

**Exhibit 20**

**Regional Approaches Addressing Climate Change**

**Melinda E. Taylor, University of Texas School of Law, "Building Momentum for National Legislation: Action by the States and Federal Agencies Since 2001," PowerPoint Presentation at Carbon and Climate Change Seminar (April 24, 2008).**

# Building Momentum for National Legislation: Action by the States and Federal Agencies Since 2001

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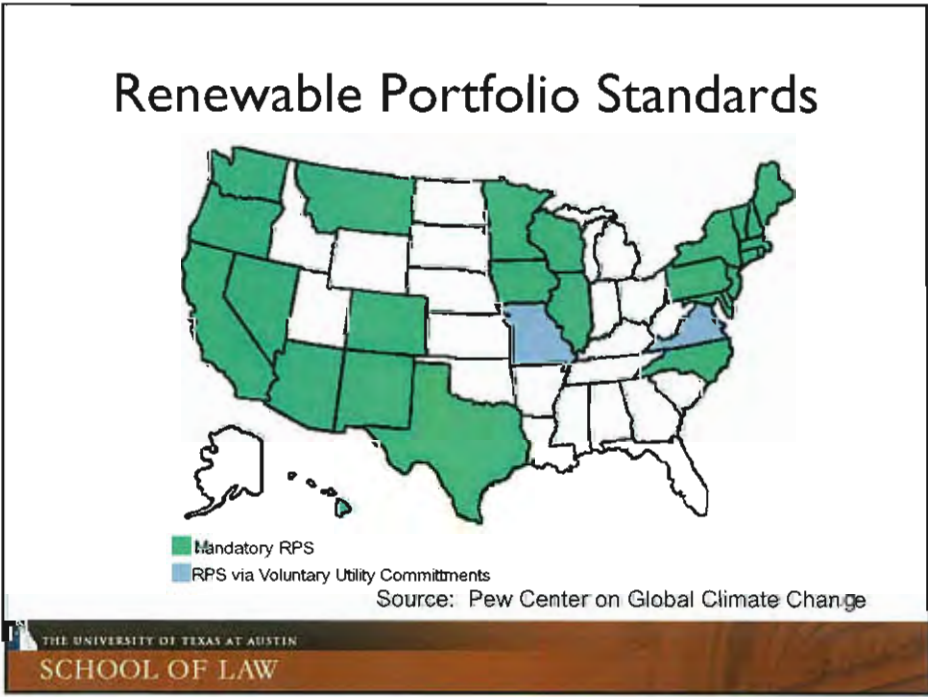
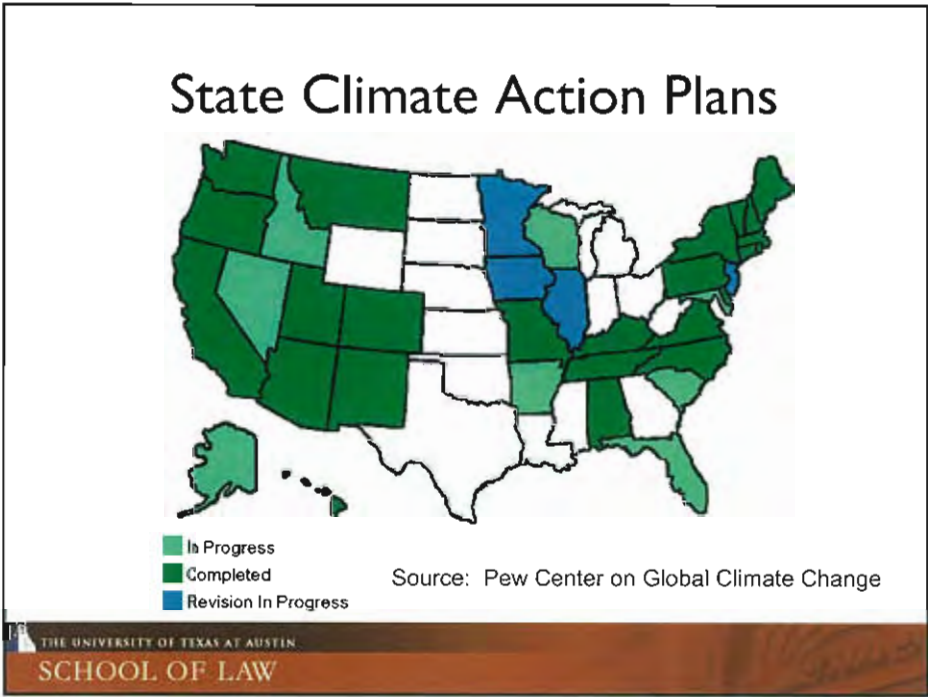
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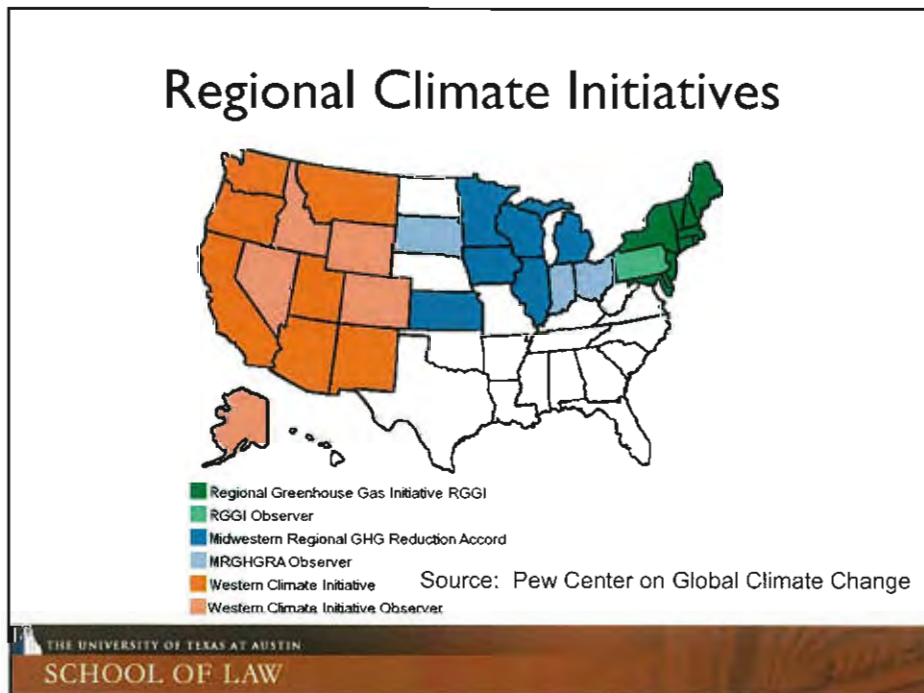
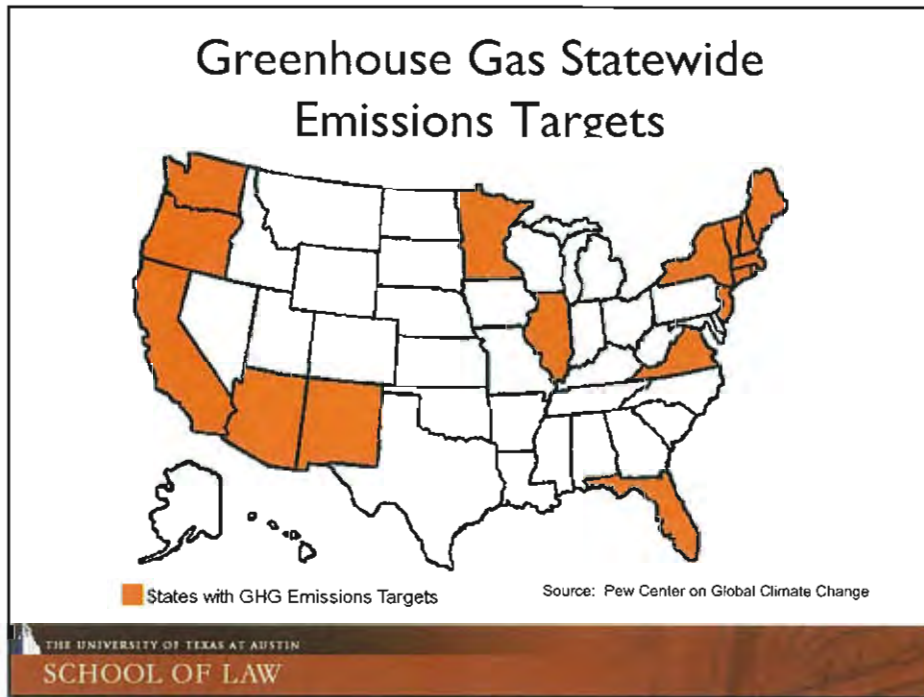
## Outline

- Growing Public Support for Federal Action
- Significant State Activity
- Federal Agencies Actions



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## National Environmental Policy Act

- EIS required for “major Federal actions”
- Court challenges for failure to address GHG emissions in EIS, forest plans, federal funding decisions



## Endangered Species Act

- Listing Decisions
- Designation of Critical Habitat
- Consultation Requirement
- Prohibition on “Take”
- Incidental Take Authorization



Photo Credit: USFWS

## Conclusion

- High likelihood of federal law in near future
- States have taken action to address emissions from electricity generating sector, mobile sources, agriculture
- Federal agencies are incorporating analyses of climate change impacts into NEPA documents and endangered species decisions

**Exhibit 21**

**Climate Communities Action Agenda**

**Climate Communities, "Climate Action from the Ground Up: Agenda for Federal Action," < [www.climatecommunities.us](http://www.climatecommunities.us) >.**



## CLIMATE ACTION FROM THE GROUND UP Agenda for Federal Action

**Climate change is the challenge of our generation.** What we do or don't do to address this challenge in the coming years will have a fundamental impact on the security, economic well-being, and quality of life for Americans and citizens throughout the world for generations to come. By tackling the climate challenge, America can help achieve some of our most important national objectives – energy independence and national security, economic competitiveness and job creation, protection of public health and the environment, and sustainable community development.

Local governments from across America have formed a new national coalition that will pursue federal policies that support climate change action from the ground up. *Climate Communities* has convened cities, counties, councils of government, utility districts and other units of local government to: (1) educate national policy-makers on the critical role of local governments in reducing greenhouse gas (GHG) pollution and adapting to the impacts of climate change; and (2) ensure that Congress and federal agencies enact policies and programs that provide the resources, tools and incentives localities need to meet the climate change challenge. The *Climate Communities* federal action agenda includes the following:

- Promote national **cap-and-trade** legislation that supports local government climate actions with a fair share of resources from the proposed \$100 billion annual regulatory system.
- Ensure that Congress and the Administration provide full funding of \$2 billion in FY 2009 for the new **Energy Efficiency and Conservation Block Grants**, and fully funds other local government grant programs authorized by the new energy law.
- Urge Congress to provide \$15 million in FY 2009 to create 50 U.S. Environmental Protection Agency (EPA) "**Climate Communities Demonstration Pilots.**"
- Urge Congress to provide \$50 million in FY 2009 to expand the U.S. Department of Energy's (DOE) "Clean Cities Program," which supports clean fuels and low-emission vehicles at the local level.
- Ensure that reauthorization of the **federal transportation law** provides a significant portion of the expected \$300+ billion federal transportation investment for local land use and transportation planning, public transit, green vehicles, and other local actions that reduce vehicle miles traveled (VMT) and curb carbon emissions.
- Direct resources to EPA, the Federal Emergency Management Agency (FEMA), and the National Oceanic & Atmospheric Administration (NOAA) to help localities create **climate resilient communities** that are prepared to prevent and address the impacts of climate change.



**THE CRITICAL ROLE OF LOCALITIES IN MEETING THE CLIMATE CHALLENGE**

**Local governments have been at the forefront of the movement to combat climate change.** Mayors from 850 cities have signed the Mayors' Climate Protection Agreement pledging to take actions in their communities to meet or beat the Kyoto Protocol targets for reductions in GHG emissions. More than 25 counties representing over 35 million people have joined Cool Counties and pledged to reduce GHG emissions by 80 percent by the year 2050.

Moreover, localities continue to be the leaders in developing innovative programs and policies and serve as the laboratories for innovative technologies as our nation strives to develop the best approaches to combat climate change. For example:

- **King County, WA** recently announced plans to purchase 500 new hybrid buses over the next five years as part of its effort to convert the County's entire transit and vehicle fleet to low-emission vehicles.
- **Nassau County, NY** recently launched its "Green Levittown" initiative, a public-private partnership to help the 17,000 residents of America's first suburb conduct home energy audits, replace old boilers and make other home energy savings improvements. Nassau County aims to reduce carbon emissions from Levittown homes by 20 percent in 2008.
- **The City of Stamford, CT** recently launched "Stamford Cool & Green 2020," a multi-faceted climate protection plan including an Energy Improvement District to promote combined heat and power and renewable energy, green building standards for commercial buildings, a green lighting program to encourage citizens to use compact fluorescents, and property tax relief for citizens who purchase hybrid cars.
- **Sacramento County, CA** and the **Sacramento Area Council of Governments, CA** have established a blueprint for the metropolitan region that links transportation investments to a vision of sustainable future growth and development, served by public transit, walkability measures, and other approaches to reduce VMT in the region by 27 percent by 2050.

**Local government action will continue to be critical to addressing America's climate change challenge.** If localities are not able to foster major reductions in GHG emissions in their jurisdictions – through green buildings, clean transportation, green energy, green jobs, and sustainable community development – America will fail to meet the climate challenge.

**More than any other sector, local governments have the ability to promote, encourage and lead the effort to reduce GHG pollution.** Localities are ideally suited to implement land use planning, building codes, infrastructure improvements, green technology, sustainable economic development and other local actions that must underlie climate change progress. For example, only local governments can implement the land use and transportation planning required to reduce vehicle miles traveled, which is essential to reducing GHG emissions.

Moreover, localities are uniquely suited to develop and implement new building codes and green building incentives to reduce energy use in residential and commercial buildings, which are responsible for more than one third of the nation's GHG emissions.

**Local governments are also the first responders to the impacts of climate change.** It is local governments that must take the lead in dealing with drought, water shortages, wildfires, flooding, rising sea levels, infrastructure disruption, and other impacts of climate change. As a result, a number of localities have begun to grapple with the monumental task of planning for these occurrences.

### **A STRONG LOCAL-FEDERAL PARTNERSHIP IS ESSENTIAL TO ADDRESSING CLIMATE CHANGE**

While local governments are uniquely suited to play a leadership role in addressing climate change, a strong partnership with the federal government is essential. Like homeland security, addressing climate change will require a national response and commitment. While many localities have pledged action to prevent and adapt to climate change, most are just beginning to develop their climate protection plans. **In order to turn local climate pledges into real action, localities need funding, incentives, and other assistance from the federal government.**

However, despite the critical role of local governments in meeting the climate challenge, the federal government currently provides very little funding or assistance to help localities develop local climate protection strategies and deploy innovative approaches for green buildings, clean transportation, reduction of vehicle miles traveled, and other local actions. While President Bush recently signed new energy legislation authorizing \$2 billion a year for energy efficiency block grants to local governments, Congress must now decide how much to appropriate for this new program. Equally important, climate change legislation being considered by Congress now – including the cap-and-trade bill introduced by Senators Joseph Lieberman (I-CT) and John Warner (R-VA) and the climate change principles put forth by House Energy & Commerce Committee Chairman John Dingell (D-MI) and Energy and Air Quality Subcommittee Chairman Rick Boucher (D-VA) – provides no funding, no allowance allocations, no auction proceeds, no offset credits, no technical assistance, and no direct help for local climate activities.

### **CLIMATE COMMUNITIES FEDERAL POLICY ACTION AGENDA**

To ensure that local governments have the tools, resources, and incentives from the federal government needed to tackle the climate challenge, the *Climate Communities* coalition is launching an ambitious national advocacy campaign focused on the following four goals in 2008 and beyond:

1. **CAP-AND-TRADE CREDITS FOR LOCAL ACTIONS TO ADDRESS CLIMATE CHANGE:** *Climate Communities* will support ambitious cap-and-trade legislation and work to ensure that it empowers local government and metropolitan regional action to reduce GHG emissions. Although cap-and-trade incentives to State programs are important, they cannot substitute for incentives directly to local governments. The coalition will work with leaders of the Senate Environment and Public Works Committee to ensure that the Lieberman-Warner Climate Security Act provides cap-and-trade incentives directly to local governments for green actions. Likewise, the coalition will work with leadership of the House Energy & Commerce Committee

to draft legislation that provides cap-and-trade incentives and credit for local action. We will seek legislation that:

- **Directs a significant portion of overall cap-and-trade auction proceeds** to units of local government to support projects and programs that reduce carbon emissions. Eligible local pollution reduction activities could include local and distributed renewable energy projects, energy efficiency projects, changeover to green municipal and private sector fleets, emissions-reducing green infrastructure projects (e.g., green rooftops), and programs and projects that reduce vehicle miles traveled in the metropolitan region. Auction proceeds may be used directly on eligible local projects, be provided by the locality as incentives for private sector action by the local government, or be used to build local government program capacity to support eligible projects.
- Allows regulated industries (utilities, manufacturers, transportation sector) to **offset carbon emissions by funding or implementing eligible cost-shared local government initiatives** that result in quantifiable, surplus, enforceable, permanent GHG emission reductions. Local governments that are eligible to receive offset projects could be known as “CORE Communities – Carbon Offset Receiving Enterprise Communities.”
- **Allocates emissions allowances to units of local government** that achieve quantifiable, surplus, enforceable, permanent reductions in carbon-equivalent emissions through eligible local pollution reduction activities. Eligible emission reduction activities can include activities conducted by the local government, or private sector projects that are incentivized by a locality and aggregated for cap-and-trade credit.

2. **EXPAND FY 2009 FEDERAL FUNDING FOR LOCAL CLIMATE ACTION:** *Climate Communities* will advocate for increased FY 2009 appropriations for federal programs that support local efforts to combat climate change, including:

- \$15 million in annual funding for an EPA grant program to provide grants to implement 50 annual local government “**Climate Communities Demonstration Pilots**” that enable the local government to establish a local climate program and fund a “Climate Coordinator” position.
- \$2 billion in annual funding for **Energy Efficiency and Conservation Block Grants**, as well as full funding for other local government grant programs authorized by the new Energy Bill.
- Increasing the DOE’s “**Clean Cities**” program to \$50 million annually to support cities and other units of local government with clean transportation resources.

3. **ENSURE THAT SAFETEA-LU REAUTHORIZATION INVESTS IN LOCAL CLIMATE PROTECTION ACTIONS:** *Climate Communities* will work with allied organizations to develop and support proposals to change the federal transportation law in ways that enhance the ability of local governments to combat climate change. Top priorities will include:

- Increasing total resources and federal-local share ratios (to 80-90% federal), and streamlining approval processes, for **public transit (rail, bus) projects** that reduce energy use, GHG, and VMT.

- Providing federal funds to pay for the cost differentials for low-emission, clean-fuel alternatives to traditional **municipal fleet, bus fleet, and private sector fleet vehicles**.
- Developing a U.S. Department of Transportation (DOT) grant program for localities and metropolitan planning organizations to conduct and implement **Land Use and Transportation Planning/Visioning/Scenario Analyses**.
- Funding studies, demonstration projects and training programs to support local government efforts to prepare for and protect against the **impacts of climate change on transportation infrastructure**.

4. **NATIONAL PROGRAMS TO SUPPORT CLIMATE RESILIENT COMMUNITIES:** *Climate Communities* seeks expanded federal programs that support research, demonstration and deployment activities supporting local government efforts to prevent and adapt to the exacerbated impacts of climate change (*e.g.*, rising sea level, impacts on water supply, increased flooding, more fires, and more severe storm events). This includes:

- Increasing funding for **FEMA's pre-disaster hazard mitigation program** and ensuring that such funds may be used by localities for climate change adaptation planning.
- Creating a grant program at **EPA to address local and regional impacts of climate change**, including by accommodating, protecting, or relocating affected communities and public infrastructure.
- Creating a grant program for **NOAA to support local government "coastal community" projects** under Coastal Zone Management Programs to plan for climate impacts on localities.
- Seeking Congressional and Administration support for the creation of a **Federal Interagency Task Force on Climate Change Adaptation**, in order to promote collaboration and integration of strategies among key agencies including NOAA, EPA, FEMA, the U.S. Army Corps of Engineers, the Bureau of Reclamation, the U.S. Department of Agriculture, and other agencies.

For more information, contact Andrew Seth at (202) 331-8500 or [andy@climatecommunities.us](mailto:andy@climatecommunities.us).

**Exhibit 22**

**USEPA Regions Developing GHG Plans**

**Anthony Lacey, "EPA Regions Draft Internal GHG Plans to Prepare for Climate Rules," *InsideEPA* (August 19, 2008), < [www.insideepa.com/secure/docnum.asp?docnum=8192008\\_ghgplans&=epa\\_2001.ask](http://www.insideepa.com/secure/docnum.asp?docnum=8192008_ghgplans&=epa_2001.ask) >.**



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## EPA Regions Draft Internal GHG Plans To Prepare For Climate Rules

AUSTIN, TX -- EPA regions are moving ahead with plans to lay the groundwork for mandatory greenhouse gas (GHG) controls amid headquarters' reluctance to adopt climate rules, with regions I, VI and IX all drafting plans that one EPA source says aim to transition the regions from voluntary to mandatory efforts to curb GHGs.

Region VI has completed the first round of an evolving plan to "encourage" GHG reductions, with a long-term goal to write climate-related provisions into key mandatory air quality plans. Additionally, regions I and IX are also pursuing their own, similar climate plans to prepare for an expected mandatory climate regime, sources say.

One activist says the fact that regions are moving forward despite headquarters' resistance to issuing GHG rules highlights a vast internal split on climate change within EPA. Development of the regional climate change plans is "evidence that many career employees at EPA have spent a great deal of time thinking about climate change and appear prepared to move forward once the political leadership changes in a new administration," the source says.

At the same time, one informed industry source says career staff at EPA headquarters are planning for how to push climate change policies once the Bush administration leaves office.

A second informed source notes that EPA's draft advance notice of proposed rulemaking for regulating GHGs under the Clean Air Act may serve as a blueprint, despite the fact that Administrator Stephen Johnson disavowed the idea of using the air act to regulate GHGs in a preamble to the draft.

Meanwhile, the regional EPA climate plans are drawing fire from opponents of mandatory climate controls, with one source saying they represent overreaching by the agency's regions. The source says it should be up to Congress to develop the groundwork for any climate control regime, and that EPA's job would be to implement the legislation, rather than working on policy measures now.

Region VI's plan which several agency officials say will evolve through a series of updates, now lays out various methods for encouraging voluntary GHG reductions from industry. But future versions of the plan will focus more on regulatory mechanisms for reducing emissions, including adding new provisions to state air quality plans, consent decrees, National Environmental Protection Act (NEPA) compliance documents and more.

Copies of Region VI's plan, titled *Clean Energy & Climate Change Strategy*, were circulated at the Texas Environmental Superconference here Aug. 7, and a regional air official gave a presentation outlining what some sources say is an ambitious future for the document, including policy options for reducing GHGs.

Region VI's Joe Kordzi said during a presentation at the conference that the document is "internal and should not be considered regulation," but critics of the plan say that it shows a desire by the region to transition industrial sources to quasi-mandatory climate controls through various measures, such as including climate reduction incentives in state implementation plans (SIPs), which detail how states intend to attain EPA air standards.

Kordzi, an environmental engineer, noted that emissions sources in Region VI are responsible for "more than a fifth" of all carbon dioxide (CO<sub>2</sub>) emissions in the United States, highlighting the importance of finding ways to curb GHG emissions. Region VI includes Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Describing the plan as a "living document," Kordzi told the conference that it encompasses a range of near-term plans that include promoting coastal protection and adaptation; advancing the use of alternative and renewable energy; and reducing the agency's own carbon footprint, among other steps.

The plan notes that that Region VI has "several policy advisors and senior managers invested in [its] development and initiation" and that the effort will be an ongoing process.

Future editions of the plan are set to include more sweeping measures, including promoting regulatory incentives for companies to reduce their GHG emissions, such as climate control provisions in SIPs, consent decrees, NEPA compliance documents and others. Additionally, the document will strongly promote national programs, such as the Energy Star efficient product program run by EPA and the Energy Department.

A third informed source welcomes development of the regional climate plans, saying it shows initiative by staff-level agency employees to prepare their offices for a smooth transition to a mandatory climate control regime. For example, several of the long-term proposals in Region VI's plan -- including implementing GHG reduction provisions in SIPs -- are likely to be an element of future climate rules, the source says.

"These are things that are going to be happening," the source says of various provisions in Region VI's plan, adding, "They're being smart by getting ready" for a future mandatory climate regime.

Several sources say that Regions I and IX are also developing their own climate change plans to transition to a new administration when EPA is widely expected to promulgate GHG rules. The two regions cover major parts of the United States, with Region I encompassing six New England states and Region IX covering Arizona, California, Hawaii, Nevada and the Pacific Islands.

Region VI's plan says that states in the region generate 35 percent of the nation's fossil fuel-derived CO<sub>2</sub> emissions from industrial sources, and 15 percent of the nation's CO<sub>2</sub> emissions from transportation and electric power sources. The plan says the region is taking steps to make a "difference over the next six months and beyond" by focusing on reducing GHGs, conserving energy, adapting to climate change impacts, and promoting clean or renewable energy sources.

Under the plan, Region VI will develop a multi-divisional resource network to assist states, local agencies, industry, the public and tribes to create projects to boost energy efficiency.

The region also plans "focused" stakeholder sessions to advance policy and program goals relating to

climate change impacts, and will support GHG mitigation efforts through sequestration actions “wherever possible,” including using Region VI’s expertise in deep well injection technology and permitting to help inform the development of federal CO2 geosequestration regulations.

Objectives of the plan include reviewing and revising policies and guidance to maximize opportunities to include the plan’s goals in SIPs, financial assistance mechanisms, consent decrees, documents developed for NEPA compliance purposes, and supplemental environmental projects -- which are special projects that industry can fund as part of a consent decree that are designed to address specific environmental harm.

However, the source who opposes climate controls says the regional plan is out of bounds, criticizing the introduction to the Region VI plan which aims to “lay the groundwork” for future GHG controls. The document “just gets worse from there, as EPA envisions many big, big things for itself,” the source says. -- *Anthony Lacey*

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