

## Massachusetts DEP Proposes Comprehensive Greenhouse Gas Reporting Regulations: New requirements for electricity sellers, third party verification of emissions, and voluntary emissions reports added

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### Comments Due May 11<sup>th</sup>

As the next step in implementing the economy-wide cap on greenhouse gas emissions [mandated by the Global Warming Solutions Act](#) (GWSA), the Massachusetts Department of Environmental Protection (DEP) [issued proposed amendments to 310 CMR 7.71](#) (.pdf), which create comprehensive regulations regarding the mandatory reporting of greenhouse gases in Massachusetts. (See our [December 18 Environmental Alert](#) for more information on the emergency regulations, implemented in December). The public hearing on the proposed amendments is scheduled for April 30, and comments are due May 11. The third phase of regulations, regarding how emissions will be capped and reduced by 10-25% by 2020 and 80% by 2050 as required by the GWSA, will be promulgated in 2011.

The proposed regulations are similar in some respects to the existing emergency regulations, but they include important new provisions relating to reporting by electricity sellers, mandatory third party verification of submissions, and voluntary emission reports.

### One-Time Registration, Due April 15, 2009

As outlined in the [emergency regulations issued December 29, 2008](#) (.pdf), any facility that emitted more than 5,000 short tons of CO<sub>2</sub> from fossil fuel combusted in stationary sources in 2008 or holds an Operating Permit under the Massachusetts Title V program (310 CMR 7.00 Appendix C) must register with DEP by April 15, 2009. The [one-time registration form](#) (.pdf) requires facilities to certify the amount of each type of fossil fuel used in 2008, multiplied by an emissions factor to determine the amount of CO<sub>2</sub> emitted in 2008. Although facilities can choose the emissions factor to use, DEP recommends using the figures from Table 12.1 of [The Climate Registry's General Reporting Protocol](#) (.pdf) and provides an example from that form in the guidance document. Unlike future reporting, the number reported for this registration does not require independent verification, but does need to be certified as accurate under the pains and penalties of perjury.

### New in the Comprehensive Regulations:

1) *Retail Sellers of Electricity Required to Report Emissions:*

Beginning in 2010, every retail seller of electricity in MA (including utilities, municipal electric departments, and municipal light boards) must annually report the megawatt hours it sold the previous year, including any line losses, and the greenhouse gas emissions that are associated with that power.

Electricity sellers will have to report the emissions from electricity produced from fossil fuels separately from the emissions created by biogenic sources (defined as the combustion of plant or animal material), and may also choose to exclude non-emitting megawatt hours, if the power was eligible to demonstrate compliance with the Renewable Portfolio Standard (RPS) under 225 CMR 14.00 or 15.00, or if the associated renewable energy certificates (RECs) in the New England Power Pool (NEPOOL) Generation Information System are retired from the seller's account.

The DEP will announce two emission factors each year – one for fossil fuel and one for biogenic greenhouse gas emissions – through which retail sellers will calculate their emissions by multiplying the number of megawatt hours they sold, rather than actually adding the emissions up. For sellers who wish to be more accurate in their reporting, the regulations allow direct reporting of emissions, rather than use of the emission factor, if sellers can show through certificates from the NEPOOL system or contracts with particular generators where the power came from.

### *2) Certification and Third Party Verification:*

Reporting entities will have to sign a statement certifying the veracity of the reported emissions, as they do for many other forms submitted to the DEP. In addition, the proposed regulations set out a staggered schedule under which all facilities will have to hire an approved third party verifier once every 3 years. The first set of facilities to go through third party verification are those who emitted more than 25,000 tons of CO<sub>2</sub> in 2009, who must verify their 2010 emissions by the end of 2011.

### *3) Voluntary Reporting:*

The proposed regulations allow voluntary reporting, either reporting by otherwise exempt facilities, or regulated facilities' reporting additional data, such as indirect emissions due to electricity consumption. The regulation requires that the same protocol be followed and the additional data be accommodated by the electronic registry that the DEP is working with The Climate Registry to construct.

Given that emissions that are voluntarily reported will also be subject to 3<sup>rd</sup> party verification, there will likely be an additional cost associated with reporting additional data. Even so, it could be worth a facility's while to voluntarily report data on emission avoidance or to demonstrate reductions from energy efficiency, in the hopes that these early reductions will be eligible for credits. The DEP had mentioned including a provision for Early Action Credits in a stakeholder meeting in February, but the proposed regulations do not include this provision.

**Changes in the Comprehensive Regulations:**

The proposed regulations also change the Emergency Regulations in a few other ways:

- Once in, always in: once a facility crosses the reporting threshold, whether because it emitted more than 5,000 CO<sub>2</sub>e in the previous year or because it holds an operating permit under Appendix C, the facility must report its emissions annually
- New definition of "motor vehicles:" includes off-road vehicles, such as forklifts and mowing equipment, if they are owned or leased by that facility or any affiliate. This definition comes into play for reporting 2010 emissions. For 2009, facilities are required to report only emissions of CO<sub>2</sub> from combustion of fuels in stationary sources and on-road vehicles.