



# Legal ALERT!

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## ENVIRONMENTAL

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## DEC Issues Draft Policy On SEQRA Greenhouse Gas Review

On March 11, 2009, the New York State Department of Environmental Conservation ("DEC") issued for public comment a draft policy that instructs DEC staff on the review of Environmental Impact Statements ("EIS") that include a discussion of a proposed project's energy use or greenhouse gas ("GHG") emissions. DEC anticipates that this guide could be applicable to large scale projects, including electric generating facilities. The draft policy is also intended for use as a guide for other state and local agencies serving as lead agency under State Environmental Quality Review Act ("SEQRA"). Public comments on the draft policy will be accepted by the DEC through April 10, 2009.

The draft policy: (1) identifies six main GHGs that could be included in the scope of an EIS - carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride; (2) provides instruction in identifying the methods and boundaries for the assessment of energy use, GHG emissions and mitigation measures in the preparation of an EIS; and (3) informs parties of the type of information, related to potential climate change impacts, that should be included in an EIS.

The draft policy requires any EIS analysis of GHGs to include assessment of both direct and indirect GHG emissions from mobile and stationary sources. Direct GHG emissions are defined to include stack and fugitive emissions from combustion processes or industrial processes, as well as emissions from vehicles associated with the project that are owned or operated by the project sponsor. Indirect GHG emissions include emissions generated by off-site energy plants supplying energy used on the project site during operations, and from vehicle trips to and from the project site during operations where the vehicles are not owned or operated by the project sponsor.

The draft policy instructs reviewers how to quantify direct and indirect GHG emissions from mobile and stationary sources. For example, computer modeling is used to develop a reasonable estimate of fuel usage from such sources, which is then multiplied by published emission factors to determine associated carbon dioxide emission estimates. The total projected GHG emissions are calculated as the sum of emissions from direct stationary sources, direct mobile sources, indirect stationary sources, indirect mobile sources, and waste generation.

In order to satisfy EIS requirements for consideration of alternatives, the draft policy requires a project sponsor to compare its proposed project's total annual GHG emissions to all alternatives. It also requires the EIS to include a review and assessment of mitigation measures, including calculations of the projected reduction in GHG emissions resulting from such mitigation measures.

Notably, the draft policy does not establish when an EIS should include a discussion of energy use or GHG emissions, nor does it establish a threshold for the lead agency's determination of significance. ■

*If you require further information regarding this draft policy and its impact on your organization, please contact any of the Environmental Practice Area members listed on this Alert.*