

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

IN THE MATTER OF:

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

AQB 26-57(P)

**ORDER DENYING MOTION FOR RECONSIDERATION
AND ORDERING EXPEDITED BRIEFING ON A COROLLARY ISSUE.**

This matter having come before me on Mr. Maxwell's Expedited Motion for Reconsideration and Clarification of August 11, 2026 Order and, in the Alternative, for Limited Modification of Technical-Filing Procedure, the corollary issue. I have reviewed Mr. Maxwell's motion and I again reviewed Mr. Maxwell's August 10, 2026 Reply in Support of the Motion and I hereby deny Mr. Maxwell's Expedited Motion for Reconsideration of the August 11, 2026 Order for the reasons set forth in my Order of served on August 12, 2026 in which I held:

"After further review of Rule 4 and discovery in air quality permit hearings, 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, therefore, deny Mr. Maxwell’s Motion to Reconsider.

However, Mr. Maxwell also argues that denying his request for discovery potentially creates affirmative-case prejudice in light of the August 24th filing deadline under the requirements of 20.1.4.400(A)(1) NMSA, 20.1.4.300(B)(1)(a) NMSA, and 20.1.4.400(B)(2) NMSA. See Section V. of Mr. Maxwell’s Motion. In response to this argument, I hereby order expedited briefing on the following issues raised in Section VI. (4) of Mr. Maxwell’s Motion in which Mr. Maxwell requests a

limited modification of the August 24th filing deadline under 20.1.4.100(F)(2) NMAC
as follows:

- a. for information first made available on or before August 24, any such supplement to his NOI may be filed no later than August 28, 2026;
- b. for materially responsive information first made available after August 24, Maxwell may seek or file a narrowly confined supplement to his NOI within five calendar days of disclosure, subject to any further order necessary to protect the response rights of NMED and Applicant;
- c. NMED and Applicant may address any such supplementation in rebuttal or request a correspondingly limited adjustment upon a particularized showing; and
- d. the September 14 hearing date shall remain unchanged unless the Hearing Officer later determines that a narrow adjustment is necessary to prevent prejudice.

. I hereby order that expedited briefing of these issues be submitted by
August 19, 2026.

Max Shepherd
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

Zachary Ogaz
General Counsel
Christopher Vigil
Assistant General Counsel
Brian Yardman-Frank
Assistant General Counsel
New Mexico Environment Department
Office of General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
zachary.ogaz@env.nm.gov
christopherj.vigil@env.nm.gov
brian.yardman-frank@env.nm.gov
Counsel for NMED

Kelsea E. Sona
Robles, Rael & Anaya, P.C.
500 Marquette Ave NW. Suite 700
Albuquerque, NM 87102
kelsea@roblesrael.com
Counsel for NMED

Jennifer L. Bradfute
David Kirmse
P.O. Box 90233
Albuquerque, NM 87199
Telephone: (505) 264-8740
jennifer@bradfutelaw.com
david@bradfutelaw.com
Counsel for Applicant Yucca Growth Infrastructure, LLC

Jennifer L. Bieber
Carlos Romo
Williams Weese Pepple & Ferguson, P.C.
1801 California Street, Suite 3400
Denver, CO 80202
jbieber@williamsweese.com
cromo@williamsweese.com
Counsel for Applicant Yucca Growth Infrastructure, LLC

Colin Cox
Gail Evans
Center for Biological Diversity
P.O. Box 31417
Santa Fe, NM 87594
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org
Counsel for the Center for Biological Diversity

Mariel Nanasi
Christopher Dodd
New Energy Economy
422 Old Santa Fe Trail
Santa Fe, NM 87501
mnanasi@newenergyeconomy.org
chris@fayerbergdodd.com
Counsel for New Energy Economy

Maslyn Locke
Senior Staff Attorney
Eric Jantz
Legal Director
New Mexico Environmental
Law Center
mlocke@nmelec.org
ejantz@nmelec.org
Counsel for Viviana Fuller and Jose Saldaña Jr.

Esperanza Chairez
Zephyr Jaramillo
YUCCA Policy Campaign Manager
esperanza@yuccanm.org
info@yuccanm.org
Youth United for Climate Crisis Action

Yiwei Chen
Economic Development New Mexico
P.O. Box 20003
Santa Fe, NM 87504-5003
yiwei.chen@edd.nm.gov
*Counsel for the New Mexico Economic
Development Department*

Nicholas R. Maxwell
P.O. Box 1064
Hobbs, NM 88241
inspector@sunshineaudit.com
Pro Se Intervenor

Isaiah Zemke
2300 Buena Vista SE, Suite 110
Albuquerque, NM 87106
izemke@smwlu49.org
*Counsel for Sheet Metal Workers
Local Union No. 49*

Bruce Wetherbee
60 Thoreau Street #103
Concord, MA 01742
editor@thecandlepublishing.com
Pro Se Intervenor

Courtenay Eichhorst
411 Arizona St.
Albuquerque, NM 87108
courtenaye@ualocal412.org
*Counsel for New Mexico Building
and Construction Trades Council*

Christine Dobbin
1 Cielo Azul
Anthony, NM 88021
dobbin.cc@gmail.com
Pro Se Intervenor

Andre Makarski
510 San Pedro
Albuquerque, NM 87108
andre@ualocal412.org
*Counsel for United Association
Local 412*

Joe Cardillo
344 4th Street SW
Albuquerque, NM 87102
joe@progressnownm.org
Pro Se Intervenor

Nathaniel Chakeres
General Counsel
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5012
nathaniel.chakeres@ose.nm.gov
Counsel for NMOSE

Mark Trujillo
Stephanie Maez
Electrical Workers, Local Union 611
markgtrujillo@ibew611.org
smaeznm@gmail.com
*Authorized Representatives for
IBEW Local Union 611*

Darrell Deaguero
Laborers' International Union
of North America
1030 San Pedro Dr. NE
Albuquerque, NM 87110
darrell.deaguero@liuna16.org
cc: mlor@liuna.org
Representative of LIUNA Local 16

Max Shepherd
max.shepherd@comcast.net
Hearing Officer

By: /s/ Pamela Jones for
Luis Lopez, Hearing Clerk
Office of Public Facilitation
New Mexico Environment Department
Direct: 505-490-0186
luis.lopez@env.nm.gov