



Tuesday, October 26
2:30pm-4:00pm

708 - Which Way is the Wind Blowing Today? A Practical Review of the Legal Implications of Climate Change

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Partner

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Vincent Gonzales

Senior Environmental Counsel

Southern California Gas Company

Robert Johnson

Chief Attorney - Environmental & Safety

Exxon Mobil Corporation

Robert Temple

Former Deputy General Counsel, Secretary and Vice President

CPS Energy

Faculty Biographies

Jacob Dweck

Jacob Dweck is a partner in Sutherland's Energy and Environmental Practice Group, and has a diverse energy policy and legal practice spanning nearly 35 years in oil, natural gas and LNG, electric power, climate change, renewable resources, and energy futures and derivatives. He has represented major concerns in nearly every segment of the energy industry, including IOCs, NOCs, power generators, oil, gas and electricity traders, investment bankers, state and foreign governments, utilities, pipeline companies, refiners, terminal operators and project developers, among others. His practice has involved significant matters before U.S. Congress and the courts, as well as the U.S. Department of Energy, FERC, EPA, MMS, Coast Guard, Customs Service and other federal and state agencies.

Mostly recently, Mr. Dweck has been focusing on the financial reform legislation and the impact it will have on energy companies. He was interviewed by Platts Energy Week on WUSA Channel 9 in Washington DC, and continues to cover the speaking circuit. Additionally, he chairs Sutherland's firm-wide Climate Change Practice and regularly contributes to the Energy Projects and Energy Trading teams at Sutherland. He was recently recognized by Public Utilities Fortnightly for his work serving clients in the LNG industry by being named as a "Groundbreaking Lawyer" in their November 2009 issue.

Mr. Dweck graduated magna cum laude from the City University of New York and graduated from Georgetown Law Center.

Vincent Gonzales

Vincent M. Gonzales is senior environmental counsel for Sempra Energy, working in both Los Angeles and San Diego, California. He provides legal counsel and services to Sempra Energy's regulated entities (Southern California Gas Company and San Diego Gas & Electric Company) and its other energy companies.

Prior to joining Sempra Energy, Mr. Gonzales was in-house counsel for Atlantic Richfield Company (ARCO), now operating as BP America. Before ARCO, he was an associate in the corporation department of O'Melveny & Myers.

Mr. Gonzales is a member of the International Board of Directors of ACC. He will be chairing ACC's Energy Committee starting the fall of 2010. He is a director emeritus member of the board of directors of ACC's Southern California chapter. Mr. Gonzales is on the board of directors of the Asian Pacific American Legal Center of Southern California, serving as its treasurer. He is a member and former president of the Philippine American Bar Association of Los Angeles. He has served as chair of ACC's Environmental & Sustainability Committee and as chair of ACC's Council of

Committees. He is also a frequent speaker on environmental law subjects. Most recently, Mr. Gonzales received the Robert J. Townsend ACC Member of the Year Award for 2007, in recognition of his many professional contributions to the ACC and its many in-house counsel members.

Mr. Gonzales is a graduate of the University of Southern California's Gould School of Law. He received a BA from Haverford College, and a MA from the University of California, San Diego.

Robert Johnson

Rob Johnson is chief attorney - environmental & safety, for Exxon Mobil Corporation, based in Houston, Texas. In this position Mr. Johnson is responsible for the provision of legal advice on environmental and safety law issues to Exxon Mobil Corporation and its worldwide affiliates. He leads a team of 18 lawyers and other legal professionals and assistants.

Prior to his current assignment, Mr. Johnson served as assistant chief attorney, ExxonMobil Production Company, with responsibility for legal advice to ExxonMobil upstream affiliates in the US, West Africa, and Asia-Pacific. Before the merger of Exxon and Mobil, Mr. Johnson held a variety of legal positions with Mobil Corporation, including litigation and upstream assignments. He joined Mobil, he was an associate in the Washington, DC office of Hunton & Williams.

Mr. Johnson has been an active member of ACC, serving as a board member and president of ACC's Houston Chapter, and a board member of the ACC Houston Diversity Foundation. He is also active in pro bono work at ExxonMobil. He has served as chair of the Oil and Gas Committee for the Institute of Energy Law. His other community service activities include serving as an assistant scoutmaster with the Boy Scouts of America.

Mr. Johnson received his law degree from Georgetown University, and his undergraduate degree from American University in Washington, DC.

Robert Temple

Bob Temple recently joined the Energy Practice group within the law firm of Haynes and Boone, where he serves as Of Counsel in that firm's Washington, DC office.

Previously, Mr. Temple was deputy general counsel at CPS Energy, the nation's largest municipally-owned electric and gas utility, serving customers in and around San Antonio. In this role, he addressed regulatory issues before administrative agencies, negotiated significant agreements, served as secretary to CPS Energy's board of trustees, and oversaw regulatory and litigation attorneys. He helped implement CPS Energy's strategic energy plan and provided transactional, legislative, and commercial guidance to the Energy Development leadership team. This included obtaining an air permit for a coal-fired power plant. He helped complete negotiation of an engineering procurement and

construction agreement for the expansion of the South Texas Nuclear Project. He also has aided in the development and financing for a variety of wind, solar and fossil-fired generation projects. Prior to joining CPS Energy, Mr. Temple was in private practice in Chicago, representing energy clients in transactional and regulatory work involving power plant purchases and sales, in federal courts in commercial litigation, and before regulatory agencies on energy and environmental matters. Prior to entering the practice of law, he worked as a licensed senior reactor operator and served in the US Navy as an engineering supervisor.

Mr. Temple serves on the statewide board of the General Counsel Forum and the state board for Prevent Blindness Texas.

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Outline of Discussion

- **Background: Many Ways to Regulate GHG**
- **EPA Regulation: Going at it Solo**
- **SEC Disclosure: Carbon Balance Sheet**
- **State Laws (California): Taking the Lead, Again**
- **Cap & Trade: Now-You-See-It, Now-You-Don't**
- **Climate Change Litigation: Courts In the Act**
- **Practical Implications & Experiences: Day to Day**

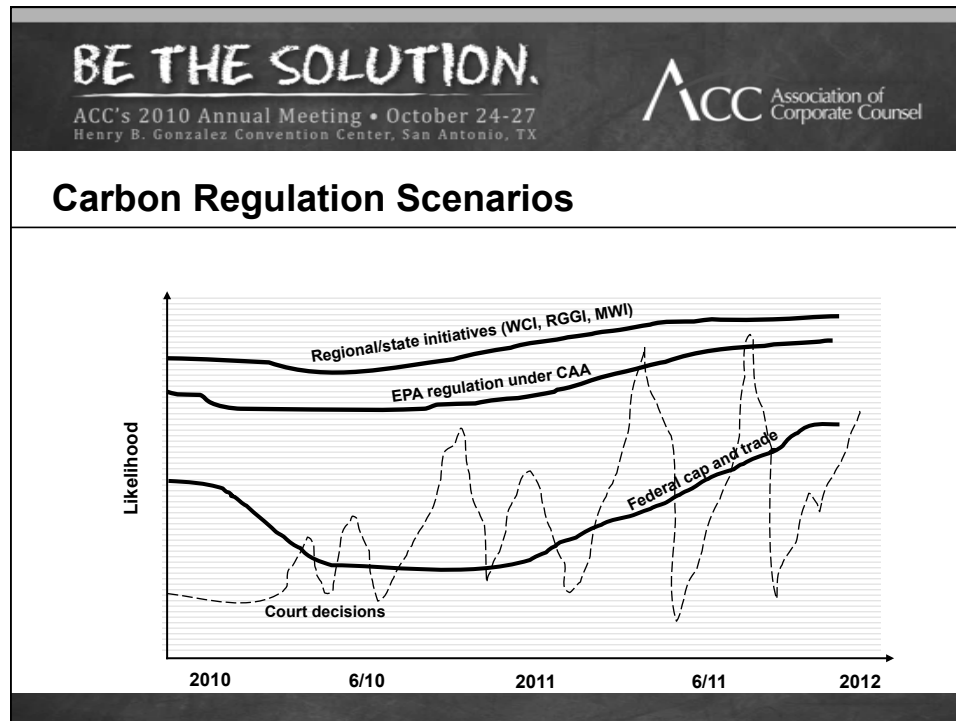
ADDITIONAL REFERENCE MATERIALS

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Background: Many Ways to Regulate GHG



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Federal "Cap and Trade" Fundamental

- **BASIC IDEA:** Supply and demand for emission allowances yield market price for most efficient GHG reductions
 - 1=MTCO₂e: One allowance for each metric ton of CO₂ equivalent
- **SUPPLY:** Government auctions allowances annually equal to each year's emissions cap
 - CREDITS: Issued for qualifying "offset" projects and other activities can be used as allowances
- **DEMAND:** Each "covered entity" must acquire allowances equal to its actual emissions each year
- **PRICE:** Current and forward prices determined by market as allowances (and credits) can be traded, banked, hedged, etc.

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Alternate Regulation Scenario: Regional Laws

Integrated Maps of the 3 Regional Markets

Legend:

- Western Climate Initiative (WCI) Member
- WCI Observer
- Midwestern GHG Reduction Accord (MGGRA) Member
- MGGRA Observer
- Regional Greenhouse Gas Initiative (RGGI) Member
- RGGI Observer

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Regulation Scenario: U.S. EPA

- EPA authorized to regulate GHG under CAA
- GHG inventory reporting adopted
- Proposed "Tailoring Rule" issued under CAA for Title V and PSD facilities
- Rules regulating large emitters
- Existing laws not suitable for GHG regulation
- Industry groups to fight regulators
- Environmentalists will try to force regulation by court action
- EPA actions put pressure on Congress to enact legislation

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Alternative “Regulation” Scenario: The Courts

- “Tobacco” scenario risk – courts acting because executive and legislative fail to adopt preemptive GHG regulation
- Courts now refusing to dismiss claims against emitters for bad effects of GHG – “public nuisance” theory
- Risks and uncertainties of court decisions
 - Use of class actions to ensnare whole industries (e.g., refiners)
 - Based on common law principles applies in each case, not public policy
 - Potentially inconsistent decisions in different parts of the country
 - Crude tools for regulation: money judgment or injunction

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Climate Change – Potential Legal Issues

<p style="text-align: center;">Indirect GHG Regulation</p> <ul style="list-style-type: none"> • Clean Air Statutes & Regulations • Species / Habitat Statutes & Regulations • Environmental Impact Statement Requirements • Clean Water Statutes & Regulations 	<p style="text-align: center;">Litigation</p> <ul style="list-style-type: none"> • Regulatory Litigation • Civil Litigation – Damages • Civil Litigation – Injunctions • Impact Assessment Litigation
<p style="text-align: center;">Traditional Regulatory Issues</p> <ul style="list-style-type: none"> • Possible Trade / WTO issues • Green marketing claims • Intellectual Property issues in technology transfer • Securities regulations / disclosures • GHG Reporting Rules • Antitrust / Competition Law • Regulation of carbon sequestration • Direct GHG Regulations (e.g., Renewable Power Standards, efficiency standards) • Guidelines / Standards from industry groups or standards-setting organizations (e.g., ASTM, ISO, IPIECA) 	<p style="text-align: center;">Legislative Issues</p> <ul style="list-style-type: none"> • Appropriate legal drafting • Enforcement and litigation issues in legislative proposals • Limits on statutory initiatives – constitution, treaties / trade, preemption
	<p style="text-align: center;">Contractual Issues</p> <ul style="list-style-type: none"> • Contractual framework for trading of emissions credits • Responsibility for GHG compliance & costs • Liability for default caused by GHG limit • Ownership of GHG emissions / credits in various scenarios

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EPA Regulation: Going at it Solo

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Overview

- **Background**
 - *Mass v. EPA*
- **Clean Air Act Regulation of GHGs By EPA**
 - Endangerment Finding
 - "Subject to Regulation" Decision (Johnson Memo)
 - Motor Vehicle Rule (Tailpipe Emissions Standards)
 - Tailoring Rule (PSD and Title V)
- **GHG Litigation**
- **2011 and Beyond?**

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Clean Air Act Regulation of GHGs by EPA

- **Endangerment Finding: statutory predicate to regulation under CAA**
 - GHGs from motor vehicles cause/contribute to air pollution
 - GHGs endanger public health and welfare of current/future generations
- **Motor Vehicle Rule: sets GHG tailpipe emissions standards for new MV's in a 2012 (companion to DOT CAFÉ Standards)**
 - Purportedly makes GHGs "subject to regulation" under CAA, triggering PSD construction permitting and Title V operating permits for stationary sources
- **"Subject to Regulation" Decision: interprets "pollutant subject to regulation" at the point where actual GHG control requirements occur**
 - Sets PSD trigger date of January 2, 2011 as a result of Motor Vehicle Rule

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EPA Regulation

- **EPA GHG reporting rule effective January 2010**
 - EPA has granted limited extensions to ease compliance schedule
 - Additional Upstream reporting starting in 2011
- **EPA progressing GHG regulation under Clean Air Act (CAA)**
 - Endangerment Finding established basis for regulation under CAA (Dec '09)
 - 202 rule limits tailpipe GHG emissions from new automobiles (April 2010)
 - 202 rule triggers stationary source GHG permit requirements by statute
 - Low statutory thresholds for permitting creating concern about permit backlog
 - Tailoring Rule seeks to stagger requirements and "tailor" thresholds for permitting
 - CAA complexities create opportunities for opponents to delay or derail projects through permit procedures or legal challenges
- **Congress debating to delay or prevent EPA action under CAA**
- **"Indirect Regulation" issues also arise under**
 - Endangered Species Act
 - Clean Water Act
 - NEPA (environmental impact statement requirements)

Absence of Congressional Action ≠ No Regulation

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- **Endangerment Finding: 17 Petitions for Review filed**
 - Trade Associations/coalitions
 - 3 States also challenged: TX, AL, VA
 - DC Cir: consolidated/held all cases in abeyance until mid-August 2010
- **"Subject to Regulation" Decision: 18 Petitions for Review filed**
 - Trade Associations/Coalitions
 - 8 States filed challenges: TX, AL, VA, SC, ND, SD, NE, MS
 - Only EPA rule challenged by NGO (CBD)
- **Motor Vehicle Rule: 17 Petitions for Review filed**
 - Trade Associations/Coalitions
 - 8 States filed challenges
 - 4 protective petitions filed relating to PSD rulemakings in 1978, 1980 and 2002
- **Tailoring Rule: 5 Petitions filed as of July 12, 2010 (deadline 8/2/10)**
 - State challenge?

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- **1971 – SEC says registrants should consider disclosing financial impact of compliance with environmental laws, based on materiality**
- **Recently, proposed emissions reporting standards from various groups provide framework for disclosure of financial risks due to climate change**
- **February 8, 2010 - SEC interpretive guidance on how existing SEC disclosure requirements apply to climate change; companies should also evaluate for disclosure, and disclose (where material):**
 - Impacts of Legislation and Regulation
 - Impacts of International Accords
 - Indirect Consequences of Regulation or Business Trends
 - Physical Impacts of Climate Change

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- **In 1971 the SEC has issued an interpretive release stating that registrants should consider disclosing in their SEC filings the financial impact of compliance with environmental laws, based on the materiality of the information**
 - See SEC Release 33-5170, 36 FR 13989 (July 19, 1971)
- **More recently the combination of proposed emissions reporting standards from the Climate Registry, the Carbon Disclosure Project and the Global Reporting Initiative along with other actions by regulatory oversight groups, such as the National Association of Insurance Commissioners, have provided a framework for mandatory disclosure of financial risks due to climate change**
- **On January 1, 2010, the EPA began, for the first time, to require large emitters of greenhouse gases to collect and report data with respect to their greenhouse gas emissions**
 - See Mandatory Reporting of Greenhouse Gases, Docket No. EPA-HQ-OAR-2008-0508, 74 FR 56260 (October 30, 2009)

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- **Effective February 8, 2010, the SEC issued interpretive guidance on existing SEC disclosure requirements as they apply to the issue of climate change**
 - Not a rule change, but an interpretation of requirements under existing SEC rules
- **According to the SEC guidance, companies should also evaluate for disclosure, and disclose where material:**
 - **Impacts of Legislation and Regulation:** the impact of certain existing laws and regulations regarding climate change and the potential impact of pending legislation and regulation
 - **Impacts of International Accords:** risks or effects on its business of international accords and treaties relating to climate change
 - **Indirect Consequences of Regulation or Business Trends:** legal, technological, political or scientific developments regarding climate change that create new risks or opportunities
 - **Physical Impacts of Climate Change:** the actual and potential material impacts of environmental matters on their business

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- **Costs to improve facilities and equipment to reduce emissions to comply with regulatory limits or to mitigate the consequences of a “cap and trade” system;**
- **Costs or profits from allowances or credits under a “cap and trade” system; and**
- **Changes to profit or loss from changes in demand for goods and services as a direct result of legislation or regulation, and indirectly from changes in costs of goods sold**

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Examples: Possible Consequences of International Accords Related to Climate Change

- **Charges to the European Union Emissions Trading System (an international “cap and trade” system of allowances based on mechanisms set up under the Kyoto Protocol) or changes to the Kyoto Protocol or subsequent climate change treaties**

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Examples: Possible Indirect Consequences of Regulation or Business Trends

- **A company that plans to reposition itself to take advantage of potential opportunities, such as through material acquisitions of plants or equipment**
- **Impacts to reputation from public perceptions related to climate change**
- **Increased or decreased demand for goods, availability of materials or competition**

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- Coastal property damage and disruptions to operations, including manufacturing operations or the transport of manufactured products;
- Financial and operational impacts from disruptions to the operations of major customers or suppliers from indirect impacts like severe weather, such as hurricanes or floods;
- Increases in insurance claims and liabilities for insurance and reinsurance companies;
- Decreased agricultural production capacity in areas affected by drought or other weather-related changes; and
- Increased insurance premiums and deductibles, or a decrease in the availability of coverage, for companies with plants or operations in areas subject to severe weather

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- By extension under the National Environmental Policy Act (NEPA) other federal agencies compelled to consider climate change for major federal actions – e.g., Department of the Interior, Department of State, FERC, and US Nuclear Regulatory Commission
- As a result of a final rule published July 12, 2010, EPA expanded its Mandatory Greenhouse Gas Reporting Rule requirements to Coal Mines and Industrial Landfills

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**State Laws (California):
Taking the Lead, Again**

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California's AB32 Law

- **GHG Goals**
- **Cap and Trade Program**
- **Low Carbon Fuel Standards**
- **Practical Implications**
 - Energy
 - Transportation
 - Manufacturing
 - Goods & Services

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SDG&E's Sunrise Powerlink Project

- **Concept**
- **Renewable energy sources**
- **Reliability and cost savings**
- **Environmental challenges**
 - Environmental assessment
 - Routing issues

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Cap & Trade: Now-You-See-It, Now-You-Don't

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Possible Approaches to GHG Legislation

- Cap and Trade (C&T)
 - Cap on greenhouse gas (GHG) emissions established; cap declines over time
 - GHG emitters required to surrender emission allowances
 - Excess allowances sold on market
 - May require remission of emission allowances for fuels sold, although not ultimate end consumer
- Carbon Tax
 - Tax on GHG emissions or carbon content of fuel
 - Built on existing tax infrastructure
 - Applied anywhere along the "supply chain"
 - Revenue neutral: carbon tax neutralized by offsets in other taxes (e.g., labor or capital taxes)
 - Transparent and efficient; costs predictable
 - Eliminates risk of new commodity market
- Command & Control Legislation
 - e.g., Renewable Portfolio Standards
 - e.g., energy efficiency standards, building codes

Absent new legislation, regulation of GHGs likely to proceed under the Clean Air Act and other existing statutes

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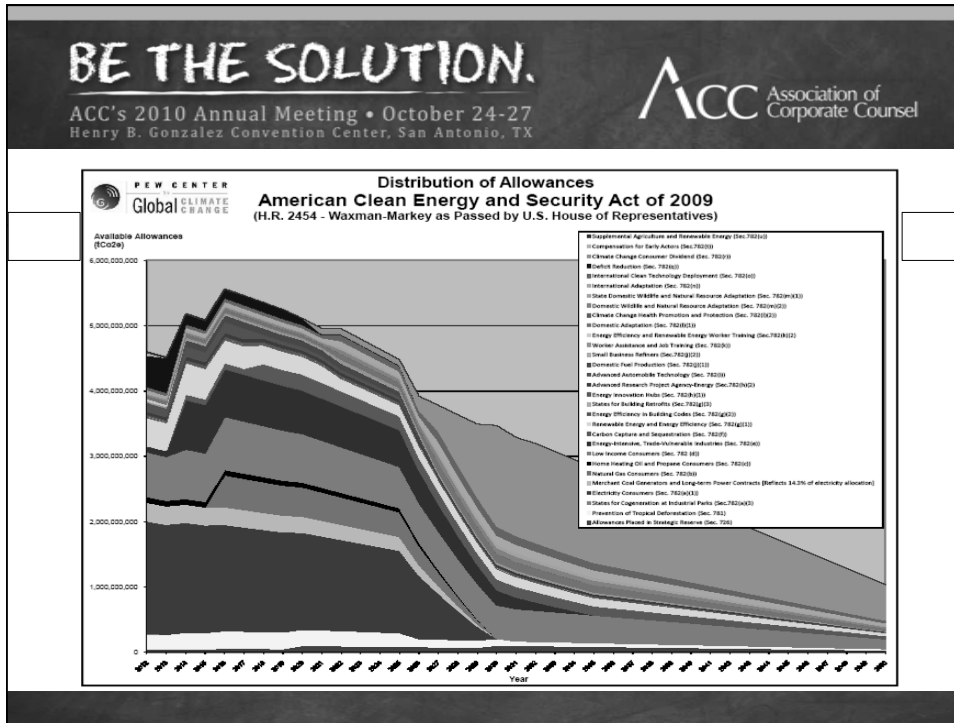
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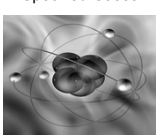


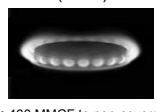
Free and Auctioned Allowances Distribution

Figure 1: Auction vs. Free Allocation in Waxman-Markey

Year	Free Allocation (Billions)	Auction (Billions)
2012	4.5	0.5
2017	4.5	5.5
2022	4.0	4.5
2027	3.5	3.5
2032	2.5	2.5
2037	1.5	1.5
2042	0.8	0.8
2047	0.5	0.5

<http://www.pewclimate.org/policy-memo/allowance-distribution-under-waxman-markey>



Key Regulated Businesses: "Covered Entities"		
<p>Petrochemical Producers</p>  <p>Some chemicals subject to > 25,000 MTCO₂e/yr threshold</p>	<p>NGL Producers</p>  <p>> 25,000 MTCO₂e/yr</p>	<p>Electricity Sources</p>  <p>Threshold: None</p>
<p>Petroleum Refiners</p>  <p>Combustion of fuels produced >25,000 MTCO₂e/yr and emissions from operations (no threshold)</p>	<p>Fuel Importers</p>  <p>Combustion > 25,000 MTCO₂e/yr</p>	<p>Producers, Importers or Emitters of Specified Gases</p>  <p>>25,000 MTCO₂e/yr</p>
<p>Producers of Specified Carbon Intensive Products</p>  <p>Threshold: None</p>	<p>Specified Stationary Sources</p>  <p>>25,000 MTCO₂e/yr</p>	<p>Local Gas Distribution Companies (LDCs)</p>  <p>Deliver >460 MMCF to non-covered entities beginning 2016</p>

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Examples


Offset and Other Compliance Credits




Forestry



Agriculture



Coalmine Methane



Pipeline Upgrades

- Under WM, up to 2B MT annual offset credits -- up to 1B MT U.S. and up to 1.5B MT international (to make up for determination of domestic offset shortfall)
 - Limits on each entity's use of allowances: 30% in 2012; up to 67% in 2050
- **KB sets lower limits and more strict qualification rules**
- **Government to strictly regulate: * additionality * qualification * permanence * leakage**

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Carbon Price Determined by Trading Market . . . With Government Help

- Trading "unrestricted": anyone can play in market for allowances and credits
 - Hedging and derivatives
 - Unlimited "banking"
- Federal Government auctions allowances from \$2.7B "Strategic Reserve" if price exceeds specified level
 - In WM, \$28 in 2012, 5% higher in 2013-14, or 60% above 30-month average after 2014
- Strict regulation of cash transactions, derivatives, credits . . . all aspects – and heavy penalties for non-compliance

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- **Action on climate legislation focused in Senate**
 - House passed Waxman Markey cap and trade bill in June 2009
 - Similar bill passed Senate Environment & Public Works in October 2009
 - Broad consensus that this legislation cannot get 60 votes in current Senate
- **Cantwell and Collins introduced cap and dividend bill**
 - Allowances auctioned; trading very restricted
 - 75% of revenue returned to public via dividend
- **New proposal developed by Kerry, Graham, and Lieberman**
 - Sectoral approach with cap and trade for large emitters
 - Seeking to broaden support with provisions for OCS development, nuclear and natural gas in power generation
 - Ongoing debate over preemption and revenue use
- **"Energy only" legislation, without a carbon price, may be a fallback**
 - Bingaman's bill (ACELA) potential starting point for negotiations
 - Focus on energy subsidies and standards, including electricity generation standard
 - Significant risk that oil and gas industry will be targeted to "pay for" new costs

Situation fluid, but comprehensive climate legislation appears unlikely to pass in 2010

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Climate Change Litigation: Courts In the Act

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- Challenges to EPA GHG Rules by trade associations, states, others
 - Broad challenges to Endangerment Finding on legal and technical issues
 - Some industry groups will challenge "climate science"
 - Legality of "tailoring" likely to be challenged
 - Potential for stay of 202 motor vehicle rule would provide timely relief for stationary sources
- ESA Polar Bear litigation
 - Cases challenging decision to list as "threatened"
 - "4(d) rule" that mitigates impact of listing for industry also being litigated

Tort Litigation

- *State of Connecticut v. American Electric Power* – seeks injunctive relief
- *Comer v. Murphy Oil USA* – seeks damages; ExxonMobil a defendant
- *Native Village of Kivalina v. ExxonMobil* – seeks damages
- Cases in various stages of appeal from trial court dismissals
- Issues include standing and "political question doctrine"

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- **About 250 lawsuits and administrative cases are on file aiming to reduce greenhouse gases or otherwise litigate climate related issues**
- **Most are based on specific statutes, but a handful have been brought under the common law of nuisance, which stems from the idea that the courts for centuries have been ordering abatement of smoke and other nuisances**

Will common law nuisance claims get traction?

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- **Connecticut v. AEP, 2nd Cir:** states and private plaintiffs brought suit against five utilities alleging harm from GHG emissions from power plants, making federal claims or in the alternative, public nuisance claims
 - Panel reversed district court ruling that the claims presented non-justiciable political questions
- **State of North Carolina v. TVA, 4th Cir:** public nuisance law claims that interstate air emissions of criteria pollutants originating from TVA-owned coal-fired power plants in Alabama and Tennessee constituted a public nuisance downwind in North Carolina
 - Panel reversed district court ruling that had allowed extraterritorial application of state law-based nuisance claim
- **Comer v Murphy Oil, 5th Cir:** Katrina victims allege that oil and coal companies emitted greenhouse gasses that contributed to global warming that, in turn, caused a rise in sea levels, adding to Hurricane Katrina's ferocity
 - Panel reversed the district court's ruling that plaintiffs lacked Article III standing to bring such claims, and that the tort claims presented non-justiciable political questions
- **Native Village of Kivalina v. ExxonMobil, District Court, Alaska:** Kivalina, an Inupiat Eskimo village on an island north of the Arctic Circle, has sued some two dozen companies alleging they helped cause climate change that it says is destroying the island and the district court also dismissed the case as non-justiciable

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Day to Day**

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Structuring a Corporate Strategy

Some companies are still here today

Wait and See Position Hedge All In

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Structuring a Corporate Strategy

Where companies increasingly should be

Wait and See Position Hedge All In

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Deploying Tools to Manage Your Carbon Risk

- Track policy and market trends
- Dynamically update carbon price forecasts
- Know your internal abatement cost curve
- Quantify risk-based milestones and response measures
- Implement milestones as they are triggered

Putting the pieces together to reduce your carbon costs, and enhance your competitive advantage

Implementing Operational Responses as Milestones Are Triggered: NGL Example

Renegotiating contracts to shift carbon costs

Changing mix of NGL sales between fuel and non-combustion uses

Changing rate and timing of NGL production

Changing mix of NGL ownership at point of fractionation

Acquisition and disposition of assets

Acquisition and disposition of assets

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Understand Offset Opportunities *(Examples)*

 <p>Landfill Methane</p>	 <p>Small Scale Hydropower</p>	 <p>Agricultural Biodigesters</p>
 <p>Animal Waste Biodigesters</p>	 <p>Biomass and Waste Management</p>	 <p>Industrial Efficiency</p>

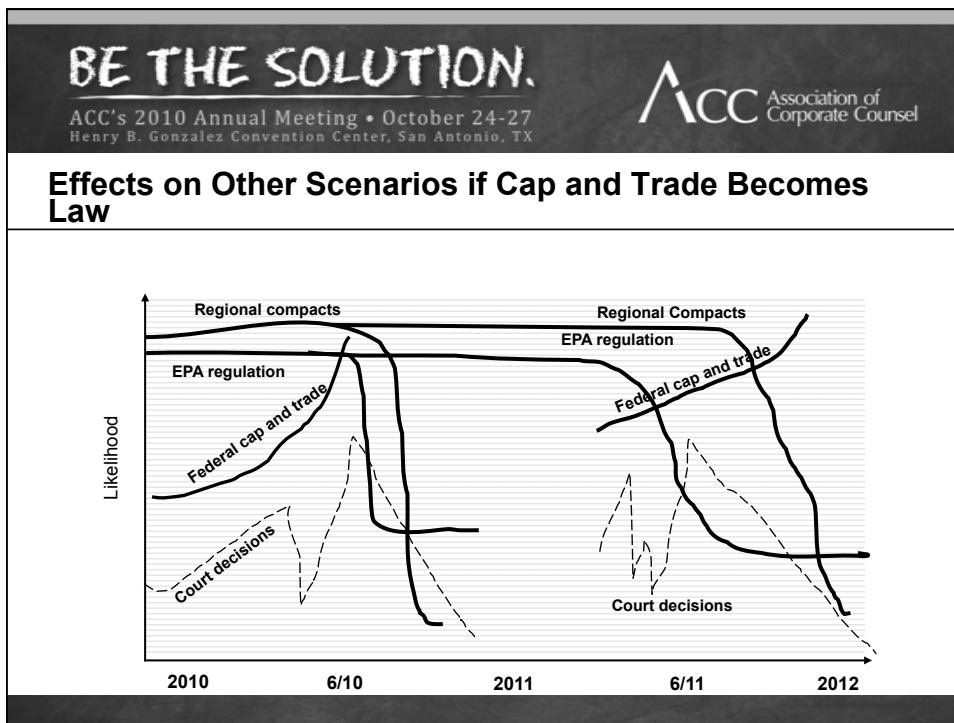
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ADDITIONAL REFERENCE MATERIALS

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U.S. Cap & Trade Legislation

- **Action on climate legislation focused in Senate**
 - House passed Waxman Markey cap and trade bill in June 2009 - broad consensus that this legislation cannot get 60 votes in current Senate
 - Issues include allocation process, limited preemption
- **Kerry- Lieberman – introduced May 2010**
 - Sectoral approach with cap and trade for large emitters
 - Sought to broaden support with provisions for OCS development, nuclear and natural gas in power generation
- **Issues for companies**
 - How are allowances allocated – auction, given out free? Who gets?
 - Trade/WTO issues if try to protect domestic industry
 - Preemption – what's covered? State programs? Federal laws? Tort suits?
- **Prospects???**
 - Senator Reid announced he won't bring up a climate bill until after September
 - CLEAR Act passed in House; no climate provisions
 - No Republican support

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Offsets and Compliance Cost Reductions

Various Estimates of the Costs of Reducing Greenhouse-Gas Emissions Under Cap-and-Trade Programs With and Without Offsets
 (Allowance price in 2007 dollars per metric ton of CO₂e)

Source: Congressional Budget Office based on estimates from the National Commission on Energy Policy, the Environmental Protection Agency, the Energy Information Administration, the Nicholas Institute for Environmental Policy Solutions, and the Massachusetts Institute of Technology.

Notes: The figure shows, for 2030, the allowance prices and emission reductions under various cap-and-trade proposals, including variations on S. 280, the Climate Stewardship and Innovation Act of 2007, and S. 2191, America's Climate Security Act of 2007. Costs are reported in terms of the price per metric ton of carbon dioxide equivalent (CO₂e) emissions associated with achieving a given reduction in greenhouse gases. A metric ton of CO₂e is the amount of a given greenhouse gas (for example, methane or nitrous oxide) that makes the same contribution to global warming as a metric ton of carbon dioxide.

The estimates do not account for the costs of measures to address concerns about the credibility of offsets.

<http://www.cbo.gov/ftpdocs/104xx/doc10497/08-03-Offsets.pdf>

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Not All Potential Offsets Are Created Equal

Category	0 MMT CO ₂	375 MMT CO ₂	750 MMT CO ₂	1,125 MMT CO ₂	1,500 MMT CO ₂	1,875 MMT CO ₂	2,250 MMT CO ₂
Forestry	\$0	\$10	\$20	\$30	\$40	\$50	\$60
Energy Supply	\$0	\$10	\$20	\$30	\$40	\$50	\$60
Energy Efficiency	\$0	\$10	\$20	\$30	\$40	\$50	\$60
Transportation	\$0	\$10	\$20	\$30	\$40	\$50	\$60
Non-CO ₂ Measures	\$0	\$10	\$20	\$30	\$40	\$50	\$60

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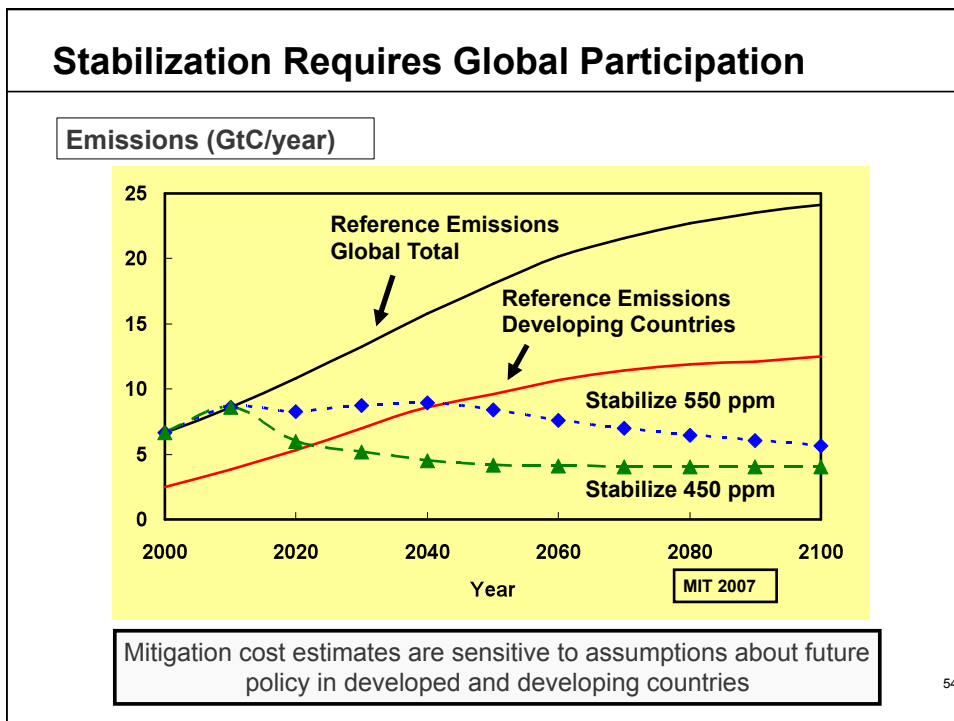
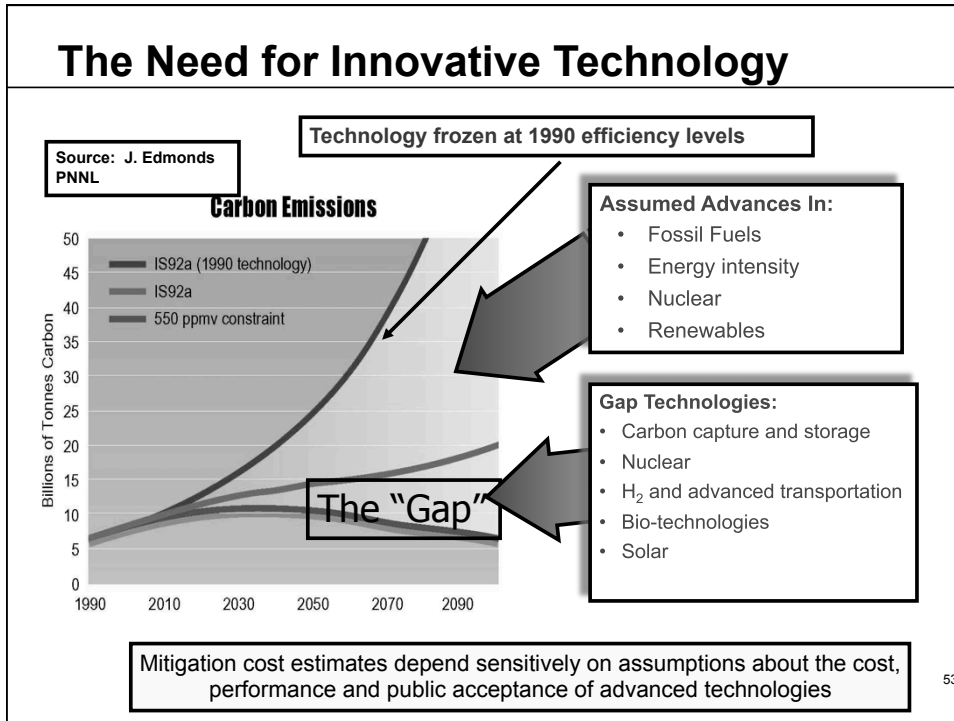
	Ease of Implementation/ Likelihood of Project Success						
	Measurable & Verifiable Reductions						
	Ease of Baseline Development			Clear Ownership of Reductions			
				Results in Direct Reductions			
				Positive Ancillary Benefits		Summary	
Landfill Gas Recovery	Excellent	Excellent	Excellent	Good	Good	Fair	█
Coalmine Methane Recovery	Excellent	Excellent	Excellent	Good	Good	Fair	█
Biomass Energy	Good	Excellent	Good	Excellent	Excellent	Good	█
Energy Use Efficiency - Industry	Good	Excellent	Fair	Good	Good	Fair	█
Afforestation and Reforestation	Good	Good	Excellent	Good	Excellent	Good	█
CO2 Sequestration (Enhanced Oil and Gas Recovery)	Poor	Excellent	Good	Good	Excellent	Poor	█
Inter-Fossil Fuel Switches	Good	Excellent	Fair	Unknown	Fair	Fair	█
Energy Use Efficiency - Commercial	Good	Good	Fair	Good	Poor	Fair	█
Improved Agricultural Practices	Fair	Good	Good	Fair	Good	Good	█
Energy Use Efficiency - Residential	Fair	Fair	Poor	Fair	Poor	Fair	█
Transportation - Behavior Changes	Poor	Poor	Fair	Poor	Poor	Good	█

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Choose the Right Standards

September 7, 2010



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Expanding Parameters of Regional Initiatives


- **Regional cap and trade systems are up and running—and may expand if federal cap and trade is delayed**
 - Regional Greenhouse Gas Initiative (RGGI) since 2008—utilities only but may expand to other entities
 - Western Climate Initiative (WCI) effective 2012 and covering many emitters; may expand to other jurisdictions
 - Midwestern Initiative (MWI) preliminary accord to reduce GHGs; proposed framework rules issued October 2009
- **Under WM, states prohibited from adopting their own cap and trade programs, 2012-2017**
- **Unused allowances and offset credits under regional programs likely to receive federal cap and trade credits, subject to restrictions**



Midwestern Greenhouse Gas Reduction Accord



RGGI



Western Climate Initiative

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Background: *Mass v. EPA*

- **October 1999: 19 NGOs petitioned EPA to regulate emissions of CO₂ and 3 other GHGs from new motor vehicles**
- **September 2003: EPA denied petition; appealed by the NGOs, 12 states and 4 local governments**
- **July 2005: DC Circuit (2-1) upholds EPA's denial**
- **April 2007: Supreme Court finds that CO₂ and other GHGs are "Air Pollutants" under the CAA, and orders EPA to determine:**
 - based on science, whether GHG emissions from new motor vehicles
 - contribute to air pollution *and*
 - may reasonably be anticipated to endanger public health or welfare
 - *or*, provide "some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether" such endangerment exists

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Evolution of Endangerment Finding

- **Proposed Rule:** “[I]t is the Administrator’s judgment that current and projected levels of the mix of the six greenhouse gases endanger the public health and welfare of current and future generations.” 74 Fed Reg 18898

CURRENT HEALTH	CURRENT WELFARE
FUTURE HEALTH	FUTURE WELFARE

- **Final Rule:** “The Administrator finds that the elevated atmospheric concentrations of the well-mixed greenhouse gases may reasonably be anticipated to endanger the public health and welfare of current and future generations.” 74 Fed Reg 66523
- “By current generation we mean a near-term time frame of approximately the next 10 to 20 years” 74 Fed Reg 66514

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Clean Air Act Regulation of GHGs by EPA

- **Tailoring Rule: Phased approach which initially limits PSD/Title V programs to large sources by increasing statutory pollutant thresholds for CO₂e**
 - January 2, 2011 (Step 1): only for sources which require PSD permits for other criteria pollutants
 - July 1, 2011 (Step 2): for PSD 100k/tpy & 75k/tpy and for Title V 100K/tpy applicability threshold
 - Justification: “Administrative Necessity” arising from “Absurd Results”
- **EPA’s Estimated Economic Impacts due to Motor Vehicle Rule Trigger***
 - Title V: 6 million stationary sources totaling \$49.4 billion/yr in permit costs
 - PSD: 81,000 stationary sources totaling \$5.4 billion/yr in permit costs plus cost of installing BACT controls
 - Permitting Agencies: \$22.5 billion/yr to issue Title V/PSD permits

*Source: EPA estimates of relief provided by Tailoring Rule – 75 Fed. Reg. 31595 *et seq* (June 3, 2010)

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2010: Indirect EPA Regulation under CAA

Absent legislative action, indirect regulation of GHGs to proceed under CAA and other environmental statutes (ESA, CWA, etc.)

- Less efficient -- existing laws not designed to address GHG's vs. conventional pollutants
- Clean Air Act: PSD, NSPS, NAAQS . . .

<p>Endangerment Finding</p> <ul style="list-style-type: none"> • Mass v. EPA (2007) confirmed EPA's authority to regulate GHGs under the CAA • Issued by EPA 15-Dec-09 • A prerequisite to GHG regulation for auto manufacturers, leading to a cascade of GHG regulation for stationary sources • PSD / Title V Permits <ul style="list-style-type: none"> • Once GHGs are regulated under any provision of the CAA, triggers PSD for stationary sources • Stationary sources subject to Title V operating permit requirements 	<p>§ 202 Tailpipe Rule</p> <ul style="list-style-type: none"> • EPA proposed rule for regulation of GHG emissions from cars/light duty vehicles (Sept-09) <ul style="list-style-type: none"> • Companion rule proposed by DOT (CAFE standards) • Final rule anticipated Mar-10 • Applicable to model year 2012 • Will likely trigger PSD / Title V requirements <ul style="list-style-type: none"> • Will apply to numerous small sources never before subject to federal air permits • Regulatory gridlock likely result 	<p>PSD Tailoring Rule</p> <ul style="list-style-type: none"> • Proposed rule "tailors" major source applicability thresholds for GHG emissions under PSD and Title V • Expected to be finalized Mar-2010 along with § 202 Rule • Raises "major source" threshold for PSD applicability to 25K tons of CO2 per year • States concerned with threshold under state laws-not addressed by tailoring rule
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Risk Factor Disclosures

- **ExxonMobil, Form 10-K (27-Feb-09)**
 - **Political and Legal Factors:** The operations and earnings of the Corporation and its affiliates throughout the world have been, and may in the future be, affected from time to time in varying degree by political and legal factors including: . . . laws and regulations related to environmental or energy security matters, including those addressing alternative energy sources and the risks of global climate change
- **BP, Form 20-F (4-Mar-09)**
 - **Climate change and carbon pricing.** Compliance with changes in laws, regulations and obligations relating to climate change could result in substantial capital expenditure, reduced profitability from changes in operating costs, and revenue generation and strategic growth opportunities being impacted.
 - **Market context.** Our market is a complex and fast-moving environment. . . . There is also a clear need for greater energy diversity to address the competing challenges of growing demand and climate change.
- **Chevron, Form 10-K (26-Mar-09)**
 - **Regulation of greenhouse gas emissions could increase Chevron's operational costs and reduce demand for Chevron's products.** Management expects continued political attention to issues concerning climate change, and the role of human activity in it and potential remediation or mitigation through regulation that could materially affect the company's operations.
 - [T]he company expects to incur substantial capital, compliance, operating, maintenance and remediation costs. The level of expenditure required to comply with these laws and regulations is uncertain and may vary by jurisdiction depending on the laws enacted in each jurisdiction and the company's activities in it. The company's production and processing operations (e.g., the production of crude oil at offshore platforms and the processing of natural gas at liquefied natural gas facilities) typically result in emission of greenhouse gases. Likewise, emissions arise from power and downstream operations, including crude oil transportation and refining. Finally, although beyond the control of the company, the use of passenger vehicle fuels and related products by consumers also results in greenhouse gas emissions that may be regulated.
 - The company's financial performance will depend on a number of factors, including, among others, the greenhouse gas emissions reductions required by law, the price and availability of emission allowances and credits, the extent to which Chevron would be entitled to receive emission allowances or need to purchase them in the open market or through auctions and the impact of legislation on the company's ability to recover the costs incurred through the pricing of the company's products. Material cost increases or incentives to conserve or use alternative energy sources could reduce demand for products the company currently sells. To the extent these costs are not ultimately reflected in the price of the company's products, the company's operating results will be adversely affected.

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- Current and proposed fuel and product specifications, emission controls and climate change programmes under a number of environmental laws will have a significant effect on the production, sale and profitability of many of our products.
- In response to rising concerns about climate change, governments continue to identify fiscal and regulatory measures at local, national and international levels.
- [Discussion of GHG regulatory measures around world, including Kyoto, EU ETS, Mass v. EPA, CA AB 32, etc]
- Since 1997, BP has been actively involved in the policy debate. We also ran a global programme that reduced our operational GHG emissions by 10% between 1998 and 2001. We continue to look at two principal kinds of GHG emissions: operational emissions, which are generated from our operations such as refineries, chemicals plants and production facilities; and product emissions, generated by our customers when they use the fuels and products that we sell. Since 2001, we have been focusing on measuring and improving the carbon intensity of our operations as well as developing sustainable low-carbon technologies and businesses.
- After seven years, we estimate that our operations have delivered some 7.5 million tonnes (Mte) of GHG reductions. Our 2008 operational GHG emissions were 61.4Mte of CO2 equivalent on a direct equity basis, nearly 2.1Mte lower than the reported figure of 63.5Mte in 2007. The primary reason for the lower reported emissions is a reporting protocol change for BP Shipping (1.9Mte) to align us more closely with industry practice.

➤ **Dynegy, Form 10-K (26-Feb-09)**

- The adoption of regulatory programs mandating a substantial reduction in CO2 emissions or attaching a significant cost to those emissions could have a far-reaching and significant impact on us and others in the power generating industry. Several bills have been introduced in Congress that would compel reductions in CO2 emissions from power plants. However, we believe it is not likely that any mandatory federal CO2 emissions reduction program will be adopted and implemented in the immediate future, and the specific requirements of any such program cannot be predicted with confidence. Various states in which we have generating facilities have proposed, are in the process of developing or have implemented, regulatory programs to reduce CO2 emissions. Officials in other states where we have generation assets have expressed the intent to reduce CO2 emissions. We are closely following and continually analyzing legislative and regulatory developments in these jurisdictions to determine how such developments might impact our business.

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- [E]nvironmental laws and regulations, including those that may arise to address concerns about global climate change, are expected to continue to have an increasing impact on our operations in the United States and in other countries in which we operate.
- There has been a broad range of proposed or promulgated state, national and international laws focusing on greenhouse gas (GHG) reduction. . . . Compliance with changes in laws, regulations and obligations that create a GHG emissions trading scheme or GHG reduction policies generally could significantly increase costs or reduce demand for fossil energy derived products
- In the United States, there is growing consensus that some form of regulation will be forthcoming at the federal level with respect to GHG emissions and such regulation could result in the creation of additional costs in the form of taxes or required acquisition or trading of emission allowances. In light of this consensus, we have taken a position to encourage the adoption of a pragmatic and sustainable regulatory framework addressing GHG.

➤ **Sunoco, Form 10-K (25-Feb-09)**

- Regulatory Matters. Through the operation of its refineries, chemical plants, marketing facilities and coke plants, Sunoco's operations emit greenhouse gases ("GHG"), including carbon dioxide. There are various legislative and regulatory measures to address GHG emissions which are in various stages of review, discussion or implementation. These include federal and state actions to develop programs for the reduction of GHG emissions. While it is currently not possible to predict the impact, if any, that these issues will have on the Company or the industry in general, they could result in increases in costs to operate and maintain the Company's facilities, as well as capital outlays for new emission control equipment at these facilities. In addition, regulations limiting GHG emissions or carbon content of products, which target specific industries such as petroleum refining or chemical or coke manufacturing could adversely affect the Company's ability to conduct its business and also may reduce demand for its products.

BE THE SOLUTION.ACC's 2010 Annual Meeting • October 24-27
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- Panel, without much guidance, found that the claims are judicially manageable
- A difference between circuits raises probability of Supreme Court Review
 - 4th Cir was a rejection of a state law claim; 5th Cir case more on point, but...

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- 5th Circuit hearing en banc granted by minimum sized *en banc* panel after several recusals; the procedural effect is to overrule the panel's decision
- Bizarre late recusal resulted in insufficient judges being available to hear the case
 - Result is the dismissal stands even though no *en banc* decision issued
 - Motions for reconsideration pending

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Next Steps

- Likely appeal of *Kivalina* to the 9th Circuit
- Likely appeal of *Connecticut* to the Supreme Court (petition for writ of cert filed by four of five utilities)
- Naming many large companies in climate change suits means recusals in the 5th Circuit and possibly in the Supreme Court remain an issue
- Continued failure to pass Waxman-Markey or other GHG bills leaves a legislative gap that some think needs to be filled


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Global Climate Litigation


Data from Columbia Law School Center for Climate Change Law

Total Cases



□ US ■ Rest of World

Active or Pending Cases



□ US ■ Rest of World

Non-US Locations: EU, Canada
 Australia / New Zealand, Africa

There are over 300 cases total, 128 active

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- **Trade: buy low, sell high**
- **Hedging: futures, swaps and derivatives**
- **Participate in government auctions**
- **In-house trading capabilities vs “carbon” trading shop**
- **Use of exchanges, clearing houses**
- **“Banking” of unused allowances, credits**
- **“Borrowing” from future vintage years**
 - ▶ **Generally same tools as any liquid commodity** ◀

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- **Investigate sector opportunities and market entry opportunities – develop relationships**
- **Invest in carbon funds for experience development**
- **Identify apparent domestic, international offset opportunities, and early market entry options**
- **Launch selective pilot offset projects**
- **Pursue larger scale offset investments**

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Build Company's Resources and Knowledge Base

- **Internal and external resources to effectively develop, update and constantly evaluate Carbon Management Plan**
- **Resources to evaluate specific proposed actions**
 - Alternations in business operations
 - Trading-related activities
 - Technology measures
 - Market-based transactions (e.g., credits)
 - Offset project-based opportunities
 - Contracts
- **Resources to execute approved carbon-related plan, measure**



Extras from ACC

We are providing you with an index of all our InfoPAKs, Leading Practices Profiles, QuickCounsels and Top Tens, by substantive areas. We have also indexed for you those resources that are applicable to Canada and Europe.

Click on the link to index above or visit <http://www.acc.com/annualmeetingextras>.

The resources listed are just the tip of the iceberg! We have many more, including ACC Docket articles, sample forms and policies, and webcasts at <http://www.acc.com/LegalResources>.