

1 STATE OF NEW MEXICO
2 BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD
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5 IN THE MATTER OF PROPOSED NEW REGULATIONS,
6 20.2.300 NMAC – *Reporting of Greenhouse Gas Emissions*
7 20.2.301 NMAC – *Greenhouse Gas Emissions – Verification Requirements*
8 AND EXISTING REGULATION,
9 20.2.87 NMAC – *Greenhouse Gas Emissions Reporting*

No. EIB 10-09 (R)

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14 DIRECT TESTIMONY OF JIM NORTON
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18 I. INTRODUCTION

19 The greenhouse gas (GHG) reporting rules proposed today are an important part of New
20 Mexico's effort to address climate change. The rules will provide accurate and consistent data
21 about GHG emissions and can serve as the foundation for the implementation of a regional
22 and/or national cap-and-trade system to reduce GHG emissions economy-wide.

23 My testimony has several purposes: (1) to explain Governor Richardson's support for the
24 regional initiative which led to the development of these rules; (2) to explain how the rules fit
25 into the broader context of New Mexico's effort to control GHG emissions, and (3) to discuss the
26 Department's harmonization of the proposed rules with the recently finalized U.S. Environmental
27 Protection Agency ("EPA") rule which requires reporting of GHG emissions.

28 II. BACKGROUND

29 The rules being considered today are another step in the policy direction established by
30 Governor Richardson in 2005 to reduce GHG emissions in New Mexico. To understand the
31 importance of these rules, it is necessary to describe their place in the Governor's effort to reduce
32 GHG emissions and to protect New Mexico from the impacts of climate change.

1 **A. 2005 EXECUTIVE ORDER**

2 In June 2005, Governor Richardson issued Executive Order 2005-033, "Climate Change
3 and Greenhouse Gas Reduction". NMED-Norton Exhibit 1. In the Executive Order, the
4 Governor emphasized the need for New Mexico to address GHG emissions. Scientists concur
5 that GHG emissions already are causing adverse effects to the global climate, and that these
6 effects will intensify over the coming years unless immediate action is taken. Recognizing this
7 scientific consensus, as well as the potential impact of climate change on New Mexico, Governor
8 Richardson established aggressive goals to reduce New Mexico's GHG emissions - 2000 levels
9 by 2012, 10% below 2000 levels by 2020, and 75% below 2000 levels by 2050.

10 **B. 2006 EXECUTIVE ORDER**

11 In December 2006, Governor Richardson issued Executive Order 2006-69, "New Mexico
12 Climate Action". NMED-Norton Exhibit 2. The Governor directed state agencies, including the
13 Environment Department, to implement measures to reduce GHG emissions. Relevant to this
14 hearing, the Department was ordered to "work with other states and the federal government, as
15 appropriate, to evaluate the effectiveness and feasibility of a mandatory market-based emission
16 reduction program with a regional or national scope", and to submit to this Board a proposal for
17 a GHG reporting mechanism. As a result of this Executive Order, New Mexico became a
18 founding member of the Western Climate Initiative, and in 2007 this Board adopted one of the
19 most comprehensive GHG reporting programs in the country at the time.

20 **C. 2009 EXECUTIVE ORDER**

21 In December 2009, Governor Richardson signed Executive Order 2009-047 "Establishing New
22 Mexico as a Leader in Addressing Climate Change". NMED-Norton Exhibit 3. The Governor
23 ordered state agencies to ramp up their efforts to combat climate change, including an order to

1 the Department "to continue to participate in the Western Climate Initiative to develop a regional
2 greenhouse gas emission reduction program that addresses the unique characteristics of New
3 Mexico." The Department continues to represent New Mexico as an active member in the WCI,
4 and the Department's proposal today is in direct response to the Governor's Executive Order.

5 **D. WESTERN REGIONAL CLIMATE ACTION INITIATIVE**

6 In February 2007, Governor Richardson joined the Governors of Arizona, California,
7 Oregon, and Washington in signing the Western Climate Action Initiative ("WCI"). NMED-
8 Norton Exhibit 4. This historic agreement established a collaboration of states that pledged to
9 work together to reduce GHG emissions in the western region of the United States. In two and a
10 half years, the effort has gained momentum. The States of Utah and Montana, and the Canadian
11 Provinces of British Columbia, Manitoba, Ontario, and Quebec have joined, and several
12 additional states and provinces have become observers.

13 WCI's objectives are ambitious and significant. These objectives include:

- 14 • Establishing a region wide goal to reduce GHG emissions by August 2007; the goal
15 has been set at 15% below 2005 levels by 2020;
- 16 • Establishing a regional market-based emissions reduction program covering a
17 significant part of the regional economy by August 2008; and
- 18 • Participating in a multi-state registry that tracks and manages the reduction of GHG
19 emissions.

20 Beginning in Spring 2007, the WCI Partner jurisdictions worked collaboratively, with
21 input from stakeholders, to design the cap-and-trade program. Committees were established to
22 examine the design issues in detail and provide recommendations to the Partner jurisdiction
23 representatives. The WCI Reporting Committee was charged with developing the Essential

1 Requirements for Mandatory Reporting, a uniform system of emissions reporting requirements to
2 support the cap-and-trade program. The statutory authority to implement reporting regulations
3 exists individually within each of the WCI states and provinces. In New Mexico that authority
4 resides with the Board which, as I shall describe in more detail shortly, has the authority to
5 require reporting of GHGs and other air contaminants.

6 The state of New Mexico and other WCI partners believe that a key design principle for
7 development of the emissions reporting system is that the system must "[assure] a transparent
8 and robust accounting system that will measure and report emissions rigorously and consistently
9 across all sectors and throughout the region." Consistent measurement across all the sectors and
10 jurisdictions was considered important because each ton of emissions may translate directly into
11 a financial obligation or benefit for programs implemented by the EIB and comparable decision
12 making bodies in the other WCI states and provinces. Consistent and uniform emissions
13 measurement across jurisdictions also ensures equity among reporters, who may be participating
14 in a common allowance trading market. Stakeholders emphasized to WCI the need for
15 consistent reporting requirements to avoid a burdensome patchwork of different requirements
16 across the multiple jurisdictions in which they have facilities.

17 In September 2008, the WCI released a paper, "Design Recommendations for the WCI
18 Regional Cap-and-Trade Program", which outlined key elements of the program design.
19 Included were several elements that needed to be taken into account in development of the
20 Essential Requirements for Mandatory Reporting, including:

- 21 1. The target date for the beginning of the first compliance period of the cap-and-
22 trade program, when covered sources will need to hold allowances, is January 1,
23 2012. Commencement of measurement and monitoring of GHG emissions should

1 begin in 2011, with emissions for that year to be reported in 2012. There was
2 considerable stakeholder support for beginning the reporting before the first
3 compliance period, to allow a startup period for the reporting and to provide
4 emissions information that could inform the setting of allowances prior to the
5 compliance period.

6 2. The emissions threshold for sources to be covered by the cap should be 25,000
7 metric tons CO₂ equivalent (CO₂e), but for emissions reporting should be 10,000
8 metric tons CO₂e. The threshold for reporting should be lower than the threshold
9 for the cap in order to detect any future significant increases in the number of
10 uncapped sources, and so that uncapped sources with increasing emissions might
11 consider their future coverage under the cap. The 25,000 metric ton threshold is
12 also found in the final 2009 U.S. EPA reporting rule.

13 3. Emissions reports from sources covered by the cap should be third-party verified
14 to ensure accuracy. New Mexico and other Partners recognized that in the context
15 of a cap-and-trade program, a much higher level of scrutiny of emissions reports
16 and supporting data was needed than in traditional compliance inspections for
17 most sources, where the key issue in regard to emissions is whether a limit has
18 been exceeded. Because every ton of emissions above or below the cap may
19 translate into financial obligation or benefit, third-party audits by accredited
20 bodies without serious conflict of interest are needed. Voluntary GHG emissions
21 registries such as the California Climate Action Registry and its successor The
22 Climate Registry have established third-party verification as the “gold standard”
23 for quality assurance in emissions reporting.

1 In July 2009 the WCI released the Essential Requirements of Mandatory Reporting to
2 assure reporting requirements across Partner jurisdictions were consistent. In September 2009,
3 the EPA finalized the Mandatory Reporting Rule for GHG emissions. To minimize the reporting
4 burden in the U.S., the WCI harmonized the 2009 WCI Essential Requirements with the EPA
5 Reporting Rule so that a facility will be able to submit a single report satisfying both the WCI
6 Partners' requirements and the EPA rule. Because the EPA reporting rule is not designed to
7 support a cap-and-trade program, it includes a range of quantification and measurement methods.
8 In some cases, the WCI Partners' specifications require the more rigorous methods among the
9 options included in the EPA rule in order to achieve the accuracy required in the WCI Partners'
10 program.

11 New Mexico and other WCI jurisdictions are continuing to work on the development of
12 requirements for additional source categories not included in this first set of requirements. Chief
13 among these are oil and gas production, natural gas processing, and natural gas transmission and
14 distribution, which are significant sources of GHG emissions in some WCI Partner jurisdictions
15 including New Mexico. In April 2010, EPA released re-proposed requirements for GHG
16 emissions reporting for oil and gas operations. To support the EPA's effort to require reporting in
17 this sector and to align EPA reporting requirements with WCI Partner needs, the WCI Partner
18 jurisdictions evaluated the proposed rule and submitted extensive comments to EPA. WCI
19 Partner jurisdictions will review EPA's final reporting rule for the oil and gas sector and
20 determine its appropriateness for a regional cap-and-trade program. We anticipate this work to
21 be complete sometime next year.

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2 **E. PUBLIC INVOLVEMENT**

3 The WCI Partners sought stakeholder comment at several stages in the development of
4 their design recommendations and of the Essential Requirements for Mandatory Reporting, and
5 carefully considered and responded to comments. NMED-Norton Exhibit 5.

6 **F. DEPARTMENT OUTREACH REGARDING WCI**

7 In 2007 and 2008 the Department held eight public meetings to inform New Mexicans
8 and get their feedback on the Western Climate Initiative and the development of the Design
9 Recommendations for the Regional Cap-and-Trade Program. NMED-Norton Exhibit 6. At each
10 of these meetings there was discussion about the WCI reporting requirements and the public was
11 provided with web addresses for additional sources of information. While all these meetings
12 took place in Santa Fe, each was accessible telephonically and each had PowerPoint slides
13 available to the public during and after the meeting. The primary mechanism for meeting
14 notification was through electronic mail. The Department's GHG distribution list has over 900
15 recipients interested in climate changes issues.

16 Additionally, since Summer 2007 representatives from the Governor's Office and
17 Department have given twenty presentations in New Mexico on the state's climate change
18 initiative including the WCI and the mandatory reporting program. The audiences included
19 tribal entities, industrial sources and organizations, legislative committees, and environmental
20 groups. Most recently, the Department held six open houses and poster sessions around the state
21 to inform the public about both the proposed reporting and cap-and-trade rules. Lastly, the draft
22 rules were released on July 8 for informal public comment in addition to the 60 day public

1 comment period in advance of this hearing. The state has made a concerted effort to inform the
2 public about the work of the WCI including the development of the reporting requirements.

3 **III. STATUTORY AUTHORITY**

4 In 2007, the Board determined that it had the statutory authority to adopt GHG inventory
5 and reporting rules. *See* 20.2.73 & 87 NMAC.

6 ○ Greenhouse gases are "air contaminant[s]". The Air Quality Control Act ("Act"),
7 §74-2-2(A), defines "air contaminant" as "a substance, including any particulate
8 matter, fly ash, dust, fumes gas, mist, smoke, vapor, micro-organisms, radioactive
9 material, any combination thereof or any decay or reaction product thereof." This
10 definition is broad enough to include GHG.

11 ○ The Board may adopt regulations to prevent or abate air pollution. The Act, §74-
12 2-5(B)(1), authorizes the Board to adopt regulations to "prevent or abate air
13 pollution...within the geographic area of [its] jurisdiction." GHG emissions
14 constitute air pollution which the Board may prevent or abate by adopting
15 regulations.

16 ○ The Board has general authority to require GHG reporting. The Board's general
17 authority to prevent and abate air pollution authorizes the adoption of
18 requirements for GHG reporting and registry in order for the state to develop
19 reduction strategies.

20 ○ The Board has specific authority to require GHG reporting. The Act, §74-2-
21 5(C)(5), authorizes the Board to "require any person emitting any air contaminant
22 to...(c) establish and maintain records of the nature and amount of emissions; (d)
23 submit reports regarding the nature and amounts of emissions and the

1 performance of emission control devices; and (e) provide any other reasonable
2 information relating to the emission of air contaminants.”

3 **IV. EPA REPORTING RULE**

4 The Preamble of EPA’s 2009 rule for the Mandatory Reporting of Greenhouse Gases
5 clearly states that the rule is designed to meet the limited purpose of satisfying the requirements
6 of the Appropriations Act, which require the development of a reporting system that would
7 generate data to inform a wide range of possible future programs. EPA recognizes the need for
8 different reporting requirements to support other programs, including state and regional GHG
9 programs. The rule explicitly does not preempt other GHG programs, including state and
10 regional programs. Although the rule requires sources to report directly to EPA, the EPA stated
11 that it will work with state and regional programs on data access and sharing with other
12 programs. NMED-Norton Exhibit 7. The Department has been an active participant on the EPA
13 Integrated Planning Team, which is developing the EPA GHG reporting tool and database.

14 New Mexico, the other WCI Partners, and the majority of stakeholders agree that double
15 reporting burdens at the federal and state levels should be avoided to the extent possible. For this
16 reason, the Department postponed implementation of the WCI Essential Requirements until this
17 year. The Board may recall that after EPA released the final reporting rule in September 2009,
18 the Department withdrew its petition because it would have imposed double reporting burdens
19 on facilities covered by the EPA rule. Over the past year the Department and other WCI Partners
20 have studied the EPA rule closely and evaluated its requirements to determine whether they were
21 sufficient to support a cap-and-trade system.

22 This evaluation has resulted in the WCI’s “Harmonization of Essential Requirements for
23 Mandatory Reporting in U.S. Jurisdictions with EPA Mandatory Reporting Rule”, to be released

1 in August 2010. The Department's proposed rule before you today is consistent with this
2 document. While the Department had hoped to have these rules in place last year, it delayed
3 efforts to limit the burden of duplicative reporting on industry. Moreover, while it is certain that
4 EPA will periodically make adjustments to their reporting requirements, the Department is
5 committed to working with the WCI and this Board to make the necessary adjustments to assure
6 that accurate emissions reporting imposes the minimal added burden for affected sources.

7 **IV. CONCLUSION**

8 The proposed rules are clearly within the Board's authority to require reporting of air
9 contaminants and will provide valuable information about the sources of global warming
10 pollution in New Mexico. Given the long lead time between the establishment of reporting
11 requirements and the availability of data from the first year of reporting, the proposed rules
12 should become effective by January 1, 2011, which means that the regulations must be filed with
13 the State Records Center no later than December 1, 2010.