

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT



IN THE MATTER OF THE APPLICATION
OF CAMINO REAL ENVIRONMENTAL, INC.
FOR THE RENEWAL AND MODIFICATION
OF A SOLID WASTE FACILITY PERMIT
FOR THE CAMINO REAL LANDFILL

NO. SWB 07-41(P)

**HEARING OFFICER'S REPORT, PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW, AND RECOMMENDED FINAL ORDER**

INTRODUCTION

Summary

Camino Real Environmental, Inc. (Camino Real or the Applicant) has applied for the renewal and modification of its Solid Waste Facility Permit (the Application) for the Camino Real Landfill (the Landfill or CRLF), located in Sunland Park, Dona Ana County. The permit initially issued to Camino Real was approved for a 10-year period; the Application seeks renewal of this permit for another 10 years. In addition, because the Application includes new engineering design data and certain technical changes for a new landfill unit designated as Unit 3, Camino Real seeks modification approval as a part of the Application.

In addition to members of the general public, consisting mostly of citizens of Sunland Park, those in attendance throughout the hearing were the Applicant, represented by various corporate officers or management employees; the Applicant's attorneys; the Chief of the Solid Waste Bureau (the Bureau), New Mexico Environment Department; the Bureau's attorneys; the City of Sunland Park, represented by its Mayor; the City's attorney; and various pro se parties.

The City of Sunland Park and the pro se parties are collectively designated in this report as the Opponents; when necessary, the pro se parties will be referred to as the Other Parties, to distinguish them from the City of Sunland Park.

The hearing was originally scheduled to begin on December 5, 2007 for a period of 10 days, including Saturdays to allow for additional public comment sessions. The hearing began as scheduled on December 5 but continued for a total of 14 days, excluding Sundays, as a result of the following circumstances.

The least amount of time spent on a given day of testimony was 8.5 hours, but most days consisted of at least 10 hours of hearing, with 11, 12, and even 12.5 hours of testimony taken during several days. These extended hours became necessary in order to complete the hearing even within the four additional days.

It became clear to me after the first few days of the hearing, due mostly to the great number of witnesses who were scheduled to testify and delays caused by the Other Parties (due understandably to their inexperience in legal or administrative proceedings and various due process motions and other arguments made and argued by their spokesperson, Mr. Moore), that it was likely we would not complete the hearing within the ten days scheduled. I suggested to all counsel and the parties that I anticipated extending the hearing beyond the 10-day schedule so we could complete the testimony before the Christmas holidays.

Although there were some objections to my suggestion, a few of which were a part of several due process motions made during the hearing by the

Other Parties, I was determined to complete the hearing before the holidays. The option of stopping the testimony prematurely at the conclusion of the initial period of ten days and then reconvening to continue testimony after the holidays sometime in January of 2008, in my judgment, would add considerable expense to the hearing for all parties and the public and would create inefficiency in the examining of witnesses that would not be in the best interests of all concerned.

To assure that the hearing was conducted in an efficient and orderly manner, I reduced the lunch time and dinner time recesses from 1.5 hours to 1 hour and imposed a time limitation on the direct and cross examination of witnesses for the duration of the hearing. I do not believe that any party was prejudiced either by my extending the hearing a few days to assure completion or by the time limitations I imposed on examination of witnesses. I believe that all parties were given more than ample time to complete their examination of witnesses, which the hearing transcript will reflect. Certainly, the public's opportunity to express its views and to make comment benefitted considerably by being afforded an additional four days for comment.

The hearing concluded early evening of Thursday, December 20, 2007, the 14th day.

Recommendation

Based on the administrative record, my review of the evidence, documentary and testimonial, the hearing transcript, argument of counsel, Environmental Justice considerations, and my recommended findings of fact and conclusions of law, I recommend that the Application be approved and Camino

Real's request for renewal of the permit be granted for a period of ten years. Granting of the permit should be subject to certain conditions necessary to protect against any hazard to public health, safety, welfare, and the environment, and to prevent any undue risk to property or a public nuisance, as noted in the recommended conclusions.

Brief History

The testimony adduced at the hearing showed that the general area of the land now occupied by the Landfill was originally used for indiscriminate, open dumping by the public throughout the '70s and the early '80s. This essentially unregulated dumping continued until the land was purchased by JOAB, Inc. from the former owner sometime the early part of 1987. Initially, the facility operated by JOAB was registered with the New Mexico Environment Department (NMED or the Department) as the Nu-Mex Landfill (Nu-Mex) under the then-existing state regulations.

When new solid waste management regulations were promulgated, Nu-Mex submitted an application for a permit from the Department in November of 1991. The Department granted Permit No. SW 91-04 on November 6, 1992 for a 5-year period. This permit allowed the continued development and operation in the "Permit Area", designated Unit 2.1. The Landfill was sold by Nu-Mex to Camino Real before expiration of that 5-year period. The total land now owned by Camino Real consists of about 480 acres, although the actual area used for CRLF is much less, as noted in the summary of the various landfill units described below.

In November of 1995, one year before expiration of the initial permit, Camino Real submitted an application for permit renewal. Modification approval was sought in that application because Camino Real sought to include a "Permit Renewal Area" designated as Unit 2, which is the current active area at CRLF. That unit included twelve, lined disposal cells on about 126 acres of land. Following review by the Department and public hearings pursuant to the applicable statutory law and NMED regulations, the Department issued Solid Waste Permit No. SW 96-05(P) on March 5, 1997 for a 10-year period.

In September of 2000, Camino Real submitted a "Title V" Permit Application to the Department's Air Quality Bureau (AQB). Following AQB's review and public hearings pursuant to the applicable statutes and Department regulations, AQB issued Title V Operating Permit No. P189L on April 30, 2001. To address the installation of a certain gas collection and control system required by law, the solid waste facility permit issued to Camino Real in March of 1997 was modified and approved, and a new permit, Solid Waste Permit No. SW-00-10 (M), was issued on March 12, 2001.

Camino Real currently operates CRLF under this permit issued in March of 2001 and seeks renewal and modification of this permit, which was scheduled to expire on March 5, 2007. As required by the Department's regulations, the Application was submitted twelve months prior to that expiration date. As noted previously, Camino Real, in addition to seeking renewal of its Permit for a new 10-year period, is seeking modification approval. This approval is sought because in addition to continuing its operations in Unit 2, Camino Real has

requested approval of continued operations into new lined cells in Unit 3, which in prior permit submittals, had been designated as "Phase III". The Application provides detailed site characterization data and engineering designs for Unit 3.

In summary, although the total amount of land owned by Camino Real comprises some 480 acres, considerably less than half of that has been or is being used as units of the actual Landfill. CRLF itself is broken down into the following units:

1. Unit 1 is an area consisting of about 50 acres, which is referred to as the "Closed Area". It was closed sometime in 1991-92 and has been capped, vegetated, and monitored as required by the Department's regulations.

2. Unit 2 is the "active unit", which includes the original permit area (Unit 2.1) and the Permit Renewal Area, consisting of about 126.1 acres. Current operations are now being conducted in Cell 8B, after development of Cells 1 through 8A. Cell 9 has now been completed. Camino Real has represented that the remaining capacity of Unit 2 will accommodate collection of waste at the site throughout this permit renewal process.

3. Unit 3 is made up of three primary cells (Cells 3.1, 3.2, & 3.3), which have been represented to accommodate anticipated waste receipts through at least the 10-year period extension sought in the Application. As noted above, the Application contains updated site characterization, engineering design, and environmental monitoring networks for Unit 3.

4. Unit 4 has been identified as Phase II in prior permit submittals to the Department and is planned for future development to the east of Camino Real's current operations.

GENERAL COMMENTS

The General Purpose of Landfill Regulation

The New Mexico legislature, as other legislatures have done in other states throughout the United States, made the basic policy decision several years ago that, although landfills, especially those accepting hazardous waste, potentially create significant dangers to the public and the environment, they are nonetheless a public necessity. It therefore enacted the Solid Waste Act and the Environmental Improvement Act to regulate the industry.

Under these two acts, the Department has the duty to promulgate regulations to protect the safety, health, welfare, and property of the public, as well as New Mexico's natural resources, from the public health hazards, environmental pollution, and economic loss that may result from improper and inadequate solid waste disposal while at the same time insuring the provision of solid waste disposal by private enterprise as needed by the public. The hearing held in this case is but one part of that process.

Environmental Justice

On November 18, 2005, Governor Bill Richardson signed Executive Order 2005-056 on Environmental Justice issues. The order cited the federal government's underscoring of Environmental Justice as an important national issue, President Bill Clinton's Executive Order 12898 on the subject, and the

creation of the National Environmental Justice Advisory Council to integrate Environmental Justice into federal policies and programs.

The Governor's order recognized that all residents of the state, regardless of race, ethnicity, income or education level, were entitled to fair treatment and meaningful involvement in the development, implementation, and enforcement of environmental laws and regulations. The order directed all cabinet level departments, boards, and commissions to provide meaningful opportunities for involvement to all people in the state, to use available environmental and public health data to address and determine impacts in communities of color or low-income communities in connection with siting and permitting of existing and proposed industrial and commercial facilities, and to disseminate environmental information to the public in languages other than English.

Only a few months prior to the issuance of that order, on July 18, 2005, the New Mexico Supreme Court, in *Colonias Development v. Rhino Environmental Services, Inc.*, 2005-NMSC-024, 117 P.3rd 939 (*Rhino*), held that in a hearing on a permit application to operate a landfill, (1) the Department must consider public opinion at the hearing; (2) the consideration of public testimony is not limited to technical issues but may be weighed and considered in determining the adverse impact, if any, on the community's quality of life; and (3) the impact of the proliferation of landfills on a community is relevant to the Department's review of a permit application under the Solid Waste Act and the regulations under it. The Court, in addressing (3) above, also held that the Act and regulations require the Department to consider whether evidence of the harmful

effects from such cumulative impact rises to the level of a public nuisance or potential hazard to public health, welfare or the environment.

Based on these holdings that allow for meaningful participation by the public and for consideration of the community's concerns in the final decision making process, our Supreme Court in *Rhino* remanded the case to the Department's hearing officer for a limited public hearing and additional public testimony on the impact of proliferation and to permit a line of cross-examination that had been disallowed. The Court also directed that the Cabinet Secretary for the Department, in reconsidering the public testimony, should he reject it, must explain the rationale for doing so.

In considering the impact of Environmental Justice concerns on this case, it is clear to me that in applying those concerns or factors, it is important to determine whether a disparate impact has been established on the citizens of Sunland Park, who the record and the evidence show clearly are largely Hispanic and generally of low income.

In this connection, it is important to understand that, although the City of Sunland Park argued, and a few witnesses testified, that Sunland Park is a Colonia, as that term is understood or used in New Mexico, the testimony and evidence, as reflected by the findings and conclusions, strongly indicate otherwise. This is so despite the fact that apparently several agencies have designated the City of Sunland Park as qualified to receive funding as a Colonia. The status of Sunland Park's infrastructure, or lack of it, as well as its citizens'

economic statuses, of course, are important in addressing Environmental Justice factors that come into play.

As noted by the Court in *Rhino*, Colonias are rural settlements along the US-Mexican border consisting of recent immigrants and typically lacking safe housing, potable water, wastewater treatment, drainage, electricity, and paved roads. Although there is some indication in the evidence that recent immigrants may exist in Sunland Park, the community is incorporated as a municipality with a duly elected mayor and council, does not lack infrastructure, has a wide assortment of paved roads, plenty of safe housing, potable water, drainage, electricity, and a wastewater treatment plant that is owned by the municipality. In addition, Sunland Park is home to a multi-million racetrack, as well as a privately owned amusement park and other commercial establishments and restaurants, including one that attracts its diners and customers from the neighboring cities of El Paso and Las Cruces.

Although the City of Sunland Park contends, and several of its witnesses maintained in their testimony, that a recently adopted and ambitious long-range plan for the municipality will be adversely affected by an extension of the permit to the Applicant, the evidence and therefore the findings and conclusions make clear that existence of the Landfill has not negatively affected commercial development. I am satisfied that operation of the Landfill has not in the past and will not in the future thwart the efforts of the municipality from its worthwhile long-range plan, which a well-known design and engineering firm drafted and developed.

Counsel for the City of Sunland Park suggested several times during his examination of witnesses that an interdisciplinary team of experts such as sociologists, social workers, and psychologists should have been organized to study the social impact of the Landfill on the community's citizens and to submit a report that could be used to assess any detrimental or adverse affect the Landfill would have on the community.

To me, this raises several important questions. How much should the Department be expected to do in performing its function under the Act and regulations? What else could be done by the Department, what other approach can be taken, other than that already taken by it in giving proper notices, holding various community meetings to solicit public input, and having its staff extensively investigate the Application and CRLF's operations and performance? More importantly, whose responsibility is it to take those additional steps?

Should it be the responsibility of the opponents to a facility's permit extension to counter the CIA or the Department's investigative work with a social impact assessment of their own? Is the Department required to take on this responsibility when considering *Rhino's* discussion on social impact and the public's meaningful involvement? In my judgment, the answer is no to the latter question. All that *Rhino* and Environmental Justice require in that regard is that the public be permitted to be a part of the process in a meaningful manner, so that ultimately, any decision made does not ignore the important considerations under Environmental Justice.

There are two other important matters to consider in this connection. First, under recently adopted regulations by the Department, a written Community Impact Assessment must be prepared by the Applicant under certain circumstances. That is one of several steps the Department has taken to address the concerns expressed by our Supreme Court in *Rhino*. Although those recently adopted regulations do not apply to this case, the Applicant nevertheless paid for and submitted to the Department a CIA that was admitted into evidence and testified to by several witnesses. As its name suggests, the exhibit is generally an assessment of the impact CRLF has had and will have on the community of Sunland Park and the surrounding area.

Second, an unregulated dump and then another landfill, long before Camino Real bought the land, have existed for many years in the same location and were a part of the region for all those years. True, operation of prior landfills and of the Landfill have been expanded through the years, but with such expansions have come improvements that have lessened, not increased, potential problems that may adversely affect the people in the surrounding area. The majority of these improvements took place after Camino Real took over the operation of the prior landfill.

Based on these and other considerations, I have concluded that this is not a case in which the Applicant, in requesting a 10-year renewal of its permit, and the Department, in reviewing or approving the granting of the permit, have affected the area differently from other, unaffected communities within the state or within comparable areas. Although argued indirectly by the City of Sunland

Park and the Other Parties, there was no credible testimony or evidence that the health, income, or the general population are significantly different than other communities of similar size throughout the entire state.

I believe that the requirement under the Act and its regulations (that a permit not be granted if the Department determines that the landfill endangers the public health, safety, welfare, or the environment, or will cause undue risk or damage to property) incorporates an important element and concern of Environmental Justice. Many witnesses for the Applicant and the Department testified that the granting of the permit in this case meets that requirement. The question to be asked is whether there was any credible evidence, including testimony from the public, that reasonably refuted the Applicant's and the Department's witnesses in that regard.

To be sure, in the section below entitled "The Citizens of Sunland Park," I go into some detail about the number of citizens who testified of their fears and concerns regarding their physical health, as well as the safety of their homes, ground water, roads, and the injurious nature of air and noise pollution. However, as I have noted in that section, these fears are speculative and were not supported by credible evidence.

Based on what I have said here and elsewhere, one might be tempted to suggest that the citizens' concerns and fears are understandable and even reasonable and that, although the Landfill fulfils all of the Act's and the regulations' requirements, its location is just too close to the City of Sunland Park and should be moved elsewhere. That, of course, would require a denial of the

extension request, or if not a denial, that the extension grant be for a shorter period than 10 years.

The problem with such rationale (that based on the citizens' complaints, the location is not suitable and the Landfill should therefore be moved), however, is that, first, it has no support under the Act or its regulations, and second, outright denial or the grant of an extension for a lesser period than 10 years, under the facts of this case, could be reasonably argued to be outside the scope of the Cabinet Secretary's authority, both under the Act and the regulations and under the New Mexico Constitution.

I state that for two reasons.

First, I believe that if the Department finds that the Applicant has met all of the technical requirements, and it further finds that granting the renewal will not result in "a hazard to public health, welfare, or the environment" or create an "undue risk to property," the Department has no choice in my judgment but to grant the permit. These are the only two criteria under the Act and its regulations that must be met. This is true even if one considers Environmental Justice principles, as we must, as well as the mandate under *Rhino*. After all, as I previously suggested, Environmental Justice has a nexus, so to speak, in what I term the "anti-hazard" requirements under the Act and its regulations. If the two criteria I noted above are met, then denial is not an option.

The second reason is equally important. Denial of a permit if both criteria have been met or even a grant for a lesser period than 10 years could result in an unconstitutional regulatory taking under New Mexico's Constitution. N.M.

Const. Art II § 20. Camino Real has not only met, but in some cases, actually exceeded the requirements under the Act and its regulations. To grant the permit for any period less than ten years under these circumstances could easily be deemed as an abuse of authority or police power that could result in an unconstitutional taking of property without just compensation. See *Board of County Comm'rs v. Harris*, 69 N.M. 315, 318, 366 P.2d 710, 712 (1961).

I realize that the Department not only has a right to impose conditions to its grant of a permit and also has the right to grant the permit for a lesser period than ten years. I am concerned, however, in light of the circumstances of this case, where Camino Real has been shown to have exceeded the requirements under the Act, that what I consider to be unfounded fears, unsubstantiated and subjective concerns of the citizenry of Sunland Park, as well as speculative causes, cannot form the basis for granting the permit for a lesser period than ten years.

Additionally, under the facts of this case, it could be reasonably argued that Camino Real has through the years acquired a vested right in its permit, subject only to the requirements under the Act and the pertinent regulations. Any attempt to diminish that vested right by requiring it to apply in five years for an extension of its permit could be considered a taking of property without just compensation.

Finally, one should not ignore the fact that the Department has a right under the Act and regulations to step in at any time in the future, if the permit is granted for ten years, should the Department have reason to believe Camino

Real is not complying with the regulations or the conditions imposed on the permit. This is a sufficient safeguard. I see no reason to put the Applicant, the Department, and others to the expense of repeating this whole process within less than ten years.

Considering what I deem to be the high quality of the Department's staff that testified at the hearing, my recommended findings and conclusions strongly indicate that I have confidence that, should CRLF not perform as required under the regulations, and the staff believes the Landfill has created a hazard to the public health, welfare, and safety of the citizens of Sunland Park, the Department can then rise to the occasion at some later date to assure that the public is fully protected and that the problems are resolved or the facility is ordered closed and the permit terminated, if necessary.

In connection with the Application process in this case, I believe the Bureau's staff has performed its function admirably. More than that, one cannot ask for. For these reasons, as I note elsewhere in the report, I have recommended the granting of the permit for ten years.

In summary, I believe that the mandates of both the Governor's Executive Order and our Supreme Court's ruling in *Rhino* have been met in this case from its inception. In addition to what I have already noted in this discussion and in my recommended findings and conclusions, notices of all meetings and hearings were published in both English and Spanish for the benefit of the citizens of Sunland Park and the outlying areas, including El Paso and Juarez, Mexico. There was meaningful involvement and participation in the process, including

various formal and informal meetings involving the public, public officials, and elected officials of the area. Although the decision reached by the Bureau in supporting the Application may have met with the citizens' disapproval, nonetheless, I believe that their voices have been heard.

POST HEARING BRIEFS REQUESTED ON ISSUES

During the course of the hearing, I requested the parties to brief three separate issues. Initially, I allowed approximately 30 days for the filing of these briefs, but on motion by the Department, to which all parties agreed, I extended the deadline for filing until February 25, 2008. All parties represented by attorneys (the Applicant, the Bureau, and the City of Sunland Park) filed briefs on the three issues I raised.

Summary of Issues

1. What impact do Environmental Justice considerations or issues have on the decision to grant or deny a permit application in a given case; may the application be denied outright on the basis of Environmental Justice, or do such considerations only dictate the granting of the permit with certain conditions as a remedy?

2. Does proliferation, as that term is used by the New Mexico Supreme Court in *Rhino* apply only to new solid waste facility permit applications or does it apply also to permit renewal applications, such as the Application filed by the Applicant in this case?

3. In my report to the Cabinet Secretary, not only as a basis for factual findings but otherwise, am I permitted as a quasi-judicial officer to rely on my own senses or sensory perceptions such as hearing, smell, or visual?

Issue No. 1

After considering the briefs submitted, I am of the opinion that Environmental Justice considerations, depending on the evidence, can definitely have an impact on both the question of whether to grant or deny an application or whether to impose certain conditions; those considerations are not limited to the setting of conditions. Therefore, the question raised by this issue can be answered as follows: If the granting of an application is shown to pose a hazard to the public health, welfare and environment or an undue risk to property, it may be denied outright, unless the setting forth of certain conditions demonstrate that such conditions will otherwise negate the hazards or undue risk.

Although I initially raised this issue in my own mind during the course of the hearing, it was only touched upon briefly by one of the technical witnesses for the Applicant, Ms. Marla Shoats, who, in reply to my own question, essentially replied that Environmental Justice considerations should only be applied to the imposing of special conditions to negate any Environmental Justice concerns. With all due respect, I disagree with her opinion.

In this regard, as pointed out by *Rhino*, the Secretary shall issue a permit if an applicant demonstrates that all the technical requirements under the regulations have been satisfied and the application demonstrates that neither a

hazard to public health, welfare, or the environment nor undue risk to property will result.

As pointed out in its brief, Applicant considers the non-technical issues, i.e., the issues relating to public health and welfare, as the “environmental justice issues.”

I agree that generally speaking, Environmental Justice considerations fall under this second part of the regulations’ requirements. It follows that should the Cabinet Secretary determine that any one of these non-technical issues has not been met, he may deny the permit application outright. Thus, Environmental Justice considerations are not limited to the imposition of special conditions as suggested by Technical Witness Shoats, but can form the basis for an absolute denial of an application.

I took special interest in the Applicant’s formulation of this issue: “Given this guidance [referring to three separate instances when I posed the question to be briefed], the Applicant will frame the issue to be briefed as follows: How should the Hearing Officer treat public testimony?” (See Page 2 of Memorandum Regarding the Impact Environmental Justice Considerations May Have on the Permitting Decision). Applicant is correct that the great majority of public comment at the hearing related to the public’s perception of the landfill’s impact on the community’s quality of life, which of course falls under the public health and welfare part of the regulations’ requirements. Only a few public witnesses, at one time or another, took issue with the technical testimony of a witness unrelated to the second part of the requirements, but there was little if no basis

for such disagreement, as my recommended findings and conclusions will show. Under *Rhino* and the requirements of Environmental Justice, it is essential that the public and members of the community be given the opportunity for meaningful input, and it is my strong belief that as hearing officer, I afforded all interested parties that opportunity. I agree with Applicant that public testimony should be treated the same way as all other testimony and should be evaluated for its relevance and credibility.

In applying Environmental Justice concerns, I also agree with Applicant that all of the testimony should be evaluated by me for its credibility and relevance, giving such weight to it as I deem it worthy of, in recommending findings and conclusions to the Cabinet Secretary. In doing so, I am to determine whether all the evidence, as a whole, shows a hazard to the public health, welfare or environment or any undue risk to property. If all of the regulations' technical requirements are met and I have determined under my recommended findings and conclusions that it has not been demonstrated that there is a hazard to the public health, welfare and environment or an undue risk to property, I have no alternative but to recommend that the permit be granted.

Issue No. 2

The question I asked to be briefed under this issue is a rather narrow one. The term "proliferation," to my knowledge, is not one that appears in any of New Mexico's regulations dealing with solid waste disposal, but is a term that appeared for the first time in *Rhino*. Upon my first reading of *Rhino*, based on my understanding of the meaning of the word "proliferation", I immediately made a

mental note that our Supreme Court in *Rhino* appeared concerned with the impact an “additional” landfill in the area in that case might have on the community’s quality of life. It was in that context that the Court used the term.

It naturally followed, in my mind, that the word, as I’ve commonly seen it defined, may have no application to this case, which involves a permit application for a renewal of an *existing* landfill. In my review of preliminary documents in the administrative record, I took note that the Opponents seemed to bring into question the allegedly great number of existing industries that potentially contaminated or polluted the soil or air in the area. Yet, they were not arguing against a new facility that might *add* to the vicinity’s problem but essentially were opposing an *already existing* facility.

Because I realized that *Rhino’s* holding must be considered and applied in this case, in posing the question for counsel to brief, I merely wanted to determine whether I was required to consider proliferation as one of the requirements under *Rhino*, or whether I could apply *Rhino’s* holding by eliminating one of the matters the case dealt with, namely, proliferation, as I was initially inclined to do.

It took little to persuade me that my original thinking was correct. The briefs have persuaded me that the term “proliferation”, as used in *Rhino*, is not applicable to this case, which involves an application for a renewal permit of an existing facility.

Counsel for the City of Sunland Park had already made his position on the issue clear at the hearing and argued in his brief that the existence of other

allegedly polluting industries in the surrounding area should be considered in determining whether Camino Real's renewal application would amount to a "proliferation." I was not persuaded by the his argument, which stated rather baldly that "[t]here is no question that the . . . adverse impact of . . . proliferation of landfills and other industrial sites . . . indeed applies to permit renewals." (See Page 9 of City's brief)

As a basis for this assertion, the City of Sunland Park relies on the purpose outlined in the statutes and regulations, which essentially, it argues, is to protect the environment. The City then asserts that the purpose for renewal permits should be the same as when an applicant seeks a new permit for a previously non-existing facility. Because the purpose is the same, the City's argument continues, as I understand its rationale, the term "proliferation" used by *Rhino* applies to both new and previously existing facilities. To hold otherwise, the City claims, "would chill public participation in the permit renewal process contrary to legislative intent," relying on language in *Rhino*. This is a broad leap, especially when one considers the context in which term "proliferation" was used by our Supreme Court in that case.

The problem I have with the City's rationale is that protection of the environment, accepting the City claim that such is the purpose of the Act and its regulations, can involve different applications of a multitude of criteria, depending on the facts and circumstances of a given case. If a new facility, for example, is attempting to come into an area, all that *Rhino* requires is that the "cumulative effect" of other industries present in the region, together with the *new* industry, be

considered by the Department in determining whether a hazard to the public welfare will exist if a permit to the new facility is granted. For the reasons noted below, I determine that *Rhino's* holding in that regard is not applicable to this case.

Although I recognize that in its broad sense, the term at issue may be used otherwise, I am persuaded by Applicant's reliance on Webster's Dictionary's definition of the word as meaning "a rapid and often excessive spread or increase." (See Page 3 of Applicant's Brief Concerning Proliferation) My review of two of my own dictionaries found similar definitions or meanings. This reading of the word is buttressed when one considers the context in which it was used by the Court in *Rhino*. In discussing the right of the public and community members to voice their concerns, *Rhino* held that the Hearing Officer and Secretary in that case erred in failing to consider the impact of proliferation of landfills and other industrial sites in the area. In such a situation, the Court stated that "the Secretary must evaluate whether the impact of an additional landfill on a community's quality of life creates a public nuisance or a hazard to public health, welfare, or the environment." *Rhino* at Para. 32. The Court also stated that the "cumulative impact" of proliferation was necessary and relevant. *Id.* at Para. 33.

Based on the above, I conclude that although the various elements or aspects of Environmental Justice must be taken into account in this proceeding, proliferation is not one of them. For that reason, this report and its recommended findings and conclusions, will so reflect.

Issues No. 3

All of the briefs filed on this issue answered this question “No.” I was persuaded by their argument that as hearing officer, who stands essentially as a finder of fact in submitting recommended findings to the Cabinet Secretary, although I can rely on my own life experiences in evaluating the testimony and evidence, cannot rely on my own sensory perceptions as a basis for this report or my recommended findings or conclusions.

As a hearing officer in this proceeding, I fill the role of a quasi-judicial officer, and as such, am able to form my own impressions at the hearing to carry out my judicial function and duties and an impartial, observant, and active participant. I must base my recommendations and decisions on my ability to observe and can form opinions throughout the proceeding so long as they are substantiated by the record. To reach ultimate findings and conclusions, I must draw on my ability to draw inferences from the evidence and testimony.

Not only am I free to perform these tasks, but I believe I am duty-bound to carry them out. But my function and authority stop there. I am persuaded by counsel and all of the briefs that as a finder of fact, I stand in the same role as a jury in a courtroom who, in rendering a verdict, is prohibited from considering any evidence obtained from outside the hearing or from some other, extraneous source. As an appellate judge, I am well aware that a juror’s consideration of extraneous matter, not subject to notice to, or cross-examination by the parties, is deemed reversible error in New Mexico. Counsel for the City of Sunland Park, reminded me in his brief of that principle by citing to my dissent in *State v. Mann*,

11 P.3d 564 (Ct. App. 2000). But I should remind him that the issue there was whether what the juror took into account and discussed with the jury was extraneous material creating reversible error or whether it was essentially information gained through his own life experience. Both the majority and the New Mexico Supreme Court, which affirmed the Court of Appeals decision on certiorari, disagreed with my opinion in the dissent that the juror brought in extraneous material into the jury room, which wasn't subject to cross-examination.

In summary, I am convinced that I can not take into account my own observations or other sensory perceptions such as smell and sound outside the hearing, of which the parties received no notice, and more importantly, were not given the opportunity to discredit, qualify, or otherwise bring into question, my ability to evaluate the testimony or evidence based on those individual, sensory perceptions.

I assure the parties, as well as the Cabinet Secretary, that my consideration of the issues, the testimony, and the documentary evidence, will not take into account any of those perceptions. This report, its comments, its proposed findings, conclusions, and its recommended decision, will be based solely on the evidence and testimony presented at the hearing, to which all parties had ample notice and the opportunity to discredit or otherwise bring into question on rebuttal or otherwise.

OPPONENTS' DUE PROCESS ARGUMENTS AT HEARING

At the onset of the hearing on the first day, before any testimony was given, and at various stages throughout, one of the Other Parties,, Mr. Taylor Moore, on his own behalf and on behalf of all other Opponents, argued a motion for a continuance. (I use the term Opponents because counsel for the City of Sunland Park, although stating at different times that he was not joining in the motion, complained that he too found himself with little time to prepare for the hearing). Mr. Moore had in his possession, a 9-page motion that he had not filed or distributed to counsel. After affording all counsel the time and opportunity to read the contents of the motion, I allowed Mr. Moore sufficient time to argue it. The written motion has been made a part of the record. See Vol. 1, pps. 24-36.

Essentially, although the written motion was for a continuance, Mr. Moore argued throughout the hearing that the Opponents were being denied their due process rights because they were not given the opportunity to prepare for and to fully present their case. He contended that because the Opponents had received copies of the administrative record only a few weeks before the starting date of the hearing, it was a denial of due process to proceed with the hearing without giving all the Other Parties the time and opportunity to prepare and to present their case in opposition to granting the permit.

Once again, I should point out that counsel for the City of Sunland Park, although he had not filed any formal pre-hearing motion, and did not join in Mr. Moore's motion, argued that although he would do his best to participate in the hearing, he found it taxing that he had not been given more time to prepare. See

Vol. 1, p. 36-41. He too indicated he believed it was a denial of due process to proceed with the hearing. For these reasons, I deem the motion as one on behalf of all Opponents, so my ruling applies equally to the City of Sunland Park.

I denied the motion. See Vol. 1 pps. 47-49. I should add that at various times later in the hearing, Mr. Moore continued to renew his motion, as well as reargue his due process arguments.

In summary, I gave the following reasons for denial of the motion: It was not filed timely, although Mr. Moore had ample opportunity to do so; believing that all parties had ample time to review the record and exhibits to prepare for the hearing, I did not see any violation of due process, either substantively or procedurally; it would be prejudicial to all parties and the public to delay or continue the hearing for any period of time, considering the length of time the case had been pending; finally, based on my experience, I did not feel that Mr. Moore and the Opponents would be any better prepared at a later date than they were on the first day of the hearing, considering the nature of the issues. The case was what it was; it would be the same in January or at some later date.

Throughout the hearing, at such times as Mr. Moore renewed his motion, I gave the same and other, additional reasons for my denial, but I believe that essentially, the fact that I considered the motion untimely and the prejudice to the parties and the public, were a sufficient basis for denial.

THE CITIZENS OF SUNLAND PARK

What follows are my views or comments based on my recollection of the testimony and my review of the exhibits, the hearing transcript, my hearing notes, and the public comment sessions.

Partially based on Environmental Justice considerations, I was particularly interested in the testimony and comments of members of the community during the public comment sessions. Much of what is contained in this section refers to my impressions concerning these sessions. Whenever facts and testimony are noted here, those facts and testimony are contained in the Summary of Testimony and form the basis for my recommended findings and conclusions.

The people of Sunland Park who I heard speak at the hearing, for the most part, are decent, honest, and humble individuals who are to be respected. They are hard workers and have a strong work ethic. The compassion and respect that I have for them is heartfelt, and I tried to convey those feelings to them at the hearing during my closing remarks:

"I want to especially thank the people of Sunland Park, who sat patiently throughout the hearing and to those of the citizens who spoke from their heart with such passion.

" . . . I realize only too well that this is an issue important to them. I'm going to miss seeing their faces in the audience, which I've grown accustomed to seeing during the past few weeks.

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"To [those citizens present], I thank you for your courtesies during our time here. Having lived most of my 68 years in this area, which I've often referred to as God's country, I share and understand your pride in your community.

"I grew up in a neighborhood in Las Cruces much like yours. Many of the people I lived among in my neighborhood were no different than you are, and I value those humble and tender years of my life."

Having heard these individuals speak at the hearing, I understand fully that, based on their own beliefs and their perspective, they genuinely and truly feel that their air and water are being contaminated by the Landfill and that as a result, their health and well-being are being adversely affected.

I have no way of knowing whether their feelings and beliefs are representative of a majority of the community's members, but it would be a fair assumption to say that they are. Let me put it another way. Aside from several, young students who appeared in the last few days of the hearing and one or two individuals who at one time or another expressed their neutrality or support of the Landfill, there was not a time when a large group of citizens showed up as a bloc to indicate their strong support for the Landfill.

What is abundantly apparent to me, however, is that the great majority of citizens who made public comment definitely do not want the Landfill at its present location. What is also clear is that they genuinely believe the Landfill is the cause of many illnesses (possibly all of the illnesses) they have suffered throughout the years. But what has not been shown by them, other than by their own speculation, is a required cause and effect.

The high emotional and psychological aspects surrounding the citizens' negative view of the Landfill have caused their complaints and perceptions to become exaggerated. They have convinced themselves that any time they smell an odious odor or see a rat or cockroach or hear a complaint about the smell or taste of their drinking water, those things are caused or are somewhat related to

the Landfill's presence, despite the fact that objective evidence does not substantiate those claims.

In this respect, they appear to be driven by an anxiety that has manifested itself into an open, emotional, and often angry protest against the Landfill.

Some of them apparently believe, even if based on misconceptions, misunderstandings, or hearsay, that there are conspiracies among various parties, known or not known, including the Department, the EPA, and other federal agencies, whose purpose it is to hide the fact that the community's air and ground, as well as its water, are being contaminated by the Landfill.

To be sure, the citizens' negative views of the Landfill are not helped by several incidents of the past before Camino Real came into the picture. For example, there was bad will and suspicion created in the City of Sunland Park as a result of the medical waste incinerator incident that occurred back in 1991-92. That event still leaves a bad memory in the minds of the community's residents. The presence of Asarco nearby for a great number of years, which definitely has been shown to have polluted the ground and air in the area with dangerous substances, has also caused fear in the people that the Landfill is yet another polluter of their precious air and ground.

These phenomena apply equally to the citizens' concerns about their property and home values, which they generally believe are decreasing because of, or have been otherwise adversely affected by, the Landfill. Yet, this is contradicted by uncontested testimony indicating that in one of the city's newest subdivisions, which originated on land adjacent to the Union Pacific's railway

tracts (and which abuts Camino Real's property), the homes furthest from the Landfill were mostly manufactured or mobile homes on lots that sold for about \$21,000. The newest houses closer to the Landfill sit on lots selling for about \$23,000, an increase of lot value. These homes were not manufactured homes but houses built on site. Additionally, houses continue to be built on those lots closest to the Landfill. The testimony of one of the Applicant's rebuttal witnesses spoke to this issue and is reflected in the recommended findings. His testimony was contrary to the positions taken by the City of Sunland Park, its mayor, and several of the citizens who testified on this point.

In support of the citizens who made public comment, the Mayor and counsel for the City of Sunland Park, as well as the Other Parties, tried extremely hard to make their case that CRLF was a hardship they had to forebear and that it was injurious to their physical and mental well being. Despite their gallant attempt, the testimony failed to persuade me that their fears and concerns were well-founded.

A point germane to this discussion is the fact that during CRLF's 16 years in operation, Camino Real has never received a single notice of violation issued by the Department.

Most of the citizens that spoke during the public comment sessions stated consistently that Desert View Elementary School was "700 feet from the dump," even though none of them had actually taken the time to measure the distance from the school's boundary line to the property line of the Landfill. Yet, uncontradicted testimony clearly showed that the distance from the nearest

boundary of the school grounds to the nearest point of Camino Real's property boundary line measured 1,300 feet, almost double the distance claimed by the residents and well outside the minimum distance required by the regulations. This, to me, showed that some residents relied possibly on a sole source during some citizens' meeting to support their belief that the Landfill was simply too close to one of the community's schools. This did little to buttress the credibility of those witnesses.

I am not sure that anything can be done to sway the course of public opinion and distrust. There are apparently strong resistances to hear or listen to anyone say anything that contradicts their beliefs or casts doubt on the terrible things they believe are happening to their community due to the Landfill. There is an unwillingness to believe testing, analysis, investigations, and assessments coming from government sources or others they do not trust.

Dr. Devon Pena, a technical expert for the City of Sunland Park, stated otherwise to be sure, but I concluded he knew little about the Landfill or the citizens of Sunland Park. He believed he "knew" the community's citizens solely because he compared their frustrations and concerns over the Landfill with what he alleged were typically similar characteristics of members of other communities who have been downtrodden throughout their lives. He appeared overly zealous and seemed to come to the hearing ready to passionately take on the Landfill.

The City of Sunland Park had the opportunity to contest the Application on Environmental Justice principles by choosing a credible advocate to argue that issue on their behalf. Instead, the City made a tactical decision to rely on an

expert in Dr. Pena's field instead of an expert specifically versed in Environmental Justice. Although Dr. Pena was familiar with that concept, I found his knowledge somewhat marginal if not doubtful. My other comments concerning Dr. Pena appear in the Preface of the section entitled RECOMMENDED FINDINGS OF FACT at Page 189.

I reiterate what I have said before: All of the witnesses who spoke against CRLF strongly voiced their concerns for a multitude of reasons they themselves genuinely considered valid. Whatever the nature of their specific complaint, however, the true nature of their concerns was probably the Landfill's location; its proximity to Sunland Park, its schools, and the citizens' homes. This closeness, I think, forms the basis for their opinion that the Landfill is causing many of the ailments suffered by the community's citizens. But as I noted elsewhere, although a good majority of these witnesses were able to articulate well their reasons for their opposition, there was little in the admissible documentary evidence and testimony that supported their testimony; specifically, their complaints of ailments.

I concluded that they simply did not want a landfill they perceived was much too close to them for comfort. It was too close to their homes, their schools, and they suffered from it and would be made to suffer in the days to come should the extension be granted.

But based on the siting criteria and the health, hazard, and safety requirements under the regulations, I cannot accept, with all due respect to the citizens' opinions to the contrary, that opposition to location alone, without more,

forms a basis for a denial of the Applicant's renewal request. Despite its location, the evidence strongly supports a finding that CRLF is not a hazard to public health, safety, welfare, and the environment, and does not create an undue risk to property or a public nuisance.

Although I deeply respect the majority of citizens who testified about their fears, as I respect their right to express their views and concerns, I believe their protests were no different than those from citizens of other communities not only in New Mexico but throughout the country, who at some time or another, have opposed the granting of a permit for a landfill they feel is too close to their homes or businesses.

When expressing those protests, citizens of whatever age or culture generally complain of increased noise, odors, traffic, various health concerns, and generally, an adverse affect of their quality of life. They voice their concerns, citing the potential lessening of community spirit or the adverse affect on the pride of the community that may come about as the result of a landfill nearby.

These concerns are universal, though, however understandable they may be. They can be expected in any community, and anyone of us would find it hard to think that someone somewhere might respond with glee, "Great, they're building a landfill across the street from my house." Some have commonly referred to such protests as the "Not-in-My-Backyard" syndrome.

Despite the City of Sunland Park's citizens' complaints at the hearing that the Landfill is affecting their health, their well-being, and generally, their quality of life, I found no other testimony or other evidence to substantiate their subjective

complaints. I have kept an open mind when searching for such evidence in the hearing transcript, but found instead overwhelming evidence to the contrary. If I at any time during the course of this proceeding had found some basis for suspecting that under the circumstances of this case, the people of Sunland Park were being taken advantage of or were victims of disparate treatment under Environmental Justice considerations, I would have taken whatever steps necessary to satisfy myself that was in fact the case. But I found no such basis.

The facts of this case show a situation where it does not matter the quality of the Landfill. It matters not whether it is of premier quality or not; to the people, it is not just a dump but one in their own backyard. It could be the best of the best in the world, and it would not matter to them. Even the fact that the Landfill in its midst may successfully strive to be a clean, productive, and efficient industry, does not matter in these circumstances. No matter the quality, all that the residents see is a dump they would much rather see be located elsewhere, in someone else's backyard; any place but where they themselves chose to live.

The problem with this perspective, of course, is that it is not a consideration under the Act or regulations, unless it is shown that Environmental Justice principles or the requirements under the regulations have not been fully met. It is only in that manner that the citizens can help themselves and be helped. But the "Not-in-My Backyard" syndrome is not a basis for denial.

In closing, I am not insensitive to the testimony of Ms. Olga Arguelles, a citizen of Anapra, probably Sunland Park's poorest subdivision, who spoke of the plight of the children there. (See Summary of Testimony section at Pages

186-188 of this report.) Certainly, the deplorable conditions touched upon by Ms. Arguelles with such emotion must be and definitely should be addressed by state and federal agencies. But, based on my view of the evidence, the causes do not lie with the Landfill.

SUMMARY OF TESTIMONY

The testimony given at the hearing is summarized in the following order: Applicant's witnesses on direct and on cross examination; Bureau's witnesses on direct and cross examination; City of Sunland Park's witnesses on direct and cross examination; Other Parties' witnesses on direct and cross examination; Applicant's rebuttal witnesses on direct and cross examination. Witnesses are listed in the order they testified, unless noted otherwise. Subparagraph A for each witness contains a *general summary, gist, or substance* of each witness' testimony. Subparagraph B, on the other hand, sets out the *highlights* of each witness' relevant testimony, in brief outline form.

Applicant's Witnesses

1. Mark Turnbough, Ph.D., Systems and Environmental Consultant

A. Dr. Turnbough related the history of the Sunland Park landfill, as well as his own experience in landfill permitting, site selection and related work. He described the zoning and annexation decisions made regarding the landfill, and other aspects of the relationship between the landfill and the community. Dr. Turnbough addressed the facility's history of compliance with applicable regulations, including siting criteria and inspections of the facility by numerous governmental entities. He described the waste streams to the landfill and

addressed several allegations of improper waste acceptance. Dr. Turnbough described aspects of the public outreach which was part of the permitting process. He detailed the socioeconomic and demographic characteristics of the community population, and the positive trends in local economic development. CRLC does not pose a hazard to public health or welfare, and is not a public nuisance. The Landfill does not pose a hazard to the environment or create a risk to property.

B.

- 1) In 1986, Dr. Turnbough consulted with Bureau of Land Management to evaluate 14 landfill leases in Dona Ana County, each of which contained an unregulated dump. BLM closed 13 of the dumps ahead of the new federal landfill regulations; the 14th dump site, at Sunland Park eventually became CRLF. Vol. 1, pp. 88-90.
- 2) Dumping at the Sunland Park site had been long-term and extensive, covering an area from the escarpment to the access road, leading to dumping on the community side of the railroad tracks. Vol. 1, pp. 93-94, 98-99.
- 3) Waste on the escarpment included stable waste from the Sunland Park Racetrack, a large amount of which ultimately spontaneously combusted and smoldered for weeks at a time as an underground fire. Vol. 1, p. 97.
- 4) In 1986 the site was home for an army of large rats and a lot of mosquitoes. The county was responsible for oversight of the dump in

1986 but was only able to provide a bulldozer on a monthly circuit. Vol. 1, pp. 103-104.

- 5) In 1986 a private operator consolidated property at and near the dump site, including private and leased property, for a total of 610 acres, of which 480 acres comprises the current Landfill. Vol. 1, pp. 106-107.
- 6) Subsequently the owner initiated discussion with Dona Ana County to request a special use permit for a sanitary landfill, and in April 1986 the planning and zoning commission approved that permit. The approval document noted that the operator would provide solid waste disposal services for the southern part of the county, that the Landfill was compatible with existing land uses and contemplated future uses. Vol. 1, pp. 170-171.
- 7) A year later the City of Sunland Park annexed the facility, noting that the zoning of the property was subject to the use of the property for sanitary landfill purposes only. The landfill is considered light industry. Vol. 1, p. 172, Vol. 8, p. 2803.
- 8) At the time of these agreements with the County and the City (1986-87) no complaints from the community were expressed to the Department's predecessor, although later a medical waste incinerator run by JOAB at the site prior to Waste Connections' involvement caused a lot of suspicion, controversy and opposition. Vol. 1, pp. 173-174, Vol. 4, pp. 1422-1427.

- 9) The first order of business for the private operator was a massive cleanup program. The cleanup operation included a reduction of slope steepness and re-contouring. Cleanup proceeded steadily over five years and included cleanup outside of the landfill property into the area between the railroad tracks and the Meadow Vista subdivision. Vol. 1, pp. 174-177.
- 10) Although in 1996 and 1987 New Mexico required only a short-form registration of a landfill, the private operator also considered whether the site was geographically strategically located and suitable for long term use, in addition to being consistent with historical land use. Vol. 1, pp. 177-180.
- 11) CRLF meets minimum federal and state standards, including New Mexico's additional siting criteria that the bottom of a landfill cell must not be within 100 feet of the seasonal high water table. Vol. 1, p. 101.
- 12) The Landfill was the first facility permitted under the new state solid waste management regulation in 1991. The process included a hearing and negotiations with the department and concerned citizens. The negotiations resulted in the facility's voluntary agreement to install a Subtitle D synthetic liner. Vol. 1, pp. 181-185.
- 13) Buffer zone requirements that appeared first in the federal solid waste regulations in 1993 required a minimum distance of 500 feet from residences, schools, hospitals and churches. At the time of initial

permit application, the facility was approximately 1300 feet from each of these. Vol. 1, pp. 188-190.

14) Over the years the facility and the community have gotten closer. The facility boundaries have not changed substantially, but the active residential development is growing toward the landfill boundary. Vol. 1, pp. 194-198.

15) New homes built in 2007 closest to the landfill boundary are some of the largest and most expensive houses in Sunland Park. The Valle Vista Subdivision is a reflection of the decision to build homes notwithstanding adjacent land use. Vol. 4, pp. 1262-1265, 1397, Vol. 7, pp. 2467-2468.

16) A lot of literature has focused on the impact of hazardous waste disposal facilities on the value of adjacent properties, but there is a big difference between a hazardous waste facility and an ordinary solid waste disposal facility, and the studies have drawn inconsistent conclusions about the effect of a solid waste facility on property values. Vol. 4, pp. 1400-1403.

17) The 2000 census shows the population in Sunland Park as 13,309 persons, a substantial increase from the 1990 census figure of 8,179 persons. Sunland Park is growing rapidly, more rapidly than Dona Ana County and the state of New Mexico. It is an economically emerging area, outperforming most comparable communities, primarily the result

of leadership and infrastructure developments. Vol. 1, pp. 204-205,
Vol. 4, pp. 1395-1396, 1406.

18) Approximately 96 1/2 percent of the population is Hispanic or Latino, higher than the percentage for Dona Ana County (63.4%) and the state of New Mexico (42.1%). Sunland Park is also generally younger relative to the county and the state. Formal education attainment is lower, but the Gadsden school district is showing leadership, and there is a new branch campus of the community college. Vol. 1, pp. 206-209.

19) Although the 2000 census shows higher unemployment in Sunland Park than in Dona Ana County, there is higher unemployment in the county than in the state and Dr. Turnbough anticipates an uptick based on more recent activity. Vol. 1, pp. 209-210.

20) The new facility entered into a host agreement with the City in April 2001, tracking federal legislation that dealt with interstate transportation of solid waste. The compensation in the agreement was not compensation for increased risk, but to develop status as a good corporate citizen and to integrate with the community to plan future activity. Vol. 1, pp. 213-214.

21) The host fee negotiated was 3% of the gross revenue on a monthly basis in addition to in-kind services rendered such that payments to the City effectively totaled 7.7% of gross revenues. These contributions were voluntary. Vol. 1, pp. 217-219, pp. 221-222, Vol. 4, p. 1408.

22) From the time this facility was permitted in 1991, the Landfill has not knowingly taken any prohibited item, and has been vigilant about not accepting medical waste or hazardous waste they are not permitted to accept. When suspect waste has been received, they have staged it off of the working face and physically inspected it. If acceptance of the waste would violate the permit, it has been turned back to the generator and reported to the Environment Department. Vol. 1, pp. 222-230.

23) In one instance in which an internal audit by Phelps Dodge revealed they had sent unacceptable waste that was already buried, an independent third-party performed a risk assessment on fate and transport of the material. They concluded that there was no risk of material migration, and CRLF continues to monitor the leachate. Vol. 1, pp. 231-234.

24) In 1993 EPA Region 6 conducted an extensive multimedia investigation of the facility and a reconnaissance of the community. Sunland Park citizens had expressed concern to EPA about medical and hazardous waste disposal. EPA collected soil and water samples in the disposal area and hydrocarbon treatment area. They also took air-quality samples. EPA found no evidence of any hazardous waste contamination at the landfill. Vol. 1, pp. 235-237.

25) The first major health reconnaissance study conducted in Sunland Park was by the Agency for Toxic Substances and Disease Registry

(ATSDR), part of the Center for Disease Control. The agency did confirmatory sampling and found no apparent linkage between community health conditions and the landfill, and that the landfill was properly operated. Vol. 1, pp. 239-240.

26) Later the New Mexico Department of Health conducted a study at the request of the Environment Department. The health reconnaissance was much more detailed than the ATSDR's, and included Phase 1 physical exams for individuals who had expressed concern. The study found a fairly typical range of physical maladies common to lower socioeconomic communities with poor access to public health care and few resources to travel to health delivery systems outside of the area. Vol. 1, pp. 240-241.

27) Additional inspections have also been performed at the Landfill. In response to citizens' concerns, the Department conducted an intensive campaign of inspections. From 1992 to 1996, there were 46 inspections by Department inspectors. From 1997 to 2007 there were an additional 25 inspections. Most of these inspections were not announced. Vol. 1, pp. 249-251, Vol. 7, pp. 2430-2432.

28) CRLF has never been issued a citation or notice of violation. Vol. 1, p. 251.

29) The Application complies with the Department's regulations. CRLC does not pose a hazard to public health or welfare, and is not a public

nuisance. The Landfill does not pose a hazard to the environment or create a risk to property. Vol. 1, pp. 252-253.

30) There are continuous discussions about the operating parameters at the Landfill, including the hours of operation. The dilemma is that those collecting solid waste in the commercial market area have to get in and out before traffic congestion becomes such the waste cannot efficiently be moved. The Landfill is considering different dispatch configurations to limit the number of trucks idling at the gate, based on concerns about vehicle noise. Vol. 4, pp. 1258-1261.

31) From the nearest point of CRLF boundary to the perimeter area of Desert View Elementary School is 1300 feet. Vol. 4, pp. 1271.

32) Historically, the Landfill has tried to keep trucks out of neighborhoods and school zones. Traffic routing has included considerations of road conditions, distance and traffic loading. A potential access road parallel to the railroad tracks was abandoned because of negotiation difficulties with Union Pacific, a route through the Verde property is cost prohibitive in construction and fuel, and a potential route through the Riverside Elementary School zone would present a safety issue and increase the distance of the haul route and diesel fuel use significantly. Vol. 4, pp. 1330-1334, Vol. 5, pp. 1722-1723, 1728-1730.

33) The City of Sunland Park is no longer disposing its solid waste at the Landfill, and has pulled out of the host agreement; CRLC does accept waste from residents once a month. Vol. 4, pp. 1409-1413.

- 34) The Application was not written in Spanish because its primary purpose is to provide the Department with the information required for its evaluation of the technical requirements, and Spanish is not required. When the Landfill published the Community Impact Assessment (CIA), which includes demography and socioeconomic status, it contracted with a certified translator and made it available in Spanish at several locations in the community. Vol. 5, pp. 1820-1821.
- 35) CRLC follows and exceeds the design and operational standards developed by the EPA to protect human health and the environment; Subtitle D criteria were established to ensure that “no reasonable probability of adverse effects on health or the environment will result from solid waste disposal facilities or practices.” Vol. 5, pp. 1838-1839, Vol. 7, pp. 2427-2430.
- 36) Waste going to CRLF comes from El Paso, North Chihuahua, along the frontier, and the industrial parks, from southern Dona Ana County. The waste stream is top-heavy in terms of commercial quantities; most of the El Paso residential waste ends up at the Clint landfill. The Landfill does not accept any offal, ash or infectious waste. Vol. 7, pp. 2436-2437, Vol. 8, p. 2800.
- 37) 20 NMAC 9.3.18 .A provides for the review of site suitability and the demonstration that an applicant has knowledge and skill to properly operate a facility. Meeting these standards indicates that an adverse effect or hazard to public health will not be created, but the voice of the

community must also be considered. If somebody has a concern that isn't addressed by one of these technical requirements, that concern must be investigated. A concern about a nuisance can be addressed with a permit condition while a valid concern about a hazard can be the basis for denial of a permit application, unless it can be addressed by a condition. Vol. 7, pp. 2442-2449, Vol. 8, pp. 2986-2987.

38) The Department pursued meaningful community involvement and held numerous meetings with a community multi-Bureau team. The Department also delayed deeming the Application complete as it worked to address community concerns. Vol. 7, pp. 2449-2453.

39) The Applicant also worked to ensure meaningful involvement of the community and developed study tasks and scopes to evaluate community concerns, focusing on traffic, noise, odors and air. CRLC also hired a public relations firm to assure community awareness of its work and made community outreach efforts. Vol. 7, pp. 2454-2456.

40) Dr. Turnbough has worked in other border communities; Sunland Park is much better off than nearly all of the communities he's worked with in the lower valley of El Paso County and the communities in the lower Rio Grande Valley; he sees clinics, organized civic life, more economic viability, more state and federal money made available, paved streets and other infrastructure, and effective advocacy on behalf of the community. Vol. 7, pp. 2462-2465.

- 41) CRLF has a slightly positive influence on the local economy; it hires people from the Sunland Park area. Vol. 7, p. 2466.
- 42) The Verde group has taken over the Santa Teresa industrial park project, master planned the whole area, and plan to develop in Sunland Park as the institutional center of their concept. The property immediately west and north of the Landfill is scheduled for residential and commercial development; other planned development beyond the existing race track, casino and amusement park includes a dinosaur museum and an IMAX theater. Vol. 7, pp. 2468-2474.
- 43) The Verde Group Santa Teresa project manager and the operator of the casino have both indicated that they value the Landfill and require a relatively close source of waste disposal. The Verde project manager also stated that the Landfill would eventually need to be relocated in order to viably develop the surrounding area, but he was talking about a long time horizon. Considering the investment that has been made, the value of the remaining airspace, and the capacity of the facility, the cost of finding and characterizing a new site within the same relative distance of the market area would approach half a billion dollars. Vol. 7, pp. 2477-2478, Vol. 9, pp. 3247-3249.
- 44) Regarding concerns that Asarco waste has been buried at the Landfill, available documentation indicates that only non-hazardous waste has come to CRLF. Vol. 7, pp. 2479-2481.

- 45) The Department received an anonymous complaint that medical waste was coming into the Landfill and a team came down to go through every bag and every truck for about a week. They found a small amount of medical waste generated by household uses and some documentation linking waste to practically all of the hospitals in the area, waste that had been disposed of in white bags rather than red bags. The waste was set aside, not buried, and the Landfill informed generators they would stop taking their waste if they could not assure future compliance. CRLF has not accepted waste from these hospitals since August 2006. Vol. 7, pp. 2481-2483, Vol. 8, pp. 2800-2802.
- 46) A claim that medical waste had come in from Mexico was investigated; it turned out to be food quality dyes. Vol. 7, p. 2484.
- 47) Asbestos can pose a danger to workers and CRLF isn't permitted to accept it. There was an attempt at the El Paso power plant demolition project to plant asbestos in one of the loads, but the landfill was notified and in turn notified THE DEPARTMENT, double bagged the waste and returned it to El Paso Electric, which was cited for a violation. Vol. 7, pp. 2485-2487.
- 48) The complaint that medical waste has been burned at the Landfill is urban legend; the incinerator was dismantled in 1993 and no medical wastes have been burned since. Vol. 7, pp. 2487-2488.
- 49) There have been complaints about odors and the Landfill has tried to identify the sources of those odors. Many of the complaints are about

odors at night, but CRLF does not accept waste at night and the waste already accepted has been covered with soil by 4 p.m. Dr. Turnbough has detected odors from the stables and the sludge drying beds at the City's wastewater treatment plant. Vol. 7, pp. 2488-2491.

50) There is no nexus between Asarco's and the Landfill's operations; investigations on that issue were conducted by EPA, the Department, the Agency for Toxic Substances and Disease Registry and the New Mexico Department of Health. EPA conducted a multimedia inspection of CRLF in 1993 and found no lead contamination; Asarco was still operating then. Vol. 7, pp. 2492-2493.

51) Dr. Turnbough has never found anything related to CRLF causing hazards to public health, welfare or the environment, or undue risk to property. Vol. 7, p. 2506.

52) In March 2007, Dr. Turnbough went to review preliminary conceptual plans produced by the Polyzoides Group, and heard an economist, Mr. Berg, state that the Landfill was a hazard to the community and would preclude implementation of the City of Sunland Park's Master Plan. Dr. Turnbough approached Mr. Berg to request the basis for his statements, but Mr. Berg ended the conversation abruptly after admitting that he wasn't familiar with New Mexico's regulations, hadn't been at the site and didn't have factual information about soil types there. Dr. Turnbough denied threatening Mr. Berg physically or with a lawsuit. Vol. 14, pp. 5734-5744.

2. Carol Condie, Ph.D., Anthropologist and Principal Archeological Investigator

A. Dr. Condie described her qualifications and the archaeological survey, testing and excavation she performed at CRLF in 2005-2006. Dr. Condie also described other archeological surveys at the site, and addressed potential impact on 27 other sites up to one half mile from the Landfill boundaries. There are no sites within the boundaries of the Landfill that qualify as being archaeologically or historically significant.

B.

- 1) Dr. Condie performed an archaeological survey at the Landfill in 2005, and archaeological testing and excavation in 2006. Vol. 2, p. 406.
- 2) A prior archaeological study of the Landfill property done in 1988 when it was BLM land had identified two archaeological sites, one of which was deemed in 1994 by the Office of Contract Archeology to be too badly disturbed to conduct testing or excavation. Vol. 2, pp. 407-409, 488.
- 3) Dr. Condie's investigation at the other site, a lithic scatter of chipped stone 30 feet from a bone scatter, included 47 one-meter by one-meter test pits, but did not reveal human involvement or anything of cultural significance. Vol. 2, pp. 410-415.
- 4) The state historic preservation officer (SHPO) concurred with Dr. Condie's conclusion that the tested site was not significant or eligible for the National Register of Historic Places, that no additional work

should be done at the site, and that the Landfill should proceed. Vol. 2, pp. 415-416.

- 5) Dr. Condie performed her work at the Landfill as a subcontractor to Gordon Environmental (not METRIC Corporation). No one from the Landfill directed her work or performed any of the testing. Vol. 2, pp. 469-70, 475-477.
- 6) There are no sites within the boundaries of the Landfill that qualify as being archaeologically or historically significant. Vol. 2, p. 481.
- 7) Dr. Condie's report includes a reference to 27 other sites within an area that is one third to one half mile from the Landfill boundaries, some of which were lithic scatters and some of which included pot shards, but none of the 27 sites is near enough to be affected by activities at the Landfill. Vol. 2, pp. 491-496.

3. Joe King, Ph.D., CREC Former General Manager and CEO

A. Dr. King related his qualifications and work history. He described how waste enters the Landfill, how it is inspected, and how the Landfill has addressed complaints of odors. Dr. King described the acceptance of special waste, employee training and certification and other operational activities.

B.

- 1) Although waste now enters in trash vehicles from McNutt onto CRLF's entrance road, the entrance used to continue to Cristo Rey Road; as part of its host agreement with the City of Sunland Park, in 2001 CRLF

moved the access road further away from the community and toward a natural lift with a high dirt profile. Vol. 2, pp. 537-539.

- 2) Signage for trucks begins at McNutt and continues to the Landfill gatehouse, which is attended 24 hours a day, either by a gatehouse operator or a security guard. Vol. 2, pp. 540-541.
- 3) All waste loads coming into the Landfill receive a gatehouse receipt, reflecting the generator, type of waste, rate charged, volume, driver's signature, time of entry and exit and the name of the scale master. Vol. 2, pp. 541-543.
- 4) Every employee at CRLF is taught waste screening, which includes inspections done at the gatehouse, in addition to a video camera system that records all vehicles entering from multiple angles. Vol. 2, pp. 543-544.
- 5) CRLF paved the road from McNutt to the entrance in 2004 -- 05. After leaving the gatehouse, the roads are dirt roads to the active portion of the Landfill, or tipping area, which has an upper lift and a lower lift to separate commercial vehicles from residents as a safety measure. Vol. 2, pp. 545-546.
- 6) The tipping area or working face is less than an acre, usually 150 to 300 feet; it is kept small and covered every day with 6 inches of soil in order to manage odors, prevent fires, scavenging and vectors, and to help control blowing litter. Vol. 2, pp. 546-548.

- 7) All Landfill staff have been ordered to identify odorous loads coming into the Landfill so that they can be immediately covered to eliminate the odor; the loads with the strongest odor potential contain sludge from Sunland Park, twice a week. Vol. 2, pp. 549-550.
- 8) In addition to the initial inspection of all waste loads at the gate, there are more thorough daily random inspections of commercial vehicles which include a report, and may include action if it is a noncompliant load. Vol. 2, pp. 554-557.
- 9) CRLF is not permitted to take hazardous waste of any kind, either listed or characteristic. Vol. 2, pp. 558-561.
- 10) CRLF is permitted to take three types of special waste: wastewater treatment plant sludge, petroleum contaminated soils, and industrial solid waste, i.e. waste generated through an industrial process. Vol. 2, pp. 561-562.
- 11) Very little sludge is accepted; it comes from the City of Sunland Park, from the City of Hatch, and occasionally from Fort Bliss. CRLF received sludge from Holloman Air Force Base once a year between 2000 and 2005. Sludge is dried prior to delivery to the Landfill, where it must pass a paint filter test to show that it is not liquid. Vol. 2, pp. 563-567, Vol. 5, pp. 1807, 1809.
- 12) CRLF is permitted to accept petroleum-contaminated soils and to land-farm them until they have been treated, but since June 2002 chooses to take only soils which already meet treatment standards, and have

become ordinary solid waste. Vol. 2, pp. 568-569, Vol. 4, pp. 1288-1289, Vol. 5, p. 1804.

- 13) The majority of the industrial waste coming to the Landfill is from maquiladoras, also called twin plants. Examples of maquiladora waste include fabric, rubber and paper scrap, all of which arrives in closed containers during the day. Vol. 2, pp. 569-572.
- 14) CRLF does not accept medical waste or liquid waste or waste in drums. Medical waste disposed of as normal trash by the hospitals has been intercepted, isolated, reported to the Department and the generator, and typically manifested and removed by a medical waste company like Stericycle. Vol. 2, pp. 573-574, Vol. 4, pp. 1290-1291.
- 15) Every truckload of special waste is inspected regardless of how many arrive each day, and all special waste is accompanied by documentation including manifests and goes through multiple screening levels prior to coming to the Landfill, including proof that the waste is not hazardous. Vol. 2, pp. 577-580.
- 16) The Landfill is seeking to accept fewer special wastes than it has in the past and has two special waste management areas: an area where maquiladora trailers are temporarily stored for inspection and a petroleum-contaminated soil area. Vol. 2, pp. 581-583.
- 17) CRLF meets all regulatory requirements for the handling of special wastes. Vol. 2, p. 583.

- 18) The Landfill employs 32 people and includes several on-site certified Landfill operators, although only one is required and must merely be available, not on site. Vol. 2, pp. 584, 595.
- 19) The regulations require that all industrial waste be treated as special waste based on the fear that the industrial process is more likely than a household to contaminate a waste stream, and therefore warrants greater care and scrutiny. Vol. 2, pp. 586-588, 594.
- 20) Every CRLF employee goes through an intensive waste screening program annually in order to reduce the potential for receipt of unauthorized waste, and to be taught the procedures to be followed in the event a suspicious waste stream is identified. Vol. 2, pp. 596-597.
- 21) Nonconforming loads of maquila waste are found once or twice a year. Vol. 4, p. 1286.
- 22) CRLF has received several awards for excellence in solid waste management and provides support to the local community, financially and with in-kind services, in multiple ways. Vol. 2, pp. 598-603.
- 23) The Landfill takes municipal and commercial waste from El Paso, and Waste Connections owns El Paso Disposal Company. Over the years the disposal company has hauled some industrial waste but today does not haul any maquiladora waste. Vol. 4, pp. 1278, 1280-1281.
- 24) The Landfill has never been on fire, although Dr. King has seen smoke from a smoldering underground fire on land that does not belong to the

Landfill. Smoldering trash from the old landfill disposal area was dug out and moved to a lined cell. Vol. 4, pp. 1292-1293.

25) Operating conditions are varied in response to high wind; the Landfill closes if visibility becomes a health or safety risk, and clients are limited on very windy days in order to prevent blowing litter. Vol. 4, p. 1293.

26) Other landfills include the Corallitos Landfill in Las Cruces, approximately 45 miles from Sunland Park, and Clint Landfill in the City of El Paso, approximately 37 miles from Sunland Park. Vol. 5, pp. 1739-1740.

27) There have been attempts to dispose of asbestos at CRLF, but the Landfill dealt with it within the regulations, and the asbestos was sent either to Keers Environmental, 90 miles away, or Lincoln-Otero County Landfill, 45 miles away; both are authorized to accept it. Vol. 5, pp. 1811-1812.

4. Thomas Reilly, CREC Western Regional Engineering Manager

A. Mr. Reilly described operational activities at the Landfill, monitoring and reporting, corporate compliance history and financial assurance. The Application for permit renewal complies with the New Mexico Solid Waste Management Regulations.

B.

- 1) At the Landfill working face a compactor tears the waste and compacts the refuse while a scraper hauls dirt from a future refuse cell to cover the face with soil, to control odors, vectors and litter. Vol. 2, pp. 611-612.
- 2) A landfill is constructed in lifts 15 to 20 feet high, with an intermediate cover of 6 inches of soil and a final daily cover of another 6 inches of soil. The community will see the Landfill operation as a new berm is being constructed but most of the activity is done behind the berm. Vol. 2, pp. 613-614.
- 3) A liner is part of a sanitary landfill along with a layer of sand or gravel and the liner is sloped so that leachate moves to a sump and is pumped out. Groundwater is monitored beneath the Landfill, up-gradient and down-gradient. Vol. 2, pp. 615-616.
- 4) Landfill gases generated during decomposition of waste are collected in 52 gas collection wells and destroyed in a flare. Vol. 2, pp. 615-618.
- 5) The facility submits an annual report to the Environment Department which includes the inspection and screening plan and all environmental monitoring results. Last year's report reflects no indication that the site impacts groundwater or any exceedances of Landfill gases. Vol. 2, pp. 619-621.
- 6) CRLF has a Plan of Operation which identifies design and operation practices used to protect the environment and public health and safety

and welfare of the surrounding community. This plan includes discussion of compaction, cover, dust control, protection from wind, litter control, vector and odor control, access to the facility and security, specialized equipment, traffic and transportation, interruption in service, and emergency situations. Vol. 2, pp. 622-637.

7) CRLF's regulatory compliance history is excellent; they have never been cited for a violation, been found to be in willful disregard of environmental laws, or had a permit revoked. Waste Connections' regulatory compliance history includes notices of violation, but is very good. All required disclosure forms were submitted. Vol. 2, pp. 637-640.

8) Financial assurance for CRLF is provided by Waste Connections through performance bonds from a credit-worthy entity. The bonds are based on cost estimates for closure, post-closure and environmental assessments and are adjusted annually for inflation. Vol. 2, pp. 641-642.

9) The Application for permit renewal complies with the New Mexico Solid Waste Management Regulations. Vol. 2, p. 643.

5. Ian Keith Gordon, Principal Engineer

A. Mr. Gordon described his work history, the major components of the Application, and the regulatory requirements to renew a landfill permit. He also

discussed the requested permit modification, the location of the flare, leachate generation and the contours of the anticipated final landfill elevation.

B.

- 1) The Application includes Landfill management plans, engineering calculations, siting compliance and land use information, subsurface investigation results and a new groundwater monitoring plan, as well as administrative documents and the required fee, and was filed March 6, 2006, one year prior to the expiration of the current permit. Vol. 3, pp. 759-762.
- 2) Camino Real is seeking both to renew and to modify its permit; the modification reflects only an extension into a new area of their environmental monitoring systems. Vol. 3, pp. 765-766.
- 3) Public notice was given of the Application in English and in Spanish by mailing, posting and publication to all required entities, to potentially interested entities and to concerned citizens, beyond what was required. Camino Real also provided copies of the Application for review in seven publicly accessible locations. Vol. 3, pp. 767-770.
- 4) Between the time of submittal and the time the Application was deemed substantially complete by the Solid Waste Bureau in October 2007, several meetings were held to discuss the Application, including the drilling and testing program, and additional information was supplied in response to formal requests. Vol. 3, pp. 771-773.

- 5) A landfill cell is a subcomponent of a unit; typically each cell has its own leachate collection system and liner system, and ranges in size from five to 20 acres. Vol. 3, pp. 774-775.
- 6) An intermediate grading plan is required in order to properly manage the storm water that sheds from the Landfill as it's being developed, and a soil quantity analysis is performed to assure enough soil for ultimate capacity and cover. Vol. 3, pp. 778-780.
- 7) The Landfill meets all 18 siting requirements in the solid waste management regulations, including those designed to protect surface and ground water, aircraft safety, and threatened and endangered species. Vol. 3, pp. 781-785.
- 8) Engineering calculations prepared for the Application included volumetric, settlement, slope stability analysis, compatibility, pipe loading, drainage, and the demonstration using the HELP model required to show that the liner will function properly. Vol. 3, pp. 786-787.
- 9) The four-layered liner system has proven effective at managing leachate and containing fluids within individual cells and units. Vol. 3, pp. 788-791.
- 10) Management plans developed for the Landfill include a Plan of Operations, Contingency Plan, Construction Quality Assurance Plan, Closure/Post Closure Plan, Landfill Gas Management Plan, Leachate Management Plan, Special Waste Disposal Management Plans,

Transportation Plan and Storm Water Management Plan. Vol. 3, pp. 794-799.

11) The regulations require the Landfill to manage at least a 25-year/24-hour storm event. In August 2006 the Landfill withstood a storm event in excess of a 500-year storm event; all storm water was retained within the storm-water control systems and not released offsite. Vol. 3, pp. 799-801.

12) The proposed modification of the Landfill permit does not involve a lateral expansion; Phase 3 was identified for future development in both previous application proceedings. Vol. 3, pp. 806-807.

13) Neither the Landfill nor the renewal of its permit poses a hazard to public health, welfare or the environment. Vol. 3, pp. 807-808.

14) The Landfill has no plans to expand to the north in future permit cycles; there is a grade break which would make it impractical. Vol. 4, p. 1266.

15) Landfills near affluent areas in the state of New Mexico include Sandoval County, Rio Rancho and the City of Roswell. There is a \$1.4 million home adjacent to Sandoval County Landfill; the nearest residence to the Roswell Landfill is more rural, approximately 800 feet distant; and the nearest residence to the Rio Rancho Landfill is 500 feet from the disposal area and much closer to the property line. Vol. 4, pp. 1415-1419.

- 16)The surfactant sprayed for dust control cannot be smelled, even when hit with rainfall. Vol. 5, pp. 1629.
- 17)The flare is behind a berm on the side of the Landfill property near a residential area for several reasons; there are no safety issues with the location and no circumstance with the flare or blower unit would represent any risk or danger to the community. Vol. 5, pp. 1658-1663.
- 18)The anaerobic stage of waste decomposition is not necessarily connected to the production of leachate. Typically peak generation for leachate occurs 15 years after the placement of the waste. At some point there is no measurable gas being produced by the waste and if at 30 years there is still a measurable quantity of Landfill gas, the gas collection control system would continue to be operated. Vol. 5, pp. 1668, 1680.
- 19)Studies of projected longevity of the HDPE liner show a half-life of 400 years, and there is a secondary clay liner underneath. Vol. 5, pp. 1684-1685.
- 20)At the end of this 10-year permit renewal, when Unit 3 is completed, the mound will be 60 feet higher than the existing elevation of the surrounding terrain and further back than it is now, or 80 feet above the highest current point. Vol. 5, pp. 1923-19.

6. David Bleakly, Botanical and Biological Surveyor

A. Mr. Bleakly described his work experience, and his biological survey of Unit 3 at the Landfill, searching for wetlands and critical habitat.

B.

- 1) Mr. Bleakly's biological and botanical survey of Unit 3 of the Landfill revealed no wetlands, no hydrophytic plants, and no indications of hydric soil or wetland hydrology. There are no water courses and no wetlands on the site. Vol. 3, pp. 819-822.
- 2) Mr. Bleakly found no threatened or endangered plant species or threatened or endangered animals within the site area. Vol. 3, pp. 824-826.
- 3) Mr. Bleakly's conclusions were reported and reviewed at the Department of Game and Fish and the Fish and Wildlife Service; the Department of Game and Fish granted a letter of clearance. Vol. 3, pp. 828-829.
- 4) CRLF will not have a negative impact on any listed or rare species of animals or plants, and it is not within a watercourse, a wetland or a floodplain. Vol. 3, p. 829.
- 5) Mr. Bleakly was paid approximately \$2000 for this work. Vol. 3, p. 836.
- 6) Mr. Bleakly's conclusions are consistent with those reached in another survey performed 10 years ago that no critical habitat would be affected by the operation of the Landfill and that it is unlikely for

any threatened or endangered species to be on the site. Vol. 3, p. 880.

7. Larry Coons, Professional Engineer and Hydrogeologist

A. Mr. Coons described his work history, regional and site geology and hydrogeology. He also discussed potential faulting beneath the Landfill.

B.

- 1) Mr. Coons' assessment of the geology and hydrogeology of the Landfill area, studied numerous times between 1988 and 2006, shows that the site provides an excellent natural setting for a municipal landfill. Vol. 3, pp. 894, 905.
- 2) Regional groundwater flow in the basin is from the northwest toward the southeast. Vol. 3, p. 903.
- 3) The most recent site characterization program undertaken shows site geology to be a sequence of sediments consisting predominantly of sands and silt sands with interbeds of siltstones, mud, and mudstones. Vol. 3, pp. 922-923.
- 4) The uppermost aquifer beneath the Landfill site is a fine-grained, weakly consolidated silt sandstone. Vol. 3, p. 926.
- 5) All Landfill cells have been designed such that the minimum separation distance between the base of the cell and ground water is 160-165 feet; depth to the uppermost aquifer is generally 140-400 feet. Vol. 3, p. 928.

- 6) All siting criteria relating to the hydrogeology of the site are met, including seismic impact zone and slope stability. Vol. 3, pp. 930-936.
- 7) The Landfill and permit renewal do not pose a hazard to the uppermost aquifer, to public health or welfare or the environment. Vol. 3, pp. 952-953.
- 8) No information, including numerous borings and wells at the site, indicate any displacement or faulting beneath the Landfill. Vol. 5, pp. 1794, 1798.

8. Michael Crepeau, Manager for Environmental Monitoring and Compliance Reporting

A. Mr. Crepeau described his experience and the monitoring and compliance reporting activities at the Landfill, including controls for dust and other air contaminants, and controls for water pollution, leachate and landfill gasses.

B.

- 1) The Landfill has taken several measures to control fugitive dust: it limits vehicle speed on site to 15 mph, applies 96,000 gallons of water daily to landfill roads and other areas subject to wind erosion, applies 5,000 gallons of chemical surfactants quarterly to form a wind resistant crust, and limits site access to a single point of ingress and egress. Additionally, the Landfill has installed wind fencing, and

applied hydro seeding, and the natural topography helps mitigate wind erosion effects. Vol. 3, pp. 956-958.

- 2) Camino Real has a Title V air quality permit, and is required to meet state and federal air quality standards for fugitive dust, sulfur dioxide, oxides of nitrogen and carbon monoxide. The Title V permit imposes numerous monitoring and reporting requirements. Vol. 3, pp. 958-960, 962-963.
- 3) The Landfill's Storm Water Pollution Prevention Plan was developed to prevent the discharge of pollutants to receiving waters of the United States by identifying potential sources of pollution and best management practices to prevent that pollution from entering surface water. Vol. 3, pp. 965-966.
- 4) The Landfill's Leachate Management Plan currently provides for leachate to be pumped from a manhole to a tanker truck, taken to the active fill face and sprayed on the waste mass under the daily cover. In the Application, the Landfill is proposing additional alternatives, which include disposal at a publicly owned treatment work or liquid processing facility, and the use of dilute leachate for dust control. CRLF actively samples and analyzes its leachate, although it is not required to. Vol. 3, pp. 967-969.
- 5) The Landfill's gas collection and control system consists of 52 active landfill gas extraction wells; they are also proposing a gas recovery

system such that methane could be put to beneficial use. Vol. 3, pp. 970-976.

- 6) The Landfill's gas monitoring shows that since the issuance of the 1997 permanent methane concentrations have been below regulatory requirements, and the Landfill is proposing to reduce monitoring frequency for the permanent probes, as well as the elimination of annual borehole probe monitoring. Ten new perimeter probes are planned for the site along the southern and western boundaries. Vol. 3, pp. 976-980.
- 7) The current operation of CRLF is in full compliance with federal and state regulations pertaining to landfill gas. Vol. 3, p. 983.
- 8) The Landfill's ground water monitoring program currently consists of semiannual sample collection and analysis of groundwater samples from each of the site's six monitoring wells. Each of the wells is screened in the uppermost water bearing unit at the site and is capable of detecting a potential release from the Landfill. Vol. 3, pp. 984, 990-991.
- 9) Two new monitoring wells are proposed as the waste filling sequence progresses into Unit 3. Vol. 3, pp. 994-995.
- 10) Landfill operations have had no impact on groundwater quality beneath CRLF. Vol. 3, p. 999.
- 11) The Landfill's updated Closure/Post Closure Plan includes cost estimates developed for the site, maintenance of control systems and

groundwater assessments, and fully complies with the solid waste management regulations. Vol. 3, pp. 1000-1006.

12)CRLF and permit renewal do not pose a hazard to public health or welfare, property or the environment. Vol. 3, pp. 1006-1007.

13)The flare has demonstrated 98% destruction efficiency of landfill gas. As required, emissions from the flare have been broken down into three primary criteria pollutants: sulfur dioxide, nitrogen dioxide and carbon monoxide, and all of these emissions meet standards. Vol. 5, pp. 163-1641.

14)The flare is located behind the berm for three reasons: condensate management, site security and proximity to active landfill operations. Vol. 5, pp. 1658-1659.

15)The proposed semiannual leachate analysis incorporates a list of more than 50 organic and 44 inorganic parameters specified for ground water monitoring; the Landfill also collects and analyzes samples for biochemical oxygen demand, chemical oxygen demand and phosphates. Vol. 5, p. 1664.

16)CRLF produces approximately 20 gallons of leachate per day, and pumps approximately 1200 gallons of leachate quarterly from the sump system. Vol. 5, pp. 1802-1803.

9. Nevin Harwick, Traffic Operations Engineer

A. Mr. Harwick described his background and his role in this project: to do a traffic impact analysis, to review existing conditions and projected conditions at the end of the permit period, and to conduct a safety assessment and speed study of the vehicles on McNutt Road.

B.

- 1) McNutt is a state highway and arterial roadway, as is Racetrack Drive and Country Club Drive; arterial roadways are the most functional classification and should be designed to support heavy trucks. Vol. 3, pp. 1015-1017.
- 2) Estimated average daily traffic on roadways of concern show a significant reduction of traffic on Racetrack Drive because of the addition of Sunland Park Drive. The late afternoon peak has the greatest volume of traffic, but does not reflect a lot of solid waste vehicles. During the morning peak there are a moderate number of trucks, increasing near Camino Real Blvd., but the overall percentages are not extremely high. Vol. 3, pp. 1023-1026.
- 3) Not everyone turning off of McNutt onto Camino Real Boulevard is going to the Landfill; of over 1000 vehicles, 577 vehicles were landfill related, and on McNutt itself 3% of the total traffic is landfill-related. Vol. 3, p. 1027.
- 4) Levels of service are graded A through F, ranging from almost no delay whatsoever to potential for excessive delay at an intersection.

For each road intersecting McNutt, at the a.m. peak, level of service is acceptable in 2007 and projected in 2017 for each of the intersections except Camino Real Blvd, which will degrade to level of service F based on background growth of the population. Vol. 3, pp. 1033-1038.

- 5) The projection for 2017 does not suggest that traffic is going to come to a stop; while the volume will increase significantly, there is excess capacity now at the Landfill intersection and each of the other existing intersections. The grade level for CRLF will be similar to each of the side streets feeding into McNutt in this area. Vol. 3, pp. 1039-1040.
- 6) Mr. Harwick's traffic survey examined safety issues and in particular the severity index, or percentage of crashes resulting in injury or fatality. The severity index for the 7-mile stretch of McNutt Road near the Landfill was 38, Doña Ana County has a severity index of 37, the state of New Mexico has a severity index of 36, and the community of Sunland Park has a severity index of 45. Heavy vehicles are underrepresented in the vehicle crashes. McNutt Road was the only road in Sunland Park with a concentration of accidents. Vol. 3, pp. 1046-1051, Vol. 5, pp. 1609, 2324-2325.
- 7) Landfill trucks do not compromise vehicular safety in Sunland Park, and the roads surveyed are suitable for landfill traffic. They did not note operational or safety deficiencies in traffic patterns. Vol. 3, pp. 1052-1053.

- 8) Although concerns were expressed at public meetings in 2005 or 2006 about landfill vehicles cutting through on 5th St to get to Camino Real Blvd., McNutt Road was being widened at the time and drivers were seeking alternate routes of travel. The construction project has since ended; he nevertheless suggested that the Landfill erect signage to direct drivers away from the neighborhoods and off of 5th Street. Vol. 3, pp. 1053-1055.
- 9) Traffic in Sunland Park does not pose a hazard to public health, welfare or the environment, or pose a risk to property. Vol. 3, p. 1056.

10. Bill Tillar, Air Quality and Transportation Noise Specialist

A. Mr. Tillar described his work background and his role: he performed a noise assessment as part of a Community Impact Assessment for the Application, using a sound level meter or dosimeter to monitor outdoor sound levels within the community over a period of time.

B.

- 1) Mr. Tillar followed the guidelines for community noise exposures of the Housing and Urban Development (HUD) agency because they require both a daytime and nighttime noise assessment. Vol. 3, pp. 1076-1078.
- 2) The Sunland Park assessment reflects day/night weighted average levels range from 53.9 dB to 58 dB, less than the 65 dB threshold

impact under the HUD noise guidelines, and within the acceptable category. Vol. 3, p. 1082.

- 3) The highest readings were at the Desert View Elementary School, at 68.4 dB, although the school is furthest from the route of landfill traffic; the primary source of noise at that location is children. Vol. 3, pp. 1085-1086.
- 4) The greatest source of noise in Sunland Park are the trains from the Union Pacific Railroad, and in particular trains idling along residential areas near Camino Real Blvd. Mr. Tillar observed trains passing at least every 15 minutes throughout the day. Train traffic was less but continued throughout nighttime hours as well. Vol. 3, pp. 1086-1087.
- 5) The noise levels observed in Sunland Park are similar to noise levels one would observe in urban or suburban environments throughout the United States; the levels were typical for this type of community. No readings suggested the need for mitigation measures. Vol. 3, p. 1088.
- 6) The Landfill does not have a negative impact on noise levels in Sunland Park. It is not a source of noise within the community due primarily to distance from receiver locations and intervening higher terrain with the berm between the working face and the residential areas. Vol. 3, pp. 1088-1089.
- 7) The noise levels measured do include the contribution of the trucks traveling down McNutt Road and turning into the Landfill, but the

noise contribution from the trucks was not significant and did not add to any noise levels above the impact thresholds. Vol. 3, pp. 1090-1091.

- 8) Standing 30 feet from an idling truck, the decibel level range would be in the high 60s to low 70s. An idling truck could interfere with sleep patterns in the community if it is within 100 yards and possibly within 500 yards if the receiver is outdoors. Beeping noises associated with trucks and heavy equipment backing up would probably be in the upper 50 dB to lower 60 dB range at 500 yards. Vol. 4, pp. 1339-1341.
- 9) Mr. Tillar followed HUD guidelines for his testing, taking noise measurements at the location of the nearest residence approximately 70 feet from the roadway, and not at a distance of 25 feet from vehicles as is apparently contemplated by local ordinance to protect mobile pedestrians from annoyance. Vol. 5, pp. 1590-1601.
- 10) The wind can affect noise levels if it is strong enough by carrying the sound pressure waves in the direction of the wind. During his noise measurements, Mr. Tillar did not hear sounds of any machinery coming from the Landfill at any location. Vol. 5, pp. 1841, 1844.

11. Marla Shoats, Government Relations Consultant and Lobbyist

A. Ms. Shoats described her background, her experience in groups dedicated to pursuing environmental justice in New Mexico, and her understanding of the Rhino case.

B.

- 1) In 2004 Ms. Shoats was appointed by Secretary Curry to the Environmental Justice Planning Committee, which had as its purpose the development of environmental justice principles and outreach to communities. The Committee set up listening sessions around the state and heard from a lot of citizens; one of the primary concerns was that environmental justice was not part of the criteria in the permitting process. Vol. 6, pp. 2355-2358.
- 2) Three additional groups were created to continue building environmental justice principles at the state: the EJ Policy Committee, the EJ Working Group and the EJ Interagency Task Force. The Policy Committee was charged with setting up the framework for the Governor's Executive Order on environmental justice. Vol. 6, p. 2359.
- 3) Executive Order 2005-056 calls for the meaningful involvement of the public in the state's process, the dissemination of information regarding the process in a meaningful and effective manner, translated in Spanish and English or other predominant language of the community, and training within the agencies on cultural

sensitivities and the concept of environmental justice. These objectives are being accomplished in CRLF permit renewal process and hearing, with scoping meetings, town hall meetings, the compilation of the Community Impact Assessment and the translation of that document into Spanish, and the distribution of relevant information throughout the community. Vol. 6, pp. 2361-2364.

- 4) In 2005 Ms. Shoats was appointed to the EJ Working Group, a large diverse group brought together to rewrite the solid waste regulations and the solid waste plan to incorporate environmental justice principles. These regulations have been adopted, but did not change the basis on which a permit will be issued. Vol. 6, pp. 2365-2366, 2371, 2379-2380.
- 5) The concepts of fair treatment and meaningful involvement are related: with early and adequate notice, time and assistance to prepare, meaningful involvement should equate to fair treatment. Vol. 6, pp. 2368-2369.
- 6) Proliferation is not defined in the solid waste regulations but is defined in the dictionary to mean growing or increasing by rapid production. It is difficult to determine what mechanism an agency would use to deny the renewal of a permit; Ms. Shoats believes the term should apply only when there is a new siting. The legislature has not been able to come to consensus on guidance to the Department on this issue. Vol. 6, pp. 2371-2373.

- 7) Assuming 12 industrial sites in the Sunland Park community, Ms. Shoats does not know how many of those facilities are under the jurisdiction of the state of New Mexico. If the concept of proliferation would result in closing some of the sites, those sites that are related to problems the community is facing are the ones that should be closed. The Working Group did recognize the difficulty with establishing proliferation as a criterion in a permit renewal, and no regulations have been put in place to address denial of a permit for renewal based on proliferation. Vol. 6, pp. 2373-2377.
- 8) A Community Impact Assessment is a tool for consideration when listening to the community, a cumulative description of what is happening in the community and what the impacts are. In this permit renewal, a Community Impact Assessment was not required but was nevertheless done by Camino Real. It will allow the decision-makers to assess concerns and consider them as part of the permitting process, to evaluate whether the facility is a hazard to the community. Vol. 6, pp. 2377-2378, 2381-2382.
- 9) Public participation must be considered and public input can be used in setting conditions on a permit. That input would not provide a basis for denial of a permit application if that facility meets the technical requirements and does not pose a hazard to public health, welfare or the environment, or undue risk to property. Vol. 7, pp. 2778-2780.

10) Ms. Shoats will be paid approximately \$15,000 for her time in this proceeding. Vol. 8, p. 3159.

12. Thomas Van Zandt, Environmental Assessment Consultant

A. Mr. Van Zandt described his varied work background, and his supervision of the multi-disciplinary team hired to assess impacts to the Sunland Park community and the environment associated with the Landfill.

B.

1) Mr. Van Zandt was asked to do an environmental justice analysis in connection with the last permit renewal process in 1996, and for this permit renewal was asked to prepare a Community Impact Assessment. He assembled a team including three environmental planners, a senior economist, a senior sociologist, technical specialists in air quality, noise and transportation, a hazardous waste expert, a professional geologist and a historian skilled in photographic analyses. Vol. 7, p. 2518-2521.

2) CRLF was not required to prepare a Community Impact Assessment (CIA) or the addendum by the old or new solid waste management regulations, by the Rhino opinion or by the Executive Order on environmental justice, but did so in order to have robust community involvement in its permit renewal process. Vol. 7, pp. 2522, 2539-2547.

- 3) The draft rules available to Mr. Van Zandt when they were performing the assessment did not set out a required methodology for the CIA; they decided to follow the basic approach under the National Environmental Policy Act, which describes a methodology for preparing environmental impact statements and environmental assessments for federal projects because it is a familiar model which is the subject of much guidance and has been tested in the courts for 30 years. Vol. 7, pp. 2549-2550, 2553.
- 4) The sociologist on Mr. Van Zandt's staff is aware of the field of study relating to the social impact assessments described by Dr. Pena, but they believe that approach is less appropriate to an administrative proceeding and more appropriate for doing assessments of traditional societies and tribal situations. Vol. 7, pp. 2554-2559.
- 5) The assessment included community meetings: the first round of meetings was to solicit comments, which became a roadmap for the development of a work plan to collect additional data; the second round of meetings included a presentation of the team's preliminary findings on the priority list of concerns. Vol. 7, pp. 2563-2564, 2567.
- 6) Twenty-eight viewpoints were considered for the visual and aesthetic impact portion of the assessment; the mesa dominates the landscape, not the Landfill, which is visible mostly as a berm with oleanders on top. Natural landforms and terrain features screen

landfill operations from most points of view. Vol. 7, pp. 2569-73, 2580-2581.

- 7) The air-quality portion of the assessment reflects a dusty environment in the northern Chihuahua Desert, with 85% of the dust attributed to wind erosion, especially road dust from paved and unpaved roads. All landfill emissions are within regulatory limits; there are no significant air-quality impacts from the Landfill. Vol. 7, pp. 2584-2585, 2588.
- 8) As for odor, nothing in the Landfill corresponds to a lot of the complaints made, such as burning trash; the most prominent odors detected were from the City's wastewater treatment plant and the stables. Vol. 7, pp. 2586-2587.
- 9) The evaluation of ambient noise in the community showed noise to be within acceptable standards, and landfill-related traffic is a small percentage of total traffic on the roads in Sunland Park, about 3%, or 300 vehicles/day. Vol. 7, pp. 2588-2589, Vol. 8, pp. 3165-3167.
- 10) The CIA does not include an independent public health assessment; the team looked at available information, including the 1993 EPA multi-media study and the ATSDR study, and concurred with those findings. Vol. 7, p. 2589.
- 11) The finding as to economic impact was that the Landfill has a modest but positive effect on the economy of Sunland Park and Dona Ana County. Vol. 7, p. 2596.

12)Mr. Van Zandt corrected the number given earlier for the cost to the City of choosing not to renew the host agreement with the Landfill. The correct number is \$650,000 per year, including disposal costs; the error was based on the overstatement of cubic yards of disposal of City waste and the addition of gross receipts tax. Vol. 7, pp. 2587-2598.

13)Mr. Van Zandt does not believe that there is a proliferation of landfills in the Sunland Park community. The nearest operating landfill is 30 miles away, and there is a closed landfill about 17 miles away (McCombs) which has not operated for several years. Neither of these landfills have any potential impact on this community. Vol. 7, pp. 2602-2603.

14)The difficulty of trying to develop a workable methodology for defining "proliferation" is illustrated by the inclusion in Mr. Moore's list of things such as wastewater treatment plants, which are intended to alleviate pollution, horse stables, unpaved roads, the Chihuahuan Desert, Sunland Park Mall, and the planned international crossing. The assessment team did not find an unexpected or unusually large number of facilities that would characterize Sunland Park as a particularly industrial area; rather, it is an urbanizing area. Vol. 7, pp. 2605-2610, 2615.

15)Mr. Van Zandt does not agree with the City's economists that the Landfill serves as a disincentive to economic development in the

community; they relied on references based on hazardous waste facilities and brown fields, which are very different facilities. One of the reports cited included a finding of a minor effect on property values within 1000 feet of a landfill but that beyond 1000 feet the stigma effect goes to zero. Vol. 7, pp. 2620-2621.

16) In the addendum to the CIA, the team interviewed city planners and others to provide further information on economic impact: the City has recently annexed 600 acres towards Santa Teresa to accommodate growth, a new wastewater treatment plant will replace the closed one, Sunland Park Drive has been extended to McNutt for increased mobility, a new amusement park opened this year, with a new hotel and restaurant planned next door. A new sports complex is planned, as well as a new RV park, and a retail shopping center at McNutt and Racetrack, and the City's master plan includes an entertainment corridor which will be linked with the Anapra crossing, and will include a river trail, geological park, science museum, and amphitheater. Vol. 7, pp. 2622-2625.

17) CRLF furthers the purposes of the Solid Waste Act; it is a scientifically advanced type of facility intended to protect the environment from the illegal dumping of municipal solid waste. Vol. 7, pp. 2626-2628.

18) The Landfill is also furthering the recycling goal in the Solid Waste Management Plan for New Mexico; they recently opened a fairly substantial recycling facility adjacent to the office. Vol. 7, p. 2638.

19)The socioeconomic profile for Sunland Park shows a median household income lower than the county and the state, percentage persons of color higher than the county and state, more limited English proficiency and lower educational attainment, consistent with the demographics that might be expected in communities along the US-Mexico border. It is not, however, a colonia, because it has a lot of the infrastructure that would be lacking in a colonia. Vol. 7, pp. 2639-2640.

20)Comparing Sunland Park with 27 other communities similar in population on the HUD list, Sunland Park shows the third highest population growth in the 1990s, the greatest decrease in the poverty rate, a lot of recent immigration and a decrease in English proficiency, and the highest increase in median home value. Vol. 7, pp. 2655-2657.

21)The continued operation of the Landfill will not create a public nuisance or a hazard to public health or welfare or the environment, or an undue risk to nearby property. Vol. 7, pp. 2658-2659.

22)Mr. Van Zandt is not recommending that the applicant fund or contribute to a large health assessment; their recommendations are more in the direction of public education and possibly assistance to local clinics, and educational materials for the schools. Vol. 8, pp. 2818-2819.

23)Mr. Van Zandt's team did not conduct an ethnographic study or psychological investigation of the community, but the broad social-psychological elements manifested by the attitudes and perceptions of people were amply demonstrated in the public involvement process, and quality of life can be assessed in other ways. Vol. 8, pp. 2848-2862.

24)Mr. Van Zandt was paid \$200 an hour for his work. Vol. 8, p. 3160.

13. Darrell Dechant, Ph.D., Certified Industrial Hygienist

A. Dr. Dechant described his qualifications, the health hazard assessment he conducted on the Landfill in 1996, and again for this permitting cycle, to ascertain whether the Landfill has the potential to represent a public health threat to the Sunland Park community.

B.

- 1) Dr. Dechant first considered whether materials disposed at the Landfill have the potential to expose Sunland Park residents to harmful levels of chemical or biological agents through the air from the time they arrive at the facility until they are buried. He found no exposure threat and no pathway by which potential materials could represent a hazard. Vol. 7, pp. 2689-2696.
- 2) Dr. Dechant next considered whether the groundwater supply used by Sunland Park could become contaminated by landfill activities, thereby exposing residents to potentially harmful concentrations of

chemical or biological agents via its consumption. He found that it would be a virtual impossibility that activities at the Landfill could contaminate the drinking water supply for Sunland Park, all water supply wells are up-gradient of the Landfill, among other reasons. Vol. 7, pp. 2698-2710.

- 3) Dr. Dechant next considered whether landfill gases, including VOCs, generated within the cells during decomposition of waste materials have the potential to expose Sunland Park residents to harmful levels of chemical or biological agents through the air. He found no viable pathways for the gases to present a hazard to the community. Vol. 7, pp. 2711-2721.
- 4) Dr. Dechant next considered whether fugitive dust generated at the Landfill has the potential to cause or contribute to harmful dust exposures in Sunland Park. Monitoring of PM10 in the area by the state shows that Sunland Park is in attainment and meets the conservative ambient air quality standard that is protective of children, elderly and asthmatics, and thus the community is not overexposed to fugitive dust, even considering all sources of dust present, including the Landfill. If the Landfill would cause the community to go out of attainment, or would result in significant deterioration of air quality, it would not have been able to get a Title V permit. Vol. 7, pp. 2722-2729, 2743-2745, 2748.

- 5) Considering the comparative locations of the Landfill, the City of Sunland Park and Asarco, and the predominant winds in the area, it is not likely that pollution will blow from Asarco to the Landfill and from the Landfill to the City. Vol. 7, p. 2741.
- 6) Dr. Dechant reviewed the earlier public health studies done in the community: the 1993 EPA study determined that there were no violations of any regulation, and no viable pathways of exposure to the community. The 1996 AMASI Anecdotal Observation Study reflects a lot of concerns expressed about asthma, allergies and skin disorders, but the subsequent environmental health assessment by the University of Texas found asthma rates, mortality rates, congenital abnormality rates and causes of death to be similar between Sunland Park and the rest of the state, an absence of elevated blood levels in Sunland Park children, no common cause for skin disorders, and the conclusion that there was nothing unusual or unexpected in Sunland Park residents in terms of health conditions. The 2001 Health Assessment of VOCs indicates that the Landfill is not a meaningful contributor to VOC levels. The 2007 Snapshot Study of Sunland Park is not scientific, but a collection of anecdotal observations. Vol. 7, pp. 2749-2769.
- 7) The Landfill is not capable of causing the illness or health concerns that have been described during the hearing such as diabetes, cancer, blood diseases, heart attacks or vision problems, or asthma

or allergies. Dr. Dechant found no hazards to public health or the environment or undue risk to property arising from landfill activities, even if considered with the cumulative effects of everything else, including industrial sites, present in the community. Vol. 7, pp. 2770-2771, Vol. 8, pp. 2833-2834.

- 8) There is no reason to do additional health assessment in the community with respect to the impact of the Landfill. Many pathway analyses have been done, the concerns of the community have been extensively investigated and determined to be not associated with the Landfill. Without exposure to hazardous agents and viable pathways, no further health effects assessment is performed. Vol. 7, p. 2775, Vol. 9, pp. 3285-3288, 3355.
- 9) Dr. Dechant is being paid \$175 an hour for his work. Vol. 8, p. 3160.

14. John Howden, MAI, Real Estate Appraiser and Consultant

A. Mr. Howden described his professional background and his review of property values in Sunland Park. He also commented on the City's experts' Report.

B.

- 1) Mr. Howden was asked to review the value of homes in Sunland Park, and found that, with the exception of the northernmost area studied, the highest prices per square foot are in the areas that are

closest to the Landfill. Moving away from the Landfill and toward McNutt the average prices went down. Vol. 14, pp. 5760-5762.

- 2) The number of sales Mr. Howden reviewed was not large enough to make general conclusions about the area, or to draw conclusions about the effect on home prices of the existence of the Landfill over time. Vol. 14, p. 5762.
- 3) Dr. Widner did a study looking at values within one mile of the Landfill, but did not have sales data for residences and based his study on tax-assessed values, which is a horrible system for the evaluation of individual properties. Vol. 14, pp. 5766-5768.
- 4) Of the sales Mr. Howden reviewed, the newer homes tended to be closer to the Landfill and probably had something to do with why the prices are higher. Vol. 14, p. 5773.
- 5) Mr. Howden is being paid \$175 an hour for his work. Vol. 14, p. 5781.
- 6) The sales price for each of the 18 houses Mr. Howden reviewed is an indication of fair market value of the house on that date of sale but is not necessarily the value of the property. Mr. Howden is not extrapolating to the community as a whole and the true value of a property would also include the consideration of several comparable properties. Vol. 14, pp. 5786-5788.

15. James Holcomb, Ph.D., UTEP Economics Professor

A. Dr. Holcomb described his academic work, and his review of the report on socioeconomic impact prepared by Dr. Erickson and Dr. Widner.

B.

- 1) Dr. Holcomb does not believe Dr. Erickson and Dr. Widner did the work necessary to support the general conclusion they reach that there is no benefit to the city or county from the Landfill. Vol. 14, pp. 5796-5802.
- 2) Specifically, they took a previous study that showed some positive economic benefit and tried to change the level of analysis relating to multipliers without determining the multiplier for the community of Sunland Park. Vol. 14, pp. 5800-5803.
- 3) They also concluded that the Landfill will stifle economic development according to the master plan without presenting evidence or data to support this conclusion; although a study could be designed to indicate impact, no study was done or data gathered. Vol. 14, pp. 5804-5808.
- 4) No evidence is presented to support the conclusion that the Landfill has a negative impact on property values; all that is included is a table reflecting research into tax values of properties within a mile of the Landfill and an indication of what it would mean if property values are 5% too low or 10% too low, etc. No data whatsoever is included and no study has been done to isolate the impact of the

Landfill compared to other factors, including other polluting industries. Vol. 14, pp. 5809-5812, 5816.

- 5) If the Landfill were to have an impact on surrounding property values, that impact would have been seen when the Landfill came into existence, because once the Landfill is in place future property values reflect its presence. To figure out the impact of the Landfill, he would need data on sales before and after its existence. Vol. 14, pp. 5812-5815.
- 6) Dr. Holcomb does not agree with the conclusions reached in the report. Vol. 14, pp. 5816-5817.
- 7) Dr. Holcomb is being paid \$150 an hour for his work. Vol. 14, p. 5828.

Department's Witnesses

1. Eric Johnson, Environmental Planner, Consultant

A. Mr. Johnson described his qualifications and his independent review for THE DEPARTMENT of the CIA and addendum prepared by Hicks & Co., as well as the additional socio-economic information he gathered in a 4-mile radius around the Landfill.

B.

- 1) Hicks and Company adequately gathered and accessed data in a reasonable manner. Vol. 9, p. 3424.

- 2) The additional information Mr. Johnson gathered came from the US Bureau of Census on minority representation, per capita income and median family income; he also gathered general information on other facilities in the area, including New Mexico and Texas. Vol. 9, pp. 3425-3426.
- 3) As to race and ethnicity, Mr. Johnson found a fairly diverse area beyond Sunland Park, which is predominantly Hispanic, Latino. Income and minority representation vary within census block groups, especially going northward. Income for Sunland Park is definitely lower than the overall 4-mile radius, but Sunland Park is probably not a colonia. Vol. 9, pp. 3426-3427.
- 4) Prior to the submittal of the addendum, Mr. Johnson had concluded that the original CIA was missing some information: there was no data on Texas, no information on changes in property values and insufficient public health data. The addendum provided data on Texas and on property values; the information he would like to see regarding public health would include better resolution at the Sunland Park level rather than the Doña Ana County level on the causes of illness and mortality. A public health expert or epidemiologist would have to collect this information from medical records or medical providers. The new regulations do not require this information, and it may not currently exist for Sunland Park in any repositories. Vol. 9, pp. 3430-3435.

- 5) The environmental matter in the CIA that he would follow up on is PM10 or general dusts because of the potential relationship with asthma; he would want more localized information for the community although the regulations do not require that. Vol. 9, pp. 3435-3436.
- 6) The extensive census data shows there is probably a community of concern in the Sunland Park area for environmental justice. Vol. 9, pp. 3436-3437.
- 7) The CIA adequately addressed traffic and noise as topics of interest to the community, and offered good mitigation measures for noise. Vol. 9, pp. 3437-3439.
- 8) In general, it appears there is a small positive economic impact on Sunland Park from the Landfill, and the Verde development appears to be a good development for the future. The Landfill is not irreconcilable with the City's efforts to grow. Vol. 9, pp. 3439-3444.
- 9) The CIA does not demonstrate that there will be a hazard to public health, welfare or the environment, or undue risk to property, in renewing the facility permit. It is important that the Landfill maintain a strong dialogue with the City, engage in ongoing public involvement, and implement the mitigation measures described in the CIA. Vol. 9, pp. 3446-3447.
- 10) Hicks & Co. chose an appropriate methodology for the CIA, using the NEPA procedures, Federal Highway Administration procedures and Arizona Department of Transportation's road-tested approach. They

addressed the central question of environmental justice as well as important issues to the community such as visual impact, land use and transportation. In combination with the addendum and Dr. Van Zandt's table comparing different communities to provide a trend analysis, they addressed the elements set out in the new solid waste regulations, even though the regulations are not applicable. Vol. 9, pp. 3449-3450.

11) Mr. Johnson agrees with Mr. Van Zandt that the social impact approach is not likely to lead to results helpful in answering the questions that must be answered in this hearing. The ethnographic approach, while producing interesting data on the community, does not answer the central environmental justice question of exposure pathways for contaminants and other issues identified by the community. Vol. 9, pp. 3456-3457, 3513-3514.

12) Although Mr. Johnson noted that information was lacking in the CIA on geology, soils, groundwater, surface water, vegetation and wildlife, the Application goes into great detail on these topics and was made available to the community. Vol. 9, pp. 3466-3467.

13) The presence of industry does not necessarily depress property values, and psychological principles are separate from economics; they are not necessarily connected or related in a cause and effect relationship. Before considering a psychological impact on the community, one must first look for some physical impact upon the

community -- that's the primary job in a NEPA evaluation. Vol. 9, pp. 3500, 3515-3516.

14) Mr. Johnson has a fixed contract with a ceiling of \$10,000. He is paid a salary, the firm's hourly rate for his work is \$70-\$75. Vol. 9, p. 3531.

2. Lawrence Aires, the Department's Environmental Scientist - Air Permitting Specialist

A. Mr. Aires described his work history and the applicable air quality regulations for the air permits related to Landfill activities. Mr. Aires also described the dust control measures he had observed at the Landfill.

B.

- 1) A federal regulation, the New Source Performance Standard, requires landfills of a certain size to install a landfill gas collection and control system to keep landfill gases from emitting to the atmosphere. The regulation also requires enhanced monitoring, recordkeeping and reporting requirements; a startup, shutdown and malfunction plan; an annual certification of compliance and an open flare; a dust control plan and emission control requirements for VOCs (volatile organic compounds). Vol. 9, pp. 3589-3596.
- 2) The first Title V permit was issued to the Landfill in 2001; the permit was renewed in 2007 and must be renewed every five years. Vol. 9, p. 3597.

- 3) The Air Quality Bureau's Enforcement Section is responsible for inspections at the Landfill. Because the Landfill is a major source, it must be inspected every two years to verify compliance with permit requirements. Detailed semiannual monitoring reports and an annual compliance certification must also be submitted. Vol. 9, p. 3600.
- 4) Another air permit associated with landfill activities, a construction permit, was issued to Four Peaks Energy in 2006 to install two internal combustion engines to use landfill gas to produce electricity for positive use. Landfill gases will no longer be flared except in upset conditions or engine maintenance periods. Vol. 9, p. 3601.
- 5) Dust control measures put into place at the Landfill over the last five or six years have been incorporated into the dust control plan and the Title V permit. Mr. Alires has observed hydro-mulching or hydro-seeding, the application of chemical surfactants and water, and the use of straw and manure from the race track for dust control. Vol. 10, pp. 3697-3698.

3. Erik Aaboe, the Department's Air Quality Bureau Monitoring Section Supervisor

A. Mr. Aaboe described his qualifications and work history; the Bureau's current, past and planned air quality monitoring in Sunland Park; and the Landfill's contribution to the dust in the area.

B.

- 1) The Bureau conducts emission air quality monitoring in the Sunland Park area: carbon monoxide is not significant in Sunland Park and is not measured. Nitrogen dioxide is not significant but is measured because it is of interest for ozone formation. At one time, lead was monitored at City Hall and the race track, and sulfur dioxide was monitored at the City Yards; monitoring ended after the Asarco smelter closed. Ozone, PM 2.5 and PM10 are important pollutants for the area and are monitored. Vol. 9, pp. 3609-3614.
- 2) The Sunland Park area is currently in attainment for all ambient air quality standards. It was out of attainment for ozone between 1995 and 1997, when EPA changed the ozone averaging, and there have been exceedances of the PM10 standard, but they have been determined to be the result of natural windstorms. Vol. 9, pp. 3616-3620.
- 3) The Landfill was found to contribute an average of 24 mcg per cubic meter of PM10 to the atmosphere as the wind blows across the Landfill; the last time this particulate data was collected, however, was 2001. Vol. 9, pp. 3627-3630, Vol. 10, p. 3693.
- 4) The Bureau is planning additional monitoring for the Sunland Park area; they have secured funding from the EPA to purchase portable monitors to explore short-term high values of PM10 in low wind events. The PM10 monitoring done on the Landfill cannot be compared to

standards because the monitoring was conducted within the facility fence line. Vol. 9, pp. 3635-3637.

- 5) It is fair to say that the PM10 levels are high because southern New Mexico is primarily in a desert. The Bureau has monitored high values of PM10 throughout Doña Ana County and some of the highest events are high-wind dust storms. Vol. 10, pp. 3696, 3723.
- 6) It is one of the limitations of air monitoring that monitors do not identify the origin of the particulate matter sampled, only how much is collected at a particular time. There were days when the monitor on the upwind side of the Landfill actually measured higher than the monitor on the downwind side of the Landfill, but they know nothing more. Vol. 10, pp. 3699-3700.
- 7) The best approach to air monitoring is to monitor a representative location in the community; monitoring stations at schools gives the Bureau an estimate of what the students and the community are being exposed to. Vol. 10, p. 3706.
- 8) An air monitoring station costs \$75,000 to install and as much as \$5,000 a month afterwards to operate. Monitoring is one tool to protect public health, but it is not the only one, and the placement of additional monitors is not the ultimate solution. Vol. 10, pp. 3710-3711.
- 9) Sunland Park is complicated terrain. The wind goes in different directions at different locations and at different elevations. Vol. 10, p. 3728.

- 10) Ground cover, including vegetation, would be best at slowing down the wind at ground surface and suppressing the amount of particular matter that would get up into the air. Vol. 10, pp. 3735-3736.
- 11) The number of windy days in Sunland Park varies from year to year, depending upon how much soil moisture there is, but in the last couple of years there have been 15 or 20 days when the Bureau monitored values throughout the County in exceedances of the PM10 standard because of high winds. This could pose a hazard, or not, depending on what's happening at the time. Vol. 10, pp. 3739-3740.
- 12) In the 1997 permit, there was a requirement for the Landfill to operate a meteorological station as part of an air monitoring plan. The department operates these stations to collect data that supports dispersion modeling throughout the state. Vol. 10, p. 3741.
- 13) It is important for the Bureau to use its resources to do as much air monitoring as they can in areas that are most important around the state. The best available equipment is equipment approved by EPA for use as a federal reference or equivalent method; the age of the monitor does not matter, and the recent advances in air monitoring have merely enhanced communication to minimize travel for maintenance. Vol. 10, pp. 3749, 3754-3757.
- 14) The Bureau currently has a monitoring station in front of the school with 2 TEOMs in it to measure particulate matter, an ozone monitor, a NOX monitor, data logging equipment and a meteorological tower. At

Sunland Park City Yard, there is another shelter with a meteorological tower, a particulate monitor with a number of samplers out front and an ozone monitor. The Bureau is doing a good job monitoring the air in Sunland Park with sophisticated, federally-approved monitoring equipment already in place, collecting data that is made available immediately to the public on the Internet. Vol. 10, pp. 3758-3759.

15) If the Asarco smelter were to begin operations again, Mr. Aaboe would add monitoring for sulfur dioxide and lead. Vol. 10, p. 3760.

16) The Landfill had monitors for particulate matter in 1998, but the monitors have not operated since 2001, when the Title V operating permit was put into place. Vol. 10, pp. 3768-3769.

4. Thomas Ruiz, NMED Border Air Quality Liaison, Assistant Professor

A. Mr. Ruiz described his work experience and particularly his work with the Health Department, the Department and numerous other entities on border health issues. Mr. Ruiz set out specific findings from studies conducted in Sunland Park, and his continuing work to collaborate on the control and mitigation of particulate matter.

B.

1) Mr. Ruiz has worked with six different Liaison organizations relating to environmental border issues: New Mexico Environmental Health Council, Bishop's Colonia Task Force, Environmental Health Coordinating Council, Joint Advisory Committee, a Border 2012 joint

effort with EPA, and a Border 2012 joint effort with SEMARNAT, the Mexican version of EPA. Some of this work concerned the City of Sunland Park, including a bio-monitoring project for heavy metal analysis, a blood lead level analysis in children, and a soil lead depositions study. Vol. 10, pp. 4096-4098.

- 2) Mr. Ruiz filed a matrix that set out some of the studies carried out in Sunland Park; there have been subsequent studies conducted there, including an analysis of low-wind exceedances for PM10. Vol. 10, pp. 4101-4102.
- 3) Mr. Ruiz discussed the findings from the lead deposition study of house dust and residential soils: of 63 residential properties tested, two homes in the Anapra section of Sunland Park were shown to be high in lead, exceeding the EPA action level of 500 ppm. Upon further investigation of these two homes, they found the lead likely to be human caused; one man had been a mechanic and had buried a battery on his property, and the other man had leveled his yard with soil brought from a place closer to Asarco. House dust analyses did not find high levels of lead. There were higher levels of lead in the soil on the face of Mount Cristo Rey, and subsequent studies may indicate higher levels of lead in the soil at greater depth. Vol. 10, pp. 4106-4107.
- 4) Blood lead level testing for children showed that of 16 samples taken at La Clinica de Familia in Sunland Park, not one showed high blood

lead level. There should be more work in this area, and Mr. Ruiz was disappointed at the low numbers for the blood screening, which can be attributed to a community group, the Get-The-Lead-Out Coalition, that actively dissuaded people from participating in the bio-monitoring.

Members of the Coalition include Taylor Moore and Heather McMurray. Vol. 10, pp. 4108, 4113-4114, 4132.

- 5) An area that requires further investigation is the phenomenon of low wind exceedances for particular matter, especially PM10. Unpaved roads are a significant contribution to this phenomenon, but with bi-national collaboration, they can further characterize and address this problem. Mr. Ruiz is actively working on this issue. Vol. 10, pp. 4109-4111.
- 6) The Natural Events Action Plan ensures the community knows about dust exceedances due to high winds, and can implement measures to control dust such as dust ordinances like those put into place in Deming and Las Cruces. He has begun this dialogue in Sunland Park, and a dust ordinance is in the works. Vol. 10, pp. 4115-4118.
- 7) The Landfill may contribute to the dust in Sunland Park; a lot of unpaved, open areas around Sunland Park have the potential to contribute to the dust. At the Landfill he noted dust suppression techniques, including hydro mulch and road watering, so there would be less likelihood of contribution. He is working on a memorandum of

understanding that would include the Landfill in the Natural Events Action Plan. Vol. 10, pp. 4118-4120.

- 8) Sunland Park residents have been meaningfully involved in this permitting action. Groups dealing specifically with colonia issues have been represented in meetings and have helped prioritize several projects. Vol. 10, p. 4122.
- 9) He has not reviewed the Application for Camino Real, taken a position on whether the permit should be renewed or been told to come to a conclusion about the matter. Given the Landfill's compliance history and dust suppression techniques, he does not have concerns about the proximity of the Landfill to Sunland Park and El Paso. Vol. 10, pp. 4124-4125.
- 10) The Landfill does not pose a hazard to public health, or public welfare, or an undue risk to property. Vol. 10, p. 4127.
- 11) Mr. Ruiz does not see particulate matter from the Landfill in high winds as a hazard to the health of Sunland Park. Adequate monitoring is taking place throughout the town and there is additional monitoring proposed, primarily to study the problem they believe is associated with Anapra, Mexico. Vol. 10, pp. 4140-4141, 4144.
- 12) Following Mr. Taylor Moore's expression of concern to him about blood lead levels in Anapra children, particularly with an upcoming Asarco hearing, Mr. Ruiz was able to obtain an additional \$60,000 in his

budget to address this concern, and to conduct bio-monitoring. Vol. 10, pp. 4154-4156.

13)Mr. Moore subsequently became convinced that department staff were concealing contamination in Sunland Park, and wanted to follow Mr. Ruiz when he came down to sample for the bio-monitoring project, although the precise location of the study subjects is supposed to be confidential. Mr. Moore ambushed Mr. Ruiz at the community center with a tape recorder and followed him with a paper cup until Mr. Ruiz went to the police department in order to be able to do his work in peace. Vol. 10, pp. 4158-4163.

14)It was apparent to Mr. Ruiz that Mr. Moore did not want Mr. Ruiz conducting any further tests in the community, but Mr. Ruiz did not believe Mr. Moore represented the whole community. Vol. 10, p. 4166.

5. Auralie Ashley-Marx, Chief of the Department's Solid Waste Bureau

A. Ms. Ashley-Marx related her qualifications and work history. She described the applicable solid waste regulations, provided an overview of the Bureau's review of the Application, presented a summary of the permit history, supplied information regarding the steps taken by the Bureau to afford meaningful opportunities and public participation in the process, and presented recommendations for permit conditions.

B.

- 1) The 1995 Solid Waste Management Regulations at 20 NMAC 9.1 apply to the Application. The Regulations set out requirements for siting, design, construction, operation, maintenance, financial assurance and post-closure care and ongoing monitoring. Unlike the dumps of the past, a Subtitled D landfill is a highly engineered system designed to isolate and encapsulate waste away from the environment to protect public health. These facilities are also designed to collect and manage leachate and to manage the methane gas generated. Vol. 11, pp. 4210-4212.
- 2) The Bureau's permit review process included an initial review, two requests from the Bureau for additional information from the applicant, which the applicant complied with, and the deeming of completeness on October 16, 2007. Vol. 11, pp. 4213-4214.
- 3) Camino Real is requesting a 10-year renewal period to continue to operate a 480-acre existing landfill; the modification requested is not a request for lateral expansion, but for the engineering design of the environmental monitoring controls and the engineering for the evapotranspiration cap. Vol. 11, pp. 4215-4216.
- 4) The facility was first registered as Nu-Mex in 1989. In 1992 a five year permit was issued for approximately 35 acres located in current Cell 2. In 1995 an application was submitted for the rest of Unit 2 that encompassed 12 cells. In 1997 a permit was issued to operate and

close Unit 2. In 1999 the Landfill was purchased from Nu-Mex by Camino Real. Vol. 11, pp. 4216-4217.

5) Ms. Ashley-Marx described many ways in which the Application meets general requirements and has demonstrated compliance with the solid waste regulations: there is adequate site capacity to handle projected waste volume; necessary buffer zones are included within the 480 acres; they have demonstrated compliance regarding prohibited acts, recordkeeping and annual reports; the Application was accompanied by facility plans and drawings designed and sealed by a professional engineer; the facility meets siting criteria; the Applicant has correctly plugged all boreholes and identified a water source for the facility; the Applicant has properly addressed the control and mitigation of odors, landfill equipment, plans for alternative handling when the facility is closed, the control of litter dust and noise caused by traffic, dust suppression, and other impacts from traffic to and from the facility. Vol. 11, pp. 4221-4227.

6) The Applicant does plan to divert solid waste from the waste stream and has recently applied for and was granted a five-year registration for a recycling facility with a plan to process 15 tons per day. Vol. 11, pp. 4227-4228.

7) All public notice was provided and other procedures followed as required. Vol. 11, p. 4228.

- 8) The required elements the Applicant must address for permit renewal include an operational requirement that the Landfill not cause a public nuisance or create a potential hazard; review of compliance history; environmental monitoring results, releases or any remediation that may have occurred during the previous 10 years; changes in information required on the disclosure forms; any other technical information as requested by the secretary; financial assurance; convictions under any state or federal environmental law since issuance of the permit; and compliance demonstrations which pertain to some of the siting requirements that could have changed in the last 10 years, including proximity to floodplains, airports and unstable areas. Vol. 11, pp. 4228-4229.
- 9) The Landfill is in compliance with operational requirements and inspection practices, although the Bureau does recommend that the waste screening plan be updated. Vol. 11, pp. 4230-4232.
- 10) The Landfill complies with gas monitoring requirements. The Bureau does concur with the applicant's request to eliminate methane monitoring using bar probes around Unit 1 because the waste in that cell is 20 years old and no longer generating gas that would reach the height that bar probes can detect, and because the Landfill has installed permanent deeper methane probes which are more effective in monitoring the gas. Vol. 11, pp. 4233-4238.

- 11) The Landfill complies with the requirements relating to unauthorized access and safe authorized access; the control of storm water run-on and run-off; scavenging, fire control and management of hot wastes; leachate management; and the control of litter, disease vectors and odors. Vol. 11, pp. 4238-4247.
- 12) The Applicant requested approval for an alternative design for the final cap and cover design. The proposed alternative cap will work in harmony with the liner as required, both the liner and cap conform to the regulations and the engineer has adequately demonstrated their equivalency to the prescribed design. Vol. 11, pp. 4248-4252.
- 13) The applicant has requested approval for the use of several alternate daily covers, including tarps, shredded tires, processed green material, remediated petroleum-contaminated soil, foams, auto shredder residue and selected construction and demolition debris. The Bureau recommends approval of the use of tarps, shredded tires, processed green material and the soils, subject to certain conditions. The Bureau recommends consideration of approval for the foams and auto shredder residue only following a pilot test. The Bureau recommends denial of the use of selected construction and demolition debris for alternate daily cover based on potential risk to the public, the facility's employees, and the environment, and public perception of the stockpiles that would need to be maintained for this use. Vol. 11, pp. 4253-4255.

- 14) Recycling operations will be confined to an area remote from the operating area of the Landfill in a manner that does not create a nuisance. The Applicant complied with environmental monitoring, and had no releases; the Applicant complied with the required corporate disclosures, including requests for additional information; and the Applicant complied with financial assurance requirements for closure and post-closure. Vol. 11, pp. 4256-4264.
- 15) The Applicant has made the necessary compliance demonstrations regarding floodplains, distance to airports and unstable areas. Vol. 11, pp. 4265-4267.
- 16) In 2006 CRLF received 606,664 tons of waste: New Mexico waste was 34,871 tons, or 5% of the waste stream; 546,165 tons, or 90% of the waste stream, came from El Paso, Texas; and 27,824 tons, or 5% of the waste stream, came from Chihuahua, Mexico. The department does not have statutory or regulatory authority to limit the amount of waste received nor the authority to limit delivery from other states. Vol. 11, pp. 4267-4268.
- 17) The Applicant has met all the siting and other criteria for the existing Landfill and proposed Unit 3. The cap and liner system exceed requirements, and the leachate management plan complies with requirements. The Applicant is seeking approval for two alternative leachate management alternatives. The first is to dispose of leachate at a publicly owned treatment work or wastewater treatment plant, and

the Bureau recommends denial until a specific site is identified and the leachate management plan is updated with the necessary information and approved. The second is to use diluted leachate for dust suppression activity; the Bureau recommends that the applicant be authorized to continue to place diluted leachate on the waste in lined cells, but based on concerns raised by the public, the Bureau is recommending the applicant not be granted approval to place diluted leachate on roads or in areas that will be excavated in the future. Vol. 11, pp. 4272-4274.

18)The Applicant's closure and post-closure plan complies with regulatory requirements, and all requirements relating to the acceptance of special waste have been met, as well as all requirements and permit conditions contained in the final order from the last permitting process. Vol. 11, pp. 4275-4278.

19)The Bureau met and substantially exceeded the public notice requirements for a permit renewal. In addition to publishing notice of the hearing in English and in Spanish in two newspapers, using legal ads and large display ads, the Bureau also sent 43 certified mailings to persons owning property within 100 feet of the Landfill and to all government entities located within 10 miles of the Landfill, 225 mailings via regular US mail to any person identified as an interested person, and posted notices of the hearing at five public locations in Sunland Park. Copies of the Application and the Community Impact

Assessments were translated into Spanish and provided for public review at several locations. The Bureau was advised during a community meeting that the best way to reach individuals in Sunland Park would be to place information in utility bills, and this was done, in English and in Spanish. Laminated posters in English and Spanish were posted at the Church and the Landfill. Additionally, because property records in Dona Anna County were probably stale, 70 notices in English and Spanish were hand-delivered to residences in the Valle Vista subdivision. Vol. 11, pp. 4278-4281.

20) Other actions taken by the Department to inform citizens about the permit and permitting procedure included making all relevant files available to two representatives from the Sunland Park Grassroots Environmental Group over a period of three days, with 5,000 copies provided at no charge, and numerous meetings and site visits. In addition to smaller meetings with Mr. Ardovino and Mr. Garza, large community meetings were held, which staff from many bureaus and several division directors attended. Some of the meetings were conducted by professional facilitators, and a compendium of studies regarding border health issues was compiled for distribution. Department staff and management also met with officials in El Paso, Texas to discuss the Environment Department's position regarding re-permitting and reopening of the Asarco smelter. Vol. 11, pp. 4278-4289.

21) Ms. Ashley-Marx reviewed the packet that Mr. Taylor Moore sent to Governor Richardson, and was able to locate the full reports that were referenced. A metals survey sampling report referenced shows that samples obtained at the water tank at McNutt and Racetrack in Sunland Park is the location with the highest levels of arsenic and lead found in the community. Vol. 11, pp. 4290-4294.

22) Prior to her tenure as Deputy Secretary of Environment, Cindy Padilla was instrumental in obtaining an agreement from EPA to undertake cleanup of homes and lead contamination around homes in Anapra, New Mexico. The cleanups occurred in 2007. Based on concerns raised by citizens, the lead-contaminated soil removed from Anapra homes was not disposed of in the Landfill. Vol. 11, p. 4295.

23) Also in response to concerns raised by citizens, Ms. Ashley-Marx directed her enforcement staff to undertake two unannounced inspections of maquiladora deliveries to the Landfill. She also instructed the Bureau hydrologist to undertake an independent literature review regarding potential groundwater pollution from the Landfill, and arranged for the independent review of engineering portions of the Application by a qualified professional engineer with a doctorate. Vol. 11, pp. 4296, 4408, 4414-4416.

24) The Bureau did not require the applicant to provide the CIA, and did not complete a technical review of that assessment, but Ms. Ashley-Marx reviewed it to increase her understanding of the community and

the concerns raised by residents. She was unable to find information to corroborate the perception of residents that link the Landfill to adverse environmental or health impacts in the community. Ample information in the reports and studies show the major source of contamination in Sunland Park and surrounding communities is from the past operation of the Asarco smelter in El Paso, Texas. Vol. 11, pp. 4297-4298.

25) The Bureau completed a rigorous review of the Application for completeness and compliance with the Act and applicable regulations. The Applicant has clearly demonstrated that it meets or exceeds the technical criteria for a renewal permit; they have also demonstrated they are in compliance with the Act and solid waste regulations, which are protective of public health. The Bureau's review of monitoring data, and published journals articles and health studies, found no evidence of a causal connection to negatively impact health or environment or provide evidence of any exposure pathways from the Landfill to residents in Sunland Park. Vol. 11, pp. 4298-4299.

26) The Applicant has designed, constructed and is operating the facility in a manner protective of ground and surface water, and there is no evidence to demonstrate that the facility has negatively impacted groundwater or surface water. The facility is minimizing air pollution from the site, with their Title V air-quality permit, and the construction of the landfill gas recovery system and other activities to minimize dust.

The compliance history of the facility demonstrates that it is well operated and the Applicant has demonstrated the capability to properly operate a landfill. Vol. 11, pp. 4299-4300.

27) Ms. Ashley-Marx gave a lot of thought to assessing risk and potential impact to the community as part of this process. She believed the best way for her to evaluate concerns raised by the public was to review the facts and measure them against the relevant statutes and regulations, which establish compliance requirements and numerical benchmarks for ground water, air and methane control. She reviewed the evidence to determine if there were exceedances of standards or points of non-compliance with the regulations that could pose a potential exposure pathway. Where she was in doubt she directed staff to verify information, to make additional inspections and to gather other information using literature searches. The Bureau recommends that the permit renewal and modification be approved with certain special conditions meant to address public concerns. Vol. 11, pp. 4303-4309.

28) The most recent solid waste annual report notes that in 2006, New Mexicans generated 3,851,675 tons of municipal waste, slightly higher than the national average, which may change as more waste is diverted through recycling. As waste volume has increased, the number of licensed solid waste facilities has decreased, as a result of regionalization. The existence of a modern Subtitle D landfill located

near a population center does reduce illegal dumping. Vol. 11, pp. 4417-4420, 4422.

29)The New Mexico solid waste permitting regulations provide for substantial public participation, more than in other agencies in New Mexico and in other states. Vol. 11, pp. 4431-4432.

30)Affecting an individual's economic condition would be a quality of life impact. Quality of life would be included within the public welfare portion of the solid waste regulations. Vol. 11, pp. 4433-4434.

31)The Bureau's review of the Application does involve an active review, including independent verification of information or data furnished by the Applicant; the hydrology was examined by Mr. Kulis and other professionals within the engineering field were retained to review parts of the Application. The Bureau is moving toward a more interdisciplinary team to address issues not historically examined, but Ms. Ashley-Marx does not believe the department has the statutory or regulatory authority to require an expert economic analysis or to deny a permit on that basis, and the Bureau does not have the resources to retain sociologists, a traffic person and a noise expert. If someone came forward with an economic analysis, that would be considered as part of the decision-making process. Vol. 11, pp. 4435-4439, 4444-4446.

32)The hearing in this matter was delayed so that the Bureau could hold a community meeting in Sunland Park. Further delay to a time after

Christmas was not feasible because of other hearings and the upcoming legislative session, and the staff resources needed for both. Vol. 11, pp. 4541-4543.

6. Jerzy Kulis, NMED Hydrologist for the Solid Waste Bureau

A. Mr. Kulis described his experience, and the geo-hydrology at the site. He also described the ground water monitoring system at the Landfill and potential for impact of the Landfill operations on ground water.

B.

- 1) In terms of geologic siting, the Landfill is located on the southeastern flank of the Mesilla Basin, which started forming approximately 25 million years ago and is filled with up to 3,000 feet of sedimentary deposits of Tertiary and Quaternary age. Vol. 11, p. 4314.
- 2) The Landfill satisfies regulatory requirements regarding proximity to faults, and is located more than a mile from the two nearest faults. Vol. 11, pp. 4314-4316.
- 3) Mr. Kulis visited and collected samples from the outcrop near the Rio Grande raised by Ms. McMurray. It is a small outcrop of igneous rocks, rocks of magmatic origin informed below ground surface; the outcrop is marked on geologic maps of the area, and its composition and origin are similar to those found on the peak of Cristo Rey. It is not an indicator of a fault, but is even older than the Mesilla Basin deposit. Vol. 11, pp. 4316-4318.

- 4) Groundwater under the site occurs at a depth of 140 to 400 feet below ground surface, depending on surface topography. The Landfill satisfies the regulatory requirement regarding the minimum separation distance between the bottom of the Landfill cells and the top of the uppermost aquifer. Groundwater flow direction is generally northeast toward the Rio Grande. Average ground water velocity is approximately 14 feet per year. No public water supply wells or registered private wells are within 1,000 feet of the Landfill; the only water supply well Mr. Kulis found was the Landfill's own, and the Landfill satisfies the siting criteria for distance from wells. Municipal water supply wells for the City of Sunland Park are located approximately 1.5 miles northwest of the Landfill; municipal wells for Santa Teresa are located approximately 6.5 miles northwest of the Landfill. Vol. 11, pp. 4318-4320.
- 5) The ground water monitoring system for the Landfill currently consists of 6 wells. With the exception of Well A, the groundwater wells at the Landfill have been designed and installed in accordance with the regulations and are properly located to provide an accurate representation of ground water quality both up gradient and down gradient of the Landfill. Monitoring Well A is an original water supply well for the Landfill and was designed as such. It nevertheless provides useful information to supplement data obtained from the other wells. An NMED- approved ground water monitoring program has

been in place since 1989 and conforms to regulations. Vol. 11, pp. 4321-4323.

- 6) Sporadic confirmed detections of elevated concentrations of certain compounds in the water are not indicative of groundwater contamination by the Landfill operation but are likely a manifestation of natural variations in ground water quality under the Landfill. The water beneath the Landfill is not potable because of naturally occurring events unrelated to the Landfill operations. Vol. 11, pp. 4324-4329, 4391.
- 7) Vadose zone hydrology at the Landfill was investigated in 1991. Based on logs of monitoring wells and soil borings, as well as down-hole geophysical logging, the consultants identified multiple clay layers within the vadose zone under the Landfill, over 10 clay-rich zones. Any potential leachate released from the Landfill will most likely travel west/southwest on the top of those clay layers, moving away from Sunland Park and other populated areas, migrating horizontally with a long travel time. The geology of the vadose zone beneath the Landfill is favorable for protection of groundwater. Vol. 11, pp. 4331-4333, 4397-4398.
- 8) There is no indication of negative impact to groundwater quality from the Landfill's operation and the ground water monitoring program is protective of groundwater. Vol. 11, pp. 4333-4334.

7. George "Chuck" Akeley, Solid Waste Bureau Enforcement Section Manager

A. Mr. Akeley described his qualifications and the Landfill's compliance history.

B.

- 1) The Landfill has been inspected by Bureau personnel 25 times since January 1997, when the current permit became effective. The inspections documented no violations of the solid waste management regulations, and there have been no notices of violation issued to the Landfill's owner or operator. Vol. 11, pp. 4338-4339.
- 2) Another 46 inspections of the Landfill were conducted between January 1992 and November 1996, including the period when the Landfill was known as Nu-Mex; none of the inspections resulted in a finding of regulatory violations or the issuance of enforcement documents. Vol. 11, p. 4339.
- 3) The Landfill accepts waste from maquiladoras, and because those wastes are industrial wastes, they are considered special wastes and additional characterization, transportation and manifesting requirements apply. Four recent separate waste screening inspections of waste received from nine separate maquiladora waste generators found no hazardous or otherwise prohibited waste delivered to the Landfill. The amount of maquiladora waste delivered to the Landfill has been decreasing over the past several years and appears likely to continue to decrease as a result of manufacturing

moving to other countries, specifically China. Vol. 11, pp. 4339-4347, 4427-4428.

- 4) Mr. Akeley did not note strong or objectionable odors at the Landfill during his inspection, although he did notice a faint and occasional odor consistent with sewage evaporation ponds he observed at the Santa Teresa Wastewater Treatment Lift plant on McNutt road. Generally, the only notable odor from the El Paso Disposal garbage trucks was exhaust fumes; there was one exception, a roll-off truck with a sour smell. Vol. 11, pp. 4347-4349.
- 5) Mr. Akeley did not see significant amounts of dust originating from the Landfill; the only dust he observed was generated in the tipping area where the solid waste was off-loaded and compacted with heavy machinery. It appears the dust control measures employed by the Landfill are working. Vol. 11, pp. 4349, 4390.
- 6) In August 2004 the Bureau was directed to spearhead an unannounced waste screening inspections sweep of all truckloads of solid waste being delivered to the Landfill for the purpose of disposal over a period of six days. The sweep was coordinated with the New Mexico Department of Public Safety and involved many bureaus in the Environment Department. Vol. 11, pp. 4350-4351.
- 7) Of 580 vehicles inspected, 16 loads were found to be problematic. The most notable enforcement action concerned infectious waste; it was clear that many of the medical facilities based in El Paso were

not effectively segregating regulated medical waste from other waste streams. The offending waste was removed prior to disposal by appropriate contractors. Notices of violation were issued to several facilities; those facilities subsequently responded to indicate changes in their procedures to ensure that noncompliance did not recur. A compliance order issued to El Paso Disposal was settled with the payment of a civil penalty and the performance of two supplemental environmental projects. No enforcement action was taken against the Landfill, which was helping the Department to ensure that prohibited waste was not improperly disposed. Vol. 11, pp. 4351-4357.

- 8) In April 2006, Phelps Dodge Corp. disclosed mischaracterization of industrial solid waste that was actually hazardous waste. The total amount of mischaracterized waste disposed of the Landfill was estimated to be no more than 20 cubic yards. The Solid Waste Bureau's investigation identified four hauling companies that had improperly transported at least a portion of this waste to the Landfill. Enforcement action was taken against the transportation haulers and against Phelps Dodge. Phelps Dodge subsequently provided the Bureau with a risk assessment to substantiate the minimal risks that the disposal posed. Additionally, the Landfill is a lined facility that captures and analyzes leachate, and the risk to human health or the environment from this waste would be minimal. Vol. 11, pp. 4357-4362.

- 9) Mr. Akeley's review of the contingency plan contained in the Application found that it generally complied with regulatory requirements, but he has three concerns: the plan should update the identity and contact information for the Landfill's emergency coordinator; the site plan should be updated to show the location of the newly registered recycling center located next to the Landfill office; the plan should be revised to describe actual coordination with emergency response agencies. Vol. 11, pp. 4362-4364.
- 10) Mr. Akeley is generally aware of some lack of participation or assistance by response agencies; if law enforcement agencies refuse to receive the contingency plan from the Landfill, that fact should be articulated in the contingency plan and made a matter of record. Vol. 11, pp. 4384-4385.
- 11) It is not uncommon for a landfill to receive a notice of violation every now and again; it is relatively uncommon for a landfill not to receive one, and CRLF has an exceptional compliance history. Considering that the Landfill does not have a history of violations, it has probably been inspected twice as often as other landfills without violations. At least some of those inspections were conducted in an attempt to be responsive to community concerns. Vol. 11, pp. 4388-4389, 4391.

8. Cindy Padilla, Former NMED Deputy Cabinet Secretary

A. Ms. Padilla described her work history and outreach efforts in Sunland Park.

B.

- 1) In 2004, Ms. Padilla was Chief of the Solid Waste Bureau and served as team leader for a multi-day surprise compliance inspection conducted at the Landfill. Vol. 12, pp. 4589-4590.
- 2) She became aware at the end of 2006 that the Landfill permit renewal was upcoming, and following a meeting during the 2007 legislative session with Senator Nava, Robert Ardivino and others, decided to travel to Sunland Park to listen to citizen concerns about the Landfill and other environmental issues. This included a meeting with the Grassroots Environmental Group in March 2007, a town hall meeting in June 2007, a meeting at the church with citizens in August 2007, and a community meeting with a professional facilitator in early October 2007 to discuss just the Landfill. Vol. 12, pp. 4590-4592.
- 3) Concerns raised by citizens at the meetings included historic environmental contamination from Asarco, dust, poor health, excessive truck traffic, safety of children, location of schools, nuisance issues, flies, noise, traveling behind garbage trucks, historic bad practices of the old dump, medical waste incineration, lack of information and transparency, and disregard of citizens. Vol. 12, p. 4594.

- 4) There is a lot of distrust of the Environment Department by the citizens, distrust of government in general, including EPA and almost anyone in authority. They tried to listen to the citizens, to understand their concerns, and to provide information to them. It was also suggested to Ms. Padilla that she meet with the Bishop to explore ways to establish trust, and she did so. It did not occur to Ms. Padilla to retain a psychologist or sociologist. Vol. 12, pp. 4595, 4606-4609.
- 5) The Environment Department participated in getting EPA to include New Mexico as part of the Texas cleanup to address residential areas in Sunland Park where the soil had been contaminated by the Asarco smelter. The Environment Department has actively opposed the reopening of the Asarco smelter. Vol. 12, pp. 4596-4597.
- 6) The Department has responded to requests for public information from the citizens and community of Sunland Park. A great deal of time was spent during the summer of responding to requests, and individuals from the citizens group came to Santa Fe to look at files. Vol. 12, p. 4598.
- 7) Quality of life includes all things about our lives that make it what it is: having economic opportunities, education, a place to live, clean environment, opportunity for recreation and social opportunities. Around a landfill, the regulations must be met and environmental protection must be ensured. Vol. 12, p. 4612.

- 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.

7) The cluster survey was limited to Valle Vista and Meadow Vista because the public hearing in this matter was getting close and throughout the years one priority was to obtain more information about how much people know about the Landfill and permit. They knew that Mr. Moore's group was focusing on Asarco and the Anapra area, did not want to spread out too much, and exchanged information with them. Vol. 13, pp. 5531-5533.

Other Parties' Witnesses

1. Robert Ardivino, Restaurateur

A. Mr. Ardivino described his background and civic activities, including the Sunland Park Grassroots Group. He described the impact of the Landfill on his restaurant business and conversations with other business owners about impact. He described interactions with state officials concerning contamination in Sunland Park.

B.

1) Mr. Ardivino owns Ardivino's Desert Crossing restaurant and banquet facility on the western foothills of Mt. Cristo Rey in Sunland Park. He is the chairman of the Planning and Zoning Commission, active in Get the Lead Out Sunland Park Grassroots Group, active in both of the master plan steering committees, has sat for six months on the JAC committee, and is on the Board of Directors for the New Mexico Farmers Market Association. Although Sunland Park is a difficult

community because of political factions, he successfully started a children's project at the local farmers market, and helped start the environmental fair, which led to the Sunland Park Grassroots Group that meets every Wednesday night for discussion. Vol. 14, pp. 5593-5602.

- 2) Much of the Grassroots Group discussion relates to the proliferation of industry in the Sunland Park area. "Proliferation" is defined in the American Heritage Dictionary as the rapid reproduction of a cell, part or organism, and it is also a large number of something. Vol. 14, pp. 5602-5605.
- 3) Sewage plants have been a particularly interesting issue for the Group and for Mr. Ardovino personally. There is a plant in the middle of Sunland Park which continues to be a problem, 200-300 yards from the restaurant. There is a Mexican wastewater treatment plant proposed in Juarez on the border of Sunland Park and Anapra, Mexico, just 200-300 yards from the restaurant. The El Paso West side treatment plant can be smelled sometimes from Mt Cristo Rey. These Santa Teresa plant is 3 miles away by the railroad tracks, and he used to smell it when it was operational. Vol. 14, pp. 5606-5614.
- 4) The Ardovinos knew from the beginning that the area, including the Landfill, presented issues. He immediately decided not to open for lunch; there was no way he could ask people to drive in and out of the City during lunch time, as there are too many trash trucks. Weddings

are a main part of their business, and Mr. Ardovino has to assure that every patio includes a buffer so that people are not looking at trash trucks on barren hills. Vol. 14, pp. 5615-5616. Mr. Ardovino later clarified: trash trucks are not the only reason the restaurant is not open for lunch. Vol. 14, pp. 5682-5683.

- 5) Mr. Ardovino has had discussions with other business owners in Sunland Park about the impact of the Landfill. The manufacturing business owners are not concerned; they don't have a quality-of-life issue with it and don't mind the trucks. The Cristo Rey Restoration Committee members are neutral, because the Landfill has been helpful in providing machinery to grade the roads for the pilgrimages twice a year, when there are 20,000 to 30,000 people walking up and down the mountain in one day. It is those in the entertainment business who always have a concern, who have invested a lot of money, and who are trying to deal with it the best they can. Vol. 14, pp. 5616-5618.
- 6) Mr. Ardovino evolved into the contact person between the Grassroots Group and the Environment Department. The Group had tried to start getting the attention of people at the state, and started trying to hold rallies. The Governor was coming to town in late October 2006, and they decided that would be a good time to get his attention. They had a peaceful protest and presented him with a packet of information about environmental problems in the area, and a list of demands: due process of law, the removal of those concealing environmental hazards

from the decision-making process, complete disclosure, an environmental assessment of the community made by independent scientists and engineers, knowledge of the impact of the contamination on the health of the people in Sunland Park, and a voice, just as promised in the Environmental Justice order. Vol. 14, pp. 5619, 5622-5628.

- 7) A month after presenting the letter to Governor Richardson, Secretary Curry sent a response to the Group which did not address the exhibits that had been delivered to Governor Richardson, or the Group's request for independent assessments of the environment and community health. A month after the response, the Group sent an angry letter to Mr. Curry repeating the demands from the earlier letter and also demanding a moratorium on permits until the independent assessments could be completed. Vol. 14, pp. 5629-5634.
- 8) Mr. Ardivino does not believe that the Environment Department heard the Group's response to Mr. Curry, and hopes that it would be their job to address the Group's concerns, and the Group's allegations that they are concealing contamination. It is a big state with enormous resources and no one has addressed their letter head-on. Vol. 14, pp. 5638-5639.
- 9) His next communication with the Environment Department was a trip during the legislative session to Santa Fe to talk to senators, to Ms. Cottrell of the Governor's office and to talk to Ms. Padilla. He also sat

briefly with Mr. Curry. He gave all of these people the same packet, but none of the evidence in the packet was addressed. Subsequently, Ms. Padilla, Mr. Jim Norton and Mr. Ruiz went to Mr. Ardovino's restaurant, and met with 15 or 20 residents, but they did not address evidence that they were concealing contamination. Ms. Padilla made a promise to address the evidence and later sent a written response dated May 1, but the response did not address a Washington Post article dated April 28, 1982 about blood lead levels in Anapra, a handwritten memo, four soil samples taken from the water tower in 2001, or a New York Times article reporting that Asarco had secretly turned its smelter into a hazardous waste incinerator. Vol. 14, pp. 5640-5647.

10) Mr. Ardovino participated in a meeting in June 2007 at the Riverside School. A representative from EPA said they had tested soil in Anapra and would be removing soil from houses there. In August, soil was removed from 23 or 24 homes in Anapra. The Grassroots Group asked for results of the testing there, and the Group has made numerous attempts to get this information, but has never received it. Vol. 14, pp. 5649-5654.

11) Moule and Polyzoides brought 14 to 22 highly qualified people, world-renowned urbanists, to conduct an engaging planning process in Sunland Park. He did see Dr. Turnbough and David Bergman talking, and then Dr. Turnbough alone, and did hear Dr. Bergman say later that

he felt like he was being threatened by the Landfill. It didn't seem important at the time, and he cannot say what happened between them. Vol. 14, pp. 5655-5657.

12) Mr. Ardovino received a lot of paperwork from FedEx right around Thanksgiving and worked hard to prepare for the hearing that began on December 5. The Group's request for \$5,000 to pay for an expert to help at the hearing was denied. Vol. 14, pp. 5657-5660.

13) The restaurant has 53,000 visitors a year. Mr. Ardovino made a substantial investment in the property in 1997, after it sat idle for 20 years. The Landfill was in operation at that time, as was Asarco. Vol. 14, pp. 5686-5688.

2. Oiga Arguelles

A. Ms. Arguelles described the plight of children in Anapra.

B.

1) Ms. Arguelles lives in Anapra, a subdivision of Sunland Park next to the Texas border located 3 miles from Asarco and 3 miles from the Landfill. Vol. 14, pp. 5690-5691.

2) La Casita, a small house used as a community center, sits in the middle of the community. Ms. Arguelles worked there as a volunteer for AmeriCorps and among other things organized the youth group. Vol. 14, pp. 5693-5694.

- 3) The majority of kids in Anapra seem not to have hope or faith. They are intelligent but they have a lot of health problems and when she was working with the youth group, most of the kids were learning disabled. Four buses are necessary to take the children to elementary school; just one bus is necessary for transport to the middle school and the high school because of all the dropouts. Vol. 14, pp. 5695-5696.
- 4) The community of Anapra is stigmatized. The kids growing up there tend to be aggressive, and have been profiled as delinquent. When they run into problems they are expelled; the system has no patience with them. They are supposed to get more one-on-one attention in the special education program, but that doesn't necessarily happen. A lot of them are promoted because of their age, not their ability. All of the kids participate in the federal program that provides food. After school, a lot of the kids head to La Casita, or they play at the park. La Casita has several computers, and the kids get help with their homework and a snack. Ten years have passed without one person from Anapra graduating from high school. Vol. 14, pp. 5696-5700.
- 5) The people in Anapra do not feel they get a square shake from the Sunland Park Police Department, the Sheriff's Department or the Immigration Service. Most of the boys and men in Anapra are in the system, either on probation or in prison. Very young girls get pregnant, which is not really new to Anapra. There are problems with despair and depression. There is a lot of self-medication in the community,

where people are either obtaining medication for which they don't have a prescription, or they are taking drink or drugs. Anapra is completely surrounded by a levee, and everything ends up in their backyard. Vol. 14, pp. 5700-5704.

- 6) Recently, EPA came into Anapra and removed soil from 24 houses. Ms. Arguelles gave them permission to test at her house, but they did not remove soil there. Her mother lives next door; they did remove soil there. The owner of that house is confused as to what EPA told him except that the results were very high and that they would take the soil away. Vol. 14, pp. 5705-5706.
- 7) New Mexico Border Health has a mobile testing vehicle that came to La Casita and did blood testing. They stopped at some point, after a meeting in which Tom Ruiz spoke with the promotoras and indicated that the people of Anapra had lead in their blood because of lack of hygiene and candy from Mexico. She had spoken with Mr. Ruiz about health problems in the community, including metals in the blood, young ladies with developmentally delayed problems, respiratory diseases and chronic fatigue. It is hard to keep the children on task and hard for them to remember things; they are hyperactive and aggressive. Her own children have allergies, poor eyesight, migraines, nosebleeds and intense growing pains. She herself was diagnosed with lupus when her daughter was born. Vol. 14, pp. 5708-5715.

8) Ms. Arguelles is not still waiting for New Mexico Border Health and the Environment Department to address the evidence they've presented to them; she has lost all hope. Vol. 14, pp. 5721-5722.

RECOMMENDED FINDINGS OF FACT

Preface

For the most part, the recommended findings of fact below are drawn from the Applicant's Requested Findings of Fact, as modified, inasmuch as I am recommending granting of the permit for a period of ten years, with conditions. I found many of the Department's requested findings to be evidentiary or more detailed in nature, as opposed to being ultimate findings of fact. As one would expect, many of the Department's findings are duplicative or similar to those requested by the Applicant. To the extent possible, I have incorporated (as opposed to adopting them as separate findings), implicitly or expressly, some of the Department's requested findings in the findings proposed by the Applicant. In other cases, I have accepted the Department's requested findings as separate findings (shown as "accepted expressly"), apart from those proposed by the Applicant. Essentially, I have accepted either implicitly or expressly all of the Department's requested findings (excepting those noted below), even though they may not be noted as expressly accepted.

With respect to the City of Sunland Park's Requested Findings of Fact, of which there were 520, I found a great number of them to be extremely detailed and consisting mostly of evidentiary or factual findings, as opposed to ultimate

findings of fact. As a result, I have noted below that some of the City's requested findings were accepted but already incorporated implicitly or expressly in the Applicant's or Department's findings that I accepted. In some cases, I considered the City's requested findings as frivolous. In a majority of these, the specific subject matter treated in the requested findings was not relevant to the issues to be decided in this case, and such was duly noted in the list of rejected findings.

Many of the City's requested findings were a mere paraphrasing of the witnesses' testimony or taken verbatim from a report or document in evidence. Because I rejected a great majority of these, I wish to mention two things on this point.

First, although the requested findings may have accurately stated the testimony of the witnesses, in many cases, as noted below, I rejected them on the basis that they were not supported by substantial or credible testimony/documentary evidence or by the preponderance of the evidence as a whole, either because I found the evidence or testimony not believable or contradicted by other testimony or evidence, or I did not wish to rely on evidence I perceived to be biased, discredited, or coming from an unreliable source. I deemed that to be my prerogative as a finder of fact. As such, I rejected some testimony and accepted the remainder. For the sake of brevity, findings that were found not supported by the evidence for the reasons noted above are noted only as "not supported."

Second, even in those instances in which I chose to believe the testimony, I may not have accepted the requested finding expressly (that is, separate and apart from a finding I may have already accepted from the Applicant's or the Department's requested findings) for two reasons: Either it was duplicative or the requested findings were evidentiary in nature, in which case I deemed them as incorporated in another finding already accepted (especially if it was an ultimate finding); or, I deemed the City's requested finding as irrelevant to the issues in the case, in which case I rejected it and so noted.

In some instances, rather than just showing below the City's requested finding as either accepted or rejected, I have noted other reasons for my decision to reject the finding.

Finally, I consider it important to make special note of the City's requested findings based on Dr. Devon Pena's testimony, the City's technical expert. I rejected most if not all of those requested findings. Based on Dr. Pena's answers to questions, his demeanor, and his approach, I felt strongly throughout his testimony that he was extremely and unreasonably biased, had failed to familiarize himself with the facts of the case, and especially lacked knowledge of the region, as well as the applicable law and regulations. He also misrepresented what he knew or did not know of the 1996 proceeding (during the last permit renewal hearing). I found his testimony much too theoretical, too general and academic in nature without his applying his knowledge specifically to the facts of the case. His testimony seemed built on a great number of assumptions that were not evidence in the case.

As a witness, he appeared quite sure of himself, but there lay his weakness. Because of his demeanor, the longer he spoke, the less credible he became. He concluded that he knew the area and especially the people of Sunland Park, based on his own perception of his personal experience and expertise on the subject of Colonias, towns, and cities along the U. S.-Mexican border, having come from one of them himself. His own words failed to convince me on that point.

The effect of all this was that I found Dr. Pena to have discredited himself as a witness, not only during cross-examination but during his direct testimony.

Whatever credibility he may have had left at the end of his direct examination was destroyed by opposing counsel during cross-examination. My sentiments concerning Dr. Pena's testimony have been incorporated in several of the recommended findings.

Applicant's Requested Findings

Findings accepted expressly without modification: 1, 2, 4, 5, 7-21, 23-33, 35, 37-43, 46-51, 53-60, 64-68, 70-71, 73-84, 86-92, 94-121, 124-140, 142-148, 150, 152-160, 162, 167-170, 173, 176, 180, 183-184, 186-188, 190-192, 195, 197, 200-204, 206, 210-213, 215-220, 226-237, 240-243, 245-248, 252-253, 256-265, 268-270, 272-274, 277-279, 281-286, and 288.

Findings accepted expressly with modification: 3, 6, 22, 34, 36, 44-45, 52, 61-63, 69, 72, 85, 93, 122-123, 141, 149, 151, 161, 163-166, 171-172, 174-175, 177-179, 181-182, 185, 189, 193-194, 196, 198-199, 205, 207-209, 214, 221-225, 238-239, 244, 249-251, 254-255, 266-267, 271, 275-276, 280, and 287.

Findings rejected: None

Department's Requested Findings

Findings accepted expressly without modification: 11, 77, 79, 130-132, 142, 149, 217-219, 228-239, 257-266, 334-340, 376, 380-882, 395-396, 406, 410, 412-413, 417, 422, 437-438, and 443-444.

Findings accepted expressly with modification: 1-5, 13, 15-16, 20, 75, 87, 89, 113, 120, 125, 143-144, 150-151, 186, 270, 293, 301-317, 333, 397, 400, 404, 411, 416, 418-419, and 436.

Findings accepted implicitly and incorporated: 6-10, 12, 14, 17-19, 21-74, 76, 78, 80-86, 88, 90-112, 114-119, 124, 126-130, 133-141, 145-148, 152-185, 187-216, 220-227, 240-256, 267-269, 271-292, 294-300, 318-332, 341-375, 377-379, 383-403, 405, 407-409, 414-415, 420-421, 423-435, 439-441, and 444-453.

Findings rejected: None.

City of Sunland Park's Requested Findings

Findings accepted expressly without modification: 146, 148, 155, 171, 182, and 184.

Findings accepted expressly with modification: 3, 4, 18, 22, 147, 149, 187, 201, 234, 328-330, 365, 368, 371, 376-377, 431-432, 472, and 514.

Findings accepted implicitly and incorporated (with or without modification): 1, 5, 14-15, 26, 49, 139, 190, 192-197, 200, 202-204, 206, 212-213, 215-219, 230-231, 236, 242-243, 245-249, 263, 281-283, 285-286, 294, 298-299, 307-309, 332-333, 357, 359-364, 372-374, 384-385, 400, 412-413, 428,

434-435, 443-444, 448, 455, 458, 461-463, 473, 477-478, 481-482, 486, 488, 491, 505, 516, and 520.

Findings rejected: 2 (not supported and Hearing Officer's estimate is not evidence), 6 (meaning unclear and too broad), 8 (not supported), 11-13 (not supported), 16-17 (not supported), 19 (not supported), 27-48 (not supported), 50-138 (not supported), 140-144 (not supported), 145 (not relevant), 150-154 (not supported), 156 (not supported and not relevant), 157-160 (not supported), 161-163 (not supported and not relevant), 164-166 (not relevant), 167-168 (not supported and not relevant), 169 (not relevant), 170, (not supported), 172-174 (not relevant), 175 (incomplete sentence and not relevant), 176-181 (not relevant), 183 (not relevant), 185-186 (not relevant), 188-189 (not relevant, 191 (not relevant), 198-199 (not relevant), 205 (not relevant), 207-211 (not relevant), 214 (not relevant), 220 (not supported and not relevant), 221-222 (not relevant), 223-224 (not supported), 225-226 (not relevant), 227-228 (not supported), 229 (not supported and not relevant), 232-233 (not supported), 235 (not supported), 237 (not supported), 238 (not supported and not relevant), 239-241 (not supported), 244 (not supported), 250 (not supported), 251-261 (not relevant), 262 (not supported), 264-274 (not supported), 275-280 (not supported and not relevant), 284 (not relevant), 287-288 (not relevant), 289 (not supported and not relevant), 290 (not relevant), 291 (not supported and not relevant), 292 (not supported and not relevant), 293 (not relevant), 295 (not relevant), 296 (not supported and not relevant), 297 (not relevant), 300-303 (not relevant), 304-306 (not supported), 310 (not supported and not relevant), 311 (not relevant), 312-

313 (not supported), 314-315 (not relevant), 316-325 (not supported and not relevant), 326-327 (not supported), 331 (not supported), 334-336 (not supported), 337 (not supported and meaning unclear), 338-340 (not supported), 341-343 (not supported and not relevant), 344-349 (not supported), 350-353 (not relevant), 354-356 (not supported), 358 (not supported), 366-367 (not supported and not relevant), 369 (meaning unclear and not relevant), 370 (not supported), 375 (not supported), 378-382 (not supported), 383 (not supported and not relevant), 386-389 (not supported), 390-394 (not supported and not relevant), 395-399 (not supported), 401-402 (not supported and not relevant), 403 (not supported, too broad, and meaning unclear), 404 (meaning unclear), 405-406 (this is legal argument, not findings based on testimony), 407 (not supported), 408 (again, this is legal argument, not a finding based on testimony), 409-410 (not supported), 411 (not relevant and meaning unclear), 414 (not supported and too broad), 415 (too broad; not time line), 416-420 (not supported and too broad), 421 (not supported), 422 (not supported and too broad), 423-424 (not supported), 425 (meaning unclear), 426 (not supported), 427 (not supported and too broad), 429 (not supported), 430 (not relevant and too broad), 433 (not supported and too broad), 436-437 (not relevant; expertise and credibility not affected), 438 (not relevant and too broad), 439-440 (too broad; different owners; not time line), 441 (not relevant), 442 (not supported and not relevant), 445-446 (not supported), 447 (not relevant and duplicative), 450 (not supported and too broad), 451-452 (not relevant; expertise and credibility not affected), 453 (not supported), 454 (not supported and not relevant), 456 (not supported and too

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

facility that is the subject of the permit hearing and the other “proliferating industries” with which it is compared. No credible evidence was presented at the hearing that CRLF generates pollutants, much less that there is a common nexus with any pollutants that might be generated at any other site. Testimony of Marla Shoats, Tr. Vol. 6, pp. 2373-2377.

RECOMMENDED CONCLUSIONS OF LAW

Once again, as I did for the recommended findings, the recommended conclusions below are drawn from the Applicant’s Requested Conclusions of Law. Some of the Department’s and the City of Sunland Park’s requested conclusions are duplicative of the Applicant’s, so those requested conclusions, if not rejected, are shown as accepted implicitly and incorporated in other conclusions accepted:

Applicant’s Requested Conclusions

Conclusions accepted expressly without modification: 1, 15, 17-26, 28-34, and 36-38.

Conclusions accepted expressly with modification: 2, 3, 16, 27, and 35.

Conclusions accepted implicitly and incorporated: None.

Conclusions rejected: None.

Department’s Requested Conclusions

Conclusions accepted expressly without modification: 8-9, 12-16, 18, 20, 23(D), 23(E), 23(M).

Conclusions accepted expressly with modification: 3, 7, 21-22, 23(F), 23(K), 24, and 26.

Conclusions accepted implicitly (with or without modification) and incorporated: 1-2, 4-6, 10-11, 17, 23, and 25.

Conclusions rejected: 23(J) (see Conclusion 37), 23(N) (not necessary; regulations speak for themselves and must be followed), 23(O) (not necessary; regulations speak for themselves and must be followed).

City of Sunland Park's Requested Conclusions

Conclusions accepted expressly without modification: 5-9.

Conclusions accepted expressly with modification: 11, 16-21, and 24-27.

Conclusions accepted implicitly (with or without modification) and incorporated: 1, 4, 10, 12-15, and 22-23.

Conclusions rejected: 3 (not supported by my interpretation of *Rhino*, not supported by the evidence, and not supported by the findings of fact) and 28 (not supported by the evidence or the findings of fact).

Conclusions of Law

1. The Secretary of Environment ("Secretary") has jurisdiction over the subject matter and the Parties to this proceeding.

2. CRLF's Application and this proceeding are governed by the Solid Waste Act, NMSA 1978, §§ 74-9-1 to 74-9-43 and regulations promulgated under the Act by the Department (codified at 20 NMAC Chapter 9).

3. The purpose of the Environmental Improvement Act, N.M. Stat. Ann. §74-1-1 to -16, is to "ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet

unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people.”

4. The purpose of the Solid Waste Act, *N.M. Stat. Ann. §74-9-1 to -42*, is to “enhance the beauty and quality of the environment; conserve, recover and recycle resources; and protect the public health, safety and welfare.”

5. The purpose of the permit renewal process found in the Solid Waste Act, *N.M. Stat. Ann. §74-9-1 to -42*, and its regulations, is the same as for initial permit issuances, which is to protect the environment and the public health, safety and welfare.

6. The process in the Solid Waste Act, *N.M. Stat. Ann. §74-9-1 to -42*, and its regulations, for seeking a permit renewal (i.e., filing an application, review of application, notice to the public and affected parties, public input and education, public hearing, etc.) is the same or substantially the same as that for seeking an initial permit.

7. The Solid Waste regulations apply the same standard for issuance of an initial permit and permit renewal, which standard is that “The Secretary shall issue a permit if the applicant demonstrates that the other requirements of this Part are met and the solid waste facility application demonstrates that neither a hazard to public health, welfare, or the environment nor undue risk to property will result.”

8. The Department in initial permit issuances as well as in permit renewals is required to weigh the sociological concerns of the community, among other concerns, in protecting the public health and welfare under the Act.

9. The Act and regulations provide for the proper and reasonable construction of procedures in order to carry out the purposes of the statutes and regulations.

10. The Department has a duty to interpret its regulations in a manner to accomplish the purposes of the Solid Waste Act and the Environmental Improvement Act.

11. The regulations under the Solid Waste Act, *N.M. Stat. Ann. §74-9-1 to -43*, require more from the Department than just technical oversight.

12. The Department must not ignore community concerns relating to environment protection and the public health, welfare, environment, or risk to property simply because they are not a part of the technical requirements under the regulations. The Department has met that requirement in this case.

13. CRLF is a permitted facility in New Mexico as authorized under the Solid Waste Disposal Act and therefore satisfies the exclusion of the Small Business Relief and Brownfields Revitalization Act and is by definition not a Brownfield site. 42 U.S.C. 6901 et seq; Public Law 107-118 (H.R. 2869).

14. The proposed CRLF is a solid waste facility subject to the Solid Waste Act and 20 NMAC 9.1.

15. Notice by publication, posting and mailing of the filing of the Application in 2006 complied with the requirements of New Mexico law, including 74-9-22 and 20 NMAC 9.1.201(C) (now compiled at NMAC 20.9.3.8 (G)). Application, Vol. I, Section 2, pp. 2-18 to 2-20; Application, Vol. VI, Section 2

16. The Department's notice by publication, posting and mailing of the scheduling of the hearing on CRLF's Application complied with the requirements of New Mexico law, including 20 NMAC 1.4.200(C).

17. Camino Real provided notice of the filing of the Application to adjacent property owners, local government, interested parties and the public by certified mail, publication and posting as required by NMAC 20.9.3.8 (G). Application, Vol. VI, Section 2.

18. The Application complied with all applicable requirements of the Solid Waste Act and the regulations of the Department promulgated at 20 NMAC, Chapter 9.

19. The siting of CRLF complies with the criteria set forth in 20 NMAC 9.1.302. Application, Vol. I, Section 3, pp. 3-1 to 3-7.

20. The composite liner system that underlies CRLF conforms to the requirements of 20 NMAC 9.1.306. Application, Vol. I, Section 3, pp. 3-8 to 3-14

21. CRLF's leachate collection system complies with the requirements of 20 NMAC 9.1.308. Application, Vol. I, Section 3, pp. 3-15 to 3-17.

22. CRLF gas control system complies with the requirements of 20 NMAC 9.1.309. Application, Vol. I, Section 3, pp. 3-17 to 3-19.

23. CRLF complies with the regulations for landfill operation, including the requirements at 20 NMAC 9.1.401. Application, Vol. I, Section 4, pp. 4-1 to 4-7.

24. CRLF complies with the Department's regulations for handling and disposal of special waste, including the requirements set out at 20 NMAC 9.1.402

and 9.1.700 to 712. Application, Vol. I, Section 4, pp. 4-8 to 4-17; Application, Vol. I, Section 7.

25. CRLF meets the Department's requirements for closure and post-closure plans, including the requirements set out at 20 NMAC 9.1.501 & 502. Application, Vol. I, Section 5, pp. 5-1 to 5-6.

26. CRLF meets the Department's requirements for operator certification, including the requirements set out at 20 NMAC 9.1.600 to 603. Application, Vol. I, Section 6.

27. On August 2, 2007, the Secretary promulgated certain regulations requiring a permit applicant to prepare a Community Impact Assessment before granting a solid waste permit in certain circumstances. That regulation is currently promulgated at NMAC 20.9.3.8.D. NMAC 20.9.3.8.D does not apply to the Application because Camino Real filed the Application with the Department in March, 2006, 17 months before the Secretary promulgated that regulation. At the time of Camino Real's submission of the Application in March, 2006, no regulation of the Secretary required an applicant for a solid waste permit to prepare a Community Impact Assessment (CIA).

28. Camino Real commissioned the CIA, despite the fact that it had no legal or regulatory obligation to do so.

29. The term "special waste" is defined under applicable NMED regulations as solid wastes that have unique handling, transportation, or disposal requirements to assure protection of the environment and the public, health, welfare and safety." 20 NMAC 9.1.105(BZ).

30. The Application complies with all applicable requirements of the Act and regulations promulgated by the Secretary at 20 NMAC Chapter 9.

31. All of the statutorily required public notices were given as required by the Act and 20.1.4 NMAC and were provided in English and Spanish, including newspaper publications, postings, and notices, in conformance with EO 56.

32. The public notice for the hearing was in compliance with NMSA 1978, § 74-9-22.

33. The hearing was conducted in accordance with the Act and the provisions of 20 NMAC 1.4.

34. “The Secretary must consider whether lay [non-technical] concerns relate to violations of the Solid Waste Act and its regulations.” *Rhino*, 2005-NMSC- 024, ¶24, 138 N.M. at 140, 117 P.3d at 946.

35. Renewal and modification of Camino Real's permit will not result in a hazard to public health or a hazard to the public welfare or the environment, nor will it result in an undue risk to property.

36. Renewal and modification of the permit will not create a public nuisance.

37. CRLF not only demonstrated that the proposed facility and its operation pose no undue hazard to public health, the environment, or to property, but that adequate conditions and mitigation measures are in place to ensure protection of human health and the environment during and after the lifetime of the proposed landfill.

38. The evidence provided by public comment does not support a conclusion that renewal of the permit will adversely affect the health, welfare, or the environment in the area surrounding CRLF.

39. Camino Real and the Department made a showing that renewal of the permit will comply with all applicable requirements of the Act and 20 NMAC Chapter 9.

40. No Party or interested participant, nor any member of the public, presented credible evidence to rebut the prima facie showing made by Camino Real and the Department that renewal and modification of the permit will comply with all applicable requirements of the Act and 20 NMAC Chapter 9.

41. The concept of "proliferation," as discussed in the New Mexico Supreme Court's opinion in *Colonias Dev. Council v. Rhino Environmental Servs.*, 138 N.M. 133, 117 P.3d 939 (2005), pertains to the initial siting and permitting of a new landfill or vertical or lateral expansion of an existing landfill. However, the concept of "proliferation" is inapplicable to the present proceeding because CRLF's Application seeks to renew an existing permit. Furthermore, Camino Real is not attempting to expand the footprint of the existing landfill. Application, Vol. I, Section 1, p. 1-1; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4215-4216.

42. "Meaningful involvement" in the permitting process requires that the process be open in such a manner that the voices of the community are heard and that their input is considered. That happened at the hearing. Meaningful involvement does not mean, and environmental justice does not require, that the

result sought by any one person or group must become the outcome of the process. Rather it means that all will be heard and the evidence presented will be considered and weighed in line with the statutory requirements. That too happened at the hearing.

43. Consideration of the adverse impact of CRLF on a community's quality of life, as discussed in *Rhino*, applies to permit renewals as well as initial permit issuances.

44. In certain communities that are experiencing a "proliferation of landfills and industrial sites," the Department must consider whether "evidence of the harmful effects from the cumulative impact of industrial development rises to the level of a public nuisance or potential hazard to public health, welfare, or the environment." *Rhino*, 138 N.M. at 142, 117 P.3d at 948. The Department's New Rules provide appropriate guidance for applying this "proliferation" concept. Testimony of Auralie Ashley-Marx, Tr. Vol. 11, p. 4410.

45. The "proliferation" concept does not apply in cases like this one in which the Applicant is merely renewing an existing permit without laterally or vertically expanding the Landfill. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2601-2602; Testimony of Marla Shoats, Tr. Vol. 6, pp. 2371, 2796.

46. The New Rules provide guidance as to the types and quantity of facilities that are to be considered under the proliferation analysis -- the relevant inquiry is whether there are at least three "regulated facilities" within a four-mile radius of CRLF. Testimony of Thomas Van Zandt, Tr. Vol. 7, pp. 2604-2605, 2608-2610; see also NMAC 20.9.2.7.V (defining "vulnerable area"); NMAC

20.9.3.8.D.2 (describing procedures for Community Impact Assessments for vulnerable areas, under certain circumstances).

47. The Governor's Executive Order on Environmental Justice requires the Department to provide meaningful opportunities for involvement of the public in the permitting process, to provide publicly disseminated information in English and Spanish, to utilize available environmental and public health data and to accomplish the Executive Order's mandated actions within the bounds of and consistent with the Department's existing statutory and regulatory authority.

48. Meaningful opportunities for public involvement were provided by a town hall and community meetings, in addition to the statutorily required public hearing that lasted 14 days, all with simultaneous English and Spanish translation.

49. Even if the proliferation analysis had been relevant in this permit renewal hearing, which it is not, the Opponents did not present the evidence necessary to perform a meaningful proliferation analysis in the hearing.

50. "Quality of life concerns expressed during the hearing bear a relationship to environmental regulations the Secretary is charged with administering." *Rhino*, 2005- NMSC- 024, ¶30, 138 N.M. 133, 141, 117 P.3d 939, 947.

51. *Rhino* determined that the legislature did not limit the Department's role to reviewing technical requirements but rather its role is much broader in that the Secretary must use discretion in implementing the Solid Waste Act and its regulations in order to encourage public participation in the permitting process,

including consideration of sociological concerns and adverse impacts on a community's quality of life.

52. Neither *Rhino* nor the Department's New Rules changed the ultimate test for permit issuance, which is: If the Applicant demonstrates that all of the technical requirements for the permit are met, and that neither a hazard to public health, welfare, or the environment, nor undue risk to property, nor a public nuisance will result, then a permit shall be issued. See *Rhino*, 138 N.M. at 142, 117 P.3d at 948; Testimony of Marla Shoats, Tr. Vol. 6, pp. 2379-2380, 2388; NMAC 20.9.3.18.A.

53. The Solid Waste Regulations at 20 NMAC 9.1.212.J provide that the "Secretary shall issue a permit if the applicant demonstrates that the other requirements of this part are met and the solid waste facility application demonstrates that neither a hazard to public health, welfare, nor undue risk to property will result."

54. 20 NMAC 9.1.212.P(3) lists causes for denying or revoking a permit, including "a determination that the permitted activity endangers public health, welfare, or the environment."

55. The Department is required to consider issues relating to social well-being and quality of life not addressed by specific technical regulations and to deny a permit if the evidence presented at the hearing on these issues would be contradictory to or in violation of the Solid Waste Act or its regulations.

56. The regulations require the Department to deny the issuance of a permit or renewal of a permit if there is a hazard to public health, welfare, environment, or undue risk to property.

57. Under *Rhino*, the Department can deny the issuance of a permit or renewal of a permit if there is an adverse impact to the quality of life of a community, such that the impact is deemed a hazard to public health, safety, or welfare.

58. Under *Rhino*, community concerns may affect the Department's decision to deny a permit or impose conditions if such concerns form a basis for a finding that granting the permit, with or without conditions, would result in a hazard to public health, safety, or welfare, or undue risk to property.

59. "The regulations do not limit the Secretary's review to technical regulations, but clearly extend to the impact on public health or welfare resulting from the environmental effects of a proposed permit." *Rhino*, 2005- NMSC- 024, ¶31, 138 N.M. at 141, 117 P.3d at 947.

60. Evidence in support of a hazard to public health or the environment must show a direct linkage between the permitted activity and the effects on health and the environment, not through an indirect mechanism. *Cox v. Dallas*, 256 F.3d 281, 291 (5th Cir. 2001); *Blue Legs v. U.S. EPA*, 668 F.Supp. 1329 (SD 1987) (multiple and direct exposure pathways to the public).

61. Several of the Opponents contended that CRLF adversely "impacts" property values or "impedes" economic growth in Sunland Park. These are not proper grounds to deny renewal of the permit. The question is whether

CRLF creates “a hazard to public health, welfare or the environment [or an] undue risk to property.” NMAC 20.9.3.18.A (formerly codified at 20 NMAC 9.1.212.J). As a matter of law, the term “undue risk to property,” as it is used here, does not encompass a mere diminution in property values or a slowing of economic development, unless such diminution results from actual or likely contamination originating from a landfill.

62. Public testimony against granting of the Application was generally about traffic, odor, dust and litter. The evidence does not support a conclusion that these conditions are a direct result of CRLF and not from other causes.

63. The M&P Master Plan bears little relevance to this proceeding. The question is not whether CRLF will impede the City’s ability to “gain maximum benefit” or “transform” the community by implementing the M&P Master Plan. Rather, the correct test is whether renewal of the permit will result in a *hazard* to the public health, welfare, or the environment; an *undue* risk to property; or a public nuisance. NMAC 20.9.3.18 (formerly codified at 20 NMAC 9.1.212.J) Even if Dr. Erickson’s admittedly “extreme” assumption (that the continued existence of CRLF would completely halt implementation of the M&P Master Plan) is taken at face value, it could not be a legitimate basis for denying the Application because CRLF cannot be deemed to have created a *hazard* simply by impeding the implementation of a “very ambitious” and “transforming” master plan.

64. The Department recommends granting the Application, provided that the following proposed permit conditions be added to the terms of the permit:

1. The Applicant will comply with all applicable requirements of the Solid Waste Management Regulations, the Solid Waste Act, and any other conditions set forth in the permit, and shall construct and operate the Landfill in accordance with the permit application. This condition is to remind the Applicant that all applicable requirements and application statements must be complied with throughout the life of the Landfill.

2. At least 30 days prior to the start of new cell construction, the Applicant will furnish the Department with a major milestone schedule. This condition is to ensure that the Department is given timely notice to effectively monitor new construction at the landfill.

3. The Liner Construction Certification Report must be submitted to and approved by the Department prior to disposal of any solid or special waste in any new cell. Any new disposal area must be inspected by a representative of the Solid Waste Bureau prior to waste disposal. A letter from the Department must be received authorizing acceptance of waste prior to disposal. This condition is to ensure that the liner is constructed in accordance with the permit and regulations.

4. The Waste Inspection and Screening Program (Volume II, Section 2, Part 4.4, of the Permit Application) shall be amended prior to implementation at the Landfill to indicate that no less than three random waste screening inspections shall be conducted during each operating day. One of the required daily load inspections shall be conducted upon a load of maquiladora waste, unless no loads of such waste were received during the operating day. Within 30 days of permit issuance, the Waste Inspection Screening Program shall be updated and items as specified by the Department shall be included. The Screening Program shall include:

- Inspection documentation that specifies the identity, by name and title, of the persons completing the inspection.
- A statement that staff shall inspect loads from the ground and not just from heavy equipment.
- Details on how the inspections will be completed; such as how many staff will undertake the inspections, what equipment will be used, what methods will be used to check the loads (i.e. ripping bags open using rakes), what personal protective equipment will be used, and any other information necessary.
- Information that addresses the procedures in place regarding maquiladora deliveries; such as identifying the number of waste

totes inspected from maquiladora trucks and other details regarding the selection of these loads for inspection.

5. The Plan of Operations and the Special Waste Disposal Plan – Industrial Solid Waste Disposal Management Plan shall be amended to include additional details regarding use of Category of alternative daily covers (ADC). A pilot beneficial use plan, with a completed field evaluation of Category II ADCs including Auto/Fluff/ Automotive Shredder Residue (ASR) and foam, shall be submitted to the Solid Waste Bureau for approval prior to any use of the ASR. Use of Category III ADCs is denied.

6. As a result of public comments regarding dust generation from CRLF, within 60 days of issuance of the permit, the Applicant shall install a weather station at a location on-site that will accurately reflect the site's meteorological conditions. The capabilities of the station shall include, at a minimum, wind speed, wind direction, humidity, barometric pressure, temperature, and a precipitation gauge. The station shall be able to monitor wind speed (hourly peak wind speed) and wind direction at two different elevations, at eye level (5-6 feet from the surface of the Landfill, and at a height between 10-20 feet. The Applicant shall install a system that is able to record data hourly and maintain records via a computer or other technology. The data should be compiled on a monthly basis, and the records maintained on-site for review by Department staff. Weather data shall be obtained for a minimum of five years. The Department has confirmed that Dave Nolan, 505-589-3972, NOAA – National Weather Service Forecast Office, Santa Teresa, New Mexico, will provide technical assistance regarding equipment, placement and data sharing. The goal of this condition is to obtain five years of site specific data to assist and enhance the evaluation of air particulate monitoring data.

7. The Applicant shall submit a Plan to the Department within 90-days of permit issuance that explores options to minimize particulate matter from the fleet of on-site heavy equipment, and for the El Paso Disposal, a wholly owned subsidiary of Waste Connections. This plan applies only to equipment or vehicles used on-site or to deliver wastes to CRLF.

8. To facilitate on-going public involvement, the Applicant shall continue to assess community concerns, gauge the effectiveness of mitigation measures undertaken by owners of CRLF, and to provide information regarding operation of the facility to the residents, of Sunland Park, the Applicant shall hold a minimum one public meeting per year. A report summarizing the

comments from the meeting shall be provided to the Department within 30-days of the date of the meeting.

9. The Applicant shall hold at least two scoping meetings in 2011, and complete another Community Impact Assessment, in 2012, to update the Community Impact Assessment based in part on the new available 2010 Census data.

10. Upon issuance of the permit, the owner shall operate this facility in accordance with all applicable requirements of Title 20, Chapter 9, Parts 2-10.

11. The Applicant shall dilute any leachate collected and place it on lined cells only, but shall not place leachate on any other portion of the Landfill, including access roads or other unlined areas. Prior to disposal of leachate at a Public Owned Treatment Works or permitted liquids management facility, the Applicant shall receive approval from the Department.

12. A view shed analysis of the proposed final elevation in comparison with the surrounding mesa shall be completed for Unit 3 within five years prior to the mid-term review. The analysis must visually show a representation of the elevation from all directions.

13. Additional vegetative screening shall be established at this facility as specified in the CIA within one year of permit issuance.

14. Three revisions shall be made to the Contingency Plan and submitted to the Bureau for approval prior to implementation.

- It shall be revised to correctly identify the contact information for the Landfill's emergency coordinator. The Contingency Plan shall be updated any time there is a material change in circumstances affecting the Contingency Plan.
- The site plan shall be revised to show the location of the newly registered recycling center located adjacent to the Landfill office.
- The description of emergency response coordination should include the name of each agency; the date and location of coordination; the primary points of contact for each agency; a description of the equipment, expertise and assistance that the agency will provide in the event of an emergency; the agency's estimated response time to the Landfill, if applicable; an indication of whether unaccompanied access after hours would

be granted to the agency through the sharing of keys or codes or 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.

Summary of Testimony for Ashley-Marx, NMED Ex. 1, pp. 72-74, attached to NMED's Statement of Intent; Testimony of Auralie Ashley-Marx, Tr. Vol. 11, pp. 4308-09.

65. Proposed additional permit condition numbers 1-8 and 10-12 are well-founded and will be added as additional terms of the permit.

66. Proposed additional permit condition number 9, however, is not warranted and should not be added as a term of the permit. The New Rules of the Department require only that a CIA be prepared when an application is pending for a new facility or a vertical or lateral expansion of an existing facility and other additional prerequisites are met. There is no legitimate justification for forcing the Applicant to undergo the expense and burden of preparing another CIA by 2012 under circumstances where one would not otherwise be required by the standards set out in the Department's own rules. Imposing such a burden on the Applicant would be arbitrary and capricious. Besides, the benefit to be gained from yet another CIA would be marginal, at best. Although the Applicant chose to prepare a CIA that was not otherwise required, the evidence from the hearing demonstrated that the Opponents were not satisfied by the existence of the CIA. There is no reason to believe that the Opponents would be any more receptive to a new CIA prepared in 2012.

67. The Application, public hearing, and full record reveal no basis under the Act or the regulations on which to deny the Application for a period of ten years.

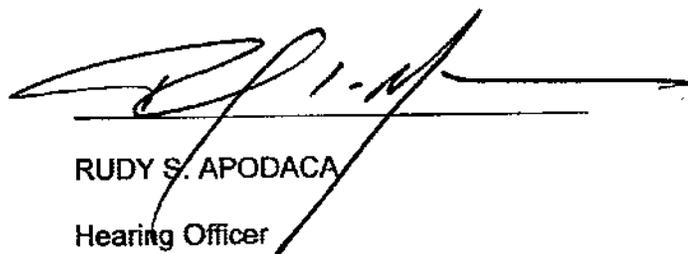
68. After conducting a technical evaluation of the Application, a review of the engineering design, and an assessment of the facility's location, the Department has determined that the Applicant meets the permitting requirements of the regulations and the Act and that the Application should be granted subject to the conditions noted above.

69. The Application should be granted in its entirety, subject to additional conditions 1-8 and 10-14 as listed in paragraph 64, above.

RECOMMENDED FINAL ORDER

A draft Final Order consistent with my recommendation and with the findings of fact and conclusions of law is attached and incorporated by reference.

Respectfully submitted,



RUDY S. APODACA
Hearing Officer

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION
OF CAMINO REAL ENVIRONMENTAL, INC.
FOR THE RENEWAL AND MODIFICATION
OF A SOLID WASTE FACILITY PERMIT
FOR THE CAMINO REAL LANDFILL**

NO. SWB 07-41(P)

FINAL ORDER

This matter comes before the Secretary of Environment following a hearing before the Hearing Officer on December 5, 2007 through December 20, 2007, in Sunland Park, New Mexico.

Applicant Camino Real Environmental, Inc. seeks renewal and modification of its Solid Waste Facility Permit for the Camino Real Landfill (CRLF), located in Sunland Park, Dona Ana County. In addition to seeking renewal of its Permit for a new 10-year period, Applicant is seeking modification approval. This approval is sought because in addition to continuing its operations in Unit 2, Applicant has requested approval of continued operations into new lined cells in Unit 3, which in prior permit submittals, had been designated as "Phase III". The Application provides detailed site characterization data and engineering designs for Unit 3. The New Mexico Environment Department Solid Waste Bureau supports the issuance of the permit with conditions necessary to protect public health and welfare and the environment.

Having considered the administrative record in its entirety, including the Proposed Findings of Fact and Conclusions of Law submitted by the Applicant, the Bureau, and the City of Sunland Park (the Opponent) respectively; the

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Closing Arguments submitted by the Applicant and the Bureau respectively; and the Hearing Officer's Report and Proposed Findings of Fact and Conclusions of Law; and being otherwise fully advised regarding this matter;

THE SECRETARY HEREBY ADOPTS THE HEARING OFFICER'S REPORT, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED CONDITIONS.

IT IS THEREFORE ORDERED:

- A. Pursuant to 20 NMAC 1.4.500(2), no written comment will be accepted on the Hearing Officer's Report;
- B. Pursuant to 20 NMAC 1.4.500(3), no oral argument may be allowed on the Hearing Officer's Report;
- C. The Application for a solid waste facility permit is approved, the permit is granted for a term of ten years, and the modification in the Application, noted above, is approved, subject to the conditions set out below:

1. The Applicant will comply with all applicable requirements of the Solid Waste Management Regulations, the Solid Waste Act, and any other conditions set forth in the permit, and shall construct and operate the Landfill in accordance with the permit application. This condition is to remind the Applicant that all applicable requirements and application statements must be complied with throughout the life of the landfill.

2. At least 30 days prior to the start of new cell construction, the Applicant will furnish the Department with a major milestone schedule. This condition is to ensure that the Department is given timely notice to effectively monitor new construction at the landfill.

3. The Liner Construction Certification Report must be submitted to and approved by the Department prior to disposal of

any solid or special waste in any new cell. Any new disposal area must be inspected by a representative of the Solid Waste Bureau prior to waste disposal. A letter from the Department must be received authorizing acceptance of waste prior to disposal. This condition is to ensure that the liner is constructed in accordance with the permit and regulations.

4. The Waste Inspection and Screening Program (Volume II, Section 2, Part 4.4, of the Permit Application) shall be amended prior to implementation at the Landfill to indicate that no less than three random waste screening inspections shall be conducted during each operating day. One of the required daily load inspections shall be conducted upon a load of maquiladora waste, unless no loads of such waste were received during the operating day. Within 30 days of permit issuance, the Waste Inspection Screening Program shall be updated and items as specified by the Department shall be included. The Screening Program shall include:

- Inspection documentation that specifies the identity, by name and title, of the persons completing the inspection.
- A statement that staff shall inspect loads from the ground and not just from heavy equipment.
- Details on how the inspections will be completed; such as how many staff will undertake the inspections, what equipment will be used, what methods will be used to check the loads (i.e. ripping bags open using rakes), what personal protective equipment will be used, and any other information necessary.
- Information that addresses the procedures in place regarding maquiladora deliveries; such as identifying the number of waste totes inspected from maquiladora trucks and other details regarding the selection of these loads for inspection.

5. The Plan of Operations and the Special Waste Disposal Plan – Industrial Solid Waste Disposal Management Plan shall be amended to include additional details regarding use of Category of alternative daily covers (ADC). A pilot beneficial use plan, with a completed field evaluation of Category II ADCs including Auto/Fluff/ Automotive Shredder Residue (ASR) and foam, shall be submitted to the Solid Waste Bureau for approval prior to any use of the ASR. Use of Category III ADCs is denied.

6. As a result of public comments regarding dust generation from CRLF, within 60 days of issuance of the permit, the Applicant shall install a weather station at a location on-site that will accurately reflect the site's meteorological conditions. The capabilities of the station shall include, at a minimum, wind speed, wind direction, humidity, barometric pressure, temperature, and a precipitation gauge. The station shall be able to monitor wind speed (hourly peak wind speed) and wind direction at two different elevations, at eye level (5-6 feet from the surface of the landfill, and at a height between 10-20 feet. The Applicant shall install a system that is able to record data hourly and maintain records via a computer or other technology. The data should be compiled on a monthly basis, and the records maintained on-site for review by Department staff. Weather data shall be obtained for a minimum of five years. The Department has confirmed that Dave Nolan, 505-589-3972, NOAA – National Weather Service Forecast Office, Santa Teresa, New Mexico, will provide technical assistance regarding equipment, placement and data sharing. The goal of this condition is to obtain five years of site specific data to assist and enhance the evaluation of air particulate monitoring data.

7. The Applicant shall submit a Plan to the Department within 90-days of permit issuance that explores options to minimize particulate matter from the fleet of on-site heavy equipment, and for the El Paso Disposal, a wholly owned subsidiary of Waste Connections. This plan applies only to equipment or vehicles used on-site or to deliver wastes to CRLF.

8. To facilitate on-going public involvement, the Applicant shall continue to assess community concerns, gauge the effectiveness of mitigation measures undertaken by owners of CRLF, and to provide information regarding operation of the facility to the residents, of Sunland Park, the Applicant shall hold a minimum one public meeting per year. A report summarizing the comments from the meeting shall be provided to the Department within 30-days of the date of the meeting.

9. Upon issuance of the permit, the owner shall operate this facility in accordance with all applicable requirements of Title 20, Chapter 9, Parts 2-10.

10. The Applicant shall dilute any leachate collected and place it on lined cells only, but shall not place leachate on any other portion of the landfill, including access roads or other unlined areas. Prior to disposal of leachate at a Public Owned Treatment Works or

permitted liquids management facility, the Applicant shall receive approval from the Department.

11. A view shed analysis of the proposed final elevation in comparison with the surrounding mesa shall be completed for Unit 3 within five years prior to the mid-term review. The analysis must visually show a representation of the elevation from all directions.

12. Additional vegetative screening shall be established at this facility as specified in the CIA within one year of permit issuance.

13. Three revisions shall be made to the Contingency Plan and submitted to the Bureau for approval prior to implementation.

- It shall be revised to correctly identify the contact information for the landfill's emergency coordinator. The Contingency Plan shall be updated any time there is a material change in circumstances affecting the Contingency Plan.
- The site plan shall be revised to show the location of the newly registered recycling center located adjacent to the landfill office.
- The description of emergency response coordination should include the name of each agency; the date and location of coordination; the primary points of contact for each agency; a description of the equipment, expertise and assistance that the agency will provide in the event of an emergency; the agency's estimated response time to the landfill, if applicable; an indication of whether unaccompanied access after hours would be granted to the agency through the sharing of keys or codes or 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.

RON CURRY
Secretary of Environment

NOTICE OF PROCEDURE FOR APPELLATE REVIEW

Any aggrieved party may seek appellate review in the Court of Appeals, pursuant to NMSA 1978, Section 74-9-30.