

# US GHG Markets – October 2009 (1/2)

## Monthly Market Update



### Federal

#### Kerry-Boxer Bill (S.1733) Clears Senate Hurdle

On November 5th, the Senate Committee on Environment and Public Works (EPW), chaired by Senator Barbara Boxer (D-CA), reported from committee S. 1733, a comprehensive climate change bill. The move was not without controversy as the bill passed despite a boycott by all of the committee's Republican members.

The legislative process known as "mark up," requires the minority Republican Party to have two members present. Republicans on the EPW Committee stated they would boycott the mark up process, citing the absence of final results of the EPA economic analysis as the key reason they refuse to participate. However, Boxer circumvented this process using an exception to Committee rules and went mark up without the necessary two Republicans. Despite reservations by several of Committee Democrats, Boxer ultimately had enough votes to pass the bill out of the EPW Committee. Currently, 12 of the 19 Committee members are Democrats.

Though the bill made it out of Committee, important panel members, including Senator Max Baucus (D-MT) has expressed "serious concerns" over the 2020 mid-term target in the bill. Baucus is seen as a major Democratic vote, both in the Committee vote as well as the broader Senate Floor vote. He and Arlene Specter (D-PA) have also expressed concern over the lack of language in the bill addressing EPA pre-emption under the Clean Air Act (CAA), or the Agency's ability to supersede the legislation under the CAA and directly regulate greenhouse gas emissions. Despite concerns, in his testimony, Baucus stated he believed the bill "has a sweet spot."

#### Kerry-Graham Process Expected to Drive Bill to Senate Floor Vote

In an op-ed piece in the New York Times in early October, Senators John Kerry (D-MA) and Lindsey Graham (R-SC) pledged bi-partisan support on climate change legislation. The two Senators have identified a number of issues on which they plan to find compromise in order to get the required 60 votes in the Senate. The issues include inclusion of nuclear energy as a renewable form of energy, much like wind and solar, under a national renewable energy standard. In addition, Senator Graham is looking to make financing nuclear energy more readily available with the inclusion of loan guarantees to the industry, and onshore and offshore oil drilling were other points of compromise for the Senators. Senator Graham has noted he would like to form workgroup of senators to "find a pathway forward," so that by Copenhagen, "we have a process that you all would understand, and the world would understand, that could lead to a new dynamic than could lead to a breakthrough."

John Kerry has been working diligently with Senator's John McCain (R-AZ) and Joseph Lieberman (I-CT) to garner bi-partisan support on climate change. The legislative process being forged by the Kerry-Graham partnership is expected to lead to a compromise that will enable the Senate to take a bill to the full Floor vote sometime between December 2009 and February 2010. It has been estimated that there are roughly 20 swing votes in the Senate on the bill, currently. Some observers have expressed concern that delaying a vote too far into 2010 will decrease the chances of passage due to midterm elections next year. In the Senate, 36 or 100 seats will be

contested in elections and all of the members of the House will be up for re-election in November 2010.

#### Allowance Allocation Plan Unveiled for S.1733

The EPW Committee released the "Chairman's mark" of S.1733, which outlined the proposed allocation of allowances. The results largely reflected the allocation plan established in the House bill version, known as the Waxman-Markey bill. S.1733 proposes the following:

- 75% of allowances are allocated for free in 2012 (phased out from 2026-2030)
- 35% are given free to utilities to protect electricity consumers from potential electricity price spikes
- 30% are given free to state-regulated local electric distribution companies (LDCs) to protect ratepayers from price spikes
- 5% are given free to merchant coal generators and long-term power purchase agreements
- 2% placed in a "market stability reserve" that aims to stabilize prices when they reach a threshold price set at \$28/tonne in 2012
- 2.25% from 2014-2026 are given free to domestic oil producers

### California

#### AB 1404 Vetoed

Governor Schwarzenegger vetoed AB 1404, a bill which would have restricted the quantity of offsets that could be used for compliance in the state's forthcoming greenhouse gas cap and trade program, which is scheduled to begin January 1, 2012. AB 1404, which passed in the California legislature, last month, was introduced by Assembly Members De Leon, Carter, and V. Manuel Perez and would have reduced the quantitative limit on offsets from the current level of 49% of emissions reductions to 10% over the period of 2012-2020. In addition, the bill aimed to "prioritize" offsets in local air basins within California. The final version of the bill would have also imposed additional administrative fees to fund verification of the offsets.

It was believed that California businesses would have been adversely affected due to increased compliance costs from the bill. Several California groups, including the Western States Petroleum Association, the California Manufacturers and Technology Association, Western Growers, the California Retailers Association, the California League of Food Processors, were publicly opposed to the bill.

The Governor wrote a letter to the Members of the California State Assembly citing the bill was "premature" and too restrictive on the design approach the Air Resources Board (ARB) is considering for the program.

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# US GHG Markets – October 2009 (2/2)

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### Anticipated Release of AB 32 Draft Regulatory Language

The California Air Resources Board (ARB) aims to release draft regulatory language for public comment at the end of November. It is expected the language will thoroughly address offsets. At the moment, ARB has only approved the Climate Action Reserve (the Reserve) livestock methane and forestry offset projects as “voluntary” early action projects. To date, ARB has not issued language on “compliance” offsets. However, it is expected that ARB will speak to the role early action offsets will play in a future compliance cap and trade market in California. Some information market participants may expect to receive includes cut off dates for early action, which existing programs will qualify for an early action offsets system under AB 32, and where offset projects could be located.

For further information on offsets, please call our Carbon Desk in San Francisco at 415.963.9137.

### Climate Action Reserve Revises the Landfill Gas Protocol

- The Reserve has revised Version 2.0 of the Landfill Gas Project Protocol. Version 2.1 of the protocol, released in October, contains the following changes:
- The Reserve now uses the term “Legal Requirements Test” rather than “Regulatory Test”;
- A Reserve project with a “pre-project qualifying device” must deduct the methane destruction resulting from the pre-project device, when calculating emission reductions;
- New and refined non-methane organic compound (NMOC) thresholds;
- Guidance on non-qualifying pre-project device discounting;
- Other clarifications related to data substitution and meter calibration; and
- New definition of a bioreactor.

All existing landfill gas projects in the United States must have their projects Listed with the Reserve by the deadline date of November 17, 2009. As per Reserve policy, existing projects must become listed 12 months after the adoption of the current protocol – Version 2.0 for landfills. After November 17, 2009, only new projects (i.e. those submitted within six months of their start dates) may achieve Listing.

### Climate Action Reserve Adopts Organic Waste Digestion as a Project Type

The Board of Directors at the Reserve unanimously adopted the Organic Waste Digestion (OWD) protocol earlier this month. The OWD protocol provides carbon market incentive for waste owners to divert organic waste from landfills into anaerobic digestion projects.

### Verified Emission Reductions (VERs) Offers

▼ TYPE	▼ COUNTRY	▼ SIZE (tons CO@e)	▼ VINTAGE	▼ BID/ASK	▼ PRODUCT
Livestock Methane	Western USA	25k/year	2009-2015	\$7.00 / \$10.50	Climate Action Reserve (CRT's)
Landfill Gas	Mid-USA	75k/year	2009-2013	\$6.00 / \$8.50	Climate Action Reserve (CRT's)
Forestry	California	50k/year	2009-2013	\$7.50 / \$12.00	Climate Action Reserve (CRT's)
Seller's Choice	N/A	35k/year	2009-2013	\$6.25 / \$8.00	Climate Action Reserve (CRT's)

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The protocol provides a standardized approach to quantifying, monitoring and verifying greenhouse gas reductions from organic waste diversion. According to the Reserve, currently only 3% of all food waste in the U.S. is diverted.

### Regional

#### WCI Offsets Committee Begins Reviewing Existing Protocols

The Western Climate Initiative (WCI) Offsets Committee began reviewing existing offset protocols against the WCI Offset Draft Criteria. They will be joined by DNV in the assessment of protocols. The results will identify which existing protocols are aligned with the ISO framework which is defined by 14064-2, 14064-3 and 14065.

#### WCI Recommendations on Offsets Limit

The WCI released recommendations on the offsets limit. The paper has been released for public comment in advance of the WCI making a final decision on offsets limit. The WCI Cap Setting and Allowance Distribution Committee recommended:

- Limiting the use of offsets rather than limiting the supply of offsets to be issued – the Committee cited lower compliance costs as the reason for this recommendation.
- The limit-use approach would be applied at the entity-level and as a percentage of compliance obligations (i.e. emissions) – the Committee cited predictability for cover entities and ease of administration as reasons for this recommendation.
- Implementing a common use limit across WCI Partner jurisdictions, including California – the Committee cited equal access to offsets amongst WCI Partner jurisdictions and ensuring the overall limit is not exceeded as the reasons for this recommendation.
- Setting the limit at an equal percentage of compliance obligations across compliance periods – the Committee noted this option would allow for the greatest number of offsets to be used in the earlier compliance periods.
- Implementing a region-wide “carry-over” approach, which should be construed narrowly, applying only to the specific circumstances of the WCI program design.
- This essentially means if entities to not use all allowable offsets in the first compliance period, that shortfall which equals the amount allowable minus the amount used, will carry over to the next compliance period.