

**Seventh Annual Regional Sustainable Development Forum:
Being a Part of the Climate Change Solution:
Individual Action for Collective Impact**

January 25, 2008, MIT Sloan School of Management

Session 2: The Role of Governance & Regulation

Presenters:

Ann Berwick, Undersecretary for Energy, Commonwealth of Massachusetts

Matthew Pawa, President, Law Offices of Matthew F. Pawa, P.C.

Anne Kelly, Director of Governance Programs, Ceres

Moderator:

Edward Connelly, President, New Ecology, Inc.

The moderator began by saying that these will be interesting presentations and discussion about the role of governance affecting all of the issues discussed during the Keynote presentations. This discussion will be around three broad topics:

- (i) the government side of regulation;
- (ii) the role of the litigator and;
- (iii) how challenging regulations and laws affects what we are talking about and then the role of corporate governance.

Each presentation will be followed by questions and answers to the panelists.

Introduction to panelists: Ann Berwick works for the Patrick Administration in the Energy Office and she is going to talk about the role of the government for climate change mitigation efforts. Matthew Pawa is a litigator facing a lot of challenges in the environmental field. He is going to talk about some work done to make change on environmental policies. Anne Kelly is also an attorney and she has experience on the Environment Strike Force of Massachusetts, and is also involved in the mediation and conciliation business. She is a Director at Ceres, which is an organization that works with corporations on environmental issues. She is going to talk about the role of corporate governance and corporate approaches to include sustainability.

Ann Berwick:

Her presentation focused on the key energy-related initiatives, such as:

1. Energy and Environmental Division aggregation:

One of the first things that Patrick's Administration did was to reorganize and aggregate the Energy Agency and Environmental Departments that were independent on the previous administration. Now it is the Executive Office of Energy and Environmental Affairs with two separate Undersecretaries.

This demonstrates a better integration between the two divisions and this is reflected in the policies created around energy issues.

2. RGGI – Regional Greenhouse Gas Initiative:

RGGI is a cap and trade system covering the Northeastern States that regulates carbon dioxide emissions from fossil fuel fired electric generation plants. If anyone wants more clarification about cap and trade regimes, I will be happy to explain it later.

Under RGGI, emissions from generating plants are stabilized through 2014 and reduced 10% by 2018. Massachusetts joined RGGI under the current Administration (2007).

In addition, the Governor made a commitment from the start to auction 100% of the allowances under RGGI. This is going to generate revenues that will be invested back on energy efficiency and other clean energy purposes.

The Senate then passed legislation that authorizes the State to adopt regulations pursuing to the memorandum of understanding among the RGGI states and to spend the auction's proceeds for enumerated purposes.

3. Commonwealth Solar:

It started operating on the 23rd of January, 2008 and implements the governor's commitment to increase the adoption of solar and photovoltaic in Massachusetts from where it is now (between 2 and 4 MW) to 250 MW by 2017. It involves for the first 4 years of the program 68 million dollars. It applies to residential, commercial and municipal installations and will give Massachusetts a national leadership role in solar development and supportive growing solar industry in Massachusetts. So, you can see clearly the link between clean energy and economic development.

4. MEPA – Massachusetts Environmental Policy Act :

MEPA requires that certain kinds of large projects evaluate and minimize their environmental impacts. So under MEPA, Massachusetts is the first State that now requires that developers analyze the greenhouse gas emissions released by the project. This includes state funded projects and private projects that require an air quality permit. Developers should quantify greenhouse gas emissions from 3 sources:

- Direct CO2 emissions
- Indirect CO2 emissions and
- CO2 from transportation

Monitoring all other major GHG should be analyzed in a case-by-case basis.

If the developer is covered in the terms of avoiding or minimizing the GHG emissions, he has to compare the proposed building to a baseline building presenting how the GHG are going to be minimized.

Q: Is that in place today?

A: Yes. Any project that is covered by MEPA starting in November 2007 will have to follow those requirements.

Q: Is there a permit under MEPA?

A: No. MEPA is not the permit program but under MEPA you have to analyze the environmental impacts that are associated with the activity.

Q: Is there any standard to say that you should be increasing energy efficiency by 20% for example?

A: No. Under MEPA, you have to minimize your impacts on a case-by-case evaluation.

Q: Let's suppose you have a parking lot. How would you minimize the impacts on this situation?

A: So, perhaps initially the project proposes 1,000 parking spaces. So, after MEPA, maybe the project should minimize the parking spaces or maybe prioritize parking spaces for hybrids. This is not completely defined; we still don't know how MEPA will define the minimization activities.

Q: Is that directly linked to the Environmental Impact Statement?

A: Yes. It is part of the Environmental Impact Statement.

Q: What are the follow-ups to make sure that the project is committing its measures of minimization?

A: So it will be a permit requirement and that is enforceable.

Q: When and where do those regulations require LEED certification?

A: MEPA does not say you have to meet any particular standard. However, state facilities should present some certifications, but this only applies to government facilities.

5. Other pieces of this Administration's energy-related policies:

1) The procurement of all cost effective energy efficiency and decoupling. Those are complicated but right now, under current law, there are certain energy efficiency programs. But those are doing the opposite of what we want them to do in terms of energy efficiency because they make more money the more power they sell, which increases the consumption.

So, there is a commitment to a very significant ramp up in spending on energy efficiency, what seems to enable people through electricity bills to go down.

Apart from the energy legislation, you have gone into the Department of Utilities (DPU), the agency that regulates electric utilities and without legislation, we have this decoupling procedure going on. The DPU will structure rates so utilities have incentives to sell less power.

2) The Massachusetts Climate Road Map – we worked this first year to pass the legislation and we are very optimistic about that and now we are attending to the targets of 20% by 2020 and 80% by 2050.

I am not prepared to hand this out because it is only a draft but what we are planning to do is to identify the high priorities related to climate and prepare a working document, where we will present approximately 20 measures that we are going to work on and for each one we are going to do an analysis that:

- identifies the sector (transportation or building, as example)
- the policy involved
- how much we can reduce
- the social cost per ton of GHG reduced
- the cost for the State Budget per ton of GHG
- the co-benefits of the policy
- how well targeted the policy is
- equity issues associated with the policy

So, as you can see a very serious effort to evaluate policies that are already in place. This will be replicated to policies being contemplated too. Again we are the first State to provide this level of commitment with those types of policies.

Q: Is pollution being included on those guidelines?

A: The co-benefit piece addresses pollution in addition to GHGs.

Q: Could you talk more about having an energy score under the energy bill? I would like to know how this division will work with this, who will do the paper work, etc.

A: This is a controversial provision. It passed the Senate but in a form that we are not happy about the basic concept. But how we do it is that if you are going to sell a house, there is a mandatory roof inspection related to the energy efficiency of the house. Right now, you don't have to make any inspection, but banks, if they are going to finance your house, they require an inspection. So we actually make this inspection mandatory. The Bill will provide a score for your house.

Q: Is there any cost effectiveness analysis of those programs?

A: Now we have energy efficiency programs, which cost about 3 cents per kWh as opposed to 9 cents for generation.

Matthew Pawa:

My name is Matthew Pawa, I am a lawyer and I have a small law firm in Boston specialized in environmental law and in particular, in global warming. When I started working with this in 2001, there was no law around global warming. And about a month

or two ago, a lawyer in New York City put together a chart with cases associated with global warming, and there were not many cases. And a couple of weeks ago, the amount of cases increased much more, from less than one page in the beginning to more than 3 pages of cases.

If you are the Attorney General of Massachusetts, what will be your first thought of what you have to do in addition to what is already happening in the State? Considering issues of global warming crossing borders, where most of emissions come from?

In the US, most emissions come from coal-fired electric power plants, the vast majority located in Ohio and others. So you would assume that Massachusetts is doing their share while those other States are not doing theirs. And that is where I come in, since I can do something about those types of issues. We spend a significant amount of time thinking about the issues that could be a legal case regarding global warming.

New England and California are the states at the forefront of legal cases on global warming. And they fall into a broad range of categories: the traditional administration law cases that have been used by environmentalists for decades, for example the lawsuit against the Federal Government for failing to regulate GHGs. In 2007, a bunch of these administrative law cases started producing results. Massachusetts took the lead – the case mentioned before where the Supreme Court decided that the EPA has the legal authority under the Clean Air Act to regulate CO₂ – this was an enormous victory, but the Court did not say, however, that the EPA must regulate CO₂ but simply said that EPA has the legal authority to do it. And as we see today, EPA has done nothing about it.

California domestically set more stringent standards for GHG sources. They are setting their own GHG limits on automobiles. California filed a lawsuit against the EPA – the staff of EPA released some arguments that they will get sued if they do not do something about the GHG emissions. California has lots of reasons to be willing to do this. One is its vulnerability because its water supplies depend on the snowpack, which is already melting.

So all those cases are still depending on the EPA exercising power – they now have the legal authority, congratulations, but they have to exercise it.

Couple of interesting aspects coming from the case of the Supreme Court in terms of what the EPA should be doing about global warming. An important concept is standing—getting through the door on environmental cases. The US Supreme Court helped Massachusetts to have standing – a property owner with a property close to coastal areas that are already being inundated by sea level rise and reducing the value of the property in the future, as a result. It looks like now any property that is being harmed by global warming will be able to bring such a case.

The second very important point that came out of it is that the EPA said that they have been interfering in the Foreign Affairs: only the President can set Foreign Affairs and this is the argument. If we lower our GHG emissions domestically, we will have less bargaining leverage, the President has less bargaining leverage in dealing with foreign

countries, particularly third world countries (non-Annex I under the Kyoto Protocol). The Supreme Court answered basically that this is a silly argument to not exercise the regulatory role of regulating GHG emissions. It should be tied to the Clean Air Act.

There are also cases by industries. Those in particular, have sued States that are trying to set their own limits to reduce GHG emissions. Detroit and the Association of Automobile Manufacturers sued the States of California and Vermont for adopting laws of GHG limits. The judge decided that there is no reason for a State not to set its own limits of GHG emissions. The same happened in California. So this is another huge victory for 2007 about cases related to global warming issues.

What is coming next about global warming litigation? Monetary damages cases because at some point the Federal Government will regulate GHG. So the case will be seeking who will pay for harms, as for instance what happened during Katrina, which involved the cost of hundreds of millions of dollars.

Final thought about the policy: we talked a lot about RGGI today. RGGI and trading regimes are with no doubt the best solutions for the problems that should be implemented right now. Some aspects of those are: first, who gets the benefits of the tradable parts? Should they go to the citizen or toward a trust? This can be another area for litigation.

And finally, it is important to pair those trade regimes with the regulations. Otherwise, we will end up with a system that may not get us as far as it should go. Economically there is no difference between cap and trade and a carbon tax.

Anne Kelly:

Anne Kelly started talking about what CERES does and what corporations and investors are doing now.

Bracken mentioned in his keynote address that green is no longer a satellite issue, but the core of what people are doing. In this case, it is essential to give careful look at what corporations are doing.

Some corporations were sued in the past as polluters. To address such problems, it is important to take a look at laws, approaches, regulations and market forces.

This is what CERES is about. CERES stands by the coalition for the environmentally responsible economies and it basically works with companies towards sustainability. This is done through the coalition of three groups:

- 1) Companies who are members – this includes Body Shop, Coca Cola, McDonald's, Dell. They are 70 companies in total.
- 2) Investor arm – includes investors that hold 4 trillion dollars in assets including ESRI and mainstream investors.
- [3) Environmentalists and other public interest groups.]

CERES was founded in 1989 and considers it important to build an investor network. This is important because, in case of the investors that hold a company, they can push it to take climate change seriously, as a matter of a long-term value. It is important to raise climate change to the board level, to the governance level and allow it to be in under Health and Safety.

In fact, climate change is embedded with risk and opportunities and that is why CERES uses the expression climate risk. Planning, strategizing and disclosing and thinking about the carbon footprint are essential for good investors.

The progress with companies is positive, but should be faster and on a larger scale. There are costs with carbon so companies intensive in carbon should know that their businesses are going to change. That is why strategic thinking is so important and some companies are much better on this than others.

For example, power companies could argue that their businesses are dependent on the demand side. But this is not true. Any process intensive in carbon, such as transportation, should explore ways to reduce the footprint.

The mechanism that companies are using is the shareholder resolution for the most part and those with climate resolutions have increased over the last 3 years. And the resolution says that the investors demand that the companies disclose its emissions, talk about strategy, and make statements to reduce the carbon footprint.

To judge if the companies are doing this well, there are reports on companies' sustainability status available on the website. Basically, CERES looks at a 14-point checklist for 100 companies and say how well the corporate climate risk is incorporated as a matter of governance:

Is the Board thinking about it?

Do they understand it?

Do they know that humans cause it?

Have they disclosed their carbon footprint?

To systematize this disclosed information to the markets and investors, it depends on the regulators – is this a voluntary system, or not? Do we need regulation?

And the answer is yes. There are cases of some companies that even say that climate change is not a real problem and their value on Wall Street is even going up. Since there is no enforcement, nothing happens to them.

Sidenote: FCC and Y2K issue in late 90s: they knew what to disclose and there is need to pursue the FCC to make the same with climate change.

Other examples of company action:

Timberland for example changed the feed that the cows were receiving and in result, this reduced methane emissions by 80%;

News Corp. wanted to change content – so they would like to look at their shows and try to input climate change within. The examples of the *Simpsons* and *My Name Is Earl* were mentioned.

The companies that are really making progress are those where decisions are coming from the top down.

Another important question: How can we be sure that the companies that are doing the right things are getting the market share? Some companies mentioned before (those doing good things) are just watching their markets shares going down.

So how many of the consumptive generation are choosing the products based on what companies are doing for the environment?

Short term investments – Wall Street; climate investments are long term.

Important also not to compartmentalize the problem of climate that is connected to environmental justice, poverty and water issues.

Q: You mentioned three groups, but only explained two. Can you detail the third one please?

A: I apologize about that. The third group is the public interests organizations which includes a number of environmental groups such as Sierra Club, the Apollo Alliance. In total they are about 75.

Q: How do you reconcile companies' carbon footprint with their desire to grow? What are the sources of information about this?

A: There are lots of different sources on carbon counting now. The World Resources Institute is a great source of this type of information. But talking about how companies do that, Dupont is a good example because they grew enormously and then they had to pull down their carbon footprint. So, it sometimes can't be done.

Q: Going along with the question before, how do you reconcile those carbon principles with the increase on consumerism and increase on the generation of waste?

Q: I am struggling with my example, because we work with conservation and our goal is to protect land. We don't produce anything. Our main source of reduction would be to send our staff home.

A: Well, sending the staff home is not a bad idea. They can work from home. Telecommuting, less business travel—the gains in energy efficiency are profound.