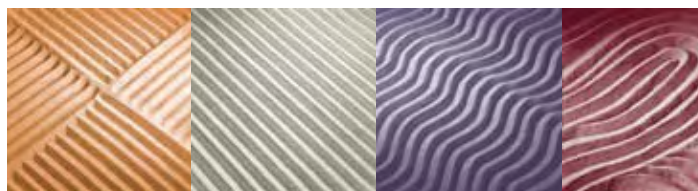




MILLER THOMSON LLP

Barristers & Solicitors
Patent & Trade-Mark Agents



ENVIRONOTES - BC CLIENT ALERT

December 2009

A publication of
Miller Thomson's
Environmental
Practice Group in
British Columbia

BC'S MANDATORY GREENHOUSE GAS EMISSION REPORTING TO BEGIN ON JANUARY 1, 2010

Starting January 1, 2010, facilities in British Columbia that emit greenhouse gases (GHG) over 10,000 tonnes of CO₂E will be required to report annually their GHG emissions to the BC Government. For those facilities emitting more than 25,000 tonnes of CO₂E, you must not only report the emissions, but verify the emissions using an independent accredited third party verifier.

This initiative is the second step in BC's cap and trade system that was introduced through the *Greenhouse Gas Reduction (Cap and Trade) Act* which created a framework for a BC cap and trade system. The BC system is based on and is intended to be consistent with the Western Climate Initiative (WCI), a regional cap and trade regime initially started on the US west coast. There are also similarities between BC's new Reporting Regulations and those recently announced by the US Environmental Protection Agency. However, there are also significant differences as well and companies operating facilities in various locations should review the applicable regulations carefully to ensure their emissions data collection and reporting procedures comply with the regulations.

In order to have a workable cap and trade system, it is important to establish the amount of GHG emissions that each facility emits in BC. Accordingly, the new Reporting Regulation sets out the type of greenhouse gases that must be reported, the threshold level of emissions (10,000 tonnes of CO₂E), the types of facilities required to report, the quantification methods to be used in reporting, how to report, how to verify the emission reporting, and administrative matters such as record keeping and compliance.

The reporting obligation applies to a range of activities including:

- base metal production;
- cement production;
- coal mining from underground mines;
- coal storage at facilities that burn coal;
- electronics manufacturing;
- glass manufacturing;
- industrial wastewater processing;
- petrochemical production and refining;
- pulp and paper production;
- upstream oil and gas;
- natural gas transmission and distribution;
- electricity transmission and distribution;
- oil pipeline transportation.

It is also important to understand the definitions under the Reporting Regulations as they will determine whether and what the facility will be required to report. For example, emissions from "linear facilities" such as those for oil and gas gathering, processing and distribution, are to be aggregated and treated as a single facility for the 10,000 tonne reporting threshold and the 25,000 tonne verification threshold

when each facility in the linear chain is “managed or controlled” by the same person or company. Yet, consider a similar scenario where there are similar numerous facilities, but each facility is managed and controlled by a different person. In this scenario, the facilities would not be aggregated to determine whether thresholds have been met. The Reporting Regulations indicate that a facility need not include and report emissions from “mobile equipment” as part of its annual emissions. However, an operating mine facility will likely need to include and report emissions from its ore hauling vehicles because those vehicles are not considered “mobile equipment” for reporting purposes.

On the face of it, the regulation appears to exempt carbon dioxide produced from biomass from the calculations to determine whether thresholds have been met. However, the biomass fuel source must be composed primarily of wood and must contain minimal amounts of other biomass materials. In addition, the regulation does not exempt biomass wood fuel imported into BC from a jurisdiction that does not consider wood biomass carbon neutral.

The Reporting Regulation does not apply to emissions from landfills that are managed under the Landfill Gas Management Regulation. In addition, the Reporting Regulation only requires facilities to report their direct emissions. There is no requirement to include and report indirect emissions emitted by suppliers of materials or services to the reporting facility. In keeping with BC’s participation in WCI, the quantification methods required to be used under the Reporting Regulation are those used by the WCI. However, operators of facilities in various locations in North America should also be aware of the EPA’s reporting requirements and regulations as there are significant differences between those regulations and the WCI regulations.

Annual reporting begins with the 2010 calendar year, and those annual reports are required by March 31 of the following year. For those facilities that are required to report in 2010, and which had greater than 20,000 tonnes of CO₂E for any of the years 2006 to 2009, they are required to report on those prior years’ emissions.

The Reporting Regulation sets out the administrative requirements that businesses must meet, including maintaining records for at least seven years. Although the reported emission information will generally become public information, it is possible to request that certain information remain confidential (in order to protect proprietary information). Companies that fail to comply with these emission reporting requirements may be penalized with fines of up to \$1 million or imprisonment for a term of up to six months, or both.

For further information or assistance with determining whether the Reporting Regulations apply to your company/facility, please contact:

Tony Crossman
604.643.1244
tcrossman@millerthomson.com

Charles Bois
604.643.1224
cbois@millerthomson.com

Sarah Hansen
604.643.1273
shansen@millerthomson.com

Note: This publication is provided as an information service to our clients and is a summary of current legal issues. This article is not meant as a legal opinion and readers are cautioned not to act on the information provided without seeking specific legal advice with respect to their unique circumstances.

© Miller Thomson LLP, 2009. All Rights Reserved. All Intellectual Property Rights including copyright in this publication are owned by Miller Thomson LLP. This publication may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP, which may be requested at: mt_vancouver@millerthomson.com

www.millerthomson.com