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EPA Advances Climate Change Agenda with Proposed CO2 Emission Standards for New Power Plants

As part of a continuing effort to address climate change, the United States Environmental Protection Agency ("EPA") has released a revised proposed rule seeking to significantly reduce carbon dioxide ("CO_2") emissions from all new coal- and natural gas-fired power plants. The proposed rule, announced by EPA on September 20, 2013, would establish the first uniform national limits on the amount of carbon-based emissions from new power plants.

EPA's proposal replaces an earlier 2012 proposal to regulate CO_2 emissions from electric generating units under the Clean Air Act. As now proposed, EPA is establishing separate New Source Performance Standards for coal- and natural gas-fired electric generating units. Initially, EPA sought a single standard for new generating units, regardless of whether the units used coal or natural gas to operate.

Under EPA's revised draft rule, new coal-fired units would need to meet a limit of either 1,100 pounds of CO_2 per megawatt-hour over a 12-month rolling average operating period or between 1,000 and 1,050 pounds of CO_2 per megawatt-hour based on an 84-month rolling average operating period. With respect to either standard, new coal-fired units would be required to install "partial" carbon capture and sequestration technology ("CCS"), an emerging technology, as the best system of emission reduction to lower CO_2 emissions. By requiring partial CCS technology, EPA estimates that new coal-fired units would emit approximately 30 to 50 percent less CO_2 than a coal-fired unit without CCS technology.

With respect to new natural gas-fired units, larger units with a capacity of at least 850 million Btu's per hour ("mm/Btu/h") would need to meet a limit of 1,000 pounds of CO_2 per megawatt-hour, while smaller units with a capacity of less than 850 mm/Btu/h would be subject to an emissions limit of 1,100 pounds of CO_2 per megawatt-hour. According to EPA, the most common type of fossil fuel-fired units being planned or built is natural gas-fired with combined cycle technology, which EPA concludes "is an inherently lower CO_2-emitting technology" than a typical new coal-fired plant of the same size. EPA asserts that no additional emissions control technology will likely be required for new natural gas-fired units to meet either limit.

The proposal to regulate carbon dioxide from new power plants is EPA's first major initiative since President Obama announced his Climate Action Plan this past June (http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf). EPA plans to follow its proposed rule on new power plants with a far-reaching one seeking to establish CO_2 performance standards for existing coal and gas-fired units. In a presidential memorandum dated June 25, 2013 (http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards), President Obama directed EPA to issue proposed carbon pollution standards for modified, reconstructed and existing power plants by June 1, 2014, and to finalize such standards by June 1, 2015.

EPA is accepting comments on the proposed rule setting CO_2 emission standards for new power plants for 60 days following publication in the Federal Register. EPA will hold hearings on the proposed rule and has indicated that it plans to issue a final rule within the next year. This final rule is expected to face a court challenge.