



# Energy Committees Newsletter

Vol. 8, No. 3

April 2011

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## MESSAGE FROM THE EDITOR

**Tison Campbell**  
*Committee Newsletter Vice Chair,  
Special Committee on Nuclear Power*

This issue of the Energy Committees Newsletter of the Section of Environment, Energy, and Resources (SEER) focuses on three developments in energy policy since the start of the Obama administration. Stephen Burns explains the Nuclear Regulatory Commission's new mandatory hearing process, which will apply to all applications to construct and operate new nuclear power plants. Susan Marriott's article looks at the administration's policy on biofuels. And finally, Kate Joyce takes us into the international sphere and looks at the latest Conference of the Parties of the UN Framework Convention on Climate Change, which was held in Cancun, Mexico, in late 2010.

Members of the nine SEER energy committees are encouraged to consider writing for future issues of the Energy Committees Newsletter. One-paragraph article proposals should be submitted to Jay Hickey (lawjeh@hofstra.edu), who will forward proposals to future editors of the newsletter. Articles should address an energy-related topic of current interest to the Energy Committees' membership and should be about 1,500 words.

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## NRC CLARIFIES MANDATORY HEARING PROCESS FOR NEW REACTOR APPLICATIONS

**Stephen G. Burns**

Over the past decade nuclear energy has reemerged as an option for new electric generation capacity in the United States. If electric generators pursue new plant construction and operation, the Nuclear Regulatory Commission (NRC) has the responsibility for determining, before a license is granted, whether applicants meet the agency's safety and security standards. As of February 2011, the NRC had 17 applications for some 26 potential new nuclear units under some stage of consideration.

Although the now 104 operating nuclear power plants were all licensed under the two-step process of obtaining a construction permit and later an operating license—a process employed first by the Atomic Energy Commission (AEC) and then the NRC as its successor—this process was roundly criticized in various quarters, including by both the Presidential Commission on the Accident at Three Mile Island and the NRC's Special Inquiry Group, which also investigated the Three Mile Island accident. In brief, the complaints lodged against the NRC's licensing regime can be characterized as a lack of standardization and a "design as you go" approach to constructing the plant; deferred resolution of important safety issues until plant construction was well underway; changing regulatory requirements; and a

**Energy Committees Newsletter  
Vol. 8, No. 3, April 2011**

This newsletter is a cooperative effort of the following committees: Energy and Environmental Markets and Finance; Energy and Natural Resources Litigation; Energy and Natural Resources Market Regulation; Energy Infrastructure and Siting; Hydro Power; Oil and Gas; Petroleum Marketing; Renewable, Alternative, and Distributed Energy Resources; and the Special Committee on Nuclear Power. On behalf of these committees, Tison Campbell is editor of this issue.

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Any opinions expressed are those of the contributors and shall not be construed to represent the policies of the American Bar Association or the Section of Environment, Energy, and Resources.

**Upcoming Section Programs—**

For full details, please visit the “Events & CLE” link on our Section Web site:  
[http://www.americanbar.org/groups/environment\\_energy\\_resources.html](http://www.americanbar.org/groups/environment_energy_resources.html)

April 20, 2011  
*Wave Energy: Devices, Deployment, Project Finance, and Policies Tied to an Emerging Domestic Industry*  
Primary Sponsor: American Council On Renewable Energy  
Teleconference

April 27, 2011  
*Will it Have Teeth?: EPA’s Environmental Justice Plan for 2014 and Its Potential Impacts on Permits and Enforcement*  
Quick Teleconference

May 19, 2011  
*Nano Governance: The Current State of Federal, State, and International Regulation*  
Quick Teleconference

August 4-9, 2011  
*ABA Annual Meeting*  
Toronto

October 12-15, 2011  
*19th Section Fall Meeting*  
Indianapolis

February 22-24, 2012  
*30th Annual Water Law Conference*  
San Diego

March 22-24, 2012  
*41st Annual Conference on Environmental Law*  
Salt Lake City

seemingly inefficient and duplicative review and hearing process. Responding to this criticism, the NRC reformed its licensing process over twenty years ago by adopting 10 C.F.R. Part 52. The original rule was adopted in 1989, 54 Fed. Reg. 15,372 (Apr 18, 1989), was sustained en banc by the D.C. Circuit in *Nuclear Information & Resource Service v. NRC*, 969 F.2d 1169 (D.C. Cir. 1992), and largely codified by the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776.

The approach to licensing under part 52 rests on three primary regulatory approvals: design certification rules (DCRs), early site permits (ESPs), and combined licenses (COLs). Both the DCR and an ESP are optional for the COL applicant that wishes to construct and operate a plant, but each provides advantages to the applicant if it references an ESP or DCR in its application. The ESP allows the applicant to obtain review of a site's suitability without committing to the full review necessary for a COL. Perhaps of greater importance is the DCR for a standardized design that can be referenced by multiple applicants at different sites. The DCR is intended to foster standardization and provide greater stability in the design and regulatory process for designs that have gone through the rigors of the agency's design review. The COL provides both an authorization to construct the facility in accordance with the approved design and a conditional authorization to operate the facility once it has been constructed in accordance with the design and other regulatory requirements and once other necessary programs (e.g., security, operating staff, radiation protection, etc.) are in place to support operation.

The first DCRs were issued in the late 1990s, and several newer designs are under active review for initial certification or for amendment. The first ESP applications were filed in 2003. Two ESPs have been referenced in active pending COL applications for the North Anna plant in Virginia and the Vogtle plant in Georgia. Early experience with DCRs and ESP applications led the NRC to adopt refinements to the part 52 process in 2007. 72 Fed. Reg. 49,352 (Aug. 28, 2007). And now, some twenty years after the adoption of part 52, the commission is nearing its first

decisions on COL applications. In preparing for that possibility, the commission has recently announced how it intends to proceed with one aspect of the review process—the “mandatory” hearing required under the Atomic Energy Act (AEA). The remainder of this article will focus on the commission's approach to conducting the “mandatory”—or uncontested—hearing required under the act.

As NRC practitioners know, section 189a of the AEA, 42 U.S.C. § 2239(a), generally provides an opportunity for hearing in licensing proceedings. The NRC has a well-developed hearing process reflected in 10 C.F.R. Part 2, with rules governing participation and litigation of safety, security, or environmental issues bearing on the NRC's licensing determination. Although most determinations of the conformance of the application to regulatory standards rest with the NRC staff, contested issues are heard and decided by an atomic safety and licensing board (ASLB) comprised of legal and technical judges whose decisions are subject to appellate review by the full commission.

For those proceedings that involve the granting of a construction permit for a nuclear power plant, the AEA requires the commission to hold a hearing, even in uncontested cases. *See* 42 U.S.C. § 2239(a)(1)(A). Because a COL is in part a construction permit, this mandatory hearing requirement attaches to the NRC's consideration of a COL application. *See* 42 U.S.C. § 2235(b). The origins of the mandatory hearing requirement date back to 1957 amendments to the AEA (later modified in 1962) that were intended in part to address a perceived lack of transparency in the AEC's handling of early plant applications. Early construction permits were issued largely without prior notice or hearing and without public dissemination of the AEC's safety evaluation. *See Exelon Generation Co., LLC, et al.*, CLI-05-17, 62 NRC 5, 27-28 (2005) (discussion of legislative history). Since those early days of reactor licensing, the combined promotional and regulatory functions of the old AEC were severed, with NRC established as the regulatory authority, and other general reforms have improved the transparency of government decision making through such statutes as the Freedom of Information Act, the

National Environmental Policy Act (NEPA), the Federal Advisory Committee Act, and the Government in the Sunshine Act. In this context one might argue that the mandatory hearing requirement is an anachronism, but the NRC was nonetheless constrained to frame part 52 around this statutory requirement. Congress has not, to date, relieved the NRC of the mandatory hearing requirement for nuclear power plant construction permits.

To date, experience with the mandatory hearing requirement under part 52 has been limited to ESPs, which are also in part construction permits. Hearings on ESPs, as well as on uranium enrichment plants for which a mandatory hearing is also required, have been conducted by ASLBs. Questions and frustrations about the process were expressed by licensing boards, applicants, and the NRC staff and led the chief judge to certify questions to the commission about its expectations. The commission answered those questions in *Exelon*. Perhaps most significant for our purposes here, the commission stated that “boards should conduct a simple ‘sufficiency’ review of uncontested issues, not a de novo review” and further, that a board, in conducting a hearing, should “narrow its inquiry to those topics or sections in Staff documents that it deems most important and should concentrate on portions of the documents that do not on their face adequately explain the logic, underlying facts, and applicable regulations and guidance.” *Exelon* at 21–22.

With burgeoning interest in new plant licensing, interest stemming in part from incentives contained in the Energy Policy Act of 2005, former Chairman Dale Klein formed a task force in late 2006, headed by former Commissioner Jeffrey Merrifield, to identify potential process efficiencies that could be achieved in the NRC’s handling and review of new applications. Although the task force recommended that the commission seek legislative elimination of the mandatory hearing requirement, the task force recommended that, in the absence of such change, the commission satisfy the mandatory hearing requirement through a “legislative”-style hearing. The task force reaffirmed that the purpose of the hearing should be as described by the commission in *Exelon*: a “sufficiency

review,” which would focus on “whether the NRC staff’s review was adequate and had reasonable support in logic and fact.” Task Force Report at 9 (ADAMS #ML071130225).

The commission adopted the task force recommendation that the commission itself conduct the mandatory hearing. In adopting this recommendation, it is worth noting that the commission had not held argument or taken live testimony in a licensing proceeding since its consideration of appeals in the Shoreham plant case in 1989 and, more recently, has done so only in a remanded case related to the consideration of terrorism in the environmental impact statement for a fuel storage facility. See *Long Island Lighting Co.*, CLI-89-02, 29 NRC 211 (1989); *Pacific Gas & Elec. Co.*, CLI-08-26, 68 NRC 509 (2008). In the staff requirements memorandum (June 22, 2007; ML071760109) (SRM) directing the staff to develop plans to implement the approved task force recommendations, the commission indicated that the mandatory hearing plan should be “modeled after the Browns Ferry restart meeting and the Calvert Cliffs and Oconee license renewal meetings.” These references underscored the commission’s expectation that the mandatory hearing would reflect the less formal, legislative-style format of the typical commission meeting over the more formal adversarial, trial-type proceedings conducted by ASLBs on contested issues. If it lacked experience in conducting the latter, the commission was certainly well versed in holding meetings on sometimes controversial plant restart decisions for utilities seeking to resume operation after a period of distress or, in the early days of the license renewal program, to review the staff’s intended issuance of renewed operating licenses.

Initial procedures for conducting mandatory hearings were posted on the NRC’s Web site in 2009 as part of the agency’s Internal Commission Procedures (§§ IV-11 to IV-14, available at <http://www.nrc.gov/about-nrc/policy-making/internal.html>). The commission has just recently made publicly available a new SRM (Dec. 23, 2010; ML103570203) that updates the commission’s expectations for conducting the mandatory hearing. Release of this new guidance is important now because the commission expects to

conduct its first mandatory hearings in late summer or early fall 2011 on the pending Vogtle and Summer plant applications. Although some of the details of the process will be reflected in updated commission procedures (to be issued in the near future), the commission has outlined in general terms the nature and the timing of these hearings.

The commission directed that the NRC staff kick off the uncontested phase of the hearing by providing a publicly available information paper, concurrent with the issuance of the later of the staff's final safety evaluation report (SER) or its final environmental impact statement (FEIS). The paper would address the key AEA and NEPA findings reflected in 10 C.F.R. §§ 52.97 and 51.107 and provide an adequate basis for the commission to conclude that each of these findings can be made. In this respect the commission reaffirmed its earlier view in *Exelon* that the mandatory hearing would essentially constitute a sufficiency review of the staff's evaluation of the application on uncontested matters.

In deciding to initiate the mandatory hearing when the staff issues the SER and FEIS, the commission was cognizant of the fact that either a pertinent DCR or the contested phase of the hearing might still be underway. The commission acknowledged that it would await issuance of a final DCR related to a COL before issuing its decision on uncontested matters. Because the mandatory hearing will not cover contested issues being heard by an ASLB (issues that could come before the commission on appeal), the commission can proceed with the hearing and, though it does not expressly say so in the SRM, can be expected to keep an eye on any contested hearing to the extent that it may affect the scope or perhaps even the timing of the commission's findings.

The parties to the mandatory hearing are the staff and the applicant. The commission can be expected to issue a notice of hearing upon receipt of the staff's information paper and may pose questions regarding matters of interest. The staff's information paper will constitute its prefiled testimony, except to the extent that it needs to answer the commission's questions or identify witnesses. The applicant would be expected to

file testimony that would answer the commission's questions, identify witnesses, and provide other views it wishes to make known. The commission also plans to invite interested governmental entities, including any interested state, local government body, or local federally recognized Indian tribe, to submit written statements. This opportunity is consistent with section 2741 of the AEA, 42 U.S.C. § 2021(l), and the commission's rules in 10 C.F.R. § 2.315(c).

The commission stated in the SRM that it intends to complete the mandatory hearing, including issuance of a final commission decision, within four months of the issuance of the later of the SER or FEIS for the COL. To plan for this objective, the commission has directed staff to update the internal commission procedures to include hearing milestones for the commission's review and to update the publicly available COL application review schedules to reflect the milestones and target dates for commission action on the mandatory hearing. Finally, the commission directed the staff to assess the efficiency and effectiveness of the process based on the agency's experience with conducting the first two mandatory hearings and to suggest any changes to improve the process.

Although some work remains to fill in the details of the framework for the mandatory hearing, the commission has positioned itself for its consideration of the first COLs later this year. As with much of part 52, it will be interesting to see how practice meets theory as the commission proceeds.

**Stephen Burns** is the general counsel of the U.S. Nuclear Regulatory Commission. The views contained in this article are his and do not necessarily represent the views of the NRC. For more background on the development of NRC's licensing process, see Burns, *Looking Backward, Moving Forward: Licensing New Reactors in the United States*, Nuclear Law Bulletin No. 81, at 7–23 (2008), available at <http://www.oecd-nea.org/law/nlb/>.

## THE OBAMA ADMINISTRATION SEES BIG THINGS FOR BIOFUELS

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**Susan Marriott**

President Barack Obama ended the recent State of the Union address with the idea: “We Do Big Things.” Certainly, producing 80 percent of U.S. electricity from clean energy sources by 2035 is a big thing, one of the biggest initiatives Obama announced during his address. In the past couple years, Obama has positioned the domestic biofuels industry as a prominent contributor to his administration’s clean energy goals through new and expanded incentive programs and favorable regulations. He stated, “With more research and incentives, we can break our dependence on oil with biofuels.”

Case in point, the tax bill recently signed into law as a result of negotiations between the White House and Congress included a 45-cent credit per gallon of domestic ethanol blended with gasoline and a 54-cent per gallon tariff on imported ethanol. The bill also extended a \$1.00-per-gallon biodiesel tax credit that applies to producers of biodiesel or diesel/biodiesel blends. Extending these incentives, at least for another year, reaffirms Obama’s commitment to develop the domestic biofuels supply.

Also, federal agencies have been proactive in the research, development, and promotion of biofuels. In October, 2010, the U.S. Department of Agriculture (USDA) signed a memorandum of understanding (MOU) with the Federal Aviation Administration (FAA). Under the MOU, USDA and FAA will work with the airline industry over the next five years to develop appropriate feedstocks that can be most efficiently processed into jet fuel. Secretary of Agriculture Vilsack also announced the “establishment of five USDA regional Biomass Research Centers for the development of non food biomass feed stocks. These Regional Centers, involving a collaboration between the Agricultural Research Service (ARS) and the U.S. Forest Service, will focus, accelerate, and coordinate the science and technology needed to incorporate feed stock production into existing agricultural and forest based systems.”

These individual measures are part of a broad, long-term strategy for biofuel industry growth spearheaded by the Obama administration to make up lost ground toward achieving the goals of the renewable fuel standard (RFS). The RFS requires 36 billion gallons per year of renewable fuel, including fuel from biomass, in the U.S. motor fuel supply by 2022. Currently, biofuels production is only at around 12 billion gallons per year, mostly from corn grain ethanol. It is clear that the existing biofuels industry is not on track to reach the goal, and the Obama administration has responded with urgency.

Even with the Obama administration’s new initiatives, biofuels remain a nascent industry. USDA’s June 2010 report, *A USDA ROADMAP TO MEETING THE BIOFUELS GOALS OF THE RENEWABLE FUELS STANDARD BY 2022* [http://www.usda.gov/documents/USDA\\_Biofuels\\_Report\\_6232010.pdf](http://www.usda.gov/documents/USDA_Biofuels_Report_6232010.pdf) states that an additional 21 billion gallons of advanced biofuels are needed to meet RFS goals, meaning that 527 biorefineries averaging 40 million gallons per year will need to be built by 2022, at an estimated cost of \$168 billion. In particular, the Northeast region has the potential to annually produce 423.7 million gallons of advanced biofuels from 639,150 acres of dedicated bio-energy crops (perennial grasses) plus 1.7 million acres of harvested logging residue. This will take 11 biorefineries, producing 40 million gallons per year, costing \$320 million per biorefinery, for a \$3.52 billion cumulative investment over time. Moreover, only approximately 4.5 percent of the available cropland and pasture acreage is used in meeting the advanced biofuel mandates. Accordingly, the biofuels industry remains dramatically underdeveloped and will require significant additional investment, both in biorefineries and cropland, to meet the RFS annual volume standards. In fact, the 2010 cellulosic biofuel standard (6.6 million gallons) is a fraction of that required by law (100 million gallons) because of a lack of industry growth due to the recession and other company-specific factors.

To jump-start new investment into the biofuels supply chain, Obama has established the Biofuels Interagency Working Group—co-chaired by USDA, the U.S. Department of Energy (DOE), and the Environmental Protection Agency (EPA), and with input from many

others—to develop a comprehensive approach to accelerating the investment in and production of American biofuels to reduce dependence on fossil fuels. The working group’s first report, *GROWING AMERICA’S FUEL* [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/growing\\_americas\\_fuels.PDF](http://www.whitehouse.gov/sites/default/files/rss_viewer/growing_americas_fuels.PDF), released in February 2010, advocates a number of strategies for development of a robust biofuels supply chain, including public-private partnerships to facilitate rapid adoption of research and technology, lead agency responsibility for each supply chain segment, the aforementioned regional research centers, and an emphasis on advanced biofuels and direct substitute fuels that can leverage existing infrastructure.

Moreover, USDA and EPA have bolstered existing programs or made regulatory reforms in accordance with Obama’s clear mandate for renewable energy. USDA recently expanded its Biomass Crop Assistance Program (BCAP) to increase the amount of land used for energy production by 50 million acres by converting traditional cropland and pastureland. About 17 million acres of traditional cropland and 34 million acres of pastureland would be shifted to energy crop production. BCAP provides incentives to agricultural and forest landowners and operators for the harvest, storage, and transportation of biomass to processing facilities and for the establishment and production of biomass for conversion to bio-energy in selected project areas. Also, USDA will soon publish a new rule so its Biorefinery Assistance Program (BAP) can be a better tool for viable commercial-scale facilities to develop new and emerging technologies for advanced biofuels. The BAP provides loan guarantees, with a maximum loan amount of \$250 million. Recently, the largest loan guarantee was awarded to Coskata, Inc., which received a \$250 million loan guarantee to produce 55 million gallons per year of cellulosic ethanol from woody biomass. The USDA also awards payments under the Bioenergy Program for Advanced Biofuels to producers to support and expand production of advanced non-cornstarch biofuels.

In addition, EPA recently reconsidered its position on regulating biomass combustion. EPA’s greenhouse gas tailoring rule initially included emissions resulting from biomass burning under the new regulatory scheme,

along with those from fossil fuel combustion. Inclusion of biomass combustion in the tailoring rule was a mixed message from EPA, which did not include biomass emissions in its *DRAFT INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 1990–2008* [http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Complete\\_Report.pdf](http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Complete_Report.pdf). However, the EPA recently responded to complaints from legislators and biomass power producers by stating that it would issue a new rule on July 1, 2011, that excludes biomass from GHG regulation for three years to further consider whether biomass is really a green fuel. As that debate continues between industry groups and environmentalists, EPA moved forward with increasing ethanol’s share of the country’s fuel supply. EPA recently approved E15 fuel (up to 15 percent ethanol) for use in vehicles from model year 2007 or later and is considering allowing the blend in vehicles built in the 2001 model year and later, based on the results of further testing.

In summary, the Obama administration established a clear mandate for continued investment into and support for the domestic biofuels industry through a broad, multiagency strategy involving creation of new and expansion of existing incentive programs, research and development, and biofuels regulation. These recent developments reflect the Obama administration’s promotion of biofuels as integral to ensuring the nation’s energy sustainability and security.

Nevertheless, biofuels are experiencing opposition that may chip away at certain parts of Obama’s biofuels agenda and inhibit growth of the industry. Some of these measures, including biofuels’ exception from greenhouse gas regulations and E15 fuel, could be stymied through litigation and opposition from industry groups and environmental organizations that question the environmental benefit of biofuels and their preferential treatment over traditional fossil fuels. Lawsuits have already been filed over the rule allowing E15 fuel in late model year trucks and cars, challenging the rule on the basis of inadequate testing and the risk of customers filling earlier model year cars and trucks with the E15 fuel, which the lawsuits allege may damage engine parts.

Another ongoing debate between environmentalists, the biofuels industry, and other stakeholder industries is whether biofuels are really the clean, green cure to the country's fossil fuel addiction. In particular, there is a debate whether biofuels really produce significant greenhouse gas reductions, both from direct displacement of fossil fuels and over the life cycle of the biofuel, hence EPA's need for additional time to determine whether greenhouse gas emissions should be regulated from biomass combustion facilities.

Ultimately, whether the production of biofuels can meet RFS goals will primarily depend upon economic investment, which is facilitated by the aforementioned federal programs. The tax incentives were only extended through 2011. With the current legislative climate in Washington focused on spending cuts, and limited support from the states, the biofuels industry faces a real risk of losing its current momentum, which has been propelled by incentives and research and development in this still sluggish economy. Accordingly, biofuels supporters should be monitoring budget negotiations very closely to ensure that the Obama administration does not compromise on its support for biofuels and that the tax incentives and research and development funding do not again lapse. Instead of merely propping up the domestic biofuels industry support for these programs would promote continued development of innovations that could make biofuels more cost competitive, sustainably produced, and integrated into the domestic fuel supply.

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## CALL FOR NOMINATIONS



The Section invites nominations for three awards:

*The Environment, Energy, and Resources Government Attorney of the Year Award* will recognize exceptional achievement by federal, state, tribal, or local government attorneys who have worked or are working in the field of environment, energy, or natural resources and are esteemed by their peers and viewed as having consistently achieved distinction in an exemplary way. The award will be for sustained career achievement, not simply individual projects or recent accomplishments. Nominees are likely to be currently serving, or recently retired, career attorneys for federal, state, tribal, or local governmental entities.

*The Law Student Environment, Energy, and Resources Program of the Year Award* will recognize the best student-organized educational program or public service project of the year addressing issues in the field of environmental, energy, or natural resources law. Nominees are likely to be law student societies, groups, or committees focused on these three areas of law.

*The State or Local Bar Environment, Energy, and Resources Program of the Year Award* will recognize the best CLE program or public service project of the year focused on issues in the field of environmental, energy, or natural resources law. Nominees are likely to be state or local bar sections or committees focused on these practice areas.

Nominations for all three awards are due at the ABA Section office by May 16, 2011. The Award will be presented at the ABA Annual Meeting in Toronto in August 2011. Award recipients should plan to be present at the award presentation.

For more information, visit [http://www.americanbar.org/groups/environment\\_energy\\_resources/projects\\_awards/awards.html](http://www.americanbar.org/groups/environment_energy_resources/projects_awards/awards.html)

## CANCUN AGREEMENT REPRESENTS MODEST U.N. CLIMATE MOMENTUM

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**Kate Joyce**

The UN Framework Convention on Climate Change (UNFCCC) held a Conference of the Parties in Cancun, Mexico, from November 29 to December 11, 2010. Expectations were low going into the meeting due to last year's failed summit in Copenhagen plus the U.S. Senate's inability to pass a climate bill and the results of the November U.S. elections. While President Obama's presence and efforts contributed to the Copenhagen Accord, the U.S. Congress's failure to pass climate and energy legislation has created uncertainty throughout the world as to whether the United States will be able to meet its pledge to reduce emissions to 17 percent below 2005 levels by 2020 as promised in the Copenhagen Accord.

Last year in Copenhagen, Denmark, the prospect of a new climate treaty was dealt a significant blow when countries failed to meet the world's expectations, and completion of a final climate treaty never materialized. In place of a treaty, the countries completed a political agreement called the Copenhagen Accord. The accord managed to put global warming pollution reduction pledges from both developed and developing nations on the table. However, as UNFCCC noted, the accord is a voluntary agreement that lacks the legal standing of a binding and enforceable treaty. As a result, the Cancun meeting became necessary to restore confidence that all countries are working toward a global climate deal in 2011 to shape a post-Kyoto world (the Kyoto Protocol expires at the end of 2012).

In Cancun, 193 countries came together and demonstrated a renewed commitment to tackle global warming. The Cancun Agreements make important strides to implement the Copenhagen Accord: they make progress on emission reductions, greater transparency and accountability, forest preservation, and the creation of a Green Climate Fund to mobilize much needed investments throughout the world.

Under the Cancun Agreements, developed nations must develop low-carbon development strategies, which must include a plan to meet carbon reduction goals and annual reports of emissions. Developing

countries must also act to reduce emissions, reporting progress every two years. A registry will match developing countries' mitigation actions to finance and offer technology support from developed countries. Developed countries also pledged a total of \$30 billion in fast-start finance to support climate action in the developing world in 2010–2012, along with another \$100 billion a year in public and private finance in the long term. This Green Climate Fund will be governed by a 24-member board with equal representation from developed and developing countries.

A key component of the Cancun Agreements is a provision compensating countries for protecting their forests, known as REDD—Reduced Emissions from Deforestation and Forest Degradation. The REDD initiative is meant to reduce the emissions of developing countries through the transfer of wealth or technology from developed countries. To receive compensation through REDD, the reduced emissions must be real and verified by a third party. Developing countries must provide a technical assessment of forest management, which will be used during the second commitment period of the Kyoto Protocol beyond 2012. Assessments must be transparent and include comparable and accurate methodology to facilitate review. This area of land use and carbon emissions is an area of considerable debate and discussion; additional information on this topic can be found through the links below.

The Cancun Agreements keep alive the UNFCCC goal of achieving legally binding emission reduction targets in future negotiations. The agreements solidify the core achievement of the Copenhagen Accord—the willingness of most countries to commit to emission reductions. The next Conference of the Parties is scheduled to take place in Durban, South Africa, in December 2011.

For more information:  
<http://unfccc.int/2860.php>  
<http://www.pewclimate.org/blog>  
[http://ucsusa.org/global\\_warming](http://ucsusa.org/global_warming)

**Kate M. Joyce** is an environmental lawyer who lives in New Jersey.

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## The ABA Section of Environment, Energy, and Resources Law Summit

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