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Re: THE DEPARTMENT'S REVISED DRAFT GHG REPORTING RULES

Dear Mary:

Please accept these comments on behalf of the Natural Resources Defense Council and Western Environmental Law Center regarding the Department's revised draft Greenhouse Gas Reporting Rules ("Draft GHG Reporting Rules"). Overall, we are encouraged by the Department's revised conceptual approach to GHG reporting from the oil and gas industry, although we do have some concerns we hope the Department will consider and address.

1. OVERARCHING RECOMMENDATIONS

The Department's efforts to craft Global Warming-related rules, policies, and procedures should all be designed to achieve the GHG emissions reduction targets set forth in Governor Richardson's Executive Orders 2005-033 and 2006-69: "2000 levels by the year 2012, 10 percent (10%) below 2000 levels by the year 2020, and 75 percent (75%) below 2000 levels by the year 2050," or any future reduction goals or hard caps established as State policy. Thus, GHG reporting, fundamentally, is about reducing GHG emissions. We therefore provide the following overarching recommendations:

- The GHG Reporting Rules should be designed consistent with – if not explicitly inform and support – broader regional initiatives, such as The Climate Registry ("TCR") and the

Western Regional Climate Action Initiative ("WRCAI"). Cross-pollination of data and knowledge between laws, rules, policies, and procedures will invariably quicken GHG reduction efforts.

- GHG reporting should, as soon as possible, capture methane emissions given that methane emissions are a significant contributor of the oil and gas industry's overall GHG emissions footprint, and given that methane emissions present excellent opportunities for proven, cost-effective GHG reductions. As stated in our May 16th comments, by prioritizing methane, the Department can best position itself to support the ability of companies to take early action to reduce GHG emissions and achieve or even surpass GHG emissions reduction targets.

- GHG reporting Rules should: (1) capture a significant majority of the actual GHG emissions (CO_2 & CH_4) footprint from the oil and gas industry; (2) resolve key data gaps and uncertainties currently undermining the accuracy and precision of the GHG Inventory; (3) account for the different emissions footprints resulting from production, processing, transmission, and distribution; and (4) reflect differences between the State's different production regions, principally the San Juan and Permian Basins.

- GHG reporting should capture not just major sources, but minor sources that contribute cumulatively significant GHG emissions. Typically, regulatory structures tend to focus on the low-hanging fruit: large entities that are typically already subjected to regulation. Yet this predilection tends to exclude the multitude of minor sources that contribute cumulatively significant levels of pollution that causes widespread harm to the public and our environment. This is particularly true for GHG emissions from oil and gas field operations. Ultimately, this leads to the illusion of pollution control, and the consequent undermining of effective pollution-control efforts. Thus, obtaining data about individually minor, but collectively significant GHG sources should be a core component of the Department's GHG reporting program.

2. <u>PART 73</u>

The Draft GHG Reporting Rules in Part 73 appear to defer the substance of GHG reporting to a separate implementation-level process. While the Department presumably will involve the public in this process, it leaves us worried given that Part 73 provides little substantive guidance and that the outcome of this implementation-level process may not be subject to approval by the EIB. The Department should therefore explain to the EIB and the public how it intends to implement Part 73 and expressly seek the EIB's guidance concerning the implementation-level process. Insofar as the Department's May 24th and 30th handouts do provide some clarification, these documents are fact sheets that do not constitute binding Departmental commitments and therefore do not alleviate our concerns.

Notably, Part 73 does appear to capture a fairly broad range of activity sectors and at least some of the minor emissions sources from those sectors – not just major emissions sources such as power plants, refineries, and cement plants that are subject to Part 87. This coverage is welcomed, yet we are still in the dark as to whether Part 73 empowers the Department to capture GHG emissions data about many of the collectively significant GHG emissions sources from oil and gas operations. We therefore refer the Department to our recommendations in (1), above, and to our May 16th comments where we discussed the sources of equipment that we believe the Department should capture – whether as a component of Part 73 or Part 87. As explained in those comments, and equally relevant here:

> The key is <u>not</u> to simply obtain a single, aggregate GHG emissions total for individual companies or for the oil and gas industry as a whole. Rather, the key is to understand with as much precision as possible regarding the <u>sources and magnitude</u> of those emissions. Such a perspective will more readily support the Department's parallel-track Oil & Gas Emissions Reduction Study and, consequently, the prompt deployment of appropriate measures and policies to reduce GHG emissions. Once deployed, the impact of these measures and policies can then be more readily tracked over time through the MRP.

WELC & NRDC Comments of May 16, 2007 at 4. Thus, we would ideally like the Department to quantify as best as it is able the approximate percentage of total sector emissions that would be captured by the GHG reporting program. But the Department should <u>also</u> assess whether it is capturing the predominant number of <u>sources</u> of GHG emissions, in particular those sources for which deployable GHG emission reduction technology exist.

3. <u>PART 87</u>

We approve of the Department's intent to implement Part 87 consistent with – and in some instances directly using – reporting tools developed by the California Climate Action Registry ("CCAR"), in particular third-party verification. We are nonetheless still confused by the interplay between Part 87 and Part 73, and the implications of these two separate regulatory parts, and therefore intend to have further discussions with the Department as this rulemaking process moves forward. In particular, we are concerned that Part 87 does not require the Department to address methane in the first reporting year. While we understand that CCAR is not addressing methane in the first reporting year, if New Mexico required methane reporting in Part 87 in the first reporting year, we do not view this as inconsistent with CCAR. Rather, New Mexico's Part 87 reporting would simply move faster than CCAR relative to methane while still operating consistent with CCAR's basic reporting framework. In effect, New Mexico should not hesitate to lead in the development of GHG reporting programs where appropriate, in particular from methane.

4. <u>WELC & NRDC SUPPORT THE DEPARTMENT'S INTENT TO DEVELOP A TCR-BASED REPORTING PROTOCOL FOR OIL & GAS EXPLORATION, PRODUCTION, AND PROCESSING</u>

The Department has represented that it intends to work with the California Climate Action Registry "to develop a GHG reporting protocol for TCR for oil and gas (O&G)

exploration, production, and processing." NM Mandatory GHG Reporting, Revised Concept for Proposal in Response to Comments, Element 1 (May 24, 2007) ("May 24th Revised Concept"). We strongly support this intent, and, as noted above, emphasize that GHG reduction efforts by New Mexico should inform and support regional GHG reduction efforts, such as TCR and the WRCAI. In this endeavor, obtaining GHG reductions from the oil and gas industry, as a significant contributor of GHG emissions in the Rocky Mountain West, is essential, in particular given the foundational role that the upstream oil and gas industry plays in inducing GHG emissions throughout our economy.

Nonetheless, we are concerned that the Department has not made any binding commitments to actually see this process through and therefore encourage the Department to provide assurances to the public that it will in fact do so. To the extent that these assurances can be build into Part 73 and Part 87, or, at the least, explained as part of the basis of the Department's reporting program during the EIB rulemaking process so that the Department can obtain guidance and support from the EIB, all the better. We also strongly encourage the Department to maintain an open line of communication with us as this effort proceeds so that we may best able leverage our support and expertise.

5. WELC & NRDC SUPPORT DEPARTMENTAL EFFORTS TO OBTAIN RESOURCES TO MANAGE THE MANDATORY REPORTING PROGRAM ESTABLISHED PURSUANT TO 20.2.87 NMAC

We support the Department's intent to obtain "resources to cover the contract(s) with CCAR and to pay for full-time NMED employees" to "manage the program, including the contract, and provide technical assistance to reporting entities." May 24th Revised Concept, Element 3. Governmental agencies are typically underfunded and understaffed, sometimes intentionally, relative to environmental protection and therefore may have a difficult time achieving their missions in the public interest. Obtaining these resources should help New Mexico reach its GHG emissions reduction targets.

6. WELC & NRDC ENCOURAGE THE DEPARTMENT TO SEEK LEGISLATION TO AUTHORIZE FEE COLLECTION FOR EMISSIONS REPORTS

The Department has indicated that it may seek legislative authorization to obtain fees for emissions reports. May 24th Revised Concept, Element 3. We encourage the Department to do so; companies have a responsibility to support governmental efforts that seek to protect the broader public interest in environmental protection – protection critical to a healthy, sustainable economy that benefits our communities.

7. WELC & NRDC STRONGLY ENCOURAGE THE DEPARTMENT TO SEEK LEGISLATION PROVIDING EARLY ACTION CREDIT FOR ENTITIES THAT REGISTER WITH THE CLIMATE CHANGE ACTION REGISTRY

The Department has stated that "New Mexico may consider including" protections for "emissions credits from early reductions from baselines for companies that register under CCAR." May 24th Revised Concept, Element 3. We strongly encourage the Department to seek such legislation. Providing companies with the opportunity to obtain early action credit for emissions reductions is important for two principal reasons.

First, immediate emissions reductions are essential to set the stage for long-term efforts to combat Global Warming. The sooner reductions are taken, the less intensive and, thus, less disruptive overall emissions reductions will have to be through time. If we wait too long, we will eventually be compelled to take sharper action to reduce GHG emissions.

Second, early action credits are an important market-based incentive to quicken the pace of GHG reductions. Companies that take such early action should be rewarded, both as a matter of utilizing the power of economic markets, but also as a matter of fairness, both of which are consistent with the State and public's interest in reducing GHG emissions. If a regressive company fails to take early action, this could, if carbon caps are eventually imposed, disadvantage the progressive company that took early action because the progressive company has likely already picked the low-hanging fruit (i.e., cost-effective measures) relative to GHG emissions, while the regressive company has not. Moreover, it could lead to delays in GHG reduction efforts that are contrary to the State and public's interest in GHG reductions.

CONCLUSION

Overall, the Draft GHG Reporting Rules constitute an improvement over the State's first draft. However, the Rules also implicate a variety of uncertainties that the Department has represented will be addressed as the Rules are considered during the EIB rulemaking process and through implementation. WELC and NRDC therefore look forward to working with the Department and the EIB to ensure that New Mexico's GHG Reporting program helps achieve the State's GHG emissions reduction targets, and we reserve our rights to provide additional comments and recommendations as the Department's process moves forward.

Thank you for your consideration.

Sincerely,

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