

**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**

No. AQB 26-57 (P)

**MAXWELL'S CONSOLIDATED REPLY IN SUPPORT OF MOTION FOR EXPEDITED
PREHEARING DISCLOSURE, PRODUCTION OF IDENTIFIED ADMINISTRATIVE-
RECORD MATERIALS, TARGETED ADMISSIONS, AND, IN THE ALTERNATIVE,
LIMITED DISCOVERY**

Mr. Maxwell submits this consolidated Reply to the August 7, 2026 responses filed by the New Mexico Environment Department Air Quality Bureau ("NMED" or "Bureau") and Applicant Yucca Growth Infrastructure, LLC ("Applicant").

The Motion seeks a layered and narrow prehearing order: access to identified Administrative Record materials; existing records; limited clarification of the present basis for proposed Conditions A107 and A110 and related calculations; targeted admissions; and, only to the extent necessary, limited discovery.

The principal prejudice is straightforward: under 20.1.4.400(A)(1) NMAC, Maxwell bears the burden of going forward to "present an affirmative case" on any permit condition he contends is inadequate, improper, or invalid. With that affirmative technical case due August 24, he cannot meaningfully satisfy that burden on the existing schedule if material information concerning the factual and technical basis for Conditions A107 and A110 remains within NMED's and Applicant's control until the same deadline. Without the limited prehearing disclosure and clarification requested, Maxwell must either formulate his affirmative case without information necessary to test those conditions or defer material issues until after the deadline for presenting that case has passed.

I. THE MOTION SEEKS EXISTING RECORDS AND THE PRESENT BASIS OF THE DRAFT PERMIT, NOT PREMATURE TECHNICAL TESTIMONY.

A. Administrative-Record access is independent of formal discovery.

NMED acknowledges the operative definition of “Administrative Record” in 20.1.4.7(A)(2) NMAC: all public records used by the Division in evaluating the application, including supporting data, cited materials, public comments, correspondence, the Draft Permit and Statement of Basis, and other material used in the evaluation. *NMED Resp.* at 4.

Section 20.1.4.200(A)(2) separately provides that the Division shall forward the Administrative Record to the Hearing Clerk no later than the hearing and that “[t]he Administrative Record is available for public review at all times.” The forwarding deadline and the public-review requirement are different provisions. A deadline for transmitting the assembled record to the Clerk does not postpone the express requirement that the record be available for public review in the meantime.

NMED describes the Administrative Record as a document that must be “compiled,” “organized,” and “collated,” and argues that “available for public review at all times” appears to contemplate access through IPRA. *NMED Resp.* at 5. But Part 4 does not define the Administrative Record as a completed packet or index that comes into existence only when compilation is finished. It defines the record functionally by the public records the Division has used in evaluating the Application. Nor does Section 200(A)(2) state that its public-review requirement exists only through a separate IPRA request.

NMED also emphasizes that it has posted what it calls the “most critical documents,” including the Application, Draft Permit, Statement of Basis, and Modeling Review Report. *NMED Resp.* at 1 & n.1. Those are the public materials Maxwell reviewed to identify the specific questions in the Motion. Their publication does not establish that the underlying July 13

and July 16 exchanges, native calculations, project-specific design records, or full-precision modeling information sought in Exhibit A are contained in those posted documents. The Motion is directed to the identified gaps revealed by review of the posted materials, not to obtaining another copy of what is already online.

The Motion does not require NMED to complete its final index early. It asks for access to the Administrative Record as it presently exists in the organization by which NMED keeps and uses it, together with rolling access as additional public records are used in the continuing evaluation. That gives effect to both portions of Section 200(A)(2): the record remains reviewable during the proceeding, while NMED retains until the regulatory deadline to forward the assembled record to the Hearing Clerk.

Applicant takes no position on this Department-directed relief and expressly has “no objection” to NMED making Administrative Record materials available on a rolling basis. *Applicant Resp.* at 4.

B. The four NMED interrogatories seek the existing regulatory basis of materials already issued for public review.

NMED characterizes all four interrogatories as requests for its technical testimony before it is due. *NMED Resp.* at 1–3. The requests are narrower. They ask what NMED presently determined, verified, included, or intended in developing the July 29 Draft Permit and associated review materials.

NMED Interrogatory No. 1 concerns the arithmetic shown in the SSM Worksheet and the intended operation of A107.D and A107.E. No. 2 asks which identified assumptions NMED verified, the existing records supporting any verification, and the basis for the potential-emission and applicability treatment. No. 3 asks NMED’s present understanding of the onsite gas-treatment configuration and the monitoring basis of A107 and A110. No. 4 asks whether

identified CDS activities were included in the existing inventory and modeling and asks NMED to reconcile values already published in its own review materials. *Motion*, Ex. A at 3–5.

Those questions concern regulatory review already performed to produce the Draft Permit, Statement of Basis, and Modeling Review Report. They do not require NMED to draft its August 24 testimony, identify future witness opinions, perform a new study, or create a new calculation. If a requested point remains unresolved or will first be determined in later technical testimony, NMED can state that fact. Such an answer identifies the present state of the permit review without requiring premature testimony.

The requests for production are even more distinct from testimony. The July 13 Department communication, Applicant’s July 16 response and attachments, native calculation files, existing CDS diagrams, existing purge procedures, gas analyses, and modeling files are existing records. NMED’s August 6 transmission of two files as “responsive documents to RFP No. 2 in your Motion” illustrates only the procedural distinction: identifying and transmitting an existing responsive record does not require NMED to file its August 24 technical case. *NMED Resp.*, Attach. A.

The Motion further permits exact incorporation of an existing response or production and expressly disclaims creation of a new record, drawing, engineering study, test, or calculation. The Hearing Officer can therefore order disclosure of the existing regulatory basis without ordering NMED to put on its case early.

C. Applicant’s interrogatories and production requests seek existing project facts and records, not an advance presentation of Applicant’s technical case.

Applicant argues that Maxwell’s requests would effectively require Applicant to put on its case before the August 24 Statement-of-Intent deadline and uses Applicant Interrogatory No. 1 as its principal example. *Applicant Resp.* at 6–9. That interrogatory does not ask for a witness

opinion or a new engineering analysis. It asks Applicant to describe the current onsite natural-gas treatment path and identify the configuration, number, service, routing, and venting characteristics of the equipment relevant to the CDS system.

The subparts are different aspects of one process-path question, not twenty unrelated subjects. They are directed to identifying what equipment treats the gas, where the CDS units sit in that path, how many units and materially different classes are contemplated, what equipment each unit serves, and what isolation, purging, blowdown, venting, servicing, or replacement activities occur. Those facts bear directly on identifying potential emission points and determining whether the assumptions and compliance structure used in A107 describe the proposed source.

The Motion also does not require Applicant to recreate that information in narrative form if an existing record answers it. Exhibit A permits exact incorporation of an existing response, diagram, drawing, record, or prior production sufficient to answer the request. The production requests likewise seek existing records and expressly do not require creation of a new drawing, study, test, or calculation.

Applicant emphasizes that “CDS” appears repeatedly throughout Maxwell’s requests and that all seven Applicant interrogatories concern the CDS. *Applicant Resp.* at 7. That repetition reflects concentration on one identified permit issue rather than expansion into unrelated subjects. Maxwell deliberately excluded the broad project-development, water, pipeline, manufacturing-capacity, raw-material, financing, and unrelated waste subjects Applicant criticizes elsewhere.

D. The ten targeted admissions are useful because they can remove simple, documentary propositions from dispute.

Applicant correctly notes that requests for admission are a recognized civil discovery device. *Applicant Resp.* at 3–4. Maxwell does not claim an unconditional right to serve them. He asks the Hearing Officer to authorize a small set of admissions as part of a prehearing order, consistent with 20.1.4.300(A)(3) NMAC, which expressly authorizes prehearing measures to simplify issues and obtain stipulations or admissions of fact or law.

The ten requests are not open-ended interrogatories disguised as admissions. Four ask Applicant to admit arithmetic apparent from the SSM Worksheet: how the 780,900-scf and 520,600-scf totals are calculated and the corresponding 8,220-scf and 5,480-scf per-CDS quantities. Two ask about the Worksheet’s stated no-overlap assumption and the sum of its stated startup and maintenance VOC masses. The remaining four ask whether A107 itself contains a no-overlap provision, where A110’s annual samples are taken, whether the Transwestern tariff supplies the asserted two-percent VOC value, and whether the narrative’s “approximately ninety-five” description differs from the Worksheet’s use of exactly 95. *Motion*, Ex. A at 11–12.

Applicant says these requests are inappropriate because the documents “speak for themselves.” *Applicant Resp.* at 4. That observation supports the low-burden character of the requests. If a document says what the request states, Applicant can admit the proposition without narrative technical testimony. If Applicant believes the proposition is incomplete or inaccurate, the form permits a denial or qualification and asks for the factual basis and supporting existing record. No new engineering work is required.

The benefit is issue narrowing. Admissions can remove undisputed arithmetic and documentary propositions from the hearing, reveal which apparently simple points actually remain disputed, and focus technical testimony and cross-examination on those disputes. That is the function contemplated by Section 300(A)(3), not duplication of the merits hearing.

II. THE AUGUST 24 DEADLINE MAKES TIMELY ACCESS NECESSARY TO MAXWELL'S AFFIRMATIVE CASE AND FALLS WITHIN PART 72'S SEPARATE THIRTY-DAY REVIEW PERIOD.

A. Part 4 requires an affirmative technical case, not merely later rebuttal and cross-examination.

NMED states that all parties should have their “first opportunity” to see witness lists, technical testimony, and exhibits at the same time on August 24 and characterizes that simultaneity as ensuring fairness. *NMED Resp.* at 3. Applicant similarly contends that Maxwell can use rebuttal and cross-examination after receiving the Administrative Record and technical filings. *Applicant Resp.* at 7–8.

That position does not account for the distinct burden Part 4 places on Maxwell before rebuttal or cross-examination occurs. NMED places quotation marks around Maxwell's “affirmative filing” and later calls it a “so-called ‘affirmative filing.’” *NMED Resp.* at 1, 3. The terminology is not Maxwell's invention. Section 20.1.4.400(A)(1) NMAC provides that a person who contends a proposed permit condition is inadequate, improper, or invalid has “the burden of going forward to present an affirmative case on the challenged condition.” The prefiled technical submission is the means by which Maxwell must present that case: Section 20.1.4.300(B)(1) NMAC requires a Statement of Intent to Present Technical Testimony, and the Amended Scheduling Order requires full written technical testimony and supporting exhibits by August 24. Applicant is therefore correct that the burden of going forward attaches when a party challenges a proposed condition. *Applicant Resp.* at 8. Maxwell is doing exactly that as to Conditions A107 and A110.

The prejudice is that Maxwell must satisfy that affirmative-case burden by August 24 while material information needed to evaluate the factual and technical basis for those conditions may remain exclusively with NMED and Applicant until that same deadline. Formal

simultaneity does not cure that problem. NMED developed the Draft Permit and its supporting analysis, and Applicant possesses the project-specific design and operational information underlying its Application. Maxwell must formulate and support his affirmative challenge from the materials actually available to him before his filing is due. Information first disclosed in NMED's or Applicant's August 24 technical filing is necessarily unavailable for use in Maxwell's own filing due the same day.

The Statement-of-Intent rule reinforces the resulting prejudice. Section 20.1.4.300(B)(1) (a) NMAC requires a technical filer to identify witnesses and exhibits, list or make available the technical materials relied upon by each witness, and attach a summary of each witness's testimony, opinions, and the basis for those opinions. Under the Amended Scheduling Order, Maxwell's complete affirmative technical filing is due August 24. Technical material first disclosed that day cannot beforehand be reviewed by Maxwell, supplied to his witness, analyzed, tested against the proposed permit conditions, incorporated into calculations, or used as support for the opinions he is required to prefile.

Rebuttal does not cure that prejudice because rebuttal follows, rather than substitutes for, the affirmative case Section 400(A)(1) requires Maxwell to present. Nor does later cross-examination. Section 20.1.4.400(B)(2) NMAC generally precludes introduction during witness examination of technical information that was not placed in the Hearing Record by the technical-filing deadline, except for impeachment or rebuttal. Cross-examination can test a technical basis after it is disclosed; it cannot provide Maxwell the prefiling access necessary to develop and support the affirmative case he is required to file before that disclosure occurs.

B. Part 72 separately provides thirty days to review the Department's analysis, comment, and request a hearing.

The timing is also significant under the underlying construction-permit rule. Section 20.2.72.206(A)(3) NMAC requires the initial public notice to explain that a person who expresses written interest will receive a thirty-day period to review and comment on the Department's analysis. Section 206(B)(1) requires notice to those interested persons when the analysis is available, and Section 206(B)(2) prohibits permit issuance until at least thirty days after the analysis becomes available; during that period, any person may submit written public comments or request a public hearing.

The Department made the Draft Permit, Statement of Basis, and Modeling Review Report available on July 29, 2026. The resulting Part 72 review period extends beyond the August 24 deadline for complete affirmative technical testimony. Nothing in Section 206 expressly prohibits initiation or scheduling of a Part 4 hearing before that review period expires, and Maxwell does not contend otherwise. Given the permit-decision deadline in 20.2.72.207(B)(1) NMAC and the Secretary's authority under Section 207(C) to grant a good-cause extension of up to ninety additional days, beginning the hearing process before every stage of public review has concluded may be prudent.

But an accelerated hearing schedule should not make the separate thirty-day analysis-review opportunity functionally hollow. Part 72 gives interested persons time to inspect the Department's analysis, identify questions, submit comments, and request a hearing. Requiring a party to fix its complete affirmative technical case before that review period has run, while deferring the underlying records and explanations until the same filing date, reverses the practical sequence contemplated by that review opportunity.

NMED itself argues that public access to Administrative Record materials may occur through IPRA. *NMED Resp.* at 4–5. Maxwell does not ask the Hearing Officer to enforce IPRA here. But NMED's own theory underscores the timing problem. A written IPRA request

ordinarily calls for inspection immediately or as soon as practicable and, absent circumstances such as excessive burden or breadth, no later than fifteen days after receipt. NMSA 1978, § 14-2-8(D). Maxwell filed his Notice of Second Request for Administrative Record on July 30, identifying the narrowed categories now at issue. Using July 30 as the operative date, the ordinary fifteen-day outside date is August 14, 2026—ten days before the August 24 technical-filing deadline and still within Part 72’s thirty-day review period. The Motion does not ask the Hearing Officer to adjudicate that separate IPRA deadline; the point is that even the alternate access mechanism NMED invokes ordinarily contemplates access early enough to permit review before August 24.

The requested order does not enlarge Part 72’s thirty-day period or delay the September 14 hearing. It gives practical effect to that review opportunity within the accelerated Part 4 schedule by requiring prompt access to existing material and limited clarification while there is still time to use it.

C. NMED’s assertion that the Motion “clearly shows” Maxwell already has everything he needs confuses identifying a question with knowing its technical basis.

NMED argues that Maxwell’s Motion “clearly shows that he has all the information he needs to develop his technical testimony” because the Motion itself identifies apparent inconsistencies. *NMED Resp.* at 3. The example NMED selects is the factor-of-ninety-five discrepancy involving 780,900 scf and 520,600 scf. *Id.*

That example demonstrates the distinction. The arithmetic identified in the Motion is elementary. The public SSM Worksheet uses 95 CDS units, a vessel count, purge-cycle counts, and a 1,370-scf quantity to produce the displayed totals; division by 95 produces the corresponding one-CDS quantities identified in the Motion. No specialized engineering expertise is required to perform multiplication or division or to compare the resulting labels with

Draft Condition A107.D. A person with general education can reasonably identify an apparent mismatch from those public materials.

What ordinary arithmetic cannot reveal is the project-specific technical and regulatory basis needed to resolve the issue. The public materials do not establish whether A107.D contains a drafting error; whether the 780,900-scf and 520,600-scf values were intended as facility-wide, per-CDS, or other quantities; what existing record supports the underlying assumptions; whether NMED verified those assumptions; how A107.D and A107.E are intended to operate; or whether NMED intends to revise the condition. Those are among the limited matters addressed by the requests.

NMED itself says its August 24 SOI “would very likely reconcile the alleged mismatch.” *NMED Resp.* at 3. That statement recognizes that identifying the discrepancy from the public materials is different from possessing the reconciliation. The ability to formulate a question is not the same as having the information needed to answer it, evaluate its significance, or support an affirmative technical position.

The same distinction applies to the Motion’s other examples. Reading two published ozone values, comparing table totals, or identifying what a cited tariff does or does not state may require careful review, but it does not itself require specialized expertise. Determining which value was actually used in modeling, why values differ, what full-precision source rates were used, or what project-specific record supports an assumption requires access to the underlying permit-review information. The Motion identifies those gaps with specificity; it does not establish that the gaps have already been filled.

III. THE THRESHOLD AUTHORITY ARGUMENT AND THE CASES CITED BY NMED AND APPLICANT DO NOT REQUIRE CATEGORICAL DENIAL.

A. The Motion asks the Hearing Officer to implement the July 29 orders through a narrowly tailored order.

Applicant argues that 20.1.4.200(E) NMAC is limited to Solid Waste Act hearings and that no other provision independently creates a general discovery right in this air-permit proceeding. *Applicant Resp.* at 3. Maxwell's Motion does not contend that Section 200(E) applies wholesale or creates an unconditional discovery entitlement.

The July 29 Order already found that discovery "should be allowed in the case" subject to an appropriate order, and Paragraph 7 of the Amended Scheduling Order provides that formal discovery will be allowed only upon order of the Hearing Officer. Maxwell's Motion is the request for the narrow order contemplated by those rulings. It relies principally on the Hearing Officer's general Part 4 authority and uses the limiting concepts identified in Section 200(E)(2)—relevance, privilege, burden, duplication, and reasonable availability—as useful limits on any formal discovery ordered.

The relief is also not all "discovery." Administrative-Record access arises independently under Section 200(A)(2), and Section 300(A)(3) expressly authorizes prehearing orders to simplify issues and obtain stipulations or admissions. Formal discovery is requested only to the extent the Administrative Record, existing records, and limited clarification do not resolve the identified gaps.

Applicant argues that Sections 100(E)(2) and 300(A)(3) describe powers of the Hearing Officer rather than creating a unilateral discovery entitlement in a party. *Applicant Resp.* at 4. Maxwell agrees with that procedural distinction. He did not purport to compel responses on his own authority; he filed a motion asking the Hearing Officer to exercise the authority those provisions confer and to enter the further order required by the Amended Scheduling Order. The fact that Section 300(A)(3) also directs prehearing management toward discouraging unnecessary, duplicative, or wasteful activity supports tailoring the order, not categorical denial.

The Motion's incorporation, issue-narrowing, and minimum-alternative provisions are designed for that purpose.

B. *Dunn* and *Schweizer* state limiting principles that the Motion already accommodates; SWOP confirms that air-permit discovery is not inherently anomalous.

NMED relies on *Dunn v. Brandt*, 2019-NMCA-061, ¶ 11, for the ordinary proposition that discovery should be limited when it is duplicative or burdensome. *Dunn* arose from an IPRA dispute involving a judicial protective order and quoted Rule 1-026(B)(2) NMRA in discussing the district court's authority. Maxwell does not dispute the limiting principle. The Motion is structured around it: existing records need not be reproduced; records "sufficient to establish" specified facts may be supplied; privilege and confidentiality are protected; no new studies or calculations are required; and formal discovery is an alternative where narrower means do not resolve the issue. *Dunn* does not make a general assertion of burden dispositive.

United States ex rel. Schweizer v. Océ North America, Inc., 956 F. Supp. 2d 1, 11 (D.D.C. 2013), is further removed. *Schweizer* concerned the scope of a statutory fairness hearing over a False Claims Act settlement and cautioned against "full-blown discovery as of right." Maxwell seeks neither full-blown discovery nor discovery as of right. He seeks a limited order in a proceeding in which the Hearing Officer has already determined that discovery should be allowed subject to an order defining its scope. *Schweizer*'s concern about converting a limited statutory hearing into a trial on the merits does not address targeted access to existing permit-review records and discrete clarification of proposed permit conditions.

Applicant also states that no party identified an air-permitting case in which discovery was ordered. *Applicant Resp.* at 8. Maxwell's Motion cited *Southwest Organizing Project v. Albuquerque-Bernalillo County Air Quality Control Board*, 2021-NMCA-005, ¶¶ 25–27. *SWOP* arose under a local procedural rule that expressly authorized discovery, so it does not establish

the precise reach of Part 4. But it is inconsistent with the broader suggestion that discovery is inherently foreign to an air-permit adjudication. The Court of Appeals also rejected the argument that prefiled technical testimony necessarily made discovery unnecessary, recognizing discovery as a means to fill information gaps and resolve underlying issues. *Id.* ¶ 27. That is the limited function Maxwell requests here.

C. Applicant’s constitutional-discovery authorities address a different question.

Applicant devotes a separate section to the proposition that there is no freestanding constitutional right to pretrial discovery in an administrative hearing. *Applicant Resp.* at 9–12. Maxwell’s Motion does not depend on such a right.

Archuleta v. Santa Fe Police Department, 2005-NMSC-006, ¶ 31, states the general rule that there is no constitutional right to pretrial discovery in administrative hearings. But *Archuleta* also states that the general rule “is not dispositive” and quotes *Dente v. State Taxation & Revenue Department*, 1997-NMCA-099, ¶ 8, for the proposition that in some cases additional prehearing process may be necessary to afford a meaningful opportunity to prepare. Applicant itself quotes that qualification. *Applicant Resp.* at 10.

Dente involved a driver-license revocation and rejected an asserted automatic due-process right to prehearing depositions where the driver had an adequate opportunity to cross-examine and showed no specific prejudice from the lack of depositions. 1997-NMCA-099, ¶¶ 8–10. Maxwell does not seek depositions and does identify concrete procedural prejudice: his affirmative technical case is due August 24, the same day NMED and Applicant say the missing technical basis will first be disclosed. Thus, even if *Archuleta* and *Dente* were reached, they do not establish that later rebuttal and cross-examination cure the timing problem here.

Applicant’s reliance on *Ramirez v. Marsh*, 2025-NMSC-050, is similarly misplaced. *Ramirez* concerned a criminal defendant’s request for confidential U-visa material and whether

restrictions on disclosure violated the Sixth Amendment right of confrontation. The Court held that the confrontation right was satisfied through the cross-examination available in that criminal proceeding. *Id.* ¶ 42. *Ramirez* did not address Part 4, engineering records supporting a proposed permit condition, or a schedule requiring a party to file its affirmative technical case before it can use information first disclosed by opposing parties.

The remaining constitutional authorities cited by Applicant principally concern whether a protected liberty or property interest exists and what process the Constitution independently requires. *Applicant Resp.* at 9–12. Maxwell need not establish a constitutional property interest to obtain relief authorized as a matter of Part 4 case management and under the Hearing Officer’s existing orders. The Motion’s fairness concerns are practical consequences of the governing procedure, not an attempt to create a freestanding constitutional right to discovery.

For the same reason, Applicant’s proposed *Mathews* balancing is not the governing test for this Motion. In any event, its burden analysis relies heavily on collective requests and “collateral subjects” that Maxwell expressly excluded. *Applicant Resp.* at 11–12. Maxwell’s requested minimum relief is confined to existing records and discrete questions concerning proposed permit conditions and is designed to preserve, not postpone, the September 14 hearing. Applicant identifies no reason that this narrowed relief would jeopardize the proceeding’s final-action deadline.

IV. THE BURDEN, AGGREGATION, AND MATERIALITY OBJECTIONS DO NOT JUSTIFY DENIAL OF MAXWELL’S NARROW REQUESTS.

A. Neither NMED nor Applicant supplies particularized evidence supporting its burden assertions.

Both responses repeatedly characterize Maxwell’s requests as burdensome, onerous, duplicative, or disproportionate. *NMED Resp.* at 1–3; *Applicant Resp.* at 5–8. But neither response is supported by an affidavit, declaration, or sworn statement from a Bureau technical

employee, Applicant engineer, records custodian, project manager, or other person with knowledge describing what work the narrowed requests would actually require. Neither provides an estimate of hours, personnel, cost, searches, responsive-record volume, or new work supposedly necessary to answer the requests.

The requests themselves can of course be examined to determine their scope. But counsel's characterization of the effort required to answer them is not a substitute for factual support concerning actual burden. New Mexico appellate courts have repeatedly stated that "[t]he mere assertions and arguments of counsel are not evidence." *Muse v. Muse*, 2009-NMCA-003, ¶ 51, 145 N.M. 451, 200 P.3d 104; *see also G & G Servs., Inc. v. Agora Syndicate, Inc.*, 2000-NMCA-003, ¶ 51, 128 N.M. 434, 993 P.2d 751. That principle is particularly relevant where burden is asserted as a factual reason to deny otherwise relevant prehearing access.

NMED's Response does not identify a request that would require a new study or calculation, and its Attachment A does not establish the asserted burden. On July 31, counsel acknowledged that Maxwell sought the narrowed records to prepare his NOI and stated that he was seeing whether they could be provided faster. On August 6, counsel transmitted two files as "responsive documents to RFP No. 2 in your Motion." *NMED Resp.*, Attach. A. Maxwell reserves any substantive interpretation of those files. The procedural point is simply that the only concrete record submitted with NMED's burden argument does not show that identifying and transmitting existing responsive records before August 24 is equivalent to presenting NMED's technical case early.

NMED also points to more than 22,000 public comments that must ultimately be reviewed and compiled into the Administrative Record. *NMED Resp.* at 5 n.2. That may bear on completion of a final index or assembled filing, which Maxwell does not ask NMED to finish

now. It does not establish the burden of making the record reviewable in its current organization or locating the discrete technical records identified in Exhibit A.

Applicant's numerical discussion similarly shows the wording and number of Maxwell's requests, but not the actual effort necessary to answer them under the Motion's limiting instructions. Existing records may be incorporated rather than reproduced; records "sufficient to establish" specified facts may be supplied; no new engineering study, drawing, test, model, or calculation is required; and the Motion expressly provides a narrower minimum alternative. General assertions of burden do not answer those limitations.

B. NMED's use of IPRA as an alternate access mechanism does not make the Part 4 relief duplicative.

NMED argues that Maxwell has used IPRA to seek many of the same public records and "should not be permitted to do both." *NMED Resp.* at 4–6. But NMED itself describes the Administrative Record as a distinct Part 4 record. The Motion does not ask the Hearing Officer to adjudicate whether NMED complied with IPRA, award an IPRA remedy, or bypass any applicable exception or privilege. It asks for proceeding-specific relief under Part 4, including access to the developing Administrative Record, limited written clarification and admissions, and a procedure for information produced too late for reasonable use in the August 24 filing. IPRA cannot supply several of those forms of relief. The ordinary fifteen-day period associated with Maxwell's July 30 narrowed request also has not yet run; on the July 30 operative date it reaches August 14. That pending outside date reinforces why the Motion preserves, rather than asks the Hearing Officer to adjudicate, separate IPRA rights.

Nor does prior use of IPRA require duplicate production. The Motion expressly allows exact incorporation of material already produced, and Maxwell does not seek again the files NMED has already supplied. If another requested record has been produced through IPRA,

NMED may identify and incorporate that production. The same mechanism prevents parallel access routes from creating duplicate work.

NMED further reasons that because 20.1.4.100(A) NMAC excludes automatic application of the Rules of Civil Procedure and Evidence, the command that the Administrative Record be “available for public review at all times” appears to contemplate IPRA alone. *NMED Resp.* at 5. The conclusion does not follow from the premise. Administrative-Record access is stated in Part 4 itself, independently of the civil rules, and Section 100(A) expressly permits use of the New Mexico Rules of Civil Procedure and Evidence for guidance where appropriate. Nothing NMED cites makes use of IPRA a waiver of the separate Part 4 public-review provision.

NMED notes that some records remain under review for exceptions or privilege. *NMED Resp.* at 5. The Motion already preserves privilege, permits particularized objections and redactions, and provides for protective treatment where appropriate. The dispute is therefore not whether protected material must be disclosed, but whether nonprivileged existing material and the present Administrative Record should be accessible in time for meaningful use.

C. Applicant’s aggregate counts do not measure the burden of Maxwell’s separate Motion.

Applicant emphasizes the number of subparts it assigns to Maxwell’s interrogatories and then aggregates Maxwell’s requests with more than one hundred requests served by other parties. *Applicant Resp.* at 5. That aggregate does not measure the burden created by Maxwell’s separate Motion.

Applicant itself acknowledges that Maxwell’s Exhibit A “disclaims most” of the broad project-development, supply-chain, water, wastewater, and pipeline subjects sought elsewhere. *Applicant Resp.* at 2. Maxwell’s requests are confined to the CDS SSM calculation, Conditions A107 and A110, the onsite gas-treatment path needed to identify relevant equipment and venting,

supporting gas-composition information, and the corresponding inventory and modeling treatment.

The requests also use burden-reducing mechanisms that Applicant's numerical count does not capture. They seek existing records or records "sufficient to establish" specified facts; permit exact incorporation of prior responses and productions; permit rolling production; protect privileged and legitimately confidential material; and do not require depositions, site inspections, new testing, new modeling, drawings, studies, or calculations.

Even accepting Applicant's characterization of individual clauses as "subparts," the relevant question under the July 29 Order is whether the ordered scope is reasonable and useful—not whether a numerical limit from civil litigation mechanically applies. Part 4 itself provides that the Rules of Civil Procedure do not apply, though they may be used for guidance. 20.1.4.100(A) NMAC. Applicant's citation to authority recognizing that nominally separate parties may "in some instances" be treated as one party for a federal interrogatory limit does not establish that the independent intervenors here should be aggregated. *Applicant Resp.* at 5 n.2. Their requests were separately filed, seek materially different subjects, and Maxwell expressly excluded many subjects sought by others.

The August 6 production also narrows the remaining production burden in one uncontested respect: NMED has already supplied the two files it identified as responsive to NMED RFP No. 2, and Maxwell does not seek them again. The proposed order permits that production to be incorporated rather than duplicated.

D. The requested subjects are directly tied to the proposed source, permit conditions, emissions, and compliance.

Applicant's Introduction argues that any permissible discovery must be directly relevant to the statutory air-permit criteria. *Applicant Resp.* at 1–3. Maxwell's Motion satisfies that

premise. It is directed to proposed Conditions A107 and A110, the calculation of emissions those conditions regulate, the equipment and activities that may vent, the supporting gas-composition and sulfur-monitoring information, and the treatment of those emissions in the inventory and modeling. Those subjects concern whether the proposed source and its permit conditions accurately account for and control regulated emissions and satisfy applicable air-quality requirements; they are not the collateral project-development subjects Maxwell expressly excluded.

Applicant separately characterizes Maxwell's requests as demands to explain "every complex equation" and "every related Application assumption." *Applicant Resp.* at 6. They are not. The Motion identifies discrete calculations and assumptions that affect A107, A110, the emissions inventory, and modeling. Applicant's own example, Interrogatory No. 1, asks for one site-specific process path. An existing process-flow or piping record may answer much of it by incorporation. The request for the configuration and service of the CDS system is relevant because those facts identify the equipment and activities capable of isolation, purging, blowdown, venting, servicing, or replacement and thus whether the permit's SSM assumptions correspond to the source actually proposed.

Applicant cannot use the stated 0.34-tpy output to establish that inquiry into its supporting basis is immaterial.

Applicant characterizes CDS emissions as "immaterial" because it compares 0.34 tpy of VOC from the CDS units with approximately 124 tpy from fuel-cell operation. *Applicant Resp.* at 7. But the 0.34-tpy figure is itself one of the outputs whose calculation, assumptions, and enforceability the Motion seeks to understand. Using that stated output as the premise for denying access to its supporting basis is circular.

The Motion did not depend on later-produced material to identify the issue. It relied on the public SSM Worksheet and Draft Condition A107 available when the Motion was filed. From those public materials, the Motion identified elementary arithmetic and labeling questions concerning the 780,900-scf and 520,600-scf values, the use of 95 CDS units, the stated event quantities, and the no-overlap assumption. *Motion* at 12–14.

What the public materials do not reveal is the project-specific technical and regulatory basis needed to resolve those questions: whether an apparent mismatch is a drafting issue or an intended compliance method; what existing record supports the underlying assumptions; how NMED verified the quantities; how A107 and A110 are intended to operate together; and how authorized venting was treated in the inventory and modeling. The requests seek that missing basis.

The significance of a permit condition is not determined solely by comparing its stated tonnage with the largest source category at the facility. The relevant question is whether the condition and its compliance method accurately describe and constrain the emissions they purport to regulate. Resolving simple documentary and arithmetic questions before testimony can narrow the hearing, permit stipulations or corrections, and focus later technical analysis on genuine disputes.

E. The Motion addresses the limiting criteria Applicant itself proposes.

Applicant says that, if limited discovery is permitted, the Hearing Officer should consider delay and expense, privilege and relevance, cumulativeness and reasonable availability, and whether expected benefit outweighs burden. *Applicant Resp.* at 5–6. Maxwell does not object to those limiting concepts as guidance. Applied to this Motion, they favor at least the minimum alternative relief.

The requested procedure is designed to avoid delay and preserve the September 14 hearing. It expressly protects privileged and legitimately confidential information. The subjects are tied to identified permit conditions, emissions calculations, inventory, modeling, and monitoring. Existing productions may be incorporated rather than repeated. The central information is not reasonably obtainable in time for Maxwell's affirmative filing if it first appears in the August 24 Administrative Record or technical filings. And the expected benefit is concrete: resolving whether identified discrepancies are drafting issues, supported assumptions, or substantive compliance questions before testimony can narrow the issues and avoid unnecessary hearing time.

Thus, even under Applicant's proposed limiting framework, categorical denial does not follow. If the Hearing Officer concludes that some individual item exceeds what is necessary, the Motion expressly invites narrower relief rather than denial of the entire request.

V. AT MINIMUM, THE NARROW ALTERNATIVE RELIEF SHOULD BE GRANTED.

The responses do not require an all-or-nothing choice between every item in Exhibit A and no prehearing relief. The Motion expressly provides a minimum alternative designed to obtain the core existing material and clarification needed for the August 24 filing without new engineering work.

NMED's response confirms that the Administrative Record is continually growing and is presently being organized and collated. *NMED Resp.* at 5. Its Attachment A confirms that counsel understood Maxwell sought the narrowed records to prepare his NOI and was attempting to provide them faster. Applicant affirmatively does not object to rolling review of Administrative Record materials. *Applicant Resp.* at 4.

At minimum, Maxwell seeks the current organization of the Administrative Record sufficient to permit meaningful review; the July 13 Department communication and Applicant's July 16 response and attachments; incorporation of the native SSM calculation already produced; existing CDS process-flow or piping information and purge procedures; and concise clarification of the per-CDS versus facility-wide quantities and the basis for excluding overlapping startup and maintenance. *Motion* at 3.

That middle course materially assists preparation of the affirmative technical filing, preserves the September 14 hearing date, and avoids unnecessary or duplicative discovery.

VI. CONCLUSION.

The responses do not justify categorical denial of the narrow relief requested. The Motion seeks existing Administrative Record materials, existing records, limited clarification and admissions, and only such formal discovery as remains necessary.

WHEREFORE, Mr. Maxwell respectfully requests that the Hearing Officer grant the Motion and enter the proposed order, with prior productions incorporated to avoid duplication. At minimum, Maxwell requests the limited alternative relief stated on page 3 of the Motion and the limited supplementation procedure stated in the Motion if materially responsive information is produced too late for reasonable use in the August 24 technical filing.

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of my Consolidated Reply in Support of Motion for Expedited Prehearing Disclosure, Production of Identified Administrative-Record Materials, Targeted Admissions, and, in the Alternative, Limited Discovery was served by email to the Hearing Clerk and all parties of record on August 10, 2026, with a hard copy mailed upon request.

-s- *Nicholas Maxwell*
Mr. Nicholas R. Maxwell