

**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 10833**

AQB 26-57 (P)

**NEW MEXICO ENVIRONMENT DEPARTMENT AIR QUALITY BUREAU'S
RESPONSE TO REQUESTS FOR DISCOVERY**

The New Mexico Environment Department's ("Department" or "NMED") Air Quality Bureau ("Bureau"), pursuant to 20.1.4.200(D)(4) NMAC, respectfully submits this Response to requests for an order granting discovery filed, respectively, by New Energy Economy ("NEE"), and the Center for Biological Diversity and Environmental Law Center ("COBD/ELC") (referred collectively as "Requestors"). The Requestors seek to circumvent the administrative process through various attempts to transform this proceeding into a civil matter governed largely by the rules of civil procedure. The information sought by the Requestors is overbroad and exceeds the scope of this proceeding. In addition, Requestors have all the information that they need to begin building their respective cases for application for an air permit No. 10833, the Draft Permit, the Statement of Basis, and the Modeling Report – all of which are available to the Requestors and the public at large along with other documents on NMED's Public Notices webpage.¹ The Hearing Officer should deny discovery in this matter as it is not specifically allowed under the applicable statutes and regulations, unnecessary, and if the Hearing Officer does decide discovery is necessary, discovery should be narrowly tailored and specific.

¹ <https://www.env.nm.gov/public-notice/>

I. THIS MATTER IS GOVERNED BY 20.1.4 NMAC AND NOT BY THE RULES OF CIVIL PROCEDURE

In their respective requests, as in previous motions, the Requestors appear to misunderstand the nature of administrative proceedings and are effectively asking the Hearing Officer to transform this permit proceeding into a civil case by seeking extensive discovery rather than proceeding under the specific disclosure procedures provided in 20.1.4.300(B)(1) NMAC. Under Section 74-1-7(A)(4) of the Air Quality Control Act, the Legislature delegated authority to the Department to promulgate permitting rules pursuant to the federal Clean Air Act. The resulting rules, 20.1.4 NMAC, contemplate an expedited hearing process that is distinct from the New Mexico Rules of Civil Procedure and Rules of Evidence.

In fact, the rules governing this proceeding explicitly state that “[t]he New Mexico Rules of Civil Procedure . . . and the New Mexico Rules of Evidence . . . shall not apply to proceedings under this [20.1.4 NMAC].” 20.1.4.400(A) NMAC.² Instead, the rules provide that the Hearing Officer may look to those rules for guidance but does not grant the authority to substitute civil procedure and evidentiary rules for the administrative rules. This would be an impermissible contradiction of the Legislature’s intent to create the adjudicatory process for air quality permits that they did. See Nash v. Grp I: Bd. of Cty. Comm’rs, 2021-NMSC-005, 480 P.3d 842 (restating settled law that in interpreting statutes, the duty of a tribunal “is to ascertain and give effect to the intent of the Legislature”) (internal citations omitted).

Furthermore, because proceedings in the administrative context are designed by statute to move faster than in the civil context, due process protections are not as rigid and only require that the Movants have a reasonable opportunity participate. See Archuleta v. Santa Fe Police Dep’t ex

² Another example of the streamlined procedures is the elimination of the standing requirements in civil cases. In its place, 20.1.4.300(A)(1) NMAC allows “any person” to enter as a party without having to show standing of any type.

rel. City of Santa Fe, 2005-NMSC-006, ¶ 32, 108 P.3d 1019 (restating the principle that “[c]onstitutional due process does not require an agency to afford a petitioner all elements of a traditional judicial proceeding . . . In general, the right to due process in administrative proceedings contemplates only notice of the opposing party's claims and a reasonable opportunity to meet them”) (internal citations and quotation marks omitted); and *Lopez v. United States*, 129 F. Supp. 2d 1284, 1289 (D.N.M. 2000) (citing *Kelly v. EPA*, 203 F.3d 519, 523 (7th Cir. 2000) (“there is no general constitutional right to discovery in an administrative proceeding”) (internal citations omitted)).

Had the Legislature wanted to provide a discovery process as it did in the Solid Waste Act (See NMSA 1978, § 74-9-29), it could have done so. The absence of similar language in the Air Quality Act is telling, and that absence should be read as the Legislature’s intent to not provide for discovery in air permit hearings. Denying discovery requests or curtailing them does not limit the ability of the Requestors to participate. The requests should be denied.

II. IF THE HEARING OFFICER PERMITS DISCOVERY, HE MUST DENY THOSE DISCOVERY REQUESTS THAT ARE OVERLYBROAD OR BURDENSOME, IRRELEVANT, IMMATERIAL, OR OF DE MINIMIS PROBATIVE VALUE

If the Hearing Officer does not disallow discovery outright in this matter, discovery should be limited to only those matters that are within the scope of this proceeding and not unduly burdensome. Under Section 74-2-7 of the Air Quality Control Act, the grounds for denying a permit are whether the proposed permit:

“(a) will not meet applicable standards, rules or requirements of the Air Quality Control Act or the federal act; (b) will cause or contribute to air contaminant levels in excess of a national or state standard or, within the boundaries of a local authority, applicable local ambient air quality standards; or (c) will violate any other provision of the Air Quality Control Act or the federal act.”

These standards are mirrored in 20.2.72.208 NMAC. If discovery is permitted, it should be limited to those responses that are relevant and material to the factors listed above and how they apply to the subject permit application. See Archuleta, 2005-NMSC-006, ¶ 32 (stating that the exclusion of irrelevant and immaterial from discovery in an administrative proceeding is not inconsistent with the rules of evidence).

Further, the burden of responding to irrelevant and immaterial requests far outweighs their probative value and therefore should be denied. NMED staff has already spent a considerable amount of time ensuring permit materials are posted for review and responding to information requests from the various parties. The Hearing Officer should consider the burden of producing discovery requests that are overly broad, lack specificity or are completely irrelevant. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (stating that the government's interest in conserving scarce fiscal and administrative resources is a factor that must be weighed in determining whether due process requires procedural safeguards prior to an administrative decision).

III. SPECIFIC RESPONSE TO NEW ENERGY ECONOMY'S DISCOVERY REQUESTS

New Energy Economy's NEE's discovery requests go far beyond the scope of this proceeding and should be denied. A large part of NEE's request for discovery is based on unverifiable factual allegations made in a single, non-peer reviewed article published by *Hunterbrook Media*. [NEE Req. Ex. A]. The Hearing Officer should proceed skeptically when considering this source. *Hunterbrook Media* is an activist blog that partners with Hunterbrook Capital LP, an investment firm. (<https://hntrbrk.com/about-us>), that seems to use the information it gathers to drive profit for the investment firm. It is not a news source as is typically understood and should not be treated as such.

Twenty of NEE's twenty-five interrogatories, and five of the ten requests for production ("RFPs") are based on the allegations made in the *Hunterbook* source.³ For example, Interrogatory No. 9 seeks information regarding "scandium . . . yttria . . . zirconia . . . nickel . . . ceramics . . . interconnect materials . . . [and] specialty alloys." [NEE Req at 7]. This is lifted directly from allegations in the article that "Bloom is in fact reliant on Chinese scandium . . . plus scandium bearing ceramics." [NEE Ex. A at 2]. Fully seventy percent of NEE's discovery are based on wild accusations made in the article with little to no connection or relevance to the matters being determined in this proceeding. The Hearing Officer should deny all twenty of these requests as none of this discovery relates to the grounds for approving or denying a permit as described above.

For the reasons set forth above, the Bureau respectfully requests that the Hearing Officer deny the Motion.

Respectfully submitted,

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³ Interrogatory Nos. 1, 2, 4, 5, 6, 7, 9 through 16, 19, 20, 21, 23, 24, and 25; and RFP Nos. 2, 3, 4, 5, and 10.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was sent via electronic mail to the persons listed below this 7th day of August 2026.

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