

Hawaii's Climate and Energy Regulatory Process and Evolving Federal Mandates

Rising Tides: Climate Change and the
Economic and Business Impact on Hawaii

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Douglas A. Codiga, Esq.

Schlack Ito LLC

Summary of Key Points

- * Climate change impacts business and the economy
- * Impacts addressed through regulatory process
 - * Climate change
 - * Clean energy
- * Evolving interplay of state and federal regulation
- * Hawaii response to federal Clean Power Plan illustrates regulatory process challenges and opportunities for business and economic growth

Evolving Federal Mandates: Clean Power Plan

Clean Power Plan Final Rule (40 C.F.R. Subpart UUUU)

- * “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (80 Fed. Reg. 64,662-64,694)
- * Published Oct. 23, 2015 and effective Dec. 22, 2015
- * Guidelines rely on “emerging growth in clean energy innovation”
- * CPP is “significant step forward in reducing greenhouse gas (GHG) emissions in the U.S.” via emissions guidelines for existing power plants
- * Confirms U.S. “international leadership” in “global effort to address climate change”
- * Result of “unprecedented outreach and engagement” with 4.3 million comments

Hawaii in CPP Final Rule - Energy

- * Hawaii, Alaska, Guam, Puerto Rico = 1% total U.S. EGU GHG emissions
- * EPA lacks data and information for Best System of Emission Reduction (BSER)
- * NREL renewable energy data for mainland only
- * “Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop” *Mass. v. EPA*, 549 U.S. 497, 524 (2007)
- * EPA committed to “putting goals in place soon”

Hawaii in CPP Final Rule - Climate

- * CPP Final Rule cites Hawaii climate impacts
 - * Rising air and ocean temperatures
 - * Shifting rainfall patterns
 - * Rising sea levels and changing ocean chemistry
 - * Sea surface temperature to rise 4.7 F by 2090
 - * Impacts on coral reef ecosystems
- * Impacts will affect “ecosystems on land and in the oceans, as well as local communities, livelihoods, and cultures”

Legal Challenges to CPP Final Rule

- * Petitions for review in DC Circuit Court of Appeals
 - * 60 days after Fed. Reg. publication or Dec. 22, 2015
 - * Less than 12 hours after publication CPP became the most heavily litigated environmental regulation ever
- * State and industry petitioners
 - * Majority of states oppose
 - * NJ (RGGI) and CO (Gov. v. AG) show political aspect
- * Hawaii AG and 15 others support CPP
- * U.S. Supreme Court to address in 2017 or 2018

Hawaii Climate and Clean Energy Law and Policy



Hawaii Climate Change Law

- * Act 234 (2007): “Serious threat to the economic well-being, public health, natural resources, and the environment of Hawaii”
- * HRS § 342B-71 mandates reduction in statewide GHG emissions to at or below 1990 levels by 2020
- * HAR ch. 11-54 establishes GHG emissions reductions
 - * 16%GHG emissions cap for large sources (100k TPY)
 - * Reduction measures in approved plan incorporated into facility’s permit

Hawaii Clean Energy Law

- * Hawaii Clean Energy Initiative (2008)
 - * 70% clean energy by 2030
 - * 40% renewable energy and 30% energy efficiency
- * HRS ch. 269 Part V, “Renewable Portfolio Standards”
 - * 15% by 2015; 30% by 2020; 40% by 2030; 70% by 2040
 - * 100% by 2045 (HB 623)
- * HRS 269-96, “Energy Efficiency Portfolio Standards”
 - * 40% or 4,300 GWh reduction in energy use by 2030

Regulatory Process Challenges and Opportunities



Hawaii Agency CPP Comments

- * Hawaii agencies filed consolidated comments
 - * Nov. 28, 2014 based on draft rule
 - * DOH, DBEDT, PUC, and Consumer Advocate
- * Agencies generally support CPP
- * Comments link climate and clean energy
- * Hawaii GHG and RE/EE goals compatible with CPP
- * Business and economic aspects acknowledged

Regulatory Process Addresses Challenges and Opportunities

- * DOH comments
 - * Hawaii's GHG rules and EE/RE programs meet Hawaii and CPP goals
 - * CPP approach is “compatible” with Hawaii approach
- * DBEDT comments
 - * Hawaii energy law and policy is to “drive our economy and spark innovation and investment” in clean energy
 - * “Substantial reduction” in GHG emissions is “key outcome” of energy policy

Challenges and Opportunities, con't.

- * PUC comments
 - * PUC regulates utility implementation of RE/EE laws
 - * Need to “work together” to “align Federal and State regulations” with Hawaii’s “unique options and challenges”
- * Consumer Advocate comments
 - * Based on Hawaii’s “unique geographical circumstances” EE/RE and GHG rules “should be combined” to develop effective emissions reduction goals

Conclusion

- * Climate impacts drive law and policy changes
- * Clean energy closely linked to climate
- * Regulatory administrative law processes addresses key issues
- * Hawaii experience with CPP illustrates climate and energy law and policy linkages
- * Business and economic growth remain key focus of challenges and opportunities

Mahalo

Douglas A. Codiga, Esq.
Schlack Ito LLC
dcodiga@schlackito.com