

Climate Policy Update

Akin Gump
STRAUSS HAUER & FELD LLP

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Good evening!

This is Akin Gump's weekly policy newsletter on climate change policy and regulatory developments, providing information on major climate policy headlines from this past week and forthcoming climate-related events and hearings:

Contents

[National News](#)

[Local News](#)

[International News](#)

[Quotes of the Week](#)

[Upcoming Congressional Hearings](#)

[Federal Agency Climate News](#)

[Funding Opportunities](#)

[Comment Opportunities](#)

[Upcoming Climate Events](#)

National

- **[U.S. SEC Chief Weighs Scaling Back Climate Rule As Lawsuits Loom](#)** (*Politico*)
Securities and Exchange Commission (SEC) Chair Gary Gensler is reportedly considering rolling back the Commission's climate-risk disclosure rules in light of anticipated lawsuits. Perhaps the most controversial component of the SEC's rulemaking includes a "mandate that certain large public companies report data about carbon emissions from their extensive supply chain networks and customers." Stakeholders have expressed opposition to the rulemaking, characterizing the requirements as "burdensome and costly." As such, it is expected that lawsuits will push back on the rule's content and the SEC's authority to implement it.
- **[Treasury Updates Vehicle Classification Standard for Clean Vehicle Tax Credits Under Inflation Reduction Act](#)** (*Treasury Department*)
The U.S. Department of Treasury updated its vehicle classification standard on February 3, 2023. This standard determines the applicability of the Inflation Reduction Act's clean vehicle tax credits. Specifically, the update utilizes the "consumer-facing [Environmental Protection Agency (EPA)] Fuel Economy Labeling standard."
- **[Biden Clears the Way for Alaska Oil Project](#)** (*The New York Times*)
The Bureau of Land Management (BLM) released its environmental analysis of the "\$8 billion ConocoPhillips oil drilling project on the National Petroleum Reserve in Alaska." The report reels in the project to "three drill sites from five, as well as reducing the proposed length of both gravel and ice roads, pipelines, and the length of airstrips to support the drilling." This assessment serves as a

final regulatory step before the Biden-Harris administration determines whether the project is approved, which would come as early as next month. In determining that “limited drilling could occur on the land in Alaska’s North Slope, the Biden administration has already sent a strong signal that it is likely to give the project a green light.”

- **[Manchin, Westerman Plot New Push for Permitting Reform](#)** (*E&E Daily*)
As permitting reform conversations are reviving, Sen. Joe Manchin (D-WV) signaled that he will defer to Rep. Bruce Westerman (R-AR). After the two lawmakers met, Rep. Westerman noted that he identified “common ground” with Sen. Manchin. Moreover, Rep. Westerman explained he “saw no point in trying to advance a permitting bill that would not have support from Democrats.”
- **[Republicans Seek Quick Rollback of Water, ESG Rules](#)** (*E&E Daily*)
The GOP introduced two resolutions directed at the Biden-Harris administration’s environment-related rulemaking. The first resolution—introduced by Sen. Mike Braun (R-IN) and Rep. Andy Barr (R-KY)—seeks to “overturn the [Department of Labor’s (DOL)] rulemaking to allow fiduciaries to take environmental, social, and governance—or ESG—factors into consideration when choosing retirement investments.” The second resolution—led by Sen. Shelley Moore Capito (R-WV) and Rep. Sam Graves (R-MO)—aims to “permanently repeal the Biden administration’s Waters of the United States—or WOTUS—definition, arguing the regulation amounts to federal overreach.”
- **[Climate Change May Cut U.S. Forest Inventory by a Fifth This Century](#)** (*North Carolina State University*)
A North Carolina State University study concluded that “under more severe climate warming scenarios, the inventory of trees used for timber in the continental United States could decline by as much as 23 percent by 2100.” Ultimately, these findings may impact forest product prices and affect carbon storage in forests across the country.

Local

- **[‘Cap and Invest’ Proposal to be Detailed in Hochul’s Budget](#)** (*Politico*)
Gov. Kathy Hochul’s (D-NY) Fiscal Year 2024 state budget calls on lawmakers to “embrace a cap-and-trade program to raise billions of dollars to reduce emissions in New York.” The proposed cap-and-trade program would establish an annual, gradually declining limit on the number of carbon allowances to meet New York’s statutorily required climate target to slash emissions levels by 85 percent from 1990 levels by 2050. The New York State Energy Research and Development Authority (NYSERDA) will oversee the auctions and will “transfer about a third of the money—an estimated \$1 billion—to a new state fund for rebates to consumers and businesses and use the rest to implement programs to support the programs to reduce greenhouse gas emissions.”
- **[Relief from Sky-High Gas Bills is Coming: California Regulators Order Utilities to Rush Credits](#)** (*The Los Angeles Times*)
The California Public Utilities Commission (CPUC) recently approved the California Climate Credit, an annual gas and electric credit for consumers in light of spiking natural gas prices. Commissioner Darcie Houck outlined that consumers “can expect between \$90 and \$120” in credit, although customers of utilities that are not regulated by CPUC will not receive the credit.
- **[Governor Cooper Releases New Report Outlining Strategies to Strengthen North Carolina’s Clean Energy Economy and Achieve Climate Goals](#)** (*Governor Roy Cooper*)
Gov. Roy Cooper (D-NC) released a Deep Decarbonization Pathway Analysis to outline the state’s “most promising opportunities to reduce greenhouse gas emissions across the economy in the near-term while highlighting mid- and long-term needs to develop and commercialize emerging clean energy technologies.” Specifically, the pathway details the need for all sectors of North Carolina’s economy to slash emissions to reach its climate targets.
- **[Shrinking Colorado River Hands Biden His First Climate Brawl](#)** (*Politico*)
As seven Western states debate water allocation of the dwindling Colorado River, the Biden-Harris

administration must determine “who should bear the pain of adapting to a changing climate.” While it is generally agreed that the Lower Basin states—including Arizona, California and Nevada—must take immediate cuts, the controversy centers on whether California, which maintains “strong legal rights” over much of the Lower Basin should participate in water use reduction. Six of the seven states dependent on the Colorado River requested that the Biden-Harris administration split water use reductions evenly with California as it refuses “to budge from its legal claim.” This conflict will require the Biden-Harris administration to make a tough decision after the Interior Department determines “what effect the competing approaches would mean to communities and ecosystems across the West if the next few years turn out to be dry ones.”

- **[Climate Change and a Population Boom Could Dry up the Great Salt Lake in 5 Years](#)** (*NPR*)
A recent report out of Brigham Young University cautioned that, unless action is taken, “the Great Salt Lake could go completely dry in five years.” Further, scientists warn that the “Great Salt Lake has high concentrations of neurotoxins and cancer causing carcinogens—including arsenic and mercury.” As a solution, lawmakers introduced “bills ranging from expanding turf-reduction programs in cities, to providing more incentives to farmers to divert less water from rivers that feed the lake.”

International

- **[Green Deal Industrial Plan for the Net Zero Age Launched by the European Commission](#)** (*Speaking Sustainability*)
The European Commission (EC) launched its Green Deal Industrial Plan on February 1, 2023. The plan is “aimed at a leveling up of the international playing field and combatting what the EC believes are market distortions arising from aggressive subsidy regimes being introduced ‘elsewhere.’” Specifically, the plan includes a proposed Critical Raw Materials Act, a relaxation of State Aid Rules and a newly established auction to bolster renewable hydrogen production.
- **[France Leads Push for EU to Boost Nuclear-Produced Hydrogen](#)** (*Reuters*)
France—alongside Poland, the Czech Republic, Romania, Bulgaria, Slovenia, Croatia, Slovakia and Hungary—is pushing for the European Union (EU) to “recognize low-carbon hydrogen produced from nuclear power in its renewable energy rules.” However, Germany, Denmark, Austria and Luxembourg are opposed to the idea as they believe “the EU targets should solely focus on renewable sources like wind and solar to incentivize the massive expansion of renewable needed to cut Europe’s reliance on fossil fuels.”
- **[UAE, France, India to Cooperate on Energy, Climate and Adopt Implementation Roadmap](#)** (*Arab News*)
The United Arab Emirates (UAE), France and India launched an initiative “in several areas including energy and climate change” and will “promote the joint design and execution” of energy-focused projects. Moreover, the countries will expand the UAE-led Mangrove Alliance for Climate and the Indo-Pacific Parks Partnership, which is led by India and France.
- **[Despite Billions to Get Off Coal, Why Is Indonesia Still Building New Coal Plants?](#)** (*NPR*)
The Indonesian government is building a “green industrial park” to serve as a “hub for green manufacturing using the country’s vast mineral reserves.” However—while the green industrial park’s solar power and hydropower infrastructure are being constructed—Indonesia is planning to build new coal-fired plants to power the manufacturing hub. This contradictory move is raising questions, particularly as the U.S. and other world leaders previously agreed to a \$20 billion deal to support Indonesia’s move away from coal power.
- **[WMO Unveils Plans for Sustainable Monitoring of Greenhouse Gases](#)** (*United Nations*)
The World Meteorological Organization (WMO) recently released its plan to monitor greenhouse gases, which would establish “a network of ground-based measurement stations that can verify worrying air quality data that has been flagged by satellites or airplanes.” Moreover, WMO called for

cooperation between “governments, international organizations, and the private sector” to ensure the proposed Global Greenhouse Gas Monitoring plan is successful.

- **[Society Isn't Changing Fast Enough to Stop Climate Change: Study](#)** (*The Hill*)
The University of Hamburg published its annual Hamburg Climate Outlook and concluded that “keeping global warming below 1.5 degrees Celsius—the goal set in the Paris Agreement—is implausible for social reasons, not technical ones.” Notably, the report cited “consumption patterns and corporate responses—as well as the impact of the COVID-19 pandemic and the Russian invasion of Ukraine” as causes for slowed carbon emission reductions.
- **[No More Carrots Needed for Oilpatch to Invest in Carbon Capture Emissions Reduction: Report](#)** (*Financial Post*)
In light of amendments to Alberta’s industrial carbon pricing rules, a recent Pembina Institute update detailed that sufficient incentives exist to catalyze investments in carbon capture, utilization and storage (CCUS). The updates to the Technology Innovation and Emissions Reduction Regulation (TIER) program “increase the stringency of the tax on industrial emitters, while offering incentives to reduce emissions with the introduction of new credits for [CCUS].”
- **[OGCI Study Finds Biofuels Can Help Decarbonize Shipping as Part of a Range of Low-Carbon Solutions](#)** (*Oil and Gas Climate Initiative*)
A new study by the Oil and Gas Climate Initiative (OGCI) determined that biofuels may assist in reducing emissions from the international shipping sector. Moreover, the analysis called for “greater biomass mobilization,” such as legislative action and infrastructure projects, to bolster feedstock availability for marine biofuel.
- **[Satellite Tracking is Helping Scientists Pinpoint the Worst Emissions Offenders](#)** (*World Economic Forum*)
Climate TRACE is utilizing “satellite technology with artificial intelligence (AI) to help create a clearer picture of the state of global emissions.” While countries self-report information to the United Nations, former Vice President Al Gore, one of Climate TRACE’s backers, noted that “over 50 countries have not submitted any emissions inventories for the last decade.” Moreover, the National Aeronautics and Space Administration (NASA) uses “satellite remote sensing, scientific knowledge, and modeling” to support its Carbon Monitoring System.

Check out below for key quotes, federal agency news and a look at the week ahead in congressional hearings and think tank events:

Quotes of the Week

“On the conservative side, they have always wanted to reform processes to get to answers faster [...] we have to build things a lot faster, and that’s going to require taking a look at permitting reform.”

– Rep. Scott Peters (D-CA) *discussing permitting reform*
([E&E News](#) – February 2)

“We need not to bicker about what America has done. But to have Europe get up and do the same thing, to have the large Asian economies do the same thing. If we don’t have these great macro shifts of policy, your world has cooked.”

– Andrew Forrest, former CEO of Fortescue Metals Group *responding to the Inflation Reduction Act's incentives*
([Reuters](#) – February 3)

Upcoming Congressional Hearings (February 6 – February 10, 2023)

Senate

[State of the U.S. Territories](#)

Senate Energy and Natural Resources

Thursday, February 9, 10:00 AM EST

366 Dirksen Senate Office Building

[Farm Bill 2023](#)

Senate Agriculture, Nutrition and Forestry

Thursday, February 9, 10:00 AM EST

House of Representatives

[American Energy Sources/Technology](#)

House Energy and Commerce

Tuesday, February 7, 10:00 AM EST

2123 Rayburn House Office Building

[Waters of the United States Rule](#)

House Transportation and Infrastructure Subcommittee on Water Resources and Environment

Wednesday, February 8, 10:00 AM EST

2167 Rayburn House Office Building

[American Energy/Mining Potential](#)

House Natural Resources

Wednesday, February 8, 10:00 AM EST

1324 Longworth House Office Building

[U.S. Critical Minerals Crisis](#)

House Natural Resources Subcommittee on Oversight and Investigations

Thursday, February 9, 9:00 AM EST

1324 Longworth House Office Building

Federal Agency Climate News

Department of Interior

[Interior Department Issues Statement on Proposed Willow Project](#) (February 1)

[Interior Department Releases Draft Guidance for \\$500 Million in Formula Grants for States to Address Orphaned Oil and Gas Wells](#) (January 30)

Department of Energy

[DOE Invests More Than \\$130 Million to Lower Nation's Carbon Pollution](#) (January 30)

<p>Environmental Protection Agency</p> <p>EPA Announces Financial Capability Guidance to Support Communities and Ensure Clean, Affordable Water (February 1)</p>	
<p>Funding Opportunities</p>	
<p>Hydrogen Fuel Shot</p> <p>Department of Energy Close Date: April 28, 2023</p> <p>Key Deployment Challenges for Offshore, Land-Based and Distributed Wind</p> <p>Department of Energy Close Date: March 10, 2023</p> <p>Regional Initiative to Accelerate Carbon Capture, Utilization, and Storage Deployment</p> <p>Department of Energy Close Date: February 2, 2023</p> <p>Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program</p> <p>Environmental Protection Agency Close Date: April 10, 2023</p>	<p>Energy Efficiency and Conservation Block Grant Program</p> <p>Department of Energy Close Date: July 31, 2023</p> <p>Long-Duration Energy Storage Demonstrations</p> <p>Department of Energy Close Date: March 3, 2023</p> <p>Resilient and Efficient Codes Implementation</p> <p>Department of Energy Close Date: March 27, 2023</p> <p>Environmental Justice Government-to-Government Program</p> <p>Environmental Protection Agency Close Date: April 10, 2023</p>
<p>Comment Opportunities</p>	
<p>Supplemental Methane Rule</p> <p>Environmental Protection Agency Close Date: February 13, 2023</p> <p>Green Guides for the Use of Environmental Marketing Claims</p> <p>Federal Trade Commission Close Date: February 21, 2023</p>	<p>Renewable Fuel Standard Program</p> <p>Environmental Protection Agency Close Date: February 10, 2023</p>

Upcoming Events

[U.S.-Romania Spotlight: How Transatlantic Cooperation Can Advance Energy Security and Decarbonization](#)

The Atlantic Council

Monday, February 6, 9:00 AM EST

[Electricity Market Report](#)

The International Energy Agency

Tuesday, February 7, 8:30 AM EST

[Discussion with House Energy and Commerce Chair Cathy McMorris Rodgers](#)

Punchbowl News

Wednesday, February 8, 9:00 AM EST

[Charging Ahead: The Hill's EV/AV Summit 2023](#)

The Hill

Wednesday, February 8, 1:00 PM EST

[Industry's Role in an Inclusive and Sustainable Energy Transition](#)

The Atlantic Council

Thursday, February 9, 8:00 AM EST

[Climate Tech: Leveraging Data to Mitigate Climate Risks](#)

The Middle East Institute

Monday, February 6, 10:00 AM EST

[Water and Conflict: Updates from the Russia-Ukraine War](#)

The Wilson Center

Tuesday, February 7, 9:30 AM EST

[Evaluating the U.S. Grid Two Years After the Deadly Storm](#)

The American Council on Renewable Energy

Wednesday, February 8, 12:00 PM EST

[Driving the Future: WPI's Impact on Sustainable Technologies and Sustainability](#)

The Worcester Polytechnic Institute

Wednesday, February 8, 5:30 PM EST

[2023 Energy Crisis: Opportunities to Shape the EU's Energy Transition](#)

CQ Roll Call and Fiscal Note

Thursday, February 9, 10:00 AM EST

For more information, please contact your regular Akin Gump lawyer or advisor, or:

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