

**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED  
ADOPTION OF 20.2.92 NMAC –  
*Clean Transportation Fuel Program***

**No. EIB 25 - 23(R)**

---

**Pre-Hearing Order**

---

On June 10, 2025, the Environmental Improvement Board (“Board”) ordered that the hearing in this matter will begin on September 22, 2025, at 9:00 am through October 3, 2025, resuming at 9:00 am on November 17, 2025 and continue as long as required to hear all testimony, evidence, and public comment. *See* Order Scheduling Hearing on Petition and Hearing Officer Appointment, entered June 10, 2025.<sup>1</sup> The Board also designated Felicia Orth as the Hearing Officer. *See id.* On July 8, 2025, the Hearing Officer, Board Administrator, and all parties that have entered an appearance in the matter as of July 7, 2025, participated in a pre-hearing conference to discuss procedures ahead of the hearing in this matter. Having reviewed the Board’s Order Scheduling Hearing on Petition, and Hearing Officer Appointment, the file, and calendar, along with consultation of all entered parties during the pre-hearing conference, the Hearing Officer orders as follows:

1. Public notice of the hearing was published in the New Mexico Register on June 24, 2025, and is available at <https://www.srca.nm.gov/wp-content/uploads/2025/06/xxxvi12.pdf>. The dates and requirements in the public notice apply to this proceeding, in addition to the dates and requirements established in this Pre-Hearing Order, read together with the requirements set forth

---

<sup>1</sup> The Board issued a revised order on June 12, 2025 to update the location of the hearing. *See* Order Scheduling Hearing on Petition, and Hearing Officer Appointment, entered June 12, 2025.

in 20.1.1 NMAC.

2. The deadline for entries of appearance filed pursuant to 20.1.1 NMAC shall be no later than September 2, 2025.

3. The deadline for Notice of Intent to Present Technical Testimony (“NOI”) filed pursuant to 20.1.1 NMAC is September 2, 2025. NOIs shall include a full narrative of anticipated direct testimony and all exhibits other than PowerPoint presentations or other demonstrative exhibits, among other information, which shall include:

- a. identify the party for whom each witness will testify;
- b. identify each technical witness the party intends to present and state the qualifications of that witness, including a description of their educational and work background;
- c. include a copy of the direct testimony of each technical witness in narrative form;
- d. include the text of any recommended modifications to the proposed regulatory change; and
- e. list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

4. NOIs and other documents submitted to the Board Administrator shall be filed electronically and served electronically on all parties reflected on the service list maintained by the Administrator, in accordance with the public notice. The requirement in 20.1.1.200(B)(1) NMAC to provide an original document with several paper copies is waived, except one paper copy shall be filed for the Hearing Officer, which may be hand-delivered or mailed within a day after the electronic filing.

5. The technical witnesses for each party shall not read their narrative testimony from the NOI but offer a summary of their direct testimony not to exceed 30 minutes, unless otherwise authorized by the Hearing Officer.

6. The filing of rebuttal NOIs is important, as it will assist the Board members in their deliberations following the hearing and will allow all parties to focus their efforts for the final week of the hearing more precisely on contested issues. In order to streamline presentation of witnesses during the first two weeks of the hearing, provide time for review of the original NOIs, and provide time for preparation of rebuttal NOIs, any party wishing to present rebuttal technical testimony must file and serve a rebuttal NOI by noon on November 7, 2025, in the same manner as the original NOI. A rebuttal NOI must include the full narrative of rebuttal testimony and the other required elements in the direct NOI shown above in paragraph 3. A rebuttal NOI shall be limited to addressing the evidence presented by other parties during their direct case and not otherwise be new information. Rebuttal testimony will be heard when the hearing resumes on November 17, 2025, as discussed during a pre-hearing conference and ordered by the Hearing Officer. Surrebuttal is strongly disfavored and will be allowed only in the Hearing Officer's discretion, and only if it is responsive to rebuttal, not direct testimony.

7. For rebuttal, the technical witnesses for each party shall not read their narrative testimony from the NOI but offer a summary of their rebuttal testimony not to exceed 15 minutes, unless otherwise authorized by the Hearing Officer.

8. The Hearing Officer will make time for non-technical public comment each day of the hearing in a manner that accommodates the public. This may require interrupting the technical testimony from time to time. Public comment sessions will be expressly reserved at 1 p.m. on September 22, 2025, and each hearing day thereafter. Other than the 1 p.m. public comment

sessions on Monday, September 22 and Monday, November 17, 2025, each session will not exceed an hour, or the time necessary to accept comment from all who are present to offer it, whichever is shorter. Members of the public wishing to offer non-technical public comment may do so once. For the 1 p.m. public comment sessions a commenter may comment either in person or on the virtual platform without video. In addition to the 1 p.m. sessions each day of hearing, public comment may be offered on the virtual platform only beginning at 6 p.m. on September 22, September 29, and November 17. Those wishing to comment may be invited but will not be required to sign up for the time slot they wish to speak in. Oral public comment is limited to three minutes, just once; anyone wishing to offer additional comment may submit written public comment to the Board Administrator; see paragraph 9. Although any person who testifies at the hearing is subject to cross-examination on the subject matter of their direct testimony and matters affecting their credibility, the parties are encouraged to limit such cross-examination of non-technical witnesses, including the public, to avoid harassment, intimidation, needless expenditure of time or undue repetition.

9. Written public comment submitted to the Board Administrator is unlimited and must be received prior to adjournment of the hearing. Written public comment may be submitted electronically or as a single original document. The requirement in 20.1.1 NMAC to provide an original and several paper copies of non-technical comment or materials is waived.

10. Dispositive motions must be filed and served by September 2, 2025; responses are due by September 12, 2025; and replies will be heard at the beginning of the hearing on September 22, 2025.

11. Other opposed prehearing motions, including motions *in limine*, must be filed and served by September 12, 2025; responses are due by September 17, 2025; and replies will be heard at the beginning of the hearing on September 22, 2025.

12. PowerPoint presentations and other demonstrative exhibits shall be shared with the other parties, the Hearing Officer, and the Administrator by noon on September 19, 2025 for direct testimony and by noon on November 14, 2025 for rebuttal testimony. A Dropbox link or other information may be sent to the parties prior to that date in order to facilitate the sharing of large files. This will allow for review by all parties and the members of the Board prior to the hearing.

13. Petitioner will make its presentation first, followed by parties generally supportive of the rule and continuing to parties generally not supportive of the rule or in opposition to the rule. The order of presentation by other parties will be decided during a pre-hearing conference prior to hearing. Presentation of cases may be considered by self-identified aligned parties, including coordination of presenting witnesses. The Hearing Officer retains discretion to deviate from the schedule, taking witnesses or issues out of order, as necessary based on circumstances or time constraints that arise during the hearing.

14. Opening statements shall be 20 minutes or less. Each party may choose whether to offer its opening statement at the beginning of the hearing, at the beginning of the presentation of that party's witnesses or waive the opening statement.

15. Any party may present its witnesses for some or all of its presentation as a panel of no larger than four persons. If witnesses testify as members of a panel, clarifying questions and cross-examination will occur only after all panel members have testified. The Board members may ask clarifying questions and cross-examine individual witnesses or witness panels at the conclusion of all direct testimony by individual witnesses or witness panels. Thereafter, cross-

examination by the parties will be in reverse order of their direct testimony, with each party or set of self-identified aligned parties to keep cross-examination to 30 minutes or less for each technical witness. Each party or set of aligned parties is expected to prepare cross-examination based on individual witnesses and cannot combine the time for a cumulative cross-examination time when witnesses sit as a panel. Although technical witnesses are subject to cross-examination on the subject matter of their direct testimony and matters affecting their credibility, the parties are encouraged to coordinate and limit cross-examination of technical witnesses to avoid harassment, intimidation, and needless expenditure of time of undue repetition. At the conclusion of cross-examination, a party may redirect its technical witnesses for 10 minutes or less for each technical witness.

16. The provisions of paragraph 15 shall apply to rebuttal testimony except the time limit for cross-examination shall be 15 minutes or less and for redirect 10 minutes or less.

17. The Hearing Officer maintains authority to limit or expand the time limits on direct testimony, cross-examination, and rebuttal testimony, at her discretion to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome.

18. Witnesses may testify in-person or, with advance notice to the Hearing Officer, virtually.

/s/ Felicia Orth

Felicia Orth

Hearing Officer

## **CERTIFICATION OF SERVICE**

I hereby certify that on July 15, 2025, a copy of the foregoing was sent via electronic mail listed below, and a hard copy will be mailed upon request:

Eduardo Ugarte  
New Mexico Department of Justice  
[eugarte@nmdoj.gov](mailto:eugarte@nmdoj.gov)  
*Counsel for the Environmental Improvement Board*

New Mexico Environment Department  
Zachary Ogaz, General Counsel  
Dylan Villescas, Assistant General Counsel  
Kelly Villanueva, Assistant General Counsel  
[zachary.ogaz@env.nm.gov](mailto:zachary.ogaz@env.nm.gov)  
[dylan.villescas@env.nm.gov](mailto:dylan.villescas@env.nm.gov)  
[kelly.villanueva@env.nm.gov](mailto:kelly.villanueva@env.nm.gov)

and

ROBLES, RAEL & ANAYA, P.C.  
Marcus J. Rael, Jr.  
Jessica L. Nixon  
Kelsea E. Sona  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)  
[jnixon@roblesrael.com](mailto:jnixon@roblesrael.com)  
[kelsea@roblesrael.com](mailto:kelsea@roblesrael.com)  
*Attorneys for the New Mexico Environment Department*

Charles de Saillan  
[desaillan.ccae@gmail.com](mailto:desaillan.ccae@gmail.com)

and

Cara R. Lynch  
[Lynch.cara.nm@gmail.com](mailto:Lynch.cara.nm@gmail.com)  
*Attorneys for Coalition for Clean Affordable Energy*

Dalva L. Moellenberg  
Anthony J. Trujillo  
Samantha Catalano  
Serafina Seluja  
[dln@gknet.com](mailto:dln@gknet.com)  
[AJT@gknet.com](mailto:AJT@gknet.com)  
[Samantha.catalano@gknet.com](mailto:Samantha.catalano@gknet.com)  
[Serafina.seluja@gknet.com](mailto:Serafina.seluja@gknet.com)

*Attorneys for New Mexico Oil and Gas Association & American Petroleum Institute*

Stuart R. Butzier  
Stan N. Harris  
P. O. Box 2168  
Albuquerque, NM 87103  
(505) 848-1800 / Fax (505) 848-9710  
[stuart.butzier@modrall.com](mailto:stuart.butzier@modrall.com)  
[stan.harris@modrall.com](mailto:stan.harris@modrall.com)  
*Attorneys for HF Sinclair Corporation*

Nicholas R. Maxwell  
[inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)

Bruce Wetherbee  
[editor@thecandlepublishing.com](mailto:editor@thecandlepublishing.com)

By: /s/ Pam Jones  
Pam Jones  
*Administrator for the Environmental  
Improvement Board*