

# SEC's Scope 3 Emissions and PFAS Update

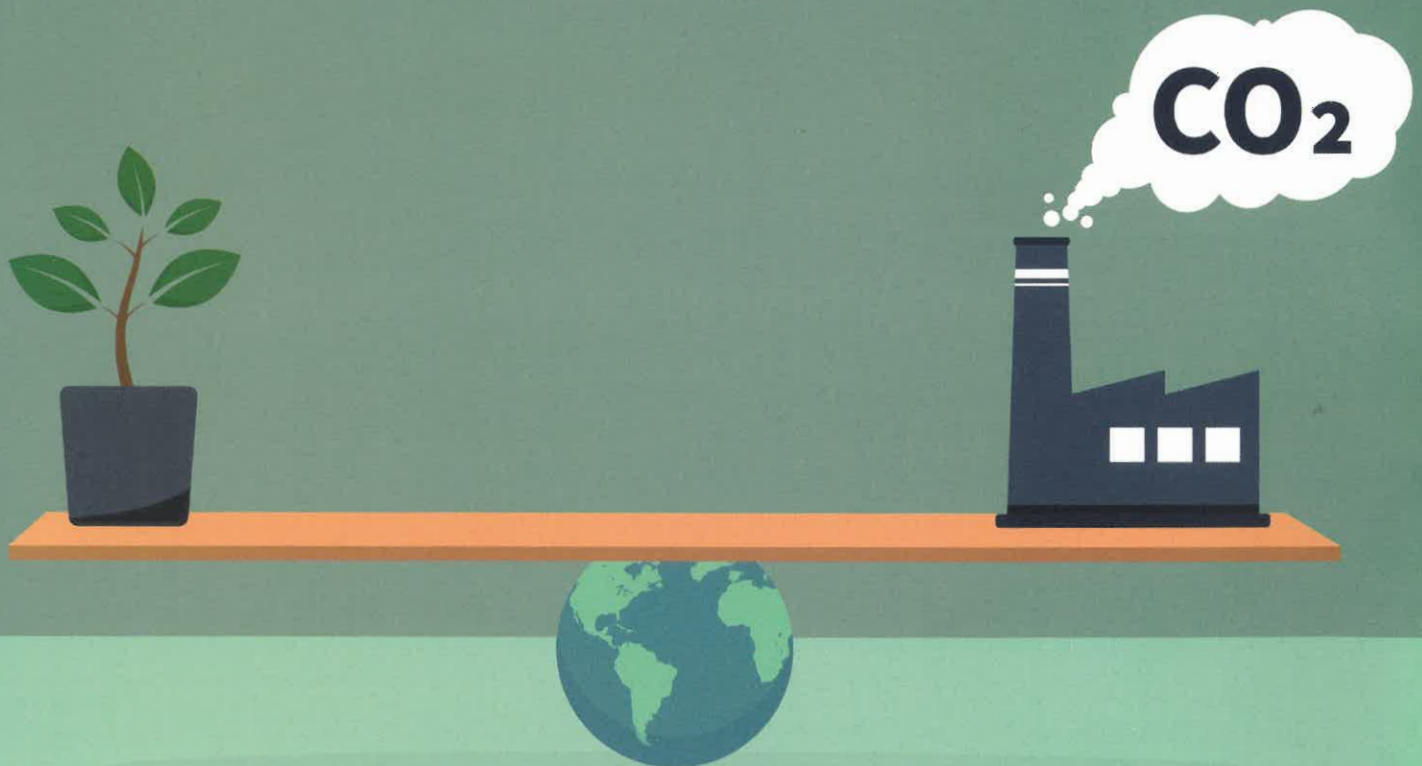
By Alan Hahn  
Environmental Scientist

There appears to be some relatively good news as it relates to environmental regulatory pressures on agriculture. This anticipated relief comes from a federal agency that may have been under your radar – The Security and Exchange Commission (SEC).

What does the SEC have to do with environmental protection? If you said, nothing, you are in agreement with at least one SEC board of governors. SEC Commissioner Hester Peirce has been vocally opposed to involving the SEC in environmental regulations.

Here is the background. On March 21, 2022, the SEC proposed a rule, "The Enhancement and Standardization of Climate Related Disclosures for Investors." This proposed rule requires extensive climate disclosure by public companies, including their supply chain. The proposed rule is 510 pages with over 1,000 technical footnotes.

According to the SEC, the required information about climate-related risks would "...include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks." Those supporting the proposed rule believe the risks associated with climate can put the security of companies at risk.



### Scope 3 and Agriculture

What does this have to do with agriculture? Greenhouse gases are defined globally as Scope 1, Scope 2, and Scope 3 emissions. Scope 1 are a company's direct emissions. Scope 2 are indirect emissions such as greenhouse gases (GHGs) produced by the utility that is supplying power to a facility. Scope 3 are indirect emissions by suppliers.

The Environmental Protection Agency defines Scope 3 emissions as, emissions that are the result of "activities from assets not owned or controlled by the reporting organization, but that the organization indirectly affects in its value chain. Scope 3 emissions include all sources not within an organization's scope 1 and 2 boundary."

The American Farm Bureau stated that reporting Scope 3 emissions not only "directly affects farmers' and ranchers' operations, but could create several substantial costs and liabilities, such as reporting obligations, technical challenges, significant financial and operational disruption and the risk of financially crippling legal liabilities."

Reporting Scope 3 emissions requires that reporting be expressed as "carbon dioxide equivalent" of each GHG: carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. These are data not likely at the fingertips of most in agriculture unless you happen to have a software package designed to track these individual constituents.

### Privacy Concerns

Complications aside, there are concerns over privacy. The American Farm Bureau wrote of these concerns, "In addition to the massive amount of business data this SEC rule could potentially ask of farmers and ranchers, there is also the issue of data privacy, particularly personal identifying information. Unlike public companies and corporations, farmers work and raise families in their place of business. There remain many questions about how their privacy will be protected."

### SEC Looks to Back Down on Scope 3 Emissions

At the time of this article being drafted, there are reports by groups such as Bloomberg Law that the SEC, after two years of delays on the reporting rule, will back down and

“**The Environmental Protection Agency defines Scope 3 emissions as, emissions that are the result of “activities from assets not owned or controlled by the reporting organization”..**

not require Scope 3 reporting for those entities that report Scope 1 and 2 emissions. Assuming this is true, it is also reasonable to expect that environmental groups will consider their legal options to force Scope 3 reporting. Further, once the dust settles after the elections this fall, this issue may rise to the top again.

### PFAS

Updating another big-picture environmental issue is a look at regulatory developments regarding per- and polyfluoroalkyl substances (PFAS). For additional background on PFAS, see the October 2023 issue of Partners.

The ubiquitous nature of PFAS has been well documented. Manufactured as far back as the late 1930s, this group of chemicals is found in human blood serum and in the environment virtually everywhere on the globe - even in polar bears in the Arctic.

While found globally, there remains disagreement regarding "safe levels" of PFAS. For example, one of the most studied PFASs is Perfluorooctanoic acid or PFOA. According to an article in Environmental Science and Engineering, The World Health Organization "proposed provisional guidance values of 100 ppt individually for PFOA" in drinking water (Environ. Sci. Technol. 2023, 57, 18, 7103–7105). In 2022, the United States Environmental Protection Agency proposed a maximum contaminant level of 4 ppt for PFOA.

For reference, one part per trillion is equivalent to one second over 320 centuries or one drop of water in a pool covering a

football field to a depth of 43 feet.

This wide disparity and continued lack of scientific consensus is causing increased confusion regarding PFAS regulation.

### PFAS and Future Transactions

We know some agricultural land has been impacted (through biosolid application, impacted groundwater from military bases and airports, etc.). What we don't know is what it means. Further, as agricultural land changes hands in the future, either to continued agricultural use or other uses, lenders involved in these transactions are likely to require an assessment for the potential presence of PFAS. If found during a transaction, this could, pending some legislation, trigger Superfund liability.

The pending legislation that would designate certain PFAS as hazardous substances under Superfund is something we continue to monitor.

For the time being, Scope 3 emissions look to be on the chopping block (nothing is final until it is final and maybe not even then - think Waters of the United States rule changes) and PFAS remains a pending liability concern. Keep a watchful eye out for future environmental regulatory developments that can affect agriculture and your operations. ■

### ABOUT THE AUTHOR

Alan Hahn is an Environmental Professional and Business Development Manager at The Dragun Corporation in Farmington Hills, Michigan.

*The opinions stated herein are not necessarily those of GreenStone Farm Credit Services.*