The Energy Law Advisor

published by The Institute for Energy Law of The Center for American and International Law

In This Issue

Volume 5, No.1 -- January 2011

Industry News

The New Pemex E&P Risk Service Contracts

Submitted by Carlos Morán[1], Goodrich Riquelme y Asociados and Eduardo Nuñez[2], Nuñez Rodríguez Abogados (Mexico City)

Pemex, the Mexican State-owned oil monopoly, is still one of the top producers of crude oil in the world and a major supplier of that commodity to the U.S. It is still the sole producer of crude oil, natural gas and petroleum products in Mexico and represents the most important source of income for the Mexican federal government. This article looks at the recent decline in Pemex's production, the need for additional technology and foreign resources, and recent changes within that have been implemented to help its long term sustainability.

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[1] Sub-Coordinator of the Energy Committee of the National Association of Business Lawyers ("ANADE"), Mexico.
[2] Coordinator of ANADE's Energy Committee.

Get the full story.

EPA's Regulation of Greenhouse Gases and the Three Branches of Government

Submitted by Terry W. Roberson[1], Farnsworth & VonBerg, L.L.P., Houston

The energy industry faces federal regulation of greenhouse gases. This article discusses how all three branches of the government will participate in the regulation of greenhouse gases debate over the next two years, including Texas' lawsuits that are now at the forefront of the debate. Compromise is the only measure that will ensure our energy industry operates in a green manner.

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[1] Terry W. Roberson is an associate at Farnsworth & vonBerg, L.L.P., an energy and business law firm based in Houston, Texas. He holds an LL.M. degree in International and Comparative Law from The George Washington University Law School and a J.D. from South Texas College of Law. Mr. Roberson may be reached at terry@fvllp.com.

Get the full story.

Editorial Board

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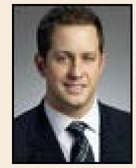
To submit an industry news item for the next issue, contact Brit Brown at bbrown@bmpllp.com and ieladvisor@cailaw.org.

Members in the News

Aaron Ball spoke on the current M&A environment at the Houston CPA Society Energy Seminar on September 23, 2010.


Aaron Ball

He recently joined Squire, Sanders & Dempsey (US) LLP after serving as Partner with Looper Reed & McGraw. He advises clients on structure, negotiation and documentation of global corporate, energy and manufacturing transactions, with a focus on the United States and Latin America.


Andrew Haynes

Andrew Haynes has joined the London office of BP.

Andrew Haynes is the Associate General Counsel, Global Corporate of BP plc, based in London. Prior to joining BP, Andrew served in a variety of roles with BG Group plc,including as Deputy General Counsel (Group), Chief Legal Counsel for South America and Chief Legal Counsel for Asia & the Middle East.

Sheila Hollis received the Charitable Foundation of the Energy Bar Association (CFEBA) Paul E. Nordstrom Service Award.


Sheila Hollis

The Award was created in memory of Paul Nordstrom, a past President of the Energy Bar Association (EBA) and motivating force in the establishment of the CFEBA. It is an award to honor and to recognize exemplary long-term service or a particularly significant example of public service by a current or past member to the community through the EBA, the CFEBA, or the Foundation of the Energy Law Journal.


Steven Otillar

Steven Otillar has joined the Houston office of Dewey & LeBoeuf LLP.

Steven Otillar joined Dewey & LeBoeuf LLP after serving as Partner for Baker & McKenzie. He has extensive experience in the development, construction, acquisition and divestiture of energy projects, with a particular emphasis on upstream projects in emerging markets. He also counsels clients on public tenders and auctions for the right to develop oil and gas and major energy infrastructure projects, including E&P blocks, pipelines, and wind, solar and natural gas power projects.

Sustaining Member **Beirne, Maynard & Parsons, L.L.P.** added **Scott Marrs**, **Richard Simses** and **Wm. Bruce Stanfill** (Houston) as advisory board members and designated **John Broussard** and **James Rogers** (Houston) as the young energy professional advisory board representatives.

ConocoPhillips has increased their membership from the Supporting to Sustaining Member level. **Jason E. Doughty** (Deputy General Counsel - E&P Americas), **Ron C. Schultz** (Senior Counsel - Corp. E&P) (Houston) and **Graham W.C. Vanhegan** (Deputy General Counsel - E&P International) join as advisory board members. **Laura Robertson** (Lead Counsel, Arbitration) (Houston) is designated as one of the young energy professional advisory board representatives.

Sustaining Member **EOG Resources, Inc.** added **Brett Brasher** (Houston) as one of the young energy professional advisory board representatives.

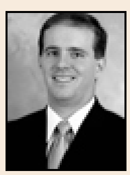
Sustaining Member **Fulbright & Jaworski L.L.P.** added **Craig Vogelsang** (Houston) as an advisory board member and designated **J. Christopher Champion** (Houston) as one of the young energy professional advisory board representatives.

Sustaining Member **Hess Corporation** added **Dennis C. Smith** (Associate General Counsel, Houston) as an advisory board representative.

A new Sustaining Member is **Jones Walker** (**Michael Donald**, **Nicole Duarte**, **Josh Norris** (young energy professional representative) and **Amy Vazquez** (young energy professional representative) (Houston), **Alida Hainkel**, **David Hunter**, **Grady Hurley**, **Marjorie McKeithen** and **Carl Rosenblum** (New Orleans), **Warren Fleet** and **Robert W. Scheffy** (Baton Rouge)).

Sustaining member **Kirkland & Ellis LLP** added **Brian Kavanaugh** and **Jeffrey Zeiger** (Chicago) as the young energy professional advisory board representatives.

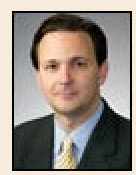
Sustaining Member **Mayer Brown LLP** added **Pablo Ferrante** (Houston) as an advisory board member.

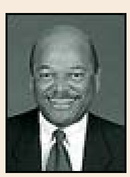

John Broussard


Chris Champion


Michael Donald


Nicole Duarte


Pablo Ferrante


Warren Fleet


Alida Hainkel


David Hunter


Grady Hurley


Brian Kavanaugh

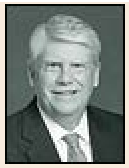

Scott Marrs


Marjorie McKeithen


Josh Norris


James Rogers

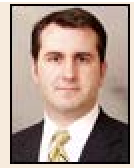

Carl Rosenblum


Robert Scheffy


Richard Simses


Bruce Stanfill


Amy Vazquez


Craig Vogelsang


Jeff Zeiger

A new Supporting member is **Allen & Overy** (**Anne Baldock**, **Michael Burns** (young energy professional representative), **Paul Griffin** and **Mark Levy** (London)).

Supporting Member **Alvarez & Marsal** added **Aaron Stai** (Houston) as an advisory board member and designated **Megan Bennett** (Houston) as the young energy professional advisory board representative.

Supporting Member **Harrison, Bettis, Staff, McFarland & Weems, L.L.P**. designated **Stephan Selinidis** as the young energy professional advisory board representative.

Supporting Member **Haynes and Boone, LLP** added **Don Jackson** as an advisory board member and designated **Liz Klingensmith** (Houston) as the young energy professional advisory board representative.

Supporting Member **Holland & Hart LLP** added **Walter F. Eggers, III** (Cheyenne) as an advisory board representative and designated **Chris Chrisman** (Denver) as the young energy professional advisory board representative.

Supporting Member **Kean Miller** has added **Michael R. Phillips** (New Orleans) as an advisory board member.

Supporting Member **Kilburn Law Firm** designated **Jordan Faulk** (Houston) as the young energy professional advisory board representative.

A new Supporting Member is **Novack and Macey LLP** (**Richard Douglass**, **Eric Macey** and **Stephen Siegel** (Chicago)).

Supporting Member **Scott, Douglass & McConnico, L.L.P.** designated **Joe T. Sanders** (Austin) as the young energy professional advisory board representative.

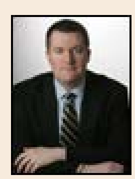
Supporting Member **UHY Advisors FLVS, Inc.** has added **Stephanie Fuller** (Houston) as an advisory board member and designated **Meredith Alfred** (Houston) as the young energy professional advisory board representative.

Supporting Member **Wyatt, Tarrant & Combs, LLP** added **Troy Nichols** (Lexington) as the young energy professional advisory board representative.


Anne Baldock


Michael Burns

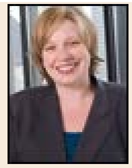

Chris Chrisman


Richard Douglass


Walter Eggers, III

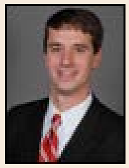

Paul Griffin


Don Jackson


Liz Klingensmith


Mark Levy

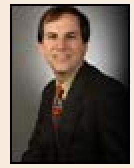

Eric Macey


Troy Nichols


Michael Phillips


Joe Sanders


Stephan Selinidis

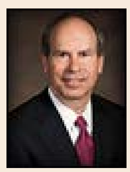

Stephen Siegel

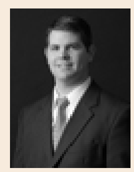

Aaron Stai

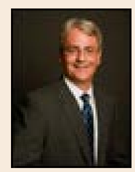
New Sponsoring Members are **Bradley Murchison Kelly & Shea** (**Leland Horton**, Shreveport), **Chesapeake Energy Corporation** (**Henry J. Hood**, Oklahoma City), **Finance Scholars Group** (**Michael Sadler**, Austin), **Ikiebe & Company** (**Joy Ikiebe**, Lagos) and **Kris Terry & Associates, Inc.** (**Kris Terry**, Dallas).

Sponsoring Member **McGinnis, Lochridge & Kilgore, L.L.P.** designated **Jonathan Baughman** as the advisory board representative.


Jonathan Baughman

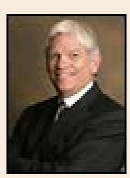

Henry Hood


Leland Horton

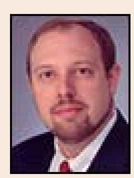

Michael Sadler

New Associate Members are **Joe Odey Agi** (Joe Agi and Associates, Abuja), **Thomas Armistead** (Deputy General Counsel, BG Group plc, Houston), **Barry C. Barnett** (Susman Godfrey, L.L.P., Dallas), **Michael L. Beatty** (Beatty & Wozinak P.C., Denver), **Ronnie C. Blackwell** (Legal Counsel, XTO Energy Inc., Fort Worth), **Charles Cavallo** (McGuireWoods LLP, Chicago), **Donald Ensing** (McGuireWoods LLP, Chicago), **David Ezarik** (Southlake), **Michael Grove** (Houston), **John J. Harris** (Meyers Nave, Los Angeles), **Carlos Morán** (Goodrich, Riquelme y Asociados, Mexico City), **Rob Robertson** (GableGotwals, Oklahoma City), **Mark S. Watt** (Perkins Coie LLP, Anchorage), **Scott Witte** (Director, Ernst & Young, Houston) and **Randel Young** (Jackson Walker, LLP, Houston).

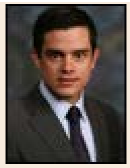

Barry Barnett


Michael Beatty

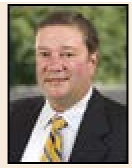

Charles Cavallo


Donald Ensing

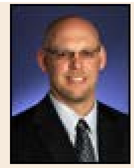

John Harris



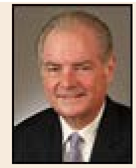
Carlos Moràn



Rob Robertson



Mark Watt



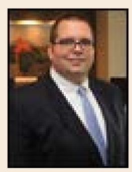
Randel Young

A new non-profit member is **La Asociación Nacional de Abogados de Empresa, Colegio de Abogados, A.C.** (**Eduardo Núñez Rodríguez** and **Carlos Morán**, Mexico City).

A new academic member is **Miranda Wainberg** (Senior Energy Researcher, Center for Energy Economics, University of Texas at Austin, Houston).

New Young Energy Professional Members are **NJ Ayuk** (Centurion Law Firm, Mississauga), **Eric Camp** (Whitaker, Chalk, Swindle & Sawyer, L.L.P., Fort Worth), **Omar Fahel** (Legal Counsel, Anadarko Petroleum Corporation, The Woodlands), **J. Austin Frost** (Haynes and Boone, LLP, Houston), **Justin Marlles** (Counsel, Petrohawk Energy Corporation, Houston), **Eric Pena** (Houston), **April Rolen-Ogden** (Liskow & Lewis, Lafayette), **J. Hunter Summerford** (Bracewell & Giuliani, Houston).

Eric Camp



Austin Frost

April Rolen-Ogden

Hunter Summerford

Participate in the IEL Advisory Board LinkedIn Group

Share your thoughts on current issues and developments in the field with other members of the Advisory Board in our new members-only IEL Advisory Board LinkedIn group. If you are not already a member of LinkedIn, click here for directions on how to join.

Visit the Advisory Board Members website

To visit the members website, click here and enter the password that was sent to you recently by email (If you need the email sent to you again, please email iel@cailaw.org). Here you will find current information about the Institute, the Advisory Board and the members themselves, including member photo rosters, committee descriptions and rosters, and a calendar of upcoming events. Here you can also access our new members-only online forum on LinkedIn, our bimonthly newsletter *The Energy Law Advisor*, our *Online Articles Index*, our other publications, and a description of Sponsorship Opportunities at upcoming programs.

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Submit your member announcements for the next issue,
with a photo if possible, to ieladvisor@cailaw.org.

Calendar of Events

62nd Annual Oil & Gas Law Conference
February 17-18, 2011 | Houston, Texas

4th Annual Power & Alternative Energy Law Conference
May 12-13, 2011 | Houston, Texas

Natural Resources Law Teachers Institute
May 25-27, 2011 | Columbia River Gorge, Oregon

2nd Conference on the Law of Shale Gas Plays
June 2011 (TBA)

3rd IEL-SEERIL International Oil and Gas Law Conference
June 27-28, 2011 | London, United Kingdom

International Oil and Gas Law, Contracts, and Negotiations: Upstream Issues and Agreements
September 19-23, 2011 | Houston

International Oil and Gas Law, Contracts, and Negotiations: Midstream Issues and Agreements
September 26-30, 2011 | Houston

Oil & Gas Law Short Course
October 17-21, 2011 | Westminster

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The New Pemex E&P Risk Service Contracts

Submitted by Carlos Morán[1], Goodrich Riquelme y Asociados and Eduardo Nuñez[2], Nuñez Rodríguez Abogados (Mexico City)

1. Why do we need a new legal framework for E&P activities in Mexico?

Pemex, the Mexican State-owned oil monopoly, is still one of the top producers of crude oil in the world and a major supplier of that commodity to the U.S. It is still the sole producer of crude oil, natural gas and petroleum products in Mexico and represents the most important source of income for the Mexican federal government.

Over the last decade, Pemex has faced a rapid declination in the production of its main fields (most notably Cantarell in the Gulf of Mexico), while other important fields have not reached their maximum production rate, such as: Chicontepec, Ku-Maloob-Zaap (the most important field today), Crudo Ligero Marino and Burgos. Whereas crude oil production reached 3.4 million bpd in 2004, in 2009 it reached only 2.6 million bpd. Between the years 2004 and 2009, crude oil production decreased at a 5.1% annual rate for a total 23% decrease.

The reserve to production indicator was at a 13.2 year level in 2002 and at a 9.9 year level in 2008 in spite of increased levels of investment in exploration and production by Pemex. Pemex's investment in exploration increased at an annual average rate of 16% from 2000 to 2008. Due to that effort, the proved reserves restitution rate increased to 71% in 2009 from 25% in 2003.

Having a gigantic field in shallow waters, such as Cantarell, where resources could be easily accessible, caused Pemex to prefer to invest in its production infrastructure rather than in exploration. Research and development of technology also fell behind. Cantarell's production represented 63% of the national crude oil output in 2004. In 2009 it accounted for only 26.3%. Between 2004 and 2009 Cantarell's production fell from 2.1 million bpd to 0.7 million bpd.

Mexico's aggregate 3P reserves are still above 43 billion bpd. However, it is forecasted that most of the future crude oil production will originate in small fields, which will in turn cause production to be more complex and expensive. Pemex estimates that approximately 56% of its prospective resources are in deep waters and 44% are in on-shore mature fields and shallow waters.

Over half of the probable and possible reserves of Mexico are in the Chicontepec field and onshore mature fields that face many challenges, such as being geographically dispersed in areas occupied by communities, being comprised of multiple oil wells that tend to show a rapid declination, and having a difficult geology (low permeability and porosity of rocks).

Pemex needs to avail itself with larger capital investment capabilities in order to face those challenges and be able to maintain competitive levels of oil and gas discovery, development and production costs; increase oil and gas reserve restitution levels; keep oil production levels in the region of 2.5 million bpd; assure supply meets demand; and, reach a 100% proved reserves restitution rate by 2012.

2. The reform to the oil legal framework

In view of the production decline, President Felipe Calderon, at the beginning of his administration, undertook to put forward a major energy reform to the Mexican Congress. In keeping with his promise, he submitted a reform bill aiming at:

1. Defining a clear energy policy;
2. Strengthening regulatory activities;
3. The creation of a corporate governance model for Pemex; and
4. A new contractual regime for Pemex;

During the consultation rounds at the Senate, two additional goals were added in order to make the energy reform as comprehensive as possible:

1. Development of renewable energy potential; and
2. Transition to renewable energy production.

The first consensus reached among the political parties at Congress was that the existing constitutional principles would be respected. The Mexican State would hence confirm its inalienable rights over oil and solid, liquid and gaseous hydrocarbons in the subsoil in accordance with Article 27 of the Mexican Constitution. Likewise, the Mexican State, through Pemex, would continue performing in an exclusive manner all strategic activities related to oil and refined petroleum products as provided by Articles 3 and 4 of the Regulatory Law on Article 27 of the Constitution in Relation to Oil (hereinafter referred to as the "Strategic Activities"), namely:

> (i) Exploration, exploitation, refining, transportation, storage, distribution and first-hand sales[3] of oil and refined oil products;
> (ii) Exploration, exploitation, production and first-hand sales of gas , as well as the transportation and storage thereof that is indispensable for interconnecting the exploitation and production chains thereof; and
> (iii) Production, transportation, storage, distribution, first-hand sales[4] of oil and gas by-products susceptible of being used as industrial basic raw materials (known in Mexico as basic petrochemicals)[5].

Interestingly enough, neither the Mexican Constitution nor secondary laws dealing with E&P expressly refer to "risk" contracts.

Pemex's monopoly does not entail a total prohibition for private or foreign companies to participate in the Mexican oil industry. Pemex may award works or services agreements under public procurement procedures as long as Pemex does not share profits or production in the exploitation of oil.

With that in mind, a number of out-of-date legal provisions were derogated and new laws and regulations were passed in 2008. The most important piece of legislation originating from the reform was the entirely new Pemex Law (*Ley de Petróleos Mexicanos*) that was enforced on November 29, 2008. The Regulations to the Pemex Law (*Reglamento de la Ley de Petróleos Mexicanos*) were enacted by the Executive Branch on September 5, 2009 and enforced the day after.

Institutional changes came along with the reform. The Mexican Congress granted more powers to the Ministry of Energy for it to become a regulator with real teeth of the activities of Pemex and its subsidiary entities. Likewise, the National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*), as a new technical agency, was formed in order to supervise exploration and production activities. The Energy Regulatory Commission was given more powers in order to issue the methodology to determine the price of first-hand sales of heavy oil, gas and basic petrochemicals.

Given the fact that one of the main purposes of the reform was to improve corporate governance in Pemex and taking into account best international practices, a new Pemex Board of Directors was formed, including independent professional experts and technical committees. The new Board of Directors also has greater administrative and management powers. Two new committees in particular will have an important role for the purposes of exploration and production projects: (1) the Committee for Acquisitions, Works and Services (*Comité de Adquisiciones, Arrendamientos, Obras y Servicios –CAAOS*) (to oversee procurement procedures); and (2) the Committee for Investment and Strategy (*Comité de Estrategia e Inversiones*).

A key feature of the new regime is the fact that exploration and production activities will no longer be subject to the traditional government procurement procedures in the Public Works Law (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*) and the Law on Acquisitions, Leases and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*). The newlyenacted Pemex Law and its Regulations contain ad hoc provisions on procurement and contracting for Strategic Activities, and mandated the Board of Directors of Pemex to issue detailed rules on that respect.

On January 6, 2010, the Board of Directors of Pemex finally enacted the new Contracting Rules for Acquisitions, Leases, Works and Services for Strategic Productive Activities of Pemex and Subsidiaries (*Disposiciones Administrativas de Contratación en Materia de Adquisiciones, Arrendamientos, Obras y Servicios de las Actividades Sustantivas de Carácter Productivo de Petróleos Mexicanos y Organismos Subsidiarios* - also known as DACs). Projects related to the Strategic Activities are to be awarded under the new procurement framework and the rest of the projects will continue to be awarded under the old framework.

3. New contracting framework

Under the new rules, three procurement procedure methods remained the same: (1) open tendering; (2) invitation to three bidders; and (3) single source procurement (direct awarding). However, there are some new features, such as: (1) a comprehensive registry for contractors; (2) pre-qualification proceedings; (3) new bid evaluation methods (i.e., the binary method, the best price method, the net current value method, the cost-benefit method, and formulas using points or percentages, or any other); (4) a consecutive discount offers modality when procuring standardized services or goods; (5) a negotiation stage where the tender guidelines that have an impact on the economic content of a bid may be negotiated; and (6) the substitution of members of a consortium prior to the execution of the agreement is allowed under certain conditions.

Pemex and its subsidiary entities will enjoy more contractual flexibility under the new framework. There are also advantages for contractors, such as transparency, publicity, equality, efficiency, competitiveness and timeliness in procurement procedures. For example, Pemex's contractors will enjoy more freedom to subcontract works or services as long as they keep the planning, direction and performance evaluation of the project. This feature will facilitate the participation of domestic and international services companies in the Mexican market, as the procurement procedures of those operators should be less bureaucratic than Pemex's.

Contract amendments are now allowed if they are motivated by: i) technology developments; ii) market price variations in materials and equipment; iii) new information; and iv) other efficiency reasons.

The new framework provides for more flexibility regarding the assignment of rights and obligations under a Pemex contract or the assignment of an interest in a consortium that has been awarded a Pemex contract. This is an important change, taking into account that, under the old framework, contractors could only assign earnings under Pemex contracts.

Among the finance-related features of the new framework, we may find that: i) bidders will have to be rated by rating agencies registered with the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (BBB by Fitch, Standard & Poor's or HR Ratings de Mexico, or Baa2 by Moody's); ii) Pemex is expressly allowed to receive corporate guarantees from bidders' parent companies; iii) consideration by Pemex will continue to be paid in cash (as opposed to oil barrels); iv) compensation formulas may now include production incentives based on indicators customarily used in the industry, such as production volumes and costs, incorporated and recovered reserves, timely performance and the creation of economies of scale; v) compensation adjustments may be stipulated in the contracts and take into account domestic or international indexes, public information or price indicators published by specialized renowned institutions; and vi) additional compensation may be agreed upon in the contract but must be based on time efficiency if it results in a reduction of Pemex's costs, or on the extent to which Pemex may benefit from new technologies provided by the contractor, or on efficiency that translates in higher profits for Pemex.

From a liability standpoint, contractors should have more certainty under the new framework when it comes to the degree of their exposure to liability. A fairer distribution of liabilities is now allowed. Knock-for-knock provisions, limits of liability and exclusion of consequential damages may be incorporated into Pemex's E&P contracts. However, the parties to a consortium awarded a Pemex contract will remain joint and severally liable vis-à-vis Pemex irrespective of the value of their interest in the consortium or their tasks in the operations.

Another key feature of the reform that oil services companies should take into account is the new Registry of Suppliers and Contractors (*Registro de Proveedores y Contratistas de los Organismos Descentralizados*) that Pemex will be obligated to maintain. The Registry shall keep records of E&P contracts; contractors and their certifications, production capabilities and evaluations; penalties imposed on contractors; contractors forbidden to bid; as well as contractors' performance regarding, *inter alia*, timely delivery, quality, safety, environmental compliance and labor responsibility.

A major controversy resulting from the 2008 reform is the prohibition established in the Pemex Law for Pemex's contractors to register Mexican oil reserves as assets of their own. The same provision stipulates that only the Mexican State shall register those reserves as part of their patrimony. How far that provision reaches is still somewhat unclear. The Mexican Ministry of Energy maintains a record of the reserves under the Mexican subsoil, but would that provision apply as well to the registration of reserves in contractors' financial statements? Would simply registering a legal right to produce Mexican oil be in contravention of that provision? Would it be so if the registration was made in financial statements to be filed with a non-Mexican securities regulator? Would that registration impair the Mexican State's ability to register its reserves? If so, what would the sanction be under Mexican law?

4. E&P risk service contracts and the South Region projects

The Contracting Rules detail a non-exclusive list of Pemex's E&P contracting modalities:

I. Exploration contracts;
II. Oilfield development contracts;
III. E&P risk services contracts (*contratos integrales*); and
IV. Transactional contracts.

The only way for private companies to participate in integrated oil and gas exploration and exploitation activities in Mexico will be to enter into the E&P risk services contract.

The E&P risk services contract is meant to be used in on-shore mature fields (Chicontepec, the North Region and the South Region) and deep-water projects. The aggregate prospective resources of those projects total 6 billion barrels.

So far, Pemex-Exploración y Producción (a subsidiary of Pemex - "PEP") has published the model contract that it expects to use for three on-shore mature oilfield areas in the state of Tabasco, namely: Carrizo, Santuario and Magallanes (all in the South Region).

Pemex's Board of Directors approved the model contract on November 24, 2010. Coincidentally, in early December 2010, the Supreme Court confirmed the constitutionality of certain challenged articles of the Pemex Law and the Regulatory Law on Article 27 of the Constitution in Relation to Oil.

According to the draft tender guidelines, in order to pre-qualify to participate in the South Region Contract Areas bidding procedures, oilfield operators will have to prove they have operated fields with a certain minimum total production during the previous year and have invested a certain minimum amount in E&P projects. For example, in the awarding of the Contract Areas, those pre-qualification requirements will be as follows:

Contract Area	Minimum Production (bpd)	Minimum Investment (USD)
Magallanes	30	100
Santuario	10	35
Carrizo	10	35

A consortium may add the production or investment of different companies within the same corporate group in order to fulfill those pre-qualification requirements. The production or investment of non-related entities cannot be added for that purpose.

The tender security that Pemex plans to require from bidders for the South Region projects will be a stand-by letter of credit issued by a financial institution operating in Mexico in the amount of USD 2 million, which shall initially guarantee the completion of the minimum evaluation program and subsequently the conclusion of the minimum works program. Performance security will be required in the form of a corporate guarantee and a stand-by letter of credit issued by a financial institution operating in Mexico.

The expected duration of the South Region contracts is 25 years; which will be divided into an evaluation phase and a development phase. Pemex may agree to an extension of the term.

The purpose of the contracts is the evaluation/exploration, development and production of oil and gas within the Contract Area. Bidders may bid for as many of those three Contract Areas as they wish. Contract Areas may be reduced or extended under certain conditions.

According to PEP, as of January 1, 2010, the Carrizo area reported oil reserves in the region of 49 million barrels while gas reserves amounted to 5.8 billion square feet. The initial Contract Area for this project will be 13 square kilometers.

The initial Contract Area of the Santuario project will be 17.6 square kilometers. As of January 1, 2010, oil reserves in this area reached 39.6 million barrels and gas reserves 25.5 billion square feet.

The Magallanes area is by far the largest of these three projects in the South Region. Its initial Contract Area will be in excess of 169 square kilometers. As of January 1, 2010, reserve levels exceeded 92 million barrels of oil and 93 billion square feet of gas.

The Magallanes and Santuario areas currently produce nearly 14,000 barrels per day.

The South Region contracts will be awarded to the consortium offering the lowest fee per barrel, as the only consideration payable under the awarded contract will be a fee per barrel plus a partial reimbursement (e.g. 75%) of the contractor's costs and capital expenditures. The fee per barrel will be adjusted on the basis of the contractor's revenues/expenses ratio. PEP will only pay the contractor once it has commenced the delivery of hydrocarbons to PEP during the development phase. Consideration will be adjusted every six months in accordance with inflation as reported by the U.S. Bureau of Labor Statistics price indexes. Payments by PEP will be subject to PEP's available cash flow for the project. Any difference owed to the contractor will be carried forward. The available cash flow will be based on PEP's forecasted gross income from the project based on an average of the West Texas Sour spot price, less PEP's payable taxes.

The awarded contractor will have to provide all of the funding required to cover all of the expenses related to the services rendered (except PEP's expenses), including wages, technology, materials and financing costs.

During the evaluation phase, the contractor will have to comply with a minimum evaluation program. This program will have a minimum value in U.S. dollars and include, *inter alia*: geological, petro-physical and reservoir studies; interpretation of seismic data; testing of different practices and technologies; well drilling for information gathering purposes; building drilling and production infrastructure; and, a knowledge exchange program with PEP. The evaluation phase shall last 24 months according to the draft tender guidelines.

Contractors will be allowed to abandon the Contract Area upon providing a 3-month notice to PEP. To invoke that right, contractors should have fulfilled certain abandonment requirements and completed the minimum evaluation program or the minimum works program, as the case may be, depending on the phase of the contract. In the event of abandonment, contractors will not be entitled to any payment from PEP (except for the reimbursement of authorized abandonment expenses).

If the contractor decides to carry on with the project after the evaluation phase, it shall submit a development plan for PEP's approval. The development plan shall not contain excessive expenses (beyond what PEP is willing to reimburse) but fulfill the minimum works program agreed with PEP, which contains minimum investment obligations for the development phase. The development plan must also: forecast an optimal recovery of hydrocarbons in the expected economic scenarios; comply with feasibility requirements; meet safety, security and environmental standards; and contain mechanisms for the promotion of technology transferring, training, education, research and development, sustainable development and national content[6]. PEP may suggest amendments to the development plan so long as the amendments do not refer to technical specifications that have an adverse impact on the technologies proposed by the contractor. The contractor may, from time to time, propose amendments to the development plan.

Throughout the duration of the contract, the contractor will also have to submit annual work programs along with budgets of expenses to PEP. A Steering Committee formed by two representatives of PEP and two representatives of the contractor will review those programs. The Steering Committee will oversee the performance of the services from a contractual viewpoint and try to resolve disputes before they turn into arbitration proceedings.

PEP will annually evaluate the contractor using key performance indicators, such as production volume; on budget performance; health, safety and environmental protection; and national content. PEP shall use the evaluation scores to decide whether or not to extend the Contract Area upon contractor's request or help PEP decide to award another contract in the future to the same contractor.

The contractor shall transfer to PEP the ownership title to all pipelines, facilities, drilling and production equipment, other equipment, machinery, tools, goods, supplies, plants, and technical documents acquired by the contractor for the rendering of the services to PEP. Although the contractor may offer to PEP the building infrastructure required for the project (to be reimbursed for it), PEP may decide to build it itself or hire a third party to build it. PEP may also request the contractor to use existing infrastructure in the area.

Pemex's unionized employees currently working in some facilities in the Contract Area will remain subordinated to PEP and PEP shall be responsible for those workers as their employer. PEP shall coordinate their activities as per the work program of the project.

The contractor is expressly authorized to assign the contract to a company controlled by the same corporate group; provided, however, that the assignment refers to the entire contract as opposed to a portion thereof. The assignment of earnings under the contract is possible but, subject to PEP's prior consent, should not be unreasonably withheld. At any time the contractor may request Pemex's authorization to assign the contract to another qualified bidder or third party with adequate financial and technical capabilities.

In the event a reservoir in the Contract Area extends beyond the limits thereof, PEP may request the contractor to negotiate and execute a unitization agreement with either one or more operators or with PEP itself.

It will be the contractor's duty to apply for and obtain any governmental or environmental permits required for the rendering of the services to PEP.

It should be noted that Mexican law does not establish limits for civil liability for losses and damages arising out of or in connection with environmental disasters caused by the production of oil. As the model contract stands now, the contractor will be solely and unlimitedly liable for environmental damages occurring in the Contract Area as well as for any direct and immediate losses and damages resulting from a loss of hydrocarbons. Consequential or punitive damages are excluded.

The contractor could be a Mexican-specific vehicle company formed by the members of a consortium for the sole purpose of performing the services under the awarded contract. The draft tender guidelines do not stipulate a minimum fixed contributed capital for the contractor. At any rate, all of the members of the consortium will have to sign the awarded contract in order to remain jointly and severally liable, along with the contractor, to PEP.

In the event the contractor is a consortium having Pemex as a member, the consortium shall appoint a consortium leader (other than Pemex) to act as operator of the Contract Area and act as a liaison between the consortium and PEP. The operator will be in charge of the management of the consortium's activities in compliance with the PEP contract, the procurement strategy of the consortium and day-to-day decisions. The operator would be subject to the decisions of a Coordination Committee formed by the members of the consortium (the operator would chair the committee). The consortium would be deemed as a private entity or joint venture in spite of Pemex's participation therein.

The contractor, in accordance with the best international practices and standards in the industry, shall purchase insurance covering all risks inherent to the performance of the services for PEP.

The PEP contracts will be subject to Mexican law and any disputes arising therefrom shall be resolved under the ICC Rules of Arbitration. The contracts shall stipulate a payment calculation disputes mechanism under which such disputes will be resolved by a technical expert's decision.

With regards to potential Mexican tax legislation changes, the model contract simply sets forth that if those changes affect oil and gas services providers, the parties to the contract may amend the contract if deemed beneficial.

5. Closing remarks

In order to benefit from larger capital investment capabilities, technology and the efficiency of international services companies, Pemex is now expressly allowed to award the exploration, production and operation of large blocks of oilfields to those companies for a long term under E&P risk services contracts. The usual practice of Pemex hiring and managing numerous contractors in each field should increasingly become the exception rather than the rule.

The new E&P risk services model contract was designed by a specialized team in Pemex and the Mexican government during an open, inclusive and participative process in which the opinions of experts, interested companies and internationally well-respected consultants were taken into account.

Pemex expects to attract the attention of international oil services providers and oil companies in view of the potential of the oilfields in which the new model contract will be used, the fact that contractors' supplies are regionally available and a balanced economic model behind the contract; an economic model where incentives are clear and simple, economic parameters are certain and a competitive investment return is offered.

Even though the oil industry worldwide expected a deeper reform to the Mexican oil regime, we believe that the reform as passed amounted to a real breakthrough in Mexican oil history, as an oil legislation reform of this magnitude had not been seen in decades in our country.

It remains to be seen how much interest the resultant new model contract attracts internationally. Undoubtedly, the success of the new model contract will depend to a great extent on the economic model on which it is based.

According to PEP, the procurement procedure leading to the awarding of the South Region projects will formally be launched in February and the contracts are to be awarded in mid-July.

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[1] Sub-Coordinator of the Energy Committee of the National Association of Business Lawyers ("ANADE"), Mexico.

[2] Coordinator of ANADE's Energy Committee.

[3] First-hand sales are defined in Article 21 of the Regulations to the Regulatory Law on Article 27 of the Constitution in Relation to Oil as the first sale of hydrocarbons conducted by Pemex to a third party for its delivery in Mexican territory.

[4] It must be noted that pursuant to the Natural Gas Regulations (article 3) and the Liquefied Petroleum Gas Regulations (article 4) imports and exports of gas may now be performed freely by private parties in terms of the Foreign Trade Law; provided, however, that the storage, distribution and transportation of gas be conducted by holders of permits issued by the Ministry of Energy through the Energy Regulatory Commission (*Comisión Reguladora de Energía*).

[5] Basic petrochemicals are ethane, propane, butane, pentane, hexane, heptane, naphtha, raw materials for the production of carbon black, and methane when recovered from the extraction of hydrocarbons in Mexican oil fields and utilized as a raw material in industrial petrochemical processes. Non-basic petrochemicals (also known as secondary petrochemicals) may be produced, stored and commercialized by private entities. Examples of secondary petrochemicals are ammonia, ethylene, propylene, toluene, formaldehyde, nitric acid, ethylene dioxide resins, polyester, synthetic fibers and polyurethane foam. The distinction between basic petrochemicals and secondary petrochemicals in Mexican law is based on political or economic criteria rather than scientific or chemical ones.

[6] It should be noted that national content requirements may not contravene the ten free trade agreements containing a public procurement procedure section that Mexico has adopted.

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The Energy Law Advisor
published by The Institute for Energy Law of The Center for American and International Law

EPA's Regulation of Greenhouse Gases and the Three Branches of Government

Submitted by Terry W. Roberson[1], Farnsworth & VonBerg, L.L.P., Houston

The main environmental issue facing the energy industry is federal regulation of greenhouse gases ("GHGs"). All three branches of the government will participate in the GHG debate over the next two years. The White House will continue to regulate what it has been unable to legislate. The 112th Congress has proposed legislation to implement democratic consent. Further, the Supreme Court may have to determine whether such emissions contribute to climate change.

Background

After 35 years of research, the legal authority for the federal government to regulate air pollution was granted in 1990. The Air Pollution Control Act of 1955 was the first federal legislation that issued research funds for air pollution. The Clean Air Act of 1963 established a federal program with the U.S. Public Health Services and authorized research into controlling air pollution. The Air Quality Act enacted in 1967 permitted the federal government to conduct extensive ambient monitoring studies and stationary source inspections. The Clean Air Act of 1970 ("CAA") authorized the creation of federal and state regulations to limit emissions from stationary and mobile sources. The major regulatory programs facing stationary sources were: the National Ambient Air Quality Standards ("NAAQS"), State Implementations Plans, New Source Performance Standards, and National Emission Standards for Hazardous Air Pollutants. Additionally, the U.S. Environmental Protection Agency ("EPA") was created on May 2, 1971 to implement the CAA regulations. The 1977 amendments to the CAA authorized provisions for the Prevention of Significant Deterioration ("PSD") or air quality in areas attaining the NAAQS. The 1990 amendment required all states to develop operating permit programs for stationary sources. Every major industrial source of air pollution must obtain a Title V Operating Permit, which includes air emission control requirements.

Administrative Branch

Recent Presidents were required to determine whether GHGs are pollutants and subject to regulation by the EPA. The Clinton administration found that GHGs were pollutants subject to regulation; however, the Bush administration concluded they were not. The judicial branch entered the debate in April 2007, when the U.S. Supreme Court held in *Massachusetts v. EPA* that the CAA authorizes the EPA to regulate GHGs, including carbon dioxide[2]. It ruled that the EPA was required to determine if GHG emissions contribute to climate change. On December 18, 2008, the EPA issued a memorandum entitled "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." This was the EPA's first step to determine whether carbon dioxide is a regulated pollutant requiring a best available control technology in new PSD permits.

When President Barack Obama took office in January 2009, the EPA initiated the process to regulate GHGs. In April 2009, the EPA responded to the Supreme Court by issuing a proposed finding that GHGs threaten public health and contribute to global warming under Section 202(a) of the CAA. As a prerequisite to finalizing EPA's Corporate Average Fuel Economy (CAFÉ) standards for light duty vehicles, the EPA found in December 2009 that six GHGs endangered the public health and welfare and the emissions of these gases from new motor vehicles contribute to GHG pollution[3]. On March 29, 2010, the EPA signed a notice that it will continue to apply the December 2008 memorandum's interpretation of "subject to regulation." It finalized the regulation of GHG emissions from light duty vehicles on April 1, 2010. The CAA permitting program emissions thresholds for pollutants from stationary sources, e.g., factories, are 100 and 250 tons a year. However, GHGs are emitted in much higher volumes than other air pollutants so the threshold must be reduced by a tailoring rule. Otherwise, the level of permits in a state could increase from 20 to 2,000 due to GHGs. The EPA issued its final GHG tailoring rule on June 3, 2010 requiring GHGs be regulated under the CAA's PSD and Title V Operating Permit programs. State authorities had until August to notify the EPA whether they must make rule changes to implement the new regulations and when such changes would occur.

The Obama administration has been utilizing the EPA to regulate GHGs because they were unable to pass such legislation. The November 2010 election will affect U.S. energy policies, in particular cap and trade and the EPA regulation of greenhouse gases. Republicans gained over 60 seats in the House; the biggest shift since the Democrats lost 75 seats in the 1948 election. In a humbling November 3, 2010 news conference, the President stated both parties must unite and engage in an honest and civil debate about the issues[4]. The President's agenda is to reduce our deficit, provide clean energy initiatives, ensure our children have the best education in the world, and invest in technology that enables us to keep our competitive edge in the global economy. President Barack Obama faces a Republican held House that insists on cutting taxes and spending. The President and Congressional leadership must compromise to achieve any success on GHG legislation in the 112th Congress.

Legislative Branch

Congress faced regulation of GHGs in proposed cap and trade legislation during the past two years. This issue began gaining traction during the 2008 election cycle and was at its pinnacle prior to health care reform. On June 26, 2009, the House of Representatives passed the American Clean Energy and Security Act (H.R. 2454) to create jobs, increase energy independence, reduce pollution, and keep energy costs low[5]. Despite the success of cap and trade in the House, it continues to languish in the Senate. The first cap and trade bill, the Clean Energy Jobs and American Power Act of 2009 (S. 1733), was passed by the Senate Environment and Public Works Committee in November 2009 and placed on the Senate Legislative Calendar in February 2010. Next, Debbie Stabenow (D-MI) introduced the Clean Energy Partnerships Act of 2009 (S. 2729), which was referred to the Committee on Environmental and Public Works in November 2010. Eventually, a bipartisan effort began in October 2009 when Lindsay Graham (R-SC) and John Kerry (D-MA) announced their effort to pass climate change legislation in an opinion piece in *The New York Times*[6]. After Lindsay Graham (R-SC) dropped out in April 2010, John Kerry (D-MA) and Joe Lieberman (I-CT) drafted the most recent Senate counterpart, the American Power Act, that was released on May 12, 2010 and revised in July 2010[7]. Meanwhile, on December 9, 2010, Ted Poe (R-TX) introduced the Ensuring Affordable Energy Act (H.R. 6511), which has 25 original co-sponsors[8]. On the same day, the bill was referred to the House Committee on Energy and Commerce. The bill expressly denies appropriation of funds to the EPA to implement or enforce a cap and trade program. Democrats could not pass cap and trade legislation while controlling a majority of both the House and Senate. Therefore, the White House and Congress must compromise to ensure GHG regulations pass.

Due to Congress' lack of success, the White House faces bipartisan scrutiny of the EPA's GHG regulations. As stated above, the EPA's endangerment findings face fierce opposition in the legislative and judicial branches. In June 2010, Lisa Murkowski (R-AK) introduced a resolution that nullifies the endangerment finding rule that was defeated in the Senate 47-53. In addition, Jay Rockefeller (D-WV) introduced the Stationary Source Regulations Delay Act in March 2010 that would suspend regulations for two years[9]. And, as stated above, the Ensuring Affordable Energy Act expressly denies the appropriation of funds to the EPA to implement or enforce "any statutory or regulatory requirement pertaining to the emissions of one or more greenhouse gases from stationary sources." On December 28, 2010, Fred Upton (R-MI), chairman of the Houston Energy and Commerce Committee, stated Congress should overturn EPA's proposed GHG regulations outright or enter a bipartisan compromise to delay its regulations until the courts rule on the EPA's endangerment finding and proposed rules[10].

The EPA is expanding the industries to include permits for the exploration and production of natural gas. In December 2010, it issued a rule requiring that facilities that inject carbon dioxide underground must report GHG data to the EPA annually[11]. This measure directly affects all operators that use hydraulic fracturing to capture natural gas and service companies that provide goods or services for fracking. In particular, numerous separate companies would be required to disclose confidential data regarding all fluids used in the process of fracking a particular well. The Federal Trade Commission submitted a comment to the EPA warning that this rule would make public competitively sensitive business information[12]. Congress must determine whether a federal regulatory agency may require corporations to produce confidential data, *i.e.*, the Coca-Cola formula, which will be made public in an effort to protect the public.

Judicial Branch

The judicial branch granted the EPA its authority to regulate GHGs. As a result of the Bush administration's delay in implementing such regulations, 11 states, three environmental groups, and two cities sued the EPA over its failure to update the pollution standards for fossil fuel power plants and petroleum refineries[13]. These two industry sectors emit nearly 40 percent of the GHGs in the U.S.; primarily carbon dioxide and methane. Prior to the settlement, the EPA implemented the GHG permit program that requires businesses to consider the best available control technology for reducing GHG emissions when they build a new plant or modify an existing one. The regulations seek to curb GHGs from power plants and other large stationary sources; however, the petitioner sought stricter rules. Under the settlement agreements, the EPA will propose new standards for fossil fuel power plants by July 26, 2011, and for petroleum refineries in December 10, 2011, and will issue final regulations in May 26, 2012 and November 10, 2012, respectively[14].

Several states and energy organizations have filed multiple suits against the EPA challenging the new rules claiming the underpinnings that GHGs threaten public health by warming the planet are based on faulty data. The remainder of the article will discuss Texas' suits, because it has the most legal arguments and most recently filed suits.

On June 30, 2010, the EPA announced its final disapproval of Texas' Flexible Permits Program and imposed the federal government's judgment on the state[15]. They claim that Texas industries were allowed to pollute at higher levels and the state had no way of determining if the flexible permit holders actually complied with authorized limits; therefore, the permits would not hold up in federal court. Texas claims the rules are overreaching by the federal government and will harm its economy. For example, Congress found under Section 101 of the CAA that air pollution prevention and control "is the primary responsibility of the States and local governments." Texas legal battles are an effort to hedge President Obama's pressing regulations after Congress failed to pass cap and trade.

Texas is the only state that refuses to comply with the rules that took effect on January 2, 2011. The EPA announced in December the takeover for companies seeking to build or upgrade power plants or oil refineries in Texas, once it refused to award permits at the level of pollution the EPA mandates. Texas filed a motion for stay of the regulations in the U.S. Court of Appeals for the Fifth Circuit; however, the appellate court denied its motion on December 29, 2010[16]. The Fifth Circuit stated in the ruling that it still has the EPA's motion for dismissal or, in the alternative, to transfer to the D.C. Circuit before the panel. The next day, the EPA issued an interim final rule to seize control of GHG permitting in Texas[17].

Texas immediately filed suit in the D.C. Circuit on December 30, 2010, challenging the EPA's regulations of GHGs on a new legal issue: did the EPA abuse its administrative powers by taking control of the permitting program without proper public notice? On the same day, Texas filed its emergency motion for a stay pending review to block the EPA from taking over permitting on January 2, 2011, and the appellate court granted the emergency. After the appellate court had a sufficient opportunity to consider the merits of the emergency motion, it lifted the brief stay on January 12, 2011. The Court's denial to prevent the EPA from federalizing the regulation of GHGs in Texas does not affect its ability to continue its suit against the EPA.

Conclusion

The White House will continue to implement GHG regulations on various industries without legislation from Congress. The 112th Congress faces two huge obstacles: (1) a divided Congress, a Republican held House and a Democrat held Senate, and (2) the presidential election in November 2012. Congress must begin a transparent debate on this issue now because politicians will be busy debating campaign promises, not legislation, in 2012. The U.S. Court of Appeals has several cases on their docket that seek to determine Congress' intent in regulating the CAA and whether such emissions contribute to climate change. The White House, Congress, environmental groups, energy organizations, and energy industry must compromise to ensure that our energy industries operate and produce goods in a green manner.

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[1] Terry W. Roberson is an associate at Farnsworth & vonBerg, L.L.P., an energy and business law firm based in Houston, Texas. He holds an LL.M. degree in International and Comparative Law from The George Washington University Law School and a J.D. from

South Texas College of Law. Mr. Roberson may be reached at terry@fvllp.com.

[2] *See Massachusetts v. EPA*, 549 U.S. 497 (2007).

[3] *See* Endangerment and Cause or Contribution Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule, 74 Fed. Reg. 66496 (2009) (to be codified at 40 C.F.R. § I).

[4] *See* The White House, Press Conference by the President, Nov. 3, 2010, *available at* http://www.whitehouse.gov/the-press-office/2010/11/03/press-conference-president (last visited Jan. 11, 2010).

[5] *See* Speaker Nancy Pelosi, American Clean Energy and Security Act, *available at* http://www.speaker.gov/newsroom/legislation?id=0322 (last visited Nov. 30, 2010).

[6] *See* The New York Times, Yes We Can (Pass Climate Change Legislation), Oct. 10, 2009, *available at* http://www.nytimes.com/2009/10/11/opinion/11kerrygraham.html?_r=1 (last visited Jan. 10, 2011).

[7] *See* The New York Times, Kerry, Lieberman Push Their Own Utility-Only Climate Bill as Reid's Decision Nears, July 14, 2010, *available at* http://www.nytimes.com/cwire/2010/07/14/14climatewire-kerry-lieberman-push-their-own-utility-only-69652.html?adxnnl=1&adxnnlx=1279224042-rEUszfsIUKgzI4Lb0HWXKg (last visited Jan. 10, 2011).

[8] *See* The Library of Congress, H.R.5611, *available at* http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.6511: (last visited Jan. 10, 2011).

[9] *See* The Library of Congress, S.3072, *available at* http://thomas.loc.gov/cgi-bin/query/z?c111:S.3072: (last visited Jan. 10, 2011).

[10] *See* House Energy & Commerce Committee, Press Release, December 28, 2010, available at http://energycommerce.house.gov/news/PRArticle.aspx?NewsID=8136 (last visited Jan. 15, 2011).

[11] *See* Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide; Final Rule, 75 Fed. Reg. 75060 (2010) (to be codified at 40 C.F.R. §§ 72, 78, and 98).

[12] *See* Federal Trade Commission, FTC Submits Comment to EPA on Proposed Rule Concerning Confidentiality of Greenhouse Gas Data, Oct. 8, 2010, *available at* http://www.ftc.gov/opa/2010/10/greenhouseelpaso.shtm (last visited Jan. 10, 2011).

[13] The Petitioners include: the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York, Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund.

[14] *See* U.S. Environmental Protection Agency, Addressing Greenhouse Gas Emissions, *available at* http://www.epa.gov/airquality/ghgsettlement.html (last visited January 15, 2011).

[15] *See* U.S. Environmental Protection Agency, EPA Disapproves Texas Flexible Air Permit Program, June 30, 2010, *available at* http://yosemite.epa.gov/opa/admpress.nsf/0/1D91BF2747C5682B8525775200626AA6 (last visited January 17, 2011).

[16] *See State of Texas v. EPA*, order denying the motion for stay, *available at* http://static.texastribune.org/media/documents/Order_Denying_Stay_-_Dec_29_-_2010.pdf (last visited January 15, 2011).

[17] *See* EPA interim final rule, December 30, 2010, http://origin.www.gpo.gov/fdsys/pkg/FR-2010-12-30/pdf/2010-32786.pdf.

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