

# Green Report



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# USEPA ISSUES GREENHOUSE GAS REPORTING REGULATIONS



On September 22, 2009, USEPA issued greenhouse gas (GHG) reporting regulations. Pursuant to December 26, 2007 federal funding legislation, H.R. 2764-285, USEPA was required to establish by mid-2009 a mandatory program for all sectors of the economy to report GHG emissions. On March 10, 2009, USEPA issued its draft of these regulations. Through the end of the comment period for the draft regulations in June, USEPA received about 16,800 comments and met with over 4000 people and 135 groups regarding the proposal.

The purpose of the regulations is to establish mandatory GHG reporting requirements for owners and operators of certain facilities that directly emit GHGs and also for certain fossil fuel suppliers and industrial GHG suppliers, or "upstream" sources. For suppliers, the GHGs reported are the quantity that would be emitted from combustion or use of the products supplied.

Categories of direct emitters are listed in the regulations and include electricity generation, aluminum production, cement production, petroleum production, petroleum refineries, iron and steel production and pulp and paper production. Certain of these categories must report GHG emissions even if they do not emit 25,000 metric tons or more of GHGs, the threshold that generally applies to other sources and suppliers. Suppliers include coal-to-liquids, petroleum product, natural gas and natural liquids, industrial greenhouse gas and carbon dioxide suppliers.

Regulated entities must start collecting data in 2010 and start reporting during the first quarter of 2011. The regulations include technical requirements for

calculating GHG emissions. It is the responsibility of a direct or indirect source to determine now and in the future whether its emissions trigger obligations under these regulations. Once subject to the requirements of the regulations, reporting must continue unless certain standards are met that would permit discontinuation of reporting, which depend on whether emissions are reduced below applicable thresholds or discontinued altogether.

Requirements are provided for emission calculations, monitoring, quality assurance, missing data, record keeping and reporting. Each facility and supplier subject to these regulations must have a designated representative who is responsible for certifying, signing and submitting GHG emissions reports to the Administrator of USEPA. The acts and omissions of the designated representative legally bind the facility or supplier regarding matters involving these regulations and the facility and supplier are bound by any decision or order issued to the designated representative by the Administrator or a court.

In its preamble to the regulations, USEPA provides information about its promulgation of these regulations and its impressions about their impact.

- The final regulations apply to fossil fuel suppliers and industrial gas suppliers, direct greenhouse gas emitters and manufacturers of heavy-duty and off-road vehicles and engines.

- Tables in the preamble are provided to help those potentially subject to these regulations identify source categories that they will need to consider in their facility applicability determination and include in their reporting.

- These regulations are expected to cover about 85% of GHG emissions in the United States.

- There are other types of data and reporting that USEPA thinks are important and necessary to address the issue of climate change and that these regulations can be viewed as narrowly focusing on certain sources

of emissions. There are also existing programs at the federal, regional and State levels that collect information. These programs are a component of the Nation's climate policy and the targeted nature of these regulations should not be interpreted to mean that the data USEPA collects through this program are the only data necessary to support the full range of climate policies and programs.

- USEPA promulgated these regulations by its authority under the Clean Air Act and not the funding legislation mentioned above.

- Information collected from the reporting required under these regulations will inform decisions about whether and how other provisions and programs under the Clean Air Act are impacted.

- These regulations are one of several climate change related actions USEPA has taken recently, all of which will help in future policy development. This GHG reporting program supplements and complements, rather than duplicates, existing government programs.

- Existing State and regional GHG reporting and reduction programs have led the way in reporting GHG emissions before the Federal government acted and assist in quantifying GHG emission reductions. These programs are important in achieving GHG emission reductions and these regulations do not preempt any other program. In order to address climate change issues, there will likely be a need to collect additional data from sources subject to these regulations and other sources. Addressing climate change will require a variety of policies and programs and this reporting rule is just one effort to collect information to inform those policies. USEPA plans to work with State and regional programs in this effort.

# USEPA TO "GREEN" SUPERFUND CLEANUPS

On September 8, 2009, USEPA issued its draft Superfund Green Remediation Strategy ("Strategy") for cleanup of Superfund sites.

The Strategy sets out USEPA's current plans for its Superfund Remedial Program to reduce greenhouse gas (GHG) and other emissions that can occur during remediation of a hazardous waste site or a non-time critical removal action. Since promoting clean energy and mitigating climate change are among USEPA's top priorities, the Strategy recognizes that much can be done to reduce energy use and improve the environmental performance of Superfund activities at both private and federal sites. Five core elements of green remediation are listed. They involve: (1) energy, to improve energy efficiency and use renewable energy sources; (2) air, to apply advanced technologies and practices to reduce onsite and offsite emission of GHGs and other air pollutants from activities such as treatment processes, operation of heavy machinery and transportation by routine vehicles and cargo trucks; (3) water, to reduce water consumption, reuse treated water and use efficient techniques to protect surface and ground water; (4) land and ecosystems, to minimize further harm to the subject area, protect land resources and ecosystems at and near the site and promote ecological, economic, social and other site uses; and (5) material and waste, to reduce material consumption and waste generation, use recycled and indigenous materials and spent products and purchase environmentally preferred products.

The Strategy is not intended to be a comprehensive document but, instead, is expected to change over time as more is learned. Although the Strategy is not law, USEPA states that green remediation strategies involve concepts found in many federal and state statutes and regulations and executive orders. Those laws address reductions in energy use and water consumption, increased use of renewable energy and conservation of natural resources.

In order to promote green remediation, the current version of the Strategy outlines 10 key action items that fall into three overarching categories.

- A. *Policy and Guidance Development*
  1. Clarify the role of green remediation in remedy selection and implementation.
- B. *Resource Development and Program Implementation*
  2. Develop protocols for green remediation practices.
  3. Identify options for use of green remediation practices.
  4. Address air pollutants and diesel emissions.
  5. Develop pilot projects to evaluate and demonstrate green remediation applications.
  6. Use contracts to identify green remediation practices and remedies.
  7. Share success stories.
- C. *Program Evaluation*
  8. Evaluate green remediation applications at the site level.
  9. Develop program evaluation measures.
  10. Evaluate the Strategy.

In order to implement these action items, USEPA feels that it is important to clarify how green remediation practices fit within the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

The goal of the Strategy is to better understand resource and energy demands for Superfund remedies and to develop metrics to measure and evaluate green remediation actions. The Strategy also contains recommendations for addressing major issues, such as the extent various parts of USEPA, including enforcement branches, can incorporate green remediation practices under existing laws and regulations.

The Strategy also includes recommendations on how to establish a process for quantifying the reduction of the impact that site cleanups place on the environment. This includes establishing baseline information on the environmental demands of sites before implementation of the Strategy. Using the baseline information, USEPA could then establish targets for remediations, such as reducing energy consumption by 20%, increasing use of alternative fuels and renewable energy by 15% and



reducing diesel equipment emissions of particulate matter by 10%, all by 2015.

The next version of the Strategy will include specifics regarding USEPA's Emergency Response/Removal Program.

# EXECUTIVE ORDER SETS SUSTAINABILITY GOALS FOR THE FEDERAL GOVERNMENT

On October 5, 2009, President Obama signed an Executive Order entitled Federal Leadership In Environmental, Energy And Economic Performance. The order is intended to establish an integrated strategy for sustainability in the Federal government and to make reduction of greenhouse gas (GHG) emissions a priority of Federal agencies.

The order sets federal policy and, in order to create a clean energy economy and to lead by example, imposes requirements on Federal agencies to: (1) increase energy efficiency; (2) measure, report and reduce their GHG emissions from direct and indirect activities; (3) conserve and protect water resources through efficiency, reuse and storm water management; (4) eliminate waste, recycle and prevent pollution; (5)

leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products and services; (6) design, construct, maintain and operate high performance sustainable buildings in sustainable locations; (7) strengthen the vitality and livability of the communities in which Federal facilities are located; and (8) inform Federal employees about, and involve them in, the achievement of these goals.

Federal agencies are required to designate senior management officials to work with other federal officials to meet the requirements of this order. This includes preparation and implementation of a Strategic Sustainability Performance Plan that will prioritize agency actions based on lifecycle return on investment.

It is thought that this policy can have a significant impact on sustainable development and the economy in light of the size of the federal government, which reportedly occupies about 500,000 buildings, operates more than 600,000 vehicles, employs over 1.8 million civilians and purchases more than \$500 billion each year of goods and services.



## ILLINOIS GREEN BUILDINGS ACT REQUIRES GREEN CONSTRUCTION AND RENOVATION OF STATE'S BUILDINGS

Effective July 24, 2009, the Illinois Green Buildings Act ("IGBA") requires that all new State-funded building construction and major renovation of existing State-owned buildings must, at a minimum, be consistent with "green" construction standards and, in certain situations, obtain "green" certifications.

In passing this statute, the Illinois General Assembly found that an efficient green building is essential to reduce increasing energy costs, reduce energy use, reduce pollution, preserve the environment and improve building environments.

The IGBA defines major renovation as a project with a construction budget that equals 40% or more of the building's current replacement cost. The statute also recognizes "green" construction standards and certification programs, including Leadership in Energy and Environmental Design ("LEED") by the United States Green Building Council ("USGBC") and Green Globes by the Green Building Initiative.

All new State-funded building construction and major renovation of existing State-owned buildings must seek LEED, Green

Globe or an equivalent certification and, regardless of size, achieve the highest level of certification practical within the project budget. New buildings and major renovations less than 10,000 square feet must meet the highest standard of the LEED rating system for new commercial construction and major renovation or an equivalent standard, though LEED, Green Globe or an equivalent certification is not required. New buildings and major renovations of 10,000 square feet or more must achieve the LEED silver rating for new commercial construction and major renovations or an equivalent standard and, in this situation, LEED, Green Globe or an equivalent certification is required. Buildings that are determined by the Illinois Capital Development Board to not be "comfort" conditioned are exempt under this statute. However, the design team for such a building must document in the final design appropriate sustainable building methods, strategies and technologies.

A waiver may be applied for and granted by the Capital Development Board or another appropriate State agency if complying with this statute would impose an unreasonable financial burden,

be an unreasonable impediment to construction, impair the principal function of the building or compromise the historic nature of the structure. Documentation for the requested waiver must include, at



a minimum, life cycle cost analysis and energy modeling. Green construction standards must still be followed and documented.

The Illinois Capital Development Board will from time to time reevaluate the green building standards referenced in this statute.

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