

## **Five State Greenhouse Gas (GHG) Initiative Signed**

Today the Governors of Washington, Oregon, California, Arizona and New Mexico signed the Western Regional Climate Action Initiative. This memorandum of understanding (MOU) commits the five states to the following three tasks:

- \* By August 26, 2007: Set an overall regional greenhouse gas (GHG) reduction goal--this will build off the already established state goals;

- \* By August 26, 2008: Develop a design for a regional market based multi-sector program to achieve GHG reductions; and

- \* Establishment of a multi-state registry to track GHG emissions and credit companies for reductions

Multiple press releases were issued today, with the lead persons from each state presenting a joint briefing conference this afternoon walking through their expectations from the MOU. The presenters were very upbeat about wanting to incentivize new efficient technologies, but short on answers about how baseload power generation needs would be addressed in the years to come given the sentiment (expressed by the Oregon Governor's office) that "we are not interested in coal." Governor Schwarzenegger made separate statements that this MOU would put pressure on DC to develop a nationwide cap and trade program.

The first element of the MOU is the establishment of a regional GHG reduction goal. This element is probably the least contentious aspect of the MOU given that all five states have already stated GHG reduction targets in various Executive Orders. However, by entering into the MOU the goal was to add teeth to the previous Executive Orders and to get those targets added to statute. Washington already has legislation under consideration that will do this and Oregon indicated that it will soon introduce legislation to memorialize the Governor's goals.

The heart of the program (as indicated by Schwarzenegger's comments) is the intent to develop a regional cap and trade program. California representatives indicated the expectation that the MOU would result in the spread of the California GHG reduction program (known as AB 32) in the other four states. California hoped that this would help stem the feared exodus of certain businesses to other states. Concern was expressly stated about the fact that Nevada did not sign onto the MOU given its proximity to key California markets and the allure of its comparatively low regulation environment. Cal-EPA Secretary Linda Adams responded to a question about whether California would accept a credit generated in Arizona that one aspect of the interstate program would be the requirement to have a "very sophisticated lengthy process to ensure reductions actually occur" when they are then the basis of trading credits.

The 5-state program will require the development of a program structure, not necessarily implementation of a program, by August 2008. These deadlines are consistent with California's AB 32 program deadlines which require a scoping plan for a GHG reduction approach by the end of 2008.

What this MOU adds to the existing California program is that it pushes the state more in the direction of a cap and trade program (although CA

states its final AB 32 program will include both market program and regulatory programs). For the other four states, the MOU ensures that a key aspect of each state's GHG approach will be a cap and trade system and, given the tight time frame, that the other states will likely work off what is already under development in California. It will be important for companies to work with their respective states over the next 18 months to ensure that the programs developed are not punitive.

For example, a key aspect to be worked out between the five states as they move forward with cap and trade will be whether companies will have to buy GHG credits via auction as opposed to credits being allocated (as with the federal acid rain program).

As this MOU was being executed, Oregon and Washington legislatures were actively moving in the direction of purely regulatory (as opposed to market drive, e.g., cap and trade) programs. Washington has SB 6001 which, among other things, establishes a hard GHG emissions cap on baseload power generation used in the state akin to what was implemented last fall in California (SB 1368). Oregon's legislative counsel office is working on similar legislation that will shortly be considered by that state in the next few weeks. These state initiatives will work independently of the multi-state trading program.

Companies located in any of the five the western states should anticipate that pace to develop regulatory and market based programs to address GHGs will increase. Consistent with Cal-EPA's comment, we should expect these programs to impose sophisticated and lengthy processes for tracking and reporting compliance. This makes it important that companies involve themselves or their trade associations in the negotiation of the state program elements and work to try and create some consistency pending the implementation of a national program.