Emerging Issues Commentary
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Jenner & Block: Climate Change 2007 Year in Review: "States, Trades, and Automobiles"

By Gabrielle Sigel and Oscar Marrero

In the year 2007, climate change issues skyrocketed to the top of the agenda for political and business leaders and for the public. While the year began with corporate America calling for action by federal and international governments to address greenhouse gas (GHG) emissions and climate change strategies generally,[1] in early spring 2007, sparked by a United States Supreme Court decision, the climate change agenda changed dramatically — shifting from general calls for action to a year-long focus on state and local regulatory actions, Congressional cap-and-trade legislation, and vehicle GHG emission limitations. Hence, from the climate change perspective, 2007 was the year of "states, trades, and automobiles."

"Automobiles" — GHG Emission Reduction Regulation & Litigation

***Massachusetts v. EPA*.** The power industry has most often been the focus of attention for efforts to reduce GHG emissions. In 2007, however, emissions became the new center of concentration when the U.S. Supreme Court issued a landmark decision demanding that the federal government address GHG emissions from automobiles. On March 2, 2007, the Supreme Court decided *Massachusetts v. Environmental Protection Agency*.[2] In a 5-4 decision, the Court ruled against the Bush administration to hold that the United States Environmental Protection Agency (EPA) has authority under the Clean Air Act (CAA) to regulate GHG emissions from new automobiles.[3] Justice Stevens wrote the opinion for the Court, holding that Massachusetts had standing to sue[4] and that EPA has authority under the CAA to regulate GHG emissions.[5] The Court con-

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1. On January 22, 2007, U.S. Climate Action Partnership (USCAP) released a "Call to Action" urging Congress to pass legislation requiring mandatory GHG emissions reductions through a cap-and-trade program. Press Release, USCAP, Major Businesses and Environmental Leaders Unite to Call for Swift Action on Global Climate Change (Jan. 22, 2007), http://www.us-cap.org/media/release.pdf. USCAP consists of 10 major energy and manufacturing companies including BP America, Inc. and General Electric. On January 11, 2007, 20 multi-national companies announced an initiative to create a global response to climate change and requested that the European Commission consider their proposals. Press Release, The 3C Initiative, Business Leaders Launch Climate Change Initiative during Brussels Meeting with President Barroso (Jan. 11, 2007), http://www.combatclimatechange.org/www/ccc_org/ccc_org/224546home/240303press/240335press/index.jsp?pmid=61100&WT.ac=content.

2. 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007).

3. 127 S. Ct. 1438, at 1462.

4. 127 S. Ct. 1438, at 1458.

5. 127 S. Ct. 1438, at 1462.

cluded by stating that the reasons EPA had given for deciding not to regulate GHG emissions were not valid under the CAA.[6]

EPA Responds to California's GHG Regulation Request, Sparking Further Litigation. One of the principal consequences of the Supreme Court's decision was that EPA was forced, at least politically, to make a decision on the State of California's pending request for a waiver of the CAA's federal preemption rules, which prohibit a state from adopting air regulations more stringent than federal law.[7] California needs approval of the waiver so that it can implement its regulation to control GHG emissions from motor vehicles ("the GHG Regulation"), which it adopted on August 4, 2005.[8] This regulation limits 2009 model-year passenger cars, pick-up trucks, and small sports utility vehicles (SUVs) to a fleet-average of 323 grams of carbon dioxide (CO_2) per mile, which decreases to 205 grams per mile for the model year 2016.[9] The GHG Regulation also limits 2009 model-year larger trucks, large SUVs, and medium-duty passengers to 439 grams per mile for 2009 and 332 grams per mile for 2016.[10]

After California issued its regulation in August 2005 and requested a waiver from EPA in December 2005, 16 other states adopted or considered adopting the GHG Regulation in their own states, as soon as California's waiver request was approved by EPA.[11] In response to the State of Vermont's adoption of the provisions in the GHG Regulation, the automobile industry mounted a legal challenge.[12] The industry's complaint primarily focused on its claim that the GHG Regulation was preempted by the federal Energy Policy and Conservation Act (EPCA).[13] Because reducing GHG emissions can most easily be achieved by burning less fuel (*i.e.*, increasing fuel economy), the automobile industry

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6. 127 S. Ct. 1438, at 1462-63.

7. The CAA prohibits states from adopting their own motor vehicle emissions standards. 42 U.S.C. § 7543(a). However, the EPA Administrator must grant California a waiver from this prohibition after notice and an opportunity for public hearing if California's emission standards will be at least as protective of public health and welfare as applicable federal standards. 42 U.S.C. § 7543(b)(1); *see* Motor & Equip. Mfrs. Ass'n. v. EPA, 627 F.2d 1095, 1100 n.1 (D.C. Cir. 1979). EPA can deny the waiver request by finding either that (1) California's determination is arbitrary and capricious; or (2) California does not need a more stringent regulation to meet compelling and extraordinary conditions. 42 U.S.C. § 7543(b)(1)(A)–(B).

8. *See* CAL. AIR RESOURCES BOARD (CARB), FINAL REGULATION ORDER (2005), *available at* http://www.arb.ca.gov/regact/grnhsgas/revfro.pdf.

9. *See* CAL. AIR RESOURCES BOARD (CARB), FINAL REGULATION ORDER (2005), *available at* http://www.arb.ca.gov/regact/grnhsgas/revfro.pdf.

10. *See* CAL. AIR RESOURCES BOARD (CARB), FINAL REGULATION ORDER (2005), *available at* http://www.arb.ca.gov/regact/grnhsgas/revfro.pdf.

11. Those states are: Arizona, Colorado, Connecticut, Florida, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, and Washington. The Pew Center on Global Climate Change, States Poised to Adopt California Vehicle GHG Standards, http://www.pewclimate.org/what_s_being_done/in_the_states/vehicle_ghg_standard.cfm (last visited Jan. 30, 2008).

12. Green Mountain Chrysler-Plymouth-Dodge-Jeep v. Crombie, 508 F. Supp. 2d 295 (D. Vt. 2007).

13. *See* 49 U.S.C. § 32919 ("a State … may not adopt or enforce a law or regulation related to fuel economy standards … .").

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plaintiffs argued that the GHG Regulation is a state fuel economy standard prohibited by EPCA. However, the federal district court in Vermont upheld Vermont's GHG regulation, finding it sufficiently distinct from a fuel economy standard to survive a preemption challenge.[14] Following the Vermont decision, a California federal district court also upheld the GHG Regulation against the automobile industry's challenge on the same basis.[15]

After the Supreme Court's decision in *Massachusetts v. Environmental Protection Agency*,[16] EPA reviewed California's petition for a waiver to regulate GHG emissions from automobiles.[17] In May 2007, EPA held public hearings on California's petition for a waiver of federal preemption law.[18] The public hearing period remained open through mid-June. When EPA still had not ruled on the waiver request, on November 8, 2007, California filed suit in the United States District Court for the District of Columbia, seeking to force EPA to make a decision on the waiver request.[19]

On December 19, 2007, EPA denied the waiver, marking the first time EPA had ever denied a requested waiver from California.[20] EPA stated that California did not need its GHG regulation to meet compelling and extraordinary circumstances.[21] EPA justified the denial by noting that the President had recently signed the Energy Independence and Security Act of 2007 (EISA), which raises the corporate average fuel economy (CAFE) standard for cars and light trucks and increases renewable fuel use.[22] According to EPA, the EISA will be more effective in reducing GHG emissions than the individual state standards that would come into effect if EPA had granted the waiver.[23]

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14. *Green Mountain Chrysler*, 508 F. Supp. 2d 295, at 398–99.

15. Central Valley Chrysler-Jeep, Inc. v. Goldstone, 2007 U.S. Dist. LEXIS 91309, at *67–73 (E.D. Cal. Dec. 11, 2007).

16. 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007).

17. Although the Bush Administration did not immediately issue a decision on the California waiver request, the Administration took other high-level action to address GHG emissions from vehicles. Specifically, on May 14, 2007, President George W. Bush issued an executive order requiring the heads of the Department of Transportation, the Department of Energy, and EPA to coordinate efforts to protect the environment from greenhouse gas emissions from motor vehicles. Exec. Order No. 13,432, 72 Fed. Reg. 27715 (May 16, 2007). The executive order stated that if an agency can reasonably be expected to regulate or substantially affect GHG emissions from motor vehicles, that agency must undertake such a regulatory action, to the extent practicable. 72 Fed. Reg. 27715, at 27717. The executive order also stated that any action taken must be consistent with sound science, an analysis of benefits and costs, public safety, and economic growth. 72 Fed. Reg. 27715, at 27717. The heads of above agencies were required to coordinate their actions to implement the executive order and share with each other their information, research and resources. 72 Fed. Reg. 27715, at 27718.

18. Press Release, EPA, EPA Hearings on California Air Resources Board's Request for Waiver (May 21, 2007), http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceeac8525735900400c27/7f3179a363c5fda6852572e2004c020a!OpenDocument.

19. California v. EPA, No. 1:07-cv-02024 (D.D.C. Nov. 5, 2007).

20. *See* Press Release, EPA, America Receives a National Solution for Vehicle Greenhouse Gas Emissions (Dec. 19, 2007), http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/41b4663d8d3807c5852573b6008141e5!OpenDocument.

21. *See* Press Release, EPA, America Receives a National Solution for Vehicle Greenhouse Gas Emissions (Dec. 19, 2007), http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/41b4663d8d3807c5852573b6008141e5!OpenDocument. *See* 42 U.S.C. § 7543(b)(1)(B).

22. *See* EISA, Pub. L. No. 110-140 [110 P.L. 140], §§ 102(b)(2)(A), 202(a)(2)(B)(i)(I), 121 Stat. 1492 (2007).

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On January 2, 2008, California appealed EPA's decision to the United States Court of Appeals for the Ninth Circuit.[24] Several states and environmental groups have joined California's appeal. As a result, litigation with respect to California's waiver request will continue in 2008.[25]

In the wake of the Supreme Court decision, the automobile industry embraced the idea of reducing GHG emissions, while it resisted attempts to do so through California's emissions reduction approach. For example, even before the Supreme Court's decision, on February 1, 2007, EPA and the automobile industry announced that they had developed new technology that will reduce GHG emissions from automobile air conditioners.[26] The refrigerants used in automobile air conditioners, hydrofluorocarbons (HFCs), are significant GHGs.[27] After the Supreme Court's decision, on March 22, 2007, General Motors (GM) announced plans to cut its CO_2 emissions by 40 percent below 2000 levels at its domestic manufacturing plants by 2010.[28] GM stated that it will achieve the reductions by improving energy efficiency, reducing waste, and increasing the use of renewable resources.[29] While not directly addressing emissions from vehicles, GM's announcement indicated that the industry was committed to working to reduce GHG emissions as part of a broader effort.

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23. *See* Press Release, EPA, America Receives a National Solution for Vehicle Greenhouse Gas Emissions (Dec. 19, 2007), http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/41b4663d8d3807c5852573b6008141e5!OpenDocument.

24. California v. EPA, No. 08-70011 (9th Cir. Jan. 2, 2008).

25. On December 21, 2007, the U.S. District Court for the District of Rhode Island rejected a motion to dismiss a suit by the automobile industry challenging the State of Rhode Island's GHG emission regulations for automobiles, adopted from the California regulation. Lincoln-Dodge, Inc. v. Sullivan, No. 1:06-CV-00070 (D.R.I. Dec. 21, 2007). Rhode Island moved to dismiss the case on the ground that it was unripe for review, as EPA had not granted California its waiver request under the CAA (and consequently Rhode Island could not yet implement its own GHG emissions regulations). The court held that the suit was ripe, despite EPA's December 19 denial of California's waiver request, because California might still obtain that waiver through litigation, which would then allow Rhode Island to proceed with implementation of its regulations.

26. Press Release, EPA, New Technology Cools Effect of Air Conditioners on Climate (Feb. 1, 2007), http://yosemite.epa.gov/opa/admpress.nsf/eebfaebc1afd883d85257355005afd19/d9464cc269db579c852572750065a001!OpenDocument.

27. One pound of the hydrofluorocarbon used in automobile air conditioners, HFC-134a, has the same global warming effect as 1,300 pounds of CO2. U.N. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS 212 (2007), *available at* http://www.ipcc.ch/ipccreports/ar4-wg1.htm. The new technology developed by EPA and the automobile industry will reduce emissions by one million metric tons of carbon equivalent per year. *See* Press Release, EPA, New Technology Cools Effect of Air Conditioners on Climate (Feb. 1, 2007), http://yosemite.epa.gov/opa/admpress.nsf/eebfaebc1afd883d85257355005afd19/d9464cc269db579c852572750065a001!OpenDocument.

28. Press Release, GM, GM Pledges to Reduce CO2 Emissions by 40 Percent (Mar. 22, 2007), http://media.gm.com/servlet/GatewayServlet?target=http://image.emerald.gm.com/gmnews/viewmonthlyreleasedetail.do?domain=74&docid=34506.

29. Press Release, GM, GM Pledges to Reduce CO2 Emissions by 40 Percent (Mar. 22, 2007), http://media.gm.com/servlet/GatewayServlet?target=http://image.emerald.gm.com/gmnews/viewmonthlyreleasedetail.do?domain=74&docid=34506. GM first announced plans to reduce CO2 emissions in 2002, when it joined EPA's Climate Leaders. Press Release, EPA, EPA Administrator Launches Climate Leaders Program Charter Members Commit to Greenhouse Gas Inventories and Emissions Reductions Targets (Feb. 20, 2002), http://yosemite.epa.gov/opa/admpress.nsf/963707f9ea3c005d85257359003d480a/f7ab46554772dd9c85256b66005d353c!OpenDocument. GM surpassed its initial goal of reducing CO2 emissions to 10 percent below 2000 levels by 2005, when GM achieved eleven and seven tenths percent reductions by 2003. *See* Press Release, GM, GM Pledges to Reduce CO2 Emissions by 40 Percent (Mar. 22, 2007).

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Congress Reacts to the Supreme Court's Decision in *Massachusetts v. EPA*. Congress also was spurred into action by the Supreme Court's decision. On June 21, 2007, the U.S. Senate approved an energy bill, H.R. 6, by a vote of 65-27, to increase the CAFE standards for all cars, trucks and sport utility vehicles by 10 miles per gallon over the next 10 years.[30] In one of the many compromises made to approve this bill, no set CAFE increases were required past 2020. Instead, automakers are required to increase to the maximum feasible mileage in years beyond 2020.[31] The energy bill was approved after two weeks of debate and two filibusters by Republicans who opposed the bill.[32]

The Senate action ultimately resulted in passage by Congress of EISA, which the President signed into law on December 19, 2007.[33] EISA requires the National Highway Traffic Safety Administration to raise the CAFE standard for cars and light trucks to 35 miles per gallon by 2020.[34] In addition, refiners will be required to use 9 billion gallons of ethanol in 2008, with 36 billion gallons required by 2022, a five-fold increase from current requirements.[35] EISA also includes several non-vehicle fuel efficiency standards, including the phase-out of most incandescent light bulbs by 2012-2014[36] and requiring residential boilers to achieve 80 percent efficiency.[37]

International Regulation of Vehicle Emissions. The U.S. was not the only country focusing on vehicle emissions in 2007. Early in the year, the European community indicated a firm commitment to decrease vehicle GHG emissions. Although there had been some initial disagreement among members of the European Commission ("the Commission") regarding how best to address the issue, on February 7, 2007, the Commission published a strategy reaffirming plans to reduce CO_2 emissions from cars sold in the European Union (EU).[38] Commission members compromised to reach their agreement, which allows for an integrated strategy that combines fuel efficiency with other

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30. *See* EISA, Pub. L. No. 110-140 [110 P.L. 140], § 102(b)(2)(A), 121 Stat. 1492 (2007).

31. *See* EISA, Pub. L. No. 110-140 [110 P.L. 140], § 102(b)(2)(B), 121 Stat. 1492 (2007). A study by the University of Michigan Transportation Research Institute found that although an increase in CAFE standards will make cars more expensive, the decrease in sales due to higher prices would be offset by the higher profit margins automakers commonly achieve on more expensive cars. WALTER S. MCMANUS, THE IMPACT OF ATTRIBUTE-BASED CORPORATE AVERAGE FUEL ECONOMY (CAFE) STANDARDS: PRELIMINARY FINDINGS 4 (2007), *available at* http://www.umtri.umich.edu/content/CAFEPrelim.pdf.

32. In the House of Representatives on June 28, 2007, Speaker Nancy Pelosi (D-CA) unveiled energy legislation, which did not include any change in CAFE standards.

33. EISA, Pub. L. No. 110-140 [110 P.L. 140], 121 Stat. 1492 (2007).

34. EISA, Pub. L. No. 110-140 [110 P.L. 140], § 102(b)(2)(A), 121 Stat. 1492 (2007). CAFE standards had not been raised since their inception in 1975.

35. EISA, Pub. L. No. 110-140 [110 P.L. 140], § 202(a)(2)(B)(i)(I), 121 Stat. 1492 (2007).

36. EISA, Pub. L. No. 110-140 [110 P.L. 140], § 321, 121 Stat. 1492 (2007).

37. EISA, Pub. L. No. 110-140 [110 P.L. 140], § 303, 121 Stat. 1492 (2007).

38. *Communication from the Commission to the Council and the European Parliament*: *Results of the Review of the Community Strategy to Reduce CO2 Emissions from Passenger Cars and Light-Commercial Vehicles*, COM (2007) 19 final (Feb. 7, 2007).

measures, such as traffic management and use of biofuels.[39] On October 24, 2007, the European Parliament ("Parliament") approved, by a vote of 397-269, a legislative proposal for mandatory CO_2 emissions reduction targets on new passenger vehicles placed on the market in the EU.[40] The Parliament, however, approved a slightly higher average CO_2 emission rate of 125 g/km (= .47 lbs/mi) for automobiles by 2015, making the Parliament's action less stringent than the Commission proposal.[41] The Parliament also announced two long-term goals: (1) by 2020, average emissions should not exceed 95 g/km (= .35 lbs/mi); and (2) by 2016, long-term targets should be established, which may include 70g/km (= .25 lbs/mi) by 2025.[42] To become binding law in the EU, the approved Parliament targets will have to be included in legislation which must then be passed by both the Parliament and the EU members states. On December 19, 2007, the Commission published plans that would impose fines on automakers if their vehicles exceed an average emissions limit of 130 grams of CO_2 per kilometer.[43] The fine would begin in 2012 at 20 Euros ($28.80) per car per gram/kilometer over the limit, increasing to 95 Euros ($136.70) in 2015.[44] The fine would affect all automobiles sold in the EU, whether made by European companies or not.[45]

Thus, in both Europe and the U.S., reducing GHG emissions from vehicles was a major focus of regulatory attention. California's stance is that it can and should do more to address GHG emissions than rely on increased CAFE standards. The Bush Administration rejects, as a matter of policy and science, that a state can reduce GHG emissions in the absence of a broader national or international approach. California's and the Bush Administration's clashing positions led to litigation in 2007 that will likely continue throughout 2008.

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39. *Communication from the Commission to the Council and the European Parliament*: *Results of the Review of the Community Strategy to Reduce CO2 Emissions from Passenger Cars and Light-Commercial Vehicles*, at 8, COM (2007) 19 final (Feb. 7, 2007).

40. Resolution on Community Strategy to Reduce CO2 Emissions from Passenger Cars and Light-Commercial Vehicles, P6_TA-PROV(2007)0469, *available at* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0469+0+DOC+XML+V0//EN&language=EN.

41. Resolution on Community Strategy to Reduce CO2 Emissions from Passenger Cars and Light-Commercial Vehicles, P6_TA-PROV(2007)0469, at ¶ 3, *available at* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0469+0+DOC+XML+V0//EN&language=EN.

42. Resolution on Community Strategy to Reduce CO2 Emissions from Passenger Cars and Light-Commercial Vehicles, P6_TA-PROV(2007)0469, at ¶¶ 5, 8, *available at* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0469+0+DOC+XML+V0//EN&language=EN.

43. *Regulation of the European Parliament and of the Council*: *Setting Emission Performance Standards for New Passenger Cars as Part of the Community's Integrated Approach to Reduce CO2 Emissions from Light-Duty Vehicles*, at 21, COM (2007) 856 final (Dec. 19, 2007).

44. *Regulation of the European Parliament and of the Council*: *Setting Emission Performance Standards for New Passenger Cars as Part of the Community's Integrated Approach to Reduce CO2 Emissions from Light-Duty Vehicles*, at 21, COM (2007) 856 final (Dec. 19, 2007).

45. *Regulation of the European Parliament and of the Council*: *Setting Emission Performance Standards for New Passenger Cars as Part of the Community's Integrated Approach to Reduce CO2 Emissions from Light-Duty Vehicles*, at 16, COM (2007) 856 final (Dec. 19, 2007).

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"Trades" — Congress Pushes Towards Adopting Cap-and-Trade Law

Congress began 2007 with an impressive array of new bills, committee work, and hearing activity addressing climate change. A common thread for almost all of the climate change legislation introduced throughout the year was the rejection of a tax on carbon emissions in favor of a cap-and-trade program. Under a cap-and-trade program, the government issues, either at a price or for "free," a capped number of allowances that allow a GHG source to emit a certain amount of GHG emissions. Sources that do not use all of their allowances can sell them, like stock, in an exchange system. Sources that cannot meet their allowance must buy further allowances on the trading exchange or otherwise obtain offsets to their GHG emissions. The government would meet GHG emission reduction goals by steadily reducing the number of allowances available each year.[46] Although the exact parameters of a cap-and-trade program differ in each bill, and the detailed construction of the program is typically deferred to regulatory agencies, it is notable that this market-based system has been almost universally embraced by Congress as the appropriate approach for regulating GHG emissions.

In January 2007 alone, three separate climate change bills contemplating a trading regime were introduced in the Senate, with a fourth circulated in draft. For example, on January 12, Senators John McCain (R-AZ) and Joseph Lieberman (I-CT) introduced climate change legislation which would cut GHG emissions to 2004 levels by 2012.[47] The bill also would create a cap-and-trade emissions program to allow GHG emission reductions by an additional two percent per year, through 2050, until levels are brought down to one-third below current levels in 2050.[48] On January 16, 2007, Senator Bernie Sanders (I-VT) introduced a climate change bill that was co-sponsored by Senator Barbara Boxer (D-CA).[49] The bill calls for reducing GHG emissions to 1990 levels by 2020 and then to 80 percent below 1990 levels over the following three decades.[50] The bill also would provide EPA with the authority to take greater action to reduce GHG emissions if global GHG emissions continue to increase.[51] Senators Dianne Feinstein (D-CA) and Thomas Carper (D-DE) introduced a climate change bill on January 17, 2007, that would cap emissions from electric power plants at 2006 levels by 2011 and reduce the cap to 2001 levels by 2015.[52] Senators Jeff Bingaman (D-NM) and Arlen Specter

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46. The EU currently uses a cap-and-trade system to implement its Kyoto Protocol requirements. Council Directive 87, 2003 O.J. (L275). A similar program was enacted and has been implemented by EPA with much success for the control of sulfur dioxide emissions. *See* 42 U.S.C. §§ 7651(a)–7651(o).

47. S. 2191, 110th Cong. (2007).

48. S. 2191, 110th Cong. (2007).

49. S. 309, 110th Cong. (2007).

50. S. 309, 110th Cong. (2007).

51. S. 309, 110th Cong. (2007).

52. S. 317, 110th Cong. (2007).

(R-PA) circulated their draft proposal for a climate change bill on January 22, 2007.[53] This proposed legislation would launch a cap-and-trade emissions trading program aimed at stabilizing GHG emissions at 2013 levels by 2020.[54]

Similar activity occurred in the House of Representatives. House Speaker Nancy Pelosi (D-CA) announced on January 18, 2007, that she was creating the Select Committee on Energy Independence and Global Warming.[55] This House committee, which does not have authority to create legislation, would focus on gathering information and increasing public awareness of global warming and energy-related issues.[56] Representatives John Olver (D-MA) and Wayne Gilchrest (R-MD) introduced the first House climate change legislation of the current Congress on January 22, 2007.[57] The Olver-Gilchrest bill is a companion measure to the McCain-Lieberman bill introduced in the Senate and contains similar provisions.[58]

Congressional activity continued throughout the year. For example, on March 20, 2007, Representative Henry Waxman (D-CA) reintroduced his Safe Climate Act, which he originally introduced in June 2006.[59] The Safe Climate Act would be implemented jointly by the EPA and the Department of Energy (DOE).[60] EPA would be charged with creating a cap on CO_2 emissions and regulations to implement a cap-and-trade program.[61] DOE would have to establish national standards to increase the percentage of retail electricity generated from renewable sources by 20 percent by 2020.[62] The bill also calls for two percent annual reductions in CO_2 emissions, beginning in 2011, and five percent annual reductions beginning in 2021, resulting in a total reduction of CO_2 emissions to 80 percent below 1990 levels by 2050.[63] In April and May, Senators Lamar Alexander (R-TN)[64] and Thomas Carper (D-DE)[65] introduced separate bills aimed at reducing

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53. Press Release, U.S. Sen. Comm. on Energy & Natural Resources, Another Step Forward on Climate Legislation (Jan. 22, 2007), http://energy.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&PressRelease_Id=235184.

54. S. 1766, 110th Cong. (2007).

55. Press Release, Speaker Nancy Pelosi, Pelosi Announces the Creation of Select Committee on Energy Independence and Global Warming (Jan. 18, 2007), http://speaker.house.gov/newsroom/pressreleases?id=0038.

56. H. Res. 202, 110th Cong. § 4(c) (2007).

57. H.R. 620, 110th Cong. (2007).

58. S. 280,110th Cong. (2007).

59. H.R. 1590, 110th Cong. (2007).

60. *See, e.g.,* H.R. 1590, 110th Cong. § 3(704)(b)(2) (2007).

61. H.R. 1590, 110th Cong. § 3(704) (2007).

62. H.R. 1590, 110th Cong. § 4(610)(a)(2) (2007).

63. H.R. 1590, 110th Cong. § 3(701) (2007).

64. S. 1168, 110th Cong. (2007).

power plant GHG emissions. In October 2007, Representative Rick Boucher (D-VA), Chair of the House Energy and Commerce Subcommittee on Energy and Air Quality, and John Dingell (D-MI), Chair of the House Committee on Energy and Commerce, announced that their goal was to use a cap-and-trade program to reduce GHG emissions 60 to 80 percent by 2050, encompassing all sectors of the economy, including the transportation sector.[66]

Lieberman-Warner Cap-and-Trade Bill Ready for the Senate. Despite this Congressional activity throughout the year, the bill that proceeded the farthest through the legislative process was one of the last climate changes bills introduced in Congress in 2007. On October 18, 2007, Senators Joseph Lieberman (I/D-CT) and John Warner (R-VA), chairman and ranking member, respectively, of the Environment and Public Works Subcommittee on Private Sector and Consumer Solutions to Global Warming and Wildlife Protection, introduced S. 2191, a bill creating a GHG cap-and-trade program that focuses on the electric power and industrial sectors of the economy.[67] After further change in committee process, on December 5, 2007, the Senate Environment and Public Works Committee voted 11-8 in favor of S. 2191.[68] The bill would cap GHG emissions at 70 percent of 2005 levels by 2050, in the electric power, natural gas, and industrial sectors.[69] In 2012, twenty-one and a half percent of emission allowances would be auctioned, increasing to sixty-nine and a half percent by 2031.[70] If S. 2191 is enacted, fuel supplies must reduce the carbon per unit of energy in their fuel five percent by 2015 and 10 percent by 2020.[71] The bill now is awaiting consideration by the full Senate.

The Lieberman-Warner bill assigns to EPA the responsibility for crafting the GHG inventory and reporting requirements for its cap-and-trade program.[72] The bill establishes a fast-track system for companies to inventory and report their emissions. As currently drafted, sources must begin reporting their emissions in early 2008 and provide historical emissions data for 2004-2007 by the end of the first quarter of 2009.[73] While these deadlines will likely change in further Senate debate and negotiations with the House,

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65. S. 1177, 110th Cong. (2007).

66. *See* U.S. HOUSE COMM. ON ENERGY AND COMMERCE, CLIMATE CHANGE LEGISLATION DESIGN WHITE PAPER: SCOPE OF A CAP-AND-TRADE PROGRAM (2007), *available at* http://energycommerce.house.gov/Climate%5FChange/White_Paper.100307.pdf.

67. S. 2191, 110th Cong. (as reported by S. Comm. on Envt. and Public Works, Dec. 5, 2007).

68. S. 2191, 110th Cong. (as reported by S. Comm. on Envt. and Public Works, Dec. 5, 2007).

69. S. 2191, 110th Cong. § 1201(d) (as reported by S. Comm. on Envt. and Public Works, Dec. 5, 2007).

70. S. 2191, 110th Cong. § 3102 (as reported by S. Comm. on Envt. and Public Works, Dec. 5, 2007).

71. S. 2191, 110th Cong. §§ 11003(c)(11)(a)(i)(IV)(bb)–(cc) (as reported by S. Comm. on Envt. and Public Works, Dec. 5, 2007).

72. S. 2191, 110th Cong. §§ 1103–1104 (as reported by S. Comm. on Envt. and Public Works, Dec. 5, 2007).

73. S. 2191, 110th Cong. § 1103(d) (as reported by S. Comm. on Envt. and Public Works, Dec. 5, 2007).

most notably, a significant Senate committee is expecting regulated companies to act immediately to inventory and report their emissions.[74]

Trading Programs in the States. Congress was not the only arena in which emission trading programs were being developed; the states were actively pursuing their own such programs to reduce GHG emissions in state and region-wide initiatives. For example, on June 18, 2007, Maine Governor John Baldacci (D) signed into law the Regional Greenhouse Gas Initiative Act of 2007 ("the Maine Act").[75] The Maine Act establishes a statewide cap of 5,948,902 tons of CO_2.[76] This cap will remain stable until 2015, at which point the cap will decrease by 10 percent from 2015 through 2018.[77] Initially, power plants in Maine must purchase CO_2 emissions credits through an auction.[78] Similarly, in August and October, the environmental agencies in Massachusetts[79] and New York,[80] respectively, issued proposed trading regimes controlling GHG emissions from power plants in their states. Maine, New York, and Massachusetts are members of the Regional Greenhouse Gas Initiative (RGGI), which intends to implement a trading exchange that would serve all 10 member states and their regulated power industries.[81]

While the pace of Congressional activity addressing climate change was unprecedented, no legislation broadly addressing GHG emissions passed either house of Congress in 2007. Remarkably, however, Congress reached agreement and obtained President Bush's approval to increase fuel economy standards for the first time in decades.[82] Moreover, Congressional leaders seemed to have reached consensus that if any GHG emission reduction mandate is enacted, it will include a cap-and-trade program as an integral part of achieving that mandate. Thus, in 2007, Congress took sig-

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74. For a detailed and enlightening discussion of the Lieberman-Warner bill's reporting deadlines and penalties, see EDWARD F. MALONE & MICHAEL R. STRONG, REGISTERING EMISSIONS UNDER LIEBERMAN-WARNER BILL — LIABILITY RISKS AND SOLUTIONS, 2008 Emerging Issues LEXIS 5 (Jan. 2008).

75. Me. Rev. Stat. Ann. tit. 38, §§ 580-A to 580-C. The Maine Act makes Maine the first state to implement the Regional Greenhouse Gas Initiative (RGGI) Model Rule. The RGGI Model Rule focuses on GHG emissions from power plants. RGGI is a regional initiative, comprised of 10 northeastern and mid-Atlantic States to control GHG emissions from power plants. Under the RGGI Model Rule, the regional cap and trade of GHG emissions will begin January 1, 2009. *See* Me. Rev. Stat. Ann. tit. 38, § 580-B(2).

76. Me. Rev. Stat. Ann. tit. 38, § 580-B(3).

77. Me. Rev. Stat. Ann. tit. 38, § 580-B(3).

78. *See* Me. Rev. Stat. Ann. tit. 38, § 580-B(4)(F).

79. 1085 Mass. Reg. 11 (Aug. 24, 2007).

80. XXIX N.Y. Reg. 12 (Oct. 24, 2007); XXIX N.Y. Reg. 18 (Oct. 24, 2007).

81. *See* About RGGI, http://www.rggi.org/about.htm (last visited Jan. 30, 2008). The 10 members of RGGI are: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Participating States, http://www.rggi.org/states.htm (last visited Jan. 30, 2008).

82. See the discussion above of the Energy Independence and Security Act of 2007, Pub. L. No. 110-140 [110 P.L. 140], 121 Stat. 1492 (2007).

nificant new steps to increase fuel economy and to craft fundamental approaches to GHG emission reductions as part of a broader climate change agenda.

"States" — Churning Ahead With Climate Change Regulation

In 2007, almost all of the government activity to directly limit GHG emissions occurred through state or regional initiatives. As in the past, California led the way, continuing to develop the implementing regulations for its statewide GHG emission reduction program. However, other states have begun to develop their own programs. Moreover, regional groups have continued to implement previously agreed-to programs or craft new ones.

Regional Groups Form Across the Country. The year began with the announcement of a new regional partnership. Governors of five western states announced on February 26, 2007, that they were forming the Western Climate Initiative (WCI).[83] This group includes Arizona, California, Montana, New Mexico, Oregon, Utah, Washington, and the Canadian provinces of British Columbia and Manitoba.[84] WCI pledged to establish a regional target for reducing CO_2 and other GHGs.[85] The members will then develop a cap-and-trade program designed to achieve the GHG emissions reduction goal.[86] On August 12, 2007, WCI announced its GHG reduction goals.[87] To reach a combined GHG emissions reduction economy-wide of 15 percent below 2005 levels by 2020, WCI expects to establish a framework for a regional GHG cap-and-trade program by August 2008.[88]

WCI is following the example set by RGGI, a climate change partnership comprised of northeastern and mid-Atlantic states. RGGI focuses on requiring emission reductions by power plants, but these utility emission reductions will have ripple effects on industry and other consumers in the region and nationally. RGGI states used 2007 to propose regulations implementing their regional commitment. In Maine, Governor John Baldacci (D) signed legislation implementing the RGGI Model Rule, which reduces GHG emissions through a cap-and-trade system.[89] Later in the year, Massachusetts[90] and New

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83. Press Release, WCI, Five Western Governors Announce Regional Greenhouse Gas Reduction Agreement (Feb. 26, 2007), http://www.westernclimateinitiative.org/ewebeditpro/items/O104F12774.pdf.

84. WCI Provincial and State Partner Contacts, http://www.westernclimateinitiative.org/Contact_Us.cfm (last visited Jan. 30, 2008).

85. Press Release, WCI, Five Western Governors Announce Regional Greenhouse Gas Reduction Agreement (Feb. 26, 2007), http://www.westernclimateinitiative.org/ewebeditpro/items/O104F12774.pdf.

86. Press Release, WCI, Five Western Governors Announce Regional Greenhouse Gas Reduction Agreement (Feb. 26, 2007), http://www.westernclimateinitiative.org/ewebeditpro/items/O104F12774.pdf.

87. Press Release, WCI, WCI Members Set Regional Target to Reduce Greenhouse Gas Emissions (Aug. 22, 2007), http://www.westernclimateinitiative.org/ewebeditpro/items/O104F13013.pdf.

88. Memorandum, WCI, WCI Statement of Regional Goal (Aug. 22, 2007), http://www.westernclimateinitiative.org/ewebeditpro/items/O104F13012.pdf.

89. Me. Rev. Stat. Ann. tit. 38, §§ 580-A to 580-C.

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York[91] released their draft regulations to reduce GHG emissions by their power plants and establish a trading regime.

In addition to RGGI and WCI, a third regional initiative has been formed. On November 15, 2007, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Ohio, South Dakota, Wisconsin, and the Canadian province of Manitoba signed the Midwestern Greenhouse Gas Reduction Accord ("the Midwestern Accord").[92] The Midwestern Accord commits the signatories to establish GHG emissions reduction targets, develop a multi-sector cap-and-trade program, and create a reporting system.[93] The signatories met on December 17, 2007, to develop a regional climate change strategy, with the goal of proposing a cap-and-trade program within 12 months. These states also agreed to the Energy Security and Climate Stewardship Platform for the Midwest, under which the states agreed to meet at least two percent of regional annual retail sales of natural gas and electricity through energy efficiency by 2015; the percentage will increase by two percent every year after 2015.[94]

States Take Individual Actions. Outside of these regional efforts, individual states enacted their own laws and moved on several different fronts to address climate change issues. For example, while the western region was agreeing to collaborate, the State of Washington passed legislation requiring action in that state. On May 3, 2007, Washington Governor Christine Gregoire (D) signed climate change legislation that requires economy-wide reductions in GHG emissions.[95] The Washington Act is similar to the California Global Warming Solutions Act of 2006[96] ("the California Act"), the first legislation in the U.S. to require reductions in GHG emissions. The law requires reduction of statewide GHG emissions to 1990 levels by 2020, to 25 percent below 1990 levels by 2035, and to 50 percent below 1990 levels by 2050.[97] The bill also prohibits electric utilities in the state

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90. 1085 Mass. Reg. 11 (Aug. 24, 2007).

91. XXIX N.Y. Reg. 12 (Oct. 24, 2007); XXIX N.Y. Reg. 18 (Oct. 24, 2007).

92. MIDWESTERN GOVERNORS ASS'N, MIDWESTERN GREENHOUSE GAS ACCORD (2007), http://www.midwesterngovernors.org/resolutions/GHGAccord.pdf. Indiana, Ohio, and South Dakota signed as observers. News Release, Midwestern Governors Ass'n, Governors Sign Energy Security and Climate Stewardship Platform and Greenhouse Gas Accord (Nov. 16, 2007), http://www.midwesterngovernors.org/govenergynov.htm.

93. *See* MIDWESTERN GOVERNORS ASS'N, MIDWESTERN GREENHOUSE GAS ACCORD (2007), http://www.midwesterngovernors.org/resolutions/GHGAccord.pdf. All participating states are members of or plan to join the Climate Registry as the group's procedure for tracking emissions. The Climate Registry is an association of 39 states, the District of Columbia, six Canadian provinces, three Native American tribes, and two Mexican states organized to develop and manage a uniform GHG emissions reporting system. *See* The Climate Registry, States, Provinces and Tribes That Have Joined The Climate Registry as of January 18, 2008, http://www.theclimateregistry.org/The_Climate_Registry_Map_of_States.pdf (last visited Jan. 30, 2008).

94. MIDWESTERN GOVERNORS ASS'N, ENERGY SECURITY AND CLIMATE STEWARDSHIP PLATFORM FOR THE MIDWEST 2007 6 (2007), http://www.midwesterngovernors.org/resolutions/Platform.pdf.

95. S. 6001, 60th Leg., 2007 Reg. Sess. (Wash. 2007) ("the Washington Act").

96. Cal. Health & Safety Code §§ 38500–38599.

from entering into long-term power contracts with power plants after June 30, 2008, unless the plant meets the state's new emissions performance standards.[98]

New Jersey went beyond RGGI and, on July 6, 2007, enacted the New Jersey Global Warming Response Act ("the New Jersey Act").[99] The New Jersey Act requires the state to reduce GHG emissions in the short- and long-term.[100] Specifically, GHG emissions must be reduced to 1990 levels by 2020, the same reduction requirement found in the California Act.[101] The New Jersey Act goes beyond the requirements of the California Act by requiring a statewide reduction of GHG emissions by 80 percent by 2050.[102] The New Jersey Department of Environmental Protection is now required to prepare a report by June 2008 which recommends policies on how to meet the 2020 GHG emissions reduction goal and, by June 2010, create a report addressing how to achieve the 2050 goal.[103] Maryland also began moving to consider economy-wide GHG emission reductions, releasing a report in December from its Commission on Climate Change urging reductions of 90 percent below 2006 levels by 2050.[104]

In the Midwest, in July, the Illinois Climate Change Advisory Group, appointed by Governor Rod Blagojevich (D), approved 19 strategies to reduce the state's GHG emissions.[105] Some of the approved strategies include energy-efficiency standards for appliances and equipment, passenger and freight rail upgrades, a renewable portfolio standard requirement for the electric power industry, and a Low Carbon Fuels Standard (LCFS) similar to the one proposed in California.[106] Illinois, a state blessed with significant coal reserves, was challenged to develop initiatives that would not have a negative impact on the coal industry.

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97. S. 6001, 60th Leg., 2007 Reg. Sess., § 3(a)–(c) (Wash. 2007). On December 21, 2007, the Washington Climate Advisory Team released a draft report providing 12 recommendations for meeting the targets, including creating a cap-and-trade program with binding GHG emissions limits. WASH. CLIMATE ADVISORY TEAM, A COMPREHENSIVE CLIMATE APPROACH FOR WASHINGTON (2007), http://www.ecy.wa.gov/climatechange/CATdocs/122107_1_recommendations.pdf. A final draft is due by February 7, 2008.

98. S. 6001, 60th Leg., 2007 Reg. Sess., § 5(2) (Wash. 2007).

99. N.J. Stat. §§ 26:2C-37 to 26:2C-44.

100. N.J. Stat. § 26:2C-40.

101. N.J. Stat. § 26:2C-40.

102. N.J. Stat. § 26:2C-40.

103. N.J. Stat. § 26:2C-42(b) & (c).

104. MD. COMM'N ON CLIMATE CHANGE, CLIMATE ACTION PLAN: INTERIM REPORT TO THE GOVERNOR AND THE MARYLAND GENERAL ASSEMBLY (2008), http://www.mdclimatechange.us/ewebeditpro/items/O40F14798.pdf.

105. ILL. CLIMATE CHANGE ADVISORY GROUP, RECOMMENDATIONS FROM THE JULY 10, 2007 MEETING (2007), http://www.epa.state.il.us/air/climatechange/documents/07-07-10/summary-of-recommendation-july-10-meeting.pdf.

106. ILL. CLIMATE CHANGE ADVISORY GROUP, RECOMMENDATIONS FROM THE JULY 10, 2007 MEETING (2007), http://www.epa.state.il.us/air/climatechange/documents/07-07-10/summary-of-recommendation-july-10-meeting.pdf.

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Similarly, on September 12, 2007, Virginia Governor Tim Kaine (D) published the Virginia Energy Plan ("the Plan"), which proposed legislation requiring an economy-wide reduction in GHG emissions to 30 percent below 2007 levels by 2025.[107] The Plan also proposes reducing the state's energy growth rate by 40 percent by 2025.[108] The Plan promotes consumer awareness on energy use, research and development in nuclear energy, alternative transportation fuels, coastal energy production, and CO_2 sequestration.[109] The plan does not endorse decreasing coal production, as Virginia is one of the largest coal-producing states in the country.

In New York, climate change regulation occurred on a statewide and municipal level. On August 3, 2007, New York Governor Eliot Spitzer (D) signed a bill that requires that all new cars and light trucks sold in New York, model year 2010 and later, include a global warming index sticker.[110] The global warming index sticker must be securely and conspicuously affixed in a clearly visible location on the vehicle.[111] The sticker must contain a scale that compares the emissions of global warming gases from the vehicle with the average projected emissions from all vehicles of the same model year.[112]

This statewide action followed the announcement of New York City Mayor Michael Bloomberg (R) on May 22, that the New York City Taxi and Limousine Commission will adopt new emissions standards to convert the city's taxicab fleet to hybrid vehicles by October 2012.[113] The new standards will require all vehicles in the taxicab fleet to get a minimum of 25 miles per gallon by October 2008, increasing to 30 miles per gallon by October 2009.[114] According to the Mayor's office, the new standards will reduce the CO_2

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107. VA. DEP'T OF MINES, MINERALS AND ENERGY, THE VIRGINIA ENERGY PLAN 143 (2007), http://www.governor.virginia.gov/TempContent/2007_VA_Energy_Plan-Full_Document.pdf.

108. VA. DEP'T OF MINES, MINERALS AND ENERGY, THE VIRGINIA ENERGY PLAN 144 (2007), http://www.governor.virginia.gov/TempContent/2007_VA_Energy_Plan-Full_Document.pdf.

109. VA. DEP'T OF MINES, MINERALS AND ENERGY, THE VIRGINIA ENERGY PLAN 145-50 (2007), http://www.governor.virginia.gov/TempContent/2007_VA_Energy_Plan-Full_Document.pdf. CO2 sequestration consists of capturing and storing CO2 to prevent it from reaching the atmosphere.

110. N.Y. Envtl. Conserv. Law § 19-1103(1).

111. N.Y. Envtl. Conserv. Law § 19-1103(1).

112. N.Y. Envtl. Conserv. Law § 19-1103(2)(a).

113. Press Release, N.Y. Mayor Michael Bloomberg, Mayor Bloomberg Announces Taxi Fleet to be Fully Hybrid by 2012 (May 22, 2007),http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2007a%2Fpr156-07.html&cc=unused1978&rc=1194&ndi=1.

114. Press Release, N.Y. Mayor Michael Bloomberg, Mayor Bloomberg Announces Taxi Fleet to be Fully Hybrid by 2012 (May 22, 2007),http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2007a%2Fpr156-07.html&cc=unused1978&rc=1194&ndi=1.

emissions of the city's taxicab fleet by 50 percent during the next decade and could save taxicab operators, on average, $10,000 a year in fuel costs.[115]

Climate change initiatives demonstrated broad bi-partisan support at the state level. For example, on July 13, 2007, Florida Governor Charlie Crist (R) signed three executive orders designed to reduce GHG emissions in the state. In Executive Order 07-126, Governor Crist established GHG emission reduction targets for state agencies and departments.[116] The order calls for a 10 percent reduction from current emissions levels by 2012, a 40 percent reduction from current levels by 2017, and a 40 percent reduction from current levels by 2025.[117] Executive Order 07-127 requires the Florida Secretary of Environmental Protection to develop rules to achieve GHG emissions reductions throughout the state, including adopting a maximum allowable GHG emissions level for electric utilities in the state and adopting the California LCFS.[118] Executive Order 07-128 creates the Florida Governor's Action Team on Energy and Climate Change, tasked with developing a comprehensive Energy and Climate Action Plan.[119] On November 14, 2007, Florida's Chief Financial Officer, Alex Sink, announced that investment managers controlling the state's $20 billion in treasury funds must assess climate change risk affecting their investment portfolios in their semi-annual reviews.[120] The investment managers must demonstrate how their investment decisions take into account the financial risks posed by climate change.[121]

Other states took more targeted action against electric utility companies. For example, in Kansas, on October 18, 2007, the Department of Health and Environment (KDHE) denied an air quality permit for two coal-fired generators because the generators would produce 11 million tons of CO_2 yearly, acting under a statute that allows KDHE to deny a permit to protect the health of persons or the environment.[122] In its decision, KDHE

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115. Press Release, N.Y. Mayor Michael Bloomberg, Mayor Bloomberg Announces Taxi Fleet to be Fully Hybrid by 2012 (May 22, 2007),http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2007a%2Fpr156-07.html&cc=unused1978&rc=1194&ndi=1.

116. Exec. Order No. 07-126, *available at* http://www.flgov.com/pdfs/orders/07-126-actions.pdf.

117. Exec. Order No. 07-126, at § 1, *available at* http://www.flgov.com/pdfs/orders/07-126-actions.pdf.

118. Exec. Order No. 07-127, at § 2(1), *available at* http://www.flgov.com/pdfs/orders/07-126-actions.pdf.

119. Exec. Order No. 07-128, at §§ 1–2, *available at* http://www.flgov.com/pdfs/orders/07-128-actionteam.pdf.

120. Press Release, Alex Sink, CFO, Florida Department of Fin. Servs. CFO Sink Announces State Treasury Requiring Disclosure of Climate Risk; Exploration of Clean Energy Fund for Florida (Nov. 14, 2007), http://www.myfloridacfo.com/pressoffice/ViewMediaRelease. Florida's investment portfolio includes Wachovia, Bank of America, and General Electric.

121. Press Release, Alex Sink, CFO, Florida Department of Fin. Servs. CFO Sink Announces State Treasury Requiring Disclosure of Climate Risk; Exploration of Clean Energy Fund for Florida (Nov. 14, 2007), http://www.myfloridacfo.com/pressoffice/ViewMediaRelease.

122. News Release, Kansas Department of Health and Environment, KDHE Denies Sunflower Electric Air Quality Permit (Oct. 18, 2007), http://www.kdheks.gov/news/web_archives/2007/10182007a.htm.

found CO_2 to be a pollutant, relying on the Supreme Court's decision in *Massachusetts v. EPA*.[123] KDHE stated that the decision was the first step in a state policy to reduce CO_2 emissions.[124]

However, Nevada's Environmental Commission rejected a petition by Western Resource Advocates, a Colorado-based environmental organization, that sought to prevent three utility investment firms from building coal-fired power plants before the Nevada Division of Environmental Protection (NDEP) develops a GHG emissions standard.[125] While rejecting this petition, the Nevada authority ordered NDEP to draft a memorandum of understanding with the firms seeking to build coal-fired power plants which would require installation of CO_2 sequestration technology when that technology becomes commercially available.[126]

California Continues to Lead State Efforts. Despite widespread state and regional efforts in 2007, the single state to have taken the most significant action with respect to GHG emission regulation was California. In 2006, California enacted the California Act (California Global Warming Solutions Act of 2006, also known as AB 32), which requires industry-wide GHG reductions in that state.[127] Implementing that law, on April 20, 2007, staff of CARB recommended three "early action" measures to reduce GHG emissions: (1) a LCFS, (2) restrictions on high global warming potential (GWP) refrigerants, and (3) landfill methane capture.[128] The second early action measure targets HFCs, which have 140-11,700 times more GWP than CO_2.[129] The measure would restrict the use of HFCs in non-professional recharging of leaking automotive air conditioners.[130] The last early

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123. News Release, Kansas Department of Health and Environment, KDHE Denies Sunflower Electric Air Quality Permit (Oct. 18, 2007), http://www.kdheks.gov/news/web_archives/2007/10182007a.htm.

124. News Release, Kansas Department of Health and Environment, KDHE Denies Sunflower Electric Air Quality Permit (Oct. 18, 2007), http://www.kdheks.gov/news/web_archives/2007/10182007a.htm. A petition to build a coal-fired plant also was rejected in Florida due to concerns over future GHG emission regulation. News Release, Fla. Pub. Serv. Comm'n, Florida Public Service Commission Denies Determination of Need for Proposed Power Plants in Glades County (June 5, 2007), http://www.floridapsc.com/home/news/index.aspx?id=273.

125. *In re* Western Resource Advocates, Nev. State Envtl. Comm'n (Oct. 5, 2007), *available at* http://www.sec.nv.gov/docs/decision_notice_cover_let_090707.pdf.

126. *In re* Western Resource Advocates, Nev. State Envtl. Comm'n 4 (Oct. 5, 2007), *available at* http://www.sec.nv.gov/docs/decision_notice_cover_let_090707.pdf.

127. Cal. Health & Safety Code §§ 38500–38599.

128. CARB, PROPOSED EARLY ACTIONS TO MITIGATE CLIMATE CHANGE IN CALIFORNIA (2007), http://www.arb.ca.gov/cc/ccea/meetings/042307workshop/early_action_report.pdf. The LCFS was first proposed by California Governor Arnold Schwarzenegger (R) in a 2007 executive order. Exec. Order No. S-01-07, *available at* http://gov.ca.gov/index.php?/executive-order/5172/. The LCFS will require fuel providers to ensure that the fuels they sell in California meet a declining standard for GHG emissions that result from the use of transportation fuel. CAL. AIR RESOURCES BOARD (CARB), FINAL REGULATION ORDER (2005), *available at* http://www.arb.ca.gov/regact/grnhsgas/revfro.pdf.

129. CARB, PROPOSED EARLY ACTIONS TO MITIGATE CLIMATE CHANGE IN CALIFORNIA 14 (2007), http://www.arb.ca.gov/cc/ccea/meetings/042307workshop/early_action_report.pdf. *See* U.N. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 26.

action measure would set standards for the installation and performance of active gas collection and control systems at landfills.[131] CARB estimates that these three actions will reduce GHG emissions in California between 13 and 26 million metric tons of CO_2 equivalent annually by 2020, relative to projected levels.[132] On September 6, 2007, CARB's staff proposed six additional early actions to be in place by 2010 ("the 2010 actions") and another five by 2012 ("the 2012 actions").[133] The 2010 actions include: (1) banning sulfur hexafluoride; (2) emissions standards for aerosols, tire inflators, and electronics cleaning and dust removal products; (3) retrofitting trucks and trailers to reduce aerodynamic drag; (4) requiring automobile maintenance workers to ensure proper tire inflation; (5) allowing docked ships to use shoreside electrical outlets instead of their auxiliary engines; and (6) perflourocarbon emission standards in the semiconductor industry.[134] The 2012 actions include: (1) enhanced monitoring, enforcement, and recovery of refrigerants, including HFCs; (2) improved energy efficiency in cement facilities; (3) increased cement blending; (4) increased compliance with anti-idling regulations; and (5) research on reducing nitrous oxide emissions from fertilizer applications.[135] The CARB list of early actions, including 35 other approved measures for GHG emission reductions (for a total of 44), was finalized in October 2007.[136] CARB estimated that the early actions could provide 25 percent of the reductions by 2020 mandated by the California Act.[137]

In its final major GHG regulatory action for the year, on November 16, 2007, CARB proposed 427 million metric tons as the GHG emissions baseline for 1990 that must be met by 2020 to comply with the California Act.[138] CARB estimates that California will produce 600 million metric tons of GHG emissions in 2020, so the state would have to reduce its GHG emissions by approximately 173 million metric tons between now and

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130. CARB, PROPOSED EARLY ACTIONS TO MITIGATE CLIMATE CHANGE IN CALIFORNIA 14 (2007), http://www.arb.ca.gov/cc/ccea/meetings/042307workshop/early_action_report.pdf.

131. CARB, PROPOSED EARLY ACTIONS TO MITIGATE CLIMATE CHANGE IN CALIFORNIA 15 (2007), http://www.arb.ca.gov/cc/ccea/meetings/042307workshop/early_action_report.pdf.

132. CARB, PROPOSED EARLY ACTIONS TO MITIGATE CLIMATE CHANGE IN CALIFORNIA 7 (2007), http://www.arb.ca.gov/cc/ccea/meetings/042307workshop/early_action_report.pdf.

133. CARB, EXPANDED LIST OF EARLY ACTION MEASURES TO REDUCE GREENHOUSE GAS EMISSIONS IN CALIFORNIA RECOMMENDED FOR BOARD CONSIDERATION (Draft) (2007), http://www.arb.ca.gov/cc/ccea/meetings/091707workshop/ea_ii_report.pdf.

134. CARB, EXPANDED LIST OF EARLY ACTION MEASURES TO REDUCE GREENHOUSE GAS EMISSIONS IN CALIFORNIA RECOMMENDED FOR BOARD CONSIDERATION (Draft) 12–14 (2007), http://www.arb.ca.gov/cc/ccea/meetings/091707workshop/ea_ii_report.pdf.

135. CARB, EXPANDED LIST OF EARLY ACTION MEASURES TO REDUCE GREENHOUSE GAS EMISSIONS IN CALIFORNIA RECOMMENDED FOR BOARD CONSIDERATION (Draft) 14–15 (2007), http://www.arb.ca.gov/cc/ccea/meetings/091707workshop/ea_ii_report.pdf.

136. CARB, EXPANDED LIST OF EARLY ACTION MEASURES TO REDUCE GREENHOUSE GAS EMISSIONS IN CALIFORNIA RECOMMENDED FOR BOARD CONSIDERATION (Final) (2007), http://www.arb.ca.gov/cc/ccea/meetings/ea_final_report.pdf.

137. CARB, EXPANDED LIST OF EARLY ACTION MEASURES TO REDUCE GREENHOUSE GAS EMISSIONS IN CALIFORNIA RECOMMENDED FOR BOARD CONSIDERATION (Final) 2 (2007), http://www.arb.ca.gov/cc/ccea/meetings/ea_final_report.pdf.

138. CARB, CALIFORNIA 1990 GREENHOUSE GAS EMISSIONS LEVEL AND 2020 EMISSIONS LIMIT 1 (2007), http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf.

2020 to meet the baseline.[139] CARB's proposal will not become final until after an official public comment period, which began in early December.

Climate Registry Takes Hold Across the Country. Recognizing that these statewide, regional and, potentially, national reduction initiatives would benefit from a uniform emission inventory and reporting system, many states joined to adopt a common emission registry system. On May 8, 2007, 31 states, two Canadian provinces, and one Native American tribe announced that they will be participating in the Climate Registry, a new multi-state GHG emissions tracking system.[140] The Climate Registry will be modeled after California's Climate Action Registry and give its members tools to measure, track, verify, and publicly report GHG emissions. The Climate Registry will begin accepting data from member states in January 2008. Initially, the Climate Registry will be funded by several states and private foundations. Eventually, the Climate Registry will be funded through fees paid by businesses and other entities that voluntarily report their GHG emissions through the Climate Registry. On October 29, 2007, the Climate Registry announced its proposed General Reporting Protocol, which will become final early in 2008.[141] By the end of 2007, the Climate Registry had become widely accepted throughout the United States and included Canadian provinces, a Mexican state, and Native American tribes.[142] The Climate Registry was also promoted as a system EPA should examine when adopting the reporting scheme proposed in the Lieberman-Warner cap-and-trade bill.[143]

Conclusion: What to Expect in 2008

The year 2007 was a pivotal one for climate change, as this issue became the focus of political, economic, and social discourse. Global attention was captured when Vice President Al Gore and the United Nations Intergovernmental Panel on Climate Change (IPCC) won the Nobel Peace Prize for their work on climate change.[144] In the U.S., almost all climate change initiatives occurred outside of the White House — in corporate board rooms, state office buildings, the halls of Congress, or consumers' wallets. In

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139. CARB, CALIFORNIA 1990 GREENHOUSE GAS EMISSIONS LEVEL AND 2020 EMISSIONS LIMIT 1, at 26 (2007), http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf.

140. Press Release, The Climate Registry, Dozens of States Join *The Climate Registry* to Track Greenhouse Gas Emissions (May 8, 2007), http://www.theclimateregistry.org/The_Climate_Registry_Press_Release.pdf.

141. THE CLIMATE REGISTRY, GENERAL REPORTING PROTOCOL FOR THE VOLUNTARY REPORTING PROGRAM (2007), http://www.theclimateregistry.org/Draft_General_Reporting_Protocol.pdf.

142. The Climate Registry, Member Contacts: November 7, 2007, http://www.theclimateregistry.org/TCR_States.pdf (last visited Jan. 30, 2008).

143. See subhead "Lieberman-Warner Cap-and-Trade Bill Ready for the Senate," above, for discussion of the Lieberman-Warner bill.

144. IPCC issued its Fourth Assessment Report in parts throughout 2007, where it concluded, *inter alia*, that human beings are causing global warming. *See* IPCC, FOURTH ASSESSMENT REPORT: CLIMATE CHANGE 2007: SYNTHESIS REPORT: SUMMARY FOR POLICYMAKERS (2007), *available at* http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf.

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2007, 290 million compact fluorescent light bulbs, which were endorsed by EPA's and DOE's Energy Star program to help reduce GHG emissions, were sold, representing approximately 20 percent of market sales.[145]

Although states are proceeding to develop new regulations to implement GHG emission reductions targeted at the energy sector, those regulations will have pass-through effects throughout industry and to consumers. With states likely to continue to introduce new regulatory actions on climate change throughout 2008, industry must keep careful watch on initiatives occurring in many different jurisdictions nationwide.

In addition to monitoring state regulation, industry should begin analyzing how they will meet likely inventory and reporting requirements for their GHG emissions. The Lieberman-Warner bill requires industry to begin accounting for their GHG emissions almost immediately upon enactment as law. Moreover, while the bill does not mandate a particular reporting scheme, its endorsement of the Climate Registry cautions business to take a hard look now at how it could comply with the Climate Registry and other inventory requirements.

Although the focus of litigation and federal legislation in 2008 has been on vehicular emissions, the auto industry is not the only one to be affected by continuing litigation in 2008. While a decision on California's attempt to limit GHG emissions from vehicles is not likely to be finalized this year, pressure will continue on all vehicle users to limit emissions and for industry to develop alternative fuels. This will lead to pressure on agriculture prices and vehicle prices, particularly as European countries begin to impose vehicle emissions.

In sum, 2007 saw climate change initiatives beginning to have impacts throughout major sectors of the economy, particularly in the energy and transportation sectors. Although the White House may not be leading efforts to address climate change, national legislation to control GHG emissions, including an emissions trading system, is on track to be enacted before the end of the decade.

For Discussion of Climate Change and Global Warming, *see* Treatise on Environmental Law Ch. 1A, § 1A.01 *et seq.* (LexisNexis Matthew Bender).

For Discussion and Analysis of *Massachusetts v. EPA*, *see* Treatise on Environmental Law § 1A.02 (LexisNexis Matthew Bender); Environmental Law Practice Guide § 17.10A; and Michael B. Gerrard's Expert Commentary accompanying the case on Lexis.com at 127 S. Ct. 1438 (2007).

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145. Press Release, EPA, EPA and DOE Spread a Bright Idea: Energy Star Light Bulbs Are Helping to Change the World (Jan. 15, 2008),http://yosemite.epa.gov/opa/admpress.nsf/dc57b08b5acd42bc852573c90044a9c4/970f05bf0bc5d9aa852573d10055b38d!OpenDocument. According to EPA, if every U.S. household replaced a bulb or fixture with an Energy Star-approved bulb, there would be a reduction of GHG emissions equivalent to those of more than 800,000 cars. *Id.*

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For Discussion and Analysis of *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, *see* Dustin Till's Expert Commentary accompanying the case on Lexis.com at 2007 U.S. Dist. LEXIS 67617 (D. Vt. 2007)**.**

For Comprehensive Coverage of Environmental Trading Programs, *see* Environmental Law Practice Guide, Ch. 18B (LexisNexis Matthew Bender).

For General Coverage of California Emission Standards, *see* California Environmental Law & Land Use Practice, Ch. 42, *Federal and State Regulation of Motor Vehicles*, §§ 42.40–42.42 (LexisNexis Matthew Bender).

For Coverage of California's Response to Global Warming, *see* California Environmental Law & Land Use Practice, Ch. 85, *Climate Change* (LexisNexis Matthew Bender).

For Expert Commentary on Various Topics Discussed in this Article, *see* Steven Jones, CA Sues EPA Over Vehicle Emissions Standards; CARB Disputes Effectiveness of New Federal Standards, 2008 Emerging Issues LEXIS 48 (Jan. 2008); Edward F. Malone & Michael R. Strong, Registering Emissions Under Lieberman-Warner Bill — Liability Risks and Solutions, 2008 Emerging Issues LEXIS 5 (Jan. 2008); Oscar Marrero & Gabrielle Sigel, EPA Denies Clean Air Act Waiver for California's GHG Regulation for Motor Vehicles, 2008 Emerging Issues LEXIS 10 (Jan. 2008); Alyssa Moir, California Moves to Reduce Greenhouse Gas Impacts From Transportation Fuels, 2008 Emerging Issues LEXIS 109 (Feb. 2008).

For More About the Regional Greenhouse Gas Initiative, *see* Treatise on Environmental Law § 2.04 (LexisNexis Matthew Bender) (specifically § 2.04[4]).

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Ms. Sigel's national practice focuses primarily on environmental, safety and health litigation and counseling, toxic tort defense, and insurance coverage litigation and counseling. She recently concluded several toxic tort lawsuits concerning a contaminated site located in a residential area. A significant portion of Ms. Sigel's litigation practice involves representing employers in matters concerning work-related injuries, including OSHA proceedings, personal injury lawsuits, criminal investigations, workers' compensation hearings and insurance coverage claims.

In addition to her litigation practice, Ms. Sigel advises clients on a variety of counseling, regulatory, and transactional issues. For example, she currently is

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advising a multinational corporation on how to address climate change issues, including working to develop definitions, inventory, and programs for greenhouse gas emission reduction. Her transactional experience has included due diligence investigations of environmental, safety and health issues nationwide, in Europe, and in Canada, in preparation for both sales and acquisitions of manufacturing concerns.

Ms. Sigel has been an adjunct professor, teaching environmental law at Northwestern University School of Law. She is active in the American Bar Association, Sections of Litigation and Environment, Energy and Resources. The Illinois State Bar Association appointed her to its Environmental Law Section Council. Ms. Sigel began developing her diverse legal practice when she joined Jenner & Block in 1983, immediately after graduating *cum laude* from Boston University School of Law. Ms. Sigel is AV Peer Review Rated, Martindale-Hubbell's highest peer recognition for ethical standards and legal ability.

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About Jenner & Block. Jenner & Block LLP is a national law firm with over 450 lawyers experienced in virtually every area of the law. Jenner & Block's reputation as one of the country's most successful law firms has been established by consistently delivering excellent legal counsel to clients in the boardroom and the courtroom, from the trial level through the United States Supreme Court. In keeping with the Firm's tradition of proactively addressing the needs of the global business community, Jenner & Block's Climate and Clean Technology Law Practice takes a unique, holistic and cross disciplinary approach to addressing its clients' needs in this rapidly evolving area of the law.

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