



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

RE: April 24, 2007 NMED Proposed Strawman
GreenHouse Gas Reporting and Registry
Proposed rule 20.2.87 NMAC

Dear Ms. Uhl;

On behalf of the Independent Petroleum Association of New Mexico, we are writing to respond to your request for comment on proposed rule 20.2.87 NMAC. Please note that responses in this letter do not constitute a waiver of additional comment on either the noted sections or any other part of the proposed rule. The responses noted in this letter are tracked to the proposed legislation by section.

As an initial matter, IPANM would note that the proposed strawman is substantially different than the information presented or discussed at the public stakeholder meetings of March 27, 2007, April 6, 2007, April 12, 2007 or April 24, 2007. It was our understanding that the NMED intended to promulgate a regulation for the collection of information for a voluntary Greenhouse gas registry program. In addition, when the discussion changed from voluntary to mandatory, NMED stated very clearly

and reassuringly that they were only interested in collecting numbers from Title V, 20.2.70 NMAC sources. While it is true that a representative of industry made an offer to allow for collection of emissions information from a proposed list of hardware, the proposed rule goes even farther. In fact, as drafted, the rule requires the top 60% of producers from five random lists to create and report “a listing, by source of the amount of air pollutant discharged into the atmosphere.” The offered list of hardware is included in the proposed rule, but as defined in the rule, the operator seems to be liable for reporting of all types of emissions of any ‘air pollutant’ rather than limited to the five types of hardware. As noted below, better definitions are needed to clarify the rule as is simplification of the listing process for entities with operational control of the facilities.

Technical concerns:

20.2.87.6 Objective As drafted, the proposed purpose of the rule is too vague and expansive in that it will ‘establish requirements for the reporting of greenhouse gas emissions to the Department’ IPANM maintains that the purpose of the rule is more narrow and that it is only to establish requirements for the reporting of greenhouse gases for use in a greenhouse gas voluntary inventory. By not defining the type of registry, the implication is that the registry will be mandatory and that NMED will have fining and enforcement authority as it relates to greenhouse gas reporting. In fact, the intent to create a punitive reporting system was not within the parameters defined for the stakeholder group at the March 27, 2007 meeting. See pg 2 slide 5, “Mandatory reporting objectives: 1) Improve NM GHG inventory, and 2) provide experience in GHG reporting for easier transition to more rigorous voluntary reporting.” The NMED has also stated that it is following the mandates of Executive Order 2006-69, par. II.1.c which states, “NMED shall submit to the EIB a proposal to adopt a greenhouse gas emissions registry and reporting mechanism, after consultation with affected stakeholders, no later than January 1, 2008”. Note that Executive Order 2006-69 was issued December 26, 2006, prior to the conclusion of the 2007 Legislative session which ended March 17, 2007. Finally, in the legislative session, the two NMED bills pertaining to emissions, House Bill 386, “Oil and Gas Operations Emissions standard” and House Bill 431, “Greenhouse Gas Emissions reporting and fee” were killed in committee. Clearly, the

legislature has refused to grant authority to the NMED to create any reporting or registry system with the purpose of charging fees or fines to industry. Indeed, whether the NMED has the authority to create a mandatory reporting or registry system from an expired Executive Order is also a contested issue.

20.2.8.87.7 Definitions

A. Control: This definition must include “operational control meaning: to have the contractual authority to introduce and implement operations at an oil and gas facility.”

B. Emissions report or inventory: As drafted, this definition is too broad. Moreover, the prior discussions from NMED stakeholder meetings in March pertained to requiring CO2 emissions from specific sources only and that the reported emissions number would be for the entire entity, not the specific source. This definition must be narrowed to “CO2 discharged to the atmosphere” to be reported as required in section XX of 20.2.87 NMAC.

C. Entity: Due to privacy issues, the way an operator will be required to report emissions data is paramount. In order to receive accurate information, NMED must strike a delicate balance between full access to information and prevention of reporting because of undue regulatory burdens. In several discussions at the stakeholder meeting of April 24 and subsequently on May 10, 2007 conference call, there was concern over best defining the reporting entity. Note that in 20.2.70 NMAC, an entity is not defined in favor of using the word “operator” which is defined as the person or persons responsible for the overall operation of the facility. Another alternative may be a definition of ‘reporting entity’ meaning the organization responsible for the total facilities, operations and ventures within the parameters of 20.2.70 NMAC.” However, in the small independent arena which contracts out much of the leasing, drilling and even accounting functions, the operator as the reporter should only be responsible for emissions from hardware owned by the operator. Reporting emissions from rental and leased equipment must be the responsibility of the owner of said equipment, not the leasee. Without this exemption, double reporting will inevitably occur.

20.2.87.200 Greenhouse Gas emissions reporting procedures

Clarification needed: “Entities that meet the applicability requirements in sections 20.2.87.201 through 20.2.87.299 NMAC shall submit a greenhouse gas emissions report under this Part upon request to all applicable entities of that sector by the Department..” Who are the ‘applicable entities of that sector by the Department? There was discussion in listing ‘sectors’ by NAICS listings, but that adds to the confusion. This paragraph seems to imply that an entity will have to submit a GHG report to anyone in the same sector? Finally, as noted above, the definition of greenhouse gas emissions report is too broad and overreaches the clear understanding and statements made in the stakeholder meetings. The GHG reported is only CO₂, for specific hardware from entities/operators from one BOE list and reported in one number reported by entire entity/operator/owner of a facility located in New Mexico.

20.2.87.201 Phase I reporting

(A)(1): Applicable entities: clarification that transport is by pipeline, not vehicle, is needed. As noted in comments to Section 20.2.87.303, below, the multiple list and percentage of production levels is one that will be difficult to calculate and could result in unfairly causing an entity to be part of the reporting process based on faulty numbers. A listing or ranging level is often used by OCD and NMSLO for quantification and reporting or audit cut offs. Note that OCD does not provide accurate ranking data until almost 18 months after the close of the calendar year, so reliance and extrapolation of this data will not occur until nearly 2 years out. If an operator sells off part of the company, his incentive will be to get off this list, and he may have the ability to litigate and win on this issue. Moreover, using 5 concurrent lists which duplicate each other will have the effect of casting a much larger net for this mandatory reporting. How NMED will accurately calculate the top 60% of producers from a geographic area will also be an area to litigate the rule.

(2) Reported emissions: This paragraph is contradicted by the definition of “Emission report or inventory” since this seems to imply that only carbon dioxide emissions from the list of hardware is required as part of the report. Moreover, ‘operations under its control’ must not include hardware that is either rented or leased.

There is a question as to whether a rented compressor would be under the contractual control of the operator.

20.2.87.300 Content of Emissions reports

The reason for a report of fuel use, including the amount and specification of fuel type, directly related to reported emissions, is unclear and will be very costly and cumbersome for industry. Section E, description of methods utilized should be narrowed down to one of two options – actual monitoring or modeling off SANGEA.

20.2.87.303 Emissions Calculation Procedures

See discussion above in Section 20.2.87.201.

Thank you for the opportunity to comment on this very important proposed rulemaking. I look forward to continuing our work together and clarifying the various issues. If you have any questions, please don't hesitate to call me anytime.

Sincerely,

Karin V. Foster
Director of Government Affairs