your business strategy
  - Only big emitters under direct pressure, but smaller footprint has multiple regulatory benefits
  - Look for “no regrets” options that reduce GHGs while saving energy and money; benefits will multiply as cost of GHG emissions increases under federal legislation
  - Consider GHG emissions when choosing your business partners because their footprint will be attributed to you

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What to do now

- No. 2: GHG monitoring and reporting is here to stay, so:
  - Check the EPA and state rules
  - Retain a consultant to assess your business and establish your baseline
  - Obtain your monitoring equipment and prepare a monitoring plan
  - Document GHG reductions (you may want credit for them later)
  - Remember that more publicly-available data means more litigation

What to do now

- No. 3: Disclosure of climate change risks to your business is here to stay, so:
  - Strictly conform to SEC guidance if you are a public company
  - Inadequate or inaccurate disclosure is another likely source of litigation
  - If you are not a public company, prepare for other forms of disclosure, such as in context of insurance, upon sale of business, etc.

What to do now

- No. 4: If you are planning anything that needs a federal or state permit:
  - Analyze the likely GHG emissions from all aspects of your potential project
  - Develop alternatives and detailed, defensible mitigation and/or offset plans
  - Analyze your project's vulnerability to climate change impacts, using existing scientific literature

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What to do now

- No. 5: Get involved!
  - Comment on Ecology's draft SEPA guidance by June 25
  - Comment on the upcoming Ecology reporting rule
  - Attend agency workshops to better understand new rules; engage agency staff
  - Meet with federal and state agency staff early in project development; they are looking for early success stories

For More Information

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