

broad), 457 (not relevant), 459 (not supported), 460 (not supported, too broad, and meaning unclear), 464 (not supported and not relevant), 465 (not supported and too broad; matter of semantics), 466 (not supported), 467 (not relevant), 468-469 (not supported and not relevant), 470 (not supported), 471 (meaning unclear and too broad), 474-476 (meaning unclear and too broad), 479 (meaning unclear; this is legal argument), 483 (not supported, not relevant, and too broad), 484 (not supported and duplicative), 485 (not supported), 487 (not supported and too broad), 489 (not supported and meaning unclear), 490 (not supported, meaning unclear, and assumes facts not proven), 492-493 (not supported), 494 (not supported and meaning unclear; don't all states have minorities?), 495-496 (not supported and not relevant), 497-498 (not supported), 499-502 (not supported), 503-504 (meaning unclear), 506 (not supported and assumes facts not proven), 507 (not supported and too broad), 508 (not supported), 509-510 (not supported and too broad), 511 (meaning unclear and assumes facts not proven), 512 (not supported and not relevant), 513 (not supported), 515 (not supported), 517-518 (not supported), and 519 (too broad and meaning unclear).

Findings of Fact

1. Applicant Camino Real owns and operates the Camino Real Landfill (CRLF) located in southern Doña Ana County, New Mexico. Application, Vol. I, Section 2, p. 2-7; Testimony of Tom Reilly, Tr. Vol. 2, p. 610.

2. CRLF is an existing solid waste facility permitted pursuant to the Solid Waste Act, NMSA 1978, §§ 74-9-1 to 74-9-42. Application, Vol. I, Section 2, p. 2-1.

3. CRLF was formerly operated by JOAB, Inc. under the name of Nu-Mex Landfill. Application, Vol. I, Section 1, p.1-1; Testimony of Mark Turnbough, Tr. Vol. 4, p. 1423; NMED Administrative Record. It became a permitted landfill on November 6, 1992, when Permit No. SW 91-04 was issued to the facility. App. Vol. I, p. 1-4. The Solid Waste Facility Permit for CRLF was renewed on March 5, 1997 with an expiration date of March 5, 2007. App. Vol. I, Fig. 1.1.1.

4. Camino Real Environmental Center, Inc. is a wholly-owned subsidiary of Waste Connections, Inc., a publicly-traded company. Application, Vol. I, Section 2, p. 2-7; Testimony of Tom Reilly, Tr. Vol. 2, p. 610.

5. The Solid Waste Management Regulations provide: "To renew a permit, the owner or operator of a solid waste facility shall file a permit renewal application no later than 12 months prior to the expiration date of the facility permit." 20 NMAC 9.1.212.T (now codified at NMAC 20.9.3.25). Camino Real timely filed the Application to renew and modify its permit on March 6, 2006, one year prior to the expiration of its current permit. Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 761-762; Application, Vol. I, Section 1, p. 1-1.

6. Camino Real seeks in the Application to renew its permit for a period of ten years pursuant to 20 NMAC 9.1.212.D and to continue operations as a privately owned and operated solid waste facility. In addition, Camino Real seeks to modify its permit pursuant to 20 NMAC 9.1.210 (now codified at NMAC 20.9.3.22) to provide for the extension of environmental control systems, in order to extend operations into Unit 3 of the facility, including the storm water management system, the leachate collection system, and the Landfill gas control

system. Camino Real's application to renew and modify its permit is referred to herein as "CRLF's Application" or "the Application." Application, Vol. I, Section 2, p. 2-1; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4215-4216.

7. The Solid Waste Act mandates that "an application for a permit shall be in a form and contain the information required by the [Secretary of Environment], including all information necessary for the [Secretary] to make a decision on the application pursuant to [NMSA 1978 § 74-9-24] of the Solid Waste Act." NMSA 1978 § 74-9-24. CRLF's Application is in a form specified by the Secretary of Environment. Additionally, the Application includes all information necessary to enable the Secretary to make a decision on the Application. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4271 to 4278.

8. At the time of filing of CRLF's Application in March, 2006, the fee for a permit renewal and modification was \$10,000. See 20 NMAC 9.1.1108 (now codified, as amended at NMAC 20.9.3.39). Camino Real paid the proper application fee, in the total amount of \$10,000 (\$5,000 for the permit renewal application and \$5,000 for the modification application) to the Department at the time Camino Real filed the Application in March, 2006. Testimony of I. Keith Gordon, Vol. 3, pp. 762-63; Application, at preface to Vol. I (showing receipt).

9. The Department deemed CRLF's Application complete on October 16, 2007, under the requirements of 20 NMAC 9.1.212.I (now codified, as amended, at NMAC 20.9.3.20.A). Record Proper; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4214 & 4540; Testimony of I. Keith Gordon, Tr. Vol. 3, p. 771.

10. Notice of the filing of a permit application must be provided by certified mail to the owners of record, as shown by the most recent property tax schedule, and to tax exempt entities of all properties within one hundred feet of the property on which the facility is located or proposed to be located. In addition, notice must be provided to all interested participants and all municipalities, counties and tribal governments within a ten-mile radius. 20 NMAC 9.1.201.C (now codified at NMAC 20.9.3.8.G). In 2006, Camino Real gave the required public notice of the filing of CRLF's Application. Camino Real gave notice by certified mail to adjacent property owners (as shown on the most recent property tax schedules) and to local and tribal governments within a ten-mile radius, and to all other affected and interested parties. Camino Real sent notice via certified mail to over 103 potentially interested parties, thereby exceeding the mandatory notice required by the NMAC. Application, Vol. VI, Section 2, Table VI.2.2; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 770-771.

11. Notice of the filing of an application must be published once in a newspaper of general circulation in the county in which the facility is located. 20 NMAC 9.1.201.C.4 (now codified as amended at NMAC 20.9.3.8.G.4). Camino Real met and exceeded this requirement by publishing notice of the filing of the Application in the Las Cruces Sun-News (in English and Spanish); El Diario (in English and Spanish); and the El Paso Times (in English and Spanish). Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 770-771. Application, Vol. VI, Section 2, Subsection 3.

12. Notice of the filing of an application must be posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located. 20 NMAC 9.1.201.C.5 (now codified as amended at NMAC 20.9.3.8.G.5). Camino Real posted notice of the filing of the Application in English and Spanish at the entrance to CRLF and also in four other accessible and conspicuous places in Sunland Park, including: (1) the Sunland Park Post Office; (2) Sunland Park City Hall; (3) the Sunland Park Senior Citizen's Center; and (4) Main Bank in Sunland Park. Application, Vol. VI, Section 2, Subsection 3, Affidavit of Joe King.

13. Prior to submitting the Application, Camino Real commissioned Hicks & Company to perform a Community Impact Assessment ("CIA"), even though there was no regulatory requirement to do so. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2521-2522 and 2547.

14. Hicks & Company is a multi-disciplinary environmental consulting firm based in Austin TX since 1986, specializing in environmental assessments, environmental impact analyses and cultural resources, as well as socio-economic and demographic studies. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2507-2517.

15. Camino Real commissioned the CIA in order to address community concerns raised during the current permit period and to identify other potential community concerns and give members of the community a voice in the record in advance of the hearing on CRLF's Application. Testimony of Thomas Van

Zandt, Tr. Vol. 7, pp. 2545-2547; Community Impact Assessment (“CIA”), at p. 9 (Exhibit CRLF 14).

16. In the course of preparing the CIA, Hicks & Co. examined the characteristics of the community of Sunland Park and the relationship between CRLF and the community. The topical areas examined in the CIA included the environmental setting in Sunland Park, the socioeconomic and racial demographics of the community, and the economic and environmental impact, if any, CRLF has on the community. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2550-2552; CIA (Exhibit CRLF 14).

17. As part of the CIA process, Hicks & Company held four scoping meetings in Sunland Park on November 10, 2005 and January 18, 2006 to provide information about CRLF to the community and to allow members of the community to voice concerns about CRLF. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2564-2566; CIA at p. 5; CIA at appendices D & E (Exhibit CRLF 14) The Department held two more scoping meetings in 2007 for similar purposes. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4283-84 Spanish translators were provided at these meetings.

18. At the Department’s first public meeting, held in June 2007 at Desert View Elementary, roughly 50 people attended. A large number of Department employees, representing various bureaus within the Department, were present. Secretary Curry and Deputy Secretary Padilla were also present. The Department made a presentation to explain the permitting process and then

listened to concerns expressed and responded to questions. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4283-85.

19. At the Department's second meeting, held in October 2007 at Riverside Elementary, the Department made a presentation to explain the permitting process and then listened to concerns expressed and responded to questions. The Department also stressed that the permit hearing would take place in December of 2007 and explained that this hearing would be an opportunity for community members to participate. The Department also explained the procedures that would need to be followed at the hearing. Roughly 70 people attended. The Department hired professional meeting facilitators for the meeting. Erin Ward attended the meeting and copies of her "compendium" were made available to the public (see below). Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4285-87; Testimony of Cynthia Padilla, Tr. Vol. 12, p. 4592.

20. In addition to public scoping meetings, long before the Hearing, the Department took a number of measures to assist in its understanding of local issues and concerns:

a. In early 2007, Deputy Secretary Padilla met with State Senator Nava, Robert Ardovino, and others from the community to discuss CRLF's Application. Testimony of Cynthia Padilla, Tr. Vol. 12, p. 4590.

b. In response to the issues raised at that meeting, Ms. Padilla and her staff traveled to Sunland Park and held a public meeting in late March 2007 to listen to the public's concerns about environmental issues, including CRLF. Testimony of Cynthia Padilla, Tr. Vol. 12, pp. 4590-91.

c. In May 2007, the Department made all relevant files available for inspection by representatives of the Sunland Park Grassroots Environmental Group – Taylor Moore and Juan Garza – who spent three days combing through those files. At their request, roughly 5,000 pages of documents were copied for them at no charge. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4281-82.

d. In May 2007, Ms. Ashley-Marx and others from the Department came to Sunland Park to meet with Robert Ardovino and Juan Garza and take a tour of Sunland Park. On that same trip, they met with representatives from the New Mexico Department of Health to discuss health issues related to Sunland Park and Anapra, New Mexico. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4282-83.

e. The Department took the unusual step of hiring a consultant to research and assemble a “compendium” of studies regarding health issues and other environmental issues in the Sunland Park area and make it available to the public. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4287.

21. In August of 2007, Ms. Ashley-Marx, Deputy Secretary Cindy Padilla, and Environmental Protection Division Director Jim Norton attended a meeting of the Sunland Park Grassroots Environmental Group (“SPGEG”) to discuss CRLF and other concerns. Roughly 20 people attended. Asarco was a big source of concern at that meeting. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4288; Testimony of Cynthia Padilla, Tr. Vol. 12, pp. 4591-92.

22. At the suggestion of Sunland Park residents, Deputy Secretary Padilla met with local Bishop Ramirez. Testimony of Cynthia Padilla, Tr. Vol. 12, p. 4606.

23. Deputy Secretary Padilla was aware from her meetings with Sunland Park's citizens in 2007 that there was a range of issues that community residents were concerned about, which included the Landfill. Tr. Vol. 12, p. 4593, line 24 to p. 4594, line 22.

24. Deputy Secretary Padilla understood the residents to generally have a lack of trust of both state and federal government, and almost anyone in authority. Tr. Vol. 12, p. 4594, line 23 to p. 4595, line 9.

25. Deputy Secretary Padilla was aware that the lack of trust by the residents due in part to the prior owner's operation of the medical waste facility and the inaction by the Department. Tr. Vol. 12, p. 4601, line 5 to p. 4602, line 20.

26. Although little waste disposed of at CRLF comes from New Mexico, but rather from Mexico or El Paso (Tr. Vol. 12, p. 4752, line 6 to line 22), Ms. Padilla noted that as a matter of interstate commerce, the State of New Mexico may not prohibit waste disposal generated in the State of Texas. Tr. Vol. 12, p. 4597, line 5 to line 18.

27. After the Hicks & Company scoping meetings and upon completion of the CIA, Hicks & Company provided a list of Findings and Recommendations. These Findings and Recommendations, in large part, addressed the concerns

raised by the community. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2567-2568; CIA at 117-119 (Exhibit CRLF 14).

28. The CIA was submitted as additional information to the Department. It is not part of CRLF's Application, but is included in the Record Proper. NMED Administrative Record.

29. In addition, the CIA was made available to the community in both English and Spanish in public locations and in some instances copies were provided directly to individual citizens. Exhibit CRLF 86.

30. In its CIA, Hicks & Company concluded that Sunland Park is not a colonia. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2645-46.

31. According to information published by the U.S. Department of Housing and Urban Development, the median household income for Sunland Park increased 63.4% during the decade of the 1990's. This was the second highest rate of increase among eight similar border communities in New Mexico and Texas surveyed by Hicks & Co. in connection with its CIA. Testimony of Thomas Van Zandt, Tr. Vol. 7, p. 2655.

32. Even though it was not required to do so, the Applicant had a Community Impact Assessment, and an addendum, prepared for the Application (collectively, the "CIA"). Exhibits CRLF 14 and CRLF 44A. The CIA demonstrated that CRLF's impact upon the community is negligible and, in some cases, beneficial. The CIA helped facilitate robust community involvement and ensure meaningful public involvement. The CIA also formed a framework for hearing, considering and evaluating public concerns, and then disseminating that

information back to the public, in both English and Spanish. The end goal of the CIA was to provide a platform for assisting in evaluating the ultimate test -- whether permit renewal will result in "a hazard to public health, welfare or the environment," an "undue risk to property" or a "public nuisance." Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2545-2547, 2561-2563.

33. The CIA provided useful information to the Department and community in order to evaluate any potential environmental justice impacts of CRLF. Testimony of Eric Johnson, Tr. Vol. 9, p. 3452.

34. The methodology used for the CIA was appropriate and was modeled on relatively standardized and "road-tested" approaches used by other state and federal agencies. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2549-2553; Testimony of Eric Johnson, Tr. Vol. 9, pp. 3449, 3455-3457.

35. Although not required, the CIA as amended includes each of the elements required by the 2007 Solid Waste Rules and the environmental and public health data component of Executive Order 2005-056. 2007 Solid Waste Rules 20.9.3.8 NMAC, NMED- NOI, Mr. Johnson, Ex. 8, p. 21.

36. The "social impact analysis" ("SIA") method -- which the City's witness, Dr. Pena, contended should have been used to prepare the CIA -- would have been inappropriate because it explores a number of intangibles, such as "cultural values" and how the local community interacts "music, dance, language, arts, crafts, and other expressive aspects of culture," which do not lead to the types of objectively measurable findings and cause/effect relationships that would be useful in this permitting matter. Moreover, the SIA approach would

have been less helpful than the approach used in the CIA in evaluating environmental justice issues. Testimony of Dr. Devon Pena, Tr. Vol. 10, pp. 3885-3890; Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2553-2561; Testimony of Eric Johnson, Tr. Vol. 9, pp. 3455-3458, 3515.

37. Dr. Peña opined that it would have been more appropriate for the Applicant to have undertaken an environmental impact statement (EIS), which is the National Environmental Policy Act (NEPA) model, and involves an ethnographic study of Sunland Park, instead of just the CIA performed by Hicks & Company. Tr. Vol. 10, p. 3874, line 11 to p. 3875, line 8.

38. Dr. Peña admitted that NEPA does not govern this case and this is not a federal action. Tr. Vol. 10, p. 406, line 6 to line 8.

39. One of the important aspects of Dr. Peña's opinion or purpose was to show that perceptions of risk are strongly correlated with actual poor health conditions. Tr. Vol. 10, p. 3821, line 2 to line 6.

40. Yet, Dr. Peña admitted that he had not conducted an independent study on health risks or assessment in Sunland Park. Tr. Vol. 10, p. 4028, line 6 to line 17.

41. Nor did Dr. Peña review any environmental health literature, only literature on risk assessment. Tr. Vol. 10, p. 4044, line 10 to p. 4045, line 7.

42. Dr. Peña did not have any scientific evidence of a casual relationship between environmental toxins or negative health outcomes in Sunland Park. Tr. Vol. 10, p. 4027, line 12 to p. 4028, line 3.

43. Dr. Peña did not know the difference between a RCRA Subtitle D (solid waste) and a Subtitle C (hazardous waste) facility and did not know the history of the ownership or violations of CRLF in contrast to his pre-filed testimony. Tr. Vol. 11 p. 4017, line 14 to p. 4020, line 5, CSP Ex. 23-A.

44. Dr. Peña recommended that the State of New Mexico do community-based studies on a community by community basis, even though there are no regulations in effect for this currently. Tr. Vol. 10, p. 3979, line 12 to p. 3980, line 18.

45. Dr. Peña only review of the Application consisted of reviewing the CIA. Tr. Vol. 10, p. 4010, line 2, p. 4015, line 19.

46. Although Dr. Peña's testified generally about Environmental Justice principles, he was unaware of what occurred in the 1996 CRLF permit hearing or the development of the 2007 Solid Waste Rules, which contains a definition of environmental justice. Tr. Vol. 10, p. 4064, line 9 to p. 4066, line 8.

47. The per capita income for Sunland Park increased 92.1% during the decade of the 1990's, according to information published by the U.S. Department of Housing and Urban Development. This was the highest rate of increase among eight similar border communities in New Mexico and Texas surveyed by Hicks & Co. in connection with its CIA. Testimony of Thomas Van Zandt, Tr. Vol. 7, p. 2655.

48. The median home value for homes in Sunland Park increased from \$35,100 to \$58,700 during the decade of the 1990's, according to information published by the U.S. Department of Housing and Urban Development. This was

the highest rate of increase among eight similar border communities in New Mexico and Texas surveyed by Hicks & Co. in connection with its CIA.

Testimony of Thomas Van Zandt, Tr. Vol. 7, p. 2657.

49. There are a number of additional ways in which CRLF is a beneficial element in the Sunland Park community:

a. CRLF, and its adjoining recycling center, help further a goal of the State's 2007 Solid Waste Management Plan to increase and facilitate recycling at landfills. Testimony of Thomas Van Zandt, Tr. Vol. 7, p. 2638; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4419-20; Ex. CRLF 31.

b. The presence of CRLF helps reduce the local incidence of illegal dumping, a practice that poses a greater risk to public health, safety and welfare than CRLF poses. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4421-23; Ex. CRLF 30.

c. By providing a safe and cost effective way to dispose of the wastes generated by modern society, CRLF helps achieve the Solid Waste Act's goal to "enhance the beauty and quality of the environment; conserve, recover, and recycle resources; and protect the public health, safety and welfare." Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2626-27.

d. CRLF reduces the cost of waste disposal for Sunland Park citizens, whereas the cost of hauling the waste to another landfill many miles away could be much higher. The City of Sunland Park, however, has arranged to have its waste disposed of elsewhere, and so the residents are not taking advantage of

disposing their waste collectively at CRLF. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4451-52.

50. The Department met and exceeded the notice of hearing requirements in the regulations. Prior to the public hearing on CRLF's Application, the Department gave notice of the hearing by mailing notices, in English and Spanish, by certified mail to adjacent property owners (as shown on the most recent property tax schedules), and by U.S. mail to local and tribal governments and other affected and interested parties. The notice, in English and Spanish, was given by publication in the Las Cruces Sun News and by publication in the El Paso Times. Notice was given by including inserts, in English and Spanish, in Sunland Park utility bills sent in early November 2007 (4,500 notices). Notice was also given to the public by posting at the entrance to CRLF and also in four other accessible and conspicuous places. Copies of the Application and the CIA were provided for public review at the posting locations and at offices of the Department. Posters in English and Spanish were posted at CRLF gatehouse and at San Martin de Porres Church. Finally, notices in English and Spanish were hand-delivered to residences in the Valle Vista Subdivision of Sunland Park. R.P. (NMED Statement of Intent to Provide Technical Testimony of Auralie Ashley-Marx, pp. 60-61); Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4279 to 4281, 4301.

51. A public hearing (the "Hearing") on the Application commenced on December 5, 2007 at the San Martin de Porres Church parish hall at 1885 McNutt Road, Sunland Park, New Mexico. The hearing concluded on December

20, 2007. Tr. Vol. 1 through Tr. Vol. 14. Pursuant to 20.14.500A NMAC, the hearing was transcribed and a transcript of the hearing was prepared.

52. All witnesses were sworn prior to giving testimony. Tr. Vol. 1 through Tr. Vol. 14.

53. The Hearing Officer reserved several blocks of time each day for public comment. On most hearing days, the Hearing Officer reserved the first hour of the morning session, the first hour of the afternoon session, and the evening session for public comment. During these time blocks, public comment was heard before the testimony was heard from the witnesses presented by the parties.

54. The Hearing Officer gave members of the public a full and fair opportunity to comment on the Application. The Hearing Officer did not confine the scope of public comment. Members of the public were permitted to testify freely about any aspect of CRLF or the Application.

55. Even opponents of CRLF praised the degree to which public participation was facilitated in the hearing. For example, Mr. Richard Moore, Executive Director of the Southwest Network for Environmental and Economic Justice, and a member of the NMED's Environmental Justice Committee and the Governor's Interagency Task Force on Environmental Justice, offered his congratulations for a hearing process that allowed "real true public participation." Tr. Vol. 1, pp. 129-132.

56. At the hearing, every witness was given the opportunity to testify in either Spanish or English, at the witness's discretion. The Department provided

certified translators to provide real-time translation of all testimony. This translation involved the use of electronic headsets with radio receivers. The translator provided several dozen head sets. These were freely given out to members of the audience and participants, and there was never a shortage of headsets. When a witness (including any member of the public) testified in Spanish, the testimony was simultaneously translated and broadcast to the headsets of those participants desiring to hear an English translation. Likewise, all English testimony was simultaneously translated into Spanish and broadcast to the Spanish speakers. In this manner, every person present at the hearing (whether a participant or a member of the audience) had the opportunity to receive a real-time translation of the testimony into either Spanish or English. Testimony of Jim Ficklin, Tr. Vol. 1, pp. 8-10.

57. The actual amount of public participation during the hearing was, however, surprisingly small. Less than one half of one percent of the Sunland Park population participated. Acknowledgement of the low level of public participation was expressed as early as the first day of the hearing: "Where is the support? Where are the people? . . . [V]ery few people come to the hearings." Testimony of C. Renteria, Tr. Vol. 1, p. 329 In light of their relatively small number, many individuals were allowed to provide comments two, three, and even four times. Tr. Vol. 3, p. 1200; Tr. Vol. 10, p. 3660 Public interest in the hearing dwindled steadily as the hearing continued from day to day. Much of the time set aside for receiving public comment was not utilized for that purpose.

The public interest was not nearly as significant as had been anticipated. Tr. Vol. 10, pp. 3664-65.

58. During the course of the 14-day public hearing on the Application, a total of 61 persons, excluding witnesses produced by the parties, made public comments opposing the Application of the Landfill and 14 persons submitted written comments. Tr. Vol. 1 to Vol. 14; Written Public Comment.

59. The testimony of the 61 persons who gave public testimony, and including Mayor Segura's testimony of complaints he receives from residents on average of once a week, was focused on the odor, traffic, litter and health problems. Tr. Vol. 12, p. 4731, line 18 to p. 4732, line 5; Tr. Vol. 12, p. 4966, line 22 to p. 4967, line 3.

60. Much of the public comment was in opposition to the Application and identified with the Landfill prior to current ownership and prior to the previous ten year permit period.

61. Most of the citizens of Sunland Park who testified believe there exist cumulative effects from surrounding polluting industries. Tr. Vol. 10, P.3927, Ln 12-16.

62. Sunland Park is a border community. Tr. Vol. 12, P.4665, Ln 2-24; Exhibit CSP G and N.

63. As a border community, Sunland Park has a common interest with other communities throughout the U.S. border, as well as a common culture, history, language, environment and ecosystem. Tr. Vol. 12, P.4665, Ln 2-24; Exhibit CSP G and N.

64. Colonias are substandard communities along the U.S. – Mexico border. Tr. Vol. 12, P.4655, Ln 1-5; Exhibit CSP G and N. Although there was some testimony that the City of Sunland Park qualifies for federal funding from governmental agencies, based on the universally applied definition of what constitutes a “Colonia”, the City of Sunland Park is not a Colonia.

65. According to the 2000 U.S. Census, Sunland Park has a population of 13,309. Tr. Vol. 12, P.4666, Ln 15-19; Exhibit CSP G and N.

66. The Department of Housing and Urban Development defines a colonia as a community that is in Arizona, California, New Mexico or Texas, that is within 150 miles of the U.S.-Mexico international border (except for any metropolitan area exceeding one million people), and on the basis of objective criteria lacks adequate sewage systems and lacks decent, safe and sanitary housing, and was in existence as a colonia before November 29, 1990. Tr. Vol. 12, P.4685, Ln 3-25; P.4686, Ln 1-10; Exhibit CSP G and N.

67. According to the City of Sunland Park’s master plan, the percentage of population that is Hispanic/Latino is 96.4 percent. Tr. Vol. 12, P.4690, Ln 8-15; Exhibit CSP N – Master Plan Page 23; Exhibit CSP G and N.

68. According to the 2000 U.S. Census 85% of the population of the City of Sunland Park considers Spanish to be their dominant language. Tr. Vol. 12, P.4691, Ln 8-14; P.4805, Ln 6-9; Exhibit CSP G and N.

69. According to some reports, 36.3 percent of the population of the City of Sunland Park lives below the poverty level. Tr. Vol. 12, P.4691, Ln 15-23; Exhibit CSP N – Master Plan Page 30; Exhibit CSP G and N.

70. There is a great necessity for job creation in the City of Sunland Park. Tr. Vol. 12, P.4693, Ln 15-25; P.4694, Ln 1-9; Exhibit CSP N – Master Plan Page 31-32; Exhibit CSP G and N.

71. The transcript of proceedings (“Tr.”) of the hearing was filed on February 25, 2008. The transcript of proceedings is 5,582 pages in length. Tr. Vol. 1 through Tr. Vol. 14.

72. On March 5, 2008, the Department requested and was granted an extension of time in which to submit proposed findings of fact and conclusions of law and closing arguments up to and including April 25, 2008. Subsequently, the City requested an additional two-week extension. In the absence of the Hearing Officer, the Secretary granted this request, extending the deadline for the filing of proposed findings of fact and conclusions of law and closing arguments until May 9, 2008.

73. Prior to the Hearing, the following entities and persons entered their appearances in the present administrative proceeding: (1) Camino Real; (2) the Department; (3) the City of Sunland Park; (4) Edith J. Velasco; (5) Taylor Moore; (6) Luz Vargas; (7) Robert Ardovino; (8) Heather McMurray; and (9) Alcides Flores Martinez (collectively referred to as the “Parties”). All of these entities and persons were admitted as parties and, except for Edith J. Velasco and Alcides Flores Martinez, who absented themselves, all participated in the hearing.

74. Camino Real, the Department, and the City of Sunland Park were represented by counsel; all Other Parties appeared pro se.

75. Only Camino Real, the Department, and the City of Sunland Park filed statements of intent to present testimony at the Hearing. In addition, only Camino Real, the Department, and the City of Sunland Park submitted proposed exhibits and pre-filed testimony, resumes and witness lists. NMED Administrative Record.

76. Voluminous testimony and other evidence that was supportive of CRLF's Application were presented by Camino Real and the Department.

77. Testimony and other evidence in opposition to CRFL's Application were presented by the City of Sunland Park, Taylor Moore, Luz Vargas, Robert Ardovino and Heather McMurray.

78. The Hearing Officer also heard public comment from numerous members of the general public both in support of and in opposition to CRFL's Application.

79. Much of the public opposition to CRLF related to anecdotal allegations of excessive noise, odors, litter, dust and traffic. No technical testimony to support any of these allegations was presented by any Party or any member of the public.

80. Several members of the general public commented regarding various health problems they attributed to CRLF. However, there was no competent medical or scientific testimony connecting any health problem of any person or persons to CRLF.

81. Prior to 1986, the land where CRLF currently exists was an unregulated dump. Wastes were deposited there by members of the public in an

unregulated manner, and they were not properly managed or routinely covered by soil. During a period of several decades prior to 1986, the land contained a large debris field. A wide range of wastes, including stable wastes, white goods such as old refrigerators and washers, septic waste, tires, and motor oils were dumped there in large quantities. As the area and the access roads to the area became congested with wastes, the waste field gradually expanded towards the community of Sunland Park, New Mexico, such that waste was frequently illegally dumped outside of the area designated as the city dump. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 92-107; Exhibit OP C-1.

82. The residents of Sunland Park and surrounding areas routinely availed themselves of this unregulated dump. Residents of Sunland Park used the unregulated dump for household and yard waste as well as old appliances, batteries and the like. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 102-103; Exhibit OP C-1.

83. During the period when the site was an unregulated dump, wastes would sometimes catch fire and burn. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 97-98.

84. JOAB, Inc. acquired the site in or about 1987. JOAB, Inc. consolidated the unregulated dump into an organized landfill. JOAB, Inc. operated the site as the "Nu-Mex" landfill beginning in 1989. Upon acquiring the property, the Applicant's predecessor, through a concerted effort over a period of years, cleaned up large areas of the property which had previously been covered with debris, and the uncontrolled wastes disposed of were collected and properly

disposed. That clean-up effort extended outside the boundaries of CRLF, including between the railroad tracks and the Meadow Vista Subdivision. As a result, many of the environmental problems that had plagued the unregulated dump – such as mosquitoes and rodents – were eliminated. To this day, the Applicant continues to clean up areas that were dumped on prior to the facility becoming a permitted landfill. The Sunland Park City Council has expressly acknowledged that CRLF “cleaned up and corrected” the “environmental health hazard created by the prior refuse dump” at the facility location. Application, Vol. I, Section 1, p. 1-1; Application, Vol. IV, Section 2, Attachment IV.2.A; Testimony of Mark Turnbough, Tr. Vol. 1, pp. 174-77, Tr. Vol. 7, p. 2433, Tr. Vol. 4, p. 1423; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4216.

85. In 1993, federal regulations regarding Solid Waste facilities promulgated by the U.S. Environmental Protection Agency became effective. Those regulations are codified at 40 CFR Part 258. After 1993, JOAB, Inc. operated the landfill pursuant to the requirements of 40 CFR Part 258. The landfill has been operated consistently with these regulations since that time. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 181-184.

86. In 1995, Nu-Mex was renamed Camino Real Environmental Center, Inc. Application, Vol. IV, Section 2, p. 2-10; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4258.

87. In September, 1999, Waste Connections, Inc. purchased Camino Real Environmental Center, Inc. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4217, 4258; Application, Vol. VI, Section 3.

88. Camino Real operates CRLF in a manner that is far more protective of the public health and welfare and with respect to the environment, than it was when the area was used as an unregulated dumping ground in the 1960's, 1970's and 1980's. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 186-187.

89. CRLF is located in Sunland Park, Dona Ana County within a 479.5-acre tract comprised of parts of Sections 12 and 13, Township 29 South, Range 3 East, New Mexico Principal Meridian. Application, Vol. I, Section 2, Att.1.2.A.

90. Solid Waste Management Regulations require landfill operators to make and maintain operating records during the active life of the facility. 20 NMAC 9.1.109 (now codified at NMAC 20.9.5.16). Camino Real has been maintaining, and has indicated it will continue to maintain, operating records for the active life of CRLF, as well as for the closure and post-closure activity. Application, Vol. I, Section 1, p. 1-1.

91. Camino Real has been submitting, and has indicated it will continue to submit, annual reports to the Secretary of the Department. Application, Vol. I, Section 1, p. 1-11.

92. All other applicable requirements of NMAC Subpart I were adequately addressed in the Application. Application, Vol. I, Section 1.

93. Under 20 NMAC 9.1.106 A, the Applicant shall dispose of all solid waste in accordance with the Act, Regulations and its operating permit. NOI-NMED, Ms. Ashley-Marx, Ex. 1 p. 72.

94. As required by 20 NMAC 9.1.201(B)(2), the Application contains a statement that it complies with the requirements of 20 NMAC 1.4 (20.1.4 NMAC). App. Vol. I, p. 2-5.

95. In compliance with Section 20 NMAC 9.1.201(B)(4), the Application contains a statement that it complies with the financial assurance requirements as specified in Subpart IX of 20 NMAC 9.1. App. Vol. I, p.2-6.

96. CRLF's Application contains all information required by the Act and by NMAC. Application, Vol. I, Section 2, p. 2-5; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4305-4306.

97. In compliance with 20 NMAC 9.1.201.B.3 (now codified as NMAC 20.9.3.8.C.4), the Application contains plans and drawings for the facility signed and sealed by I. Keith Gordon, a professional engineer registered in New Mexico and in 24 other states. Application, Vol. II, Section 1 (11" x 17"); Submitted as a full-size (24" x 36" plan set); Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4222.

98. The Application and Record Proper contain all necessary disclosure statements as required by 20 NMAC 9.1.201.B.6. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4258-4259.

99. The Application demonstrates compliance with the operational criteria and the record-keeping requirements of 20 NMAC 9.1.201. Application, Vol. I, Section 2, p. 2-6; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4222, 4230-4231, 4300-4301.

100. The information regarding siting requirements submitted in the Application and in prior correspondence indicates that the Applicant addresses and satisfies the siting requirements of Section 20 NMAC 9.1.201(B)(8) App. Vol. I, Section 1; Tr. Vol. 11, p. 4223, line 2 to line 5 (Test. of Ms. Ashley-Marx).

101. CRLF is not located within five miles of an airport. The nearest active airport is in Santa Teresa, New Mexico, about 8.5 miles northwest of CRLF. Application, Vol. I, Section 3, p. 3-5; Application, Vol. IV, Section 1, p. 1-16; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 784-785; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4265.

102. The Application demonstrates compliance with the siting restrictions of 20 NMAC 9.1.201.10. Application, Vol. I, Section 3, pp. 3-1 to 3-7; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4222-4223.

103. The site for CRLF is properly zoned for industrial use. Application, Vol. IV, Section 2, p. 2-10; R.P., NMED Statement of Intent to Provide Technical Testimony of Auralie Ashley-Marx, p. 8; Testimony of Mark Turnbough, Tr. Vol. 1, pp. 171-172.

104. Applicant indicated that the average weekly waste disposal rate is anticipated to be 32,725.5 cubic yards (at the gate) per week. Application, Vol. I, Section 2, p. 2-13.

105. The Application properly contains operational information required by 20 NMAC 9.1.201.11, including the means for controlling and mitigating odors; the equipment used at CRLF; a narrative description of the operating plan; a plan for alternative waste handling; the hours of operation; plans for transportation to

and from CRLF; and a contingency plan. Application, Vol. I, Section 2, pp. 2-10 to 2-18; Testimony of I. Keith Gordon, Tr. Vol. 3, p. 794; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4223-4227; Testimony of George Akeley, Tr. Vol. 11, pp. 4362-4365.

106. The Application contains all required facility plans and drawings in accordance with 20 NMAC 9.1, including plans for transportation to and from CRLF, the size and approximate number of vehicles that will deliver waste daily to CRLF, routes to be used by waste vehicles, and documentation of the suitability of roads to and from CRLF. Application, Vol. II, Section 9, Att. II.9.A; Testimony of Nevin Harwick, Tr. Vol. 3, pp. 1052-1056.

107. Part of the land encompassing the acreage owned by Camino Real in the vicinity of the actual land used by CRLF, with the exception of the open face, is visible from most locations in the surrounding area, including the area included in the Master Plan. Tr. Vol. 12, P.4815, Ln 12-25; P.4816, Ln 1-4; Exhibit CSP N – Erickson-Widner Socio-Economic Impact Report; Exhibit CSP N – Moule & Polyzoides Master Plan.

108. The Camino Real property is also clearly visible from Sunland Park Drive and the new bridge of that roadway, and from the Sunland Park Racetrack and Casino. Tr. Vol. 12, P.4815, Ln 12-25; P.4816, Ln 1-4; Exhibit CSP N – Erickson-Widner Socio-Economic Impact Report; Exhibit CSP N – Moule & Polyzoides Master Plan.

109. Despite the ongoing operations at CRLF, the City of Sunland Park presently has the following projects under consideration: (1) Insights Museum

which acquired 233 acres in the City of Sunland Park, (2) Amphitheater, (3) River Trail Project, (4) IMAX Theater, (5) Mercado De La Rivera, and (6) International Port of Entry. Tr. Vol. 12, P.4818, Ln 6-25; P.4819, Ln 1-5; Exhibit CSP N – Erickson-Widner Socio-Economic Impact Report; Exhibit CSP N – Moule & Polyzoides Master Plan; Exhibit CSP N – Master Plan Pages 42-49.

110. The City of Sunland Park is experiencing large growth, despite the presence of CRLF. Tr. Vol. 12, P.4947, Ln 6-11.

111. Access to CRLF is by way of McNutt Road to Camino Real Boulevard. Application, Vol. II, Section 9, p. 9-2; Testimony of Nevin Harwick, Tr. Vol. 3, p. 1014.

112. McNutt Road is a state-owned highway that is maintained by the New Mexico Department of Transportation. Testimony of Nevin Harwick, Tr. Vol. 3, p. 1017.

113. McNutt Road is adequate to handle the weight and class of traffic going to CRLF. Application, Vol. II, Section 9, Att. 11.9.A, Appendix 1; Testimony of Nevin Harwick, Tr. Vol. 3, pp. 1016-1017.

114. Camino Real Boulevard is a private road that is maintained by Camino Real. Testimony of Nevin Harwick, Tr. Vol. 3, p. 1018. Camino Real Boulevard is an all-weather road. Application, Vol. II, Section 2, p. 2-27.

115. Camino Real Boulevard is adequate to handle the weight and class of traffic going to CRLF. Application, Vol. II, Section 9, p. 9-2.

116. Camino Real Boulevard is well-maintained and has been improved and upgraded to minimize the generation of dust and to enhance safety.

Application, Vol. II, Section 9, pp. 9-2 and 9-4 to 9-5.

117. Camino Real Boulevard crosses railroad tracks just before the entrance to CRLF. Testimony of Nevin Harwick, Tr. Vol. 6, pp. 2297-2298. The railroad crossing has lights, signals and gates to enhance safety at the crossing.

Application, Vol. II, Section 9, p. 9-4.

118. Camino Real provides and maintains access roads at CRLF, such that traffic can enter and exit CRLF safely, flow smoothly, and not be interrupted by inclement weather. Application, Vol. II, Section 2, p. 2-23.

119. CRLF will have a negligible impact of traffic in the community. During the duration of the permit renewal period, all intersections along the trash hauling routes in Sunland Park will continue to operate "very well," at levels of service above the minimum acceptable standard. Testimony of Nevin Harwick, Tr. Vol. 3, pp. 1008, 1012, 1027- 39; Tr. Vol. 6, p. 2313; Exhibit CRLF 63.

120. The traffic impact study demonstrates that CRLF-related trucks do not compromise vehicle safety in Sunland Park, and the roads utilized by CRLF-related traffic will provide a suitable level of service throughout the permit renewal term. Testimony of Nevin Harwick, Tr. Vol. 3, pp. 1046 - 1052; Tr. Vol. 6, p. 2313.

121. Although the Applicant does not own the trucks that carry wastes to the facility, the trucks that enter the facility are enclosed vehicles or are covered

with tarps. CRLF requires the use of covers such as tarps on those haul vehicles that are not enclosed. Application, Vol. II, Section 9, p. 9-4, Fig. II.9.2.

122. Camino Real has submitted a schedule of filling and methods of compaction of solid waste and the types and sources of cover. Application, Vol. I, Section 2, pp. 2-22 to 2-23; Testimony of Auralie Ashley Marx, Tr. Vol. 11, pp. 4218-4221, 4231, 4246-4250; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 777-781.

123. The Application contains site plans and sections of CRLF drawn to scale indicating location of groundwater monitor wells, gas wells and gas collection systems, materials recovery, borrow and fill areas, fire-protection equipment, surface drainage, water supply, buildings, roads, utilities, storage ponds, fences and locations of roads within CRLF. Application, Vol. I, Section 2, pp. 2-22 to 2-25; Testimony of Auralie Ashley Marx, Tr. Vol. 11, pp. 4216-4226; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 756-760, 773-778, 797-798; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 956-957.

124. The site plan also includes measures for concealing CRLF from public view and to reduce noise. Application, Vol. I, Section 2, p. 2-25; Testimony of Auralie Ashley Marx, Tr. Vol. 11, pp. 4225-4227; Testimony of Mark Turnbough, Tr. Vol. 1, pp. 196-197; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 539, 546.

125. Noise associated with CRLF is insignificant. Testimony of Bill Tillar, Tr. Vol. 3, pp. 1089-1091.

126. CRLF does not contribute to noise levels in Sunland Park.

Testimony of Bill Tillar, Tr. Vol. 3, pp. 1087-1091.

127. The noise levels in Sunland Park are similar to what one would encounter in urban or suburban settings anywhere in the country. Noise from actual on-site landfill operations is barely discernable in the community of Sunland Park. The distance from CRLF to the community and the intervening topography prevent significant landfill noise from reaching the community.

Testimony of Bill Tillar, Tr. Vol. 3, pp. 1082, 1086-1091.

128. Noise from truck traffic bound for CRLF is not significant and does not increase noise levels above any unacceptable threshold mandated by the HUD Guidelines. Testimony of Bill Tillar, Tr. Vol. 3, pp. 1082, 1085-1091.

129. Although the contour of substantial portions of soil and land containing no vegetation are visible from various locations in the surrounding area, the great majority of operations at CRLF are shielded from view by railroad berms constructed on the perimeter of the Landfill and oleanders planted along the perimeter of CRLF. These measures also reduce noises resulting from CRLF operations. Application, Vol. I, Section 2, p. 2-25, Att. I.2.B.

130. The Application contains topographic maps providing all information required by 20 NMAC 1.9. Application, Vol. I, Section 2, Att. I.2.D.

131. The characterization of the geology of the area as well as the uppermost aquifer at the proposed landfill is contained in the Application. Application, Vol. V, Section 1; Testimony of Larry Coons, Tr. Vol. 3, pp. 928-930, 950-951.

132. Storm water control structures are incorporated into the design of CRLF to control storm water run-on to CRLF and also run-off from CRLF. Application, Vol. I, Section 4, pp. 4-11 to 4-12; Application, Vol. II, Section 1, Engineering Drawings 3-9 and 14; Application, Vol. III A, Section 8; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4257; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 798-806; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 955-956, 965-966.

133. Storm water is diverted by drainage channels around the perimeter of the disposal area and retention ponds. These structures are designed to prevent flow onto the active portion of the Landfill during the peak discharge of a 24-hour, 25-year storm. The storm water retention ponds are of sufficient size to retain all the storm water runoff generated during a 24-hour, 25-year storm event. Application, Vol. I, Section 4, pp. 4-11 to 4-12; Application, Vol. II, Section 1, Engineering Drawings 3-9 and 14; Application, Vol. III A, Section 8; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 799.

134. Storm water control structures in place at CRLF prevent run-off from the active portion of the Landfill into the waters of the State or the U.S. Application, Vol. I, Section 2, p. 2-29 and Section 4, p. 4-11; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4257; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 798-806; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 965-967.

135. In August, 2006, CRLF experienced a 24-hour, 500-year storm event. During this event period, the drainage channels, berms and retention ponds functioned properly to contain all storm water runoff. The on-site retention ponds did not overflow, and no berms were breached. Storm water did not

escape from CRLF. Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 799-806; Exhibits OP B-6; OP B-7; OP B-8.

136. Surface water at CRLF will be controlled in a manner that will not discharge contaminants in violation of the New Mexico Water Quality Act or the Federal Clean Water Act. Surface water run-off from the active portion of CRLF will be diverted by temporary berms into channels and retention ponds for evaporation. No run-off from the active portion of the Landfill will be discharged from the site. Application, Vol. I, Section 4, pp. 4-11 to 4-12; Application, Vol. II, Section 1, Engineering Drawings 3-9 and 14; Application, Vol. III A, Section 8; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 798-806; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 965-967.

137. Camino Real has submitted appropriate closure and post-closure plans, plans for ground water monitoring, liner specifications, leachate collection plans, and landfill gas monitoring and management plans. Application, Vol. II, Section 5; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4275; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 1000-1007.

138. The Application contains a description of the types of waste to be accepted, the amount anticipated, the method by which they are disposed, disposal management plans (for various waste streams) and measures to be taken in case of an emergency or spill. Application, Vol. I, Section 2, pp. 2-31 to 2-32; Application, Vol. II, Section 8; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 540-542; Testimony of Tom Reilly, Tr. Vol. 2, pp. 634-636; Testimony of I. Keith Gordon, Vol. 3, pp. 796-797.

139. In compliance with 20 NMAC 9.1.301(A), the Application specifies that CRLF property occupies approximately 480 acres, and is therefore under the 500 acres solid waste facility size limit. App. Vol. I, p. 3-1; Vol. I, Fig. I.3.1 (Site location map); Vol. I, Att. I.2.A (legal description of property).

140. CRLF is not located within a floodplain or within 500 feet of a wetland or within 200 feet of a watercourse. Application, Vol. I, Section 3, pp. 3-1 to 3-3; Application, Vol. IV, Section 1, pp. 1-3 to 1-7; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 783-784; Testimony of David Bleakley, Tr. Vol. 3, p. 829.

141. The seasonal high water table is not closer than 100 feet to the bottom of CRLF. Application, Vol. I, Section 3, p. 3-3; Application, Vol. IV, Section 1, pp. 1-8 to 1-9; Testimony of Larry Coons, Tr. Vol. 3, pp. 927-931, 944-945; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4270; Testimony of Jerzy Kulis, Tr. Vol. 11, p. 4318.

142. A professional biologist surveyed the facility site of proposed operations under the renewed permit and did not find any hydrophytic plants, hydric soil, or any other indication of wetland hydrology, or any watercourses. Tr. Vol. 3, p. 819 to p. 822 (Test. of David Bleakley).

143. The depth from the land surface to the uppermost aquifer ranges from 140 to 400 feet. The cells of the Landfill are designed so that the minimum depth from the base of cells to the uppermost aquifer is 160 to 165 feet. Tr. Vol. 3, p. 928.

144. CRLF is not located within 200 feet of a fault that has had a displacement within Holocene time (i.e. the past 11,000 years). Application, Vol.

I, Section 3, p. 3-4; Application, Vol. IV, Section 1, p. 1-10, Figure IV.1.7; Testimony of Larry Coons, Tr. Vol. 3, p. 932; Testimony of Jerzy Kulis, Tr. Vol. 11, pp. 4314-4316.

145. Pursuant to 20 NMAC 9.1 slope stability analysis is required for slopes greater than 25%. Although there are no slopes in CRLF greater than 25%, the Applicant has submitted slope stability calculations as part of the Application. Application, Vol. III A, Section 3; Testimony of Larry Coons, Tr. Vol. 3, pp. 940-944.

146. The appropriate archeological and threatened and endangered floral and wildlife surveys were conducted pursuant to 20 NMAC 9.1. Application, Vol. I, Section 3, p. 3-4; Application, Vol. IV, Section 1, pp. 1-13 to 1-16, Att. IV.1.B and IV.1.D; Testimony of Dr. Carol Condie, Tr. Vol. 2, pp. 415-416, 478-481; Testimony of David Bleakley, Tr. Vol. 3, pp. 815-829, 877-881.

147. CRLF is not located within any historically or archaeologically significant sites. Application, Vol. IV, Section 1, pp. 1-15 to 1-16, Att. IV.1.F; Testimony of Dr. Carol Condie, Tr. Vol. 2, pp. 415-416.

148. CRLF is not located within 1,000 feet of any public water supply well or a private well that pumps 100 gallons per minute or more. Application, Vol. I, Section 3, p. 3-5; Application, Vol. IV, Section 1, p. 1-16; Testimony of Jerzy Kulis, Tr. Vol. 11, p. 4319.

149. CRLF is not located within 350 feet of a public water supply well or a private well that pumps less than 100 gallons per minute. Application, Vol. I,

Section 3, p. 3-5; Application, Vol. IV, Section 1, p. 1-16; Testimony of Jerzy Kulis, Tr. Vol. 11, p. 4319-4320.

150. In compliance with 20 NMAC 9.1.302(A)(6) and 302(A)(7), a hydrologist independently confirmed the separation distance to known public municipal supply wells was approximately 1.5 miles. NOI-NMED, Ms. Ashley-Marx, Ex. 1 p.2, pp. 3-4.

151. CRLF is not located within the minimum distance for airports set by the Federal Aviation Administration for special waste landfills. Application, Vol. I, Section 3, p. 3-5; Application, Vol. IV, Section 1, p. 1-16; Testimony of I. Keith Gordon, Tr. Vol. 3, p. 784; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4265.

152. CRLF disposal cells will be constructed at least 50 feet from property boundaries. The nearest building to CRLF disposal area is a school located approximately 1/4 mile northeast of the property boundary. Application, Vol. I, Section 3, p. 3-5; Application, Vol. IV, Section 1, p. 1-17; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4270.

153. In compliance with 20 NMAC 9.1.302(A)(9), the Application states that the nearest permanent residence at the time of initial permitting was in excess of 1300 ft away; the nearest permanent residence currently in existence is 720 ft away. The nearest school, Desert View Elementary, is approximately 1300 ft away. The Landfill is not located within at least 50 feet from the property boundaries and is at least 500 feet from the nearest institution or church. App. Vol. I, p. 3-5 Vol. IV, p. 1-17.

154. CRLF is not located within an active alluvial fan. Application, Vol. I, Section 1, Att. I.2.C; Application, Vol. I, Section 3, p. 3-6; Application, Vol. IV, Section 1, p. 1-19; Testimony of Larry Coons, Tr. Vol. 3, pp. 923-924; Testimony of I. Keith Gordon, Vol. 3, p. 785.

155. CRLF is not located within areas that will result in the destruction of or adverse modification of critical habitat of endangered or threatened species. Application, Vol. I, Section 3, p. 3-6; Application, Vol. IV, Section 1, pp. 1-19 to 1-21; Testimony of David Bleakley, Tr. Vol. 3, p. 829.

156. CRLF is not located within an unstable area. Application, Vol. I, Section 3, p. 3-7; Application, Vol. IV, Section 1, p. 1-23; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4265-4266 CRLF is located within a seismic impact zone but the Applicant has demonstrated that all structural components and all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in the earth material at this site. Application, Vol. I, Section 3, pp. 3-6 to 3-7; Application, Vol. IV, Section 1, p. 1-21, Figure IV.1.11; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4266-4267; Testimony of Larry Coons, Tr. Vol. 3, pp. 932-945.

157. There are no sub-surface mines registered in proximity to or on CRLF property. Application, Vol. I, Section 3, p. 3-3; Application, Vol. IV, Section 1, p. 1-10, Figure IV.1.6; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 782-784.

158. The floor of CRLF is lined with a state-of-the-art pollution control system, which includes a composite liner and leachate collection system. The

two-part composite liner system consists of an upper component of 60-mil high density polyethylene (HDPE) and a lower geo-synthetic clay liner. The geo-synthetic clay liner meets the equivalency requirements of 20 NMAC 9.1.306.A.2 for alternate composite liners and has been approved by the Secretary of the New Mexico Environment Department. The geo-synthetic clay liner is installed over a compacted, prepared sub-grade, and it has a saturated hydraulic conductivity of no more than 1×10^{-11} centimeters per second. Application, Vol. I, Section 3, pp. 3-8 to 3-9; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4250-4251; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 788-794.

159. The composite liner in use in CRLF is able to withstand the projected loading stresses and disturbances from overlying waste, waste cover materials and equipment operation. Application, Vol. I, Section 3, pp. 3-10 to 3-11; Application, Vol. III A, Section 7; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4250-52; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 786-794; Testimony of Larry Coons, Tr. Vol. 3, pp. 938-951.

160. The geo-synthetic components of the liner meet all requirements of 20 NMAC 9.1.306.B.2. Application, Vol. I, Section 3, pp. 3-11 to 3-12; Application, Vol. II, Section 4, p. 4-9; Application, Vol. III A, Section 3 and Section 4; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4250-4252; Testimony of I. Keith Gordon, Tr. Vol. 2, pp. 786-794; Testimony of Larry Coons, Tr. Vol. 3, pp. 938-951.

161. The composite liner system has a protective cover of at least two feet of granular soil, installed over the HDPE, to protect the liner from damage

and provide drainage for leachate to flow into the collection system. Application, Vol. I, Section 3, p. 3-14; Application, Vol. II, Section 4, pp. 4-26 to 4-29; Application, Vol. III B, Section 9; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4251; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 786-794.

162. The construction of CRLF liners has complied with a quality control plan approved by the Department. Construction of new cell liners is overseen and periodically inspected by NMED personnel. To date, all liners installed by Camino Real at CRLF have met all testing and quality control standards imposed by the Department and 20 NMAC 9.1.307. Application, Vol. I, Section 3, pp. 3-14 to 3-15; Application, Vol. II, Section 4; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4252; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 756-759; NMED Administrative Record – Engineering Certification Reports.

163. To protect public health and the environment, the Department requires the Applicant to submit the Liner Construction Certification for Department approval prior to initiation of disposal of any solid or special waste in any new cell. NOI-NMED, Ms. Ashley-Marx, Ex. 1 p. 72.

164. Pursuant to Section 402(N) of 20 NMAC 9.1, the Applicant will cover the active face with a six-inch layer of earth or approved alternate daily cover at the conclusion of each day's operation or more often as conditions may dictate. The Applicant requests the Department's approval to evaluate the following materials as alternative daily covers: tarps, foams, remediated Petroleum Contaminated Soils, processed green material, auto shredder residue,

shredded tires, select C & D debris, and "other suitable material or wastes. App. Vol. I, p. 4-14; Vol. II, Sec. 2 (Operating Plan).

165. The Department considers these proposed alternative daily covers as falling into three categories: Category I, materials recommended for approval subject to certain specified conditions; Category II, materials for which a pilot test is needed in order for the Department to consider approval; and Category III, materials for which the Department recommends denial of the proposed use. Category I includes: tarps, shredded tires, processed green material and remediated petroleum contaminated soils. Category II consists of foams and auto shredder residue. Category III consists of selected construction and demolition debris. Test. of Ms. Ashley-Marx, Tr. Vol. 11, p. 4253 to p. 4255.

166. Pursuant to Section 402(O) of 20 NMAC 9.1, the Applicant will provide intermediate cover that will be: (a) one foot thick; (b) placed on all areas of a landfill that will not receive further waste for one month or greater, but have not reached final elevation; (c) stabilized with vegetation on any areas that will be inactive for more than two years; and (d) inspected and maintained to prevent erosion and infiltration. App. Vol. I, p. 4-17; Vol. III A, Sec. 1 (Volumetrics).

167. CRLF cells incorporate a leachate collection system consisting of a network of piping installed on top of the polyethylene liner. Any leachate percolating through the waste deposited in CRLF is caught by the leachate collection system and funneled to a leachate reservoir. Application, Vol. I, Section 3, pp. 3-15 to 3-16; Application, Vol. II, Section 2, pp. 2-23 to 2-24; Application, Vol. III A, Section 4 and Section 5; Testimony of I. Keith Gordon, Tr.

Vol. 3, pp. 766, 774-777, 787-792; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 7211, 4216, 4243-4245.

168. The leachate collection and liner systems meet the following standards: (i) have a minimum 2% slope to promote positive drainage and facilitate leachate collection; (ii) maintain less than one foot depth of leachate on the liner; (iii) resist chemical decomposition as a result of contact with waste or leachate; and (iv) withstand the loads, stresses, and disturbances from overlying waste, cover materials and equipment operations. Application, Vol. I, Section 3, pp. 3-15 to 3-16; Application, Vol. II, Section 2, pp. 2-23 to 2-24 and Section 4, pp. 4-33 to 4-36; Application, Vol. III A, Section 4 and Section 5; Testimony of I. Keith Gordon, Tr. Vol. 2, pp. 788-794; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4243-4245, 4266-4275.

169. Camino Real operates under a leachate management plan, which was submitted to the Department as part of CRFL's Application. The plan describes the means for analyzing leachate. The plan also describes the treatment and proposed disposal methods for leachate generated by CRLF. Camino Real adheres to that plan, which has been approved by the Department, and which complies with the standards of 20 NMAC 9.1.308.C. Application, Vol. I, Section 3, pp. 3-16 to 3-17; Application, Vol. II, Section 7; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 966-969.

170. Camino Real maintains records (on a quarterly basis) of leachate generation, treatment and disposition. Application, Vol. II, Section 7, pp. 7-5 to 7-13; Testimony of Mike Crepeau, Tr. Vol. 3, p. 963.

171. Further, compared with other landfills, CRLF generates “extremely low” amounts of leachate – roughly .173 gallons per acre per day. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4245.

172. There are two reasons for this: (1) it is located in a desert environment with little rainfall; and (2) it receives a waste stream that is drier than the typical municipal solid waste stream at other landfills. The drier a waste stream, the less landfill gas will be generated. Testimony of Larry Coons, Tr. Vol. 3, pp. 947-949; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4235; Testimony of Jerzy Kulis, Tr. Vol. 11, p. 4333.

173. CRLF proposes to also transport leachate to a Publicly Owned Treatment Works or permitted liquids management facility for proper treatment, and to use diluted leachate for dust suppression/control on disposal cells, and on-site access roads at the site. App. Vol. II, p. 7-12.

174. The Department recommends that the request to deliver leachate to a Public Owned Treatment Works or permitted liquids management facility be denied until a specific site is specified and the leachate management plan is updated, and approved by the Department. Tr. Vol. 11, p. 4273, line 1 to line 11.

175. The Department also recommends that the Applicant dilute the leachate and place it on lined cells only, but to deny approval for use for dust suppression on any other portion of the Landfill, including access roads or other unlined areas. Tr. Vol. 11, p. 4273, line 11 to line 19.

176. The Department has determined that the waste screening plan is minimally acceptable. The Bureau recommends that a permit condition be

adopted to require certain additional elements in the waste screening plan. Tr. Vol. 11, p. 4232, line 20 to line 18, p. 4308, line 1 to line 9 (Test. of Ms. Ashley-Marx).

177. Camino Real has submitted to the Department a landfill gas (LFG) control plan. The plan describes the design of the LFG control system, the location and design of vents, barriers, collection piping and manifolds and other structures and control measures. Application, Vol. I, Section 3, p. 3-17; Application, Vol. II, Section 6; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 961-964.

178. Camino Real's LFG control plan provides for destruction of LFG in a manner that does not create or cause danger to persons or property. Nor does the disposal of LFG interfere or conflict with other activities at CRLF or with any other required control measures. Application, Vol. I, Section 3, pp. 3-18 to 3-19; Application, Vol. II, Section 6; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 973-976.

179. Camino Real's LFG control plan characterizes the chemical and physical properties of condensates and other residues generated from LFG disposal at CRLF. Application, Vol. I, Section 3, p. 3-19; Application, Vol. II, Section 7, pp. 7-3 to 7-13; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 971-974; Testimony of I. Keith Gordon, Tr. Vol. 3, p. 756.

180. Camino Real has in place a program to ensure that the generation and lateral migration of methane gas does not exceed the standards set out at

20 NMAC 9.1.402. Application, Vol. I, Section 4, p. 4-8; Application, Vol. II, Section 6, pp. 6-20 to 6-21; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 981-983.

181. Camino Real has implemented a routine and systematic LFG monitoring program. This program involves monitoring for LFG (including methane gas) on a monthly basis. This monitoring program, which has been approved by the Department, is appropriate for the soil, hydro geologic, and hydraulic conditions at CRLF. It also takes into account the locations of structures and property lines. Application, Vol. I, Section 4, pp. 4-9 to 4-10; Application, Vol. II, Section 6, pp. 6-24 to 6-34; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 955, 961-964, 970-984; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 766, 775.

182. This monitoring program has demonstrated that LFG levels (including methane gas levels) in and around CRLF have never exceeded allowable levels. Testimony of Mike Crepeau, Tr. Vol. 3, pp. 976-979, 981-983; Application, Vol. II, Section 6, Att. II.6.A; Exhibits CRLF 24-1 & 24-2.

183. Pursuant to Section 711 of 20 NMAC 9.1, the Department recommends the disposal management plan be amended to include additional details regarding Auto Fluff/Automotive Shredder residue. NOI-NMED, Ms. Ashley-Marx, Ex. 1 p. 72.

184. Maximum methane concentrations have never exceeded 25% of the lower explosive limit for gases in facility structures. Testimony of Mike Crepeau, Tr. Vol. 3, pp. 976-979, 981-983; Application, Vol. II, Section 6, Att. II.6.A; Exhibits CRLF 24-1 & 24-2.

185. A landfill gas collection system is currently in place and will continue to ensure that the requirements of 20 NMAC 9.1.402 are met. There are also several LFG monitoring wells on site. LFG gases are collected from the wells through a system of pipes, valves and associated hardware. Application, Vol. II, Section 6, pp. 6-2 to 6-16; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 973-977.

186. The landfill gases are transmitted through pipes to an on-site flare, which burns at least 98% of CRLF gasses. Camino Real has plans to use landfill gasses to power two 1-megawatt electric generators. Power produced at the power generation will in turn be sold to the El Paso Electric Co. Application, Vol. II, Section 6, pp. 6-14 to 6-16 and 6-22 to 6-23; Testimony of Tom Reilly, Tr. Vol. 2, pp. 616-618; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 973-977.

187. Pursuant to Section 402(C) of 20 NMAC 9.1, the Applicant will implement a routine methane monitoring program to ensure that the concentration of methane does not exceed the regulatory limits. The type of and frequency of the monitoring has been determined based on the soil conditions, hydro-geologic and hydraulic conditions surrounding the facility, and location of facility structures and property lines. Monitoring is conducted monthly at eight permanent gas monitoring points and at four on-site structures. Annual methane testing is also completed using bar-hole probes at various locations along the site perimeter. A plan exists for response and notification in the event gas is detected above regulatory limits. App. Vol. I, pp. 4-8 – 4-10; Vol. II, Sec. 6 (Landfill Gas

Management Plan); Vol. II, Sec. 6, Figure II.6.1, p. 6-4. Vol. V, Sec. 1 (Hydrogeology and Groundwater).

188. Monthly methane monitoring conducted since permit issuance in 1997 have shown methane levels below the regulatory maximums of 5 percent methane by volume in the air at the facility property boundary, and 1.25 percent methane by volume in air in onsite structures. Tr. Vol. 3, p. 977 to p. 979. The Applicant is requesting approval of quarterly instead of monthly monitoring at the permanent monitoring locations, and complete discontinuation of the bar-probe sampling. Id.

189. The Department recommends that the changes in the methane monitoring program be granted based on monitoring that shows that methane has not been detected in excess of the regulatory limits, demonstrated ability of the Applicant to appropriately monitor, the recent installation of an active gas collection system, and the low generation of landfill gas at this facility. NMED Ex. #1, page 24 (Test. Ms. Ashley-Marx), Vol. 11, p. 4237 line 13-25, and p. 4238.

190. The Applicant's technical witnesses testified that in their professional opinion the facility will not cause a public nuisance or create a potential hazard to public health, welfare or the environment. Tr. Vol. 1, p. 252 to p. 253 (Test. of Dr. Mark Turnbough); Tr. Vol. 2, p. 643 (Test. Mr. Reilly); Tr. Vol. 2, p. 416 (Test. Dr. Condie); Tr. Vol. 3, p. 952 to p. 953 (Test. Larry Coons); Tr. Vol. 3, p. 829 (Test. Mr. Bleakley); Tr. Vol. 3, p. 1005, line 18 to p.1007 (Test. Mike Crepeau); Tr. Vol. 3, p. 1052 and p. 1056 (Test. Mr. Harwick); Tr. Vol. 3, p. 1088 to p. 1089 (Test. Mr. Tillar); Tr. Vol. 6, p. 2379, line 23 to p. 2381; Tr. Vol.

7, p. 2626, line 14 to line 25, p. 2627, line 1 to line 15, p. 2658, line 10 to line 25, p. 2659 to p. 2661 (Test. Mr. Van Zant); Tr. Vol. 7, p. 2770, line 14 to line 25, p. 2771 to p. 2775 (Test. Dr. Dechant, CIH); Tr. Vol. 9, p. 3445 to p. 3447 (Test. Mr. Johnson).

191. There is no credible evidence that CRLF is a major source of odors in the Sunland Park community.

192. The evidence introduced indicates that CRLF is not a significant source of odors. Odors are controlled at the facility by flaring the methane gas and by keeping the working space confined to a small area and covering wastes soon after they are deposited in CRLF. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4223; Testimony of Dr. Joe King, Tr. Vol. 1, p. 547.

193. The majority of the waste stream consists of materials, such as manufacturing scrap, which is dry, inert, and emits no odors. Testimony of Dr. Joe King, Tr. Vol. 2, pp. 548-553; Testimony of Tom Reilly, Tr. Vol. 4, pp. 1300-1301; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4235.

194. It is implausible that CRLF would be the source of odors at night because all wastes deposited at CRLF each day are covered by a minimum of six inches of soil at the end of each work day. Testimony of Dr. Joe King, Tr. Vol. 2, pp. 547-548; Testimony of I. Keith Gordon, Tr. Vol. 3, p. 778.

195. CRLF is simply not a significant generator of odors. During inspections, NMED staff have not noticed strong odors at CRLF, but have noted odors from sources for which the City of Sunland Park is responsible:

[T]here were no strong or objectionable odors noted [at CRLF], although there was a faint and occasional odor consistent with

sewage evaporation ponds that I noted at the Santa Teresa Wastewater Lift Plant on McNutt Road.

Testimony of George Akeley, Tr. Vol. 11, p. 4347 Likewise, NMED inspection staff have noticed "no pattern of strong or offending odors emanating" from passing garbage trucks bound for CRLF. Testimony of George Akeley, Tr. Vol. 11, p. 4349.

196. Odors are generally not noticeable at CRLF. Testimony of Dr. Joe King, Tr. Vol. 2, pp. 549, 552.

197. The prevailing winds in the vicinity of CRLF are from the east-south-east. CRLF is located generally south of the populated areas of Sunland Park. When the wind blows from the east-south-east, the residential areas of Sunland Park are not downwind of CRLF. Application, Vol. IV, Section 2, p. 2-34, Figure IV.2.6; Testimony of I. Keith Gordon, Tr. Vol. 5, pp. 1633-1634, 1749; Tr. Vol. 6, pp. 2109, 2280; Testimony of Dr. Joe King, Tr. Vol. 4, p. 1282.

198. The Sunland Park Wastewater Treatment Plant, however, is located in the eastern part of the City of Sunland Park, right next to the Sunland Park City Hall. Testimony of Dr. Joe King, Tr. Vol. 2, p. 564 The Wastewater Treatment Plant is the major source of odors in the Sunland Park community. Testimony of Mark Turnbough, Tr. Vol. 7, pp. 2490, 2587 When the wind blows from the east-south-east (the direction of prevailing winds), the major residential areas of Sunland Park are downwind of the Sunland Park Wastewater Treatment Plant. Testimony of I. Keith Gordon, Tr. Vol. 5, pp. 1633-1634, 1749; Testimony of Dr. Darrell Dechant, Tr. Vol. 7, pp. 2738-2739.

199. CRLF is located and operated in a manner that does not cause a public nuisance or create a potential hazard to public health, welfare or the environment. Application, Vol. I, Section 4, pp. 4-1 to 4-2; Application, Vol. II, Section 2, p. 2-14.

200. Camino Real has posted appropriate signage to indicate the location of CRLF, the hours of operation, emergency telephone numbers, disposal instructions and that fires and scavenging are prohibited. Application, Vol. I, Section 4, p. 4-2, Figure I.4.1 and Figure I.4.2; Application, Vol. II, Section 2, p. 2-15; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 538-540; Exhibits 16-1; 16-2; 16-3.

201. Six of Camino Real's employees are certified landfill operators, licensed by the Department. At least one certified operator is available at all times while CRLF is in operation. Application, Vol. I, Section 4, p. 4-2, Application, Vol. I, Section 6, Att. I.6.A; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 584-585.

202. Camino Real trains its employees in the detection and identification of unauthorized and hazardous materials in order to prevent the introduction of such materials into CRLF. Camino Real provides a full day of training annually to each employee of CRLF. Application, Vol. I, Section 4, pp. 4-2 and 4-6; Application, Vol. II, Section 2, pp. 2-15 to 2-19; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 596-597.

203. The Application notes that the Department has approved Camino Real's training program for employees of CRLF. Application, Vol. I, Section 4, pp. 4-2 and 4-6; Application, Vol. II, Section 2, pp. 2-15 to 2-19.

204. The requirements of 20 NMAC 9.1 Subpart VI dealing with operator certification are adequately addressed in the Application. Application, Vol. I, Section 6; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 584-585, 592, 595-596.

205. Camino Real has an inspection program in place to inspect incoming loads of waste to detect and prevent the disposal of regulated hazardous and unauthorized waste. Waste that comes into CRLF is visually inspected at the gate. Video cameras provide the gate operator with real time views of each incoming load from various angles, including from above. In addition, incoming loads are visually inspected by CRLF employees during the tipping process at the working face. One incoming load is randomly selected daily for a complete inspection that involves off-loading, spreading and thorough inspection in a designated inspection area away from the working face. A written record is created and retained in CRLF files for each such random inspection. Application, Vol. I, Section 4, p. 4-6, Figure I.4.3; Application, Vol. II, Section 2, pp. 2-15 to 2-19; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 553-554, 556-557; Exhibit CRLF 19-3.

206. Camino Real's standard procedure is to prepare a written inspection record for each load inspection that takes place. Each inspection record includes the following minimum information:

- a. date and time of inspection;

- b. name of transportation company;
- c. truck license number and description
- d. source of the waste; and
- e. any pertinent observations made during the inspection.

Application, Vol. I, Section 4, p. 4-6, Figure II.4.3; Application, Vol. II, Section 2, pp. 2-15 to 2-19; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 556-557.

207. CRLF employees thoroughly inspect every load of special waste that comes into CRLF. A written record is created for each such inspection.

Application, Vol. I, Section 4, pp. 4-2 and 4-6, Figure II.4.3; Application, Vol. II, Section 2, pp. 2-15 to 2-19; Testimony of Dr. Joe King, Tr. Vol. 2, p. 577.

208. Camino Real has procedures in place to ensure that if unauthorized waste is detected, a CRLF manager promptly notifies the Department and the hauler involved. Camino Real's procedures ensure that the public is restricted from such unauthorized waste and that proper cleanup, transport and disposal of the waste occurs. Application, Vol. I, Section 4, p. 4-6; Application, Vol. II, Section 2, pp. 2-15 to 2-19; Testimony of Dr. Joe King, Tr. Vol. 2, p. 557.

209. The operating plan provides for checking and inspecting loads to detect and prevent the disposal of regulated hazardous and unauthorized special waste. Application, Vol. II, Section 2, pp. 2-15 to 2-19; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 540-545, 553-557, 576-583.

210. Camino Real routinely uses principles of sanitary engineering by confining the "working face" to the smallest practical area, and Camino Real employees constantly compact solid waste to the smallest practical volume by

consolidating the waste with specialized CRLF equipment. Application, Vol. I, Section 4, p. 4-8; Application, Vol. II, Section 2, pp. 2-11 and 2-20; Testimony of Dr. Joe King, Tr. Vol. 2, p. 547; Exhibit CRLF 19-4.

211. Camino Real takes measures to prevent unauthorized access by the public and entry by large animals into the active area of CRLF through the use of gates, fences, locks and 24-hour security patrols. Application, Vol. II, Section 2, p. 2-20; Testimony of Dr. Joe King, Tr. Vol. 2, p. 540.

212. Camino Real has an adequate plan and means to prevent and extinguish fires. Application, Vol. I, Section 4, pp. 4-12 to 4-13; Application, Vol. II, Section 2, pp. 2-21 to 2-22; Application, Vol. II, Section 3, pp. 3-6 to 3-7.

213. Camino Real has a designated "hot waste" area which is remote from the operating area. Camino Real has adequate procedures for dealing with haul trucks that are found to have "hot waste" loads. Application, Vol. I, Section 4, p. 4-13; Application, Vol. II, Section 2, p. 2-22.

214. CRLF has sufficient unloading areas to meet demands of peak periods. Application, Vol. I, Section 4, p. 4-14; Application, Vol. II, Section 2, p. 2-23.

215. Camino Real operates CRLF in a manner that controls disease vectors and odors. Odors and disease vectors are controlled by covering wastes daily, soon after they are deposited in CRLF. Further, the majority of the waste stream consists of materials that are dry, inert, and emit no odors. Application, Vol. I, Section 4, pp. 4-15 to 4-16; Application, Vol. II, Section 2, pp. 2-4 to 2-7 and 2-24 to 2-25.

216. The following litter control measures are in operation and are adequate to control litter in and around CRLF: Application, Vol. I, Section 4, p. 4-15; Application, Vol. II, Section 2, p. 2-24.

a. Camino Real maintains the smallest practicable "working face" at CRLF. Application, Vol. I, Section 4, p. 4-15; Application, Vol. II, Section 2, p. 2-24; Testimony of Dr. Joe King, Tr. Vol. 2, p. 547.

b. Camino Real has installed snow fences throughout the property to catch and control litter. In addition, chain-link fencing is in place around the perimeter of CRLF, and portable chain link fencing is emplaced and moved from day-to-day as necessary to control blowing litter at the site of the active face. Application, Vol. I, Section 4, p. 4-15; Application, Vol. II, Section 2, p. 2-24; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 628-630.

c. Teams of CRLF employees pick up any trash that escapes the barriers during daily patrols. Application, Vol. I, Section 4, p. 4-15; Application, Vol. II, Section 2, p. 2-24; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 629-630.

d. Six inches of soil cover (i.e. "daily cover) is applied each day on top of the waste deposited that day. Application, Vol. I, Section 4, p. 4-15; Application, Vol. II, Section 2, p. 2-24; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 547-549.

e. Scavenging is prohibited at CRLF. Application, Vol. I, Section 4, p. 4-12; Application, Vol. II, Section 2, p. 2-21; Testimony of Dr. Joe King, Tr. Vol. 2, p. 540.

217. The Application contains operation procedures required by 20 NMAC 9.1.401. This includes requirements for: instructional and warning signs; location and operation of the facility so a public nuisance or potential health hazard is not created; and the presence of a certified operator during operating hours. Application, Vol. II, Section 2; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 538-557, 595-596.

218. Complete records are currently maintained and will continue to be maintained at CRLF documenting activities related to the operation, inspection, and disposal of waste. Application, Vol. I, Section 1, pp. 1-8 to 1-12; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 556, 576-583.

219. CRLF will continue to use principles of sanitary engineering in its operation pursuant to 20 NMAC 9.1.402 including:

- a. control migration of methane gas;
- b. prevent unauthorized scavenging and access by the public and large animals through the use of fences, gates, and locks to active portions of CRLF;
- c. provide daily and intermediate cover;
- d. control litter, odors and vectors; and
- e. confine the solid waste to the smallest practical area and reduce it to the smallest practical volume.

Testimony of Dr. Joe King, Tr. Vol. 2, pp. 534-594.

220. CRLF does not generate dust in quantities sufficient to create a hazard to public health, welfare or the environment, nor does it create an undue

risk to property. CRLF utilizes a number of methods to suppress dust, some of which are not required by the regulations, such as: imposing low speed limits on the facility's roads; applying water to the facility's roads and areas where soil is disturbed throughout the day (Exhibits CRLF 22-1 through 22-5); periodically applying chemical surfactants to roads and areas of disturbed soils; restricting vehicular access; installing wind fences and snow fences (Exhibit CRLF 21); applying dust-suppressing racetrack and stable wastes as intermediate cover on waste disposal areas (Exhibit CRLF 22-6); and regularly applying hydro-seeding mulch (Exhibits CRLF 22-7, 22-8). Other factors that reduce dust generation include: the natural topography of CRLF; the waste disposal process whereby the working face of the Landfill is kept small and directed away from Sunland Park. Testimony of Mike Crepeau, Tr. Vol. 3, pp. 955-958; Testimony of Joe King, Tr. Vol. 4, pp. 1301, 1321; Testimony of Lawrence Aires, Tr. Vol. 10, pp. 3697-98; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4233; Ex. CRLF 20-5.

221. Camino Real Boulevard was paved by the Applicant in 2004 to reduce dust caused by truck traffic. Testimony of Mark Turnbough, Tr. Vol. 4, pp. 1248-1249.

222. On very windy days, CRLF will often limit operations or shut down altogether in order to minimize dust and litter generation. Testimony of Joe King, Tr. Vol. 4, p. 1293.

223. CRLF will often take wind direction into account when planning disposal activities on any given day. For example, if a windy day is expected, CRLF might move the working face to a lower elevation in the Landfill and/or

create berms around the working face. Testimony of Tom Reilly, Tr. Vol. 2, p. 627.

224. The Applicant is using adequate dust suppression methods at CRLF. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4226.

225. The Applicant has demonstrated its compliance with applicable air quality standards by obtaining issuance of a new Title V Operating Permit recently issued by the New Mexico Environment Department's Air Quality Bureau. Testimony of Mike Crepeau, Tr. Vol. 3, pp. 958-959.

226. Airborne sand, dirt, and dust are a problem that is endemic to southern New Mexico because of the state's desert environment. Testimony of Erik Aaboe, Tr. Vol. 10, p. 3696. The evidence suggested that CRLF is *less* of a contributor to sand and dust in the air than the surrounding desert lands. For example, during certain high wind events, air quality monitors on the upwind side of the Landfill register higher PM₁₀ readings than monitors on the downwind side of the Landfill. Testimony of Erik Aaboe, Tr. Vol. 10, p. 3700.

227. Additionally, Thomas Ruiz, an NMED Air Quality Bureau employee testified that, given the dust control measures in place at CRLF, the Landfill would be less likely to contribute dust to the environment than other areas around Sunland Park. Testimony of Thomas Ruiz, Tr. Vol. 10, pp. 4118-19, 4137.

228. Based on Mr. Ruiz' involvement in various public health agencies, task forces and councils, he was aware of a recent study that identified unpaved roads in Anapra, Mexico as the source of particulate matter (dust) in the eastern

section of Sunland Park during low-wind conditions.. Tr. Vol. 10, p. 4092, line 23 to p. 4102, line 24; NMED-NOI, Ex. 6.

229. Mr. Ruiz testified that while open areas in general may be a potential source of dust, he was familiar with the Landfill's dust suppression measures and did not think that the Landfill was the cause of the high particulate values in the area. Tr. Vol. 10, p. 4137, line 8 to p. 4138, line 17.

230. George Akeley, the Solid Waste Bureau's Enforcement Section Manager, testified that he was on-site at CRLF during windy conditions. Although Mr. Akeley noticed "a lot of dust being generated and/or swept through the Village of Anapra, Mexico" and "towards Sunland Park," he did not observe any significant amount of dust being generated at CRLF. Testimony of George Akeley, Tr. Vol. 11, pp. 4349, 4390.

231. Moreover, research in recent years has revealed that sources in Mexico are the primary cause of dust in Sunland Park at times when there is not an ongoing high wind event. For example, researchers at the University of Texas at El Paso ("UTEP") recently analyzed low wind exceedances for PM₁₀ in the eastern portion of Sunland Park in order to try and determine the sources of particulate matter. That research revealed that unpaved roads in Anapra, Mexico were the cause of particulate matter in the air in Sunland Park during times of low wind. Testimony of Thomas Ruiz, Tr. Vol. 10, pp. 4102-4103.

232. Mr. Thomas Van Zandt identified that the Natural Events Action Plan indicates that about 85 percent of dust in the environment is due to non-

manmade sources such as wind, erosion, but the remainder is due to roadway dust. Tr. Vol. 8, p. 2820, line 9 to line 23.

233. Mr. Crepeau testified that air dispersion modeling was done for the CRLF site and that the modeling demonstrated compliance with both the federal and state ambient air quality standards. Tr. Vol. 2, p. 959, line 1 to p. 962, line 23.

234. Although particulate monitoring has been done by the Department in Sunland Park since the late '80s, the Department has not performed air monitoring at the Landfill itself, the intent being to monitor air quality throughout the community itself.

235. The Department has kept monitoring records based on monitors set up throughout the area to verify that CRLF's dust control plan is working as intended, but the Department has not employed or contracted an independent source to verify the Department's work.

236. To evaluate the dust levels coming from the Landfill, the Department recommends a weather station be installed on-site to accurately record the site's meteorological conditions. NMED-NOI, Ms. Ashley-Mark, Ex. 1, p. 73, and OP Ex. J.

237. To minimize air pollution from traffic, the Department recommends the Applicant submit a plan to the Department containing options to minimize particulate matter from its fleet of on-site heavy equipment and from El Paso Disposal trucks. El Paso Disposal is a wholly owned subsidiary of CRLF's parent company, Waste Connections, Inc. NMED-NOI, Ms. Ashley-Marx, Ex. 1, p. 73.

238. The operating plan provides adequate means to prevent and extinguish fires; maintain access roads at CRLF to ensure entrance and exit in a safe manner; control litter, disease vectors and odors; provide intermediate cover consistent with 20 NMAC 9.1., and provide daily cover at the active face of CRLF. Application, Vol. II, Section 2, pp. 2-21 to 2-22; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 546-549; Testimony of Tom Reilly, Tr. Vol. 2, pp. 626-638.

239. The Application notes that Camino Real covers waste throughout the day with “daily cover” consisting of a six-inch layer of soil. The alternative cover proposed by Camino Real conforms with applicable regulations and poses no threat to the environment or the public health or safety. Application, Vol. I, Section 4, p. 4-16; Application, Vol. II, Section 2, pp. 2-25 to 2-26.

240. In one of the tests conducted by Mr. Tillar, an expert for the Applicant, it was determined that the highest noise level reading was at the Desert View Elementary School. Tr. Vol. 3 p. 1085 ln. 9-15.

241. The Application notes that Camino Real emplaces “intermediate cover,” consisting of a one-foot layer of soil over all areas of CRLF that will not receive further waste for one month or longer, but have not reached final elevation. Application, Vol. I, Section 4, p. 4-17; Application, Vol. II, Section 2, pp. 2-25 to 2-26.

242. The Application notes that Camino Real stabilizes with vegetation those areas of CRLF that will be inactive for more than two years, and Camino Real inspects and maintains such areas in order to prevent erosion. Application, Vol. I, Section 4, p. 4-17; Application, Vol. II, Section 2, pp. 2-25 to 2-26.

243. The final cover design submitted in the Application is an alternate to the design described in 20 NMAC 9.1.502.A.1 and conforms with 20 NMAC 9.1.502.A.2 requirements. Application, Vol. I, Section 5, pp. 5-4 to 5-5; Application, Vol. II, Section 5, pp. 5-7 to 5-9; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 1000-1006.

244. Camino Real's final cover design consists of a one-foot soil foundation layer, a 36-inch infiltration layer, an 18-inch layer of rooting medium, a six-inch layer of topsoil, and a six-inch layer of vegetation cover. Application, Vol. I, Section 5, pp. 5-4 to 5-5; Application, Vol. II, Section 5, pp. 5-7 to 5-9; Testimony of Mike Crepeau, Tr. Vol. 3, p. 1003.

245. The CIA notes that CRLF built a 45 foot earthen berm and planted 500 Oleander bushes to screen the view, but recommends future mitigation measures that include a landscape/screening analysis specific to Unit 3 and a continuation and expansion of the landscaping program. CRLF Ex. 14, p. 35, Visual and Scenic Resources Section 3.4.3 Mitigation Measure.

246. The Department recommends a permit condition to implement the additional vegetative screening as a mitigation measure as discussed in the CIA. Tr. Vol. 11, p. 4309.

247. Equivalency of Camino Real's alternate design to the 20 NMAC 9.1.502.A.1 design was demonstrated through the EPA-generated HELP (Hydrologic Evaluation of Landfill Performance) computer model, which predicts the amount of the infiltration of precipitation through the final landfill cover and

into the waste. Application, Vol. III B, Section 9; Testimony of Larry Coons, Tr. Vol. 3, pp. 892-913, 920-953.

248. The results of the modeling indicated that the proposed alternate final cover design is more than equivalent to the bottom liner in terms of reducing infiltration as required by 20 NMAC 9.1.502.A.2.a. Application, Vol. III B, Section 9; Testimony of Larry Coons, Tr. Vol. 3, pp. 946-952.

249. Camino Real calculated the erosion rate of the final cover at the site due to rainfall using the Universal Soil Loss Equation ("USLE") and determined the erosion rate to be 1.51 tons/acre/year. This erosion rate is below the generally accepted landfill cover maximum erosion rate of 5 tons/acre/year. Application, Vol. III A, Section 6, p. 6-1.

250. The United States Environmental Protection Agency recommends the USLE for use on landfill design and landfill cover designs or applications. Application, Vol. III A, Section 6.

251. Camino Real currently has an effective revegetation program and is committed to ensuring the prevention of soil erosion on the final cover at CRLF in the future. CRLF's final cover will be covered with a vegetative layer and developed with grass or other native vegetation to ensure no erosion will occur. Application, Vol. II, Section 2, pp. 5-10 to 5-11; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 1000-1006.

252. Appropriate and adequate closure and post-closure plans have been prepared for CRLF, and financial assurance for closure and post-closure

costs is secured by a surety bond. Application, Vol. II, Section 5; Application, Vol. VI, Section 1; Testimony of Tom Reilly, Tr. Vol. 2, p. 641-642.

253. Camino Real has prepared a detailed written closure and post-closure plan, which specifies and describes the various tasks associated with closing CRLF and monitoring the condition of the land for a period of 30 years following closure. The closure and post-closure plan includes detailed cost estimates for the various activities associated with closure and monitoring. Application, Vol. I, Section 5; Application, Vol. II, Section 5; Testimony of Tom Reilly, Tr. Vol. 2, pp. 640-642; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 1000-1006.

254. Camino Real has provided financial assurance, in the form of a performance bond, to guarantee the availability of sufficient funds for CRLF's closure and post-closure monitoring for a period of 30 years. Application, Vol. VI, Section 1; Testimony of Tom Reilly, Tr. Vol. 2, pp. 640-642.

255. Camino Real's closure and post-closure plans include detailed estimates, in current dollars, of the cost of hiring a third party to close the largest area of CRLF and requiring closure and final cover at any time during the active life of CRLF. Application, Vol. II, Section 5; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 1000-1006.

256. Officials from the Department's Solid Waste Bureau Enforcement Section inspected CRLF 25 times during the current permit period (between January 15, 1997 and the time of the hearing in December, 2007). In addition, the Enforcement Section inspected CRLF 46 times between January 13, 1992

and November 4, 1996. None of these 71 inspections resulted in a finding of regulatory violation or resulted in the issuance of any enforcement document (such as a notice of violation). Testimony of George Akeley, Tr. Vol. 11, pp. 4338-4339.

257. Most of these were unannounced, surprise inspections. Testimony of Mark Turnbough, Tr. Vol. 1, p. 251.

258. CRLF has been inspected roughly twice as often as other typical active landfills in the state. This unusually high level of inspections is an attempt by the Department to be responsive to community concerns. Testimony of George Akeley, Tr. Vol. 11, pp. 4388-4389.

259. The campaign of inspections by the Department has been "very intensive." Testimony of Mark Turnbough, Tr. Vol. 1, p. 250.

260. According to one witness, CRLF is likely the only landfill in New Mexico with a perfect compliance history. Testimony of George Akeley, Tr. Vol. 11, p. 4389.

261. Four waste screening inspections of maquiladora waste were conducted between October 4, 2007 and November 1, 2007. No inconsistencies between the waste and the accompanying manifests were found and no violations were noted during the inspections. Tr. Vol. 11, p. 4344, line 10 to p. 4247, line 8 Test. of Chuck Akeley.

262. Between August 4 and August 10, 2004, the Department's Solid Waste Bureau, Hazardous Waste Bureau, Groundwater Quality Bureau, and Occupational Health and Safety Bureau, in coordination with the New Mexico

Department of Public Safety, Motor Transportation Division, conducted a six day inspection to screen all incoming waste loads. Approximately 580 vehicles were inspected, of which approximately 63 percent were commercial and 37 percent residential. Tr. Vol. 11, p. 4350, line 1 to p. 4351, line 21 Test. of Chuck Akeley.

263. Of the 580 vehicles, sixteen were determined or suspected to contain unauthorized waste. The inspections resulted in issuance of Notices of Violation to the El Paso Specialty Hospital, the Del Sol Medical Center, Sierra Medical Center, Thomason Hospital, and Providence Memorial Hospital, all located in El Paso. The Notices of Violation alleged failure to properly segregate, containerize, and manifest infectious waste, and (attempted) disposal of infectious waste at a facility not authorized to accept infectious waste. Tr. Vol. 11, p. 4351, line 18 to p. 4353, line 25 (Test. of Chuck Akeley); NMED Ex. 3, pp. 19 – 20 Written Test. of Chuck Akeley.

264. In response to the Notices of Violation, the El Paso medical facilities changed their procedures to prevent recurrence of the violations, and notified the Department in writing of those changes. Tr. Vol. 11, p. 4354, line 1 to line 5 Test. of Chuck Akeley; NMED Ex. 3, p. 20 Written Test. of Chuck Akeley.

265. An Administrative Compliance Order was issued to El Paso Disposal, a subsidiary of the parent company of the Applicant, on October 14, 2004, for unauthorized and improper transportation and attempted disposal of special waste including infectious waste at the Landfill. The Order included a civil penalty assessment of \$82,000. Tr. Vol. 11, p. 4354, line 6 to line 13 Test. of Chuck Akeley; NMED Ex. 3, p. 20 Written Test. of Chuck Akeley.

266. On January 21, 2005, El Paso Disposal and the Department settled the Administrative Compliance Order for a civil penalty payment of \$11,500 and two supplemental environmental projects. One project was to provide waste containers and transportation for clean up projects, valued at \$11,500. The second project was to develop and present, in at least four regions of the state, an infectious waste management training program for generators of such waste. The value of this project was \$71,600. Tr. Vol. 11, p. 4354, line 13 Test. of Chuck Akeley; NMED Ex. 3, p. 20 Written Test. of Chuck Akeley.

267. El Paso Disposal has fulfilled all the requirements of the settlement agreement. Tr. Vol. 11, p. 4355, line 3 to line 5 Test. of Chuck Akeley; NMED Ex. 3, p. 20 Written Test. of Chuck Akeley.

268. No violations by the Landfill were detected during this six day inspection. The Bureau assessed violations for disposal or attempted disposal of unauthorized waste against both the generator and the hauler of the waste.

269. It is not a violation by the operator of a landfill if unauthorized waste is discovered during pre-disposal inspection and to find otherwise would create a disincentive to landfills to conduct thorough predisposal inspections. Tr. Vol. 11, p. 4355, line 10 to p. 4356, line 22 Test. of Chuck Akeley.

270. The Bureau issued on October 24, 2006 a Notice of Violation to Phelps Dodge Corporation for alleged improper disposal of hazardous waste at the Landfill. The Notice was based on incidents of waste mischaracterization which Phelps Dodge had voluntarily disclosed to the U.S. EPA on April 18, 2006. The mischaracterizations involved three types of waste: (1) fire assay laboratory

wastes that failed the toxicity characteristic test for lead (approximately 1.44 cubic yards per year), (2) used plastic gasoline filters hazardous for ignitability and benzene toxicity (approximately one cubic foot per year), and (3) refinery casting insulation waste hazardous for the toxicity characteristic of arsenic (approximately 3.5 cubic yards per year). The mischaracterized waste was delivered to Camino Real between 2002 and 2005 and totaled less than 20 cubic yards. The Bureau also issued Notices of Violation to four hauling companies. Tr. Vol. 11, p. 4357, line 19 to p. 4359, line 18 Test. of Chuck Akeley.

271. Phelps Dodge paid a \$19,800 penalty assessed by the Texas Commission on Environmental Quality, and implemented an additional tracking system and more frequent internal and external inspections to prevent recurrence of such incidents. Phelps Dodge also provided the Bureau with a risk assessment prepared by a third party to substantiate that the risks imposed by the disposal of the mischaracterized hazardous wastes were minimal. Tr. Vol. 11, p. 4360, line 24 to p. 4361, line 14 Test. of Chuck Akeley.

272. No violations were cited against the owner and operator of the Landfill because the waste had been managed in accordance with its characterization as special rather than hazardous waste. Tr. Vol. 11, p. 4361, line 15 to line 21 Test. of Chuck Akeley.

273. There were a few references in the testimony on occasion that sometimes a waste disposal truck heading to the Landfill has allowed trash to fall along the roadside, despite the requirement that all waste in trucks be covered.

When such instances were reported to the CRLF, efforts were made for the Landfill's employees to pick up the trash.

274. The Department occasionally gets anonymous allegations about violations at CRLF. In each such instance about which Mr. Akeley was aware, when the allegation was investigated by the Department, the allegation proved to be meritless. Testimony of George Akeley, Tr. Vol. 11, pp. 4389-90.

275. CRLF was the first landfill in the state to install a liner. It was the first landfill in the state to obtain a "Title V" permit under the Clean Air Act, which necessitated the installation of certain emissions control systems on CRLF equipment. Testimony of Mark Turnbough, Tr. Vol. 7, pp. 2433-34.

276. In 1997, CRLF received the gold award for excellence from the Solid Waste Association of North America ("SWANA"). The gold award recognized CRLF as the best landfill in Canada, the United States, and Mexico. The SWANA is the largest trade organization for solid waste professionals in the United States, and it represents landfills throughout North America. Testimony of Dr. Joe King, Tr. Vol. 2, pp. 598-600.

277. In 2002, CRLF received the Green Zia award for environmental excellence from the New Mexico Environment Department. CRLF is the only landfill to ever receive this award. Testimony of Dr. Joe King, Tr. Vol. 2, pp. 600-601.

278. CRLF has an excellent record of regulatory compliance. Testimony of George Akeley, Tr. Vol. 11, pp. 4338-4339.

279. Under its current permit from the Department, CRLF accepts the following types of special waste: (1) wastewater treatment plant sludge; (2) petroleum-contaminated soils; and (3) industrial solid wastes. In CRLF's Application, Camino Real is seeking to continue to accept these three types of special waste. Camino Real is not seeking to accept any new types of special waste. Application, Vol. I, Section 7, p. 7-1; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 582-583.

280. Applicant's Exhibits CRLF 25-1 to 25-13 consist of representative samples of various "industrial solid wastes," as that term is defined in 20 NMAC 9.1.105.AK. By definition in 20 NMAC 9.1.105.BZ, these materials also are classified as "special wastes." None of the various wastes shown at Exhibits CRLF 25-1 to 25-13 has any special handling, transportation or disposal requirements, nor do they pose a health hazard of any kind.

281. CRLF does not accept, nor will it be permitted to accept, hazardous waste, asbestos, radioactive, medical or infectious waste for disposal at CRLF. Application, Vol. I, Section 7, p. 7-1; Testimony of Dr. Joe King, Tr. Vol. 2, p. 561; Testimony of Mark Turnbough, Tr. Vol. 1, pp. 225-226.

282. Although various testimony, comments, implications, or argument were made at the hearing about hazardous waste being disposed of at CRLF, there is no credible evidence that CRLF has ever accepted or disposed of any hazardous waste originating from the Asarco smelting plant in El Paso, Texas.

283. Camino Real has designated two "special waste storage areas" at CRLF. Application, Vol. II, Section 8, Figure II.8.1.

284. The Application notes that Camino Real documents and records the physical and chemical characteristics of all special wastes prior to disposal. Application, Vol. I, Section 7, pp. 7-3 to 7-4; Application, Vol. II, Section 8, pp. 8-2 to 8-3.

285. The Application notes that Camino Real stores, treats, discs, and turns petroleum contaminated soils at a designated area of CRLF in accordance with 20 NMAC 9.1.708. Treated soils are disposed of in the lined landfill area only after they are tested to meet regulatory standards. Application, Vol. I, Section 7, pp. 7-5 to 7-7; Application, Vol. II, Section 8, p. 8-4, Figure II.8.1.

286. The Application notes that Camino Real does not accept petroleum contaminated soils containing free liquid. Application, Vol. I, Section 7, p. 7-5; Application, Vol. II, Section 8, p. 8-13.

287. CRLF currently receives wastewater treatment sludge from two sources, the Hatch wastewater treatment plant and the Sunland Park wastewater treatment plant. CRLF samples and disposes of wastewater treatment sludge in accordance with 20 NMAC 9.1.709. Application, Vol. I, Section 7, pp. 7-7 to 7-10; Application, Vol. II, Section 8; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 562-567.

288. A manifest containing the information specified at 20 NMAC 9.1.712.A accompanies each load of special waste accepted for disposal at CRLF. Each such manifest is signed by the waste generator and commercial hauler. Camino Real maintains copies of such manifests in its files. Application,

Vol. I, Section 7, p. 7-12; Application, Vol. II, Section 8, pp. 8-6 to 8-7; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 577-558.

289. Under Camino Real's procedures, Camino Real rejects any load of special waste that does not conform to the information in the manifest. In addition, Camino Real notifies the Department of any such discrepancy.

Application, Vol. I, Section 7, p. 7-12; Application, Vol. II, Section 8, pp. 8-6 to 8-7; Testimony of Dr. Joe King, Tr. Vol. 2, pp. 577-580; Testimony of Tom Reilly, Tr. Vol. 2, pp. 620-621.

290. The Application notes that "maquiladora wastes" are wastes originating at certain manufacturing plants located in northern Mexico. Maquiladora wastes are regulated special wastes since they are generated by the manufacturing process and therefore they meet the definition of "industrial solid waste" under 20 NMAC 9.1.105.AK. Application, Vol. II, Section 8, p. 8-9.

291. The maquiladora wastes disposed of at CRLF generally consist of dry wastes such as plastic, rubber, fabric, cardboard and similar waste products. Exhibits CRLF 25-2 to 25-13.

292. There are six groundwater monitoring wells on site, including both up-gradient and down-gradient wells. These wells comply with the standards of 20 NMAC 9.1.802. Samples are taken from these wells twice a year and analyzed. To date, this sampling has revealed no evidence of contamination of the groundwater by CRLF. Application, Vol. I, Section 8, p. 8-3; Application, Vol. V, Section 2, pp. 2-1 to 2-6; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 983-

1006; Testimony of I. Keith Gordon, Tr. Vol. 3, pp. 760-761, 766; Testimony of Jerzy Kulis, Tr. Vol. 11, pp. 4329, 4333-4334.

293. There is no evidence that CRLF poses any threat of contamination to the City of Sunland Park's groundwater supply. Application, Vol. V, Section 2, pp. 2-1 to 2-6; Testimony of Mike Crepeau, Tr. Vol. 3, p. 999; Testimony of Jerzy Kulis, Tr. Vol. 11, p. 4320.

294. Actual well monitoring data reveals no evidence that CRLF has caused contamination of groundwater beneath the facility. Testimony of Jerzy Kulis, Tr. Vol. 11, pp. 4329, 4333-4334.

295. Although the groundwater beneath CRLF is non-potable, the data indicates that the condition of the water is caused by naturally-occurring causes having nothing to do with CRLF. Testimony of Jerzy Kulis, Tr. Vol. 11, pp. 4323-4329; 4391.

296. The Department has approved CRLF's groundwater monitoring system. Application, Vol. V, Section 2, p. 2-1; Testimony of Mike Crepeau, Tr. Vol. 3, pp. 983-985; Testimony of Jerzy Kulis, Tr. Vol. 11, p. 4323.

297. Between the groundwater and the cells, there are multiple layers (more than 10) of low permeability clays that would impede the down flow of water in the unlikely event that leachate breached the landfill liner. Testimony of Larry Coons, Tr. Vol. 1, pp. 927-931; Testimony of Jerzy Kulis, Tr. Vol. 11, pp. 4332-34.

298. The low permeability clays slope away from Sunland Park, meaning that, in the unlikely event that leachate leaks out of CRLF, it would migrate away from the community. Testimony of Jerzy Kulis, Tr. Vol. 11, pp. 4332-4333.

299. CRLF is located and operated in a manner that does not cause a public nuisance or create a potential hazard to public health, welfare or the environment. Application, Vol. II, Section 2, p. 2-14; Application, Vol. IV, Section 2.

300. A contingency plan included in the Application sufficiently describes equipment and procedures to be utilized should an emergency situation arise. An approved contingency plan is currently in place at CRLF. Application, Vol. II, Section 3.

301. The Application includes a contingency plan that sufficiently describes emergency equipment and procedures which will be in place at CRLF. Application, Vol. II, Section 3.

302. Pursuant to Section 811 of 20 NMAC 9.1, the Application contains a contingency plan addressing the requirements of Subsection 811(D) (1) – (13) of 20 NMAC 9.1 App. Vol. I, p. 8-26 Vol. II, Sec. 3 (Contingency Plan).

303. NMED Compliance Manager Chuck Akeley testified that the Contingency Plan was well written and generally conformed with all applicable requirements, but recommended three revisions be made to the plan submitted to the Department to approval prior to implementation.

304. The first revision is that the Contingency Plan should be revised to identify the correct identity and contact information for the landfill's emergency

coordinator, because the person identified in the plan is no longer employed at the Landfill. Second, the site plan should be revised to show the location of the newly registered recycling center located adjacent to the Landfill office. Third, the description of emergency response coordination should include “the name of each agency; the date and location of such coordination; the primary points of contact for the agency; a description of the equipment, expertise and assistance that the agency would provide in the event of an emergency; the agency's estimated response time to the Landfill, if that's applicable; an indication of whether unaccompanied access after hours would be granted to the agency through the sharing of keys or codes or by other means; and acknowledgment that the agency was apprised of potential contaminants and the type of incidents that could occur at the Landfill; and, when applicable, the agency's failure or unwillingness to participate with the Landfill regarding the contingency plan and related coordination efforts.” Tr. Vol. 11, p. 4363, line 4 to p. 4365, line 2 (Test. of Chuck Akeley).

305. There is no credible evidence that the Department or Camino Real has discriminated against any person or group of persons in the siting of CRLF or in these proceedings.

306. There is no evidence that Camino Real has not fully disclosed all relevant facts during this proceeding.

307. There is no evidence that Camino Real has knowingly misrepresented a material fact in the Application.

308. There is no evidence that Camino Real has been convicted of any felony involving claims of restraint of trade, price-fixing, bribery, or fraud, nor is there any evidence that the applicant has exhibited a history of willful disregard for the environmental laws of any state or the United States.

309. There is no evidence that any officer of Camino Real or its parent company Waste Connections, Inc. has been convicted of any felony involving claims of restraint of trade, price-fixing, bribery, or fraud, nor is there any evidence that any such officer has exhibited a history of willful disregard for the environmental laws of any state or the United States.

310. There is no evidence that Camino Real has refused or failed to disclose any information required under the Act or 20 NMAC 9.1.

311. Camino Real has provided complete information regarding the ownership and control of Camino Real and its officers and affiliated companies, as required by NMSA 1978, § 74-9-21 and 20 NMAC 9.1.201(B)(6) and as specified and requested by the Department's Solid Waste Bureau. Application, Vol. I, Section 2, p. 2-6; Application, Vol. VI, Section 3.

312. CRLF is not a brownfield. Testimony of Mark Turnbough, Tr. Vol. 7, p. 2440.

313. At the public hearing, expert testimony demonstrated that the location and operation of the Landfill does not have a negative impact on the development, marketing or value of property that is located near CRLF. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 194-222; Testimony of John Howden, Tr. Vol. 14, pp. 5752-5762.

314. The unchallenged evidence was that there is new home construction in the areas immediately adjacent to CRLF. Further, the new home construction includes some of the most expensive homes in Sunland Park. Testimony of John Howden, Tr. Vol. 14, pp. 5760-5762.

315. John Howden, a certified appraiser, testified that the second most expensive neighborhood in terms of home prices was adjacent to the Landfill. Further, Mr. Howden testified that the farther the homes are from CRLF, the lower their value. Reduction in value occurs due to proximity to McNutt Road, the primary artery through Sunland Park, not proximity to CRLF. Testimony of John Howden, Tr. Vol. 14, pp. 5760-5762.

316. Mr. Howden's testimony was not contradicted by competent evidence.

317. There is no support in the record that CRLF has produced a decline in property values and/or a slowing of economic development. The values of homes built next to CRLF are among the highest in Sunland Park. Economic development is occurring in Sunland Park at a rate that is generally better than other similarly-situated border communities. Testimony of John Howden, Tr. Vol. 14, pp. 5760-5762; Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2655-2656.

318. The testimony from the City's economists was not credible or convincing. Dr. Benjamin Widner's methodology and conclusions were fundamentally flawed. By his own admission, his reliance upon the assumption that CRLF was a "brownfield" was incorrect. Testimony of Benjamin Widner, Tr. Vol. 13, pp. 5316-5317; see also Small Business Liability Relief and Brownfields

Revitalization Act, 42 U.S.C. § 9601(39) None of the studies dealing with property value impacts that he relied upon pertained to non-hazardous sanitary landfills. Testimony of Benjamin Widner, Tr. Vol. 13, pp. 5322-5329 Meanwhile, the studies that dealt with non-hazardous landfills, and that Dr. Widner chose to ignore and neglected to acknowledge, actually reached a conclusion opposite from the one he reached. That research indicates that the presence of a sanitary landfill (that is, a landfill that does not accept hazardous waste) has little or no impact upon the value of adjacent residential properties. Testimony of Benjamin Widner, Tr. Vol. 13, pp. 5330-5339.

319. The conclusions reached by the City's economist experts lacked any factual support or analysis. Testimony of James Holcomb, Tr. Vol. 14, pp. 5803-5804. There is no technical evidence to support the claim that CRLF has a detrimental effect upon the economy of Sunland Park nor to suggest CRLF will in any way hinder economic development. Testimony of James Holcomb, Tr. Vol. 14, pp. 5803-5804, 5809, 5816.

320. A survey of the sales price of area homes in recent years revealed that homes sold in the neighborhood nearest CRLF had the highest average per-square-foot sales price out of six Sunland Park neighborhoods surveyed for the years 2005, 2006 and 2007. Testimony of John Howden, Tr. Vol. 14, pp. 5753-5765; Exhibits CRLF 87 and 89.

321. Statistical data comparing eight similar border communities in New Mexico and Texas demonstrated that CRLF is not stifling economic growth and

development in Sunland Park. Testimony of Thomas Van Zandt, Tr. Vol. 7, p. 2655; Exhibit CRLF 81.

322. In 2007, the City enlisted the Moules & Polyzoides firm to develop a master plan for an area of the City that abuts CRLF's eastern boundary (the "M&P Master Plan"). The goal of the M&P Master Plan was to "positively leverage the economic opportunities in Sunland Park", "gain maximum benefit" from the proposed US / Mexico border crossing at Anapra, and "transform" Sunland Park. Dr. Erickson opined that CRLF was preventing the City from implementing the M&P Master Plan. Statement of Enrique Palomares, Tr. Vol. 4, pp. 1525-26, Testimony of Dr. Christopher Erickson, Tr. Vol. 12, p. 4813; Exhibit CSP 22.

323. Dr. Erickson acknowledged that he was *assuming* that the continued existence of CRLF would absolutely halt implementation of the M&P Master Plan, and that this was an "extreme" assumption. Dr. Erickson's opinion was not credible in that regard. Testimony of Dr. Christopher Erickson, Tr. Vol. 13, pp. 5303-5304.

324. The M&P Master Plan itself does not substantiate the City's claim that CRLF's presence will halt progress on the plan or that CRLF must be eliminated. For example, the M&P Master Plan explicitly states that the City's wastewater treatment plant "needs to be moved," but makes no similar statement about CRLF. Testimony of Dr. Christopher Erickson, Tr. Vol. 13, pp. 5344-5346; M&P Master Plan at p. 1:4 (Attachment to Combined Exhibit CSP 3 and 4).

325. The City's current official position--that CRLF is an economic detriment--is at odds with positions many of the City's current leaders have taken in the recent past. In 2001, the City entered into a written "Host Agreement" with CRLF. 2001 Host Community Agreement, Application, Vol. IV, Attachment IV.2.A; see also Testimony of Mark Turnbough, Tr. Vol. 1, pp. 213-216.

326. In the Host Agreement the City acknowledged that: (1) the "Landfill is a valuable economic asset to the community, both as a source of increased revenue to the City and as an entity which renders valuable in-kind services to the City and its residents;" and also that (2) the City enjoys "long-term benefits of a cooperative working relationship" with CRLF. The members of the City Council who signed the Host Agreement included several who voiced their opposition to CRLF at the hearing: Mayor Segura, then-councilwoman Luz Vargas, and Marisela Monsivaiz (formerly Estrada). Testimony of Mark Turnbough, Tr. Vol. 1, pp. 217-221; Testimony of Marisela Monsivaiz, Tr. Vol. 13, p. 5108.

327. Mayor Segura's claim that CRLF used the host agreement as a form of "economic blackmail" against the City is spurious. Nothing in any of the host agreements ever in effect between the City and CRLF's current or former owner ever prevented the City from speaking out against CRLF, as evidenced by the fact that the Mayor spoke in opposition during the 1996 permit hearing and the City was a party in opposition in this hearing. Testimony of Mayor Ruben Segura, Tr. Vol. 12, pp. 4707-4709.

328. Mayor Segura testified that CRLF “has made it difficult to attract business to Sunland Park.” Testimony of Mayor Segura, Tr. Vol. 12, p. 4765. However, he failed to identify a single business that had refused to relocate to Sunland Park allegedly due to the presence of CRLF.

329. The Mayor did identify two businesses that had failed to locate to Sunland Park (a private prison and a blue jean factory) because of the Mayor’s own actions. These two businesses had *wanted* to come to Sunland Park, but he “decided not to encourage them.” Testimony of Mayor Segura, Tr. Vol. 12, p. 4768.

330. The Mayor also identified a number of companies that *are* located in the community, but which he considers less than desirable. Testimony of Mayor Segura, Tr. Vol. 12, pp. 4765-4766, 4773 His testimony, however, does not support an inference that the presence of CRLF discourages business investment in Sunland Park. At most it suggests that he is unable to attract the kinds of businesses *he prefers*.

331. The City of Sunland Park is located in an area characterized by Mayor Segura as a tri-state regional border community. Tr. Vol. 12, p. 4781, line 48 to line 8.

332. According to Mayor Ruben Segura and based on the 2000 U.S. Census, the City has a population of 13,309 people, but is actually part of an urban setting of about 2.3 million people in New Mexico, Texas and Mexico. Tr. Vol. 12, p. 4666, line 15 to line 19.

333. According to Mayor Segura the City of Sunland Park has three sister cities: El Paso, Texas, Ciudad Juarez and Chihuahua, Mexico. Tr. Vol. 12, p. 4669, line 19 to p. 4670, line 18.

334. There was no entry of appearance or comment from any of the three sister cities in this proceeding. Tr. Vol. 1 to Vol. 14; AR.

335. The City of Sunland Park presented Resolution No. 04-42: A Resolution of the City of Sunland Park Governing Body Approving the Final Draft of the City Master Plan Prepared by "Perspectiva," adopted by the City on June 15, 2004, and the "Downtown District, McNutt Corridor, and Border Crossing Master Plan," by Moule & Polyzoides Architects and Urbanists, dated November 9, 2007, as evidence of the City's planning efforts. CSP- NOI, New Mexico Economic Consultants, Appendix; CSP Ex. G.

336. The Master Plan was based on extensive fieldwork and review of three documents, 1) 2004 Sunland Park Master Plan, 2) Existing Zoning Regulations, and 3) Conceptual Engineering and Feasibility Study for the Sunland Park Port-of-Entry. CSP- NOI, New Mexico Economic Consultants, Appendix; CSP Ex. G, Page 1:3.

337. The Master Plan lists a number of challenges including, needs to increase city revenues to fund services, to improve quality of development in Sunland Park, to have a city center, as well as a need to address serious environmental concerns involving a history of air, water, and soil pollution due to Asarco smelting plant, residents' concerns with the environmental impact of CRLF, and sewage treatment plan on McNutt Road (next to present City Hall),

which the Plan recommends should be moved. CSP- NOI, New Mexico Economic Consultants, Appendix; CSP Ex. G, Page 1:4.

338. The Master Plan labels CRLF as an environmental consideration. CSP- NOI, New Mexico Economic Consultants, Appendix; Tr. Vol. 12, p. 4793, line 24 to p. 4794, line 2. It does not require or recommend its closure for economic development in the City of Sunland Park to progress. Tr. Vol. 13, p. 5215, line 9 to line 22; CSP- NOI, New Mexico Economic Consultants, Appendix.

339. Economic incentives or enhanced economic benefits are recommended for mitigation of any negative socioeconomic effect of the Landfill. AR at 129; NMED, NOI- Johnson, P. 26. The Host Agreement was in effect until 2004 and provided, among other benefits and services, free solid waste services for the City of Sunland Park Tr. Vol. 12, p. 4895, line 4 to line 22; CIA, Appendix G.

340. The CIA identified the financial value of community services, including the Host Agreement, provided by CRLF, as a positive economic benefit to the City of Sunland Park valued at \$1,184,900 in 2004. CIA, p. 104.

341. In developing the Community Impact Assessment, Mr. Van Zandt did not perform or include an ethnographic study. Tr. Vol. 8 p. 2850-2851 In. 20-7; Tr. Vol. 8 p. 2857 In. 12-15.

342. Although there was some confusion at the hearing concerning whether the CIA was fully translated in Spanish and made available to the public, it was confirmed, even by Dr. Pena, the City of Sunland Park's technical witness, that it was in fact translated. Testimony of Dr. Pena, Tr. Vol. 10 pp. 4070-4078 In

11-21. The Bureau provided copies of the Application, including the Spanish translated CIA, for public review at multiple locations in Doña Ana County. Tr. Vol. 11, p. 4280, line 10 to line 14; Tr. Vol. 10, p. 4078, line 2 to line 18; CRLF Ex. 78.

343. There is ample evidence demonstrating that businesses continue to be willing to establish and flourish in the community:

a. Robert Ardovino invested and opened a fine dining restaurant near the eastern boundary of CRLF in 1997, at a time when CRLF was operating much as it does today. The presence of CRLF did not diminish Mr. Ardovino's entrepreneurial spirit. Mr. Ardovino's restaurant serves about 53,000 patrons a year. Testimony of Robert Ardovino, Tr. Vol. 14, pp. 5686-5688.

b. The Verde Group is planning an enormous mixed-use development project that will abut CRLF to the west. This development will include residential and industrial areas to the immediate west of CRLF property. The project manager for the Verde Group has publicly stated that it is desirable to have a landfill nearby. The operator of the Sunland Park Racetrack and Casino made a similar public statement. Both of these businessmen, whose projects are of vital importance to Sunland Park, indicated that CRLF was a benefit to their businesses and to the economic development of the community. Testimony of Mark Turnbough, Tr. Vol. 7, pp. 2468-2470, 2475-2478; Exhibit CSP A.

c. There is a large number of other significant completed and planned economic development projects in the City, including road construction, infrastructure improvements, new recreational facilities, a major regional

amusement park, an entertainment corridor, a museum, a new city hall, a new international border crossing, a new hotel and restaurant complex, and a shopping center. Most comparable cities along the border in Texas and New Mexico “would kill” to have a comparable number of development projects in the works. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2622-2626, Tr. Vol. 8, P. 3039; Exhibit CRLF 44A.

d. The record is full of glowing statements regarding the city’s economic prospects, from both supporters and opponents of CRLF alike: City of Sunland Park is an “economically emerging area” Testimony of Mark Turnbough, Tr. Vol. 1, p. 205; Sunland Park is “on the verge of an economic development explosion” Statement of Enrique Palomares, Tr. Vol. 1, p. 63; the City’s economic development is “headed in the right direction” Testimony of Benjamin Widner, Tr. Vol. 12, p. 4878; I’m “very proud of the progress and the growth that [has been] seen” in Sunland Park Testimony of Senator Cynthia Nava, Tr. Vol. 6, p. 2063; Sunland Park “has really evolved . . . into a rather large Mecca,” and “many of the citizens [of Sunland Park] are very happy.” Testimony of Representative Mary Garcia, Tr. Vol. 4, p. 1193.

344. The credible evidence at the hearing did not demonstrate that CRLF was an impediment to progress.

345. The evidence demonstrated that the City government itself may have been a major impediment to the progress of the city. For example, in 2001-02, the New Mexico Office of the State Auditor conducted a special audit of City financial records and issued a report concluding that the Mayor and City Council

have “repeatedly and frequently” “willfully violated” numerous state laws and regulations. The State Auditor took the unprecedented step of recommending that the Mayor and Council be suspended from their duties and the city administration be taken over by the Department of Finance and Administration. Exhibits CRLF 82 and CRLF 84. In response to the State Auditor’s audit report, the state withheld funds designated for various infrastructure projects in the City, and also halted progress on the vitally important international border crossing in Anapra. The state also sent employees to oversee City operations for a number of months. Testimony of Mayor Segura, Tr. Vol. 13, pp. 5227-5232, 5386-5387; Exhibit CRLF 84.

346. Additionally, the City’s own Master Plan concedes that it is the *City’s facility* that impedes new development. “The smell from the [City’s wastewater treatment] plant . . . projects a negative image of the city.” “The odors [from the City’s plant] are sometimes heavy and . . . they may discourage new construction.” CSP’s Statement of Intent, Attachment 1, pp. 63, 80. The odors from the City’s wastewater treatment plant have occasionally been bad enough to drive customers away from Mr. Ardovino’s restaurant. Testimony of Robert Ardovino, Tr. Vol. 14, pp. 5611-5612. The City has experienced “chronic compliance problems” with its wastewater treatment plants and has been the subject of enforcement action by the Department because of these problems. Testimony of Mayor Segura, Tr. Vol. 13, pp. 5155-5157.

347. Despite allegations that the proximity of CRLF to the City of Sunland Park is unprecedented and would not be tolerated elsewhere in the

state, the record showed that CRLF is not particularly close to the community. The distance from the nearest point on the perimeter boundary of CRLF to the nearest point on the perimeter boundary of the nearest public building is 1,300 feet, which is several times the minimum regulatory standard. The distance to the working face of CRLF is much farther still. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 189-190, Tr. Vol. 4, pp. 1271-1272.

348. There are a number of other landfills in this State, such as the Roswell Landfill, the Sandoval County Landfill, and the Rio Rancho Landfill, that are much closer to surrounding neighborhoods and that are located in much more affluent neighborhoods. Testimony of I. Keith Gordon, Tr. Vol. 4, pp. 1274, 1418-1419.

349. There is nothing in the record to suggest that the selection of the site for CRLF had anything to do with the ethnicity or income level of the citizens of Sunland Park. Rather, the evidence in the record demonstrated that the decision to locate CRLF was a natural extension of the County's decision, made many decades ago, to utilize the site as an unregulated dump. In this respect, the installation of CRLF was entirely consistent with the prior land use, and made productive use of land that would likely otherwise serve as nothing but an eyesore. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 179-180.

350. The evidence also demonstrated that CRLF has not moved closer to the community. Rather, the community has moved closer to CRLF. An entire new subdivision, the Valle Vista Subdivision, has been built in proximity to CRLF in only the last few years. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 198-200,

Tr. Vol. 4, pp. 1261-1265, 1396-1399. The City of Sunland Park has actively encouraged frame construction—as opposed to mobile homes—in this subdivision. Testimony of Mayor Segura, Tr. Vol. 12, pp. 4775-4776; Testimony of Benjamin Widner, Tr. Vol. 13, p. at 5077. Since CRLF was first permitted in the early 1990's, builders have continued to build homes and multi-family residences closer and closer to CRLF in the Meadow Vista Subdivision. Meanwhile, the working face of the Landfill has generally migrated over time to the south (away from Sunland Park), and it will generally continue to do so over the permit renewal period. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 194-199, 202-203; Exhibits CRLF 15-1 through 15-17.

351. A few witnesses testified that they saw some waste disposal trucks heading toward the Landfill cut through residential streets, but the practice was not shown to be pervasive or a hazard. Tr. Vol. 3 p. 1053 ln. 8-19; Tr. Vol. 3 p. 1054-1055 ln. 18-1.

352. Camino Real presented the testimony of Dr. Darrell L. Dechant, a Certified Industrial Hygienist with a PhD degree in Public Health. Dr. Dechant has 20 years of experience as a practicing industrial hygienist. Testimony of Dr. Darrell Dechant, Tr. Vol. 7, p. 2663.

353. Dr. Dechant testified that there is no scientific or medical link between CRLF and any current or past health problem or illness of any person. Testimony of Dr. Darrell Dechant, Tr. Vol. 7, pp. 2689-2776.

354. Dr. Dechant's testimony was unchallenged by competent medical or scientific testimony or evidence.

355. The Department presented the testimony of Thomas Ruiz, who works as an environmental analyst for the Department's Air Quality Bureau. Mr. Ruiz also serves as an assistant professor for environmental epidemiology at New Mexico State University. Mr. Ruiz holds a master's degree in molecular biology, with a focus on environmental microbiology. Mr. Ruiz is a member of the following organizations that deal with environmental health issues in southern Dona Ana County: (1) the Environmental Health Committee; (2) the Environmental Health Education Task Force; (3) the Bishop's Colonia Task Force; (4) the Environmental Health Coordinating Council; (5) the Joint Advisory Committee; and (6) the Border 2012 Task Force. Testimony of Thomas Ruiz, Tr. Vol. 10, pp. 4091-4096, 4126.

356. Mr. Ruiz testified that the potential for lead contamination as a public health concern is by ingestion, such as transmission by means of touching soil and then putting that hand in the mouth or nose. Tr. Vol. 10, p. 4128, line 5 to line 25.

357. Mr. Ruiz testified that in his professional opinion CRLF does not constitute a hazard to public health, nor does it present a hazard to public welfare. He also testified that CRLF does not pose an undue risk to property. Testimony of Thomas Ruiz, Tr. Vol. 10, pp. 4127-4128.

358. Mr. Ruiz's testimony was unchallenged by competent medical or scientific testimony or evidence. Testimony of Thomas Ruiz, Tr. Vol. 10.

359. Ms. Ashley-Marx read the full reports referenced in the citizens packet and learned that arsenic and lead values at the three elementary schools

in Sunland Park were below EPA standards. Tr. Vol. 11, p. 4289, line 21 to p. 4293, line 21.

360. EPA's guidance states that it is incidental ingestion that is the major pathway of exposure to soil and dust and so the soil depths at the three schools were taken at shallow depths because that is where people are exposed. Tr. Vol. 11, p. 4293, line 11 to p. 4294, line 19.

361. Granting the Application will not result in a hazard to public health, welfare, or the environment, nor will it result in undue risk to property or a public nuisance.

362. The evidence conclusively demonstrated that CRLF does not pose a hazard to public health, welfare, or the environment. There is nothing inherently risky about the waste that goes into CRLF. CRLF does not take hazardous waste, and the waste it does take is no more risky than ordinary trash that every person has in his or her home. There is no evidence that any CRLF employee has ever suffered any adverse health effect that could conceivably be attributed to CRLF. Testimony of Dr. Darrell Dechant, Tr. Vol. 7, p. 2692.

363. The competent public health evidence admitted at the hearing demonstrated that CRLF is not capable of causing cancer, blood disease, heart disease, vision problems or any of the other adverse health effects that have been anecdotally attributed to it. Testimony of Dr. Darrell Dechant, Tr. Vol. 7, p. 2771; Testimony of Thomas Ruiz, Tr. Vol. 10, pp. 4127-4128.

364. Compliance with the technical requirements in the Department's rules ensures that CRLF will not create a hazard to public health, safety or

welfare or an undue risk to property. Moreover, in virtually every instance, CRLF “dramatically exceeds” the technical compliance standards set forth in the applicable rules. Testimony of Mark Turnbough, Tr. Vol. 1, p. 187, Tr. Vol. 5, pp. 1838-1839, Tr. Vol. 7, pp. 2427-2432.

365. Multiple governmental agencies, including the EPA, the Agency for Toxic Substances and Disease Registry, the New Mexico Department of Health, the New Mexico Environment Department, and the University of Texas-Houston School of Public Health in El Paso, have repeatedly confirmed that there are no public health hazards associated with CRLF. Testimony of Mark Turnbough, Tr. Vol. 1, pp. 235-242; Testimony of Thomas Ruiz, Tr. Vol. 10, pp. 4120-4121; Exhibits CRLF 27, CRLF 28, CRLF 29, CRLF 38, CRLF 61, CRLF 66.

366. The Department itself has already concluded that CRLF is not a hazard. When it issued the current permit in 1997, the Department specifically found that CRLF is not a hazard to the public health, welfare or the environment; an undue risk to property; or a public nuisance. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4423-4424; Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2659-2660; Exhibits CRLF 38, CRLF 61. Since that time, CRLF has only continued to improve its operations in ways that further reduce any impact CRLF might have, such as by paving roads, adding the recycling facility, and extending its landfill gas collection system. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4424-4425; Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2660-2661.

367. The Opponents produced no competent evidence suggesting a potential hazard. The City, through its only technical witness to discuss health

impacts, Devon Pena, only asserted a “psychosomatic” theory: the community members perceive CRLF causes health impacts and this “perception” is, in turn, “correlated” with “diminished health outcomes.” Dr. Pena expressly disclaimed any “causal relationship” between CRLF and adverse health outcomes. Tr. Vol. 10, pp. 3821-3822, 3825, 4027-31. Thus, even if Dr. Pena’s theory had been credible, it cannot be relied upon because it does not allege causation.

368. Dr. Pena’s correlation argument was not credible because it was based upon studies analyzing the stress of living near highly hazardous sites, such as the Chernobyl nuclear facility and Love Canal hazardous waste disposal site. By his own admission, the sites discussed in the studies Pena relied upon are not similar to CRLF, but are “orders of magnitude” more dangerous than CRLF. Tr. Vol. 10, pp. 4031-4041. Thus, Dr. Pena’s circular argument that CRLF is a hazard because residents suspect it is a hazard was not credible.

369. Dr. Pena was a biased witness, inclined to find environmental racism wherever he looks. Dr. Pena testified that despite having engaged in “numerous consultancies” similar to his work for Sunland Park, and having received “way too many calls” from communities claiming to suffer environmental racism, Dr. Pena has “never found an absence of environmental racism.” Tr. Vol. 10, pp. 3818, 4002-4003. Dr. Pena candidly opined that “[t]here is no such thing as objectivity.” Tr. Vol. 10, p. 3855. Much of Dr. Pena’s testimony was rambling, unintelligible, irrelevant, and not helpful to determining any of the issues relevant to the permitting decision at hand. He was also repeatedly evasive to the point of bordering on dishonesty, and prone to startling outbursts. Tr. Vol. 10, p. 4080.

370. At the hearing, several citizens expressed generalized concerns about the disposal of unauthorized waste at CRLF. However, these concerns were vague and unspecific; few public commenters claimed to have any personal knowledge of such practices. The three witnesses who did claim to have such personal knowledge were striking truck drivers employed by El Paso Disposal, a subsidiary of Camino Real's parent company, whose testimony was vacillating, suspect, biased, and therefore not credible.

371. 28 of the 61 persons who gave public comment at the hearing identified an illness or condition, such as asthma, allergies, skin problems, cancer, diabetes, blood disease and cancer they believed to be caused by the landfill. See generally, Tr. Vol. 1, p. 300, Testimony of Augustine Barraza; Tr. Vol. 10, p. 3922, Testimony of Olga Arguelles.

372. Mayor Segura was not aware of any causal relationship between the Landfill and illnesses in the community. Tr. Vol. 13, p. 5139, line 18 to p. 5140, line 19.

373. Initially, the City had indicated it would present evidence demonstrating that the presence of CRLF disillusions the citizens of Sunland Park and causes them to think less of themselves and their community. However, the City simply failed to produce competent evidence on this question. In support of its self esteem theory, the City presented a "preliminary" report concerning a survey (or series of surveys) prepared by the Colonias Development Council ("CDC"). The report was entitled "*Snapshot of Chapparal and Sunland Park, New Mexico: Preliminary Analysis of a Descriptive*

Community Driven Survey, June 25, 2007. Exhibit CSP 21 Although it is clear that the CDC is devoted to helping the citizens of Sunland Park better their community, it is equally clear that the CDC's preliminary survey does not provide probative evidence for this hearing. The Director of the CDC, Dr. Bustamante, candidly admitted that the survey: "is not meant to be exhaustive;" does not have "scientific rigor;" is only "preliminary;" and does not purport to make "any claims about all of Sunland Park" or any "generalizations to the rest of the population of Sunland Park." Bustamante confirmed, "We're not generalizing" about the mental or physical health of the citizens of Sunland Park. Testimony of Dr. Diana Bustamante, Tr. Vol. 13, pp. 5430-5431, 5456 5538, 5541 Contrary to their Statements of Intent to Present Technical Testimony, Dr. Bustamante and Ms. Carmona (also of the CDC) simply did not testify about the impact, if any, that renewal of CRLF's permit might have on the self esteem of the Sunland Park community. See Exhibit CSP N, at pp. 17-20.

374. In 2005, the Governor of New Mexico issued Executive Order 2005-056 (the "Executive Order") directing various governmental agencies, including the Department, to, within the bounds of the Department's existing authority: provide "all people" with "meaningful opportunities for involvement" in agency decision-making; communicate "significant health and environmental information" in languages other than English where appropriate; and utilize "available environmental and public health data to address impacts in low-income communities and communities of color." The Department's Solid Waste Bureau complied with these directives throughout all phases of this proceeding.

Testimony of Marla Shoats, Tr. Vol. 6, p. 2361; CIA, Appendix A (CRLF Exhibit 14).

375. The record amply demonstrates that the objectives of the Executive Order were accomplished in this permitting matter. The Department and the Applicant made an extensive effort to involve the public and keep them informed. For example, CRLF held a number of public meetings in 2005 and 2006 to hear public comments as part of CRLF's Community Impact Assessment effort. The CIA was made available to the public, in both English and Spanish. CRLF made extra efforts to notify the public of this hearing by, for example, inserting notices in utility bills. The NMED also has endeavored to maximize public notice and involvement. In January 2007, the NMED and CRLF participated in a public meeting to answer the community's questions about the upcoming permit hearing. The NMED also initiated a public meeting in October 2007 to assess community concerns. These meetings complied with the objectives of the Executive Order. Testimony of Marla Shoats, Tr. Vol. 6, pp. 2361-2364; Testimony of Cynthia Padilla, Tr. Vol. 12, pp. 4591-4592.

376. All hearing testimony was taken in both English and Spanish.

377. The phrase "meaningful involvement," as used in the Executive Order, means that the community must have an opportunity to participate and have their concerns considered. There was a well-established, grassroots effort in opposition to CRLF and the participants in that effort participated extensively in the hearing. Testimony of Marla Shoats, Tr. Vol. 6, pp. 2364-2365. All local citizens or other persons from outlying areas who desired to make any comment

or testify at the hearing were given at all times the opportunity to do so. No witness was ever prohibited to express his or her views, sentiments, opinions, or to give testimony in favor of or in opposition to CRLF. At the onset of the public's testimony, witnesses were asked how long they wanted to speak. In the great majority of cases, they were given the time they asked for and in some cases, were allotted a much longer period. In some cases, citizens who had spoken once or several times before were given limited time to testify again, due to time limitations imposed by the length of the hearing. As a result, meaningful involvement occurred in the present case.

378. The Department reviewed the Applicant's CIA, which contained public health data for Doña Ana County and the State of New Mexico. NMED, NOI- Johnson, CIA, Chapter 8; Tr. Vol. 11, p. 4297, line 1 to line 14; CRLF Exs. 14, 44A.

379. The CIA did not include specific public health data for the City of Sunland Park in the CIA because such data has not yet been compiled and may not exist. NMED, NOI –Johnson, Chapter 7 and Recommendations, p. 25; Tr. Vol. 9, p. 3434, line 22 to line 25.

380. The Department opined that specific public health data for the City of Sunland Park would have to be undertaken by a professional public health expert or epidemiologist hired for that purpose. Tr. Vol. 9, p. 3433, line 12 to p. 3434, line 8.

381. The Governor's Executive order does not require executive agencies to retain experts to produce health or environmental studies, but

instead to utilize available data. CIA, Appendix A, EO, Paragraph 3; Tr. Vol. 9, p. 3434, line 9 to line 14.

382. Ms. Ashley-Marx, Director of the Department's Solid Waste Bureau, reviewed 19 health studies, as contained within Appendix C of her pre-filed technical testimony, and concluded that nothing in the studies indicate a causal connection to negative health impacts or evidence of exposure pathways from the Landfill to the residents of Sunland Park. Tr. Vol. 11, p. 4298, line 11 to p. 4299, line 19; NMED- NOI, Ms. Ashley-Marx, Ex. 1, Appendix C.

383. In August of 2007, the Department adopted a new set of rules applicable to the permitting of certain solid waste facilities in the State of New Mexico (hereinafter, the "New Rules"). While the New Rules are not applicable to the Application, they do provide a helpful guide for interpreting and applying environmental justice concepts. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4409-4410; Testimony of Thomas Van Zandt, Tr. Vol. 7, p. 2522.

384. The New Rules define "environmental justice" as:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

NMAC 20.9.2.7.E(2). This permitting process met the standards of "environmental justice" as contained within this definition. The public was treated fairly and given ample and early notice, in both Spanish and English, and did, in fact, meaningfully participate. Their voices were heard and considered by the

Hearing Officer, as well as the Applicant and the Department. The Applicant and the Department made diligent efforts to keep the public informed and involved. Testimony of Marla Shoats, Tr. Vol. 6, pp. 2367-2370.

385. Even if the "proliferation" concept were properly applicable to this Application, the evidence did not demonstrate any proliferation in this case. There has been no proliferation of landfills in the community, as CRLF is the only one in existence for many miles and has been in existence for decades. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2602-2603. Similarly, consistent with the ordinary meaning of "proliferation," there has been no proliferation of industrial sites in the Sunland Park area because the various industries complained of by the Opponents are "very old" and most, if not all, actually pre-date the existence of the City of Sunland Park and CRLF. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2603-2605; Testimony of Robert Ardovino, Tr. Vol. 14, p. 5605.

386. Marla Shoats testified that the proliferation analysis in *Rhino* can only be conducted on new facilities where the impact of the industry could be measured before and after construction. Tr. Vol. 7, p. 2777, line 20 to p. 2780 line 18.

387. To assure meaningful involvement by members of a community requires some basic understanding and appreciation by the Department of the community and language of the individuals that should be involved in the process, and the Department in this case met those requirements. Tr. Vol. 12, P.4949, Ln 5-25; P.4950, Ln 1-25; P.4951, Ln 1-25; P.4952, Ln 1-25.

388. In theory and in a representative sense, the Master Plan integrates or embeds the quality of life wishes of the residents of the City of Sunland Park. Tr. Vol. 12, P.4952, Ln 22-25; P.4953, Ln 1-25; P.4954, Ln 1-25.

389. Although the Department employed or otherwise directed an interdisciplinary team to review the permit application and the CIA, that team did not include professionals such as sociologists and psychologists to assist in determining the concerns of the residents of the City of Sunland Park, and those professionals were not required for those purposes. Tr. Vol. 12, P.4595, Ln 16-20; P.4605, Ln 1-25; P.4606, Ln 1-25, P.4607, Ln 1-25; P.4608, Ln 1-25; 4609, Ln 1-12.

390. Some persons define "quality of life" to include all things about our lives that make it what it is, and to include, for example, having economic opportunities, an education, a place to live, a clean environment, as well as having recreational and social opportunities. Tr. Vol. 12, P.4612, Ln 1-23.

391. Environmental and public health impacts on a low-income, minority community, such as the City of Sunland Park, cannot be disproportionate or permit disparate treatment. Tr. Vol. 9 p. 3521 ln. 8-12.

392. The "regulated facility" approach, taken in the Department's New Rules, is sensible because the goal of the proliferation analysis is to look for "environmental justice exposure pathways," *i.e.*, the types of pollutants facilities may be generating; the media (air, water, soil) the pollutants might be impacting; and the interaction of same among the facilities. Testimony of Eric Johnson, Tr. Vol. 9, pp. 3427-3429, 3435.

393. The evidence showed there are only two regulated facilities within four miles of CRLF – Asarco and the electric power plant -- and those facilities have been in existence for many decades. Moreover, because the Asarco facility has not been operational for many years, it does not qualify as a “regulated facility.” Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2604-2605; Testimony of Mark Turnbough, Tr. Vol. 8, p. 3161.

394. The types of pollutants potentially generated by Asarco, the power plant, and the Landfill are “completely unrelated” and have no potential cumulative impact. Testimony of Dr. Darrell Dechant, Tr. Vol. 8, pp. 3030-3031.

395. Dr. Dechant opined that the Landfill operating in compliance with its permit conditions could not be the cause of asthma or allergies in Sunland Park. Tr. Vol. 8, p. 2833, line 1 to p. 2834, line 17.

396. Dr. Dechant described the exposure and health effect assessment for nonhazardous Subtitle D landfills like CRLF and concluded that there were no contamination exposure pathways or health hazards to Sunland Park residents of chemical biological agents through the air, groundwater, gases or fugitive dust generated at the Landfill. Tr. Vol. 7 p. 2679, line 20 to p. 2730, line 12.

397. The numerous “polluting industries” identified by the Opponents were not properly selected on the basis of the potential cumulative impacts of pollutants, but for reasons having to do with aesthetics. Moreover, the Opponents provided no technical evidence as to the types, if any, of pollutants generated at the various industries, thereby making a proper proliferation analysis impossible. The City’s “polluting industries” were chosen not by public

health experts, but by the City's economist experts, for solely economic concerns, and on the "nontechnical" grounds of seeming "obnoxious." The City's economic expert, Dr. Erickson, testified that he selected the "polluting industries" that he identified in his report on the basis of his opinion that "people don't want to locate next to 'icky' places or sites that are not appealing to property owners." Testimony of Christopher Erickson, Tr. Vol. 13, pp. 5255-5304; Testimony of Mayor Segura, Tr. Vol. 13, pp. 5165-5166; Testimony of Benjamin Widner, Tr. Vol. 13, p. 5373. Likewise, Mr. Taylor Moore's (one of the Opponents) list of around 25 "industrial sites" included things like the Chihuahuan desert, unpaved roads in Anapra, and a horse stable, that cannot reasonably be considered "industrial sites" under the *Rhino* proliferation analysis. Exhibit OPC 3.

398. Dr. Widner could not cite a study on a landfill involving residential neighborhoods, yet there was one referenced in a study he provided in his pre-filed testimony that identified a well-designed and managed landfill can be a good neighbor and have no negative impact on surrounding property values. Tr. Vol. 13, p. 5335 to p. 5339; Ex. 84.

399. Dr. Widner admitted that the five studies he included in his pre-filed testimony were not solid waste landfills, but were Superfund or hazardous waste sites. Tr. Vol. 13, p. 5322, line 14 to p. 5329, line 23.

400. Mr. John Howden testified that no conclusion could be made based on existing data to determine whether the Landfill had any effect on property values in Sunland Park. Tr. Vol. 14, p. 5762, line 5 to line 18.

401. Mr. Howden testified that Dr. Widner's conclusion that there was a negative effect on property values from the Landfill based on tax assessed values of homes was a horrible system for valuing individual properties and cannot be relied upon for market value. Tr. Vol. 14, p.5765, line 21 to p. 5769, line 20.

402. Dr. James Holcomb, an economist, testified that the report by Dr. Widner and Dr. Erickson inaccurately concludes that the Landfill provides no benefit to the City of Sunland Park. Tr. Vol. 14, p. 5798, line 12 to p. 5800, line 6.

403. Dr. Holcomb identified the better means of calculating the economic effect of the Landfill on Sunland Park would be to narrow the study to Sunland Park and not the tri-state area, and as a result there would be a different result because the benefit would not be dispersed over the large area. Tr. Vol. 14, p. 5800, line 10 to p. 5802, line 24.

404. Dr. Holcomb testified that in order to narrow the study to Sunland Park, a survey would have to be undertaken because that data does not currently exist and Dr. Widner and Dr. Erickson did not create a study or do a survey. Tr. Vol. 14, p. 5801, line 3 to p. 5802, line 9.

405. Dr. Holcomb stated that because Dr. Erickson's and Dr. Widner's economic inquiry was not specific to Sunland Park and they did not gather any data on the community, there was no direct evidence that economic development will be hindered. Tr. Vol. 14, p. 5803, line 15 to p. 5804, line 24.

406. Sound policy dictates that there must be some common nexus between the types of pollutants generated or the media potentially harmed by the