

April 28, 2014

Welcome to the Dentons' Climate Change Newsletter. Combining our regional practices from around the world, we intend in upcoming newsletters to provide short articles from several of our offices to present an overview of current developments globally in the climate change space. Please do not hesitate to reach out to any of these authors, to any member of the Environment and Natural Resources practice or to our Energy group for information on these or other topics of interest.

Topics

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US: Supreme Court reviews greenhouse gas permitting rules

by James Rubin

On February 24, 2014, the Supreme Court heard argument on the "Tailoring Rule," a key Obama climate change rule which requires certain major sources of greenhouse gas (GHG) emissions to secure pre-construction and operating permits. The issue before the Court was narrow, focusing on whether EPA correctly interpreted its authority to regulate GHGs from stationary sources based on its regulation of GHG emissions from motor vehicles through tailpipe standards. Pursuant to such authority, EPA had, in effect, rewritten the Clean Air Act (CAA) to allow it to regulate only the most significant sources of GHG emissions, rather than use the lower regulatory thresholds established in the law for more conventional pollutants.

It is likely the Court's analysis will remain narrow; during argument, the Court appeared uninterested in re-assessing its prior rulings that EPA had authority to regulate GHGs under the CAA. Justices, however, appeared to split along ideological lines on whether EPA properly acted to modify the CAA thresholds or whether it could have concluded

GHGs need not be regulated under the permit programs at all. Even justices who appeared to side with EPA expressed some concerns about the limits of EPA's discretion. Thus, it is possible that the Court might vacate the rule and send it back to EPA for a new interpretation. However, such a ruling would not likely impact EPA's ability to regulate GHGs under other CAA provisions, such as the new source performance standards (NSPS) program which is the basis for the EPA's controversial proposals to regulate GHGs from new and existing power plants. A ruling against EPA, rather, would no doubt fuel critics of the Obama Administration's climate program, who would claim it is a vindication of their arguments that the Administration is overreaching its authority.

US: California Air Resources Board approves first forest carbon offset project

by Matt Adams

The California Air Resources Board (ARB) has issued its first-ever approval of a forest carbon offset project under the state's cap-and-trade forestry offset protocol. The project is particularly noteworthy because it is being implemented on 8,000 acres of land within the Yurok Indian Reservation. Indian tribes control significant forestry resources across the United States, and there is significant interest in carbon offset project development in Indian Country. The Yurok project is likely to be the first of many tribal proposals to reach the ARB. Under California's cap-and-trade program, covered facilities may use offsets to satisfy up to 8% of their compliance obligation. To date, ARB has adopted four protocols that may be used to generate compliance credits: livestock management, urban forestry, destruction of ozone-depleting substances, and forest management. Two other protocols -- Rice Cultivation Management and Mine Methane Capture -- remain under consideration.

US: Dentons clients recognized for innovation

by Jeff Fort

On March 26, two clients of the firm were recognized for their innovation and leadership with respect to carbon reduction activities during the North American Carbon World conference, the pre-eminent conference on policy issues with respect to climate change. The American Carbon Registry, a subsidiary of Winrock International, is one of the registries used in the California AB 32 program and presented three awards this year for innovative activities to reduce greenhouse gases.

Both clients and the awards they received relate to involvement in new measures to sequester carbon from agricultural activities.

- Terra Global Capital Ltd, based in San Francisco, wrote the protocol for reduction in methane emissions from rice farming. Terra has crafted a formula that accounts for multiple variables in the California Central Valley region and the mid-south region of the United States. Terra is now recruiting rice growers to follow the protocol to earn carbon offset credits. The California Air Resources Board recently proposed to list the protocol as eligible to create compliance offset credits for use in the AB 32 cap and trade program.
- The Delta Institute, based in Chicago, has a long history of working with farmers and foresters, principally in the Midwest, to earn carbon credits from conservation activities. Delta is working with the Climate Trust and the Electric Power Research Institute (EPRI) to demonstrate a new protocol developed by EPRI and Michigan State University. Delta was recognized for its design and work in recruiting farmers to use the new protocol for fertilizers on corn crops to reduce the emissions of nitrous oxides.

Both nitrous oxides and methane are recognized as potent greenhouse gases and both protocols rely on aggregating many agricultural lands to generate substantial carbon offsets.

Dentons has been retained by both Terra and Delta to prepare the contracts for use with the farmers who agree to use these protocols. Through these agreements the farmers will earn carbon credits which can be monetized.

We are pleased to be able to work with such leading entities in the climate space and congratulate both Terra and Delta on their recognition.

South Africa: Government delays carbon tax

by Helen Bowdren

The South African government has announced it will delay introducing a carbon tax until 2016. Finance Minister Pravin Gordhan said that a package of measures is needed to address climate change, and the delay will allow time for more consultation. In its budget review, the Treasury said a policy paper will be published soon -- proposals include the option for companies to reduce their carbon tax liability by using offsets. In the annual budget speech, Gordhan also said the government may impose new levies on mining companies to help fund the treatment of acid water seeping from disused gold mines.

UK: Dentons advises UK government on funding of contract for CCS study

by Christopher McGee-Osborne

Dentons advised the UK Department of Energy and Climate Change on its funding of a FEED Contract which Energy and Climate Change Secretary Edward Davey announced recently has been awarded to Shell U.K. Limited in relation to the Peterhead CCS project, based at the Peterhead power station.

The multi-million pound FEED study funding will support the Peterhead project, which will be the world's first CCS project on a gas-fired power station. CCS allows the safe removal and permanent storage of carbon dioxide emissions from coal and gas power stations, as well as from industrial processes.

Peterhead is the second project to be allocated funds under the government's £1 billion CCS Commercialisation Programme. Dentons has advised on both. The first was the White Rose CCS project for which funding was announced in December 2013. The Peterhead and White Rose CCS projects are the EU's largest commercially sized projects.

£1 billion has been committed to the Programme, with around £100 million of that funding being invested now to support the detailed planning and engineering of these two projects. In late 2015, the projects will take final investment decisions with the government taking decisions shortly after on investing the remainder of the £1 billion funding to support construction of up to two projects.

This is a further major step towards establishing a CCS industry in the UK and towards the UK achieving its climate change targets. We are delighted that our commitment to being at the cutting edge of energy legal practice has enabled us to support the government in this ground-breaking implementation of its energy policy.

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