

Environmental Sustainability and Clean Technology – Implications and Business Opportunities of Increased Governmental Regulations

by Gil Breimen and Anatoly M. Darov



The basic principles of environmental sustainability have been around for a long time but have drawn scant interest from government regulators, investors, consumers, and businesses until recently. Current trends have drawn new attention to environmental sustainability in virtually every corner of the global economy. Rapid escalation in the cost of energy, renewed appreciation for the scarcity of natural resources, and consumer demand for environmentally sensitive products and services have forced businesses to consider their environmental exposure and assess their businesses in the context of a low-carbon, energy-efficient economy.

America's environmental and energy issues are making corporations refocus on environmental sustainability issues and the need to develop appropriate environmental strategies. The business of environmental sustainability – often termed “green” business – brings risk and opportunity to virtually every organization in every sector of the economy, and the trend toward green

investment has been strong and consistent over the past few years. We have been increasingly involved in investments focusing on clean technologies and in setting up businesses and ventures in that space. In a recent Money Tree Report by PricewaterhouseCoopers and the National Venture Capital Association, 2007 venture capital investments reached record levels in the clean technology sectors, with \$2.2 billion invested in 201 deals, a growth of 57% from the prior year. We expect continued growth in that sector.

While large-cap companies are often at the forefront of investing in clean technologies, developing environmental sustainability strategies, and implementing innovative environmental measures, smaller businesses must be aware of rapidly evolving government policies and regulations that will have material impact on their businesses and require compliance with sustainable green business practices.

Government's role in fostering the

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green economy and environmental sustainability has taken on many forms and is rapidly evolving. Local zoning and planning boards have adopted or are presently considering new ordinances and bylaws that require commercial and residential developers to consider natural resource conservation and energy efficiency on new projects. Developers that comply with green standards – which are commonly measured relative to the Leadership in Energy and Environmental Design (LEED) rating system for new buildings – may be afforded incentives that include, for example, higher maximum FARs, relaxed dimensional limitations on new buildings, and other incentives

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**Continental
Wind Partners –**
The Power and Profit in Wind

As oil prices are soaring, most segments of the world economy are stalling. But the winds of change are blowing in a positive direction for the renewable energy sector, and that has some investors very excited.

“Wind power will become a bigger factor as developing countries bid against each other for diminishing supplies of fossil fuels,” says Adam de Sola Pool, chief executive officer for Continental Wind Partners, a renewable energy investment

group headquartered in Poland. “The cost of wind power is coming down as the industry grows, and once a wind park is developed, it has a tiny operating cost compared to other power sources. That makes wind turbines one of the most exciting new asset classes,” he adds.

While Continental Wind was launched just over a year ago (March 2007), it is already facilitating the construction of

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to promote use of sustainable green practices. Locally, Boston and Cambridge have been recognized for their leadership in incorporating green building and planning principles. In January 2007, when Boston enacted Article 37 to its zoning code, it became the first major city in the nation to mandate green building standards into its zoning code. Under the provisions of Article 37, all new construction and major renovations exceeding 50,000 square feet must be “certifiable” under the LEED rating system.

Municipal governments are not alone in mandating the consideration of sustainable design on new projects. Governments at the state level have moved aggressively to mandate investment in environmental sustainability. Massachusetts now requires green design principles to be incorporated into the construction or major renovation of all state buildings and has made millions of dollars in grants and low interest loans available for renewable energy projects. Certain private real estate development projects will require analysis of green house gas (GHG) emissions impacts to be quantified before state environmental permits are issued.

In addition to mandating the efficiency of buildings, states, including Massachusetts, have taken the lead on steps to curb the emission of carbon and other green house gases (GHGs). Clearly, regulation of GHG emissions will be a major focus of all carbon-intensive businesses in the years to come. While some may argue that the federal government role in regulating GHG emissions has been limited under the Bush administration, states have taken matters into their own hands to force reductions. In 2006, Massachusetts and eleven other states sued the EPA to force it to regulate GHG emissions from motor vehicles. The Supreme Court ruling in favor of the petitioners has sent a message that global warming is a major threat and that GHG emissions are subject to regulation under the Clean Air Act. A year after the *Massachusetts* decision was handed down, California – joined by 19 other states – sued the EPA again seeking to force EPA to release a court-mandated

determination that greenhouse gases endanger public health or welfare and to take other steps to regulate GHG emissions.

In the Northeast, ten states, including Massachusetts, have formed the Regional Greenhouse Gas Initiative (“RGGI”) to limit carbon emissions by the electric industry. The RGGI plans to implement cap-and-trade emissions program where participating states will auction carbon emissions credits. Auction proceeds would be directed to renewable energy production. Although the initial implementation of RGGI will cover only carbon emissions from power plants, RGGI plans to expand the cap and reduce the other harmful GHG emissions in other industries. Ultimately, the federal government will join the efforts of progressive states in the Northeast and California and develop a national GHG reduction program.

Internationally, we have seen and advised on increased business opportunities by way of investments, incentives, and legislations in the renewable energy and energy efficiency space. The European Union, for example, has adopted an energy policy that calls for 20% in energy efficiency, 20% reduction in greenhouse gas emissions, 20% share of renewables in overall EU energy consumption by 2020 and 10% biofuel component in vehicle fuel by 2020, and has proposed a new directive to accomplish those goals. The EU’s action plan places specific emphasis on items such as appliance and equipment labeling and minimum performance requirements, building performance requirements, making power generation and distribution more efficient, achieving fuel efficiency for cars, coherent use of taxation and facilitation of appropriate financing of energy efficiency investments for enterprises. Initiatives, new technologies, and growing investment are also taking place in other parts of the world, such as India, China, Canada and Israel.

As more money is put to work in the green economy, and governments implement more green-centric policies and regulations, all businesses – not just automakers and energy producers – need to take steps now to understand

The Subprime Crisis: How Does It Impact You?

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by Robert D. Friedman
and Joshua N. Cook

The implosion of Bear Stearns & Co. underscores the recent debt and equity market disruptions caused by the subprime crisis. The historic default rate among subprime mortgages and other debt has sparked a loss of confidence in credit markets and a liquidity crunch. The fallout from the subprime crisis will not be limited to the likes of Bear Stearns but will directly affect bond issuers, investors, fiduciaries, and business people.

THE SUBPRIME LOAN

The seeds of the subprime crisis were planted when mortgage lenders extended credit to consumers who lacked traditional qualifications. So-called “subprime” borrowers, typically individuals with lower income and/or a history of credit problems, obtained credit at higher-than-market interest rates. The higher interest rates, coupled with the borrowers’ lower income and history of credit problems, gave these subprime loans an above-average risk of default. **This article is continued on our website. To read the rest, please visit burnslev.com/subprimearticle.**

their environmental exposure to increased regulation and start working to develop and implement strategies that enable their businesses to flourish in an energy-efficient, low-carbon economy. In our work with companies in this space, it is clear that companies that fail to identify their environmental exposure and craft business strategies to embrace clean technologies will have a more difficult time competing in the new green, low-carbon business world.

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Amazing Clients

Continental Wind Partners – The Power and Profit in Wind

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some of Europe's largest wind parks. It has partnered with other sophisticated companies, engineers and financial experts, to initiate projects that will bring 3,000 megawatts of wind power to Poland and Romania. It has also chalked up plans for 2,000 megawatts of wind power in Australia and New Zealand.

"It's amazing that we started with just 21 million Euros, but we already have construction of several wind parks about to start, and are in the process of obtaining \$1 billion of debt and equity financing for these construction projects," says de Sola Pool, who grew up in Cambridge, Massachusetts and attended Phillips Academy in Andover.

The visionary CEO caught the business bug from his father, a former professor at MIT. "I got to travel around with him while he was doing international business research, and that definitely influenced me," he recalls.

After attending the University of Chicago and getting his own MBA at the Sloan School, de Sola Pool went to work on Wall Street for Solomon Brothers, learning about finance and deal-making as part of a mergers and acquisitions team.

When the Soviet Union collapsed, his boss pursued an opportunity in Europe working for The European Bank for Reconstruction and Development and de Sola Pool followed. "I was one of three people assigned to the Polish team, and we quickly got involved in plans to improve the use of resources and energy efficiency," he says.

"We knew there would be a period of transition toward capitalism and saw that as a huge opportunity, but working it was not easy," he recalls. "The Polish government would not allow the firing of workers and that required major adjustment. In essence, socialism was about using as many resources as possible to produce as little as possible, while capitalism was about using as little as possible to produce the most you can."

Before long, de Sola Pool had set up a group called Environmental Investment Partners I to launch commercial efficiency and recycling efforts focused on energy and waste materials; that project went so well that he decided to create Environmental Investment Partners II to profit from propagating highly efficient gas power, heating and air conditioning.

He credits Josef B. Volman of Burns & Levinson with setting up a useful and efficient structure for the second partnership. "I liked what he did for us, so we looked to him for help when we set up Continental Wind Partners, which had a unique need to attract a group of high net worth investors from both America and Europe," says de Sola Pool. "Joe devised a creative structure [using a Delaware limited liability company]



to meet our complex needs involving international issues, investment regulations, tax efficiency and financing," he recalls. "Joe and his people get positive results without the pain and anxiety that normally goes with it," he quips.

That has allowed de Sola Pool to focus his energy on the business of wind development with an unusual degree of success. "There was only 150 megawatts of wind power in Poland when we started, and just three in Romania. Now, we've completed work on 160 megawatts of power in Poland with much more in progress, and in Romania we have plans for 600 megawatts to come on line by 2009," he says. "As it looks now, we should be very profitable. We expect early returns in line with competitive venture capital concerns," he adds.

For purchasers of the developed wind parks, the profits should be solid as well. Because of environmental concerns and government incentives, coal power in relevant parts of Eastern Europe can only be sold for 6 Eurocents per hour while wind power can be sold for 9 cents per hour. But profits are only part of the payoff. "To the citizens of Eastern Europe, this is about freedom and independence from Russia, on whom they would otherwise rely for energy," says de Sola Pool.

Continental Wind also takes a socially responsible approach, studying wind farm effects on birds and wildlife, measuring noise and other environmental impacts, and emphasizing safety for optimal performance. "Development concerns are complex when you are mounting 86-ton turbines on top of 100-meter shafts," says de Sola Pool.

"We also set up charitable foundations in each town to serve the future needs of local children and schools," he says, pointing for example to the establishment of a charitable solar powered project.

"We find local developers and provide them with the money and expertise they need to build wind parks, so we are not just a bunch of foreigners coming in with a wild idea," adds de Sola Pool, who notes that even quaint Dutch windmills were opposed as "eyesores" when they were built centuries ago.

He predicts that the modern crop of windmills will not die out or become a historical oddity either. "We think we are riding the beginning of a very long wave of renewable energy development – one that will last much longer than my lifetime."

*This article was contributed by
John Cunningham, freelance writer/editor*

Don't Try This At Home – What NOT To Do When Changing Your Estate Plan



by Clifford R. Cohen and Joseph R. Marion III

You met with your estate planning attorney several years ago and designed what you thought to be an adequate estate plan. Several years have elapsed and the only thing that you recall is that the experience required you to think hard about the manner in which you would pass your estate to your loved ones upon your death – a difficult task. As a result, most people in your situation are hesitant to revisit their estate plans for a myriad of reasons, including:

"I haven't received any notices from my attorney so I guess there have been no changes in the tax laws."

"Any changes I make will be expensive and will require a lot of time and attention."

"I think I will just make notes on my existing copy of my estate plan letting my children know about my change of intentions."

"I'll just copy what the lawyer did the last time."

Thoughts such as these can lead to costly and lengthy problems for your heirs. Just because you haven't heard from your attorney doesn't mean that there haven't been significant changes in the estate and income tax laws. Equally important, be aware that handwritten notes, torn pages, and other changes will not be effective, especially if such revisions are not witnessed appropriately, or at best can be very ambiguous in meaning. Most estate plans once designed and implemented are relatively easy and cost-effective to amend. Changes in distribution amounts, beneficiaries and fiduciaries can usually be made quickly.

Written changes to a will are called "codicils", and changes to a trust are called "amendments" or, if all the provisions are changed, "restatements". In many instances, updating of the entire document, incorporating the changes in laws and the tax code will take the estate planning attorney less time and cause less expense to the client than a review and revision of an existing

document, especially where another attorney drafted the document. Only changes to a letter of intent regarding the distribution of personal property (i.e., jewelry and other valuables) should be made by the testator on his or her own, and even then, only if specifically authorized in the estate planning documents.

Storage. Another important consideration is the storage of the originals. Generally, if safe, fireproof storage is offered by your attorney, accept it rather than using a safe deposit box, which can present access problems on death or disability. Further, if you use a different lawyer to make a small change, have all the originals stored together.

Do Your Documents Match Your Circumstances?

On occasion, your "estate plan" can change without any action on your part, via a change of circumstance, and the documents may need adjustment to deal with that. A "yes" answer to any of the following might mean it's time to at least check in with your lawyer:

- Has your state residency, marital status, or financial condition changed?
- Have any of the persons listed as beneficiaries, executors or guardians died or your relationship with these persons changed?
- Has the mental, physical, or financial condition, and/or marital status of your beneficiaries changed?
- Due to increase in your age, are you concerned about funding the cost of long term care?
- Have you bought or sold real estate, a business interest or any other assets?
- Have you changed your mind regarding thoughts on your medical treatment during incapacity?

On another note, since 2001, the estate tax laws have changed significantly, so all revocable trusts with estate tax provisions drafted prior to 2004 should

be reviewed to ensure that the estate tax provisions operate properly.

As a general rule, you should plan to visit your estate planner every three to five years to update him or her on your life changes. Don't make the error of thinking that, once established, your estate plan does not need attention and, if it does need attention, don't try to "do it yourself."

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Focus

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