

## Breaking Developments in Sustainability and Climate Change Law

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### Are Washington State Greenhouse Gas Reporting Rules About to Change?

The Washington Department of Ecology ("Ecology") is asking for changes to the state law that directs the agency to issue rules for reporting greenhouse gas emissions starting January 1, 2010. Ecology's goal is, at least in part, to ensure that the State's greenhouse gas reporting requirements are in line with the federal government's.

The state law passed in 2008 was quite specific about reporting thresholds and scope, for example, requiring that owners of motor vehicle fleets report their carbon emissions. Consequently, the reach of Washington's mandate was broader than other states with reporting rules, such as California and Oregon. To meet the rulemaking deadline, Ecology in October 2009 proposed greenhouse gas reporting rules that included requirements for reporting by motor vehicle fleet owners and an industrial facility reporting threshold of 10,000 metric tons of carbon dioxide equivalent greenhouse gas emissions ("CO<sub>2</sub>e").

In the meantime, with the change in federal administrations, the U.S. Environmental Protection Agency ("EPA") began formulating its own carbon reporting rules and it was widely expected that those rules would have a narrower reach than Ecology's. When the two agencies released their rules days apart from each other, we noted the substantial differences between the two sets of rules. (See *October 5, 2009, Hotsheet, "[Washington State's Proposed Mandatory Greenhouse Gas Reporting Rules Differ from Federal Government's Rules – Which Will Prevail?](#)"*).

As things stand now, the following are the key differences between the two rules:

- Ecology's proposed rules require that stationary sources emitting more than 25,000 metric tons of CO<sub>2</sub>e start reporting in 2010 and that the reporting trigger would drop to 10,000 metric tons CO<sub>2</sub>e starting in 2011. The EPA proposed a single 25,000 metric ton threshold, with reporting to start in 2012.
- The state rule would require reporting by owners of vehicle fleets with emissions greater than 2,500 metric tons of CO<sub>2</sub>e (equal to approximately 280,000 gallons of gasoline or 240,000 gallons of diesel), while EPA proposed to track mobile source emissions at the wholesaler/distributor level, using the so-called "upstream" method.
- The Ecology draft rules would require, after a brief transition period, aggregating all of a company's Washington state operations to determine whether reporting is required. Therefore, if a company has several facilities in the state of Washington, each of which falls below 10,000 metric tons of CO<sub>2</sub>e but collectively exceed that level, the company

would have to report. Under the EPA rule, no report would be required as long as individual facilities are below the 25,000 metric ton threshold.

Because they are tied to the 2008 state law, Ecology's proposed rules are substantially out of synch with EPA's. Faced with such significant disparities in reporting requirements, Ecology has been working to propose changes to the state reporting law to harmonize it with the federal rules. The draft legislation that will be filed with the legislature for its session starting January 11, 2010, would eliminate the vehicle fleet requirement and use an upstream method similar to EPAs. The bill also would eliminate the company-wide provision. However, Ecology would retain a lower 10,000 metric ton CO<sub>2</sub>e reporting threshold than EPA. Therefore, Ecology's rules still would encompass more facilities in Washington than other states, including California.

Once the state reporting law is amended, Ecology will need to amend its reporting rules to mesh with the new state (and federal) reporting requirements. While the draft rules Ecology issued are certain to change, it remains to be seen by how much. The ultimate outcome of the draft legislation probably won't be known until next spring. Until then, uncertainty continues for businesses in Washington trying to figure out whether they have a reporting obligation.

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