

# OE Solar

Subject: Formal Public Comment in Opposition to EIB 25-11 (R) – Proposed Rule 11.5.7 NMAC (Heat Illness and Injury Prevention)

To: New Mexico Environmental Department

From: Galina Kofchock, Founder & CFO, Osceola Inc. (OE Solar)

Date: 04/15/2025

Dear Chair and Members of the Environmental Improvement Board,

I respectfully submit this letter in opposition to EIB 25-11 (R), the proposed 11.5.7 NMAC rule concerning Heat Illness and Injury Prevention. While I support the goal of protecting workers from extreme heat, the regulation in its current form presents significant challenges—legal, logistical, and economic—for New Mexico's employers, particularly those in the renewable energy, construction, and agricultural sectors.

## Core Concerns and Implications

### 1. Regulatory Duplication and Compliance Ambiguity

The proposed rule overlaps substantially with existing OSHA standards, such as the General Duty Clause and Heat Illness Prevention guidance. Mandating state-level compliance introduces a parallel regulatory track that could create uncertainty and conflicting interpretations, particularly for firms that already operate under federal oversight and best practices.

### 2. Disproportionate Burden on Small and Medium Employers

Complying with the rule's broad mandates—including developing written procedures, creating acclimatization plans, administering training programs, and managing recordkeeping—will require the hiring of additional safety personnel or consultants for many small businesses. For companies already grappling with workforce shortages, rising insurance premiums, and inflation-driven project cost increases, these requirements may be untenable.

### 3. Economic Impact: Costly Compliance and Project Delays

From a macroeconomic standpoint, the regulation threatens to slow down the pace of outdoor development projects across multiple sectors. As a solar and storage EPC firm, we anticipate that implementing these mandates would cause significant delays in our project delivery timelines, which are often tightly bound to funding windows, tax credit qualification periods, and grid interconnection schedules. Delays of this nature create financial risk for developers, discourage private investment, and threaten the viability of time-sensitive public-private partnerships—especially in underserved and rural communities.

### 4. Reduction in Working Hours and Workforce Income

To avoid potential noncompliance, many employers will be forced to reduce working hours during peak heat periods. While well-intentioned, this unintended consequence will result in reduced weekly pay for hourly workers and may jeopardize their financial security. In many rural or marginalized communities, outdoor construction and agricultural jobs represent the primary pathway to livable wages. A policy that reduces hours without offsetting income support risks causing more harm than good to the very population it seeks to protect.

### 5. Disincentivizing Workforce Participation in Key Industries

The perception of added regulatory burden, reduced hours, and heightened risk of penalties may discourage individuals from seeking employment in outdoor industries already struggling to attract skilled labor. At a time when we are actively working to expand New Mexico's clean energy workforce and meet ambitious climate and infrastructure goals, this rule threatens to create a chilling effect on job participation and project mobilization.

### Suggested Alternative Approach

Rather than imposing a rigid regulatory framework with punitive consequences, I urge the Board to consider the following alternative strategies:

- Voluntary compliance guidance aligned with OSHA best practices, distributed through state agencies and trade associations.
- State-sponsored training modules and awareness campaigns tailored to employers and field staff.
- Heat resilience grant funding to help small businesses acquire hydration systems, mobile shade structures, and first-aid resources.
- Cross-agency coordination with OSHA and NM OSHA to streamline enforcement and avoid regulatory conflicts.
- Sector-specific flexibility that accounts for the diversity of work environments, schedules, and risk mitigation methods already in place.

The health and safety of New Mexico's outdoor workforce must remain a top priority. However, the proposed rule—11.5.7 NMAC—risks doing more harm than good if adopted in its current form. It places a disproportionate financial burden on small businesses, risks undermining job security for workers, and threatens to delay or derail critical development projects statewide.

I respectfully urge the Environmental Improvement Board to delay adoption of this rule and instead initiate a more collaborative, stakeholder-driven process that includes industry, labor, and public health experts. Together, we can arrive at a balanced solution that safeguards worker health without compromising economic resilience or development progress.

Sincerely,

Galina Kofchock

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