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

EXAMINER HEARING

IN THE MATTER OF:

Application of Sunco Trucking Water Disposal for a permit to construct and operate a commercial wastewater evaporation pond, San Juan County, New Mexico Case 9955

TRANSCRIPT OF PROCEEDINGS

BEFORE: MICHAEL E. STOGNER, EXAMINER

STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO
June 13, 1990

ORIGINAL

A P P E A R A N C E S

FOR THE DIVISION:	ROBERT G. STOVALL Attorney at Law Legal Counsel to the Divison State Land Office Building Santa Fe, New Mexico
FOR THE APPLICANT:	JOHN A. DEAN, JR. Attorney at Law P.O. Drawer 1259 Farmington, New Mexico 87499
FOR THE PROTESTANT:	GARY L. HORNER Attorney at Law P.O. Box 2497 Farmington, New Mexico 87499

I N D E X

E X H I B I T S

HEARING EXAMINER: Call next case, No. 9955, which is the application of Sunco Trucking Water Disposal for a permit to construct and operate a commercial wastewater evaporation pond, San Juan County, New Mexico. At this time, I'll call for appearances.

MR. DEAN: My name is John A. Dean, Jr., for the Applicant.

MR. HORNER: I'm Gary Horner representing a neighboring property owner, Harold Horner, who's protesting this application.

HEARING EXAMINER: Will you have any witnesses, Mr. Horner?

MR. HORNER: I don't anticipate any witnesses at this time.

HEARING EXAMINER: Mr. Dean, how many witnesses do you have?

MR. HORNER: Three.

HEARING EXAMINER: Will the witnesses please stand and be sworn at this time?

(Witnesses sworn.)

HEARING EXAMINER: Mr. Dean?

MR. DEAN: Yes. Are we going to go?

HEARING EXAMINER: Yes.

MR. DEAN: I'm new at this particular part

of it. Is my application and the letter that supplement part of the record as it stands now that you've reviewed or looked at?

HEARING EXAMINER: You need to present your exhibits, and let's continue, Mr. Dean.

MR. STOVALL: Let me answer that a little more fully. Your application is part of the file but it is not part of the record upon which the decision is based.

MR. DEAN: The record is empty right now?

MR. STOVALL: Yes. You have to put that application in on into the record.

MR. DEAN: I'm going to call Robert Frank as a witness at this time.

ROBERT C. FRANK,

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

DIRECT EXAMINATION

BY MR. DEAN:

Q. Would you please state your name.

A. Robert C. Frank.

Q. How are you employed, Mr. Frank?

A. I'm employed as an agent for Sunco Trucking Water Disposal.

Q. Other than in that capacity, what is your

employment?

A. Self-employed at this time, primarily in the permitting of well sites, pipelines, land work and drilling consulting.

Q. What is your profession?

A. I am also a geologist.

Q. Have you testified in front of this administrative body before?

A. Yes, I have.

Q. Have you been qualified as an expert?

A. Yes, I have.

MR. DEAN: I'd like to move that he be certified as an expert as a geologist at this time.

HEARING EXAMINER: Are there any objections?

MR. HORNER: No objections.

HEARING EXAMINER: Mr. Frank is so qualified as a geologist.

Q. (BY MR. DEAN) Besides your specialty or training as a geologist, do you have any others that you have expertise in that pertain to this application?

A. Yes. I've designed several pits similar to this previously.

Q. How many?

A. I designed two directly -- three directly and participated in the design of the fourth.

Q. As part of that process, have you gone through the permit and application process with OCD?

A. Yes, I have.

Q. Do you own and operate or partially own and operate a commercial disposal facility similar to the one applied for here?

A. Yes, I do.

Q. What is the name of that operation?

A. Southwest Water Disposal.

Q. Did you design that pond?

A. Yes, I did.

Q. Did you go through the application process on that pond?

A. Yes, I did.

Q. Where is that pond located?

A. Four miles north of Blanco, New Mexico.

Q. In what county?

A. San Juan.

Q. New Mexico?

A. Yes.

Q. Are you part of the day-to-day operations of that business at this time?

A. Yes, I am, in the function of sales and

managing, that type. I'm not completely in charge of the day-to-day operations at the facility.

Q. Are you aware of how it operates?

A. Very much so.

Q. How long has that pond been in operation?

A. We opened up January 11, 1989.

Q. Other than your training as a geologist, have you had any other education as it pertains to that application?

A. Yes. I took some engineering courses at Metropolitan State College in Denver, Colorado.

Q. Civil engineering courses?

A. Civil engineering.

Q. Did you receive a degree or certificate?

A. No, I did not.

Q. How many hours of study did you take?

A. Sixteen, I believe.

Q. Prior to the time that you began to operate the pond that you described in Blanco, what did you do?

A. Prior to that, I worked for Union Texas Petroleum as a regulatory and environmental analyst.

Q. Are you familiar with operations in the oil and gas industry?

A. Yes, I am.

MR. DEAN: I'm going to hand you what I've marked as Applicant's Exhibit A.

Should I use letters or numbers, or do you care?

HEARING EXAMINER: I prefer numbers.

Q. (BY MR. DEAN) -- No. 1 and ask you to identify that document for me, please.

A. This is a request to the New Mexico Oil Conservation Division for administrative approval, commercial evaporation ponds.

MR. STOVALL: Excuse me, Mr. Dean, do you have marked copies of exhibits for the --

MR. DEAN: No. I can provide those though as they're marked out of mine.

MR. STOVALL: Do you have copies of this, Mr. Horner?

MR. HORNER: Of the application? I may have one in my file.

HEARING EXAMINER: Did you prepare extra copies of --

MR. DEAN: No, I was assuming that he had them. They've been provided to him, as I understand it. I apologize for that.

MR. STOVALL: Unfortunately, the problem with this, and I realize you're unfamiliar with our

practice here, but every document that is an exhibit is entered in the record at the time of the hearing. And the other is preparatory to it. That way we can assure we have the documents as they are presented.

For example, Mr. Horner has probably got the application, but exactly what are we marking as an exhibit is my main concern. We also do have a rubber stamp somewhere which marks the case number and all that. Let's make sure we're all looking at the same exhibit during the course of this proceeding.

Go ahead. I'll see if I can find it.

MR. DEAN: Okay.

Q. Would you please describe what's been marked as Applicant's Exhibit 1. What is it?

A. It's a letter request dated May 19, 1989, from Sunco Trucking Water Disposal to the New Mexico Oil Conservation Division. The subject is titled Administrative Approval Commercial Evaporation Ponds, Northwest Quarter, Section 2, Township 29 North, Range 12 West, San Juan County, New Mexico.

Q. How many pages is that document?

A. Fourteen.

Q. And the last three pages are oversized pages?

A. Correct. They are titled Application to

Appropriate Underground Waters In Accordance With Section 75-11-1, New Mexico Statutes, the State Engineer Office Well Record.

Q. And on there is typing on the front and back of those pages only?

A. Yes, there is in all instances.

Q. Did you prepare the document marked as Applicant's Exhibit 1?

A. Yes, I did.

Q. What information did you use in preparing that document?

A. It was based upon the revised August 1988 "Guidelines For Permit Application, Design and Construction of Waste Storage/Disposal Pits."

Q. Who publishes those guidelines?

A. The New Mexico Oil Conservation Division.

Q. And attached to that document marked as Plaintiff's Exhibit 1, is there a plat and topographic map showing a location of the proposed pit in relation to government survey highways, water courses, and water wells within one mile?

A. Yes, there is.

Q. Is that the fourth-to-the-last page of that document?

A. It is.

Q. What is the closest water course to that location?

A. The nearest running water is the Animas River. I believe it's approximately a mile-and-a-half north-northwest.

Q. Do you have with you today a description of the proposed facility?

A. Yes, I do.

Q. Could you put that in front of you? We'll refer to that as Applicant's Exhibit No. 2. I just have one copy of this, which I don't mind admitting, but it is rather large and hard to copy. I think one was submitted with the application.

What does this diagram show?

MR. STOVALL: Would you hang that on the wall, Mr. Dean? There's some tape here.

MR. DEAN: Sure.

MR. STOVALL: Mr. Frank, after you hang that, I'm going to ask you to look at what I've got here and assure me it's the same thing, same date, same drawing, no changes whatsoever.

THE WITNESS: This page is the same.

MR. STOVALL: Take a look at this page.

THE WITNESS: Page 2 is exactly the same as what would be Exhibit 2 except for I did change in

writing, my handwriting, 4-inch perforated pipe at 1 percent slope to 2-inch perforated pipe at 1 percent slope.

MR. STOVALL: Or to the extent you have any copies of any of these things you wish to have prepared, we will do so.

MR. HORNER: All right.

Q. (BY MR. DEAN) I direct your attention to what's marked as 2-A, the first page of Exhibit 2, and ask you to identify that?

A. It's titled Evaporation Ponds for Sunco Trucking. It is a cover sheet.

Q. Was that document prepared based upon the application that's been submitted to OCD?

A. Yes.

Q. And the information contained in it?

A. Yes.

Q. Explain for us what specifically is shown on Exhibit 2-A.

A. Specifically, we have a vicinity map of the surrounding six sections around the facility, a blow-up of the section in which the facility is located, a location comparing for survey purposes of the ponds and the relation of each pond to each other, and certifications, construction specifications. That

would be the certifications of the surveyor, the engineer, and Mr. Coleman's oath.

Q. Look at 2-B and tell us what that is and what does it show?

A. Exhibit 2-B is entitled, once again, Evaporation Ponds for Sunco Trucking. It is a site-specific diagram of the ponds, the topographic features of the land around the ponds, the relationship of the ponds to existing pipelines, roads, power lines, and construction details.

Q. Does it show fences and cattle guards and things like that?

A. That are on the site-specific facilities, yes.

Q. Yes, that's 2-B; it shows those things?

A. Yes.

Q. Does it have information about the pits, the liners, the dikes, the sprayers, and that type of information?

A. Yes, it does.

Q. Briefly tell us what 2-B tells us about those things and how they pertain to this application.

A. This portion of 2-B shows --

Q. That's the lower right-hand corner of 2-B?

A. Yes -- the liner and anchor details. This portion is the siphon for the skimmer pond, the blow-up of the leak detection sump, the liner penetration detail.

MR. STOVALL: Mr. Frank, I must tell you, it will be awfully hard to read the record and say what you're pointing to, and I can't even see because you're standing between me and it. We have to be very specific here.

THE WITNESS: I'm sorry. They are titled.

Q. (BY MR. DEAN) Trade sides and tell us, starting in the bottom right-hand corner, what is that?

A. Liner and Anchor Detail.

Q. What and how do those pertain to this application? Tell us what they do in regard to the pit.

A. It shows the relationship of the slope, the liners, being the primary liner; it's on the surface -- a sand layer, a geotextile membrane, the cross-section of the leak detection system, and the secondary liner.

Q. Moving counterclockwise to the middle, what is shown there in the long oblong rectangle figure? No, to the left.

A. This is titled Sump Detail.

Q. On 2-B it's titled, Sump Detail; underneath that diagram, it says that?

A. Yes, it does.

Q. What is that?

A. That is a schematic of the leak detection sump.

Q. How does the leak detection sump work in a commercial disposal pond as applied for her?

A. The leak detection system is between the two liners, and the sump is a monitoring device located outside the outside dike of the pond.

Q. How does it detect leaks?

A. If there were to be a leak, the leak detection system would drain to this sump.

Q. And it would detect a leak in what?

A. The primary liner.

Q. Moving counterclockwise to the immediate left, what is that, and what is it labeled?

A. This is titled Site Department B, and it is a diagram indicating the topography of the facility, the relationship of the three ponds, the unloading facilities, the fence, existing pipelines, and roads.

Q. Will this location be fenced?

A. Yes.

Q. Completely?
A. Yes, it will.
Q. How many entrances will it have?
A. One, to the best of my knowledge.
Q. What is important about the topography information that's shown there? How is it relevant to this?
A. That gives you the lay of the land, and from that you calculate the amount of dirt to be moved to build the dikes.
Q. Did you use that topographic information to calculate that?
A. I did not, but the engineer did.
Q. Moving up still counterclockwise to the middle, what is that, and what is it labeled?
A. It is labeled the Leak Detector System, Plan View.
Q. What does it tell us?
A. It shows the relationship -- typical relationship of any one pond the leak detection system -- the orientation of the pipes in the leak detection system.
Q. Where is the leak detection system located in this proposed pond?
A. Between the secondary and the primary

liner.

Q. Throughout the pond?

A. Throughout the pond.

Q. What is it composed of?

A. It's a network of PVC pipe. The center line is a 2-inch perforated PVC pipe. The laterals are 1-inch perforated PVC pipe.

Q. How do those play into the sump?

A. They're sloped at 1 percent along the entire bottom of the pond to the sump.

Q. How do they function, and if there's a leak, tell the examiner what would happen?

A. If there's a leak in the primary liner, the water would penetrate through the liner into the porous membrane, which would be either a washed sand or a geotextile material. The laterals are sloped at 2 percent to the center line, which is sloped at 1 percent to the sump; so there is a continuous feed. If there is any leak, it will be picked up by the 1-inch lateral that's fed to the main line and then into the sump.

Q. How does a person at that facility use that to detect a leak?

A. Visual inspection.

Q. At the sump?

A. At the sump.

Q. Still on 2-B, are there any other items that -- immediately counterclockwise in the top right-hand corner, what is that, and how is it labeled?

A. This is entitled Pond Capacity. It is a graph of water depth versus capacity in acre-feet.

Q. What does it tell us, and what did you use it for?

A. It is a requirement of the State Engineer's Office, and it is a volume curve of the pond's maximum volume.

Q. That you calculate on a pond this size, how much it will hold?

A. Correct.

Q. Continuing on 2-B, are there any other diagrams?

A. In a clockwise manner, there is a certification of the engineer. It is not titled as such, but is a certification by James P. Lees, the designer.

Q. In the middle of 2-B, are there several diagrams? Tell us what those are.

A. The first one would be cross-section, or actually it's labeled X Section, and the Pond Water

Transfer Detail. It is a diagram indicating how the ponds will flow from one to the next.

Q. Elaborate on that and tell us what that means.

A. It's a liner penetration, and when the first pond gets to its height, it will flow into the second pond by gravity, and subsequently from the second to the third pond by gravity.

Q. Is it proposed that all three ponds will be built simultaneously?

A. No. The No. 1 Pond and No. 2 Pond, the dirt work will be done simultaneously. The first pond will be lined commensurate with that. The second pond will be lined as market conditions dictate.

Q. Or as the first pond fills?

A. Right.

Q. Continuing on 2-B, what is the next diagram; what is it labeled?

A. The next diagram just below the last section --

Q. The X Section?

A. Yes -- is called the Skimmer Pond Detail. It is a diagram indicating the relationship of the skimmer pond and the siphon device into the main pond.

Q. Since the time that this diagram was

proposed, have there been any changes with regard to the skimmer pond?

A. Yes. We decided to eliminate the skimmer pond and go with multiple open storage tanks and eliminate the skimmer pond.

Q. Was the proposed skimmer pond in addition to the other ponds?

A. Yes.

Q. Tell us what the function of the storage tanks will be and where they will be located in relation to 2-B.

A. The skimmer tanks will be located close to the entrance to the facility.

Q. Please tell us what you're pointing at.

A. I'm pointing to the Site Topography Diagram.

Q. On 2-B?

A. On 2-B. The trucks will enter the facility. A sample will be taken and tested. The trucks will unload into this open tank. The oil will be separated in these tanks. The oil will be drained off the top to another tank. The water will be drained off the bottom to the main pond.

HEARING EXAMINER: The tank in which the trucks will initially unload is the steel unloading

tank; it's the long oblong just to the right of the three tanks?

THE WITNESS: Correct.

HEARING EXAMINER: Marked 500 Barrels?

THE WITNESS: Correct.

HEARING EXAMINER: I'm sorry. Go ahead.

THE WITNESS: For clarification purposes, we will have multiple steel unloading tanks.

Q. (BY MR. DEAN) Will they be in the vicinity of the one that's marked Steel Unloading Tanks at this time?

A. Yes.

Q. When you say these are open tanks, what does that mean?

A. There's no lid.

Q. No top? Okay. Is there any other diagram on 2-B?

A. Yes. The last diagram would be what is titled the Liner Penetration Detail.

Q. What does that tell us?

A. That is a detail of the siphon pipe from large pond to large pond, how the plastic will be fitted around the pipe to prevent leaks.

Q. Elaborate on that particular detail at this time.

A. There will be -- the pipe will be, I believe, 6-inch pipe, and it will be steel or iron. It will be resting on a ballast of concrete on which the liner will be clamped, folded back over itselt, and then seamed to the liner. The liner penetration detail indicates that a sleeve will be put over it, pulled back against itself, and then seamed to the liner.

Q. Will that be placed in the first pond when it's constructed?

A. Yes.

Q. Is there information about the sprayers on Exhibit 2-B?

A. No, there is not.

Q. Would you point on 2-B where the sprayer locations will be?

A. I will use what is titled the Leak Detector System. There will be either two or three floating islands located approximately a third of the way across the pond.

Q. And you can show that on the sump diagram?

A. No, the leak detector system.

Q. So one will be located a third from the end and then a third; so there will be two of those?

A. Yes.

Q. Are there any other diagrams on 2-A or 2-B that you have not explained?

A. I don't believe there is.

Q. Go ahead and take a seat.

MR. STOVALL: Mr. Dean, before you do, this is more on the order of efficiency, if you don't mind, I'd like to interrupt you on these exhibits and make sure I understand the detail.

Particularly concerned with the leak detection system, if I look at the Liner and Anchor Detail, I'm looking at a cross-section of the bottom of the pond; is that correct?

THE WITNESS: Yes.

MR. STOVALL: Then if I go up to the leak detector system, what that's doing, it I flip it over and lay it down, I'm looking at the end of that 2-inch pipe as I look at this cross-section in the anchor detail; right?

THE WITNESS: That would be correct.

MR. STOVALL: What you've described in the leak detector system plan view is looking down on top of what is underlined, kind of the broad, V-shaped area in the Liner and Anchor Detail area?

THE WITNESS: That is correct.

MR. STOVALL: So on the side of the tanks,

there's a much smaller space between the primary and secondary liners; so a leak anywhere in the primary liner will flow down to the bottom?

THE WITNESS: Correct.

MR. STOVALL: The pipe which is shown on -- I assume this is a pipe -- at the bottom of the V in the Liner Anchor Detail is the same pipe that's shown going out on the Sump Detail, the 2-inch PVC pipe goes into the sump?

THE WITNESS: That's correct.

MR. STOVALL: There will be one of these under each of the ponds?

THE WITNESS: Correct.

HEARING EXAMINER: There will also be one is this known as the skimmer pond I'm pointing at? This is on the lower right-hand corner of Pond 1 on your site topography view?

THE WITNESS: We've eliminated that skimmer pond.

HEARING EXAMINER: And so I go up to the leak detector system plan view, that is eliminated also?

THE WITNESS: Correct, on the skimmer pond.

HEARING EXAMINER: I'm going to go to the Skimmer Pond Detail. Is that eliminated too?

THE WITNESS: Yes, it will be.

HEARING EXAMINER: So there will be three sumps altogether, one in each pond?

THE WITNESS: Correct.

HEARING EXAMINER: And not the four which I had just alluded to?

THE WITNESS: Correct.

MR. STOVALL: I've got a couple more questions. Looking back at your Liner Anchor Detail, on the right side of that, you refer to a 6- or 8-inch pipe to anchor liners and backfill trench? Is that just pipe sitting in the ground and covered with dirt to hold the liner in?

THE WITNESS: Correct.

MR. STOVALL: These ponds are open ponds; is that correct, open top ponds?

THE WITNESS: Yes.

MR. STOVALL: The flow from Pond 1 to Pond 2, is that just over the slope of a line on the ground, or is that through some sort of piping?

THE WITNESS: It will be through the pipe as represented by the Liner Penetration Detail.

MR. STOVALL: As far as do you have any plans at this time as far as netting or screening these tanks, or am I jumping ahead of you on this?

THE WITNESS: To the best of my knowledge, there will be no netting required pursuant to the OCD rules at this time.

MR. DEAN: I think the application states that if it's required, it will be put on.

THE WITNESS: That was in relation to the skimmer pond.

MR. STOVALL: Ponds 1, 2 and 3, you're saying will not require netting under OCD rules?

THE WITNESS: That's correct.

HEARING EXAMINER: I've got one quick question. Steel unloading tanks, as the truck comes up, you show that that fluid is then taken off and put on the sump pond, but since that's eliminated, do they go directly into the three 500-barrel tanks?

THE WITNESS: The oil will go directly into the three 500-barrel tanks. The water will go directly into Pond 1. There will be no liner penetration from this point to this point. This pipe will be laid on the surface of the pond.

HEARING EXAMINER: You're talking about from the steel unloading tank to Pond 1, there will be no liner penetration?

THE WITNESS: No.

HEARING EXAMINER: And that, as you just

said, will be, what, steel pipe, piece of PVC pipe or a rubber hose?

THE WITNESS: More than likely, steel.

HEARING EXAMINER: Mr. Dean?

Q. (BY MR. DEAN) Since we've jumped around, before you sit down, let's use the diagram in the bottom right-hand corner of 2-B that shows the V cross-section of the bottom of the pond. First of all, will all these ponds be constructed identically?

A. Yes.

Q. As far as you know at this time?

A. Yes.

Q. If there were some changes between the market conditions between 1, 2 and 3, you would make those changes then? Take us through the construction process, using that diagram, of all the things that will be done to construct this first pond and the other ponds.

A. The construction process will consist of removing the sagebrush and topsoil, removing it off location, and then transporting of the dirt, soil, rocks, and compacted. The compaction will be monitored by an independent party. They will be compacted to 95 percent of proctor.

Q. What does that mean?

A. Proctor is a term that engineers like to use where they take a specific soil type, compact it to 100 percent in the laboratory, take a density reading, and then come back into the field and measure the density of the material in situ, and we will be at 95 percent of proctor.

Q. How does that help in this construction process?

A. That insures that the pond is compacted properly and will stay stood up.

Q. Will keep its form in design? Does it have any usefulness if there's penetration from the pond through the liner system into that? Does it have any usefulness there?

A. Most definitely. The subsoil will be compacted to 95 percent of proctor. The permeability of that soil and/or dirt has not been measured or quantified; however, there will be some inherent impermeability.

Q. Because of its compaction?

A. Correct.

Q. You say an independent party will watch that. Who will that be?

A. In this instance, Western Technologies.

Q. The next step will be?

A. The next step will be the installation of the secondary liner, which is a PVC liner.

Q. It's a sheet of liner?

A. Sheet of plastic. It will be multiple sheets of plastic, which will be laid in the pond and seamed to the manufacturer's specifications.

Q. What is that strength?

A. I don't recall. I'd have to refer to the documents.

Q. Once that's in place, what's the next step?

A. The next step will be the installation of the leak detection system, the 2-inch PVC, the 1-inch PVC. Subsequent to that will be the filling of the trenches with a porous medium. In some instances, it's sand and pea gravel.

Q. What trenches are we talking about?

A. The trenches in which the leak detection systems will lie.

Q. They lie on top of the first liner?

A. Yes.

Q. Then what's next?

A. Next will be a geotextile, which is a permeable, man-made cloth is what it really looks like, that will not compress under the weight of water. It will have a very high hydraulic

conductivity. If there is a leak, it will show up quickly. That will be located on the sides of the pond. The bottom of the pond is where the sand and pea gravel is located.

After that, we install the primary liner, which is a chlorinated polyethylene liner.

Q. Why is it that kind of liner?

A. It's resistent not only to oil and hydrocarbons of various sorts, but, as well, ultraviolet lights.

Q. Then what?

A. Then the ponds are done.

Q. Is there any other system put in at that time?

A. At that time the pond will be fitted with the plumbing for the spray system; however, the spray system will not be operational until such time as the pond is full enough to operate it.

Q. Tell us what plumbing will go on top of tne second liner.

A. What we'll have, it will be the suction side for the sprayer system. It will be located in the bottom of the pond, and it will be located so that there are two different points of suction. They will suck simultaneously, but they will suck from the

bottom of the pond.

Q. Will they be able to pick up liquid from the bottom of the pond, and where will it go?

A. It will come through the bottom of the pond to the pump, out the discharge line, which will be a floating line, to the sprayer islands, and then sprayed into the air.

Q. If you would on Exhibit 2-B, tell us where the pump will be, and where the sprayer islands will be in each pond.

A. At this point in time, we anticipate the pump will be located on what would be near the east corner of the first pond.

Q. And you're using what to show that?

A. That's based upon the Site Topography Detail of Exhibit 2-B.

Q. When the water or the fluid gets to the sprayer islands, what happens to it?

A. It will go through a series of nozzles and be sprayed in the air, fall back to the pit to be recycled.

Q. They're at the middle of each pond?

A. Towards the middle. I believe I described it as a third of the way.

Q. What else will be placed on top of the

second liner prior to any fluids being --

A. There will be two aeration systems.

Q. Describe the first of those for us.

A. The first aeration system will be purchased from Aquatic Ecosystems out of Florida. It is a rock diffuser that utilizes a small rotary vein compressor blower, and it will be anchored to the second aeration system.

The second aeration system consists of a network of PVC pipe. Once again, there will be two sides of it. Each side will consist of a central line of 2-inch PVC and 1-inch laterals. The 1-inch laterals will be perforated with 1/32-inch holes every 20 foot on center, and the aeration system laterals will be located 40 feet equidistant between them.

Q. Will the two halves of the system be placed in the halves of the pond?

A. Roughly.

Q. Do you know how much in terms of feet, how many feet of PVC pipe in each pond, approximately?

A. I can sit and figure it out, but it will be close to -- I'm taking a quick guess at roughly 1400 foot of pipe.

Q. The first of these aeration systems with the three rock diffusers, what's the purpose of having

that system?

A. The purpose is to keep the pond aerobic. It will roll the pond. It's on the bottom of the pond. The air in both instances in both systems is compressed, and as it comes out of the diffusers or PVC pipe, it is a small size. As it comes up through the water, the hydrostatic pressure is lesser; therefore, the air expands, creating a meniscus as it reaches the surface. In essence, it forms a convection type of current which will continually roll the pond.

Q. By roll the pond, what do you mean?

A. I mean bringing the bottom to the top.

Q. What do you mean by aerobic?

A. Aerobic, by definition, oxygen is present.

Q. What would an aerobic state of the pond be?

A. A residual oxygen supply in the pond.

Q. Are the two aeration systems dependent on each other or are they separate?

A. They are separate.

Q. Do they operate independently?

A. They operate independently.

Q. The purpose of the second system, what does it do different than the first aeration system?

A. The second system has the ability to

transport not only gaseous mediums. It also has the ability to transport liquid mediums.

Q. What purpose would it serve in operation of a pond like this?

A. If need be, chemicals could be injected into the bottom of the pond and circulated throughout the pond.

Q. Using 2-B, the topographic section, would you show us where those chemicals will be loaded into that system? How will they be loaded into that system?

A. They will be loaded into the system at the source of the second aeration system, which would be located, once again, close to the northeast corner of Pond 1.

MR. DEAN: If you don't have any more questions about that, I'll let him sit down.

MR. STOVALL: Keeping with our tradition now of answering the pieces as we get through it, and possibly I missed this, but what is the need to keep the pond aerobic?

THE WITNESS: The need to keep the pond aerobic would be to eliminate the potential for an anaerobic bacteria.

MR. STOVALL: What does an anaerobic

bacteria do? You're talking to a lawyer.

THE WITNESS: An anaerobic bacteria is a bacteria that cannot live in the presence of oxygen. It feeds upon sulfides. As it processes the sulfides, it gives off a byproduct known as H2S.

MR. STOVALL: That I know. So by keeping it aerobic, you avoid the creation of H2S?

THE WITNESS: It forms an environment in which the anaerobic bacteria cannot live.

MR. STOVALL: If the anaerobic bacteria can't live, then you can't have H2S; is that correct?

THE WITNESS: That's correct.

MR. STOVALL: That's it.

Q. (BY MR. DEAN) If you you want to sit down for a minute. Does the leak detection system you've described, using Exhibit 2-B, meet the specifications of the OCD guidelines?

A. It was based upon the specifications of the OCD guidelines.

Q. Are there guidelines that cover the aeration systems that you've described?

A. No.

Q. Have you used these aeration systems in another pond?

A. Yes, I have.

Q. What pond is that?

A. A pond operated by Southwest Water Disposal.

Q. Have they been successful in that?

A. To this point, very much so.

Q. You've also described as part of those aeration systems perhaps another sprayer system that would be added later. Could you elaborate on that for us?

A. Yes. The sprayer system that we anticipate at this time will be a centrifugal pump. I talked about the suction side being on the bottom of the pond and the sprayers being floating islands out in the middle of the pond.

In addition, we believe we will have PVC pipe around the exterior of the pond as backups. Due to fluctuations in wind velocity, as well as direction, this will enable us to keep the spray in the pond.

Q. Those sprayers are separate from the three islands that you've described out in the middle?

A. Yes.

Q. Will those two sprayer systems operate independently of each other?

A. Actually, they will be two legs of the same

system.

Q. Will they operate independently? The ones around side of the pond and the ones in the middle?

A. They will operate independently by virtue of the manifold system.

Q. What's the advantage of having the sprayers in the middle of the pond?

A. The basic advantage is that the spray is evaporated in almost all instances prior to reaching the edge of the pond.

Q. So as opposed to the ones along the edge, if the wind is blowing, there wouldn't be any drift outside the pond confines, the dimensions of the pond?

A. Correct.

Q. What would govern the operation of the outside sprayer system around the outside dimensions of the pond?

A. To increase evaporation by additional surface area.

Q. If the wind is blowing, would you use those?

A. We would use the side that was on the windward side of the pond.

Q. What is the purpose of these ponds now that we've gone through the construction? What are they

used for?

A. The purpose of this facility is for disposal by evaporation of produced water from the San Juan Basin.

Q. This is produced water from oil and gas wells?

A. Yes.

Q. These tanks that you've described for the storage of oil, how does that fit into this purpose?

A. Conventional oil and gas wells in the Farmington area, the production -- the local on-site production facilities sometimes have oil carryover, and it's incident to the production. It's waste oil, and it's just a recovery in which we will separate it from the produced water and market it thereafter.

Q. It's disposed of separately?

A. Yes.

Q. And this oil is not stored inside these larger ponds?

A. No. It is stored in the tanks.

Q. It's separated before it's put in there?

HEARING EXAMINER: I'm sorry. I didn't hear the answer.

THE WITNESS: It's stored in the tanks.

Q. (BY MR. DEAN) Calling your attention back

to Applicant's Exhibit 1, did you undertake a search or cause a search to be made for all landowners within one-half mile of the proposed facility?

A. Actually, that was conducted by Sunco proper through an abstract company in Farmington.

Q. Did you cause to be placed in the United States Postal Service notice of this hearing to those people within one-half mile?

A. Yes, I did cause that to take place.

Q. As part of the application process, did you undertake a study of the geologic and hydrologic information as it affects the pond?

A. Yes, I did.

Q. Would you tell us the results of that study?

A. I conducted it simultaneously with Western Technologies' investigation as to the soil mechanics. Western Technologies drilled a total of nine wells to various depths around the perimeter of each of the three ponds.

Q. Is that information contained on page 8 and 9 of Applicant's Exhibit 1?

A. I believe it would be maybe 7, 8 and 9.

Q. What did those results tell you?

A. It gave me a background as to the geology

underneath the ponds.

Q. What is the geology underneath the ponds?

A. It's variable. It's paleoerosional surface as evidenced by the various types of dirt and rocks and boulders encountered during the drilling.

Q. Does that cause any particular problems or concerns for the construction of this pond?

A. Not to my knowledge.

Q. Is it favorable to the construction of the pond?

A. It's not disfavorable.

Q. What about the hydrologic features of the site location?

A. To the best of my knowledge, I researched the records of the State Engineer's Office, and I found a well recorded; however, subsequent field inspections, I was unable to find the well as recorded at this specific site.

The well that was recorded indicated that water was at, I believe, 25 feet, and it was in a dark blue water sand, but my investigation did not encounter this well; so I can't tell you exactly where water depth would be. My assumption would be that it would be close to the same level as the high water level of the Animas River.

Q. So were you able to take any water samples or anything in the area within a mile?

A. No.

Q. What would be the flow direction of groundwater to be affected by a leak in the pond?

A. Northwesterly.

Q. As a part of the application, have you prepared a letter dated August 18, 1989, to the OCD regarding this application?

A. Yes, I did.

MR. DEAN: I'd like to mark it as Applicant's Exhibit 3.

Q. How many pages is that document?

A. Six.

MR. STOVALL: Mr. Horner, are you familiar with it? Do you have a copy of this letter?

MR. HORNER: I do have a copy of it.

Q. (BY MR. DEAN) Are the contents of that letter intended to supplement your application that's represented by Exhibit No. 1 of the applicant?

A. Yes.

Q. That Exhibit No. 3 goes into more detail about the liner. Could you tell us the process you went through to determine what type of liner would be sufficient for this project?

A. I knew what type of liner we needed in the generic sense. I submitted bids to several liner companies.

Q. What did you use as guidelines for those bids?

A. Actually, the bids were details of the liner and projected costs of the liner. I just used the diagrams.

Q. Are there OCD guidelines with regard to the liner?

A. No, not specifically guidelines as to what type of liner, just that they be resistent to various different constituents.

Q. Did you submit that in determining which liner to use?

A. Yes, I did.

Q. You were able to come up with a liner as described in that letter that would meet those guidelines?

A. Yes, I did.

Q. Is that the liner you propose to use in the construction of these ponds?

A. Yes, it is.

Q. Will there be any waste solids or liquids that need to be disposed from the site other than

naturally through the pond through evaporation, solid waste or anything?

A. No. Everything will be incident to the facility and its operations.

Q. At this time there's not a proposal to take any other substances other than those that are put in the disposal pond?

A. That's right.

Q. What is the closure plan for this pond?

A. At the time of abandonment, it is our procedure to leave the salts that have precipitated and/or sludges in the pond, cover them with plastic and/or an impermeable clay-packed liner to prevent leaching upwards of any salts or precipitants. Everything will be buried in situ.

If for some reason at that time the rules and regulations have changed as to where various concentrations of metals, heavy metals or certain constituents are not able to be disposed of in that pond buried on site, they will be subsequently removed from the pond with a procedure to be determined at that time and hauled away to a proper disposal facility.

Q. Will those substances be tested at the time of closure?

A. Yes, they will.

Q. What will happen to the pond site at that time?

A. The pond will be, as I stated earlier, either covered with plastic folded back on itselt, and/or covered with clay and compacted and returned to its natural contours as close as practical.

Q. Have you described that process in the application, in Applicant's Exhibit No. 1?

A. Not in that detail, but it was in subsequent letters.

Q. On April the 17th, 1990, did you submit another letter to the OCD with regard to supplementing this application?

A. Yes, I did.

Q. How many pages is that document?

HEARING EXAMINER: The letter which you're referring to dated April 17, is it to Mr. Anderson, and it starts: "Pursuant to your letter of July 20"?

MR. DEAN: Yes.

HEARING EXAMINER: I have a copy of that, and I'll mark it Exhibit 4; is that correct?

MR. DEAN: That's right.

MR. STOVALL: How many pages is it again, Mr. Frank, to make sure we've got it?

THE WITNESS: I'll have to start again.
HEARING EXAMINER: I'm sorry.
THE WITNESS: Eighteen.
Q. (BY MR. DEAN) What is the last page?
A. The last page is the last page of a certification by Richard Cheney of the aeration system.
Q. It contains his stamp here on the bottom right-hand corner?
A. Yes, it does.
Q. What was the purpose of that letter?
MR. STOVALL: Excuse me, Mr. Dean. Mr. Horner, do you have this one?
MR. HORNER: Yes, I do.
Q. (BY MR. DEAN) What was the thrust of that letter?
A. The purpose of the letter was to answer Mr. Anderson's questions. Actually, I referenced July 20, but it was Mr. Anderson's letter of November 3rd. That's a typo on my behalf.
Q. Are you referring to the first sentence of your letter of April the 17th?
A. Correct. And it is a step-by-step answer to Mr. Anderson's questions.
Q. The information attached to your response,

particularly the treatment plan, could you briefly go through what you propose as a treatment plan?

A. If, for some reason, we have levels of H2S which would not be permitted, our treatment plan would include, number one, to determine the chlorine demand for the sulfides, H2S, and organics. Number two would be to initiate treatment with 12 to 16 percent active bleach that would be on hand and at the CDI yard. CDI stands for Chemical Distributors, Inc.

Number three, deliver and treat (ponds) with sufficient bleach to reduce dissolved sulfides and to prohibit the emission of H2S. The rate of treatment will be a maximum of 5,000 gallons of 12 to 16 percent active bleach daily.

And then in following with Mr. Anderson's letter, subtitle b, "If area concentrations of H2S reach 10 ppm at the fence line as TWD, Sunco Trucking Water Disposal will notify the county fire marshall county sheriff's department, New Mexico State Police, and the OCD."

And then we have a specific plan that is once again labeled, pursuant to Mr. Anderson's letter, Treatment Plan. Number one would be notify parties as shown above.

Number two, evacuate those persons residing

within one-quarter mile of the fence line. Provide temporary housing at the Motel 6, Farmington, New Mexico, or at another motel as approved by STWD. Each person requiring temporary housing will be provided a per diem for meals not to exceed $20. Temporary housing and the meal per diem to be provided as long as the H2S levels remain above 10 ppm at the fence line.

Number three, implement treatment plan as outlined in (a) above. Any other actions or requirements imposed by the OCD after review of H2S emissions will be implemented after review of all alternatives and acceptance by STWD. STWD believes that protection of the general public is paramount and will take prudent action to ensure the safety of the general public.

Q. What effect does chlorine have it there is an H2S problem in the pond?

A. The active chlorine would combine with the H2S that would be present in the pond, as well as the water that is present in the pond. The end result of that chemical reaction would be the formation of H2S04 which is sulfuric acid and hydrochloric acid, HCl.

Q. How would that chlorine be put into the pond?

A. The chlorine would be injected through the second aeration system.

Q. That you described on 2-B?

A. On Exhibit 2-B, correct.

Q. Have you had occasion to treat the pond that you operate in this manner?

A. Yes, I have.

Q. It has the same system as the pond proposed here?

A. Yes, it is the same system.

Q. Was the treatment plan successful?

A. The treatment of that pond was just a matter of prudence, and, yes, it was.

Q. You were able to get the chlorine into the pond?

A. Yes.

Q. You talked about the plan for H2S. What about just a spill or release of fluid from the pond if it happened to leak?

A. The only -- this would be what is known as our contingency plan. I'll read it as --

Q. Why don't you just tell us briefly what it is?

A. We would immediately cease receiving fluids for disposal in the affected pond. We would drain the

affected pond into the unaffected pond, if it's available. If none of the ponds are available, we would go ahead and commence with evaporation of the pond and transportation of fluids to other commercial facilities within the general vicinity in the San Juan Basin.

Q. Did you cause to be delivered to the OCD a letter dated May 18, 1990, that pertains to a leak in the system?

A. Yes, I did.

Q. Was that intended to be a supplement to your application?

A. Yes, it is.

MR. DEAN: It's a one-page letter.

MR. STOVALL: Once again, Mr. Horner, you have a copy, I assume?

MR. HORNER: What are we talking about now?

MR. DEAN: A letter dated May 18, 1990, from Sunco to Roger Anderson.

MR. HORNER: I believe I have it. Go ahead and describe it.

Q. (BY MR. DEAN) How does that change your treatment plan in case there's a leak?

A. In essence, it amended our application or

the subsequent letter to our application to where we would commence to haul immediately upon discovering of a leak.

Q. What routine inspection and maintenance is necessary for doing the operation of a pond such as these?

A. Dissolved sulfides in the ponds will be analyzed monthly, and the results will be kept at the office.

Q. What's the purpose of doing that?

A. It was a requirement of the OCD. I would assume it to be availability of food source possibly for the anaerobic bacteria, of which we shouldn't have any.

Q. Does that play into the formation of H2S that you've described?

A. Yes.

Q. What else?

A. Air concentrations of H2S will be measured in tenths of a part per million and the pH of the pond will be measured twice daily around the perimeter of the ponds.

Q. How does measuring the pH help in the operation of the ponds?

A. The pH will give you an indication as to

chemical imbalances in the pond.

Q. Does that play into a potential H2S problem again?

A. Yes. The bacteria -- I don't recall exactly which pH, but it is more prone to grow, proliferate in certain pH pond, and I can't recall what that is.

Q. How often will the leak detection sump be checked?

A. The leak detection sump will be checked weekly.

Q. And on location, what will be kept to treat the loads as they come in?

A. As I recall, we will have 1,000 gallons of liquid bleach on hand to enter into the unloading tank as water is brought to us that may contain H2S.

Q. Let's go back to the groundwater and clear up what you think the effect of any leak would be on the groundwater, what you've analyzed in proposing this application?

A. I don't believe there will be any effect on groundwater as we have a double-lined pond, and the leak detection system will pick it up almost instantaneously. And if there were multiple breaches of each liner, once the pond is lowered below that

level of the leak, the capillary action inherent to the compacted subgrade will keep that water bounded by capillary action in situ; so I don't believe there is any problem with contamination of groundwater from this facility.

Q. Is the pond that you operate now lined in this fashion?

A. No.

Q. How is it lined?

A. The pond that Southwest Water Disposal operates is a clay-lined pond, compacted natural clay.

Q. Has it filled up?

A. Yes, it is.

Q. Have you had any problems with leaks in it?

A. No.

MR. DEAN: I'd like to put in the three letters that these are in response to. The first one is dated July 20, 1989. I'd like to mark it as 6.

MR. STOVALL: These are letters from Mr. Anderson to Sunco Trucking Water Disposal?

MR. DEAN: Yes, that the other letters are in response to.

The second one I'll mark No. 7 is dated 11-3 of 89, and the third one 5-2 of 90. I'd like to mark it as No. 8.

Q. I hand you what's marked as Applicant's Exhibits 6, 7 and 8 and ask you if you can identify those?

A. Exhibit No. 6 is a letter from the OCD to Mr. George Coleman, Sunco.

Q. Who is George Coleman?

A. George Coleman is, to the best of my knowledge, the owner of Sunco Trucking. The subject matter is Commercial Disposal Facility, Northwest Quarter, Section 29 North.

Q. Is that the letter you wrote a letter in response to, what's previously been marked in this case as Exhibit 3?

A. Yes, if you say so.

Q. Okay. What's No. 7?

A. No. 7 is a letter from the OCD, once again to Mr. Coleman. It's dated November 3, 1989, once again in regards to the commercial disposal facility.

Q. Is that the letter that you wrote Applicant's Exhibit No. 4 in response to?

A. I believe so.

Q. And No. 8?

MR. STOVALL: Mr. Dean, could you slow down? We're digging through the file finding these things.

MR. DEAN: You can have these.

MR. STOVALL: Once again, Mr. Horner, do you have copies?

MR. HORNER: I have copies.

Q. (BY MR. DEAN) No. 8 is?

A. Once again, a letter from Mr. Anderson to I believe it was Mr. Coleman. It might have been myself.

Q. Did you write Applicant's letter No. 5 dated 5-18 of 90 in response thereto?

A. Yes, I did.

Q. Is it your representation today that these letters all supplement your original application to the OCD for this commercial wastewater disposal site?

A. They do.

Q. They have become an integral part of those to be followed by the applicant, if granted?

A. That's correct.

Q. Is the information contained in those true and correct to the best of your knowledge?

A. It is.

MR. DEAN: I don't have any other questions.

MR. STOVALL: Mr. Horner, do you have some questions, if the examioner is ready for--

HEARING EXAMINER: No, that's tne reason I didn't pass the witness just yet.

MR. DEAN: I'm sorry. I would like to move for the admission of my Exhibits 1, 2-A, 2-B, 3, 4, 5, 6, 7 and 8.

HEARING EXAMINER: Are there any objections?

MR. HORNER: No objections.

HEARING EXAMINER: Exhibits 1 through 8 will be admitted into evidence.

MR. DEAN: Pass the witness.

CROSS-EXAMINATION

BY MR. HORNER:

Q. Mr. Frank, I believe you testified that you have designed other disposal pits here previously, one of which is the Southwest Disposal Pit that you own. Did you also design one known as or owned by Basin Disposal?

A. No.

Q. You did not design that? Are you familiar with that project?

A. Vaguely, from newspaper clippings, articles.

Q. Do you know where the San Juan River lies with respect to this project?

A. It would be to the south.
Q. Do you know how far south?
A. No.
Q. Is a mile-and-a-half reasonable?
A. It's reasonable.
Q. So, in fact, this disposal pit actually lies between the Animas and San Juan Rivers; is that correct?
A. Yes, it does.
Q. And the Animas and San Juan Rivers come together just a few miles down river; is that correct?
A. Down river, yes. I don't know how far.
Q. Do you know how far this project is from the City of Farmington?
A. Approximately four miles, I believe.
Q. And how about from the City of Aztec?
A. Approximately four, likewise.
Q. How about from the City of Bloomfield?
A. Six, possibly.
Q. How about from Flora Vista?
A. South of Flora Vista by approximately two-and-a-half miles.
Q. Are there any roads located near this facility?
A. Yes.

Q. What road would that be?
A. It's County Road 3500.
Q. Where does this road go?
A. It runs for the most part north-south through or adjacent to this proposed facility.
Q. How close does it come to this facility?
A. Three hundred, 400 yards.
Q. What is the condition of this road?
A. Recently paved.
Q. Is it paved as continuous lane?
A. I haven't traveled it as continuous lane; so I don't know, but I would assume it's continuous lane.
Q. You've indicated that on your drawings here there's three evaporation ponds; is that correct?
A. Yes.
Q. Could you explain when Evaporation Pond Nos. 2 and No. 3 are going to be installed?
A. Pond No. 1 and No. 2, the earthen structures will be built pending application approval. Pond No. 1 will be lined immediately after completion of the dirt work of Pond 1. Pond No. 2 will be lined as market conditions indicate. Pond No. 3 will be built subsequent to No. 2 and once again as market conditions indicate.

Q. What is purpose of building Pond No. 2 without a liner?

A. Capital costs up front.

Q. Why build it at all?

A. The pond would be built because the majority of the work to build one of these ponds is the construction of the subgrade.

Q. I still don't understand why you wouldn't put that cost off until you actually intend to use that pond and put in liners?

A. It was a decision of Mr. Coleman's. I can't answer you as to why he decided not to put the liner in, but it's as market conditions would indicate.

Q. Is it being constructed so it can be used even though it has no liner?

A. No.

Q. Can you guarantee the OCD and the public that it will not be used until it has the liner?

A. I can't personally, but due to the operations of the pond, it will be manned during all open hours, and therefore with a degree of certainty, yes, I believe we can guarantee that the pond will not be used.

Q. Well, it appears to be a relatively easy

matter to either guarantee that it will or will not be used until it has a liner.

MR. DEAN: He's arguing with the witness. I object. He's answered the question. I don't know what a guaranty is under this situation. He says they're not going to use it.

MR. STOVALL: Mr. Horner, would you explain where you're going? Maybe you want to rephrase that question.

MR. HORNER: Let me go on a little bit, and talk about this.

MR. STOVALL: You're withdrawing that question?

MR. HORNER: I'll withdraw that question for the minute.

Q. If a leak is detected in your first pond that you have constructed with a liner, what do you intend to do?

A. Subject to our letters, we will cease accepting fluids, commence evaporation, commence hauling, lower the pond to the level at which the leak is, repair the liner, put the pond back into operation.

Q. In fact, in one of your letters did you not state if a leak was detected, you would wait about 100

days, trying to let the pond evaporate itself down below the leak?

A. I believe we clarified this in my previous testimony in a letter dated May 18, that we amended that particular concern of yours to where it fluids are found in the leak detection sump, artifical evaporation and the transportation of fluids to other facilities will begin immediately. So there is no 100-day delay.

Q. Right, and did the OCD not write you back and said that you had to drop the water level in that pond below the leak within seven days?

A. That's not the way I interpreted it, and that is not our response either.

MR. HORNER: I would refer the Examiner to -- I don't have the exhibit number, but it's the November 3rd letter, OCD to Mr. George Coleman. That would be --

HEARING EXAMINER: I believe that's Exhibit No. 7; is that correct, Mr. Dean?

MR. DEAN: Yes, it is, the second OCD letter is seven.

Q. (BY MR. HORNER) That would be item No. 4B talking -- Item 4 starts out talking about, "If there is only one pond at the time the leak is detected." B

talks about, "Immediately begin removing fluids from the affected pond to an approved location. The removal of the fluids will continue uninterrupted until the pond is empty or until the fluid level is below the leak. A period not to exceed seven days will be allowed to accomplish the removal of the fluids."

A. You read from Mr. Anderson's letter. However, our response did not indicate we would comply with this. Our response is as we indicate here.

Q. And that is that you will begin immediately to remove fluids?

A. Correct.

Q. It does not say you will remove fluids below the leak within seven days?

A. That is correct.

Q. Now then, is it possible that you anticipate removing fluids from Pond 1 by pumping them into an unlined Pond 2?

A. No, that is not our intention.

Q. What do you intend to do with fluids from Pond 1 if a leak is detected?

A. As indicated in our letters, we will commence evaporation and commence hauling to one of the three other commercial disposal facilities in the

San Juan Basin.

Q. How long do you anticipate will be the maximum length of time before that pond level drops below the leak?

A. I would have to know where the leak is. Does that answer your question?

Q. Does that mean you intend to make no efforts whatsoever to comply with the seven-day requirement they were talking about?

A. There are some physical constraints as to the actual lowering of the pond in that period. So we intend to comply with it as best we can with tne available manpower and available facilities.

Q. So you may run the system with a leak in your primary liner indefinitely?

A. That is not correct.

Q. How do you anticipate testing for leaks in your primary liner?

A. As I explained in testimony previous, the leak would hit either the geotextile or the permeable median, which would be the sand and pea gravel. At that time it would drain by gravity to the leak detection sump.

Q. How do you intend to check for leaks in the secondary liner?

A. We don't. We can't.

Q. So you may be running indefinitely with a leak in your primary liner and possibly a leak in your secondary liner, and you wouldn't even know it?

MR. DEAN: I'm going to object. It's mischaracterizing the evidence. Nobody said they were going to run indefinitely, and it's not the testimony. I object to the question as not the evidence.

MR. HORNER: We have a direct question, and we have no testimony regarding how long it would take to drop the level below the leak.

MR. DEAN: If you want me to respond -- I don't know if you want me to.

MR. STOVALL: Mr. Examiner, I will simply advise the Examiner, and for the record, gentlemen, just so you are aware the nature of this process, the Examiner is an engineer and qualified technically, and my role is to advise him as to the legal procedural/ evidentiary matters. I believe that the question asked previously with regard to the time to remove, the response to that question was it depends on the location of the leak. So I think it was responded to, and, quite frankly, I've now confused myself and forgotten Mr. Horner's last question. Would you like

to repeat it, or we can have it read from the record?

MR. HORNER: If you're confused to that extent, let me go back.

Q. If the leak is on the bottom of the pond, how long will it take to remove the fluids?

A. Once again, dependent upon available manpower and the time of year in which it happens. It's a --

Q. Six months?

A. No, it shouldn't take that long.

Q. It shouldn't take that long, but could it take that long?

A. It could.

Q. A year?

A. No.

Q. Why do you say no?

A. Because the pond can be evaporated in less than nine months and/or trucked.

Q. For the six to nine months or to the year, whatever it's going to take to drop the fluid level of this first pond when you've got a leak in your primary liner, how do you know that there is no leak in the secondary liner?

A. We do not.

Q. And so if in fact there is a leak in the

secondary liner, you could be leaking to the surrounding ground for six to nine months to a year?

A. That's incorrect because Mr. Coleman, in conveying to me, and that is the purpose for building the second pond, the shell whereby we shouldn't have a six to nine months' delay. Where we would have the delay would be a maximum of three to four months, depending on weather conditions to a point in time in which we can install new liners in the second pond, those months being the winter months in which the liners can't be installed due to the inflexibility due to cold.

Your question to me, really, the pond would be emptied just by evaporation or trucking in no more than four months.

Q. So it could be -- the surrounding ground could be exposed to the water in the pond for a period of four months while you wait to line the second pond?

A. Correct.

Q. Although the OCD has asked that it be dropped below the leak level within seven days?

MR. DEAN: I'm going to object to that because it's clearly not the case. It's a misrepresentation. The letter of May the 2nd, No. 7, clearly states what their response was to our letter

before that, and we adopted what they said. There's nothing about seven days in there.

MR. STOVALL: Come back with us, Mr. Dean.

MR. DEAN: If you read Exhibit 7, 4B, in the middle of that letter, it says --

MR. HORNER: It might be a little easier it he does this on some sort of Redirect.

MR. STOVALL: We're reading from an item that's an exhibit procedure. We don't adhere.

MR. DEAN: Number seven, "And in tne transportation of fluids to other facilities will begin immediately waiting 100 days before commencing hauling is not acceptable." What he did in Exhibit A is adopt that completely, and I take that as an amendment to what Mr. Anderson had said before before we adopted it if.

HEARING EXAMINER: You're reading from Exhibit No. 8; is that correct, and not Exhibit No. 7?

MR. DEAN: I'm sorry. You're right. It's our 5 and 8 that are related our 5. His 8 comes first and own our 5.

MR. STOVALL: Let me go back and ask Mr. Frank some questions with respect to this exhibit to make sure we have this correctly.

You received the November 3 letter, Exhibit

No. 7, from Mr. Anderson in response to your initial application, if you will, be that one or two parts, in which your initial application proposed you begin evaporation and transportation and wait 100 days before starting transportation; is that correct? Your initial proposal was to begin evaporation, and it it wasn't done within 100 days, begin transportation from that time forward?

THE WITNESS: Correct.

MR. STOVALL: In response to that, Mr. Anderson sent you the letter of November 3, Exhibit No. 7, paragraph 4B of which says, in effect, We don't accept that. What you will do is begin removal -- evaporation and removal immediately and empty the pond within seven days or get below the leak within seven days?

THE WITNESS: That's what Mr. Anderson's letter indicates.

MR. STOVALL: That's the next step. The next piece of correspondence then was -- that I have in this sequence of the three pieces of paper I'm looking at is a May 2 letter, Exhibit No. 8, in which Mr. Anderson provides that if fluids are found in the leak detection sump, evaporation will begin and transportation will begin immediately. The waiting

100 days is not acceptable?

THE WITNESS: There's an intermediate step. Our letter --

MR. STOVALL: That's what I thought. Your letter, which exhibit or which date?

THE WITNESS: It's dated April 17, 1990. I don't remember which exhibit number it would be right now.

MR. STOVALL: Probably No. 3, I believe; is that correct? No. 4. What specific part of that letter are you referring to?

THE WITNESS: No. 4, consisting of the last paragraph of the first page, all of page 2, and the top portion of page 3.

MR. STOVALL: This is where the 100 days came in; is that correct? In my sequence of events, this is where we came up with 100-day hauling proposal?

THE WITNESS: The 100-day hauling proposal was prior to this. Mr. Anderson didn't like the 100 day proposal. Told us to do it in seven days. This is my response to the seven-day proposal. And then comes the other letters from Mr. Anderson saying we will start hauling immediately.

MR. STOVALL: To which you responded yes,

we agree to start hauling immediately?

MR. DEAN: Yes.

MR. STOVALL: Let me again make this clear because you're new, and to a large extent, we're new at this process. What you have going on here is a process of correspondence and interplay between tne OCD technical staff, the environmental bureau, and the applicant regarding the requirements for approval. Now, there is within the rules, and as you started out, an administrative approval process by which such a facility could be approved without necessity for a hearing such as this. As a result of the Horner protest, this matter has now moved to a hearing phase. What the OCD has specified as requirements are not necessarily what will come out in the order, nor with what Sunco has stated will come out in the order.

The order will be based upon tne evidence taken at this hearing today and will put in some specific requirements. It will tell you, "You will do these things, and you will have this fluid removed within a period of time," or "You will commence fiuid removal within a period of time."

I don't think it's necessary to engage in further debate as to philosophically what's

necessary. There's some evidence to show what time period is appropriate.

Mr. Horner, particularly, it appears that you're questioning the time, and I understand that. I think it may be that as your turn approaches, it you will, you need to demonstrate a time, help us focus in so we can set that requirement. It's not cast in stone yet. We are taking evidence on that issue.

MR. HORNER: May I ask a question?

MR. STOVALL: Yes.

MR. HORNER: And that is if the OCD staff is still recommending a seven-day time frame, will that be incorporated in this order?

MR. STOVALL: If it is admitted as evidence in this hearing.

MR. HORNER: But it it is not admitted as evidence in this hearing, the staff of the OCD, their recommendations will be ignored? Isn't it the function of the OCD to in fact require compliance with OCD regulations and OCD requirements?

MR. STOVALL: Mr. Horner, I'm not going to engage in debate with you about the function of the OCD. The OCD is operating under a specific set of rules. I described to you the process, and we've got a somewhat integrated process between an

administrative approval give and take and now a hearing process. So it's based upon the record with a court reporter and exhibits admitted into evidence.

As I pointed out to Mr. Dean, he is being required to admit his correspondence between tne OCD and the applicant and yourself as a part of that record. If there is a requirement by OCD staff that this be drained within seven days, please make that part of the record.

MR. HORNER: This is one of my concerns with this hearing, why the OCD is not a party to this hearing to be able to stand up and say that tney are going to require, if they want to, that this pond be drained below the leak within seven days. That really is not my function. I am not a representative of the OCD. I am representing a landowner who's concerned about contamination to his property and not in a position to try to enforce OCD regulations.

MR. STOVALL: I understand that. We have in the record as of this time the exchange of correspondence, and this is why I spent some time going through this exchange of correspondence, to determine what has happened. We have now I think it's four exhibits that we've just discussed here in the

last few minutes relating to the time requirements for evacuating the pond, getting the fluid below the leak level, and doing repair work. That in effect constitutes part of this requirement. That gets the OCD position into it.

We are not a party before the hearing. We do not have a bifurcation in our organization of staff and hearing officers. We don't have that formal relationship. We do have the evidence in the record. If there is an additional requirement, if you feel that something is missing from this record, I'd be glad to let you look at our official file, and if there is additional correspondence in here you would like to get into the regard regarding this issue, if we've left something out, let's do it because that's where the OCD position is going to come from.

It's in the record, as far as I know, unless we're missing something, and I would ask you at this point with respect to your client's interest to help us with that process.

MR. HORNER: I will do what I can, but if I were not here today, and my client was not a participant in this hearing, it looks to me like Sunco or STWD would be required to comply with OCD regulations in dealing, as with this correspondence

back and forth, and as between STWD and OCD, there would be some sort of order come down that, You will do this and this and this and this, and that will effectively comply with our regulations, or if you refuse to do this and this and this and this, we will refuse to grant you a permit without me ever having shown up.

MR. STOVALL: Exactly right, and that's what this exchange of correspondence is. That is how this exchange of correspondence initially came about. OCD would not approve administratively the 100 days to begin trucking or 100 days for evaporation. That's been demonstrated by the evidence.

MR. HORNER: I see nothing in the correspondence here that indicates that OCD will accept -- I mean they have indicated that they must begin moving immediately, and it's got to be done within seven days in order to get it below the leak, and now it appears that STWD's position is they will begin moving immediately, but it may take them four to six months to get below the leak, and I don't see OCD standing there saying they have agreed to this anywhere in any of this correspondence. I don't understand how that gets factored into this process if in fact I am required at this point to bring forward

the OCD position.

MR. STOVALL: You understand, of course, the limited jurisdiction of the OCD for the protection of fresh water resources here in this disposal permit; is that correct?

MR. HORNER: That's another set of concerns of mine.

MR. STOVALL: And again in the administrative process, our technical staff has made that review. And I will grant you that it does -- when this moves into the hearing process, and it only moves into the hearing process when there is an opponent, and it is at that point that the opponent takes on some responsibility and some burden. At this point what I am telling you is that I'm not prejudging this case, and the examiner is not prejudging this case.

What we don't want to engage in for the procedural purposes here is a debate between you and the applicant's techincal witness philosophically as to what you think is right. If you feel there is something missing in terms of what should be established, it is at this point incumbent upon you to supplement the record.

MR. HORNER: It looks to me like it Mr.

Dean had not submitted these letters into evidence, although this correspondence was in the file, it may not have been considered by this hearing examiner with regard to the order that's going to come from this hearing even though there may have been agreements. So I don't think that the OCD, their recommendations and their position can be totally ignored with regard to the order that comes from this hearing other than what is introduced by Mr. Dean or myself today.

MR. STOVALL: And in fact it has been introduced; so that issue is moot at this point. This information is in the record at this hearing.

MR. HORNER: I think it's probably time to go on.

MR. STOVALL: I agree.

MR. DEAN: My concern is if we're going to ask questions, we ask them on the facts that are in evidence. I just want to make that clear. That was my concern about the question that was asked.

Q. (BY MR. HORNER) Regarding Ponds 2 and 3, you have stated previously that Ponds 2 and 3 will be completed as constructed as market conditions dictate. You have just stated that it is the completion of Pond 2 as a part of your contingency plan if a leak is found, detected?

A. It is not part of our contingency plan as submitted, but it is an option to the contingency plan.

Q. So it is an option to your contingency plan. It is not a part of your contingency plan?

A. No. Our contingency plan is outlined in these documents as submitted.

Q. I understood you to say that the maximum length of time that the local ground could be submitted to a leak in the secondary liner would be four months because that is the length of time it takes to complete Pond 2; correct?

A. That is correct.

Q. So if in fact now the completion of Pond 2 is only an option to be considered and may not in fact be undertaken if a leak is detected in Pond 1, then in fact the length of time that the local ground may be submitted to a leak in the secondary liner may be longer than four months; is that correct?

A. Would you repeat that question, please.

Q. If in fact Pond 2 is not going to be lined, if a leak is detected in Pond 1, then it may be longer than four months before Pond 1 is drained below the level of the leak; correct?

A. Yes.

Q. And you say that the pond should be able to be totally evaporated within nine months; correct?
A. Correct.
Q. So, therefore, it may be nine months before Pond 1, the level is reduced below the leak, possibly?
A. Dealing in possibilities, yes, I believe that's true.
Q. What is the maximum depth of the pond, all three ponds?
A. The maximum depth to be 13.5 feet of water.
Q. What basically is the purpose of these three ponds?
A. The purpose is stated in the initial application. It's for disposal by evaporation of produced water from the San Juan Basin.
Q. By evaporation?
A. Um-hm.
Q. It would appear to me that an evaporation pond would require a maximum surface area at a minimum depth. Would that be reasonable?
A. For evaporation, that's the purpose is to increase your surface area.
Q. And isn't 13.5 feet a bit excessive?
A. Not in my opinion.
Q. I believe you stated that when a load is

brought into the facility, it is put into some, what did you call them, what kind of tanks were they?

A. I believe it was titled unloading tanks, unloading steel tanks.

Q. And those from the drawings seem to be tanks that are considerably longer than they are high?

A. That's correct.

Q. And they are totally open on the top?

A. That's correct.

Q. What is the purpose of them being open?

A. The purpose of them being open is so we can visually inspect the water that we receive.

Q. You've also talked about trying to aerate this pond to eliminate anaerobic bacteria; correct?

A. I testified to where the pond would be equipped with an aeration system, and it would keep the pond aerobic.

Q. The purpose of keeping the pond aerobic is to eliminate anaerobic bacteria and therefore hydrogen sulfide; correct?

A. Correct.

Q. Is there any other way you can get hydrogen sulfide into this facility?

A. Hydrogen sulfide can be transported into the facility from waters already contaminated with the

bacteria, and therefore the H2S could be inherent in the water brought to us.

Q. If there is H2S in the water brought in, and it's dumped in an open tank, that H2S can escape to the ambient air; is that correct?

A. The H2S would be sampled from the truck prior to being dumped in the tank. It would be tested for H2S. If there is H2S, the operator would be called and said, "We would request you to either remove this load from our facility or we will treat it prior to accepting it."

Q. Is an operator going to be on hand for every load that's brought into the facility?

A. Yes.

Q. So if in fact there is H2S in the load, what do you do with the water?

A. The water, once again, we've determined there is H2S by testing. The chlorine would be dumped into the open air tank, the load dumped into it. Sufficient chlorine would be added to it such tnat there will be residual chlorine in the water after the H2S has been converted to hydrochloric acid and sulfuric acid prior to being dumped into the large pond.

Q. Sufficient quantities of chlorine to reduce

the emission of H2S?

A. To have a chemical reaction to remove the H2S.

Q. I am not sure that you answered my question. Would all the H2S be gone then when they put it in the unloading tank?

A. It would be -- at the same time that it is put into the unloading tank, it would be treated; so simultaneously. So, no, not before but simultaneously.

Q. So there still could be H2S in that unloading tank escaping to the atmosphere?

A. Yes, minor quantities, yes, because it's all dissolved.

Q. So in fact the plan is not to isolate the H2S load?

A. It will be isolated in the unloading tank.

Q. Okay, but it's not enclosed?

A. No.

Q. On your drawings up here, there is no reference made to the spray system, although you described the spray system. Do you intend to submit diagrams of the spray system?

A. If required, I will submit diagrams.

Q. Also there are no diagrams submitted of the

aeration system. Do you intend to submit diagrams of the aeration system?

A. I can submit diagrams. The narrative explained it rather well, but a diagram can be submitted.

Q. How far above the bottom of the pond will the suctions be located for the spray system?

A. The suction for the pond will be a riser which will extend eight feet up. It will be a slotted riser; so it will pull from all levels of the pond.

Q. Do you anticipate a sludge buildup in this pond?

A. Yes.

Q. Do you anticipate interference with your riser system on your spray system with the sludge?

A. No.

Q. Why is that?

A. The interference that you would discuss would be in essence only applicable or would only affect the riser such a point out to where the suction no longer drags the material to the riser. So I don't expect any interference because it will be over a long period of time, and the pump that we have will be able to pump those solids, and it will blow it back out the sprayer system into the bottom of the pump.

Q. The solids will be pumped through the system and out the spray nozzles?
A. Yes.
Q. Do you anticipate clogging of your spray nozzles?
A. It's a possibility.
Q. Do you anticipate the need for cleaning the sludge out of the bottom of your pond to make the system work?
A. No.
Q. Does the sludge in the bottom of tne pond increase the likelihood of anaerobic conditions that cause H2S?
A. No.
Q. In the design of your aeration system, apparently you had two systems. The first was a rock diffuser. What was the purpose of the rock diffuser aeration system?
A. It's an aeration system that is very economical to operate. The purpose of it is to roll the pond.
Q. What is rolling the pond, and why are we rolling the pond?
A. Rolling the pond, in essence, turns tne pond over. It brings the waters that are on the

bottom to the surface, and the surface waters that were once on the top are then recirculated to the bottom.

Q. Why are we doing that?

A. To keep the pond aerobic.

Q. How does that keep the pond aerobic?

A. It brings the pond to the surface where the oxygen transfer between the air and the water is completed.

Q. So the oxygen transfer is actually going on on the surface rather than with bubbles of air coming up?

A. No. There is oxygen transfer with the bubbles of air coming up, but it is not nearly as much of an oxygen transfer as what occurs at the surface.

Q. Can you give me a feel for what the relationship is, how much oxygen is gained on the surface versus through the bubbles?

A. We're getting out of my expertise. That will be covered by someone else.

Q. If oil gets into the evaporation pond, oil will be on the surface of the pond; is that correct?

A. Due to the emissability of water and oil, yes, it would be.

Q. Oil on the surface of the water will

prevent oxygen transfer at the surface of the water, will it not?

A. If there was oil on the pond, it does prohibit the oxygen transfer.

Q. And it will also prohibit evaporation, will it not?

A. Yes, it would.

Q. Do you have a plan for getting oil off your evaporation pond, if it gets in there?

A. Yes. It will be picked up by a vacuum truck.

Q. What is a sufficient oxygen level in the pond to keep an aerobic condition?

A. I'd have to have that asked of someone else. I don't have that answer.

Q. Your aeration system that you've got under the surface of the water, will there be any decrease in efficiency over time of those systems?

A. Over time, what I perceive to happen to the rock diffuser, there would be no decrease in efficiency. The other second aeration system, due to the nature of air being continuously blown through a PVC pipe, the only thing that would happen would be that the holes would become larger, and that would be the only deterioration or inefficiency, and then all

you need is a larger compressor to move more air.

Q. If the holes are getting larger, you need a larger compressor to move more air?

A. Correct, because what would happen is, as the holes become larger, they would let out more air per hole. And if you have limited capacity on your air pump, you have to increase the capacity of that pump.

Q. In fact, over time isn't the salinity of this pond going to increase enormously?

A. It will increase to a certain point in time, at which time, depending on the various salts, those salts will precipitate and fall to the bottom of the pond. My training indicates to me the pond will reach a certain salinity, at which point it will not get any higher than that because the salts will precipitate out.

Q. When this air is blowing through this aeration system and coming out these little bitty holes, won't salt precipitate out of the water and form around these holes and clog the holes?

A. No, because, once again, it will be a continuous operation to where the air coming out of the pipes will clean the surrounding area around it.

Q. Did you submit a recommended compressor to

go with this system?

A. Yes, I did.

Q. What was the size of that compressor?

A. Let me first ask which system are you talking about?

Q. I'm talking about, I guess it's in your August 18, 1989, letter to the OCD. And again I'm not clear on which exhibit number that is.

MR. DEAN: Three.

MR. STOVALL: Three.

THE WITNESS: Once again, I need to know which system you're in reference to.

Q. (BY MR. HORNER) I'm just asking, did you submit a spec sheet on a compressor to go with your aeration system?

A. I submitted a spec sheet for a compressor to go with the Aquatic Ecosystems aeration system.

Q. Is there a distinction here?

A. Yes. We have two separate systems. This would be what I've commonly called No. 1.

Q. What is the size of this compressor?

A. The compressor is a rotary vein compressor, and by size what do you mean?

Q. Horsepower rating.

A. Horsepower rating is a third horsepower.

Q. Do you know what the horsepower rating of the compressor that was recommended by Mr. Cheney was?

A. I can refer to it.

Q. Okay. Let's refer to it. For the record, which exhibit are you referring to?

A. Mr. Cheney's letter here indicates that the rate of horsepower required would be 32 horsepower.

Q. That's a significant discrepancy between the one-third horsepower unit that you recommended; right?

A. Yes, but we're talking three different systems here, and Mr. Cheney's is in reference to one of the other systems.

Q. I thought we had two different systems?

A. Two systems. The third system is what I call our spray system, which is 150-horsepower motor.

Q. But the 32-horsepower motor that he's recommending goes with which system?

A. I'd have to ask Mr. Cheney that, to bring that up. I'm not sure right now.

Q. In fact in the design of these aeration systems, we're getting way out of your scope of expertise, aren't we?

A. Not in the design, but tne oxygen transfer requirements are way out of my --

Q. Plus the horsepower rating, the air flow, the fact that it's going to plug the holes in the system with salts, that the sludge is going to contaminate the inlets? I mean we're way out of your area of expertise, aren't we?

A. Not on mechanical things, no, you're not.

Q. Is the horsepower an electrical thing then that's out of your area of expertise?

A. It's an engineering thing -- let's put it that way -- of which we were required to have it certified by a registered engineer.

Q. How about air flows, is that within your expertise as a geologist?

A. No. That is Mr. Cheney's expertise. Once again, I must indicate that I did the mechanical design. Mr. Cheney certified the adequacy of those designs.

Q. Who submitted this one-third horsepower compressor?

A. I submitted the documentation submitted to me from Aquatic Ecosystems. I did not generate this information.

Q. You testified about a search of local landowners. Apparently, you signed an affidavit here that a search was made. Do you know what area was

searched?

A. I believe it was a halt-mile radius from our facility.

Q. Would I be correct in assuming that tne OCD requires clay pits or lined pits to prevent what's in these ponds from getting to the soil?

MR. DEAN: I'm going to object. It's a legal question. He doesn't know what tne OCD requires.

MR. HORNER: He's a geologist.

HEARING EXAMINER: Do you want to repeat the question because I was looking for some other information?

Q. (BY MR. HORNER) Would it be fair to assume that the reason for the lining of the pits or tne clay pits is for the purpose of preventing whatever is in that pond from getting to the surrounding soil?

A. I would assume that that's tne OCD's intention is to put an impermeable barrier between the pond bottom and the sides to the aquifers or waters.

Q. So that whatever is in there could contaminate the soils and the groundwaters?

A. That would be my assumption.

Q. But yet it's your intention with the closure plan to simply cover this up with a piece of

plastic and leave it there forever?

A. That is my intention or Sunco's intention.

HEARING EXAMINER: How much more cross-examination do you have, Mr. Horner?

MR. HORNER: This witness? It may be a little while yet.

HEARING EXAMINER: I'm going to again ask, how much longer?

MR. HORNER: Forty-five minutes.

HEARING EXAMINER: How many more witnesses do you have, Mr. Dean?

MR. DEAN: Two.

HEARING EXAMINER: We're going to take a recess, and we're going to reconvene at 8:15 tomorrow morning.

MR. DEAN: May I speak to that?

MR. HORNER: Mr. Examiner, I've got three hearings in Farmington tomorrow.

HEARING EXAMINER: We're going to reconvene at 8:15 in the morning.

MR. HORNER: I was notified of the hearing today. I showed up.

HEARING EXAMINER: It is seven o'clock, Mr. Horner.

MR. STOVALL: The hearing didn't start

until 5:00.

HEARING EXAMINER: Mr. Horner, the hearing started at 8:15.

MR. HORNER: I've got three hearings tomorrow in Farmington. Can we reconvene this to a later date or come back in a few minutes and keep going this evening?

HEARING EXAMINER: I'm not going to continue with this this afternoon, no.

MR. STOVALL: Mr. Dean, would you approach, please.

MR. DEAN: I'm sorry.

MR. STOVALL: Have you two a suggestion in the alternative?

MR. DEAN: I, quite frankly, don't care that it's another date, as long as the time we might get a decision doesn't change. I realize that's in his prerogative. I have a problem with Richard Cheney. His report is in, which is good enough. I only have this one complication to clear up, and he's going to Clovis at ten o'clock in the morning.

MR. STOVALL: Mr. Cheney?

HEARING EXAMINER: It appears that both of you have a problem.

MR. STOVALL: Let's look at this for a

second. Mr. Cheney is obviously a necessary witness, and I agree with the examiner that to continue this tonight would be very counterproductive. How do each of you look for Friday?

MR. HORNER: I'll be available Friday.

MR. DEAN: I'm sure I'm fine Friday.

MR. STOVALL: In consideration of the hour of this night's hearing, I fully agree and 100 percent recommend we not continue with this hearing this evening.

MR. DEAN: I have no objection to that.

MR. STOVALL: In consideration of the fact that it is seven o'clock at night, it would be very difficult to make alternate arrangements, I would recommend, Mr. Examiner, that we convene Friday morning at 8:15. How does that suit your schedule?

We'll take just a couple of minutes.

(Thereupon, a discussion was held off the record.)

HEARING EXAMINER: Let's go back on the record.

MR. STOVALL: Mr. Examiner, before we adjourn this hearing, I do want to make one thing clear. I hope you'll both take advantage of this 24-hour, 36-hour break that we've got to go through the

record again.

Mr. Horner, particularly I want to make it very clear to you, we want to get all of the information you think is important in the record, but in protesting this case, you take on a certain amount of responsibility for that yourself.

Just in case I did not make it clear before, what is in the file and what is part of the OCD communication between Sunco and the OCD is an integral part of the evidence. Where it might be the standard for approval in an administrative process, it is evidentiary of the standard which our staff would require in the hearing process, but please take this opportunity that if you feel there is something missing in the record, to adequately protect your client's interest. Please take this opportunity to develop that information and have it available when we reconvene this case on Friday.

MR. DEAN: I also apologize for my haphazard start. I dropped the ball in not having those exhibits ready.

MR. STOVALL: Gentlemen, neither of you has appeared before us before. You are not familiar with the process. We understand that. This is an important case, and there are some important interests

represented here. We want to make sure it's done properly. We probably should not have started today in the first place. That mistake having been made, let's make sure we take advantage of what we're doing now to get a proper and adequate record built so in fact there is a full and adequate hearing on the issues to be presented.

MR. DEAN: I also understand this is the first hearing on a --

MR. STOVALL: That's correct, so we are learning as well from the process.

MR. DEAN: We'll do better Friday.

MR. STOVALL: Perhaps it was advantageous that we did take this little start into it so we have a chance to come back.

HEARING EXAMINER: With this, I'll retract. This particular case will reconvene at 8:15 Friday morning. In that case, we'll call it a night. Thank you.

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Deborah O'Bine, 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 June 25, 1989.

Deborah O'Bine

DEBORAH O'BINE
CSR No. 127

My commission expires: August 10, 1990

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 9955, heard by me on June 13, 15, and 22 1990.

, Examiner
Oil Conservation Division