

To: Our Clients and Friends

September 29, 2009

## EPA Finalizes Mandatory Reporting Rule for Greenhouse Gas Emissions

Approximately 10,000 facilities must begin monitoring greenhouse gas (“GHG”) emissions pursuant to federal law beginning on January 1, 2010. On September 22, 2009, the U.S. EPA issued its final rule to require mandatory reporting of GHG emissions within nearly all sectors of the economy. This rule was developed in response to a Congressional mandate and provides the first comprehensive national system for reporting emissions of carbon dioxide and other GHG emission sources in the United States. EPA announced its proposed rule on March 10, 2009. Some notable changes to the proposed rule are discussed below.

### Scope and Timeline for Reporting Under the Final Rule

The final rule requires suppliers of fossil fuels or industrial GHGs, manufacturers of vehicles and equipment (except those in the light duty sector), and certain other facilities that emit 25,000 metric tons or more of carbon dioxide equivalent (mt CO<sub>2</sub>e) per year to submit annual reports regarding GHG emissions to EPA. The proposal does not require control of GHGs, but instead requires certain facilities to monitor and report GHG emissions. Although the reporting methodology varies depending upon the industry, the data collection will usually occur at the facility level rather than at the corporate level.

The following GHGs are covered by the rule: carbon dioxide (CO<sub>2</sub>); methane (CH<sub>4</sub>); nitrous oxide (N<sub>2</sub>O); sulfur hexafluoride (SF<sub>6</sub>); hydrofluorocarbons (HFCs); perfluorochemicals (PFCs); and other fluorinated gases, including nitrogen trifluoride (NF<sub>3</sub>) and hydrofluorinated ethers (HFE). These gases are often expressed in metric tons of carbon dioxide equivalent (mt CO<sub>2</sub>e).

EPA estimates the rule will cover approximately 10,000 facilities comprising 85% of the total national GHG emissions. These facilities must begin monitoring and recordkeeping on January 1, 2010, and submit the first annual report to EPA by March 31, 2011 for the 2010 calendar year. Motor vehicle and engine manufacturers would be required to begin reporting for model year 2011. A significant change from the proposed rule is that facilities are now allowed to use best available monitoring methods for a short period of time if it is not feasible to obtain and install a required piece of monitoring equipment by January 1, 2010. From January through March of 2010, entities can collect emissions data based upon best available monitoring methods in lieu of using the required monitoring methods proscribed

under the final rule. All reporting will be made electronically to a central EPA registry, and EPA is responsible for verifying the data submitted by each facility. Entities also have the ability to revise their annual report within 45 days of either discovering an error or being notified by EPA of an error.

## Who Reports?

Five general categories of industries (also known as “source categories”) are required to report GHGs for calendar year 2010:

- (1) **Facilities in 17 Industries that EPA Identified as Large GHG Emitters.** Most of these industries will report without regard to meeting threshold emission levels. These facilities are required to report emissions from any source that is listed in the final rule, including, adipic acid production, aluminum production, ammonia manufacturing, cement production, electricity generation, HCFC-22 production, HFC-23 destruction processes, lime manufacturing, manure management systems, municipal solid waste landfills, nitric acid production, petrochemical production, petroleum refineries, phosphoric acid production, silicon carbide production, soda ash production, and titanium dioxide production.
- (2) **Facilities that Emit 25,000 mt CO<sub>2</sub>e or more from Other Source Categories.** This category applies to facilities that emit 25,000 mt CO<sub>2</sub>e or more in combined emissions from stationary fuel combustion, miscellaneous carbonate use, and seven different source categories. These categories include ferroalloy production, glass production, hydrogen production, iron and steel production, lead production, pulp and paper manufacturing, and zinc production. These facilities must determine if they emit more than 25,000 mt CO<sub>2</sub>e. According to EPA, 25,000 mt CO<sub>2</sub>e per year is roughly equivalent to the emissions from 131 rail cars worth of coal, 58,000 barrels of oil consumed, the annual energy use of 2,200 homes, or emissions from 4,600 passenger vehicles.
- (3) **Facilities that Emit 25,000 mt CO<sub>2</sub>e or more from Stationary Combustion.** Stationary combustion sources are boilers, stationary engines, process heaters, combustion turbines, or other fuel combustion equipment. EPA states that if the maximum rated heat capacity for all stationary fuel combustion equipment is less than 30 million British thermal units (mmBtu) per hour, the facility is presumed to emit less than 25,000 mt CO<sub>2</sub>e, and does not have to calculate or report emissions. According to EPA, approximately 80% of commercial buildings have boilers for heating water and steam with a capacity less than 10 mmBtu/hr, and thus will not have to report under the final rule.
- (4) **Suppliers of Fossil Fuels.** This category requires producers, importers, and exporters of coal-based liquid fuels and petroleum products to report the fossil fuels that are placed into the economy each year. Moreover, all natural gas fractionators and all local distribution companies must report the natural gas and natural gas liquids placed into the economy. The emissions associated with the complete oxidation of all of these fossil fuels must also be reported. There is no threshold quantity for these sources. Electric generating units that are already subject to CO<sub>2</sub> reporting under the Clean Air Act’s Acid Rain program will have to report cumulative CO<sub>2</sub> emissions gathered under that program.

(5) **Suppliers of Industrial GHGs that Emit 25,000 mt CO<sub>2</sub>e or more GHGs.** This category requires producers, importers and exporters of industrial GHGs (fluorinated gases, nitrous oxide, carbon dioxide) to report the annual volume of GHGs that are placed into the economy and the emissions associated with the complete release of the product. These producers, importers, and exporters must determine if they supply industrial GHGs that are equivalent to 25,000 mt CO<sub>2</sub>e or more annually when released.

EPA provides an overview of these threshold trigger requirements for the five categories of sources at the following web page:

<http://www.epa.gov/climatechange/emissions/downloads09/generalprovisions.pdf>.

The majority of the reporters will collect data at the facility level. There are a few exceptions where facilities will report at the corporate level, including some suppliers of fossil fuels, suppliers of industrial greenhouse gases and manufacturers of vehicles and engines outside of the light-duty sector. For some source categories, the reporter must provide information at the unit-level or process-line level as well as for the entire facility.

EPA believes that the final rule will not have a significant impact on the “vast majority” of small businesses, although some small businesses in energy-intensive industries or heavy manufacturing sectors may have to report. Additionally, the “vast majority” of commercial and residential building owners will probably not be required to report. EPA acknowledges that there is inherent double-reporting of emissions in a program that includes both upstream and downstream sources, although the double-reporting is consistent with the language in the Appropriations Act.

### **Changes from Proposed Rule to Final Rule**

There were a number of changes that occurred from the proposed rule to the final rule, including, but not limited to, the following:

- **Decrease in Number of Source Categories.** The number of source categories has decreased from 42 in the proposed rule to 31 in the final rule. The source categories that are not required to report at this time are: electronics manufacturing, ethanol production, fluorinated GHG production, food processing, industrial landfills, magnesium production, oil and natural gas systems, SF<sub>6</sub> from electrical equipment, underground coal mines, wastewater treatment, and coal suppliers. The stationary fuel combustion sources at ethanol production facilities and food processing facilities are subject to reporting if the general stationary fuel combustion emissions exceed 25,000 mt CO<sub>2</sub>e.
- **Exiting the Program.** The proposed rule had a no-exit provision from reporting which has been eliminated in the final rule. An entity is able to stop reporting after three consecutive years of emissions below 15,000 mt CO<sub>2</sub>e or stop reporting after five consecutive years of emissions below 25,000 mt CO<sub>2</sub>e. An entity is also able to stop submitting annual reports immediately if the processes or operations causing the GHG emissions are shut down.

- **Records Retention.** Each facility and/or supplier subject to the final rule will need to retain certain identified information for three years in electronic or hard-copy format, not for five years as in the proposed rule.
- **Measuring Devices.** Facilities can use best available measuring methods in lieu of the required monitoring methods from January through March of 2010. Facilities can request a date extension beyond March 2010, but EPA will not approve any requests for an extension beyond 2010.
- **Report Revisions.** Facilities are able to submit revised annual GHG reports as needed. The entity has 45 days from either discovering an error or being notified by EPA of an error.

## **Vehicle and Engine Manufacturers**

All vehicle and engine manufacturers, except small businesses, small manufacturers, and governmental agencies, must report emission rates of carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), and methane (CH<sub>4</sub>) from the products they supply. Included are heavy trucks, motorcycles, and non-road engines and equipment. At this time, manufacturers of light-duty vehicles, light-duty passenger trucks, and medium-duty passenger vehicles are not covered by the final rule, but EPA has proposed a comprehensive light-duty GHG emission control program commencing in model year 2012. The CO<sub>2</sub> emissions reporting begins with model year 2011, the CH<sub>4</sub> emissions reporting begins in model year 2012, and the N<sub>2</sub>O emissions reporting begins in model year 2013. Emissions will be reported annually, at a rate of grams per kW-hr, which are similar to current carbon dioxide reporting requirements for mobile source manufacturers under EPA and California regulations. EPA is incorporating the GHG reporting requirements into the requirements under Title II of the Clean Air Act.

## **Record Retention**

Each facility and/or supplier subject to reporting will need to retain certain identified information for three years in electronic or hard-copy format, not for five years as in the proposed rule. Because the initial reporting period begins on January 1, 2010, affected companies, if they have not done so already, will want to start planning their recordkeeping programs immediately.

## **Next Steps**

The final rule will go into effect 60 days after it is published in the Federal Register. EPA's website contains a prepublication version of the final rule and other related resources:

<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

For additional information, please refer to Bryan Cave's Client Alert from March 17, 2009 regarding the proposed rule: <http://www.bryancave.com/EPA-Proposes-Mandatory-Reporting-Rule-For-Greenhouse-Gas-Emissions-03-16-2009>.

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