

Agua Fria Village Association

2073 Camino Samuel Montoya
Santa Fe, NM 87507



October 1, 2015

Pam Castaneda
Administrator for Boards & Commissions
Environmental Improvement Board
New Mexico Environment Department
1190 St. Francis Drive, S-2100
Santa Fe, NM 87502
Pam.Castaneda@state.nm.us

EIB 15-05(A)



Dear Ms. Castaneda:

Pursuant to your email of September 30, 2015 accepting our Appeal of the permit (Application - GCP5 - 6538) for the Applicant, Albert Montano Concrete Batch Plant; I am attaching our Appeal in the format required by NMAC Rule 20.1.2.200.

I, William H. Mee, Petitioner pursuant to Section 74-2-7(H) NMSA 1978, will act as an individual pro se, reserving the right to legal counsel at a later date. As a resident of Agua Fria Village I reside in the vicinity of the Applicant's proposed operations and would be adversely affected by thus operations; therefore, I have standing under the Act (Air Quality Control Act, Chapter 74, Article 2 NMSA 1978).

As background, the Agua Fria Village Association (AFVA), on behalf of the Agua Fria Village Traditional Historic Community (THC), has voted at its September 14, 2015 meeting to appeal the issuance of the permit (Application - GCP5 - 6538) for the Albert Montano Concrete Batch Plant at A. Montano and Associates Sand and Gravel and Septic Tanks at 4519 Agua Fria Street, Santa Fe NM 87507.

The basis for our appeal is not based on the issuance of the Air Quality permit itself but rather on the process for issuing such a permit. In fact, we think that the process for issuing any Concrete Batch Plant is inherently flawed and results in potential irreparable harm and liability to the N.M. Environment Department, as well as others, such as our Association.

Sincerely,

William Henry Mee, President AFVA
(505) 473-3160
WilliamHenryMee@aol.com

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF THE PETITION FOR
HEARING ON AIR QUALITY PERMIT NO. Application - GCP5 - 6538**

**William H. Mee,
Petitioner**

I, William H. Mee, acting as an individual, am appealing the issuance of GCP5 – 6538 (A. Montano Concrete). The basis for our appeal is as follows:

1. The operations of the Concrete Batch Plant are being conducted on portions of land owned by the U.S. Bureau of Land Management, and nor leased by the applicant, as determined by aerial photography from the Santa Fe County Assessor's Office.
2. Standards for fugitive emissions are not specified in Construction Permit GCP-5 rule adopted 9-12-2006 (20-2-72 NMAC).
3. There is no determined or guaranteed safe source for the raw cement being proposed by the applicant. The contention is that out-of-state cement and out of country (China and Mexico), have heavy metals and radioactive materials, added from other industrial waste, and there is no acceptable standard for any emission from these sources under the Construction Permit GCP-5 rule.
4. No water source was specified in the applicant's public notice.
5. The general basis of the Appeal is not based on the issuance of the Air Quality permit itself but rather on the process for issuing such a permit. In fact, we think that the process for issuing any Concrete Batch Plant is inherently flawed and results in potential irreparable harm and liability to the N.M. Environment Department, as well as others, including myself and the Agua Fria Village Association at large.

A Concrete Batch Plant requires both water to make the concrete and water to wash off the equipment. The later must be contained in a U.S. Environmental Protection Agency compliant system of retention ponds. This particular site borders on the Santa Fe River and there must be an active plan and monitoring to keep this water, and associated grease and oil from the prerequisite trucks and equipment, from reaching this river (the U.S. E.P.A. designates this area as a "protected class 1 restricted area" --- like national parks, wildlife preserves, watersheds, etc.). Therefore, any Air Quality Permit requires simultaneous applications to the Surface Water Quality Bureau and the Ground Water Quality Bureau, as well as a review from the Drinking Water Bureau since the site is within $\frac{3}{4}$ of a mile of the Agua Fria Community Water System intake sources and downstream farm irrigation operations (La Cienega and the Acequia Madre in Agua Fria Village).

Any air quality permit should be held in abeyance until the other three Bureaus also approve it. The process should be that a permit can be allowed/granted with a provision: "PENDING acquisition of a Surface and/or Ground Water Bureaus permit(s)."

We are seeking the immediate rescission by the Department Secretary of the Air Quality permit to Montano based on these procedural flaws of the Department's actions.

6. There are other grounds for appeal as follows:

6.1. We think the New Mexico Environment Department's standards for approving a Concrete Batch Plant are flawed and not updated with the way concrete is currently made. Europe has revised their standards in the last decade. A retired employee from the N.M. Department of Health has given us some information on the toxic effects of pollutants from cement factory CKD (Cement Kiln Dust); not only does it contain Nitrogen oxides and Sulfur dioxide but also contains heavy metals such as; lead, chromium, mercury, nickel, etc. Depending on the source of the raw cement (in China they charge firms to dispose of radioactive materials and then add them to the cement, Mexican cement adds metals from industrial waste to make product heavier and thus more profitable; there are dyes, fiberglass and anti-freezing agents added to concrete which are of dubious origin and may have cancer causing agents). So we don't really know what is in the cement, which might be discharged from any normal operations or human contact by workers.

6.2. The Permit specifies no active monitoring plan by the N.M. Environmental Department at the location or within the 3 mile toxic zone (as defined by the U.S. EPA) from the concrete batch plant (as outlined in the manual: *Cement Factories, Air Pollution and Consequences* found at: <https://drive.google.com/file/d/0B0HdZ7JSmqO9ZTZIYZNMUFBQRkU/view> or http://www.sciencepub.net/book/00065_book_1_65.pdf). The research is further supported by:
- <http://www.itas.kit.edu/pub/v/2003/acua03b.pdf>
- <http://www.epa.gov/ttnchie1/ap42/ch11/final/c11s12.pdf>.

6.3. The permit makes takes no consideration of the effects of the normal operations on other political subdivisions of the state. Yet, this violates the provision in state case law that says: "that no state agency shall take an action which adversely affects another political subdivision of the state." In Agua Fria Village, our roadway (County Road 66) was redone by Santa Fe County as part of our Agua Fria Street Phase One and Two Construction Project in 2001. The base of the road was not done to withstand concrete trucks, which are the heaviest-axled trucks and most damaging to roadways according to N.M. Department of Transportation Weight Distance Studies. The road is already in disrepair and needs resurfacing which will be costly. Since the County has no budgeted funds in its current Five Year ICIP plan for this project, we can only assume the project will take another 5-10 years to fund. If the projected 100 concrete truck trips-a-day are allowed under the proposed permit the roadway will face within a year total reconstruction (setting a base mixture and base asphalt under the current 3-4 inch surface). This is estimated to cost \$6-12 million dollars that could reasonably be an impact fee to the applicant.

6.4. The projected population of the 3-mile toxic zone (as defined by the U.S. EPA) from the concrete batch plant is 5,000 County residents (2,865 in the THC) and 15,000 in the City of Santa Fe. Although Montano ran a Concrete Batch Plant in the area more than two decades ago, there wasn't this population density at the time (probably less than 200 people were in this area). There is now an **"incompatibility with the increasingly residential neighborhood"** of lower Agua Fria, including Agua Fria Village, La Cielo Green Homes, Cottonwood Village, Fairway Village, and others. It is no longer an outskirts location where high industrial businesses are active like the area was decades ago when septic tanks were cast there.

6.5 There are special operating procedures required by the applicant in a ¼ mile radius. We do not yet have a census and identification of all the persons living or working in this area and the granted permit should be suspended until such work can be completed.

6.6. It is our understanding that the permit (GCP5) allows for 95 tons of particulates and the applicant is expected to only generate 6 tons; so it is well under the accepted limits. However, we think that these levels are flawed and not scientifically defensible. The Air Quality Bureau must take into effect the higher population densities in the area and the cumulative toxicological effects on humans especially on the very young (<5yrs) and infants. This is an area of 95% minorities and immigrants who may not be able to avoid direct contact with the contaminants (they leave windows open because they have no air conditioning, for example) and may not be able to afford health care after the fact. It may just be a population, which is just collateral damage, to the economic benefit of having a Concrete Batch Plant.

6.7 It is our understanding from the Environmental Law Center that the applicant was conducting operations for a Concrete Batch Plant and Septic Tank Cleaning Service BEFORE the application for the state required permit. Such bad faith conduct should be grounds for reviewing the issuance of the permit.

6.8. The Montano Concrete Batch Plant is in violation of a number of local County Ordinances and has been issued three (3) Notices of Violation by Santa Fe County. **The Air Quality permit should be suspended by the Department Secretary pending a successful resolution of these infractions.**

6.9 This appeal has been prepared to the best of my knowledge as of October 1, 2015. I reserve the right to add additional infractions by the applicant, or withdraw incomplete claims, as they are discovered. Additionally, I reserve the right to modify this Appeal should legal counsel be obtained.

Thank you for the consideration of this Appeal and its many facets.

From: Tickle, Greg, NMENV, NMENV <Greg.Tickle@state.nm.us>

To: Tickle, Greg, NMENV, NMENV <Greg.Tickle@state.nm.us>

Cc: Schooley, Ted, NMENV, NMENV <ted.schooley@state.nm.us>; Carr, Kerry, NMENV, NMENV <kerry.carr@state.nm.us>; Kuehn, Elizabeth, NMENV, NMENV <Elizabeth.Kuehn@state.nm.us>

Subject: Public Comments and Concerns - GCP5-6538 – A. Montañó Concrete - 4519 Agua Fria St., Santa Fe, NM

Date: Thu, Sep 3, 2015 11:09 am

Attachments: GCP-5 permit.pdf (2848K)

August 31, 2015

Regarding:

Public Comments and Concerns

GCP5-6538 – A. Montañó Concrete

Albert J. Montañó & Associates - Sand, Gravel, & Septic Tanks

4519 Agua Fria St., Santa Fe, NM 87507

Dear Interested Person or Party:

Thank you for submitting comments regarding the air quality permit application for a concrete batch plant (GCP5-6538 – Albert J. Montañó Concrete) to the New Mexico Air Quality Bureau (AQB). Your comments are important and have been included as part of the public record.

This letter contains information regarding this specific air quality permit application and general information regarding air quality permitting requirements. I've also attached to this email a copy of the GCP-5 permit for your reference.

The NMED Air Quality Bureau is responsible for implementing and enforcing the air quality requirements of the federal Clean Air Act in New Mexico. Our regulatory authority comes from the state's Environmental Improvement Act, Air Quality Control Act, and our State Implementation Plan (SIP), which has been approved by EPA.

An air quality permit is required to be obtained by any person constructing a stationary source with a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. The Department has issued general construction air quality permits for certain types of facilities that have similar equipment, air emissions, and applicable requirements. The regulatory authority to issue general construction permits is located at 20.2.72.220 NMAC. The general construction permit contains federally enforceable conditions including emission controls, monitoring, recordkeeping, and reporting requirements to ensure the facility will meet the emission limitations and the terms and conditions of the air quality permit.

Concrete batch plants combine aggregate, sand, cement, and water to manufacture concrete. Please note that there are no cement kilns or cement manufacturing activities associated with this facility.

Per the 20.2.72.220.C(2) NMAC, the Air Quality Bureau must either issue or deny the request to register to operate under a General Construction Permit within 30 days of receipt of the application. The basis for denying an application for a GCP-5 can be found in the GCP-5 permit on Page 7. Based on our review of the application, the applicant has met the requirements of the GCP-5 permit and of the regulation. Thus, there is no basis to deny this request for the GCP-5 permit. As we were required to do by regulation, the permit was issued on August 28, 2015.

The public notice published as part of this air quality permit application contains the maximum amount of emissions that can be emitted on a source operating under a GCP-permit. However, this amount does not reflect the actual amount of emissions that will be generated from the operation. The amount of emissions generated is proportional to the amount of concrete being produced at the facility.

Please understand the AQB appreciates the comments and concerns received from the community and has placed these emails, letters, and phone calls in the public record. The comments suggest some misunderstanding about the limits of AQB's regulatory authority. Hopefully this will clarify the limits of our authority.

The Air Quality Bureau does not have regulatory authority over several issues and concerns included in the received comments. However, these issues may be regulated pursuant to local ordinances:

1. Noxious odors unrelated to the GCP5;
2. Sources of construction noise;
3. Vehicular traffic and potential impacts to roadways;
4. Dust and particulate matter not associated with the concrete batching equipment;
5. Requirements to provide an environmental assessment of potential health impacts from commercial operations at 4519 Aqua Fria;
6. Inappropriate land uses within Aqua Fria Traditional Community;
7. Forced relocation to vacant land;
8. Requirements for the use, under certain situations of catalytic convertors, or other devices to mitigate diesel fumes, which are unrelated to concrete batching operations, and
9. Storm water detention, soil contamination, and potential pollutant discharges into the Santa Fe River.

Please feel free to contact the Bureau with any additional questions.

Sincerely,

Greg Tickle

NM Environment Department

Air Quality Bureau – Technical Services

525 Camino de los Marquez, Suite 1

Santa Fe, NM 87505-1816

Office: (505) 476-4333

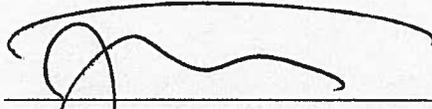
Email: greg.tickle@state.nm.us

CONSTRUCTION PERMIT NO: GCP-5

*Registration No.
(For NMED use only)*

GENERAL PERMIT CATEGORY: Concrete Batch Plants

ISSUED BY: New Mexico Environment Department



JIM NORTON, Director
Environmental Protection Division

Date of Issuance 9/12/06

Air Quality Permit No. GCP-5 for Concrete Batch Plants (Permit) is issued by the Air Quality Bureau (AQB) of the New Mexico Environment Department (Department) under Title 20 Chapter 2 Part 72 of the New Mexico Administrative Code. [20.2.72 NMAC – Construction Permits, Section 220 – General Permits] The Department issues general permits in order to register groups of sources that have similar operations, processes, and emissions and that are subject to the same or substantially similar requirements. [20.2.72.220.A(1) NMAC] General permits provide an additional permitting option for specific types of sources that can meet the predetermined permit requirements. [20.2.72.220.C(1) NMAC]

This Permit authorizes the owner or operator to construct, modify, and operate a Concrete Batch plant (Facility) in New Mexico (excluding Bernalillo County and Tribal lands) under the conditions set forth herein as long as all conditions of this Permit are continually met.

An owner or operator who registers for and receives approval to construct under this Permit, will have satisfied the State of New Mexico's requirement for obtaining an air quality permit prior to constructing, modifying, or operating a source of air pollutants. However, other federal, state, or local agencies may have additional requirements such as zoning restrictions.

All terms written with initial capital letters are defined in Section VII – Acronyms and Definitions, of this Permit. Regulatory authority, if applicable, is cited in brackets. Please refer to the guidance document for this Permit for details, descriptions, and registration instructions. Questions regarding eligibility for this Permit can be directed to the Air Quality Bureau of the Environment Department at (505) 827-1494, or visit the New Mexico Environment Department's Web Site at <http://www.nmenv.state.nm.us/AQB>.