



Please contact any of the attorneys in our **Environmental Law Group** if you have any questions regarding alert.

Douglas H. Green
dhgreen@Venable.com
202.344.4483

Robert G. Smith
rgsmith@Venable.com
410.244.7590

Justin W. Curtis
jwcurtis@Venable.com
202.344.4410

Greenhouse Gas Reporting Deadline Looming

The first deadline for greenhouse gas (GHG) reporting (2010 emissions) is March 31, 2011. These reports are the first step in the creation of an inventory of greenhouse gas emissions generated by the most significant industrial and commercial sources. For this purpose (as described in our [September 22, 2009, Environmental Alert](#)), the Environmental Protection Agency (EPA) issued a final rule in October of 2009 mandating that approximately 10,000 covered entities begin collecting data on GHG emissions starting with calendar year 2010. While the recent change in the composition of Congress makes prospects of a nationwide cap-and-trade system unlikely for the foreseeable future, the GHG reporting rule remains in effect and the first round of reporting deadlines are just around the corner.

Many facilities are covered by the reporting rule if they generate 25,000 metric tons or more of carbon dioxide (CO₂) or CO₂-equivalent emissions per year—an amount approximately equal to burning 30 MMBTU/hr or about 2.5 million gallons of fuel per year. Entities that must report by the March 31, 2011 deadline, if they meet this threshold, include:

- hydrogen, glass, ferroalloy, iron, steel, lead, and zinc producers;
- paper and pulp manufacturers;
- municipal solid waste landfills; and
- manure management systems operators.

Other entities that must report by the March 31, 2011 deadline, regardless of their total emissions, include:

- electricity generators who are subject to EPA's Acid Rain Program;
- aluminum, ammonia, soda ash, and cement producers;
- petroleum producers and refineries; and
- suppliers, importers, and exporters of certain fossil fuel and GHG products.

The rule prescribes specific requirements and calculation methodologies for the various covered industrial sectors. In some cases, these requirements have been amended within the past year or are in the process of being amended, so it is important to ensure that your data and calculations comply with current regulations. Covered entities should make certain that data collected since 2009 is submitted in compliance with the updated regulation.

The information collected under the new GHG reporting rules will be critical to any future EPA decisions about how to regulate GHG emissions. Accordingly, it would be prudent to assume that EPA will vigorously enforce the provisions of the GHG emissions reporting rule. Accuracy and timeliness in reporting are key. EPA has indicated that it may bring enforcement actions under the Clean Air Act against covered entities that fail to accurately monitor, calculate, or report their emissions. Penalties under the Clean Air Act can include significant, per-day penalties.

Additional Industrial Sectors Subject to GHG Reporting in 2012

EPA has continued to tinker with the final GHG reporting rule since it was first issued in final form. Notable changes within past six months include:

- *Additional covered industries.* EPA continues to expand the scope of industries that may be subject to GHG reporting obligations. The rules now include parties engaging in geologic sequestration or injection of carbon dioxide; underground coal mines; industrial wastewater treatment facilities; magnesium production facilities; entities engaged in petroleum and natural gas production, processing, storage, and

distribution; electrical transmission and distribution equipment users, manufacturers, and refurbishers; and fluorinated GHG producers, importers, and exporters. Although these industries were only recently added to the list of covered entities, their GHG monitoring and data-collection obligations began on January 1, 2011. The first reports for these entities are due on March 31, 2012.

- *Coverage extended to offshore facilities.* The rule now applies to all covered entities on or below the Outer Continental Shelf.
- *Provisional protection for confidential business information (CBI).* Responding to industry concerns, EPA has temporarily suspended the requirement to report certain data elements so that the issue can be reviewed more thoroughly. EPA will continue to accept comments on this matter until March 7, 2011.

For more information, on actions your industry or business must take to comply with the GHG reporting rule, please contact any of the attorneys below.

Douglas H. Green

dhgreen@Venable.com

202.344.4483

Robert G. Smith

rgsmith@Venable.com

410.244.7590

Justin W. Curtis

jwcurtis@Venable.com

202.344.4410

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com