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June 12, 2007

Mary Uhl,
Chief, Air Quality Bureau
New Mexico Environment Department
2048 Galisteo Street
Santa Fe, New Mexico 87505

Re: Comments on NMAC 20.2.73 and NMAC 20.2.87

Dear Ms. Uhl:

Yates Petroleum Corporation appreciates the opportunity to comment on the proposed greenhouse gas regulations. Having participated in the process since December 2006, Yates has a vested interest in these proposed regulations. Yates is greatly disturbed by the proposed time frame to develop these regulations. It is understood that there are external constraints such as the public notice period for the EIB. However, the haste with which this process is progressing is rife with opportunities for inconsistencies, poor regulations, and mistakes.

General Comments

Yates feels that these two regulations (NMAC 20.2.73 and NMAC 20.2.87) should compliment each other. In discussions with Bureau staff, it was understood that the Bureau intends for a company to report greenhouse gas emissions under 20.2.73 until a sector protocol is developed and accepted. Once a sector protocol is accepted, 20.2.87 will be amended to include that sector with appropriate NAICS codes. The transition for a specific company from reporting under 20.2.73 to reporting under 20.2.87 should not be difficult, if the regulations complement each other and do not contradict each other. It might involve more rigorous recordkeeping, but the two regulations should not be so different that there are difficulties for the Department or the company that is reporting. Given the similarities between the two regulations, Yates feels that there are some issues that are relevant to both regulations concerning consistency.

Yates appreciates and applauds the Department's willingness to use already established Protocols in the development of a New Mexico greenhouse gas registry. New Mexico has a unique opportunity to be a leader in greenhouse registries with these regulations. There are multiple protocols that are widely used and recognized. With limited staff, the Bureau should focus its efforts where those efforts can be successful rather than in "reinventing the wheel."

However, the Department shouldn't try to rewrite or copy the Protocol into the regulation. Protocols are by nature, organic and flexible. As conditions and information warrants, protocols are designed to change to meet those needs. By carrying over Protocol language into the regulation, the Department is limiting the use of the Protocol. Protocols can and should be allowed to change rapidly while regulations are not

designed to be changed so quickly. The greenhouse gas regulations should be written in broad language to refer to the various Protocols without restating the protocol language in the regulation.

There are several definitions which should be consistent across the greenhouse gas regulations. The first is the definition of greenhouse gases. The Department is unnecessarily complicating the issue with extraneous “technical” terms. The definition of greenhouse gas for these reporting purposes is simple: *“greenhouse gas” or “greenhouse gases” or “GHG” means any one or sum of the following: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbon (PFC) or sulfur hexafluoride (SF₆).* This definition of GHG is widely accepted in other Protocols. The Bureau has already stated its intent to be consistent with existing and future protocols and registries.

Similarly, and in conjunction with the discussion on protocols above, Yates recommends adding the definition for Protocol: *“Protocol” means any protocol accepted by the California Climate Action Registry (CCAR) and/or “The Climate Registry”.* This will allow for the organic growth of existing protocols and the addition of individual sector protocols over time rather than the suggested limiting language. The Bureau has stated its intent to adopt the CCAR General Reporting Protocol.

Specific comments for 20.2.87

20.2.87.6 The sole objective of this regulation is to improve the New Mexico greenhouse gas inventory as per the Governor’s Executive Order. The objective statement should simply state that without unnecessary complications. Whether the inventory is “third-party verified” or not is irrelevant to the objective of improving the inventory.

20.2.87.7 The definitions are unnecessarily complicated with definitions for carbon dioxide, methane, and other greenhouse gases. These individual definitions can and should be contained under the definition of greenhouse gas.

20.2.87.200 The California Climate Action Registry does not refer to owner or operator but rather to entity. To be consistent with the protocols that the department plans on using, this regulation should do the same. The term “owner and/or operator” should be replaced with “entity” or “reporting entity” throughout the regulation. The Bureau has already stated its intent to be consistent with existing and future protocols and registries.

Yates does not understand why the Department is proposing a “de minimus” level of 3% as opposed to an already established 5% de minimus level. Consistency is the key to a rigorous multi-state registry. In addition, reporting entities should be able to make an initial demonstration of “no emissions” for certain greenhouse gases such as hydrofluorocarbons (HFC), perfluorocarbon (PFC) or sulfur hexafluoride (SF₆). It is burdensome and unnecessary for an entity to make a negative statement year after year.

20.2.87.202 Yates feels that the regulation should be coached in broad terms and refer to the Protocol whenever possible. This will limit the confusion and possible cross-purposes of the regulation and the Protocol as time passes and the registry is developed. If a company follows an accepted Protocol in calculating greenhouse gas emissions, it is understood that certain information and methods were utilized, as per the protocol. The regulation doesn’t need to, and shouldn’t, spell out the Protocol. This

information will be available to a third-party verifier but shouldn't be included in the emissions report if the purpose of the regulation is to improve the greenhouse gas inventory.

The purpose of this regulation is to improve the greenhouse gas inventory. One use of the inventory is to project future greenhouse gas emissions. The inclusion of emissions "upsets, and malfunctions" as suggested in 20.87.202.B(5)(i) would unnecessarily skew any future projections. As example of this would be the excess emissions resulting from a catastrophic event such as Hurricane Rita. If emissions from that event were used to project future emissions, the future projected emissions would be drastically higher than actual emissions.

Yates strongly disagrees with the inclusion of the suggested language in 20.2.87.202.B(5)(k) "a listing, including percentages, of the owners of equity shares of the emissions reported". This information is not necessary to develop an inventory. Yates would consider this information to be business confidential. It is understood that some industrial sectors, such as the power generation sector, would like to report this information for various purposes. The reporting tool should allow for that flexibility, but it should not be a requirement. The reporting of this information should be at the discretion of the reporting entity.

If New Mexico is going to utilize existing protocols, such as the CCAR Certification Protocol, then spelling out the certification process in the regulation is unnecessary. Simply refer to the accepted protocol. If the Department wishes to develop a separate protocol for the certification process, then that information needs to be conveyed to the interested stakeholders and the details developed within the appropriate forum. The appropriate forum for protocol development is not during regulation development.

The language suggested in Section D is confusing and unnecessary. Again, the Department conveyed their intent to follow existing Protocol. Yates feels that it is better to reference the existing Protocol instead of re-phrasing the protocol in the regulation. Given the short time frame that the Department wishes to develop this regulation, it is better for the Bureau and for industry to have the Protocols referenced rather than restated within the regulation.

Specific Comments for 20.2.73

Yates feels that the suggested language is too broad. The Bureau has stated their intent to limit their initial inventory request to CO₂ emissions from Title V sources followed in a year by an emissions request for all NSR permits. However, the proposed language does not specify that intent. The proposed language authorizes the Department to request any GHG information from any source at any time. The proposed language grants the Department open-ended authority. There are no specific checks, thresholds, or other guiding criteria that the regulated community may rely upon in its understanding of the scope of the regulation.

20.2.73.7 Yates suggests changes for some definitions to make them more universal and clear. These included the suggested definitions for "fuel carbon content", "greenhouse gas", and "Protocol". The definition of Protocol as used in this subpart means any accepted protocol already in use by the CCAR or The Climate Registry.

20.2.73.300 Yates supports NMOGA's suggestion that the Department add a new Section 400 to this regulation for the inventory of greenhouse gases instead of adding it to the existing Section 300. There are multiple sections in Section 300 which are simply not applicable to the objective of improving the greenhouse gas inventory. Yates recognizes that much of this information is important for criteria pollutants but not for greenhouse gases. As this time, greenhouse gases are not regulated. As stated above, Yates feels that the two regulations should compliment each other. Yates feels that the Department and the various industries will be better served by adding a new Section 400 that deals with the greenhouse gas portion of the inventory for several reasons:

- **20.2.73.300.B (9) (c) and (d):** The intent of this proposed language is very confusing and unclear. Yates understands that the intent was a "de facto" de minimus level without using the term de minimus. However, the suggested language is subject to misinterpretation regardless of the intent.
- **20.2.73.300.C (1):** In the oil and gas industry, field facilities do not have "addresses". In addition, several minor source permits are portable and thus do not have addresses. Driving directions, where applicable, were provided in the permit application and the Bureau has access to this information already. There is no reason to provide it again.
- **20.2.73.300.C (3):** "Responsible official" is a term used in Title V regulations (NMAC 20.2.70.6.AD). Many minor sources do not have designated "responsible officials" and are not required to designate a "responsible official". The regulation should allow for the distinction of self-certification as opposed to third party verification (NMAC 20.7.87). In addition, the individual that self-certifies for GHG emissions inventory may or may not be the person that self-certifies for the criteria pollutant emissions inventory. The Department needs to allow for this flexibility.
- **20.2.73.300.C (5):** Greenhouse gases are not regulated and the proposed requested information is not necessary to develop a greenhouse gas inventory. In addition, information such as fuel combustion rates, fuel type, and carbon content would be part of the Protocol and should not be part of the report. The proposed Section 400 also references existing Protocols for reporting and calculation methodologies. This allows for the flexibility in adjusting the existing protocols rather than re-writing the protocols in the regulation.
- **20.2.73.300.E:** "Insignificant emissions" is a term used in Title V for criteria pollutants. Because greenhouse gases are not regulated, this term is irrelevant. Greenhouse gas emissions are not regulated and it is not correct to force existing regulations to meet the needs of developing a greenhouse gas inventory by using terms such as "responsible official" and "insignificant sources".
- It is Yates understanding that if an entity wishes to voluntarily participate in any other greenhouse gas registry that company would not have to report GHG emissions under 20.2.73. That is not clearly stated in the regulation as proposed. New language should be added that makes this clearly understood.
- The actual GHG emissions should be reported by facility, not by unit within the facility. At no time in previous discussions did the Bureau staff indicate that it was necessary to obtain unit specific GHG emissions information. Facility emissions information is more than adequate to develop a greenhouse gas inventory. In fact, it will improve the inventory if emissions are reported by facility rather than by unit. There are many sources that are considered insignificant for criteria pollutants and are not listed in the permit. However, these sources may or may not be sources of greenhouse gas emissions. By requesting the GHG emissions information on a facility

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basis, ALL greenhouse gas emissions will be captured rather than just a portion that would be collected from specific units.

- The Department has the right to ask for backup information for greenhouse gas emissions calculations. Yates would, of course, provide the necessary information if requested. However, to require that a company provide all backup data with every report is not feasible. If a company clearly states the methodology or protocol that was used to perform the calculations, then the Bureau should understand what information was used.

Yates feels that the Department is deviating from the original objective of improving the greenhouse gas emissions inventory. That should be the ONLY objective behind the changes to these regulations. Improving the greenhouse gas emissions inventory does not require extraneous information because GHG are not regulated. There are other studies on reduction measures that could result in changes to these regulations or new policies. However, at this time, the only objective is to improve the greenhouse gas emissions inventory. Yates Petroleum Corporation appreciates the opportunity to comment on these draft regulations. Please feel free to contact me if you have any questions on our comments. I can be reached via email at jknowlton@ypcnm.com or at 505-748-4471.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Knowlton". The signature is written in a cursive, flowing style.

Jennifer Knowlton
Environmental Engineer