

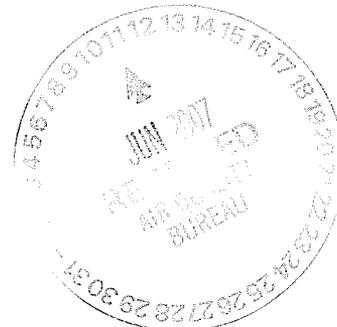


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Transwestern Pipeline Company

June 8, 2007

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



RE: Comments on Proposed Greenhouse Gas Reporting Regulations

Dear Ms. Uhl:

This letter presents for your consideration Transwestern Pipeline Company's (TWP) comments on the New Mexico Environment Department's (NMED) proposed changes to the emission inventory regulation at 20.2.73 NMAC and the new greenhouse gas (GHG) reporting regulation at 20.2.87 NMAC. In addition to its contribution to the New Mexico economy, TWP emits GHG from compressor stations on its interstate pipeline that crosses the State of New Mexico and, as a stakeholder in the outcome the NMED's proposals, we are providing the Department with our concerns and constructive input to the regulatory development process.

General Comment on Redundancy

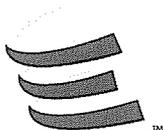
The new paragraph in Part 73, 20.2.73.300.B.(9) NMAC, is similar – but broader – than the Part 87 devoted to GHG emissions reporting. Both proposals grant the NMED authority to collect GHG emissions data from sources or source categories in New Mexico. Part 87 clearly is more developed but it would be rendered unnecessary by the expanded inventory authority that would be given the Department under paragraph 20.2.73.300.B.(9) NMAC. The Department should carefully consider whether two different regulations with the same underlying intent – but significantly differing scope – are necessary. We present more detailed comment on our support of Part 87 over Part 73 in the paragraphs below.

Comments on 20.2.73 NMAC – Notice of Intent and Emission Inventory Requirements

1. Emission Inventory Requirements (20.2.73.300.B.(9) NMAC)

Proposed paragraph B.(9) of 20.2.73.300 NMAC is not fully formed as a regulation; rather, it is a plan for developing a future regulation. More precisely, the paragraph is a statement of intent by the Department to impose yet-to-be-defined reporting requirements on any source subject to the Department's authority, with a commitment to take steps that resemble a rulemaking procedure. The idea, apparently, is that the Department will flesh out specific schedules and emission quantification methodologies considering the GHG contribution of individual sources or source types.

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Transwestern Pipeline Company

A question the Department should consider at this point is, “Why not take time to develop the specific elements listed in paragraph (9) (via the rulemaking steps outlined in the paragraph) **before** proposing it as a regulation change?” The paragraph is a statement of intent to develop specific timeframes and methodologies. The appropriate course should be to first develop timeframes and methodologies, then publish them as a proposal and ask for comment on the specific references. As it is, there is nothing substantive to comment on except that the paragraph grants the Department authority to require unlimited GHG emissions reporting at its discretion.

Our greatest concern is that the paragraph in its current embryonic form grants the Department open-ended authority to require any source selected by the Department to prepare and submit GHG inventories at any time for any reason. The paragraph contains no benchmarks, checks, thresholds, categories, schedules or other guiding criteria by which the regulated community may understand the applicability of the rule, gauge the resources needed to comply with its intent, define the limits of the Department’s authority or defend against unfair or uneven implementation by the Department. This paragraph also undercuts the measured implementation of GHG reporting proposed in Part 87, which has been the subject of a significant investment of time and energy by the Department and interested stakeholders. We request that the Department provide the regulated community with an answer to the question as to whether the Department intends to charge emission fees for GHG emissions.

Transwestern feels strongly that the NMED should withdraw paragraph (9). If the Department at this time cannot define more specifically what it will require of GHG-emitting sources, how can the Department fairly, efficiently and properly wield the authority this version of the rule grants it? The rule needs to have a clear set of limits and identify specific procedures before authority is granted the Department to impose the burden to industry associated with preparing GHG emission reports. We urge the Department to take the time necessary to draft a concrete proposal at a later date (after the implementation of proposed Part 87), which will better serve the Department, the regulated community and the citizens of the planet.

2. Definition of “Greenhouse Gas” (20.2.73.7.G NMAC)

The definition as written does not specify the chemical compounds covered by the term “greenhouse gas,” but defers to the United Nations Framework Convention on Climate Change. The reader is left without a reference to a document, page or paragraph that would provide a direct and unambiguous pathway by which to identify with certainty those compounds with established global warming potential values. Typically, incorporation by reference in a regulation is sufficiently specific to leave no doubt as to the target of the reference (e.g., incorporating a federal rule from 40 CFR 63). When the NMED goes forward with the proposed changes to this Part (which we do not support at this time), the Department should use a single definition of “greenhouse gas” such as that proposed in Part 87, which lists the six greenhouse gases currently identified as having warming potential.



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Comments on 20.2.87 NMAC – Greenhouse Gas Emissions Reporting

1. Transwestern Supports the Measured Approach in Part 87

This Part is titled “Greenhouse Gas Emission Reporting,” and requires reporting from three source categories: electric power generating installations; petrochemical refining facilities; and cement manufacturing facilities. Transwestern supports NMED’s initial coverage of a small number of source categories to test the how the reporting and registry process will work and the effect the rule will have on facilities subject to the rule and on the Department’s resources. Future refinement or expansion of applicability of the rule may be accomplished based on the lessons learned from the experience with the three subject source categories.

2. Additional Comments on Redundancy of Part 73 and Part 87.

As mentioned in the opening to this letter, TWP observes that this entire Part 87 is made redundant by paragraph B.(9) in 20.2.73.300. Paragraph 20.2.73.300.B.(9) NMAC gives the Department virtually unlimited authority to require GHG reporting from any source or source category at any time for any reason, making Part 87 pale, indeed, by comparison. Thus, if the NMED retains 20.2.73.300.B.(9) NMAC in some form resembling its current scope, then Part 87 is rendered virtually unnecessary because more data may be collected by the Department from the regulated community under Part 73 than under Part 87, including the three source categories covered by Part 87. It appears to TWP that the effort spent to develop Part 87 may be wasted unless the Department pauses and integrates its development of Parts 73 and 87.

3. Regulate Greenhouse Gas Reporting in One Part of NMAC.

At this time the NMED has proposed two separate regulations that require GHG reporting. One regulation, Part 20.2.87, was specifically developed to give the Department authority to require reporting of third party-verified greenhouse gas emissions. The listing of only three source categories reflects the idea presented by the NMED in Technical Work Group sessions of a phase-in of reporting requirements over time. Logically, the regulated community, the public and other regulatory agencies would expect to find New Mexico’s greenhouse gas reporting requirements listed in this Part, which is the fruit of much stakeholder input over many months.

We do not understand the proposal of GHG reporting requirements in 20.2.73, which treats GHG as a typical air contaminant and which bypasses the collaborative rulemaking effort expended to develop Part 87. In our opinion, New Mexico should pursue a single coordinated rulemaking to provide a single set of requirements in one Part of the NMAC that incorporates all of the Department’s representations during the Technical Work Groups leading up to the present proposal. The last-minute proposal of a half-baked paragraph 20.2.73.300.B.(9) NMAC disrupts the consistency of the agency’s reporting program and undermines the integrity of the multi-party effort to arrive at a rational GHG reporting rule as embodied in Part 87. Much effort has gone into its development and, clearly, little has been spent on the production of 20.2.73.300.B.(9) NMAC. Part 87 can – and should – contain all the GHG emissions reporting requirements for all of the Department’s data needs and we recommend



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Transwestern Pipeline Company

that the Department craft the Part in this manner. As stated above, we urge the Department to postpone work on the new paragraph in Part 73 and to move forward with implementation of Part 87.

4. Third Party Verification is Unnecessary.

Although TWP has not commented previously on elements of Part 87, third party verification is atypical in emission inventory programs in the United States and it seems rather extreme and unnecessary to require third-party verification of GHG emissions estimating. First, the Department presumably will provide industry (and other interested parties) with generally-accepted GHG emissions estimating methodologies so that all companies with similar emission units will be able to use the same procedures and calculations to estimate emissions. Company submittals of GHG emission calculations will be documented, transparent and can be verified by anyone who has access to the methodologies in the same way current emission inventory calculations can be verified by the Department or the public using data included in emission inventory reports. If the emissions estimating methods will be readily available and relatively straightforward for anyone with a modicum of experience in air emissions estimating, then all the data needed to verify the accuracy and completeness of a company's submittal will be available to the NMED, environmental groups, other state agencies and the general public. If focused attention is needed in this endeavor, it would be best spent to ensure the methodologies the Department proposes for industry's use are technically sound.

Second, the pollutants listed in Part 73 are required to be reported now because they are known to have adverse health and welfare effects. Many sources that submit inventory reports are subject to emission limitations and often employ emission controls to reduce emissions of these pollutants. In the case of GHG, there are no emission limitations yet promulgated by the State and the role the gases play in the complex dynamics of planetary climate are not well-understood. There is less scientific and regulatory background to support increased scrutiny of GHG emission inventories than for inventories of criteria pollutant emissions.

Third, in our experience no third-party verification is required of criteria pollutant emission inventory reports that industry currently submits under Part 73. The emissions estimating program under Part 87 appears to be similar in technical scope and difficulty. Industry has the technical knowledge and experience to understand and apply whatever GHG emission estimating methodologies the Department will require. Therefore, we believe that the requirement for third-party verification of GHG emissions inventory reports is excessive and programmatically asymmetrical as long as the Department does not require an equivalent level of verification for criteria pollutant inventory reports.

5. Do Not Count Indirect Emissions

At 20.2.87.201.B.(2), the proposal requires reporting of indirect emissions for the second and subsequent reporting years. Transwestern believes that the facility that emits GHG should be the only entity responsible for reporting its emissions. Producers of electrical power, steam and heat should report their emissions, not their consumers. Not only does this violate a principle of fairness, it will result in double-counting of GHG emissions. For example, if a refinery purchased electric power from an electric power generating station located in New Mexico, the GHG emissions will be reported twice: once by the generating station and again by the refinery. Considering the GHG

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registry regionally or nationally, the same double-counting will occur. When a New Mexico facility purchases electricity from a power plant in a neighboring state, GHG will be reported to the NMED by the New Mexico facility and the power plant will report its GHG emissions to its state agency. Thus, on a regional scale the GHG emissions will be counted twice. Double counting of GHG emissions is illogical and undermines the goal to produce a State-wide and regional **accurate** and **credible** count of GHG emissions.

To use an example from our own operations, Transwestern powers a number of compressors with electric motors. These sites produce no GHG emissions. If we were to try to compute the amount of CO₂ that was emitted from the power grid, for example, resulting from the electricity used by the motors at our compressor stations, the amount of CO₂ computed would replicate the amount of CO₂ emissions estimated by the power plant. We hope that such double-counting, and the concomitant inflation of total GHG emissions in the inventory, is not the intent of the Department.

To be fair, a facility required to report GHG emissions should only be compelled to report emissions from units or areas that it owns or has operational control over. This concept of responsibility for emissions is consistent with the Clean Air Act and regulations EPA has promulgated under its authority (40 CFR 52, 60, 61 and 63). We request that the Department justify and explain to the public why it is proposing that facilities estimate and report indirect GHG emissions from facilities over which they have no operational interest. Otherwise, the Department's inclusion of indirect emissions reporting appears to be arbitrary and technically flawed.

We appreciate the opportunity to assist the Department with the development of regulations in its greenhouse gas reporting program by sharing our views on the two proposed regulations. If you wish to contact us regarding any of our comments, please call Mr. Sam Duletsky in Houston at 713-989-7987 or contact him via email at Sam.Duletsky@EnergyTransfer.com.

Sincerely,
Transwestern Pipeline Company

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