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EPA Takes Major Steps Toward Regulating Greenhouse Gas Emissions

Comment Periods Open Through June

Over the past two weeks, the U.S. Environmental Protection Agency ("EPA") has issued a proposed rule and a proposed regulatory finding that may be precursors to Federal regulation of greenhouse gas ("GHG") emissions. The Agency is accepting public comment on both actions for 60 days.

Mandatory Reporting of Greenhouse Gases; Proposed Rule, 74 Fed. Reg. 16448 (Apr. 10, 2009)

On April 10, 2009, EPA proposed a rule requiring mandatory reporting of GHG emissions from large sources in the United States. The rule would require certain suppliers of fossil fuels and industrial GHGs, manufacturers of vehicles and engines, and facilities that emit large amounts of GHGs (generally 25,000 metric tons or more per year of CO₂-equivalent) to submit annual reports to EPA. Covered facilities would be required to report emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated gases. Existing facilities and suppliers would begin collecting data on January 1, 2010, with the first annual emissions reports due on March 31, 2011. Once subject to the proposed rule, a facility or supply operation would be required to continue to submit reports even if it falls below the reporting thresholds in future years.

EPA has stated that the primary goal of the proposed mandatory reporting program is to gather data to inform a wide array of potential future climate change policies. The proposed GHG reporting program is intended to supplement, not duplicate or replace, other Federal, state and regional GHG programs.

The public comment period on the proposed rule closes on June 9, 2009. EPA is accepting comments on all aspects of the proposed rule, but has specifically requested comments on the proposed reporting thresholds, methodologies, frequency of reporting, feasibility of reporting emissions for 2010 in 2011, verification options, and duration of the reporting program.

For more information on the proposed GHG Reporting Rule, please [click here](#).

IF YOU WOULD LIKE ADDITIONAL INFORMATION, PLEASE CONTACT:

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Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under the Clean Air Act

On April 17, 2009, EPA proposed two highly-anticipated findings in response to the U.S. Supreme Court's holding in *Massachusetts v. EPA*, 549 U.S. 497 (2007), that GHGs are air pollutants covered by the Clean Air Act:

1. current and projected concentrations of CO₂, CH₄, N₂O, HFCs, PFCs, and SF₆ in the atmosphere endanger the public health and welfare of current and future generations (the "Endangerment Finding"); and
2. emissions of CO₂, CH₄, N₂O, and HFCs from new motor vehicles and motor vehicle engines contribute to atmospheric concentrations of these GHGs and, thus, to the threat of climate change (the "Cause or Contribute Finding").

Because these are proposed findings and not proposed rules, they would not impose any requirements on regulated entities. They are, however, a significant step toward regulation of GHGs under the Clean Air Act. In fact, EPA expects to issue proposed emission standards pursuant to Section 202(a) of the Clean Air Act, which allows EPA to regulate emissions of air pollutants from new motor vehicles and motor vehicle engines, in the next several months.

The Endangerment Finding

In support of its Endangerment Finding, EPA states that atmospheric concentrations of GHGs are at unprecedented levels and "are the unambiguous result of human emissions." EPA further asserts that high levels of GHGs are "very likely the cause" of climatic changes, including observed increases in average temperatures. EPA contends that the effects of climate change – including more frequent and intense heat waves, more wildfires, intense storms, heavy downpours and flooding, degraded air quality, increased drought, greater sea level rise, and harm to water resources, agriculture, wildlife and ecosystems – are effects on public health and welfare within the meaning of the Clean Air Act. Therefore, EPA is proposing to find that atmospheric concentrations of CO₂, CH₄, N₂O, HFCs, PFCs, and SF₆ endanger public health and welfare within the meaning of Section 202(a) of the Clean Air Act.

The Cause or Contribute Finding

EPA also states that the combined emissions of CO₂, CH₄, N₂O, and HFCs from new motor vehicles and motor vehicle engines are contributing to concentrations of GHGs in the atmosphere. Thus, EPA is proposing to find that the motor vehicle emissions are contributing to air pollution that is endangering public health and welfare pursuant to Section 202(a) of the Clean Air Act.

After publication of the proposed findings in the Federal Register, EPA will accept comments for 60 days.

For more information on the proposed Endangerment and Cause or Contribute findings, please see <http://www.epa.gov/climatechange/endangerment.html>.

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If you have questions about the proposed Mandatory GHG Reporting Rule or the proposed Endangerment and Cause or Contribute Findings, or need assistance in submitting comments, please contact any member of Sullivan & Worcester's Climate-Related Business & Technology Group.