

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 10507 (DeNovo)
ORDER NO. R-9769-A

APPLICATION OF C & C LANDFARM INC.
FOR A COMMERCIAL SURFACE WASTE
DISPOSAL FACILITY, LEA COUNTY,
NEW MEXICO

APPLICATION FOR REHEARING
BY
ELSIE REEVES AND W. TRENT STRADLEY

This Application for Re-Hearing is submitted by W. Thomas Kellahin, Esq. and C. Gene Samberson, Esq. on behalf of W. T. (Trent) Stradley and S-W Cattle Co. and by W. Thomas Kellahin on behalf of Elsie M. Reeves (hereinafter collectively the Opponents").

In accordance with the provisions of Section 70-2-25 NMSA (1978), the Opponents request the New Mexico Oil Conservation Commission grant this Application for

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ReHearing in Case 10507 (DeNovo) to correct erroneous findings and conclusions set forth in Order R-9769-A, attached as Exhibit "A" and to substitute Opponents' proposed Commission Order attached as Exhibit "B" hereto, and IN SUPPORT THEREOF OPPONENTS STATE:

INTRODUCTION

On April 27, 1993, the New Mexico Oil Conservation Commission met at a public meeting to enter its decision in this case. During that public deliberation, Commissioner Carlson, the only attorney on the Commission, correctly applied his legal training and concluded that C & C Landfarm Inc. ("Applicant") had failed to meet its "burden of proof."

Commissioner Weiss concluded that the Opponents had failed to meet their "burden of proof" because the Opponents' hydrologist had not visited the site and had not presented any site specific scientific data proving the probable contamination of ground water.

Commission LeMay made no public comments but voted with Commissioner Weiss to approve the Applicant's request.

GROUND'S FOR REHEARING

**POINT I: THE COMMISSION IGNORED THE ULTIMATE
ISSUE IN DISPUTE**

This is a simple case. The ultimate factual issue is whether this surface waste facility creates a risk of contamination to the fresh water aquifer from which Trent Stradley's well has produced continuously in excess of forty-five (45) years and is the only fresh water supply for cattle in some nine sections and is referred to herein as the "Stradley Aquifer."

To answer that issue, it is essential for the Commission to have proper scientific evidence about the Stradley Aquifer including its size, shape and recharge mechanics. The Applicant's failure to submit that evidence is fatal to its case and is what Commissioner

Carlson meant when he said the Applicant had failed to meet its "Burden of Proof."

The fact that the Applicant did not find the Stradley Aquifer with some five shallow monitor wells drilled on the proposed facility does not substitute for a proper hydrologic study to determine the risk to the Stradley Aquifer. Contaminates can be introduced on the surface and with the introduction of rain will percolate into the ground both vertically and horizontally and migrate into the Stradley Aquifer.

Nobody knows how the Stradley Aquifer is recharged and from what source. Nobody knows the size and shape of the Stradley Aquifer. The Commission ignored that absence of evidence and in doing so, failed to decide the ultimate issue in this case.

POINT II: ORDER R-9769-A WAS ADOPTED BY A
 MAJORITY OF THE COMMISSION BASED
 UPON AN INCORRECT UNDERSTANDING OF
 "BURDEN OF PROOF"

The Commission improperly placed the "Burden of Proof" on the Opponents to demonstrate that the waste facility would harm the fresh water aquifer. During public deliberations Commissioner Weiss commented that he had specifically edited Finding (13) of Order R-9769-A to place emphasis upon the Opponent's hydrologist's failure to visit the site and take samples and conduct tests.

The Commission missed the purpose of Mr. Kelly's testimony. As the only qualified hydrologic expert presented to the Commission on this matter, Mr. Kelly's testimony was to show the Commission what should be required of the Applicant (not the Opponents) before a proper decision could be made about this waste facility.

It is not the Opponents' burden to prove that this surface waste facility will contaminate the Stradley Aquifer. To the contrary, it is the Applicant's Burden of Proof to persuade the Commission that it will not.

The following is presented to guide the Commission in understanding the legal concept of "Burden of Proof." The term "proof" is the end result of conviction or persuasion produced by the evidence. The term encompasses two separate burdens of proof: one is the burden of producing evidence and the second is the burden of persuading the trier of fact that the alleged fact is true.

In this case, the alleged fact is that the approval of this facility will not pose a risk to ground water, human health and the environment. The Applicant always retains the ultimate burden of producing evidence AND the burden of persuasion that the facility would not pose a risk to the Stradley

Aquifer. The Applicant's failure to provide evidence of the size, shape and hydrology of the Stradley Aquifer from which the Stradley windmill produces fresh water is a failure of the Applicant to meet its "Burden of Proof."

All that the Opponents needed to do, they did by introducing evidence of the location of the fresh water sources in the Stradley Aquifer in close proximity to the waste facility. It then was the Applicant's Burden of Proof to produce the hydrologic study of the Stradley Aquifer which must provide convincing evidence that no risk was being imposed upon the Stradley Aquifer by this waste facility.

While the Applicant introduced evidence of five monitor wells having failed to encounter the Stradley Aquifer, the Applicant failed to provide evidence as to any of the following:

- (1) composition samples and tests
- (2) soil samples and tests
- (3) compaction tests
- (4) permeability tests

- (5) Cation Exchange capacity tests
- (6) liquid and plastic tests of the redbeds
- (7) any soil properties tests and data
- (8) any hydrology studies
- (9) any groundwater studies
- (10) any percolation tests or data
- (11) any ground water migration tests/data
- (12) any contaminant mobility tests/data

It is improper to put the Applicant's failure of proof on the Opponents.

POINT III: THE COMMISSION VIOLATED EVIDENCE
 RULE 703 WHEN IT REJECTED EXPERT
 OPINIONS NOT BASED UPON PERSONAL
 KNOWLEDGE OF THE EXPERT

The Commission accepted the opinions of the Division's Environmental Bureau ("NMOCD-EB") even though its witness was not a hydrologist because she had made a personal visual inspection of the site. The Commission rejected the expert opinions of Mr. Kelly, the Opponent's qualified hydrologist, because he had not made a recent personal visual inspection of the site. The Commission ignored the fact that Mr. Kelly

had been present for and reviewed all of the transcripts and exhibits of the Division Examiner hearing of this case including the various topographical maps and testimony of others concerning the appearance of the facility and the site.

New Mexico Rule of Evidence 703 provides:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Apparently, the Commission failed to remember the testimony of Mr. Stradley who had repeatedly been over every part in this "White Breaks" area for decades. Mr. Stradley testified that the surface waste facility was located on the northeast edge of a natural topographical depression with his fresh water windmill located in the bottom of that depression and in excess of 30 feet lower than the surface waste facility. As an expert witness, Mr. Kelly does not have to

personally visit the site. He is entitled to rely upon the observations of Mr. Stradley and others and did so to support his expert opinions.

Mr. Kelly concluded that the likely direction of contaminant movement from the waste facility will be down gradient along the redbed surface. But there have been no hydrologic studies of the area to determine gradients and therefore no way to know the length of time and distance of travel of the contaminants. There has been no scientific study of the redbeds and the movement cannot be predicted. His point was that the Commission cannot approve this facility until that determination is made.

While a visual inspection of the surface of the facility is hardly scientific and does not allow the observer to divine the subsurface conditions in the area, the only inference for the Commission to have drawn from site inspection was that the surface topography would increase the risk of contamination to the Stradley Aquifer.

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As an apparent excuse for disregarding the lack of technical data by the Applicant, the Commission decided this case based upon what witness had made a personal visual inspection of the site and thereby rejected the expert opinions of the Opponent's witness because he had not made a personal inspection of the site. Although the Commission enjoys the ability to relax the rules of evidence they should not decide cases based upon an erroneous application of those rules.

POINT IV: THE COMMISSION BASED ITS ORDER R-9769-A
 UPON FINDING (11) WHICH IS CONTRARY TO
 THE EVIDENCE AND CONTAINS AN IRRELEVANT
 FINDING.

Finding (11)(a):

"There is no fresh water under the disposal site because there is no Ogalalla aquifer present."

At the hearing the Commission raised the irrelevant issue of the location of the Ogalalla

aquifer and then used that irrelevant fact as a basis for approval of the Application. See Finding (11)(a). The aquifer at risk and for which the Commission failed to address any findings was the Stradley Aquifer in the shallow alluvium down slope from the proposed waste facility. The issue is where are the vertical and horizontal limits of that aquifer and its recharge system.

It is of no consequence whether the Ogallala aquifer is present under the waste facility. However, if the Commission wants to decide this case based upon the presence or absence of the Ogallala aquifer under the facility, it has made a fundamental error in finding the Ogallala aquifer absent. In fact, the Ogallala aquifer IS PRESENT UNDER this surface waste facility. See Exhibit "C" attached hereto and incorporated by reference.

To decide this case based upon location of an aquifer not at issue in this case is to wrongly decide this case.

Finding (11)(b):

"The berm to be constructed and maintained and operational requirements will be adequate to prevent precipitation run-off and run-on for the treatment portion of the facility"

This finding makes no grammatical sense. But more importantly, this finding is contrary to the evidence. There are no scientific data introduced on soils tests and therefore no compaction data, no composition data, and permeability data from which to determine the construction and maintenance standards for the berm. Further the order does not detail the constructions, maintenance or operations requirements for the berm.

This finding is simply an assumption without proper basis and cannot be supported by the record in this case.

**POINT V: THE COMMISSION ERRONEOUSLY BASED ITS
DECISION ON A "VISUAL INSPECTION OF THE
SURFACE OF THE SITE" AND IGNORED THE
ABSENCE OF A SCIENTIFIC HYDROLOGIC
STUDY**

The Commission erroneously based its decision on a visual inspection of the surface of the facility by a non-hydrologist staff member of the Oil Conservation Division's Environmental Bureau ("OCD-EB"). See Finding (14). The Commission also in error found it significant that the Opponents' hydrologist had not made a personal inspection of the surface of the facility.

The Commission ignored the testimony of Mr. Stradley about the slope of the topography and the fact the facility was some 35 feet higher in elevation to his down slop fresh water well. The Commission ignored the testimony of Opponent Reeves who had located and identified some forty-six (46) water wells in the area.

The Commission failed to explain how that surface inspection could substitute for a scientific hydrologic study of the potential contamination of Mr. Stradley's fresh water well.

**POINT VI: THE IS NO SUBSTANTIAL EVIDENCE TO
SUPPORT FINDING (12) CONCERNING A
NEED FOR THIS WASTE FACILITY**

Finding (12) states:

"There is a need for landfarms to
remediate oil contaminated soils in
the oil fields of Southeast New Mexico."

Contrary to this finding, the uncontested evidence was that the location of the facility was arbitrary; that the applicant had not conducted any economic analysis to justify this facility or establish its need; that there was nothing introduced about the capacity of existing OCD approved waste facilities or their location or inability to meet the "needs" of the industry; there was no testimony from any operator of oil & gas wells in this area supporting this application.

The Commission made an error. The need for this facility at this site was NOT established by substantial evidence.

**POINT VII: THE ADMINISTRATIVE PROCESS OF
THIS CASE AND ORDER R-9796-A
VIOLATE PROCEDURAL DUE PROCESS**

On October 8, 1991, the Applicant, C&C Landfarm, Inc. filed its application with the Division seeking authority to construct and operate a commercial "landfarm" facility ONLY for the remediation of soils contaminated with hydrocarbon substances which are exempt from the Federal Resources Conservation and Recovery Act (RCRA) on a 40-acre site owned by Jimmie T. Cooper. On November 27, 1991, notice concerning the original Application was published in The Lovington Daily Leader, a newspaper of general circulation in Lea County, New Mexico. No published notification was made of any of the amendments to the application.

The Commission granted the Applicant more than Applicant sought. While the Applicant only sought to construct and operate a commercial "landfarm" facility specifically limited to the remediation of non-hazardous hydrocarbon contaminated soils, the OCD Conditions appended to the Order R-9769-A as Exhibit "A" also authorize other contaminants to be received into the facility.

Specifically, OCD Conditions #1 and #10 set up a process for the Applicant to expand its waste facility to accept other contaminants and to do so without public notice or public hearing.

Since April, 1992, the Opponents have complained about receiving inadequate notice of about this Application, including the NMOCD-EB approving this facility and the various amendments to that Application without notice to Opponents. The public notice in this case is flawed and continues to violate due process. The Commission has perpetuated that violation of procedural due process by approving an order which

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allows amendments to take place without public notice
or hearing.

**POINT VIII: THE COMMISSION FAILED TO PROPERLY AMEND
THE OCD-EB PROPOSED CONDITIONS DATED
JANUARY 6, 1993 AND THEREFORE ORDER
R-9769-A IS ARBITRARY, CAPRICIOUS AND
NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

Should the Commission disagree with the other
Points raised by the Opponents in this Application for
Rehearing, Order R-9769-A is still legally deficient
because certain conditions adopted by the Commission
are directly contrary to the uncontested evidence in
this case:

(1) Condition (2):

"No disposal or remediation of contaminated soils
will occur within one hundred (100) feet of your
property boundary."

The 100 foot horizontal setback ("buffer") was recommended by Kathy Brown of the OCD-EB. On cross examination, she admitted that there is no scientific basis for the distance being 100 feet.

A Buffer Zone is essential but the proper distance must be based upon some site specific scientific reasons to determine that distance is adequate. The Commission has adopted an arbitrary distance for the Buffer Zone without any scientific basis.

(2) Treatment Zone Monitoring:

The Commission has made a mistake when it adopted the OCD-EB proposed conditions concerning the Treatment Zone and its Monitoring. The OCD-EB speculates that the first three feet of native soils will be an adequate "Treatment Zone" and with monitoring will protect ground water.

Again, Kathy Brown, testifying in support of the adoptions of the OCD-EB conditions was not a qualified expert hydrologist and did not undertake an adequate scientific study to justify its Treatment Zone Monitoring.

The proposed monitoring of the Treatment Zone has no scientific basis for determining its reliability. There is no data from which to determine that the location of the cells in which the contaminated soils will be placed have been located an adequate distance from either the excavated pits or from the boundary of the adjoining Stradley property. Nobody knows how frequently to sample and how many samples per acre to take in order to detect contamination in the Treatment Zone. The OCD-EB Revised Recommendations are inadequate to detect any leaching process of movement of contaminants that could cause the pollution of nearby fresh water supplies.

In summary, while the OCD-EB recommendations are well intended, they are inadequate to provide reasonable protection of the valuable groundwater present in the immediate adjacent tracts.

**POINT IX: THE COMMISSION VIOLATED THE FASKEN,
THE VIKING PETROLEUM AND THE CONTINENTAL
OIL CASES WHEN ITS FAILED TO ADDRESS AND
DECIDE THE OPPONENTS' ISSUES AND
OBJECTIONS**

The Commission is required to make findings of ultimate facts which are material to the issues and to make sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings with substantial support in the record for such findings. Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

Likewise, in Viking Petroleum v. Oil Conservation Commission, 100 N.M. 451, 453, 672 P.2d 280 (1983), the

New Mexico Supreme Court reiterated its opinions in Continental Oil and Fasken, that administrative findings by the Commission should be sufficiently extensive to show the basis of the order and that findings must disclose the reasoning of the Commission in reaching its conclusions.

It is not enough in this case for the Commission to simply adopted the OCD-EB revised Conditions of Approval and to then append those conditions to Order R-9769-A as Exhibit "A." The Commission needs to articulate its decision on each of the conditions which were opposed by the Opponents.

The Commission failed to explain why it found it important to summarize the disputed Applicant's evidence but omitted a summary of the Opponent's evidence.

A rehearing is required, if for no other reason than for the Commission to adopt an adequate order

which complies with state law. An adequate order would specifically address the issues described in the Opponents' Pre-Hearing Statement and which are summarized as follows:

Opponent Stradley stated he has fresh water in the immediate vicinity of the subject project which he currently uses and which is at risk of contamination if this project is approved as outlined by the "OCD Conditions of Approval" notice dated May 20, 1992 or as outlined in "OCD Recommendations" dated January 6, 1993.

Opponent Reeves, after extensive personal search of the State Engineer's records concerning fresh water wells in the area introduced evidence of the presence of some forty-six (46) water wells in the area. The Commission, with no explanation, ignored that evidence.

The Applicant had some 240 contiguous acres from which to select a possible site for the facility. The Commission could have and should have required that

this facility be located farther north within the same tract of land controlled by the Applicant. Instead the Commission chose to avoid this solution and approved a facility on the southern end of the Applicant's tract adjacent to Mr. Stradley's tract. That puts the risk of contamination directly upon Mr. Stradley and not upon the Applicant.

The procedure applied by the Division in processing this case violated procedural due process. This was a make it up as you go process.

The NMOCD "Conditions of Approval" notice dated May 20, 1992 and "OCD Recommendations" dated January 6, 1993 contain substantial errors and fail to protect ground water, human health and the environment.

The subject facility is being designed by the OCD and not the Applicant and is being permitted without any science or experience to know that it will work and prior to the OCD adopting guidelines for such a facility.

The Opponents presented evidence that the granting of the application by the Commission failed to protect human health and the environment and constitutes a risk of contamination of ground water, including the following:

(a) The Applicant's proposed plan will place at risk shallow water wells located down-dip from the proposed landfarm which will be subject to contamination from seepage of leachate contaminants.

(b) The Applicant's plans to prevent migration of contaminants down gradient along the redbed surface is inadequate.

(c) The proposed monitor wells are improperly located and will not afford adequate assurance of detection of contaminants.

(d) The proposed dike identified in OCD Condition (10) in said Order is insufficient and conditions on compaction and verification are inadequate to stop the mobility of the leachate contaminants.

(e) The composition of the berm is not environmentally safe.

(f) Additional soil tests should be performed on the redbed soil including:

- (1) Falling head permeability tests,
- (2) Soil property tests,
- (3) Cation Exchange Capacity tests,

(g) Applicant needs to perform liquid and plastic tests on the redbeds.

(h) The Applicant's proposed barrier is inadequate for its proposed landfarm.

(i) Applicant's geology is inadequate and fails to include an east-west cross section.

The OCD-Environmental Bureau's (OCD-EB) January 6, 1993 Recommendations assume that the contaminated soils will be kept from any shallow fresh water because of about 10 feet of native soil being used as a "treatment zone."

There is no characterization of the "redbeds." In this area there are the Triassic deposits, probably the Chinle shale, and referred to as the "redbeds." The integrity of this landfarm system is dependent upon the impermeability of the redbeds, but the Applicant has presented no data about the physical characteristics of these deposits, such as cation exchange rates, in-situ permeability, remolded permeability at specified compaction ratios, swelling characteristics, etc. All of these are critical factors that ensure that there would be no migration of leachate along the top of or through the redbeds.

There are inadequate horizontal and vertical buffer zones surrounding this proposed facility. The configuration of the upper surface of the redbeds in the 40-acre tract has not been defined.

Commission Order R-9769-A is fatally flawed and should be withdrawn and a Rehearing granted to address all of the issues set forth in this Application for Rehearing.

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CONCLUSION

The Commission should withdraw Order R-9769-A and substitute Order R-9697-B which is attached hereto as Exhibit A and incorporated herein by reference. In order to preserve Opponents' right to further appeals of this matter, all of the issues set forth in our proposed Order R-9697-B are made a part of this Application for Rehearing.

Respectfully submitted,

KELLAHIN AND KELLAHIN,

A large, stylized handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', is written over the printed name.

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AND ELSIE M. REEVES

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10507 (De Novo)
Order No. R-9769-A

APPLICATION OF C & C LANDFARM, INC.
FOR A COMMERCIAL SURFACE WASTE
DISPOSAL FACILITY, LEA COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on February 25, 1993, at Santa Fe, New Mexico, before the Oil Conservation Commission of the State of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 19th day of April, 1993, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) Sections 70-2-12.B(21) and (22) N.M.S.A. (1978) Compilation, also known as the New Mexico Oil and Gas Act, authorizes the New Mexico Oil Conservation Commission ("Commission") to regulate the disposition of non-domestic wastes resulting from various oil and gas activities and operations and to protect public health and the environment.

(3) The applicant, C & C Landfarm, Inc. (C & C) filed an application, pursuant to General Rule 711 with the Division on October 8, 1991 seeking authorization to construct and operate a commercial landfarm facility for the remediation of non-hazardous and exempt hydrocarbon contaminated soils. C & C proposes to utilize biodegradation process on a site located in the SW/4 NE/4 (Unit G) of Section 2, Township 20 South, Range 37

EXHIBIT A TO APPLICATION
FOR REHEARING

East, NMPM, Lea County, New Mexico, which is located approximately two miles southeast of Monument, New Mexico. The term "non-hazardous and exempt" is synonymous as defined in the Resource Conservation and Recovery Act (RCRA) Subtitle C Regulations.

(4) This application was reviewed by the Environmental Bureau of the Oil Conservation Division and determined to be approvable.

(5) A Division Examiner hearing was scheduled to provide to interested parties an opportunity to present technical evidence why this application should not be approved pursuant to the applicable rules of the Division.

(6) Within the time frame authorized by Division rule, certain parties of interest filed written objections to the proposed facility including Elsie M. Reeves and W. T. Stradley, President of S-W Cattle Company.

(7) An Examiner hearing was held on September 1, 1992 at which time Elsie M. Reeves and W. T. Stradley presented evidence in opposition to this application.

(8) On November 16, 1992 the Division entered Order No. R-9769 approving this application and thereafter Elsie M. Reeves, S-W Cattle Company and W. T. Stradley timely filed for a hearing De Novo.

(9) Properly managed landfarming is an excellent method to manage contaminated soil, because those soils are remediated to a useful condition and contaminants can be contained and any movement observed and stopped before they cause any harm.

(10) The proposed landfarm is to be located on a forty-acre tract of land, as described in Finding Paragraph No. (3) which is bordered on the east by Lea County Road No. 58. Oil field contaminated soils will be trucked to the site and deposited within cells in six inch lifts; these soils will be tilled or plowed to ensure proper aeration and bioremediation to proper government standards. Prior to any soil being deposited in a cell, the soil in the cell or "treatment zone" will be sampled and tested. Six months after the first oil field contaminated soil is deposited in the cell and quarterly thereafter the treatment zone will be tested again to assure that no contamination is occurring.

(11) Applicant presented factual evidence that supports the following conclusions:

- (a) There is no fresh water under the disposal site because there is no Ogallala aquifer present.
- (b) The berm to be constructed and maintained and operational

requirements will be adequate to prevent precipitation run-off and run-on for the treatment portion of the facility.

- (c) Quarterly testing within the treatment zone will determine if there has been downward migration of contaminants.
- (d) The process of bio-remediation to be employed at the proposed landfarm is a proven, cost effective technology for treatment of oil contaminated soils.

(12) There is a need for landfarms to remediate oil contaminated soils in the oil fields of Southeast New Mexico.

(13) Elsie M. Reeves and W. T. Stradley, property owners in the area, appeared in opposition to the application and expressed concern that the proposed facility could contaminate fresh water. They called a hydrologist who testified that additional requirements might be necessary to assure there was no contamination of fresh water supplies but admitted that such requirements would need to be developed based on inspection of the facility and sampling and testing of the water and soil in the area. He stated he had not been to the site and had taken no samples nor conducted any tests at the proposed facility. His expert opinion was based upon general hydrologic information from the literature and not upon specific knowledge at the site and the type of operation and therefore was ~~not useful~~ in this case.

(14) The Division's Environmental Bureau has reviewed the proposed facility, inspected the site and made specific permit recommendations for this facility which it requests be incorporated into and made part of a Commission Order approving this application. These "Conditions of Approval" should be adopted to assure safe operations and to provide for a monitoring system to detect any leaching or movement of contaminants that could cause the pollution of nearby underground fresh water supplies.

(15) If contaminant migration occurs, the Division should immediately order the operator to stop taking additional contaminated soils and implement steps to remediate the contaminated zone and provide a procedure to prevent future contamination migration.

(16) Approval of this application and operation of the proposed landfarm in accordance with the Environmental Bureau's proposed "Conditions of Approval" will not impair fresh water supplies in the area, will have no adverse effect on human health nor on the environment, will not cause waste and should be approved.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, C & C Landfarm, Inc. is hereby authorized to construct and operate a commercial "landfarm" facility for the remediation of non-hazardous hydrocarbon contaminated soils utilizing an enhanced biodegradation process on a site located in the SW/4 NE/4 (Unit G) of Section 2, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico.

PROVIDED HOWEVER THAT: the proposed facility shall be constructed and operated in accordance with the permit conditions attached hereto as Exhibit "A" which are incorporated herein and made a part of this order, and in accordance with such additional conditions and requirements as may be directed by the Division Director, and shall be operated and maintained in such a manner as to preclude spills, fires, limit emissions and protect persons, livestock and the environment.

PROVIDED FURTHER THAT, prior to initiating operations, the facility shall be inspected by a representative of the Hobbs District Office of the Oil Conservation Division in order to determine the adequacy of fences, gates and cattle guards necessary to preclude livestock and unauthorized persons from entering and/or utilizing said facility, and also to determine the adequacy of berms to assure safe facility operations.

(2) Prior to commencing operations on said facility, the applicant shall submit, to the Santa Fe Office of the Division, a surety or cash bond pursuant to General Rule 711, in the amount of \$25,000 in a form approved by the Division.

(3) The Director of the Division shall be authorized to administratively grant approval for the expansion or modification of the proposed disposal facility after notice to interested parties.

(4) Authority for operation of the landfarm shall be transferrable only upon written application and approval by the Division Director.

(5) Authority for operation of the landfarm facility shall be suspended or rescinded whenever such suspension or rescission appears necessary to protect human health or property, to protect fresh water supplies from contamination, to prevent waste, or for non-compliance with the terms and conditions of this order or Division Rules and Regulations.

(6) The permit granted by this order shall become effective only upon acceptance by the applicant of the "Conditions of Approval" attached hereto as Exhibit A.

(7) The Division shall have the authority to administratively change any condition

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of this permit to protect fresh water, human health and the environment. Applicant may request a hearing upon any change which materially affects the operation of the facility.

(8) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Bill Weiss

WILLIAM W. WEISS, Member

William J. Lemay

WILLIAM J. LEMAY, Chairman

I Dissent

Gary Carlson

GARY CARLSON, Member

S E A L

dr/

Exhibit "A"
Case No. 10507 De Novo
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**C & C LANDFARM, INC. APPLICATION
OCD CONDITIONS OF APPROVAL**

LANDFARM OPERATIONS

1. Remediation of contaminated soils will occur only on the native ground surface. The caliche pit present on the facility will not be used for the disposal, storage or remediation of **any materials** without the case-by-case approval of the OCD.
2. No disposal or remediation of contaminated soils will occur within one hundred (100) feet of your property boundary.
3. Disposal will only occur when an attendant is on duty. The facility will be secured when attendant is not present.
4. The facility will be fenced and have a sign at the entrance. The sign will be legible from at least fifty (50) feet and contain the following information: 1) name of the facility, b) location by section, township and range, and c) emergency phone number.
5. An adequate berm will be constructed and maintained to prevent run-off and run-on for that portion of the facility containing contaminated soils.
6. All contaminated soils received at the facility will be spread and disked within 72 hours of receipt.
7. Soils will be spread on the surface in six inch lifts or less.
8. Soils will be disked a minimum of one time every two weeks (biweekly) to enhance biodegradation of contaminants.
9. Successive lifts of contaminated soils will not be spread until a laboratory measurement of Total Petroleum Hydrocarbons (TPH) in the previous lift is less than 100 parts per million (ppm), and the sum of all aromatic hydrocarbons (BTEX) is less than 50 ppm, and the benzene is less than 10 ppm. Comprehensive records of the laboratory analyses and the sampling locations will be maintained at the facility. Authorization from the OCD will be obtained prior to application of successive lifts.
10. Only oilfield wastes which are exempt from RCRA Subtitle C regulations or non-hazardous by characteristic testing will be accepted at the facility. Solids from operations not currently exempt under RCRA Subtitle C or mixed exempt/non-exempt solids will be tested for appropriate hazardous constituents. Test results must

be submitted to the OCD along with a request to receive the non-exempt solids, and a written OCD approval (case specific) must be obtained prior to disposal. Any non-oilfield wastes which are RCRA Subtitle C exempt or are non-hazardous by characteristic testing will only be accepted on a case-by-case basis and with prior OCD approval. Comprehensive records of all laboratory analyses and sample locations will be maintained by the operator.

11. Moisture will be added as necessary to enhance bio-remediation and to control blowing dust. There will be no ponding, pooling or run-off of water allowed. Any ponding of precipitation will be removed within seventy-two (72) hours of discovery.
12. Enhanced bio-remediation through the application of microbes (bugs) and/or fertilizers will only be permitted after prior approval from the OCD. Request for application of microbes must include the location of the area designated for the bio-remediation program, composition of additives, and the method, amount and frequency of application.
13. No free liquids or soils with free liquids will be accepted at the facility.
14. Comprehensive records of all material disposed of at the facility will be maintained at the facility. The records for each load will include: 1) the origin, 2) date received, 3) quantity, 4) exempt or non-exempt status and analysis for hazardous constituents if required, 5) transporter, and 6) exact cell location and any addition of microbes, moisture, fertilizers, etc.
15. The monitor wells will be inspected for the presence of fluids on a quarterly basis on the same schedule as the treatment zone monitoring. If fluids are discovered the OCD will be notified immediately.

TREATMENT ZONE MONITORING

1. One (1) background soil sample will be taken from the center portion of the landfarm two (2) feet below the native ground surface. The sample will be analyzed for total petroleum hydrocarbons (TPH), general chemistry, and heavy metals using approved EPA methods.
2. A treatment zone not to exceed three (3) feet beneath the landfarm will be monitored. A minimum of one random soil sample will be taken from each individual cell, with no cell being larger than five (5) acres, six (6) months after the first contaminated soils are received in the cell and then quarterly thereafter. The sample will be taken at two to three (2-3) feet below the native ground surface.
3. The soil samples will be analyzed using approved EPA methods for TPH and BTEX quarterly, and for general chemistry and heavy metals annually.
4. After obtaining the soil samples the boreholes will be filled with an impermeable

material such as bentonite cement.

REPORTING

1. Analytical results from the treatment zone monitoring will be submitted to the OCD Santa Fe Office within thirty (30) days of receipt from the laboratory.
2. The OCD will be notified of any break, spill, blow out, or fire or any other circumstance that could constitute a hazard or contamination in accordance with OCD Rule 116.

BOND

Pursuant to OCD Rule 711 a surety or cash bond in the amount of \$25,000, in a form approved by the Division, is required prior to commencing construction of the commercial surface disposal facility.

CLOSURE

The operator will notify the Division of cessation of operations. Upon cessation of disposal operations for six (6) consecutive months, the operator will complete cleanup of constructed facilities and restoration of the facility site within the following six (6) months, unless an extension for time is granted by the Director. When the facility is to be closed no new material will be accepted. Existing soils will be remediated until they meet the OCD standards in effect at the time of closure. The area will then be reseeded with natural grasses and allowed to return to its natural state. Closure will be pursuant to all OCD requirements in effect at the time of closure, and any other applicable state and/or federal regulations.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 10507 (DENOVO)
ORDER NO. R-9769-B

APPLICATION OF C & C LANDFARM, INC.
FOR A COMMERCIAL SURFACE WASTE
DISPOSAL FACILITY, LEA COUNTY, NEW MEXICO.

ELSIE REEVES AND W. TRENT STRADLEY'S
PROPOSED
ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 AM on
Thursday, February 25, 1993, at Santa Fe, New Mexico,
before the Oil Conservation Commission of New Mexico,
hereinafter the "Commission."

NOW, on this 20th day of May, 1993, the
Commission, a quorum being present, having considered
the testimony presented and the exhibits received at
said hearing, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as
required by law, the Commission has jurisdiction of
this cause and the subject matter thereof.

(2) The New Mexico Oil and Gas Act, Section 70-2-
12.B(21) and (22), NMSA (1978) authorizes the New
Mexico Oil Conservation Division ("Division") to
regulate the disposition of non-domestic wastes
resulting from various oil and gas activities and
operations and to protect public health and the

environment.

(3) Pursuant to that authority the Division has adopted regulations governing the operation of commercial surface waste disposal facilities (Rule 711 of the Rules and Regulations of the Oil Conservation Division, hereinafter "OCD Rules").

(4) On October 8, 1991, the Applicant, C & C Landfarm, Inc. ("C&C"), filed its Application with the Division seeking authority to construct and operate a commercial "landfarm" facility ONLY for the remediation of soils contaminated with hydrocarbon substances which are exempt from the Federal Resource Conservation and Recovery Act (RCRA), (42 USA 6921-6939b), Subtitle C regulations (40 CFR Parts 260-272) on a 40-acre site, owned by Jimmie T. Cooper and located in the SW/4NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico, which is approximately two miles southeast of Monument, New Mexico.

(5) In its original Application, C&C applied for approval to excavate the native soil within the facility down to the Triassic formation ("redbeds") (about 10-16 feet) and then to fill the excavated pit with hydrocarbon contaminated soils.

(6) C&C asserted it had drilled five "monitor" wells within the 40-acre site and did not encounter groundwater under the facility.

(7) The Oil Conservation Division's Environmental Bureau ("OCD-EB") commenced processing the C&C application pursuant to Division Rule 711 which provides among other things that "If there is objection by owners or occupants of adjacent lands, the Director of the Division may set any application for a surface waste disposal permit for public hearing."

(8) On November 27, 1991 public notice concerning the subject Application was published in The Lovington Daily Leader, a newspaper of general circulation in Lea County, New Mexico.

(9) Within the 30-day public notice provision set forth in OCD Rule 711(B), written objections were filed with the Division by Elsie M. Reeves and W. T. "Trent" Stradley of S-W Cattle Company, each of whom is an adjoining land owner and unless otherwise stated are referred herein collectively as "Opponents."

(10) Despite receiving timely objections from the Opponents, the OCD did not set the C&C Application for hearing, but rather continued with its administrative processing.

(11) On February 21, 1992, the OCD-EB wrote to C&C expressing, among other things, concern for the "possibility of contaminants migrating off of your property along the surface of the redbed" and requested a detailed description of how C&C planned to prevent the migration of contaminants down gradient along the redbed surface.

(12) On March 2, 1992, C&C submitted to OCD-EB a schematic for the excavated pit now showing a proposal to install a "redbed dike" on the south, west and north edges of the facility with the south edge of the dike touching the north edge of the Stradley property.

(13) On April 3, 1992, OCD-EB notified the Opponents that, "The application at this time is administratively approvable since it meets all of the technical requirements to protect ground water, human health and the environment." and informs the Opponents that they had 30-days to submit comments which responded with "substantive technical information."

(14) The Opponents renewed their protest and filed objections which raised the following issues:

(a) That the OCD-EB "Conditions of Approval" contained substantial errors and failed to protect ground water, human health and the environment;

(b) That C&C's proposed facility would place at risk shallow water wells located down-dip from the facility which will be subject to contamination from seepage of leachate contaminates;

(c) That there was inadequate notice of the C&C Application and of the various amendments to that Application and that the Application, as amended, should be dismissed;

(d) That the administrative processing by the OCD-EB had violated procedural due process and did not comply with the rules of the OCD;

(e) That the Application requested approval of a 40-acre tract but proposed to use only 2 acres;

(f) That the OCD-EB proposed to grant C&C significantly greater disposal authority than the C&C had requested;

(g) That C&C's plan to prevent migration of contaminants down gradient along the redbed surface was inadequate;

(h) That there was no scientific data submitted by the Applicant to support its Application; and

(i) That the design of the facility was grossly inadequate.

(15) On May 20, 1992, the OCD-EB notified the Opponents that the OCD-EB, without a hearing, would grant the C&C application subject to the "Conditions of Approval" dated May 20, 1992.

(16) Prior to June 9, 1992, the Opponents again requested a public hearing.

(17) Finally the OCD set a hearing not for C&C to present its case but rather for the limited purpose of hearing the Opponents' technical evidence in opposition to the OCD-EB conditional approval of May 20, 1992.

(18) The limited Hearing was held before OCD Examiner Michael Stogner on September 1, 1992.

(19) On November 16, 1992, the OCD issued Order R-9769 approving the disposal of contaminated soils and solids into the excavated pit subject to the May 20, 1992 conditions proposed by the OCD-EB.

(20) The Opponents timely filed for a DeNovo hearing of Case 10507 before the Commission.

(21) On January 6, 1993, the OCD-EB issued newly proposed "Revised Recommendations" which provided for the disposal of the contaminated soils within the facility but precluded disposal into the excavated pits.

(22) At the Commission Hearing, C&C presented the following in support of its Application:

(a) That out of the 200 acres controlled by Jimmie Cooper, C&C proposed to use a 40-acre tract the southern boundary of which is immediately adjacent to a tract controlled by Trent Stradley;

(b) That C&C had not examined any other site in this area or any other portion of the Cooper tract as a possible site;

(c) That it had drilled five "monitor" wells within the 40-acre site and did not encounter groundwater under the facility;

(d) That it proposed to limit the material taken into the facility to oil field contaminated soils; and

(e) That it would adopt and abide by all of the OCD-EB Revised Recommendations dated January 6, 1993.

(23) At the Commission Hearing, the Opponents presented the following in opposition to the Application:

(a) That C&C failed to present a qualified expert hydrologist and did not undertake an adequate scientific study to justify its Application;

(b) That Stradley's fresh water windmill well some 1,700 feet to the southwest of the facility is at risk of contamination if the project was approved as outlined by the OCD-EB;

(c) The location of the facility within this proposed 40-acres within the Cooper tract is arbitrary;

(d) C&C failed to provide any reasonable reasons for selecting this site over available sites within the Cooper property which would be farther away from Stradley and Reeves;

(e) The need for this facility at this site was not established;

(f) The design of the facility is flawed and will not provide adequate protection for ground water, public health or the environment;

(g) The 100 foot buffer recommended by the OCD-EB is arbitrary and inadequate;

(h) The proposed monitoring of the treatment zone has no scientific basis for determining its reliability;

(i) There is no data from which to determine that the location of the cells in which the contaminated soils will be placed have been located an adequate distance from either the excavated pits or from the boundary of the adjoining Stradley property;

(j) The OCD-EB recommendations, while well intended, are inadequate to provide reasonable protection of the valuable groundwater present in the immediately adjacent tract;

(k) The facility is an environmental accident waiting to happen;

(l) The \$25,000 Bond recommended by the OCD-EB is grossly inadequate;

(m) The Applicant failed to undertake any scientific study and allowed the OCD-EB to attempt to design the facility for the Applicant based upon the OCD-EB's best guess; and

(n) The January 6, 1993 OCD-EB Revised Recommendations are inadequate to detect any leaching process or movement of contaminants that could cause the pollution of nearby underground fresh water supplies.

(24) At the Commission Hearing, the OCD-EB presented the following in support of its January 6, 1993 Revised Recommendations:

(a) Although the OCD-EB originally approved the C&C request to place contaminated soils into the excavated pits, the OCD-EB now (January 6, 1993) recommends against such a request;

(b) C&C originally sought to put the facility and contaminated soils right up to the property line common with Trent Stradley. The OCD-EB May 20, 1992 conditions approved the facility without a set back or "buffer zone." The OCD Order approved the application also without a buffer zone. Now, the OCD-EB proposes a 100 foot setback from the property line as a "buffer zone."

(c) The OCD-EB admitted that the 100 foot buffer was an arbitrary distance without any scientific basis;

(d) The integrity of the proposed landfarm is dependent upon the impermeability of the redbeds and the apparent absence of shallow groundwater at five locations under the facility;

(e) The OCD-EB proposes that the first three feet of native soils will be an adequate "treatment zone" and proper monitoring will protect ground water;

(f) The OCD-EB January 6, 1993 Recommendations are predicated upon the assumption that the contaminated soils will be kept from any shallow ground water by monitoring for potential contaminant in a "treatment zone" consisting of the first three feet of native soil upon which the contaminated soils have been placed; and

(g) The OCD-EB proposes that a single soil sample can be taken at the center of the facility and provide a background soil sample.

(25) It is of significance to the Commission, which must rely upon expert witnesses, to judge the creditability and expertise of each such witness.

(26) In this case, the Opponents presented a well-recognized geohydrologist with both bachelor and master degrees in hydrology who had specific knowledge of the immediate subject area and who has testified before this Commission on a number of prior occasions.

(27) C&C relied upon a petroleum geologist without expertise in hydrology who had not undertaken any hydrology studies and who was unable to express any expert opinions concerning this matter.

(28) The OCD-EB relied upon the testimony of a petroleum geologist, who had in fact designed the facility for C&C, but who had no hydrology degrees and no experience with the actual operation of this type of facility.

(29) Based upon the foregoing and upon the entire record in this case, the Commission finds that:

(a) The rebeds are the first layer which will divert shallow ground water but they have not been mapped in this area and their characteristics are unpredictable;

(b) the Applicant presented no data about the physical characteristics of the rebeds such as cation exchange rates, in-situ permeability, remolded permeability at specified compaction ratios, swelling characteristics, etc., all of which would be critical factors to ensure that there is no migration of leachate along the top of or through the rebeds;

(c) Although the OCD-EB on February 21, 1992 expressed its concern about the potential migration of contaminants down gradient along the rebed surface, there is no evidence of any hydrologic studies of the area to determine the direction of migration of contaminants;

(d) There was no scientific data presented to support the OCD-EB conclusion that the disposal of contaminated soils on top of undisturbed native soil constitutes an adequate vertical buffer between the contaminants and the potential source of ground water recharge to the Stradley windmill water well;

(e) Although a monitoring procedure of the treatment zone is proposed, there is no assurance that such a monitoring procedure will timely detect potential contaminants and the facility should be substantially removed from any potential ground water both horizontally and vertically so as not to pose a risk;

(f) The OCD-EB proposed monitoring system for the "treatment zone" is inadequate and not based upon either experience with similar sites nor upon published scientific literature;

(g) An adequate horizontal "buffer zone" is essential but there is no evidence, scientific data, experience or anything else presented to determine what that distance should be;

(h) C&C's proposed facility is the 40-acre tract at the SE corner of a 200 acre tract owned by Jimmie Cooper. The NE/4 40-acre tract appears to be sufficiently removed from the Stradley tract so as not to pose a risk to his groundwater but no effort was made by C&C to investigate the feasibility of any alternative sites;

(i) While C&C expressed a "need" for this facility there was no economic justification for this facility presented;

(j) There was no evidence presented as to the risk to public health and the environment when contaminated soils are concentrated at this facility rather than leaving those contaminants at the well sites;

(k) The OCD-EB January 6, 1993 Recommendations propose that one soil sample of the treatment zone be taken quarterly for not more one sample for a 50-acre tract.

(l) The Applicant did not present any soil samples or analysis for the facility;

(m) There have been no studies to determine if a single soil sample will be representative of the soil conditions and characteristics over the entire 40-acre tract;

(n) There was no evidence introduced from which to determine how frequently to sample and how many samples per how many acres should be taken;

(o) A single soil sample monitoring procedure is inadequate;

(p) The OCD-EB proposed sampling assumes the ability to detect contaminants percolating into the native soil treatment zone but is not based upon anything more than speculation;

(q) There are no published scientific reports or OCD-EB experience about any similar facilities from which to determine the potential success or failure of the proposed treatment zone monitoring;

(r) That while the C&C application sought approval ONLY for disposal of oil field contaminated soils, the OCD-EB proposed to allow the disposal of oil field solids and other contaminants;

(s) That the OCD-EB Revised Recommendations provide a method for future modification of the C&C facility which fails to provide adequate public notice and will violate procedural due process; and

(t) That the OCD-EB Rules and Regulations fail to provide adequate protection for ground water, public health or the environment.

(30) The Commission finds that the Application should be DENIED.

IT IS THEREFORE ORDERED THAT:

(1) This application is hereby DENIED.

(2) Order No. R-9769, entered in this matter on November 16, 1992, and Order R-9769-A entered in this matter on April 29, 1993 are hereby rescinded and are of no effect.

NMOCD Case No. 10507 (DeNovo)
ORDER NO. R-9769-B
Page 12

(3) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

GARY CARLSON
Member

WILLIAM W. WEISS
Member

WILLIAM J. LeMAY
Chairman

Geohydrology Associates, Inc.

May 17, 1993

W. Thomas Kellahin, Esq.
P. O. Box 2265
Santa Fe, New Mexico 87501

RE: C & C LANDFARM

Dear Tom:

By FAX I am sending copies of a portion of a map prepared by Nicholson and Clebsch, which clearly shows that the C & C Landfarm facility is located well within the outcrop area of the Ogallala formation. Also listed below are four other references, all of which have mapped the site within the outcrop area of the Ogallala.

Conover, C. S. and Akin, P. D., 1942, Progress report on the ground water supply of northern Lea County, New Mexico: New Mexico State Engineer Biennial Report.

Bretz, J. H., 1949, The Ogallala formation west of the Llano Estacado: Journal of Geology.

Judson, S. S., Jr., 1950, Depressions of the northern portion of the southern High Plains of eastern New Mexico: Geological Society of America Bulletin.

Dane, C. H. and Bachman, G. O., 1965, Geologic map of New Mexico: U. S. Geological Survey and New Mexico Bureau of Mines.

Hopefully this information will be of use to you.

Sincerely,

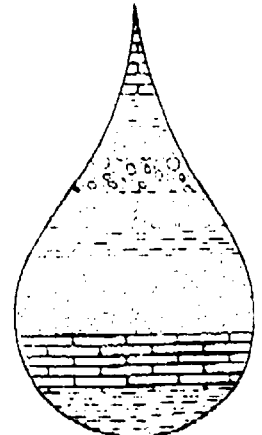
GEOHYDROLOGY ASSOCIATES, INC.

T. E. Kelly
T. E. Kelly
President

attachment

TEK/kc

EXHIBIT C TO APPLICATION
FOR REHEARING



GEOHYDROLOGY ASSOC., INC.

GROUND-WATER REPORT 6

Geology and Ground-Water Conditions in Southern Lea County, New Mexico

by *ALEXANDER NICHOLSON, Jr.*
and *ALFRED CLEBSCH, JR.*

UNITED STATES GEOLOGICAL SURVEY

Prepared in cooperation with the
New Mexico Institute of Mining and Technology,
State Bureau of Mines and Mineral Resources Division
and the New Mexico State Engineer

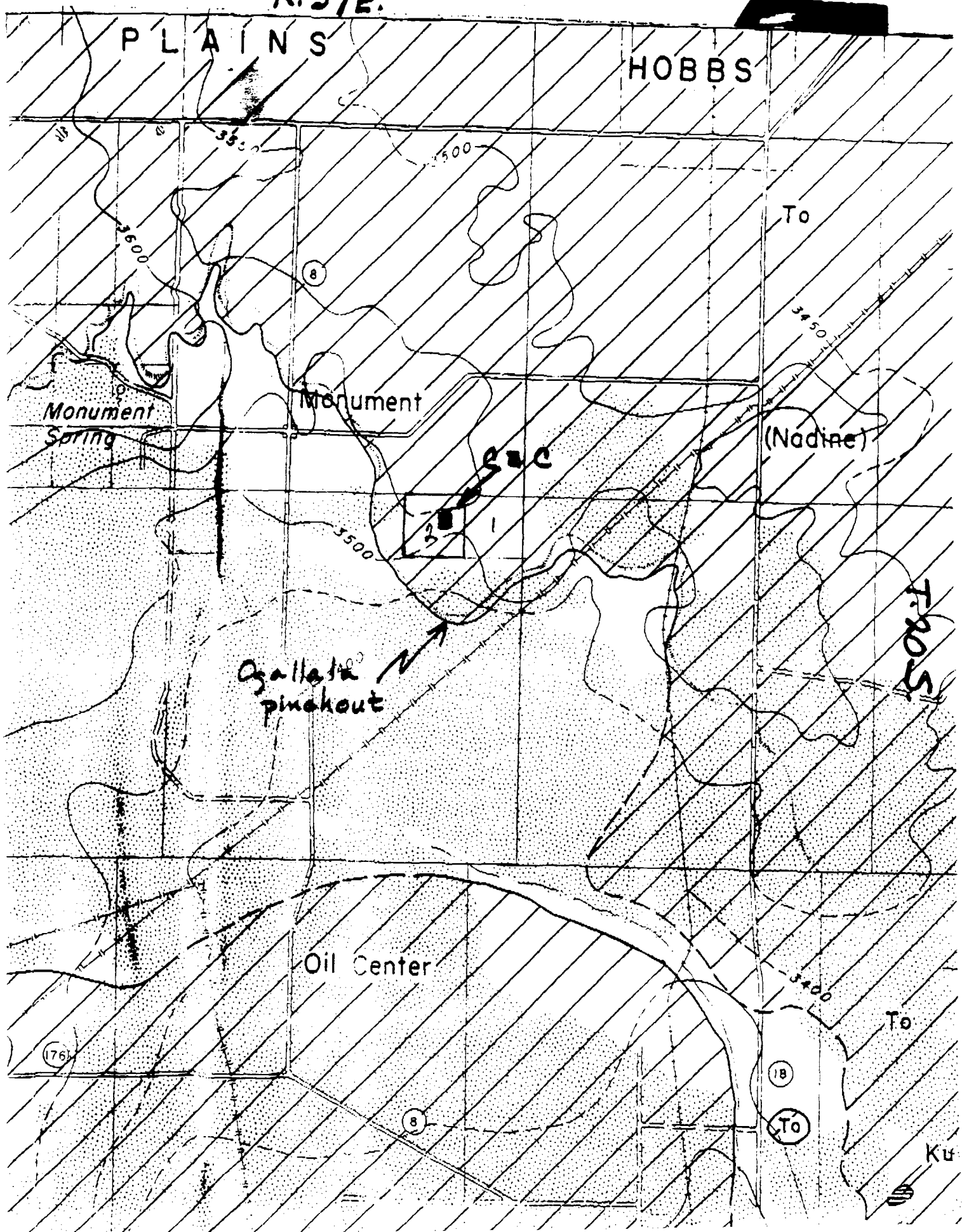
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STATE BUREAU OF MINES AND MINERAL RESOURCES
NEW MEXICO INSTITUTE OF MINING & TECHNOLOGY
CAMPUS STATION SOCORRO, NEW MEXICO

R. 37E.

PLAINS

HOBBS



State of New Mexico
Energy, Minerals and Natural Resources Department
OIL CONSERVATION DIVISION
P.O. Box 2088
Santa Fe, NM 87501

APPLICATION FOR SURFACE WASTE DISPOSAL FACILITY

(Refer to OCD Guidelines for assistance in completing the application.)

- I. Type: ☐ Produced Water ☐ Drilling Muds ☐ Treating Fluids
☒ Solids ☐ Other _____
- II. OPERATOR: C & C Landfarm Inc.
ADDRESS: Box 55 Monument, NM 88265
CONTACT PERSON: Jimmie T. Cooper PHONE: 505-397-2045
- III. LOCATION: SW 1/4 NE 1/4 Section 3 Township 20 Range 37 E
Submit large scale topographic map showing exact location.
- IV. IS THIS AN EXPANSION OF AN EXISTING FACILITY? ☐ Yes ☒ No
- V. Attach the name and address of the landowner of the disposal facility site and landowners of record within one-half mi. of the site.
- VI. Attach description of the facility with a diagram indicating location of fences, pits, dikes, and tanks on the facility.
- VII. Attach detailed engineering designs with diagrams prepared in accordance with Division guidelines for the construction/installation of the following: pits or ponds; leak-detection systems; aerations systems; enhanced evaporation (spray) systems; waste treating systems and security systems.
- VIII. Attach a contingency plan for reporting and clean-up of spills or releases.
- IX. Attach a routine inspection and maintenance plan to ensure permit compliance.
- X. Attach a closure plan.
- XI. Attach geological/hydrological evidence demonstrating that disposal of oil field wastes will not adversely impact fresh water.
- XII. Attach proof that the notice requirements of OCD Rule 711 have been met. (Commercial facilities only.)
- XIII. Attach a contingency plan in the event of a release of H₂S.
- XIV. Attach such other information as is necessary to demonstrate compliance with any other OCD rules, regulations and orders.
- XV. CERTIFICATION

I hereby certify that the information submitted with this application is true and correct to the best of my knowledge and belief.

Name: Eddie H. Seay Title: Agent/Consultant
Signature: Eddie H. Seay Date: October 4, 1991

DISTRIBUTION: Original and one copy to Santa Fe with one copy to appropriate Division District Office.

APPLICATION FOR SURFACE WASTE DISPOSAL FACILITY

- I. Type: Solids - Oil or Salt water contaminated soils from production facilities only.
- II. OPERATOR: C & C Landfarm Inc.
ADDRESS: Box 55 Monument, NM 88265
CONTACT PERSON: Jimmie T. Cooper
PHONE: 505-397-2045
- III. LOCATION: SW 1/4 of the NE 1/4 of Section 3, Township 20, Range 37 East, Lea Co., NM.
- IV. IS THIS AN EXPANSION OF AN EXISTING FACILITY? No, this is a new facility.
- V. LANDOWNER OF FACILITY SITE
Jimmie T. Cooper
P.O. Box 55
Monument, NM 88265

LANDOWNERS OF RECORD WITHIN 1/2 MILE
State of New Mexico
State Land Office
P.O. Box 1148
Santa Fe, NM 87504

S & W Cattle Co.
8900 South County Rd. 58
Monument, NM 88265

J.R. Williams, et al
P.O. Box 215
Monument, NM 88265

A.C. Doyall
P.O. Box 188
Monument, NM 88265
- VI. DIAGRAM (attached)
 - (A) Excavate area as needed down to top of redbed approximately 10 to 12 feet. Use overburden to build berms around site to prevent and restrict rain run off and drainage to facility.
 - (B) Fence around all sides, with chain link fence adjacent to County Road 58.
 - (C) Gate with cattle guard at entrance. Open during daylight hours only.
 - (D) 5 monitor wells on North, South, East, and West sides.
 - (E) Signs posted with restrictions and permit no.

(F) Any other improvement as needed or required by OCD.

VII. DRAWING OF MONITOR WELL (attached)

Excavate land area down to redbed. dispose of contaminated soil in 6 in. lifts and till or plow every 30 to 60 days as needed to ensure proper aeration so soil can be cleaned up by natural remediation according to government standards. Have soil tested for TPH and BTEX before adding new lift as required.

VII. CONTINGENCY PLAN (NA)

There will be no liquids at facility. Any soil accidentally spilled at facility will be picked up with front end loader and deposited within landfill. No material will be accepted without documentation.

IX. ROUTINE INSPECTION AND MAINTENANCE PLAN

- (1) Weekly inspection of monitor wells.
- (2) Road area around facility will be graded and kept free of oily dirt.
- (3) All loads will be documented and logged.
- (4) No liquids accepted.
- (5) No tank bottoms accepted.
- (6) Area will be posted with proper signs.
- (7) No dumping will be allowed unless facility is open.
- (8) May require letter from company showing waste has not been mixed with non-exempt waste.
- (9) All area properly fenced with locked gates.
- (10) Each lift will be tested for BTEX Method 602 and TPH Method 8015 EPA test requirements before adding new lift.

X. CLOSURE PLAN

All overburden will be removed down to the redbed, averaging from 12 ft. on the east side, to 16 ft. on the west side.

Disposal of solids will start at redbed, when area has been filled and tested to within 1 ft. of surface elevation, area will be backfilled with top soil, mound over and compacted. The mound should prevent rain or water from standing or leaching into backfill.

All fences will be left in tact and monitor wells left in place for future monitoring.

1-14 ft. Caliche, Rock
14-17 ft. Redbed
All formations dry.

- * An area in the middle of the east edge of the property, was excavated with a backhoe. Rock and caliche at 0-12 ft. Redbed was encountered at 12 ft.

The wells were drilled with rotary rig, no water was encountered, only caliche, rock, and sand down to redbed. The redbeds came in at 12 ft. on the east side, down to 17 ft. on the west side. The five wells drilled were completed into the redbed and cased with 3 in. PVC pipe with 5 ft. of screen on bottom with the top 2 ft. cemented and capped. Wells to be secured with locks and used as monitor wells.

Researched State Engineers records and U.S.G.S. file, no fresh water was recorded or found within area of review. A physical inspection was made and a windmill was found approximately 1 mile SW of the site, a sample was taken and analysis recorded for future use.

We feel this is one of the better sites for deposit of contaminated soil due to the thickness of redbeds, little or no fresh water in the area, a monitor system is in place for control of system. This system is in the middle of the oil and gas production and will serve a valuable environmental need, both regulatory and industrial.

- XII. PROOF OF OCD RULE 711 (attached)
- XIII. CONTINGENCY PLAN FOR RELEASE OF H₂S (NA)

Open pit system should not have H₂S. If encountered, OCD Rule 118 will be adhered to.
- XIV. All State of New Mexico, Oil Conservation rules will be enforced as they pertain to this system.

Also, any additional rule or regulation at time of closure will be adhered to.

- XI. Geographically, the site is situated near the western boundary of the southern extension of the High Plains in Southeastern New Mexico. The site in question is a 40 acre tract located in Unit G, Section 3, Township 20, Range 37 E, Lea Co., NM.

The site which is bordered by County road 58 on the east, has a gradual surface slope to the west. To the SE of this site in Unit Lettter O is a large pit with the redbed exposed. Redbed is a layer of relatively impermeable clays, red to reddish brown in color, underlying the fresh water aquifer in SE New Mexico ranging in thickness up to 1200 ft.

C & C Landfarm Inc. is located on or near the redbed layer. A series of test wells were drilled to define the redbed and check for fresh water.

TEST WELL LOGS

- #1 Located 100 yds. N of NW corner
0-1 ft. Top Soil
1-18 ft. Caliche, Rock
18-20 ft. Redbed
All formations dry.
- #2 Located 125 ft. N of the south line on the extreme west edge.
0-1 1/2 ft. Top Soil
1 1/2-16 ft. Caliche, Rock
16-18 ft. Redbed
All formations dry.
- #3 Located 100 yds. E of the west line on the south side.
0-1 ft. Top Soil
1-15 ft. Caliche, Rock
15-17 ft. Redbed
All formations dry.
- #4 Located 50 yds. W of the east line on the south border.
0-1 ft. Top Soil
1-13 ft. Caliche, Rock
13-16 ft. Redbed
All formations dry.
- #5 Located 150 yds. W of east line on the north side.
0-1 ft. Top Soil

C & C LANDFARM INC.

Additional information to Application for Surface Waste
Disposal.

ENVIRONMENTAL DIVISION
SEP 1980

- I. The thickness of the redbeds varied from area to area 87 9 31
in Section 3. The information was taken from logs of
producing oil wells in the area and lithology reports.

Unit C	Top 20 ft.	Base 960 ft.
F	30 ft.	562 ft.
B	14 ft.	880 ft.
H	15 ft.	1350 ft.
M	30 ft.	1270 ft.
L	40 ft.	1050 ft.

with the average thickness being 987 ft.

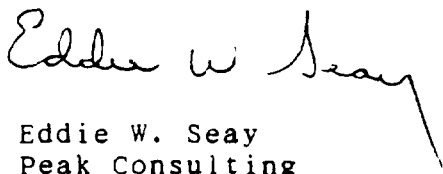
- II. Groundwater in the area; Figure I is a copy of the
State Engineer's water analysis and locations for this
area. none were listed in Sect. 3. The windmill SSW of
our proposed site appears to be located in Unit M of
Sect. 3 approximately 3/4 mile from site; Figure II is
a copy of analysis from S & W windmill. Figure III
indicates water wells in the general area showing top
and bottom of water formation and contour line
indicating direction of flow, which is SE. Figure IV
is a contour map of top of redbed, with slopes to the
SSE. Figure V is a contour map of the surface for the
surrounding area, the direction of slope is to the
west.

The contour maps provided are information from the
State Bureau of Mines, which shows any movement at our
site would run SE along the redbed surface and west
along the top of ground.

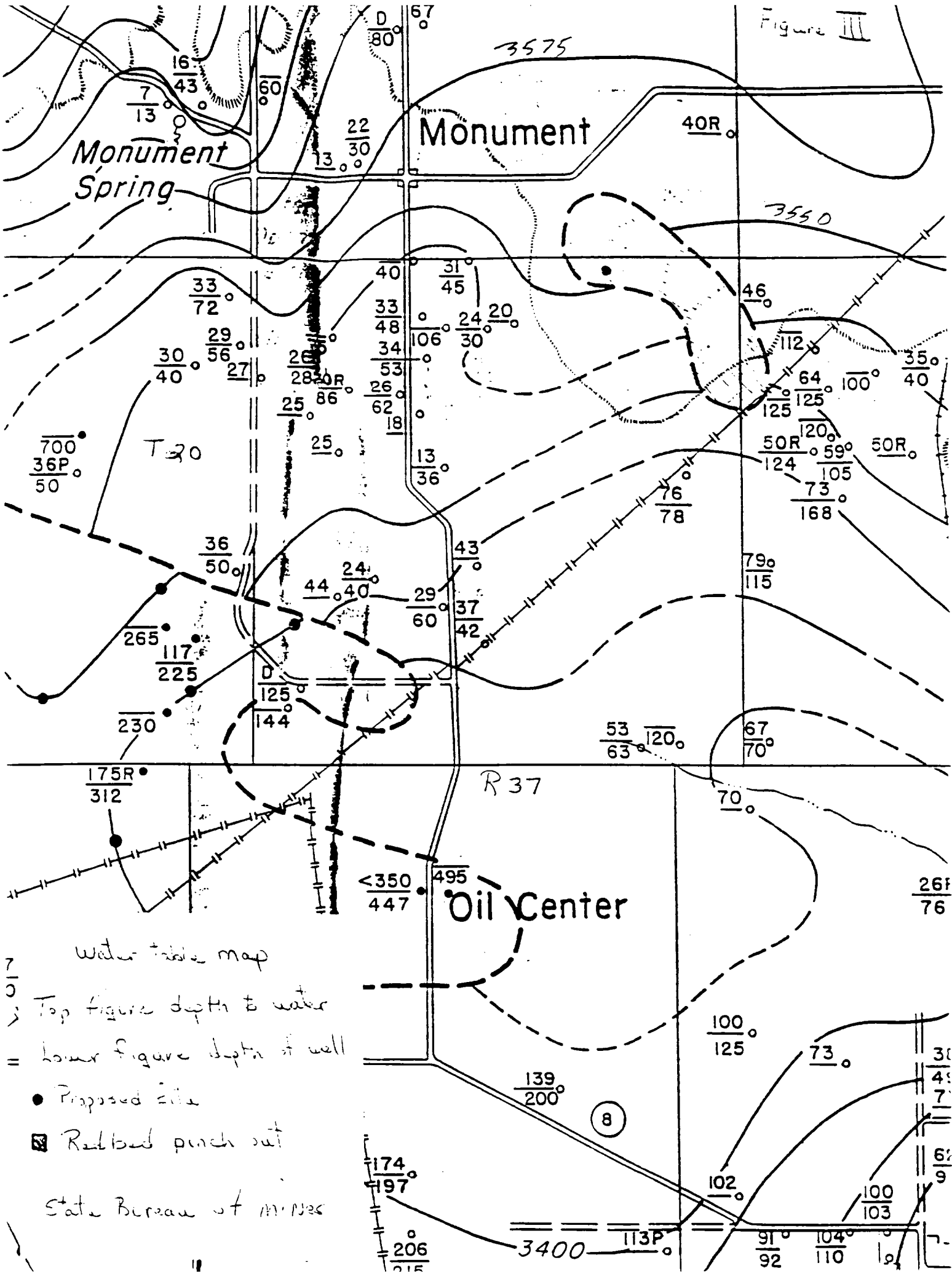
If the State feels it is necessary, additional monitor
wells can be installed or a redbed barrier constructed
on the SW portion of our site to prevent any
contaminate from moving.

- III. Also provided are the mail receipts from registered
letters.

Any additional information needed, please call (505)392-2236.


Eddie W. Seay
Peak Consulting

LOCATION	DATE COLLECTED	CHLORIDE mg/L	CONDUCT M-MHOS	TEMP DEG	WBF	State Proj.
20S 36E 09 13440	10/12/84	434	2350	63F	TOG	State Proj. 10/12/84
20S 36E 10 32114	08/28/72	79	520		GAL	State Proj. 08/28/72
20S 36E 10 32114	11/01/76	66	889	66F	GAL	State Proj. 11/01/76
20S 36E 10 32114	10/19/79	68	880	66F	GAL	State Proj. 10/19/79
20S 36E 10 32114	10/12/84	92	980	64F	GAL	State Proj. 10/12/84
20S 36E 11 42243	08/28/72	1000	1450		GAL	State Proj. 08/28/72
20S 36E 11 42243	11/01/76	918	3969	63F	GAL	State Proj. 11/01/76
20S 36E 11 42243	10/19/79	1074	4569	65F	GAL	State Proj. 10/19/79
20S 36E 11 42243	10/12/84	840	4330	64F	GAL	State Proj. 10/12/84
20S 36E 15 242421	08/28/72	720	1800		GAL	State Proj. 08/28/72
20S 36E 15 242421	11/01/76	518	3223		GAL	State Proj. 11/01/76
20S 36E 15 242421	10/12/84	882	3630	63F	GAL	State Proj. 10/12/84
20S 36E 15 242421	5/07/86	884	3715	70F	GAL	State Proj. 5/07/86
20S 36E 15 24342	03/30/54	1080	6780		TOG	State Proj. 03/30/54
20S 36E 15 24342	09/09/58	1240	7500		TOG	State Proj. 09/09/58
20S 36E 15 24342A	08/28/72	1280	2900		TRC	State Proj. 08/28/72
20S 36E 15 24342A	11/01/76	1192	6988	70F	TRC	State Proj. 11/01/76
20S 36E 26 24344	11/08/79	150	1790		TOG	State Proj. 11/08/79
20S 36E 26 24344	2/08/85	150	1798	68F	TOG	State Proj. 2/08/85
20S 36E 26 24443	11/08/79	182	1895		TOG	State Proj. 11/08/79
20S 36E 35 24444	11/08/79	118	1541		TOG	State Proj. 11/08/79
20S 37E 04 11114	04/02/54	450	2180		GAL	State Proj. 04/02/54
20S 37E 04 11114	04/22/55	425	2090		GAL	State Proj. 04/22/55
20S 37E 04 11114	09/09/58	325	1670		GAL	State Proj. 09/09/58
20S 37E 04 221321	04/22/55	51	758		GAL	State Proj. 04/22/55
20S 37E 04 221321	09/09/58	47	708		GAL	State Proj. 09/09/58
20S 37E 04 221321	07/14/77	106	1070		GAL	State Proj. 07/14/77
20S 37E 04 221321	10/25/79	214	1506	65F	GAL	State Proj. 10/25/79
20S 37E 04 221321	2/06/85	81	964		GAL	State Proj. 2/06/85
20S 37E 05 222144	11/29/79	258	1611		TOG	State Proj. 11/29/79
20S 37E 05 222144	9/26/84	314	1729		TOG	State Proj. 9/26/84
20S 37E 07 24331	11/09/79	1268	4232		TOG	State Proj. 11/09/79
20S 37E 07 24331	2/13/85	2680	8160	68F	TOG	State Proj. 2/13/85
20S 37E 08 244124	11/29/79	868	3734	57F	TOG	State Proj. 11/29/79
20S 37E 08 423223	10/25/79	520	2396	66F	TOG	State Proj. 10/25/79
20S 37E 08 423223	9/26/84	886	3806		TOG	State Proj. 9/26/84

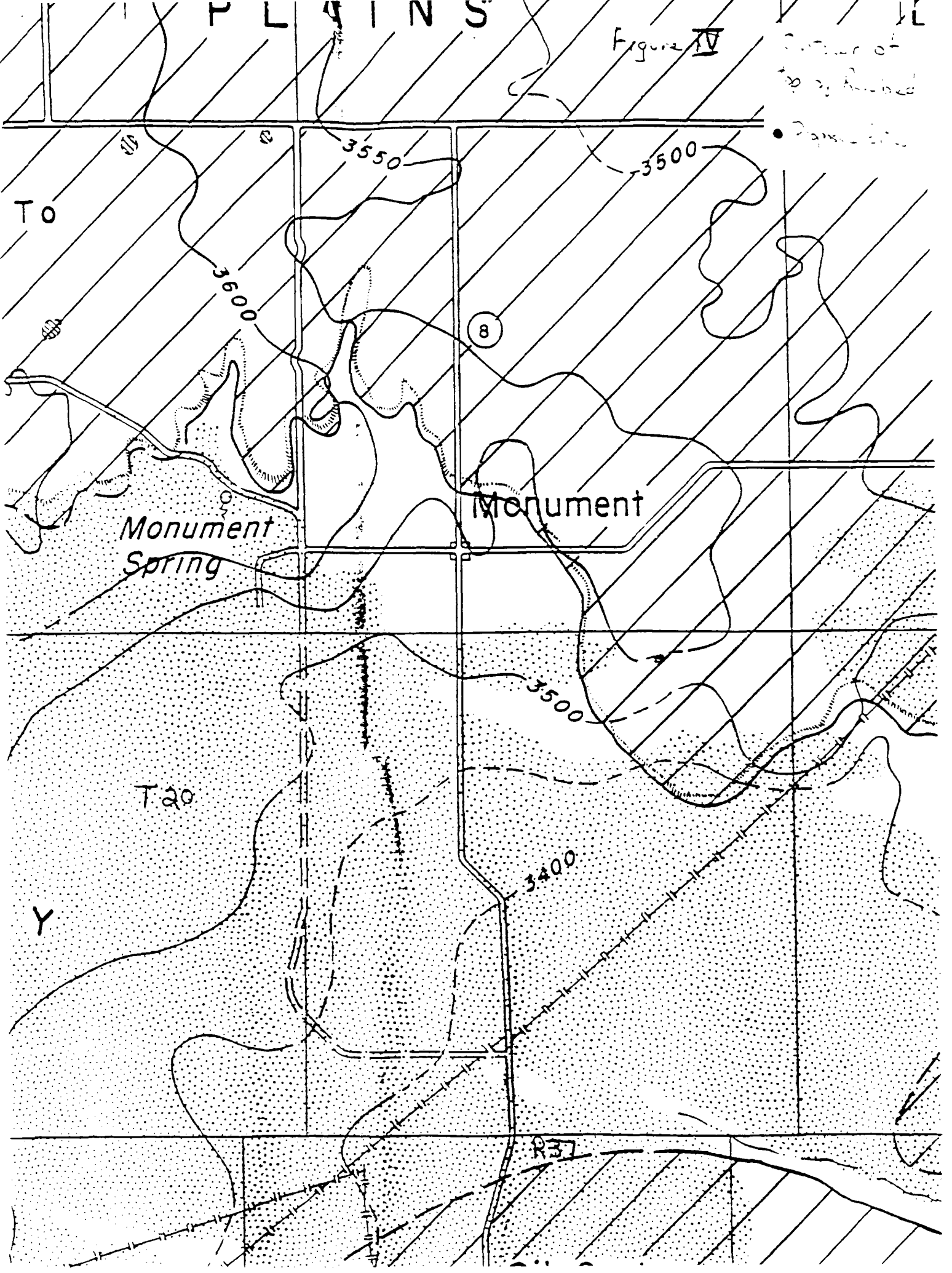


water table map
 > Top figure depth to water
 = lower figure depth of well
 • Proposed site
 ■ Railroad punch out
 State Bureau of Mines

PLAINS

Figure IV

Contour of
top of Rocked
• 3450 ft



WATER ANALYSIS REPORT -----

Company : S & W CATTLE CO
 Address : HOBBS, NEW MEXICO
 Lease : SECT 3 T20 R37
 Well : UNIT M
 Sample Pt. : WINDMILL

Date : 10/29/91
 Date Sampled : 10/28/91
 Analysis No. : 876

ANALYSIS		mg/L		* meq/L
-----		----		-----
1. pH	7.1			
2. H2S	NEGATIVE			
3. Specific Gravity	1.000			
4. Total Dissolved Solids		2245.2		
5. Suspended Solids				
6. Dissolved Oxygen				
7. Dissolved CO2				
8. Oil In Water				
9. Phenolphthalein Alkalinity (CaCO3)				
10. Methyl Orange Alkalinity (CaCO3)		291.0		
11. Bicarbonate	HCO3	355.0	HCO3	5.8
12. Chloride	Cl	599.1	Cl	16.9
13. Sulfate	SO4	575.0	SO4	12.0
14. Calcium	Ca	153.5	Ca	7.7
15. Magnesium	Mg	66.1	Mg	5.4
16. Sodium (calculated)	Na	496.4	Na	21.6
17. Iron	Fe	0.0		
18. Barium	Ba	0.0		
19. Strontium	Sr	0.0		
20. Total Hardness (CaCO3)		655.6		

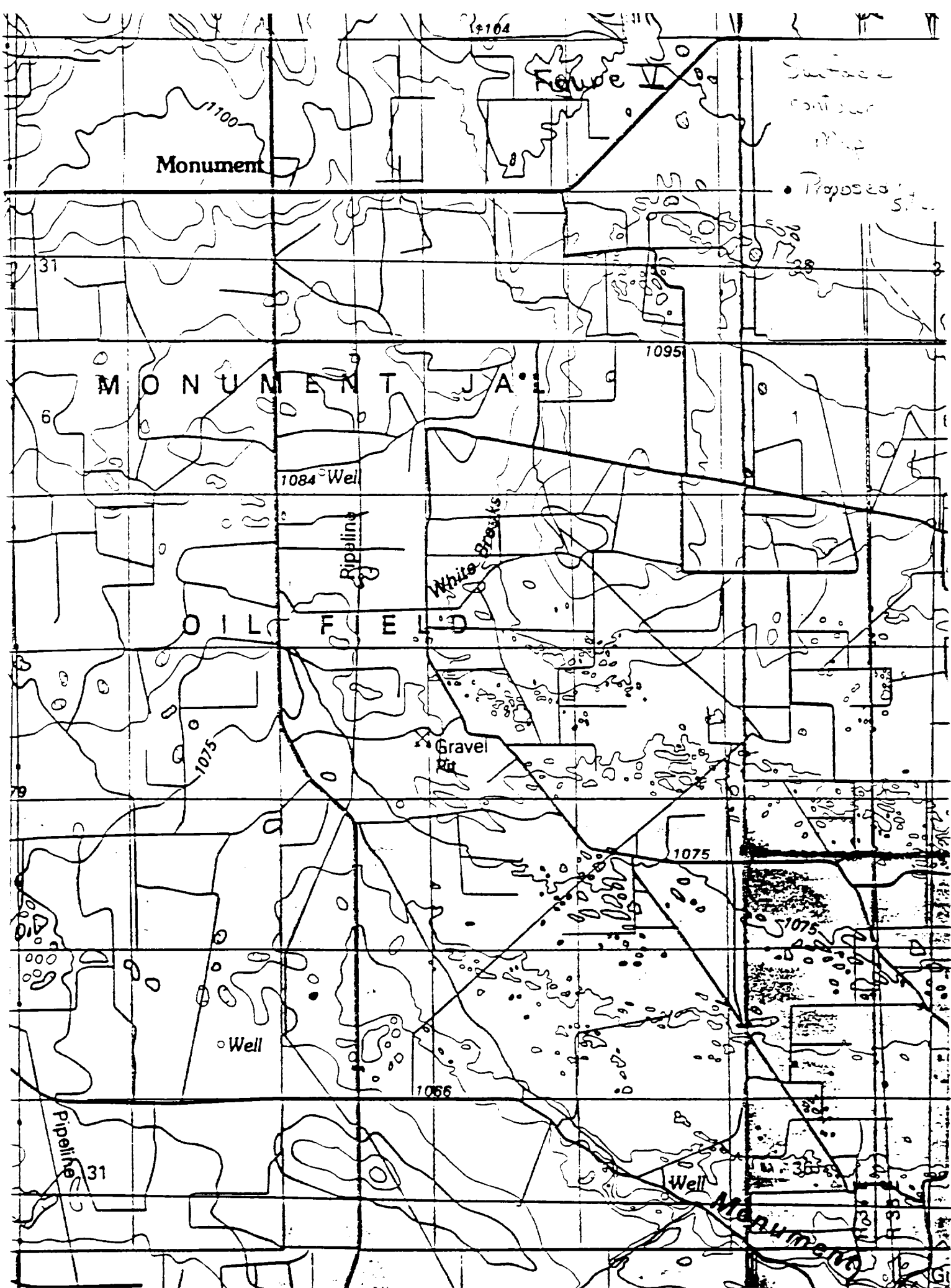
PROBABLE MINERAL COMPOSITION -----

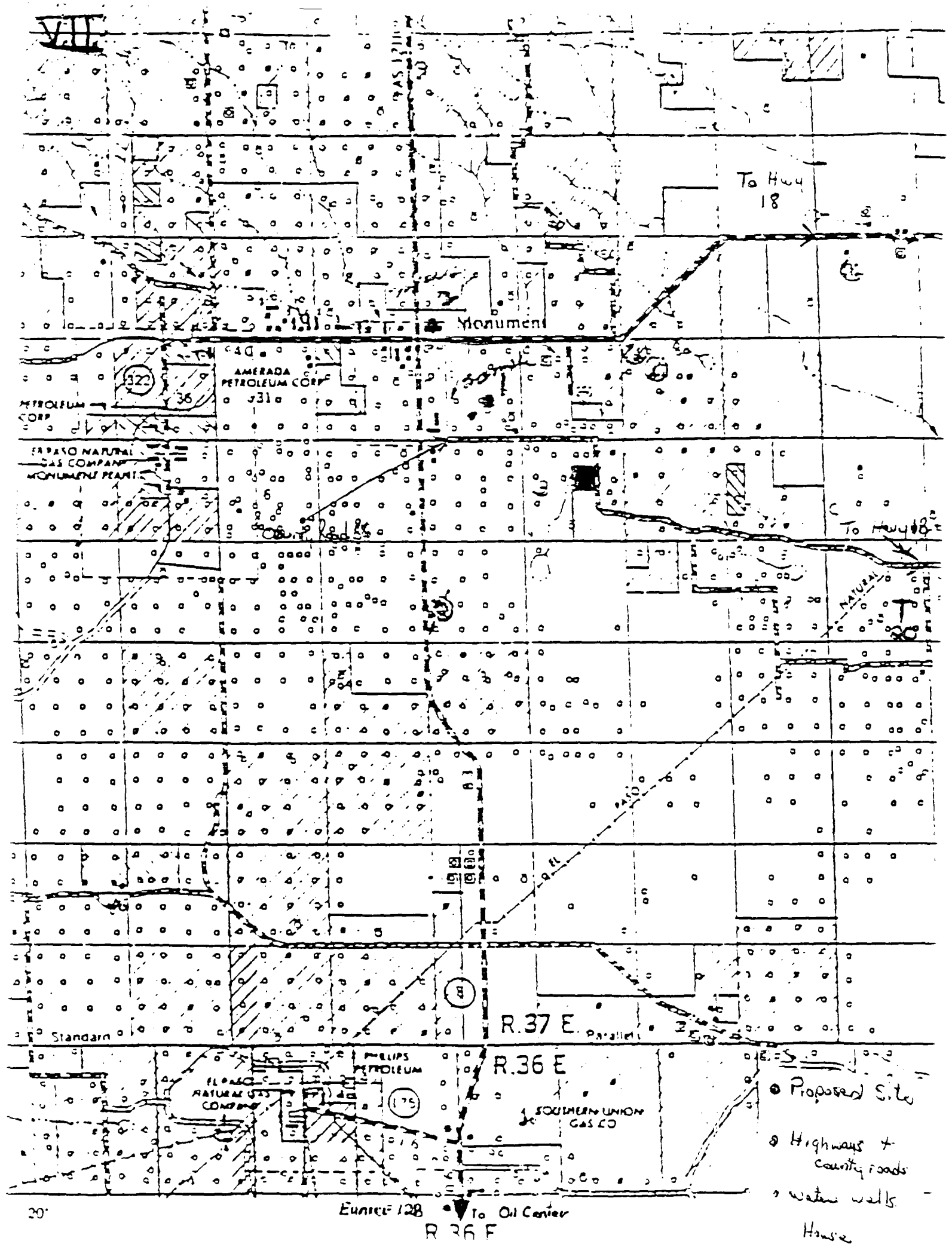
*milli equivalents per Liter		Compound	Equiv wt X meq/L	=	mg/l
-----					-----
8 *Ca <----- *HCO3	6	Ca(HCO3)2	81.0	5.8	472
----- /----->	-----	CaSO4	68.1	1.8	125
5 *Mg -----> *SO4	12	CaCl2	55.5		
----- <----- /	-----	Mg(HCO3)2	73.2		
22 *Na -----> *Cl	17	MgSO4	60.2	5.4	327
-----	-----	MgCl2	47.6		
Saturation Values Dist. Water 20 C		NaHCO3	84.0		
CaCO3 13 mg/L		Na2SO4	71.0	4.7	333
CaSO4 * 2H2O 2090 mg/L		NaCl	58.4	16.9	988
BaSO4 2.4 mg/L					

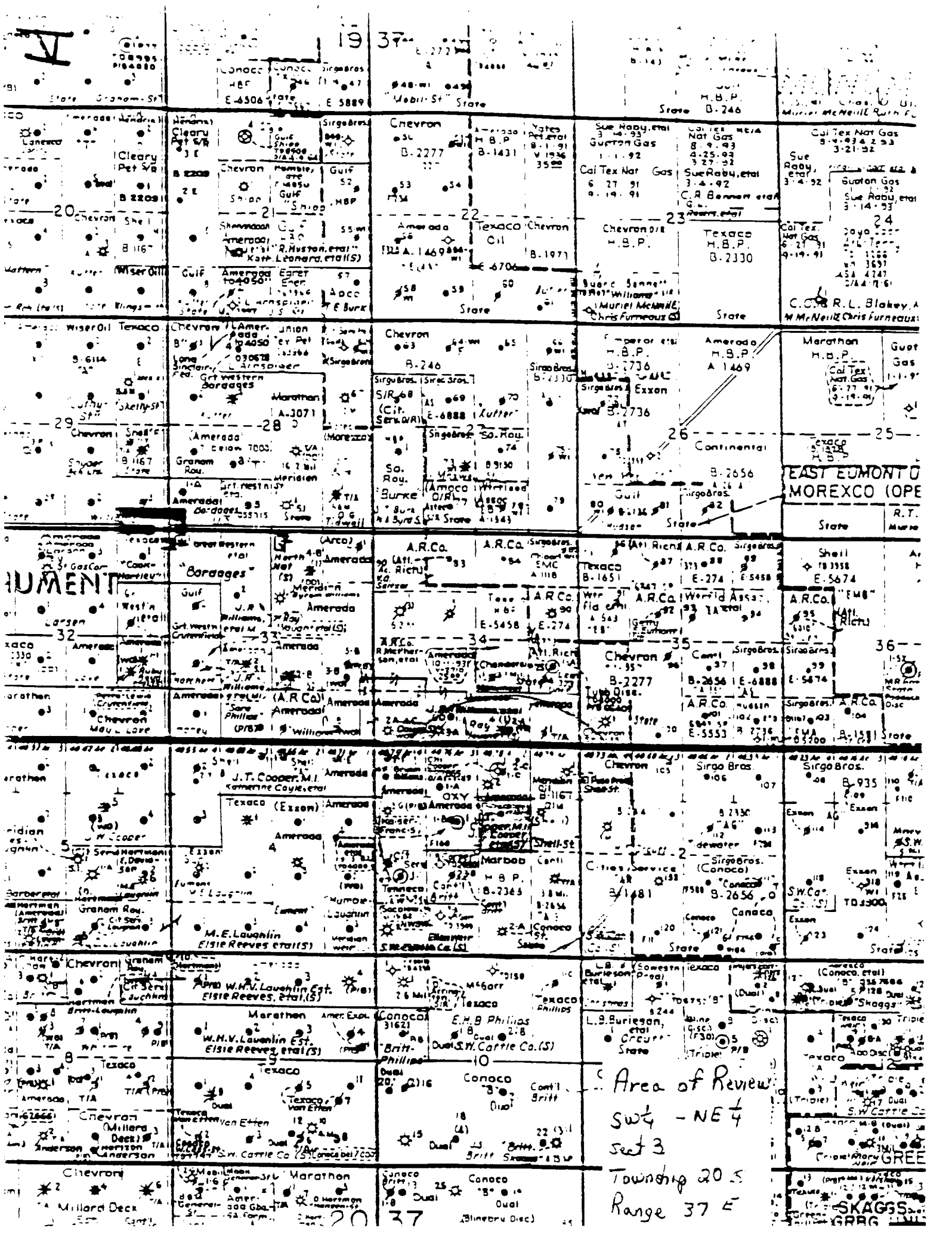
REMARKS: EDDIE SEAY

Petrolite Oilfield Chemicals Group

Respectfully submitted,
 ROZANNE JOHNSON







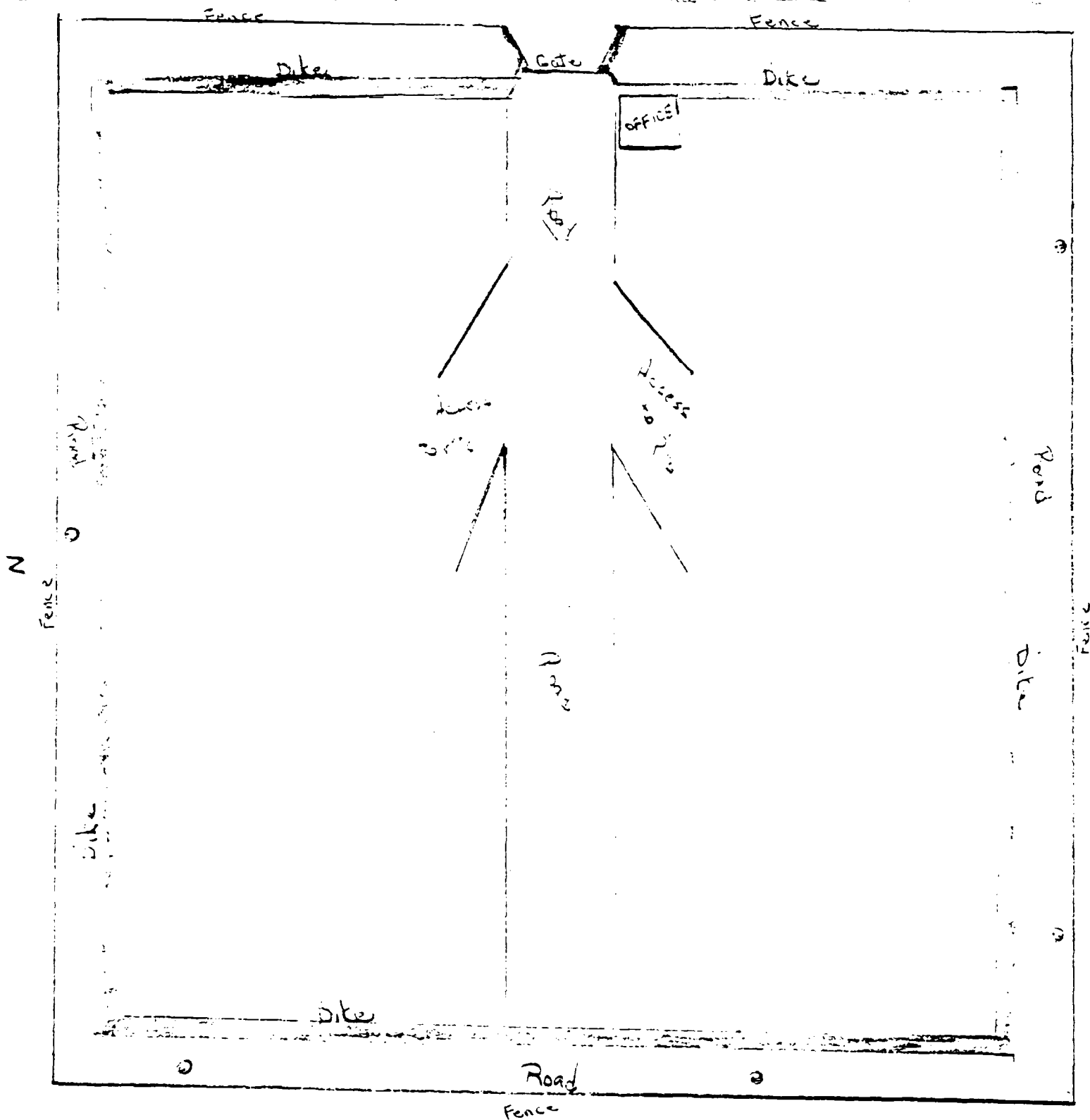
Area of Review
SW 1/4 - NE 1/4
sect 3
Township 20 S
Range 37 E

SKAGGS
GREG

VI

E

County Road 58 "Billy Walker Road"



ILLEGIBLE

3

- Monitor wells
- ★ Burns or Dyke
- Disposal Area

LEASE

C+C Land Farm Inc.

WELL NO.

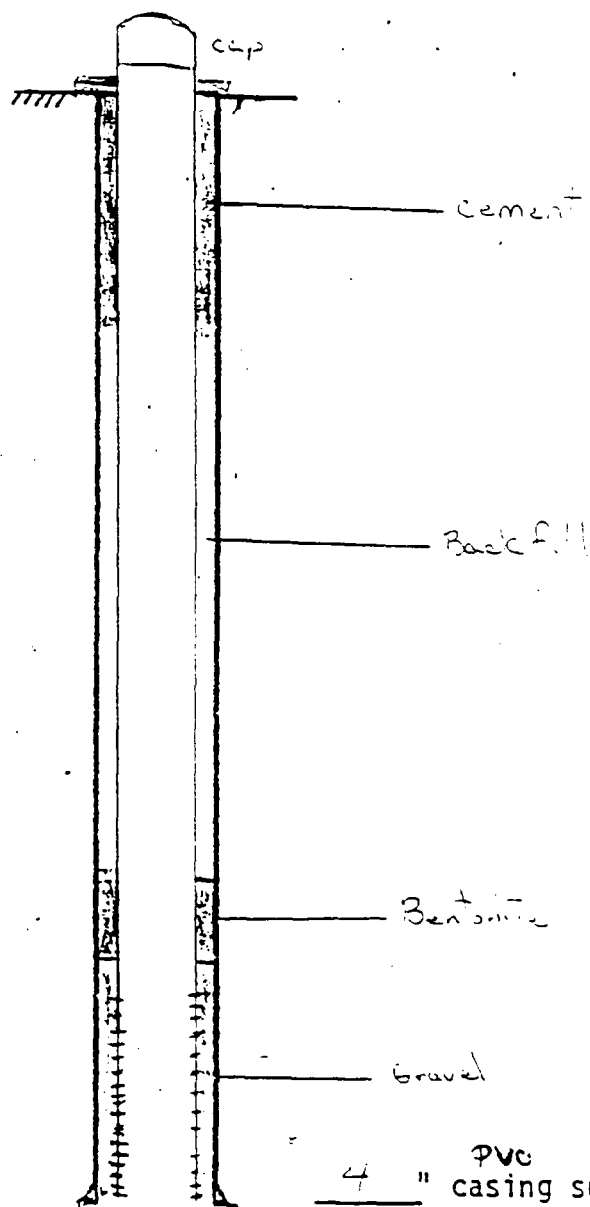
MW

LOCATION

11 G S-3 T-20 R-37 E

VII

Test well - Monitor well



4" ^{PVC} casing set at Redhill

Hole size $6\frac{3}{4}$ "

ILLEGIBLE

All

P 661 750 233



Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to	
S & W Cattle Co.	
Street & No	
8900 S. County Rd. 58	
PO., State & ZIP Code	
Monument, NM 88265	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1990

P 661 750 234



Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to	
Mr. Jimmie T. Cooper	
Street & No	
Box 55	
PO., State & ZIP Code	
Monument, NM 88265	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1990

P 661 750 230



Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to	
Mr. A.C. Doyall	
Street & No	
P.O. Box 188	
PO., State & ZIP Code	
Monument, NM 88265	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1990

P 661 750 231



Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to	
Commissioner of Public Lands	
Street & No	
P.O. Box 1148	
PO., State & ZIP Code	
Santa Fe, NM 87504	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1990

P 661 750 232



Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to	
J.R. Williams, et al	
Street & No	
P.O. Box 215	
PO., State & ZIP Code	
Monument, NM 88265	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1990

XII

C & C Landfarm Inc.
Jimmie T. Cooper P.O. Box 55 Monument, NM 88265
505-397-2045

October 1, 1991

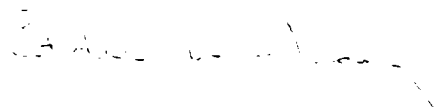
Dear Sir:

Pursuant to Rule 711 of the Oil Conservation Commission, State of New Mexico, notice is hereby given that Jimmie T. Cooper, owner and operator of C & C Landfarm Inc., will be filing an application for a surface waste disposal facility located at SW 1/4 of the NE 1/4 of Section 3, Township 20, Range 37E, Lea Co., NM on deeded land. The facility will be for the disposal of contaminated soils only from oil and gas production. No produced waters or tank bottoms will be allowed. This disposal will allow a safe place for the natural occurrence of remediation of the soil.

If there are any questions please contact:

Mr. Roger Anderson
State of New Mexico
Oil Conservation Division
P.O. Box 2088
Santa Fe, NM 87501
505-827-5884

Thank You.



Eddie W. Seay
Peak Consulting Service

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.
1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

Article Addressed to:
J & W Cattle Co.
P.O. Box 1799
Hobbs, NM 88240

Signature - Addressee

Signature Agent
J. Kunkela

Date of Delivery

Form 3811, Apr. 1989

U.S.G.P.O. 1989-238-815

DOMESTIC RETURN RECEIPT

8. Addressee's Address (ONLY if requested and fee paid)

Always obtain signature of addressee or agent and DATE DELIVERED.

Type of Service:
☐ Registered
☒ Certified
☐ Insured
☐ COD
☐ Return Receipt for Merchandise
☐ Express Mail

Article Number
P 661 750 229

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.
1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

Article Addressed to:
Mr. A.C. Doyall
P.O. Box 188
Lionment, NM 88265

Signature - Addressee
A.C. Doyall

Signature - Agent

Date of Delivery

10-7-91

Form 3811, Apr. 1989

U.S.G.P.O. 1989-238-815

DOMESTIC RETURN RECEIPT

8. Addressee's Address (ONLY if requested and fee paid)

Always obtain signature of addressee or agent and DATE DELIVERED.

Type of Service:
☐ Registered
☒ Certified
☐ Insured
☐ COD
☐ Return Receipt for Merchandise
☐ Express Mail

Article Number
P 661 750 230

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
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1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

Article Addressed to:
Mr. Jimmie T. Cooper
P.O. Box 55
Monument, NM 88265

Signature - Addressee
Jimmie T. Cooper

Signature - Agent

Date of Delivery
7-10-91

Form 3811, Apr. 1989

U.S.G.P.O. 1989-238-815

DOMESTIC RETURN RECEIPT

8. Addressee's Address (ONLY if requested and fee paid)

Always obtain signature of addressee or agent and DATE DELIVERED.

Type of Service:
☐ Registered
☒ Certified
☐ Insured
☐ COD
☐ Return Receipt for Merchandise
☐ Express Mail

Article Number
P 661 750 234

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Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.
1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

Article Addressed to:
Commissioner of Public Lands
State of New Mexico
NM State Land Office
P.O. Box 1148
Santa Fe, NM 87504

Signature - Addressee
[Signature]

Signature - Agent

Date of Delivery

7-10-91

Form 3811, Apr. 1989

U.S.G.P.O. 1989-238-815

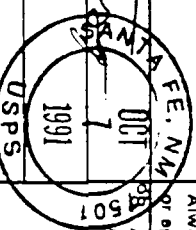
DOMESTIC RETURN RECEIPT

8. Addressee's Address (ONLY if requested and fee paid)

Always obtain signature of addressee or agent and DATE DELIVERED.

Type of Service:
☐ Registered
☒ Certified
☐ Insured
☐ COD
☐ Return Receipt for Merchandise
☐ Express Mail

Article Number
P 661 750 231



180 62

To

(Pearl)

3700

3650

3693

3600

3550

3500

3

Monument

3500

3400

To

(Nadine)

3450

To

A

L

E

Y

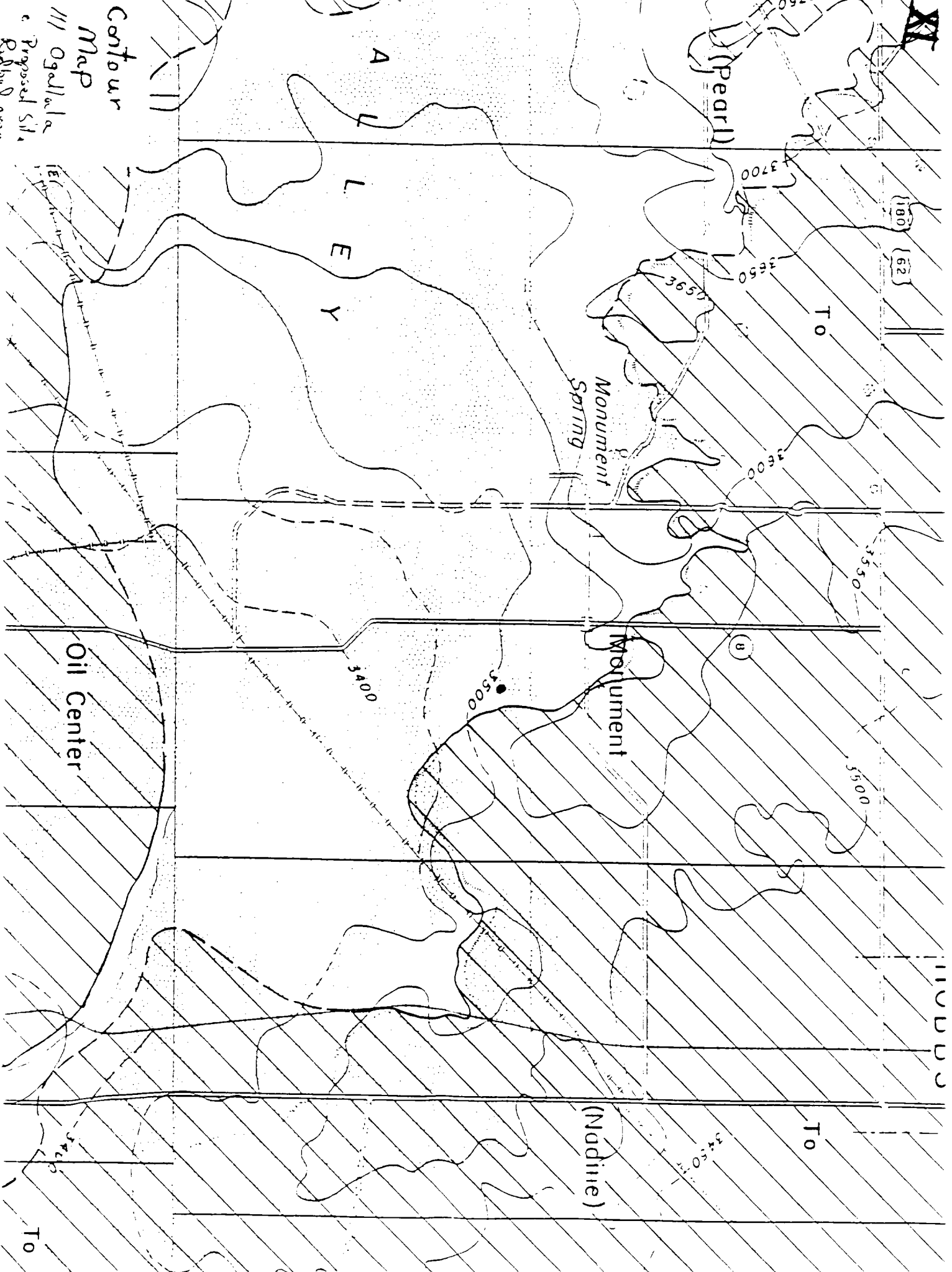
Oil Center

Contour
Map

111 Ogallala

e. Proposed S.H.

Railroad area



<p>SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</p> <p>Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.</p> <p>1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to:</p> <p>APOLLO Realty ATTN: J. R. Williams P.O. Box 75285 Albuquerque, NM 87194-0285</p>	<p>4. Article Number</p> <p>P 661 750 228</p>
<p>5. Signature - Addressee</p> <p><i>J. R. Williams</i></p>	<p>6. Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured</p> <p><input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD</p> <p><input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or Agent and DATE DELIVERED.</p>
<p>7. Date of Delivery</p> <p>10-15-91</p>	
<p>8. Addressee's Address (ONLY if requested and fee paid)</p>	

PS Form 3811, Apr. 1989

* U.S.G.P.O. 1989-236-815

DOMESTIC RETURN RECEIPT



STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION



BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

January 6, 1993

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

CERTIFIED MAIL
RETURN RECEIPT NO. P-667-241-935

Mr. Jimmie T. Cooper
C & C Landfarm Inc.
Box 55
Monument, New Mexico 88265

RE: **C & C Landfarm Inc.**
Oil Conservation Commission Hearing
Eddy County, New Mexico

Dear Mr. Cooper:

The New Mexico Oil Conservation Division (OCD) has reviewed both the Division Order issued November 16, 1992 for C & C Landfarm, Inc., and the letter dated November 20, 1992 from Peak Consulting Services on behalf of C & C Landfarm, Inc. Based on review of these documents and on the current OCD requirements for commercial landfarm facilities, the OCD recommends that the attached conditions be placed on the proposed facility if the Oil Conservation Commission (OCC) deems it appropriate to approve the permit.

If you have any questions, please do not hesitate to contact me at (505) 827-5884.

Sincerely,

Kathy M. Brown
Geologist

Attachment

xc: Mike Williams, OCD Artesia Office

ATTACHMENT
OCD 711 PERMIT RECOMMENDATIONS
C & C LANDFARM, INC.
(January 6, 1993)

LANDFARM OPERATION

1. Remediation of contaminated soils will occur only on the native ground surface. The caliche pit present on the facility will not be used for the disposal, storage or remediation of **any materials** without the case-by-case approval of the OCD.
2. No disposal or remediation of contaminated soils will occur within one-hundred (100) feet of your property boundary.
3. Disposal will only occur when an attendant is on duty. The facility will be secured when no attendant is present.
4. The facility will be fenced and have a sign at the entrance. The sign will be legible from at least fifty (50) feet and contain the following information: a) name of the facility, b) location by section, township and range, and c) emergency phone number.
5. An adequate berm will be constructed and maintained to prevent runoff and runon for that portion of the facility containing contaminated soils.
6. All contaminated soils received at the facility will be spread and disked within 72 hours of receipt.
7. Soils will be spread on the surface in six inch lifts or less.
8. Soils will be disked a minimum of one time every two weeks (biweekly) to enhance biodegradation of contaminants.
9. Successive lifts of contaminated soils will not be spread until a laboratory measurement of Total Petroleum Hydrocarbons (TPH) in the previous lift is less than 100 parts per million (ppm), and the sum of all aromatic hydrocarbons (BTEX) is less than 50 ppm, and the benzene is less than 10 ppm. Comprehensive records of the laboratory analyses and the sampling locations will be maintained at the facility. Authorization from the OCD will be obtained prior to application of successive lifts.
10. Only oilfield wastes which are exempt from the RCRA Subtitle C regulations or non-hazardous by characteristic testing will be accepted at the facility. Solids from operations not currently exempt under RCRA Subtitle C or mixed exempt/non-exempt solids will be tested for appropriate hazardous constituents. Test results must be submitted to the OCD along with a request to receive the non-exempt solids, and a written OCD approval

(case specific) must be obtained prior to disposal. Any non-oilfield wastes which are RCRA Subtitle C exempt or are non-hazardous by characteristic testing will only be accepted on a case-by-case basis and with prior OCD approval. Comprehensive records of all laboratory analyses and sample locations will be maintained by the operator.

11. Moisture will be added as necessary to enhance bioremediation and to control blowing dust. There will be no ponding, pooling or run-off of water allowed. Any ponding of precipitation will be removed within seventy-two (72) hours of discovery.
12. Enhanced bio-remediation through the application of microbes (bugs) and/or fertilizers will only be permitted after prior approval from the OCD. Request for application of microbes must include the location of the area designated for the bio-remediation program, composition of additives, and the method, amount and frequency of application.
13. No free liquids or soils with free liquids will be accepted at the facility.
14. Comprehensive records of all material disposed of at the facility will be maintained at the facility. The records for each load will include: 1) the origin, 2) date received 3) quantity, 4) Exempt or non-exempt status and analysis for hazardous constituents if required, 5) transporter, and 6) exact cell location and any addition of microbes, moisture, fertilizers, etc.
15. The monitor wells will be inspected for the presence of fluids on a quarterly basis on the same schedule as the treatment zone monitoring. If fluids are discovered the OCD will be notified immediately.

TREATMENT ZONE MONITORING

1. One (1) background soil sample will be taken from the center portion of the landfarm two (2) feet below the native ground surface. The sample will be analyzed for total petroleum hydrocarbons (TPH), general chemistry, and heavy metals using approved EPA methods.
2. A treatment zone not to exceed three (3) feet beneath the land farm will be monitored. A minimum of one random soil sample will be taken from each individual cell, with no cell being larger than five (5) acres, six (6) months after the first contaminated soils are received in the cell and then quarterly thereafter. The sample will be taken at two to three (2-3) feet below the native ground surface.
3. The soil samples will be analyzed using approved EPA methods for TPH and BTEX quarterly, and for general chemistry and heavy metals annually.
4. After obtaining the soil samples the boreholes will be filled with an impermeable material such as bentonite cement.

REPORTING

1. Analytical results from the treatment zone monitoring will be submitted to the OCD Santa Fe Office within thirty (30) days of receipt from the laboratory.
2. The OCD will be notified of any break, spill, blow out, or fire or any other circumstance that could constitute a hazard or contamination in accordance with OCD Rule 116.

BOND

Pursuant to OCD Rule 711 a surety or cash bond in the amount of \$25,000, in a form approved by the Division, is required prior to commencing construction of the commercial surface disposal facility.

CLOSURE

The operator will notify the Division of cessation of operations. Upon cessation of disposal operations for six (6) consecutive months, the operator will complete cleanup of constructed facilities and restoration of the facility site within the following six (6) months, unless an extension for time is granted by the Director. When the facility is to be closed no new material will be accepted. Existing soils will be remediated until they meet the OCD standards in effect at the time of closure. The area will then be reseeded with natural grasses and allowed to return to its natural state. Closure will be pursuant to all OCD requirements in effect at the time of closure, and any other applicable state and/or federal regulations.

C. GENE SAMBERSON
MICHAEL T. NEWELL
LEWIS C. COX, III

OIL CONSERVATION DIVISION
RECEIVED HEIDEL, SAMBERSON & NEWELL
LAW OFFICES
311 NORTH FIRST STREET
POST OFFICE DRAWER 1688
LOVINGTON, NEW MEXICO 88260
TELEPHONE (505) 396-5303
FAX (505) 396-5305

FL-4608L
1213-10061

'92 MAY 15 AM 8 45

May 13, 1992

Mr. Roger Anderson
State of New Mexico
OIL CONSERVATION DIVISION
Post Office Box 2088
Santa Fe, New Mexico 87504-2088

Re: C & C Landfarms, Inc. Application

Dear Mr. Anderson:

On behalf of S-W Cattle Co., I submit the following objections to the above captioned Application for a commercial remedial surface disposal facility, to-wit:

- (1) Based upon the information on file in your Office in connection with the above Application, I am not aware of any written notice having been given to the Bureau of Land Management, who is an owner of surface lands within a 1/2 mile of the location of the proposed disposal facility. It is our understanding that the Applicant has applied for a permit on the Southwest Quarter of the Northeast Quarter (SW/4NE/4) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico, and it is our further understanding that the Bureau of Land Management owns at least a 40 acre tract (NE/4SW/4 of said Section 3) which is located in the immediate vicinity of the location Applicant seeks to permit. If our information is correct, we believe that under the Rules of the Oil Conservation Division written notice is required to be given to the Bureau of Land Management. Further, based on the information available to us, we do not find any written notice of the above captioned Application having been given to the Board of Commissioners for the County of Lea, State of New Mexico, which we believe is necessary in order to permit the County of Lea to determine whether the public interests requires action on its part with respect to areas not regulated by the OCD and EPA, examples of which areas being land use, zoning, subdivision regulations and other similar matters.
- (2) Applicant has requested that the entire 40 acre tract be permitted for land farming, notwithstanding that the existing pit presently occupies approximately 2 acres. The information on file in connection with the Application indicates that the proposed solution to how Applicant plans to prevent the migration of contaminants down gradient along the red bed surface is the construction of a dike consisting of a trench 2' to 3' wide, with the trench being dug deep enough to penetrate the red bed interval to a depth of approximately 2', but the information does not clearly show whether such dike (trench) will be located immediately adjacent to the existing 2 acre pit or is to be constructed and

Page 2
May 13, 1992
Mr. Roger Anderson

located around the North, West and South perimeters of the 40 acre tract. Similar questions exist with respect to the five (5) monitor wells proposed by Applicant and additional questions exist whether five (5) monitor wells are sufficient if the area requested to be permitted is actually 40 acres, rather than the existing 2 acres occupied by an existing pit. The Application for permitting 40 acres is inconsistent with the description of the facility and diagram which appears to be applicable to 2 acres, rather than 40 acres. Applicant has not met the requirements of OCD's Rules for commercial surface waste disposal facilities.

- (3) Applicant's plan of constructing a dike (trench) to prevent the migration of contaminants down gradient along the red bed surface depends on backfilling and compacting the trench with red bed material, yet Applicant makes no showing that such compacted red bed material will be sufficiently impenetrable to prevent the migration of contaminants down gradient through the overburden above the red bed surface. S-W Cattle Co. believes that if the facility is to be approved a more appropriate approach to the construction and operation of such facility would be to require Applicant to construct its proposed facility by digging into the red bed to a sufficient depth so that all of its operations will be conducted below the overburden and therefore any contaminants would remain confined within the red bed and thus prevent migration of contaminants down gradient from the site, either along the red bed surface or through the undisturbed red bed walls of the pit.
- (4) Based upon the information of which we are aware that is on file in connection with Applicant's Application, there does not appear to have been any bond required, either in the form of a surety bond or cash bond, as required by OCD's Rules.
- (5) Applicant's proposed closure plan appears to be merely when the area, whether the present 2 acre pit or the requested 40 acre tract, has been filled and tested to within 1' of the surface elevation that area will be backfilled with top soil, mound over and compacted. S-W Cattle Co. objects to the closure plan on the basis that same is inadequate in view of its concerns stated above with respect to the proposed facility and size of same.
- (6) S-W Cattle Co. submits that a complete and proper Application has not been filed with the OCD and further that the Rules of the OCD have not been complied with by Applicant.

By reason of the foregoing, S-W Cattle Co. objects to the Director of the Oil Conservation Division administratively approving and issuing a Permit in connection with the above described Application.

Very truly yours,

HEIDEL, SAMBERSON & NEWELL

By 

CGS:lt

C. GENE SAMBERSON
MICHAEL T. NEWELL

LEWIS C. COX, III

LAW OFFICES
HEIDEL, SAMBERSON & NEWELL
311 NORTH FIRST STREET
POST OFFICE DRAWER 1599
LOVINGTON, NEW MEXICO 88260
TELEPHONE (505) 396-5303
FAX (505) 396-5305

OIL CONSERVATION DIVISION
RECEIVED
'92 JUN 4 AM 9 10

F.L. HEIDEL
(1913-1986)

June 3, 1992

Ms. Kathy M. Brown
Geologist
OIL CONSERVATION DIVISION
Post Office Box 2088
Santa Fe, New Mexico 87504-2088

Re: C & C Landfarm, Inc. Application

Dear Ms. Brown:

Your letter dated May 20, 1992, addressed to W. T. Stradley, President, S-W Cattle Co., Hobbs, New Mexico, has been forwarded to me for handling.

Mr. Stradley and I are both confused with respect to the contents of your May 20th letter to him, particularly with respect to your statement that if Mr. Stradley does not request a hearing in the above matter by June 9, 1992, C & C LandFarm, Inc.'s Application will be administratively approved. We had understood that the public comment period for the above Application had been extended to July 6, 1992. I am enclosing a photocopy of a letter dated April 27, 1992, purporting to be from Roger C. Anderson, Acting Bureau Chief of the OCD. We believe that it is probable that additional objections to the Application in question will be made prior to July 6, 1992. We want the opportunity of having all public comments or objections made in this matter prior to July 6th before we are called upon to make a decision regarding a request for hearing when the comment period still is open for more than a month. Mr. Stradley may very well wish to request a hearing, but he wants the opportunity to evaluate all information available, particularly when you have requested him, if he wishes to request a hearing, to include a concise statement of his objection and concern and a summary of evidence that he will present at the hearing.

Although your May 20th letter does not so indicate, Mr. Stradley has submitted, in writing, his concerns and objections two (2) times, the last being my letter of May 13, 1992, outlining additional objections. The reason I mention the latter letter is that Mr. Stradley and I do not believe that even with your May 20, 1992, attachment of OCD conditions and approval all of the objections outlined in my May 13th letter to Mr. Anderson still do not appear to have been addressed.

Page 2
June 3, 1992
Ms. Kathy M. Brown

Would you please advise as soon as possible if the June 9, 1992, deadline for requesting a hearing will remain, notwithstanding that the public comment period does not end until July 6th.

Very truly yours,

HEIDEL. SAMBERSON & NEWELL

By  C. Gene Samberson

CGS:lt

cc: Mr. W. T. Stradley

KELLAHIN, KELLAHIN AND AUBREY

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

TELEPHONE (505) 982-4235

TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*
KAREN AUBREY*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

*ALSO ADMITTED IN ARIZONA

SANTA FE, NEW MEXICO 87504-2205

JASON KELLAHIN (RETIRED 1991)

June 5, 1992

Mr. William J. LeMay
Oil Conservation Division
310 Old Santa Fe Trail
Room 218
Santa Fe, New Mexico 87504

HAND DELIVERED

RE: Objection to Application of
C & C Landfarm Inc. and
Request for Hearing

RECEIVED

JUN 05 1992

Dear Mr. LeMay:

OIL CONSERVATION DIVISION

Our firm represents Ms. Elsie Reeves in opposition to the referenced application filed by Mr. Jimmie T. Cooper of C & C Landfarm Inc. dated October 4, 1991.

By letter dated April 16, 1992, Ms. Reeves wrote to the Division requesting until July 6, 1992 to file her written objections. Her request was approved by the Division and confirmed by a letter dated April 27, 1992 from Mr. Roger Anderson, NMOCD.

Thereafter, Ms. Kathy Brown, NMOCD, sent Ms. Reeves a letter dated May 20, 1992 advising her to request a hearing and file her comments and objections by June 9, 1992. The Division's communications to my client are inconsistent and confusing.

However, in order to protect her interest, we hereby file the enclosed Request for Hearing and Objections to the referenced application within the time frame set forth in the Division's notice letter dated May 20, 1992. We reserve the right to file additional objections and comments by July 6, 1992 as approved by Mr. Anderson.

The first paragraph of the Division's May 20, 1992 letter states "The application and supplemental information submitted are in compliance with all Division rules and regulations...." That conclusion is

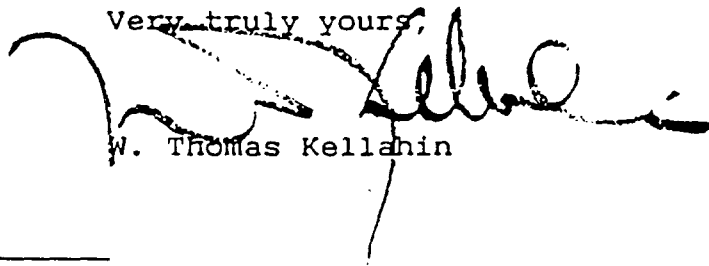
Mr. William J. LeMay
June 5, 1992
Page Two

not correct and a hearing is required to resolve this matter.

In as much as the Division has no other hearing process than the ~~Examiner's~~ regularly scheduled hearing docket, we request that this matter be docket for hearing on the July 23, 1992 Examiner's docket.

In addition, the Division's May 20, 1992 states that a hearing may be set only if the Director determines Ms. Reeves has "significant additional information to offer." We consider that criteria to be unconstitutionally vague and a denial of Ms. Reeves rights to due process. This procedure appears to shift the burden of proof to Ms. Reeves to prove that the application should not be granted when in fact the burden of proof belongs to the applicant. Accordingly, should you not grant a Hearing, I would appreciate notice of that decision in writing so that I can pursue Ms. Reeve's right to an appeal of this matter.

Very truly yours,



W. Thomas Kellahin

WTK/jcl

xc: with Enclosure

Elsie Reeves

Jimmie T. Cooper (C & C Landfarm Inc.)

William F. Carr, Esq.

Larry N. Henry

S-W Cattle

Walter C. Laughlin

Controlled Recovery Inc.

C. Gene Samberson, Esq

Peak Consulting Service

appt605.645



NESCO - NEW MEXICO, INC.

P.O. Box 1417

Socorro, New Mexico 87801

(505) 835-0377 • 835-0573

May 25, 1992

State of New Mexico
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

RE: Comments per Landfarm Request
C & C Landfarm Inc. Lea County, New Mexico
Requested by: Ms. Elsie M. Reeves 3902 W. Keim
Phoenix, AZ 85019

1. Of prime concern, should be the investigation of facts stated in Mr. Walter C. Laughlin's letter of December 20, 1991 to NMOCD. Mr. Laughlin speaks of shallow water wells, at a depth of 25 feet, located down-dip from the proposed landfarm. Water this shallow, surely needs to be protected from any possible seepage of leachate contaminants.

2. In looking at figure 1 presented by C & C Landfarm Inc., it would appear that the monitoring wells should be located outside of the proposed redbed barrier. The purpose of the monitoring wells should be to notify the fact that contaminants have seeped outside the barrier.

3. To arrive at a proper compaction of the redbed barrier, I suggest that the dike would need to be thicker than the proposed 2 feet. It would be hard, if not impossible, for equipment to compact the soil in such a small area. I would suggest a barrier thickness of from 6 to 10 feet would be more in order; and surely compaction tests should be performed on lifts of no more than 24 inches per lift. Lab compaction tests should be performed to determine what percent of compaction is needed to stop the mobility of the leachate contaminants.

I suggest that the compacted barrier be extended into the in-situ redbeds for at least 20 feet to stop any possible seepage of leachate through the non-compacted redbeds.

4. Rather than a caliche berm, a clay non-permeable berm would be much more environmentally safe.

5. It would appear that additional tests should be performed on the redbed soil. Such as:



CONSERVATION DIVISION
RECEIVED

NESCO - NEW MEXICO, INC.

JUN 5 AM 8 59

P.O. Box 1417

Socorro, New Mexico 87801

(505) 835-0377 • 835-0573

a) Falling head permeability tests should be performed to determine the values for in place coefficient of permeability, K, in cm/s.

b) Soil properties should be tested to predict the mobility of the leachate contaminants. Properties such as:

- 1) Texture
- 2) Content of hydrous oxides
- 3) Type and content of organic matter
- 4) Particle size distribution
- 5) Cation exchange
- 6) Soil pH

The total capacity of soils to exchange cations is called the Cation Exchange Capacity (CEC). I suggest that (CEC) tests be performed on the redbed soils. A range for (CEC) in determining permeability suitability for this type of landfarm is from 5 to 10 meg/100g.

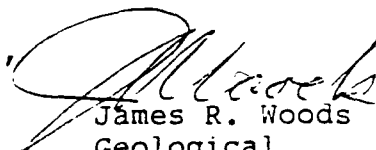
6. I suggest that liquid and plastic limit tests be performed on the redbeds.

7. In my opinion, a better barrier for this type of landfarm would be a barrier applied in stages: 1) graded sand section: 2) clay barrier section: 3) composite drainage section and a final clay barrier section. Each section applied in 3 foot sections.

8. The only cross section that I observed was from north to south; surely there is a cross section east to west and surely the barrier is intended to be on all four sides of the pit.

I hope that my thoughts are taken in a constructive view, as my comments are intended to help prevent any future environmental problems and to help insure that the project is completed by using excepted environmental engineering practices.

Sincerely,


James R. Woods
Geological
Engineer

JAMES R. WOODS
Geological Engineer
Cert # 314113517
Lic # 11572

OIL CONSERVATION
RECEIVED
APR 28 1992

CRI

Encl. Burson

CONTROLLED RECOVERY INC.

P.O. BOX 369, HOBBS, NM 88241 (505) 393-1079

April 28, 1992

Mr. Bill LeMay
Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

****FAX TRANSMISSION****

RE: C&C Land Farm Inc.

Dear Mr. LeMay:

I have been receiving numerous phone calls, letters, and copies of correspondence concerning the application of C&C for land farming. I have also obtained copies of the file and reviewed them. Should I feel it necessary to make any comments on the issues, I will do so in another letter.


Many of the comments I have heard are about the public hearing process. The oil and gas industry does not need the perception that we are not being good neighbors or refusing to listen to public concerns.

CRI's management works very hard to be good citizens and neighbors and to go beyond our obligation required by rules, laws, and regulations. We have and we want to maintain the trust and respect of the industry, our customers, and the public.

If a public hearing is not held on this application, all disposal operations including CRI's could receive negative publicity and perhaps be suspect of ignoring public concerns. I would recommend that all disposal applications have a public hearing.

I respectfully request that the C&C application be sent for public hearing. Please advise.

Sincerely,



Ken Marsh

RECEIVED
RE
JUL 8 1982

Elsie M. Reeves
3902 West Keim Drive
Phoenix, Arizona 85019

Ms. Kathy M. Brown
Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

RE: C&C Landfarm, Inc.

Dear Ms. Brown:

Rule 711 Section B requires notice to all landowners within one half mile of the property on which a disposal facility is to be located.

I have had Elliott & Waldron Abstract research the land owners. You will notice from the attached plats and your copy of C&C's application that Tommie Lee Schmidt aka Tanja Weir and the United States of America are owners of surface lands within one half mile and were not notified.

You will also see that Jimmie T. Cooper is not the sole owner of the property described in the application but that the owners are Delbert Dale Cooper, 1/3 undivided interest, Jimmie Tom Cooper 1/3 undivided interest, and Jimmie T. Cooper et ux Betty B. (JT), Jimmie B. Cooper, married, s&sp, Adana J. Hilliker, married, s&sp (JT), 1/3 undivided interests.

This noncompliance with the rules of the Commission are reason to reject the application, and I request that the application be rejected immediately.

I am having further technical data prepared as I have communicated to you in my previous correspondence.

I thank you for your consideration of this information.

Sincerely yours,

Elsie M. Reeves

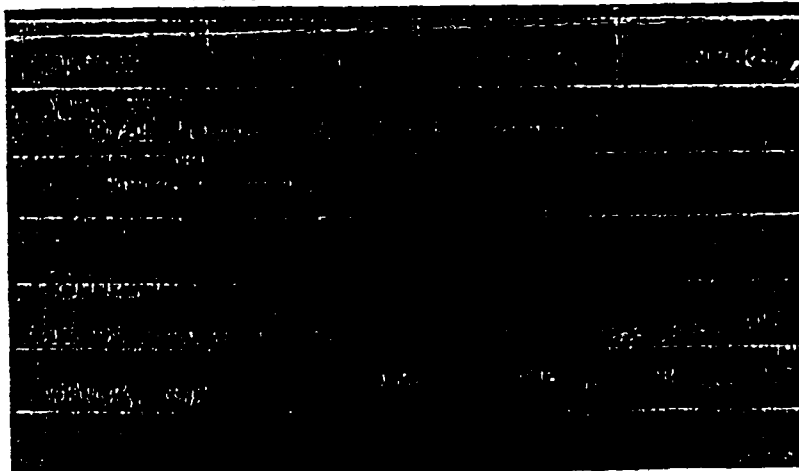
TV —

W2 NE4, NW4

#033922 446-772	QC Deed	9-8-88	9-15-88
First Interstate Bank of Lea County, Trustee of the Luther Cooper Estate to Tommie-Lou Cooper, \checkmark Delbert Dale Cooper and \checkmark Jimmy Tom Cooper - out $\frac{1}{3}$ $\frac{1}{3}$			
Surface		88-1134	
W $\frac{1}{2}$ NE $\frac{1}{2}$, NW $\frac{1}{2}$		SEC. 3	TSP. 20 R. 37 OL

#70227 467-223	QCD	10-17-90	10-29-90
Tommie Lou Cooper, single, by Jimmie T. Cooper, atty in fact to Jimmie T. Cooper et ux Betty B. (JT), Jimmie B. Cooper, married, s&sp, Adana J. Hilliker, married, s&sp (JT)			
Surface		Converted $\frac{1}{3}$	
W $\frac{1}{2}$ NE $\frac{1}{2}$, NW $\frac{1}{2}$		SEC. 3	TSP. 20 R. 37 OL

Contg —→



50-523 14356	R W	1-14-37	2-19-37
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No J.I.

(01)

PHONE 393-7708
P.O. BOX 295
HOBBS, NEW MEXICO 88240
BILL PEVEY - Pres.

PHONE 396-5846
P.O. BOX 817
LOVINGTON, NEW MEXICO 88260
PEGGY PEVEY - Vice Pres.

1 vara—33½ inches.
1900 8/10 varas 1 mile.
3645 square varas—1 acre.
4840 square yards or 43,560 square feet—1 acre.
1,000,000 square varas—1 labor or 177 1/10 acres.
25,000,000 square varas—1 league or 4428 acres.
7.92 inches—1 link.
1 rod—5½ yards, or 16½ feet, or 5.94 varas.
320 rods—1 mile.
100 links—1 chain, or 66 feet, or 23.76 varas.

80 chains, 3250 feet, 1760 yards—1 mile.
To reduce yards to varas multiply by 1.05.
To reduce varas to yards, divide by 1.05.
To reduce feet to varas, multiply by 36 and point off two decimals.
To reduce varas to feet, multiply by 100 and divide by 36.
1 Square Rod—272¼ Square Feet
1 Acre—43,560 Square Feet
1 Acre—160 Square Rods
1 Acre is about 108¼ Feet Square
1 Acre is 8 Rods x 20 Rods (or any two numbers of rods whose product is 160.)

SCALE FOR SECTION. Each side large squares = 20 chains, 80 rods, 320 feet; area of square 40 acres.
Each side small squares = 5 chains, 20 rods, 320 feet; area of square 2½ acres.

N

Lot 4	Lot 3	Lot 2	Lot 1
Cooper, et al	Cooper, et al	Cooper, et al	State
Cooper, et al	Cooper, et al	Cooper, et al	State
S-W CATTLE Co.	(ON Contract or lease to S-W CATTLE Co.) U.S.A.	State	State
S-W CATTLE Co.	S-W CATTLE Co.	State	State

W

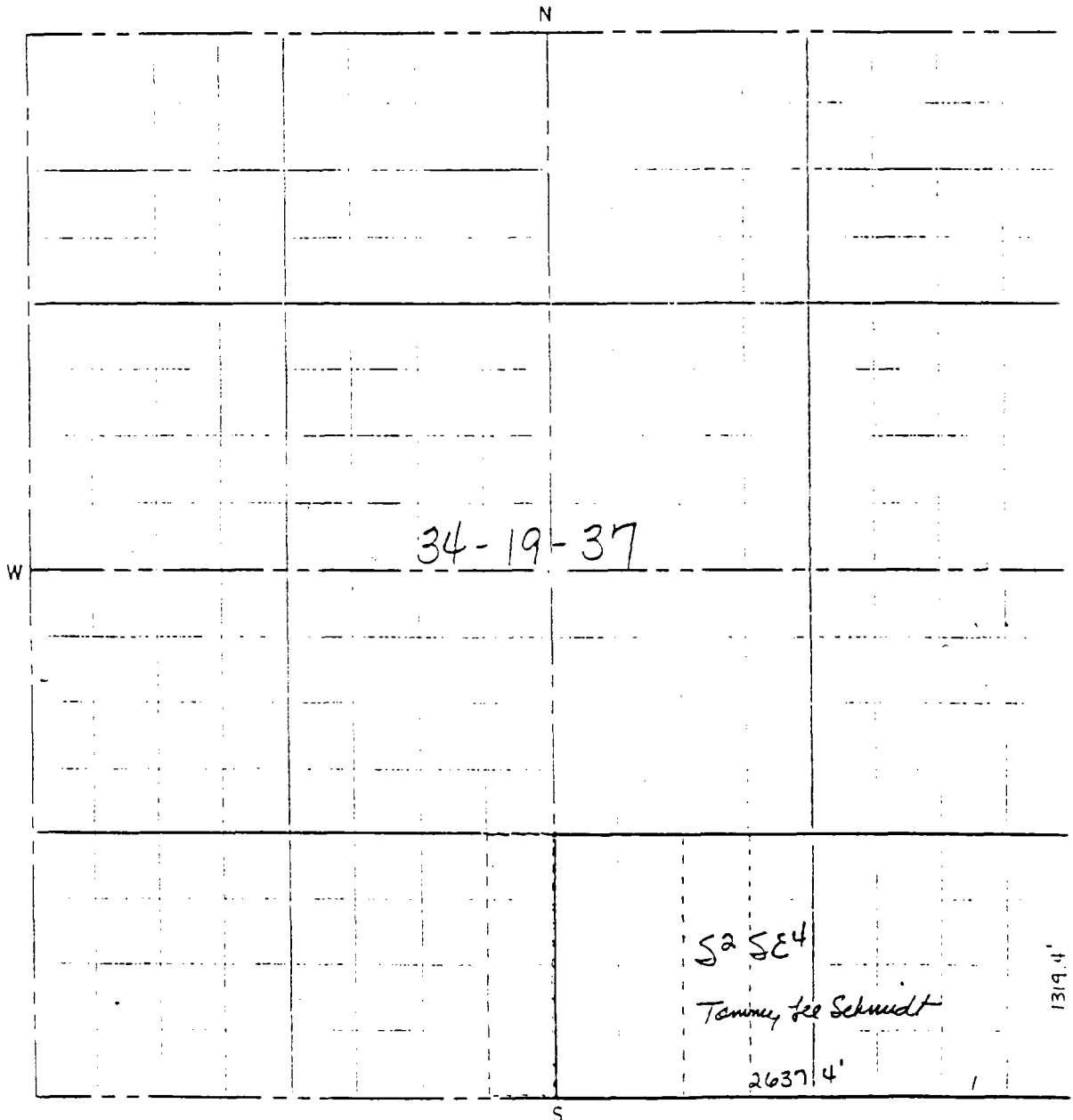
P.O. BOX 295
HOBBS, NEW MEXICO 88240
BILL PEVEY - Pres.

P.O. BOX 817
LOVINGTON, NEW MEXICO 88260
PEGGY PEVEY - Vice Pres.

1 vara—33 1/2 inches.
1900 8/10 varas 1 mile.
5643 square varas—1 acre.
4840 square yards or 43,560 square feet—1 acre.
1,000,000 square varas—1 labor or 177 1/10 acres.
25,000,000 square varas—1 league or 4428 acres.
7.92 inches—1 link.
1 rod—5 1/2 yards, or 16 1/2 feet, or 5.94 varas.
320 rods—1 mile.
100 links—1 chain, or 66 feet, or 23.76 varas.

80 chains, 5280 feet, 1760 yards—1 mile.
To reduce yards to varas multiply by 1.08.
To reduce varas to yards, divide by 1.08.
To reduce feet to varas, multiply by 36 and point off two decimals.
To reduce varas to feet, multiply by 100 and divide by 36.
1 Square Rod—272 1/4 Square Feet
1 Acre—43,560 Square Feet
1 Acre—160 Square Rods
1 Acre is about 208 1/4 Feet Square
1 Acre is 8 Rods x 20 Rods (or any two numbers of rods whose product is 160.)

SCALE FOR SECTION: } Each side large squares = 20 chains, 80 rods, 1320 feet; area of square 40 acres.
660 ft.—1 inch. } Each side small squares = 5 chains, 20 rods, 330 feet; area of square 2 1/2 acres.



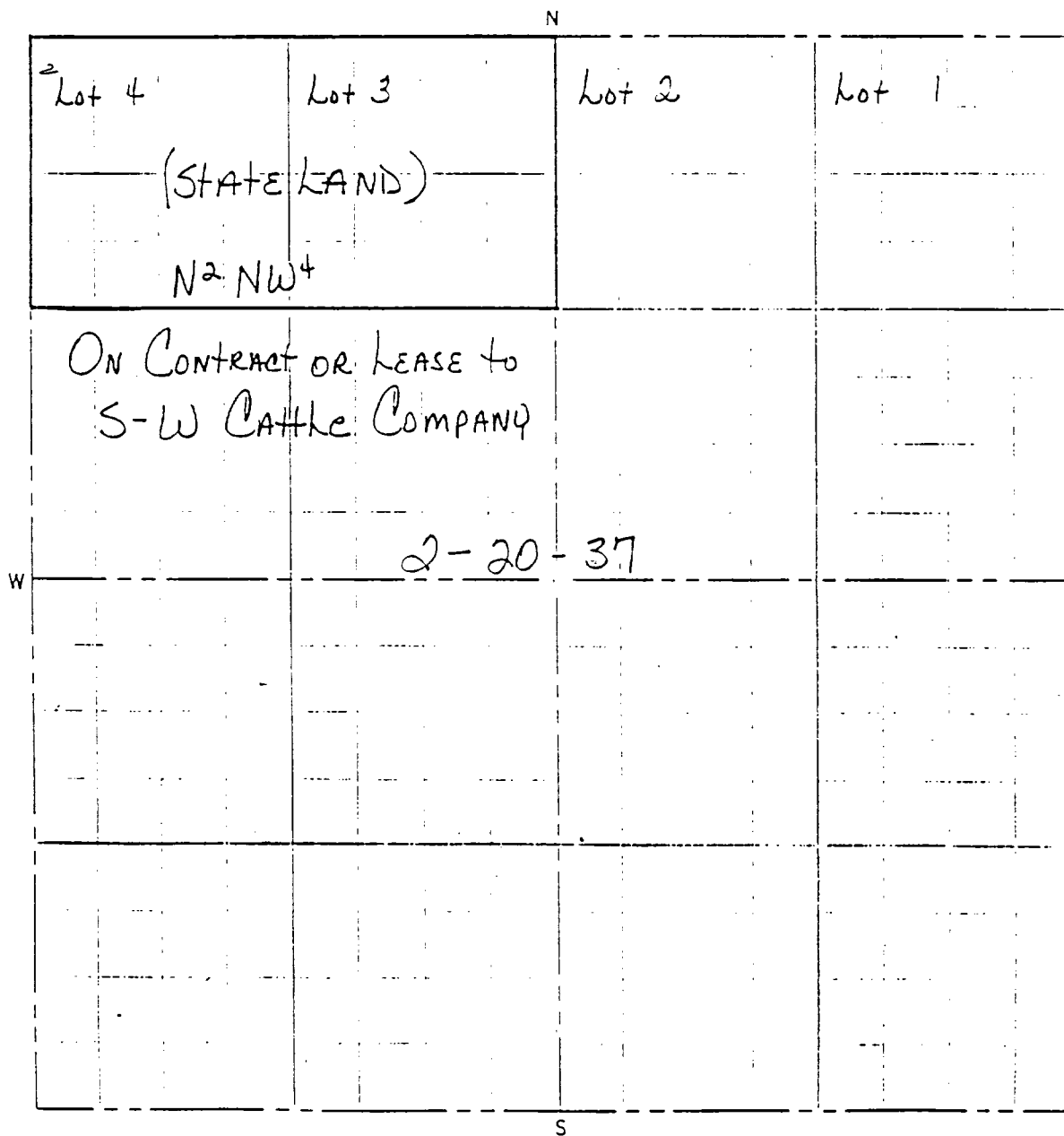
P.O. BOX 295
HOBBS, NEW MEXICO 88240
BILL PEVEY - Pres.

P.O. BOX 817
LOVINGTON, NEW MEXICO 88260
PEGGY PEVEY - Vice Pres.

1 vara—33½ inches.
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5645 square varas—1 acre.
4840 square yards or 43,560 square feet—1 acre.
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80 chains, 5280 feet, 1760 yards—1 mile.
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To reduce varas to yards, divide by 1.08.
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1 Square Rod—272¼ Square Feet
1 Acre—43,560 Square Feet
1 Acre—160 Square Rods
1 Acre is about 308¼ Feet Square
1 Acre is 8 Rods x 20 Rods (or any two numbers of rods whose product is 160.)

SCALE FOR SECTION, } Each side large squares = 20 chains, 80 rods, 1320 feet; area of square 40 acres.
660 ft.—1 link. } Each side small squares = 5 chains, 20 rods, 330 feet; area of square 2¼ acres.



3902 W. Keim Drive
Phoenix, Arizona 85019
April 16, 1992

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Energy
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

CERTIFIED MAIL
RETURN RECEIPT NO. P-509 518 446

Re: Application of C & C Landfarm, Inc.
Lea County, New Mexico

Dear Mr. LeMay:

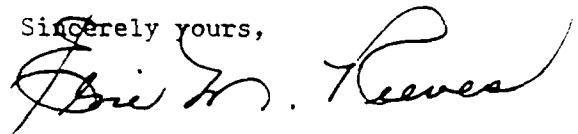
I am in receipt of certified correspondence from geologist Kathy M. Brown of your Division stating that the above referenced application is administratively approvable at this time, pending evaluation and substantive technical information from protestors to the aforesaid application, and giving a time limit of thirty (30) days to submit such information.

As I am an out-of-state landowner, as are the other co-owners, we would appreciate an extension on an additional sixty (60) days, i.e., July 6, 1992. Such an extension would give us enough time to receive and review the application in its entirety and to gather the required technical and regulatory information for substantiation of our protest.

In the event such an extension cannot be granted I would appreciate immediate notification by telephone, to be followed by a letter of refusal. I may be reached by phone at (602)841-6427. Meanwhile, we will proceed in the expectation that approval of this request will be granted.

Thanking you in advance for your consideration in this matter, I am,

Sincerely yours,



Elsie M. Reeves

emr
XC: file

1-21-92

Dear Sir,

'92 JAN 21 AM 8 43

I would like to voice my objection to the Coopen Waste Pit, as my land is in the approximate area. I have a very shallow water well and possible seepage from this pit could ruin it. I may some time in the future move back to the land or may sell the property. If the well is ruined the property would be useless. It is set up for a home and is not just pasture land.

Thank You,

Larry D. Henry

500 E. Scharbauer

Hobbs, N.M. 88240

OIL CONSERVATION DIVISION
RECEIVED

(602) 841-6427
3902 W. Keim Drive
Phoenix, Arizona 85019
December 17, 1991

'91 DEC 20 AM 8 42

Mr. William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Energy
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

CERTIFIED MAIL
P-509 518 445

Re: Application of C & C Land Farm, Inc.
for an oil field waste disposal system
on the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 3, T20S, R37E
Lea County, New Mexico

Gentlemen:

Regarding the above referenced application I hereby protest the installation of such a disposal system in that particular area and make formal request for a Public Hearing in this matter.

As an owner of a portion of the surface interests on the S $\frac{1}{4}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, and the S $\frac{1}{2}$ of Section 4, T20S, R37E and as a member of an Advisory Board which represents ninety-six percent of the remaining owners of the Section 4 property, as well as being one of the landowners of the N $\frac{1}{2}$ of Section 9 in the same Township and Range, I am deeply concerned about the possibility of contamination of our ground water supply as a result of the installation of a waste disposal system at this particular location.

Historically, the ground water supply on our property has been from shallow wells at a depth of 25 to 30 feet. Currently our water source is from a shallow well located on the SW $\frac{1}{4}$ of Section 4; however, shallow ground water at a depth of 25-30 feet is documented in a number of areas on Section 4 much closer to the proposed disposal site. On the Section 9 portion of my interests there are also several locations where shallow ground water has been documented.

According to various Geological Survey maps the approximate elevation of the proposed site on Section 3 is 3573 feet. While the location of our water supply on Section 4 is slightly further than one-half mile from the proposed disposal site, the elevation at our well is approximately 3556 feet and contour of the maps indicate to me a sloping of the terrain to the South and Southwest from the Section 3 area. That same configuration continues on to our property on the N $\frac{1}{2}$ of Section 9 where the elevation is approximately 3546 feet. My concern is that contamination may occur through the natural flow of gravity, whether it be via rainwater, flooding or gravitation along the surface of the Red Beds in that area.

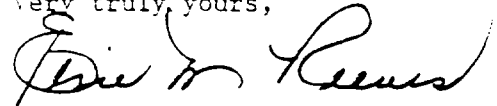
It has come to my attention that a pit has already been dug at the proposed site in anticipation of approval of this application, said pit being approximately 7 feet in depth. If this is in fact the case, my concern is deepened in that it puts the contaminants only that much closer to the surface of the Red Beds, thereby increasing the possibility of gravitational displacement.

Our property on Section 4, 5, 8 and 9 is currently under a grazing lease and it is imperative to the landowners as well as to our tenant that the ground water supply be protected from even the slightest possibility of contamination.

It is my understanding that the New Mexico Conservation Division, by statute, has a duty to protect the correlative rights of all parties concerned. To that end I am confident that the Commission will exercise its full responsibility to protect not only our rights, but the rights of all parties in the surrounding proximity.

Thanking you in advance for your consideration in this matter, I am,

Very truly yours,

A handwritten signature in cursive script, appearing to read "Elsie M. Reeves". The signature is written in dark ink and is positioned above the printed name.

Elsie M. Reeves

OIL CONSERV. DIVISION
SANTA FE, N.M.
10

'91 DEC 23 AM 9 24

Mr. William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Energy
P. O. Box 2038
Santa Fe, New Mexico 87504-2038

December 20, 1991

Re: Application of C & C Land Farm, Inc.
for an oil field waste disposal system
on the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 3, T20S, R37E
Lea County, New Mexico

Gentlemen:

Regarding the above referenced application I hereby protest the installation of such a disposal system in that particular area and make formal request for a Public Hearing in this matter.

As an owner of a portion of the surface interests on the S $\frac{1}{4}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and the S $\frac{1}{4}$ of Section 4, T20S, R37E and as a member of an Advisory Board which represents ninety-six percent of the remaining owners of the Section 4 property, as well as being one of the landowners of the NE $\frac{1}{4}$ of Section 9 in the same Township and Range, I am deeply concerned about the possibility of contamination of our ground water supply as a result of the installation of a waste disposal system at this particular location.

Historically, the ground water supply on our property has been from shallow wells at a depth of 25 to 30 feet. Currently our water source is from a shallow well located on the SW $\frac{1}{4}$ of Section 4; however, shallow ground water at a depth of 25-30 feet is documented in a number of areas on Section 4 much closer to the proposed disposal site. On the Section 9 portion of my interests there are also several locations where shallow ground water has been documented.

According to various Geological Survey maps the approximate elevation of the proposed site on Section 3 is 3573 feet. While the location of our water supply on Section 4 is slightly further than one-half mile from the proposed disposal site, the elevation at our well is approximately 3556 feet and contour of the maps indicate to me a sloping of the terrain to the South and Southwest from the Section 3 area. That same configuration continues on to our property on the NE $\frac{1}{4}$ of Section 9 where the elevation is approximately 3546 feet. My concern is that contamination may occur through the natural flow of gravity, whether it be via rainwater, flooding or gravitation along the surface of the Red Beds in that area.

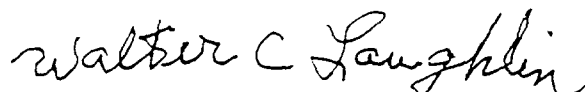
It has come to my attention that a pit has already been dug at the proposed site in anticipation of approval of this application, said pit being approximately 7 feet in depth. If this is in fact the case, my concern is deepened in that it puts the contaminants only that much closer to the surface of the Red Beds, thereby increasing the possibility of gravitational displacement.

Our property on Section 4, 5, 8 and 9 is currently under a grazing lease and it is imperative to the landowners as well as to our tenant that the ground water supply be protected from even the slightest possibility of contamination.

It is my understanding that the New Mexico Conservation Division, by statute, has a duty to protect the correlative rights of all parties concerned. To that end I am confident that the Commission will exercise its full responsibility to protect not only our rights, but the rights of all parties in the surrounding proximity.

Thanking you in advance for your consideration in this matter, I am,

Very truly yours,

A handwritten signature in cursive script that reads "Walter C. Laughlin". The signature is written in dark ink and is positioned above the typed name and address.

Walter C. Laughlin
4139 E. Laughlin Road
Casa Grande, AZ 85222

RECEIVED
OIL CONSERVATION DIVISION
OCT 31 1991 8 51 AM
S-W CATTLE CO.

P.O. BOX 1799
HOBBS, NEW MEXICO 88241

October 28, 1991

Mr. Bill LeMay, Director
State of New Mexico
Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504-2088

RE: Application For A Waste Disposal Facility
SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 3, Township 20, Range 37E
Lea County, New Mexico Deeded Land

Dear Mr. LeMay:

We are in receipt of correspondence notifying us that Jimmy T. Cooper owner and operator of C & C Landfarm Inc. is filing an application for a Surface Waste Facility to be located on deeded land as described above.

The described land is bordered on two sides by New Mexico State Land, presently leased by S-W Cattle Co., and is cornered by a forty acre tract of BLM land which S-W Cattle Co. is in the process of purchasing. Further, the proposed site lies within one-half mile of an earthen tank supplied by windmill water from approximately thirty foot. Also, the elevation of the proposed site is higher than some of the adjoining land.

Our primary concern is for the security of this water and Mr. Roger Anderson of the New Mexico Oil Conservation Division has assured me that precautions will be taken to guarantee the continued purity of the water.

Please keep us advised and informed as to the progress of this project. I can be contacted by phone at 505-393-4321 or 393-6420. Please direct all correspondence to P.O. Box 1799, Hobbs, NM 88241.

Yours Very Truly,

S-W CATTLE CO.


W. T. STRADLEY, PRESIDENT



JIM BACA
COMMISSIONER

State of New Mexico
OFFICE OF THE
Commissioner of Public Lands
Santa Fe

10-10-91
10:00 AM
10/10/91

P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

October 7, 1991

Roger Anderson
State of New Mexico
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

Dear Mr. Anderson:

Please provide the State Land Office (Attn: Pleas M. Glenn) with a copy of the Jimmie T. Cooper, C & C Landfarm, Inc. permit for disposal of contaminated soils from oil and gas production. We have State Trust Lands both east and south of this proposed disposal area and would appreciate the opportunity to review and comment on this permit prior to O.C.D. action.

Thank you in advance for your cooperation.

Sincerely,

Pleas M. Glenn
Assistant Commissioner

PMG/d1

NOTICE OF PUBLICATION

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

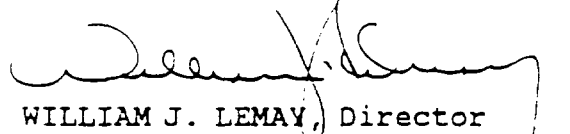
Notice is hereby given that pursuant to New Mexico Oil Conservation Division Regulations, the following application to construct and operate a commercial surface waste disposal facility has been submitted for approval to the Director of the Oil Conservation Division, State Land Office Building, P.O. Box 2088, Santa Fe, New Mexico 87504-2088, Telephone (505) 827-5800:

C & C Landfarm Inc., Eddie W. Seay, Agent, P.O. Box 55, Monument, New Mexico 88265, has submitted an application to construct and operate a commercial landfarm facility for remediation of hydrocarbon contaminated soils. The proposed location of the facility is the SW/4 NE/4, Section 3, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico. The facility is proposed to consist of a land management area where solids containing "non-hazardous" contaminants will be spread on the ground surface in six inch lifts or less and periodically stirred to enhance biodegradation of contaminants. Groundwater most likely to be affected by any accidental discharges at the surface is not known to be present in the area of one-half mile from the boundaries of the facility. The facility is underlain by redbeds ranging in thickness from 430 to 1200 feet.

Any interested person may obtain further information from the Oil Conservation Division and may submit written comments to the Director of the Oil Conservation Division at the address given above. The application may be viewed at the above address between 8:00 a.m. and 5:00 p.m., Monday through Friday. Prior to ruling on any proposed permit or its modification, the Director of the Oil Conservation Division shall allow at least thirty (30) days after the date of publication of this notice during which comments may be submitted to him.

GIVEN under the Seal of New Mexico Oil Conservation Commission at Santa Fe, New Mexico, on this 18th day of November, 1991.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


WILLIAM J. LEMAY, Director

S E A L

NOTICE OF PUBLICATION
STATE OF NEW MEXICO
ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION
Notice is hereby given that pursuant
to New Mexico Oil Conservation
Division Regulations, the following
application to construct and operate a
commercial surface waste disposal
facility has been submitted for ap-
proval to the Director of the Oil
Conservation Division, State Land
Office Building, P.O. Box 2088, Santa
Fe, New Mexico 87504-2088. Tele-
phone (505) 827-5800: Hilary
C & C Landfarm Inc., Eddie W.
Seay, Agent, P.O. Box 55, Monu-
ment, New Mexico 88265, has sub-
mitted an application to construct and
operate a commercial landfarm fac-
ility for remediation of hydrocarbon
contaminated soils. The proposed
location of the facility is the SW/4
NE/4, Section 5, Township 20 South,
Range 37 East, NMPM, Lea County,
New Mexico. The facility is proposed
to consist of a land management area
where solids containing "non-
hazardous" contaminants will be
spread on the ground surface in six
inch lifts or less and periodically
torn to enhance biodegradation of
contaminants. Groundwater is not
likely to be affected by any accidental
discharges at the facility, it is not
known to be present in the area of
one-half mile from the boundaries of
the facility. The facility is bounded by
redbeds dipping to the west from
430 to 1200 feet. The facility is
Any interested person may obtain
further information from the Oil Con-
servation Division and may submit
written comments to the Director of
the Oil Conservation Division at the
address given above. The application
may be viewed at the above address
between 9:00 a.m. and 5:00 p.m.,
Monday through Friday. Prior to ruling
on any proposed permit or modifica-
tion, the Director of the Oil
Conservation Division shall allow at
least thirty (30) days after the date of
publication of this notice during which
comments may be submitted to him.
GIVEN under the Seal of New Mexico
Oil Conservation Commission at
Santa Fe, New Mexico, on this 18th
day of November, 1991.
STATE OF NEW MEXICO
OIL CONSERVATION DIVISION
WILLIAM J. LEMAY, Director

STATE OF NEW MEXICO

County of Bernalillo

ss

Thomas J. Smithson being duly sworn declares and says that he is National Advertising manager of the Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 31, Session Laws of 1937, and that payment therefore has been made or assessed as court costs; that the notice, a copy of which is hereto attached, was published in said paper in the regular daily edition,

for.....1.....times, the first publication being on the.....27.....day

of.....Nov....., 1991, and the subsequent consecutive

publications on....., 1991.

Thomas J. Smithson

Sworn and subscribed to before me, a Notary Public in and for the County of Bernalillo and State of New Mexico, this27..... day of.....Nov....., 1991.

PRICE.....\$ 18.56.....

Statement to come at end of month.

CLA-22-A (R-12/91)

ACCOUNT NUMBER.....C 81184.....

OIL CONSERVATION DIVISION
RECORDED

DEC 2 AM 9 29

Affidavit of Publication

STATE OF NEW MEXICO)
) ss.
COUNTY OF LEA)

Joyce Clemens being first duly sworn on oath deposes and says that he is Adv. Director of THE LOVINGTON DAILY LEADER, a daily newspaper of general paid circulation published in the English language at Lovington, Lea County, New Mexico; that said newspaper has been so published in such county continuously and uninterruptedly for a period in excess of Twenty-six (26) consecutive weeks next prior to the first publication of the notice hereto attached as hereinafter shown; and that said newspaper is in all things duly qualified to publish legal notices within the meaning of Chapter 167 of the 1937 Session Laws of the State of New Mexico.

That the notice which is hereto attached, entitled

Notice Of Publication

and numbered _____ in the

_____ Court of Lea County, New Mexico, was published in a regular and entire issue of THE LOVINGTON DAILY LEADER and not in any supplement thereof, once each week on the same day of the week, for one (1)

week
~~consecutive weeks~~, beginning with the issue of _____

November 21 1991

and ending with the issue of _____

November 21 1991

And that the cost of publishing said notice is the sum of \$ 22.90

which sum has been (Paid) ~~(Assessed)~~ as Court Costs

Joyce Clemens
Subscribed and sworn to before me this 26th

day of November 1991

Mrs. Jean Lerner
Notary Public, Lea County, New Mexico

My Commission Expires Sept. 28 1994

LEGAL NOTICE NOTICE OF PUBLICATION STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

Notice is hereby given that pursuant to New Mexico Oil Conservation Division Regulations, the following application to construct and operate a commercial surface waste disposal facility has been submitted for approval to the Director of the Oil Conservation Division, State Land Office Building, P.O. Box 2028, Santa Fe, New Mexico 87504-2088, Telephone (505) 827-5800.

C & C Landfarm, Inc., Eddie W. Seay, Agent, P.O. Box 55, Monument, New Mexico 88265, has submitted an application to construct and operate a commercial landfarm facility for remediation of hydrocarbon contaminated soils. The proposed location of the facility is the SW/4 NE/4, Section 3, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico. The facility is proposed to consist of a land management area where solids containing "non-hazardous" contaminants will be spread on the ground surface in six inch lifts or less and periodically stirred to enhance biodegradation of contaminants. Groundwater most likely to be affected by any accidental discharges at the surface is not known to be present in the area of one-half mile from the boundaries of the facility. The facility is underlain by redbeds ranging in thickness from 430 to 1200 feet.

Any interested person may obtain further information from the Oil Conservation Division and may submit written comments to the Director of the Oil Conservation Division at the address given above. The application may be viewed at the above address between 8:00 a.m. and 5:00 p.m., Monday through Friday. Prior to ruling on any proposed permit or its modification, the Director of the Oil Conservation Division shall allow at least thirty (30) days after the date of publication of this notice during which comments may be submitted to him.

GIVEN under the Seal of New Mexico Oil Conservation Commission at Santa Fe, New Mexico, on this 18th day of November, 1991.

STATE OF NEW MEXICO
OIL CONSERVATION
DIVISION
WILLIAM J. LEMAY,
Director

SEAL
Published in the Lovington Daily
Leader November 21, 1991.

Affidavit of Publication

STATE OF NEW MEXICO

COUNTY OF LEA

Joyce Clemens being first duly sworn on oath deposes and says that he is Adv. Director of THE LOVINGTON DAILY LEADER, a daily newspaper of general paid circulation published in the English language at Lovington, Lea County, New Mexico; that said newspaper has been so published in such county continuously and uninterruptedly for a period in excess of Twenty-six (26) consecutive weeks next prior to the first publication of the notice hereto attached as hereinafter shown; and that said newspaper is in all things duly qualified to publish legal notices within the meaning of Chapter 167 of the 1937 Session Laws of the State of New Mexico.

That the notice which is hereto attached, entitled
Notice Of Publication

and was published in a regular and entire issue of THE LOVINGTON DAILY LEADER and not in any supplement thereof, on the 18th day of June, 1992, for one (1) day

beginning with the issue of June 24, 1992 and ending with the issue of June 24, 1992

And that the cost of publishing said notice is the sum of \$70.74 which sum has been (Paid) (Assessed) as Court Costs

Subscribed and sworn to before me this 25th day of June, 1992
Notary Public, Lea County, New Mexico

My Commission Expires Sept. 28, 1994

LEGAL NOTICE NOTICE OF PUBLICATION STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION SANTA FE, NEW MEXICO

The State of New Mexico by its Oil Conservation Division hereby gives notice pursuant to law and Rules and Regulations of said Division promulgated thereunder of the following public hearing to be held at 8:15 A.M. on July 9, 1992, at the Oil Conservation Division Conference Room, State Land Office Building, Santa Fe, New Mexico, before Michael E. Stogner, Examiner or David R. Catanach, Alternate Examiner, duly appointed for said hearing as provided by law.

STATE OF NEW MEXICO TO:
All named parties and persons having any right, title, interest or claim in the following cases and notice to the public.

(NOTE: All land descriptions herein refer to the New Mexico Principal Meridian whether or not so stated.)

CASE 10496:
Application of Mitchell Energy Corporation for a unit agreement, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks approval of the Comanche State Unit Agreement for an area comprising 2558.66 acres, more or less, of State lands in all or portions of Sections 3, 4, 9, and 10 of Township 21 South, Range 33 East, which is centered approximately 1.5 miles south of State Highway No. 176 at mile marker 19.

CASE 10497: (Readvertised)
Application of Newbourn Oil Company for two secondary recovery pilot projects, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks authorization to institute two secondary recovery pilot projects in the Querecho Plains-Upper Bone Spring Pool within Township 18 South, Range 32 East, on its Government "K" Lease by the injection of water from approximately 8454 feet to 8515 feet in Well No. 2 located 1950 feet from the South line and 1980 feet from the West line (Unit K) of Section 23 and on its Federal "E" Lease by the injection of water into the perforated interval from approximately 8501 feet to 8530 feet in Well No. 10 located 2310 feet from the North and East lines (Unit G) and from approximately 8360 feet to 8486 feet in Well No. 11 located 660 feet from the North line and 530 feet from the East line (Unit A) both in Section 27. Said pool is centered approximately 9

NEW MEXICO
CASE 10502:
Application of Meridian Oil Inc. for compulsory pooling, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks an order pooling all mineral interests from the surface to the base of the Delaware formation or to a depth of 8700 feet, whichever is deeper, underlying the NW/4 NW/4 (Unit D) of Section 23, Township 22 South, Range 33 East, forming a standard 40-acre oil spacing and proration unit within said vertical extent. Said unit is to be dedicated to a well to be drilled at a standard location thereon. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof as well as actual operating costs and charges for supervision, designation of applicant as the operator of the well and a charge for risk involved in drilling said well. Said unit is located approximately 6.25 miles north-northwest of the junction of State Highway No. 128 and the Delaware Basin Road.

CASE 10503:
Application of Meridian Oil Inc. for compulsory pooling, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks an order pooling all mineral interests from the surface to the base of the Delaware formation or to a depth of 8700 feet, whichever is deeper, underlying the SW/4 NW/4 (Unit E) of Section 23, Township 22 South, Range 33 East, forming a standard 40-acre oil spacing and proration unit within said vertical extent. Said unit is to be dedicated to a well to be drilled at a standard location thereon. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof as well as actual operating costs and charges for supervision, designation of applicant as the operator of the well and a charge for risk involved in drilling said well. Said unit is located approximately 6 miles north-northwest of the junction of State Highway No. 128 and the Delaware Basin Road.

CASE 10504:
Application of Meridian Oil Inc. for compulsory pooling, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks an order pooling all mineral interests from the surface to the base of the Delaware formation or to a depth of 8700 feet, whichever is deeper, underlying the NW/4 SW/4 (Unit L) of Section 24, Township 22 South, Range 33 East, forming a standard 40-acre oil spacing and proration unit within said vertical extent. Said unit is to be dedicated to a well to be drilled at a standard location thereon. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost

for supervision, designation of applicant as the operator of the well and a charge for risk involved in drilling said well. Said unit is located approximately 5.5 miles north by way of the junction of State Highway No. 128 and the Delaware Basin Road.

CASE 10505:
Application of United G Search, Inc. for a credit enhanced oil recovery, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks a credit enhanced oil recovery cover the following leases: Glen Ryan (Leonard Federal) Lease comprising all of Section 11; the S/2 of Section 14, Town 26 South, Range 37 East, and except as to depths below 3600 feet subsurface in the S SE/4 of said Section 11 and to depths between the surf and 3600 feet subsurface in SW/4 SW/4 of said Section Glenn Ryan (Leonard Brothers Lease comprising all of Section 13 and the N/2 of Section Township 26 South, Range East, save and except as to Queen formation in the S SW/4 of said Section 13; the Leonard Brothers "A" Lease comprising the N/2 N/2, S NW/4, and the SW/4 NE/4 Section 23, Township 26 South, Range 37 East, save and except as to the Queen formation the NE/4 NE/4 of said Section 23. Said leases are located approximately 5 miles southeast of Bennett, New Mexico.

CASE 10507:
Application of C & C Land Inc. for a commercial surf waste disposal facility, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks authorization to construct and operate a commercial landfill for remediation of non-hazardous hydrocarbon-contaminated soils using an enhanced biodegradation process. The area is to be located in the S NE/4 (Unit G) of Section Township 20 South, Range East, which is approximately 2 miles southeast of Monr New Mexico. This application has been administratively determined to be approved and this hearing is scheduled to allow parties the opportunity to present technical evidence why the application should be approved pursuant to rules of the Division. In absence of objection, application will be taken under advisement.

Given under the Seal of State of New Mexico Conservation Commission Santa Fe, New Mexico on 18th day of June, 1992.

STATE OF NEW MEXICO
OIL CONSERVATION
DIVISION
WILLIAM J. LEM
Director

SEAL
Published in the Lovington

OIL CONSERVATION DIVISION
RECEIVED

'92 DEC 8 PM 4 34

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 10507
Order No. R-9769

APPLICATION OF C & C LANDFARM,
INC. FOR A COMMERCIAL SURFACE
WASTE DISPOSAL FACILITY, LEA
COUNTY, NEW MEXICO

ELSIE REEVES, S-W CATTLE COMPANY'S AND
W. T. STRADLEY'S
REQUEST FOR A DE NOVO HEARING
BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION

Comes now ELSIE REEVES, S-W CATTLE COMPANY AND W. T. STRADLEY, parties of record before the New Mexico Oil Conservation Division in Case 10507 and adversely affected by Division Order R-9769 entered November 16, 1992, by its attorneys Kellahin & Kellahin and pursuant to Section 70-2-13 NMSA-1978, hereby requests that the New Mexico Oil Conservation Commission hold a HEARING DENOVO in this matter.

NMOCD Case No. 10507
Request for Hearing DeNovo
Elsie Reeves and S-W Cattle Company
Page 2

Respectfully Submitted:



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87501
(505) 982-4285
ATTORNEYS FOR ELSIE REEVES,
W. T. (TRENT) STRADLEY AND
S-W CATTLE COMPANY

Gene Samberson, Esq.
P. O. Drawer 1599
Lovington, New Mexico 88260
(505) 396-5303
ATTORNEYS FOR W. T. (TRENT)
STRADLEY AND S-W CATTLE COMPANY

CERTIFICATE OF MAILING

I, W. Thomas Kellahin, hereby certify that on this _____ day of December, 1992 I provided a copy of the foregoing pleading by US mail, postage pre-paid or hand delivery to all counsel and parties of record in this matter.



W. Thomas Kellahin

Affidavit of Publication

STATE OF NEW MEXICO)
) ss.
COUNTY OF LEA)

Joyce Clemens being first duly sworn on oath deposes and says that he is Adv. Director of THE LOVINGTON DAILY LEADER, a daily newspaper of general paid circulation published in the English language at Lovington, Lea County, New Mexico; that said newspaper has been so published in such county continuously and uninterruptedly for a period in excess of Twenty-six (26) consecutive weeks next prior to the first publication of the notice hereto attached as hereinafter shown; and that said newspaper is in all things duly qualified to publish legal notices within the meaning of Chapter 167 of the 1937 Session Laws of the State of New Mexico.

That the notice which is hereto attached, entitled

Notice Of Publication

~~and published~~ ~~in the~~ ~~County of~~ ~~Lea~~ ~~County, New Mexico~~, was published in a regular and entire issue of THE LOVINGTON DAILY LEADER and not in any supplement thereof, ~~on the~~ ~~same day~~ ~~for~~ ~~one (1) day~~

~~commencing~~, beginning with the issue of December 30, 1992

and ending with the issue of December 30, 1992

And that the cost of publishing said notice is the sum of \$ 28.35

which sum has been (Paid) ~~(Assessed)~~ as Court Costs

Joyce Clemens
Subscribed and sworn to before me this 8th
day of January, 1993

William J. Lemay
Notary Public, Lea County, New Mexico

My Commission Expires Sept. 28, 1994

LEGAL NOTICE
NOTICE OF PUBLICATION
STATE OF NEW MEXICO
ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
DIVISION
SANTA FE - NEW MEXICO
The State of New Mexico by its Oil Conservation Commission hereby gives notice pursuant to law and Rules and Regulations of said Commission promulgated thereunder of the following public hearing to be held at 9:00 A.M. on THURSDAY, JANUARY 14, 1993, at Morgan Hall, State Land Office Building, Santa Fe, New Mexico.
STATE OF NEW MEXICO TO

All named parties and persons having any right, title, interest or claim in the following cases and notice to the public.

(NOTE: All land descriptions herein refer to the New Mexico Principal Meridian whether or not so stated.)

CASE 10507: (DE NOVO)
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks authorization to construct and operate a commercial landfarm facility for remediation of non-hazardous hydrocarbon-contaminated soils using an enhanced biodegradation process. Said area is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, which is approximately 2 miles southeast of Monument,

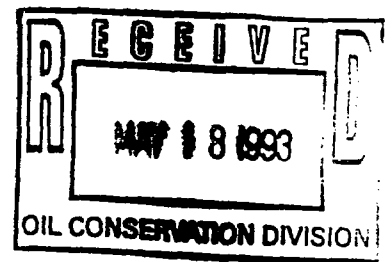
New Mexico. Upon application of intervenors Elsie Reeves, S-W Cattle Co. and W.T. (Trent) Stradley, this case will be heard De Novo pursuant to the provisions of Rule 1220.
CASE 10444: (DE NOVO)
Application of Amerada Hess Corporation for pool contraction, pool creation, and promulgation of special pool rules, Lea County, New Mexico.

Applicant, in the above-styled cause, seeks the creation of a new pool for the production of oil from the Lower Blinbry formation and the promulgation of special pool rules therefor, including provisions for 80-acre oil spacing and proration units, designated well location requirements and a special gas-oil ratio limitation of 10,000 cubic feet of gas per barrel of oil. Applicant also seeks the concomitant contraction of the vertical limits of the Hobbs-Blinbry Pool in conjunction with the creation of said new Lower Blinbry oil pool within the existing horizontal boundaries of the Hobbs-Blinbry Pool in portions of Townships 18 and 19 South, Range 38 East. Said area is located on the west side of Hobbs, New Mexico. Upon application of Amerada Hess Corporation this case will be heard De Novo pursuant to the provisions of Rule 1220.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 22nd day of December, 1992.

STATE OF NEW MEXICO
OIL CONSERVATION
DIVISION
WILLIAM J. LEMAY,
Director

SEAL
Published in the Lovington Daily Leader December 30, 1992.



STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 10507 (DeNovo)
ORDER NO. R-9769-A

APPLICATION OF C & C LANDFARM INC.
FOR A COMMERCIAL SURFACE WASTE
DISPOSAL FACILITY, LEA COUNTY,
NEW MEXICO

APPLICATION FOR REHEARING
BY
ELSIE REEVES AND W. TRENT STRADLEY

This Application for Re-Hearing is submitted by W. Thomas Kellahin, Esq. and C. Gene Samberson, Esq. on behalf of W. T. (Trent) Stradley and S-W Cattle Co. and by W. Thomas Kellahin on behalf of Elsie M. Reeves (hereinafter collectively the Opponents").

In accordance with the provisions of Section 70-2-25 NMSA (1978), the Opponents request the New Mexico Oil Conservation Commission grant this Application for

ReHearing in Case 10507 (DeNovo) to correct erroneous findings and conclusions set forth in Order R-9769-A, attached as Exhibit "A" and to substitute Opponents' proposed Commission Order attached as Exhibit "B" hereto, and IN SUPPORT THEREOF OPPONENTS STATE:

INTRODUCTION

On April 27, 1993, the New Mexico Oil Conservation Commission met at a public meeting to enter its decision in this case. During that public deliberation, Commissioner Carlson, the only attorney on the Commission, correctly applied his legal training and concluded that C & C Landfarm Inc. ("Applicant") had failed to meet its "burden of proof."

Commissioner Weiss concluded that the Opponents had failed to meet their "burden of proof" because the Opponents' hydrologist had not visited the site and had not presented any site specific scientific data proving the probable contamination of ground water.

Commission LeMay made no public comments but voted with Commissioner Weiss to approve the Applicant's request.

GROUND FOR REHEARING

**POINT I: THE COMMISSION IGNORED THE ULTIMATE
ISSUE IN DISPUTE**

This is a simple case. The ultimate factual issue is whether this surface waste facility creates a risk of contamination to the fresh water aquifer from which Trent Stradley's well has produced continuously in excess of forty-five (45) years and is the only fresh water supply for cattle in some nine sections and is referred to herein as the "Stradley Aquifer."

To answer that issue, it is essential for the Commission to have proper scientific evidence about the Stradley Aquifer including its size, shape and recharge mechanics. The Applicant's failure to submit that evidence is fatal to its case and is what Commissioner

Carlson meant when he said the Applicant had failed to meet its "Burden of Proof."

The fact that the Applicant did not find the Stradley Aquifer with some five shallow monitor wells drilled on the proposed facility does not substitute for a proper hydrologic study to determine the risk to the Stradley Aquifer. Contaminates can be introduced on the surface and with the introduction of rain will percolate into the ground both vertically and horizontally and migrate into the Stradley Aquifer.

Nobody knows how the Stradley Aquifer is recharged and from what source. Nobody knows the size and shape of the Stradley Aquifer. The Commission ignored that absence of evidence and in doing so, failed to decide the ultimate issue in this case.

**POINT II: ORDER R-9769-A WAS ADOPTED BY A
MAJORITY OF THE COMMISSION BASED
UPON AN INCORRECT UNDERSTANDING OF
"BURDEN OF PROOF"**

The Commission improperly placed the "Burden of Proof" on the Opponents to demonstrate that the waste facility would harm the fresh water aquifer. During public deliberations Commissioner Weiss commented that he had specifically edited Finding (13) of Order R-9769-A to place emphasis upon the Opponent's hydrologist's failure to visit the site and take samples and conduct tests.

The Commission missed the purpose of Mr. Kelly's testimony. As the only qualified hydrologic expert presented to the Commission on this matter, Mr. Kelly's testimony was to show the Commission what should be required of the Applicant (not the Opponents) before a proper decision could be made about this waste facility.

It is not the Opponents' burden to prove that this surface waste facility will contaminate the Stradley Aquifer. To the contrary, it is the Applicant's Burden of Proof to persuade the Commission that it will not.

The following is presented to guide the Commission in understanding the legal concept of "Burden of Proof." The term "proof" is the end result of conviction or persuasion produced by the evidence. The term encompasses two separate burdens of proof: one is the burden of producing evidence and the second is the burden of persuading the trier of fact that the alleged fact is true.

In this case, the alleged fact is that the approval of this facility will not pose a risk to ground water, human health and the environment. The Applicant always retains the ultimate burden of producing evidence AND the burden of persuasion that the facility would not pose a risk to the Stradley

Aquifer. The Applicant's failure to provide evidence of the size, shape and hydrology of the Stradley Aquifer from which the Stradley windmill produces fresh water is a failure of the Applicant to meet its "Burden of Proof."

All that the Opponents needed to do, they did by introducing evidence of the location of the fresh water sources in the Stradley Aquifer in close proximity to the waste facility. It then was the Applicant's Burden of Proof to produce the hydrologic study of the Stradley Aquifer which must provide convincing evidence that no risk was being imposed upon the Stradley Aquifer by this waste facility.

While the Applicant introduced evidence of five monitor wells having failed to encounter the Stradley Aquifer, the Applicant failed to provide evidence as to any of the following:

- (1) composition samples and tests
- (2) soil samples and tests
- (3) compaction tests
- (4) permeability tests

- (5) Cation Exchange capacity tests
- (6) liquid and plastic tests of the redbeds
- (7) any soil properties tests and data
- (8) any hydrology studies
- (9) any groundwater studies
- (10) any percolation tests or data
- (11) any ground water migration tests/data
- (12) any contaminant mobility tests/data

It is improper to put the Applicant's failure of proof on the Opponents.

**POINT III: THE COMMISSION VIOLATED EVIDENCE
 RULE 703 WHEN IT REJECTED EXPERT
 OPINIONS NOT BASED UPON PERSONAL
 KNOWLEDGE OF THE EXPERT**

The Commission accepted the opinions of the Division's Environmental Bureau ("NMOCD-EB") even though its witness was not a hydrologist because she had made a personal visual inspection of the site. The Commission rejected the expert opinions of Mr. Kelly, the Opponent's qualified hydrologist, because he had not made a recent personal visual inspection of the site. The Commission ignored the fact that Mr. Kelly

had been present for and reviewed all of the transcripts and exhibits of the Division Examiner hearing of this case including the various topographical maps and testimony of others concerning the appearance of the facility and the site.

New Mexico Rule of Evidence 703 provides:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Apparently, the Commission failed to remember the testimony of Mr. Stradley who had repeatedly been over every part in this "White Breaks" area for decades. Mr. Stradley testified that the surface waste facility was located on the northeast edge of a natural topographical depression with his fresh water windmill located in the bottom of that depression and in excess of 30 feet lower than the surface waste facility. As an expert witness, Mr. Kelly does not have to

personally visit the site. He is entitled to rely upon the observations of Mr. Stradley and others and did so to support his expert opinions.

Mr. Kelly concluded that the likely direction of contaminant movement from the waste facility will be down gradient along the redbed surface. But there have been no hydrologic studies of the area to determine gradients and therefore no way to know the length of time and distance of travel of the contaminants. There has been no scientific study of the redbeds and the movement cannot be predicted. His point was that the Commission cannot approve this facility until that determination is made.

While a visual inspection of the surface of the facility is hardly scientific and does not allow the observer to divine the subsurface conditions in the area, the only inference for the Commission to have drawn from site inspection was that the surface topography would increase the risk of contamination to the Stradley Aquifer.

As an apparent excuse for disregarding the lack of technical data by the Applicant, the Commission decided this case based upon what witness had made a personal visual inspection of the site and thereby rejected the expert opinions of the Opponent's witness because he had not made a personal inspection of the site. Although the Commission enjoys the ability to relax the rules of evidence they should not decide cases based upon an erroneous application of those rules.

POINT IV: THE COMMISSION BASED ITS ORDER R-9769-A
 UPON FINDING (11) WHICH IS CONTRARY TO
 THE EVIDENCE AND CONTAINS AN IRRELEVANT
 FINDING.

Finding (11)(a):

"There is no fresh water under the disposal site because there is no Ogalalla aquifer present."

At the hearing the Commission raised the irrelevant issue of the location of the Ogalalla

aquifer and then used that irrelevant fact as a basis for approval of the Application. See Finding (11)(a). The aquifer at risk and for which the Commission failed to address any findings was the Stradley Aquifer in the shallow alluvium down slope from the proposed waste facility. The issue is where are the vertical and horizontal limits of that aquifer and its recharge system.

It is of no consequence whether the Ogalalla aquifer is present under the waste facility. However, if the Commission wants to decide this case based upon the presence or absence of the Ogalalla aquifer under the facility, it has made a fundamental error in finding the Ogalalla aquifer absent. In fact, the Ogalalla aquifer IS PRESENT UNDER this surface waste facility. See Exhibit "C" attached hereto and incorporated by reference.

To decide this case based upon location of an aquifer not at issue in this case is to wrongly decide this case.

Finding (11)(b):

"The berm to be constructed and maintained and operational requirements will be adequate to prevent precipitation run-off and run-on for the treatment portion of the facility"

This finding makes no grammatical sense. But more importantly, this finding is contrary to the evidence. There are no scientific data introduced on soils tests and therefore no compaction data, no composition data, and permeability data from which to determine the construction and maintenance standards for the berm. Further the order does not detail the constructions, maintenance or operations requirements for the berm.

This finding is simply an assumption without proper basis and cannot be supported by the record in this case.

**POINT V: THE COMMISSION ERRONEOUSLY BASED ITS
DECISION ON A "VISUAL INSPECTION OF THE
SURFACE OF THE SITE" AND IGNORED THE
ABSENCE OF A SCIENTIFIC HYDROLOGIC
STUDY**

The Commission erroneously based its decision on a visual inspection of the surface of the facility by a non-hydrologist staff member of the Oil Conservation Division's Environmental Bureau ("OCD-EB"). See Finding (14). The Commission also in error found it significant that the Opponents' hydrologist had not made a personal inspection of the surface of the facility.

The Commission ignored the testimony of Mr. Stradley about the slope of the topography and the fact the facility was some 35 feet higher in elevation to his down slop fresh water well. The Commission ignored the testimony of Opponent Reeves who had located and identified some forty-six (46) water wells in the area.

The Commission failed to explain how that surface inspection could substitute for a scientific hydrologic study of the potential contamination of Mr. Stradley's fresh water well.

**POINT VI: THE IS NO SUBSTANTIAL EVIDENCE TO
SUPPORT FINDING (12) CONCERNING A
NEED FOR THIS WASTE FACILITY**

Finding (12) states:

"There is a need for landfarms to
remediate oil contaminated soils in
the oil fields of Southeast New Mexico."

Contrary to this finding, the uncontested evidence was that the location of the facility was arbitrary; that the applicant had not conducted any economic analysis to justify this facility or establish its need; that there was nothing introduced about the capacity of existing OCD approved waste facilities or their location or inability to meet the "needs" of the industry; there was no testimony from any operator of oil & gas wells in this area supporting this application.

The Commission made an error. The need for this facility at this site was NOT established by substantial evidence.

**POINT VII: THE ADMINISTRATIVE PROCESS OF
THIS CASE AND ORDER R-9796-A
VIOLATE PROCEDURAL DUE PROCESS**

On October 8, 1991, the Applicant, C&C Landfarm, Inc. filed its application with the Division seeking authority to construct and operate a commercial "landfarm" facility ONLY for the remediation of soils contaminated with hydrocarbon substances which are exempt from the Federal Resources Conservation and Recovery Act (RCRA) on a 40-acre site owned by Jimmie T. Cooper. On November 27, 1991, notice concerning the original Application was published in The Lovington Daily Leader, a newspaper of general circulation in Lea County, New Mexico. No published notification was made of any of the amendments to the application.

The Commission granted the Applicant more than Applicant sought. While the Applicant only sought to construct and operate a commercial "landfarm" facility specifically limited to the remediation of non-hazardous hydrocarbon contaminated soils, the OCD Conditions appended to the Order R-9769-A as Exhibit "A" also authorize other contaminants to be received into the facility.

Specifically, OCD Conditions #1 and #10 set up a process for the Applicant to expand its waste facility to accept other contaminants and to do so without public notice or public hearing.

Since April, 1992, the Opponents have complained about receiving inadequate notice of about this Application, including the NMOCD-EB approving this facility and the various amendments to that Application without notice to Opponents. The public notice in this case is flawed and continues to violate due process. The Commission has perpetuated that violation of procedural due process by approving an order which

allows amendments to take place without public notice or hearing.

**POINT VIII: THE COMMISSION FAILED TO PROPERLY AMEND
THE OCD-EB PROPOSED CONDITIONS DATED
JANUARY 6, 1993 AND THEREFORE ORDER
R-9769-A IS ARBITRARY, CAPRICIOUS AND
NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

Should the Commission disagree with the other Points raised by the Opponents in this Application for Rehearing, Order R-9769-A is still legally deficient because certain conditions adopted by the Commission are directly contrary to the uncontested evidence in this case:

(1) Condition (2):

"No disposal or remediation of contaminated soils will occur within one hundred (100) feet of your property boundary."

The 100 foot horizontal setback ("buffer") was recommended by Kathy Brown of the OCD-EB. On cross examination, she admitted that there is no scientific basis for the distance being 100 feet.

A Buffer Zone is essential but the proper distance must be based upon some site specific scientific reasons to determine that distance is adequate. The Commission has adopted an arbitrary distance for the Buffer Zone without any scientific basis.

(2) Treatment Zone Monitoring:

The Commission has made a mistake when it adopted the OCD-EB proposed conditions concerning the Treatment Zone and its Monitoring. The OCD-EB speculates that the first three feet of native soils will be an adequate "Treatment Zone" and with monitoring will protect ground water.

Again, Kathy Brown, testifying in support of the adoptions of the OCD-EB conditions was not a qualified expert hydrologist and did not undertake an adequate scientific study to justify its Treatment Zone Monitoring.

The proposed monitoring of the Treatment Zone has no scientific basis for determining its reliability. There is no data from which to determine that the location of the cells in which the contaminated soils will be placed have been located an adequate distance from either the excavated pits or from the boundary of the adjoining Stradley property. Nobody knows how frequently to sample and how many samples per acre to take in order to detect contamination in the Treatment Zone. The OCD-EB Revised Recommendations are inadequate to detect any leaching process or movement of contaminants that could cause the pollution of nearby fresh water supplies.

In summary, while the OCD-EB recommendations are well intended, they are inadequate to provide reasonable protection of the valuable groundwater present in the immediate adjacent tracts.

POINT IX: THE COMMISSION VIOLATED THE FASKEN, THE VIKING PETROLEUM AND THE CONTINENTAL OIL CASES WHEN ITS FAILED TO ADDRESS AND DECIDE THE OPPONENTS' ISSUES AND OBJECTIONS

The Commission is required to make findings of ultimate facts which are material to the issues and to make sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings with substantial support in the record for such findings. Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

Likewise, in Viking Petroleum v. Oil Conservation Commission, 100 N.M. 451, 453, 672 P.2d 280 (1983), the

New Mexico Supreme Court reiterated its opinions in Continental Oil and Fasken, that administrative findings by the Commission should be sufficiently extensive to show the basis of the order and that findings must disclose the reasoning of the Commission in reaching its conclusions.

It is not enough in this case for the Commission to simply adopted the OCD-EB revised Conditions of Approval and to then append those conditions to Order R-9769-A as Exhibit "A." The Commission needs to articulate its decision on each of the conditions which were opposed by the Opponents.

The Commission failed to explain why it found it important to summarize the disputed Applicant's evidence but omitted a summary of the Opponent's evidence.

A rehearing is required, if for no other reason than for the Commission to adopt an adequate order

which complies with state law. An adequate order would specifically address the issues described in the Opponents' Pre-Hearing Statement and which are summarized as follows:

Opponent Stradley stated he has fresh water in the immediate vicinity of the subject project which he currently uses and which is at risk of contamination if this project is approved as outlined by the "OCD Conditions of Approval" notice dated May 20, 1992 or as outlined in "OCD Recommendations" dated January 6, 1993.

Opponent Reeves, after extensive personal search of the State Engineer's records concerning fresh water wells in the area introduced evidence of the presence of some forty-six (46) water wells in the area. The Commission, with no explanation, ignored that evidence.

The Applicant had some 240 contiguous acres from which to select a possible site for the facility. The Commission could have and should have required that

this facility be located farther north within the same tract of land controlled by the Applicant. Instead the Commission chose to avoid this solution and approved a facility on the southern end of the Applicant's tract adjacent to Mr. Stradley's tract. That puts the risk of contamination directly upon Mr. Stradley and not upon the Applicant.

The procedure applied by the Division in processing this case violated procedural due process. This was a make it up as you go process.

The NMOCD "Conditions of Approval" notice dated May 20, 1992 and "OCD Recommendations" dated January 6, 1993 contain substantial errors and fail to protect ground water, human health and the environment.

The subject facility is being designed by the OCD and not the Applicant and is being permitted without any science or experience to know that it will work and prior to the OCD adopting guidelines for such a facility.

The Opponents presented evidence that the granting of the application by the Commission failed to protect human health and the environment and constitutes a risk of contamination of ground water, including the following:

(a) The Applicant's proposed plan will place at risk shallow water wells located down-dip from the proposed landfarm which will be subject to contamination from seepage of leachate contaminants.

(b) The Applicant's plans to prevent migration of contaminants down gradient along the redbed surface is inadequate.

(c) The proposed monitor wells are improperly located and will not afford adequate assurance of detection of contaminants.

(d) The proposed dike identified in OCD Condition (10) in said Order is insufficient and conditions on compaction and verification are inadequate to stop the mobility of the leachate contaminants.

(e) The composition of the berm is not environmentally safe.

(f) Additional soil tests should be performed on the redbed soil including:

- (1) Falling head permeability tests,
- (2) Soil property tests,
- (3) Cation Exchange Capacity tests,

(g) Applicant needs to perform liquid and plastic tests on the redbeds.

(h) The Applicant's proposed barrier is inadequate for its proposed landfarm.

(i) Applicant's geology is inadequate and fails to include an east-west cross section.

The OCD-Environmental Bureau's (OCD-EB) January 6, 1993 Recommendations assume that the contaminated soils will be kept from any shallow fresh water because of about 10 feet of native soil being used as a "treatment zone."

There is no characterization of the "redbeds." In this area there are the Triassic deposits, probably the Chinle shale, and referred to as the "redbeds." The integrity of this landfarm system is dependent upon the impermeability of the redbeds, but the Applicant has presented no data about the physical characteristics of these deposits, such as cation exchange rates, in-situ permeability, remolded permeability at specified compaction ratios, swelling characteristics, etc. All of these are critical factors that ensure that there would be no migration of leachate along the top of or through the redbeds.

There are inadequate horizontal and vertical buffer zones surrounding this proposed facility. The configuration of the upper surface of the redbeds in the 40-acre tract has not been defined.

Commission Order R-9769-A is fatally flawed and should be withdrawn and a Rehearing granted to address all of the issues set forth in this Application for Rehearing.

CONCLUSION

The Commission should withdraw Order R-9769-A and substitute Order R-9697-B which is attached hereto as Exhibit A and incorporated herein by reference. In order to preserve Opponents' right to further appeals of this matter, all of the issues set forth in our proposed Order R-9697-B are made a part of this Application for Rehearing.

Respectfully submitted,

KELLAHIN AND KELLAHIN,

A large, stylized handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', is written over the printed name and address.

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AND ELSIE M. REEVES

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

Case No. 10507 (De Novo)
Order No. R-9769-A

APPLICATION OF C & C LANDFARM, INC.
FOR A COMMERCIAL SURFACE WASTE
DISPOSAL FACILITY, LEA COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on February 25, 1993, at Santa Fe, New Mexico, before the Oil Conservation Commission of the State of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 29th day of April, 1993, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises.

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) Sections 70-2-12.B(21) and (22) N.M.S.A. (1978) Compilation, also known as the New Mexico Oil and Gas Act, authorizes the New Mexico Oil Conservation Commission ("Commission") to regulate the disposition of non-domestic wastes resulting from various oil and gas activities and operations and to protect public health and the environment.

(3) The applicant, C & C Landfarm, Inc. (C & C) filed an application, pursuant to General Rule 711 with the Division on October 8, 1991 seeking authorization to construct and operate a commercial landfarm facility for the remediation of non-hazardous and exempt hydrocarbon contaminated soils. C & C proposes to utilize biodegradation process on a site located in the SW/4 NE/4 (Unit G) of Section 2, Township 20 South, Range 37

East, NMPM, Lea County, New Mexico, which is located approximately two miles southeast of Monument, New Mexico. The term "non-hazardous and exempt" is synonymous as defined in the Resource Conservation and Recovery Act (RCRA) Subtitle C Regulations.

(4) This application was reviewed by the Environmental Bureau of the Oil Conservation Division and determined to be approvable.

(5) A Division Examiner hearing was scheduled to provide to interested parties an opportunity to present technical evidence why this application should not be approved pursuant to the applicable rules of the Division.

(6) Within the time frame authorized by Division rule, certain parties of interest filed written objections to the proposed facility including Elsie M. Reeves and W. T. Stradley, President of S-W Cattle Company.

(7) An Examiner hearing was held on September 1, 1992 at which time Elsie M. Reeves and W. T. Stradley presented evidence in opposition to this application.

(8) On November 16, 1992 the Division entered Order No. R-9769 approving this application and thereafter Elsie M. Reeves, S-W Cattle Company and W. T. Stradley timely filed for a hearing De Novo.

(9) Properly managed landfarming is an excellent method to manage contaminated soil, because those soils are remediated to a useful condition and contaminants can be contained and any movement observed and stopped before they cause any harm.

(10) The proposed landfarm is to be located on a forty-acre tract of land, as described in Finding Paragraph No. (3) which is bordered on the east by Lea County Road No. 58. Oil field contaminated soils will be trucked to the site and deposited within cells in six inch lifts; these soils will be tilled or plowed to ensure proper aeration and bioremediation to proper government standards. Prior to any soil being deposited in a cell, the soil in the cell or "treatment zone" will be sampled and tested. Six months after the first oil field contaminated soil is deposited in the cell and quarterly thereafter the treatment zone will be tested again to assure that no contamination is occurring.

(11) Applicant presented factual evidence that supports the following conclusions:

- (a) There is no fresh water under the disposal site because there is no Ogallala aquifer present.
- (b) The berm to be constructed and maintained and operational

requirements will be adequate to prevent precipitation run-off and run-on for the treatment portion of the facility.

- (c) Quarterly testing within the treatment zone will determine if there has been downward migration of contaminants.
- (d) The process of bio-remediation to be employed at the proposed landfarm is a proven, cost effective technology for treatment of oil contaminated soils.

(12) There is a need for landfarms to remediate oil contaminated soils in the oil fields of Southeast New Mexico.

(13) Elsie M. Reeves and W. T. Stradley, property owners in the area, appeared in opposition to the application and expressed concern that the proposed facility could contaminate fresh water. They called a hydrologist who testified that additional requirements might be necessary to assure there was no contamination of fresh water supplies but admitted that such requirements would need to be developed based on inspection of the facility and sampling and testing of the water and soil in the area. He stated he had not been to the site and had taken no samples nor conducted any tests at the proposed facility. His expert opinion was based upon general hydrologic information from the literature and not upon specific knowledge at the site and the type of operation and therefore was not useful in this case.

(14) The Division's Environmental Bureau has reviewed the proposed facility, inspected the site and made specific permit recommendations for this facility which it requests be incorporated into and made part of a Commission Order approving this application. These "Conditions of Approval" should be adopted to assure safe operations and to provide for a monitoring system to detect any leaching or movement of contaminants that could cause the pollution of nearby underground fresh water supplies.

(15) If contaminant migration occurs, the Division should immediately order the operator to stop taking additional contaminated soils and implement steps to remediate the contaminated zone and provide a procedure to prevent future contamination migration.

(16) Approval of this application and operation of the proposed landfarm in accordance with the Environmental Bureau's proposed "Conditions of Approval" will not impair fresh water supplies in the area, will have no adverse effect on human health nor on the environment, will not cause waste and should be approved.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, C & C Landfarm, Inc. is hereby authorized to construct and operate a commercial "landfarm" facility for the remediation of non-hazardous hydrocarbon contaminated soils utilizing an enhanced biodegradation process on a site located in the SW/4 NE/4 (Unit G) of Section 2, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico.

PROVIDED HOWEVER THAT: the proposed facility shall be constructed and operated in accordance with the permit conditions attached hereto as Exhibit "A" which are incorporated herein and made a part of this order, and in accordance with such additional conditions and requirements as may be directed by the Division Director, and shall be operated and maintained in such a manner as to preclude spills, fires, limit emissions and protect persons, livestock and the environment.

PROVIDED FURTHER THAT, prior to initiating operations, the facility shall be inspected by a representative of the Hobbs District Office of the Oil Conservation Division in order to determine the adequacy of fences, gates and cattle guards necessary to preclude livestock and unauthorized persons from entering and/or utilizing said facility, and also to determine the adequacy of berms to assure safe facility operations.

(2) Prior to commencing operations on said facility, the applicant shall submit, to the Santa Fe Office of the Division, a surety or cash bond pursuant to General Rule 711, in the amount of \$25,000 in a form approved by the Division.

(3) The Director of the Division shall be authorized to administratively grant approval for the expansion or modification of the proposed disposal facility after notice to interested parties.

(4) Authority for operation of the landfarm shall be transferrable only upon written application and approval by the Division Director.

(5) Authority for operation of the landfarm facility shall be suspended or rescinded whenever such suspension or rescission appears necessary to protect human health or property, to protect fresh water supplies from contamination, to prevent waste, or for non-compliance with the terms and conditions of this order or Division Rules and Regulations.

(6) The permit granted by this order shall become effective only upon acceptance by the applicant of the "Conditions of Approval" attached hereto as Exhibit A.

(7) The Division shall have the authority to administratively change any condition

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of this permit to protect fresh water, human health and the environment. Applicant may request a hearing upon any change which materially affects the operation of the facility.

(8) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Bill Weiss

WILLIAM W. WEISS, Member

William J. Lemay

WILLIAM J. LEMAY, Chairman

I Dissent

Gary Carlson

GARY CARLSON, Member

S E A L

dr/

Exhibit "A"
Case No. 10507 De Novo
Order No. R-9769-A

**C & C LANDFARM, INC. APPLICATION
OCD CONDITIONS OF APPROVAL**

LANDFARM OPERATIONS

1. Remediation of contaminated soils will occur only on the native ground surface. The caliche pit present on the facility will not be used for the disposal, storage or remediation of **any materials** without the case-by-case approval of the OCD.
2. No disposal or remediation of contaminated soils will occur within one hundred (100) feet of your property boundary.
3. Disposal will only occur when an attendant is on duty. The facility will be secured when attendant is not present.
4. The facility will be fenced and have a sign at the entrance. The sign will be legible from at least fifty (50) feet and contain the following information: 1) name of the facility, b) location by section, township and range, and c) emergency phone number.
5. An adequate berm will be constructed and maintained to prevent run-off and run-on for that portion of the facility containing contaminated soils.
6. All contaminated soils received at the facility will be spread and disked within 72 hours of receipt.
7. Soils will be spread on the surface in six inch lifts or less.
8. Soils will be disked a minimum of one time every two weeks (biweekly) to enhance biodegradation of contaminants.
9. Successive lifts of contaminated soils will not be spread until a laboratory measurement of Total Petroleum Hydrocarbons (TPH) in the previous lift is less than 100 parts per million (ppm), and the sum of all aromatic hydrocarbons (BTEX) is less than 50 ppm, and the benzene is less than 10 ppm. Comprehensive records of the laboratory analyses and the sampling locations will be maintained at the facility. Authorization from the OCD will be obtained prior to application of successive lifts.
10. Only oilfield wastes which are exempt from RCRA Subtitle C regulations or non-hazardous by characteristic testing will be accepted at the facility. Solids from operations not currently exempt under RCRA Subtitle C or mixed exempt/non-exempt solids will be tested for appropriate hazardous constituents. Test results must

be submitted to the OCD along with a request to receive the non-exempt solids, and a written OCD approval (case specific) must be obtained prior to disposal. Any non-oilfield wastes which are RCRA Subtitle C exempt or are non-hazardous by characteristic testing will only be accepted on a case-by-case basis and with prior OCD approval. Comprehensive records of all laboratory analyses and sample locations will be maintained by the operator.

11. Moisture will be added as necessary to enhance bio-remediation and to control blowing dust. There will be no ponding, pooling or run-off of water allowed. Any ponding of precipitation will be removed within seventy-two (72) hours of discovery.
12. Enhanced bio-remediation through the application of microbes (bugs) and/or fertilizers will only be permitted after prior approval from the OCD. Request for application of microbes must include the location of the area designated for the bio-remediation program, composition of additives, and the method, amount and frequency of application.
13. No free liquids or soils with free liquids will be accepted at the facility.
14. Comprehensive records of all material disposed of at the facility will be maintained at the facility. The records for each load will include: 1) the origin, 2) date received, 3) quantity, 4) exempt or non-exempt status and analysis for hazardous constituents if required, 5) transporter, and 6) exact cell location and any addition of microbes, moisture, fertilizers, etc.
15. The monitor wells will be inspected for the presence of fluids on a quarterly basis on the same schedule as the treatment zone monitoring. If fluids are discovered the OCD will be notified immediately.

TREATMENT ZONE MONITORING

1. One (1) background soil sample will be taken from the center portion of the landfarm two (2) feet below the native ground surface. The sample will be analyzed for total petroleum hydrocarbons (TPH), general chemistry, and heavy metals using approved EPA methods.
2. A treatment zone not to exceed three (3) feet beneath the landfarm will be monitored. A minimum of one random soil sample will be taken from each individual cell, with no cell being larger than five (5) acres, six (6) months after the first contaminated soils are received in the cell and then quarterly thereafter. The sample will be taken at two to three (2-3) feet below the native ground surface.
3. The soil samples will be analyzed using approved EPA methods for TPH and BTEX quarterly, and for general chemistry and heavy metals annually.
4. After obtaining the soil samples the boreholes will be filled with an impermeable

material such as bentonite cement.

REPORTING

1. Analytical results from the treatment zone monitoring will be submitted to the OCD Santa Fe Office within thirty (30) days of receipt from the laboratory.
2. The OCD will be notified of any break, spill, blow out, or fire or any other circumstance that could constitute a hazard or contamination in accordance with OCD Rule 116.

BOND

Pursuant to OCD Rule 711 a surety or cash bond in the amount of \$25,000, in a form approved by the Division, is required prior to commencing construction of the commercial surface disposal facility.

CLOSURE

The operator will notify the Division of cessation of operations. Upon cessation of disposal operations for six (6) consecutive months, the operator will complete cleanup of constructed facilities and restoration of the facility site within the following six (6) months, unless an extension for time is granted by the Director. When the facility is to be closed no new material will be accepted. Existing soils will be remediated until they meet the OCD standards in effect at the time of closure. The area will then be reseeded with natural grasses and allowed to return to its natural state. Closure will be pursuant to all OCD requirements in effect at the time of closure, and any other applicable state and/or federal regulations.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 10507 (DENOVO)
ORDER NO. R-9769-B

APPLICATION OF C & C LANDFARM, INC.
FOR A COMMERCIAL SURFACE WASTE
DISPOSAL FACILITY, LEA COUNTY, NEW MEXICO.

ELSIE REEVES AND W. TRENT STRADLEY'S
PROPOSED
ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 AM on Thursday, February 25, 1993, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter the "Commission."

NOW, on this 20th day of May, 1993, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) The New Mexico Oil and Gas Act, Section 70-2-12.B(21) and (22), NMSA (1978) authorizes the New Mexico Oil Conservation Division ("Division") to regulate the disposition of non-domestic wastes resulting from various oil and gas activities and operations and to protect public health and the

environment.

(3) Pursuant to that authority the Division has adopted regulations governing the operation of commercial surface waste disposal facilities (Rule 711 of the Rules and Regulations of the Oil Conservation Division, hereinafter "OCD Rules").

(4) On October 8, 1991, the Applicant, C & C Landfarm, Inc. ("C&C"), filed its Application with the Division seeking authority to construct and operate a commercial "landfarm" facility ONLY for the remediation of soils contaminated with hydrocarbon substances which are exempt from the Federal Resource Conservation and Recovery Act (RCRA), (42 USA 6921-6939b), Subtitle C regulations (40 CFR Parts 260-272) on a 40-acre site, owned by Jimmie T. Cooper and located in the SW/4NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico, which is approximately two miles southeast of Monument, New Mexico.

(5) In its original Application, C&C applied for approval to excavate the native soil within the facility down to the Triassic formation ("redbeds") (about 10-16 feet) and then to fill the excavated pit with hydrocarbon contaminated soils.

(6) C&C asserted it had drilled five "monitor" wells within the 40-acre site and did not encounter groundwater under the facility.

(7) The Oil Conservation Division's Environmental Bureau ("OCD-EB") commenced processing the C&C application pursuant to Division Rule 711 which provides among other things that "If there is objection by owners or occupants of adjacent lands, the Director of the Division may set any application for a surface waste disposal permit for public hearing."

(8) On November 27, 1991 public notice concerning the subject Application was published in The Lovington Daily Leader, a newspaper of general circulation in Lea County, New Mexico.

(9) Within the 30-day public notice provision set forth in OCD Rule 711(B), written objections were filed with the Division by Elsie M. Reeves and W. T. "Trent" Stradley of S-W Cattle Company, each of whom is an adjoining land owner and unless otherwise stated are referred herein collectively as "Opponents."

(10) Despite receiving timely objections from the Opponents, the OCD did not set the C&C Application for hearing, but rather continued with its administrative processing.

(11) On February 21, 1992, the OCD-EB wrote to C&C expressing, among other things, concern for the "possibility of contaminants migrating off of your property along the surface of the redbed" and requested a detailed description of how C&C planned to prevent the migration of contaminants down gradient along the redbed surface.

(12) On March 2, 1992, C&C submitted to OCD-EB a schematic for the excavated pit now showing a proposal to install a "redbed dike" on the south, west and north edges of the facility with the south edge of the dike touching the north edge of the Stradley property.

(13) On April 3, 1992, OCD-EB notified the Opponents that, "The application at this time is administratively approvable since it meets all of the technical requirements to protect ground water, human health and the environment." and informs the Opponents that they had 30-days to submit comments which responded with "substantive technical information."

(14) The Opponents renewed their protest and filed objections which raised the following issues:

(a) That the OCD-EB "Conditions of Approval" contained substantial errors and failed to protect ground water, human health and the environment;

(b) That C&C's proposed facility would place at risk shallow water wells located down-dip from the facility which will be subject to contamination from seepage of leachate contaminants;

(c) That there was inadequate notice of the C&C Application and of the various amendments to that Application and that the Application, as amended, should be dismissed;

(d) That the administrative processing by the OCD-EB had violated procedural due process and did not comply with the rules of the OCD;

(e) That the Application requested approval of a 40-acre tract but proposed to use only 2 acres;

(f) That the OCD-EB proposed to grant C&C significantly greater disposal authority than the C&C had requested;

(g) That C&C's plan to prevent migration of contaminants down gradient along the redbed surface was inadequate;

(h) That there was no scientific data submitted by the Applicant to support its Application; and

(i) That the design of the facility was grossly inadequate.

(15) On May 20, 1992, the OCD-EB notified the Opponents that the OCD-EB, without a hearing, would grant the C&C application subject to the "Conditions of Approval" dated May 20, 1992.

(16) Prior to June 9, 1992, the Opponents again requested a public hearing.

(17) Finally the OCD set a hearing not for C&C to present its case but rather for the limited purpose of hearing the Opponents' technical evidence in opposition to the OCD-EB conditional approval of May 20, 1992.

(18) The limited Hearing was held before OCD Examiner Michael Stogner on September 1, 1992.

(19) On November 16, 1992, the OCD issued Order R-9769 approving the disposal of contaminated soils and solids into the excavated pit subject to the May 20, 1992 conditions proposed by the OCD-EB.

(20) The Opponents timely filed for a DeNovo hearing of Case 10507 before the Commission.

(21) On January 6, 1993, the OCD-EB issued newly proposed "Revised Recommendations" which provided for the disposal of the contaminated soils within the facility but precluded disposal into the excavated pits.

(22) At the Commission Hearing, C&C presented the following in support of its Application:

(a) That out of the 200 acres controlled by Jimmie Cooper, C&C proposed to use a 40-acre tract the southern boundary of which is immediately adjacent to a tract controlled by Trent Stradley;

(b) That C&C had not examined any other site in this area or any other portion of the Cooper tract as a possible site;

(c) That it had drilled five "monitor" wells within the 40-acre site and did not encounter groundwater under the facility;

(d) That it proposed to limit the material taken into the facility to oil field contaminated soils; and

(e) That it would adopt and abide by all of the OCD-EB Revised Recommendations dated January 6, 1993.

(23) At the Commission Hearing, the Opponents presented the following in opposition to the Application:

(a) That C&C failed to present a qualified expert hydrologist and did not undertake an adequate scientific study to justify its Application;

(b) That Stradley's fresh water windmill well some 1,700 feet to the southwest of the facility is at risk of contamination if the project was approved as outlined by the OCD-EB;

(c) The location of the facility within this proposed 40-acres within the Cooper tract is arbitrary;

(d) C&C failed to provide any reasonable reasons for selecting this site over available sites within the Cooper property which would be farther away from Stradley and Reeves;

(e) The need for this facility at this site was not established;

(f) The design of the facility is flawed and will not provide adequate protection for ground water, public health or the environment;

(g) The 100 foot buffer recommended by the OCD-EB is arbitrary and inadequate;

(h) The proposed monitoring of the treatment zone has no scientific basis for determining its reliability;

(i) There is no data from which to determine that the location of the cells in which the contaminated soils will be placed have been located an adequate distance from either the excavated pits or from the boundary of the adjoining Stradley property;

(j) The OCD-EB recommendations, while well intended, are inadequate to provide reasonable protection of the valuable groundwater present in the immediately adjacent tract;

(k) The facility is an environmental accident waiting to happen;

(l) The \$25,000 Bond recommended by the OCD-EB is grossly inadequate;

(m) The Applicant failed to undertake any scientific study and allowed the OCD-EB to attempt to design the facility for the Applicant based upon the OCD-EB's best guess; and

(n) The January 6, 1993 OCD-EB Revised Recommendations are inadequate to detect any leaching process or movement of contaminants that could cause the pollution of nearby underground fresh water supplies.

(24) At the Commission Hearing, the OCD-EB presented the following in support of its January 6, 1993 Revised Recommendations:

(a) Although the OCD-EB originally approved the C&C request to place contaminated soils into the excavated pits, the OCD-EB now (January 6, 1993) recommends against such a request;

(b) C&C originally sought to put the facility and contaminated soils right up to the property line common with Trent Stradley. The OCD-EB May 20, 1992 conditions approved the facility without a set back or "buffer zone." The OCD Order approved the application also without a buffer zone. Now, the OCD-EB proposes a 100 foot setback from the property line as a "buffer zone."

(c) The OCD-EB admitted that the 100 foot buffer was an arbitrary distance without any scientific basis;

(d) The integrity of the proposed landfarm is dependent upon the impermeability of the redbeds and the apparent absence of shallow groundwater at five locations under the facility;

(e) The OCD-EB proposes that the first three feet of native soils will be an adequate "treatment zone" and proper monitoring will protect ground water;

(f) The OCD-EB January 6, 1993 Recommendations are predicated upon the assumption that the contaminated soils will be kept from any shallow ground water by monitoring for potential contaminant in a "treatment zone" consisting of the first three feet of native soil upon which the contaminated soils have been placed; and

(g) The OCD-EB proposes that a single soil sample can be taken at the center of the facility and provide a background soil sample.

(25) It is of significance to the Commission, which must rely upon expert witnesses, to judge the creditability and expertise of each such witness.

(26) In this case, the Opponents presented a well-recognized geohydrologist with both bachelor and master degrees in hydrology who had specific knowledge of the immediate subject area and who has testified before this Commission on a number of prior occasions.

(27) C&C relied upon a petroleum geologist without expertise in hydrology who had not undertaken any hydrology studies and who was unable to express any expert opinions concerning this matter.

(28) The OCD-EB relied upon the testimony of a petroleum geologist, who had in fact designed the facility for C&C, but who had no hydrology degrees and no experience with the actual operation of this type of facility.

(29) Based upon the foregoing and upon the entire record in this case, the Commission finds that:

(a) The redbeds are the first layer which will divert shallow ground water but they have not been mapped in this area and their characteristics are unpredictable;

(b) the Applicant presented no data about the physical characteristics of the redbeds such as cation exchange rates, in-situ permeability, remolded permeability at specified compaction ratios, swelling characteristics, etc., all of which would be critical factors to ensure that there is no migration of leachate along the top of or through the redbeds;

(c) Although the OCD-EB on February 21, 1992 expressed its concern about the potential migration of contaminants down gradient along the redbed surface, there is no evidence of any hydrologic studies of the area to determine the direction of migration of contaminants;

(d) There was no scientific data presented to support the OCD-EB conclusion that the disposal of contaminated soils on top of undisturbed native soil constitutes an adequate vertical buffer between the contaminants and the potential source of ground water recharge to the Stradley windmill water well;

(e) Although a monitoring procedure of the treatment zone is proposed, there is no assurance that such a monitoring procedure will timely detect potential contaminants and the facility should be substantially removed from any potential ground water both horizontally and vertically so as not to pose a risk;

(f) The OCD-EB proposed monitoring system for the "treatment zone" is inadequate and not based upon either experience with similar sites nor upon published scientific literature;

(g) An adequate horizontal "buffer zone" is essential but there is no evidence, scientific data, experience or anything else presented to determine what that distance should be;

(h) C&C's proposed facility is the 40-acre tract at the SE corner of a 200 acre tract owned by Jimmie Cooper. The NE/4 40-acre tract appears to be sufficiently removed from the Stradley tract so as not to pose a risk to his groundwater but no effort was made by C&C to investigate the feasibility of any alternative sites;

(i) While C&C expressed a "need" for this facility there was no economic justification for this facility presented;

(j) There was no evidence presented as to the risk to public health and the environment when contaminated soils are concentrated at this facility rather than leaving those contaminants at the well sites;

(k) The OCD-EB January 6, 1993 Recommendations propose that one soil sample of the treatment zone be taken quarterly for not more one sample for a 50-acre tract.

(l) The Applicant did not present any soil samples or analysis for the facility;

(m) There have been no studies to determine if a single soil sample will be representative of the soil conditions and characteristics over the entire 40-acre tract;

(n) There was no evidence introduced from which to determine how frequently to sample and how many samples per how many acres should be taken;

(o) A single soil sample monitoring procedure is inadequate;

(p) The OCD-EB proposed sampling assumes the ability to detect contaminants percolating into the native soil treatment zone but is not based upon anything more than speculation;

(q) There are no published scientific reports or OCD-EB experience about any similar facilities from which to determine the potential success or failure of the proposed treatment zone monitoring;

(r) That while the C&C application sought approval ONLY for disposal of oil field contaminated soils, the OCD-EB proposed to allow the disposal of oil field solids and other contaminants;

(s) That the OCD-EB Revised Recommendations provide a method for future modification of the C&C facility which fails to provide adequate public notice and will violate procedural due process; and

(t) That the OCD-EB Rules and Regulations fail to provide adequate protection for ground water, public health or the environment.

(30) The Commission finds that the Application should be DENIED.

IT IS THEREFORE ORDERED THAT:

(1) This application is hereby DENIED.

(2) Order No. R-9769, entered in this matter on November 16, 1992, and Order R-9769-A entered in this matter on April 29, 1993 are hereby rescinded and are of no effect.

NMOCD Case No. 10507 (DeNovo)
ORDER NO. R-9769-B
Page 12

(3) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

GARY CARLSON
Member

WILLIAM W. WEISS
Member

WILLIAM J. LeMAY
Chairman

Geohydrology Associates, Inc.

May 17, 1993

W. Thomas Kellahin, Esq.
P. O. Box 2265
Santa Fe, New Mexico 87501

RE: C & C LANDFARM

Dear Tom:

By FAX I am sending copies of a portion of a map prepared by Nicholson and Clebsch, which clearly shows that the C & C Landfarm facility is located well within the outcrop area of the Ogallala formation. Also listed below are four other references, all of which have mapped the site within the outcrop area of the Ogallala.

Conover, C. S. and Akin, P. D., 1942, Progress report on the ground water supply of northern Lea County, New Mexico: New Mexico State Engineer Biennial Report.

Bretz, J. H., 1949, The Ogallala formation west of the Llano Estacado: Journal of Geology.

Judson, S. S., Jr., 1950, Depressions of the northern portion of the southern High Plains of eastern New Mexico: Geological Society of America Bulletin.

Dane, C. H. and Bachman, G. O., 1965, Geologic map of New Mexico: U. S. Geological Survey and New Mexico Bureau of Mines.

Hopefully this information will be of use to you.

Sincerely,

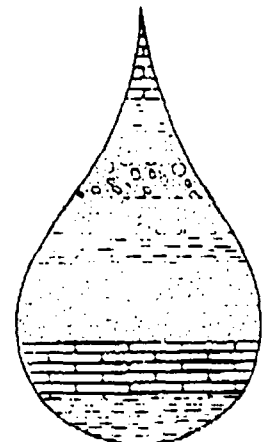
GEOHYDROLOGY ASSOCIATES, INC.

T. E. Kelly
T. E. Kelly
President

attachment

TEK/kc

EXHIBIT C TO APPLICATION
FOR REHEARING



GEOHYDROLOGY ASSOC., INC.

GROUND-WATER REPORT 6

Geology and Ground-Water
Conditions in Southern
Lea County, New Mexico

by *ALEXANDER NICHOLSON, Jr.*
and *ALFRED CLEBSCH, JR.*

UNITED STATES GEOLOGICAL SURVEY

Prepared in cooperation with the
New Mexico Institute of Mining and Technology,
State Bureau of Mines and Mineral Resources Division
and the New Mexico State Engineer

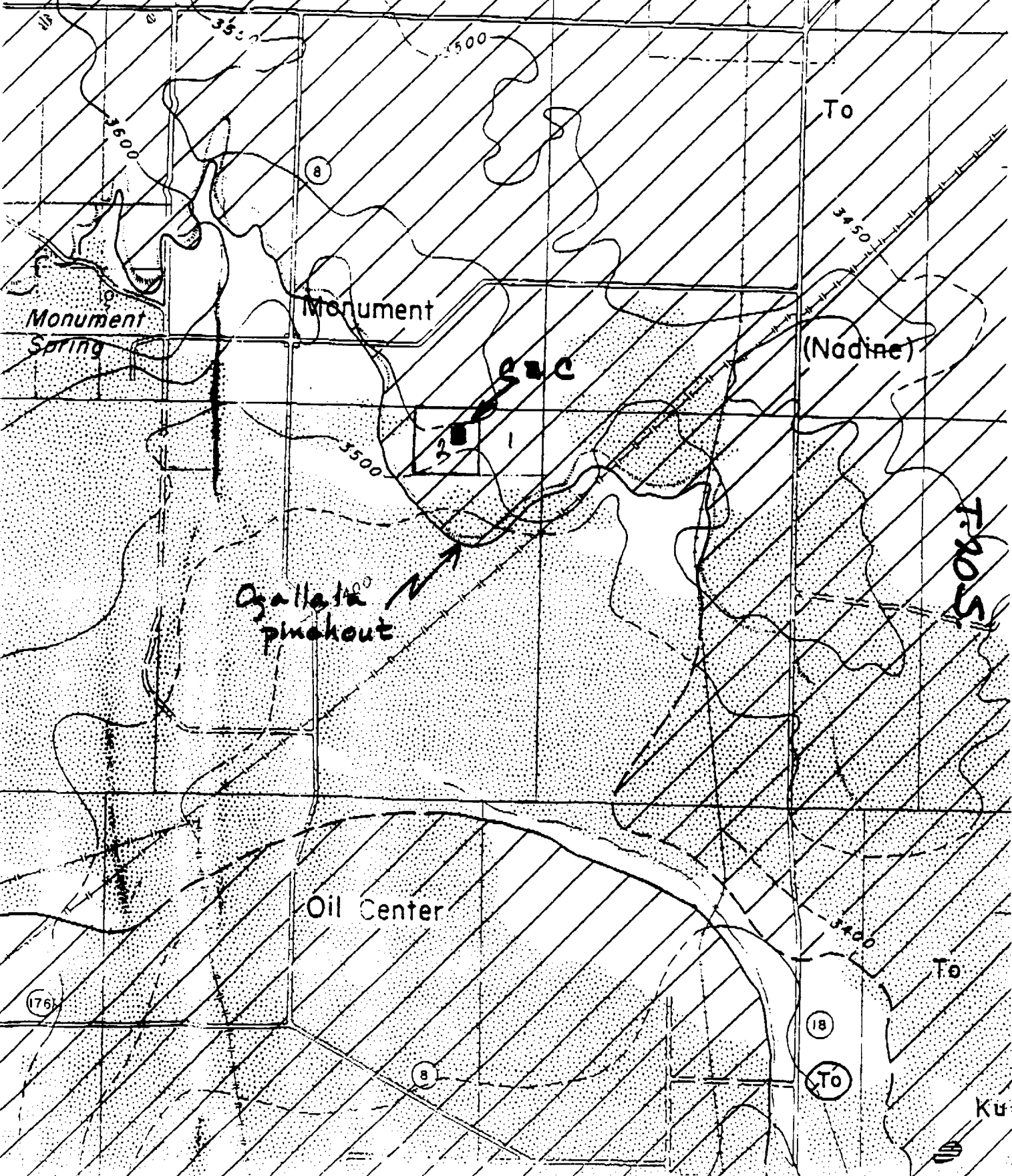
1961

STATE BUREAU OF MINES AND MINERAL RESOURCES
NEW MEXICO INSTITUTE OF MINING & TECHNOLOGY
CAMPUS STATION SOCORRO, NEW MEXICO

R. 37E.

PLAINS

HOBBS



NEW MEXICO OIL CONSERVATION COMMISSION
STATE LAND OFFICE BUILDING
STATE OF NEW MEXICO
CASE NO. 10507

IN THE MATTER OF:

The Application of C & C Landfarm,
Inc., for a Commercial Surface Waste
Disposal Facility, Lea County,
New Mexico.

BEFORE:

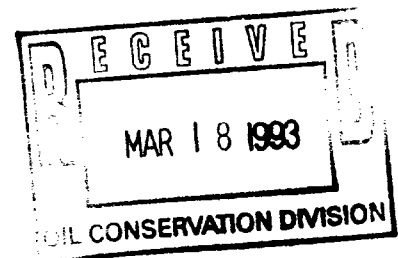
CHAIRMAN WILLIAM LEMAY
COMMISSIONER BILL WEISS
COMMISSIONER GARY CARLSON
FLORENE DAVIDSON, Staff Specialist

Mabry Hall

February 25, 1993

REPORTED BY:

CARLA DIANE RODRIGUEZ
Certified Court Reporter
for the State of New Mexico



A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

ROBERT G. STOVALL, ESQ.

General Counsel
State Land Office Building
Santa Fe, New Mexico 87504

FOR THE APPLICANT:

CAMPBELL, CARR, BERGE & SHERIDAN, P.A.

Post Office Box 2208
Santa Fe, New Mexico 87504-2208

BY: WILLIAM F. CARR, ESQ.

FOR MS. ELSIE REEVES and S-W CATTLE COMPANY:

KELLAHIN & KELLAHIN

Post Office Box 2265
Santa Fe, New Mexico 87504-2265

BY: W. THOMAS KELLAHIN, ESQ.

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1 CHAIRMAN LEMAY: We shall continue by
2 calling Case No. 10507.

3 MR. STOVALL: Which is the application
4 of C & C Landfarm, Inc., for a commercial surface
5 waste disposal facility, Lea County, New Mexico.
6 The case is heard de novo based upon the
7 application of Elsie Reeves, S-W Cattle Company
8 and W. T. "Trent" Stradley.

9 CHAIRMAN LEMAY: Appearances in case
10 10507?

11 MR. CARR: May it please the
12 Commission, my name is William F. Carr with the
13 Santa Fe law firm Campbell, Carr, Berge &
14 Sheridan. I represent C & C Landfarm, Inc., and
15 I have one witness.

16 CHAIRMAN LEMAY: Additional
17 appearances. Mr. Kellahin?

18 MR. KELLAHIN: Mr. Chairman, I'm Tom
19 Kellahin, of the Santa Fe law firm of Kellahin
20 and Kellahin. I'm appearing today on behalf of
21 Ms. Elsie Reeves. Ms. Reeves is here in the
22 audience with me. And Mr. Trent Stradley is
23 sitting behind her in the audience. He is
24 president of S-W Cattle Company. I intend to
25 call them both as witnesses.

1 In addition, my hydrologist is Mr. Tim
2 Kelly from Albuquerque, and he is my third
3 witness.

4 MR. STOVALL: Robert G. Stovall on
5 behalf of the Division. The Division is not a
6 party to this case, but this has involved some
7 administrative processing by the Environmental
8 Bureau of the Division, and there may be a strong
9 likelihood--there will be a member of that Bureau
10 testify to explain what has happened at the
11 Division and where the Division Bureau stands
12 with respect to this application.

13 Again, we don't take a position, but
14 with respect to keeping the Commission informed,
15 I think it's almost essential that that occur and
16 that that witness be put on.

17 MR. KELLAHIN: Mr. Chairman, I think
18 this is a unique case. Mr. Carr, Mr. Stovall and
19 I, I think, have been plowing new ground with
20 this case and we continue to perhaps make it up
21 as we go.

22 I think it would be appropriate to have
23 opening comments in an effort to put in context
24 what each of us thinks are the issues for concern
25 to the Commission at this point.

1 CHAIRMAN LEMAY: Okay. Let's swear in
2 the witnesses, and then we'll go to opening
3 comments. Those that will give testimony, please
4 stand.

5 [And the witnesses were duly sworn.]

6 CHAIRMAN LEMAY: Let's begin with
7 opening comments, then. Mr. Carr.

8 MR. CARR: May it please the
9 Commission, in October 1991, C & C Landfarm,
10 Inc., filed an application with the Oil
11 Conservation Division seeking approval to run and
12 operate a commercial landfarm in Lea County, New
13 Mexico.

14 Meetings were held with the
15 Environmental Division Bureau of the Oil
16 Conservation Division, and on May 20, 1992, the
17 Environmental Bureau advised that the application
18 had been determined to be approvable if certain
19 conditions were met, and those conditions were
20 set forth.

21 C & C agreed to meet these conditions,
22 and a case was advertised before an examiner of
23 the Oil Conservation Division, and the
24 advertisement noted that unless there were
25 objections, the application would be approved.

1 Following that, the people that Mr.
2 Kellahin represents here today filed written
3 objections, the matter was set for hearing, and
4 following an examiner hearing an order was
5 entered approving the application and imposing a
6 set of conditions on the operation of this
7 facility.

8 Following that and on January 6th,
9 another letter was delivered from the
10 Environmental Bureau, and still new and
11 additional conditions concerning how this
12 facility was to be installed and operated were at
13 least recommended by the Division. And those
14 conditions are also, I might add, acceptable to
15 C & C.

16 We're here today because of the
17 objections that have been filed, and although the
18 Environmental Bureau has determined that this
19 application is approvable, the question is for
20 you to decide whether or not this application is,
21 in fact, to be approved.

22 We will call Michael Pierce. He's a
23 consulting geologist from Hobbs. Mr. Pierce is
24 going to review for you what they're proposing,
25 how the project will operate, and he will show

1 you that what we are proposing will not
2 contaminate fresh water, is environmentally
3 sound, and will not pose a threat to human
4 health.

5 And after 18 months of working with
6 this matter, we believe we are finally in a
7 position where we can come to you and seek your
8 final approval.

9 CHAIRMAN LEMAY: Thank you, Mr. Carr.
10 Mr. Kellahin.

11 MR. KELLAHIN: Mr. Chairman, I have a
12 plat that illustrates the area that I would like
13 to put up. There's not an easel in the room, but
14 perhaps I can position it here so that the only
15 person that can't see it will be Mr. Stovall.

16 MR. STOVALL: I think I've seen it
17 before, Mr. Kellahin.

18 MR. KELLAHIN: I believe you have, Mr.
19 Stovall.

20 MR. KELLAHIN: Gentlemen, my clients'
21 position is that adjoining ranchers and owners
22 will be materially affected by the approval of
23 what C & C Landfarm proposes to do. We'll give
24 you some more illustrations, some more maps, but
25 just to orient you, let me explain to you what

1 C & C originally applied for back in October of
2 1991.

3 We filed, with the Oil Conservation
4 Division's Environmental Bureau, a request for
5 surface commercial disposal facilities within a
6 40-acre tract located here and outlined in red on
7 the exhibit, which will be Exhibit No. 2. It's
8 Section 3. Within that 40-acre tract, then, that
9 was the facility or the siting of the landfarm
10 facility.

11 Outlined in blue is some 200 acres, of
12 which 40 acres has been carved out. This is land
13 under the control of Mr. Cooper. Mr. Cooper has
14 arranged with C & C Landfarm to use the 40-acre
15 tract as the landfarm.

16 You can see identified on the display a
17 yellow outlined tract, and that is the farm or
18 ranch that Elsie Reeves and her family controls,
19 that is west and southwest of the facility.

20 Mr. Trent Stradley, as S-W Cattle
21 Company, controls the acreage to the south and to
22 the east of the site, and it is outlined
23 generally by the green border.

24 The major sources of fresh water are
25 very shallow aquifers lying above the redbed.

1 There is a windmill down here, identified in the
2 southwest quarter of 3, by the blue dot that is
3 Mr. Stradley's windmill. That has been there for
4 decades. It produces continually from shallow
5 groundwater. From the surface to the depth of
6 the water is about 20 feet, give or take a couple
7 of feet. That is a principal point of withdrawal
8 of the shallow water.

9 You can see from the topo map and, as
10 Mr. Kelly will describe to you and Mr. Stradley
11 will document, that this is in the area called
12 White Breaks. Topographically, it's simply a
13 slump or a sink in this area, and is a natural
14 collection point for shallow fresh water.

15 In addition, Mr. Stradley has two other
16 points down here on the display, shown on the
17 south side of the display by two blue dots.
18 Those are submersible pump wells, where he also
19 produces and extracts fresh water at shallow
20 depths. Those three withdrawal points are the
21 only points within six to eight sections where
22 Mr. Stradley waters his cattle. There's no other
23 water available to him other than those control
24 points.

25 The application, as originally filed,

1 sought to place contaminated soils, soils that
2 were contaminated with hydrocarbon, taking them
3 from sites where wells were located, taking that
4 material and concentrating it at the facility.
5 The Applicant originally sought to put that
6 contaminated soil in an excavated pit.

7 The pit originally started in the
8 southeast corner of the 40-acre tract. Caliche
9 was removed from that area and was used in other
10 oil field sites, on roads and whatever, off the
11 property.

12 The plan was to take the contaminated
13 soils and put them back in the pit. That was the
14 original plan. C & C submitted that to the
15 Environmental Bureau.

16 The Environmental Bureau, through a
17 course of exchanges of correspondence, asked the
18 Applicant to provide documentation, a design for
19 that facility, and to further document what they
20 sought to do.

21 Based upon that review, then, the
22 Environmental Bureau, in May of 92, issued some
23 conditions. The conditions would approve putting
24 the contaminated soils into the excavated pit.
25 The protective device to be utilized to protect

1 the shallow groundwater was something called a
2 redbed dike. The plan was to excavate along the
3 edge of the pit and construct a deep, narrow dike
4 to protect or constitute a barrier so that
5 contaminants or leachates would move off the
6 property. That was the condition of approval, in
7 substance, of the May conditions.

8 My clients objected, sought to preclude
9 the administrative approval of this landfarm
10 concept with those conditions, and sought a
11 hearing. That hearing was held before Examiner
12 Stogner in September of 92.

13 At that hearing, we presented testimony
14 from Ms. Reeves, Mr. Stradley, and Mr. Kelly,
15 describing and identifying for the Examiner the
16 issues we had of concern for the contamination of
17 the groundwater.

18 After that hearing, Mr. Stogner entered
19 an order denying our objections and approving the
20 facility, attaching to it substantially the same
21 conditions as were set forth in the May 20, 1992
22 letter of conditions from the Environmental
23 Bureau.

24 We then timely filed for a de novo
25 hearing. Pending a hearing before the

1 Commission, the Environmental Bureau now issues
2 substantially revised recommendations, on January
3 6, 1993. What the Bureau did is they now
4 preclude the Applicant from putting contaminated
5 soils in the excavated pit. They say, "That
6 poses a risk and you can't do it," and so now the
7 Applicant can only utilize native soil within the
8 40-acre tract, and put it on top of undisturbed
9 soil.

10 Mr. Kelly finds fault with the
11 amendment, he finds fault with the original
12 concept, and we're here to object to the approval
13 of this facility at this site.

14 Procedurally, we're in no man's land, I
15 contend. We're here on the rehearing or the de
16 novo hearing of the examiner order and yet, as we
17 go through that process, we are now subject to
18 additional conditions from the Environmental
19 Bureau that have substantially altered the
20 facility as approved by Examiner Stogner. It
21 would be my position that it is premature to be
22 before the Commission today, and what should
23 happen in this case ought to be reopened and the
24 recommendations taken by the Environmental Bureau
25 be taken back to the Examiner, so he can

1 reexamine whether or not that ought to be
2 changed.

3 We are here today to oppose the
4 facility either under the original concept or
5 under the current proposed amendments of January
6 6, 1993.

7 CHAIRMAN LEMAY: Let me interrupt you
8 for just a point here. Mr. Carr and Mr. Stovall,
9 have you discussed procedurally what Mr. Kellahin
10 is talking about, whether that would be the
11 procedure for this type of an application, or do
12 you agree or disagree?

13 MR. STOVALL: I'll allow Mr. Carr to
14 respond first and then I'll be glad to explain.

15 CHAIRMAN LEMAY: I didn't mean to
16 interrupt you at that point, Counselor, but I
17 thought while we were on that point, I would like
18 to clarify that.

19 MR. KELLAHIN: I think it's worth
20 clarifying at this point. The processing of the
21 case was originally administrative. The Division
22 is currently undertaking to develop guidelines
23 for landfarms. They haven't been issued, as best
24 I know. What we have is an experiment, if you
25 will, with this application, in determining what

1 criteria, standards and guidelines are applied to
2 it.

3 As we go through the process, the
4 conventional case would have taken this to an
5 Examiner because of objections. The Examiner
6 enters an order, and we come before you if we're
7 dissatisfied. But that process has now been
8 interrupted by a significant change in what's
9 happened, and I don't know why you ought to be
10 hearing it.

11 CHAIRMAN LEMAY: Let's look at that
12 issue by itself. Mr. Carr.

13 MR. CARR: As I indicated in my opening
14 statement, this application was originally filed
15 in October 1991. Since that time, the procedures
16 have been evolving at the Division level as to
17 how to handle a project of this nature.

18 To come in and say now because 18
19 months later there has been some change in
20 recommendations from the agency, which you're
21 here to consider, means that we have to go start
22 the process all over again, I think is absurd.

23 This isn't the unique case Mr. Kellahin
24 wants it to be perceived as. You have approved
25 two of these in less than 90 days, in the

1 interim, since this application was originally
2 approved under the guidelines developed by your
3 Environmental Bureau.

4 We have a situation here where there
5 are two ways to keep us from going forward; beat
6 us on the merits, which they've been unsuccessful
7 in doing, or defeat us with a war of attrition,
8 and if after 18 months because there is an
9 evolving set of rules and regulations we're told
10 to go start all over again, it means we'll be
11 back before you 18 months from now, and you're
12 going to deny the Bureau its flexibility in
13 continuing to evolve effective regulations for
14 needed projects just like this one.

15 This isn't an argument being advanced
16 by Mr. Kellahin, because he's worried about the
17 new conditions. They were mailed out January the
18 6th. Certainly there's opportunity and has been
19 opportunity since that time for their expert to
20 review them. They're trying to delay a final
21 resolution of a question that they have been able
22 to keep before you for now 18 months. And we
23 think it's time to get this thing revolved. We
24 have been ready to go for 18 months.

25 If you would like to discuss when your

1 Bureau's witnesses are up, the kinds of changes,
2 and if you'll compare those changes to the very
3 objections raised by Mr. Kellahin at the Examiner
4 level, you will see in fact they were responding
5 to those objections. And if you now start the
6 process over and deny that flexibility to your
7 agency, you're really creating a situation where
8 when someone comes forward and tries to work with
9 your Environmental Bureau to develop a sound
10 project, we're really laying ourselves wide open
11 to absolutely endless delay.

12 CHAIRMAN LEMAY: Mr. Stovall, would you
13 respond.

14 MR. STOVALL: Mr. Chairman,
15 procedurally, I think they've pretty well
16 described what has happened. As you're aware,
17 applications for all disposal facilities have
18 normally been processed administratively by the
19 Division's Environmental Bureau, and the director
20 of the Division issues a permit authorizing
21 operations.

22 One of the things about those permits
23 and about the whole process is that it's
24 iterative. The application comes in, the Bureau
25 reviews it, they take pieces of it, they put it

1 together, and come up with a final package.

2 The original case, the first time we
3 had a case was a surface disposal facility for
4 produced water. That lasted, at the Examiner
5 level, five days.

6 Part of the reason for that was because
7 they stopped the iterative administrative
8 process; decided, the next time what we would do
9 is go through the administrative review, analyze
10 it, come to a hearing--analyze it, make a
11 preliminary determination whether or not an
12 application was approvable or not, and give the
13 party who didn't like the decision the
14 opportunity to request a hearing.

15 That's essentially what we've done in
16 this case, and indeed it is a bit experimental,
17 in that sense. What has happened in this case
18 that has caused the additional complication is
19 that the Environmental Bureau reviewed the order
20 and had some specific concerns about the Examiner
21 order which came out, and quite frankly welcomed
22 this opportunity to review and come back in.

23 Procedurally, and something we've
24 always got to insist is, regardless of whether
25 it's an administrative approval or an order

1 approval, the Division must retain authority to
2 modify any permit conditions based upon future
3 information that's acquired.

4 With respect to the January changes, I
5 think that was the nature of the process, legally
6 speaking, procedurally speaking, that the
7 Division said, "We really think that these
8 changes ought to be made to the process." At
9 that time it was made in the context of knowing
10 this case was going to come de novo and come
11 before you.

12 This is truly, and the Division views
13 this, as a de novo case. It is the obligation of
14 the Applicant to show that this facility can be
15 constructed and operated in a manner which is
16 environmentally sound and meets the requirements
17 of the Division, including the fresh water
18 protection, the human or public health and the
19 environment protections that are required. All
20 the requirements of the OCD rules must be
21 satisfied.

22 Procedurally, I would agree with Mr.
23 Carr that the only effect of trying to take it
24 back and go through an Examiner hearing again
25 would be to extend and draw out the process, and

1 indeed this one has been a wrong one.

2 As far as the establishment of
3 guidelines, it is actually hearing processes such
4 as this that really aid and assist in the
5 development of guidelines, and they are just
6 that. They are a set of conditions or
7 operational requirements which the Division
8 publishes and says, "If you meet these, you can
9 probably get approval."

10 But they're not rules, they're not hard
11 and fast. Out of this hearing it's very likely
12 that there may be some additional revisions to
13 the guidelines. Those will be changed. They're
14 intentionally not rules because somebody may come
15 up with a better idea, and we want the
16 opportunity to adopt that better idea.

17 I think, in fairness to everybody, I
18 think you should go ahead and hear this case. It
19 is de novo. It's a standing case. Make your
20 decision, issue your order. We'll have some
21 guidance to go forward and know how to operate in
22 the future, but you're doing this one from
23 scratch and need to get all of the right
24 information in.

25 That's one of the reasons, as I stated

1 earlier, that I intend to put on a Division
2 witness to explain the scientific basis for the
3 conditions, and the things the Division is
4 looking at are the January conditions that were
5 put out; again, put out in anticipation of this
6 hearing and knowing that they would be reviewed
7 at this hearing. And the Division is prepared to
8 explain those. So procedurally, I recommend that
9 the Commission go forward with this case.

10 CHAIRMAN LEMAY: Let's take a couple of
11 minutes here.

12 COMMISSIONER CARLSON: Do we have a
13 motion, Mr. Kellahin? Are you moving that we
14 dismiss this or send it back to the Examiner, or
15 what are we acting on?

16 MR. KELLAHIN: I so move, that the
17 application before you is premature because, as I
18 understand it, both the Division Environmental
19 Bureau and the Applicant have agreed to material
20 changes to modifications of the Examiner order,
21 as issued, and that's the order from which we've
22 taken our de novo appeal. So it's premature to
23 have the case before the Commission.

24 If you want it in the context of a
25 motion, I move that this Commission direct this

1 case to be reopened at the Examiner level to take
2 testimony concerning the changes.

3 MR. CARR: And I would ask you to refer
4 to my prior statement, obviously.

5 COMMISSIONER CARLSON: I have a
6 question of Mr. Stovall. Isn't there,
7 statutorily, isn't there a provision that this
8 Commission can take cases without having first
9 going through an Examiner if it is obvious to the
10 Chairman that it's likely to be appealed anyway?

11 MR. STOVALL: Yes, that's true,
12 Commissioner Carlson. It's not a procedural
13 requirement that it go back and be reheard. You
14 have every authority in the world to take this
15 case, and I recommend you do so as an original
16 case at this point.

17 CHAIRMAN LEMAY: Commissioner Weiss.

18 COMMISSIONER WEISS: Have there been
19 any new measurements since the original case?

20 MR. KELLAHIN: I'm sorry?

21 COMMISSIONER WEISS: Have there been
22 any new measurements? anything measured that's
23 different than it was back when you started?

24 MR. KELLAHIN: My understanding is,
25 there are no new scientific data available for

1 consideration.

2 COMMISSIONER WEISS: Thank you. Let's
3 take a couple minutes.

4 [Discussion off the record.]

5 CHAIRMAN LEMAY: We all agree
6 unanimously that we do want to hear this case, so
7 we shall carry forward with it today.

8 MR. KELLAHIN: That concludes, Mr.
9 Chairman, my opening remarks.

10 CHAIRMAN LEMAY: I didn't mean to
11 interrupt you at that point.

12 MR. KELLAHIN: No, I was finished.
13 Let's get on with it.

14 CHAIRMAN LEMAY: Okay. Thank you, Mr.
15 Kellahin.

16 MR. CARR: May it please the
17 Commission, at this time we'll call Michael L.
18 Pierce.

19 **MICHAEL L. PIERCE**

20 Having been first duly sworn upon his oath, was
21 examined and testified as follows:

22 EXAMINATION

23 BY MR. CARR:

24 Q. Will you state your name for the
25 record, please?

1 A. Michael L. Pierce.

2 Q. Where do you reside?

3 A. In Hobbs, New Mexico.

4 Q. By whom are you employed and in what
5 capacity?

6 A. By Peak Consulting Services, and I'm
7 owner of that company.

8 Q. Have you previously testified before
9 this Division or before the Oil Conservation
10 Commission?

11 A. I have.

12 Q. Have you previously testified before
13 the Commission?

14 A. No, I have not.

15 Q. Would you briefly summarize your
16 educational background and then review your work
17 experience.

18 A. I received a bachelor of science degree
19 in geology from the University of New Mexico in
20 1979. I spent a year working as a mine geologist
21 in Grants, in a uranium mine. I moved to Hobbs,
22 New Mexico, in 1981, provided as a petroleum
23 geologist. I worked there until 1986 and I have
24 been an independent consultant in Hobbs ever
25 since then.

1 Q. When were you employed by C & C
2 Landfarm, Inc., on this matter?

3 A. In approximately August of 1991.

4 Q. What were you asked to do?

5 A. To develop a plan for a commercial
6 landfarm facility.

7 Q. Were you also asked to help secure the
8 necessary regulatory approvals?

9 A. Yes, I was.

10 Q. Are you familiar with the application
11 that has been filed in this case on behalf of
12 C & C Landfarm, Inc.?

13 A. I am.

14 Q. Did you assist with the preparation of
15 the application itself?

16 A. I did, yes.

17 Q. Subsequent to the filing of the
18 application, have you been involved in meetings
19 with the Environmental Bureau staff of the Oil
20 Conservation Division?

21 A. Numerous meetings.

22 Q. Did you testify in support of this
23 application at the Examiner hearing?

24 A. Yes, I did.

25 MR. CARR: At this time we would tender

1 Mr. Pierce as an expert in petroleum geology.

2 MR. KELLAHIN: May I ask the witness
3 some questions, Mr. Chairman?

4 CHAIRMAN LEMAY: Sure.

5 EXAMINATION

6 BY MR. KELLAHIN:

7 Q. Mr. Pierce, your current experience and
8 the recent past experience has been in the field
9 of petroleum geology, has it not?

10 A. The majority of it, yes.

11 Q. Do you hold a degree in hydrology?

12 A. No, sir, I do not.

13 Q. Do you have any experience in modeling
14 or studying groundwater movement?

15 A. No, sir, I do not.

16 MR. KELLAHIN: Mr. Chairman, I don't
17 believe Mr. Carr has laid an appropriate
18 foundation to qualify this witness as an expert.

19 MR. CARR: May it please the
20 Commission, I tendered him as an expert in
21 geology. Mr. Kellahin maybe is trying to suggest
22 that he is more than that, but we're going to try
23 and stand on what his qualifications are, and I
24 would request that he be so qualified.

25 CHAIRMAN LEMAY: I think he's qualified

1 as a geologist, and we'll hear his testimony.
2 You can always object to an area you feel he's
3 not qualified in.

4 MR. KELLAHIN: Thank you, Mr.
5 Chairman.

6 FURTHER EXAMINATION

7 BY MR. CARR:

8 Q. Would you briefly state what C & C
9 Landfarm seeks with this application?

10 A. We seek to permit a landfarm, pursuant
11 to the Division Rule 7-11.

12 Q. Are you also one of the owners of C & C
13 Landfarm?

14 A. I am. I have an interest in C & C
15 Landfarm.

16 Q. Could you tell us, initially, what is a
17 landfarm?

18 A. It's a facility designed--and
19 specifically this facility is designed to
20 remediate oil-contaminated soil.

21 Q. Is what we're talking about here today
22 a new facility?

23 A. Yes, sir, it is.

24 Q. Are there any similar landfarms in this
25 area?

1 A. No, there are not.

2 Q. Could you tell the Commission where
3 this facility is actually located?

4 A. It's approximately two miles southeast
5 of Monument, New Mexico, in the southwest quarter
6 of the northeast quarter of Section 3, Township
7 20 South, Range 37 East, in Lea County.

8 Q. How much acreage are you actually
9 proposing to utilize as a landfarm?

10 A. We would like 40 acres permitted.

11 Q. Can you identify what has been marked
12 as C & C Landfarm Inc. Exhibit No. 1?

13 A. That's the original application we
14 filed in October of 1991.

15 Q. Following the filing of this
16 application, could you tell us what transpired?

17 A. Would you repeat that question?

18 Q. Following the filing of this
19 application, were there meetings with the Oil
20 Conservation staff?

21 A. Yes. We consulted with the
22 Environmental Division of the Oil Conservation
23 Division a number of times in order to develop a
24 plan to develop this facility.

25 Q. This is the plan that the Division

1 advised in May of 1992 as being approvable, is
2 that correct?

3 A. Yes, sir.

4 Q. Were you advised at that time that it
5 would also have to be advertised for hearing?

6 A. Yes, it was.

7 Q. And set for hearing?

8 A. Yes, sir, it was.

9 Q. And objections were filed, is that
10 correct?

11 A. Yes.

12 Q. Let's go to what has been included in
13 Exhibit No. 1 as an area map. It's the first map
14 in that exhibit. Would you identify that,
15 please?

16 A. That's a land map with a half-mile
17 radius around the proposed facility, and it's
18 showing offset operators in oil and gas wells,
19 and, in some cases, the offset surface owners.

20 Q. The shaded area in the center of the
21 circle is the proposed facility?

22 A. That's correct.

23 Q. What is the radius on that circle
24 around that facility?

25 A. That's half a mile radius.

1 Q. Could you just quickly identify the
2 owners of the acreage, the offsetting owners to
3 the proposed facility side?

4 A. Mr. Kellahin did that very aptly with
5 his map. Mrs. Elsie Reeves owns the surface to
6 the west of the facility, Mr. Stradley to the
7 east and to the south, and Mr. Cooper to the
8 north.

9 Q. Let's take out what has been marked as
10 Exhibit No. 4, please. Could you identify this,
11 please?

12 A. Yes. This is a map of the 40-acre
13 tract that we had done by a registered surveyor.

14 Q. All right. Would you refer to this
15 plat and just review what you're proposing the
16 site to look like when it's fully installed?

17 A. This is an actual representation of
18 what the 40-acre tract looks like today. You can
19 see have two pits, labeled Pit No. 1, that is
20 approximately one-and-a-half acres in size, and
21 Pit 2, immediately to the north, that's one-and-
22 three-quarter acres in size.

23 And immediately to the west and
24 slightly to the south of Pit No. 2 is what we
25 call Cell No. 1, and it's approximately--just

1 slightly under two acres in size.

2 The heavy dark line on the west and
3 south side is a berm that's in place right now.
4 You see what's identified as Wells 1 through 5.
5 Those are monitor wells that are in place at the
6 facility right now. We have labeled, in the
7 hatched area, several other cells, Cells 2, 3
8 and 4. These cells are proposed cells and they
9 have not been constructed yet. There is an oil
10 well in this facility that Amerada Hess operates,
11 and then several pipelines crossing the
12 facility.

13 The 40-acre tract is completely fenced,
14 and there is a gate, a locked gate on the
15 southeast side of the facility.

16 Q. Will there be an office at the
17 facility?

18 A. Yes, close to the gate.

19 Q. And is there a proposed setback from
20 the outer boundary of the 40-acre tract?

21 A. Yeah. Pursuant to the rules and the
22 recommendations from the Environmental Division
23 in their January 6th letter, they proposed a
24 buffer zone of 100 feet from offsetting acreage.

25 Q. Is this property directly bordering the

1 county road?

2 A. Yes, sir, it is. I believe it's County
3 Road 58 or Billy Walker Ranch Road is north/south
4 along the east side of the facility.

5 Q. Is any right-of-way going to be needed
6 as part of the proposed facility?

7 A. No. Mr. Cooper owns the 40-acre tract
8 and it has access from Billy Walker Ranch Road.

9 Q. You've talked about cells. Could you
10 tell us what you mean by when you say there's
11 Cell No. 1?

12 A. This is the location where we would
13 first like to begin landfarming. The cell, per
14 OCD regulations, can be up to five acres in
15 size. This cell is intact. It has been built.

16 Q. Cell 1 is where you propose to commence
17 operation?

18 A. That's correct.

19 Q. Can you tell me exactly how you go
20 about constructing a cell or what it looks like?

21 A. Under the January 6th letter, we are
22 going to use a method called the treatment zone
23 monitoring method, where we're going to landfarm
24 on the original land surface of the area. All we
25 have done here is scraped off the native grasses

1 and mesquite bushes in the area of Cell No. 1,
2 removing very little of the topsoil material.

3 Q. Have you constructed a berm around that
4 cell?

5 A. Cell 1 is completely enclosed in the
6 berm that is shown as the heavy black line along
7 the south and the west side.

8 Q. Are there plans to extend the berm?

9 A. Yes. Before the facility is opened,
10 the berm will be totally around the facility.

11 Q. In addition to the berm around the
12 facility, will there be berms around the
13 individual cell?

14 A. Right. There will be berms separating
15 individual cells.

16 Q. Now, what is the status of the land on
17 which this facility is located?

18 A. It is owned by Mr. Jimmy Cooper.

19 Q. And is it fee land?

20 A. Yes, sir, it's fee land.

21 Q. Could you explain to the Commission how
22 you propose to operate this landfarm?

23 A. Like I mentioned, we are going to use
24 the treatment zone monitoring method, where we'll
25 deposit oil-contaminated soil on the original

1 land surface in up to six-inch lifts or less. No
2 more than six inches at a time, per lift.

3 This material will be tilled biweekly
4 to ensure proper aeration of the soil, so that
5 the bioremediation can occur.

6 Q. Are you required to run any sort of
7 tests before you deposit the oil-contaminated
8 soil in a cell?

9 A. We are required to do a background test
10 on the facility, just to get a background number
11 or something we can compare it to at a later
12 date. That's before any material is deposited in
13 the soil.

14 Q. When you say you're going to get a
15 background test, what do you do?

16 A. The first test, the initial test in the
17 facility, will be tested for TPH, total petroleum
18 hydrocarbons, a general chemistry in heavy
19 metals, using approved EPA methods.

20 Q. What do you do? Do you take a sample
21 of the soil?

22 A. That's correct. We'll take a sample in
23 what they call the treatment zone, and that is an
24 interval of two and a half to three feet below
25 the original land surface where there's no

1 contaminated material. This is undisturbed
2 material where we would take this test.

3 Q. So if I understand your testimony, you
4 build the cell by constructing a berm and grading
5 off the surface vegetation?

6 A. Correct.

7 Q. Then you test the treatment zone, as
8 you've indicated, being the top two or three
9 feet, and that gives you a base sample?

10 A. That's correct.

11 Q. Or base reading on the constituent
12 elements in that soil?

13 A. That's correct.

14 Q. Then, at that point in time, in layers
15 of not more than six inches, you spread the
16 oil-contaminated soil?

17 A. That's correct.

18 Q. And then at least every two weeks you
19 said you disk it? You plow it?

20 A. Right.

21 Q. Now, are there other tests that you're
22 required to take of the soil in the cell?

23 A. On a quarterly basis after we've
24 started depositing material in an individual
25 cell, on a quarterly basis we're required to take

1 additional tests for TPH and BTEX, and this is
2 every quarter after we've started landfarming in
3 a particular cell.

4 If we are active in three cells, we
5 will have to test each one of those cells every
6 quarter.

7 Q. When you test within those cells, what
8 is it you're testing?

9 A. We're trying to determine if there is
10 any migration of contaminants into the treatment
11 zone, the interval of two and a half to three
12 feet below the original land surface.

13 Q. So do you again take a sample of the
14 treatment zone?

15 A. That is correct.

16 Q. And then you have that analyzed?

17 A. Yes, sir.

18 Q. What do you do with that information?

19 A. We are required to report that to the
20 OCD and retain those records at the facility.

21 Q. Now, after you take a sample out of the
22 treatment zone, the layer of soil under the
23 contaminated zone, what do you with that, the
24 place where you took the--

25 A. We're required by OCD rules to backfill

1 this sample hole with an impermeable material
2 such as bentonite cement.

3 Q. And this method of landfarming is
4 called what?

5 A. Treatment zone monitoring.

6 Q. Why are you proposing to utilize this
7 method?

8 A. This is the method that the
9 Environmental Division recommended us to look at
10 in their January 6th letter. And, after talking
11 with their representatives, we were more
12 comfortable with this method.

13 Q. If you use this method and if there is
14 contamination, how often will you be testing for
15 that?

16 A. Every three months.

17 Q. And you report that, as you indicated,
18 to the OCD?

19 A. That's correct.

20 Q. What happens if there should be
21 contamination in this treatment zone?

22 A. We would obviously not deposit any more
23 material in this individual cell, and we would
24 report the results of the tests that showed
25 contamination to the OCD, and we would consult

1 with them on the best procedure to take care of
2 this problem.

3 Q. Now, you indicated, I believe, that the
4 facility would be fenced?

5 A. Yes, sir. It is fenced now.

6 Q. And will there be a gate, a lock on the
7 facility?

8 A. Yes, there is a gate and a lock on that
9 gate now.

10 Q. When the facility is open and receiving
11 product, will there be an attendant on duty at
12 all times?

13 A. That's correct.

14 Q. Now, as soils are brought into this
15 facility and delivered to the site, how are they
16 documented? What do you do?

17 A. We have to keep track of where the
18 material came from, how much material is in the
19 load, the date received, whether it's exempt or
20 nonexempt, the transporter. We have to keep on
21 record in which cell it was deposited in.

22 Q. Is all of this required by OCD
23 guidelines?

24 A. Yes, this is all required by OCD
25 guidelines.

1 Q. Will any free liquids be received by
2 the facility?

3 A. No, no free liquids will be received.

4 Q. Will any water be permitted to pool or
5 stand within the facility?

6 A. No. We will be required to use fresh
7 water on occasion to control the dust, if this
8 develops a problem at the facility, and to keep
9 the remediated soil from drying out completely,
10 so that the remediation process can progress.

11 Q. If there is any evidence of
12 contamination, you check that every three months
13 to see if there is?

14 A. That's correct.

15 Q. And if there is any sign of it, then
16 you immediately report it to the OCD?

17 A. That's correct.

18 Q. Are there fresh water zones under the
19 proposed facility?

20 A. No, sir, there are not.

21 Q. What do you base that statement on?

22 A. The five marker wells we drilled, that
23 are shown on Exhibit 4, were drilled down to a
24 depth of two feet into the redbed and screened
25 off approximately five feet in the bottom of the

1 hole, and we encountered no fresh water in any of
2 the five wells on this.

3 Q. Were the wells dry?

4 A. Yes, sir, they were dry.

5 Q. Did you check the records at the state
6 engineer's office to see if there were water
7 zones reported under the facility site?

8 A. Yes, sir, we did.

9 Q. What did you discover?

10 A. They had no record of fresh water on
11 that 40-acre tract.

12 Q. Did you check the records at the BLM
13 for the existence of any fresh water?

14 A. Yes, sir, we did.

15 Q. What did those records show?

16 A. They showed no evidence of fresh water
17 on this tract.

18 Q. Mr. Kellahin, in his opening, indicated
19 that there was a windmill in the vicinity that
20 was operated by Mr. Stradley, I believe?

21 A. Yes, sir.

22 Q. And that is how close to the proposed
23 disposal facility site?

24 A. Approximately half a mile to the
25 southwest.

1 Q. Was a water analysis, a sample taken
2 and analyzed from that well?

3 A. Yes, it was included in the original
4 application.

5 Q. And the analysis is in Exhibit 1?

6 A. Yes, sir.

7 Q. So there's base information to judge
8 if, in fact, anything ever should happen to that
9 well.

10 A. That's correct.

11 Q. Does Exhibit 1 also show the other
12 water wells in the area that were reviewed by Mr.
13 Kellahin in his opening?

14 A. I think his map is a little more
15 detailed. We were only required to show the
16 water wells within a mile, I believe, of the
17 facility, in the original application.

18 Q. Now, you've been at the site?

19 A. Yes, sir.

20 Q. Is there any slope to the surface?

21 A. The general topography, where our
22 facility is, slopes to the west.

23 Q. Now if there should be a spill of one
24 of these hydrocarbon-contaminated-soil
25 facilities, how do you propose that be handled?

1 A. Well, as there's not going to be any
2 free liquids, we would just pick up any spill and
3 deposit it in a cell to be remediated.

4 Q. Will the 100-foot buffer zone be kept
5 clean and free of any oil-contaminated dirt or
6 soil?

7 A. Right. There will be no
8 oil-contaminated soil in the buffer zone at all.

9 Q. Is this facility located in a flood
10 plain?

11 A. It is on the west side of a gentle
12 hill. I mean, it's not in a low spot, no, sir.

13 Q. Is there, in your opinion, any danger
14 resulting from rainfall in the area?

15 A. As you know, we experienced a
16 hundred-year flood in May of 1992, and at the
17 time the facility did not have any berms around
18 it. The way the facility is laid out with the
19 county road there on the east side of it, the
20 county road is below grade of the facility, so
21 any water that ran off the hill from above us ran
22 down to the county road and either went south or
23 north, and nothing from the east side flowed into
24 the facility.

25 With the installation of the berms

1 around the facility, this will ensure that we get
2 no run-on from rainwater in future events on the
3 facility, and the berms will also keep any water,
4 any rainwater from leaving the facility, also.

5 Q. After the flood last summer, did the
6 Oil Conseravation Division inspect the facility?

7 A. Yes. Chris Eustice, of the
8 Environmental Division, went out there and we
9 tested the monitor wells to see if they had any
10 water in them, and they were still, all five,
11 dry.

12 Q. Now, if I understand it, all the
13 disposal that you're proposing will be confined
14 to those cells that are shown on what we have
15 marked as our Exhibit No. 4?

16 A. That's correct.

17 Q. Does C & C Landfarm have a \$25,000 bond
18 on file with the Division as required by the
19 guidelines in the Environmental Bureau?

20 A. They do.

21 Q. Now, as we know from the opening
22 statements, the Division has imposed certain
23 conditions on the operation of this facility, is
24 that correct?

25 A. Yes, sir, they have.

1 Q. And certain conditions were included
2 and incorporated into the Order that resulted
3 from the Examiner hearing?

4 A. That's correct.

5 Q. Was C & C prepared to comply with all
6 those conditions?

7 A. Yes, sir, we were.

8 Q. Those conditions have been subsequently
9 changed, is that right?

10 A. That's correct.

11 Q. Are those changes contained in the
12 letter that has been marked as C & C Exhibit No.
13 3?

14 A. Yes, sir, that's correct.

15 Q. What were the changes that were
16 actually proposed?

17 A. Essentially, the major change in that
18 was to no longer use the redbed dike, and to use
19 the treatment zone monitoring method.

20 During the original Examiner hearing,
21 Mr. Kellahin and his witnesses objected to this.
22 First of all, they didn't know how effective it
23 would be and, secondly, they didn't know how you
24 could construct such a barrier.

25 Q. And that's no longer a requirement?

1 A. Yeah. With the letter in Exhibit 3,
2 we're no longer proposing this in lieu of the
3 treatment zone monitoring method.

4 Q. Now, are the conditions proposed by the
5 Environmental Bureau in its January 6th letter,
6 acceptable to C & C Landfarm?

7 A. Yes, sir, they are.

8 Q. Will C & C Landfarm, in operating this
9 facility, keep all records and make all reports
10 and otherwise fully comply with Division rules,
11 regulations, and with the guidelines of the
12 Environmental Bureau for a landfarm of this
13 nature?

14 A. Yes, sir, they will.

15 Q. How long are these records to be kept?

16 A. A minimum of two years.

17 Q. What are the closure plans of Seay &
18 Seay for this facility?

19 A. When we decide that we are going to
20 close this facility, we notify the OCD
21 immediately. We're no longer allowed to accept
22 any contaminated soil, but we must continue the
23 remediation process until all the material on the
24 side has been remediated to OCD and EPA
25 standards.

1 Then, once that has been accomplished,
2 the area will be reseeded and all equipment and
3 buildings and all will be removed from the site.

4 Q. If the Commission should approve this
5 application, how soon could Seay & Seay be ready
6 to commence operation?

7 A. Just very soon. Like I say, the
8 facility is in place, and all we need to do to
9 comply with all the conditions is to do the
10 background check at the facility.

11 Q. Do you anticipate encountering any H2S
12 in any of these open pits?

13 A. No, sir, we do not.

14 Q. And, if you do, will you comply with
15 the provisions of Division Rule 118 concerning
16 H2S emissions?

17 A. Yes, sir.

18 Q. In your opinion, will the proposed
19 facility provide an economical and efficient way
20 to dispose of oil field waste?

21 A. Yes, it would be economical, and it's a
22 much needed system. Right now we're very limited
23 on what we can do with oil-contaminated soil.

24 Q. In your opinion, as the operator of the
25 facility, have you fully complied with the

1 guidelines set forth by the OCD? Are you
2 prepared to do that?

3 A. Yes, sir, we are.

4 Q. And are you prepared to comply with all
5 of their regulations designed to protect human
6 health, the environment, and avoid contamination
7 of groundwater?

8 A. Yes, we are.

9 Q. And are you prepared to comply not only
10 with the guidelines as they stand today, but with
11 subsequent changes in those guidelines if and
12 when in those guidelines are amended or changed?

13 A. Yes, we will.

14 Q. Were Exhibits 1 through 5 either
15 prepared by you or compiled under your direction?

16 A. They were.

17 MR. CARR: At this time, we would move
18 the admission of C & C Landfarm Exhibits 1
19 through 5.

20 CHAIRMAN LEMAY: Without objection,
21 Exhibits 1 through 5 will be admitted into
22 record.

23 MR. CARR: That concludes my direct
24 examination of Mr. Pierce.

25 CHAIRMAN LEMAY: Thank you, Mr. Carr.

1 Mr. Kellahin.

2 EXAMINATION

3 BY MR. KELLAHIN:

4 Q. Mr. Pierce, let me ask you about what I
5 propose to use as S-W Cattle Exhibit No. 1. It's
6 the illustration of this area that I made my
7 opening comments from.

8 As best as you understand it, have I
9 correctly depicted the relationship of the
10 various owners within this given area?

11 A. Yeah. I don't know Mr. Stradley and
12 Mrs. Reeves' acreage positions out there, but I
13 do know they own acreage in approximately where
14 you've indicated.

15 Q. In terms of complying with the notice
16 requirements that the Bureau has placed upon you
17 as the Applicant, do you find, in your search of
18 owners, any different ownership than I have
19 expressed to you in my opening statements?

20 A. Yeah. We did notify several other
21 owners to the north, and I don't recall their
22 names.

23 Q. This information, though, is consistent
24 with what you have found?

25 A. Yes, sir.

1 Q. When we look at what has been
2 characterized as the Cooper tract outlined in
3 blue in Section 3, a portion of which is the
4 40-acre tract that is to be the facility?

5 A. Yes, sir.

6 Q. As part of your analyzing for site
7 selection, did you look at the 40-acre tract
8 north of the proposed site as a potential site?

9 A. No, sir, we did not.

10 Q. Did you look at the 40-acre tract west
11 of the proposed site as a possible site?

12 A. No, we did not.

13 Q. How about the northwest diagonal
14 40-acre tract to the site?

15 A. No, sir.

16 Q. Within that site, then, you have
17 prepared what I call a site plat, Exhibit No. 4.
18 Do you have one of those?

19 A. Yes, sir.

20 Q. Have you satisfied yourself that the
21 five wells listed in your application are
22 properly located on Exhibit No. 4?

23 A. I believe they are. We had a surveyor
24 do this. I would assume that he put them in the
25 right position.

1 Q. My only question is, when you look at
2 Exhibit No. 1 and go over to the test well logs
3 on page 4, am I correct in understanding that
4 those test well logs on page 4 of Exhibit 1 are
5 the wells that you've identified on Exhibit 4?

6 A. Yes, sir.

7 Q. So if there's a slight misdescription
8 in that Exhibit 1, may I use Exhibit 4 to tell me
9 where those wells are located?

10 A. Yes, sir. That is probably closer to
11 being correct than these. I mean, the surveyor
12 did that.

13 Q. All right. Pit No. 1, as it existed in
14 the ground when we had the hearing back in
15 September, did it encompass the entire 1.53 acres
16 as depicted on Exhibit 4?

17 A. It probably was not as large back in
18 September. They were still hauling caliche out
19 of it.

20 Q. This represents the current size and
21 shape of Pit No. 1 now?

22 A. To the best of my knowledge, yes, sir.

23 Q. Do you have intentions of enlarging
24 this pit?

25 A. They're still hauling caliche; I mean ,

1 on an as-needed basis, out of these pits.

2 Q. So, in terms of this display, Pit 1,
3 over the life of the facility, could be enlarged?

4 A. Yes, sir, it could.

5 Q. Does Pit No. 2 exist in this size and
6 shape now in the ground?

7 A. Yes, sir.

8 Q. Do you have plans to increase the size
9 and the shape of this pit?

10 A. No, sir. This is the pit that the road
11 department hauled caliche out of to redo the
12 Billy Walker Ranch Road. Mr. Cooper donated
13 caliche out of this pit to do that road.

14 Q. What's the size of any individual cell
15 within a cell display here?

16 A. The size of each cell is there. They
17 can be no larger than five acres, by OCD rules.
18 The Cell No. 1 is 1.85 acres.

19 Q. I misspoke. The interior grid of each
20 cell, what's the significance of the grid?

21 A. It's just showing the aerial extent of
22 Cell No. 1 and proposed Cell No. 4 and proposed
23 Cell No. 3.

24 Q. As part of your proposal to be the
25 operator of this facility, have you done any soil

1 samples or tests within the 40-acre proposed
2 facility?

3 A. No, sir, we haven't done any tests.

4 Q. Have you done any compaction tests?

5 A. These tests are not required for this
6 application, by the OCD.

7 Q. But you haven't done them?

8 A. No, sir, I haven't. They're not
9 required.

10 Q. If you would just answer my question,
11 we'll get through this easier.

12 A. I did answer your question, sir.

13 Q. I didn't ask you if they were required
14 by the Division, I asked you if you had done the
15 test.

16 A. Well, if they were not required, I
17 wouldn't have done them.

18 Q. Did you do any permeability tests?

19 A. No, sir, I didn't.

20 Q. Did you do any liquid or plastic tests
21 on the redbeds?

22 A. No, sir, I haven't.

23 Q. Did you do any soil property tests or
24 data?

25 A. No, sir, I haven't.

1 Q. Did you do any hydrology tests?

2 A. No, sir, I haven't.

3 Q. Any groundwater studies?

4 A. We drilled five monitor wells and they
5 were all dry.

6 Q. Any percolation tests or data?

7 A. No, sir.

8 Q. Any groundwater migration tests or
9 data?

10 A. We have no groundwater at the site, so
11 we can't do those tests.

12 Q. Any contaminant mobility tests or data?

13 A. No, sir.

14 Q. Whose idea was it to have a redbed
15 dike, as proposed in the conditions in May of 92?

16 A. I don't know that I recall. We were
17 speaking with several people in the Environmental
18 Division. I don't know if it was an idea that we
19 come up with or one that the OCD come up with.

20 Q. Summarize for me the sequence, starting
21 with the application and then the proposal to put
22 this material in the excavated pit. Give me a
23 summary of the evolvement of the processing of
24 the application, starting off with, what was the
25 first proposal? What did you you want to do?

1 A. The first proposal, we proposed to use
2 the cell caliche out of the pits for locations
3 and road use, and landfarm in these pits, and
4 fill the pits back up with this landfarmed
5 remediated material so that we wouldn't have a
6 hole in the ground after we were through.

7 Q. And part of that original plan, then,
8 included this redbed dike concept?

9 A. Yes, sir, it did.

10 Q. You don't recall who suggested that
11 idea as--

12 A. It was either the Environmental
13 Division or us.

14 Q. Help me understand the material that
15 you now propose to take through the gate of the
16 facility and put on the surface within the cell
17 blocks. Describe for me what material you're
18 seeking approval to put on the facility.

19 A. This will be material from around
20 wellheads, oil-contaminated soil from around
21 wellheads, tank batteries from flow line leaks,
22 and spills.

23 Q. To try to understand it as a layman, is
24 this simply contaminated soil material that has
25 been contaminated with hydrocarbons?

1 A. Yes, sir.

2 Q. It's not tank bottoms?

3 A. No, no tank bottoms.

4 Q. There are not solids? It does not
5 produce salt water?

6 A. No, there will be no free liquids in
7 the facility.

8 Q. No liquid hydrocarbons except those
9 that may have been saturated in the contaminated
10 soil?

11 A. There's not going to be any free
12 hydrocarbons that you can hold up in your hand
13 and see dripping out of the soil. No, sir.

14 Q. Under the January 6, 1993
15 recommendations from the Environmental Bureau, do
16 you propose to accept all of those conditions?

17 A. Yes, sir.

18 Q. In paragraph 1, what is your
19 understanding of what you can do with the
20 contaminated soils in relation to the excavated
21 caliche pits?

22 A. We cannot use the excavated caliche
23 pits for any contaminated soil. We cannot
24 deposit any contaminated soil in the caliche
25 pits.

1 Q. In addition, is it also your
2 understanding of that condition in this
3 paragraph, that even if those soils are
4 remediated, that even the remediated soils can
5 not be put in the excavated pits unless you get
6 subsequent approval from the Division?

7 A. That's my understanding, yes, sir.

8 Q. Skip down with me to No. 9 on the
9 conditions or recommendations. I believe that's
10 the one that gives you the contaminants or the
11 constituents to test for. What contaminants are
12 you suppose to test for?

13 A. The total petroleum hydrocarbons,
14 benzene, toluene. I don't personally know
15 everything that these two tests test for. I
16 don't run those tests, so I don't know.

17 Q. Are you going to be running tests for
18 total dissolved solids?

19 A. No, sir.

20 Q. Any salt chloride concentrations?

21 A. No, sir.

22 Q. Any sulfur conservations?

23 A. No, sir.

24 Q. Any heavy metals?

25 A. Yes, sir.

1 Q. Heavy metals would be, or constituents
2 of those materials would be tested?

3 A. Yes, sir. Let me, on its last
4 page--no, I take that back. In the treatment
5 zone monitoring, on page 2--

6 Q. Yes, sir. Which paragraph are you
7 looking at?

8 A. I'm trying to find it. Under No. 1,
9 under treatment zone monitoring, it says the
10 initial test will include a general chemistry, so
11 some of what you mentioned may be tested in that.
12 I don't know what a "general chemistry"
13 encompasses.

14 Q. That's your initial background test so
15 you can have background levels for all those
16 constituents.

17 A. Right.

18 Q. But the subsequent test of the
19 treatment zone does not include some of those
20 items?

21 A. Right. That's correct.

22 Q. What's the source of the materials that
23 are coming into the facility?

24 A. We anticipate the source to be from
25 producing well locations, around tank battery

1 facilities, from old flow line leaks and spills.

2 Q. You said you reached a conclusion about
3 the economic necessity for a facility such as
4 this located in this area. Did you or did you
5 not reach that conclusion?

6 A. I think a facility like this is needed,
7 yes, sir.

8 Q. Upon what basis did you reach that
9 opinion?

10 A. Under even new OCD regulations, when
11 you abandon a lease, this lease will have to be
12 reclaimed for state land, under state leases.
13 And, under current federal leases, once you
14 abandon a lease, this lease must be reclaimed.

15 So, you can either remediate it on
16 site, or you can hall this material over to an
17 appropriate facility.

18 Q. Have you made projections of the volume
19 of material that you will bring into the facility
20 over a certain range of time?

21 A. No, sir, we have not.

22 Q. Have you done any economic projections
23 about the feasibility of the project.

24 A. No, sir, we haven't.

25 Q. Does Exhibit No. 4 represent the final

1 design plan for this facility that you would
2 submit to the Environmental Bureau, if the
3 Commission approves your facility?

4 A. Some of the cells may be smaller or
5 larger, you know, depending on what takes place,
6 but this would be a general schematic of what we
7 anticipate, yes, sir.

8 Q. Help me understand what you'll do with
9 regards to berming individual cells or individual
10 pits to keep contaminated material from moving
11 into the excavated caliche pits?

12 A. The caliche pits have berms around them
13 now where they push the topsoil off to get to the
14 caliche.

15 Q. Describe for me how those berms are
16 created. To what height, what width, and to what
17 compaction?

18 A. They're not compacted at all, they're
19 in various heights up to 10 feet in places, and
20 maybe 20-feet wide in some places.

21 Q. Do you propose that the size of the
22 cells for the placement of contaminated soils in
23 the facility is going to be enlarged?

24 A. Due to the locations of the pits, I
25 think we're pretty well limited on how big we can

1 make Cell 1 and Cell 4. With the pipelines we
2 have crossing this, I don't anticipate enlarging
3 any of these cells very much.

4 Q. Help me visualize the scale of Exhibit
5 No. 4. When I look at Mr. Stradley's property
6 along the southern boundary, that is a common
7 boundary between the facility and Mr. Stradley?

8 A. Yes, sir.

9 Q. When I'm looking at that line, how many
10 feet north do I go before I hit the southern edge
11 of the berm?

12 A. The scale on this is one inch is equal
13 to 80 feet, and our buffer zone will be 100 feet
14 from the property line, so no material will be
15 deposited within a hundred feet of the property
16 line in the buffer zone.

17 Q. So, to get from the edge of the
18 property line into 100 feet, it's going to be on
19 the north side of the berm but outside of the
20 cell?

21 A. Right.

22 Q. You've accepted the Environmental
23 Bureau's horizontal buffer of a hundred feet?

24 A. Yes, sir.

25 Q. Did you make any independent study or

1 scientific inquiry about the adequacy of the
2 hundred feet?

3 A. That was the recommendation they had
4 and used in other landfarms they permitted.

5 Q. And you accepted what they proposed?

6 A. Yes, sir.

7 MR. KELLAHIN: Thank you, Mr.
8 Chairman.

9 CHAIRMAN LEMAY: Thank you, Mr.
10 Kellahin. Additional questions of the witness?

11 MR. CARR: No additional questions.

12 MR. STOVALL: I have some questions, if
13 I might, Mr. Chairman, very briefly.

14 CHAIRMAN LEMAY: Mr. Stovall.

15 EXAMINATION

16 BY MR. STOVALL:

17 Q. Mr. Pierce, I'm asking these questions
18 primarily to make sure you understand what the
19 Division's concerns are.

20 First of all, will you be involved
21 directly in management and operation of the
22 facility?

23 A. As it exists now, yes, sir, I am.

24 Q. I see think it's important that we make
25 sure you understand why we impose some

1 requirements or recommend some requirements.
2 First off, what is your understanding as to what
3 the most significant environmental risk is, if
4 you will? What is the most important resource
5 that we're trying to protect with this?

6 A. The fresh water in the area.

7 Q. Your statement was, there was no fresh
8 water underneath your facility?

9 A. That's correct.

10 Q. But you acknowledge that there are some
11 fresh water wells, as indicated on Mr. Kellahin's
12 map?

13 A. Yes, sir.

14 Q. Do you have any knowledge or opinion of
15 what is the most likely manner in which
16 contaminants from the soils could possibly get to
17 fresh water?

18 MR. KELLAHIN: Objection, Mr. Chairman.
19 This witness has not been qualified to express an
20 opinion within the scope of a hydrologist's
21 expertise, and I would object that that question
22 is outside the scopy of this witness's
23 qualifications.

24 MR. STOVALL: Mr. Chairman, I did not
25 offer this witness and I'm not relying on his

1 expertise. I'm asking him, as the Division
2 attorney, because I want to make sure he has some
3 comprehension of the issues he has to address as
4 the operator of the facility. I'm here to find
5 out whether he has some understanding of those
6 issues.

7 MR. KELLAHIN: It doesn't matter, Mr.
8 Chairman, who asks the questions. The witness
9 has not been qualified to answer any question
10 from anyone on that topic.

11 CHAIRMAN LEMAY: Let me ask the
12 witness; does he feel qualified to answer that
13 question?

14 THE WITNESS: Yes, sir, I think I can.

15 CHAIRMAN LEMAY: Let's hear the answer
16 and we'll go from there?

17 A. Would you repeat your question?

18 Q. My question was, how would contaminants
19 from the soil that you place on the site get to
20 the fresh water sources in the area?

21 A. Using this treatment zone monitoring
22 method, there's not any way that we can get any
23 migration of contaminants into any fresh water.
24 With this treatment zone monitoring, we monitor
25 these individual cells on a quarterly basis. If

1 we see any migration of contaminants into this
2 treatment zone, we immediately stop what we're
3 doing and devise a plan to take action to prevent
4 this from going any further.

5 As long as we operate this facility per
6 these guidelines, it doesn't take a hydrologist
7 or an engineer or a hydrologist to operate this,
8 as long as we use these rules. We're testing
9 these on a quarterly basis, and if we operate
10 under these rules, there's no way we're going to
11 get any contaminants into any fresh water.

12 Q. In other words, it's your understanding
13 that the treatment zone method that is being
14 recommended, the purpose of that is to prevent
15 contaminants from getting underground, is that
16 correct? under the surface of the ground?

17 A. It's not designed to prevent it, but
18 it's designed to detect it, and so that we can
19 minimize any impact of the migration. On a
20 quarterly testing schedule, if we have a problem,
21 we're going to pick it up very fast. It won't be
22 five years down the road when we first discover
23 that we've got a problem.

24 Additionally, we've got monitor wells
25 around this facility that we will test on a

1 regular basis, that we will look at, to see if we
2 see any material in these monitor wells; any
3 water or whatever. So we have an extra measure
4 of protection there.

5 Q. Would it be fair to characterize, then,
6 that the concern that you perceive that is being
7 addressed by these solutions is the potential
8 fluid flow, somehow, through beneath the surface
9 of the earth to, potentially, those water
10 sources?

11 A. Yes, sir.

12 Q. The two pits that you referred for,
13 Pits 1 and 2, those are caliche pits and that's
14 why they exist, is that correct?

15 A. That's right.

16 Q. Your testimony is that Pit 2 is about
17 as big as it can get without interfering with the
18 cells?

19 A. Right. The landfarming operation will,
20 hopefully, generate more capital than selling
21 caliche. So, it's not in our best interest to
22 enlarge these pits at this point.

23 Q. I believe you testified, in response to
24 either Mr. Carr or Kellahin, that in Pit 1 there
25 was some potential that there would be some

1 additional caliche removed?

2 A. Yes, sir.

3 Q. Would you understand or would you agree
4 that there ought to be some distance from any
5 cell closer than which the pit could not be
6 enlarged?

7 A. Oh, yes, sir. We would not encroach
8 Cell No. 1. The capital we generate from
9 landfarming would be hopefully much more than we
10 could get through the sale of caliche.

11 Q. Do you have an opinion, yourself, as to
12 what that distance might be, assuming the
13 noneconomic factors?

14 A. I would just as soon the pit didn't get
15 any larger right now, and that has been my
16 recommendation to Mr. Cooper.

17 Q. You're speaking from the standpoint of
18 an operator of a facility, and I'm thinking from
19 the standpoint of potentially causing a flow of
20 contaminants. Is there a distance, safety wise,
21 that you would recommend that we not allow the
22 pit to get any--I'm getting convoluted in my
23 words here, but, a safety distance between the
24 pit and the cell?

25 A. I think we could probably use the same

1 buffer zone around that as we did offset.

2 Q. A hundred feet?

3 A. Yes, sir.

4 Q. Now, you indicated that there will be
5 berm around the entire facility, is that correct?

6 A. That's correct.

7 Q. If I look at your scale, it looks like
8 that's approximately 50 feet--the outer edge of
9 the berm is approximately 50 feet from the
10 property line, give or take half an inch or so?

11 A. I think it's a little more than that,
12 but, yes, sir. All on the sought side, yes. On
13 the west side it's much more than hundred feet in
14 the buffer zone.

15 Q. And the southeast corner is the low
16 point in the property, is that correct,
17 topographically?

18 A. Probably the same all across the west
19 side..

20 Q. You also indicated that you're going to
21 berm each cell, is that correct?

22 A. That's correct, to separate the cells
23 from one another.

24 Q. What is the purpose of the berms, as
25 you understand it?

1 A. We want to separate the cells and to
2 keep any inflow or runoff from moving to and out
3 of these cells, from one cell into another, or
4 from off the property onto the property, or from
5 on the property off the property, or whatever.
6 Whatever is out, keep it out; and whatever is in,
7 keep it in.

8 Q. To prevent the fluid flow of any sort,
9 whatever it might be?

10 A. Right.

11 Q. Now, under the proposal by the
12 Division, we've talking, actually, about three
13 tests. There additional background tests to
14 start with, is that correct?

15 A. Yes, sir.

16 Q. And that is the least comprehensive,
17 actually, of the tests? It's looking for TPH and
18 general chemistry, is that correct?

19 A. And heavy metals. It's just designed
20 as a background test to give us a baseline which
21 to compare future tests.

22 Q. There are quarterly tests within the
23 treatment zones to determine if there has been
24 any downward migration of any contaminants, is
25 that correct?

1 A. That's correct.

2 Q. And again the guidelines have been
3 presented--not the guidelines, but the conditions
4 recommended by the Division, if specified the
5 specific types of tests and components to look
6 for, constituents to look for?

7 A. Yes, sir.

8 Q. And, additionally, there is required an
9 annual testing or more comprehensive testing,
10 looking for some additional constituents. Do you
11 understand that?

12 A. Yes.

13 Q. I gather, from your testimony and in
14 response to Mr. Kellahin, you aren't specifically
15 knowledgeable and would not begin to testify as
16 to the nature of these tests or exactly what they
17 look for?

18 A. No, sir.

19 Q. But you understand they would have to
20 be conducted by a laboratory in under accepted
21 and approved laboratory conditions?

22 A. Certainly. Yes, sir.

23 Q. What is your opinion as to what the
24 remediated soil can be used for? What can be
25 done with the soil after it has been treated, and

1 I believe the conditions again state a level to
2 which you must treat it, is that correct?

3 A. Yes, sir.

4 Q. What is the potential use or
5 disposition of that soil?

6 A. Depending on the consistency, you might
7 use it for roads, or locations even.

8 Q. The real question is, once treated to
9 the level set by the Division, it's your opinion
10 that those soils could safely be distributed and
11 spread at most locations in that area?

12 A. That's my understanding, yes, sir.

13 MR. STOVALL: I have no further
14 questions.

15 CHAIRMAN LEMAY: Any additional
16 questions?

17 Commissioner Carlson?

18 COMMISSIONER CARLSON: Yes, I do.

19 EXAMINATION

20 BY COMMISSIONER CARLSON:

21 Q. I guess I don't quite understand how
22 this thing is going to work. You say you
23 put--you'll bring in contaminated soil and put
24 six-inch lifts--

25 A. Yes, sir.

1 Q. --over Cell 1, initially?

2 A. Or a portion of Cell 1, you know,
3 depending.

4 Q. And then you would disk that once every
5 two weeks--

6 A. Yes, sir.

7 Q. --until the soil is remediated?

8 A. That's correct.

9 Q. And then you can put an additional lift
10 on top of those other six lifts?

11 A. Yes, sir, after we've performed tests
12 to show that that soil is remediated to OCD
13 regulations. Right now, once we start this, we
14 don't know how long this process is going to
15 take. It's going to be trial-and-error.

16 Q. That was going to be my next question.
17 How long will you be looking at?

18 A. We don't know that. We're going to
19 have to spend some money and do these tests,
20 until we have something to go by, whether it be
21 60 days or 90 days before we can add another
22 lift, or 120 days. We just don't know that right
23 now.

24 I imagine that the temperature is going
25 to play a part in this. I mean, the remediation

1 process is going to be much slower in the
2 wintertime. This is going to be a learning thing
3 as far as the remediation process goes.

4 Q. But I mean, can it feasibly take years
5 to remediate six inches of soil? Are we looking
6 at 60, 90, 120 days, or are we looking at years?

7 A. I think we're looking at something more
8 like 180 days. I have seen locations where they
9 have gone in there and tilled the material on
10 site at a specific location and kept it wet and
11 aerated it, and grown grass in the same season on
12 this material. So, I don't think we're looking
13 at extended periods of time.

14 Q. So, is it your intent to do a lift over
15 Cell 1, remediate that, then do another lift over
16 that cell or move on to Cell 2?

17 A. No, to apply another lift on Cell 1
18 after the initial lift is tested.

19 Q. Before you move on to another cell?

20 A. No. We're going to get varying soils.
21 Some soils will probably test when we bring them
22 in the facility. They've already been remediated
23 on site, they've been there so long.

24 Other material, you know, will be newer
25 spills or whatever, and will take longer, so

1 we'll probably have cells divided into how
2 concentrated--not concentrated, but the amount of
3 hydrocarbon in the soil. And that's going to be
4 just an estimate of that, you know. I guess I
5 don't know how to explain that to you.

6 Q. Okay. You mentioned as part--I think
7 in your application, you agreed to identify what
8 is exempt and nonexempt. Would you explain what
9 you mean by that? Is that from RCRA?

10 A. Yes, sir, RCRA, subtitle Seay.

11 Q. Oil field wastes, by definition, are
12 exempt from RCRA, isn't that correct?

13 A. Yes, sir, but in our application we
14 propose to only take oil-contaminated soil, and
15 that's primarily what--that is what we want to
16 do. We don't want to get into nonexempt waste,
17 where we have to test it before we bring it in.
18 We want to go with RCRA-exempt waste.

19 Q. You have no intention at all of bring
20 anything else but oil-field waste into this?

21 A. There are other facilities in the area,
22 Parabo, CRI, that can take these other
23 materials. We don't need to take that type of
24 material.

25 Q. You mentioned the pits. Initially you

1 planned to put the contaminated soil in the pits,
2 but I guess that's no longer the plan, is that
3 correct?

4 A. That's correct. We will not deposit
5 any contaminated materials in the pits.

6 Q. And obviously you're not going to
7 backfill it, you'll berm them and they'll stay as
8 pits during the life of this operation?

9 A. That's correct.

10 Q. Do you have any estimated time frame
11 about the life of this operation?

12 A. I think that goes back to how fast the
13 material can be remediated. If the material that
14 we end up taking remediates very fast--well, I
15 guess, to back up, I see this facility being
16 there 10 or 15 years.

17 Q. Okay. You put a six-inch lift on, the
18 soil gets remediated, you add another six
19 inches. Sooner or later the level of these cells
20 is going to increase.

21 A. Right.

22 Q. How high are you going to build the
23 level before you're going to move to another cell
24 or do something with that remediated soil?

25 A. I don't think we've addressed that

1 question.

2 MR. STOVALL: Commissioner Carlson, if
3 I might, I think there seems to be--I want to
4 make sure everybody understands how this is
5 done. I might try to ask some questions to
6 clarify for you how the operation would actually
7 work?

8 COMMISSIONER CARLSON: Is it your
9 intent, Mr. Stovall, to have a witness from the
10 Division?

11 MR. STOVALL: I do intend to have
12 somebody to explain that, but I think in terms of
13 depositing, your questions would indicate or my
14 understanding would be that there would be lifts
15 deposited at different locations and remediated
16 at those different locations within the cells,
17 and so it's sort of an ongoing process. It's not
18 fill one cell and complete it and then move on to
19 the next, and that's what I wanted to get to with
20 Mr. Pierce.

21 And that's correct?

22 THE WITNESS: That's correct.

23 COMMISSIONER CARLSON: Well, I
24 understand that. There comes a time, though,
25 when the level of these cells will get X feet

1 high, and you have to either stop or move the
2 soil, I assume.

3 I don't have any other questions.

4 CHAIRMAN LEMAY: Commissioner Weiss?

5 EXAMINATION

6 BY COMMISSIONER WEISS:

7 Q. I guess your feeling that
8 bioremediation will work, is personal experience,
9 where you've seen it in the field?

10 A. Yes, it has been done. It hasn't been
11 extremely effective because, in our part of the
12 state, you know, we don't have a lot of rainfall
13 and moisture content of the soil for the natural
14 remediation process to take place. We need a
15 certain amount of moisture in the soil. And, to
16 add quote-unquote bugs and stuff like that, you
17 have to have a certain moisture content or these
18 organisms don't survive or they don't prosper.

19 In a localized facility, we can
20 monitor, you know, the moisture content of the
21 soil and make optimum use of the natural
22 biodegradation of the naturally occurring
23 organisms in the soil, or these guidelines give
24 us the option, with OCD approval, of adding
25 organisms to the soil to enhance the process.

1 Q. Now that I understand what you're
2 talking about, around the battery or something
3 like that where oil has been spilled over the
4 past years before people are real concerned about
5 it, is that similar to asphalt? I was just
6 wondering if the oil content was similar?

7 A. I think that most of the light ends of
8 the hydrocarbon have been dissipated through the
9 years, you know, and you're going to end up,
10 potentially, with some concentrated material
11 there, yes, sir. But that's part of the process
12 of tilling it, you know, on a regular basis and
13 breaking this soil up, so that the remediation
14 process can go faster.

15 Q. I don't know what the state does with
16 the asphalt that they chop up out of these roads
17 when they replace them, but would that stuff fit
18 in your site?

19 A. No, sir. We're just taking stuff from
20 oil field-related facilities, from producing
21 locations; tank batteries, spills, flow lines,
22 and material like that.

23 COMMISSIONER WEISS: Those are the only
24 questions I have. Thank you.

25 CHAIRMAN LEMAY: I just have a couple

1 of questions for you, Mr. Pierce.

2 EXAMINATION

3 BY CHAIRMAN LEMAY:

4 Q. You mentioned if there was evidence of
5 contamination, you would notify the OCD. Do you
6 have any contingency plans, if there is
7 contamination?

8 A. We talked with the Environmental
9 Division. I guess it depends on what we've
10 seen. Say if we start to see the migration of
11 fluids down, that might mean we're applying too
12 much moisture to the facility to control the dust
13 and to the moisture content of the soil.

14 We might back off on that and monitor
15 it on a closer interval, instead of every three
16 months, every month, and see if that's taking
17 care of the problem. I guess eventually, you
18 know, we could excavate that site and deposit it
19 in another cell and remediate it there, you know.
20 We would get with the Environmental Division and
21 see what we would need to do with that.

22 Q. What about another facility, like
23 Parabo or something like that, could they take
24 your contaminated soil in the event that--well,
25 say it didn't work?

1 A. Yes, sir, they could.

2 Q. In terms of your five well logs, if I
3 get into an area that you feel uncomfortable or
4 Mr. Kellahin objects, feel free not to answer the
5 question.

6 I was curious, at least at a geologist,
7 if you could identify the type of rock or soil
8 you encountered below the redbed? It looked like
9 you penetrated below the redbeds, and there's no
10 description of what was below that.

11 A. I did not participate in the drilling
12 of these wells. Mr. Eddie Seay actually drilled
13 the wells and, as you know, Eddie was an employee
14 of the state for a number of years and has
15 drilled several hundred monitor wells for the
16 state. Mr. Seay did that part.

17 CHAIRMAN LEMAY: Is Mr. Seay going to
18 testify, or not?

19 MR. CARR: We were not planning to call
20 him, but I can call him and ask he be sworn, and
21 he can respond to your question if you sire.

22 THE WITNESS: I was not available to
23 witness the drilling of those wells. I was on
24 another job.

25 CHAIRMAN LEMAY: I might ask then, is

1 the hydrologist you have--

2 MR. KELLAHIN: I have no objection to
3 you asking Mr. Seay those questions right now.

4 CHAIRMAN LEMAY: I think it would help.
5 We're at that point right now, and if you're
6 going to get into the hydrology, I would like to
7 know what's below the redbeds.

8 MR. KELLAHIN: I don't think you need
9 to swear him in or qualify him; just ask him the
10 questions.

11 CHAIRMAN LEMAY: Eddie, what was below
12 the redbeds?

13 MR. SEAY: We did not drill below the
14 redbeds. The redbeds are 900-feet thick below
15 our site. We only drilled two feet into the
16 redbeds.

17 CHAIRMAN LEMAY: Where it says "16 to
18 18 feet," that means that you drilled two feet of
19 redbed and stopped? It doesn't mean you had 16
20 or 18 feet of redbeds?

21 MR. SEAY: Oh, right.

22 CHAIRMAN LEMAY: That was my question.
23 I didn't mean to--

24 THE WITNESS: No, I misunderstood your
25 questions.

1 the hydrologist you have--

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3 you asking Mr. Seay those questions right now.

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6 going to get into the hydrology, I would like to
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9 to swear him in or qualify him; just ask him the
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12 the redbeds?

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14 redbeds. The redbeds are 900-feet thick below
15 our site. We only drilled two feet into the
16 redbeds.

17 CHAIRMAN LEMAY: Where it says "16 to
18 18 feet," that means that you drilled two feet of
19 redbed and stopped? It doesn't mean you had 16
20 or 18 feet of redbeds?

21 MR. SEAY: Oh, right.

22 CHAIRMAN LEMAY: That was my question.
23 I didn't mean to--

24 THE WITNESS: No, I misunderstood your
25 question.

1 CHAIRMAN LEMAY: The wells don't give
2 how deep they are, they just give the location.
3 And then you have a description of the rock, and
4 I was just assuming you penetrated the redbeds.

5 Those are the only questions I have.

6 MR. CARR: I have no further questions
7 of Mr. Pierce.

8 CHAIRMAN LEMAY: The witness may be
9 excused, if there are no additional questions.

10 MR. CARR: And that concludes our
11 direct presentation.

12 CHAIRMAN LEMAY: Okay. Let's take a
13 short break and then we'll come back.

14 [A recess was taken.]

15 CHAIRMAN LEMAY: Please continue.

16 W. TRENT STRADLEY

17 Having been first duly sworn upon his oath, was
18 examined and testified as follows:

19 EXAMINATION

20 BY MR. KELLAHIN:

21 Q. Mr. Stradley, for the record, would you
22 please state your name?

23 A. My name is W. Trent Stradley, 419
24 Jemez, Hobbs, New Mexico. I'm president and owner
25 of S-W Cattle Company.

1 Q. Mr. Stradley, did you testify as an
2 opponent before the Examiner of the Division when
3 this case was heard back in September of 1992?

4 A. Yes, sir, I did.

5 Q. And you're appearing again today in
6 opposition to the Applicant?

7 A. Yes, sir.

8 Q. Let me ask you, sir, to help us
9 identify some plats and help us get oriented as
10 to your ranch property.

11 First of all, if you'll look at Exhibit
12 No. 1, which is two portions of a quadrangle map
13 put together, have you satisfied yourself that
14 the topographic maps that are published by the
15 U.S. geological survey, to the best of your
16 knowledge, accurately depict the surface of this
17 area as you know it to exist?

18 A. Yes, sir, I do. This information was
19 furnished by John West Engineering Company out of
20 Hobbs.

21 Q. Did they assist you in enlarging this
22 information so that the details of this facility
23 could be more easily visualized by parties?

24 A. Yes, sir.

25 Q. Have you examined what is identified as

1 S-W Cattle Company Exhibit No. 2, which is the
2 large display, and satisfied yourself that that's
3 an accurate reproduction of the topographic maps?

4 A. I briefly looked at it, yes, sir.

5 Q. The area that's outlined, being south
6 and east on the display, of a line that's shown
7 in green, can you see that, sir?

8 A. Yes, sir.

9 Q. What does that generally depict?

10 A. That looks like part of Section 3. If
11 you're going to the east, it goes into Section 2
12 and to Section 1, and if you go into 38, it's in
13 Section 6.

14 Our ranch consists of approximately 16
15 sections. It's almost a square entity, four by
16 four miles in area, and we operate it in four
17 areas that we rotate our cattle in, working off a
18 hub in the center that we work our cattle at.

19 Q. Insofar as that ranch property that you
20 control is adjacent to or potentially affected by
21 this application, does Exhibit No. 2 accurately
22 show that?

23 A. Yes, sir.

24 Q. On Exhibit No. 2, there is a windmill
25 circled in blue in a portion of Section 3. Do

1 you know about that windmill?

2 A. Yes, sir, I do.

3 Q. Is that accurately located on the
4 display?

5 A. Yes, sir.

6 Q. In addition, down, I believe it is, in
7 section--

8 A. 9.

9 Q. --9, there are two other well locations
10 indicated by blue dots. What do those represent?

11 A. They are wells; one that we just
12 recently drilled, and the other was an old
13 existing well that was homesteaded by the--I
14 don't know whether it was the Laughlin family or
15 it could have been the Buchanan family. It was
16 an old homestead well.

17 They're submersible wells, and we
18 actually have laid fast lines to some of our
19 country that has no water, so we can utilize
20 these wells to water these areas where we
21 normally didn't use to run our cattle.

22 Q. Give us a summary of your personal
23 involvement with this portion of the ranch
24 property.

25 A. I actually started riding this ranch

1 when I was 14 years old, with my father-in-law
2 who was Billy Walker, and I have been over most
3 of this country. And in regard to this windmill
4 well, we actually used to pull this well by hand
5 because it's so shallow.

6 Q. Describe for us what the current water
7 level is in the windmill, as you know it.

8 A. I measured this well myself just before
9 the last hearing, and the well from the top of
10 the casing, which is about two foot above ground
11 level, it was 33 foot to the redbed--I assume the
12 redbed. The well has been there forever. It
13 gauged 18 foot of water, so the water level was
14 approximately, oh, 12 to 15 foot below ground
15 level.

16 Q. Over your experience of dealing with
17 this windmill, does it continue to have water in
18 it or is it one where water levels fluctuate?

19 A. It's been there since I have been going
20 to the place.

21 Q. All right. Go down and give us the
22 water levels on the two wells that have the
23 submersible pumps in them.

24 A. The furthest est well, which is right
25 at the edge of the highway, approximately three

1 miles or two and a half miles south of Monument,
2 this well is the old homestead well. It's
3 approximately 52 foot deep. This well has
4 approximately 25 foot of water standing in it,
5 and with this submersible pump actually servicing
6 four surface tanks for my cattle, this well has
7 never pumped off.

8 The other well is the well that we
9 drilled. It's not as good a well but it was
10 drilled down to approximately 46 to 50 foot. It
11 had approximately 18 to 20 foot of water standing
12 in it, and it will produce something like 35
13 gallons per minute.

14 We primarily did this because Texaco
15 was furnishing the electricity and I wanted a
16 backup in case we did loose any of these watering
17 places.

18 Q. Are these your sources of fresh water
19 for this portion of the ranch?

20 A. These three wells actually furnish
21 water for approximately eight sections of
22 country. There is one exception. In the center
23 of the hub, which is the center of these 16
24 sections, I do have water there that I pump in
25 from over on the east side of the ranch, which I

1 have my own submersible pumps there, and I can
2 pump into the center of this area. It would be
3 four to five miles, in some instances, from my
4 boundary line to the center point, if we didn't
5 have this other water available to us.

6 Q. Let's talk about the topography. Let
7 me direct your attention to Exhibit 3, a locator
8 plat. This is the plat you utilized at the last
9 hearing, Mr. Stradley.

10 Prior to the last hearing, did you
11 prepare Exhibit No. 3?

12 A. Yes, sir, I did.

13 Q. And in conjunction with that, in
14 Exhibit No. 4, there are some colored photographs
15 for the Commission--and I apologize I don't have
16 sufficient color photographs, but we can share
17 them with Mr. Carr.

18 Exhibit 4 represents the photographs 1
19 through 17?

20 A. Yes, sir.

21 Q. These are all photographs that you've
22 taken and had photocopied and enlarged?

23 A. Yes, sir, that's right.

24 Q. Take us through, and I will let you do
25 this for us, if you use the locator plat, Exhibit

1 3, each of the numbers corresponds to a
2 photograph, does it not?

3 A. Yes, sir, that's right.

4 Q. And the purpose of the arrow is to show
5 the point of view you had when you took the
6 picture, is that correct?

7 A. That's right.

8 Q. And does the photograph as reproduced,
9 give you an accurate depiction as you could see
10 that property from that point of view when you
11 stood on the ground?

12 A. That's right.

13 Q. Take us, with No. 1, and give us a
14 sense of the topography of this area.

15 A. If you were to start at the southeast
16 corner of the 40-acre tract that is intended to
17 be the landfill, C & C, there is a cattle guard
18 there that we recently put in to restrict the
19 movement of my cattle into this county road.

20 I stood at this cattle guard and
21 actually took these pictures to the four
22 different directions, the north, east, west and
23 south, primarily to show the fact that the
24 topography of this landscape actually moves very
25 strongly from this point to a west and southwest

1 area, on to a draw that traverses across this
2 Cooper country and actually moves on down to this
3 area where my windmill is.

4 At the time that the engineering
5 company gave me this information, they estimated
6 from this point, to my windmill, was probably in
7 excess of a 40-foot drop from the point of the
8 corner, which is the highest point in that area,
9 to my windmill. In all this area, it all moves
10 to either the west or the southwest towards my
11 property and my windmill.

12 Q. When you look at the surface, there is
13 an area identified on Exhibit No. 2 to the south
14 and identified as White Breaks?

15 A. Yes, sir.

16 Q. Is that a name known to you?

17 A. Yes, sir. This is a caliche-looking
18 gypsum-type formation that actually lays back to
19 the east. It's been pretty common knowledge that
20 any water lays below this White Break cliff. I
21 actually have Sections 1 and 2, and we have no
22 water in that area that we've been able to find,
23 or usable water. What water we do have is a
24 gypsum content to the extent that the cattle
25 won't hardly drink it, so we actually don't pick

1 up good water until you do fall off of this White
2 Break cap.

3 Q. Identify for us the next series of
4 photographs. You've compiled them together as
5 Photographs 2 through 6. Take us through those
6 and these us what we're seeing.

7 A. No. 2, I'm standing at the cattle guard
8 that I referred to, which is at the corner of the
9 C & C proposed facility and my lease property. I
10 have shot from that point to the south.

11 Now, at this point we're on top, this
12 is before you fall off the White Break, and this
13 facility, you can actually see a caliche pit and
14 a clay pit right directly south, pretty close to
15 this arrow that's showing the curve, and the old
16 clay pit has been there for years and years.

17 The caliche pit was dug 15 years ago,
18 and it's real strange that within a 50- to
19 60-foot range that you've actually got a bona
20 fide caliche pit, and then you move into a clay
21 pit that's probably 12- to 15-feet deep that will
22 hold water--fresh water.

23 The No. 3 is actually shooting from
24 this same point, shooting to the west. My prime
25 reason for doing this, if you'll look at the

1 stakes of the fence that's running from east to
2 west, you can see how it is traversing down from
3 this point.

4 To the right of that is when they
5 originally started this C & C facility and, I
6 might add, in my opinion the pit is already
7 within approximately 75 to 80 foot of our
8 property line.

9 Also, it's hard to see, but
10 approximately 200 foot down this fence line going
11 to the west, you can actually see the first
12 monitor well. Now this monitor well serves no
13 purpose because it's up above, and I would
14 acknowledge there has never been any water in
15 this particular area.

16 If you move on down this line 500 foot
17 you pick up the next monitor well, and then at
18 this point they actually moved on to the west
19 approximately 500 foot, but they also moved back
20 to the north 60 to a hundred foot, so these are
21 the three wells and, in my opinion, only the
22 furthest west well would have any value as far
23 as a monitor well.

24 This does show how the country does
25 decline down, and you can actually see in the

1 background where it actually is higher over
2 approximately a mile from us and actually works
3 back to this low area, which is this draw that
4 runs north and south.

5 No. 4 is a shot back to the east, and
6 this shows how the country--this goes into
7 section--this is the east quarter of Section 3
8 and then on into Section 2, and you can see how
9 much higher it is back into that area.

10 Shot No. 5 is taken from this same
11 corner, shooting to the north, and this is the
12 county road that they would primarily be bringing
13 the material in. You can actually see where they
14 have got their area there where they will go into
15 this facility.

16 On the north side, you'll see where
17 I've recently built a fence to help control our
18 livestock from being on this road, because I felt
19 like with the additional traffic that we might
20 pick up in this area, that it would be a hazard
21 to animals and humans not to have this area
22 fenced.

23 Some of my country is open area and
24 we've asked the county to give us some help as
25 far as fencing, but they don't fence so any

1 fencing we build, we have to bear the expense and
2 the labor to do it.

3 No. 6 is primarily shooting from this
4 cattle guard into the C & C facility, when they
5 first started building it. And in the background
6 you can actually see some of the houses over in
7 the Monument area.

8 No. 7 is the first monitor well, which
9 is approximately 200 foot from this cattle guard,
10 going west down this fence line. As you can see,
11 testimony was given that there was approximately
12 20 foot from the fence line. I would venture to
13 say that it's probably closer to 12 foot than 20
14 foot.

15 No. 8 is the second monitor well, and
16 again you can see from the fence line the fact
17 that it's probably not over 12 foot at a maximum
18 from the property line. And then also, if you
19 look down that fence line, you can see how this
20 property--how the terrain traverses downhill, and
21 back to the left of this is my windmill.

22 Q. No. 9 is taken from the second monitor
23 well, just looking back to the facility as it was
24 first laid out. This is actually taken back to
25 the northeast.

1 The No. 10 photograph is actually taken
2 from the fence line, and this is the third
3 monitor well which is the west well which, as I
4 say, in my opinion was the only one that might
5 have any credibility. You can see that it was
6 actually moved in from the fence line, I would
7 estimate, somewhere in the hundred-foot range.
8 Also, if you look at the back, you can see also
9 how the terrain is moving downward in a steep
10 decline towards that draw.

11 No. 11 was taken from the quarter
12 section support marker. In other words,
13 normally, when you build fence, about every
14 quarter of a mile you'll put in a cross-member to
15 help support your fence, and this was actually
16 taken from the point. You can see just to the
17 right of this support area, you can see this
18 third monitor well which I was alluding to. You
19 can also see in the background how this country
20 is coming down towards us.

21 No. 12 is, again, taken down my fence
22 line to describe how this country does continue
23 to move to the west and southwest from the high
24 point of this facility.

25 [Referring to No. 13] I turned and

1 shot towards my mill, and while they estimated
2 this area to be--the distance from the fence line
3 to my mill to be in excess of a half a mile, in
4 fact it's less than four-tenths of a mile.

5 The No. 14 was actually back up at the
6 cattle guard again, shooting towards my mill,
7 which you can barely see the mill but you can see
8 how all this country is moving downward towards
9 my mill. This whole area here actually works
10 like a huge funnel or a bowl type, and all these
11 areas move to this low point. And then it
12 continues to move lower as it moves on to the
13 south and southwest.

14 No. 15 was a dry hole marker. This
15 actual location is on BLM land. Now, I have made
16 application to BLM to buy this land. They, at
17 first, sent me a letter saying they were going to
18 sell it to me, and now they're going to
19 reconsider.

20 However, you can see how the vegetation
21 has grown up around this location, and while I
22 have no control over the BLM land, on some of my
23 deeded land I will not be in very good humor if
24 someone comes in there and starts tearing up my
25 soil again after I have already lost as many

1 acres as I have to the oil people. I would be
2 remiss to agree to let them come in and tear up
3 my country again.

4 But, in essence, this is from this dry
5 hole marker shooting back towards the pit, which
6 again you can see that the area moves downhill
7 from the pit area to this dry hole marker on the
8 BLM hand.

9 I turned directly south from this same
10 location and shot my mill, and at the time I
11 think my mill was approximately 1,700 foot south
12 of this location where I was shooting, and my
13 deeded land actually is just to the area of where
14 this road comes through and then moves on down.
15 And I have deeded land that moves to all
16 different directions from this mill.

17 The No. 17 was actually taken from the
18 windmill itself, shooting back towards the area
19 where C & C--and you can see this area just to
20 the right of my windmill. However, it's not very
21 legible, but you can see the fact that it's quite
22 a bit higher than the area where my mill is.

23 Q. How long has that windmill been there?

24 A. I started going to the ranch with Mr.
25 Walker when I was 14 years old, and that's been

1 some 45 years ago, and the well was there then.

2 Q. Have you personally drunk the water out
3 of the windmill?

4 A. Yes, sir, I have.

5 Q. Can you drink it?

6 A. Yes, sir.

7 Q. Let me show you Exhibit 5, Mr.
8 Stradley. If you'll turn to page 2. The first
9 page is a cover sheet. If you'll turn to the
10 second page, at the bottom of the water analysis
11 there's a code by which each of the three water
12 samples has been analyzed and coded to a
13 particular source.

14 Can you identify for us where sources
15 1, 2 and 3 are in the water analysis?

16 A. These are the two submersible wells and
17 the windmill that lie on our deeded property.

18 Q. These were water samples extracted from
19 those sources back in July of last year?

20 A. Yes, sir, that's right.

21 MR. KELLAHIN: That concludes my
22 examination of Mr. Stradley, Mr. Chairman. We
23 would move the introduction of Exhibits 1 through
24 5.

25 CHAIRMAN LEMAY: Without objection,

1 Exhibits 1 through 5 will be admitted into the
2 record.

3 Mr. Carr.

4 EXAMINATION

5 BY MR. CARR:

6 Q. Mr. Stradley, if I understand your
7 testimony, you're concerned about possible
8 contamination of these fresh water wells on your
9 ranch as a result of this disposal activity?

10 A. That would be the most devastating
11 thing that could happen to me. My operation is a
12 cow-calf operation. We've been there, the Weirs
13 homesteaded the place. My father-in-law bought
14 the land from the Weirs. It took in excess of
15 two years to buy the place because they had
16 checkerboarded this place in 40-acre tracts, and
17 we had to deal with some 10 to 12 heirs, so it
18 took over two years to get this under purchase.

19 Yes, it would be very devastating,
20 considering the fact that we just got through
21 with our taxes and we spent over \$300,000 out
22 there this year, most of it in the State of New
23 Mexico. If it gets to be any more expensive to
24 me, I suspect that I can no longer afford to keep
25 this place.

1 Q. Is it important to you that the Oil
2 Conservation Division has developed guidelines
3 for the installation and operation of facilities
4 like this?

5 A. Let me commend them. This is a far cry
6 from what we first started with. But there
7 again, even your oil companies such as Conoco,
8 which is one of the best companies when it comes
9 to protecting the landowner, I think I just
10 recently received a check from them for something
11 like 25 leaks. Now, they didn't intend for those
12 leaks to be there, but they were.

13 Chevron has one little pipeline across
14 me and they sent me a check for six leaks. If
15 these major oil companies can make these
16 mistakes, it concerns me what a landfill might do
17 there just above my property.

18 Q. Isn't it also important to you that the
19 OCD guidelines require or provide that they'll
20 monitor this site at least quarterly?

21 A. I appreciate that. I would hope they
22 would do it, but having dealt with the government
23 for many years, sometimes these things fall
24 through the cracks.

25 Q. If this application was approved, would

1 you prefer that the guidelines developed by this
2 agency for facilities of this nature be
3 incorporated into this order and made conditions
4 of its approval?

5 A. Well, you suggested maybe I want it in
6 Roosevelt County. Now, I don't want it in
7 Roosevelt County. I wouldn't wish this on
8 Roosevelt County. What I would prefer to see,
9 the Coopers have a great deal of land that lays
10 back to the west and southwest of us, probably
11 many sections. There's no reason why they
12 couldn't move this facility onto some of this
13 land where it wouldn't be of any consequence to
14 their neighbors--they're probably polluting our
15 water--and actually made this 16-section ranch
16 worthless, rather than have this facility on some
17 of their property.

18 Q. Maybe you didn't understand my
19 question.

20 A. I'm sorry.

21 Q. My question was, if this application
22 should be approved, would it be important to you
23 that these guidelines, which you've commended the
24 agency for, be incorporated into that order and
25 made a condition of the operation of this

1 facility?

2 A. Yes, sir. Yes, sir. I'm sorry.

3 MR. CARR: That's all.

4 CHAIRMAN LEMAY: Additional questions?
5 Commissioner Carlson?

6 COMMISSIONER CARLSON: Yes.

7 EXAMINATION

8 BY COMMISSIONER CARLSON:

9 Q. You mentioned, I think it was
10 photograph 15, that that was BLM land?

11 A. Yes, sir, that's right. This facility
12 was constructed and, in essence, what I have of
13 the 16 sections, I have approximately 1800 acres
14 of BLM land, there's 2200 acres of state land,
15 and approximately 6000 acres of fee land. This
16 is all mixed together.

17 I've always had a lease on the state
18 land. I have a cow-calf allotment on the BLM
19 land, and then of course, my fee land.

20 Where this facility is, right due south
21 is a 40-acre tract that belongs to the State of
22 New Mexico. Right adjoining that is a 40-acre
23 tract that belongs to BLM. Then, just to the
24 west of that is a 40-acre that is my fee land.

25 It looks to me like if the wind gets

1 high enough to blow these contaminants over in
2 this area, not only will it hurt me, but possibly
3 the State of New Mexico and the BLM may have some
4 concern.

5 Q. So, within Section 3, there is federal,
6 state, and fee land, all interspersed through
7 there?

8 A. Yes, sir, that's right.

9 Q. And the 40 acres directly south of this
10 site is state?

11 A. And then the 40 acres to the southwest
12 of the facility is BLM land.

13 Q. I see.

14 A. So the corner of the BLM land actually
15 hooks up with the corner of this facility.

16 Q. Okay. And you have the lease on the
17 BLM, and that state 40, plus--

18 A. I have the lease on the state land.
19 This old federal allotment is a cow-calf
20 allotment, where they allow us to run so many
21 mama cows for a certain length of time in this
22 area.

23 COMMISSIONER CARLSON: That's my only
24 question. Thank you.

25 CHAIRMAN LEMAY: Commissioner Weiss?

1 COMMISSIONER WEISS: Yes, sir.

2 EXAMINATION

3 BY COMMISSIONER WEISS:

4 Q. I looked at your water analysis here,
5 and No. 3 is the windmill sample. Is that the
6 same sample point, do you know, that was reported
7 in C & C's report as a analysis?

8 A. I don't know, because I didn't give
9 C & C permission to take this analysis. So, I'm
10 not for sure that they did take an analysis, but
11 possibly they did.

12 Q. They're totally different waters, I
13 guess, is what I notice.

14 A. Well, then, possibly we ought to have
15 it redone.

16 Q. It's not important. I don't know.
17 They're both fairly fresh water. But I see that
18 neither analysis included any tests for organics
19 or oil, or that nature. Is there any oil in the
20 water now?

21 A. Sir, I wouldn't know. I would doubt it
22 because there's not a whole lot of production in
23 that particular area.

24 Now, if you move south, probably two
25 miles, Amoco just got through doing remediation

1 work on a well. They dug down to approximately
2 28 foot, at which point they picked up the fresh
3 water. They claimed to have done a water
4 analysis on it. They did cover the whole back up
5 and wrote me a letter saying the water wasn't
6 contaminated. I truthfully don't know, but I
7 take their word for it.

8 COMMISSIONER WEISS: Thank you. That's
9 my only question.

10 CHAIRMAN LEMAY: I don't have any
11 questions. Thank you very much. I appreciate
12 your attendance.

13 THE WITNESS: Did I do good?

14 CHAIRMAN LEMAY: That's why I don't
15 have any questions. You answered them all.

16 THE WITNESS: Thank you.

17 MR. KELLAHIN: Call, at this time, Mr.
18 Chairman, Elsie Reeves.

19 ELSIE REEVES

20 Having been first duly sworn upon his oath, was
21 examined and testified as follows:

22 EXAMINATION

23 BY MR. KELLAHIN:

24 Q. Ms. Reeves, for the record, would you
25 please state your name and occupation?

1 A. My name is Elsie M. Reeves, and I'm
2 retired.

3 Q. Where do you reside now?

4 A. At 3902 West Kaim Drive, in Phoenix,
5 Arizona.

6 Q. At the Examiner hearing back in
7 September of 92, you testified as one of the
8 opponents to the Applicant in this case?

9 A. That's correct.

10 Q. We have illustrated on Exhibit No. 2 an
11 area outlined in yellow on the display. Have you
12 examined that area?

13 A. Yes, I have seen that.

14 Q. What does that represent?

15 A. That is the property owned by the
16 Laughlin family in Lea County.

17 Q. You characterize it as the Laughlin
18 Ranch or the Laughlin Farms, is that correct?

19 A. That is correct.

20 Q. What is your relationship to that
21 property?

22 A. My father and my grandparents
23 homesteaded that property in the early 1900s.

24 Q. Do you currently have any management
25 interest in that facility or that ranch property?

1 A. Yes. I am one of the three-member
2 advisory board that takes care of--looks after
3 the property, and we are currently leasing it.

4 Q. We have identified on Exhibit No. 2 a
5 windmill in the approximate center of the
6 Laughlin property identified by a blue dot in
7 Section 4?

8 A. That's correct.

9 Q. Are you familiar with that windmill?

10 A. Yes, I am.

11 Q. Is that windmill utilized for any
12 purpose at this point?

13 A. Yes. Currently, our tenant is using it
14 to water his cattle.

15 Q. Okay. Your concern is the same as Mr.
16 Stradley's, of potential contamination to shallow
17 groundwater sources?

18 A. Very definitely.

19 Q. As part of your review of available
20 groundwater in this vicinity, did you go to
21 Roswell, New Mexico, and visit with the Office of
22 the State Engineer and study, with their
23 assistance, the public documents concerning water
24 locations and water level measurements?

25 A. Yes, sir, I did.

1 Q. When did you do that?

2 A. Tuesday.

3 Q. Did you bring those documents to my
4 office and, with the assistance of my secretary,
5 did you prepare a plat that located all those
6 water sources and make copies of all the
7 documents you obtained from the State Engineer's
8 Office?

9 A. Yes, sir.

10 Q. In looking at Exhibit No. 6, did you
11 attempt to locate, from the information supplied
12 to you by the State Engineer in Roswell, the
13 location of any points that had penetrated water
14 in this area?

15 A. Yes, sir.

16 Q. Did you locate them or, with the
17 assistance of my secretary, locate them as best
18 you could on the topo map?

19 A. Yes, we did.

20 Q. What do the numbers represent when we
21 look over at Exhibit 7, to the compilation of all
22 that data?

23 A. The numbers on Exhibit 7 are reflected
24 on Exhibit 6 as locations of places where water
25 had been documented.

1 Q. How did you determine from the State
2 Engineer records the water level that you've
3 shown on the exhibit?

4 A. From the well records that are copied
5 here in Exhibit 7.

6 Q. And as you turn to Exhibit 7 and move
7 past the index and go to the section and past the
8 section cover sheet, then, each well record is
9 numbered with a number that corresponds to the
10 index?

11 A. Yes.

12 Q. Were there available to you in Roswell
13 water analysis from any of these wells?

14 A. Yes, I believe they did have that
15 information.

16 Q. You had not had the opportunity to
17 tabulate yet the water analysis for any of the
18 wells?

19 A. That's correct.

20 Q. At this point you simply had the
21 measurements of the reported depths of water in
22 the area and have depicted them on the display?

23 A. That's correct.

24 MR. KELLAHIN: That concludes my
25 examination of Ms. Reeves, Mr. Chairman. We move

1 the introduction of Exhibits 6 and 7.

2 CHAIRMAN LEMAY: Thank you, Mr.

3 Kellahin.

4 Mr. Carr?

5 MR. CARR: We have no objections to the
6 admission of the exhibits, and we have no
7 questions.

8 CHAIRMAN LEMAY: The exhibits will be
9 admitted into the record.

10 Additional questions of the witness?

11 Commissioner Carlson?

12 COMMISSIONER CARLSON: No.

13 COMMISSIONER WEISS: I have no
14 questions.

15 CHAIRMAN LEMAY: I have, I guess, one.

16 EXAMINATION

17 BY CHAIRMAN LEMAY:

18 Q. Your points of water there from the
19 State Engineer's Office, they indicate a depth of
20 water. Is there anything to indicate volumes?
21 You said you had no quality data. How about
22 quantity?

23 A. I believe some of these well records in
24 Exhibit 7 indicate gallons per minute on some of
25 these locations. I'm looking at the first one

1 that says 10 gallons per minute, the second one
2 says 25 gallons per minute.

3 Q. I see a water level--okay. Oh, 10
4 gallons per minute on your well records, yes.
5 Okay.

6 CHAIRMAN LEMAY: Thank you very much.

7 THE WITNESS: You're welcome.

8 MR. KELLAHIN: Mr. Chairman, at this
9 time I would call Mr. Tim Kelly.

10 T. E. "TIM" KELLY

11 Having been first duly sworn upon his oath, was
12 examined and testified as follows:

13 EXAMINATION

14 BY MR. KELLAHIN:

15 Q. Mr. Kelly, would you please state your
16 name and occupation?

17 A. My name is Tim Kelly, and I'm President
18 of Geohydrology Associates in Albuquerque.

19 Q. Do you hold any professional degrees,
20 Mr. Kelly?

21 A. Yes, sir, I hold a bachelor's degree in
22 geology and a master's degree in geology.

23 Q. Describe for us your education and
24 employment experience as a geohydrologist in the
25 State of New Mexico.

1 A. After receiving my master's degree, I
2 was hired by Chevron and worked for Chevron for
3 two years. Then I resigned from Chevron and went
4 to work for the water resources of the U.S.
5 Geological Survey, and I worked for them for 15
6 years, after which, in 1975, I resigned and
7 established the firm of Geohydrology Associates
8 in Albuquerque. And we've been in business as
9 consulting hydrologists since 1975.

10 Q. Have you conducted groundwater studies
11 and geohydrologic studies in Southeastern New
12 Mexico?

13 A. Yes, sir.

14 Q. Have you testified and qualified as an
15 expert hydrologist before the Oil Conservation
16 Commission in prior cases?

17 A. Yes, sir.

18 Q. Did you testify as an expert
19 hydrologist before Examiner Stogner back in
20 September, in this case?

21 A. Yes, sir.

22 Q. When did you first become involved in
23 this particular issue, Mr. Kelly?

24 A. Probably in July or August, prior to
25 the first hearing.

1 Q. Was that that point I hired you to make
2 a study on behalf of my clients of the
3 applications filed by the Applicant in this case?

4 A. Yes, sir.

5 Q. Have you reviewed the OCD case file
6 concerning this application?

7 A. Yes, sir.

8 Q. Have you had conversations with Kathy
9 Browne, Roger Anderson, and Bill Olsen of the
10 Environmental Bureau, concerning this
11 application?

12 A. Yes, sir.

13 Q. Have you reviewed the conditions of
14 approval of May 20, 1992?

15 A. Yes, sir.

16 Q. And did you review the recommendations
17 that the Environmental Bureau issued and
18 distributed by letter of January 6, 1993?

19 A. Yes, sir.

20 Q. And, based upon that entire review, do
21 you now have professional opinions and
22 conclusions about this application?

23 A. Yes, sir.

24 MR. KELLAHIN: We tender Mr. Kelly as
25 an expert hydrologist.

1 CHAIRMAN LEMAY: His qualifications are
2 acceptable.

3 Q. Mr. Kelly, I've shown you what is
4 marked as S-W Cattle Exhibit No. 8. It's an
5 exhibit numbered from pages 1 through 43.

6 Does this include information that you
7 have examined out of the OCD case file concerning
8 this application?

9 A. Yes, sir.

10 Q. The initial document is the C & C
11 Landfarm application, and you examined that prior
12 to the last hearing?

13 A. Yes, I did.

14 Q. Following that is the various
15 correspondences between the Applicant and the
16 Environmental Bureau, and the Examiner Order, and
17 then finally the recommended changes from January
18 6th of 93?

19 A. Yes, sir.

20 Q. I want to focus most of our attention
21 on the January 6, 1993 recommendations, but in
22 order to place that in context, I would like you
23 to summarize for the Commission what were your
24 concerns as a hydrologist about the original
25 application as it was presented to Mr. Stogner?

1 What was that issue for you?

2 A. Well, my major concern is not whether
3 or not Mr. Cooper has a soil farming operation on
4 his land, but the location of this particular
5 site relative to the existing water wells which
6 are used by your clients.

7 At the first hearing before Mr.
8 Stogner, I felt that it was kind of like fighting
9 a cloud. We didn't see anything until the
10 hearing. We saw no drawings. As a matter of
11 fact, it was my conclusion that the system was
12 still under design. In fact, I think testimony
13 shows that some of the activities were being
14 discussed between Mr. Pierce and the OCD within a
15 matter of days prior to the hearing, so we were
16 asked to testify in opposition to a plan which
17 really was not even on paper.

18 So that made it difficult to address
19 some of the problems other than, based on my
20 knowledge of the geology and experience and
21 looking at the data that had been presented, I
22 didn't feel that the data presented justified
23 granting the application.

24 Q. What was your opinion concerning the
25 use of the excavated caliche pits as a place to

1 put the contaminated soils?

2 A. I felt that was just a pathway to any
3 nearby water.

4 Q. Did you have an opinion with regards to
5 the viability of the redbed dike as a mechanism
6 to ensure that the leachates would not
7 contaminate into the groundwater that existed
8 off-site?

9 A. The redbed dike simply would not have
10 worked. It couldn't have been constructed. It
11 would have been a physical impossibility. But
12 then they were proposing to use a local material,
13 the clay for the dike, but, in fact, they didn't
14 have any tests on the clay to know how permeable
15 it was. So, if they didn't know how permeable
16 the clay was before they dug it up, they would
17 have no idea what it was going to be like after
18 they built the dike. And I think physically it
19 would have been impossible to build the dike.

20 Q. Based upon your study at that point,
21 would you characterize for us the potential
22 groundwater migration, the hydrology of this area
23 that Mr. Stradley has identified as being west of
24 the White Breaks?

25 A. Yes, sir. I think on one of the

1 exhibits that you've given me here, it's
2 identified as figure 3, and this is a
3 reproduction--it's this illustration that I'm
4 referring to. It's probably on page 5 or 6 of
5 the exhibit.

6 Q. The pages are numbered at the bottom,
7 Mr. Kelly.

8 A. Thank you. It's on page 10 of Exhibit
9 8. This is an enlargement of a U.S. Geological
10 Survey map that was published in cooperation with
11 the Bureau of Mines, which shows the water table
12 contours in the area, and groundwater flow moves
13 at right angles to those contours. But in the
14 vicinity of the facility, the water table or the
15 groundwater movement would be generally from
16 north to south.

17 Q. What's your conclusion?

18 A. So, my conclusion from that is that
19 anything that got away from the pits would move
20 directly onto the S-W property and the adjoining
21 property, and certainly towards the well with
22 which he is concerned.

23 Q. Is there any relationship to the
24 topography of the surface and the position or the
25 location of the groundwater?

1 A. There may or may not be. It's
2 relative. Certainly the topography will carry
3 runoff in the direction of the well, as indicated
4 by Mr. Stradley. And during the movement of
5 water down that drainage, it will percolate into
6 the soils and eventually reach the water table
7 where it may change direction of flow in
8 accordance with the illustration shown here on
9 page 10.

10 Q. Is there sufficient scientific data
11 available to you at this point, from which you
12 can conclude or project with reasonable certainty
13 the extent or degree of groundwater movement of
14 leachates, if they're introduced at this
15 facility?

16 A. Yes, sir, I would say there is.

17 Q. All right. Where will they go?

18 A. Well, it's on figure 10--I mean, page
19 10.

20 Q. What, in your opinion, is the necessary
21 scientific information in order to have
22 sufficient comfort, as a hydrologist, to site
23 this facility as the Applicant proposes? What
24 would you want done and what information would
25 you want to see?

1 A. Well, certainly more monitoring wells.
2 And the letter of January 6th, which begins on
3 page 41, specifies certain things which are
4 certainly an improvement over what was proposed
5 by the Applicant at the September hearing.
6 However, I don't think these are adequate to
7 protect the environment.

8 Q. Let's specifically talk about those
9 items. Looking at the January 6, 1993,
10 recommendations, page 42 of Exhibit No. 8, going
11 down to No. 9, or anywhere else in that
12 recommendation, do you see any testing protocol
13 to identify and test the volumes of salt that may
14 be introduced into the groundwater?

15 A. No, sir. They haven't been addressed.

16 Q. Is that an issue of importance to you,
17 as a hydrologist?

18 A. Yes, sir, because those water wells can
19 be contaminated by salt probably more easily than
20 they can be contaminated by the hydrocarbons.
21 Salts are much more mobile.

22 Q. The treatment zone monitoring that is
23 proposed by the Environmental Bureau on the next
24 page, indicates one background soil sample for
25 the entire facility located in the center of that

1 facility?

2 A. Yes, sir.

3 Q. In your opinion as a hydrologist, is
4 that an adequate sample to give you a
5 representative test to identify the character of
6 the soil for the entire 40-acre tract?

7 A. No, sir, it's not.

8 Q. Why not?

9 A. Because there's enough variations in
10 the soils of that part of the state that you
11 could collect 10 different samples in the 40-acre
12 tract and the only way you would come up with a
13 background would probably be to average the
14 results of the 10.

15 I might also mention, going back--you
16 had alluded to No. 9, what that specifies for is
17 the sum of all the aromatics, the BTEX, but, in
18 fact, as related to water quality standards,
19 there's a lot of difference in the maximum
20 permissible limits for benzene than there is for
21 toluene or ethyl benzene or xylene. Just giving
22 the sum really doesn't tell you anything.

23 And I think it's important to talk
24 about the water quality standard because that's
25 what we're concerned with in this well.

1 Q. The use of a horizontal buffer, it's
2 Item No. 2 on page 42, it says, "No disposal or
3 remediation of contaminated soils will occur
4 within one hundred feet of the boundary of the
5 property"?

6 A. Yes, sir.

7 Q. To the best of your knowledge,
8 information and belief, is there any scientific
9 basis for that footage setback for this type of
10 facility?

11 A. At the meeting that we had with members
12 of the environment group from OCD, it was stated
13 that that hundred feet was an arbitrary value.

14 Q. Are you aware of any scientific basis,
15 within the context of your own knowledge, to
16 justify a setback of a hundred feet?

17 A. No, sir.

18 Q. Do you have an opinion or
19 recommendation as an expert as to what that
20 buffer zone setback ought to be?

21 A. No, sir. I think that would have to be
22 determined on a case-by-case basis.

23 Q. How would you go about making a
24 determination on a case-by-case basis?

25 A. I would simply require a much more

1 stringent monitoring program associated with
2 this, including additional drilling and testing.

3 Q. In determining the amount of buffer
4 zone to have for the facility where it joins
5 another property, would it be important to you as
6 a hydrologist to know how deep it was vertically
7 before you got to groundwater?

8 A. Yes, sir, it is. The other thing at
9 this particular site which makes it difficult to
10 establish a horizontal parameter, is the drill
11 logs, which Mr. Seay analyzed, all show a
12 considerable amount of caliche. And, contrary to
13 popular belief, caliche is not impermeable. In
14 fact, it's often fractured and jointed so it's
15 extremely difficult to determine how and where
16 water is going to move through it.

17 Q. Do you have a copy of the water values
18 from Cardinal Laboratories? I believe it was
19 Exhibit No. 6. I'm sorry, Exhibit 5. Here is
20 one.

21 What is your opinion of the quality of
22 the water as identified from the windmill source
23 on the S-W Cattle Ranch?

24 A. I would say that this would certainly
25 be acceptable water for cattle ranching

1 operations.

2 Q. Is that water quality sufficient that
3 that water is protected by the State Engineer?

4 A. Yes, it is.

5 Q. Did you attempt to determine from the
6 Environmental Bureau what standard, what
7 criteria, what guidelines they were utilizing by
8 which to develop the recommendations that are now
9 set forth on the January 6, 1993 recommendations?

10 A. Yes, sir, I did.

11 Q. What were you advised was the basis
12 upon which, either by experience or by
13 literature, those recommendations were made?

14 A. Well, I visited the environment
15 department and got a copy of the permit that was
16 given to Rhino Tank Company, and it's my
17 understanding that it is that site that was used
18 as the guidelines for the system which is now
19 proposed by C & C.

20 After examining that and talking with
21 Mr. Robert Garcia, who is in charge of that
22 particular monitoring system, my conclusion is
23 there's a lot of difference between what Rhino
24 has been required to do by the Environment
25 Department and what OCD has required in these

1 recommendations that you've given me here.

2 Q. Let me show you what's marked as
3 Exhibit No. 9, Mr. Kelly. If the Environmental
4 Bureau is using as a basis of experience or at
5 least as an example of a landfarm facility by
6 which to analyze and judge the C & C Landfarm, if
7 they're using the Rhino facility as a benchmark,
8 if you will, what are the differences?

9 A. Well, they require, as you can see the
10 first item, that four samples be collected, one
11 per acre; whereas the OCD has required one per 40
12 acres.

13 Also, I think it's important to note
14 that the Rhino facility cannot accept the same
15 type of waste which is proposed by C & C
16 Landfarms. Rhino only can accept waste from
17 underground storage tanks.

18 This is soils which have been
19 contaminated either by diesel or by conventional
20 gasoline, and both of those products are highly
21 volatile and therefore much more easily
22 remediated through soil farming. And the
23 volatiles are driven off much more quickly.

24 As a result, the entire concept for the
25 Rhino site versus the C & C site are based on two

1 entirely different sets of parameters. Also,
2 there's no reference in this permit from Rhino
3 Tank concerning groundwater monitoring, and I was
4 concerned about that. So, when I talked with Mr.
5 Garcia, he advised me that four wells have been
6 drilled to a depth of 200 feet at this site to
7 confirm that there was no free water present.

8 And then, when I asked him if there was
9 water at 18 feet below land surface in the
10 vicinity, would they require monitoring wells,
11 and he said, "Definitely." I said, "What about
12 50 feet?" and he said, "Yes." And I said, "What
13 about a hundred feet?" and he said, "There's a
14 place at Portales where they have monitoring
15 wells beneath the soil farming operation where
16 the water table is 100 feet below land surface,"
17 and he said that this was due to the fact it was
18 on the Ogallala formation. And of course, I
19 think it's been brought out in earlier testimony,
20 that this is on the Ogallala formation.

21 Q. Do you have an opinion as to the
22 environmental risk and the potential risk to
23 groundwater of taking this material from various
24 well sites and consolidating it or concentrating
25 it within a facility such as this, as potential

1 risk?

2 A. Well, yes, sir. It certainly leaves it
3 available to the effects of rainfall and runoff.
4 Regardless of the amount of protection that they
5 can give for runoff, no concern has been provided
6 in either of the new guidelines provided in the
7 letter of January 6th, or in any of the earlier
8 work, for the salts.

9 And the salts, as I mentioned, are
10 going to be highly mobile. There are always
11 salts associated with this type of waste. So,
12 those would certainly percolate into the
13 groundwater, and there's no monitoring
14 regulations for them.

15 Q. Mr. Pierce talked about the potential
16 to remediate the contaminated soils by
17 degradation. What, in your opinion, is the
18 viability of that concept in which to remediate
19 the soils?

20 A. I think it will take a considerable
21 length of time to remediate these soils.

22 Q. Why do you say that?

23 A. Because, as Mr. Pierce alluded earlier,
24 the volatiles are primarily gone, so you're left
25 with the heavy fraction which is take a much

1 longer time for the bacteria to break down. I
2 think it's going to take a much longer time than
3 they believe.

4 Q. The Environmental Bureau has proposed a
5 monitoring of the treatment zone and that
6 monitoring, then, is to be the fail-safe for the
7 system so that the detection of contaminants in
8 the native soil underneath the contaminated soil
9 is going to be the protection.

10 A. Yes, sir.

11 Q. Do you share their belief that that is
12 an adequate fail-safe device in order to protect
13 groundwater that's present in the area?

14 A. No, sir.

15 Q. Why not?

16 A. Well, they're going to look to the
17 contamination once it gets three feet in the
18 ground and then, as Mr. Pierce testified, if it
19 gets down there, then they're going to go to a
20 Plan B, but Plan B hasn't been provided.

21 So presumably, once they find a
22 contamination there, they're going to have to
23 figure out what they're going to do about it. I
24 think that the number of samples are going to
25 collect. Certainly the location of the

1 monitoring wells which they have proposed are not
2 sited in such a way that they would intercept
3 anything getting away, at least not all of the
4 monitoring wells. So I just think there's a
5 tremendous opportunity for this stuff to get away
6 from them and they would never know it.

7 Q. In your opinion as a hydrologist, for
8 this area, is there an adequate vertical as well
9 as horizontal separation from groundwater so that
10 this facility can be approved as proposed?

11 A. They've never identified groundwater
12 and I think that's because they haven't drilled
13 enough holes or drilled them in the right
14 places. But certainly four-tenths of a mile to
15 the one windmill is not very much protection for
16 Mr. Stradley.

17 Q. Anything else in summary, Mr. Kelly?

18 A. No, sir.

19 MR. KELLAHIN: That concludes my
20 examination of Mr. Kelly. We move the admission
21 of Exhibits 8 and 9 into the record.

22 CHAIRMAN LEMAY: Without objection,
23 Exhibits 8 and 9 will be admitted into the
24 record.

25 EXAMINATION

1 BY MR. CARR:

2 Q. Mr. Kelly, the last time we talked was
3 last July or August, and I think at that time you
4 told me you only had a short period of time to
5 review the proposal, is that correct?

6 A. I only think we discussed this at the
7 hearing, which was in September.

8 Q. If I recall, you had only been involved
9 in the project for just a matter of days at that
10 time?

11 A. Yes, sir, that's right.

12 Q. And at that point in time, in fact, you
13 had only limited data available to you?

14 A. Yes, sir.

15 Q. Have you ever been employed to consult
16 on a project similar to this one?

17 A. Yes, sir.

18 Q. A landfarm of this nature?

19 A. We have been involved in several
20 instances where we set up the landfarming
21 operation for an operator. We did not ever go
22 through the permitting process.

23 Q. Were they in New Mexico?

24 A. Yes.

25 Q. Could you identify those for me, or any

1 of them?

2 A. They were primarily in the San Juan
3 Basin area.

4 Q. Do you know the name of the operator of
5 any of those?

6 A. Well, that's proprietary.

7 Q. Were they landfarms where there was
8 simply going to be no liquids but just a
9 contaminated hydrocarbon soil remediated?

10 A. Yes, sir, they were.

11 Q. When you did that, when you're called
12 to consult on a project like that, is it
13 important to visit the site?

14 A. Is it what?

15 Q. Important to go out and actually visit
16 the site?

17 A. It depends on what they want done.

18 Q. In terms of trying to reach conclusions
19 about the viability of a project, you, as a
20 consultant, would be able to do this without ever
21 going to the site? Is that what you're telling
22 me, or would you want to go out and look at it?

23 A. Normally I would go out and look at the
24 site, yes, sir.

25 Q. Is there certain testing and sampling

1 that you would do?

2 A. There are certain tests and samples
3 that we would recommend be done, yes, sir.

4 Q. Mr. Kellahin, every time we do this,
5 rattles off these tests. Compaction tests, is
6 that one of the things you would want to do?

7 A. Yes, sir.

8 Q. Permeability tests?

9 A. Yes.

10 Q. Percolation tests?

11 A. Yes, sir.

12 Q. Groundwater migration tests?

13 A. Yes.

14 Q. And contamination mobility tests?

15 A. Right.

16 Q. So these are things that you would need
17 to reach a conclusion and make a determination
18 about whether or not a project is sound, is that
19 fair?

20 A. Well, it would depend on--as I said, it
21 would depend on the site that it was at, the
22 amount of material you're dealing with, and a lot
23 of different factors. On a site like this,
24 that's certainly what I would want, yes, sir.

25 Q. Have you ever visited this site?

1 A. No, sir.

2 Q. Following the Examiner hearing, Mr.
3 Kellahin requested permission, and it was
4 granted, to go out and collect samples and run
5 tests. To your knowledge, were any tests or
6 sampling done by you in preparation for this
7 hearing?

8 A. No.

9 Q. Or anyone else for Mr. Kellahin's
10 clients, that you're aware of?

11 A. Not that I'm aware of.

12 Q. I assume you have seen the OCD
13 guidelines for landfarms that they have prepared?

14 A. Yes.

15 Q. You're not finding fault with these
16 guidelines, are you?

17 A. No, I'm not.

18 Q. You're just saying that here maybe
19 something else may be required?

20 A. Pardon me?

21 Q. You're saying, in this particular case
22 something else may be required?

23 A. I think that the guidelines are as good
24 as written, but each site must be evaluated on
25 its own merits.

1 Q. And that would require the kind of
2 testing and visual inspections and things that
3 you've discussed?

4 A. Yes, sir.

5 Q. Now, your concern about contamination
6 of these offsetting water wells is really based
7 on the concern that the contaminants will get
8 away from this facility, isn't that right?

9 A. I'm concerned that they won't stay on
10 Cooper's property.

11 Q. In fact, they would get not only out of
12 the treatment zone that they're talking about,
13 but away from the facility altogether?

14 A. Yes, sir.

15 Q. If that didn't happen, we wouldn't have
16 a problem?

17 A. That's correct.

18 MR. CARR: Thank you.

19 CHAIRMAN LEMAY: Mr. Stovall?

20 MR. STOVALL: I have a few questions.

21 EXAMINATION

22 BY MR. STOVALL:

23 Q. Mr. Kelly, do you know of your own
24 knowledge if there's any groundwater directly
25 under the facility?

1 A. Based on the information that's been
2 submitted at this hearing, I do not know whether
3 there's any there or not, underneath that
4 particular 40 acres.

5 Q. Would you explain to me, just as a
6 hydrologist, what does it take to cause movement
7 of fluids? We're talking about this situation,
8 obviously. If contaminants got down there, what
9 does it take to move them down and then move them
10 away from the facility underground?

11 A. Free water.

12 Q. What does "free water" mean?

13 A. Rainfall or runoff or water that's
14 added during the remediation process.

15 Q. How much would it take to move them how
16 far?

17 A. I can't answer that question.

18 Q. Is this something you would have to
19 calculate to figure out?

20 A. No. I think that the rule of thumb is
21 that on the Ogallala formation, approximately
22 one-half inch of precipitation infiltrates per
23 year to the water table.

24 Q. Do you know that this is the Ogallala
25 formation in this area?

1 A. I have worked in that immediate
2 vicinity, and there are geologic maps, and I
3 believe that one of the exhibits identifies it as
4 the Ogallala, yes, sir. I don't think anybody
5 questions whether or not it's the Ogallala.

6 Q. You're saying that if any moisture at
7 all hits the surface, hits one of the lifts, that
8 contaminants are going to flow down?

9 A. No, sir.

10 Q. There's a volume which causes it to
11 flow, is that right?

12 A. Yes, sir.

13 Q. And in order to help design criteria
14 that would make this specific facility safe,
15 would it not be useful or do you think it would
16 be useful for the Division to have those numbers,
17 or is there some point at which you could say,
18 clearly there's not enough volume of fluid or
19 contaminant to do something? Where do we go?

20 A. To my knowledge, there's only been one
21 study that's ever looked at this, and that was
22 that one-half inch of precipitation, per year,
23 percolates through the Ogallala to the water
24 table, and that's in an area where the annual
25 precipitation is roughly 10 inches a year. Now,

1 that was a study that was done on this particular
2 aquifer.

3 The only way that you would ever get to
4 what you're looking for, I believe, is to have a
5 highly detailed monitoring system and one in
6 which you were able to measure the rainfall and
7 the water levels and monitoring wells, and see
8 how they react. The rainfall takes time to
9 percolate in. For example, you could get
10 half-inch rainfalls for five years and never see
11 anything get to the bottom. But if you got one
12 three-inch rainfall, you could suddenly have an
13 awful lot of water on the ground.

14 There are a lot of records with a lot
15 of data in the geological survey and, I'm sure,
16 in the Environment Department, that would verify
17 that.

18 Q. You don't have any specific
19 calculations for this site? no knowledge you have
20 that would specifically guide us in making any
21 sort of measurement or calculations?

22 A. No, sir.

23 Q. You don't have any saturated or
24 unsaturated flow models that would be applicable
25 or useful?

1 A. We have the use of those, but with a
2 model like that, it's garbage-in-garbage-out, and
3 we don't have enough information to be able to
4 say. We don't know what the vertical or
5 horizontal permeability is out there.

6 Q. Shifting to something else and talking
7 about some of the testing, you were concerned
8 about the sum of all the aromatic hydrocarbons,
9 the BTEX in less than 50 parts per million?

10 A. Right.

11 Q. You thought that was not specific
12 enough?

13 A. I think that as long as you're going to
14 get the sum, you ought to be reporting benzene,
15 toluene, ethyl benzene and xylene, so that you
16 can look at the specific contaminants rather than
17 just the bulk number.

18 Q. Do you have the January 6th order?

19 A. Yes, I do.

20 Q. I would ask you to take a look at that
21 and, after it says 50 parts per million, do you
22 see where that is in paragraph 9, third line?

23 A. Yes, sir.

24 Q. What's the next phrase after that?

25 A. "And the benzene is less than 10 ppm."

1 Q. You also expressed concerns about the
2 salts?

3 A. Right.

4 Q. If you would turn to the next page,
5 paragraphs 1 and 3, are you familiar with what
6 the general chemistry test tests for?

7 A. No, sir.

8 MR. STOVALL: Thank you. I have no
9 further questions.

10 CHAIRMAN LEMAY: Commissioner Carlson?

11 EXAMINATION

12 BY COMMISSIONER CARLSON:

13 Q. I think you heard Mr. Pierce say that
14 he thought 180 days may be enough to remediate
15 the soil, and you testified that you thought it
16 would take much longer than that. How much
17 longer?

18 A. That's a very difficult question to
19 answer. I have personal experience in which it
20 has taken gasoline-contaminated soils over a year
21 to be remediated.

22 As I mentioned, gasoline is much more
23 volatile than the material which would be put in
24 this facility. I think it's reasonable to assume
25 that it may take certainly more than a year.

1 Also, Mr. Pierce mentioned that some of
2 the sites or some of the material brought in
3 might already be remediated. I'm not sure why
4 they would bring it in if it was already
5 remediated, but it would depend on what the
6 concentrations were. But I think it would take a
7 lot longer than they propose.

8 COMMISSIONER CARLSON: That's all I
9 have.

10 CHAIRMAN LEMAY: Commissioner Weiss?

11 COMMISSIONER WEISS: Yes, sir.

12 EXAMINATION

13 BY COMMISSIONER WEISS:

14 Q. On the drinking water issue, is Sample
15 No. 3 that's in this packet of data, S-W Cattle
16 Company, is that drinking water quality?

17 A. No, sir. It's not human drinking water
18 quality. It's certainly adequate for stock
19 water.

20 Q. Is that maybe the reason that people
21 don't measure the amount of oil in the water
22 because people don't drink it? My point is, I
23 keep hearing that people are worried about oil
24 getting in the water, but nobody tests for it.

25 A. Well, I wasn't a party at collecting

1 these samples. I probably would have had them
2 analyzed for that. That wasn't one of my
3 responsibilities.

4 Q. And then, perhaps, in your experience,
5 what do people do with asphalt? What does the
6 state do when they haul it off of roads? What do
7 they do with it?

8 A. Some of it's buried in very dry soils
9 and some of it--where they've removed base coat
10 along I-25, it has been spread along the shoulder
11 and left at the surface.

12 Q. In my mind, that's similar to what's
13 going to be added to this facility.

14 A. Well, I'm not sure that that's true
15 because the base coat is a very hard, compact
16 media, and it is in dry chunks and relatively
17 immobile; whereas, what they're bringing in is
18 contaminated soil, and the only way they can
19 remediate it is to keep it broken up, by
20 disking. So, they have to keep it soft and loose
21 and permeable, in order for the system to work.

22 COMMISSIONER WEISS: Okay. Thank you.
23 That's the only question I have.

24 CHAIRMAN LEMAY: I've got one.

25

EXAMINATION

BY CHAIRMAN LEMAY:

Q. I'm going to go back to the Ogallala. It hasn't been mentioned before. I think you mentioned it. Do you know for a fact there is Ogallala in this area?

A. Yes, sir, I think I've got a map that shows that.

Q. Could you present it to us?

A. Yes, sir. This is identified as plate 1, geologic map of Southern Lea County, New Mexico. It was prepared by the U.S. Geological Survey in cooperation with the U.S. Bureau of Mines, and I'll give you the document from which it was taken. Here is the symbol right here for Ogallala, and here is the site.

Q. Getting pretty close to the edge, though, isn't it?

A. Yes, it is. What this is, right here, is the sand overlying the Ogallala down here.

Q. Are you familiar with the areas where the Ogallala is absent because of redbeds?

A. Yes, sir, there are some down there. In fact, the clay pit which Mr. Stradley alluded to, is one of those.

1 Q. Where would the Ogallala be in this
2 area, do you think? Underneath the Triassic, if
3 it's there? The wells that were penetrated show
4 nothing but caliche on down to the Triassic
5 redbeds. I'm just wondering where the Ogallala
6 would be.

7 THE WITNESS: Would you like to answer
8 that question, or should I?

9 MR. SEAY: Where the Ogallala is?

10 THE WITNESS: In these test holes.

11 MR. SEAY: There is none in these test
12 holes.

13 MR. STOVALL: Mr. Chairman, we're now
14 having the sworn witness asking an unsworn
15 participant questions, to answer the
16 Commissioner's question.

17 CHAIRMAN LEMAY: Sorry. We got carried
18 away.

19 MR. STOVALL: It's geologically
20 exciting, but I think it's terrible to build a
21 record this way.

22 CHAIRMAN LEMAY: It's also very hard
23 for the court reporter to translate, I know.

24 A. The answer to that question is, the
25 caliche is within the Ogallala. The caliche at

1 that point is in the Ogallala.

2 Q. The caliche's in the Ogallala?

3 A. Yes, sir.

4 Q. That's an interesting one.

5 A. The caliche is simply calcium carbonate
6 that's been deposited by groundwater in an
7 existing formation of sand and gravel, and the
8 existing formation that was there was the
9 Ogallala, and then the caliche formed in it
10 later.

11 So, when the drilling was done, they
12 reported the rock tight, which was caliche, but
13 the name of the formation is the Ogallala
14 formation.

15 Q. Assuming we don't talk about names,
16 then, but what characteristics do you normally
17 associate with the Ogallala? Is it a good
18 aquifer?

19 A. Yes.

20 Q. Is caliche a good aquifer?

21 A. Caliche is very permeable. It's
22 generally quite shallow and water is commonly
23 found beneath it.

24 Q. Is water found in it?

25 A. Water is found in it over at Monument.

1 Q. Does it supply water for any areas that
2 you know? Are there any water wells in the
3 caliche that produce water?

4 A. Yes, they are municipal wells near
5 Monument, dug wells and old homesteads wells that
6 are in the caliche that produce water from the
7 Ogallala.

8 Q. From the caliche?

9 A. Yes.

10 Q. Are you sure of that?

11 A. Yes, sir. We put monitor wells in the
12 caliche at the Climax Chemical Company Plant,
13 which is just west of this facility.

14 Q. You can pump out of caliche?

15 A. Yes, sir. If I may, this is
16 Groundwater Report No. 6, and the authors are
17 Nicholson & Clebsch. It was published by the
18 Bureau of Mines and Mineral Resources. The date
19 is 1961.

20 CHAIRMAN LEMAY: Thanks for the
21 reference. I have no further questions.

22 FURTHER EXAMINATION

23 BY COMMISSIONER CARLSON:

24 Q. One more question, following up on
25 something Mr. Weiss asked earlier, if I look on

1 page 9, the water analysis report in your Exhibit
2 8, and I compare that to sample 3 in your Exhibit
3 5, do you have both of those?

4 A. I have the one from Cardinal Labs. I
5 don't have the other one that you're referring
6 to.

7 Q. The other one is on page 9 of Exhibit
8 8.

9 A. Okay. I do have it.

10 Q. Now, as I understand this, these are
11 supposedly from the same well. My question is,
12 is the margin of error so great between these two
13 analyses that that could possibly be from the
14 same well?

15 A. I don't think they're from the same
16 well. One of them is a sodium sulfate water and
17 the other one is a sodium chloride water. It
18 does have a lot of sodium in it--I mean a lot of
19 sulfate in it, but they look like different
20 samples to me.

21 Q. Aren't they reputed to be from the same
22 well? Am I reading something wrong here?

23 A. It's my understanding they're from the
24 same well.

25 COMMISSIONER CARLSON: That's all I

1 have.

2 CHAIRMAN LEMAY: Additional questions
3 of the witness? If not, he may be excused.
4 Thank you.

5 MR. KELLAHIN: That completes my direct
6 presentation, Mr. Chairman.

7 CHAIRMAN LEMAY: Thank you, Mr.
8 Kellahin. Mr. Stovall?

9 MR. STOVALL: Mr. Chairman, if I could
10 have two minutes to step out of the room, I'll be
11 ready to start with Mr. Browne.

12 CHAIRMAN LEMAY: Okay. Let's take a
13 two- to five-minute break.

14 [A recess was taken.]

15 CHAIRMAN LEMAY: Okay. We shall
16 continue. Mr. Stovall.

17 MR. STOVALL: Mr. Chairman, I was about
18 to call Kathy Browne to testify. Again, I want
19 to reiterate that the Division is not taking a
20 position. It's not supporting this application.

21 However, the testimony is going to
22 indicate that the Division has found conditions
23 under which it believes the Environmental Bureau
24 staff believes that this permit could be
25 approved, and were it being processed

1 administratively it would, most likely, be
2 approved subject to these conditions.

3 The purpose of Ms. Browne's testimony
4 is to explain the conditions, why they're
5 imposed, what they looked at and how they came up
6 with them, to help clarify the issues. And then,
7 of course, her purpose is to be available to
8 answer any questions that the parties or the
9 Commission may have with respect to how the
10 Environmental Bureau processed it, and the
11 concerns it may have, and the factors it has
12 looked at.

13 KATHY BROWNE

14 Having been called to the stand, was examined and
15 testified as follows:

16 EXAMINATION

17 BY MR. STOVALL:

18 Q. Ms. Browne, would you state your name,
19 please, and place of residence?

20 A. Kathy Browne, Santa Fe, New Mexico.

21 Q. How are you employed?

22 A. I'm a geologist for the Oil
23 Conservation Division Environmental Bureau.

24 Q. Have you testified before this
25 Commission and had your credentials as a

1 geologist accepted as a matter of record?

2 A. No, I haven't.

3 Q. Would you tell the Commission your
4 educational background, please?

5 A. I have a bachelor of science in geology
6 from the University of Texas, and a master's of
7 science in geology from Northern Arizona
8 University.

9 Q. What is your work experience that might
10 be relevant to this, your work for the Division
11 on this application?

12 A. My work with the Division?

13 Q. Your work experience prior to and with
14 the Division that's relevant, that is useful, for
15 them to understand your expertise.

16 A. Well, I'm familiar with the oil patch.
17 I've worked as well tender in the summers of
18 college out in the oil patch.

19 I worked for two and a half years with
20 Shell Offshore in New Orleans as a production
21 geologist and also in the field, and I've worked
22 for the last two years with the Environmental
23 Bureau, permitting disposal facilities, reviewing
24 the ones we have, and all the other operations
25 that we do as an Environmental Bureau for the oil

1 and gas industry.

2 Q. Are you familiar with the development
3 of guidelines and conditions for approval of
4 landfarm facilities, such as this one?

5 A. Yes, I am, because landfarms are fairly
6 new in the oil patch, and I have been working
7 with them as the permits have come into the OCD,
8 so I have been working them from the beginning,
9 basically.

10 Q. Mr. Carr submitted earlier what are
11 called guidelines for landfarm operations. Are
12 you familiar with those guidelines?

13 A. Yes, I am.

14 Q. Did you participate in the development
15 of those guidelines?

16 A. Yes, I did. I was the lead person in
17 developing them. However, everything we do in
18 our Bureau is worked between myself and the other
19 members, who are hydrogeologists and chemical
20 engineers, and any other input from the engineers
21 in our Division.

22 Q. With respect to this particular
23 application, the C & C Landfarm application, are
24 you familiar with that application?

25 A. Yes, I am.

1 Q. Are you the lead person who is
2 responsible for processing the administrative
3 process?

4 A. Yes, I am.

5 Q. Are you the person who primarily was
6 the lead person in the development of the permit
7 recommendations contained in the January 6th
8 letter, which has been referred to numerous times
9 today?

10 A. Yes, I was the primary person in that,
11 however, as I said, with confrontations with the
12 rest of the Bureau.

13 Q. Confrontations or consultations, or
14 both?

15 A. Consultations.

16 MR. STOVALL: I would offer Ms. Browne
17 at this time, as an expert geologist familiar
18 with the landfarm operations.

19 CHAIRMAN LEMAY: Her qualifications are
20 acceptable. I wonder if she was sworn in
21 earlier?

22 MR. STOVALL: No, I'm sorry, she was
23 not.

24 CHAIRMAN LEMAY: Would you stand and
25 raise your right hand please?

1 [Ms. Browne was duly sworn at this
2 time.]

3 MR. STOVALL: Thank you. I had
4 forgotten she was not here during the initial
5 period.

6 Q. (BY MR. STOVALL) Talking first in
7 generalities, you say landfarms are relatively
8 new in the oil field operations in New Mexico?

9 A. Yes.

10 Q. How new?

11 A. Last year and a half. This was the
12 first one, basically, to come in. No, I'm sorry,
13 we do have one up in the Northwest before that.

14 Q. Was that facility you're referring to,
15 is that the Tierra facility?

16 A. No, that's the Enviro-Tech facility.
17 It was permitted before I did come in.

18 Q. That was permitted by the OCD as a
19 landfarm operation?

20 A. Yeah.

21 Q. Broadly similar to this one, in terms
22 of operation?

23 A. This one has many more stringent
24 requirements put on it than the Enviro-Tech one
25 in the Northwest.

1 Q. But the methodology is the same, put
2 the stuff on the ground, till it, and
3 bioremediate?

4 A. Exactly.

5 Q. Is there not another one in the
6 Northwest that was approved through a hearing
7 process?

8 A. There are two other ones in the
9 Northwest.

10 Q. The Tierra facility was approved
11 through an Examiner Hearing, is that correct?

12 A. Exactly. TNT was also approved
13 administratively.

14 Q. Is landfarming becoming, or is it
15 reasonably well-established as a technique for
16 dealing with contaminated soils?

17 A. Yes, it is.

18 Q. How does it work, basically? Just real
19 quickly, what happens?

20 A. You take the contaminated soils and
21 spread them out as we've indicated in a lift, six
22 inches or less, and then you till the soil so
23 that you have oxygen and the nutrients being
24 mixed in with the oil and basically they are
25 bioremediating or eating up the contaminants, the

1 hydrocarbons in the soils.

2 Q. It's a natural process?

3 A. Yes. Some people do add the bugs, but
4 it's specific case-by-case.

5 Q. We're talking about in the oil field,
6 and there was reference earlier to RCRA
7 nonexempt. This field specifically deals with,
8 excuse me, RCRA nonhazardous or exempt wastes, is
9 that correct?

10 A. Right. Most of the wastes are exempt,
11 but you could have pit clean-ups in, say, a
12 service company that was not exempt. Those are
13 case-by-cased only, to be accepted at the
14 landfarm.

15 Q. When we're talking about exempt, it
16 means it may have hazardous constituents by
17 characteristics, but they're exempt from RCRA
18 subtitle (C) regulations, as far as disposal?

19 A. Correct.

20 Q. When we're talking about nonexempt
21 waste, we're talking about wastes which are not
22 exempted from hazardous waste disposal, and if
23 those are to be accepted here they have to be
24 nonhazardous by characteristics, is that correct?

25 A. Right, and those would only be accepted

1 on a case-by-case basis.

2 Q. After testing, to ensure that they have
3 no hazardous characteristics?

4 A. After testing, that's correct.

5 Q. Is landfarming ever used for hazardous
6 material disposal?

7 A. Yes. In refineries, the hazardous
8 wastes they have for that, but those are
9 permitted through a different agency, however.

10 Q. Through the Environmental Department?

11 A. Right, through their Hazardous Waste
12 Bureau.

13 Q. But my point is, it can be used for a
14 wide variety of contaminants?

15 A. Right. We tend to look at remediation,
16 as opposed to disposal. If we can find methods
17 of remediation, recycling, those types of thing,
18 as opposed to just a disposal facility, that's
19 where we see the waste management going.

20 Q. Because then you have a usable or at
21 least nondangerous material left?

22 A. Correct.

23 Q. That's a "yes," I take it?

24 A. Yes.

25 Q. Now, looking more specifically at the

1 permitting conditions, the bureau has developed a
2 set of guidelines for landfarm permitting, is
3 that correct?

4 A. Yes.

5 Q. Is that fairly recently, based upon the
6 experience you've had with the other facilities?

7 A. Yeah, it is.

8 Q. With respect to this facility and the
9 conditions that are part of, I believe it's Mr.
10 Carr's Exhibit No. 3, your letter of January 6th
11 which contained the recommended conditions, tell
12 me how you developed those.

13 A. The different conditions?

14 Q. Yeah, the package of conditions as a
15 totality?

16 A. They really evolved from the beginning
17 of when this application came in, and through the
18 other applications. Through our own discussions,
19 through concerns from outside, from the public,
20 through the two hearings that we've had, they've
21 been an evolving process, trying to look at all
22 the concerns and how we can protect the
23 groundwater, health, and the environment.

24 Q. Were these specific ones in this letter
25 developed with this specific site in mind?

1 A. Yes, with this site in mind, yeah.

2 Q. I think you mentioned earlier that some
3 of the facilities in the northwest have less
4 stringent conditions actually, is that correct?
5 Not all of them, but at least one or two are less
6 stringent?

7 A. Right.

8 Q. So, when you go to permit a facility,
9 am I correct in assuming you start with the
10 guidelines and then adapt them to the specific
11 site?

12 A. They're site-specific.

13 Q. Let's talk a little bit about the site
14 now. In earlier questions, I talked to Mr.
15 Pierce, and I think Mr. Kelly's testimony largely
16 alluded to the fact that the primary
17 environmental concern is the protection of fresh
18 water in this area, is that correct?

19 A. Correct.

20 Q. Do you have knowledge whether there is
21 any fresh water in this area to be protected?

22 A. I believe that there's no fresh water
23 directly below the site. I know that there's
24 water in Mr. Stradley's well, but below the site
25 I don't believe there is any fresh water.

1 Q. All the testimony about the water wells
2 that we have heard, in the area, you assume that
3 to be true and that water is to be protected when
4 you develop these criteria, is that correct?

5 A. Yes.

6 Q. What is the significance of the fact
7 that there is no water directly below the site,
8 that you believe there's no water directly below
9 the site itself?

10 A. Well, the fact that there is no water
11 directly below the site, would make it very
12 difficult to have the contaminants migrate
13 vertically down and then laterally out through
14 the water. And there's no water to contaminate
15 if there's no water directly below the site.

16 Q. Let's look quickly at Mr. Kellahin's
17 Exhibit No. 6, the map that was prepared.

18 A. This one?

19 Q. That's the one, yes. Now, looking
20 specifically at Nos. 27 to 28, and then if you
21 look at the tabulation behind--

22 A. Right. Those show the water to be at
23 in excess of 500 feet in those wells.

24 Q. If you go to No. 26, you find it's
25 considerably shallower than 500 feet, is it not?

1 A. Yes.

2 Q. And have you also examined the data
3 from the monitor wells which we've never
4 permitted Mr. Seay to talk about too much, the
5 specific wells that are identified by C & C?

6 A. Right. The wells around the facility,
7 yes.

8 Q. Does that help you confirm that there's
9 probably no water under this specific site?

10 A. Yes, based on the monitor wells. And
11 north of there, those wells, I would state that
12 there's no fresh water underneath the facility,
13 that there's no water at all under the facility.

14 Q. Based upon the information that you and
15 the Bureau team--and I understand this is a
16 collaborative effort and you're speaking, in a
17 sense, for the rest of the staff as well--what is
18 the most probable threat that contaminants could
19 move to a fresh water source? How would it get
20 there? How would contaminants get to a fresh
21 water source from this site?

22 A. To get to the fresh water source of Mr.
23 Stradley's well?

24 Q. Yes, for example.

25 A. They would have to migrate down to the

1 surface of the redbeds and then laterally out to
2 the southwest.

3 Q. So as you designed the guidelines or
4 the requirements for this facility, is it
5 designed to prevent that?

6 A. That's how it's designed, yes.

7 Q. You heard Mr. Pierce's testimony about
8 how the facility will be operated. Is that
9 substantially consistent with what your
10 conditions are based upon, with the cells, berm
11 cells, and a berm facility?

12 A. Yes.

13 Q. And is his statement about the
14 monitoring of the treatment zone correct?

15 A. Yes. It would be background sample,
16 and then quarterly for TPH and BTEX, and annually
17 for heavy metals and general chemistry.

18 Q. Do you feel that the background
19 sampling that is proposed, and I believe I was
20 looking for one site in the center area of the
21 landfarm, is that going to provide you an
22 adequate indication of the composition of the
23 soil?

24 A. Yes. We've discussed that and we
25 believe that one sample would be significant or

1 would be enough to represent the soils below the
2 landfarm.

3 Q. In the Examiner hearing, there was
4 discussion about putting the material into the
5 pits that have been excavated for the caliche,
6 and I believe the Division has come to the
7 conclusion that that is probably not the
8 appropriate way to do it, is that correct?

9 A. That's correct. Like I said, this has
10 been an evolving process. We were concerned from
11 the beginning with migration along the redbed
12 surface, and that's why, in our first
13 correspondence to C & C, we told them they had to
14 propose some type of method to ensure that that
15 would not happen. And that was when the redbed
16 dike was proposed by them.

17 However, if that's how it would have
18 been processed, the facility still would not have
19 been operable until we had inspected the redbed
20 dike and been assured, ourselves, that it was
21 going to be enough of a guarantee.

22 Q. If my recollection is correct from the
23 testimony in the original hearing and the
24 Examiner hearing, is that one of the concerns is
25 because of the topography, those would be low

1 points and gathering points for water which could
2 cause migration, is that correct?

3 A. Yes.

4 Q. Are you satisfied that with the berming
5 that is proposed around each cell, that surface
6 flow of contaminants can be contained?

7 A. Yes.

8 Q. Now, explain to me how this treatment
9 zone works and why you believe that that is an
10 appropriate way to watch for and prevent the
11 significant downward flow of contaminants such
12 that it could flow along the redbeds to the water
13 sources?

14 A. Well, we believe that the monitor zone
15 is the most effective way to detect any movement
16 of contaminants before they get away from you, as
17 it has been put, because the monitor zone, you
18 sample two to three feet below the native surface
19 and analyze that, and right then you can tell if
20 there's any contaminants that have reached that
21 level. And if they have, then steps can be taken
22 immediately to cease putting anything else on and
23 to determine the extent it's gone, and then to
24 increase, say, your tilling and microbes or
25 whatever might be necessary to stop any further

1 leaching.

2 Q. You're talking two to three feet,
3 taking the sample at two to three feet, but that
4 would detect contaminants that might have only
5 gone six inches, is that correct? I mean, would
6 you see those? Are you going to wait until they
7 get to two or three feet before you do something,
8 or if you see it anywhere in the treatment zone?

9 A. Anywhere in the treatment zone; but the
10 sample is taken at two to three feet below.

11 Q. Now, there was some concern expressed
12 that there is no plan in the event that
13 contaminants are found, is that correct?

14 A. No, there is a plan. I mean, if
15 contaminants are found, the OCD is notified
16 immediately. No more soils are put on there.
17 The levels of the contaminants are looked at and
18 we would proceed, then, with further tilling of
19 the soils, determining the extent the
20 contaminants have gone to.

21 Q. So, in other words, if I understand
22 correctly, we don't want to build some specific
23 thing into an order or conditions, but rather be
24 able to respond to specifics?

25 A. Exactly. Right.

1 Q. But you have some idea what you would
2 require, once you found out?

3 A. Exactly, right.

4 Q. It could be just stop adding soil, for
5 example?

6 A. And determine the extent of how far
7 down it's gone.

8 Q. So, if you've found some at three feet,
9 you might have to drill further to find out if it
10 went any further?

11 A. You would.

12 Q. Possibly stop, leave the soil in place,
13 but stop adding water so that you would reduce
14 the flow? I mean, the watering is part of the
15 remediation process, is that correct?

16 A. Right. At that time you would stop any
17 water addition though.

18 Q. Then you could increase tilling? That
19 would increase the rate of bioremediation, is
20 that correct?

21 A. Yes.

22 Q. You talked about bugs earlier, in terms
23 of other facilities. You could add bugs to this
24 one, microbes, that would actually enhance the
25 bioremediation?

1 A. Right.

2 Q. Ultimately, is it possible that you
3 could require them to remove it from that
4 particular site?

5 A. Right. If it was that bad, you could
6 have them remove that, and there are facilities
7 in the area that it could be taken to.

8 Q. I'm going to skip around here for just
9 a second and talk about bugs. This facility does
10 not propose, at this time, to use an enhanced
11 bioremediation, using microbes of any sort, is
12 that correct?

13 A. Correct.

14 Q. Conceivably, that could be something
15 that was used later if it was determined to be
16 feasible and practical?

17 A. Right. They would have to submit all
18 the materials, the specifics on the bug
19 additions.

20 Q. Why not take samples more often, rather
21 than once quarterly in each cell? Why not do it
22 monthly, for example?

23 A. We believe quarterly is frequent enough
24 to detect any contaminants. And also, the more
25 holes you start putting out there, the more

1 possibility you could have for some type of
2 conduit. So, we believe quarterly is a proper
3 amount.

4 Q. And if you found something in one of
5 these samples and took these remediation
6 measures, are you satisfied that you could
7 prevent, even in cases of extreme rainfall, you
8 could remediate quickly enough the problem to
9 prevent fluids from leaving the property?

10 A. Yes.

11 Q. When Mr. Kellahin was talking to Mr.
12 Kelly, he was talking about a variety of tests
13 that could be performed. I think you heard that
14 testimony, is that correct?

15 A. Yes.

16 Q. Would those be particularly useful to
17 you?

18 A. No, I feel like they're irrelevant,
19 since the whole system is designed to detect any
20 contaminants before they go below the monitoring
21 zone.

22 Q. In other words, those would discuss
23 flow rates and that sort of thing, and is it your
24 intent that there be no flow--

25 A. Yes.

1 Q. --because there's not going to be
2 contaminants in the soil, is that correct?

3 A. Yes.

4 Q. Let's talk about the test. There's
5 some concern about the test. Would you just
6 explain briefly what the various tests are going
7 to look for that they're going to be required to
8 run on a quarterly and annual basis?

9 A. Quarterly, they're required to test for
10 total petroleum hydrocarbons and for BTEX. Total
11 petroleum hydrocarbons pick up any of the heavier
12 ends of the hydrocarbon spectrum, and the BTEX
13 picks up the organics, the lighter ends.

14 Then annually they would be required to
15 test for heavy metals and for general chemistry,
16 and the general chemistry does include all the
17 salts; the sodium, the chlorides, those that
18 would be associated with produced water.

19 Q. Now, with respect to the hundred-foot
20 buffer zone from the nearest cell to the facility
21 boundary, do you have an opinion as to whether
22 that provides an adequate buffer to prevent the
23 migration of contaminants off the property?

24 A. I believe it does.

25 Q. What is the basis for that? Do you

1 have any scientific or measurement basis for
2 that, or is it--

3 A. No, we don't. It was discussed at the
4 Examiner Hearing. That number was thrown around.

5 Q. Has anybody done any measurements which
6 would indicate how long it would take
7 contaminants to move off?

8 A. Not to my knowledge.

9 Q. With that in mind, then, is it the
10 Division and the Bureau-- Well, let me ask the
11 background question. The Bureau would be
12 responsible for enforcing the compliance with
13 these conditions, is that not correct?

14 A. Yes.

15 Q. With that in mind, once you started to
16 see contaminants get into the native soil, is it
17 the Bureau's intent that they would prevent that
18 from continuing to happen? That they would stop
19 that infiltration of contaminants?

20 A. Yes, that would be the number one
21 action of the Bureau, is to make sure those
22 contaminants did not migrate any further.

23 Q. If I understood you correctly, those
24 contaminants have to go down to the redbed before
25 they go out?

1 A. Yes.

2 Q. Do you feel like it's a substantial
3 safety zone? It's not just a minimal
4 requirement?

5 A. Yes. I believe with all the conditions
6 we've imposed that there's substantial, enough
7 precautions that the contaminants would not
8 migrate off of the site.

9 Q. The monitor wells, are there adequate
10 monitor wells properly placed to determine,
11 should you be wrong, that there might be some
12 movement? Are they going to pick that up?

13 A. I believe that they would.

14 Q. Would you like to retain the authority
15 to require additional monitor wells if there was
16 some reason to determine that is was not
17 adequate?

18 A. Yes, and we have that authority.

19 Q. Commissioner Carlson expressed some
20 concern, and his question was, basically, how
21 long do you keep putting dirt on here, on the
22 contaminated soils on here, before you get too
23 much? What's going to govern the limit of how
24 much contaminated soil you can put on any
25 particular cell or part of the cell before you

1 have to cease using--

2 A. Well, the height of the berm would
3 determine how much soil you could put in there.
4 You'd have to increase your berm height if you
5 wanted to further increase within the cell.

6 Q. Now, given the requirement that you've
7 got to reduce a lift to the stated levels of
8 hydrocarbon and various other constituents before
9 you can add to that cell, before you can put more
10 on top of that particular lift, does that lift,
11 in effect, become an additional buffer from the
12 ground?

13 A. Yes, it does.

14 Q. In other words, contaminants from the
15 new lift would have to go through that lift
16 before they got to the ground? before they got
17 into the treatment zone?

18 A. Right, so you're increasing your buffer
19 zone vertically.

20 Q. What can be done with these soils after
21 they've been remediated?

22 A. Various things. There's lots of pit
23 clean-ups and closures, and they can be used to
24 fill back into those pits. Lease roads. We do
25 not give the authority for them to just take it

1 off site, though. Any time they would want to
2 remove those soils it would be a site-specific
3 case. They would have to have the analyses of
4 the soils they wanted to remove and where they
5 would be going to.

6 Q. In other words, different uses might
7 require different levels below the minimum level
8 here that we've talked about, before it could be
9 removed?

10 A. Correct.

11 Q. Mr. Stradley talked a little bit about
12 dust. Can dust be controlled?

13 A. Yes, through the addition of moisture.

14 Q. Is there a balancing process that
15 you're required to make, to make sure you've got
16 enough moisture to control the dust to keep
17 remediation, without having so much that you
18 start a flow?

19 A. Yes.

20 Q. Can that balance be attained and
21 maintained periodically, recognizing that there's
22 not always the same volume of water involved?

23 A. Correct.

24 Q. Do you have experience with other
25 facilities that are in operation that show that

1 this can be done?

2 A. Yes, we do.

3 Q. The ones you referred to earlier?

4 A. Yes.

5 Q. Assuming, and we don't assume, we take
6 it as a given fact, that the water sources
7 described by Mr. Stradley and Ms. Reeves are, in
8 fact, valuable water sources, particularly in
9 this part of the country; and given the fact, as
10 Mr. Stradley has said, he's got a 16-section
11 ranch which ruination of these waters could
12 condemn, are you satisfied that this facility can
13 be operated with these conditions without
14 creating any significant risk to Mr. Stradley or
15 Ms. Reeves, to their--

16 A. Yes, I am, to their water.

17 Q. Do you have anything further you would
18 like to add to your testimony?

19 A. No.

20 MR. STOVALL: I have no further
21 questions. I would pass the witness.

22 CHAIRMAN LEMAY: Mr. Carr?

23 MR. CARR: I have no questions.

24 CHAIRMAN LEMAY: Mr. Kellahin?

25 MR. KELLAHIN: Just a few, Mr.

1 Chairman.

2 EXAMINATION

3 BY MR. KELLAHIN:

4 Q. Ms. Brown, about the time Mr. Stogner
5 was processing the C & C Landfarm application in
6 that hearing, he was also processing the order
7 for the Tierra Environmental Company Landfarm in
8 San Juan County, New Mexico?

9 A. Yes.

10 Q. Are you familiar with that facility?

11 A. Yes, I am.

12 Q. To expedite this, let me share with you
13 a copy of his order that included the conditions
14 from the Environmental Bureau for the Tierra
15 Environmental Company case.

16 You are proposing recommendations for
17 C & C that are shown on the January 6, 1993,
18 recommendations. Are there any material
19 differences between the recommendations you have
20 for this case and what was adopted by Examiner
21 Stogner in Case 10539, Order No. R-9772?

22 A. Well, the Tierra Landfarm application
23 had some other concerns that were brought out by
24 someone who lived basically next to the facility,
25 on air emissions, so those were incorporated into

1 their order by Mr. Stogner.

2 Q. Do you have any air emission control or
3 monitoring procedures proposed for the C & C
4 Landfarm facility that's under discussion here
5 this afternoon?

6 A. No. We don't believe that air
7 emissions are a problem at the landfarms. The
8 landfarm is designed to remediate soils, not to
9 have volatilization to be the primary method.
10 So, we don't believe that to be a problem.

11 However, in the Tierra case, because of
12 the closeness of the residents there, other
13 precautions were taken.

14 Q. When we look at paragraph No. 1 under
15 the recommended changes for C & C Landfarm, what
16 materials do you understand are being approved to
17 be placed in that facility?

18 A. Exempt oil field waste solids,
19 hydrocarbon contaminated solids, or nonexempt
20 nonhazardous oil field solids.

21 Q. Mr. Pierce said that he was limiting
22 that material to contaminated soils. Are you
23 approving, by this recommendation, more than
24 contaminated soils for the facility?

25 A. I'm not quite sure what you're asking.

1 Q. Can you take tank bottoms and put in
2 this facility?

3 A. No.

4 Q. Are you and Mr. Pierce talking the same
5 language when you talk about materials that are
6 going in this facility?

7 A. Yes. Well, I guess I should take that
8 back. Tank bottoms, if they had no free liquids
9 on them and were a solid, could be taken there.
10 Those are an exempt oil field material.

11 Q. What other kinds of solids could be put
12 on this facility other than that, that you just
13 described?

14 A. What other kind of solids?

15 Q. Yes.

16 A. I'm not sure what you're asking.

17 Q. Well, he's applied to put contaminated
18 soils on the facility?

19 A. Yes.

20 Q. Are you proposing to approve any other
21 materials other than the contaminated soils?

22 A. No.

23 Q. It says, in paragraph 1, "A
24 case-by-case approval of the Oil Conservation
25 Division to put materials in the caliche pits."

1 What do you propose to mean by that paragraph?

2 What's going to happen?

3 A. You're saying which one, No. 1?

4 Q. Yes, No. 1.

5 A. Our recommendation is that nothing is
6 placed, no contaminated soils are placed in the
7 caliche pit. At a later time, if it was proposed
8 to place clean soils in there, we would not tell
9 them they could not do that.

10 Q. How would you process that under this
11 proposed change in the order?

12 A. That would be a modification to their
13 permit.

14 Q. Is that a material modification to
15 their permit?

16 A. I believe it would be, yes.

17 Q. Are you going to provide notice to the
18 general public of that material change?

19 A. Yes.

20 Q. The buffer zone, the hundred-foot
21 buffer zone that's set forth in paragraph 2, is
22 there any scientific basis for that distance?

23 A. No. We don't have buffer zones at any
24 of our facilities, and we don't have any
25 scientific basis for it. That was discussed and

1 that was what had been discussed at the hearing,
2 and that's what we chose.

3 Q. That was discussed by Mr. Pierce at the
4 Examiner Hearing with regards to the setback?

5 A. Right, but we did not hear any
6 technical evidence from either side giving us an
7 option.

8 Q. As to any footage setback?

9 A. Exactly.

10 MR. KELLAHIN: No further questions.

11 MR. CARR: I would like to follow up on
12 that.

13 EXAMINATION

14 BY MR. CARR:

15 Q. Ms. Browne, you participated in the
16 development of the conditions for the Tierra
17 application, did you not?

18 A. Yes, I did.

19 Q. And you developed these applications on
20 a site-by-site basis?

21 A. Yes.

22 Q. And what is applicable to Tierra may or
23 may not be applicable to C & C, is that correct?

24 A. Yes.

25 Q. And you participated in the development

1 of the conditions that you're recommending for
2 the C & C facility?

3 A. Yes.

4 Q. In your opinion, if this facility is
5 approved and operated in accordance with those
6 conditions, will it pose a threat to fresh water
7 in the area?

8 A. No, it will not pose a threat.

9 Q. If it is approved and operated in
10 accord with those conditions, will it pose a
11 threat to the environment?

12 A. No.

13 Q. Will it pose a threat to human health?

14 A. No.

15 MR. CARR: Thank you.

16 CHAIRMAN LEMAY: Commissioner Carlson?

17 EXAMINATION

18 BY COMMISSIONER CARLSON:

19 Q. C & C Landfarm would do their own
20 testing under your proposal, is that correct?

21 A. Yes.

22 Q. Would the Bureau do any on-site testing
23 at all?

24 A. That would be a good idea, to go out
25 there as a Bureau and possibly take a random

1 check sample.

2 Q. But you don't envision doing it?

3 A. Sure, yeah. We get out in the field
4 when we get through with the paperwork, now and
5 then.

6 Q. The testing done by C & C would be,
7 they would take the soil samples, submit it to a
8 laboratory, and the laboratory would then forward
9 it to the Bureau?

10 A. Yes. I'm sure it would probably come
11 back to C & C, and then to us.

12 Q. The \$25,000 bond, is that pursuant to
13 statute, or regulation, or is that just--

14 A. Yes, that's pursuant to Rule 7-11.

15 Q. Is that the maximum under that rule?

16 A. Well, that's just the set--

17 Q. The set bond?

18 A. The set bond, yes.

19 Q. So, you have no authority to lower it
20 or raise it, depending on the circumstances
21 around a particular site?

22 A. Correct.

23 COMMISSIONER CARLSON: That's all I
24 have. Thank you.

25 CHAIRMAN LEMAY: Commissioner Weiss?

1 COMMISSIONER WEISS: I have no
2 questions.

3 CHAIRMAN LEMAY: I have one.

4 EXAMINATION

5 BY CHAIRMAN LEMAY:

6 Q. Is there Ogallala underneath this site?

7 A. I don't believe that's Ogallala under
8 the site.

9 CHAIRMAN LEMAY: Are there any
10 additional questions of the witness? If not, she
11 may be excused. Thank you very much.

12 Anything in addition in the case?

13 MR. KELLAHIN: Mr. Chairman, the hour
14 is late. I would propose to waive closing
15 arguments and simply submit to you a proposed
16 order setting forth the position of my client in
17 this matter.

18 CHAIRMAN LEMAY: Mr. Carr?

19 MR. CARR: If Mr. Kellahin won't bore
20 us with a closing, I won't either.

21 CHAIRMAN LEMAY: Mr. Stovall, any
22 closing?

23 MR. STOVALL: I have no desire
24 whatsoever.

25 CHAIRMAN LEMAY: Well, let's leave

1 the--is two weeks enough, or do you want more?

2 Let's leave the record open for two
3 weeks to present a closing argument, preferably a
4 draft order by each of you, and we shall take the
5 case under advisement. Thank you very much.

6 (And the proceedings concluded.)

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1 CERTIFICATE OF REPORTER

2 STATE OF NEW MEXICO)


3) ss.

4 COUNTY OF SANTA FE)

5 I, Carla Diane Rodriguez, Certified
6 Court Reporter and Notary Public, HEREBY CERTIFY
7 that the foregoing transcript of proceedings
8 before the Oil Conservation Division was reported
9 by me; that I caused my notes to be transcribed
10 under my personal supervision; and that the
11 foregoing is a true and accurate record of the
12 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 March 18,
19 1993.

20
21 
22 CARLA DIANE RODRIGUEZ, RPR
23 CCR No. 4
24
25