

Here come the states

“You shall not press down upon the brow of labor this crown of thorns, you shall not crucify mankind upon a cross of gold.”

– William Jennings Bryan, 19th century American orator and politician in a speech to the Democratic National Convention of 1896

Following five years of talk in the US Congress – but no legislation – the American debate over cutting greenhouse gas (GHG) emissions has moved to the state level. As another example of the ‘bottom-up’ approach previously discussed in this column, two states have passed laws to establish GHG ‘cap-and-trade’ systems. Several others have passed, or are debating, laws establishing the infrastructure to facilitate trading. However, one particular state is considering legislation that has the potential to create a highly fractured US approach to climate change.

It all began with Oregon. This was the first state to initiate a public policy aimed at mitigating GHG emissions. In 1997, legislation required new power plants to avoid, sequester, or displace a portion of their previously unregulated carbon dioxide (CO₂) emissions. As a result, the Climate Trust, a non-governmental organisation whose main purpose is to implement CO₂ offset projects, was established. The programme provided flexibility to power suppliers. A company could offset its CO₂ emissions by making a contribution to the Climate Trust, in lieu of establishing its own offset programme.

Massachusetts was the first state to legislate a cap on carbon dioxide emissions.

Under this law, existing electricity generating facilities are subject to two types of cap – historic and output-based. After 1 October 2004, a power plant’s CO₂ emissions cannot exceed its three-year average emissions over 1997 to 1999. After 1 October 2006, its CO₂ emissions rate cannot exceed 1,800 Clean Power Act (HB 284) pounds/MWh. Both historic and output-based limits can be met through off-site CO₂ reductions. In addition, any new facility of more than 100 MW capacity must offset 1% of its emissions per year for the next 20 years.

New Hampshire, a neighbour of Massachusetts, has also passed legislation providing for a cap-and-trade system (see *Environmental Finance*, May 2002, page 11). The law provides for a statewide cap of 5.4 million tons of CO₂. Emissions must be reduced by 7% below 1990 levels beginning in 2006. Coverage applies to the state’s three fossil-fuel plants, which are owned by Public Service of New Hampshire, a division of Northeast Utilities. The utility can reduce its emissions or buy credits from other approved programmes or sources.

It is interesting to note that legislation in both Massachusetts and New Hampshire was preceded by significant interaction between the government and a variety of stakeholders. However, it is not clear that



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those affected by these laws put forth the argument that the multiple GHG limits and flexibility provisions should be coordinated.

While Massachusetts and New Hampshire have similar types of programmes, another state is following a different course. The great-granddaughter of William Jennings Bryan – who was staunchly opposed to the ‘command-and-control’ gold standard in his Democratic convention speech quote above – has introduced legislation in California that would require the reduction of tailpipe emissions of greenhouse gases.

The proposed legislation would require the State Air Resources Board to develop regulations that would achieve the maximum feasible reductions of GHG’s by vehicles used for personal transportation. The regulations could take effect as early as 2006 but the application of the law would be limited to vehicles that are made in the model year 2009 and later. In response to a specific question, a staff member of the California State Assembly informed us that no trading is foreseen.

A law of this type carries with it the danger of reverting to a command-and-control system, as opposed to a more flexible and cost effective cap-and-trade system. It is ironic that California’s “cross of gold” may turn out to be inflexible command-and-control legislation with a potential long-term deleterious impact on its economy. A significant coalition has mobilised against the passage of the bill. This may in fact be round one in the GHG mitigation battle of command-and-control versus markets.

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Table 1. Salient features of Massachusetts and New Hampshire trading programmes

Massachusetts	New Hampshire: Clean Power Act (HB 284)
<ul style="list-style-type: none"> ● Signed by Governor 23 April 2001 ● Capped at historic CO₂ emissions (3-year average of 1997–99) ● Facilities will also have an output-based limit of 1,800 lb/MWh ● Both historic limit and output-based limit can be met through off-site CO₂ reductions ● Must meet historic cap by 1 October 2004; output rate-based cap by 1 October 2006 	<ul style="list-style-type: none"> ● Signed by Governor 9 May 2002 ● Applies to three power plants in the state ● Reduce CO₂ to 1990 levels by 2006 ● Caps are annual, output-based, with trading for CO₂

Table 2. Selected states with recent GHG activity

Climate change initiatives/proposed legislation	Registries	Multi-state initiatives
Massachusetts New Hampshire Oregon New York Pennsylvania Illinois Michigan Minnesota Ohio California	California New Hampshire New Jersey Wisconsin Massachusetts	New England governors Eastern Canadian provinces