

- 8) The regulations require that permits be reviewed every five years and renewed every 10 years because it is possible that a landfill that did not pose a hazard to public health, welfare or the environment may upon reassessment pose such a hazard. Vol. 12, pp. 4619-4620.

City of Sunland Park's Witnesses

1. Devon Pena, Ph.D., Professor of Anthropology and American Ethnic Studies

A. Dr. Pena's testimony had four purposes: to examine the literature on perceptions of risk and health outcomes, to look at the relevant literature on environmental justice, to review cutting edge standards for social environmental impact assessment, and to evaluate the Community Impact Assessment performed by Hicks & Co.

B.

- 1) Principal research findings in the field of risk studies include three major results: a) perceptions of risk are strongly correlated with actual poor health conditions and health outcomes; b) economic, political and social uncertainties are very significant compounding factors that contribute to psychological unease and suffering, are measurable, have economic implications and are further correlated with actual diminished health outcomes, especially in impacted communities; and c) cumulative risk factors associated with solid waste landfills and similar facilities further compound the effects of poverty, lack of education, lack of access to health service delivery systems and the

disruption of a sense of place, and are all factors associated with diminished community health outcomes, especially in communities facing multiple environmental health threats. Vol. 10, p. 3281.

- 2) The causal link between perception of risk and diminished health may be less significant than the presumed link or a risk assessment. Risk perception may be especially attenuated among those populations that already face facilities that pose risks as well as among populations already subject to other forms of marginality, especially populations with low socio-economic status, low education and lack of access to health delivery systems. Vol. 10, p. 3822.
- 3) Dr. Pena spoke with close to a dozen people in Sunland Park and found a perception of multiple risks and multiple exposures, creating the kind of uncertainty associated with diminished health outcomes. Vol. 10, p. 3823.
- 4) The literature indicates that perception of risk is correlated with psychological stresses that impair the immune system, and therefore, the ability of the body to deal with environmental toxicants and other organisms. Vol. 10, p. 3829.
- 5) The literature also identifies as a compounding factor the effect of a lack of trust in government and the quality of opportunities for local citizen involvement in governmental planning and decision-making. People here are cynical with good reason about the viability of the public participation that's been offered, because it violates the

principles of environmental justice and is not true collaborative participation. Vol. 10, pp. 3829-3831.

- 6) The concept of environmental justice has been narrowly reduced by Mr. Johnson to the idea of exposure pathways. Environmental justice people are radical, and post-modernism must be broken down into affirmative post-modernism and skeptical post-modernism; if it has had any influence on environmental justice it must be recognized that postmodernism rejects all totality, including Marxism and feminism. Vol. 10, pp. 3834-3836.
- 7) The perception of experts that the local people are unsophisticated creates a hostile environment for public participation. Marginalized populations are richly endowed with cultural or social capital, intense social solidarity, self-help and mutual aid traditions. Vol. 10, pp. 3839-3840.
- 8) The people of Sunland Park do not consider themselves to be helpless or hopeless but disempowered and alienated from the institutions of power. Dr. Pena spoke with six long-term residents yesterday and all of them built their homes the way the Amish do, with the help of their neighbors, who bring their own skills to a collaborative effort to improve their own quality of life. In this manner, the social capital of the community is transformed into measurable economic values, which should be considered in this proceeding even if the current regulations do not insist on it. Vol. 10, pp. 3842-3846.

- 9) Environmental degradation and a political environment of uncertainty are major factors contributing to the deterioration of social and cultural capital. The quantitative measurement of these things requires using qualitative methods, like ethnography, to identify sources of information for survey research that can then be quantified for data analysis. Vol. 10, pp. 3848-3849.
- 10) The cult of expertise privileges the knowledge and methods of a self-reproducing cadre of professionals, with little public input; the methods of scientific experts end up disqualifying other ways of knowing and of engaging in empirical observation. Vol. 10, p. 3850.
- 11) The current standard for environmental justice studies requires community-based participatory research, where the community participates in designing the study from the start, and is not given just the opportunity to comment on research already done. Women in Sunland Park, especially, have been doing "kitchen table" science, collecting evidence of negative health outcomes within a 4-mile radius, which itself is arbitrary. Vol. 10, pp. 3856-3857.
- 12) Just because the experts have not found a so-called exposure pathway does not mean it is not there; in an uncertain environment it is best to adopt the precautionary principle and err on the side of public safety until the data is in. Vol. 10, p. 3858.
- 13) Environmental Justice scholars agree on four things: ending patterns of disproportionate impacts from toxicants and other pollution;

promoting full community participation in environmental planning and decision-making processes; fully integrating diversity into governmental and nongovernmental environmental organizations; and promoting a sustainable future that provides equal access to all environmental amenities, such as open space, clean air, clean water and access to healthy ecosystems. Vol. 10, pp. 3860-3861.

14) Mr. Johnson's narrowing of environmental justice to an exposure pathway narrows environmental justice to toxic racism and does not include ecological democracy or sustainable development. Vol. 10, pp. 3861-3862.

15) The City's new master plan is a brilliant example of sustainable growth and development; if it is implemented, Sunland Park will become a model for the Southwest on how to move towards sustainable new urbanist planning. A landfill is completely incompatible with that plan. Vol. 10, p. 3863.

16) Procedural inequities were at work in the 1996 landfill permit hearing: the local people did not testify and did not have any experts to hire. If they had had substantive procedural equity, that permit would not have been issued. Vol. 10, pp. 3865-3866. Dr. Pena later acknowledged that he knew that the Concerned Citizens of Sunland Park had opposed the permit in that hearing and had retained the services of a prominent environmental justice lawyer. He was unaware that they

had two public health expert witnesses and a soils expert testify on their behalf. Vol. 10, pp. 4065-4066.

17)Everybody agrees this is a low-income community of color. Most would agree that it has been targeted for locally unwanted land uses (LULUs) and therefore is being subjected to disparate impacts. Vol. 10, p. 3868.

18)Environmental Justice researchers have documented a pattern in which communities are asked to choose between jobs or environmental protection. Corporations try to bribe local communities or elected officials with promises of jobs, tax revenues and other incentives to induce a permit or zoning exception. This strategy is economic blackmail. Vol. 10, pp. 3870-3872.

19)The Landfill generates more than dust, blowing trash, leachate, other pollutants and obnoxious smells. Most significantly, it generates fear and uncertainty. The Landfill is a clear and present threat to the visionary work of the community and its elected officials to implement an ambitious yet feasible master plan for sustainable development of Sunland Park based on new urbanist principles. Vol. 10, pp. 3872-3873.

20)A CIA is a subset of a broader concept of social environmental impact assessment which is in itself a subset of the wide-ranging set of issues covered by environmental impact studies (EIS) under NEPA. Hicks & Co. did not include recent advances in methodology, or social impact,

or cumulative, compounding and cascading effects in risk analysis.

Vol. 10, pp. 3874-3875.

21) Ethnographic research can reveal subtleties that are missed by using just aggregated or statistical methods or demographic data. Vol. 10, p. 3876.

22) The most recent government guidelines for Community Impact Assessments were issued by the General Services Administration (GSA), and identify social impact assessment as a method for analyzing the impacts government action may have on social aspects of the environment. The guidelines require longer-term ethnographic research, living, working and interacting with the subjects of the study for extended periods of time in order to understand the local culture. Vol. 10, pp. 3884-3893.

23) Quantitative data may be relied upon, but unless quantitative data is combined with more qualitative sources, like oral history, ethnographies, participant organization and cognitive mapping, the results are likely to be biased, flawed or incomplete. Vol. 10, pp. 3894-3895.

24) Dr. Pena's objections to the Hicks & Co. CIA are as follows: the GSA state of the art guidelines should have been included, and would have led to a much broader range of data, variables and methods. Hicks & Co. largely relied on secondary data sources such as the census and other governmental reports in which ethnic group members are

undercounted. The firm produced its deliverable with little community involvement in designing and implementing research, collecting and interpreting the data, and then reporting. Hicks and Company did not really consider the impact on the Landfill from an environmental justice point of view on the ability of Sunland Park elected officials to implement their master plan. The report does not discuss all of the literature that exists on environmental justice and sustainability. Mr. Johnson does not seem to share the understanding Dr. Pena and the Governor have of environmental justice, which includes ecological democracy, procedural equity, social-organizational equity and sustainable development. Vol. 10, pp. 3897-3907.

25) Dr. Pena does not believe the CIA comports with the Rhino decision because Hicks and Company did not approach proliferation as an environmental issue, rather than an amorphous general welfare issue, and because procedural equity would be required. A different model of collaboration should have been used to get meaningful public participation; unless the issues of fear and uncertainty are addressed prior to calling a meeting, it is not meaningful public participation. Vol. 10, pp. 3910-3913.

26) The renewal of the landfill's permit will negatively impact the quality of life, environment, ecological democracy and sustainable development prospects. There is no way to make the Landfill compatible with the master plan. Through the synergistic effect of poverty and lack of

access to medical healthcare delivery systems, the Landfill is already posing a hazard to the public health, welfare or environment. The Landfill exacerbates and contributes to an overall climate of environmental uncertainty and, therefore, to diminished health outcomes for this community. One of the primary causes of the disruption of social networks and social capital formation is environmental degradation and uncertainty posed by existing risks. Those are enough to merit the rejection of the permit renewal. The permit renewal will result in undue risk to property of the residents of Sunland Park and will have a negative impact on property values. Vol. 10, pp. 3915-3918.

27) Dr. Pena is not able to distinguish from the CIA transcripts the sources of public perception or public opinion. His preference would be in-depth interviews to ascertain where people got their ideas. Vol. 10, pp. 3990-3991.

28) Dr. Pena identifies Sunland Park as an environment that is already confirmed as toxic or dirty because the newspaper coverage portrays it to be so, with serious implications for economic development. Vol. 10, p. 3993.

29) The Environmental Justice movement rejects the concept of minimally acceptable risk and anything associated with it, including exposure pathways. Vol. 10, p. 3995.

30) Dr. Pena was first contacted about this case by e-mail from Mr. Palomares three weeks ago. He was asked to provide expert testimony on an analysis and critique of the CIA. In his official capacity, he has never found an absence of environmental racism. He was able to provide a written summary of his testimony within a few days by using a template from a similar critique of another CIA prepared by the same company. Vol. 10, pp. 3999-4005.

31) Although he agrees that an intense and involved process must be undergone before one can reach an opinion about a community, his statement of intent purports to set out what the people of Sunland Park know and believe, and that statement was written before he had visited Sunland Park, because he has been doing this work for 30 years and keeps seeing the same kind of people doing the same kind of things, and running into the same kind of local people who have the same kind of local knowledge. Vol. 10, pp. 4006-4007.

32) Dr. Pena's compensation for his work in this matter includes his expenses, round-trip airfare and \$5,000 which he has committed to donate to charity. Vol. 10, p. 4009.

33) Dr. Pena has not toured the Landfill or asked to tour it, or interviewed any CRLF personnel, or reviewed the Application. He has not interviewed anyone at the Department regarding the Application or reviewed any Department files regarding the Application. He has not stayed in Sunland Park. He has not reviewed any records relating to

Asarco, the electric plants or any of the other facilities or sites identified by the City of Sunland Park as problematic. Vol. 10, pp. 4010, 4012-4015.

34) Dr. Pena stated that he is familiar with the Resource Conservation and Recovery Act (RCRA), but is unable to describe the differences in regulatory requirements between a RCRA Subtitle C facility, which is authorized to accept hazardous wastes, and a RCRA Subtitle D facility, a municipal solid waste landfill that is not authorized to accept hazardous wastes. Vol. 10, pp. 4016-4018.

35) Dr. Pena's statement to the effect that the community's lack of trust was provoked by a poor to at best mixed record of landfill management practices was based on an examination of the literature cited in his exhibit. The only part specific to the Landfill would have been the 1991 incident with the medical incinerator and some other documented irregularities, although he is unaware of any violation associated with the incinerator or any of the other landfill activities. Vol. 10, pp. 4018-4020.

36) Dr. Pena did not identify anything on which to base a conclusion that the Landfill is a hazard for reasons other than social-psychological risk factors; he was not brought in to do a study, or to address environmental health issues. Vol. 10, pp. 4044-4045.

37) Dr. Pena believes the Governor's Executive Order and the Rhino decision both require the applicant to prepare a CIA, and that the new

regulations require a CIA in this instance to be prepared as well. Vol. 10, pp. 4049-4050.

38) Dr. Pena believes he may have misread a document and thought the GSA was an information clearinghouse and research service, rather than the agency in charge of office space for the US government. Vol. 10, pp. 4061-4062.

39) Dr. Pena considers himself an environmental risk assessment process expert, but is unable to set out the standard approved by EPA for environmental risk assessment. Vol. 10, p. 4066.

40) Dr. Pena confirmed that the entire CIA was translated into Spanish, not just the executive summary, as he had believed. Even making it available at 10 locations, however, does not necessarily mean increased public access to the document, in a low-income, limited-transportation community such as Sunland Park. Vol. 10, pp. 4070-4071, 4077.

41) Racism is systemic oppression and discrimination, and only white people can be racist. People of color can be prejudiced, but these are completely different things. Vol. 10, pp. 4080-4081.

2. Janet Trebs, Volunteer, Colonias Development Council

A. Ms. Trebs described her volunteer work for the CDC and her participation in inputting data from a survey conducted in Sunland Park.

B.

- 1) The CDC conducted a survey in Sunland Park and in Chaparral; Ms. Treb's involvement with the survey was to input the data, share it with community members and teach it to the promotoras. Her analysis went to the point of creating charts and bar graphs and running the numbers through data analysis software. Vol. 11, p. 4550, 4557-4558.
- 2) A questionnaire was utilized as part of the survey, in five different versions, two versions in English and three versions in Spanish. Of the 259 surveys done, 10 were in English, as Spanish was the preference of the people interviewed. 87 of the surveys were performed in Sunland Park, in cluster samples. Vol. 11, pp. 4552-4553, 4558-4560.

3. Jesus Ruben Segura, Mayor of Sunland Park

A. Mayor Segura described his personal history and background, the demographics of the Sunland Park Community and the experience of the City and its residents with the Landfill. The Mayor described economic development in Sunland Park, the City's revenue streams, and the community's Master Plan.

B.

- 1) The 2000 census reflects a population of 13,309 in Sunland Park, but the City is part of an urban setting of approximately 2.3 million people. They are small and have unique challenges as a border community geographically isolated from the major New Mexico communities. Vol. 12, pp. 4666-4668.

- 2) Mayor Segura and other City officials have worked hard to foster relationships with other communities in the area, such as El Paso, Ciudad Juarez and Chihuahua, Mexico, through specific partnerships, Sister City agreements, an accord to oppose the reopening of Asarco, a resolution on the river levees of the Rio Grande, a memorandum of understanding on cross-border communications and emergency response, and the formation of the Camino Real Regional Utility Authority. Vol. 12, pp. 4668-4680.
- 3) The City of Sunland Park is one of 40 designated Colonias, which the federal government defines as a community in Arizona, California, New Mexico or Texas within 150 miles of the US-Mexico border, except for any metropolitan area exceeding one million people, and which lacks adequate sewage systems, decent, safe and sanitary housing and was in existence as a colonia before November 29, 1990. HUD and EPA use the term, and last year Governor Richardson awarded the City close to \$1.5 million under the Community Development Block Grant section for Colonias. Vol. 12, pp. 4685-4686.
- 4) Regarding the demographics of Sunland Park, the projected population for 2007 was 16,829. The average family size in Sunland Park is significantly higher than in nearby communities; there is a higher percentage of Hispanics and Latinos; a higher percentage consider Spanish to be the dominant language; it is a young population with a lower number of high school graduates and poverty is significantly

higher than in other communities. In many ways a Sunland Park is still a bedroom community, with a secondary local economy, not one exporting goods or services. Vol. 12, pp. 4688-4693.

- 5) During the late 1970s or early 1980s, there was a county landfill by Riverside. In 1983 the City incorporated as a municipality and in 1984 the City established its administrative offices. In 1985, NMED's predecessor began to demand that the City adhere to the Environmental Improvement Act of 1971, and, because the population was over 3,000, required them to collect household waste at least once a week and to transport and dispose of it in a sanitary landfill. At the same time, Dona Ana County closed its landfill, and Sunland Park struggled to provide solid waste services from 1985 to 1995. The City, the County and Nora Green entered into an agreement regarding a piece of property at the site of the then-current landfill; that agreement was terminated in 1987. Nu-Mex Landfill purchased the property from Ms. Green and began its operations. The site has evolved from an original dump of 26 acres to a 480-acre site. Vol. 12, pp. 4694-4699.
- 6) Residents did not complain about the Landfill in the early days; people threw their waste there, and it met the community's needs. Now the Mayor would be surprised if he does not get a complaint a week. Vol. 12, pp. 4699-4700.
- 7) In December 1988 the Landfill started the construction of an incinerator. The community was alarmed by a lot of dense, black

smoke coming from the incinerator and it stirred a lot of community controversy. In February 1990, Nu-Mex submitted an application for a landfill, incinerator and recycling facility, and in August 1991 NMED conducted public hearings. In December 1991 Secretary Espinosa denied the biomedical waste incinerator permit. In April 1992 the community discovered that the Landfill was holding medical waste at a transfer station there, and in 1995 the Landfill entered into an agreement with the City consenting never to allow incineration, treatment or handling of infectious medical waste or hazardous waste at the site without City Council approval. Vol. 12, pp. 4700-4704.

- 8) Other complaints about the Landfill include claims that asbestos was disposed there, and that raw sewage was disposed on the far side of the property near the school. Vol. 12, pp. 4705-4706.
- 9) Mayor Segura has witnessed the economic blackmail described by Dr. Pena in Sunland Park: in March 1992, following the NMED hearing, JOAB notified the City that they would be suspending the contract for hauling as a result of the high price of re-permitting the Landfill. The City contracted with an independent contractor for collection and hauling, and increased fees from about three dollars to about seven dollars at that time. Former Mayor David Martinez, who had negotiated the 1987 agreement, became a lobbyist for the company and at the same time was a state representative; Fernando Macias, a state senator, was also attorney for the Nu-Mex landfill. The City

Attorney was Frank Coppler, who was also a registered lobbyist for the Landfill. Throughout the years, people have made claims that some council members were supporting the Landfill in exchange for money. The Host Agreement, which is voluntary on the part of the Landfill, is often used as a way to maneuver the struggling municipality, which does not have authority to issue or deny the permit. Vol. 12, pp. 4707-4711, 4712-4721.

10) It is not bad for a municipality to work with private entities, but it should not be highly dependent on one, and this community has been forced, to a certain extent, to rely on that type of service because of the limited resources they have had throughout the years. Vol. 12, pp. 4722-4723.

11) Complaints to Mayor Segura over the past 12 years include odors, truck noise early in the morning, dust, trash falling from trucks and usage of residential roads. People constantly complain about their health, especially of cancer, allergies, skin rashes, sores, infections, lung and respiratory problems, asthma, diabetes, eye infections, head and stomach aches and sometimes nausea; these illnesses are attributed to the Landfill. Vol. 12, pp. 4725-4732, 4738.

12) People within and outside the community have a negative perception of Sunland Park due to the Landfill, and sometimes refer to it as "Dumpland Park." Because of its size, the Landfill sometimes overshadows the community and causes a stigma, particularly with all

of the trash by the road. Some of the teenagers who are sensitive to their image refer to themselves as being from Santa Teresa rather than Sunland Park. Vol. 12, pp. 4739, 4742.

13) Trash is a problem in the community, and the City public works department cleans the main streets, including McNutt Road, Racetrack Drive, Sunland Park Drive and Country Club Road. They clean up twice a week but never catch up. The Landfill rarely sends out staff to clean up along these roads unless another permit hearing is coming up. Vol. 12, pp. 4742-4743.

14) Most Sunland Park residents are very distrustful of the Environment Department and EPA, believing these agencies do not take their concerns seriously and that they have a close relationship with those they regulate. Trust is established by being in the community, listening to concerns and getting involved, not just going through the steps. It is a public responsibility of a regulatory entity to make certain they are gaining the public trust. A couple years ago people questioned whether a site visit by the Secretary was political maneuvering or a sincere visit to look at the site, since at the time Governor Richardson was putting pressure on the City and County to settle a water dispute with regard to the Verde property. Vol. 12, pp. 4744 -4748.

15) Trash from the City of Sunland Park had represented 4.2% of the total waste stream to the Landfill; the City is now taking its trash to the Corralitos landfill. Vol. 12, p. 4751.

16)The Landfill has made it difficult to attract business to Sunland Park, except for predatory loan companies, dollar stores, taco shops, and junk yards. With the exception of a prison and a stonewashed jean company, investors do not want to locate in the Meadow Vista area, near the Landfill, but want to go on the other side of the river, near the race track, casino and Western Playland. There have been good economic developments in Sunland Park, and there are plans for several more. The dollar store is not an instance of proliferating industry, but is an externality of proliferating industries. Vol. 12, pp. 4753, 4765-4769, 4767-4768, Vol.13, pp. 5127-5138, 5170.

17)The City's revenues include gross receipts taxes, property taxes, the state racing commission tax, the franchise tax and cigarette tax. The majority of money comes from gross receipts taxes, and the City is highly dependent on sales for revenue. Although the casino gives approximately \$25 million to the state of New Mexico each year, the City receives only \$12,000 each year and for that amount is required to provide police, fire and emergency services to the casino. Vol. 12, pp. 4754-4759.

18)Compared to other New Mexico communities of a similar size, Sunland Park has a smaller operational budget and fewer employees to provide for the specific needs of its population. Vol. 12, pp. 4760-4763.

19)The Landfill creates devastating economic conditions and continually scars the community of Sunland Park. It stagnates growth, attracts

undesirable companies, creates a general sense of despair and tends to cultivate a cycle of poverty, which yields crimes and drug abuse, and threatens the human spirit of the people of Sunland Park. Vol. 12, p. 4771, Vol. 13, pp. 5217-5220.

20)The Valle Vista subdivision has a total of 214 lots; 152 lots are occupied, and of those mobile homes and double-wides account for 117. The City has worked hard with state and federal agencies to move away from trailers and toward site-built homes. Subsidies, grants and loans have been provided in the community to connect homes to water and sewer. Valle Vista remains low-income housing, with home values lower than other subdivisions in the Sunland Park area, including Hacienda San Miguel, Winton Homes and Hacienda Nogal. Vol. 12, pp. 4774-4779.

21)The City's first master plan was adopted in 2004; the vision is to focus on an economic strategy in which the City is viewed as a stakeholder and co-partner of a tri-state regional border community. The plan has five major goals, relating to the environment, culture, a historical and religious component, progressive community and entertainment. The Landfill is listed along with Asarco and a cement factory as "environmental considerations" in the plan. Vol. 12, pp. 4781-4790, 4793-4794.

22)The City of Sunland Park officially opposes the Landfill and adopted Resolution 06-66. Vol. 12, p. 4795.

- 23) The circumstances surrounding the issuance of an administrative order for violations at the wastewater treatment plant in 2004 were beyond the control of the City at the time, which was trying to condemn the property in the public interest. Vol. 12, pp. 4796-4798.
- 24) The renewal of the Landfill permit will negatively impact the lives of the residents of Sunland Park, and pose a hazard to public health, welfare or the environment and an undue risk to property. Vol. 12, p. 4799.
- 25) With regard to meaningful involvement, it is of paramount importance to be bilingual in a community such as Sunland Park. It is important to be sensitive to that issue because sometimes it takes a lot of courage for the poor to speak out. Vol. 12, pp. 4949-4950.
- 26) When Moule and Polyzoides arrived, they looked at the landscape of the area and did an overall assessment of the existing buildings, and made a written report. There was a pre-charrette, a three-day process in which they sat down with outside investors. The public involvement process was unique, because they understood there were challenges. After assessing the comments, they went through the charrette process from early in the morning until very late at night for an entire week, the planners, architects and artists all in one space. Vol. 12, pp. 4951-4952.
- 27) The community of Sunland Park enjoys the outdoors, but is challenged by the Landfill. Vol. 12, pp. 4953-4954.

28)The City of Sunland Park had to return \$12,000 to EPA that had been intended for use to do testing and analyses in Anapra, because City staff was completely frustrated and unable to work out issues with Mr. Moore and his group. Vol. 12, pp. 4985-4988. Mayor Segura later clarified: the City was issued an administrative order with a monetary penalty by EPA because of the outfall at Sana Teresa wastewater treatment plant. The City had the option to spend money to do a health assessment in Anapra rather than pay the fine to EPA, but ultimately paid the fine because they were not successful in formulating the scope of work for the assessment. EPA restricted the City to paying for water and wastewater related projects; the money could not have been spent on the Landfill. Vol. 13, pp. 5077-5079, 5155-5159.

29)The City of Sunland Park must follow its own ordinances, including ordinances relating to zoning, and if zoning allows light industry, light industry cannot be prevented from moving into an area zoned for it. Mayor Segura does not remember whether the zoning ordinance allows development of the land between Desert View Elementary School and the Landfill, but the City cannot capriciously prevent anyone from maximizing the usage of their property. Vol. 12, pp. 5005-5007.

30)City water is high in arsenic and uranium, both of them naturally occurring. Vol. 12, pp. 5008-5012.

31) A 2006 Memorandum of Understanding with other municipalities in the area relating to a regional resolution for solid waste expired after one year, and Mayor Segura directed City staff not to renew it until after a decision was made as part of this hearing process. Vol. 12, pp. 5012-5013.

32) Mayor Segura has tried to make things better in Sunland Park but he doesn't know that they have gotten better. He has tried to help people believe in themselves, but there are some realities that cannot be changed, not only with regard to the Landfill but also the economic situation. In 25 years since Sunland Park was incorporated, the community has been able to get electrical service, paved roads, potable water service, wastewater treatment service and a drainage plan. There are still challenges, such as fire hydrants in certain locations and flooding with water coming from Mexico. Some residents lack safe housing, but Mayor Segura does not have an estimate as to how many people that would be. Vol. 12, pp. 5019-5020, Vol. 13, pp. 5119-5126.

33) The City will look to see whether the Department has followed the law, and whether it feels justice was served in regard to the interpretation of the law, and if that is done they will feel satisfied that the will of the people has been served. If not, they have the right of appeal and due process and will take it to the Supreme Court if they need to. Mayor

Segura respects the institution of the judicial process and will adhere to any applicable court decision. Vol. 13, pp. 5104-5107.

34) Mayor Segura suspects that the Landfill is a health hazard based on the number of friends and neighbors who are passing away from cancer. The Mayor cannot take at face value the testimony of Dr. Dechant that there is no health hazard associated with the Landfill, or the similar conclusions drawn by UTEP, EPA, ATSDR, or the New Mexico Department of Health, but would have to have his experts look into the methodology of the studies and reach his own conclusions. Although the Mayor agrees that public health, safety and welfare are his most critical responsibility, and although these studies were conducted in the 1990s, he has not reviewed them or come to any conclusions yet. The Mayor might be convinced that the Landfill is not a health hazard if the methodology is correct, the public is involved correctly, economic impacts are considered as well as health effects and independent entities bring credibility to the studies. Vol. 13, pp. 5139-5140, 5142-5149, 5159-5160.

35) The Sunland Park City Council approved the development of the Valle Vista subdivision in two phases in 1997 or so, but has not allowed other residential development near the Landfill. Vol. 13, pp. 5150-5153.

36) The municipality received hundreds of thousands of dollars of benefits under the Host Agreement each year over a period of two decades.

Most of the money was spent on infrastructure and employee salaries; none of it was spent studying potential adverse impacts of the Landfill. Vol. 13, pp. 5153-5154.

37) The City of Sunland Park Master Plan adopted in June 2004 provides an overall picture of the municipality, identifies concerns of the City and ways to improve it. Priorities for addressing pollution include transportation issues caused by peak time traffic jams, heavy commuting and traffic generated by the racetrack and casino, with the goal of utilizing mass transit to cut down on exhaust pollution. Landfill truck traffic is not mentioned as a transportation problem. A second objective is to reduce illegal dumping, and there the trucks are mentioned. Strategies to improve "Aesthetics" include updating existing zoning, adopting subdivision standards, development standards and architectural standards; encouraging site-built homes; creating more City entrance gates and planting more greenery in parks and along roadways. The last strategy for improving perception of the City is to create a buffer around dumps and wastewater facilities. Odors from the wastewater treatment plant are mentioned; the document does not mention odors from the Landfill. The Master Plan does not suggest that the Landfill must be closed before economic development can progress, but it is not the City that decides whether the permit is renewed. Vol. 13, pp. 5196-5215.

38) Governor Richardson has accused the City Council of constant stonewalling with regard to its disputes with the County, and the State withheld \$2.5 million for public infrastructure projects in Sunland Park based on the Governor's concerns about the City's management of funds. Mayor Segura acknowledged that the development of the Anapra border crossing had been slowed as a result, but denies that the Verde development was slowed by the dispute. A state audit conducted in 2003 made numerous findings, but was not conducted according to generally accepted accounting principles, and the Mayor believes the Governor's actions were in retribution for the City's decision to reject a federal court settlement over water services around Santa Teresa. The City did submit a rebuttal document to the state auditor's office and they were prepared to prove that a lot of the findings were wrong, and the state did not take any action. Mayor Segura later clarified: for a period of six months the state monitored the City's finances, and assisted in the centralization of the City's procurement process. Vol. 13, pp. 5225-5234, 5356-5366, 5386-5387.

39) Benefits to the City that have come from the disputes and lawsuits include 1,500 acre feet of water rights, a regional utility system that extends to the industrial park, a positive new working relationship with the new County Council and County administration, and an economy of scale such that Sunland Park will not be competing with itself or with Santa Teresa for grants and opportunities. Vol. 13, pp. 5367-5368.

40) Mayor Segura spoke with the Mayors of Anthony and El Paso about ending the Host Agreement, and received a letter from Mayor Cook that the City of El Paso landfills have capacity to accept all waste currently deposited at the Landfill; they would need a permit modification to accept the maquiladora waste. Vol. 13, pp. 5370-5371.

4. Christopher Erickson, Ph.D., New Mexico State University Professor

A. Dr. Erickson discussed his educational and professional experience, the socio-economic factors in Sunland Park, the impact of the Landfill on economic development and tax revenues, and the Hicks & Co. economic impact analysis included as part of the CIA and the Application.

B.

1) Sunland Park is a very poor community characterized by a low income population, a large population of people of color who are mainly Hispanic and who speak Spanish as their primary language. The median family income in Sunland Park is \$21,000, which compares to \$50,000 nationally, and Sunland Park has larger families. Even with dramatic economic development in the area, relative levels of poverty persist. In almost every socio-economic measure, Sunland Park performs more poorly than Chaparral; clearly, if Chaparral qualifies as a community which needs protection under the Rhino case, so does the Sunland Park. Vol. 12, pp. 4805-4808.

- 2) The master plan calls for 260,000 square feet of retail space to be developed in the next 20 years. This figure represents the retail space that a community like Sunland Park would be expected to have and would increase the retail space in Sunland Park by 4.8 times; currently retail activity is quite suppressed. This development would create 538 net jobs and generate nearly \$90 million in gross receipts. Vol. 12, p. 4810.
- 3) The planners are attempting to develop a pleasant residential and mixed-use commercial facility. Moule and Polyzoides is a new urbanist group, which means they are trying to develop a community where people can walk to where they work, shop and go to school, in an integrated, completed community. Vol. 12, pp. 4811-4812.
- 4) The economic analysis included in the master plan is reasonable and sound and comes from a world-famous master planning agency. The plan seems ambitious, but it is reasonable. Dona Ana County is currently in a period of rapid economic expansion: Fort Bliss expects 22,000 troops over the next five years, and western El Paso is close to saturation. Vol. 12, pp. 4813-4814.
- 5) The continued operation of the Landfill compromises the implementation of the Master Plan. The Landfill dominates the skyline of the City, and is an eyesore. Vol. 12, pp. 4815-4816.
- 6) Projects currently under consideration in Sunland Park include the Insights Museum, the amphitheater, the River Trail Project and an

IMAX theater. These projects are compromised by the continued operation of the Landfill. The Landfill becomes something that has to be overcome; it is an objection that people will have to locating in Sunland Park. Vol. 12, pp. 4818-4820.

7) The majority of gross receipts taxes paid by the Landfill go to the state. Taxes of 7% are split among the State (5.93%), the County (just under 1%) and the City (just over 1%). Although Hicks & Co. originally believed that the gross receipts tax was being paid under the Host Agreement, that payment is a legal obligation regardless of the Host Agreement. Vol. 12, pp. 4821-4822, 4825.

8) Although Hicks & Co. correctly indicated that data allowing an economic analysis at the level of the City is not available, Dr. Erickson believes the analysis is incorrect because landfills fall in the category of a non-base industry and do not contribute to job creation in the community. There are a number of other landfills which could take the flow of trash if Camino Real were to shut down. El Paso is part of the local community and does not inject new revenue into the economy. Sunland Park is serving as a receptacle for waste from El Paso and yet is not benefiting in terms of economic activity, jobs and sales revenue. Vol. 12, pp. 4825-4830.

9) The Landfill does not create jobs; the 32 jobs at the Landfill are diverted from other facilities in the area. Trash will generate fees

somewhere in the local area, even if it is not at the Landfill. Vol. 12, pp. 4830-4832.

10)The Rhino case refers to issues of social justice, quality of life and the cumulative impact of proliferation of surrounding polluting industries, and does apply in this matter. Vol. 12, pp. 4832-4833.

11)The most noteworthy aspects of the Governor's Executive Order include the emphasis on quality of life and the potential for mitigating impacts on land and housing values through siting action. Vol. 12, p. 4833.

12)The renewal of the Landfill's permit will have a significant negative impact on the quality of life and public welfare of Sunland Park residents. The permit should not be renewed; the Landfill should be relocated. Vol. 12, pp. 4833-4835.

13)Data for Sunland Park is somewhat limited between the census, but we do have data for Dona Ana County, which has had a relatively low unemployment rate and good job growth. Meanwhile, income level for the County relative to the nation has stuck at 70% of the national average, indicating there has not been a major advance on poverty and wages in Sunland Park. Vol. 12, pp. 5022-5023.

14)Although we have no specific data on people who commute from Sunland Park to work at Fort Bliss, there are a number of people who commute from Southern Dona Ana County to work at Fort Bliss or in businesses associated with Fort Bliss, and the expansion of Fort Bliss

could lead to expansion in the Sunland Park area. El Paso is a relatively low-density, large County, however, and close to Fort Bliss it is in-filled. Vol. 13, pp. 5035-5037.

15) Dr. Erickson is generally aware that communities can sometimes grow toward an industrialized area, in this case, a landfill, but has not personally read academic articles addressing that issue. Vol. 13, pp. 5042-5043.

16) The fact that there is a major shopping area just across the interstate from Sunland Park in Texas would affect the economic growth and development in the Sunland Park community. Sunland Park is attempting to create jobs for residents, but they're competing with other areas, including Santa Teresa and Las Cruces. Nearing the Landfill, there is less retail, because the Landfill becomes an objection to locating in Sunland Park. The anticipated expansion over the next few years, primarily because of Fort Bliss, will provide an opportunity for new retailers to come into the area, and those retailers could locate in Sunland Park. Vol. 13, pp. 5043-5044, 5051.

17) One of the other 14 dump sites in the county on BLM land that were systematically closed in the mid-80s could serve as an alternative site for the Landfill. Dr. Erickson agrees that the primary driver for relocating the Landfill would be the landfill siting criteria. Dona Ana County is big and there are a lot of open spaces where a landfill could be located away from residential areas. Vol. 13, pp. 5044-5046.

18) In terms of measuring environmental impacts, it would be reasonable to measure from the center of the Landfill, but in talking about economic impacts, it's reasonable to measure from the border of the Landfill, because the perception of being near the Landfill depends upon where the property is relative to where the Landfill is perceived to be, and a layperson will consider distance to the operational property line. Vol. 13, pp. 5056-5057.

19) As an economist seeking to promote development in the area, the Landfill should be closed in such a way to make it no longer obvious to people who are living in the area that there was a landfill here. Vol. 13, p. 5063.

20) Dr. Erickson and Dr. Widner are splitting evenly a flat fee of \$15,000 for their work in this matter. Vol. 13, pp. 5252.

21) Dr. Erickson's statement in his report that the "residents of Sunland Park have expressed concern" was meant as a general statement of his perception of the sentiment of the residents in Sunland Park; residents who have specifically expressed their concern to him would be a tiny fraction of the 15,000 people in the community. He is not vouching for the correctness of what is set out in the City's resolution opposing the Landfill, but including it as evidence that the residents are opposed. The statement that "the very nature of the Landfill's commercial operation generates ... pollution" represents what the people of Sunland Park think, not what Dr. Erickson has found. Dr.

Erickson's conclusion regarding the "proliferation of polluting industries" near Sunland Park is based on his consultation with Mr. Palomares, and Mr. Palomares' interpretation of the law. Vol. 13, pp. 5252-5258.

22) Dr. Erickson may personally use the word "proliferation" to mean "numerous," but if the dictionary definition is "to increase or spread at a rapid rate," that means time is a factor, and the date of origin of each of the polluting industries in the area would have to be known, and Dr. Erickson does not have this evidence. If the Court in the Rhino case used the word "proliferation" in the dictionary sense, Dr. Erickson did not use it in the same sense. Vol. 13, pp. 5268-5275.

23) When Dr. Erickson was describing the socioeconomic characteristics of the community in his report, he was referring in part to Sunland Park, in part to Chaparral and in part to Dona Ana County. He did use information from the snap shot survey done in Sunland Park by the Colonia Development Council, and wishes that he had included some caveats acknowledging the limited sample size and geographic areas for the survey. Vol. 13, pp. 5278-5281.

24) Dr. Erickson generally agrees with the statement that the impression of the Sunland Park area depends upon what direction you're looking from: looking from north to south the area looks poor; looking from south to north it is a great step up in terms of quality of life. However, he agreed with that statement 10 years ago and 20 years ago, and the

area is not moving forward relative to other areas in the United States.

Vol. 13, pp. 5283-5284.

25) From a policy perspective, considering proliferation, Dr. Erickson agrees that if the issue was air pollution, it would not make sense to eliminate a site that did not contribute to air pollution. If the issue were water pollution, it would not make sense to eliminate a site that did not contribute to water pollution. The best thing would be to eliminate the site that resulted in the best improvement. Vol. 13, pp. 5284-5288.

26) Dr. Erickson does not know the multiplier for Sunland Park, and did not try to determine it, because the Landfill is a non-base industry, meaning sales are made from within the area rather than outside the area. The smallest multiplier would be one. Vol. 13, pp. 5293-5299.

27) Dr. Erickson acknowledged that his comparison of gross receipts tax payments from the Landfill versus the City Master Plan assumes that the Landfill will bring future development from the Master Plan to a complete halt. He believes the Landfill has compromised development of the area, but agrees the calculation is at the extreme level. Vol. 13, pp. 5303-5304.

28) Proliferation should not be the only consideration under Rhino; industries created 50 years ago that are still currently operating are impacting the social well-being and welfare of the citizens who are exposed to them. Rhino is not limited merely to emissions, but includes any kind of psychological impact or economic impact; people

look at the Landfill as a source of ills and that in itself causes discomfort to people living in the community and stigmatizes the community. Dr. Erickson stands by his report. Vol. 13, pp. 5381-5384.

5. Benjamin Widner, Ph.D., New Mexico State University Assistant Professor

A. Dr. Widner related his qualifications and professional history. He discussed the impact of the Landfill on property values surrounding it, the implications of the tax revenue from the Landfill and what that means in terms of development for the City of Sunland Park, and the benefits that may exist from the relocation of the Landfill.

B.

- 1) Any landfill is considered a brownfield site because of the potential presence of contaminants. As EPA defines the term, "brownfield means real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant." Vol. 12, pp. 4842-4843.
- 2) Any community has Brownfields, and Dr. Widner identified a number of potential brownfield sites in the Sunland Park area: gas stations, cement factories, the brick plants, the pavers plant in Mexico, Asarco, the power station and the cotton plant. Vol. 12, pp. 4844-4846, 4855.

- 3) The Landfill is visible from Cristo Rey, visible from Sunland Park Drive, from City Hall and from Desert View Elementary School. Vol. 12, pp. 4848-4849.
- 4) The Landfill is a brownfield, and all of the brownfield sites in the Sunland Park area have the potential to impede redevelopment. Vol. 12, pp. 4850-4851.
- 5) Dr. Widner understands the new regulations to require the measurement of a 4- mile radius to be taken from the center of the property; he believes this to be the wrong point, and that the measurement should be taken from the property border or edge, because that's where the impact starts. Vol. 12, pp. 4855-4856.
- 6) It is not correct to conclude from the census data that there is no impact from the Landfill. Data collection methods changed significantly from 1990 to 2000; not everybody received a housing value question and the wording was changed to include mobile homes. The data is not comparable. Furthermore, there was no correction for inflation, which alone would account for 31% higher numbers in the 2000 figures. Annexation of the Santa Teresa area would have had an impact on the census data as well. Vol. 12, pp. 4856-4860.
- 7) The better ways to estimate real property changes, including a review of growth patterns in real estate prices over the last 10 years, show that property in New Mexico has decreased by about 9%. Vol. 12, pp. 4860-4862.

- 8) The Guntermann article specifically looked at a landfill in an industrialized area and found an impact 1000 feet from the landfill's border. Guntermann found the property value of the landfill itself decreased by 57% and the properties within 1000 feet decreased by 47% in value. The thousand foot zone of impact may be extended if the landfill is placed in a residential area. Vol. 12, pp. 4864-4865.
- 9) Dr. Widner looked at the cumulative effect of multiple brownfield sites on housing values and found significant impact from each brownfield on housing values. This impact is not limited to residential properties and is not necessarily permanent, but can be reversed through clean up and redevelopment. Actual contamination is not necessary for an economic impact on surrounding property values; the potential of contamination is enough to make residents worry. The specific type of contaminant is irrelevant. Vol. 12, pp. 4866-4868.
- 10) Assuming a modest 5% impact, the absence of the Landfill would improve the value of land by \$1.5 million, and the value of buildings by \$4.1 million, for a total of \$5.67 million within a 1-mile radius of the Landfill. The current tax collected by the County would increase \$50,351, which would more than offset the property tax currently paid by the Landfill. Dr. Widner cannot state any specific dollar value for the impact of the Landfill, because he would need sales data over a period of time, and would have to adjust for inflation and market trends, and Sunland Park has not tracked this data over the last 20 years. But

there is no reason to suspect that Sunland Park is immune from the impact of the Landfill, and he believes the assumption of a 5% impact is conservative. Vol. 12, pp. 4868-4872.

11) The development near the Landfill is not a sign of economic vitality, but a sign of lack of choices or options. The developments include low income housing, mostly subsidized housing, and they are cheap because they are located next to the Landfill. Vol. 12, pp. 4873-4874.

12) The estimates of the property impacts from the Landfill are not the only impacts of the Landfill; there are other impacts that cannot be dollarized in terms of public perception and public well-being. Development losses in terms of retail activity, gross receipts taxes and a sense of pride about one's community are also all impacts that arise from the Landfill. The dollar values may be debatable, but it is significant. Vol. 12, p. 4875.

13) The Master Plan for Sunland Park is forward thinking and a good move by the City, which is headed in the right direction. They have identified the stumbling blocks to their development, the Landfill being one of them. They have identified the types of entertainment, businesses and activities they want to promote in their community and that is important in the process of future development. Vol. 12, pp. 4876-4878.

14) The redevelopment plans Dr. Widner has seen do not include a landfill in residential areas. A number of them have contained brownfields,

and most or all of the plans looked to redevelop or relocate those sites to industrialized zones not in the center of retail or entertainment activity. Vol. 12, p. 4879.

15)The renewal of the Landfill's solid waste permit will have a significant negative impact on the quality of life of the residents of the City of the Sunland Park, and a continuing negative impact on the public welfare of those residents. For the City to achieve its goals, the permit should be denied, and the Landfill should be relocated to an area outside of a residential area, or the trash should be taken elsewhere. Vol. 12, pp. 4880-4881.

16)The Master Plan for the community must take into account all risks for investors. Any private investor will take into account growth projections, retail sales projections and future housing and entertainment development. Strengths and weaknesses will be evaluated before the investment is made. Vol. 12, pp. 4947-4948.

17)Dr. Widner has not researched all the literature related to landfills, which is a large amount, but there is not a lot on landfills in residential areas, because landfills tend not to be located in residential areas. Vol. 13, pp. 5038-5041.

18)Dr. Widner has seen closed landfills redeveloped as parks and golf courses, and the negative effects from a landfill can be reversed in that redevelopment. Vol. 13, pp. 5045-5046.

- 19) Dr. Widner uses the term "brownfield" very broadly because it is a broad definition provided by the EPA. EPA chooses to fund cleanups for those sites that tend to be the most damaged or polluted areas. Vol. 13, p. 5047.
- 20) If the Landfill is to be reclaimed, a replanting of indigenous vegetation would reclaim the area and induce the natural kind of habitat to relocate to the area. Dr. Widner cannot speak to how such vegetation, or the grass for a golf course, would be reconciled with the cap on the Landfill, but knows there are qualified people who can implement the redevelopment of a closed landfill. Vol. 13, pp. 5060-5063.
- 21) Dr. Widner's purpose in comparing real estate growth patterns among New Mexico, California and Orange County is merely to show that location matters. Comparing the census growth does not provide real information unless it is in context; different areas grow at different rates. New Mexico grew less than the national average, while California grew above the national average. Comparing incomplete census data from 1990 to 2000 does not give a real picture of growth in real estate. The data does not show that New Mexico home prices have not kept up with inflation. Vol. 13, pp. 5064-5066.
- 22) Dr. Widner acknowledged that the legal definition of "brownfield" includes exclusions, and that one of those exclusions is "a facility to which a permit has been issued ... under the Solid Waste Disposal Act." He did not consult with a lawyer about whether the Landfill

qualifies as a brownfield, but had no intention to deceive. His incorrect interpretation of the law does not change his analysis of property value impacts. Vol. 13, pp. 5306-5317.

23) Regarding the studies cited in his report, he acknowledged the following: the subject of the Gayor-Viscusi study was seven hazardous waste sites listed on the EPA's national priority list as Superfund sites. The Jackson study considered only the property value of contaminated sites themselves. The Rosiers study concerned the impact of electric power lines, and found that negative visual impacts, where applicable, tend to decrease rapidly with distance, and are no more significant beyond 500 feet. The Smith study dealt with open space as an amenity, not landfills. The Kohlase study dealt with house values affected by the presence of a toxic waste dump that was a Superfund site. Vol. 13, pp. 5322-5329.

24) Dr. Widner included a report by Guntermann in his appendix list, not in the section on neighboring property values; that report cites findings of four other studies that in almost all cases that landfills were either neutral or had a positive effect on value and/or rates of development and appreciation. In one case, values were apparently adversely affected by the landfill at least for one year. In another case values apparently were enhanced by the added infrastructure associated with the landfills. The literature on sanitary landfill suggests they are far

less likely to impact property values than are chemical or toxic waste sites. Vol. 13, pp. 5330-5332.

25) Another study cited in the Guntermann report found that housing prices in a neighborhood adjacent to a landfill in the Los Angeles area compared to housing and comparable neighborhoods some distance from the landfill, indicating no significant difference in current prices or appreciation rates over a 10-year period. Dr. Widner did not cite this study because there have been advancements in hedonic modeling and econometric estimation techniques since 1991, when the study was done. The new models require a large amount of sales data that was not available for a small town like Sunland Park. When he said earlier that he could not find studies on landfills next to residential neighborhoods, he meant that he could not find a study that he could agree with. Vol. 13, pp. 5335-5339, 5376-5377.

26) There are potential impacts from all polluting industries. The range and magnitude of the impacts may vary. Vol. 13, pp. 5340-5341.

27) Regardless of whether the Landfill is a brownfield, properties are impacted by their neighbors; it can just be a site that does this not appear aesthetically to an individual. A house's messy yard will impact a property. The Landfill has an impact on surrounding property values. Vol. 13, pp. 5373-5374, 5385.

6. Juan Antonio Fuentes, Sunland Park City Councilor

A. Councilor Fuentes described his experience and observations as a City Councilor, and the Council's decision to oppose the Landfill's permit renewal.

B.

- 1) Sunland Park struggles each year to obtain state and federal funding for the community. Vol. 12, p. 4891.
- 2) Sunland Park residents have expressed to Mr. Fuentes their concerns related to the Landfill. These concerns include physical and mental illness, as described during some of the public comment. Their conclusions may not be based on science, but they have expressed their sense of not feeling safe in their homes living so close to the Landfill, being exposed to trucks passing by, and their children going to school nearby. Vol. 12, pp. 4893-4894.
- 3) The City Council unanimously adopted a resolution, Resolution 06-66, opposing the renewal permit of the Landfill. The Council also opted not to renew the Host Agreement based on strong opposition to the Landfill and what they believe are the negative impacts of the Landfill. They now dispose of the City's solid waste at a facility outside the City, at the Corralitos transfer station by Las Cruces . Vol. 12, pp. 4895-4896.
- 4) The City has approved a Memorandum of Understanding among the City of Sunland Park, Dona Anna County, El Paso, Texas, the Town of

Anthony and the Village of Vinton. The Memorandum calls for a joint effort to try to come to a regional solution for solid waste service, and in the last legislative session the City received money towards this effort. Vol. 12, p. 4896.

- 5) The renewal of the Landfill's permit would continue to have a negative impact on the community. Growth has been very slow, and has taken a lot of hard work. Every municipality has to dispose of their municipal waste but CRLF accepts waste from all over the region. Being a dumping ground has severely injured the psyche of this community and the permit renewal should be denied. In order to implement the Master Plan, the Landfill should be relocated. Vol. 12, pp. 4897-4899.
- 6) The Hearing Officer is hearing the concerns of the community, and will take them into consideration, along with all the other evidence presented. If the Secretary grants the permit based on the facts, Councilor Fuentes' voice has been heard. Councilor Fuentes understands that decisions must be made on the record, as the City Council must do when they sit as a quasi-judicial body to hear permit appeals on zoning issues. Vol. 13, pp. 5099-5103.
- 7) Councilor Fuentes does not remember receiving a letter from Ms. Suzanne Michaels, has not met with her, and has not been to the Landfill to tour the operations. Vol. 13, p. 5111.

7. Yvette Cortez, Sunland Park City Councilor and Mayor Pro Tem

A. Councilor Cortez described her experience and observations as a City Councilor, and the Council's decision to oppose the Landfill permit renewal.

B.

- 1) The concerns of the residents against the Landfill have not diminished, but have increased. These concerns include health, economic developments and the children's future. Vol. 12, p. 4907.
- 2) Councilor Cortez strongly opposes the renewal of the Landfill's permit and adopts Councilor Fuentes' statements about the Landfill. Vol. 12, p. 4907.
- 3) Councilor Cortez' voice and the voice of the community will only have been heard if the Secretary decides to deny the permit. Vol. 13, pp. 5096-5097.
- 4) Councilor Cortez has not met with Suzanne Michaels or toured the Landfill's operations. Vol. 13, p. 5111.

8. Gabriela Buso, Sunland Park City Councilor

A. Councilor Buso described her experience and observations as a City Councilor, and the Council's decision to oppose the Landfill's permit renewal.

B.

- 1) Counselor Buso's district is next to the Landfill and the complaints she gets the most from residents include the smell during the summers, the rats and roaches, and the trucks on the street. In the morning

there is traffic from the dump trucks. Councilor Buso adopts the statements made by Councilor Fuentes about the Landfill. Vol. 12, pp. 4909-4910.

- 2) If the hearing officer and the Secretary consider what Councilor Buso has to say, along with the other testimony, and reaches a result that is correct based on the law and the facts, the voice of the community has only been heard if the permit is denied. If they achieve their objective as a community and what they are fighting for, they have been heard. They will continue fighting until justice is served. Vol. 13, pp. 5086-5087, 5095.
- 3) Councilor Buso has taken trash to the Landfill but has not toured its operations. She does not recall a letter from Suzanne Michaels with a request to meet to discuss the Landfill. Vol. 13, pp. 5110, 5112.

9. Elizabeth Martinez, Sunland Park City Councilor

A. Councilor Martinez described her experience and observations as a City Councilor, and the Council's decision to oppose the Landfill permit renewal.

B.

- 1) Councilor Martinez' constituents' concerns include noise and dust from the big trucks, and the stress of the fact that they were not aware when they bought their properties that there was a landfill one mile from their home. Vol. 12, pp. 4916-4917.

- 2) If the Landfill is issued a permit, the Landfill will continue to affect the people of Sunland Park emotionally and psychologically. It will devalue the existing and future homes and businesses in Sunland Park. It will slow the City's growth and the many projects they plan as a City Council. Vol. 12, pp. 4917-4918.
- 3) The voice of the community will not have been heard unless the permit is denied. Vol. 13, p. 5092.
- 4) Councilor Martinez has toured the Landfill operations many, many times. She did not receive a letter from Suzanne Michaels in March 2006 with a request to meet to discuss the Landfill, and has not met with her. Vol. 13, pp. 5110-5111.

10. Marisela Monsivaiz, Sunland Park City Councilor

A. Councilor Monsivaiz described her experience and observations as a City Councilor, and the Council's decision to oppose the Landfill's permit renewal.

B.

- 1) Councilor Monsivaiz strongly opposes the renewal of the Landfill's permit. The Landfill affects the community, which is known as having a landfill; the City Council has tried hard to change this image. Residents' concerns expressed to her include trash and dump trucks on residential streets. Vol. 12, pp. 4922-4925.

- 2) If the permit is granted, Councilor Monsivaiz' voice will have been heard as a representative of District 5, but justice will not have been served; the Landfill cannot guarantee that they know what is in each truck. Vol. 13, pp. 5093-5095.
- 3) Councilor Monsivaiz signed the Host Agreement as Marisela Estrada. Vol. 13, p. 5108.
- 4) Councilor Monsivaiz has toured the operations of the Landfill more than once. She has not met with Suzanne Michaels. Vol. 13, p. 5111.

11. Isabel Santos, Former President, Concerned Citizens of Sunland Park

A. Ms. Santos described her history and involvement with the Citizen's group, and the complaints of the citizens about the Landfill.

B.

- 1) In 1986, when Ms. Santos came to Sunland Park, she started to hear from neighbors who were having health problems related to the dump, and began her career as a community leader. Her own daughter Erica was going to school, getting headaches and starting to throw up. Erica told her that she was hungry, but would not eat because it smelled very bad in the cafeteria, like trash or something rotten. Vol. 12, pp. 4928-4931.
- 2) Concerned Citizens of Sunland Park was formed to protect the welfare and environment of the Sunland Park community. It is a

nonprofit organization, and had to sell food in order to travel to Santa Fe to ask legislators to close the Landfill. Ms. Santos was president for 10 years. Vol. 12, pp. 4931-4932.

- 3) The complaints expressed to Ms. Santos included odors, noise from the dump trucks, dust, and children's illnesses, allergies and other respiratory ailments. Vol. 12, pp. 4933-4935.
- 4) Local authorities tricked the residents in order to incorporate, saying they needed to separate from the County to be able to have more benefits. Problems began for the City when it became a City, and shortly afterward the Environment Department convinced them they needed to have their own dump. Later people realized it was not just a local dump, but a regional one. Vol. 12, pp. 4936-4937.
- 5) Public officials who betrayed the community included Senator Macias, the Mayor at the time, David Martinez, and the City lawyer, all of whom were also lobbyists for the Landfill at the same time. To this day people are still very angry about these representatives. Vol. 12, p. 4938.
- 6) A number of incidents have occurred throughout the years involving the Landfill: people realized there was an incinerator there, and there were many complaints about the stench of burning corpses in the morning. They got rid of the incinerator, but the Landfill was receiving asbestos, medical waste, and sludge, without a liner there. Also the dirty wastewater was being dumped there. Two years ago Governor

Richardson sent people from EPA and they found hazardous waste there. Vol. 12, pp. 4939-4940.

- 7) The impact of the Landfill on the community is such that the community cannot live in peace and is prevented from living in a healthy way. They've tried medicine, but they cannot exercise, because if they go outside it smells bad. Vol. 12, pp. 4940-4941.

12. Diana Bustamante, Ph.D., Executive Director, Colonias Development Council

A. Dr. Bustamante described her qualifications, Colonias, the history of the CDC, and the survey and organizing efforts the CDC conducted in the Sunland Park community.

B.

- 1) Colonias Development Council is a private nonprofit organization providing organizing support to colonia communities in three counties in Southern New Mexico: Luna, Otero and Dona Ana. Generally, Colonias are unincorporated communities that lack basic infrastructure. The definition in Rhino is not the only definition; HUD recently expanded the definition to refer to whole communities and sections of communities. Sunland Park is characterized as a colonia because certain sections lack basic infrastructure, such as Santa Teresa and Anapra. Vol. 13, pp. 5395-5396, 5399-5403.

- 2) The Colonias Development Council was originally called the Farmworker Organizing Project, and came out of the Catholic Diocese of Las Cruces. The Office of Catholic Social Ministries was looking at how the Immigration Reform and Control Act of 1986 would affect farm workers given legal immigration status or amnesty, who were settling in unincorporated communities lacking basic infrastructure. Vol. 13, pp. 5404-5406.
- 3) The fundamental themes of Catholic social teachings guides a lot of CDC's work. The focus has been on social justice, which includes looking at root causes of poverty and inequities, and has seven themes: the life and dignity of the individual; a call to family, community and participation; human rights and responsibilities; an obligation to poor and vulnerable persons; the dignity of work and the rights of workers; global solidarity and care for God's creations. There are three assumptions: people are acutely aware of their needs and resources; given the opportunity, people will take positive action to change conditions in their lives; and by building communities together, people are empowered to overcome obstacles. CDC works toward at least four of the eight categories of human rights recognized by the United Nations, including environmental rights. Vol. 13, pp. 5406-5412.
- 4) The thread in all of the CDC's work is advocacy for immigrant citizens. Their work includes running two small daycare centers, providing

technical assistance for groups who want to start their own businesses, and farmworker advocacy and education related to workers compensation, displaced workers and non-discrimination in the schools. Environmental health injustice is another area that have worked on closely; CDC has historically been involved in providing education regarding solid waste ordinances in the county, because sometimes border control was called in to raid a community immediately following what was ostensibly an inspection for environmental code violations by deputy sheriffs. Vol. 13, pp. 5412-5417.

- 5) The CDC is usually invited to go into communities to provide organizing support, leadership development trainings, and other types of organizing or administrative support. One of the first things they consider is whether the community contacting them is a community of need, of interest, of solution or of action. CDC assesses whether it has the resources and staff to provide the organizing support. They are funded mostly by private charitable foundations, and a lot of the grant money is generic, but some of it is project- specific. Once staff has evaluated the request, they go to the board for approval. Vol. 13, pp. 5418-5420.
- 6) To establish whether a community is a community of need, the CDC does a lot of one-on-one interviews. They establish whether the community is a community of interest with scoping meetings, house

meetings and community meetings. Throughout these interactions they try to establish if it is a community of solution, willing to take trainings offered and to develop work plans. The next step is whether the community is ready to work, and implement the work plan. Vol. 13, pp. 5420-5422.

- 7) CDC's involvement in Sunland Park over the past 10 years has included involvement with the incinerator issue and the negotiation of the Host Agreement, which the Environmental Law Center was also involved in. They have observed a lack of understanding about permitting authority, a sensation that decisions are being made elsewhere, and a perception that the Landfill has an impact on health. There is a sense of powerlessness, and a stigma, and a feeling that there is not genuine consultation with the community on decision-making. Vol. 13, pp. 5424-5426.
- 8) The community of Sunland Park has been surveyed and researched to the max; this is clear from the compendium Dr. Erin Ward presented to NMED. There is a lack of trust with government entities doing surveys, and part of the CDC's approach is to work with people in the community who are trusted by the community to conduct their own research, and to assure that the information is presented to the community afterwards. They trained four women to do the interviews and as a courtesy let Mayor Segura know they were undertaking the survey. Vol. 13, pp. 5427-5429.

- 9) They conducted 87 surveys to try to substantiate some of the things people were already saying, to see if it complemented the information in other reports. It was not meant to be an exhaustive research project or a social impacts assessment, it was not peer-reviewed, and it is not scientifically rigorous. It is an organizing tool for them, a way of finding recurring concerns in the community. The findings are still preliminary; they have not finished cleaning the data. Vol. 13, pp. 5430-5431.
- 10) The results that were compiled reflect only those questions that appeared throughout the various versions of the questionnaires, in presenting the data, they had to overcome some confusion with questions that were not applicable, or that people had difficulties with, or where the interviewer skipped a question, etc. They worked as a team in this effort to organize the raw data. Vol. 13, pp. 5447-5452.
- 11) The Landfill is not the only issue the CDC is working with in Sunland Park, there are other issues that have surfaced in the past three years, but the Landfill and odors kept coming up and CDC knew that the permit renewal was up for consideration. A pilot survey was done in 2005, and they concluded that it was not so much what people knew, but what people did not know, that there was a void in information. The results presented here are from a second survey. They are not claiming that these survey results can be generalized, and are not making any claims about all of Sunland Park; this is just

the first step, and it is just a snapshot of part of the city. Vol. 13, pp. 5451-5456, 5490-5491, 5538.

12) Two women went house to house in an area that includes Meadow Vista and Valle Vista. The women, residents of the community and of Mexican descent, were instructed to go to every tenth house. Vol. 13, pp. 5457-5458.

13) Dr. Bustamante was involved in the Rhino case as the sociologist who asked the Applicant if social impact studies had been conducted and was told by the hearing officer that the regulations did not require that those issues be considered. CDC was a party in that case, and appealed the permit. On appeal, the Supreme Court discussed quality of life impacts and meaningful participation. Genuine involvement is lacking in this process. Industry receives technical assistance from department staff, but communities need information early on and should be involved in the decision-making process in terms of location, mitigating measures and monitoring, before an application is submitted and deemed complete by the agency. The community did not receive technical assistance from the agency on a consultation about baseline health studies to see if there would be an impact from a specific industry, and there is a void in terms of qualitative research that could have been gathered in the community. Vol. 13, pp. 5460-5467.

14)The surveys were taken between April 2006 and April 2007. Dr. Bustamante described the results for Sunland Park: The average length of residency is 11 years. The people interviewed came from Texas, from other parts of New Mexico or from Mexico. Close to 59% of the population had an income less than \$30,000. Many people keep informed by talking with others in the community; 62 people said they stay informed with television, 14% use the newspaper and 2% use the Internet. There is an average of four people in each household, and 10% of the households report that three or more people work outside the home. 22% of the people surveyed identified at least one person with a disability in the home, which was attributed to hereditary conditions; all with disabilities had some kind of health coverage. Chronic illnesses identified included diabetes, asthma, allergies, gastrointestinal problems and depression. Vol. 13, pp. 5472-5479.

15)The survey also reflected certain areas lacking some infrastructure: 15% claimed not to have water, 12% did not have electricity, 15% said they did not have paved roads in front of their homes and nearly 15% said they were not connected to a sewage system. 37% said they did not have any disagreeable odors around the home, but 63% said they either sometimes or frequently have smelled some kind of odor around the house. 57% of those claimed that the Landfill causes those odors; the second largest category identified septic odors. 45%

detected an infestation of rodents, insects and other pests. 33% of those attributed infestation to the Landfill, and 37% identified the climate. Only 23% of the people had heard about environmental codes in their area, to address open burning for example. 79% of the people interviewed drink bottled water, with 63% identifying safety as the reason, and 25% saying that they just liked it better. 46% of those surveyed do not know the operating schedules of the Landfill, and 61% did not know what kind of waste is accepted by the Landfill. 13 people believe that medical, hazardous and toxic waste is accepted there. 61% believe that the Landfill affects the community, with noise, odors and contamination, increased pests and animals. Vol. 13, pp. 5479-5486.

16) Plans for the future include continuing with home meetings and community meetings, and taking the information to the people who were surveyed. They may also work to educate the high percentage of people who drink bottled water. Vol. 13, pp. 5534-5536.

17) The term "chronic illness" was not defined for people answering the survey and there may be some limitations on the use of that data. The rate of people in Sunland Park reporting depression in their family, 15%, is exactly the same as the national average. Vol. 13, pp. 5539-5546.

13. Lucia Veronica Carmona, Community Organizer, Colonias Development Council

A. Ms. Carmona described her experience as a community organizer and her community work in Sunland Park.

B.

- 1) Ms. Carmona is originally from Chihuahua, and has worked for the CDC since November 2004. She is a lead organizer, and her work is to train and coordinate with promotoras and volunteers within a community to reach common objectives. She spends a considerable amount of time in communities and establishes a personal relationship based on learning and respect. Vol. 13, pp. 5493-5500.
- 2) Ms. Carmona first discovered persistent worries about the Landfill when she was working in the community of Sunland Park to promote voting. She was a part of the team that put together the survey, and the pilot survey, as well. Vol. 13, pp. 5502-5507.
- 3) It is always more comfortable to go to a neighbor's house and talk among friends, and they began doing home meetings where committees have been permanently established and they have developed a natural human network. Part of Ms. Carmona's work is to communicate in the community of immigrants that they should not forget about their roots, because that helps the young people establish their identity. Ms. Carmona also participated in setting up a

forum called Meet the Candidates, so that people could interact with candidates without fear. Vol. 13, pp. 5512-5516.

- 4) The survey was a gesture of sharing their learning tool, and they found that people believe health is not taken into account.

Perceptions in the community include an observation from one family that their rosebushes die at a certain time of the year because of methane gas from the Landfill, and that dust and odors come from the Landfill. Vol. 13, pp. 5518-5520.

- 5) The people also perceive the process to have no credibility; in 1996 more than 700 people participated in the hearing, and this time, the room is empty, it is a lack of hope. Although, compared to other landfills and from the information she has heard, the Landfill is good, the people in this community are not convinced, and we have to take into account why the community continues to feel hurt by the Landfill. Communities have empirical knowledge, and if there is smoke, there's fire. Vol. 13, pp. 5520-5523.

- 6) Other issues surfaced in the house meetings that the CDC continues to work on: priorities in Valle Vista included truck traffic and the lack of speed bumps. The City Council finally assigned funds to put bumps in the subdivision. Other concerns included a lack of recreational area for children, animal control, and a lack of trash pick-up. Vol. 13, pp. 5526-5527.