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Recent Developments in Climate Change Law Relating to the Western Climate Initiative

by Amy Carruthers

On September 23, 2008, the Western Climate Initiative (“WCI”) released its Design Recommendations for the WCI Regional Cap-and-Trade Program (the “Program”).

According to the WCI, the Program is intended to reduce climate-changing greenhouse gas (“GHG”) emissions (including carbon dioxide and five other gases commonly considered carbon dioxide equivalents, or “CO₂e”), encourage growth in new green technologies, help build a strong clean-energy economy and reduce dependence on foreign oil. The Program will now be implemented by enabling legislation in the various Partner jurisdictions, including British Columbia, which have committed to participating in the Program and reducing GHG emissions in the region to 15 percent below 2005 levels by 2020. Other Canadian Partner jurisdictions include Manitoba, Ontario and Quebec, with Saskatchewan as an official observer.

The Program is designed to be comprehensive and will eventually cover nearly 90% of the GHG emissions in the region, including from electricity, industry, transportation, and residential and commercial fuel use. The Program will require certain emitters, both direct (facilities) and indirect (entities), whose emissions exceed a specified threshold, to match their actual GHG emissions in a given three year compliance period with an equivalent amount of GHG allowances which will be issued by their jurisdiction and may be banked (saved and applied to emissions in future compliance periods), traded or purchased (as determined by that jurisdiction). Borrowing allowances from future compliance periods will not be permitted. Each allowance will be equal to one metric ton of CO₂e.

The regional emissions cap will be equal to the sum of all Partner jurisdictions’ allowances. The WCI will calculate each jurisdiction’s initial allowances by the fall of 2009, and by the end of 2009 the WCI will design a coordinated regional auction process (for those jurisdictions that wish to allocate their allowances in such a manner). Allowances will be recognized by all Partner jurisdictions. Each Partner jurisdiction must issue (allocate) or cancel (retire) all its allowances by the end of the applicable compliance period.



The Program will be implemented in phases as follows:

- ▶ Early 2011 – reporting of 2010 emissions (mandatory reporting of CO₂e emissions for emitters with annual emissions above 10,000 metric tons of CO₂e);
- ▶ January 1, 2012 – first compliance period (three years), for industrial and electricity sector emitters with annual emissions above 25,000 metric tons of CO₂e; and
- ▶ January 1, 2015 – second compliance period (three years), Program expanded to include transportation fuels and residential, commercial and industrial fuels not already covered in the first phase, for (upstream) emitters responsible for annual emissions above 25,000 metric tons of CO₂e (covered entities to be determined and may vary by jurisdiction).

Reported emissions will be subject to third party verification and reporting thresholds are much lower than the current federal levels. Emitters subject to the compliance obligation will likely include: electricity generators and importers and large industrial and commercial facilities (in the first and following compliance periods), and fuel distributors or final blenders (in the second and following compliance periods). Emitters responsible for carbon neutral biomass and biofuel emissions above the specified thresholds will be subject to the reporting, but not the compliance, obligation.

The limits (or caps) and corresponding allowances under the Program will decline on a straight line trajectory to achieve the desired levels by 2020. Caps for future compliance periods post 2020 (and corresponding allowances) will be set by the WCI not less than three years in advance.

If an emitter fails to comply with the requirement to surrender sufficient GHG allowances to cover its actual GHG emissions in the compliance period by the deadline for doing so, it will then be required to obtain and surrender three allowances for every metric ton of CO₂e not covered by an allowance at the deadline. In addition, Partner jurisdictions may impose their own penalties or sanctions.

“Early Reduction Allowances” for reducing capped emissions before the first compliance period may be issued by Partner jurisdictions (which will be in addition to that jurisdiction’s allowances in the first compliance period), and the applicable criteria are to be established by the WCI by the end of 2009.

The Program will also include a rigorous offsets system; however, criteria and protocols for offset projects are yet to be developed and each jurisdiction must limit the use of all offsets and allowances from other WCI-recognized GHG emission trading systems to no more than 49% of the total emissions reductions from 2012-2020 in order to ensure that a majority of emission reductions are attributable to emitters and emissions covered by the Program.



It is not yet clear how the Program will account for or “credit” any reductions attributable to British Columbia’s carbon tax, although the WCI has committed to determining the mechanism for integrating the Program with the BC carbon tax by 2012.

In the next year, we should expect the following developments for the Program as it relates to British Columbia:

- ▶ BC to develop regulations under the *Greenhouse Gas Reduction (Cap and Trade) Act* (British Columbia), which is BC’s enabling legislation related to the Program (intended content for the proposed Mandatory Reporting of Greenhouse Gas Emissions Regulation, which is anticipated to come into effect in early 2009, is now outlined in the policy intentions paper published at www.env.gov.bc.ca/epd/codes/ggrcta/reporting-reg.htm and comments are due by November 28, 2008; consultation on the development of all further regulations is expected in early 2009);
- ▶ WCI to calculate and allocate Partner jurisdictions’ initial allowances by the fall of 2009;
- ▶ WCI to design a coordinated regional auction process and develop applicable criteria for early reduction allowances by the end of 2009; and
- ▶ WCI to develop criteria and protocols for offset projects and use of allowances or credits from other WCI-recognized GHG emission trading systems starting in 2009.

For more information about the WCI and the Program, please contact a member of our Climate Change Law Group below, or visit the WCI website at www.westernclimateinitiative.org.

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