

**STATE OF NEW MEXICO
TO CONSIDER STATE-WIDE CAP
ON GREENHOUSE GAS EMISSIONS
AND MANDATORY REDUCTION OF GREENHOUSE GAS EMISSIONS**

A state-wide cap on greenhouse gas emissions and a mandatory reduction of certain greenhouse gas emissions is expected to be introduced in the 2009 New Mexico Legislature as part of the session that starts on January 20, 2009. A similar greenhouse gas emissions cap is already part of a recently-initiated regulatory proceeding before the New Mexico Environmental Improvement Board (EIB).

Draft Greenhouse Gas Emission and Reduction Legislation – Cap and Trade:

- A discussion draft of legislation is being circulated seeking to expand and specify the regulatory authority for the EIB to adopt rules to reduce greenhouse gas emissions in New Mexico.
- The New Mexico Environment Department has explained that the legislation is needed to implement New Mexico's commitments to the Western Climate Initiative (WCI), a regional cap and trade program scheduled to begin in 2012. An overview of the WCI is at <http://www.westernclimateinitiative.org/ewebeditpro/items/O104F19871.PDF>
- The draft legislation instructs the EIB to develop a program for reductions in emissions and a cap and trade program for certain greenhouse gas emissions sources.
- Greenhouse gas sources covered by the draft legislation include the sources covered by the WCI, which are emissions from electricity generation, combustion at industrial and commercial facilities, industrial process emissions sources (including oil and gas process emissions), and emissions from residential, commercial and industrial fuel combustion.
- The draft legislation also requires EIB to develop mandatory monitoring and reporting requirements for certain sources emitting over ten thousand metric tons of carbon dioxide equivalent and public disclosure of facility-level aggregated emissions.
- The draft legislation provides for early reduction and offset allowances (not to exceed 49% of total emission reductions required between 2012 and 2020).
- The draft legislation specifies that by January 1, 2010 the New Mexico Environment Department must establish the 2000 statewide greenhouse gas emission levels.
- The draft legislation also mandates that greenhouse gas emissions will be reduced 10% below 2000 levels by 2020.
- The proposed legislation includes a provision that would repeal the New Mexico program when a federal program of equivalent or greater stringency is enacted.

New Mexico Legislature:

- The New Mexico Legislature convenes on January 20, 2009 for a sixty-day session.
- The draft legislation involving greenhouse gas emissions is expected to be introduced during the session.

New Mexico EIB Proceeding:

- The EIB recently docketed a Petition seeking similar, but more aggressive, changes to the New Mexico Administrative Code involving greenhouse gas emissions including carbon dioxide (CO₂), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluorides. The case is docketed as EIB 08-19(R).
- The petition was brought by New Energy Economy, Inc., a New Mexico-based non-profit organization, working with the New Mexico Environmental Law Center.

Subject of the EIB Proceeding:

- The Petition specifically requests that the EIB establish a cap on greenhouse gas emissions set at 1990 levels and a procedure for determining 1990 levels.
- The Petition also seeks a mandatory statewide reduction of greenhouse gas emissions of 25% below 1990 levels by 2020.
- The Petition does not appear to limit its scope to the greenhouse gas emissions that are the subject of the Western Climate Initiative.
- In addition to requesting the cap on greenhouse gas emissions, the Petition requests specific changes in New Mexico air quality permitting procedures.
- The permitting changes relate to both direct and indirect emissions of greenhouse gases.
- The proposed changes to the Administrative Code include new definitions related to greenhouse gases, including direct and indirect emissions of greenhouse gases.
- The Petition also requests broad procedural changes to the air-quality permitting process, and changes to the scope of departmental authority in regard to future permits.

Procedure and Dates Set for EIB Hearings:

- The EIB has scheduled a hearing on April 6, 2009 to consider its authority to regulate greenhouse gas emissions. For those parties already participating, briefing will be initiated at the end of January 2009.

- Pending the result of the April 6, 2009 hearing, the EIB has set a hearing on August 3, 2009 to consider the requested state-wide greenhouse gas cap.

Status and Conclusion:

A greenhouse gas emissions limit and mandatory reductions in emissions through a cap and trade program are in the forefront in New Mexico and are actively being considered in both legislative and regulatory proceedings.

If you are interested in the status of the New Mexico legislative efforts or the EIB proceeding, or have any questions about New Mexico's current and proposed regulation of greenhouse gas emissions, climate change initiatives, or other air quality matters, please contact William ("Bill") C. Scott at (505) 848-1824 or bcscott@modrall.com; Marte D. Lightstone at (505) 848-1847 or milightstone@modrall.com; or Leslie M. Padilla at (505) 848-1897 or lpadilla@modrall.com.