

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED
ADOPTION OF 20.2.92 NMAC -
*Clean Transportation Fuel Program***

No. EIB 25-23 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT,

PETITIONER.**

**MAXWELL’S GENERAL PUBLIC COMMENT ON
THE DEPARTMENT’S PATTERN OF EXCLUSION AND NARRATIVE CONTROL**

Mr. Nicholas R. Maxwell submits this comment to document a continuing pattern of procedural overreach and selective exclusion by the New Mexico Environment Department (“Department”) during the Clean Transportation Fuel Program rulemaking. The Department’s most recent filings, its Reply in Support of Oral Motion to Compel Cross-Examination of Mr. Maxwell and its Notice of Intent to File Motion in Limine Regarding Party Discussions, viewed alongside its conduct throughout the hearing, reflect an ongoing effort to control both the evidentiary record and the narrative surrounding this proceeding. Such has not gone unnoticed.

I. Disproportionate Response to a Public Comment.

The Department’s eleven page “reply” dated October 30 devotes an extraordinary amount of public resources to attacking a two page public comment that cited three publicly available federal documents: a Department of Energy press release, a White House fact sheet (“Ending the Green New Scam”), and a public social media post by the Director of the Office of Management and Budget. The substance of those official materials, apparently distributed with a clear intent for review and consumption by the general public, documented the termination of federal clean energy funding directly relevant to the proposed rule’s feasibility. The Department characterized

the filing as “technical testimony,” accused Mr. Maxwell of “flouting” and “abusing” procedure, and demanded compelled cross examination (or now, per their reply, exclusion entirely), transforming an ordinary public filing into a quasi disciplinary matter.

Such disproportionate escalation functions as a state cudgel to deter future critical participation. The personalized tone, naming Mr. Maxwell dozens of times and, as shown above, imputing motive, too, reflects an adversarial posture inconsistent with the Board’s stated objectives in 20.1.1.6(B) through (D) NMAC to encourage public participation and to assure fair and equitable hearings.

II. Repeated Attempts to Exclude Opposing Technical Evidence.

The Department’s conduct toward other participants shows that this pattern is not isolated. Before the close of direct testimony, it sought—unsuccessfully—to exclude substantial portions of the New Mexico Oil & Gas Association’s and American Petroleum Institute’s noticed technical testimony and expert witnesses. Throughout the hearing, the Department repeatedly objected in efforts to narrow the evidentiary record, with most objections overruled. Taken together, these actions reflect a consistent effort to control the scope of the proceeding through procedural maneuvering rather than substantive engagement. The record speaks for itself.

III. Confidential “Discussion Sessions” and Off-Record Restrictions.

The Department’s Notice of Intent to File Motion in Limine Regarding Party Discussions extends this pattern beyond the evidentiary phase. Following the Board’s encouragement that parties work toward resolving differences before rebuttal, the Department convened two “discussion sessions” for October 30–31, 2025, under conditions of strict confidentiality. Any person who declined to “be bound by the confidential approach” was told not to attend.

When journalist Bruce Wetherbee of *The Candle* objected to these restrictions as inconsistent with open government principles, he was excluded from participation. (Department Notice, Ex. A at pp. 6–9.) While not being “public meetings” in the traditional sense of the Open Meetings Act involving a present quorum of a public body, these sessions were convened at the Board’s own request for parties to seek alignment on rule language prior to the rebuttal phase, a rulemaking function squarely within the Board’s ongoing proceeding. That context renders the Department’s assertion that the sessions were “not part of the formal Environmental Improvement Board proceeding,” merely because they were not held on the record, both formalistic and unpersuasive.

Per this notice of intent, the Department further stated that it may seek to limit or exclude any later references to the sessions that it deems to violate its confidentiality expectations. Yet, this framework is entirely a construct of the Department itself, neither requested nor authorized by the Board. What began as a simple directive from the Board for parties to seek alignment on rule language before the rebuttal phase was transformed by the Department into a closed, quasi-settlement process. Through its own correspondence, the Department redefined the discussions as “not part of the formal Environmental Improvement Board proceeding” and “not public meetings,” asserting that candid dialogue was only possible under “conditions...essential to mediation and settlement forums.” In doing so, the Department substituted the open, deliberative character of rulemaking with a private negotiation model of its own design. This is not a dispute between private litigants but the creation of public law, where transparency is an obligation, not a choice. Invoking Rule 11-408 NMRA, a rule governing settlement offers in civil litigation, to justify secrecy in a quasi-legislative process collapses that distinction entirely. Conditioning

participation in a rulemaking on confidentiality undermines the legitimacy of any outcome derived from it.

IV. Context and Tone of Communications.

Mr. Maxwell's correspondence with Department counsel on October 30 illustrates the increasingly defensive and reactionary posture that now surrounds even minor procedural exchanges (Maxwell Exhibit 4). After he promptly expressed opposition to the described motion in the Department's aforementioned notice, counsel replied to emphasize that the filing was "simply a notice, not a motion"—a distinction of practically zero consequence, yet conveyed in a corrective and formal tone emblematic of the Department's approach to public interaction. The exchange reflects an unnecessary escalation over a routine procedural matter.

Notably, counsel's disclaimer in the email cites 18 U.S.C. § 2517(4), a federal statute that actually permits disclosure of lawfully obtained communications in official proceedings such as this one. Its inclusion here, misapplied boilerplate language from criminal wiretap law, serves no legal function in an administrative context but adds an air of intimidation foreign to public participation. To nonlawyers, such formalized warnings amplify the impression that engagement in this rulemaking is adversarial rather than participatory. This dynamic, whether deliberate or not, exemplifies the Department's broader pattern of over-legalizing communications with public participants and, in effect, discouraging meaningful civic involvement.

V. Conclusion: A Cumulative Pattern with Broader Implications.

Throughout this proceeding, the Department has repeatedly acted to narrow the record, reframe critical comments as procedural violations, and channel substantive dialogue into confidential, off-record settings. Taken together, these actions reveal not the pursuit of procedural

order, but a sustained effort at narrative control and constraint of participation rather than the promotion of candid, open and balanced deliberation.

The Board's procedural framework exists to ensure that all participants can present their views and perspectives openly. When an agency employs procedural devices to narrow that exchange, recasts dissent as misconduct, or shifts substantive discussion into closed settings, it undermines transparency, equality of access, and the integrity of the rulemaking process itself. A credible rule must be built on a record developed in full public view, not one filtered for institutional convenience. A rulemaking conducted in daylight requires no defense; one constrained by secrecy and exclusion invites doubt and cannot withstand scrutiny.

Respectfully submitted,

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

Maxwell Exhibit:

- Exhibit 4: Email correspondence between Mr. Maxwell and counsel for the New Mexico Environment Department regarding Mr. Maxwell's notice of intended opposition to the Department's NOI to file motion in limine (October 30, 2025)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of my general public comment and exhibit was served by email on October 31, 2025 to all parties of record, with a hard copy mailed upon request.

-s- Nicholas Maxwell
Mr. Nicholas R. Maxwell

From: ["Nick Maxwell" <inspector@sunshineaudit.com>](mailto:inspector@sunshineaudit.com)

To: ["Kelsea Sona" <kelsea@roblesrael.com>](mailto:kelsea@roblesrael.com)

Date: 10/30/2025 9:55:16 AM

Subject: Re: EIB 25 - 23(R); NMED's NOI to File MIL (IMO Proposed Adoption of 20.2.92 NMAC)

Greetings,

That's already well understood, Ms. Sona. Clearly, you are in receipt of my notice.

Thanks,
Nick

On 2025-10-30 08:51, Kelsea Sona wrote:

> Good morning, Mr. Maxwell,
>
> NMED simply filed a notice, not a motion that includes responses or a
> request for relief. If a motion is filed, we will seek the party's
> positions to include in the motion. Thank you.

>
> Kelsea E. Sona
> Associate Attorney
> Robles, Rael & Anaya, P.C.
> 500 Marquette, Suite 700
> Albuquerque, NM 87102
> (505) 242-2228 Phone
> (505) 242-1106 Fax
> kelsea@roblesrael.com

> *****

>
> The unauthorized disclosure or interception of e-mail is a federal
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> use of those to whom it is addressed and may contain information which
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> If you have received this e-mail in error, do not distribute or copy
> it. Return it immediately with attachments, if any, and notify me by
> telephone at (505) 242-2228. Thank you.

> -----Original Message-----

> From: Nick Maxwell <inspector@sunshineaudit.com>
> Sent: Thursday, October 30, 2025 8:48 AM
> To: Kimberly Rael <Kimberly@roblesrael.com>
> Cc: Felicia Orth <felicia.l.orth@gmail.com>; Jones, Pamela, ENV
> <pamela.jones@env.nm.gov>; eugarte@nmdoj.gov; desaillan.ccae@gmail.com;
> Lynch.cara.nm@gmail.com; sgersen@earthjustice.org; dlm@gknet.com;
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> <kelly.villanueva@env.nm.gov>; Villescas, Dylan, ENV
> <dylan.villescas@env.nm.gov>; Marcus Rael <Marcus@roblesrael.com>;
> Kelsea Sona <kelsea@roblesrael.com>; Amanda Rivera
> <amanda@roblesrael.com>
> Subject: Re: EIB 25 - 23(R); NMED's NOI to File MIL (IMO Proposed
> Adoption of 20.2.92 NMAC)
>
> Greetings,
>
> You are hereby notified that I am opposed to your motion.
>
> Nick Maxwell
> 575.441.3560
>
>
> On 2025-10-30 08:31, Kimberly Rael wrote:
>> Good morning, Madam Hearing Officer Orth and Ms. Jones,
>>
>> The purpose of this email is to submit the attached _New Mexico
>> Environment Department's Notice of Intent to File Motion in Limine
>> Regarding Party Discussions _for filing in the above-referenced
>> matter.
>>
>> Thank you for your time and attention to this matter. Please let me
>> know if you have any questions or concerns.
>>
>> Sincerely,
>>
>> Kimberly Rael
>>
>> _Paralegal_
>>
>> Robles, Rael & Anaya, P.C.
>>
>> 500 Marquette Ave. NW, Suite 700
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>>
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>> telephone at (505) 242-2228. Thank you.