

PROPOSED GHG REPORTING REGULATION

By: *Sarah S. Brehm*

Summary

The March 10, 2009 draft regulation proposes a mandatory federal greenhouse gas (“GHG”) reporting program. The proposed rule does not require control of greenhouse gases, rather it requires only that sources above certain threshold levels monitor and report emissions. Affected companies would be required to start collection emissions data on January 1, 2010, and submit annual reports starting in 2011.

Who Is Affected?

Any facility that annually emits more than 25,000 metric tons of carbon dioxide or carbon dioxide equivalents is affected. The regulation lists each greenhouse gas and gives a global warming potential (“GWP”) based on CO₂ with a GWP of 1. The rule would apply to fossil fuel suppliers and industrial gas suppliers, as well as to direct greenhouse gas emitters. The preamble includes two charts with relevant information. The first chart lists emitters that will likely be subject to the reporting requirement. The second chart helps determine which categories they must report on.

Electricity generating facilities are included in the list of emitters likely affected by the regulation. Other clients that may be affected include those involved in the supply side of all aspects of the petrochemical industry¹.

PSD Permits

The U.S. Environmental Protection Agency (“EPA”) states that this proposed regulation does not affect the July 30, 2008 ANPR on Regulating Greenhouse Gas Emissions under the Clean Air Act (“CAA”) or the Administrator’s December 18, 2008 interpretation for PSD permit program². On February 17, 2009, EPA Administrator Lisa Jackson said the agency would reconsider former Administrator Johnson’s December 18, 2008 memorandum. In early January, three environmental groups first petitioned the EPA to reconsider the memo and then filed suit at the end of January. It is unclear how the PSD permitting issue will ultimately be resolved; however, the EPA states that this proposed reporting regulation does not affect PSD permits at this time. The reporting regulation’s preamble states:

At this time, a regulation requiring the reporting of GHG emissions and emissions-related data under CAA sections 114 and 208 does not trigger the need for EPA to develop or revise regulations under any other section of the CAA, including the PSD program. See memorandum entitled “EPA’s Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program” (Dec.

¹ EPA credits the following GHG sources for structuring this proposed regulation: (1) Fossil Fuel Combustion: Stationary, (2) Fossil Fuel Combustion: Mobile, (3) Industrial Processes, (4) Fossil Fuel Fugitive Emissions, (5) Biological Processes and Upstream sources of emissions, (6) Fuel Suppliers, and (7) Industrial GHG Suppliers.

² <http://www.joneswalker.com/news-publications-565.html>

18, 2008). EPA is reconsidering this memorandum and will be seeking public comment on the issues raised in it. That proceeding, not this rulemaking, would be the appropriate venue for submitting comments on the issue of whether monitoring regulations under the CAA should trigger the PSD program.³

Public Comments

Public comments are due within 60 days. There will be two public hearings. One in Washington, D.C. on April 6 and 7, and another in Sacramento, California on April 16, 2009. Comments should be identified by Docket ID No. EPA-HQ-OAR-2008-0508 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: <mailto:a-and-r-Docket@epa.gov>

³ See footnote 8, page 40–41.