

Lawyers witness upswing in sustainable law trends

BY DAVID VAN'T HOF

As former advisor to Oregon Governor Ted Kulongoski on sustainability-related public policy, a position I held for the past seven years, I've helped the governor push forward some of the nation's most cutting-edge energy and climate change policies.

As I transition into providing private legal services to clients in the sustainability arena in the Pacific Northwest, I am now helping companies tackle a variety of legal issues arising from increased investment in renewable energy and greenhouse gas (GHG) reduction activities, among other things. Following are some trends I predict many lawyers practicing in the sustainability arena will be faced with in coming years.



Energy-related projects and deals

Oregon in particular, and the West Coast in general, have been ahead of the national curve in creating policies to attract development of renewable energy projects, as well as the manufacture of

renewable energy products and components to support them. A quick review of Northwest law firm Web sites demonstrates that renewable energy is an important new area in which attorneys seek to practice.

To date, large utility-scale wind energy projects have driven the renewables market, with wind industry jobs increasing by 70 percent in 2008 alone. Wind developers and marketers require legal services ranging from siting, financing, constructing and selling output of wind energy projects. Tax lawyers play a surprisingly large role in these and other energy-related projects because tax credits are the dominant federal and state based incentives. Wind projects will continue to thrive as the lowest-cost renewable energy resource, particularly with increased incentives for renewable energy projects at the national level. Also driving this growth is the aggressive requirements for West Coast utilities to integrate renewable energy (renewable portfolio standards), combined with some of the best state incentives for renewable energy projects.

The amount of undergrowth that must be removed to reduce fire impacts on forestlands in the Pacific Northwest, combined with federal stimulus dollars and other incentives, could mean numerous small-scale biomass energy projects will become financially viable and proliferate. Cellulosic ethanol technologies also should accelerate in the Pacific Northwest with our wood resources and stimulus funding.

Wave energy is still years away from significant commercial project development but it and other sectors such as geothermal and small-scale hydroelectric projects will increase over time.

Also, energy efficiency may soon rival renewable energy as an economic sector in the Pacific Northwest and nationally. Both federal and state laws and incentives increasingly focus on this sector as the most cost effective way to both address global warming and benefit energy consumers with lower energy bills. Businesses will need to negotiate financing and contractual agreements with respect to many of these projects.

Greenhouse gas regulation

Climate regulation increasingly looms as a major source of new legal demands for businesses that have significant GHG emissions. Whether regulation arrives in the form of federal legislation (as most assume at this point) or as a regional or state specific cap and trade program (such as the one being developed by the Western

Climate Initiative) is yet to be seen. But California is already well on its way to regulating greenhouse gasses, and Oregon and Washington are in the process of requiring reporting of greenhouse gas emissions. Many forward-thinking businesses are preparing for carbon regulation by entering voluntary reporting protocols such as the California Climate Registry, and some are beginning to verify emission reductions in preparation for cap-and-trade regulation. Businesses will increasingly need legal advice as they develop strategies to compete in a carbon-regulated marketplace.

Emerging trading markets

For the areas discussed above—renewable energy, energy efficiency and carbon regulation—new trading markets have emerged, and businesses are increasingly seeking legal expertise with respect to them. In the renewable energy arena, renewable energy credits (RECs)—also called Green Tags—have matured. There also are growing markets for verified emission reductions (VERs) and certified emission reductions (CERs) in the voluntary and mandatory greenhouse gas arenas respectively, and white tags in the energy efficiency arena.

There also is the prospect of a new trading market for ecosystem services [see "Banking on biodiversity," *Sustainable Industries*, September 2009]. Oregon in 2009 enacted legislation to provide recommendations to the legislature on how to establish an ecosystem services market in Oregon. In theory, such a market could enable the purchase and sale of not only VERs, but also credits for ecological benefits such as riparian and wetland improvements among others.

Green building sector

The West Coast has been a leader in green building for many years. LEED and other green building certifications are utilized in more and more buildings, but this typically can be secured without additional legal services. However, the emerging concept of eco-districts will generate significant new legal relationships for shared services and facilities. Be they onsite energy generation, water reuse or waste disposal, the developments will require new forms of legal relationships both among the building owners in the district as well as with city service providers and utilities.

Sustainability planning

Companies are increasingly recognizing that integrating sustainability principles into their business improves their bottom line. From reducing energy and material use, reducing waste streams and economic liabilities, and marketing their "green" practices with consumers and thereby increasing the popularity of their products, sustainability is catching on with corporate America.

Many companies are developing sustainability metrics that they are accountable for, and some seek legal counsel in how best to structure, evaluate and score these performance measures. These considerations increasingly are relevant for public companies and are becoming part of annual reports.

As the economic sectors described above continue to grow, they will eventually be less identified as areas of "sustainability" related legal practice, and more as core areas of legal practice. ●

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