ROCKY MOUNTAIN CLEAN AIR ACTION

Clean Air For Healthy Children and Healthy Communities

March 5, 2008

Brad Musick
New Mexico Environment Department
Air Quality Bureau
1301 Siler Rd., Building B
Santa Fe, NM 87507

Re: Comments on Final Oil and Gas Emission Reduction Study

Dear Mr. Musick:

Rocky Mountain Clean Air Action, the Natural Resources Defense Council, Oil and Gas Accountability Project, and Western Environmental Law Center submit the following comments in response to the New Mexico Environment Department's ("NMED's") "Oil and Gas Greenhouse Gas Emissions Reductions, Final Report" (hereafter "Final OGER report"), released for public review on December 31, 2007. The final OGER report represents NMED's efforts to respond to Governor Richardson's Executive Order 2006-069, which states that NMED "shall conduct a study of the voluntary and mandatory mechanisms for reducing greenhouse gas emissions from oil and gas processes by January 1, 2008[.]"

For the purposes of these comments, we hereby incorporate by reference our prior December 21, 2007 comments submitted on the Draft OGER Report. We would like to provide additional comments regarding the overall thrust of the OGER Report and the authority of NMED to adopt rules that would limit greenhouse gas emissions from oil and gas sources in the State of New Mexico.

Overall, the OGER Report is a step in the right direction. As we read it, NMED appears to be relying intensively on a tracking system to monitor progress on GHG reductions. We support such a tracking system, and only emphasize that NMED ensure that the tracking system does not slow the State's progress in achieving aggressive GHG reductions in both the near and far terms. On this point, given the pragmatic timelines built into the formation and implementation of a tracking system, we are very concerned that a tracking system could be perceived as a barrier to meaningful near term GHG reduction policies. This would be a mistake. We believe that there is ample information – now – to justify meaningful GHG reduction policies.

Our concern is amplified by the fact that the OGER study is premised on the largely unsubstantiated assumption that voluntary GHG reductions through BMPs & PROs can actually

achieve the necessary level of total reductions. We have not seen any analysis demonstrating that a purely voluntary system is, in and of itself, adequate. Indeed, there appear to be internal structural barriers within the oil and gas industry that may compromise the widespread deployment of GHG reduction mechanisms at a scale commensurate with the State's long-term goals. Furthermore, to a degree, there appears to be a double standard in place: on the one hand, a perceived lack of data is used to justify the use of purely voluntary policies, but on the other hand, there's really no data to justify the efficacy of voluntary policies. NMED – and the public – need to keep their on the ball: achieving the State's GHG reduction targets.

In any event, a voluntary program may be more effective if NMED works in close partnership with not only NMED's state-level counterparts, such as OCD, but also with NMED's federal counterparts in both the EPA and the U.S. Bureau of Land Management. Standing alone, each entity has limited authorities, responsibilities, and capabilities. Standing together, the state and federal agencies may have the collective authority, responsibility, and capability to create and deploy strong GHG reduction policies.

At the state level, we strongly encourage NMED to confer with OCD and the public to address whether New Mexico's prohibition against "waste" can support the development of GHG reduction policies. This is important authority that we believe has been read far too narrowly and has been too little used, and we intend to do our own independent research to address whether and how the authority can be used to support GHG reduction policies.

Finally, in our previous comments, we requested NMED explore possibilities to reduce methane emissions through additional rulemakings. We pointed to a number of examples where methane reduction strategies, if implemented, would be extremely cost-effective and achieve reductions in other harmful regulated air pollutants. We also pointed to a number of examples where neighboring states have adopted rules limiting emissions of air pollutants from oil and gas sources, including condensate storage tanks, glycol dehydrators, pneumatic controllers, and well completions.

In response, NMED has indicated it believes its authority is limited by New Mexico statute, which prohibits the Environmental Improvement Board ("EIB") from promulgating rules that are more stringent than the federal Clean Air Act and federal regulations implementing the Clean Air Act. We disagree. While admittedly, the EIB is restricted in limited circumstances from adopting rules that are more stringent than federal statutes and regulations, we do believe the EIB has ample authority to achieve methane reductions through additional rulemakings.

To the extent the New Mexico Air Quality Act at NMSA Section 74-2-5 limits the EIB's authority, the Act applies only in specific circumstances. Namely, 74-2-5 limits the EIB's authority to adopt rules that are more stringent than federal laws and regulations pertaining to "visibility protection in mandatory class I areas," "prevention of significant deterioration," and "nonattainment areas." NMSA Section 74-2-5(C)(1)(a). The Act also limits the EIB's authority to adopt new source performance standards and emission standards for hazardous air pollutants that are more stringent than federal regulations. NMSA Section 74-2-5(C)(2)(a). In all other circumstances, the EIB has the authority to adopt rules that are more stringent than federal law and regulations, consistent with the EIB's duty to "prevent or abate air pollution." NMSA Section 74-2-5(A).

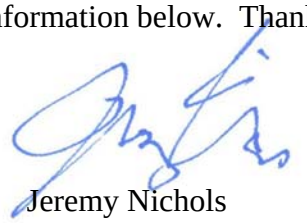
When it comes to additional rulemaking to reduce methane emissions or even emissions of other criteria air pollutants, the New Mexico Air Quality Act therefore empowers the EIB to adopt rules that are more stringent than federal laws and regulations. So long as those rules do not pertain to visibility protection, prevention of significant deterioration, nonattainment areas, new source performance standards, and emission standards for hazardous air pollutants, the EIB appears to have broad authority.

In the context of promulgating methane reduction rules in New Mexico, this leaves considerable opportunity for the EIB. As we suggested in our prior comments, the EIB could promulgate rules limiting methane emissions from condensate storage tanks and other sources, in turn also reducing emissions of other harmful air contaminants (e.g., volatile organic compounds and hazardous air pollutants). Such rules could be promulgated pursuant to the EIB's duty to "prevent or abate air pollution" as set forth in NMSA Section 74-2-5(A).[1]

Although some may claim the EIB cannot promulgate rules to reduce methane because they would be more stringent than the federal law and regulations, such a claim would be baseless. Clearly, if such rules are adopted, they would not pertain to "nonattainment areas," they would not pertain to "visibility protection," they would not pertain to "prevention of significant deterioration," and they would not constitute new source performance standards for emission standards for hazardous air pollutants. Plain and simple, such rules would constitute measures to "prevent or abate air pollution."

In sum, we see no reason why the EIB would be statutorily restricted from promulgating rules requiring methane reductions from oil and gas sources. Given that there are a number of options to cost-effectively reduce methane from oil and sources, NMED must fully explore opportunities for additional rulemaking.

Once again, we are confident the NMED is moving in the right direction. We appreciate the opportunity to comment. If the NMED has any questions or concerns, please contact us at the information below. Thank you.



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[1] "Air pollution" is defined at NMSA Section 74-2-2(B) as "the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property." The definition of "Air contaminant" includes any "gas." NMSA Section 74-2-2(A). Methane is an air contaminant because it is a gas, and when released into the outdoor atmosphere constitutes air pollution due to the fact that it contributes to climate change, which is linked with injury to human health and unreasonably interfered with public welfare. Thus, the EIB has authority to regulate methane pursuant to the New Mexico Air Quality Act.

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