

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED NEW REGULATION,
20.2.50 NMAC – *Oil and Gas Sector – Ozone Precursor Pollutants*

No. EIB 21-27 (R)

**MOTION TO STRIKE THE NATIONAL PARK SERVICE’S
TECHNICAL TESTIMONY SUBMISSIONS**

Pursuant to the Environmental Improvement Board’s (“Board”) rulemaking procedures at 20.1.1.307 NMAC, Petitioner the New Mexico Environment Department (“Department”) files this Motion to Strike the Summary of Technical Testimony, Technical Testimony Requirements, and Technical Comments (collectively “Notice of Intent” or “NOI”) of the National Park Service. As grounds for its Motion, the Department states as follows:

1. The Board’s procedural rules at 20.1.1.200(B)(2) NMAC require that any person filing a Notice of Intent to present technical testimony who is not the petitioner must serve a copy of the Notice of Intent on the petitioner. This requirement is important because it ensures that the Petitioner has timely notice of technical testimony submissions.

2. The National Park Service did not serve a copy of their NOI by any of the means specified in 20.1.1.200(C) NMAC, and did not include a Certificate of Service with their NOI affirming that the documents were served on the Department and the Board’s legal counsel. Department counsel learned of the submission of the NOI from viewing the docket on the Board’s website after the NOI was apparently stamped as received and posted by the Board Administrator, despite the lack of a Certificate of Service.

3. The Board’s procedural rules for technical testimony at 20.1.1.302(A)(4) require that an NOI “include a copy of the direct testimony of each technical witness *in narrative form*” (emphasis added). This requirement is important because the pre-filed testimony is intended as a

substitute for in-person testimony at the hearing. As such, it must be attributed to a witness and fully developed in complete narrative form to allow the other parties to fully comprehend the positions and analyses being presented so that they can fully and adequately rebut the testimony. The parties also need to know which witness the testimony is attributed to so that they can prepare and conduct cross-examination at the hearing.

4. The National Park Service included a “Summary of Technical Testimony” that is not attributed to any of the witnesses identified in its “Technical Testimony Requirements.” The National Park Service also submitted a PowerPoint titled “National Parks Service Technical Comments” that is not attributed to any particular witness, and is not in narrative form as required by the Board’s rulemaking procedures.

5. The Board’s rulemaking procedures at 20.1.1.302(A)(5) NMAC require that any person filing a NOI to present technical testimony “include the text of any recommended modifications to the proposed regulatory change.”

6. In its Technical Comments PowerPoint, the National Park Service recommends changes to the proposed rules, but does not include the text of the recommended modifications.

7. Striking the National Park Service’s technical testimony submissions will not prejudice the National Park Service, because there is still an opportunity to file rebuttal technical testimony. The Department suggests that the National Park Service repackage its submissions as rebuttal testimony and comply with the Board’s rulemaking procedures in any future filing.

8. The Department appreciates the National Park Service’s support for the proposed rules. However, the Department also has a significant interest in ensuring that the Board’s rulemaking procedures are properly followed so that the important purposes of those rules are served.

9. The Department notes that the National Park Service's submissions as posted on the Board's docket do not include a contact name, phone number, email address, or physical address, and therefore the Department cannot seek the position of the National Park Service on this Motion, and cannot serve the Motion on the National Park Service. No other parties have indicated their opposition to this Motion as of the time of filing.

For the reasons stated above, the Department requests that the National Park Service's technical testimony submissions be stricken from the record in these proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Strike the National Parks Service's Technical Testimony Submissions* was filed with the Environmental Improvement Board Administrator and served on the following via electronic mail on August 19, 2021.

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