

E P Harvey Jr

NM Environmental Improvement Board May 7, 2025

c/o NM Environment Department

1190 St. Francis Drive, Suite N4050

Santa Fe, NM 87505

Re: EIB 25-11(R) - In the Matter of Proposed New Regulation 11.5.7 NMAC – Heat Illness and Injury Prevention.

Dear Environmental Improvement Board:

My family has farmed and ranched in south-central New Mexico since 1912. I currently am a partner in a Registered Hereford cattle breeding operation in rural southern-southeastern NM where the heat can be severe. However, as ranchers, we know how to deal with the heat, the extreme cold, and every other weather condition in between. I have also been a partner, or owned other businesses in the Las Cruces area that installed landscapes and irrigation systems to residences as well as businesses, plus operated car washes for over 20 years where employees were working in all kinds of heat situations.

Historically, the federal Occupational Safety and Health Administration (OSHA) regulates workplace health and safety in the US. NM has had a general regulatory policy for decades of adopting federal regulations and guidelines without state-specific rules. As a relatively small state, this policy has served NM well. This proposed regulation is an unnecessary departure from past practice. So far, only a few states have issued local "heat stress" rules that vary from federal guidelines.

Businesses in NM are aware of the risks inherent in working outdoors. These risks require careful work planning and execution by trained workers and supervisors.

Industries such as agriculture, construction, energy, and others require outdoor work in NM's warm, dry western climate. There are many business incentives to work smartly and safely. Most businesses strive to provide safe work practices for their employees and face substantial legal liability in the case of an accident or illness due to poor work practices.

OSHA is currently revising its rules on heat stress (Ref. 1). NM should wait for the outcome of this federal process before considering its own regulations.

Employers rely on industry "heat stress" standards developed by trade associations and others. In particular, the National Institute for Occupational Safety and Health (NIOSH) has published heat stress guidelines for the workplace (Ref. 2). Industry guidelines are based on this work.

Based on the current availability of industry best practices, state-specific NM regulations are counterproductive and unnecessary at this time. A better approach is to work cooperatively with NM trade groups and employers to ensure good heat stress practices are followed.

If NM insists on issuing its own regulation, it should be reasonable and take into account the existing work practices in our state and the prevailing climate. The administrative requirements of the proposed regulation (Ref. 3) should be exempt for small companies with 10 employees or fewer. Also, especially in construction or energy, there are many

subcontractors at a work site. Provision should be made for subcontractors to be covered by the General Contractor's administrative system.

The draft regulation has unreasonable "rest periods" related to heat stress. Experienced workers and supervisors instinctively know that regular "rest breaks" in shady areas are necessary when working on a hot day. In particular, the values in Table 3 of the proposed regulation (Ref. 3) are not reasonable for many outdoor activities, and an overly zealous inspector could use this table to delay work unreasonably.

In summary, this proposed regulation would be unnecessary and counterproductive for businesses in NM and should not be adopted.

Thank you for the opportunity to comment.

References:

(1) Webpage: https://www.federalregister.gov/documents/2024/08/30/2024-14824/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov

(2) Webpage: <https://www.cdc.gov/niosh/heat-stress/recommendations/index.html#:~:text=Review%20the%20full%20recommendations%20in%20the%20NIOSH%20Criteria,to%20workers%20exposed%20to%20heat%20in%20different%20workplaces.>

(3) New Mexico Environment Department Proposed Heat Illness and Injury Prevention Rule

TITLE 11 CHAPTER 5 PART 7 LABOR AND WORKERS COMPENSATION
OCCUPATIONAL HEALTH AND SAFETY OCCUPATIONAL HEALTH AND SAFETY-
HEAT ILLNESS AND INJURY PREVENTION (draft)