

Air Districts and GHG Verification in California

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INTRODUCTION

In the wake of implementation of California's AB 32, facilities subject to the California Air Resources Board (CARB) regulation for mandatory reporting of Greenhouse Gas (GHG) emissions must have their GHG reported emissions verified by a 3rd party verifier, a service provided primarily by consultants accredited by CARB. However, several regional air districts in the state also sought and achieved state-approved Verification Body status, enabling them to likewise conduct verifications per the rigorous and highly specific requirements of the CARB program. The idea of air districts conducting verifications has been debated throughout the rulemaking process, with the California Air Pollution Control Officers Association (CAPCOA) making the case regarding their inherent capacity and qualification to participate in GHG verification within the mandatory framework. Air districts do not, typically, already collect reported GHG data from their permitted sources, but assert that verifying these inventories could be a natural extension of their duties.

However, setting up programs and committing resources to engage in the process is easier said than done. On the one hand, air districts must evaluate the actual means by which they will conduct their verification activities free of Conflict of Interest (COI), recover their costs, provide services potentially outside their jurisdiction, manage the inherent risks and liabilities of final verification opinions, and a host of other possible pitfalls. On the other hand, the air districts have the opportunity to engage in the GHG arena and demonstrate, to an increasingly concerned public, relevant achievements in holding accountable the big GHG emitters, and touting tangible reductions in their overall "management" portfolio of climate activities. Air districts, with their extensive expertise, permit systems, and non-profit status, could position themselves as obvious choices for companies seeking less expensive, highly trustworthy, verifications of their reported emissions. Air districts are practical extensions of the state government, giving them further leverage in competing for "business," and possibly creating an important revenue stream in these times of diminishing budgets. In the long run, and once the overall market system is in full operation, it may be in the State's interest to ultimately hand over much of the reporting and verification work to the air districts, as their existing systems are likely capable of integrating the conditions and protocols into separate sections of existing stationary source permits.

IMPLEMENTATION OF AB32, THE GLOBAL WARMING SOLUTIONS ACT

The regulation of GHGs in the state of California, under the auspices of AB 32, requires that all of California's 588+ stationary facilities subject to the mandatory reporting regulation have their reported emissions verified by trained teams of State-accredited 3rd party verifiers. CARB has been tasked with the tremendous undertaking to govern and implement such methodologies in California, wherein the largest emitters of GHGs, 25,000 metric tons (MT) carbon dioxide

equivalent (CO₂e) or greater, are required to report their GHGs on an annual or triennial basis. These companies will participate in a proposed cap-and-trade program, enabling a flourishing carbon market, with credits and offsets, causing a gradual ratcheting down of statewide GHGs to meet specific reduction goals¹.

A limited number of consultants, along with several air districts, achieved Verification Body (VB) status, the necessary step required to conduct legitimate 3rd party verifications². The implementation of the regulation, now in its second full year of reporting and verification, seems to be working under the current scheme. However, it's clear that getting so many facilities verified, a fairly rigorous and expensive process, within the required time frames, is a real challenge especially as the quantity of accredited VB's actually conducting verifications has winnowed. CARB, while initially concerned about the inclusion of air districts in the verification work, has overcome its initial legal concerns, modified the rule and now welcomes air districts to sign on to assure that the work gets done. While the COI concerns remain, CARB has become more confident air districts can effectively participate, mitigating the risks and be an integral part of the program³.

CLIMATE RELEVANCY AT THE REGIONAL LEVEL

The implementation of AB 32 has engendered some question as to the role of air districts in reducing GHG emissions. Such air districts have historically been the implementing agencies of both state and federal air quality rules that apply to stationary sources, especially with regard to criteria air pollutants, such as volatile organic compounds. However, much of the impacts of these pollutants have been regional by nature and appropriately assigned for these air basin jurisdictions to manage. With GHG's being a global pollutant, air districts have to question how they can contribute to the effort to mitigate and manage such pollutants.

The overall consequences of GHGs, no matter their derivation, are wrought both within and beyond air district boundaries. GHGs logically require regulatory bodies with more extensive ranges of control. Air districts want to have an active role in this arena and not leave their expertise and vast experience gone unharnessed.

Some air districts are at the forefront in CEQA-based GHG policies and programs, a significant undertaking towards making regional advances in climate protection. One air district is charging 4.8 cents per MT CO₂e to recover costs of various climate protection program activities⁴. Another is engaged in a carbon credit reduction scheme⁵. Grant monies are being generously distributed. While contributive, these programs are just the beginning. Conducting GHG verifications potentially serves as a tangible and worthy method for direct involvement, participating in a program that results in real reductions, and keeping atop the rising wave of public concern and disillusion.

CAPCOA MAKES ITS VOICE HEARD

Since the beginning of the process of AB 32's implementation, CAPCOA, which represents the air districts in California, repeatedly made its position known to CARB regarding the need to include air districts in the execution of the mandatory reporting regulation. CAPCOA communicated consistently its best case for a significant role in implementation, and argued the following points:

- The air districts currently have extensive regulatory programs in place to meet AB 32 goals, including the expertise in areas such as stationary source emission inventories, permitting, and enforcement. Adding greenhouse gas emissions to this existing program structure is an efficient and effective method rather than creating a new, duplicative system of reporting.
- Thousands of facilities are currently reporting annual emissions data to local air districts, including those likely to be included in any mandatory GHG inventory process. Such data already includes the same process and throughput data needed to calculate GHG emissions, such as fuel use.
- Air districts already have rigorous QA/QC programs that entail engineering reviews of the reported emissions parameters using in-house tools.
- Air districts require Best Available Control Technology to minimize criteria and toxic emissions increases, encourage voluntary emission reductions (generation of emission reduction credits), and require offsets to mitigate any residual emissions increases.
- Collectively, air districts conduct over 100,000 inspections each year with nearly 400 field staff, as well as having hundreds of engineers, air quality specialists and attorneys dedicated to enforcement of air quality requirements. This existing level of on-the-ground expertise and infrastructure is a tremendous asset to the state and will help jump start the implementation of the stationary source measures in the AB 32 Scoping Plan.⁶

CAPCOA fought hard to allow the air districts to be a part of 3rd party verifications. In the process, CARB appreciated the discourse and decided to include the option of air districts participating, modifying Sections 95132 and 95133 of the regulation, clauses uniquely addressing District verification activities, including the potential COI that air districts might find themselves in. CARB asserted that air districts, like the consulting firms, have to draw of very clear line between the Verifier staff and anyone in the agency who was, in any way, dealing with a facility's GHG inventory calculations and throughputs. CARB, wary of problems that occurred in the European Trading Scheme, was concerned about any previous and current relationships the verifiers may have had with the facility such as past enforcement actions or inspections and other interactions that could taint objectivity. Thus, they established rigorous COI policies to prevent any potential high risk verifications. In addition, the consultancies did not want CARB to give the districts unfair advantages in the COI terms.

TO BE OR NOT TO BE VERIFIERS

After considerable debate, air districts were allowed to participate in the verification process. Many air district staff members sought to attain accreditation, via CARB's intensive training, and become official GHG Verifiers, although some did not pass the challenging general examination, much less the sector specific tests, such as the complex power and electricity sector. If two or more staff for each air district passed and met the qualifications to become Lead Verifiers, the air district could, if it so chose, apply to become an accredited Verification Body, as long as certain criteria are met.

Even after air districts were given the option to participate, some air districts still have serious questions about whether such a commitment was feasible given the resource requirements and potential liabilities. 3rd party GHG Verification of the reported emissions of major emitters is a highly rigorous endeavor, and the consequences of failing to accurately determine if any discrepancies are apparent could be serious. Verification is supposed to lead to the reasonable assurance of the integrity of the reported data, and thus the credibility of the actual metric tons of

CO₂e a company emitted is at stake. In the cap-and-trade program, the final verification opinion will translate directly into monetary value of the carbon.

While air districts have a tremendous amount of experience overseeing the very same facilities that are subject to AB 32, verification of GHGs, per the extensive CARB protocols, is an elevated level of commitment. Air districts have not historically undertaken such intensive, high stakes compliance roles, requiring a whole new level of scrutiny and cross checking of data sources and management practices. Management of criteria and toxic emission reduction credits has not resulted in the high commodity value that GHGs are expected to have. Like many of the consultancies, air districts likewise will have a real learning curve as they tenuously engage into what will likely be a very instructive verification arena.

In addition, air districts' verification teams will likely be charging for their services, an unusual and unfamiliar position for most air districts. Air districts do not normally charge fees for services provided, at least directly. The costs of operations are primarily collected in permit fees. Having to establish an hourly fee rate and sign on to contractual terms requires air districts to change their "business" models to recover their costs.

THE EXPERIENCE OF FIVE AIR DISTRICTS

Currently, four California air districts are registered as accredited VB's. Other air districts have accredited verifiers and are eligible to seek VB status but, for a variety of reasons, have declined to move forward or are still evaluating their agency's capacity and willingness to plunge in and open up shop. Of the four accredited air district VB's, two have essentially opted out of the process due to their small size, lack of resources and limited number of facilities in their respective jurisdictions subject to the regulation. These agencies have chosen to watch from the sidelines for the time being.

Another District VB is still seeking to define the parameters of its program including costs and definitions of its role. It has established that it will not market its services, but will entertain any requests for proposals it's offered.

Of the four, only one has actually successfully conducted a valid verification. According to one Lead Verifier of this District, the process was very consistent with the existing criteria pollutant auditing program. The Verifier lauded CARB's helpfulness and support in providing excellent feedback and direction. The Verifier also indicated that the COI concerns have been overstated, and that staff has had no problem maintaining a clear division of duties. The team distinguished themselves as a sort of separate entity, not providing any advice or direction to the company, or any citations. The Verifier believes that his team has a unique wealth of knowledge and years of experience working in a similar auditing and reviewing format, assuring the accuracy, consistency, and quality of various emissions data. Finally, the Verifier indicated that cost recovery is not an issue for the District since, as a not-for-profit government agency, GHG fees are established through a public process as part of its mandate to regulate thousands of businesses and protect public health.

A fifth larger District is still trying to determine whether to attain VB status and enter into the "market." It still has not decided if it's worth the inherent risk and is uncertain as to any significant benefit by engaging the process. It is concerned that the COI issues and attendant liabilities associated with any verification are too rife with downsides. Going forward with conducting verifications requires 100% commitment to warrant entering the fray.

THE LONGER TERM VIEW

As air districts involve themselves with verification under the mandatory reporting regulation, CARB could eventually modify the regulation transferring certain responsibilities to the air districts to carry out particular tasks. This could be especially true with data collection, especially with respect to the correlations between GHG's and criteria pollutants. The method of using consultants for verifying emissions, while certainly effective in the current framework, may become unnecessary over the long term as reported and verified emission audits progressively find fewer and fewer material misstatements, and the methodologies used for accounting becoming more predictable and trustworthy. As the process evolves, consultancies' initial invaluable role may fulfill their usefulness and could be, ultimately, superseded by a more stable and established regional government system which has become increasingly experienced in GHG verifications. It could be foreseen that state and federal agencies may hand over the bulk of the GHG field work to the local air districts, which are in a much better resource position to utilize the data and carry out strict monitoring and enforcement of the programs.

The verification process, for at least a few air districts, may evolve to be a familiar and natural extension of air district duties. Review of GHG data will inevitably become progressively incorporated into existing and modified regulations and permits. Since many of the facilities subject to mandatory GHG reporting currently have their relevant sources permitted with an air district, channels for verified emission data exchange will only expand. The facilities themselves may lobby to consolidate the multitude of agencies they have to answer to as the program develops. In addition, as CARB develops and ratifies its Offset protocols, Districts may have another avenue for participating and exercising their talents.

SUMMARY

As the planet continues to warm and the effects of climate change become increasingly real and unequivocal, public pressure to take action is likely to continue to mount, and both the staff and Boards of Directors at many California air districts will be compelled to find new ways to assert their climate protection relevancy. 3rd party GHG verification remains available as a means to apply an air district's considerable knowledge and skills toward programs that will result in actual reductions. While each eligible District has to decide for itself whether investing in the verification program is in its best interest, it's possible that, in the long term, air districts could assume a dominant role in assuring high quality GHG accountability.

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