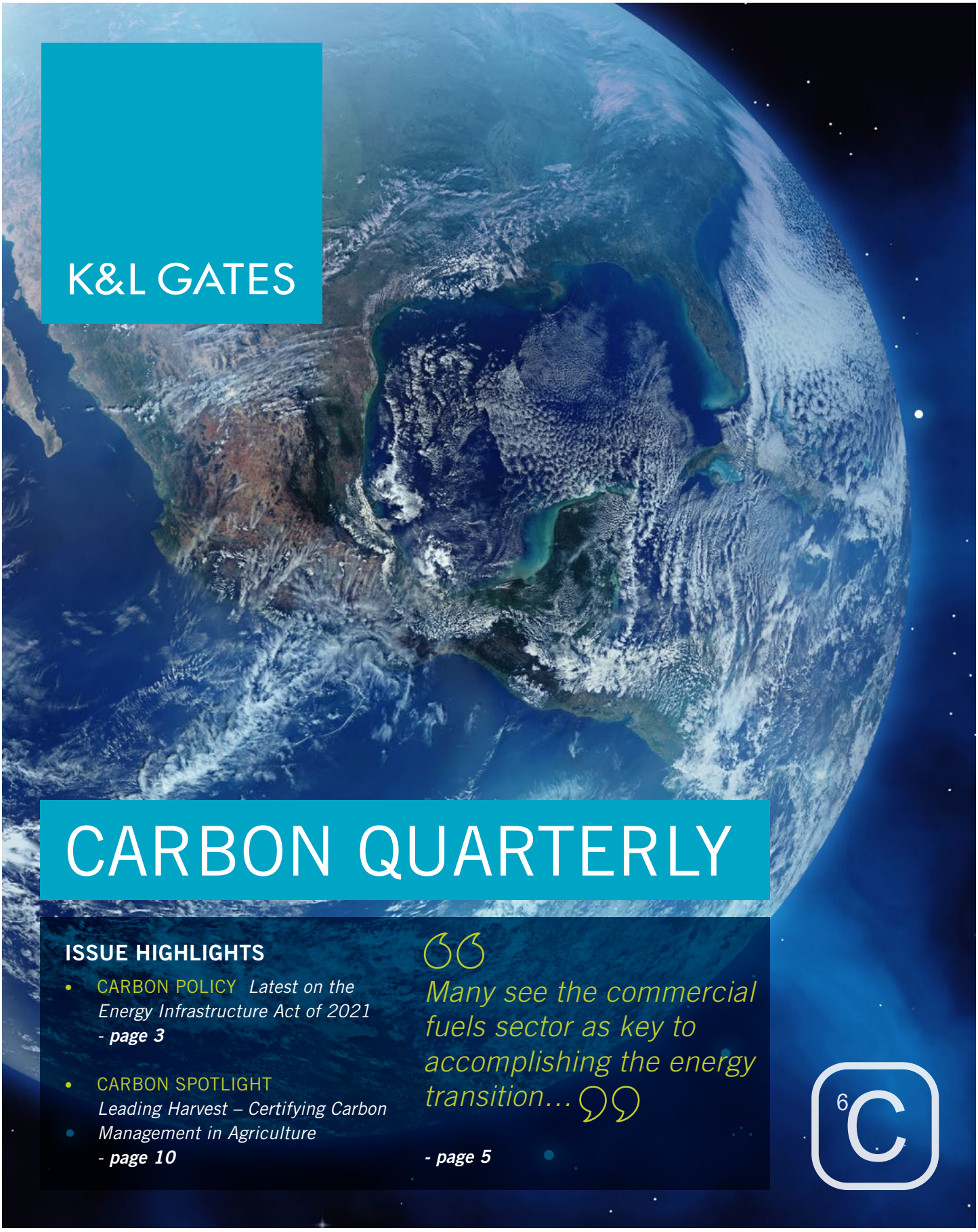

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CARBON QUARTERLY

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What's Inside

The Carbon Quarterly is a newsletter covering developments in carbon policy, law, and innovation. No matter your views on climate change policy, there is no avoiding an increasing focus on carbon regulation, resiliency planning, and energy efficiency at nearly every level of government and business. Changes in carbon—and more broadly greenhouse gas—policies have the potential to broadly impact our lives and livelihoods. Carbon Quarterly offers a rundown of attention-worthy developments, including:

Carbon Policy

LATEST ON THE ENERGY INFRASTRUCTURE ACT OF 2021

On 28 July 2021, a bipartisan group of Senate negotiators and the White House announced an agreement on a bipartisan infrastructure package. The package includes the Energy Infrastructure Act of 2021 (Energy Infrastructure Act), which would authorize US$73 billion for power-related infrastructure and nearly US$95 billion overall.

The Energy Infrastructure Act was introduced by Senate Energy and Natural Resources Committee (ENR) Chairman Joe Manchin (D-WV). It authorizes substantial funding for carbon capture, utilization and storage (CCUS) infrastructure. In particular, it includes the "Storing CO_2 and Lowering Emissions (SCALE) Act," which creates a Carbon Dioxide Infrastructure Finance and Innovation Act Program to provide low-interest loans for carbon dioxide (CO_2) transport infrastructure projects. It authorizes US$3.5 billion for four regional direct air capture hubs, described in the bill as "networks of direct air capture projects, potential carbon dioxide utilization off-takers, connective carbon dioxide transport infrastructure, subsurface resources, and sequestration infrastructure located within a region." The Energy Infrastructure Act calls for the development of standards and certification of products made using captured carbon, and it provides grant funding to state and local governments for the procurement of these products.

The Secure Geologic Storage Permitting section of the bill would provide annual funding of US$5 million to the U.S. Environmental Protection Agency for the permitting of Class VI wells "for the injection of CO_2 for the purpose of geological sequestration," while also creating a state grant program that would provide funding to states to establish their own Class VI permitting programs.

The Energy Infrastructure Act also includes a title dedicated to accelerating the use of clean hydrogen production, directing the Department of Energy (DOE) to "develop a national strategy and roadmap to facilitate widescale production, processing, delivery, storage, and use of clean hydrogen." It would provide US$500 million over five years for DOE research and development focused on clean hydrogen manufacturing and recycling. Another US$1 billion is authorized to support projects demonstrating hydrogen electrolysis. In addition, the bill would provide US$8 billion to establish four regional clean hydrogen hubs to "demonstrate the production, processing, delivery, storage, and end-use of clean hydrogen."

Readers may recall that at the end of 2020, Congress passed and the president signed into law comprehensive legislation that included the "Energy Act of 2020." The Energy Act of 2020 was another bill that was written, in part, by Senator Manchin, when he was the ranking Democrat on ENR and Senator Lisa Murkowski (R-AK) was chair. Like the Energy Infrastructure Act, the Energy Act of 2020 included a robust carbon management title, authorizing the establishment of a carbon capture technology program at DOE, a program to advance direct air capture, and a carbon capture demonstration and pilot program for large-scale CCUS pilots. Funding has not been appropriated for the 2020 bill. Senator Manchin, in the Energy Infrastructure Act, included funding for the Energy Act of 2020. While in committee, the bill's proposals for direct appropriations were converted to funding recommendations, it is clear that Senator Manchin intends to push for inclusion of funding for the Energy Act of 2020 along with the Energy Infrastructure Act as the infrastructure package receives full consideration.

On 10 August 2021, the bipartisan infrastructure package, including the Energy Infrastructure Act of 2021, passed the Senate by a vote of 69-13, with 19 Republican Senators voting for the bill.

A separate Democrat-only package with additional climate and clean energy provisions is being developed by House and Senate Committees, and is expected to advance using the budget reconciliation process. Budget reconciliation allows a bill to pass without threat of a filibuster. So, rather than the 60 Senate votes required to overcome a filibuster, the bill can pass with only a simple majority of support.

A framework of the Democrat budget reconciliation bill indicates that the package would include the following policies: a Clean Energy Standard; clean energy and vehicle tax incentives; a Civilian Climate Corps; climate-smart agriculture, wildfire prevention and forestry programs; federal procurement of clean technologies; weatherization and electrification of buildings; and a clean energy accelerator.

D.C. CIRCUIT CONFIRMS SALE OF OFFSHORE WIND LEASE DOES NOT TRIGGER NEPA REVIEW

Offshore wind energy developers can now count on environmental review under the National Environmental Policy Act (NEPA) occurring at the development phase of a project and not immediately upon purchase of an offshore lease. In the 20 May 2021 decision in *Fisheries Survival Fund v. Haaland*, the D.C. Circuit Court of Appeals confirmed that the Bureau of Ocean Energy Management's (BOEM) obligations under NEPA were not triggered by the issuance of an energy lease if the lease "reserves both the authority to preclude all activities pending submission of site-specific proposals and the authority to prevent proposed activities if the environmental consequences are unacceptable."[1]

The plaintiffs in *Fisheries Survival Fund* claimed that BOEM should have completed a more rigorous environmental review prior to the sale of an offshore wind energy lease to Equinor (formerly Statoil) for the development of a wind farm off the coast of New York. Before the sale of the energy lease, BOEM issued an environmental assessment of the proposed lease sale, which focused on the potential impact of and the reasonable alternatives to commercial wind lease issuance, site characterization activities, and site assessment activities.[2] Plaintiffs claimed that BOEM should have performed a complete environmental impact statement (EIS) to assess the environmental consequences of the entire proposed wind farm development. The D.C. Circuit affirmed the lower court's rejection of this claim, noting that the mere issuance of an energy lease does not constitute an "irreversible and irretrievable commitment of resources and the concomitant obligation to fully comply with NEPA."[3]

The decision in *Fisheries Survival Fund* is important in that it confirms offshore wind energy developers need not complete a full environmental review prior to securing an offshore energy lease. However, this flexibility cuts both ways. The decision will streamline the initial step of obtaining an offshore lease, but it only postpones rather than eliminates the need to perform a more thorough environmental review. The timing of the environmental review creates the risk that a developer could invest significant time and expense in obtaining the lease before receiving assurance that the project will meet the environmental standards necessary to proceed.

As industry veterans and NEPA practitioners know, the full environmental review process is extremely complex and time consuming. The D.C. Circuit's decision in *Fisheries Survival Fund* raises the stakes for developers because the public involvement process under NEPA is delayed until after a developer obtains its energy lease. The public comment process can introduce new and complicated issues into project development, potentially delaying construction and related deadlines. To avoid surprises, developers should consider engaging with other stakeholders early in the process to identify any potential impacts well before they arise later in formal environmental review.

U.S. TAX UPDATES FOR CARBON

The past quarter has been very busy for carbon in Washington, D.C.

First, on 1 July 2021, the Department of the Treasury released guidance concerning the U.S. federal income tax credit for the capture and storage of carbon oxides. This guidance addressed several hot-button issues, largely focused on whether acid gas reduction units are considered carbon capture equipment (they are), whether they impact the placement in service date for the equipment that is necessary to capture carbon that would be emitted into the ambient air (they do not), and how much of the carbon capture equipment at a facility must be owned by a person claiming the tax credit (at least one item in the single process train of carbon equipment). However, the guidance did not address many other outstanding questions, leaving taxpayers to rely on their wits (and their lawyers) to make informed decisions about structuring tax equity-driven finance of carbon capture equipment.

Not long before that, the Senate Finance Committee released a revised draft of the Clean Energy for America Act (the CEA). Like the original version of the bill introduced in April 2021, the revised version includes new versions of the investment tax credit (ITC) and production tax credit (PTC) that emphasize reduction of greenhouse gas emissions rather than specific technology to accomplish the same. These provisions also include sections that would give projects credit for technology that captures carbon emitted from generation facilities, as well as provisions oriented toward wages and labor practices. In addition, both the original and revised versions include changes to the carbon capture tax credit, revoking credit qualification for captured carbon that is used for enhanced oil recovery and increasing the credit amount available for direct air capture. The refundable credit provisions referred to as "direct pay" that have garnered so much attention are retained in the revised version, as are the clean fuel production credits.

There are a few general trends throughout the revised version of the CEA:

- Increased focus on environmental and energy equity.
    - Wage requirements and increased credit amounts for projects located in "energy communities," i.e., census tracks that have historically had employment in the traditional energy sector, indicate that there is a clear focus on job and wealth creation in areas of the country that have been reliant on coal and petrochemicals. Also, new penalties for failure to meet wage requirements indicate that Congress means business on these points.
    - By permitting certain tax-exempt actors to claim benefits using the direct-pay mechanism, Congress is recognizing that organizations such as public utilities, Native American tribal governments, and electric cooperatives meaningfully contribute to the energy transition. These provisions could also be read as oriented toward broader energy equity goals since many of these providers are in rural or historically disadvantaged communities. Note that the original and revised versions of the CEA contemplate increased ITC and PTC for projects in lower-income census tracts.
    - A provision at the end of the CEA would ban the importation of any solar cell, wind turbine, energy storage equipment, or component thereof unless the United Nations certifies that such article is not mined or otherwise produced using forced labor or child labor. This provision is startlingly short and likely should be treated as a placeholder for additional discussions around trade actions, such as the exclusion order issued by U.S. Customs and Border Patrol on 24 June 2021.
- Congress is recognizing that incentivizing project development is only part of the wealth creation battle. New credits would also incentivize facilities to produce various components and materials used in the energy transition, e.g., clean fuels, personal and commercial electric vehicles (EVs), and clean energy generation equipment.
- The revised version encompasses both "clean" electricity generation technologies and a range of clean fuels for both personal and commercial and industrial use, including aviation. Many see the commercial fuels sector as key to accomplishing the energy transition, and it seems Congress is recognizing that as well.

In addition to the above, the revised version of the CEA would:

- Increase the ITC[4] and PTC credit amounts available for:
    - Facilities located in disadvantaged communities or "energy communities," generally, census tracts that have historically had high employment in the traditional energy sector or an industrial facility that is subject to greenhouse gas reporting at the federal level.
    - Utilizing "nascent" clean energy technology or domestically manufactured steel, iron, or manufactured products.

- Penalize taxpayers for claiming an "excessive" amount of PTC or ITC.
- Create a new ITC for interconnection property (in addition to the ITC for transmission property that appeared in the April version of the CEA).
- Create new exempt facility bonds for qualified CO_2 capture facilities.

Several additional types of projects, manufacturing facilities, and recycling facilities also would benefit from tax credits under the revised CEA, including:

- Alternative fuels
  - ITC for property used to manufacture biogas that is captured for use as a fuel (and not merely transportation fuel).
  - PTC for "clean" hydrogen fuel production and ITC for property used to manufacture the same.
  - Production credits for sustainable aviation fuel derived from biomass (but not palm fatty acid distillates), electrolysis (e.g., hydrogen SAF), or carbon oxides captured from an industrial source or the ambient air (including a stopgap until the proposed new clean fuel production credit would become effective in 2023).
- Chemicals
  - ITC for property used to recover nitrogen and phosphorus from untreated manure.
- Fuel cells
  - ITC for property used to generate electricity from fuel cells using electromechanical processes.
- Alternative fuel vehicles
  - Increase in credit rate for EVs manufactured in the United States or a facility where the workers are represented by a labor organization.
  - Credit for commercial vehicles utilizing additional types of electric propulsion systems and vehicles using renewable fuels, such as hydrogen, ethanol, renewable natural gas, biodiesel, and advanced biodiesel.
- Clean energy and fuels materials manufacturing and recycling
  - A bit of a bucket list here, but a new version of the Advanced Energy Project Credit would provide for up to US$8 billion of tax credits for industrial facilities for the purpose of manufacturing and, separately, recycling equipment used in solar, wind, wave, geothermal, fuel cells, microgrid, energy storage (including for EVs), grid modernization equipment, carbon removal, capture, and utilization, commercial EVs, low-carbon and emission renewable fuels, and many other categories of equipment and materials crucial for the energy transition. In addition to the general credit provisions, an increased credit rate is available for projects in census tracts where a coal mine or coal-fired generation facility has closed after 2009.

But will this go anywhere? While the odds are reasonably good at this point that some portion of the CEA will be included in a broader infrastructure bill that moves through Congress under the reconciliation rules, it is too soon to tell how much will move. Nonetheless, many of the provisions in the CEA are very clearly oriented toward a bipartisan audience (or perhaps audience of one, i.e., Senator Manchin, a Democrat from West Virginia and chair of the Senate Energy and Natural Resources Committee) and the strong emphasis on domestic job and wealth creation should earn it some friends in the public as well. In addition, increased emphasis on some of the back-end work, e.g., crucial regulatory guidance, should allay some concerns about implementation of the CEA. Taken together, the bipartisan focus on domestic jobs along with the background planning are likely to allow meaningful portions of the CEA to find their way into law. We are watching developments in Washington, D.C. closely and will include updates about these matters in future issues of the Carbon Quarterly.

Carbon Litigation and Regulation

DIRECTLY TARGETING INDIRECT SOURCE—THE SILVER BULLET TO COMPREHENSIVE GREENHOUSE GAS MANAGEMENT?

In May 2021, California's South Coast Air Quality Management District (SCAQMD) passed a Warehouse Indirect Source Rule (the WISR) in an effort to combat the region's significant air quality obstacles. Specifically, the WISR targets nitrogen oxide and particulate matter associated with trucks servicing warehouses in an effort to meet state and federal regional air quality standards.

California's air management districts and air pollution control districts tend to focus their regulation on stationary sources. The WISR name, however, comes from the fact that it seeks to address emissions from the trucks that service the warehouses, as opposed to the emissions attributable to the warehouses themselves, which has been the air district's more traditional and straightforward approach to targeting greenhouse gases within the shipping and e-commerce industry.

The WISR will be the first rule in the country to apply to existing warehouses over 100,000 square feet. The WISR therefore targets ground zero for the nation's freight industry, where SCAQMD encompasses the greater Los Angeles area, which houses the most densely concentrated group of warehouses in the country. The rule is also unique in that it will require warehouse owners and operators to control their truck fleets in order to meet the WISR emission reduction mandates. The extent of the WISR's reach is not insignificant, given that SCAQMD estimated that roughly 40%[5] of warehouse operators already own their own trucks and thus will be impacted by the WISR, and that is not counting all the other warehouse owners and operators subject to the WISR that will have to gain some extent of control of the truck fleets that service their buildings. It is expected the WISR could affect up to 3,000 of the largest warehouses in the Southern California area.

Warehouse owners and operators subject to the WISR must earn a certain number of Warehouse Actions and Investments to Reduce Emissions (WAIRE) points each year from a menu of emission-reducing best management activities, develop a custom plan, or pay a mitigation fee per WAIRE point. SCAQMD bases the amount of WAIRE points that any given warehouse owner or operator must earn on how many truck trips are made to that warehouse. These best-management activities could include using or implementing zero emission or net zero energy equipment on site or installing zero emission or net zero energy fueling or charging infrastructure. If warehouses choose to pay a mitigation fee, such fees will be put into a fund to provide financial incentives for truck owners to purchase net zero energy or zero emission trucks or for the installation of fueling or charging infrastructure, with priority given for such projects that are proposed in communities near where the warehouses that paid the mitigation fee are located.

Warehouse operators earning more than the requisite annual amount of WAIRE points may transfer any excess points to another warehouse within that owner or operator's control. Additionally, warehouse operators and owners may also carry over excess WAIRE points to the following year, for up to three years.

What is unique about the WISR is that the SCAQMD is regulating nonstationary sources. While this is unconventional given its traditional jurisdictional authority, it is likely authorized under California law. Generally, the statewide California Air Resources Board is the state department within the California Environmental Protection Agency that has primary authority over emissions from mobile sources, such as trucks that can move throughout the state. Air districts like SCAQMD, on the other hand, are air pollution agencies with jurisdictional reach throughout a specific region, typically excluding mobile sources, such as motor vehicles.[6] California law, however, recognizes some ability to control mobile sources, with California Health and Safety Code (HSC) § 40716(a)(1) stating that air districts may adopt and implement regulations that control emissions from indirect and area-wide sources in order to meet state ambient air quality standards.

Furthermore, the HSC requires SCAQMD to adopt an Air Quality Management Plan (AQMP) demonstrating compliance with federal and state ambient air quality standards for SCAQMD's jurisdiction. Indeed, the federal Clean Air Act (CAA) allows a state to include "as part of an applicable [state] implementation plan, an indirect source review program which the state chooses to adopt and submit as part of its plan."[7] The federal CAA defines indirect sources as a "facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution."[8] In 2016, SCAQMD developed an AQMP that included targeting many stationary as well as mobile sources. With this precedent set, the WISR may be the first of many more indirect source rules around the nation to pop up in the coming months and years.

Carbon Business

OFFSHORE WIND PROJECTS TAKE OFF UNDER BIDEN ADMINISTRATION

Since taking office on 20 January 2021, the Biden administration has taken significant steps to implement its policy of reducing greenhouse gas emissions by supporting the rapid development of offshore wind. On 27 January 2021, President Biden signed Executive Order 14008, which directed the Secretary of the Interior to take action to double offshore wind by 2030.[9] The Department of the Interior (DOI), Department of Energy (DOE), and Department of Commerce subsequently announced a shared goal of deploying 30 gigawatts (GW) of offshore wind by 2030.[10] To help achieve this goal, "DOI's Bureau of Ocean Energy Management (BOEM) plans to advance new lease sales and complete review of at least 16 Construction and Operations Plans (COPs) by 2025, representing more than 19 GW of new clean energy for" the nation.[11] Over the last few months, the Biden administration has announced significant developments regarding offshore wind along California's coastline, the Gulf of Mexico, and the east coast.

California

On 25 May 2021, the White House and California Governor Gavin Newsom announced an agreement to open areas off California's central and northern coastline for offshore wind development that could generate up to 4.6 GW of energy and power up to 1.6 million homes.[12] DOI and the Department of Defense identified a 399-square-mile area near Morro Bay, California, that will support 3 GW of offshore wind, as well as an area off of the northern coast of California (known as the Humboldt Call Area), as potential Wind Energy Areas (WEAs) for offshore wind leasing.[13] On 13 July 2021, BOEM and the California Intergovernmental Renewable Energy Task Force held a webinar to discuss next steps regarding the leasing process for these two areas.[14]

Gulf of Mexico

On 8 June 2021, the DOI announced its intent to explore potential offshore wind opportunities in the Gulf of Mexico, on the Western and Central Planning Areas offshore the states of Louisiana, Texas, Mississippi, and Alabama.[15] On 11 June 2021, BOEM published a Request for Interest (RFI) to assess interest in opening the Gulf of Mexico to commercial wind energy leasing.[16] BOEM also held a Gulf of Mexico Intergovernmental Renewable Energy Task Force meeting

on 15 June 2021 to facilitate coordination and discuss next steps.[17] Based on the responses to BOEM's RFI, BOEM will determine "whether to schedule a competitive lease sale or to issue a noncompetitive lease[.]"[18]

East Coast

There are five offshore wind projects being developed along the East Coast:

- First, and perhaps most significantly, on 11 May 2021, BOEM approved the nation's first large-scale offshore wind project: the 800 megawatt (MW) Vineyard Wind project off the coast of Massachusetts.[19]
- Second, on 30 March 2021, BOEM announced a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Ocean Wind project, a 1,100 MW project off the coast of New Jersey.[20]
- Third, on 30 April 2021, BOEM published a NOI to prepare an EIS for Revolution Wind, a 704 to 880 MW project off the coast of Rhode Island and Massachusetts.[21]
- Fourth, on 24 June 2021, BOEM published a NOI to prepare an EIS for Empire Wind, a 2,000 MW project off the coast of New York.[22] Fifth, BOEM is currently preparing a final EIS for the South Fork Wind Farm, a 132 MW project off the coast of Rhode Island.[23]
- Fifth, BOEM has identified 800,000 acres as WEAs in the New York Bight, an area of shallow waters between Long Island and the New Jersey coast, for potential offshore wind leasing, and it has started preparing an environmental assessment associated with wind energy leases in the WEAs.[24]
- Additionally, on 14 June 2021, BOEM published a Proposed Sale Notice for the sale of commercial wind energy leases on the Outer Continental Shelf in the New York Bight.[25]

EXXON CCUS INNOVATION ZONE: HOUSTON SHIP CHANNEL

In April 2021, ExxonMobil Corporation (ExxonMobil) proposed a new carbon capture and storage (CCS) facility in Houston Ship Channel as part of the oil giant's efforts to address carbon emissions. ExxonMobil announced plans to establish a US$100 billion carbon capture innovation zone to capture carbon emissions from around the Houston metro area from a variety of emissions sources, including petrochemical, manufacturing, and electricity-generating facilities. The CCS facility would then store the captured CO_2 emissions in geological formations within the Gulf of Mexico. The announcement from ExxonMobil comes hand in hand with its own proposal to mobilize the commercial transportation, power generation, and industrial manufacturing sectors to achieve their carbon emission goals. Because the Houston Ship Channel project involves three sources commonly considered the leading causes of carbon emissions (power generation, manufacturing, and refineries and chemical plants), the CCS project may serve as the archetype for other metro areas in how to address climate change.

ExxonMobil rolled out its plans for the Houston Ship Channel in anticipation of the Biden administration's refocus on climate change, and the oil giant intends to maximize public and private investment and resources to capture and permanently store CO_2. The concept of an innovation zone for CCS is similar to public-private initiatives, where large-scale collaboration between government, industry, academia, and local communities drives successful deployment of new technology to urban areas. By leveraging such a wide range of resources and adopting the federal government's "whole of government" approach, ExxonMobil anticipates the ability to capture and store 50 million metric tons of CO_2 annually by 2030, with the potential for annual capture and storage reaching 100 million metric tons by 2040 while continuing to provide affordable energy and products to consumers.

Carbon Spotlight

LEADING HARVEST—CERTIFYING CARBON MANAGEMENT IN AGRICULTURE

Leading Harvest is a nonprofit organization that is working with stakeholders across the agricultural value chain on administering sustainability certification programs that unite owners, growers, companies, and agricultural communities. Their Farmland Management Standard, developed in close consultation with over 50 stakeholder organizations and implemented via third-party auditing, allows producers of all sizes and across all geographies to achieve sustainability certification.

Leading Harvest's Farmland Management Standard addresses 13 key sustainability principles. Many aspects of carbon management are captured throughout these principles, including soil health and conservation, water, waste and material management, and protection of crops. We focus here on their fifth principle, which addresses energy use, air quality, and climate change. For an overview of their overarching sustainability work, including the integration of social justice and community principles, we encourage you to visit their website at **www.leadingharvest.org**.

Leading Harvest recognizes that agriculture has long had sustainability at its core—good stewardship and efficient use of land and water resources is critical to the long-term success of growing and harvesting food. Leading Harvest also recognizes that agriculture has long had to be resilient in the face of change—droughts, floods, pests, and disease have wreaked havoc on the sector throughout history. The organization leverages this experience from its members and combines it with cutting-edge technical expertise to address climate change from two perspectives: minimizing greenhouse gas emissions and sequestering carbon.

First, in order to minimize greenhouse gas emissions and conform to the Farmland Management Standard, participants may implement the following:

- Retrofitting farm equipment to lower greenhouse gas emissions.
- Maintaining an equipment replacement schedule and using the most recent technologies.
- Employing no-till farming techniques to reduce equipment usage and sequester carbon in soils.
- Implementing energy efficiency practices, such as using software to track energy use and leakage or drones to more efficiently detect water needs.
- Training machine operators in efficient machine use.
- Purchasing or developing renewable energy.

Second, in order to encourage carbon sequestration and conform to the Farmland Management Standard, participants may implement the following:

- Reincorporating crop residues to increase the soil organic matter and the carbon sequestered within.
- Implementing soil conservation practices such as crop rotation, contour building, and rotational grazing.
- Using cover crops in addition to minimized tillage.
- Implementing precision agricultural practices, such as building technology networks with in-field sensors to track real-time soil moisture, compaction, nutrient density, and temperature.

While carbon management is only one slice of Leading Harvest's overall management standard, given the 1.25 million U.S. acres already enrolled in its programs, Leading Harvest's impact in carbon reduction is potentially enormous. Additionally, integrating and recognizing the critical role of climate resiliency ensures that the participants in Leading Harvest's standard can continue their work in the face of changing climatic events. Our firm is proud to provide legal counsel to many aspects of Leading Harvest's efforts.

You can learn more about Leading Harvest's work by listening to a conversation with Kenny Fahey, Executive Director, recorded in April 2021 as part of K&L Gates' Distinguished Speaker Series. Kenny discussed sustainable agriculture, ESG investing, and the larger sustainable economy in an interview with K&L Gates partner, Marisa Bocci. Please click on this link to be directed to the interview: **K&L Gates Distinguished Speaker Series: A Conversation on the Sustainable Economy with Kenny Fahey**.

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Endnotes

[1] *Fisheries Survival Fund* v. *Haaland*, No. 20-5094, slip op. at 2 (D.C. Cir. May 20, 2021) (quoting Sierra Club v. Peterson, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (emphasis omitted)).

[2] *See Fisheries Survival Fund* v. *Jewell*, 16-CV-2409 (TSC), 2018 WL 4705795, at *3 (D.D.C. Sept. 30, 2018), aff'd sub nom. *Fisheries Survival Fund*, 2021 WL 2206426.

[3] *Fisheries Survival Fund*, No. 20-5094, slip op. at 2 (quoting Center for Biological Diversity v. U.S. Interior Dep't, 563 F.3d 466, 480 (D.C. Cir. 2009)).

[4] The ITC would be limited to a maximum of 50 percent of a facility's qualified basis.

[5] https://www.nytimes.com/2021/05/08/climate/e-commerce-warehouse-smog-regulation.html.

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[7] CAA § 110(a)(5)(A)(i).

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[13] *Id.*

[14] *See* Press Statement, U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., You're Invited: BOEM California Intergovernmental Renewable Energy Task Force Webinar (June 21, 2021), https://www.boem.gov/BOEM-California-Intergovernmental-Renewable-Energy-Task-Force-Webinar.

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[18] 86 Fed. Reg. 31,339.

[19] Press Statement, U.S. Dep't of the Interior, Biden-Harris Administration Approves First Major Offshore Wind Project in U.S. Waters (May 11, 2021), https://www.doi.gov/pressreleases/biden-harris-administration-approves-first-major-offshore-wind-project-us-waters.

[20] *Id.; see also* U.S. Dep't of Interior, Bureau of Ocean Energy Mgmt., Notice of Intent to Prepare an Environmental Impact Statement for Ocean Wind, LLC's Proposed Wind Energy Facility Offshore New Jersey, 86 Fed. Reg. 16,630 (Mar. 30, 2021), https://www.federalregister.gov/documents/2021/03/30/2021-06520/notice-of-intent-to-prepare-an-environmental-impact-statement-for-ocean-wind-llcs-proposed-wind.

[21] U.S. Dep't of Interior, Bureau of Ocean Energy Mgmt., Notice of Intent to Prepare an Environmental Impact Statement for Revolution Wind LLC's Proposed Wind Energy Facility Offshore Rhode Island, 86 Fed. Reg. 22,972 (Apr. 30, 2021), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/86-FR-22972.pdf.

[22] U.S. Dep't of Interior, Bureau of Ocean Energy Mgmt., Notice of Intent to Prepare an Environmental Impact Statement for Empire Offshore Wind, LLC's Proposed Wind Energy Facilities Offshore New York, 86 Fed. Reg. 33,351 (June 24, 2021), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/86-FR-33351.pdf.

[23] U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., South Fork, https://www.boem.gov/renewable-energy/state-activities/south-fork (last visited June 27, 2021).

[24] *See* Biden Offshore Wind Announcement; see also Press Release, U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., BOEM Advances Offshore Wind in Major U.S. East Coast Energy Market (Mar. 29, 2021), https://www.boem.gov/boem-advances-offshore-wind-major-us-east-coast-energy-market.

[25] U.S. Dep't of Interior, Bureau of Ocean Energy Mgmt., Atlantic Wind Lease Sale 8 (ATLW-8) for Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight – Proposed Sale Notice, 86 Fed. Reg. 31,524 (June 14, 2021), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/86-FR-31524.pdf.

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