McDermott Will & Emery

On the Subject

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The Kerry-Lieberman climate bill promotes accelerated carbon capture and sequestration through cap-and-trade bonuses for electric utilities and industrial facilities that are early adopters of carbon storage technology and practices.

Using Cap-and-Trade Bonuses to Promote Early Adoption: Carbon Capture and Sequestration in the Draft American Power Act

Senators John Kerry (D-MA) and Joe Lieberman (I-CT) introduced a discussion draft of the American Power Act on May 11, 2010. The bill follows the same general format as other climate change proposals (see McDermott's *On the Subject* "Kerry and Lieberman Introduce Much-Anticipated Climate Change Bill") and includes several provisions to promote development of carbon capture and sequestration (CCS) technologies. The CCS provisions combine financial incentives and mandates to encourage the commercial deployment of CCS at electric power plants and large industrial operations; this mirrors the CCS strategy found in the Waxman-Markey bill, H.R. 2454. The Kerry-Lieberman bill is less detailed in some respects than H.R. 2454, leaving room for agencies and policymakers to create a more detailed framework as it is implemented. For instance, unlike H.R. 2454, it does not mandate a certification and permitting program for geologic storage.

The CCS process involves capture and separation of CO_2 gas at an emission source, compression of the CO_2 gas, pipeline transport of the gas, and its injection into geological formations or deep ocean locations for long-term storage. While various components of CCS technology have been utilized in the United States (such as oil-recovery-enhancing CO_2 injection), the scope of CCS projects has been limited primarily by cost and the lack of financial constraints or regulatory limits imposed on CO_2 emissions.

The bill creates a federal agency task force to identify the key roadblocks to commercial scale deployment of CCS. The U.S. Environmental Protection Agency (EPA) Administrator is directed to appoint members to the task force to study and make recommendations on the adequacy of existing laws, regulations and private sector mechanisms for addressing liabilities, risks and affected property rights associated with the use of CCS.

The bill supplements the $2.4 billion carve-out in the Economic Stimulus Act for carbon capture projects with a special grant program financed by a fee on fossil fuel power generation. The grant program could fund up to $2 billion per year for 10 years to accelerate the commercial availability of CCS technologies and methods.

The bill also provides for the distribution of emission allowances for CCS technologies that achieve at least a 50 percent reduction in CO_2 emissions at electric generating units (EGUs) of at least 200 megawatts where at least half of the fuel is coal or petroleum coke, or industrial facilities that would otherwise emit more that 50,000 tons per year of CO_2.

The allowances are divided into weighted distribution categories, with not more than 15 percent given annually to industrial sources. Allowances are also weighted to provide the greatest benefit to those achieving the highest percentage of reductions, while reverse auctions are used to supply some of the emission allowances. The bill requires that allowances be returned or that a cash payment be made if a project captures less CO_2 than the amount projected.

The bill provides for changes to be made in the quantity of allowances issued based upon the Comptroller General's findings in a CCS technology deployment study. That study must be conducted on the earlier of May 1, 2033, or one year after the EPA Administrator has determined that there are insufficient allowances available to meet the allowance requests and, at the time of that determination, there are less than 72 gigawatts of generating capacity in existence at stationary sources employing CCS technology.

The bill also contains carbon capture performance standards for EGUs where at least 30 percent of their fuel constitutes coal or petroleum coke. Those EGUs first permitted from the beginning of 2009 through 2019 must achieve a 50 percent reduction in CO_2 emissions within four years after the EPA Administrator issues a report establishing that a specified number of facilities at a given capacity are capturing and sequestering at least 12 million tons of CO_2 per year. Unless the standard is reduced by an EPA rulemaking, the mandated level of CO_2 reduction increases to 65 percent in 2020, or two years thereafter if extended by Congress at the recommendation of the EPA Administrator and the Secretary of Energy.

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