

Nicholas Maxwell

Please find my attached comments in PDF format, with attachments.

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION
UNIVERSAL WASTE SYSTEMS, INC.
FOR A SOLID WASTE FACILITY PERMIT
FOR BROADWAY TRANSFER STATION**

SWB 24-08

MAXWELL'S FINAL NON-TECHNICAL PUBLIC COMMENTS ON THE MATTER

I, Nicholas R. Maxwell, submit and preserve the following issues on the above matter:

I. Issue #1: UWS's Improper Exhibit Labeling and Admission.

I wish to highlight a significant procedural error regarding the admission of improperly labeled exhibits by Universal Waste Systems, Inc. (UWS) during the hearing for the permit in this matter. Despite my repeated communications to UWS's counsel, Mr. Cadigan, on April 1, April 13, April 15, April 17, and April 22, 2024 [Attachments 1-4], outlining my objections to his labeling of exhibits with letters instead of sequential numbers as mandated by 20.1.4.400.B(3) NMAC, these concerns were disregarded. Notably, in his response to me on April 15 [Attachment 2], Mr. Cadigan apparently viewed my objection as a motion in limine, further complicating the proceedings and misinterpreting my clear and straightforward objection.

The Hearing Officer erred during the hearing in deciding to overrule my objections and allow the admission of these improperly labeled exhibits contrary to previous standards enforced in similar permitting processes where exhibits were required to be sequentially numbered [Attachment 5]. This inconsistency not only impaired my ability to effectively participate in the hearing but also indicates a departure from established procedural norms. This decision to permit alphabetically labeled exhibits, despite clearly established regulations to the contrary, and the disregard for my repeated formal objections, can only be viewed as arbitrary and capricious.

This failure to adhere to mandated procedural rules has prejudiced my rights and undermined the fairness of the hearing process. It is imperative that this procedural flaw is recognized and corrected to ensure the integrity of the administrative hearing process. This comment is submitted to preserve the issue for judicial review.

II. Issue #2: Delayed Inspection of the Administrative Record and Undue Influence.

The Inspection of Public Records Act (IPRA) in New Mexico is a cornerstone of transparent governance, intended to empower citizens by ensuring prompt access to public records. This access facilitates informed participation in government affairs, which is fundamental for a functioning representative democracy. Despite this, the NMED exhibited a pattern of delays and conflicts of interest in handling an IPRA request related in this matter concerning the solid waste bureau, which directly contradicts the spirit and letter of the IPRA.

On April 3, 2024, I initiated an IPRA request for records pertinent to Docket Number SWB 24-08 [Attachment 6]. The urgency and necessity of accessing these records were clear, given their relevance to a public hearing where I was a registered intervenor. Despite this, the NMED's response was markedly delayed, culminating in a full 15-day waiting period before the provision of the requested Administrative Record (AR) [Attachment 7]. This delay is contrary to IPRA's stipulation for "immediate" access or access "as soon as practicable," especially when no substantial reason for delay was provided.

Adding to the concern, the involvement of the particular custodian in this process, who also served as counsel for the solid waste bureau—an adverse party to my position—was flagged as a potential conflict of interest but was apparently disregarded. This dual role of the custodian

could have improperly influenced the protracted response time, potentially compromising the fairness of the administrative process.

The records, which were already indexed early in the month as shown in NMED Exhibit 5, were withheld from my inspection until the very end of the period granted by law for an agency to provide for an inspection of its records, leaving me with a single weekend, of which I was preoccupied, and only one business day to review them before the hearing. This action not only undermines the principle of fair and informed participation but also casts doubts on the NMED's commitment to transparency as mandated by law.

This delay and the apparent conflict of interest violate the spirit of IPRA, and the letter of NMSA, Section 14-2-5 of the IPRA, which aims to ensure that all persons are entitled to the greatest possible information regarding the affairs of government to support an informed electorate. Furthermore, this situation poses a judicially reviewable issue under the Solid Waste Act, where permit issuance must be in accordance with law (NMSA, Section 74-9-30(B)(3)). The handling of this IPRA request, characterized by unjustifiable delay and conflicted administration, not only severely disadvantaged me as a participant but also favored the adverse party, skewing the balance of representative governance and transparency that the department claims to uphold. This will be revisited further in Issue #4, focusing on Environmental Justice, reflecting how these practices contrast starkly with the department's stated values and commitments.

III. Issue #3: Inadequate Surface Water Management and Oversight at Universal Waste Systems.

Attached is a map I printed from Google, outlining the probable path for stormwater runoff contamination toward the Rio Grande [Attachment 8]. The second page shows a downhill

gradient drop of approximately 26 feet from the Universal Waste Systems (UWS) headquarters to the arroyo, a walking distance of about seven minutes. The third and fourth pages are from a zoomed in version of the map. The curvature in the center of the road, as depicted in a Google Maps street view printout of the UWS facility's northwest property corner with the road shown [Attachment 9], suggests that water runoff will channel down the side of the road instead of crossing it. According to the testimony of the civil engineer for UWS, the gradient slopes from east to west. The retention pond, to be situated in this northwest corner of the facility, presented uncertainty to the civil engineer regarding the direction of water flow once the basin is full—however, it is clear to me that the flow direction would, simply put, be downhill, particularly eastward until this roadside channel. Notably, the facility's application (USW Application Volume 2 - Attachment 5, page 6) mentions that seemingly non-leak proof “empty” containers are permitted to be stored onsite to meet demand, apparently outdoors. The addition of the new construction and corresponding impermeable surfaces, coupled with stormwater runoff approaching from the south—where this unincorporated area of Mountain View lacks stormwater management—and more runoff from the east crossing over the property to the west, could realistically direct runoff, potentially including leachate from the full basin, towards the channeled stormwater flow heading north on the road. This channel continues approximately 0.3 miles to the Tijeras Arroyo (a watercourse under Solid Waste rules), and then approximately 1.6 miles directly to the Rio Grande.

The potential impact of snow melt on water runoff through the facility must also be more thoroughly considered, as it could significantly increase the volume in the retention pond. This consideration is underscored by the ambiguity in UWS's application regarding how inclement

weather is managed. The application (USW Application Volume 2 - Attachment 5, page 18) under section '3.9 Inclement Weather Closure' specifies that in events of excessive rain, snowfall, extremely icy roads, or freezing temperatures, the NM Operations Manager and the BTS Foreman will assess the adverse effects on operations at the transfer station. Purportedly, they will then strategize and review the effectiveness of any implemented ice/snow removal measures. Decisions on whether to continue operations will then supposedly be based on mutually agreed observations of the current weather and conditions. However, the application lacks clear guidelines on the levels of extremity that would impair the evaluation or performance of these duties, or what contingency plans are in place for severe conditions. This omission raises concerns about the preparedness and responsiveness of the facility to effectively manage runoff, especially in more extreme weather, which could exacerbate the filling of the retention area.

The state's water expert, a groundwater specialist, admittedly lacked surface water expertise. This deficiency is particularly concerning given the significant issues raised about the environmental impact of directly channeled runoff water on the road into the arroyo watercourse. The lack of surface water expertise may have resulted in an inadequate assessment of how the USW facility's stormwater management practices could affect nearby water bodies, especially in terms of contamination risks and changes in water flow dynamics. Moreover, this gap in expertise could have compromised the thoroughness of technical testimony during the hearing, potentially overlooking critical environmental implications. This apparent oversight in the permitting process brings impeachment to the supposed robustness of NMED's evaluation, raising concerns about compliance with environmental standards and the facility's potential impact on the surrounding ecosystem, most notably the Tijeras Arroyo.

Considering the issues discussed, it is evident that the oversight in surface water management at the UWS facility poses significant environmental risks. The facility's inadequate handling of stormwater runoff, particularly from a full retention basin, along with the state's limited expertise in surface water dynamics during the permitting process, could lead to severe contamination of nearby watercourses, notably the Tijeras Arroyo and ultimately the Rio Grande River. This situation necessitates a comprehensive re-evaluation of the facility's environmental management strategies and the implementation of stringent oversight mechanisms to ensure adherence to environmental standards. Moreover, given the proximity of the runoff path to a watercourse, there are compelling concerns that the operation of the facility at this site may not comply with 20.9.4.12 NMAC, which prohibits siting transfer stations in floodplains, watercourses, or wetlands unless specific conditions are met. This regulation aims to prevent facilities from impacting these sensitive areas, and the current management practices at UWS might violate these provisions, thereby endangering the surrounding ecosystem and undermining the integrity of local water resources. The insufficient scrutiny of other water protection laws during the permitting process, particularly considering the proximity to the Tijeras Arroyo as depicted in two angles of a Google Maps street view [Attachment 10], heightens concerns about potential regulatory violations. Therefore, the issuance of a permit for this facility, under these circumstances, may be subject to judicial review for being "otherwise not in accordance with law."

IV. Issue #4: Environmental Justice Concerns.

Environmental Justice (EJ) as defined by the NMED Solid Waste Management Plan commits to ensuring that all New Mexico residents, especially communities of color and low-

income communities, receive fair treatment and meaningful involvement in the development and enforcement of environmental laws. This includes equal protection from environmental hazards and equitable participation in decision-making processes. Despite these commitments, the siting of the UWS facility raises significant concerns regarding the adherence to these principles.

The proposed UWS facility is located less than one mile as the crow flies from a new local elementary school [Attachment 11]. The proximity of the facility to the school is approximately 4,750 feet measured in a straight line, a fact that raises serious questions about the potential exposure of children to environmental hazards emanating from the facility's operations. The elementary school is also depicted in USW Application Volume 2 - Attachment 15. The development of the school over time is shown in the historical streetside view as I've printed out from Google Maps [Attachment 12].

During the hearing, the General Manager of UWS was unable to provide me with specific details about the school's name or its exact location. This lack of awareness suggests a concerning disregard for the safety and well-being of the surrounding community in the facility's planning process. The fact that this critical question led to the impeachment of the witness is especially troubling, considering that educational institutions like the nearby elementary school and its adjacent daycare center host vulnerable populations—children—who spend significant portions of their day in these environments.

The siting of the UWS facility so close to an elementary school should have triggered a community meeting similar to the one specified under 20.9.3.8.D(1)(a) NMAC, to address any potential EJ inequities. This requirement is crucial for ensuring that the community has the

opportunity to voice concerns and participate meaningfully in the decision-making process related to local environmental changes that may affect them directly.

The transparency and fairness of the siting process for the UWS facility, specifically designed as a transfer station, are under substantial scrutiny, indicating a departure from the rigorous oversight typically expected of the NMED. While the regulations in 20.9.3.8.D NMAC specifically address landfills, the underlying principles could, at the Secretary's discretion—who is tasked with environmental protection in the Solid Waste Act—be reasonably applied to any major waste management facility, including transfer stations, particularly in light of significant public opposition. The absence of documented evidence of a comprehensive zoning process or quasi-judicial public hearing, which would provide opportunities for community participation, is particularly concerning. This gap is notably alarming given NMED's declared commitment to transparency and public engagement. Furthermore, the considerable local resistance, compounded by reports of the community being caught off guard due to insufficient notice and the prolonged silence from the authorities between the initial public notice by the applicant and the announcement of the public hearing, raises troubling questions. These factors suggest that the siting process may have been compromised by political influences or undisclosed agreements. Such a lack of procedural fairness not only raises serious ethical and regulatory concerns but also threatens the health and environmental safety of the local community.

This issue is closely linked to concerns highlighted in Issue #2 about the delayed Inspection of the Administrative Record. The NMED's handling of the IPRA request, marked by considerable delays and conflicts of interest, illustrates a broader pattern of neglecting transparent and inclusive practices. These practices are crucial for upholding environmental

justice, as explicitly recognized in the state's solid waste management plan, which references IPRA under its EJ provisions. Unfortunately, these essential practices seem to have been deprioritized in favor of advancing the permit process.

The siting of the UWS facility near a local elementary school, coupled with the apparent deficiencies in mandated public participation and community assessment procedures, raises serious issues about compliance with NMED's EJ commitments and the principles of the IPRA. These shortcomings suggest a significant deviation from established solid waste management plan, compromising not only the health and safety of the local community but also the integrity of the processes intended to protect them. Given these issues, there is a pressing need for a deeper investigation into this matter and potentially judicial scrutiny to ensure transparency, fairness, and rigorous adherence to environmental justice principles. This scrutiny is critical to uphold regulatory standards, protect our most vulnerable populations, and restore public trust in the NMED's environmental governance.

By -s- *Nicholas R. Maxwell*
Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
Telephone: (575) 441-3560
Email: inspector@sunshineaudit.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of my final non-technical public comments on the matter was served by email on April 26, 2024 to the persons listed below, with a hard copy mailed upon request:

Madai Corral
Hearing Clerk
madai.corral@env.nm.gov

Michael Cadigan
Cadigan Law Firm P.C.
Universal Waste Systems, Inc.
cadigan@cadiganlaw.com

Tatiana D. Engelmann
Assistant General Counsel
New Mexico Environment Department
tatiana.engelmann@env.nm.gov

-s- *Nicholas R. Maxwell*
Nicholas R. Maxwell

ATTACHMENT 1

Nicholas R. Maxwell

From: Nick Maxwell <inspector@sunshineaudit.com>
Sent: Monday, April 1, 2024 11:08 AM
To: Michael Cadigan
Cc: madai.corral@state.nm.us; pamela.jones@state.nm.us
Subject: Re: SWB 24-08

Dear Mr. Cadigan,

Thank you for the prompt provision of your NOI. Your adherence to timelines is greatly appreciated.

Per section 20.1.4.400.B(3), exhibits should be numerically sequenced.

Your current submission includes exhibits labeled A through F. For consistency with regulations, please revise these to Exhibit 1 through 6.

If you have questions or need assistance, feel free to contact me.

Thank you for your attention to this matter.

Sincerely,
Mr. Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
Telephone: (575) 441-3560
Email: inspector@sunshineaudit.com

On 2024-04-01 10:39, Michael Cadigan wrote:

> Please see attached Notice of Intent to Call Technical Witnesses.
> Thank you.
>
> Michael Cadigan
>
> Cadigan Law Firm P.C.
>
> 600 Central Avenue SE
>
> Suite M
>
> Albuquerque, New Mexico 87102
>
> 505 980 5623
>
> cadigan@cadiganlaw.com

ATTACHMENT 2

Nicholas R. Maxwell

From: Nick Maxwell <inspector@sunshineaudit.com>
Sent: Monday, April 15, 2024 10:37 PM
To: Michael Cadigan; tatiana.englemann@env.nm.gov
Cc: Madai.corral@state.nm.us; Pamela.Jones@env.nm.gov
Subject: Re: Request for Position on Motion to Continue Due to AR Unavailability

I will abstain from filing for a continuance as Mr. Cadigan has respectfully noted his opposition and I do respect his time. I have good cause at this moment to believe a serious violation of accepted professional standards is being incurred at the NMED.

But, Mr. Cadigan, might I inquire as to the second motion you refer? Is it that you refer to my objection to your admission of exhibits which don't comply with NMAC or the Hearing Officer's order, even after I had notified you on the day of your filing of the associated NOI, and have now done so a 2nd time in the preceeding letter?

If so, would you please explain why your party's position appears to be that such rules do not apply? I noticed you filed exhibits in the same manner in other proceedings of UWS's permitting of another solid waste transfer station, yet such had gone without objection.

It seems the honorable and professional thing, especially on behalf of your client, would have been to amend your NOI filing with sequentially numerical exhibits, rather than apparently insisting on keeping alphabetically listed exhibits. If your intent is to 'fix it' at the last minute, despite known objections, then you do so at the expense of other parties (in this case, me) who have to prepare for the same hearing. And if your attitude is indifferent, or worse, then I assert that you would be dishonorable and are in the wrong profession.

After my review of some of the compliance-related issues of the other facility, which seems to be a disturbingly regular occurrence, I am a bit concerned for your party's lack of adherence to the most basic standards by which everybody else must follow.

Please clarify.

Mr. Nicholas R. Maxwell

On April 15, 2024 12:04:05 PM MDT, Michael Cadigan <cadigan@cadiganlaw.com> wrote:

Applicant does not agree to either motion.

Michael Cadigan
Cadigan Law Firm PC
600 Central Avenue SE
Suite M
Albuquerque, New Mexico 87102
505 980 5623

On 4/13/24, 12:22 AM, "Nick Maxwell" <inspector@sunshineaudit.com>
<<mailto:inspector@sunshineaudit.com>>> wrote:

Subject: Request for Position on Motion to Continue Due to AR

Unavailability

Dear Parties,

I am requesting your position on a motion to continue in the matter of SWB 24-08 as the Administrative Record (AR), referenced in NMED's technical testimony and numerically indexed, remains unavailable despite my formal IPRA request on April 3rd, 2024. The department's apparent stalling exacerbates the issue, despite my objections to potential conflicts of interest in the matter, severely hindering my preparation for the upcoming hearing.

The department lacks a valid justification for not making this information available to me by this past weekend at the latest.

Additionally, the decision by counsel for Universal Waste Systems to reference exhibits by letter in their notice of intent, rather than using sequential numbering, contravenes both the permitting rules and the hearing officer's order. Despite having already notified counsel of the issue, I have received no response and it remains unresolved. While I intend to object to the admission of that evidence, it only highlights a broader disregard for procedural rules and further impedes my ability to prepare.

I appreciate your prompt responses as we navigate the challenges posed by the department's failing approach to facilitate meaningful public participation. I'll be filing my motion on the 15th.

Best regards,
Mr. Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
Telephone: (575) 441-3560
Email: inspector@sunshineaudit.com <<mailto:inspector@sunshineaudit.com>>

ATTACHMENT 3

Nicholas R. Maxwell

From: Nick Maxwell <inspector@sunshineaudit.com>
Sent: Wednesday, April 17, 2024 9:33 AM
To: cadigan@cadiganlaw.com; tatiana.englemann@env.nm.gov
Cc: Madai.corral@state.nm.us; Pamela.Jones@env.nm.gov; virtue@virtuelaw.com
Subject: Request for Clarification on Procedural Non-Compliance

Subject: Request for Clarification on Procedural Non-Compliance

Dear Mr. Cadigan,

I am writing to follow up on my previous communication which has not yet received a response. I would like to address a critical issue more frankly: your silent dismissal of established procedural rules, which you apparently regard as both professional and honorable.

Given the lack of response, I am compelled to ask explicitly: Why do you consider it acceptable to deviate from the procedural norms that are clearly stipulated by both NMAC and the Hearing Officer's orders? Your deliberate choice to file exhibits in a non-compliant format not only disregards these rules but also imposes significant preparation challenges on other parties, including myself.

This approach, which potentially favors last-minute corrections despite known objections, undermines the fairness and integrity of the hearing process. Such conduct not only warrants scrutiny but may also merit consideration by the Disciplinary Board of the Supreme Court. I must insist on an explanation for your strategy, as it seems to reflect a broader indifference to regulatory compliance that is both extremely concerning and absolutely unacceptable.

Please clarify your position at your earliest convenience.

Sincerely,

Mr. Nicholas R. Maxwell

----- Original Message -----

Subject: Re: Request for Position on Motion to Continue Due to AR Unavailability

Date: 2024-04-15 22:36

From: Nick Maxwell <inspector@sunshineaudit.com>

To: Michael Cadigan <cadigan@cadiganlaw.com>, "tatiana.englemann@env.nm.gov" <tatiana.englemann@env.nm.gov>

Cc: "Madai.corral@state.nm.us" <Madai.corral@state.nm.us>, "Pamela.Jones@env.nm.gov" <Pamela.Jones@env.nm.gov>

I will abstain from filing for a continuance as Mr. Cadigan has respectfully noted his opposition and I do respect his time. I have good cause at this moment to believe a serious violation of accepted professional standards is being incurred at the NMED.

But, Mr. Cadigan, might I inquire as to the second motion you refer? Is it that you refer to my objection to your admission of exhibits which don't comply with NMAC or the Hearing Officer's order, even after I had notified you on the day of your filing of the associated NOI, and have now done so a 2nd time in the preceeding letter?

If so, would you please explain why your party's position appears to be that such rules do not apply? I noticed you filed exhibits in the same manner in other proceedings of UWS's permitting of another solid waste transfer station, yet such had gone without objection.

It seems the honorable and professional thing, especially on behalf of your client, would have been to amend your NOI filing with sequentially numerical exhibits, rather than apparently insisting on keeping alphabetically listed exhibits. If your intent is to 'fix it' at the last minute, despite known objections, then you do so at the expense of other parties (in this case, me) who have to prepare for the same hearing. And if your attitude is indifferent, or worse, then I assert that you would be dishonorable and are in the wrong profession.

After my review of some of the compliance-related issues of the other facility, which seems to be a disturbingly regular occurrence, I am a bit concerned for your party's lack of adherence to the most basic standards by which everybody else must follow.

Please clarify.

Mr. Nicholas R. Maxwell

On April 15, 2024 12:04:05 PM MDT, Michael Cadigan <cadigan@cadiganlaw.com> wrote:

> Applicant does not agree to either motion.
>
> Michael Cadigan
> Cadigan Law Firm PC
> 600 Central Avenue SE
> Suite M
> Albuquerque, New Mexico 87102
> 505 980 5623
>
> On 4/13/24, 12:22 AM, "Nick Maxwell" <inspector@sunshineaudit.com>
> <mailto:inspector@sunshineaudit.com>> wrote:
>
> Subject: Request for Position on Motion to Continue Due to AR
> Unavailability
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> Dear Parties,
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> I am requesting your position on a motion to continue in the matter of
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> SWB 24-08 as the Administrative Record (AR), referenced in NMED's
> technical testimony and numerically indexed, remains unavailable
> despite my formal IPRA request on April 3rd, 2024. The department's
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> for the upcoming hearing.
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> The department lacks a valid justification for not making this
> information available to me by this past weekend at the latest.
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> Additionally, the decision by counsel for Universal Waste Systems to

> reference exhibits by letter in their notice of intent, rather than
> using sequential numbering, contravenes both the permitting rules and
> the hearing officer's order. Despite having already notified counsel
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ATTACHMENT 4

Nicholas R. Maxwell

From: Nick Maxwell <inspector@sunshineaudit.com>
Sent: Monday, April 22, 2024 6:44 AM
To: cadigan@cadiganlaw.com; tatiana.engelmann@env.nm.gov
Cc: Madai.corral@state.nm.us; Pamela.Jones@env.nm.gov; virtue@virtuelaw.com
Subject: Urgent Concern Over Continued Procedural Non-Compliance

Subject: Urgent Concern Over Continued Procedural Non-Compliance

Dear Mr. Cadigan,

Given the hearing in roughly 24 hours, your continued silence in response to my previous letters compels me to write again. I am frankly astounded by your persistent disregard for the procedural norms mandated by both NMAC and the Hearing Officer's orders regarding how you have dishonorably presented your exhibits, while behaving as if such actions are beyond reproach. This "Rules for Thee, None for Me" mentality, which seems to pervade your professional conduct, is not only disconcerting but fundamentally dishonorable.

Your approach allows permittees like Universal Waste Systems to dishonorably navigate the permitting process without fear of repercussion for such a wanton failure to adhere to basic rules. This is unacceptable and severely undermines the integrity of our regulatory system. It also casts a long shadow over the fairness of the entire permitting process, suggesting a system rigged in favor of those who flout the rules. Given these grave concerns, I strongly believe that your conduct needs disciplinary review to address and rectify these breaches of ethical standards.

I must insist that you address these issues immediately. Your behavior warrants not just scrutiny but outright censure, as it is antithetical to the principles of equity and justice that our legal system purports to uphold.

Awaiting your expedient correction of these serious breaches,

Mr. Nicholas R. Maxwell
575.441.3560

On 2024-04-17 09:33, Nick Maxwell wrote:

> Subject: Request for Clarification on Procedural Non-Compliance

>

> Dear Mr. Cadigan,

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>> Telephone: (575) 441-3560
>> Email: inspector@sunshineaudit.com
>> <<mailto:inspector@sunshineaudit.com>>

ATTACHMENT 5

Nicholas R. Maxwell

From: Chakalian, Gregory, ENV <Gregory.Chakalian@env.nm.gov>
Sent: Tuesday, June 20, 2023 7:39 AM
To: Kayla Rodriguez; Corral, Madai, ENV
Cc: Walker, Mason, ENV; Knight, Andrew, ENV; Jones, Pamela, ENV; inspector@sunshineaudit.com; 'perry.robinson@urenc.com'; Charles Hughson; Charles Vigil
Subject: RE: [EXTERNAL] GWQB 23-03(P)

Ms. Rodriguez,

Please contact Ms. Jones at 505 660-4305 this morning to finalize the exhibits and do not copy Bruce Baizel on future emails.

The Scheduling Order filed in January 2023 outlines how exhibits must be marked to be entered into evidence. If you need an example, you can review the NMED exhibits filed May 22, 2023, as they are marked correctly.

To wit, every exhibit must be marked with an exhibit sticker and a sequential number. I noticed that some of your exhibits that you submitted Friday do not have a sticker on them and some have the same exhibit number as others.

Thank you,



Gregory Chakalian

Administrative Law Judge
Office of Public Facilitation
New Mexico Environment Department
Phone: 505-690-4549
Web: www.env.nm.gov
Twitter: @NMEnvDep | #IamNMED
Email: gregory.chakalian@env.nm.gov
1190 South St. Francis Drive, Santa Fe, NM 87505

From: Kayla Rodriguez <KRodriguez@rodey.com>
Sent: Friday, June 16, 2023 2:25 PM
To: Corral, Madai, ENV <Madai.Corral@env.nm.gov>; Chakalian, Gregory, ENV <Gregory.Chakalian@env.nm.gov>
Cc: Walker, Mason, ENV <mason.walker@env.nm.gov>; Knight, Andrew, ENV <Andrew.Knight@env.nm.gov>; Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; Baizel, Bruce, ENV <Bruce.Baizel@env.nm.gov>; inspector@sunshineaudit.com; 'perry.robinson@urenc.com' <perry.robinson@urenc.com>; Charles Hughson <CHughson@rodey.com>; Charles Vigil <CVigil@rodey.com>
Subject: RE: [EXTERNAL] GWQB 23-03(P)

Good afternoon All,

Here attached the Testimonies with the requested changes to the exhibits.
Thank you Ms. Corral for you elaboration, as I understand these now reflect the requirements.

Best,
- Kayla

From: Corral, Madai, ENV [<mailto:Madai.Corral@env.nm.gov>]
Sent: Thursday, June 15, 2023 5:39 PM
To: Kayla Rodriguez; Chakalian, Gregory, ENV
Cc: Walker, Mason, ENV; Knight, Andrew, ENV; Jones, Pamela, ENV; Baizel, Bruce, ENV; inspector@sunshineaudit.com; 'perry.robinson@urencocom'; Charles Hughson; Charles Vigil
Subject: RE: [EXTERNAL] GWQB 23-03(P)

This email was sent from someone outside of the Rodey email system.

Dear Ms. Rodriguez,

Please mark every page with an exhibit number.

The exhibit labels should be on the first page of each exhibit and subsequent pages should be mark with the exhibit number and page number.

Please resubmit these documents.

Thank you,

Madai

From: Kayla Rodriguez <KRodriguez@rodey.com>
Sent: Thursday, June 15, 2023 4:37 PM
To: Chakalian, Gregory, ENV <Gregory.Chakalian@env.nm.gov>; Corral, Madai, ENV <Madai.Corral@env.nm.gov>
Cc: Walker, Mason, ENV <mason.walker@env.nm.gov>; Knight, Andrew, ENV <Andrew.Knight@env.nm.gov>; Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; Baizel, Bruce, ENV <Bruce.Baizel@env.nm.gov>; inspector@sunshineaudit.com; 'perry.robinson@urencocom' <perry.robinson@urencocom>; Charles Hughson <CHughson@rodey.com>; Charles Vigil <CVigil@rodey.com>
Subject: [EXTERNAL] GWQB 23-03(P)

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Good afternoon Judge Chakalian and Counsel,

Here attached please find

1. Urenco's Amended Statement of Intent to Present Technical Testimony,
2. E. Saucedo and J. Miller's Joint Direct Testimony (exhibits amended), and
3. W. Padgett and J. Rickman's Joint Direct Testimony

for your review in reference to the above captioned case.

Thank you.

Kayla Rodriguez | Legal Assistant

**to Leslie McCarthy Apodaca, Henry Bohnhoff, and Charles
Vigil**



KRodriguez@rodey.com
505.766.7547

201 Third Street NW, Suite 2200
Albuquerque, New Mexico 87102
fax: 505.768.7395

Rodey, Dickason, Sloan, Akin & Robb, P.A.
www.rodey.com

This message is confidential and may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, please reply to the sender that you received the message in error and then delete it. Thank you.

ATTACHMENT 6

Re: L FW: [EXTERNAL] IPRA: SWB 24-08 AR



From Nick Maxwell <inspector@sunshineaudit.com>
To Records, Environment, ENV <Environment.Records@env.nm.gov>
Cc Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>, Shean, Rick, ENV <Rick.Shean@env.nm.gov>, Martinez, SaraLouise, ENV <SaraLouise.Martinez@env.nm.gov>
Date 2024-04-17 17:01

Good Afternoon,

I am writing to express my profound dissatisfaction with the handling of this public records request. The full 15-day period allowed by law has been utilized to respond, seemingly without any legitimate basis. This arbitrary use of the maximum permissible time suggests that, had the law allowed 45 days, the solid waste bureau would have taken every bit of those 45 days as well. This is particularly troubling considering that the administrative record is explicitly meant to be available for public inspection. Furthermore, the potential conflicts of interest concerning the request, along with the department's apparent disregard for the due process rights of individuals involved in its proceedings, only deepen my concerns. These practices tarnish the reputation of the Department that professes to value inclusiveness, transparency, and accountability. May we strive for the day that we will see the Department truly embody these principles.

Mr. Maxwell

On 2024-04-17 08:39, Nick Maxwell wrote:

Where are my records?

Mr. Maxwell

On April 12, 2024 11:52:05 PM MDT, Nick Maxwell
<inspector@sunshineaudit.com> wrote:

April 12, 2024

Subject: Urgent Concern Over Continued Delays and Lack of Leadership
in Public Records Access

I am writing to follow up on my previous letter concerning serious issues in accessing the Administrative Record (AR) necessary for an informed participation in the public hearing regarding the solid waste transfer station permit. Despite the urgency and clarity of my initial inquiry, I have not received any acknowledgment or response, which not only exacerbates my concerns but also directly reflects on the leadership of the New Mexico Environment Department under Secretary Kenney.

Ever since the Urenco discharge permitting proceeding, I have taken note of a troubling pattern of mismanagement and a disconcerting disregard for robust public participation under this Secretary's tenure. The delay in providing access to crucial documents and the lack of communication seem symptomatic of a broader issue of opacity within this department. It is concerning that this approach to governance not only undermines the democratic process but also appears to be a recurring example of poor leadership.

Moreover, operating in the shadows does not seem like a legacy any leader would aspire to— the lack of transparency and responsiveness raises significant doubts about the commitment of this department to uphold the principles of fairness and accountability expected in public administration.

Given these recurring issues, it is crucial that there be immediate improvements in how requests for public records are managed, particularly in cases where the documents should already be systematically organized but are, apparently, in disarray. This not only casts a poor light on the Secretary's leadership but also reflects unfavorably on Governor Michelle Lujan Grisham's choice in leadership for this crucial role. I urgently demand a prompt response to my previous letter and an expedited release of the Administrative Record (AR). This situation impacts not only my rights as an intervenor to participate fully in environmental governance but also the overall integrity of the department itself.

In light of the ongoing challenges and lack of response, I will be formally submitting these comments into the public record. It is deeply concerning that the department continues to operate without the transparency and accountability that are fundamental to its function and to public trust. This formal record of my grievances underscores my profound dissatisfaction with the department's failure to adhere to these essential principles. I trust that this action will highlight the urgency of rectifying these issues and restoring integrity to the department's operations.

Mr. Maxwell

On 2024-04-11 21:58, Nick Maxwell wrote:

Greetings,

I am writing to express my concerns about accessing public records crucial for participating in the public hearing concerning the permit for a new solid waste transfer station. I have become aware that the counsel responsible for overseeing the state's interests in that permitting process has previously and very recently acted as counsel for the public records custodian. Just this month, I received a letter from her denying my records request, which is not the first denial I have encountered from her this year.

Although I am not currently aware of the specific individual who may be serving as counsel for the public records custodian in this particular request, the recent involvement of aforementioned counsel

in IPRA-related matters gives me sufficient reason to be concerned about potential conflicts of interest. Her overlapping roles may potentially be impacting my timely access to the requested files of the Administrative Record (AR), which is critical for my participation in the hearing. While some documents such as the application and notices are immediately accessible online, the AR is not, and my request for access has been met with a notification of the potential of a 15-day delay.

While perhaps being technically within legal boundaries, any arbitrary application of an undue delay in a situation involving a straightforward and unburdensome request would be an incorrect interpretation of the law's intent. The law is designed to ensure "immediate" access to public records. Given that the records in question are already numerically indexed, as evidenced in the state's technical testimony for this case, the actual delay being incurred at this time seems to be stretching that intent, to say the least. I believe that what I am seeing is more akin to bureaucratic foot-dragging than a genuine effort to facilitate my access to government records.

In conclusion, I express my genuine dissatisfaction with any undue delay in my access of the AR, seemingly exacerbated by conflicts of interest. Given the public policy of the state emphasizes the public's right to extensive information about government actions (14-2-5, IPRA), each day of delay diminishes my opportunity to prepare for said hearing on equal ground as the state, underscoring an unfair power dynamic that undermines the principles of representative government and transparency.

Sincerely,

Mr. Maxwell

On 2024-04-05 12:45, Records, Environment, ENV wrote:

Good afternoon,
Attached is a letter regarding your request.
Thank you,

Christina Espinoza
Records Custodian
New Mexico Environment Department
Office of General Counsel
1109 S. Saint Francis Drive, Suite North 4050
Santa Fe, New Mexico 87501
505-469-0922 mobile
<https://www.env.nm.gov/>
Pronouns: she, her, hers

-----Original Message-----

From: Nick Maxwell <inspector@sunshineaudit.com>
Sent: Wednesday, April 3, 2024 1:08 PM
To: Records, Environment, ENV <Environment.Records@env.nm.gov>;
inspector@sunshineaudit.com
Subject: [EXTERNAL] IPRA: SWB 24-08 AR

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Greetings,

I wish to inspect the following public records:

1) All records contained within the Administrative Record for Docket Number SWB 24-08.

Thanks,

Mr Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
Telephone: (575) 441-3560
Email: inspector@sunshineaudit.com

ATTACHMENT 7

RE: SWB 24-08 - Administrative Record



From Engelmann, Tatiana, ENV <tatiana.engelmann@env.nm.gov>
To Corral, Madai, ENV <Madai.Corral@env.nm.gov>, Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>
Cc Michael Cadigan <cadigan@cadiganlaw.com>, Nick Maxwell <inspector@sunshineaudit.com>
Date 2024-04-18 15:33

My apologies, Mr. Cadigan and Mr. Maxwell.

The emails I sent to you both got bounced back to me. It looks like the Administrative Record exceeds our server limit for attachments, so you will be receiving a link to Kiteworks where you can view and download the Administrative Record. Let me know if you have any problems. Thanks.

Tatiana D. Engelmann (she/her/hers)
Assistant General Counsel
New Mexico Environment Department
Office of General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
Cell Phone: 505-231-4055
tatiana.engelmann@env.nm.gov
www.env.nm.gov



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From: Engelmann, Tatiana, ENV
Sent: Thursday, April 18, 2024 3:26 PM
To: Corral, Madai, ENV <Madai.Corral@env.nm.gov>; Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>
Cc: Michael Cadigan <cadigan@cadiganlaw.com>; Nick Maxwell <inspector@sunshineaudit.com>
Subject: SWB 24-08 - Administrative Record

Good afternoon, Madai,

Attached please find the complete Administrative Record for SWB 24-08, that includes the index for the Administrative Record, which was filed as NMED Exhibit 5 with the Notice of Intent to Submit Technical Testimony. Please contact me if you have any questions. Thank you.

Tatiana D. Engelmann (she/her/hers)
Assistant General Counsel
New Mexico Environment Department
Office of General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
Cell Phone: 505-231-4055
tatiana.engelmann@env.nm.gov
www.env.nm.gov



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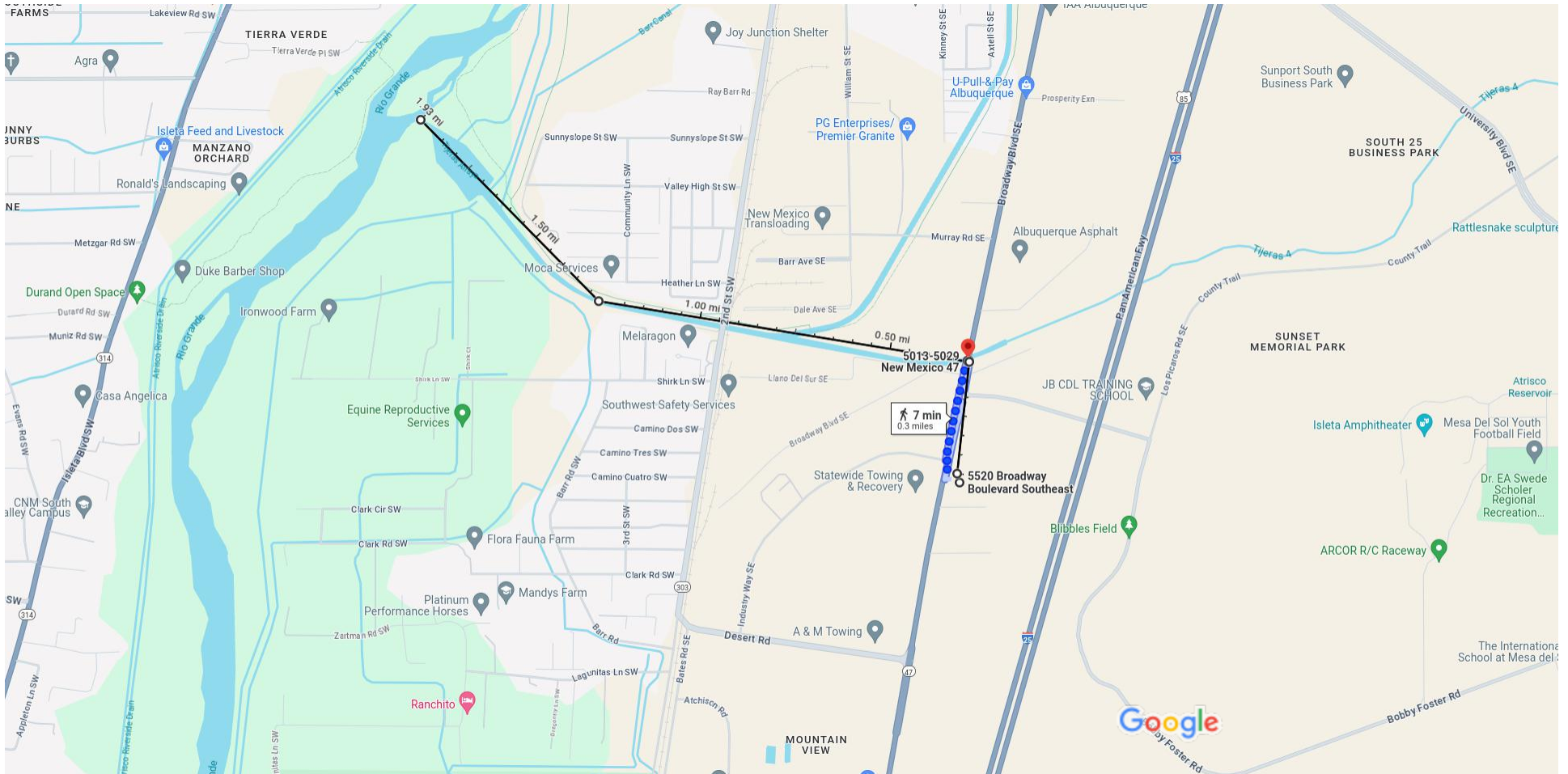
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ATTACHMENT 8



5520 Broadway Blvd SE, Albuquerque, NM 87105 to 5013-5029 NM-47, Albuquerque, NM 87105

Walk 0.3 mile, 7 min



Map data ©2024 1000 ft



via NM-47 N

7 min

0.3 mile



via NM-47 N

7 min
0.3 mile



via NM-47 N

7 min
0.3 mile

All routes are mostly flat



↑ 0 ft · ↓ 26 ft

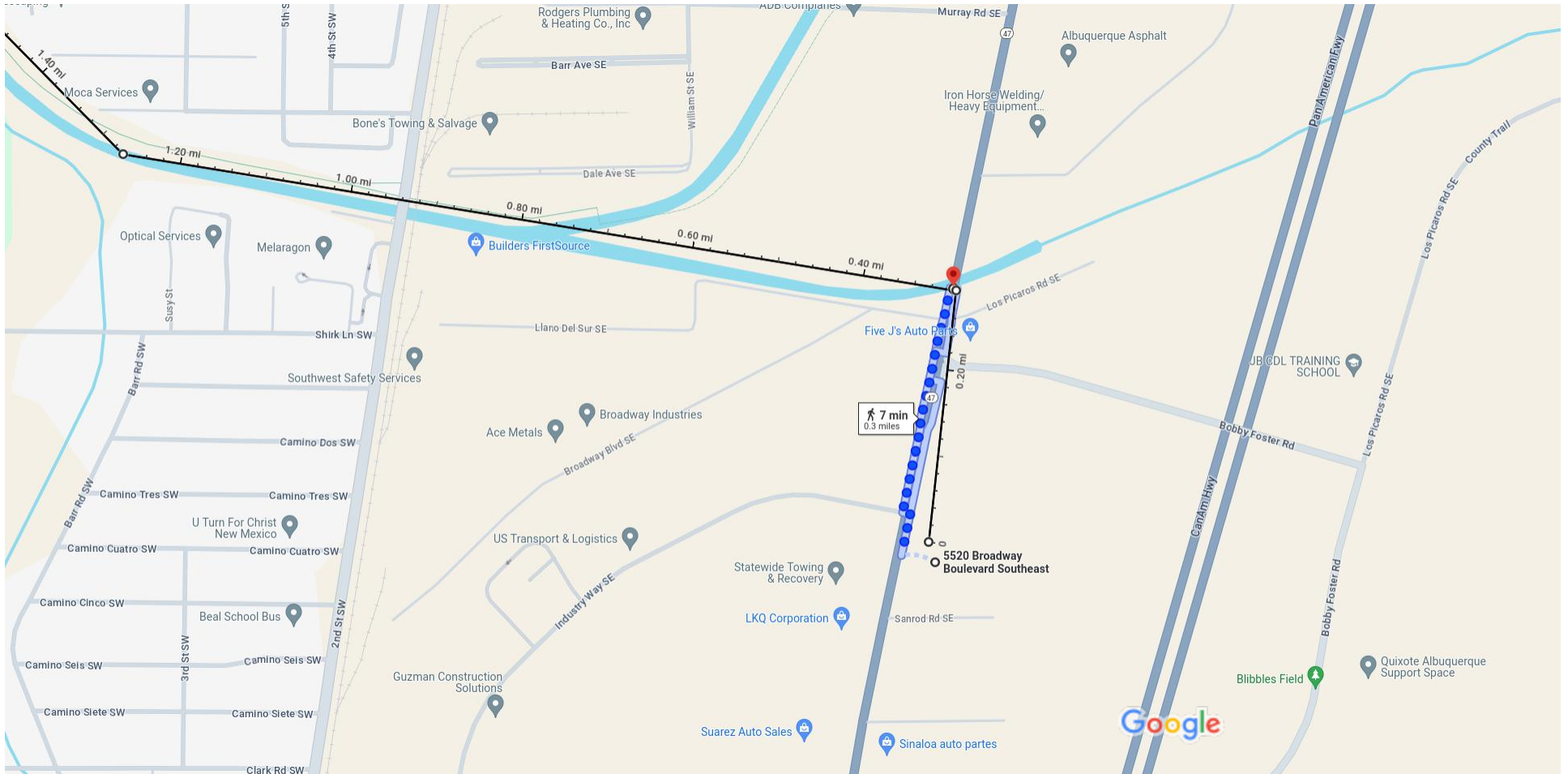


Measure distance
Total distance: 1.93 mi (3.10 km)



5520 Broadway Blvd SE, Albuquerque, NM 87105 to 5013-5029 NM-47, Albuquerque, NM 87105

Walk 0.3 mile, 7 min



Map data ©2024 500 ft



via NM-47 N

7 min

0.3 mile



via NM-47 N

7 min

0.3 mile



via NM-47 N

7 min

0.3 mile

All routes are mostly flat



↑ 0 ft · ↓ 26 ft



Measure distance

Total distance: 1.93 mi (3.10 km)

ATTACHMENT 9



5520 Desert Rd

5520 Broadway Blvd SE, Albuquerque, NM 87105

Albuquerque, New Mexico

 Google Street View

Sep 2023

[See more dates](#)



Image capture: Sep 2023 © 2024 Google



ATTACHMENT 10

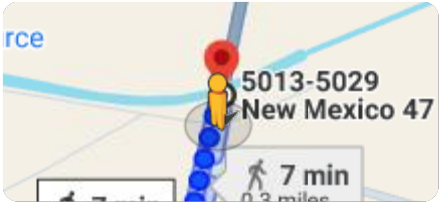
Albuquerque, New Mexico

 Google Street View

Sep 2023 See more dates



Image capture: Sep 2023 © 2024 Google



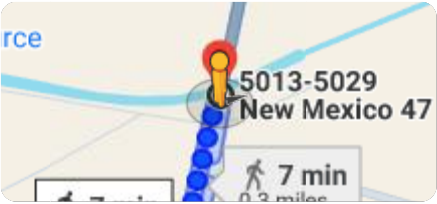
Albuquerque, New Mexico

 Google Street View

Sep 2023 [See more dates](#)



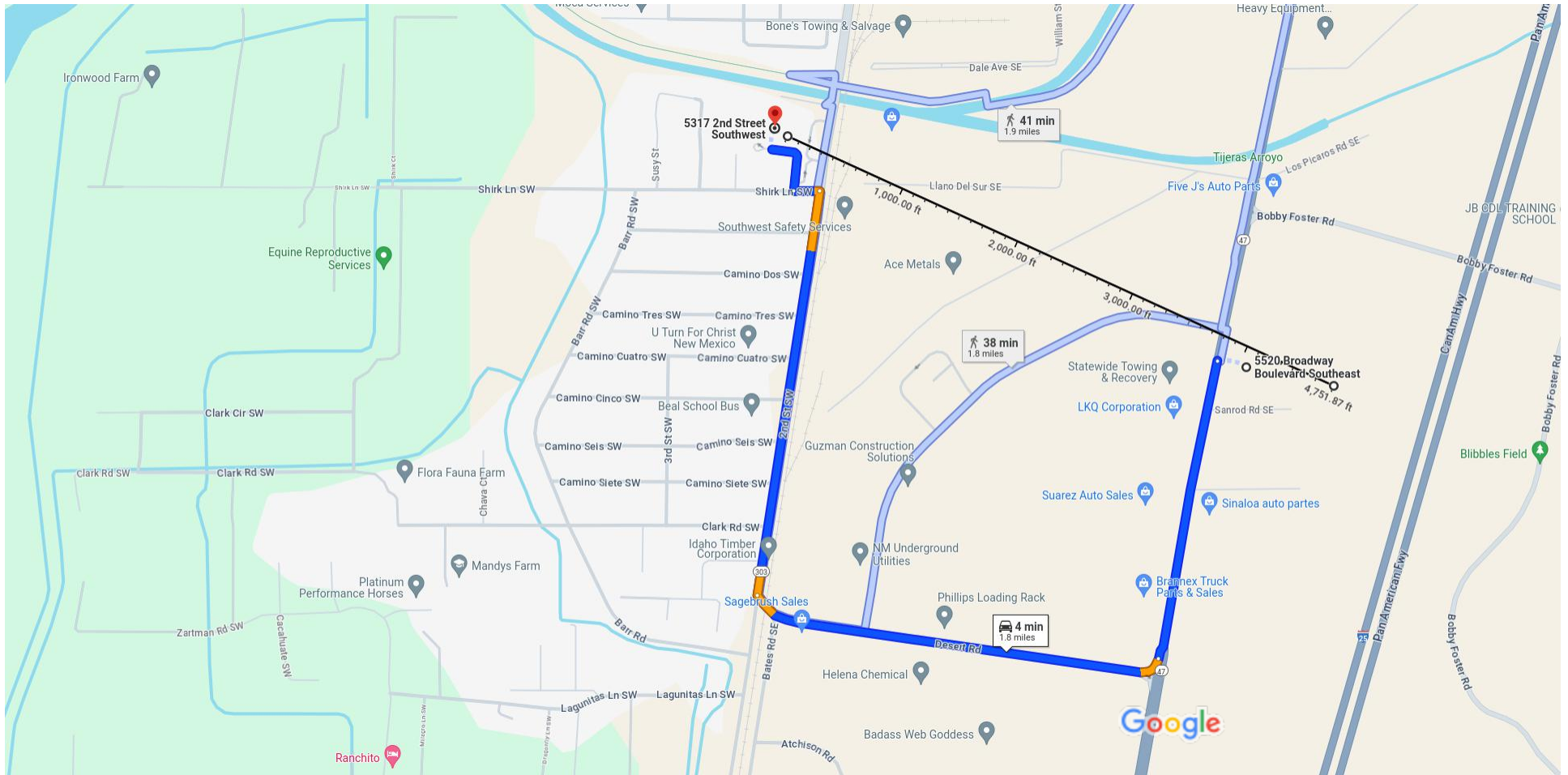
Image capture: Sep 2023 © 2024 Google



ATTACHMENT 11



5520 Broadway Blvd SE, Albuquerque, NM 87105 to 5317 2nd St SW, Albuquerque, NM 87105 Drive 1.8 miles, 4 min



Map data ©2024 500 ft

5520 Broadway Blvd SE
Albuquerque, NM 87105

↑ 1. Head south on NM-47 S toward Sanrod Rd SE

0.5 mi

- 2. Turn right onto Desert Rd
0.6 mi
- 3. Turn right onto NM-303 N
0.6 mi
- ↶ 4. Turn left onto Shirk Ln SW
203 ft
- 5. Turn right
[Destination will be on the right](#)
492 ft

5317 2nd St SW

Albuquerque, NM 87105

Measure distance

Total distance: 4,751.87 ft (1.45 km)

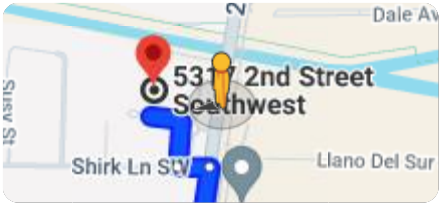
Albuquerque, New Mexico

 Google Street View

Jul 2023 See latest date



Image capture: Jul 2023 © 2024 Google



ATTACHMENT 12

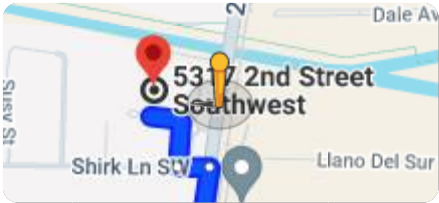
Albuquerque, New Mexico

 Google Street View

Aug 2011 See latest date



Image capture: Aug 2011 © 2024 Google



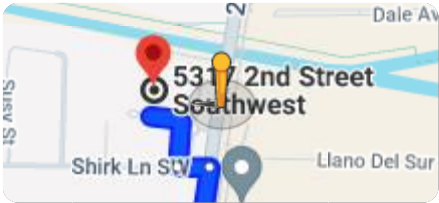
Albuquerque, New Mexico

 Google Street View

Jul 2015 See latest date



Image capture: Jul 2015 © 2024 Google



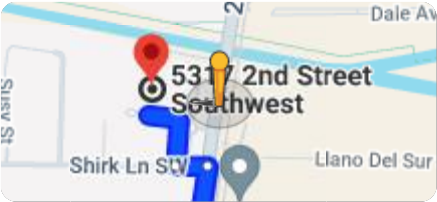
Albuquerque, New Mexico

 Google Street View

Dec 2018 See latest date



Image capture: Dec 2018 © 2024 Google



Albuquerque, New Mexico

 Google Street View

Apr 2022 [See latest date](#)



Image capture: Apr 2022 © 2024 Google

