

## ENVIRONMENTAL ALERT

October 27, 2009

### Mandatory Greenhouse Gas Reporting Rule

On September 22, 2009, the U.S. Environmental Protection Agency (EPA) issued a final rule mandating greenhouse gas (GHG) reporting requirements for large GHG emission sources (GHG Reporting Rule). Originally proposed on April 10, 2009, the GHG Reporting Rule's applicability extends to entities that emit 25,000 metric tons of carbon dioxide equivalent per year. Specific GHGs that must be reported under the rule include carbon dioxide, methane, nitrous oxide, and fluorinated GHGs (*e.g.*, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, etc.).

Reporting is generally required at the facility level, although certain upstream GHG emission sources (*i.e.*, suppliers of fossil fuels and industrial GHGs) and vehicle and engine manufacturers will be required to report at the corporate level. Among others, downstream GHG emission source categories incorporated in the final rule include stationary fuel combustion sources, cement production, petrochemical production, petroleum refineries and municipal solid waste landfills. Potential regulated entities are encouraged to determine whether they are required to report under the GHG Reporting Rule.

The GHG Reporting Rule requires regulated entities to begin collecting GHG emission data on January 1, 2010. Through March 31, 2010, regulated entities will be permitted to use "best available" monitoring methods for parameters that cannot reasonably be measured according to the rule's monitoring and quality assurance/ control requirements. After March 31, 2010, regulated entities will be required to comply with source specific monitoring methods. This may likely require some industries to install GHG specific monitoring equipment. In most cases, GHG emission reports will be required annually, with the first GHG emission report filing due March 31, 2011.

Note that the GHG Reporting Rule contains no state delegation provision and does not preempt States from regulating or requiring GHG reporting. Regulated entities are thus required to submit emission reports directly to the EPA. The EPA will verify the data submitted; third party verification is not required. However, reporters will be required to self-certify the data submitted. Finally, entities covered by the rule are allowed to cease reporting only if they shut-down, emit less than the 25,000 metric ton threshold for five consecutive years, or emit less than 15,000 metric ton for three consecutive years.

Data reported under this rule will likely be used in the design of future EPA and legislative measures addressing climate change. The GHG Reporting Rule's 25,000

metric tons threshold is estimated to bring approximately 10,000 facilities under regulation and report on roughly 85 percent of the total U.S. GHG emissions.

If you have any question, or wish additional information regarding this matter, please contact any of the attorneys listed below, members of our Environmental, Energy and Land Use Practice Group.

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