NEW MEXICO OIL CONSERVATION DIVISION

STATE OF NEW MEXICO

CASE NO. 10507

IN THE MATTER OF:

The Application of C & C Landfarm, Inc., for a commercial surface waste disposal facility, Lea County, New Mexico.

BEFORE:

MICHAEL E. STOGNER

Hearing Examiner

State Land Office Building

September 1, 1992

REPORTED BY:

DEBBIE VESTAL
Certified Shorthand Reporter
for the State of New Mexico

ORIGINAL

A P P E A R A N C E S

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I N D E X

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I N D E X (CONTINUED)

E X H I B I T S

EXAMINER STOGNER: This hearing will come to order for Docket No. 27-92. There's three of them this week. Please note today's date, Tuesday, September 1, 1992. I'm Michael E. Stogner, Appointed Hearing Examiner for today's case.

At this time I'll call Case No. 10507.

MR. STOVALL: Application of C & C Landfarm, Inc., for a commercial surface waste disposal facility, Lea County, New Mexico.

EXAMINER STOGNER: Call for appearances.

MR. CARR: May it please the Examiner, my name is William F. Carr with the Santa Fe law firm, Campbell, Carr, Berge & Sheridan. I represent C & C Landfarm, Inc.

EXAMINER STOGNER: Thank you, Mr. Carr.

Any other appearances?

MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin, of the Santa Fe law firm of Kellahin & Kellahin, appearing today for two clients. The first is Mr. Trent Stradley, of S-W Cattle Company, in association with Mr. Gene Samberson, a New Mexico attorney. My other client is Elsie

Reeves, of the Laughlin Farms, and I'm appearing for her.

We have three witnesses to be sworn, Mr. Examiner.

EXAMINER STOGNER: Before we get started today, this application had been administratively determined to be approvable by the Division's Environmental Bureau. There were some objections filed. And it is our determination that a hearing was therefore scheduled, and that's why we're here today, is to allow the parties an opportunity to present technical evidence as to why this application should not be approved pursuant to the rules of the Division.

Gentlemen, is there anything further before we get started?

MR. CARR: I have a brief statement, but I think it might be appropriate to swear the witnesses. Whatever you desire, Mr. Stogner.

MR. KELLAHIN: I have a brief statement too. I think we're walking on new ground here, Mr. Examiner, and perhaps we need to have a discussion about procedure. I would like to raise some issues with you and then arrange to

present the technical information for your decision.

EXAMINER STOGNER: Let's go ahead and get those out of the way before we swear the witnesses.

MR. CARR: Mr. Examiner, as I'm sure you have noted, we filed an application for this landfarm back in October of 1991. On May 20 of this year, the parties were advised that it had been determined by the Division's Environmental Bureau to be approvable if certain conditions were complied with, and C & C has agreed to meet those conditions.

The case, as advertised, provided that it would be taken under advisement unless there were objections, and Mr. Kellahin's clients have raised these objections. And we believe we're here today to hear those and that the burden actually is on them to show why this application should not be approved.

I intend to offer, and I can do that now, simply a certified copy of the Environmental Division's file, which contains the application and all correspondence, including all prehearing statements that have been filed in this matter,

and would ask that that be admitted into evidence. And at that point in time we simply would rest in terms of a direct presentation and suggest that it's appropriate now for Mr. Kellahin to call his witnesses.

Depending on what happens, we would reserve the right to call representatives of the applicant, but at this time we are not certain that will be necessary.

EXAMINER STOGNER: Thank you, Mr. Carr.

Mr. Kellahin?

MR. KELLAHIN: Mr. Examiner, the process that has evolved for handling this case plows new ground for us, I believe.

EXAMINER STOGNER: No pun intended?

MR. KELLAHIN: No, sir.

The hearing today is to focus on a technical presentation. We propose to present three witnesses to you. Mr. Stradley will identify his ranch properties and provide some orientation plats for informational purposes. He has some photographs he's taken to give you a sense of the topography.

Ms. Reeves will make a similar

presentation for her ranch property. Each of those ranchers will identify the source and location of freshwater that they're taking from this area.

We'll then call Mr. Tim Kelly, who's an expert geohydrologist, who's appeared before this Division on numerous occasions. And he will present his comments and evaluations of the application.

I would like to preserve for the record the following objection to the procedure. It appears to me that this case should be processed very much like you would process an application for a saltwater disposal case that had originally been filed administratively.

Once that application is filed administratively and the engineers on the staff make a review, if there is no objection, then it completes its administrative process. If there's an objection, it's set for hearing and the burden remains that of the applicant to provide sufficient technical and scientific information to establish his burden that there is no impairment of freshwater sources or other impediments to approval of that application.

The process that's evolved for this particular case has shifted the burden of proof to me and my clients to prove that this application will not impair freshwater sources, damage the environment, or otherwise not be in the best interests of conservation. We think that's an inappropriate shift in the burden of proof, and we'll introduce our objection to that at this point.

Depending upon your ruling on that decision, we are prepared to go forward, Mr. Examiner, with the technical presentation.

MR. STOVALL: Mr. Examiner, let me clarify. There seems to be an uncertainty here, which truly this is a new process. And for your information, historically the way this has evolved is only recently have Environmental Bureau permit applications come to a hearing process.

The way they have historically handled applications for permits is considerably different than the way the oil and gas side, the Engineering Bureau, has handled its applications. They normally process and have an iterative process of permit review and

application approval.

What the Division determined, based upon the experience of one case, is that that was to go through that process and then come back and redo it at hearing was duplicative and to not go through that process and then to come back and do it at hearing was not the best way. The last time we did that, we ended up in a three-and-a-half-day hearing, which could have probably been resolved in a day-and-a-half.

The Division has chosen to use this approach rather than stop an administrative review when an objection is received -- is to proceed with it, to make the review, to do the iterations and determine whether or not an application is administratively approvable.

At that time then if objections are received, as in this case, the matter is set for hearing. It's my interpretation that it is not that the applicant -- that the burden of proof has shifted, but rather that the applicant has made a prima facie case on the burden of proof. It still rests with the applicant.

Hopefully, Mr. Kellahin, you've had an opportunity to review what has been submitted and

prepare your case in response to that. If that is incorrect, I think now is the time to get that on the table and have some discussion about it.

But it is not my interpretation that that burden has shifted, but it is still the burden of the applicant. It's a question of whether that has been -- as I say, a prima facie case has been established and then you can go forward to challenge that case rather than to have to prove the negative.

MR. KELLAHIN: One further comment before Mr. Carr responds. The process as presented to us creates a procedural due process issue in that the application is processed administratively without benefit of examination of the technical people or whomever presented this case to the Division on behalf of the applicant. And we have simply had no opportunity to examine those witnesses before this case gets to this point, and we're now faced with an approved application subject to some conditions.

MR. STOVALL: Let me ask you a question with that regard. I think it was the intent of the Division that the intervenors, as I'll refer to your clients, be involved in that iterative

process and have input during that process and have the opportunity to comment on matters that were presented through the administrative process.

Are you saying that has not occurred?

MR. KELLAHIN: No. That has occurred, and we have filed written objections and comments to the administrative processing. But having interrupted the administrative processing and now set it for hearing, it appears to me to be consistent with procedural due process that Mr. Carr and his clients now present their technical case to justify the application. And it should not be my obligation to go forward with my technical case at this time.

MR. CARR: May it please the Examiner, I think it's important to realize that we're here coming before you for hearing today for one reason, and that reason is that after reviewing what we submitted and we believe made a prima facie showing that this is an appropriate application and is approvable, that Mr. Kellahin's clients took a different position.

And we're here today not because our application has been determined to be defective;

we're here because they want to complain. And so we're here so they can do just that, complain, and we're ready to hear it.

I think what we're raising here is a procedural question just trying to complicate a hearing which is designed for one purpose, and that purpose is to hear them. And that's the reason the burden is on them. It isn't a shift. We've met the burden.

And once we've met the burden, if somebody is distressed about it or feels something else needs to be placed before the Division, they bring it to your attention. They have done that. And we're here to hear them today, and I think we should get on with the hearing.

We did -- we agree with Mr. Kellahin, this is new ground. And we also agree that review of environmental applications has taken a different course within the agency than other kinds of applications that have traditionally come on for hearing.

Initially we were prepared to make a full presentation. But after reviewing the application, looking at the file, and determining

that you have already concluded it was an approvable application, it seems appropriate to come in and respond to questions, any that they may have concerning the sufficiency of what we have presented to you.

We think the burden is on them, and they should go forward. We've been waiting a year to get to hearing, and the time has come, if they want to express their objection, we might submit the time is now.

MR. STOVALL: Mr. Kellahin, just again, because this is new, I want to take some time to explain how we got here. One of the reasons we've approached the case in this matter is, again, with some previous experience and a lot of cases is the opponents of an application of this nature have attempted to make their case through cross-examination of the proponents or applicant's witnesses.

And what we are encouraging and hoping today is that your clients, the opponents, the objectors to this application, will put some direct information into the record which will be more scientifically sound and beneficial and more helpful to the Examiner of the Division to make

the decision as to whether or not this should be approved.

Again I will emphasize it is not shifting the burden of proof, and I hope you have had the opportunity to review the administratively approvable file. And with that, I would recommend that we go forward on that basis.

Mr. Carr, I assume your technical people are available and can be called for --

MR. CARR: If needed.

MR. STOVALL: Probably the best analogy of this is almost a pre-file testimony type of approach in that the applicant's witnesses should be available and should be available for cross-examination on the matters that have been submitted.

The part we're really just leaving out is the direct examination of those people to redo that which they've already done in paper fashion. I think I'm going to recommend to the Examiner that we do play a little loose with how we actually conduct this hearing simply because we are evolving a new process, and we want to make it as efficient as possible. And we'll

learn some more things from this one.

I also want to make sure that your clients, Mr. Kellahin, get their full opportunity. But I assure you the burden is on C & C to prove that their facility can be operated in accordance with Division rules and regulations and would invite you to question their witnesses on any specific things that you have any questions about. But would hope that your objections can be presented in the form of direct primarily.

I think that's more useful to us than beating around on cross-examination. But it certainly is an opportunity which you have at this time, and we will swear Mr. Carr's witnesses just to make them available to you and give you the opportunity.

As a matter of fact, Mr. Carr, I suggest what you're going to have to have is to put one on to at least enter the administrative record and state that that is what they presented.

MR. KELLAHIN: I have no need to do that. I will accept Mr. Carr's stipulation as to what is marked as his client's Exhibit No. 1.

EXAMINER STOGNER: In that case C & C Exhibit No. 1 will be admitted into evidence at this point.

MR. CARR: Mr. Stogner, we were also directed by the Division to provide notice of the hearing to all owners within a half-mile of the facility as well as to all parties who had objected to the proceeding. And I do have an affidavit confirming that the notice of today's hearing has been provided. And I would move the admission of that as the C & C Exhibit No. 2.

And I have nothing further to present on direct. And we're prepared to hear the presentation of those who have objected.

EXAMINER STOGNER: Have you had an opportunity to review Exhibit No. 2, Mr. Kellahin, or do you have any problem with it?

MR. KELLAHIN: Mr. Carr is a truthful individual, Mr. Examiner. I will accept his attestation as to the mailing of notice.

EXAMINER STOGNER: Thank you. This Exhibit No. 2 will be also be admitted into evidence at this time. That's Exhibit No. 2 for C & C Landfarm, Inc.

MR. STOVALL: Anybody who thinks they

might offer testimony today, please, stand.

[The witnesses were duly sworn.]

EXAMINER STOGNER: Mr. Kellahin, I'll turn it over to you.

MR. KELLAHIN: Trent, why don't you come on up to the table.

W. TRENT STRADLEY

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

EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Stradley, for the record would you, please, state your name and occupation?

A. My name is W. Trent Stradley, President, and my wife and I are stockholders of S & W Cattle Company, Hobbs, New Mexico.

Q. Do you reside in Hobbs, New Mexico, or in that vicinity, Mr. Stradley?

A. 419 Jemez, J-e-m-e-z, in Hobbs.

Q. Have you received notice of the application of C & C Landfarms for approval of this particular project by the Oil Conservation Division?

A. I received a notice from Mr. Carr. It was my understanding that it was a much different

application than what has finally resolved -- revolved. But yes, I did receive an application, notification.

Q. At my request have you taken copies of maps available to you, identified maps that you felt were relevant to demonstrate your acreage position in proximity to the project that C & C Landfarms proposes in Lea County, New Mexico?

A. Yes, sir.

Q. As part of your effort, did you take a United States Department of Interior Geological Survey map and then have that enlarged and then from that enlargement made notations about your properties?

A. Approximately 30, 45 days ago, I received copies of the map from the John West Engineering Company in Hobbs, and they in turn enlarged several portions of it. It was kind of an awkward situation in regard to the fact that the Section 3 and Section 4 are on different maps, so we had to piece them together in order to get the proper pictures.

Q. Let me show you what is marked as S-W Exhibit No. 1 and ask you if this is the quadrangle map that you utilized to then make

your notations?

A. Yes, sir.

Q. Mr. Stradley, let me ask you to turn to what we've marked as S & W Exhibit No. 2. What you have in front of you is my duplication of your original display.

If I might have the original for a moment, Mr. Examiner, let me have him authenticate that.

The Examiner has returned to me the original, Mr. Stradley. Would you identify that and tell me if that represents your notations taken on an enlarged copy of the quadrangle map that you've already identified?

A. It is. And I apologize to the Commission for the poor penmanship and the coloring, but this came at such an awkward time. And we were unable to get the engineering firm to go out and do some survey work for us. And so in terms, we had to use these facilities.

Yes, sir, it is.

Q. To orient the Examiner, Mr. Stradley, let me have you identify some of the information that you have depicted on Exhibit No. 2. Within this particular area, have you on past occasions

been on the actual surface of the ground within this portion of Lea County, New Mexico?

A. Yes, sir. I'd like to elaborate.

Q. Well, describe for me --

A. S & W Cattle Company is a cow-calf operation that has approximately 16 sections in this area.

Q. You have to keep your voice up a little, Mr. Stradley.

A. Yes. S & W Cattle Company is a cow-calf operation that operates -- either owns or leases approximately 16 sections in this area. We have in excess of 6000 acres of deeded land. We have approximately 1800 acres of BLM land, about 2200 acres of state land.

This land originally was the Weir Ranch in 41. It was purchased by my father-in-law, Billy Walker. We incorporated this ranch in 74 into S & W Cattle Company. I've been helping Mr. Walker, he's deceased now, work cattle on this place since I was 14 years old, which is in excess of 45 years ago. And I have probably ridden most of this country on a horse.

Q. When we look at Exhibit No. 2, if you look up in the upper right-hand portion of the

display, the word "Cooper" appears just below the elevation number 3573. Do you see that mark?

A. Yes, sir.

Q. What is the purpose of identifying this portion of the display with the name "Cooper"?

A. They have excavated a large hole in the ground in that area, and I assume that's where they expect to put this facility.

Q. At the location where the number 3573 appears, is that the approximate location of what you know to be the C & C Landfarm pit that you've described?

A. It would be approximately, oh, 200 foot south of that marking.

Q. The area shaded or hashed in pink, what is that identifying, Mr. Stradley?

A. That is state lease land.

Q. And who is the lessee of the state lease land?

A. S & W Cattle Company.

Q. When we move then to the south and west of the C & C Landfarm site, there is an area identified as BLM. What does that show?

A. That is a 40-acre tract of BLM land that we have a cow-calf allotment under.

MR. STOVALL: Mr. Kellahin, if I could interrupt you. Because we are primarily an oil and gas agency and we are used to dealing with underground oil and gas leases, I assume in this case we are talking about surface leases; is that correct?

MR. KELLAHIN: Insofar as the state grazing lease, that is a surface lease of the surface, and Mr. Stradley utilizes some of this area for cattle. And he has water in this area for those cattle.

MR. STOVALL: Mr. Stradley, I assume when you're talking leases, you're talking about the surface; you're not worrying about oil and gas, are you?

THE WITNESS: No, sir. That's right surface only.

MR. STOVALL: We've got to change our orientation here a little bit to what we're used to hearing.

THE WITNESS: As a cow-calf man, I'm primarily grass and water; that's my livelihood.

MR. STOVALL: That's what I thought.

Q. (BY MR. KELLAHIN) The area hashed in blue, in which there is a black square and a

green circle around the black square, it says, "S & W." What does that depict?

A. That is fee land, deeded land, and that is a windmill location. The black mark, that has served as a watering point in that area as long as I've been going to the ranch, in excess of 45 years.

Q. What do you utilize the water pump by the windmill for, Mr. Stradley?

A. To service the cow-calf operation. Our 16 sections are divided into four main grazing areas. We have a hub in the center where we have water. And then we take and rotate our cattle, depending on the time of the year, into these four areas. And in this particular area we have very limited water.

And this water plus two submersible pumps down in Section 9 are primarily our source of water for the cow-calf operation in this area. Without this water, these six to eight sections would be useless.

Q. When we look to the south of the area shaded in pink and blue, are we moving into Section 10?

A. Into Section 10 and then on down into

Section 16.

Q. In Section 10, who has the ownership of that land?

A. I own the north half with the exception of 40 acres. The south half of Section 10 is BLM land.

Q. As we move then to the west, there are three other locations also identified with green markings. If you'll start with the bottom two on the display and start then with the right one, what does that identify?

A. That is a submersible pump. This well was drilled two years ago. And it is a well that has a depth of 45 foot, of which 22 foot of water stands. I have a submersible pump that actually services two different livestock tanks. To the west of that, less than a half a mile, is an old well that we cleaned out. This well is 50 foot deep, and we have water standing in this well at 25 foot. It also is serviced with a submersible pump.

Q. I must tell you I have trouble with these sections. Do we have regular sections in this area?

A. I guess I don't understand your

question.

Q. Would a regular sized section of 640 acres be in a square?

A. They'll vary maybe anywhere from 3 to 10 acres.

Q. Am I looking in Section 9 when I look at the two wells that have submersible pumps in them that you have just described on the south end of the display?

A. Yes, sir. These wells are -- both wells are located in the north half of the south half of Section 9.

Q. Are those freshwater wells that you and your company own?

A. Yes, sir.

Q. And what do you use that water for?

A. To primarily water the livestock. The east well services two livestock tanks. Like I say, they are submersible pumps pressured with the pressure tanks. The west well services four livestock tanks. We laid a fast line from that location, working to the south-southeast, and we laid approximately three miles of fast line. And we have four livestock tanks on this line that service this area.

In the past two years we've probably spent in excess of $60,000 on laying fast lines and putting tanks in to service this area where it could be a viable cow-calf operation.

Q. When we move north of those two submersible pumped wells and move up to what appears to be a windmill symbol in the center portion of the display, what does that identify?

A. Well, if it's due north of these two in Section 9, I assume that that is water on the Laughlin place.

Q. As best you understand, that's the approximate location of the Laughlin windmill?

A. Yes, sir.

Q. Mr. Stradley, I'd like to direct your attention now to the map you prepared, which is going to be marked Exhibit 3, and to a series of photographs that you've taken, which I'm going to mark in a package as Exhibit No. 4.

Let me ask you to authenticate Exhibits 3 and 4 for me, Mr. Stradley. In looking at Exhibit No. 3, is this an enlarged copy of the quadrangle map that you've been utilizing to illustrate your presentation?

A. It's primarily a portion of that map.

It actually encompasses Section 3 and part of Section 4 -- part of Section 3 and part of Section 4, primarily the north half.

Q. On the Examiner's copy in red, have you made the notations on that display?

A. Yes, sir, the numerals from 1 through 17.

Q. Okay. In addition, the three green dots that are on the display, did you put those dots on the display?

A. Yes, sir, I did.

Q. When we look at the package of photographs that are marked 1 through 17, do these represent photographs that you took yourself personally?

A. The numbers 1 through 17 are the photographs that -- nomenclature of the photographs that I have taken.

Q. And you were the one that indexed the cover sheet to the photographs and numbered those photographs?

A. Yes, sir, that's right.

Q. And when you get on the ground and physically orient yourself to have the view that you had when you took the photographs, do the

photographs when reproduced give you an accurate and reliable depiction of the property as you would see it if you were there?

A. The black and whites are terrible. You can't tell anything by those, but the color photographs do. In essence, what I was trying to do is to show that the terrain of this country runs to the west-southwest. And, in essence, these photographs will verify that.

Q. Let's start with the plat, Exhibit 3, and the package of photographs. I apologize, we only have one colored set, which I've given the Examiner. And they're certainly available for inspection and review.

When we look at the Exhibit 3, there are some elevations and some contour lines on that display, are there not, sir?

A. Yes, sir.

Q. When you physically go out on the property, as you've done on numbers of occasions, do you find the contour lines to be reasonably accurate as you find the topography to be on the surface?

A. Well, this really to a layman is rather confusing. But there's no question, if you go to

this windmill, you can look in any direction, with the exception to the southwest, and everything is elevated above you. In fact, if you were to look directly to the northeast, which is in the direction of the Cooper facility, the engineering firm said that that is in excess of 30 foot higher than what my windmill is.

Q. The windmill you're describing is the one identified next to the number 17?

A. Yes, sir, that's right.

Q. When you're on the surface of this portion of this area of Lea County, describe for us what you see in terms of the topography and the relationship of the windmill to everything around it.

A. This area is referred to as White Breaks. In fact, as a kid, when we worked cattle, if we wanted to take our horses to the White Breaks area, it would be referring to this windmill. In essence, the Sections 1 and 2 and then south of that is a rocky type of white formation that is elevated above this draw, and it has no water in it.

Anyone that is familiar with this country knows that in Sections 1 and 2 there's no

freshwater. You actually don't get freshwater until you fall off this little old cap, which is referred to as the White Breaks, and then you pick up this shallow freshwater.

Q. Let me have you more specifically detail that. In relation to the windmill that you have and the C & C Landfarm, which is to the northeast of your windmill, if you were to move yourself farther northeast of the landfarm, are you in an area that you can find freshwater at shallow levels?

A. No. There's no freshwater in that area.

Q. As you then move to the southwest, come through the C & C Landfarm area down to your windmill, what do you find in terms of your ability to encounter freshwater?

A. Well, we have never drilled north-northeast of the mill, per se, in this particular area. But we do have in excess of 18 foot of water standing in this mill and have had water there in excess of 45 years.

Q. Let's follow the plat, Exhibit 3, with the numbered sequence for the photographs. And without specifically detailing what is apparent

in the photographs, tell us generally where you were located and what your point of view was as you move through the sequence of photographs.

A. The number one location is, in essence, in a county road that comes from a mile south of Monument that comes out over on the Hobbs-Eunice highway approximately 8 miles south of Hobbs. This road is being upgraded by the county at the present time. And I could be mistaken, but I believe this is County Road 58.

The location I was standing on was just on the east side of this county road. And I took the picture facing the west-southwest. My intentions were to try to show the decline in the terrain of the property.

Q. The gating arrangement shown in the photograph on Exhibit 1, what is that?

A. That is the entrance to this new facility.

Q. You mean the C & C Landfarm facility?

A. Yes, sir.

Q. As we move through Exhibits 2 through 6, what is your point of view, and what are you depicting?

A. I stood at the cattle guard that is at

the corner of this particular facility, the Cooper facility, or C & C. And I took pictures in each direction, north, east, west, and south, to try to show the terrain from that position.

Q. Photograph 7, identify and describe that.

A. This double line that is just above No. 7 is the existing fence line that separates the Cooper property from S & W Cattle Company property.

Q. Hang on just a minute. On the reproduced copies, that is a black double line. On the Examiner's copy, I believe it is a green line.

A. I drew it with a green pencil, I'm sorry.

Q. That green line on his display and the black and white line that runs east-west represents what, sir?

A. This is the fence line that separates S & W Cattle Company property from the Cooper property.

Q. When you identify the Cooper property, describe for us generally what you know that property to be.

A. It would actually be the north three quarters of the section in Section 3.

Q. Approximately how many acres are included within that area as best you know it?

A. Two hundred and forty acres.

Q. There are three green dots on the display just north of the fence line. What do those represent?

A. These are wells that have just recently been drilled and they have a PVC pipe extending above ground level. And they also have caps and locks on them. So I assume that these were either test wells or monitor wells.

Q. Okay.

A. They are located on the Cooper property.

Q. Identify and describe photograph 8 for us.

A. The No. 7 -- let me refer you to it, please, as a marking point. The No. 7 location, or I will call it a monitor well, it actually was approximately 200 foot west of the corner of this facility. If you go on west down this fence line, approximately another 500 foot is No. 8, is a photo of the second monitor well.

This photo was taken with me standing to the south of the fence line shooting back to the north-northwest.

Q. Photograph No. 9.

A. Well, I was at this same location. I shot back at the facility to try to show the incline in the terrain.

Q. And identify and describe then photograph No. 10.

A. No. 10 is the third monitor well. It is approximately another 500 foot west of the No. 8 facility. It actually lays further into the Cooper property than the first two monitor wells. The first two monitor wells were probably within 20 foot of the fence line. This third well probably lays 150 foot north of the fence line. This photo was taken from just to the southeast of that location shooting back to the northwest.

Q. Identify photograph No. 11 for me.

A. No. 11 is the spread support of the quarter mile fence line. In other words, it would be -- somewhere in that vicinity would be the quarter of a mile marker from the east to west of that particular section, 40-acre tract.

Q. Exhibit No. 12, photograph Exhibit No. 12.

A. From that same point, I took a picture due west down the fence line. And the fence posts would indicate how the terrain does drop. It also would indicate that back behind it that you can almost see to the Monument highway, which is over there approximately a mile-and-a-half.

It also would indicate that there is a draw that runs north and south through the Cooper property that goes directly down to this windmill.

Q. Identify and describe -- I'm sorry. I've lost track. Is it 13?

A. We can sure try that one.

MR. STOVALL: You just finished 12.

MR. KELLAHIN: That ought to be the next one then, if I remember correctly.

A. While I was at this same point, I took a picture from this same area shooting down towards the windmill that is in question here.

Q. All right. Then No. 14, identify your point of view and what you are attempting to depict.

A. I had taken a picture also of the

windmill whenever I was at this second monitor hole. And I just threw it in. The fact that it does show that the terrain does slope to that mill from all directions of that facility.

Q. As you move into photograph 15, identify and describe that photograph.

A. I actually took this picture from -- the No. 15 is a dry hole that Conoco drilled on the BLM land. And this is located on the marker. I believe it shows 2080 foot from the south line, 1980 foot from the west line. It is, like I say, an old location that has been abandoned by Conoco and is so marked. It is right next to the road that goes down to the windmill, and I felt like it would be a good position to take a picture to show the facility as well as the proximity to the mill.

So the No. 15 is actually from this location, which is approximately 560 foot south of the fence line that joins me and Cooper, and I've actually shot back towards the Cooper facility. No. 16 is the same location shooting to my mill.

MR. STOVALL: If I might ask a question at this point.

MR. KELLAHIN: Sure.

MR. STOVALL: How far from about this location is it to your water well, to your windmill?

THE WITNESS: From where I'm standing?

MR. STOVALL: Yes, in these pictures.

THE WITNESS: Okay. I'm confused. From the Cooper facility?

MR. STOVALL: No. From where you're standing in these pictures. I'm just trying to get spacial --

THE WITNESS: From the dry hole marker, which is from the north fence line, is 560 foot south of the fence line. And then from that point on down to the well, I'm going to say, is approximately 1100 foot.

MR. KELLAHIN: To the windmill.

THE WITNESS: To the windmill.

MR. STOVALL: Okay. That's what I wanted to know. Thanks.

THE WITNESS: I estimate, from the north fence line to the windmill, approximately 1700 foot.

MR. STOVALL: Okay.

Q. (BY MR. KELLAHIN) And then finally

photographic Exhibit No. 17.

A. 17, I went to the mill and shot back towards the facility. If an old cow and calf down there wanted a drink of water -- there's nothing there -- that's how she'd kind of look, kind of sad, looking back towards that facility.

Q. The last exhibit I would like you to discuss with me, Mr. Stradley, is what I've marked as S & W Exhibit No. 5. Again, is this a reproduction taken from the quadrangle maps that you've previously identified as Exhibit No. 1?

A. Yes, sir, it is.

Q. The information I want you to describe for us is with regards to the writing just below each of the freshwater sources on the display. If you'll start, first of all, with what we have described as the S & W windmill in a portion of Section 3, which is the windmill closest to the C & C Landfarm facility, there is a number 33 feet RB. What does that mean?

A. This well is the well that I have referred to that's been there in excess of 45 years. Whenever this hearing was scheduled, I went out and measured this well because I used to pull it by hand when I worked on this well, but I

had actually forgotten the exact depth.

The well measures from the top of the casing, which is approximately 2 foot above ground level, it actually measures to the Redbed 33 foot, of which 18 foot of water is standing. So if you're actually going from ground level, it would be 2 foot less than that. But 33 foot from the top of the pipe to the Redbed, 18 foot of water standing in the well.

Q. When we move to the next well in the southern portion of the display, the first well on the right that you said has a submersible pump in it?

A. Yes, sir. That's in the north half of section -- actually the northeast half of the south half of Section 9. This is a well that was drilled two years ago. It's 45 foot deep to the Redbed, of which approximately 22 foot of water is standing. I did not measure this well, but I had new pumps put in both of these wells less than 60 days ago. And the water well man is the one that gave me that information.

Q. As we move then to the next well to the west, identify and describe that information.

A. This is an old existing well that was

actually on this property whenever I bought it. I understand at one time that this was a homestead. This well is 50 foot deep to the Redbed, of which 25 foot of water is standing. This well is serviced by a submersible pump.

Q. And then finally there is a blue mark to the south and west of the last well you've described. It appears to be a windmill symbol. What is your knowledge about that well?

A. I'm really not prepared to make a statement about that. I did make the comment that just across the Monument highway, which is Highway No. 8, that runs north and south by this 50 foot well, just to the west side of the pavement, I understand that -- or in my opinion Mr. Cooper has a water station.

And the reason I think this, it is an earthen hole that is plastic lined, and I've seen water trucks in this area. So I assume that he has a water station there. I'm not for sure that it actually ties into this windmill.

MR. KELLAHIN: That concludes my examination of Mr. Stradley. We move the introduction of his Exhibits 1 through 5.

EXAMINER STOGNER: Exhibits 1 through 5

will be admitted into evidence at this time.

THE WITNESS: Thank you very much.

MR. KELLAHIN: Wait just a minute.

EXAMINER STOGNER: Mr. Carr, I want to turn the witness over to you at this time.

MR. CARR: Almost got away from me.

EXAMINTION

BY MR. CARR:

Q. Mr. Stradley, what is the distance between the proposed C & C facility and your water well in the southwest of Section 3 approximately?

A. If they take the whole 40 acres, which I understand they have proposed, it is approximately -- from that corner it's approximately 1700 foot down to the windmill.

Q. And then the current excavation there is about, what? half a mile away?

A. No. It would be less than 4/10 of a mile. I drove it in my car, and my car is not real accurate. But it was less than a 4/10 of a mile from the corner where the cattle guard is to the windmill.

Q. When you talked about your well, is 33 feet the total depth of the well?

A. Yes, sir.

Q. And then how much of that is -- you've got 18 feet of water in the bottom of the well?

A. Right.

Q. How much of that wellbore is open or has it got a pipe or casing all the way down to 33 feet?

A. Oh, I'm not for sure. We have worked on this well. Mr. Van Noy probably worked on it last. We've had in the past -- a lot of our old pipe has rotted out, and we have replaced it with PVC pipe. When we do this, we perforate that PVC pipe with a saw. So I'm really not qualified to say.

Q. Now, you use that well -- and I'm only really interested in my questions about the well in the southwest of 3. You utilize that well for watering cattle?

A. Yes, sir.

Q. There is a gravel pit indicated in the south half of 3 as well?

A. A gravel pit and a clay pit.

Q. Okay. Are there two pits there?

A. Yes, sir, side by side.

Q. Have they been there for some period of

time?

A. Yes, sir, as long as I remember. Let me correct that. The clay pit has been there as long as I can remember. The actual caliche pit was open, oh, probably 25 years.

Q. Do they also hold water periodically?

A. The clay pit will hold water, yes, sir.

Q. Does it have water in it often?

A. Yes, sir.

Q. What is the source of that water?

A. Rainwater.

Q. When you say "caliche," is that just constructed out of Redbeds, or is it a substance that has been brought in?

A. I guess I don't understand what you're saying.

Q. When you say it's a caliche pit, what is the source of that caliche? Is it just material from the Redbeds, or is it a substance that has been brought in?

A. It actually is the same type of substance that is in the area where the Coopers are digging this facility. There is no water in that particular area. This clay pit lays directly to the west of this caliche pit, and we

actually would have loved to have water there so we could use the clay pit as a source to hold our water. There is no water there.

But that is above what they call the White Breaks. As you fall off this White Breaks to the west, that is where you actually encounter the water.

Q. Have you ever had a problem with water moving from that pit down to the location of your water well in southwest of 3?

A. Not to my knowledge. We could have, and I wouldn't know it. The county recently was looking for some hard rock to work on the roads, and they went into this 40-acre track of BLM land. They took a backhoe, and they dug down 12 foot in several places. And they found no rock; however, they did find sand, gravel, caliche, and a little clay.

Q. When you say it's a caliche pit, it isn't lined with anything, is it?

A. No, sir.

Q. And it will hold the water?

A. I don't know that the caliche pit will hold it; the clay pit will.

Q. The clay pit holds the water?

A. Yes, sir. But this is how precarious this area is. These two entities are within a 100 foot of one another. One is completely sealed with clay; the other one has no clay.

Q. And -- I may have asked you this -- the source of the water is rainwater?

A. Yes, sir.

MR. CARR: That's all I have.

EXAMINER STOGNER: Thank you, Mr. Carr.

I've got some questions.

EXAMINATION

BY EXAMINER STOGNER:

Q. When I look in Section 9, your first water well, there's also another clay pit just north and east of there. It shows gravel pit and it shows up on the map of the road to it. Are you familiar with that gravel pit?

A. I'm sorry. Let's try it again, please.

Q. Okay.

A. In Section 9?

Q. Yes.

A. Yes, sir. I'm familiar. That pit comes all the way to our fence line, and I am familiar with the pit.

Q. How deep is it? Is it a caliche pit? Is it a clay pit?

A. Yes, sir, that is a caliche pit. And I would estimate it to be somewhere in the 10-foot depth. It's shaped kind like of like a cross. And the reason I'm quite familiar with it, we had some individual drive through our fence line just a couple of weeks ago and we had cattle mixed in with the cattle on the Laughlin place, so we had to get the cattle out of there. And we looked at the pit.

I also caught some people working in the area and cautioned them that -- I thought maybe they thought they were on my country, so I cautioned them it was Laughlin Construction Company, who are good friends of mine, and I cautioned them to be sure they knew where they were at. And they assured me that they had talked to the individual who controls that pit and had made arrangements to be in that pit.

But to your question, it does lay just to the north of our property line in Section 9.

Q. Does it ever hold water?

A. Yes, sir, I've seen water in it. I

don't know to what degree. We've had more water the last three years than I can remember. In fact, I have several buffalo waters in some of the areas where we have no freshwater. And I notice that even some of those are still retaining water.

Q. Like you said, this has been an unusually wet year, has it not?

A. Yes, sir, it certainly has. It's been great.

MR. STOVALL: Maybe not in downtown Hobbs?

THE WITNESS: No, sir.

Q. (BY EXAMINER STOGNER) When I look at your first exhibit, the words "White Breaks" appears, and this is what you were talking about where it seems to separate the water out there. And I want to make sure that I'm seeing it right.

If I go up to the north end of the map, I see several topo lines running parallel to each other running down to the south to the Monument cemetery.

MR. KELLAHIN: The witness is not with you yet, Mr. Examiner.

EXAMINER STOGNER: I'm sorry.

THE WITNESS: I believe maybe I can -- okay. Start again, please.

Q. (BY EXAMINER STOGNER) Okay. If I go up on Exhibit No. 1, that is that large scale map, the first map you gave me --

A. All right. Sir.

Q. -- and I see that the topography seems to fall off back to the east. And I assume that's probably part of the White Breaks, is what you're considering, that goes down to the cemetery, and then it kind of cuts back to the south and east before extending south again near the gravel pit there between Sections 3 and 10, and then you hit that White Breaks.

Is that a continuation of this White Breaks area, as you call it?

A. I would assume it is. And I suspect that it probably runs a mile-and-a-half to two miles south. Now, I know for a fact that four miles south of us is a Conoco water station, so there is some water on down four miles south of my south line, which is in Section 21.

Q. Now, when you say water station, you're talking about a water supply well that supplies

the oil and gas industry out there with freshwater?

A. Yes, sir. But they also furnish the ranchers in that area water. The McCasland, which lay to the south and southeast of me, they derive most of their water from the Conoco water station. And I also derive some of the water for the southeast portion of my ranch.

There is no water in Sections 22, 23, and 24 even into Section 18 of 38 east. And we actually have lines running from that Conoco water station that service us in this area for our cattle operation.

Q. How far do these water lines go into your property?

A. Oh, they service the ones -- the ones that Conoco works with me on, they actually service Sections 23, 24, and into 18 of 20 South, 38 East. So they actually service approximately three sections of land. But the pasture is divided up into about a five-section pasture, and we actually derive water from the Conoco people as well as having water at the center of the 16 sections that serves as the hub.

Q. Let's get back to my White Breaks

here.

A. Okay. Let me see if I understood your first question in referring to the topography. I believe you made the statement that the land actually went downhill from the point of origin to the south-southeast. And it actually -- it rises from the point of origin to the south-southeast.

Q. Okay. So I'm backwards. That's higher to the east, lower to the west?

A. This windmill actually looks like it's in a big tub. And everything in that area, anything that goes aboveground up in this Section 3 to the northeast will eventually end up down there at this windmill. And then it proceeds on further to the south-southwest; it actually goes lower.

In fact, at one point there I think there's probably a 40-foot discrepancy from the proposed site on down in there just to the south-southeast of Section 9.

Q. Do I find very many water wells back to the east of this general area?

A. No, sir, there is no water. We have looked in Section 1 and Section 2 and then also

south into Section 14, and we just don't have any freshwater. That's why we've had to go to the expense of laying these fast lines so we can utilize what freshwater we do have.

Q. Let's go back to your water well in No. 1?

A. This is the windmill?

Q. This is the windmill.

A. All right, sir.

Q. You've been familiar with that since you've been out there for the last 45 years?

A. Yes, sir.

Q. Has that well ever gone dry?

A. No, sir.

Q. Never gone dry?

A. It quits pumping once in a while, but the reason is that the old check will actually get trash in it. And my wife kids me, we used to call it the balking mill because if I'd go by and hit it with a sledgehammer, it would go to pumping.

Q. So it's never gone dry and it's always pumped unless you have some problems with the pump?

A. Yes, sir.

Q. There's always been water in that tank that it supplied?

A. No. Now, I cut that mill off. We're not utilizing that mill, but I have that problem. The dove hunters and the quail hunters love to hunt on our property, and we permit hunting. And if I don't provide them water, they shoot up my facilities, so at this type of year I have got my water on so they can hunt out there.

Q. So they may be shooting that windmill up today?

A. Right.

MR. KELLAHIN: As we speak.

MR. STOVALL: That's right, hunting season started today.

EXAMINER STOGNER: I passed a lot of hunters with shotguns on the road coming from Moriarty.

I have no other questions of Mr. Stradley -- or Stradley?

THE WITNESS: Stradley.

MR. STOVALL: I do have some.

EXAMINATION

BY MR. STOVALL:

Q. Just looking at photo No. 3 -- this is

more out of curiosity -- it appears to be some civilization in the background there. Is that Monument?

A. Monument would actually lay to the right of this picture. It wouldn't be in this picture, I don't think. But this picture is taken from the corner of the Cooper facility shooting directly to the west. And it actually shows the downhill incline of this property.

MR. KELLAHIN: Let me show you the original so that you can see what Mr. Stovall is identifying for you to describe.

THE WITNESS: All right.

MR. KELLAHIN: See out in the distance?

THE WITNESS: These facilities are probably on the other side of the Monument highway. And the trees that you see to the right are the little community of Monument, but I suspect they're just a little bit south of Monument.

MR. STOVALL: Okay.

THE WITNESS: You can actually go south of Monument about half a mile and you can see this facility laying back up to the

east-southeast from a half a mile south of Monument.

Q. (BY MR. STOVALL) Let me see if I understand what your understanding of the facility is just for -- I think you said so, but I want to make sure. On any of your exhibits where you've marked the Cooper facility --

A. Yes, sir.

Q. -- is it your understanding that that is going to be a quarter-quarter section in -- the entire 40 acres is going to be right up to essentially the fence line?

A. They're within 20 foot of my fence line now. I really don't know what the facility is. Because we wrote several letters -- I say "we," my attorney did -- trying to get some clarification. And every time we'd write a letter, we'd get one back that says that the OCD has no jurisdiction on adjoining property.

Well, we're not that concerned with adjoining property; we're concerned with the deterioration of that water in that area. So, as far as what the size of that will be, it's my understanding that we started out with maybe a 3-acre or 5-acre facility, of which I didn't give

too much concern because I always considered the Coopers friends.

But when they start talking they might just make it a 40-acre facility, and the fact that I've serviced the oil field for the last 35 to 40 years, it concerned me what might go in that facility, regardless of how cautious you are about trying to monitor it.

Q. To the best of your knowledge, did C & C or Cooper provide you with any sort of plat or information as to how they're using the entire 40 acres and how it's going to be laid out?

A. It's my understanding that we got one letter from C & C that said that they were putting the facility in and that there would be no tank bottoms, which would be impossible to actually keep the tank bottoms out of it.

But at any rate, it's my understanding that they give me one letter that was addressed to S & W Cattle Company. And I actually visited with Mr. Jimmie Cooper probably a week before he started this facility. I had an old cow that was trying to have a calf. Jimmie stopped, and we visited quite a bit, and he didn't mention this facility.

Q. Again, you've not actually seen something from C & C that lays out the 40 acres and says what's going to be where that on that 40-acre tract?

A. I have not seen that. However, we have been told, too, that this information was on record, that they weren't able to furnish it to us, but that we could hire somebody to come and get it. It's my understanding we do have it in our office.

It's also my understanding that my attorney was quite concerned, knowing the fact, like I say, having dealt with the oil field for the last 35, 40 years, what's going to happen to this facility when they get it full and go off and leave it. I know what will happen; it's going to pollute the water of Monument.

MR. STOVALL: I don't have any other questions at this time.

EXAMINER STOGNER: Thank you.

Mr. Kellahin?

MR. KELLAHIN: I'd like to excuse Mr. Stradley and call Mrs. Elsie Reeves.

THE WITNESS; Thank you very much.

EXAMINER STOGNER: Thank you, sir.

MR. STOVALL: Mr. Stradley, are you going to be around? I assume you're sticking around for the whole show here; is that corret?

THE WITNESS: Well, I surely can, yes, sir.

MR. STOVALL: Just in case there are any other questions that come up. Again, this being a new process, we may want to get you back and ask you a couple things.

THE WITNESS: I'll stay here from now on, if that's what it takes.

MR. STOVALL: Hopefully, we won't keep you here all day, but we'll see.

MR. KELLAHIN: Mr. Examiner, I'd like to call at this time Elsie M. Reeves.

ELSIE M. REEVES

Having been duly sworn upon her oath, was examined and testified as follows:

EXAMINATION

BY MR. KELLAHIN:

Q. Would you, please, state your name?

A. Elsie M. Reeves.

Q. Mrs. Reeves, where do you reside?

A. Phoenix, Arizona.

Q. The property that Mr. Stradley

identified in this area as being the Laughlin Farms or the Laughlin Ranch area, do you have knowledge about that area?

A. Yes, I do.

Q. What is your family's ranch area within this vicinity? How is that called? What do you call it?

A. We call it the Laughlin Properties, M-E-D-L Laughlin Property and the W-H-B Laughlin Property.

Q. What is your relationship to the Laughlin Properties?

A. My grandparents and my father homesteaded our properties in the area.

Q. When we look at what Mr. Stradley has identified as Exhibit No. 5 -- and I want to show you another copy of that -- there is an area identified with a yellow marker on this display, Exhibit No. 5, what does that represent?

A. That outlines the Laughlin property in Lea County.

Q. Give us a summary of the history of this particular portion of the Laughlin property as identified on this Exhibit No. 5.

A. The south half of the northeast

quarter, the southwest quarter of the north -- pardon me, the southeast quarter of the northwest quarter and the south half of Section 4 together with the southeast quarter of Section 5 and the northeast quarter of the northeast quarter of Section 8 and the north half of Section 9 is all Laughlin property.

Q. Is this fee property that was homesteaded by your family?

A. That's correct.

Q. What do you do with that property now?

A. We lease the surface on a grass lease basis.

Q. And what does your lessee do with the surface?

A. He grazes cattle.

Q. Are you familiar with the surface of the Laughlin Ranch Properties?

A. Yes, sir, I am.

Q. And you have been on that property numbers of occasions, have you not?

A. In the past few years, I've eventually covered all of it.

Q. Within the area identified by the yellow marker, can you identify for us any

sources by which freshwater is produced?

A. Yes. The windmill, it's here designated by a blue dot in the southwest -- southeast quarter of the southwest quarter probably in Section 4 is the Laughlin windmill.

Q. All right. Describe for us what information you have on that windmill.

A. To the best of my knowledge, the windmill is approximately 50 -- the well is approximately 50 feet deep. There is approximately 15 feet of water in the hole, and it is 35 feet to water.

Q. How long has that windmill been in existence? Do you remember?

A. The windmill itself?

Q. Yes.

A. I would say from the 1950s, I believe, the windmill has been there. The water well itself has been there longer.

Q. How long has the water been produced from the freshwater aquifer at this location?

A. Since the late 1930s or possibly the early 1930s in that particular place.

Q. Do you and your lessee continue to use this windmill as a source of freshwater?

A. Yes, sir.

Q. What does your lessee do with that water?

A. He attempts to hold it in a holding tank and waters his cattle from it.

Q. Is there a continuous supply of water that's producible from a well at this location, or is this a periodic windmill that occasionally has water?

A. No. This has always been a water source on this property. There were -- in our original homestead, my grandparents' original homestead, there were two more water wells just north of this windmill, two more windmills, and that was in the early 1900s. And those windmills continued to supply water to the family up until 1920.

Sometime after 1920 the family moved away, and the windmills then deteriorated and this one was used.

Q. Without repeating for you Mr. Stradley's testimony or his observations about the topography in the area, consistent with your own observations?

A. Yes.

Q. Summarize for us the relationship of your windmill to the Cooper facility, the landfarm facility we've talked to in terms of the topography.

A. It is down-elevation.

Q. Which is down-elevation?

A. Pardon? The windmill is down-elevation from the proposed facility.

Q. When you look at this contour map, any of those that we've reproduced, do you find the contouring to be an accurate depiction of the surface as you know it?

A. As I know it, yes.

MR. KELLAHIN: That concludes my examination of Mrs. Reeves.

EXAMINER STOGNER: Thank you, Mr. Kellahin.

Mr. Carr.

EXAMINATION

BY MR. CARR:

Q. Mrs. Reeves, your water well in the southwest of No. 4 is actually up-dip, is it not, from the water well operated by S & W in the southwest of 3?

A. According to this, yes, it is.

MR. CARR: That's all I have.

EXAMINATION

BY EXAMINER STOGNER:

Q. You mentioned the surface lessee. May I ask who that is?

A. Yes. The current tenant is Malcolm Coombes.

Q. C-o-n-e-s?

A. C-double-o-m-b-e-s.

Q. Are there oil and gas wells on the surface of your property?

A. Yes, sir.

Q. Approximately how many?

A. Total?

Q. Just approximately.

A. Fifteen.

Q. Fifteen. Okay. Are there any residential dwellings on your property at this time?

A. On our property?

Q. Yes.

A. No, sir.

Q. So nobody is living on it except cattle and windmills and oil and gas wells; is that correct?

A. And a few snakes.

Q. And a few snakes. And Highway 8 goes right across?

A. And Highway 8.

EXAMINER STOGNER: I have no other requests of Ms. Reeves.

MR. STOVALL: Just a couple.

EXAMINATION

BY MR. STOVALL:

Q. Do you know how far it is from the Cooper property to your windmill?

A. To the windmill it's slightly over a half mile. It would probably be closer to three-quarters of a mile to that particular windmill down to the caliche pit on our property, which also holds water occasionally. It's about the same probably. Just about three-quarters of a mile.

Q. That's up to the south, I guess, southwest corner of that Cooper property; right? Is that where you're measuring when you say three-quarters of a mile?

A. Three-quarters of a mile from the proposed facility over to the windmill on Section 4.

MR. STOVALL: Okay. Nothing further at this time.

EXAMINER STOGNER: I have no other questions of Ms. Reeves. She may be excused.

Mr. Kellahin?

MR. KELLAHIN: May we take a five-minute break, Mr. Examiner, and I'll get Mr. Kelly ready for his technical testimony.

EXAMINER STOGNER: Okay. Let's take about a ten-minute recess at this time.

[A recess was taken.]

EXAMINER STOGNER: Hearing will come to order.

Mr. Kellahin.

MR. KELLAHIN: Thank you, Mr. Examiner. I'd like to call at this time Mr. Tim Kelly.

T. E. KELLY

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

EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Kelly, would you, please, state your name and occupation?

A. My name is Tim Kelly. I'm one of the

principals in the firm of Geohydrology Associates in Albuquerque, New Mexico.

Q. And you reside in Albuquerque, New Mexico?

A. Yes, I do.

Q. Do you hold any professional degrees, Mr. Kelly?

A. Yes, sir. I have a bachelor of science and a master of science. Both majors were in geology. I received my master's in 1961. At that time there were no curriculum being taught in hydrology, per se. I have taken subsequent graduate work in courses related to hydrology.

Q. Describe specifically what it is that your firm does?

A. Our firm does primarily water resource evaluations and environmental studies. Basically we do anything that has to do with water from the design of municipal wells to the remediation of contamination of various types.

Q. Did your firm represent the Four Corners Gas Producers Association in the vulnerable water hearings conducted before the New Mexico Oil Conservation Commission?

A. Yes, sir.

Q. On past occasions have you testified before the Commission and the Division concerning hydrology and groundwater studies that were impacted or affected by oil and gas operations in New Mexico?

A. Yes, sir.

Q. Did you testify before this agency with regards to the permitting of surface disposal areas for Laguna Gatuna and Laguna Quattro, I believe it was?

A. Yes, sir, we have.

Q. In addition, do you provide geologic and hydrology expert assistance to parties seeking approvals before the State Engineer's Office?

A. Yes, sir.

Q. In addition to approvals before the Environmental Improvement Division?

A. Yes, sir.

Q. Have you had an opportunity to review the C & C Landfarm, Inc., application before the Oil Conservation Division that is the subject of this hearing?

A. Yes, I have.

MR. KELLAHIN: We tender Mr. Kelly as

an expert geohydrologist.

EXAMINER STOGNER: Are there any objections?

MR. CARR: No objections.

EXAMINER STOGNER: Mr. Kelly is so qualified.

Q. (BY MR. KELLAHIN) With regards to this particular area of Lea County that is the subject of this application, have you in the past ever conducted for any other client or for your own interest studies of the geology in the particular area?

A. Yes, sir, we have. We spent several years providing technical support for applications that were being submitted by Climax Chemical Company, which is located approximately four miles west of the proposed facility.

Q. As part of that study, in addition to other searches and research you may have conducted, are you generally familiar with the concept of the accumulation of freshwater within and above the Redbeds in this area?

A. Yes, sir, I am.

Q. Give us a general overview of the hydrology and the geology that's involved when

you examine the feasability of a project such as this in this kind of area.

A. Well, it's very complex because the proposed facility is immediately west of an extension of Mescalero Ridge, which is sometimes referred to as the boundary of the high plains where the Ogallala Formation is present. And below the escarpment of Mescalero Ridge, there is an area where the Redbeds crop out, the Redbeds in this case being the Chinle Formation.

And then, as you get away from the escarpment, there is an accumulation of rework Ogallala, which is in part alluvial in origin and in part windblown in origin. And then there are caliche deposits that have formed within this unconsolidated material.

So it is rather complex with large capacity wells to the north and east. And then, as you get off of the Mescalero Ridge to the south and west, small pockets of water form and gradually there is a widespread aquifer on top of the Redbeds.

Q. When you look at the particular feature that's involved around the S & W Cattle windmill and the proximity of that feature to the C & C

Landfarm, is there a way to describe or characterize what that feature is?

A. In reviewing that feature on the topographic maps in which the S & W windmill is located, I believe that's a collapse feature similar to Sand Simone Sink. And there are a number of other collapse features throughout southern Lea County.

And I believe that this is actually a faulted structure in which there has been a collapse so that it would form, as Mr. Stradley pointed out, a bowl into which groundwater will move.

Q. Can you look at the surface and the topography of this area and draw any relationship to what the subsurface may be?

A. Yes, sir. In this particular case it's very clear that that collapsed structure is to the south and west. And in fact there are several closed contours.

Q. Characterize for us the Redbeds as they have been generically identified and what that does in terms of its ability to hold water that can be utilized for freshwater purposes?

A. Well, in southern Lea County, the

Redbeds can actually be one of two formations. In the western part of the county, it's the Santa Rosa Formation, which is primarily a sandstone. And then as you get east and into this area, it's the Chinle Formation.

The Chinle has several members, one of which is the Petrified Cliffs Member, which is actually quite sand and gravel. It gets its name from the Petrified Cliffs -- Petrified Forest, I'm sorry, the Petrified Forest Member from Arizona. And there is a lot of sand and gravel in that particular formation.

Elsewhere there are zones, strata of siltstone and sandstone within the Chinle. And, in fact, it's not uncommon for stock wells in that part of the state to be completed in sand lenses or siltstone lenses within the Chinle.

Q. Let me ask you to direct your attention specifically to the proposed application. And while it is contained in Mr. Carr's Exhibit No. 1 for his client, I have separated out the original application and marked it as Exhibit No. 6, Mr. Kelly, and I show that to you.

Does Exhibit No. 6 represent the application of C & C Landfarm that I asked you to

undertake a review and evaluation of?

A. Yes, sir.

Q. Let me show you what I've marked as Exhibit No. 7. Again this is a cross-sectional diagram taken from the same information Mr. Carr has utilized. And for convenience I have separated it out and marked it as S & W Exhibit No. 7. Are you familiar with this cross-section?

A. Yes, sir.

Q. And then finally, sir, I want to show you what is marked as S & W Exhibit No. 8, which is the May 20, 1992, Conditions of Approval issued by the Oil Conservation Division.

Again for convenience, so that we have these documents in front of you for your reference, you have examined Exhibits 6, 7, and 8 as part of your review of this application?

A. Yes, I have.

Q. Let me ask you some preliminary questions about the criteria that you would apply as a hydrologist to analyzing this application or similar applications before other agencies dealing with this kind of topic.

I want to ask you to give us a summary of the adequacy, in your opinion as an expert, of

this application in context and within the administrative framework of the State Engineer's Office and the Environmental Improvement Division, as well as this type of application before the Oil Conservation Division, so that we can have some framework of your point of view on your opinions.

A. Well, in my opinion this application would not be approved under the guidelines that are established for a similar type of facility by the State Engineer's Office or the Environmental Department or the Bureau of Mines & Mineral Resources.

Q. When you apply that analysis and reach the conclusion that you've just expressed, describe for us the reasons that cause you to reach that conclusion.

A. Well, I think that the Oil Conservation Division is in the early stages of developing criteria and have not had the opportunity to experience the problems that some of the other agencies have experienced in the past.

Also, I suspect that many of the other state agencies, such as the State Engineer's Office and particularly the Environmental

Department, have the benefit of input from federal agencies such as the Environmental Protection Agency.

But, as a general rule, I just find that the material being required does not address all of the hydrologic problems that could evolve as a result of this type of facility at this location.

Q. Describe for us the kinds of problems that you see that may occur in this area if this application is approved.

A. Well, first of all, as I pointed out, the depression in which the S & W windmill is located, I believe, is a structural feature. If that's true and the contour maps are read accurately, there is one contour, it's the 3555 foot contour, which actually borders the western boundary of the proposed 40 acres.

It's quite possible that this is fault control. Therefore, the shale, even if it is impermeable, which seems to be the assumption made by C & C, may in fact be faulted. Even if the fault is inactive, it could act as an avenue along which contamination could move.

So this would not meet the

requirements, for example, of a sanitary landfill which have to meet certain seismic requirements and be so far away from any known faulted area.

Q. If you were the applicant or representing the applicant as an expert, describe for us the kinds of sampling, testing, or other studies that you would undertake in order to support and justify this type of application?

A. Well, first of all, they have based their application on the assumption that the Redbeds are impermeable. I think that's false. I don't believe they are impermeable. They may be very low in permeability relative to the overlying material. But, nevertheless, I believe that there is a permeability within the shales.

Also, they have not provided -- I would suggest, if I were their representative, that they need to determine what the cation exchange rates are of the shale. They need to determine the in situ permeability of the shale.

If in fact they're going to use this to build a dike, they can't determine what the permeability of remolded shale is if they don't know what the in situ permeability is to start with. So I would recommend that that information

be collected.

They have a 40-acre tract which consists of the Redbeds, which have an erosional surface, and then capped by unconsolidated material above. While the conditions of approval state that no free liquids will be allowed, it's highly unlikely that that the material that's going in will be bone dry. Therefore it will have moisture, which will create a leachate and will move down to the Redbeds.

Also, any precipitation on the 40-acre tract will create a leachate, and no facility has been designed to remove this leachate from the facility.

Likewise, they don't know what the configuration of the Redbeds are in the subsurface beneath the 40 acres, so they don't know where the leachate is going to go. So they wouldn't know where to put their recovery system. In other words, I would recommend that they drill a significant number of monitoring wells and draw a contour map on top of the Redbeds beneath the 40 acres.

And then there are another couple of things that I would suggest that perhaps in their

application they need to look at, and that is their drillers' logs do not appear to have been made by anyone with any technical background, so I don't believe their drillers' logs are dependable. And I think they need to get more information on that.

And then, of course, nothing is presented in the application -- and this would be something I'd recommend to them -- is while a monitoring program is specified, there is no information specified as to when this is going to be submitted to the OCD, nor is the closure plan complete.

There are things that they haven't addressed such as there's no bonding required. And if this facility was taken to complete -- well, to completion, who would be responsible for the monitoring after C & C walks away from it? I don't think the state is. Normally that type of thing is covered by bonding.

I think that I would recommend that they have a drainage plan. Almost any major engineering project in the state requires a drainage plan with the guideline being: How will this facility be affected by a 100-year flood

event?

Not only is this facility located just below the Mescalero Ridge, an extension of Mescalero Ridge, but in fact there is on this exhibit -- which I don't know what the number is -- but on this exhibit, there is an arroyo coming off the ridge which is aimed directly at the front gate of the facility.

Q. Take a moment and let's identify the display that you've used. It is Exhibit No. 3.

A. All right. The contour on the right-hand side above the elevation point 3573, this is a drainage system which is pointed directly at the facility itself. And in fact I noticed that the approval conditions do not require a dike on the east boundary. And that's the direction from which any flooding is going to occur.

So these are all things that I would recommend to C & C that they address, these and some others.

Q. When you look at the package of data and information supplied in support of the application, did you find any hydrology studies?

A. No, sir.

Q. Did you find any geologic studies?

A. No, sir. What they referred to was some published data. Well, an example was they used a contour map to show where the groundwater is. That map was part of -- was a photocopy of Plate 2 of the New Mexico Bureau of Mines Groundwater Report No. 6, published in 1961.

And a footnote on that same plate states that the data was collected in 1953 and 1954. So that data is 38 or 39 years old, and I certainly don't feel that that is representative of the groundwater conditions that exist today.

Likewise, their geologic map was taken from that same publication. And it should be pointed out that that publication was intended to show the general characteristics of the entire south half of Lea County and certainly was not intended to be used as a site specific document for a site such as this.

Q. Did you find evidence of composition samples or tests to support the application?

A. Well, there's contradiction in that. Their test logs, which I've already alluded to, simply show that below the soil, it's caliche or rock all the way to Redbeds in all five of the

holes that they drilled, and yet on the item No. 10 they referred to the presence of sand.

And this would certainly be in accordance with the findings that we had in our drilling in that area in which, while caliche is present, it is certainly erratically distributed. And there is a large amount of sand in the alluvial material above the Redbeds, and frequently there's a gravelly zone at the base, which would be expected on top of an erosional surface like that.

Q. Did you find any evidence of compaction testing, data tests, or samples?

A. No, sir.

Q. Did you find any evidence of permeability tests?

A. No, sir.

Q. There is indication in the report of water samples and at least analogies to water in the area?

A. They collected a sample, I believe, from the S & W windmill, which they refer to in their report as being approximately one mile southwest, but in fact I scaled it off, and I would agree with Mr. Stradley that in fact it's

less than half a mile. But that is where the sample came from, yes, sir.

Q. Do you see any evidence of any type of percolations tests or data?

A. No, sir.

Q. Any groundwater migration tests or data?

A. No, sir.

Q. Any contaminant mobility tests or data?

A. No, sir.

Q. I provided to you three well reports of wells that were up-dip from the facility that were supplied to me by opposing counsel. Did you have an opportunity to look at those?

A. No, I did not.

Q. Okay. When you look at the general migration of water in this area, if waste materials are introduced in a point in the vicinity where C & C proposed do that, will it pose any potential risk to the impairment of freshwater sources?

A. Yes, sir. I believe the direction of movement will be in the direction of the S & W windmill.

Q. Based upon the available data, is there

any way to determine how long it will take for that occurrence to happen?

A. Not on the data that was presented in this application. In the work that we did, which included digital modeling and projection of 40-year rates of movement at Climax Chemical four miles west, I would have to make the assumption that it would probably take a year, perhaps a little longer, and it may be less. But that's based on that information from several miles away.

Q. Let's turn to Exhibit No. 7, which is the north-south cross-sectional diagram --

A. Yes, sir.

Q. -- that was presented by the applicant. Give me your observations, comments, and opinions concerning this diagrammatic demonstration of their facility.

A. Well, there are several things. It's interesting in their application that they state that the depth -- this is in Roman numeral VI -- describing the diagram, they state that the top of the Redbeds is approximately 10 to 12 feet. And yet, according to this diagram, it's 13 to 14 feet. And then elsewhere in the documentation, I

believe it refers to the depth as much as 16 feet. So you have to take the diagram as it's presented here and not as you read in the documentation.

Also, you'll notice the property line is shown on both the north and the south boundary. So I conclude from this that in fact the entire 40 acres are going to be utilized since this is a north-south cross-section of the pit facility.

Two-foot dikes are shown, Redbed dikes are shown. And I've already referred to the fact that, if you don't know what the permeability is of the formation in place, then there's no way you can determine what the permeability of a dike composed of this material is likely to be. It would certainly be less than the in situ permeability.

But I question whether or not a dike, which is 2 feet wide and 16 feet -- 16 or 17 feet deep and 5280 feet long could even be constructed. I don't think physically you could construct such a facility, and I certainly don't know how you could compact it.

And also something that wasn't

addressed in the facility -- or in the report, this indicates a caliche berm, which is presumably going to be constructed from the material that's removed. But I calculated that they're actually going to remove approximately 1 million cubic yards of fill, and once they remove that they're going to change the volume to about -- excuse me, 2 million yards.

And once they remove that they're going to have a volume of approximately 2.2 million yards, so they're going to have plenty of caliche for a berm. In fact, they're going to have enough caliche to grade any road in Lea County. And if that were true, that volume of fill under the State Mining Act would have to be reclaimed.

So I have a number of problems with this diagram. Also the monitor wells are shown here, but as I pointed out, they've drilled five, and they haven't really determined the top or the configuration of the top of the Redbeds. And they haven't drilled a monitor well on the east side, although that's what their application states. They drilled -- there is no monitor well on the east side as shown by their drawing. It may have been put in later.

[A discussion was helf off the record.]

Q. Regardless of the size of this facility, is this particular proposed plan for an excavation and a dike with monitoring wells an appropriate one for this type of material?

A. Not in my opinion as presented here, no, sir.

Q. Referring back to Exhibit No. 3, Mr. Stradley identified what he thought were wells, he characterized as monitor wells, identified as he found them on the surface to be in the general area of those three green dots. If that in fact is the purpose of those wells, are they properly located in your opinion to act as appropriate monitor wells to detect potential contamination of materials leached from the pit area as they might move and migrate to the south and southwest?

A. No, sir, I don't think they are.

Q. In summary then, Mr. Kelly, summarize for us your conclusions and your recommendations to this Examiner.

A. Well, my conclusions are that the material as presented for the application are seriously lacking in technical support, and I

think that as presented that they don't -- there is not sufficient evidence to justify the approval of this application.

Q. In your opinion will approval of this application, under the conditions the Division has applied to this application, those conditions being 1 through 10, if that is how the Examiner resolves this, will the Division have protected human health, the environment, and avoided a risk to the contamination of groundwater?

A. Not in my opinion.

Q. Has the applicant proposed, as best you can find in the information provided, a means to detect the migration of contaminants with the monitoring wells to afford an adequate assurance of detection of those contaminants?

A. No, sir. I don't think as presented it would be adequate either during operation and certainly not after operation.

Q. In your opinion does the applicant's proposed plan put at risk shallow freshwater sources that are located down-dip from the proposed facilities?

A. Yes, sir.

Q. In your opinion will the applicant's

plan prevent the migration of contamination down-gradient along the Redbed surface?

A. No, sir, not on the basis of the data that's presented.

MR. KELLAHIN: That concludes my examination of Mr. Kelly.

EXAMINER STOGNER: Thank you, Mr. Kellahin.

Mr. Carr, your witness.

EXAMINATION

BY MR. CARR:

Q. Mr. Kelly, when did you become involved on this project?

A. Friday afternoon.

Q. And so you've been working on it just that length of time?

A. Yes, sir.

Q. If I understood your testimony, you were concerned that the standards that have been developed by this agency are in fact at this time inadequate?

A. What I said -- I believe my testimony is that, in comparison with other regulatory bodies, they do not -- they are not as stringent.

Q. Are you aware of the efforts that are

being made by this agency to develop new and additional requirements for projects of this nature?

A. No, I'm not.

Q. Wasn't it your testimony that they're sort of behind the curve when compared to, say, the State Engineer or EPA in terms of monitoring these facilities?

A. I think my testimony was that the other agencies had the benefit of more time and other agencies to provide input to them, which the Oil Conservation has not had the benefit.

Q. If in fact this application were approved, wouldn't it be appropriate to require that the facility be kept in line with new and additional requirements imposed by the agency?

A. Yes, sir.

Q. Now, you talked about the potential for faulting in this area. What's the problem with the fault? Is that a channel for the migration of fluids? Is that why a fault would be of concern?

A. Two reasons: One -- that's correct, that is Item No. 1. It could act as an avenue through which the contamination would move. And

the other is, when you do have subsurface faulting, you don't know what the configuration of the Redbed surface is, and it is the Redbed surface which is faulted. So we don't really know what direction the groundwater might move in the vicinity of a fault.

Q. Well, without more information you can't tell the location of any faults in this particular area; isn't that a fair statement?

A. Yes, sir, that's correct.

Q. You're just concluding that from the topography there is a potential for faulting?

A. No. I'm basing it on my knowledge of the area and the reports that have been published in which the faulting is well documented. And this particular site is geologically identical to those others where there has been more study made.

Q. If you couldn't right now tell me or point to where any fault might be in this particular area.

A. If I were mapping it with aerial photos, I would draw a fault along the White Breaks.

Q. Can you tell us that there is a fault

there?

A. Not without going down there.

Q. Okay. Now, you were, I believe -- and correct me if I'm wrong -- involved with the development of the facility at Laguna Gatuna; is that correct?

A. We've done several projects at Laguna Gatuna.

Q. Were the kinds of tests and studies that you recommend be utilized here conducted on the facility at Laguna Gatuna?

A. No. It was a totally different geologic and hydrologic environment.

Q. So the tests were not required there?

A. No. In that case the discharge was going into the lake and into the liquid itself; whereas, in this case it's going into the sediment.

Q. And so if these tests that -- if I understand your testimony, you were saying that this kind of testing and additional information would be necessary to satisfy you at least that this was a safe facility. Is that what those recommended tests would do?

A. Yes. And I would presume a regulatory

agency would want those tests also.

Q. And if those tests should be required by this agency and conducted, then would you have no objection, I would assume, to amending this application for the disposal of fluids at that site?

A. I might have a problem with the disposal of fluids no matter what was done in view of the presence of the S & W windmill. But if those tests were done and the facility was used as described in this Conditions for Approval for solids and the numbers were adequate, then I could not object to that, no, sir, as least not as far as the permeability is concerned, the in situ permeability.

Q. When we talk about Laguna Gatuna, in fact, you own an interest, do you not?

A. No, sir, I don't.

Q. You don't?

A. No, sir.

Q. Isn't that also a collapse sort of feature down there as well as what we're talking about here?

A. Yes, sir.

Q. So there would be faulting and

potential problems there too?

A. Yes, sir.

Q. Different kinds of testing and data would be required there that would be required here?

A. In that area it's a totally different geologic environment. That is all part of Nash Draw, which is a well-known collapse feature in Eddy County. And in fact there is evidence that the groundwater in there is moving upward along the fault rather than downward because of the amount of brine that's been discharged by the potash industry and the potash refinery over the years.

Q. Isn't it fair to say our concern is that liquids will migrate from this pit subsurface and that that will become the source of contamination of freshwater in the area?

A. Yes, sir.

Q. And you understand we're not proposing to dispose of any liquids in the field?

A. I understand that.

Q. And you understand, do you not, we've already had the 100-year flood in the last few months?

MR. KELLAHIN: It just went through Mr. Carr's house.

A. Well, the 100-year flood is a statistical analysis. And the 100-year flood can occur two years in a row.

Q. Are you aware that after that the Oil Commission went out and checked the monitor wells and inspected them and they remained dry?

A. No, I am not. I have not seen any water level information or reports on that.

Q. You told us what you think we ought to do --

A. Yes, sir.

Q. -- the kind of tests that ought to be required. And I recognize you've only been on this since Friday, but what sort of test data do you have or tests have you conducted? Any?

A. On this site?

Q. Yes.

A. I have conducted none.

Q. Are you aware that there is a requirement and that C & C, if this is approved, will have to post a $25,000 bond that could be used to close this facility if they walked away from it?

A. I have seen no reference to that.
Q. The material that you've reviewed, I guess you got from Mr. Kellahin?
A. That's correct.
Q. And this was material that, at least from the diagram, would include apparently the entire 40 acres?
A. Yes, sir.
Q. So you don't have any problem with being kept in the dark that we were only looking at 2 acres. I mean, you understood from this diagram that 40 acres were being looked at, did you not?
A. There are contradictory statements. Some say 2 acres and some imply 40 acres. So I have to make the assumption based on this diagram you're going to dig a 40-acre hole.
Q. If we were going to talk about adequate monitor wells to keep an eye on this facility, wouldn't the most appropriate place to locate these wells be down-dip from the pit itself, down-structure from that facility?
A. Well, what you're talking about is an erosional surface on the top of the Redbed, and we don't know what down-dip is on that. We know

what down-dip is on the surface, but that's not necessarily what happens in the subsurface.

Q. And if in this continuing review by the agency they conclude that they don't have a handle on this, then it would be appropriate for them to require additional monitor wells, wouldn't you think?

A. Yes, sir.

MR. CARR: I think that's all I have. Thank you.

EXAMINER STOGNER: Any redirect, Mr. Kellahin?

MR. KELLAHIN: Yes.

FURTHER EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Kelly, you were hired on Friday because of the death of the wife of my prior geologic witness, were you not?

A. Yes, sir.

Q. Did it take you more than a weekend to discover the serious flaws in this application?

A. No, sir, it didn't.

Q. When we talk about liquids, hydrocarbons, and this project is confined to solid waste materials, and this pit is subject to

the accumulation of rainwater, will there be leaching of hydrocarbons into the subsurface and into the aquifer even if the applicant attests to the fact that he's not putting liquid hydrocarbons into this pit?

A. Quite probably there would be. And certainly the application also refers to sediments that are high in salt content. And the salt content would actually be more mobile than the hydrocarbons.

Q. Whether this facility is 40 acres, 2 acres, 5 acres, does it change your conclusions that you've reached concerning this application?

A. I believe that regardless of the size, there's a danger to the S & W windmill and other water supplies down-gradient, yes, sir.

MR. KELLAHIN: That concludes my examination Mr. Kelly.

MR. CARR: I just have one follow-up.

EXAMINER STOGNER: Mr. Carr.

FURTHER EXAMINATION

BY MR. CARR:

Q. You were retained just in the last week. Who were you contacted by? Mr. Kellahin?

A. As a matter of fact, I was out of town

on Friday, and one of my associates, Mr. Kilmer, was contacted by Mr. Kellahin. Mr. Kilmer and I met on Saturday and discussed the contents and worked on this. But it was Mr. Kellahin.

Q. And did you agree on Friday to assist him with this?

A. No. What we agreed to do on Friday was to review the file over the weekend and then call him on Monday and give him our assessment of the application and see how he wanted to proceed.

Q. You've worked for Mr. Kellahin in the past, have you not?

A. Yes, sir.

Q. And you knew, when you were reviewing this application, that he was representing people in opposition to the application, did you not?

A. Yes, we did.

MR. CARR: That's all I have.

EXAMINER STOGNER: Thank you, gentlemen.

Do you have any questions, Mr. Stovall?

MR. STOVALL: Once again I venture into geology and technology. Always a risk.

EXAMINATION

BY MR. STOVALL:

Q. Mr. Kelly, just so I can focus on what you consider the greatest potential threat or the potential threat -- I shouldn't say greatest -- what is the potential threat to the freshwater zone, particularly the windmill in Section 3? Is that the most likely to be affected? I would assume because it's the closest it's the --

A. Yes, sir. Not only is it the closest, but the surface contours indicate that it's in a depression. So that's the direction the groundwater is going to flow first. Where it goes beyond that, we don't have enough subsurface information to know.

Q. Given what you know about the nature of this operation, being that it is not for the disposal of fluids, and any creation of fluids is basically going to be rainwater or runoff or natural water coming into the area; is that correct?

A. Well that, plus the fact that undoubtedly the materials that are put into the facilities will have some moisture content. If that's not completely abated, then there will be an accumulation or -- and certainly it will hold

some moisture, which would increase the likelihood of precipitation accumulating. In other words, it's going to hold moisture in the soil or in the sediments.

Q. What would likely cause the moisture and in particular the concern about the hydrocarbons, the contaminants that would presumably be present in the soil, what would cause that to move? Would it be the moisture content of the soil itself, or is it going to be the addition of rainwater or drainage water?

A. No. It would be the addition of rainwater. Or if they happen to bring up a particularly wet load of contaminants, whatever it happened to be, that might contribute to it. But it would be in general the rainfall and perhaps the runoff.

Q. Recognizing that you've only had a short time, but -- well, let me ask you first as a preface, Mr. Kellahin had another geologist -- or the opponents had another geologist hired who was evaluating this material apparently -- presumably as it was going along or at least looking at it. Have you had the opportunity to review any of that person's work?

A. No, I have not.

Q. So you don't know if there have been any calculations made by somebody else as far as movement of the water and how much volume it would take, time, et cetera?

A. No, I don't. I'm not aware of any, although based on the information presented in the file, I see no information which would enable you to make those calculations. So if he were making calculations, he would do the same thing. I would have to take the data from some other source. So it really wouldn't be site specific to this facility.

Q. And, to best of your knowledge, nobody has requested that type of information from the applicant to enable that type of calculation to be made?

A. No, sir.

MR. KELLAHIN: Mr. Examiner, we have made that request.

MR. CARR: May it please the Commission, Mr. Kellahin requested the information that we had. We provided what we had.

MR. KELLAHIN: We requested that

information. They had none, Mr. Examiner.

MR. STOVALL: What type of information did you request, Mr. Kellahin? Is it in the packet of materials here?

MR. KELLAHIN: No, sir. It's outside the record. Here's Mr. Carr's response. Let me find for you the request. This is the list of the information each party requested from the other. Mr. Carr made a similar request as I made to him. But that letter at least itemizes the data that we sought to have the applicant provide.

MR. STOVALL: In other words, this is Mr. Carr's request to you for comparable data to which you had requested from him; is that correct?

MR. KELLAHIN: That's right.

MR. STOVALL: This is your August 5 letter, Mr. Carr?

MR. CARR: That's correct.

MR. STOVALL: Would you say that was a fairly accurate statement?

MR. CARR: That's an accurate statement. It's verbatim what Mr. Kellahin sought from me.

MR. STOVALL: Not original material; is that what you're telling me?

Q. (BY MR. STOVALL) Back to the question then, Mr. Kelly. Are you able to, based upon your experience and what knowledge you do have of the area, form an opinion as to what volumes of fluid might need to be present to cause the migration to freshwater sources that would potentially contaminate or length of time?

And the reason I'm asking this question is -- with an eye to help you structure your answer, with an eye to saying, okay, what can be done to prevent it from occurring?

A. I don't believe that it can be prevented from occurring. I believe that it could be minimized by a drainage study being required by the Division.

But also I think that the best way to resolve the problem would be, first, to define the configuration of the Redbeds in the subsurface and at the low point, based on the drilling, to install a leachate recovery well so that, as water accumulated in this well, it could be removed and disposed of in a proper manner.

Q. Presumably you'd have to know where the

-- well, let me back up and fill in my geologic knowledge here. I am concluding, from what little I know about geology and also from the exhibits which the opponents have presented, that the Redbed really represents the base of the aquifer or water storage formation; is that pretty much true?

A. That's the conclusion they have reached. And while I would agree that that is certainly a formation of low permeability, it's not necessarily impermeable. That's why I'm saying additional tests are needed.

However, even if some did infiltrate into the Redbeds, the bulk of the movement of the leachate would move along the top of the Redbeds to the low point beneath the facility. And at that site a recovery well could conceivably be installed.

Q. All the wells that have been identified, particularly, I think, Mr. Stradley is the one with the knowledge of those, it appears to me he's indicated that those wells have drilled to the Redbed and that the water table within the wellbore sits on top of the Redbed, which would lead me to the conclusion

that the movement of leachate or contaminated fluids that you'd be concerned about would be that which would occur above the Redbed or on top of the Redbed because that's how it would get to the water wells; is that correct?

A. Yes, sir, that's correct. That's where the greatest amount of water would go. In a sanitary landfill, for example, where virtually no liquids are put in place, the individual cells have to have an impermeable liner just because of the possible accumulation of leachate.

And also what we're talking about here is degrees of permeability. Mr. Stradley has a well which has 18 feet of water, and, as you've accurately described, the water is in the sand and gravel above the Redbeds.

But there are also wells in the area where that particular unit is dry and wells have been drilled into the Redbeds and completed in the Redbeds. So it's a matter of relative permeability encountered by the drilling operation as to where the water comes from.

Q. Are you familiar with the location of the wells that are drilled in the Redbed and get in the water from the Redbed?

A. Yes, sir.
Q. Where are they in relation to this?
A. West.
Q. How far?
A. Well, we found several like that in the vicinity of Climax Chemical, which is a maximum of four miles west-northwest. Also --
Q. I'm sorry. Go ahead.
A. Also Mr. Stradley pointed out that all of his wells are completed in the Redbed, but -- I mean, excuse me, in the shallower formation, but they haven't drilled into the Redbed. And since when you're drilling a well you're paying for it by the foot, the ideal thing is to try and get water as shallow as you can.

So if you can get the shallow water, that's the logical way to go. Plus the water quality is generally better.

Q. I understand that. Again, I guess, that restates the point that primarily the water we're concerned with protecting is in the water which would be most threatened by this facility, to the extent there is a threat to freshwater, would be above the Redbed level?
A. That's correct.

Q. And the wells which you've talked about which are in the Redbed are some distance away and probably, am I correct in concluding that that would mean if any contaminants from this location got there, it would have to be through some sort of fracture system most likely; that the low level of permeability of the Redbed would probably mitigate any migration over a four-mile stretch?

A. It would greatly reduce it, yes, sir.

Q. Again, recognizing that you've only been on this a fairly short time and really are looking at a lot of other peoples' evaluations and drawing your own conclusions, could you -- and also understanding your comment that just because you know what the surface does doesn't mean you know what the Redbeds 12 to 30 feet below it do, or whatever depth they are at this particular location -- any particular recommendation, again you're saying, put a well, a leachate well at the low point. Would one be enough? What do you have to do as far as identifying it?

A. I would think initially one would be enough. And in the event that more leachate was

present than could be handled by that well, you might want to put in additional recovery wells.

Q. I think you also expressed some concern with respect to the placement and number of monitor wells; is that correct?

A. Yes, sir.

Q. Again any specific recommendations as to what would be necessary with respect to those to adequately protect the freshwater?

A. Well, I'm somewhat confused about the size of the facility. If you look at this document, this particular map here, which is part of the application --

Q. Was that in your Exhibit No. 6?

A. It's -- yes, it is.

Q. Okay.

A. And this shows --

Q. Is that the one with the page 3 on the bottom?

A. Yes.

Q. Shows a road in the middle --

A. Yes, sir.

Q. -- kind of that arrow-like?

A. Yes, sir.

Q. Okay.

A. I conclude from looking at this that this is a 40-acre tract. And there are 5 wells that are shown here, 2 on the south, 2 on the west, and 1 on the north. If only 2 acres are going to be developed, then logically the testing and evaluation should be limited to those 2 acres, not the 40 acres.

So what I'm saying, sir, is that it depends on the size of the area as to how much drilling might be required. And I think that certainly it would require fewer holes to define the configuration of the Redbeds beneath 2 acres than it would beneath 40 acres.

Q. Just to make sure I understand the copy I'm looking at, it appears that the left side of the paper, as you hold it vertically, I've got what may be a cutoff end. Are you assuming that's north?

A. Yes, I'm assuming that's the north there.

Q. Okay. So if it's actually a 2-acre facility, am I again correct in assuming what you would recommend is they don't need as many wells, but should they be closer to where the actual pit facility is, or should they be that far out?

A. If they're trying to define this subsurface configuration, the hole should be drilled throughout the test area itself.

Q. Monitor wells or just test wells?

A. No. Test wells to determine the configuration of the Redbeds unless, as it's stated in the documentation, they're going to strip all the way down to the Redbeds. If they were going to do that, then they wouldn't have to do any drilling because they would be exposing the Redbeds. And so at that point you would know exactly where you're going to need your recovery wells.

Q. Okay. Now, I'm back on the monitor well question.

A. Okay. On the monitor wells it's simply a matter of putting the monitor wells down at the top of the Redbeds. And I believe that it states that they will take weekly measurements, although there's no statement in here that they will be reported weekly.

So, you know, all you can do is drill enough holes that the Division is satisfied that it's adequately covered and then take their weekly measurements and see if there's a change.

And what we have found in this area is that in areas of very low permeability -- or actually you can have what we call an ephemeral aquifer; it can be there at certain times of the year due to rainfall, and then it dries up. So just because you drill a monitor well today doesn't mean it's going to be dry six months from now or six years from now.

Q. Well, presumably if you're putting in a monitor well, as I'm seeing it, it would be a well which would remain in place and you would constantly watch both the volume and the make-up --

A. Yes, sir.

Q. -- of the fluids in that well?

A. Yes, sir, that's correct.

Q. If the applicant were required to contain their facility within a certain distance from the property, assuming that we're more than 2 acres and something less than 40, you have an area which is not a buffer zone, if you will, a test zone, a monitor zone from the edge of the property, and to maintain an adequate, however it's defined when we finish up here, monitoring system to determine if there's any leachate

moving towards the property edge, would that provide some protection, even if you just determined there were volumes, you could get in there and get a leachate recovery well fairly quickly to recover if you started seeing fluids moving in the wrong direction, so to speak?

A. Yes, sir, it would, but it would have to be site specific based on the aquifer characteristics that you're dealing with. And from that you could calculate the rate of groundwater movement. This would give you a better concept of how big a buffer zone should be.

Q. We clearly don't have those calculations. Nobody appears to.

A. No, we don't.

Q. Would that be the best containment method to use? You seem to be concerned about the dikes either, A, the feasibility of the construction of those dikes, but are you also concerned about the effectiveness of the dikes in terms of retaining any leachate or fluids within the property?

A. Yes, sir, I am.

Q. Do you have any recommendations that

you would make with respect to that construction which would retard if not prevent the flow of fluids from the property?

A. The Division could specify that the dike reach certain compaction levels such as those that are specified for a sanitary landfill. And that's really about all you could do is specify that during the construction, assuming that it was possible that the compaction reach an acceptable level.

Q. Would that reduce or eliminate the need for monitoring and recovery wells?

A. I don't think it would simply because if it doesn't work, and there's some question in my mind as to whether or not such a dike would be impermeable, without monitor wells nobody is going to know it's not working until Mr. Stradley finds out, and he'll be the first to know. And I don't think that's an acceptable alternative.

Q. If there are adequate -- and again we haven't defined what "adequate" means exactly -- but adequate monitor wells and identification of low point and leachate recovery wells, would that obviate the need for the dike? I mean, could

they go with the monitor wells and recovery system and eliminate the necessity for a dike? Would that provide adequate protection?

A. Conceivably it could, yes, sir.

MR. STOVALL: I don't think I have any other questions.

MR. CARR: Mr. Stogner?

EXAMINER STOGNER: Mr. Carr.

FURTHER EXAMINATION

BY MR. CARR:

Q. When we talk about these leachate recovery wells, how long does it take to install one, to drill one? Could it be done in a matter of weeks?

A. It could be done in a half a day.

Q. Is there any reason to install one before you discover you've got any leachate?

A. How would you discover you had it if you didn't have a well in?

Q. Wouldn't you use a monitor well to determine if you have it, and then is this a separate kind of a well from a monitor well?

A. No. You could use a monitor well. A monitor well could serve as a leachate recovery well. Frequently a monitor well is installed

with a 2-inch casing. And you can't -- it won't be adequate for a pump. So, you know, if the monitoring wells were, say, 4 inches or greater, then presumably you could use these.

Q. But it's conceivable if you're monitoring and you discover the problem, you could convert and address the problem at that point in time?

A. Yes, sir.

MR. CARR: Okay.

EXAMINER STOGNER: Mr. Kellahin?

MR. KELLAHIN: No, sir.

MR. STOVALL: Just one last question.

FURTHER EXAMINATION

BY MR. STOVALL:

Q. If they don't excavate to the Redbed where they physically observe it, would they be able to make a determination as to where the low point most likely was if, say, they put wells toward each corner to find out the general terrain of the Redbed?

A. No.

Q. Not monitor wells but --

A. No. This is just a test hole to determine the top of the Redbeds? My suggestion

to the Division would be you have competent technical staff members who could sit on the wells. And, as far as I'm concerned, in order to do that it would simply be a matter of hiring a rig and drilling enough holes until your technical staff was satisfied that they had found the low point.

And this may take -- you know, they may get lucky and do it with 4 or 5, and it may take 12 or 15. But again it would depend on whether you're talking about 2 acres or 40 acres.

Q. Well, let me ask you another question then. It appears from all of the evidence that we have seen that the freshwater that we're concerned with that needs to be protected is to the south and west of the facility. Would it be adequate to come up with a number of monitor wells on those sides of the facilities where we know where the water is, where the stuff to be protected is, and have your recovery system or potential recovery system there?

A. I would think that the recovery system should be on the facility itself.

Q. I do mean on the facility, but I'm talking about in terms of which side of the

facility.

A. Well, I think you would want it, as you suggested, a buffer zone. I think that the recovery system should probably be inside a buffer zone so that in the event that you found out that it was getting past, you'd still have some room to go out and do some additional work.

The other thing that would probably be appropriate as part of the monitoring system would be to monitor some of the existing wells in the area, such as Mr. Stradley's wells or the other wells that are in the area, and perhaps even put monitoring wells on his property.

Q. I guess my question -- let me go back to my question again. If they're building a 40-acre tract in Section 3, assuming some buffer zone, it appears that the freshwater in the area is to the south and west of that 40-acre tract.

It also appears to me, looking at Mr. Stradley's well, the Redbeds are at 33 feet. Again, I'm not sure of the surface, so that obviously throws it off a little bit. But it appears that the well, where they know the Redbed on the facility is somewhere in the 12- to 16-foot range. I think you're not exactly sure

what they're saying, but it appears to be there. It would appear to me that the dip of the Redbed probably is to the south and west towards where the water is.

My question is, if we build a monitoring system or require a monitoring system and a buffer zone, would it be adequate to do that to the south and to the west where it appears that both the dip and the water is located, focus on that side of the facility rather than on the north and east?

A. Based on the information we have, that would be the logical place to put it. But since we don't know what the configuration of the Redbeds is, it could also be moving straight west.

Q. Yes. That's why I say south and west.

A. Right.

Q. Okay. I assume you've not been out in this area and done any visual inspections of the general area; is that correct?

A. No, I haven't.

MR. STOVALL: Okay. Nothing further.

EXAMINER STOGNER: Thank you, Mr. Stovall.

Are there any other questions of Mr. Kelly at this point?

MR. KELLAHIN: No, sir.

EXAMINER STOGNER: If not, he may be excused.

Mr. Kellahin, do you have any --

MR. KELLAHIN: That completes my presentation, Mr. Examiner.

EXAMINER STOGNER: Thank you, Mr. Kellahin.

MR. STOVALL: I would like to recall either or both of your landowner witnesses just for one question. Start with Mr. Stradley. It will only take a moment.

W. TRENT STRADLEY

Having been previously duly sworn upon his oath, was examined and testified further as follows:

EXAMINATION

BY MR. STOVALL:

Q. Preliminary to that, do you have any oil or gas wells on your property within this immediate area?

A. When you refer to "immediate area" --

Q. Let's say it's on your exhibits that you've prepared.

A. You'll find several dry holes. There is some producing wells. It's a real strange situation. The old Van Eaton lease lays in Section 9, south of the Laughlin, and this was an old Getty lease. A lot of contaminants down there. The old ground is soaked with oil where in years past -- I'm talking back, you know, in the early 50s and 60s. A lot of the contamination.

I complained to Texaco, who bought this lease from Getty, and they felt like that time had probably taken care of this. However, I have been contacted by Enron, who says that EPA has made them go in and do some test work in this area. So we don't know exactly where it's being done, but there is test work being done by the EPA at the present time.

In regard to your question on the 16 sections we have, there may be 300 wells producing in that area and probably another 40 or 50 that have been plugged over a period of time.

Q. One of the areas I'm particularly concerned with in Section 9, Section 10 --

A. In the section -- okay. In the Section 9, the Van Eaton lease at one time had 32 wells

in that area. To my knowledge they have all been plugged except for maybe 3 or 4 by Texaco. I was contacted before I left home, which has been a couple of weeks ago, that they intend to drill a new well in this area. So it's a real strange situation.

Q. Do you happen to know -- as I know, you've ridden over quite a bit of this over the years. Are there any unlined disposal pits for these wells in any of these areas? Do you understand what I mean by unlined disposal pits?

A. Yes, sir. But this is a strange situation whenever you see a drilling company -- and let me say this. I qualify this by saying that I've run a trucking company for in excess of 35 years and have probably moved in excess of 1000 drilling rigs, so I've seen a lot of pits.

And it's amazing, they'll go in to drill a small pit for their trash, and they'll end up taking caliche out of it to make the pad. And you have a huge pit that they throw trash into, and you actually don't know what's been in there.

And as of right now I have one company, Greenhill, who has left open pits in the area

where they have worked on wells, and they don't seem too concerned about covering it back up. And now they are within the requirements of the OCD, so I'm sure they're in compliance as far as the size. But these are open pits that theoretically stock could get into or migratory fowl.

So there's a lot of pits in the area that have remained open and have not been closed properly.

Q. And now when you say remained open, are there fluids in them?

A. I'm sorry?

Q. Fluids in those pits or just depressions?

A. There has been, especially when they work on a well, the Cross Timber people are a good example. They're over on my fee land in Section 6. They'll go out on my property and just dig a hole and run their blewey pipes out there. And their contentions are when they're working on a well that has pressure on it, they have no recourse besides just go ahead and blow their oil out there on my pasture. So I just have to live with it.

The same thing with Conoco and Texaco. These people are very good neighbors. But they have these blowouts, and they'll cover maybe a 5-acre tract with oil. They're sorry about it; they'll offer damages. But there's just nothing they seem to be able to do about it.

MR. STOVALL: Okay. I don't have any further questions. Thank you, Mr. Stradley.

THE WITNESS: Thank you.

MR. STOVALL: Mrs. Reeves, if I could, I want to do the same kind of questions with you, if I might.

ELSIE M. REEVES

Having been previously duly sworn upon her oath, was examined and testified further as follows:

EXAMINATION

BY MR. STOVALL:

Q. You specified there were a number of wells and you knew the number, and it doesn't really matter. But do you know if any of these wells have open, unlined pits into which oil well or gas well fluids are going at the present time?

A. Not at the present time.

Q. Okay. They're all either lined pits or tanks, or are all those wells abandoned?

A. No. They're not all abandoned. And the last time I saw an open pit on our property, it was lined, and they were just doing some repair work at that time.

MR. STOVALL: That's all I have.

EXAMINER STOGNER: You may be excused.

EXAMINER STOGNER: Mr. Carr?

MR. CARR: May it please the Examiner, at this time I don't intend to call a witness. I have a closing statement. If the witnesses are here, they're sworn. If you have questions, they're of course available.

MR. STOVALL: Mr. Examiner, I think it would perhaps be useful for you and I to spend a few minutes and see if we do have any questions. Take a 15-minute break?

EXAMINER STOGNER: We'll take a 15-minute break at this point.

[A recess was taken.]

EXAMINER STOGNER: This hearing will come to order.

Mr. Kellahin, before we get started, again, do you have anything further on your portion?

MR. KELLAHIN: No, sir. We've rested

our presentation. Thank you.

EXAMINER STOGNER: Mr. Stovall?

MR. STOVALL: Mr. Carr, we've discussed this application. I think the opponents have raised some specific concerns which certainly need to be approved or resolved by the Examiner.

First, let me make it clear, so that we all understand this, that the approval by the Division, the administrative approval does not bind the Examiner. If the Examiner approves the application, he may impose some conditions upon the application as he determines are necessary based upon this record that is made today of which that approval is only a part.

And so we, in order to determine whether this application can be approved under any conditions and what those conditions might be, we would like to ask you to identify the expert or witness with the applicant who is prepared, having heard all the testimony this morning and the questions, to be able to answer some specific questions about design and alternatives and other concerns that are raised by the opponents.

So I don't know which of your witnesses

that would be or both of them.

MR. CARR: We would initially suggest that Michael Pierce take the stand.

MR. STOVALL: Okay.

EXAMINER STOGNER: Mr. Pierce, I might remind you you're under oath at this point.

MR. STOVALL: I'm going to ask, Mr. Carr, would you identify and qualify the witness because you probably know a little bit more about this, so I don't go blindly wandering through it to find out why he's on the stand.

MICHAEL L. PIERCE

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

EXAMINATION

BY MR. CARR:

Q. Would you state your name name for the record, please?

A. Michael L. Pierce.

Q. By whom are you employed?

A. Peak Consulting Services in Hobbs, New Mexico.

Q. And in what capacity?

A. I'm owner.

Q. Have you previously testified before

the New Mexico Oil Conservation Division?

A. I have.

Q. And were your qualifications as an expert -- did you testify as an expert witness?

A. Yes, I did.

Q. And how were you qualified? As a petroleum engineer or geologist?

A. I'm a petroleum geologist.

Q. Were your qualifications as a geologist accepted and made a matter of record at that time?

A. They were.

Q. Could you briefly review for Mr. Stogner your educational background and then review your work experience?

A. I received a bachelor of science degree from the University of New Mexico in 1979 in geology. I have for the past eleven years worked in Hobbs, New Mexico, as a petroleum geologist. For a time, five years, for an independent, and for the last six years I have been on my own.

Q. Are you familiar with the application filed in this case on behalf of C & C Landfarm, Inc.?

A. I am.

Q. In fact, you participated in the preparation of that application, did you not?
A. Yes, I did.
Q. Are you familiar with the proposed disposal facilities?
A. Yes.
MR. CARR: Are the witness' qualifications acceptable?
EXAMINER STOGNER: Are there any problems?
MR. KELLAHIN: No questions.
EXAMINER STOGNER: Mr. Pierce is so qualified.
MR. CARR: At this time, Mr. Examiner, with your permission, since I understand the Division has some questions, I will tender the witness so that he may respond to those questions.
EXAMINER STOGNER: Thank you, Mr. Carr.

EXAMINATION

BY MR. STOVALL:
Q. This being a new proceeding, the basis upon which I am proceeding is that, again as I stated at the beginning, Exhibit 1 is really the

applicant's pre-filed testimony in which you have had a part in preparing, Mr. Pierce, and you are familiar with the packet that's in Exhibit 1 and the information contained therein?

A. Yes, sir.

Q. You understand that the essential criteria which must be satisfied for the Division to approve this application is that it must not cause any contamination or harm to freshwater supplies in the area?

A. That's correct.

Q. And you were present this morning during the testimony by the various opponents and their expert; is that correct?

A. Yes, sir.

Q. Do you have any comments with respect -- particularly with respect to the location of freshwater supplies, do you substantially agree with what they've stated as to the locations of water wells and depths, et cetera?

A. The S & W Cattle Company water well is somewhat less than half a mile from the facility.

Q. Have you had an opportunity to determine whether Mr. Stradley's testimony

about the depth of the well and the water is accurate, or do you have any reason to question it?

A. We, in the course of our research, we went to the New Mexico Engineer's Office in Roswell to try to obtain a drillers' log of this well and to ascertain the top of the Redbed, and we were not able to obtain that. It was not on file there. So there's no way of knowing, for us to know what the top of the Redbed is. It's a relatively shallow well as far as the top of Redbed.

Q. Is it in a range that you would find -- that's probable to be acceptable?

A. Yes. Yes.

Q. Would you agree then that the White Breaks area that he identified on his exhibits probably is the cutoff of location of water in that area? Do you know what I'm--

A. Yes. I think the -- I think probably the location of water is somewhat to the east of the White Breaks -- I mean, as Mr. Stradley testified in Sections 1 and 2 -- I believe he said in Sections 1 and 2. He's drilled water wells in the past, and they have come up dry.

And that is going to be somewhat to the east of White Breaks.

Q. Are you in a position where you'd have an opinion as to how far east you could go and still find water?

A. I know at some point back east there is some water. I don't have, without looking at a map, you know, any idea of how far that might be. But there is water back to the east.

Q. Do you have an opinion or knowledge as to the orientation of the dip of the Redbeds in your facility?

A. Well, I found it interesting that just from our monitor wells, it looks like we have a dip to the south and west and including even if you go further north, you know, there looks like there could be a little saddle to the west of us where we have a dip that can go to the southwest or one that could go to the northwest. We just don't have the control to figure out which way it goes.

To the direct south of us, southeast, the clay pit that Mr. Stradley mentioned, the top of the Redbed is two-and-a-half feet from the surface. So from our location, C & C Landfarm, a

quarter mile to the south, we move up-dip as far as the Redbed top goes. And that surface is exposed in that clay pit.

Q. Would it be safe to say that the Redbed probably dips to the south-southwest in general there rather than to the east?

A. Well, I have another thought here, and I don't know if I understood Mr. Stradley correct. I believe he said that he took a backhoe out to the BLM location that is southwest of the C & C Landfarm and found red sand, clay, and some caliche within the surface to 12 feet. Was that his testimony?

Q. Okay. Well, if that's your understanding of it --

A. If that's what happened, then there is a definite -- the Redbed continues to be high from the clay pit to the BLM location. And if that is the case, then the dip is not to the southwest.

Q. More to the west?

A. Correct.

Q. More directly to the west. Okay. And you understand, again as I say, that this application can only be approved if there is no

-- if it won't endanger and harm freshwater?

A. That's correct.

Q. First, let me ask you, what is the purpose of the facility? What does the facility hope to accomplish? Describe in general what it's going to do.

A. The facility, as we originally permitted it or as it still is permitted or the application, is to bioremediate oily soil. Material from around wellheads, tank batteries, flow-line leaks.

Q. What does bioremediate mean? I don't necessarily mean the process, but what do you get as a result of bioremediation?

A. A soil that is not contaminated with oil, hydrocarbons.

Q. In other words, this is not intended to be a dump for dumping oily soil --

A. Oh, no.

Q. -- to be disposed of?

A. No. Our intent is that, after this facility is closed, at some point in time that you can go in there and using established OCD requirements not have any contamination at this site. I mean, the way the rules read that we are

not allowed to add any additional material until the prior lift tests less than certain levels.

So ultimately that when this facility is closed there will be nothing in there that is hazardous or capable of contaminating anything. That's been the whole premise of this.

Q. So, in other words, as I read the permit issued by the OCD, it's Mr. Kellahin's -- the conditions are in Mr. Kellahin's Exhibit 8, S & W's Exhibit 8. First of all, you're allowed to spread on the contaminants in 6-inch lifts --

A. Correct.

Q. -- is that correct? And then once you have spread the contaminants, you have to disk this on a weekly basis?

A. I think the rule said biweekly.

Q. Biweekly. Excuse me.

A. Uh-huh.

Q. Am I correct that once you have place a lift on a particular -- I guess you refer to it as a cell of the facility; is that correct?

A. Correct.

Q. -- that then you bioremediate until the contaminants within the soil that you put there drop below a certain level, a specified level?

A. Right, for total hydrocarbons, BTEX.

Q. Do you know how those levels were arrived at? Do you know what they are?

A. Not --

Q. Do you know the scientific significance of those levels? I guess that would be my question.

A. Well, it's a measurement of how much hydrocarbon is still in the soil essentially.

Q. When those soils are brought in and those lifts are applied initially, they are going to be 6 inches, as I say, are left. Are the contaminants we've talked about, leachates and leaching -- do you think those contaminants are going to be at a leachable level, do you think? Or do you have an opinion?

A. I would think that most of the material that will be brought to the facility, most of the light ends of the hydrocarbons will already be gone, the gaseous members. So we're going to be left with the oily phase, the heavy ends.

If there was a sufficient amount of fluid available, then there could be leachate.

Q. I guess what I'm saying is that when you bring it in, let's say you got a good rain

and there was some fluid applied to it, there would be sufficient levels of contamination there that could be leached down into the soil initially; is that correct?

A. Well, the way our application requested is that we would only bring in dry material. I mean, there will be moisture in it, but I mean it's not going to be wringing wet.

Q. Right. I understand. It's not going to leach of its own accord, but if rain were added to it, in the early stages of a lift, it potentially could get some movement of that lift; is that correct -- I mean, of the contaminants?

A. Yes, it's possible. With the process of tilling it biweekly and being in 6-inch lifts, I think that the probability of any leachate migrating is probably very small.

Q. Do you have the expertise to be able to identify how we can assure that that reaches a non-leachable level?

A. Well --

Q. How to determine it?

A. In the rules for adding a new lift is that we would have to test the lift that is in place. And if it was not at the levels

prescribed by the OCD, then we would not be allowed to add any material on top of this lift. So only once a lift is below acceptable levels would we be able to allow or to add additional material.

So we would be testing this material on a fairly regular basis in each one of these cells before new lifts could be added.

Q. So the objective then is to create a soil in which there is such a low level of hydrocarbon constituents and that that soil itself doesn't present a hazard even on the site that it's located on; is that correct?

A. That's correct. I mean, this is not a dump.

Q. If that result is accomplished -- and let me back up first and ask you, since we've talked about testing and the conditions of approval, talked about testing to measure the levels of petroleum hydrocarbons and aromatic hydrocarbons, it is determinable, it is capable of determination as to whether or not these results are being achieved; is that correct?

A. Oh, yes, by all means.

Q. So if additional measures are

necessary, those can be instituted to ensure either reducing the lift size or increasing the tilling frequency or whatever is necessary?

A. Oh, yeah. I mean, if we find that, you know, the material needs to be tilled more often or the lifts need to be less or even more, you know, we will abide by anything the Commission decides we need to do.

Q. So assuming the facility is approved, we can set some sort of performance standard to which you must bring the soils?

A. Certainly.

Q. And you'll do whatever is necessary to get to that standard?

A. That's correct.

Q. Now, of course, if you accomplish that, then I would assume all the other concerns about the potential of contamination of freshwater supplies nearby would be virtually eliminated; is that correct?

A. I would think so, yes.

Q. If there's nothing there to contaminate them, then they won't be contaminated?

A. That's right.

Q. The concern then becomes, because there

will be some contaminated soil on the site during the use of it, how to to deal with the potential of some leaching and migration of that soil off of the facility?

A. Well, yes, sir. What are we doing now? We have this contaminant, this oily contaminated dirt spread all over the countryside on Mr. Stradley's 300-plus wells, plus the 40 that's been plugged. We have it all over the country. Everytime it rains we have the potential for it to leach further into the ground. Every flow-line leak we have the potential to leak further into the ground.

Q. How did you happen to pick this particular site for your facility?

A. The lack of groundwater.

Q. You have knowledge there's no groundwater underneath your proposed --

A. We've drilled 5 monitor wells on the 40-acre tract, and we have -- all 5 wells are dry.

Q. One of the questions that's come up in the course of the discussion is nobody is quite sure how big your actual leaching -- or, excuse me, your bioremediating area is going to be. And

apparently you have chosen to do it using a pit rather than surface remediation; is that correct?

A. Right. We've always -- we've always been in the contention it will be 40 acres. When we started this process, our pit was approximately 2 acres, when we originally tendered the application. In the last 8 months it's grown to approximately 6 acres because we are constantly hauling caliche out of the pit for oil companies to build locations and roads.

Q. Is that why you've chosen to do a pit rather than surface bioremediation --

A. Yes.

Q. -- so you can use the material?

A. That's right.

Q. And then fill in the hole from the material?

A. That's correct.

Q. Now, you say you intend to use the entire 40 acres. Does that mean you intend to make the entire 40 acres a pit?

A. At some point in time. Obviously we would not be able to excavate all of the caliche out of this 40 acres at one time. But we would like the option of having the entire 40 acres

permitted. That way we could expand as we need.

Q. One of things that came up in the discussion with Mr. Kelly this morning was the creation of what we referred to as a buffer zone which, to make sure we're clear, I would identify as an area surrounding the perimeter of the facility which is undisturbed and which would serve to prevent the migration of fluids and to be an area where perhaps you could put monitor wells and have some opportunity should the unexpected happen and should there start to be a migration where there could be some remediation before it left the property. Did you understand that?

A. Yes, sir. That's the way the pit has been constructed so far. We have a property line. We have monitor wells on the south side too, and then we have the pit. So the monitor wells are in an undisturbed area.

Q. How wide is that area between the property line and the actual excavation area?

A. Forty to fifty feet, I believe. And the monitor wells are approximately twenty feet -- on the south they're approximately twenty feet from the fence line within C & C acreage.

Q. What would be the minimum, again using the term buffer zone, that you would recommend would be necessary to give you the opportunity to determine if there was any unexpected migration of contamination and the ability to recover it before it left the property? The width of it from the property line to the excavation?

A. Right. I really -- I don't have a good answer for that. I mean, because the only way in my mind that we could have migration of fluid off this property is to have fluid on the property. And our monitor wells show dry.

Back in May we had a 100-year flood. We went back on two different occasions and tested these wells again. On the first occasion they were dry. On the second occasion the test was witnessed by OCD Representative Chris Eustice, and all five monitor wells were dry again.

So we have -- and like Mr. Kelly said, I mean, a 100-year flood is a statistical thing. It can happen again next week. I don't doubt that. But it looks to me that if we were going to have migration at such a rate, we would have seen it in the monitor wells.

So I think if something shows up in the monitor wells, we're only looking at 15 -- or I'm guesstimating numbers now -- 12 to 20 feet to top of Redbed. Okay. So it would not take a very long time to put in some type of drain, a French drain, or something to collect any leachate that was starting to migrate off the property.

And we can do that in the room that we've got between the property line and the edge of the pit now. We can certainly do that within 50 feet.

Q. And your monitor wells are 20 feet so presumably you're not going to go any closer than that?

A. Right. That's the idea behind the monitor well, was to leave it undisturbed.

Q. The rain you had in May, was there any sort of -- first describe to me the surface topography of your 40 acres.

A. We are on, like Mr. Stradley said, there's a high to the east of us, the White Breaks high. And that is -- I don't know the exact elevation how much higher, but we are on the slope. And the surface topography slopes to the southwest.

The way the county road that runs -- and the Billy Walker ranch road and I think Mr. Stradley said 58 runs, it is cut into -- the road is cut lower than the interests into the facility. So any runoff that came from the slope above us went down the county road either to the north or to the south of us. So we had no runoff from the slope.

Q. In this major rain then, the water essentially drained off the property in one direction or another?

A. Well, what happened is we didn't have any water from off the property get into the pit facility, is what happened.

Q. But the rain that hit the property moved off the property?

A. Right.

Q. Now, I would assume if there's going to be migration of any hydrocarbons, it would require some sort of hydrostatic head to actually put pressure on it to cause it to flow; right?

A. Or just a continual --

Q. Or a gravity flow?

A. Right. Just a continual level of moisture. And, you know, we don't seem to have

that.

Q. When you drill a -- dig a pit now, you're going to have actually have an area for water to collect --

A. That's right.

Q. -- which could change that condition; is that correct?

A. Well, the clay pit that is southeast of us, like Mr. Stradley has said, it has had water in it for a number of years. There's some fairly large trees growing in it to attest the fact there's been water in it forever -- or, you know, long enough to grow fair-sized trees anyway. And the water is not going anywhere. It's in the pit.

So the only -- I think you're not seeing -- you're seeing -- you're probably not seeing any migration from that pit or, at least Mr. Stradley said he hadn't seen any in his water well that's down-dip from that pit. And about the only way they're losing water is through evaporation out of that pit.

Q. What happens in your facility when you dig a pit and you get rain in it and you get water? What does that do to the bioremediation

efforts that you've got?

A. Generally moisture enhances bioremediation, makes it go faster.

Q. Is there a level well which it ceases to --

A. Yeah.

Q. I'm assuming if you get standing water in there, if you've got a low area in that part of the country --

A. Right. Well, you know, hopefully in the areas of the lift, where we're actually doing the landfarming, there's not going to be low areas. It's going to be a fairly flat area where if you get a tremendous amount of rainfall, you know, it's not going to sit there and stand and leach -- you know, leach through the material.

There are certainly going to be low areas in the pit where we're excavating, but it's not going to be leaching material that has been contaminated. I mean, it will be running off the caliche or the walls of the pit or something.

Q. Where is it going to go?

A. Just like this pond that's south of us, in that clay pit, it's going to evaporate.

Q. So we've got, let's see, Mr. Kellahin's

Exhibit 7, which is part of your exhibit that shows the cross-section --

A. Yes, sir.

Q. -- you've got the pit area. If it rains, does this pit not contain rainwater? Is it not going to hold it?

A. Yeah, there was water in it after the 100-year flood that fell in it.

Q. To the extent that there are contaminants, is that not the type of water that is going to tend to cause potential migration? That's what would be the source of real danger to causing migration; is that correct?

A. Right. But, like I say, after this 100-year flood, we checked our monitor wells, and they are still dry.

Q. How deep is your pit now?

A. Within 2 feet of the Redbed. The excavated area.

Q. Okay. As this grows bigger --- I mean, my concern is as this grows bigger it's going to become like a pond or a bathtub and be a potential place to hold water for a while and as the water is sitting on, say, you've got a freshly dumped lift, isn't that the potential?

Where is the water going to go? It's got to go down; right?

A. Well --

Q. If it can't flow off, it's got to go down?

A. Right.

Q. And it can't flow off a pit; is that correct?

A. Right. Yeah, it can't flow off of a pit. I mean, we're not in an area of high rainfall.

Q. I understand that.

A. I mean, our evaporation rate of rainfall is, like, plus-19 inches.

Q. So you think it will evaporate more quickly than it will eventually reach--

A. With the process of tilling, you know, the lifts too. I mean, you're going to have water and moisture in there, but it's not like you're letting it sit for months at a time. You're continually turning this soil over.

Q. Do you have an opinion as to whether or not the monitor wells which you have drilled would adequately show whether or not there is a migration of hydrocarbons if you follow a

monitoring program?

A. We have never contended that we have enough monitor wells. We were -- the purpose of the first five wells was to, you know, determine the top of the Redbed and to install monitor wells.

We have told the OCD that we will add additional monitor wells if they think they are necessary and at a choice of their location. In fact, we were told by the OCD not to add any more wells until we consult with them.

Q. Of your own, given that constraint, but just on your own, did you have any particular opinion as to how far apart monitor wells should be or where they should be located on this facility to again assure that you would identify the flow of hydrocarbons before it could ever leave the property and do something to recover them?

A. Just like everybody else's concern, we don't want to mess up anybody's water well. And given the surface topography and the -- we really don't know what the Redbed top is doing just because, you know, either lack of data or incomplete data, the most logical place for

additional monitor wells would be the south and west sides of the facility.

Q. If the Division determined that to be necessary, you'd be willing to drill those?

A. Most certainly.

Q. There's been some discussion about the size of pipe, whether to put a 2-inch well or a 4-inch well. What's your opinion?

A. The monitor wells we have right now have 3-inch PVC.

Q. Does that give you enough room to pump out if you discovered there was some contaminants in there?

A. Yes. And if the OCD required 4-inch PVC, we could do that.

Q. Now, your proposal also, as I understand it, it appears that your containment method is to actually go down to just about the Redbeds, you say you're within 2 feet of them now?

A. Right.

Q. You're proposing to actually go down to the top of the Redbed?

A. We don't want to get into the Redbed, per se, because in the event that it does get

wet, you can't work in the Redbed. I mean, it's very sloppy. You can't get equipment in there and out of there. We would have just as soon to leave some material sitting on top of the Redbed so that we don't get into a mess.

Q. Now, this morning I came to the conclusion that the primary flow of water horizontally would be along the top of the Redbed. Would you agree with that?

A. I don't know that I would agree with that.

Q. Where would you expect the horizontal flow of water to take place or fluids, I should say?

A. Well, if that's where the flow of waters is, why is there water in the S & W cattle well?

Q. I'm talking about horizontal as opposed to --

A. Right. If the flow of water was along the top of the Redbed, wouldn't the water that's in the S & W well right now migrate further to the south and west along the top of the Redbed?

Q. Why doesn't it?

A. I don't know. Probably --

Q. Is there a water table there that's holding it there?

A. Probably because it doesn't flow along the top of the Redbed as easily. That may not be as good a conduit as what people think.

Q. Are you saying it doesn't flow at all then?

A. Well, I can't say that. I don't know that. But it appears that it doesn't act as readily as a conduit as we might believe.

Q. Well, let me back up and ask you another question then. Is my understanding correct that, if you've got water moving in an area like this, the first thing it would do would be to tend to go vertically down until it found some surface that would cause it to move horizontally? Is it primarily going to go down first; is that correct, through permeable material?

A. The only reason it would come up is if you had pressure on it.

Q. I don't mean so much up as I mean laterally.

A. Well, yeah, I mean, gravity works. It's going to go downhill.

Q. It's going to go down and then out rather than out and down simultaneously; is that correct?

A. Well --

Q. To a certain extent anyway?

A. Yeah. There's going to be some lateral movement too.

Q. Now, the purpose of your dikes as they show up on this Exhibit No. 7 is to contain any fluid movement; is that correct?

A. Right, that's correct.

Q. Mr. Kelly raised some concerns about that, and I think one of the ones I would certainly share is can you construct a 2-foot wide dike as deep as you're talking about, 14 to 16 feet deep, and sufficiently compact it to make it an effective containment mechanism?

A. You know, I think the dike was fairly much a contingency plan. I mean, that was one option that we presented to the OCD. We talked about a French drain type system where we dig a ditch and line it with a material or into the Redbed and collect any material that would flow into it. You know, that was just an option that we could do that we discussed with the OCD.

Q. Would it be easier actually to ensure that no fluids were going down to where they could flow? For example, I think the Division discussed with you at some time having a 3-foot treatment area, I believe they called it, below the lowest lift?

A. Well, we learned about that yesterday.

Q. That was the first time you heard about that discussion, about that concept?

A. I believe it was. I have not heard about it prior to this.

Q. My understanding of how that would -- the purpose of that would be to enable you to monitor undisturbed soil and say, all right, if leachable levels of contamination are going down below a certain depth than this, then we need to stop putting contaminants in until those levels become non-leachable?

A. That's correct.

Q. And that would eliminate the potential for lateral migration for the water; is that correct?

A. Yes. That sounds like a very good system to me.

Q. Would that be acceptable to you, to do

something of that nature?

A. Most certainly. I mean, we have tried to make the OCD an integral part of this application. They have visited the facility, you know, several times. We're trying to make this a process where we both work together to develop a facility that works and that we're not going to have problems with. And to me that sounds like a very doable and practical application.

Q. So, as I understand, the discussion of how that would work is that you would maintain a level of undisturbed soil of at least 3 feet above the Redbeds, which we've identified as being the most impermeable barrier in this area?

A. That's correct.

Q. You would begin your landfarm remediation operation on top of that with the 6-inch lift limitations?

A. Yes, sir.

Q. And then, according to some schedule approved by the OCD, you would monitor that undisturbed soil down to a specific depth -- I think the discussion is 2 feet -- and if it was determined that there were leachable levels of hydrocarbon contaminants starting to get to that

depth, then you would have to cease adding any contaminated soils until you had remediated both the lifts of contaminated soil and allowed the elimination of that level of contamination in the undisturbed soil. Does that make sense?

A. Oh, definitely. I mean, that way you never get to the point where you have migration off the property.

Q. So then if you get the 100-year flood and water is there and the water starts to move, it's not going to carry contaminants with it; is that correct?

A. I mean, you're on a testing schedule, and, you know, it's independent of how many lifts you've added. If you've added one or you've added ten, you still have this testing schedule. And if you don't see any migration, fine. If you do see some migration, you have to take some type of action to make that migration cease.

And so it's an ongoing process. It's never going to get very far ahead of you. It's never going to get to the point where it's a half a mile down-dip, you know, to get to a water well.

Q. Well, hopefully our objective here is

we're not going to even see it at the edge of the property?

A. That's right.

Q. If we put in something that said, for example, put in this treatment buffer area or treatment zone below where you're treating the soil and then identified the locations for some monitor wells so that -- am I correct in concluding that that would actually provide a double layer of protection?

A. I think so.

Q. That you would first say, don't let it get into the soil where it can migrate, and then if you should happen to miss that, you've got another way to determine --

A. Right. You've got a backup system on the soil testing, yes.

Q. And if you were to determine that that were to happen, that there were to be some contaminants, say, get to one of these monitor wells, is it possible then to be able to pump it out and get it out of the --

A. If you have enough fluid, you can pump it out, and/or you can do something else, you know, outside of the contaminated area to keep it

from spreading any further while you're pumping it out.

Q. The other thing Mr. Kelly suggested would be to make sure you had a well on the lowest point on the property area. Have you done that? Are you willing to do that to try to identify where the Redbed is the lowest?

A. If we go with the treatment zone idea, that's not useful information, is it? I mean --

Q. I'm asking you. I don't know.

A. I don't have a problem with finding the low spot on the Redbed. I don't know, given this treatment zone idea, what valuable information that will give us, though.

MR. STOVALL: Mr. Examiner, I don't think I have any further questions at this time. I guess I certainly want to make the witness available to Mr. Kellahin for any additional cross-examination.

But I guess, Mr. Carr, would you rather wait --

MR. CARR: Yes.

MR. STOVALL: -- until Mr. Kellahin is through before you ask any direct, redirect, or however you want to identify it?

MR. CARR: Yes.

EXAMINER STOGNER: Mr. Kellahin, your witness.

EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Pierce, I'll try not to repeat areas that Mr. Stovall engaged you in.

Point of information. Mr. Stradley was generally describing what he characterized as the Cooper property within a portion of the northwest quarter of Section 3. I want to share with you what was marked as his Exhibit No. 3, on which I have taken his information and outlined in yellow what he tells me is to be the area he characterized as the Cooper track.

Would you look at that for me and see if that is consistent with your understanding of the Cooper tract within this area?

A. I am not familiar with all the land that Mr. Cooper owns here. I know that he does own the 40-acre tract in question and that he has access to the 40-acre tract immediately north of that. The rest of of this I don't have any knowledge of it.

Q. Let me find another colored pen so that

you could on that display draw me in in a different color, if you will, an approximation of the 40-acre tract that's involved in the application as well as the additional 40-acre tract that you've just identified as being accessible to Mr. Cooper.

MR. CARR: I have a blue pen if that's what you're looking for.

MR. KELLAHIN: Yes, let's try a different color. Here's a better color.

MR. STOVALL: We will not hold you to surveyor qualities of drawing. Even if Mr. Kellahin tries to --

MR. KELLAHIN: No, sir. That certainly wasn't my intent. I wanted an approximation from him.

THE WITNESS: The tract for the landfarm will be located in Unit letter G. And the 40-acre tract immediately north, Unit letter B, is the other tract that Mr. Cooper has access to.

MR. KELLAHIN: Share that with the Examiner.

MR. STOVALL: That's been identified in the pink; is that correct?

THE WITNESS: Correct.

Q. (BY MR. KELLAHIN) The criteria that you applied for the selection of the site, I think in response to Mr. Stovall, was the absence of groundwater?

A. Right, the lack of groundwater at the site.

Q. Okay. How did you investigate the presence or absence of groundwater at either one of those 40-acre tracts that you've identified as being Mr. Cooper's?

A. In Unit letter G where the facility is we drilled five monitor wells.

Q. Those five monitor wells, are those shown within the application?

A. Yes, sir.

Q. Did you drill test wells or monitor wells in any other portion of the Cooper tract?

A. I'm not aware of any that we did. An offset landowner, I don't recall his name, drilled three, attempted to drill a monitor well to the north along this county road, Billy Walker Ranch road.

And he drilled, my understanding, was three wells, and they were all three dry and they

went in a north-south line, the southernmost well being right there on Billy Walker Road. And those are the three drillers' logs that I sent to you.

Q. Okay. Did you determine whether the north 40-acre tract met your criteria for the absence of groundwater?

A. No, we have not.

Q. Why didn't you do that?

A. Because we are permitting Unit letter G.

Q. Why?

A. This was the location that Mr. Cooper said he wanted to do this project on.

Q. Did you make any examination of any alternative site for this facility?

A. Well, this was a fee lease, and this was the location that he gave us.

Q. Will the north 40-acre tract satisfy that fee criteria?

A. I don't know.

Q. Would the use of the 40-acre tract north of the proposed facility provide a distance of safety between the project area and those properties controlled by Mr. Stradley?

A. I don't follow your question.

Q. The direction of greatest potential risk to groundwater is to the south and west; correct?

A. Okay.

Q. Yes? No?

A. I don't know that. I mean, I'm assuming, just like everybody else, that that is the direction of groundwater flow. And without any information, I can't make that assumption. But --

Q. Were you able to reach any conclusion about the potential impact on the property to the south?

A. Well, that is why we've drilled the monitor wells there, is to protect that property.

Q. And despite the monitor wells, if contamination should occur, wouldn't it be more appropriate to locate this project on the north 40-acre tract and provide an additional 40 acres as a buffer so that the area of contamination remains confined to the interest owners that are going to economically benefit from this project?

A. Well, following your line of reasoning,

why don't we move it to Roosevelt County then and get it further away? I mean, I'm not trying to be smart, sir, but this location is a good location. It has good access to the roads. It doesn't have a lot of oil producing facilities on it. And the monitor wells are there. The -- it's just a good location where it sits.

And, as a matter of fact, geologically a better location might even be the 40-acre tract to the south, direct south. I feel that it will share pretty much the same geological characteristics as the track we're doing now.

MR. STOVALL: May I interrupt and ask a question, Mr. Kellahin?

MR. KELLAHIN: Sure.

FURTHER EXAMINATION

BY MR. STOVALL:

Q. Did you participate in the selection of the tract, or was that Mr. Cooper's decision?

A. He came to us and said this is the area I want to try and do this in. Is this a good area? I mean, he already knew that there wasn't any water there.

Q. So he is the landowner that made that decision? Is that what you're telling me?

A. He designated the spot, yes. And we collected what data we could to substantiate the area would be a good candidate.

Q. So your job was to confirm the site he selected was adequate?

A. Right. Part of this process was that he was wanting to sell caliche out of this pit also. It was two-fold: Sell the caliche and then fill the pit up with this material eventually so we're not left with a hole in the ground on this pasture, where this pasture could eventually support cattle again instead of just having a hole in the ground that tends to collect trash and what all. So there was a two-fold.

MR. STOVALL: Back to you, Mr. Kellahin.

CONTINUED EXAMINATION

BY MR. KELLAHIN:

Q. Describe for me this method of bioremediation. What does that consist of?

A. The method that we're looking at right now is that it's going to be fairly natural. We're not going to introduce any type of bugs or fertilizer or anything to this oil-contaminated dirt. And we will evaluate this process as we go

along to see if this is working well enough or up to our expectations.

Q. Describe for me the testing procedures that you utilize for the 40-acre tract in monitoring the levels of contaminants that remain in these various lifts as you move through the project.

A. We will have to monitor BTEX on the -- you know, prior to adding a new lift. We'll have to measure BTEX and total hydrocarbons, TAC, and they're going to have to be less than certain levels.

Q. The BTEX levels, to what standard or criteria are you accountable?

A. Whatever the OCD says we need to be.

Q. Are you aware that the EPA has standards of levels for the BTEX --

A. I think they're the same as the OCD standards.

Q. That method of bioremediation does nothing about the salts, does it?

A. No, it doesn't.

Q. What's going to happen to the salts?

A. They will still be there.

Q. In response to my request for data, did

you assist Mr. Carr to provide him all the technical data that you had available in response to my request?

A. Yes, sir.

Q. Okay.

A. And like that response, we had none of the tests that you asked for. The only thing that we did have was the addition of the three drillers' logs to the north.

MR. KELLAHIN: Thank you, Mr. Examiner.

EXAMINER STOGNER: Thank you, Mr. Kellahin.

Mr. Carr.

FURTHER EXAMINATION

BY MR. CARR:

Q. Mr. Pierce, Exhibit No. 8 sets forth certain OCD requirements that came with their determination that the application was approvable. Are you familiar with those requirements?

A. Yes, sir.

Q. Is C & C prepared to comply with all those requirements?

A. Yes, sir.

Q. Would you also be prepared to comply with additional or amended requirements?
A. Yes, sir.
Q. And as their procedures evolved, you will stay in compliance with those procedures?
A. Absolutely.
Q. As you've developed this proposal, you have worked with the staff of the Oil Conservation Division; is that correct?
A. Yes, sir.
Q. Both here and in Hobbs?
A. Correct.
Q. You indicated you had drilled five monitor wells and been advised not to drill additional ones until after the OCD had reviewed it; is that correct?
A. Until after we got permission to drill additional wells by the OCD.
Q. Are you prepared -- I believe you've indicated you are prepared to drill such additional wells as they require?
A. We are.
Q. Would you be prepared to drill those in a fashion that they could be converted to a leachate recovery well if that becomes necessary?

A. Yes, we will.

Q. Have you made adequate arrangements to secure a $25,000 bond to assure that the facility is closed in an appropriate fashion?

A. Yes, sir.

Q. All lifts that you're going to operate are going to be below-grade, are they not?

A. Yes, sir.

Q. In view of the kinds of precautions that you're willing to undertake to assure that should contamination start to occur, it can be caught, in view of the way you tend to operate this facility, do you have an opinion as to whether or not there is any threat posed by this proposal to freshwater in the area?

A. No, I don't think there's a threat to freshwater in the area.

MR. CARR: That's all I have.

EXAMINER STOGNER: Thank you, Mr. Carr.

MR. STOVALL: One last question, Mr. Pierce.

FURTHER EXAMINATION

BY MR. STOVALL:

Q. Do you understand that in a facility of

this nature, when the Division writes an order, it also contains a provision that future requirements may be imposed if determined necessary by actual experience and conditions?

A. Yes, sir.

Q. And you are prepared to meet those requirements?

A. We are.

Q. I understand you can't know what they are because we don't know what they are at this time?

A. That's correct.

Q. But again the objective is that there will be no contamination leave the C & C property?

A. That's correct.

Q. And the Division will require you to do whatever is necessary to prevent that from occurring?

A. That's right. And we understand that.

EXAMINATION

BY EXAMINER STOGNER:

Q. With that line of thinking, if you're 20 foot from that property line, you're not going to have much a chance to protect that other

property line, are you?

A. From when we see --

Q. Contamination of some source, if it should occur?

A. I think, without a continual source of moisture moving through this facility, we're not going to have any migration of fluids. And if some unforeseen circumstance happens, I think we would be aware of it through the testing of the monitor wells on a regular basis or if we have a 100-year or 500-year flood, we would be aware of that so that we could take the precautions necessary.

MR. STOVALL: Let me follow up with that.

FURTHER EXAMINATION

BY MR. STOVALL:

Q. Is the monitor well which is closest to an external boundary of this facility, is it 20 feet or is it the one that is furthest from the external boundary of the facility?

A. The two on the south edge of the facility are approximately 20 feet from the property line.

Q. I mean, just back on this map that you

have marked --

A. That would be --

Q. The two on the right that have been marked with the green dots?

A. Yeah. That would be, I guess, pictures 7 and 8. If a larger buffer zone is needed, if we would rather have 50 feet, I mean, that's not a problem.

EXAMINER STOGNER: What would be a problem?

MR. STOVALL: Let me back up and rephrase that. Maybe it would be helpful. We always like --

MR. KELLAHIN: I thought the Examiner was doing fine without the help, Mr. Stovall.

MR. CARR: I would say 660 feet would be a problem or 1320.

FURTHER EXAMINATION

BY MR. STOVALL:

Q. The 20 foot is the well location, and if you're going to maintain those monitor wells, obviously you can't excavate right up to them?

A. Right. We had no plans to excavate up to those. If you're looking at the berm, from where the pit is, that's probably -- and in that

picture that's the south edge of that.

Q. In that one?

A. Right.

Q. Okay. That's the south edge. How far is that from the fence line?

A. Approximately 50 feet.

Q. Okay.

A. I mean, I'm guesstimating that one.

MR. STRADLEY: I'm sorry. What was that?

MR. STOVALL: About 50 feet he said.

THE WITNESS: From the fence line to the berm.

MR. STOVALL: We accept that as a guess.

THE WITNESS: Right.

EXAMINER STOGNER: I'm going to go back to my original question. What would be a problem?

MR. STOVALL: Somewhere between 20 and 660 is acceptable.

THE WITNESS: Well, the more buffer zone we have, the smaller the facility gets and the less, you know, we can put in that.

EXAMINER STOGNER: Mr. Kelly had

already brought up some mine reclamation. I'm not too familiar with those particular --

THE WITNESS: We're not stacking the caliche there on that. I mean, he's selling it for use on roads and locations. And the operators that we have spoken with, who want to use the facility, when they remove contaminated dirt from around the wellhead, they're going to have to have something to fill in the hole. So they're going to use the caliche that they excavated out of this pit to replace wherever they --

MR. STOVALL: You're trading dirt; is that what you're saying?

THE WITNESS: Correct. I think, you know, up to 100 feet -- to get back to Mr. Stogner's -- would be more than enough.

MR. STOVALL: If you were representing Mr. Stradley, how much would you say that he would want to have between him, his property line, and your facility?

THE WITNESS: I'm not in the cattle business and -- I mean, I don't know what --

MR. STOVALL: We're talking about the water issue.

THE WITNESS: Right. I think that, to be honest with you, he's going to want it in Roosevelt County.

MR. STOVALL: Let me rephrase.

MR. KELLAHIN: That's unfair, Mr. Examiner.

MR. STOVALL: Yeah. I withdraw the question, and you don't have to answer that. Your objective is to have as much of the surface available for your facility as possible --

THE WITNESS: Right.

MR. STOVALL: -- because the more you can bring in, the more revenue you can generate.

THE WITNESS: Right.

MR. STOVALL: His objective is to have his water adequately protected?

THE WITNESS: Right.

MR. STOVALL: What is the minimum buffer that you think is necessary to adequately protect his water and can be installed to give your facility an economically viable operation?

THE WITNESS: I think a 100-foot buffer from the property line would probably satisfy most people. That would give us -- you know, if we're required to drill additional monitor wells,

we can put them further into the property. And that way, if a problem ever does develop, we will have, you know, the remaining distance to go in there and do something to alleviate the problem.

MR. STOVALL: That's a number that I think we were trying to get to through a series of better and worser questions.

I don't have any others.

EXAMINER STOGNER: Does anybody else have any questions of Mr. Pierce?

If not, you may be excused.

EXAMINER STOGNER: Does anybody else have anything further at this time?

MR. STRADLEY: May I clarify?

EXAMINER STOGNER: Yes, sir.

MR. STRADLEY: And it may have been my fault, I may have misstated. In regard to the excavation that was done on the BLM 40-acre tract, this was not done at my insistence. This was actually done by the county road department. And the reason for this, they were actually hunting rock to crush to put on top of pavements. And they were not able to find the rock they wanted. And they are the ones that said they dug in areas there 12-foot deep and

actually found gravel, caliche, and some clay.

I might also add that, in regard to the clay pit that has been mentioned, this clay pit does go dry. And at some point in time I have had cattle get in there and get bogged down. So I really have no way of knowing if the water does leach down toward my windmill. But at some point in time the clay pit does go dry. At the present time it is holding water.

I might also add one more thing. In between this proposed site and the clay pit, there is areas where the clay does come directly to the top of the ground. So, in my opinion, I don't see how a monitor well could ever be efficient because if in fact it is blocked by clay to where it can't pick up the contaminants, I just don't see how one would work.

Thank you very much.

EXAMINER STOGNER: Thank you, sir.

Does anybody else have anything further?

MR. KELLAHIN: Closing statement.

EXAMINER STOGNER: Closing statements.

Mr. Kellahin, I'll let you go first.

MR. KELLAHIN: Mr. Examiner, this is a

particularly troublesome case. I've done hundreds of cases before you. And Mr. Carr and I are usually fussing over oil and gas production and how one company is going to resolve a particular issue.

I find dealing with the potential contamination of very valuable freshwater sources to be absolutely petrifying. It scares me to death to consider what Mr. Cooper has proposed for his neighbors. I think he's treated Mr. Pierce unfairly by dealing Mr. Pierce a stacked deck, by which he limits Mr. Pierce to a consideration of the 40-acre tract out of some 200-plus acres of property he has available in this area in which to propose this site.

Mr. Cooper enjoys the opportunity not to put at risk his groundwater because he has none. But in order to derive the economic benefit realized from this project, he intends to put the risk of contamination entirely upon his neighbors. I think that's unfair and unworthy, and we deserve better.

I can find nothing in the information provided to you to give us an excuse or an explanation why this project can't be located

farther north within an area provided by this particular individual.

The concept of a buffer is only a partial answer. Mr. Pierce tells you an approximation of a number that makes him comfortable as to a buffer. He provides you no science, no water movement calculations, no predictions, no even scientific guess as to how long it will take for these contaminants to leach through the water and contaminate the groundwater.

This is a project that is designed to fail. The unfortunate part of it is when it does fail, the only party that's going to know about it is going to be Mr. Stradley and his neighbor, Ms. Reeves.

To suggest that a $25,000 bond is somehow going to make this all right is a drop in the bucket for these ranchers. Mr. Stradley has some 16 sections at risk, which he operates with these particular wells, and simply as a matter of luck, if not good fortune, for reasons unknown to anyone, oil field operations in this area have yet to contaminate the groundwater.

I don't know why we have to invite the

opportunity to put at risk this water that thus far has not been jeopardized. It's unfair and inappropriate to put these neighbors at risk with Mr. Cooper.

Mr. Kelly has brought to you on very short notice a very thorough and comprehensive analysis of the problems he sees with this project. In response to my requests and his questions, the applicant brings to you no science.

Mr. Carr is very fond of characterizing my comments to you as simply being lawyer's comments without any science, but I'll tell you there is no science in this case. There is nothing to give you any comfort that this case ought to be approved. And there's simply no justification in the record to put at risk this groundwater.

We request that the application be denied and the applicant seek a project area somewhere else. It is not fair to suggest that we ask them to move to Roosevelt County. That's facetious. What we're looking for is a fair chance to have Mr. Cooper develop his property as he chooses but to put the risk of failure of his

project where it belongs, and that is on him and not upon my clients.

Thank you Mr. Examiner.

EXAMINER STOGNER: Thank you, Mr. Kellahin.

Mr. Carr.

MR. CARR: May it please the Examiner, C & C Landfarm is before you today seeking approval for a landfarm for contaminated soil. Mr. Kellahin is here telling you how frightened he is about this proposal. We're not frightened. For we submit to you we stand before you taking a realistic approach to what is going on out there, not a hysterical one.

We come before you with a program that is not only technically sound, but that is going to be efficiently and effectively monitored. We're proposing something which is economical, which is environmentally sound, which is needed, and which will be implemented and operated in a fashion that will assure that environmental problems do not occur. We will meet current and future standards imposed by this Division.

It's a good location. It's a good location because of the thickness of the well

beds, because of the proximity to the sources, and because of the absence of freshwater at this site. It is a good plan. All of the lifts will be below-grade, and we're going to constantly monitor the effort.

We have worked on this proposal for many months with the Oil Conservation Division and with the OCD staff, and they found this application approvable.

We gave notice as required, and the return receipts are here. No one hid the ball. We were talking about 40 acres. We gave notice to everyone who had raised an objection, everyone in the area, and they have come in here today and expressed their concerns, and that's appropriate.

As Mr. Pierce said, the last thing we want to do is contaminate somebody's water well. We simply submit that when you look at this record it's simply not going to happen. The basis for their objection is contamination, leachate contaminates that will result from the migration of liquids.

No liquids are going to be disposed. The evaporation rate dramatically exceeds the

rainfall. There's no aquifer at the site. And we've had one 100-year flood since the facility was implemented and the monitor wells were drilled, and they remain dry, monitored by us, monitored by you.

These wells are placed where even Mr. Kelly thinks they should be, south and west. And we've stood before you and said we're prepared to drill more.

Now, Mr. Kellahin has come in, and he has pointed out that Mr. Kelly had a limited time to review this, but S & W has not had a limited time. Ms. Reeves has not. They've had an opportunity to come in here and present a technical case and there is no technical case from them. This hearing is to review their objections.

They have not tested anything. They have done nothing but come in here and say, golly, we don't have any data, and if we did everything in the world, maybe it wouldn't even be safe then.

Well, the only thing that they've really done is tell us that everything you can find in a textbook on Saturday ought to be done

and that we ought to move the location far away from where we've proposed the facility from the site we have studied, have worked with the Division on, and are proposing to you.

We simply can stand before you and tell you that we have done all that we can to bring what we think is an appropriate application to you; that we stand before you ready to do what you want us to do now and what you want us to do in the future.

And we believe that in that situation there is no threat to freshwater. There is none with the proposal itself and the operation itself, and if we're surprised, we're going to monitor it and then be in a position to take remedial action, whatever remedial action is necessary.

We would urge you to take the case under advisement. We think when you look at the record, not just the testimony here today such as it was, but the full application, which is contained in our Exhibit 1 and the supporting data there, you will find a technical presentation that supports the application, that supports your Environmental Division.

And we've been waiting now for a year to get this thing going, and we would request that the application be expedited.

EXAMINER STOGNER: Thank you, Mr. Carr.

Before I take this under advisement, I appreciate everybody's patience today. This went a lot easier than the last one I had. I'd like to remind everybody, people in here that are royalty owners, there were some things brought up on these lease pads and tank bottoms that are sitting out there. We're going to have to go forward and do something.

And this perhaps -- it may be, may not be the best answer, but we're going to have to do something to change some of that that has been going on for years without shutting down the oil production, where the royalty owners aren't enjoying that aspect of the industry.

I appreciate it. And with that, I will take --

MR. STOVALL: If I might, one other thing I might add, that should this be approved without expressing an opinion, we would always invite the assistance of landowners and people

who are concerned to assist in the process of keeping us informed as to what's going on in any situation.

I think that's important. It is ongoing, any facility, whether it's this one or any others. We appreciate Mr. Stradley and -- I'm drawing a blank, I'm sorry -- Mrs. Reeves, your coming in here and participating, because that is what helps us make a good, thorough evaluation to ensure that interests are protected.

EXAMINER STOGNER: With that, I will take Case No. 10507 under advisement at this time. With that, this hearing is adjourned.

[And the proceedings were concluded.]

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 10507, heard by me on 2 September 1992.

_____, Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Debbie Vestal, Certified Shorthand Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I caused my notes to be transcribed under my personal supervision; 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 SEPTEMBER 7, 1992.

Debbie Vestal

DEBBIE VESTAL, RPR
NEW MEXICO CSR NO. 3

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date SEPTEMBER 1, 1992 Time: 8:15 A.M.

NAME	REPRESENTING	LOCATION
William F. Carr	Campbell, Carr, Berge + Sheridan	Santa Fe
Michael Stogner	C + C Landfarm	
W. Perry Pearce	Kellahin & Kellahin	Santa Fe
Maurice Brunner	RW Byram	SF
Kathy Brown	OCD	SF
Eddie W. Seay	C+C Landfarm	Hobbs
Bill Olson	OCD	Santa Fe

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

IN THE MATTER OF THE APPLICATION
OF C & C LANDFARM INC. FOR A
COMMERCIAL SURFACE WASTE DISPOSAL
FACILITY, LEA COUNTY, NEW MEXICO. CASE NO. 10507

AFFIDAVIT OF MAILING

William F. Carr, being duly sworn, states that on July 1, 1992 he mailed a letter advising that C & C Landfarm Inc., had filed an application for a commercial surface waste disposal facility in Lea County, New Mexico, setting forth the hearing date, by certified mail, return receipt requested, to the following individuals listed on Exhibit A attached:

Further Affiant sayeth naught.

William F. Carr

SUBSCRIBED AND SWORN to before me this 31st day of August, 1992.

Notary Public

My Commission Expires:

Sept. 5 1994

BEFORE EXAMINER STOGNER
OIL CONSERVATION DIVISION
C+C EXHIBIT NO. 2
CASE NO. 10507

EXHIBIT A

Mr. A.C. Doyall
Post Office Box 188
Monument, NM 88265

Mr. J.R. Williams, et al.
Post Office Box 215
Monument, NM 88265

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

S & W Cattle Co.
c/o C. Gene Samberson, Esq.
Post Office Drawer 1599
Lovington, NM 88260

Mr. Jimmie T. Cooper, Landowner
Post Office Box 55
Monument, NM 88265

Commissioner of Public Lands
State of New Mexico
Post Office Box 1148
Santa Fe, NM 87504

Apollo Realty
Attn: J.R. Williams
Post Office Box 75285
Albuquerque, NM 87194-0285

BLM Minerals
Post Office Box 1778
Carlsbad, NM 88221-1778

Ms Elsie M. Reeves
3902 West Keim Drive
Phoenix, AZ 85019

Mr. Ken Marsh
Controlled Recovery Inc.
Post Office Box 369
Hobbs, NM 88240

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS
MICHAEL H. FELDEWERT

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. A.C. Doyall
Post Office Box 188
Monument, NM 88265

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Dear Mr. Doyall:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

This application has been scheduled for hearing before an Examiner of the Oil Conservation Division on July 23, 1992. It has been administratively determined to be approvable, and this hearing is scheduled to allow parties the opportunity to present technical evidence why the application should not be approved pursuant to the rules of the Division. As a landowner in the area or a party who has previously objected to this application, you may desire to appear at that hearing and present testimony. Failure to appear at that time or otherwise become a party of record will preclude you from challenging this matter at a later date.

Parties appearing in cases before the Division have been requested to file a Prehearing Statement substantially in the form prescribed by the Division (Oil Conservation Division Memorandum 2-90). A copy of the Division's Prehearing Statement form is enclosed for your information. Prehearing Statements should be filed by 4:00 o'clock p.m. on the Friday before the scheduled hearing.

Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

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

3. Article Addressed to:	4. Article Number
Mr. A.C. Doyall Post Office Box 188 Monument, NM 88265	P 106 677 408
	Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise
	Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature — Address X Guy R. Doyall	8. Addressee's Address *(ONLY if requested and fee paid)*
6. Signature — Agent X	
7. Date of Delivery 7-6-92	

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Mr. A.C. Doyall
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LAWYERS

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WILLIAM F. CARR
BRADFORD C. BERGE
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TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. J.R. Williams, et al.
Post Office Box 215
Monument, NM 88265

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Gentlemen:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS
POST OFFICE BOX 2208
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Monument, NM 88265

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Post Office Box 215
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SANTA FE, NEW MEXICO 87504-2208
TELEPHONE: (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Gentlemen:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

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Very truly yours,

William F. Carr

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208

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MAIL

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

1st AT 7/3/92
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return 7/18/92

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NO INSURANCE COVERAGE PROVIDED
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(See Reverse)

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Monument, NM 88265

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PS Form 3800, June 1985

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& SHERIDAN, P.A.
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POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

S-W Cattle Company
c/o C. Gene Samberson, Esq.
Post Office Drawer 1599
Lovington, NM 88260

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Dear Mr. Samberson:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

This application has been scheduled for hearing before an Examiner of the Oil Conservation Division on July 23, 1992. It has been administratively determined to be approvable, and this hearing is scheduled to allow parties the opportunity to present technical evidence why the application should not be approved pursuant to the rules of the Division. As a landowner in the area or a party who has previously objected to this application, you may desire to appear at that hearing and present testimony. Failure to appear at that time or otherwise become a party of record will preclude you from challenging this matter at a later date.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

S-W Cattle Company
c/o C. Gene Samberson, Esq.
Post Office Drawer 1599
Lovington, NM 88260

4. Article Number
P 106 677 477

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

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Address
X

6. Signature — Agent
X Patricia Thompson

7. Date of Delivery
7-6-92

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

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

P-106 677 477

S-W Cattle Company
c/o C. Gene Samberson, Esq.
Post Office Drawer 1599
Lovington, NM 88260

Postage	.52
Certified Fee	1.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom & Date Delivered	1.00
Return Receipt Showing to whom, Date, & Address of Delivery	
TOTAL Postage & Fees	2.52
Postmark or Date	JUL - 1 1992

PS Form 3800, June 1988

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS
MICHAEL H. FELDEWERT

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jimmie T. Cooper, Landowner
Post Office Box 55
Monument, NM 88265

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Dear Mr. Cooper:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

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1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)* 2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:	4. Article Number
Mr. Jimmie T. Cooper, Landowner Post Office Box 55 Monument, NM 88265	P 106 677 411
	Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise
	Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature — Address X Jimmie T. Cooper	8. Addressee's Address *(ONLY if requested and fee paid)*
6. Signature — Agent X	
7. Date of Delivery 7/3/92 AJ.	

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

P-106 677 411

Mr. Jimmie T. Cooper, Landowner
Post Office Box 55
Monument, NM 88265

Certified Fee	.52
Special Delivery Fee	1.00
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	1.00
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$ 2.52
Postmark or Date	JUL - 1 1992

PS Form 3800, June 1985

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS
MICHAEL H. FELDEWERT

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Commissioner of Public Lands
State of New Mexico
Post Office Box 1148
Santa Fe, NM 87504

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Gentlemen:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

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1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)* 2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:	4. Article Number
Commissioner of Public Lands State of New Mexico Post Office Box 1148 Santa Fe, NM 87504	P 106 677 412
	Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise
	Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature — Address X M. Lucero	8. Addressee's Address *(ONLY if requested and fee paid)*
6. Signature — Agent X	
7. Date of Delivery	

SANTA FE, N.M. JUL 1 1992 87504 USPS

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

P-106 677 412

Commissioner of Public Lands
State of New Mexico
Post Office Box 1148
Santa Fe, NM 87504

.52
1.00
1.00
2.52

JUL - 1 1992

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS
MICHAEL H. FELDEWERT

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Apollo Realty
Attn: J.R. Williams
Post Office Box 75285
Albuquerque, NM 87194-0285

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Dear Mr. Williams:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

This application has been scheduled for hearing before an Examiner of the Oil Conservation Division on July 23, 1992. It has been administratively determined to be approvable, and this hearing is scheduled to allow parties the opportunity to present technical evidence why the application should not be approved pursuant to the rules of the Division. As a landowner in the area or a party who has previously objected to this application, you may desire to appear at that hearing and present testimony. Failure to appear at that time or otherwise become a party of record will preclude you from challenging this matter at a later date.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

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

3. Article Addressed to:

Apollo Realty
Attn: J.R. Williams
Post Office Box 75285
Albuquerque, NM 87194-0285

4. Article Number
P 106 677 413

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

Always obtain signature of addressee or agent and DATE DELIVERED.

6. Signature – Address
X

6. Signature – Agent
X

7. Date of Delivery 7/9/92

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

PS Form **3811**, Mar. 1988 * U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

P 106 677 413

Apollo Realty
Attn: J.R. Williams
Post Office Box 75285
Albuquerque, NM 87194-0285

.52	
1.00	
1.00	
2.52	

JUL - 1 1992

PS Form 3800, June 1985

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS
MICHAEL H. FELDEWERT

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

BLM Minerals
Post Office Box 1778
Carlsbad, NM 88221-1778

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Gentlemen:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

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

1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

BLM Minerals
Post Office Box 1778
Carlsbad, NM 88221-1778

4. Article Number
P 106 677 414

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

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Address
X

6. Signature — Agent
X

7. Date of Delivery

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

CARLSBAD, N.M. JUN 6 1992 USPO

PS Form 3811, Mar. 1988 ★ **U.S.G.P.O. 1988-212-865** **DOMESTIC RETURN RECEIPT**

P-106 677 414

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

BLM Minerals
Post Office Box 1778
Carlsbad, NM 88221-1778

Certified Fee	.52
Special Delivery Fee	1.00
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	1.00
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$ 2.52
Postmark or Date	JUL - 1 1992

PS Form 3800, June 1985

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS
MICHAEL H. FELDEWERT

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms Elsie M. Reeves
3902 West Keim Drive
Phoenix, AZ 85019

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Dear Ms Reeves:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

This application has been scheduled for hearing before an Examiner of the Oil Conservation Division on July 23, 1992. It has been administratively determined to be approvable, and this hearing is scheduled to allow parties the opportunity to present technical evidence why the application should not be approved pursuant to the rules of the Division. As a landowner in the area or a party who has previously objected to this application, you may desire to appear at that hearing and present testimony. Failure to appear at that time or otherwise become a party of record will preclude you from challenging this matter at a later date.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

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1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)* 2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:	4. Article Number P 106 677 415
Ms Elsie M. Reeves 3902 West Keim Drive Phoenix, AZ 85019	Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise
	Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature – Address X	8. Addressee's Address *(ONLY if requested and fee paid)*
6. Signature – Agent X	
7. Date of Delivery 7-3-92	

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

P-106 677 415

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
See Reverse

Ms Elsie M. Reeves
3902 West Keim Drive
Phoenix, AZ 85019

Certified Fee	.52
Special Delivery Fee	1.00
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	1.00
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$ 2.52
Postmark or Date	JUL - 1 1992

PS Form 3800, June 1985

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS
MICHAEL H. FELDEWERT

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

July 1, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ken Marsh
Controlled Recovery Inc.
Post Office Box 369
Hobbs, NM 88240

Re: Oil Conservation Division Case No. 10507:
Application of C & C Landfarm Inc. for a commercial surface waste disposal facility, Lea County, New Mexico

Dear Mr. Marsh:

This letter is to advise you that C & C Landfarm Inc. has filed an application with the New Mexico Oil Conservation Division seeking authorization to construct and operate a commercial land farm facility for remediation of non-hazardous hydrocarbon contaminated soils using an enhanced biodegradation process. This facility is to be located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, N.M.P.M., Lea County, New Mexico.

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Very truly yours,

WILLIAM F. CARR
ATTORNEY FOR C & C LANDFARM INC.
WFC:mlh
Enc.

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2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Mr. Ken Marsh
Controlled Recovery Inc.
Post Office Box 369
Hobbs, NM 88240

4. Article Number
P 106 677 416

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

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Address
X Becky Johnson

6. Signature — Agent
X

7. Date of Delivery
7-2-92

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

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

P-106 677 416

Mr. Ken Marsh
Controlled Recovery Inc.
Post Office Box 369
Hobbs, NM 88240

Certified Fee	.52
Special Delivery Fee	1.00
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.00
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage and Fees	2.52
Postmark or Date	JUL - 1 1992

PS Form 3800, June 1985

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

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

CASE NO. 10507
ORDER NO. R-9769

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

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on Tuesday, September 1, 1992, at Santa Fe, New Mexico, before Examiner Michael E. Stogner in Docket No. 27-92.

NOW, on this 16th day of November, 1992 the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

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

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

(3) The applicant, C & C Landfarm, Inc., (C & C) originally filed its application, pursuant to General Rule 711 with the Division on October 8, 1991 for authorization to construct and operate a commercial "landfarm" facility for the remediation of non-hazardous hydrocarbon contaminated soils utilizing an enhanced biodegradation process on a site located in the SW/4 NE/4 (Unit G) of Section 3, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico, which is located

approximately two miles southeast of Monument, New Mexico. The term "non-hazardous" in this matter is synonymous with the terminology and usage in the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations.

(4) This application, subsequent to review by the Division, has been administratively determined to be approveable and this hearing was scheduled to allow interested parties the opportunity to present technical evidence why this application should not be approved pursuant to the applicable rules of the Division.

(5) Within the required time frame and in accordance with Division rules, five parties of interest filed written objections to the proposed facility:

a) Walter C. Laughlin
4139 E. Laughlin Road
Casa Grande, Arizona 85222

b) Larry N. Henry
500 E. Scharbauer
Hobbs, New Mexico 88240

c) Elsie M. Reeves
3902 W. Keim Drive
Phoenix, Arizona 85019

d) W. T. Stradley, President
S-W Cattle Company
P.O. Box 1799
Hobbs, New Mexico 88241

e) Ken Marsh
Controlled Recovery, Inc.
P.O. Box 369
Hobbs, New Mexico 88241

(6) At the time of the hearing Elsie M. Reeves and W. Trent Stradley entered appearances through counsel in objection to this matter.

(7) Also at the hearing, all previous correspondence, letters, applications from the applicant, notices and other such pertinent material prepared by the Division, interested parties, other state and federal agencies and the applicant were made part of the record in this case.

(8) The proposed landfarm is to be located on a forty-acre tract of land, as described in Finding Paragraph No. 3, which is bordered by Lea County Road No. 58 [illegible] the 'redbed', which is a thick layer of relatively impermeable clays. Oilfield contaminated soils will be trucked to the site and broadcast within the excavated site(s) in six-inch lifts; these soils will be tilled or plowed to ensure proper aeration and bio-

remediation to proper governmental standards. New lifts will be added in the above-described method until an excavated area has been filled and properly tested to within one foot of the surrounding surface elevation, the area will then be backfilled with topsoil, mound over and compacted to prevent rainfall from standing or leaching into backfill. All should be constructed, operated and maintained in accordance with applicable NMOCD rules and standards.

(9) There is a need for such solids disposal facilities in Southeastern New Mexico to provide environmentally safe and cost effective means of disposing of such solid wastes in connection with oil and gas operations, and approval of a properly designed facility will help to prevent illegal dumping of solid material in a manner which could endanger the environment.

(10) Applicant appeared at the hearing and presented testimony about the design and operational standards and established a prima facie showing that the facility could be designed and operated so as to protect fresh water supplies and not constitute an unreasonable harm to human health and the environment if standards for such operation are met and followed.

(11) Testimony presented in this matter indicates that the proposed facility can be constructed and operated in a manner that will not cause contamination of underground fresh water resources, will not leach-out and migrate onto off-setting properties, can be operated and maintained in a safe manner and will not cause waste.

(12) "Conditions of Approval" should be adopted by this order which will assure safe operations and provide an adequate monitoring system to detect any leaching process or movement of contaminants that could cause the pollution of nearby underground fresh water supplies.

IT IS THEREFORE ORDERED THAT:

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

PROVIDED HOWEVER THAT the proposed facility shall be constructed and operated in accordance with the permit conditions attached hereto as Exhibit "A" which are incorporated herein and made a part of this order, and in accordance with such

additional conditions and requirements as may be directed by the Division Director, and shall be operated and maintained in such a manner as to preclude spills, fires, limit emissions and protect persons, livestock and the environment.

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

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

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

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

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

(6) The permit granted by this order shall become effective only upon acceptance and certification by the applicant.

(7) The Division shall have the authority to administratively change any condition of this permit to protect fresh water, human health and the environment. Applicant may request a hearing upon any change which materially affects the operation of the facility.

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

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

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

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

LANDFARM OPERATIONS

1. Disposal will only occur when an attendant is on duty. The facility will be secured when no attendant is present.

2. The facility will be fenced and have a sign at the entrance. The sign will be legible from at least fifty (50) feet and contain the following information: a) name of the facility, b) location by section, township and range, and c) emergency phone number.

3. A redbed dike will be installed on the south, west and north edges of the property as proposed in C & C's correspondence dated March 2, 1992.

4. All contaminated soils received at the facility will be spread and disked within 72 hours of receipt.

5. Soils will be spread on the surface in six-inch lifts or less.

6. Soils will be disked a minimum of one time every two weeks (bi-weekly) to enhance biodegradation of contaminants.

7. Successive lifts of contaminated soils will not be spread until a laboratory measurement of Total Petroleum Hydrocarbons (TPH) in the previous lifts is less than 100 parts per million (ppm), and the sum of all aromatic hydrocarbons (BTEX) is less than 50 ppm, and the benzene is less than 10 ppm. Comprehensive records of the laboratory analysis and the sampling locations will be maintained at the facility. Authorization from the OCD will be obtained prior to application of successive lifts.

8. Only oilfield wastes which are exempt from Federal Resource Conservation and Recovery Act (RCRA), (42 U.S.C. §§6921-6939b), Subtitle C regulations (40 C.F.R. Parts 260-272) will be accepted at the facility. Solids from operations not currently exempt under RCRA Subtitle C or mixed exempt/non-exempt solids will be tested for appropriate hazardous constituents. Test results may be submitted to the OCD along with a request to receive non-exempt solids, and a written OCD approval (case specific) must be obtained prior to disposal. Any

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

9. Moisture will be added as necessary to enhance biodegradation and to control blowing dust. There will be no ponding, pooling or run-off of water allowed. Any ponding of precipitation will be removed within seventy-two hours of discovery.

CLOSURE

When the facility is to be closed, no new material will be accepted. Existing soils will be remediated until they meet the OCD standards in effect at the time of closure. The area will then be reseeded with natural grasses and allowed to return to its natural state. Closure will be pursuant to all OCD requirements in effect at the time of the closure.