

## *Deadline Fast Approaching for Submission of New York City Building Energy Use Benchmarking Data*

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The deadline for submission of energy benchmarking data for most large buildings in New York City is just around the corner. The due date, May 1, 2011, was established by Local Law 84<sup>1</sup> when it was enacted in 2009 as a component of New York City's Greener, Greater Buildings Plan.<sup>2</sup>

Benchmarking requirements apply to (i) any building that exceeds 50,000 gross square feet, (ii) two or more existing buildings on the same tax lot that together exceed 100,000 gross square feet, and (iii) two or more buildings held as condominiums that are governed by the same board of managers and together exceed 100,000 gross square feet.<sup>3</sup>

Owners of these buildings must submit, to U.S. EPA's Energy Star Portfolio Manager Benchmarking Tool, data specified by the Portfolio Manager Worksheet.<sup>4</sup> The information is then directly uploaded to New York City's electronic reporting structure.<sup>5</sup>

The data required to complete the Worksheet requires coordination with tenants. Owners are obligated to request energy use information from separately metered non-residential tenants, and such tenants are required by law to provide such information.<sup>6</sup> However, tenant failure to provide the requested data does not excuse an owner from performing the benchmarking process.<sup>7</sup> Alternative ways of completing the submission without all tenant data include the use of an extrapolation formula or default values provided by the Department of Buildings,<sup>8</sup> or aggregated information on the whole building's energy use from Con Edison.<sup>9</sup> The penalty for failure to benchmark is anticipated to be \$500 per quarter.<sup>10</sup>

This year's benchmarking results (based on 2010 energy data) will not be a matter of public record. However, benchmarking scores for covered non-residential buildings based on this year's data will be available through the City Department of Finance's website by September 1, 2012. Benchmarking results for covered residential buildings will become public by September 1, 2013.<sup>11</sup>

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*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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<sup>1</sup> Int. No. 967-A, codified at New York City Admin. Code § 28-309.

<sup>2</sup> See D. Freeman and J. Hiney, "New York City Adds to Growing Tide of Green Buildings Legislation", BNA Daily Environmental Report, March 2, 2010.

<sup>3</sup> § 309.2. The relevant "gross square foot" figure is the one that "appears in the records of the department of finance", which, because of the way that the Department calculates that figure for tax purposes, may vary significantly from actual building dimensions. A list of covered buildings can be found at [www.nyc.gov/GGBP](http://www.nyc.gov/GGBP).

<sup>4</sup> See [www.energystar.gov/benchmark](http://www.energystar.gov/benchmark).

<sup>5</sup> The statute also requires benchmarking of water use in covered buildings. However, that data is, at present, required only for buildings with automatic meter reading equipment supplied by the Department of Environmental Protection, and that data will be directly uploaded by DEP starting in 2012. § 309.5.2. See also the Department of Buildings' proposed benchmarking regulations, a new section § 5000-02 of Title 1 of the Official Compilation of the Rules of the City of New York ("Proposed Regulations") at 5000-02(h). The Proposed Regulations are open for public comment until March 21, 2011.

<sup>6</sup> § 309.4.1.

<sup>7</sup> § 309.4.1.4.

<sup>8</sup> See Proposed Regulations at § 5000-02(g)(2).

<sup>9</sup> For a fee of \$102.50, Con Edison will provide the aggregated information within 15 days of receipt of a request. See [www.nyc.gov/GGBP](http://www.nyc.gov/GGBP).

<sup>10</sup> See Proposed Regulations at § 5000-02(l).

<sup>11</sup> § 309.8