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U.S. CLIMATE CHANGE POLICY UNDER G. W. BUSH

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I. INTRODUCTION

During the first three months of 2001, there were two startling developments in climate change policy. In January, the Intergovernmental Panel on Climatic Change (IPCC) reported unequivocally that the world's climate is warming and that anthropogenic sources — mostly burning coal, oil and gas to produce electricity — are at least partially responsible[1]. In March, his second month as U.S. President, George W. Bush both reversed his earlier position on regulating domestic emissions of CO_2 and repudiated the Kyoto Protocol of 1997. The Kyoto Protocol was fashioned at the third Conference of Parties (COP) to the 1992 Framework Convention on Climate Change (FCCC), held in Kyoto, Japan in December 1997. Its purpose was to implement the goals of the FCCC and had been a signal accomplishment of the Clinton-Gore administration. President Clinton signed it in 1998.[2]

There is no way to reconcile these two developments. The IPCC 2001 report offered the considered assessment of the

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[1] IPCC Third Assessment Report (TAR) Synthesis Report (Apr. 2001) *at* http://www.ipcc.ch/.

[2] Shardul Agrawala and Steinar Andresen, *U.S. Climate Policy: Evolution and Future Prospects*, ENERGY AND ENV'T, Summer 2001, at 126.

overwhelming majority of the world's climate scientists, and President George W. Bush's reversal and repudiation seemed a head-in-the-sand response driven by ignorance, short-sightedness and the interests of certain elements of the American business community.

In this short article, I review the development of U.S. climate change and energy policy under President George W. Bush, describe various executive branch initiatives to address the issue of global climate change, and assess the prospects for progressive U.S. action to address climate change over the remainder of the Bush Presidency. This is a short article because the repudiation of Kyoto speaks for itself and the domestic initiatives that could arguably influence greenhouse gas abatement seem extraordinarily modest in scope and cost.

II. COP-6 AT THE HAGUE

Between COP-4 in Buenos Aires in November 1998 and COP-6 in The Hague in November 2000, significant domestic opposition to emission cuts developed in corporate circles and in Congress. Since it became clear that an emissions trading system would take many years to be realized, the only alternative to lifestyle-changing cuts in carbon emissions was for U.S. negotiators at COP-6 to seek credits for carbon sinks in U.S. agriculture and forestry practices.[3] The European Union (E.U.) insisted that at least half of industrialized countries' reduction

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[3] *Id.* at 123. David Sandalow, Assistant Secretary of State for Oceans, Environment and Science, and Head of the U.S. delegation at COP-6 in The Hague, said in his opening statement to the Sixth Session of the Conference of the Parties to the U.N. Framework Convention on Climate Change, The Hague, The Netherlands, November 13, 2000:

> The United States will work with all Parties to craft sound decisions that include:
> - *Strong, market-based rules for the flexible mechanisms*;
> - Binding legal consequences for failure to meet targets;
> - *Rules that recognize the role of forest and farmlands in fighting climate change*;
> - A prompt start to the Clean Development Mechanism, with rules to ensure its workable operation and environmental integrity;
> - Help to provide the technology and capacity [that] developing countries need to combat climatic change and adapt to its impacts.

[Emphasis added] (speech on file with the author). *See also* D.B Sandalow and I.A. Bowles, *Climate Change: Fundamentals of Treaty-making on Climate Change*, SCI., June 8, 2001, at 1839-40.

targets be achieved through domestic cuts in fossil fuel emissions.[4] It seemed at one point in the negotiations that the gap between the E.U and U.S. positions could be bridged. But the E.U. delegates, perhaps under pressure from their Green Party members and environmental Non-Governmental Organizations (NGOs), eventually refused to bridge this gap and COP-6 ended without agreement. Since George W. Bush was declared president-elect in the three weeks following the end of COP-6, it seemed to many observers that the gap between the E.U. and the U.S. would likely widen in the future.[5]

III. THE GEORGE W. BUSH FIRST HUNDRED DAYS

The historical moment seemed ripe for Republican presidential leadership, in the tradition of President Nixon going to China: Vice President Gore, who championed the "global warming" issue in his 1992 bestseller, *Earth in the Balance*, and who had been the lightning rod for congressional opposition to carbon abatement since 1993, was off the public stage, and Republicans seemed poised to co-opt this issue and divide his supporters. Several industry leaders, including CEOs of oil companies, had announced that global climate change was here to stay and needed to be taken seriously. Several large corporations, reluctant to appear regressive on the issue of climate change, had left the Global Climate Coalition — the industry lobby that had been so vocal in opposition to an international climate agreement for most of the 1990s. The IPCC had just predicted a global temperature rise as high as 6°C in the 21st Century unless greenhouse gas emissions are reduced. Seizing the moment to announce progressive, market-based carbon dioxide policies would seem to have been the safest political course, with the possibility of reducing the usual swing to the opposition party in the 2002 midterms elections, and helping to secure President Bush's reelection in 2004.

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[4] *See Hotting Up in The Hague*, THE ECONOMIST, Nov. 18, 2000, at 83.

[5] Argwala, *supra* note 2, at124. Beyond these EU/US divisions, Agrawala and Andresen argue that American "national culture" influences the shape of climate change policy: "There is unlikely to be domestic support for measures that seemingly enhance government control over citizen behavior. This sentiment has played a major role in the U.S. insistence on flexible, market based approaches, as opposed to more top-down measures...supported by most European countries." *Id.* at 133.

Notwithstanding this apparent opportunity, President Bush wrote on March 13, 2001 to four Republican Senators that he was not willing to regulate CO_2 emissions in light of the ongoing California energy shortage and "the incomplete state of scientific knowledge of the causes of, and solutions to, global warming change, and the lack of commercially available technologies for removing and storing carbon dioxide."[6]

Sixteen days later, the second shoe dropped when President Bush repudiated the Kyoto Protocol by stating he would not accept a plan that will harm our economy and hurt American workers.[7]

IV. REACTION TO PRESIDENT BUSH'S MARCH, 2001 PRONOUNCEMENTS

Most environmental NGOs deplored President Bush's March 2001 pronouncements on global climate change. One typical response came from the Union of Concerned Scientists (UCS):

> The president cited two reasons for his decision, both of which are ill founded, and without merit.
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> The first is that he does not believe the evidence of global warming is clear. Nothing could be further from the truth. A panel of the world's leading scientists recently released the most comprehensive study ever on global warming, and found that it is well underway, will have devastating impacts if emissions go unchecked, and can be limited at little or no net economic cost.
>
> The second is that including caps on carbon dioxide emissions will significantly increase electricity costs for the nation's consumers. His claim is based on a fatally flawed study commissioned by former Representative David McIntosh, a hard-line opponent of action on global warming. Other recent analyses by the Department of Energy, Environmental Protection Agency and private groups demonstrate that major

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[6] Letter from President George W. Bush to Senators Hagel, Helms, Craig and Roberts (Mar. 13, 2001), *available at* http://www.whitehouse.gov /news/rleases/2001/03 /20010314.html.

[7] President George W. Bush, Press briefing at The White House (Mar. 29, 2001). *See also Rage Over Global Warming*, THE ECONOMIST, Apr. 7, 2001, at 18.

> reductions in power plants' pollutants including carbon dioxide can be achieved at modest cost.[8]

The UCS e-mail to its supporters goes on to explore "solutions to deflate soaring electricity prices," including presidential support of clean energy sources and energy efficiency measures to reduce demand. UCS noted that wind energy is the fastest growing energy supply in the world.[9] It is hard to comprehend President Bush's political strategy in these March 2001 reversals. Whereas conservatives and the business community make up perhaps 20 percent of the electorate,[10] polls indicate that a large majority of Americans of both major parties consistently favor protecting the environment and conserving open spaces.[11] Conservatives and business people may be more deeply committed to their beliefs than environmentally-minded people are to theirs, but the political calculations of the Bush team still seem to risk a backlash from voters in 2002 and 2004.

To defuse the negative public reaction to his reputation of Kyoto, as well as his apparent reneging on a campaign pledge to regulate CO_2 emissions, President Bush on May 11, 2001, called for guidance on climate change policy from America's most highly regarded scientific body, the politically neutral National Academy of Sciences (NAS).[12] The NAS organized an expert panel that, within four weeks, concluded, "[g]reenhouse gases are accumulating in Earth's atmosphere as a result of human activities . . . Human-induced warming and associated sea level rises are expected to continue throughout the 21st Century."[13] The NAS expert committee went on to endorse the IPCC January 2001 report's main conclusions, and praised IPCC Working GrouP's "admirable summary of research activi-

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[8] E-mail from Lloyd Ritter, Union of Concerned Scientists, to the Union of Concerned Scientists mailing list (Mar. 20, 2001) (on file with author).

[9] *Id.*

[10] To be sure, this twenty percent of the electorate may represent eighty percent or more of the country's wealth.

[11] Jean Cumming & John Harwood, *Arsenic Issue May Poison Bush's 'Compassionate Conservatism'*, WALL ST. J., Apr. 20, 2001, at 16. In an April 2001 CBS poll, 61 percent of respondents said that protecting the environment was more important to them than producing energy. *Id.* Only 29 percent chose energy over the environment. *Id.*

[12] *Burning Bush*, THE ECONOMIST, Jun. 16, 2001, at 77.

[13] *Id.*

ties in climate science."[14] If President Bush expected the NAS group to be skeptical of climate change and to hamletize about scientific uncertainty, he must have been disappointed.

Besides calling for help from the NAS, President Bush announced his intentions to set up a U.S. Climate Change Research Initiative to study areas of scientific uncertainty and develop priority areas for investment.[15] He also announced his support for a National Climate Change Technology Initiative centered in universities and national laboratories.[16] These initiatives got President Bush little credit, especially since they appear likely to be modestly funded — as have all U.S. climate change initiatives in the last ten years.

V. KYOTO REDUX

Stanford Senior Fellow David Victor has argued that the Kyoto targets were arbitrary and hopelessly unrealistic."[17] *The Economist* believes that Bush's formal repudiation of Kyoto contains some good news and some bad news.[18] The bad news is that (a) President Bush has retrogressed by alleging continued uncertainties about the science of climate change, in the face of an overwhelming consensus among climate scientists that global warming and its damaging effects are real and are caused by human activity; and (b) President Bush's team has argued that developing countries are not required to cut carbon emissions and thus get a free ride while developed countries like the U.S. suffer economic loss.[19] But developing countries' per capita carbon emissions are now a small fraction of per capita emissions in the U.S. and other developed countries; the developed countries' emissions account for the bulk of the greenhouse effect, so it is fair that they act first; and all climate negotiations envision a carbon emission role for developing countries at a later stage.[20]

The good news, according to *The Economist*, is that the Bush people are focusing on the costs of complying with Kyoto

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[14] *Id.*
[15] President George W. Bush, Press Briefing at the White House (Jun. 11, 2001).
[16] *Id.*
[17] VICTOR, THE COLLAPSE OF THE KYOTO PROTOCOL, 27-29 (2001).
[18] *See Oh no, Kyoto,* THE ECONOMIST, Apr. 7, 2001, at 73-75.
[19] *Id.* at 74.
[20] *Id.*

targets. An international climate change treaty could be implemented in a flexible way that gives broad play to market forces and encourages innovation and development of clean technologies. Europeans seem to be unreasonably skeptical of market approaches, and the Bush repudiation may get them to rethink their position. The *Economist* cited with approval Victor's argument that the cause of the Kyoto Protocol's collapse is its "cap and trade system," which allows ambitious targets but puts no limits on compliance costs.[21]

VI. THE DOMESTIC POLICIES: BUSH-CHENEY ENERGY PLAN

Both President Bush and Vice President Cheney are former Texas oil men. That seems about as good an explanation as any for the regressiveness of their "energy security" plan. According to the National Energy Policy, the federal government can reduce fossil fuel use, improve energy efficiency, develop renewable energy supplies, reduce gasoline consumption in the U.S. transportation sector – half of the U.S. oil supply from all sources is consumed by vehicles – and switch from coal or oil to natural gas without building a diversified energy System.[22]

The Bush-Cheney energy plan only addresses the last of these five strategies. It focuses on expanding the supply of natural gas. There may have been an unsavory connection between Vice President Cheney and Enron, which had been the world's largest natural gas supplier until it filed for bankruptcy in October 2001.[23] Enron was a top contributor to the Bush-Cheney campaign in 2000. The plan would open one to two mostly gas-fired power plants each week for several years, and make the U.S. far more dependent on natural gas than it ever was on oil.[24]

It seems fairly clear that Bush and Cheney are serving their own business community. The suggestion that more drilling within the U.S. will reduce America's dependence on for-

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[21] *Id.* at 75.

[22] OFFICE OF THE PRESIDENT, REPORT OF THE NATIONAL ENERGY POLICY DEVELOPMENT GROUP, (May 2001), *available at* http://www.whitehouse.gov/energy/.

[23] Tom Hamburger, *Six Meetings Cited Between Enron Corporation and Officials of the Bush Energy Task Force*, WALL ST. J., Jan. 9, 2002, at A4.

[24] Antonia V. Herzog et al., *Renewable Energy: A Viable Choice*, ENV'T, Dec. 2001, at 12.

eign oil is bogus. Saudi Arabia has enormous resources of oil that can be extracted at a lower cost than oil anywhere else in the world. This oil will, inevitably, flow onto the world market and set the world price, regardless of U.S. policies.[25]

The Bush-Cheney energy plan would open federal lands, including Alaska's Arctic National Wildlife Refuge, to oil and gas exploration. It would promote the construction of oil refineries, power plants and oil and gas pipelines. It calls for subsidies for coal and nuclear power and for rolling back environmental standards.[26] It is hard to see how any of this promotes energy security or serves the national interest.

VII. OTHER U.S. DOMESTIC ACTIONS AND PROPOSALS WITH CLIMATE CHANGE IMPLICATIONS

On January 9, 2002, the Bush administration announced that it was abandoning the Clinton administration's Partnership for a New Generation of Vehicles, on which the government has spent an annual average of $200 million over the past seven years. This program sought to create an 80-mile-per-gallon American car. Energy Secretary Spencer Abraham said that U.S. car manufacturers could not build such a vehicle at an affordable cost[27] – despite the presence in the U.S. market of Honda and Toyota hybrid (gasoline and electric-powered) cars with mileage per gallon approaching the 80 m.p.g. target. Abraham announced a new program called Freedom Cooperative Automatic Research ("Freedom Car") whose aim is to develop sport utility vehicles powered by hydrogen fuel cells.[28] The Bush administration seems to have no interest in tougher Corporate Average Fuel Economy (CAFÉ) standards, much less in reducing overall motor vehicle use. It seems to prefer to cut sweetheart deals with the U.S. auto industry – continuing the Clinton Policy in that respect, but with a supposedly more realistic goal that, in Secretary Abraham's words, doesn't sacrifice "freedom of mobility and freedom of choice."[29]

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[25] *See Addicted to Oil*, THE ECONOMIST, Dec. 15, 2001, at 9.

[26] *See* Katherine Q. Seelye, *Regulators Urge Easing of Rules for Clean Air*, N. Y. TIMES, Jan. 8, 2002, at A1.

[27] *Bush Shifts Gears on Car-Research Priority*, WALL ST. J., Jan. 9, 2002, at C14.

[28] *Id.*

[29] *Id.*

If the U.S. is to seriously embrace hydrogen fuel cells, the challenges of hydrogen storage and distribution will have to be met. The low energy density of gaseous hydrogen makes it difficult to store in a vehicle. If hydrogen is to be used to power vehicles, it must be stored either as a compressed gas or as a liquid at extremely cold temperatures (-253°C). These extreme temperature and pressure conditions mean that hydrogen will require a new distributional infrastructure. Also, the costs of storing cold liquefied hydrogen are currently prohibitively high.[30]

Four senators last year proposed a modest bill that would mandate that the fuel economy of light trucks match car fuel economy by 2007.[31] Democrats Dianne Feinstein of California, Jack Reed of Rhode Island, and Charles Schumer of New York, and republicans Olympia Snowe and Susan Collins of Maine sponsored this bill. The proposed increase in fuel economy would supposedly save an estimated million barrels of oil per day and prevent 240 million tons of carbon dioxide from entering the atmosphere.[32] This bill seems to have been eclipsed by the war on terrorism and has gone nowhere.

Senators Joseph Lieberman (D-CT.) and John McCain (R-AZ.) also announced last August their intention to introduce domestic cap-and-rule legislation, which "will . . . enable us to negotiate an acceptable international agreement . . . when the U.S. does come back to the table."[33] Lieberman chairs the Senate Governmental Affairs Committee, which voted out a bill on August 1, 2001, to create a new White House Office on Climate Change, responsible for developing, coordinating and implementing a national strategy on global climate change.[34]

At about the same time, *The Washington Post* reported that executives of several large utilities believe that carbon

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[30] Seth Dunn, *Hydrogen Futures, Toward a Sustainable Energy System*, WORLDWATCH PAPER 157, Aug. 2001, at 36-37.

[31] Senators Feinstein and Snowe, release to the press, May 1, 2001, *available at* http://feinstein.senate.gov/releases01/cafe_standards.html.

[32] *Id.*

[33] Senators Leiberman and McCain, press statement, Aug. 3, 2001, *available at* http://www.senate.gov/~lieberman/press/01/08/2001803920.html.

[34] Senator Leiberman, press statement, Aug. 1, 2001, *available at* http://www. senate.gov/~gov_affairs/080101_press.htm.

dioxide regulation is inevitable. They want and need to be guided by clear national regulatory policy on CO_2 emissions.[35]

In the wake of COP-7's endorsement of Kyoto's targets, the *Economist* reported on two initiatives by business lobbies. The GHG Protocol, developed by the World Resources Institute and the World Business Council on Sustainable Development — whose members include Ford and Dupont — establishes an international standard under which businesses report their GHG emissions.[36] The Emissions Market Development Group announced its intention to create a new "commodity for international trading of greenhouse-gas reductions."[37]

The Pew Center on Global Change has also organized a "Business Environmental Leadership Council," whose members include IBM, Boeing, BP, Hewlett/Packard, Dupont and Intel. This Council argues that U.S. businesses should take concrete steps now to reduce carbon emissions.[38]

VIII. THE FEBRUARY, 2002 BUSH CLIMATE CHANGE STRATEGY

On February 14, 2002, President Bush announced his long awaited strategy to address climate change. His target is to cut the rate of annual domestic carbon emissions through voluntary corporate action from 183 metric tons per million dollars of GDP to 151 metric tones by 2012.[39] His aim is to slow the *growth* of emissions rather than reducing them – thereby avoiding harm to the U.S. economy. He talked of cutting greenhouse gas "intensity" by eighteen percent over the next decade. The eighteen percent cut is not a cut in emissions but rather a cut in the level of emissions per unit of economic output.[40] Growth in economic output between 2002 and 2012 make it likely that U.S. carbon emissions would be significantly *higher* in 2012 than they are today.

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[35] Eric Pianin, *Bush Urged to Negotiate Global Warming* Treaty, WASH. POST, Aug. 2, 2001, at A14.

[36] *Gasometry*, THE ECONOMIST, Nov. 17, 2001, at 69.

[37] *Id.*

[38] Business Environmental Leadership Council, mission statement <http://www.pewclimate.org/belc/index.cfm >. *See also* Geoff Winestock, *Effort to Cut Greenhouse Gases Percolates on Back Burner*, WALL ST. J., Feb. 1, 2002, at A14.

[39] John J. Fialka, *Bush to Unveil Plan Linking Economy and Environment*, WALL ST. J., Feb. 14, 2002, at A22.

[40] *Blowing Smoke*, THE ECONOMIST, Feb. 16, 2002, at 27.

The Bush climate change strategy included a proposed $4.6 billion in tax credits over five years, averaging $900 million per year, to stimulate investments in clean energy sources, hybrid and fuel cell vehicles and emissions reducing technologies.[41] Notwithstanding much talk by Bush administration officials and the Council of Economic Advisers about market based initiatives, there is nothing in the new strategy about carbon emissions trading – one of the flexibility mechanisms of the Kyoto Protocol contributed by the U.S. delegation to COP-3 in 1997.

The President said his 2003 budget commits $4.5 billion to climatic change, "more than any other nation's commitment in the entire world."[42] This includes $588 million toward energy conservation research and development (R + D), $408 toward renewable energy R + D, and $150 million for the new Department of Energy "Freedom Car Initiative." [43]

President Bush observed that, under the Kyoto Protocol, the U.S. would have had to "make deep and immediate cuts in our economy to meet an arbitrary target." It would have cost our economy up to $400 billion and we would have lost 4.9 million jobs."[44] He also noted that "developing countries such as China and India already account for a majority of the world's greenhouse gas emissions,"[45] but failed to acknowledge that China and India *together* contain 2.3 billion people and produce fewer carbon emissions than the U.S. with 280 million people.

President Bush's budget allocations to address climate change are on the same order and roughly the same tiny percentage of GDP that President Clinton allocated. Like the Bush-Cheney energy policy, there is scant emphasis in the new climate change strategy on energy conservation, renewable energy or fuel efficiency standards. An editorial in the New York Times concluded that President Bush does not regard global warming as a problem: "[t]here seems no other way to interpret a policy that would actually increase the gases responsible for

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[41] President George W. Bush, Address at The National Oceanic and Atmospheric Administration, (Feb. 14, 2002), *available at* www.whitehouse.gov/news/releases/2002/02/20020214-5.html.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

heating the earth's atmosphere . . . By his own figures, actual emissions . . . could rise by 14 percent, which is exactly the rate at which they have been rising for the last 10 years."[46]

Senator James Jeffords (Ind., VT), chair of the Senate Environment and Public Works Committee, described the Bush climate change strategy as "divorced from the reality of global warming".[47] Environmentalists must now appeal to Congress, where they seek legislation to require corporations to publicly disclose their carbon emissions — in contrast to the voluntary disclosure advocated by President Bush.

IX. PROGNOSIS

The declaration that the Kyoto Protocol is dead seems premature, in light of its adoption by 178 nations in Bonn in July 2001 and reaffirmed at COP-7 in Marrakech in November 2001. Benefiting from the international shock over President Bush's withdrawal from the Kyoto negotiating process, the E.U. went along with massive compromises in November 2001 (COP-7) that they wouldn't consider in November 2000, at COP-6. In the wake of Bush's repudiation, the E.U. was willing to accept a partial deal rather than a continued stalemate. Thus, U.S. policy has had a major, though obviously unintended, influence over the entire climate change negotiation.

Prior to September 11, 2001, pressure was building on all sides — Congress, industry and environmental groups — to take action on climate change and to develop an international alternative to Kyoto. Now, notwithstanding the war on terrorism, the rest of the world has moved forward with concerted international action on climate change without U.S. involvement. Americas' allies may reasonably expect a less unilateral[48] and more cooperative role in climate change in view of their support of U.S. anti-terrorism measures.

President Bush may have calculated that responding to international pressure on the climate change issue will lose rather than gain him domestic support. The major challenge

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[46] *Backward on Global Warming*, N. Y. TIMES, Feb. 16, 2002, at A18.

[47] *Bush Plan Deepens Divide Over Kyoto Protocol*, NATURE, Feb 21, 2002, at 821.

[48] Climate change isn't the only case of unilateralism in U.S. foreign policy. In the last year, the Bush administration also revoked President Clinton's endorsement of the International Criminal Court and cast aside the nuclear test ban treaty.

ahead seems to be for Congress and the business community to persuade the Bush administration to act much more forcefully to reduce carbon dioxide domestically and to collaborate in shaping carbon reduction policies, strategies, and mechanisms with fellow member states of the FCCC, all sharing the same carbon-loaded atmosphere, and most allied with the United States in its war on terrorism. This, together with flexible market-based mechanisms developed in tandem with Bush policy advisors, and with growing pressure from Democrats, scientists, and environmentalists, could bring the U.S. back into the process.