

**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)**

PROCEDURAL ORDER

The Hearing Officer, Board Administrator, Board Counsel, and thirty-two party representatives participated in a ninety-minute pre-hearing teleconference on August 19, 2021, to discuss a number of hearing-related topics. The Hearing Officer reminded all parties to electronically serve all filings on everyone appearing on the Service List; provided a number to text in the event of an emergency during the hearing; noted a personal disclosure on behalf of the Board Chair; and noted that she would be discussing procedural matters related to the hearing with the Board at its next meeting, on August 27.

The Hearing Officer then walked through the provisions of a draft procedural order prepared by the Petitioner, and hereby enters this Procedural Order pursuant to the New Mexico Environmental Improvement Board's ("Board") rulemaking procedures at 20.1.1 NMAC and the Board's Order of Hearing Determination and Hearing Officer Appointment issued June 8, 2021.

Rebuttal: Any party planning to present direct rebuttal testimony at the hearing pursuant to 20.1.1.302 shall file a notice of intent to present direct rebuttal testimony, together with the full written testimony of each witness and a copy of each rebuttal exhibit, and a statement of witness' qualifications not previously submitted, no later than **September 7, 2021**.

Witness Lists: The Parties shall file witness lists and disclose the order in which they will call witnesses no later than **September 13, 2021**.

Briefing on Credible Evidence Provisions in Proposed Section 20.2.50.127: Parties wishing to raise legal issues regarding the provisions in Section 20.2.50.127 of the Department's proposed regulations shall file briefs on those issues by **September 13, 2021**. Briefs shall be limited to 10 pages in length and shall be restricted only to the provisions of Section 20.2.50.127. Any legal argument on Section 20.2.50.127 provided in technical testimony through a non-legal technical expert shall be excluded. This briefing deadline does not preclude any party from making the legal arguments it chooses as part of its post-hearing submittal.

Amendments: On or before **September 16, 2021**, the Department shall file any proposed changes to proposed Part 50 that will be presented at hearing. This deadline does not preclude the Department from final rule adjustments that may be proposed to the Board in its post-hearing submittal.

Hearing Date and Location: The hearing will commence **September 20, 2021**, and will continue day-to-day until completed. It is anticipated that the hearing will take 2 weeks. The hearing shall commence each day at 9:00 am, and shall be held on a virtual platform. Information regarding how to access the virtual hearing will be sent to the parties and posted on the Board's website by **September 16, 2021**.

Hearing Procedures: The hearing shall be conducted as follows:

1. **Opening Statements by Hearing Officer:** The hearing shall begin with an opening statement by the Hearing Officer identifying the nature and subject matter of the hearing and explaining the procedures to be followed.

2. Opening Statements by Parties: Parties that have filed a notice of intent to present technical testimony may make an opening statement at the beginning of the hearing or immediately prior to the presentation of their evidence, in their discretion. Parties' opening statements shall be limited to no longer than 15 minutes.

3. Order of Testimony: Testimony at the hearing shall be presented by issue, as set forth in a Schedule of Testimony that will be prepared following receipt of the parties' rebuttal NOIs. As the Petitioner, the Department will present first on each issue, followed by the other parties that have filed testimony on that issue, in an order to be determined following submission of the pre-filed rebuttal testimony. The Schedule of Testimony is intended as a guide, and the Hearing Officer retains discretion to deviate from that schedule, taking witnesses or issues out of order as necessary based on circumstances or time constraints that arise during the hearing.

4. Presentation of Testimony: Witnesses for parties that have filed Notices of Intent to provide technical testimony may summarize their direct and rebuttal testimony before standing for cross examination. Summaries of pre-filed technical testimony, encompassing both direct and rebuttal testimony, should not exceed a total of thirty (30) minutes per witness. This time limit does not include sur-rebuttal or cross-examination. In the event a party believes any topic requires longer to adequately summarize the voluminous testimony, that party should raise it for discussion with the Hearing Officer. Witnesses who will testify on multiple issues will be qualified and adopt their pre-filed direct and rebuttal testimony when they first testify, and need not do so again for each issue on which they provide testimony. The Hearing Officer shall hear and rule on any objections to the technical testimony and exhibits before entering the

written testimony and exhibits into the record. All witnesses who submit technical testimony shall be subject to cross examination by the other parties in the order determined by the Hearing Officer. A party shall be entitled to one re-direct of its witnesses, limited to the scope of cross examination.

5. Demonstrative Exhibits: Technical testimony not timely disclosed will not be admitted. PowerPoint presentations or other illustrative exhibits may be used at the hearing without having been attached to a Notice of Intent, so long as such presentations or demonstrative exhibits are based on technical testimony timely submitted, and copies of the presentation or demonstrative exhibit are provided to the Board and all other parties no later than the day before it is scheduled to be presented during the hearing.

6. Public Comment: At 9 a.m. on each day of the hearing except the first day, and at 1 p.m. and at 5 p.m. on each day the hearing proceeds through those times, the Hearing Officer will ask whether anyone in attendance desires to present non-technical public comment on the Petition. Commenters may comment once, and will not be time-limited in the absence of irrelevant or redundant commentary. The Hearing Officer will accept public comment from anyone present on the platform at those times, for up to 30 minutes each time; if the public comment does not fill 30 minutes, the Hearing Officer will return to the technical witnesses. Commenters may also submit public comment in writing to the Board Administrator through the close of the evidentiary hearing. The Hearing Officer in her discretion may also allow for public comment at other times during the hearing, including one or more longer sessions in the evening.

7. Change in Order of Testimony: The Hearing Officer may alter the order of testimony for good cause shown, as reasonably necessary to accommodate the schedules of witnesses and the parties.

Official Transcript of Proceedings: The hearing shall be transcribed by a certified court reporter in accordance with the Board's rules. The cost of transcribing the hearing shall be borne by the Petitioner in accordance with NMAC 20.1.1.403. Other parties wishing to purchase a copy of the transcript may go directly to the court reporter. The transcript also becomes a public record when filed with the Board Administrator.

Post-Hearing Submittals: Parties will be invited to file post-hearing submittals following the Board Administrator's receipt of the transcript. The post-hearing submittals may include, in each party's discretion, closing argument addressing the law and evidence, proposed findings and conclusions they would want to see in the Board's statement of reasons, and a final proposed draft of the rule they recommend for adoption by the Board. The Hearing Officer may be asked by the Board to prepare a report; the report will not include a recommendation on the merits of the Petition or any party's final proposal. The discussion of post-hearing deadlines will be held no later than the close of the hearing.

DATED this 25th of August, 2021.



Felicia Orth, Hearing Officer

Certificate of Service

I hereby certify that on August 26, 2021 a copy of the attached Procedural Order was emailed to the persons listed below. A copy will be mailed first class upon request.

Petitioner New Mexico Environment Department

Lara Katz, Assistant General Counsel
NMED Office of General Counsel
1190 St. Francis Drive
Santa Fe, New Mexico 87505
Lara.katz@state.nm.us

Andrew Knight, Assistant General Counsel
NMED Office of General Counsel
121 Tijeras Ave. NE, Suite 1000
Albuquerque, New Mexico 87102
Andrew.knight@state.nm.us

New Mexico Oil and Gas Association

Eric L. Hiser
Brandon Curtis
Jorden Hiser & Joy, PLC
5080 N. 40th St. Ste. 245
Phoenix, Arizona 85024
ehiser@jhjlawyers.com
bcurtis@jhjlawyers.com

Dalva L. Moellenberg
Gallagher & Kennedy, PA
1239 Paso de Peralta
Santa Fe, New Mexico 87501-2758
DLM@gknet.com

"Clean Air Advocates": Conservation Voters New Mexico, Diné C.A.R.E., Earthworks, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, 350 New Mexico, and 350 Santa Fe

Tannis Fox
Western Environmental Law Center
409 East Palace Avenue #2
Santa Fe, New Mexico 87501
fox@westernlaw.org

David R. Baake
Baake Law LLC
2131 North Main Street
Las Cruces, New Mexico 88001
david@baakelaw.com

Environmental Defense Fund

Elizabeth deLone Paranhos
Delone Law Inc.
1555 Jennine Place
Boulder, Colorado 80304
elizabeth@delonelaw.com

Center for Civic Policy and NAVA Education Project

Daniel Jaynes, clinical law student
Keifer Johnson, clinical law student
Gabriel Pacyniak, supervising attorney
Natural Resources & Environmental Law Clinic
University of New Mexico
1117 Stanford Dr NE
Albuquerque, New Mexico 87106
jaynesda@law.unm.edu
johnsoke@law.unm.edu
pacyniak@law.unm.edu

National Park Service

Lisa Devore, Air Quality Specialist, Intermountain Region
Lisa_devore@nps.gov
John Vimont, Branch Chief, Air Resources Division
John_Vimont@nps.gov

Wild Earth Guardians

Matthew A. Nykiel
3798 Marshal St., Ste. 8
Wheat Ridge, CO 80033
mnykiel@wildearthguardians.org

Daniel L. Timmons
301 N. Guadalupe Street, Ste. 201
Santa Fe, NM 87501
dtimmons@wildearthguardians.org

New Mexico Environmental Law Center

Charles de Saillan
New Mexico Environmental Law Center
1405 Luisa Street, Ste. 5
Santa Fe, New Mexico 87505-4074
cdesaillan@nmelc.org

Independent Petroleum Association of New Mexico

Louis W. Rose
Kari Olson
Ricardo S. Gonzales
Montgomery & Andrews, PA

P.O. Box 2307
Santa Fe, NM 87504-2307
(505) 982-3873
lrose@montand.com
kolson@montand.com
rgonzales@montand.com

Oxy USA Inc.

J. Scott Janoe
Baker Botts L.L.P.
910 Louisiana Street
Houston, Texas 77002
scott.janoe@bakerbotts.com

The Gas Compressor Association

Jeffrey Holmstead
Tim Wilkins
Whit Swift
Bracewell LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
jeff.holmstead@bracewell.com
tim.wilkins@bracewell.com
whit.swift@bracewell.com

Stuart R. Butzier
Christina C. Sheehan
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Post Office Box 2168
Albuquerque, New Mexico 87103-2162
srb@modrall.com
ccs@modrall.com

Kinder Morgan, Inc., El Paso Natural Gas Company, L.L.C., TransColorado Gas Transmission Co., LLC, and Natural Gas Pipeline Company of America, LLC

Ana Maria Gutierrez
Hogan Lovells US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202
ana.gutierrez@hoganlovells.com

Sandra Milena McCarthy
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW Washington, DC 20004
sandra.mccarthy@hoganlovells.com

“Commercial Disposal Group”: NGL Energy Partners LP, Solaris Water Midstream, Owl SWD Operating, LLC, Goodnight Midstream, LLC, and 3 Bear Delaware Operating—NM, LLC

Christopher J. Neumann
Gregory R. Tan
Casey Shpall
Counsel for NGL, Solaris, Owl and Goodnight
Greenberg Traurig, LLP
1144 Fifteenth Street, Suite 3300
Denver, CO 80202
neumannc@gtlaw.com
tangr@gtlaw.com
shpallc@gtlaw.com

Matthias L. Sayer
Additional Counsel for NGL Energy Partners LP
VP Legal – Regulatory Compliance
125 Lincoln Ave., Suite 222
Santa Fe, NM 87501
Matthias.Sayer@nglep.com

Christopher L. Colclasure
Counsel for 3 Bear Delaware Operating—NM, LLC
Beatty & Wozniak, P.C.
216 16th Street, Suite 1100
Denver, CO 80202
ccolclasure@bwenergyllaw.com

Solar Turbines, Inc.

Leslie Witherspoon, Manager, Environmental Programs
9330 Sky Park Court
MZ:SP3-Q
San Diego, CA 92123-5398
Witherspoon_leslie_h@solarturbines.com

Environmental Improvement Board Counsel

Karla Soloria
New Mexico Office of the Attorney General
P.O. Box 1508
Santa Fe, NM 87504
ksoloria@nmag.gov

Environmental Improvement Board Hearing Officer

Felicia L. Orth

Felicia.L.Orth@gmail.com

Pamela Jones Digitally signed by Pamela Jones
Date: 2021.08.26 12:30:18 -06'00'

Pamela Jones, Board Administrator
Environmental Improvement Board
1190 S. Saint Francis Dr., S-2104
Santa Fe, NM 87505
Phone: (505) 660-4305
Email: pamela.jones@state.nm.us