

December 7, 2009

## EPA Issues Greenhouse Gas Endangerment Finding

On December 7, 2009, EPA Administrator Lisa Jackson announced EPA's finding that emissions of greenhouse gases may reasonably be anticipated to endanger public health and welfare ("the endangerment finding"). Administrator Jackson also made a related finding that emissions of certain greenhouse gases from motor vehicles contribute to air pollution ("the cause or contribute finding"). These findings have far reaching impacts on commercial and industrial operations, including many that have not previously been regulated under the federal Clean Air Act ("CAA").

The endangerment finding identifies the air pollutant of concern to be the collective emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The endangerment finding concludes that these greenhouse gases endanger both public health and welfare by increasing ground-level ozone, altering the climate, contributing to a rise in sea levels, and harming water resources, agriculture, wildlife and ecosystems. It also concludes that greenhouse gases could lead to increases in allergenic illnesses and pathogen borne diseases, but does not place primary weight on these two factors.

These findings are the latest development in the controversial issue of whether EPA should regulate greenhouse gases to protect against the adverse impacts of global warming. Having issued the findings, EPA is now directed by the CAA to determine how to regulate those gases to protect public health and welfare. One of many potential mechanisms to regulate greenhouse gases is limitations on emissions from motor vehicles, and EPA already has proposed regulations to limit emissions of certain greenhouse gases from motor vehicles. EPA could propose other forms of regulation in the future.

Under the CAA, certain regulatory requirements, including permitting, become automatically applicable to sources emitting greenhouse gases if those pollutants become "regulated pollutants." EPA explains that though these findings do not make greenhouse gases regulated pollutants triggering the CAA permitting requirements, adoption of its already proposed limits on greenhouse gas emissions from motor vehicles would establish those greenhouse gases as regulated pollutants. The result is permitting requirements could become applicable to a wide range of facilities, including many institutional and commercial structures that have not been significantly regulated under the CAA. To address this concern, EPA separately proposed rules that would at least temporarily exempt such smaller emitting facilities from the permitting requirements, but its authority to exempt those smaller sources has been questioned.

Because of concerns over the impacts of greenhouse gas regulation pursuant to the CAA, increased pressure may be placed on Congress to enact legislation that would provide a comprehensive system of greenhouse gas regulation in lieu of the provisions of the existing CAA. Currently, the House of Representatives has passed a bill that would establish a "cap and trade" system to address greenhouse gases and exempt them from most Clean Air Act requirements. The Senate continues to work on its own version of a cap and trade bill, but it appears that any Senate action will not occur until next year and the ability of the Senate to pass a comprehensive bill that could also be adopted by the House of Representatives remains in question.

If you have any questions about this topic, please contact:

[James D. Braddock](#)

512.867.8462

[james.braddock@haynesboone.com](mailto:james.braddock@haynesboone.com)

[Jeff Civins](#)

512.867.8477

[jeff.civins@haynesboone.com](mailto:jeff.civins@haynesboone.com)

[Mary Mendoza](#)

512.867.8418

[mary.mendoza@haynesboone.com](mailto:mary.mendoza@haynesboone.com)