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EPA Takes Significant Steps Toward Regulating Greenhouse Gas Emissions

While the Senate is taking a slow and steady approach to GHG legislation – the most recent information suggests that it is unlikely to vote on a greenhouse gas (GHG) bill this year - the U.S. Environmental Protection Agency (EPA) is moving swiftly forward on a strategy to regulate GHG emissions from almost all major emitters. Two weeks ago, EPA proposed a rule regulating GHG emissions from light duty vehicles. Yesterday, it stated that it would seek comment on a proposed rule which would regulate the GHG emissions of approximately 13,660 stationary sources. Of these sources, approximately 3,000 would be completely new to the applicable Clean Air Act regulatory schemes – regulated solely as a result of their emission of GHGs.

The vehicle emissions rule has been anticipated since May, and is summarized below. EPA's proposed regulation of stationary sources of GHGs, while not unexpected, is significantly more dramatic and could have widespread impacts. EPA itself acknowledges the stationary source rule could impact virtually every American industry (and everyone else, too), including

- Agriculture, fishing, and hunting
- Mining
- Utilities (electric, natural gas, other systems)
- Manufacturers (food, beverages, tobacco, textiles, leather)
- Wood product and paper manufacturers
- Petroleum and coal products manufacturers
- Chemical manufacturers
- Rubber product manufacturers
- Miscellaneous chemical products
- Nonmetallic mineral product manufacturers
- Primary and fabricated metal manufacturers
- Machinery manufacturers
- Computer and electronic products manufacturers
- Electrical equipment, appliance, and component manufacturers
- Transportation equipment manufacturers
- Furniture and related product manufacturers
- Miscellaneous manufacturers
- Waste management and remediation
- Hospitals/Nursing and residential care facilities
- Personal and laundry services

- Residential/private Households
- Non-Residential (Commercial)

The proposed stationary source rule applies to Prevention of Significant Deterioration (PSD) and Title V clean air permits. While typically those permit requirements would be triggered by emissions of either 100 or 250 tons per year (tpy) of a regulated pollutant (here, CO₂ equivalent emissions), EPA is proposing to set much higher ceilings on applicability. The higher ceilings are (1) 25,000tpy as the applicability threshold for "major sources" under both PSD and Title V and (2) between 10,000 and 25,000 tpy as the "significance level" for emission increases due to modifications to pre-existing major sources that may trigger PSD. As discussed in prior Venable GHG Client Alerts, 25,000 tpy is an amount approximately equal to burning about 30 MMBTU/hr or about 2.5 million gallons of fuel per year.

EPA says that the higher triggers are needed because CO₂ is emitted in such large quantities that the 100 or 250 ton threshold would require too many entities to obtain permits, overwhelming both the entities and the permitting authorities and resulting in long delays in issuing permits. EPA estimates that, without the higher threshold, 40,000 PSD permits would be required annually (up from 300 currently) and approximately 6 million Title V permits would have to be issued (there are currently about 15,000). It is likely that EPA's proposed higher thresholds will be subject to vigorous comments, as many commentators will believe they are too high and many believe they are too low.

The proposed rule contains a number of other related provisions. Among other things, it includes various streamlining mechanisms and commits EPA to studying the permitting burden and, within 6 years, reaffirming or modifying the rules.

EPA's contemporaneous vehicle emissions rule has been anticipated since May, when President Obama announced an agreement with automakers to significantly enhance Corporate Average Fuel Economy (CAFÉ) standards. Proposed on September 15, EPA's proposal would require significant advances in vehicle fuel economy starting in 2012 and increasing through 2016 and, for the first time, would establish GHG emission limits. Notably, it allows for some credits toward the GHG standards for actions other than simply increasing fuel economy performance, including reducing leaking from vehicle air conditioner systems, manufacturers vehicles that utilize flexible or alternative fuels, and developing certain advanced or innovative technologies. In addition, the proposed rule would allow for the banking of credits if a vehicle manufacturer achieves its GHG targets ahead of schedule.

The proposed rules will be published shortly in the Federal Register and opened for public comment. For more information on how your industry or business would be affected by the proposed rules or how you can comment on the proposed rules, please contact Lowell Rothschild, Bob Smith, or Doug Green.

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