



NEW MEXICO OIL CONSERVATION DIVISION

STATE OF NEW MEXICO

CASE NO. 10539

IN THE MATTER OF:

The Application of Tierra Environmental  
Company, Inc., for a commercial surface  
waste disposal facility, San Juan  
County, New Mexico.

BEFORE:

MICHAEL E. STOGNER

Hearing Examiner

State Land Office Building

September 2, 1992

REPORTED BY:

DEBBIE VESTAL  
Certified Shorthand Reporter  
for the State of New Mexico

**ORIGINAL**

## A P P E A R A N C E S

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1                   EXAMINER STOGNER: This hearing will  
2 come to order for Docket No. 28-92. Please note  
3 today's date, September 2, 1992. I'm Michael E.  
4 Stogner, Appointed Hearing Examiner for today's  
5 docket. We have one case, and at this time we  
6 will call it.

7                   MR. STOVALL: It's Case 10539, the  
8 application of Tierra Environmental Company,  
9 Inc., for a commercial surface waste disposal  
10 facility, San Juan County, New Mexico.

11                  EXAMINER STOGNER: Call for  
12 appearances.

13                  MR. BICHAN: Arthur Bichan personally.

14                  EXAMINER STOGNER: I'm sorry?

15                  MR. BICHAN: Arthur Bichan,  
16 B-i-c-h-a-n.

17                  EXAMINER STOGNER: What was the other  
18 part?

19                  MR. BICHAN: Appearing just for myself.

20                  EXAMINER STOGNER: Any other  
21 appearances?

22                  MR. HALE: My name is Kevin Hale. I'm  
23 the attorney for Tierra Environmental Company,  
24 Incorporated.

25                  MR. CHENEY: Richard Cheney.

1 MR. STOVALL: That's all right. We  
2 don't need the witnesses. If they are your  
3 witnesses, they don't need to make an appearance.

4 EXAMINER STOGNER: You will have two  
5 witnesses, Mr. Hale?

6 MR. HALE: I will.

7 MR. BICHAN: Glenn Vavera, also an  
8 opponent.

9 MR. STOVALL: Is he here?

10 MR. BICHAN: I left him at the  
11 restaurant an hour ago.

12 MR. STOVALL: When he appears -- you're  
13 not representing him, are you?

14 MR. BICHAN: Oh, no.

15 MR. STOVALL: We'll get his appearance  
16 when he shows up.

17 EXAMINER STOGNER: Any other  
18 appearances?

19 Is there any need for opening remarks  
20 at this time?

21 MR. HALE: The only opening remarks  
22 would be, I made a procedural request in the  
23 prehearing statement, and I'm trying to determine  
24 the scope of the evidence that will be taken  
25 today.

1           MR. STOVALL: I will explain that just  
2 so you -- so we understand because we're in sort  
3 of an evolutionary process with respect to this  
4 type of application. The way we have -- based  
5 upon some experience we've had, and actually had  
6 a similar case yesterday, it worked fairly well.

7           The burden is on the applicant, of  
8 course, to show that this facility can be  
9 permitted under the rules of the Oil Conservation  
10 Division, as required by the rules and the  
11 matters which the OCD must consider.

12           The process we've established is to  
13 review the administrative application. That has  
14 been determined in this case to be  
15 administratively approvable. We would then go to  
16 hearing. Essentially by submitting that  
17 administrative application, you are presumed to  
18 have met your prima facie burden. And I assume  
19 that is what you intend to do with your first  
20 witness, is to submit that application.

21           MR. HALE: That's correct.

22           MR. STOVALL: At that point the  
23 opponents will have the burden of going forward  
24 but not proof of showing that the application  
25 cannot be approved under the rules and



1 regulations of the Division.

2 MR. BICHAN: I have a question.

3 MR. STOVALL: All right.

4 MR. BICHAN: This is the Oil  
5 Conservation Division?

6 MR. STOVALL: Correct.

7 MR. BICHAN: And I presume that the Oil  
8 Conservation Division file is here and available  
9 as part of the proceedings.

10 MR. STOVALL: It can be made  
11 available. The Division itself is not going to  
12 participate in the hearing. It is still the  
13 parties who will participate. If there is  
14 information which you need in the file, we will  
15 make it available.

16 MR. BICHAN: I need the file, yes, I  
17 do.

18 MR. STOVALL: Kathy has got it here.  
19 So if there's any document -- for the purpose of  
20 making a record, anything contained within that  
21 file which needs to be within the Examiner record  
22 -- we bifurcated the process. We don't have a  
23 real administrative split of the agency. But we  
24 are bifurcating the process.

25 And the administrative approval is --

1 or determination of approvability, if you will,  
2 is not binding on the Examiner. He can make his  
3 own decision based on the evidence of this  
4 record. He can modify the approval, impose  
5 additional conditions, deny the approval. It is  
6 independent.

7 But if there are any items in that  
8 record which you would like in the record, please  
9 feel free to bring in. And authenticating them  
10 is not going to be a problem, but whatever  
11 purpose you want to use them for, you may do so.

12 MR. BICHAN: The file itself I need.

13 MR. STOVALL: Kathy has got the file,  
14 and we can get documents made, any specific  
15 copies of documents.

16 MR. BICHAN: The whole file because  
17 there's admissions from that file that are  
18 required by law.

19 MR. STOVALL: That's fine. If you want  
20 to bring that up, that's fine. The whole file is  
21 available. But you'll need to go through the  
22 process of getting it into the record, is what  
23 I'm saying. The Division does not automatically  
24 put that in the record. It's either you or the  
25 applicant will have to put that in the record.

1           In order to make the file of the case  
2   -- to make a prima facie case, of course, the  
3   applicant has to get sufficient evidence in.  
4   While there is a presumption they have done so,  
5   they have to submit it. For example, what was  
6   done yesterday was the file was certified and  
7   brought in as a package. Apparently the  
8   applicant is proceeding differently today. But  
9   we can address that, your concern.

10           Also, I will point out to you we are  
11   not bound by any strict rules of procedure. We  
12   try to follow a normal hearing type process. But  
13   we don't get hung up on rules where it becomes  
14   all rules and no substance. We'll look at the  
15   substance of the application, the substance of  
16   the whole process. And, as I say, the Rules of  
17   Evidence are applied loosely in this case.

18           MR. HALE: May we by stipulation  
19   introduce the OCD file as an exhibit?

20           MR. STOVALL: I would have no problem  
21   with that.

22           MR. BICHAN: I would like to do that.

23           MR. HALE: We would agree to do that.

24           EXAMINER STOGNER: I believe Kathy --

25           MS. BROWN: Bill is making a copy.

1 EXAMINER STOGNER: She just referred to  
2 Mr. Bill Olson, who is with our Environmental  
3 Bureau, and Kathy Brown, who just spoke, is also  
4 with our Environmental Bureau here at the Oil  
5 Conservation Division.

6 MR. HALE: I would like that to be then  
7 Exhibit 1 of the OCD file as an exhibit to this  
8 hearing.

9 MR. STOVALL: Referring in this case to  
10 the Environmental Bureau administrative  
11 processing file for this application?

12 MR. HALE: The file that was used in  
13 our application processing, the issuance of the  
14 permit, and the subsequent suspension.

15 EXAMINER STOGNER: Do you wish to offer  
16 that at this time, or would you like to --

17 MR. HALE: I'd like to offer that at  
18 this time.

19 EXAMINER STOGNER: Are there any  
20 objections to Exhibit 1?

21 MR. STOVALL: Are you stipulating to  
22 that?

23 MR. BICHAN: Yes, I'm stipulating to  
24 that.

25 EXAMINER STOGNER: In that case,

1 Exhibit 1, being the administrative application  
2 file with the Environmental Bureau at this time  
3 with the Oil Conservation Division, will be  
4 admitted into evidence as Exhibit No. 1.

5 With that, Mr. Hale.

6 MR. HALE: Thank you. I'd like to call  
7 my first witness, would be Mr. Richard Cheney.

8 EXAMINER STOGNER: At this time I  
9 believe we need to --

10 MR. BICHAN: Is this beginning the  
11 substance of the hearing?

12 MR. STOVALL: Yes.

13 EXAMINER STOGNER: Yes, sir, it is.

14 MR. BICHAN: There's a lot of  
15 procedural material that I need the file for that  
16 I want to go through before that. Because I do  
17 not think that there is an application to be  
18 considered at this time according to the rules of  
19 the department.

20 EXAMINER STOGNER: Sir, we already have  
21 an application at this time. I'm going to swear  
22 my witnesses in, and perhaps they might answer  
23 some of those questions. Will the witnesses,  
24 please, stand to be --

25 MR. STOVALL: Anybody who might

1 testify.

2 MR. HALE: You might stand to be  
3 sworn.

4 [The witnesses were duly sworn.]

5 EXAMINER STOGNER: Mr. Hale.

6 RICHARD CHENEY

7 Having been duly sworn upon his oath, was  
8 examined and testified as follows:

9 EXAMINATION

10 BY MR. HALE:

11 Q. Mr. Cheney, would you state your name  
12 and address, please?

13 A. Richard Cheney, 909 West Apache,  
14 Farmington, New Mexico.

15 Q. What is your occupation, Mr. Cheney?

16 A. I'm a civil engineer.

17 Q. And do you have any ownership interest  
18 in a corporation known as Tierra Environmental  
19 Company?

20 A. Yes, sir, I do.

21 Q. Would you tell me the nature of that  
22 ownership?

23 A. I own approximately 8 percent of the  
24 company. My partners and Brewer & Associates  
25 Engineering own another 16 percent.

1 Q. Do you hold a position with that  
2 company?

3 A. I am the president of the company.

4 Q. Would you give me a brief description  
5 of your educational background?

6 A. I'm a graduate of New Mexico State  
7 University with a degree in civil engineering.  
8 And I have been practicing civil engineering,  
9 waste water reclamation, water treatment, and  
10 basic civil engineering for the past 30 years.

11 Q. Do you hold any licenses with the State  
12 of New Mexico?

13 A. I am a Registered Professional Engineer  
14 with the State of New Mexico.

15 Q. And how long have you been a registered  
16 engineer?

17 A. Since 1964, I believe. Maybe 66. I  
18 don't recall for sure.

19 Q. Can you give me a brief description of  
20 your work experience in this area?

21 A. In this area, of course, bioremediation  
22 of soils is relatively new, but we have worked in  
23 design of waste water treatment plants for that  
24 30-year period. We've designed facilities all  
25 the way from 30,000 gallons up to 4 million

1 gallons per day.

2 And we have done spill control for  
3 Western Company in several areas of New Mexico,  
4 Texas, and Wyoming, which is designing spill  
5 controls at their blending and mixing facilities  
6 for Western Company, as well as Amoco and some of  
7 the other oil companies.

8 Q. When you say spill control, can you  
9 tell me specifically what that would involve?

10 A. Spill control, basically it was from  
11 storm water runoff from their facilities to  
12 control waste water that might be running off  
13 from those types of oil field service facilities.

14 Q. And do you have experience with  
15 groundwater and soil contamination?

16 A. Yes, sir.

17 Q. And contaminants of what nature?

18 A. Basically contaminants of hydrocarbons,  
19 nonhazardous hydrocarbons.

20 Q. Would that include cleanup of those  
21 types of spills?

22 A. Yes, sir.

23 Q. Did Tierra Environmental Company,  
24 Incorporation, make an application for a surface  
25 waste disposal facility?



1 A. Yes, sir, we did.

2 Q. Could you identify for me what I marked  
3 as Exhibit 2?

4 A. Yes, sir. That is that application.

5 Q. And who prepared that application?

6 A. Myself and Phil Nobis.

7 Q. And was that application submitted to  
8 OCD?

9 A. Yes, sir, it was.

10 Q. And when was it submitted?

11 A. I believe April 13, somewhere along  
12 there. They might not have received it on that  
13 date, but that's the date, I believe, that we  
14 certified it for mailing and submittal.

15 Q. And specifically what did you request  
16 with that application?

17 A. We requested the permission to  
18 construct a surface solids treatment facility,  
19 otherwise known as a landfarm, for the  
20 remediation of nonhazardous oil field waste.

21 Q. Did you seek a permit for that  
22 operation?

23 A. Yes, sir, we did.

24 Q. And was a permit issued for that  
25 operation?

- 1           A.     Yes, sir, it was.
- 2           Q.     Pursuant to your application?
- 3           A.     Yes.
- 4           Q.     And specifically where is the landfarm  
5 operation proposed to be located?
- 6           A.     Well, it's in the northwest quarter of  
7 the southeast quarter of Section 2 in Township 29  
8 North, Range 12 West on the mesa, otherwise known  
9 as Crouch Mesa.
- 10          Q.     In San Juan County?
- 11          A.     In San Juan County.
- 12          Q.     Who owns the real property on which  
13 this site would be located?
- 14          A.     Tierra Environmental.
- 15          Q.     How long have you owned that site?
- 16          A.     We purchased that site -- well,  
17 sometime. We've owned it 30 days prior to the  
18 time we submitted the application or so. I don't  
19 remember the exact date that we acquired it.
- 20          Q.     And how large is the site it's on?
- 21          A.     Eighty acres.
- 22          Q.     Of that 80 acres, what portion would be  
23 utilized for your operation?
- 24          A.     This proposal is approximately 23  
25 acres, I believe.

1 Q. Would you describe the general area on  
2 which the site would be located?

3 A. It's, as I stated, on top of what's  
4 called the Crouch Mesa area between Farmington,  
5 Aztec, and Bloomfield. It's relatively -- the  
6 particular area that we're looking at is  
7 relatively flat. Both directions, north and  
8 south from this area, it begins to drop off into  
9 the north, to the Animas River Valley, and to the  
10 south of the San Juan.

11 Q. Regarding Exhibit 2, did you take steps  
12 to notify landowners adjacent or in the area of  
13 the proposed site?

14 A. Yes, sir, we did. Mr. Nobis went to  
15 the San Juan County Courthouse and made a search  
16 of titles. And, to the best of our knowledge, we  
17 notified every landowner of record.

18 Q. Okay. And does your application,  
19 Exhibit 2, contain notices to those parties?

20 A. Well, I don't see it right here. Yes,  
21 the owners of record are listed, and I believe we  
22 have the return receipt. They were notified by  
23 return receipt, and I believe we have those that  
24 were submitted. I don't see copies of them right  
25 here, but I believe they were submitted.

1           Q.       You're referring to page 2 of the  
2 application?

3           A.       Yes, sir.

4           Q.       You list the parties notified?

5           A.       Yes, sir.

6           Q.       And has any construction begun on the  
7 site?

8           A.       No, sir.

9                   MR. HALE: I would move for the  
10 introduction of Exhibit 2 at this time.

11                   EXAMINER STOGNER: Exhibit No. 2 will  
12 be admitted into evidence at this time.

13           Q.       (BY MR. HALE) Let me hand you a  
14 document I've now marked as Exhibit 3, Mr.  
15 Cheney, and ask if you could identify --

16           A.       Yes, sir.

17           Q.       -- what's represented there. What is  
18 represented on Exhibit 3?

19           A.       Those are the copies of the return  
20 receipts where we notified the landowners of  
21 record.

22           Q.       Okay. And tell me generally what steps  
23 you took to notify the landowners?

24           A.       We, as I say, we went to -- Mr. Nobis  
25 went to the county courthouse, obtained the

1 landowners of record. They were notified by  
2 registered mail, return receipt requested, and  
3 these are the copies of the return receipts.

4 Q. And Exhibit 3 are Xerox copies of the  
5 signed return receipts?

6 A. Yes, sir.

7 Q. Was notice given to any parties who  
8 were not of record in the general geographic  
9 area?

10 A. Yes, sir, I believe so. To my  
11 knowledge, we notified Mr. Vavera. I think Geoff  
12 McMahon did that.

13 Q. Is that Glenn Vavera one of the  
14 protestants?

15 A. Yes.

16 Q. Was notice given to any other party,  
17 any other protestant?

18 A. Not that I'm aware of. I'm not sure.  
19 That's the only one that I recall at this time.

20 Q. Do you know if notice was given to Mr.  
21 Bichan who's here today?

22 A. Mr. Bichan was not a landowner of  
23 record. But, I believe, when the land was  
24 purchased that he was notified of our intent for  
25 landfill -- or landfarm, pardon me.

1 Q. All right. What response did you get  
2 to the notices to landowners?

3 A. We -- personally, I did not get any  
4 response. There was a handbill that was passed  
5 around out there, but we did not have any  
6 response from landowners.

7 Q. This handbill, do you know who  
8 generated that document?

9 A. No.

10 Q. Was it generated by your company?

11 A. No. Let me clarify one other thing. I  
12 did have a couple of calls from people that was  
13 curious as to what was going on but they did not  
14 offer any protest. They just wanted a little bit  
15 of explanation.

16 Q. Other than the protestants here today,  
17 have any of the parties that were notified  
18 pursuant to Exhibits 2 and 3 complained of the  
19 operation --

20 A. No, sir.

21 Q. -- or indicated that they objected to  
22 or intended to protest the operation?

23 A. No, sir.

24 Q. Okay. I would like to get into the  
25 operation itself, if I might, Mr. Cheney, and you

1 can refer to Exhibit 2, if you'd like to. Would  
2 you describe in general the proposed operation?

3 A. The operation that we propose is known  
4 as a landfarm operation where we take  
5 nonhazardous oil field wastes or spills, take the  
6 soil up there, and remediate it. And it's  
7 classified as nonhazardous waste.

8 The procedure is to, if you have a  
9 spill somewhere, the procedure is to pick up the  
10 dirt at that site, take it to the landfarm  
11 facility, spread it out on the ground, and till  
12 it to enhance the natural biodegradation of the  
13 hydrocarbons that are in the -- that may be in  
14 the soil.

15 Q. And from where do these soils normally  
16 come, or where do you propose that they will be  
17 removed from what sites?

18 A. Well, from various sites. But  
19 primarily in the San Juan Basin up there, it will  
20 be from well locations where there have been  
21 spills or possibly pits that have been used in  
22 the past where waste waters and stuff from the  
23 oil wells were dumped.

24 Q. And how would these soils be  
25 transported to the site?

1           A.       By dump trucks.

2           Q.       And who would be responsible for the  
3 transportation?

4           A.       Well, various -- it's been our  
5 intention to contract that through various  
6 contractors up there that are permitted to move  
7 -- haul materials.

8           Q.       And once they're delivered to the site,  
9 what would the next step be?

10          A.       Well, prior to the delivery to the site,  
11 we would require testing of the soils that are to  
12 be hauled to the site. In other words, if  
13 there's a location that is to be remediated, we  
14 would require that we receive copies of the tests  
15 of the materials that are in the soil. And then  
16 we propose to make those -- some of those tests  
17 ourselves for verification to make sure that the  
18 materials are nonhazardous oil field wastes.

19          Q.       Okay. So specifically what type of  
20 soils would be remediated at the sites? What do  
21 you anticipate, based upon the testing of each  
22 load or of soils to be delivered, what do you  
23 anticipate will be located at this site?

24          A.       It would be soils that have been  
25 contaminated with hydrocarbons.



1 Q. Any other substances?

2 A. No. Basically this oil field waste and  
3 the derivatives are from hydrocarbons.

4 Q. Okay. And once delivered to the site,  
5 would you describe the steps that would next be  
6 done?

7 A. The site would be divided into cells so  
8 that we can keep track of each location. And it  
9 will be -- after it's been tested again, it will  
10 be placed in the cells, spread in 6-inch lifts,  
11 and, like I say, tilled periodically to enhance  
12 the natural biodegradation of the materials.

13 With OCD's permission, probably will be  
14 a little bit of moisture added periodically to  
15 keep the bacteria due to biodegradation -- to  
16 keep them alive and to keep them moist.  
17 Periodically the soils will be tested to see what  
18 levels the particular hydrocarbons have reached.

19 And when they get to be an acceptable  
20 level, well, at that time they are a material  
21 that can be used for fill or other purposes. And  
22 they could be stockpiled or used as fill in other  
23 areas.

24 Q. Do you anticipate that the remediated  
25 soils will remain at the site?

1           A.       They don't have to. I would think  
2       that, like I stated, if there are some areas  
3       where we can utilize them as fills, I would think  
4       we would intend to do that. We have some areas  
5       on the site that we may want to fill and level.  
6       They could remain at the site. They could be  
7       utilized for road fills. Or depending on the  
8       type of soil it is, it could be utilized for road  
9       bases.

10          Q.       Regarding the ongoing remediation, who  
11       will make the decisions as to how that  
12       remediation is performed?

13          A.       I think that will be made before the  
14       soils are delivered that we will have a plan for  
15       the remediation of that. At this time it will  
16       probably be myself, Phil Nobis and Bill Rippetoe.

17          Q.       And will your operation be supervised  
18       by any third party?

19          A.       No. It will be supervised by us.

20          Q.       Okay. And the activity at the site, is  
21       that subject to review by any governmental  
22       agency?

23          A.       It's subject to review by the Oil  
24       Conservation Division.

25          Q.       Is it subject to their approval?

1           A.       The operations are subject to their  
2 approval.

3           Q.       What type of approval or supervision,  
4 to your understanding, is done by OCD?

5           A.       Well, OCD has an office in Aztec, and I  
6 believe they have people staffed up there that  
7 periodically review these things. And then they  
8 have staff out of Santa Fe that makes periodic  
9 visits to these facilities.

10          Q.       Okay. Subsequent to the filing of your  
11 application, was the site actually viewed by any  
12 governmental agency?

13          A.       I believe it was. I'm not sure, but I  
14 believe that some folks from the OCD have been  
15 out there to verify the location, just to look at  
16 it a little bit.

17          Q.       What is the nearest OCD site or office?

18          A.       The nearest OCD office, I believe,  
19 would be in Aztec.

20          Q.       And how far physically is that from  
21 this site?

22          A.       Approximately 10, 12 miles.

23          Q.       In terms of geographical locations,  
24 what is the closest residence to this site?

25          A.       I believe the closest residence would

1 be Mr. Vavera's residence. And it's basically  
2 adjacent to the site across the county road to  
3 the east.

4 Q. Okay. In terms of feet or miles, can  
5 you tell me how far that would be?

6 A. Well, I think it's -- I'm not really  
7 sure where he's adjacent to our east boundary.  
8 I'm not sure exactly whether his house is just  
9 straight east of his boundary. But he's  
10 basically adjacent to it right here along this  
11 county road. I don't recall the number of the  
12 road.

13 Q. Okay. I'm going to stamp a map as  
14 Exhibit 4. And it bears two legends, one being  
15 Glenn Vavera, and two being George Coleman. Can  
16 you tell me generally what that depicts?

17 MR. STOVALL: Excuse me just a second,  
18 Mr. Hale. The only problem with having the  
19 witness looking at things without us having a  
20 copy is we don't know what he's talking about.

21 MR. HALE: Yes, I understand that.

22 MR. BICHAN: It's in the file. That's  
23 why I asked you to have it with you.

24 MR. STOVALL: While we're on a break,  
25 is Mr. Vavera here yet?

1 MR. BICHAN: Yes.

2 MR. STOVALL: Mr. Vavera, would you  
3 like to officially enter an appearance and be a  
4 party in this case so that you could preserve any  
5 -- stand up and give the court reporter your  
6 name.

7 MR. VAVERA: I'm Glenn Vavera.

8 MR. STOVALL: You are a neighbor to the  
9 facility that Mr. Cheney is referring to?

10 MR. VAVERA: Right next to it.

11 EXAMINER STOGNER: For the record,  
12 what's your address?

13 MR. VAVERA: County Road 3100, House  
14 367, Aztec, New Mexico.

15 EXAMINER STOGNER: Thank you, sir.

16 THE WITNESS: He is northeast of our  
17 east boundary.

18 Q. (BY MR. HALE) Referring to what I've  
19 marked as Exhibit 4, what is depicted on the left  
20 side of that exhibit?

21 A. The left side is a copy of a USGS quad  
22 sheet showing the location of the landfarm.

23 Q. And how does it appear on that map?

24 A. In the crosshatched area.

25 Q. In about the center of that?

1           A.       Roughly in the center of that.

2           Q.       Then there is a legend 1 with a circle;  
3 what does that represent?

4           A.       That represents the Vavera residence.

5           Q.       And legend 2?

6           A.       That's the George Coleman-Sunco --  
7 there's a residence. I believe that's the  
8 location of a manager's quarters there.

9           Q.       Okay. Are there any other permitted  
10 landfarm operations currently in this area?

11          A.       There's one currently, I believe, has  
12 an administrative permit on the south boundary of  
13 our 80 acres. I believe it's Amoco Production.

14          Q.       So that would be adjacent to the south  
15 of the crosshatch area?

16          A.       No. We actually -- we own 80 acres  
17 there in the north area. The north boundary of  
18 the crosshatched area is the north boundary of  
19 that 80 acres. And then it drops off, as you can  
20 see, from the contours there. So it's roughly  
21 maybe a quarter of a mile from the south  
22 boundary.

23          Q.       So there has been a permit issued a  
24 quarter mile from the south boundary for a  
25 similar operation?

1           A.       Yes, sir.

2           Q.       That's been approved by this Division  
3 to your knowledge?

4           A.       That's my understanding.

5           Q.       All right. Let me hand you what I'll  
6 mark as Exhibit No. 5 and ask if you can identify  
7 that document?

8           MR. BICHAN: Are these exhibits being  
9 accepted just on presentation?

10          MR. STOVALL: Our normal course is all  
11 the exhibits are offered and then accepted into  
12 the record at the conclusion of their being  
13 offered.

14          MR. BICHAN: I have an opportunity to  
15 come and examine and ask that they not be  
16 accepted then?

17          MR. STOVALL: Yes.

18          MR. BICHAN: All right.

19          MR. HALE: I'd offer Exhibit 4 into  
20 evidence at this time.

21          MR. BICHAN: Is this 4?

22          MR. HALE: Yes, sir.

23          EXAMINER STOGNER: Okay. I believe --  
24 now, we talked about Exhibit 2, and that was  
25 admitted. Exhibit No. 3, I don't think we've

1       talked about it.

2               MR. HALE:   I'd offer Exhibits 3 and 4.

3               EXAMINER STOGNER:   Are there any  
4       objections?

5               MR. BICHAN:   I haven't seen them.

6               EXAMINER STOGNER:   Mr. Hale, do you  
7       have any other additional exhibits?

8               MR. HALE:   That will be the last one.

9               MR. STOVALL:   Have you got the copy,  
10      Willie?   The file?

11              MR. OLSON:   Everything but the maps.

12              MR. STOVALL:   Why don't you bring that  
13      up because that has been accepted as Exhibit 1.

14              MR. OLSON:   Do you want me to make a  
15      few copies of it?   It doesn't have the maps is  
16      the only thing.   They were large scale maps.

17              MR. STOVALL:   Why don't you make four  
18      copies of it.

19              MR. HALE:   I'll have five exhibits  
20      total we wanted to admit.   I'm offering 3 and 4  
21      at this time.

22              Is there any objection to Exhibit 3?

23              MR. BICHAN:   That it be entered?

24              MR. HALE:   Yes.

25              MR. BICHAN:   No, I have no objection.



1 EXAMINER STOGNER: Exhibit 3 and how  
2 about No. 4?

3 MR. BICHAN: I object to No. 4.

4 EXAMINER STOGNER: Could you be more  
5 specific on your objection?

6 MR. BICHAN: Yes. I notice that Brewer  
7 Associates, Mr. Cheney's company, is the one that  
8 prepared this farm location residence. In the  
9 file Mr. -- they have an engineering plan of the  
10 exact layout of the farm. Mr. Cheney's company  
11 has moved the location of the landfarm  
12 considerably south and away from the Vavera  
13 residence. And it does not depict the location  
14 of the landfarm and does not fairly represent its  
15 location in relation to the Vavera residence.

16 EXAMINER STOGNER: So the map you're  
17 referring to has been admitted as Exhibit No. 1;  
18 is that correct?

19 MR. STOVALL: It should be in the  
20 file?

21 MR. BICHAN: Yes, it's in the filed.

22 EXAMINER STOGNER: Okay. So noted,  
23 your objection. Exhibit No. 4 will be admitted  
24 into evidence at this time.

25 MR. HALE: Okay. Thank you.

1           Q.       (BY MR. HALE) I hand you now, Mr.  
2 Cheney, a document I've marked as Exhibit No. 5.  
3 I believe we've provided copies. It appears to  
4 be something "Did you know?" in the upper left.  
5 Can you identify that document for me?

6           A.       That's a document that, as I understand  
7 it, was passed out in the Homestead Subdivision  
8 up there regarding the -- after the legal notice  
9 in the paper came out.

10          Q.       And does that contain a copy of the  
11 legal notice that was published in the Farmington  
12 Daily Times?

13          A.       Yes, sir, it does.

14          Q.       Was that published on Sunday, May 17,  
15 1992?

16          A.       Yes, sir.

17          Q.       And do you, of your personal knowledge,  
18 do you know if any of the protestants received an  
19 actual copy of that handbill and notice?

20          A.       No, I don't know personally. I  
21 understand that Mr. Vavera received a copy of it.

22          Q.       Referring to Exhibit 5, that indicates  
23 that the owner of the proposed site is Basin  
24 Disposal. Is that information accurate?

25          A.       No, sir.

1 Q. Who is the owner of the site?

2 A. Tierra Environmental.

3 MR. HALE: I'd move for the  
4 introduction of Exhibit 5.

5 EXAMINER STOGNER: Any objections?  
6 Exhibit No. 5 will be admitted into evidence.  
7 Mr. Hale, do you have anything further of this  
8 witness?

9 MR. HALE: Has it been admitted?

10 EXAMINER STOGNER: Yes.

11 MR. HALE: Thank you. Yes, I do.

12 Q. (BY MR. HALE) Mr. Cheney, based upon  
13 your participation in this application and your  
14 knowledge of the OCD rules and regulations, do  
15 you have an opinion whether the application  
16 complies with the rules and regulations as set  
17 forth by OCD?

18 A. Yes, sir, I believe it complies with  
19 all the rules and regulations.

20 Q. And in fact was an application -- I  
21 mean, was an permit issued?

22 A. Yes, sir.

23 Q. Do you have an opinion as to whether  
24 the operation as proposed will represent a danger  
25 to public health or safety?

1           A.       I do not believe it will.

2           Q.       And can you tell me the reasons behind  
3 that conclusion?

4           A.       Well, these are -- they've been  
5 classified. They are nonhazardous oil field  
6 wastes. They'll be strictly up there -- at the  
7 time they reach that area, most of the volatiles  
8 are going to be already out of this soil. We're  
9 going to be treating the heavier hydrocarbons.  
10 And we'll utilize just natural biodegradation to  
11 do it, and I don't believe it will be hazardous  
12 to anybody's health.

13          Q.       In terms of the substances that would  
14 go into the air, you say you believe that those  
15 will be minimal?

16          A.       I think they will be because the  
17 lighter ends of this, I believe, will basically  
18 be gone by the time we get it to the landfarm.

19          Q.       Do you have an opinion as to the  
20 approximate age of the materials that will be  
21 carried to the site?

22          A.       Oh, that's going to vary greatly. Some  
23 of it is going to be several years old.

24          Q.       And with age do the substances that  
25 would go into the air tend to dissipate?

1           A.       Yes.

2                   MR. HALE:   That's all the questions I  
3   have of this witness.

4                   EXAMINER STOGNER:   Thank you, Mr.  
5   Hale.

6                   Mr. Bichan, I'm going to turn the  
7   witness over to you at this time.   Remember this  
8   is the question and answer portion of this  
9   particular proceeding at this time.

10                  MR. BICHAN:   I understand that.

11                               EXAMINATION

12   BY MR. BICHAN:

13           Q.       Mr. Cheney, you stated for the record  
14   that Tierra has owned this property since 30 days  
15   before the application?

16           A.       Well --

17           Q.       That is not the truth, is it?

18           A.       I believe I stated that was about the  
19   time I thought that it was purchased.

20           Q.       Isn't it true that about that time you  
21   entered into a land contract to purchase?

22           A.       Yes, sir.

23           Q.       And that you paid \$1,000 on that land  
24   contract to purchase?

25           A.       I'm not sure exactly how we -- how we

1       took possession of that land, but we did have an  
2       agreement to purchase.

3           Q.       Then you did not own the land at that  
4       time, and you do not own the land now?

5           A.       I'm not sure, Mr. Bichan, exactly what  
6       -- we have some agreements on that land. I'm not  
7       sure we have an agreement to purchase.

8           Q.       All right. You have --

9           A.       We consider it our land.

10          Q.       Then you know that you have an  
11       agreement to purchase?

12          A.       Yes, sir.

13          Q.       And the statement that you owned it is  
14       not true?

15          A.       Well, I guess that's maybe technically  
16       not true, but we have the land.

17          Q.       And is there any condition on the land,  
18       on the purchase?

19          A.       On the purchase? No, sir, I don't  
20       believe so.

21          Q.       So sometime in the future you are  
22       either going to forgo the thousand or go ahead  
23       with the purchase?

24          A.       That's correct.

25          Q.       At this time you're not an owner?

1 A. We have an agreement to purchase it.

2 Q. All right. Then you are not an owner?

3 A. We have an agreement to purchase it.

4 MR. BICHAN: All right. Will you ask  
5 the witness to please answer the question?

6 EXAMINER STOGNER: He did.

7 MR. STOVALL: I think we can advise the  
8 Examiner that we understand what the status of  
9 the title is.

10 Q. (BY MR. BICHAN) You stated that Mr.  
11 Nobis made a search of the titles and obtained  
12 the landowners of record?

13 A. Landowners of record, yes, sir.

14 Q. Is that true?

15 A. Yes, sir.

16 Q. And you knew that of your own personal  
17 knowledge?

18 A. I know that Mr. Nobis made the search,  
19 yes, sir.

20 Q. But what I say to you -- what would you  
21 say that if I told you that Mr. Nobis made no  
22 search of the titles and in fact went to the tax  
23 records and took the names of the addresses for  
24 the tax bills?

25 A. Well, my initial reaction, Mr. Nobis

1 told me he went to the records and searched them,  
2 so I'd say he was a liar.

3 Q. All right. Thank you on that point.

4 Do you propose that Mr. McMann gave a  
5 written notice to Mr. Vavera --

6 A. No.

7 Q. -- describing the landfarm?

8 A. Not at all.

9 Q. That's what's required if he is the  
10 applicant; is that not true?

11 A. If he is a landowner of record.

12 Q. Have you read Rule 711?

13 A. Yes, sir.

14 Q. Are you aware that paragraph 2 states:  
15 "The applicant shall give written notice of  
16 application to the owners of surface lands and  
17 occupants thereof within a half a mile"?

18 A. No, sir, I wasn't aware that it said  
19 anything about occupants. Landowners of record  
20 was what I understood that to say.

21 Q. So then if it says occupants, you have  
22 not complied with notice?

23 A. If in fact that rule says "occupants,"  
24 he did not receive a written notice from us.

25 Q. And there's been no proof of the



1 written notice to your knowledge?

2 A. I guess we'd -- at that point there has  
3 not been a return receipt received from Mr.  
4 Vavera. But I think there is some proof that he  
5 had written notice that this was going to take  
6 place and in fact is here today.

7 Q. What is that written notice?

8 A. I believe that he received a copy of  
9 this.

10 EXAMINER STOGNER: You're referring to  
11 Exhibit No. 5, Mr. Cheney?

12 THE WITNESS: Yes, sir.

13 EXAMINER STOGNER: Let the record  
14 note.

15 Q. (BY MR. BICHAN) And you gave that  
16 written notice as stated in the rule?

17 A. No, sir, I didn't say that.

18 Q. Oh, well, the applicant shall give  
19 written notice to --

20 A. That's exactly right.

21 Q. -- to occupant?

22 A. He did not receive notice.

23 EXAMINER STOGNER: Excuse me. The  
24 reporter is having a hard time when two people  
25 overlap. So if you could please give her some

1 consideration, I'd appreciate it. Please  
2 continue.

3 MR. BICHAN: I'm sorry.

4 Q. I want to get this straight. Then it  
5 is the fact that the applicant did not give  
6 written notice to Mr. Vavera, an occupant, within  
7 a half a mile and did not give proof of such  
8 notice to the Division?

9 A. I believe I answered that, Mr. Bichan.

10 Q. I don't believe you did.

11 A. I did. I made the statement that we  
12 did not give him written notice.

13 Q. All right. So then the application is  
14 faulty by a failure to comply with Section 2, and  
15 you know that to be true?

16 MR. HALE: I'll object to the form of  
17 the question. He's asking for a conclusion that  
18 rests with the Examiner.

19 MR. STOVALL: The objection is well  
20 founded. You have information upon which you can  
21 make a determination as to whether or not the  
22 application is faulty based upon the rule as  
23 cited by Mr. Bichan and Mr. Cheney's testimony.

24 I don't think Mr. Cheney has to answer  
25 the question. I think you can make that

1 determination based upon the facts that are in  
2 the record.

3 EXAMINER STOGNER: So noted.

4 Mr. Bichan, do you want to continue  
5 with another question?

6 MR. BICHAN: May I see exhibit --

7 MR. STOVALL: Describe it.

8 MR. BICHAN: -- Exhibit 4.

9 EXAMINER STOGNER: That is the map?

10 MR. BICHAN: No. Then it's 5 -- No.

11 3. I'm sorry.

12 MR. BICHAN: You've not submitted 3?

13 EXAMINER STOGNER: 3 has been admitted,  
14 yes.

15 MR. HALE: It's been admitted.

16 MR. STOVALL: At this time, Willie,  
17 let's have Exhibit 1 up here. Have you got it?  
18 The copies being presented do not include the  
19 large maps that have been submitted in  
20 conjunction with the application.

21 Mr. Hale, if you would mark each of  
22 those and put a stamp on those as Exhibit 1.

23 MR. HALE: Yes.

24 EXAMINER STOGNER: With that let's take  
25 a five-minute recess so we can go off the record

1 while you're marking that. Also I would ask that  
2 if you have other copies of Exhibits, 1, 2, 3,  
3 and 4, let's make sure that the parties at the  
4 table have copies of those.

5 [A recess was taken.]

6 MR. HALE: Exhibit 1 contains Exhibits  
7 2 and 3. And then I have given 4 and 5 to the  
8 Examiner and to Mr. Bichan.

9 EXAMINER STOGNER: This hearing will  
10 come to order. Mr. Bichan, I believe the ball  
11 was in your court.

12 MR. BICHAN: Yes. I've got an  
13 objection to the proposed Exhibit 1 here.

14 EXAMINER STOGNER: We've already  
15 accepted it.

16 MR. BICHAN: I never saw it until now.

17 MR. STOVALL: Sir, you stipulated to  
18 the admission of the OCD file.

19 MR. BICHAN: Right. This pretends to  
20 be a copy. This is not the file that I saw the  
21 day before yesterday.

22 MR. STOVALL: What's either added or  
23 missing that you don't --

24 MR. BICHAN: In the file that I went  
25 through yesterday, there is a statement that Mr.

1 Nobis -- or that the -- contained the certified  
2 mail receipts submitted to the board saying that  
3 the names were taken from the tax records, and  
4 that is now not here.

5 MR. STOVALL: From Mr. Nobis?

6 MR. BICHAN: No. I don't know who it  
7 was from. But the transmittal --

8 MS. BROWN: Nothing has left the file  
9 since you saw it.

10 MR. BICHAN: Well, there is an addition  
11 to the file since I saw it.

12 MS. BROWN: The case docket was added.

13 MR. BICHAN: And your memo is added  
14 concerning our conversation. And the Vavera memo  
15 is added.

16 MR. STOVALL: Let's go through Exhibit  
17 1 and review it. Have you got the original file,  
18 Willie?

19 MR. OLSON: It's right here.

20 MR. STOVALL: Let me have that up  
21 here.

22 MR. HALE: Page 2 of the application  
23 indicates that land owners of records were taken  
24 according to the San Juan County Assessor  
25 information. That's in our application.

1 MR. BICHAN: That's what it is, okay.

2 All right. I'm sorry, I knew it was --

3 MR. HALE: The application.

4 MR. STOVALL: Does that satisfy your  
5 concern?

6 MR. BICHAN: Yes.

7 MR. STOVALL: As far as the addition of  
8 the docket and the conversation memo, the file is  
9 up-to-date as of this morning.

10 MR. BICHAN: Could you tell me where  
11 that is?

12 MR. HALE: Page 2 of the application.

13 MR. STOVALL: Which was Exhibit 2; is  
14 that right?

15 MR. HALE: Flip one more. Right  
16 there.

17 MR. BICHAN: All right.

18 Q. (BY MR. BICHAN) The application that  
19 you filed and submitted, it's signed as to being  
20 true and accurate, states that landowners of  
21 record, according to the county assessor's  
22 information, not according to the register of  
23 deeds, not the registered owners. And you know  
24 that to be true?

25 A. Yes, sir. That's --

1           Q.       So you have failed then to notice the  
2 owners of record?

3           A.       No, sir, I don't believe so. We went  
4 to county -- Mr. Nobis went to the county clerk.  
5 They said the assessor's office had the  
6 landowners of record, and that's where we went to  
7 get them. So I do not know that to be true that  
8 we don't have all the landowners of record.

9           Q.       Lawrence Woodard, in care of Richard  
10 Patton, P.O. Box Bloomfield, is an owner of  
11 record, or is that just a mailing address for a  
12 tax record?

13          A.       Mr. Bichan, to our knowledge that was  
14 the best address we had of the owner of record.

15          Q.       Whether or not that is on the title,  
16 you do not know?

17          A.       Mr. Bichan, that was the best  
18 information we had of the owner of record.

19          Q.       The best information you looked for.  
20 You did not examine the titles of record then; is  
21 that true?

22          A.       I did not, no, sir.

23          Q.       Nor did anybody from your business?

24          A.       Not to my knowledge.

25          Q.       So your determination of ownership did

1 not go to the titles of record?

2 A. We were told that the county assessor's  
3 office had the landowners of record, and that's  
4 what we went to.

5 Q. And you've examined Exhibit 3, the  
6 receipts?

7 A. I don't -- I haven't examined them. I  
8 just went through them to see that they were all  
9 returned from the ones we sent notices to.

10 Q. You're satisfied that that's true?

11 A. Yes, sir.

12 Q. And we are to view your testimony in  
13 that light? This is the care you take in your  
14 testimony; is that correct?

15 A. Mr. Bichan, we sent out letters with  
16 return receipt requested to what we thought to be  
17 the landowners of record. We received return  
18 receipts from those landowners of record, and  
19 they're in the files.

20 MR. BICHAN: May I see Exhibit 3?

21 MR. STOVALL: I believe it's in this  
22 record; is that correct?

23 MR. HALE: Yes. Exhibit 3 is part of  
24 Exhibit 1, but we can hand him --

25 MR. BICHAN: That's not a part of



1 Exhibit 1.

2 MR. HALE: Here you are.

3 MR. STOVALL: Just a moment, Mr. Hale.  
4 That is Exhibit 3. That is the document that's  
5 been marked as Exhibit 3.

6 MR. BICHAN: That's right.

7 MR. HALE: Yes. The return receipts  
8 are on the very back of Exhibit 1, the certified  
9 mailing receipts. Exhibit 3 are the signature  
10 cards that were returned pursuant to those.

11 MR. BICHAN: Back of Exhibit 1 is the  
12 proof of mailing. It is not a proof of service.

13 MR. HALE: He's correct. Exhibit 3 is  
14 the return receipt cards which were obtained  
15 pursuant to the receipt of mailing.

16 MR. STOVALL: Are you suggesting, Mr.  
17 Bichan, that the mailing by certified receipt is  
18 not compliance with that requirement, that  
19 specific portion of the requirement?

20 MR. BICHAN: Not without the signed  
21 receipt.

22 MR. STOVALL: I'm not sure --

23 MR. BICHAN: Exhibit 3 are the signed  
24 receipts.

25 MR. STOVALL: All right. Let me ask

1 Mr. Cheney a question. Have you compared the  
2 signed receipts with the exhibit which is in the  
3 case file in Exhibit 1 showing the mailing to  
4 determine if each --

5 THE WITNESS: Excuse me. I have not  
6 personally compared them.

7 MR. BICHAN: Can I see it, please?

8 Q. (BY MR. BICHAN) So then your statement  
9 that these were the proofs of service, you have  
10 no foundation for that at all, do you?

11 A. Yes, sir, I believe I do. We sent them  
12 out; they came back. That's the foundation for  
13 the proof, and we have the originals here with us  
14 if you'd like to go through them.

15 Q. And this exhibit is that proof --

16 A. Yes, sir.

17 Q. -- of service upon all those people  
18 stated?

19 A. Yes, sir.

20 Q. That's what you want this hearing to  
21 believe?

22 A. That's what we submitted as the  
23 additional --

24 Q. Now, please look through it one time.  
25 Please look through it one time.

1 EXAMINER STOGNER: One at a time.

2 Mr. Stovall.

3 MR. STOVALL: Let's discuss the issue  
4 first. What is the purpose of this? Where are  
5 you going with this?

6 MR. BICHAN: There's three identical  
7 sheets; there's their names and that's all.

8 MR. STOVALL: Is that correct, Mr.  
9 Cheney?

10 Do I see green return receipt cards in  
11 front of you, Mr. Hale?

12 MR. HALE: Let's see, we had trouble  
13 with copies. Let me look and see.

14 MR. STOVALL: Mr. Hale, do I see green  
15 return receipt cards in front of you?

16 MR. HALE: Yes, I do have those.

17 MR. STOVALL: Are those original return  
18 receipt cards?

19 MR. HALE: They are.

20 MR. STOVALL: Would you mark those  
21 Exhibit 3-A and submit them to Mr. Bichan, and we  
22 will dispense with whether copies are accurate.

23 MR. HALE: Yes, I will do that.

24 THE WITNESS: We apologize for that.  
25 We had some copies made this morning. And the

1 copy people had some problems with it.

2 MR. HALE: I'm not certain how to mark  
3 this.

4 MR. STOVALL: I suggest what we'll do,  
5 hand those to Mr. Bichan at this time, allow him  
6 to examine those, and then you'll staple them to  
7 pieces of paper.

8 I'm going to ask you to submit an  
9 affidavit that notice has been given in  
10 accordance with Rule 711. Either you may sign  
11 it, or a principal of the company can sign it.  
12 You probably want to look at 711 to make sure  
13 that that's true.

14 MR. HALE: Yes, I'll do that. I think  
15 that's the way in which this is normally handled,  
16 is to provide an affidavit of service and to,  
17 although the rules don't state that, it is  
18 administratively the most accurate.

19 If you'll review those, Mr. Bichan, if  
20 you wish to make lists of the names or actually  
21 photocopy them yourself, and we'll have those  
22 stapled and submitted as Exhibit 3-A. That will  
23 be the most accurate way of determining from whom  
24 they have got return receipt cards.

25 Mr. Cheney?

1           THE WITNESS: Could I ask a question at  
2 this time? I believe that copies of these are a  
3 part what would be Exhibit 1, which is your  
4 file.

5           MR. STOVALL: That may be. I'm going  
6 to ask for the originals in this case, so we  
7 don't have any question in this case whether the  
8 copies are accurate.

9           MR. HALE: I'll prepare an affidavit  
10 and submit that.

11          MR. BICHAN: I have a name here, Eugene  
12 Watson, I don't find -- Oh, here it is. I'm  
13 sorry. I'll object to being -- I'm sorry.

14          EXAMINER STOGNER: You found, I  
15 believe, a discrepancy, a Eugene Watson?

16          MR. BICHAN: No. No. I found several  
17 discrepancies.

18          EXAMINER STOGNER: Go ahead.

19          MR. BICHAN: There is no return from  
20 the US Bureau of Land Management. There is no  
21 return from Lawrence Woodard. There is no return  
22 from Raymond Condit. There is no return from Fay  
23 Greer. There is no return from Glenn Vavera.

24          EXAMINER STOGNER: How many names did  
25 you give me?

1 MR. HALE: This is argument rather  
2 than --

3 THE WITNESS: -- than fact. This is  
4 not fact. We already have Exhibit 1, and these  
5 were submitted in Exhibit 1.

6 EXAMINER STOGNER: At this point I  
7 believe we're going to need the originals. I do  
8 agree with Mr. Stovall.

9 MR. HALE: As per Mr. Stovall, I'll  
10 prepare an affidavit and submit those.

11 EXAMINER STOGNER: Mr. Hale, what were  
12 you going to say in response to Mr. Bichan?

13 MR. HALE: His comments are, I guess,  
14 closing argument. But when he says there are no  
15 receipts, if these were sent in care of a second  
16 party, they were signed for by the party to whom  
17 they were sent. Raymond Condit in care of James  
18 Hobbs. And we have Hobbs signing for that.  
19 Lawrence Woodard in care of Richard Patton. Mr.  
20 Patton has signed for that.

21 But I will prepare and submit the  
22 affidavit as directed by Mr. Stovall.

23 EXAMINER STOGNER: Thank you.

24 Mr. Bichan, do you have any other  
25 questions?

1 MR. BICHAN: That's not service on the  
2 owner. That's service on Hobbs.

3 EXAMINER STOGNER: Are you making a  
4 motion at this point?

5 MR. BICHAN: Yes. I move that the  
6 alleged return receipts of Woodard and Condit be  
7 disregarded as not being signed by Woodard or  
8 Condit, the owners of the property, alleged by  
9 them to be owners.

10 EXAMINER STOGNER: Mr. Hale.

11 MR. HALE: My response would be that  
12 Rule 711 A(2) does not impose upon us the  
13 obligation to provide return receipt cards. And  
14 it says -- provides that we shall give written  
15 notice. It does not specify the manner or method  
16 and that mailing by certified mail is a  
17 reasonable method of doing that and represents  
18 substantial compliance.

19 MR. BICHAN: Mr. Stogner, that's a  
20 misrepresentation of the rule. The rule says,  
21 "and proof of such notice."

22 EXAMINER STOGNER: With that, Mr.  
23 Bichan, my general counsel is back.

24 [The Examiner and Counsel  
25 conferred off the record.]

1           MR. STOVALL: Am I correct, Mr. Bichan,  
2 do I understand what the Examiner said, you're  
3 objecting to some of the notice because the  
4 return receipt cards are not signed by the  
5 addressee? Is that my understanding?

6           MR. BICHAN: "My objection is that the  
7 rule states: The applicant shall give written  
8 notice of application to the owners of surface  
9 lands and occupants within one-half mile. And a  
10 copy and proof of such notice will be furnished  
11 to the Division."

12          MR. STOVALL: Okay.

13          MR. BICHAN: There is no proof of  
14 notice. There's a proof of mailing.

15          MR. STOVALL: Notice, it is my  
16 interpretation of our rules that service by mail,  
17 that proof of the mailing is adequate; that  
18 proves they have given the notice. There's  
19 nothing the applicant can do to guarantee that  
20 that person -- and it is not required that it be  
21 signed by the addressee only. If they have  
22 attempted to give the notice by that mailing, I  
23 do not believe that is deficient under the  
24 rules.

25                 Our rules require service by mailing,



1 by certified mail. If they have posted that, the  
2 rules require that it be mailed. The recipient  
3 has the option of rejecting it, not receiving it;  
4 another person can pick them up for them. That  
5 does not make the notice deficient.

6 Are you arguing that it does?

7 MR. BICHAN: No. I'm arguing that the  
8 proof submitted proves it was -- that the notice  
9 was given to someone other than the known owner.

10 MR. STOVALL: Are you suggesting  
11 because someone picked up for the owner that that  
12 indicates that there was not service?

13 MR. BICHAN: Yes. That's not proof of  
14 service on the owner. Absolutely.

15 MR. STOVALL: My advice, Mr. Examiner,  
16 the mailing is the requirement. It is not a  
17 requirement that it be sent addressee only. And  
18 there is not a requirement of personal service;  
19 that the mailing to the owner would satisfy our  
20 requirements for mailing of notice.

21 And the fact that somebody else picks  
22 up for the owner does not negate that notice.  
23 All that is is an acknowledgment that the matter  
24 sent has been received at the address by a party  
25 authorized presumably to pick up the mail.

1           Now, if somebody stole the mail, then  
2           there's a problem. But presumably that person is  
3           authorized to pick it up, and the rules do not  
4           require a certified addressee only.

5           MR. BICHAN: That person to whom it was  
6           addressed can own the box and does own the box,  
7           and he is not stealing the mail when it is put in  
8           his box.

9           MR. STOVALL: Okay.

10          MR. BICHAN: That is not proof that the  
11          owner received the notice.

12          MR. STOVALL: My recommendation again  
13          is that that is -- that the demonstration that it  
14          was mailed to the owner at that address is proof  
15          that it was served.

16          MR. HALE: My comment would be that the  
17          rule requires proof of notice, not proof of  
18          receipt. We have no control over whether the  
19          record landowner chooses to receive it or whether  
20          his agent chooses to receive it.

21          MR. STOVALL: Now, Mr. Vavera, let me  
22          just advise you on this one. Apparently you're  
23          not included in the discussion we're having  
24          because you didn't get anything, according to Mr.  
25          Cheney.

1           MR. VAVERA: I didn't get nothing from  
2 anybody.

3           MR. STOVALL: The discussion that is  
4 going on does not involve you specifically, just  
5 for your information.

6           MR. VAVERA: Well, it should.

7           MR. STOVALL: I know it does. That's a  
8 separate issue.

9           MR. VAVERA: Okay.

10          MR. STOVALL: I don't mean to exclude  
11 you. I'm just saying at this point the issue is  
12 something different than service upon you. We'll  
13 get to that, I assume --

14          MR. VAVERA: Except for, like, the one  
15 to Lawrence Woodard.

16          MR. STOVALL: Pardon?

17          MR. VAVERA: Like the letter to  
18 Lawrence Woodard. It was mailed to Richard  
19 Patton.

20          MRS. VAVERA: But we purchased land  
21 from Lawrence is why we feel like --

22          MR. VAVERA: I mean, it's his land --

23          MR. STOVALL: Excuse me just a second.  
24 If you folks will sit patiently for a moment,  
25 I'll give you the opportunity to say something.

1 But let's try to keep some semblance or order in  
2 here.

3 I assume Mr. Bichan is not representing  
4 you; is that correct?

5 MR. VAVERA: No.

6 MR. STOVALL: You're representing  
7 yourselves. We'll address your concerns, your  
8 specific concerns in just a moment. Let's finish  
9 with Mr. Bichan and the other parties and then  
10 we'll get to you. I'm certainly not trying to  
11 exclude you. I'm just saying let's keep an order  
12 as to how we deal with it. We'll deal with you  
13 separately because apparently you've got a  
14 separate situation that we need to be aware of.

15 MR. BICHAN: There is no receipt from  
16 the US Department of Land Management. This is no  
17 evidence that they received it. Notice is  
18 required, evidence of notice. There is no  
19 evidence of notice. There is no evidence of  
20 notice to Kay Greer.

21 MR. NOBIS: Excuse me, Mr. Bichan.  
22 It's right there.

23 MR. STOVALL: Excuse me.

24 MR. NOBIS: That was the part of the  
25 package we handed them. I'm sorry, Mr. Stovall.

1 MR. BICHAN: Oh.

2 MR. STOVALL: Again Mr. Bichan is  
3 arguing that unless they sign for it and receive  
4 it, if I am correct, your argument is that unless  
5 they actually sign the card, the person to whom  
6 it's addressed, the owner of the land, then it is  
7 not notice.

8 My advice to the Examiner is that if it  
9 is mailed to that person, then it is notice to  
10 that person. If it is mailed, if we have proof  
11 that it was mailed to the BLM, then that notice  
12 requirement has been satisfied.

13 Likewise with -- you said Greer; is  
14 that the name? What was the name?

15 MR. BICHAN: Fay Greer.

16 MR. STOVALL: If there is proof of that  
17 mailing --

18 MR. BICHAN: So my understanding is  
19 that it is the position of the Bureau or the  
20 Department that any statement of mailing  
21 satisfies the rule?

22 MR. STOVALL: Requirement of certified  
23 mail, return receipt. And there is no -- neither  
24 the party mailing it nor the Division can control  
25 whether that party will actually accept, receive

1     that mail. Now, if there's some deficiency in  
2     that mailing, in that process in the mailing in  
3     the address, then that is another issue.

4             But if it is mailed to a party of  
5     record or to an interested party, it is the  
6     mailing which satisfies that. That is why I'm  
7     requesting the affidavit to further supplement  
8     the proof that the mailing has been made, that  
9     the items have been deposited. Return receipt,  
10    certified mail.

11            MR. BICHAN: I would like to see the  
12    receipts from the Bureau of Management [sic] and  
13    Fay Greer.

14            MR. STOVALL: Are you talking about the  
15    green card or the slip that indicates that it  
16    was --

17            MR. BICHAN: The return receipt.  
18    Either rejected or -- wait a minute. The return  
19    receipt states by whom it was received or if it  
20    was refused. The return receipts are always  
21    returned.

22            Now, the failure to put those receipts  
23    in that have been returned to them for the Bureau  
24    of Land Management and for Fay Greer indicates  
25    that these people have no knowledge and have

1 never been presented with it because they have  
2 not rejected it, and there is no evidence it was  
3 ever rejected. There is no evidence that they  
4 ever received anything.

5 MR. STOVALL: You've made your  
6 argument, and I've made my recommendation to the  
7 Examiner. So I think that is the status of that  
8 matter.

9 EXAMINER STOGNER: I think we need to  
10 move on to other matters. It has been so noted,  
11 and we have it on the record at this time. We do  
12 need to move on to something else.

13 MR. BICHAN: My other objection to the  
14 exhibits is that these are all required prior to  
15 issuance of any approval of application and  
16 belong as part of the application. And the  
17 receipts were not submitted as part of that  
18 application and proof.

19 MR. STOVALL: You're repeating your  
20 objection; is that correct? There's no green  
21 card for those two specific --

22 MR. BICHAN: No. No. All green  
23 cards. This is not the time to submit them.  
24 These, to allow the application to go through,  
25 should have been submitted before. And I object

1 to them being submitted now after the application  
2 has been approved.

3 MR. STOVALL: The application has been  
4 determined to be approvable, notwithstanding the  
5 language of the letter that went out. Let's get  
6 more to the substance.

7 MR. BICHAN: I would like to -- wait a  
8 second. Notwithstanding the letter that went  
9 out, I have been advised that it was approved.  
10 That's not true?

11 MR. STOVALL: At this point the  
12 approval is in -- the practical effect of the  
13 approval is that it is not effective. The  
14 Examiner, in this order, will issue a new order  
15 which will either approve or deny the  
16 application. If it approves it, it may be the  
17 same conditions as occurred with the letter that  
18 went out, and it may not be.

19 For all practical purposes, as of the  
20 time this matter is set for hearing, there is not  
21 an approval for the Tierra Landfarm facility.  
22 This order will determine whether there's an  
23 approval for it or not, not the letter.

24 As I stated at the beginning, the  
25 burden is still on the applicant to demonstrate



1       that it should be approved.

2               MR. BICHAN:   Then you have no  
3       approval?

4               THE WITNESS:   Well, I'm going by the  
5       letter that was sent to us.   To my understanding  
6       it was approved but placed in suspension pending  
7       this hearing.

8               MR. STOVALL:   And that is -- yes, that  
9       is the language of the letter.   I am telling you  
10      at this point that the effect is that by placing  
11      it in suspension and setting this matter for  
12      hearing, this order will make that determination  
13      and will set forth the conditions.

14              As I told you at the beginning of this,  
15      this is an evolving process with the Division.  
16      And we are going to look at substance in this  
17      case.   Tierra has no authority at this time to  
18      commence construction of the facility.

19              THE WITNESS:   We understand that.

20              MR. STOVALL:   And whether that is due  
21      to a suspension of an approval or a determination  
22      of approvability subject to the hearing, the net  
23      result is the same.   Tierra does not have an  
24      approval until this order, the order is entered  
25      by this Division.

1           Q.       (BY MR. BICHAN) On your application,  
2       type of operation, you state: "These substances  
3       will be landfarmed. They will be spread and then  
4       turned periodically in accordance with the  
5       determined schedule based on the degree of  
6       contamination for each job. They will be spread  
7       and treated, and a select cell will be proposed  
8       dedicated to biological technology for  
9       remediation."

10                   Is that what you intend to do on that  
11       property?

12           A.       Yes, sir.

13           Q.       You've just stated here that you are  
14       going to add moisture to the property?

15           A.       Only as approved by the OCD, and I  
16       believe I said that at the same time.

17           Q.       But you did not say that in this  
18       application. So this application does not in  
19       truth demonstrate what you intend to do?

20           A.       Mr. Bichan, the application was  
21       submitted. There were some questions raised, and  
22       some other additional information was submitted.  
23       And the addition of moisture was discussed. And  
24       the application, I think, has to consist of the  
25       request for additional information as well as

1 this specific application.

2 Q. So there has been a lot of other  
3 conversations and discussions about how this is  
4 going to go besides the requests which you think  
5 are part of the application?

6 A. They are all of record. They were  
7 specific requests by the OCD in which we  
8 replied.

9 Q. All right. Are you acquainted with  
10 Roger Anderson?

11 A. Yes, sir.

12 Q. Have you been in close contact with him  
13 concerning this application?

14 A. Close contact?

15 Q. Yes.

16 A. No, sir. I've been in contact with  
17 him.

18 Q. All right.

19 A. I don't understand your definition of  
20 close.

21 Q. Well, have you discussed how this  
22 property is to be farmed with Mr. Anderson?

23 A. Only through the application process  
24 and the request for additional information.

25 Q. All right. In the Exhibit 1, in the

1 docket, Robert Anderson --

2 MR. HALE: Could you refer him to --

3 Q. (BY MR. BICHAN) Sent a memorandum?

4 MR. HALE: Could you give him a date on  
5 that, give him the date of that?

6 Q. (BY MR. BICHAN) -- to Bobby Myers at  
7 Air Quality, dated August 19, requesting the  
8 determination as to whether or not an air quality  
9 permit was required. Did you discuss that with  
10 Mr. Anderson?

11 A. I did not, no, sir.

12 Q. Do you know of anybody in your  
13 operation that did that, discuss that with him?

14 A. I'm not sure. I don't know whether  
15 anybody discussed it with him or not.

16 Q. You're the principal operating officer?

17 A. Yes, sir.

18 Q. The file shows that on August 27 Mr.  
19 Anderson sent a memorandum to Mr. Myers stating  
20 that: "The principal of this landfarm operation  
21 is to add moisture and nutrients to the soil and  
22 then to disk over to enhance biodegradation.  
23 This type of operation relies on biochemical and  
24 physical breakdowns as opposed to volatilization  
25 of hydrocarbons."

1                   Did you discuss that with Mr. Anderson?

2           A.       I believe that someone in our firm has  
3 discussed it with him.

4           Q.       And you agree with that?

5           A.       Yes, sir.

6           Q.       And that is not included in this  
7 application?

8           A.       Mr. Bichan, I'm going to say again  
9 that, no, it was not included in the  
10 application. That's additional information that  
11 was submitted as a result of the application.  
12 And they requested -- there's some other  
13 information in there, I believe, as well that was  
14 submitted after the application was submitted.

15                   And I'm sure that you're well aware  
16 that you submit an application and if they have  
17 questions, they ask them and you respond to  
18 them. And that's the process that took place  
19 here.

20           Q.       My question to you is, do you intend to  
21 rely on biochemical and physical breakdown of  
22 contaminants as opposed to volatilization of the  
23 hydrocarbons as stated in that memorandum that  
24 you have before you?

25           A.       That's correct.

1 Q. No volatilization?

2 A. No, I didn't say that there would be no  
3 volatilization.

4 Q. Are you acquainted with the memorandum  
5 of -- have you seen the memorandum from the Air  
6 Quality Bureau dated August 28?

7 A. No, sir, I have not.

8 Q. In addition to the memorandum of August  
9 27, the Air Bureau alleges that Anderson has  
10 advised that Tierra proposes to landfarm and that  
11 the landfarm is intended to utilize a  
12 bioremediation process to reduce the  
13 concentration of heavy end hydrocarbons to OCD  
14 levels and that a 1-acre plot will be used to  
15 demonstrate the effectiveness of the project and  
16 then will be expanded to include 21.9 acres.

17 A. That's correct.

18 Q. So then you are only going to landfarm  
19 one acre --

20 A. No, sir.

21 Q. -- until the effectiveness has been  
22 demonstrated?

23 A. No, sir.

24 Q. The landfarm is intended to utilize  
25 remediation to reduce the concentration. In the

1 initial phase a 1-acre plot will be used to  
2 demonstrate the effectiveness and then will be  
3 expanded to include the 22-acre site. That's  
4 false?

5 A. No, sir.

6 Q. You do not intend to do that?

7 A. That's exactly right. That's exactly  
8 how we intend to do it.

9 Q. So you are going to do one and then --

10 A. We are going to do one acre where we  
11 add bioremediation. The rest of the landfarm  
12 will utilize natural biodegradation.

13 Q. Meaning?

14 A. Mr. Bichan, I think I explained it  
15 pretty --

16 Q. I don't understand biodegradation.

17 A. Biodegradation. Natural bacteria that  
18 occur. One acre is going to have it added to  
19 it. The rest of it, we're going to depend on the  
20 natural bacteria and biological activity that  
21 will take place under the proper conditions.

22 Q. There will be no volatilization?

23 A. No, sir. I didn't say there would be  
24 no volatilization.

25 Q. And you did not say that it will be

1       used for volatilization of light ends?

2           A.       We do not intend to use it for  
3 volatilization.

4           Q.       It will not be used?

5           A.       It's our belief that most of those  
6 light ends, by the time they reach our landfarm,  
7 will already have been volatilized.

8           Q.       I ask you to look at the memorandum.

9           A.       I don't understand the memorandum.

10           MR. HALE: I don't understand his  
11 question. My client is not a party to the  
12 memorandum. What's your question? If he's read  
13 the memorandum, or how he's going to operate it?

14           MR. BICHAN: No. The OCD has done  
15 something here, and I want to know whether or not  
16 it is done with the concurrence of Tierra --

17           MS. BROWN: I can clarify this.

18           MR. BICHAN: -- Corporation. I want to  
19 to know whether it's been done with the  
20 concurrence --

21           MR. HALE: Okay. That's what I'm  
22 saying. Ask him those questions.

23           MR. BICHAN: -- by the OCD without the  
24 concurrence.

25           MR. HALE: It will be helpful if you'd



1 ask him those questions.

2 MR. STOVALL: Let me back up and just  
3 say that whatever is going to be done will be  
4 done under the direction of the OCD. And if the  
5 OCD imposes the requirement, the applicant will  
6 concur with those requirements if they're going  
7 to operate the facility.

8 Does that answer your question with  
9 respect to that?

10 MR. BICHAN: No.

11 MR. STOVALL: Now you can ask a  
12 specific question.

13 MR. STOVALL: The purpose here is,  
14 according to the memorandum, the OCD wants to  
15 know whether or not an Air Quality permit is  
16 required.

17 MR. STOVALL: Correct.

18 MR. BICHAN: And they make statements  
19 to Bobby Myers concerning how this is going to be  
20 operated.

21 MR. STOVALL: Correct.

22 MR. BICHAN: And upon those statements  
23 there is a finding by Bobby Myers that it will  
24 not be required.

25 MR. STOVALL: Correct. Those documents

1 speak for themselves.

2 MR. BICHAN: If these statements are  
3 not true and he did not tell the Department this,  
4 then it appears that the Department has on its  
5 own created a scenario that is not true to avoid  
6 a land use permit -- I mean, the Air Quality  
7 permit.

8 If this is not going to be what's  
9 happening -- right here, the Bureau has received  
10 your request and listed below is a summary of my  
11 understanding of the proposed project. This is  
12 Bobby Myers back to Anderson who asked this.

13 "Tierra propose to accept solids and  
14 sludges, landfarm to reduce to hydrocarbons. The  
15 landfarm is intended to utilize bioremediation to  
16 reduce the concentrations of heavy-end  
17 hydrocarbons to accepted levels. In the initial  
18 phase a 1-acre plot will be used to demonstrate  
19 the effectiveness of the project and then will be  
20 expanded to use 22 acres of the site for  
21 bioremediation.

22 "The Landfarm 'Will Not,' in capitals,  
23 "be used for volatilization of light ends in the  
24 atmosphere to reduce contaminated soil. Water is  
25 to be added to the contaminated soil to enhance

1 the bioremediation and will also aid in  
2 suppressing windblown dust from the area.

3 "Since the project will not be  
4 releasing hydrocarbons to the atmosphere and the  
5 dust suppression is to be used, then an Air  
6 Quality permit is not required."

7 And I simply want to know if that is in  
8 fact is the truth and is that what you intend to  
9 do?

10 A. If that's what we are -- that's the  
11 basic intent, was to have a specific 1-acre plot  
12 to demonstrate the addition of bacteria for  
13 bioremediation. The rest of the plot is natural  
14 biodegradation and natural bioremediation. And  
15 this is exactly what we intend to do and any  
16 other items that we are instructed to do at that  
17 site, if we're instructed to do it by the OCD.

18 Q. Did you tell Roger Anderson that you  
19 are going to add water to enhance the remedial  
20 process and to suppress windblown dust from the  
21 area?

22 A. In our initial application, I believe  
23 we discussed that over the 1-acre site that we  
24 talked about. And we have notified them that we  
25 are willing to add water to suppress dust over

1 the site. I think that's in part of the replies  
2 subsequent to the application that are certainly  
3 part of the application.

4 Q. So then the application now is of  
5 August 28, this particular application has now  
6 been amended to this?

7 A. Whatever is part of that file, I think  
8 that the Hearing Examiner and the OCD are well  
9 aware that that's part of the application. If  
10 they ask for additional information and we  
11 respond, then that's part of the application. I  
12 assume that this hearing is going to become part  
13 of the application.

14 Q. So this statement then or saying that  
15 there's no requirement is not in fact the facts  
16 as you intend it? You are not going to add water  
17 to enhance the bioremediation and also to  
18 suppress dust? That is not your intent?

19 A. That is exactly our intent.

20 Q. All right.

21 A. If that's part of the approved  
22 process.

23 Q. If that is part of the approved  
24 process?

25 A. Yes, sir. We aren't going to do

1 anything out there that's not approved by the  
2 OCD.

3 Q. Have you stated to Roger Anderson  
4 you're going to do this?

5 A. Certainly.

6 Q. You have stated to Roger Anderson  
7 you're going to do this?

8 MR. STOVALL: Do what, Mr. Bichan? I  
9 don't understand.

10 A. We expressed our willingness to do  
11 that.

12 EXAMINER STOGNER: Mr. Stovall?

13 MR. STOVALL: Let me back up and make  
14 sure that you understand the purpose of this.  
15 We're not here to -- let me rephrase that. We  
16 are here to determine what conditions must be  
17 imposed upon the applicant if this facility is to  
18 be approved.

19 The Air Quality Bureau, the letter to  
20 which you're referring to from Air Quality in  
21 combination with Mr. Anderson's facilities -- or,  
22 excuse me, memorandums regarding the facility are  
23 information which can be used by the Examiner to  
24 set forth the conditions.

25 Now, you're asking -- it sounds to me

1     like you're saying you won't do unless the -- if  
2     the OCD tells you to. I don't think that's the  
3     intent. I think the intent here is to determine,  
4     and we would like your input to the extent that  
5     it can be helpful, to determine what conditions  
6     must be imposed upon this facility if it is to be  
7     permitted under the regulations of the Oil  
8     Conservation Division.

9             Now, if the addition of water to hold  
10    down dust and eliminate volatilization is  
11    technically sound, then that will be a condition  
12    of this facility. If they don't operate it in  
13    accordance with those conditions, they are  
14    subject to the remedial actions of the Division,  
15    including corrective actions and other  
16    enforcement actions as necessary.

17            MR. BICHAN: I'm fully aware of that.  
18    But what I'm really concerned about is the  
19    request for an Air Quality -- whether or not an  
20    Air Quality permit is required by OCD.

21            MR. STOVALL: The OCD doesn't require  
22    one. You're talking about the request by OCD?

23            MR. BICHAN: The request by OCD to the  
24    Environmental Department as to whether or not an  
25    Air Quality permit is required reasonably,

1 because they don't want to grant a permit to  
2 landfarm if an Air Quality permit is required --

3 MR. STOVALL: Okay.

4 MR. BICHAN: -- to do such a thing.

5 And in doing so they make statements concerning  
6 that the operation is to be run according to the  
7 copy of the original permit.

8 MR. STOVALL: I think Mr. Cheney --

9 MR. BICHAN: Then they find that that  
10 is nowhere near sufficient, so then they make  
11 certain representations to Mr. Myers in avoidance  
12 apparently of having to get an Air Quality  
13 permit.

14 And I'm concerned that these statements  
15 are not directed as to advising Bobby Myers how  
16 these people intend to do it, but is directed to  
17 Bobby Myers so as he will say no permit is  
18 required.

19 And I'm trying to find out whether the  
20 statements made by the Department that induced  
21 Myers to say that under these conditions it is  
22 not required are in fact the intentions of the  
23 applicant. And I think that's a fair question.

24 MR. STOVALL: Well, I will advise you,  
25 for your information, that even if it is not the

1 intention of the applicant, if he were to answer  
2 that question no and the Division were to  
3 determine that these steps are necessary to  
4 prevent Air Quality discharges, then the Division  
5 will impose those requirements upon Tierra  
6 regardless of whether or not Tierra intends to do  
7 that. They will be told to do it, if that is the  
8 appropriate action.

9 As Mr. Cheney has pointed out in his  
10 response, the process is iterative. The  
11 application as filed, additional conditions can  
12 be imposed as the process continues. This piece  
13 of information can be used by the Examiner to set  
14 forth additional conditions. If those conditions  
15 are determined to be necessary, then the  
16 applicant has a choice: Either he operates under  
17 those conditions, or he doesn't operate at all.

18 So we don't need, from the Division's  
19 standpoint, if these conditions are necessary,  
20 technically necessary to prevent the illegal  
21 discharge of air contaminants, then those  
22 conditions will be set forth and required by the  
23 Division. And we will not permit him to  
24 violate. If he intends to discharge pollutants  
25 into the the air which would make him subject to



1 the Air Quality Board, requirements for an Air  
2 Quality discharge permit, then he will have to  
3 obtain that permit from Air Quality.

4 But if Air Quality is saying that if  
5 they satisfy these conditions, that will not  
6 constitute a discharge, then OCD has the  
7 authority to impose these conditions upon the  
8 operation of the facility.

9 And our purpose at this hearing today  
10 is to determine whether or not those conditions  
11 should be imposed in an effort to ensure that  
12 this facility operates in compliance with the  
13 rules.

14 MR. BICHAN: I understand they will do  
15 that. But I also understand and, as stated in  
16 here, that Roger Anderson felt that a  
17 determination by the Air Quality board, as to  
18 whether or not a permit was required, should be  
19 made before the issuance of the final permit.

20 MR. STOVALL: Correct.

21 MR. BICHAN: And he has made statements  
22 concerning how this operation is to be run, and  
23 those statements elicited a finding of no permit  
24 required. And what I want to know is: Did Roger  
25 Anderson make those statements on his own to keep

1 the Air Quality permit from having to be  
2 involved? Or in fact is this -- did he in fact  
3 give the intent of Tierra to Mr. Myers, and does  
4 Tierra in fact intend to do this and make it part  
5 of the application?

6 MR. STOVALL: I don't think you heard  
7 me, Mr. Bichan. I said it doesn't matter. If we  
8 impose the conditions, they will do it.

9 MR. BICHAN: I understand that. But  
10 they also, if they are in violation of the Air  
11 Quality Act, must have a permit.

12 MR. STOVALL: Well, that's a  
13 contradiction in terms. Yes, if they are going  
14 to have an intentional discharge into the air,  
15 they must have a permit, or they are in violation  
16 of the Air Quality Act, yes.

17 MR. BICHAN: If they're going to do  
18 that. And my question is -- my concern is:  
19 These people by their permit indicate on the  
20 record that they're going to remediate by  
21 evaporation. And that now there's all this  
22 conversation about wetting it down and preventing  
23 volatilization and preventing dust. But that's  
24 not the application before this. And if there  
25 has been an amendment or a change, I think that

1 the public ought to know what's going on here.

2 MR. STOVALL: It's here. You've got  
3 the entire package.

4 MR. BICHAN: Well, he says that they  
5 are going spread it on the ground and turn --

6 MR. HALE: If I may make an objection.

7 MR. BICHAN: -- it periodically.

8 MR. HALE: If I may make an objection.

9 EXAMINER STOGNER: Mr. Hale.

10 MR. HALE: He had an opportunity to  
11 subpoena Mr. Anderson. If those are the  
12 questions he has, they should be directed to  
13 him.

14 My client has stated twice how they  
15 intend to operate. Counsel for the OCD has  
16 stated that the conditions can be imposed at the  
17 request of OCD. I think we've exhausted this  
18 subject. I think this is simply argument as to  
19 matters already of record.

20 EXAMINER STOGNER: With that, Mr. Hale,  
21 I agree.

22 So, Mr. Bichan, I suggest we move on to  
23 another topic.

24 Q. (BY MR. BICHAN) Now, Mr. Cheney, you  
25 have stated in your notice and you have stated

1 here that the products that you're bringing forth  
2 are nonhazardous. That is not true. They are  
3 hazardous; is that not true?

4 A. They are classified by RCRA as  
5 nonhazardous oil field waste.

6 EXAMINER STOGNER: For definition sake,  
7 what does RCRA stand for?

8 THE WITNESS: Resource Conservation  
9 Recovery Act.

10 EXAMINER STOGNER: That is from the  
11 EPA, Environmental Protection Agency, of the US  
12 Government; is that correct?

13 THE WITNESS: Yes, sir, that's correct.

14 MR. STOVALL: Actually it's an act of  
15 Congress. And the abbreviation is RCRA.

16 Q. (BY MR. BICHAN) And is it not true  
17 that the determination of nonhazardous as to oil  
18 field wastes and Subchapter C was made for the  
19 purpose of avoiding -- I'm sorry -- was made for  
20 the purpose of an exemption of Subchapter C and  
21 that alone?

22 A. Of an exemption?

23 Q. For an exemption.

24 A. I don't know.

25 Q. Of the requirements of Subchapter C.

1           A.       It certainly is an exemption, but I'm  
2 not sure that that was the specific purpose. So  
3 I can't state that.

4           Q.       And is it not true that, as a matter of  
5 fact, the wastes contain a wide variety of  
6 hazardous constituents?

7           A.       No, sir, I don't believe that is true.

8           Q.       Is benzene a hazardous constituent?

9           A.       At certainly levels it could be, yes,  
10 sir.

11          Q.       Yes, sir. Is toluene a hazardous  
12 constituent?

13          A.       At certain levels, certainly.

14          Q.       Is xylene a hazardous constituent?

15          A.       To the best of my knowledge, it is.

16          Q.       And do these materials contain such?

17          A.       Certainly they're going to be some  
18 materials that may contain portions of that. But  
19 I think I stated previously, those are the light  
20 ends. And primarily what's going to be deposited  
21 on this landfarm are going to be the heavy end  
22 carbons.

23          Q.       So there will be no toluenes, benzenes,  
24 or xylenes?

25          A.       I can't state that unequivocally that

1       there will be absolutely no benzenes, toluenes.  
2       But the acts, I believe, have certain limits that  
3       have to be met, and they will not exceed those  
4       limits.

5           Q.       Tierra Environmental, June 3, to Kathy  
6       Brown, letter --

7                   EXAMINER STOGNER:   Is that included in  
8       Exhibit No. 1?

9                   MR. BICHAN:   It is.

10                  EXAMINER STOGNER:   What was the date of  
11       that letter?

12                  MR. BICHAN:   June 3.

13                  EXAMINER STOGNER:   Okay.

14                  MR. BICHAN:

15           Q.       (BY MR. BICHAN)   This letter states,  
16       "Contaminated soils received at the facilities  
17       will be spread within 72 hours of receipt.  
18       Tierra will disk soils and active cells a minimum  
19       of one time every two weeks.   Successive lifts of  
20       contaminated soils will not be spread until a  
21       measurement of total petroleum hydrocarbons in  
22       previous lifts is less than 100 parts per million  
23       and the sum of all aromatic hydrocarbons is less  
24       than 50 parts per million and benzene is less  
25       than 10 parts per million."

1           The purpose of bringing the soil there  
2 is to get rid of toluene, xylene, and benzene  
3 down to that safe level; is that not true?

4           A.     If they're in the soils when they  
5 arrive, that's the purpose.

6           Q.     If they're not in the soils, you  
7 wouldn't be bringing it, would you?

8           A.     We might be treating it for total  
9 petroleum hydrocarbons of other types.

10          Q.     Is it your contention that it does not  
11 contain hazardous waste?

12          A.     It's my contention that -- no, sir. I  
13 said that it is classified as nonhazardous under  
14 the RCRA Act. And that's what we intend to bring  
15 there, is nonhazardous oil field waste.

16          Q.     It is classified as nonhazardous for  
17 the purpose of being exempt from Subchapter C,  
18 very extreme requirements. That is the truth,  
19 and you know that to be true?

20          A.     No, sir.

21                 MR. HALE: I'll object. He's asked and  
22 answer this question.

23          Q.     That is not a scientific determination  
24 that they in fact are nonhazardous. Those wastes  
25 are hazardous, aren't they?

1 MR. HALE: Again he's asked and  
2 answered this question, Mr. Examiner.

3 EXAMINER STOGNER: I believe Mr. Cheney  
4 has answered that question, as the EPA has  
5 classified this as nonhazardous material <sup>for</sup> oil  
6 field wastes. <sub>ms.</sub>

7 Now, do you want to move on to  
8 something else?

9 MR. BICHAN: I would like to mark this  
10 portion of the Federal Register as an exhibit.

11 EXAMINER STOGNER: Okay. You may do  
12 that. Do you want to identify it for the record  
13 at this time?

14 MR. BICHAN: Yes. This is the  
15 regulatory determination of oil and gas  
16 geothermal exploration development and production  
17 wastes. And it contains the --

18 EXAMINER STOGNER: Let me ask this.  
19 What's the Federal Register citation up on top?  
20 That's what I want.

21 MR. BICHAN: Volume 53, No. 129,  
22 Wednesday, July 6, 1988.

23 EXAMINER STOGNER: This particular page  
24 is put out by the --

25 MR. BICHAN: Yes. Pages 25446 through



1 25459. And it is the preamble to the RCRA  
2 legislation.

3 EXAMINER STOGNER: Thank you. You  
4 would like to mark that as Exhibit No. 1?

5 MR. BICHAN: I would.

6 EXAMINER STOGNER: Are there any  
7 objections to -- is this going to be marked as  
8 Bichan Exhibit No. 1?

9 MR. BICHAN: Yes.

10 EXAMINER STOGNER: I'll even go one  
11 step further and take administrative notice of  
12 any other EPA documents that that particular  
13 documents refers to.

14 MR. BICHAN: I beg your pardon?

15 EXAMINER STOGNER: I'll take  
16 jurisdictional notice of any other EPA  
17 documentation that that particular preamble  
18 alludes to because, after all, we are still  
19 authorized -- or this Environmental Bureau is  
20 authorized to proceed under the RCRA rules and  
21 regulations.

22 MR. BICHAN: Do you want to examine  
23 this?

24 MR. HALE: He's taken administrative  
25 notice of it.

1 MR. STOVALL: Applicable federal  
2 regulations with respect to Resource Recovery --  
3 whatever it is -- Act, RCRA.

4 EXAMINER STOGNER: Do you have any  
5 other questions, Mr. Bichan?

6 MR. BICHAN: Just specifically that the  
7 preamble states that EPA found oil and gas and  
8 geothermal waste originating in very diverse  
9 ecological settings and contain a wide variety of  
10 hazardous constituents.

11 EXAMINER STOGNER: So noted.

12 MR. BICHAN: That EPA documents 62  
13 damage cases resulting in management of these  
14 wastes found that many were in violation of  
15 existing state and federal requirements.

16 So I want the department, if it does  
17 not understand that the determination of  
18 nonhazardous of these drilling sources is for the  
19 purpose of avoiding the stringent requirement of  
20 Subchapter C; it is not a determination of  
21 scientific content; that it does in fact contain  
22 it.

23 MR. HALE: I'll object to that argument  
24 as no foundation.

25 EXAMINER STOGNER: Thank you, Mr. Hale.

1 MR. BICHAN: It's in there.

2 EXAMINER STOGNER: It's also on the  
3 record at this time.

4 Do you want to continue, Mr. Bichan?

5 MR. BICHAN: Yes.

6 EXAMINER STOGNER: When I say do you  
7 have any continuation, do you have any questions  
8 of Mr. Cheney?

9 MR. BICHAN: Yes, I do.

10 Q. (BY MR. BICHAN) Oh. Mr. Cheney, how  
11 do you intend to apply water to this 23-acre  
12 site?

13 A. However the permit requires.

14 Q. You submitted engineering drawings. Do  
15 you show on there how you intend to apply water?

16 A. No, sir.

17 Q. How would you intend to apply water?

18 A. If the addition of water in fact  
19 becomes a requirement part of the permit, there  
20 will be several different methods, either by a  
21 sprinkler irrigation system or with a water  
22 truck.

23 Q. So my understanding is that you do not  
24 intend to wet down this ground unless the permit  
25 demands it; is that true?

1           A.       We are going to comply with whatever  
2 the permit requires. If the permit requires us  
3 to wet that, we're going to. If for some  
4 technological reason they don't want to us to and  
5 instruct us not to, then we will not water it.

6           I don't know how to make it any clearer  
7 that we are going to comply with the requirements  
8 of the permit that is issued. If it requires us  
9 to water it, that's what we will do.

10          Q.       Am I to understand that the  
11 requirements of the permit are to be later  
12 determined and that this is not in fact what you  
13 intend to do, the application here; there is  
14 going to be a determination later on?

15          A.       Mr. Bichan, there are specific reasons  
16 in some areas not to add water to a particular  
17 soil that might be brought in. I think I'm going  
18 to reiterate again that this is all in the part  
19 of the permit application as it evolved from the  
20 original permit. The discussions are in there.  
21 And if the permit requires us to add water,  
22 that's what we're going to do.

23          Q.       So you then do not have an approved  
24 permit at this time, and you recognize that?

25          A.       Well, it's my understanding, yes, sir.

1 I think that was made perfectly clear just a few  
2 minutes ago.

3 Q. So that if the permit does not spell  
4 out the requirement of water, you will not water?

5 A. That's correct.

6 MR. HALE: I object to this line of  
7 questioning. I think we've exhausted this  
8 discussion for over an hour.

9 EXAMINER STOGNER: The water issue I  
10 want to continue. Let Mr. Bichan question Mr.  
11 Cheney on the water issue.

12 Mr. Stovall?

13 MR. STOVALL: If I may make a  
14 suggestion, though, to make this issue a little  
15 more useful to the Examiner. It would seem to me  
16 that it would be more beneficial to address the  
17 benefits and the technical issues of whether or  
18 not water should be applied and why in order for  
19 us to make a determination rather than discuss --  
20 again we've said, if the applicant will comply  
21 with our operations and if changes are required,  
22 we will then order that those changes be made.

23 But if you will assist us by getting to  
24 the issues of the benefits of adding water or the  
25 reasons to not keep the facility moist, or any

1 other technical side of that, it's certainly much  
2 more helpful than trying to get him to say he's  
3 not going to do what he's told to do.

4 THE WITNESS: We would certainly be  
5 glad to discuss those aspects.

6 MR. BICHAN: No. I want the Commission  
7 to understand that if they do not order him to,  
8 he will not do it regardless of the --

9 EXAMINER STOGNER: If that's what  
10 you're asking, then he has answered that  
11 question, and I suggest you move on to something  
12 else then.

13 MR. BICHAN: Okay.

14 Q. (BY MR. BICHAN) So then in fact if  
15 there's no order to do so, to water, you're not  
16 directly ordered to water, you will then  
17 remediate by volatilization?

18 A. No, sir.

19 Q. How else would you remediate?

20 A. There will be natural biodegradation.  
21 There may be some volatilization, but it's  
22 basically natural biodegradation of materials.

23 Q. There will be?

24 A. I can't say that there absolutely won't  
25 be any volatilization of anything out there. I

1 think that anybody involved in this process knows  
2 that you can't make that kind of statement. But  
3 the vast majority of it is going to be degraded  
4 by natural biodegradation.

5 Q. And I still don't know what that is. I  
6 asked you to explain that to me before.

7 A. Natural occurring bacteria to break  
8 these compounds down.

9 Q. And there is that bacteria in this  
10 soil?

11 A. They occur naturally. You can add  
12 them. Under the right conditions they will grow  
13 and cause that biodegradation to take place.

14 I might add to that. I think that the  
15 addition of water is appropriate. We've always  
16 felt that way. And under the direction of the  
17 OCD, that's what we'll do. But the addition of  
18 water would enhance that natural biodegradation,  
19 we believe.

20 Q. Are you going to use water for dust  
21 suppression?

22 A. If we are allowed to with the permit.

23 Q. So the permit must spell out that you  
24 must use it?

25 A. I think that as the operation goes up

1       there, the OCD will review this. And I would  
2       hope that they -- whatever they want done, that  
3       they specify in the permit. But if they come  
4       along and say, look, we need to spread some more  
5       water on this, we're going to do it.

6           Q.       Some water or some more water?

7           A.       Well, some water, or water, or  
8       additional water.

9                   Mr. Bichan, I'd like to go back. If  
10       you want to talk about the benefits of adding  
11       water or not adding water, I'll be glad to do  
12       that. But we are going to follow whatever the  
13       permit requires us to do regarding the addition  
14       of water.

15          Q.       Mr. Cheney, it's of vital importance to  
16       the public health as to whether or not  
17       volatilization will or will not take place as to  
18       whether or not blowing dust of contaminated soil  
19       will or will not take place.

20                   And I think it's fair that the public  
21       should know whether you intend to suppress the  
22       volatilization and whether or not you intend to  
23       suppress the dust as has been indicated you will  
24       do in the memorandum -- as stated in the  
25       memorandum from the Environmental Department.



1 And I think that we are entitled to know: Are  
2 you going to suppress the dust with the water, or  
3 are you going to prevent volatilization with  
4 water?

5 A. I think I've answered that question.

6 MR. HALE: Yes. I'd object to the line  
7 of questioning. Again we've had a lengthy  
8 discussion that it will be operated per OCD  
9 directions and regulations and that he will do  
10 what is required and as required by the OCD. The  
11 question has been asked and answered ten  
12 different ways. I'd object to the line of  
13 questioning.

14 MR. BICHAN: Again we're in the  
15 situation where the OCD has made these  
16 representations. And I want to know whether he  
17 intends to do this.

18 EXAMINER STOGNER: I think he has  
19 answered that question, Mr. Bichan.

20 MR. BICHAN: It is my understanding  
21 then he will only do what it is ordered, and if  
22 it is not ordered, he will not do it.

23 MR. STOVALL: Let me ask you a  
24 question, Mr. Cheney, just to make sure.

25 EXAMINATION

1 BY MR. STOVALL:

2 Q. If I understood the answer you said  
3 before, you said in response to the one question,  
4 you might add water if it were not prohibited by  
5 the OCD; is that correct?

6 A. That's correct.

7 Q. And there are two approaches to take:  
8 One is that the OCD requires watering, in which  
9 case you would comply with that requirement and  
10 water according to whatever standard we might  
11 set, however that might be determined?

12 A. That's correct.

13 Q. The other consideration would be that  
14 we would say: Do not add water. There are some  
15 technical scientific risks that say if you get it  
16 too wet, it creates some sort of hazard;  
17 therefore, don't add water. In that case you  
18 would not add water; is that correct?

19 A. That is correct.

20 Q. And the in-between situation is one  
21 where the OCD order did not specifically address  
22 the issue of watering or not. In that situation  
23 would your company make an independent  
24 determination and do what it thought was best,  
25 perhaps with consultation with the OCD?

1           A.       Yes, sir. Exactly. But it will be in  
2 consultation with the OCD.

3           Q.       In other words, if I understand what  
4 you're saying -- and I think we're getting at  
5 this in kind of a back-door way -- I mean, I'm  
6 telling you you'll do what we tell you to do, and  
7 I think you know that.

8           A.       We understand that.

9           Q.       And I'm also telling you, you won't do  
10 that which we tell you you won't do.

11          A.       That is correct.

12          Q.       And if there's steps in between that  
13 aren't addressed in the order, am I correct in  
14 saying that you are prepared to go forward, take  
15 the initiative to recommend action, and seek OCD  
16 approval for a particular action which would  
17 improve the health measures?

18          A.       Absolutely.

19          Q.       Conversely, if the Division determines  
20 that some additional step is needed subsequent to  
21 the issuance of a permit, assuming one is issued,  
22 you understand that if we say do it, it has to be  
23 done?

24          A.       That's correct. I think there's  
25 another point to that that we're going to do. If

1 we don't think it's proper at the time, we're  
2 going to argue with you about it. The same way,  
3 though, that if we'd come to you and say: We  
4 think this should be done; we would like your  
5 permission to do it.

6 So we're going to try to operate that  
7 facility in the best technologically appropriate  
8 manner that we can do it.

9 MR. STOVALL: Now, Mr. Bichan, what  
10 I've heard so far from Mr. Cheney is that it  
11 sounds like watering is a good idea. We haven't  
12 discussed issues of frequency or levels or  
13 whatever. I don't know if we can set those  
14 levels. Perhaps we need to explore that issue  
15 further if we're going to be more specific as to  
16 what those requirements are going to be,  
17 including the method of application, the volumes,  
18 moisture content, et cetera.

19 But I think the answer you're trying to  
20 get, you're trying to get him to say something  
21 that doesn't really help us in making that  
22 determination.

23 Do you have any further questions about  
24 what --

25 MR. BICHAN: Yes, I do. One further

1 question.

2 FURTHER EXAMINATION

3 BY MR. BICHAN:

4 Q. You are aware of the Environmental  
5 Department's air quality permitting process?

6 A. Yes, sir.

7 Q. And you are aware that if you are in  
8 violation of the rules of the department or  
9 intend to be, you must get a permit from that  
10 department?

11 A. Yes, sir, as those rules are  
12 applicable.

13 Q. And you are aware of that?

14 A. Yes, sir.

15 Q. And you are also aware that operation  
16 without permission when required is punishable by  
17 \$15,000 a day fine?

18 A. I think that it is certainly important  
19 that we emphasize in your question the words,  
20 "when required," yes, sir.

21 Q. Yes. I understand. And you would  
22 understand that if you operated and a permit was  
23 required, you did not have a permit, you were  
24 subject to \$15,000 a day?

25 A. That is correct. Permit is not

1 required for this facility.

2 Q. The permit is not required?

3 A. That's right.

4 EXAMINER STOGNER: I believe you said  
5 you had one question. Was that it, Mr. Bichan?  
6 Are you through cross-examining?

7 MR. BICHAN: He just says the permit is  
8 not required, and the Environment Department says  
9 water is to be added to the contaminated soil.  
10 And he says he will not -- he is not going to add  
11 water unless it's required.

12 EXAMINER STOGNER: Are you going to  
13 have any other questions of this witness, Mr.  
14 Bichan? That's old hat. We've already discussed  
15 all that.

16 MR. BICHAN: I don't believe we have.  
17 I believe --

18 EXAMINER STOGNER: Mr. Bichan, I  
19 believe we have, and I would like to continue,  
20 please.

21 Q. (BY MR. BICHAN) Did you receive a  
22 notice of this hearing date from the OCD?

23 A. Yes, sir.

24 Q. And that letter was addressed to you  
25 telling you what you must do concerning this

1 hearing?

2 A. As I recall, yes, sir.

3 Q. That was sent to you by certified  
4 mailed, return receipt requested?

5 A. Yes, sir.

6 Q. And you did respond?

7 A. I don't believe I signed the return  
8 receipt, though, Mr. Bichan.

9 MR. BICHAN: It's Tierra Environment --  
10 it's just addressed as president, not  
11 individually, so the office would suffice.

12 I have no further questions at this  
13 time.

14 EXAMINER STOGNER: Thank you, Mr.  
15 Bichan. Any other redirect questions?

16 MR. HALE: No redirect.

17 EXAMINER STOGNER: Mr. Stovall or -- I  
18 have some questions of Mr. Cheney.

19 MR. STOVALL: Why don't you go ahead,  
20 and if I've got any additional ones -- I've got  
21 some too, but they may be the same. So go ahead  
22 and get yours.

23 EXAMINATION

24 BY EXAMINER STOGNER:

25 Q. With the addition of water, Mr. Cheney,

1 are we talking freshwater?

2 A. Yes, sir.

3 Q. Not produced water from oil field brine  
4 or anything such as that?

5 A. No, sir.

6 Q. Now, this is if it is required by the  
7 OCD, you'll follow out to introduce water to your  
8 landfarm?

9 A. Absolutely.

10 Q. As a civil engineer, how would you  
11 propose that this could be done, the addition of  
12 this water?

13 A. Up there, there might be two methods  
14 that would be appropriate. One of them could be  
15 done through a sprinkler system and then disking  
16 it in. Or in the area that we're operating in,  
17 the size facility we have, I think it could be  
18 done with a water truck similar to one that  
19 distributes water through a road base compaction  
20 and so on.

21 Q. So, to make it clear to me, the  
22 irrigation system is applicable farm type  
23 equipment --

24 A. Yes, sir.

25 Q. -- in which I see alongside the road



1       for irrigation with the sprinklers?

2           A.       Yes, sir.

3           Q.       The other one would be the truck.  If  
4       you're required to introduce water to these  
5       6-inch toughs, in what volume do you think would  
6       be adequate?

7           A.       I think that that's going to have to be  
8       determined on the type of soil that's in there.  
9       Some soils, very little water will make them  
10      pretty wet.  Other soils, you can put a little  
11      more water into them.

12                   I think that the basic consideration  
13      here just to keep it moist enough to encourage  
14      microbial activity.  That's just -- I think that  
15      would be moist enough to suppress any dust.  I  
16      think you have to be very careful of the amount  
17      of water that you put in there.

18                   If we put water in, it's also my  
19      understanding we have to do additional monitoring  
20      around the site and report the condition of the  
21      soil, say, at 3-foot depth or 2-foot depth more  
22      often than we do if we don't add water.  But it's  
23      my personal belief that the addition of water  
24      will encourage microbial activity and will  
25      enhance the degradation of these materials at a

1 more rapid rate.

2 Q. So the way I hear right now, we cannot  
3 determine what volumes of water would be adequate  
4 at this point, and that would be determined at a  
5 later time?

6 A. [Nodded.]

7 Q. Now, you said, you mentioned something  
8 about testing regardless of what volumes were  
9 adequate. What would happen if too much water  
10 was added out there?

11 A. Well, if there's too much, of course,  
12 if you add too much to it, then you limit your  
13 ability to work that soil. But there's always  
14 the possibility if you add too much, that you  
15 might drive the contaminants down into the soil,  
16 and that's not the purpose of the process.

17 Q. And what would that do, driving the  
18 contaminants down?

19 A. At our site I don't think it's going to  
20 cause anything, except we have to be concerned  
21 about groundwater at any depth. And if we drive  
22 them down too deep, then we might want to quit  
23 using that particular cell and remediate that  
24 cell in itself. And that can be done before it  
25 gets to a depth that might be prohibitive.

1 Q. You mentioned earlier about the natural  
2 biodegrade --

3 MR. STOVALL: Degradation?

4 EXAMINER STOGNER: That's the word.

5 MR. BICHAN: That's a bitch of a word.

6 Q. (BY EXAMINER STOGNER) -- that at this  
7 time you propose to only use natural as opposed  
8 to any addition of any microbiological organisms  
9 that are out there on the market at this time?

10 A. I think we're willing to add. It was  
11 our understanding that we needed to do a  
12 demonstration in a small site of the bacteria  
13 that we propose to use before we generally  
14 applied them to the entire landfarm.

15 Q. And another line of questioning also.  
16 If technology or as technology advances in the  
17 future, if your application is approved, that  
18 could also be included other than through a pilot  
19 project for any additions of some super bug that  
20 may come along in the next two years or such?

21 A. Yes, sir. And it would be to our  
22 advantage to do that.

23 Q. Okay. But at this time it's natural?

24 A. That's what we propose in everything  
25 except one cell now that we had proposed to use

1 as a demonstration project for the addition of  
2 various microbes. And we certainly have some in  
3 mind that we think are appropriate.

4 Q. Okay. I'd like to specifically now go  
5 to Exhibit No. 4. This is that map?

6 A. Yes, sir.

7 Q. In looking at that and I show in  
8 Section No. 2, I show the hatched area as the  
9 landfarm. And I assume that's your landfarm; is  
10 that correct, proposed landfarm?

11 A. Yes, sir.

12 Q. Okay. I see a line going through  
13 there. And up in the northwest corner of that  
14 map, I show it to be in the pipeline. It appears  
15 to go right through the landfarm; is that  
16 correct?

17 A. The landfarm may be a little off on  
18 this map. There are other maps submitted that  
19 have the actual locations. I think there's also  
20 an aerial. But there are three pipelines, I  
21 believe, that go through this. I believe there  
22 are three pipelines that go through this  
23 facility.

24 Q. Is that shown on the other maps?

25 A. Yes, sir, it is.

1           MR. BICHAN: On the blueprints right  
2 there that you have in your hand, there is a  
3 general location. And that's the specific  
4 location, engineering location, on that one  
5 there.

6           EXAMINER STOGNER: Sounds like to me,  
7 Mr. Bichan, you're quite familiar with this  
8 blueprint; is that correct?

9           MR. BICHAN: I examined the file Monday  
10 afternoon.

11          MR. STOVALL: This particular one is  
12 Topography and Control Drainage and Other Notes,  
13 done by San Juan Engineers and Brewer &  
14 Associates, each part respectively?

15          THE WITNESS: Topography was provided  
16 by San Juan Engineering.

17          MR. STOVALL: Does this particular map  
18 show the facility location? Okay. There appears  
19 to be a line. Are you familiar with this map  
20 such that you can respond?

21          THE WITNESS: Yes, sir. I've got a  
22 copy here somewhere.

23          MR. STOVALL: It's the -- well,  
24 photography date is 4/9/91. I see a line with  
25 X's in it. Would that be a safe guess? There's

1 a reference to bioremediation area.

2 THE WITNESS: There is an area up  
3 there. The lines with the X's outline the  
4 boundary of the proposed 22 acres approximately  
5 that we propose to landfarm at this time. And  
6 then we have an area that was designated as a  
7 proposed bioremediation area. It could be  
8 anywhere on the location actually.

9 MR. STOVALL: It's shown up on the  
10 corner of this one, the northeast corner of this  
11 one?

12 THE WITNESS: Yes, sir. I want to make  
13 it understood, this whole thing is bioremediation  
14 basically. But what we had intended to do was do  
15 a demonstration area where we actually did the  
16 addition of microbes to a particular area.

17 Q. (BY EXAMINER STOGNER) My question was  
18 leading up to broadcasting water on top of your  
19 area and in respect to the pipeline right-of-ways  
20 that have been out there. Naturally this  
21 particular soil would be disturbed already  
22 through a pipeline.

23 Do you see any problem on that? With  
24 the addition of water, would there be some  
25 additional testing that would be required, you as

1 a civil engineer, as opposed to the natural soils  
2 that are out there under natural compaction at  
3 this point?

4 A. No, sir. I believe the addition of  
5 water, though, requires -- if we add water, it  
6 requires in the rules -- I'm not for sure, but  
7 there's something about a quarterly report of the  
8 monitoring that we have to do rather than  
9 annually.

10 MR. STOVALL: Are you referring to some  
11 sampling of the soil beneath the facility where  
12 water is added --

13 THE WITNESS: Yes, sir.

14 MR. STOVALL: -- to determine that  
15 there is no leaching of the hydrocarbons  
16 downward?

17 THE WITNESS: That's correct.

18 Q. (BY EXAMINER STOGNER) I guess maybe I  
19 might have stepped ahead of myself. I'm assuming  
20 that such broadcasting of this material and the  
21 disking of it would also take place on the  
22 pipeline right-of-ways?

23 A. Yes, sir. We have cleared that with  
24 the pipeline companies, by the way.

25 MR. STOVALL: Your concern is that that

1 soil might be more permeable, Mr. Examiner, that  
2 there's a greater potential for downward  
3 migration --

4 EXAMINER STOGNER: Essentially, yes.

5 MR. STOVALL: -- in the area where the  
6 soil has been disturbed to install the pipeline?

7 EXAMINER STOGNER: That's where I'm  
8 getting at, Mr. Stovall.

9 THE WITNESS: Okay. That could be a  
10 possibility. These pipelines have been there for  
11 quite a while. And this soil, the nature of this  
12 soil, on top of it, it tends to -- it's got a  
13 very low permeability rate. They're very  
14 fine-grained soils.

15 EXAMINER STOGNER: This may be  
16 something I need to look at a little bit closer  
17 because I, for one, am not familiar with the  
18 compaction requirements that are needed after a  
19 pipeline is laid, how long these pipelines have  
20 been out there.

21 But if additional monitoring, if the  
22 water is to be included in our order, perhaps  
23 that might be a technical question that one needs  
24 to address.

25 MR. STOVALL: May we ask you that



1 question, Mr. Cheney? If water is required to be  
2 applied, there will probably be a provision  
3 requiring you to take periodic soil samples below  
4 the lifts --

5 THE WITNESS: Yes, sir, that's right --

6 MR. STOVALL: -- to determine downward  
7 migration. Would it make sense to require that  
8 those samples, periodically that you pay  
9 particular attention to pipeline construction  
10 areas where there is a theoretical greater  
11 potential for migration due to the fact it's been  
12 excavated?

13 THE WITNESS: Yes, sir. I think in  
14 that we work with the pipeline company there, and  
15 I think that one of the procedures -- and I might  
16 suggest one in that area -- would be to sample  
17 the soil, it may be a 2-foot depth, and determine  
18 what the moisture content is before we start so  
19 that we have something to compare it to.

20 And then after we've worked it and  
21 we've added moisture for 30 days, or 60 days, or  
22 whatever might be determined, that we again  
23 sample at that same depth and see if there's any  
24 migration of moisture.

25 I don't believe that the amount of

1 moisture that we're talking about here, that it  
2 will migrate to any great depth in those natural  
3 soils out there.

4 Q. (BY EXAMINER STOGNER) I also see that  
5 you're going to have a built-up dike on the  
6 northwest quarter. I'm assuming that is the low  
7 part of the site?

8 A. Yes, sir.

9 Q. That particular dike is built up -- we  
10 heard this a lot yesterday -- for the 100-year  
11 flood?

12 A. Yes, sir, to contain storm water.

13 Q. Has Farmington had a 100-year flood in  
14 a while?

15 A. Periodically in small areas of that  
16 area we have a 100-year flood sometimes, 100-year  
17 rainfall, let me put it that way.

18 Q. That particular volume would be helped  
19 by this water dike --

20 A. Yes, sir.

21 Q. -- that they are predicting for your  
22 100-year flood?

23 A. Yes, sir, 100-year rainfall.

24 Q. Looking over to the county line -- I'm  
25 sorry, the County Road 5290, is that down-dip or

1 up-dip? I'm using geological terms here. Is  
2 that uphill or downhill from this broadcast area?

3 A. There's a ridge right along in there.  
4 You can see that close to the road where that  
5 5900 is going back to the west; then it drops to  
6 5890. And the road is basically on a ridge. If  
7 you see to the east there a little bit, we're  
8 still at 5900. And then just a little bit  
9 further east, we start to drop off again to  
10 5890.

11 So basically the slope of the ground on  
12 this particular site is back to the west and  
13 somewhat north in some areas of it.

14 Q. What I'm leading up to is any  
15 additional natural water or water to be occluded  
16 out there. I'm going to use a term here, Mr.  
17 Bichan, that you might not be familiar with. Is  
18 it going to go down a bar ditch?

19 A. No, sir. Absolutely not. We have  
20 proposed to construct a dike for the containment  
21 of all waters that fall within this area, to  
22 contain those waters within this particular site.

23 Q. So the natural drainage, along with  
24 additional buildup along that county road, will  
25 not have any washed material introduced into that

1 right-of-way?

2 A. No, sir.

3 Q. Okay. Now, there again on this plat  
4 that we're looking at here and that Mr. Bichan is  
5 somewhat familiar with, is that a fence line that  
6 I see marked with the lines in the X's?

7 A. Yes, sir. We're proposing to construct  
8 a fence. That's to be constructed.

9 Q. What kind of fence would that be?

10 A. We proposed a four-strand barbwire.

11 Q. Primarily what is this going to fence  
12 off?

13 A. Well, we would hope livestock and  
14 people.

15 Q. Now, let's see, I see several gates, I  
16 believe, over toward the west, one to the south.  
17 Is that the only two gates that will be  
18 accessible?

19 A. Yes, sir. We have to leave on that  
20 particular -- the pipeline company requested that  
21 we leave a gate for them for access to their  
22 pipelines. Two of those gates are over that  
23 pipeline and will be utilized for the pipeline  
24 people only. The main entrance is over to the  
25 southeast.

1 MR. STOVALL: Off Road 5290?

2 THE WITNESS: Yes, sir, off Road 5290.

3 MR. STOVALL: Mr. Cheney, what other  
4 type of fencing could be put around that if it  
5 were determined that that were not adequate to  
6 keep, say, smaller animals, say, pets that sort  
7 of thing out of there?

8 THE WITNESS: Well, about the only  
9 other type of fence you could put around it, you  
10 might do a hot wire fence around it, or you might  
11 do chain-link.

12 MR. STOVALL: I guess what they refer  
13 to as a sheep fence, where it's got the grids as  
14 opposed to strands?

15 THE WITNESS: Yeah, a sheep fence. I  
16 hadn't thought about that, but a sheep fence  
17 would do the same thing.

18 EXAMINER STOGNER: Will these be gates,  
19 or will they be cattle guards?

20 THE WITNESS: No. They'll be gates.

21 EXAMINER STOGNER: With locks?

22 THE WITNESS: Yes, sir.

23 MR. STOVALL: They won't be like the  
24 old ranchers' barbwire gate that you throw  
25 aside?

1 THE WITNESS: No, sir.

2 EXAMINER STOGNER: What's wrong with  
3 those? In all seriousness, there will be a  
4 locked gate of steel construction?

5 THE WITNESS: Yes, sir.

6 EXAMINER STOGNER: Okay. Does anybody  
7 else have any other questions of Mr. Cheney at  
8 this time?

9 MR. BICHAN: Pursuant to that line of  
10 questioning, what was that word you used?

11 EXAMINER STOGNER: Bar ditch. Bar  
12 ditch, in my part of the world in Oklahoma, was  
13 the ditch that runs along on either side of the  
14 road. Some people call it just a ditch. I've  
15 heard it called -- what do they call them in  
16 England, Mr. Stovall, gullies?

17 MR. STOVALL: They don't have them in  
18 England. They've got stone walls up next to the  
19 roads.

20 MR. BICHAN: Material --

21 MR. STOVALL: Well, what it is is when  
22 a road is built up, it's either built up and the  
23 ditch is there, or the material is dug out to  
24 create the ditch and bermed on either side. It's  
25 an area to catch runoff from the road primarily.

1           MR. BICHAN: So there is a concern  
2 about this material being carried down your bar  
3 ditch.

4           EXAMINER STOGNER: That's my line of  
5 questioning, yes, Mr. Bichan. I apologize for  
6 using a word that --

7           MR. BICHAN: Could I pursue that just a  
8 little further with, Mr. Cheney?

9           EXAMINER STOGNER: Go ahead, Mr.  
10 Bichan.

11                           FURTHER EXAMINATION

12 BY MR. BICHAN:

13         Q.       Mr. Cheney, you're aware of the  
14 situation on the top of that hill?

15         A.       Yes, sir.

16         Q.       And winds do exceed 50 miles an hour up  
17 there; is that not true?

18         A.       Occasionally.

19         Q.       Is there any provision in your  
20 application for the prevention of soil erosion  
21 and the carrying away of the dirt that you're  
22 spreading out?

23         A.       With the addition of moisture,  
24 certainly we would do that. But are you talking  
25 about from windblown or water borne?

1           Q.       I'm talking about windblown material  
2 that you are required to maintain on your  
3 premises until it reaches the safe levels.

4           A.       Only with the addition --

5           Q.       How are you preventing it from being  
6 blown away?

7           A.       With the addition of moisture. That's  
8 about it, yes, sir.

9           Q.       Have you determined what percentage of  
10 moisture is going to be required to keep it from  
11 being blown away?

12          A.       No, sir. I believe I made that  
13 statement earlier, that that can only be  
14 determined for the particular soil that might be  
15 at a given location.

16          Q.       But that can be determined, how much  
17 moisture content it has to be to keep it in  
18 place?

19          A.       Well, I don't know scientifically that  
20 it can be determined, but I think that it can be  
21 determined that it's a lot less likely to blow if  
22 it has a moisture -- some type of moisture  
23 content than if it's just perfectly dry.

24                   And some of these soils are going to be  
25 granular. Some of them are going to be



1 fine-grained. So I don't know that you can make  
2 a determination of how much water needs to go on  
3 a particular location until you have that soil on  
4 site.

5 Q. So then if the department determines  
6 that moisture is not to be added, you have no  
7 provision to prevent the migration of this soil  
8 off the property; is that correct?

9 A. Due to wind, that's correct.

10 Q. None whatsoever. Are you aware that  
11 that area immediately to the east and downwind of  
12 the property is covered with vegetation, trees?

13 A. Yes, sir.

14 Q. And that it is on a fairly substantial  
15 down-slope, on a slope?

16 A. Yes, sir.

17 Q. And that dirt carried off your premises  
18 by wind would then be trapped by the trees or  
19 snow fences and subject to be washed-down  
20 concentration down the hill if it were not  
21 prevented?

22 A. Well, if it blows in that quantities,  
23 yes, but I don't think -- many of these soils,  
24 it's going to be difficult for them to blow in  
25 the first place. Again I'm going to say it's

1 dependent on the type of soil that's brought in.  
2 It can vary. But certainly if it's dry, it's  
3 going to blow.

4 Q. So that --

5 A. I can't -- you know, I shouldn't -- I  
6 can't make that exact statement either because  
7 I've seen dry soils in this area that didn't  
8 blow. And there are things you can do to them  
9 when they're dry. There's specific farm  
10 equipment that's made to prevent the blowing of  
11 soils. And certainly I would anticipate that  
12 we'd have that, various chisels, type of  
13 materials that are used throughout the farming  
14 industry to break up soil when it doesn't have  
15 any vegetation on it to prevent it from blowing.  
16 And so it can be done.

17 Q. And soils do blow hard? It does blow  
18 off down to a hard space if left alone?

19 A. If left alone, it could.

20 Q. And if it's churned up, it's more  
21 liable to be carried by high winds?

22 A. No, not necessarily.

23 Q. Loosened up by disking?

24 A. No, not necessarily. Like I said,  
25 there are specific pieces of equipment that are

1 made to prevent that being carried off by high  
2 winds.

3 Q. Oh, so you can treat this area with  
4 water and with equipment to prevent wind erosion?

5 A. There are ways to minimize the wind  
6 erosion, yes, sir.

7 Q. One includes the angle of disking to  
8 the wind, doesn't it?

9 A. Certainly.

10 Q. Another includes windbreaks, doesn't  
11 it?

12 A. Absolutely.

13 Q. And you are aware of those?

14 A. [Nodded.]

15 Q. And those will reduce soil erosion?

16 A. Sure.

17 MR. BICHAN: Okay.

18 EXAMINER STOGNER: Thank you, Mr.

19 Bichan.

20 Mr. Stovall?

21 FURTHER EXAMINATION

22 BY MR. STOVALL:

23 Q. One of the concerns here obviously, Mr.  
24 Cheney, is the release of hydrocarbons,  
25 volatilized hydrocarbons into the atmosphere. I

1 think we understand that this Division cannot  
2 permit those releases above the levels set by Air  
3 Quality standards. You'd have to get a permit to  
4 do that.

5 A. That's correct.

6 Q. My question is: Should volatilization  
7 occur, can it be measured and controlled before  
8 those discharges would reach a level which would  
9 require a permit or be in violation of Air  
10 Quality standards? Can you determine in specific  
11 cases whether there is volatilization of this  
12 stuff going on?

13 A. Certainly at the sites I don't know how  
14 you do it. The only thing that you can determine  
15 whether it's volatilization going on or  
16 biodegradation --

17 Q. Let me rephrase. If there's matter  
18 going into the air in some form that contains  
19 some of these substances that we're concerned  
20 about, can those be measured? Can the level of  
21 that be determined at some point?

22 A. They can be.

23 Q. Now, if that level is maintained below  
24 any Air Quality standards -- I mean in compliance  
25 with Air Quality standards, when I say below, can

1 I presume then at the site itself, at the actual  
2 cell that's being worked at any particular time,  
3 can I then presume if it's below that level that  
4 at some point above the cell, that it will be  
5 below that level at some point remote from the  
6 cell?

7 A. Yes.

8 Q. Do you follow my question? Does it  
9 make sense?

10 A. Yes, sir. The level at the cell is not  
11 any indication of what it might be off the  
12 property.

13 Q. Well, I mean, when you say it's not any  
14 indication, it would be more or less?

15 A. It would probably be less as it's  
16 transported.

17 Q. Would it be feasible to impose a  
18 requirement to say particularly, I think, is it  
19 correct -- first, let me ask you and is my  
20 assumption correct, that the point in time at  
21 which the emission -- I'm not going to say  
22 volatilization; I don't want to get too technical  
23 -- at which stuff going into the air is most  
24 likely to be at its highest levels is shortly  
25 after the new soils are spread on a particular

1 cell?

2 A. That would be my idea of when, if there  
3 is any volatilization taking place, that's  
4 probably when it would occur.

5 Q. And would it be feasible then to  
6 require measurements to be taken at some location  
7 at or immediately adjacent to the cell and if you  
8 should find those emissions exceed a certain  
9 level somewhere below Air Quality, that some  
10 action could be taken to reduce the rate,  
11 therefore keep the level of the emission lower?

12 A. That type of testing is pretty  
13 sophisticated.

14 Q. Uh-huh. Is it possible?

15 A. Certainly it's possible.

16 Q. When you say "sophisticated," what do  
17 you mean?

18 A. It's going to require substantial  
19 monitoring, I believe, and I think that that's  
20 one we might agree to only if it's imposed in  
21 other areas as well. Because I don't believe  
22 that particular requirement has been imposed on  
23 anybody on a landfarm yet.

24 MR. BICHAN: I might point out that, as  
25 far as I know, this is the first time that

1 anybody has proposed building a landfarm a few  
2 hundred feet from children.

3 MR. STOVALL: Actually it doesn't  
4 matter whether they're children or adults.  
5 They're all entitled to protection, Mr. Bichan.

6 MR. BICHAN: I know. But children are  
7 even more subject to these things.

8 MR. STOVALL: Because of their  
9 susceptibility due to size; is that what your  
10 concern is?

11 MR. BICHAN: Yes.

12 MR. STOVALL: I understand.

13 MR. BICHAN: And length of time  
14 continuously on site, things like that.

15 MR. STOVALL: I understand.

16 Q. (BY MR. STOVALL) Mr. Cheney, let me  
17 rephrase the question and throw the ball into  
18 your court. Given the fact that we're not going  
19 to issue a permit which would allow you to make  
20 discharges in excess of Air Quality standards,  
21 what method would you proposed to monitor the  
22 air? Again I'm suggesting it be immediately at  
23 the facility because if it's okay there, it's  
24 probably okay some distance away due to  
25 dispersion and additional evaporation, I would

1     assume.

2                 What method would you propose that your  
3     company could use to ensure that those levels did  
4     not reach discharge levels not permitted under  
5     the Air Quality Act?

6             A.     Well, first off, Mr. Stovall, I'd have  
7     to look to see what kind of facilities or  
8     apparatus might be available to do that. It  
9     might be that we can just put some indicators out  
10    there, maybe visual indicators, that would be  
11    similar to a badge that people wear for radiation  
12    exposure -- that we could put some visual  
13    indicators out there that would indicate when a  
14    particular level might be achieved in the air.  
15    And I would do that.

16                We talk about downwind out there. The  
17    prevailing winds are from the west and from the  
18    east. But you might post some of those around  
19    the facility. And I'd just have to look and see  
20    what might be available as indicators for these  
21    particular types of discharges.

22                MR. BICHAN: I just might suggest for  
23    the Division's consideration, these materials are  
24    highly volatile and they do dissipate quickly.  
25    As you come across, there's some 1500 feet or



1 1800 feet of solid sweep. The only place of  
2 concern would be to the downwind edge. To  
3 monitor every single pit is kind of futile  
4 because the closest upwind pit is going to be  
5 very little. And it gets heavier, heavier, and  
6 heavier as it picks up going across. So it's  
7 really pointless to do it at the upwind, I think,  
8 but just at the perimeter end.

9 In addition to that, there is no health  
10 endangerment except to that one downwind area  
11 over there. And I really don't care, and I don't  
12 think anybody else cares, about what they do here  
13 as long as that particular area is protected by  
14 water, by windbreaks, and by some sort of  
15 monitoring to make sure the levels are  
16 maintained.

17 I think that my position here is  
18 mistaken by everybody. I think that the first  
19 letter I ever wrote, I said that Mr. McMahon told  
20 me there was going to be a microremediation [sic]  
21 plant. And I told him I was acquainted with it,  
22 and I was all in favor of it, I thought it was a  
23 great idea. And because it was going to be wet,  
24 they would seal it in, I had no objection. I  
25 still have no objection to that.

1           And if they're going to go ahead and  
2     put it in here and wet it down so it does seal in  
3     the hydrocarbons and does keep the dust and dirt  
4     from blowing, I don't think that -- I think that  
5     the public is well served. But if they don't  
6     want to do that, then I think I have very serious  
7     concerns. And that's the only reason that I'm  
8     here.

9           MR. STOVALL: Mr. Bichan, I appreciate  
10    that because that's why we hold these hearings,  
11    because we can gather useful information in the  
12    record and inform people such as yourself. When  
13    we focus on the specific concerns of that nature,  
14    it enables us to set those standards. And Mr.  
15    Cheney is familiar with this. He's been through  
16    the process before, and he knows we do it. And  
17    they're evolving and we appreciate your input.

18           Now, with that in mind, again I would  
19    suggest that what needs to be done is to ensure  
20    that those levels are measured or determined at  
21    some point below the Air Quality standards that  
22    are set so that you never become in violation of  
23    the Air Quality Act. In other words, if you  
24    measure it at the Air Quality levels, of whatever  
25    constituents there are, once you measure it, you

1       may be in violation.

2               So I'm suggesting that whatever method  
3       is used, and Mr. Bichan's suggestion may be well  
4       taken, that the placement of it may not be at the  
5       source, but rather at some downwind location from  
6       it.

7               MR. BICHAN:   A mile from this site,  
8       nobody on earth could ever measure what was in  
9       there.   It dissipates into the air.   It's highly  
10      volatile, and that would be the end of it.   But  
11      when you put it so close to people, there's a  
12      real danger involved here, and these are the only  
13      concerns that I have.

14              And I personally do object to, in my  
15      mind, ridiculous demands put on industry, all  
16      kinds of industry, for some of these Air Quality  
17      standards; that they are not realistic.   And I  
18      know that some of them are self-serving to expand  
19      the EPA.

20              And I have had the engineers in the EPA  
21      so state that they could not state and would be  
22      fired if they stated the true concentrations of  
23      where they came from.   That has to do with the  
24      nitrous oxides, which comes from lightning and  
25      does not come from cars at all, but if they ever

1     said it, they'd be fired.

2             So I don't like that sort of thing. I  
3     wanted to move here. I knew at the time when we  
4     discussed it that it was not a zoned area, and I  
5     don't want to live in a zoned area because I  
6     think people ought to be able to do what they do  
7     and I think these people ought to be able to.

8             But I think they have a real  
9     responsibility, and I would like to to see an  
10    overt intention on their part that, yes, we want  
11    to do this, not that we'll only do what we have  
12    to. That's what frightens me.

13            MR. STOVALL: Let me back up on that  
14    point and explain that, based upon my experience,  
15    I've had some specific experience with Mr.  
16    Cheney, and I know where he comes from. And I  
17    know where industry, companies come from, not  
18    just in our industry, is that there is a concern,  
19    I think, on their part if they don't do something  
20    that's specifically required, if they don't get  
21    the regulatory agency's blessing, then they take  
22    a risk, even if it makes good technical sense.

23            So I understand when he says he will do  
24    something that is required, I would hope that his  
25    company, as well as any other, will take the

1 initiative and say we think we should do this  
2 step; will you approve it.

3 MR. BICHAN: I may further say, I  
4 understand the Commission's, somehow their  
5 responsibilities have been focused on water only,  
6 to the extent that Mr. LeMay told me that's all  
7 I'm interested in; I don't care about anything  
8 else. But I can understand a real concern,  
9 particularly xylene, I guess, penetrates like  
10 hell going down through dirt. I can understand  
11 the Commission's concern about the leaching  
12 downward.

13 But it occurs to me that, from what is  
14 said here, that by lightly watering and turning  
15 to get a good consistency and then lightly  
16 watering it again to put a cap on it would pretty  
17 much prevent the downward migration and keep the  
18 top, just the top a little damper, to keep it  
19 from blowing away as well.

20 MR. STOVALL: It sounds to me like we  
21 have what may work as a solution here. I would  
22 suggest, and I'm not sure that you're prepared --  
23 well, are you prepared at this hearing, Mr.  
24 Cheney, to recommend a monitoring system which  
25 would address the concerns?

1           And I will say that the Division shares  
2 the concerns which Mr. Bichan is raising with  
3 respect to air quality. We have no authority to  
4 regulate to it, except to say you won't violate  
5 the rules and if you intend to do it, you'll go  
6 to the Air Quality Board. We set standards to  
7 prevent the violation of those rules in the  
8 interest of human health and the environment.

9           Are you prepared to recommend a  
10 procedure today which could be incorporated,  
11 subject always to our authority to require  
12 additional or different measures to be taken,  
13 which could address the concerns of the migration  
14 of some of these constituents from the Tierra  
15 property particularly towards residential areas?

16           Is there something that could be done  
17 to ensure it doesn't occur and to measure and to  
18 enable you to take steps?

19           MR. CHENEY: Certainly the application  
20 of moisture to the sites is going to help assure  
21 that that doesn't occur. And I've reiterated  
22 before that we are willing and able to provide  
23 that moisture to the site and apply it.

24           MR. STOVALL: That prevents the actual  
25 volatilization or evaporation into the area --

1 MR. CHENEY: Yes, sir. --

2 MR. STOVALL: -- of the substances to a  
3 large extent; is that correct?

4 MR. CHENEY: Yes, sir.

5 MR. BICHAN: I'm satisfied that it  
6 does.

7 MR. STOVALL: And then the second thing  
8 I would ask, are you prepared today, or would you  
9 like some additional time, to submit a method of  
10 simply having a back-up measure to ensure that  
11 there is some -- so you are aware of some level  
12 of potential emissions?

13 Mr. Cheney, let me offer you an  
14 alternative. The question I asked you was: Are  
15 you prepared to make such a recommendation  
16 today?

17 MR. CHENEY: That's what I was trying  
18 to do was, maybe for the particular type of  
19 equipment, because there's some others. I think  
20 we could use photoionization equipment that would  
21 test for what might be in the air in a particular  
22 area, and I think we would be willing to do  
23 that.

24 MR. STOVALL: It sounds like -- we've  
25 still got one party here that I want to talk to

1 before we finish up, and I have not forgotten you  
2 -- Mr. Vavera? Is that right?

3 MR. VAVERA: Vavera.

4 MR. STOVALL: I'm horrible on names.  
5 I'm not leaving you out of this discussion. I  
6 hope it's helpful to you.

7 MR. VAVERA: Yes.

8 MR. STOVALL: It seems to me that  
9 there's a general agreement here with the proper  
10 application of moisture and then with some  
11 back-up detection equipment that the significant  
12 concern raised by this particular facility can be  
13 addressed.

14 The concern I have for a recommendation  
15 to the Examiner, it sounds like the level of  
16 moisture application is hard to define --

17 MR. CHENEY: Yes, sir.

18 MR. STOVALL: -- at this point.

19 MR. CHENEY: It's going to vary, I  
20 think.

21 MR. STOVALL: It doesn't seem to sound  
22 like it particularly matters whether it's done by  
23 sprinkler system or truck. Would that be  
24 correct, Mr. Bichan, it wouldn't really matter to  
25 you?



1           MR. BICHAN: No. Just as long as  
2 they've got some method to kind of keep a seal on  
3 it. You know, if you're going into a non-zoned  
4 area like I am, I could be living next to a corn  
5 field, and they could be broadcasting manure, and  
6 I recognize all that.

7           MR. STOVALL: Next to a feedlot.

8           MR. BICHAN: That there may be at one  
9 time or another some, because he can't control  
10 everything, some minor violations, and that  
11 doesn't concern me. I'm not going to be standing  
12 with a meter every second and a telephone, a  
13 cellular phone in my other hand hooked up to the  
14 EPA yelling and screaming, but those basic  
15 considerations I'd like to see.

16           And I want something else to be  
17 understood by the Commission and by Tierra. I  
18 came out here just as I demonstrated and bought  
19 the property, and I'm a total stranger. I don't  
20 know a soul in New Mexico. And suddenly I'm  
21 struck with this thing, and it has nothing to do  
22 with moisture or biodegradation or anything. All  
23 it has to do with is one cell and the rest  
24 evaporative and I'm back to Michigan.

25           Now, to say that I am defensive is an

1 understatement. I am really hostile about my  
2 rights and the protection of my rights because I  
3 know nobody here and I don't know what the  
4 connections are between all these people. I do  
5 know that Mr. Cheney services the oil industry  
6 there in his various capacities. And so all  
7 these things make me really concerned.

8 MR. STOVALL: Let me back up.

9 MR. BICHAN: I want to make it clear  
10 that I do have those concerns, and I don't want  
11 to be under the covers about it. And I think  
12 that --

13 MR. STOVALL: Again let me back up and  
14 say that your bringing those to our attention is  
15 why we have the process the way we do. We try to  
16 keep it informal so we come to a resolution.

17 MR. HALE: May I make a comment, Mr.  
18 Stovall?

19 MR. STOVALL: Yes, sir.

20 MR. HALE: I think I know where you're  
21 going. If what Mr. Bichan is saying is if there  
22 is some monitoring and some regulation of the  
23 addition of moisture to the site so as to prevent  
24 violation of the Air Quality Act, that's your  
25 concern and that's what you're here to address.

1           MR. BICHAN: I'm satisfied moisture  
2 takes care of dust. I'm satisfied moisture takes  
3 care of volatilization.

4           MR. HALE: And, Mr. Vavera, would that  
5 be your position too, that you're concerned that  
6 this not violate the Air Quality Act and that  
7 there be regulated application of moisture to  
8 prevent violation of that act? Is that why  
9 you're here today too?

10          MR. VAVERA: Mostly.

11          MR. STOVALL: I think -- I guess the  
12 question I would now have is whether we have  
13 sufficient information? I'm inclined to think we  
14 do. I simply would say that if an order were  
15 entered, it would say that moisture should be  
16 applied to enhance biodegradation, whether done  
17 by natural or additive means, and that it be  
18 applied, maintained.

19               I assume with the dust issue, it's  
20 mostly keeping the surface wet. With the  
21 biodegradation question, it's a matter of below  
22 the top inch or so of soil; is that correct, Mr.  
23 Cheney?

24          MR. CHENEY: Keeping it mixed properly.

25          MR. HALE: If we could address those

1 concerns and satisfy the OCD that that was an  
2 ongoing process, are we then in agreement that a  
3 permit could be issued with those conditions?

4 MR. BICHAN: If the OCD will consider  
5 this as well. I had a hell of time. I finally  
6 went to Bill Peterson, who is the soil  
7 conservation officer for the US Soil Conservation  
8 Department in the area. And he gave me an  
9 erosion estimate. His office is right there, and  
10 he knows the property and he knows --

11 MR. STOVALL: I'm familiar with the  
12 service.

13 MR. BICHAN: He's familiar with Nape  
14 [phonetic] right across the way. This is why I  
15 asked. He talked about ridging the soil and to  
16 then make the ridges in the disking crosswise to  
17 the wind. It substantially reduces it. And he  
18 says here how much it reduces it. And he also  
19 talks about unsheltered distances of 1500 feet,  
20 which about this is.

21 But, believe it or not, if it were a  
22 sandy loam, it could carry as much as 105 tons  
23 per acre a year away. So there is a real  
24 consideration concerning keeping it, you know,  
25 down and wet because that is a huge amount,

1 particularly if you were carrying 105 tons per  
2 acre away onto the hillside, it's going to wash  
3 right down unremediated.

4 So I'd like to submit this for the  
5 consideration of the Commission in its  
6 deliberations as well.

7 MR. HALE: But would I be correct in  
8 saying, just to see if we have an understanding  
9 of the parties here, that we could stipulate to  
10 an entry of an order that the permit would be  
11 issued with the conditions that there be  
12 appropriate wetting of the soil --

13 MR. BICHAN: Yeah.

14 MR. HALE: -- to the extent deemed  
15 appropriate by the OCD to prevent wind erosion of  
16 the soil and violation of Air Quality standards  
17 due to volatilization and that there be some  
18 downwind monitoring on the site?

19 MR. BICHAN: I would --

20 MR. HALE: Would that be correct Mr.  
21 Bichan?

22 MR. BICHAN: That would be perfectly  
23 within the rights of the order.

24 MR. HALE: Would that be an acceptable  
25 order to you?

1 MR. BICHAN: Yeah, if you own it.

2 MR. HALE: Mr. Vavera, would that be  
3 acceptable to you?

4 MR. VAVERA: [Nodded.]

5 MR. HALE: And, Mr. Cheney, would that  
6 be acceptable?

7 MR. CHENEY: Certainly.

8 MR. STOVALL: I think, in terms of the  
9 language of the order, we'll state -- because we  
10 can't set those levels and we consistently set  
11 performance criteria -- the performance criteria  
12 is to keep the volatilization, the emission of  
13 the volatiles below Air Quality standards.

14 MR. HALE: Right.

15 MR. STOVALL: In compliance with Air  
16 Quality standards.

17 MR. HALE: That's something we can  
18 determine.

19 MR. STOVALL: And to prevent the  
20 blowing of dust. In other words, if you get that  
21 50, 60 miles per hour wind out there, you may  
22 have to get out there and do something right now.

23 MR. BICHAN: I wouldn't expect them  
24 to.

25 MR. STOVALL: Rather than set specific

1 standards of quantities of water.

2 MR. HALE: It's going to be ongoing  
3 monitoring by this Division anyway. Certainly we  
4 should be able to accomplish that. I guess what  
5 I'm saying from a procedural standpoint is the  
6 three parties to this hearing agree to that, can  
7 we in fact stipulate and enter an order to that  
8 effect?

9 MR. STOVALL: Well, the one thing I  
10 will tell you, Mr. Hale, is this is not quite  
11 like a courtroom because the Examiner can only  
12 make a recommendation to the Director. He cannot  
13 approve a specific order.

14 But I think what I'm hearing is that we  
15 will recommend an order of that nature and that  
16 will address those concerns and do that because  
17 that is ultimately our concern.

18 MR. HALE: All right.

19 MR. BICHAN: I would like to avoid, and  
20 I'm sure Mr. Vavera would like to avoid, the  
21 necessity of running out there every half hour to  
22 take a bag sample out of the air.

23 MR. STOVALL: We're going to set the  
24 performance standard. If they violate the  
25 performance standard, whatever it may be, we will

1 hold them in violation. If you see something  
2 that you are concerned with, you certainly have  
3 the opportunity and perhaps even the obligation  
4 to advise us.

5 MR. HALE: And, Mr. Examiner, based on  
6 the comments, would you be willing to enter an  
7 order to that effect?

8 MR. STOVALL: To recommend an order.

9 MR. HALE: Recommend an order.

10 EXAMINER STOGNER: Believe me, there  
11 are other considerations that are still on my  
12 mind, which I have brought up with Mr. Cheney  
13 with the fencing, the berming. There was some  
14 other issues. And I believe you talked with the  
15 US Soil Conservation Commission. There's also  
16 some other agencies, I think within the County  
17 Extension Service, that one might want to make  
18 this a model.

19 He mentioned windbreaks, poplar trees,  
20 whatever the case may be. I would also suggest  
21 that might be another agency to make this a model  
22 landfarm up there. With simple agricultural  
23 techniques, which is actually what you're doing.

24 But also get that other expertise or at  
25 least input from that particular agency, whether



1     it be the US Soil Conservation, the Soil  
2     Conservation District Manager, whoever that may  
3     be. I don't know what Soil Conservation District  
4     you're in. There could also be the County  
5     Extension Service in San Juan County -- might be  
6     somebody else.

7             That's some other things I'm thinking  
8     about too. But there's been other issues that  
9     have been brought up that I'm also concerned  
10    with, not only with the ones you have also, the  
11    three parties have touched upon.

12            MR. STOVALL: Mr. Examiner, let me make  
13    sure we're clear on the understanding here, is  
14    that I think what we have discussed is that the  
15    issue which is a specific concern to the  
16    protestors in the case, I certainly think the  
17    ground monitoring, as has been discussed, is  
18    going to be a requirement.

19            We will make a determination as to the  
20    fencing. It could be that based upon our own  
21    concerns that a four-strand barbwire may not be  
22    enough.

23            MR. CHENEY: We don't have any  
24    objection to a livestock type fence that's a  
25    solid -- that's a woven type fence, if that's

1     preferable, with maybe a strand of barbwire on  
2     top of it.

3                 EXAMINER STOGNER:   A sheep type --

4                 MR. CHENEY:   Sheep type.

5                 EXAMINER STOGNER:   -- which I believe  
6     Mr. Stovall had brought up and the ones I'm  
7     familiar with, which is exactly what you said,  
8     with the one- or two-strand.

9                 MR. STOVALL:   Where you've got a grid  
10    rather than just a horizontal line.

11                MR. BICHAN:   I'd sure appreciate that.  
12    I've got a young Springer who loves to disguise  
13    his odor by rolling in any noxious substance he  
14    can find.

15                MR. CHENEY:   We certainly don't have  
16    any objection to that type of fence.   And maybe  
17    put one of those up that's maybe three feet and  
18    then put a couple of strands of barbwire above  
19    it.

20                MR. STOVALL:   I think that's kind of  
21    what we've got in mind in terms of keeping the  
22    pets and kids out of the facility.

23                MR. CHENEY:   No objection at all.

24                MR. STOVALL:   There will be some other  
25    things which have been addressed by the Division

1 and are normally addressed in these facilities.  
2 What we are concerned with specifically, of  
3 course, is this facility at this site near these  
4 residences and some specific concerns it raises.

5 I think the Examiner's suggestion about  
6 contacting the soil people and getting some good  
7 farming techniques may be -- I don't envision an  
8 order that would say "plant trees" at this time,  
9 but one never knows with the Examiner.

10 Does that address the concerns?

11 MR. HALE: Yes. I've tried to write  
12 them down. We stipulate to an order that there  
13 would be some type of ground monitoring regarding  
14 Air Quality standards; that there would be a  
15 recommendation as to a woven type livestock  
16 fence, recommendation as to berms, windbreak in  
17 connection with soil conservation practices, and  
18 a wetting per monitoring by OCD so as to avoid  
19 soil erosion and violation of air quality; that  
20 if those recommendations would be contained in a  
21 stipulated order and the recommendation would be  
22 if there's compliance with that, that the  
23 recommendation will be to issue the permit.

24 MR. BICHAN: Might I add, I think that  
25 windbreaking may be an imposition. I think that,

1 from what I understand from the Soil Conservation  
2 guy, the proper disking crosswind and the proper  
3 constitution, moisture content of the soil, will  
4 in fact hold it down. Isn't that what --

5 MR. CHENEY: That's my understanding.  
6 That's the reason I brought up the farm equipment  
7 that can be utilized to help prevent --

8 MR. BICHAN: I think Peterson from --  
9 the Soil Conservation guy who's right there feels  
10 that way too.

11 MR. CHENEY: Windbreaking, I have a  
12 little bit of objection to that.

13 MR. BICHAN: Oh, you'd have to put one  
14 in every 50 feet. It's nuts.

15 MR. STOVALL: Okay. I think just to --  
16 half a second here.

17 [A discussion was held off the record.]

18 MR. STOVALL: I would like to make a  
19 suggestion to Mr. Hale as to a way to make sure  
20 that the concerns are addressed. I would like to  
21 recommend that you prepare a proposed order and,  
22 because you've not practiced before us before,  
23 you might check some of our orders for format and  
24 style of the order and how it should be drafted.

25 Prepare that, submit that to us and to

1 Mr. Bichan and Mr. Vavera, and allow -- we will  
2 allow them a period to comment on it. I don't  
3 think it's necessary to submit competing orders.  
4 I think it would be more effective if you were to  
5 comment on the specific order and upon which the  
6 Commission could then draft an order.

7 MR. HALE: All right.

8 MR. STOVALL: If we give you, say, ten  
9 days to submit a proposed order and give you ten  
10 days to respond, would that be satisfactory?

11 MR. BICHAN: Ten days is enough.

12 MR. HALE: Assuming that falls through  
13 and we are unable to do that, we could then  
14 reconvene the hearing.

15 MR. STOVALL: No. Submit your comments  
16 and the Division will enter an order based upon  
17 the draft and the comments.

18 MR. BICHAN: You draw the order and  
19 we'll submit any comments.

20 MR. STOVALL: No. We won't come back  
21 and do this again.

22 MR. BICHAN: They'll do what they want  
23 anyway.

24 MR. STOVALL: Is that your wife with  
25 the child out there?

1 MR. VAVERA: Yes.

2 MR. STOVALL: Mrs. Vavera, would you  
3 come back in? I want to deal with you guys  
4 first. You've kind of been out of the process.  
5 I assume you are not experts in this field; is  
6 that correct?

7 MR. VAVERA: No.

8 MR. STOVALL: But you're concerned  
9 about your own health and your kids'.  
10 Technically I think it is correct that you did  
11 not receive notice.

12 MR. VAVERA: No, we never received  
13 anything.

14 MR. STOVALL: Now, the net effect of  
15 that is what we could do is send the applicant  
16 back and say, okay, start over, give them notice,  
17 and we come back in and do this in 30 days.

18 MR. VAVERA: I don't think there's no  
19 need for that.

20 MR. STOVALL: Okay. That's what I want  
21 to find out. But I want to make sure you feel  
22 like you've had an opportunity to have your  
23 concerns addressed. That's very important.

24 MR. VAVERA: Yes.

25 MR. STOVALL: And you've heard most of.

1     what's going on?

2                 MR. VAVERA:   Yeah.

3                 MR. STOVALL:   You've got as much  
4     education as I have on this?

5                 MR. VAVERA:   I have.

6                 MR. STOVALL:   Are you comfortable with  
7     what's been discussed?

8                 MR. VAVERA:   I would like to see a  
9     windbreak either on -- the west and east end, on  
10    both ends, just as wind -- as a buffer.

11                MR. STOVALL:   Okay. I think -- again  
12    the thing will be submitted to you -- the order  
13    will be submitted to you. I think you can  
14    address that. You've heard some concerns on both  
15    sides about the practicality of actually putting  
16    one in, but we will take your comment into  
17    consideration. That is a part of the record.

18                Any other concerns that you've got?

19                MR. VAVERA:   Not really.

20                MR. STOVALL:   Okay.

21                MR. VAVERA:   Because a fence --

22                MRS. VAVERA:   What is it going to do to  
23    the groundwater? We do want to drill a well. We  
24    want to be self-sufficient. We plan on getting  
25    water from Mr. McMahon, but just as in Florida --

1 I know we don't have hurricanes -- but if  
2 something were to happen, we have a garden and we  
3 want to be self-sufficient. And we would like to  
4 know what this is going to do to the groundwater.

5 MR. STOVALL: What we are going to  
6 require them to do is do some monitoring below  
7 their facility, and we can set standards to  
8 ensure that there are no contaminants that get  
9 down below a very shallow depth. And then that  
10 would ensure that there would be no migration of  
11 fluids from their facility to any -- and I  
12 understand the groundwater is fairly deep out  
13 there.

14 MRS. VAVERA: Yes, it is.

15 MR. VAVERA: One hundred and fifty  
16 feet.

17 MR. STOVALL: And we're talking about a  
18 foot, two feet, three feet maybe at the most. So  
19 that's how we address that issue. And --

20 MR. VAVERA: As long as there is, like  
21 he was saying, water with sprinkler system. It  
22 was kept wet.

23 MR. STOVALL: Yeah. If it's kept wet  
24 to keep the dirt down, but not too wet so as to  
25 continue to drive the fluids downward. That



1 would be the --

2 MR. VAVERA: Moist.

3 MR. STOVALL: Any other concerns that  
4 you've got? Does that pretty well --

5 MR. VAVERA: That's mostly it.

6 EXAMINER STOGNER: For the record would  
7 you state your name?

8 MRS. VAVERA: My name is Storme,  
9 S-t-o-r-m-e.

10 EXAMINER STOGNER: And who's the little  
11 one in your arms?

12 MRS. VAVERA: This is Tyle, T-y-l-e.

13 MR. STOVALL: Is there anything  
14 further? That's your question; that's not my  
15 question.

16 EXAMINER STOGNER: Is there anything  
17 further in this hearing?

18 MR. HALE: As I understand, within ten  
19 days of today, I am to submit a proposed order to  
20 these gentlemen.

21 MR. STOVALL: And to the Commission.

22 MR. HALE: And to the Commission. They  
23 will add their comments, if any, and then --

24 MR. STOVALL: Let me restate that. You  
25 will submit to the Commission and to the parties

1 your order, proposed order. Within ten days from  
2 -- twenty days from now, they will submit their  
3 comments on your proposed order to the Commission  
4 with any recommended changes.

5 MR. BICHAN: And to him.

6 MR. STOVALL: And to him, correct. And  
7 subsequent to that, then the Division will enter  
8 an order dealing with this facility.

9 MR. HALE: Making a recommendation to  
10 the Division Director?

11 MR. STOVALL: Correct. And you don't  
12 see the recommendation that goes to the Director.

13 MR. HALE: But the understanding is the  
14 recommendation will be issuance of the permit  
15 under these conditions we've been discussing.

16 MR. STOVALL: We never made quite that  
17 commitment absolutely, again as a judge would,  
18 but I think that you can rely on our being very  
19 consistent with what you've discussed today.  
20 We're not going to change the rules on the  
21 technical -- where you'll see any changes would  
22 be any specific things the Examiner might be  
23 concerned with.

24 MR. HALE: Conditions to be imposed?

25 MR. STOVALL: If you don't like the

1 ultimate order that comes out, you've got the de  
2 novo process to go through. But hopefully this  
3 will resolve any concerns.

4 EXAMINER STOGNER: With that gentlemen,  
5 I -- and ladies -- I appreciate your patience.  
6 And in the last hour I appreciate the way this  
7 type of hearing is going. I appreciate everybody  
8 -- we are still evolving this type of hearing,  
9 which I know Mr. Cheney is very well aware of  
10 since he was involved in the very first one that  
11 we all had.

12 And with that I'm going to leave the  
13 record open for 20 days with the stipulation that  
14 Mr. Stovall has alluded to earlier. With that,  
15 if there's nothing further at this time --

16 MR. BICHAN: I can't tell you how  
17 delighted I am not to have to face another  
18 hearing and drive 1719 miles in two days to get  
19 here.

20 EXAMINER STOGNER: I would suggest you  
21 all exchange cards and make sure the addresses  
22 are proper. And if you have fax machines, give  
23 them those numbers or access to fax machines. I  
24 would like to see no communications foul-up  
25 getting in this procedure's way.

1 With that I'm going to adjourn this  
2 hearing at this time. Thank you.

3 [And the proceedings were concluded.]  
4  
5

6 I do hereby certify that the foregoing is  
7 a complete record of the proceedings in  
8 the Examiner hearing of Case No. 10539  
9 heard by me on 2 Sept. 1992.

Mark E. Stearns, Examiner  
Oil Conservation Division  
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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF NEW MEXICO )  
4 COUNTY OF SANTA FE ) ss.

5  
6 I, Debbie Vestal, Certified Shorthand  
7 Reporter and Notary Public, HEREBY CERTIFY that  
8 the foregoing transcript of proceedings before  
9 the Oil Conservation Division was reported by me;  
10 that I caused my notes to be transcribed under my  
11 personal supervision; and that the foregoing is a  
12 true and accurate record of the proceedings.

13 I FURTHER CERTIFY that I am not a  
14 relative or employee of any of the parties or  
15 attorneys involved in this matter and that I have  
16 no personal interest in the final disposition of  
17 this matter.

18 WITNESS MY HAND AND SEAL SEPTEMBER 12,  
19 1992.

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22  
23 \_\_\_\_\_  
24 DEBBIE VESTAL, RPR  
25 NEW MEXICO CSR NO. 3