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16 May 2007

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

VIA E-Mail

Dear Mr. Musick and Ms Weaver:

Attached are the NMOGA Comments on the April 24th discussion draft for Greenhouse Gas Emissions Reporting Rule. We would like to thank you for the additional time allotted for responding to the discussion draft and we are hopeful that you will find our comments to be constructive and of value to the proposed rulemaking as we move forward.

Because we are unable at this time to review our changes to the discussion draft with you a summary of our substantive changes are noted below.

20.2.87.6 Objective:

At the May 7, 2007 conference call, the Air Quality Bureau staff sounded reluctant to change the objective statement because that "wasn't normally how an objective was phrased." NMOGA has serious concerns that the information collected as part of the inventory will be used for punitive actions against reporting companies. The purpose of the information is only to improve the greenhouse gas inventory.

20.2.87.7 Definitions: NMOGA reworded several definitions and added others.

20.2.87.7 H. and I. Operational control and reporting entity are conceptually understood but difficult to articulate. These definitions are broad and we don't believe that the definition should try to capture every imaginable example of these concepts. NMOGA believes that the proposed definition of "operational control" answers the question as to contractual control. Contractual control might or might not be the same as operational control. Each reporting entity will have to have background data to support the decision of whether a facility, operation, or venture is under that entity's operational control on a case by case basis.

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20.2.87.200 GHG Emissions Reporting Procedures:

20.2.87.200. B NMOGA agrees with the proposed due date of July 1 for the inventory. This is after the Emissions Inventory but before any quarterly or calendar semi-annual reports. NMOGA suggests that all information pertinent to the inventory including calculations, assumptions, background information, etc be maintained for five years. This is the standard length of time for federal recordkeeping.

20.2.87.201 Phase I Reporting:

20.2.87.201. A (1) NMOGA added specific NAICS codes instead of the more generalized “sector”. This would exclude some operations that were not meant to be included at this time (i.e. wholesalers and bulk terminals).

20.2.87.201. A (2) “Reporting entity” is used in lieu of owner or operator. This regulation is specific to “operational control” so ownership is not an issue and all references to ownership and/or operator should be eliminated to avoid confusion.

20.2.87.201. A (2)(a) The reference to Subpart ZZZZ was misunderstood by the Bureau. That was the logic for choosing the 500 horsepower threshold, but it wasn’t the intent that this regulation only apply to sources subject to ZZZZ. There are a lot of sources that are over 500 horsepower, but not subject to ZZZZ because the sources are not located at sites that are major sources of HAP emissions. NMOGA also suggests adding the term “nameplate” horsepower so that there is no confusion over whether the applicability is based on site rated horsepower or nameplate horsepower. In addition, NMOGA added the term non-road engines to ensure that only stationary, non-mobile sources were subject to this rule.

20.2.87.201.A (2)(e) Under Phase I, NMOGA proposes only reporting CO2 emissions from processed gas streams. At this time, there are not adequate protocols for such calculations. The original draft language would have included CO2 from vent streams for instance.

20.2.87.201.A (2)(f) NMOGA believes that the proposed language in (2)(f) would capture all of the major sources of CO2 in the refinery process.

20.2.87.202 Phase II Reporting: Subpart A of Phase II is identical to Subpart A of Phase I with the exception that the applicability to producers is raised to 80%.

20.2.87.202. B (1) The NAICS code for refineries was eliminated because there are no sources of methane in the refinery process.

20.2.87.202. B (2)(a) – (e) NMOGA proposes that methane reporting be confined to the five listed activities or processes. The methane emissions can be calculated via emission factors or emission estimating software for these activities. Industry acknowledges that there are other sources of methane, however, at this time, there are not adequate protocols developed to produce an accurate methane inventory. The recordkeeping from these activities will be burdensome, but with time to prepare, industry will be ready by 2010 to estimate methane emissions from these activities.

20.2.87.300 Content of Emissions Reports: While 20.2.70 was a good place to start for this section, it is not totally applicable. The inventory is designed to be “entity wide”. It is not appropriate to include the physical location of facilities. First, there might be facilities not subject to 20.2.70 reporting; and second, the Bureau already has the

physical location of all Title V facilities. However, it is appropriate to include a list of facilities or business units whose emissions were included in the inventory.

20.2.87.300. C The amounts and specifications of each fuel type should be retained by the entity as part of the background information used to develop the inventory but should not be part of the inventory report. Fuel specifications are usually considered Business Confidential Information.

20.2.87.300. D The basic methods used in calculations will have been approved and provided by the Department. The entity should report calculation methods only if the entity deviated from these methods. This would still allow site specific calculations that may be more appropriate but would simplify the reporting process.

20.2.87.300. E NMOGA feels strongly that only emissions from routine operations should be included. The stated purpose of this regulation is to improve the greenhouse gas inventory. One aspect of that inventory is to project future emissions. It is not appropriate to project future emissions based on unusual events. An example of this would be the excess emissions caused by Hurricane Rita in the September 2005. If the emissions from that year had been used to project future emissions, the future emissions would be grossly overestimated.

20.2.87.300. F “Responsible official” is a term used in Title V compliance. It is not appropriate to use that term and apply it to non-Title V sites. NMOGA suggests the term “duly authorized official”. This would allow entities the flexibility to determine who is “in charge” of the greenhouse gas reporting for that entity.

20.2.87.301 Entities That Report GHG Emissions Under The Multi-State Registry:
NMOGA feels that is appropriate to allow companies that participate in *any other registry* that meets the requirements to be in compliance with this subpart.

20.2.87.302 Emissions Calculation Procedures:

20.2.87.302. A (4) NMOGA feels that it is important that the AQB issue procedures be generally consistent with multi-state registry protocols.

20.2.87.302. A (5) The proposed procedures should also specifically state the accepted global warming potential for methane. The API compendium suggests using the SAR value through 2012 and the TAR value after 2012.

20.2.87.302. B. NMOGA feels that it is a better use of resources if the Department only offers advance notification if the Department wishes to deviate from the calculation procedures used in previous reporting years. If there is no change (i.e. existing protocols have not changed), then the Department can simply state that they aren’t changing the calculation procedures and companies can proceed.

20.2.87.302. D. The Department should post the proposed calculation procedures on the website in addition to notifying the interested parties.

Thank you for the opportunity to comment and if you have any questions, I hope that you will feel free to contact me at the association office.

Sincerely,

Deborah Seligman
Director Governmental Affairs

Attachment as noted

cc: Mary Uhl, Bureau Chief
Suzanne Holland, Chevron
Bruce Gantner, ConocoPhillips
Co-chairs, NMOGA Environmental Affairs Committee

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 87 GREENHOUSE GAS EMISSIONS REPORTING

20.2.87.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.87.1 NMAC - N, XX/XX/07]

20.2.87.2 SCOPE: All persons who own or operate an applicable source of greenhouse gas emissions in the geographic areas within the jurisdiction of the Environmental Improvement Board.
[20.2.87.2 NMAC - N, XX/XX/07]

20.2.87.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically Sections 74-2-5(B)(1) & 74-2-5(C)(5)(d) & (e).
[20.2.87.3 NMAC - N, XX/XX/07]

20.2.87.4 DURATION: Permanent.
[20.2.87.4 NMAC - N, XX/XX/07]

20.2.87.5 EFFECTIVE DATE: MM/DD/YY except where a later date is cited at the end of a section or paragraph.
[20.2.87.5 NMAC - N, XX/XX/07]

20.2.87.6 OBJECTIVE: The objective of this Part is to establish requirements for the reporting of greenhouse gas emissions (GHG) to the Department for the purpose of developing an improved greenhouse gas inventory. This regulation is not to be used for the purpose of other regulatory actions, including but not limited to establishing a baseline inventory for cap and trade purposes.
[20.2.87.6 NMAC - N, XX/XX/07]

20.2.87.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this Part.

A. "CO₂ equivalent" means quantity of a given greenhouse gas multiplied by its total global warming potential.

B. "Direct emissions" means emissions from sources that are within the operational control of the reporting entity.

C. "Greenhouse gas" or GHG means any of the following: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbon (HFC), perfluorocarbon (PFC) or sulfur hexafluoride (SF₆).

D. "Greenhouse gas emissions reporting year" means the calendar year in which reported data is required to be collected under this Part.

E. "GHG emission report or inventory" means a listing, by source, or in aggregate, of the amount of GHG air pollutants discharged into the atmosphere.

F. "Indirect Emissions" that are a consequence of the actions of a reporting entity but are produced by sources owned or controlled by another entity.

G. Metric tons mean 2204.62 pounds.

H. "Operational control" means having the contractual authority to introduce and implement operation and environmental, health, and safety (EHS) policies at the facility or venture.

I. "Reporting Entity" means the organization responsible for the total facilities, operations, and ventures within predetermined boundaries that a company is reporting under 20NMAC 2.87.

J. "The Climate Registry" refers to any future multi-state registry that the State of New Mexico participates in.

K. "Sector" means like industries based on NAICS codes.

[20.2.87.7 NMAC - N, XX/XX/07]

20.2.87.8 SEVERABILITY: If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
[20.2.87.9 NMAC - N, XX/XX/07]

20.2.87.9 CONSTRUCTION: This Part shall be liberally construed to carry out its purpose.
[20.2.87.10 NMAC - N, XX/XX/07]

20.2.87.10 SAVINGS CLAUSE: Repeal or supersession of prior versions of this Part shall not affect any administrative or judicial action initiated under those prior versions.
[20.2.87.11 NMAC - N, XX/XX/07]

20.2.87.11 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this Part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.
[20.2.87.12 NMAC - N, XX/XX/07]

20.2.87.12 to 20.2.87.199 [RESERVED]

20.2.87.200 GREENHOUSE GAS EMISSIONS REPORTING PROCEDURES:

A. Reporting 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. Greenhouse gas emissions reports shall apply to a calendar year.

B. Reporting entities that are requested to report greenhouse gas emissions shall collect and record required data during the greenhouse gas emissions reporting year to which the report applies. Reporting entities shall submit reports required under this Part by July 1 of the year following the greenhouse gas emissions reporting year. Each reporting entity shall maintain records for five (5) years of all information used to calculate, in accordance with the requirements of this Part, the entity's applicable greenhouse gas emissions for each year for which they report.

C. The Department shall not request Phase I greenhouse gas emissions reports for any greenhouse gas emissions reporting year prior to 2008.

D. The Department shall not request Phase II greenhouse gas emissions reports for any greenhouse gas emissions reporting year prior to 2010.

[20.2.87.200 NMAC - N, XX/XX/07]

20.2.87.201 PHASE I REPORTING:

A. Phase I Oil and Gas Reporting Entities:

(1) Applicable Entities. Phase I applies to all oil and gas reporting entities with the following NAICS codes: 211111, 221210, 324110, 486210 and that:

(a) are included on the list, prepared by the Department prior to each reporting year under Section 303 NMAC of this Part, of the top producers collectively accounting for 60 percent of production; or

(b) own or operate a facility that is subject to permit requirements under 20.2.70 NMAC.

(2) Reported emissions. Each oil and gas reporting entity shall report emissions of carbon dioxide from the following sources under its operational control during the greenhouse gas emissions reporting year:

(a) stationary engines that are greater than or equal to nameplate 500 horsepower in size;

(b) heaters with a maximum design heat input capacity greater than or equal to 10 million British Thermal Units (BTU) per hour;

(c) turbines with a nameplate capacity greater than or equal to 25 megawatts;

(d) all fossil fuel combustion reported as part of permit requirements under 20.2.70 NMAC;

(e) all carbon dioxide removed from coal bed methane (CBM) or natural gas streams by processing through amine treatment processes; and

(f) Refinery emissions of CO₂ vented to atmosphere from tail gas incinerators fluid catalytic cracking unit regenerators, and hydrogen plants.

B. Electrical Generating Reporting Entities:

(1) Applicable Entities. Phase I applies to all electrical generators that:

(a) are subject to permit requirements under 20.2.70 NMAC;

(b) have the nameplate capacity to generate at least 25 megawatts of electricity; and

- (c) operate the electrical generation equipment more than 500 hours per year.
- (2) Reported emissions. Each electrical generating reporting entity shall report, for the greenhouse gas emissions reporting year, carbon dioxide emissions resulting from all fossil fuel combustion reported as part of permit requirements under 20.2.70 NMAC.
[20.2.87.201 NMAC - N, XX/XX/07]

20.2.87.202 PHASE II REPORTING:

A. Oil and Gas Entities Reporting Carbon Dioxide:

- (1) Applicable Entities. Phase I applies to all oil and gas reporting entities with the following NAICS codes: 211111, 221210, 324110, 486210 and that:
 - (a) are included on the list, prepared by the Department prior to each reporting year under Section 303 NMAC of this Part, of the top producers collectively accounting for 80 percent of production.; or
 - (b) own or operate a facility that is subject to permit requirements under 20.2.70 NMAC.
- (2) Reported emissions. Each oil and gas reporting entity shall report emissions of carbon dioxide from the following sources under its operational control during the greenhouse gas emissions reporting year:
 - (a) stationary engines that are greater than or equal to nameplate 500 horsepower in size;
 - (b) heaters with a maximum design heat input capacity greater than or equal to 10 million British Thermal Units per hour;
 - (c) turbines with a nameplate capacity greater than or equal to 25 megawatts;
 - (d) all fossil fuel combustion reported as part of permit requirements under 20.2.70 NMAC;
 - (e) all carbon dioxide removed from CBM or natural gas streams by processing through amine treatment processes ; and
 - (f) Refinery emissions of CO₂ vented to atmosphere from tail gas incinerators fluid catalytic cracking unit regenerators, and hydrogen plants.

B. Oil and Gas Entities Reporting Methane:

- (1) Applicable Entities. Phase I applies to all oil and gas reporting entities with the following NAICS codes: 211111, 221210, 486210 and that:
 - (a) are included on the list, prepared by the Department prior to each reporting year under Section 303 NMAC of this Part, of the top producers collectively accounting for 60 percent of production; or
 - (b) own or operate a facility that is subject to permit requirements under 20.2.70 NMAC.
- (2) Reported emissions. Each such oil and gas reporting entity shall report emissions of methane released to the atmosphere from the following activities, equipment and processes under its operational control during the greenhouse gas emission reporting year. Facilities with an annual production throughput of less than 100 MMscf are exempt from reporting in this Phase.
 - (a) glycol dehydration units with a throughput greater than 4 mmscfd;
 - (b) plunger lifts;
 - (c) gas actuated pneumatic controllers;
 - (d) crude oil or condensate storage tank vents; and
 - (e) processes at facilities subject to 20.2.70 not listed in (a) – (d)

C. Electrical Generating Reporting Entities:

- (1) Applicable Entities. Phase II applies to all electrical generators that:
 - (a) are subject to permit requirements under 20.2.70 NMAC;
 - (b) have the capacity to generate at least 25 megawatts of electricity; and
 - (c) operate the electrical generation equipment more than 500 hours per year.
- (2) Phase II reported emissions. Each electrical generating reporting entity shall report all direct greenhouse gas emissions that occurred at the electrical generating unit during the greenhouse gas emissions reporting year, except that such emissions from mobile sources at the facility are not required to be reported.
[20.2.87.202 NMAC - N, XX/XX/07]

20.2.87.203 to 20.2.87.299 [RESERVED]

20.2.87.300 CONTENT OF EMISSIONS REPORTS: Emissions report contents shall include:

- A.** the name and address of the reporting entity;
- B.** the name and telephone number of the person to contact regarding the emissions report;
- C.** fuel use directly related to reported emissions;

E. a description of any methods, other than those identified in Section 302 of this regulation, utilized to make emissions calculations;

F. the sum of all reported greenhouse gases, in units of tons of carbon dioxide equivalent, from emissions occurring during routine operations;

G. a certification signed by a duly authorized official of the reporting entity attesting that the statements and information contained in the greenhouse gas emissions report are true and accurate to their best knowledge and belief. This certification should include the full name, title, signature, date of signature, and telephone number of the certifying official.

[20.2.87.300 NMAC - N, XX/XX/07]

20.2.87.301 ENTITIES THAT REPORT GREENHOUSE GAS EMISSIONS UNDER [THE MULTI-STATE REGISTRY]: Entities required to report greenhouse gas emissions under this Part may register and third-party verify their greenhouse gas emissions with “The Climate Registry”. Entities that have registered and verified their greenhouse gas emissions in accordance with the procedures of the “The Climate Registry” for the greenhouse gas emissions reporting year shall be deemed to be in compliance with this Part for that reporting year. [20.2.87.301 NMAC - N, XX/XX/07]

20.2.87.302 EMISSIONS CALCULATION PROCEDURES:

A. At least 180 days prior to the beginning of a greenhouse gas emission reporting year, the Department shall issue procedures for the calculation of greenhouse gas emissions that are required to be reported in that reporting year. Notification of the availability of such procedures shall be posted on the AQB website; provided to each reporting entity; and provided to each person who has notified the Department of an interest to be notified. Such procedures shall:

- (1) be consistent with generally accepted protocols for estimation of greenhouse gas emissions;
- (2) include recommended methods for estimation of greenhouse gas emissions from equipment and processes for which emissions calculations are required, and the supporting data that is required for use of such methods;
- (3) include alternate methods for estimation of greenhouse gases, where such alternate methods are available allowing for source specific, site specific or entity specific calculation methodologies;
- (4) be consistent with multi-state registry protocols; and
- (5) determine the current global warming potential (GWP) for reported greenhouse gases.

B. The Department shall provide interested persons at least sixty (60) days to submit comments regarding procedures for the calculation of greenhouse gas emissions, and shall respond to those comments at least thirty (30) days after the end of the comment period. The Department’s response may include revision to and reissuance of the procedures for the calculation of greenhouse gas emissions. Notification of the Department’s response shall be provided to each reporting entity and to each person who has notified the Department of an interest to be notified.

C. Department notifications required under this Part may be made electronically or in writing.
[20.2.87.302 NMAC - N, XX/XX/07]

20.2.87.303 LISTS OF TOP PRODUCERS

A. During each calendar year that immediately precedes a greenhouse gas emissions reporting year for which applicability is based on oil and gas production ranking, the Department shall evaluate data from the previous year of oil and gas production in New Mexico, including production in the geographic areas within the jurisdiction of the Environmental Improvement Board, and propose lists of the top producers accounting for 60 percent and 80 percent, respectively, of oil and gas production. Each list shall include the names of the minimum number of producers needed to account for at least the stated percentage of each of the following:

- (1) production (in barrels of oil equivalent) in the San Juan Basin;
- (2) production (in barrels of oil equivalent) in the Permian Basin;
- (3) gas production (including conventional natural gas and coal bed methane);
- (4) oil production; and
- (5) carbon dioxide production.

B. By September 1 of the calendar year immediately preceding a greenhouse gas emissions reporting year, the Department shall provide the proposed lists of top producers to all producers on each list, all producers on the lists for the previous greenhouse gas emissions reporting year, and all persons who have expressed an interest in writing of being notified of the proposed lists. Producers on the lists shall notify the Department in writing by

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October 1 of that calendar year of any significant changes they anticipate occurring in their production during the applicable reporting year.

C. By November 1 of the calendar year immediately preceding a reporting year, the Department shall issue revised lists of top producers, if necessary.
[20.2.87.303 NMAC - N, XX/XX/07]

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