

# E – Outlook

ENVIRONMENTAL HOT TOPICS AND LEGAL UPDATES

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*Editor's Note: In this issue, **Hong Huynh and Suzanne Lacampagne**, of Miller Nash LLP, report on Oregon's promulgation of the greenhouse gas reporting rules. Representing Oregon industries, Ms. Lacampagne was a member of the Department of Environmental Quality Greenhouse Gas Advisory Committee that assisted in the drafting of reporting rules.*

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## OREGON MANDATES GREENHOUSE GAS REPORTING

Oregon is in the forefront of states seeking to understand the sources of their greenhouse gas ("GHG") emissions. On August 7, 2007, Gov. Ted Kulongoski signed into law House Bill 3543, which created a permanent global-warming commission, and established GHG reduction goals for the State of Oregon to arrest increasing emissions by 2010, reduce emissions to 10 percent below 1990 levels by 2020, and reduce emissions to 75 percent below 1990 levels by 2050. To better understand the state's GHG, and in response to the Governor's request, the Oregon Department of Environmental Quality ("DEQ") drafted rules to require certain sources to report their GHG to DEQ. The purpose of the GHG reporting rules is to define who will report and how the data will be reported. Understanding the sources of GHG will help the state to track progress in meeting its GHG emission reduction goals. Once the sources of GHG are better quantified, the state might choose to implement GHG reduction programs, such as a cap and trade system.

While the new GHG reporting rules will affect a limited number of facilities, primarily industrial, they could have far-reaching impacts by pinpointing the sources of GHG and giving DEQ firm data needed to determine how to require sources to reduce their GHG. Understanding the GHG rules and their implications will help affected facilities to comply with the rules and prepare for the future. As for businesses in other sectors that are also major emitters of GHG, but are not covered by this rule, including the transportation, agriculture, forestry, residential, and commercial sectors, these changes may be a glimpse into their future.

### Background

On October 23, the Oregon Environmental Quality Commission adopted rules requiring GHG reporting by certain sources. This adoption came on the heels of the listing of some companies that DEQ believes to emit GHG at significant levels.

The new rules adopted in Oregon Administrative Rules Chapter 340, Division 215 (a new division), generally cast a wide net on sources that are required to annually register and report

GHG emissions to DEQ. The rules require all sources in Oregon that must have a Title V air permit, and certain sources that must have an air contaminant discharge permit ("ACDP"), to report their GHG emissions beginning with the 2009 reporting year. Certain solid waste disposal facilities, wastewater treatment facilities, electric generating units, and electricity transmission and distribution systems that emit 2,500 metric tons of GHG each year are also required to report their GHG, but beginning with the 2010 reporting year. DEQ estimates that approximately 481 small businesses and 126 large businesses will be subject to the rule. The measurement of GHG is in "carbon dioxide equivalents" ("CO<sub>2</sub>e") per year. GHG emissions that are regulated include carbon dioxide ("CO<sub>2</sub>"), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. All non-CO<sub>2</sub> GHG emissions are converted into CO<sub>2</sub>e, a unit of measurement that describes, for a given amount of a GHG, the amount of CO<sub>2</sub> it would take to make the same contribution to global warming. In the coming month, DEQ will hold workshops to raise awareness and to train the regulated sources on the rules.

### **2010 Permittee Reporting**

Beginning in 2010, certain permitted air sources are required to report their 2009 GHG emissions.

First, major sources that are required to have Title V permits must start monitoring and reporting. In Oregon, current Title V permittees include forest products, pulp and paper, building materials, waste disposal, cement, chemical, and energy companies. There are approximately 136 Title V permit holders in Oregon.

Second, minor sources that are required to have ACDPs must monitor and report if they carry out certain activities or have certain source types. Such sources and activities widely range from natural gas- and propane-fired boilers that have from 10 to 30 or more Btu per hour heat input to gasoline plant and bulk terminals, to coffee-roasting and snack-product manufacturers, to printed circuit board and semiconductor manufacturers, to name a few. Approximately 426 ACDP sources will have to report under the rule.

For fossil fuels and other nonrenewable sources, reporting would be required for emissions coming from the combustion of biomass (such as wood waste and hog fuel).

### **2011 Non-Permittee Reporting**

Beginning in 2011, reporting becomes mandatory for certain sources that are not required to have air quality permits, but that emit 2,500 metric tons or more of CO<sub>2</sub>e. Specifically, those sources include wastewater treatment facilities required to have an individual National Pollutant Discharge Elimination System permit, solid landfills required to have a waste permit, electricity and natural gas distribution lines, and electric generating units. These sources must report their 2010 emissions.

Electric generating units include those operated by PacifiCorp and Portland General Electric, two Oregon investor-owned utilities. The natural gas utilities, oil and natural gas pipelines, and

propane and fuel oil distributors are expected to report their product sales and natural gas transport volumes, including transmission and other system losses.

### **Timeline**

March 15 is the due date for the annual registration and reporting of all required sources unless a source is subject to a Title V permit or an ACDP that specifies the date of the annual report. These Title V and ACDP permittees can report their GHG emissions in the annual report.

### **Exempted Sources**

A number of sources are not required to monitor and report their GHG emissions, but the rule does allow them to do so voluntarily.

First, certain types of significant emissions are excluded from the reporting requirement, most notably from the transportation sector (mobile sources), which accounts for a third of GHG in Oregon. No other single sector generates more GHG in the state. The DEQ Advisory Committee that assisted in developing the reporting rule considered the importance of capturing motor vehicle fleet information, but recognized the complexities of implementing mandatory reporting for vehicles and fleets, particularly when they are not currently required to report emissions to DEQ. The Advisory Committee did recommend to DEQ that in addition to collecting comprehensive data on fuel consumption for inventory and benchmarking purposes, and collecting comprehensive vehicle miles traveled and statewide vehicle data for mobile source modeling purposes, DEQ convene a mobile source reporting task force to make recommendations regarding reporting rules for fleets and other mobile emissions sources.

Second, DEQ does not require monitoring of indirect GHG emissions, such as power consumption, employee commuting, and air travel.

Third, and for now, DEQ is not requiring reporting of GHG emissions from (1) power used in Oregon that is generated outside of Oregon, and (2) distribution of fuels used in Oregon that result in GHG emissions when later burned.

These exempted sources may be the subject of DEQ's proposed legislation in 2009 to require reporting.

Finally, with respect to sources that are required to monitor by 2010 or 2011, DEQ may exempt or defer the reporting requirement if it determines that there are inadequate reporting protocols. Reporting protocols that are approved by DEQ will undergo a 30-day public comment period and will be part of a reference list DEQ maintains to assist regulated sources.

### **Conclusion**

The GHG reporting rules are only one of several steps that are being taken in Oregon to address global climate change. The data that DEQ seeks to collect will help it make meaningful

regulatory and policy decisions, including whether and how to implement a cap-and-trade or other GHG reduction program in the state. Furthermore, these rules might be a precursor to rules requiring GHG reporting from other significant GHG sectors, such as transportation.

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