

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

NO: AQB 21-57

IN THE MATTER OF THE APPLICATION
OF ROPER CONSTRUCTION, INC., FOR
AN AIR QUALITY PERMIT,

TRANSCRIPT OF PROCEEDINGS

February 9, 2022

9:00 a.m.

All parties remote

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE, this Hearing was:

HEARD BY: GREGORY A. CHAKALIAN
HEARING OFFICER

REPORTED BY: SHANON R. MYERS, RPR, CRR, RMR, CRC

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A P P E A R A N C E S

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E X H I B I T S

1-3 Paul Wade's testimony and CV	14:19
1-16 NMED Exhibits 1-8 and Rebuttal 1-8	15:10
1-18 SONTERRA Exhibits 1-18	324:21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

All Witnesses:	Page
Opening Statement by Mr. Rose	19:1
PAUL WADE for the Roper Construction, Inc.	
Direct Examination by Mr. Rose	26:1
Cross-Examination by Mr. Knasko	39:13
Redirect Examination by Mr. Rose	73:2
Recross-Examination by Mr. Knasko	77:8
Opening Statement by Mr. Vigil	78:25
DEEPIKA SAIKRISHNAN for the NMED	
Direct Examination by Mr. Vigil	81:21
ERIC PETERS for the NMED	
Direct Examination by Mr. Vigil	97:18
RHONDA ROMERO for the NMED	
Direct Examination by Mr. Vigil	108:13
KATHLEEN PRIMM for the NMED	
Direct Examination by Mr. Vigil	147:12
Cross-Examination by Mr. Knasko	156:16
Cross-Examination by Mr. Knasko	162:12
Cross-Examination by Mr. Knasko	164:24
Opening Statement by Mr. Hnasko	190:9
CARLOS ITUARTE-VILLARREAL for Sonterra	
Direct Examination by Mr. Knasko	194:16
BREANNA BERNAL for Sonterra	
Direct Examination by Ms. Sakura	214:10
DAVID EDLER for the Sonterra	
Voir Dire Examination by Mr. Vigil	223:3
Direct Examination by Ms. Sakura	230:19

1	ELUID MARTINEZ for Sonterra	
	Voir Dire Examination by Mr. Vigil	241:13
2	Direct Examination by Ms. Sakura	243:25
	Cross-Examination by Mr. Vigil	257:9
3	Cross-Examination by Mr. Rose	265:9
	Cross-Examination by Mr. Rose	268:1
4	Cross-Examination by Mr. Rose	269:9
5	Court Reporter's Certificate	325:1

6

7 HEARING OFFICER CHAKALIAN: The hearing in Air
8 Quality Bureau 21-57, also known as the application of Roper
9 Construction, Incorporated for an air quality permit
10 Number 9295, Alto Concrete Batch Plant, will now come to
11 order. We have a team of interpreters present at this time.
12 I invite them to give a brief overview of how to access the
13 Spanish language channel. I will also ask the court
14 reporter to swear in the interpreters before we continue.

15 (NOTE: Interpreters duly sworn.)

16 MS. CORRAL: If everyone could please for us to be
17 able to hear them, I think the issue right now is we have to
18 choose a channel, that would be English or Spanish, and
19 they'll be giving more instructions. I apologize, but if
20 you could go into the little globe on the left side of the
21 screen, and it says my interpretation language, and then if
22 you could choose English, just so we could hear the
23 interpreters get sworn in.

24 HEARING OFFICER CHAKALIAN: So, Ms. Patty and
25 Ms. Rosa, would you please affirm.

1 THE COURT REPORTER: Would you like me to repeat
2 the oath?

3 HEARING OFFICER CHAKALIAN: No, I'm sure they
4 heard it. Let's have one at a time.

5 THE INTERPRETER: (Nodded head.)

6 HEARING OFFICER CHAKALIAN: Thank you.

7 We can't hear you, Ms. Patty. Ms. Patty, you were
8 muted. No.

9 Well, I don't want to hold up the hearing any longer.
10 When Patty can verbally take the oath, then we can use her
11 as an interpreter, but for now, we will only be able to use
12 Interpreter Rosa, so I'm going to continue. And, Ms. Patty,
13 let me know when you can participate more fully to continue.

14 The Roper facility is proposed to consist of a
15 125-cubic-yard-per-hour concrete batch plant to be operated
16 within the county of Lincoln, state of New Mexico, and
17 located off of Highway 220 near Alto, New Mexico. The
18 permitting rules provide for the opportunity for public
19 comment and for a public hearing when the cabinet secretary
20 of Environment determines that there is significant public
21 interest. On August 11, 2021, a finding of significant
22 public interest was approved by the cabinet secretary, and
23 on November 2nd, this matter was first docketed in the
24 Office of Public Facilitation.

25 My name is Gregory Chakalian. I am the New Mexico

1 Environment administrative law judge. I was appointed to
2 hear this case by the secretary on November 16, 2021, and it
3 is my responsibility to conduct the hearing in a fair and
4 impartial manner so that the relevant facts are fully
5 developed and to avoid delay. That also includes the duty
6 of providing the decision-maker, who in this case is deputy
7 cabinet secretary Stephanie Stringer, with a clean record.
8 A clean record means that people don't speak over each other
9 because the court reporter is not able to properly
10 transcribe verbatim multiple people speaking. It's also
11 disrespectful. Also, a clean record means that we only
12 accept relevant evidence, so the parties are under an
13 obligation to object to irrelevant facts, and if they don't,
14 then I'm going to take it upon myself to object to
15 irrelevant facts.

16 This comes from the rule that anyone can find on their
17 computer. It's the New Mexico Administrative Code
18 abbreviated as NMAC, NMAC 20.1.4.100, Subsection E(2).
19 Moreover, all evidence received at this hearing must be
20 relevant to the draft permit and the application. Those are
21 the issues that are relevant here today. You can find that
22 at 20.1.4.300, Subsection B(1) and (2). Issues such as
23 zoning or noise are outside the draft permit and, therefore,
24 not relevant to this proceeding. I have a duty to admit all
25 relevant evidence that is not unduly prejudicial or

1 repetitious or otherwise unreliable or of little probative
2 value. You can find that at 20.1.4.400, Subsection B(1).

3 Due to the COVID-19 public health emergency, this
4 hearing is being held both virtually and at a local
5 facility, and the Air Quality Bureau has provided
6 simultaneous Spanish translation. As demonstrated earlier,
7 if you prefer to participate in Spanish, please use the
8 language function at the bottom of the screen, bottom left
9 corner. There is also a chat feature to communicate with
10 the Webex host. You can communicate with the Webex host
11 with any questions about the hearing or to sign up to
12 provide public comment. This is our virtual sign-in sheet.
13 The parties will now enter their appearance for the record.
14 First, the permittee.

15 MR. ROSE: Mr. Hearing Officer, this is Louis Rose
16 with Montgomery & Andrews, and Kristen Burby, of
17 Montgomery & Andrews, on behalf of the applicant Roper
18 Construction, Inc.

19 HEARING OFFICER CHAKALIAN: Good morning.

20 And now the homeowners of Sonterra.

21 MR. HNASKO: Good morning, Mr. Hearing Officer.
22 Thomas Hnasko and Julie Sakura on behalf of the homeowners,
23 Sonterra Property Owners Association, and Mr. and Ms. Weems
24 as well.

25 HEARING OFFICER CHAKALIAN: Good morning. It is

1 hard to hear you, so I'm going to ask you to either speak up
2 or move the microphone closer.

3 MR. HNASKO: Is that better, Mr. Hearing Officer?

4 HEARING OFFICER CHAKALIAN: Marginally, but I'm
5 concerned about the court reporter being able to transcribe
6 what you say accurately.

7 MR. HNASKO: Let me get our IT person to fix that
8 problem if I can. Thank you very much.

9 HEARING OFFICER CHAKALIAN: And -- you're welcome.
10 In the meantime, the New Mexico Air Quality Bureau counsel.

11 MR. VIGIL: Good morning. Chris Vigil, assistant
12 general counsel, New Mexico Environment Department, here for
13 the Air Quality Bureau.

14 HEARING OFFICER CHAKALIAN: Good morning.

15 Okay. The public hearing is a forum to accept
16 reliable and relevant evidence to fully inform the
17 decision-maker approval or denial of the draft permit.
18 Public participation is encouraged and an important
19 component of the permitting process. Public comment is
20 admissible as general or nontechnical evidence, and it will
21 be received today at 12:00 p.m. and 5:00 p.m. To avoid
22 background noise and feedback, everyone except for the
23 attorneys will be muted. One witness at a time will be
24 unmuted to provide their sworn testimony. Now, we've run
25 into issues with unmuting and muting people, so I'm going to

1 ask that everyone who is not speaking to mute themselves.
2 People will not speak over each other and over the hearing
3 officer. Attorneys will not address each other, but
4 instead, speak to the hearing officer. To promote an
5 orderly and efficient hearing, the hearing clerk will ensure
6 these rules are observed.

7 Public comment shall be received into evidence either
8 in written or verbal format. Written comment has several
9 benefits. It is not limited in length. And it can be made
10 at your convenience before the record closes and has the
11 equal weight of sworn testimony. The hearing clerk has
12 provided the SmartComment link in the chat for your
13 convenience.

14 So, Ms. Corral, is that link available in the chat?

15 MS. CORRAL: I will send it now, Mr. Hearing
16 Officer, for everyone to -- to view.

17 HEARING OFFICER CHAKALIAN: Thank you.

18 Sworn comment will be limited in length for each
19 public member. To prevent undue delay or undue repetition,
20 this time limit may be reduced to allow everyone to speak.
21 Please use the chat feature to alert the hearing clerk of
22 your desire to provide sworn general comment, and you will
23 be called in the order that you've signed up. When called,
24 unmute yourself and enable your camera for the court
25 reporter to swear you in, and then spell your name for the

1 record. Finally, I will consider both forms of public
2 comment in my hearing report and recommend a decision to the
3 deputy secretary.

4 The burdens of persuasion in this hearing are as
5 follows, and these can be found at 20.1.4.400, Subsection
6 A(1). The applicant, otherwise known as Roper Construction,
7 has the burden of proof that the draft permit should be
8 issued and not denied. And that burden never shifts. The
9 Air Quality Bureau has the burden of proof for a challenge
10 condition of the permit. Any member of the public or any
11 person who contends that a permit condition is inadequate or
12 improper or who proposes to include a new permit condition
13 has the burden of presenting an affirmative case.

14 Testimony today will be presented in the following
15 order: First, the applicant will present their case and
16 their technical witnesses in support of the draft permit;
17 then the Air Quality Bureau, their technical witnesses will
18 then present their testimony; and, finally, Sonterra's
19 technical witnesses in opposition of the draft permit will
20 then present their case.

21 Now, the parties have attended a prehearing scheduling
22 conference which resulted in the December 2nd scheduling
23 order, which can be found on the environment's web page.
24 And for all public members who are participating, who want
25 to be well informed, if you go to the New Mexico

1 Environment's web page and you click on public
2 participation, you will see a drop-down menu. That's one of
3 the ways to find the SmartComment link to make a written
4 comment. You can also go to the docketed matters page and
5 look up Roper Construction from there, and that has every
6 document that has been filed in this case. That includes
7 the full written testimony of every witness who is going to
8 testify today and their rebuttal testimony if they have
9 submitted any. Now, since all the parties and all of the
10 technical witnesses have submitted full written technical
11 testimony, today they will be providing summaries limited in
12 length for the public's benefit. And I'll get to that in
13 just a moment.

14 The purpose of the public hearing is to provide the
15 public with information and to receive your relevant
16 comment. Each technical witness has submitted full written
17 technical testimony into the record in the form of an
18 exhibit, which are numbered based on the parties, and which
19 have been uploaded with any attachments for the public's
20 view on the website, as I just explained. Unless I sustain
21 an objection, these exhibits will be adopted under oath by
22 each witness and admitted into the -- into evidence in their
23 entirety. Witnesses, therefore, will provide a 15-minute
24 plain language summary for the public. The hearing clerk
25 will inform each witness five minutes before the end of

1 their time. Many witnesses also filed written rebuttal
2 test- -- technical testimony, also posted on the website.
3 These witnesses shall have an additional 15 minutes to
4 summarize their rebuttal testimony.

5 Cross-examination is not part of these time limits,
6 and the public may sign up to cross-examine a technical
7 witness. Cross-examination is not an opportunity to testify
8 and must be provided in the format related to the witness'
9 testimony. So, in other words, if a witness has not
10 testified to a subject, a proper cross-examination question
11 cannot be to something outside that subject. The hearing
12 officer has a duty to enforce these rules.

13 Finally, we will not take a formal lunch break, and we
14 may continue past 5 o'clock. Preliminary matters: As a
15 preliminary matter, there was a motion to dismiss, which was
16 denied. It was renewed; it was also denied. And a motion
17 to exclude evidence about water issues. I also denied that
18 motion. My orders and reasoning are available on the
19 website.

20 Let's now deal with the parties' exhibits, so let's
21 start with the applicant.

22 MR. ROSE: Mr. Hearing Officer, we have three
23 exhibits. They're labeled Roper 1, 2 and 3, and they
24 consist of Mr. Wade's direct and rebuttal testimony and his
25 resume, and we would offer Roper Exhibits 1 through 3 at

1 this time and ask that they be admitted.

2 HEARING OFFICER CHAKALIAN: Are there any
3 objections to Roper Exhibits 1, 2 and 3 being admitted into
4 evidence? Hearing none, they are admitted into evidence.

5 All right. So admitted, Roper 1, 2 and 3.

6 (NOTE: Roper Exhibits 1 through 3 admitted into
7 evidence.)

8 HEARING OFFICER CHAKALIAN: Mr. Vigil. I can't
9 hear you, Mr. Vigil.

10 MR. VIGIL: Yeah. Thank you so much. Sorry about
11 that. We have NMED Exhibits 1 through 8 and NMED rebuttal
12 Exhibits 1 through 8, and we move that all 16 of those
13 exhibits be entered into evidence.

14 HEARING OFFICER CHAKALIAN: Are there any
15 objections?

16 MR. ROSE: No objection.

17 MR. HNASKO: No objection, Mr. Hearing Officer.

18 HEARING OFFICER CHAKALIAN: Okay. Thank you. Let
19 me just write this down. We have all 16 exhibits for the
20 Air Quality Bureau are admitted into evidence at this time.

21 (NOTE: NMED Exhibits 1 through 8 and Rebuttal
22 Exhibits 1 through 8 admitted into
23 evidence.)

24 HEARING OFFICER CHAKALIAN: And Mr. Hnasko for
25 Sonterra.

1 MR. HNASKO: Mr. Hearing Officer, we previously
2 submitted our testimony and rebuttal testimony attachments
3 of our exhibits, and they're included within the record
4 proper, all of them already, and we just -- we move those to
5 be admitted as well.

6 HEARING OFFICER CHAKALIAN: Okay. Can I have the
7 exact numbers?

8 MS. SAKURA: They are --

9 MR. HNASKO: They're numbered, Mr. Hearing
10 Officer, Exhibits --

11 MS. SAKURA: It should be Carlos 118.

12 MR. HNASKO: For Mr. -- Dr. Ituarte-Villarreal,
13 Exhibits 1 through 10, and for Martinez, Exhibits 1 through
14 3, and for Mr. Edler, excuse me, and for -- Mr. Edler does
15 not have any exhibits, so none for him. And then finally,
16 for Ms. Bernal, Breanna Bernal, we have Exhibits 1 through
17 4.

18 HEARING OFFICER CHAKALIAN: So let me see if I
19 understand --

20 MR. HNASKO: I'm sorry, Mr. Hearing Officer,
21 Exhibits 1 through 7.

22 HEARING OFFICER CHAKALIAN: 1 through 7, okay.
23 Let me see if I understand what you're saying. You have
24 four witnesses, three of which who have exhibits, and the
25 exhibits are labeled with their names and numbers?

1 MS. SAKURA: In the statement of intent.

2 MR. HNASKO: They're in the statement of intent,
3 Your Honor. I don't think the exhibits themselves are
4 individually labeled. We could certainly correct that, and
5 if Your Honor would -- if the Hearing Officer wants them
6 individually labeled. We attached them to each -- each
7 summary and testimony is provided in the notice of intent.

8 HEARING OFFICER CHAKALIAN: I have read the
9 notices of intent carefully, but for admission into evidence
10 and for the parties to be able to refer to them in their
11 post-hearing submissions, I do want them to be labeled, so
12 I'm not going to tell you how to label them, Mr. Hnasko, but
13 it seems to me you have ten and three, thirteen and seven,
14 it looks like you have 20 exhibits in total; is that
15 correct?

16 MR. HNASKO: That's correct, Mr. Hearing Officer.

17 HEARING OFFICER CHAKALIAN: All right. So unless
18 you want to do it differently, would you label them and mark
19 them and resubmit them at some point today as Sonterra 1
20 through 20.

21 MR. HNASKO: Yes, we would. Thank you.

22 HEARING OFFICER CHAKALIAN: Okay. Are there any
23 objections to any of Sonterra's exhibits?

24 MR. ROSE: Mr. Hearing Officer, this is Louis
25 Rose. We had previously filed a motion in limine on water

1 issues, and to the extent to which those exhibits relate to
2 those issues, we'd like to make it a continuing objection to
3 those rather than raise them every time that the issue comes
4 up, so if you would consider that continuing objection. As
5 to the other exhibits, we have no objection.

6 HEARING OFFICER CHAKALIAN: Okay. Mr. Vigil.

7 MR. VIGIL: We have no objection to the entry of
8 the exhibits, just noting that the environment department
9 did concur with the motion in limine, but we'll restrict our
10 objections in the moment during testimony. Thank you.

11 HEARING OFFICER CHAKALIAN: Okay. Well, to
12 reiterate the order that was circulated for the parties'
13 benefit and for witness preparation on Saturday, that motion
14 was denied. That evidence will come in and be given the
15 appropriate weight that I find, and so those objections are
16 irrelevant, and the -- at this point, and the Sonterra
17 Exhibits 1 through 20 are admitted into evidence.

18 Now we are going to move on to opening statements, and
19 I'm going to ask the permittee to provide an opening
20 statement if he wishes, and if not, to call his first
21 witness.

22 MR. ROSE: Yes, Mr. Hearing Officer. Again, this
23 is Louis Rose with Montgomery & Andrews. I have a brief
24 opening statement, and then we have one witness that we'll
25 call, and I don't know if, Mr. Hearing Officer, you want to

1 allow the parties to give open -- all of them to give
2 opening statements before you begin testimony or whether you
3 want each party to open immediately preceding their witness
4 testifying. Either approach is -- I get to go first either
5 way, but I don't know what you -- procedurally how you
6 intend to do that.

7 HEARING OFFICER CHAKALIAN: This is your -- this
8 is your case-in-chief, Mr. Rose, and so your opening
9 statement and then your witnesses. Other parties will have
10 their opportunity later. Thank you.

11 MR. ROSE: Thank you, Mr. Hearing Officer.

12 As you indicated in your opening, this is a hearing
13 before the Department on a permit application, an air
14 quality permit application for Roper Construction. The
15 permit application was submitted under the Air Quality
16 Control Act Section 74-27 as well as the Environmental
17 Improvement Board's permitting -- construction permitting
18 regulation 20.2.72. Under those -- that regulation, an
19 application, and the relevant consideration is whether the
20 applicant has demonstrated that they can and will comply
21 with applicable air quality regulations and will not cause
22 or contribute to ambient air quality levels in exceedance of
23 any national or state ambient air quality standard or PSD
24 increment.

25 The application in this matter was submitted last

1 summer. With the application, Roper submitted modeling, and
2 we believe that the application, as submitted, demonstrates
3 compliance with regulations. And in this case, the only
4 applicable regulation that sets substantive criteria
5 applicable to Roper's operation is 20.2.61, which provides
6 that for combustion equipment, that equipment cannot exceed
7 an opacity limit of 20 percent. There are three small water
8 heaters. Those are the only combustion sources on-site, and
9 they will combust pipeline-quality natural gas, and it's our
10 understanding that by combusting that natural gas, that
11 these units will meet the opacity requirement.

12 The remainder of the discussion relates to compliance
13 with ambient air quality standards, and in this case, there
14 are national ambient air quality standards that apply, and
15 there are some state ambient air quality standards that
16 apply.

17 In addition to the standards, the modeling also
18 addresses where prevention of significant deterioration
19 increments, which are actually requirements more stringent
20 than the ambient air quality standards. And as the modeling
21 demonstrated, and as you'll hear testimony today from our
22 witness, Mr. Wade, the modeling demonstrates compliance
23 with -- with the ambient air quality standards, that is,
24 that emissions from Roper's operation will not cause or
25 contribute to an exceedance of any applicable ambient air

1 quality standard and will not exceed any PSD increment. And
2 as I indicated, we have one witness, Mr. Wade, who submitted
3 prefiled written direct and rebuttal testimony. It will be
4 available for cross-examination, but his testimony is, along
5 with the application, demonstrates Roper's entitlement to a
6 hearing.

7 You'll also hear testimony from Mr. Wade concerning
8 proposed conditions that the Department has indicated
9 they -- they put in the -- or proposed in the draft permit
10 to be issued as well as some additional changes as a result
11 of prefiled testimony. You'll hear testimony from Mr. Wade
12 that even though Roper does not think that these conditions
13 are necessary, it will agree to inclusion of those
14 conditions in the permit.

15 So with that, Mr. Hearing Officer, I'd like to call my
16 first witness and have him sworn, Mr. Paul Wade.

17 HEARING OFFICER CHAKALIAN: Okay. Mr. Rose,
18 before we swear your first witness in, I would like everyone
19 to know that if you use the link that was in the chat for
20 the SmartComment, you will initially see a little warning
21 from Webex. It says that you are being taken to an external
22 site. That's fine. Click on the continue button below, and
23 you will actually get to the comment forum. So there's
24 nothing wrong with the link, and I just wanted everyone to
25 know that.

1 So, Ms. Myers, would you please swear in Mr. Wade.

2 PAUL WADE

3 (being duly sworn, testified as follows:)

4 HEARING OFFICER CHAKALIAN: Mr. Wade, would you
5 please spell your name for the court reporter.

6 THE WITNESS: It's Paul Wade, P-A-U-L, W-A-D-E.

7 HEARING OFFICER CHAKALIAN: Okay. And, Mr. Wade,
8 since you do have rebuttal testimony, you will be under a
9 30-minute time limit, so please proceed.

10 MR. HNASKO: Mr. Hearing Officer, I'm sorry to
11 interrupt. Tom Hnasko here. I've just been informed that
12 the Ruidoso Convention Center has not been admitted into the
13 Webex conference.

14 HEARING OFFICER CHAKALIAN: Very good.

15 Ms. Corral.

16 MS. CORRAL: Mr. Hearing Officer, I currently have
17 nobody on the lobby. If they would like to try to sign in
18 again, I'll keep my eye -- we've let everyone in at this
19 point.

20 HEARING OFFICER CHAKALIAN: Thank you.

21 Okay, Mr. Wade, it is 9:34. Please proceed.

22 MR. ROSE: I think that it's important that the
23 residents who want to hear this are allowed to listen, so if
24 we need to take a break while that gets sorted out, we have
25 no objection to doing that.

1 HEARING OFFICER CHAKALIAN: How are we doing?

2 MS. SAKURA: Mr. Hearing Officer, they're trying
3 to log in again right now.

4 HEARING OFFICER CHAKALIAN: Okay. Thank you.
5 Let's give them a moment.

6 MS. CORRAL: In the meantime, Mr. Hearing Officer,
7 Patty, the interpreter, is ready to be sworn in if you would
8 like to do that in the meantime.

9 HEARING OFFICER CHAKALIAN: Ms. Patty, you were --
10 you heard the oath. Do you agree?

11 THE INTERPRETER: (Nodded head.)

12 HEARING OFFICER CHAKALIAN: Thank you. You are
13 sworn in now. Thank you.

14 MS. CORRAL: Thank you, Patty.

15 MR. HNASKO: Mr. Hearing Officer, they are signed
16 in, apparently, the residents down in Ruidoso. I just
17 wanted to verify that.

18 MS. CORRAL: And I'm sorry, are they using the
19 calendar, the main link that it's in the website? Because I
20 don't see them in our end. Pam, do you see them?

21 MS. JONES: Nope. I'm watching for them. The --
22 everyone is -- has been directed to go to the NMED calendar
23 to get the link to this meeting.

24 HEARING OFFICER CHAKALIAN: Ms. Corral, I see on
25 my screen Taylor -- or Trailer Jim, and I see a woman waving

1 at us. Are you saying that that's not who you're waiting
2 for?

3 MS. CORRAL: No. Taylor Jim is the Environment
4 Department, the facility that we provided.

5 HEARING OFFICER CHAKALIAN: I see.

6 MS. CORRAL: And if I'm correct, the -- they chose
7 to -- another location.

8 HEARING OFFICER CHAKALIAN: Okay.

9 MS. CORRAL: The convention center, if I'm
10 correct.

11 HEARING OFFICER CHAKALIAN: Mr. Hnasko, are you in
12 communication with the other location?

13 MR. HNASKO: Yes, we are, Mr. Hearing Officer.

14 HEARING OFFICER CHAKALIAN: Okay. Have you
15 directed them to the calendar on the New Mexico Environment
16 website, which has the proper link?

17 MR. HNASKO: I have.

18 HEARING OFFICER CHAKALIAN: You have. Okay. And
19 have -- are they -- what have they told you?

20 MR. HNASKO: We're standing by for a reply.

21 HEARING OFFICER CHAKALIAN: I see.

22 MR. HNASKO: Yeah, we're having someone call down
23 there, too, Mr. Hearing Officer, to verify that.

24 HEARING OFFICER CHAKALIAN: Okay.

25 MR. HNASKO: And while we are waiting for that, is

1 my audio better, Mr. Hearing Officer?

2 HEARING OFFICER CHAKALIAN: Marginally. I mean, I
3 can -- I can make you out. My concern was that the court
4 reporter would not capture your voice, but if she doesn't
5 have a problem with it, it's good enough for me.

6 MR. HNASKO: Okay. Thank you.

7 THE COURT REPORTER: And I can hear you loud and
8 clear. Thank you.

9 HEARING OFFICER CHAKALIAN: Okay. Great. Thank
10 you, Shanon.

11 Mr. Hnasko, do you have an update?

12 MR. HNASKO: We're waiting, Your Honor --
13 Mr. Hearing Officer. We should have one very soon.

14 UNIDENTIFIED SPEAKER: Apparently they were on the
15 wrong link. They're going to the right link now.

16 HEARING OFFICER CHAKALIAN: I'm going to give them
17 another five minutes, and then we're going to continue, so
18 it's now 9:39.

19 MS. CORRAL: Mr. Hearing Officer, I believe he's
20 in. They told me they were going to be under Bill --

21 HEARING OFFICER CHAKALIAN: Okay. Bill Horton?

22 MS. CORRAL: Yes.

23 HEARING OFFICER CHAKALIAN: Okay. Very good.

24 So the time now is 9:41. Mr. Rose.

25 MR. ROSE: Thank you, Mr. Hearing Officer. See if

1 Mr. Wade is back here. There he is.

2 THE WITNESS: I'm back.

3 MR. ROSE: It looks like somebody still hasn't
4 muted, so --

5 HEARING OFFICER CHAKALIAN: Mr. Horton, are you
6 addressing the hearing?

7 Ms. Corral, would you mute Mr. Horton so we can
8 continue?

9 MS. CORRAL: Yes, Mr. Hearing Officer.

10 HEARING OFFICER CHAKALIAN: Mr. Rose, it is 9:42.

11 MR. ROSE: Thank you, Mr. Hearing Officer.

12 DIRECT EXAMINATION

13 BY MR. ROSE

14 Q. Mr. Wade, since you've already told us your name
15 and spelled it, could you tell us with whom you're currently
16 employed?

17 A. I'm currently employed with Montrose Air Quality
18 Services, LLC.

19 Q. And in what capacity are you so employed?

20 A. I'm an air quality consultant. I'm a senior
21 project manager and also a principal.

22 Q. And, Mr. Wade, could you give us a brief
23 description of your educational and work background?

24 A. I have a Bachelor's degree in mechanical
25 engineering from the University of New Mexico, and I have

1 worked in air -- for air quality issues for approximately 27
2 years.

3 Q. And, Mr. Wade, did you prepare the permit
4 application that's at issue in this case?

5 A. I did.

6 Q. And did you prepare written direct testimony in
7 this proceeding?

8 A. I did.

9 Q. And if we were to ask you the questions that are
10 included in your written direct, would you give us the same
11 answers under oath today that you did in your written
12 testimony?

13 A. I would.

14 Q. And do you adopt your -- your prefiled written
15 direct testimony as your direct testimony in this
16 proceeding?

17 A. I do.

18 Q. Mr. Wade, did you prepare rebuttal testimony in
19 this proceeding?

20 A. I did.

21 Q. And, again, if we were to ask you the questions
22 under oath that were asked in the -- the rebuttal testimony,
23 would you give the same answers?

24 A. I would.

25 Q. And do you adopt your written rebuttal testimony

1 as your rebuttal testimony in this proceeding?

2 A. I do.

3 Q. And have you prepared a summary of your written
4 direct and rebuttal testimony for this proceeding?

5 A. I have.

6 MR. ROSE: Mr. Hearing Officer -- Mr. Wade, could
7 you give that summary? And Mr. Wade's going to use a
8 PowerPoint presentation, which we circulated yesterday, and
9 I think -- and I don't know if he has control of the screen
10 or if -- exactly how that's to work, so -- it looks like
11 we're --

12 HEARING OFFICER CHAKALIAN: Oh, I made him a
13 presenter. Feel free to -- to share.

14 MR. ROSE: There we go.

15 A. Can we see it?

16 Q. (BY MR. ROSE) We can.

17 A. Oops. Sorry. My -- I'm here to testify or
18 summarize my testimony regarding the Roper Construction
19 permit application Number 9295 for their -- their proposed
20 Alto Concrete Batch Plant.

21 THE WITNESS: I'm sorry?

22 A. My direct testimony addressed the Roper permit,
23 how the concrete batch plant operates, emission control
24 equipment, Roper emissions for the concrete batch plant, and
25 facility modeling. The facility is requesting a minor

1 source permit for the concrete batch plant to produce a
2 maximum of 125 cubic yards per hour and an annual production
3 limit to 5,000 -- 500,000 cubic yards per year. The
4 application was submitted June 14th, 2021, and was ruled
5 administratively complete on July 22nd, 2021.

6 This slide shows the -- a list of the equipment that
7 will be installed at the site. These are the emission --
8 emission equipment -- emission units for the facility. It
9 includes a haul road, feed hopper, feed hopper conveyor,
10 overhead aggregate bin, aggregate weigh batcher, aggregate
11 weigh batcher conveyor, the truck loading area with
12 baghouse, some cement and fly ash weigh batcher with
13 baghouse, the cement split silo with baghouse, and a fly ash
14 silo with baghouse. The silo is a single unit, but it is
15 split into two sides. One will be containing cement, and
16 one -- the other will be containing fly ash. Along with
17 that is some storage of aggregate material, aggregate and
18 sand materials in storage piles, and three concrete --
19 basically water heaters. Each water heater is an
20 instantaneous heating unit similar to what you can buy for
21 your -- for your home.

22 Here is a layout of the equipment and how it's -- you
23 know, the specific emission points. I'm basically going to
24 go walk through and explain how the operation will happen.
25 The haul trucks will enter the site to deliver aggregate,

1 sand, cement, fly ash, and water. The haul road will be
2 paved to minimize emissions of particulates. The aggregate
3 and sand are stored in three-sided storage bins. The
4 aggregate and sand will be removed from the storage piles
5 with a front-end loader and loaded into the feed hopper.
6 From the feed hopper, it is conveyed on a feed hopper
7 conveyor into the overhead aggregate bins.

8 Since material has -- I mean, there's different --
9 different material properties for -- for mixing the
10 concrete. There is four aggregate bins that are used for
11 storage of that -- that material. The -- when they're ready
12 to load the trucks, the weigh batcher will measure the
13 specific amount of material to be used for the aggregate and
14 sand and drop it onto the weigh batcher delivery conveyor,
15 which moves the aggregate and sand into the truck loading
16 area.

17 Also in -- at the truck loading area, which is below
18 the -- the cement -- or the silo is a cement/fly ash
19 batcher, and what -- what that piece of equipment does is it
20 measures out the amount of fly ash and cement that will be
21 used in the mix. And, again, that silo is -- it will have
22 the cement and fly ash split silo, and each side will have a
23 baghouse.

24 Here's a picture of what the -- a side view of the
25 truck loading area, and basically, I'm going to explain how

1 the -- the loading will happen. A concrete truck are backed
2 into a three-sided shroud, which you can see on the picture,
3 a rubber chute, which you can see in the picture, is
4 positioned in -- into the concrete truck loading chute.
5 Aggregate sand, cement, fly ash, and water is loaded through
6 the rubber chute into the truck in combinations that
7 minimize few emissions; in other words, water will be added
8 at the same time to capture some of the dust that may be
9 generated during loading.

10 During loading, any dirty air displaced from the
11 concrete truck drum will be emitted into the three-sided
12 shroud and captured using negative pressure and sent into
13 the central dust collector that's similar to a -- you know,
14 what you would find in a vacuum where, you know, a -- where
15 the air is being sucked up. This dirty air is sent through
16 filters, and clean air is emitted into the atmosphere.

17 Here's a picture of the -- of the central dust
18 collector system. The lower section of the central dust
19 collector is the -- is a hopper to collect dust captured by
20 the filters. The material in the baghouse hopper is
21 pneumatically loaded into the cement silo, where the dirty
22 air during loading is sent through the cement silo baghouse.
23 The filters in the central dust collector are continuously
24 cleaned using a reverse air system, which blows the caked-on
25 material into the baghouse hopper, which is then transferred

1 to the cement silo.

2 Here's a picture of the silo baghouse. The silo
3 baghouse will control dust during silo loading, a loading of
4 the cement and the fly ash. Dirty air is displaced out of
5 the silo and into the baghouse, and it runs through the
6 cartridge filters where particulates are captured, and clean
7 air is exhausted. A point suggest system cleans the filters
8 where the captured particulate is sent to the silos.

9 For material handling, a fugitive dust suppression
10 system will be used, which is basically the addition of
11 moisture, additional moisture on the material as it is
12 processed. The additional moisture will be added to the
13 material transfers from the feed hopper to the feed hopper
14 conveyor if visible emissions are observed. Alternative
15 method of adding moisture to control visible emissions
16 during material transfers will be adding moisture at the
17 aggregate or sand storage piles. The addition of moisture
18 on the storage piles will reduce emissions during feeder
19 loading -- feed hopper loading, which was not accounted for
20 in the allowable emission rates that show compliance with
21 ambient standards. And the draft permit condition that
22 discusses the -- the control methods for fugitive dust is
23 A502.

24 This slide summarizes the allowable emission rates
25 that were determined for the -- for the facility based on

1 maximum operation at 500,000 cubic yards per year.

2 And the permit allowable emission rates were
3 determined using the appropriate EPA AP-42 emission factors,
4 which are AP -- AP-42 emission factors that are typical of
5 the facility.

6 Modeling was done to show compliance with ambient air
7 quality standards. The modeling is done in a step process.
8 First Roper sources only are -- are modeled to determine any
9 exceedance of significant impact levels. If the significant
10 impact levels are not exceeded, then the model is -- that's
11 the end of the modeling exercise. As you can see on the
12 table, under the percent of criteria, you could see that the
13 NOx annual, PSD Class I NOx annual, PSD Class II NOx annual,
14 CO, SO2, and PM class I -- PSD class 1 PM10 annual were
15 not -- did not exceed the SILs, so no further modeling was
16 prepared.

17 For the pollutants and time averaging periods that
18 exceeded the SILs, cumulative modeling was performed,
19 cumulative modeling is performed, including appropriate
20 neighboring permitted emission sources or emissions, and
21 also a background concentration, or background monitoring
22 stations were selected that are conservative for the Alto
23 area, including modeled contributions from Roper sources,
24 appropriate neighbors, and background concentrations, all
25 cumulative concentrations were below national and state

1 ambient air quality standards. The limiting factor for the
2 Roper facility as far as how they could operate was
3 determined to be the PSD Class II PM10 24-hour increment.
4 And this dictated the limitations to the facility operation.

5 Prior to modeling, I consulted with the New Mexico
6 modeling section on which -- which meteorological data
7 should be used, and it was selected to be Holloman Air Force
8 Base. I prepared the Holloman Air Force Base meteorological
9 data based on the years 2016 through 2020, so five total
10 years. I submitted a modeling protocol on April 29th, 2021.
11 Fugitive dust sources were input into the model as volume
12 sources per NMED source input for the -- for that -- for
13 those -- each type of source. The point sources, which are
14 the water heaters and the baghouses, were input as point
15 sources into the model. Dispersion model was run using the
16 most recent available AERMOD version, and going back to the
17 meteorological data, it was processed using the most recent
18 available AERMET data.

19 The facility handpicks -- the facility impacts were
20 all below New Mexico and federal ambient air quality
21 standards. Facility impacts were also below the Class I and
22 Class II PSD increment limits. This depicts the wind rose
23 of the meteorological data set that was selected for
24 Holloman Air Force Base. The MET data included the Holloman
25 Air Force Base surface data, the Santa Teresa upper air

1 data, the five years of MET, years 2016 through 2020. It --
2 the MET data was prepared using the most recent available
3 update of AERMET, and it has a significant amount of calms
4 and low wind speeds. For this type of facility, low --
5 where you have low stack releases and non-buoyant fugitive
6 emissions, low wind speeds conditions create the highest
7 concentrations at the facility boundaries where all
8 pollutant highest concentrations occurred.

9 In conclusion, while the facility was run at maximum
10 operations of 125 cubic yards per hour, the application
11 demonstrated compliance with applicable regulations, the
12 national ambient air quality standards, and PSD increments.
13 The NMED proposed additional conditions to the permit,
14 including additional monitoring and recordkeeping
15 requirements. Even though the facility as proposed meets
16 applicable requirements, the additional permit conditions
17 proposed by the NMED are accepted by Roper.

18 And that concludes my summary of my testimony.

19 Q. (BY MR. ROSE) Mr. Wade, do you have a summary of
20 your rebuttal testimony as well?

21 A. I do.

22 Q. Would you please give that?

23 A. As part of the Sonterra SOI there was a discussion
24 on the correct meteorology that could be used for that site
25 and suggested that Sierra Blanca meteorological data

1 would -- would be best used in this modeling analysis. I
2 consulted with NMED modeling section on the appropriate
3 meteorological data to be used for the modeling analysis.

4 To show support, that -- the Holloman Air Force Base
5 data was the correct meteorological data set to be used, I
6 created and ran the models using the Sierra Blanca
7 meteorological data, and resulted in lower cumulative
8 concentrations for all pollutants. The issue with the
9 Sierra Blanca meteorological data is that it does not meet
10 the EPA requirement of a 90 percent complete database before
11 substitutions. The missing data, as you can see in the wind
12 rose, was over 22 percent. The use of Holloman data
13 resulted in higher modeled concentrations; therefore, it is
14 more conservative.

15 Sonterra SOI also had an opinion about which version
16 of AERMET and AERMOD should be used. I ran the model for
17 this facility prior to the availability of Version 21112 for
18 AERMET and AERMOD. The updates to AERMET and AERMOD Version
19 21112 did not change anything that would have impacted --
20 have changed the impacts from the facility in the modeling
21 results. I did, though. I reran the meteorological data in
22 the updated Version 21112, and then I reran the dispersion
23 modeling under the new version for AERMOD of Version 21112,
24 and it did not change the results for any modeling --
25 modeled concentrations.

1 Additional opinions from Sonterra had to do with haul
2 road trips. Modeling was performed for the facility
3 operation -- operating at maximum production of 125 cubic
4 yards per hour. The draft permit condition A112 permits 305
5 round trips per day. This condition does not discriminate
6 against the type of haul road trips. So that -- it will
7 include water, product delivery, and raw material trips, and
8 will -- they will all be treated the same in the daily count
9 of the 305.

10 For -- the additional opinion was the incorrect
11 particle size -- particle density size. All particle
12 density size used were NMED-approved values supplied by the
13 NMED. I did make an error. I used lime density instead of
14 cement density. The lime density is 3.3 grams per cubic
15 centimeter, and the part- -- the density for cement is
16 2.85 grams per cubic centimeter.

17 In looking at this, the -- what happens is the weight
18 of the particle will allow it to drop out of the plume when
19 using plume depletion, which was used in the PM10 model.
20 What that does is allows the material to drop out faster as
21 it -- as the plume travels away from the source. Since all
22 modeled concentrations were highest at the boundary, the
23 quicker the particles dropped out, the higher the
24 concentration would be, so lime would be -- have a higher
25 density result in higher concentrations in the boundary,

1 which would be a more conservative result.

2 To verify this, I reran the model for PM10 with the
3 correct particle density for cement, and that confirmed that
4 the model concentration decreased slightly. With the --
5 with using cement, a lighter particle density.

6 For fugitive dust at the aggregate piles, the original
7 calculations in the model represented no controls applied to
8 the aggregate piles. The -- so both the uncontrolled and
9 the controlled emissions in the application are based on an
10 uncontrolled value. This uncontrolled emission rate was
11 used in the modeling analysis. Modeling with the
12 uncontrolled aggregate piles demonstrated compliance with
13 applicable regulations and ambient air quality standards.
14 NMED has proposed the option of adding additional moisture
15 content at either the storage piles or at the unloading of
16 the feed hopper onto the feed hopper conveyor in draft
17 permit condition A502. Additionally, in that condition, is
18 a visible inspection that determines how much -- determines
19 the amount of additional moisture that should be added to
20 control any fugitive dust. With the addition of moisture on
21 the aggregate storage piles, this will reduce emissions
22 further than what was originally modeled.

23 MS. CORRAL: You have five minutes.

24 A. And that completes my rebuttal testimony.

25 MR. ROSE: Mr. Hearing Officer, I have a couple

1 questions on surrebuttal if you want to do it now or later.

2 I can certainly do it now. That's fine.

3 HEARING OFFICER CHAKALIAN: Now is fine.

4 Q. (BY MR. ROSE) Mr. Wade, did you review the
5 rebuttal testimony or rebuttal opinions provided by
6 Sonterra's witnesses?

7 A. I did.

8 Q. And did any of those opinions change your opinion
9 as to the approvability of this application?

10 A. It did not.

11 MR. ROSE: I have no further questions of this
12 witness, Mr. Hearing Officer.

13 HEARING OFFICER CHAKALIAN: Okay. So, Mr. Wade,
14 we now come to the cross-examination part of your testimony,
15 so I will open it up to the parties.

16 Mr. Vigil, do you have any cross-examination?

17 MR. VIGIL: The Bureau has no cross-examination.
18 Thank you.

19 HEARING OFFICER CHAKALIAN: Mr. Hnasko?

20 MR. HNASKO: Thank you. Mr. Hearing Officer, may
21 we control the screen for purposes of using documents?

22 HEARING OFFICER CHAKALIAN: Please.

23 MR. HNASKO: Thank you.

24

25

CROSS-EXAMINATION

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BY MR. HNASKO

Q. Mr. Wade -- can you hear me all right, Mr. Wade?

A. I can.

Q. Okay. Thank you very much. Please let me know if you don't because we want to make sure my questions are clear and your answers -- you get an opportunity to answer appropriately.

Mr. Wade, Mr. Rose stated at the outset that the only thing that was relevant here was the exceedance or lack thereof of opacity limits in 20.2.61. Would you also agree with me, based on your 27 years of experience as an air quality expert, that the application has to accurately reflect the conditions of the site and as represented in the proposed permit? Is that a fair statement?

A. The application should represent the permitted emission sources for the site.

Q. All right. Very good. You're familiar with EPA's subpart W concerning the use of meteorological data?

A. I am.

Q. And let me just, if I may, put this up on the screen for you. And incidentally, Mr. Wade, we will have all these numbered today, so it will be easy for your counsel to track later on when we are looking at all of this.

1 First of all, do you see the reference in the
2 highlighted area, the subparagraph B indicated that the
3 parameter selected to -- should represent the conditions of
4 the area of concern?

5 A. Yes.

6 Q. All right. And below that, we are talking about
7 the proximity of the meteorological data, should -- it
8 should be considered for the site; is that right?

9 A. That is correct.

10 Q. And that, in fact, your meteorological data chosen
11 can be adversely affected by the distances between the site
12 and the domain chosen for model; is that right?

13 A. The distance from the meteorological data
14 collected to the site is not always an issue.

15 Q. All right. But it becomes an issue where you have
16 topographic characteristics of the area that are different
17 than the site selected for the modeling; is that right?

18 A. The -- the selected meteorological data provides
19 wind speeds and wind directions throughout the radius of the
20 facility. The meteorological data for -- selected was used
21 because it had a -- a large amount of low wind speeds and
22 calm winds that -- that produce the highest concentrations
23 for this type of facility.

24 Q. So, Mr. Wade, I'm not asking you why you chose
25 what you chose. I'm just asking you to affirm what the EPA

1 guidance is here, and I think it says in the last sentence,
2 it's highlighted, that the representativeness of the data
3 can be adversely affected by differences in topographical
4 characteristics. Is that just -- I just want to know, is
5 that a fair statement?

6 A. The way it's written, that's a fair statement.

7 Q. All right. And if we go to the next page of
8 subpart W, if we could, please. And again, subparagraph I
9 is referring to data used input. That's input into your
10 AERMOD model. Do you see that, sir?

11 A. Yes.

12 Q. All right.

13 MR. ROSE: Mr. Hnasko, could you -- it looks like
14 the page number of the exhibit that you are referring to
15 here is cut off on the top. So if you could --

16 MR. HNASKO: I'm happy to move it. Thank you,
17 Lewis. It's 5232.

18 MR. ROSE: Okay. Thank you.

19 MR. HNASKO: You're welcome.

20 Q. (BY MR. HNASKO) Mr. Wade, again, the data -- you
21 know, that should possess an adequate degree of
22 representativeness, right, to ensure that the wind,
23 temperature, and turbulence profiles are representative of
24 the impact here, correct?

25 A. Correct.

1 Q. All right. If we go down below there, the -- it
2 talks about atmospheric input variables. Do you see that,
3 sir?

4 A. I do.

5 Q. And do you see where wind speed and direction are
6 factors that should be considered in determining
7 representativeness?

8 A. Yes.

9 Q. All right. Now, in your rebuttal on Page 2, I
10 think you talk -- I think you made an affirmative statement,
11 which you just adopted, that you chose the quote, best
12 available, end quote, meteorological data, and that it was
13 actually NMED who had selected the data. Is that -- does
14 that correspond with your recollection?

15 A. That is correct with the -- with the caveat that I
16 had originally selected Alamogordo -- Alamogordo data as
17 being the most representative because of proximity.
18 Holloman Air Force Base is right next to Alamogordo, so he
19 selected Holloman Air Force Base as more representative.

20 Q. All right. Well, let's explore that a bit and
21 look at the e-mails you exchanged with the Environment
22 Department, and the next exhibit is an e-mail. Can we get
23 the date on that if we go up. That's dated March 16, which
24 is Tuesday, and that is from Mr. Peters of the Environment
25 Department to you. Do you see that?

1 A. I do.

2 Q. And this is Mr. Peters suggesting to you, not the
3 other way around, that Alamogordo might be more
4 representative of Alto than Holloman since it's closer to
5 the same outlines. Do you see that reference?

6 A. I do.

7 Q. Well, we don't see any other e-mails telling us
8 how Holloman was ultimately chosen over Alamogordo, even
9 though NMED told you here that Alamogordo would be more
10 representative. Do you recall any other e-mails on this
11 subject?

12 A. No, I just recall a phone discussion with Eric.

13 Q. All right. Did you have an opportunity to look at
14 the terrain differences between Holloman Air Force Base, the
15 area you ultimately chose for modeling, and the subject
16 location?

17 A. Well, what you're showing me is a land use data.

18 Q. Excuse me. I'm just asking you if you had an
19 opportunity prior to --

20 A. I've seen that -- that picture in the testimony.

21 Q. Okay. We can't talk over each other. I'm sorry
22 if we -- let's just make sure that, you know, you get an
23 opportunity to respond, and I get an opportunity to finish,
24 so the court reporter doesn't have difficulty.

25 Is this something you looked at prior to your choice

1 of Holloman Air Force Base as the area to conduct your
2 modeling?

3 A. Prior to, no.

4 Q. All right. Now, you can see what this depicts.
5 It's a pretty arid area, correct?

6 A. I'm sorry; can you repeat the question?

7 Q. Would you agree with me that this depicts what one
8 would call a desert-like area?

9 A. It is -- yes, combination of high dessert and I
10 think there's some -- some shrubs or -- it's basically
11 desert, yes.

12 Q. All right. Very good. Can we go to the next --
13 this is the proposed site. Have you -- did you have an
14 opportunity, Mr. Wade, to view this topography before you
15 chose Holloman Air Force Base?

16 A. I did not.

17 Q. All right. And you see the difference here to the
18 naked eye, do you not, of the proposed site and Holloman if
19 we compare the two?

20 A. Yes, I see that it does include some high desert
21 and some --

22 MS. SAKURA: It should be the next one.

23 A. Some business -- some deciduous forest.

24 Q. (BY MR. HNASKO) All right. Here I put up a
25 comparison for you that might be easier to see. So we are

1 looking at a marked difference in the type of vegetation and
2 terrain from the proposed site versus Holloman. Is that a
3 fair statement?

4 A. That is -- that is a fair statement.

5 Q. Incidentally, you are well aware of the altitude
6 differences, I take it, 4,000 roughly of Holloman versus 7-
7 or so at the proposed location?

8 A. There is a difference in elevation.

9 Q. Let's go -- let's go look at the other aspect of
10 EPA subpart W, which talks about wind directions. I'd like
11 to pull up the wind rose at Holloman if you could. All
12 right. You testified quite a bit it was a directional, this
13 wind rose plot, indicating a couple things here that I'd
14 like to note. First of all, the direction itself is
15 primarily to the southeast. Is that -- is that an accurate
16 summary?

17 A. For the high winds. But those high winds are not
18 what causes a maximum concentrations in the model.

19 Q. Correct. And I think you testified about that,
20 but they do influence markedly the dispersion of fugitive
21 emissions, do they not, at the --

22 A. High winds -- I'm sorry.

23 Q. Do high winds have a direct impact on the amount
24 of fugitive emissions at the boundary when they occur?

25 A. Not as high as the low wind -- low and calm winds.

1 Q. Now, if we are talking about truck traffic, things
2 of that nature, Mr. Wade, at the southeastern part of the
3 facility during a high-wind event, one would expect a larger
4 fugitive dust emissions then during a low wind event. Isn't
5 that a fair statement?

6 A. No. I wouldn't -- I would not characterize it as
7 that.

8 Q. You would not characterize a more windy day as
9 causing more fugitive emissions at the -- in the
10 directional -- the primary direction of the way the wind
11 blows in a low windy day?

12 A. The -- when we are comparing ambient -- looking at
13 the ambient standards for this type of facility, it is the
14 calm and low wind speeds that cause the highest
15 concentrations.

16 Q. So I --

17 A. The higher wind speeds do not cause as high a
18 concentrations.

19 Q. Again --

20 A. For the roads -- for the roads, the emissions are
21 generated as the truck is driving over the paved area. If
22 this paved area is kept clean to where it's -- minimizes the
23 fugitive emissions, then I would not expect anything more
24 from high or low winds.

25 Q. Mr. Wade, I'm not quarreling with you your

1 conclusion on how standards are measured, low wind events
2 versus high winds, but I am going to pushback with you on
3 the notion that a truck traveling through a windy day on the
4 southeastern part of the facility here is going to -- is
5 going to create additional emissions, is it not, if that
6 road is not maintained properly?

7 A. Well, the permit -- the way the draft permit
8 reads, it has to be maintained.

9 Q. All right. And we'll get to that in a moment.

10 Now I'd like to just show you the wind rose, if I may,
11 from the close Sierra Blanca airport, and this is -- as you
12 can see here, the wind direction is quite different, is it
13 not?

14 A. It is quite different.

15 Q. All right. And the high wind areas are actually
16 going towards the southwest, which actually discussed could
17 influence fugitive emissions if the roads weren't maintained
18 on a windy day, correct?

19 A. Well, I'm disagreeing with your assumption that
20 the high winds are going to cause increased emissions from
21 haul road traffic.

22 Q. Well, I know you are, but just indulge me for a
23 while that the -- it's a road where it's not maintained with
24 sufficient water or from other suppression mechanisms, you
25 have the potential for more fugitive emissions going to the

1 southwest at this facility due to that road traffic?

2 A. I've already discussed this in my rebuttal
3 testimony, and when I modeled this meteorological data set,
4 it produced concentrations lower than the Holloman Air Force
5 Base data set, so --

6 Q. We're --

7 A. -- your assumption -- the emission -- the question
8 you're asking me, I can just say from -- from doing the
9 modeling, the answer is no.

10 Q. Well, I'd like you -- I'm going to get to your
11 modeling in a moment, Mr. Wade, and give you an opportunity
12 to expand on that rather than just putting on a couple
13 columns in your rebuttal testimony, but for the time being
14 all I want to know for us folks who aren't air quality
15 experts, it seems to me to be pretty common sense that if
16 it's a windy day and a haul road is not maintained properly
17 with the addition of sufficient moisture, that there are
18 going to be more fugitive emissions in the southwesterly
19 direction from this facility.

20 MR. VIGIL: Objection; asked and answered.

21 HEARING OFFICER CHAKALIAN: Mr. Hnasko, I agree;
22 it has been asked and answered several times. At this
23 point, I'm going to ask you to move on.

24 MR. HNASKO: All right. Thank you.

25 Q. (BY MR. HNASKO) Mr. Wade, let's go back if we

1 could to the terrain map for the Sierra Blanca Regional
2 Airport. All right. So, Mr. Wade, you have just testified,
3 and you mentioned some -- Pages 3 and 4 of your testimony,
4 that, you know, I ran the model based on Sierra Blanca, and
5 the emissions were actually less, and so basically what
6 you're telling us is no harm no foul?

7 A. Concentrations. I'm sorry, not emissions were
8 less, concentrations were less.

9 Q. Concentrations were less. Thank you for the
10 clarification.

11 But what you're really telling the hearing officer
12 today is don't worry that Sierra Blanca is more
13 representative than Holloman because the emissions are less,
14 so it doesn't matter. Or the concentrations were less, so
15 it really doesn't matter based on the modeling run you did?

16 A. What I'm saying is the use of the Ruidoso Regional
17 Sierra Blanca Airport data would not be allowed under EPA
18 subpart -- or monitoring requirements for -- for
19 meteorological data sets to be used in modeling.

20 Q. You said that today, but you didn't say that in
21 your rebuttal testimony. What you said in your rebuttal
22 testimony is that you ran a model using Sierra Blanca, and
23 the concentrations in your view were actually less, so using
24 Holloman, even though it's not representative, to not be
25 more conservative. Is that --

1 A. No. What I said was that Sierra Blanca airport
2 had over 22 percent missing data. EPA requires 90 percent
3 collection data of meteorological data to be used for
4 dispersion modeling analysis. I --

5 Q. Did --

6 A. I did --

7 Q. Today. Today you said that, but you didn't say
8 that in your rebuttal testimony.

9 A. I said it in the rebuttal testimony.

10 Q. All right. And you ran --

11 A. Okay.

12 Q. Yeah, please, go ahead.

13 A. Okay. I'd have to look back at my rebuttal
14 testimony to see if that was what was said.

15 Q. Well, that was new information today, kind of
16 surprised me. You said you wouldn't use it, but yet you did
17 use it. And when you did use it, you found out, based on
18 your run, that the concentrations were less using Holloman
19 than they would have been using Sierra Blanca. Is that a
20 fair summary?

21 A. What I did was I ran it just to -- to compare to
22 see if there was going to be an issue if Sierra Blanca
23 airport data was -- was used in the modeling analysis, and I
24 found, the results, that was actually less, that Holloman
25 Air Force Base data produced higher concentrations than

1 would be the use of Sierra Blanca airport data.

2 Q. Okay. Well, let me ask you a question, I don't
3 mean to be coy here, but why don't we just use Fargo? I
4 mean, if that turned out to be more conservative, that would
5 be okay, right, under your analysis even though it's not
6 representative? I mean, what's the difference between using
7 Holloman if it's not representative and some location far
8 away, so long as you can conclude that the results are more
9 conservative? There isn't any, is there?

10 A. The meteorological data for Holloman is the
11 closest and most representative of the proposed area for
12 Roper Construction.

13 Q. All right. Well, we just went over the terrain
14 maps and the wind roses, Mr. Wade, and I think you --

15 A. Well, you --

16 Q. I think you agreed the terrain map showed marked
17 differences in the type of topography on these different
18 locations?

19 A. Land use.

20 Q. Now, let me ask you a question on the -- your
21 so-called modeling you did on the Sierra Blanca. If you
22 look at the Sierra Blanca Regional Airport, if one wanted to
23 get a representative modeling result using Sierra Blanca
24 airport, would you agree that it wouldn't be appropriate to
25 extend that distance parameter to one kilometer only because

1 in so doing, you would pick up concrete and runways and
2 parking lots and things of that nature?

3 A. I'm not following the question. I'm sorry.

4 Q. Well, let me phrase it alternatively. We're
5 trying to get representative data, correct? Is that our
6 goal?

7 A. Our goal is to get representative data that will
8 show compliance with ambient air quality standards.

9 Q. All right. Well, then the answer's yes, we want
10 to get representative data, right? So, in this instance, if
11 one were to try to replicate the conditions of the Roper's
12 proposed site, wouldn't it be advisable to extend your
13 distance parameter to, say, at least 3 kilometers here, so
14 we can capture the terrain, which is more similar to the
15 Roper location?

16 A. The -- the terrain that was used in the modeling
17 is -- far exceeds 3 kilometers.

18 Q. But did you go out 5 kilometers to determine
19 whether that terrain was sufficiently similar to the Roper
20 terrain to give accurate modeling results?

21 A. The -- the modeling was run initially with
22 terrain, and I can't remember what the receptor grid was
23 exactly, but it was over. I think it was over 5 kilometers
24 and probably was more like 10 kilometers.

25 Q. But you don't know that because we don't have any

1 data demonstrating that, do we?

2 A. Say that again.

3 Q. We don't have any data in the record demonstrating
4 that, Mr. Wade, do we?

5 A. It is in the -- it is in the modeling records,
6 yes. It is part of the modeling protocol -- I mean,
7 modeling report.

8 Q. No. You're talking about Holloman, not Sierra
9 Blanca. I'm talking about the -- your modeling run for
10 the -- when you used Sierra Blanca data. That is not in the
11 record. What your spatial -- your spatial data points are
12 not in the record. We don't know if you used 1 kilometer,
13 3 kilometers, or 5 kilometers, or whether the numbers that
14 you derive in your testimony at Page 3 to 4 in that column,
15 we don't know what the basis is for those. We don't know,
16 do we, what distances were used from the Sierra Blanca
17 Regional Airport?

18 A. What distances were used from the Sierra Blanca
19 Regional -- I'm not understanding exactly what you're
20 asking.

21 Q. All right. Can you go back briefly to your
22 rebuttal testimony, Mr. Wade? Do you have that in front of
23 you? You put a chart together there which indicated the
24 results of your so-called modeling run. I believe it's on
25 Page 4 to help you out.

1 A. I'm just trying to find the correct file.

2 Q. It's definitely one you adopted. I can help you
3 today if you want. I can summarize it for you.

4 A. Okay. Which page was it?

5 Q. It's Page 4 of your rebuttal testimony.

6 A. Of my rebuttal testimony.

7 Q. Yes, sir.

8 A. How come I'm not seeing that?

9 Q. Well, do you remember making a chart there? You
10 had the Holloman MET cumulative concentrations in one
11 column, and you had the Sierra Blanca in the other, and you
12 did a little percent reduction in the third column?

13 A. Correct.

14 Q. It was trying to indicate that Holloman was
15 actually more conservative.

16 A. Okay. I'm on that table.

17 Q. All right. Do you see that table?

18 A. Yes, I do.

19 Q. So this is all we've got on your so-called
20 modeling run on Sierra Blanca, is that right, this table?

21 A. Correct.

22 Q. This table doesn't tell us the distance factors
23 you used at Sierra Blanca Regional Airport to come up with
24 these cumulative concentrations?

25 A. The distance used is the same as what was used in

1 the Holloman MET data.

2 Q. I'm not worried about --

3 A. For the modeling. For the modeling.

4 Q. Well, Mr. Wade, you understand we disagree with
5 the use of the Holloman data because it's not
6 representative. What I want to know here, is did you use a
7 distance that was sufficient to capture the terrain of the
8 proposed facility?

9 A. Yes.

10 Q. You're confident of that?

11 A. Yes.

12 Q. And that's not indicated in this document?

13 A. This is -- the modeling results will show -- does
14 show, again, that the highest concentrations are right at
15 the facility boundary for Roper. It does not extend -- as
16 it extends past that, it drops off significantly, and that's
17 what would be expected for this type of facility where you
18 have low release stacks and non-buoyant fugitive sources.

19 Q. So I don't -- I think we're ships passing in the
20 middle of each other here, Mr. Wade. I'm not talking about
21 the Roper facility. I'm talking about the use of the Sierra
22 Blanca data. Your columns don't indicate a number of
23 things. They don't tell us, so we can't examine what your
24 distance parameters were, whether those parameters include
25 terrain that is substantially similar to the Roper facility.

1 Do you see what I'm saying here?

2 A. I think you're confusing terrain with -- with land
3 use data. Is that what you are talking about? Because when
4 I -- when I prepared the Sierra Blanca MET data set with
5 AERMET, I did include land use data for the Sierra Blanca
6 airport.

7 Q. Okay. And again, I'm going to leave this go.
8 We'll handle this in our own testimony, Mr. Wade, because I
9 don't think you're quite understanding that I'm asking
10 whether you used data extended far enough out to actually
11 capture land use and land terrain that is substantially
12 similar to the Roper facility. It doesn't appear that you
13 can answer that.

14 A. Fine. I can tell you that I did use the --
15 through AERMET, the latest version of AERMET, I did use land
16 use data that was representative of the Sierra Blanca
17 Regional Airport that --

18 Q. So --

19 A. That data file that was submitted into the AERMET
20 was probably 50 miles square.

21 Q. And we don't have that data file, do we, that you
22 used?

23 A. No.

24 Q. All right. Now, you also -- you made a lot in
25 your rebuttal testimony about calm winds and things of this

1 nature --

2 A. Uh-huh.

3 Q. -- indicating that when you ran the models, that
4 you found that there was -- there was more calm at Holloman
5 than there was at Sierra Blanca; is that right?

6 A. That's correct.

7 Q. Now, you're a pro at this, but aren't you supposed
8 to exclude calm hours when you run your modeling?

9 A. It's the -- the low wind speeds is what I was
10 discussing, and if you look at the -- the -- both the wind
11 roses side by side, you'll see that the Holloman Air Force
12 Base data has a lot more low wind speeds than does the
13 Sierra Blanca data.

14 Q. Did you -- but you agree with me that you excluded
15 calm hours, is that correct, in determining your model,
16 running the model?

17 A. No.

18 Q. So you included calm hours?

19 A. The model includes whatever data you submit.

20 Q. And you submitted the -- you submitted that data
21 which included the calm hours, so that was included,
22 correct?

23 A. Correct.

24 Q. All right. And --

25 A. Holloman and Sierra Blanca.

1 Q. And did you have an opportunity to note, based on
2 the meteorological data, when the calm hours and low wind
3 hours occur at these locations? What time of day?

4 A. That -- that can be found in the -- the results
5 from -- from AERMET, the --

6 Q. And you agree with me that the calm hours and the
7 low wind speed hours are generated in the late afternoon and
8 evening hours in these locations?

9 A. Correct. That is correct.

10 Q. And that would be during times the facility
11 supposedly would not be operating, right?

12 A. That's correct.

13 Q. All right. So it's not going to do us any good to
14 discuss low wind speeds or calm hours if there's no
15 operation at the facility. The facility should -- the
16 modeling, should it not, reflect the operational aspects of
17 that facility?

18 A. Low wind speeds usually occur in the early morning
19 or in the late evening.

20 Q. Mr. Wade, let me -- let me direct your attention
21 to the part of your testimony where you kind of -- you said,
22 again, it's kind of a no harm no foul aspect that, look, it
23 doesn't matter what kind of trucks you have, because we're
24 limited to 305 round trips during what period -- during a
25 particular period of time, so again, it was -- it seemed to

1 be your testimony that the type of trucks would be
2 immaterial to that determination; is that -- is that right?

3 A. Yes, especially since the model was run in error
4 of doubling the emissions from all truck traffic.

5 Q. So you -- so you actually had the mistake at
6 first, correct? You had a doubling; then you dialed that
7 back to 305 round trips; is that right?

8 A. That was based on how many trucks it would require
9 to do 125 cubic yards an hour.

10 Q. All right. Well, let's look at Section 6, Page 7
11 of the application, if we could put that on the screen.

12 A. Can I -- can I -- when I was interrupted on a
13 previous question --

14 Q. You were?

15 A. Can I finish my response on the low wind speeds?

16 Q. Yes, absolutely.

17 A. Because I don't know what happened. All of a
18 sudden, somebody was talking over me.

19 Low wind speeds usually occur in the early morning and
20 early evening hours, and Roper will be operating in those
21 hours, during those hours, especially in the summertime
22 and -- Spring, Summer, and Fall times.

23 Q. Did you have an opportunity, Mr. Wade, to
24 determine how those low wind speeds -- compare that with the
25 proposed hours of operations?

1 A. I did not.

2 Q. All right.

3 A. That is -- based on my experience of 27 years, it
4 is usually those early morning or late evening or not --
5 early evening hours which -- which has the low wind speeds.

6 Q. All right. Well, based on your 27 years of
7 experience, you also know that different trucks have
8 different emissions, correct?

9 A. The -- inputted into the truck --

10 Q. Mr. Wade, will you please listen to my question.
11 Different specifications for different vehicles result in
12 different emissions for those vehicles. Is that an accurate
13 statement?

14 A. That is correct.

15 Q. All right. Let's look at Section 6, Page 7, and
16 you do a nice job here, I must say. All right. You
17 identify the trucks here, fly ash truck, there's a cement
18 truck, you have an aggregate sand truck, and you've got a
19 concrete truck. Right?

20 A. Correct.

21 Q. And for each one, you're having different
22 emissions factors, because there's different specifications
23 for each of these trucks, right?

24 A. Not -- not really.

25 Q. Well --

1 A. You -- go ahead.

2 Q. I'm sorry; I don't want to interrupt you, but the
3 calculations of these emissions are based on the
4 specifications of the fly ash truck, cement truck, aggregate
5 sand truck and a concrete truck, right?

6 A. The number of trucks that will be required to
7 operate at 125 cubic yards per hour is included in that --
8 what you have highlighted.

9 Q. All right. Well --

10 A. The emissions are based on the -- really the only
11 variable between all the trucks is the -- the weight of the
12 truck. And for the weight of the truck, the concrete trucks
13 are slightly different if you'd scroll down a little bit
14 from that, you'll see where there's a discussion on the
15 weights. For all the others, the fly ash, the cement, the
16 sand and aggregate trucks are all the same weight, so they
17 are represented the same in the modeling and in the emission
18 calculations.

19 Q. You're doing very good, Mr. Wade, but would you
20 agree what we're missing here is a similar calculation on
21 water trucks. And you testified earlier, even when you were
22 talking about the aggregate piles you're going to use water
23 to suppress --

24 A. Right.

25 Q. -- the emissions, so there's nothing in here about

1 a water truck in the specifications and how those emissions
2 would impact this final result; is that correct?

3 A. That is -- I mean, based on the number -- the
4 number of trucks that were allowed in a day, they will
5 include water trucks, whether -- even if it is not
6 specifically specified in this calculation.

7 Q. Well, I understand. You've already testified to
8 that. The 305 round trips is inclusive of all truck
9 traffic, whether it's water --

10 A. Yes.

11 Q. -- fly ash, aggregate and concrete, right? We
12 understand that. We're in agreement on that. But my point
13 here is that you don't have any emission factors or
14 calculations for water trucks because you don't know the
15 weight of the truck, you don't know if it's a six-wheeled
16 truck, you don't know if it's an eight-wheeled truck. You
17 don't know any of the specifications, correct?

18 A. The number of wheels has nothing to do with the
19 emission calculations. It is the weight of the truck. The
20 weight of the truck for the water trucks will not exceed the
21 weight of the truck for aggregate sand trucks, cement
22 trucks, or fly ash trucks.

23 Q. That's not -- that's nowhere to be found in this
24 application, is it?

25 A. The weight of the -- weight of those trucks is

1 just below if you scroll down.

2 Q. No. I'm talking about water trucks, Mr. Wade.
3 There's no reference to any calculations on emission factors
4 contributed by the delivering of the water that's necessary
5 to implement these pollution controls. There's nothing in
6 here. Can we agree on that?

7 A. Not specifically.

8 Q. All right.

9 A. What I can say is the water trucks will not -- so
10 long as you stay below the number of trucks per day, you
11 will not be exceeding the emission rates that were
12 calculated for the model at 305 trucks per day. It doesn't
13 matter if it's a water truck or an aggregate sand truck or
14 cement truck, or fly ash truck. They all create the same
15 amount of emissions. So if I said -- take away one sand and
16 gravel -- or sand and aggregate and substitute that for a
17 water truck, it's going to give me the exact same emissions.

18 Q. Mr. Wade, you just testified earlier that the
19 weight of the truck is going to drive the emissions for that
20 particular truck, correct?

21 A. Correct.

22 Q. All right. So let's go to -- let me first
23 identify this next document for you, Mr. Wade. Will you
24 scroll up, please. This is an e-mail from you to Deepika at
25 the NMENV and cc'd Mr. Roper. I think we're on Number 4,

1 there's a question asked to you here, okay, about your
2 304-and-a-half trips per day; what's that based on. Well,
3 the question is -- and the answer to you is -- that you
4 provide is 304 trips per day are based on maximum production
5 of concrete, right?

6 A. The -- it is based on the maximum production per
7 day of concrete.

8 Q. Yeah.

9 A. The one being the 1,875 cubic yards per day.

10 Q. Got it. And that's all I wanted you to affirm
11 because there's not one trip within that 304.5 trips that
12 you say is devoted to the transportation of water.

13 A. No. What I said was the -- it doesn't matter if
14 it's an aggregate, a cement, fly ash truck or a water truck,
15 they will all be considered the same when you calculate the
16 emissions that were used in the dispersion modeling.

17 Q. We don't have any record, Mr. Wade, do we, in the
18 application or in your testimony, concerning the relative
19 contributions of these water trucks driven by their weight,
20 as you said to the total emissions?

21 A. I think in my testimony, I said that if you stay
22 at the -- the daily truck count, it doesn't matter if it's a
23 water truck, an aggregate sand truck, or cement or fly ash
24 truck.

25 Q. Yeah, I understand that.

1 A. It's all being considered the same.

2 Q. I understand that, Mr. Wade. You made that very
3 clear. You've said -- it's clear as a bell that the 305
4 trips includes everything. I just want you to affirm for
5 the record that we don't have any relative contributions
6 specifically for water trucks embedded in this application?

7 A. That is true.

8 Q. All right. So I'd like to direct your attention
9 to Section 10, if I may, of the application. And this is
10 a -- the routine operations of the -- of the facility.
11 Please scroll down here, that spot we have there. I don't
12 see anything in here, and I don't know if you see anything
13 in here, but as far as routine operations, as far as, you
14 know, managing fugitive emissions from the aggregate piles
15 by the application of water, using water on the paved roads,
16 have you seen anything in the routine operation of this
17 facility which would require the significant water
18 consumption in order to implement these pollution controls
19 that the draft permit says need to be implemented? Do you
20 see anything here in the operational plan?

21 A. I guess I'm misunderstanding your question. Can
22 you repeat that?

23 Q. Well, I'm just curious because you go through the
24 operational -- if we can scroll up and get the title of that
25 again. This is routine operations, but the routine

1 operations, according to Section 10, that would include the
2 sig- -- application of the significant water that's
3 necessary to achieve the emission controls of the draft
4 permit, reportedly requirements. There's nothing in here.
5 Please scroll.

6 A. There is not.

7 Q. And Mr. Wade, I'd like to direct your attention,
8 keep in mind for future reference this second-to-last
9 sentence on this particular exhibit, indicating that haul
10 roads on site will be paved and maintained to reduce
11 particular emissions from truck traffic. Do you see that
12 reference there?

13 A. Correct.

14 Q. There's no reference to what the maintenance is or
15 is not. It just says it will be maintained, right?

16 A. Correct.

17 Q. All right. Well, I want you to remember this
18 statement because we are going to come back to it shortly if
19 you would, please. Go to the next exhibit, 14 --
20 Section 14. Next page.

21 All right. This again is the operational plan to
22 mitigate emissions. Do you see this -- you're familiar with
23 this, obviously, aren't you?

24 A. Correct.

25 Q. And, again, it talks about maintenance procedures

1 but -- haul roads and service control methods, but there's
2 no reference to the application of the water that's going to
3 be required to operate this plant?

4 A. There is none except for where it just says "water
5 sprays."

6 MS. SAKURA: But that's only during shutdown.

7 Q. (BY MR. HNASKO) But that refers to the shutdown
8 aspects of the facility, not the routine mitigation
9 measures, correct?

10 A. Actually, I was looking in maintenance.

11 Q. You're looking at maintenance?

12 A. Yeah.

13 Q. Yeah, I understand that during startup and
14 shutdown. Do you see that reference to the qualification?

15 A. The -- the discussion is -- is how to mitigate
16 emissions from startup and shutdown, so it addresses that
17 there will be water sprays; water sprays will be functioning
18 all the time as needed.

19 Q. Understood, but I guess my continued question
20 is -- and this reference to maintenance really is talking
21 about during shutdown and startup, correct?

22 A. That is correct.

23 Q. All right. Let's go if we may, Mr. Wade, I want
24 to have -- you mentioned earlier in your testimony, which I
25 thought was interesting, about -- I think you -- the words

1 you used is it was typical of the facility to rely on the
2 AP-42 guidance from the EPA. Is that -- do you recall that?

3 A. Yes.

4 Q. And it is typical, isn't it? You want to look at
5 the AP-42 guidance to determine how you should calculate
6 your emissions and so forth?

7 A. Correct.

8 Q. All right. So I'm curious because the haul road
9 emission calculations -- and this caught my eye during your
10 testimony. You -- you appear to use .6 grams per square
11 meter to determine the maximum emissions from these haul
12 roads based on this ubiquitous baseline --

13 A. Right.

14 Q. -- pertaining to AP-42, right?

15 A. Right.

16 Q. Okay. Now, you are aware, based on your 27 years,
17 that this particular emission factor is -- is used for
18 publicly traveled roads, paved roads, not industrial roads?

19 A. It is -- I mean, it is for roads that are driven
20 less than 500 road trips a day.

21 Q. That's not all -- that's publicly traveled roads,
22 would you agree with that?

23 A. No.

24 Q. All right. Well, let's -- maybe we can refresh
25 your memory. Are you familiar with this -- the differences

1 between the EPA's preference for emission calculations based
2 on publicly traveled roads versus roads confined within an
3 industrial complex?

4 A. No, I'm not.

5 Q. All right. Well, let me -- let me try to
6 enlighten you a little bit. Let's move down if we can
7 further through this document --

8 HEARING OFFICER CHAKALIAN: Mr. Hnasko, I'm going
9 to stop you here for a moment. The witness has said he's
10 not familiar. You're not going to educate him.

11 MR. HNASKO: Well --

12 HEARING OFFICER CHAKALIAN: He's here as a fact
13 witness.

14 MR. HNASKO: That's right, but --

15 HEARING OFFICER CHAKALIAN: Mr. Hnasko, don't
16 speak over me. You're here to ask questions to him. He's a
17 fact witness. If he says he's not familiar with what you're
18 going to show him, then move on. And don't sit there and
19 try to educate him because that's not why he's here. So
20 please don't educate him. Please ask your next question.

21 Q. (BY MR. HNASKO) Mr. Wade, are you familiar with
22 the particular designation for paved roads for a concrete
23 batching plant?

24 A. I know that there's a table that represents an
25 average of what was calculated for concrete batching roads.

1 Q. All right. And in -- and have you seen this table
2 before, the Table 13.2.1-3, indicating that the -- how many
3 grams per square meter one should include for a paved road
4 within a concrete batching plant?

5 A. I can see that, but again, I'm going to say that
6 that's based on what was measured at concrete batch plants.
7 It's -- it is why I have when I calculated the emissions for
8 the paved roads, that was going to be maintained much higher
9 so that no visible emissions are -- are being presented
10 from -- from all road traffic at this -- at Roper's concrete
11 batch plant.

12 Q. So -- but that's not my question, Mr. Wade. You
13 just --

14 A. That's my --

15 Q. You stated you're familiar with this table and
16 EPA's requirement that you use 12 grams per square meter for
17 emissions for a paved road within a concrete batching plant?

18 A. It is not a requirement.

19 Q. Well, it's certainly a preference, is it not?

20 A. It is what they came up with when they did their
21 analysis on what paved roads -- the concrete batch plants
22 that they were testing at, that's what they -- what it came
23 out as.

24 Q. So --

25 A. That's not --

1 Q. So you used the emission factors recommended by
2 EPA for everything else but for the paved roads within the
3 concrete batch plant?

4 A. I recommended the -- the emission factor for paved
5 roads based on travel of less than 500 trucks per day.

6 Q. And you used the ubiquitous number, which is
7 roughly 15 times less than the concrete batching number
8 recommended by the EPA?

9 A. That's correct.

10 Q. And do you know what happens to your emissions
11 when you use the 12 grams per square meter?

12 MR. VIGIL: Objection; this sounds like direct
13 testimony.

14 MR. HNASKO: It's cross-examination.

15 HEARING OFFICER CHAKALIAN: Mr. Hnasko, again,
16 this is a fact witness. I'm asking you to ask him factual
17 questions. He's -- you asked him a question, he said no.
18 And I agree with Mr. Vigil that this next question sounds to
19 me like you're going to try to get him to agree with the
20 conclusion that you've come up with, and that's not an
21 appropriate cross-examination question.

22 MR. HNASKO: Well, I'm not going to have him agree
23 with my conclusion, Mr. Hearing Officer. I only asked him
24 whether he has made the calculation to determine what would
25 happen to these emissions if he, in fact, used the 12 grams

1 per square meter set forth in AP-42. Either he has, or he
2 hasn't.

3 HEARING OFFICER CHAKALIAN: And Mr. Wade, did you
4 answer that question?

5 THE WITNESS: The answer is no.

6 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko,
7 there's your answer. Please move on.

8 MR. HNASKO: Thank you very much.

9 Mr. Hearing Officer, I'll pass the witness.

10 HEARING OFFICER CHAKALIAN: Mr. Rose, this is your
11 witness. Is there any redirect?

12 MR. ROSE: Let me unmute first. Yes, Mr. Hearing
13 Officer, just a couple questions.

14 HEARING OFFICER CHAKALIAN: Please.

15 REDIRECT EXAMINATION

16 BY MR. ROSE

17 Q. You were questioned by -- by Mr. Hnasko about the
18 use and the propriety of using Sierra Blanca MET data, were
19 you not?

20 A. Yes, I was.

21 Q. And my understanding is you explained why that was
22 not used, and could you, again, briefly explain why you
23 didn't use Sierra Blanca data as part of this application?

24 A. The -- the use -- after discussions with the --
25 the NMED modeling section, it was determined to use Holloman

1 Air Force Base data.

2 Q. Okay. And was that the recommendation or the
3 requirement of the Air Quality Bureau's modeling section?

4 A. That was the recommendation and what I had
5 submitted in my modeling protocol.

6 Q. Okay. And you testified as to -- at length about
7 water trucks and whether or not they were included in your
8 estimate. Do you normally -- you've done a number of these,
9 have you not, applications for concrete batch and other
10 plants --

11 A. Yes, I have.

12 Q. Do you routinely include water trucks for those --
13 in -- in your calculation of emissions?

14 A. Not usually because most facilities have access
15 to -- to water on site.

16 Q. And I believe you testified about what the impacts
17 of including the water trucks would be. Could you clarify
18 that as to whether you would expect the -- the emissions in
19 your models to be any different if you included the water
20 truck trips?

21 A. The emissions in the model would not change with
22 including water truck trips as part of the daily count of
23 trucks that enter the site.

24 Q. And I believe you were questioned by Mr. Hnasko
25 about the use of dust suppression equipment or watering of

1 the piles at the site, were you not?

2 A. I was.

3 Q. And did the application include any provisions for
4 watering those piles?

5 A. The application did not include provisions for
6 watering the storage piles. It included application of
7 water at the exit of the feed hopper onto the feed hopper
8 conveyor.

9 Q. And is the requirement to -- to include dust
10 suppression or water to the piles, is that a condition of
11 the draft permit?

12 A. The requirement, no. It is an option that Roper
13 industries can use that accomplishes the same thing of
14 adding water at the feed -- feed loader -- feed hopper
15 unloading to a feed conveyor, with the exception that it
16 will actually decrease the emissions because you're adding
17 water at the storage piles, and so that means that there
18 will be additional controls at the loading of the feed
19 hopper, which was not in the original application.

20 Q. And let's clarify. You testified about the
21 modeling results, and I believe your testimony was that the
22 model was run without any additional moisture for those
23 piles, was it not?

24 A. The model was run for no additional moisture to
25 the piles or loading the feed hopper.

1 Q. Okay. And so the additional requirement imposed
2 or proposed here by NMED with lower emissions, with lower
3 than beyond what you -- you modeled in your modeling
4 analysis, correct?

5 A. Yes, the application of additional moisture to the
6 storage piles would reduce the emissions beyond what was
7 originally modeled.

8 Q. And I believe you also testified about the
9 maintenance of the haul roads. Was there any provision in
10 the application submitted concerning how those roads would
11 be maintained?

12 A. I think -- I'd have to look back at that draft
13 permit condition, but the facility will have to maintain
14 monthly a fugitive dust plan that addresses any fugitive
15 dust from the site. If the -- if there starts to be
16 fugitive dust coming from the roads as trucks are driving on
17 them, then they're going to have to increase either --
18 either increase the maintenance either by water washing the
19 roads or doing more sweeping.

20 Q. And let's just clarify. That -- those conditions
21 were not in the -- in the application. They were additional
22 requirements that NMED is proposing as part of this permit,
23 correct? Take your time.

24 A. Yeah, I'm trying to find the exact wording. And
25 then they are -- the condition of the permit, their draft

1 conditions require that you maintain and -- to minimize the
2 silt built up to control particulate emissions.

3 Q. Thank you.

4 A. The monitoring -- you know, the permittee shall
5 monitor the frequency, quantity, and location of water
6 application or equivalent control measures such as sweeping.

7 Q. And that's in the draft permit, is it not?

8 A. That's in the draft permit.

9 Q. Okay.

10 MR. ROSE: Mr. Hearing Officer, I have no further
11 questions.

12 HEARING OFFICER CHAKALIAN: Mr. Hnasko, before I
13 go to you, Mr. Vigil, are there any cross-examination
14 specifically to those redirect questions?

15 MR. VIGIL: No, the Bureau has no
16 cross-examination with regard to that. Thank you.

17 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko, are
18 there any cross-examinations specifically to the questions
19 asked?

20 MR. HNASKO: Yes, Mr. Hearing Officer.

21 RE-CROSS-EXAMINATION

22 BY MR. HNASKO

23 Q. Mr. Wade, you are aware that this particular
24 facility has no water available on-site to control or
25 implement emission controls, correct?

1 A. I have been told that there's no water directly at
2 the site, but Mr. Roper has assured that enough water to
3 control fugitive dust and to make the concrete mix will be
4 provided.

5 Q. But none on site, correct?

6 A. Well, they'll -- the -- the trucks coming in will
7 store material -- restore water on site in storage tanks.

8 Q. My question is, there is no source of water on the
9 property like a well, authorizing the appropriation of water
10 for this purpose?

11 A. I'm -- I do not have any direct knowledge of the
12 site as far as if there's water available.

13 Q. All right.

14 MR. HNASKO: No -- thank you, Mr. Wade.

15 No further questions, Mr. Hearing Officer.

16 HEARING OFFICER CHAKALIAN: Okay. Mr. Rose, does
17 that conclude your case-in-chief?

18 MR. ROSE: It does, Mr. Hearing Officer.

19 HEARING OFFICER CHAKALIAN: Okay.

20 Mr. Vigil.

21 MR. ROSE: Mr. Hearing Officer, the court
22 reporter's been at it for a couple hours now. I don't know
23 if she needs a break or whether you want to just move on
24 to -- to the noon hour, but this might be an appropriate
25 place to break for a few minutes if the -- if the court

1 reporter thinks it's appropriate or necessary.

2 HEARING OFFICER CHAKALIAN: I'm expecting that the
3 court reporter will let me know when she needs a break.

4 Ms. Myers.

5 THE COURT REPORTER: I'm okay with a break if you
6 have time. If not, then we can keep going.

7 HEARING OFFICER CHAKALIAN: I'd rather keep going.

8 Ms. Myers, you'll let me know -- you can chat with the
9 hearing -- with the host, the Webex host when you need a
10 break, and we will take a break at that time.

11 Mr. Vigil, do you want to give your opening statement?

12 MR. VIGIL: Thank you very much.

13 The Air Quality Bureau is here today to provide direct
14 technical and rebuttal testimony in support of a
15 recommendation to grant the draft permit in this matter in
16 accordance with the Air Quality Control Act and associated
17 State and federal regulations for issuing an air quality
18 construction permit.

19 In this hearing, we're going to hear a lot of
20 testimony by Sonterra's witnesses. It's all designed to
21 bring -- not to bring substantive challenges to the
22 application or to the permit. But rather to muddy the water
23 and so doubt. Taken as a whole, Sonterra's entire case can
24 be summarized as this: Yeah, we know that the application
25 and permit are valid, but we just wish it was different.

1 Sonterra's expert witness testimony reflects this
2 approach. Sonterra's witnesses will offer testimony that is
3 academic and divorced from the practical reality of
4 environmental protection. Their testimony will attempt to
5 create a simplistic idealized view of the statutory and
6 regulatory requirements that ignore the very real
7 considerations that go into crafting a permit that is
8 protective of human health and the environment. The Air
9 Quality Bureau has a serious statutory and regulatory
10 responsibility to protect the environment and human health.
11 That is their job. It is not an academic or plutonic
12 exercise, and the Bureau's testimony in this matter will
13 show that they take that role seriously.

14 Today, the Bureau will offer witnesses whose testimony
15 will show that the Bureau has given a thorough and complete
16 administrative and technical review for both the permit
17 application and the draft permit, ensuring that the
18 respective documents meet all the legal and technical
19 requirements under the air quality act and associated
20 regulations.

21 With that, the Bureau calls its first witness, Deepika
22 Saikrishnan.

23 HEARING OFFICER CHAKALIAN: Would you tell me,
24 ma'am --

25 MR. VIGIL: Mr. Hearing Officer --

1 HEARING OFFICER CHAKALIAN: Hold on a second,
2 Mr. Vigil.

3 Would you tell me how to pronounce your name?

4 THE WITNESS: Deepika Saikrishnan.

5 HEARING OFFICER CHAKALIAN: Saikrishnan.

6 THE WITNESS: Yes.

7 HEARING OFFICER CHAKALIAN: We are going to swear
8 you in. Which of the exhibits are yours?

9 THE WITNESS: Exhibit 1, that is my testimony, and
10 I think Exhibit 2, which is my resume.

11 HEARING OFFICER CHAKALIAN: And do you have a
12 rebuttal exhibit?

13 THE WITNESS: Yes. Yes. I have rebuttal
14 Exhibit 6, 7, and 8.

15 HEARING OFFICER CHAKALIAN: Uh-huh. So 1 and 2
16 are direct and resume, 6, 7, and 8 are your rebuttal, and
17 Mr. Vigil will take you through those to adopt them in a
18 moment after we get you sworn in.

19 Ms. Myers.

20 DEEPIKA SAIKRISHNAN

21 (being duly sworn, testified as follows:)

22 HEARING OFFICER CHAKALIAN: Would you spell your
23 name please, for the record?

24 THE WITNESS: Yes. D-E-E-P-I-K-A. Saikrishnan is
25 spelled S-A-I-K-R-I-S-H-N-A-N.

1 HEARING OFFICER CHAKALIAN: Please proceed.

2 MR. VIGIL: Mr. Hearing Officer, I have one
3 question. I'm assuming that you want us to go ahead and go
4 through direct, rebuttal, and Ms. Saikrishnan has
5 surrebuttal; she's the only witness that has surrebuttal.
6 Should we go ahead and do all -- all three in succession?

7 HEARING OFFICER CHAKALIAN: Yes. Please proceed.

8 MR. VIGIL: Thank you so much.

9 DIRECT EXAMINATION

10 BY MR. VIGIL

11 Q. Good morning. Could you please state your name
12 for the record?

13 A. Deepika Saikrishnan.

14 Q. And where are you currently employed?

15 A. I'm employed by the Air Quality Bureau of the New
16 Mexico Environment Department.

17 Q. What is your job title?

18 A. My job title is permit specialist, and I work in
19 the Technical Services Unit of the Permitting Section.

20 Q. What are your job responsibilities as a permit
21 specialist?

22 A. I review air quality permit applications for
23 administrative and technical completeness and accuracy. I
24 coordinate with the public, industry, consultants, Air
25 Quality Bureau staff, and other regulatory agencies to

1 provide quality customer service during the permitting
2 process. If a proposed facility meets air quality
3 regulations and standards, I authorize an enforceable permit
4 that specifies all state and federal regulations as well as
5 the emission limits that apply to the facility.

6 Q. How long have you worked in the Permitting
7 Section?

8 A. I have worked in the Permitting Section since
9 February 2019.

10 Q. And during that time, how many air quality
11 permitting actions have you worked on?

12 A. I have worked on over 400 permitting actions.

13 Q. Could you briefly describe your educational
14 background?

15 A. I have a PhD in biochemistry from the University
16 of Hertfordshire, United Kingdom.

17 Q. And I direct your attention to NMED Exhibit 2. Is
18 this a copy of your latest resume?

19 A. Yes, it is.

20 Q. And did you submit prefiled technical testimony
21 for this hearing?

22 A. Yes.

23 Q. And --

24 A. It is Exhibit 1.

25 Q. Thank you. And do you have any corrections or

1 additions to your written technical testimony that you'd
2 like to make at this time?

3 A. No, I don't.

4 Q. And do you adopt your written testimony in its
5 entirety?

6 A. Yes, I did.

7 Q. Let me circle back. I want to save us some time
8 here. Did you submit prefiled rebuttal testimony for this
9 hearing?

10 A. Yes, I did.

11 Q. And could you give me the exhibit? Do you have
12 that on hand?

13 A. The exhibit numbers?

14 Q. Yeah, just for your prefiled rebuttal, just for
15 the convenience of the court reporter?

16 A. Yes. I do have Exhibit 6, Exhibit 7, and
17 Exhibit 8 for my rebuttal testimony.

18 Q. Okay. Thank you. And do you have any corrections
19 or additions to your rebuttal testimony that you would like
20 to make? If so, maybe we could do it when we get to that.

21 A. No, I don't.

22 Q. Okay. So do you adopt all of your written
23 submitted testimony, both direct, rebuttal, and surrebuttal
24 in its entirety?

25 A. Yes, I do.

1 Q. Okay. Thank you. Thank you. Sorry for going
2 back on that.

3 Okay. Can you please provide a brief overview of your
4 direct testimony?

5 A. Yes. My technical testimony presents my
6 qualifications, a summary of Roper Construction,
7 Incorporated's application Number 9295 for their proposed
8 Alto Concrete Batch Plant facility. An overview of the
9 construction permits authorized under 20.2.72 New Mexico
10 Administrative Code, which is also abbreviated as NMAC, and
11 a summary of my review of application 9295.

12 In my testimony, I describe the administrative review,
13 which is an initial review that confirms all the required
14 parts of the application are present. I also describe the
15 technical review, which involves verifying emission
16 calculations and determining which federal and State
17 regulations apply to the facility. My testimony also
18 summarizes the Air Quality Bureau's public outreach efforts
19 throughout various stages of this permitting action and the
20 basis for conditions in the December 30th, 2021, version of
21 the draft Permit 9295 for this proposed facility.

22 Q. And what is the purpose of the current permit
23 application submitted by Roper?

24 A. Roper Construction, Incorporated, is applying for
25 a new 20.2.72 NMAC Air Quality permit for a 125-cubic-yard

1 concrete batch -- per-hour concrete batch plant to be
2 operated within Lincoln County in the state of New Mexico.
3 The facility will be identified as "Alto CBP."

4 Q. I want to, in the interest of time, I'd like to
5 move forward if you could, and I want to ask you a question
6 about the December 30, 2021, version of the draft permit.
7 Do you have any edits to that version of the draft permit
8 that you would like to make at this time?

9 A. Yes. I would like to add that conditions A503.B
10 and A503.D in the draft permit version 12/30/2021 have been
11 amended to include stricter requirements and add Control
12 Unit 7B, respectively. Ms. Rhonda Romero will discuss these
13 amendments in her testimony.

14 Q. Okay. Thank you. And can you describe how the
15 Department gave formal notice of this hearing as required by
16 the regulations?

17 A. Yes. Air Quality Bureau staff wrote the notice of
18 hearing and sent it out in accordance with the regulatory
19 requirements in 20.1.4.200.C(2) NMAC. I e-mailed --

20 Q. Ms. Saikrishnan, let's -- I'm sorry to interrupt
21 you. Let's skip reading out the citations just for the
22 interest of time.

23 A. Okay.

24 Q. I appreciate the thoroughness --

25 A. Sorry.

1 Q. -- but let's just move it along. Thank you.

2 A. I e-mailed the notices of hearing to the Air
3 Quality Bureau administrative team to print hard copies of
4 the notices in English and Spanish to be e-mailed to -- by
5 postal service to citizens who had submitted only written
6 comments by postal service or FedEx. For interested
7 citizens who had submitted comments via e-mail, I sent out
8 e-mails with the notice in English and Spanish attached. I
9 also sent the same e-mails with attachments to nearby
10 tribes, counties, municipalities, Class 1 area, EPA, and
11 organizations that were identified on a list maintained by
12 the Department who have indicated in writing a desire to
13 receive notices of application. The notice of hearing was
14 also published in English and Spanish in the Albuquerque
15 Journal and Ruidoso News on January 5th, 2022.

16 Q. Thank you. And what other steps has the Bureau
17 taken to facilitate public and stakeholder input?

18 A. The Department wanted to explain the application
19 review process and inform the public about this proposed
20 facility, so we went beyond the notification requirements
21 presented in the regulations. I spoke with the people on
22 the phone and responded to e-mails, and sent outreach
23 e-mails when the hearing determination was made by the
24 secretary of NMED to keep citizens informed of the status of
25 their hearing requests. I included all citizen comments

1 beyond the comment periods ranging from prior to receipt of
2 the application until January 27, 2022, as part of the
3 administrative record.

4 The Department created frequently asked questions with
5 answers and an introduction to air permitting document. I
6 shared these documents via e-mail and on the ABQ -- sorry.
7 Air Quality Bureau page maintained for Application 9295 so
8 people would access information. Air Quality Bureau updated
9 the web page to provide helpful information all in one
10 place. Air Quality Bureau also sent requests for public
11 service announcements in English and Spanish to run on
12 English and Spanish radios in Ruidoso.

13 Q. How does the Air Quality Bureau regulate issues
14 such as noise, vehicle traffic on public roads, degradation
15 of natural beauty, quality of life for residents, threat to
16 wildlife, water quality, water conservation, and property
17 values?

18 A. The Clean Air Act and State regulations are
19 health-based regulations and do not provide the Air Quality
20 Bureau legal authority to regulate impacts that are not
21 specifically related to air quality. Primary National
22 Ambient Air Quality Standards provide public health
23 protection. Secondary, National Ambient Air Quality
24 Standards provide public welfare protection, including
25 protection against the freezability and damage to animals,

1 crops, vegetation, and buildings, so the Air Quality Bureau
2 cannot deny an applicant an air quality permit and -- based
3 on these other issues. Many of these issues, such as noise,
4 odor, nuisance issues, truck traffic on public roads,
5 quality of life issues, and property values, fall under the
6 jurisdiction of local ordinances.

7 Q. Could you tell us about any shared regulatory
8 processes between the City, the County, and the Bureau?

9 A. These authorities and processes are independent of
10 each other.

11 Q. How would this permit ensure that the emissions
12 from the proposed facility do not exceed the levels
13 represented in the application and application updates?

14 A. First, the permit applicant is required to operate
15 the facility as represented in the application and
16 application updates. The failure to operate the facility as
17 represented in the application and the application updates
18 would be considered a violation of the permit and would be
19 referred to the Enforcement Section at the Air Quality
20 Bureau. In addition, the permit contains operating,
21 monitoring, and recordkeeping conditions to ensure
22 compliance with the emission rates in the permit.

23 Q. Can you describe how Roper Construction's Alto
24 Concrete Batch Plant meets the applicable regulatory
25 requirements?

1 A. Yes. The proposed facility, as represented in the
2 application and application updates, demonstrates compliance
3 with all federal and State regulations. In New Mexico,
4 construction permits are required by 20.2.72 NMAC for
5 facilities with a potential emission rate greater than
6 10 pounds per year -- per hour or 25 tons per year for any
7 pollutant with a national or New Mexico Ambient Air Quality
8 Standards. Roper Construction, Incorporated's Alto Concrete
9 Batch Plant meets the requirement of 20.2.72 NMAC. This
10 application includes all the contents required by
11 20.2.72.203 NMAC. None of these listed bases for the permit
12 in 20.2.72.208 NMAC are true for this application.

13 Also, according to 20.2.72.210 NMAC, the conditions in
14 the draft permit are based on the contents of the
15 application and application updates. Compliance with all
16 the applicable State and federal regulations will be
17 demonstrated the following requirements specified in the
18 permit foundations.

19 Q. Thank you. And what is the Bureau's
20 recommendation regarding this draft permit?

21 A. The Bureau recommends the issuance of this
22 permit -- draft permit.

23 Q. Okay. Thank you so much.

24 Let's move on to your rebuttal testimony, and let me
25 know when you're ready.

1 A. I'm ready.

2 Q. On Page 8 of Sonterra's statement of intent or
3 SOI, Ms. Bernal's summary of opinions states that the
4 applicant did not represent the operating schedule
5 consistently throughout the application. She additionally
6 states that the facility's maximum daily operating schedule
7 in Section 1-E represents a start time of 3:00 a.m. to
8 9:00 a.m., which does not represent any schedules in Table C
9 of Section 16K. Could you please explain how the permit
10 enforces the operating schedule?

11 A. Yes. The draft permit does not establish permit
12 conditions based on the entry in Section 1-E of the
13 application. Instead, the draft permit establishes
14 conditions based on production base limits. These
15 instruct- -- the instructions in Section 1-E state that the
16 1-E.1 and 1-E.2 operating schedules may become conditions in
17 the permit. The 4,509 hours of operation per year comes
18 from adding the maximum hours the facility can operate each
19 day of the month if operating -- each day of each month if
20 operating at the maximum production capacity of 125 cubic
21 yards per hour.

22 Condition A108.A of the draft permit sets forth the
23 allowable hours of operation for the facility. This
24 condition is based on the permit limits set in the modeling
25 report, which represents the time frames within which the

1 applicant may operate the facility in the specific months,
2 which is a total of 5,422 hours. If the applicant chooses
3 the operate the facility for all of the hours presented in
4 the permit condition A108A for that specific month, the
5 facility could not operate at the maximum hourly production
6 capacity because of condition A108B, which limits the daily
7 production rate. In addition to hourly and daily production
8 limits, condition A108B also includes an annual production
9 limit of 500,000 cubic yards per year. Exhibit 6 is a chart
10 summarizing the allowable operation hours and production
11 rates.

12 Since modeling shows that operating at the maximum
13 production rate of 100 cubic yards per hour for each hour
14 between 3:00 a.m. and 9:00 p.m. demonstrates compliance with
15 air quality standards, if the facility operated at less than
16 maximum capacity, the emission rates for those hours would
17 be reduced from what was used in the modeling and therefore
18 demonstrate compliance with air quality standards.

19 I would now like to respond to Ms. Bernal's second
20 part of the question.

21 The operating schedule represented in Section 1-E as
22 3:00 a.m. and 9:00 p.m. captures the span of the operable
23 hours with respect to all operating scenarios modeled as
24 represented in Table 3 of Section 16K. This representation
25 is also consistent with Table 1 of Section 16K, where all

1 the allowable hours of operation for each month are
2 represented per condition A108A of the draft permit.

3 Q. Ms. Bernal states on Page 9 of Sonterra's SOI that
4 the weighted average of moisture content for sand and gravel
5 is stated to be 2.65 percent. Could you explain the basis
6 for this value?

7 A. Yes. The 2.65 percent weighted average moisture
8 for sand and gravel is the correct value. This was verified
9 in Section 7 of the Excel spreadsheet, material handling
10 sheet, cell C65, provided on August 8th -- August 10th,
11 2021, by the applicant. The 2.65 percent weighted average
12 moisture was derived using the formula 1.77 percent
13 multiplied by 118.8 pounds per hour, plus 4.17 percent
14 multiplied by 68.8 tons per hour divided by 187.5 times per
15 hour. The incorrect values in Section 6 were typographic
16 errors and were updated by the applicant on January 28,
17 2022. These typographic errors did not affect the
18 calculation of emissions.

19 Q. On Page 9 of Sonterra's SOI, Ms. Bernal states
20 that the maximum haul truck emissions are not supported.
21 Can you provide the basis for the haul road emissions?

22 A. Yes. The maximum haul road truck emissions
23 submitted in the original application double-counted the
24 round trips in the material handling section of the
25 calculation spreadsheet. This is in cell D239. This was

1 corrected and verified in Section 7 spreadsheet that was
2 provided by the applicant on August 10, 2021. That was the
3 reason for the reduction in the haul truck emissions.

4 Q. Page 9 of Sonterra's SOI, Ms. Bernal's opinion
5 states that the application improperly used hourly emission
6 factors instead of annual emission factors in Table 6.1 of
7 the application. Can you explain the hourly emission
8 factors in this table?

9 A. Yes. Section 6, Table 6.1 refers to the
10 precontrolled material handling particulate emissions.
11 These emissions have been verified to be corrected in the
12 updated Section 7 calculation spreadsheet, again provided on
13 August 10th, of 2021. The process rate in Table 6.1 had
14 typographic errors and was updated by the applicant on
15 January 13th, 2022. The calculation spreadsheet represented
16 the correct process rate, and I verified this.

17 Q. Mr. Elder's opinion on Page 17 of Sonterra's SOI
18 states that for the operational plan to mitigate emissions,
19 the application incorrectly identifies asphalt production
20 instead of concrete production. Can you address Mr. Edler's
21 opinion?

22 A. Yes. This was a typographic error and was updated
23 by the applicant on January 28, 2022.

24 Q. Okay. Thank you. And let's move on to your sur
25 and final rebuttal, and let me know when you're ready.

1 A. Yes, I'm ready.

2 Q. Oh, thank you. Thank you. On Page 3 of
3 Sonterra's rebuttal SOI, Ms. Bernal's opinion states that
4 the application does not identify the basis for a requested
5 permit capacity of 305 trips per day for haul road trucks.
6 Could you explain how the 305 trips per day is enforceable
7 in the permit?

8 A. The application represented the number of trucks
9 per hour, 20.3 trucks per hour in Section 2A, and in the
10 calculation spreadsheet. I asked the consultant to clarify
11 the basis for the 305 trips per day. The consultant
12 responded and clarified that the number of trucks would be
13 limited by the daily production rate. The number of trucks
14 needed to produce the maximum daily throughput is 15 hours
15 per day multiplied by 20.3 trucks per hour, which amounts to
16 304.5 trucks per day.

17 Q. On Page 4 of Sonterra's rebuttal SOI, Ms. Bernal
18 noted that the applicant failed to account for additional
19 moisture, to explain additional moisture content supposedly
20 added to the aggregate piles. Ms. Bernal summarizes that
21 the applicant -- the application does not account for the
22 moisture content. Could you please explain how moisture
23 content added to aggregate piles is enforceable in the
24 permit?

25 A. Yes. Section 6, Page 8 of the original

1 application states that the applicant is not requesting
2 controls for Unit 11, which is the aggregate piles. The
3 applicant also states that for this unit, the control being
4 used is limiting annual throughput. The emission factors
5 used to calculate emissions for this unit are uncontrolled
6 emission factors, AP-42 13.2.4, Aggregate Handling and
7 Storage Piles. The moisture content being added to these
8 storage piles of quality controls, this is to reduce visible
9 emissions further than what is requested as allowable
10 emissions for the unit in Table 2E of the application, but
11 no credit for control is being taken.

12 The applicant also requested additional moisture
13 content to be included as a draft permit condition, A502.A.
14 Condition A502.B of the fugitive dust control plan also
15 requires that the stockpiles are kept adequately moist.

16 Q. Thank you.

17 MR. VIGIL: I have no further questions for this
18 witness. I -- the Bureau -- the Bureau's witnesses can
19 either stand for cross-examination individually or
20 cross-examination as a panel. I suggest we do it as a
21 panel, but I will defer to counsel and the hearing officer.

22 HEARING OFFICER CHAKALIAN: Okay. We're going to
23 do it as a panel, but, of course, anyone who asks a
24 cross-examination question can direct it to any witness if
25 they so choose. So why don't you present your next witness.

1 MR. VIGIL: Thank you so much. Can you hear me?
2 I'm having trouble here. Oh, thank you. I think I'm okay.
3 Thank you.

4 Okay. The Bureau calls its next witness, Eric Peters.

5 THE WITNESS: I am here.

6 MR. VIGIL: I think, Mr. Peters --

7 HEARING OFFICER CHAKALIAN: Mr. Vigil, hold on one
8 second.

9 Mr. Peters, which are your exhibits?

10 THE WITNESS: My testimony is Exhibit 3, my resume
11 is Exhibit 4, and I don't know what my rebuttal testimony
12 number is.

13 HEARING OFFICER CHAKALIAN: Mr. Vigil.

14 MR. VIGIL: I -- I'm getting the -- I'm getting
15 that up right now. I will be with you in one second.
16 Mr. Peters's rebuttal is NMED Exhibit 2.

17 HEARING OFFICER CHAKALIAN: NMED rebuttal
18 Exhibit 2.

19 MR. VIGIL: I'm sorry; NMED -- yes, rebuttal
20 Exhibit 2. Thank you.

21 HEARING OFFICER CHAKALIAN: Very good. So,
22 Ms. Myers, would you swear Mr. Peters in.

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ERIC PETERS

(being duly sworn, testified as follows:)

HEARING OFFICER CHAKALIAN: Please spell your name for the record.

THE WITNESS: E-R-I-C, P-E-T-E-R-S.

HEARING OFFICER CHAKALIAN: Okay, Mr. Vigil, proceed.

MR. VIGIL: Thank you very much.

DIRECT EXAMINATION

BY MR. VIGIL

Q. Can you please state your name for the record?

A. My name is Eric Peters.

Q. And could you briefly describe your educational background?

A. I have Bachelor of Science degrees in mechanical engineering and biology from the University of Illinois and a master of science degree in environmental engineering from the University of Kansas.

Q. And could you briefly describe your current employment?

A. I work for the Air Quality Bureau of the New Mexico Environment Department, which I will call the Department, as an air dispersion modeler. I have worked in the modeling section for over 24 years. One of my primary duties is the review of air dispersion modeling for new

1 source review permit applications to determine if they will
2 comply with air quality standards and other modeling-related
3 requirements.

4 Q. Did you submit your resume?

5 A. Yes. It's the Department's Exhibit 4.

6 Q. And you submitted written testimony, and do you
7 have any corrections to make to your testimony at this time?

8 A. I have no corrections to make.

9 Q. How about to your rebuttal testimony?

10 A. I have no corrections to make to that either.

11 Q. Do you adopt both your direct testimony and your
12 rebuttal testimony in their entirety?

13 A. Yes.

14 Q. Thank you. What is the relevance of the air
15 dispersion modeling on the draft permit?

16 A. Roper Construction, Inc., which I'll call "the
17 applicant," applied for permit 9295, which is known as Alto
18 Concrete Batch Plant. I'll call that "the facility." They
19 applied for under that 20.2.72 New Mexico Administrative
20 Code. The permit application process requires the
21 application to contain an analysis demonstrating that
22 emissions from routine operations will not violate any New
23 Mexico or National Ambient Air Quality Standards or
24 prevention of significant deterioration PSD increments.

25 Q. Could you briefly describe the standards that are

1 modeled?

2 A. National Ambient Air Quality Standards are maximum
3 concentrations of pollution allowed in the air. These
4 standards are periodically reviewed by the Environmental
5 Protection Agency and are designed to protect the most
6 sensitive individuals from exposure to pollutants. PSD
7 increments are limited to the increase of pollutant
8 concentrations in an area and are designed to maintain the
9 air quality of pristine areas.

10 Q. How does the applicant know what options to choose
11 when conducting air modeling?

12 A. The Department maintains the New Mexico modeling
13 guidelines to provide a basis for acceptable modeling
14 analyses. These guidelines incorporate and interpret the
15 most recent version of EPA's guideline on air quality
16 models, which was published in the Federal Register
17 Volume 82 Number 10. The New Mexico modeling guidelines
18 also incorporate other information and guidance, such as EPA
19 memorandums.

20 Q. Did the Bureau review the modeling submitted by
21 Roper in this matter?

22 A. Yes. The Department reviewed the modeling
23 submitted by the applicant for these permits. The
24 Department verified the applicant followed appropriate
25 modeling practices. Details of the modeling review are

1 described in the modeling review report.

2 Q. And what are the conclusions from your review of
3 the modeling in this case?

4 A. Alto Concrete Batch Plant modeling was performed
5 in accordance with the New Mexico modeling guidelines. If
6 the facility operates in compliance with the terms and
7 conditions of the draft permit, then it will not cause or
8 contribute to any concentrations above State or federal
9 ambient air quality standards or PSD increments. The
10 facility has satisfied all modeling requirements, and the
11 permit may be issued.

12 Q. Okay. Thank you. I'd like to move on to your
13 rebuttal testimony. Let me know when you're ready.

14 A. Ready.

15 Q. Dr. Ituarte-Villarreal questioned meteorological
16 data for the modeling in Sonterra's statement of intent at
17 Page 3. How would you describe the appropriateness of the
18 data used?

19 A. The facility is a minor source with respect to
20 PSD. We do not require minor sources to collect their own
21 meteorological data, so we are limited to existing sites
22 that collect this data. Two stations are close to the
23 facility with respect to the large size of New Mexico.
24 These are Holloman Air Force Base and Ruidoso. Of these two
25 stations, Holloman Air Force Base has more calm and low wind

1 conditions as can be seen from Sonterra Exhibits 8 and 9.

2 Since the maximum concentrations for this type of
3 facility are expected to occur when winds are slow and
4 steady, the evidence shows that Holloman Air Force Base
5 would be expected to produce higher concentrations. Since
6 the goal of modeling is to predict the highest possible
7 concentration, the Holloman Air Force Base data is
8 acceptable for a demonstration of compliance with air
9 quality standards.

10 Q. And Dr. Ituarte-Villarreal and Ms. Bernal
11 questioned versions of the AERMET and AERMOD used to conduct
12 modeling in Sonterra's statement of intent at Page 5 and 8.
13 How would you describe the appropriateness of the model
14 versions used?

15 A. AERMOD is the model EPA requires for this type of
16 permitting to ensure reliability and consistency. AERMET is
17 the program used to process meteorological data to use as an
18 input for AERMOD. Both of these programs are mature, and
19 significant changes to calculations would not be expected
20 for new releases. An examination of the bug fixes described
21 in the model change bulletins revealed no changes that would
22 affect the modeling for this permit. Since the modeling was
23 performed before the new versions were released and no
24 evidence of changes related to this modeling were found, the
25 reliance on the program version's available when the

1 modeling was performed is acceptable.

2 Q. Dr. Ituarte-Villarreal claimed that the applicants
3 failed to include water trucks and other missing sources in
4 the modeling and Sonterra's statement of intent at Page 5.
5 Would you comment on the missing sources?

6 A. If water or other materials are delivered by
7 truck, then those delivery trucks would be included in the
8 permit condition that limits the total delivery truck
9 quantity. Trucks bringing water would not be expected to
10 bias the modeling compared to trucks delivering other
11 materials to or from the facility. Comments about missing
12 equipment may also refer to exempt equipment. Equipment or
13 activities that are exempt from permitting are also exempt
14 from modeling. Exempt activities cannot be required in the
15 modeling but are assumed to be represented by the background
16 concentrations added if they are large enough to make an
17 impact.

18 Q. Dr. Ituarte-Villarreal and Ms. Bernal observed
19 that the PM10 and PM2.5 models were not updated to account
20 for revisions to haul road emissions listed in Table 2-E,
21 and this is in Sonterra's statement of intent at Pages 6 and
22 11. Could you describe the changes with respect to
23 modeling?

24 A. The changes to haul road calculations reduced the
25 haul road emissions. There is no need to update modeling

1 when emissions are being reduced because the concentrations
2 cannot increase.

3 Q. Dr. Ituarte-Villarreal observed that the
4 elevations were sometimes recorded in meters rather than
5 feet. How would this affect a modeling result?

6 A. Reporting the elevations with the incorrect unit
7 of measure in the results summary does not affect the model
8 concentrations.

9 Q. Dr. Ituarte-Villarreal and Ms. Bernal suggested
10 that the Bureau has never approved use of non-default
11 modeling options in AERMET. Could you discuss the use of
12 non-default options?

13 A. There is no regulatory requirement for minor
14 sources to write a modeling protocol and no requirement for
15 it to be approved. In order to model some sources using
16 flat terrain, the selection of non-default options is
17 required. The facility contains many sources that are
18 non-buoyant. Emissions from ground-level fugitive sources
19 tend to follow the terrain instead of being lifted into the
20 air and then gradually descending. The use of flat terrain
21 for this type of source is consistent with the AERMOD
22 implementation guide and the New Mexico modeling guidelines.
23 Modeling these sources with flat terrain maximizes
24 concentrations by preventing the model from moving the model
25 plume above or below the ground.

1 Q. Dr. Ituarte-Villarreal and Ms. Bernal commented on
2 particle density parameters. Could you address these
3 comments?

4 A. The Department maintains a reference that
5 documents particle distributions and densities of commonly
6 encountered sources. The applicant used these parameters.
7 Additional documentation is not expected when this reference
8 is used.

9 The exception is that a higher density was used for
10 source ID CSBH by mistake. The emissions from this source
11 are very small and have minimal impacts on the results.
12 Increasing the density for plume depletion in AERMOD does
13 not necessarily decrease the concentration. When the
14 density is increased, it can lower the plume for that source
15 and increase concentrations very close to the source where
16 maximum concentrations were predicted for this facility.
17 Because of the small emission rate of CSBH, and the nearby
18 location of the maximum concentrations, this area -- error
19 is not expected to increase model concentrations.

20 Q. Ms. Bernal noted that Units 13 and 14 were missing
21 from Section 16-0 of the application. Could you discuss the
22 modeling of these units?

23 A. The three heaters were modeled as a single heater
24 and identified as Unit 12 or CBPH. Combining separate
25 emission units into a single point is a conservative

1 approach to modeling because it concentrates the emissions.
2 This combination is acceptable.

3 Q. Mr. Edler suggests the wind speeds used to
4 calculate emissions are lower than actual wind speeds at the
5 facility. Could you address this comment?

6 A. The Department has reviewed studies that relate
7 wind speeds, emission rates, material handling sources, and
8 predicted concentrations in AERMOD. The maximum predicted
9 concentrations do not occur when the wind speed is at its
10 maximum in these AERMOD modeling runs because the increase
11 in turbulence and dispersion outweighs the increase in
12 emission rates. An emission rate based on an annual average
13 is a more realistic but conservative method of modeling the
14 relationship between wind speed and dispersion for material
15 handling sources.

16 Q. Considering the new information presented and the
17 modeling provided by the applicant, what are the conclusions
18 from your review of the modeling analysis?

19 A. Alto Concrete Batch Plant modeling was performed
20 in accordance with the New Mexico modeling guidelines. If
21 the facility operates in compliance with the terms and
22 conditions of the draft permit, then it will not cause or
23 contribute to any concentrations above State or federal
24 ambient air quality standards or PSD increments. The
25 facility has satisfied all modeling requirements, and the

1 permit may be issued.

2 Q. Thank you.

3 MR. VIGIL: I have no further questions for this
4 witness. And the Bureau calls its next witness, Rhonda
5 Romero.

6 HEARING OFFICER CHAKALIAN: Now, Mr. Vigil, I have
7 a question for you before we proceed with swearing in
8 Ms. Romero. Originally when the first witness testified,
9 she said that her rebuttal exhibit, I thought, was 6, 7, and
10 8, and her direct was 1 and 2. When I look at the list of
11 exhibits in your rebuttal, it looks like her exhibit is 1 in
12 rebuttal. What am I missing?

13 MR. VIGIL: That is correct. Her -- yes, her
14 rebuttal testimony is Exhibit 1. I -- Ms. Saikrishnan is --
15 she's a -- she's not an attorney. She was referencing
16 exhibits that came along with her rebuttal testimony.

17 HEARING OFFICER CHAKALIAN: Oh.

18 MR. VIGIL: So, and there -- her surrebuttal, of
19 course, was not prefiled.

20 HEARING OFFICER CHAKALIAN: So let me make sure
21 that the court reporter and I have this straight. So far,
22 NMED has admitted -- well, I have admitted into evidence
23 NMED's Exhibits 1 through 8, and their rebuttal Exhibits 1
24 through 8 and through testimony, Exhibits -- exhibits now,
25 direct exhibits, 1, 2, 3, and 4 have been adopted under

1 oath; is that correct?

2 MR. VIGIL: That's correct.

3 HEARING OFFICER CHAKALIAN: Okay. And rebuttal
4 Exhibits 1 and 2 are adopted under oath.

5 MR. VIGIL: That's correct.

6 HEARING OFFICER CHAKALIAN: All right. That's
7 fine. I just wanted to clarify.

8 Okay. So now we have Ms. Romero. Ms. Romero, you're
9 going to be sworn in first.

10 RHONDA ROMERO

11 (being duly sworn, testified as follows:)

12 HEARING OFFICER CHAKALIAN: Now, Ms. Romero --
13 Hold on one second, Mr. Vigil.

14 Ms. Romero, would you spell your name, please.

15 THE WITNESS: Sure. It's R-H-O-N-D-A, Romero,
16 R-O-M-E-R-O.

17 HEARING OFFICER CHAKALIAN: It's very hard to hear
18 you. Would you get closer to the microphone and/or speak
19 louder.

20 Mr. Vigil.

21 MR. VIGIL: Oh, I was just saying that
22 Ms. Romero's testimony is NMED Exhibit -- rebuttal
23 Exhibit 3.

24 HEARING OFFICER CHAKALIAN: Only rebuttal exhibit.
25 There's no direct, then.

1 MR. VIGIL: There is no direct.

2 HEARING OFFICER CHAKALIAN: Perfect. Thank you.

3 So please proceed.

4 DIRECT EXAMINATION

5 BY MR. VIGIL

6 Q. Could you state your name for the record?

7 A. Rhonda Romero.

8 Q. Ms. Romero, could I -- I know it's a headache.
9 Could you try to get closer so your -- you sound a little
10 far away.

11 A. Sure. Does that sound better?

12 Q. It does sound better. Thank you.

13 And where are you currently employed?

14 A. I am employed by the New Mexico Environment
15 Department Air Quality Bureau.

16 Q. And what is your job title?

17 A. I'm the staff manager for the Minor Source Unit of
18 the Permitting Section.

19 Q. And what are your job responsibilities as staff
20 manager?

21 A. I guide staff in the Minor Source Unit through the
22 review of technically complex air quality permit
23 applications and the development of enforceable air quality
24 permits. I have written and reviewed hundreds of air
25 quality permits to ensure that they are legally enforceable.

1 In addition, I interact with various stakeholders, including
2 the public, industry, consultants, other air agencies, and
3 internal colleagues at the Bureau.

4 Q. How long have you worked in the permitting
5 section?

6 A. I have worked in the permitting section since
7 February of 2013. I started in the Minor Source Unit as a
8 permit specialist and eventually got promoted to staff
9 manager in the Minor Source Unit in July of 2018.

10 Q. And could you briefly describe your educational
11 background?

12 A. I have both a Bachelor and Master of Science.

13 Q. And your resume is -- your latest resume is NMED
14 Exhibit 5?

15 A. Yes.

16 Q. And your -- your rebuttal testimony was directly
17 filed in this matter as NMED rebuttal Exhibit 3?

18 A. Correct.

19 Q. And do you have any changes to this that you'd
20 like to make?

21 A. I do not.

22 Q. And do you adopt your rebuttal testimony in its
23 entirety?

24 A. I do.

25 Q. Thank you. And what was your role in the Air

1 Quality Bureau's review and development of the Roper permit?

2 A. I reviewed all applicable regulations and reviewed
3 the permit language and supporting documents for legal
4 enforceability of the construction permit regulation 20.2.72
5 NMAC.

6 Q. On Page 9 of Sonterra's statement of intent, the
7 summary of Ms. Bernal's opinion states that the application
8 is incomplete because the applicant did not check the box
9 indicating emissions due to routine predictable startup,
10 shutdown, or scheduled maintenance are no higher than those
11 listed on Table 2-E. Can you explain how SSM activities are
12 addressed, and I just want to say that SSM stands for
13 startup, shutdown, and maintenance. So can you explain how
14 SSM is addressed?

15 A. On Page 26 of the original application, the
16 applicant indicated that no startup, shutdown, or
17 maintenance emissions are predicted for this site, and no
18 maintenance would be performed during periods with no
19 production.

20 Permittees are required to develop and maintain an SSM
21 plan per 20.2.7 NMAC, as acknowledged by the applicant in
22 Section 14 of the application. In addition, they are also
23 required to minimize emissions in accordance with 20.2.7.109
24 NMAC and 20.2.72.203.A(5) NMAC.

25 Q. On Pages 15 and 16 of Sonterra's statement of

1 intent, the summary of Mr. Edler's opinion states that a
2 99.9 percent control efficiency of emissions using a
3 baghouse is unrealistic. Can you explain how a 99.9 percent
4 control efficiency is enforceable in the draft permit?

5 A. The baghouse manufacturer guarantees up to
6 99.99 percent control efficiency if the control device is
7 maintained and operated per the manufacturer's
8 recommendations. The permit conditions A503.A, A503.C, and
9 A503.D establish requirements, monitoring, and recordkeeping
10 to demonstrate compliance with the 99.9 percent control
11 efficiency that the applicant used to calculate allowable
12 emissions. These require -- I'm sorry. These requirements
13 include the installation of a differential pressure gauge,
14 continuous monitoring of the differential pressure across
15 each baghouse, and a no visible emissions requirement for
16 each transfer point as determined by EPA Reference Method
17 22.

18 If the differential pressure readings are outside of
19 the manufacturer recommended differential pressure range,
20 the permit requires the operator to seize operations
21 immediately until the deviation is rectified. In addition,
22 if visible emissions are observed at transfer points outside
23 of EPA Reference Method 22 requirements, the permit requires
24 the operator to perform a maintenance check on the baghouse
25 and perform all necessary maintenance in accordance with the

1 manufacturer's specifications.

2 Q. On Page 16 of Sonterra's statement of intent, the
3 summary of Mr. Edler's opinions state the applicant's
4 failure to implement emission controls for the aggregate
5 handling and storage pile will cause significant fugitive
6 dust emissions. Can you explain how fugitive dust controls
7 from aggregate handling and storage piles are enforceable in
8 the draft permit?

9 A. In condition A502.A, the permit requires that a
10 wet dust suppression system be used to minimize fugitive
11 emissions from Units 3, 4, 5, 6, and 11. In addition,
12 condition A502.B in the permit requires a fugitive dust
13 control plan by minimizing emissions from areas such as
14 aggregate feeders, conveyors, storage piles, and other types
15 of fugitive dust emitting sources. The permit requires that
16 piles be either covered or kept adequately moist to control
17 dust during storage and handling.

18 Q. On Page 17 of Sonterra's statement of intent, the
19 summary of Mr. Edler's opinions also states the claim that
20 the -- in the application that fugitive dust can be
21 controlled by central dust control system is unrealistic.
22 Can you explain how controlled by the central dust control
23 system is enforceable in the permit?

24 A. The central dust control system is represented as
25 a control for Units 7 and 8 in the permit application.

1 Permit conditions A105.A, A503.B, A503.C, and A503.D require
2 that fugitive emissions from the cement/fly ash batcher and
3 the concrete truck loading be controlled with the central
4 dust control system. And a no visible emissions requirement
5 as determined by EPA Reference Method 22.

6 Q. On Page 18 of Sonterra's statement of intent, the
7 summary of Mr. Edler's opinion states that the application
8 is incomplete because it does not identify the emissions
9 from the cleaning operations that are necessary at a
10 concrete batch plant. Can you explain how emissions from
11 cleaning operations are enforceable in the draft permit?

12 A. The permit condition A502.B requires that a
13 fugitive dust control plan be implemented at the facility to
14 minimize fugitive dust. Any observations of visible dust
15 emissions requires that the fugitive dust control plan be
16 updated in order to address visible emission -- visible
17 fugitive dust emissions.

18 Q. Can you briefly describe the Bureau's recent
19 revisions to the draft permit?

20 A. In response to Mr. Edler's concerns on the central
21 dust control system, the Department strengthened condition
22 A503.B to establish more stringent requirements on the
23 central dust control system as well as establishing solid
24 monitoring and recordkeeping requirements to ensure that the
25 requirements are properly performed and documented. In

1 addition, the permit condition A503.D was also revised to
2 include the baghouse Unit 7b. The detailed changes to the
3 permit condition can be found in NMED rebuttal Exhibit 3,
4 and the revised draft permit can be referenced at NMED
5 rebuttal Exhibit 5.

6 Q. Okay. Thank you.

7 MR. VIGIL: I have no further questions, and the
8 Bureau calls its final witness.

9 HEARING OFFICER CHAKALIAN: Mr. Vigil, excuse me.
10 We're going to go now to public comment. It is 12:02. We
11 are going to take the first twelve people who signed up. If
12 your name is called and you are not ready to provide your
13 public comment, then we will move you down one on the list,
14 and we will call your name again. Each public member will
15 have up to five minutes after you are sworn in.

16 So, Mr. Vigil, we're going to hold on your last
17 witness, Ms. Kathleen Primm, for now, and we will come back
18 to her at 1 o'clock as time allows us.

19 So, Ms. Corral, are you ready? Ms. Corral, there
20 seems to be something wrong with your microphone. It seems
21 to be muting you and unmuting you. Let's try it now.

22 MS. CORRAL: Okay. I apologize. I'm not sure
23 what happened there.

24 HEARING OFFICER CHAKALIAN: There you are.

25 MS. CORRAL: Okay. We're going to start off with

1 Suzie Santos, and then Tom Stewart would go next. So
2 Ms. Suzie Santos, and I believe they're going to be in the
3 gym location.

4 HEARING OFFICER CHAKALIAN: Okay.

5 Ms. Myers, would you please swear in the first public
6 speaker.

7 (NOTE: Speaker duly sworn.)

8 HEARING OFFICER CHAKALIAN: Please spell your
9 name.

10 PUBLIC SPEAKER: S-U-Z-A-N-N-E, last name is
11 Santo, S-A-N-T-O.

12 HEARING OFFICER CHAKALIAN: Okay. You have five
13 minutes. Thank you.

14 PUBLIC SPEAKER: Thank you. Air Quality Board
15 members, my name is Suzanne Santo, and I live in Enchanted
16 Forest. I own three properties in the Enchanted Forest area
17 that were never notified about the plant in 2021. My
18 properties which are valid at over 750,000, are
19 approximately 33 linear feet from the proposed site. I
20 selected this area for the clean mountain air to retire in,
21 having lived in El Paso for many decades and having vested
22 in a clean air, dark sky community that has a thriving
23 amount of wildlife in the area. I am opposed to the
24 development of a CBP at this location and will pray that the
25 hearing members will hear our plea to reject the permit and

1 not allow the plant to negatively impact the Alto community,
2 the White Mountain wilderness area, Lincoln National Park,
3 and our homes that we have worked all our lives to enjoy in
4 peace and health.

5 Having worked as a manager in the city of El Paso
6 Building and Planning Department, I'm very familiar with
7 application processes. The application presented is and has
8 been flawed since submission and should have been rejected.
9 The fact that the site cannot meet the minimum distance to
10 the designated federal wilderness area should have resulted
11 in a rejection of the application for that site at -- on
12 that merit alone.

13 Please consider the following: Personally, I have
14 seen the amount of particulate matter that is released from
15 our CBP, even with proper emission controls in El Paso. My
16 husband was a quality control manager for the largest
17 concrete plant in El Paso and witnessed the impact of
18 surrounding neighborhoods that lived with silica dust. The
19 dust settles over the community and adversely impacts those
20 neighborhoods and residents who are suffering with current
21 breathing problems or will cause breathing problems and/or
22 possibly cancer in the future.

23 From my home, I will see the emission clouds in the
24 air. I will breathe the silica emissions that will be
25 deposited on my home and my land, and I will hear the

1 constant noise of a CBP running 12 to 18 hours a day. The
2 County does not have a noise ordinance, so there will be no
3 relief for those of us that live nearby if the continual
4 movement of trucks carrying concrete or heavy equipment
5 needed to load the raw material into the facility. A CBP
6 will require high-intensity lighting for safety issues
7 resulting in light trespass and will negatively impact the
8 community's appeal as a dark sky community.

9 I have a rental property that provides revenue to the
10 County of Lincoln that will be negatively impacted by the
11 foul air, loss of water availability and possible
12 groundwater contamination, and noise generated by the plant.
13 I'll be negatively impacted by this plant regarding my
14 property values, which in turn will result in lower tax
15 revenue for the County and the State. Lower revenues across
16 the impacted areas will reduce budgets at local and State
17 levels. The State will have significant losses related to
18 the maintenance of roads and safety issues with large trucks
19 entering the scenic byway of Highway 220 as well.

20 The White Mountain wilderness was devastated by the
21 Little Bear fire in 2012, and it's just beginning to revive.
22 Silica dust will harm not only the grass, plants, and the
23 trees in that area but will also severely impact the health
24 of our local New Mexico wildlife that will ingest the silica
25 dust as they're grazing.

1 Our subdivision and many surrounding subdivisions will
2 be negatively impacted by the amount of water required to
3 produce concrete and maintain adequate dust control methods
4 that is normally mandated for an industrial facility like
5 this. We are struggling with the current wells for our
6 community, seeing them declining each year. Watching a
7 surface irrigation system spraying raw materials and the
8 plant road for dust control is an insult to every water
9 entity in the area trying to conserve this precious
10 resource. Groundwater contamination will become a serious
11 concern to our community.

12 Simply put, having a third CBP plant in our area is an
13 atrocity to the sanctity of the Sacramento Mountains. Your
14 mission statement is to protect and restore environment and
15 to foster a healthy prosperous New Mexico for present and
16 future generations, and your agency further states to
17 protect the public health of New Mexicans and the nature of
18 the State by forbidding the deterioration of air quality.
19 Protect our community, please.

20 Applications that completely fail to meet the
21 standard -- excuse me; the standards of your department
22 requires that the air quality permits should be denied. I
23 plead with you to reject this application on a technical
24 failure the permit application and the negative impact of
25 New Mexico air, water, and soil quality to this great --

1 help of the -- respectfully, Suzanne Santo.

2 MS. CORRAL: Your time is up.

3 Thank you.

4 HEARING OFFICER CHAKALIAN: Ms. Corral, the next
5 speaker?

6 MS. CORRAL: Up next, we have Tom Stewart. And
7 then after that, we'll have Jim Spiril, if he could be
8 ready. Thank you.

9 HEARING OFFICER CHAKALIAN: Okay. Mr. Stewart,
10 you are going to be sworn in.

11 (NOTE: Public speaker duly sworn.)

12 HEARING OFFICER CHAKALIAN: Please proceed, sir.

13 PUBLIC SPEAKER: Mr. Hearing Officer, my name is
14 Tom Stewart, and I reside at 116 Tanglewood Lane in Alto.
15 The proposed plant is approximately 1.2 miles from my
16 residence. I've been a resident of the area for 23 years,
17 and the only reason that I came to Lincoln County in the
18 first place was because I was hired as its county manager.
19 I served in that capacity for 13 years. I resigned that
20 position and ran for county commission in 2014. I'm
21 currently in my last year of an eight-year tenure. I want
22 to be clear the Board of County Commissioners has not
23 authorized me to speak, but as a potentially affected
24 resident, I do feel an obligation to provide my personal
25 observations and opinion on this subject.

1 Making laws for governing our society is supposed to
2 be hard. As one of five county governing elected officials,
3 I can attest to the fact that it is often difficult to gain
4 a consensus on any given issue. Issues of private property
5 rights are especially sensitive, and in my opinion, however,
6 those rights should not be permitted to impact your
7 neighbors in a harmful way. Ever since Roper Construction
8 decided to seek an environmental permit for the concrete
9 plant, I have heard about little else from the constituents
10 in my district. I feel that the price of land in the area
11 of Alto is such that I, and I believe the county
12 commissioners I have served in the past as manager, could
13 never have imagined the need for zoning in such a pristine
14 area as Alto. Especially when there is almost 5,000 square
15 miles in this county to consider for all conceivable
16 activities.

17 Best I could get out of my fellow commissioners thus
18 far has been the nuisance resolution 2021-24 that you have
19 been provided. I believe the resolution actually --
20 accurately presents the situation, and I feel that I am
21 starting a lengthy process of trying to sway the governing
22 body toward considering zoning to prevent this type of
23 closed activity in areas that are clearly not appropriate
24 when it has so many negative impacts on the surrounding
25 area.

1 As a nearby resident, I realize that this NMED hearing
2 as specified by the hearing officer is dealing with just the
3 air quality issues when there are so many other factors that
4 need to be considered. Deed restrictions, proximity to a
5 national forest, critical water supply for just dust
6 suppression, a scenic byway concentrated in a long
7 construction activity in a residential area, and potential
8 health issues of the surrounding residents should all be
9 eventually considered. A reasonable county zoning ordinance
10 could have precluded this entire process, and it needs to be
11 considered in the future of this County.

12 Unfortunately, such an effort, in this case, would
13 be -- excuse me, would be more than a day late and a dollar
14 short. Speaking as a potentially affected local resident, I
15 would ask that the hearing officer at NMED carefully
16 consider all the expert testimony you have heard in rebuttal
17 of the applications and the NMED experts and find the
18 permit -- to find the permit -- the grounds under its
19 charter to deny granting the permit. I would like to repeat
20 that in slightly stronger terms, and in another way, please
21 deny the permit because the proposed activity could destroy
22 the fragile community I live in based on the necessary water
23 usage for dust suppression alone.

24 If the permit cannot be denied and the plant is
25 subsequently constructed, please ensure monitoring of the

1 plant to see that the standards of air quality are strictly
2 enforced for the very health of the residents and the
3 environment. Thank you, Mr. Hearing officer.

4 HEARING OFFICER CHAKALIAN: Thank you, sir.

5 Ms. Corral, who's next?

6 MS. CORRAL: Thank you. Next is Jim Spiril. And
7 after that, we'll have Jim Kalvelage.

8 HEARING OFFICER CHAKALIAN: Can you spell the last
9 name of the first person?

10 MS. CORRAL: Yeah. S-P-I-R-I-L.

11 HEARING OFFICER CHAKALIAN: Okay. Are you ready,
12 sir?

13 MS. CORRAL: Yes, he's in -- he's coming up to the
14 camera.

15 HEARING OFFICER CHAKALIAN: Okay. And who's the
16 next person in line?

17 MS. CORRAL: Okay. So I have James Kalvelage.

18 HEARING OFFICER CHAKALIAN: How do you spell that?

19 MS. CORRAL: K-A-L-V-E-L-A-G-E.

20 HEARING OFFICER CHAKALIAN: Okay. Ms. Myers,
21 would you swear in this witness.

22 (NOTE: Speaker duly sworn.)

23 HEARING OFFICER CHAKALIAN: Sir, with your mask
24 on, it's hard to hear you. Okay. You have five minutes.
25 Please proceed. Oh, would you spell your name, please.

1 PUBLIC SPEAKER: K-A-L-V, as in Victor, E-L-A-G-E.

2 HEARING OFFICER CHAKALIAN: Okay. Please proceed.

3 PUBLIC SPEAKER: Thank you. I appreciate the
4 opportunity to speak with you. I live -- we live less than
5 a mile from the proposed plant, and that has been a concern,
6 but after listening today, I really would urge you to
7 reconsider the modeling used. You talk about using climate
8 data from Holloman Air Force Base, but that's very, very
9 different than the proposed plant location in Alto.

10 What really struck me was, look at where these places
11 are, Holloman and Alto compared to the mountains here, the
12 Sacramento range. Holloman is on the west side of the
13 mountain range, and the plant is proposed for the east side
14 of the mountain range. That -- that sounds very different
15 in location, also as already brought up, that
16 topographically they're very different locations, we saw
17 that on the maps, and very different locations. We're used
18 to, you know, the winds can vary dramatically here,
19 depending on what the weather conditions are. Simply I ask,
20 why simply not use a local location to fit the information
21 into the permit?

22 And the other thing, and I realize we are talking air
23 quality, but the Environment Department looks at more than
24 just air quality, are using water to try to limit the air
25 particulates, whatever possible pollutions to bring that

1 down to the ground. My gosh, I live right next to a creek.
2 My well is right there, and the creek -- I can guarantee you
3 the creek plays a big role in what my well has. We found
4 that out when we searched -- we looked to see how deep down
5 the water table is, and we've done that several times, so
6 the creek plays a big role. If the creek is flowing, my
7 water level is higher. If the creek's not flowing, my --
8 you know, my well is further down into the ground.

9 Why would the Environment Department, and I realize
10 it's the Air Quality Bureau, and they're looking at, you
11 know, what we're breathing, but we have to drink that water,
12 too, and if it's going to be precipitated, if it's going to
13 get moisturized, whatever, to get that -- those air
14 particles down to the ground, when they go down to the
15 ground, eventually they're going to go down to the
16 groundwater, and that's right where Little Creek is. Little
17 Creek is right there, and that's an important water source
18 for me. Please think of us here. Thank you for your time.

19 HEARING OFFICER CHAKALIAN: Thank you, sir.

20 Ms. Corral, who's next?

21 MS. CORRAL: Okay. I have Jim Kalvelage. And
22 then, after that, I have Stanley Mathis.

23 HEARING OFFICER CHAKALIAN: Okay.

24 UNIDENTIFIED SPEAKER: That was Jim Kalvelage.
25 We're bringing Stanley up right now.

1 MS. CORRAL: Okay. Perfect. Thank you.

2 UNIDENTIFIED SPEAKER: Thank you.

3 HEARING OFFICER CHAKALIAN: Okay. Would you spell
4 your name, please?

5 PUBLIC SPEAKER: Stanley, S-T-A-N-L-E-Y, Mathis,
6 M-A-T-H-I-S.

7 HEARING OFFICER CHAKALIAN: M-A-T-H-I-S.

8 Ms. Myers.

9 (NOTE: Speaker duly sworn.)

10 HEARING OFFICER CHAKALIAN: Would you proceed,
11 please.

12 PUBLIC SPEAKER: I'm sorry?

13 HEARING OFFICER CHAKALIAN: Would you please
14 proceed?

15 PUBLIC SPEAKER: Oh, sure. I am Stanley Mathis. I
16 live less than a mile-and-a-half from the proposed plant.
17 I'm not going to reiterate what has already been said. I
18 just want to add because, I mean, we all have the issues
19 with the water, we believe that the winds will move the
20 particulates to our properties, but I just want to just put
21 my two cents in that this Board take a look at far more than
22 just what is modeled. The modeling, I'm sure these permits
23 are going to fit into what your models say that they should.
24 But from what we've seen and what I've seen personally with
25 the site -- with another plant owned by the same owner in

1 Carrizozo, it -- with the dust all around there, and the
2 lack of vegetation, it's a totally different thing than what
3 your model suggests. I'll give this up for someone else to
4 speak.

5 HEARING OFFICER CHAKALIAN: Thank you, sir.
6 Madai.

7 MS. CORRAL: Okay. Next we're going to start with
8 Bill Horton, and I believe they are in the convention
9 center.

10 HEARING OFFICER CHAKALIAN: I see. Okay.

11 PUBLIC SPEAKER: Can you hear me?

12 HEARING OFFICER CHAKALIAN: Yes, we can. Would
13 you sit down so that we can see you.

14 Oh, there you go. Would you spell your name, please.

15 PUBLIC SPEAKER: Bill Horton, H-O-R-T-O-N.

16 HEARING OFFICER CHAKALIAN: Very good. You're
17 going to be sworn in, and then you'll have five minutes.

18 (NOTE: Speaker duly sworn.)

19 HEARING OFFICER CHAKALIAN: Please proceed.

20 PUBLIC SPEAKER: My wife and I live in Legacy
21 Estates, which is directly across the road from the proposed
22 site. We moved here 14-and-a-half years ago. When we moved
23 here, my wife had been diagnosed with reactive airway
24 disease prior to our moving here. Within two years of
25 moving here, we've moved here for the pristine environment,

1 the clean air, less traffic, noise, et cetera, within two
2 years, her reactive airway disease seemed to disappear, and
3 she no longer requires an inhaler. With this concrete batch
4 plant being 660 feet away from our home, it's inevitable
5 that those symptoms will return and get worse.

6 We are both in our mid to late 70s. We are in that
7 age group where we are much more susceptible to the dangers
8 of pollutants in the air. We are not unique. Our community
9 has a very high concentration of retirees. There's also a
10 Christian school camp within a half a mile of this plant
11 that operates year-round.

12 I voice the same concerns that many of the people
13 who -- the people who have spoken ahead of me have stated.
14 We are very concerned about the impacts not only to the
15 Class 1 wilderness area to the wildlife as well as the
16 people obviously, but we are also concerned about the
17 impacts to the Fort Stanton-Snowy River Cave system. We --
18 we do not nor does anyone else seem to know what the
19 potential damage to that critical system is. We do know
20 that the cave system extends out to Little Creek, which
21 you've heard mentioned before, which is just down the road
22 from where I live, very close to the plant, very close to
23 our house. We risk doing irreparable damage to these areas
24 and to our future generations.

25 If this plant goes in, I see no choice for my wife and

1 I other than to leave our home. I cannot risk her health to
2 what this plant will produce. Unfortunately, that also
3 means we probably can't sell the house. No one will want to
4 live within 660 feet of a concrete batch plant.

5 I've heard lots of discussion about how the permit and
6 the Bureau enforces compliance with standards. I heard
7 nothing about monitoring, about observation, which is going
8 to be critical to make sure that the plant stays within its
9 limits. We have tried to find out the history of the plant
10 in Carrizozo. I have been able -- unable to find any
11 evidence, and others have been unable to find any evidence
12 of -- of inspection ever of that plant. So who is going to
13 be looking out for us?

14 If you are truly concerned about New Mexico's
15 citizens, you have to consider all these factors. Thank you
16 for your time.

17 HEARING OFFICER CHAKALIAN: Thank you, sir.

18 Ms. Corral.

19 MS. CORRAL: Okay. Mr. Hearing Officer, our next
20 person, we have Penny Horton, and she's also in the
21 convention center.

22 HEARING OFFICER CHAKALIAN: Okay. Ms. Horton.

23 PUBLIC SPEAKER: I think my husband -- I think my
24 husband has -- can't see me, huh?

25 HEARING OFFICER CHAKALIAN: Ms. Horton, would you

1 please spell your name.

2 PUBLIC SPEAKER: Penny, P-E-N-N-Y, Horton,
3 H-O-R-T-O-N.

4 HEARING OFFICER CHAKALIAN: You're going to be
5 sworn in, ma'am.

6 PUBLIC SPEAKER: Yes.

7 (NOTE: Speaker duly sworn.)

8 HEARING OFFICER CHAKALIAN: Please proceed.

9 PUBLIC SPEAKER: That was my husband that just
10 talked, so I think he covered just about everything, but
11 I -- I am very concerned for my health being -- having
12 reactive airway disease of any particulates in the air --
13 so, and we live so close, we live just right across the
14 street from where this plant is supposed to go. So I'm very
15 concerned about that. I would hate to have to move. So
16 thank you.

17 HEARING OFFICER CHAKALIAN: Thank you, Ms. Horton.
18 Ms. Corral.

19 MS. CORRAL: Okay. Up next, we have at 12 o'clock
20 Galen Farrington, and he's also in the convention center.

21 HEARING OFFICER CHAKALIAN: Can you spell his
22 name?

23 MS. CORRAL: Yeah. F-A-R-R-I-N-G-S-T-O-N [sic],
24 and I apologize if I'm saying it wrong.

25 HEARING OFFICER CHAKALIAN: Okay. Sir, can you

1 spell your name, please.

2 PUBLIC SPEAKER: Yes. First, we have an echo
3 here. Can you hear us okay?

4 HEARING OFFICER CHAKALIAN: Yes, you're coming in
5 just fine. Thank you, sir.

6 PUBLIC SPEAKER: Okay. My name is spelled first
7 name Galen, G-A-L-E-N, last name Farrington,
8 F-A-R-R-I-N-G-T-O-N.

9 HEARING OFFICER CHAKALIAN: You're going to be
10 sworn in, sir.

11 PUBLIC SPEAKER: Yes.

12 (NOTE: Speaker duly sworn.)

13 HEARING OFFICER CHAKALIAN: Please proceed.

14 PUBLIC SPEAKER: My name is Galen Farrington, and
15 my wife and I live in Legacy Estates, directly due south
16 from the proposed site for Roper Construction's concrete
17 batch plant. Mr. Roper states on his commercial website
18 that, quote, we have a commitment to our community and our
19 customers count on our integrity, unquote. Which he
20 references as a core value. I now find his statements
21 disingenuous.

22 On June 3rd, four senior retired property owners in
23 Legacy Estates, realizing the consequential negative health
24 issues resulting from Mr. Roper's proposed project, faxed
25 letters of opposition to NMED AQB. Not only had he ignored

1 the well-being of an established residential community, he
2 filed his permit request on June 22nd, indicating that there
3 was no opposition to his proposed plant site. His
4 application response shows he defiled his statement of
5 commitment and integrity.

6 In my July letter, I stated that the application was
7 not truthful and honest. It was deceptive and incomplete.
8 How could the permitting process continue? I then made an
9 argument for denying the permit due to outdated
10 meteorological data gathered at Holloman Air Force Base
11 because of, quote, similar elevation, topography, terrain,
12 vegetation, and climate at both sites.

13 My objection to the applicant's modeling was, quote,
14 there is an elevation difference of almost 3500 feet, a
15 terrain and topographic change from high desert to
16 mountainous, two vegetative life zone differences, and 80
17 climate zone differences, unquote. How can data derived
18 from such dissimilar sites 45 miles apart be comparable?

19 The NMED's website claims, quote, Plants, animals and
20 humans all rely on clean air to breathe, unquote. The
21 residents and business people of the immediate surrounding
22 area of Mr. Roper's proposed industry will be negatively
23 affected by any added pollutants in the air. NMED's
24 position that no particulates will advance beyond property
25 boundaries is ludicrous.

1 NMED is also tasked by the New Mexico Water Quality
2 Act and the Water Quality Control Commission to prevent
3 water pollution in the State at sites which pose a
4 significant risk to the environment and human health. For
5 cancer survivors, appropriate filtration systems are a
6 necessary financial investment. Our home has a five-stage
7 drinking water system and a three-stage rest of house
8 filtration system. This system is not designed to deal with
9 the crystalline silica of airborne cement dust, which will
10 infiltrate water sources. The health and well-being of over
11 150 residents within the unsafe zone will be negatively
12 impacted forever.

13 Mr. Roper is the interloper, and his application to
14 construct the concrete batch plant in this location
15 demonstrates his lack of concern for members of his
16 community. Residents currently living in the area did not
17 choose to live in a life-threatening environment. NMED has
18 been tasked with, quote, protecting the quality of air for a
19 healthy environment which plays a critical role, unquote, in
20 their decisions.

21 This is no -- there is no fail-safe zone within a half
22 a mile of any concrete batch plant operation. Ethically,
23 Mr. Roper should withdraw his application and consider the
24 alternate opportunities offered him. Ethically, NMED
25 should -- excuse me, should deny his application to protect

1 the lives of often marginalized New Mexicans. NMED has not
2 even come to put boots on the ground to see what this
3 environment is like. After all, Mr. Roper is on record as
4 admitting that NMED would deny his permit request if it was
5 deemed, quote, socially unjust. Thank you.

6 HEARING OFFICER CHAKALIAN: Thank you,
7 Mr. Farrington.

8 Ms. Corral.

9 MS. CORRAL: I have next Kathleen Weems, also in
10 the convention center.

11 HEARING OFFICER CHAKALIAN: Okay. Ms. Weems.
12 Thank you, ma'am. Would you spell your name, please.

13 PUBLIC SPEAKER: K-A-T-H-L-E-E-N, W-E-E-M-S.

14 HEARING OFFICER CHAKALIAN: W-E-E-M-S?

15 PUBLIC SPEAKER: Yes, sir.

16 HEARING OFFICER CHAKALIAN: Thank you. You're
17 going to be sworn in.

18 (NOTE: Speaker duly sworn.)

19 PUBLIC SPEAKER: My husband and I have been --
20 we're retired educators. We've lived in the Ruidoso area
21 since 1975, just built our home last year, less than
22 two-tenths of a mile away from the proposed site. And so
23 much of what I was going to say has been said. I won't take
24 the time that I just, again, reiterate what Mr. Farrington
25 said about how can a decision that's going to affect so many

1 people be made without a visit from some of you from
2 Santa Fe? It's one man's profit versus literally thousands
3 of people's health, well-being, and properties, especially
4 health.

5 The issue of containment, we have gone over the
6 permit, and he's gone over the permit, but you cannot
7 contain the light and the noise and the emissions and the
8 water contamination on his property. It will impact all of
9 us that are in the area. I'm not going to reread the
10 mission of New Mexico's Environment Department because it
11 has already been stated a couple of times, but I would like
12 to say that if not you, where do we go? Where do we go as
13 an advocate for all the aspects of the environment? Thank
14 you very much for your time.

15 HEARING OFFICER CHAKALIAN: Thank you.

16 Ms. Corral.

17 MS. CORRAL: Thank you. Okay. Up next, we have
18 Donnie Weems, also in the convention center.

19 HEARING OFFICER CHAKALIAN: Okay.

20 Mr. Weems, would you spell your name, please.

21 PUBLIC SPEAKER: D-O-N-N-I-E, W-E-E-M-S.

22 HEARING OFFICER CHAKALIAN: Thank you, sir.

23 You're going to be sworn in.

24 (NOTE: Speaker duly sworn.)

25 HEARING OFFICER CHAKALIAN: Please proceed.

1 PUBLIC SPEAKER: Mr. Hearing Officer, we -- I --
2 we live at 116 Legacy Lane, that was my wife Kathleen there
3 that just spoke, and we are less than two-tenths of a mile
4 from the proposed Roper concrete batch plant. And one of
5 the requirements that I understand of the permitting process
6 is to be provided by certified mail to owners of record as
7 shown in the most recent property tax schedule of all
8 properties; B, within one-half mile of the property on which
9 the facility is located or is proposed to be located.

10 We purchased our property on February the 7th, 2020.
11 We have a warranty deed from the county clerk of Lincoln
12 County, New Mexico, dated February the 10th, 2020. We've
13 paid taxes on said property, according to the Lincoln County
14 Assessor's Office in November of 2020 and May of 2021. We
15 did not receive the required original certified letter from
16 Mr. Roper, which was in June of 2021, notifying us of the
17 intent to build a concrete batch plant on Highway 220.
18 Instead, it was sent to the previous owners, Mark C. and
19 Lecretia C. Sturgeon of Bonney, Texas, even though we were
20 listed on the county records as the landowner.

21 Then on January the 4th, 2022, we received this
22 letter, certified letter, Weems, Donnie R. and Kathleen A.,
23 P.O. Box 563, Ruidoso, New Mexico 88355-0563. Quote, Dear
24 Neighbor. This notice was mailed on June the 7th, 2021, by
25 Roper Construction, Incorporated to the landowners of record

1 identified by Lincoln County to be within one-half mile of
2 Roper's proposed concrete batch plant in Alto, New Mexico.
3 Counsel for the Ranches of Sonterra Property Owners
4 Association found both Donnie R. Weems and Kathleen A. Weems
5 have represented that you did not receive this notice.
6 Roper Construction is providing you with this notice. Six
7 months after the fact. Sincerely, Roper Construction,
8 Incorporated, Box 969, Alto, New Mexico 88312.

9 We were listed as landowners of record by Lincoln
10 County prior to the June 7th, 2021 letter but did not
11 receive the certified letter. We were actually living in
12 our home at that time. So our question is, why didn't we
13 receive the original certified letter if we were listed as
14 the landowners of record prior to June 7, 2021, and what
15 method was used to determine land ownership at that time?
16 Thank you.

17 HEARING OFFICER CHAKALIAN: Thank you, Mr. Weems.
18 Ms. Corral.

19 MS. CORRAL: Okay. Mr. Hearing Officer, next I
20 have Brenda Restivo.

21 HEARING OFFICER CHAKALIAN: Is she available?

22 MS. CORRAL: She's also in the convention center.

23 HEARING OFFICER CHAKALIAN: Thank you.

24 Would you spell your name, ma'am?

25 PUBLIC SPEAKER: Brenda, B-R-E-N-D-A, Restivo,

1 R-E-S-T-I-V-O.

2 HEARING OFFICER CHAKALIAN: You are going to be
3 sworn in.

4 (NOTE: Speaker duly sworn.)

5 HEARING OFFICER CHAKALIAN: Please proceed, ma'am.

6 PUBLIC SPEAKER: I come here today representing my
7 family and as president of the Ranchers of Sonterra Property
8 Owners Association, the community of over 480 property
9 owners that is directly northeast and anywhere from one-half
10 mile to four miles of the proposed site. And I'd just like
11 to say I concur with previous public comments and thank them
12 for their participation here today.

13 In early June of 2021, I received a phone call from a
14 resident of the Ranches asking what I was going to do about
15 the proposed cement plant on Highway 220. I had no idea of
16 what she was talking about. On June 7th, I drove to the
17 site and took a picture of the permit application posted
18 40-foot off the roadway on an eight-and-a-half by eleven
19 poster. And so it began. A fight against a moving target.
20 One where you have continuously allowed Mr. Roper to amend
21 his flawed application to resolve issues addressed and
22 discoverable evidence submitted by our attorney. We were
23 given deadlines. Mr. Roper wasn't.

24 We, the Ranches of Sonterra, started with letter
25 writing, which led to this public hearing. Phone calls and

1 research. This was an arduous task, and our concerns grew
2 to where we felt we had to hire an attorney to represent us.
3 We formed a coalition of the surrounding community and
4 reached out to those outside our Highway 220 corridor
5 boundaries. A costly venture for our predominately senior
6 community.

7 The Ranches of the Sonterra community voted to approve
8 50,000 to start our litigation fund, and we have received
9 donations from over 250 individuals to aid in this fight.
10 We are putting ourselves in debt to fight for our rights.
11 Individuals concerned about air quality, water rights, the
12 environment, safety, groundwater, the very air we breathe.
13 With passion, we are in this fight.

14 Personally, my husband and I live less than
15 three-quarters of a mile from the site, which we can see
16 from our living room and den. You have pictures. If you
17 live here, you have experienced the continuous springtime
18 winds in excess of 30 miles per hour, which carries fugitive
19 dust to the Ranches of Sonterra, directly northeast of the
20 site. This past year we have had winds carrying over to the
21 Fall and Winter, gusts of over 60 miles per hour. We
22 retired here in 2010. This is our only home, and we came
23 here to escape the noise, traffic, and pollution of a large
24 city, New Jersey. We were attracted to the area because of
25 the beautiful, pristine views, quiet, clean air, and the

1 abundant wildlife.

2 In 2012, we thought we were going to lose all this in
3 the Little Bear fire. We were fortunate to have only lost
4 trees and vegetation as the fire came within 150 feet of our
5 home. Our thanks to the courageous efforts of our
6 firefighters. And now, here we are fighting to preserve our
7 homestead again. If this plant is allowed to be built, we
8 will no longer be able to enjoy our beautiful land because
9 of the air and noise pollution, and we fear our well will
10 also go dry because of the water needed to sustain this
11 cement facility.

12 I'm urging you to come down here and visit the site of
13 this proposed batch plant to see the lives that will forever
14 be disturbed by allowing this project to go forward. Homes
15 directly across the street and behind the site, a business
16 that will destroy from the fugitive dust and pollutants.
17 Lifestyles and health of individuals, the homes that will be
18 unsellable, and the life savings of these residents will be
19 depleted all for the sake of one individual, Mr. Roper, and
20 his greed. He doesn't care about any of us. I hope you do.
21 We are not a piece of paper or a model. We are real people,
22 living in a real community. Please deny this application
23 and protect this community. The project doesn't belong
24 here. Thank you.

25 HEARING OFFICER CHAKALIAN: Thank you Ms. Restivo.

1 Ms. Corral.

2 MS. CORRAL: Okay. Up next, we have Craig Cathey.
3 And also on the convention center.

4 HEARING OFFICER CHAKALIAN: Would you spell your
5 name, please.

6 PUBLIC SPEAKER: Craig, C-R-A-I-G, Cathey,
7 C-A-T-H-E-Y.

8 HEARING OFFICER CHAKALIAN: You're going to be
9 sworn in, sir.

10 (NOTE: Speaker duly sworn.)

11 HEARING OFFICER CHAKALIAN: Please proceed.

12 PUBLIC SPEAKER: I'd like to talk about the human
13 elements of this situation, not the mathematical elements,
14 but it pains me to see that the Air Quality Bureau did not
15 do its own study. Roper's expert witness did not do his own
16 study. What he did is take numbers that are standard and
17 put them into an equation, and spit out some numbers. And
18 what happened was Mr. Roper submitted an application, which
19 was approved and is deemed to be -- what's the word,
20 administratively complete on the 22nd of July, my birthday.
21 This application has been modified again and again. And the
22 site where it's proposed to go is surrounded on all sides by
23 established residential neighborhoods. You've heard from
24 some of the -- our -- my neighbors. It -- it is a threat to
25 our very existence in these neighborhoods.

1 My home, where myself and my wife live, my property is
2 less than one hundred yards across the highway from the
3 perimeter where Roper wants to build his concrete batch
4 plant. He proposes to run that plant 18 hours -- up to 18
5 hours a day, beginning it as early as 3 o'clock in the
6 morning and running until 9 o'clock at night. I can't
7 imagine how the plant would be able to operate during
8 nighttime hours without violating a 1999 New Mexico Night
9 Skies ordinance, and I can't imagine the noise, noise which
10 experts predict will exceed allowable federal noise levels
11 in my neighborhood, Legacy Lane.

12 I can't imagine the -- that wet suppression techniques
13 will eliminate all of the fugitive respirable silica dust
14 that the concrete batch plant will generate. I can't
15 imagine that even if it is possible to control that dust
16 with wet suppression, I can't imagine where Roper is going
17 to get the water to run the plant in the manner described in
18 his application.

19 I can't imagine that NMED has an air quality permit
20 application process that allows the applicant to submit an
21 application, and when it is being reviewed, if omissions and
22 inaccuracies or questionable data is found, NMED goes back
23 to the applicant, discusses the issues, and allows the
24 applicant to revise the application again and again and
25 again and again and again, up to ten times in Mr. Roper's

1 case, addressing over 20 separate issues. It seems like
2 unless an applicant is dumber than a rock, they finally
3 figure out exactly what NMED wants them to say, and they say
4 it. And then they get NMED approval.

5 Now, there are many states in the country where
6 setback laws from concrete batch plants are being introduced
7 to allow concrete batch plants to be no closer than
8 440 yards to schools or residences. In some cases, it's
9 880 yards. I wonder why New Mexico can't do that. It's not
10 in practice here.

11 This plant, if it goes in, is going to destroy lives.
12 It's going to destroy property values. I cannot understand
13 how the State of New Mexico would allow this to happen and
14 allow a company build and operate a concrete batch plant
15 that is based solely on air quality --

16 MS. CORRAL: Sir, your time is up. It's been five
17 minutes. Thank you.

18 HEARING OFFICER CHAKALIAN: Thank you, Mr. Cathey.

19 May we have the next person, Ms. Corral.

20 MS. CORRAL: Yes, Mr. Hearing Officer. And this
21 would conclude the twelve members, the first twelve members
22 of the public, and this is going to be Ellen Hightower, also
23 in the convention center.

24 HEARING OFFICER CHAKALIAN: Would you spell your
25 name, please.

1 PUBLIC SPEAKER: Yes. E-L-L-E-N,
2 H-I-G-H-T-O-W-E-R.

3 HEARING OFFICER CHAKALIAN: Ms. Hightower, you are
4 going to be sworn in.

5 (NOTE: Speaker duly sworn.)

6 HEARING OFFICER CHAKALIAN: Please proceed,
7 Ms. Hightower.

8 PUBLIC SPEAKER: Thank you, Officer. Initially I
9 was going to read a letter I have written to the State, but
10 they're too numerous. I have made phone calls, e-mails. I
11 have spoken to --

12 HEARING OFFICER CHAKALIAN: Can you speak --
13 Ms. Hightower, can you speak a little louder so that the
14 court reporter can catch your --

15 PUBLIC SPEAKER: Yes. Thank you.

16 HEARING OFFICER CHAKALIAN: -- testimony.

17 PUBLIC SPEAKER: Are we good?

18 HEARING OFFICER CHAKALIAN: Yes, we are now.
19 Please proceed.

20 PUBLIC SPEAKER: Okay. I'm Ellen Hightower. My
21 husband and I purchased 11 acres of land in 1997 and built
22 our home in Alto after having lived in Lincoln County for
23 over 40 years. We live directly on Little Creek, which has
24 been mentioned. It's a water source that we love. We have
25 two springs. We also bought land with an enormous apple

1 orchard already established, and we built a cherry orchard
2 as well. So Little Creek is a water source that's
3 invaluable to us. We were not notified, as were so many
4 other residents of the area. We live less than a half-mile
5 and have resided there, paying taxes for over 25 years.
6 That is a problem with me with NMED permitting. Supposedly
7 that's a standard.

8 I want to make exception also to Mr. Vigil's
9 statement. Sir, we take exception to the testimony that you
10 presented just a little while ago. I don't think you have
11 done a job well. The permit has been rubber-stamped way
12 prior to the last two hearings. We are apparent
13 unconservable group of people who have no valid concerns
14 with health, welfare at all as New Mexico residents.

15 Now I'm going to continue and say I've submitted
16 numerous letters, many phone calls, and I have gone over the
17 following, violations of New Mexico Night Sky Act,
18 violations of federally protected White Mountain Class 1
19 wilderness area, violations of deed restrictions, violations
20 of federal and State regulations for the United States as
21 well as New Mexico scenic byway, violation of proximity to a
22 federally-protected Native American established reservation,
23 violation of a proximity to a school and camp that houses
24 children. I'm appalled that this has gotten this far, and
25 I'm saddened by it.

1 I had one more statement to make, and it's on a
2 personal note. Having said that, our issues as a community
3 are not so much about just air quality as you have outlined.
4 Everyone is opportunistic without exception. Only the
5 degree of one's opportunism separates from others. How far
6 is one individual willing to go for how much he wants to
7 profit. To get what Mr. Roper wants, he's willing to go to
8 any length, any length, he will and has gone beyond what's
9 lawful, decent, or moral. He will continue along his
10 financial backers to hurt his neighbors, friends, and
11 family. I pray that you-all at the New Mexico EMD will not,
12 in turn, just turn a blind eye to the obvious attempt to
13 greed, hurting thousands for the benefit of one.

14 And as a footnote, when your friend and neighbor turns
15 his back on you after you have offered to purchase the land,
16 the site for double what he invested, and create a community
17 park for our environment, when you have held his hand at a
18 hospital, and you have prayed with his wife and children,
19 and you have pleaded for your community, it is obvious to us
20 it's about greed and profit. Thank you.

21 HEARING OFFICER CHAKALIAN: Thank you,
22 Ms. Hightower.

23 We are going to return to the New Mexico Environment
24 Air Quality Bureau's case-in-chief.

25 Mr. Vigil, you were about to call Ms. Primm.

1 MR. VIGIL: Yes, Mr. Hearing Officer. Can we have
2 about 30 seconds to prepare?

3 HEARING OFFICER CHAKALIAN: By all means.

4 And then for the public, we will come back at
5 5 o'clock, and we will take more public comment at that
6 time. Again using the virtual sign-in sheet to -- to order
7 the testimony. Thank you.

8 Ms. Primm, would you spell your name, please.

9 THE WITNESS: Sure. It's Kathleen,
10 K-A-T-H-L-E-E-N, last name Primm, P-R-I-M-M.

11 HEARING OFFICER CHAKALIAN: Okay. And you're
12 going to be sworn in.

13 KATHLEEN PRIMM

14 (being duly sworn, testified as follows:)

15 HEARING OFFICER CHAKALIAN: And before we begin,
16 Mr. Vigil, which exhibits are you -- is Ms. Primm carrying
17 in?

18 MR. VIGIL: She is NMED rebuttal Exhibit 4.

19 HEARING OFFICER CHAKALIAN: Okay. So no direct,
20 just rebuttal.

21 MR. VIGIL: Just rebuttal.

22 HEARING OFFICER CHAKALIAN: Very good. Number 4.
23 Okay. Please proceed.

24

25

DIRECT EXAMINATION

1

2 BY MR. VIGIL

3 Q. Please state your name for the record.

4 A. Kathleen Primm.

5 Q. And where are you currently employed?

6 A. I'm employed by the Air Quality Bureau of the New
7 Mexico Environment Department.

8 Q. And what is your job title?

9 A. I'm a supervisor in the Minor Source Unit of the
10 Permitting Section.

11 Q. And what are your job responsibilities as a
12 supervisor?

13 A. I manage assigned staff in the Minor Source
14 Permitting Unit and regulatory and technical activities,
15 including their review of air quality permit applications
16 and their development of enforceable air quality permits. I
17 also coordinate with various stakeholders, including the
18 public, industry, consultants, other air agencies across the
19 nation, and internal colleagues here at the Air Quality
20 Bureau.

21 Q. How long have you worked in the Permitting Section
22 at the Air Quality Bureau?

23 A. I have worked in the Permitting Section since June
24 of 2008. Prior to becoming a supervisor last April, I was a
25 permit writer at the Bureau for about 13 years. I reviewed

1 air quality permit applications for administrative and
2 technical completeness and accuracy and wrote legally
3 enforceable permits that specified all applicable State and
4 federal regulations as well as the emission limits that
5 apply to each facility.

6 Q. In your time with the Bureau, how many air quality
7 permitting actions have you worked on?

8 A. I have worked on over 600 permitting actions.

9 Q. Could you briefly describe your educational
10 background?

11 A. Sure. I have a Bachelor of Science degree from
12 New Mexico State University.

13 Q. And is your resume -- has your resume been
14 submitted, to your knowledge, as NMED Exhibit 6?

15 A. Yes, that's correct.

16 Q. Have you submitted prefiled rebuttal testimony in
17 this hearing as NMED rebuttal Exhibit 4?

18 A. Yes.

19 Q. Do you have any corrections or additions you'd
20 like to make to your testimony at this time?

21 A. No. Thank you.

22 Q. And do you adopt your written testimony in its
23 entirety?

24 A. Yes, I do.

25 Q. I'm going to go ahead and skip your summary in the

1 interest of time, and I'll be asking you today to address
2 the opinions provided by Mr. Martinez in his testimony.

3 On Page 12 of the -- or excuse me, on Page 12 of
4 Sonterra's statement of intent, Mr. Martinez states -- gave
5 the opinion that the application is complete because the
6 lack of identification of the source of water that
7 constitutes the majority of emission control equipment.

8 Does the Bureau have the regulatory authority to
9 request that Roper identify the water sources available to
10 control particulate emissions as represented in the permit
11 application?

12 A. No. The Air Quality Bureau does not have the
13 regulatory authority to require permit applicants to prove
14 that the water resources are available to control the
15 emissions as they represented.

16 MR. HNASKO: Mr. Hearing Officer, I'm going to
17 lodge an objection if I may. It's a legal conclusion,
18 beyond the expertise of this particular technical witness.

19 HEARING OFFICER CHAKALIAN: Mr. Vigil.

20 MR. VIGIL: Well, I mean, she is a permit
21 specialist. They have to refer to the law in order to write
22 permits, and so it is -- they have to know the legal
23 requirements. It is not -- it's not conceivable, on the one
24 hand, to say that bureau staff did not do a good job because
25 they didn't write a permit that adhered to the legal

1 requirements and, on the other hand, object when they are
2 explaining why they did adhere to the legal requirements.
3 So it -- you know, I respect the zealous advocacy, but it
4 seems a little bit like they're asking to have it both ways.

5 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko.

6 MR. HNASKO: May I respond --

7 HEARING OFFICER CHAKALIAN: Hold on.

8 MR. HNASKO: Mr. Hearing Officer --

9 MR. ROSE: First of all, I think the court
10 reporter would like to take a break, so we are going to
11 take -- and I will think about this objection over the
12 break. We're going to take a ten-minute break. It is
13 1:01 p.m. We are going to come back at 1:11.

14 Ms. Myers, is that sufficient?

15 THE COURT REPORTER: Yes, thank you.

16 HEARING OFFICER CHAKALIAN: Okay. So we are off
17 the record.

18 (NOTE: Recess taken, 1:01 to 1:11 p.m.)

19 HEARING OFFICER CHAKALIAN: Mr. Vigil, I'm going
20 to sustain the objection. Ms. Primm is not an attorney.
21 However, Mr. Vigil, I think you can ask the question in
22 another format to get the same answer.

23 MR. ROSE: Mr. Hearing Officer, before you get
24 there, I noticed I wasn't allowed to opine on the objection,
25 but since you've already ruled, I won't offer, but I did

1 have a response to the objection, as well.

2 HEARING OFFICER CHAKALIAN: Well, Mr. Rose, since
3 it wasn't your witness and it didn't occur to me to ask you
4 your opinion about someone else's objection, and I want to
5 be careful that we don't have parties basically ganging up
6 on each other, so I kept that between Mr. Hnasko and
7 Mr. Vigil, but thank you for -- thank you for that.

8 Mr. Vigil, would you proceed, please.

9 MR. VIGIL: Yes. Thank you so much.

10 Q. (BY MR. VIGIL) Ms. Primm, is there anything in
11 the regulations or the statutes, the Air Quality -- the Air
12 Quality Control Act or the construction permit regulations
13 that require that the Bureau require an applicant to prove
14 up water resources for the purposes of an application?

15 A. No. In matters relating to water rights, those
16 are not regulated in the Clean Air Act or the New Mexico
17 Administrative Code.

18 Q. Okay. Let's see here.

19 A. Under the air quality section, I should specify.

20 Q. Okay. Thank you. Let me -- give me just a
21 second. I'm trying to reformulate the second part of this
22 question.

23 MR. HNASKO: May I intervene again? I don't have
24 a -- I'm going to object again. I don't want to interrupt
25 Mr. Vigil's examination, it's certainly not probative to do

1 that, but the -- I think the hearing officer was implying
2 that we -- she can certainly testify as to what the
3 practices of the Bureau historically in using or requiring
4 the applicant to demonstrate a sustainable water supply. I
5 have no objection to that. I do have an objection when she
6 says what the Clean Air Act requires and what it allows, so
7 that's the point. It's a fine point, but I think you're
8 almost there, but I don't -- I think it's objectionable as
9 asked again.

10 HEARING OFFICER CHAKALIAN: Okay. So, Mr. Hnasko,
11 I have already ruled on the objection. Is there a new
12 objection to that answer that she gave?

13 MR. HNASKO: Yes. Yes, sir.

14 HEARING OFFICER CHAKALIAN: And can you concisely
15 state what it is?

16 MR. HNASKO: Yes. I don't think the witness is
17 qualified to testify as to what the Clean Air Act allows or
18 does not allow. I think she's qualified to testify as to
19 what the Bureau does in terms of requiring the applicant to
20 demonstrate a sustainable source of water to enforce
21 pollution control.

22 HEARING OFFICER CHAKALIAN: Mr. Hnasko, I'm
23 looking at Ms. Primm's resume, and she is the supervisor of
24 the Minor Source Unit of the Permitting Section of the
25 Bureau. This is a minor source, which is my understanding.

1 I take her answer within the bounds of her -- of her resume
2 from her experience, so I overrule the second objection you
3 have just made, and I'm going to ask Mr. Vigil to continue.

4 MR. VIGIL: Thank you.

5 Q. (BY MR. VIGIL) Ms. Primm, now, what happens if
6 there is a failure to apply water as represented in the
7 application?

8 A. Well, the Bureau does have the regulatory
9 authority to enforce on the failure to apply water as
10 represented in the permit application, and emission
11 calculations, and as required by the air quality permit.

12 Q. Okay. Thank you. On Page 14 of Sonterra's SOI,
13 Mr. Martinez states that the application is incomplete
14 because it does not identify the amount of water for the
15 additional moisture content required to obtain the emission
16 controls necessary to control emissions at Units 3, 4, 5,
17 and 6. Should the Bureau require the permit applicant to
18 identify the amount of water required to control emissions
19 at Units 3, 4, 5, and 6?

20 A. No, the amount of water required to control
21 emissions for these units is not quantified in the
22 application or the draft permit because the amount of water
23 required to control particulate emissions from these units
24 depends on multiple variables such as precipitation, wind,
25 and temperature. Compliance with allowable particulate

1 emission limits for these units is demonstrated by
2 maintaining and operating a wet dust suppression system
3 according to requirements in condition A502.A of the draft
4 permit.

5 Q. Okay. I want to drill down a little bit and just
6 ask you a little bit more technical question, maybe not
7 technical. So would -- based on your experience and based
8 on what you know about the permit, would the amount of water
9 required for dust suppression be different, say, when it was
10 snowing outside than when it was sunny and warm?

11 A. Yes, absolutely.

12 Q. Okay. Thank you so much. Are the haul road
13 fugitive emissions from water trucks delivering water to the
14 facility accounted for in the draft permit?

15 A. Allowable particulate emissions limits from the
16 paved haul road at the facility are established in
17 Table 106A of the draft permit. Compliance with those
18 limits is demonstrated by limiting truck traffic. Condition
19 A112A of the draft permit limits the truck traffic on the
20 paved roads at this facility to 305 round trips per day.
21 This condition requires the permittee to monitor the total
22 number of round trips per day and keep records of the total
23 number of held trips per day. Water trucks are not excluded
24 from this condition.

25 Q. Okay. At risk of irritating you, I want to circle

1 back to this issue of seasonal water use. I just want to be
2 very clear about this. Now, what you said a second ago was
3 that the amount of water when it was, say snowy and cold
4 outside, used for emission controls is going to be a little
5 bit different or maybe drastically different, I'm not a
6 witness here, in the warm -- warmer months when it's warm
7 and sunny outside. Is the variation between those two
8 amounts of water, at least in part, the reason why the
9 amounts of water are not necessarily required in the permit?

10 A. That's correct. The condition for the wet dust
11 suppression system speaks to visible emissions and
12 inspecting equipment to make sure that visible emissions are
13 minimized, so it's not -- it's not a quantitated value in
14 the permit. It's based on real-life conditions. These
15 facilities are outside, of course, so the elements have a
16 big impact on the emissions and how much water is required
17 to minimize fugitive dust.

18 Q. Okay. Thank you so much.

19 MR. VIGIL: I have no further questions.
20 Ms. Primm is our last witness, and so the Bureau's witnesses
21 will stand for cross-examination.

22 HEARING OFFICER CHAKALIAN: Okay. And we'll start
23 out with the applicant. Mr. Rose.

24 MR. ROSE: Mr. Hearing Officer, we have no
25 questions of these witnesses.

1 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko.

2 MR. HNASKO: Thank you, Mr. Hearing Officer. We
3 do have questions, and I'll begin briefly with Ms. Primm if
4 I may.

5 CROSS-EXAMINATION

6 BY MR. HNASKO

7 Q. Ms. Primm, I notice you just said earlier that
8 there's nothing in the Clean Air Act that, quote, requires,
9 end quote, you to consider water usage in a permit
10 application. And that was your term, requires. So in a
11 general sense, do you know anything in the Clean Air Act
12 that prevents you from considering the availability of water
13 if the use of that water is a condition of the permit to
14 control emissions?

15 A. No. I don't know of anything that prevents me,
16 but I do want to clarify. I said that it doesn't require me
17 to ask the applicant to prove what their source of water is.

18 Q. Nor does it require -- nor does it prevent you
19 from requiring the applicant to prove what their source of
20 water is, does it?

21 A. Yep, that's correct.

22 Q. Well, let's just go through this by looking at
23 Section 74 to 7, and specifically looking at the highlighted
24 portion of paragraph D. Do you see that, Ms. Primm?

25 A. Is it possible to make that a little bit bigger?

1 It's kind of hard for me to see that.

2 Q. Yes. Sorry. Absolutely. Just one second,
3 Ms. Primm. I'm sorry about this.

4 A. That's okay.

5 Q. Is that better? Is that better, Ms. Primm?

6 A. Yes.

7 Q. All right. So -- so clearly under the statutory
8 authority of the Department, you can specify conditions
9 under the permit, correct?

10 A. Correct.

11 Q. And in one of those conditions you may specify is
12 a requirement that the source install and operate control
13 technology as determined on a case-by-case basis sufficient
14 to meet the standards, rules, and requirements of the Air
15 Quality Control Act. Did I read that accurately?

16 A. Yes.

17 Q. All right. And that's a pretty broad statement of
18 authority to implement and operate control technology and
19 impose conditions on, am I right?

20 A. It's an observation, but you read the citation
21 correctly.

22 Q. Well, I'm here to ask you questions still. Would
23 you agree with me if you can -- you could install and
24 operate control technology to determine --

25 MR. VIGIL: Objection to the question. Asked and

1 answered. Objection. The question was asked, and Ms. Primm
2 answered.

3 HEARING OFFICER CHAKALIAN: Mr. Hnasko,
4 Mr. Hnasko, I sustained your objection a little while ago
5 because Ms. Primm is not an attorney. I -- and you are now
6 asking her to interpret a statute, and I'm going to sustain
7 the objection, but on different grounds, so please move on.

8 Q. (BY MR. HNASKO) Ms. Primm, so the reason I'm
9 asking these questions is you did, in fact, impose certain
10 requirements on Roper in this draft permit; is that right?

11 A. We did.

12 Q. And one of those requirements you imposed was the
13 use of water to effectuate control technology, right?

14 A. That's correct.

15 Q. Let me ask you a question. Just put aside water
16 and all the technical jargon we've been speaking about
17 today. Let me ask you, if the applicant said I'm going to
18 put Jell-O on the aggregate piles to control emissions, and
19 I'm going to need 14-acre feet of Jell-O to make sure I
20 comply with the regulations, would it be a reasonable
21 question to ask where are you going to get all the Jell-O?

22 MR. VIGIL: Objection; that's calling for
23 speculation based on a silly analogy.

24 HEARING OFFICER CHAKALIAN: Mr. Hnasko.

25 MR. HNASKO: I don't know if it's silly. I think

1 it's pretty apropos.

2 HEARING OFFICER CHAKALIAN: Mr. Hnasko, you're
3 asking the witness who is a fact witness to a hypothetical
4 question which I feel is out of bounds, so please rephrase
5 your question or move on.

6 MR. HNASKO: Okay. Let me try to rephrase it for
7 you, Ms. Primm.

8 Q. (BY MR. HNASKO) So remind me, are you the
9 supervisor of the Minor Source Air Quality Permit Division
10 or however you divided up your responsibilities? Is that --

11 A. Yes, sir. I'm the supervisor of the Minor Source
12 Unit.

13 Q. I think you said you've done, what, 250 air
14 permits or supervised that many air permits; is that a right
15 number?

16 A. I've done more than 600 permitting applications.

17 Q. 600. I'm sorry; I hadn't counted. So based on
18 your experience, I'm just using this as maybe an absurd
19 example, but I think it drives home the point of ensuring
20 that emission controls are actually effectuated as per the
21 applicant's representations. So back to my Jell-O example,
22 based on your 600 applications that you reviewed, if someone
23 proposed a particular methodology to implement controls on
24 emissions, wouldn't you require them to show you that they
25 have the ability to satisfy and implement that methodology?

1 Is that a reasonable request?

2 A. Well, I -- I don't disagree with your opinion that
3 the use of water is critical at this facility, this proposed
4 facility. But where we differ in opinion is you're implying
5 that it is our job to source their water, and that is not
6 something that the Bureau does.

7 Q. Well, I want to correct that, please, Ms. Primm.
8 I'm not implying that you source their water. What I'm
9 asking, and please tell me you agree, is that you, as the
10 Department, determine whether the applicant's proposed
11 sourcing of water is sufficient to meet the control
12 technology that you've required. Is that an unreasonable
13 request?

14 A. We review their calculations, and when their
15 calculations are dependent on the use of water as a
16 control -- a method of controlling fugitive dust, that is
17 required to be a condition in the permit, and it is a
18 condition in the permit. In this case, it's condition
19 A502.A for the wet dust suppression system. They also have
20 a fugitive dust control plan that's required in condition
21 A502.B of the permit.

22 Q. I understand where you are on this, Ms. Primm, and
23 the Bureau, that you're going to impose a water requirement,
24 but not find out if they can actually meet it and get that.

25 A. No --

1 Q. Well, hold on now. You're only going to shut them
2 down if they don't meet it, but if they -- if they can't
3 meet it, you're not -- you're going to issue the permit
4 anyway if they don't demonstrate that they have a
5 satisfactory water source; isn't that right?

6 A. If they're not operating according to condition
7 A502.A and visible emissions are not minimized according to
8 A502.A or A502.B, that is a violation of the permit. They
9 have to cease operations. We could enforce on that.

10 Q. Well, you and I at least agree on one thing,
11 though. We agree that there's no prohibition in the Air
12 Quality Act saying that the Air Quality Bureau cannot
13 require the applicant to demonstrate the ability to comply
14 with a condition of the permit?

15 A. I am not prohibited from asking them what their
16 source of water is if I wanted to. I think that's what
17 you're asking me.

18 Q. That's -- I appreciate that. Thank you,
19 Ms. Primm.

20 I'd like to move over to Ms. Romero, if I may,
21 Mr. Hearing Officer, briefly. Is Ms. Romero available?

22 THE WITNESS: I'm here.

23 MR. HNASKO: I just don't see you on the screen
24 yet, I guess. There you are. Hello, Ms. Romero.

25 THE WITNESS: Hello.

CROSS-EXAMINATION

1

2 BY MR. HNASKO

3 Q. So, Ms. Romero, just a couple of questions. You
4 made some comments about enforceable restrictions in your
5 testimony. Do you recall that?

6 A. I do.

7 Q. And you -- I assume you're familiar with the
8 concept of federally enforceable restrictions under the Air
9 Quality Act?

10 A. Yes.

11 Q. And, of course, we're going under the State act,
12 but you mentioned that the -- the -- there's an enforceable
13 restriction in this permit on the aggregate piles in
14 particular because the water has to be applied in order to
15 control emissions. And in your judgment, that's
16 enforceable, right?

17 A. Yes.

18 Q. All right. So let me just understand. Are you
19 suggesting today in your testimony that the requirement to
20 apply water to the aggregate piles is an enforceable
21 restriction in this permit, proposed permit, but yet you
22 have no idea how because Roper hasn't disclosed to you how
23 water is going to be made available to be applied to those
24 piles? I just want to get that straight. Is that correct?

25 A. That's right, but they -- in their application,

1 they did represent that they were going to use water, so
2 that demonstrates to me that they have the intent to use
3 water to meet the requirements of the permit.

4 Q. Okay. Well, better yet, so if I just state, in an
5 application, I'm going to use water that's sufficient in
6 my -- it's presumed that I will have that available water to
7 achieve the emission controls mandated by the permit?

8 A. Yes, otherwise they're -- you know, they're not
9 meeting the requirements of the permit, and they are going
10 to be in violation of the permit.

11 Q. But they have no requirement, in your judgment, to
12 demonstrate that they can comply with the permit before the
13 permit is even issued?

14 A. We -- the requirement is there, and if they don't
15 meet it, then we enforce on them. That's --

16 Q. So we wait and see; is that right? We wait and
17 see how they did it?

18 A. Well --

19 Q. The permit makes the representation that the law
20 will be applied, but they don't have water, and we'll act
21 after that instead of before?

22 A. Well, they certify in their application -- when
23 they submit it, they certify that that is the intent,
24 everything in their application is true and accurate, and
25 that's what --

1 Q. And nothing in the application tells you where
2 that water is going to come from, right?

3 MR. VIGIL: Objection; asked and answered.

4 HEARING OFFICER CHAKALIAN: I'm going sustain the
5 objection, Mr. Hnasko. You've asked the question multiple
6 times in multiple ways; please move on.

7 MR. HNASKO: That's all I have for Ms. Romero.

8 HEARING OFFICER CHAKALIAN: Please continue your
9 cross-examination.

10 MR. HNASKO: I'd like to direct some questions to
11 Mr. Peters if we may.

12 THE WITNESS: I'm here.

13 CROSS-EXAMINATION

14 BY MR. HNASKO

15 Q. Hi, Mr. Peters.

16 A. Hi.

17 Q. Get you up there. There we go. All right.

18 All right. Mr. Peters, your job -- part of your job
19 or someone under you is to approve all modeling submitted to
20 the Department, right?

21 A. Yes, all modeling, but I approve -- I review
22 modeling and approve it if it's approvable.

23 Q. All right. So no one can go forward with a
24 modeling run and submit it unless it's approved by the
25 Environment Department, correct?

1 A. If there's a permitting requirement to do
2 modeling, then they are required to do modeling in order to
3 get the permit.

4 Q. All right. And here there is a permit requirement
5 to do modeling, correct?

6 A. Yes.

7 Q. All right. So in this instance, I'm just focusing
8 on -- you saw the rebuttal testimony of Mr. Wade. We put
9 those two charts together and the emission factors for
10 Holloman based on Holloman data and the other column,
11 emission factors on what he thought was Sierra Blanca, where
12 he ran that model. Did you see that?

13 A. Yes, I saw those. Those were concentrations on
14 emission factors.

15 Q. Did he present those modeling results to you?

16 A. I -- I saw that in his testimony.

17 Q. No, no, that's not what I'm asking. Did he
18 present those modeling -- the modeling runs and the results
19 to you for approval?

20 A. No.

21 Q. So you are simply relying on the columns he has on
22 Page 3 of 4 of his rebuttal testimony, correct?

23 A. Could you repeat that?

24 Q. I said you, like I, are relying on Mr. Wade's
25 columns that he put in Pages 3 and 4 of his rebuttal

1 testimony, correct?

2 A. Yes, for those -- for the points that he made,
3 yes.

4 Q. Okay. Fair enough. Thank you so much. Now,
5 Mr. Peters, let me direct your attention to the air
6 dispersion modeling guidelines that we have up on the
7 screen. Can you see those okay?

8 A. Yes.

9 Q. All right. And your -- if we go down to Page 1,
10 it looks like your --

11 MS. SAKURA: No. Stop.

12 Q. (BY MR. HNASKO) It looks like you're an author
13 here. Is that your handiwork?

14 A. Yeah, I'm one of the, yeah, primary authors and
15 editors of these guidelines.

16 Q. All right. And these are guidelines you -- that
17 are used, generally speaking, by modelers when they're going
18 submit an air quality application that requires modeling,
19 correct?

20 A. Yes.

21 Q. All right. Let me go to Page 2. So can you go --
22 the first paragraph, do you see the -- see the first
23 paragraph, Mr. Peters? Let me just read this to you. It
24 says, quote, The meteorological data used in the modeling
25 analysis should be representative of the meteorological

1 conditions at the specific site proposed construction or
2 modification or else you screen meteorological data which
3 contains worst-case data. That's part of the -- did I read
4 that accurately?

5 A. You read that correctly.

6 Q. All right. All right. So it's clear that the --
7 the idea here, I take it, is to make sure that you have
8 representative conditions at the site?

9 A. The -- the guidelines are taken as a whole, rather
10 than one specific thing, but -- but yeah, that is the --
11 that is the goal to have data representative of the site.

12 Q. All right. Can we go to the next -- I'm going to
13 go back to the terrain maps if I could, briefly. So here's
14 what we used, or what Mr. Wade used, Holloman Air Force
15 Base, and then, of course, you have the proposed site
16 topographical features, and I don't think it -- I'm not
17 going to belittle the auditors here --

18 MR. VIGIL: Objection. I'm concerned that
19 Mr. Peters is being cross-examined on Mr. Wade's exhibits
20 and testimony. I'm not -- you know, I'd like to hear from
21 Mr. Hnasko how this is not cross-examination on Mr. Wade's
22 testimony and exhibits and how this is relevant to
23 Mr. Peters's testimony.

24 HEARING OFFICER CHAKALIAN: So, Mr. Vigil, are you
25 saying objection, this is out of the scope of the -- of

1 Mr. Peters's testimony and rebuttal testimony?

2 MR. VIGIL: Yes, I'm concerned about that, yes,
3 Mr. Hearing Officer.

4 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko, are
5 you able to ask questions to Mr. Peters without using
6 these -- these -- these exhibits that were not -- that are
7 not developed by Mr. Peters.

8 MR. HNASKO: I mean, I don't know why I would,
9 Mr. Hearing Officer. He has just testified about the --
10 about being the primary author on modeling guidelines and
11 that the modeling analysis should be representative of the
12 meteorological conditions at the proposed site, and he knows
13 about these sites, and these are markedly different sites,
14 so he's certainly susceptible to cross-examination on this
15 issue.

16 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko, I'm
17 going to override the objection. I'll allow you to ask
18 questions, but if Mr. Peters -- you're going to be stuck
19 with Mr. Peters's answer.

20 MR. HNASKO: And that's perfectly fair,
21 Mr. Hearing Officer. Thank you.

22 HEARING OFFICER CHAKALIAN: Thank you. Please
23 proceed.

24 Q. (BY MR. HNASKO) Mr. Peters, so in terms of
25 terrain, when I look at these two maps, to me they look very

1 dissimilar, and I just want to get your -- can you confirm
2 that for me, that Holloman Air Force Base in a high desert
3 or desert location versus this alpine location are markedly
4 different terrains?

5 A. I agree they look different.

6 Q. Thank you. Can you go to the next --
7 incidentally, Mr. Peters, going back to the -- keep that up.
8 Going back to the concentration numbers that Mr. Wade
9 provided in his rebuttal testimony for which he did not
10 submit a modeling analysis to you, do you know what kind of
11 distance Mr. Wade used to -- from the source of the modeling
12 run to obtain those concentrations?

13 A. I'm a little bit confused by your question. The
14 terrain and the receptors are different from the terrain
15 around the meteorological data, so could you reask the
16 question?

17 Q. Yeah. I -- thank you. I'm just curious if you
18 knew how far out he went from the Sierra Blanca Regional
19 Airport to obtain data based on those receptors in terrain
20 that's probably more similar to the Alto terrain. Do you
21 know?

22 A. I don't know how far he went out for land use.

23 Q. Okay.

24 A. And the -- yeah, the terrain in the model itself
25 is in the modeling report.

1 Q. And we don't know because we don't have a modeling
2 report for the Sierra Blanca concentrations, right?

3 A. If someone were to rerun a model using a different
4 meteorological data, then all the inputs, other than that
5 meteorological data, would be the same. I --

6 Q. Fair enough. So there was also some testimony
7 earlier that, I think from Mr. Wade in particular, and you
8 had some -- your testimony addressed this as well, who made
9 the decision to use Holloman versus something else, and I
10 think you've compared your testimony to Holloman, and you
11 called it Ruidoso, and I call it Sierra Blanca Regional
12 Airport. This e-mail here, dated March 16 from you to
13 Mr. Wade, seems to indicate that you're preferring
14 Alamogordo over Holloman in that instance. Do you remember
15 sending that e-mail?

16 A. Could you repeat the last sentence?

17 Q. Yeah, absolutely. This e-mail, if you can read
18 it, it says -- you say, Paul, quote, Alamogordo might be
19 more representative of the Alto location than Holloman --

20 MS. SAKURA: Because.

21 Q. (BY MR. HNASKO) -- because Alamogordo was closer
22 to the same mountain range -- or since Alamogordo's closer
23 to the same mountain range. Do you remember writing that
24 e-mail?

25 A. Yes.

1 Q. And I guess Alamogordo was not chosen, correct?

2 A. Correct.

3 Q. And who -- did you choose Holloman for Mr. Wade,
4 or did he choose Holloman and present that to you?

5 A. I'm -- I'm not certain. The -- I mean, this was
6 an initial e-mail exchange, and like you heard Paul say
7 earlier, he had a phone conversation with me. I don't
8 recall that in detail, that phone conversation. If he did
9 say that the -- there was not enough data in the
10 Alamogordo -- that it didn't meet EPA requirements, then the
11 Holloman Air Force Base would have become the default to use
12 for that facility.

13 Q. All right. But in any event, at least as of
14 March 16th, you had expressed the view that Alamogordo's
15 more representative, correct?

16 A. Yes, that was my initial observation.

17 Q. And you're familiar, Mr. Peters, with EPA --
18 AP-42, the general guidance on emission factors and what
19 should be used for particular emission sources?

20 A. I'm somewhat familiar with that, yes.

21 Q. Well, let me ask if you're not familiar with it,
22 but you know we've been through this with Mr. Wade, and I
23 suggested to him through my cross-examination that he used
24 the wrong valley or industrial paved roads for the haul
25 roads and, in fact, used publicly traveled paved roads,

1 which are -- which are .6 grams per square meter when, in
2 fact, there's a particular value ascribed for concrete batch
3 plant paved roads, which is the average of 12 grams per
4 meter. Were you aware of that?

5 MR. VIGIL: Objection. Mr. Hnasko is again
6 outside of the scope of Mr. Peters's testimony. If he
7 wants -- I would again request the hearing officer require
8 Mr. Hnasko to stick to Mr. Peters's testimony.

9 HEARING OFFICER CHAKALIAN: Mr. Hnasko, how is
10 this within Mr. Peters' scope of his testimony?

11 MR. HNASKO: Well, because it goes to the
12 emissions in the draft permit, and my question is
13 permissible because I asked him if he was aware of it. The
14 answer is no, then I'm done because he's not aware of it, so
15 we have to know if he's aware of it to conduct a proper
16 cross-examination.

17 HEARING OFFICER CHAKALIAN: Mr. Peters, what was
18 your answer to whether you were aware of this table here?

19 THE WITNESS: I did not talk about this table. I
20 said I was generally familiar with AP-42.

21 MR. HNASKO: And my particular question,
22 Mr. Hearing Officer, is whether he is familiar with the
23 emission concentration requirement for concrete batching
24 plants with respect to paved haul roads.

25 HEARING OFFICER CHAKALIAN: And Mr. Peters, have

1 you answered that question yet?

2 THE WITNESS: No, I'm not clear what the -- could
3 you repeat the question?

4 HEARING OFFICER CHAKALIAN: Well, it's not my
5 question, sir. Mr. Hnasko, repeat the question.

6 MR. HNASKO: I'm sorry. And maybe we can clear
7 this up a little bit.

8 Q. (BY MR. HNASKO) Mr. Peters, I just want to know
9 when you're looking at Table 13.2.1-3, all right, in AP-42,
10 whether you're familiar with the silt loading average
11 emission concentrations of 12 grams per square meter
12 ascribed to paved haul roads in concrete batching plants.

13 A. I'm not familiar with that particular number. The
14 permit writer reviews the emission calculations, and the
15 modeler in the Air Quality Bureau compares the emission
16 calculations on the application form with the values that
17 were in the model, so it's probably not appropriate for me
18 to -- to talk much more about this.

19 HEARING OFFICER CHAKALIAN: Okay. Mr. Peters,
20 thank you. So I'm going to sustain the objection,
21 Mr. Hnasko, so let's move on.

22 MR. HNASKO: Well, that is -- he answered no, so I
23 can't ask him any questions on it anyway, so that's
24 perfectly fair. And I thank you, Mr. Peters, and let's move
25 on to Dr. Saikrishnan.

1 HEARING OFFICER CHAKALIAN: Who are you asking
2 for?

3 MR. HNASKO: Dr. Saikrishnan.

4 HEARING OFFICER CHAKALIAN: Okay.

5 MR. HNASKO: Deepika.

6 HEARING OFFICER CHAKALIAN: Please proceed. She's
7 there, Mr. Hnasko. Please proceed.

8 MR. HNASKO: I don't see her.

9 THE WITNESS: I'm here.

10 Q. (BY MR. HNASKO) Did I pronounce your name
11 correctly, Dr. Saikrishnan?

12 A. Yes, you did.

13 Q. Okay. Thank you very much. I wasn't quite sure
14 about that.

15 Doctor, couple of questions, in your testimony, you
16 talked about your duties, and you were, you know, charged
17 with determining administrative completeness of the
18 application; is that correct?

19 A. Yes.

20 Q. And also, you know, coordinated with outreach to
21 the public?

22 A. Yes.

23 Q. And so make sure notice and things of that nature
24 were complied with?

25 A. Yes.

1 Q. So with respect to notice, I'm going to pull up
2 something for you if I may because I'm certain you're
3 familiar with 20.2.72.203?

4 A. Yes.

5 Q. And do you see -- we are talking about public
6 notice to those who are within one-half mile of the proposed
7 facility?

8 A. Yes.

9 Q. And do you see that that should be provided by
10 certified mail to the --

11 A. Yes.

12 Q. -- homeowners shown on the most recent property
13 tax schedule?

14 A. Yes.

15 Q. And so you're familiar with that regulation, I
16 take it?

17 A. Yes.

18 Q. Let's go to the next. And Doctor, do you know
19 what a tax schedule is?

20 A. A tax schedule is a document -- this is from my
21 understanding, but I do not know whether this is right -- it
22 is a document that shows --

23 MR. VIGIL: Objection. Objection.

24 THE WITNESS: -- listed --

25 MR. VIGIL: Dr. Saikrishnan is not an expert in

1 tax law. She is a technical staff bureau -- of the Air
2 Quality Bureau. The affirmation on the application is the
3 guarantee of the veracity of the information in the
4 application. That is the Bureau's responsibility. And I --
5 so I object to -- this is outside of the scope of
6 Dr. Saikrishnan's expertise.

7 HEARING OFFICER CHAKALIAN: Mr. Hnasko, where are
8 you going with this question?

9 MR. HNASKO: I wanted to take Ms. --
10 Dr. Saikrishnan through the notice provisions of the
11 statute.

12 HEARING OFFICER CHAKALIAN: And what's the purpose
13 of this?

14 MR. HNASKO: The purpose of this is to show that
15 notice was not given properly to landowners within one-half
16 mile of the facility. I have every right to do that.

17 HEARING OFFICER CHAKALIAN: Mr. Hnasko, this was
18 the subject of a motion to dismiss. This has been ruled on
19 by myself after a full briefing. I provided the legal
20 opinion that the applicant did substantially comply with the
21 notice requirements, so this subject is off limits for your
22 questioning to Ms. -- to this witness, and so I'm going to
23 sustain --

24 MR. HNASKO: Well --

25 HEARING OFFICER CHAKALIAN: -- I'm going to

1 sustain the objection.

2 MR. HNASKO: I'm going to make an objection to
3 that, Mr. Hearing Officer, because I am absolutely entitled
4 to make an offer of proof. Let me add that --

5 HEARING OFFICER CHAKALIAN: Please.

6 MR. HNASKO: And to make my offer of proof that --
7 let me add that during the hearings on the motion to
8 dismiss, you ruled on that as a preliminary matter.
9 Mr. Vigil himself was the one who suggested it be fully
10 vetted during the hearing. I have every right for any
11 appellate body that looks at this to develop a very solid
12 record as to how one uses a tax schedule to determine
13 ownership of property within one-half mile of the facility.
14 And yes, you have ruled against the ruling on -- which you
15 view this as doctrine of substantial compliance. I have the
16 right to go through this as a factual matter and show
17 precisely how easy it is to use the tax schedule to find the
18 owners, which the applicant didn't do.

19 And by the way, to Mr. Vigil's comment on
20 attestations, it is the Environment Department and
21 Dr. Saikrishnan, who has the -- had the duty of oversight,
22 to make sure that this information, which the statute
23 requires be readily available to the public, is used
24 properly. So with all due respect, Mr. Hearing Officer, I
25 would like the opportunity to go through this, you could

1 disallow the evidence in your consideration, but I would
2 like to take Ms. Saikrishnan through this and develop my
3 record.

4 HEARING OFFICER CHAKALIAN: Mr. Hnasko, you have
5 submitted the evidence in the form of affidavits from people
6 who did not receive their notice. There were 13 of them, if
7 I'm not mistaken, in your renewed motion. That evidence is
8 in the record already. This is not a fact witness to that
9 type of information. She was not involved with
10 communicating with the Lincoln County assessor. She is not
11 the proper witness to ask these questions to, but before you
12 say anything else, Mr. Hnasko, I want to hear from Mr. Rose
13 since it is his -- his witness who ended up submitting an
14 affidavit showing the involvement with the Lincoln County
15 assessor. So, Mr. Rose, what do you have to say about this?

16 MR. ROSE: Mr. Hnasko had the opportunity to
17 question Mr. Wade, assuming this is relevant at this stage,
18 and I think we agree with the hearing officer that you've
19 already ruled on the question of whether or not notice met
20 the requirement of the statute and the rules, and therefore
21 we don't believe that it -- it's appropriate to look at this
22 further in this hearing.

23 Assuming you're to consider that evidence, the
24 question of what was done, how it was done, what the
25 communication was with the Lincoln County office would have

1 been with Mr. Wade. Mr. Hnasko did not raise those
2 questions with Mr. Wade, and my understanding is that this
3 witness certainly has no firsthand knowledge of what was
4 done and, therefore, can't testify as to whether or not
5 notice was given and how notice was given. And therefore, I
6 don't believe it's relevant or appropriate.

7 MR. HNASKO: May I respond?

8 HEARING OFFICER CHAKALIAN: Yes, please, go right
9 ahead.

10 MR. HNASKO: Thank you so much. I appreciate the
11 opportunity. Whenever -- what Mr. Rose says is true with
12 respect to Mr. Wade, but I am not questioning Mr. Wade. I'm
13 questioning Dr. Saikrishnan on the oversight
14 responsibilities. She was directly involved in this, she
15 received the list from Mr. Roper, and it's going to take me
16 no more than 120 seconds to demonstrate that that list is
17 not a property tax schedule, and that's her job, is to
18 determine her ownership based on a property tax schedule.
19 And I'm going to show -- and I'd like to hear from
20 Mr. Peters --

21 MR. VIGIL: Objection. Objection.

22 MR. HNASKO: Hold on.

23 MR. VIGIL: Mr. Hnasko is testifying. Mr. Hnasko
24 does not know what he is talking about. He is speculating,
25 he is -- inventing out of whole cloth a fantasy of what he

1 fantasizes our staff's job is. He has no idea.

2 MR. HNASKO: She just testified.

3 MR. VIGIL: It's speculation.

4 MR. HNASKO: She just testified her job included
5 providing notice to the public and making sure that that was
6 done according to the rules and regulations.

7 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko,
8 what she meant by that, and I understand what she meant
9 through her testimony. That was not the same thing as what
10 you are asking her now. That's a different matter. What
11 you're asking was the responsibility of Mr. Wade and Roper
12 Construction, and it was their communication with the
13 Lincoln County assessor to arrive at that list and to do the
14 certificated mail. They attested that they did. This was
15 the subject of a prehearing motion; that motion has been
16 denied. This subject is off-limits at this point to this --
17 your questioning this witness. I sustain the objection.
18 Please move to a different subject matter.

19 MR. HNASKO: All right. I just want to make it
20 clear that my -- obviously my objection is noted to this.
21 This should be forward.

22 HEARING OFFICER CHAKALIAN: Clearly noted, sir.

23 MR. HNASKO: And for the record, I want to -- I
24 want to state for the record that in NMED Exhibit 1, Page 6,
25 Dr. Saikrishnan states as follows: Quote, On July 19th,

1 2021, I sent an e-mail to RCI's consultant, Paul Wade,
2 requesting the property tax record certified mail received
3 for Reynaldo Cervantes, an example of the letter sent to the
4 landowners.

5 HEARING OFFICER CHAKALIAN: That is noted. Let's
6 move on.

7 Q. (BY MR. HNASKO) Dr. Saikrishnan, let me again
8 just briefly look at Section 14 of the operational plan to
9 mitigate emissions if you can.

10 HEARING OFFICER CHAKALIAN: Can you identify,
11 Mr. Hnasko, which exhibit and page number you are looking
12 at?

13 MS. SAKURA: Exhibit 14 of the application.

14 MR. HNASKO: This is Exhibit 14 to the
15 application. So, Mr. Hearing Officer, what we have done,
16 over the noon hour we submitted our exhibits before these
17 cross-examination exhibits. This is simply part of the
18 original application, so we didn't number those -- those
19 exhibits.

20 HEARING OFFICER CHAKALIAN: Okay. That's okay.
21 I'm not asking that. What I'm asking is, are you using an
22 admitted exhibit at this time, or you're not using an
23 exhibit?

24 MR. HNASKO: Yes.

25 HEARING OFFICER CHAKALIAN: Okay. Which exhibit

1 are you using?

2 MR. HNASKO: It --

3 MR. VIGIL: It's NMED rebuttal Exhibit 5. I
4 apologize, but I'm not sure that they have it at their
5 fingertips.

6 HEARING OFFICER CHAKALIAN: I have rebuttal
7 Exhibit Number 5 here. What page are we talking about?

8 MR. HNASKO: This is page -- Section 14, Page 1,
9 Mr. Hearing Officer.

10 HEARING OFFICER CHAKALIAN: Section 14, Page 1.
11 Mr. Vigil, which page of your NMED Exhibit 5 is that? I
12 want to follow along.

13 MR. VIGIL: I don't have it up. I will have to
14 get it. I apologize. I'm working on that right now.

15 HEARING OFFICER CHAKALIAN: Okay. I have the
16 table of contents. Do you have a table of contents,
17 Mr. Hnasko?

18 MR. HNASKO: One moment, please. I'll get that.

19 HEARING OFFICER CHAKALIAN: Sure.

20 Dr. Saikrishnan, if you have a page number, I can use
21 that as well.

22 THE WITNESS: Okay. If it's for the application
23 page number -- is that what I need to do?

24 MS. SAKURA: Yes.

25 MR. HNASKO: Yes.

1 THE WITNESS: Okay. It's Section 14 that you're
2 looking for.

3 MS. SAKURA: Yes, Page 1.

4 THE WITNESS: It's going to be Page 148 on the
5 admin record.

6 HEARING OFFICER CHAKALIAN: Well, I don't have the
7 admin record. What I have here is NMED's rebuttal Exhibit
8 Number 5. So before we have any further questions, would
9 someone point me to the proper page in NMED rebuttal 5. I
10 have part A, I have part B, I have part C. Can someone
11 point to those sections?

12 MR. VIGIL: Okay. I think I may have -- I think I
13 may have misguided you.

14 HEARING OFFICER CHAKALIAN: Oh, okay.

15 MR. VIGIL: I have our team working on it.

16 HEARING OFFICER CHAKALIAN: Okay. All right. So
17 then it's not an exhibit.

18 MR. VIGIL: I'm wrong. It's the wrong -- it's the
19 wrong exhibit. And the Bureau is fine with -- with what is
20 up on the screen.

21 HEARING OFFICER CHAKALIAN: Okay. Very good.
22 Okay.

23 Mr. Hnasko, please proceed.

24 MR. HNASKO: And I'm sorry for all the problems
25 here because it's not that significant.

1 Q. (BY MR. HNASKO) I'm curious, Dr. Saikrishnan, see
2 if you look at the yellow part, it looks as though, you
3 know, all the way up to January 22nd, 2022, you know, we had
4 this asphalt production mistake in the application. Is
5 that -- is that -- did I get that right in terms of timing?

6 A. Yes.

7 Q. So, you know, and I'm not going to take you
8 through each and everything here, but there were some
9 interesting public comments I thought over the noon hour. I
10 don't know if you had the opportunity to hear them, about
11 all the changes to this application. And I take it you're
12 the one who's responsible for incorporating changes to the
13 application or accepting the changes; is that right?

14 A. Yes.

15 Q. And I'm not going to take you through all these,
16 and I really don't want to do that, but I'm counting them up
17 all the way from November 18th, 2021, through just
18 January 28th, 2022, and I mean, I'm not going to say agree
19 with me or not agree with me, but there are dozens and
20 dozens of changes to this application. Has that been your
21 experience with this application?

22 A. Any application has many updates that are made to
23 the application. There have been several corrections in
24 this application, yes.

25 Q. Okay. I appreciate that very much. You also

1 mentioned about the -- the -- I'm still stuck on this truck
2 traffic thing, the 305 trips per day, because in -- and I
3 think your testimony indicated that the truck trips were
4 limited by production rates; is that right?

5 A. Yes.

6 Q. And nowhere in there is there any reference to,
7 you know, water trucks being part of that equation, is
8 there?

9 A. It has not been indicated that the water -- in the
10 application, the water trucks, yes, I agree.

11 Q. And also, Doctor, you know, in the aggregate
12 piles, I think the requirement you put in there is they've
13 got to be, quote, adequately moist, end quote. But, you
14 know, again, there's no requirement on demonstrating the
15 water to keep them adequately moist, correct?

16 A. Can you repeat your question?

17 Q. Yeah. I just -- it's not necessarily a -- you
18 know, I think when you testified you talked about, you know,
19 the stockpiles having to be kept adequately moist as a
20 condition?

21 A. Yes, yes.

22 Q. But there's no corresponding requirement on how --
23 where the water's going to come from to keep them adequately
24 moist, correct?

25 A. Yes.

1 Q. And I just want to know what kind -- I don't know
2 whether this got corrected or if it did, but are you aware
3 that in a public notice that went out about this facility
4 that originally the September -- the entire month of
5 September was omitted from the operational hours? Did you
6 catch that eventually?

7 A. Sorry, the public notice?

8 Q. Yes.

9 A. You mean the public notice that went out did not
10 capture the month September.

11 Q. Correct, yes.

12 A. Which public notice are you referring to?

13 Q. The public notice that was posted.

14 A. By the applicant?

15 Q. Yes.

16 A. No, I did not -- I was not aware of that.

17 MR. HNASKO: Mr. Hearing Officer, I'll pass the
18 witness. Thank you.

19 Thank you, Doctor. I appreciate your time.

20 THE WITNESS: Thank you.

21 HEARING OFFICER CHAKALIAN: Mr. Vigil, are there
22 any redirect questions for any of your witnesses?

23 MR. VIGIL: No, I have no redirect. Thank you.

24 HEARING OFFICER CHAKALIAN: Okay. Does the
25 Department rest its case?

1 MR. VIGIL: The Department rests its case.

2 HEARING OFFICER CHAKALIAN: Okay. Thank you,
3 Mr. Vigil.

4 Mr. Hnasko, it is time for you to put on your case.
5 How many witnesses do you have?

6 MR. HNASKO: We have four witnesses, Your Honor.

7 HEARING OFFICER CHAKALIAN: Four witnesses. Let
8 me get to your first NOIs, so -- now, you said that you sent
9 out exhibits at the lunch hour?

10 MR. HNASKO: Let me confirm that. To Madai, yes,
11 we did.

12 HEARING OFFICER CHAKALIAN: And who did you send
13 them to because I would like a copy of them?

14 MR. HNASKO: Ms. Corral.

15 HEARING OFFICER CHAKALIAN: Ms. Corral.

16 Ms. Corral, did you get that e-mail from Mr. Hnasko?

17 MS. CORRAL: Give me one second, Mr. Hearing
18 Officer. I believe I did see them come through.

19 HEARING OFFICER CHAKALIAN: Can you forward
20 them --

21 Mr. Hnasko, did you send them to the parties as well?

22 MR. HNASKO: Did we send them to the parties as
23 well? No, they're going now.

24 HEARING OFFICER CHAKALIAN: Mr. Rose, do you have
25 those?

1 MR. ROSE: No. And once he sends them, I think
2 we'll need some time to print them before he begins his
3 testimony, so once we get that, we should take about a
4 five-minute break to make sure we can print them.

5 HEARING OFFICER CHAKALIAN: Well, Mr. Rose, these
6 are just -- these are exhibits that you already have had for
7 weeks now; they're just numbered.

8 MR. ROSE: Okay. So all we are talking about is
9 the exhibits that were attached to the direct NOI and the
10 rebuttal NOI, then --

11 HEARING OFFICER CHAKALIAN: That's my
12 understanding.

13 Mr. Hnasko, am I correct?

14 MR. HNASKO: You are correct.

15 HEARING OFFICER CHAKALIAN: Okay.

16 MR. ROSE: As long as we have them already, that's
17 fine.

18 HEARING OFFICER CHAKALIAN: I wouldn't ask for you
19 to proceed without them, Mr. Rose.

20 MR. ROSE: It wasn't clear from the dialogue
21 whether it was something we've already seen.

22 HEARING OFFICER CHAKALIAN: Thank you.

23 So, Mr. Hnasko, would you let me know when you've sent
24 them to the parties, please?

25 MR. HNASKO: Yes, sir. And Mr. Hearing Officer,

1 may I request a ten-minute break?

2 HEARING OFFICER CHAKALIAN: It's now 2:05. We
3 will return on the record at 2:15. Thank you.

4 (NOTE: Recess taken, 2:05 to 2:14 p.m.)

5 HEARING OFFICER CHAKALIAN: We are back on the
6 record. It's 2:15, Wednesday, February 9th. And before you
7 begin, Mr. Hnasko, I want to work this out with the court
8 reporter.

9 Ms. Myers? Ms. Myers, the hearing clerk will send you
10 all of the exhibits, indicating which ones were admitted and
11 which ones were not. Obviously, so far, none have been
12 excluded, so all of them are admitted, but I want to make
13 sure that you get the latest submission from Sonterra with
14 their labeled exhibits. And I want to see -- okay. So it
15 says Exhibit 1 -- okay.

16 All right. Mr. Hnasko, please proceed.

17 MR. HNASKO: Thank you, Mr. Hearing Officer. A
18 brief opening statement first?

19 HEARING OFFICER CHAKALIAN: Please.

20 MR. HNASKO: Thank you.

21 So, Mr. Hearing Officer, I really believe that based
22 on the hearing officer's initial comment who has the burden
23 of proof in this matter and how the hearing should proceed,
24 that Roper has not sustained its burden at all in this case
25 to demonstrate that the permit as applied for should be

1 issued. I know Mr. Rose was suggesting that the only thing
2 you've got to determine is whether opacity requirements are
3 satisfied, but, in fact, the permit application has to be
4 accurate to match the operations of the facility.

5 There are a number of reasons why this is not true.
6 I'd like to go through that. First of all, as our witnesses
7 are going to testify, Dr. Ituarte-Villarreal started out
8 this is not a representative data used by Mr. Roper. He can
9 backtrack as much as he wants and determine, say, well, no
10 harm, no foul because it's actually more conservative, but
11 the fact is the representative data needs to be used in this
12 matter. So that's number one.

13 Number two, there are serious, serious problems
14 with -- I think what the hearing officer has been over
15 ad nauseam and what you have ruled on earlier last Saturday
16 as a matter of fact, in the absence of a demonstration of
17 sustainable water supplies, there is none. And the NMED's
18 testimony is very perplexing because, on the one hand,
19 they're arguing that they don't have to do that, have the
20 applicant demonstrate a reliable source, but on the other,
21 they can impose the use of water to meet their emission
22 requirements, so we're going to be having witnesses testify
23 about that and in particular Ms. Martinez will discuss that.

24 We're going to have other witnesses as well talking
25 about this. Mr. Edler will be speaking about the concrete

1 operations. Breanna's going to be speaking and addressing
2 some of the issues with the permit, so that's the main
3 issue. I think it's going to be important to note that when
4 we go through this, Dr. Ituarte, to start out, is going to
5 talk about the lack of representativeness of the modeling
6 done by Mr. Wade.

7 And secondly, you know, that the application, itself,
8 and this is what happens when you have all the omissions and
9 changes that have occurred, but with the lengthy period of
10 time this application has been alive, we think we're going
11 to offer some primary testimony, direct testimony, rebuttal
12 testimony, and from Dr. Ituarte's perspective a brief
13 surrebuttal on the use of the wrong values for the paved
14 haul roads. And in that regard, Mr. Hearing Officer, I'd
15 just like to alert you I have just discovered that the
16 entire AP-42 document is not included within the
17 application. As a matter of fact, the AP-42 document
18 submitted by Mr. Wade stops at the use of the six-tenths of
19 value for haul roads that are traveled by the public, paved
20 haul roads, which does not go on for the couple of pages
21 later to include appropriate batch paved haul roads, it says
22 approximately 15 times emissions. So we're going to
23 respectfully request after we do that, that that document in
24 its entirety be admitted into evidence.

25 So based on the applicant's failure to meet its burden

1 in this matter to demonstrate, A, that the modeling was
2 incorrect, the emissions are incorrect, there's no reliable
3 source to comply with the emission controls mandated by the
4 NMED under the Air Quality Act because we do know, of
5 course, that -- and I think Ms. Primm verified that the air
6 quality of that facility does not prevent the Bureau from
7 imposing the requirement to demonstrate a reliable source of
8 water. Based on these omissions that the applicant has not
9 sustained its burden, that the permit should be denied on
10 that basis.

11 HEARING OFFICER CHAKALIAN: Mr. Hnasko, as you
12 call your witnesses, we're going to get them sworn in one at
13 a time, and I'd like you to identify with your exhibit
14 numbers which ones they will be carrying in through their
15 adoption. Are you ready to begin?

16 MR. HNASKO: I am ready. Thank you, Mr. Hearing
17 Officer.

18 HEARING OFFICER CHAKALIAN: Who is your first
19 witness?

20 MR. HNASKO: Dr. Carlos Ituarte.

21 HEARING OFFICER CHAKALIAN: Okay. Sir, would you
22 spell your name please for the record.

23 THE WITNESS: Sure. Carlos, C-A-R-L-O-S, Ituarte,
24 I-T-U-A-R-T-E.

25 HEARING OFFICER CHAKALIAN: And, Mr. Ituarte,

1 which exhibits are you -- have you submitted either on the
2 rebuttal or in direct?

3 THE WITNESS: To be honest, I'm not familiar with
4 the numbering for the exhibits.

5 HEARING OFFICER CHAKALIAN: Mr. Hnasko.

6 MR. HNASKO: Yes, Mr. Hearing Officer, those are
7 numbered 2 through 7.

8 HEARING OFFICER CHAKALIAN: Did you say 2 through
9 7?

10 MR. HNASKO: Yes.

11 HEARING OFFICER CHAKALIAN: So for the record,
12 it's 2, 3, 4, 5, 6, and 7.

13 MR. HNASKO: Correct. 1 also. 1 is his
14 curriculum vitae; that should be in there as well. 1
15 through 7. I'm sorry.

16 HEARING OFFICER CHAKALIAN: Okay. Of the
17 direct -- of the initial SOI?

18 MR. HNASKO: Yes, that's -- yes, Mr. Hearing
19 Officer.

20 HEARING OFFICER CHAKALIAN: Is there any rebuttal?

21 MR. HNASKO: No rebuttal for Mr. -- Dr. Ituarte.

22 HEARING OFFICER CHAKALIAN: Okay. Very good. So
23 would you proceed -- oh, well, we need to get him sworn in.
24 Ms. Myers.

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CARLOS ITUARTE-VILLARREAL

(being duly sworn, testified as follows:)

HEARING OFFICER CHAKALIAN: Please proceed.

DIRECT EXAMINATION

BY MR. HNASKO

Q. Dr. Ituarte-Villarreal, would you state your name, please?

A. My name is Carlos Marco Ituarte-Villarreal.

HEARING OFFICER CHAKALIAN: Mr. Hnasko, let me just remind you that each witness has 15 minutes to provide a summary of their testimony. If they have rebuttal, they get another 15, so it is 2:22 now, and by my calculation, Mr. -- this witness has 15 minutes.

MR. HNASKO: Thank you, Mr. Hearing Officer.

HEARING OFFICER CHAKALIAN: Proceed, sir.

MR. HNASKO: For the record, Mr. Hearing Officer, Dr. Ituarte will have direct testimony and rebuttal testimony. And as I mentioned, we'll include within that a brief surrebuttal as well, so we would respectfully request the 30-minute time to accomplish this.

Q. (BY MR. HNASKO) Dr. Ituarte --

HEARING OFFICER CHAKALIAN: Hold on, Mr. Hnasko. So you're saying that this witness has rebuttal testimony but didn't file it.

MR. HNASKO: No, Your Honor, he did file it. I --

1 HEARING OFFICER CHAKALIAN: I had asked several
2 times what the exhibit number is for his filing.

3 MR. HNASKO: There are no additional exhibits in
4 his rebuttal testimony.

5 HEARING OFFICER CHAKALIAN: Yes.

6 MR. HNASKO: There is only rebuttal testimony. He
7 will advise of exhibits previously put in, in his direct
8 testimony.

9 HEARING OFFICER CHAKALIAN: I see. So you're
10 saying -- you're saying that he -- you're saying that this
11 witness is responsible for bringing into the record
12 Exhibits 1, 2, 3, 4, 5, 6, and 7, and he did not file a
13 rebuttal exhibit but has rebuttal testimony.

14 MR. HNASKO: Correct.

15 HEARING OFFICER CHAKALIAN: Okay. Then he has 30
16 minutes. Please proceed.

17 MR. HNASKO: Thank you very much.

18 Q. (BY MR. HNASKO) Would you state your name for the
19 record.

20 A. Carlos Marco Ituarte-Villarreal.

21 Q. Dr. Villarreal, could you get closer to the
22 microphone? I think you're a little bit unclear there. Is
23 that better? Okay.

24 Could you briefly describe for the hearing officer
25 your educational background and your place of work?

1 A. I'm currently employed by SWCA Consultants in
2 El Paso, Texas. I have received my Bachelor's of Science in
3 industrial engineering, also a Master's in science, also for
4 industrial engineering, and a Doctorate for environmental
5 science and engineering.

6 Q. When did you receive your doctorate?

7 A. 2015.

8 Q. Okay. And what are your duties with your -- with
9 SWCA?

10 A. Basically, an air quality and modeling specialist
11 for the air quality group.

12 Q. And, Dr. Villarreal -- Ituarte, if you could just
13 give a summary without me asking questions, we'd save a lot
14 of time, so please go over your work history with respect to
15 air quality permitting, modeling, and your position with
16 SWCA, if you would, please.

17 A. Well, I have almost ten years of experience doing
18 modeling for air quality, both -- also includes noise
19 modeling. Before that, I was working as a compliance
20 specialist for a power utility here in El Paso, Texas. And
21 before that, I was working for the University of Texas
22 El Paso as both a research associate and teaching assistant.

23 Q. And how many -- in that capacity, in your
24 experience, how many modeling -- air quality modeling runs
25 have you personally done?

1 A. It's hard to put a number, but I will say around
2 50.

3 Q. And you filed in this case direct testimony and
4 rebuttal testimony; is that correct?

5 A. Yeah, that's correct.

6 Q. And do you adopt as your testimony today both the
7 direct testimony and the rebuttal testimony?

8 A. I did.

9 Q. Okay. And then, Dr. Ituarte-Villarreal, what is
10 the purpose of your testimony today?

11 A. Well, my -- the purpose of my testimony is to
12 explain my filed direct testimony and rebuttal testimony and
13 also discuss the rebuttal testimony filed by NMED and
14 Mr. Wade on behalf of Roper.

15 Q. And let's first start with your direct testimony
16 and maybe segregate that from your rebuttal of Mr. Wade and
17 NMED. Could you briefly summarize, if you could, please,
18 what you -- the points you wanted to make in your direct
19 testimony for the members of the audience today?

20 A. Well, basically, my opinion is that the modeling
21 results are not representative of the operations, or the
22 proposed operations of the facility and therefore are not
23 reliable -- a reliable data in which to grant their
24 requested permit.

25 Q. And do you rely on certain EPA guidance documents

1 for that purpose?

2 A. Correct, yeah, from -- well, both federal and
3 State documents.

4 Q. And I put up on the screen here the document we
5 previously used on EPA subpart. Can you identify this,
6 please, first of all, and explain what that means?

7 A. Yeah, I cannot clearly see it. Yeah. It's a part
8 50, Subpart W, also known as the modeling guidance --
9 federal modeling guidelines.

10 Q. And what are the important factors in this
11 guidance?

12 A. I'm sorry?

13 Q. What are the important factors in this guidance?
14 Just summarize what they are, please.

15 A. Well, basically -- well, in terms of
16 meteorological data, or what do you mean?

17 Q. In terms of what is the guidance pointing to
18 that -- what's important for selecting meteorological data?

19 A. Okay. Well, as you can see here in the exhibit,
20 it's pretty clear that the federal requirements or the
21 federal regulations require that the meteorological data use
22 is important for modeling should be collected on the basis
23 of both the spatial and meteorological representativeness
24 and as well as the availability of digital parameters
25 selected to characterize the transfer and dispersion

1 conditions in the area of concern, meaning the area of
2 concern; basically, the proposed site for the project.

3 Q. And turning the page to the next yellowed
4 highlighted material. Do you see a reference in there to
5 wind direction and ambient temperature and these other
6 atmospheric input variables being important?

7 A. Correct, yeah. Basically, the federal regulations
8 require that the inputs to AERMET, which is the brief
9 assessor for the MET data, should be -- or should possess an
10 adequate degree of representativeness to ensure that the
11 wind, the temperature, turbulence, profiles, and other --
12 other factors are both laterally and vertically
13 representative of the sources of impact area.

14 Q. And how does wind direction play into that?

15 A. Yeah, wind direction is basically part of the
16 laterally and vertically representativeness of the source
17 area.

18 Q. And what effects does wind direction have on the
19 dispersion of particulate matter?

20 A. Well, basically, wind speed and wind direction
21 drive the dispersion here, the most significant conditions
22 for -- specific for projects like this with a significant
23 amount of punitive emissions.

24 Q. And so do you have an opinion as to whether the
25 modeling -- the meteorological data selected by the

1 applicant was appropriate in this instance?

2 A. No, it's not appropriate. I don't think it's
3 representative of the conditions at the project site.

4 Q. And why is that?

5 A. Well, there are several factors. As mentioned
6 before, one of this is, as you're showing here, land use and
7 land coverage plays a significant factor when you're
8 characterizing the sources conditions as -- I don't know if
9 you can make that -- yeah, closer. But, yeah, as you can
10 see, the difference between the two sites are obvious, where
11 this proposed site -- it's mostly covered in evergreen
12 forest land use conditions, and even some parts are covered
13 in shrubs. The Holloman Air Force Base is mainly shrubs and
14 desert conditions.

15 Q. And in your view, what is the more representative
16 data?

17 A. I'm sorry? Can you repeat the question?

18 Q. What would be the most appropriate data to be
19 representative of the site?

20 A. In my opinion, the closest representative MET
21 station should be at the Ruidoso Regional Airport.

22 Q. And can you explain what you see here?

23 A. Yeah, that's the land use and land cover depiction
24 around the Ruidoso Regional Airport.

25 Q. And what's that showing in relation to the

1 conditions at the site?

2 A. Well, this is closer to what we expect at the
3 project site with evergreen forest and shrubs, shrub covers.

4 Q. So were you present -- I think you probably heard
5 of Mr. Wade's subsequent statement that he ran some --
6 apparently a model based on using Sierra Blanca data, and
7 that, in his judgment, the model actually showed greater
8 emissions or greater concentrations using that data than
9 using the Holloman data. How do you respond to that?

10 A. Well, there are two --

11 MR. ROSE: Hang on, sir. Before you answer,
12 Dr. Ituarte, Mr. Hearing Officer, my understanding is that,
13 in fact, Mr. Wade testified exactly the opposite; that his
14 testimony was that the use of Sierra Blanca data actually
15 showed less of an impact than the use of Holloman data. So
16 I think the question is incorrect in terms of what the
17 representation of Mr. Wade's testimony is.

18 MR. HNASKO: I think I said it just the opposite
19 way. I said the use of Holloman data increased
20 concentrations.

21 MR. ROSE: I think you said it the other way.

22 MR. HNASKO: Did I? Okay. Well, I apologize if I
23 did, but in any event, Dr. Ituarte, let me clean that up.

24 Q. (BY MR. HNASKO) You heard Mr. Wade's testimony
25 that the use of Sierra Blanca airport data would actually

1 cause greater concentrations. How do you -- how do you
2 react to that statement?

3 A. Well, first of all, the goal of modeling is to
4 predict the worst-case concentrations without going beyond
5 that case with overly conservative functions, so that goes
6 back to representativeness of the data. But additionally,
7 Mr. Wade's rebuttal testimony states that there were more
8 low and calm wind conditions for Holloman Air Force Base
9 than for Sierra Blanca and, therefore, the low wind speeds
10 leads to higher concentrations at the model boundary. The
11 problem with this statement is that the assumption that the
12 number of calm and low wind conditions or low wind hours is
13 sufficient justification for selecting or deeming a MET data
14 set as conservative.

15 Additionally, in terms of calm hours, AERMET
16 substitutes most of these hours through the different
17 processing routines for calm and missing hours, and
18 additionally, the AERMOD sub-work along with the processing
19 routines calculates or basically sets the concentration
20 values to Sierra for missing and calm hours for -- for those
21 hours, basically assumes a zero concentration and calculates
22 short-term averages according to EPA's calm policy.

23 And in terms of low wind or hours at -- specific to
24 this project, low-wind conditions or low -- low-wind hours
25 are generally -- or generally occur in the late afternoon or

1 evenings, and based on the application, the proposed
2 schedule for the Roper site, it's mainly daytime hours, so
3 most of these low-wind conditions are going to have no
4 impact on the results because they are outside of the
5 scheduling -- or the operation in the schedule.

6 MR. ROSE: Mr. Hearing Officer, again, I didn't
7 want to interrupt Dr. Ituarte, but I think the way
8 Mr. Hnasko phrased the question was, again, the exact
9 opposite of what Mr. Wade testified to. I think he again
10 phrased it that the use of the Sierra Blanca data resulted
11 in higher concentrations, when, in fact, the testimony was
12 it resulted in lower concentrations. So I just wanted to
13 bring that to your attention.

14 HEARING OFFICER CHAKALIAN: Okay.

15 Mr. Hnasko.

16 MR. HNASKO: Right. And I apologize. Mr. Rose is
17 exactly correct. So, you know what I meant, Dr. Ituarte.

18 HEARING OFFICER CHAKALIAN: Hold on. Mr. Hnasko,
19 when there's an objection, you have to give me an
20 opportunity to make a ruling so that we have a clean record.

21 MR. HNASKO: Certainly.

22 HEARING OFFICER CHAKALIAN: I sustain the
23 objection that Mr. Rose made previously, and I sustain this
24 one as well, so please rephrase the question.

25 Q. (BY MR. HNASKO) So, Dr. Ituarte, your testimony

1 in comparing the various -- Sierra Blanca, comparing that
2 with Holloman, is that Mr. Wade -- Mr. Wade testified that
3 using Holloman was, in fact, more conservative in terms of
4 the application versus using Sierra Blanca, and your
5 response to that, you've given the reasons why that may or
6 may not be so; is that correct?

7 A. That's correct.

8 Q. All right. And would we know unless we do an
9 appropriate modeling run with all the relevant factors on
10 the Sierra Blanca -- using the Sierra Blanca data?

11 A. I'm sorry; I can barely hear you.

12 Q. I'm sorry. I'm trying to determine how we would
13 find out, because Mr. Wade has set forth in Page 3 to 4 of
14 his testimony the columns of concentrations suggesting that
15 Holloman is more conservative. And I'm asking you what
16 would we have to do to really make that determination in
17 this instance, and has it been made here?

18 A. Well, first of all, I think the only way to make
19 that assertion is to actual- -- actually rerun the model,
20 and I don't think any of the inputs used for Mr. Wade's
21 rerun are included anywhere in the application, so there's
22 no way I can duplicate this effort.

23 Q. Okay. So, Dr. Ituarte-Villarreal, could you
24 describe what's depicted on the screen here?

25 A. Yes, those are the wind rose plots for both the

1 Sierra Blanca Regional Airport and the Holloman Air Force
2 Base. Basically what wind rose plot is, it's just a plot of
3 the frequency of wind speed and wind directions for a
4 specific location.

5 Q. And how do the various wind directions affect
6 dispersion at the site?

7 A. Well, I think it's fair if I use a simple example.
8 Just by looking at the depiction here, if you look to the
9 Holloman Air Force Base wind rose on the left, you can see
10 the majority of the dispersion events from the Holloman data
11 will occur on the -- or from winds blowing from the
12 southeast area. So for fugitive emissions, this means that
13 basically -- well, for example, trucks transporting
14 materials to the southern border of the facility will be
15 expected to cause greater impact in that direction. While
16 for the Ruidoso case, you have the majority of the wind
17 hours blowing from the southwest and, therefore, impacts at
18 the northeastern boundary should be higher.

19 Q. And how does that affect the reliability of the --
20 of the modeling?

21 A. Well, the -- basically this -- this model is not
22 representative of the area because there's no -- there's
23 no -- therefore not reliable because we don't know what the
24 results will be if the Sierra Blanca meteorological data is
25 used and what inputs were used when estimating or

1 prepossessing the MET data when Mr. Wade reran the model.

2 Q. And is there a -- I'm a little bit confused.

3 Isn't there a parameter for distance that one could input
4 into the model to more closely replicate the proposed site
5 conditions?

6 A. Right, yeah. If you go to the -- the land use and
7 land cover figures. Yeah, right there. I don't know if you
8 can see on that figure that radius there, it's basically
9 representative of one-kilometer radius from the location of
10 the MET station at the Ruidoso airport, so if we don't know
11 just what parameters were used for -- for calculated sources
12 condition when preprocessing this data, so in this case, if
13 you use one kilometer, you're basically assuming -- or
14 you're going to have more impact from, like, cement or
15 Tarmac or parking lot than the actual surrounding cover for,
16 like, shrubs or evergreen forest, so -- but what happens if
17 you extend that radius to 3 kilometers or 5 kilometers, then
18 you're going to capture the actual conditions at --
19 surrounding that airport, and those conditions are more in
20 line with the conditions at the Alto, New Mexico site.

21 Q. Okay.

22 A. So there's always an unknown here what parameters
23 were used when estimating concentrations using the Sierra
24 Blanca MET data set.

25 Q. Dr. Ituarte-Villarreal, I think you were present

1 when you heard some testimony on trucks that it doesn't
2 matter, they're all basically the same emissions, and what's
3 your response to the absence of water trucks in this
4 application?

5 A. Well, it's -- everything relates to the emission
6 factors in the equation there to calculate emissions. As we
7 can see, a significant parameter there, it's the weight of
8 the trucks. So if they're saying that -- if -- well, if
9 they're saying that this many trucks are going to be assumed
10 for the operation and this many for cement trucks, this many
11 for aggregate and sand trucks, why not include water truck
12 trips.

13 Q. And finally, Doctor, did you -- did you discover
14 an error in the application using AP-42?

15 A. Correct, I did.

16 Q. And could you explain what that is, please?

17 A. Well, first of all, if we assume loading values of
18 .6 as shown in Table 13.2.1-2, and this value is actually
19 for -- corresponds to paved public roads, which, in this
20 case, this is not the case. This is a road within an
21 industrial facility, so I don't think that's appropriate to
22 be -- to be used for calculating emissions. And I think,
23 additionally, in Section 6, Page 8 of the application -- of
24 the permit application, basically, it states that no
25 controls will be included for Units 1, 2, and 11, if I'm not

1 mistaken, with the exception of limiting the out and out
2 throughput, so therefore, I don't think there's any
3 justification for assuming a loading of this load for the
4 conditions at the facility.

5 Q. And what -- what parameter should have been used
6 in your judgment?

7 A. Well, as you mentioned before, yeah,
8 Table 13.2.1-3 actually lists a specific value for paved
9 roads at industrial facilities, in this specific case for
10 concrete batching facilities, of 12, which is basically 20
11 times higher than this .0 -- .6 grams per meter squares
12 used.

13 Q. Have you done any calculations as to how much the
14 emissions would actually increase if this value was used for
15 concrete batching plants rather than the .6 value that Roper
16 used?

17 A. I did. Estimated emissions are close to 50 times
18 higher than those presented on the application.

19 Q. And based on your review of the data -- the data
20 used for modeling which you think is not representative and
21 the other deficiencies in this application, including the
22 wrong -- the wrong value for concrete batching roads, do you
23 have an opinion whether this permit, based on your
24 experience, should be -- should be granted?

25 A. Yes. I don't think the -- this permit should be

1 granted on the basis that the -- both the emissions and the
2 modeling are not representative of the actual conditions or
3 proposed conditions of the operations of the facility.

4 Q. Okay.

5 MR. HNASKO: Mr. Hearing Officer, we'll pass the
6 witness, but at this time, I'd like to offer into evidence
7 as an additional surrebuttal exhibit the full AP-42, which,
8 apparently, is not included in the application of Mr. Roper;
9 only parts were included.

10 MR. ROSE: I don't see the hearing officer, so I
11 guess we can't -- there he is.

12 HEARING OFFICER CHAKALIAN: I'm here, but I didn't
13 hear the question.

14 MR. HNASKO: The question was, Mr. Hearing
15 Officer, I pass the witness --

16 HEARING OFFICER CHAKALIAN: Oh, you're passing the
17 witness, okay.

18 MR. HNASKO: Yeah, the --

19 HEARING OFFICER CHAKALIAN: So -- hold on,
20 Mr. Hnasko. Do you want to present your witnesses as a
21 panel?

22 MR. HNASKO: Yes, Mr. Hearing Officer.

23 HEARING OFFICER CHAKALIAN: Then why don't you
24 call your next witness, and who will that be?

25 MR. HNASKO: Mr. Hearing Officer, one housekeeping

1 matter if I may. I don't think you heard my earlier
2 request, when Dr. Ituarte-Villarreal was finished
3 testifying, that we're -- as a surrebuttal exhibit, we would
4 like to introduce the complete copy of AP-42 because we
5 looked over the application, and it appears that only a
6 third of that was included, but not the part with the
7 concrete haul road emission concentration factor.

8 HEARING OFFICER CHAKALIAN: Are there any
9 objections?

10 MR. VIGIL: No objection.

11 MR. ROSE: Mr. Hearing Officer, we have no
12 objection. It's just that I don't know exactly what that's
13 to look like. I don't know if he's actually offering a
14 written copy as an exhibit or asking the hearing officer
15 whether you'll take notice of the AP-42 factor. The pages
16 that Mr. Hnasko referred to and Dr. Ituarte testified on, I
17 think we're looking at a handful of pages beyond those
18 included in the application as opposed to the entire AP-42
19 document, so I'm not sure whether all of that document is
20 really relevant, but -- but we have no objection to you
21 taking administrative notice of the sections he referred to.

22 HEARING OFFICER CHAKALIAN: Okay. Mr. Hnasko,
23 before I go to Mr. Vigil, it sounds to me that what you
24 should be doing is sending out the exhibit to the parties to
25 let them see exactly what you are asking to be admitted.

1 MR. HNASKO: Correct.

2 HEARING OFFICER CHAKALIAN: Or are you just asking
3 for me to take notice of it?

4 MR. HNASKO: Well, I think you can take notice,
5 but I think it's better to have it part of the record
6 because of the omission in the application, but I do accept
7 Mr. Rose's friendly agreement that we don't need the entire
8 document, just the pages I'd referenced, which there are
9 about five more in addition.

10 HEARING OFFICER CHAKALIAN: Okay. So, Mr. Hnasko,
11 first I want to hear from Mr. Vigil. Mr. Vigil, what was
12 your objection?

13 MR. VIGIL: No, I was saying we don't have an
14 objection.

15 HEARING OFFICER CHAKALIAN: Oh, you don't have an
16 objection. Okay. Mr. Hnasko, before I consider whether to
17 allow that in or not, please provide the entire document
18 that you want to be considered. I understand that you want
19 additional pages, but what I would like is for you to submit
20 all of AP-42 that you want admitted, so the part that's
21 already there plus the new part. I want it all as one.

22 MR. HNASKO: Understood. Thank you.

23 HEARING OFFICER CHAKALIAN: And we're going to
24 call that what exhibit number?

25 MR. HNASKO: That would be Exhibit 15? 15.

1 HEARING OFFICER CHAKALIAN: You have 20 so far,
2 sir.

3 MS. SAKURA: Let's make it --

4 MR. HNASKO: We can't do that. You know,
5 Exhibit 21.

6 HEARING OFFICER CHAKALIAN: 21. All right. Let
7 me write that down. We will reserve judgment once the
8 parties take a look at that. Are you ready to proceed to
9 your second witness?

10 MS. SAKURA: We are, Mr. Hearing Officer.

11 HEARING OFFICER CHAKALIAN: Okay. Good. Who will
12 that be?

13 MS. SAKURA: It will be Breanna Bernal.

14 HEARING OFFICER CHAKALIAN: Okay. Before we begin
15 with her testimony, what number exhibits will she be
16 carrying in?

17 MS. SAKURA: Mr. Hearing Officer, we're going to
18 obviously have to rework our submission of exhibits. We
19 apologize for that. It should follow -- you know, once we
20 put in the new -- it should follow after Mr. Ituarte's, so
21 it should be 10 through --

22 MR. HNASKO: 8 through --

23 MS. SAKURA: Or 8 through --

24 HEARING OFFICER CHAKALIAN: So you're saying that
25 the e-mail that you sent around to everyone, which ends with

1 Exhibit 5 -- no, 7, it -- so this is -- this needs to be
2 redone.

3 MS. SAKURA: That's right. That's correct.

4 HEARING OFFICER CHAKALIAN: I can see that now
5 that I got past Number 7, I see that it ends there on
6 Page 35 without any further. Okay. So --

7 MS. SAKURA: We will be resending that shortly.

8 HEARING OFFICER CHAKALIAN: Okay. So then why
9 don't we deal with the exhibit numbers before the end of her
10 testimony.

11 MS. SAKURA: Thank you, Your Honor.

12 HEARING OFFICER CHAKALIAN: All right. So let's
13 get her sworn in.

14 BREANNA BERNAL

15 (being duly sworn, testified as follows:)

16 HEARING OFFICER CHAKALIAN: Would you spell your
17 name for the record?

18 THE WITNESS: Yes. It's B-R-E-A-N-N-A,
19 B-E-R-N-A-L.

20 HEARING OFFICER CHAKALIAN: Very good. Okay.
21 Please proceed.

22 MS. SAKURA: Thank you.

23 DIRECT EXAMINATION

24 BY MS. SAKURA

25 Q. Ms. Bernal, could you briefly tell us about your

1 experience and educational background?

2 A. Yes, I have three-and-a-half years experience in
3 conducting air quality permitting compliance and reporting
4 driven by State, federal, and local air quality rules and
5 regulations. I currently work at SWCA Environmental
6 Consultants, and my educational background is I have a
7 Bachelor's degree of Science in Environmental Geoscience
8 from Texas A&M University.

9 Q. And did you file a written summary of your
10 opinions in this case?

11 A. Yes, I did.

12 Q. And do you have any changes to that written
13 summary?

14 A. No, I do not.

15 Q. Did you file written rebuttal testimony in this
16 case?

17 A. Yes, I did.

18 Q. Do you have any changes to that written rebuttal
19 summary of testimony?

20 A. No, I do not.

21 Q. So do you adopt the -- both the written summary of
22 your opinions and the written sum- -- rebuttal summary of
23 your opinions?

24 A. Yes, I adopt both.

25 Q. And very briefly, in surrebuttal to the rebuttal

1 testimony of Mr. Paul Wade, Mr. Wade talks about annual
2 emissions calculated in Table 6.1. Are you familiar with
3 this table in the application?

4 A. Yes, I am. So Table 6-1 on Page 6 of Section 6,
5 it basically shows the precontrolled material handling
6 particulate emissions for each unit.

7 Q. Okay. And is there a table that -- and then he
8 also talks about emission rates for controlled emissions
9 after the inclusion of control equipment. Do you know where
10 that information is found?

11 A. Yes. The control emissions would be on Table 6-2,
12 which is Page 11 of Section 6.

13 Q. And for those units processed, Unit 2, 3, 4, 5,
14 and 6, do you know what control equipment is -- the
15 applicant is proposing for those units?

16 A. Yes. For Units 3, 4, 5, and 6, they are proposing
17 to add water sprays.

18 Q. Okay. Are they proposing any other control
19 equipment for 3, 4, 5, and 6?

20 A. Not as far as I'm aware.

21 Q. So going back to the uncontrolled emissions,
22 Table 6.1.

23 A. Yes.

24 Q. If there is not an adequate or reliable source of
25 water, what are the emissions for those Units 3, 4, 5, and

1 6?

2 A. So if there's not an adequate control of water,
3 the emissions for Units 3, 4, 5, and 6 would be as
4 represented in Table 6-1, with the highest emission rate
5 being 2.46 tons per year of particulate matter for each
6 emission unit. So if we were to combine emission Units 3,
7 4, 5, and 6, it would total approximately 9.84 tons per year
8 of particulate matter for those units combined without water
9 sprays.

10 Q. And is there any other source of emissions in the
11 application where water is the primary control?

12 A. Not to my recollection.

13 Q. Do you know what they're proposing to do with the
14 haul roads?

15 A. The haul roads, I believe that only -- let me see.
16 So in the first paragraph of Page 8 on Section 6, it states
17 that no controls will be included for Unit 1, which is the
18 haul road with the exception on limiting annual throughput,
19 so it does not mention the use of water for those haul
20 roads. And I believe the emission calculations also did not
21 mention the use of any water being applied to the roads.

22 Q. Okay. Have you reviewed the draft permit that the
23 NMED witnesses testified about earlier?

24 A. Yes, I did. Yes.

25 Q. And did you look at the permit condition D?

1 A. Yes.

2 Q. Sorry. Permit condition B?

3 A. Yes. So Part B is for haul road controls, and it
4 states that truck traffic areas and haul roads shall be
5 maintained to minimize silt buildup to control particulate
6 emissions. So those controls later mention, basically, it
7 would be water application or sweeping the roads would be
8 the controls that they are required to do for the permit
9 conditions.

10 Q. And what happens to this requirement if there is
11 not a reliable source of water?

12 A. The requirement could not be met if there is not a
13 reliable source of water unless they were to do -- sweeping
14 would be the only alternative in there.

15 MS. SAKURA: Pass the witness. Actually, we'll go
16 on since we're -- we're combining our -- all of our
17 witnesses in a panel for cross-examination, so we'll just
18 call our next witness.

19 HEARING OFFICER CHAKALIAN: Okay. So hold on. So
20 Ms. Bernal does not have rebuttal testimony.

21 MS. SAKURA: Just what we've put on the record
22 right now.

23 HEARING OFFICER CHAKALIAN: Okay. All right.
24 Sounds good. So let me -- let me review with you what I
25 have here so far. You submitted an SOI originally, I guess

1 it's not marked as we have figured out, and then you
2 submitted a rebuttal -- you submitted a Roper rebuttal. And
3 Roper rebuttal is shorter than the first one. You know,
4 without exhibit numbers, it's very difficult, but -- but I
5 do see that actually, the rebuttal has actual -- it looks
6 like what you would call Bates numbers at the bottom, or
7 does it not?

8 MR. ROSE: Mr. Hearing Officer, I think you're
9 referring to our --

10 HEARING OFFICER CHAKALIAN: I am. You're right, I
11 am. That's correct. You're right. There are just no
12 markings whatsoever. There are page numbers, though. There
13 are some page numbers. Okay. Well --

14 MS. SAKURA: Mr. Hearing Officer, what we can do
15 is include the administrative record number for these -- for
16 both our statement of intent and our rebuttal, and that way,
17 there would be some sort of way to identify those documents.

18 HEARING OFFICER CHAKALIAN: The scheduling order
19 is specific that exhibits have to be marked, so I'm going to
20 wait for you to properly mark them. I do have your e-mail
21 that shows that 1 through 7 have been marked, so they are
22 admitted.

23 I don't know which exhibits this -- Ms. Bernal was
24 supposed to bring in. Are you aware of how many exhibits
25 that you filed with her testimony?

1 MR. HNASKO: It would have been -- well, we marked
2 1 through 7, Mr. Hearing Officer, and -- or was it 8? And
3 it would be 9 through 13 is what we're -- there should be 15
4 total exhibits.

5 HEARING OFFICER CHAKALIAN: Oh, not 20.

6 MR. HNASKO: Not 20.

7 HEARING OFFICER CHAKALIAN: Wait. Not 20?

8 MR. HNASKO: Not 20.

9 HEARING OFFICER CHAKALIAN: Originally --
10 originally, I was told there was 1 through 10, then there
11 was 1, 2, 3, and then there was 1 through 7. So I added
12 them up as 20. But now you're saying that there -- that you
13 have submitted so far 15 exhibits, and then you will have
14 one additional one, which will be that -- which will be the
15 AP-42 extension.

16 MR. HNASKO: Mr. Hearing Officer, so Carlos
17 Ituarte-Villarreal had 1 through 10.

18 HEARING OFFICER CHAKALIAN: 1 through 10, not 1
19 through 7.

20 MR. HNASKO: Yes, 1 through 10. Ms. Bernal had 11
21 through 17. Mr. Martinez had 18 through 21. But
22 those again, a lot of those exhibits, the reason -- I think
23 our confusion arose, is because a lot of them were already
24 admitted by others, so they're going to be duplicatives at
25 this point.

1 MS. SAKURA: And we didn't include things that
2 were already part of the record proper.

3 HEARING OFFICER CHAKALIAN: And that's fine with
4 me. I'm only concerned with the e-mail that you sent all
5 the parties back on January the 19th, that had a -- that had
6 a PDF. Those will have to be appropriately marked, and
7 we're going to have to go through that after -- at some
8 point. Maybe -- I don't know when, and then you sent
9 something on February 2nd, which was rebuttal exhibits, and
10 those are going to have to be appropriately marked.

11 So if you could -- if you could find those two PDFs
12 that you e-mailed all the parties, appropriately mark them
13 with exhibit numbers, send them out again, and then we can
14 identify by the proper numbers on them which ones belong to
15 which witnesses.

16 MS. SAKURA: Of course.

17 MR. HNASKO: Absolutely.

18 HEARING OFFICER CHAKALIAN: Okay. That's how
19 we're going to do this because I'm not going to slow down
20 this hearing for you guys to do that now. So who is your
21 next witness?

22 MS. SAKURA: Mr. Dave Edler.

23 HEARING OFFICER CHAKALIAN: Okay. Mr. Edler,
24 would you please spell your name. But you're on mute.

25 THE WITNESS: Okay. There we go. David Edler,

1 D --

2 HEARING OFFICER CHAKALIAN: You're too -- you have
3 to turn up your microphone, sir. I can't hear you.

4 THE WITNESS: Okay. It's David Edler, E-D-L-E-R.

5 HEARING OFFICER CHAKALIAN: Okay. And Mr. Edler,
6 did you -- did you submit any written testimony?

7 MS. SAKURA: Yes, Your Honor.

8 HEARING OFFICER CHAKALIAN: He did, okay.

9 THE WITNESS: Yes.

10 HEARING OFFICER CHAKALIAN: So that will be an
11 exhibit. Did he submit rebuttal?

12 MS. SAKURA: Yes. Yes, he did.

13 HEARING OFFICER CHAKALIAN: So he has both direct
14 and rebuttal prefiled, full written testimony.

15 MS. SAKURA: That's correct.

16 HEARING OFFICER CHAKALIAN: Okay.

17 MR. VIGIL: Mr. Hearing Officer --

18 HEARING OFFICER CHAKALIAN: Yes.

19 MR. VIGIL: -- this is Chris Vigil. I just wanted
20 to say when it's appropriate, I'd like an opportunity to
21 voir dire this witness.

22 HEARING OFFICER CHAKALIAN: Mr. Edler?

23 THE WITNESS: Yes.

24 HEARING OFFICER CHAKALIAN: Well, okay, yeah,
25 Mr. Vigil, are you speaking about Mr. Edler?

1 MR. VIGIL: Yeah, thank you.

2 HEARING OFFICER CHAKALIAN: Okay. Very good.

3 Let's get the court reporter to swear in Mr. Edler, and then
4 we're going to do a voir dire.

5 DAVID EDLER

6 (being duly sworn, testified as follows:)

7 HEARING OFFICER CHAKALIAN: Mr. Edler, before
8 Mr. Vigil takes over, did you submit a resume? Because I
9 wouldn't know where to look.

10 THE WITNESS: No, sir.

11 HEARING OFFICER CHAKALIAN: Oh. There's no
12 resume.

13 THE WITNESS: (Shook head.)

14 HEARING OFFICER CHAKALIAN: Okay, Mr. Vigil, go
15 ahead.

16 VOIR DIRE EXAMINATION

17 BY MR. VIGIL

18 Q. Mr. Edler, can you tell us what you -- where you
19 are currently employed?

20 A. I am retired, three years ago.

21 Q. You are retired. And how long have you been
22 retired?

23 A. Three years. I retired in 20- -- December of
24 2018.

25 Q. Okay. Great. Hope to join you someday in the

1 ranks of the retired, and maybe I'll make it.

2 And previous to your retirement, where were you
3 employed?

4 A. I spent 20 years working for Kienstra,
5 Incorporated, and we owned six batch plants, two block
6 manufacturing plants, and a precast plant. And after that,
7 I worked at an oil refinery for 14 years.

8 Q. Okay. I'm sorry; what was the last place you
9 worked that you said? I didn't hear you. I'm sorry.

10 A. In an oil refinery for a mechanical contractor.

11 Q. Okay. Great. Thank you so much. Now, you
12 said -- you said that you -- you worked somewhere, but then
13 you said, "we owned." So were you an owner of this
14 operation that you -- what was the name of it again? I'm
15 sorry.

16 A. It was named -- it was called Kienstra,
17 Incorporated, and I did not own it. I just worked there.

18 Q. Oh, I see. And what was the nature of their
19 business?

20 A. We owned six batch plants for concrete, and we
21 owned two block manufacturing plants, which was made with
22 concrete, and we owned a precast plant, which was all your
23 big sewer pipes, septic tanks, so we pretty much did
24 everything with making stuff out of concrete.

25 Q. Okay. Great. Great. And what was your

1 capacity -- in what capacity did you work there?

2 A. I started out mainly as a truck driver, but I
3 drove the front end loaders. I pretty much did a little bit
4 of everything. But anything that had wheels on it, I drove.

5 Q. Yeah, that's great. Have you ever -- have you
6 ever been involved in the design of a concrete batch plant?

7 A. No, sir.

8 Q. Have you ever -- have you ever been involved with
9 the submission of an application for a concrete batch plant
10 with the New Mexico Environment Department or any regulatory
11 agency in any state?

12 A. No, sir.

13 Q. Are you an engineer?

14 A. No, sir.

15 Q. I see.

16 MR. VIGIL: I have no further questions. Thank
17 you very much.

18 HEARING OFFICER CHAKALIAN: Mr. Hnasko.

19 MS. SAKURA: We can proceed?

20 HEARING OFFICER CHAKALIAN: Mr. Hnasko.

21 MR. HNASKO: Yes, Mr. Hearing Officer.

22 HEARING OFFICER CHAKALIAN: I'm not sure who's
23 going to be dealing with this witness. Is it Ms. Sakura or
24 you?

25 MR. HNASKO: Yes, Ms. Sakura.

1 MS. SAKURA: It's me.

2 HEARING OFFICER CHAKALIAN: I'm looking through
3 your prehearing submission, your SOI in other words, and I'm
4 starting with the January 19 one, and I have found, by the
5 way, which I do find helpful, finally, I did find the page
6 where you said testimony of Carlos Ituarte-Villarreal, so I
7 do have something that helps delineate the starting and
8 stopping of the exhibits even though they're not properly
9 marked. Then I see testimony of Breanna Bernal. I just
10 don't know where that ends because I can't find a similar
11 sheet to help me with Mr. Edler's prefiled testimony. So
12 will you help me.

13 MS. SAKURA: Of course. And we did that a little
14 bit out of order. We're going to do Mr. Edler first and
15 Mr. Martinez last. So in our statement of intent,
16 Mr. Martinez comes after Ms. Bernal, and Mr. Edler comes
17 after Mr. Martinez, and that --

18 HEARING OFFICER CHAKALIAN: You have to give me a
19 minute so I can find these things, so hold on. Okay. Well,
20 I see Mr. Martinez' exhibits, and then it seems like there
21 aren't many. There's really only a resume here, and I -- I
22 don't see anything for this witness here. Can you help me?

23 MS. SAKURA: Page 15.

24 HEARING OFFICER CHAKALIAN: Well, I don't have
25 page numbers, ma'am.

1 MS. SAKURA: Okay.

2 HEARING OFFICER CHAKALIAN: You didn't label these
3 in any way. There's not even a page number here.

4 MS. SAKURA: There are page numbers on the copy
5 that we have.

6 HEARING OFFICER CHAKALIAN: Of the -- hold on.
7 Are you looking at the submission from January 19?

8 MS. SAKURA: Yes.

9 HEARING OFFICER CHAKALIAN: That's what I have in
10 front of me.

11 MS. SAKURA: Okay.

12 HEARING OFFICER CHAKALIAN: Okay. Show me where
13 is the -- where is the exhibit for this witness?

14 MS. SAKURA: There's no exhibit. He's -- they're
15 simply in the body of the statement. There is a Roman
16 numeral Number 4 in the body of the statement.

17 HEARING OFFICER CHAKALIAN: What do you mean by
18 "body of the statement"? You mean the first couple of
19 pages?

20 MS. SAKURA: So what we did is just we provided
21 summaries for each witness --

22 HEARING OFFICER CHAKALIAN: Okay. I see that.

23 MS. SAKURA: -- in our statement of intent, so we
24 didn't --

25 HEARING OFFICER CHAKALIAN: I see that.

1 MS. SAKURA: -- attach a separate exhibit.

2 HEARING OFFICER CHAKALIAN: Okay. I'm with you
3 now. I'm there. I'm there. So, basically, I'm now turning
4 to look -- here we go. Here we go. On Page 15 of the --
5 I'm not sure what you would call this. I guess it would be
6 a motion or the SOI. It's Page 15. That has page numbers,
7 and I do see here -- I do see here his -- okay. Now, the
8 following exhibits are submitted in connection with
9 Mr. Edler's testimony. The NSR minor source permit
10 application for Roper, and I see because that's part of the
11 administrative record, that's why it's not here. I
12 understand now. Thank you. Thank you. And Table 2-C, both
13 sets.

14 MS. SAKURA: True.

15 HEARING OFFICER CHAKALIAN: Okay. So you say here
16 that Mr. Edler is an expert qualified by knowledge, skill,
17 experience, and training to provide opinions regarding the
18 reality of concrete batch operations. I've not heard -- I
19 have not heard his qualifications to be a technical expert.
20 Can you explain that?

21 MS. SAKURA: Mr. Edler's going to be providing
22 testimony about his experience working for 20 years at a
23 concrete batch plant and what the day-to-day operations look
24 like in terms of what happens at the plant, what kinds of
25 emissions occur based on his direct experience working for

1 20 years at a concrete batch plant.

2 HEARING OFFICER CHAKALIAN: Okay. I understand.

3 I understand where this is coming from; however, how does
4 it -- how does it specifically apply to this draft permit?

5 MS. SAKURA: He's going to be testifying that he
6 does not agree with the emissions control efficiencies at
7 the baghouse.

8 HEARING OFFICER CHAKALIAN: Okay.

9 MS. SAKURA: He's going to testify about the
10 emissions controls at the aggregate piles. He's going to be
11 testifying about the emissions controls that occur when
12 concrete is unloaded into the trucks.

13 HEARING OFFICER CHAKALIAN: Okay. Okay. You
14 don't have to -- I understand. And this comes from his 20
15 years of experience working in a concrete batch plant.

16 MS. SAKURA: That's correct.

17 HEARING OFFICER CHAKALIAN: Okay. All right.
18 Well, the rule is very broad when it comes to technical
19 testimony. I don't have an objection based on -- from the
20 parties, so what I will do is, is there any -- is there any
21 rebuttal testimony, or is this just direct?

22 MS. SAKURA: He does have a brief rebuttal
23 testimony, but it's basically just a reiteration of his
24 direct testimony.

25 HEARING OFFICER CHAKALIAN: Okay. Then I will

1 give him 15 minutes to summarize his testimony, although
2 there's really nothing to summarize because he hasn't filed
3 any testimony.

4 MS. SAKURA: He's filed summary -- a summary of
5 his testimony.

6 HEARING OFFICER CHAKALIAN: You filed it.

7 MS. SAKURA: We filed it. Sorry.

8 HEARING OFFICER CHAKALIAN: So these are your
9 words, not his, right? Okay. So there's nothing filed in
10 his own words that he would be adopting, so this will be new
11 testimony. I will give him 15 minutes to provide testimony.
12 We will call it technical testimony based on his experience.
13 And we will start now at 3:16. So please proceed.

14 MS. SAKURA: Just one brief thing. He did file
15 written rebuttal testimony that we would like to address.
16 There are certain things that are different.

17 HEARING OFFICER CHAKALIAN: Okay. Let me find it.
18 Hold on. Let me find it. Help me find it.

19 MS. SAKURA: Okay. If you look at the Property
20 Owners of Sonterra's Notice of Intent to Present Rebuttal --

21 HEARING OFFICER CHAKALIAN: Okay. I'm here. Go
22 ahead.

23 MS. SAKURA: If you go to Page 7.

24 HEARING OFFICER CHAKALIAN: I'm here. Yes.

25 MS. SAKURA: Summary of Mr. Edler's experience.

1 HEARING OFFICER CHAKALIAN: Right, but these --
2 okay. This is similar to the SOI, the direct SOI, in that
3 you are summarizing his opinion, but it's not -- it's not
4 drafted by him, so there's nothing more than a summary here
5 that you drafted, so he has 15 minutes to provide his
6 summary -- or to provide testimony, so please proceed.

7 DIRECT EXAMINATION

8 BY MS. SAKURA

9 Q. Mr. Edler, do you have an opinion about how
10 efficient baghouses are in controlling emissions at concrete
11 batch plants?

12 A. My -- in my experience, when you drive by a
13 concrete plant, and you see the tall silo that the cement is
14 in, the way that you can tell that they leak is you look for
15 gray streaks going down the side of the silos, that tells
16 you that there is cement that has escaped from the baghouses
17 that's laying up on top of the silo and when it rains,
18 that's what those gray streaks are you're seeing. And I've
19 seen them for 20 years. I always look when I go by one,
20 just out of habit, and I don't think I have ever seen one
21 without some, so there is cement that gets out.

22 Q. And at what -- how does that cement get out of
23 those baghouses?

24 A. Any time they're opened for maintenance, or any
25 time there's a seal that leaks a little bit and any time

1 they have to get in to change the filters, it is a
2 pressurized system, so any pinhole or any -- any piece of
3 the baghouse that doesn't completely fit right, it's going
4 to be pushing it out. The stuff is like talcum powder, baby
5 powder; it's very fine.

6 Q. And in your experience, what kind of emissions are
7 released from these baghouse products?

8 A. Say the question again.

9 Q. Sure. In your experience, is the -- are the
10 emissions that come from these baghouse products
11 significant?

12 A. Over time, yes, they are. They -- it's real fine
13 and it -- I mean, it piles up every day. If you're pouring
14 concrete every day, if there's a leak, it just keeps piling
15 up until it rains, and then it washes down the side, or the
16 wind blows it.

17 Q. And if the wind is -- blows stronger, are those
18 emissions -- do they go further?

19 A. Absolutely. I -- weather is a hobby of mine, has
20 been for a long time. I have a Davis instrument weather
21 station at my house. That's the kind that colleges and
22 refineries and businesses use. I pay attention to that
23 every day, and quite a few people on here have mentioned the
24 wind.

25 Four weeks ago, I had sustained winds of over 25 miles

1 an hour for three days in a row, 24 hours a day. The
2 maximum gust was 62 miles an hour, and I had quite a few of
3 them in the 50s, and that -- that kind of wind, just like we
4 was talking about it, if they have to open a baghouse to
5 change the filters, or it's got a little leak anywhere, that
6 stuff's going to -- going to be in the neighbor's yard. It
7 will not stay on his piece of property.

8 And the wind blows -- we have lived here for three
9 years, and it is very distinct in March, April, and then in
10 the Fall again, and we just had really bad winds just three
11 months ago in the middle of winter and everybody in the
12 subdivision up here, I live approximately a little bit over
13 a half-mile from where the concrete batch plant is wanting
14 to be built, and I mean, it's a topic of conversation. The
15 wind up here blows a lot, and it blows for quite a while.
16 The Holloman Air Force thing is nowhere close to what the
17 weather is up here.

18 Q. Do you have an opinion on whether the aggregate
19 storage piles will be a source of emissions?

20 A. Yes, they will because they're talking about --
21 they said they was going to put water on them. Okay. So
22 you've got a pile of aggregate, which is rock, when the
23 trucks come in, one thing I haven't heard anybody talk about
24 when the tractor trailers come in and dump their
25 50,000 pounds of rock, they lift the trailer up in the air,

1 that's sticking up in the air about 20-foot, and when you
2 dump 50,000 pounds of rock on this pile, there's going to be
3 dust. It's rock; it's going to have dust in it.

4 Now, they're saying, okay, we're going to put water on
5 it. Well, the pile of rock is going to be 10, maybe 15 feet
6 tall, maybe 15 -- 15-foot across in a square. What they use
7 that I've seen and we had, was -- it's like a sprinkler
8 system. So it's not like a fire hose; it's not going to
9 soak the whole pile. If the wind blows, the efficiency of
10 that's going to go down because it's like holding your
11 sprinkler in your yard. If the wind's blowing 20 miles an
12 hour, half the water's going to be going somewhere else
13 except on the pile.

14 The next thing with that, when the loader, the big
15 front end loader, when they drive into that pile to get a
16 big scoop of rock, the -- the pile, itself, the -- maybe the
17 top inch or two of the rock has got damp. The stuff on the
18 bottom where the -- where the loader's digging into, it's
19 dry, and you're going to have dust. The loader picks that
20 up, drives back, he's got to drive 30 feet, 40, to go over
21 to dump that into the hopper, so the leg can take -- the
22 conveyor system can take it up to the top of the bin. So
23 when a loader pulls up, he lifts his bucket up about 12-foot
24 tall, and then you dump 4,000, 5,000 pounds of rock in the
25 metal container, and that's dry rock, the wind's blowing,

1 the dust is going to carry that somewhere else.

2 Q. In your experience, is there a significant amount
3 of dust that's associated with those processes you just
4 described?

5 A. Every day we left work, our cars were full of
6 dust, so yes.

7 Q. Do you have an opinion about the emissions that
8 would be -- that would occur at the cleaning -- during
9 cleaning operations at the -- at a concrete batch plant?

10 A. You're talking about the baghouses?

11 Q. The cleaning operations.

12 A. Oh, at the end of the day?

13 Q. That's correct.

14 A. Yes. At the end of the day, every mixer truck has
15 to be washed out. They'll back underneath the batch plant,
16 get about 100 gallons of water dropped in them, and then
17 they go to someplace that's called a wash-out pit, and I've
18 never -- I haven't seen anything in the application about
19 what they're going to do about a wash out pit.

20 Well, how that works, the truck backs up there, they
21 reverse their drum, and it cleans out what's left in the
22 truck from all day, and that will be leftover chunks of
23 cement that have dried up behind the fins, it'll be some
24 rock, some sand, and you just dump it in these concrete
25 pits. Eventually those get filled, and then you have to

1 move to the next pit. Then the -- all that stuff dries out.
2 It turns back into rock, sand, and cement dust. We have to
3 clean that out. You can either -- we used to dump it, we
4 had a lot more area than Roper's got down there, but we'd
5 dump it way in the back and just pile it up.

6 Well, every time you dig in there with your front end
7 loader, you're digging into dry, and as soon as you pick it
8 up and start moving, some of it's falling off the side of
9 the -- off the side of the bucket, and when you're going
10 down the road, it's bouncing, and you're going to have --
11 you've got dry cement you're digging up, so that the wind's
12 blowing, it's taking it somewhere else again. Or it gets
13 dropped in the parking lot, and then every time a truck
14 drives in, they drive over that and then it creates more
15 dust. Now, he said he --

16 Q. So --

17 A. -- he'd water the lot down, but you -- with that,
18 if you've got a water truck spraying the dust down, that
19 turns into mud, the trucks drive through it, and they go
20 back out on the highway, and then it starts throwing it off
21 of their tires, and then you've got the stuff laying in the
22 road, cars are driving over it, and it turns back into dust
23 again.

24 Q. So the cleaning operations are a source of dust
25 emissions in your experience?

1 A. Yes.

2 Q. Now, there was testimony earlier that the
3 emissions are going to stay on -- they're going to be
4 confined to the Roper property, and they're going to
5 disperse right at the property boundary line. Do you agree
6 with that testimony?

7 A. Nope.

8 Q. Why is that?

9 A. It don't happen like that. Especially here. When
10 you're talking 30 or 40 miles an hour wind, there's no way.
11 I mean, unless he built a dome over his property, there's no
12 way he can keep that there.

13 MS. SAKURA: And I have a -- we have a
14 demonstrative exhibit that I'd like to show Mr. Edler.
15 Mr. Edler?

16 HEARING OFFICER CHAKALIAN: We will make him a
17 presenter, and I just want you to know that he has three
18 minutes left.

19 MS. SAKURA: Perfect. Thank you.

20 HEARING OFFICER CHAKALIAN: Ms. Corral, can you
21 make him an exhibiter?

22 MS. CORRAL: Yes, Mr. Hearing Officer.

23 MS. SAKURA: It would be us; we would be the
24 presenters.

25 HEARING OFFICER CHAKALIAN: Oh, very good.

1 MS. CORRAL: Okay. You can try now, please.

2 Q. (BY MS. SAKURA) Yeah, Mr. Edler, can you see the
3 video?

4 A. Yes, ma'am.

5 Q. Can you see what's in the background?

6 A. Yes, that's the concrete silo and the bins for the
7 aggregate at a batch plant.

8 Q. And is this representative, in your experience, of
9 what happens at a concrete batch plant on a windy day?

10 A. Absolutely.

11 Q. And because of the concrete batch plant emitting
12 this amount of fugitive dust, where are these plants usually
13 located?

14 A. This looks like the plant in Carrizozo. I
15 recognize --

16 Q. Where in general are batch plants located?

17 A. In -- outside of town or industrial areas. I
18 don't think I have ever seen one in the middle of a
19 residential area, and I have traveled a lot. I've been
20 lucky to travel.

21 Q. Thank you.

22 MS. SAKURA: Okay. That's all we have for
23 Mr. Edler, Mr. Hearing Officer. We'll move on to
24 Mr. Martinez.

25 HEARING OFFICER CHAKALIAN: Okay. And before we

1 go to Mr. Martinez, I just want you to know that I have
2 received two e-mails from the hearing clerk, and I don't
3 know if I should just ignore them because you're still
4 working on these exhibits or not, but one sent out at 2:05
5 from Ms. Corral says Sonterra Labeled Exhibits. The next
6 one says Sonterra Labeled Exhibits 1 through 15. Should I
7 ignore both e-mails at this point?

8 MS. SAKURA: Yes, please.

9 MR. HNASKO: Yes, please. And we will endeavor to
10 put -- after this hearing is over, or either tonight or
11 early tomorrow morning, we will put together a master list
12 for you and correct numerical designations to make your life
13 a lot easier.

14 HEARING OFFICER CHAKALIAN: And yours as well.

15 Ms. Myers, so just so you understand, even though I
16 have admitted them into evidence, since they're not marked
17 at this point, we're not really going to do anything more
18 with Sonterra's exhibits until they provide them marked to
19 me, and then I will make sure to get them to you to as
20 marked.

21 THE COURT REPORTER: Perfect. Thank you.

22 HEARING OFFICER CHAKALIAN: You're welcome. I
23 don't want there to be any confusion.

24 So now you're going to call your last witness, and who
25 is that?

1 MS. SAKURA: It's Mr. Eluid Martinez.

2 HEARING OFFICER CHAKALIAN: Is he here?

3 MS. SAKURA: He's going to be sitting right next
4 to me.

5 HEARING OFFICER CHAKALIAN: Oh, he's next to you,
6 okay. Very good. Mr. Martinez.

7 MR. VIGIL: Mr. Hearing Officer, this is Chris
8 Vigil. I'd like to voir dire this witness.

9 HEARING OFFICER CHAKALIAN: Mr. Vigil, after he
10 spells his name and gets sworn in.

11 THE WITNESS: My name's Eluid L. Martinez. First
12 name's spelled E-L-U-I-D.

13 HEARING OFFICER CHAKALIAN: And your last name,
14 please.

15 THE WITNESS: Martinez, M-A-R-T-I-N-E-Z.

16 HEARING OFFICER CHAKALIAN: Okay. Could we get
17 the court reporter to swear him in.

18 ELUID MARTINEZ

19 (being duly sworn, testified as follows:)

20 HEARING OFFICER CHAKALIAN: And, Mr. Martinez,
21 before Mr. Vigil voir dices you, I think I saw a piece of
22 paper -- here we go -- at the end of the SOI that was
23 submitted January 19. I have the testimony of Eluid
24 Martinez, and it says exhibits. I have a resume.

25 THE WITNESS: That's correct.

1 HEARING OFFICER CHAKALIAN: Okay. Good. And then
2 I see a New Mexico Office of the State Engineer, it looks
3 like a well application, and then I see maybe some
4 regulations or general conditions of approval. Those are
5 your -- those are your two exhibits, is it?

6 THE WITNESS: That particular application refers
7 to a well permit that had been issued on the Roper property
8 where this plant will be situated.

9 HEARING OFFICER CHAKALIAN: Mr. Martinez, that's
10 not my question. My question is, are those your two
11 exhibits?

12 MS. SAKURA: Yes, beyond what's -- what's already
13 in the record as in the --

14 HEARING OFFICER CHAKALIAN: Of course. Of course.
15 I'm just asking about what's been submitted, Ms. Sakura.

16 MS. SAKURA: Yes.

17 HEARING OFFICER CHAKALIAN: And then I'm going to
18 go to the rebuttal, Sonterra rebuttal just to see -- were
19 there -- I see summaries here, so I guess there were no
20 exhibits -- well, there is one Exhibit 1, but that's an
21 e-mail from Liz Stefanics to a constituent or a house
22 member. Okay. Then I think these are the only two exhibits
23 that we're going to bring in on this -- his testimony.

24 Mr. Vigil, I just wanted to clear that up for my own
25 understanding, so please proceed with your voir dire.

VOIR DIRE EXAMINATION

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BY MR. VIGIL

Q. Thank you so much. Good afternoon, Mr. Martinez. I've been in cases with you before. In particular, you might recall the New Mexico copper case; I have seen you testify. I know you have a long -- long and respectable career.

So beginning in 1971, it looks like you began your career as an engineer, and it seems like you've worked almost exclusively in the area of water with regard to the American southwest; is that correct?

A. Not -- well, yes, that's correct.

Q. I see. And that includes a presidential appointment, right, to the Bureau of Reclamation; Is that correct?

A. That's correct.

Q. And senate appointment, State senate appointment as the secretary of the New Mexico Interstate Stream Commission?

A. No, that was appointed by the Governor of the State of New Mexico and confirmed to the State Senate.

Q. Okay. I'm sorry. I'm sorry. And you also served as the State engineer as a cabinet secretary; is that correct?

A. That's correct.

1 Q. Okay. Excellent. In your career, have you --
2 what -- can you tell us a little bit about any experience
3 you have with concrete batch plants?

4 A. I don't recall any.

5 Q. I see. Have you ever been involved in the writing
6 or development of a concrete batch application?

7 A. No.

8 Q. Have you ever submitted or reviewed a concrete
9 batch plant application to the New Mexico Environment
10 Department or any state agency in any state?

11 A. No.

12 Q. I see. And if you could just give us a ballpark
13 estimate, or you could give us a number, about how many
14 concrete applications have you been involved in?

15 A. Concrete batch plant applications?

16 Q. Yes.

17 A. For air quality or water quality?

18 Q. Water -- you're saying water quality in concrete
19 batch applications? You have been involved in concrete
20 batch plant applications with regard to water quality?

21 A. No.

22 Q. Okay. Have you been involved in concrete batch
23 plants at all in any capacity?

24 A. No.

25 MR. VIGIL: Okay. I have no further questions.

1 Thank you.

2 HEARING OFFICER CHAKALIAN: Mr. Rose, is there any
3 voir dire from you?

4 MR. ROSE: No, Mr. Hearing Officer. I'm familiar
5 with Mr. Martinez's history and his experience.

6 HEARING OFFICER CHAKALIAN: Wonderful. Okay.
7 Thank you. So let's see, do we have rebuttal testimony,
8 Ms. Sakura?

9 MS. SAKURA: Yes, we do, Mr. Hearing Officer.

10 HEARING OFFICER CHAKALIAN: Okay. So then this
11 witness will be limited to 30 minutes if he needs to use all
12 of it. It is 3:36 now.

13 DIRECT EXAMINATION

14 BY MS. SAKURA

15 Q. Mr. Martinez, could you briefly describe your
16 education and experience?

17 A. Before we start, there's one correction to my
18 summary testimony I need to --

19 Q. Could you -- could you briefly describe your
20 education and experience, please?

21 A. Yes. I was -- I graduated from New Mexico State
22 University in 1968 with a degree in civil engineer. 1971, I
23 went to work for the State Engineer's Office, which
24 administers the waters of the State of New Mexico, worked in
25 that office from 1971 through 1994, in various capacities.

1 In 1990, I was appointed State Engineer by the Governor,
2 confirmed by the Senate, and I retired from that position in
3 late 1994. In 1995, I was appointed by President Clinton as
4 the Commissioner of United States Bureau of Reclamation,
5 confirmed by the United States Senate, and I served in that
6 capacity for five years.

7 After retiring from that federal position, I came back
8 home and opened a water rights consulting company, where I
9 consulted in water rights and water resources management in
10 the State of New Mexico, and I still am the principal in
11 that company, and I still consult to this day.

12 Q. Mr. Martinez, did you file a written summary of
13 your opinions in this matter?

14 A. Yes.

15 Q. Do you have any corrections to that written
16 summary?

17 A. Yes. In one of the places in my summary where I
18 make reference to potential sources of supply for water, I
19 reference a potential source being an application for the
20 appropriation of water in the State of New Mexico and make a
21 comment that the Rio Hondo stream system is closed, and
22 therefore the engineer would reject an application. Upon
23 inquiry with the Roswell division of the State Engineer's
24 Office last week, I was informed that they're still
25 accepting applications for new appropriations of groundwater

1 in Hondo Basin, so that would be a change in my testimony,
2 and that would be it.

3 Q. And does that change in your testimony --

4 HEARING OFFICER CHAKALIAN: Ms. Sakura.

5 MS. SAKURA: Yes.

6 HEARING OFFICER CHAKALIAN: Ms. Sakura, I'm
7 looking for the full written testimony of Mr. Martinez, and
8 I don't see it. Are you referring to the summary?

9 MS. SAKURA: Yes. We filed summaries of our --

10 HEARING OFFICER CHAKALIAN: Okay. I want to make
11 sure that I'm looking for the right --

12 MS. SAKURA: Sure.

13 HEARING OFFICER CHAKALIAN: -- for the right thing
14 here.

15 MS. SAKURA: It's on Page 12.

16 HEARING OFFICER CHAKALIAN: I'm going from 11 --
17 Page 11 of your summaries or your SOI to basically --

18 MS. SAKURA: Yes.

19 HEARING OFFICER CHAKALIAN: -- to 14.

20 MS. SAKURA: That's correct.

21 HEARING OFFICER CHAKALIAN: I have a question for
22 your witness. I'm sorry to interrupt you, but then you'll
23 be free to continue.

24 Mr. Martinez, did you write this?

25 THE WITNESS: I wrote the underlying information

1 that was summarized by the attorney.

2 HEARING OFFICER CHAKALIAN: Okay. So then is the
3 answer no then?

4 THE WITNESS: Did I write this particular -- no, I
5 provided the underlying information.

6 HEARING OFFICER CHAKALIAN: Okay. I -- my
7 question to you, sir, is starting on Page 11, and going to
8 14, are these your words?

9 THE WITNESS: Yes, to the extent that they were
10 taken from my underlying document.

11 HEARING OFFICER CHAKALIAN: Okay. Sir, I'm going
12 to take that answer as a no. It sounds like someone else
13 has recharacterized your -- whatever you submitted; is that
14 correct?

15 THE WITNESS: They summarized what I submitted,
16 yes.

17 HEARING OFFICER CHAKALIAN: That's -- thank you.
18 Okay. Please proceed.

19 Q. (BY MS. SAKURA) That one change that we just
20 spoke of to your testimony regarding the potential sources
21 of water, does that change your opinion about the sources of
22 water?

23 A. No.

24 Q. And why not?

25 A. It doesn't change my opinion. The opinion I --

1 I'm referring to is that the only liable base source of
2 supply would be the trucking of water, and it doesn't change
3 that opinion.

4 Q. Okay. Thank you. So do you adopt this summary as
5 your -- a summary of your prefiled testimony?

6 A. Yes.

7 HEARING OFFICER CHAKALIAN: Ms. Sakura.

8 MS. SAKURA: Yes.

9 HEARING OFFICER CHAKALIAN: Would you direct me to
10 the sentence or sentences that were just modified by his
11 testimony.

12 MS. SAKURA: Yes, of course. If you look on
13 Page 13.

14 HEARING OFFICER CHAKALIAN: Okay. I'm there.

15 MS. SAKURA: It's at the top of the page, and it's
16 the first full sentence. It starts, "An application seeking
17 a permit for new appropriation."

18 HEARING OFFICER CHAKALIAN: I see that. So -- but
19 there's another sentence after that. So, Mr. Martinez,
20 would you please correct on the record what you are changing
21 on Page 13.

22 THE WITNESS: Yes. The sentence that reads right
23 now reads, "An application seeking a permit for new
24 appropriation of underground water" -- "groundwater for
25 industrial purposes" -- "for industrial uses at the facility

1 would be rejected because the site of the proposed well
2 would be located within the Hondo Underground Water Basin,
3 which is now closed to a new appropriation." That has
4 changed to, that the applicant can seek a new appropriation
5 of groundwater for industrial uses at the facility because
6 the State Engineer's Office is accepting applications for
7 new appropriation.

8 HEARING OFFICER CHAKALIAN: What about the next
9 sentence? Would you read that and tell me if that still
10 applies?

11 THE WITNESS: That particular sentence goes to the
12 transfer of water rights, which is a different issue.

13 HEARING OFFICER CHAKALIAN: Okay. All right. So
14 then the only sentence that's affected is the one you just
15 mentioned and you've clarified. Okay. Thank you. Thanks,
16 Ms. Sakura.

17 MS. SAKURA: Of course.

18 Q. (BY MS. SAKURA) Mr. Martinez, do you have an
19 opinion about the -- whether the application is complete
20 based on the lack of identification of the source of water?

21 A. Yes, I have an opinion, and the reason for that
22 opinion, I looked at the application with reference to the
23 use of water to address emissions that weren't resolved from
24 this particular batch plant and identified where in the
25 application and the supporting documentation a reference is

1 made to the use of water. And there are several places in
2 that application or report to the application where water is
3 referred to as a means of abating the emissions. And it
4 appears to me that water is critical to the control of the
5 emissions, and without a showing of the amount of water that
6 would be necessary or where the water would come from, it
7 appears to me that the abatement could not occur.

8 Q. Do you have an opinion about how water could be --
9 how the applicant would obtain water at that site?

10 A. Yes. The applicant would obtain water from three
11 sources that I've identified, an outside well, bringing in
12 water by a pipeline, or trucking water into the site.

13 Q. And do you have an opinion about which is the most
14 likely of those three options that --

15 A. I was not able to locate a pipeline -- a water
16 pipeline that could be made available to this site. There
17 is no well on the property that's been approved by the State
18 engineer for commercial use based on my review of the files
19 of the State Engineer's Office, so it would appear to me
20 that the most viable way of getting water to that site would
21 be by trucking it.

22 Q. And if we could get the ability to share our
23 screen, I'm going to show you a draft permit. Are you aware
24 whether or not the applicant had -- Mr. Roper had applied
25 for a permit to appropriate groundwater at this site?

1 A. Yes. In the exhibit that the hearing officer was
2 referring to with respect to the State Engineer document,
3 that is a copy of an application that had been made by
4 Mr. Roper for a livestock well at the site where the
5 proposed plant is to be located. That permit was approved
6 by the State Engineer's Office, allow the diversion of three
7 acre-feet -- up to three acre-feet per annum for livestock
8 purposes only.

9 Q. And when was that?

10 A. The date of the permit -- I don't recall, but
11 let's see -- the date of the permit would have been May 7th,
12 2021.

13 Q. Does this permit -- can the applicant use water
14 under this permit for the operation of the concrete batch
15 plant?

16 A. No.

17 Q. And do you -- are you aware of what happened to
18 this permit subsequent to the May 7th permit approval?

19 A. The file at the State Engineer's Office,
20 electronic files, indicate that the well has not been
21 drilled, and Mr. Roper requested that that permit be
22 withdrawn and canceled.

23 Q. When was that?

24 A. That was subsequent to May -- to the date of the
25 summary testimony.

1 Q. If you look at this --

2 A. That would have been canceled on January 24th,
3 2022.

4 Q. Have you reviewed the application in terms of how
5 much water is required to produce 125 cubic yards of
6 concrete?

7 A. Yes.

8 Q. How much?

9 A. The -- the estimate is 40- -- approximately 48
10 acre-feet per year.

11 Q. And -- and --

12 A. And that's for the production of up to a maximum
13 500,000 cubic yards as set forth in the application.

14 Q. And how many gallons is approximately 48 acre-feet
15 per year?

16 A. It's approximately 15,600,000 gallons.

17 Q. And so how many gallons of that a day to produce
18 that amount of concrete?

19 A. If you use the 365 days, it would be about
20 42,000 gallons, on average, per day.

21 Q. Did you -- we heard testimony today that the
22 amount of truck trips is going to be limited to 305 truck
23 trips a day. Did you review the application regarding the
24 delivery of water through water trucks?

25 A. My mention that 42,000 gallons per day on average

1 would require a truckload -- if a truck was hauling
2 2,000 gallons per day -- I mean, per trip, would require
3 approximately 22 trucks per day. I -- where I found in the
4 application in the supporting material was the section
5 dealing with haul roads that included the number of trucks
6 that were hauling materials into the site. Water is
7 material that would be hauled into the site, and my review
8 of the documentation reflects that the water right -- water
9 trucks that would be used if the water was hauled by trucks,
10 is not included or addressed in the application.

11 Q. And you looked -- you just testified about how
12 many trucks that would be a day. What was that number
13 again?

14 A. Approximately 22 based on a truck that can haul
15 2,000 gallons per load.

16 Q. And do you know whether or not there are water
17 storage tanks at the facility?

18 A. I'm not aware of any storage tanks at the -- on
19 the property, and the application documents don't refer to
20 any storage tanks that's being proposed or on-site for
21 water.

22 Q. Did you look at the application's assertion that
23 they are going to additional moisture content and is
24 emissions factor at Units 3, 4, 5, and 6?

25 A. Yes, the supporting documentation refers to

1 several tables. One table identifies all the units where
2 they expect to have emissions. Another table addresses how
3 those units would be addressed by moisture, and that -- one
4 of the tables reflects units -- those units as having
5 additional moisture content as a control mechanism.

6 Q. And did you make any calculations regarding how
7 much water would be required if that additional moisture
8 content was not present in those plants?

9 A. With respect to those units, there is no way a
10 determination can be made. There is no evidence, no
11 supporting documentation, or anything in the application
12 that would enable somebody to make an estimate.

13 Q. But water is going to be required at those Units;
14 is that correct?

15 A. That -- yeah, that's correct, the application says
16 water will be required at those units, doesn't address
17 quantity or source.

18 Q. What about for the aggregate piles?

19 A. Now, the aggregate piles is a different issue
20 because if you look at the application in the calculation
21 portion of the application, it assumes that, the way I read
22 it, is that emissions be controlled by moisture within the
23 aggregate and sand pile. And it -- it estimates a -- I
24 believe a 2.65 percentage of the volume of the aggregate and
25 sand to be watered. So by using that and going back to the

1 500,000 cubic yards of proposed concrete, I can estimate
2 that the maximum amount of water that would be required as
3 the aggregate and sand piles to abate emissions would be
4 approximately 14-acre feet per year.

5 Q. And so that would be in addition to the 48-acre
6 feet per year that's required just for operations; is that
7 right?

8 A. That's correct.

9 Q. And so did you give any calculations about how
10 much water just the aggregate piles and the operations would
11 require?

12 A. That's the answer I gave you. It would be
13 approximately 14-acre feet per year.

14 Q. Added -- so --

15 A. It would -- if the piles were dry, it would have
16 to be added to the piles. If the pile contained the
17 moisture, it wouldn't have to be added, so it would be a
18 14-foot on acre-feet maximum.

19 Q. Okay. So did you -- are there any calculations
20 regarding how much water would be required to obtain control
21 of emissions at Units 3, 4, 5, and 6?

22 A. Well, I just answered that. There's not any
23 information available for me to make that estimate.

24 Q. But there would be some amount of water, correct?

25 A. There would have to be, because the applicant

1 proposes to use water to abate emissions at those units.

2 Q. So if you took the approximately 48 acre-feet just
3 needed for operations and added it to the cap of 14
4 acre-feet to obtain moisture control of the piles, what's
5 your total amount just for those two units?

6 A. Approximately 60 acre-feet a year.

7 Q. And how much water is that?

8 A. Well, if you can digitalize an acre of land, the
9 water would be stacked 60 feet high.

10 Q. Do you have an opinion about whether or not the
11 applicant needs to identify source and supply of water?

12 A. The applicant proposes to utilize water to meet
13 the abatement conditions that will result from emissions
14 control. It doesn't appear to me personally to, on the one
15 hand, say we're going to need the water but not quantify how
16 much we're going to need or where it's going to come from.
17 And it would be, I think, incumbent to have that information
18 because if the water is either -- is not available, then the
19 conditions cannot be met as required by approval of a
20 permit.

21 Q. And if the water is available, can the applicant
22 comply with air quality standards?

23 A. Well, I think they -- if it's shown that the water
24 is available both as to quantities and source, then they
25 would comply with conditions of the permit.

1 Q. But if they don't provide that information, what
2 would happen?

3 A. Well, if they don't provide that information, what
4 you wind up with is -- my opinion -- is approval of an
5 application that would allow construction of a facility
6 that, for all practical purposes if the water's not
7 available, would be a construction of a facility that would
8 be sitting out there not being able to be used.

9 MS. SAKURA: Thank you. That's all we have for
10 our witnesses.

11 HEARING OFFICER CHAKALIAN: Okay. Are your
12 witnesses ready to stand for cross-examination?

13 MS. SAKURA: They are.

14 HEARING OFFICER CHAKALIAN: Okay. And they are
15 going to stand as a panel?

16 MS. SAKURA: That's correct.

17 HEARING OFFICER CHAKALIAN: Mr. Vigil, would you
18 like to go first?

19 MR. VIGIL: Sure. I just have questions for
20 Mr. Martinez.

21 CROSS-EXAMINATION

22 BY MR. VIGIL

23 Q. Mr. Martinez, you said just maybe about a
24 minute-and-a-half ago that -- that you -- you estimate the
25 60-acre feet per year would be needed for aggregate piles

1 for emission controls. Where did you derive this estimate
2 from?

3 A. What I said is the 60-acre feet would be a
4 combination of the amount of water that would be required to
5 produce the concrete and the amount of water that would be
6 necessary to abate the aggregate and sand, and the -- if I
7 may --

8 Q. Take your time.

9 A. It would be -- we would address the Section 6,
10 Page 2 of the Montrose report, there's a section dealing
11 with uncontrolled particulate emission rates. At the bottom
12 paragraph, it made reference to moisture content for sand
13 and aggregate. And the way I interpret the discussion of
14 this docket is that the particulate matter that will result
15 from the aggregate and sand does not require mitigation
16 because the mitigation is the moisture in the piles, which
17 is estimated at 2.6 percent of volume, so what I'm saying is
18 that if the aggregate and the sand have the -- the --
19 moisture in them, then you don't need any additional water.
20 But if the piles of sand and aggregate are -- do not have
21 the 2.65 percent moisture content, then you need to apply
22 water. And the estimate of the 14-acre feet assumes the
23 maximum production and the piles being dry. Does that
24 answer your question?

25 Q. Yeah, it -- yes. Thank you so much. It's

1 interesting to me a very detailed answer for someone who has
2 never worked on concrete batch plants before. Did you write
3 this testimony, and is this testimony yours?

4 A. Yeah. Let me ask you this. I'm a registered
5 professional engineer, been practicing engineering, civil
6 engineering for over 50 years.

7 Q. I'm asking the questions, sir. I'm asking the
8 questions. Thank you very much.

9 A. I calculated this.

10 Q. So let me move on to my next question. You gave
11 the opinion that the permit application should require that
12 watered resources be proven. Where did you get that idea,
13 and what is that based on?

14 A. That is my opinion. And it's based on the fact
15 that it does not appear to be practical to require water as
16 a means of granting the permit without knowing if the
17 water's going to be available either in quantities or
18 sources before that permit is approved. That's a personal
19 opinion.

20 Q. Oh, it's a personal -- I see, you're giving a
21 personal opinion, okay. I just wanted to clarify that.
22 Thank you so much.

23 Okay. I'd like to move on to your direct testimony.
24 Let's see here. If I could have the sharing screen, would
25 that be possible. Is the administrator able to do that for

1 me? Can I have the share screen, please?

2 MS. JONES: Yes, I'm going to do it for you,
3 Mr. Vigil. Hold on.

4 There you go. See it?

5 MR. VIGIL: Yes. Thank you so much. Let me see
6 here.

7 Q. (BY MR. VIGIL) Can you see this, Mr. Martinez?
8 Needs to be bigger, maybe?

9 A. Just --

10 Q. Is that better?

11 A. Okay. Good.

12 Q. You give the opinion in your direct testimony or
13 your summary of testimony that the application is incomplete
14 and unreliable because the requested permit capacity of 20.3
15 trucks an hour does not include trucks necessary to
16 accomplish the delivery of water required for the operation
17 of the concrete batch plant for the emission control
18 measures identified by the applicant. And my question is
19 about your -- your -- your expert opinion that the
20 application is incomplete. What do you -- what is the basis
21 of your opinion? How is it that you know that the
22 application is incomplete?

23 A. I'm glad you asked that question. The -- the
24 application requires identification of rocks they are
25 hauling, the material for the processing of the concrete.

1 The application and the supporting documentation make no
2 reference to the trucking of water. So if water is trucked
3 into that facility, that has not been accommodated for in
4 the calculations. And if you don't account for something in
5 the calculations, then it's -- the application's
6 insufficient.

7 Q. And that's another personal opinion?

8 A. No, that's -- that's a fact.

9 Q. It's a fact, okay. It's a fact, but what is a
10 fact -- I guess I'm wondering where -- how you obtained this
11 fact?

12 A. Let me ask you a question. On Section 6, Page --
13 Section 6, Page 1, under road calculations --

14 Q. I'm asking the questions to you, sir. I'm not
15 under examination.

16 A. You asked a question, I want to answer it.

17 Q. Okay.

18 A. It reads, if you transport raw materials,
19 processed materials, or product into our facility more
20 frequently than one round trip per day, you have to account
21 for that trip in your analysis. And all I'm saying is that
22 if they're trucking water in, and that has not been
23 accounted for, then the application mechanics are not
24 correct.

25 Q. Thank you so much. I have one other question for

1 you. Going now to your rebuttal testimony. In your
2 testimony, you testify that the deputy director, the deputy
3 cabinet secretary for NMED, had made a claim to a senator, a
4 State senator. How did you know this?

5 A. That document was brought to my attention, and the
6 document speaks for itself.

7 Q. And what -- I -- it doesn't speak to me. What
8 does it say, sir? Can you explain to us why it's relevant
9 to your testimony?

10 A. Let me -- can I have a copy of it so I can read
11 it?

12 Q. It's up on the screen. And let me make it larger.
13 I'm sorry. I guess I'm not understanding how this is
14 relevant to your testimony. Could you explain that to us?

15 A. The -- that statement I interpret to mean that the
16 secretary hasn't -- no authority under the law or under
17 regulation to deal with water issues. That's the way I
18 interpret it. The -- on the face of the application --

19 Q. Do you want me to scroll back up? I'm sorry.

20 A. Is everybody on? Can you hear us? Can anybody
21 hear me?

22 MS. SAKURA: Go back in.

23 MR. ROSE: We can hear him. I don't think there's
24 any problem. We can hear everyone.

25 A. It says -- she stated, does not have the authority

1 under applicable statute or rules to make a decision on the
2 air permit based on water quality issues. And I'm saying
3 the permit, on its face, depends on water to be effective.
4 So for a statement to say that water cannot -- issuance
5 cannot be considered on an air permit does new -- to me does
6 not make sense because the permit is conditioned on being
7 able to use water, so that opens the question as to how much
8 water and how can the agency make sure that the water is
9 available to effect the permit. That's the point I was
10 trying to make. Does that answer your question?

11 Q. (BY MR. VIGIL) Yeah. Thank you. I have one more
12 question for you. Right above that, and if you look on the
13 screen it's up here, you testify that accordingly,
14 consideration of the hearing of other evidence related to
15 water rights, well permits, water resources, and water
16 consumption are relevant evidence in order to determine the
17 applicant can comply with the moisture requirements set
18 above. Just one last question: How do you know what is
19 relevant evidence? How do you make that determination?

20 A. Maybe I'm --

21 MR. ROSE: It looks like they're gone. I can't
22 tell. They're no longer on the screen.

23 THE COURT REPORTER: I do not hear them as well.

24 HEARING OFFICER CHAKALIAN: Ms. Myers, let's take
25 a five-minute break and let them come back on.

1 (NOTE: Recess taken, 4:08 to 4:11 p.m.)

2 HEARING OFFICER CHAKALIAN: We are back on the
3 record. I think that we have Mr. Hnasko and counsel for
4 Sonterra and Mr. Martinez back with Ms. Sakura. And
5 Mr. Vigil, you were asking a question, and I think there was
6 no answer unless I am mistaken.

7 MR. VIGIL: Yeah, I -- thank you, Mr. Hearing
8 Officer, I appreciate it. And thank you, Mr. Martinez. I
9 have no further questions. I'll withdraw the question, and
10 I have no further questions for any of the witnesses at this
11 point.

12 HEARING OFFICER CHAKALIAN: Mr. Rose.

13 MS. SAKURA: Mr. Hearing Officer, the question
14 pending that I think the witness is entitled to answer.

15 HEARING OFFICER CHAKALIAN: And who is telling me
16 this?

17 MS. SAKURA: That's -- sorry. Ms. Sakura, can you
18 see me? So I think Mr. Vigil just --

19 HEARING OFFICER CHAKALIAN: Ms. Sakura, the
20 question has been withdrawn, so there's no question to
21 answer.

22 MS. SAKURA: Mr. Martinez was in the middle of his
23 answer when there were technical difficulties, so it would
24 be akin to Mr. Vigil interrupting Mr. Martinez's --

25 HEARING OFFICER CHAKALIAN: Let me check with the

1 court reporter. Let me see what's going on.

2 (Previous question was read by the reporter.)

3 HEARING OFFICER CHAKALIAN: Okay. I'm going to
4 allow the witness to finish his answer.

5 A. The relevancy, in my opinion, comes from the fact
6 that the permit is conditioned upon the use of water to
7 abate the emissions that were results from this facility.
8 In other words, it -- the permit on its face relies on the
9 use of water, and to say that water is not an issue in this
10 permit process, I cannot reach that conclusion. It has to
11 be relevant and has to be an issue.

12 HEARING OFFICER CHAKALIAN: Mr. Vigil.

13 MR. VIGIL: Thank you. I have no further
14 questions.

15 HEARING OFFICER CHAKALIAN: Okay.

16 Mr. Rose.

17 MR. ROSE: Let me unmute first. And let me start
18 with Dr. Ituarte, and for that matter, I guess anybody can
19 answer, but I think my questions are more directed at his
20 testimony. So I believe he's back with us.

21 CROSS-EXAMINATION

22 BY MR. ROSE

23 Q. Dr. Ituarte, you -- as I understood your
24 testimony, in part, you're saying that the Sierra Blanca
25 meteorological data should have been used in this permit

1 application and should have been part of the modeling that
2 was performed in support of this permit application; is that
3 correct?

4 A. Well, what I'm actually saying is that the Sierra
5 Blanca data set that's more representative of the conditions
6 of the project when compared with the Holloman Air Force
7 Base database, I don't know if there's any other data source
8 or MET station that may be more -- more appropriate.

9 Q. And are you familiar with the EPA criteria or the
10 monitoring guide- -- the MET guidance concerning the amount
11 of data or the number of days that's required for use of the
12 MET set in modeling?

13 A. Correct, yes.

14 Q. And you familiar with -- and I'm referring to the
15 February 2000 EPA document entitled, "Meteorological
16 Monitoring Guidance for Regulatory Modeling Applications."
17 That's what you're familiar with?

18 A. Yes, I'm familiar with that guidance.

19 Q. And are you familiar with requirements of that
20 document for completeness?

21 A. Yes.

22 Q. And do you know what the document says is the
23 requirement for MET data set, the completeness of the MET
24 data set to be used for modeling?

25 A. Yeah, I believe it's 90 percent of recorded hours.

1 Q. That's correct, and that's on Page 5-4.

2 Do you know whether the Sierra Blanca MET set meets
3 that requirement?

4 A. No, I don't know.

5 Q. Were you here when Mr. Wade testified about the
6 use of the Sierra Blanca data and the fact that it was
7 approximately 22 percent missing data in that MET set?

8 A. No, I wasn't on the hearing.

9 Q. Okay. If, in fact, Mr. Wade's representation's
10 correct, would it be appropriate to use the Sierra Blanca
11 MET set?

12 A. Correct, yeah, or any other more appropriate data
13 sets.

14 Q. And do you know whether, for example, either the
15 Alamogordo or the Holloman Air Force Base MET set met the
16 90 percent criteria?

17 A. No, I'm not aware of the percentage of
18 completeness.

19 Q. Okay. I think you also testified concerning
20 running the model with either the Sierra Blanca MET set, and
21 the -- and you testified concerning Mr. Wade's testimony on
22 what the results were when he ran it, correct?

23 A. Yes.

24 Q. And you testified that you couldn't opine as to
25 the propriety of his answers because you didn't have access

1 to -- to the data or the -- the inputs to the modeling
2 analysis; is that correct?

3 A. Yeah, that's -- that's correct. There's no
4 reference in the application or any other document to the
5 actual assumptions or the data inputs they use for rerunning
6 the model using the Sierra Blanca data set.

7 Q. And do you -- did you ever request access to those
8 data sets so that you could run the model?

9 A. No, I did not.

10 Q. Okay.

11 MR. ROSE: Let me refer to Ms. Bernal here for a
12 second.

13 CROSS-EXAMINATION

14 BY MR. ROSE

15 Q. As I understood your testimony, you said that you
16 prepared applications for concrete batch plants, correct?

17 A. Yes, that's correct.

18 Q. And were any of those concrete batch plants in New
19 Mexico?

20 A. No, they were not.

21 Q. And were they mostly in Texas, then?

22 A. Yes, that's correct.

23 Q. And are -- and are -- were they all minor sources,
24 or were they major PSD sources?

25 A. They were all minor sources.

1 Q. And under Texas rules, are you -- is an applicant
2 required to conduct mon- -- modeling as a part of that
3 application?

4 A. If they are a new source review, not a standard
5 permit, then yes.

6 Q. And of the sites you worked on, were those regular
7 NSR permits or standard or permit by rule in Texas?

8 A. I worked on a combination of standard permits,
9 permit by rule and NSRs.

10 Q. And so then you conducted -- or at least the
11 modeling was conducted as a part of those -- the NSR
12 applications, correct?

13 A. Yes, but I did not conduct modeling. I mainly did
14 the application and the emissions -- emissions calculations
15 for that.

16 Q. Okay.

17 And let me see, Mr. Edler, I think you testified based
18 on your experience at concrete batch plants, I guess mostly
19 in Illinois; is that correct? If he's still -- there he is.
20 I think he's on mute.

21 CROSS-EXAMINATION

22 BY MR. ROSE

23 A. There we go.

24 Q. That's better.

25 A. Yes, they were -- they were in Illinois.

1 Q. And how long ago was that experience? Is it
2 recent or -- I think you had talked about 20 years -- I
3 wasn't sure from your testimony how long ago.

4 A. The last I worked --

5 Q. We're getting some feedback, Mr. Edler. I'm not
6 sure where from, so we can't hear you.

7 A. The last year I worked was 2006.

8 Q. And are you familiar with dust control technology
9 and whether there have been any advances in the technology
10 in this industry since 2006?

11 A. I'd have to say no.

12 Q. For example, you -- were you here when Mr. Wade
13 testified earlier today?

14 A. Yes.

15 Q. And he used an exhibit that showed, for example, a
16 central dust collection system.

17 A. (Nodded head.)

18 Q. And also had a picture of the silo baghouse; is
19 that correct?

20 A. Right.

21 Q. And are you familiar with either of the companies
22 that supply these or the technology that's being proposed
23 here?

24 A. Not by -- not by name, no.

25 Q. So you couldn't opine that if Mr. Roper were to --

1 or Roper Construction were to employ these -- this
2 technology, or these -- this equipment, that -- that, in
3 fact, there would be emissions the way you predicted?

4 A. Only thing I can go by is what his other plant
5 looks like, and I can see the cement seeping down the sides.
6 I would --

7 Q. Do you know whether --

8 A. It's the same thing.

9 Q. I didn't mean to cut you off. I thought you were
10 finished.

11 A. I just assumed he would use the same system that
12 he's got down there, which that's my assumption, that could
13 be wrong.

14 Q. And my understanding is that the equipment and the
15 technology he intends to use here is not the same as he's
16 using at that facility, so that it's more modern equipment
17 and, in fact, maybe the most modern equipment of any bag- --
18 or at least of any concrete batch plant in the state.

19 MR. ROSE: Excuse me for a minute. Mr. Hearing
20 Officer, I have no further questions.

21 HEARING OFFICER CHAKALIAN: Is there any redirect,
22 Ms. Sakura?

23 MS. SAKURA: No, Your Honor, we do not have any
24 redirect.

25 HEARING OFFICER CHAKALIAN: Okay. So then does

1 Sonterra rest its case?

2 MS. SAKURA: Yes, Your Honor.

3 HEARING OFFICER CHAKALIAN: Okay. It is 4:24.

4 And I want to go back to public comment. Ms. Sakura and
5 Mr. Hnasko, you're going to have at least an hour to get
6 these exhibits corrected and sent out so that we can get
7 this done today with the court reporter in attendance as
8 opposed to e-mailed tomorrow, so let's go back to public
9 comment. And I have a list in front of me of people who
10 have signed up to speak. There is a large number of people
11 listed. So because I want to get everyone an opportunity to
12 speak, there's going to be a three-minute time limit. If
13 you need more time, you can always ask for it. But we're
14 going to start with a Mr. Jeff Bleau.

15 MR. ROSE: Mr. Hearing Officer, before he starts,
16 are we going to discuss post-hearing process after the --

17 HEARING OFFICER CHAKALIAN: Yes.

18 MR. ROSE: -- public comment? Okay. Thank you.

19 HEARING OFFICER CHAKALIAN: Yes. And I definitely
20 want to get these exhibits nailed down because I -- I don't
21 want anyone to be confused about this.

22 So, Mr. Bleau, are you ready?

23 PUBLIC SPEAKER: Yes, I am.

24 HEARING OFFICER CHAKALIAN: You are there, okay.
25 Wonderful, sir. Would you spell your name, please.

1 PUBLIC SPEAKER: J-E-F-F, B-L-E-A-U.

2 HEARING OFFICER CHAKALIAN: E-A-U. Thank you.

3 And please swear him in.

4 (NOTE: Speaker duly sworn.)

5 HEARING OFFICER CHAKALIAN: Please proceed, sir.

6 PUBLIC SPEAKER: Okay. I live in Alto, east of
7 the proposed site, and the prevailing winds, you know, most
8 of the year are from out of the west. I guess I would like
9 to first start off by saying I know it's been a long day,
10 and I want to thank everybody for all of the help that
11 they've given. The NMED staff that's been here and at other
12 sites, so thank you very much.

13 To begin with, I want to be sure to say that I'm not
14 here to prevent the permit applicant from trying to advance
15 his business, but I am here to say that the proposed
16 location is inappropriate and possibly harmful to the
17 community and the neighboring properties. We've talked a
18 lot about the process today, about dust generation.
19 We've -- I'd like to emphasize that the proposed site is not
20 a big site, so to get to the fence line doesn't take very
21 long, and all the discussion about -- about wind speed and
22 MET data, it just is a function of how long -- how long and
23 how fast can a release get to the point that it becomes
24 fallout, so that's -- you know, it's going -- we've got a
25 lot of anecdotal data that shows that there's dust

1 accumulation outside of concrete plants. So you can talk
2 all you want about concentrations; the fact is that dust
3 does accumulate in and around concrete batch plants.

4 Further, we have talked about the particulate matter
5 being suppressed by the use of water. I'm kind of
6 paraphrasing some of the stuff because I'm trying to cut
7 through it. The spray results that impacts the surface
8 water and possibly groundwater should the applicant ever use
9 groundwater for production, it would clearly be a threat to
10 residential well users in the area and, you know, and
11 several people in the community. Hundreds.

12 Additional incidental impacts include air quality
13 issues as we talked about related to transport vehicles,
14 road issues, and other equipment. These impacts would cross
15 over into noise, light, and operational nuisances.

16 Now, for the last quarter-century and beyond, the
17 area's been primarily residential and recreational use. The
18 appeal of that will suffer in the presence of the plant.
19 This could result in decreased values in tax revenues. This
20 is something that I appreciate commissioner Tom Stewart's
21 position on, and I wish the rest of the County Commission
22 would get involved and get behind him. And in essence, we
23 really should be getting a better plan around -- I'm not
24 saying we shouldn't have an additional concrete resources,
25 but they have to be located in the right place. This isn't

1 one of them. Thank you.

2 MS. CORRAL: Thank you. I'm sorry, Mr. Hearing
3 Officer, you're on mute.

4 HEARING OFFICER CHAKALIAN: Mr. Skinner, are you
5 available for us? Would you spell your name, please?

6 PUBLIC SPEAKER: Sir?

7 HEARING OFFICER CHAKALIAN: Spell your name,
8 please.

9 PUBLIC SPEAKER: Yes, it's J-O-H-N, S-K-I-N-N-E-R.

10 HEARING OFFICER CHAKALIAN: Ms. Myers.

11 (NOTE: Speaker duly sworn.)

12 HEARING OFFICER CHAKALIAN: Thank you, sir. You
13 have three minutes. Please proceed.

14 PUBLIC SPEAKER: My wife and I reside at 123
15 Coyote Mesa Trail, Alto, New Mexico. We have lived there
16 for the past 24 years and have owned this seven-and-a-half
17 acres for the past 34 years. Our property is situated
18 approximately one mile north/northeast of the proposed batch
19 plant. With the prevailing wind in this area, it blows from
20 the southwest. Consequently, that puts our house in the
21 direct line of prevailing winds from the proposed Roper
22 batch plant.

23 My wife and I have severe dry allergies or dry eye
24 conditions as well as allergies. During the Spring and the
25 Fall, the weather conditions are such that we like to have

1 our windows open. If you approve the Roper batch plant, we
2 would be subject to the pollutants produced by the batch
3 plant, which our doctors tell us would exacerbate the dry
4 eye and allergic conditions. We would have to install
5 central air, which we haven't needed for the past 24 years.

6 We also object to the excessive water use, which has
7 been previously mentioned by Mr. Martinez to be
8 41,000 gallons a day. This extreme water use would
9 obviously deplete any existing wells in the vicinity of the
10 Roper batch plant and would seriously lessen the value of
11 our property.

12 Several years ago, the Sonterra subdivision opposed
13 Mr. Hubbard from transferring water rights from the Hondo
14 Valley to his new subdivisions just north and west of
15 Sonterra. And when the hydrologist testified in District
16 Court that they would deplete the wells at Sonterra,
17 Mr. Hubbard was denied the transfer of his water rights. We
18 contend that this is the same issue with the Roper concrete
19 batch plant, and we ask that you deny Mr. Roper's request.
20 Thank you very much.

21 HEARING OFFICER CHAKALIAN: Thank you, sir.

22 Next we have Mr. Botkin. Sir, would you spell your
23 name after you unmute yourself.

24 PUBLIC SPEAKER: J-O-S-H, B-O-T-K-I-N.

25 HEARING OFFICER CHAKALIAN: You're going to be

1 sworn in.

2 (NOTE: Speaker duly sworn.)

3 HEARING OFFICER CHAKALIAN: Please proceed, sir.

4 PUBLIC SPEAKER: Thank you. I'm the owner of High
5 Country Landscapes and Nursery situated on the property
6 directly adjacent to the proposed concrete batch plant. My
7 property boundary is within less than 100 feet of where his
8 proposed silo is supposed to be. Prior to beginning this
9 business, I received my Master's degree from Colorado State
10 University in ecology through the Warner College of Natural
11 Resources and worked in rangeland ecology. My wife, a
12 veterinarian, and I chose the Alto/Ruidoso area to raise our
13 young children because of its pristine environment and
14 beauty.

15 In 2013, I decided to deviate from my previous career
16 path and pursue the American dream of entrepreneurship,
17 leading to the creation of my business. My mission was
18 simple: To provide ecologically sensitive landscapes to the
19 public in an area where its natural resources can be
20 preserved. At the same time, maintaining the natural beauty
21 of New Mexico and educating the public on the various flora
22 and fauna in the area as they relate to landscapes. There's
23 always been my aspiration to create a self-sustaining
24 nursery and provide its plant and tree materials to the
25 community.

1 High Country Landscapes and Nursery now provides
2 plants and trees to the local, public, and surrounding area,
3 which in large part, we grow here on site. We also refill
4 landscape products and create designs that incorporate
5 finished landscapes to our customers. Part of our master
6 plan is designed to perform future public outreach programs
7 geared for youth and the general public on-site in our
8 state-of-the-art teaching greenhouse, programs that will
9 entail horticulture and general concepts in ecology as they
10 apply to our ecological zone.

11 When I purchased my property in 2014, I was the only
12 business operating within the four initial tracts of land
13 being sold by Frank Reed. I had three sets of criteria the
14 land had to meet without exception as I searched the
15 appropriate acres to carry out my aspiration. First, the
16 property had to be close or located to the New Mexico -- I'm
17 sorry; Highway 48. Second, the property had to be flat.
18 And, third, the land had to be protected by local zoning
19 and/or restrictions that would harbor certain protections to
20 ensure the success and the future growth of my company. The
21 property purchased in 2014 and which is adjacent to the CBP
22 met all those requirements.

23 Like many, I was not notified through mail, flyer, or
24 by phone regarding the proposal for the construction of the
25 CBP, even though I stand to be the most affected by its

1 operation. Instead, I found out through a concerned
2 resident living in our subdivision located directly across
3 the highway after she happened to stop and examine an
4 8-and-a-half by 11 sheet of paper posted obscurely 50 feet
5 off the highway through dense vegetation and stapled to a
6 barbed wire fence. This obvious disregard for transparency
7 by Roper Construction was not the first attempt to the
8 surrounding community to disguise his intentions for the
9 property. The first came when he intentionally misled the
10 seller and me about his plans for the property. Mr. Roper
11 understood the land would not be sold and that his intent
12 was to operate an industrial business such as a CBP.

13 Second came shortly after that before he closed on the
14 property when Mr. Roper tried to unilaterally change the
15 language in the deed restrictions that will allow him
16 protections to operate a CBP as confirmed by an e-mail chain
17 between he and his title company.

18 MS. CORRAL: Time.

19 PUBLIC SPEAKER: May I have more time to finish,
20 please?

21 HEARING OFFICER CHAKALIAN: Mr. Botkin, can you
22 sum it up in about 15 seconds whatever else you had to say?

23 PUBLIC SPEAKER: Sure. So skipping through
24 everything I had prepared, my nursery stands to lose quite a
25 bit. The dust that falls on my trees outside have been

1 shown through various studies that it will cause degradation
2 in plant health, bee health, and all abiotic responses by
3 the roots. I do not see how it is fair for NMED, whose
4 mission statement has been reiterated multiple times today,
5 how -- the greater good is outweighed by the individual in
6 this instance. So in summary, again, I stand to lose quite
7 a bit. I've built this business from the ground up, and I
8 do not know why I stand to be the one that loses everything
9 for construction of a plant.

10 HEARING OFFICER CHAKALIAN: Mr. Botkin, thank you
11 for taking your time to advise the hearing of your thoughts.
12 I appreciate it.

13 Mr. Thompson, Doug Thompson. Mr. Thompson, would you
14 spell your name, please.

15 PUBLIC SPEAKER: Yes. My name is Doug Thompson.
16 That's D-O-U-G, last name Thompson, T-H-O-M-P-S-O-N.

17 HEARING OFFICER CHAKALIAN: Ms. Myers.

18 (NOTE: Speaker duly sworn.)

19 HEARING OFFICER CHAKALIAN: Please proceed, sir.

20 PUBLIC SPEAKER: In his opening statement,
21 Mr. Vigil cautioned many of the public comments would be
22 emotional. That was his word. Most of my neighbors are not
23 technical people. My expertise is in electronics, which
24 kind of disqualifies me to be a technical expert in this
25 area; however, what we are here to talk about is the effect

1 of -- on our lives -- oops. Okay. Is the effect on our
2 lives by -- and by definition that is an emotional topic.
3 Because this plant does not yet exist, it is unrealistic to
4 expect technical grade comments from the public, and it is
5 arrogant to make demeaning comments directed at us, the
6 property owners and residents, who live nearby the proposed
7 location. During a hearing such as this one, there is no
8 argument to be presented to persuade any sentient being that
9 this concrete batch plant will improve the quality of life
10 for any living thing in the area.

11 If any of you folks up there in Baja, Colorado head
12 north of I-40, is -- and if an industrial polluter of this
13 nature would be located within one-half mile of your home,
14 can you honestly say that you would not react with emotion?
15 Thank you.

16 HEARING OFFICER CHAKALIAN: Thank you, sir.

17 Mr. Cannella. Mr. Cannella, after you take your mask
18 off, would you spell your name for us.

19 PUBLIC SPEAKER: He's just walking in right now.

20 HEARING OFFICER CHAKALIAN: Oh, okay. Well, oh,
21 there you are. Mr. Cannella, would you spell your name for
22 the record.

23 PUBLIC SPEAKER: Yes. Can you hear that?

24 HEARING OFFICER CHAKALIAN: Now we can hear you,
25 sir. Please spell your name.

1 PUBLIC SPEAKER: Oh, this one? Okay. F-R-A-N-K,
2 C-A-N-N-E-L-L-A.

3 HEARING OFFICER CHAKALIAN: Thank you, sir.

4 Ms. Myers.

5 (NOTE: Speaker duly sworn.)

6 HEARING OFFICER CHAKALIAN: Mr. Cannella, you have
7 three minutes to make a general comment.

8 PUBLIC SPEAKER: Okay. Well, my comments are
9 that, my opposition to the proposed concrete plant, he's
10 proposing to establish this concrete plant in a residential
11 neighborhood. It would adversely affect the air, water
12 quality of the neighbors. I know that's been stated before,
13 but I'll state it again. And I did some research, and if
14 you look at that area, there's eleven subdivisions within
15 just a mile or so of that concrete plant. Each of these
16 subdivisions has its own water and -- and, you know, lots of
17 residents shall be impacted on the water and the residents
18 that live there. Also, the drains that sit on top of the
19 Little Creek drainage area, which drains the Monjo area and
20 White Mountain wilderness. The Little Creek drainage also
21 provides water for hundreds of people and private wells and
22 municipal water system.

23 If this many trucks are cleaned, wastewater would go
24 into the aquifer. The plant would be less than three miles
25 from the White Mountain wilderness area and would have a

1 negative impact on the wilderness area. Also, the RV park
2 and the plant nursery located nearby would -- would be
3 adversely affected by a concrete plant and probably be
4 forced to shut down.

5 And it's for these reasons that I'm opposed to the
6 concrete plant. I just think it's an inappropriate location
7 because of the residential nature of that -- of that
8 neighborhood. I don't think you would allow something like
9 that in Santa Fe or Espanola. If you came down here and saw
10 the land, it's beautiful land, and it's totally residential,
11 and it's just totally inappropriate. That's it.

12 HEARING OFFICER CHAKALIAN: Thank you
13 Mr. Cannella.

14 May I now hear from Ms. Cannella. Would you spell
15 your name, please.

16 PUBLIC SPEAKER: It's the same as Frank, and my
17 first name is Margaret, M-A-R-G-A-R-E-T.

18 HEARING OFFICER CHAKALIAN: Okay. Sounds good.
19 We're going to swear you in now.

20 (NOTE: Speaker duly sworn.)

21 HEARING OFFICER CHAKALIAN: Please proceed.

22 PUBLIC SPEAKER: Frank and I moved here in 1975,
23 and we've been married for 50 years, and I agree everything
24 that Frank said, and I also want to put in that I read a lot
25 about endangered species and how New Mexico is concerned

1 about all kinds of endangered species in the Albuquerque
2 Journal and also in the Ruidoso News, and one of the
3 endangered species is the spotted owl, and the spotted owl
4 is in our wilderness area, and the spotted owl doesn't stay
5 in one tree all the time. He flies around, so he would be
6 adversely affected by this plant, and a lot of other
7 animals, and, most of all, the people that live here. Thank
8 you for your consideration.

9 HEARING OFFICER CHAKALIAN: Thank you,
10 Ms. Cannella.

11 May I hear from Hank Jones if he's available. Should
12 we move on to the next person on the list? Barbara Yount.

13 PUBLIC SPEAKER: Well, that was close. I'm
14 Dr. Barbara Yount. My property --

15 HEARING OFFICER CHAKALIAN: Ms. Yount, would you
16 please wait for just a moment. Thank you. Would you please
17 first spell your name.

18 PUBLIC SPEAKER: B-A-R-B-A-R-A, Y-O-U-N-T.

19 HEARING OFFICER CHAKALIAN: You're going to be
20 sworn in before you make your statement.

21 (NOTE: Speaker duly sworn.)

22 HEARING OFFICER CHAKALIAN: Please proceed,
23 Ms. Yount.

24 PUBLIC SPEAKER: I'm Dr. Barbara Yount. My
25 property is less than 100 yards from the proposed plant.

1 Should you decide to approve this air quality permit, your
2 decision will destroy my peaceful life of hiking, gardening,
3 and spending hours every day and evening outdoors enjoying
4 the fresh air, stunning views, and night skies that brought
5 me to Alto, New Mexico. Numbers on an application do not
6 adequately describe the health damage that will prove to the
7 residents of the more than 140 properties within a one-half
8 mile radius of this site.

9 NMED staff have told me that measures will be taken to
10 prevent visible dust from crossing the property line. It is
11 not the visible we fear, but the invisible respirable silica
12 dust is one-one-hundredth the size of a grain of beach sand.
13 This invisible silica dust, when inhaled, bypasses our
14 body's defenses and goes straight to our lungs, creating
15 scars in the delicate lung fibers that can never be repaired
16 and may eventually lead to terminal silicosis. It also
17 exacerbates asthma, heart and lung disease, and this starkly
18 limits our outdoor activities, thus damaging not only our
19 physical health but our mental health as well.

20 This proposed CBP with its toxic air, extreme water
21 usage, loud industrial noise, proposed long operating hours,
22 and heavy truck traffic would reach far beyond its borders,
23 harming the health and welfare of residents, disturbing
24 habitats of native New Mexico wildlife, birds, and plants,
25 depleting natural resources, and contaminating the scarce

1 surface water, and perhaps irreparably harming the
2 subsurface water we all share.

3 The benefits of this CBP will accrue to Roper
4 Construction, leaving taxpayers of Lincoln County, taxpayers
5 of New Mexico, and the federal government and local property
6 owners to pay for the increased healthcare costs, road
7 repairs, management of road dust and water quality, damage
8 to local wells, loss of property value; in short, to
9 subsidize the profits of Roper Construction. No company has
10 the right to subsidize its profits with our physical and
11 mental health. Concrete batch plants are a necessary part
12 of 21st-century construction, but this concrete batch plant
13 at this location is wrong and a danger to the community. As
14 a 78-year-old little old lady with health issues, including
15 allergies and a compromised immune system, I implore you to
16 deny this permit.

17 HEARING OFFICER CHAKALIAN: Thank you.

18 May we next hear from Kevin Fleharty. Would you spell
19 your name, sir.

20 PUBLIC SPEAKER: K-E-V-I-N, F-L-E-H-A-R-T-Y.

21 HEARING OFFICER CHAKALIAN: Ms. Myers.

22 (NOTE: Speaker duly sworn.)

23 HEARING OFFICER CHAKALIAN: Please proceed.

24 PUBLIC SPEAKER: I want to first start off by
25 seconding Doug's comments about Mr. Vigil's inaccuracy in

1 describing us as a community that is not connected and is
2 only mouthing off, and I'd like to second Barbara's comments
3 about her feelings towards -- our feelings towards the batch
4 plant.

5 I came to town in -- I came to town in 1974 for a
6 weekend, and I never left. Why? I have two grown kids, two
7 grown grandkids, and I have been working in Lincoln County
8 all this time, and this is something that is beyond belief
9 that it has gotten this far. We have nothing right to say
10 about the batch plant. Yes, cement is necessary in our
11 community; the location is unnecessary. There is way too
12 many negatives that outweigh the only positive that there
13 is, and that is to line the pockets of Mr. Roper. Thank
14 you.

15 HEARING OFFICER CHAKALIAN: Thank you, sir.

16 Next we'd like to hear from Ms. Sue Catterton. Would
17 you spell your name, please.

18 PUBLIC SPEAKER: S-U-E, C-A-T-T-E-R-T-O-N.

19 HEARING OFFICER CHAKALIAN: Ms. Myers.

20 (NOTE: Speaker duly sworn.)

21 HEARING OFFICER CHAKALIAN: Please proceed, ma'am.

22 PUBLIC SPEAKER: My husband and I have lived in
23 the Ranches of Sonterra about -- which is about
24 one-and-a-half miles away from the proposed plant. We have
25 lived in the area for about 17 years, and I concur with

1 everything everyone has said here, so I don't want to repeat
2 everything because I know we're short on time. But I am
3 very disappointed that no one in the air quality permit
4 office has felt the need to come to Alto to see firsthand
5 what we have been writing letters, e-mails, calls, and so on
6 to you about. And I wish you had been here in December when
7 winds were recorded at our airport at 83 miles per hour. I
8 am not opposed to the concrete plant. I don't think anybody
9 is because we need concrete, but there's a right place and a
10 wrong place, and this is the wrong place. I mean, in the
11 middle of residential areas, come on. And after all the
12 testimony, I just hope you will do the right thing and
13 disallow this permit.

14 HEARING OFFICER CHAKALIAN: Ms. Catterton,
15 Ms. Catterton? Can we bring back Ms. Catterton, please.

16 PUBLIC SPEAKER: I'm here.

17 HEARING OFFICER CHAKALIAN: There you are.

18 Ms. Catterton, I first want to assure you and everyone else
19 who has spoken today that I personally know people who have
20 visited the site. So it is not the case that no one from
21 the Environment Department has been to Airport Road, Route
22 220, in Alto, New Mexico. So I first want to -- I first
23 want to say that to you.

24 PUBLIC SPEAKER: Okay, well --

25 HEARING OFFICER CHAKALIAN: New Mexico because New

1 Mexico Environment Department is not a heartless department.
2 Second of all, I want to reiterate that zoning issues are
3 outside of our purview. We have no control, no control,
4 over zoning, and I said that in my opening comments, that we
5 are under a legal obligation to follow the law and the rules
6 when considering this type of a permit, and there are many
7 things that -- that the members have said that are heartfelt
8 and completely understandable, but they are without our
9 control, and so I just wanted you to know that.

10 PUBLIC SPEAKER: Well, thank you. But the water
11 is under your control, and we have hardly any water, and so
12 I don't -- we don't understand that. How you can say that
13 it isn't applicable, that just because Roper says that he
14 can provide water doesn't -- I mean, I guess I'm so old I'm
15 not naive to think that just because somebody puts that on
16 an application, that that's the truth. And they can do it.
17 And/or will do it.

18 HEARING OFFICER CHAKALIAN: Well, I understand
19 your position. Thank you.

20 PUBLIC SPEAKER: Thank you.

21 HEARING OFFICER CHAKALIAN: Thank you, ma'am.

22 Mr. Steven Hightower. Mr. Hightower, I think we heard
23 from your wife earlier.

24 PUBLIC SPEAKER: Yes, you did.

25 HEARING OFFICER CHAKALIAN: Very good. Would you

1 spell your name, please.

2 PUBLIC SPEAKER: S-T-E-V-E-N, H-I-G-H-T-O-W-E-R.

3 HEARING OFFICER CHAKALIAN: Okay, sir.

4 Ms. Myers.

5 (NOTE: Speaker duly sworn.)

6 HEARING OFFICER CHAKALIAN: Mr. Hightower, please
7 proceed.

8 PUBLIC SPEAKER: Mr. Hearing Administrator, I have
9 lived in Lincoln County for 50 years now. I live within
10 one-half of a mile of the proposed plant -- batch plant
11 site. I was not notified by certified mail by the NMED, so
12 add me to Number 14. I had the circle surveyed, and I'm
13 clearly within the half a mile circle, was not notified. I
14 think we've missed something, and this deals with air
15 quality. I know a little bit about it. I was a commercial
16 pilot here for 42 years. I flew out of the Sierra Blanca
17 airport since its construction in 1987, and there's
18 something very unique that happens along the Little Creek
19 valley, not actually unique to New Mexico, but I'm surprised
20 that I see it nowhere in your parameters for studying air
21 quality. You guys talk about temperature, humidity, wind
22 speed, and direction, but nowhere do I see any kind of
23 reference to temperature inversions.

24 Now, temperature inversions happen on my property
25 every single day in the wintertime. This morning I recorded

1 a minus 4-degree Fahrenheit temperature in the valley.
2 Along Little Creek, on top of a hill on my property, it was
3 32 degrees. That's a strong inversion that takes place
4 every single day. The particular site is a bowl where this
5 thing is proposed to be built. I promise you there's an
6 inversion layer that takes place there every single day, and
7 nothing affects air quality in New Mexico as much as a
8 temperature inversion does, and it's not even been
9 considered from what I have been able to read.

10 You guys know what this does to the air in
11 Albuquerque? You have nights on end where you can't even
12 burn your fireplace because there's an inversion layer. So
13 I don't think your data from Holloman matters one bit. I
14 don't think your data from Sierra Blanca airport would
15 matter one bit. Sierra Blanca airport sits on top of a
16 mesa. The valleys that surround that airport invert
17 nightly. I've seen fog form in those valleys where the
18 airport's sitting up in the clear air.

19 The same thing is going to happen in that bowl where
20 you propose to build that site, and I'd like to know why an
21 inversion is not included in your study. It affects air
22 quality. You know what happens when there's an inversion,
23 it traps particulate matter. It stays for hours or days as
24 long as that inversion is in place. The air quality will
25 become so poor in that bowl where that site is, nobody's

1 going to want to drive by there. You're going to want to
2 hold your breath, okay. So I think nothing short of a study
3 at the site would address the air quality that's actually
4 going to get produced there.

5 Further, I know you said something about zoning. We
6 don't have any zoning here. We have -- we rate our
7 properties by deed restriction. I'd like more time if
8 you're trying to tell me I'm out of time. There are deed
9 restrictions in place on this proposed site. Mr. Roper knew
10 full well --

11 HEARING OFFICER CHAKALIAN: Mr. Hightower,
12 Mr. Hightower, how much more time do you need?

13 PUBLIC SPEAKER: I need a minute or two. I'd like
14 my five minutes.

15 HEARING OFFICER CHAKALIAN: Sir, there were too
16 many people that had signed up, so we had to reduce it to
17 three, but you can take another minute, sir. Go ahead.

18 PUBLIC SPEAKER: Okay. Let me try to sum this up.
19 Hundreds of folks will be affected by construction of this
20 plant, air pollution, light pollution, noise pollution; only
21 one person benefits. Yeah, that's emotional. I'm going to
22 be -- I have talked to a local appraiser, my property value
23 could drop as much as, according to him, 50 percent. This
24 is absurd. This is an absurd location to attempt to put
25 this plant. Mr. Roper knows it. I tried to solve this

1 early. I tried to double his money. You know what he said
2 to me? I stand to make hundreds of thousands of dollars.
3 Why would I sell this property to you? What an attitude.
4 You know, we're trying to solve the problem here. We're
5 trying to help our neighbors. We're not trying to hurt our
6 neighbors. Please say no.

7 HEARING OFFICER CHAKALIAN: Thank you,
8 Mr. Hightower.

9 May I hear from Nan Fegely, if I'm pronouncing that
10 right. Thank you. I can see you, ma'am. Can you spell
11 your name, please.

12 A. First name is Nancy, N-A-N-C-Y, last name is
13 Fegely, F-E-G-E-L-Y.

14 HEARING OFFICER CHAKALIAN: Ms. Myers.

15 (NOTE: Speaker duly sworn.)

16 HEARING OFFICER CHAKALIAN: Please proceed.

17 PUBLIC SPEAKER: I'm going to say some of the
18 similar things. The -- certainly about the area being a
19 residential area, and it was a residential area long before
20 Roper acquired the property, and you know the site is
21 located next to the White Mountain Wilderness area, and Fort
22 Stanton-Snowy River conservation area is nearby and downwind
23 of the site. The property is simply not appropriate for
24 such an intense industrial use because of its proximity to
25 so many residences, property, and sensitive environmental

1 areas, which you also know.

2 We have been wondering if you had visited the site,
3 and then it was good to hear that you said you had. But it
4 would have been a good thing had you contacted some of our
5 representatives. We know you're well acquainted with the
6 Alto CEP. We would have been able to show you our concerns
7 and showed you some of our good old Alto hospitality, but
8 you would at least know in better detail our concerns.

9 We know that the -- our huge concern is the issue of
10 pollutants and fugitive dust this type of operation creates
11 and the carcinogen crystalline silica. Dust and pollutants
12 will not stay contained to the site or nearby. You've heard
13 about reports of New Mexico wind and the winds generated
14 just in this past January. I live about three miles
15 downwind from the site, and in my area, I had sustained
16 winds of over 35 miles per hour and gusts between 65 and
17 75 miles per hour. We can be affected by dust storms
18 created by White Sands, that's 40 miles away, and that
19 brings chips in here. And I believe gypsum is heavier than
20 crystalline silica.

21 As stated, enormous amounts of water must -- oh, I'm
22 sorry. Let me just also mention that the existing Roper
23 plant in Carrizozo is remarkably similar to the topography
24 as the Holloman model. Is it possible that the permit for
25 Alto, for the Alto location submitted was just a plug and

1 play of previous submitted permit? It didn't have to -- it
2 didn't have any -- by using an existing permit that's
3 remarkably similar to the other location, he didn't have to
4 do additional research and, as stated, did not -- the Sierra
5 Blanca airport was not used because it was missing
6 22 percent of the information required in the permit
7 process. So I'm curious why that additional information
8 wasn't gathered and -- to make that application far more
9 acceptable in terms of the topography because an arid open
10 area like Holloman has nothing to do with what we have here
11 with mountains and the canyons that we have here, with the
12 downslope winds, et cetera.

13 MS. CORRAL: Time.

14 PUBLIC SPEAKER: I'll sum my comments up with the
15 idea that my husband and I moved to Alto to enjoy a very
16 active outdoor lifestyle in a beautiful scenic area. We
17 fell in love with the clear blue skies, almost devoid of a
18 single contrail left by aircraft, and a night sky brilliant
19 with stars because of a dark sky ordinance and little
20 pollution. Air quality is the unparalleled here, currently
21 as witnessed by --

22 MS. CORRAL: Your three minutes have been passed.

23 PUBLIC SPEAKER: I'll sum up in just 30 seconds.
24 The air quality is unparalleled here, currently, as
25 witnessed by the fact that snow, which has been on the

1 ground for over seven days, is still pristine without a
2 speck of black, brown, or rust-colored dirt on its surface.
3 That is a sure indicator of contaminants in the area when
4 you see that kind of dirt on snow. The CBP will affect our
5 air quality and the quality of life for all of us in the
6 area. Thank you.

7 HEARING OFFICER CHAKALIAN: Thank you, Ms. Fegely.

8 Do we have a Mr. or Ms. Stierwalt? Okay. Do we have
9 a Mr. Lou- --

10 PUBLIC SPEAKER: I'm here.

11 HEARING OFFICER CHAKALIAN: And who are you,
12 ma'am?

13 PUBLIC SPEAKER: Diorly Stierwalt.

14 HEARING OFFICER CHAKALIAN: Great. Would you
15 please spell your name?

16 PUBLIC SPEAKER: Yes. D-I-O-R-L-Y,
17 S-T-I-E-R-W-A-L-T.

18 HEARING OFFICER CHAKALIAN: Very good.

19 Ms. Myers, would you swear her in.

20 (NOTE: Speaker duly sworn.)

21 PUBLIC SPEAKER: And this is very emotional. This
22 is very emotional, whatever it is, and once I get going, I'm
23 going to have to finish, okay, and I'll make it quick, but
24 it may be over.

25 After searching for over a year in 2020, we found a

1 home midway between my work in Ruidoso, my husband's
2 principalship in Capitan. And that is the only property on
3 the Coyote Mesa. It was breathtakingly beautiful, filled
4 with tall, majestic Ponderosa pines, serene with abundant
5 wildlife, elk, deer, turkey, bear, and had the most glorious
6 night skies. It was a hidden gem. Our forever home. Life
7 was good.

8 December 12th, 2010, I was diagnosed with
9 triple-negative breast cancer, one of the rarest in the
10 world at that time. There was little info on causes, no
11 treatment protocol existed, and the survival rates were
12 grim. I was 54 years old and had two young adults in
13 college. I was blessed with a brilliant oncologist who
14 threw every available treatment at it, a double mastectomy,
15 four months of big red chemo, and lastly, I was driven to
16 Roswell for 28 consecutive days to get my glow on from
17 radiation. I finished up with two more surgeries. Our
18 forever home provided us respite, salvation, a protective
19 cocoon in a nurturing environment for family and fellowship
20 during treatment and healing. 18 months later, I was
21 finally done, and we had survived.

22 Next, in 2012, came the Little Bear fire. It jumped
23 48 and came down on the Coyote Mesa. We were given less
24 than an hour to leave. We evacuated in a firestorm. I
25 turned for one last look at our forever home. It was

1 horrific. After a week of being told our home burned and
2 then that it had not, we were able to see for ourselves that
3 it was still standing. 90 percent of our trees were
4 destroyed. We had over \$100,000 in losses, and we were
5 unable to return home for 36 days because of the caustic
6 smoke. But our forever home was still there, and we
7 survived.

8 But due to the lack of vegetation, the floods came,
9 our ground floor was standing in four to six inches of
10 water, removed soggy carpets, removed mushy drywall, threw
11 out destroyed furniture, repaired the damage, and we
12 survived. Next came the beetles. They devoured many of the
13 remaining weakened trees. We cried as we cut them down. It
14 took us seven years to clean up our five acres of dead and
15 downed trees because one hundred percent of the cost to do
16 so came out of our pocket. And as public school educators,
17 we had no expendable income. Once again, we survived.

18 We now live in a moonscape. We see neighbors we did
19 not know existed. Gone are our beautiful trees and our
20 privacy. We get horrific high winds. The dust from our
21 dirt roads wreak havoc, and the traffic noise from Highway
22 220 reverberates over our property since we no longer have
23 trees for a buffer. However, we gained a full view of
24 Sierra Blanca, bought the adjoining five acres, were making
25 the best of what we have. After all, it's our forever home,

1 and we survived again.

2 But today, we are facing a most formidable foe of a
3 different kind. The most destructive yet. One that feeds
4 off greed and disdain for its neighbors. One that appears
5 to be insurmountable. A man-made threat that will take away
6 our rights as a property owner. Roper's construction
7 proposed concrete batch plant on Highway 220, just under a
8 half-mile from our property. Since I am immunocompromised
9 from my cancer treatments, I will not be able to stay in my
10 forever home. Any emissions of cancer-causing particles is
11 too many. We will be forced to leave the place that is most
12 sacred to us, our oasis that holds our life story where for
13 years, our family memories had been made and our children
14 and their friends hung out, and holidays have been
15 celebrated. The container of who we are and the reminder of
16 past challenges overcome.

17 Lastly, for the first time in our 21 years of history
18 on the Coyote Mesa, we know that we will not and cannot
19 survive this if it prevails. Our forever home will be no
20 more. What gives a person the right to destroy the way of
21 life for us and our neighbors? You must remember that there
22 are real people with real lives who are facing real
23 consequences concerning our future. This is about real
24 human beings. No one should be able to do this. It's
25 simply wrong.

1 HEARING OFFICER CHAKALIAN: May I hear from Lou
2 Goode. Would you spell your name, sir?

3 PUBLIC SPEAKER: Louis, L-O-U-I-S, Goode,
4 G-O-O-D-E.

5 HEARING OFFICER CHAKALIAN: Ms. Myers.

6 (NOTE: Speaker duly sworn.)

7 HEARING OFFICER CHAKALIAN: Please proceed, sir.

8 PUBLIC SPEAKER: Yes, sir. I'm Louis Goode.
9 Lived with my parents from Oak Ridge, Tennessee, Las Cruces,
10 New Mexico back in 1956. I currently reside with my wife
11 Amy three-quarters of a mile downwind and downstream from
12 Roper's proposed Alto CBP site.

13 Our message is a simple one. Concrete batch plant
14 operations, equipment and trucks make volatile ground
15 compounds, hazardous air pollutants, particulate matter, and
16 non-EPA New Mexico Environmental Department controlled
17 respirable crystalline silica, RCS or silica dust that, once
18 inhaled, can cause lung cancer, kidney disease, silicosis,
19 and incurable lung disease. How can anyone issue an air
20 quality permit for a permanent, temporary or mobile CBP,
21 where people and wildlife, birds, fish and animals live,
22 work, and play.

23 While your draft permit suggests that spring water
24 quality Mr. Roper is yet to prove he can provide over the
25 entire CBP operation, to limit dispersion of hot spots of

1 particulate matter. I mean, EPA and NMED standards. It
2 fails to charge him with controlling the primary source of
3 visible emissions, which is RSC or silica dust, which is a
4 by-product of fly ash aggregate cement mixing. The heavy
5 trucks, more than 150 per day, constantly dropping mud,
6 dirt, aggregate, cement, water, mud oil, transmission, and
7 brake fluid on CR220 and New Mexico 48, coating the asphalt
8 pavement outside of the boundary of the CBP with slime,
9 grit, sludge that forms a clay-like substance, covering both
10 roadways that dries out and becomes dust that's now inhaled
11 by motorists, tourists, wildlife, residents, their children,
12 and grandkids.

13 In the summertime, every day from 3:00 a.m. to
14 9:00 p.m., in the springtime, our 50 to 60 mile-an-hour
15 southwesterly winds will carry these airborne particles for
16 miles and miles, perhaps all the way out to the Sierra
17 Blanca Regional Airport. In the wintertime, northeast winds
18 will carry the hot spot fugitive emissions directly in the
19 Class 1 White Mountain wilderness area.

20 Why does NMED's air quality permitting process focus
21 on what goes on behind or inside the applicant's boundary
22 fences when it actually is the air quality outside the
23 boundary fences that affects people, plants, creatures, and
24 is what really matters most, sir.

25 Hundreds of trucks running up and down five-percent

1 grades constantly shifting gears, dropping debris, fluids,
2 jack-braking on two-lane roads, just to park and idle their
3 diesel engines for hours at or near the CBP site. There
4 would be no noise associated with the traffic, or since
5 you're burning diesel fuel and hazardous VOCs without air,
6 I'll argue that noise and odor are both essential components
7 of air quality because without air, we'd have neither odor,
8 smell, or noise sound. With water being nearly 32 percent
9 air and subject to evaporation, atmospheric pressure, it
10 should be considered a staple of air quality analysis in
11 permitting as well, sir.

12 With RCI's -- NMED's Air Quality Bureau permit request
13 has dozens of revisions. Being the first to examine
14 extensive draft permit, NMED AQB team continues to revise
15 seemingly ultimately for approval. I'm hoping this hearing
16 provides the opportunity for some common sense to be applied
17 to the resolution of this matter.

18 Aside from rejecting air permitting applications,
19 perhaps the right thing to do is direct Mr. Roper to
20 relocate his CBP to a sparsely populated area more than five
21 minutes from his house with fewer people and animals, less
22 source and further away from the EPA Class 1 White Mountain
23 Wilderness area and any other sensitive area so not to
24 adversely affect him with ongoing CBP operations. Direct
25 him to provide you with air dispersion modeling replicating

1 meteorological data and environment at the new location
2 instead of information about Holloman Air Force Base near
3 White Sands National Park, 50 miles southwest of Alto, south
4 of the regional airport, 130 miles southwest of Alto near
5 El Paso, Texas, both located on a desert floor, around
6 4,000 feet of elevation.

7 MS. CORRAL: Mr. Goode, your three minutes are up.

8 PUBLIC SPEAKER: You can't use Sierra Blanca, use
9 Roswell, which is on the right side of the mountain at
10 least. Another minute, sir.

11 Perhaps it would be wise to ask him to resubmit his
12 original application correcting hundreds of typographical
13 errors, this public notice included. The typographic errors
14 like using product weight values for limestone instead of
15 cement, stating asphalt instead of concrete, right. In
16 certain areas requesting information about proximity of
17 occupied structures in sensitive areas and local Indian
18 tribes and using correct units of measurement throughout the
19 documents, including basic application before deeming it to
20 be administratively complete and prior to developing and
21 issuing a draft permit. Almost finished, sir.

22 As a United States Army field artillery school
23 chemical weapons department analyst, I know firsthand how
24 radiation inhalation and monitoring fugitive hot spots and
25 RSC slowly and quietly kills humans and animals.

1 God's blessed us with two sons, four daughters, two
2 beautiful grandchildren. Having found our forever home
3 three years ago now, so I can't imagine not seeing the
4 sunrise from Sierra Blanca from our backyard porch because
5 of a smoke, dust, or particle plume and inversion clouds
6 generated by RCI's backyard batch plant.

7 In short, NMED's approval of RCI's current application
8 for air quality permit just one mile east of the Class 1
9 White Mountain wilderness area will expose our family,
10 friends, neighbors, and wildlife to all significant
11 collateral damage health risks associated with residing
12 within a five-mile radius with CBP.

13 HEARING OFFICER CHAKALIAN: Thank you, Mr. Goode.

14 PUBLIC SPEAKER: We appreciate the opportunity to
15 share our concerns with you at the State level as your
16 constituents.

17 HEARING OFFICER CHAKALIAN: May I hear from
18 Mr. Dennis Venski. Mr. Venski, would you spell your name,
19 please.

20 PUBLIC SPEAKER: First name's Dennis, D-E-N-N-I-S,
21 last name Venski, V, as in "Victor," E-N-S-K-I.

22 HEARING OFFICER CHAKALIAN: Okay.

23 Ms. Myers.

24 (NOTE: Speaker duly sworn.)

25 HEARING OFFICER CHAKALIAN: Mr. Venski, please

1 proceed.

2 PUBLIC SPEAKER: Okay. I understand the need for
3 bureaucracy. I don't like it, but I understand it. I don't
4 think bureaucracy should benefit one person over thousands
5 of neighbors, and that's what he's asking to do. What I
6 dislike most about bureaucracy is the unwritten rule of
7 "pass the buck." Several times today, more than several
8 times, I have heard about the use of water to mitigate dust
9 and pollutants. And even worse, using water or sweeping on
10 the roads to get rid of the dust there.

11 If you use water on a road, it washes all these
12 pollutants into the ditch. It goes back into the water
13 system. If you sweep the road, you put all this dust back
14 into the air, and it goes someplace else, and it has another
15 chance to get in something. It seems by saying if you
16 eliminate the dust and use water, you're passing the buck.
17 Because it takes it out of the air, you no longer have to
18 worry about it. We have to live with it. I hope that
19 people responsible for passing this permit or issuing the
20 permit will look beyond the bureaucracy and see what the
21 residents will have to live with the rest of their lives as
22 90 percent of the people here, this is it. Their next home
23 is going to be a funeral home. Thank you.

24 HEARING OFFICER CHAKALIAN: Thank you, Mr. Venski.

25 Mr. Bill Kren. Mr. Kren, would you please spell your

1 name.

2 PUBLIC SPEAKER: K-R-E-N.

3 HEARING OFFICER CHAKALIAN: First name.

4 PUBLIC SPEAKER: William.

5 HEARING OFFICER CHAKALIAN: Ms. Myers.

6 (NOTE: Speaker duly sworn.)

7 HEARING OFFICER CHAKALIAN: Please proceed.

8 PUBLIC SPEAKER: Okay. My first comment here was
9 going to be if I could see the audience, but I -- I could
10 tell I can't very well do that. However, everyone is at the
11 sound of my voice, I was just going to see if I could see a
12 show of hands of people who are not originally from Alto or
13 Ruidoso, New Mexico attending this session. I can't see
14 that. But I'll proceed here with what I have to say.

15 I come from a big city. I lived -- I was born and
16 raised in Cleveland, Ohio. I also lived in Phoenix,
17 Arizona, and Dallas, Texas. These three cities have three
18 things in common, noise, traffic, and air pollution. These
19 three things is what Alto does not need to have right now.
20 Let me mention those things again: Noise, traffic, and air
21 pollution.

22 Air quality is the reason we're here tonight. I guess
23 it wouldn't be really fair to qualify Alto in the same
24 category as those three major cities; however, if Mr. Roper
25 is allowed to construct this batch plant, I'm afraid the air

1 quality could very well go to that level. It's mentioned
2 that this plant is going to operate 24 hours a day, seven
3 days a week. How in the world could that not affect air
4 quality?

5 I'm not an air quality engineer, I don't know how to
6 measure particulates in the air, and I don't know how much
7 dust can be produced in the air; however, I know that if I
8 go outside and start sneezing, that's because of the dust.
9 I know there's particulates in the air, and that's what's
10 going to make me cough. I must say that the prior two
11 speakers that I've heard so far are quite technical in their
12 research. The air quality will not be the same in this
13 area, and Roper does not need to proceed with this
14 construction. Thank you for your time.

15 HEARING OFFICER CHAKALIAN: Thank you, sir.

16 That's my list. Have I missed anyone?

17 MS. CORRAL: No, Mr. Hearing Officer. Those -- I
18 gave you the list, and we're done with the list, so we're
19 done with public comment for tonight.

20 HEARING OFFICER CHAKALIAN: Okay. There being no
21 more evidence to be presented today --

22 MS. CORRAL: I apologize, Mr. Hearing Officer.
23 Hank Jones earlier, he was not present, but he's present
24 now.

25 HEARING OFFICER CHAKALIAN: Mr. Jones? Are you

1 there, Mr. Jones?

2 MS. CORRAL: He's with the convention center. I
3 see him walking. There he is.

4 HEARING OFFICER CHAKALIAN: Mr. Jones, would you
5 unmute your microphone, please.

6 Ms. Corral -- oh, there we go.

7 PUBLIC SPEAKER: Hello.

8 HEARING OFFICER CHAKALIAN: Hello, Mr. Jones.
9 Would you please spell your name, and then you're going to
10 be sworn in.

11 PUBLIC SPEAKER: Hank Jones, H-A-N-K, J-O-N-E-S.

12 HEARING OFFICER CHAKALIAN: Ms. Myers.

13 (NOTE: Speaker duly sworn.)

14 HEARING OFFICER CHAKALIAN: Please proceed, sir.

15 PUBLIC SPEAKER: I have friends that live in the
16 area, and I'm a resident of Ruidoso and caught wind of this.
17 I know that this is an air quality issue, but it's also a
18 water quality issue, and this facility is located within --
19 within a mile of a waterway of the United States. And under
20 some of the acts that RCRA, the Resource Conservation and
21 Recovery Act established, they're to protect the waterways
22 of the United States. And one of the things that they did
23 was enact the stormwater P3 permits, which basically says
24 you have to collect all the rainwater on your property and
25 make sure whatever's discharged does not contaminate a

1 waterway of the United States. And I haven't seen any of
2 this exhibited in these meetings.

3 Also, they talked about cleaning the dis- -- pavement
4 of wash water with -- clean pavements with wash water. That
5 is a -- these are called non-stormwater discharges, and that
6 would also send contaminants to a waterway. Without getting
7 really into the weeds on this, it's -- this has not been
8 addressed, and I think if it does get addressed, that the
9 permit would not be allowed. Cement contains quite a few
10 heavy metals and above allowable percentages in content, and
11 I think sampling around the area would show that levels
12 would go up and con- -- again, pollute the waters of the
13 United States. Thank you very much.

14 HEARING OFFICER CHAKALIAN: Thank you, Mr. Jones.

15 Okay. Let's go back to closing the hearing. There
16 being no more evidence to be presented today, in accordance
17 with 20.1.4.500 NMAC, this hearing is now closed. The court
18 reporter will submit a copy of the verbatim transcript to
19 the Office of Public Facilitation, which will, in turn,
20 provide the parties with notice of a transcript filing.

21 Ms. Myers, are you anticipating about a week?

22 (NOTE: Discussion held off the record.)

23 HEARING OFFICER CHAKALIAN: Okay. Unless Mr. -- I
24 have seen in the past where the applicant expedites it.
25 Mr. Rose.

1 MR. ROSE: Mr. Hearing Officer, we have not
2 discussed that, so I can certainly talk to the client. But
3 at this point, we -- we have not requested an expedited
4 transcript.

5 HEARING OFFICER CHAKALIAN: Very good. Thank you.
6 And I wasn't suggesting that you should. I was just saying
7 that in the past, it has been done and that shortens the
8 time, but okay. So two weeks, about two weeks from now, we
9 will get the verbatim transcript, and we will issue a notice
10 to the parties. That will, in turn, provide the parties the
11 30 days that they have to submit proposed findings of fact
12 and conclusions of law and a closing written argument. The
13 transcript is the official record of the hearing, and all
14 citations must be to the transcript page and line or to the
15 administrative record or to properly admitted exhibits. And
16 we'll get to the exhibit issue with Sonterra in just a
17 moment. Anyone who wants a copy of the transcript will
18 contact the court reporter directly.

19 Ms. Myers, would you like to give your e-mail address
20 now.

21 (NOTE: Discussion held off the record.)

22 HEARING OFFICER CHAKALIAN: Okay. I need one
23 minute. I will be back in one minute. There's also a Webex
24 audio and visual recording of this hearing, which may be
25 requested from the hearing clerk.

1 Ms. Corral, would you give your e-mail address,
2 please.

3 MS. CORRAL: Yes, Mr. Hearing Officer. My e-mail,
4 which is Madai, M-A-D-A-I, .corral, which is spelled
5 C-O-R-R-A-L, @state.nm.us.

6 HEARING OFFICER CHAKALIAN: Any party that submits
7 a post-hearing submission, it must be in Microsoft Word
8 format. Any issue not addressed in the parties' closing
9 argument is deemed to be waived. Parties may also file
10 joint findings and conclusions by oral motion or written
11 motion. All motion -- all submissions shall be in writing
12 and shall contain adequate references to the hearing record
13 and the authorities relied upon. No new evidence shall be
14 presented.

15 The hearing record is defined at 20.1.4.7 NMAC as the
16 record proper and the verbatim transcript of the public
17 hearing, including all exhibits offered into evidence,
18 whether or not admitted. The record proper is further
19 defined as the administrative record and all documents filed
20 by or with the hearing clerk. Within 30 days after the
21 parties' submissions, I will serve on the parties a hearing
22 officer report and a recommended decision. The parties will
23 then have 15 days to comment.

24 Once we receive the parties' comments, the hearing
25 officer report and the recommended decision, and the

1 comments will go to the deputy secretary for her
2 consideration of whether or not to approve this permit.

3 Now it is time to deal with Sonterra's exhibits.

4 Mr. Hnasko, have you cured the defect?

5 MR. HNASKO: I think we have, Mr. Hearing Officer.
6 And the exhibits have been submitted in numerical form from
7 Exhibit 1 through Exhibit 18. And the only exhibit that we
8 did not include was, of course, the application, so that has
9 all been taken care of.

10 HEARING OFFICER CHAKALIAN: I would like to look
11 at it -- Mr. Hnasko, before you continue, I would like to
12 look at it so that we are talking about what's in front of
13 me. So has it been sent to the hearing officer yet?

14 MR. HNASKO: It's been sent to Ms. Corral plus all
15 the parties, so --

16 HEARING OFFICER CHAKALIAN: All right. Okay. And
17 Mr. Rose and Mr. Vigil, have you received it?

18 MR. VIGIL: Yes, I have.

19 HEARING OFFICER CHAKALIAN: Okay.

20 MR. ROSE: And we have too. We haven't looked at
21 it, but I trust Mr. Hnasko's representations.

22 HEARING OFFICER CHAKALIAN: Okay. And Ms. Corral,
23 have you sent it to me so I can look at it?

24 MS. CORRAL: I have a couple of e-mails from them.
25 I just want to make sure that I sent you the correct one.

1 At what time was the last --

2 MS. SAKURA: It would be within the last ten
3 minutes.

4 MS. CORRAL: Okay. I have not received it from --

5 MS. SAKURA: Or within the last 15.

6 MS. CORRAL: Okay. And it's coming from Linda?

7 MR. ROSE: From Sonya, and I think it was -- we
8 got it timed at 5:28, so it would have been eight minutes
9 ago.

10 MS. CORRAL: I don't have it. No, I don't see it
11 on my e-mail. If you wouldn't mind resending it to me.

12 MS. SAKURA: Sure.

13 Mr. Hearing Officer, do you want us to send you one
14 directly?

15 HEARING OFFICER CHAKALIAN: No. If you'll send it
16 to Ms. Corral, she'll immediately forward it to me. One
17 less thing to not worry about right now.

18 MR. HNASKO: Mr. Hearing Officer, may I add one
19 housekeeping matter.

20 HEARING OFFICER CHAKALIAN: By all means.

21 MR. HNASKO: Thank you. You know, I previously
22 made a motion to include a complete copy of AP-42 --

23 HEARING OFFICER CHAKALIAN: Yes.

24 MR. HNASKO: -- as an additional exhibit. In
25 reviewing the record, I note that the entire AP-42 is

1 attached as Exhibit 14 --

2 HEARING OFFICER CHAKALIAN: Okay.

3 MR. HNASKO: -- to Ms. Bernal's testimony, so I
4 respectfully withdraw that motion.

5 HEARING OFFICER CHAKALIAN: Okay, okay. So, in
6 other words, it's already here.

7 MR. HNASKO: It's already here.

8 HEARING OFFICER CHAKALIAN: Okay. Sounds good.

9 MR. ROSE: And Mr. Hearing Officer, just as a
10 housekeeping matter, I think when you refer to submittal of
11 the post-hearing findings and conclusions and closing
12 argument, I think you asked for them in Microsoft Word.

13 HEARING OFFICER CHAKALIAN: Yes.

14 MR. ROSE: It's my understanding that normally, we
15 submit these both as a PDF and as a Microsoft Word document.
16 That's at least been the practice. Is that --

17 HEARING OFFICER CHAKALIAN: You're more than
18 welcome to.

19 MR. ROSE: Okay. Thank you.

20 HEARING OFFICER CHAKALIAN: Yes, of course.

21 MS. SAKURA: Mr. Hearing Officer, apparently the
22 e-mail is too big for the State system to receive all in one
23 PDF, so we're breaking it up, and that was the issue there.
24 That's why -- I'm not quite sure why Chris could receive it
25 and not --

1 HEARING OFFICER CHAKALIAN: Mr. Vigil.

2 MS. SAKURA: Mr. Vigil, sorry.

3 HEARING OFFICER CHAKALIAN: It's okay.

4 Mr. Vigil.

5 MR. VIGIL: I -- I'm not sure what the question
6 is. I received -- I received three e-mails, and I have not
7 looked at them. I don't have a problem with any of the
8 exhibits or the -- or any representations, but I'm happy to
9 go through the e-mails if you'd like me to.

10 HEARING OFFICER CHAKALIAN: Well, I think it's
11 important that everyone receive the properly marked
12 exhibits.

13 Mr. Rose, did you say that you've looked at this
14 already?

15 MR. ROSE: Mr. Hearing Officer, I noted that I
16 received it and we're looking at it now, but --

17 HEARING OFFICER CHAKALIAN: Okay.

18 MR. ROSE: And I think it was -- if Mr. Vigil's
19 looking for the -- or the e-mail, I think it was the one at
20 5:28, and it was submitted by Ms. Mares, I think, is who it
21 should have come from. Yes, ours is timed 5:28, so --

22 MR. VIGIL: I haven't received a 5:28 e-mail yet.

23 MR. ROSE: I think you may have the same problem
24 that Mr. Hnasko and Ms. Sakura referenced in terms of the
25 actual attachment being too large for the State system,

1 so --

2 HEARING OFFICER CHAKALIAN: Mr. Rose, how big is
3 this e-mail?

4 MR. ROSE: We're looking. It looks like -- Was it
5 51 megabytes? 51.1 megabytes.

6 HEARING OFFICER CHAKALIAN: I see. Yeah, that
7 probably is too big.

8 MR. HNASKO: So we'll resend it in parts if that
9 would be better.

10 HEARING OFFICER CHAKALIAN: Right.

11 MR. HNASKO: Maybe five or six different parts.

12 HEARING OFFICER CHAKALIAN: Or you could create an
13 FTP site and have them access it.

14 MR. HNASKO: Yes.

15 MS. CORRAL: Mr. Hearing Officer, now that we're
16 waiting, they're asking can they still submit comments until
17 12:00 tonight.

18 HEARING OFFICER CHAKALIAN: Yes, we will leave the
19 SmartComment link open for the rest of the evening.

20 MS. CORRAL: Okay. Thank you.

21 HEARING OFFICER CHAKALIAN: Thank you.

22 So, Mr. Hnasko, while we are waiting for your
23 exhibits, why don't we go down a list of what we are going
24 to be looking at. So what is Exhibit 1?

25 MR. HNASKO: Excuse me. I'm back, Mr. Hearing

1 Officer. Sorry.

2 HEARING OFFICER CHAKALIAN: Did you hear the
3 question?

4 MR. HNASKO: I did not. I'm sorry.

5 HEARING OFFICER CHAKALIAN: Okay. So what is --
6 so I have here your 19-page SOI referencing exhibits. What
7 is going to be Exhibit 1?

8 MS. SAKURA: That's going to be the CV.

9 MR. HNASKO: The CV.

10 HEARING OFFICER CHAKALIAN: Can you be very
11 specific about how many pages and whose CV?

12 MR. HNASKO: Yes. I've just got to get it in
13 front of me. I didn't think this would be that complicated,
14 frankly, because I thought you'd get the documents.

15 Exhibit 1 is the CV of Dr. Carlos Ituarte-Villarreal.

16 HEARING OFFICER CHAKALIAN: How many pages is it?

17 MR. HNASKO: Three pages.

18 HEARING OFFICER CHAKALIAN: All right. What is
19 Exhibit 2?

20 MR. HNASKO: Exhibit 2 is the Model Change
21 Bulletin, AERMOD Version 21112.

22 HEARING OFFICER CHAKALIAN: How many pages?

23 MR. HNASKO: 7 pages.

24 HEARING OFFICER CHAKALIAN: Six, seven. Exhibit 3
25 is what?

1 MR. HNASKO: Is Federal Register Volume 82,
2 Number 10, consisting of two pages.

3 HEARING OFFICER CHAKALIAN: Two?

4 MR. HNASKO: Two.

5 HEARING OFFICER CHAKALIAN: Seems to me that it's
6 more than two. It looks like it's three.

7 MR. HNASKO: I have two.

8 HEARING OFFICER CHAKALIAN: I have Pages 5 --
9 Federal Register Page 5231, 5232, and 5222.

10 MR. HNASKO: That's the next exhibit, Mr. Hearing
11 Officer. 5222 is the -- is Exhibit Number 4.

12 HEARING OFFICER CHAKALIAN: Perfect. So it's a
13 one-page --

14 MR. HNASKO: It's a one-page document.

15 HEARING OFFICER CHAKALIAN: Okay. What is
16 Exhibit 5?

17 MR. HNASKO: Exhibit 5 is a -- is part of a Roper
18 Construction dispersion model protocol.

19 HEARING OFFICER CHAKALIAN: Uh-huh.

20 MR. HNASKO: Consisting of one page, Page 9 of
21 that protocol, Exhibit 5.

22 HEARING OFFICER CHAKALIAN: Very good. And what
23 does it depict?

24 MR. HNASKO: Pardon me?

25 HEARING OFFICER CHAKALIAN: What does it depict?

1 MR. HNASKO: Meteorological data. Narrative on
2 meteorological data using the Holloman Air Force Base.

3 HEARING OFFICER CHAKALIAN: Okay. What I have --
4 the next page I have after your Exhibit Number 4 looks like
5 a relief map of an airport.

6 MR. HNASKO: No. That's coming up later in our
7 submittal.

8 HEARING OFFICER CHAKALIAN: Well, originally, you
9 submitted that picture right after 5222 of the Federal
10 Register.

11 MR. HNASKO: In our presentation we did, but
12 not -- not in the notice of intent.

13 HEARING OFFICER CHAKALIAN: I'm looking at your
14 NOI, sir.

15 MR. HNASKO: I have Exhibit 5 is the dispersion
16 model protocol, Page 9, and going to Exhibit 6, which is the
17 wind rose.

18 HEARING OFFICER CHAKALIAN: Okay. I'm not at the
19 wind rose yet. I'm still wondering what are these
20 photographs that have green colors on them and look like one
21 is an airport, one might be the location of the proposed
22 facility.

23 MR. HNASKO: Those are terrain maps that are later
24 on. We have a number of those.

25 HEARING OFFICER CHAKALIAN: You have a number of

1 them, okay. Well, the way you submitted them to, at least
2 to Ms. Corral, you have one, two -- you have two that are
3 greenish in color and one that is reddish and yellow in
4 color.

5 MR. HNASKO: That's correct.

6 HEARING OFFICER CHAKALIAN: So should I ignore
7 those pages for now?

8 MR. HNASKO: Just for now.

9 HEARING OFFICER CHAKALIAN: Okay. So what is
10 Exhibit 5, and what does it look like?

11 MR. HNASKO: Exhibit is a one-page document taken
12 from the Roper Construction dispersion model protocol.

13 HEARING OFFICER CHAKALIAN: Okay. Does it start
14 out with -- what it says, wind rose data table?

15 MR. HNASKO: No. It is Section 2.2 is the top of
16 the page.

17 HEARING OFFICER CHAKALIAN: I don't have that.

18 MR. HNASKO: 5 is our analyze and meteorological
19 data collecting for the modeling study, and that's on our
20 notice of intent at Page 2.

21 HEARING OFFICER CHAKALIAN: Okay. I printed your
22 NOI in its entirety, and what I'd like to know is these two
23 green -- these two green maps, there are two green maps and
24 one yellow map, what exhibits are they part of?

25 MR. HNASKO: The first map, which is Exhibit 7,

1 is -- depicts the -- the terrain locations at the Alto
2 concrete batch plant proposed location. The second map,
3 which is what you referred to as the more tan-colored map,
4 that's Exhibit 8, and that is the -- so Exhibit -- let me
5 back up if I may. Exhibit 6 is our -- is the wind rose.
6 Exhibit 6 is the map depicting the topographical conditions
7 at Holloman Air Force Base, the brown map.

8 HEARING OFFICER CHAKALIAN: Okay. I -- I thought
9 you just said Exhibit 6 was the wind rose.

10 MR. HNASKO: I did, and I was incorrect.

11 HEARING OFFICER CHAKALIAN: Okay. My question --
12 my question is this: I have two green -- green maps, okay.

13 MR. HNASKO: Yes.

14 HEARING OFFICER CHAKALIAN: One -- one has a --
15 well, they both have bullseyes on them. One looks like it
16 is of the proposed site. What exhibit number is that?

17 MR. HNASKO: The proposed site. Exhibit 7.

18 HEARING OFFICER CHAKALIAN: And what is -- it
19 looks like it might be the Sierra Blanca airport.

20 MR. HNASKO: It is. That is the -- the other one
21 is the Sierra Blanca airport. Which one is this? I think
22 what we're going to have to do, Mr. Hearing Officer, I know
23 you're trying to get through this, but I think it is best if
24 we -- if we specifically identify these, resubmit them in
25 two or three separate e-mails, and I think it would be

1 self-explanatory to you at that point.

2 HEARING OFFICER CHAKALIAN: Okay.

3 MR. VIGIL: If I could just get -- I don't know if
4 this is going to help at all or make things worse, but I
5 just -- I received two e-mails with Part 1 and Part 2 of
6 their exhibits, and the -- I looked at them while you were
7 chatting, I was looking through them, and the Bureau has no
8 objection as -- on them.

9 MR. HNASKO: Yeah, and I appreciate that, Chris,
10 but I would like to go through these one more time and then
11 resubmit them if there are any out of order, so the hearing
12 officer has them --

13 HEARING OFFICER CHAKALIAN: Okay.

14 MR. HNASKO: -- exactly in the order with the
15 description that he needs.

16 HEARING OFFICER CHAKALIAN: Okay. All right.

17 MR. VIGIL: Yeah, that's fine with the Bureau as
18 well.

19 MR. HNASKO: Okay. Thank you very much.

20 HEARING OFFICER CHAKALIAN: So let's do this,
21 then -- let's do this, Mr. Hnasko, when do you foresee
22 sending those e-mails out with the corrected labels and
23 markers?

24 MR. HNASKO: 30 minutes after we get off our call
25 here -- after we get off Webex.

1 HEARING OFFICER CHAKALIAN: Okay. Then what I'll
2 do is this: You send it to Ms. Corral, Mr. Rose and
3 Mr. Vigil, and I'm going to give them some time to look
4 through the exhibits and make any objections that they see
5 fit to make, if any. If they do make -- if they do make
6 objections, we're going to have to get back on the record to
7 deal with the objections either tomorrow or the next day.
8 If they do not make an objection, then what we'll do is we
9 will accept them as you send them, and we will get them to
10 the court reporter.

11 MR. HNASKO: Thank you.

12 HEARING OFFICER CHAKALIAN: Am I -- is there
13 anything else before we are off the record for this evening?

14 MR. HNASKO: Nothing further, Hearing Officer.

15 MR. VIGIL: I -- maybe just a formal motion, maybe
16 you've already taken care of it, but I move that the record
17 remain open for the purpose of Sonterra's exhibits until
18 close of business Friday.

19 HEARING OFFICER CHAKALIAN: I have no problem with
20 leaving the record open until we -- for the specific purpose
21 of fixing -- of getting these properly marked and into --
22 and into evidence and to the court reporter, not at all,
23 that's not a problem.

24 MR. ROSE: Mr. Hearing Officer, just one
25 clarification, I think you said you're going to keep the

1 record open this evening for additional written comments for
2 folks to include in there. Is there a mechanism by which
3 those submittals can be provided to the applicant as well
4 or --

5 HEARING OFFICER CHAKALIAN: Definitely.

6 MR. ROSE: Get copies?

7 HEARING OFFICER CHAKALIAN: Definitely. We have a
8 new system in place. It just was put in place a few weeks
9 ago. It's called SmartComment. Other states have been
10 using it for years now, and what we can do is once the
11 record is closed for comment as of midnight, the hearing
12 clerk will work with IT to compile those into a report, and
13 that report can be sent to the parties.

14 MR. ROSE: I think that would be appropriate,
15 Mr. Hearing Officer.

16 HEARING OFFICER CHAKALIAN: And that's fine. What
17 we will do is we will send those comments in their original
18 format as they are submitted to us, and we will get those to
19 the parties as -- as soon as next week sometime.

20 MR. ROSE: Thank you, Mr. Hearing Officer. And
21 just -- just to make it clear, we have looked at
22 Mr. Hnasko's exhibits, and we have no objection either.
23 They look fine to us, so --

24 HEARING OFFICER CHAKALIAN: And, of course, since
25 I can't see what you're looking at, it's nice of you, but it

1 doesn't help me right now.

2 MR. ROSE: We appreciate that.

3 HEARING OFFICER CHAKALIAN: So we're still in the
4 same boat where we have to wait for Sonterra's counsel to
5 send out the final version of these exhibits in one, two, or
6 three files so that everyone has a chance to either object
7 or not object, and I will wait to hear from Mr. Vigil and
8 yourself either saying we have no objection or we have an
9 objection and here's our objection, so that I can then work
10 with the court reporter.

11 MR. ROSE: We can certainly do that, Mr. Hearing
12 Officer.

13 HEARING OFFICER CHAKALIAN: Okay. Wonderful.

14 And Mr. Rose, from your perspective, is there anything
15 else?

16 MR. ROSE: No, I think -- I think we have covered
17 all the areas that -- that we need to, and we've set the
18 post-hearing process, so I think we're good to go.

19 HEARING OFFICER CHAKALIAN: Okay. Mr. Vigil, is
20 there anything from your perspective?

21 MR. VIGIL: No. Thank you.

22 HEARING OFFICER CHAKALIAN: Of course.

23 And, Mr. Hnasko, or Ms. Sakura, is there anything from
24 your perspective?

25 MR. HNASKO: Nothing, Mr. Hearing Officer. Thank

1 you for your time today.

2 HEARING OFFICER CHAKALIAN: Okay. Ms. Myers?

3 THE COURT REPORTER: Yes.

4 HEARING OFFICER CHAKALIAN: Okay. Ms. Myers, I
5 need to be able to communicate with you regarding the
6 exhibits in the next couple of days. Would you send an
7 e-mail to Ms. Corral, the hearing clerk, with all of your
8 contact info, including your cell phone number?

9 THE COURT REPORTER: Yes.

10 HEARING OFFICER CHAKALIAN: Wonderful.

11 We are now off the record. It is 5:55 p.m. on
12 Wednesday, February 9th. Thank you to everyone, and thank
13 you to all of the public members who spoke with such
14 heartfelt comments that they were loudly heard and also all
15 of the witnesses. All of the public servants at the New
16 Mexico Air Quality Bureau and all of the witnesses who
17 testified on behalf of Roper, and from Sonterra. So thank
18 you, everyone. Have a good evening.

19 (NOTE: Proceedings concluded at 5:55 p.m.)

20 (NOTE: Sonterra Exhibits 1 through 18 admitted
21 into evidence.)

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1 STATE OF NEW MEXICO)
)
 2 COUNTY OF BERNALILLO) ss

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5 I, Shanon R. Myers, Certified Court Reporter for the
 6 County of Bernalillo, State of New Mexico, hereby certify
 7 that I reported, to the best of my ability, the proceedings,
 8 numbered 4 through 324, inclusive, a true and correct
 9 transcript of my stenographic notes, and were reduced to
 10 typewritten transcript through Computer-Aided Transcription;
 11 and that on the date I reported these proceedings, I was a
 12 New Mexico Certified Court Reporter.

13 Dated at Albuquerque, New Mexico, this 19th day of
 14 February, 2022.

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SHANON R. MYERS, CCR, RPR, CRR, RMR, CRC
 New Mexico CCR No. 275
 Expires: December 31, 2022

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