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## Breaking Developments in Sustainability and Climate Change Law

### Washington Climate Change Executive Order Signed

05/21/2009

Governor Christine Gregoire signed an executive order on May 21, 2009, that adopts many of the measures that the Legislature failed to pass in its recent session. Executive Order 09-05, titled "Washington's Leadership on Climate Change," directs various state agencies to take actions to continue efforts to address greenhouse gas emissions. The order adds some provisions from the Governor's climate change bill, while stopping short of actually adopting cap-and-trade.

Under RCW 70.235.020, the state established targets to reduce greenhouse gas emissions to 1990 levels by 2020, and 25 percent below 1990 by 2035 and 50 percent below 1990 levels by 2050. In the last legislative session, Gov. Gregoire requested that the state legislature adopt a bill to move forward in the development of a cap-and-trade system through the Western Climate Initiative, which would have capped total emissions starting in 2012 and required industries to purchase or trade allowances for their emissions. The legislature revised the bill substantially but did not pass it by the time the session adjourned.

The Governor's order directs the Washington Department of Ecology to continue working with the six other Western states and four Canadian provinces that make up the Western Climate Initiative to develop a regional emissions reduction program and to work with the Obama Administration to help design a national program that reflects Washington state's priorities.

There are two provisions of particular interest to Washington businesses over the near term. The first requires Ecology by December 1, 2009, to provide an estimate of the greenhouse gas emissions for each facility that emits more than 25,000 metric tons of greenhouse gases per year in Washington, and identify the proportionate share of the reductions needed by each facility to meet the 2020 targets. The second requires that Ecology develop emission benchmarks for facilities the department believes will be covered by a federal or regional cap and trade program, which benchmarks Ecology will propose as the basis for distributing emission allowances in whatever cap-and-trade program is ultimately adopted in Washington. Because Ecology's implementation of these two provisions is likely to set standards that will be proposed for adoption in future climate change legislation, impacted Washington businesses will want to monitor and/or participate in these efforts. The order sets an October 1, 2010, deadline for Ecology to submit to the Governor a set of emission reduction strategies and actions to achieve the 2020 goals.

In addition, the Executive Order provides for:

- Reducing emissions by half from the TransAlta coal-fired power plant near Centralia;
- Ensuring Washington has trees to capture harmful carbon, while creating financial incentives for the forestry industry;
- Working on low-carbon fuel standards or alternative requirements to reduce carbon emissions from the transportation sector;
- Joining with other West Coast states and the private sector to develop and implement a West Coast highway accessible to electric and alternative-fuel vehicles;
- Addressing rising sea levels and the risks to water supplies; and
- Increasing transit options, such as buses, light rail and ride-share programs, and give Washington residents more choices for reducing the effect of transportation emissions.

In her comments at the press conference to sign the Executive Order, the Governor called it the "next best thing" to having a cap-and-trade bill. The order, however, doesn't address funding, which is going to be an ever-present issue with an economy in recession and steep cuts to government programs.

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