

## EPA Issues Mandatory Reporting of Greenhouse Gases Rule

On Friday, October 30, 2009, the US EPA's Final Mandatory Reporting of Greenhouse Gases Rule (the "GHG Rule") was published in the Federal Register.<sup>1</sup> The GHG Rule sets forth mandatory monitoring and reporting requirements for certain facilities<sup>2</sup> based on source categories and/or emission threshold limits (GHGs)<sup>3</sup> and for suppliers of fossil fuels and industrial GHGs. The GHG Rule is slated to affect over 10,000 facilities across the nation and is expected to cover an estimated 85% of total GHG emissions in the United States.

### I. Applicability

The GHG Rule will affect three broad classes of GHG emission sources.<sup>4</sup> First, the GHG Rule singles out facilities that contain any of 17 identified source categories. Second, the GHG Rule covers facilities that do not contain any of the 17 identified source categories but which emit more than 25,000 metric tons of carbon dioxide equivalence (mtCO<sub>2</sub>e) annually from stationary fuel combustion, miscellaneous carbonate usage, and 7 additional source categories. Third, the GHG Rule applies to suppliers of fossil fuels and industrial GHGs. Once a facility or supplier becomes covered by the GHG Rule, it will continue to remain subject to the rule until the owner or operator submits a notification to the Administrator announcing the cessation of reporting and either explains the reasons for the reduction in emissions or certifies to the closure of all GHG-emitting processes and operations.<sup>5</sup>

#### A. Facilities Containing Identified Source Categories

The GHG Rule automatically applies to facilities containing certain source categories, regardless of the amount of emissions generated. Specifically, the GHG Rule applies to facilities engaged in any of the following 15 activities: electricity generation, adipic acid production, aluminum production, ammonia manufacturing, cement production, HCFC-22 production, HFC-23 destruction processes, lime manufacturing, nitric acid production, petrochemical production, petroleum refining processes, phosphoric acid production, silicon carbide production, soda ash production, and titanium dioxide production. In addition, the GHG Rule also applies to 2 other identified source categories: municipal solid waste landfills that generate CH<sub>4</sub> in amounts

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<sup>1</sup> Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 56260 (Oct. 30, 2009) (to be codified at 40 CFR pts. 86, *et seq.*)

<sup>2</sup> A Facility is defined as "any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas."

<sup>3</sup> GHGs subject to the rule include carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorochemicals (PFCs), sulfur hexafluoride (SF<sub>6</sub>), and other fluorinated gases such as hydrofluorinated ethers (HFEs)

<sup>4</sup> In an effort to prevent confusion and inadvertent mistakes, the EPA has provided an online tool for determining applicability of the GHG Rule. To use the applicability tool, visit <http://www.epa.gov/climatechange/emissions/GHG-calculator/index.html>.

<sup>5</sup> Reporting may cease after 5 consecutive years of emissions below the 25,000 mtCO<sub>2</sub>e/year threshold; after 3 years of emissions below 15,000 mtCO<sub>2</sub>e/year; or after the GHG-emitting processes or operations are shut down. These cessation opportunities do not apply to facilities with municipal solid waste landfills.

equivalent to 25,000 mtCO<sub>2</sub>e or more per year, and manure management systems with combined CH<sub>4</sub> and N<sub>2</sub>O emissions in amounts of 25,000 mtCO<sub>2</sub>e or more per year.

#### B. Facilities Generating more than 25,000 mtCO<sub>2</sub>e/year

If a facility does not contain any of the 17 identified source categories, it will still be subject to the rule if it emits at least 25,000 mtCO<sub>2</sub>e per year in combined emissions from fuel combustion, miscellaneous carbonate use, and the manufacture of any of the following 7 products: ferroalloys, glass, hydrogen, iron and steel, lead, pulp and paper, and zinc. If a facility engages only in stationary combustion,<sup>6</sup> it will be presumed to fall under the 25,000 mtCO<sub>2</sub>e/year threshold if its maximum-rated heat-input capacity for all stationary fuel combustion combined is less than 30 million Btu per hour.

#### C. Suppliers of Fossil Fuels and Industrial GHGs

Finally, the GHG Rule also applies to suppliers of certain fossil fuels and industrial GHGs. Specifically, the rule covers suppliers of coal-based liquid fuels, natural gas and natural gas liquids, petroleum products, fluorinated gases, N<sub>2</sub>O, and CO<sub>2</sub>.

### II. Monitoring/Reporting Timeline

All sources subject to the GHG Rule must begin implementing the rule's monitoring requirements on January 1, 2010. Reporters, however, may use best available monitoring methods through March 31, 2010, for any parameter for which it is not feasible to acquire, install, and operate a required piece of monitoring equipment by January 1, 2010.

In addition, the reporter may request an extension for compliance beyond April 1, 2010 (but no later than December 31, 2010), if it can demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment with enough time to comply with the GHG Rule. The request must identify the equipment for which the request is being made as well as its location and the specific rule requirements for which the equipment is needed. Further, the request must contain a description as to why there is a need for an extension and supporting documentation, if applicable, and a description of the actions the operator will take to obtain and install equipment. In order to receive an extension, the reporter must submit a request to the Administrator no later than November 27, 2009, or 30 days after the effective date of the GHG Rule.

The first annual report (for year 2010) is due March 31, 2011. Thereafter, annual reports are due every March 31 for the period of January 1 to December 31 of the prior year.

### III. Monitoring, Reporting, and Recordkeeping Guidelines

The requirements for annual monitoring, reporting and recordkeeping are fairly straightforward. All reports must contain the name of the facility or supplier, its address, the

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<sup>6</sup> For purposes of the GHG Rule, stationary fuel combustion devices include boilers, stationary internal combustion engines, process heaters, and combustion turbines. Emissions from portable equipment, emergency generators, emergency equipment, agricultural irrigation pumps, hazardous waste combustors, and flares are not included.

year and months covered, and the date of submittal. The report must include annual emissions of CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, and fluorinated GHGs, as well as the aggregate GHG emissions.<sup>7</sup> The report must also contain a brief description of each “best available monitoring method” used, as well as each data element for which a missing data procedure was used. Further, if there is a change in how emissions are calculated during the reporting period, a written explanation is required. Finally, each report must include a signed and dated certification statement provided by the designated representative of the owner or operator.<sup>8</sup>

Emission records, calculations, and other information supporting the annual reports must be retained for 3 years, and may be verified through audits by the Administrator. Among the records to be retained are a list of all units, operations and processes for which GHG were calculated; the data used in such calculations; the annual GHG reports themselves; any missing data computations, if applicable; a written GHG Monitoring Plan<sup>9</sup>; the results of all required certification and quality assurance tests; maintenance records; and any annual report revisions, if applicable.

#### IV. Assistance

EPA has developed numerous training resources to assist reporters in complying with the GHG Rule. An online applicability tool helps facilities or suppliers determine whether the rule applies to them. In addition, several webinars and guidance documents are also available to describe the contents and requirements of the rule. These resources are available at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>

If you would like further information regarding the Final Mandatory Reporting of Greenhouse Gases Rule, please contact Lauran Sturm at [lauran.sturm@stites.com](mailto:lauran.sturm@stites.com) in Louisville or Christina Davidow at [christina.davidow@stites.com](mailto:christina.davidow@stites.com) in Nashville.

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<sup>7</sup> Suppliers of fossil fuels must report the annual quantities of fuels supplied and the emissions associated with the complete oxidation of the fuels. Suppliers of industrial GHGs must report the annual quantities supplied and the emissions associated with the complete release of the GHGs.

<sup>8</sup> Note that a report may not be submitted unless there is a “designated representative.” In addition, the designated representative must submit a certificate of representation no later than 60 days prior to the deadline of the first report. The EPA will reject any reports that do not comply with requirements for designated representatives.

<sup>9</sup> The Monitoring Plan must identify the positions of responsibility, explain the processes of data collection, and describe quality assurance methods.