

Date October 16, 2009
To DBA Members
From Laurie Fischer – Executive Director
Subject Mandatory GHG Reporting for Manure Management Systems

CLIENT ALERT FROM MICHAEL, BEST & FRIEDRICH

On September 22, 2009, U.S. Environmental Protection Agency (“EPA”) Administrator Lisa P. Jackson finalized the first economy-wide federal regulation of greenhouse gas emissions (“GHGs”). Pursuant to the new rule, all covered sources must begin monitoring GHG emissions by January 1, 2010 and submit the first annual report no later than March 31, 2011. Although this rule does not require any GHG controls, EPA will use data collected in annual reports to make policy decisions that will inform the development of more stringent GHG regulations.

The final rule requires certain facilities, including livestock facilities with manure management systems, which emit 25,000 metric tons of carbon dioxide equivalent (“mtCO₂e”) to monitor and report GHG emissions on an annual basis. The rule defines manure management system as, “a system that stabilizes and/or stores livestock manure, litter, or manure wastewater in one or more of the following system components: uncovered anaerobic lagoons, liquid/slurry systems with and without crust covers (including but not limited to ponds and tanks), storage pits, digesters, solid manure storage, dry lots (including feedlots), high-rise houses for poultry production (poultry without litter), poultry production with litter, deep bedding systems for cattle and swine, manure composting, and aerobic treatment.” 40 CFR § 98.360(b). That definition does not include any facilities or equipment used for land application procedures, any method of manure utilization that is not listed above, or any manure management activities located off-site from the facility. 40 CFR § 98.360(c)-(d).

Livestock facilities and manure management systems subject to this rule must report annual aggregate methane (CH₄) and nitrogen oxide (N₂O) emissions from the following livestock facility manure management components:

- (1) Uncovered anaerobic lagoons.
- (2) Liquid/slurry systems (with and without crust covers, and including but not limited to ponds and tanks).
- (3) Storage pits.
- (4) Digesters, including covered anaerobic lagoons.

- (5) Solid manure storage.
- (6) Dry lots, including feedlots.
- (7) High-rise houses for poultry production (poultry without litter)
- (8) Poultry production with litter.
- (9) Deep bedding systems for cattle and swine.
- (10) Manure composting.
- (11) Aerobic treatment.

40 CFR § 98.362(a). The rule provides a minimum average animal number as a guideline to help livestock facilities determine if their manure management system may be covered by the rule. Minimum averages are outlined in the following table:

Table JJ-1 of Subpart JJ-Animal Population Threshold Level Below which Facilities are not required to report Emissions under Subpart JJ		
Animal Group		Average Annual Animal Population (Head)
Beef		29,300
Dairy		3,200
Swine		34,100
Poultry	Layers	723,600
	Broilers	38,160,000
	Turkeys	7,710,000

For each animal group except dairy, the average animal number above represents the total number of animals at the facility. For dairy, the 3,200 number only includes mature dairy cows at the facility; that number does not include heifers or calves. 40 CFR § 98.368, fn3. Livestock facilities with fewer than the minimum average do not have to report emissions from manure management systems, but facilities with greater than the minimum average should conduct a more thorough analysis to determine if they will hit the 25,000 ton reporting threshold. 40 CFR § 98.360 (a)(1). Although it may be unlikely, some livestock facilities could also be subject to GHG reporting under other subparts of the final rule, in which case the facility would need to determine under which subpart it is required to report. See 40 CFR § 98.362(b)-(c). Such a case-by-case determination requires careful review of the rule.

For each covered source, the final rule provides specific equations, detailed charts, emission conversion factors and reporting and recordkeeping requirements that must be adhered to. For those related manure management systems, see 40 CFR §§ 98.363, 98.368.

The first step a facility must take is to carefully review the final rule, determine if it is a covered source under the rule and, if so, how it will ensure compliance starting January 1, 2010. EPA has developed a number of guidance documents that are available on its website (<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>). The most useful of EPA's tools may be the Applicability Tool, designed to help facility owners and operators determine if they will be subject to the rule. The Applicability Tool can be found at: <http://www.epa.gov/climatechange/emissions/GHG-calculator/index.html>

If you have questions or would like additional details, please contact either David A. Crass or Anna J. Wildeman at Michael Best & Friedrich LLP. They can be reached by telephone at 608-257-3501 or by email at dacrass@mbf-law.com or ajwildeman@michaelbest.com.