

Breaking Developments in Sustainability and Climate Change Law

EPA Issues Proposed Greenhouse Gas Reporting Rule

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After several months' delay and a change in administrations, the U.S. Environmental Protection Agency ("EPA") has issued a proposed rule that would require major emitters to collect data on the amount of their greenhouse gas ("GHG") emissions starting January 2010 and report starting January 2011. In what is the first significant climate change regulatory step by the new president, the proposed rule would apply to approximately 13,000 large industrial sources around the country that emit more than 25,000 metric tons of GHGs.

The rule would require measuring and reporting of GHG emissions, including carbon dioxide, methane, nitrous oxide and various fluorinated gases. The facilities covered by the proposed rule include electricity generators; electronics manufacturers; petroleum refineries; chemical producers; cement, glass and pulp and paper plants; landfills; large animal feeding operations; and motor vehicle and engine manufacturers. Together these facilities account for nearly 90 percent of the total U.S. GHG output.

The proposed rule is considered an important foundation for adoption of a federal program to limit GHG emissions through a market-based cap-and-trade system. In order to regulate GHG emissions by auctioning allowances it will be necessary to know the amount of a facility's operational emissions. The EPA will accept public comment for the next 60 days.

The proposed federal rule comes after a number of states, including Oregon and California, adopted their own GHG emissions reporting requirements. Several of those states are participating in the Western Climate Initiative and are in the process of designing a regional cap-and-trade market that would be based, in part, on emissions reporting requirements.

The Oregon reporting rule, which took effect January 1, 2009, applies to any source that is required to obtain a Title V Operating Permit or Air Contaminant Discharge Permit and emits more than 2,500 metric tons of GHGs per year. Oregon estimated that the state rule would affect approximately 126 large businesses, 481 small businesses and 77 local governments. Although the Oregon reporting thresholds are much lower than the proposed federal rule, Oregon did not include electric, gas and other energy sources, or agricultural and forestry sources, which would be covered by the proposed federal rule.

The State of Washington has not adopted a reporting requirement, but the Department of Ecology is in the process of drafting rules that are expected to be released this spring. The Washington effort is the result of a measure passed by the legislature last year that requires reporting by any owner or operator of a fleet of on-road motor vehicles that emits at least 2,500 metric tons of GHG per year in the state, and large industrial and power facilities that generate at

least 10,000 metric tons of GHG per year. The Washington rule, unlike either the proposed federal rule or Oregon's rule, would apply to trucking and delivery fleets, rental car companies, large customer-service fleets and large government-agency fleets. The reporting threshold for the industrial sources under the Washington statute also is lower than the proposed federal rule, and thus would cover more facilities than what the EPA is proposing.

What's important about the federal GHG reporting requirement is that it signals a change in the approach to climate change regulation, from a state-driven initiative to one driven more by federal policy. It is likely only the first of many significant climate change programs to emerge from the new administration in the coming months and years.

For more information, please contact the Sustainability and Climate Change Practice Group at Lane Powell:

206.223.7000 Seattle
503.778.2100 Portland
sustainability@lanepowell.com
www.lanepowell.com

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