

**ENVIRONMENTAL ALERT**

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**FEDERAL GREENHOUSE GAS REPORTING RULES ISSUED**

On September 22, 2009 the U.S. Environmental Protection Agency (U.S. EPA) issued a final rule mandating that emitters of Greenhouse Gases (GHGs<sup>1</sup>), above a certain threshold, report the total sum of GHG emissions annually to U.S. EPA. U.S. EPA has estimated that approximately 10,000 facilities will be subject to these reporting obligations. Currently, less than half the states have state-based GHG reporting requirements. Even for facilities in those states, it should not be assumed that actions taken to comply with state requirements will be sufficient to meet federal standards.

It is anticipated that U.S. EPA intends to use this information to guide future GHG emission limitations. The likelihood of regulatory action on this front was greatly increased by U.S. EPA's April 2009 finding that carbon dioxide and other greenhouse gas emissions present a danger to human health, welfare and the environment, and may depend on the extent to which Congress is able or unable to pass greenhouse gas legislation in the near future.

Under the new reporting rule, facilities emitting 25,000 or more metric tons of CO<sub>2</sub> or other GHGs per year must submit an annual report that details their GHG emissions. Carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorochemicals and other fluorinated gases make up the list of GHG that must be included in the report. Certain sources will be required to submit an annual report even if they fall below the 25,000 metric ton threshold – i.e., those that fall into the categories of large manufacturing operations such as petroleum refineries, lime and cement producers. It is important to note that a report is required for each facility, as opposed to each company.<sup>2</sup>

Under the rule, the first annual report is due no later than March 31, 2011 for the 2010 calendar year.<sup>3</sup> As such, the reporting requirement applies to emissions from January 1, 2010 forward – a date barely three months away. Accordingly, every facility subject to this rule – or that recognizes that it may be subject to the rule - should commence work now to ensure that its emissions accounting system is complete and in place by the beginning of next year. Recognizing the short time frame, EPA will temporarily allow affected facilities to use best available data in lieu of the required monitoring methods, but only for the period of January through March 2010. While facilities may request an extension beyond March 2010, EPA has stated that no requests will be approved for extensions beyond 2010.

Accuracy of reporting is critical because the proposed rule does not provide any allowances or estimations for missing data. Additionally, the GHG reports are expected to have a direct impact on the number of GHG credits or allowances that may ultimately be allocated to each facility under the anticipated future cap-and-trade program. Thus, accuracy is critical because current regulatory analysis

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<sup>1</sup> Including suppliers of fossil fuel and industrial chemicals, manufactures of motor vehicles and engines, as well as large direct emitters of GHG.

<sup>2</sup> Except for certain suppliers of fossil fuels and industrial greenhouse gases along with vehicle and engine manufacturers that report on the corporate level.

<sup>3</sup> Except for vehicle and engine manufacturers outside of the light-duty sector which will begin phasing in GHG reporting with model year 2011.

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suggests potentially significant adverse future impacts to an affected facility's GHG allocations and credit needs from an over- or under-counting of current GHG emissions.

Facilities will likely face considerable challenges to accurately count and report their GHGs. For example, facilities will need to account for and distinguish between process emissions and combustion emissions. In the first instance, the accounting will be of direct emissions only, as indirect emissions (such as offsite electric generation) are currently excluded. Further, in establishing an effective carbon emission accounting system, facilities may find it necessary to implement a "carbon balance method" using the equations described in the rule for each process to mass balance inputs and outputs, and respective weight fractions of carbon in each process to determine GHG emission rates. Alternatively, facilities may consider using a site-specific emission factors based on an extensive stack testing protocol (expected to be an expensive proposition).

In connection with these reporting obligations, the rule contains many recordkeeping requirements. For example, each affected facility must maintain a list of all units, operations, processes, and activities for which GHG emissions were calculated; the data used to calculate the GHG emissions; documentation of the process used to collect the necessary data; the GHG emission calculation derivations and methods used; emission factors and their basis; and facility operating data.

In this final rule, U.S. EPA made a few notable changes to the proposed rule that was published in April 2009. These changes include:

- Finalizing reporting requirements for only 31 of the 42 emissions sources listed in the proposed rule. The emissions sources 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 suppliers of coal.
- Adding a mechanism for affected facilities to cease annual reporting requirements through a reduction in GHG emissions. An affected facility may cease reporting after 5 consecutive years of GHG emissions below 25,000 metric tons, after 3 consecutive years of GHG emissions below 15,000 metric tons, and cease reporting if the GHG-emitting processes or operations are shut down.

All affected or potentially affected sources are encouraged to review the rule in detail and make ready to be able to comply with the rule as soon as it goes into effect in January 2010.

*The Environmental Alert is intended to keep readers current on matters affecting environmental issues and is not intended to be legal advice. For information or assistance regarding any of the information noted above, please contact Scott R. Dismukes at 412.566.1998 or [sdismukes@eckertseamans.com](mailto:sdismukes@eckertseamans.com), Richard S. Wiedman at 412.566.5967 or [rwiedman@eckertseamans.com](mailto:rwiedman@eckertseamans.com), David A. Rockman at 412.566.1999 or [drockman@eckertseamans.com](mailto:drockman@eckertseamans.com), Kathryn L. Clark at 412.566.6188 or [kclark@eckertseamans.com](mailto:kclark@eckertseamans.com), Erin W. McDowell at 412.566.6070 or [emcdowell@eckertseamans.com](mailto:emcdowell@eckertseamans.com), Jessica L. Sharrow at 412.566.5941 or [jsharrow@eckertseamans.com](mailto:jsharrow@eckertseamans.com) or any other attorney with whom you have been working.*