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Climate Change and Greenhouse Gas Emissions Analysis to be Incorporated into Washington State Environmental Reviews

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Breaking Developments In Environmental Law

The Washington Department of Ecology (“Ecology”) is taking steps to clarify how state and local jurisdictions should incorporate climate change and greenhouse gas emissions into the environmental reviews they are required to do under the State Environmental Policy Act (“SEPA”). Over the next several months, Ecology will convene a working group that includes business representatives to recommend changes to SEPA and provide guidance to government agencies.

Under SEPA, a state or local agency that is deciding whether to issue a permit for a project, or is developing regulations, must consider the possible environmental impacts of the project or regulation. Currently, applicants in Washington submit a SEPA checklist that is used to determine a project’s impacts and guide an agency in deciding whether the environmental impacts of a project are significant enough to require an environmental impact statement. The checklist and regulations, however, do not have any guidelines for whether or how to quantify, analyze and mitigate greenhouse gas emissions, and it is unclear how climate impacts of a proposed action should be addressed in response to the checklist.

In an April 30, 2008, letter to more than 1,000 Washington state agencies and local jurisdictions, Ecology Director Jay Manning said that preparing guidance for climate evaluations under SEPA would avoid the “policy by litigation” that has occurred in other states. For example, in California, the state attorney general and a public interest group sued San Bernardino County for failing to adequately investigate and disclose greenhouse gas emissions reasonably expected from the county implementing an update to its General Plan. In settling the case, the county agreed, among other things, to establish targets and identify mitigation measures for reducing greenhouse gas emissions attributable to the county’s discretionary land use decisions and internal government operations.

King County and the City of Seattle already are requiring permit applicants to disclose greenhouse gas emissions in their SEPA checklists, and both jurisdictions are evaluating the emissions when reviewing development applications. Other states, such as California and Massachusetts, also are developing regulations and guidance to address climate change issues in the environmental review process.

The working group that Ecology establishes to develop Washington's SEPA guidelines will include Climate Advisory Team members and other government, business and environmental representatives, with the goal of: (1) clarifying how, when and where to incorporate climate change considerations into the SEPA review process; (2) recommending changes to SEPA rules, checklists, threshold determinations and/or environmental impact statements; and (3) providing instructions or guidance to state and local government on how to determine possible mitigation strategies and whether climate change impacts will affect the project over its lifetime. The process is expected to take several months, but opening the working group to input from businesses will provide an opportunity for the regulated community to participate in shaping the outcome.

Further information about the SEPA review process is available on the Ecology [website](#).

For more information, please contact the Environmental Law Practice Group at Lane Powell:

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