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Sheila Apodaca

Commission Clerk

Delivered via email: occ.hearings@emnrd.nm.gov

RE: Public Comment on Class VI Primacy Rules

Dear Ms. Apodaca,

We support New Mexico's efforts to gain Class VI primacy and Energy, Minerals and Natural Resources' comprehensive effort to develop these regulations. In response to the Class VI Primacy Rules, we would like to submit this comment for the record. ExxonMobil, as a member of NMOGA, supports their comment on a non-technical basis, but we submit the following outline of technical comments on our own behalf.

We have submitted four Class VI permits and have two currently under review in other states with primacy. Our experience deploying CCS projects has allowed ExxonMobil to participate in rulemaking for several states as they pursued Class VI primacy. We encourage OCD to focus on a streamlined and consistent process to enable advancement and enablement of CO_2 injection for storage.

I. CLASS VI PRIMACY RULES: Comment Outline Notice - an expansive notice/AoR-plus-buffer requirement that will increase costs and litigation exposure
   a. Citations:
      i. 19.15.41.7(D)
      ii. 19.15.42.7(C)
      iii. 19.15.42.11(A)(5)(h)
   b. Issues:
      i. An expanded notice area beyond the delineated AOR will include parties that will not be affected by the Class VI project. This could invite participants into the Class VI application process who are not impacted by the application. Modeling and monitoring plans submitted as part of the

Class VI application will provide indication on whether the AOR requires modification.

ii. Expanding area with ¼ mile buffer will greatly increase title search timeline and costs.

iii. 19.15.42.11(A)(5)(h) only identifies "property owners" as the parties who must have names and addresses provided to OCD. This definition is vague and is likely overly expansive compared to other jurisdictions.

iv. Depending on the area of NM, OCD would need to mail possibly hundreds of notices under this standard.

c. Recommendation: Clearly identify notice requirements to explicit owners listing surface owners, mineral owners, Lessees, and operators of wells and limit notice to these owners within the AoR. This improves clarity on the requirement, achieves a process which notices the right persons, and aligns/matches the standard in other jurisdictions.

II. Hearings - a public hearing framework that lacks meaningful standing requirements and invites obstructionist participation

a. Citations:
   i. 19.15.41.8(F)
   ii. 19.15.41.8(G)(1)

b. Issues:
   i. The proposed rules lack an effective filter to limit hearings to those persons who may be affected by a proposed Class VI project, since as drafted, the standard of "interested person" would currently include anyone, including advocacy groups with no property rights, no geographic connection, and would suffer not particularized injury, enabling them to have standing to challenge a Class VI permit. This will potentially create undo burden on the agency to address non-productive comments on Class VI proposed projects.
   ii. The threshold of a hearing being granted when a Director "… finds… a significant degree of public interest…" further exacerbates the above issue.

c. Recommendations:
   i. Adopt an "affected person" standard in which only parties who can demonstrate a particularized injury or economic damage have standing to trigger a contested hearing.
   ii. Specific differentiation between interested person and affected person, as well as delineation between public meeting and contested hearing and who can participate in each.

III. Compressed timelines — particularly around AoR reevaluation and permit validity — that are tighter than all other jurisdictions

   a. Citations:
      i. 19.15.41.8(H)(2)
      ii. 19.15.43.9(E)(2)(b)(i)
      iii. 19.15.43.9(E)(5)
      iv. 19.15.43.9(K)(12)
   b. Issues:
      i. The two-year construction permit validity timeframe may be problematic for CCS projects, as the construction timeline can sometimes stretch beyond the two-year period. Companies who have invested significant capital in construction would face uncertainty when depending on extensions at the OCD's discretion.
      ii. The proposed initial AOR reevaluation after two years is sooner than other jurisdictions, which typically require AOR reevaluation after five years of injection. More frequent reevaluation will increase monitoring costs, affect operational timelines, and may be at frequency too small to allow for appropriate learning cycles.
      iii. Similar comments and logic apply to the testing and monitoring review, which is currently proposed on a two-year cycle to match the AOR reevaluation. While consistent timing requirements for AOR reevaluation and testing and monitoring review is a recommended basis, the timeline should be extended.
   c. Recommendation: The construction period should be extended to a minimum of five years and the AOR reevaluation timeline and testing and monitoring review should be extended to five years to match other jurisdictions.

IV. Monitoring mandates - go well beyond what EPA or other primacy states require

   a. Citations:
      i. 19.15.43.9(K)(8)
      ii. 19.15.43.9(K)(10)
      iii. 19.15.43.9(I)(5)(e)
   b. Issues:
      i. Mandatory soil gas monitoring goes beyond EPA and other state requirements. This will impose additional capital and operating costs on every project regardless of site-specific risk factors and does not further derisk Class VI projects.
      ii. Mandatory seismic monitoring also goes beyond the EPA standard. At a minimum "Confinement efficiency" would need to be defined.

   iii. The mandatory emergency shutdown system test is not found in the EPA rules nor is it found in any other primacy jurisdictions.

  c. Recommendation: Soil gas and seismic monitoring should be recommended by the applicant and as justified by the Operator and site-specific risk analysis. Additionally, mandating a 6 month cadence for emergency shutdown system testing is unnecessary, as operators test emergency systems at sufficient intervals outlined in ISA-84.

V. Restriction on Automatic Transfer of Permits – a modification process is required for a permit to transfer.
  a. Citation:
     i. 19.15.42.11(G)(2)
     ii. 19.15.42.12(A)(12)(c)
  b. Issues:
     i. The limitation on transfer will create significant complications for the sale of projects, joint ventures, and corporate reorganizations, particularly if the modification process would require public notice and comment period. Combined with the low hearing threshold, this would allow unaffected parties to contest the transfer of a project to qualified operators.
  c. Recommendation: Other jurisdictions allow for the transfer of a permit upon notice. To enhance industry and activity in New Mexico it is encouraged to match that standard.

Thank you for your time and attention to our input to your implementation of Class VI in New Mexico. Please feel free to contact me if you would like to discuss our comments.

Sincerely,

DocuSigned by:
DAVID CHEN
09BE43AEB5CE414...

David Chen

CCS Business Interface Manager

ExxonMobil Low Carbon Solutions

cc: Mr. Benjamin Bajema