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BUSINESS RESPONSES TO CLIMATE CHANGE:

OVERVIEW OF THIS ISSUE

By Perry Wallace*

Climate change, whether taken as a scientific phenomenon, a political issue, a governmental or corporate policy, or the rationale for an international legal framework, has continued to press its way into our lives. Indeed, professionals in virtually all disciplines and laypersons alike have found themselves more knowledgeable (and perhaps even more concerned) than they might have ever imagined about concepts such as “greenhouse gases,” the Kyoto Protocol, “sinks,” and “carbon sequestration.”

This long march of climate change, from distant, exotic notion to important modern concern, was by no means guaranteed. From its introduction into the broader arena of law and

public policy at the 1992 United Nations Conference on Environment and Development, doubt and resistance served to limit the possibilities of a more affirmative response to a phenomenon already well known in the scientific community. Thus, the choice of a “framework” treaty model, specifically the United Nations Framework Convention on Climate Change (“UNFCCC”), reflected, among other things, the daunting task of gaining the support of the largest number of nations possible. Hence, the UNFCCC structure, with provisions for subsequent protocols and annexes, allowed a crucial first step in a long process whose fundamental themes would always include not only scientific justification, but also persistence and advocacy balanced by flexibility and compromise.

Gradually, climate change appears to have prevailed as a phenomenon that, along with its potential consequences, must be taken seriously. Therefore, on February 16, 2005, the much-debated Kyoto Protocol to the UNFCCC entered into effect. Further, notwithstanding President George W. Bush’s rejection of the Protocol as “fatally flawed,” progress in addressing climate change issues has even occurred in the United States. For example, several state governments have instituted measures designed to address these issues, including litigation seeking to force the United States Environmental Protection Agency to reconsider its decision not to regulate greenhouse gases. Non-governmental organizations have also mounted climate change strategies, including initiatives directed at the very corporate community responsible for an overwhelming proportion of the human-induced diffusion of greenhouse gases into the environment.

This issue of *Sustainable Development Law & Policy* addresses the topic “Business Responses to Climate Change.” In doing so, the issue brings to the reader a rich offering of articles by top professionals in the climate change arena, with a specific focus on the role of the business community as it regards climate change.

Dan Worth takes a look at the voluntary solutions to climate change problems that have been developed in the absence of federal regulation.¹ Using case studies, he describes the roles of innovation, energy conservation, and up-front investment in cleaner technologies and their great value in forging solutions. He particularly addresses the potential of these approaches for universities.

Sara Standish notes that in the new, emerging world of climate change regulation, companies that have not planned

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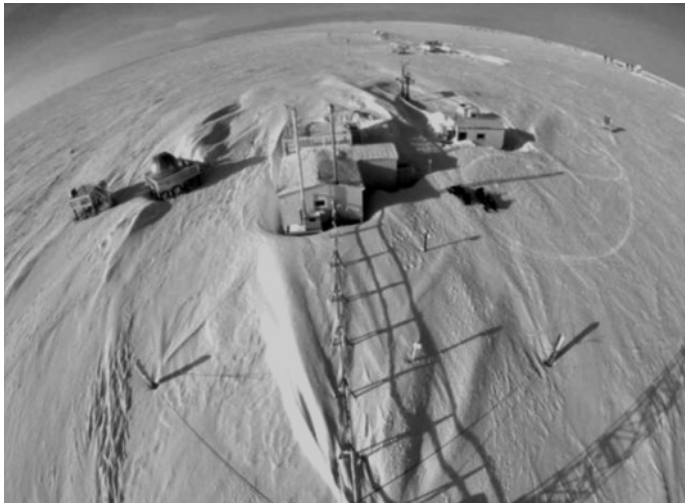


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properly risk not only reduced profits, but also diminished interest by the investment community.² As a result, they focus on the importance of shaping policies that encourage companies to align growth strategies with environmental goals, thus allowing those companies to harness the innovative power of business to produce environmental and economic solutions.

Stephen Tully takes on the important topic of business participation in the formation of the emerging climate change legal regime.³ He takes us into the Conference of Parties (“COP”) procedural process of the UNFCCC, concentrating on the modalities for corporate participation and ends the article by



Point Barrow Observatory, Alaska is one of the many stations monitoring the effects of climate change.

assessing the process and its prospects for meaningful lawmaking where the corporate community is intimately involved.

Sophie Smyth discusses the World Bank’s establishment of the Prototype Carbon Fund for addressing the problem of climate change.⁴ Concentrating on the topic of carbon finance, in particular the Prototype Carbon Fund, she treats the novel

issues of international trusts and securities law that have arisen as this legal and institutional climate change framework emerged.

Stephen Hesse looks at our oceans, the resources and services they provide, and how we treat them.⁵ He then narrows his discussion to the topic of how climate change affects the oceans. There follows a discussion of public and private roles in the protection of these resources, including possible incentives for fishers, conservationists, the business sector, and governments to cooperate in pursuit of appropriate protections.

Julia Philpott analyzes the Equator Principles, a 2003 agreement entered into by ten of the world’s largest banks, addressing the environmental and social impacts related to project finance.⁶ Noting the immense influence these banks can have over the design and technology choices—and thus the environmental and social impacts—of development projects, Ms. Philpott presents and discusses a model for inclusion of greenhouse gas assessment and reporting into the Equator Principles framework.

Todd Foley and Kevin Gallagher address the subject of forward-looking energy companies that create profitable markets while reducing society’s negative impact on global climate systems.⁷ By moving quickly and effectively to develop renewable energy sources, energy companies can diversify their energy portfolios while at the same time promoting long-term sustainability.

Itaru Nittu argues in favor of using patent revenue and expenditures for environmental purposes, noting that patent recipients profit from untaxed environmental degradation.⁸ Dr. Nittu proposes a new “green patent system” and discusses the implications for climate change.

Taken together, these articles present the reader with highly interesting and up-to-date treatments of climate change. The issues, ideas, and proposals presented here are an important part of the debate and discussion around climate change, and they will remain so in the years to come.



ENDNOTES: Business Responses to Climate Change

¹ Dan Worth, *Accelerating Towards Climate Neutrality with the U.S. Government Stuck in Neutral: The Emerging Role of U.S. Businesses, Cities, and Universities in Aggressively Reducing Greenhouse Gas Emissions*, *infra* p. 4.

² Sara Standish, *Business and Climate Change: Examining Drivers for Action*, *infra* p. 9.

³ Stephen Tully, *Commercial Contributions to the Climate Change Regime: Who’s Regulating Whom?*, *infra* p. 14.

⁴ Sophie Smyth, *The Prototype Carbon Fund: A New Departure in International Trusts and Securities Law*, *infra* p. 28.

⁵ Stephen Hesse, *Adapting to Sea Change: Managing Marine Resources in the Face of Climate Uncertainties*, *infra* p. 37.

⁶ Julia Philpott, *Keeping it Private, Going Public: Assessing and Disclosing the Global Warming Performance of Project Finance*, *infra* p. 45.

⁷ Todd Foley and Kevin Gallagher, *Solar Power: The Journey from Niche to Mainstream*, *infra* p.59.

⁸ Itaru Nittu, *Proposal for a Green Patent System: Implications for Sustainable Development and Climate Change*, *infra* p.61.