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# ENERGY LAW

## REPORT



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# MethaneSat Joins Greenhouse Gas Monitoring Constellation

*By Arie T. Feltman-Frank\**

*In this article, the author examines the use of remote sensing technologies – including from space – to continuously monitor methane and carbon dioxide emissions from individual industrial facilities.*

On March 4, 2024, MethaneSat, a satellite developed by a subsidiary of the Environmental Defense Fund that will locate and quantify methane emissions from oil and gas operations, was launched into orbit. According to the MethaneSat website,<sup>1</sup> the satellite will be able to quantify regional-scale methane emissions from oil and gas operations down to areas of around 1 km, as well as trace larger single emission events over 500 kg/hr back to their point source. The satellite will be able to detect methane emissions down to a concentration of 3 parts per billion. Stakeholders and the public will then be able to access this information freely and in a timely manner on the MethaneSat cloud-based data platform.

According to a news release on the satellite’s launch, “[d]ata from MethaneSAT will enable both companies and regulators to track emissions, and give stakeholders – citizens, governments, investors, and gas importers – free, near-real time access to the data, and the unprecedented ability to compare the results against emission goals and obligations.”<sup>2</sup>

MethaneSat is not the only player in this space. For example, in 2024, Carbon Mapper, a California non-profit is planning to launch its own satellites that it states will persistently (i.e., on a daily to weekly basis) pinpoint, track, and make available to the public methane and carbon dioxide emissions at individual facilities located within “high-priority areas.”

According to its website, Carbon Mapper’s satellites will be able to detect point source methane emissions ranging from 50-150 kg/hr and point source carbon dioxide emissions ranging from 200,000-600,000 kg/hr, assuming a 3 m/s wind speed and medium surface brightness.<sup>3</sup>

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<sup>1</sup> <https://www.methanesat.org/satellite/>.

<sup>2</sup> <https://www.methanesat.org/project-updates/methanesat-is-launching-today-on-groundbreaking-mission-to-protect-the-climate/>.

<sup>3</sup> <https://carbonmapper.org/our-mission/technology/>.

GHGSat already has satellites in orbit that can measure methane and carbon dioxide emissions from individual industrial facilities.<sup>4</sup>

## WHAT'S NEW?

Pollution monitoring by satellite is not new. What is new is the fact that remote sensing technologies are advancing in their ability to continuously monitor, detect, and quantify emissions and attribute the emissions to individual sources. Moreover, satellite data is becoming increasingly accessible to enforcement agencies and the public. As a result, we are seeing an increased effort by governments, non-profit organizations, and industry to harness remote sensing technologies to better understand and reduce pollution.

## LEGAL RISKS

The availability of satellite-derived emissions data can lead to legal risks that can materialize in enforcement actions (which are likely to become more common, particularly with respect to methane emissions at oil and natural gas operations and landfills), as well as citizen suits and tort actions.

Moreover, when a third party discovers an emissions event before the source, the source may find it harder to favorably resolve violations pursuant to enforcement policies that favor voluntary self-disclosure. This type of third-party detection is also not good for a company's reputation – particularly when a third party detects and publicizes an emissions event<sup>5</sup> before the source reports it or as being of a more serious nature<sup>6</sup> than originally reported by the source. Companies should especially consider how remote sensing technologies may invite public scrutiny related to environmental and social goals.

These legal risks are not limited to oil and natural gas production operations and landfills (though methane emissions from these sources are certainly a primary focus so far). Nor are these legal risks limited to methane and carbon dioxide emissions. For example, Tropospheric Emissions: Monitoring of Pollution (TEMPO), an instrument that was launched into space in August 2023, measures pollutants including nitrogen dioxide, ozone, aerosols, and sulfur dioxide on an hourly basis during the daytime over North America at neighborhood scales.<sup>7</sup>

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<sup>4</sup> <https://www.ghgsat.com/en/technology/constellation/>.

<sup>5</sup> <https://www.bloomberg.com/news/articles/2023-12-08/phillips-66-failed-to-report-big-gas-release-spotted-from-space?leadSource=verify%20wall>.

<sup>6</sup> <https://www.bloomberg.com/news/articles/2023-01-31/big-gas-cloud-seen-over-us-state-where-small-releases-reported?embedded-checkout=true>.

<sup>7</sup> <https://tempo.si.edu/>.

## PREPARING FOR WHAT'S TO COME

Companies and investors associated with emissions-intensive operations should consider taking steps to prepare for what's next, which may include (1) conducting a tailored analysis of the legal risks that remote sensing technologies pose to current and future operations, and (2) considering whether it is worth utilizing remote sensing technologies to supplement current pollution monitoring and quantification efforts. Companies should especially consider how remote sensing technologies may fit in with certain federal and state efforts to quantify and reduce greenhouse gas emissions. Recent efforts include:

- *The EPA's final rule setting new source performance standards and emissions guidelines for oil and natural gas facilities.*<sup>8</sup> Under this rule, EPA-certified third parties will be able to use EPA-approved remote sensing technologies to notify the Agency of "super-emitter events" (100 kg/hr of methane or greater), ultimately requiring owners and operators to investigate the events and, if necessary, take corrective actions. Also, owners and operators of oil and natural gas facilities will be able to use advanced methane detection technologies as an alternative to ground-based methods to comply with monitoring requirements. 24 Republican attorneys general challenged this rule in the U.S. Court of Appeals for the District of Columbia Circuit on March 12, 2024.
- *The EPA's proposed rule to revise Subpart W of the Greenhouse Gas Reporting Program (applicable to petroleum and natural gas systems).*<sup>9</sup> The proposed revisions to Subpart W would allow satellite data to be used to identify and quantify super-emitter and other large emissions events. This may influence the methane charge that covered facilities will have to pay pursuant the Inflation Reduction Act's Methane Emissions Reduction Program.<sup>10</sup> In the EPA's recent amendments to Subpart HH (applicable to municipal solid waste landfills),<sup>11</sup> the EPA stated that it will continue to review methane monitoring technologies, including satellites, and may amend Subpart HH to allow the incorporation of additional measurement or monitoring methodologies in the future.

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<sup>8</sup> [https://www.epa.gov/system/files/documents/2023-12/eo12866\\_oil-and-gas-nsps-eg-climate-review-2060-av16-final-rule-20231130.pdf](https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsps-eg-climate-review-2060-av16-final-rule-20231130.pdf).

<sup>9</sup> <https://www.govinfo.gov/content/pkg/FR-2023-08-01/pdf/2023-14338.pdf>.

<sup>10</sup> See EPA's proposed rule on this at [https://www.epa.gov/system/files/documents/2024-01/wec-proposed-rule-fr\\_1-26-2024.pdf](https://www.epa.gov/system/files/documents/2024-01/wec-proposed-rule-fr_1-26-2024.pdf).

<sup>11</sup> <https://www.epa.gov/system/files/documents/2024-04/ghgrp-final-preamble-and-rule-april-2024.pdf>.

- *The Securities and Exchange Commission's (SEC) final climate disclosure rule.*<sup>12</sup> This rule will require certain public registrants to disclose their material Scope 1 and/or Scope 2 greenhouse gas emissions. The SEC issued an order staying this rule pending the completion of judicial review by the U.S. Court of Appeals for the Eighth Circuit.
- *The Federal Acquisition Regulatory Council's (FAR Council) proposed climate disclosure rule.*<sup>13</sup> This proposed rule would require certain federal contractors to disclose their Scope 1 and 2 greenhouse gas emissions. Major federal contractors would also have to disclose their scope 3 emissions and set science-based targets to reduce their emissions.
- *California's Climate Corporate Data Accountability Act.*<sup>14</sup> This law will require certain companies that do business in California to annually measure and report their Scope 1-3 greenhouse gas emissions. Starting in 2026, covered companies will be required to annually report their Scope 1 and 2 emissions, and starting in 2027, those companies will be required to annually report their Scope 3 emissions. On January 30, 2023, various business groups sued the California Air Resources Board challenging this law.

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<sup>12</sup> <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>.

<sup>13</sup> <https://www.federalregister.gov/documents/2022/11/14/2022-24569/federal-acquisition-regulation-disclosure-of-greenhouse-gas-emissions-and-climate-related-financial>.

<sup>14</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240SB253](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB253).