

# Environmental Law Update

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## EPA Issues Final Rule for Mandatory Reporting of Greenhouse Gas Emissions from Four Emissions Sources

On June 28, 2010, EPA signed a final rule for Mandatory Reporting of Greenhouse Gases from Magnesium Production facilities, Underground Coal Mines, Industrial Wastewater Treatment facilities, and Industrial Waste Landfills, thereby adding these four source categories to the list of source categories already required to report greenhouse gas emissions ("GHGs") under the Greenhouse Gas Reporting Program set forth at 40 C.F.R. Part 98. Importantly, in this final rule, EPA decided not to include ethanol production and food processing facilities as distinct subparts in the Greenhouse Gas Reporting Program, and also decided not to impose reporting requirements on coal suppliers at this time.

The four source categories noted above were added as part of a larger rulemaking effort to establish GHG reporting requirements. Part 98 requires the monitoring and reporting of GHGs and supply from all sectors of the economy, including fossil fuel suppliers, industrial gas suppliers, and direct emitters of GHGs. It covers several GHGs, including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated compounds. Methane is the primary GHG emitted from coal mines, industrial wastewater treatment systems, and industrial landfills, while the main GHG emitted from magnesium production is sulfur hexafluoride.

EPA proposed 40 C.F.R. Part 98 on April 10, 2009 (74 F.R. 16448). The final 40 C.F.R. Part 98 was signed by EPA's Administrator on October 30, 2009 (74 F.R. 56260). The October 2009 Final Rule, which became effective on December 29, 2009, included reporting requirements for facilities and suppliers in 31 Subparts. The April 2009 proposal, however, included monitoring and reporting requirements for an additional 11 source categories that were not finalized in the October 30, 2009 action. The June 28, 2010 final rule includes monitoring and reporting requirements for four of the 11 source categories that were proposed but not finalized in the October 30, 2009 action, and amends the general provisions of 40 C.F.R. Part 98, Subpart A.

The June 28th final rule contains specific and detailed reporting and monitoring requirements for each of the four sources noted above, which will create new challenges, burdens, and costs for reporting facilities. For example, as a brief overview, the final rule requires each magnesium production facility covered under the final rule to report total emissions at the facility level of certain gases in metric tons of gas per year resulting from their use as cover gases or carrier gases in magnesium production or processing. With regard to underground coal mines, each facility to

which the rule applies must report: (1) quarterly CH<sub>4</sub> liberation from ventilation and degasification systems; and (2) quarterly CH<sub>4</sub> destruction for ventilation and degasification systems and resultant CO<sub>2</sub> emissions, if destruction takes place on-site. For certain industrial wastewater treatment facilities, the final rule requires reporting of: (1) the amount of CH<sub>4</sub> generated, recovered, and emitted from treatment of industrial wastewater using anaerobic lagoons or anaerobic reactors; (2) the amount of CH<sub>4</sub> recovered and emitted from anaerobic sludge digesters; and (3) the amount of CH<sub>4</sub> destroyed by and emitted from biogas collection systems and destruction devices. Finally, for industrial waste landfills covered under the final rule, facilities must report: (1) annual CH<sub>4</sub> generation and CH<sub>4</sub> emissions from the industrial waste landfill; and (2) annual CH<sub>4</sub> recovered (for landfills with gas collection and destruction systems).

Monitoring and reporting of GHGs for the four sources noted above, as well as other sources covered under 40 C.F.R. Part 98, is only required for sources with carbon

dioxide equivalent emissions above certain threshold levels. The final rule requires the new categories to begin collecting emissions data on January 1, 2011, with the first annual reports submitted to EPA on March 31, 2012. The final rule also contains recordkeeping requirements, which require reporters to keep records of additional data used to calculate GHGs. EPA is developing an electronic reporting system to facilitate the collection of data under this rule.

In sum, the final rule, and the larger rulemaking effort, will result in a national inventory of GHGs by state, industry, and source category. While control of GHGs is not required at this time, this rulemaking effort may be a first step toward the future enactment of GHG reduction legislation.

In the event that your company is affected by this final rule or other EPA efforts related to the monitoring and reduction of GHGs, Blank Rome will be able to assist you with an understanding of the legal implications for your company and the strategic issues that should be considered to minimize the economic impacts. ■

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