

Climate Change and Sustainable Development Committee Newsletter

Vol. 6, No. 3

June 2003

FOCUS ON STATE EFFORTS TO ADDRESS CLIMATE CHANGE: EDITORS' NOTE

**Tom Kerr
Amy Royden**

This issue of the Newsletter looks at the various actions states are taking to tackle the issue of climate change. Our first article deals with a subject near and dear to lawyers' hearts: litigation. Several New England states have filed notice of their intent to sue EPA for its failure to regulate carbon dioxide as a pollutant and for its failure to review performance standards for fossil-fueled electric generating units under the Clean Air Act. Three of these states have taken the next step and filed suit. The second article describes a more collaborative approach taken by the New England states – cooperating with Eastern Canadian premiers to set ambitious targets for reducing greenhouse gases (GHGs) and mapping out a strategy to achieve these goals. The next article details the process Rhode Island engaged in to develop a GHG Action Plan, which involved stakeholders from business, industry, citizen groups, environmental organizations and other government agencies.

This is by no means a comprehensive review of states' actions, but rather a snapshot. For example, other states outside of New England

that are active in climate change issues include California and New York. California's Climate Action Registry began operations in October 2002 and currently accepts voluntary registry of greenhouse (GHG) emissions from a broad spectrum of participants, including utilities, businesses, industry, government agencies, educational institutions, non-profit organizations and other entities. See www.climateregistry.org. A previous edition of this newsletter described California's recently enacted statute directing the California Air Resources Board to "develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of [GHG] emissions from motor vehicles." New York Gov. George Pataki in his State of State speech in January 2003 directed New York's Public Service Commission to implement a Renewable Portfolio Standard that will provide that that within the next 10 years, at least 25 percent of the electricity bought in New York will come from renewable energy resources like solar power, wind power or fuel cells. Pataki also said that New York would adopt the carbon dioxide emission standards for motor vehicles developed by California. In April, the governor wrote nine governors of Northeast states urging them to work with New York to develop a regional strategy to address carbon dioxide (CO₂) emissions from power plants. He set a goal of developing such an approach within two years. These initiatives

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Tom Kerr and Amy Royden, Editors

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This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611.



grew from recommendations by the New York GHG Task Force, which the governor convened in 2001.

For an excellent overview of state action on climate change – including activities not specifically directed at reducing GHG emissions but which have that effect – see *Greenhouse & Statehouse: The Evolving State Government Role in Climate Change*, a report prepared for the Pew Center on Global Climate Change by University of Michigan Prof. Barry Rabe (available at www.pewclimate.org). It includes nine case studies of states – Georgia, Massachusetts, Minnesota, Nebraska, New Jersey, North Carolina, Oregon, Texas and Wisconsin – that have taken action to mitigate climate change.

Last but not least, the newsletter includes a write-up of the brown bag the Committee held in mid-May reviewing the prospects for federal climate change legislation. Whether regulatory, collaborative and litigious approaches by states increase pressure for federal legislation remains to be seen . . .

SEVEN STATES NOTIFY EPA OF THEIR INTENT TO SUE OVER GLOBAL WARMING

Richard Blumenthal
Kimberly Massicotte

Why States Are Compelled to Act

Seven states are taking on the federal government for its failure to act on global warming. The states – Connecticut, Massachusetts, Maine, New Jersey, New York, Rhode Island, and Washington – have sent notices of intent to sue the federal government under the Clean Air Act (the Act). Three of these states – Connecticut, Maine and Massachusetts – have notified the U.S. Environmental Protection Agency (EPA) of

their intent to sue for failure to regulate carbon dioxide (CO₂) as a criteria air pollutant under Section 108 of the Act. [Editor's note: After this article was submitted, the three states filed suit in federal district court in Connecticut.] All seven states have notified EPA of their intent to sue EPA for its failure to review and revise the New Source Performance Standards (NSPS) for fossil fuel-fired electric generating units pursuant to Section 111(b)(1)(B) of the Act.

Since President Bush rejected the Kyoto Protocol in 1991, evidence of the existence and dangers of human-caused global warming – especially evidence from researchers engaged by the federal government – has continued to mount. In 2002, the federal government submitted the *U.S. Climate Action Report 2002*, U.S. Dept. of State, Washington, D.C., May 2002 (*Climate Action Report*) to the United Nations as the United States' official report satisfying the obligations that arise under the United Nations Framework Convention on Climate Change. The report describes the serious consequences of global climate change. It repeatedly concludes that emissions of CO₂ from the burning of fossil fuels are the dominant source contributing to human-caused climate change.

States and their citizens will suffer serious consequences to their environment, to public health and to their economies from increased climate change. The essential character and identity of states and regions are at risk. New England, for example, will lose its spectacular fall foliage as hardwoods decline. Coastlines and critically important estuaries and tidal wetlands will be inundated. EPA's own Web site alarmingly predicts up to a 50 percent increase in loss of life from heat-related deaths. The economic consequences will be severe. Tourism in general, ski resorts and other recreational businesses will greatly suffer. At the same time, the burdens on state budgets from increased health care costs and

the necessary efforts to stem the loss of critical resources will grow.

After President Bush abandoned his campaign pledge to seek mandatory cuts in CO₂ emissions and proposed instead to push a series of voluntary measures, states' efforts to address global warming intensified. States have created a patchwork of legislation designed to address this insidious problem. Several states have adopted voluntary or mandatory measures for reducing CO₂ emissions. (See *Greenhouse & Statehouse, The Evolving State Government Role in Climate Change*, Pew Center on Global Climate Change (2002).) For example, Massachusetts developed state regulations to reduce CO₂ emissions from power plants. (310 CMR 7.29 Emissions Standards for Power Plants). California passed a law to limit CO₂ emissions from vehicles. (California Assembly Bill 1493). Obviously, however, the most effective and least costly approach to dealing with climate change is through a national program of market-based controls. Only the Congress has the power to create a national system. Due to the lack of meaningful action at the federal level, states have been left to their own efforts to effect a national change in policy. Because the consequences of global warming will severely impact states' most important priorities – the welfare of our residents and of our unique natural resources – states must do everything possible to curtail global warming emissions now.

The Actions

The states aver that CO₂ clearly meets the statutory definition of "air pollutant." The Act defines an air pollutant to include "any physical, chemical, [or] biological ... substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. § 7602(g). See also CAA § 103(g), which refers to CO₂ as an air pollutant. Not only does the plain

meaning of the statute compel a conclusion that CO₂ is an air pollutant, but the states also contend that EPA administrative determinations also support this conclusion. In 1998, EPA General Counsel Jonathan Cannon set forth the legal analysis supporting the agency's conclusion that greenhouse gases, including CO₂, are "air pollutants" subject to regulation, in response to a request from Congressman Tom DeLay. (Memorandum of Jonathan Z. Cannon, General Counsel, to Carol M. Browner, Administrator, regarding *EPA's Authority to Regulate Pollutants Emitted by Electric Power Generation Sources*, dated April 10, 1998.) In 1999, EPA General Counsel Gary Guzy confirmed and reiterated this position in testimony to Congress in which he presented EPA's "views as to the legal authority provided by the Clean Air Act to regulate emissions of CO₂." (*Testimony of Gary S. Guzy, General Counsel, U.S. EPA, Before a Joint Hearing of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the Committee on Government Reform and the Subcommittee on Energy and Environment of the Committee on Science, U.S. House of Representatives, Oct. 6, 1999.*)

Remarkably, EPA has established no standard for the emission of CO₂. It is beyond dispute that CO₂ emissions from power plants in the United States are significant contributors to global warming. Power plants contribute over 35 percent of CO₂ emissions in the United States, and their emissions are expected to increase by 35 percent over the next two decades. (U.S. General Accounting Office, *AIR POLLUTION: Meeting Future Electricity Demand Will Increase Emissions of Some Harmful Substances, GAO-03-49 (dated October 30, 2002) (Future Demand).*)

The Section 108 Notice

Pursuant to Section 304 of the Clean Air Act, 42 U.S.C. § 7604, in January 2003,

Connecticut, Maine and Massachusetts ("the 108 states"), pursuant to a concept advanced by Massachusetts, served a notice of intent to sue the Environmental Protection Agency (EPA) for its failure to list CO₂ as a criteria air pollutant pursuant to Section 108 of the Clean Air Act, 42 U.S.C. § 7408. The Clean Air Act requires EPA to regulate "criteria pollutants." Section 108(a)(1) defines criteria pollutants as air pollutants present in the ambient air that come "from numerous or diverse mobile or stationary sources" and which, in the administrator's judgment, "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7408(a)(1). A criteria pollutant begins its regulatory life when it is "listed." See 42 U.S.C. § 7408(a). After it is listed, EPA must set air quality criteria and a National Ambient Air Quality Standard for that pollutant. See 42 U.S.C. § 7408, 7409, and 7417(c)(1).

The states assert that EPA has already concluded that CO₂ is an air pollutant that "cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health or welfare." EPA played a lead role in preparation and publication of the *Climate Action Report*. It conducted formal notice and comment proceedings on the report twice. EPA Administrator Christine Todd Whitman has made several statements recognizing that CO₂ emissions endanger public health and welfare and must be reduced. Whitman has stated, "If we fail to take steps necessary to address the very real concern of global climate change, we put our people, our economies and our way of life at risk." (G8 Environmental Minister Meeting, Working Session on Climate Change, Trieste, Italy (March 3, 2001).) CO₂ emissions result from numerous mobile and stationary sources including power plants, industrial sources, and motor vehicles.

In light of these facts, the Clean Air Act

requires EPA to list CO₂ as a criteria air pollutant. In *Natural Resources Defense Council v. Train*, 545 F.2d 320 (2d cir. 1974), the Second Circuit held that the EPA administrator had a mandatory duty to list certain pollutants and that EPA could be compelled through a mandamus action to do so under certain circumstances. The court ordered the administrator to list lead as a criteria pollutant after the administrator conceded that lead posed a serious risk to public health. Similarly, the administrator has already conceded the serious risks posed by CO₂. She has an obligation to list it. Ultimately, Connecticut, Maine and Massachusetts intend to file a mandamus action to require EPA to list CO₂ as a criteria pollutant.

The 111 Action

The Clean Air Act requires EPA to adopt New Source Performance Standards (NSPS) for categories of sources that cause or contribute significantly to “air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b). The Act further requires EPA to review and revise, if necessary, the standards every eight years. In February 2003, Connecticut, Maine, Massachusetts, New York, New Jersey, Rhode Island and Washington, in a matter first advanced by New York, notified EPA of their intent to sue under Section 302(b)(2) of the Act, 42 U.S.C. § 7406(b)(2), for EPA’s failure to review and revise the NSPS for fossil fuel-fired electric generating units (power plants).

There is little question that global warming and climate change will significantly endanger public health and welfare. Moreover, reliable and effective technology to reduce, sequester or avoid CO₂ emissions already exists. Technological options include increasing generation efficiencies, “end of pipe” capture of CO₂ at its sources, sequestration of CO₂ in a long-duration medium, generation mix

changes offsetting CO₂ emissions, and increased electrical use efficiency. Given the availability of viable options to control CO₂ emissions, EPA has a legal obligation to set New Source Performance Standards for CO₂.

What Is Next?

If the EPA or the courts agree with the states’ positions, several important actions will occur. The listing process for CO₂ as a criteria pollutant requires EPA to develop a National Ambient Air Quality Standard or NAAQS for CO₂. Next, the states must develop ways to meet the NAAQS for emitters within their boundaries. The NSPS process requires EPA to examine and set performance standards for new power plants. Power plants would have to employ technologies immediately available to control emission of CO₂. These changes would result in substantial reductions of the emission of greenhouse gases.

Richard Blumenthal is the attorney general for the State of Connecticut, and Kimberly Massicotte is an assistant attorney general and head of the Environment Department of the Connecticut attorney general’s office. They can be reached at 860/808-5250, and Ms. Massicotte can be reached by e-mail at kimberly.massicotte@po.state.ct.us.

CLIMATE CHANGE AND SUSTAINABLE DEVELOPMENT COMMITTEE NEWSLETTER

The Climate Change and Sustainable Development Committee welcomes the participation of members who are interested in preparing this Newsletter. If you would like to lend a hand by writing, editing, identifying authors, or identifying issues please contact one the editors: Amy Royden (aroyden@4cleanair.org) or Tom Kerr (kerr.tom@epa.gov).

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NEW ENGLAND STATES AND EASTERN CANADIAN PROVINCES TEAM UP TO TACKLE CLIMATE CHANGE

**Ken Colburn
Amy Royden**

Though the federal governments of Canada and the United States may be taking markedly different approaches on the Kyoto Protocol, New England governors and Eastern Canadian premiers are coordinating their efforts to reduce regional greenhouse gas (GHG) emissions. The Conference of New England Governors and Eastern Canadian Premiers (NEG/ECP) is a unique collaboration among eleven U.S. states and Canadian provinces to address a broad suite of topics of common interest. Environmental issues are among those the NEG/ECP has focused on since the early 1980s, resulting in, for example, the adoption of successful action plans to address acid rain and mercury in 1998. More recently, the NEG/ECP turned its attention to climate change.

History

In March 2000, the NEG/ECP convened a conference on climate change in St. John, New Brunswick, focusing on the state of climate change science. This conference led to a resolution that was adopted at the 25th Annual NEG/ECP Conference in 2000 that the governors and premiers should: (1) hold a workshop in the winter of 2000-2001 to examine the regional impacts of global warming, discuss options for reducing GHG emissions, and clarify the need for this region to adapt to climate change and explore methods for doing so; and (2) evaluate the conclusions and recommendations of the workshop from a strategic and scientific viewpoint, and present a summary of findings of the meeting and a recommended action plan to the 2001 NEG/ECP annual meeting.

2001 Climate Change Action Plan

Consistent with this direction, a follow-up workshop focused on policy options and opportunities was held in Fredericton, New Brunswick in March 2001. Subsequently, at the 26th Annual Conference of the NEG/ECP in August 2001, the governors and premiers adopted an ambitious Climate Change Action Plan (see <http://www.cmp.ca/res/ccape.pdf>) with specified GHG reduction targets and strategies to meet these goals. The plan established a short-term goal to reduce regional GHG emissions to 1990 emissions by 2010; a mid-term goal to reduce GHG regional emissions by at least 10 percent below 1990 emissions by 2020; and to establish a 5-year process beginning in 2005 to adjust the goals as necessary and set future emission reduction goals. Importantly, the plan also stated a long-term goal to reduce regional GHG emissions sufficiently to eliminate any dangerous threat to the climate, estimated to be in the range of 75-80 percent below current levels. Because these are regional reductions, no state or province is individually required to meet each specific target, providing the jurisdictions with flexibility in how the overall target is met.

The plan also listed nine targeted action items, including: (1) establishing a standardized regional GHG emissions inventory; (2) establishing a standardized regional GHG emissions registry to facilitate trading; (3) each jurisdiction establishing a plan articulating measures to achieve GHG reductions in view of the regional short and mid-term goals; (4) leading by example and reducing GHG emissions from the government sector; (5) reducing, by 2025, the amount of CO₂ emitted per megawatt hour of electricity use within the region by 20 percent from current emissions; and (6) increasing, by 2025, the amount of energy saved through conservation programs (as measured in tons of GHG emissions) within the region by 20 percent.

Reducing the *growth* in GHG emissions from the transportation sector is also mentioned, but no target is specified.

A steering committee representing energy and environmental officials from each of the 11 jurisdictions was established and met in December 2001 to organize its efforts and to commence work to implement the governors' and premiers' plan. The steering committee launched workgroups to address the longer term action items, but also identified an initial set of cost-effective, readily implementable "low hanging fruit" opportunities to demonstrate the NEG/ECP's commitment to and progress on its Climate Change Action Plan. Such opportunities included switching to light emitting diode (LED) traffic lights, coordinating a broad "university challenge," encouraging greater use of biofuels, encouraging the sale of "greener" cars through a consumer labeling program, etc. A resolution approving these recommendations was adopted by the governors and premiers at their August 2002 meeting. (See http://www.cmp.ca/reports_08_2002/27-7_climate_change_e.pdf)

Next Steps

It is anticipated that 2003's NEG/ECP meeting in September will represent a transitional period for the Climate Change Action Plan. Progress will be reported in the implementation of the earlier "low hanging fruit" ideas identified, and new ideas are expected to be brought to the table. At the same time, initial progress reports on some longer term action items are expected. For example, comprehensive updates to state and provincial GHG emissions inventories are complete for several jurisdictions and underway in others. Similarly, an initial framework for the regional GHG reduction registry is anticipated.

These and other cornerstone steps will

provide essential "infrastructure" elements necessary to move forward with the implementation of the emission reduction action items specified in the governors' and premiers' visionary Climate Change Action Plan. Already well below national average GHG emission rates, the NEG/ECP is confident that its goals can be met, and that the technology opportunities associated with progressive climate action will add to, rather than detract from, the region's strong economy. It took a long time to create the current concentrations of atmospheric carbon dioxide that threaten quality of life in New England and Eastern Canada, and it will take a long time to fix this problem. To their credit, rather than adopting a wait-and-see approach with respect to federal action, the New England governors and Eastern Canadian premiers have voluntarily made the decision to lead by example on climate change.

Ken Colburn is the executive director of the Northeast States for Coordinated Air Use Management (NESCAUM) and can be reached at kcolburn@nescaum.org. Amy Royden is a senior staff associate for the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) and a vice-chair of the Committee, as well as co-editor of this newsletter. She can be reached at aroyden@4cleanair.org.

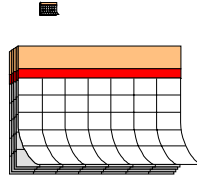
BACK ISSUES

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<http://www.abanet.org/enviro/committees/climatechange/newsletter/>

**AMERICAN BAR ASSOCIATION
SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES**

Calendar of Section Events



ABA Annual Meeting

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San Francisco, California

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A STAKEHOLDER ACTION PLAN FOR GREENHOUSE GAS REDUCTION IN RHODE ISLAND

Dr. Steve Bernow
Dr. Jonathan Raab

Beginning in the fall of 2001 and continuing since then, the Rhode Island Department of Environmental Management and the State Energy Office have been working with a group of over thirty stakeholders from business, industry, citizen groups, environmental organizations and other government agencies to develop a Greenhouse Gas (GHG) Action Plan for Rhode Island. This process was precipitated largely by the growing international consensus among scientists and policymakers that the build up of GHGs in the atmosphere, primarily carbon dioxide from combustion of fossil fuels, is warming the planet at a rapid rate. Continuation of this trend under business-as-usual conditions and policies will likely have adverse impacts throughout the world and on Rhode Island's environment and economy.

The Rhode Island GHG Action Plan (Action Plan) process builds on the 2001 agreement among the New England Governors and Eastern Canadian Premiers (Governors/Premiers) to reduce GHGs in the region to 1990 levels by 2010, 10 percent below those levels in 2020, and by as much as 75 percent over the longer-term. In Phase I, over 60 individuals participated in sector-specific Working Groups to support the stakeholder process through discussion of GHG reduction options. Tellus Institute analyzed these options in scoping papers, detailing potential carbon emissions reductions, net costs and savings, and other benefits. The stakeholders adopted an Action Plan targeted to realize Rhode Island's proportional share of the regional targets established by the Governors/Premiers, *i.e.*, the same percentage reductions below Rhode Island's Baseline

emissions path. In Phase II there has been further research, analysis and program design for several high priority program and policy options. It is anticipated that in Phase III implementation will begin of the highest priority options, and implementation plans for other options will be designed.

Figure 1 shows our projections of the baseline path for Rhode Island's GHG emissions (expected absent new initiatives), and a path for its proportional share of the Governors'/Premiers' regional targets. The figure indicates the gap that needs to be filled with initiatives, programs, and policies to meet those targets, which by 2020 would need to be about one-third below the baseline level in that year.

The stakeholders agreed to include 52 program and policy options in the Action Plan to begin to fill this gap. Forty-nine of the options were consensus options endorsed by all the stakeholders, and 49 are primarily in-state options, with only three requiring regional or national implementation. Of the full set of options, 25 are targeted at buildings and facilities, 11 at transportation, six at land use, six at energy supply, and four at solid waste. In addition to these 52 options, the stakeholders also identified numerous other potentially fruitful areas for Rhode Island to track and study for possible future inclusion in the Plan.

As can be seen in Figure 2, substantial carbon savings can be attained through implementation of these options. The In-State Consensus options are projected to almost meet the 2020 target of the Governors'/Premiers, and the In-State options as a whole (Consensus plus Non-Consensus) could meet the 2020 target. With national and regional options added, the target could be exceeded with or without the non-consensus In-State options. The sharp downward trend approaching the year 2020 indicates that continuation of these options would have additional reductions in the following years.

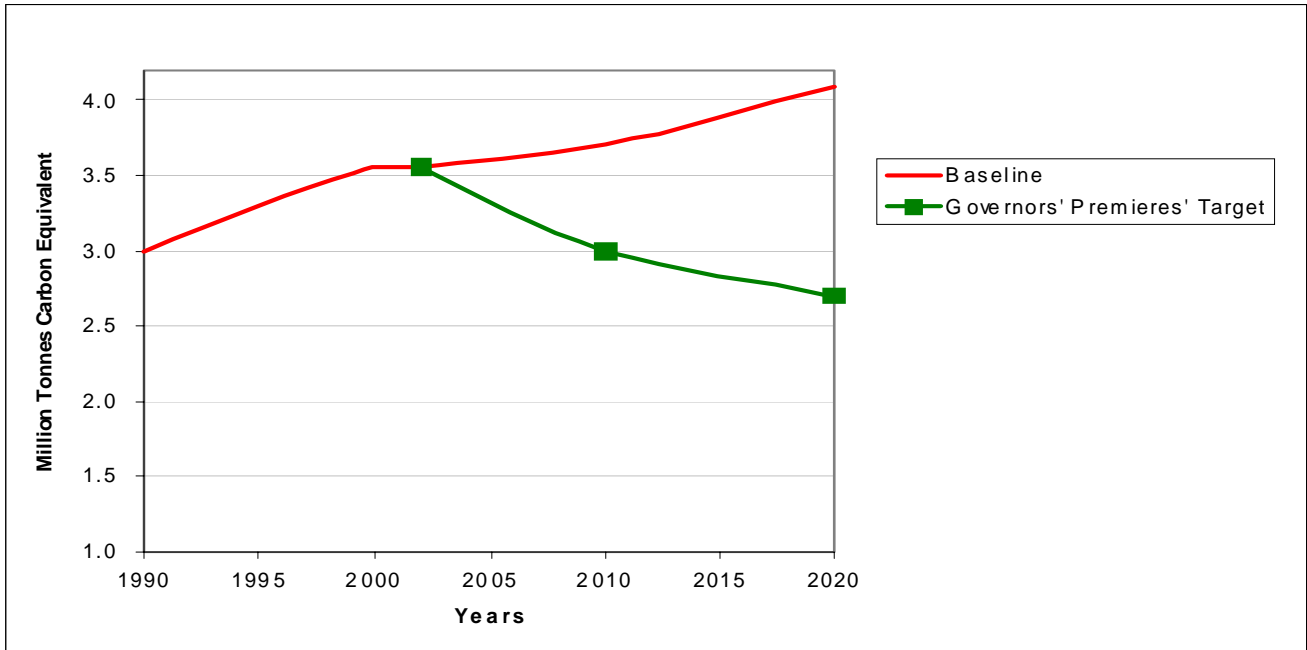


Figure 1: Baseline Emissions Scenario Compared to Governors'/Premiers' Target

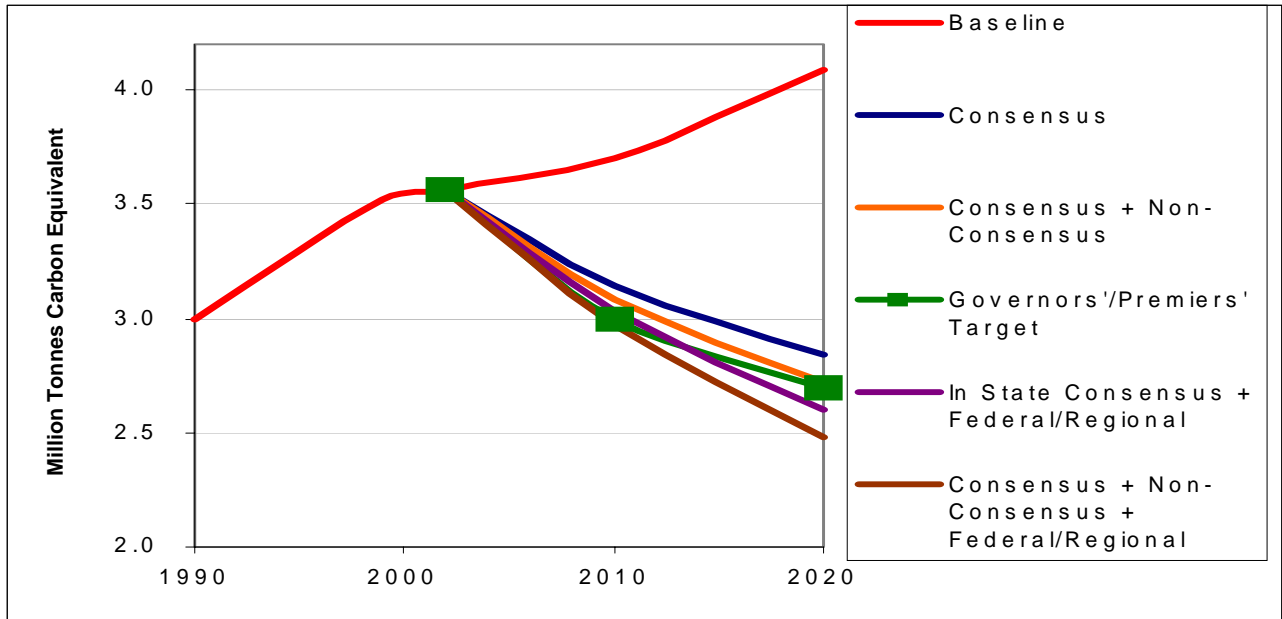


Figure 2: RI GHG Emissions Scenarios Compared to Governors'/Premiers' Target

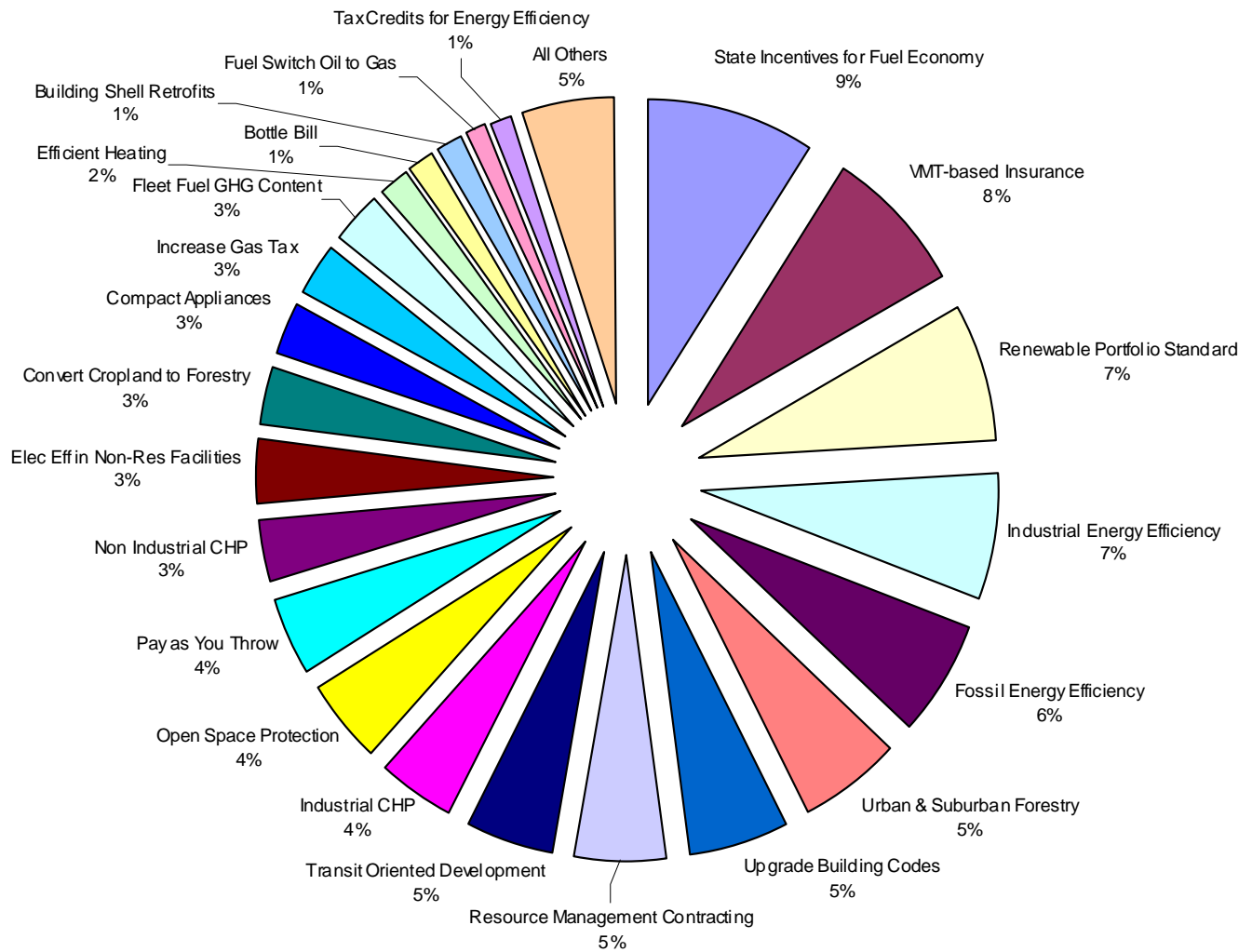


Figure 3: Contribution of Options to GHG Savings vs. Baseline in 2020 in Scenario: Consensus & Non-Consensus

The analysis shows that these reductions could be achieved while producing substantial cumulative net economic benefits to Rhode Island, with a cumulative net economic benefit of over \$700 million for the In-State options. This occurs largely because many of the options identified in the Action Plan also save energy and those savings exceed capital and operation and maintenance costs for the energy-saving technologies and practices. There are also savings due to reductions in other air pollutants.

Figure 3 shows the contribution of each option in the Action Plan to the overall reductions in 2020.

The Stakeholders agreed that the Action Plan should be reviewed every three to five years to ensure that it embodies the best technologies and program/policy designs, as well as the right mix of local, regional and national initiatives and to adjust its targets and Action Plan accordingly. Because there will be an on-going need to coordinate among a wide range of entities including state agencies, local government, the legislature, businesses, and citizens, Rhode Island should consider having one entity such as a state agency serve in a shepherding (*i.e.*, coordinating and tracking) role.

In Phase II, five of the Action Plan options were subjected to refined quantitative analysis, policy design, and implementation plan (with draft legislation in some cases). These were:

- Renewable Portfolio Standard (RPS) for electricity supplied to Rhode Island consumers,
- Vehicle Efficiency Incentive Program (VEIP), setting miles per gallon-based fees and rebates for vehicle purchases,
- Tax credits for energy efficiency in the residential and commercial sectors,
- Monitoring and targeting energy

- efficiency opportunities in industry, and
- Incentives for performance contracting to realize reductions in fossil fuel demands in commercial, government and industrial facilities.

With the conclusion of Phase II and beginning of Phase III, in which additional options will be taken through refined quantitative analysis, policy design, and implementation planning, Rhode Island is on its way to meeting the 2010 and 2020 targets – assuming a leadership role in New England. However, to meet the longer term 75 percent reduction targets will likely require enhanced regional and national coordination and initiatives, as well as technological improvements.

Steve Bernow is a vice-president and the director of the Energy Group and Manager of the Energy and Environment Program at the Tellus Institute and can be contacted at sbernow@tellus.org. Jonathan Raab is president of Raab Associates, Limited, and can be reached at raab@raabassociates.org. The Rhode Island Greenhouse Gas Process has been funded by the U.S. Environmental Protection Agency, the U.S. Department of Energy, the Institute for Environmental Conflict Resolution and the State of Rhode Island. The state hired Raab Associates, Ltd. to provide facilitation and project management services, and Tellus Institute to provide consulting and modeling services on technical and policy issues.

CLIMATE CHANGE AND SUSTAINABLE DEVELOPMENT COMMITTEE

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**COMMITTEE HOSTS CAPITOL HILL
SEMINAR ON CLIMATE CHANGE
LEGISLATION IN THE 108TH CONGRESS**

Kyle Danish

On May 16, 2003, the Committee hosted a seminar on Capitol Hill regarding pending climate change legislation. The two speakers were Tim Profeta, a legislative aide to Sen. Joseph Lieberman, D-Conn., and Marty Spitzer, professional staff on the House Science Committee, which is chaired by Rep. Sherwood Boehlert, R-N.Y. Spitzer also is the Climate Change and Sustainable Development Committee's vice-chair for Membership. The moderator was Dale Louda, manager of Federal Affairs for PPL, and one of the Climate Change and Sustainable Development Committee's two vice-chairs for Alternative Programs.

Coming from the Senate and the House of Representatives respectively, Profeta and Spitzer reviewed various bills directly or indirectly affecting U.S. climate change policies, including: the Lieberman-McCain Climate Stewardship Act (S.139), the Senate and House versions of the energy bill, and the Clear Skies Act (S. 485, H.R. 499) and alternative multi-pollutant bills.

In introducing the program, Dale Louda asserted that climate change has become an issue that no U.S. power company or other major manufacturer can ignore. He explained that, at PPL, climate change is not "just" an environmental issue. Rather, the possibility of a future greenhouse gas (GHG) regulatory program is a central element of the company's planning exercises. Louda noted the many state and shareholder initiatives emerging on the climate change issue.

Lieberman-McCain Bill

Tim Profeta focused his remarks on the

Lieberman-McCain bill. Sen. McCain has stated that he plans to introduce the Lieberman-McCain bill as an amendment to the version of the energy bill currently under consideration in the Senate.

Sens. Lieberman and McCain have proposed a comprehensive, economy-wide GHG regulatory program. The Lieberman-McCain bill would reduce annual GHG emissions from the electricity generation, industrial, commercial and transportation sectors to year-2000 levels by 2010, and to year-1990 levels by 2016. The bill would allow regulated firms to meet their obligations through flexibility mechanisms, including a "cap-and-trade" program.

Profeta explained that the aim of the senators is to do something credible in the United States on climate change. He asserted that the senators are motivated by a sense of national embarrassment that the rest of the world is taking action while the Bush administration is proposing only half-measures to address the issue. Profeta emphasized that the current bill is intended only as a first iteration and that it is likely to go through many revisions.

Profeta offered several reasons to take action on climate change. First, he argued that there is a need to induce technological innovation. A market-based program, such as a cap-and-trade system, cost-effectively encourages the development and deployment of new technologies. He also asserted that there is a need for certainty. Profeta explained that capital-intensive manufacturers and energy companies make 30-year investments; continued uncertainty about the timing and stringency of a future U.S. climate regulatory program is impairing investments. Finally, he asserted that there is a need for U.S. leadership on the issue of climate change.

Overview of Legislation in the House

Marty Spitzer spoke after Tim Profeta and addressed climate change-related legislation under consideration in the House of Representatives. The Republican Representative who chairs the House Science Committee, Sherwood Boehlert, tends to vote with the Democrats on environmental issues.

Spitzer explained that any kind of climate change legislation is difficult to get through the House of Representatives at this time. On the other hand, he noted several trends that are changing the political landscape on the climate change issue. He cited recent shareholder initiatives targeted at utilities such as American Electric Power, TXU, and Cinergy. He also noted the many emerging state voluntary and regulatory programs aimed at climate change.

Spitzer acknowledged that while almost every aspect of the House energy bill at least indirectly affects climate change, the term “climate change” does not appear in the bill. Accordingly, the House will be in a position of reacting to whatever the Senate comes up with on the issue.

Clear Skies Act and Alternatives

Spitzer also addressed the Bush administration’s “Clear Skies Act” and other bills proposing “multi-pollutant” regulations for electric utilities. He noted that action on the Clear Skies Act in the Senate continues to be delayed and likely will occur only after action on the energy bill. Spitzer explained that Rep. Boehlert strongly believes that any multi-pollutant legislation affecting utilities should incorporate controls on carbon dioxide. (Rep. Boehlert finds little agreement with his fellow House Republicans on this position.) Rep. Boehlert is troubled by many aspects of the Clear Skies Act including: (1) the lack of carbon dioxide controls; (2) the weakness of

the controls on other pollutants; and (3) the included amendments to other sections of the Clean Air Act, including the New Source Review program. Rep. Boehlert and others have introduced an alternative to Clear Skies – the “Clean Smokestacks Act of 2003” (H.R. 2042) – which would cap utility carbon dioxide emissions. (The Senate version of the Clean Smokestacks Act – S. 556 – has been proposed by Sen. Jeffords, Ind-Vt.).

Other Bush Administration Proposals

Spitzer also addressed the Bush administration’s proposed programs on climate change science and climate change technologies, over which the House Science Committee has oversight authority. Spitzer praised many of the process-related aspects of the administration’s climate change science program, but explained that Rep. Boehlert and other committee members are concerned that the program is focused too strongly on issues that already have been resolved. Spitzer cited a recent review of the program by the National Academy of Sciences, which came to similar conclusions. With regard to the administration’s climate technology program, Spitzer asserted that the program has had a slow start. Spitzer noted that the administration has promised a report on the program for next month.

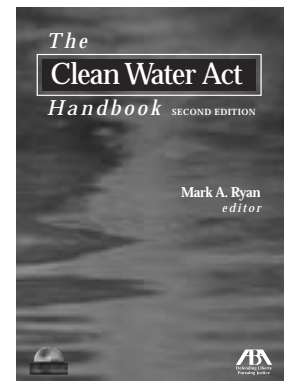
Finally, Spitzer asserted that the Science Committee has many questions about the administration’s proposed reforms to the “1605(b)” voluntary greenhouse gas reporting and inventory program. Spitzer explained that many members believe that more should be done through legislation to address the shortcomings of the current 1605(b) system.

Kyle Danish is an attorney with the Washington, D.C. office of Van Ness Feldman, P.C. In August 2003, he will complete a two-year term as the co-chair of the Section’s Climate Change and Sustainable Development Committee.

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