

**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)

**REPLY IN SUPPORT OF DISCOVERY REQUEST TO
NEW MEXICO ENVIRONMENT DEPARTMENT**

The Center for Biological Diversity, Jose Saldaña Jr. and Vivian Fuller (collectively, “Movants”) file this Reply in Support of Movants’ July 31 discovery request to the New Mexico Environment Department (the “Department”), and to address the Department’s August 7 Response to Movants’ discovery request. The Department objects to the Hearing Officer’s decision to order discovery but fails to specifically object to any of Movants’ interrogatories or requests for production. In doing so, the Department waives its objections to Movants’ requests. Because expert testimony filing dates are rapidly approaching, Movants ask the Hearing Officer to order the Department to answer Movants’ interrogatories and provide documents responsive to Movants’ requests for production by August 17, 2026. This will allow Movants seven days to review responsive material and develop testimony around them, and will avoid any delay in this hearing.

I. The Department has waived its objections to Movants’ discovery requests.

In its August 7 response, the Department fails to object with specificity to any of Movants’ requests. While the Department references a handful of New Energy Economy’s requests, it does not mention or specifically object to even one of Movants’ requests.

The New Mexico Supreme Court has held that "objections to interrogatories must be specific and be supported by a detailed explanation as to why interrogatories or a class of interrogatories is objectionable." *United Nuclear Corp. v. Gen. Atomic Co.*, 96 N.M. 155, 217. In *United Nuclear*, the New Mexico Supreme Court upheld a default judgement against defendant General Atomic Company issued by the district court as sanction for the defendant's bad faith actions in all stages of discovery. The defendant's bad faith discovery practice included filing vague responses that did not object specifically to plaintiff's requests. The Court held that "[t]he party resisting discovery has the burden to clarify and explain its objections and to provide support therefor." *Id.* And "[g]eneral objections without specific support may result in waiver of the objections." *Id.*

Here, the Department is engaging in similarly bad faith tactics. Because the Department has failed to object with any specificity to Movants' discovery requests – or, indeed, reference even a single one of those requests – the Department has waived any objection it may have had and must respond in full.

II. **Movants request critical information that is highly relevant to this proceeding and not otherwise available.**

Movants submitted narrowly tailored requests based on glaring omissions from the Department's draft permit and statement of basis. This information is critical to a full and accurate evaluation of the air pollution from the proposed source, whether it complies with the New Mexico Air Quality Control Act, and whether the Applicant can construct the proposed source in a reasonable amount of time. 20.2.72.208.A-G, NMAC.¹

¹ See *Center for Biological Diversity, Jose Saldaña Jr. and Vivian Fuller's First Request for Production and Set of Interrogatories to NMED*, Attachment 1.

Movants submitted nine interrogatories and fifteen requests for production, for the most part related to the interrogatories, with additional requests for communications about the proposed source between the Department and various parties to this proceeding.

Movants request, for example, explanation and supporting documents showing why the Department plans to approve significantly higher pollution limits for nitrogen oxides, carbon monoxide, volatile organic compounds, and carbon dioxide from the proposed Bloom fuel cells compared to the very same fuel cells currently permitted at other facilities in Delaware, Ohio, and Texas.

Movants request explanation and supporting documents showing the expected emissions of hydrogen and methane from the proposed fuel cells, which are currently unmentioned, unmeasured, and unmonitored in the Application, draft permit or statement of basis, in direct violation of New Mexico law. 20.2.72.203.A(3) NMAC (“Any person seeking a permit shall ... [p]rovide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated air contaminants the source will emit ...”) (emphasis added).

Movants request explanation and documentation regarding the specific chemical composition of the multiple exhaust streams from the fuel cells. Currently, neither the Application, draft permit, or statement of basis actually lists all of the dangerous pollutants that can be emitted from the fuel cells, including, for example, formaldehyde, nickel tetracarbonyl and hexavalent chromium. 20.2.72.203.A(3) NMAC.

Movants request explanation and supporting documents related to the Department’s determination that the proposed source is not a “major source” subject to prevention of

significant deterioration regulations. The draft permit and statement of basis offer no justification for this determination.

Movants request documents regarding whether the proposed source can be built in a reasonable amount of time given the denial of necessary methane pipeline approvals from the State Land Office, and given recent public reporting regarding the lack of sufficient scandium to construct the fuel cells.

Finally, movants have requested the administrative record. At the July 17 scheduling conference, Mr. Vigil stated that the Department was ready to produce the record for an August 17 hearing. Now Mr. Vigil states that the Department will file the record on the August 24, the same day Movants must file their direct technical testimony. The Department's intentional delay in filing the administrative record after Movants direct testimony deadline has already passed – when it has admitted it could file the record earlier – is unacceptable and an attempt at gamesmanship.

The Department's suggestion that all documents Movants seek are available via IPRA is misleading. Movant Center for Biological Diversity has not received any response from the Department to its IPRA requests on this topic. And, based on past experience with extremely slow IPRA responses from the Department, Movants to not expect to receive responsive documents prior to the expedited filing deadlines in this hearing. The Department's gamesmanship limits Movants' ability to meaningfully protect their interests and should not be tolerated.

Notably, Movants are not seeking privileged documents. To the extent any responsive documents are protected by a privilege, the Department can certainly exercise its rights by asserting that privilege and producing a privilege log. Movants have therefore satisfied NMAC

20.1.4.200.E(2) (b) and (c) which provides: (b) the information sought is not privileged and is relevant to the subject matter of the proceeding; and (c) the information to be obtained is not unreasonably cumulative or duplicative, or not otherwise reasonably obtainable.

III. Discovery will not unreasonably delay the proceeding and is not unreasonably burdensome or expensive.

Movants seek focused discovery on issues directly relevant to a number of as-yet-unquantified air pollutants and unsupported assumptions of air pollution from the proposed source. Movants requests were timely served on the Department on July 31, based on information missing from the Department's July 29 draft permit and statement of basis.

In the interest of respecting the expedited filing deadlines in the July 29 Amended Scheduling Order, Movants ask the Hearing Officer to order the Department to respond in good faith to these discovery requests by August 17. This will allow Movants a mere seven days to review responsive documents and develop expert technical testimony prior to the August 24 direct technical testimony deadline, and will cause no additional delay in the hearing process. Movants have therefore satisfied NMAC 20.1.4.200.E(2)(a): the discovery will not unreasonably delay the proceeding and is not unreasonably burdensome or expensive.

IV. Request for Relief

Having met all three prongs of NMAC 20.1.4.200.E(2), as required by the July 29 Order, Movants respectfully request the Hearing Officer order the Department to respond to Movants' previously filed discovery requests by August 17, 2026.

DATED: August 12, 2026

Respectfully submitted:

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Certificate of Service

I hereby certify that on August 12, 2026 a copy of the foregoing Motion to Strike Improper Filing by Applicant Yucca Growth Infrastructure was emailed to the persons listed below.

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**CENTER FOR BIOLOGICAL DIVERSITY, JOSE SALDAÑA JR. AND VIVIAN
FULLER's FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND SET OF
INTERROGATORIES TO NMED**

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Counsel for NMED

The Center for Biological Diversity, Jose Saldaña Jr. and Vivian Fuller file these discovery requests pursuant to the Hearing Officer's July 29 order ordering discovery to proceed in this hearing. The requests for production of documents described herein are pursuant to Rules 1-026 and 1-034 of the New Mexico Rules of Civil Procedure for the District Courts of New Mexico. Please produce legible copies of the requested documents for inspection at P.O. Box 12931, Albuquerque, New Mexico 87195. Alternatively, to conserve time and resources, any documents that can be accurately produced in electronic format may be provided through means agreed upon by both parties. For purposes of this request, documents include any documents authored by the New Mexico Environment Department (the "Department"), as well as documents within its possession, custody, or control.

DEFINITIONS

1. “Document” is used in the broadest sense possible and means any written, typed, printed, recorded or graphic matter, including electronically stored information, however produced or reproduced, or any type or description, regardless of origin or location, including without limitation all correspondence, records, memoranda, notes, lists, calendars, telexes, telecopies, messages (including, but not limited to, notes, reports, memoranda, or recordings of telephone conversations), electronic mail messages or transmissions, contracts, agreements, assignments, invoices, statements, acknowledgments, computer-generated or computer-stored documents or information, all other data compilations from which information can be obtained or translated, if necessary, reports and/or summaries of investigations, drafts and revisions of drafts of any documents, invoices, receipts and original preliminary notes. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical, each non-identical copy is a separate document.
2. “Information” shall be construed expansively and shall include facts, data, opinions, knowledge, belief, images, impressions, concepts, and formulae.

INTERROGATORIES

1. Please explain why the 15% safety factor was removed with respect to carbon dioxide pollution but was retained with respect to criteria pollutants, including nitrogen oxides, carbon monoxide, volatile organic compounds, particulate matter, and hazardous air pollutants.

ANSWER:

2. Please describe what continuous emissions monitoring systems or parametric monitoring will be installed, and where it will be installed, at the proposed facility to ensure that actual emissions are consistent with permitted assumptions and legal limits. If no continuous emissions monitoring systems or parametric monitoring will be installed,

please describe how that will be adequate to ensure compliance with all applicable requirements under the Air Quality Control Act.

ANSWER:

3. Please explain the Department's basis for determining that the proposed source is exempt from PSD applicability.

ANSWER:

4. Please explain the Department's basis for determining that emissions from the associated data center are not required to be considered in evaluating this Application.

ANSWER:

5. Please explain why the proposed source has higher pollution limits of nitrogen oxides per megawatt hour than the Bloom facilities listed in the statement of basis in Delaware, Texas and Ohio, and the basis for allowing those higher pollution limits.

ANSWER:

6. Please explain why the proposed source has higher pollution limits of carbon dioxide per megawatt hour than the Delaware-based Bloom facilities listed in the statement of basis, and the Departments basis for allowing those higher pollution limits.

ANSWER:

7. Please explain the specific chemical composition of fuel cell exhaust from, separately, the cathode side of the fuel cell and, separately, the anode side of the fuel cell.

ANSWER:

8. Please explain how the Department has modeled or otherwise accounted for impacts of heat, ground-level CO₂, and low levels of oxygen in the fuel cell exhaust.

ANSWER:

9. Please explain the Department's basis for concluding that the Applicant will be able to construct the proposed facility in a reasonable amount of time.

ANSWER:

REQUESTS FOR PRODUCTION

1. Please provide all documents related to this Application or Applicant Yucca Growth Infrastructure that the New Mexico Environment Department has produced to, created for

or otherwise shared with the Applicant Yucca Growth Infrastructure, the New Mexico Economic Development Department, or State Engineer of New Mexico.

ANSWER:

2. Please provide all documents showing communications related to this Application or Applicant Yucca Growth Infrastructure between the New Mexico Environment Department and the New Mexico Economic Development Department or the State Engineer of New Mexico.

ANSWER:

3. Please provide all communications and documents shared between the Department and Applicant Yucca Growth Infrastructure, LLC, and its consultant Trinity Consultants.

ANSWER:

4. Please provide all emission calculation spreadsheets in their native formats, complete and with formulas intact.

ANSWER:

5. Please provide the complete source-test reports for the tests run on Dec. 2023 and Apr. 2026, including raw data, QA/QC, calibration, chain of custody, and the specific methods run for each analyte.

ANSWER:

6. Please provide the full AERMOD/BPIP/AERMAP input and output files, receptor grid included.

ANSWER:

7. Please provide all documents related to the Department's conclusion that the source is not a listed PSD source category.

ANSWER:

8. Please provide all documents related to the conclusion that emissions from the associated data center do not need to be included in analysis and review of this Application.

ANSWER:

9. Please provide all documents related to the meteorological data and background concentration values the Department provided or directed the Applicant to use, and the basis and monitor sources for each.

ANSWER:

10. Please provide all documents related to any prior Department permitting determinations for Bloom Energy or other SOFC facilities in New Mexico.

ANSWER:

11. Please provide all documents related to any permitting determinations for the Bloom Energy facilities in other states listed in the statement of basis.

ANSWER:

12. Please provide all documents related to emissions of nickel tetracarbonyl or formaldehyde from the proposed fuel cells.

ANSWER:

13. Please provide all documents related to emissions of methane or hydrogen from the proposed fuel cells.

ANSWER:

14. Please provide all ambient air monitoring data for the Sunland Park/Santa Teresa area relied upon in reviewing this Application.

ANSWER:

15. Please provide the complete administrative record.

ANSWER:

DATED: July 31, 2026

Respectfully submitted:

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