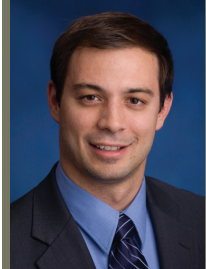




Kerry E. Shea



Michael J. Gelardi

# GHG Emissions Reporting Begins Jan. 1

By Kerry E. Shea and Michael J. Gelardi

Last fall, the U.S. Environmental Protection Agency (EPA) issued a rule creating a mandatory national system for reporting greenhouse gas (GHG) emissions. The agency requires regulated entities to begin monitoring GHG emissions January 1, 2010, and to submit their first annual emissions reports March 31, 2011. This is a key step toward federal regulation of GHG emissions (a step that may have major implications regarding “major sources” and permitting requirements for new sources). It’s also an opportunity for power producers to implement their inventory management plans.

The EPA’s program covers approximately 10,000 factories, power plants, fuel suppliers, and other business units accounting for about 85% of national GHG emissions. The rule requires monitoring and reporting of all major GHGs, including carbon dioxide (CO<sub>2</sub>), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated gases. Those required to report include not only large “downstream” facilities that directly emit GHGs but also “upstream” suppliers of GHG-producing fuels and chemicals, plus certain vehicle and engine manufacturers dubbed “mobile” sources.

This development may not be new to everyone. Any electricity-generating facility already required to continuously monitor its GHG emissions under the Acid Rain Program is automatically required to report GHG emissions under the new EPA rule. These facilities fall under the “Electricity Generation” category (Subpart D of the rule). Facilities that are not subject to the Acid Rain Program must monitor and report their GHG emissions if they have an aggregate maximum rated heat input capacity of at least 30 million Btu/hour and have emissions of at least 25,000 metric tons of CO<sub>2</sub> equivalent per year (Subpart C, “General Stationary Fuel Combustion Sources”).

The EPA’s reporting program does not preempt state GHG emissions reporting programs. Currently, 17 states have developed or are developing mandatory GHG reporting programs. Reporting requirements and methodologies differ, so you may have to consult your state for details.

## Develop a Strategy and Implement a Monitoring Plan

This rule should jump-start some internal programs regarding how to calculate the emissions, how to verify the numbers, and how to preserve the underlying data to protect and support the numbers. The EPA expects each facility to create and implement a GHG monitoring plan to calculate and verify emissions, and that plan should be finalized early—before second quarter 2010 at the latest.

Although the EPA’s monitoring requirements take effect on January 1, 2010, the rule allows regulated entities to use best available monitoring methods through the first quarter of 2010 where it is not reasonably possible to begin monitor-

ing emissions according to required methodologies. A facility may also seek an extension to continue to use best available methods beyond the first quarter if it can demonstrate that it could not procure the proper monitoring equipment, despite good faith efforts. Petitions for time extensions must be submitted to the agency by January 28, 2010.

No third-party verification is required. The EPA is responsible for verifying the accuracy of annual emissions reports through audits and investigations. The rule requires that all reporting entities self-certify that their reports are accurate and that they keep records and emissions calculations for three years.

## Present Burden, Future Benefit?

Implementing a comprehensive monitoring plan can be a facility’s launch pad to developing a GHG strategy. These emission numbers will translate into a form of currency, either by establishing baseline numbers to support operations and decisions or by converting to offsets under a cap-and-trade program. Though you shouldn’t count your chickens before they hatch, you should count your eggs so you know how many eggs you have right now!

Regulation of GHGs is at the forefront of the EPA’s vision, and the agency is taking steps to promulgate more rules regulating GHGs under the existing Clean Air Act. In addition, Congress is proposing new laws to regulate GHGs, and the courts are interpreting existing common law to allow suits regarding GHGs. With this reporting regime, a company can think creatively about how it wants its GHG program to look. Pressure from stakeholders (including investors and clients) to comply with new regulations, as well as to have a strategic plan for approaching climate change in general, may encourage companies to create a strategic-level “inventory management plan.”

It makes sense for a company to address these issues at a high level, given the differences between federal and state law as well as the uncertainty surrounding the nature of future carbon regulations. Understanding your emissions profile, and implementing a strategic plan to communicate that profile to regulators and the public, is a big step toward developing an effective carbon management strategy.

These emissions numbers may convert to currency one day. If a cap-and-trade program is implemented, depending on the cap, each metric ton of CO<sub>2</sub> will represent a unit in the regime. So get an accurate understanding of your inventory now, and implement a robust plan going forward. It’s your opportunity. ■

—**Kerry E. Shea** ([kerryshea@dwt.com](mailto:kerryshea@dwt.com)) is a partner in Davis Wright Tremaine’s Energy Practice Group. **Michael J. Gelardi** ([michaelgelardi@dwt.com](mailto:michaelgelardi@dwt.com)) is an associate in the firm’s Portland office.