

## NINE THINGS YOU NEED TO KNOW ABOUT U.S. CARBON REGULATION

While all eyes are on Copenhagen and climate legislation is stalled in both the House and Senate, a number of carbon-related actions have recently been taken by the EPA, the courts, and other regulators. These developments may have far-reaching implications for any business impacted by carbon emissions such as power plants, electronic manufacturing facilities, facilities with large boilers, and possibly even large commercial developments. Below is a summary of the most recent issues in carbon regulation that may affect your business.

1. The EPA has recently made an "Endangerment Finding" which concludes that greenhouse gases are endangering people's health and must be regulated. The Supreme Court had previously determined that the EPA has the authority under the Clean Air Act to regulate carbon emissions, and this Finding was the next step required after that ruling.
2. While the Finding does not directly result in regulation, under the Clean Air Act, it is likely that large carbon emitting sources will soon need to evaluate technology or processes to reduce carbon emissions during facility permitting or modification under the Prevention of Significant Deterioration (PSD) program. Since no technology is currently available to remove carbon from stack gases, initial requirements will likely consist of improving energy efficiency, switching fuels, or otherwise eliminating carbon emissions from facility processes. The EPA is attempting to exempt smaller sources (less than 25,000 tons of carbon emissions per year) from these requirements but may not be successful.



3. The EPA also finalized regulations requiring that larger emitters of carbon dioxide (25,000 tons per year) report their annual emissions, which will begin at the end of this year. (25,000 tons is what an oil fired boiler burning about 2.2 million gallons of oil emits in a year, but facilities must aggregate all emissions and if more than 25,000 tons are expected to be produced, reporting is required.)

4. The EPA also made a Cause or Contribute Finding related specifically to carbon emissions from automobiles, and is now finalizing stricter fuel economy standards to be imposed by the 2012 model year.

5. The SEC has been asked to look into whether reporting companies should be required to disclose the cost and potential losses associated with carbon regulation and climate change impacts. Costs associated with regulation will be uncertain for a number of years. Potential losses or liability due to climate change

impacts, such as rising sea levels or changes in weather patterns, will be extremely difficult to predict, and any reporting obligations could lead to wildly differing interpretations. However, it may be prudent for companies to attempt to quantify the risks and disclose them proactively.

6. In the past month, several tort and public nuisance cases against large emitters of carbon dioxide, including power plant operators, alleging potential property damage due to rising sea levels and increases in storm damage, have been allowed to proceed in federal court.

7. The House passed a comprehensive, economy-wide climate change bill over the summer, and the Senate is currently holding hearings on its own version. While the bills differ markedly in terms of timeframes, distribution of carbon allowances, and whether proceeds from allowance auctions will be used to reduce the deficit, both bills have virtually identical “cap and trade” provisions:

- Power plants and industrial boilers utilizing coal and natural gas will have to acquire allowances based on the number of tons of carbon emitted.
- Each unit of petroleum fuel will have an imbedded allowance based on the projected carbon emissions upon combustion.
- All other major sources of carbon emissions will have to account for and acquire allowances to cover such emissions.
- The net effect is projected to be an approximately 10 to 15 cent increase in the price of a gallon of gasoline, and an approximately \$5 to \$10 increase in monthly electric bills, depending upon the carbon makeup of a utility's generation units.

8. At this time, it is anticipated that the Senate climate bill will be debated in the spring. If climate legislation is stalled, expect the EPA to ramp up its proposed

regulation in a piecemeal approach through its various programs. Any regulation of carbon emission sources under the Clean Air Act will likely lead to drawn out litigation and significant uncertainty on the part of potentially regulated entities. Such an approach will result in uneven regulation where some sources are heavily impacted and some not at all.

9. If economy wide climate legislation fails, it is very possible that more limited proposals may gain acceptance. Such proposals may include creating a program similar to the northeast's Regional Greenhouse Gas Initiative which regulates only large electric utilities, raising fuel efficiency standards in automobiles and energy efficiency standards in appliances, as well as possibly a nationwide renewable portfolio standard.

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