

### EPA Announces Proposed Rule for Mandatory Greenhouse Gas Reporting

In a previous E-Flash Update in February 2008, we reported that through an obscure provision in an appropriations act, Congress had required that EPA develop a mandatory greenhouse gas reporting system. EPA was late in producing the proposed regulations. Now with much fanfare, EPA has announced that they have developed regulations that will be soon be published in the *Federal Register*.

Although widely expected, and believed to be the first step in an overall regulatory program to control greenhouse gas emissions, the proposed rulemaking is massive and complex and warrants close attention. Most initial reports have emphasized that reporting will be limited to sources that emit more than 25,000 metric tons per year of greenhouse gases (GHG). However, the 25,000 metric ton threshold is expressed as carbon dioxide *equivalent* (CO<sub>2</sub>-e). Most of six other categories of greenhouse gases that are reportable are much more potent than CO<sub>2</sub> and therefore are reportable at lower thresholds. For example, since methane is approximately 20 times more potent than CO<sub>2</sub>, annual emission of approximately 1,300 tons of methane would require reporting. Moreover, some of the industrial gases covered by the proposed rule are so potent as a greenhouse gas that emissions of slightly more than *one ton* would trigger the reporting requirement.

The proposed rule also lists source categories that are required to report CO<sub>2</sub>-e emissions regardless of the 25,000 ton threshold. Likewise, suppliers of fossil fuels including coal, natural gas, and petroleum products are required to report the volume of fuel placed into the economy each year and the emissions associated with the complete oxidation of that fuel, without regard to the 25,000 ton threshold. Other listed source categories must report only if they exceed the threshold, but must aggregate all potential sources of GHG to determine the volume. Institutions and commercial operations using boilers, combustion turbines or the like for heating purposes, that does not otherwise fall within one of the listed source categories, would only need to report if emissions from that combustion source exceeded the threshold. In addition, stationary fuel combustion sources with a rating of less than 30,000,000 Btus per hour will be presumed to emit less than 25,000 metric tons of CO<sub>2</sub> and will not have to calculate or report emissions.

EPA is proposing to hold two public hearings in April, one in the Washington, DC area and one in Sacramento, CA, and will provide a 60-day public comment period commencing when the rule is published in the *Federal Register*. Although it is still early in the process and the regulations could change significantly, they warrant careful analysis and perhaps the submission of comments, as they are the first major step by the federal government toward the inevitable regulation of greenhouse gas emissions.

The attorneys in Post & Schell's environmental practice group and energy practice group have been advising clients on both energy and environmental issues relating to greenhouse gas emissions for existing and proposed projects. We are prepared to assist clients in identifying reporting obligations and in developing strategies to prepare for the approaching greenhouse gas regulatory era. *If you have any questions or comments about this E-Flash, please contact Terry Bossert at (717) 612-6018 or e-mail him at [tbossert@postschell.com](mailto:tbossert@postschell.com).*

**Disclaimer:** this E-Flash does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this E-Flash without first seeking the advice of counsel.