

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

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

AQB 26-57

**RESPONSE IN OPPOSITION TO REQUEST FOR EMERGENCY STATUS
CONFERENCE**

The New Mexico Environmental Law Center, on behalf of Jose Saldaña Jr. and Vivian Fuller, (collectively, “Community Members”), and with the Center for Biological Diversity, respectfully provide the following response in opposition to Yucca Growth Infrastructure, LLC’s (“YGI”) *Request of [sic] Emergency Status Conference*, (hereinafter “Motion”), in an attempt to explain the Hearing Officer’s authority to exceed a 180-day permitting deadline and clarify the Department’s obligation to ensure all parties, not just Yucca Growth Infrastructure, LLC (“YGI”), are able to meaningfully participate in a hearing on YGI’s Application for Permit No. NSR 10883. Community Members and the Center for Biological Diversity note that YGI’s “Request” is actually an inappropriately submitted motion that does not comply with the requirements of 20.1.4.200(D) NMAC, as YGI fails to state whether parties’ concurrence was sought and party positions, For that reason alone, YGI’s Motion must be denied. 20.1.4.200(D)(3) NMAC (“Any opposed motion shall state either that concurrence of other parties was sought and denied, or why concurrence was not sought”) (emphasis added).

While it is correct that the Department must either grant, grant subject to conditions or deny the YGI’s Application “within ninety (90) days after the department deems the application administratively complete, if the application is not subject to the requirements of 20.2.74 NMAC (Prevention of Significant Deterioration),” and “the secretary may grant an extension, not to

exceed ninety (90) days ... if the secretary determines good cause exists,” 20.2.72.207 (B) and (C) NMAC, such a 180 day deadline does not apply to situations when a public hearing has been granted. This authority is clearly demonstrated by the plain language of the Department’s regulations governing permit procedures, as well as the Department’s pattern and practice of ensuring parties to a public hearing have a reasonable amount of time to prepare to present technical testimony and meaningfully engage in the hearing.

Indeed, once a public hearing has been granted, the regulations dictating the hearing process are to “be liberally construed to carry out its purpose and the purposes of the statute or statutes and regulations pursuant to which the proceeding at issue is conducted. This part shall also be liberally construed to facilitate participation by members of the public, including those who are not represented by counsel.” 20.1.4.100(B) NMAC. That purpose, of course, is to prevent and abate air pollution and protect the public health and welfare, which is best accomplished by “ensur[ing] due process for all persons; ensur[ing] the ability to participate of all persons and entities who desire to take part; and to give orderly structure to the proceedings.” 20.1.4.6 NMAC (emphasis added). The Hearing Officer, for his part, “shall exercise all powers and duties prescribed or delegated under the Act, the Regulations, or this Part.”¹ The Hearing Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay.” 20.1.4.100(E)(2). This authority includes the ability to grant an extension of time for good cause shown, and after consideration of prejudice to other parties and undue delay to the proceeding. 20.1.4.100(F)(2) NMAC.

¹ While YGI asserts in its Response to Objections & Legal Arguments Raised in Party Correspondence Prior to the Scheduling Conference, submitted on July 15, 2026, as well as its Motion, that the Hearing Officer does not have the authority to issue extensions for permit applications because such authority is not found in Part 20.1.4 NMAC, this is clearly incorrect. See 20.1.4.100(F)(2) NMAC.

Thus, any assertion that this process must conclude by November 23, 2026 – 180 days from the date YGI submitted its Application – lest the Department risk violating the law, is flatly incorrect. Indeed, typical Department practice suggests the same. Take the Associated Asphalt and Materials, LLC air permit application process for example.² Associated Asphalt and Materials, LLC, (hereinafter “Associated Asphalt”), applied for a similar NSR minor-source permit to operate a hot-mix asphalt batch plant on the south side of Santa Fe, submitting Notice of its application between October 29, 2019 and October 31, 2019.³ Notably, NMED held two thirty (30) day comment periods: one after the Department made its initial administrative completeness determination; the second after the Department released its technical analysis.⁴ NMED finished its statement of basis for the draft permit on February 4, 2021⁵ which said that as of January 23, 2020, the Department had received comments from 46 people.⁶ The hearing was ultimately scheduled to begin on March 22, 2021.⁷ Joint motions for extension of time were granted and the final Order was signed on July 30, 2021. In total, the process took nearly 580 days.

² See generally Air Quality Bureau 20-12 – Permit Application for Associated Asphalt and Materials LLC No 8585 Administrative Record, Accessible at <https://cloud.env.nm.gov/resources/translator.php/MzYyMjBjNjMxNzNhNjJlNDk5NGI2NjE0Yl8yNjYwNA~~.pdf> (last viewed July 15, 2026) (hereinafter “AAM Record”).

³ *Id.* at 233, 234.

⁴ See New Mexico Environment Department Letter Re: Air Quality Permit Application No. 8585 - IDEA ID No. 39276 - PRN20190001) Associated Asphalt and Materials Company, Associated Asphalt Material - Santa Fe Facility (January 28, 2020). Included here as Attachment 1. Community Members and the Center for Biological Diversity maintain that the Department has failed to comply with this process and must do so prior to any hearing on YGI’s Application.

⁵ AAM Record at 323.

⁶ *Id.* at 326.

⁷ Air Quality Bureau 20-12 – Permit Application for Associated Asphalt and Materials LLC No. 8585, “Notice of Hearing.” Accessible at <https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2021/02/AQBP-ENGLISH-NOTICE-OF-03.22.21-PUBLIC-HEARING-8585.pdf> (last viewed July 15, 2026).

Notably, the Associated Asphalt permit application was much less complex than YGI's Application, and received significantly less public interest – yet the Department and YGI are demanding a rushed hearing process based on a false sense of urgency to inappropriately push this project through. Certainly, as many parties expressed during the July 16 scheduling hearing, from April 27, 2026, the date of which YGI's Application was submitted, to August 13, 2026 – a mere four months – is not a reasonable amount of time to prepare for a hearing given the complexity of the Application and the fact that the Department has not publicly released most documents the parties need to provide technical review. If, in fact, the Department provides its analysis in the coming days, which it claimed would occur by Friday, July 17, and failed to do, it is unfathomable how two weeks will be sufficient time to review and technically assess the documentation the Department purports to provide in support of its draft permit for YGI's polluting facility. Importantly, in order to comply with all applicable requirements, the Department must mail by certified mail the hearing notice to all public commenters, over 17,000, and ensure all information is posted concurrently in Spanish in order to allow all people the same access and opportunity to participate. The Department has provided no indication such a feat is possible between the time of this filing. Instead, YGI is asking the Department to create an untenable situation, based on the incorrect assumption that a decision on the YGI Application must be made within 180 days of its completeness determination, that will almost certainly violate the parties and the public's right to notice and an opportunity to be heard. *See Reid v. New Mexico Bd. of Exmrs.*, 1979-NMSC-005, ¶ 6, 92 N.M. 414 (“The Fourteenth Amendment guarantees every citizen the right to procedural due process in state proceedings ... By ‘procedural due process’ we mean the following: ... one whom is sought to deprive of such rights must be informed of this fact (that is, he must be given notice of the proceedings against

him); he must be given an opportunity to defend himself (that is, a hearing); and the proceedings looking toward the deprivation must be essentially fair”(citations omitted); *see also Maso v. N.M. Tax’n & Revenue Dep’t, Motor Vehicle Div.*, 2004-NMSC-028, ¶ 10, 136 N.M. 161 (in a civil administrative proceeding notice must be *reasonably* calculated to apprise the litigant of the date and time of the hearing).

The Hearing Officer clearly has the authority, and the obligation, to ensure that all interested parties have sufficient time to prepare for a hearing. Notably, while YGI claims any hearing date that will extend the hearing process beyond November 23 will result in prejudice to YGI, YGI’s experience is not the only relevant experience to this process.⁸ As many parties expressed at the July 15 scheduling hearing, rushing this process will result in the inability to put together a meaningful case – particularly, and conveniently for YGI and the Department, a case demonstrating the significant issues in YGI’s Application.

Assertions that all parties have had since January, 2026 to develop this case are demonstrably false and suggestions that the parties’ inability to comply with the Department’s rushed timeline is indicative of the failure of the advocates themselves, are unjustified. While it is true that YGI, at the time, known as Acoma, LLC, submitted two air pollution permit applications to power the same facility it seeks to power now, both applications were withdrawn by YGI.⁹ YGI’s current Application is drastically different from its earlier proposals. Further, as of the filing of this response, the Department has yet to publish its technical analysis and draft permit. These documents are critical to the hearing, and the parties have had no opportunity to

⁸ Notably, any prejudice YGI claims is ultimately a product of its own poor decision-making, choosing to invest resources into a project before ensuring all appropriate permitting approvals are in place.

⁹ New Mexico Environment Department, Public Notices, “Acoma, LLC East Microgrid (Application Withdrawn 4/27/26)” and “Acoma, LLC West Microgrid (Application Withdrawn 4/27/2026).” Accessible at <https://www.env.nm.gov/public-notice/> (last viewed July 15, 2026).

review them. Under Department rules, all persons are entitled thirty days to review and comment on the Department's technical analysis. 20.2.72.206(B) NMAC (emphasis added). Holding a hearing prior to the 30-day period provided by law – which has yet to begin – would nullify important public participation opportunities and render meaningful hearing participation by the parties impracticable. Ultimately, YGI's claim that Community Members and the Center have already briefed the merits of this case is absurd. While our comments have addressed some glaring issues in YGI's Application, that is not the entire subject matter of the hearing. The parties have yet to see important portions of the administrative record, including the above-mentioned technical analysis and draft permit. The parties must be given adequate time to review these documents and develop relevant testimony prior to hearing.

Additionally, the Hearing Officer has allowed discovery in this proceeding. For discovery to be meaningful, parties must be given the opportunity to submit discovery requests, receive responsive documents, and then review and develop testimony around those responsive documents. YGI's proposal to have direct testimony due in two weeks would render discovery impossible. Thus, Center for Biological Diversity and Community Members urge the Department to maintain its existing hearing schedule, with a hearing set to begin on October 19, 2026, because such a schedule, while still rushed, will at least better ensure that all parties are able to meaningfully participate, conduct any necessary discovery, and allow the Department to consider all relevant information when making a decision that serves to significantly impact all New Mexicans.

Submitted on this 21st day of July, 2026.

/s/ Maslyn Locke
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CERTIFICATE OF SERVICE

I certify on July 21, 2026, a true and correct copy of the foregoing Response in Opposition was served by email to:

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JAMES C. KENNEY
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JENNIFER J. PRUETT
DEPUTY SECRETARY

January 28, 2020

Re: Air Quality Permit Application No. 8585 (IDEA ID No. 39276 - PRN20190001)
Associated Asphalt and Materials Company, Associated Asphalt Material - Santa Fe
Facility

Dear Ms. Stout,

The New Mexico Environment Department's Air Quality Bureau (AQB) has received your January 17, 2020 comments expressing concern about Associated Asphalt and Materials Company's plans to apply for an air quality permit to modify the Associated Asphalt Material - Santa Fe Facility near Santa Fe in Santa Fe County near your home or property.

Your comments will be included as part of the permit application record.

This letter is intended to provide general information about the permit process. If you need additional information, please feel free to call me in Santa Fe at 505-476-5561.

You may also call Associated Asphalt and Materials Company directly. The contact person is Matt Lane, Environmental Specialist at 505-490-0887 in Santa Fe, NM.

WHAT IS AN AIR QUALITY PERMIT?

Air quality permits issued by the AQB authorize a company to construct or modify a facility which will emit one or more regulated air pollutants: sulfur dioxide, particulate matter, carbon monoxide, nitrogen dioxide, volatile organic compounds, and/or lead. In addition to these pollutants, facilities that emit certain toxic pollutants also may need to apply for a permit.

Our permitting regulation, New Mexico Administrative Code, Title 20, Chapter 2, Part 72 (20.2.72 NMAC) requires a pre-construction permit for any proposed new or modified facility that has a potential emission rate of more than 10 pounds per hour or 25 tons per year of air pollutants with ambient air quality standards. The potential emission rate of a facility is the

emission rate prior to air pollution control equipment and prior to any enforceable limit on production rates or hours of operation. For New Mexico Toxic Air Pollutants, the potential emission rate threshold is usually much lower. Permits are also required for sources that are subject to certain federal air pollution control programs.

PUBLIC NOTICE REQUIREMENTS IN NEW MEXICO

You may have heard about the proposed project because 20.2.72 NMAC requires applicants to notify the public before an application is submitted.

1. **PRE-APPLICATION REQUIREMENTS FOR THE APPLICANT.** With a few exceptions, each company that applies for an air quality permit must satisfy comprehensive public notice requirements before the permit application can be ruled administratively complete. This is intended to inform the public and individuals who might be impacted by air emissions of this facility. The public often receives information about a permit application before the AQB. Public notice includes radio or television public service announcements, certified letters to landowners near the proposed or modified facility, public notice statements posted in at least four publicly accessible and conspicuous locations, certified letters to municipalities and counties in the area, and legal classified ads in a local newspaper.

2. **PUBLIC NOTICE REQUIREMENTS FOR THE AQB.** Once the AQB has completed a preliminary review of the permit application and deemed it administratively complete, it must make available for public inspection the permit application and publish a preliminary determination/public notice in a newspaper of general circulation in the area closest to the location of the facility. The notice will also be sent to the nearest NM Environment Department Field Office. In addition to describing the permit application (a summary of estimated emissions and ambient impact), the notice will affirm that all interested parties have thirty (30) days, from the date the notice is published, to notify the Department in writing of their desire to review and comment on the Department's analysis.

The Department's analysis includes a Statement of Basis and is prepared as part of the permit development process. Interested persons that submit a request prior to the end of the thirty (30) day period following the public notice, will be sent the notification of the availability of the Department's analysis (when it becomes available) and will be given thirty days (30) days to review the analysis before the permit is issued or denied. During that time, the public may submit written comments or evidence on the application and analysis and request a public hearing. This second thirty (30) day comment period will begin after the NMED Field Office receives the Department's analysis. The analysis for Associated Asphalt will be available for review on the Departments website at this link: <https://www.env.nm.gov/air-quality/permit-applications-with-public-interest-public-meeting-or-public-hearing/> or the analysis can be viewed at the Department's Santa Fe office at 525 Camino de los Marquez, Suite 1, Santa Fe, NM 87505.

After the permit is issued or denied, the Department will mail written notice of the action taken on a permit application to all persons who submitted written comments or evidence on the application.

PUBLIC HEARINGS

20.2.72 NMAC also requires that a public hearing be held if the Secretary of the Environment determines that there is significant public interest. Public hearings will be held in the geographic area in which the source intends to locate and will be administered by a hearing officer. The applicant and the public will be notified of the place, date, and time of the hearing. A recording of the hearing will be made, and a transcript of the hearing can be made at the expense of the person requesting the transcript.

At the hearing, all interested persons will be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The number of persons requesting a hearing is important to the Secretary's decision as well as the nature of the interested person's arguments. In a request for a public hearing, it is recommended that a summary of any data, views, or arguments be given so that the AQB understands the issues.

But please note. If opposition to the proposed construction or modification is not air quality related, the AQB will not be able to resolve that issue. Opposition to the construction or modification of a facility due to location, noise, traffic, etc., is often related to local zoning issues and not to air quality issues.

An option that you or your neighbors may wish to consider, prior to requesting a public hearing, is to contact the company and request a meeting so that the company can explain their facility operations. The AQB would be willing to attend and explain air quality issues.

PERMIT REVIEW PROCESS

The AQB requires the applicant to submit detailed information regarding the proposed construction. An application is ruled "administratively incomplete" if the Department did not receive enough information to adequately review the proposed project. After an application is ruled "administratively complete" the Department usually has 90 days to issue or deny the permit, depending on the particular process under which the application is being reviewed. It is during this time period that a public hearing would likely be held.

The AQB staff reviews each permit application and air quality analysis to determine whether or not the source will comply with applicable state and federal regulations and ambient air quality standards. If the permit is issued, it will contain conditions to ensure that the facility will operate as represented by the company in the application. If it is determined that the facility will not meet air quality regulations and standards, the permit will not be issued.

If you have any further comments, please submit them to me at the address at the top of this letter. Please specify the name and location of the facility, the permit application number if known, and be sure to provide your complete mailing address.