

PUSH TOWARDS CLIMATE CHANGE REGULATION CONTINUES IN DECEMBER

In recent weeks, environmental authorities have focused significant attention on greenhouse gas emissions. First, on Monday December 7, 2009, the United States Environmental Protection Agency (EPA) released its Endangerment and Cause or Contribute Findings (the “Endangerment Finding”) for greenhouse gases. On the same day, the U.S. began attending and participating in the United Nations’ climate change conference in Copenhagen, Denmark. Neither of these actions directly imposes limitations on greenhouse gases, but both can be seen as steps toward regulation of greenhouse gases in the United States.

EPA’s Endangerment Finding consists of two parts—a determination that the greenhouse gases at issue constitute air pollution, which is reasonably anticipated to endanger public health and welfare under the Clean Air Act, and, secondly, a determination that emissions of greenhouse gases from new motor vehicles contribute to that air pollution. The Endangerment Finding does not impose any emission reduction requirements; however, the Endangerment Finding does allow EPA to finalize the regulations applicable to new light-duty vehicles that were proposed earlier this year. Additionally, this Endangerment Finding paves the way for the adoption of new regulations by EPA requiring the reduction of greenhouse gas emissions from other sources such as coal-fired power plants. As EPA Administrator Jackson stated in her press conference announcing the release of the Endangerment Finding, EPA “is now authorized *and obligated* to take reasonable efforts to reduce greenhouse pollutants under the Clean Air Act” (emphasis added).

In the final days of the Copenhagen Conference, President Obama announced that the United States had entered into the “Copenhagen Accord” with Brazil, China, India and South Africa. Although trumpeted by the Obama administration as “unprecedented,” the substance of the Accord is merely a non-binding commitment that each participating country will take actions to limit global surface temperature increases to “no more than 2 degrees Celsius above pre-industrial levels.” The Accord does not, however, require its signatories to follow through on the agreed-upon goals.

Some have argued that the greater importance of the Copenhagen Accord could be to provide support for the push in the United States Senate to enact legislation similar to the Waxman-Markey bill passed by the House earlier this year. The Senate has long been critical of developing nations and their unwillingness to engage in efforts to minimize climate change. The Copenhagen Accord, although weak, may grant new momentum to the climate change movement. As if to illustrate that new momentum, Al Gore has called the current administration and the Senate to action: “I will ask my fellow U.S. citizens who share my sense of urgency to join me in asking President Obama and the leadership of the U.S. Senate to set a deadline of April 22, 2010—the 40th anniversary of Earth Day—for final action on the U.S. legislation.”

We will continue to monitor the almost daily developments surrounding greenhouse gas regulations and provide periodic updates. If you have any questions about what EPA’s Endangerment Finding means or could mean for your facility or operations, please contact Kevin R. Murray, Patrick S. Malone or Nicole C. Squires at 801-533-0066.

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