FLASTER GREENBERG
Attorneys at Law | A Professional Corporation

# Philadelphia Commercial Buildings Over 50,000 Square Feet Subject to Upcoming Reporting Deadlines under New Energy and Water Use Benchmarking Ordinance

*Legal Alert*

February 25, 2013

**John G. Koch, Attorney**

*** Update: The deadline referred to in this alert has been extended to November 25, 2013 due to the recent Federal Government shutdown.**

In August, 2012, Mayor Nutter signed into law Bill No. 120428-A, which requires owners of qualifying large commercial and mixed use buildings in Philadelphia to compile and report water and energy usage data to the City's Office of Sustainability.

## Who Needs to Comply and How

All "commercial" buildings with at least 50,000 square feet of floor space, in addition to mixed-use buildings in which at least 50,000 square feet of floor space is used for commercial purposes, are subject to the benchmarking and reporting requirements. Regulations implementing the new law are being proposed in March,2013, and will define commercial to include hospitals and other healthcare facilities, schools, retail, offices, warehouses, industrial and other buildings. Owners of qualifying buildings must provide 12 months of energy and water bills and other relevant information, like location, square feet, uses, number of tenants and other data, which should help to provide a basis for comparison among buildings with varying uses. Qualifying lessees with sub-metering will be required to provide energy and water use data to building owners under the new law.

## EPA Energy Star Portfolio Manager Online System To Be Used

Under the new law, building owners must enter the required information into EPAs Energy Star Portfolio Manager [1] annually. The Portfolio Manager program assigns an energy efficiency score, which can be compared to other buildings' scores nationwide.

## Reporting Deadlines and Information

For 2013 only, the required information must be entered by October 31. Building owners will need to request data from sub-metered tenants and/or utilities by May 30 and tenants/utilities must respond by June 15.

Beginning in 2014 and beyond, the annual reporting deadline will be June 30, with a compliance timeline that requires building owners to seek energy and water use data from tenants or utilities by February 28 of every year, and tenants and utilities must respond by March 15. Building owners must enter the building's energy and water usage data into the on-line Portfolio Manager by June 30.

Also beginning in 2014, the City will make the reported information available to the public. Until then, the reported data must be disclosed to prospective purchasers and tenants upon request.

## Office of Sustainability Finalizing Regulations

The City of Philadelphias Office of Sustainability is proposing regulations in March 2013 to implement the new law, and expects that the regulations will be adopted sometime in April 2013 after a 30 day comment period. The regulations will specifically define what "commercial" means for determining the law's applicability, which will include hospitals, schools and other buildings, but will exclude purely residential buildings. The regulations will also set forth procedures for collecting and inputting the required data into the Portfolio Manager program, in addition to disclosing the required data to the Office of Sustainability and the public.

The new legislation and upcoming regulations will not mandate any further action other than benchmarking and public disclosure. Buildings already in EPA's Energy Star program will be least impacted, as they are already benchmarking and reporting energy use information into EPA's Portfolio Manager.

## Issues to Consider for Owners and Lessees

Like other cities with similar laws on the books, the new requirements may induce building owners to make energy and water efficiency improvements to save on energy costs and increase their marketability to lessees, buyers or customers. This is especially true when competing properties have lower utility costs and better efficiency scores. Lessees may be want to be aware of energy saving improvements for a number of reasons, including n the following:

- Lessees should ask that energy savings from such improvements be passed on to them.
- In the case of lessees with net leases, it must be determined whether any such improvements constitute capital expenditures and whether the amortized cost of the capital expenditure can be passed on to the lessee.
- Building owners may demand or seek to renegotiate leases to sub-meter energy and water use to lessees, or to ensure that lessees and tenants properly use new energy and water efficient equipment or infrastructure.
- In cases where energy and water use is or becomes sub-metered, lessees will be required to provide energy use data under the new law.

Ownership of qualifying buildings in Philadelphia with at least 50,000 square feet of commercial floor space require you to comply with the new law. If you are a lessee in a qualifying building, you should be aware of the new law and understand the requirements that are in place to provide energy and water use information to building owners. Lessees should also be aware of the new energy use information so that they may make informed decisions when entering into and renegotiating leases.

For more information on this topic, please contact John Koch at 215.279.9393 or john.koch@flastergreenberg.com or any member of our Real Estate or Environmental Departments.

---

[1] www.energystar.gov

**ATTORNEYS MENTIONED**

John Koch