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ELI's Schang discusses challenges to implementing cap-and-trade plan

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If and when Congress passes a cap-and-trade plan, what will the key challenges be to implementing the scheme? How will regulators avoid corruption within the system? During today's OnPoint, Scott Schang, vice president of climate and sustainability at the Environmental Law Institute and editor in chief of Environmental Law Reporter, discusses the challenges associated with implementing a cap-and-trade scheme in the United States. He addresses concerns over corruption and talks about the economic impacts of cap and trade.

Transcript

Monica Trauzzi: Welcome to the show. I'm Monica Trauzzi. Joining me today is Scott Schang, vice president of climate and sustainability at the Environmental Law Institute and editor-in-chief of the Environmental Lot Reporter. Scott, nice to see you.

Scott Schang: Thank you, Monica, for having me.

Monica Trauzzi: Scott, ELI recently held an event focusing on the issues surrounding the implementation of a cap and trade. It assumes that one will eventually pass, but it's an important discussion to have because billions of dollars will be at stake once we have a cap and trade in place. So, what are the primary challenges you see associated with the implementation of a cap and trade?

Scott Schang: Well, the conference is really focusing on implementing climate policy broadly in the United States. So, cap and trade was the reason we actually decided to have the conference. Back in the summer we thought, look, Waxman-Markey has gone fairly well. We think by February of 2010 we'll probably have a fairly good sense of what the Senate bill will look like. That didn't happen.



Scott Schang

So the conference did talk about cap and trade and how you could implement it and the fact that implementing a program like this is really key in understanding in order to do the design. And Lori Schmidt and people from the Hill talked a little bit about how they had thought about enforcement and the need for monitoring and the need for other tools to be available and built into the legislation so you could actually do a cap-and-trade program that worked on the ground once it was implemented.

Monica Trauzzi: So, where do we start? I mean if and when Congress does pass legislation, what are the first steps that need to take place in order to get the wheels turning and some motion going on this?

Scott Schang: I think the first steps have already happened. I mean one interesting thing that came out of the conference was the notion that, while we don't yet have a U.S. action plan for climate change, the kind of guide stars are starting to appear. So, for example, the president did say in the Copenhagen Accord in the annex to the Copenhagen Accord that the U.S. would try to reduce greenhouse gas emissions by 17 percent if Congress acted, it was conditional. But the U.S. has, we've seen in Waxman-Markey, those same goals and similar goals. So, in a broad sense, the United States is starting to move down the road. We also have the EPA starting to move down the road in terms of implementing some rulemaking surrounding climate and the state, obviously, have already been well down the road and they no longer sit and idle if the Congress continues to stay stalled. So we are moving.

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Monica Trauzzi: So, do the same challenges exist if EPA regulates versus if we have cap-and-trade legislation?

Scott Schang: Very different challenges. And that's, I think, one of the messages that came from the conference, was that, look, one way or another we're going to get this done. Everybody, I think, said, and there was a real consensus, that we need federal legislation and that's really the way that would be the most efficient and the most effective for regulating greenhouse gases. But people did also say, look, if we don't get federal legislation we're still going to move. Gina McCarthy made that point, which has been made by the administration, that they have a legal duty to move on greenhouse gases. But we also heard about the states and the individuals, what you can do at very different levels and the need to use all the different toolkits, the tools that we have in our toolkit to actually make progress. So, for example, Mike Vandenberg gave an interesting talk about the impact of individuals on climate and how what we really have to do here, up at the federal, state, and local level, is to change behavior. Cap and trade is just one tool to try to change behavior. It's the one that we've coalesced around and decided that it's probably the most efficient, but if it doesn't work we can do other things, like an energy bill or making progress on energy efficiency goals or helping individuals understand their impact on the environment and what they can do to actually a change in their daily behaviors that will impact the climate. So there are all these tools that are available and this conference walked through those various tools and talked about the pluses and minuses and how you might use them.

Monica Trauzzi: So, there's a lot of money at stake here. How do you avoid corruption and scandals from taking place?

Scott Schang: That's hugely important and that's actually one of the reasons I think we're having some trouble politically with cap and trade is that the legislation that was written was written in a somewhat different time

Cap-and-Trade cont.

It was before the economy met significant difficulties. It was before Wall Street lost a lot of the confidence of the American public. And so when you have a system that was built around a market and it's going to try to give significant allowances to large interests, as Dan Esty has pointed out, you have some real concerns about cap and trade that weren't there a year or so ago. That's been a significant issue for us to try to handle. On the other hand, implementing at the EPA level, as we all know, would require a lot of difficult rule makings. It's a very poor fit to try to actually do what we're trying to do. You can make it work, but it will be very inefficient, probably expensive to do.

Monica Trauzzi: Are there previous regulatory schemes that we can sort of look to for examples of how to make a cap and trade work? Or is this uncharted territory?

Scott Schang: There are some. Everyone has talked about the acid rain program, which is definitely a beginning, but, as other people have also pointed out, acid rain only addressed a single pollutant and it came from a single type of source that was continuously monitored. And regulating 13,000 sources in a variety of industries around the country without monitoring is a real issue. So, I think the keys that I heard at the conference that are really important are monitoring and reporting. And that's a concern for us at ELI as well; because if you're going to have a system like this created you have to have the data made available to the public. And Gina McCarthy did make some comments that make us think that the data they collect through the greenhouse gas reporting rule will be made public.

Of course, you would have expected that, but she did say that. And that's really important, because if the public doesn't understand what's happening at their local level, who's emitting what, how are certain companies and industries meeting their goals, then they can't understand the system and embrace it. Also, you can't have people enforce the system. You need the reporting and the monitoring in order to have enforcement and that's a concern we've had at ELI, is making sure that you can actually enforce the system once it's put in place. Our environmental system is cooperative federalism and we're used to most environmental statutes being enforced at the state level. This is a federally driven system that we're putting into place and the role of the states is really in question. We haven't asked to the states, as John Dernbach suggested, to come up with state action plans and actually implement through the states, we're doing a federal augmentation. If that's going to happen, we also have to make sure that we can have citizen suits. It's been very important in many of our federal statutes to have citizens stand behind the federal government and the state governments and retain the ability to bring enforcement actions to make sure that all the different things are happening that need to happen at the actual implementation level. If you don't have that reporting and monitoring being very transparent, you can't have these citizen suits. The other concern about citizen suits is you need to have standing. In other words, you need to have the ability of a citizen to be able to get into the courtroom to bring his or her case. And with greenhouse gases having such a broad impact, it's not clear that standing is going to be easily shown, so we're concerned about that as well.

Monica Trauzzi: This is complex stuff, clearly, through this discussion that we're having. Will a cap and trade czar even be possible, someone

who knows all the ins and outs of the system, who can sort of oversee everything that's happening or will it sort of need to be broken down bit by bit?

Scott Schang: I think that's the important thing about legislation and one thing that we've heard at the conference is that it won't be one thing that will happen. There will be cap and trade, but if you read the Waxman-Markey bill it has four titles, only one of which is cap and trade. There are three other titles and that's really important. So, again, going back to the toolkit analogy, we're going to have all these different tools that need to be used. Cap and trade is one of them. There will be one person, probably at EPA, maybe with some help from USDA, who will make the cap-and-trade system work and maybe the CFTC will also be involved there. And they'll know how to do that. I don't think that's too difficult. We do have to design a system however so it maintains its environmental integrity. So that there is some concern and I'd like to see some more work done on the notion of giving the offsets, the domestic offsets to the USDA. If you do that, do they really know how to design and run an offset system and maintain the environmental integrity? EPA is the agency that's going to be worried about the environmental integrity and how will they have input into what USDA is doing? There are some models that we have across our environmental statutes where we've done this before. For example, the Corps of Engineers has to issue permits and they implement guidelines that are written by EPA to ensure the environmental effectiveness of those permits. That might be a kind of system that we could use to ensure that when we create the system we have all the different people doing their jobs, but doing them well and in a coordinated way.

Monica Trauzzi: OK, we will end it right there, a lot to think about and look forward to.