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RE: NMED and EMNRD draft rules regulating waste, volatile organic compounds and oxides of nitrogen – methane emission reduction

Dear Commissioners:

Thank you for the opportunity to comment on the proposed rules relating to methane reduction through the regulation of waste, volatile organic compounds, and oxides of nitrogen.

Climate change is an issue of utmost importance to the people of New Mexico, which is why members of the Legislature and I have focused tremendous resources and time to address the effects of climate change. With the rollback of the federal rules regulating methane emissions, it is now up to New Mexico to ensure that we protect our environment in a way that reasonably considers the cost of compliance by the oil and gas industry.

Minimize Carve-outs. I urge you to take care in the crafting of these regulations to ensure that none of the rules and regulations adopted inadvertently allow the vast majority of the wells in

New Mexico to escape regulation. Specifically, I urge you to reconsider the exemptions for stripper wells and the 15 tons per year pollution threshold for volatile organic compounds presently in the draft rules. By one estimate I have seen, these two exemptions combined would exempt 95% of all wells in New Mexico. While it is important to consider the cost of compliance for smaller stripper wells, I believe that the overriding concerns of public health and climate change force the adoption of regulations that will result in substantial reductions in methane emissions from stripper wells. I also believe that this goal can be achieved in a way that provides for economic viability of stripper wells without subjecting public health to further risk.

Frequent Inspection of High Producing Well Sites. The research shows that great gains in methane reduction can be achieved by identifying and eliminating sites that are "super-emitters." I urge you to consider monthly inspections and leak detection and repair requirements for high producing well sites and for sites that have been found to have emitted large amounts of methane.

Move to Eliminate Pneumatic Devices. The use of pneumatic devices in the oil industry is a common practice to help regulate fluids, pressure, and temperature. While the benefit to industry of these devices is understood, it is also clear that public health pays a price for their use. Pneumatic devices routinely leak small amounts of methane continually and often fail, which results in significant methane emissions. Electric devices are a better alternative to pneumatic ones, and we should adopt rules that incentivize the industry to switch to electric devices. While access to electricity has been an issue in the oil and gas fields, the departments can easily establish means to encourage industry to solve this issue with utility companies or private companies that readily offer solar-powered solutions to oil field needs. Additionally, the rules should consider requiring "zero-bleed" or zero emission pneumatics within a reasonable time frame, regardless of whether a site has access to electricity. If a company still chooses to use pneumatic devices, it makes sense to extend leak detection and repair requirements to these pneumatic devices.

Use Incentives. I urge you to maximize the use of incentives in the rules to encourage companies to use best practices at all times and self-identify issues. For example,

- Amend the New Mexico Civil Penalty Policy to encourage better self-reporting of issues in a manner that allows persons that conduct, in good faith, voluntary environmental or health and safety audits of regulated facilities and operations to receive reduced (or eliminated) regulatory liability from administrative penalties for violations discovered, disclosed, and corrected within a reasonable amount of time as is done in Texas;[1]
- Incentivize companies that have shut down wells temporarily to reopen after a full leak detection and repair process has occurred; and/or
- Incentivize companies that have shut down wells to install zero-bleed equipment upon restart that replaces pneumatic equipment.

[1] Texas Environmental, Health, and Safety Audit Privilege Act, https://www.crgtexas.com/2018/03/05/texas-environmental-health-safety-audit-privilege-act/

Ensure sufficient and appropriate Tribal consultation. As described in the Methane Advisory Panel report, a number of promising methane reduction technologies and work processes can either harm or benefit Tribal communities, lifeways, and cultural properties. In the process of rulemaking, agencies should consider how regulatory options could harm or benefit Tribal communities, lifeways, and cultural processes, and where possible should require options to be implemented in ways that will reduce harmful effects or secure co-benefits for Tribal Communities, lifeways, and cultural properties. The agencies should consult with Tribes and with the NM Indian Affairs Department to identify potential co-benefits and harms.

Native communities experience unique and disproportionate harms from oil and gas production. As sovereign nations, government-to-government consultation under federal and state laws and policies are required. See New Mexico State-Tribal Collaboration Act, NMSA 11-18-1 et seq.; Consultation and Coordination with Indian Tribal Governments, Exec. Order 13175 (Nov. 6, 2000). Tribal communities, lifeways, and cultural properties are also protected by numerous federal and state laws. See e.g., New Mexico Cultural Properties Act, NMSA 18-6-1 et seq.; National Historic Preservation Act, 54 U.S.C. § 302706.

It is important to ensure that the perspectives of Tribal communities are considered and included in the rules.

Respectfully submitted,

Brian Egolf