Perkins Coie and Environmental Law Institute Seminar

# Update: Greenhouse Gases: The New Regulatory Approaches

Tuesday, January 24, 2012
Portland, Oregon

ENVIRONMENTAL LAW • INSTITUTE®
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# Speakers

Jay Austin

Manik Roy

Sandy Mackie

Ivan Gold

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# Welcome

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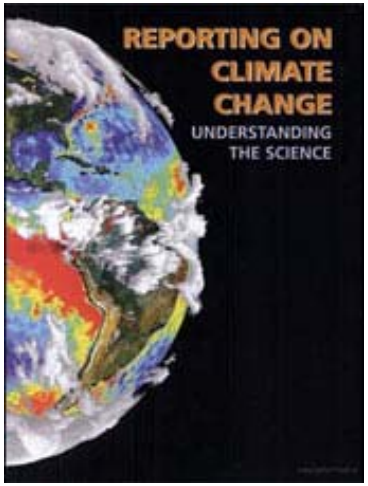


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# Litigation backdrop – Supreme Court

*Massachusetts v. EPA*, 549 U.S. 497 (2007)

- EPA required to make "endangerment" finding about regulating under Clean Air Act

*American Electric Power Co. v. Connecticut*, No. 10-174, ___ U.S. ___ (2011)

- Federal common-law nuisance actions against emitters displaced by Clean Air Act



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# Litigation backdrop – D.C. Circuit

*Coalition for Responsible Regulation v. EPA*, No. 09-1322 (arg. set for Feb. 28-29, 2012)

Panel: Judges Sentelle, Rogers, Tatel

- Endangerment finding
- "Tailoring" and "timing" rules for stationary sources
- "Tailpipe" rule for cars and light trucks



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CENTER FOR CLIMATE AND ENERGY SOLUTIONS

# THE FEDERAL CLIMATE POLICY DEBATE: STATE OF PLAY

PERKINS COIE – ENVIRONMENTAL LAW INSTITUTE SEMINAR
JANUARY 24, 2012

Manik Roy, Ph.D.
Vice President, Strategic Outreach
Center for Climate and Energy Studies
www.C2ES.org

Overview:

- Congressional action unlikely for now
- Possible future federal policies
- EPA GHG regulation is the default option

# CONGRESS – 2009 - 2010

Congressional action in 2009 - 2010:

- House of Representatives passed the Waxman-Markey climate-energy bill, including cap-and-trade, in June 2009
- Senate unable to pass climate-energy bill
- EPA authority to regulate greenhouse gases attacked

# CONGRESS - NOW

Current Congress unlikely to enact significant climate/energy legislation, either:

- limiting or pricing GHGs, or
- preventing EPA from regulating GHGs

# CONGRESS - CONUNDRUM

Political conundrum:

- Winning message: Greenhouse gas (GHG) regulations are an unnecessary energy tax.
- EPA GHG regulations could have been delayed by Congress in 2011.
- However, power companies and others are more concerned with EPA regulations aimed at other pollutants – e.g., mercury, air toxics -- than GHGs.
- Winning message: Public health protection should not be weakened.
- Mercury and air toxics regulation probably can not be delayed or stopped by Congress.

# CONGRESS - CONUNDRUM

Conundrum continued:

- What Republican Congressional leaders could have delivered (delay of GHG regulations) was not a priority for power companies; the high priority (intervention in mercury and air toxics regulations) probably can’t be delivered.

# CONGRESS - 2011

Congressional action in the past year:

- The House passed a bill to prevent EPA from regulating GHGs under the existing Clean Air Act (Upton bill)
- Upton bill defeated in Senate
- No serious effort to restrict EPA in must-pass bills
- EPA regulations lower on list of political messaging priorities than Keystone XL and Solyndra

# FUTURE CONGRESS

A future Congress may return to the question of how to reduce or price GHGs:

- Carbon tax
- Clean energy standard
- (Default: EPA GHG regulations)

# FUTURE – CARBON TAX

Carbon tax:

- Two main problems – “carbon” & “tax”
- Not suggested as climate policy
- Offset reductions of other taxes (e.g., payroll, corporate, territoriality fix)
- Surprising voices: Exxon, American Enterprise Institute

# FUTURE – CLEAN ENERGY

Clean Energy Standard:

- Possible Bingaman (D-NM) bill
- Credit for large-head hydro, nuclear, coal w/CCS, natural gas (partial), renewables
- Based on Republican proposals, but mentioned by President Obama
- Maybe Senate hearings this year, but nothing else likely

# EPA REGULATIONS

New EPA regulations impacting power plants and manufacturers:

- Mercury and other air toxics
- Sulfur dioxide
- Coal ash
- Cooling water

# EPA GHG REGULATIONS

EPA GHG regulations – the default option:

- BACT guidance mostly requires new large sources of GHGs to explore use of the most energy efficient technology
- EPA publishes data on GHG emissions from large sources
- Plans to propose regulations for GHG emissions from new power plants
- Later in queue: GHG regulations from existing power plants, and new and existing oil refineries
- EPA has authority to let states use market-based programs to meet EPA GHG emission standards for existing sources under Clean Air Act section 111(d) and section 110

# EPA REGS - MARKET-BASED

Clean Air Act, section 110(a)(2)(A):

"[E]conomic incentives such as fees, marketable permits, and auctions of emission rights"

# EPA REGS – MARKET-BASED

Questions:

- Will EPA allow states to use market-based measures to meet EPA GHG emission standards?
- Will CA and RGGI states use their cap-and-trade programs to comply with 111(d)?
- Will other states use this flexibility, whether as cap-and-trade, emissions averaging, taxes – or will they stay with command-and-control?

# GREENHOUSE GAS REGULATION

## A Washington State Perspective

A (Sandy) Mackie

February 24, 2012

# Recent Timetable of WA Dept. of Ecology Actions to Use SEPA to Implement Legislative GHG Goals

2008—Director Manning seeks clarifying rulemaking

2010—September Guidance—for comment

2010—October working paper—for comment

- "Many comments not helpful"
  - Referring to letters from Settle, Schneider, AWB, NAIOP, et al. pointing out that SEPA was not designed to handle GHG regulation as desired by State

2011—May "Internal Guidance"

- Nominally for WDOE use
- WDOE is on the road telling local governments and consultants IG approach is the safe way to avoid problems

# Legislative GHG Goals (RCW 70.235.020)

## Washington greenhouse gas emission reductions

- By 2020, return to 1990 levels
- By 2035, reduce to 25% less than 1990
- By 2050, reduce to 50% less than 1990
- DOE's Comprehensive Plan projects State must reduce GHG emissions by 11% to meet 2020 Goal

# Major Actions Possible

Close Centralia Power Plant (Political decision)

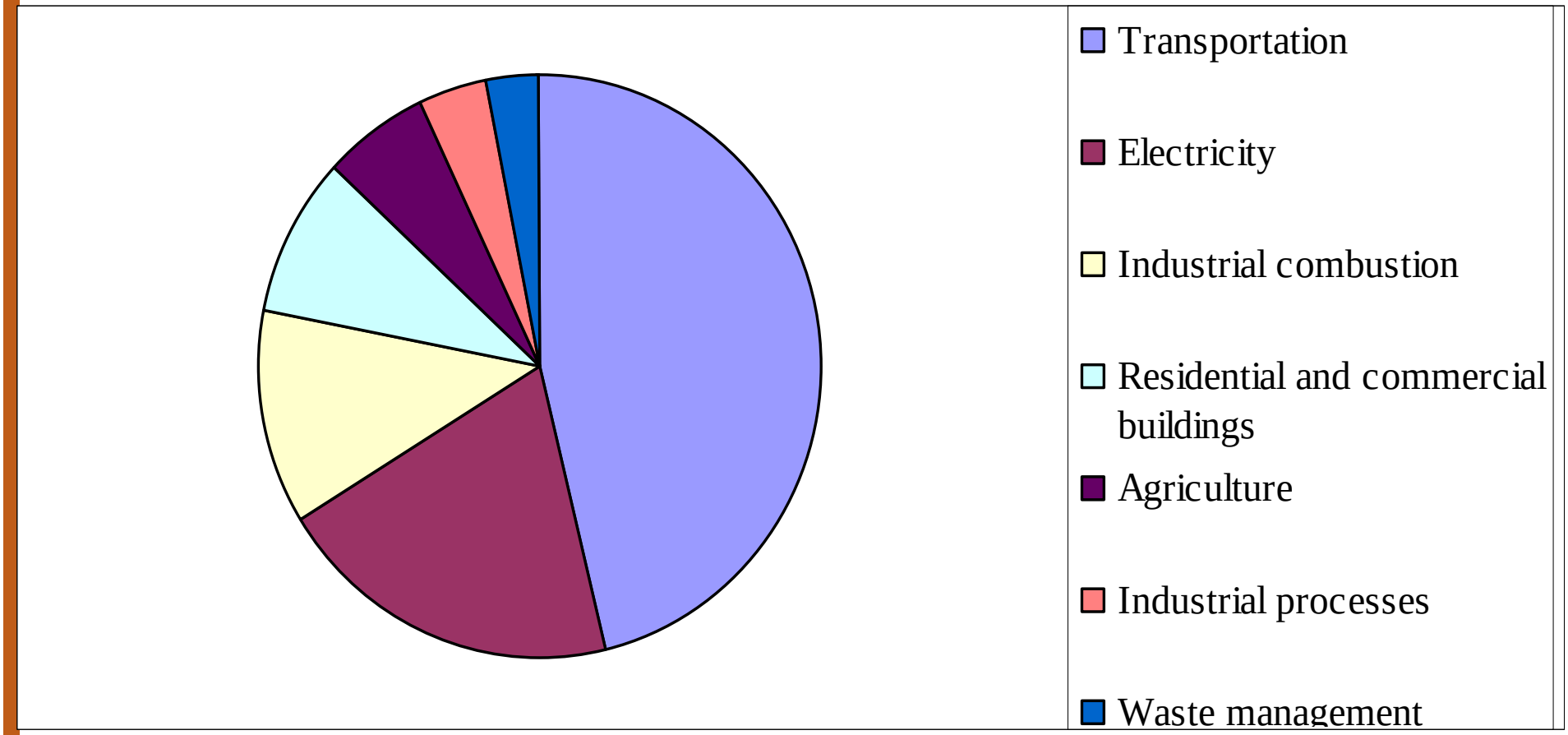
RACT to control GHG (Legal requirement)

SEPA to regulate individual projects (Internal Guidance)

Not focus on programmatic plans

- Likely still required in SEPA review, but DOE suggests too complex to work (Manning 1/13/2012)

# 2005 Washington GHG Sources*




*http://www.ecy.wa.gov/climatechange/sepa_ghgsources.htm

# Major Greenhouse Gas Sources

Within those sectors, the major sources of greenhouse gases are:

- **Stationary combustion** – Fuel burned to produce electricity or at manufacturing facilities (for example, using boilers); fuel combustion at industrial, residential, or commercial facilities.
- **Mobile combustion** – Fuel burned for transportation, such as in cars, trucks, ships, trains, and planes, and other mobile sources such as portable equipment, and specialized construction equipment.
- **Industrial processes** – Non-combustion emissions produced as a byproduct of certain types of manufacturing such as cement, aluminum, ammonia, and electronics.
- **Fugitive Emissions** – Other vented or leaked non-combustion-related greenhouse gas emissions. These emissions do not pass through a stack, chimney, or exhaust pipe. Examples include methane ($CH_4$) from natural gas pipelines, sulfur hexafluoride (SF6) from electricity transmission lines, HFCs from air conditioning and refrigeration units, and $CH_4$ from agricultural, wastewater, and solid waste management facilities.

# 3 Types of Emissions Considered for Assessing Proposal's Greenhouse Gas Emissions

**Scope One** emissions: under direct control of the project. Direct emissions from sources owned by or necessarily associated with the project

- Includes full life analysis
  - Products used in construction
  - Transportation for construction and operation
  - Impact of operations for full life cycle

# 3 Types of Emissions Considered for Assessing Proposal's Greenhouse Gas Emissions (cont.)

**Scope Two:** Life cycle emissions from energy purchased to produce electricity, heat, steam or cooling for the project

- May include energy to make construction materials

# 3 Types of Emissions Considered For Assessing Proposal's Greenhouse Gas Emissions (cont.)

**Scope Three:** emissions produced as a *consequence of the project* – but not from sources owned or part of the project, e.g.,

- Transportation demand created by the project, including contractor and/or visitor-owned vehicles
- Emissions from outsourced activities
- Line losses from electricity transmission and distribution
- Embodied emissions from the extraction, production, and transportation of purchased goods.

Even though some Scope Three emissions might be harder to estimate, they can be critically important to consider when reviewing the *project's long-term GHG impact* associated with the proposal

# Additional Possible GHG Inquiry

**Land use changes**

Changes in land use release carbon stored in trees and soils, and reduce trees available to store carbon in future years. Therefore, land clearing and land use changes such as land conversion are other potential sources of emissions that should also be evaluated.

# GHG Scope of inquiry

**Evaluate all known or expected GHG sources**

Proponents could be asked to evaluate all aspects of a proposal for all known or expected sources of greenhouse gases that they can reasonably assess or calculate ***over the life of the project***

- Construction of the project
- Continued operation or implementation

# SEPA Guidance and Greenhouse Gas

SEPA is intended to identify and mitigate "significant" impacts

- I.e., reasonable likelihood of more than a moderate adverse impact on environmental quality.
  WAC 197-11-794

SEPA threshold determination flows from checklist

- DNS
- MDNS
- DS

# What Level of Detail is Needed for Emission Disclosure?

For projects expected to annually produce an average estimate of at least 10,000 but less than 25,000 metric tons CO2e, proponents should at least qualitatively disclose the GHG emissions caused by the project

Proponents of projects expected to produce an average of 25,000 or more metric tons CO2e each year should include a quantitative disclosure of GHG emissions

# The Threshold Determination According to WDOE

## Key questions in making a threshold determination

Would the proposal

- Be likely to **significantly contribute** either directly, indirectly, or **cumulatively** to ***greenhouse gas concentrations*** in the atmosphere?
- Be ***vulnerable to the environmental impacts*** that would in turn be likely to cause a significant impact on the environment?
- Conflict with applicable **plans, policies, or regulations** [designed to] reduc[e] greenhouse gas emissions

# Unfortunately, Project-Level Impacts Cannot Be Measured!

## According to WDOE:

- "The CEQ draft NEPA guidance on greenhouse gases states '*it is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project to emissions, as such direct linkage is difficult to isolate and to understand*.'"

  WDOE September Guidance 7

# DOE's Guidance Would Be a Material Departure From Standard SEPA Guidelines

## SEPA case law

- Activity is proximate cause of local impact
  - Impact is demonstrated in local region
  - Mitigation is feasible
  - Reduction in impact by reason of mitigation is measurable

## Guidance

- Activity is proximate cause of local emission
  - Impact is immeasurable in time, place and extent
  - Mitigation has no nexus to potential reduction in impact
  - Reduction in impact by reason of mitigation is unmeasurable

# WDOE's Threshhold for Significance

**Conversion of Forested Lands**

| | 10,000 | 25,000 | |
|---|---|---|---|
| Deforestation (Western WA) | 83 | 207 | Acres |
| Deforestation (Eastern WA) | 213 | 532 | Acres |

# WDOE's Threshhold for Significance

**Residential Development (includes transportation and operation)**

| | 10,000 | 25,000 | |
|---|---|---|---|
| Single Family | 409 | 1,023 | DU |
| Multifamily | 575 | 1,438 | DU |
| High-Rise Condo | 854 | 2,135 | DU |

# WDOE's Threshold for Significance

**Commercial Development (includes transportation and operation)**

| | | | |
|---|---|---|---|
| General Retail | 185 | 463 | Thousand Square Feet |
| Supermarket | 75 | 187 | Thousand Square Feet |
| Office Space | 399 | 998 | Thousand Square Feet |
| Medical Office | 160 | 399 | Thousand Square Feet |
| Hotel | 565 | 1,411 | Hotel Rooms |
| Movie Theatre | 30 | 75 | Movie Screens |

# "Reasonable Probability" & "More Than Moderate Adverse Impact" Are Thresholds for SEPA Review

[O]ur Supreme Court has held that "the *procedural requirements* of *SEPA*, which are merely designed to provide full environmental information, *should be invoked* whenever **more than a moderate effect** on the quality of the environment is a *reasonable probability*."

*Davidson Serles & Assoc. v. City of Kirkland*, 159 Wn. App. 616, 635, 246 P.3d 822 (2011) (emphasis supplied)(citations omitted)

- Unless you have a potential problem that you can identify and mitigate that meets the threshold test—the procedural requirement of SEPA do not apply

# No Link Between Project Emissions and Climate Change

"Proximate cause" means a "**reasonably close causal relationship** between the environmental effect and the alleged cause"

It is the standard that the United States Supreme Court adopted under NEPA

- From IG, look to NEPA in the absence of State cases
- But WDOE then ignores any nexus between emission and causation

# No Link Between Project Climate Change and Local Impact

Under . . . SEPA, evaluation of a proposal's environmental impacts requires examination of at least two relevant factors:
(1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area, and

(2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area.

*Davidson Serles & Assoc. v. City of Kirkland*, 159 Wn. App. 616, 635, 246 P.3d 822 (2011)

Agency Guidance

- Emissions, not impact
- All future uses, not "present impact in excess of existing uses"
- Area or fact of impact undeterminable

# No Link Between Project Climate Change and Reasonable Probability of Local Impact

## Significance is the prerequisite for action

- Context and intensity
- No formula
  - Severity
  - Likelihood of occurrence

*See Davidson, 159 Wa. App.* at 635

## Problem with SEPA as GHG tool

- No link between project and severity or likelihood of climate change
- Impacts vary with time and location—but are well into the future
- Projections, not predictions
  - Highly subjective
  - Subject to intervening factors and cocontributors

## Due process question

- Is the regulation reasonably related to the objective sought to be achieved when neither contribution-impact nor mitigation can be measured or reasonably predicted?

# No Link Between Project Climate Change and "More Than Moderate" Impact

Individual project's impacts are immeasurable

Cumulative impact does not help

- Washington State—Cumulative impact requires examination of existing conditions plus impacts of project and those necessarily follow from the project under review—not all future projects that have no nexus or connection to the project are under review
- See *Gebbers v. Okanogan Cnty. PUD No. 1*, 144 Wn. App. 371, 183 P.3d 324 (2008)
- WDOE—Existing, project-related and *all future anticipated project impacts* cause climate change and are the basis for the determination of significance

# What Is "More Than Moderate" Rainfall—in Washington State ?

Rainfall—1-2% by 2050

- within the range of normal variability

Causation contribution unknown—Also affected by

- PDO/ADO—30-50 year cycles
- ENSO—El Nino, La Nina (decadal cycles)

(from Climate Impact Group May 2010)

If your area gets 35 inches of rain per year, by 2050 you will get 36.40-37.80 inches per year

- Can you tell the difference?
- How will you be affected?
- How can anyone say project mitigation made any difference?

# Rainfall—No Statewide Average, Must Look to Local Circumstance

"Precipitation intensity may increase but the spatial pattern of this change and changes in intensity are highly variable across the state."

"More intense precipitation projected by regional climate model, but distribution is highly variable; *substantial changes only over the North Cascades and northeastern Washington*." [little if any change, Vancouver and Spokane]

*CIG May 2010 draft*

*Snowpack basins affected more than rainfall basins*

*May lead to more/less flooding*

# What Is "More Than Moderate" Temperature?

Projected change in average annual temp is 0.5°F per decade (range: 0.2- 1.0°F)

Can you detect a 1-2°F change in average temperature?

CIG May 2010 draft

- Note the growth chart comparison is with 1970-1990 baseline when PDO was in a low cycle. Comparison much smaller when compared with 1900-1930, which was a period of higher average temperatures
- Well within normal variability
- 2000-2010 within normal temperature range (including 2003 French heat wave)

# What Is "More Than Moderate" Temperature Impact?

How do you correlate project-level GHG with "proximate impact"?

- Washington State has historic cycles of temperature variability tied to the PDO—30-50 year cycles also influenced by ENSO
  - Warm periods—tree growth increase at elevation and more fires
  - Cooler periods—trees at elevations more stressed—fewer fires
- As a SEPA official how are you going to differentiate between normal cycles and impacts caused by project-related GHG?
  - Time, place and quantity increments are unknowable
  - A guess or supposition at best

# What Is "More Than Moderate" Sea Level Rise?

Sea Level Rise 2050

Projected medium change in WA sea level

- NW Olympic Peninsula: 0" (-5-14")
- Central & South Coast: 5" (1-18")
- Puget Sound: 6" (3-22")

1/13/2012 CLE: Former WDOE Director Manning said 1.8 meters—from Hanson (NASA Director)

- Not supported by Greenland or Antarctic Ice patterns

# What Is "More Than Moderate" Impact?

## High confidence that sea level will rise globally

## CIG May 2010 draft

- Ocean rose 6" in the prior century
- Will continue to rise due to a variety of causes
  - Thermal expansion
  - Continental uplift and subsidence
  - Changes in snowpack—not following models
    - Greenland—but icepack is growing
    - Antarctica—colder and more snow, not less
- GHG impacts in 2050 impossible to isolate from natural variation and adaptations

# Who Has Standing to Complain? "Injury In Fact"

[T]he courts' central concern [is] that a specific and perceptible injury to a member of the organization be alleged. An organization whose interest is only speculative or indirect may not maintain an action.

*SAVE v. Bothel*, 89 Wn.2d at 866 (citation omitted)

# How Do You Meet the "Injury in Fact" Test?

"immediate, concrete, and specific injury" [is required]

if the injury is merely conjectural or hypothetical, there can be no standing.

*Snohomish Cnty. Prop. Rights Alliance v. Snohomish Cnty.*, 76 Wn. App. 44, 53, 882 P.2d 807 (1994) (citations omitted)

How can a projected (hypothetical) impact in 2020-2050-2100 be

- Immediate, concrete, and specific?

# Why SEPA Cannot Work at the Project Level

There is no link between project and global GHG increase

There is no link between project and climate change locally

Local impacts of climate change often minor and with no impact in any measurable time frame

Climate projections have very low confidence in any specific area

# How Do You Meet the "Injury in Fact" Test (cont.)?

Where will you be living in 2050?

How can you say with any degree of certainty that any impact will specifically occur

- To you
- In that location

How will communities be affected 40 years from now by

- 1-2 degree temperature rise
- 2-4 inch sea level rise
- Change in forest ecology that increases growth, fires and disease
- Regional change in rainfall timing highly variable

# What Meets the "Injury in Fact" Test (cont.)?

- How to account for intervening causes/adaptations?
- How to account for the inherent uncertainties of models to identify time, place or magnitude of impacts?
- How do these limitations permit a conclusion of
  - Reasonable probability;
  - More than moderate impact in the affected area;
  - To someone who will suffer immediate perceptible (not remote and speculative)

# SEPA GHG Model Is a Litigation Model Bound to Fail

Under SEPA—action may be

- *Conditioned only to mitigate specific adverse environmental impacts*
- Identified in the environmental documents
- Stated in writing by the decision maker
- Feasibly mitigated.

RCW 43.21C.060 (emphasis supplied)

- If you cannot link a specific project to any GHG—related impact
- If you cannot quantify the size, location or timing of any related impacts
- If you cannot measure the efficacy of required mitigation

How do you pass this test in the GHG context?

- One man's opinion—you do not

# A Contested Case Model Will Not Work

The issue is not whether climate change is occurring—it has and will—but when the government seeks to impose conditions, it has the burden of proof on nexus and proportionality between GHG emissions and climate change mitigation

For climate change, scope and extent over time are

- Projections without consensus, not predictions,
- Cumulative with natural and anthropogenic factors,
- Highly variable by location,
- Highly variable by time, and
- Subject to innumerable intervening forces and adaptations

# A Contested Case Model Will Not Work (cont.)

- SEPA's "paper chase" wont' produce defensible decisions
- Projected impacts are no better than hypothetical guesses
- Well-prepared cases will defeat a claim that a specific project has a reasonable probability of creating more than a moderate impact to any given location, person or habitat

# Problem for Cities and Counties
# "Thou shalt not tax"

RCW 82.02.020

Mitigating conditions not tied to identifiable measures of nexus and proportionality are

- Unlawful taxes
- Unenforceable
- In extreme cases grounds for liability and damages—Chapter 64.40 RCW

The State's Guidance is inviting cities and counties into the RCW 82.02.020 trap

- But as guidance, rather than rule—making, they put all of the risk on local governments who shoulder the bulk of permit responsibility

# Is SEPA a Rational Approach to GHG Regulation From a Litigation Point of View?

No

- No proximate cause
- No direct and specific impact
- No measurable consequence of mitigation
- No limit to Scope 1, 2 and 3 consequences
- No limit to litigation
- No predictable result

Problems

- Excessive conjecture
- Excessive cost
- No meaningful results produced
- Serious inhibitor to desirable growth
- Many or more problems caused than solved

# Is SEPA a Rational Approach to GHG Regulation From a Policy Point of View?

Fails "do no harm" test

Micromanage a macro problem

- Goal—compact cities—higher density—reduce VMT/GHG
- SEPA GHG mitigation for urban center project
  - Reduce mass and density—reduces GHG
  - Require LEED Gold buildings
    - Increases costs—lack of affordability drives sprawl
  - Threshhold promotes "under the radar" (smaller) projects
    - Increases sprawl, increases VMT
- Unintended consequence—discourage urban development—extended sprawl can make net GHG situation worse, not better.

See A-P/Al Hurd, *The Carbon-Efficient City: Building Blocks to Cool Our Planet*, to be published spring 2012

# A Better Approach

## Nationally

- Energy generation 50-75% contribution
- Refiners 10% contribution
- Deal with major sources through rulemaking

## Locally

- Specific regulations under Clean Air Act can deal with "large" emitters required to get air quality permits, but with RACT protection identified in specific rules
- (*WEC v. WDOE and WSPA*)

# A More Rational Approach—Skip Projects, Focus on Community/Regional Planning

GMA and SMA focus on creating communities that promote

- Compact/transit friendly growth
  - 2 million new people in the next generation in Puget Sound area
  - Each has a carbon footprint throughout the community

Programmatic SEPA review looks at big picture

- Economically viable infrastructure, industries and services
- Environmentally sensitive approach to land management
- Urban affordability to encourage infill

Once the community plans are in place you have done the best you can

- Projects consistent with local codes and ordinances should proceed without costly and time-consuming, project-specific GHG SEPA analysis and meaningless mitigation

# NEPA Does Not Mandate GHG Review

Not all federal projects need NEPA review

- *NC Alliance for Transp. Reform v. USDOT*, 713 F. Supp. 2d 491 (2010).

Freeway expansion—qualitative analysis not required

- NEPA does not expressly require consideration
- EPA did not require project to be reviewed for GHG
- Project had negligible impact based on both benefits and burdens

# NEPA Does Not Mandate GHG Review In All Cases

*See also Sierra Club v. FHWA*, 715 F. Supp. 2d 721 (2010)

- Plaintiffs have not pointed to any law or regulation showing defendants' failure to consider greenhouse gas emissions makes the [highway] FEIS inadequate, or makes the decision of the FHWA arbitrary or capricious.

# Extra Territorial Reach Questionable

Low carbon fuel standards likely violate commerce clause as discriminatory against out of state products—preliminary injunction granted.

*See Rocky Mountain Farmers Union v. Goldstene* (Case #CV-F-09-2234 LJO DLB), Order, *Nat'l Petrochemical & Refiners Assn. v. Goldstene* (Case #CV-F-10-163 LJO DLB) (E.D. Cal. Dec. 29, 2011)

Presented by

Alexander W. “Sandy” Mackie
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
206-359-8653
amackie@perkinscoie.com

# Oregon Climate Change Developments

Ivan Gold

ELI/Perkins Coie Seminar

January 24, 2012

Perkins Coie

# Topics:

GHG reduction goals;

GHG reporting;

Land Conservation and Development Commission developments;

Oregon involvement in Western Climate Initiative (WCI); and

Oregon Renewable Energy Credits

# GHG Reduction Goals (ORS 468A.205)

(1) The Legislative Assembly declares that it is the policy of this state to reduce greenhouse gas emissions in Oregon pursuant to the following greenhouse gas emissions reduction goals:

- (a) By 2010, arrest the growth of Oregon's greenhouse gas emissions and begin to reduce greenhouse gas emissions.
- (b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.
- (c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.

(2) The Legislative Assembly declares that it is the policy of this state for state and local governments, businesses, nonprofit organizations and individual residents to prepare for the effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming.

# GHG Reporting (OAR 340-215)

GHG reporting rules approved in 2008, updated in 2010

Rules impose an annual reporting requirement

- Facilities may cease reporting if their direct emissions are below the threshold for three consecutive years

# GHG Reporting – Who must report to DEQ?

Qualifying facilities emitting 2,500 metric tons or more of $CO_2e$ during a year must report, including:

- Air quality permit holders (ACDP and Title V)
- Landfills
- Wastewater treatment facilities (reporting temporarily deferred)

Qualifying suppliers of fuels and electricity must report, including:

- Gasoline, diesel, and aircraft fuel distributors
- Propane wholesalers
- Natural gas suppliers
- Investor-owned utilities and electricity service suppliers
- Consumer owned utilities (protocol to be released in 2012)

# GHG reporting – Federal & State

Reporting entity may submit EPA report generated pursuant to 40 CFR, Part 98 in lieu of Oregon registration and report.

Oregon DEQ maintains authority to request additional information.

# Land Conservation and Development Commission Developments

## 2011: Metropolitan GHG Reduction Targets OAR 660-044-0000

- Light vehicle traffic GHG to 75% of 1990 by 2035*
- Guidance to local governments
- Urban development patterns
- No effect on statewide planning goals

## Oregon Transportation Planning Rules OAR 660-012-0035

- Reduce reliance on automobile
- Local governments must adopt TSP or alternatives

*different targets for Bend, Corvallis, Eugene, Rogue Valley and Salem Keizer

# DEQ Low Carbon Fuel Standards

HB 1286: 2009 Legislative Assembly

2011 DEQ Proposed Standards

Reduce carbon intensity 10% from 2012-2022

- A: gasoline and related fuels
- B: diesel and related fuels
- Phase in over time with exit ramps
  - Short supply
  - Price spikes

No immediate mandatory issues

# Oregon Involvement in WCI

2007: Western Climate Initiative formed (Arizona, California, New Mexico, Oregon, and Washington)

Mission:

- 1) Develop regional target for reducing greenhouse gas emissions
- 2) Participate in a multi-state registry to track and manage regional GHG emissions
- 3) Develop a market-based program to reach emissions reduction target

By 2010: 7 member states, 4 member provinces, limited legislation passed

**Blue - WCI Partners,**
**Yellow - WCI Observers**

# Oregon Involvement in WCI

November 2011:

- 6 of 7 U.S. member states, including Oregon, withdraw
- California, Quebec, Manitoba, Ontario (and possibly British Columbia) vow to move ahead with cap and trade

Oregon to refocus attention on new organization: North America 2050

Blue - WCI Partners,
Yellow - WCI Observers

# WCI Goes Forward

WCI plans North American GHG trading program

WCI plans cap and trade to begin in 2012

WCI plans WCI Inc., to

- Develop a compliance tracking system for allowance and offset certificates;
- Administer allowance auctions; and
- Market monitor for allowance auctions and allowance and offset certificate trading.

# North America 2050: A Partnership for Progress

## Mission

- Facilitate state and provincial efforts to design, promote and implement cost-effective policies that reduce GHG emissions and create economic opportunities

## Membership

- Open to all U.S. and Mexican states and Canadian provinces

## Working Groups

- Focus on different aspects of the energy, climate and economic challenges facing each jurisdiction

# WECC Renewable Energy Credits—indirect climate change—not GHG/

Some utility transactions taking place.

Recent PUC approved transactions at $6—12/REC.

Idaho Power splits ownership with IPPS.

Most utilities have enough RECS for current RPS reporting cycle.

Approach to 2015 may strengthen market.

Hard to get debt to support future REC value in projects.

Evolution Markets: current weak Western State REC market at $5-10/REC.

TREC market uncertain in CA. ("bucket 3" is limited).

# Questions

Ivan Gold, (503) 727-2214
igold@perkinscoie.com

Perkins Coie's climate change practice:
http://www.perkinscoie.com/climate_change_law_policy/

# Q&A