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Recent Developments in Climate Change Regulation

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In recent years, there has been an increasing amount of attention paid to climate change, both in the media and on the part of "green groups" such as Sierra Club, and regulators in the U.S. and other countries have proposed or finalized rules intended to limit greenhouse gases such as carbon dioxide, methane and ozone-depleting substances. These regulations affect various industries, including coal and oil and gas, as well as industries reliant upon them, such as the power generation and auto industries.

In addition, certain countries, including the U.S., China, India and Brazil, have made public pronouncements of ambitious plans to reduce carbon emissions during the next few decades. These plans have been released in advance of this December's "COP21" negotiations in Paris, where the parties to the UN Framework Convention on Climate Change will meet to try to agree to binding carbon emissions reduction targets as a successor to the Kyoto Protocol.

As there is every indication this regulatory interest in climate change will continue for the foreseeable future, we briefly describe below nine significant recent regulations or developments related to climate change as a preview of what is to come.

1. U.S. Clean Power Plan / Carbon Pollution Standards for New, Modified and Reconstructed Power Plants

a. The Clean Power Plan, issued by the U.S. Environmental Protection Agency ("EPA") sets state-by-state target emissions rates for carbon emissions from the power sector that add up to a 32% reduction in carbon emissions from 2005 levels by 2030. It requires states to submit implementation plans to meet these emissions rates (with a federal plan kicking in if states refuse to submit plans). Certain states already have measures in place that will likely help them meet their target emissions rates (e.g., California's greenhouse gas reduction regulation, AB 32, which includes emissions reduction targets and a cap and trade program).

i. *Timing:* State implementation plans are due by September 2016, and states must begin meeting interim emissions goals in 2022 and final goals in 2030.

ii. *Legal Uncertainty:* This rule was subject to litigation almost as soon as it was proposed; the litigation has not been successful because it was premature, but many more lawsuits challenging the final rule are expected once it is published in the Federal Register this fall.

b. The EPA's Carbon Pollution Standards are a separate set of regulations that will place carbon emissions limits on new, modified and reconstructed power plants.

i. *Timing:* These standards apply to new power plants that commence construction after January 8, 2014, and to modifications to or reconstructions of existing sources that occur after June 18, 2014.

2. China Carbon Emissions Reduction Targets / Carbon Emissions Trading Program

a. China has announced that it will cut greenhouse gas emissions per unit of GDP by 60 to 65% from 2005 levels by 2030.

b. In 2017, China plans to put in place a nationwide carbon emissions trading program covering various sectors, such as power generation, iron/steel, chemicals, and building materials.

3. India Carbon Emissions Reduction Targets

a. India has announced that, by 2030, it will reduce its carbon emissions rate relative to GDP by 33 to 35% from 2005 levels.

4. Brazil Carbon Emissions Reduction Targets

a. Brazil has announced it will cut carbon emissions by 37% from 2005 levels by 2025 (mainly by reducing deforestation and increasing the share of renewable energy).

5. Conference of Parties 21 (COP21) in Paris

a. This meeting of the parties to the UN Framework Convention on Climate Change will occur in December 2015, and the goal is for the parties to agree on legally binding measures intended to limit global temperature rise to 2 °C above pre-industrial levels.

b. The U.S., China, India and Brazil carbon emissions initiatives discussed above are intended to be these countries' contribution to this goal.

6. EPA Proposed Methane Rules for the Oil & Gas Sector

a. In August 2015, EPA proposed rules regulating methane (a potent greenhouse gas) emissions from U.S. oil and gas wells that aim to reduce methane emissions from oil and natural-gas drilling by 45% by 2025 compared to 2012 levels.

b. Timing for finalizing these rules is unknown, though it would likely need to happen before the end of President Obama's term at the end of 2016.

7. EPA and the U.S. Department of Transportation's National Highway Traffic Safety Administration's ("NHTSA") Corporate Average Fuel Economy ("CAFE") standards

a. EPA and NHTSA issue greenhouse gas and fuel efficiency standards for light-, medium- and heavy-duty vehicles called CAFE standards. New CAFE standards are issued periodically for upcoming vehicle model years, meaning that the standards generally become more stringent over time.

b. For example, in June 2015 EPA and NHTSA proposed new CAFE standards for medium- and heavy-duty vehicles manufactured in model years 2021 through 2027, which for the first time include greenhouse gas standards relating to trailers in addition to engines.

8. EPA Proposed Update to Clean Air Act Refrigerant Management Requirements

a. In October 2015, EPA released a proposed rule intended to reduce emissions of ozone-depleting refrigerants, which are among the most potent of greenhouse gases. The proposed rule would have the effect of more strenuously enforcing existing U.S. Clean Air Act provisions that prohibit knowingly venting ozone-depleting refrigerants during the repair or disposal of air conditioning and refrigeration equipment.

9. Sierra Club's "Beyond Coal" and "Beyond Gas" Campaigns

a. In addition to government regulation aimed at combatting climate change, we are increasingly seeing environmental groups assert their climate policy agendas through campaigns such as the Sierra Club's "Beyond Coal" and "Beyond Gas" campaigns.

b. Sierra Club and other environmental groups not only advocate for increased regulation aimed at preventing climate change, but also bring citizen suits and target various stakeholders in the coal and gas industries (e.g., landlords and regulators) in an effort to replace these greenhouse gas intensive fuels with cleaner energy sources.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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