CARBON QUARTERLY

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According to Climate Policy Initiative, the world needs over US$10 trillion of climate-related investment each year from 2031 to 2050 to limit global warming.

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What’s Inside

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.

Covering developments in carbon policy, law, and innovation, Carbon Quarterly is produced by our Carbon Industry group—a collaboration of our lawyers in the Asset Management and Investment Funds; Corporate; Energy, Infrastructure, and Resources; Real Estate; and Policy and Regulatory practices.

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Carbon Spotlight

EPA Defends New Power Plant Rules

On 9 May 2024, the US Environmental Protection Agency (EPA) finalized long-anticipated CO_2 emissions rules for existing coal-fired power plants and new natural gas power plants.[i] The EPA's previous attempts to regulate CO_2 emissions from power plants were overturned in the widely publicized US Supreme Court ruling, *West Virginia v. EPA*, in 2022.[ii] *West Virginia v. EPA* is considered the defining case for the "Major Questions Doctrine," a doctrine that courts may use to invalidate agency action on matters of major economic and political significance when Congress has not expressly provided such authority to the agency.[iii] The EPA believes this time it has tailored the rule to comply with the Major Questions Doctrine and other issues identified by the US Supreme Court in *West Virginia v. EPA*.[iv]

The new rule sets emissions standards based on the Best System of Emissions Reduction (BSER), which the agency has identified as carbon capture and sequestration (CCS).[v] This standard requires existing coal and new gas-powered plants operating past 2039 to reduce emissions of CO_2 by 90%.[vi] Plants operating past 2032 but retiring before 2039 would only need to reduce emissions by 40%, and plants ceasing operations before 2032 would not be impacted by the rule.[vii] While the EPA identified CCS as the BSER, it does not mandate power plants use CCS to achieve emissions reductions.

Twenty-five states immediately challenged the rule.[viii] The state challengers argue that the rule goes beyond the EPA's statutory authority and is arbitrary and capricious, an abuse of discretion, and not in accordance with law.[ix] On 19 July 2024, the Court denied the challengers' motion for a stay of EPA's rule.[x] The court found the challengers were not likely to succeed on the merits stating that the way EPA means to regulate power plants is "well within EPA's bailiwick."[xi] It also found the challengers failed to show irreparable harm because of the long lead time for the rule to take effect.[xii] On 23 July 2024, challengers petitioned the US Supreme Court to review the D.C. Circuit's decision.[xiii]

The EPA makes two arguments why the rule is significantly different than its predecessor, the "Clean Power Plan." First, since *West Virginia v. EPA*, Congress has expressly directed the EPA to regulate CO_2 emissions as air pollutants, a change to the law made in President Joe Biden's signature climate policy legislation, the Inflation Reduction Act, which may help overcome objections based on the Major Questions Doctrine.[xiv] Second, the Clean Power Plan, which required coal and gas-fired power plants to shift generation from fossil fuel sources to renewable sources, is not required under the Greenhouse Gas Power Plant Rule. The US Supreme Court determined this "generation shifting" methodology fell outside the scope of BSER as prescribed by the Clean Air Act.[xv] EPA's new BSER for CO_2 emissions sets emissions standards without requiring power plants to shift to renewable power generation.

To read more on EPA's final rule on CO_2 emissions, along with the three other regulations impacting fossil fuel power generation that the EPA concurrently released, please see our client alert, "**EPA Issues New Power Plant Rules**."

Carbon Policy

Transmission Revamp: FERC Adopts New Rule Requiring Regional Plans to Ease Interconnection Bottlenecks and Accommodate New Renewable Resources

On 13 May 2024, the Federal Energy Regulatory Commission (FERC) released a new rule—Order No. 1920—that squarely addresses regional transmission policy and the need for long-term transmission planning.[xvi] The new rule sets specific requirements for transmission providers to conduct long-term planning for regional transmission facilities and how to pay for them.[xvii] The rule further requires periodic updates from transmission operators on long-term transmission planning over a 20-year horizon and the "right-sizing" of transmission facilities, i.e., the cost-effective expansion of transmission that is being replaced.[xviii] Additionally, the rule promotes the roles of states in the process of planning, selecting, and determining how to pay for transmission lines, among a suite of other changes.[xix]

The new rule is based on the largest public comment record ever compiled by FERC, reflecting tens of thousands of pages of comments over the course of three years and constituting nearly 1,300 pages in the order itself.[xx] The rule was approved on a vote of 2-1, with Commissioner Mark Christie explaining in his dissent that it permits "free riding" by large loads and generators, favors certain types of resources, and could contravene the Major Questions Doctrine.[xxi]

Order No. 1920 was published in the *Federal Register* on 11 June 2024, and took effect on 12 August 2024.[xxii] The deadline for regional compliance filings is 10 months after the effective date and one year after the effective date for interregional compliance filings.[xxiii]

For a deeper dive into FERC's new transmission rule, please see our client alert, "**FERC Issues Landmark Transmission Planning Rule, Order No. 1920: Final Rule Modifies the Proposed Rule, Drawing 2-1 Vote**."[xxiv]

DOE Announces Preliminary Designations for National Interest Electric Transmission Corridors

On 8 May 2024, the US Department of Energy's (DOE) Grid Deployment Office released a preliminary list of potential National Interest Electric Transmission Corridors (NIETCs) as part of Phase 2 of the process that DOE has planned to designate NIETCs.[xxv] The NIETC designations allow for valuable federal financing and permitting tools to expedite construction of grid transmission projects within a NIETC in order to reduce consumer harms.[xxvi] The preliminary list includes potential NIETCs, maps of their boundaries, and a high-level explanation of the basis for the DOE's decision making.[xxvii] DOE opened up a 45-day public comment period on the potential NIETCs to be included on the preliminary list, seeking feedback on: (1) transmission needs within the proposed NIETCs and associated consumer harms; (2) the geographic boundaries of the NIETCs; and (3) potential impacts on environmental, community, and other resources within the NIETCs.[xxviii]

Public comments on the DOE's preliminary list were due by 24 June 2024.[xxix] Phase 3 of the NIETC designation process is anticipated to begin in fall 2024.[xxx]

Climate Amnesia: Florida Zigs While Maine and Oregon Zag on Offshore Wind

On 15 May 2024, Florida Governor Ron DeSantis announced on social media platform X that he had signed a slew of new legislative bills to remove climate change as a priority in state energy policy and "keep windmills off our beaches."[xxxi] Newly signed HB 1645 will erase climate change references from state statutes, ban offshore wind turbines from being sited within one mile of Florida's coast, and expand natural gas infrastructure.[xxxii] The bill is largely symbolic, as Florida currently has zero operational wind farms.

The situation is vastly different on the Northwest and Northeast coasts of the United States. On 30 April 2024, the US Department of the Interior announced two proposals for offshore wind energy auctions off the coast of Oregon and in the Gulf of Maine.[xxxiii] The two sales proposed by the Bureau of Ocean Energy Management (BOEM) seek to generate over 18 gigawatts of offshore wind energy, enough to power nearly six million homes.[xxxiv]

The offshore wind energy auction would be the first ever for the Gulf of Maine Wind Energy Area and consists of eight lease areas off the coasts of Maine, Massachusetts, and New Hampshire, amounting to 15 gigawatts in generative capacity.[xxxv] BOEM is seeking comments on various aspects of the proposed lease areas, including size, orientation, location, prioritization, and whether or not it should provide bidding credits to bidders that support workforce training programs and a fisheries compensatory mitigation fund.[xxxvi]

The proposed lease sale off the coast of Oregon includes two lease areas and also seeks comment on possible bidding credits for a variety of activities.[xxxvii] BOEM has also released its draft environmental review of potential impacts associated with offshore wind energy leasing activities for public review and comment.[xxxviii]

The Department of the Interior has taken substantial steps to grow the offshore wind industry.[xxxix] On 24 April 2024, Interior Secretary Deb Haaland announced a new, five-year offshore wind lease schedule with the possibility of 12 offshore wind energy lease sales through 2029.[xl] The Department of the Interior also announced that BOEM and the Bureau of Safety and Environmental Enforcement had finalized updated regulations for renewable energy development on the US Outer Continental Shelf that would reduce costs associated with offshore wind project development, streamline complex processes, and clarify ambiguous regulatory provisions.[xli]

G7 to Phase Out Coal by Mid-2030s

From 28–30 April 2024, energy and climate leaders met for the G7 Ministerial Meeting on Climate, Energy and Environment and continued to solidify actions discussed at COP28 in Dubai last December.[xlii] Specifically, the unanimous Ministerial Communique turns a series of energy and climate pledges from the Dubai agreement into firm implementation actions by the G7 members, including the achievement of a first-ever consensus commitment to phase out existing unabated coal power generation in energy systems by the mid-2030s.[xliii] Other commitments included a quantitative global goal of increasing energy storage in the power sector to 1500 gigawatts in 2030 and the recognition of nuclear energy as a key component of "clean/zero emissions" energy, among others.[xliv]

Graphite Temporarily Exempted From Domestic Supply Requirements for EV Tax Credit

On 6 May 2024, the US Department of Treasury and the Internal Revenue Service (IRS) released a final rule on sourcing requirements for the electric vehicle (EV) tax credit.[xlv] The tax credit provides up to US$7,500 toward the purchase of new EVs but excludes from the definition of new EVs any vehicle with a battery containing critical minerals from a foreign entity of concern.[xlvi] Foreign entities of concern include China, Russia, North Korea, and Iran.[xlvii]

To allow time for the domestic supply chains to respond to this requirement, the new rule temporarily exempts graphite from the sourcing requirement until 1 January 2027.[xlviii] The rule identifies graphite as an "impracticable-to-trace battery material," which qualifies it for this temporary exemption.[xlix]

The Alliance for Automotive Innovation celebrated the carve-out.[l] Because 70% of graphite produced globally is from China, only 20% of EVs produced currently qualify for the tax credit—a number that is set to get smaller as the sourcing requirements get more restrictive each year.[li]

The EV rule comes at the same time as the Office of the US Trade Representative announced a tariff increase on Chinese critical minerals for EV batteries and battery parts from 7.5% to 25%.[lii] The new tariffs are effective in 2024, but the Biden administration delayed implementation of the tariffs for graphite until 2026.[liii]

Biden Administration Finalizes Reform to Simplify and Modernize Federal Review Process Under the National Environmental Policy Act

On 30 April 2024, the White House Council on Environmental Quality finalized a rule intended to reform, simplify, and modernize the federal environmental review process under the National Environmental Policy Act.[liv] The new rules implement permitting efficiencies that President Joe Biden secured in the Fiscal Responsibility Act of 2023, which includes "setting clear deadlines for agencies to complete environmental reviews, requiring a lead agency and setting specific expectations for lead and cooperating agencies, and creating a unified and coordinated federal review process."[lv] Among the new implementations, the rule provides new ways for federal agencies to establish categorical exclusions, which are the fastest form of environmental review.[lvi] The new rule also promotes and encourages public engagement earlier in the review process to reduce conflict, accelerate reviews, improve project design and outcomes, and increase legal durability.[lvii] The Biden administration views these new rules as a core element of its effort to build "America's clean energy future, strengthen energy security, shore up critical supply chains, and rebuild American infrastructure."[lviii]

One of the key components of the new rule is to provide greater flexibility to establish categorical exclusions to speed up low-impact projects, such as solar storage and EV charging infrastructure.[lix] The rule clarifies that agencies may jointly establish categorical exclusions and should generally work closer together to share analysis and avoid duplication of review efforts.[lx]

On 18 June 2024, opponents in Congress led by Senator Joe Manchin (I-W.Va.) introduced a Congressional Review Act resolution to overturn these new rules.[lxi] Senator Manchin is a proponent of permitting reform, but he views the new rules as an undermining of previous bipartisan agreements made with the Biden administration in the Fiscal Responsibility Act, which included permitting reforms.[lxii] Senator Manchin also stated that the rule "includes definitions that favor certain groups over others instead of keeping a level playing field for all types of projects."[lxiii]

BLM Signals Federal Land Is Open for Renewables

In May 2024, the Bureau of Land Management (BLM) issued a final rule updating its renewable energy and right-of-way policies.[lxiv] BLM is one of the largest landholders in the United States, with significant landholdings west of the Mississippi River in particular, and the final rule signals BLM is open for renewable development on those lands. To drive the growth of renewable energy on BLM lands, the final rule reduces costs and institutes a streamlined administrative process for renewable energy projects. The final rule is designed to further the Biden administration's efforts to promote clean energy development on public lands and could help achieve its dual goals of creating a carbon pollution-free power sector by 2035 and a net-zero emissions economy by 2050. It also presents opportunities for developers as the clean energy transition takes hold.

For a deeper dive on BLM's final rule, please see our client alert, "**BLM Signals Federal Land is Open for Renewables**."

Carbon Litigation

Exxon Mobil Loses Lawsuit Against Activist Shareholders but Retains Board Seats

On 17 June 2024, a Texas federal judge for the US District Court for the Northern District of Texas dismissed a lawsuit brought by oil giant ExxonMobil (Exxon) against activist investor Arjuna Capital (Arjuna).[lxv] Exxon had sued Arjuna in January 2024 related to a shareholder proposal brought by Arjuna that sought stronger targets to reduce greenhouse gas (GHG) emissions and alleged Exxon contributions to anthropogenic climate change.[lxvi] Following Exxon's attempt to exclude the proposal through the US Securities and Exchange Commission (SEC), Arjuna withdrew the contested proposal and moved to dismiss Exxon's lawsuit.[lxvii] The motion to dismiss was originally denied by the district court because Arjuna's withdrawal did not foreclose the same conduct from taking place in the future.[lxviii] As a result, Arjuna "unconditionally and irrevocably" promised to stop submitting similar proposals.[lxix] The district court concluded that Arjuna's promise foreclosed the chance of another proposal regarding Exxon's GHG emissions and declared the case moot, dismissing the action without prejudice.[lxx]

The ruling judge noted that Exxon's true intentions behind the lawsuit were likely to challenge how the SEC interprets and applies its own proxy proposal rules and to limit the inundation of climate-related proposals that Exxon, and the oil industry in general, often receives.[lxxi]

The lawsuit also drew the ire of the California Public Employes' Retirement System (CalPERS), which, as of the end of 2023, owned approximately US$1.1 billion in Exxon stocks and bonds.[lxxii] On 29 May 2024, CalPERS voted against all sitting members of Exxon's board of directors in direct response to the Exxon's lawsuit against Arjuna that CalPERS said "threatens to silence shareholders everywhere by stripping away their rights and role in improving a company's bottom line."[lxxiii] CalPERS's vote was previewed in a letter sent to its members where it described Exxon's lawsuit as "reckless" and "schoolyard bullying."[lxxiv] All sitting members of Exxon's board of directors retained their seats following the shareholder vote.

On the Horizon: Court Rules Against Chevron Deference in Major Hit to US Federal Agency Rulemaking Power

Our Carbon Industry Group is actively watching the development following two US Supreme Court cases that overruled the *Chevron* doctrine, which permitted US federal courts to defer to federal agencies' interpretations of ambiguous statutes so long as they are "reasonable."[lxxv] Those cases are *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*, which were decided at the end of June 2024.[lxxvi] Stay tuned for a closer look at the effects of these decisions in Volume 10 of Carbon Quarterly. For now, please read our analysis on the ramifications of the US Supreme Court's decision overruling *Chevron* in our client alert, "**The End of Chevron Deference: What the Supreme Court's Ruling in Loper Bright Means for the Regulated Community**."[lxxvii]

States Challenge Department of the Interior Rule on Methane Waste

On 24 April 2024, four Republican-led states—North Dakota, Montana, Texas, and Wyoming—challenged the US Department of the Interior's new rule to reduce methane waste from oil and gas production operations.[lxxviii] The rule, issued by the BLM, seeks to update a 1979 rule regulating natural gas flaring and venting that occurs during oil and gas production operations.[lxxix] BLM is mandated by the Mineral Leasing Act to prevent undue waste from oil and gas production on federal land.[lxxx] The new rule requires operators to capture all methane that is not unavoidably lost or pay royalties on the wasted methane.[lxxxi]

Notably, BLM did not justify the rule based on Executive Order 13990, which was issued early in the Biden administration directing all agencies to use their regulatory authority to address climate change.[lxxxii] This was found to be the "principle purpose" for a prior version of the rule that was ultimately overturned by the Wyoming District Court for exceeding BLM's statutory authority.[lxxxiii] The states challenging the new rule believe BLM continues to exceed its authority, but it is simply "less careless" with how it presents its legal justifications.

The states filed a motion for a preliminary injunction of the rule while the lawsuit plays out.[lxxxv] The District Court for the District of North Dakota heard arguments on this motion on 18 June 2024.

Carbon Trading and Investment

Transportation and Transfers: The US Department of Treasury and IRS Release New Guidance and Regulations on Sustainable Aviation Fuels and Transfers of Renewable Energy Project Tax Credits Under the Inflation Reduction Act

On 30 April 2024, the US Department of the Treasury (Treasury) and the IRS released final regulations and guidance for certain clean energy credits established by the Inflation Reduction Act of 2022 (IRA).[lxxxvi]

In particular, Notice 2024-08926 reflects final regulations for Section 6418 of the Internal Revenue Code concerning the transfer of certain clean energy tax credits.[lxxxvii] The regulations clarify rules regarding transfers that enable eligible taxpayers to transfer tax credits to third parties rather than utilizing credits against their own federal income tax liabilities.[lxxxviii] The term "eligible credit" is defined in Section 6418(f)(1)(A) and includes 11 potential credits.[lxxxix]

Most notably, the final rule maintained Treasury's original stance as proposed in June 2023, reaffirming that Section 6418 does not allow advanced cash payments for transferred credits while noting, however, that there was no prohibition on third parties receiving an arm's-length loan to secure the credit purchase.[xc] The Treasury did not weigh in on the treatment of such loans, noting that they were outside the scope of the regulations.

The recent regulations for transferability also included special rules applicable to partnerships and S corporations, providing that: (1) the election to transfer eligible credits be made at the entity level—not by individual shareholders or partners of that organization; (2) the amount received for a transferred credit be treated as tax-exempt income; and (3) a partner's distributive share of the exempt income be based on the partner's distributed share of the transferred credit.[xci]

Since the Treasury released the proposed rules in June 2023, the market has seen substantial growth in project developers and owners selling credits with buyers to lower their own tax liabilities.[xcii] These provisions is expected to provide a simpler, less-costly method of transferring credits that proponents anticipate will open the door to more clean energy investments.[xciii] Meanwhile, transferability has already altered the project financing landscape by broadening the pool of potential investors to include companies investing in clean energy technology for the first time through the purchase of credits.[xciv]

In addition to Notice 2024-08926, on 30 April 2024, Treasury and the IRS released guidance on the Sustainable Aviation Fuel (SAF) Credit.[xcv] According to Treasury, "the credit incentivizes the production of SAF that achieves a lifecycle GHG emissions reduction of at least 50% as compared with petroleum-based jet fuel."[xcvi] The guidance also incorporates a US Department of Agriculture (USDA) pilot program to promote Climate Smart Agriculture (CSA) practices for SAF feedstocks, providing a GHG reduction credit if a "bundle" of CSA practices is utilized.[xcvii]

Here, most notably, the producers of the SAF are eligible for tax credits ranging from US$1.25 to US$1.75 per gallon. SAF that reduces GHG emissions by 50% is eligible for the US$1.25 credit per gallon amount, whereas a reduction in emissions that exceeds 50% is eligible for an additional US$0.01 per gallon for each percentage that exceeds 50%, up to US$0.50 per gallon.[xcviii]

The guidance applies to SAF credits under section 40B of the Internal Revenue Code.[xcix] SAF credits under 40B must be sold and used by 31 December 2024, leaving little time for this guidance to take effect.[c] Starting in 2024, the IRS will be replacing the 40B tax credits with the Clean Fuel Production Credit under section 45Z of the Internal Revenue Code, and a new 45Z-GREET model will be developed to calculate life-cycle GHG emissions rates of SAF production.[ci]

Relatedly, more than 40 companies—including American Airlines, United, and Boeing—have formed an SAF coalition to help promote alternative jet fuels.[cii] The group is seeking to expand and preserve existing SAF credits in anticipation of any contraction of Treasury incentives by either the Biden administration or an IRA repeal-ready Trump administration.[ciii]

Greek Recap: Commodities Futures Trading Commission Chairman Rostin Benham Addresses the CFTC's Role in Climate-Related Markets at the Hellenic Republic Capital Market Commission Conference

On 29 May 2024, Commodity Futures Trading Commission (CFTC) Chairman Rostin Behnam attended and made public remarks at the Hellenic Republic Capital Market Commission Conference titled "Climate in the Center of Economy."[civ] Chairman Behnam recognized the importance of the climate's impact on global economies and emphasized the "critical role" the CFTC plays in its oversight of "the listing and trading of climate-focused derivatives on CFTC designated contract markets."[cv] Noting that the CFTC is not a "climate regulator" and lacks the authority to put forward climate-specific policies, Benham discussed the likely increased use of derivatives markets to mitigate climate change-induced physical and transition risk.[cvi]

Benham referenced his tenure as a commissioner at the CFTC from 2017–2021, during which time he sponsored the CFTC's Market Risk Advisory Committee and oversaw the release of the Climate Related Financial Market Risk Subcommittee report entitled, "Managing Climate Risk in the U.S. Financial System," described as a "first of-its-kind effort" from a US regulator to publicly examine climate-related impacts on the financial system.[cvii] He also touted his creation of the CFTC's interdivisional Climate Risk Unit in 2021, whose mission seeks to better understand the role of derivatives in price discovery

and mitigating climate-related risk, while supporting the transition to a net-zero economy through market-based initiatives.[cviii]

Chairman Benham further remarked about the interactions between the CFTC and the Financial Stability Oversight Council in preparing the October 2021 Report on Climate-Related Financial Risk to President Joe Biden.[cix] Following this report, the CFTC conducted substantial work on voluntary carbon markets (VCMs) and the ecosystem for trading offsets as an underlying asset for CFTC-regulated products, including issuing a Request for Information on Climate-Related Financial Risk.[cx] He then discussed VCM and environmental market-related enforcement actions and whistleblower alerts related to wash trading, "ghost" credits, double counting, and fraudulent statements regarding the material terms of carbon credits.[cxi] Additionally, Benham noted the work of the CFTC's Environmental Fraud Task Force and his own introduction of the CFTC's guidance on the listing of voluntary carbon credit derivative contracts at COP28 in December 2023.[cxii]

Benham concluded by discussing US domestic coordination on VCMs between the secretaries of the Treasury, USDA, and DOE, and the White House, which culminated in a VCM Joint Policy Statement and Principles for Responsible Participation in VCMs that the CFTC will work in concert with.[cxiii] The Joint Policy Statement and Principles for Responsible Participation in VCMs are discussed in more detail in the below section titled, "Rebuilding Trust in Voluntary Carbon Markets." Benham also stressed the importance of international collaboration through the International Organization of Securities Commissions and its Sustainable Finance Task Force Carbon Markets Workstream.[cxiv] Finally, he reiterated the need to build integrity and resiliency in carbon markets to aid in the transition to lower-carbon economies and achieve our net-zero target.[cxv]

Rebuilding Trust in Voluntary Carbon Markets

In May 2024, the Biden administration released new guidelines for VCMs aimed at building confidence that carbon credits sold on these markets represent the carbon removal advertised.[cxvi]

According to Climate Policy Initiative, the world needs over US$10 trillion of climate-related investment each year from 2031 to 2050 to limit global warming to 1.5°C, up from the US$1.3 trillion financed in 2022.[cxvii] In 2022, 49% of climate financing came from private sources.[cxviii] Bridging the gap in climate financing will require a substantial increase in financing from both public and private sectors.

VCMs contributed US$1.9 billion in private climate finance in 2022 and have the potential to contribute a greater portion of the needed climate financing to meet global goals.[cxix] However, the markets contracted 61% in 2023 to US$723 million.[cxx] The dramatic drop in the value of the carbon market has been attributed to a loss in confidence in the value of carbon credits.[cxxi] In particular, an investigative report by *The Guardian*, *Die Zeit*, and *SourceMaterial* released in early 2023 reported that more than 90% of rainforest-based offset credits do not represent genuine carbon reductions.[cxxii]

The Biden administration's recently released guidelines seek to rehabilitate the reputation of carbon markets. The guidelines recommend VCMs meet credible atmospheric integrity standards. Key concepts for this include: (1) additionality, or the idea that the credit represents carbon emission reductions that would not have occurred but for the offset project; (2) uniqueness, meaning the credits cannot be double counted; (3) real and quantifiable, in that emission reductions are transparently calculated using robust and credible methodologies and do not result in emissions shifting elsewhere (i.e., "leakage"); (4) validation and verification by accredited third parties of all credits; (5) permanence, meaning the emissions reductions will be kept out of the atmosphere for a specified period; and (6) robust methodologies to calculate baseline emissions and reductions therefrom. The guidelines put the responsibility on carbon credit certification bodies to ensure their standards meet these guidelines.

Many of these concepts reinforce existing concepts around VCM integrity. For example, CFTC released similar guidelines for derivatives carbon markets in December 2023.[cxxiii]

The private sector has also stepped in to improve confidence in carbon markets. The Integrity Council for Voluntary Carbon Markets (ICVCM) released 10 Core Carbon Principles (CCP) in March 2023 with similar concepts to those released by the Biden administration.[cxxiv] Since then, ICVCM has undertaken an assessment of carbon-crediting methodologies, seeking to review the reliability of these methodologies and approve them to use a CCP label.[cxxv] In June 2024, ICVCM concluded the first round of assessments, approving three methodologies related to the destruction of stockpiles of ozone-depleting material and four methodologies tied to landfill gas.[cxxvi] ICVCM expects to complete assessments of other methodologies through 2024.[cxxvii]

Community Benefits Agreement Attempts to Fill Regulatory Gaps on CO_2 Pipeline Safety

In April 2024, Trailblazer CO_2 Pipelines (Trailblazer) LLC, Bold Alliance, Inc. (Bold Alliance); and Bold Education Fund Inc. announced a 10-year landmark community benefits agreement (CBA) associated with the Tallgrass Trailblazer CO_2 pipeline project in Nebraska and Southeast Wyoming.[cxxviii] This CBA sets a new precedent for CO_2 pipeline infrastructure by creating rigorous protections for landowner rights throughout the pipeline's life cycle and establishing safety programs to protect the local community.[cxxix]

Trailblazer is a subsidiary of Tallgrass Energy, an energy infrastructure company that operates over 2,500 miles of pipeline infrastructure across 47 states,[cxxx] while Bold Alliance is a network of groups across rural states that builds alliances between the agriculture community, environmentalists, and other local interests to protect land and water.[cxxxi] Bold Alliance is known for its role as the lead plaintiff in the lawsuit that successfully opposed the Keystone XL pipeline.[cxxxii]

Trailblazer has owned the 400-mile natural gas pipeline at the center of this CBA for over a decade. In 2022, FERC approved Trailblazer to transition the existing pipeline to carry CO_2, with the plan to collect CO_2 from Midwest ethanol plants for transport to underground sequestration sites.[cxxxiii]

The parties entered into this CBA to address feedback received through their engagement with landowners, community members, and other stakeholders. This agreement will provide Nebraska residents community benefits in the categories of landowner protections,[cxxxiv] public safety,[cxxxv] and community investment.[cxxxvi] In exchange for the concessions provided by Trailblazer, Bold Alliance agreed to not oppose the Trailblazer project.[cxxxvii]

Under this CBA, landowners in areas where new sections of pipeline will be built may elect to receive yearly royalty checks based on the volume of CO_2 being shipped, as opposed to an upfront lump-sum payment.[cxxxviii] Landowners also retain the option of having Trailblazer remove the pipe and reclaim the land if the pipeline is later decommissioned.[cxxxix]

Recent CO_2 pipeline ruptures have demonstrated the safety risks of CO_2 pipelines for the communities they pass through. For example, in 2020, a pipeline ruptured causing the hospitalization of 45 people in Mississippi.[cxl] To address these community concerns, the CBA includes a US$200,000 commitment to fund the development and deployment of a first responder CO_2 training program and a US$100,000 commitment to support the development or enhancement of a regional CO_2 emergency communication system.[cxli] The CBA will also require an ongoing obligation for Trailblazer to replenish essential first responder equipment and provide public safety notifications to families who live near the pipeline.[cxlii] Other benefits and investments to the community include a US$500,000 commitment to nonprofits in counties associated with this project.[cxliii]

Although FERC approved abandoning the Trailblazer pipeline as a natural gas carrier, the agency will not have any authority on next steps, as CO_2 pipelines are beyond the scope of FERC's regulatory authority. The Pipeline and Hazardous Materials Safety Administration (PHMSA), which operates under the US Department of Transportation, has limited regulation authority over CO_2 pipelines.[cxliv]

Thus far, CO_2 pipelines have been regulated like other hazardous liquid pipelines, but that may change soon. In March 2024, PHMSA submitted a draft Notice of Proposed Rulemaking (NPRM) to the White House Office of Management and Budget (OMB) for prepublication review.[cxlv] This draft NPRM would amend PHMSA's Pipeline Safety Regulations (49 C.F.R. pts 190-199).[cxlvi] While the details of PHMSA's proposal are not yet public, the proposed rulemaking is expected to enhance the safe transportation of CO_2 by pipelines in order to accommodate an anticipated increase in the number of CO_2 pipelines and volume of CO_2 transported.[cxlvii] This proposed rulemaking is also expected to include requirements related to emergency preparedness and response for CO_2.[cxlviii] The NPRM is expected to be published in the *Federal Register* in June 2024 but as of 19 August 2024 had not yet been released.

Alliance to Advance Climate-Smart Agriculture Begins Its US$80 Million Pilot Program in Arkansas, Minnesota, North Dakota, and Virginia

The Alliance to Advance Climate-Smart Agriculture (Alliance) has commenced a pilot program supported by the USDA's Partnerships for Climate-Smart Commodities in Arkansas, Minnesota, North Dakota, and Virginia intended to promote and support climate-smart agriculture practices among farmers and ranchers.[cxlix] The US$80-million pilot program is to run for three years and will offer eligible applicants US$100 per acre or animal unit for stewardship practices that promote improved soil health, water quality, water conservation, GHG reduction, and other services.[cl] The Alliance intends to enroll approximately 1,100 to 1,200 farms in each of the four states, for a total reach of 4,400 to 4,800.[cli] Each enrolled farmer or rancher must commit to one or more specific conservation practices selected from the USDA Natural Resources Conservation Service Conservation Practice Standards.[clii]

Applicants will be selected for acceptance into the Alliance based on a model developed at the Virginia Tech College of Agriculture and Life Sciences (Virginia Tech), and the model includes criteria such as diversity of commodities, operation size, underrepresented producers, and previous adoption of climate-smart practices.[cliii] At least 40% of Alliance participants will include historically underserved farmers and ranchers, which may include small producers, women-owned operations, socially disadvantaged producers, and military veteran producers.[cliv]

The Alliance is intended to support Virginia Tech's research agenda, which includes the measurement of the impact climate-smart agricultural practices has on carbon sequestration and to quantify the economic and environmental benefits from adopting climate-smart practices.[clv] During the life of the Alliance, Virginia Tech researchers will collect and quantify the GHG benefits resulting from the climate-smart agriculture activities of the Alliance participants.[clvi]

Dairy Farmers of America Becomes First Purchaser of Carbon Credits From Athian's Livestock-Focused Carbon Marketplace

The Dairy Farmers of America (DFA) became the first purchaser of verified carbon credits from the livestock carbon insetting marketplace established by Athian.[clvii] Athian has developed and implemented a protocol by which farmers may verify and sell carbon credits by reducing enteric methane (methane developed in the digestive track of ruminant animals).[clviii] The reduction was achieved through an innovative feed management product and quantification tool from Elanco Animal Health, and Athian claims that the carbon credits purchased represented a reduction in nearly 1,150 metric tons of CO_2 equivalent.[clix] The Athian marketplace is intended to create a scalable opportunity for farmers to earn money for their sustainability efforts while accelerating tangible impact on emissions reductions.[clx]

DFA is the largest US milk marketing cooperative and has a stated goal of reducing GHG emissions across the supply chain by 30% by 2030, and it is part of an industrywide collaboration on environmental sustainability to make the dairy industry GHG neutral or better by 2050.[clxi] GHG emissions generated by the livestock industry as a whole are currently estimated to contribute between 11.1% to 19.6% of global GHG emissions.[clxii]

Decrease in Demand in Future Carbon Allowances in Washington State Carbon Market as Uncertainty Looms Regarding Repeal Effort for Climate Commitment Act

Washington state's carbon allowance auction held on 5 June 2024 raised an estimated US$189 million from some of the state's largest carbon emitters by selling about 5.3 million 2023 and 2024 allowances and 1.3 million 2027 allowances (each allowance represents one metric ton of emissions for the applicable year).[clxiii] For the first time in Washington's carbon market auctions, however, not all of the allowances auctioned were sold, with only approximately 60%

of the 2.2 million 2027 allowances put up for sale being purchased.[clxiv] All allowances in the first five quarterly auctions, and the two supplemental auctions offered by the Washington State Department of Ecology to satisfy the demand at that time, were sold.[clxv]

The uncertainty surrounding the continued existence of Washington's Climate Commitment Act (CCA) may be at least partially to blame for the decreased demand. The carbon market is a key component of the CCA's cap-and-invest program, which requires entities that emit 25,000 metric tons or more of CO_2 equivalent in a calendar year to reduce their emissions or purchase allowances to cover them.[clxvi] The CCA is integral to the state's goal of cutting emissions nearly in half by 2030 and to become mostly carbon free by 2050.[clxvii] But the CCA is at risk, as Washington voters will be presented with a ballot initiative during this November's general election to repeal the CCA and prohibit the state legislature from enacting a similar cap-and-invest program in the future.[clxviii] One poll found that up to 41% of voters would likely vote to repeal the program, 31% would vote to keep it, and 28% remained undecided.[clxix] Another poll found that 45% of registered voters either strongly or somewhat favored repealing the CCA and 39% strongly or somewhat opposed repealing it.[clxx] When those polled were presented with a statement about a repeal of the law resulting in reduced gas prices, 67% said they either strongly or somewhat favored repealing the CCA.[clxxi] The CCA has a number of high-profile supporters, including Microsoft founder Bill Gates and former chief executive officer Steve Balmer of Amazon.com, Inc., and BP Co. PLC, who has championed the CCA and its carbon market as an important tool for companies to maintain compliance with emission-reduction laws, and is concerned that repeal of the CCA would create more uncertainty in future reduction efforts.[clxxii]

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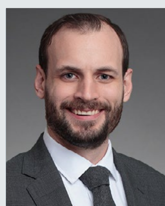

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