

Mandatory Carbon Emissions Tracking, Reporting Requirements Effective Dec. 29

November 17, 2009

Under a new United States Environmental Protection Agency (USEPA) requirement, businesses that fail to track and report annual carbon emissions may soon face a daily fine of up to \$37,500 per violation.

On Oct. 30, the USEPA published a final rule, called "Mandatory Reporting of Greenhouse Gases," which becomes effective on Dec. 29. The rule requires greenhouse gas (GHG) emissions reporting from a wide variety of industries, including the following: electric generation facilities, aluminum production facilities, cement production facilities, petroleum refineries, certain municipal solid waste landfills, and certain manure management systems.

The rule also requires that suppliers report GHG emissions of certain products, including coal-based liquid fuels, petroleum products, natural gas and carbon dioxide. Annual reporting requirements apply to most fossil fuel and industrial GHG suppliers, manufactures of heavy duty and off road vehicles and engines, and facilities that emit 25,000 metric tons or more of carbon dioxide (CO²) equivalents.

How expansive are these requirements? They will impact approximately 85 percent of the nation's GHG emissions or roughly 10,000 facilities. They will include facilities operating boilers, process heaters, incinerators, turbines and internal combustion engines. Not surprisingly, fossil-fuel electric generating units are covered. The rule may also include the following industries:

- electrical generating facilities
- universities
- healthcare facilities
- large commercial buildings
- airports
- large hotels and convention centers
- manufacturing operations
- municipal solid waste landfills and sewage treatment facilities
- large agricultural facilities

- suppliers of greenhouse gases, include carbon dioxide
- mobile sources, like aircraft, locomotives, marine diesel, heavy duty construction vehicles
- vehicle and engine manufacturers outside of the light-duty sector will begin phasing in GHG reporting with model year 2011

Affected facilities must begin collecting GHG emission data on Jan. 1, 2010, with a report to be generated for the year 2010 on March 31, 2011. Reports must then be generated annually every March 31 for the previous year's GHG emission figures. There are provisions for ceasing reporting if certain parameters are met and demonstrated to the USEPA.

According to the USEPA, one major benefit of requiring the reporting of GHG emissions is the ability to generate economy-wide data to support future policy decisions on global climate change policy. This data will identify on a facility-specific and industry-specific basis where GHG are generated throughout the American economy.

Policymakers will then be able to identify which industries would be affected by future legislation and regulation of GHG emissions and where regulation would do the most good in reducing GHG emissions. The rule also acknowledges that many states already have requirements for establishing GHG inventories for industries operating within their borders.

The USEPA recognizes that this rule may be confusing and companies that will be subject to its provisions may not be aware of whether and how it may affect them. USEPA will be preparing outreach and education efforts to assist affected industries.

If companies that are required to report their GHG emissions under the rule fail to do so or otherwise violate the rule (like falsifying records), they will be subject to the enforcement provisions of the Clean Air Act. These include administrative, civil and criminal penalties. The USEPA may sue to compel compliance or levy civil and administrative penalties of \$37,500 per day, per violation, so non-compliance can become very expensive, very quickly.

The Federal Register notice of the Final Rule is 216 pages long and contains complete and exhaustive responses to the large number of public comments received since the USEPA posted the Proposed Rule. How the Rule will be interpreted and who exactly will need to comply can be gleaned from the Final Rule itself and the USEPA's responses to the public comments.

The breadth and scope of reporting requirements is quite broad and it is important for companies to review this Final Rule with its plant operations personnel, its consultants and legal counsel to determine whether it applies to their operations and how to prepare for the reporting obligations that are set to start in less than two months.

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Plunkett Cooney's Energy Industry Group has reviewed the rule and is available to assist clients in complying with its requirements. Plunkett Cooney is also teaming up with industry consultants, Conestoga-Rovers & Associates (CRA), who provides technical expertise and support for the impacted industries. Plunkett Cooney and CRA are available to meet with potentially affected companies to provide a quick overview of the rule and to explain whether or how the rule may affect them. The initial meeting would be free of charge. In the event the rule does apply to the company, Plunkett Cooney and CRA will be able to assist the company in complying with the rule.

It is believed that the USEPA's actions are just the first step towards regulating GHG emissions, either through national "cap and trade" legislation or, in the event that Congress does not pass such legislation, when the USEPA begins regulating GHG emissions as air pollutants.

To learn more about the USEPA's new requirements and whether they apply to your business, contact the author or Plunkett Cooney's Energy Industry Group Leader Dennis Cowan at (248) 901-4029; dcowan@plunkettcooney.com.