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P.O. Box 1864
Santa Fe, NM 87504-1864

Ph: 505-982-2568
Fax: 505-986-1094

www.nmoga.org

13 June 2007

Via E-mail

Lany Weaver and Brad Musick
New Mexico Environment Department, Air Quality Bureau
2048 Galisteo Street
Santa Fe, NM 87505

RE: Proposed (draft) Regulations 20.2.87 GHG Reporting and 20.2.73 Implementation

Dear Lany and Brad,

The New Mexico Oil and Gas Association (NMOGA) represents over 300 member companies doing business in the state of New Mexico ranging from independent to integrated oil and gas producers which produces 99% of the oil and natural gas extracted in the state, as well as pipeline companies, well servicing and field service companies, refineries and processing plants. NMOGA is responsible for working with the state and federal regulatory agencies, Indian Nations and tribes as well as the New Mexico Legislature and congressional delegation to address and promote the orderly development of the mineral estate within the state of New Mexico.

NMOGA would like to thank you for the opportunity to work with the New Mexico Environment Department Air Quality Bureau (AQB) in the development of proposing regulations for the reporting of Greenhouse Gas (GHG) emissions as well as a GHG registry. There will be a tremendous amount of effort involved for the NMOGA member companies that are multi-state and we are in hopes that the various processes will maintain cohesiveness for those companies that operate beyond the borders of New Mexico.

As it concerns the AQB proposed (draft) regulations, NMOGA strongly feels that these two proposed (draft) regulations should compliment each other. In practice, a company should report GHG emissions under 20.2.73 until a sector protocol is developed. Once a sector protocol is developed, 20.2.87 should be amended to include that sector. The transition for a specific company from reporting under 20.2.73 to reporting under 20.2.87 should not be difficult. It might involve more rigorous recordkeeping, but the two mechanisms should not be so different that it causes difficulties for the Department or the company that is reporting.

Given the similarities between the two proposed (draft) regulations, NMOGA feels that there are some issues that should cover both proposed (draft) regulations. NMOGA appreciates and understands the Department's willingness to use already established Protocols in the development of a New Mexico GHG registry. However, the Department should not try to rewrite or copy the Protocol into the regulation. Protocols are intended to be flexible and as conditions and information warrants, change to meet those needs. By carrying over Protocol language into the regulation, the Department is limiting the use of the Protocol. The Protocol may change but the regulation can't change as quickly and the regulation takes precedence. The GHG proposed (draft) regulations should be written in broad language to refer to the various Protocols without restating the language in the Protocol. There are several definitions which should be consistent across the GHG proposed (draft) regulations. The first is the definition of GHGs. The Department is unnecessarily complicating the issue with extraneous "technical" terms. The definition of GHG for reporting purposes is simple: "greenhouse gas" or "GHG" means any of the following: carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC) or sulfur hexafluoride (SF6). Similarly, and in conjunction with the discussion on protocols above, NMOGA recommends adding the definition for Protocol that would include any protocol accepted by the California Climate Action Registry (CCAR) and/or "The Climate Registry".

Specific comments for 20.2.87

20.2.87.6 The objective of this regulation is to improve the New Mexico GHG inventory as per the Governor's Executive Order. The objective statement should simply state that without unnecessary particulars.

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 proposed regulation should do the same. NMOGA recommends the term "owner and/or operator" should be replaced with "entity" and/or "reporting entity" throughout the regulation. NMOGA does not understand why the Department is proposing a "de minimus" level of 3% as opposed to the already established 5% de minimus level. Consistency is the key to a rigorous registry. In addition, reporting entities should be able to make an initial demonstration of "no emissions" for certain GHGs such as hydrofluorocarbons (HFC), perfluorocarbons (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 The regulation should be couched in broad terms and refer to accepted Protocols 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 estimating GHG 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 verification process, but shouldn't be included in the emissions report if the purpose of the regulation is to improve the inventory.

Some of the suggested language such as owners and equity shares is not necessary to develop an inventory.

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. Suggested Section D is confusing and unnecessary. Again, the Department conveyed their intent to follow existing protocol. Reference the existing protocol instead of re-phrasing the protocol in the regulation.

Specific Comments for 20.2.73

20.2.73.7 NMOGA made some suggestions 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 NMOGA strongly suggests that the Department add a new Section 400 to this regulation for the inventory of GHGs instead of adding it to the existing Section 300. There are multiple sections in Section 300 which are not applicable to the GHG inventory. Greenhouse gases are not regulated. Much of this information is important for criteria pollutants but not for GHGs.

20.2.73.300.B(9)(c) and (d): The intent of this proposed language is very confusing and unclear. We would request an explanation of the Department's intent with this language before we can fully comment.

20.2.73.300.C(1): Field facilities do not have "addresses".

20.2.73.300.C(3): "Responsible official" is a term used in Title V regulations. Many minor sources do not have designated "responsible officials." Also, the person responsible for reporting GHG emissions may or may not be the same individual responsible for reporting criteria pollutants for the inventory.

20.2.73.300.C(5): Greenhouse gases are not regulated and the proposed requested information is not necessary to develop a GHG 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.

20.2.73.300.E: "Insignificant emissions" is a term used in Title V for criteria pollutants. Because GHGs are not regulated, this term is irrelevant.
The Department and affected industries will be better served by adding a new Section 400 that deals with the GHG portion of the inventory for several reasons:

- Greenhouse gas emissions are not currently regulated and it is inappropriate to force existing regulations to meet the needs of developing a GHG inventory by using terms such as "responsible official" and "insignificant sources".
- It is NMOGAs understanding that if an entity wishes to voluntarily participate in any other GHG registry that company would not have to report GHG under 20.2.73. That is not clearly stated in the regulation.
- The regulation should allow for self-certification, as opposed to third party verification. In addition, the individual that certifies for GHG emissions inventory may or may not be the

person that certifies for the criteria pollutant emissions inventory. The Department needs to allow for this flexibility.

- 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 GHG 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 not be "insignificant" for GHGs. By requesting the GHG emissions information on a facility basis, ALL GHG emissions will be captured rather than just a portion that would be collected otherwise.
- 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.

Again, thank you for the opportunity to comment and participate in the regulatory framework for GHG and if you have any questions please feel free to contact me.

Sincerely,

(original signed by)

Deborah Seligman
Director Governmental Affairs

c: Bob Gallagher, President
Mary Uhl, Chief, NMED AQB
NMOGA GHG Working Committee

enclosure