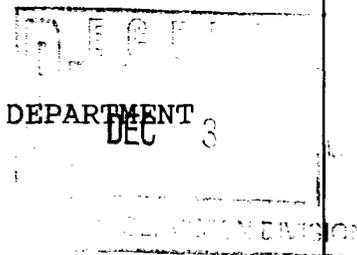


STATE OF NEW MEXICO

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:)
APPLICATION OF SUNCO TRUCKING)
COMPANY FOR APPROVAL TO MODIFY ITS)
RULE 711-PERMITTED SURFACE WASTE)
DISPOSAL FACILITY, SAN JUAN COUNTY,)
NEW MEXICO)

CASE NO. 11,518

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RAND L. CARROLL, Hearing Examiner

November 19th, 1996

Farmington, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, RAND L. CARROLL, Hearing Examiner, on Tuesday, November 19th, 1996, at San Juan Community College, Room 9008, Farmington, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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 Examiner Hearing
 CASE NO. 11,518

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A P P E A R A N C E S

FOR THE DIVISION:

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FOR THE APPLICANT:

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* * *

1 WHEREUPON, the following proceedings were had at
2 10:00 a.m.:

3 MR. CARROLL: This hearing will come to order.

4 Welcome, this is a special hearing of the Oil
5 Conservation Division to consider one case.

6 My name is Rand Carroll, I'm the specially
7 appointed Hearing Examiner for this case.

8 This is Docket Number 33-96, and we are at the
9 San Juan Community College in Farmington, New Mexico.

10 At this time I will call Case 11,518, which is
11 the Application of Sunco Trucking Company for approval to
12 modify its Rule 711-permitted surface waste disposal
13 facility, San Juan County, New Mexico.

14 Are there appearances in this matter?

15 MR. DEAN: My name is John Dean. I represent --
16 I'm here for the Applicant, Sunco Trucking.

17 MR. ANDERSON: If it please the Examiner, I'm
18 Roger Anderson, and I'm appearing on behalf of the Oil
19 Conservation Division.

20 MR. HORNER: Your Honor, my name is Gary Horner.
21 I submitted a protest on behalf of my mother, Doris Horner,
22 who owns a piece of property immediately adjacent to the
23 subject property. The title of that property has now been
24 transferred to my name.

25 I am appearing here, then, today representing

1 myself.

2 EXAMINER CARROLL: Okay. Are there any other
3 appearances? Somebody's going to ask questions or make a
4 statement?

5 How many witnesses do we have?

6 MR. DEAN: I have three witnesses.

7 EXAMINER CARROLL: Mr. Horner, do you have any
8 witnesses?

9 MR. HORNER: I have no witnesses, no.

10 EXAMINER CARROLL: Will the witnesses please
11 stand and be sworn?

12 (Thereupon, the witnesses were sworn.)

13 EXAMINER CARROLL: Mr. Dean, you may proceed.

14 MR. DEAN: All right, thank you.

15 MR. HORNER: Your Honor, if I might ask right
16 quick if we could kind of get a feel for what the process
17 is here today. I mean, the notice in the paper says we're
18 going to have a public hearing. There seems to be people
19 here from the area that we believe would like possibly to
20 make public comments. Is that the format that's going to
21 be used here today?

22 EXAMINER CARROLL: The format is that the
23 Applicant will present their case to me, and any member of
24 the public or you can ask the witnesses questions, and then
25 at the end they can make statements, and you can make a

1 statement, and then an order will be issued within the next
2 30 days.

3 MR. HORNER: Does anybody intend here today to
4 make a trip to the site, which is real close?

5 EXAMINER CARROLL: I have visited the site prior
6 to the hearing today.

7 Have you visited the site, Mr. Horner?

8 MR. HORNER: Yes, I have. I was out there last
9 night.

10 EXAMINER CARROLL: Okay.

11 MR. HORNER: And the point I wanted to make was,
12 all the development in the area, all of the new residential
13 development, all the new houses and --

14 EXAMINER CARROLL: Okay, I visited the site and I
15 noted the development in the area. I don't know what else
16 could be brought to my attention as to -- I guess, future
17 proposed development?

18 MR. HORNER: Right, you could -- If you were
19 there recently, you saw the new streets and water lines
20 that were being installed. They're just to the northeast
21 of the subject property. All of the houses are a little
22 bit farther to the east of the subject property.

23 Then immediately to the west of the subject
24 property I am in the process of either developing or
25 selling the property to another developer that will also be

1 turned into residential property.

2 EXAMINER CARROLL: Okay, Mr. Horner, I think
3 these are all questions properly asked of Mr. Dean's
4 witnesses, and I will give them due consideration.

5 MR. HORNER: All right, thanks.

6 EXAMINER CARROLL: Mr. Dean, you may proceed.

7 MR. DEAN: Do you want me to number or letter my
8 exhibits?

9 EXAMINER CARROLL: Why don't you letter them?

10 MR. DEAN: Letter them? Okay.

11 The Applicant calls Hal Stone.

12 HAL STONE,

13 the witness herein, after having been first duly sworn upon
14 his oath, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DEAN:

17 Q. Would you state your name?

18 A. Hal Stone.

19 Q. How are you employed, Mr. Stone?

20 A. By Sunco Trucking Company.

21 Q. And how long have you been so employed?

22 A. Nine years plus.

23 Q. What have been your responsibilities during that
24 length of employment?

25 A. Well, I started dispatching and I worked my way

1 up, and I'm presently in charge of the Sunco disposal
2 facility, both pipe yards, the water trucks, as well as the
3 frac tanks.

4 Q. All right. Does that responsibility include the
5 disposal pond that Sunco operates?

6 A. Yes, sir, that's correct.

7 Q. All right. If a permit is obtained for a
8 landfarm from the OCD, would you be responsible for that?

9 A. Yes, sir, that's correct.

10 Q. All right. Who are the officers of Sunco?

11 A. Chairman of the board is George E. Coleman,
12 president is Ron Fellabaum, vice president is Larry
13 Pittman, and the secretary/treasurer is Barbara Coleman.

14 Q. And who owns the land that the proposed landfarm
15 would be on?

16 A. George E. Coleman and Barbara Coleman..

17 Q. All right. As part of your responsibilities for
18 Sunco, are you in charge of keeping their records?

19 A. Yes, sir, that's correct.

20 Q. And how do you do that?

21 A. I have files in my office of all the files for
22 the, you know, the disposal, landfarm, et cetera.

23 Q. All right. Is the Application that was submitted
24 as part of this landfarm-permit process part of the
25 business records?

1 A. Yes, sir, that's correct.

2 Q. All right. Let me hand you what I've marked as
3 Applicant Sunco Trucking's Exhibit Number A and ask you to
4 identify that.

5 A. Yes, sir, this is correct, this is our
6 Application for our landfarm.

7 MR. DEAN: All right. I'd move that admission
8 into the record of Exhibit A, which is the Application.

9 MR. HORNER: Your Honor, I don't have a copy of
10 that. Is there a --

11 EXAMINER CARROLL: Mr. Dean, can you provide Mr.
12 Horner a copy?

13 MR. DEAN: It's a public record. My
14 understanding was that he had received copies of the file.
15 Did he not receive a copy of the Application?

16 EXAMINER CARROLL: Mr. Horner, did you receive a
17 copy of the Application?

18 MR. HORNER: I have not received a copy of the
19 Application.

20 EXAMINER CARROLL: How many copies do you have
21 there, Mr. Dean?

22 MR. DEAN: Well, I don't have enough for
23 everybody. I do have some extras.

24 EXAMINER CARROLL: Is there anybody else that
25 would like a copy?

1 MR. DEAN: I hate -- I need to keep --

2 MS. WELLES: I'd like a copy.

3 EXAMINER CARROLL: Okay, and who are you, ma'am?

4 MS. WELLES: Jamie Welles.

5 MR. DEAN: Give her yours. That's the only other
6 one we have.

7 MS. WELLES: If you have an extra one.

8 MR. DEAN: I have a lot of exhibits, and I don't
9 have copies of all of them, so -- It's not my understanding
10 that that's necessary for me to do.

11 EXAMINER CARROLL: Well, we might require you to
12 provide copies after the hearing.

13 MR. DEAN: That would be fine. I just don't have
14 them today.

15 Q. (By Mr. Dean) Mr. Stone, let me show you what
16 I've marked as Applicant Sunco Trucking Exhibit Number B
17 and ask if that's a part of the business records of Sunco.

18 A. Yes, sir, this is.

19 Q. What is that?

20 A. This is a letter that was sent out to all the
21 residents within the area of review for our landfarm.

22 MR. DEAN: All right, I move the admission of
23 Applicant's Exhibit B.

24 EXAMINER CARROLL: Mr. Dean, do you have a copy
25 of these exhibits for me, rather than me rummaging through

1 the file?

2 MR. DEAN: I do.

3 EXAMINER CARROLL: Okay.

4 MR. DEAN: I have a copy of these.

5 Would you hand him yours as we go through and put
6 a B on them -- put a B on the bottom of it?

7 I intend to give those to you, so --

8 EXAMINER CARROLL: Okay.

9 MR. DEAN: -- I mean, he doesn't need these.

10 EXAMINER CARROLL: All right. Thank you.

11 Q. (By Mr. Dean) Let me hand you what I've marked
12 as Applicant Sunco's Exhibit Number C and ask you if that's
13 a part of the business records of Sunco Trucking Company?

14 A. Yes, sir, this is.

15 Q. What is that?

16 A. This is an affidavit of publication through the
17 classified manager of the *Farmington Daily Times*.

18 Q. All right. And what did that purport to publish?
19 What is it that was published?

20 A. This is published to the public, about our
21 Application for our landfarm.

22 MR. DEAN: All right, I move the admission of
23 Exhibit C.

24 Q. (By Mr. Dean) Let me hand you what I've marked
25 as Applicant's Exhibit D and ask if that's a part of the

1 business records of Sunco Trucking.

2 A. Yes, sir, this is.

3 Q. And what is that?

4 A. This is some information about the hydrology and
5 the geology of the area of review here.

6 Q. And where does that information come from?

7 A. Pardon me, sir?

8 Q. What part of the records was the --

9 A. Oh, this came from the disposal pond, the
10 information for the disposal pond, the landfarm --

11 Q. All right, and as part of the --

12 A. -- Application.

13 Q. -- as part of that application process --

14 A. Yes, sir.

15 Q. -- the geology and hydrology --

16 A. Yes, sir.

17 Q. -- information had to be submitted?

18 A. Yes, sir.

19 Q. Let me hand you what I've marked as Applicant
20 Sunco's Exhibit Number E and ask you if it was a part of
21 the Sunco business records, and I move the admission into
22 the record of Applicant's D.

23 MR. HORNER: I object, your Honor, to D.
24 Hearsay, authentication. Apparently Mr. Stone did not read
25 that document.

1 EXAMINER CARROLL: Mr. Dean, can you lay a
2 foundation for the admittance of --

3 MR. DEAN: Well, it's a business record of Sunco
4 Trucking. It's also a part of the public record in the
5 disposal-pond case with -- It authenticates itself.

6 EXAMINER CARROLL: Well, I haven't admitted it
7 into evidence yet.

8 Mr. Horner. You can ask questions of the witness
9 regarding --

10 MR. HORNER: Again, I haven't seen that document.

11 MR. DEAN: Once again, my understanding, there
12 was a letter in the file that Mr. Horner was given access
13 to the files of Sunco. I assumed that he had gotten copies
14 of all those documents.

15 EXAMINER CARROLL: Do you have an extra copy for
16 Mr. Horner?

17 (Off the record)

18 MR. DEAN: If I do, I can't put my hands on it
19 right now.

20 He can look at that one while we're -- We're not
21 going to talk any more about it with this witness, so he
22 could look at that one.

23 EXAMINER CARROLL: Okay, I'll --

24 MR. DEAN: There's another one up here somewhere,
25 I just --

1 EXAMINER CARROLL: -- withhold the ruling on the
2 admittance of this evidence pending further questioning.

3 Q. (By Mr. Dean) All right. What is Exhibit E?

4 A. Exhibit E is a letter from Jerry Cates, Creative
5 Future Technologies. He was a gentleman that worked for us
6 during the landfarm; he was a consultant for us. And this
7 is a letter acknowledging that he sent out all these
8 letters out to the people within a mile review.

9 Q. What are the pages that are attached to the front
10 page?

11 A. These are pages that are attached that letters
12 were sent out to people in the area, mile area of review.

13 Q. And it's a part of the business records of Sunco,
14 of which you're the custodian?

15 A. Yes, sir, that's correct.

16 MR. DEAN: All right. I move admission of
17 Exhibit E.

18 I'm not aware, Mr. Hearing Officer, that -- Is
19 Mr. Horner here as an attorney for himself, or is he here
20 as himself?

21 If he's going to object and ask questions as an
22 attorney, does the public get to object to evidence being
23 admitted at a public hearing, or is he an attorney?

24 EXAMINER CARROLL: Yes, the public can object to
25 evidence admitted --

1 MR. DEAN: All right. My understanding --

2 EXAMINER CARROLL: -- and it's my understanding
3 he is a landowner, so he's appearing *pro se* as himself.

4 MR. DEAN: All right.

5 EXAMINER CARROLL: He doesn't appear any more to
6 be representing his mother. He's here representing
7 himself.

8 MR. DEAN: All right. My understanding also of
9 the rules of administrative hearings is that they're
10 informal and the rules of evidence are not strictly
11 applied; is that correct?

12 EXAMINER CARROLL: That's correct.

13 MR. DEAN: All right.

14 Q. (By Mr. Dean) Mr. Stone, let me show you what
15 I've marked as Sunco's Exhibit F and ask if you can
16 identify it.

17 And we've tried to put it up here where everybody
18 can see it. You're welcome to come up and look at it if
19 you choose.

20 Show me -- First tell me what the -- if you know
21 what that is.

22 A. Yes, sir, I do.

23 Q. What is it?

24 A. In the center of the larger picture is our pond,
25 our disposal facility, as well as our Crouch Mesa pipeyard.

1 Q. All right. Do you know when that picture, the
2 big picture, was taken?

3 A. Prior to 1994.

4 Q. All right. And the purpose of that picture is
5 not to show the present condition but just to show the
6 actual location of Sunco's property?

7 A. That is correct.

8 Q. All right. What about the little pictures that
9 are around that big picture?

10 A. The smaller pictures I took this week, and I took
11 those pictures around the pond in different areas this
12 week.

13 Q. All right. Most of the pictures don't -- This
14 one picture has arrows on it. Can you tell us why those
15 arrows are on there like that?

16 A. Those arrows are there to show -- illustrate what
17 the existing structure is right now, as far as the --
18 around the facility, the land, the lands here, the
19 landfarm, blah, blah, blah.

20 Q. All right. And could you point on the big
21 picture and show where you were standing when you took all
22 of those pictures except these two in the top right-hand
23 corner?

24 MR. HORNER: Your Honor, may I approach the
25 pictures?

1 EXAMINER CARROLL: Sure, why don't you take a
2 look at the pictures?

3 MR. HORNER: Go ahead.

4 Q. (By Mr. Dean) Show us where you were standing
5 when you took all the pictures but the two in the top right
6 corner.

7 A. I was standing approximately right here on the
8 dike.

9 Q. All right. Now, the other two pictures were
10 taken where?

11 A. The other two pictures in reference to Tierra?

12 Q. All right.

13 A. Is that -- Is that what you're asking?

14 Q. Right.

15 A. They were taken approximately over here. There
16 was one of them taken over here on the property line. And
17 then the other one's taken over by Tierra's office, right
18 in this area.

19 Q. Which isn't in the big picture?

20 A. No, that's correct.

21 Q. All right.

22 A. That was prior.

23 Q. And do the small pictures and the big picture,
24 are they a true and accurate representation of the Sunco
25 property in what they purport to show in those pictures?

1 A. Yes, sir.

2 Q. All right, and you took all of them but the big
3 one?

4 A. I took everything but the big one.

5 Q. All right. Have you compared the big picture to
6 the actual scene, and it's an accurate representation of
7 that?

8 A. Yes, sir, that's correct. Some of the pipe may
9 have changed, some of the equipment may have changed in the
10 pipeyard.

11 Q. And you tried to show that in a couple of
12 pictures?

13 A. That's correct.

14 MR. DEAN: All right, I move the admission of
15 Sunco's Exhibit F.

16 I guess my problem is that if Mr. Horner is going
17 to object or not object, I'd like to hear that on the
18 record if he's here as an attorney. That was the thrust of
19 my last statement. I'm moving the admission, but I'm not
20 getting any response. If he doesn't have any objection,
21 that would be what he normally would say, or if he objects.

22 MR. HORNER: I'm not objecting to anything except
23 Exhibit D so far, your Honor.

24 EXAMINER CARROLL: Okay, and I haven't ruled on
25 the admittance of any of these yet.

1 MR. DEAN: Okay.

2 Q. (By Mr. Dean) All right, once again I'll put
3 this up here. If you can't see it, you're welcome to come
4 on up. There is some small writing on that.

5 I show you what's marked as Applicant Sunco's
6 Exhibit G and ask you to identify that.

7 A. This again, this picture shows our disposal
8 facility, as well as our Crouch Mesa facility. This marks
9 some of the landmarks, as far as County Road 3500.

10 This also shows our proposed site for our five-
11 acre landfarm, as well as Tierra's existing landfarm across
12 -- adjacent to our property in the corner section here of
13 our Sunco facility.

14 Q. And once again, the large picture there that's
15 used was taken when?

16 A. Prior to 1994.

17 Q. And is that the same picture that's in the
18 preceding exhibit?

19 A. Yes, sir, that's correct.

20 Q. All right. And does it accurately reflect at
21 least the general terms and outline of the Sunco property
22 today --

23 A. Yes, sir, that is correct.

24 Q. -- with some changes that you --

25 A. Yes, sir.

1 Q. -- tried to note on the other picture?

2 A. Yes, sir.

3 MR. DEAN: All right. I move the admission of
4 Applicant's Exhibit G.

5 MR. HORNER: I will object to this one, your
6 Honor. Apparently they're using it for the purpose of
7 demonstrating the location of the proposed landfarm, which
8 is not in the picture. They have simply stuck a little
9 green thing up here on the base to indicate where the
10 landfarm would be with regard to the subject facility, and
11 so the proposed location isn't even in the picture.

12 MR. DEAN: I don't understand the objection.

13 EXAMINER CARROLL: No, I don't either. It does
14 show where it is in relation to the picture though; isn't
15 that correct?

16 MR. HORNER: Maybe relatively so, but you can't
17 see what's around it, you can't see the houses back here.

18 EXAMINER CARROLL: Okay, I think the preceding
19 picture showed the areas around the facility, and maybe
20 they could relate the green area to one of those pictures.

21 MR. HORNER: Well, if they're going to show the
22 proposed facility by means of a picture, it would be nice
23 to have the location of the facility on the picture.

24 EXAMINER CARROLL: Okay, and that could be a good
25 exhibit for you too, Mr. Horner, showing the whole area and

1 where their landfarm is intended to be.

2 MR. DEAN: The Applicant chose not to do that.

3 Q. (By Mr. Dean) Does one of the smaller pictures
4 show some of the area where the landfarm would be located?
5 Can you point to that for me? These are just
6 approximations?

7 A. These are just approximations. This -- You know,
8 this area right here will show some of it --

9 Q. All right.

10 A. -- as well as just over the dike here.

11 Q. All right. And does the green square there show
12 the approximate location relative to the picture of the
13 proposed landfarm?

14 A. Yes, sir, approximate.

15 Q. It's not put on there by a survey or an
16 engineering study, is it?

17 A. No, sir.

18 Q. How large is the proposed landfarm site?

19 A. Approximately five acres.

20 Q. All right. Could you point out for us on this
21 picture, is there an existing fence?

22 A. On the existing picture, right now?

23 Q. Yes.

24 A. We've got a fenceline along County Road 3500
25 right here.

1 Q. All right. Now, today is the entire property
2 fenced?

3 A. Yes, sir, that's correct.

4 Q. And would that include the landfarm site?

5 A. Yes, sir, it would.

6 Q. And how is that property secured, other than the
7 fence? Is there a gate? What's the --

8 A. There's gates. There's gates. It's all fenced
9 in. There's gates, and they're locked at all times.

10 Q. Now, is the facility manned when it is open?

11 A. Yes sir.

12 Q. All right. And is it -- When it's closed, what
13 happens?

14 A. The gate is locked.

15 Q. All right. Is there a caretaker?

16 A. We have a caretaker that lives approximately just
17 north of the proposed landfarm site. He lives right over
18 there, the caretaker, yes, sir.

19 Q. All right. What are his responsibilities?

20 A. Well, he's one of our employees, and he and his
21 family live out there and as caretaker just kind of watch
22 the area.

23 Q. All right. And is he there at night or during
24 the day or --

25 A. Well, when he's not working he's there at night,

1 yes, sir.

2 Q. All right. Does the Sunco pond presently
3 generate solid materials?

4 A. Yes, sir, it does.

5 Q. And how are those disposed of at the present
6 time?

7 A. We take them across the street to Tierra
8 landfarm.

9 Q. And would that be the area that's marked on the
10 map?

11 A. Yes, sir, that's correct.

12 Q. Does the Tierra landfarm area come up and touch
13 the Sunco pipeyard?

14 A. That one corner, yes, sir, it does.

15 Q. Point to that corner for us.

16 A. Right here in the corner of the property.

17 Q. All right. Now, let's -- Using Exhibit G and
18 Exhibit F, the two pictures in the top right-hand corner of
19 Tierra's gates. Where are they on Exhibit G?

20 A. The gate's approximately right here.

21 Q. You need to move so that --

22 A. Okay, right here.

23 Q. Now, which picture would show that gate?

24 A. That would show this one right here.

25 Q. All right.

1 A. I shot this picture with the sign going down our
2 fenceline, the sign going down our fenceline to show our
3 corner right here.

4 Q. All right.

5 A. And the other one I shot, I drove around the
6 place, right over here at their main office, and I shot a
7 picture of that, looking back towards our facility.

8 Q. So at the present time, the solids generated from
9 the Sunco disposal pond are taken to Tierra?

10 A. Yes, sir, that is correct.

11 Q. All right. Is some action taken with the sludges
12 on your property now? Do you do anything with those
13 solids, or sludges, as they're commonly called?

14 A. Well, the first step is, we have some cement
15 troughs on our property, and that's the first step there,
16 till they're stabilized. And then once they're stabilized,
17 then they're trucked across the street to Tierra.

18 Q. Okay. If the permit would be granted, what
19 materials would be placed in your landfarm?

20 A. It would only be from our facility, generated
21 from our facility, the solids.

22 Q. So you're not going to let other people come up
23 and dump solids --

24 A. No.

25 Q. -- in your facility?

1 A. No, sir, it's for us only.

2 Q. So it would only be the solids that are presently
3 taken across the street to Tierra?

4 A. That's correct.

5 Q. All right. What companies are allowed at the
6 present time to haul materials to the pond?

7 A. Sunco Trucking.

8 Q. All right. How many water trucks does Sunco
9 Trucking own?

10 A. We own approximately 30 water trucks.

11 Q. All right, and they're the only trucks that dump
12 material at that pond?

13 A. Sunco trucking, we generate probably
14 approximately 95, 98 percent, Sunco only. There has been
15 times with emergencies as far as letting other companies
16 come in, but it's very rare.

17 Q. All right. Will you be in charge of making sure
18 the facility -- that the proposed landfarm facility, if a
19 permit is granted, complies with permit conditions?

20 A. Yes, sir, I will.

21 Q. And how are you going to do that?

22 A. Well, first of all I'm going to document
23 everything, I'm going to abide by the OCD rules, I'm going
24 to communicate with the OCD, and if I need any help or we
25 need any help, I'm going to hire some engineers or experts

1 in environmental to help us get started.

2 Q. All right. You've -- Sunco has received some
3 notice of violations in the past?

4 A. Yes, sir, that is correct.

5 Q. All right. And you have examined those files?

6 A. Yes, sir.

7 Q. And were you responsible for compliance at the
8 time that those violations were received?

9 A. No, sir, I wasn't.

10 Q. All right. And have you changed any procedures
11 at Sunco in accordance with those violations and tried to
12 make sure that doesn't happen in the future?

13 A. Yes, sir, I have.

14 Q. And what changes have you made?

15 A. We're -- Our record-keeping and our documentation
16 and our testing has improved drastically, and it's
17 continuously improving.

18 Q. All right. There's presently a -- you've applied
19 for a Class 1 -- There's an injection well on the property?

20 A. That's correct.

21 Q. Will you point to that for me? It's marked.

22 A. Injection well, right there.

23 Q. And there's a permit pending OCD for a Class 1
24 permit?

25 A. That is correct.

1 Q. All right. But it hasn't been permitted that way
2 yet?

3 A. We are not accepting any Class 1 fluids at this
4 time.

5 Q. Now, what kinds of Class 1 fluids is it your
6 understanding that would be accepted?

7 A. Well, there's -- The Class 1 fluids that would be
8 accepted would be nonhazardous material.

9 Q. All right.

10 A. It's just an area of generation that's a -- you
11 know, it's a gray area.

12 Q. And if someone brings Class 1 materials in, what
13 do they have to provide to Sunco?

14 A. They'll have to -- certification of waste,
15 documenting and testing where that material was generated
16 and what it is --

17 Q. All right.

18 A. -- before we'll accept it.

19 Q. And how are you going to try to take care of or
20 prevent any adverse effect to the pond with those
21 materials? Who are you going to rely on for that?

22 A. I'm going to rely on the OCD, first of all. I'm
23 going to be communicating with the OCD constantly.

24 And second of all after that, I'm going to -- you
25 know, if necessary, analysis. We're going to have analysis

1 on all the material received in, all the Class 1 material.

2 Q. All right. Have you reviewed the -- referred the
3 -- or reviewed the Application submitted by Sunco to the
4 OCD?

5 A. Yes, sir.

6 Q. And have you looked at the rules and regulations
7 that OCD has with regard to landfarms?

8 A. Yes, sir.

9 Q. And are you able to tell us today whether or not
10 Sunco Trucking will be able to apply [sic] with those rules
11 and regulations?

12 A. Oh, yes, we will be.

13 MR. DEAN: All right, I don't have any other
14 questions of this witness.

15 EXAMINER CARROLL: Mr. Horner, your witness.

16 CROSS-EXAMINATION

17 BY MR. HORNER:

18 Q. Okay, Mr. Stone, first on these exhibits, I
19 believe they were G and H, I didn't see any houses in those
20 pictures.

21 MR. DEAN: F and G.

22 Q. (By Mr. Horner) Do you see any houses in those
23 pictures?

24 A. In this particular picture right now, G?

25 Q. Either one, G or H?

1 MR. DEAN: F.

2 Q. (By Mr. Horner) F and G?

3 A. If we look real hard, we can probably see some
4 right over here, we see some trailers right over here.
5 There's some trailers just due east of us. See that right
6 there?

7 Q. You have to look real hard there, don't you?

8 A. Yeah, right. Those are trailers, but they are
9 there.

10 Q. Okay. And in your big picture --

11 A. Yes, sir.

12 Q. -- if that were taken today, would you see any
13 houses?

14 MR. DEAN: I'm going to object to this line of
15 questioning. I don't understand the relevance of whether
16 there's houses around.

17 EXAMINER CARROLL: What is the relevance, Mr.
18 Horner?

19 MR. HORNER: The location of the facility with
20 regard to -- and the OCD's responsibility for protecting
21 the public health --

22 EXAMINER CARROLL: Okay.

23 MR. HORNER: -- and environment.

24 Q. (By Mr. Horner) In the big picture, if that were
25 taken today, would you see any houses in that picture?

1 A. Yes, sir, you would.

2 Q. And where would those be?

3 A. They would be located right over in here.

4 EXAMINER CARROLL: Mr. Horner, are you going to
5 ask questions as to how this landfarm is going to protect
6 public health and the environment, besides just being close
7 to houses?

8 MR. HORNER: How it's going to affect it the
9 public health --

10 EXAMINER CARROLL: Yeah.

11 MR. HORNER: -- adversely, as opposed to
12 protecting it. I don't see that it's protecting the public
13 health.

14 EXAMINER CARROLL: Okay, you're just asking at
15 this point whether there's houses close by; is that
16 correct? And then somehow by inference that's going to
17 adversely affect public health?

18 MR. HORNER: First I'm going to testify -- or I'm
19 asking for testimony with regard to these exhibits that
20 don't show any houses, that basically misrepresent the
21 area.

22 MR. DEAN: I object to that.

23 MR. HORNER: I'm trying to --

24 MR. DEAN: Come on.

25 MR. HORNER: I'm trying to demonstrate that, in

1 fact, if the pictures were taken today, you would see
2 houses all over this area.

3 EXAMINER CARROLL: Well, I just took a drive
4 around the facility. I did note that there were some
5 houses.

6 MR. HORNER: You did note there were some --

7 EXAMINER CARROLL: Yes.

8 MR. HORNER: Okay. And so anyway, these pictures
9 are showing no houses.

10 EXAMINER CARROLL: Okay. And Mr. Stone, you'll
11 admit that there's houses in the area now?

12 THE WITNESS: Yes, sir, I did. I admit that
13 right there. These pictures here, there is houses, mobile
14 homes in the distance over there, yes, sir.

15 EXAMINER CARROLL: Okay.

16 Q. (By Mr. Horner) And in fact, this area is all
17 developed back in here now?

18 A. Yes, sir, that is correct. And I -- These
19 pictures here show those.

20 Q. And in fact, this area over here to the northeast
21 that is not shown in any of these pictures has currently
22 been subdivided, streets are in, water lines are in?

23 A. The streets are there. I can't verify the water
24 lines, but the streets are in, yes, sir. They are doing
25 some constructing of roads over there now.

1 Q. Okay, and it appears that in the very near future

2 there will be houses in that area?

3 A. Yes, sir, I would assume so.

4 Q. Okay. Now then, how much solid waste or sludge
5 does this facility generate in a given month?

6 A. That could vary. You know, it could vary. It
7 depends -- You know, it depends on the loads.

8 Q. And what is your experience?

9 A. Well, in the experience recently, we've been
10 taking approximately 40 to 60 cubic yards to Tierra at the
11 present time.

12 Q. A month?

13 A. Yes, sir. That can vary, you know.

14 Q. And are you familiar with the testimony that was
15 given before the OCD in -- I believe it was 1991, on the
16 permitting of this facility, where Mr. Bob Frank testified
17 that there would be no sludge generated from this facility?

18 A. No, sir.

19 MR. DEAN: I'm going to object, unless Mr. Horner
20 has a transcript of that testimony to show us today.

21 EXAMINER CARROLL: I'll allow the question.

22 MR. HORNER: What's that?

23 EXAMINER CARROLL: I said I'll allow the
24 question, and it's already been answered.

25 Q. (By Mr. Horner) Are you familiar with that?

1 A. No, sir, I'm not.

2 Q. Are you familiar, then, with the fact that this
3 facility was permitted based on the fact that there would
4 be no sludge generated?

5 MR. DEAN: I'm going to -- Objection. That's a
6 statement that's not in evidence. It's a misrepresentation
7 of the permit.

8 EXAMINER CARROLL: Do you have a foundation for
9 that statement?

10 MR. HORNER: Well, I have the transcripts at my
11 house, which I can get within about ten minutes, your
12 Honor.

13 EXAMINER CARROLL: Do you have a --

14 MR. HORNER: And --

15 EXAMINER CARROLL: Do you have a copy of the
16 order? I mean, no matter what's in the transcript, the
17 order has --

18 MR. HORNER: I have a copy --

19 EXAMINER CARROLL: -- certain findings in it.

20 MR. HORNER: I have a copy of the order in the
21 car.

22 EXAMINER CARROLL: And --

23 MR. HORNER: And there is --

24 EXAMINER CARROLL: -- could you bring it in after
25 the break then?

1 So you're saying that the permit was predicated
2 on no sludge being generated?

3 MR. HORNER: That's correct.

4 EXAMINER CARROLL: And that's a finding or an
5 ordering paragraph in that order?

6 MR. HORNER: It's not a finding in the order; it
7 was disregarded based on the testimony that had been given
8 by Mr. Frank at the hearing that there would be no sludge
9 generated.

10 The testimony at the hearing was, when asked
11 about how he would close this site, what you would do with
12 the sludge that was generated, was that there would be no
13 sludge generated. Any sludge that was generated would be
14 buried in the ponds, closed over with plastic at the
15 closure of the facility, and that was it, that there would
16 be no sludge generated that had to be taken out and
17 treated.

18 That was the testimony at the permit hearing
19 before. Things have drastically changed.

20 EXAMINER CARROLL: Well, after a break, Mr.
21 Horner, you can give me a copy of that order and I'll
22 review it.

23 MR. HORNER: Okay.

24 Q. (By Mr. Horner) Now then, you said that the
25 sludge that's removed from these ponds is taken out and

1 initially put into cement troughs; is that correct?

2 A. Yes, sir, that is correct.

3 Q. And so the purpose of that is to dry the sludge
4 out --

5 A. Yes, sir --

6 Q. -- before it's disposed of?

7 A. -- that's correct, to stabilize.

8 Q. Okay, is it treated at that point?

9 MR. DEAN: This is -- I object. This is outside
10 the scope of his direct testimony. It's not what he
11 testified to. Cross-examination is limited to what's
12 brought up on direct.

13 EXAMINER CARROLL: Mr. Dean, do you have another
14 witness that could answer that question?

15 MR. DEAN: I do.

16 EXAMINER CARROLL: And who is that?

17 MR. DEAN: Mr. Talovich.

18 EXAMINER CARROLL: Do you want to defer that
19 question until Mr. Talovich --

20 MR. HORNER: That's fine.

21 EXAMINER CARROLL: -- testifies?

22 Q. (By Mr. Horner) Are you aware that at one point
23 the sludge was removed from these ponds and just dumped
24 directly on the ground at the proposed facility?

25 A. Yes, sir.

1 Q. Okay. Are you aware that the OCD came in and
2 said you can't do that anymore?

3 A. Yes, sir.

4 Q. So initially, the plan that Sunco came up with
5 when they found the sludge problem was just to dump it out
6 on the ground?

7 A. No, I don't believe so.

8 Q. Okay, explain to me --

9 A. Well, I think that was just -- I think that was
10 just an error in judgment from one of our ex-personnel that
11 we had working at the disposal. I think that was just an
12 error in his judgment.

13 Q. Okay. Well, in fact, Sunco wrote a letter to the
14 OCD saying their plan was to dump it on the ground and disk
15 it in; isn't that correct?

16 A. Well, that letter came after the initial problem
17 we had. Yes, sir, we did ask for some additional help from
18 the OCD.

19 Q. So even after the OCD made you aware that that
20 was insufficient, you proposed to still dump it on the
21 ground and disk it into the ground?

22 A. Yes, sir, we did. We asked for permission from
23 the OCD, yes, sir.

24 Q. If the OCD is taking the position now that that
25 form of disposal of the sludge is inappropriate, who at

1 Sunco is the person responsible for the plan to properly
2 remediate the sludge?

3 A. Ask that one more time. I want to make sure I've
4 got it right.

5 Q. Okay. Apparently the plan initially coming from
6 Sunco is just to dump it on the ground. The OCD objected.
7 So now who at Sunco is the one with responsibility and the
8 expertise that has devised the current plan for disposing
9 of this sludge?

10 A. Okay, well --

11 MR. DEAN: I object. I don't understand the
12 question. The rules are set out by the OCD, aren't they?

13 EXAMINER CARROLL: Mr. Horner, can you rephrase
14 the question?

15 Q. (By Mr. Horner) Okay. Well, it appears that
16 initially no one at Sunco had the expertise to figure out
17 how to dispose this sludge.

18 MR. DEAN: I object. It's not testimony that's
19 in evidence. It's a misstatement of evidence.

20 Q. (By Mr. Horner) Who now at Sunco has -- is
21 charged with the responsibility for determining how the
22 sludge is to be disposed of?

23 A. That's going to be my responsibility, sir.

24 Q. Okay. Now, then, what kind of background do you
25 have in environmental sciences that makes you an expert in

1 knowing the impacts on the environment at this time?

2 MR. DEAN: I'm going to object. He's confusing
3 the witness. It's not the question the witness answered.

4 I think the question the witness answered is,
5 Who's in charge of complying? Mr. Horner is trying to say
6 that he's not an expert. He's never testified he was an
7 expert, and the rules about land farms are set out by the
8 OCD.

9 EXAMINER CARROLL: I'm going to allow the
10 question, because I was going to ask the same question
11 regarding Mr. Stone's background in environmental science.
12 So if you would answer Mr. Horner's question, please.

13 THE WITNESS: I don't have any background in
14 environmental science.

15 Q. (By Mr. Horner) Who at Sunco does have a
16 background in environmental --

17 A. At this present time, I'm not aware of anybody,
18 but that's why we're going to help -- get some help from
19 the OCD, as far as their guidelines, as well as hiring some
20 engineers or environmental specialists in the background.
21 This is done every day, in every walk of life.

22 Q. You are currently proposing a plan --

23 A. Yes, sir.

24 Q. -- and you are telling us at this point that in
25 the future you will look for expertise on how to operate

1 this facility; is that correct?

2 A. Well, first of all, the first step is going to be
3 OCD -- abiding by the OCD rules. And then if we need any
4 help beyond that, then we'll hire experts, environmental
5 experts or engineers or whatever it takes.

6 Q. So it appears that Sunco's methodology at this
7 point is to do whatever you want to until the OCD
8 objects --

9 MR. DEAN: I'm going to object. It's
10 argumentative.

11 Q. (By Mr. Horner) -- and then you try to somehow
12 figure out what the OCD wants and comply with it?

13 MR. DEAN: I object, it's argumentative, it's not
14 testimony that's in evidence.

15 EXAMINER CARROLL: Are you prepared to answer the
16 question, Mr. Stone?

17 THE WITNESS: I'd like him to ask it again. I
18 don't understand it.

19 EXAMINER CARROLL: Will you rephrase it, Mr.
20 Horner?

21 Q. (By Mr. Horner) Okay. Has anybody from Sunco or
22 anybody hired by Sunco in a consulting capacity helped you
23 to develop the current plans for the landfarm?

24 A. Yes, we've hired -- You know, we've got some
25 consulting in the process, in the permit process. You

1 know, we've got some information from Tierra Environmental.

2 Q. Okay. Who is the expert that you're talking to
3 that helped you to design this landfarm?

4 A. Well, the experts are the people at Tierra
5 Environmental that we had helping us, was Phil Nobis, and
6 we had Connie Dinning. She was employed with Environmental
7 -- or Tierra Environmental at the time as well.

8 Q. Are you aware of their expertise in environmental
9 sciences?

10 A. I'm not really sure, not right now.

11 Q. Are they going to be called to testify today as
12 to their environmental --

13 MR. DEAN: That's outside the scope of this
14 witness's testimony. It's not admissible evidence.

15 EXAMINER CARROLL: I don't believe the witness
16 knows the answer to that question.

17 MR. HORNER: No, I don't think they have any
18 environmental expertise.

19 MR. DEAN: Now Mr. Horner's testifying and
20 arguing with the witness, which I object to. If he wants
21 to testify, he needs to take an oath, sit down and testify.
22 And that's the problem with representing himself, and I
23 object to that behavior.

24 EXAMINER CARROLL: Duly noted, Mr. Dean. I was
25 going to have Mr. Horner sworn in later so I could ask some

1 questions as the owner of adjacent property at -- after
2 your presentation.

3 MR. DEAN: I mean, he can have all those
4 opinions, I -- That's fine. But he needs to do it as a
5 witness.

6 Q. (By Mr. Horner) Now, you've testified that there
7 has been significant problems in the past with Sunco
8 violating OCD regulations; is that correct?

9 A. We have had some violations in the past, that is
10 correct.

11 Q. And now your record-keeping has improved?

12 A. Yes, sir.

13 Q. Are these records open to the public? Can I come
14 up and look at your records?

15 MR. DEAN: It's outside the expertise of this
16 witness to say whether or not legally someone can go look
17 at their records. I'm directing him not to answer the
18 question.

19 MR. HORNER: He's responsible for the operation
20 of this facility. I'm asking the witness if I can go look
21 at his records.

22 MR. DEAN: I'm directing him not to answer the
23 question.

24 EXAMINER CARROLL: Mr. Horner, I don't believe
25 that is a proper question of the witness. The files of the

1 OCD are public records that you can investigate. You're
2 asking Sunco whether you can go in there and look through
3 all the records?

4 MR. HORNER: That's right.

5 EXAMINER CARROLL: I don't believe the witness
6 knows the answer to that question. Do you, Mr. --

7 MR. HORNER: He's in charge of the facility; he
8 should know it.

9 MR. DEAN: Why?

10 MR. HORNER: He should know it.

11 MR. DEAN: Why should he know it? Why should he
12 know it? What gives him -- what he's testified that he
13 should know the answer to that question?

14 EXAMINER CARROLL: Do you know the answer to that
15 question, Mr. Stone?

16 THE WITNESS: No.

17 EXAMINER CARROLL: Okay, that answers the
18 question, Mr. Horner.

19 Q. (By Mr. Horner) So your -- Okay, your answer,
20 then, is, you don't know if I can go look at your records?

21 A. That's correct.

22 Q. But you're in charge of the facility?

23 A. That's correct.

24 EXAMINER CARROLL: That is a legal question, and
25 I don't think this witness is qualified to answer.

1 Q. (By Mr. Horner) Okay. Now, you've also
2 testified about having applied for a Class 1 permit.
3 Apparently that's with regard to the injection well; is
4 that correct?

5 A. That's correct.

6 Q. What is a Class 1 permit?

7 A. What is a Class 1 permit? It changes the
8 classification of the fluids or materials you can take.

9 Q. Okay, and what's involved in Class 1?

10 A. Well, Class 1, there's different materials
11 generated out there, and it's just a different
12 classification of the fluids that you can take. It's just
13 a gray area. It's the generation, where it was generated
14 and so forth.

15 Q. Can you tell me what's involved in Class 1?

16 MR. DEAN: I object. He's on -- You know,
17 Counsel is on a fishing expedition. He should have
18 prepared the hearing before he got here. We're going to
19 spend two or three days while he educates himself. That's
20 unfair, both to the Applicant, to the OCD and to the
21 public.

22 EXAMINER CARROLL: I'll allow the question. Do
23 you have the knowledge to answer that question?

24 THE WITNESS: Go ahead and ask it again.

25 Q. (By Mr. Horner) What kind of materials are

1 involved in Class 1?

2 A. What kind of materials?

3 Q. Right.

4 A. It's just the basic nonhazardous material that
5 we've been taking. It's just a matter of -- The difference
6 is the generation of the material, where it's come from and
7 so forth.

8 Q. How does it differ from what you're doing now?

9 A. The difference is, right now it's going to
10 require more record-keeping, more documentation and more
11 testing.

12 Q. No, I mean where the material comes from, how
13 does that differ?

14 A. Where the material comes from?

15 Q. Right.

16 A. Well, okay, let me -- Okay, let me give you just
17 an example, okay? All right, some of the material that we
18 take right now comes from the wellhead or location, and
19 some of the Class 1 material may come from a sump or a CVP
20 or pipeline, something in that neighborhood.

21 It may be the same type of fluids that you've
22 been -- you know, the same as Class 2, except the
23 generation, where it's been, where it's -- so forth,
24 commingled with, that's -- changes the classification to a
25 Class 1.

1 Q. Are you going to be able to tell the difference
2 between the Class 1 and Class 2?

3 A. Well, we're going to be able to tell because of
4 where it's generated.

5 Q. Just where the material comes from?

6 A. Yes, sir, that's correct.

7 Q. But you're not going to be looking at what's in
8 the material?

9 A. No, they're going to have to have certification
10 of waste from the customer to the generator, we're going to
11 have to have certification of waste, a test and so forth,
12 before we can take it.

13 Q. Now, then, are we talking about liquids in this
14 Class 1?

15 A. Yes, sir.

16 Q. And so they will be dug into your pond and then
17 injected; is that right?

18 A. If everything's met, if everything's certified
19 and tested, yes, sir.

20 EXAMINER CARROLL: Mr. Horner, we're getting a
21 little far afield. I mean, this case is an Application for
22 a landfarm, and now you're digging into the Class 2 well
23 where there's a pending Class 1 Application.

24 MR. HORNER: Mr. Dean brought it up.

25 MR. DEAN: I didn't want to misrepresent the

1 facts to Mr. Horner, but it's a pending Application.

2 Hasn't been granted. It's a public file.

3 EXAMINER CARROLL: And Mr. Horner, you filed an
4 objection to the pending Application?

5 MR. HORNER: I was not even aware that it
6 existed.

7 MR. DEAN: There were no objections filed to it.

8 MR. HORNER: Certainly I didn't object, because I
9 didn't know that it existed.

10 EXAMINER CARROLL: How far are you going with
11 this line of questioning?

12 MR. HORNER: That's about it, I think.

13 EXAMINER CARROLL: Okay.

14 MR. HORNER: As a matter of fact, that's about
15 all I have of this witness.

16 EXAMINER CARROLL: Thank you.

17 Any other questions from members of the public?

18 MS. WELLES: I have a question.

19 EXAMINER CARROLL: What was your name again,
20 ma'am?

21 MS. WELLES: Jamie Welles.

22 EXAMINER CARROLL: And you're a resident in the
23 area?

24 MS. WELLES: Yeah, I'm a resident, but not of
25 this area. I just have a question about some of the

1 testing that you're going to do at the landfarm.

2 When you spread it out, are you going to do any
3 monitoring or anything like that of the landfarm?

4 THE WITNESS: Yes.

5 MS. WELLES: And at what intervals?

6 THE WITNESS: It depends on the orders of the
7 OCD. The OCD is going to -- You know, if we get this
8 permit, they're going to issue the guidelines and we're
9 going to have to abide by their guidelines. So it's going
10 to be up to the OCD, as far as your testing.

11 EXAMINER CARROLL: Ms. Welles, I could swear in
12 Roger Anderson. He could probably answer that question.

13 MR. ANDERSON: Do you want us to answer right
14 now?

15 EXAMINER CARROLL: Yeah. Steve, do you want to
16 swear Mr. Anderson in?

17 ROGER C. ANDERSON,
18 the witness herein, after having been first duly sworn upon
19 his oath, testified as follows:

20 DIRECT TESTIMONY

21 BY MR. ANDERSON: The testing that will be required, or
22 would be required, as we will recommend it to the Examiner,
23 including the order, is the same testing that's required of
24 Tierra landfarms and Envirotech and of all the landfarms in
25 the southeast.

1 fact that OCD has promulgated, after a long effort,
2 guidelines for permit application, design and operation of
3 centralized and commercial landfills. Perhaps the audience
4 doesn't know that, and it answers most of these questions.
5 I'm going to introduce that into evidence as soon as I get
6 to that witness, but maybe Mr. Anderson could say that now,
7 that we're not just going into this blind.

8 EXAMINER CARROLL: Without objection from Mr.
9 Dean, because we are interrupting your --

10 MR. DEAN: That's all right.

11 EXAMINER CARROLL: -- presentation of the case,
12 and we are holding a hearing up here for members of the
13 public --

14 MR. DEAN: That's why I thought it might be a
15 good idea to do that now.

16 EXAMINER CARROLL: It would be a good time for
17 Mr. Anderson to tell the audience what the OCD has been
18 doing regarding the permitting of disposal facilities.

19 MR. DEAN: Let me also say that what we're doing
20 is, we're applying for a permit to the guidelines that OCD
21 has. It just happens to be in this location. I think most
22 of the objections of the public are to the location, which
23 is not really within OCD's regulatory authority.

24 The Application is such that we're asking for a
25 permit subject to your guidelines that you give us for this

1 site and we're providing you information about that site,
2 and that's what we're trying to do.

3 EXAMINER CARROLL: Ms. Welles, did you have a
4 question?

5 MS. WELLES: Well --

6 MR. DEAN: I'd be happy to provide a copy of
7 those to whoever wants them.

8 MS. WELLES: -- I'm not saying anything about the
9 location; I'm just asking questions about the landfarm
10 itself and more along the lines of protecting the health
11 and safety of the environment and, you know, around the
12 area, wherever the landfarm is.

13 EXAMINER CARROLL: Well, that is one of the OCD's
14 responsibilities, is to protect public health and the
15 environment.

16 MS. WELLES: Right.

17 EXAMINER CARROLL: And maybe at this point Mr.
18 Anderson can give a very short presentation.

19 MR. ANDERSON: What the OCD did in 1991 was
20 create a series of guidelines for the design and operation
21 of landfarms, basically centralized and commercial
22 landfarms. And in 1993, we revised those based on
23 experience that we had seen with the landfarms that we had
24 permitted.

25 These guidelines contain a general overall

1 description of the requirements for construction,
2 monitoring, closure. Anything that could pertain to a
3 landfarm are in these guidelines. They are general
4 guidelines that can be modified based on specific site-
5 location characteristics.

6 For instance, if groundwater is at 10 feet, then
7 we can add groundwater-monitoring wells, as well as the
8 treatment-zone monitoring. If it's 100 feet or 120 feet to
9 groundwater, we felt that probably because of that site,
10 depending on the geology, that treatment-zone monitoring
11 would be enough.

12 These are just guidelines, but they set out a
13 basic framework for an applicant to -- what he has to
14 comply with.

15 EXAMINER CARROLL: Sir?

16 MR. CLAESGENS: My name is Bill Claesgens. I'm a
17 resident, not of the area. I live out of the area in
18 question.

19 It seems, then, these guidelines are already in
20 place; is that correct?

21 MR. ANDERSON: They've been in place since they
22 were modified in July of 1993, is when the most recent one
23 was modified.

24 MR. CLAESGENS: All right. Then the guidelines
25 can be tailored to any particular landfarm that comes up?

1 There are other specs?

2 MR. ANDERSON: No, the guidelines are just
3 general requirements. Each individual permit will have
4 specific requirements based on the site itself.

5 MR. CLAESGENS: Based on the individual site?

6 MR. ANDERSON: Individual site, site-specific
7 conditions, yes.

8 MR. CLAESGENS: One more question I'd like to
9 ask --

10 EXAMINER CARROLL: Go ahead.

11 MR. CLAESGENS: -- not being argumentative.

12 Mr. Stone stated earlier in his statement that he
13 was going to be -- I think he said constant contact or he
14 was going to be in contact with the OCD constantly. I
15 think -- I'd like to know what "constantly" is. Is that
16 weekly, daily? You know, how constant is that going to be
17 so that --

18 MR. STONE: As needed, as needed, because -- If
19 it's daily, if it's twice a week.

20 MR. CLAESGENS: Would that be once every six
21 months or just --

22 MR. STONE: No, I would imagine at the beginning,
23 if this is approved, I would imagine we're probably going
24 to be talking to them two to three times a week in the
25 beginning.

1 MR. CLAESGENS: And the OCD would be, then, doing
2 the testing of the material, or do you do that?

3 MR. STONE: Whatever -- In the guidelines, if
4 there's testing required in the guidelines, we will be
5 doing that with an independent lab.

6 MR. CLAESGENS: Oh, with an independent lab --

7 MR. STONE: Yes, sir.

8 MR. CLAESGENS: -- correct?

9 MR. STONE: Uh-huh.

10 EXAMINER CARROLL: Mr. Anderson, maybe you could
11 answer that?

12 MR. ANDERSON: There will be required testing for
13 the landfarm. And I'll say the same thing to -- and I
14 don't know if I should or not, but go back to the Class 1
15 fluids too.

16 EXAMINER CARROLL: Go ahead.

17 MR. DEAN: I don't -- That's fine with me.

18 MR. ANDERSON: They will be required to have
19 those tested prior to acceptance also, to make sure there
20 are no hazardous constituents in them.

21 The Applicant is required to do the testing, to
22 do the sampling and do the analysis and submit the analysis
23 to us. For Class 1 fluids, each individual load has to be
24 approved by both the district and Santa Fe before they can
25 accept it.

1 MR. CLAESGENS: That's for Class 1?

2 MR. ANDERSON: That's for Class 1 fluids, to make
3 sure that they're nonhazardous.

4 As far as the landfarm goes, they are required to
5 do the sampling and to do the analysis and submit the
6 analysis to us on a quarterly basis.

7 We also require that when they do sampling and
8 analysis of the landfarm, that they let us know -- I
9 believe it's 72 hours prior to the sampling event, so that
10 we are afforded the opportunity to have a witness there and
11 the opportunity to split samples with them, and we would
12 send them to our own lab, to confirm their laboratory
13 analysis.

14 We don't do that on every sample. The State does
15 not give us enough funds to check everybody's samples. So
16 we randomly select. If they never know -- If they take
17 four samples out there, we'll take four. We may only send
18 one in; we may not send any in; we may send three in. No
19 one ever knows, but us.

20 MR. CLAESGENS: And there are adequate personnel
21 within the OCD to make sure that this is all going to take
22 place?

23 MR. ANDERSON: Yes, the field representatives
24 here in the local office are the ones who would go out and
25 witness the sampling. Periodically, someone from Santa Fe

1 would also do that.

2 MR. CLAESGENS: As long as they're notified 72
3 hours in advance?

4 MR. ANDERSON: That's correct.

5 MR. CLAESGENS: Thank you.

6 EXAMINER CARROLL: Mr. Horner?

7 EXAMINATION (Resumed)

8 BY MR. HORNER:

9 Q. Mr. Anderson, where is your office?

10 A. My office is in Santa Fe.

11 Q. And so how often are you going to be up here
12 looking at the facility?

13 A. Well, up until we lost an employee this last --
14 about seven months ago, I've been up here probably once a
15 quarter --

16 Q. Once a quarter?

17 A. -- looking at places, yeah.

18 Q. Okay. But you're not going to be sitting at Mr.
19 Stone's right hand to answer his questions?

20 A. Absolutely not, no, that's -- But the phone is
21 always there. We never fail to answer anybody's phone
22 call.

23 Q. Doesn't the OCD rely on the operator of the
24 facility to provide a certain amount of expertise as far as
25 how to operate the facilities, correct?

1 A. We rely on the permit holder to comply with the
2 terms and conditions of the permit.

3 As far as their expertise goes, there are no
4 requirements for PhD degrees or specific education, no,
5 there are no requirements. We set out certain terms and
6 conditions in a permit that has to be complied with, on
7 their own, without -- You know, we will not help them in
8 complying with the permit. They have to comply with it.
9 And for -- And we allow a certain amount of self-regulation
10 to comply with that. We check and audit.

11 Q. Do you check the owner or the agents of the owner
12 in any way to become comfortable with the fact that they
13 have any kind of minimum level of expertise to be able to
14 actually provide the service that they're saying that
15 they're going to provide?

16 A. No, the only background checks that we do, based
17 on the rule, is for any criminal violations of
18 environmental laws. That's the only background that we
19 check.

20 Q. So the process, then, is essentially what has
21 gone on here in the past, and that is, they violate
22 something, it comes to your attention, and then you come in
23 and say, You're violating, it needs to be changed?

24 A. If there's violations after -- depending on the
25 violation, they'll be fined or go to hearing. And if there

1 are enough violations, we'll have a show-cause hearing why
2 their permit should not be revoked.

3 EXAMINER CARROLL: Mr. Horner, I believe there
4 are guidelines and regulations in place, and then they
5 violate them, it's not like there's a vacuum there to begin
6 with.

7 MR. HORNER: Well, the point is, they just dump
8 the stuff out on the ground and wait for OCD to come in and
9 say, You can't do that.

10 And then when OCD comes in and says, You can't do
11 that, you've got to get a permit, then they say, Okay,
12 we'll go get a permit.

13 Now we're finding out they have no expertise,
14 they don't have any idea what they're doing. They're
15 relying on the OCD to provide their expertise and saying,
16 We have no responsibility for having any expertise. It's
17 the OCD that --

18 MR. DEAN: I object to sitting here and listening
19 to these scare tactics, to Mr. Horner testify to things
20 that are not in evidence, that are ridiculous and
21 misrepresentations of what's going on, and I resent my
22 client having to pay me to sit here to do it.

23 And I would ask Mr. Horner, if he wants to act
24 like an attorney he needs to do that, or he needs to get up
25 here, take the oath, sit down and testify so I can cross-

1 examine him.

2 But this scare tactics and making up things to
3 say is not appropriate behavior.

4 MR. HORNER: It's not making up things to say;
5 it's all documented, your Honor.

6 MR. DEAN: Where? Where is it in the record?

7 MR. HORNER: In my letter of protest that I
8 submitted in this particular matter, dated January 30, 1996
9 -- Do you have a copy of that?

10 EXAMINER CARROLL: Yes, I do.

11 MR. HORNER: Okay. All of these things, all of
12 these letters from the OCD to the Sunco saying that you
13 can't dump this stuff on the ground, and then Sunco's
14 responses back saying, Well, we just want to dump it on the
15 ground and disk it right in, and the OCD coming back
16 saying, You can't, you've got to cease operations, then
17 they go ahead and do it, OCD coming back and saying, You've
18 got to cease operations, again -- They're all detailed in
19 that protest letter.

20 EXAMINER CARROLL: Okay.

21 MR. HORNER: Okay.

22 EXAMINER CARROLL: Duly noted.

23 MR. HORNER: All of the letters themselves are
24 documented, in the files, and they're available. I'm not
25 making stuff up.

1 MR. DEAN: Well, your characterization of it is
2 making it up. He's right, that stuff is in the file and it
3 says what it says. It doesn't say what Mr. Horner says.

4 EXAMINER CARROLL: Well, gentlemen, it is
5 documented in the OCD files, so I guess I don't
6 understand -- Are you trying to make the public aware of
7 the documentation in the file, Mr. Horner, or --

8 MR. HORNER: Well, it would be nice, the -- what
9 seems to be being -- The character of Mr. Dean's witness's
10 testimony here is, Yeah, we're going to do this terrific
11 job, but we're going to rely on the OCD for the expertise
12 and the guidelines. And he hasn't demonstrated that he has
13 any awareness of the guidelines. Past history is, they
14 don't pay any attention to the guidelines.

15 MR. DEAN: I just handed the guidelines to Mr.
16 Horner. I don't have any awareness of them? I can't get
17 to that point in my testimony. I mean, we're going to go
18 crazy telling me I'm a fool for doing this, before I can
19 show what I'm going to do. That's not fair, that's not how
20 cases go.

21 EXAMINER CARROLL: Well, where are we, gentlemen?
22 Mr. Horner, do you have some more questions?

23 MR. HORNER: We're ready to proceed.

24 EXAMINER CARROLL: Okay. Any other questions
25 from the audience?

1 MR. DEAN: I have a question of Mr. Horner -- or
2 Mr. Anderson, before he leaves.

3 EXAMINER CARROLL: Okay. Go ahead, Mr. Dean.

4 EXAMINATION

5 BY MR. DEAN:

6 Q. Mr. Horner makes it sound like you're the only
7 guy that my clients can call about this, and they have to
8 call you, I guess, in Santa Fe? You don't have an office
9 in Aztec?

10 A. We have a district office in Aztec.

11 Q. Does it have employees?

12 A. Yes.

13 Q. How many does it have?

14 A. Nine.

15 Q. And is one of them assigned, I think, to these
16 kind of operations?

17 A. We --

18 MR. HORNER: Objection your Honor, now we're not
19 talking about personal knowledge; he's getting his
20 information from Mr. Chavez out of the audience. If you
21 want to have Mr. Chavez come and testify about the Aztec
22 office, do so.

23 EXAMINER CARROLL: Mr. Horner, you're just going
24 to prolong the proceeding by having --

25 MR. DEAN: I'll withdraw the question.

1 EXAMINER CARROLL: -- us swear in every -- Mr.
2 Dean will withdraw --

3 Q. (By Mr. Dean) Is one of the employees in Aztec
4 assigned to monitoring ponds and landfarms?

5 A. One of the employees in Aztec is assigned as an
6 environmental geologist to monitor all environmental
7 activities in the Aztec district.

8 Q. Do you think he would be available, or do you
9 know if he would be available to my client if they had
10 questions or concerns?

11 A. He's available to anybody in -- public or
12 industry, if they have questions.

13 Q. Do you think it's appropriate that my client
14 would rely on the OCD to come up with rules and regulations
15 that they should follow to protect the public health and
16 environment in a landfarm?

17 A. The Oil Conservation Division has come up with
18 rules and regulations. They've been in effect, sir, some
19 fifty-some years? Sixty years, who knows? And we come up
20 with permit conditions when we permit a facility, and we
21 are confident that they are protective of the public health
22 and the environment.

23 Q. And did you have a role in that, coming up with
24 these guidelines?

25 A. I wrote the guidelines, yes.

1 Q. And what's your background?

2 A. I'm a chemical engineer.

3 Q. And how long have you been practicing in that
4 field?

5 A. I've been in the environmental field, since --
6 with the Oil Conservation Division, since 1986.

7 MR. DEAN: All right, I don't have any other
8 questions.

9 EXAMINER CARROLL: Any other questions from the
10 audience?

11 I have a few questions Mr. Stone.

12 MR. STONE: Okay.

13 HAL STONE,

14 the witness herein, having been previously duly sworn upon
15 his oath, was examined and testified as follows:

16 EXAMINATION

17 BY EXAMINER CARROLL:

18 Q. Have you testified before the OCD before?

19 A. No, I have not.

20 Q. Could you give me a brief background of your
21 experience in the oil and gas industry and your education?

22 A. My education, I have a high school degree. I've
23 got approximately one year of college. I've been in the
24 oil and gas industry here locally in Farmington locally for
25 approximately 15 years.

1 Q. With whom?

2 A. Well, I was six years with Don Trucking Company,
3 and I'm going on, you know, nine-plus years with Sunco
4 Trucking Company.

5 Q. What's your current position with Sunco?

6 A. I'm manager of Sunco Trucking.

7 Q. And how long have you been in that position?

8 A. I got promoted in July to manager, July 1st,
9 1996.

10 Q. Okay. You testified that the size of the
11 proposed landfarm will be five acres?

12 A. Approximately five acres, yes, sir.

13 Q. What's the size of the total facility there?
14 What's the size of Sunco's total land holdings in that
15 area?

16 A. Well, George Coleman, he owns 160 acres there,
17 total acres, 160 acres George owns.

18 Q. Okay, so the Sunco produced water disposal
19 facility is how many acres of the 160?

20 A. Oh, boy, I want to say it's approximately 20
21 acres.

22 Q. And is this landfarm going to be part of that 20
23 acres?

24 A. Yes, sir.

25 Q. Now, I drove around there this morning, and is

1 the five acres included in the fenced area --

2 A. Yes, sir.

3 Q. -- around the disposal facility?

4 A. Yes, sir, it's in the fenced-in area, uh-huh.

5 Q. And it would be in the northwest corner of that
6 facility?

7 A. Yes, sir, north.

8 Q. I noticed some houses and some residences
9 northwest of that corner.

10 A. Yes, sir, that's one of our employees, the
11 caretaker on the facility.

12 Q. Oh, that's his --

13 A. Yes, sir.

14 Q. -- his home?

15 A. That's it.

16 Q. So Mr. Coleman owns that land?

17 A. Yes, sir, that's correct.

18 Q. Currently with the sludge, you're hauling it
19 across the road to Tierra's landfarm?

20 A. Yes, sir, that's correct.

21 Q. So when Mr. Horner referred to a bunch of
22 residences up in the northeast corner of the top picture
23 there --

24 A. Do you want me to point where the --

25 Q. Yeah.

1 A. -- residences are?

2 Q. The top photo?

3 A. Yes. Yes, there --

4 Q. And out past there, there's some residences up
5 there?

6 A. Yes, that's correct, there's a lot more.

7 Q. So they're fronting the Tierra landfarm where
8 your sludge is currently being deposited; is that correct?

9 A. Yes, sir, right across the road from Tierra.

10 Q. So the sludge will be moved farther away from
11 those residents?

12 A. That is correct.

13 Q. Does Sunco find it cheaper to dispose of its own
14 waste, rather than having Tierra dispose of it?

15 A. Yes, sir, that's correct. That's why we're
16 applying for this.

17 Q. And that's the purpose for this Application?

18 A. Yes, sir, it is.

19 Q. And I -- Do you find it considerably cheaper than
20 paying Tierra to dispose of it?

21 A. Yes, sir, it will be.

22 Q. When was the disposal facility constructed or --

23 A. It was approximately -- Let's see, 1992, I
24 believe. 1991 or 1992. I can't remember.

25 Q. Were homes in the area at that time?

1 A. Boy, in 1991 or 1992 there weren't hardly anybody
2 out there. We were more or less the frontiers in that
3 area.

4 Q. Does Sunco believe that disposing of its sludge
5 on its own facility will be protective of public health and
6 the environment?

7 A. Yes, sir, more so than now.

8 Q. And why is that?

9 A. Because of the location. It's right there within
10 our facility. And our boundaries are 160 acres; it's not
11 going to be close to any other homes.

12 Q. Where is Mr. Horner's land in relation to the
13 facility?

14 A. I'm not -- Mr. Horner can answer that, but I'm
15 pretty sure -- I believe it's to the west. I believe it's
16 to the west. He can answer that. I don't know where his
17 property is.

18 Q. And I saw some other fenced-in areas out there.
19 Was there a pipeyard west of the disposal facility?

20 A. Okay, that is also Mr. Coleman's land. Okay, you
21 saw some pipe and you saw some rig parts; is that correct?
22 Is that what you're referring to?

23 Q. I noticed some pipe. I didn't notice any rig
24 parts.

25 A. Okay, they're depicted in these -- some of my

1 pictures I took. Yes, sir, that's Mr. Coleman's area also,
2 Big A, Sunco extra parts.

3 Q. And how much of the 160 acres is fenced?

4 A. I believe all of it's fenced in right now, I
5 think --

6 Q. So even the home of the caretaker I saw is --

7 A. Yes, sir.

8 Q. -- within a fenced-in area?

9 A. Yes, sir.

10 EXAMINER CARROLL: That's all I have at this
11 point.

12 And I'll admit Exhibits A through G into
13 evidence, for what it's worth at this time; I'll ask
14 further questions regarding Exhibit D.

15 MR. DEAN: Okay.

16 REDIRECT EXAMINATION

17 BY MR. DEAN:

18 Q. Mr. Stone, I don't want to have anybody in the
19 audience think that we don't have a picture that attempts
20 to show where the houses are. Is there one of these that
21 shows the line of houses that you and I looked at Saturday?

22 A. Yes, sir, this is correct, right here.

23 Q. You're pointing to Exhibit F, the top left
24 picture?

25 A. That's correct.

1 Q. Have you ever measured from County Road 3500 down
2 the road to the landfill, to that row of houses? Do you
3 know how far that is to that row of -- that development
4 over there is?

5 A. Okay, from the time you turn off County Road
6 3500, it's approximately .6 mile over there.

7 Q. All right. And where you turn off 3500 to the
8 north, does it appear to you that there's some other
9 subdivision activity going on there?

10 A. Yes, sir, that's correct.

11 Q. All right. And that's still a ways -- that's
12 still protected -- There's a buffer of Mr. Coleman's land
13 between you and that subdivision, right?

14 A. Absolutely.

15 Q. Now, are you aware that there's some houses --
16 You talked about some houses with the Examiner, located
17 near Tierra's. How close to Tierra's landfill are some of
18 those houses?

19 A. I didn't measure the road, but I would imagine --
20 It's just right across the road.

21 Q. So to the back door, farther than the back door?

22 A. Less than that, just --

23 Q. All right.

24 A. -- you know, 30 feet.

25 Q. All right.

1 A. Thirty, 40 feet, approximately. I didn't
2 measure, but 30, 40 feet, just across the road.

3 Q. Your point about hiring experts, if you run into
4 things that are outside your own expertise and the
5 expertise of the people that work for you, what steps would
6 you take? What would you do?

7 A. What would I do?

8 Q. Uh-huh.

9 A. Okay. Well, first of all I'd find out -- I'd
10 find out our problem, our area of review or whatever that
11 we needed help on. And then second of all, I'd -- word of
12 mouth or people we've used in the past as far as
13 consultants or experts, you know, I'd consult some of them
14 for their knowledge.

15 Q. All right. And rely on that information?

16 A. Oh, absolutely.

17 MR. DEAN: All right. I don't have any other
18 questions.

19 EXAMINER CARROLL: I have a couple more
20 questions.

21 FURTHER EXAMINATION

22 BY EXAMINER CARROLL:

23 Q. Mr. Stone, who prepared Exhibit D, or what
24 consultants were consulted regarding the information on
25 Exhibit D, which is the hydrology and geology?

1 A. I'd have to look at that. I'd have to get my
2 packet. That's a partial. I'd have to get my packet. May
3 I?

4 EXAMINER CARROLL: Mr. Dean, do you know the
5 answer to that question? Will you be presenting evidence
6 as to --

7 MR. DEAN: It's the public -- It's out of the
8 pond application process. It's in the public file of the
9 OCD.

10 My impression is, that information came when they
11 drilled a well. Mr. Nobis may be able to talk about where
12 some of that information came from --

13 EXAMINER CARROLL: Okay.

14 MR. DEAN: -- exactly. We just pulled it out as
15 to -- as additional information for you about the geology
16 and hydrology of the area. It was accepted as evidence in
17 both that case, the injection well case, and I think
18 perhaps in Tierra's case.

19 EXAMINER CARROLL: Mr. Stone, you may be excused
20 at this time.

21 MR. HORNER: May I -- I have just one or two
22 quick follow-ups.

23 REXCROSS-EXAMINATION

24 BY MR. HORNER:

25 Q. You testified that the row of houses is about .6

1 mile down the road. It sounded like the subject facility
2 is .6 mile from the nearest houses.

3 This new development that's going in up there
4 just to the northeast of Mr. Coleman's property actually
5 will touch Mr. Coleman's property, will it not?
6 Immediately adjacent to it?

7 A. Let's see. Yes, I believe it will. On the far
8 end, I believe it will.

9 Yes, sir, you're correct.

10 Q. Okay. So that's getting a lot closer than .6
11 mile?

12 A. No, wait a minute, let's clarify that a little
13 bit.

14 Q. Okay.

15 A. Okay, let's clarify that a little bit. Okay,
16 from that intersection, from the intersection of County
17 Road 3500 to where the row of houses are over here, that's
18 .6 mile.

19 Q. Okay.

20 A. Okay? So from the facility, our existing
21 facility, to where you're talking about is approximately a
22 half a mile, probably.

23 Q. All right, but the new development is starting to
24 get a lot --

25 A. No --

1 Q. -- closer?

2 A. -- it's getting closer, but it's approximately a
3 half a mile, I would expect.

4 Q. Okay. And if the property, then, immediately --
5 Well, obviously if the property immediately to the west is
6 developed, then that's just adjacent to this facility?

7 A. That is correct.

8 MR. HORNER: Nothing further, your Honor.

9 FURTHER EXAMINATION

10 BY MR. DEAN:

11 Q. The property immediately west of the facility is
12 Mr. Coleman's; isn't that right?

13 A. That's correct.

14 Q. It's not going to be developed, is it?

15 A. With the pipeyard, the buffer zone, the pipeyard
16 and rigs.

17 FURTHER EXAMINATION

18 BY MR. HORNER:

19 Q. Okay, how -- Okay, I'm talking about the property
20 to the west of that. How big is that buffer zone there,
21 the pipeyard, the junkyard, whatever you call it in there,
22 between the disposal pits and the -- my property to the
23 west?

24 MR. DEAN: I think he's testified he doesn't know
25 where Mr. Horner's property is.

1 Q. (By Mr. Horner) Well, it's immediately adjacent
2 to Mr. Coleman's property.

3 So what we're talking about is, What is the
4 dimension from Mr. Coleman's property, from the disposal
5 facility? You call it a pipeyard; actually it's pretty
6 much junk parts?

7 A. No, it's a storage yard.

8 Q. Okay --

9 A. It's a storage yard for rigs and extra components
10 of rigs and pipeyard, so --

11 Q. Okay, we'll call it a storage yard. How --

12 A. Okay.

13 Q. What's the dimension across there?

14 A. Now, this is approximate. I don't know, I didn't
15 drive it out or measure it. But from the ponds to the
16 property line I'm guessing is probably a quarter of a mile
17 plus.

18 Q. Quarter of a mile, plus or minus; would that be
19 fair?

20 A. Plus. That's my estimate.

21 MR. HORNER: Nothing further, Mr. Examiner.

22 EXAMINER CARROLL: Any other questions?

23 Mr. Stone, you may be excused at this time.

24 Next witness, Mr. Dean?

25 MR. DEAN: I'm going to call Phil Nobis.

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PHILLIP C. NOBIS,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEAN:

Q. Would you please state your name?

A. Phillip Charles Nobis.

Q. What's your occupation, Mr. Nobis?

A. I'm presently the CEO and president of Tierra Environmental Corporation -- or Company, Incorporated, excuse me.

Q. How long have you held that position?

A. About three years.

Q. And before that time were you employed by Tierra?

A. I was employed by Tierra prior to that as the vice president in charge of operations.

Q. And how long did you hold that position?

A. From approximately July of 1991 till about three years ago.

Q. All right. What does Tierra Environmental do?

A. We're an environmental consultant, principally the oil and gas industry. In addition to other things, we operate an OCD-permitted landfarm facility on Crouch Mesa.

Q. All right. You've been present during the testimony today?

1 A. Yes.

2 Q. It's been represented that Tierra landfarm is in
3 Applicant's Exhibit G, and it's marked "Tierra Landfarm";
4 is that correct?

5 A. Yes, that's a representation of the phase one of
6 our landfarm.

7 Q. All right. How many acres does Tierra have as a
8 landfarm on Crouch Mesa in that area that's shown on G?
9 Well, not on that area, but in that location?

10 A. In the area represented in Exhibit G, there's
11 approximately 22 acres, and then there's a phase two to the
12 south that encompasses an additional approximate 40-some
13 acres.

14 Q. So a total of 70 acres, more or less?

15 A. Well, we have a total of 86 acres, of which we're
16 currently utilizing about a total of 54 acres.

17 Q. All right. Tell us, have you developed any
18 expertise in this area? Do you have an engineering degree
19 or anything like that?

20 A. I certainly do not have an engineering degree.
21 Our consulting engineers are Cheney, Walters and Echols,
22 principally Richard Cheney, the owner of Cheney, Walters
23 and Echols, and a former partner of Tierra Environmental
24 Company.

25 Q. All right. Do you have any special training to

1 run the landfarm, or has it been on-the-job training?

2 A. It's basically been on-the-job training, and my
3 background is principally in public safety for the past 26
4 years, beginning in 1962 where I was a military policeman.
5 I was attached to a chemical, biological and nuclear
6 warfare unit where we received hazardous-incident
7 management, spill containment, training concerning the
8 handling of these materials.

9 As a police officer in a number of jurisdictions
10 since that time, I have had considerable hands-on
11 experience with hazardous material spills, truck accidents,
12 the handling and containment of hazardous materials.

13 For a brief period in the late 1970s, early
14 1980s, I was the operations manager for Mitchum Exploration
15 Company in Fort Lupton, Colorado, and we manufactured and
16 took to the field portable oil exploration equipment used
17 in the environmentally sensitive Rocky Mountains. The
18 equipment was specifically designed to protect the
19 environment. I was in charge of those operations and the
20 permitting.

21 So that's -- I have some background with the
22 hazardous materials and so forth.

23 Q. What's your education?

24 A. My education, I have four years of college.

25 Q. All right. And have you received any safety

1 training in Tierra? Do you require any safety training of
2 your employees at Tierra?

3 A. We require the mandated 40-hour OSHA hazardous
4 materials course for all the employees, which is refreshed
5 every year. It's an eight-hour refresher course --

6 Q. Do you --

7 A. -- annually.

8 Q. Do you have that certificate also?

9 A. Yes, I do.

10 Q. All right. During the time that you've been
11 employed by Tierra, have you served on a committee for the
12 OCD?

13 A. Yes, I was asked to serve on the 711 rule-change
14 committee to update the rules governing the permitting of
15 centralized and commercial waste disposal facilities.

16 Q. All right, and what was the result of that
17 committee?

18 A. By consensus, we made recommendations to the OCD
19 board that updated and made more practical, based on
20 existing knowledge, rules governing the operations and
21 permitting of these facilities.

22 Q. All right. Were those guidelines adopted by the
23 OCD, to your knowledge?

24 A. To my knowledge, they were.

25 Q. And are they followed at Tierra?

1 A. Yes, they are.

2 Q. All right. I'm going to hand you what's marked
3 as Applicant's Exhibit Number H and ask you to tell me what
4 that is.

5 A. It's the Guidelines for Permit Application,
6 Design and Operation of Centralized and Commercial
7 Landfarms, State of New Mexico, Oil Conservation Division.

8 Q. Those are also the guidelines that Mr. Anderson
9 talked about earlier?

10 A. Yes.

11 MR. DEAN: All right. I move for the admission
12 of Applicant's H.

13 I've given one copy out, Mr. Examiner. I don't
14 have another one, Mr. Horner, but I gave one back here.

15 EXAMINER CARROLL: Do you want a copy of this,
16 Mr. Horner?

17 MR. HORNER: Yeah, I would like a copy of that.

18 MR. DEAN: I'll be happy to provide copies.

19 EXAMINER CARROLL: He can review it during the --

20 MR. DEAN: I can get them during the break.

21 EXAMINER CARROLL: -- hearing, and I'll put it
22 back in the record.

23 MR. HORNER: I think the motion to admit this is
24 kind of inappropriate, but it seems that you can take
25 administrative notice of the OCD guidelines.

1 EXAMINER CARROLL: Yeah, I can. It will be
2 admitted into evidence one way or the other.

3 Q. (By Mr. Dean) We talked about Tierra has an OCD
4 permit to operate this landfarm?

5 A. Yes, we do.

6 Q. And does it -- Is it conditioned on certain
7 conditions that reflected somewhat in those guidelines?

8 A. Yes, and some other conditions that were
9 formatted by OCD following our hearing prior to our permit
10 that are site-specific.

11 Q. All right, what are those?

12 A. Specifically, we do ambient air monitoring three
13 or four times daily on the landfarm, to detect any migrant
14 volatile organic compounds, not only for the protection of
15 the public but principally for the protection of our
16 employees who are there on a daily basis in direct contact
17 with the material that we process.

18 Q. Do you do that monitoring?

19 A. I have staff that does that monitoring.

20 Q. And do you review the records that are a result
21 of that monitoring?

22 A. Yes, I do.

23 Q. Have they ever shown anything?

24 A. No, they have not.

25 Q. And you've been doing that monitoring for how

1 long?

2 A. Since February of 1993, when we received our
3 first material.

4 Q. All right. What other monitoring do you do?

5 A. We also collect particulate, pursuant to a
6 requirement in a particular permit, and we measure it
7 daily. The results of that have been, it's basically not
8 measurable.

9 Q. All right. Do you monitor for H₂S?

10 A. We monitor for H₂S on a case-by-case basis.

11 We generally -- In addition to monitoring four
12 times a day, we examine each load of material, whether it's
13 a sludge or a soil that's removed from an oil and gas
14 location. We examine it for ambient VOCs when it arrives.
15 We see, feel, smell and touch, and if there's any type of
16 odor, even a septic odor, anything of that nature, we
17 immediately treat it with a chemical, prior to applying it
18 to the landfarm, to totally suppress and reduce any chance
19 of migration of these odors to our neighbors.

20 Q. All right. Let me hand you what -- Well, is
21 there any other monitoring? You talked about other
22 conditions. I didn't mean to -- any other --

23 A. Yeah.

24 Q. -- conditions of your permit?

25 A. We, as Mr. Anderson stated, in our particular

1 permit we're required to monitor a zone two to three feet
2 beneath the surface of each cell on our landfarm randomly
3 on a quarterly basis to detect any total petroleum
4 hydrocarbons that may have migrated beneath the subsurface
5 of the landfarm. To date, and we've done it religiously,
6 we've found no migration.

7 Q. You've never found anything --

8 A. No.

9 Q. -- migrating?

10 A. No, we have a contingency plan in place should
11 that occur.

12 Q. All right. And what else -- What other things do
13 you have to do pursuant to your permit?

14 A. Okay, in the Tierra situation we recycle almost
15 everything we receive. We don't stockpile it, treat it
16 till it's cleaned up and then apply other material over it.

17 We monitor our particular cells until it appears
18 that they've been remediated to state standards, which are
19 100 parts per million, total petroleum hydrocarbons, less
20 than 50 parts per million benzene -- or BTEX, light-end
21 hydrocarbons.

22 And at that time we'll take laboratory samples,
23 composite samples of the particular cell, have them
24 submitted to an independent laboratory for analysis, and
25 then forward the results to OCD and ask permission to

1 recycle those soils for backfill for oil and gas projects,
2 road construction or other beneficial use.

3 Q. And you've received permission to do that from
4 the OCD?

5 A. Yes, we have.

6 Q. In fact, it's true, isn't it, that some of the
7 material has been used at the Aztec Speedway on occasion?

8 A. Yeah, that's correct. In fact, we did that this
9 fall.

10 Q. What do they use it for?

11 A. Well, it's to -- They use it to maintain the
12 track.

13 Q. Okay.

14 A. It's good clay-based material, and I guess it's
15 excellent racing material, I don't know.

16 Q. Okay, but that's after the total TPH is below
17 100, which is the New Mexico standard?

18 A. That's the New Mexico standard.

19 Q. Are you aware of surrounding state standards for
20 total parts per million for TPH? Are they stricter or --

21 A. Well, we've done some work in the State of
22 Colorado in the oil and gas on-site projects where they
23 require basically one hundred -- 10,000 parts per million
24 for on-site remediation.

25 Q. That would be Colorado?

1 A. That's Colorado.

2 Q. So their standards are 1000 times stricter than
3 ours -- or more lenient than ours?

4 A. More lenient.

5 Q. Does that surprise you?

6 A. Yes, it does.

7 Q. TPH, I don't know if you said what TPH -- We get
8 into this habit of using initials when I don't know what
9 they mean.

10 A. Total petroleum hydrocarbon content.

11 Q. Per million?

12 A. Per million, right.

13 Q. So you have to get it below 100 before you can do
14 anything else with it?

15 A. That's correct.

16 Q. It's also possible -- You talk about recycling.
17 It's also possible when it gets below that level to use it
18 as part of the landfarm process, isn't it?

19 A. Yes. As a matter of fact, we were able to
20 receive permission from OCD to remediate about 3000 cubic
21 yards of soil that had been remediated, and it was again a
22 good clay-base gravel material. We used that to construct
23 the berms and dikes on our phase-two expansion.

24 Q. All right. And you could also use that material
25 as part of the process to remediate other materials?

1 A. That's correct.

2 Q. All right. And you presently receive -- let me
3 -- First, let me hand you what's marked as Applicant's
4 Exhibit I and ask you to identify that, since we've been
5 talking about the Tierra permit.

6 A. That's our operational Order received from the
7 Oil Conservation Division.

8 Q. All right. That's the order you've been
9 testifying about today?

10 A. Correct.

11 MR. DEAN: All right. I move for the admission
12 of Applicant's I. I do have an extra copy of this.

13 MR. HORNER: Objection, relevance, your Honor.
14 As a matter of fact, to this whole line of questioning.
15 I'm having trouble seeing how that applies to the current
16 Application. Maybe he's going someplace, but I don't see
17 it.

18 EXAMINER CARROLL: Mr. Dean, Mr. Nobis is a
19 consultant to Sunco?

20 MR. DEAN: He has done some consulting work.

21 The relevance is that there's a landfarm being
22 operated successfully across the street, practically, from
23 the one that we're proposing. I thought that this would
24 help show that they could be operated and that public
25 health and safety wouldn't be damaged. That's why we're

1 presenting the testimony.

2 EXAMINER CARROLL: And your motion, Mr. Horner?

3 MR. HORNER: It has no relevance to how this
4 other facility is going to be operated, the one that we're
5 here to talk about today.

6 MR. DEAN: It's not being introduced for that
7 purpose.

8 EXAMINER CARROLL: Mr. Horner, it's my
9 understanding that your position is that the operational
10 landfarm on Sunco's facility would cause harm to public
11 health and the environment, and you don't think testimony
12 as to landfarm across the road -- as to its effect on
13 public health and the environment is relevant to this case?

14 MR. HORNER: In that regard it probably is
15 relevant. But what we're hearing is testimony from the CEO
16 of the facility itself, saying that there's no impact on
17 the public health and environment. I mean, that's --

18 EXAMINER CARROLL: You do have the opportunity to
19 cross-examine Mr. Nobis on the effect on public health and
20 the environment of his facility on residents in the area.
21 You are aware that you have that right?

22 MR. HORNER: I'm aware I have that right, your
23 Honor.

24 EXAMINER CARROLL: Well, I'm going to allow this
25 testimony for what it's worth.

1 MR. HORNER: Okay.

2 MR. DEAN: So I moved into the record the Tierra
3 permit. Okay.

4 Q. (By Mr. Dean) There are residents close by the
5 Tierra landfarm operation?

6 A. There are now. Directly across the street,
7 there's several hundred sites that have been developed,
8 about three-quarter-acre lot sites, most of which are now
9 occupied.

10 Q. In fact, it's true that some of the residents are
11 directly across the street from the remediation area of the
12 landfarm?

13 A. That's correct. And additionally, we have an
14 employee who lives on our landfarm as well.

15 Q. Have you ever had any complaints from any of your
16 neighbors about problems with the landfarm?

17 A. No.

18 Q. When you applied for your permit, did you have
19 some people that were concerned about it?

20 A. Yes, we had -- There were protests received by
21 OCD, and we had a hearing on it. Mr. Glenn Vavera and a
22 Mr. Bichan, who were property owners. Mr. Vavera actually
23 lived on Crouch Mesa.

24 They were concerned about the escape of volatile
25 organics into the air, blowing dust that might contain

1 hydrocarbon particles that could contaminate their property
2 or otherwise endanger their families and so forth.

3 As a result of the hearing, OCD allowed Tierra at
4 the request of the two protestants, and our concurrence, to
5 apply moisture to the landfarm and maintain a certain
6 degree of moisture so -- in order to minimize and prevent,
7 one, volatilization of any organics and, two, a blowing-
8 dust problem, blowing particulate off into the subdivision.

9 Q. All right. And then did you have occasion to
10 have another permit process with OCD?

11 A. Yes, we did. We applied for a major expansion,
12 and the same people were notified that were notified the
13 first time when we applied for phase one, and Mr. Bichan,
14 one of the protestants, wrote a letter in support of
15 Tierra's operation and recommended approval of our
16 expansion because he felt now he was satisfied we ran a
17 good operation.

18 Q. All right. You take Sunco's solids or sludge at
19 the present time, right?

20 A. Yes, we do.

21 Q. Would you tell us the process of how you handle
22 those at the landfarm?

23 A. Certainly. They're solidified prior to delivery
24 by Sunco, they're brought over by a dump truck, and we
25 apply them to a dedicated cell for Sunco where they're

1 spread and turned periodically.

2 And then the -- Once we begin the tilling
3 process, they're tilled about once every two weeks, weather
4 permitting, of course, within reason. But our permit
5 requirements are that they're tilled every two weeks and
6 treated. And the tilling process is to oxygenate the soil
7 and further stimulate the natural microbiological
8 degradation of the hydrocarbon constituents.

9 Q. All right. And then they're spread out, and then
10 eventually when they get below 100 parts per million of
11 TPH, they're used the same way you talk about the other
12 materials?

13 A. Yeah, that's correct. We asked permission to
14 recycle the soils, and then they're stockpiled on our farm.
15 And in fact, for quite some time we were furnishing Sunco
16 with remediated material to mix with their sludges, and
17 then bring it back to the landfarm. So it was a constant
18 circle.

19 Q. All right. So you get the sludges from Sunco
20 after they're dried out by Sunco, who's already doing that
21 now?

22 A. That's correct.

23 Q. All you're really doing is spreading them out on
24 the surface and letting the remediation process take place,
25 right?

1 A. Correct.

2 Q. All right. And now, at your landfarm, you take
3 other kinds of material also?

4 A. Yes, we do.

5 Q. What are some of those kinds of material?

6 A. For the most part, we take soil that's been
7 contaminated in the oilfield from oil and gas operations.

8 Q. All right. And you talked about a cell dedicated
9 to Sunco. Do you keep their material separate from --

10 A. Yeah, we keep everybody's material segregated.
11 We may not have a direct portion to the landfarm that's
12 dedicated, for example, to one producer, as opposed to
13 another producer, but each job that comes into the landfarm
14 is segregated and not commingled with other material from
15 other producers.

16 In Sunco's case, it has been a continual thing,
17 so we're able to effectively dedicate an area of the
18 landfarm particularly -- or a couple areas of the landfarm
19 particularly for Sunco.

20 Q. In your opinion, would it be easier or harder for
21 Sunco to run a landfarm, since they're only going to have
22 one source of material? Would that be easier or harder?

23 A. From a management standpoint, it should be a lot
24 simpler. They have one source. They're concerned with
25 material of a known source that comes to their own

1 landfarm, and it's treated on their own landfarm.

2 I assume they do the same thing as far as
3 recycling their solvents that you're doing, to mix with
4 their sludges to landfarm again.

5 Q. Which is what's going on now, except that --

6 A. Right.

7 Q. -- the only thing different is that they're
8 taking it about a half a mile away to your place?

9 A. Sure.

10 Q. And you're --

11 A. I personally wish they'd continue to do that, but
12 I can understand their position.

13 Q. All right. Now you receive the solids or the
14 sludge from the pond, from Sunco, after they've dried them
15 out. Do they do that in an acceptable manner?

16 A. Yes, they do.

17 Q. And have they been doing that for quite some
18 time?

19 A. Yes, they have.

20 Q. And they've been delivering it over to you, and
21 you've been spreading it out, and then sometimes it
22 actually comes back to them and they use it again?

23 A. Correct.

24 Q. And have you noticed or observed that they've
25 been able to do that in a satisfactory and safe manner?

1 A. I believe they have.

2 Q. All right. Tell me about the groundwater below
3 Tierra. Are you familiar with what the groundwater is
4 below Tierra's operation?

5 A. Yes, I prepared the permit application. I had a
6 consulting geologist and Cheney, Walters and Echols do the
7 engineering and design of the landfarm. But I believe
8 there's a perched water table approximately --

9 MR. HORNER: Objection, your Honor, personal
10 knowledge. We're talking about the engineers --

11 EXAMINER CARROLL: I'll allow it for what it's
12 worth.

13 THE WITNESS: I believe there's a perched water
14 table, according to the information I put in the permit,
15 received from the engineers, about 83 feet, and any usable
16 groundwater is in excess of 200 feet, and I believe that
17 came from the well log from the Sunco injection well. I'm
18 not totally sure of that, but that's --

19 Q. (By Mr. Dean) But your file and your permit
20 process would reflect that --

21 A. Yes.

22 Q. All right. Let me hand you what's marked as
23 Exhibit D and call your attention to -- Have you ever seen
24 this information before that's on Exhibit D, A? Have you
25 seen that hydrologic information, or is that different

1 information than what you've seen before? Or you don't
2 know?

3 A. I don't believe I've seen this before.

4 Q. All right, that's not the same information you're
5 referring to?

6 A. No, it is not.

7 Q. But your understanding is that the Tierra
8 groundwater information that was approved by the OCD was
9 information obtained from the Sunco injection well?

10 A. Yes.

11 Q. That's your understanding. All right.

12 Have you reviewed the protest letter that was
13 filed by Mr. Horner?

14 A. Yes, I have.

15 Q. Did you read the part with his concern with the
16 groundwater and technical items like that? Not the
17 location but perhaps the groundwater. Did you read that
18 part?

19 A. Yes, I did.

20 Q. Do you think you're addressing those concerns at
21 the Tierra landfarm?

22 A. I not only believe we are, I have documentation
23 to prove that we are.

24 Q. All right, what would that documentation be?

25 A. The documentation would be the annual analysis

1 submitted to the OCD and the quarterly testing reports we
2 keep on file at the office, indicating that there has been
3 no migration of contaminants below the subsurface of the
4 landfarm.

5 Q. Do you think that those concerns expressed in
6 that letter are justified or warranted?

7 A. From an uninformed source that appears to be the
8 reason. Therefore, I don't think they're justified or
9 warranted, no.

10 Q. All right. The concern may be justified, but
11 you're addressing those concerns?

12 A. That's correct.

13 Q. There's nothing to be -- The results are that
14 there's no concern there?

15 A. That's right.

16 Q. All right. Anything in his letter of protest
17 that you think that's not being addressed? I'm not
18 referring to the locations themselves as they're close to
19 residences, but the operation part of the protest letter.

20 A. I think everything mentioned relative to the
21 operational -- operations of a landfarm in that area are
22 being addressed by Tierra at this time.

23 Q. And so if Sunco operated their landfarm similar
24 to Tierra's and had the same rules in place, it would also
25 be operated safely?

1 A. Correct.

2 MR. HORNER: Objection, your Honor. We don't
3 have any testimony that Sunco is going to operate like
4 Tierra operates.

5 MR. DEAN: I didn't say -- The question doesn't
6 imply they were. It just says if.

7 EXAMINER CARROLL: Would you repeat the question,
8 please?

9 Q. (By Mr. Dean) If Sunco was operating a landfarm
10 and had the same conditions as Tierra, would it protect the
11 public health, environment and the safety of the public?

12 A. Yes, it would.

13 MR. DEAN: I don't have any other questions for
14 this witness.

15 EXAMINER CARROLL: Mr. Horner?

16 CROSS-EXAMINATION

17 BY MR. HORNER:

18 Q. Yes, Mr. Nobis, you say you keep extensive
19 records at your facility, or with regard to your
20 facility --

21 A. Yes, they're at the facility, and we do maintain
22 extensive records.

23 Q. Are those records open to the public?

24 A. No, they're not. We run a private business, and
25 some of our process involves proprietary technology;

1 therefore it would be foolish to allow the public to
2 scrutinize our particular files, as it would be -- I
3 guess -- I believe you're an attorney -- to have the public
4 scrutinize you files.

5 Anything -- Any records we're required to submit
6 to the OCD relative to sampling and analysis and the
7 compliance with the permit, most certainly after they're
8 received by OCD, are available for public inspection.

9 Q. But at your facility, none of your records with
10 regard to testing, daily testing, weekly testing, are
11 available to the public; is that correct?

12 A. Not as a general rule, no.

13 Q. Now, you talked about you have a contingency plan
14 for migration. What is that contingency plan?

15 A. As Mr. Anderson testified, our contingency plan
16 parallels the OCD requirements. If contamination was
17 identified beneath a particular cell on the landfarm, the
18 material would be removed from the cell and placed in
19 another cell that had no problem.

20 The contaminated cell would be excavated and
21 remedial measures taken. It would probably be treated with
22 an oxidizer and some common fertilizers until remediation
23 of the contamination had been complete.

24 If the cell were to be put back in operation,
25 additional sampling would be taken to demonstrate to OCD

1 that the cell had now been remediated, a clay-based
2 material would be brought in and compacted over the site
3 and the cell put back in operation following OCD approval.

4 Q. So the concept is basically, if you've got a
5 problem, you dig it up and you move it to another spot in
6 the same landfarm?

7 A. Yeah, a particular spot that has demonstrated no
8 problem.

9 Q. Okay. Do you know some of the contaminants that
10 come into your facility with the wastes that come in?

11 A. Yes, I do.

12 Q. And what are some of those things?

13 A. Mostly they involve heavy-end total petroleum
14 hydrocarbons -- that's oil -- and BTEX, light-end
15 hydrocarbons. For the most part, they're called volatiles.
16 Because of the excavation on site, the transportation and
17 handling, it's been our experience that there's very little
18 volatile organics left in the material when they come to
19 the landfarm.

20 Q. Do you have anything coming into your facility
21 that would be considered a carcinogen?

22 A. If benzene is considered a carcinogen. I's a
23 constituent of BTEX, and occasionally very low levels of
24 benzene will be present in materials received at the
25 landfarm.

1 Q. And so materials such as -- or elements such as
2 benzene that come into the facility, where do they go?

3 A. Normally -- Let me make this clear. I said low
4 levels of benzene. In most cases where benzene would be
5 involved, would be what's classified as a non-exempt, non-
6 hazardous waste.

7 And prior to receiving this material, what's
8 called TCLIP or a toxicity characteristic leaching
9 procedure analysis -- that's an EPA test method -- must be
10 conducted on the material at the site where it's generated.
11 And certain parameters are required by the US EPA as well
12 as OCD, pursuant to what levels of benzene we can accept in
13 those cases. And when we accept material that have low
14 levels of benzene, they're within the required EPA and OCD
15 parameters --

16 Q. Will in fact --

17 A. -- as non- -- considered not a hazard to public
18 health and welfare.

19 Q. Will, in fact -- These materials such as benzene,
20 they're either going to be evaporated into the air, leached
21 into the soil or broken down somehow; isn't that correct?

22 A. Yes. As I said, we only accept materials
23 following the toxic characteristic leaching procedure that
24 comply with the US EPA regulations and are considered at a
25 nonhazardous level.

1 In our landfarm facility, our procedures are that
2 our soils are tilled and a moisture -- certain moisture
3 content is maintained to prevent volatilization of any of
4 the light end, to including any low-level benzenes that may
5 be present.

6 Q. Volatilization, you mean evaporation?

7 A. That's right.

8 (Off the record)

9 Q. (By Mr. Horner) Okay, now, you've testified that
10 in certain cases, soils that you consider to have been
11 remediated from your facility are taken elsewhere?

12 A. That's correct.

13 Q. Like the Aztec Speedway?

14 A. Correct.

15 Q. And then you started talking about the Sunco
16 material and some sort of recycling, and I got lost.

17 A. Okay.

18 Q. What's --

19 A. What we have done with Sunco and others in the
20 past is, when we have completed remediation of a cell of
21 material and we've received approval from the state to
22 recycle, we'll stockpile it on location.

23 Those clients like Sunco will bring us their
24 solidified material, and on the round robin trip back to
25 their facility will pick up remediated material to take and

1 mix with their solids in their cement troughs prior to
2 bringing back to us again.

3 Q. And what is the point of that?

4 A. What is the point of it? They need backfill, and
5 the remediated backfill is a practical alternative because
6 it's constantly recycled back to the landfarm facility.

7 Q. Are they taking this soil that they're bringing
8 back from the Tierra landfarm and dumping on the ground
9 site?

10 A. No, they're mixing it with their sludges in the
11 troughs. I have not personally observed their procedures,
12 so I don't know exactly what they do.

13 Q. So in fact -- My question is, in this loop of
14 sludge to Tierra --

15 A. Yes.

16 Q. -- and stuff back to Sunco --

17 A. You're asking me if they stockpile the remediated
18 soil on their facility?

19 Q. Or does this soil leave this loop anyplace else
20 from you to the Aztec Speedway --

21 A. So far it hasn't, no.

22 Q. Okay. And are you, then, aware of what happens
23 at the Sunco facility, as far as not leaving this loop?

24 A. I'm not sure I understand your question. They
25 take our soil, mix it with -- This practice we do not do

1 anymore. This is something we've done in the past, Sunco's
2 choice. They have apparently backfill available to them
3 now.

4 They take soil that's been certified clean by
5 laboratory analysis, from our landfarm, take it to their
6 facility and use it to mix with their semi-solids, to
7 solidify those solids for the return trip to our landfarm
8 for remediation of those sludges that were solidified.

9 Q. Now, then, this sludge that's taken to your
10 facility and gets remediated, once it's remediated, are you
11 calling it soil?

12 A. Yes, in fact that's what it is.

13 Q. Okay. So it's not sludge that's been mixed with
14 soil or whatever, but it's --

15 A. Yes, it is sludge that's been mixed with soil.
16 That's how it's solidified prior to bringing it to our
17 landfarm.

18 Q. Okay, but is there soil-dumping some place, or is
19 it just the sludge that's making this loop that starts the
20 sludge and somehow becomes soil? Or is it termed soil?

21 A. The material coming from Sunco that has been
22 stabilized and solidified is considered a soil --

23 Q. Okay.

24 A. -- and it's spread upon our landfarm and
25 processed for remediation.

1 Q. But at this point you're not aware of any
2 instances where this sludge soil, stuff, has left this loop
3 and taken any other --

4 A. That's correct, it has not.

5 MR. HORNER: I have nothing further of this
6 witness at this time.

7 EXAMINER CARROLL: Any other questions from the
8 audience?

9 MS. WELLES: Yeah, I have a question.

10 EXAMINER CARROLL: Ms. Welles?

11 MS. WELLES: How large are the cells?

12 THE WITNESS: Okay, in our particular case, our
13 permit requires that they can't be any larger than five
14 acres. In most cases they're about three and a half acres
15 in size.

16 MS. WELLES: And how long does it take to
17 remediate them to 100 parts per million?

18 THE WITNESS: It depends on the constituents
19 involved and the degree of contamination. Sometimes it can
20 take as little as 60 days, and sometimes it will take a
21 year and a half.

22 MS. WELLES: And in your opinion, if Sunco was to
23 do their landfarming in a similar manner that you do, would
24 a five-acre landfarm be sufficient for their waste?

25 THE WITNESS: I think so, based on the quantities

1 they've brought to us during our business relationship,
2 that would probably be sufficient.

3 MS. WELLES: That's all the questions I have.

4 EXAMINER CARROLL: Any other questions from the
5 audience?

6 I have a few questions, Mr. Nobis. You maybe
7 already answered the first one.

8 EXAMINATION

9 BY EXAMINER CARROLL:

10 Q. Why are you appearing on behalf of Sunco when
11 you're losing a lot of business due to them self-disposing
12 of their waste?

13 A. Well, Sunco has been a good client, we have a
14 good business relationship, and I may be losing money on
15 the proposition but I felt it was necessary to defend the
16 landfarm operation as we're a neighboring landfarm.

17 I think that landfarms are an environmentally
18 effective alternative for the oil and gas industry to
19 dispose, manage, treat and recycle contaminated material,
20 and I'm a firm believer of that, or I wouldn't be in the
21 business. And I felt it an obligation to assist our client
22 Sunco in their permit for a landfarm.

23 Q. And as manager yourself, you can see how Sunco
24 can do their operation a lot simpler, rather than
25 transporting their waste a half mile to your facility, just

1 to treat it the same way on their facility?

2 A. Correct.

3 Q. Also, as the manager of a privately owned
4 facility, do you know of any companies that open their
5 records to the public, other than records that are filed
6 with public agencies?

7 A. No, I don't, unless it's on a case-by-case basis,
8 maybe a specific request for a specific purpose.

9 Q. And I had some questions regarding the issue of
10 dust you brought up.

11 A. Yes.

12 Q. You said residents were concerned about dust from
13 your facility --

14 A. That's correct.

15 Q. -- and how you handled that?

16 A. Yeah, the way we handle it is, our tilling
17 procedures capture as much natural moisture as possible,
18 and also our tilling procedures help maintain that in the
19 soil so that we don't have a blowing-dust problem.

20 The biggest blowing-dust problem we've had with
21 the Tierra Environmental Company is our roadways, so we do
22 water them to keep the dust down.

23 But we make every effort to maintain a moisture
24 level within the soils being remediated where we do not
25 have a blowing-dust problem. In fact, it's been our

1 experience that a lot of the material that we receive has
2 sufficient moisture content in it when we get it. And
3 then, with Mother Nature's help and sometimes some
4 artificial watering, we're able to maintain that moisture
5 content.

6 EXAMINER CARROLL: That's all I have of this
7 witness.

8 Any other questions?

9 You may be excused at this time.

10 THE WITNESS: Thank you.

11 MR. DEAN: I was thinking it's 11:45. I have one
12 more witness.

13 EXAMINER CARROLL: What's the estimated time for
14 your last witness?

15 MR. DEAN: Probably about the same as the other
16 -- you know, the same as each of those has taken. He's
17 just going to go through the operation of what they're
18 going to do there. I suspect it would take 25, 30 minutes.

19 EXAMINER CARROLL: Mr. Horner, are you going to
20 present any evidence?

21 MR. HORNER: Probably not. I would like to
22 recall Mr. Anderson, which might take just a few minutes to
23 fill a little gap here.

24 MR. DEAN: If I can get a drink of water, I'll
25 keep going, if you'll let me --

1 EXAMINER CARROLL: Yeah, I think I prefer to --
2 Let's take a ten-minute break and then come back and try to
3 finish this up.

4 MR. DEAN: Okay, thank you.

5 (Thereupon, a recess was taken at 11:45 a.m.)

6 (The following proceedings had at 12:00 noon.)

7 EXAMINER CARROLL: Call the hearing back to
8 order.

9 Mr. Dean, you may proceed.

10 MR. HORNER: No Mr. Dean.

11 EXAMINER CARROLL: I think Mr. Anderson went to
12 go find him.

13 While we're waiting, I'll admit what have been
14 marked Exhibits H and I into evidence. I would have taken
15 administrative notice anyway, per Mr. Horner's suggestion,
16 but since they're marked as exhibits I'll admit them.

17 MR. HORNER: That's fine. Your Honor, I do have
18 a copy of that order of the Commission having to do with
19 the Sunco permit for the disposal facility. This is my
20 only copy, and so therefore I'm really not talking about
21 admitting it as an exhibit.

22 EXAMINER CARROLL: Well, I'll take administrative
23 notice of that order also. I'd like to review it while I'm
24 here though.

25 MR. HORNER: If you'd like to look at it, we can

1 tell Mr. Dean that you've got it.

2 EXAMINER CARROLL: Yeah, okay, I will. I guess
3 while we're waiting for Mr. Horner, I can look it over --
4 or Mr. Dean.

5 MR. HORNER: But what we were talking about with
6 regard to that order was the fact that they had represented
7 that there would be no sludge generated.

8 EXAMINER CARROLL: Where is that? Can you point
9 that out to me?

10 MR. HORNER: Well, it's not really in there,
11 except when they talk about the closure plan towards the
12 end and there isn't much in the way of a closure plan.

13 There is no other reference in the order to
14 dealing with any kind of sludge or solid.

15 Mr. Dean, I've just been showing --

16 MR. DEAN: The order --

17 MR. HORNER: -- the OCD order for the Sunco
18 disposal facility.

19 MR. DEAN: Is there a particular part of it that
20 you want to admit?

21 EXAMINER CARROLL: I guess Section 10 of the
22 closure, or the permit. And it -- This order, I will note,
23 makes no reference to sludges, no mention that there will
24 not or will be any sludges, and it does provide for the
25 removal of all fluids and/or wastes and cleanup of any

1 contaminated soils.

2 So, Mr. Horner, even though I guess -- even
3 though you state, which isn't in the record, that the
4 transcript provided that Sunco represented there would be
5 no sludges, I don't see anything in the order where the
6 decision was based upon that assertion.

7 MR. HORNER: Well, there's just no -- There's
8 nothing in the order dealing with sludges and solids
9 generated at the facility. And the basis for that is,
10 there were representations made at the earlier hearings
11 that there would be no --

12 EXAMINER CARROLL: Well, Mr. Horner, that's your
13 assumption.

14 MR. HORNER: That's not my assumption; that's the
15 record, and you can take administrative notice of the
16 transcripts of that earlier hearing and --

17 EXAMINER CARROLL: I will do that, and I will
18 review the transcripts of that hearing.

19 MR. HORNER: In my protest letter, those remarks
20 are specifically set out, and the notations or the
21 references to the transcript are made in my protest letter,
22 so you can look it up in there.

23 EXAMINER CARROLL: Well, my point, Mr. Horner, is
24 that even though it's your assumption that sludges weren't
25 addressed in this order, based upon a representation at the

1 hearing that there would be no sludges, I can't read the
2 Commissioners' minds in why they neglected to address it.
3 You assume that due to representation that there would be
4 no sludges, that's why the Commission chose to ignore it.
5 And I'm not sure that they have; I haven't reviewed this
6 order.

7 MR. HORNER: What can I say? That's what's
8 happened.

9 EXAMINER CARROLL: Okay, well, I will review this
10 and I will review the transcript and the order when I get
11 back to the office.

12 Mr. Dean, you may proceed.

13 MR. DEAN: Thank you.

14 MICHAEL TALOVICH,
15 the witness herein, after having been first duly sworn upon
16 his oath, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DEAN:

19 Q. Would you please state your name and spell your
20 last name for the court reporter?

21 A. It's Mike Talovich. It's T-a-l-o-v-i-c-h.

22 Q. All right, just one "l", right?

23 A. Right.

24 Q. What's your occupation, Mike?

25 A. I'm the on-site manager for Sunco disposal.

1 Q. All right. How long have you worked for Sunco,
2 Big A or the Coleman Company?

3 A. Since August of 1983.

4 Q. And what have been your duties while you've been
5 employed since 1983?

6 A. I started off rig work and then rig operator, and
7 then I moved up to the disposal, helped construct the
8 surface facilities, and then became the on-site manager in
9 1994.

10 Q. All right. And you're serving in that capacity
11 now?

12 A. That's correct.

13 Q. All right, what's your educational background?

14 A. I've got a high school diploma and three years of
15 college.

16 Q. All right, what are your responsibilities as the
17 manager of the Sunco -- Do you call it the manager of the
18 Sunco pond or -- ?

19 A. Well, the facility. I'm in charge of the
20 facility, the ponds, all the equipment, the employees that
21 are there.

22 Q. All right. And are you responsible as manager
23 for compliance with the OCD permit that Sunco has?

24 A. Yes. Yes, I am.

25 Q. All right. And you were there when the pond was

1 first opened?

2 A. Yeah, I was up there to help. Basically, the
3 ponds were there, and then the additional equipment that
4 was constructed, a lot of the piping, the buildings and
5 stuff, I got to help screw all that together.

6 Q. How many employees are at the pond?

7 A. There's three, other than myself.

8 Q. What are the hours of operation?

9 A. 7:00 a.m. to 12:00 midnight.

10 Q. And when it's not manned, what happens at the
11 facility?

12 A. The main -- The gate is locked. As the last
13 employee goes home, he locks the gate on the way out.

14 Q. All right. And do you have contact and work with
15 the OCD staff?

16 A. Yeah, I work with the Aztec office, sometimes on
17 a daily basis.

18 Q. All right. What do you think your contact with
19 them is, on average?

20 A. I would say probably at least half a dozen --
21 once a week, half a dozen a month.

22 Q. All right. As part of your responsibilities for
23 Sunco, do you dispose or take care of the solid material
24 that is generated at the pond?

25 A. Yes, we -- I'm in charge of removing the solids

1 out of the steel pits and transporting them down to the
2 cement trays.

3 Q. All right. You talk about the steel pits. Where
4 all does the solid material collect at the pond? And if
5 you can on the pictures, sort of illustrate where that is.
6 If anyone wants to move closer to see that, they're welcome
7 to do that.

8 A. Okay --

9 Q. You need to move, Mike, and turn on the other
10 side over here so that -- I think if you stand over here
11 you'll be able to do it.

12 A. All right. Okay, this pit right here -- you can
13 barely see it right there -- is the unloading pit. That's
14 where all the water that comes in the facility is unloaded
15 into that pit, the idea being with that pit is to --

16 Q. Now, when you say "pit", what is it?

17 A. It's basically -- Let's see, I think it's 50 by
18 10 in feet. It's a mud pit. It's got dividers in it to
19 help mechanically drop the solids.

20 Q. Some people might think it's made of mud. It's
21 not -- It's a steel pit?

22 A. No, it's a steel pit, and it's constructed out of
23 steel. And it's an open top, and it's got walkways on top
24 to where -- From there it goes into the skimmer pond, which
25 is the last catch for any hydrocarbons that we don't get

1 skimmed off on the original pits.

2 Right there we -- From there it's a gravity feed,
3 the elevations are such the skimmer pond is higher than the
4 main pond, and the gravity feeds into the main evaporation
5 pond here.

6 Q. All right. Now, what's the purpose of this steel
7 pit setup in the skimmer pond? What are you trying to
8 accomplish here?

9 A. Well, the idea is to catch all our -- any -- For
10 one thing, the skimmer pond is for the oil. Any oil that
11 gets by the original skimming process in the pit will get
12 trapped in the skimmer pond --

13 Q. Right.

14 A. -- which is netted. And from there it goes to
15 the evaporation pond.

16 The pit -- The main function of the pit is to
17 basically contain any of the heavy solids that will fall
18 out that are carried along with this produced water.

19 Q. All right.

20 A. And that's where it's -- The idea is to catch all
21 those solids in the main pit.

22 Q. All right. So do some of the solids that we've
23 talked about today come out of there?

24 A. Yes, sir, most of those come from there. Those
25 things are cleaned -- Oh, I probably clean all the pits --

1 it's -- Every two months, I try to clean up all the little
2 compartments and clean them up. And it makes the system
3 work better, it cleans off water quicker, it's --

4 Q. All right.

5 A. -- it's something that has to be done.

6 Q. And then how often do you have to clean out the
7 skimmer pond?

8 A. Skimmer pond is about twice a year, and there is
9 buildup that does get through the initial system. It's
10 very fine, and it builds up in the skimmer pond and it is
11 removed twice a year.

12 Q. Okay. Now, the -- What I'm going to call the big
13 pond, the main pond --

14 A. Right.

15 Q. -- do you have to take sludges out of there?

16 A. Yeah, since -- This summer we went in there and
17 we drained all the water out of the pond and we removed any
18 of the sediment that had developed in the bottom of the
19 pond. And we cleaned it up and kept our pond, you know,
20 very low all summer. And that stuff was again, you know,
21 transported, cement trays and processed for landfarm.

22 Q. All right. So the big pond had been -- this
23 summer had been in operation for how long?

24 A. Since 1992.

25 Q. And is this the first time that you've taken it?

1 A. Yes, this is the first time. It's -- Four years
2 is the buildup that we had in this pond, so...

3 Q. Why do you need to take the solids out of these
4 three areas?

5 A. Well, we've found that -- The nature of these
6 disposals are, you're going to get some sediment built up
7 in the big evap pond. I mean, there's going to be some
8 sediment that's blown in.

9 But there will be a buildup, and that's a perfect
10 breeding ground for anaerobic bacteria, bacteria that
11 thrive in a non-oxygen environment, such as being under,
12 you know, ten feet of water, five feet of water.

13 Q. And what does that cause?

14 A. Well, that will -- The sulfates will turn to
15 sulfides and convert over to H₂S, which is something we
16 don't want. And we've found that if you can eliminate --
17 if you can clean the sediment often, it will substantially
18 reduce your problems with the water going --

19 Q. And has that been your experience?

20 A. Yes, it's --

21 Q. All right, go ahead and take a seat, Mike, and
22 tell us, the solids come out of -- or the sludges come out
23 of these three areas, and tell us what you do then, now, at
24 the present time.

25 A. All right. Right now, we remove them through the

1 use of a vacuum truck, and we transport them down to the --
2 I've got two cement trays. One is 20 by 40 and the other
3 one is 40 by 40, and we deposit the wetted solids into
4 those trays.

5 And from there, if we -- the first thing we do is
6 -- In the cleaning process you're going to get some fluid.
7 Well, the fluid will separate in those cement ponds. We
8 skim any free liquid off the top of these cement ponds, and
9 if we encounter any odor or anything, that's when we treat
10 it right there, with an oxidizer.

11 From there, we try to let it solar dry as much as
12 we can, and then we'll add backfill dirt to it, to speed up
13 the process of stabilizing those solids, so that we can
14 basically load them in a truck and get them over there to
15 the landfarm.

16 Q. Okay, and where are the cement trays that you're
17 doing that in, now? Are they -- They're marked on Exhibit
18 G here?

19 A. They're not here, they're not in this picture
20 because it was before we built them, but they're right
21 here.

22 Q. They're located there right now?

23 A. Right now.

24 Q. And describe them for me.

25 A. They're cement trays. Like I said, one is 20 by

1 40 and other one is 40 by 40. And they've -- There's 12
2 inches of concrete in the base of them. The walls are ten
3 inches, I believe, and -- wide concrete.

4 There's a secondary containment, which is a liner
5 underneath those cement trays, with a leak-detector system
6 so that if we ever have a -- let's say it leaks through the
7 concrete for some reason, there's a crack or something
8 develops. We'll know before it gets to contaminating the
9 ground.

10 Q. And you're doing all that right now?

11 A. Right.

12 Q. Okay, and you're in charge of that?

13 A. Yeah, I check the leak detectors on these and
14 basically inspect the bottom of the cement tray every so
15 often to ensure its integrity from the outside.

16 Q. All right. And then when that's -- At the
17 present operation, when did you decide to take that to
18 Tierra's landfarm across the street?

19 A. Well, we get it in dry form. It always goes over
20 there -- There's no free liquid in those solids when it's
21 transported. So when it gets to Tierra, it's -- It's a
22 soil, a dirt. It may be a little bit moist, but it's got
23 no -- In other words, there's no water puddles or anything
24 like that in it.

25 We dry it out as best we can with trays and then

1 we transport it over there.

2 Q. And you skim off the fluid, the extra fluid?

3 A. Yes, that's -- sometimes it takes -- You know,
4 there's some times we have solids in these trays for weeks
5 at a time, in the wintertime, because it's a hard -- it
6 takes a long time for those solids to dry in the
7 wintertime, through just solar heating, and we don't like
8 to put a lot of backfill dirt with it, because the more you
9 put in there, the longer it takes to dry, because they're
10 both combined.

11 Q. Okay. And do you have the truck that takes that
12 over there? Is that owned by Sunco?

13 A. Yes, that's a Sunco truck. It's an end-dump
14 truck that holds approximately 20 cubic yards.

15 Q. And that equipment is available to you now?

16 A. Yes, that's what we use to transport it over.

17 Q. Okay. Now, what's your understanding of what
18 you're -- If you're granted this permit for the landfarm,
19 what's your understanding of the construction process
20 that's going to take place?

21 And will you be in charge of that landfarm, I
22 should ask you first?

23 A. Yes, I'll be in charge of the landfarm.

24 Q. You'll be in charge of the day-to-day operation
25 of it?

1 A. Right, right.

2 Q. And what's your understanding of what's going to
3 need to be done on your site to construct it to comply with
4 OCD rules?

5 A. Well, there will be some berming. That area is
6 not entirely flat to the north and the northeast. It
7 slopes off. There will be berming that will have to be
8 done to ensure there's no runoff and no flooding.
9 Basically, the berming will be done for no runoff, and then
10 there will be probably a small berm around the whole five-
11 acre area to keep from anything running onto it, and that's
12 -- and the guidelines for construction are in the OCD
13 general guidelines.

14 MR. DEAN: All right. Excuse me for just a
15 second, I'm trying to find which exhibit I'm on. J?

16 EXAMINER CARROLL: I have J.

17 MR. DEAN: You have a J?

18 EXAMINER CARROLL: No.

19 MR. DEAN: Or this would be J?

20 EXAMINER CARROLL: Yes.

21 Q. (By Mr. Dean) All right, let me hand you, Mike,
22 what I've marked as Applicant's Sunco Trucking's Exhibit
23 Number J and ask if you can identify that for me.

24 A. This is the section which County Road 3500
25 dissects, looks like. Most of the Sunco disposal property

1 is on the east side, and on the west there's the Sunco
2 pipeyard property and the adjacent Tierra landfarm
3 property.

4 Q. And this is a photostatic -- a photocopy of a
5 survey that was done of the as-built drawings of Sunco's
6 pond?

7 A. Right.

8 Q. And did you make some additions to that?

9 A. Yeah, I drew in where the cement trays are in
10 place now. And the --

11 Q. Could you stand up and hold it so it can be seen
12 and kind of point to what you had?

13 A. Proposed landfarm area. These are the two ponds,
14 this is the pond that is lined. This second pond is not
15 lined. It's built but it's not lined; it has no function
16 as of right now.

17 The cement trays, just to the west of the second
18 pond. The area for the landfarm will be directly north,
19 behind the second pond, and it's a five-acre area.

20 Q. All right. And as you've computed that on
21 there, is it well within the boundaries of the land owned
22 by George Coleman?

23 A. Yes, the north side of the proposed landfarm area
24 is -- there's a fence, a fenceline here, but the property
25 adjacent is also owned by Mr. Coleman.

1 Q. All right. Now, you're aware that there's an OCD
2 rule that it can't be within 100 feet of the boundary. And
3 in trying to draw that in there, is it within 100 feet of
4 the fence? Or is that a possibility, it might be within
5 100 feet of the fence?

6 A. Well, it probably would -- it would be --

7 Q. Mike, Mike, why don't you turn around so -- Thank
8 you, Mike.

9 A. Oh, I'm sorry.

10 MR. DEAN: It's not like he's important.

11 EXAMINER CARROLL: Go ahead.

12 THE WITNESS: Okay, and --

13 Q. (By Mr. Dean) Okay, let's do this: Let me just
14 hold it.

15 A. Okay.

16 Q. I'll just hold it up here.

17 A. But the fenceline runs on the north side of the
18 proposed landfarm, like I said. However, George's property
19 is to the north, back here.

20 The 100 foot between the property boundary, if
21 you want to consider the disposal property boundary, it's
22 well enough away from that fence to --

23 Q. To meet that?

24 A. -- justify that requirement.

25 Q. But regardless of that, it's not within 100 feet

1 of the land owned by George Coleman?

2 A. That's right.

3 Q. Of the boundary to the north?

4 A. That's exactly right.

5 Q. All right. Did you make any other drawings on
6 this that you added to --

7 A. Right here is the road to Tierra landfarm.
8 There's a gate right here. This property to the south of
9 this fenceline and to the east of this fenceline is Tierra
10 landfarm.

11 Q. All right. And are those all the additions you
12 made to this?

13 A. Yes.

14 Q. And is it a true and accurate representation for
15 the purposes you've just talked about to show the Sunco
16 property?

17 A. Yes.

18 MR. DEAN: I move for the admission of J. Mr.
19 Horner has a copy of that.

20 EXAMINER CARROLL: Does Mr. Horner have two
21 different maps over there?

22 MR. DEAN: Yeah, I've got another one coming --

23 EXAMINER CARROLL: Oh, okay.

24 MR. DEAN: -- and he has a copy of that, so this
25 one is K, which is the other map.

1 Q. (By Mr. Dean) Let me hand you what's marked as
2 Applicant Sunco Trucking Exhibit Number K and ask you to
3 identify that.

4 A. Okay, this is off the original engineering
5 drawing for the disposal facility.

6 Right here is the evaporation pond. This is the
7 secondary pond that is, again, like I said, not lined.
8 It's constructed but not lined.

9 Here's the unloading area for the water. The
10 water is unloaded into this first pit. It goes into
11 another pit, and then from there into a third pit, and then
12 into the skimmer pond, which is this small circle here,
13 then into the evaporation pond.

14 These are the cement trays that I was referring
15 to earlier. They're located just north of the main pond.

16 The proposed five-acre landfarm area is north of
17 the main facility. This is where the injection well is
18 located, and the adjacent pumps and suction tank is there.

19 Q. All right. And is this a true and accurate
20 representation --

21 A. Yes.

22 Q. -- of those items you've just talked about?

23 All right. I move for the admission of
24 Applicant's K.

25 And that -- Applicant's K shows the buildings and

1 the facilities that are there on location at the present
2 time, Mike?

3 A. Yes, they do, there's -- We've added two steel
4 mud pits and the addition of the one that is shown on
5 this --

6 Q. And they're shown on K?

7 A. Yes, and -- Yeah, in G and K both.

8 Q. All right. And now at least at the present time
9 you wouldn't anticipate adding any office space or
10 additional --

11 A. No, not at this --

12 Q. -- for the landfarm?

13 A. Not at this time. They're -- The property for
14 the landfarm is all fenced, and I'm assuming that an
15 additional fencing for that five-acre area would not be
16 required.

17 Q. Okay, because it's inside the present --

18 A. That's right.

19 Q. -- location of the fence?

20 All right. And you wouldn't anticipate that
21 there would need to be any more office space or storage
22 areas, from what you understand at this time?

23 A. No.

24 Q. All right. What equipment do you think is
25 necessary to run the landfarm, and do you have that

1 available to you now?

2 A. Well, on site there's a -- we have a backhoe
3 tractor, we have a small bobcat, and for removing any
4 liquids we have a small trailer-mounted vacuum tanker.
5 It's 1000-gallon capacity.

6 Q. All right. Do you have any other ability that's
7 closehand on a day-by-day basis to pick up any fluids?

8 A. I have -- There's Sunco water trucks available,
9 basically a phone call away. I've got a -- like I said, a
10 small 1000-gallon vacuum tanker that takes care of the day-
11 to-day operations.

12 Q. And Sunco's water trucks are capable of picking
13 up fluid?

14 A. Yes, they're all, you know, vacuum-equipped water
15 trucks.

16 Q. All right. Now, so -- let me get this -- my
17 understanding straight, is that right now you're removing
18 the solids or the sludges from the tanks, the skimmer pond
19 and the main pond, transporting them to 12-inch-thick
20 cement trays, which also have another lining underneath
21 them --

22 A. Right.

23 Q. -- and drying them out?

24 A. Right.

25 Q. So you're doing all that right now?

1 A. Yes, sir, we dry out the solids in those cement
2 trays, and it's got to be dry or it can't be transported.

3 Q. All right. And then you're loading it up in a
4 dumptruck and hauling it across the street --

5 A. Right.

6 Q. -- to Tierra?

7 So the only additional -- Tell me the only
8 additional operation that you're asking for in this permit.

9 A. Basically so that instead of transporting it to
10 Tierra, we'd be just transporting it on our property to the
11 north.

12 Q. So what operation would you add? What are you
13 going to do that you're asking the permit for?

14 A. Just basically to take care of our solids that
15 are generated in our facility.

16 Q. Okay, and how are you going to do that, that
17 you're not doing now?

18 A. Well, basically it will be removal from the
19 cement trays and transportation to the proposed landfarm
20 area. And it will be centrally located to our facility,
21 making it easier for us to process that stuff.

22 Q. All right. And are you familiar with Tierra's
23 landfarm across the street?

24 A. Yes.

25 Q. And are you familiar with what they do with

1 your --

2 A. Yes.

3 Q. -- materials?

4 Q. And is that sort of what you --

5 A. That's basically what we're going to do. We will
6 transport it over there by truck and put it in a cell, and
7 we'll probably -- we will make records when we do that, and
8 what was the date, which cement -- or which steel
9 compartment it came from, and then we'll have a bus to keep
10 track of our -- the generation of solids and basically a
11 maintenance program.

12 Q. All right. And would you propose to do the same
13 testing that was talked about at Tierra and that's done at
14 Tierra?

15 A. Yes, it was -- it would be identical.

16 Q. All right. And are you familiar with the
17 guidelines for permit application, design and operation of
18 centralized and commercial land farms that's been talked
19 about today as Exhibit H here today?

20 A. Yes.

21 Q. And have you reviewed that?

22 A. Yes.

23 Q. All right. And in thinking about the operation
24 of the proposed Sunco facility, would you be able to meet
25 those requirements?

1 A. Yes, I don't see any problems meeting those
2 requirements.

3 Q. All right. The facility is fenced and signed, is
4 it?

5 A. Yes.

6 Q. Is there a sign somewhere out there?

7 A. There's a -- The sign is located on the entrance
8 gate to the main facility. That sign and that fencing is
9 all required in the original permitting of the facility to
10 begin with, so it's all in place.

11 Q. All right. And there's a pipeline that's marked
12 on your exhibits. Are we -- Is the landfarm well off the
13 pipeline --

14 A. Yes, it's --

15 Q. -- location?

16 A. -- I believe the guidelines say 10 feet off of
17 right-of-way for pipeline, and it's well more than that,
18 so...

19 Q. Okay. And then you're aware that there would be
20 random core samples taken, and are you prepared to do that?

21 A. Yes, that's not a problem.

22 Q. Okay. Then after the soil is remediated, what do
23 you propose to do with it then? What do you see happening
24 at your facility?

25 A. Well, cleaning out the solids is an ongoing

1 process. It's kind of the nature of the disposal process.
2 I will basically recycle it. When that soil is
3 contaminated it will be recycled and used once again, so I
4 don't ever see -- I don't ever see Sunco Disposal utilizing
5 the entire landfarm and ever filling it up, because it will
6 be constantly recycled.

7 Q. All right. Have you thought about how much
8 sludge is generated now and the size of the landfarm and
9 the cells and thought about how much of the landfarm you
10 might use up, or how quickly you might fill it up?

11 A. Well, at 50 cubic yards a month, I calculated
12 that per acre that's 1650 cubic-yard amounts per acre, so I
13 don't expect any of those solids to take longer than a year
14 to remediate. And so in one year -- I would think that I
15 would be only using, probably, half of the five-acre
16 landfarm plot at any given year or years, so...

17 Q. All right. Now, when you say recycle, how will
18 you use the soil that comes back out? When you say
19 recycle, tell us what you mean by that.

20 A. Well, it's going to be used back on the new
21 solids, the new wetted solids, as an absorbent, basically,
22 to get it stabilized to where it can be free of liquid and
23 put out on the landfarm to remediate.

24 Q. All right. Now, you've been at the pond, and
25 there's been some violations with the OCD of those

1 regulations, and you're aware of those, right?

2 A. Yes, we have.

3 Q. And have you done everything you're supposed to
4 do to correct those?

5 A. Yes, we're operating the letter of the law right
6 now.

7 Q. And have you tried to improve your compliance and
8 have you had meetings among Sunco staff and ownership about
9 that?

10 A. We had a change in higher management. We have --
11 went to great lengths. I've spent a lot of extra time
12 reading the orders, reading the rule books, to ensure that
13 we don't ever get into those kind of situations again.

14 Q. Now, those situations involved some H₂S testing
15 and some sludge --

16 A. Correct.

17 Q. -- on the ground?

18 Did you ever feel like there was a threat to the
19 public health and safety at that time, or do you think you
20 were doing some things to try to help that?

21 A. We were doing all -- I was doing all I could do
22 possible. There were several months there in a previous
23 summer that were -- We spent a lot of money maintaining
24 those ponds with chemical and increased aeration and
25 increased pumping, and we did all we knew to do at the

1 time, and I worked extra hard on it.

2 Q. Okay, and has it been emphasized to you by Sunco
3 management that compliance with OCD is a priority at this
4 facility?

5 A. Yes, it's -- most certainly has.

6 Q. All right.

7 A. It's a lot -- I've spent a lot more of my day on
8 checking compliance and reading rule books and whatnot.

9 Q. And are you in contact with the OCD?

10 A. Yes.

11 Q. And are they readily available?

12 A. Yeah, I can call and leave a message, or I can
13 usually talk to somebody directly.

14 MR. DEAN: I don't have any other questions.

15 EXAMINER CARROLL: Mr. Horner?

16 MR. HORNER: I was requested to stand by the
17 microphone here, so I'll move up if you don't mind.

18 EXAMINER CARROLL: Oh, come up.

19 CROSS-EXAMINATION

20 BY MR. HORNER:

21 Q. Okay, you say you cleaned up the big pond this
22 last summer. Why did you do that?

23 A. Well we -- We did it because that's one of the
24 problems involved with storing a large body of water. The
25 sediment buildup on the bottom will create its own

1 environment that will produce odors, it can produce H₂S.
2 It's basically -- That's where it starts, is in the bottom
3 of the pond.

4 Q. Now, did you -- were you having trouble --
5 apparently -- Let me back up.

6 Per the previous orders, you're supposed to be
7 maintaining certain oxygen levels in the pond, correct?

8 A. This is true.

9 Q. To avoid anaerobic conditions?

10 A. Uh-huh.

11 Q. And the generation of hydrogen sulfide?

12 A. We increased all our aeration to maximum, and --
13 But the problem is in the bottom of the pond and the
14 sediment buildup in the bottom of the pond. Aeration will
15 work to an extent, but you can't put oxygen molecules into
16 that sediment. You can put it in the water above it, but
17 you can't put it into the sediment.

18 Q. Do you not have pipes on the bottom of your
19 pond --

20 A. That's true, uh-huh.

21 Q. -- that you force air through?

22 A. Right.

23 Q. And does that not --

24 A. But they're not on every single inch of the
25 bottom of that pond.

1 Q. Okay. And so basically this sludge buildup,
2 then, causes you a problem with maintaining your --

3 A. Well, I think in four years of using that
4 facility, it is -- it will build up, and you'll get layers
5 of sediment. It is important, I believe, to the operation
6 of these facilities to clean that sediment out often. And
7 I think that will decrease your problems with your H₂S or
8 odors emitting out of the water.

9 Q. Were you -- Let's see, before you removed the
10 sludge, were you having trouble maintaining your oxygen
11 levels in the water, as opposed to the sludge?

12 A. We were having some problems with maintaining
13 oxygen level. We increased our chemical treatment, geez,
14 tenfold, to compensate for the oxygen demand in the pond.

15 Q. For the decreased --

16 A. Yeah, for the decreased DO, yeah.

17 Q. And increased demand?

18 A. Right.

19 Q. On your map and your picture, apparently at some
20 point you were taking the sludge and just spreading it out
21 on the property. Could you show us where that was going
22 on?

23 MR. DEAN: Make sure you say which exhibit you
24 refer to by letter, Mike.

25 EXAMINER CARROLL: All I have is Exhibits J and

1 K.

2 MR. DEAN: They're talking about the pictures
3 now.

4 Q. (By Mr. Horner) Can you use the bigger picture
5 rather than those little ones?

6 A. Well --

7 Q. It's hard to see.

8 A. -- it's kind of -- Okay, if you go to Exhibit G,
9 near this big picture, it would be --

10 EXAMINER CARROLL: Mr. Talovich, can you --

11 THE WITNESS: Oh --

12 EXAMINER CARROLL: -- move to the other side of
13 the exhibit?

14 THE WITNESS: It would be in this area right
15 here, just to the north of this pumphouse right here.

16 Q. (By Mr. Horner) Okay. Would that be the same
17 general area where the landfill or landfarm is going to be?

18 A. Well, it's actually going to be west of it. This
19 area is west of it, where the proposed landfarm is going to
20 be.

21 Q. Now then, at this time Mr. Nobis testified about
22 the soil or the sludge being taken to the Tierra facility
23 and soil coming back --

24 A. Right.

25 Q. -- and mixed with the new sludge?

1 A. Right.

2 Q. At any point, is soil or sludge taken out of that
3 loop and disposed of anyplace else?

4 A. No, sir.

5 Q. At present time?

6 A. No.

7 Q. Or to date?

8 A. (Shakes head)

9 Q. Okay. In the future with your new landfarm --

10 A. Right.

11 Q. -- are you going to be taking any soil/sludge
12 from this loop you've got now from your cement-lined pits
13 to your landfarm? Are you going to be taking anything out
14 of that loop and taking it anyplace else?

15 A. No, just back to the cement trays for recycling.

16 Q. If you come close to filling up your five-acre
17 area within -- it sounds like a couple of years --

18 A. Yeah.

19 Q. -- are you just intending to keep piling this up
20 on the five-acre site?

21 A. No, sir, Tierra landfarm, I'm sure, would be more
22 than happy to help me out if I were ever to get full.

23 Q. Well, is that the plan?

24 (Laughter)

25 THE WITNESS: Well, that is the plan, yes, sir.

1 That is.

2 Q. (By Mr. Horner) That as you fill up your
3 landfarm, you take remediated soils to --

4 A. I don't anticipate filling up my landfarm.
5 However, if that does happen, the plan will be to operate
6 like we do now, without a landfarm, and take it to Tierra
7 across the street.

8 Q. Well, it sounds like you're going to get an
9 accumulation of stuff that maybe you'll only have half of
10 it active at a particular time, but if you don't take
11 anything out of the system, it's going to pile up.

12 Do you intend to let it pile up --

13 A. Well --

14 Q. -- or are you going to take it out?

15 A. -- I feel like I can recycle -- I can remediate
16 that solid as fast as I can use it.

17 Q. Well, if you're -- still --

18 A. I guess -- Maybe I don't understand what you're
19 asking me, but --

20 Q. Basic math, one plus one is equal to two. If you
21 keep adding one to the system, it's going to grow. It
22 doesn't stay the same if you keep --

23 A. No, negative. What's going to happen, sir, is,
24 for every barrel of solids that go into that cement pond,
25 two barrels of fill dirt, dry material, goes to mix it.

1 Okay?

2 Q. Okay.

3 A. So in one year I'm going to put out three and
4 take back three. That's the way I see it.

5 Q. Well, each year you're adding one to the total?
6 One of however much that is, and the next year you add
7 another one, and the next year you add another one?

8 A. Well, I guess I don't understand what you're
9 asking, because I'm confused now.

10 Q. On these drawings, J and K, I'd like to ask you
11 to look at Exhibit J, if you would, please, and maybe we
12 can kind of hold it up. It appears -- Can people see
13 around me here?

14 MR. DEAN: He's got J and K with him.

15 Q. (By Mr. Horner) Okay. It appears that the
16 square is a section of land; is that correct?

17 A. Right.

18 Q. Okay, and so this is Section 2 --

19 A. Right.

20 Q. -- of which the northwest quarter is owned by
21 George Coleman, correct?

22 A. Right.

23 Q. And these fencelines must be drawn a little bit
24 off, because this fenceline actually goes along this
25 quarter section line, does it not?

1 A. Well, they could be a little off. They're hand-
2 drawn.

3 Q. Okay, that's not my concern. But anyway,
4 basically this entire quarter section is fenced at this
5 point, right?

6 A. Right.

7 Q. In addition, there is a fence running probably
8 along both sides of County Road 3500?

9 A. (Nods)

10 Q. Now, actually there us an additional fence that
11 runs east and west in here someplace, that divides this
12 disposal facility from George Coleman's property to the
13 north; is that not correct?

14 A. Well, there's actually two fences. There's one
15 separating the disposal property from his Big A property,
16 and from the property to the north.

17 Q. Okay, so there will be some sort of a fence in
18 here like this, similar. Okay.

19 My question is, this landfarm, proposed landfarm
20 location, with regard to this additional fence that runs in
21 here, is that -- is the landfarm outside of that fence or
22 inside, on the disposal-pit side of that fence?

23 A. It's going to be on the inside of the disposal
24 fence.

25 Q. Okay, that was my question. And all of that will

1 be located within the existing fenced area?

2 A. Yes.

3 Q. Now then, if you do have contamination to the
4 soil, if you find contamination to the soil, Mr. Nobis
5 talked about what they would intend to do with --

6 A. Right.

7 Q. -- the soil.

8 What do you intend to do if you end up with
9 contamination to the underlying soil?

10 A. Well, if -- We know contamination, for one thing,
11 will stop landfarm operation, and notify OCD of our
12 findings, of what our analysis was, and we will either hire
13 an engineering firm to come in and recommend to us ways to
14 clean it up, excavate it, whatever, and, you know, that
15 will be done. That's why you test it.

16 Q. But at this point you really don't have a plan?

17 MR. DEAN: I object, I think he's answered that
18 he had a plan.

19 THE WITNESS: That's my plan. I know exactly
20 what I'm going to do if I notice --

21 Q. (By Mr. Horner) Pick up the phone and call
22 somebody?

23 A. -- contaminated -- Huh?

24 Q. Pick up the phone and call somebody?

25 A. Well, I will -- That's correct.

1 Q. Okay. Now, then, there's been some talk here
2 today about some sort of a pending permit to handle Class 1
3 materials. Are any of those materials going to be ending
4 up in this landfarm?

5 A. Well, any of the materials that end up at the
6 disposal will be tested for hazardous constituents before
7 it gets to us, so -- And that's why you test the
8 surrounding ground and test the solids in the landfarm to
9 begin with.

10 Q. Okay. If -- The stuff is tested before it gets
11 to your facility?

12 A. Right.

13 Q. And there is hazardous material in it of this
14 Class 1 nature?

15 A. We do not accept it.

16 Q. You do not accept it?

17 A. We can't get approval from OCD to accept it.

18 Q. Okay, you're apparently currently looking for a
19 permit to do that, are you not?

20 A. To accept nonhazardous, nonexempt fluids.

21 Q. Okay. And so in your mind, though, hydrogen
22 sulfide is nonhazardous?

23 A. Hydrogen sulfide, no, I didn't say that.

24 Q. You do accept hydrogen sulfide?

25 A. Hydrogen sulfide is -- by OSHA standards it's --

1 you can be around 10 parts per million for an eight-hour
2 period.

3 So I mean, from that you can determine how
4 dangerous it is. I'm just giving you a basic --

5 Q. Okay, what was that level again?

6 A. Ten parts per million per eight-hour day.

7 Q. Is that acceptable at your facility?

8 A. No, huh-uh. It never reaches that level. It
9 never reaches that level. That's not acceptable.

10 I'm just giving you a guideline. You were asking
11 me if it was dangerous, and I'm telling you 10 parts per
12 million per eight-hour day, per OSHA, is not dangerous.

13 Q. If benzene or toluene is found in the material
14 being brought to your facility, will you accept it?

15 A. That's going to be determined by the analysis of
16 the fluid.

17 Q. Assuming it's there, do you --

18 A. If it's below levels --

19 Q. -- as the operator of the facility, accept it?

20 A. -- yeah, we can accept it.

21 Q. Now, then, you were talking about a summer or two
22 ago, was it 1994 or 1995, when you put all the effort into
23 the pond, the extra treatment and all this sort of stuff?
24 When was that? 1994? 1995?

25 A. I think it was the summer of 1995.

1 Q. The summer of 1995?

2 A. Uh-huh.

3 Q. Okay, what you did not say, but what I'm assuming
4 was not said was that with all your effort to -- The system
5 still got out of control; is that not correct?

6 A. I wouldn't say it was out of control. It was --
7 We maintained a low DO, okay? It was --

8 Q. Dissolved oxygen?

9 A. Dissolved oxygen. And we did it with a lot of
10 chemical, and a lot of money, and -- No, I wouldn't say it
11 was ever out of control.

12 Q. Were you generating hydrogen sulfide, or was the
13 facility -- not generating, but was hydrogen sulfide
14 present at the facility or in the air, in the water or in
15 the air?

16 A. Yes, at certain days. It wasn't all the time.

17 Q. Despite your best efforts?

18 A. Well -- Despite my best efforts.

19 MR. HORNER: Okay, I have nothing further.

20 Are you through with this?

21 EXAMINER CARROLL: Yes, I am.

22 Any other questions from the audience? Sir?

23 MR. CLAESGENS: Yeah, this is just for my
24 education. You were talking about the open pit. You said
25 two pits were lined and one isn't?

1 THE WITNESS: Yes.

2 MR. CLAESGENS: Is that the one where the
3 sediment was collecting, on the unlined pit?

4 THE WITNESS: No. No, no, that was during the
5 original construction of the facility. It was originally
6 designed to have two evaporation ponds. See, this is the
7 one that has no liner. This is the one we use.

8 We don't use that, it's just -- It was built, but
9 it was never utilized.

10 MR. CLAESGENS: Okay, so that's just not
11 utilized?

12 THE WITNESS: No.

13 MR. CLAESGENS: When your sludge goes into your
14 cement troughs and after it gets a little solar-dried --

15 THE WITNESS: Right.

16 MR. CLAESGENS: -- if that's the word, do you put
17 any micro-organisms on that? Do you incorporate any micro-
18 organisms in that before it's transported, say --

19 THE WITNESS: I don't -- The way we operate right
20 now, I do not. Now, what Phil does with it when he gets it
21 -- He may have microbes to enhance, you know,
22 bioremediation, I don't know. But we don't.

23 MR. CLAESGENS: When you -- If you --

24 THE WITNESS: We could.

25 MR. CLAESGENS: -- get your permit and your

1 landfarm that you're looking for, will you add micro-
2 organisms on bioremediation?

3 THE WITNESS: Yes, I think they could be used to
4 enhance the bioremediation process, speed it up.

5 MR. CLAESGENS: And the only other question I
6 had, maybe just to clarify on the five-acre thing, are you
7 using belly dumps or end dumps, or both?

8 THE WITNESS: We're using end dumps to transfer
9 the solvents.

10 MR. CLAESGENS: And what's your spread? A two-
11 inch spread, a six-inch spread?

12 THE WITNESS: Well, it will be -- According to
13 the guidelines on the OCD guidelines for landfarms, it's a
14 six-inch lift, is what it will be spread out at, six
15 inches.

16 MR. CLAESGENS: So you've got a six-inch lift
17 there.

18 THE WITNESS: Right.

19 MR. CLAESGENS: So you can spread numerous six-
20 inch loads without -- on part of your five acres --

21 THE WITNESS: Right.

22 MR. CLAESGENS: -- and still leave the other five
23 acres --

24 THE WITNESS: Right, you don't stack them, yeah,
25 exactly.

1 MR. CLAESGENS: That's what I wondered. And you
2 don't ever dump it and try to blade it?

3 THE WITNESS: Well, if it's dumped it's going to
4 be in dry form. It's going to be in a pile, and then
5 you'll probably rake it with the bucket of a tractor and
6 then till it and get it all uniform.

7 MR. CLAESGENS: Yeah. But you're not going to
8 leave it in a pile?

9 THE WITNESS: No, no.

10 MR. CLAESGENS: You're not -- I don't think you
11 can, according to the OCD --

12 THE WITNESS: Well, it won't -- It takes forever
13 to break down that way. I mean --

14 MR. CLAESGENS: Right.

15 THE WITNESS: -- you've got to use the air to
16 help the bioremediation process.

17 MR. CLAESGENS: So if you've covered half of this
18 five acres by the time you start to use the other, what
19 you're saying is that this can be remediated --

20 THE WITNESS: Yeah, it's going to be --

21 MR. CLAESGENS: -- the soil can be pushed over to
22 the other side, and what you're going to do is a flow-type
23 thing?

24 THE WITNESS: Yeah, basically I'm going to, You
25 know -- Let's say if I use half the landfarm, it takes me

1 two years. Well, I'm going to -- In two years I'm going to
2 take that decontaminated soil and put it over there next to
3 my cement tray and use it again and make room for it that
4 way.

5 MR. CLAESGENS: So there is still hope for Tierra
6 landfarm?

7 (Laughter)

8 THE WITNESS: Well, it's -- I don't expect ever
9 filling it up.

10 MR. CLAESGENS: I was just being facetious.
11 Thank you very much for that.

12 EXAMINER CARROLL: Ms. Welles?

13 MS. WELLES: Do you plan to open the other
14 evaporation pond?

15 THE WITNESS: I have no desire to take care of
16 two ponds of water, okay?

17 MR. DEAN: Do you think you might have to in
18 the --

19 THE WITNESS: I don't ever see it being a
20 problem.

21 I guess what's good about this pond that's built
22 is that if we ever have any problems with this pond, we can
23 line this one and take care of that pond as a safeguard, I
24 guess, as a way to operate. So...

25 EXAMINER CARROLL: Any other questions from the

1 audience?

2 CROSS-EXAMINATION (Continued)

3 BY MR. HORNER:

4 Q. Along those lines, the initial plan for Sunco
5 disposal pit actually called for three ponds, did it not?

6 A. Well, if you include this little skimmer pond I
7 guess that's three.

8 Q. No, I mean three big ponds.

9 A. I don't know. I wasn't there.

10 MR. DEAN: I think it did.

11 Q. (By Mr. Horner) Okay. And -- So the two ponds
12 were built, one was lined, one is utilized, and you were
13 able to get away with that because you used the injection
14 well, correct?

15 A. Correct.

16 Q. So as your levels built up and you don't want
17 that much water, you just put it into the ground, right?

18 A. Right, we -- That's exactly right. We like to
19 keep the level in that pond low.

20 Q. What level is that?

21 A. Well, right now, it's at 42 inches at the deep
22 end.

23 Q. Is that where you like to keep it?

24 A. That's where I like to keep it, yes.

25 Q. And the capacity is 10, 12 --

1 disposal, but he has other duties, other than the disposal.

2 Is that --

3 Q. You're the on-site manager for the disposal
4 facility, the injection well and --

5 A. Everything --

6 Q. -- now the landfarm?

7 A. -- yes.

8 Q. And Mr. Stone's duties include oversight of you,
9 plus some other --

10 A. Right.

11 Q. When I drove out there this morning I saw piles
12 of dirt to the southwest of the lined pond. That dirt is
13 what is mixed in the cement troughs? Or why were those
14 piles of dirt --

15 A. No, those are for -- That's my berming stockpile.
16 I have --

17 Q. And where did that dirt come from?

18 A. We transported it. It came from a property at
19 the Sunco pipeyard, that hillside. We removed that dirt
20 and transported it to the disposal.

21 Q. What hillside?

22 A. The Sunco pipeyard.

23 Q. Across the highway?

24 A. Across to the east of the disposal, there's a
25 hillside over there.

1 Q. So that's clean soil?

2 A. Yeah, yeah, it's very good.

3 EXAMINER CARROLL: Mr. Horner, can you provide
4 Mr. Talovich these two exhibits so I can ask him questions?

5 MR. HORNER: Sure.

6 EXAMINER CARROLL: I think there's only two
7 copies, and I got one, so --

8 MR. HORNER: That's fine.

9 Q. (By Examiner Carroll) And I think Mr. Horner
10 elicited this testimony from you earlier, but the -- It's
11 Exhibit J that shows the quarter section?

12 A. Uh-huh.

13 Q. It shows all of Section 2 --

14 A. Right.

15 Q. -- and then the northwest quarter, which is owned
16 by Mr. Coleman?

17 A. Uh-huh.

18 Q. There's an additional two fences, one to the
19 north of the facility --

20 A. Yes, there's -- there's -- if --

21 Q. I guess that fence is shown. And in the
22 northwest corner of the top of that quarter, is that where
23 the caretaker's home is?

24 A. Yes. And -- Yes.

25 MR. HORNER: That's not -- That's not the fence.

1 There's a fence here, and then there's a fence along here.

2 And this --

3 EXAMINER CARROLL: Well, hold it, hold it, Mr.

4 Horner. Just back -- Let me ask the questions here.

5 Q. (By Examiner Carroll) They do show -- There is a
6 fence shown toward the north of this quarter; is that
7 correct?

8 A. Right.

9 Q. And on the north side of that fence and south of
10 the quarter line is the fenced-in area where the
11 caretaker's home is?

12 MR. HORNER: You really need to be looking at the
13 same map, because you're talking about two different
14 things.

15 MR. DEAN: They are looking at the same map.

16 EXAMINER CARROLL: We are looking at the same
17 map.

18 MR. HORNER: I mean together, and pointing at
19 different things. He's pointing at this line right here as
20 the fence --

21 Q. (By Examiner Carroll) Mr. Talovich, can you hold
22 your exhibit up, please?

23 A. Okay.

24 Q. Now, you see what is marked as a fence across --

25 A. Yes.

1 Q. -- the north part?

2 Now, to the north of that fence and south of the
3 section line is the fenced-in area where the caretaker's
4 home is?

5 A. Yeah, directly to the northwest corner of that,
6 right here.

7 Q. You're crossing the section line there, though?

8 A. Well, it would be -- This is all out of scale,
9 which --

10 Q. Yeah, I thought it was.

11 A. You know. But yeah, right here.

12 Q. Okay. And then there's also a fence that
13 separates Big A -- Is that the storage yard where I saw the
14 pipe?

15 A. Right. Well, there's a fence here, and then
16 there's another fence, and then there's a storage yard.
17 There is a yard between the disposal, the production yard,
18 and then the Big A yard. There's three --

19 EXAMINER CARROLL: Mr. Dean, maybe you can help
20 Mr. Talovich here. Is what is marked as "2" Section Number
21 2, or am I --

22 MR. DEAN: Okay.

23 EXAMINER CARROLL: Mr. Coleman owns the northwest
24 quarter of Section 2?

25 MR. DEAN: Yes --

1 EXAMINER CARROLL: Okay, Mr. Talovich is over in
2 Section 3?

3 MR. DEAN: Okay, over here.

4 EXAMINER CARROLL: No, he's on the left-hand side
5 of that section line?

6 MR. DEAN: Oh, okay, over here.

7 EXAMINER CARROLL: Now, that is outside the 160
8 acres?

9 THE WITNESS: Is it? I didn't --

10 EXAMINER CARROLL: Yeah, there's some fences
11 missing in this diagram. I'm just trying to --

12 MR. DEAN: I think what he's trying to show you
13 is just the main fence that runs --

14 THE WITNESS: That's the main fence for the
15 disposal area.

16 MR. DEAN: For the disposal area.

17 EXAMINER CARROLL: Oh, okay.

18 MR. DEAN: And then Mr. Coleman has the rest of
19 his property fenced in total, is my understanding, and that
20 may be the confusion. The disposal area doesn't abut the
21 boundary of Mr. Coleman's property. Only by fence is the
22 boundary set. He owns outside that fence quite a ways.

23 EXAMINER CARROLL: Okay. I thought I asked the
24 question earlier of Mr. Stone, and it was that the whole
25 160 acres were fenced.

1 MR. DEAN: He did say that, but -- Is the whole
2 160 acres fenced? But it's not the fence you're referring
3 to.

4 MR. STONE: Yeah.

5 MR. DEAN: That's the problem. I thought that
6 was confusing at the time.

7 EXAMINER CARROLL: Oh, okay.

8 MR. DEAN: The disposal area is fenced
9 separately. So is Sunco's pipeline, and so is Big A's
10 storage yard, and then the -- But the whole 160 acres is
11 fenced also.

12 EXAMINER CARROLL: With a different type of
13 fence?

14 MR. DEAN: Yeah, there's a lot of fence.

15 EXAMINER CARROLL: Okay, that's what confused me.

16 MR. DEAN: I thought that was confusing. What we
17 were trying to show is that the landfarm as situated might
18 be within 100 feet of the Sunco disposal fence, but it's
19 not within 100 feet of Mr. Coleman's property boundary.

20 EXAMINER CARROLL: Right.

21 MR. DEAN: And that's one of the things that's in
22 your rules. That's why we were trying to -- It confused
23 everything, but that's what we were trying to do.

24 MR. HORNER: Are you through with this?

25 EXAMINER CARROLL: Why don't you leave it with

1 Mr. Talovich for a little bit?

2 Q. (By Examiner Carroll) Does the Big A storage
3 yard, does that directly abut the disposal facility?

4 A. It's --

5 Q. Yeah, look on Exhibit K.

6 A. -- to the south of this fence, okay? There's a
7 road, it's fenced again over here, and it comes down -- It
8 comes down and goes over here.

9 Q. Okay.

10 A. I wish we had a bigger view of it. It would be a
11 lot -- It would be real easy.

12 Q. Is Big A a plugging contractor?

13 A. They're a well-service company, drilling and well
14 service.

15 EXAMINER CARROLL: That's all the questions I
16 have.

17 Any other questions?

18 MR. DEAN: I don't have any other questions.

19 EXAMINER CARROLL: You may be excused, Mr.
20 Talovich.

21 Mr. Horner, if you don't mind, I'll swear you in.
22 I had a few questions of you as a landowner.

23 MR. HORNER: Sit over here?

24 EXAMINER CARROLL: Yeah, if you could sit at the
25 witness stand.

1 Yeah, and bring Exhibits J and K with you.

2 Steve, can you swear Mr. Horner in?

3 GARY HORNER,

4 the witness herein, after having been first duly sworn upon
5 his oath, was examined and testified as follows:

6 EXAMINATION

7 BY MR. CARROLL:

8 Q. Mr. Horner, where does your property lie? If you
9 could point to the exhibits and show me?

10 A. Okay, if you look at Exhibit J, what Exhibit J
11 does represent there is Section 2.

12 Q. Okay.

13 A. My property is in Section 3. It's one mile north
14 and south, so it's the full --

15 Q. Full section?

16 A. -- height of the section --

17 Q. Right.

18 A. -- and 866 feet wide, immediately adjacent to
19 Section 2. So the section line is my east boundary.

20 Q. Okay, and how many acres does that encompass?

21 A. It's 103 or something like that, 106 or something
22 like that.

23 Q. And how long have you been the owner of that 103
24 acres?

25 A. Oh, for about two months.

1 Q. And your mother owned it prior to you?

2 A. Right, and my father have -- between the two of
3 them have owned it for several years. I'm not sure how
4 long, but --

5 Q. Has your family owned other property in the area
6 besides this 103 acres?

7 A. There's a few other pieces of property they own,
8 yes.

9 Q. And you mentioned development, I guess, in
10 Section 3. What is developed on -- well, let's say in just
11 your 103 acres to start with. What is developed and what
12 is proposed to be developed for residential housing?

13 A. Right now, there is no development.

14 But this east half of this section, okay, was
15 divided into three strips that are all about the same size.
16 And they were -- It was divvied up between partners in my
17 father's business.

18 My father got the eastern portion, the next strip
19 went to a man named Dewey Foutz, and the next strip went to
20 a lady by the name of Valerie Hatch. Valerie Hatch has
21 just sold her property to Jeff McMahon, the one who has
22 developed all this other property around.

23 Looking at -- I've been out there looking at the
24 survey stakes. It appears that maybe Dewey Foutz has sold
25 his property also to Jeff McMahon. And I am at this point

1 looking at subdividing that property myself or selling it
2 to Jeff McMahon.

3 And so at this point then, it is highly likely
4 that within the next year, the east half of Section 3 will
5 be subdivided.

6 Q. Why was the east half divvied up three ways?

7 A. Well, it just came into the ownership of a
8 company, which was Foutz and Bursum, and they divvied it up
9 between partners.

10 Q. Did you obtain your 103 acres for consideration
11 for your mother?

12 A. No.

13 Q. Mr. Horner, you asked a few questions earlier
14 indicating that you -- Or you asked a few questions
15 regarding opening records to the public.

16 A. Right.

17 Q. Do you believe that private companies should open
18 their records to the public?

19 A. I believe that the problem is that the OCD
20 doesn't seem to be too worried about enforcing the permit
21 conditions that have been imposed on Sunco and other
22 facilities, and therefore the OCD leaves it to the public
23 to protect themselves.

24 And the records are not available to the public,
25 which leaves the public in the position where they can't

1 protect themselves.

2 And so the only means that the public has to the
3 information, the records that show how a facility is
4 actually operated, that shows how -- the emissions from a
5 facility, is to look at those records or to go out and hire
6 their own experts to stand out there with their meters and
7 make these determinations on their own.

8 So this information is being -- theoretically, is
9 being derived by testing. But it's not being made
10 available to the public.

11 Q. Mr. Horner, do you have a law practice?

12 A. Yes, I do.

13 Q. Do you advocate that your records should be open
14 to the public to protect the public against possible
15 malpractice?

16 A. I'm not in this kind of operation where I am
17 affecting the public with hazardous wastes, or nonhazardous
18 wastes, as you may call them, but hydrogen sulfate,
19 hydrogen sulfide, benzene, toluene that's being emitted to
20 the air and affecting neighboring public.

21 And so your neighboring public has no means at
22 this point of determining what is coming from those
23 facilities.

24 Q. Have there been talks between you and Mr. Coleman
25 regarding the purchase of your property and the use of your

1 property for expansion of Mr. Coleman's operations?

2 A. No.

3 Q. Are you aware of any complaints that have been
4 lodged against Tierra regarding the operation of their
5 landfarm?

6 A. Against Tierra? Not specifically. I think
7 somebody was mentioning some sort of complaints that have
8 been logged against them, but I am not personally familiar
9 with them.

10 MR. NOBIS: I object to that strenuously.
11 There's nothing on the record of OCD or in our company
12 files -- in fact, the Respondents may be out of order --
13 concerning anything like public -- regarding our landfarms,
14 other than the protest filed and the hearing that was
15 conducted; and all parties were satisfied, including the
16 Complainants, OCD and Tierra Environmental when we first
17 went into operation.

18 THE WITNESS: Well, I thought there was some
19 mention made earlier today.

20 MRS. NOBIS: Do you have documentation of that?

21 MR. HORNER: What's that?

22 EXAMINER CARROLL: Yeah, that does -- Let's just
23 hold it. There's no evidence introduced, so if you're not
24 aware of any, you're not aware of any.

25 Q. (By Examiner Carroll) Mr. Horner, are you aware

1 of the -- I'm searching back to law school now -- of the
2 term, "coming to the nuisance"?

3 A. Yes.

4 Q. And what does that mean in your understanding?

5 A. Well, it means that there can be a problem with
6 regard to nuisance cases where the facility is there first,
7 and then you move to the nuisance, that's true.

8 Q. And how do you think that relates to this case?

9 A. Well, in this case, when this facility was first
10 permitted, I was here making these -- Well, I wasn't here,
11 I was in Santa Fe, before the Hearing Examiner at that
12 time, telling them that this property was about to be
13 developed and was going to have an impact on the
14 surrounding residents, that this was an area that was ripe
15 for development, and that this area -- It doesn't make
16 sense to put this kind of facility, when you've got all
17 this other area out here in the county which isn't going to
18 be developed in the near future, to bring this stuff in
19 here, right between Aztec, Bloomfield and Farmington, in an
20 area that is going to grow, that's going to explode, and it
21 is in the process of exploding now.

22 To bring this stuff in here doesn't make any
23 sense.

24 Q. Did you go to the county zoning board or whatever
25 it's called, up here, to bring that to their attention?

1 A. Well, I've heard people from your office talk a
2 lot about, you can't do anything with locations of
3 facilities because there's no county zoning regulations.

4 Q. Well, you can protect public health and the
5 environment, but an adverse effect on the value of your
6 property is outside of our concern.

7 A. I'm not talking about the adverse effect on the
8 value of my property. I'm talking about the impact to the
9 people who live there.

10 Q. Well --

11 A. At this point there are people who live there.

12 Q. -- Mr. Horner --

13 A. At this point, there's more people going to live
14 there.

15 Q. Mr. Horner, today I haven't seen you introduce
16 any evidence as to an adverse effect to the public health
17 or the environment. There's been no witnesses, no studies
18 showing the OCD that there is an adverse effect on public
19 health and the environment. You have cross-examined
20 Sunco's witnesses.

21 Will there be an adverse effect on the value of
22 your property due to the expansion of the land -- the 711
23 permit granted Sunco?

24 A. You just told me that there's a problem with
25 coming to the nuisance, so therefore I may be liable by

1 subdividing the property next to this facility, because
2 this facility was there first, and therefore I may be
3 liable when those people get gassed from this facility.

4 So you are aware of the problem of coming to the
5 nuisance, you are aware that this facility can be a
6 nuisance, and now you try to turn it around to say there is
7 no nuisance, so there is no problem, so then there would be
8 no problem with development.

9 EXAMINER CARROLL: The Division has made no
10 determination that there is a nuisance, and even if it is a
11 nuisance, it might not be within the OCD's jurisdiction to
12 deny it based upon the nuisance, unless that nuisance
13 creates a public -- is not protective of public health and
14 the environment.

15 That's all the questions I have.

16 Mr. Dean?

17 MR. DEAN: I don't have any questions.

18 MR. HORNER: I just would like to -- Since I'm
19 sworn in on this point, on Exhibit J, to kind of clarify a
20 little bit these fences. It's not a big issue, but just to
21 kind of show you where the fences are.

22 There is a fence on -- that totally surrounds Mr.
23 Coleman's property, which would be the entire northwest
24 quarter, and that don't really align up of these things
25 here marked fences, okay? These things marked fences here

1 are -- I don't know where they came from, but they're not
2 right.

3 Okay, and then -- So then you will have a line
4 that runs from the west quarter corner to the center of the
5 section, a fenceline, okay, a straight line, that here is
6 kind of messed up somehow.

7 And then what you have is another fenceline that
8 runs about halfway -- It's actually about 1360 feet north
9 of the quarter corner, from a point 1360 north of the
10 quarter corner, directly east to the county road, and then
11 it makes some jogs and stuff in there, okay? But that's
12 approximately halfway up the -- that property, dividing the
13 property in roughly half.

14 And so again this other fenceline up here that
15 seems to come from about the section corner is -- I don't
16 know where that came from, but that doesn't make a lot of
17 sense.

18 Then there is a north-south fenceline that
19 divides the disposal pit from the storage yard or whatever
20 it's being called, the -- to the west of that, that -- I
21 don't know, maybe that divides that in about half too.

22 But anyway that's the arrangement of those fences
23 at this point.

24 And so my question initially was, then, it
25 appears this proposed location for the landfarm, I'm not --

1 it wasn't clear where that line with regard to that fence
2 -- Apparently the testimony is, that landfarm will be to
3 the south of that interior fence.

4 EXAMINER CARROLL: Any other questions of Mr.
5 Horner?

6 MR. DEAN: Mr. Carroll, could I clarify for the
7 record something real quick?

8 I'd just like to -- Besides Mr. Horner and Tierra
9 and Mr. Coleman, if anybody else is here today that owns
10 property or lives within a mile of the facility. Some
11 other people talked, but I think they're from a completely
12 different area of the county.

13 Could we clarify that for the record? If anybody
14 else owns or lives --

15 EXAMINER CARROLL: Yeah, could I ask of the
16 audience if there's any residents within, I don't know, a
17 couple miles of this facility in the audience?

18 (No response)

19 MR. DEAN: So for the record, only Mr. Horner
20 appeared in the public hearing today in protest.

21 EXAMINER CARROLL: Anything further in this
22 matter?

23 MR. HORNER: I would like to recall Mr. Anderson
24 for a minute.

25 EXAMINER CARROLL: Oh, that's correct.

1 MR. DEAN: Oh, and I wanted -- Before I close, I
2 want to talk about Exhibit D.

3 I think J and K went in.

4 EXAMINER CARROLL: I admitted Exhibit D for what
5 it's worth.

6 MR. DEAN: Okay. I just was going to say that I
7 -- and I apologize for not being clear about it. I think
8 it's part of the OCD file on the --

9 EXAMINER CARROLL: Or I'll take administrative
10 notice --

11 MR. DEAN: We'll clear that up and send copies,
12 if we can figure out, to you and to Mr. Horner.

13 EXAMINER CARROLL: Can you provide copies --

14 MR. DEAN: We apologize --

15 EXAMINER CARROLL: -- of all the exhibits to Mr.
16 Horner?

17 MR. DEAN: I will if he -- I can't do it right
18 now, but I will.

19 EXAMINER CARROLL: Mr. Horner, do you want copies
20 of all the exhibits?

21 MR. DEAN: I can't copy the big ones.

22 MR. HORNER: I'd like a copy of Exhibit D.

23 EXAMINER CARROLL: D?

24 MR. DEAN: Okay.

25 EXAMINER CARROLL: Mr. Anderson, will you retake

1 the stand, please?

2 ROGER C. ANDERSON (Recalled),

3 the witness herein, after having been previously duly sworn
4 upon his oath, was examined and testified as follows:

5 EXAMINATION

6 BY MR. HORNER:

7 Q. Okay, Mr. Anderson, I believe you are familiar
8 with the Tierra landfarm; is that correct?

9 A. Yes, sir.

10 Q. And with the development to the east of the
11 Tierra landfarm?

12 A. Yes, sir.

13 Q. And the residences located there, which are
14 essentially just across the street?

15 A. Right.

16 Q. Would you buy a piece of property and live on it,
17 next to the Tierra landfarm?

18 A. Hmm --

19 MR. DEAN: I'm going to object for the record.
20 It calls for speculation on the part of the witness.

21 MR. HORNER: Your Honor, he's the best expert
22 we've got here on landfarms.

23 MR. DEAN: He's not the best expert on use of
24 land.

25 EXAMINER CARROLL: Are you going to follow that

1 up with a question of whether he thinks his public health
2 and his environment is protected by the OCD regulation of
3 that landfarm?

4 MR. HORNER: Well, let's let him answer this one,
5 and we'll see where we go.

6 EXAMINER CARROLL: Okay, well --

7 THE WITNESS: I wouldn't --

8 EXAMINER CARROLL: -- follow-up question.

9 THE WITNESS: I wouldn't buy a piece of land on
10 Crouch Mesa if there wasn't anything up there.

11 Q. (By Mr. Horner) Well, you're kind of dancing
12 around the question.

13 A. No, that's -- That's my answer.

14 MR. DEAN: Objection. Arguing with the witness.

15 Q. (By Mr. Horner) Okay. With regard to a landfarm
16 of that type, would you be concerned about buying a
17 property that close to it and living on that property?

18 A. No.

19 Q. Now, that's not what you told me before over the
20 phone.

21 A. No, the Tierra landfarm, would I like it in my
22 back yard? No. That's what I told you on the phone. I
23 would not have a landfarm in my backyard.

24 I would not hesitate in an area -- If it was in
25 Santa Fe, if it was across the street, no, it wouldn't

1 bother me, Tierra landfarm, the way it's operated.

2 Q. Well, on the phone you said you wouldn't want to
3 be one of those people living across the street from the
4 Tierra landfarm.

5 A. Directly across the street? Probably not. Next
6 slot over, permit, probably wouldn't be a bother.

7 Q. And why would you not like to be the person just
8 across the street?

9 A. Well, that's aesthetics. I don't like the looks
10 of it. Of course, I don't like barren ground either.

11 Q. Now, you were talking about benzene and toluene
12 before in our conversation. Are you at all concerned that
13 there may be some of that getting out of the facility?

14 A. Benzene and toluene? No. Benzene, no. I'm not
15 concerned that it's getting out. They just -- He testified
16 that they didn't have any.

17 Q. And you're comfortable with that?

18 A. With their testing?

19 Q. With the fact that there's nothing getting out of
20 that facility?

21 A. The things that we've required them, or the
22 Commission required them to test for, if it was getting
23 out, we would know about it. It's not getting out, so I'm
24 not concerned about it.

25 MR. HORNER: I have nothing further of this

1 witness, your Honor.

2 EXAMINER CARROLL: Okay, thank you, Mr. Horner.

3 MR. DEAN: I don't have any questions.

4 EXAMINER CARROLL: Is there anything further in
5 this case?

6 With that, I'll take this case under advisement.

7 This hearing is adjourned.

8 MR. HORNER: Your Honor, I think you were going
9 to take comments from the public, or --

10 EXAMINER CARROLL: I asked -- That's what I
11 asked, is there anything further in this matter?

12 Is there any member of the public that would like
13 to make a statement?

14 MR. HORNER: Okay.

15 (Thereupon, these proceedings were concluded at
16 1:17 a.m.)

17 * * *

18
19 I do hereby certify that the foregoing is
20 a correct and true copy of the proceedings in
21 the case of 11/19/96 of 11518
22 96
23 Rand Carroll
24 Oil Conservation Division
25

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 26th, 1996.


 STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998