

CLIMATE CHANGE AND CLEAN TECHNOLOGY

Climate change is an important and complex issue that is changing the way businesses operate while inspiring innovation in renewable energy and energy efficiency. To help clients address the myriad of business interests affected by greenhouse gas (GHG) regulation and mandated emissions reductions, Sheppard Mullin has developed a multidisciplinary climate change and clean technology team.

This multidisciplinary approach is essential to manage the business risks and opportunities presented in this emerging field, including environmental, land use, insurance, intellectual property, corporate, government relations, government contracts, regulated industries, environmental litigation and toxic tort law. We represent the needs of both early stage and mature companies that face a complex mix of regulatory issues, shifts in public policy, fund-raising demands, complicated investor relations and the desire for sustainability.

Carbon Projects and Trading - We help clients enter and participate in global carbon markets, advising them on participation in emissions trading in North America, Latin America, Europe and China. Companies turn to us to create, acquire and sell emission offset and emission reduction credits and acid rain allowances under the United States Clean Air Act, SCAQMD RECLAIM and other new source review and air credit programs. Companies not subject to regulatory emission reduction obligations seek experience, skills, contacts and other benefits from reducing or offsetting their greenhouse gas emissions. Many carbon reduction projects create viable, diversified investment opportunities, particularly for energy and electric generating companies.

Corporate - We have the experience to turn clean technology entrepreneurs' business plans into viable emerging companies. We assist management and directors in developing corporate climate change policies and programs. For our public clients, we help with responses to increased pressure for disclosure and assessment of the climate change impacts on operations as well as their obligations under U.S. Securities and Exchange Commission rules and the Public Company Accounting Reform and Investor Protection Act of 2002 (Sarbanes-Oxley Act). Taking into account future business lines, energy resources and efficiencies, environmental sustainability, and insurance needs, we help companies develop new operating strategies.

Intellectual Property - As innovation in clean technologies grows, the protection of intellectual property becomes a critical component of business strategy. We help companies develop, plan, and protect their IP portfolios via patent and trademark filings, copyright maintenance, proposed guidelines for business practices, and the careful application of contractual provisions addressing invention assignment, non-disclosure issues, and non-competition.

Land Use - Developers and local, state, and federal government agencies involved in approving new development projects are increasingly concerned with how to effectively respond to climate change issues. In particular, addressing climate change and its potential impacts in environmental review documents prepared pursuant to the CEQA and NEPA has become a pressing concern in the development community. We counsel clients on the potential air quality, sea level change, and natural resource impacts that must be assessed in environmental review documents.

Litigation - Increased public and regulatory attention to climate change issues has led to increased and multi-faceted litigation. Our litigators are called upon to advise clients with respect to Clean Air Act challenges, NEPA and CEQA claims, common law nuisance litigation, federal-state preemption lawsuits and corporate liability and disclosure issues. We represent potentially responsible parties in administrative and enforcement proceedings and litigation under a variety of environmental statutes and regulations. Disputes can involve governmental authority to regulate GHG emissions and their impacts, including land use development projects under the CEQA and NEPA, as well as the defense of toxic tort, nuisance and environmental justice claims.

Policy Monitoring, Rulemaking and Advocacy - Early involvement and advocacy in GHG program rulemakings can make a critical difference in future cost-effective compliance. We monitor international, national, state, and local climate change policy, legislative and regulatory developments, and advocate our clients' position on developing legislation and regulation.

Regulatory Compliance - We help clients comply with the numerous laws and regulations mandating GHG emission reductions on the state and federal levels, including California's Global Warming Solutions Act, the Northeast and Mid-Atlantic Regional Greenhouse Gas Initiative, and the Western Climate Initiative (WCI). We also have experience with environmental rulemaking, regulatory compliance and enforcement at all levels of government and in all air pollutant control and air credit trading programs.

We represent clients before local, state and federal environmental air agencies such as the South Coast Air Quality Management District ("SCAQMD"), the Bay Area Air Quality Management District ("BAAQMD"), the California Air Resources Board ("ARB"), the United States Environmental Protection Agency ("EPA"), the state utility and energy commissions and the Federal Energy Regulatory Commission as counsel to industry consumer coalitions. We assist with contracting for energy and fuel sources and developing alternative energy source strategies. We are experienced in predecessor air credit trading programs such as the SCAQMD's RECLAIM and EPA's acid rain trading programs, which are being emulated in development of GHG environmental programs.

Renewable Energy Project Development - Renewable energy is emerging as a significant component of energy companies' portfolios. Our lawyers work on structuring and financing power projects and advised on renewable energy certificate (REC) trading and ownership. New GHG emission regulations will undoubtedly result in the investment and development of alternative energy resources. Our team represents developers of biofuels, geothermal resources, hydroelectric facilities, and wind energy companies in the development of new projects to facilitate the delivery of renewable energy.

Tax - The government's emphasis on stimulating growth in energy efficiency and clean technology often takes the form of tax relief and incentives. The American Recovery and Reinvestment Act of 2009 extended and revised various renewable energy related provisions of the Internal Revenue Code, including an extension of the renewable energy production tax credit; the election of the investment credit in lieu of the production credit; the repeal of certain limits on business credits for renewable energy property; coordination with renewable energy grants; new clean renewable energy bonds; qualified energy conservation bonds; an increase in the residential energy property credit rate; changes to the residential energy efficient property credit; and a temporary increase in the credit for alternative fuel vehicle refueling property. We assist clients with all aspects of tax planning, including advice on structuring equity investments, special allocations in partnership arrangements and implementing tax advantaged financing and acquisition techniques including tax credit and other tax advantaged transactions.