

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

RECEIVED
JUL 15 2026
Luis Lopez (OPF)


IN THE MATTER OF:
THE APPLICATION OF YUCCA
GROWTH INFRASTRUCTURE,
LLC FOR AN AIR QUALITY PERMIT,
NO. NSR 10883

AQB 26-57 (P)

**RESPONSE TO OBJECTIONS & LEGAL ARGUMENTS RAISED IN PARTY
CORRESPONDENCE PRIOR TO THE SCHEDULING CONFERENCE**

Yucca Growth Infrastructure, LLC ("YGI" or "Applicant") submits this written Response to the written Objection(s) and legal arguments raised in party correspondence in advance of the July 15, 2026 scheduling conference, including the Objection to Scheduling Conference filed by the New Mexico Environmental Law Center and the Center for Biological Diversity ("Objection"), the Notice of Joinder filed by Mr. Wetherbee, and other related arguments raised in email correspondence. Because portions of that correspondence misstate the statutes and regulations governing this proceeding, YGI provides the following authorities for the Hearing Officer's consideration:

1. The Department currently has a deadline of November 23, 2026 to issue a decision on the application.¹ Under the Air Quality Control Act, a decision to extend a permit application deadline is set by statute and may only be extended by the Secretary (or when applicable his delegate or the Director). *See* NMSA 1978, § 74-2-7(B)(2)(a). In the Notice of Docketing issued on July 2, 2026, the Secretary did not delegate this statutory authority to the Hearing Officer, and instead

¹ *See* July 1, 2026 letter sent by Secretary Kenney to Amanda Marrufo re Air Quality Permit Application No. NSR 10833 (extending the issuance/denial deadline from August 25, 2026 by 90 days to November 23, 2026).

specifically delegated all powers arising under Part 20.1.4 NMAC. *See* Notice of Docketing, Appointment of Hearing Officer, and Delegation of Final Decision Authority.²

2. Instead, the authority to issue extensions for permit application cases is found in 20.2.72.207 NMAC (not Part 20.1.4) and, thus, has not been delegated to the Hearing Officer. As such the Hearing Officer lacks authority to officially or unofficially extend the hearing (and post hearing process) for this application such that a decision is issued past the November 23, 2026 deadline.

3. Similarly, completeness decisions are covered under Part 20.2.72 NMAC and the Secretary did not delegate authority to the Hearing Officer to determine completeness of the application.³

4. Pursuant to Part 20.1.4, and more specifically 20.1.4.100(E)(2) NMAC, the Hearing Officer **is** generally granted with authority to conduct prehearing conferences, issue prehearing orders, rule on motions, and regulate the course of the hearing, including the ability to “require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings.”)

5. **Nothing** in the Air Quality Control Act or its implementation regulations prohibits a Hearing Officer from requesting a scheduling conference before the date of the hearing is scheduled or noticed.

6. The regulation relied upon in the Objection(s), 20.2.72.206(B) NMAC, clearly states that the Department may “[n]ot issue **the permit** until at least thirty (30) days after the department’s

² *See* 20.1.4.100(E)(1) NMAC (describing the powers of the Secretary as follows: “(t)he Secretary shall exercise all powers and duties as prescribed under the Act, the Regulations and this Part, and not otherwise delegated to a staff member, the Hearing Officer, or the Hearing Clerk.”)

³ Furthermore, the issue of completeness focuses on factual issues and is not a pure question of law. As such, it is an inappropriate subject for a dispositive motion, and it would be inefficient and wasteful to set the entire hearing schedule to accommodate this request. *See, e.g., Pharmaseal Lab'ys, Inc. v. Goffe*, 1977-NMSC-071, ¶ 9, 90 N.M. 753, 756, 568 P.2d 589, 592 (noting that dispositive relief is not favored and that by showing one genuine issue of material fact is enough to warrant denial of a dispositive motion).

analysis is available for review.” 20.2.72.206(B)(2) NMAC (emphasis added). This rule is completely silent regarding the holding of scheduling conferences or the holding of the hearing. Thus, it is inaccurate for Opponents to represent that the agency’s analysis “must be available for at least thirty (30) days, prior to the Department issuing a hearing determination” *See* Objection, p.1.

7. Instead, the Hearing Officer’s authority to “conduct pre-hearing conferences . . . for purposes including . . . expediting the disposition of the proceeding,” 20.1.4.300(A)(3) NMAC, contains no specific timing requirements other than to facilitate an expedited disposition of the proceeding.

8. Rule 20.1.4.300 NMAC more fully states:

In proceedings under this Part, the Hearing Officer may conduct pre-hearing conferences and issue pre-hearing orders that are not inconsistent with these rules, for purposes including but not limited to expediting the disposition of the proceeding, discouraging unnecessary, duplicative or wasteful pre-hearing activities, formulating and simplifying issues, obtaining stipulations or admissions of fact or law, obtaining advance rulings regarding the admissibility of evidence, avoiding the presentation of unnecessary or cumulative evidence or motions and adopting special procedures for managing proceedings involving difficult or complex issues and/or large numbers of parties. With respect to proceedings involving large numbers of parties, the Hearing Officer may require that service of documents under Section 115.B [Paragraph XX of 20.1.4.100 NMAC] be made on designated representatives of groups of parties with similar interests and may make such other orders as are consistent with this Subpart.

9. Opponents also indicate that a delayed schedule is needed in this matter to accommodate some sort of discovery. No details are stated regarding the desired discovery topics. This matter is governed under the procedural rules for permit hearings governed by Part 20.1.4 NMAC. The only regulations in Part 20.1.4 that discuss or mention discovery are in 20.1.4.200(E) NMAC which specifically applies to “Special Procedures for Hearings Under the Solid Waste Act.” **This**

matter, however, does not involve a permit application under the Solid Waste Act. Part 20.1.4 does not otherwise discuss or allow for discovery. The Air Quality Control Act clearly authorizes the Environmental Improvement Board to broadly issue regulations. *See* NMSA 1978 § 74-1-8. No such discovery rules, however, have been adopted for permit cases other than Hearings under the Solid Waste Act.

Based on the foregoing, YGI respectfully asks that the Hearing Officer consider the above authorities in response to the filed arguments and objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of July 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

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