

Legal Updates & News

Legal Updates

Cleantech: Quarterly Update

June 2007

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[Overview of Practice Group](#)

“Cleantech” may be the new buzzword in some circles -- but not at Morrison & Foerster. We’ve been advising the leading innovators in the world of Cleantech for years. For example, we have been helping energy and alternative energy clients innovate, conserve, and connect to the grid since the oil crisis of the 1970s. And our environmental specialists, including the former General Counsel of the EPA, have proven experience leading clients through the creation of new technologies, infrastructures, markets and regulatory regimes.

Our lawyers work with Fortune 500 companies, start-ups, VC firms, universities, and governments developing new technologies and pioneering new approaches to doing business that reduce dependence on fossil fuels and conserve water and other natural resources.

Our global presence—1,000 lawyers in 18 key financial and technology centers around the world—allows us to provide both substantive expertise and unique practical insights in domestic and cross-border financing, transactional and regulatory matters. We assist Cleantech clients going public on the AIM in London and also help them navigate the investment and regulatory regime in Shanghai.

Not just any law firm can do this work. It requires decades of experience and depth in multiple practice areas, including energy, environment, water, private equity and venture capital, intellectual property, and project development. While many law firms focus on a few of these areas, we serve the full spectrum of Cleantech legal needs.

[New and Noteworthy in Cleantech & Renewable Energy](#)

Activity on the national front to adopt climate change legislation within the next two years

There has already been a flurry of legislative, regulatory and judicial activity in 2007, both at the federal and state levels. On Capitol Hill, a number of bills have been introduced to address climate change. These bills encompass a wide range of scenarios, including national emission trading and credit development through foreign project investment. Some of these bills have contemplated preemption of state and regional programs—a highly charged topic in the regulated and environmental communities. On the House side, Speaker Pelosi formed a Select Committee on Climate Change, with several other committees holding hearings on the subject. Companies large and small are already preparing for the new requirements, as well as helping to shape the policies through coalitions like the United States Climate Action Partnership (USCAP).

Supreme Court rules that greenhouse gases are air pollutants

In April, the United States Supreme Court announced its eagerly-anticipated climate change

decision in *Massachusetts v. EPA*. By interpreting the federal Clean Air Act's definition of "air pollutant" as "embrac[ing] all airborne compounds of whatever stripe," the Court's decision changes the regulatory thinking on greenhouse gases, allowing them to be regulated within the Clean Air Act's existing framework. As a result, currently unregulated companies and industries may soon find themselves subject to the Clean Air Act, and until federal legislation is enacted, state-level rules will be increasingly important.

RPS and Regional Efforts

The emergence of new, more ambitious, renewable portfolio standards in states across the country is also paving the way for more alternative energy investment. More than 20 states have adopted RPS for energy from renewable sources. Two highly publicized regional emission efforts are also moving forward. In the northeast, the state members of the Regional Greenhouse Gas Initiative (RGGI) are considering legislation and rules that address the allocation and/or auctioning of credits. Out west, the Governors of Arizona, California, New Mexico, Oregon and Washington—members of the Western Regional Climate Action Initiative—are engaging in the development of a regional emission target along with a market-based program to achieve the target. Many potential Cleantech opportunities hinge on government incentives, which Morrison & Foerster anticipates, tracks, and understands.

California Charging Forward

Setting targets and reporting requirements:

In California, the California Air Resources Board (ARB) is charging forward with its efforts to implement AB 32. Over the next several months, there will be numerous committee meetings working on tasks for the end of the year, when the ARB must (1) set the 1990 greenhouse gas emission level for California and (2) adopt mandatory reporting requirements. These tasks involve critical issues, including making sure that the 1990 data is compatible with today's measurements so that accurate targets are set, and developing de minimis reporting thresholds below which some emitters may be exempt from regulation.

On the immediate horizon, the ARB is:

- Approving a list of discrete early action emission reduction measures that will then be developed into regulations and become enforceable by 2010. Three measures have already been identified, and thirty-three additional measures are under consideration.
- Considering California's Market Advisory Committee final recommendation on a design for an emissions trading program. (Whether or not California will develop its own market-based program may be the most hotly debated issue right now.)

Morrison & Foerster has been attending and tracking the meetings that have already taken place, and can advise those who are interested in learning more about the measures being considered.

Representative Clients and Transactions

Alternative Fuels Group
Amyris Biotechnologies
Business for Social Responsibility (BSR)
Carr/America RREEF
City and County of San Francisco
Cleantech America
Contra Costa Centre Association
EDAW, Inc.
EnerTech Environmental
Getty Trust
Illinois Ventures, LLC
Khosla Ventures
Kleiner, Perkins, Caulfield & Byers
Lucasfilm, Ltd.
Mineral Acquisition Partners, Inc.
Pacific Forest and Watershed Lands Stewardship Council
Range Fuels, Inc.
R-World
Sage Capital Partners, L.P.
Silicon Genesis Corporation

Suntech Power Holdings
Super Bulbs, Inc.
Tejas Securities Group
The Nature Conservancy