

Breaking Developments in Sustainability and Climate Change Law

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Ecology Proposes New Greenhouse Gas Reporting Rules for Washington State Emitters

The Washington Department of Ecology's ("Ecology") on-again, off-again greenhouse gas ("GHG") reporting regulations appear to be back on once again. Ecology has released the latest version of a proposed rule and will be taking public comment through October 14, 2010. Meanwhile, the U.S. Environmental Protection Agency ("EPA") is moving forward with separate GHG emissions reporting regulations. While the Ecology rules are supposed to emphasize consistency with the EPA, if the proposed state rule is adopted it will affect many more facilities and fuel suppliers than would the EPA regulations.

Nearly a year ago, Ecology issued a set of reporting rules at about the same time that the EPA issued its own emissions reporting requirements. Ecology's rules were mandated by a state law passed in 2008, while EPA's grew out of a U.S. Supreme Court case and the agency's subsequent determination that GHGs constitute pollutants, subject to regulation under the Clean Air Act. The two sets of rules differed substantially, both in terms of who would have to report and how soon. *See* October 5, 2009, Legal Update, ["Washington State's Proposed Mandatory Greenhouse Gas Reporting Rules Differ from Federal Government's Rules – Which Will Prevail?"](#) Faced with competing regulatory schemes, Ecology requested that the 2010 legislature amend the state law. The legislature did so last spring and directed Ecology to make sure that its rules were consistent with EPA's.

The latest version of Ecology's rules attempts to do that, but still differs from EPA's. The primary difference is who would be required to report GHG emissions:

- EPA would require reporting by facilities that emit 25,000 metric tons or more per year of carbon dioxide equivalent gases ("CO₂e");
- Ecology's draft rule requires reporting by owners or operators of facilities located in Washington state that emit more than 10,000 metric tons of CO₂e per year; and
- Ecology also requires reporting by suppliers of transportation fuels sold in Washington state that, when combusted or oxidized, would result in emissions of 10,000 metric tons of carbon dioxide per year.

The proposed state rule not only has a lower reporting threshold than EPA, but the state draft regulation also would include biomass emissions, which EPA does not. It appears, however, that

Ecology has eliminated the earlier proposed rule requirement to aggregate all of a company's facilities in the state to determine reporting thresholds.

The EPA's rule is expected to affect about 30,000 facilities across the country, 74 of which are in Washington state. Ecology's version would require reporting by approximately 250 facilities and fuel suppliers. Nevertheless, some 3,000 manufacturing, commercial and utility facilities and fuel suppliers in Washington will have to monitor and calculate their GHG emission to determine whether or not they need to file a report.

A key issue for many facilities is confidentiality of the information reported. The proposed state rule provides that data in the emissions report is considered public and cannot be designated as confidential, although a submitter may request that the agency keep proprietary information confidential under the Public Records Act.

Ecology is accepting written comments on the proposed rule through October 14, 2010, and will be taking testimony at two public hearings on October 6 in Spokane and October 7 in Lacey. Copies of the proposed rule and economic impact statement are available on the agency's [website](#). Ecology expects to adopt a final rule no earlier than December 1, 2010.

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