

THE NEW EPA ADMINISTRATION MOVES TOWARD NATIONAL GREENHOUSE GAS EMISSIONS REPORTING SYSTEM

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The U.S. Environmental Protection Agency ("EPA") has indicated it will regulate greenhouse gas emissions ("GGEs"). As a result, people and businesses in California will soon be subject to both federal and state GGE regulations. This alert is intended to help our clients and friends understand what the federal action means, who will be impacted and how to get involved in the development of these new regulations.

BACKGROUND

On April 2, 2007, the U.S. Supreme Court in *Massachusetts v. EPA* held that the EPA has statutory authority under § 202(a)(1) of the federal Clean Air Act to regulate GGEs provided the EPA determined these pollutants may reasonably be anticipated to endanger public health or welfare (the "endangerment finding").

Now, two years after the *Massachusetts* decision, the EPA has sent its endangerment finding to the White House Office of Management and Budget. The draft finding determined GGEs create health hazards such as increased morbidity and mortality due to an increase in the frequency and severity of heat waves and an increased risk of respiratory infection, asthma aggravation and premature death due to worsened regional ozone pollution.

EPA Administrator Lisa Jackson reported that she will sign the endangerment finding on April 16th following a review by other federal agencies. The finding would then be submitted for a 60-day public comment period and scheduled for two public hearings before being finalized.

NATIONAL GGE REPORTING REQUIREMENTS

On March 10, 2009, the EPA released a



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draft of the first comprehensive national system for reporting GGEs by major sources in the United States. While a national inventory of GGEs already exists, this program would be the first to identify GGEs on a source-by-source basis. The regulated GGEs are: carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorochemicals and other fluorinated gases.

All sources of emissions equal to or greater than 25,000 metric tons of carbon dioxide equivalent per year will be required to report their annual emissions to the EPA. The EPA estimates that the 25,000 ton figure is equivalent to the annual emissions from approximately 4,500 passenger vehicles. The first annual report would be due on March 31, 2011 for emissions occurring in 2010, except vehicle and engine manufacturers would begin reporting for the 2011 model year. The EPA estimates that approximately 13,000 facilities nationwide would be subject to the reporting requirements, representing about 85 to 90 percent of all GGEs emitted in the United States.

Direct emission sources covered under the first reporting requirements include energy intensive sectors such as cement production, electronics manufacturing facilities, industrial wastewater treatment facilities, petroleum refineries, iron and steel production, and electricity generation. Additionally, landfills and manure management systems will be subject to the reporting

requirements due to the high global warming impacts of their methane emissions. The expected cost to comply with the federal reporting requirements would be approximately \$168 million for the first year and \$134 million in subsequent years.

In developing the threshold for the reporting requirement, the EPA considered existing state and regional reporting programs and ultimately adopted the same threshold required by California. While the vast majority of small businesses will not be required to report annual GGEs in the beginning of the program, over time the emissions threshold will likely be lowered to include small businesses.

CONCLUSION

The mandatory annual GGE reporting program represents the first of many GGE programs that will be adopted over the next several years. Accordingly, it is important to track the progress of these programs in order to forecast applicable compliance dates and develop a baseline of current emissions in order to obtain credit for any GGE reduction. Procopio will continue to provide assistance on GGE and other climate change issues through client updates such as this one.

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