

## **EPA to Issue Greenhouse Gas New Source Performance Standards for Electric Generation and Petroleum Refinery Sectors**

**January 3, 2011**

On December 23, 2010, the U.S. Environmental Protection Agency (EPA) announced that it has reached settlement agreements with certain states and environmental groups to propose standards and guidelines to control greenhouse gas (GHG) emissions from electric utilities and petroleum refineries.

The states and environmental groups with which EPA reached an agreement sued EPA in the U.S. Court of Appeals for the District of Columbia Circuit after EPA issued revised new source performance standards for utilities in 2006 and refineries in 2008 without requiring control of GHG emissions. The two lawsuits (*New York v. EPA*, D.C. Cir. No. 06-1322, and *American Petroleum Institute v. EPA*, D.C. Cir. No. 08-1277) sought to force EPA to propose GHG emission standards on the two sectors.

According to EPA, electric-generating units are the largest source of GHG emissions in the United States and refineries are the second largest stationary source of those emissions. EPA indicates that these two sectors are together responsible for almost 40% of all GHG emissions in the United States. In the settlement agreements, EPA claims that cost-effective control strategies exist for reducing GHG emissions for power plants and petroleum refineries.

The settlement agreements reached between EPA and the plaintiffs require EPA to propose revisions to new source performance standards as well as emissions guidelines for electric power plants and petroleum refineries, and include proposed emission limits on GHGs. The new standards must be proposed by EPA by July 26, 2011 for the electric-generation sector and by December 15, 2011 for petroleum refineries. After a public comment period, EPA then must take final action on those proposals by May 26, 2012 and November 15, 2012, respectively.

New source performance standards apply to new and modified facilities, and are adopted on a source category basis. Emissions guidelines also apply to existing facilities within specified source categories. EPA indicated that the new source performance standards for GHG emissions from electric-generating facilities will be issued separately from the new source performance standards for other emissions from electric power plants scheduled to be proposed in March 2011. EPA stated that the refinery proposal will be combined with a review of its action on the hazardous air pollutant emissions from those facilities.

Adoption of GHG control requirements for utilities and refineries will constitute the next step in EPA's multipronged approach to reducing GHG emissions. If promulgated, the standards and guidelines would

impose the first GHG emission limits under EPA’s authority to regulate the emissions of categories of stationary sources.

Earlier in 2010, EPA adopted (1) a GHG endangerment finding, (2) GHG vehicle emission standards, and (3) regulations governing the permitting and control of GHG emissions under the Prevention of Significant Deterioration (PSD) and Title V operating permit programs. Numerous states and industry organizations have filed challenges of these regulations, which are now being pursued in the D.C. Circuit. The settlements do not affect the GHG emissions permitting and control requirements under the PSD permitting program for the largest new and modified stationary sources that took effect on January 2.

Morgan Lewis lawyers are at the center of the development of climate change programs. We help energy companies, petroleum refiners, and other industrial companies navigate developing climate change requirements and develop strategies to address the challenges they present. If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following attorneys:

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