

## **What are the Greenhouse Gas Emission Reporting Regulations, and Do They Apply to My Company?**

**By Peggy Schoeman**

**Associate, Warburton Attorneys**

**December 2017**

The National Greenhouse Gas Emission Reporting Regulations ("**Regulations**") came into effect on 3 April 2017 under the National Environmental Management: Air Quality Act 39 of 2004.

### **A data-collection mechanism which will feed into a carbon tax**

The Regulations provide for a data-collection mechanism in terms of which certain companies and organisations are, as of 3 April 2017, obliged to report on their greenhouse gas ("**GHG**") emissions.

This data inventory will then be used for two purposes:

1. to enable South Africa to report on its emissions as a country in accordance with the dictates of the United Nations Framework Convention on Climate Change Paris Agreement, which South Africa ratified in November 2016; and
2. to pave the way for a carbon tax regime. In this way, what is reported on in terms of these Regulations will be used by SARS in the near future to compute a carbon tax.

### **The main sources of GHGs**

Broadly, the Regulations are focused on GHG emissions from three sources:

1. energy production activities, which are emissions from the burning of fossil fuels (coal, gas and oil) to make heat and electricity;
2. industrial processes and activities, which are emissions from industrial processes and activities within the mineral, chemical and metal industries. For example, in the process of making cement, carbon dioxide is emitted; and
3. waste activities, which includes emissions from landfills and waste treatment operations.

### **Capacity is a key determinant**

The Regulations apply to what is termed "*Category A data providers*". This refers to companies and organisations in control of, or conducting, certain GHG-emitting activities within the above three broad categories (energy, industrial and waste activities) and critically, *above a specified capacity threshold*.

The question of capacity is key and relates to an operation's *ability* to produce, as opposed to *actual* production. For example, for a brick manufacturer, the Regulations will apply where the operation is *capable* of making 4 million bricks in one month, even if the company in reality makes much less.

### **A number of facilities together add up to the capacity threshold**

The capacity threshold is a total figure which is to include *all* facilities. By way of example, the energy capacity threshold within the commercial sector is 10 megawatts ("MW") of thermal energy. If your company owns five shopping centres, each of which has a back-up generator of two MW in the basement, then you have met the threshold (5 generators x 2 MW = 10MW), and the Regulations apply to your operation.

### **Some GHG-emitting activities included irrespective of capacity**

In some instances though, there is no capacity threshold, and the Regulations apply irrespective of the size of your operation or your capacity to produce. For example, coal mines, glass producers and ammonia/nitric acid (fertiliser) manufacturers are included *irrespective* of how much coal/glass/fertiliser is capable of being produced, or is produced.

### **What must I do if the Regulations apply to my company?**

If the Regulations apply to your business, you have three broad obligations:

1. You must have registered each of your facilities by 3 May 2017 (or within 30 days months of commencing an activity);
2. You must report on the GHG emissions from all of your facilities for the period 1 April to 31 March each year, with the first report due on 31 March 2018; and
3. You must keep records of all the information you use to estimate your GHG emissions (including your annual reports) for a period of five years.

Registration and reporting is to take place on the National Atmospheric Emission Inventory System ("NAEIS"), an internet-based system which is a component of the South African Air Quality Information System, and can be accessed at <http://www.saaqis.org.za>. To date, the GHG emission portal on this website has not yet become operational. Until such time as it is, the relevant forms must be submitted by email to the Department of Environmental Affairs' National Inventory Unit.

It is important to bear in mind that the reports are technical in nature and require specialist expertise in order to compile.

### **What if I don't do it?**

The Regulations impose significant criminal penalties where there is non-compliance – on a first conviction, you may pay a fine up to R5 million or a term of imprisonment up to five years may be imposed, or both, and on a second or subsequent conviction, a fine up to R10 million, jail time up to 10 years, or both. Offences include the failure to register, the failure to report, the failure to keep records as well as reporting which is inaccurate, incomplete or misleading.

### **Additional, related obligations**

In addition to the above, two further pieces of related legislation came into effect on 21 July 2017 – the Notice Declaring Greenhouse Gases as Priority Air Pollutants and the Pollution Prevention Plan Regulations. These impose additional obligations for many of the same GHG-emitting activities cited in the Regulations, such as glass, cement and coal production. In other words, if the Regulations apply to your company, these may well also apply (although the Regulations have a wider scope of application).

The following, additional obligations are imposed as a result of this further legislation –

1. the requirement to submit a pollution prevention plan, which must be submitted by 21 December 2017 (or within five months of commencing an operation); and
2. the requirement to submit annual progress reports (monitoring the implementation of the approved pollution prevention plan) by 31 March for the preceding calendar year.

Similar penalties apply where there is a failure to submit a pollution prevention plan or annual progress reports.

### **An inevitable carbon tax**

While carbon tax legislation has not yet come into effect, and at this stage, a revised Draft Carbon Tax Bill is only anticipated later in 2017, there can be little doubt that this is the next step planned by government.

In this respect, what is reported on in terms of the Regulations will eventually compute into a tax liability, bearing in mind that the current (albeit still to be revised) Carbon Bill prices one ton of

carbon dioxide at R120 (one hundred and twenty rand). In other words, be accurate in your reporting and start factoring this price into your business.