

**GHG
Reporting****Governor's
Directive****States'
Efforts****Reporting
Entities****Kyoto Tie-In****Transportation
Sector****PROPOSED OREGON GHG REPORTING RULES**

ALL SOURCES WITH AIR PERMITS, AND OTHERS, WILL REPORT

by Tom Wood, Stoel Rives LLP (Portland)

Introduction

On July 17, 2007 Governor Kulongoski sent a letter to the Oregon Environmental Quality Commission (EQC) directing it to develop mandatory greenhouse gas (GHG) reporting regulations applicable to sources within the state. The Oregon Department of Environmental Quality (DEQ) convened a task force, starting on October 17, 2007, to develop rules in response to this mandate. This committee included your author and 15 other representatives from environmental organizations, industry and government agencies. Through a series of long meetings this group (with exceptional assistance from Marianne Fitzgerald and Brandy Albertson of DEQ) forged a consensus recommendation covering most aspects of the reporting program. Based on these recommendations, DEQ prepared draft regulations. On April 1, 2008, DEQ released its proposed mandatory greenhouse gas (GHG) reporting regulations for public comment. [See DEQ's GHG Reporting Website: www.deq.state.or.us/aq/climate/rulemaking.htm]

Regional Overview

Oregon is not the first of the western states to implement GHG reporting regulations. California's AB 32 required the California Air Resources Board to promulgate GHG reporting regulations by the end of last year. California met that deadline, although just barely. Subsequent rule revisions were necessary. California sources have already started collecting data with the goal of reporting for calendar year 2008 in early 2009. Although certain industries are subject to custom thresholds, the general rule is that only sources with more than 25,000 tonnes (metric tons) of combined carbon dioxide, nitrous oxide and methane emissions must report. New Mexico has GHG reporting regulations as well, but only sources subject to the Title V permit requirements are required to report. Washington's legislature recently adopted a statute (HB 2815 - see Wood, *Insider* #433) requiring sources with fleet emissions of at least 2,500 tonnes of CO₂e or total source emissions of at least 10,000 tonnes to submit reports in 2010 covering 2009 emissions. Therefore, Oregon is not leading the pack with its proposed regulations. However, DEQ's proposed regulations are unique to the extent that they apply to far smaller sources than any of these other states' requirements.

Oregon GHG Reporting Proposal

Under DEQ's proposed regulations, all sources holding Title V permits and most sources holding air contaminant discharge permits will have to submit their first report in 2010 covering the 2009 emissions. No explicit emissions threshold applies as the rules are proposed. However, in order to make the rules consistent with existing air emission reporting requirements, the DEQ rules exempt from reporting those de minimis sources identified by rule as "categorically insignificant activities." This means that combustion sources should face a limited reporting burden as they will not need to report on emission units beyond those they already address in their annual reports to DEQ. DEQ has promised to provide tools such as California incorporated into its reporting rule that will make it easy for sources with combustion sources to add GHG reporting to their existing reporting spreadsheets.

Certain sources not holding one of these air permits but emitting more than 2,500 tonnes/year CO₂e will also have to report under the program. These sources will have to submit their first report in 2011 for 2010 emissions.

Under the proposed Oregon program all the Kyoto Protocol GHG gases (CO₂, nitrous oxide, sulfur hexafluoride, perfluorocarbons and hydrofluorocarbons) must be reported.

The proposed rules do not require reporting of mobile source emissions. This might appear to be a gross oversight given that the transportation sector makes up an enormous part of Oregon's GHG emissions. However, the advisory committee strongly recommended that DEQ not rely on these reporting rules to capture the transportation sector contribution to the GHG inventory. Instead, many in the advisory committee were concerned that an approach that focused on fleets (such as Washington's program does) would end up missing the sub-fleet level of transportation emissions that are believed to constitute the majority of transportation related GHG emissions. Fuel is taxed in Oregon and many on the advisory

**GHG
Reporting**

committee believed that it was better policy for DEQ to focus on obtaining existing fuel sale data and calculating emissions from the whole transportation sector than it was to get overly focused on reporting from a subset of the sector. Individual sources or fleet owners can choose to report voluntarily.

The rule package is very slim and this has given rise to concern on the part of many potentially affected sources. It appears that DEQ is seeking to address key program elements outside the scope of the rules in reporting protocols. This is an approach that likely will give rise to many comments on the rule.

PUBLIC HEARINGS:

Hearings were scheduled across the state to occur between April 24th and May 15th.

REMAINING HEARINGS INCLUDE: Pendleton/May 1; Bend/May 5; Klamath Falls/May 6; Medford/May 7; Eugene/May 8; Corvallis/May 9; & Portland/May 15 (see Calendar)

CLOSE OF COMMENT: May 16, 2008

For Additional Information, Contact:

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Tom Wood is a partner at Stoel Rives LLP who helps industrial clients across the Western United States obtain permits and comply with the myriad requirements of state and federal environmental regulations. Tom is also an adjunct professor at Lewis and Clark Law School where he teaches about the Clean Air Act. Tom recently served on the Oregon Department of Environmental Quality's advisory committee developing greenhouse gas reporting rules and worked closely with the Washington State Department of Ecology in developing its greenhouse gas emission performance standard and carbon sequestration regulations.

**Oregon Western Climate Initiative Stakeholder Meeting
RE: Allocations and Apportionment**

**Portland, May 12, 2pm to 4pm
ODOT Region 1 Building, 123 NW Flanders St, Portland, Room AB**

Phone-in Info: 1-877-322-9648, participant code 665675

All interested stakeholders in Oregon (or operating in Oregon) are welcome to join with the Governor's Office and agency staff working on the Western Climate Initiative for a dialogue on the progress of the Western Climate Initiative and to provide input to the Governor's Office on areas of particular interest or concern. Time for different topics will be allocated at the start of the meeting based on the interests of those in attendance at the meeting. However, it is expected that the majority of time will be spent on the topics of allocations and apportionment, as informed by the results of the next in-person partners meeting of the WCI occurring in late April.

For info: Jenifer Wetherbee, Oregon Department of Energy, (503) 378-5049 or jenifer.wetherbee@state.or.us.