

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

**IN THE MATTER OF THE APPLICATION
OF ROPER CONSTRUCTION, INC.**

FOR AN AIR QUALITY PERMIT

NO. 9295, ALTO CONCRETE BATCH PLANT

No. AQB 21-57(P)

FINAL ORDER

The matter of the Application of Roper Construction, Inc. (“Roper”) for an air quality construction permit is before the Deputy Secretary of Environment¹ pursuant to the *Notice of Public Hearing Determination* filed on November 2, 2021, and the *Notice of Hearing and Appointment of Hearing Officer* filed on November 17, 2021.

The Office of Public Facility (“OPF”) conducted a public hearing on the Draft Permit, utilizing the WebEx platform with on-site facilities in Alto, N.M. on February 9, 2022².

The N.M. Environment Department’s Air Quality Bureau (“AQB”) having reviewed the Application, and finding it administratively and technically complete, recommends approval of the Draft Permit.

Roper’s Application seeks an air quality construction permit pursuant to 20.2.72 NMAC, for a concrete batch plant located less than one mile east of the Lincoln National Forest in Alto, N.M. The proposed industrial site is a narrow mountain valley 7200 feet above sea level and three miles east of the Class-1 White Mountain Wilderness. Based on the sworn testimony provided by Alto residents, the industrial site is subjected to frequent and sustained

¹ See Delegation of Authority filed February 8, 2022.

² See Scheduling Order filed December 2, 2021.

southwesterly winds of twenty-five (25) mph or more during the springtime, frequent wintertime temperature inversions that trap air pollution at the ground level, and strong northeasterly wintertime winds blowing toward the Class-1 Wilderness.

The industrial site is surrounded on all sides by eleven (11) residential subdivisions populated by many retired citizens who choose Alto for its pristine air quality. Importantly, current N.M. law does not require any setback for this type of industrial facility.

From the initiation of Roper's Application, the AQB received overwhelming opposition, primarily from residents who live within a two (2) miles radius from the industrial site. Public comment was submitted in writing, and many citizens testified under oath at 12:00 p.m. and 5:00 p.m. at the public hearing. Importantly, public comment deemed credible and relevant is given evidentiary weight in the Hearing Officer's Report as findings of fact.

The verbal and written comment received by OPF discussed both relevant and irrelevant areas of concern. Irrelevant issues included the anticipated noise and pollution resulting from three hundred and five (305) truck roundtrips per day, the long operating hours per day, the loss of property values, the possibility of ground and surface water pollution, the lowering of the water table if Roper used local water to produce concrete and control emissions, and the general degradation of the quality of life. These issues are irrelevant to the outcome of this construction permit under NMSA 1978, § 74-2-7.C and 20.2.72.208 NMAC, and were therefore not weighed in the Report or Recommended Decision.

The relevant and credible evidence that was considered in the Hearing Officer's Report and affected the outcome of the Recommended Decision centered on air quality and air pollution. Most notable were:

1. The wintertime temperature inversions that occur routinely at the construction site that is sited in a narrow east-west valley that traps air pollution at the ground.
2. The frequent and sustained winds in excess of 25 mph out of the southwest in the springtime and the northeast in the wintertime, and its effect on particulate matter originating from the sand and aggregate piles stored at the site.
3. Roper's use of the low wind speed Holloman AFB meteorological data (approved by the AQB) in the AERMOD emissions modeling instead of meteorological data that is representative of the Alto, N.M. area.
4. Roper's unexplained and arbitrary use of the AP-42 emission factor for public paved roads instead of a haul-roads inside the industrial facility in the emissions modeling.
5. Roper assumed without explanation, that water would be held in storage tanks at the site, but no such tanks exist, and the AQB has not authorized storage tanks at the industrial site.

Having considered the Hearing Record as defined in 20.1.4.7 NMAC, including all post-hearing submittals and the Hearing Officer's Report; and being otherwise fully advised regarding the Draft Permit,

THE DEPUTY SECRETARY HEREBY ADOPTS THE HEARING OFFICER'S REPORT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IT IS THEREFORE ORDERED:

The Application for an air quality construction permit is hereby denied, and the corresponding permit shall not be issued by the Air Quality Bureau.

Stephanie Stringer
Deputy Secretary of Environment

NOTICE OF RIGHT TO REVIEW

Pursuant to Section 74-2-7.H, NMSA 1978, any person who participated in this permitting action and who is adversely affected by the action may file a petition for hearing by the Environmental Improvement Board, c/o Gregory Chakalian, 1190 St. Francis Drive, Santa Fe, New Mexico 87502. The petition shall be made in writing to the Board within thirty days from the date notice is given of this action.