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Climate Change Update: EPA Issues Greenhouse Gas Reporting Rule

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Action

On September 22, 2009, EPA issued a final rule mandating the reporting of greenhouse gases (GHG) from large GHG emission sources in the United States. EPA estimates that approximately 10,000 facilities will be required to report under the proposal, representing 85 percent of total annual GHG emissions. No substantive limits on GHG emissions are yet being proposed, but the information reported will be utilized in formulating future GHG regulatory or tax proposals. EPA estimates the cost of reporting will be \$115 million in the first year and \$72 million in each subsequent year.

Summary of Final Rule

The final rule requires covered facilities to calculate GHG emissions beginning in calendar year 2010, and to file annual reports of those emissions beginning March 31, 2011. With some significant exceptions, the emissions threshold that triggers reporting by individual facilities is 25,000 metric tons per year (tpy) of carbon dioxide (CO₂) or its equivalent (CO₂e).

Suppliers of fossil fuels (petroleum products, natural gas) and some industrial gases also will be required to file annual reports. In addition, manufacturers of heavy duty vehicles and engines will add GHG emission rate information to reports they already file under the Clean Air Act, beginning with 2011 model years.

Several sectors identified in an earlier draft version were not included in the final rule, although they may be covered by future reporting requirements. These include the electronic manufacturing, industrial landfill, and wastewater treatment sectors, among others.

The final rule does not pre-empt state or regional GHG reporting programs.

GHGs covered: Emissions of the following GHGs are to be reported under the proposal: (1) carbon dioxide; (2) methane; (3) nitrous oxide; (4) hydrofluorocarbons; (5) perfluorocarbons; (6) sulfur hexafluoride; and (7) other fluorinated gases (e.g., nitrogen trifluoride and hydrofluorinated ethers).

Facilities covered: Facilities that must report under the rule are those falling into any of the following categories:

- **Category 1 (“all in” source categories):** The rule identifies 15 source categories where all facilities are required to report, regardless of whether they emit more than 25,000 tpy of CO₂e. Examples are cement production, petroleum refineries, and electricity production.

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- Category 2: Any facility that emits 25,000 tpy of CO₂e from any combination of stationary fuel combustion units (e.g., boilers, combustion turbines, engines, incinerators, and process heaters), the use of carbonate (e.g., calcium carbonate), and are within 7 specified source categories (including pulp and paper manufacturing, glass production, iron and steel production, and lead or zinc production).
- Category 3: Facilities that: (1) do not contain any of the source categories covered in categories 1 and 2; (2) contain stationary fuel combustion units with an aggregate maximum rated heat input capacity of 30 million BTU/hr or greater; and (3) emit 25,000 tpy or more of CO₂e from those stationary fuel combustion units
- Category 4: Suppliers of coal-based liquid fuels, petroleum products, natural gas and natural gas liquids, industrial greenhouse gases (fluorinated GHGs or nitrous oxide), and carbon dioxide
- Category 5: Manufacturers of heavy duty vehicles and engines, who will add information on estimated GHG emissions from the vehicles and engines that they produce to reports they already file under the Clean Air Act.

Mechanics of Reporting:

- Reports are due annually, with the first report due by March 31, 2011 (covering calendar year 2010). For heavy duty vehicle and engine manufacturers, reports are due for the 2011 model year
- Reports must be filed electronically
- EPA will generally collect data at the facility level (as opposed to the corporate level). Some exceptions exist (e.g., vehicle and engine manufacturers, fossil fuel importers)
- Reporting must be in metric tons of CO₂e (i.e., amount of the GHG that has same global warming potential as a metric ton of CO₂)
- Reporting entities must self-certify their reports. Independent third party verification of data will not be required.
- Each facility must have a single designated representative to certify and submit annual GHG reports, and that individual must be identified to EPA prior to submission of any report to be signed by that individual.
- Facilities must maintain records that serve as the basis for estimating emissions for 3 years
- A facility must keep reporting annually until the facility demonstrates that its GHG emissions dropped below the emission levels that triggered reporting in the first place (5 consecutive years below 25,000 metric tons/year CO₂e or 3 consecutive years below 15,000 metric tons/year of CO₂e or total, permanent cessation of GHG emissions).
- Failure to report, to collect required data, to monitor as needed, to calculate emissions using the methods set forth in the rule, or to retain records for 3 years constitute violations of the Clean Air Act. Each day that the violation continues counts as a separate violation. Currently, civil and administrative penalties under the Clean Air Act can be imposed up to \$37,500 per day, per violation.

Temporary ability to use estimates in lieu of monitoring methods: The rule provides that during January-March 2010, facilities can use "best available data" to calculate GHG emissions if the monitoring methods set forth in the rule cannot reasonably be instituted. After April 1, 2010, facilities must use the methods in the rule unless a timely request is submitted establishing "it is not reasonably feasible to acquire, install and operate" monitoring equipment required by the rule by April 1, 2010. In no case can estimates be used in lieu of required monitoring devices after December 31, 2010.

Complete list of source categories identified in proposal: A complete list of source categories covered by the rule can be found in the rule online at http://www.epa.gov/climatechange/emissions/ghg_infosheets.html.

If you have questions about the proposed rule, please contact Phillip Fargotstein, 602-916-5453, pfargots@fclaw.com or Scott Thomas, 602-916-5427, sthomas@fclaw.com.

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Scott H. Thomas focuses his practice in environmental law with an emphasis on surface water and ground water quality issues (including NPDES permits, Section 404 dredge and fill permits, surface water quality standards, Arizona aquifer protection permits, and Safe Drinking Water Act issues). He also has experience in Superfund (and its Arizona equivalent, WQARF), solid and hazardous waste, underground storage tank, environmental due diligence, Endangered Species Act, and community right-to-know (EPCRA) matters. His practice focuses primarily on regulatory, compliance, administrative and legislative issues. He received his B.A. (1984) and his J.D. (1988) from the University of Virginia.



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