

Climate Change and Carbon Markets

Straight Talk on Climate Change and Carbon Markets

As the global economy moves inexorably toward investments in clean tech and low-carbon technologies and restrictions on greenhouse gas emissions, climate change has become a critical consideration in finance and risk management, corporate disclosure and governance, capital markets, emissions trading, project finance, environmental compliance and corporate strategic planning. In the U.S., the federal EPA began mandatory reporting of greenhouse gas emissions in the power, fuels, industrial and manufacturing sectors starting January 1, 2010. States and regional partnerships have imposed caps on greenhouse emissions, and federal regulation of greenhouse gas emissions will be phased-in beginning in 2011.

As long-term counselors in the global energy industry, Andrews Kurth has extensive experience in managing the legal context of climate regulation for our clients. Lawyers in our Climate Change practice group counsel energy production companies, manufacturing entities, state regulatory authorities, emissions-reduction project developers, leading carbon funds and investment banks, underwriters, lenders and traders on pertinent issues in climate change.

Our experience in the climate change arena combines our traditional energy and transactional experience with a superior understanding of emerging market, legislative and regulatory issues. Andrews Kurth not only follows developments but is intimately involved in shaping renewable energy and greenhouse gas markets, including representation on Capitol Hill, standardization of contracts for emission-reduction credits and renewable energy credits, development of renewable fuels and biomass projects, clean tech programs at university incubator centers, and work relating to carbon sequestration projects. Our place in the center of this dynamic field provides clients with up-to-the-minute advice on emerging developments from legislation to innovative carbon finance transaction structures.

Representative examples of our recent work in the climate change area include:

- **Carbon Market Finance and Commercial Transactions**—The Firm has advised on carbon finance and transactions in the areas of forestry credits, biogas, landfill gas, coal mine methane, industrial gas destruction (N₂O), ozone depleting substances, agricultural wastewater, manure management, enhanced oil recovery, biofuels, biotechnology, algae biomass, municipal solid waste, and composting. One of our lawyers drafted the first template buyers-side VERPA contract used in the U.S. for the largest purchaser, at the time, of greenhouse gas emissions reductions from the voluntary carbon offset market.
- **International Investment Funds**—Andrews Kurth has developed international investment funds using sophisticated risk management techniques to profit from the European Union Emissions Trading Scheme (EU ETS) and the Clean Development Mechanism (CDM) and Joint Implementation (JI) carbon reduction programs.
- **Voluntary Emissions Reductions**—Our lawyers advise on the development of corporate initiatives to capitalize on the emerging voluntary emissions reduction markets in the United States through “carbon footprint” reduction.
- **Carbon Markets Legislative Affairs**—Lawyers in our Climate Change practice group represent the carbon offset project development sector in the legislative arena on Capitol Hill and executive agencies such as the U.S. Environmental Protection Agency and U.S. Department of Agriculture.
- **Regulated Industries**—Andrews Kurth is legal counsel to a number of national trade associations with regard to climate change and environmental issues affecting the food processing industry, construction, agriculture and transportation sectors.
- **Greenhouse Gas Reporting Rules**—Andrews Kurth advises manufacturing facilities, trade associations, and electric generating utilities with regard to U.S. EPA’s mandatory greenhouse gas reporting rules and similar state and regional reporting programs.
- **Climate and Energy Strategic Planning**—Andrews Kurth advises a major paper products manufacturer regarding strategic planning and cost management driven by climate and energy policies at federal and state levels.
- **International Project Finance**—Andrews Kurth advises a leading international development bank with regard to “green lending” practices including climate change and greenhouse gas reduction issues relating to international project development loans.

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- **Administrative Proceedings**—Andrews Kurth represented a carbon market participant in one of the first formal administrative proceedings before the California Climate Action Reserve and represents companies in dealings with the Voluntary Carbon Standard and other market programs.
- **Emissions Trading**—Our Climate Change lawyers serve as general counsel for an innovative air emissions trading company focused on brokering, trading and creation of emissions reduction credits under the U.S. Clean Air Act.
- **Carbon Market Commercial Transactions**—One of our lawyers drafted the first template buyers-side VERPA contract used in the U.S. for the largest purchaser, at the time, of greenhouse gas emissions reductions from the voluntary carbon offset market. We advised on the first major nitrous oxide industrial gas reduction project in the U.S. and have handled a significant number of recent transactions in the North American carbon markets.
- **Carbon Offset Registries**—Our lawyers advise a major carbon registry with regard to legislative developments affecting carbon trading.
- **Carbon Market Development**—Andrews Kurth is a leading organizer of a working committee to develop a model VERPA contract for use in U.S. carbon and REC markets.
- **Transactional Due Diligence**—Andrews Kurth has counseled various companies on due diligence issues involved in merger and acquisition transactions and advised on disclosure matters in securities and corporate governance contexts.
- **Securities/Commodities Regulation**—Andrews Kurth guides financial institutions on the nature of securities and commodities regulation of carbon reduction credits, Renewable Energy Certificates (RECs) and “green tags” under U.S. law. The Firm also counsels public companies with regard to SEC disclosure requirements and advises issuers and underwriters with regard to climate change and environmental due diligence.
- **Enhanced Oil Recovery**—Andrews Kurth has drafted contracts for the sale of CO₂ for enhanced oil recovery. We recently advised on the financing and acquisition of a new EOR venture in the Permian Basin in West Texas.
- **Carbon Capture and Sequestration**—Andrews Kurth has advised market participants on contractual, policy and legal issues with respect to projects and financings, including the EPA's rules for CCS injection wells.
- **Emissions Control Technology Projects**—Andrews Kurth provides transactional and project development legal support to a greenhouse gas emissions reduction technology provider.
- **Sustainability Investment Fund**—Andrews Kurth provides corporate finance and environmental/carbon markets advice to an investment fund focused on urban sustainability strategies.
- **Transportation Policy**—Andrews Kurth represents a national trade association with regard to climate change policies affecting transportation investments, fuels regulation, and emissions inventories.
- **Biofuels/Renewable Fuels**—Our attorneys have advised clients, including a major petroleum company, regarding the U.S. EPA's renewable fuels standard and effects on gasoline and renewable fuels production. Andrews Kurth is also assisting biofuels companies with registration and pathway petitions under EPA's Renewable Fuels Standard, including assessment of lifecycle greenhouse gas requirements and monetization of additional greenhouse gas reductions.
- **Greenhouse Gas Project Development**—Andrews Kurth represents and advises various project developers and investors in greenhouse gas reduction projects including legal issues, legislative initiatives and emerging carbon markets, as well as ecosystem credits markets.
- **Ecosystem Credit Trading**—Andrews Kurth also advises companies regarding ecosystem credit markets, including wetlands banking, water quality credits, streambank and Natural Resource Damages restoration credits, species and habitat enhancement, and associated carbon or greenhouse gas reductions.
- **Litigation Assessment and Management**—Andrews Kurth provides ongoing strategic counsel on potential litigation issues implicit in proposed corporate projects and on strategies for mitigation of risks relating to climate change and climate legislation.
- **Power Regulation**—Andrews Kurth is advising a state regulatory commission and a major systems operator with regard to potential effects of climate change legislation, regulation of greenhouse gases, and renewable energy standards.