



U.S. AND CANADIAN OFFICIALS WHO WILL AFFECT CLIMATE CHANGE LEGISLATION

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Intro

In the next six months, significant Canadian and U.S. climate change legislative and regulatory developments will affect business activities in both countries. Newly appointed Canadian ministers and new U.S. executive and congressional leadership will influence the scope of new laws and regulations, when they take effect and their potential compliance costs and benefits to business. There are significant and varied opportunities to work with these key policy makers and to participate and influence these regulatory and legislative developments. This bulletin identifies some of the key policy makers and statements they made before taking office.

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U.S. Executive Branch

Carol Browner – Assistant to President for Energy and Climate

President Obama calls Ms. Browner the energy and climate “czar.” She believes that climate change is “the greatest environmental health problem the world has ever seen,” and will contribute to U.S. climate change policies, promote comprehensive cap-and-trade and support tougher air quality standards. In her new position, Ms. Browner will co-ordinate energy

and climate efforts across federal agencies and work closely with Lisa Jackson, new Administrator of the U.S. Environmental Protection Agency (EPA), and Nancy Sutley, new chair of the Council on Environmental Quality (CEQ). Ms. Browner will also be advised on climate policy by Jody Freeman, a Harvard Law School professor.

Ms. Browner was Chair of the National Audubon Society Board of Directors. Previously, during the Clinton administration, Ms. Browner was EPA Administrator. She was also head of the Florida Department of Environmental Protection, legislative director for former Vice President Gore (while he was a Senator from Tennessee), and legal counsel to the Senate Committee on Energy and Natural Resources.

Lisa Jackson – EPA Administrator

With EPA experience and, most recently, as New Jersey’s top environmental regulator, Administrator Jackson will advocate aggressive action on greenhouse gas regulation. She guided New Jersey into the Regional Greenhouse Gas Initiative - the nation’s first mandatory greenhouse gas cap-and-trade program. Under Administrator Jackson, EPA recently published a notice that it would reconsider the Agency’s previous decision to deny a Clean Air Act waiver for California’s stricter vehicle greenhouse gas emission standards. Jackson also plans a quick response to the 2007 Supreme Court ruling in Massachusetts v. EPA, noting that an EPA decision on endangerment would “indeed trigger the regulation of CO2 for this country.” One of Administrator Jackson’s top legal advisors is Lisa Heinzerling, a Georgetown Law School professor.



Hilary Rodham Clinton – Secretary of State

Secretary Clinton called climate change “an unambiguous security threat” that could “incite new wars of an old kind – over basic resources like food, water, and arable land.” Secretary Clinton’s Department of State will likely take a lead role in negotiations for a post-2012 international global warming agreement, including emission restrictions on developed countries and financial assistance to stimulate new technology in developing countries. Secretary Clinton has named Todd Stern, veteran of the Kyoto Protocol talks, as U.S. Special Envoy for Climate Change to assist with global climate change negotiation.

While serving as the junior U.S. Senator from New York, Secretary Clinton served on the Senate Environment and Public Works Committee. During the 2008 presidential election, Secretary Clinton pledged to (1) reduce greenhouse gas emissions 80% from 1990 levels by 2050; (2) cut foreign oil imports by two-thirds from projected levels by 2030; and (3) transform the U.S. carbon-based economy into an efficient green economy, creating at least 5 million jobs from clean energy over the next decade. Secretary Clinton has supported a comprehensive cap-and-trade program to assist in meeting these goals.

Nancy Sutley – Chair of Council on Environmental Quality (CEQ)

Ms. Sutley is expected to lead President Obama’s climate change efforts and oversee other environmental policy decisions. She will advise the President on environmental issues (including reducing greenhouse gas emissions), co-ordinate federal environmental agencies and ensure that federal agencies comply with the National Environmental Policy Act.

Ms. Sutley most recently served as Deputy Mayor for Energy and Environment for the City of Los Angeles, Energy Adviser to California Governor Gray Davis (D) and board member of the California Water Resources Control Board. She was an assistant to Carol Browner when Browner was EPA Administrator.

Steven Chu – Secretary of Energy

Secretary Chu is outspoken about the risks of global warming, including the risk of future “resource wars” over water and agricultural resources. He considers continued heavy reliance on domestic and international traditional coal-fired power plants his

“worst nightmare.” He has also stated that the United States needs to move first to curb greenhouse gas emissions, with the expectation that China and other developing countries would follow quickly. He is expected to expand federal research and deploy low-carbon energy technologies to reduce global warming pollution.

Secretary Chu most recently served as the director of Lawrence Berkeley National Laboratory and has experience with renewable energy, energy efficiency and climate change issues. He received the 1997 Nobel Prize in physics for his work on cooling and trapping atoms with laser light.

Ken Salazar – Secretary of the Interior

As a U.S. Senator, Secretary Salazar opposed the Bush administration on various Colorado and Western energy and environmental issues. Recently, he opposed oil shale development regulations as insufficient to protect the environment and legislation that would have required the U.S. Army Corps of Engineers to consider global warming when planning water projects.

Prior to serving in the U.S. Senate in 2005, Secretary Salazar was a Colorado environmental and water lawyer and was chief legal counsel to Colorado Governor Roy Romer (D) from 1987 to 1990. Governor Romer appointed him as a director of the Colorado Department of Natural Resources (“DNR”) in 1990, where he served until 1994.

Tom Vilsack – Secretary of Agriculture

President Obama is expected to give Secretary Vilsack a key role on his energy team, with particular emphasis on advanced farmland biofuel development. Mr. Vilsack told the Senate Agriculture Committee that he wants to “enhance the role of the farm sector and rural communities in solving the great environmental and energy-related challenges our country faces” by promoting renewable energy technologies and sustainable agriculture. Mr. Vilsack is a strong advocate of ethanol, wind, solar and biofuel alternative energy sources and supports a comprehensive cap-and-trade system.

Mr. Vilsack was an attorney with Dorsey & Whitney representing clients in renewable energy and agribusiness, as well as an instructor at Drake University Law School. He acted as governor for the state of Iowa from 1998 to 2006.



Update on Cap-and-Trade Authorizing Legislation

Under the Western Climate Initiative (WCI), each member jurisdiction must adopt and enact its own program linked to the regional cap-and-trade system. Some WCI members already have taken steps toward establishing such a system by 2012, including:

California. California already has legislative authority to participate in WCI. On December 11, 2008, the California Air Resources Board (CARB) approved a Scoping Plan, setting out a detailed roadmap to achieve California's greenhouse gas (GHG) reduction goals in accordance with the Global Warming Solutions Act of 2006 (AB 32). The Scoping Plan sets out many policies and actions that will be required to achieve California's GHG emission reduction commitments, including a cap-and-trade program intended to start in 2012.

Oregon. On December 18, 2008, Governor Ted Kulongoski proposed draft cap-and-trade legislation to be considered in the 2009 legislative session. Senate Bill 80 (SB 80) directs the Oregon Environmental Quality Commission, with consultation from the Department of Environmental Quality, to implement a GHG cap-and-trade system by 2012. SB 40 provides that Oregon's system will be linked to a broader cap-and-trade system, either regional or federal.

Washington. The latest draft of Washington's proposed cap-and-trade legislation would authorize the Department of Ecology to convene a market design work group to develop final recommendations to the legislature by December 1, 2010 on critical issues such as issuing and retiring allowances to businesses in the state, the inclusion/recognition of offset credits, auction design, and recognition of early actions to reduce emissions.

Canada. In the November 19, 2008, Speech from the Throne, the Canadian government signalled its interest in a North America-wide cap-and-trade system to be developed in co-operation with provincial governments. This departs from Canada's past commitments to its "Turning the Corner" plan, which had emphasized intensity-based targets.

Manitoba. On June 12, 2008, the Climate Change and Emissions Reductions Act received royal assent. The Act commits Manitoba to reducing GHG emissions, and authorizes the provincial government to enact regulations to manage GHG reductions through market-based mechanisms.

U.S. Congressional Members

Nancy Pelosi – U.S. Speaker of the House of Representatives

Representative Nancy Pelosi (D-CA) represents California's 8th Congressional District and is a leader on environmental issues domestically and abroad. In January 2007, she became Speaker of the House of Representatives. She has pledged to pass legislation on the global climate crisis and create green jobs. Speaker Pelosi helped develop comprehensive energy legislation that increased vehicle fuel efficiency standards and supported a commitment to American home-grown biofuels.

Henry Waxman – U.S. House of Representatives

Representative Henry Waxman (D-CA) represents California's 30th Congressional District. In January 2009 Representative Waxman became chair of the House Energy and Commerce Committee. He proposes to pass a comprehensive climate bill from his committee before the May 25 congressional recess.

In 1992, he introduced the first congressional bill for climate stabilization. He was one of the primary authors of the 1990 Clean Air Act amendments, which addressed urban smog, toxic air pollution, acid rain and the depletion of the stratospheric ozone layer.

Barbara Boxer – U.S. Senate

Senator Barbara Boxer (D-CA) supports federal clean air and water programs with a particular focus on greenhouse gas control. Recently, Senator Boxer stated "green technology should be part of an economic recovery strategy", and "[the United States] should mobilize to avoid the ravages of global warming." She chairs the U.S. Senate's Committee on Environment and Public Works (EPW) and EPW's subcommittee on Public Sector Solutions to Global Warming.

In February, Senator Boxer released "Principles for Global Warming Legislation" as a focal point for legislative efforts in the Senate. The principles include a commitment to create transparent and accountable market-based systems that efficiently reduce carbon emissions and to ensure a continued role for states in efforts to address global warming.



Edward J. Markey – U.S. House of Representatives

Representative Edward J. Markey (D-MA) represents Massachusetts' 7th Congressional District. He is chair of the House Select Committee on Energy Independence and Global Warming ("Select Committee") and the Energy and Environment subcommittee of the Energy and Commerce Committee. He is a key legislator with respect to climate change and other environmental issues.

The Select Committee advanced smart energy and climate policies, including the first increase in fuel economy standards in three decades. In 2008, Representative Markey sponsored the "Investing in Climate Action and Protection Act" (iCAP) "cap and invest" legislation that would have reduced greenhouse gas emissions and promoted clean technology solutions to climate change.

Canadian Leadership

Prime Minister Stephen Harper

Stephen Harper was sworn in as Canada's 22nd prime minister on February 6, 2006. Since that time, Prime Minister Harper has announced details of a federal regulatory scheme involving a cap-and-trade system and carbon trading framework as part of Canada's "Turning the Corner" plan. The November 19, 2008 Speech from the Throne, which following Mr. Harper's re-election, indicated that Canada would "work to develop and implement a North America-wide cap-and-trade system for greenhouse gases."

This commitment to a common North American system was re-affirmed in Prime Minister Harper's first official telephone call with President Obama on January 23, 2009 in which he stated that it is his intention to harmonize Canada's environmental policies to those of the new U.S. President.

Jim Prentice - Minister of the Environment

Mr. Prentice became the Minister of the Environment on October 30, 2008. Representing voters in Calgary, Alberta, Mr. Prentice is known to be a strong supporter of Canada's energy sector. He promoted the federal government's proposal to reduce greenhouse gas emissions through intensity-based caps but agrees that the ultimate goal should be a firm cap. As Minister, Mr. Prentice strongly advocates a continent-wide climate change regime that will protect Canada's perceived role as a secure source of oil to the United States from expanded Alberta oil sands development.

Andrew Treusch – Associate Deputy Minister of Environment

The government of Canada recently created a new senior civil servant position in the Ministry of the Environment dedicated to climate change issues and appointed Mr. Treusch to the role as Associate Deputy Minister of Environment in August 2008. Mr. Treusch's background is in economic and competition policy and federal-provincial relations, indicating that the government has identified implementation as a critical factor in federal efforts to address climate change.

Conclusion

Our Climate Change, Energy, and Cleantech lawyers are following these federal, state, and provincial developments and can advise you whether proposed legislation would particularly affect your business or activities. Please contact the legal services provider with whom you work for additional information about climate change legislative and regulatory initiatives.



Perkins Coie

Kirk Dublin
415.344.7059
kdublin@perkinscoie.com

Ivan Gold
503.727.2214
igold@perkinscoie.com

Steve Higgs
503.727.2215
shiggs@perkinscoie.com

Tom Lindley
503.727.2032
tlindley@perkinscoie.com

Robert Maynard
208.343.3434
rmaynard@perkinscoie.com

Karen McGaffey
206.359.6368
kmcgaffey@perkinscoie.com

Mark Quehrn
425.635.1402
mquehrn@perkinscoie.com

Steven Pope
425.635.1420
spope@perkinscoie.com

Christopher Sutton
303.291.2312
csutton@perkinscoie.com

Shane Swindle
602.351.8384
sswindle@perkinscoie.com

Joanna Thies
303.291.2322
jthies@perkinscoie.com

Sloane Wildman
202.434.1623
swildman@perkinscoie.com

Fasken Martineau

Kai Alderson
604.631.3222
kalderson@fasken.com

Florence Dagicour
514.397.5236
fdagicour@fasken.com

Ron Ezekiel
604.631.4708
rezekiel@fasken.com

Brenden Hunter
403.261.6157
bhunter@fasken.com

Sophie Ionescu
604.631.4803
sionescu@fasken.com

Charles Kazaz
416.868.3517
ckazaz@fasken.com

Pierre Meunier
514.397.4380
pmeunier@fasken.com

Andre Turmel
514.397.5141
aturmel@fasken.com

Paul Wilson
604.631.4748
pwilson@fasken.com