



Loopholes in Climate Bill “Offset” Provisions

Lets Major Polluters off the Hook

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The American Clean Energy and Security Act (ACES), narrowly approved in the House, is an important first step toward slowing climate change. The bill would create a cap-and-trade system that establishes a strict limit on the amount of greenhouse gases, the pollution that causes climate change, that industrial facilities are allowed to generate, with the limit, or cap, tightening over time. Industrial facilities that spew more than 25,000 tons of carbon dioxide or other greenhouse gases are required to take action to reduce their pollution. The goal of the cap and trade program is to reduce the amount of pollution from industrial facilities 17 percent by 2020 and 80 percent by 2050 compared to 2005 pollution levels.

The agriculture provisions of the bill, however, open two loopholes that threaten to let coal-fired power plants and other big climate polluters off the hook and slow progress toward reducing greenhouse gas emissions.

First, the bill allows polluters to take credit for meeting their required pollution reductions by paying farmers, not to put new conservation practices in place, but simply to keep doing what they were already doing. This could allow the equivalent of over 67 of the dirtiest power plants to avoid any controls on greenhouse gas emissions while missing the opportunity to encourage farmers to do more to protect the climate. **Second**, the bill provides no guarantee that key conservation practices that are generating credits for polluters will actually stay in place over the long-term.

Taking Credit for the Status Quo

Title V of ACES Agricultural and Forestry Related Offsets allows polluters to work through middlemen, called project developers, to escape the requirement to reduce their own pollution by instead paying farmers and ranchers to use conservation practices that reduce the amount of carbon dioxide and other greenhouse gases in the atmosphere. In the terminology of ACES, this approach is called an "offset program." Industries buy "credits" from project developers who contract with farmers to implement conservation practices. The "credits" the reduction in pollution achieved through conservation practices "offset" part or all of the pollution the industry is required to reduce under the bill.

If this approach works as it should, farmers get incentives to increase conservation, polluters pay less to reduce an equivalent amount of pollution, and climate change is slowed. The key to all this working as it should, however, is that the conservation practices producing the "credits" must be in addition to the conservation practices the producer is already using. If they are not additional, if they don't represent new effort by the producer, nothing new happens. There is no real reduction in pollution from current levels. We just perpetuate the status quo.

This is where ACES falls short. Section 504(a)(2)(B) allows middlemen to sell, and polluters to purchase, credits "produced" by conservation practices that have been in place on the ground since 2001.

Unless ACES is amended, it will allow polluters to keep polluting by simply paying agricultural producers to do what they have already been doing for the past 8 years. There will be no real change from the status quo and no real reductions in pollution.

The effect of allowing polluters to take credit for what farmers and ranchers are already doing could significantly impede our progress in slowing climate change. The Conservation Technology Information Center, for example, estimates that conservation tillage practices were already being used by farmers on 174 million acres in 2007.¹ These tillage practices already in use could produce between 87 and 148 million metric tons of offset credits per year, depending on whether you use USDA or EPA estimates.² Unless this loophole is closed it could let major industrial sources off the hook for between 87 and 148 million metric tons of pollution every year just for maintaining the status quo.

To put this in perspective, at the low end of the range, 32 of the dirtiest coal burning power plants in the United States would be allowed to do nothing to reduce their emissions, if they choose instead to purchase offset credits under ACES's flawed agricultural offset program.³ That figure rises to 67 of the dirtiest power plants doing nothing if more optimistic estimates of carbon storage are used. Looked at in another way, if these existing tillage practices were allowed to generate offset credits, those credits would cut the amount of emission reductions ACES would achieve by 2020 by at least 8 or 13 percent, depending on what rate of carbon storage is assumed.⁴

The loophole created by ACES is potentially much larger than these estimates suggest. If more conservation practices that farmers are already using, such as cover crops, continuous cropping, fertilizer management, and manure management, were included in these estimates, even more dirty power plants or other industrial facilities would be off the hook. USDA's Farm Services Agency estimates, for example, that the 34 million acres enrolled in the Conservation Reserve Program are already sequestering about 42 million metric tons of carbon pollution a year, equivalent to the emission reductions required of 13 of the most polluting power plants and to 4 percent of the emissions reductions ACES seeks to achieve by 2020.⁵

No Guarantee Key Practices Stay in Place

The bill allows polluters to take credit for the carbon dioxide the most common greenhouse gas that farmers and ranchers can take out of the atmosphere by growing crops and managing pasture and rangeland. Some conservation practices used by farmers and ranchers store the carbon in the soil creating a kind of "carbon bank." Carbon is "deposited" in the bank when carbon is stored in the soil by farmers and ranchers using conservation practices. If those farmers and ranchers quit using those practices, then carbon is "withdrawn" from the bank and released to the atmosphere again as carbon dioxide. Any slowing of climate change that had been accomplished while the carbon was safely in the bank is lost.

At first glance, ACES appears to recognize this problem by requiring in Sec. 504(c)(2)(A) that "any sequestration of greenhouse gases, with respect to which an offset credit is issued under this title, results in a permanent net increase in sequestration of greenhouse gases...". But a few pages later in Sec. 504(d), ACES authorizes so-called "term offset credits" that only require agricultural carbon storage practices to be kept in place for five years. Presumably, farmers and ranchers will be paid during those five years to keep their practices in place, but there is nothing in the bill to prevent farmers and ranchers from abandoning those practices after the payments stop. Offsets must actually improve the status quo by reducing current pollution levels and generate additional reductions in GHG emissions that would not have occurred otherwise. Paying farmers to do what they are already doing to store carbon does not generate additional reductions in pollution or improve the status quo. And, the carbon stored in the soil has to stay safely in the bank for the long term, otherwise no real slowing of climate change will be achieved. In keeping with the purpose of the bill, we urge strict limits on the amount of compliance reductions that covered entities can satisfy through offset credits. Moreover, we recommend that measures be taken to ensure that the carbon stored in the soil through term offset credits stays in the soil after the credit expires or that additional emissions reductions be required to compensate for the carbon released if conservation practices are abandoned after the term offset credit expires.

The Secretary of Agriculture is in Charge

ACES puts the Secretary of Agriculture, Tom Vilsack, in charge of the agricultural offset program. The ultimate impact these two loopholes will have on slowing climate change and building a credible agricultural offset program depends on four important decisions Secretary Vilsack will have to make. First, he needs to decide, out of all the conservation practices currently in place on agricultural land, which ones were put in place after January 1, 2001. The bill only allows credits to be generated, and payments made, for conservation practices applied after January 1, 2001 [Sec. 504(a)(2)(B)(ii)(II)]. Second, out of all the various types of conservation practices agricultural producers use, he needs to decide which ones are "readily reversible" [Sec. 504(a)(2)(B)(ii)(II)]. In other words, he needs to determine which practices it would be easiest for producers to tear out or abandon and then get paid to put those same practices back in place "cease and reinitiate practices" in the language of ACES. Only readily reversible practices and the producers using them since 2001 are allowed to generate credits and payment to producers. Third, he needs to decide which existing "government regulations" would require producers to keep their "readily reversible" practices in place and therefore would reduce the incentive for those producers to skirt the law ("cease and then reinitiate practices..."). The bill restricts the types of practices that are allowed to generate credits to payments to those that "are not required by existing government regulations, as determined by the Secretary" [Sec. 504(a)(2)(i)].

And finally, he needs to decide which of the conservation practices that store carbon will be eligible for "term offset credits" and thereby escape the requirement to keep the carbon stored in the bank permanently. None of these decisions are cut and dried. Comprehensive information on what practices producers are using and when they started using them don't exist. Which practices are easily reversible and which are not is a matter of judgment, not fact. Which government regulations should or should not apply and which practices should qualify as term offset credits is a matter of policy, not science. Allowing polluters to take credit for conservation practices that agricultural producers were paid to apply through government programs puts taxpayers in the position of subsidizing the pollution reductions industrial entities are required to make under the bill.

All of these decisions will be contentious because they say yes to some producers and no to other producers with potentially significant implications for their bottom lines and with potentially devastating consequences for the protection of our climate and the credibility of the agriculture and forestry offset program.

Recommendations

An offset program can be a cost effective way to reduce overall greenhouse gas emissions, but only if two conditions are met.

The offsets must actually improve the status quo by reducing *current* pollution levels and generate *additional* reductions in greenhouse gas emissions that would not have occurred otherwise. Paying farmers to do what they are already doing does not generate additional reductions or improve the status quo. The reductions in pollution must be permanent. The carbon stored in the soil has to stay safely in the bank for the long-term, otherwise no real slowing of climate change will be achieved.

ACES does not meet these conditions.

There is a better way. We should return to the basic principles of an effective and credible agricultural offset program that are actually reflected in other provisions of ACES.

ACES requires the Secretary of Agriculture, when establishing a "program governing the generation of offset credits from domestic agricultural and forestry sources" [Sec. 502(a)], to "ensure that offset credits represent verifiable and additional greenhouse gas emission reductions or avoidance, or increases in sequestration (carbon storage)" [Sec. 502(b)(1)]. Moreover, the bill defines the key term "additional" to mean "reductions, avoidance, or sequestration that result in a lower level of net greenhouse gas emissions or atmospheric concentrations than would occur in the absence of an offset project" [Sec. 501(a)(1)].

As Congress and the Administration work toward a final bill hopefully this year they should work to ensure that the agricultural offset program actually meets these stated requirements. We recommend the following changes to ACES be made to produce a credible and effective agricultural offset program.

Ensure that only conservation practices put in place after January 1, 2009, are eligible to generate offset credits and result in payments to agricultural producers through agreements with project developers. This will restore the basic and essential principle of additionality to the agriculture offset program and ensure that the program produces real and important reductions in pollution and income opportunities for producers that can stand up to public scrutiny.

Allow offset project activities started after January 1, 2001, under the auspices of section 740 of the Clean Air Act, to generate offset credits and payments to producers if those project activities meet all of the requirements for such projects that are established under the final bill. This one exception to the principle of additionality provided for already in ACES will allow those producers already participating in voluntary carbon markets similar to the cap and trade program envisioned in ACES to transition to the new program established under the bill.

Substantially increase the financial support (through a greater allocation of emission allowances) for the Agriculture Incentives Program established by ACES. This new program should be focused on projects that help agricultural producers enhance their conservation efforts in ways that simultaneously reduce or avoid greenhouse gas emissions, sequester carbon, protect water resources and agricultural watersheds, restore aquatic and terrestrial wildlife habitat and sustain the productivity and profitability of the agricultural operations in the face of climate change.

Address the issue of permanence. The fact is that the permanence of many agricultural conservation practices used to produce offsets credits by storing carbon can never be guaranteed. Congress should recognize the essential impermanence of the "readily reversible" practices cited in ACES and phase out the authority for term agricultural offset credits in 2020. Many of these readily reversible practices do have important environmental and climate benefits. The expanded funding for the Agriculture Incentives Program, rather than term offsets, should be used to encourage farmers and ranchers to use them. To ensure that an equivalent amount of pollution is removed from the atmosphere, polluters who benefit from such term offsets should be required to purchase an equivalent amount of permanent offsets or to achieve an equal amount of actual emissions reductions by the time offsets are eliminated. This approach would allow polluters to reduce the cost of compliance in the short-run while they make adjustments to their production systems that will result in real and permanent reductions in greenhouse gas emissions after 2020. In the meantime, the Secretary of Agriculture should be required to ensure that conservation practices qualifying for term offset credits before 2020 must remain in place until those term offsets are phased out.

Create an independent office of compliance and enforcement within USDA, perhaps under the Office of the Inspector General. ACES saddles the Secretary of Agriculture with a heavy burden of monitoring, enforcing, and denying payments to agricultural producers and project developers, if their practices and projects do not meet the requirements for offset projects established by the bill. USDA has a poor track record when it comes to denying benefits to producers because of failure to meet their conservation obligations.⁶ Given the expanded enforcement role the bill creates for USDA, we think it is time to create such an independent enforcement office to oversee the implementation of the agricultural offset program and other conservation and environmental provisions of the farm bill.

Agriculture has an important and unique role to play in helping to protect our climate, our food and fiber supply, and our environment as part of a comprehensive policy to slow climate change. The agricultural provisions of this potentially landmark legislation threaten instead to undermine progress toward slowing climate change and undermine the credibility of the agriculture offset program before it gets off the ground.

We strongly encourage Congress and the Administration to work together to get these important provisions back on track and included in a bill that can be signed by the President this year.

¹ Conservation Technology Information Center. 2007 Amendment to the National Crop Residue Management Survey Summary.

² The 87 MMton number assumes an average GHG emission reduction of .5 MT CO₂-eq sequestered per acre/per year, based on average USDA estimates. If average EPA estimates are used instead (.85), the amount sequestered by conservation and reduced tillage would be slightly higher than 148 million metric tons. See Congressional Research Service. Climate Change: The Role of the U.S. Agriculture Sector. RL33898. June 20, 2008.

³ According to the Carbon Monitoring for Action (CARMA) data base (<http://carma.org/dig/show/country+202+plant#top>), the 32 most polluting power plants in the United States emit 510 million metric tons of carbon dioxide equivalent emissions per year. ACES requires all capped sectors to reduce their emissions by 17% by 2020. That means these 32 plants would have to reduce their emissions by 86.7 million metric tons. Existing tillage practices alone would sequester enough carbon, using USDA's more conservative estimate of how much carbon conservation and reduced tillage sequesters per acre, per year, the tillage practices in place today will sequester enough carbon to take these 32 power plants off the hook until 2020. Using EPA's more generous estimate of carbon sequestration per acre, per year would take 67 of the top polluting power plants off the hook.

⁴ ACES requires the industrial facilities under the cap to cut their emissions by 17% by 2020 compared to 2005 emissions. ACES specifically exempts agriculture and forestry from any mandatory emissions reductions. The 2009 U.S. Greenhouse Gas Inventory Report (<http://www.epa.gov/climatechange/emissions/usinventoryreport.html>), total emissions in 2005 were 6.8 billion in 2005 if you take emissions from agriculture and forestry out of the total. Assuming all those emissions are from facilities captured under the cap—a generous assumption—ACES would result in a cut of 1.1 million metric tons by 2020. The 87 or 148 million metric tons of potential offsets from existing tillage systems amounts to between 8 to 13 percent of that 1.1 million metric ton reduction in emissions.

⁵ USDA Farm Service Agency. Conservation Reserve Program Monthly Summary. May 2009.

⁶ See Environmental Working Group, Trouble Downstream: Upgrading Conservation Compliance, September 2007 and Government Accountability Office, USDA Needs to Better Ensure Protection of Highly Erodible Cropland and Wetlands, GAO-03-408, April 2003.