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EPA Issues Final Rule Mandating the Reporting of Greenhouse Gas Emissions

On September 22, 2009, the U.S. Environmental Protection Agency (“EPA”) issued its first rule mandating the widespread reporting of greenhouse gas (“GHG”) emissions from a broad array of significant emitters. The EPA initially proposed a draft GHG reporting rule on April 10, 2009.

The rule will require certain entities to track GHG emissions beginning on January 1, 2010 and to report emissions data beginning on March 31, 2011. The entities covered by the rule are (1) facilities that emit 25,000 metric tons or more of carbon dioxide equivalent (“mtCO_{2e}”), (2) certain categories of “source” facilities even if they emit less than 25,000 mtCO_{2e}, (3) certain suppliers of fossil fuels and industrial GHGs and (4) manufacturers of vehicles and engines outside of the “light-duty” sector (i.e., manufacturers of vehicles, and engines for vehicles, that are not passenger cars or trucks). The rule covers emissions of all the major greenhouse gases, including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other fluorinated gases.

The rule only requires the tracking and reporting of GHGs. No reductions in, or control of, GHG emissions are required. Nonetheless, data generated from the implementation of the rule is expected to facilitate the further development of U.S. federal climate change policy, which will likely include mandatory GHG emissions limits or reductions and may result in a cap and trade regime.

Emitters will self-certify the emissions data they report. Third-party verification will not be required, but the EPA is empowered to conduct its own verification and initiate enforcement in cases of noncompliance. The rule does not preempt states from separately regulating GHG emissions.

For the most part facilities that emit 25,000 mtCO_{2e} or more, or are covered source facilities, will report at the facility level, although the rule requires certain source facilities to report at the unit level or process-line level as well as the facility level. Some fossil fuel and industrial GHG suppliers, such as importers of fuels, will report the annual quantities of GHGs that would be emitted from the combustion or use of their products. Manufacturers of covered vehicles and engines will be required to report the GHG emission rates of their products, beginning with the 2011 model year.

Source facilities that must report GHG emissions even if they emit less than 25,000 mtCO_{2e} include petroleum refineries and aluminum, cement, petrochemical, and pulp and paper production facilities. Some source facilities that were covered in the draft rule are not covered in the final rule unless they exceed the 25,000 mtCO_{2e} threshold. These will be the subject of further EPA review and include electronics manufacturers, ethanol producers, fluorinated GHG producers, food processors, industrial landfills, magnesium producers, oil and natural gas processing or storage facilities, wastewater treatment plants, underground coal mines and coal suppliers.

The only agricultural activities covered by the rule are livestock operations with manure management systems that emit 25,000 mtCO_{2e} or more. Methane emissions

sequestered by methane capture systems do not count towards the threshold.

To reduce the burden on small emitters, the rule does not cover any facility that has a maximum rated heat input capacity of its stationary fuel combustion units of less than 30 million British thermal units per hour (“mmBtu/hr”) and no other emission sources within its boundary. This exemption is expected to apply to most

commercial buildings. If a commercial building’s stationary fuel combustion units, however, exceed 30 mmBtu/hr, further calculations will be required to ascertain the applicability of the rule.

The EPA estimates that in the aggregate, the final rule will cover about 10,000 facilities representing an estimated 85% of U.S. GHG emissions.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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