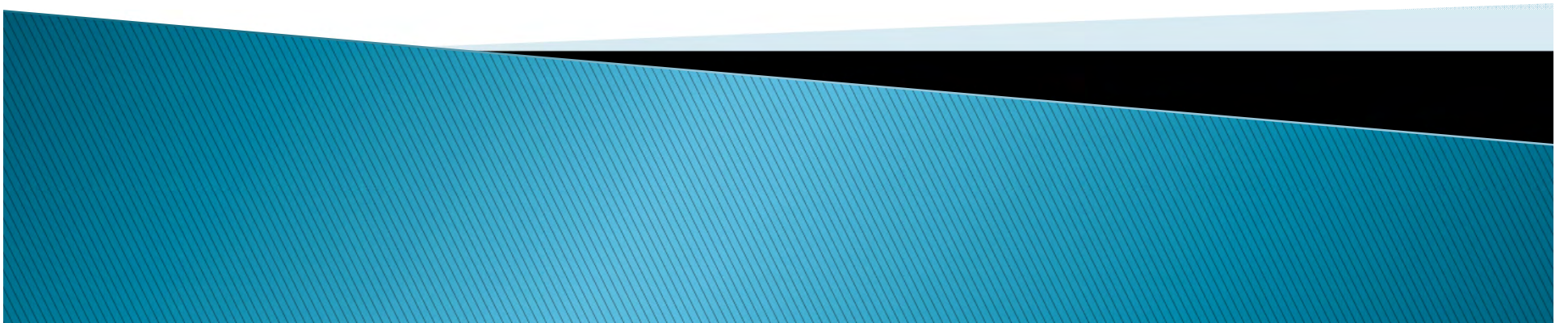


An Introduction to the Law of Climate Change

December 1, 2010



International Law of Climate Change

- ▶ United Nations Framework Convention on Climate Change
- ▶ Berlin Mandate
 - Recognition that developing nations would not be held to emissions caps
- ▶ Kyoto (the focus from these three was on capping actual emissions)
 - Phase I – 2005–2007
 - Phase II – 2008–2012
 - Cap at 5% – although EU has done more (EU ETS)
- ▶ Bali Action Plan and Copenhagen



National Law of Climate Change

- ▶ No comprehensive domestic law
- ▶ Pursuant to obligations under the UN Framework Convention on Climate Change – EPA has been inventorying GHG emissions in the US (2008 report)
- ▶ 2001 letter from President Bush to Senators Helms, Craig and Roberts
- ▶ Numerous Legislative Proposals
 - Cap-and-trade;
 - Cap-and-dividend; or
 - Carbon Tax



National Law of Climate Change: Regulation Under the Clean Air Act

- ▶ U.S. Supreme Court Decision -- *Massachusetts v. EPA* (2007)
- ▶ EPA's Endangerment Finding (December 2009)
- ▶ Proposed Regulations
 - Light duty vehicles
 - Heavy duty vehicles
 - Major stationary sources



National Law of Climate Change: Litigation

- ▶ Litigation based on pre-existing common law theory of public nuisance
- ▶ Recent Litigation:
 - *Connecticut v. AEP* (Second Circuit Court of Appeals 2009)
 - *Comer v. Murphy Oil Co.* (Fifth Circuit Court of Appeals 2010)
 - *Village of Kivalina v. Exxon Mobil* (pending in Ninth Circuit Court of Appeals)



Local Law of Climate Change: Regional Initiatives

- ▶ States are prohibited from engaging in foreign affairs under the Constitution
- ▶ Regional Greenhouse Gas Initiative (RGGI) – group of mostly northeastern states
 - Only CO₂ from power plants
 - Limit on the amount of offsets can use to meet target
 - Originally a limit on offsets from non-RGGI states, but now okay if the state has:
 - Established cap-and-trade program
 - Entered into MOU with member states



Local Law of Climate Change: State Initiatives

- Renewable Portfolio Standards
 - Obtain certain percentage from renewable
 - Obama administration supports
 - Each state may have a different definition of what is renewable
- California AB 32 – California Global Warming Solutions Act
 - Achieve 1990 levels by 2020
 - State-wide cap and trade to link to the Western Climate Initiative
 - Civil and criminal penalties



Local Law of Climate Change: Cities and Municipalities

- ▶ Example: Portland, Oregon
 - Decrease emissions 10% below 1990 emissions by this year
- ▶ Climate Action Plans
- ▶ U.S. Mayors' Climate Protection Agreement
 - Climate Action Handbook



Thank you!

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