

Biden Administration Clean Energy Agenda:
Tackling Climate Change and What Does it
Mean to New York Business

Pace University
Elisabeth Haub School of Law

Continuing Legal Education Webinar
June 28, 2021

Michael N. Romita
President & CEO
Westchester County Association



Prior Legislative Efforts to Regulate GHG Emissions

American Clean Energy and Security Act of 2009 (“ACES”), H.R. 2454 – 111th Congress. Also known as “Waxman/Markey”.

A federal cap-and-trade CO₂ emissions program modeled on the European model.

Goal to reduce GHG emissions by 83 percent of 2005 baseline by 2050.

Created a renewable electricity standard of 20 percent by 2020.

Passed in the house but never brought to the Senate floor.



Prior Administrative Efforts to Regulate GHG Emissions

Massachusetts v. U.S. Environmental Protection Agency, 549 U.S. 497 (2007).

Twelve states and numerous cities sued the federal government to force the U.S. EPA to regulate carbon dioxide and other greenhouse gasses as a pollutant pursuant to the Clean Air Act. EPA had previously decided not to regulate GHG under the Bush administration. In a 5-4 decision, the U.S. Supreme Court held that greenhouse gasses are “pollutants” under the Clean Air Act and that the EPA must regulate greenhouse gasses if found to be a threat to public health . . . *(but they don’t have to be enthusiastic about it!)*

Endangerment and Cause or Contribute Findings for Greenhouse Gasses Under Section 202(a) of the Clean Air Act, 74 F.R. 66496 (Dec. 15, 2009).

The EPA’s “endangerment finding” determining that current and projected future concentrations of carbon dioxide, methane, and a number of other greenhouse gasses did, in fact, threaten public health and welfare and thus, should be regulated under the Clean Air Act.

Endangerment finding upheld in *Coalition for Responsible Regulation v. U.S. Environmental Protection Agency*, 684 F.3d 102 (D.C. Cir. 2012).

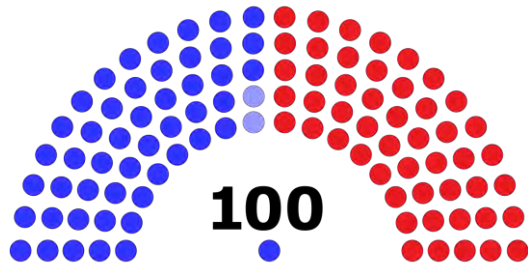
Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Final Rule, 80 F.R. 64662 (Oct. 23, 2015) (the “Clean Power Plan”). A regulatory alternative to cap-and-trade legislation and a necessary response to EPA’s 2012 endangerment finding. Under the CPP each state was given emissions limits and the freedom to adopt their own plans to meet those limits. If no plan is adopted by a state, a federal plan kicks in.

- Controversial “outside the fence line” calculations of what is “reasonable” in setting the standards for the states.
- The CPP was stayed by U.S. Supreme Court in *West Virginia v. U.S. Environmental Protection Agency*, 577 U.S. ____ (2016).
- The CPP was subsequently repealed and replaced by Trump’s “Affordable Clean Energy” rule in 2019, 84 F.R. 32520 (Sept. 8, 2019). ACE focuses on “carbon intensity” as opposed to the CPP’s focus on “absolute emissions”.
- However, earlier this year the D.C. Circuit vacated the Affordable Clean Energy Rule in *American Lung Association v. U.S. Environmental Protection Agency*, (D.C. Cir. 2021) and remanded it back to the agency. Most importantly “outside the fence line” requirements are okay under the DC Circuit opinion.
- What will Biden do with the CPP? His stated CO2 reduction goals are more aggressive than codified in the CPP (32% off of 2005 by 2030 from the power sector). The CPP remains under the U.S. Supreme Court stay.

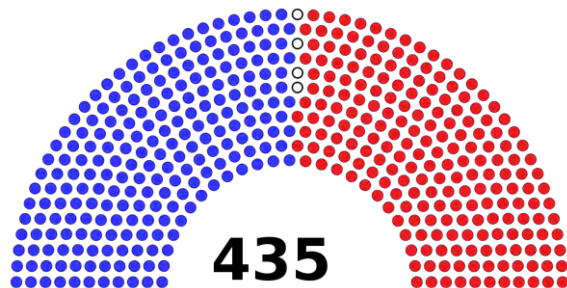


A Divided Congress Dictates a Certain Approach

*United States Senate
117 Session*



*United States House of Representatives
117 Session*



Biden Agenda

- 50 – 52 percent reduction in GHG by 2030
- Carbon Neutral by 2050

Biden Approach

- Executive Orders – *the stroke of a pen*
- Budget Priorities and Agency Funding – *power of the purse*
- Administrative Rulemakings – *non-legislation driven*
- International Engagement – *rebuilding credibility and extracting concessions abroad*

Biden Executive Orders

E.O. 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (Jan. 20, 2021)

- Revoking or suspending Trump administration executive orders on climate change;
- Direct development of a Methane Rule.

E.O. 14008 on Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021)

- Establish the Office of National Climate Policy – led by Gina McCarthy (former head of EPA under Obama);
- Establish an inter-agency climate task force.

E.O. 14030 on Climate Related Financial Risk (May 20, 2021)

- Develop a whole-of- government approach to mitigating climate related financial risk;
- Encourage financial regulators to assess climate related financial risk;
- Bolster the resilience of life savings and pensions;
- Modernize federal lending, underwriting, and procurement;
- Reduce the risk of climate change to the federal budget;
- Task NEC, OMB, Treasury and others to develop a climate-related financial risk strategy for govt. programs, federal procurement policy, the impacts of such risk on ERISA and on government regulation of the insurance industry.



Biden Budget Priorities

Biden's Proposed Budget Highlights Clean Energy in the Power Sector

- Loan guarantees to electric coops
- Expanded DOE investment in offshore wind, solar, geothermal, and domestic clean energy manufacturing
- Increased DOI funding for offshore clean energy development
- Increased funding for clean energy retrofits
- Increased funding for innovation

Biden's Proposed Infrastructure Bill Focus on Clean Energy Priorities

- An emissions neutral clean electricity standard by 2035. Paid for by reversing Trump era tax cuts and raising the corporate tax rate to 28%

Discussions Remain in Flux



Administrative Rulemakings

Hydrochlorofluorocarbon (HFC) Rule

- Slid into the December Covid relief package was the American Innovation and Manufacturing Act (AIM)
 - a little-known provision requiring EPA to regulate HFCs (a widely used coolant and refrigerant). The first national limits ever set on HFCs (thousands of times more potent than CO2 in warming the planet).
 - 86 FR 27150 May 19, 2021: EPA issued a notice of proposed rulemaking triggering the 45-day comment period. Rule expected to take effect in 2022.

Methane Rule

- Set to be proposed in late summer 2021. EPA currently conducting listening and information sessions about a rule in formation.

Clean Power Plan???

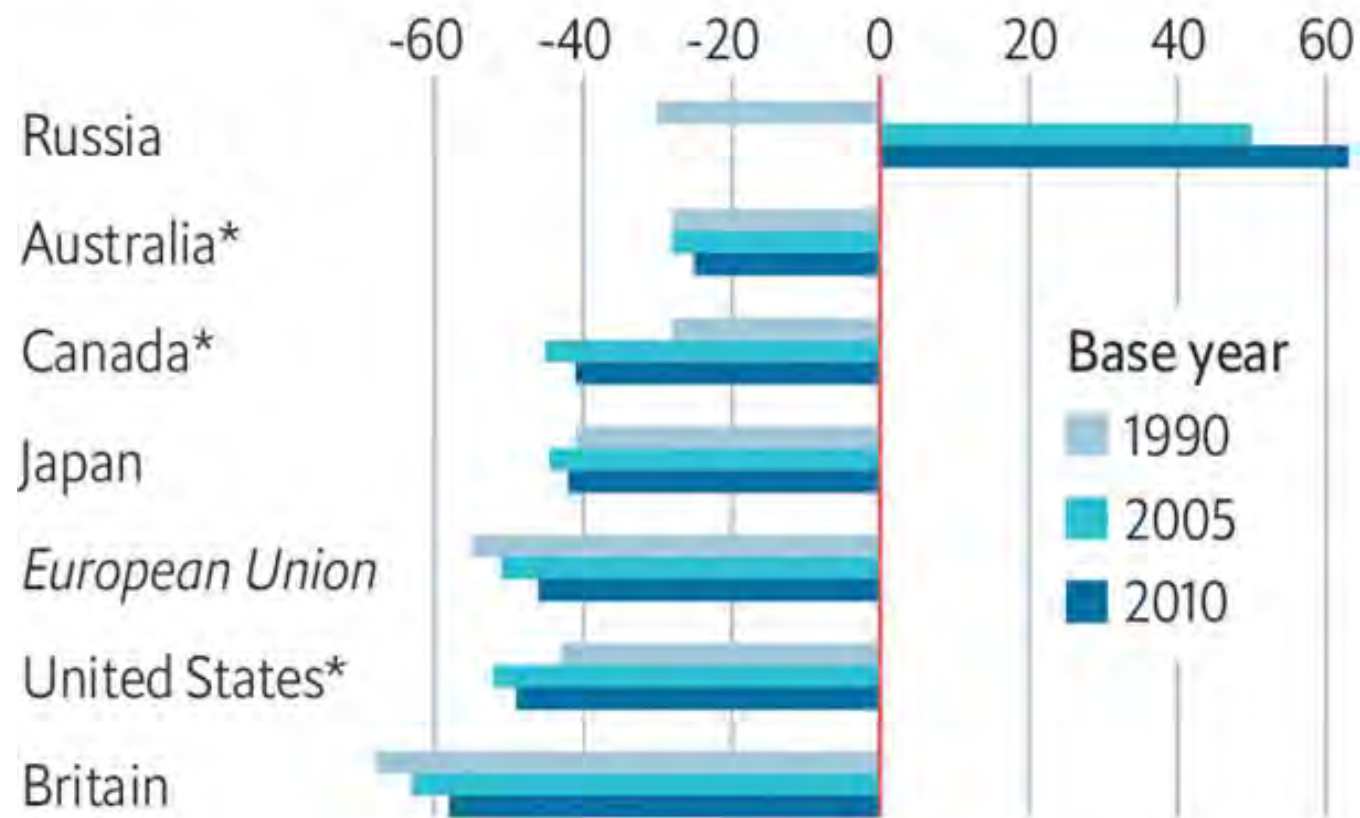


Biden Renewed International Engagement

- Re-enter the Paris Accord U.S. Pledged 50% - 52% reduction from 2005 levels by 2030 for CO2
- International Climate Summit (April 2021) – Set nationally determined contribution targets (NDCs) as required by the Paris Accord.

Emissions missions

Nationally Determined Contribution (NDC) targets 2030, % change compared with base year levels, selected countries



Source: Rhodium Group

*Upper end of range

New York State Activity

Climate Leadership and Community Protection Act of 2019 (“Climate Act”)

- 100% Zero Emissions Electricity by 2040
- 85% Total GHG Emissions Reductions by 2050
- Establishes a Climate Action Council tasked with creating a scoping plan of recommendation to meet these targets
- NYS Clean Energy Goals Already More Ambitious than Biden Targets
- Development of Large-Scale Energy Projects Through Investment
 - 9,000 MW of Offshore Wind by 2035
 - 3,000 MW of Energy Storage by 2030
 - 6,000 MW of Solar by 2025
 - Carbon Reduction through Energy Efficiency and Electrification
- Hurdles Include
 - SEQRA and permitting requirements – Article X e.g.
 - Jobs Frictions – Jones Act e.g.



WCA / Pace Energy & Climate Center Clean Energy Portal

An Information and Incentive Navigator

The WCA has partnered with Pace University's Energy and Climate Center to curate this dynamic searchable guide to available clean energy programs and incentives for businesses in Westchester and the surrounding region. Use the portal to easily access the range of programs and resources (financial and otherwise) available to help transition your business or building to a low carbon footprint.

<https://www.westchester.org/clean-energy-guide/>



Michael N. Romita
President & CEO
Westchester County Association
1133 Westchester Avenue, Suite S-217
White Plains, NY 10604
mnromita@westchester.org
(914) 948-3671