

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

IN THE MATTER OF:

**THE APPLICATION OF YUCCA
GROWTH INFRASTRUCTURE'S,
LLC FOR AN AIR QUALITY PERMIT,
NO. NSR 10883**

AQB 26-57 (P)

ORDER

This matter having come before me on a request by Center for Biological Diversity, (CBD) Jose Saldaña Jr. and Vivian Fuller for production of documents and set of interrogatories to NMED filed 7/31/2026: Request for Hearing Officer to Order Discovery filed by New Energy Economy (NEE) on 7/27/ 2026; NEE's Second Request for Discovery filed 7/28/ 2026; Applicant's response filed 7/31/2026 to the discovery requests filed by CBD and NEE; NEE's Response to YGI's request for denial of discovery filed 8/3/2026; CBD's reply in support of Discovery Request filed 8/5/2026 and NMED's response to Requests for Discovery filed 8/7/2026.

I have reviewed all of the discovery requests that have been filed and all of the responses filed thereto, and the authorities cited therein and in addition I have further reviewed rule 4 and discovery in air quality permit hearings and I have concluded that my initial interpretation of discovery under Rule 4 was incorrect and that discovery is not allowed in air quality permit proceedings.

Specifically, I adopt the following language from Applicant's response filed

7/31/2026:

The New Mexico Environment Department made the clear decision to distinguish hearings under the Solid Waste Act from all other permitting proceedings. Specifically, Section 20.1.4.200(E) authorizes discovery in "special procedures for hearings under the Solid Waste Act." Neither Section 20.1.4.200(E) nor any other subsection of that provision authorizes discovery in any other permitting proceedings. This is consistent with the legislative direction under Section 74-9-29 of the Solid Waste Act expressly authorizing discovery procedures to be adopted in Solid Waste Act *permit* proceedings. No similar legislative authority is found in the in the Air Act.

Indeed, with respect to air, the legislature has only authorized discovery in *enforcement* proceedings. *Compare* Solid Waste Act § 74-9-29 ("As a minimum, the procedural regulations shall provide: ... (5) procedures for discovery" in adjudicatory proceedings which are defined to include permit proceedings) *with* Air Act § 74-2-12 ("In connection with a proceeding under this section [concerning enforcement of the Air Act], the secretary or the director ... may adopt rules for discovery procedures.").

Consequently, the Hearing Officer is bound by the regulations and cannot invoke authority in a procedural order that has not been granted by statute or regulation. It is black letter law that "administrative agencies are bound by their own regulations." *Law v. N.M. Human Servs. Dep't.*, 2019-NMCA-066, ¶ 23, 451 P.3d 91. Because the New Mexico Environment Department is a creature of statute, it "has no common law or inherent powers and can act only as to those matters which are within the scope of the authority delegated to them." *Alto Coal. for Env't Pres. v. Roper Constr., Inc.*, 2025-NMCA-018, ¶ 12, 572 P.3d 268. Nor is there any authority or basis for the argument that "due process" requires discovery in this proceeding.

For the reasons stated above I hereby deny all of the Requestors' motions for discovery. I reaching this decision I did not consider Applicant's response filed 8/7/2026.

Max Shepherd
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

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