



Climate Law Bulletin

The bimonthly climate update from the Environmental Defender's Office

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Editorial

The Environmental Defender's Office NSW welcomes you to the second edition of the Climate Law Bulletin. This edition begins with a look at the international negotiations surrounding and progress of REDD (reducing emissions from deforestation and forest degradation in developing countries) mechanisms. Humane Society International (HSI) working within the Ecosystems Climate Alliance is seeking to ensure an acceptable REDD policy is adopted through the UNFCCC (United Nations Framework Convention on Climate Change) process. HSI have taken the opportunity in this edition of the Climate Law Bulletin to include an article on REDD and its various implications for the protection of forests in developing countries.

Here in Australia, Federal Parliament awaits what could potentially be one of the most significant decisions of modern times: the vote to pass climate legislation. The EDO considers the passage of such laws as crucial to addressing the impacts of climate change seriously, however encourages the strengthening of existing draft legislation to ensure appropriate targets and schemes as supported by scientific projections are adopted.

REDD: the latest opportunity for saving the world's forests

REDD stands for 'reducing emissions from deforestation and forest degradation in developing countries' and is one of the newer acronyms to emerge from the labyrinthine international negotiations over how best to combat climate change. These negotiations are intended to come to a head at the next joint meeting of the Conference of the Parties to the United

Nations Framework Convention on Climate Change (UNFCCC-COP) and of the Meeting of the Parties to the Kyoto Protocol to said Convention (KP-MOP) in Copenhagen in December this year.

The idea emerging around the REDD concept is that greenhouse gas polluters in developed countries could pay for pollution abatement in developing countries insofar as it might be more cost-effective than reducing emissions from the polluter's operations or from elsewhere within the polluter's host country. This could be done directly as part of a market mechanism or indirectly through intergovernmental financial institutions. This has the potential not only to protect and restore intact natural forests in developing countries with enormous gains for biodiversity conservation and for forest dependent local communities and indigenous peoples but also to provide the financial resources to allow participating countries and communities to pursue alternative development paths.

That forests are being seriously considered for inclusion in the Copenhagen deal is a very significant development. When the UNFCCC and the Kyoto Protocol were negotiated in the early '90s, the nature and scale of emissions from land-based sources were poorly understood and appreciated outside pockets of the scientific community, and largely ignored by governments and NGOs alike in the rush to confront fossil fuel use as the problem and renewable energy as the answer. The nature and scale of the problem was neatly hidden behind another acronym – LULUCF (land use, land use change and forestry), defining a surreal world where converting intact forests to plantations is regarded as part and parcel of 'sustainable forest management' and accounting for emissions from such activities to meet developed country emissions reduction targets is optional – otherwise known as 'business as usual'.

Since then, however, it has become alarmingly clear that current land management practices, in all sectors, make a highly significant contribution to greenhouse gas pollution. The International Panel on Climate Change (IPCC), an intergovernmental body of scientific experts tasked to advise governments, handed down its 4th Assessment Report in 2007 which estimated that some 17% of global greenhouse gas emissions came from deforestation alone – second only in scale to emissions from electricity generation.

Meanwhile, in 2005, Papua New Guinea and Costa Rica started drumming up support from approximately 40 similarly placed countries to establish the Coalition of Rainforest Nations to advocate for a new initiative in the fight against climate change: RED (reducing emissions from deforestation in developing countries). The idea being that a new international financing mechanism should be established whereby developed countries would provide incentives (money) to developing countries to take the steps needed to reduce emissions attributable to clearing forests.

The RED proposal was rather rashly interpreted by the wider international community as a commitment to 'save' or 'protect' forests when, in fact, many of the proponent countries considered it to be only a proposal to reduce the rate at which, and extent to which, 'forests' were converted to non-tree uses like grazing cattle or growing soyabeans. For those who took the trouble to read the fine print, stopping converting intact or partly degraded forests to tree plantations for pulpwood or oil palm production, or just logging such forests for their wood, was not on the agenda.

This rather glaring mismatch of expectations came to a head at the Bali FCCC COP in December 2007 where, in a very closely fought political battle, it was decided to expand the scope of the proposed RED mechanism to become REDD – by including 'forest degradation' where, obviously, logging or conversion to plantations are the two biggest problems.

Paragraph 1(b)(iii) of the Bali Plan of Action, known as 'REDD-plus', calls for the consideration of national and international action on mitigation of climate change, including, inter alia, "policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries".

This REDD-plus decision was widely interpreted as including a commitment to establish a REDD market mechanism to drive reductions in emissions in developing countries by protecting forests from both deforestation (clearing for agriculture) and degradation (conventional 'forestry' activities included within the scope of that misnomer, 'sustainable forest management') while also allowing for the development of additional initiatives to encourage 'conservation' (nice logging), 'sustainable management of forests' (ordinary logging, including conversion to plantations) and 'enhancement of forest carbon stocks' (planting trees).

The obvious conflict between the concepts before and after the semi colon is no accident and reflects the unresolved nature of the underlying conflict – whether to log or protect remaining intact tropical forests. Not surprisingly, those currently responsible for forest management and those dependent upon the resultant supply of logs were put out at the idea that others might establish a market for carbon that would compete with the logging industry by offering payments to landholders to forego opportunities to clear or degrade their forests insofar as such forbearance resulted in a reduction in emissions.

Indeed, the 'blow back' against REDD in favour of REDD-plus (aka 'business as usual') in the eighteen months since the Bali meeting has been so strong that, distressingly, the current range of text proposals from governments for the Copenhagen climate change deal is actually silent on the idea of establishing a REDD mechanism to actually protect forests from degradation. While most NGOs, organised through the Climate Action Network (CAN) remain focussed on the crusade against coal, HSI and a small but growing group of social and environmental NGOs worried at this turn of events has organised itself into the Ecosystem Climate Alliance (ECA), a yet small voice for protecting the enormous carbon stores in intact native forests. Time will tell whether REDD can still be rescued even at this eleventh hour of negotiations from becoming no more than yet another rhetorical layer of 'green paint' over the perversities of business as usual.

Another area of considerable contention in respect of REDD relates to the rights of indigenous people and forest communities. While REDD does pose potential gains for communities through access to financial support and enhancing the livelihoods of those communities, there are also grave dangers for those communities if any future REDD mechanism does not recognise the rights of Indigenous peoples as set out in the Declaration on the Rights of Indigenous Peoples which was requested by the Indigenous Caucus in Poznan, Poland at COP 14. This issue was particularly controversial at the Poznan COP in 2008, when Australia, New Zealand, Canada and the USA removed a reference to indigenous "rights" in the statement on REDD, and replaced it with a much weaker obligation referring to the "need to promote the full and effective participation" of indigenous people and local communities.

The failure to adequately recognise the rights of indigenous people and forest communities, who are dependent on the forests the subject of REDD, could potentially encroach on their livelihoods. In particular, the failure of a REDD mechanism to adequately address security of land tenure and access to traditional resources, to ensure full and effective participation and consultation of indigenous peoples, and provide for adequate benefit sharing could create

conflict amongst communities as well as between other 'players' in REDD (such as governments and financial institutions), potentially leading to human rights violations. It could also fail to alleviate poverty and fail to achieve the emissions reductions and biodiversity conservation intended to be obtained. The debate over these issues continues in the international arena, with concerns mounting, particularly considering the ever-increasing reports of questionable 'carbon deals' trickling out of PNG - the original REDD proponent.

Meanwhile, back in Australia, the same underlying conflict over whether forests should be protected or logged has resulted in the emissions trading system being proposed by the Rudd Government – the Carbon Pollution Reduction Scheme (CPRS) – excluding all forms of land use management from mandatory coverage and only allowing the planting of trees to be included on a voluntary opt-in basis. The opportunity to include emissions reductions attributable to foregoing land clearing, conversion to plantations or logging – domestic REDD - has not been picked up.

Ironically, if not hypocritically, the proposed CPRS would allow polluters covered by the mandatory scheme to buy credits from participants in eligible REDD-plus activities in developing countries but not at home in Australia. There is still hope that such perversities can be avoided – the CPRS can set eligibility criteria to ensure that international offset credits are only bought from genuine REDD forest protection actions; and the CPRS can be expanded to include voluntary opting in for those landholders wishing to forego clearing and logging of forests as well as just planting trees.

The biggest problem of all, however, remains unresolved: countries are not yet proposing to set realistic global targets for emissions reduction as part of the Copenhagen deal. The gap between scientific advice on what's necessary to avoid dangerous climate change and what governments are talking about is frustrating and genuinely frightening. Much as there comes a point with a ship in a storm when efforts to avoid shipwreck have to be replaced by efforts to abandon ship, scarce government resources are already being diverted from efforts to mitigate future climate change to efforts to adapt to the current impacts of climate change – abandoning our earthly ship not being an option. This decision-point is upon us now. Interestingly, the potential failure to secure an international agreement at Copenhagen opens up an opportunity for environmental lawyers to seek out litigation opportunities to constrain polluters to a realistic extent in the absence of a coherent government response: a concerned citizenry, quite rationally, attempting its own form of 'all hands to the pumps'.

Article by Alistair Graham, Advisor on Global Affairs, Humane Society International

National Update

Australia's first climate pollution case

On behalf of Peter Gray and Naomi Hodgson of environmental activist group Rising Tide, the Environmental Defender's Office NSW has commenced civil enforcement proceedings against Macquarie Generation, alleging that the company has contravened the Protection of the Environment Operations Act by negligently emitting carbon dioxide waste from its Bayswater Power Station into the atmosphere in a manner that is causing harm to the environment. Mr Gray and Ms Hodgson seek a declaration of this fact and also an injunction that Macquarie Generation immediately cease disposing of carbon dioxide waste into the atmosphere. In carrying out its electricity generation activities, Macquarie Generation has been issued with an environment protection licence allowing the company to emit certain waste but not carbon dioxide. Bayswater Power Station, located in the Upper Hunter Valley, has the highest carbon dioxide emissions of all power stations in NSW.

The matter is listed for directions hearing on 21 August 2009 before the Land and Environment Court. For more information on the case, visit <http://www.smh.com.au/environment/power-firm-sued-over-carbon-emissions-20090727-dyra.html>

Byron Council settles Vaughan case regarding 'planned retreat' policy



Byron Shire Council has settled a dispute with a landowner who attempted to place concrete boulders on the shoreline of his beachfront property at Belongil after a storm surge caused significant erosion. The council sought an injunction against the resident, Mr Vaughan, claiming he did not have development approval to carry out the works and that the property was covered by Council's 'planned retreat' policy. Byron Shire Council's planned retreat policy identifies potential coastal

erosion zones and restricts development within those zones. The NSW Land and Environment Court granted the injunction on the basis that engineering evidence demonstrated that further damage would occur to adjoining properties as a result of the concrete boulders, unless they were protected in a similar manner. Council reached an agreement with Mr Vaughan to allow him to stabilise the area by adding sand supplemented with a sandbag wall.

To read the full LEC decision, click here

[\[http://www.lawlink.nsw.gov.au/lecjudgments%5C2009nswlec.nsf/2009nswlec.nsf/WebView2/002B8252D60156F4CA2575CA00160F23?OpenDocument\]](http://www.lawlink.nsw.gov.au/lecjudgments%5C2009nswlec.nsf/2009nswlec.nsf/WebView2/002B8252D60156F4CA2575CA00160F23?OpenDocument)

Byron Shire Council adopted a policy of planned retreat in 1988. The policy was reaffirmed in 2006 when the council decided pumping sand was not a viable option to prevent erosion. All houses within potential coastal erosion zones must be relocatable to allow them to be moved if erosion prevents the continued use of the land. A policy of planned retreat is one of the best examples of an adaptive strategy used by a council to address the threats brought by climate change, including increased coastal erosion and rising sea level.

In its submission to the Inquiry into climate change and environmental impacts on coastal communities, the EDO supported a policy of planned retreat as one possible long-term adaptation response for human communities, where appropriate. This included the implementation of planned retreat principles such as set-backs, buffer zones, and development restrictions implemented into local planning and development controls now, 'to avoid impacts being dealt with and disputed on a case by case basis over the coming years as impacts increase'.

To read the full version of the submission, visit

http://www.edo.org.au/policy/climatechange_coastal080610.pdf

CPRS passage delayed until August



The Australian Government's Carbon Pollution Reduction Scheme (CPRS) legislative package has failed to pass through the Senate, delaying the Scheme's passage until August at the earliest. A lack of economic modelling has been posed as the cause of opposition to the current bills. If the Opposition propose amendments to the bills, it is predicted the bills would again be rejected and then returned to the Senate for a second time in November this year. If the government wants to use the legislation as a parliamentary double dissolution trigger, under the Constitution it must wait for three months after the first vote.

For more information on the political issues regarding the vote on the CPRS, visit [http://newmatilda.com/2009/06/22/double-](http://newmatilda.com/2009/06/22/double-dissolution-pros-and-cons)

[dissolution-pros-and-cons](http://newmatilda.com/2009/06/22/double-dissolution-pros-and-cons)

The Acting Minister for Climate Change and Water, Greg Combet, has launched a 'Countdown to Climate Change Vote' clock on the Australian Labour Party's website. Mr Combet claims the decision faced by Parliament to vote on the CPRS is 'one of the most important votes in recent times.' The clock can be accessed at <http://www.alp.org.au/>

National Greenhouse & Energy Reporting Act amendments & Streamline Protocol



The Minister for Climate Change and Water, Penny Wong, has announced a reduction in reporting 'red tape' for companies required to report on their greenhouse gas emissions. The National Greenhouse and Energy Reporting Streamline Protocol aims to reduce the administrative burden for companies when reporting to governments on a wide range of greenhouse and energy information, ensuring duplications do not occur. Implementation of the Protocol was agreed through

the Council of Australian Governments (COAG) and will be incorporated by governments in requirements for existing and future greenhouse and energy programs. For more information on the Protocol, visit:

<http://www.climatechange.gov.au/reporting/index.html>

The National Greenhouse and Energy Reporting Act 2007 (NGER Act) has also been amended, seeking to increase flexibility and lower costs for businesses covered by the Act. The amendment came after industry stakeholders highlighted the fact that reporting arrangements under the NGER Act from this financial year would have to be altered, at some cost to business, prior to the commencement of the CPRS in July 2011. For more information on the amendment, visit:

<http://www.environment.gov.au/minister/wong/2009/mr20090623.html>

The Carbon Assurance Taskforce is a group of accountants that advises the government on auditing greenhouse gas emissions claims. Concerns have recently been expressed by the Carbon Assurance Taskforce about the Federal Government's lack of explanation of certain reporting requirements placed upon large emitting companies under the National Greenhouse and Energy Reporting Act 2007. They allege that there is much uncertainty surrounding which companies are required to report and how those company reports on energy use under the National Greenhouse and Energy Reporting Act 2007 will be verified. Further, the Act does not specify who is authorised to verify the emissions claims made in company reports. The first reports under the Act are due by 31 October this year.

Biofuel (Ethanol Content) Amendment Act and Regulations 2009

The Biofuel (Ethanol Content) Amendment Act 2009 has been proclaimed to commence on 1 October 2009. The Amending Act will be renamed to become the Biofuels Act 2007, and makes various changes to the minimum ethanol content of petrol sold in NSW and the minimum biodiesel content of diesel fuels sold in NSW. A subsequent Biofuel (Ethanol Content) Amendment Regulation 2009 has also been made, reflecting changes to the Act.

For more information on the amended legislation and to access a copy of the Biofuel (Ethanol Content) Amendment Act 2009 and Regulations, visit

http://www.biofuels.nsw.gov.au/office_of_biofuels

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2009 (No. 2)

Regulations to amend the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 have been passed. The amendments involve the following changes:

- To allow the Minister to waive, in part, the prescribed fee for a pre-charged equipment licence where a person is only importing a small quantity of equipment and refrigerant;
- To introduce a new exemption for the requirement to hold a Refrigerant Handling Licence for marine engineers who have certain types of certificates issued by Australian Maritime Safety Authority; and
- To simplify the record keeping requirements for users of methyl bromide, reducing usage of daily summaries to six monthly summaries.

To access a copy of the Regulations, visit

[http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/F485AB9C591D82BECA2575EE007D358B/\\$file/0905805A090602EV.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/F485AB9C591D82BECA2575EE007D358B/$file/0905805A090602EV.pdf)

Release of key draft CPRS Regulations

The Federal Government has released the draft regulations for the CPRS, including the first group of activities that will be eligible for assistance under the Emissions-Intensive Trade-Exposed (EITE) assistance program. The draft regulations outline the framework for the EITE assistance program, application procedures and reporting requirements for eligible entities under the program. The Government has announced the regulations earlier than expected, ahead of the passage of the legislation, in order to make available as much information as possible to Parliament in considering the Scheme. Feedback from key stakeholders on the details of the regulations is currently being sought.

The draft regulations, commentary and guidance paper are all available at

www.climatechange.gov.au/whitepaper/assistance/index.html

Federal solar rebate axed

The Federal Government has decided to axe its solar rebate program, which offered Australian homes \$8,000 assistance in purchasing and installing solar panels. A new, smaller rebate will not be made available until the passage of the Renewable Energy Target (RET) through Parliament. This vote is expected to take place in August, in parallel with the CPRS vote. In a second announcement, the Federal Government have decided that they will no longer fund a 50 percent subsidy for households not connected to the electricity grid to install renewable energy systems. This subsidy had been offered under the Renewable Remote Power Generation Program, whose budget the Government claims is already fully committed.

For more information on the Government's Solar Homes and Communities Plan, visit <http://www.environment.gov.au/settlements/renewable/pv/index.html>

Energy Efficient Homes Package announced

The Federal Government has announced its latest bonus scheme in the bid to reduce household greenhouse gas emissions. The Energy Efficient Homes Package provides households with two options to install energy efficient systems:

- Ceiling insulation worth up to \$1,600 for owner-occupiers; OR
- A \$1,600 rebate on the cost of installing a solar hot water system.

There is also assistance available to landlords or tenants, with up to \$1,000 available to install ceiling insulation in rental properties.

For more information on the scheme, visit <http://www.environment.gov.au/energyefficiency/>

New policy statement for wind farm industry



The Federal Government has announced the release of the Wind Farm Industry Policy Statement, which will assist wind farm operators in determining whether they need to refer to wind farm proposals for assessment and approval under national environmental law. The Policy Statement can be accessed at <http://www.environment.gov.au/epbc/publications/wind-farm-industry.html>

Increasing support for a gross national feed-in tariff

Public support for a gross national feed-in tariff is increasing. A feed-in tariff is a premium rate paid to homeowners and small businesses for electricity they produce in excess of their own power needs using a renewable source, such as a grid connected rooftop solar system or a wind turbine. This rate is usually higher than the market rate. National gross feed-in tariff programs have been established around the world, resulting in increased uptake of solar and wind power systems by home owners and businesses.

Recently, Australian Greens Deputy Leader, Senator Christine Milne, tabled a petition of 17,000 Australians signatures in Parliament to demonstrate the public's support of such a scheme. Independent MP, Rob Oakeshott, has also announced his intention to introduce Senator Milne's Private Member's Bill for a feed-in tariff into the House of Representatives.

For more information on the growing support for a tariff, click here [\[http://www.energymatters.com.au/index.php?main_page=news_article&article_id=488\]](http://www.energymatters.com.au/index.php?main_page=news_article&article_id=488)

Environment groups submit Plan B to Rudd Government

Demonstrating their disappointment with the Government's Carbon Pollution Reduction Scheme (CPRS), the Nature Conservation Council and leading national and state environment groups have come together to form a 'Plan B' of measures that could be enacted in the next two years to enable Australia to meet a target of halving its greenhouse pollution over the coming decade.

Plan B calls upon the Rudd Government to abandon the CPRS and focus its efforts on five priority areas identified in the plan. These are:

1. Prioritise saving energy;
2. Fast-track the switch to a renewable energy economy;
3. Drive the shift to low emissions vehicles and sustainable cities;
4. Protect our forests and woodland as a carbon store and make agriculture a part of the solution; and
5. Grow the green job economy

For more information on Plan B, visit the NCC website at

http://nccnsw.org.au/index.php?option=com_content&task=view&id=2828&Itemid=1

IPART report: NSW mitigation measures

The Independent Pricing and Regulatory Tribunal (IPART) has released a review of NSW Government measures designed to mitigate the effects of climate change. The NSW Government directed IPART to develop a method for assessing NSW programs that would ensure that they complement, rather than compete with, the CPRS. It was agreed by the Council of Australian Governments (COAG) that a national approach to reducing greenhouse emissions should be adopted and that any state measures should support and complement the CPRS, rather than duplicating its effects.

For a full copy of the Report on the Review of NSW Climate Change Mitigation Measures, visit IPART's website at <http://www.ipart.nsw.gov.au/latest-news.asp?id=198>

The EDO compiled a submission for the review, emphasising that the CPRS is not a panacea and a whole host of complementary measures will be needed to mitigate the effects of climate change. To access this submission on the EDO website, visit

http://www.edo.org.au/edonsw/site/pdf/subs09/090220cc_mitigation.pdf

NSW solar bonus scheme



The NSW Government has announced the introduction of a solar bonus scheme, which will support people in NSW who produce renewable energy through roof-top solar panels and feed it back into the grid. Eligible systems covered by the scheme include those up to 10 kilowatts in size, which will be paid 60 cents per kilowatt hour for the renewable energy they feed back into the grid, approximately four times more than the average price of electricity. Minister for Climate Change, Carmel Tebbutt claims the scheme will result in

\$900 being paid to customers annually, meaning an average solar panel could be paid back within 12 years.

For more information on the scheme, visit

<http://www.environment.nsw.gov.au/resources/MinMedia/MinMedia09062301.pdf>

SA makes major climate commitments

South Australian Premier Mike Rann has announced new actions by his government to address climate change. These include:

- By 2020, 33 percent of South Australia's power generation will come from renewable energy;
- By 2014, all government buildings, including schools and hospitals, will be required to purchase 50 percent of their power from renewable sources; and
- The introduction of a feed-in tariff to support solar power.

In addition to these actions, South Australia now generates more wind power than the remaining Australian states and territories combined, whilst 90 percent of geothermal energy development is being undertaken in South Australia.

For more information on renewable energy in South Australia, visit

http://www.energy.sa.gov.au/renewable_energy

International Update

Law/Cases

US Clean Energy and Security Act passed

On 26 July, the US House of Representatives passed the Clean Energy and Security Act with a narrow vote of 219 to 212. The Act seeks to encourage the transition to a clean energy economy and reduce carbon emissions to avert the worst impacts of climate change. Targets established by the Act include a 20 percent reduction in emissions below 2005 levels by 2020. The passing of the Act will also allow the US to take a leadership role in global climate negotiations at Copenhagen in December.

The Act has been viewed by US environmental groups as a necessary 'first step' in fighting the impacts of climate change, yet far from adequate in order to prevent 'catastrophic warming'. Criticisms made of the Act include:

- The setting of inadequate targets for reducing greenhouse gas emissions;
- The Act repeals the ability of the Clean Air Act to regulate polluters, allowing numerous coal-fired plants to be built without emissions-reductions requirements;
- Offsets granted to the coal industry could result in increased greenhouse gas emissions.

US law allows for the Act to be amended as it moves through the Senate. For more information on the Clean Energy and Security Act, the Parliamentary Library has released a Background Note examining the legislation, available at

<http://www.aph.gov.au/library/pubs/bn/2008-09/ClimateChangeBill.pdf>

US climate case law

Franklin County Power of Illinois LLC v Sierra Club (US Sup. Ct. 29 June 2009)

The US Supreme Court has denied a request to review a decision barring the construction of a coal-fired power plant in Southern Illinois whose permit under the Clean Air Act had expired. Illinois had granted Franklin County Power a permit to construct the plant in 2001 however

the company failed to commence construction in the 18 month window required by the permit. Then, after commencing construction, the company discontinued works for almost two years during a payment dispute. The Sierra Club filed a citizen suit under the Clean Air Act in 2005 seeking an injunction to halt further construction due to the expiration of the permit. The district court held that the permit had expired and the company would have to obtain a new permit before continuing construction. This most recent decision affirms the district court's finding.

Hempstead County Hunting Club, Inc v Arkansas Public Service Commission (Ark Ct. App. June 24, 2009)

An Arkansas appellate court has struck down a state permit allowing an electricity company to build a \$US1.6 billion coal-fired power plant near the state's south-west border with Texas. The court held that the state public service commission failed to require the company to address alternative locations in its permit application and that it failed to make a finding regarding the basis of the need for a new plant.

Sierra Club v EPA (D. D. C. June 8, 2009)

The Federal Court in reviewing a lawsuit filed by the Sierra Club against the Environmental Protection Agency (EPA) challenging a permit for a coal-fired power plant, entered an order to reject a motion by EPA to dismiss the suit and sent the proceedings to the Federal US District court for the Eastern District of Kentucky for further proceedings.

In August 2006, the Sierra Club petitioned the EPA to refuse a Title V operating permit for a proposed coal-fired generating unit. EPA objected to the permit in August 2007. Kentucky submitted a revised permit application in March 2008. The Sierra Club sued the EPA in September 2008, alleging that the agency had failed to perform a mandatory duty to rule on the proposed permit.

Communities for a Better Environment v City of Richmond (Contra Costa Co. Sup. Ct. June 5, 2009)

A state court in California has held that the City of Richmond's environmental impact report pursuant to the California Environmental Air Quality Act (CEQA) concerning a major expansion of an oil refinery in the City violated the Act's greenhouse gas requirements. The court held that although the City identified a standard of no net increases in greenhouse gas emissions, it failed to identify any means of achieving that standard. In addition it found that the City improperly deferred its formulation of greenhouse gas mitigation measures until a future date. The environmental impact report also failed to clearly state whether the expansion would allow the plant to process heavier crude oil than it is currently processing.

Metropolitan Taxicab Board of Trade v City of New York (S. D. N. Y. June 22, 2009)



A federal court has held that a package of incentives adopted by New York City to encourage taxicab owners to convert to an all-hybrid fleet constituted a mandate that is pre-empted by the Energy and Policy Conservation Act (EPCA). Whilst the court acknowledged the City's authority to act in the public interest, and the validity of increasing the number of hybrid taxicabs as a

governmental priority, it found that Congress had already exercised its powers to impose national standards for fuel efficiency under the EPCA and engine emissions standards under the Clean Air Act, thus trumping the City's attempt to regulate in this area. The court issued a preliminary injunction to taxicab fleet owners and trade association, blocking New York City's incentive plan.

Policy

UK releases Road to Copenhagen vision

On 26th June, the UK Government released Road to Copenhagen, outlining some key outcomes the UK Government is seeking in the talks to be held in December. Among other policies, it is a clear call for developed countries to commit to an aggregate emissions reduction target of at least 80 percent by 2050, ending global forest loss by 2030 and a call for a \$100 billion global adaptation fund.

The Road to Copenhagen can be accessed at

<http://www.actoncopenhagen.decc.gov.uk/en/ambition/road-to-copenhagen/>

The UK Government approved the Climate Change Act in November 2008, setting a legally binding target for reducing UK carbon dioxide emissions by at least 26 percent by 2020 and at least 60 percent by 2050, compared to 1990 levels.

For more information on the Act and to access the legislation itself, visit

<http://www.metoffice.gov.uk/climatechange/policymakers/policy/climatechangeact.html>

Major Economies Forum commits to no more than 2 degree rise

Australia has signed onto a global agreement to restrict global warming to a minimum rise of 2 degrees Celsius. The agreement was formed by the leaders of the sixteen countries participating in the Major Economies Forum meeting in L'Aquila, Italy, in the first week of July. The forum aimed to make progress ahead of key climate talks in Copenhagen in December this year.

Australian climate expert Will Steffen claims that for Australia to commit to this target, it will have to cut emissions by 25 percent by the year 2020, and by 80 percent by the year 2050. Australia's current position is to cut emissions by only 60 percent by the year 2050.

For more information on the agreement, visit

<http://www.theaustralian.news.com.au/story/0,25197,25760176-26103,00.html>

Report from UNFCCC meeting in Bonn



The recent two weeks of climate talks held in Bonn, Germany, achieved little in the move towards a global climate agreement at UNFCCC in Copenhagen in December. Differences in the views of developed and developing nations continues to cause tension and hinder significant progress.

Some of the outcomes of the talks at Bonn are provided below:

- Major developed countries continued to set emission-reduction targets far below what is considered necessary to address climate change seriously - Japan set a disappointingly low target of 8 percent below its 1990 levels;
- The European Union has agreed to cut its emissions by 20 percent by 2020, and by 30 percent if developed countries set similar targets;
- 37 developing countries submitted a joint paper calling on developed countries to commit to cut their emissions by at least 40 percent by 2020 compared to 1990 levels;
- Developing countries continued to demand developed countries set up concrete mechanisms to transfer funds and technology to enable them to take measures to reduce their emissions to adapt to climate change.

For more information on the outcomes, visit

<http://unfccc.int/meetings/sb30/items/4842.php>

Scotland first developed country to adopt scientist-recommended targets

Scotland has become the first developed country to adopt the emissions reductions targets recommended by scientific evidence supporting climate change. Scotland has now committed to cutting its greenhouse gas emissions by 42 percent by 2020 and by 80 percent by 2050, on 1990 levels. Scottish parliament unanimously agreed to fix the target as part of a radical climate change bill which also requires the Scottish government to set legally binding annual cuts in emissions from 2012.

This has set an example for other developed countries and brought new hope that world leaders will be able to agree on a successful climate change deal in Copenhagen. Scotland's decision also meets the demands of developing nations, who want the richer countries to take responsibility for bringing the world to its current dangerously high emissions levels.

For more information on Scotland's actions, visit

<http://www.guardian.co.uk/environment/2009/jun/24/scotland-climate-change-bill>

UN Climate Summit meeting – New York

The UN General Secretary has invited world leaders to a Summit on Climate Change at the New York UN Headquarters for Heads of State and Government from every country in the world. The focus of the one day event will be to mobilise the political will needed to secure a global agreement at the UNFCCC meeting in Copenhagen in December.

For more information on the Summit on Climate Change, visit

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=589&ArticleID=6229&l=en>

IPCC Vision for AR5

The Intergovernmental Panel on Climate Change (IPCC) Secretariat has posted documents, including The Chair's Vision Paper, in preparation for the Scoping Meeting for the Fifth Assessment Report (AR5), to be held in Venice, Italy, this month. The IPCC are considered the leading authority on the science of climate change and the last assessment report, AR4, has formed the basis of many nations' major climate policy decisions. The latest Vision Paper anticipates the need for more coverage of humanitarian and economic issues and the need to keep pace with rapidly updated new information.

The report can be accessed at <http://www.ipcc.ch/workshops-experts-meetings-ar5-scoping.htm>

California County shelves harmful oil and gas development

Monterey County in California has put on hold the sale of 21 oil and gas leases approved by the US Bureau of Land Management within the County area. The land covers 35,000 acres in a region containing sensitive wildlife areas and several endangered species.

In approving the sale of the leases, the Bureau had relied upon out-dated information regarding the status of local endangered species, and upon environmental studies that failed to consider how each sale would affect air quality and the global climate. The studies made no attempt to disclose the greenhouse emissions that would result from the sale and the eventual combustion of the oil and gas produced. The sale was delayed for reconsideration following the threat of a law suit brought by the Center for Biological Diversity.

For more information on the decision, visit:

<http://www.biologicaldiversity.org/news/center/articles/2009/monterey-county-herald-06-10-2009.html>

Media, reports and other news

Origin and Carbon Conscious sign carbon sink deal



Origin Energy Limited and Carbon Conscious Limited have signed an agreement for a large-scale bio-sequestration project under the Federal Government's proposed Carbon Pollution Reduction Scheme (CPRS). The agreement involves the planting of native Mallee Eucalypt trees in wheat-belt regions of Western Australia for the purpose of generating carbon permits tradable under the CPRS. As part of the deal, Origin will pay Carbon Conscious \$26 million in planting fees for the first three years of the project. Origin will pay licence and management fees over the fifteen year life of the project. Origin will acquire options to increase the number of trees

planted from 2010 to 2014 once regulatory certainty surrounding the CPRS is provided.

It is expected the full project will sequester approximately six million tonnes of carbon. If the government's CPRS is delayed or doesn't proceed, the credits generated will be used to provide Origin customers with voluntary carbon offsets.

For more information on the agreement, visit: <http://news.theage.com.au/breaking-news-business/origin-seals-carbon-conscious-deal-20090716-dmbj.html>

BHP Olympic Dam mine expansion proposal

BHP Billiton, the world's largest resource company, has lodged a proposal to expand the Olympic Dam uranium and copper mine in northern South Australia. Concerns regarding nuclear waste management and other environmental risks expected to result from the expansion of the mine. The plan for the mine requires an Environmental Impact Statement (EIS) assessment and a decision by the Federal Environment Minister as a 'nuclear action' under the Environmental Protection and Biodiversity Conservation Act 1999. It also requires a separate decision by the SA government on a wide range of issues.

One of the greatest concerns regarding the mine expansion proposal is the substantial increase in greenhouse gas emissions from the mine. Emissions are expected to rise from 1.2 Mt a year at present to 5.9 Mt a year by 2020. This would increase SA's current total emissions of 33 Mt per year or by up to 14 percent by 2020. At these levels, the Olympic Dam

mine would account for approximately one percent of Australia's total emissions.

Approval for the mine is expected in early 2010. For more information on the mine expansion proposal, visit:

http://www.acfonline.org.au/articles/news.asp?news_id=2293

New carbon calculator for event industry launched

A new carbon calculator, tailored specifically to the unique needs of event producers and organisers, has been developed by the Australian Centre for Event Management (ACEM). The free calculator enables event managers to measure the carbon impact of events, and will also offer guidance to event organisers on the steps to be taken in seeking to reduce greenhouse emissions resulting from a specific event.

For more information, visit the ACEM website at:

<http://www.business.uts.edu.au/acem/contact.html>

World Green Car of the Year to be available in Australia



The World Green Car of the Year, the BMW 118d, will soon be available for purchase in Australia. The car uses 4.5 litres of fuel per 100 kilometres and emits 119 grams of carbon dioxide per kilometre, nearly half the average carbon emission level for new cars sold in Australia.

For more information on the BMW 118d, visit:

<http://www.bmw.com.au/com/en/insights/newsandevents/articles/845.html>

Oxfam reports released



Oxfam has recently released two reports relating to climate change and its implications for the world's population. Suffering the Science outlines evidence of how climate change is affecting every issue linked to poverty and development, from access to food and water to health and security. The report combines the latest scientific observations on climate change, with evidence from the communities Oxfam works with

in almost 100 countries around the world. The key recommendations made by the report emphasise that rich industrialised countries created the climate crisis and they have the financial resources to tackle it.

To access a copy of the report, visit <http://www.oxfam.org/en/policy/bp130-suffering-the-science>.

A briefing paper, also recently released and titled, Hang together or separately: How global cooperation is key to a fair and adequate climate deal at Copenhagen, emphasises that whilst rich countries must reduce greenhouse gas emissions first and fastest, it will be global cooperative efforts, requiring rich countries to finance large scale emissions reductions in developing countries, that will be the key to achieving climate security at Copenhagen.

A copy of the briefing paper can be accessed at:

<http://www.oxfam.org.au/campaigns/climate-change/docs/hang-together-separately.pdf>

ABS report Energy Account and environmental views survey released

The Australian Bureau of Statistics (ABS) has released a report showing Australia's energy use has increased by 15 percent over the last six years. Manufacturing, the electricity, gas and water industries were the largest domestic energy users, while households made up a further 12 percent. Over half of household energy use was on fuels such as petrol, diesel and LPG. The report, titled Energy Account, also demonstrated that despite increases in the supply of renewable energy products, renewables such as hydroelectricity, wood biomass, wind and solar made up just over one percent of Australia's total energy production in 2006-07.

A copy of the report can be downloaded free at:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4604.02006-07>

The ABS has also released the results of a survey, looking at the environmental views of the Australian population. The survey found that Australians believe water shortages and climate change to be the biggest environmental issues being faced. Nine in ten Australians are concerned about water shortages and three-quarters are concerned about climate change. Australians in the ACT were most concerned about climate change, whilst those in the NT were least concerned.

A full copy of the report can be accessed at:

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4626.0.55.001?OpenDocument>

ACCC investigates timber industry body's climate-friendly claims

The Australian Competition and Consumer Association (ACCC) is investigating claims made by a timber industry body that buying wood projects helps the fight against climate change. Forest & Wood Products Australia made two allegations in recent advertising campaigns: that the carbon dioxide stored in trees is locked up when they are logged and converted into wood products, and that forestry is one of Australia's most greenhouse-friendly industries. The Wilderness Society, with legal advice from the Environmental Defender's Office, approached the ACCC with the complaint, believing suggestions that forestry was a carbon positive industry were 'unsubstantiated and debatable.'

For more information on the advertising claims and the complaint, visit

<http://www.theage.com.au/environment/timber-body-under-fire-over-climate-aid-claims-20090726-dxix.html>

ACCC complaint against Australia's large polluters lodged



**Australian
Competition &
Consumer
Commission**

The Australian Conservation Foundation and the Australian Climate Justice Program have asked the Australian Competition and Consumer Commission to investigate whether six companies have engaged in misleading or deceptive conduct when making public statements on climate change policy. The complaint sets out 14 instances in which six corporations have made statements about the impacts of the Government's proposed Carbon Pollution Reduction Scheme (CPRS). The complaint alleges these statements are exaggerated and contradictory when compared with the companies' disclosures to shareholders and independent analysis.

For more information on the complaint lodged, visit http://www.acfonline.org.au/articles/news.asp?news_id=2311

UN Report claims green investments a legal responsibility

A new report released by the United Nations Environment Program (UNEP), titled 'Fiduciary Responsibility: Legal and Practical Aspects of Integrating Environmental, Social and Governance Issues into Institutional Investment' has claimed that 'green' investments are no longer just a luxury, but have become a legal responsibility. The report argues that if investment consultants and companies do not incorporate environmental, social and governance (ESG) considerations into their services, they face 'a very real risk that they will be sued for negligence.'

The report comes from the Asset Management Working Group of the UNEP Finance Initiative, a partnership between the agency and more than 200 financial institutions around the world. The UNEP Executive Director has stated that ESG issues are increasingly becoming part of mainstream investment decision-making and the report emphasises the central role major investment companies have to play in encouraging the transition to a low-carbon economy.

For more information on the report, visit:

<http://www.un.org/apps/news/story.asp?NewsID=31464&Cr=green+economy&Cr1=>

PNG Climate Change Office Director suspended

Papua New Guinea's Office of Climate Change (OCC) Director, Dr Theo Yasause, has been suspended whilst an internal investigation of the office is carried out. The suspension came following anomalies with OCC issuing multi-million dollar carbon trading deals without any policy or legislation in place. Yasause has denied any wrongdoing but documents obtained showed Australian company Carbon Planet paid \$1.2 million for projects in PNG.

PNG has the world's third-largest rainforest and the PNG government has great interest in turning the asset into carbon trading revenue, however no policies or legislation for doing so exists at this stage, neither in PNG nor under UN guidelines. AusAID has announced a corporate planning adviser will be placed in the OCC office for three months as part of the \$3 million pledged under the Australia-PNG carbon initiative.

For more information on AusAID's International Forest Carbon Initiative, visit <http://www.ausaid.gov.au/keyaid/mitigation.cfm>

US' top climate scientist arrested



Dr James Hansen, considered America's leading climate scientist, has been arrested whilst protesting the US Obama administration's new policy on mountain-top coal removal. Dr Hansen, along with other significant environmental movement allies, was arrested when he purposely trespassed onto the property of leading mountain-top coal removal company, Massey Energy, in the Appalachia Mountains in West Virginia, protesting the destruction of mountains directly above the Coal River Valley community.

Mountaintop removal involves mining companies blasting mountain ranges to access coal deposits. This mining technique causes serious runoff implications for waterways at the base of the mountains and also involves the clear-cutting of some of the world's most biologically diverse forests. President Obama has announced steps to end the fast-tracking approval of these mine permits but environmentalists have called for

the practice to be abolished and replaced with renewable energy sources.

For more information, visit <http://www.ens-newswire.com/ens/jun2009/2009-06-23-01.asp>

Invitation to join the EDO's Scientific Expert Register

The Environmental Defender's Office (EDO) is seeking scientific and technical experts with 10 or more years experience in a range of fields to join our Expert Register. PhD students are also encouraged to apply.

The Expert Register is a list of scientific experts who are willing to assist the EDO with public interest environmental matters on a pro bono basis. A key aim of the service is to increase the public's capacity to participate effectively in the environmental planning and development assessment process.

The EDO is also seeking to develop relationships with research organisations and environmental consultancies interested in doing pro bono work.

If you would like more information on how to be involved in the scientific work of the EDO, and have expertise in climate science or a relevant environmental field, please contact the EDO on (02) 9262 6989.