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## New Jersey's Global Warming Response Act

*Challenges for State Residents and Businesses*

**By Monica Perez, Esq.**

On June 18, 2007, Governor Corzine signed into law the Global Warming Response Act ("Act"), which sets mandatory limits for green house gas emissions. The Act requires that by January 1, 2020, the level of statewide greenhouse gas emissions be reduced to a level equal to or below the 1990 level of statewide greenhouse gas emissions. Additionally, no later than January 1, 2050, the greenhouse gas emissions should be stabilized at or below 80 percent less than the 2006 level of statewide greenhouse gas emissions.

According to testimony before the state Assembly Environment and Solid Waste Committee, which urged support for this Act, the reductions called for in the Act are needed to help prevent the worst effects of global warming. The Act provides an outline of the suggested methods for complying with the greenhouse gas emission levels and leaves the implementation of the Act to the New Jersey Department of Environmental Protection ("NJDEP") and the New Jersey Board of Public Utilities ("NJBP"). This article provides an overview of selected provisions of the Act and the amendments that it makes to the Electric Discount and Energy Competition Act (N.J.S.A. 48:3-87 (1999)).

### NJDEP Has Primary Authority

The NJDEP has primary authority under this Act to adopt rules and regulations establishing a greenhouse gas emissions program to monitor and report statewide greenhouse gas emissions. As such, the NJDEP will determine the gas emission baselines for 1990 and 2006, which are the reference points of the Act.

### Who Must Comply?

Pursuant to this Act, the following entities are required to report greenhouse gas emissions:

- ◆ Anyone associated with fossil fuels used in the state such as manufacturers and distributors of fossil fuels, which may include, but need not be limited to, oil refineries, oil storage facilities, natural gas pipelines, and fuel wholesale and retail distributors;
- ◆ Any entity generating electricity in the state and any out-of-state entity generating electricity for use in the state; (*cont'd* →)

- ◆ Any gas public utility;
- ◆ Any other entities that are significant emitters of greenhouse gases as determined by the NJDEP.

The most significant aspects of the Act are related to these targeted entities. The expansive language of the Act—“any entity generating electricity in the state and any out-of-state entity generating electricity”—raises issues as to what constitutes the generation of electricity. It may require, for example, that entities that have power generation equipment at their facilities report greenhouse emissions. It may also require cogeneration facilities to report emissions.

Additionally, the parameters used by the NJDEP to determine a significant emitter of greenhouse gases are not clear. As provided in the Environment and Solid Waste Committee testimony, the approximate breakdown of the sources of greenhouse pollution (mainly carbon dioxide, the leading greenhouse gas) is as follows:

Transportation:	52%
In-State Power Plants:	16%
Residential and Commercial Use:	21%
Industrial Facilities:	11%

The Act, therefore, only specifically targets 27% of the significant emitters of greenhouse gases. If reductions of 80% below 2006 levels are expected and required by 2050, it is likely that the NJDEP will have to focus on other classes of significant emitters, such as individuals in the transportation group and/or residential and commercial use facilities. Clarification of these issues is expected when the NJDEP issues its regulations on the Act.

It should also be noted that the NJDEP by rule or regulation may require the reporting entities to pay a reasonable fee to the NJDEP for administering the requirements of this Act.

### **Amendments to the Electric Discount and Energy Competition Act**

As stated earlier, the Global Warming Response Act contains amendments to the Electric Discount and Energy Competition Act (“EDECA”). EDECA was passed in 1999 by the New Jersey legislature to restructure the natural gas industry and increase price competition for consumers.

#### *Mitigation of Leakage*

The Act’s provision for the mitigation of leakage amends EDECA to provide that if a state department or agency adopts regulations to implement a state policy or an interstate or regional agreement to reduce statewide greenhouse gas emission related to electricity generation, then NJBPU shall adopt a greenhouse gas emission portfolio standard or another regulatory mechanism to mitigate leakage applicable to all electric power suppliers and basic generation service providers that supply electricity to customers within the state. It should be noted that this includes out-of-state generators of electricity because the Act defines leakage as an “increase in greenhouse gas emissions related to generation sources located outside of the state that are not subject to a state, interstate or regional greenhouse gas emissions cap or standard that applies to generation sources located within the state.”

The Act also amends EDECA to require that any regulation to mitigate leakage provide a transition period of three years, which shall be allowed either before or after the effective date of the regulation to mitigate leakage. In this period, basic generation service providers or electric power suppliers must either meet the emissions portfolio standard or other regulatory mechanism to mitigate leakage or transfer any customer to a basic generation service provider or electric power supplier that meets the emissions portfolio standard

or other regulatory mechanism to mitigate leakage. If this transition period occurs after the implementation of a emission portfolio standard or other regulatory mechanism to mitigate leakage, the transition period shall be no longer than three years.

If the mitigation of leakage provision is triggered, then an out-of-state generator of electricity that does not comply with the emissions portfolio standard or other regulations within the transition period will likely not be allowed to supply electric power within this state. This could have potentially adverse affects on the residents of this state since New Jersey imports 20-30% of its total electricity from out-of-state generators of electricity, including coal fired power plants in Pennsylvania (*Testimony before the Assembly Environment and Solid Waste Committee Urging Support for the Global Warming Response Act (2007)*). Additionally, this could potentially implicate commerce clause issues.

#### *Renewable Energy Portfolio Standards*

Another amendment to EDECA in the Act allows the NJBPU to implement electric energy and gas energy portfolio standards. The electric energy efficiency portfolio standards may require each electric public utility to implement energy efficiency measures that reduce electricity usage in the state by 2020 to a level that is 20 percent below the usage projected by the NJBPU in the absence of such a standard.

Similarly, the NJBPU may implement gas energy efficiency portfolio standards that may require each gas public utility to implement energy efficiency measures that reduce natural gas usage in the state by 2020 to a level that is 20 percent below the usage projected by the NJBPU in the absence of such a standard.

These energy efficiency portfolio standards would be in addition to the energy portfolio standards in EDECA.

### **Conclusion**

In conclusion, if the objectives of the Global Warming Response Act are going to be achieved, this Act may have significant impacts on all emitters of significant sources of greenhouse gases, not only energy generators and industry. It can also be anticipated that the cost and availability of power supplies to end-users in New Jersey may be adversely affected.



*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Gary F. Danis of the Environmental Law Group at [gdanis@lindabury.com](mailto:gdanis@lindabury.com) or William R. Watkins of the Energy and Utility Law Department at [wwatkins@lindabury.com](mailto:wwatkins@lindabury.com).*