



LEGAL ALERT

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Is EPA Going to Regulate Greenhouse Gases and Climate Control?

In another step towards regulation, the U.S. Environmental Protection Agency ("EPA") announced on Friday, April 17, 2009 its proposed finding that "greenhouse gases" in the atmosphere endanger the public health and welfare of current and future generations. The report expands the regulatory reach of EPA and opens the door for its direct control under the Clean Air Act of greenhouse gas emissions from virtually any source, including manufacturers, vehicles, buildings, and other generators. EPA also recently mandated reporting requirements for generators in an effort to track emitted greenhouse gases throughout the country.

EPA now suggests that concentrations of greenhouse gases have reached unprecedented levels from human emissions which have caused an increase in average global temperatures and other changes in climate. EPA's proposed finding reaches two conclusions: (1) atmospheric concentration of the combination of gases threatens public health and welfare; and (2) combined greenhouse gas emissions from new motor vehicles and motor vehicle engines contribute to the threat of climate change. EPA likely will proceed with new and increased emissions standards for vehicles and other sources.

In March, EPA published draft rules for tracking greenhouse gases proposing a mandatory federal greenhouse gas reporting program. Importantly, this is simply a reporting requirement not regulation of greenhouse gas emissions. It is anticipated that EPA will use the data collected via mandatory reporting to analyze current levels and de-



termine future regulated levels in any subsequent regulation of greenhouse gases. The extent of regulation, or even if regulation or cap and trade will occur, is still unknown. Yet, regulation could cause manufacturers and other greenhouse gas generators significant expenses in retooling and reducing greenhouse gases in one of the worst economic recessions in history. Regulation, and even just the mandatory tracking and reporting of “dangerous” gases, may create the impetus for companies to continue to move manufacturing operations abroad and could impact energy prices nationwide. On the other hand, the regulation could minimize any further harm to the environment and create financial opportunities within a cap-and-trade program.

Under EPA’s proposed reporting rules, facilities emitting more than 25,000 metric tons of carbon dioxide or carbon dioxide equivalents annually would be required to begin collecting emissions data on January 1, 2010 and submit annual reports beginning in 2011. EPA estimates that the reporting program would cover over 13,000 facilities nationwide. The reporting proposal, with respect to vehicle and engine manufacturers, also would require emissions reporting of additional greenhouse gases for new vehicles and engines.

Prompt action with respect to greenhouse gas emissions and climate change regulation is widely anticipated, especially in light of the Obama administration’s continued calls for comprehensive legislation for a clean energy economy. The

Obama administration also seeks implementation of a federal cap-and-trade emissions system and an 80 percent reduction of greenhouse gas emissions by 2050. Until Congress moves forward with such legislation, EPA is expected to regulate greenhouse gases under existing Clean Air Act legislation.

EPA’s proposed greenhouse gas endangerment finding or mandatory reporting requirement proposal currently are subject to a 60-day public comment period and will be addressed at public hearings before final publication. Interested parties are encouraged to address concerns to EPA during the comment period. A pre-publication copy of the endangerment finding may be found at: <http://epa.gov/climatechange/endangerment/downloads/GHGEndangermentProposal.pdf> and the proposed mandatory reporting rule is found at: <http://www.epa.gov/climatechange/emissions/downloads/EPA-HQ-OAR-2008-0508-0139.pdf>.

If you would like additional information as to potential implications of EPA’s findings, or assistance on public comment, please contact Marc Erpenbeck at 602.382.6512, merpenbeck@swlaw.com or Patrick Paul at 602.382.6359, ppaul@swlaw.com.