



State and Local Regulation of Climate Change is Taking Shape

By Grant S. Degginger

State and local governments around the country have taken leading roles in responding to the challenge of climate change. Although the presumptive presidential nominees have pledged greater federal participation starting next year, efforts in Olympia and in cities and counties across the state are well underway.

In the past, major environmental initiatives emanated in Washington, D.C., with substantial regulatory responsibility later handed down to the states. The National Environmental Policy Act, the Clean Air Act, the Clean Water Act and the Comprehensive Environmental Response Compensation and Liability Act were examples of “top down” regulatory templates. This has not been the case with climate change. State and local regulatory efforts took off after the federal government decided not to ratify the Kyoto Protocol. Mayors from 840 cities representing over 80 million people have committed to reducing greenhouse gas emissions in their communities. Over 30 Washington cities have signed on. Many have initiated the process of determining their carbon footprint and have begun implementing strategies for reducing greenhouse gas emissions in their own operations and citywide.

Last year, the Washington Legislature set a goal of reducing statewide greenhouse gas emission to 1990 levels by 2020; 25 percent below 1990 levels by 2035; and 50 percent below 1990 levels by 2050. Washington is one of nearly 30 states that have convened climate advisory teams to develop recommendations for reducing greenhouse gas emissions.

Washington’s Climate Advisory Team included legislators, agency heads, representatives from business, local government, tribes, labor and ports. The team developed a series of recommendations to meet the emission reduction goals set by the

governor and the legislature. Many proposals focus on buildings and transportation because both represent substantial sources of greenhouse gas emissions — over 20 percent in the case of buildings and nearly 50 percent for transportation. The legislature established a statewide benchmark of decreasing the annual per capita vehicle miles traveled by 18 percent by 2020. Thus, reducing vehicle miles traveled and improving the energy efficiency of the built environment are high priorities. Efforts to reduce products in the waste stream also will be studied. In addition, the state is working with the Western Climate Initiative to develop a regional, market-based carbon trading system to reduce greenhouse gas emissions.

An important tool in the local regulatory toolboxes is modifying the permitting process to consider the amount of and ways to reduce greenhouse gas emissions in development projects. King County, as well as the cities of Seattle and Portland, has adopted changes to its environmental checklists that require a project applicant to quantify the impact of their proposed development on greenhouse gas emissions and what efforts will be made to mitigate those impacts. In December, the legislature will receive a report detailing other potential emission reduction strategies that local governments might be asked to pursue, including whether local comprehensive plans should be required to contain elements addressing climate change.

While these efforts no doubt will challenge the development community to approach projects differently, the changing landscape also will present opportunities. Expect incentives to develop housing closer to places of employment, as well as initiatives for green construction, including LEED® certified commercial structures and residential housing. Some cities are

offering expedited permitting for projects which are attempting to achieve LEED® certification. Local governments will be looking favorably on developers who can deliver low-impact developments. The most sizeable challenge may be in finding the funding for transit investments necessary to achieve the aggressive emission reduction goals. While record high gasoline prices provide a powerful incentive to reduce trips, additional investments in transit options will be necessary.

Some state and local governments, along with citizen groups, have been using existing federal environmental laws to get the courts to implement regulatory changes. These efforts gathered significant momentum last year when the U.S. Supreme Court ruled in *Massachusetts v. EPA* that greenhouse gas emissions from automobiles are a pollutant to be regulated under the Clean Air Act. Although the Court ordered the Environmental Protection Agency to decide whether or not such emissions endanger human health, or explain why it cannot or will not make a finding, the agency has effectively delayed any decision until after the next president takes office.

We are at the outset of a new era in environmental and development regulation with climate change being a major consideration in permitting and land use. Even if “the other Washington” weighs in on the subject, it is likely that state and local governments will continue to play a major role in implementation.

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