



**BEFORE THE NEW MEXICO ENVIRONMENT IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REPEAL AND )  
REPLACEMENT OF 20.7.11 NMAC )  
 ) Case No. EIB 19-42 (R)**

**NOTICE OF INTENT TO FILE TECHNICAL TESTIMONY  
LINK SUMMERS , PRO SE**

Link Summers hereby files his Notice of Intent to file Technical Testimony in the matter listed above.

Link Summers the owner of a New Mexico approved wastewater manufacturing company (Koi Environmental) and related contracting and maintenance companies involved in the Liquid Waste Program since 1994. I am a NM licensed contractor, electrician and plumber for over 30 years. I am a New Mexico certified wastewater operator. I have been a registered lobbyist for over 30 years.

Respectfully Submitted

Link Summers

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this **MOTION FOR ENTRY OF APPEARANCE** this Motion. as transmitted via email on this   7   day of February, 2020 to the parties listed below. In addition, Link Summers will provide a copy of this document by U.S. Mail, postage Prepaid to any party who requests it.

### **List of Parties for EIB 19-42 (R)**

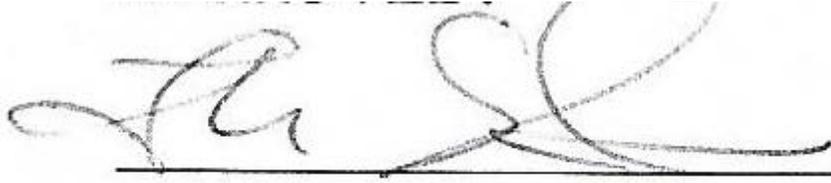
#### **Proposed Repeal & Replacement of 20.7.11 NMAC**

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A handwritten signature in black ink, appearing to read "Link Summers", is written above a solid horizontal line. The signature is stylized and cursive.

Link Summers



shifts the burden (liability) of all Advanced Treatment Systems (ATS's) to the manufacturer. No provision was made for how to pay for this. Subsequently the policy seems to have remained in effect although none of its provisions have been implemented to my knowledge.

In particular, the requirement to train and maintain a sufficient number of Maintenance Service providers to maintain the ATSs and to be liable for their activities without having any established legal control over their activities is a problem. I have no realistic idea how to proceed.

Another issue involves the inability of the maintenance service provider to get paid. Most of the ATSs manufactured by Koi and installed throughout the state are not being maintained for failure to pay. I have no idea how the imposition of an additional fee by NMED is going to bring about compliance. The current proposal will not involve existing systems until the properties are transferred. I wrote the transfer inspection section in the current rule (20.7.3). Of all the Koi systems in New Mexico, almost none are inspected by qualified personnel upon transfer. I taught a class for real estate licensees that was approved by the New Mexico Real Estate Commission over a period of years. The idea was to enable the licensees to disclose to prospective buyers the responsibilities and costs associated with ATSs. In my opinion, I am not sure why anyone would buy a house with an existing ATS and face the added expense of the annual fee, the fee to the maintenance provider, the fee to the manufacturer, the cost of repairs and utilities. I am also not sure exactly how a real estate licensee would adequately disclose the necessary details of buying a property with an ATS.

I wrote and have attempted unsuccessfully to pass a tax credit for ATS owners (see attached LS Exhibit 3) for over 15 years. The State of New Mexico seems to have little interest in providing any relief to the owners of ATSs. Meanwhile the owners of completely outdated technology known as the septic tank (circa 1850) will not be burdened.

Enforcement of the Liquid Waste Regulations is a serious problem and has been for over 30 years.

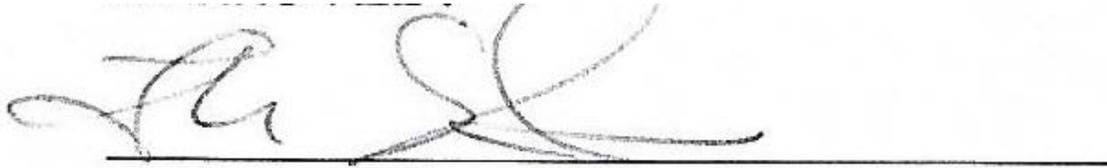
What is the biggest problem to the Environment and in the Liquid Waste Program – ATSs? Yes and no – See LS Exhibit 4. Properly implemented, I believe that the operating fee could be an effective enforcement tool – especially with regard to systems with grease traps like convenience stores and RV Parks, many of which were transferred from the Ground Water program. I don't think residential units with a history of compliance should have the same frequency of renewal as commercial units. In my opinion, those owners of residential ATS units who have not complied with their permit requirements should be treated the same as commercial units until they prove their willingness to meet their permit requirements. (One note- the requirements for ATS permits are not uniform – this should be corrected before full implementation).

Finally, the biggest Environmental problems, in my opinion, are PFOSs, PFASs, Glyphosate and related compounds, Fracking Fluids and related chemicals. My partner and I in Cold Plasma Inc. are currently involved in our patented cold plasma ozone system that will treat 40,000 barrels of produced water per day. We expect to have our

first project with a major oil company in the field by June of this year. The other biggest problem is the complete abdication by the Federal Govt. with regard to the Clean Water Act, the Safe Drinking Water Act, and related laws.

I am hopeful and support Secretary Kenney's statement – See Exhibit 5 For me, it appears that 30 years is not enough time to even begin to solve the problem.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Link Summers', is written above a solid horizontal line.

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#### **CERTIFICATE OF SERVICE**

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**List of Parties for EIB 19-42 (R)**

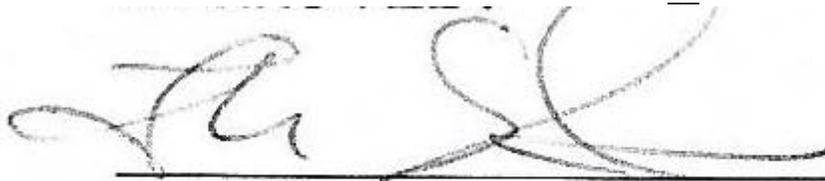
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Link Summers



1 STATE OF NEW MEXICO  
2 ENVIRONMENTAL IMPROVEMENT BOARD  
3  
4 IN THE MATTER OF PROPOSED  
5 NEW REGULATION 20.7.11 NMAC -  
6 LIQUID WASTE TREATMENT  
7 AND DISPOSAL FEES  
8 EIB-00-10

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14 TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERED that on the 13th day of July,  
2001, the above-entitled matter came on for hearing  
before the New Mexico Environmental Improvement Board,  
taken at the City County Government Center, One Civic  
Plaza, 9th Floor Committee Room, Albuquerque, New Mexico,  
at the hour of 9:42 a.m.

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A P P E A R A N C E S

For the Environmental Improvement Board:

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HILARY NOSKIN, Vice Chair  
DAVID SALOPEK, Member  
CYNTHIA MOJTABAI, Member  
ABBAS GHASSEMI, Member

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1 MR. SIMPSON: This is a hearing before the  
2 Environmental Improvement Board, and it's the Environment  
3 Department's petition entitled In the Matter of 20.7.11  
4 NMAC - Liquid Waste Treatment and Disposal Fees, and the  
5 petition number is EIB-00-10.

6 My name is Patrick Simpson, and I'm the hearing  
7 officer. I'm an Assistant Attorney General and not a  
8 voting member of the Board.

9 The record should show that there are five  
10 members of the Board here, Dr. Ghassemi, Dr. Noskin,  
11 Ms. Gadzia, Ms. Mojtabai and Mr. Salopek.

12 Now, are there any preliminary matters,  
13 Mr. Clarke, that you think need to be brought up?

14 MR. CLARKE: No, Mr. Hearing Officer. The  
15 Department's ready to commence putting on its case.

16 MR. SIMPSON: Okay.

17 And just again for the record, Mr. Clarke is  
18 here representing the Department.

19 Let's have maybe a show of hands of people who  
20 want to testify today.

21 Okay. Why don't you all stand up, and we'll  
22 give you a mass swearing in.

23 MR. CLARKE: Mr. Hearing Officer, do you also  
24 want to do that with the Department folks?

25 MR. SIMPSON: Yes, please.

1 (Witnesses sworn.)

2 MR. SIMPSON: Please, if you're going to  
3 testify today, be sure that you have signed in over at  
4 the sign-in sheet.

5 The way we want to do this is for Mr. Clarke to  
6 make his presentation first. Since he is the petitioner,  
7 it's his burden to demonstrate the reasonableness and  
8 appropriateness of the proposed fees.

9 And for each witness who testifies, that  
10 witness will be subject to cross-examination by anybody  
11 in the room.

12 I would suggest that if -- seeing as how I'm  
13 familiar with a few of the faces over on this side of the  
14 room, if the construction industry can consolidate its  
15 inquiry with the Environment Department witnesses, maybe  
16 that will give us a clearer message for the consideration  
17 of the Board. You might want to just choose somebody.  
18 But that's up to you.

19 And what I'd also like to do is perhaps if you  
20 could talk amongst yourselves and determine just how much  
21 time each of you needs to talk, we'll give you a time  
22 limit, keep things organized and keep things expeditious.

23 Otherwise, Mr. Clarke, why don't you go ahead.

24 MR. CLARKE: Good morning, Madam Chairperson,  
25 Mr. Hearing Officer, members of the Board.

1 For the record, my name is Clay Clarke, and I'm  
2 the attorney representing the Department today in its  
3 proposal to the Board for the adoption of liquid waste  
4 permit fees.

5 I believe before the Department calls its first  
6 technical witness, as Mr. Simpson indicated, who is now  
7 the hearing officer, Secretary Maggiore has a few brief  
8 statements he'd like to make, as well as Division  
9 Director Mike Koranda.

10 MR. MAGGIORE: Thank you, Clay.

11 PETER MAGGIORE

12 having been sworn, was examined and testified  
13 as follows:

14 DIRECT TESTIMONY

15 MR. MAGGIORE: Madam Chair, Mr. Hearing  
16 Officer, thank you for the opportunity to visit with you  
17 this morning.

18 My name is Pete Maggiore. I'm the Cabinet  
19 Secretary for the New Mexico Environment Department, and  
20 I've held that position since July of 1998.

21 I'd like to make a very short statement at the  
22 beginning of this hearing in support of the liquid --  
23 proposed liquid waste fee regulations that are being  
24 heard today.

25 I consider the proper implementation of the

1 Department's liquid waste program as a very high priority  
2 in my term as Cabinet Secretary for the Environment  
3 Department. I'm also convinced of the importance of this  
4 program with respect to the need to protect public health  
5 and the environment.

6           You'll hear testimony from my staff later today  
7 that the liquid waste systems in New Mexico are the  
8 second largest source of groundwater contamination in the  
9 state. And if you aggregate the discharge by volume of  
10 liquid waste systems in New Mexico, they equal the daily  
11 discharge of the City of Albuquerque's wastewater  
12 treatment plant.

13           In addition, liquid waste can contain organisms  
14 that transmit a variety of disease and infections.

15           I'm convinced that the liquid waste fee  
16 regulation being proposed today will have a very real and  
17 a very positive enhancement on the program by funding  
18 employees who will work in the areas that are in most  
19 need in the state to provide liquid waste permitting and  
20 inspection and training programs.

21           These will not be people sitting at desks in  
22 Santa Fe. These folks will be joining existing field  
23 staff to provide very important on-the-ground service to  
24 citizens of the state. And most importantly, they will  
25 enhance the implementation of the program, as I said, to

1 increase the protection of the environment and public  
2 health.

3 Getting in place a fee program for liquid waste  
4 systems and revising the liquid waste regulations are one  
5 of the three highest priorities in my Department during  
6 the remainder of the Johnson administration.

7 Just for your own personal knowledge, the  
8 highest priority that I established was completion of our  
9 information technology or IT project. And it's  
10 important to note that the liquid waste program will  
11 dovetail with that project because it is ultimately my  
12 hope to have liquid waste systems be able to be permitted  
13 on-line.

14 Another one of my three highest priorities is  
15 to have in place closure/closeout plans for the four  
16 remaining large mines in New Mexico by the end of this  
17 year.

18 So you can see that by putting liquid waste fee  
19 regulations and liquid waste regulation changes in that  
20 league emphasize the importance of this program to me.

21 I'd also like to just give you a very, very  
22 brief history, in terms of from my perspective, of how I  
23 got here, or how we got here.

24 When I became Cabinet Secretary in July of '98,  
25 I had to have a budget submitted by September 1st. And

1 quite candidly, there was a lot of other things going on  
2 at that point, including the WIPP permit and some  
3 personal obligations I had.

4 But the budget that we ultimately submitted was  
5 for about \$4.7 million for the Field Operations Division.

6 The budget that DFA ultimately recommended was about 4.9  
7 million. The budget that the legislature adopted was  
8 slightly over 4.5 million for that division.

9 And what that told me was that the legislature  
10 has other priorities sometimes, and I can't dispute that.

11 When we try and put environmental protection up  
12 against entitlement programs, up against education, up  
13 against some of the other very important things that the  
14 legislature has to deal with, although I might not  
15 necessarily agree with the priorities, I certainly  
16 understand them and respect them, but I, as Cabinet  
17 Secretary, am left to figure out ways to have my  
18 priorities reflected in the budget and reflected in the  
19 on-the-ground work that gets done.

20 So during the next legislative session, year  
21 2000, Governor Johnson agreed to support House Bill 478,  
22 which was sponsored by Representative Roger Madalena from  
23 Jemez. That bill had excellent bipartisan support. It  
24 passed both the House and Senate, and the Governor signed  
25 it.

1                   And that bill allows the Environment  
2 Department -- gives us the authority to assess fees or,  
3 more importantly, gives the Environmental Improvement  
4 Board the authority to promulgate regulations that allow  
5 the Department to collect fees.

6                   Now, I could have promoted having these fees  
7 set in statute, but I didn't, and that's a philosophy  
8 that I have. I think it's more important and more  
9 appropriate for this body to be directly involved in that  
10 process.

11                   It gives the opportunity for other folks who  
12 might otherwise not be able to attend meetings to  
13 participate, and it gives you a better opportunity, I  
14 think, to focus on the issue at hand and make a more  
15 thoughtful decision.

16                   The legislature reaffirmed its support for this  
17 legislation because last year a bill was introduced to  
18 repeal the authority, and that bill was tabled in the  
19 first committee and did not come off the table.

20                   I would have recommended to Governor Johnson  
21 that he veto that bill had it arrived on his desk, and  
22 hopefully he would have done precisely that.

23                   In addition, the proposal that we're bringing  
24 forth today is not unique, and we don't think it's  
25 necessarily overly burdensome. And the reason I say that

1 is every contiguous state to New Mexico currently has the  
2 authority and is collecting dedicated liquid waste system  
3 permit fees.

4 It's also important to note that if you average  
5 the fees that are collected, they are more than double of  
6 what we're proposing today. The statute also precludes  
7 us -- or caps the upper limit of fees that we could  
8 potentially collect, or ask you to support.

9 In addition, the fee proposal is consistent  
10 with other actions I've taken and other appearances I've  
11 made in front of this body as recently as December of the  
12 year 2000. In an attempt to try to insulate the agency  
13 with fluctuations or decreases in funding from the  
14 general fund, we have respectfully requested and this  
15 body has passed increases to air quality construction  
16 permit fees.

17 As Chair of the New Mexico Water Quality  
18 Control Commission, I supported and the Commission passed  
19 increases to groundwater discharge permit fees.

20 Finally, we have also received statutory  
21 authority to assess fees for radiation protection  
22 services, and you will be seeing a proposal -- I  
23 anticipate later this year. And we're also looking at  
24 having to increase fees for the services we provide with  
25 respect to restaurant inspections.

1 I don't take these fee increases, these  
2 requests for statutory authority fees lightly, and I  
3 certainly respect the impacts or potential impacts these  
4 could have on business.

5 Prior to becoming Cabinet Secretary and  
6 Division Director, I worked in the private sector as an  
7 environmental consultant, representing clients in the  
8 private sector before agencies and bodies such as yours,  
9 and have a firsthand feeling for what fee increases and  
10 impacts can have on the private sector.

11 So we are sensitive to that, and we think these  
12 fees are reasonable.

13 In addition, we have pursued a wide variety of  
14 programmatic efficiencies, and we've sought funds through  
15 not only the general fund but increasing federal funds.  
16 So it's not just simply coming to you here today for  
17 money. We've tried to exhaust all opportunities for  
18 additional funding.

19 We've shared resources with other programs.  
20 Director Koranda might share with you some of those new  
21 strategies so that programs within the agency that have  
22 resources that aren't dedicated and can be shared with  
23 field staff are now shared with field staff to maximize  
24 their abilities to perform their services.

25 And then finally, as I mentioned, the statute

1 precludes us from establishing fees that are in excess of  
2 those of our contiguous states. We thought this was an  
3 appropriate provision, and we supported it in the  
4 legislation.

5 And finally, once again, the legislature, I  
6 think, affirmed its position for this approach when it  
7 rejected or tabled legislation to repeal that authority  
8 last year.

9 In summation, I thank you for the opportunity  
10 to visit with you this morning and present these  
11 introductory comments. I take my role as Cabinet  
12 Secretary very seriously, particularly when we're looking  
13 at increasing fees or revenues to the agency that impact  
14 business.

15 This is a process that was not done in a  
16 cavalier manner, and it was a process where we tried to  
17 gain the support of all parties involved, and I would  
18 strongly urge that the Board ultimately vote in support  
19 of this petition.

20 Thank you very much, Madam Chair, Mr. Hearing  
21 Officer.

22 MR. SIMPSON: Actually, Secretary Maggiore, the  
23 folks in the audience get to ask you questions now.

24 MR. MAGGIORE: That's fine.

25 MR. SIMPSON: If anybody has any questions on

KATHY



1 specifically what the Secretary talked about this  
2 morning, please come forward.

3 MR. TRAYNOR: Do I need to come to the desk  
4 here?

5 MR. SIMPSON: Why don't you, just so you can  
6 ask -- and identify yourself for the record, as well as  
7 your affiliation, please.

8 MR. TRAYNOR: Sure.

9 My name is Randy Traynor, T-R-A-Y-N-O-R. I'm a  
10 registered lobbyist for the New Mexico Home Builders  
11 Association.

12 MR. CRESPIN: I'm Steve Crespin. I'm the  
13 Executive Director of the Mechanical Contractors  
14 Association. I'm also the ex-Mechanical Bureau Chief for  
15 Construction Industries.

16 I've been with the Mechanical Contractors  
17 Association for nine months, and I was very much active  
18 in the transition between Construction Industries to the  
19 Environment Department of the liquid waste program.

20 So I guess why I'm here is to provide some  
21 historical data.

22 MR. SUMMERS: My name is Link Summers. I own  
23 my own company. I'm a licensed contractor, certified  
24 wastewater operator. And I've sat on the Governor's Task  
25 Force for the last seven years rewriting liquid waste

1 rules.

2 I'll have some questions, as well.

3 Thank you.

4 MR. DURAN: I guess now is the time.

5 My name is Mark Duran, and I'm the Executive  
6 Director of the New Mexico Manufactured Housing  
7 Association.

8 And we may or may not have testimony directed  
9 at the Secretary or his comments.

10 MR. SIMPSON: Okay.

11 MR. CLARKE: Mr. Hearing Officer, before  
12 there's questions, if I could just -- the Department will  
13 be calling a technical witness. So I think perhaps maybe  
14 to expedite the process, a lot of the questions that are  
15 going to be asked may be answered at a later time.

16 So I'm not sure -- I understand under the regs  
17 Secretary Maggiore stands for cross, but I'd like to sort  
18 of move this along so that we don't see the same  
19 questions over.

20 MR. SIMPSON: Right.

21 And I wanted to remind folks that you'll all  
22 have an opportunity to present your information directly  
23 to the Board, and what we're talking about now is to ask  
24 the Secretary questions on the policies and statutes that  
25 he talked about and the processes of bringing the

1 statutes into the books and the operations for the

2 Environment Department and his priority system.

3 MR. TRAYNOR: You know, I would be willing to

4 forego my questions if I can be assured that there will

5 be somebody here -- I understand the Secretary's busy and

6 may need to move on.

7 I guess my questions were more related to the  
8 budget and their commitment in staffing and things like  
9 that, and I figure the Secretary would be the one that  
10 could answer that. If there are people here that can  
11 answer that, that's fine. I can withhold it. I just  
12 thought he would be the one best to answer those.

13 MR. SIMPSON: Right.

14 And the papers that Mr. Clarke submitted to the  
15 Board prior to the meeting demonstrate that he's going to  
16 have a subsequent witness who will have the hard numbers  
17 for you.

18 MR. TRAYNOR: Okay. Then I can wait. We'll  
19 let the Secretary go, as far as I'm concerned.

20 MR. CRESPIAN: I agree.

21 MR. SIMPSON: Okay.

22 The other folks who had questions?

23 MS. GADZIA: Was that a nod?

24 MR. TRAYNOR: Or we can keep him for an hour.

25 I don't know. He seems disappointed.

1 MS. GADZIA: He was ready.

2 MR. MAGGIORE: Mr. Hearing Officer, I'm not  
3 disappointed.

4 MR. SIMPSON: Thank you, Mr. Secretary.

5 MR. MAGGIORE: Thank you, Mr. Hearing Officer.

6 MR. SIMPSON: Mr. Clarke.

7 MR. CLARKE: Mr. Hearing Officer, if Secretary  
8 Maggiore doesn't have any more, I believe Division  
9 Director Mike Koranda also has a few brief statements  
10 before we actually get into our first technical witness.

11 MR. SIMPSON: Okay.

12 MIKE KORANDA

13 having been sworn, was examined and testified  
14 as follows:

15 DIRECT TESTIMONY

16 MR. KORANDA: Good morning.

17 My statement is essentially the same as

18 Secretary Maggiore's.

19 My name is Mike Koranda. I'm the Director of

20 the Department's Field Operations Division. I've held

21 this job approximately nine months. The Division

22 contains the Drinking Water Bureau, the Community

23 Services Bureau and the 23 district and field offices

24 located throughout the state.

25 One of the programs of this Division is the

1 liquid waste provision -- program, which is implemented  
2 by the field and district offices and the Community  
3 Services Bureau.

4 I'm here today to provide assistance to the  
5 members of my staff on this panel to present our proposed  
6 liquid waste fee regulation. The members of the panel  
7 are Steve walker and Brian Schall of the Community  
8 Services Bureau. Mr. Walker will present our direct  
9 testimony. We will all be available to help respond to  
10 your questions.

11 I've been on this job a relatively short time.  
12 One thing that I learned early, however, was the  
13 importance of this program to public health and the  
14 environment. And my staff and I began efforts early to  
15 make the program as effective as possible.

16 The fee regulation being proposed here today  
17 will allow a large increase in the effectiveness of this  
18 program. It will allow us to concentrate our activities  
19 in the areas of the state of high growth. It will allow  
20 us to complete the inspections and certifications that  
21 are part of the program.

22 The fee revenue will allow us to conduct  
23 program training to both Department staff and the system  
24 vendors and installers. Finally, the fee revenue will  
25 allow us to begin a stronger and consistent effort to

1 locate and permit illegal systems.

2 With the availability of additional fee  
3 revenue, I assure you that our efforts to implement the  
4 program will continue to be conducted in as cost  
5 effective manner as possible.

6 I hope that our presentation today will  
7 convince you of the importance of the program and of the  
8 need for the enhancements that will be provided by the  
9 fee revenue.

10 Thank you very much.

11 MR. SIMPSON: Anything else, Mr. Clarke?

12 MR. CLARKE: The Department has nothing more  
13 for this witness.

14 MR. SIMPSON: Anybody in the audience wish to  
15 ask any questions?

16 Please.

17 State your name and your affiliation if you  
18 have one.

19 MR. ADDY: My name is Mike Addy. I own and  
20 operate Albuquerque Vault Company.

21 I have one question for him.

22 CROSS EXAMINATION

23 BY MR. ADDY:

24 Q. I'd like to know what the priority list is  
25 within the Department as far as liquid waste, food,

1 drinking water. Give us the priority on which is at the  
2 top of the list and which is at the bottom, the way it  
3 stands today.

4 Thank you.

5 A. I could speak for the Division. The Division  
6 contains the programs that you mentioned. It contains  
7 drinking water, food, liquid waste, vector, pools and  
8 spas. And I don't think we can say that any one of them  
9 has a higher priority than the other. We are giving them  
10 all the highest priority now.

11 We have some features of each of these programs  
12 that are mandatory by law and regulation. For example,  
13 we have an inspection requirement for food  
14 establishments. It's a mandatory requirement they be  
15 inspected once per year.

16 So there are mandatory elements of each of  
17 those programs that can make them at times have a --  
18 well, have a higher priority.

19 Q. Could you give me the priority?

20 I mean, I'd like to know where we stand with  
21 our program within the Department.

22 I mean, if it's the first of the month, okay,  
23 and we're trying to get inspections, okay, what has  
24 priority? Drinking water? Food? Or liquid waste?

25 That's all I'm asking, just a straight answer.

1           A.    I want the liquid waste to have as high a  
2    priority as any of the other programs, but it can -- we  
3    can at times not conduct liquid waste inspections because  
4    we do have the same staff working on other programs and  
5    they have other -- they have higher priorities. That can  
6    happen. That happens now.

7                        With the adoption of fee revenue bringing in  
8    more staff, that will allow -- that's much less likely to  
9    happen in the future.

10           Q.    Can you guarantee that with this fee?

11           A.    I can guarantee that we are going to improve  
12    most definitely our performance as far as our liquid  
13    waste activities, including inspections, because it's  
14    going to translate directly to more people and more  
15    people in the fee area.

16           Q.    But right now our program is at the bottom of  
17    the Department's list as far as inspection. Every two  
18    weeks out of a month we're not tied in.

19                        MR. SUMMERS: Mr. Hearing Officer, I'd like to  
20    object. If he's going to ask a question, I think that's  
21    appropriate, but if he's going to testify, he's going to  
22    have a chance to do that in a little bit.

23                        MR. ADDY: If I could get a straight answer --

24                        MR. SIMPSON: Now, hold on.

25                        It's actually Mr. Clarke's job to do that. But

1 you've got a point well taken.

2 Again, you'll have an opportunity -- is it

3 Mr. Addy?

4 MR. ADDY: Yes, sir.

5 MR. SIMPSON: -- to give this information to  
6 the Board at a later time.

7 MR. KORANDA: We are not conducting all liquid  
8 waste inspections. In fact, statewide we are conducting  
9 50 percent of the inspections. We want with increased  
10 staff to bring that up to at least a minimum of 70  
11 percent.

12 MR. SIMPSON: Anything further?

13 Mr. Crespin?

14 MR. CRESPIN: Madam Chair, Members of the  
15 committee, a question to the Director here.

16 CROSS EXAMINATION

17 BY MR. CRESPIN:

18 Q. I keep hearing this fee increase, and currently  
19 in talking to the industry there's not a fee being  
20 charged. When we did the transfer of the program over, I  
21 urged the Department to take -- the CID was charging \$30  
22 at the time. When we did research, between tanks being  
23 replaced and new installation, there was 8,000 --

24 MR. CLARKE: Mr. Hearing Officer, again, this  
25 is more testimony.

1 Q. (BY MR. CRESPIN) What I'm asking is, if there  
2 isn't a fee being charged currently, how did you  
3 determine a \$100 fee increase -- or a \$100 fee?

4 A. The constraint is statutory. The constraint is  
5 that it not exceed the average of the fees of the  
6 contiguous states for the same permits or services.

7 Q. Okay.

8 My question again is, if we were charging \$30 a  
9 few years ago, you're more than tripling it today, and  
10 the job is being done. I mean, I guess I'm looking for  
11 justification for the \$100 fee.

12 MR. SIMPSON: Actually, Mr. Crespin, this is  
13 one of those circumstances where the actual \$100 figure  
14 is something that I think a subsequent witness is going  
15 to justify much more so than the Division Director.

16 MR. CLARKE: That is correct, Mr. Hearing  
17 Officer.

18 And the Department's not trying to put you off,  
19 but I really wish if we could just hold the questions  
20 perhaps until after you've heard all the testimony, we  
21 can avoid sort of going through this time and time again.

22 MR. CRESPIN: Okay.

23 MR. SIMPSON: Mr. Clarke, can you, except for  
24 the Secretary, retain all your witnesses here so that if  
25 they do have questions --

1 MR. CLARKE: Certainly.

2 MR. SIMPSON: -- your technical witness can't  
3 answer --

4 MR. CLARKE: That was the Department's intent.

5 MR. SIMPSON: Okay.

6 Would that work for you folks?

7 MR. TRAYNOR: That would work.

8 MR. SIMPSON: Okay.

9 Anyone?

10 Okay. Mr. Clarke.

11 MR. CLARKE: Thank you.

12 Before the Department calls its first technical  
13 witness, I would like to direct the members of the Board  
14 to the packet that's been submitted by the Department.  
15 This should be in front of everyone. The proposed  
16 regulation is Exhibit 2 in this packet.

17 The first technical witness the Department  
18 would like to call is Mr. Steve Walker.

19 STEVE WALKER

20 having been sworn, was examined and testified  
21 as follows:

22 DIRECT TESTIMONY

23 MR. WALKER: Mr. Hearing Officer, members of  
24 the Board, good morning.

25 My name is Steve Walker. I am the Program

1 Manager for the Environmental Services Section in the New  
2 Mexico Environment Department's Field Operations  
3 Division.

4 I have been in this position since November of  
5 1999. I am responsible for the management of the on-site  
6 liquid waste program, swimming pools and the vector  
7 control program.

8 I have also served as a field environmentalist  
9 and -- which have included duties including inspection of  
10 septic tanks and issuing of liquid waste permits.

11 I have over 30 years of experience in  
12 environmental health regulatory programs. I've worked in  
13 nearly every phase of environmental health, holding  
14 positions ranging from technical assignments in the field  
15 to administrative management.

16 I have a bachelor's of science degree from the  
17 University of New Mexico in microbiology and a master's  
18 of public health degree from the University of California  
19 at Berkeley.

20 My testimony today will focus on the new  
21 proposed liquid waste treatment and disposal fee  
22 regulation.

23 The Department estimates that there are a total  
24 of approximately 180,000 existing small liquid waste  
25 systems in the state, resulting in a total statewide flow

1 of about 68 million gallons per day of liquid waste that  
2 is discharged to small systems. This can be compared to  
3 Albuquerque's sewage treatment plant discharge of  
4 approximately 56 million gallons per day.

5 A liquid waste system treats domestic or  
6 residential liquid waste flows of 2,000 gallons or less  
7 per day. Residential and domestic liquid waste is waste  
8 from kitchen sinks, showers, bath tubs, laundries,  
9 toilets.

10 The majority of liquid waste systems are in the  
11 form of septic tanks and leach fields, which can  
12 adequately treat domestic and residential liquid waste  
13 when properly designed and maintained.

14 Most drinking water supplies in New Mexico are  
15 from groundwater. A wide range of disease organisms as  
16 well as various contaminants are present in untreated  
17 sewage.

18 Liquid waste systems which emit untreated  
19 sewage are the second largest source of groundwater  
20 contamination in the state. Raw sewage can contain the  
21 organisms which can transmit giardia, cholera, hepatitis,  
22 dysentery and other enteric infections.

23 For the past 20-plus years, the Environmental  
24 Protection Agency has considered small liquid waste  
25 systems, which include septic tanks, to be temporary

1 methods for treating liquid waste, expecting that in time  
2 they would be replaced by municipal treatment plants.

3           It has become clear that both the state -- at  
4 state and national levels that small liquid waste systems  
5 will remain in use. This is due primarily to the high  
6 infrastructure costs associated with centralized sewage  
7 treatment.

8           For approximately 30 years, the Department has  
9 had a liquid waste treatment and disposal regulation.  
10 The purpose of this regulation is to protect public  
11 health and the environment by preventing untreated liquid  
12 waste from discharging to groundwater or to the surface  
13 of the ground.

14           A properly located and designed septic tank and  
15 leach field uses a combination of biological treatment  
16 and filtering to provide protection to the groundwater.

17           The Department administers the liquid waste  
18 program through its 23 field offices. There are 46  
19 environmentalists and environmental supervisors located  
20 in these field offices.

21           The field environmentalist reviews the liquid  
22 waste permit applications and, if the application is  
23 complete and meets the requirements of the regulation,  
24 issues the permit and inspects the septic tank and leach  
25 field installation.

1           The field environmentalist also conducts water  
2   tightness testing of septic tanks as part of the  
3   inspections, as well as reinspections and septic tank  
4   certifications.

5           In 1999, the Department issued over 7,000  
6   liquid waste permits, performed over 8,000 liquid waste  
7   inspections and conducted 175 formal liquid waste  
8   enforcement actions.

9           In 1999, the Department determined that the  
10   enhancements to the program -- enhancements to the  
11   program were needed to meet the current and expected  
12   future needs in the area of permitting, inspection,  
13   certification and training of staff and liquid waste  
14   installers.

15           The Department further decided that it would  
16   pursue the use of liquid waste system fees to finance  
17   these enhancements.

18           In the 2000 legislative session, House Bill  
19   478, amending the Environmental Improvement Act, was on  
20   the Governor's call. It was passed by the legislature  
21   and signed into law in March of 2000.

22           The bill contained authority for the Department  
23   to establish on-site liquid waste system fees that were  
24   no more than the average charged by the states contiguous  
25   to New Mexico for similar types of permits and services.

1           House Bill 478 also created the liquid waste  
2 fund. The liquid waste fees are deposited in the fund.  
3 The money in the fund is appropriated to the Department  
4 for the administration of the liquid waste program as  
5 required by the act. The liquid waste fees can only be  
6 used for liquid waste program activities.

7           The Environmental Improvement Act is the  
8 Department's Exhibit 1.

9           A bill was introduced during the legislative  
10 session earlier this year to repeal the Department's  
11 authority to establish liquid waste system fees. This  
12 bill did not pass the legislature.

13           The Department reviewed the liquid waste fee  
14 programs of other states contiguous to New Mexico,  
15 Arizona, Utah, Colorado, Oklahoma and Texas. The review  
16 included local government liquid waste programs in  
17 Colorado because the program is administered by local  
18 governments in that state.

19           The contiguous state programs have various  
20 fees, such as permit fees, processing fees, inspection  
21 fees, variance fees and so on. The average fee for the  
22 contiguous states for a conventional residential liquid  
23 waste system is \$210.

24           The Department's proposed conventional  
25 residential fee is considerably less at \$100.

1                   The Department has the responsibility to  
2   protect public health and the environment. The  
3   Department is not able to adequately implement this  
4   program with the number of liquid waste systems being  
5   constructed in the state with the general fund budget  
6   appropriated to it.

7                   Also, the Department is unable to locate and  
8   investigate the large number of illegal systems in the  
9   state. With expected revenue from the fees collected  
10   pursuant to the proposed regulation, the Department can  
11   inspect more new systems and find existing illegal  
12   systems and get them into compliance.

13                  The anticipated revenue from the proposed fee  
14   regulation will allow the addition of seven new staff  
15   members to the liquid waste program and the usual costs  
16   associated with a staffing increase, such as rental  
17   space, training, utilities, phones, office supplies and  
18   the like.

19                  Five of the proposed staff positions would be  
20   placed in the field where the largest number of liquid  
21   waste systems are being installed. At this time, these  
22   are the counties of Torrance, Valencia, Dona Ana, Santa  
23   Fe, San Juan.

24                  NMED Exhibit 4 illustrates the location of the  
25   23 field offices as well as the five counties where the

1 new inspectors would be initially assigned.

2 The Department estimates that five full-time  
3 inspectors can perform a total of approximately 2,500  
4 additional inspections per year and issue the associated  
5 permits.

6 The sixth position would be a trainer who would  
7 provide training not only to the Department's field  
8 staff, but also to liquid waste system installers and  
9 contractors statewide.

10 The Field Operations Division has identified  
11 increased and consistent training as an important need  
12 for both field staff as well as septic tank installers  
13 and contractors.

14 The seventh position would be a financial  
15 person needed to track the fees and handle the liquid  
16 waste fees collected from the field offices.

17 Hiring for these positions would be staggered  
18 throughout the fiscal year as the fees are collected.

19 A full impact yearly budget, assuming all  
20 positions are filled, would approach \$600,000.

21 Department Exhibit Number 5 contains an  
22 attachment sent to the New Mexico Home Builders  
23 Association which describes a fully staffed budget.

24 The Department's proposed fiscal year 2002  
25 liquid waste fee budget is Exhibit Number 6. This

1 exhibit also includes the final budget based upon the  
2 expansion budget approved in House Bill 2.

3 In August, 2000, the Department held four  
4 public meetings to answer questions and take comments on  
5 the draft liquid waste regulation. The meetings were  
6 held in Las Cruces, Roswell, Albuquerque and Santa Fe.

7 As part of the Department's public outreach  
8 efforts, the draft fee regulation was also placed on the  
9 Department's web page.

10 The Department also met with a number of  
11 interested parties separately regarding the fee  
12 regulation, including the Home Builders Association.

13 The Department also mailed copies of the final  
14 proposed regulation and a cover letter on December 7th,  
15 2000, to any interested party who had provided their name  
16 and address at any of our four public meetings.

17 As a result of the many comments received, the  
18 Department lowered many of the fees in the original draft  
19 regulation. The Department also included a provision for

20 the periodic review of the fees in the proposed

21 regulation.

22 The proposed regulation is Department Exhibit  
23 Number 2.

24 As with other fees collected by the Department  
25 in any of its 23 field offices, the liquid waste permit

1 fees will be collected in the field office where the  
2 individual permit application is submitted.

3 The permit fee will be mailed within 24 hours  
4 to the Community Services Bureau, where it will be logged  
5 in and then submitted on a daily basis to the  
6 Department's Administrative Services Division.

7 On average, each field office could expect to  
8 receive between two to five permit applications and  
9 permit fees per day. The existing liquid waste permit  
10 tracking database will be modified to include tracking of  
11 liquid waste fees.

12 The Department requests of the Board, after the  
13 Board's action, that with the approval of the Board's  
14 attorney and the Department's attorney, that the  
15 Department be allowed to make formatting changes required  
16 by the New Mexico Records Center or correct typographical  
17 errors, such as renumbering definitions, for example.

18 In conclusion, nationwide 40 percent of all new  
19 residential construction is using small liquid waste  
20 systems like septic tanks and leach fields. The  
21 percentage is likely to be higher in New Mexico.

22 Improper disposal of liquid waste represents a  
23 very real threat to both the environment and public  
24 health. To meet the Department's responsibilities in the  
25 future and under the law to protect public health and the

1 environment and the consumer, the Department needs the  
2 additional resources that will be provided by the liquid  
3 waste fees.

4 The Department urges the Board to consider  
5 first and foremost the environmental and public health  
6 benefits that will result from the approval of this  
7 proposal.

8 This concludes my testimony.

9 MR. CLARKE: Mr. Hearing Officer, the  
10 Department has a number of follow-up questions for  
11 Mr. Walker.

12 DIRECT EXAMINATION

13 BY MR. CLARKE:

14 Q. Mr. Walker, simply, do the proposed fees meet  
15 the statutory requirement of being less than the average  
16 charged by contiguous states for similar permits and  
17 services?

18 A. Yes.

19 Q. And I know you touched upon this in your  
20 testimony, but could you again describe the process that  
21 the Department went through to determine that the fees  
22 for similar permits and services charged by contiguous  
23 states are less than that proposed in this fee  
24 regulation?

25 A. We contacted each of the contiguous states. We

1 obtained the fee information from each one of those  
2 jurisdictions. We calculated the arithmetic averages for  
3 the various types of permits.

4 And this is shown in Exhibit 3.

5 The average, for example, for a conventional,  
6 which is basically a septic tank and a leach field, of  
7 the contiguous states was \$210. Our proposal is only  
8 \$100.

9 Q. And were local government fees considered in  
10 this proposal?

11 A. They were, but they weren't required to be  
12 considered by statute. We did look at Bernalillo County,  
13 which is the other entity within New Mexico that does  
14 have a fee for its liquid waste program, and we found  
15 that our fees were consistent with Bernalillo County.

16 And I might mention, too, that when Bernalillo  
17 County adopted both its ordinance and fees, they were  
18 supported -- or not openly opposed by most of the septic  
19 tank contractors and installers.

20 Q. And you mentioned that the Department has met  
21 with interested parties.

22 Who were the interested parties that the  
23 Department has met with?

24 A. Well, we've met with the Home Builders  
25 Association; Manufactured Housing Association; Mr. Mike

1 Addy, who is an installer and manufacturer of septic  
2 tanks; Mr. Link Summers, who is a consultant and  
3 installer; Mr. Gene Bassett, who is also a consultant and  
4 installer; and, of course, many members of the public  
5 that we encountered at our four public meetings that we  
6 conducted throughout the state.

7 Q. And can you go through and address what the  
8 concerns were that these parties raised to the  
9 Department?

10 A. Certainly.

11 Starting with the Home Builders Association,  
12 they were concerned that the fees would not be used to  
13 improve the program. They were also concerned that the  
14 fees would be used to replace the general funding that we  
15 now receive.

16 They were concerned that there was a high  
17 number of illegal installations and nothing was being  
18 done about it. They also expressed the concern that they  
19 thought the technical regulation for liquid waste should  
20 be modified and passed before the fee regulation.

21 The Home Builders -- or excuse me. The  
22 Manufactured Housing Association was concerned that the  
23 cost of the fee would discourage low-income buyers, and  
24 they were against the fee wholeheartedly.

25 The Realtors were mixed in their reaction, as

1 well as the contractors and installers were mixed.

2 The contractors basically were in favor of the  
3 fees as long as it provided improvements to the program,  
4 provided additional inspections, provided training. And  
5 one contractor in particular had advocated that the  
6 training center should be developed to help formalize the  
7 training of contractors, staff and other parties.

8 Q. I know that's a lot of different issues, but  
9 could you go through and state the Department's response  
10 to each one of those concerns raised?

11 A. Certainly.

12 The Home Builders Association, with regard to  
13 their question regarding the fees would not be used to  
14 improve the program, the revenue can only be used for the  
15 liquid waste program. It's in the statute. The  
16 Department's budget includes funding for the seven  
17 positions.

18 The Department is not seeking any reduction at  
19 all in federal -- excuse me -- in the general funding  
20 levels that we now receive. In fact, the Department is  
21 seeking to at least obtain the same levels of funding  
22 from the legislature. It will work closely with the  
23 legislature and executive branch to achieve this goal.

24 Currently about 35 percent of our general fund  
25 budget is estimated to go toward liquid waste, and that's

1 approximately \$1,816,000.

2 But currently the budget is combined  
3 together -- the tracking of that is combined with the  
4 other programs, such as food and pools and so on like  
5 that. And just recently we have instituted a method to  
6 separate those costs out so we can track the cost of each  
7 program separately.

8 This fiscal year, a \$285,200 expansion has been  
9 added to the budget. In this fiscal -- the positions  
10 that we spoke of earlier in the field will be brought on  
11 according to a schedule as these are collected. There  
12 will be two estimated to be brought on in September of  
13 this year, two in January of 2001 -- excuse me -- 2002,  
14 one in March of 2002 and two in April of 2002.

15 In addition to that, of course, the Department,  
16 as you've heard, is seeking additional funds through EPA  
17 grants. We've applied for a \$200,000 grant for -- Clean  
18 Water Act Section 106 grant money, and we've also applied  
19 for another EPA grant, approximately \$150,000, to begin  
20 the design of a liquid waste training center.

21 Q. Now, you mentioned that the Home Builders were  
22 concerned that the fees wouldn't be used to combat  
23 illegal systems as one of the issues that they raised.

24 Could you respond to that?

25 A. Certainly.

1 I think what's important is to know what an  
2 illegal system is. An illegal system is one that's been  
3 installed without a permit or has been installed that is  
4 not in compliance with the regulations.

5 Such systems can certainly lead to public  
6 health hazards and environmental health hazards because  
7 of improper surfacing of sewage. They can also involve  
8 improper setbacks to drinking water wells, to streams.

9 Such systems can be located in areas of high  
10 ground water or in high water table areas, thus not only  
11 leading to public health problems, but obviously  
12 groundwater pollution problems.

13 Currently the Department estimates that between  
14 30 and 50 percent of the 180,000 systems out there are  
15 illegal, have not been put in with a permit. Compliance  
16 is -- well, I should say these systems are identified as  
17 they come to our attention, some by complaint, some by  
18 surveillance, primarily by complaint.

19 We attempt to seek voluntary compliance in  
20 bringing these into code. If that fails, then we can  
21 seek remedies through Magistrate Court.

22 Anybody who does have to come into compliance  
23 will have to get a permit and, if the proposal is passed,  
24 will also have to pay a fee.

25 One of the things that we've committed to as a

1 department, and I believe Mr. Koranda has already  
2 referred to it, is that we have committed to working with  
3 the Home Builders Association.

4           They have several very good ideas about how to  
5 approach this, and we would like to get their ideas and  
6 develop new methods on finding illegal systems. They  
7 have some very good suggestions that we will be following  
8 up on.

9           We will also be working with our legal staff to  
10 look at statutory and regulatory changes that we might  
11 need in order to implement some of these new methods that  
12 might come about.

13           Q. You had mentioned also there was an issue  
14 raised that perhaps the technical regs that the  
15 Department is working on with regard to liquid waste  
16 should also perhaps be adopted before or at the same time  
17 as this proposed fee regulation?

18           A. Well, the Department is not considered changing  
19 the order in which we're proceeding. The need is  
20 immediate, and the impact to public health is quite  
21 pressing to seek these fees and the improvement in  
22 services.

23           The delay cause -- there's already been a delay  
24 caused by the legislative challenge. As you remember, we  
25 had proposed coming before the Board probably five months

1 ago or so.

2 We're taking a fresh look at the liquid waste  
3 technical regulation. We're seeking -- or we're going to  
4 basically start over. We're going to seek input from all  
5 interested parties. And if there are changes necessary,  
6 we'll be bringing those amendments to that regulation  
7 before the EIB.

8 If any of those changes to the technical  
9 regulation should cause a change to the fee regulation,  
10 should it be adopted, simultaneous changes to the fee  
11 regulation can be presented to the Board at the same time  
12 the technical reg is being heard.

13 Q. And how does the Department respond to the  
14 Manufactured Housing Association's concern that this  
15 permit and the fee charged there would affect low-income  
16 house buyers or homeowners?

17 A. We conducted a very basic survey. We contacted  
18 a dealer, and actually a member of their association, and  
19 asked them to give us an example of how much it would  
20 cost to purchase and locate a manufactured home in the  
21 Moriarty area, a very typical fast-growing area in New  
22 Mexico.

23 We asked for a three-bedroom house, which is  
24 very typical, land, site preparation, utilities, closing  
25 costs, for example, just those general things.

1                   We received a range of -- figure ranging --  
2                   and, of course, that also included the manufactured house  
3                   itself -- from about \$62,000 to about \$85,000.

4                   A \$100 fee is a very small percentage. And, in  
5                   fact, it's in the 100th -- about .11 to .16 percent of  
6                   the total cost.

7                   Q. And I think, finally, Mr. Walker, you mentioned  
8                   that installers and Realtors were mixed, but there were  
9                   concerns that there wouldn't be a service provided along  
10                  with this fee.

11                  A. Yes. They certainly did express themselves  
12                  about this. Both the Realtors and the contractors both  
13                  were very concerned that if a fee were charged they would  
14                  like to see applications considered in a more timely  
15                  fashion, they would like to see inspections provided,  
16                  more inspections.

17                  And we hope -- as you've heard, we will be  
18                  addressing that with the revenue and the staff positions  
19                  that are generated by this proposal.

20                  In addition, there was really a number of  
21                  Realtors that were concerned, and some contractors I've  
22                  had expressed, as well, that when they put in a system,  
23                  they're somewhat liable for it. Any disgruntled client,  
24                  whether it be a purchaser or someone that is a recipient  
25                  of an installation, may -- somewhat puts them in a little

1 higher liablous situation.

2 With an inspection, that liability is reduced,  
3 because they have an official agency okaying what they've  
4 put in. And through this program we should be able to  
5 help them address that concern and provide more  
6 inspections and provide that.

7 Another concern that was particularly raised by  
8 the Realtors was when people wish to get a bank loan or  
9 refinance their house, and, of course, refinancing has  
10 been invoked quite a bit lately, that the bank requires  
11 documentation that that house has been constructed and  
12 the septic system installed with all the proper permits.

13 They certainly don't want to issue a loan  
14 against a house that has been illegally constructed.

15 With this fee proposal and the additional fees,  
16 we will be able to provide a better level of  
17 documentation, since we'll have more inspections and this  
18 documentation will be present.

19 The last -- I'm trying to think -- the last  
20 issue that they wished to have addressed was the issue of  
21 training. The contractors in particular, as I said

22 earlier, were very interested in having the opportunity  
23 to receive training and to have these fees help provide  
24 that training.

25 The Department, as I said earlier, has sought

1 an EPA grant of somewhere in the vicinity of about  
2 \$150,000 to begin the process of designing a liquid waste  
3 training center. And also there has been a position  
4 dedicated to the training of the contractors and staff.

5 Q. Along the lines of the concerns of the Realtors  
6 and what we're going to get for our money basically under  
7 the fee proposal, what will be the direct benefits to New  
8 Mexico homeowners?

9 A. Well, I think most importantly the -- there  
10 will be fewer failed liquid waste systems. Surface and  
11 groundwater will be protected. The public health and the  
12 environment will be protected. That's paramount.

13 The benefits to homeowners will be, of course,  
14 quicker applications, quicker inspections, and that --  
15 when they are applying for a loan, that that  
16 documentation I spoke of earlier will also be present for  
17 them.

18 Q. And, Mr. Walker, could you describe for us at  
19 this time how the program's implemented and how many  
20 people the Department has in the field?

21 A. In Exhibit 4 you'll see that it shows the  
22 location of the 23 field offices. Within those field  
23 offices there are currently 46 environmentalists who are  
24 the basic inspectors and supervisors.

25 In addition to that, those people also perform

1 inspections regarding food safety, swimming pools and  
2 spas, on occasion vector control. They issue open  
3 burning permits, and they assist the water supply program  
4 with water sampling in their jurisdiction.

5 They also provide the Department with other  
6 assistance. Since they are located in rural areas, they  
7 may help the other programs in the Department, such as  
8 underground storage tanks or solid waste in responding to  
9 issues that might come up in their community.

10 In addition to that, the staff in Santa Fe  
11 helps support the field staff through providing technical  
12 consultation and coordination of the program. I might  
13 say that that's a very small staff.

14 And just recently, Mr. Koranda, the Division  
15 Director, has elevated the Santa Fe staff to a higher  
16 level directly under him in order to increase its  
17 prominence and its importance in its function.

18 Q. Mr. Walker, you stated in your testimony that  
19 the proposed fees will provide for seven additional  
20 positions specifically in the liquid waste program.

21 A. Um-hum.

22 Q. And that five of these positions will be  
23 providing permitting and inspection services in the areas  
24 of greatest need within the state.

25 What is the percent of liquid waste

1 installations that are inspected now, and what is it  
2 expected to be upon implementation of the proposed fee?

3 A. Well, to begin with, I'd have to say the  
4 percent varies by the field office in the state. The  
5 statewide average among field offices currently is about  
6 50 percent. The actual range is about 37 to 100 percent,  
7 again depending on the field office.

8 The fees will bring on the five additional  
9 field people that would be placed in those field offices  
10 with the highest work loads. But -- and I would say that  
11 as a result of that, there will be a dramatic increase in  
12 the number of permits able to be processed and  
13 inspections performed.

14 Q. And does the Department believe the fee  
15 proposal will generate enough revenue to result in  
16 significant improvements in the program?

17 A. The Department believes that the fee revenue  
18 resulting from this proposed regulation will result in a  
19 significant improvement to the program. We probably -- I  
20 would have to say that we cannot guarantee 100 percent  
21 inspections of everything that we do, but we will be  
22 striving very much to get as close to that goal as  
23 possible.

24 In addition, in order to reach that goal, we  
25 are certainly going to work with the legislative and

1 executive branch in order to do every attempt we can in  
2 order to reach that -- reach that goal.

3 Q. And what is the schedule to begin collecting  
4 fees under the proposal?

5 A. If -- let's see. If the Board sees fit to  
6 adopt this proposal today, it would be effective on  
7 August 17th.

8 Q. And, Mr. Walker, as a final question, what is  
9 the Department's primary reason for proposing that the  
10 EIB adopt a fee proposal?

11 A. The Department believes that the increased  
12 revenue from this program resulting from the fees will  
13 increase the protection of the environment and public  
14 health.

15 And I know I keep reiterating that, but it's an  
16 extremely important point. Improper disposal of liquid  
17 waste represents a very real and significant threat to  
18 both the environment and public health. These proposed  
19 fees will result in an enhanced program that would reduce  
20 these threats.

21 MR. CLARKE: The Department has no more  
22 questions for this witness, Mr. Hearing Officer.

23 MR. SIMPSON: Mr. Clarke, is Mr. Walker your  
24 final witness?

25 MR. CLARKE: Well, we also have Mr. Brian

1 Schall who has also been sworn in.

2 MR. SIMPSON: Right.

3 MR. CLARKE: And Mr. Schall along with

4 Mr. Walker put together the figures, called various

5 states. So we would ask that Mr. Schall also be able to  
6 help in answering questions, as well.

7 MR. SIMPSON: Well, that's what I was getting  
8 at, is perhaps we could put all of the people who have  
9 knowledge with respect to the budgeting and priorities  
10 and internal operations as a panel to respond to the  
11 questions from the public.

12 MR. CLARKE: If that pleases the Board, the  
13 Department would be happy to sit as a panel. That might  
14 be the most effective means.

15 MR. SIMPSON: Okay.

16 Well, why don't we have them come forward,  
17 then, please, and maybe Mr. Koranda can cede his seat to  
18 them.

19 Actually, Mr. Clarke, maybe this is a good time  
20 to take a break. The Board's going to ask their  
21 questions first, and then the folks in the audience will  
22 have their opportunity.

23 MR. CLARKE: Okay.

24 MR. SIMPSON: Let's say five minutes.

25 (Proceedings in recess.)

1                   MR. SIMPSON: All right, everybody. Let's  
2 bring the meeting to order.

3                   Mr. Clarke, are your witnesses ready to stand  
4 for questions?

5                   MR. CLARKE: Yes, Mr. Hearing Officer. I  
6 believe they're ready to stand for questions.

7                   MR. SIMPSON: All right.

8                   **MIKE KORANDA, STEVE WALKER and BRIAN SCHALL**  
9 having been sworn, were examined and testified  
10 as follows:

11                   MR. SIMPSON: Now, to the members of the public  
12 and the rest of the audience, this is the opportunity for  
13 the Board members to ask questions of the witnesses, and  
14 as soon as they're done, you can ask questions that  
15 follow up with their questions or questions of your own.

16                   Do any of the Board members have questions?

17                   MS. NOSKIN: I do.

18                   MS. GADZIA: Yes.

19                   MS. NOSKIN: Do you?

20                   MR. GHASSEMI: I do.

21                   Were there any significant issues that were  
22 brought up by these stakeholders that you met with that  
23 has not been addressed?

24                   MR. WALKER: Not that I'm aware of.

25                   MR. GHASSEMI: Okay.

1 MR. SIMPSON: I'm sure they'll make you aware  
2 of some.

3 MR. GHASSEMI: I wanted to know ahead of time.

4 MS. GADZIA: It may be coming.

5 MR. GHASSEMI: I'm done.

6 MS. NOSKIN: All right. I have a few  
7 questions.

8 My first question is, are the existing sites  
9 going to be grandfathered in? I mean not the illegal  
10 ones, but the sites -- or is this an annual thing? What  
11 happens with that?

12 MR. WALKER: Currently there are permits that  
13 have been issued in the past for systems to be installed,  
14 and, of course, those exist and are legal.

15 There's no real grandfathering of older  
16 permits. The permits are a one-time thing. They're not  
17 annually renewed. It's a one-time permit to install the  
18 system.

19 MS. NOSKIN: Okay.

20 My next question is, these five -- the five  
21 field environmentalists that these fees will supposedly  
22 handle, and they're going to be in the field offices, are  
23 they also going to be handling open burning issues and  
24 solid waste issues?

25 MR. CLARKE: Mike, do you --

1 MR. KORANDA: No. They will be dedicated to  
2 liquid waste.

3 MS. NOSKIN: Okay.

4 Because open burning is an air issue, as far as  
5 I understand.

6 MR. KORANDA: Yes.

7 MS. NOSKIN: And those fees were increased. So  
8 I would hope there would not be.

9 The field environmentalists, are they going to  
10 be expected -- these ones that are dedicated to liquid  
11 waste, are they going to be expected to pass a field  
12 certification that, say, the installers are going to have  
13 to pass?

14 MR. WALKER: If there's a certification for an  
15 installer, it would be on how to install a septic system.  
16 There may be the chance in the future of developing  
17 inspector certifications, of which the environmentalists  
18 would have to pass, but there also may be certifications  
19 for designers, as well. So there may be different  
20 levels.

21 The field environmentalists would meet the  
22 appropriate certification, let's say, for an inspector.

23 MS. NOSKIN: Okay.

24 Because I have a bit of background in having  
25 inspectors not having to pass the same rigor, and so it

1 seems sort of a dichotomy to me that the inspector's  
2 inspecting something they didn't even have to -- they  
3 don't even understand.

4 So that might be a suggestion.

5 Now, I'm looking at these fees, and -- okay.

6 So when you install a conventional system, it's  
7 a hundred bucks, but don't you have to have a tank  
8 certification, also, to install a tank?

9 MR. WALKER: No. The tank certification is a  
10 fee paid by the person that manufactures that septic  
11 tank, whether it be concrete or plastic.

12 MS. NOSKIN: So this is a manufacturer, there's  
13 \$100 there.

14 MR. WALKER: Right.

15 MS. NOSKIN: And then the reinspection is for  
16 if the tank is installed improperly and the inspector has  
17 to come back?

18 MR. SCHALL: Yes.

19 MR. WALKER: Yes. That's correct.

20 If at the first inspection there -- the  
21 installation did not meet the requirements of the  
22 regulation and a reinspection was necessary, a  
23 reinspection fee would apply.

24 MS. NOSKIN: And I guess I'm just going to go  
25 down.

1                   Modification to the conventional -- is that  
2 from the manufacturer, or is that if something is added  
3 to the septic tank?

4                   MR. SCHALL: A modification happens when  
5 somebody comes in that has an existing system and has  
6 increased the flow to that system.

7                   MR. ADDY: An additional bedroom to their house  
8 or something like that, which would generate -- or has  
9 potential to generate an increased flow. So the system  
10 would have to be enlarged.

11                   MS. NOSKIN: So it's a modification to the  
12 actual construction, not just to the permit, say, if  
13 somebody makes a mistake in their permit?

14                   MR. SCHALL: No, no. This would be a  
15 modification -- this is a permit for a modification to an  
16 existing system.

17                   MS. NOSKIN: Okay.

18                   And then I'm curious about these advanced  
19 treatment alternatives.

20                   Aren't the advanced treatment alternatives to  
21 help, you know, biodegrade the effluent and do those  
22 kinds of things, that help increase public health?

23                   MR. SCHALL: Yes. Yes. The system -- the  
24 advanced treatment systems, or the alternative-type  
25 systems, provide a higher level of treatment prior to

1 discharging. They are more complicated systems that  
2 need -- usually requires a little more review of the  
3 permit.

4           So there's basically an increase in the time  
5 required to review that permit to be able to issue that  
6 permit. They are -- like I said, they are more  
7 technical, and there are more issues usually involved  
8 with it. And quite often a lot of times they are  
9 installed for a variance process, to overcome a siting  
10 condition.

11           MS. NOSKIN: Okay.

12           I guess -- well, then, a variance process you  
13 bring up, then you have the added \$50.

14           I guess my point here is we have all these  
15 septic tanks in New Mexico that are unidentified and only  
16 come across -- you only come across -- even with five  
17 more field inspectors in the State of New Mexico, I don't  
18 expect you're going to find, you know -- I mean, unless  
19 there's some infrared marker and you can fly over, you  
20 know, which I don't expect.

21           And we would want to encourage people to  
22 register and comply and these kinds of things, and while  
23 I think most construction would pass it on to the  
24 consumer, there are a number of people who construct  
25 these things by themselves.

1                   And so then, in my limited vision, it seems to  
2 me that you're providing disincentives not only to put  
3 these tanks in, put in their permits, register with the  
4 Department, but an increased disincentive to do an  
5 advanced treatment which would even be better for public  
6 health and the environment.

7                   MR. SCHALL: That's actually -- I'm not really  
8 sure which direction to go with an answer for this.

9                   I think the basis, I think, that the Department  
10 came up for the increased fee had more to do with  
11 increased time required to review it, the increased --  
12 and sometimes the increased time to do inspections of  
13 that system.

14                   They may require an additional inspection, that  
15 would not be considered a reinspection, but it may take  
16 more than a single inspection to do the -- to look at the  
17 installation itself.

18                   It's basically -- again, it's -- it basically  
19 takes more time to do it, and, therefore, you know, the  
20 charges are -- was increased to help cover the increased  
21 cost to that time to the Department.

22                   Now, of course, we're not trying to recoup 100  
23 percent of the cost of doing the program.

24                   MS. NOSKIN: I understand that.

25                   But I guess in reviewing this -- and maybe it's

1 something you can think about. I don't know. You know,  
2 I'm a big advocate of pollution prevention, and I just  
3 think the more convenient you make it is the only way you  
4 get it.

5 And, frankly, if I'm a homeowner and that's an  
6 extra hundred bucks and I'm trying to squeeze a hundred  
7 bucks here and there all over the place, that extra 50  
8 bucks means a lot to me.

9 And so I just -- I don't know. I guess I was  
10 hoping that we would in our future regulations -- and  
11 there's been some precedence in some of the other  
12 regulations to provide sort of credits to people who do  
13 these kinds of things, you know.

14 MS. GADZIA: Incentives.

15 MS. NOSKIN: Incentive to do these things that  
16 are a little above and beyond for public health rather  
17 than penalizing them.

18 But I don't know if there's an answer to that.  
19 Maybe that's something that could be considered.

20 MR. SCHALL: Well, there are benefits to the  
21 homeowner by putting an advanced system in. Usually  
22 they'll put them in to be able to reuse their water,  
23 beneficial uses for irrigation, something like that.

24 They also do receive a reduced sizing in the  
25 drain field, so the cost of the drain field is reduced to

1 help offset the cost of these advanced systems.

2           Advanced systems are very expensive compared to  
3 a septic system. So there are advantages to using these  
4 advanced systems.

5           Most of the use right now for these advanced  
6 systems are really to overcome siting conditions. There  
7 are some people out there that are using them in place of  
8 a septic tank, but in most instances, they are usually  
9 installed through the variance process to overcome depth  
10 to groundwater or depth to limiting layers or to lot  
11 size.

12           But, you know, the Department is looking  
13 forward to seeing advanced systems and beneficial use of  
14 the water, not just to see disposal of the water, but  
15 actual using that water for the second time. And we do  
16 encourage the use of advanced systems.

17           MR. WALKER: I might add that that may be one  
18 aspect that we look at in the technical regulation, is  
19 how to encourage that.

20           Understand a septic system is in the range of  
21 \$2,000 to \$4,000 generally. An advanced system can be in  
22 the range of sometimes \$6,000 to as much as even \$20,000,  
23 generally not quite that high. The \$50 additional fee  
24 is -- to those people putting those types of systems in  
25 is probably not a factor.

1                   The real cost is in the increased cost in the  
2 advanced system, and as Brian said, it's usually to  
3 overcome a siting problem, so they need a higher tech  
4 solution in order to have a liquid waste system on that  
5 particular parcel.

6                   MS. NOSKIN: Okay. Thank you.

7                   MS. GADZIA: Are you done?

8                   MS. NOSKIN: I'm done. Thanks.

9                   MS. GADZIA: Is it my turn?

10                   I wanted to ask you a few questions about  
11 utilizing the contiguous states as a model for our fee  
12 structure.

13                   And I wanted to ask, was it just a number  
14 model, or did you really look at their systems? In other  
15 words, are they utilizing as many septic systems -- I  
16 mean, all of our contiguous states are more populated  
17 than we are.

18                   So are there, based on the population, as many  
19 septic tanks, and are those other states having as  
20 significant a water contamination problem as we are? In  
21 other words, are we modeling after states that are in  
22 worse shape than we are? Did you look at their programs  
23 and their situations?

24                   MR. SCHALL: I didn't look at the number of  
25 permits issued, but, you know, looking at population

1 growth, you're looking at where that population growth is  
2 occurring, which is the fringe areas, which is the urban,  
3 wide area interfaces and things like that. These areas  
4 do not have the centralized sewer systems.

5 The EPA numbers, national numbers are showing,  
6 you know, an increase in the overall percentage of new  
7 construction that is going onto on-site systems just  
8 because of these reasons.

9 I'm kind of slightly aware of what the other  
10 programs are in the other counties, having talked to the  
11 people in those other states. I do not know what type of  
12 impacts their systems are having on their groundwaters or  
13 their surface waters.

14 MS. GADZIA: Right.

15 MR. SCHALL: But overall, you know, the  
16 ground -- nationwide that septic tanks are listed as one  
17 of the top nonpoint source of groundwater and even  
18 surface water pollution.

19 MS. GADZIA: So we're not unique in that.

20 MR. SCHALL: We're not unique in that sense at  
21 all.

22 MS. GADZIA: Okay.

23 MR. WALKER: If I might add, that we have a  
24 moderate knowledge of the regulations in Texas and  
25 Arizona, and they are -- their technical regulations are

1 more advanced, and some of their requirements are more  
2 advanced than ours.

3 MS. GADZIA: Because our fee is --

4 MR. WALKER: But it does vary. Oklahoma, for  
5 example, is a bit more like us.

6 MS. GADZIA: Okay.

7 MR. WALKER: Not quite as technical.

8 MS. GADZIA: Because our fee is quite -- I  
9 mean, it's lower than anybody.

10 MR. WALKER: That's correct.

11 MS. GADZIA: So I -- and related to that  
12 comment, I'm a little concerned, and I haven't heard  
13 really, and we haven't received -- I only received one  
14 letter before this that I've read before this, and I  
15 haven't had a chance to read any of this, so I haven't  
16 heard the concerns in the industry, but I got an  
17 indication that the inspections weren't happening on a  
18 timely basis, and I'm sure there's some others.

19 My concern -- and let me say up front that I'm  
20 very supportive of fees, because I think through the  
21 general fund our -- you can't count on them, and I think  
22 they're -- we might as well pay for the work we're doing  
23 to support our programs that way. So I'm a big advocate  
24 of that. And I'm sorry, I know it's painful.

25 However, I'm concerned that once the

1 legislature passes this ability to collect fees they're  
2 going to say, "Well, you don't need our general fund  
3 money anymore."

4 So are these seven additional staff members --  
5 are they funded by the fees, so they will be in place  
6 regardless of general funding?

7 MR. KORANDA: That's right.

8 MS. GADZIA: Okay.

9 So you feel like the fees are going to be  
10 adequate to improve the program, even though you may not  
11 receive as much general funding?

12 MR. KORANDA: We fully intend to seek the same  
13 level of general fund or increased general fund for this  
14 program, and because it's the critical part. These seven  
15 employees are important. They're going to result in an  
16 enhancement.

17 But what we're doing now is with the 46  
18 environmentalists in the field and a general fund budget  
19 to support them, with about 35 percent estimated of that  
20 budget devoted to liquid waste, that is the bulk of this  
21 program. That is what we must maintain.

22 MS. GADZIA: All right. Well, I just hope you  
23 get it.

24 So with five additional staff persons in the  
25 field, that will mean like -- I mean, there are a whole

1 lot of offices.

2 So are some offices keeping up with the demand  
3 and doing timely inspections, but some are overwhelmed,  
4 and so those staff members will go -- because this won't  
5 impact really a lot of your field offices. I mean, it  
6 will at the Santa Fe office probably, but it won't  
7 increase inspections in many of your offices.

8 Is that correct?

9 MR. KORANDA: We have many offices that are  
10 making the numbers. They are --

11 MS. GADZIA: Okay.

12 MR. KORANDA: -- making all of the inspection  
13 requirements and -- but there are areas of high growth in  
14 the state --

15 MS. GADZIA: Okay.

16 MR. KORANDA: -- where other offices are at  
17 that are not.

18 MS. GADZIA: All right.

19 I want to talk briefly about the training  
20 program.

21 And you said you were going to -- you're  
22 looking at constructing a physical center for training?

23 Is that --

24 MR. WALKER: Yes. That's correct.

25 MS. GADZIA: And will this training of the

1 public or the people who install, will that be something  
2 you'll be providing for free, or will that have a fee  
3 attached? I mean, have you gotten that far?

4 MR. WALKER: We have looked at the training  
5 program that TNRCC does in Texas, and, in fact, they have  
6 offered the use of their training center in El Paso for  
7 those that reside in the southern part of the state, and  
8 we intend to take advantage of that.

9 We don't know at this point what the finances  
10 will be. There may be a small fee, but I'm not sure at  
11 this point. I don't think anybody's gotten that far down  
12 the line to make that determination.

13 At this point we're trying to seek the funding  
14 to begin the design and look for a probable location of a  
15 training center here in the more northern part of the  
16 state and begin that process. If we're successful with  
17 that, of course, we then move on to architecture,  
18 construction phase, plans and things of that nature.

19 MS. GADZIA: And do you need a center so you  
20 can physically have these systems there, or -- I mean,  
21 the Department frequently takes classes around the state  
22 to make it easier for the public to attend them.

23 MR. WALKER: That's correct. But Texas has  
24 been very successful at having established centers  
25 throughout the state with these systems installed as

1 operating models.

2 MS. GADZIA: So they can actually see a  
3 physical system, so that's the benefit --

4 MR. WALKER: It's a benefit, instead of hauling  
5 around a concrete septic tank and that kind of thing.

6 MS. GADZIA: I didn't know if it was all --

7 MR. WALKER: You can teach some things kind of  
8 on the road, so to say, such as design and somewhat  
9 classroom-oriented things, but those things that are  
10 oriented toward construction and looking at installations  
11 and kind of working models, a center works best for that.

12 MS. GADZIA: Okay.

13 And does the industry have -- the industry of  
14 installers, do they have a certification program? Do  
15 they have to be certified? Or are they --

16 MR. WALKER: Currently they're not certified  
17 per se. They do have to have an appropriate license from  
18 the Construction Industries Division.

19 MS. GADZIA: Okay.

20 Let's see.

21 And just to follow up a little bit, new  
22 construction -- new systems will be permitted and  
23 inspected, and then when do you ever reinspect those?

24 I mean, I understand the new ones, and I  
25 understand you trying to locate the illegal ones.

1 Do you ever go back to look?

2 MR. SCHALL: No.

3 MS. GADZIA: Okay.

4 MR. SCHALL: Honestly, we don't. Some systems  
5 that are put under a variance, some of the advanced  
6 systems, will -- usually has a condition that we do have  
7 the right to come back out and inspect to make sure the  
8 system is operating in accordance with the conditions  
9 granted under the variance.

10 The manpower doesn't allow us to do that.

11 MS. GADZIA: Sure. I understand that.

12 MR. SCHALL: Basically we need to be able to  
13 allow -- have a system go in correctly, educate the  
14 homeowner to some extent on how to operate that system,  
15 and then usually the next time we hear about it is if  
16 it's failing.

17 And that's pretty much industrywide throughout  
18 the country. You really have very little follow-up  
19 inspections or periodic inspections.

20 MS. GADZIA: Unless the home is sold, and then  
21 you have to do --

22 MR. SCHALL: Yeah. And if the home is sold in  
23 this state, we don't get involved. Some states --

24 MS. GADZIA: You don't, but -- it has to be  
25 inspected, but not by you all?

1 MR. SCHALL: No.

2 MS. GADZIA: Oh, okay.

3 MR. SCHALL: Usually the mortgage company will  
4 have a licensed installer and do -- will do an inspection  
5 to see that it is functioning properly.

6 MS. GADZIA: Okay.

7 MR. SCHALL: They may come and check with us to  
8 see if there's a permit been issued.

9 MS. GADZIA: Okay. So it's a one-time thing  
10 basically. Okay.

11 I may have more questions after I hear from the  
12 industry, but thank you very much.

13 MS. MOJTABAI: I have a question regarding --  
14 what is your current estimated average cost of reviewing  
15 a conventional septic tank application?

16 MR. WALKER: Well --

17 MS. MOJTABAI: And I understand there's  
18 probably a range of --

19 MR. WALKER: It does vary widely because of the  
20 time involved.

21 One of the difficulties is that currently in  
22 the budget we don't have a clear separation of the costs  
23 strictly for liquid waste. We have kind of an  
24 aggregation of field programs. So we can only make an  
25 estimate of on average how much time a person spends on

1 liquid waste as opposed to food and these other programs.

2 We haven't made an exact calculation, to be

3 honest, but it would be my estimate that to sit down and

4 review 70a permit for a conventional system, we're talking

5 simplest case, a conventional system, where everything

6 has been provided -- many times that's not the case --

7 you're going to look at at least that application for

8 probably 10 minutes.

9 Then you have time that you arrange for

10 inspections, travel time and inspection time to go to the

11 site. Generally an inspection, if everything is

12 absolutely perfect, A number 1 -- generally you're on

13 that site for about 20 to 30 minutes while you make your

14 inspection, your measurements, write down your inspection

15 form and leave.

16 More typically you're going to look at that

17 application and find that it's lacking some information,

18 you're going to have to take time to call and try to

19 obtain that information.

20 Many times during inspections we may find that

21 there's been a change and -- the contractor is

22 requesting, let's say, to change something a little bit

23 from that. So it takes a little bit additional time.

24 On average probably an inspection on-site

25 somewhere between 30 minutes and 45 minutes if it's done

1 efficiently, and looking at a permit is somewhere  
2 around -- probably averages around about 30 minutes.

3 Cost-wise -- and that's where the difficulty  
4 comes in, is trying to figure, let's say, a cost per  
5 hour. I honestly don't have an exact figure for that.

6 But I would say it's probably in the vicinity of about  
7 \$40 per hour, perhaps more, considering salary and  
8 supporting overhead costs.

9 MS. MOJTABAI: You probably have travel time in  
10 there, as well.

11 MR. WALKER: Yes. And I would sort of estimate  
12 that part of it.

13 But, I mean, I want to make sure that my answer  
14 is very personally based. It's not a Department  
15 estimation. It's just --

16 MS. MOJTABAI: What about the record keeping?  
17 Do you keep the permits at the field offices where they  
18 were issued, or is there a copy sent out to Santa Fe, at  
19 a central --

20 MR. WALKER: That's all kept at the appropriate  
21 field office. And then the information is entered into  
22 the liquid waste database, and that database actually can  
23 be accessed from any field office or our Santa Fe office.

24 MS. MOJTABAI: So you probably have some  
25 additional staff time as far as arranging the permit data

1 into the --

2 MR. WALKER: Yes. Generally -- I've talked to  
3 the ladies who are very good about entering those, and  
4 five, ten minutes they're done. For those that are not  
5 as familiar, it can be excruciating, as much as an hour.

6 MS. MOJTABAI: So you're looking at maybe an  
7 average of, what, less than two hours, somewhere a little  
8 bit less than two hours total time?

9 MR. WALKER: Probably in the vicinity -- total  
10 time entering data, probably in the vicinity of maybe  
11 three or four hours, including drive time.

12 MS. MOJTABAI: Okay.

13 And you're estimating maybe \$40 per hour?

14 MR. WALKER: Yeah. And that may be low because  
15 of -- again, we're -- we will be able to define those  
16 costs more clearly, because just this budget cycle we've  
17 instituted a method to segregate those costs.

18 MS. MOJTABAI: Okay.

19 What is -- and I know that hopefully -- my  
20 understanding of the presentation of the Department was  
21 that through these fees you would hope to be able to have  
22 more staff members that perhaps would have additional  
23 time to pursue enforcement of the -- of the regs and make  
24 sure that most of the Department -- you know, the tanks  
25 that are out there are permitted.

1                   But right now, what do you estimate of the time  
2   that you're -- and I know it's difficult, because they do  
3   other things besides just liquid waste, but of the time  
4   that your field officers or employees spend on liquid  
5   waste, what do you estimate the time they --  
6   percentage-wise that they spend on enforcement versus  
7   permitting, or the other functions that are related to  
8   liquid waste?

9                   MR. WALKER: Well, in one of my responses, we  
10   estimated about -- on average through the field offices,  
11   about 35 percent of a person's time is spent on liquid  
12   waste, and the majority of that is on permitting and  
13   inspection. A small percentage is spent on enforcement.

14                  If we should get a complaint about a specific  
15   case, we go out and make an investigation. That's  
16   generally how we find them. But on occasion you might  
17   actually be driving by, smell something, see something  
18   and find it that way. That's much less likely. It's  
19   usually by complaint.

20                  I would say the -- currently just a small  
21   percentage of that, 35 percent, is actually spent doing  
22   enforcement. Most of it is spent trying to process  
23   current permits and conduct current inspections.

24                  MS. MOJTABAI: Do you think maybe 5 percent or  
25   10 percent of that 35 percent?

1 MR. WALKER: Oh, I would say it's probably --

2 MS. MOJTABAI: Less?

3 MR. WALKER: Yeah, in that range, close to 5 at  
4 the present time.

5 MS. MOJTABAI: And the Department's hoping with  
6 the additional staff, maybe overall aggregate-wise  
7 throughout the Department, that time might be increased?

8 MR. WALKER: Yes. That is correct.

9 These field positions not only would be able to  
10 perform additional inspections, but would also seek out  
11 more illegal systems.

12 And again, we hope to meet with the Home  
13 Builders Association to develop some new methods to find  
14 these. They're not easy. I mean, you drive by, and they  
15 can be difficult. They can be failing and not have any  
16 apparent sign. So it can be a difficult issue.

17 MS. MOJTABAI: Related to the use of the five  
18 new field employees, Chairman Gadzia had brought up that  
19 they're in -- they're not -- you have many field offices  
20 and you only have five folks.

21 If an area such as Socorro, they're on the  
22 edge, and they just perhaps missed the cut of getting one  
23 of the new five field officers, are those -- is the  
24 Department policy such that if there was a backlog in one  
25 area, you know, and perhaps suddenly there was some more

1 recent development in one particular area, that those  
2 five could maybe be loaned out to another area?

3 Is there flexibility built into the system?

4 MR. KORANDA: Yes, there is. And we can do  
5 that. We can respond with our liquid waste specialists  
6 to go to an area and catch them up, for example. We're  
7 doing that now.

8 That's an idea that we are -- we are currently  
9 using in the food program, to do the same thing. Where  
10 we may have an area where we're falling behind on our  
11 annual inspection requirement, we can bring a food  
12 specialist inside from that -- from other areas to  
13 concentrate and catch them up.

14 We could do the same with liquid waste.

15 MS. MOJTABAI: Okay.

16 Overall statewide, are you expecting an  
17 increase in applications significantly, or do you have  
18 any projections?

19 MR. WALKER: It's increasing in certain areas.  
20 For example, our District 3 office out of Las Cruces is  
21 experiencing a rise in applications out of the Deming  
22 office and Luna County, and the area has been replatted  
23 basically, and we have quite a number of people building  
24 down there.

25 One of the difficult areas that we have to deal

1 with is places like Ruidoso, Taos, where we have a lot of  
2 second homes being built, yet they don't actually figure  
3 into a population increase, because they're not part of  
4 the census. So we have areas that are actually growing  
5 in housing units but don't actually show an actual growth  
6 in population.

7 Then on the other hand, there are the more  
8 classic areas, and I think in reading the paper you've  
9 seen articles about the rapid growth in Valencia,  
10 Torrance, Rio Rancho, Sandoval Counties. And so there's  
11 those more classic instances. And this is where we're  
12 seeing the increase in our workload.

13 MS. MOJTABAI: And you had mentioned, I think,  
14 in your -- I think it was in your testimony that in 1999  
15 there were 7,000 permits issued.

16 MR. WALKER: Yes.

17 MS. MOJTABAI: And you were hoping these five  
18 additional field employees could process approximately  
19 2,500 applications.

20 MR. WALKER: Yes. That was an estimate.

21 MS. MOJTABAI: So you think that could build in  
22 enough slough time -- I don't know how you would say  
23 it -- but for them to spend also extra time on  
24 enforcement and --

25 MR. WALKER: Yes. We had accounted for time

1 also to be spent on enforcement, as well as doing  
2 permitting and inspection work.

3 MS. MOJTABAI: Okay.

4 And the last topic that I'd like to hit on  
5 is -- and I'll go through and ask you a lot of detailed  
6 questions. I'll tell you what just my concern is, and  
7 maybe you can help address it in the most efficient way  
8 possible, and that is just that, of course, additional  
9 costs will discourage applications.

10 I know you had brought up the example of a  
11 three-bedroom home in Moriarty, a manufactured home,  
12 \$62,000, \$85,000, you know, possible new cost, and the  
13 cost of the -- you know, the \$100 permit is actually a  
14 very small percentage, notwithstanding the fact that most  
15 people don't come up with -- you know, they don't write a  
16 check for \$85,000 right when they move in.

17 But in a lot of the area of the state where I  
18 spend my time commuting through, the homes that I drive  
19 by are almost like homemade jobs. You can see, you know,  
20 three salvaged mobile homes next to each other. And I'm  
21 always curious how they connect their kitchen or -- I  
22 don't know how they do that. But I think those are folks  
23 that install their own permits.

24 And what I'm concerned about is the  
25 cost/benefit. I know you're walking a fine line, you

1 need some revenue to do additional enforcement, but then  
2 is your fee so burdensome that they will actually make  
3 the problem worse by discouraging folks from applying for  
4 the permits.

5           And so that's my main concern.

6           I did have one detailed question, and that was  
7 when you did the average of the fees from the adjoining  
8 states, did you take into account -- would it be possible  
9 to do a weighted average for the average income of folks  
10 in the surrounding states, because I think the average  
11 income of people in Colorado is probably a little bit  
12 higher than in New Mexico.

13           MR. WALKER: Let me address your first  
14 question.

15           If there is no fee now, why didn't they get a  
16 permit to put those three trailers in?

17           I think the issue is not the cost of the fee.  
18 It's the fact that they just didn't bother to comply with  
19 the law. This is generally the case when I've served my  
20 time in the field, that the -- they don't want to put in  
21 a proper septic system.

22           They want to put in the lowest cost thing,  
23 which is usually a hole in the ground. You usually find  
24 a very rudimentary disposal system, very hazardous, very  
25 highly polluting. I don't think in their decision

1 process they factor that in.

2           Probably what their big factor was is they  
3 didn't want to get a permit because they didn't even want  
4 to have to pay \$2,000 for a septic system. So I'm not  
5 sure that the fee is going to be a big discouragement.  
6 It's the fact of paying for a septic system altogether.

7           Secondly, to your question about adjoining  
8 states, we looked quite specifically at the counties  
9 adjoining New Mexico and Colorado, Huerfano, Conejo, Rio  
10 Grande County. I was just up there last week on some  
11 annual leave. These are counties that are very similar  
12 to New Mexico in their cultural makeup, their income  
13 level.

14           Their fees are quite a bit higher than New  
15 Mexico. When you drive into the county line, there's a  
16 big sign that says "This county is zoned and permits are  
17 required." It's a much more businesslike attitude. And  
18 they don't seem to have -- we didn't hear of any  
19 particular problem with that. It's just a matter of  
20 business up there.

21           So we did look at those, and we did find that  
22 we're still quite a bit less than those adjoining  
23 counties, and somewhat similar to those in Texas. It  
24 does vary, though. And if you need to know a specific  
25 fee for a specific county, we have that information.

1 MS. MOJTABAI: Thank you.

2 I have nothing further.

3 MR. SALOPEK: Half my questions got asked  
4 already. I got a couple, though.

5 On the other states -- I guess the first thing  
6 that I want to do is on this sheet that we have, Exhibit  
7 Number 3, you have New Mexico proposed fees. I'd like to  
8 just draw a line next to that and go down it, and let's  
9 see what our current fees are, if there are any.

10 Zero.

11 MR. WALKER: All the fees are zero.

12 MR. SALOPEK: So all that's zero right there?

13 MR. WALKER: Currently.

14 MR. SALOPEK: So that answered that question.

15 And along the lines of the financing to the  
16 home that we're talking about. You know, in Moriarty we  
17 talked \$62,000 to \$85,000.

18 I wonder if you went back to the very basic  
19 level, what it cost a person to get into a home, you  
20 know, if they have to have a \$500 down payment, \$1,500  
21 down payment, how much this fee increase would increase  
22 their down payment to get into this home. I was  
23 wondering if you went clear to the zero ground level to  
24 see what it would increase that cost.

25 MR. WALKER: No, I didn't. I was just getting

1 a basic idea of what it would cost overall for a typical  
2 dwelling in that situation.

3 We didn't talk about -- in fact, we did talk a  
4 little bit about financing, and, of course, the financing  
5 and interest rates vary upon a person's  
6 creditworthiness --

7 MR. SALOPEK: Well, that's the problem --

8 MR. WALKER: -- and the amount of their down  
9 payment and things like this, and there were so many  
10 variables that it was -- we just didn't proceed in that  
11 area.

12 MR. SALOPEK: That's the problem that I have  
13 seen in Dona Ana County, where I am from, is a lot of  
14 these people can afford the monthly payments, but they  
15 have no credit.

16 MR. WALKER: That's correct.

17 MR. SALOPEK: And they have no money built up.  
18 So they get in basically to these homes for what it cost  
19 of the first down payment.

20 And I was curious to see how much this would  
21 increase that up front cost on these homeowners, because  
22 I still fear that increasing this fee is going to cause  
23 slippage in the system.

24 MR. WALKER: Well, the \$100 fee, if it were a  
25 conventional system, would have to be paid.

1 MR. SALOPEK: Up front.

2 MR. WALKER: Yes, it would. It would be part  
3 of the cost.

4 MR. SALOPEK: Now, did you all look at the  
5 other states and their fees and what services they're  
6 getting for their fees in relationship to what you all  
7 are providing, to see if it's apples and apples, or you  
8 just strictly looked at the dollars?

9 MR. SCHALL: Well, I did ask to see as far as  
10 some services -- I mean, they do provide inspections,  
11 they do provide plan reviews, for the most part. Some  
12 counties I -- you know, some of the smaller Colorado  
13 counties that are kind of in the same boat as some of our  
14 field offices, one person only having one county, he gets  
15 out there when he can, and the best he can.

16 You know, Colorado has -- I think it's a  
17 statute requirement that the county recoup the cost of  
18 the program, and that's what they set their fees at,  
19 is -- what they actually put into the program is what  
20 they charge.

21 And Colorado is run strictly on a  
22 county-by-county basis. There's state guidelines, but  
23 each county runs the programs through -- the 63, 66  
24 different programs basically in Colorado, each one has  
25 their own fee.

1 Utah is run through different health districts.

2 I think there's 12 different health districts. Some  
3 cross over to six counties. Once again, their fees -- a  
4 lot of some of their fees are based on the costs of doing  
5 business again. They may charge a mileage fee to go do  
6 an inspection, 25 cents a mile or something.

7 So once again, some of these counties are  
8 running on a cost recovery basis.

9 Arizona just came off a brand new regulation  
10 with a new set of fees, and they have 23 general permits.  
11 Each one's very specific, of a type of a system to be  
12 used in a type of a situation, each one has a specific  
13 fee that goes with it.

14 Prior to this new fee coming into effect in  
15 January, they based theirs on a -- I think it was a \$41  
16 an hour review basis, which included time in the field,  
17 too. You got your permit fee at the -- at the time of  
18 your final inspection. And it could -- it may have been  
19 \$100 if everything went through quick, it may have been  
20 as high as \$700.

21 So there was a tremendous variability when it  
22 came to Arizona's old regulations. Right now they got a  
23 very straightforward regulation that says this system  
24 costs this much. That's for review and that's for  
25 inspections.

1                   TNRCC, or Texas, is 200-some counties, I think  
2   in Texas. I tried to count them one day. I lost count.  
3   Some -- probably half are run by TNRCC, the other half is  
4   run on a local level.  
5                   Once again, usually if you're looking at a  
6   local level, it's a cost basis that they operate on.  
7   This does include, once again, review of the permit, does  
8   include inspection of the system.  
9                   So I think our services that we are trying to  
10  provide here and that we do provide is very comparable to  
11  what is happening in the rest of the contiguous states,  
12  if not even comparable to what's happening in the rest of  
13  the country.

14                  MR. SALOPEK: Okay.

15                  One other question that I had here.

16                  You said there's about 180,000 septic tanks in  
17  the State of New Mexico that you estimate and 30 to 50  
18  percent of them are illegal?

19                  How many do you estimate annually going in  
20  illegally? If you get 7,000 permits, are we having  
21  10,000 or 11,000 septic tanks going in a year that only  
22  30 percent of them are accounted for?

23                  MR. SCHALL: Could be.

24                  MR. SALOPEK: I mean, do you have any handle on  
25  that?

1 MR. SCHALL: No.

2 To give you an example, about four years ago  
3 the State of Kentucky had the same problem. Their  
4 legislature passed a law that stated that prior to  
5 getting electric hooked up to a house you had to show a  
6 septic permit and you had to show an approved system.  
7 Their permits went from 40,000 in one year to 80,000 the  
8 next year.

9 So this is not just -- once again, just New  
10 Mexico. This is a problem especially in any rural area,  
11 where you can construct or move manufactured housing onto  
12 a property that somebody may not go down that county road  
13 for a month.

14 So the number to -- how we came up with that  
15 number as far as illegal systems is the 1990 US Census  
16 listed 160,000 dwelling units in New Mexico utilizing  
17 on-site systems. Our database had 86,000 entries.

18 MS. GADZIA: Yikes.

19 MR. SCHALL: So we're about 50 percent off from  
20 what -- I mean, those are basically the figures that we  
21 used to come up with that, that number.

22 MR. SALOPEK: I don't have any further  
23 questions right now.

24 MS. NOSKIN: I actually have two more that I  
25 thought of.

1                   My first one is, when somebody puts in a  
2 permit -- an application, how long does it take for them  
3 to get that approved and inspected and done and back?  
4 What's the average time?

5                   MR. WALKER: It depends on how complete they  
6 submit the app.

7                   I'll take something from my own experience when  
8 I worked in Torrance County. If someone submits an  
9 application with all the -- filled out properly, with all  
10 the documentation, I literally can approve it in about 10  
11 minutes. They might even be waiting out front for it.

12                   Generally an inspection -- the contractor had  
13 to schedule that inspection. Generally they ran on a  
14 fairly tight schedule. So I might expect an inspection  
15 within somewhere between two to seven days.

16                   And I -- I had a fairly successful system of  
17 contractors would call me up with enough advanced warning  
18 that I could schedule them in generally without much  
19 delay. So I think the very fastest turnaround I ever saw  
20 was two days. But that was --

21                   MS. NOSKIN: So you're saying an average,  
22 though, that somebody --

23                   MR. WALKER: But an average is probably five  
24 days to a week from kind of beginning to end. Now, if  
25 they don't submit all the required information, and you

1 have a hard time contacting them and so on like that, it  
2 can lengthen the process again.

3 MS. NOSKIN: That's interesting, because I  
4 built a house in Santa Fe County, and actually my septic  
5 tank permit, which was filled out completely, took me  
6 about three weeks to get my inspector out there. So --

7 MR. SCHALL: Well, the regulation requires that  
8 upon receipt of a complete application, that the  
9 Department has 10 working days to issue a permit. So we  
10 do have a time frame of when we can -- have to have that  
11 permit issued.

12 And as far as construction, the permit also  
13 says that the contractor shall notify the Department  
14 within 48 hours of needing an inspection. So there are  
15 some time frames built into the technical regulation.

16 MR. WALKER: Yeah.

17 MS. NOSKIN: Okay.

18 Because that was my next question, because it  
19 did take me about three weeks, and I assure you  
20 everything was on the up-and-up and ready to go. It was  
21 just trying to get my inspector out to my house, is  
22 really what did it.

23 But I wanted to know what level of -- you know,  
24 accountability. I mean, there's these increased fees,  
25 increased enforcement.

1                   What kind of accountability? What happens to  
2 the people if they don't fulfill their obligations?

3                   I mean, the homeowner has to fulfill up front,  
4 the contractor has to fulfill up front. I would expect  
5 the inspector would need to also have some level of  
6 accountability.

7                   MR. KORANDA: With fee revenue we would put  
8 people on staff, put people in the field who would be  
9 dedicated to this program. That is, they will be  
10 required to carry out this program.

11                  MS. NOSKIN: So it would be a provision in the  
12 performance appraisals or --

13                  MR. KORANDA: It would be just their job  
14 description, would be to carry out the liquid waste  
15 program in the field in those areas where they're at.  
16 The --

17                  MS. NOSKIN: But in a timely manner. That's  
18 what I'm talking about. I mean, a homeowner, everybody  
19 has to deal with -- I mean, that's a lot of money. Three  
20 weeks for somebody building a house is a lot of money.

21                  And so while I understand that the things going  
22 on -- I mean, I don't see anything in these regs that  
23 provide any accountability. Maybe I'm not aware of the  
24 technical regs. I haven't reread them. So maybe that's  
25 where it is.

1 I don't hear from you that it's going to be put  
2 into their performance appraisal that they have to comply  
3 with the 10 working days or whatever for inspection. I  
4 mean, I'm not -- I'm just trying to find out what kind of  
5 accountability -- what the consumer gets for paying these  
6 fees.

7 MR. KORANDA: I think it will be a large  
8 increase -- it should be a very large increase in the  
9 performance that we are -- that we have now in this  
10 program, where we are admittedly only on a statewide  
11 basis inspecting 50 percent of the installations.

12 The inspection requirement is not -- it's an  
13 option. It is not a requirement. But it's something the  
14 Department feels that is very important to do.

15 And we expect our performance to increase, not  
16 only because of receiving fees, but also for the other  
17 steps that we are taking that -- the remainder of the  
18 people in this program, the 46 environmentalists located  
19 throughout the state, and their general fund support, to  
20 increase revenue to them, to make them more cost  
21 effective.

22 There's a variety of efforts ongoing now to  
23 increase our performance not only in this program but in  
24 all the programs that are conducted by the field and  
25 district offices.

1 MS. NOSKIN: Right.

2 And so your basic answer is no, there's nothing  
3 in black and white that provides accountability and  
4 provides any kind of guarantee for the consumer.

5 I mean, the air program, there's something  
6 built in now to the performance appraisal and also into  
7 the regulation, you know, the 90 days, those kinds of  
8 things.

9 And so that's -- so your answer is no, there's  
10 not going to be anything in writing; is that correct?

11 MS. GADZIA: Well, the 10 days is still in  
12 place, right?

13 MR. CLARKE: Just for clarification, that 10  
14 days is a regulatory requirement. If that's not complied  
15 with, the Department's in violation of the law. To me,  
16 that's about as stringent a requirement as there can be.

17 I understand perhaps in your case there was  
18 some delay, and that is the problem. That's why we need  
19 the folks in the field.

20 But the requirement is on the books. So, you  
21 know, you ask, you know, where it is. Well, it is on the  
22 books, and it's set out -- it's force of law.

23 MS. NOSKIN: Okay. Yeah.

24 You know what, that's a great idea. If within  
25 the course of this next -- you know, if you could get me

1 that requirement and I could take a look at that, I would  
2 sure appreciate that.

3 MR. CLARKE: That's an EIB reg.

4 MR. WALKER: I might add that there's many  
5 times where a permit could take three weeks from the time  
6 of submittal before you do an inspection. It's because  
7 the contractor didn't go out for two weeks to install it.

8 Many contractors will apply for permits well in  
9 advance of when they're scheduled to go out so that they  
10 have no delay. So there have been instances where I've  
11 approved a permit and literally six months later they've  
12 called for an inspection because they've applied for the  
13 permit well in advance of actually going out and doing  
14 the construction.

15 Santa Fe County is a famous one, because Santa  
16 Fe County itself has a long approval process that you  
17 also have to go through, and many people to get a  
18 building permit have to show their -- that they have an  
19 approved septic permit from the State, and then you go  
20 through the Santa Fe County process of which can add a  
21 layer of delay upon that.

22 But generally we are under statutory  
23 requirement to process permits within a specified time,  
24 and we request the contractors to call within a -- with a  
25 reasonable amount of time ahead of time to schedule an

1 inspection, and we make all efforts to get out there  
2 promptly.

3 MS. NOSKIN: Thank you.

4 That's it for me right now.

5 MR. SALOPEK: I have one more question.

6 Is there any law on the books pertaining to  
7 utility hook-up and septic tank inspection, like you had  
8 talked about in Kentucky?

9 MR. WALKER: Not on a state level. For  
10 example, Torrance County has a county regulation, before  
11 you can get clearance from the County for a utility  
12 hook-up in your rural numbers, you must show a state --  
13 an approved state septic tank application.

14 MR. SALOPEK: Do you know what counties have  
15 similar regulations?

16 MR. WALKER: I don't know them all. I was just  
17 familiar with Torrance. I believe Chaves County has  
18 something similar to that, but it is not universal around  
19 the state. I know Dona Ana has it.

20 MR. SALOPEK: Yeah, I know we do.

21 MR. WALKER: Yeah. That type of thing.

22 MR. SALOPEK: Okay. Thank you.

23 MR. SIMPSON: Anything more from the Board?

24 Well, let's have the members of the public ask  
25 questions of the witnesses, see if we can get this done

1 before the lunch hour.

2 Let's do this one at a time. Why don't one of  
3 you go ahead and take a seat, ask the questions that you  
4 have in mind, and then when you're done, the next person  
5 can do it.

6 MR. TRAYNOR: I guess I have a question.

7 Are we being allotted 12 minutes here before  
8 the lunch hour?

9 MR. SIMPSON: No. You're being allotted as  
10 much time as you want, but I'm just expressing some hope.  
11 That's all. The lunch hour isn't exactly 12:00 noon  
12 sharp either.

13 MR. TRAYNOR: We haven't taken any time so --

14 MR. SIMPSON: Right. And I appreciate  
15 everybody's patience thus far. You've waited your turn,  
16 and now it is your turn.

17 MR. TRAYNOR: My name is Randy Traynor with the  
18 New Mexico Home Builders.

19 Just a couple of questions here.

20 CROSS EXAMINATION

21 BY MR. TRAYNOR:

22 MR. TRAYNOR: I guess, would a permitted septic  
23 system installed without an inspection be an illegal  
24 system?

25 MR. WALKER: No, sir.

1 MR. TRAYNOR: Why not?

2 MR. WALKER: We have the option of making an  
3 inspection or not making an inspection. If it's  
4 determined that we do not need to make an inspection, it  
5 doesn't make the system illegal.

6 We have determined that we can trust that  
7 contractor based on his past performance, and we're  
8 allowing it to go ahead. I have two of your contractors  
9 there in that league. I have personally granted them the  
10 go-ahead without an inspection in all cases.

11 MR. TRAYNOR: Okay.

12 The neighboring states -- it was touched on a  
13 little bit here, with the neighboring states -- the fees  
14 were looked at based on the neighboring states.

15 Do you have any idea the compliance, the  
16 inspection rates for the neighboring states?

17 MR. SCHALL: No, I don't.

18 MR. TRAYNOR: So we don't know if we're getting  
19 same or similar service?

20 MR. SCHALL: No. I don't know if they have 100  
21 percent inspections or not. And I'm not even going to  
22 venture a guess, to be honest with you.

23 I have not heard of -- except for maybe a  
24 person or two in Colorado, where it's very difficult to  
25 go out and do inspections, that -- I had nobody else

1 indicate that they were having problems.

2 That's the best I can answer that question.

3 MR. TRAYNOR: And just one other question.

4 Would a reduction in your general fund impact  
5 your ability to implement this program?

6 MR. KORANDA: Yes.

7 MR. TRAYNOR: That's all I have right now.

8 Thanks.

9 MR. SIMPSON: And just to remind Mr. Traynor  
10 and the rest of the members of the public, the  
11 information that you gather on this questioning period is  
12 information that you can use in connection with your  
13 direct presentation to the Board.

14 MR. TRAYNOR: Okay. Thank you.

15 MR. SIMPSON: Anybody else?

16 Mr. Garcia.

17 MR. DURAN: It's Mr. Duran.

18 MR. SIMPSON: Mr. Duran. I'm sorry.

19 MR. DURAN: And members of the Board, members  
20 here from the Environment Department, I'm Mark Duran with  
21 the New Mexico Manufactured Housing Association.

22 CROSS EXAMINATION

23 BY MR. DURAN:

24 MR. DURAN: I'd just like to talk to you,  
25 because so many times this process feels so adversarial,

1 and it's unfortunate that it works that way. It doesn't  
2 need to work that way.

3 We've always had the attitude that there's a  
4 bunch of junk going in the groundwater, we need to clean  
5 it up. All we've ever asked of the agencies that we work  
6 with, and the same with EID, is that they be efficient  
7 and they be accountable and that they be able to justify  
8 what it is that they are doing.

9 I just have a couple of questions, first of  
10 all, in terms of some of the numbers that have been  
11 floated.

12 The first one being, as I understand it,  
13 there's going to be a fund established that will house  
14 permit fees and that will not go through the general  
15 appropriation process of the legislature; is that  
16 correct?

17 Mr. Walker?

18 MR. WALKER: Yes, it is. It's in the statute  
19 itself. So it's not at the regulatory level. It's at  
20 the statutory level.

21 MR. DURAN: Okay. Right.

22 And if I just do some simple math -- I'm  
23 probably a little confused. You can explain.

24 Say we took a number of 7,000 permits -- or  
25 applications that come in, and you take that \$100 times

1 7,000, and you end up with some approximately \$700,000 in  
2 revenues.

3 How does that then equate, decrease or somehow  
4 translate to what I think I'm understanding to be a  
5 \$285,000 budget for the implementation of the program?

6 MR. KORANDA: Yeah. The \$285,000 budget is an  
7 expansion budget on the FY '02 budget, and it's the  
8 budget that we have to -- assuming that fees are  
9 approved, it's the budget that we will have for the rest  
10 of this fiscal year.

11 MR. DURAN: I think I understand that, Madam  
12 Chair, Mr. Hearing Officer.

13 What I am asking is, does a \$700,000 budget  
14 that is coming from \$700,000 -- what I'm asking is  
15 \$700,000 in revenues, is that equating to a \$700,000  
16 budget for the inspection and everything associated with  
17 the liquid disposal regulations?

18 MR. KORANDA: Yes, it is.

19 MR. DURAN: It is. So 700,000 across the  
20 board.

21 MR. KORANDA: It may not total \$700,000, but --  
22 because we're estimating that it -- based on Steve's  
23 testimony, that it would be in the range of 500,000 to  
24 600,000. But that total amount will go into the liquid  
25 waste fund. That total amount will be utilized in this

1 program.

2 MR. DURAN: Okay.

3 Madam Chair, Mr. Hearing Officer, another --  
4 just in terms of the math, if I read the documents  
5 correctly, it said that this -- the new appropriation --  
6 or the new monies -- or one of the first things that will  
7 be done is to actually hire five inspectors that will be  
8 placed in the field and that those five inspectors will  
9 be able to do an average of 500 inspections or 50  
10 inspections -- what was it -- no, 200, 200 inspections  
11 per year.

12 MR. WALKER: For a total of 2,500.

13 MR. DURAN: For a total of 2,500. Okay.

14 MR. WALKER: Yeah. So 2,500 divided by five  
15 would be per inspector.

16 MR. DURAN: 2,500 divided by five, so 500  
17 inspections a year.

18 So if you figure there's 7,000 inspections  
19 taking place, these five guys are going to take care of  
20 2,500 of that 7,000, that leaves a remainder of 5,500.  
21 5,500 at 500 inspections per person would require 11  
22 inspectors outside of those five to accomplish just the  
23 7,000 that you estimate will take place.

24 Is there -- I know you have a lot of inspectors  
25 doing a lot of different things.

1                   Is there currently 11 inspectors out there  
2 besides these five devoted only to doing these type of  
3 inspections currently?

4                   MR. WALKER: There's 46.

5                   MR. DURAN: I know there's 46, but is there a  
6 way to break it down -- and I'm really -- I'm just  
7 curious about this.

8                   MR. WALKER: Yeah.

9                   MR. DURAN: Is --

10                  MR. WALKER: No. Since this program is an  
11 enhancement, we're enhancing it with the five inspectors,  
12 but that's enhancing the existing program that is -- that  
13 the current inspectors are already at work on. We will  
14 probably see their work continue and enhanced with these  
15 five inspectors, particularly in these fast-growing  
16 areas.

17                  In some areas of the state, the existing staff  
18 is keeping up with the workload and is doing a fine job.

19                  MR. DURAN: So you have -- Madam Chair, Hearing  
20 Officer, you have 46 inspectors who are just doing these  
21 type of inspections?

22                  MR. WALKER: No, no. They do these, food,  
23 pools and other things. This is one of their assigned  
24 duties.

25                  MR. DURAN: Okay. So --

1                   MR. WALKER:  As opposed to these will be  
2 dedicated solely to this.

3                   MR. DURAN:  We have experience working with the  
4 Manufactured Housing Division, where they work on  
5 inspection issues all the time, and they have other  
6 associated responsibilities.

7                   One of the things they've done an excellent job  
8 at doing is breaking down what amount of time, and that  
9 translates into work hours, which then translates into  
10 number of people, that actually -- dedicated number of  
11 people or hours that are devoted to these type of  
12 inspections, the ones we're talking about.

13                   And so that's really my question.

14                   In any sort of internal analysis you've done as  
15 that breaks down, what is the amount of inspectors in the  
16 field doing that, and does it justify, and does it make  
17 sense that they're completing 500 inspections a year?

18                   And if you look at the logic, it says that they  
19 are not, or else you wouldn't have a backlog.

20                   And I think those are important -- members of  
21 the Board, I think that those are very important

22 questions, because if you look at the efficiency process

23 associated with this, we're asking performance questions

24 in terms of the Division and how they'll handle that

25 program.

1 MR. KORANDA: We are starting in FY '02 with a  
2 new system to require employees to track their time on  
3 each of the programs that they implement. That will  
4 start, and we'll have much better numbers as far as how  
5 much time is spent by each employee on each program.

6 At the present time we have 46 employees in the  
7 field currently conducting this program. They're funded  
8 by the general fund, approximately \$1.8 million. If  
9 you -- that's about 35 percent of the total general fund  
10 budget. If you take 35 percent of 46, you can equate  
11 that to the 15 employees that you could say are dedicated  
12 to this program.

13 MR. DURAN: Okay.

14 MR. KORANDA: Except they are doing other  
15 programs.

16 MR. DURAN: Okay.

17 Madam Chair, Mr. Hearing Officer, I have a  
18 couple more questions, and that is along the lines of the  
19 180,000 systems out there, that 30 to 50 percent are bad.

20 If the Division has chosen not to do an  
21 inspection, like Mr. Walker sometimes says, is it fair to  
22 assume, then, that that is a system that is not  
23 considered bad and, therefore, not part of this 30 to 50  
24 percent that are bad, quote, unquote, bad?

25 MR. WALKER: Right. If a person has obtained a

1 permit, and we inspect it, of course, it's permitted and  
2 inspected, we may choose, based upon performance of the  
3 contractor or the sensitivity of the area perhaps not to  
4 perform an inspection because of workload constraints at  
5 this time.

6 That doesn't make it an illegal system. It's  
7 still a completely legal system and wouldn't factor into  
8 those that we -- what we're talking about are systems  
9 that have not been put in with any permit at all, many of  
10 whom don't even meet the most basic requirements of the  
11 regulations, that type of thing.

12 Now, there are permit -- there are systems that  
13 have been put in prior to permitting requirements in  
14 existence, generally most of those being they're so old  
15 probably would not comply with current regulations. So  
16 as they're discovered or remodeling occurs or some  
17 incidents where they became known, they would be brought  
18 up to code.

19 It's no different than very old houses being  
20 brought up to code, that type of thing.

21 MR. DURAN: I think I understood that.

22 And did you say that a permit that has had an  
23 associated inspection wouldn't be considered bad, but I  
24 also thought I understood you to say that some permits at  
25 your discretion are not inspected, yet if they met the

1 10-day period, does that mean the system is good?

2 MR. WALKER: Oh, the 10-day period applies for  
3 how long we have to act upon an application.

4 MR. DURAN: Sure.

5 MR. WALKER: And if we've acted within that  
6 10-day period, the contractor, because of experience with  
7 that contractor, very reputable, trustworthy individual,  
8 you may have more inspections to accomplish that day than  
9 you have time, you're obviously going to make inspections  
10 on those places that are sensitive environmental areas or  
11 particularly complicated systems or to a contractor that  
12 doesn't have that stellar of a track record, and you may  
13 allow that good contractor to install that particular  
14 system without a permit, and basically you trust them.  
15 Or excuse me. Without an inspection. I misspoke.

16 So it still is counted as a properly installed  
17 system, and it is a properly permitted system.

18 MR. SCHALL: For those systems that are not  
19 inspected, the permit is still signed off by the  
20 environmentalist --

21 MR. WALKER: Yes.

22 MR. SCHALL: -- saying that the system was not  
23 permitted but approved without inspection.

24 MR. DURAN: Right. Approved without  
25 inspection.

1                   And then what I was wondering about is whether  
2 that's considered, unquote, a bad system, a good system.

3                   MR. SCHALL: It's still a legal system.

4                   MR. DURAN: It's still a legal system.

5                   And I think one of the things we experienced,  
6 and it goes back to the accountability issue, Member  
7 Noskin, and that is that the accountability means really,  
8 when you get right down to it, not necessarily a  
9 credibility issue or trust issue.

10                   The Manufactured Housing Division, and  
11 everywhere we work, if you have a 100 percent inspection  
12 program, you do 100 percent of the inspections. That  
13 becomes so objective there's not criteria that you could  
14 probably state, there's not any sort of qualifications as  
15 to how to determine whether or not someone's been  
16 trustworthy or not.

17                   Who knows what's happening in someone's  
18 particular business?

19                   I have some other questions, and I think that  
20 they're very relevant.

21                   What is your current backlog of uninspected  
22 systems?

23                   MR. KORANDA: We estimate now that without fees  
24 we are inspecting approximately 50 percent of the  
25 systems. And our -- we expect, after the addition of the

1 field inspectors, to bring that up not to 100 percent,  
2 but to at least 70 percent.

3 MR. DURAN: Um-hum, um-hum.

4 MR. KORANDA: We are not going to be able to  
5 promise an inspection for every permit even with the  
6 addition of these employees.

7 MR. DURAN: Got it.

8 So in the example of the -- you know, you have  
9 three trailers or mobile homes put together and someone  
10 thinks that that's a bad system, it just may -- it may be  
11 sitting there because it wasn't inspected.

12 MR. WALKER: It may be entirely legal, as well.

13 MR. DURAN: Or it might be entirely legal.

14 MR. WALKER: Sure. Yeah.

15 You have to investigate those. Generally they  
16 pop up out of nowhere, and if you're the inspector in the  
17 area, and you haven't seen any paperwork on it, you'd  
18 probably go knock on their door --

19 MR. DURAN: Sure.

20 MR. WALKER: -- and introduce yourself, make an  
21 inquiry.

22 MR. DURAN: Is the Division or the Department,  
23 Madam Chair, Mr. Hearing Officer, maintaining a backlog  
24 list? Can a consumer -- and I think this is very  
25 important.

1                   If a consumer wants to know whether or not  
2 their contractor abided by their agreement in terms of  
3 inspections, permits, et cetera, do they have the ability  
4 to determine that, to see if they are on a backlog list?  
5 Is this a known quantity?

6                   And we've dealt with this before at the  
7 Manufactured Housing Division. As a matter of fact, they  
8 had a policy where they eventually said, "You know what,  
9 too difficult to process, we don't have a big enough  
10 computer system, at this point we're wiping it out, and  
11 we're starting brand new."

12                   It seemed like a little bit of an unfair system  
13 at the time, but -- to have this continual backlog and  
14 this unknown quantity out there.

15                   I guess my first question is, is this a known  
16 set of people and places and homes out in the state, or  
17 is this just really not anything you can put your finger  
18 on, in terms of identification?

19                   MR. WALKER: I'd have to say somewhat yes and  
20 no, and let me explain.

21                   MR. DURAN: Okay.

22                   MR. WALKER: We have a number of people that  
23 vie for permits. And I'll take a personal example.

24                   About one-third of the permits in Torrance  
25 County were never built. They applied for them, and then

1 they were never followed through on. For what reason, I  
2 don't know. Sometimes they change contractors and  
3 another permit was taken out.

4 We used to go through it, call them on a  
5 monthly basis, if they were more than a year old and the  
6 permit had expired.

7 So there's some of that.

8 But we don't maintain a list per se. We  
9 certainly have a list of pending -- of approved permits  
10 pending inspection, but of those, whether they are  
11 actually intending upon completing construction, we don't  
12 know. That's something we just don't know that type of  
13 thing.

14 MR. DURAN: Got it.

15 MR. WALKER: Now, if somebody calls up and they  
16 request an inspection, as I said earlier, and we do not  
17 use our option to make that inspection, the permit is  
18 still signed off and noted as being finally approved but  
19 without an on-site inspection. So it then goes from the  
20 pending file to the approved final file.

21 So there's no backlog list per se. There's  
22 just a list of applications approved that are pending  
23 inspection.

24 MR. SIMPSON: Excuse me, Mr. Duran.

25 Dr. Ghassemi actually had a question related to

1 what you're talking about.

2 MR. DURAN: Okay.

3 MR. GHASSEMI: Related to what you're asking.

4 Is there a similarity between the inspection  
5 ratios -- the issue that Mr. Duran is bringing up, the  
6 inspection ratios that are taking place currently with  
7 this Division compared with all the other divisions in  
8 the Environment Department?

9 MR. KORANDA: I don't know the answer to that.  
10 We can -- I can compare it to the food program and the  
11 programs that are part of my -- part of my Division, and  
12 we have a similar issue with the food program  
13 inspections.

14 However, they are mandatory. We must make 100  
15 percent. But they are -- we must balance the time  
16 required for those with the time required for everything  
17 else, and that can take away from the liquid waste  
18 program.

19 MR. SIMPSON: Anything else, Doctor?

20 MR. GHASSEMI: There's one other thing I have  
21 as a follow-up to this. There's another issue that  
22 Mr. Duran has brought up regarding accountability or  
23 maybe application going across to different stakeholders,  
24 if you will.

25 Is there a different inspection criteria when

1 you go to manufactured housing versus any other -- is  
2 there different criterias you'll have?

3 MR. WALKER: No, sir. The type of dwelling  
4 producing the liquid waste makes no difference. It's  
5 based upon -- the design is based upon the number of  
6 bedrooms, no matter what type of dwelling you're dealing  
7 with, and the standards for that septic system are the  
8 same, and the standards for inspection and compliance  
9 will be the same.

10 MR. GHASSEMI: So I want to be perfectly clear  
11 that I understand this.

12 So you wouldn't come in and say, if I was  
13 working with a given sector, the Home Builders  
14 Association versus the Manufactured Home, that there is  
15 the different inspection criteria, you're going to do 100  
16 percent here and 70 percent there?

17 MR. WALKER: No.

18 MR. GHASSEMI: Okay. That's all the questions  
19 I had.

20 MR. SIMPSON: Mr. Duran.

21 MR. DURAN: Mr. Hearing Officer, Madam Chair, I  
22 just have a couple more questions, and that is that  
23 the -- Mr. Walker and the gentleman from the Division and  
24 the Department have talked about one standard in terms of  
25 the cost of the permit, and that one standard has been a

1 statutory requirement of being at equal or less depending  
2 on how you interpret other states.

3           Hopefully the Board and eventually the  
4 Department won't only hold up that standard, I think the  
5 citizens are going to require a much higher standard that  
6 you be held up to, and that is performance within the  
7 Division, how many inspections are taking place, how  
8 efficient are you, what's the enforcement, but to go to  
9 another standard, and that is a standard of cost.

10           And this is the direct question, and that is,  
11 was there any attempt to look at other cost standards in  
12 the industry?

13           For instance, if you go and get a permit for  
14 manufactured housing, to install a manufactured home,  
15 that permit by the Manufactured Housing Division is \$60.  
16 If you go -- and this is a process that has been set up  
17 with many cities and counties.

18           Our product now requires a placement permit,  
19 and that is they really can't inspect our homes, because  
20 that's done at the factory, but what they can do is  
21 require they have the correct setbacks and EID permit, et  
22 cetera. Traditionally those range from \$30 to \$50.

23           And was there any attempt to look at standards  
24 in terms of the cost of your permit within other  
25 divisions or agencies doing as much if not more work in

1 their particular area?

2 MR. WALKER: The -- with the example of  
3 manufactured housing, the inspector there is looking for  
4 structural, plumbing, electrical kinds of things there.  
5 When it's placed on-site, then they're constructing a  
6 septic system that's completely outside of that. So the  
7 inspection is a completely separate inspection and has no  
8 overlap with any --

9 MR. DURAN: Sure.

10 MR. WALKER: -- preexisting inspection.

11 We're basing our needs based upon going -- you  
12 know, the application for that permit, for that site, and  
13 going out to that site and making an inspection. So it  
14 would be separate from other inspectional costs that are  
15 occurring, let's say, to a manufactured house as it goes  
16 from creation to its point of delivery on-site.

17 MR. DURAN: Sure. I understand. It's solely  
18 and completely separate.

19 I guess the point is, and I'm asking if you  
20 have looked at anyone else, is that they're doing  
21 inspections, and they're doing big inspections, and  
22 they're charging \$60 for those inspections.

23 And I guess it gets back to the  
24 accountability -- in my opinion, Mr. Walker, and members  
25 of the Board, much more accountability that's presented

1 here today that eventually you'll be judged on, and that  
2 is the numbers showing what are the efficiency ratios,  
3 how many inspections are being taken place by each  
4 inspector, in what area, the travel time associated with  
5 it.

6 And if we need more money to get more done,  
7 we'll get more done. I mean, we'll help you get more if  
8 that's the issue.

9 The case that's always been a problem with us  
10 is to have something on the books and then not be able to  
11 enforce it and then areas boom, like Sandoval County.

12 Next thing you know there's a bunch of ugly  
13 stuff out there, and the first thing they do is point to  
14 the industry, and the first thing we say is where were  
15 the people that were protecting the citizens' interest in  
16 that area, which goes back to government.

17 That was the end of my questions.

18 Thank you.

19 MR. KORANDA: Can I respond for just a second  
20 on your comment about being satisfied?

21 We definitely will not be satisfied with only  
22 70 percent of the inspections being conducted. We will  
23 only be satisfied with 100 percent of those inspections.

24 How do we get there with this proposal?

25 We look at the other staff that's out there and

1     how to increase the revenue to them and how to increase  
2     their cost effectiveness. That's what we're working on.

3                 MR. SIMPSON: Mr. Summers, just I think --  
4     thank you, Mr. Duran. I was addressing Mr. Summers  
5     behind you.

6                 Did you want to ask questions now, or can this  
7     wait until after lunch?

8                 MR. SUMMERS: Oh, we can wait until after  
9     lunch. I'm just going to have some questions that will  
10    clarify these questions that were asked prior.

11                MR. SIMPSON: Okay.

12                Let me ask the other members of the public, who  
13    else has some questions for the witnesses?

14                Do either of you or any of you three have any  
15    conflicts with the afternoon? Can you wait until after  
16    the lunch hour?

17                MR. CRESPIAN: I have no problem.

18                MR. SIMPSON: Sir?

19                MR. ROBINSON: My name is Paul Robinson.

20                I was anticipating making a brief comment. I  
21    didn't have any questions, but I do have a conflict after  
22    the lunch hour.

23                MR. SIMPSON: All right. Let's do it this way.

24                If the members of the public -- goodness. If  
25    the members of the public have questions for these

1 witnesses, let's wait until after the lunch hour. Let's  
2 take care of Mr. Robinson, if that's all the same with  
3 the Board.

4 Can we do that?

5 Okay. Why don't you come up and give your  
6 statement, then we'll have the questions -- further  
7 questions after the lunch hour.

8 Sir, you came in late.

9 MR. ROBINSON: I did.

10 MR. SIMPSON: Were you sworn in?

11 MR. ROBINSON: I was not.

12 MR. SIMPSON: Let's do that first.

13 Raise your hand, please.

14 PAUL ROBINSON

15 having been sworn, was examined and testified

16 as follows:

17 DIRECT TESTIMONY

18 MR. SALOPEK: State your name again.

19 MR. ROBINSON: My name is Paul Robinson. I'm  
20 Research Director at Southwest Research and Information  
21 Center here in Albuquerque. And I live at 316 Telesfor  
22 in South Valley of Albuquerque. And I'm a former septic  
23 tank owner.

24 I appear before you today to speak in support  
25 of the proposal of the Department on this matter.

1           I speak in support of it not because the fee  
2 program as described is represented as being adequate or  
3 sufficient to solve a problem, but as a mechanism to  
4 address a series of problems, many of which have been  
5 described to you already, both by the State witnesses and  
6 in the questions asked of those witnesses.

7           And certainly an awareness of the range in  
8 severity of the problems is evidenced by the questions  
9 asked by you as Board members.

10           The statute as I read it, as a nonlawyer, its  
11 plain language indicates that there clearly is authority  
12 for these fees and that the fees do have a purpose, to  
13 implement and administer an inspection and permitting  
14 program. That is a requirement, as I read, both of the  
15 Department and of the Board, in Section 74-1-8.

16           Whether the program is being described as  
17 adequate, whether it is sufficient, that is not the test,  
18 as I read the law. But there certainly is a very  
19 substantial need, and the need cuts across the new as  
20 well as the existing systems.

21           The State over the years has had great  
22 difficulty raising funds through the legislature. And  
23 having the fees for environmental services as part of a  
24 consumer cost rather than a tax cost seems to me to be  
25 asking the same person to pay one way or the other. And



1 this is a very transparent mechanism for associating a  
2 fee with a service and a value.

3 I also, from my own personal experience,  
4 happened to pull a building permit yesterday, celebrated  
5 with sparkling cider rather than champagne, and  
6 recognized that the costs I pay are paid at one time but  
7 are part of the life cycle or full amortized cost of what  
8 I would be needing to pay with interest over the life of  
9 my facility.

10 And I think that that life cycle cost and life  
11 cycle value is an appropriate consideration for the fees  
12 that are being identified by the State.

13 And as one final thought, the fees do appear to  
14 be well below the mid-range compared to other states.

15 While there have been a number of good  
16 questions asked, both by Board members and others in the  
17 public, as to the basis for comparing fee and service, it  
18 is clear that the fee for a similar type of service is at  
19 a very modest level and, based on what I was just hearing  
20 from the State witnesses, is not at a level sufficient to  
21 bring the program up to 100 percent performance.

22 That might be a value over time to try to  
23 attain, but at this time it appears that there's a strong  
24 proposal by the State at a modest level to address a  
25 significant, serious water quality problem.



1           And I would speak in favor of your support for  
2 the proposed rule.

3           And so if there's any questions, I'd be glad to  
4 address those.

5           MR. SIMPSON: Do any Board members have  
6 questions of Mr. Robinson?

7           Anybody from the Department or the public?

8           Okay. Thank you, Mr. Robinson.

9           MR. ROBINSON: Thank you for allowing me to  
10 interrupt the schedule.

11          MR. SIMPSON: All right. At this time let's  
12 break for lunch, and I'll take suggestions for the Board  
13 members on when we should reconvene.

14          MS. GADZIA: 1:30.

15          MR. SIMPSON: 1:30?

16          All right. We'll be in recess until 1:30.

17          (Proceedings in recess.)

18          MR. SIMPSON: Let's get started.

19          We were taking questions from the members of  
20 the public who wanted to question the Department  
21 witnesses.

22          MIKE KORANDA, STEVE WALKER and BRIAN SCHALL  
23 having been sworn, were examined and testified  
24 further as follows:

25          MR. SIMPSON: Do we have somebody who wants to



1 go next?

2 Mr. Crespin?

3 CROSS EXAMINATION

4 BY MR. CRESPIN:

5 MR. CRESPIN: Madam Chair, Mr. Hearing Officer,  
6 members of the commission, thank you for the opportunity  
7 to come here.

8 Again, like I said, I was with the State of New

9 Mexico. I was a Bureau Chief with Construction

10 Industries when the transition took place. And I have

11 several -- not several, quite a few questions as to the  
12 direction that this has taken.

13 And one of the commitments we had -- I had

14 received and the industry had received when the

15 transition took place was that there would always be a

16 technical advisory committee in place so the industry

17 would --

18 MR. CLARKE: Mr. Hearing Officer, I'm sorry to  
19 interrupt, but this is sort of a questioning period for  
20 these witnesses --

21 MR. CRESPIN: Yes. That's where I'm going.

22 MR. CLARKE: -- and unless you're noticed as an  
23 expert witness or -- you know, you'll have time to give  
24 testimony, but if you could just ask the questions to  
25 these witnesses regarding the testimony that they've



1 given --

2 MR. CRESPIN: Okay. Then I'll just skip that  
3 question.

4 Number one, the one question I -- issue I have  
5 is you said you would determine inspections by  
6 contractor, you know, this guy was good and this guy  
7 wasn't bad.

8 Does that not, I guess, for the attorney, open  
9 up liability for the State, when you start determining  
10 who is a better contractor than the others?

11 MR. CLARKE: Are you asking the attorney?

12 MR. CRESPIN: I'm asking the Department.

13 MR. CLARKE: I can't answer that. I think, as  
14 I said, this is a time that you're supposedly asking  
15 questions of these witnesses regarding their testimony.

16 MR. CRESPIN: Right.

17 MR. CLARKE: I will defer to my witnesses, and  
18 if they don't have an answer that's satisfactory, perhaps  
19 even myself or even Mr. Simpson can address that issue.

20 MR. CRESPIN: Right. Okay.

21 Does that open the door for favoritism,

22 retaliation and so forth?

23 MR. WALKER: I never did that. Based -- when  
24 I -- I'll give again a personal experience.

25 When I was faced with an inspection schedule



1 that didn't allow me to complete all the inspections, I  
2 had a choice of doing two things. I could tell the  
3 contractor he couldn't get an inspection today, or I  
4 ended up working late. Now, there were constraints on  
5 whether I was able to work late or not, placed on me by  
6 my supervisors.

7           There -- if I was looking at a situation, I  
8 would not make the judgment as to whether they were a  
9 good contractor or not. It was primarily based upon  
10 where was the system being installed, was this a  
11 sensitive area, this type of thing. And if the  
12 inspection needed to be skipped, it would be based upon  
13 an evaluation of the site.

14           Now, in addition to that, if this contractor  
15 had always performed well and did not have a lot of  
16 violations when I made inspections, of course, his track  
17 record usually indicated that he was well versed in the  
18 regulations and knew what needed to be installed -- you  
19 end up having to make some judgments.

20           It wasn't based on favoritism, and it wasn't  
21 based upon anything like that. It was based upon the  
22 facts of who you felt needed to be inspected if you only  
23 had a finite amount of time to do it.

24           MR. CRESPIAN: Okay.

25           Earlier Commissioner Noskin pointed out



1 accountability, and it was stated that there is a law  
2 that the Department will be held accountable.

3 What would be the penalties if they don't  
4 perform, say get their permit out in 10 days?

5 MR. SCHALL: The permit is issued as the  
6 application is submitted. It's an automatic issuance of  
7 a permit. That is what it -- that's the result of not  
8 complying with the time limit.

9 MR. CRESPIAN: What is the accountability -- I  
10 mean, what is the penalty to the Department if, say, the  
11 inspections are not being completed, conducted? Is there  
12 a penalty?

13 MR. WALKER: That's a different matter.  
14 Because on a permit we have -- we're required to act  
15 within 10 days.

16 MR. CRESPIAN: Right.

17 MR. WALKER: That's not the same as an  
18 inspection.

19 MR. CRESPIAN: Okay.

20 MR. WALKER: We're required to act upon the  
21 permit within 10 days, or, as Mr. Schall said, the permit  
22 would be approved as it was submitted, even if it had  
23 defects in it.

24 And there's -- basically the penalty there is  
25 we would end up having to administer something that



1 perhaps, you know, was not in compliance with the law,  
2 and due to our -- let's say due to some lack of acting on  
3 it within the prescribed time.

4 An inspection, on the other hand, the law  
5 allows us -- it doesn't mandate that we make an  
6 inspection. It -- we can, upon exercising reasonable  
7 judgment, determine to make an inspection or not make an  
8 inspection. And there's -- so there's no performance  
9 level required there.

10 MR. CRESPIAN: Okay.

11 On Exhibit Number 3, I'm hearing that you all  
12 put -- or you're estimating 7,000 tanks a year, and I see  
13 a grand total of \$725 total fees listed here on Exhibit  
14 Number 3.

15 Of the 7,000 tanks -- or the 7,000 applications  
16 that you all are seeing, does that encompass this total  
17 page, or is that just the conventional systems?

18 MR. WALKER: The vast majority of permits that  
19 we receive are for conventional systems. I don't have a  
20 figure as to -- of all those 7,000 permits how many were  
21 conventional, how many were advanced. I don't have that  
22 information with me.

23 MR. CRESPIAN: The reason I'm going to this is  
24 we got 7,000 conventional systems at \$100 apiece, that's  
25 \$700,000, so would it be \$700,000 on top of all of these



1 other fees?

2 MR. WALKER: No. The other fees would only --  
3 if you brought in a permit, it would be determined which  
4 fee would apply, which one fee.

5 You wouldn't be -- the only time that you could  
6 have a multiple fee is if you apply for something, it was  
7 turned down, and you decided to apply for a variance.  
8 There would be a fee for the variance.

9 If the variance was granted in your favor, you  
10 then would be able to apply for that permit, and you  
11 would not only pay the variance fee for that separate  
12 action, but then a permit fee for the appropriate type of  
13 system you'd be installing on the variance.

14 MR. CRESPIAN: And the same would go for the  
15 tank certifications?

16 MR. WALKER: Tank certifications are only for  
17 manufacturers.

18 MR. CRESPIAN: I understand that.

19 MR. WALKER: For example, Mr. Addy.

20 MR. CRESPIAN: Would that \$100 fee -- if you got  
21 a manufacturer who produces a 750-gallon tank, a  
22 1,000-gallon tank and so forth, is it \$100 per tank, or  
23 is it \$100 straight across the board for all tanks?

24 MR. WALKER: It's \$100 for a manufacturer to  
25 certify annually.



1 MR. CRESPIAN: For all of his tanks.

2 MR. SCHALL: Per design.

3 MR. WALKER: Yeah, per design.

4 MR. CRESPIAN: So that's per tank?

5 MR. WALKER: Yes.

6 MR. CRESPIAN: Again, the variance you said was  
7 not encompassed in your 7,000, so you got 7,000  
8 inspections up here or whatever, or the fee -- I'm sorry,  
9 the \$700,000 fee, plus \$50, plus \$100 per tank.

10 So if we got a manufacturer who produces --

11 MR. WALKER: No. That's incorrect. You don't  
12 pay \$100 additional. When you come in to install a  
13 system --

14 MR. CRESPIAN: Right.

15 MR. WALKER: -- you pay just the appropriate  
16 fee for a conventional or an advanced system, whichever  
17 type you're putting in. The \$100 fee for the septic tank  
18 is an annual fee to a septic tank manufacturer only. It  
19 does not entail the homeowner or a contractor putting in  
20 the system at that time.

21 MR. CRESPIAN: Okay.

22 MR. WALKER: It's just simply an annual renewal  
23 fee for the certification of their designs.

24 MR. CRESPIAN: So if he produces seven different  
25 tanks, he pays \$700 a year?



1 MR. WALKER: That's correct.

2 MR. CRESPIAN: So that's passed on to the  
3 homeowner again.

4 MR. WALKER: It would in some form, just as  
5 property taxes would be and his other operating costs.

6 MR. CRESPIAN: Have you done any estimates above  
7 the \$700,000 with this variance and the tank  
8 certification? I mean, how many tank manufacturers do we  
9 have out there?

10 MR. WALKER: We have about 60 throughout the  
11 state.

12 MR. CRESPIAN: 60 of them?

13 MR. WALKER: Yes.

14 MR. CRESPIAN: And they on the average, what --  
15 how many different size tanks? \$500 -- or 500 tanks?

16 MR. SCHALL: No.

17 MR. CRESPIAN: Say five different sizes?

18 MR. WALKER: They produce about 150 designs,  
19 produced by 60 manufacturers. Some people only  
20 manufacture one tank. We have one manufacturer that  
21 manufactures as many as seven designs.

22 MR. CRESPIAN: So a hundred --

23 MR. WALKER: But the average is probably two,  
24 is the most common number you see, and an individual  
25 manufacturer of tanks --



1           MR. CRESPIAN: So going back to what you just  
2 said -- you said 160 designs? Is that what you just  
3 said?

4           MR. WALKER: No. There are about 150 total  
5 types of tanks out there manufactured by 60 --

6           MR. CRESPIAN: At \$100 apiece.

7           MR. WALKER: -- manufacturers. So some  
8 manufacturers may produce as little as one, some as many  
9 as seven. It varies.

10          MR. CRESPIAN: So if I understand, you got 150  
11 times 100 a year statewide?

12          MR. WALKER: No. It would be -- yes. It would  
13 be 100 times 150.

14          MR. CRESPIAN: On top of the \$700,000?

15          MR. WALKER: That would be -- that would be the  
16 revenue generated by the certification of septic tank  
17 manufacturers.

18          MR. CRESPIAN: Above and beyond the \$700,000 --  
19 or the 7,000 tanks installed.

20                 What I'm saying is --

21          MR. WALKER: Yes. That's on top of the revenue  
22 generated by the liquid waste permit fee, by liquid waste  
23 installations.

24          MR. CRESPIAN: How much money is that?

25          MS. MOJTABAI: \$15,000.



1 MR. SALOPEK: 15,000.

2 MR. CRESPIN: Okay.

3 When we did the transfer, CID was only charging

4 \$30 a permit.

5 MR. CLARKE: Mr. Hearing Officer.

6 MR. SIMPSON: Yeah.

7 MS. NOSKIN: Excuse me, Mr. Clarke.

8 Our hearing officer is here to control the  
9 tone, and so while that's okay that you state an  
10 objection, I don't think that you should jump in like  
11 that.

12 MR. CLARKE: I'm just stating an objection,  
13 Dr. Noskin.

14 MS. NOSKIN: Thanks.

15 MR. SIMPSON: Mr. Crespin, the way I think the  
16 system is designed is for you to elicit information from  
17 the witnesses --

18 MR. CRESPIN: That's where I was going.

19 MR. SIMPSON: -- and to use that information  
20 subsequently in your direct presentation to the Board.  
21 If there are some assumptions that are implicit in a  
22 question, of course, you can include that.

23 MR. CRESPIN: That's where I was going with  
24 this.

25 MR. SIMPSON: Okay.



1           MR. CRESPIAN: We didn't have any of these other  
2 fees, and it was working then.

3           I'm just wondering how you came up with all  
4 these additional fees.

5           MR. WALKER: These were fees that we thought  
6 were appropriate for the various activities we performed  
7 in the liquid waste program.

8           MR. CRESPIAN: Okay. That's all I have.

9           MR. GHASSEMI: Can I follow up?

10          MR. SIMPSON: Please.

11          MR. GHASSEMI: I just want to make sure I  
12 absolutely understand the follow-up, the answer to his  
13 question.

14                 When you came up with these kind of fees, you  
15 used it based on the kind of activities that you had seen  
16 with your people in the field carrying the activities,  
17 and then you came up with this, as opposed to pulling the  
18 numbers out of the air and said this is appropriate.

19           MR. WALKER: I think that -- the types of fees  
20 for the various -- these various categories are based  
21 upon the usual types of activities that we perform in the  
22 liquid waste program, and that's based upon -- as you  
23 might remember, we've been doing the program directly  
24 since October of 1997 and for nearly 25 years prior to  
25 that, as well.



1                   MR. GHASSEMI: So it's based on somewhat of  
2 historical data.

3                   MR. WALKER: It certainly is.

4                   MR. CRESPIAN: That's all I have, Mr. Hearing  
5 Officer.

6                   MR. SIMPSON: Dr. Noskin.

7                   MS. NOSKIN: I have two more questions, based  
8 upon these questions.

9                   The first one is, does the Department have some  
10 kind of internal checklist, criteria, guidance, anything  
11 like that, that helps the person judge a good versus a  
12 not so good contractor? Anything written in writing?

13                  MR. WALKER: No, because we don't judge good  
14 and bad contractors. We need -- as I said earlier, you  
15 know, when you're faced with letting someone not be  
16 inspected, you make an evaluation of many factors, not  
17 just whether he's a good or a bad contractor. It may be  
18 the site, the type of system and its location.

19                  MS. NOSKIN: Well, whatever, you do.

20                  You know, good or bad -- good contractor, good  
21 track record, site evaluation, the aquifer is this level,  
22 blah, blah, blah, blah, blah, blah, right?

23                  Do you have a list that you go -- checklist,  
24 yes, they meet 90 percent of these, so, okay, we don't  
25 need an inspection, because they meet 90 percent of



1 these, or do you just do that based on the inspection --  
2 what --

3 MR. WALKER: Well, since we're all college  
4 level professionals, we make a professional judgment.

5 MS. NOSKIN: I see. Okay.

6 That's an interesting statement to me. But  
7 anyway -- oh, I can't get past that. I'm going to have  
8 to make this comment for the record.

9 My grandfather did not have a college degree,  
10 and he probably was much better than me with my PhD at  
11 making certain professional judgments. So I'm not sure  
12 about that. Anyway, okay.

13 Commercial unit. I was going to ask you about  
14 your definition about commercial unit, because it says  
15 your commercial unit means a structure without bedrooms.

16 Does that mean hotels are not included in  
17 commercial units?

18 MR. SCHALL: Yes.

19 MS. NOSKIN: So hotels are considered  
20 residential units?

21 MR. SCHALL: In a way they are sized very  
22 similar. They are a -- there's a lot of problems with  
23 terminologies, and not everything can fit nicely in one  
24 category.

25 A hotel is not necessarily residential, but



1 then it's also not commercial per se under our  
2 definition. It's a noncommercial type use or  
3 nonresidential type use. And there is some kind of  
4 overlapping. I'm not really sure --

5 MS. NOSKIN: Is this consistent with what  
6 the -- you know, the other regulations, the other  
7 building codes and things like that use as a definition  
8 for commercial and residential unit? Or is this  
9 something separate for the liquid waste?

10 MR. SCHALL: I'm trying to think exactly what  
11 the Uniform Building Code -- how they identify and what  
12 one use is or not.

13 Yeah. The --

14 MS. NOSKIN: So it is -- it probably is a  
15 separate definition?

16 MR. SCHALL: It's -- well, it probably is a  
17 commercial -- it would probably be -- strictly looking at  
18 the use and definition, it probably would be considered  
19 commercial. And I would have to refer back to the  
20 uniform -- I mean go to as far as what they put down as  
21 residential.

22 But that does have to do with occupancy, single  
23 owner and things like that. I do refer back to UPCs,  
24 UBCs, UMCs if we need to. So -- and I haven't really  
25 looked at the Uniform Plumbing Code, at these



1 definitions, in quite a while. If I -- so I'm real rusty  
2 on it.

3 But, you know, I think a residential use or  
4 residential structure is very defined under the Uniform  
5 Building Code, and it has to do with having bedrooms and  
6 having to live a full-time -- or, you know, normal living  
7 activities, and not necessarily rentals or anything like  
8 that. So --

9 MS. NOSKIN: Okay.

10 MR. SCHALL: I'm probably nodding yes because  
11 hotel would be commercial activity.

12 Once again, you go back to what is residential  
13 use? Is a building with nothing but 50 bedrooms standard  
14 residential use? No, even though bedrooms are used for  
15 sleeping. Now, an apartment building with 50 units, each  
16 unit is a residential unit.

17 I don't know if that muddled the situation more  
18 or not, but --

19 MS. NOSKIN: No. I understand you have a  
20 different definition than is in the other regs. That was  
21 my question.

22 So thank you.

23 MR. SCHALL: We tried to stay as fairly  
24 consistent with the other regs as we can.

25 MS. NOSKIN: Okay. Thank you.



1 MR. GHASSEMI: Can I follow up?

2 I want to make sure that I clearly understand  
3 the answer to Dr. Noskin's question.

4 Is this the kind of practice that is standard  
5 within the Environment Department, at least across all  
6 the different fields or maybe in your -- under your  
7 supervision, that you choose -- the professionals in the  
8 field make a judgment call on what to inspect and what  
9 not to inspect, or is this an anomaly?

10 MR. KORANDA: This is perhaps not an anomaly,  
11 but it's very informal. It's a means to assign  
12 priorities in the field when resources are scarce and we  
13 cannot make up 100 percent of the required inspections.

14 MR. GHASSEMI: But the precedent is not --  
15 you're not setting a precedent, or are you?

16 MR. KORANDA: My goal, as I stated before, is  
17 to inspect 100 percent of the installations, and that's  
18 what I intend to get to, with management and with fees.

19 MR. GHASSEMI: No more questions.

20 MR. SIMPSON: Anything further from the Board?

21 Mr. Crespin.

22 MR. CRESPIN: Thank you.

23 MR. SIMPSON: Anybody else from the audience  
24 wish to ask the Department any questions?

25 Please.



1           And identify yourself again.

2           MR. SUMMERS: Yes. My name is Link Summers.  
3 Again, I'm a licensed contractor, electrician, plumber,  
4 certified wastewater here in this state. I'm a licensed  
5 Installer 2 in the State of Texas. We also install  
6 systems in Colorado. I sit on the Governor's Task Force.  
7 I also sat on the City of Austin's Task Force, writing  
8 their regulations, a few years ago, as well.

9           I have some questions.

10                           CROSS EXAMINATION: Yes. My name is Link  
Summers.

3 Again, I'm a licensed contractor, electrician, plumber,  
4 certified wastewater here in this state. I'm a licensed  
5 Installer 2 in the State of Texas. We also install  
6 systems in Colorado. I sit on the Governor's Task Force.  
7 I also sat on the City of Austin's Task Force, writing  
8 their regulations, a few years ago, as well.

11 BY MR. SUMMERS:

12           MR. SUMMERS: Number one, there's been a lot of  
13 emphasis on inspections, but in the whole permit process,  
14 I want to ask you, is site evaluation an important  
15 criteria in permitting a system?

16           MR. SCHALL: The type of system that is  
17 required is truly based on the conditions at the site.  
18 Certain site conditions would require a certain type of a

19 system.

20 MR. SUMMERS: Right.

21 MR. SCHALL: So, you know, site evaluation is

22 very important.

23 MR. SUMMERS: Okay.

24 MR. SCHALL: It's the first step of the

25 permitting process.

1 MR. SUMMERS: Right.

2 So if the system -- the site is not evaluated  
3 and the site is not appropriate for a system, as far as  
4 the system working or being long-term value to the  
5 homeowner, it doesn't matter about the inspection, if the  
6 site is incorrect; is that true?

7 MR. SCHALL: The -- if the system is not  
8 suitable for the conditions, the site conditions, then we  
9 are not protecting the public health, we're not  
10 protecting the environment, the homeowner definitely has  
11 a system that's not appropriate. So --

12 MR. SUMMERS: Well, again, is the site  
13 important?

14 MR. SCHALL: The site is very important.

15 MR. SUMMERS: Okay.

16 So do you inspect the site evaluations, for  
17 instance? When someone turns in a site evaluation, do  
18 you do an inspection on that?

19 MR. SCHALL: I think overall it's rarely done.  
20 There are occasions when they may have a question  
21 concerning what was submitted, and they will actually do  
22 a physical site inspection prior to issuing the permit.  
23 But it's -- I think overall it's probably rare.

24 MR. SUMMERS: The second item is system design.  
25 Is system design important in establishing what



1 type of on-site liquid waste system needs to go on a  
2 particular site?

3 MR. SCHALL: Very important. You need to know  
4 all the parameters of the waste, of the amount of waste,  
5 to be able to design the proper system.

6 MR. SUMMERS: Okay.

7 So we have site evaluation is important, system  
8 design is important, each of these is important, right?  
9 Then the actual installation, that's important, too,  
10 true?

11 MR. SCHALL: Yes. The system -- system that is  
12 designed to meet the needs of the site needs to be  
13 installed properly and correctly for it to operate  
14 properly.

15 MR. SUMMERS: And this is the inspection that  
16 we've heard so far from the Home Builders and from the  
17 Manufactured Housing folks, right, is the actual  
18 inspection of the installation, not of the site  
19 evaluation, not of the system design?

20 MR. SCHALL: Right. It's the actual --

21 MR. SUMMERS: So their concern right now is  
22 restricted to just this one component?

23 MR. SCHALL: Right.

24 MR. SUMMERS: Now, is the operation of the  
25 system important?



1                   MR. SCHALL: Operation of the system is  
2 probably one of the most important aspects of any system.

3                   MR. SUMMERS: Okay.

4                   And the maintenance of the system is important,  
5 too?

6                   MR. SCHALL: And the maintenance. The best  
7 designed system, the best installed system will fail if  
8 not operated and maintained properly.

9                   MR. SUMMERS: Is it important for the operator  
10 of the system, i.e., homeowner or other person, to -- is  
11 it important for them to understand the function of the  
12 system, what it can and cannot do?

13                  MR. SCHALL: It's very important for the  
14 homeowner to understand how the system operates, what  
15 they have to do. Every homeowner that has an on-site  
16 system becomes a liquid waste treatment plant operator.  
17 And that's it.

18                  You have to know what you can put down the  
19 drain and what you can't put down the drain, how much  
20 volume you can put down the drain at one time. So there  
21 are certain operational constraints that one must, you  
22 know, look at when living on an on-site system.

23                  MR. SUMMERS: For a septic system, is it  
24 important to know how often you need to pump the sludge,  
25 for instance?



1 MR. SCHALL: You need to have some handle of  
2 knowing when maintenance needs to be done. It varies,  
3 but you need to know what that time frame is for your  
4 particular use.

5 MR. SUMMERS: The folks who are licensed by the  
6 State of New Mexico to install wastewater systems, do you  
7 know what classifications of licenses Construction  
8 Industries issues to them?

9 MR. SCHALL: As far as what licenses they issue  
10 for on-site --

11 MR. SUMMERS: Which ones are permissible to do  
12 on-site wastewater systems.

13 MR. SCHALL: On-site is an MS-1, MS-3, MM-1,  
14 MM-98.

15 MR. SUMMERS: Okay.

16 And those are -- you want to tell --

17 MR. SCHALL: Those are -- I believe they're  
18 general plumbing contractor's license.

19 MR. SUMMERS: Right. And an excavator's  
20 license in the case of MS.

21 And those are the folks who legally can install  
22 systems, with the one exception in the regulation that  
23 allows a homeowner to install a septic system with trench  
24 system only? That's the only type of system they can  
25 install in the exception listed in the regs, correct?



1 MR. SCHALL: Homeowners can actually install  
2 their own systems.

3 MR. SUMMERS: But they still have to get a  
4 permit? Even the homeowner still has to get his own  
5 permit, correct?

6 MR. SCHALL: Yes.

7 MR. SUMMERS: All these are permitted. Okay.

8 Do you know if the Construction Industries  
9 licenses are competency licenses? They're not like a  
10 business license, there's actually a test; is that true?

11 MR. SCHALL: As far as I know, from  
12 conversations, yes, they have to take a competency exam  
13 to get their license.

14 MR. SUMMERS: So when a person has one of these  
15 licenses with the State of New Mexico and gets a bond  
16 that is required by their licensing, they're deemed to be  
17 competent by the State of New Mexico to do those things  
18 that they're tested for and approved for under the  
19 license, correct?

20 MR. SCHALL: That's the assumption. Yes.

21 MR. SUMMERS: Okay.

22 Next question is, to your knowledge, is there  
23 anything on the Construction Industries test for an MS-1,  
24 let's say, an excavator, that deals with site evaluation?

25 MR. SCHALL: Having not seen the exams, having



1 had some conversations with the CID, I don't believe

2 there's much --

3 MR. SUMMERS: Mr. Walker, do --

4 MR. WALKER: In my very basic conversations

5 with CID, they have not indicated to me that that

6 examination would have that on there.

7 MR. SUMMERS: Okay.

8 Next question, is there anything on that same

9 exam, to your knowledge, that deals with competency for

10 system design?

11 MR. SCHALL: Not to my knowledge.

12 MR. SUMMERS: Now, do we allow in the State of

13 New Mexico someone with an excavator's license to design,

14 evaluate a site, install and presumably inform the

15 homeowner for, for instance, extended aeration systems,

16 trickling filters, sequencing batch reactors, all the

17 other types of alternatives?

18 MR. SCHALL: Yes.

19 MR. SUMMERS: Okay.

20 Is there any evidence anywhere that they're

21 ever tested for competency by the State to do these

22 things?

23 MR. SCHALL: No.

24 MR. SUMMERS: Do we have an education program

25 in the State of New Mexico to ensure that these people



1 even understand what it is they're doing?

2 MR. WALKER: Not at this time.

3 MR. SUMMERS: Okay.

4 Is this part of your proposal coming up in the  
5 future, is that we set up some sort of training program  
6 with all these massive dollars that you're going to get  
7 to try to educate this work force?

8 MR. WALKER: Yes. In fact, in my testimony, as  
9 well as in my reply to the answers that our attorney  
10 posed to me, I did state that training was identified as  
11 a high priority, and it is a matter that we're moving  
12 forward on, trying to obtain funding, and, in fact, one  
13 of the positions that this proposal will pay for will be  
14 a trainer.

15 MR. SUMMERS: Okay.

16 Are there also provisions in these funds to  
17 help train the regulatory community?

18 MR. WALKER: Yes. Those same funds and  
19 individual would be there to train both our staff and the  
20 regulated community.

21 MR. SUMMERS: Are the technologies changing  
22 rapidly in the on-site wastewater industry currently?

23 MR. WALKER: For some.

24 MR. SCHALL: New technology is coming out every  
25 day.



1 MR. WALKER: Yeah.

2 MR. SCHALL: Or, you know, generally, that --  
3 new designs, new type of equipment is becoming available.  
4 So, yes, technology is changing, it is becoming more  
5 technical.

6 MR. SUMMERS: But these advanced treatment  
7 systems, shall we call them, they're designed for  
8 difficult site conditions, aren't they?

9 MR. SCHALL: They are utilized in difficult  
10 site conditions. And that's probably one of the foremost  
11 uses of them at this time, is for the difficult sites.

12 MR. SUMMERS: Is it your experience that, in  
13 fact, most of the easy lots have now been built on in the  
14 State of New Mexico, the simple ones from the viewpoint  
15 of on-site wastewater treatment?

16 MR. SCHALL: It's been said that all the good  
17 lots are gone. People are wanting to build on sites with  
18 views, which mean up on the side of a mountain. A  
19 mountain basically is a pile of rock, not a pile of soft  
20 soil. So, yes, the sites are difficult to work on.

21 The areas along the river, where we have high  
22 water tables, are also very difficult to work with.

23 You know, generally, the industry numbers more  
24 or less state about 35 percent of the land nationwide is  
25 suitable for on-site systems, but yet we try to build on



1 90 percent of that land.

2 MR. SUMMERS: Okay.

3 And again, these sites are -- the sites you're  
4 talking about, the ones that we see more and more of now,  
5 those are sites where groundwater is vulnerable; is that  
6 correct?

7 MR. SCHALL: Sites where the groundwater is  
8 vulnerable, sites where inadequate soils providing level  
9 treatment is required, sites that have possible surfacing  
10 of sewage, which then becomes public -- direct public  
11 contact.

12 So there's a lot of different scenarios  
13 depending on the restriction of the site.

14 MR. SUMMERS: And yet we see development of  
15 these problems not so much based on on-site liquid waste  
16 disposal, right? We see development for a variety of  
17 other reasons, demand for housing, cheap land costs,  
18 those kinds of things, correct?

19 MR. SCHALL: Right. Usually -- especially  
20 on-site disposal is the last issue that they think of  
21 when they go to develop a piece of property.

22 MR. SUMMERS: Okay.

23 Now, other states delegate a lot of the  
24 functions we talked about.

25 For instance, are you aware that other states



1 have certified site evaluators who take the function from  
2 government, where it's delegated to those folks who are  
3 certified, who can lose their licenses, by the way, if  
4 they don't do a good job? Are you aware of that practice  
5 by other states, to take some of the burden off the  
6 regulatory community?

7 MR. WALKER: Yes. We're very aware of that.

8 MR. SUMMERS: The same for system design,  
9 right?

10 We have registered sanitarians in other states  
11 who design systems, although in Colorado, for instance,  
12 there are folks who work for the state who actually will  
13 come up with a final design.

14 But you're aware that function is also  
15 delegated, correct?

16 MR. WALKER: That's correct.

17 MR. SUMMERS: One other function that I wanted  
18 to raise, too, is, is there money in this budget to start  
19 educating the public and even the contracting community  
20 and the work force that we have so the people understand  
21 that we're really talking about our drinking water  
22 resources here and how to protect it by using  
23 technologies available?

24 Is there money for education to the public,  
25 public outreach, those kinds of things?



1 MR. WALKER: Yes.

2 MR. SUMMERS: Okay.

3 Again, I presume, since we have money against  
4 drunk driving, not wearing your seat belt, tobacco, all  
5 these other things, that in this budget there's some  
6 priority to try to do public service announcements and  
7 other things so the public really understands what we're  
8 talking about?

9 MR. WALKER: Yes. We would develop a public  
10 outreach plan as well as a training plan for those  
11 parties that need that training.

12 MR. SUMMERS: Okay.

13 And what percentage of folks in the State of  
14 New Mexico get their drinking water from groundwater,  
15 roughly? Is it half?

16 MR. SCHALL: It's well more than half.

17 MR. WALKER: Yes.

18 MR. SCHALL: Probably -- I think I've seen  
19 numbers at 90 percent.

20 MR. SUMMERS: As high as 90 percent?

21 MR. SCHALL: Yes.

22 MR. SUMMERS: And isn't liquid waste one of  
23 those issues where we deliberately contaminate, put  
24 contaminants into the environment for treatment, one of  
25 the few -- unlike hazardous spills, we try to prevent --



1 or accidents, those kinds of things?

2 It is a practice where we still deliberately  
3 put contaminants into the environment, hoping the  
4 environment will take care of it for us; is that correct?

5 MR. SCHALL: Right. On the basis of treatment  
6 in situ, or in the ground, is that the ground does the  
7 treatment.

8 MR. SUMMERS: Okay.

9 Are you aware that in the development of the  
10 technical regulations there was a plan to create a second  
11 phase of regulations that dealt with difficult sites,  
12 commercial types of waste loads and strengths and flows,  
13 alternative systems, so-called, so that there would be  
14 design standards, these kinds of things?

15 Are you aware that that was in the plan?

16 MR. SCHALL: Yes.

17 MR. SUMMERS: So that we could avoid variances  
18 and those kinds of things to implement for these  
19 difficult sites?

20 MR. WALKER: Yes.

21 MR. SUMMERS: And again, you're seeing a larger  
22 number of permit requests now that deal with difficult  
23 sites; is that correct? Fewer and fewer permits that are  
24 just basic, B-flat septic tank applications?

25 MR. SCHALL: Certain offices are more prone to



1 get these kind of permits.

2 MR. SUMMERS: And which of those offices, just  
3 roughly?

4 MR. SCHALL: Santa Fe, Ruidoso, Taos.

5 MR. WALKER: Angel Fire.

6 MR. SCHALL: Angel Fire. These areas which  
7 were more the mountainous areas, resort areas, things  
8 likes that.

9 MR. SUMMERS: Silver City?

10 MR. SCHALL: Silver City.

11 MR. SUMMERS: Deming, those --

12 MR. WALKER: Yes.

13 And each one of these may have a different  
14 constraint that delineates that.

15 MR. SUMMERS: Okay.

16 Do we have in the State of New Mexico large  
17 number of lots that were platted, very tiny lots that  
18 were platted prior to the time we had regulations?

19 MR. WALKER: Yes. It seems that way. Some  
20 were platted as early as when the railroads first came  
21 through, such as the town of Mountainair, things like  
22 this, that are platted that way, and then others through  
23 early land division practices.

24 MR. SUMMERS: Right. Horizon Corporation  
25 developed a lot. There were a bunch in Elephant Butte.



1 MR. WALKER: Correct.

2 MR. SUMMERS: All over the state there's tiny  
3 lots, prior to the times we had regulations, correct?

4 MR. WALKER: That's correct.

5 MR. SUMMERS: And has the density in those  
6 areas increased as people have built actually on those  
7 lots?

8 MR. WALKER: Yes. People have been building  
9 out there, and it's the difficulty of locating  
10 appropriately designed systems on lots that were sized  
11 perhaps not with liquid waste disposal in mind.

12 MR. SUMMERS: And has the risk of contamination  
13 to groundwater gone up as this density has increased over  
14 time?

15 MR. WALKER: It would be my opinion. Yes.

16 MR. SUMMERS: You're familiar with the study  
17 done in the South Valley --

18 MR. WALKER: Yes.

19 MR. SUMMERS: -- for the Environment  
20 Department. Okay.

21 So those tiny lots that are still in existence  
22 that were approved at that time, they would no longer  
23 need the regulation or the standards required by the  
24 regulations in effect, are they?

25 MR. SCHALL: The technical regulation at this



1 time requires a minimum of a three-quarter-acre lot for  
2 the installation of a conventional septic system.

3           However, there is a grandfather clause within  
4 that regulation that states that if lots were platted  
5 prior to February, 1990, then they can still be  
6 developed, and as much as 375 gallons a day flow, which  
7 is equivalent to a three-bedroom house, could go onto a  
8 lot of less than a half an acre, if you can physically  
9 locate the system on that lot.

10           MR. SUMMERS: Okay.

11           So you could put a system, because under the  
12 grandfather clause, which is a legal construct, on a  
13 tenth-acre lot, correct?

14           MR. SCHALL: If you could physically meet all  
15 the setbacks, yes.

16           MR. SUMMERS: Okay.

17           But if everybody did that, forget about the  
18 legal construct, our ability to regulate, the actual  
19 impact on the groundwater exceeds the standards that we  
20 have, and what we're talking about is pollution, the  
21 amount of pollution we're putting into the ground exceeds  
22 the standards that we have said are reasonable today?

23           MR. SCHALL: The discharge is cumulative, that  
24 as that increases, the impact increases, also.

25           MR. SUMMERS: So this is just -- again, has



1 nothing to do with an objective view of the amount of  
2 pollution or the threat to groundwater, it's just a legal  
3 construct that we put in place to try to protect the  
4 rights of folks who bought those lots.

5 MR. SCHALL: Right.

6 MR. SUMMERS: Okay.

7 In your budget for this next year, do you also  
8 have any plans -- I notice the groundwater has a web site  
9 that has all of the discharge plans on-line, and someone  
10 mentioned earlier that internally you have such a system,  
11 or you're working on such a system.

12 Is there a plan to make this Internet access  
13 public, so that people can just go on the Internet rather  
14 than calling your offices to see if there's a permit in  
15 existence?

16 MR. WALKER: It's our goal to move toward that.  
17 There are some difficulties with it, but we hope to work  
18 through those and eventually establish a system that  
19 people can access on-line, perhaps even get their permits  
20 on-line, this type of thing.

21 But to be honest, there still is quite a bit of  
22 work to be done with that.

23 MR. SUMMERS: But is there some money in this  
24 budget for that?

25 MR. WALKER: To begin this process, yes.



1           MR. SUMMERS: Because are you familiar with the  
2 practice that, for instance, real estate licensees when  
3 they're going on listing appointments, that they call the  
4 Environment Department routinely and ask for eight or ten  
5 or fifteen copies of permits before they go on listing --  
6 are you familiar with that practice?

7           MR. WALKER: It's quite unusual practice.

8           MR. SUMMERS: Do they pay for that?

9           MR. WALKER: No, they do not. And there's no  
10 fee in this proposal to cover that either.

11          MR. SUMMERS: So if there are five Realtors --  
12 and I use the term Realtor although it's a proprietary  
13 name -- real estate licensees who are all going to try to  
14 list the same piece of property, it's conceivable that  
15 they would all call and ask for copies to be faxed to  
16 them of the same permit for the same property?

17          MR. WALKER: That's conceivable.

18          MR. SUMMERS: And again, they don't compensate  
19 the Department for the time spent on that in any way, do  
20 they?

21          MR. WALKER: Not at this time.

22          MR. SUMMERS: Okay.

23                   I'm going to go to another issue. We're  
24 talking about licensees and competencies and these sorts  
25 of things. Steve, I want to direct this -- Mr. Walker, I



1 want to direct this directly to you.

2 Have you had occasion to meet with me in prior  
3 years about an installation improperly done by a person  
4 licensed by Construction Industries in the East Mountain  
5 area?

6 MR. WALKER: I -- it's in -- many years ago,  
7 but I do have a basic remembrance of that.

8 MR. SUMMERS: Do you recall the discussion that  
9 we had concerning filing with Construction Industries a  
10 complaint?

11 MR. WALKER: Not specifically, unfortunately.

12 MR. SUMMERS: Do you recall --

13 MR. WALKER: I do remember talking about it in  
14 general, but I don't recall the details.

15 MR. SUMMERS: Do you recall my mentioning to  
16 you that a complaint would be filed?

17 MR. WALKER: I do remember that portion.

18 MR. SUMMERS: Do you ultimately know the  
19 disposition of that?

20 MR. WALKER: No, I do not.

21 MR. SUMMERS: Do you have any knowledge to know  
22 that the Construction Industries did nothing?

23 MR. WALKER: Through roundabout and hearsay, I  
24 heard that, but not directly from Construction  
25 Industries.



1 MR. SUMMERS: Okay.

2 So other states licenses -- for instance, Texas  
3 licenses installers independent of Construction  
4 Industries and those kinds of things and has continuing  
5 education requirements for them, okay, to assure  
6 competency in this particular field, as opposed to  
7 grading driveways or putting in foundations and all like  
8 that.

9 Is there any talk within the Department about  
10 developing actually skills and certification specific to  
11 this industry within the Department?

12 MR. WALKER: Not only within the Department,  
13 but in some of our meetings with contractors, a number of  
14 the contractors have expressed the desire for this type  
15 of training, and have even -- some of them, not all of  
16 them -- I want to emphasize that -- have expressed an  
17 idea that perhaps at some point certification for  
18 specific skills to install septic systems might be in the  
19 future.

20 MR. SUMMERS: Because we heard issues of  
21 accountability, how are we going to keep the regulatory  
22 community accountable?

23 But isn't it somewhat difficult where we have  
24 licensing with Construction Industries but the actual  
25 responsibility under the Environment Department -- isn't



1 that somewhat awkward, to try to establish accountability  
2 on the people who are actually doing site evaluations,  
3 system design, installation, communicating with the  
4 public how to operate these -- doesn't that make it  
5 awkward, where someone else licenses someone, if you're  
6 trying to regulate those people and make sure they meet  
7 the standards?

8 MR. WALKER: That can be at times only because  
9 the two are separated from one another.

10 MR. SUMMERS: And the intent and purpose of  
11 Construction Industries is somewhat different than the  
12 authority and responsibility of the Environment  
13 Department, that's why the legislature split the two six  
14 or eight years ago; is that correct?

15 MR. WALKER: I would say that's accurate.

16 MR. SUMMERS: Yeah. Okay. Thank you very  
17 much.

18 The current regulations provide that you can't  
19 get a building permit, nor can you transport a unit onto  
20 a site before you have a liquid waste permit.

21 When people talk about not enforcing the law,  
22 for instance, do we do any enforcement right now that  
23 every manufactured home transporter must clearly display  
24 on the unit being transported down the highway that it  
25 has a liquid waste permit in place?



1           MR. WALKER:  You're correct in saying that the  
2 regulations do require a permit before a unit is placed  
3 on the property, but there is no requirement for a  
4 displaying of some verification of the permit on a unit  
5 being transported.

6           MR. SUMMERS:  So how do you enforce that under  
7 the current regulations with the staff you have and the  
8 budget constraints -- how do you enforce making sure that  
9 that used manufactured house being transported down the  
10 highway is going to a site that has a liquid waste?

11          MR. WALKER:  On one that you see going down the  
12 road, we do not know.  What we would generally find is  
13 that once it's placed on a site and through, let's say,  
14 surveillance and just noticing it and your knowledge of  
15 the area, you know that you had not issued a permit for  
16 that, and you may investigate that.

17          MR. SUMMERS:  In response to everyone's intent  
18 to try to protect the environment, has the Manufactured  
19 Housing Association approached the Department about a  
20 voluntary program to do that?

21          MR. WALKER:  Not at this time.

22          MR. SUMMERS:  Okay.

23                 So I want to make this perfectly clear, or I  
24 need to ask this question so you can make it clear for  
25 me.



1 This fee is not just for inspections, this fee  
2 is for educating the public, for designing educational  
3 programs, public outreach, responding to the public's  
4 requests, as well as elected officials, who I understand  
5 occasionally write you letters questioning your decision  
6 in cases -- all these things are part of this fee, is to  
7 try to come up with the resources to respond to all the  
8 different requirements that the environment places on  
9 you, correct?

10 MR. WALKER: That is correct. The liquid waste  
11 program is more than just inspections and approving  
12 permits.

13 MR. SUMMERS: Okay. I think that's all.

14 MR. GHASSEMI: Thank you.

15 MR. SIMPSON: Does the Board have any follow-up  
16 questions?

17 Okay. Mr. Addy.

18 Oh, I'm sorry.

19 Mr. Duran, did you have a follow-up question to  
20 that?

21 MR. DURAN: I was just curious, Mr. Hearing  
22 Officer.

23 I'm not aware of this, but is it fair to ask  
24 questions of the person who is asking the questions?

25 MR. SUMMERS: I intend to testify later. We



1 can do that then.

2 MR. DURAN: Okay. It was just a matter of  
3 establishing credibility.

4 Could I ask a follow-up question to the  
5 Department based on what was said to one of the  
6 gentleman's questions?

7 It would just be one.

8 MR. SIMPSON: Actually I don't think so. I  
9 think that's just going to confuse the order of  
10 information.

11 MR. DURAN: Okay.

12 I would just note, Mr. Hearing Officer, you  
13 gave him quite a bit of leeway, and I'm sorry you didn't  
14 allow me the one question. But that's okay. I'll save  
15 it for my final testimony.

16 MR. ADDY: My name is Mike Addy. I own and  
17 operate Albuquerque Vault and Septic Tank. I am not a  
18 wastewater engineer, but I've been in the industry for  
19 probably 30, 32 years.

20 I have a few questions. I could sit up here  
21 for hours and ask questions, but I'm glad to see the  
22 Department is finally going to give our side a little bit  
23 of leeway here on the questioning.

24 MR. GHASSEMI: I'm sorry, Mr. Addy.

25 Can I ask a question?



1 MR. ADDY: Yes.

2 MR. GHASSEMI: When you had the public  
3 hearings, was Mr. Addy informed?

4 MR. WALKER: Mr. Addy was present.

5 MR. ADDY: Yes, sir.

6 MR. GHASSEMI: Okay.

7 CROSS EXAMINATION

8 BY MR. ADDY:

9 MR. ADDY: You know, I'd like to give this  
10 Board a little bit of background about me before I  
11 proceed with them, if that's okay with the Department.

12 MR. SIMPSON: Well, Mr. Addy, here again, the  
13 process is for you to get the information from them. And  
14 when it comes time for you to give your direct  
15 presentation, you can give them your background. And  
16 actually it would be helpful for you to do so at that  
17 point more so than now.

18 MR. ADDY: Okay. That's fair enough.

19 Again, the questioning comes up as a priority.  
20 You stated that it was a threat to groundwater.

21 I want to know why the Department waited four  
22 years to bring this to the Board. You've had the program  
23 for four years, and it started in '97. This is 2001.

24 If it was such a great threat, why didn't we  
25 start this procedure earlier?



1           MR. KORANDA: I think it began at the time we  
2 received legislative authority to receive fees, assess  
3 fees, which was in the year 2000, in March. We had  
4 intended to go to hearing in January of 2001. That  
5 authority was challenged during that legislative session.  
6 So we could not do it at that time.

7           This was the next available time we had to  
8 schedule for the hearing. And we did go through a public  
9 process to get input on the proposal.

10          MR. ADDY: Okay.

11          Back to Ms. --

12          MS. NOSKIN: Noskin.

13          MR. ADDY: -- Noskin's question that she had,  
14 where her permit was in there for over three weeks, and  
15 it was complete.

16          I believe the attorney there said that it was  
17 law in 10 days.

18          What's procedure?

19          She didn't have her permit in 10 days. I'd  
20 like to know what the procedure is to get it done. It's  
21 law, it was complete, but she didn't receive it.  
22 Nobody's answered that question.

23          MR. WALKER: Well, the actual statement was  
24 that she filed her permit and the inspection came three  
25 weeks later.



1           Is that --

2           MR. ADDY: No, no.

3           MR. WALKER: Or did you have your permit?

4           MS. NOSKIN: No. I didn't receive my permit  
5 for three weeks.

6           MR. WALKER: Okay.

7           What we'd have to look at before we would  
8 actually have to answer that question is when was it  
9 submitted to the Department, when was it approved,  
10 because that same permit had to be taken over to the  
11 Santa Fe County in order for her to show that to Santa Fe  
12 County to get the rest of the building permit.

13           If it did indeed take three weeks from  
14 submittal to when it was approved, then we are at fault.  
15 But I can't say whether that occurred or not, because  
16 I'm -- I don't know that for sure.

17           MR. ADDY: Okay. Say it did occur.  
18 Everything's complete, she had her permit in there, your  
19 10 days is up.

20           What is her recourse to get that permit out of  
21 the Department?

22           MR. WALKER: She simply would come up and say,  
23 "You've had it 10 days. Give it to me."

24           MR. ADDY: And now the Department says, "It's  
25 not ready."



1           MR. WALKER: Well, there's another aspect to  
2 this. If during that period of time they found that the  
3 original submittal of any permit was not complete, the  
4 clock would begin running when it was complete.

5           She did state that she submitted a complete  
6 permit. So the clock would have begun at the time she  
7 submitted it.

8           MR. ADDY: Okay. Just --

9           MR. WALKER: I don't know that specific permit  
10 so I can't make any specific statements about it until I  
11 research it.

12          MR. ADDY: Let's just say -- I just want a  
13 straight answer out of the Department. This is going  
14 back to when I first -- and I apologize for when I first  
15 stepped in over here.

16          Everything is complete on the application,  
17 you've had it over 10 days. She wants her permit. Okay?  
18 It's done. You guys have not issued it.

19          What is her recourse for getting a permit?

20          MR. WALKER: She could come demand it.

21          MR. ADDY: And the Department says, "It's not  
22 ready."

23          What is next? What's in place for the public  
24 to deal with your Department?

25          I don't care who answers.



1 MR. CLARKE: I could give you just speaking as  
2 the attorney for the Department.

3 The regulations require that it's deemed  
4 complete in 10 days.

5 MR. ADDY: Right.

6 MR. CLARKE: And I'm not saying that the  
7 typical house owner would -- or person seeking a permit's  
8 going to do this, but if the law says that the permit  
9 becomes valid -- and you can correct me if I'm not  
10 stating the language right -- but it becomes valid after  
11 10 days, the Department's held onto it that long or  
12 longer, basically you have a right to the permit.

13 You know, I'm not saying you have to go down  
14 there and wrestle it out of their hands, but basically  
15 you have a permit that's complete.

16 MR. ADDY: But she doesn't have it in her hand  
17 to take to Building to get her building permit. So she's  
18 got to physically have something.

19 MR. CLARKE: Right.

20 MR. ADDY: So how do we proceed through that  
21 Department to get that permit? Is there anything in  
22 place that the consumer can come to, a board, a  
23 committee, a member, something that they can file a  
24 complaint, say, "Hey, the Department is not doing their  
25 job. How do I deal with it?" Is there anything in place



1 for that?

2 MR. KORANDA: Normally if we drop the ball and  
3 do not approve a permit during the 10-day period or do  
4 not furnish it to the homeowner or installer in a period  
5 of time, it can be taken up with the local office, it can  
6 be taken up with Environment Department management, but  
7 it's -- that's an option. But we should never let that  
8 happen.

9 MR. ADDY: She gave you an example of it right  
10 there.

11 MR. KORANDA: I realize it.

12 MR. ADDY: And I've seen it happen, too.

13 But what I'm saying is the tools aren't in  
14 place to implement this fee because the consumer has no  
15 place to go other than the Secretary, the Director or  
16 down the line. Okay? We don't have -- even our industry  
17 doesn't have anybody to complain to.

18 Our only option we have is to try to deal with  
19 the Secretary or go to court. That's the only two  
20 options we have. We don't have a board, we don't have a  
21 committee, any kind of oversight committee over your  
22 Department. There's nobody. Your Department does not  
23 have to answer to anybody.

24 I didn't say anything.

25 MR. SUMMERS: Mr. Hearing Officer, excuse me.



1           I'm afraid I'm going to have to object. If we  
2 have a question here, that's good, but I think we can air  
3 this during the form of his testimony.

4           MR. SIMPSON: Again, Mr. Summers, you're not  
5 representing the Department, and if it's in Mr. Clarke's  
6 judgment that Mr. Addy's statement -- I realize it's not  
7 a question. If it's in his judgment that the statement  
8 is an appropriate part of the cross-examination, then  
9 he -- or some other reason why he's not going to object,  
10 then he's not going to object.

11           And until he does so, we're going to let  
12 Mr. Addy have his opportunity.

13           MR. CLARKE: Mr. Simpson, along that lines, I  
14 realize what Mr. Addy is asking is not a question, but it  
15 is a statement. I think it does have to do with the --  
16 basically, you know, a concern.

17           We've said that we need additional revenue so  
18 we can staff up, so we can get to these things. I think  
19 actually what Mr. Addy is asking is a question that  
20 really it's something that he deals with, and I think  
21 it's good to let Mr. Addy have some time to air his  
22 concerns.

23           I would ask Mr. Addy that you do ask the  
24 questions in the -- ask questions but not phrase  
25 statements, but perhaps ask questions regarding what



1 these witnesses have testified about.

2 MR. GHASSEMI: Well, let me formulate, then --  
3 I'm going to formulate his question to you folks.

4 Are there any plans to have a process in  
5 place -- although it's not directly related to the fee  
6 increase, a process in place so that Mr. Addy can get his  
7 questions or his concerns addressed?

8 That's a question to the group here.

9 MR. KORANDA: We have not considered that, but  
10 we will. I expect field staff to do just that.

11 MR. GHASSEMI: Thank you.

12 That's what I would expect my people to do when  
13 somebody calls in. They need to take the time to answer  
14 the question. If Mr. Addy doesn't get the answer, then  
15 there's something missing.

16 MR. SIMPSON: And, Mr. Addy, I don't want to  
17 try to direct your presentation to the Board any more  
18 than what you've already done for yourself, but if you do  
19 have experience -- and I know you from the Construction  
20 Industries Commission meetings.

21 If you do have experience with the Department  
22 in this kind of transaction, and you want to relate it to  
23 the Board, I think that's important information, but that  
24 would be the time for that.

25 MR. ADDY: On the testimony, correct?



1 MR. SIMPSON: Right, right.

2 MR. ADDY: Then I've only got a couple more  
3 questions.

4 Again, maybe it's not the testimony, but it was  
5 brought up a minute ago. **Qualifications for contractors.**

6 Out of your -- I believe you stated you had 46  
7 inspectors; is that correct?

8 MR. WALKER: 46 environmentalists and  
9 supervisors.

10 MR. ADDY: And out of those, how many are  
11 qualified in soil classifications, liquid waste,  
12 secondary treatment? **Out of the 46, how many are**  
13 **qualified for that?**

14 MR. WALKER: I don't know the specific number.

15 MR. ADDY: Just give us a ballpark.

16 50 percent?

17 MR. WALKER: Well, I think it goes back to what  
18 do you define as being qualified. We have a lot of  
19 people out there with experience in the field that have  
20 had experience with liquid waste. In any profession we  
21 have people with more experience and more years of  
22 experience than others. And so it does vary. Not  
23 everybody has exactly the same level of knowledge.

24 But I would say that overall nearly everybody  
25 has a basic understanding of liquid waste and that type



1 of thing. Again, some have more advanced knowledge than  
2 others.

3 MR. ADDY: Okay.

4 Then I'm going to ask you -- and you can cut me  
5 off if you need to, but when you hire somebody for field  
6 inspections or food or water, liquid waste, what is --  
7 what is their qualifications in order to get that job as  
8 far as the liquid waste part of it? Do they have to have  
9 a degree, do they have to have any kind of experience  
10 when you hire them to do our inspections?

11 MR. WALKER: Did you want to answer that one,  
12 or do you want me to?

13 MR. KORANDA: Go ahead.

14 MR. WALKER: The job specification for  
15 environmentalists requires the minimum of a bachelor's  
16 degree. Excuse me. Degree. My voice faded there.

17 Along with that there are a listing of types of  
18 experiences that one needs to know. They cover the basic  
19 knowledge areas that that job would perform, knowledge of  
20 liquid waste, food, pools, vector control, these types of  
21 things. So it's a very broad knowledge.

22 When you look at a pool of applicants, you, of  
23 course, have a series of people that meet those basic  
24 qualifications, and in choosing the best candidate you  
25 would choose the person that obviously had the most



1 experience for the job that they intend to perform.

2           If in that particular situation they may be  
3 primarily inspecting food establishments, because that  
4 county does not do a lot of liquid waste, you may tend to  
5 make sure that they know a great deal about food.

6           Likewise, the county that does a lot of liquid  
7 waste, you may emphasize that requirement perhaps over  
8 others. It does vary by locale and the intended job that  
9 that person's going to do.

10           Further, the people that will be filling these  
11 five positions, since they are dedicated solely to liquid  
12 waste, that will almost be their sole criteria, is their  
13 knowledge in liquid waste.

14           MR. ADDY: And what would they put on their  
15 resume for knowledge of liquid waste?

16           I'm sorry. I don't understand.

17           MR. WALKER: I'm not sure what they put on  
18 there. They would certainly put down their experience --  
19 if they worked for another agency, you know, as an  
20 environmentalist, they would certainly put down their  
21 experience that they've had with dealing with liquid  
22 waste programs.

23           Perhaps they were somebody who dealt with  
24 groundwater or something like that, in a related area.  
25 During the interview, they would certainly be quizzed as



1 to their specific knowledge in liquid waste, in  
2 particular on-site, small liquid waste systems.

3 MR. ADDY: I only have two more questions, and  
4 then I'll quit.

5 What's in place now within the Department for  
6 new technology that's coming on-line? You do have a fee  
7 in here for it, so tell me what -- what's in place with  
8 the Department now?

9 MR. SCHALL: Could you maybe expand on that  
10 question? What exactly do you mean by what is in place  
11 for new technology?

12 MR. ADDY: Okay.

13 How do you -- how does the Department approve  
14 new technology coming into the state?

15 MR. SCHALL: The --

16 MR. ADDY: What's the procedure?

17 MR. SCHALL: The manufacturer submits a packet  
18 to the State for review. It's reviewed through the  
19 program office, which is right now Mr. Walker and myself.

20 A good majority of these treatment units have  
21 been thoroughly tested by using the National Sanitary  
22 Foundation or equivalent testing program through Baylor  
23 University or someplace else. They have to meet certain  
24 national standards, ANSI standards. They need to submit  
25 the test results with their documentation.



1           It's reviewed as far as engineering aspects.  
2   Actually we do have a PE on staff. I almost forgot  
3   Mr. Quintana. He works basically with the liquid waste  
4   program half time. He is a professional engineer  
5   registered in New Mexico with experience in wastewater.  
6   So we have his resource.

7           We do have other resources within the  
8   Environment Department, and we do have Technical Advisory  
9   Committee which can be called to look at these products  
10   if need be. Most of these products are precertified by  
11   NSF, and there's really -- I don't think that the  
12   Department feels that the Technical Advisory Committee  
13   needs to review something that has a national  
14   certification.

15           MR. ADDY: When's the last time the TAC met, if  
16   you have it in place?

17           MR. SCHALL: The TAC meets on an as needed  
18   basis. It's not a standing committee. And the last time  
19   it met was probably at least a year ago, possibly even  
20   slightly longer.

21           MR. ADDY: About two years ago.

22           MR. SCHALL: I wouldn't quite go that far back.

23           MR. ADDY: The next question, back to the fee.

24           I have three molds. Okay.

25           What are you going to give me for my \$100 per



1 mold every year? What are you going to do for me with  
2 that?

3 MR. WALKER: Your molds will be reviewed for  
4 compliance with the regulations. We'll make an on-site  
5 inspection and recertify them as meeting the requirements  
6 and allow them to be installed.

7 MR. ADDY: You did that the first year.

8 What are you going give me the second year?

9 I haven't changed anything.

10 Why should I pay you \$100 when I haven't  
11 changed anything on the molds?

12 MR. WALKER: Well, having just completed a  
13 complete reinspection of all the septic tank  
14 manufacturers in the state, Mr. Addy is one manufacturer,  
15 and indeed he's correct, he has not changed the design of  
16 his molds.

17 When we have made other inspections, we have  
18 found molds that have been altered, modified. We've  
19 found molds that we've never certified or seen plans on.  
20 So the annual inspection is an important aspect, because  
21 we do catch molds and things that do come in without  
22 having been properly submitted.

23 Mr. Addy, though, is a very upstanding  
24 manufacturer, and he generally -- when he wants to add a  
25 mold to his line or make a modification, he does inquire



1 with us and proceeds according to the regulations.

2 But we still give him the annual inspection  
3 just as we give everybody else a -- there -- it's the  
4 same process for all manufacturers.

5 MR. ADDY: That's all the questions I have  
6 right now.

7 MR. SIMPSON: Thank you, Mr. Addy.

8 MR. ADDY: Thank you.

9 MR. SIMPSON: Some of the Board members had  
10 follow-ups to your questions. You may want to stay there  
11 until they finish.

12 MS. NOSKIN: Actually it was a follow-up to  
13 Mr. Summers' question. It just took a little while to  
14 surface.

15 Do you have a permit checklist, written permit  
16 checklist, or something so when you get all these site  
17 evaluations and all this information that you go through  
18 to ensure that the permit is adequate, or is this again a  
19 judgment call based on the professional?

20 MR. WALKER: No. The application itself  
21 functions as a checklist. You literally go through and  
22 look and make sure that all the appropriate places are  
23 filled out on that application.

24 MS. NOSKIN: But there's nothing separate. And  
25 forgive me. I just have some background with like



1 hazardous waste permits --

2 MR. WALKER: Right.

3 MS. NOSKIN: -- where you have to fulfill the  
4 checklist as you go through the checklist kind of thing.

5 MR. WALKER: Sure. They're not that  
6 complicated.

7 MS. NOSKIN: So it's not separate like that.  
8 Okay.

9 MR. WALKER: No. And it's mostly because  
10 they're not as complicated.

11 MS. NOSKIN: So it kind of serves kind of as a  
12 checklist, you meet this, you meet this --

13 MR. WALKER: That's correct.

14 MS. NOSKIN: All right.

15 MR. WALKER: On more complicated permits,  
16 particularly with advanced treatment, many times that  
17 field person may refer that to a supervisor for a  
18 double-check.

19 And as I said earlier, our staff in Santa Fe  
20 functions -- we provide consultation to the district  
21 offices, and we do receive many calls and requests to  
22 look at things that they might -- so there's -- on more  
23 complicated permits, many times there's several levels of  
24 additional oversight on those.

25 MS. NOSKIN: Thank you.



1           MS. GADZIA: Can I -- I need to kind of figure  
2 out this process.

3           Somebody -- I bring you a permit.

4           Do you tell me, or do I send it in? Do I mail  
5 it in, or do I bring it to the local office? Do you tell  
6 me right then it's complete?

7           MR. WALKER: All of the above basically. You  
8 can send it, mail it. What we do need is an original --

9           MS. GADZIA: But do you give me a feedback that  
10 the 10 days begins and it is complete?

11          MR. WALKER: Right.

12          MS. GADZIA: Do you tell me right away?

13          MR. WALKER: What we could do is you could send  
14 us an original copy of an application or a Xerox. We  
15 just need an original signature on the back. We would  
16 immediately review that submittal. Sometimes we do get  
17 them by mail.

18          Many of them are brought in in person,  
19 particularly by the contractors, because they're  
20 interested in quick turnaround. And many times they  
21 will -- you immediately take a look at it and determine  
22 if it's complete. If it is not, then you would contact  
23 the applicant --

24          MS. GADZIA: Within --

25          MR. WALKER: -- and tell them what they need to



1 make it complete.

2 MS. GADZIA: Typically within that day? Two  
3 days?

4 MR. WALKER: Within -- usually within one or  
5 two days.

6 MS. GADZIA: So in two days I know that my 10  
7 days is running?

8 MR. WALKER: Generally, yes.

9 MS. GADZIA: Okay.

10 And so I know the 10 days is running, it's day  
11 11, and I don't have my permit.

12 Can I come to your office and get my written  
13 permit and it's good?

14 MR. WALKER: You can demand it. That's  
15 correct.

16 MS. GADZIA: So that's one way that he can --  
17 after the 10 days, after I know my 10 days is rolling, I  
18 can come into your office and demand it?

19 MR. WALKER: Certainly.

20 MS. GADZIA: That's kind of a resource, right?

21 MR. ADDY: That doesn't mean it's good, because  
22 it's not signed by the environmentalist.

23 MS. GADZIA: Will you sign it?

24 MR. WALKER: I would sign it with the notation  
25 that -- I would make the notation, to be quite honest,



1 that the Department did not act within the prescribed  
2 10-day period, approved as per statutory deadline, or  
3 regulatory deadline.

4 MS. GADZIA: Right.

5 MR. WALKER: I mean, I would make a notation so  
6 that it's noted on the record that it was approved that  
7 way.

8 MS. GADZIA: And is that good enough for the  
9 County of Santa Fe and good enough for --

10 MR. WALKER: They're looking, and then you  
11 would sign the approved line.

12 MR. ADDY: No. They wouldn't take it in  
13 Corrales.

14 MR. CLARKE: I can't answer for the County of  
15 Santa Fe, Madam Chairperson.

16 MS. GADZIA: But whatever industry then  
17 requires the permit from you all, is that a legal permit,  
18 for all the other industries to get the rest of their  
19 permits?

20 MR. WALKER: It's a legal permit from us. As  
21 Mr. Clarke said, I'm not -- I can't speak for the other  
22 entities, whether they will accept that or not.

23 MS. GADZIA: If any of those other industries  
24 are here, you can tell me when you testify.

25 MR. WALKER: I just don't know.



1                   If indeed -- let's say we did make an error  
2 like that, and then the City of Santa Fe did not accept,  
3 I think you could come back to us, and I think we'd be  
4 obligated to help you convince the City of Santa Fe that  
5 indeed it was a valid permit.

6                   MS. GADZIA: Okay.

7                   MR. WALKER: I mean, we have to act in good  
8 conscience.

9                   MS. GADZIA: Right. Okay.

10                  So one other scenario is I come in, you deem it  
11 complete, you -- in three days you say, "Here's your  
12 permit," but it needs an inspection?

13                  MR. WALKER: Yes. Basically you would have  
14 your permit.

15                  MS. GADZIA: Then you give me the physical  
16 permit?

17                  MR. WALKER: We would give you a copy of your  
18 permit. We would retain a copy.

19                  MS. GADZIA: And you schedule my --

20                  MR. WALKER: No, no, not at that point. You  
21 may not even have built your house yet. You would then  
22 hand it to your contractor, if you were using a  
23 contractor, or if you were doing a homeowner's  
24 installation, you would retain it.

25                  At the point at which you began the actual



1 construction of the liquid waste system, we would notify  
2 you that we need to see that system, make an inspection  
3 before you would cover it up.

4 So you would install the septic tank, all the  
5 piping, the disposal field, in accordance with what was  
6 approved in the location it was approved, and you would  
7 have to call for an inspection 48 hours in advance of  
8 when you anticipate needing it before you cover it up.

9 MS. GADZIA: Okay.

10 But not having the permit -- does the permit  
11 say --

12 MR. WALKER: The permit says what you're  
13 approved to install.

14 MS. GADZIA: Agreed.

15 But does the permit say this is not valid until  
16 that inspection is complete?

17 MR. WALKER: No. The permit is a permit to  
18 construct.

19 MS. GADZIA: Okay.

20 So that's -- giving me the inspection doesn't  
21 hold up getting everything else.

22 MR. WALKER: No. I mean, I have approved  
23 permits that have never been installed and ultimately  
24 expire at the one-year point. I've had some that have  
25 gone literally up to the day, and it's 364 days old, and



1 it's still a valid permit, calls for an inspection,  
2 receives one.

3 MS. GADZIA: Okay.

4 I'm sorry. I'm sorry, everybody.

5 When Mr. Summers was describing that the site  
6 evaluation and the site design was really critical in  
7 granting that permit, you have to evaluate both of those  
8 things, is that something you can tell by the -- is that  
9 something you can tell on paper?

10 In other words, is there enough information  
11 submitted so that you can evaluate that permit or --

12 MR. SCHALL: Yeah. Information is requested on  
13 the permit that asks for depth to groundwater, depth to  
14 bedrock or other limiting layers. You have to identify  
15 setbacks to private wells, public wells, surface waters.

16 So the site requirements are listed on the  
17 permit, and it's -- that's part of the review process for  
18 completion, is this information on the permit. And can  
19 we look and see.

20 There's a block that says soil type, what type  
21 of soil is out there, or they submit a percolation test  
22 results with it, which tells us something about the soil.  
23 It's up to the local inspector to have some knowledge of  
24 the area that he is also -- that he has responsibility  
25 over to know if this is reasonable.



1                   And for someplace that -- where he knows it's  
2 very tight clay soils, and somebody comes in and says,  
3 "Hey, I got sand out here," then, you know, it's -- once  
4 again, it's his professional judgment, his  
5 professional -- his professionalism of knowing his job  
6 should tell him that, well, wait a minute, this doesn't  
7 sound right.

8                   I need to know -- I need to either ask for  
9 additional information or I need to go out and do a site  
10 visit prior to issuing the permit. So --

11                  MR. WALKER: Or, if he feels strong enough,  
12 actually deny the permit.

13                  MR. SCHALL: But --

14                  MS. GADZIA: But what I'm saying is to okay a  
15 permit, to give out a permit, you've already evaluated  
16 the design, and the inspection is only to ensure that it  
17 was actually designed -- or built the way it was  
18 designed, correct?

19                  MR. SCHALL: Yes.

20                  MR. WALKER: The way it was approved.

21                  MS. GADZIA: The way it was approved. Okay.

22                  MR. SCHALL: And a lot of time this is the  
23 first time that the inspector will actually see the site  
24 conditions, and he may go out there and find the site  
25 conditions were not correct, and at that time he has the



1 opportunity not to approve the system, because --

2 MS. GADZIA: But he's already got his permit.

3 MR. SCHALL: Then you have to go back, was the  
4 information that was submitted on the permit false or  
5 correct. If it was false information, then there is, you  
6 know, recourse to void a permit.

7 MS. GADZIA: So does that happen very often?

8 MR. WALKER: Yes.

9 MS. GADZIA: It does.

10 MR. SCHALL: It happens, maybe not very often.

11 MR. WALKER: No, but it does happen.

12 MS. GADZIA: So it seems like -- I mean, okay,  
13 so there needs to be more up front work to make sure that  
14 what it's -- the way it's going to get built is the right  
15 way.

16 MR. WALKER: Yes. That's correct.

17 MS. GADZIA: To do it up front, right?

18 MR. SCHALL: (Nods head.)

19 MS. GADZIA: Okay. Thank you.

20 MR. SIMPSON: Further questions?

21 MR. ADDY: I'd like to add one thing to her  
22 scenario.

23 MR. SIMPSON: Please.

24 MR. ADDY: You've got your permit, you've got  
25 your house --



1 MS. GADZIA: I think.

2 MR. ADDY: -- 70 percent completed, right?

3 Now we go to install the system. The  
4 Department denies it because of soil conditions or  
5 something else.

6 Now there's only two steps that you have to go.  
7 Maybe possibly you can do advanced treatment, secondary  
8 treatment, or holding tank, which are both real  
9 expensive, but yet you built that house on the basis they  
10 approved the permit, and now you're looking -- instead of  
11 \$2,500, \$3,000, you're looking in the neighborhood of  
12 \$15,000 to \$20,000.

13 MS. GADZIA: Where does the responsibility of  
14 that lie? You're having it installed, right, by somebody  
15 who is licensed to do that?

16 Isn't that up to -- I mean, so there's a real  
17 need for standardization and education and certification,  
18 it seems like.

19 MR. WALKER: I might add that if that's the  
20 case, then obviously the original submittal on which the  
21 original approval was granted was way off base, and we go  
22 back and inquire with that contractor why did you tell it  
23 was sandy soil or something like this when indeed it was  
24 bedrock. There's --

25 MR. ADDY: But yet --



1 MS. GADZIA: Is it usually that black and  
2 white, though?

3 MR. ADDY: There's no protection for the  
4 consumer. That's what I'm getting at.

5 MR. WALKER: Yeah. The homeowner can be  
6 trapped in that if he has an unscrupulous contractor.

7 MR. ADDY: The agency is not protecting the  
8 consumer against even our industry or -- I mean, you  
9 know, it's an open -- open field. And that should be  
10 part of the responsibilities, to protect the consumer.

11 MR. WALKER: As well as part of the  
12 professional responsibility of contractors.

13 MR. ADDY: Sure.

14 MS. GADZIA: Yeah.

15 MR. SIMPSON: Thank you, Mr. Addy.

16 Is there anybody else from the public who wants  
17 to ask some questions?

18 Please identify yourself.

19 MR. BECKER: I'm Don Becker with San Juan  
20 County Home Builders and Medallion Corporation.

21 CROSS EXAMINATION

22 BY MR. BECKER:

23 MR. BECKER: Madam Chairperson, Hearing Officer  
24 and Board, thank you for allowing me to speak to you.

25 One of the problems that I'm having with the



1 fee arrangement is about five years ago the ED came to  
2 San Juan County and promised three things. They promised  
3 an educational program, more frequent inspections, not  
4 total inspections, but more frequent inspections, and a  
5 TAC committee where we would be able to have people hear  
6 our complaints.

7 I'm sorry. I'm nervous.

8 MR. SIMPSON: Mr. Becker, I don't want to pile  
9 on here, but again, we're asking questions of these  
10 witnesses, and if you want to ask them if they recall  
11 those promises and what happened to those promises,  
12 that's the way to turn it into a question.

13 MR. BECKER: Actually I'm going there.

14 MR. SIMPSON: Okay. Sorry.

15 MR. BECKER: My question is this.

16 What promise do we have now if we give them  
17 this fee that we'll get the promises they're making to us  
18 today, that we will actually see fruition from the  
19 promises which we did not receive on the first go-around?

20 I realize a lot of you folks have come on board  
21 since, and I'm just real curious why we should trust you  
22 the second go-around.

23 MR. KORANDA: We have said that we would add  
24 employees with fee revenue, seven employees total. And  
25 those employees would be located in the field to do



1 actual liquid waste program work, and one of those  
2 employees would be in San Juan County.

3 I think I can guarantee some degree of  
4 improvement.

5 MR. BECKER: That's it?

6 MR. KORANDA: Yes.

7 MR. BECKER: Okay.

8 In San Juan County we have three inspectors and  
9 one office manager. You have taken -- one of those  
10 persons has transferred to another department. You have  
11 not fulfilled -- or filled that position in seven months.  
12 Obviously that reduces the amount of inspections that the  
13 rest of us can receive.

14 If it takes seven months to fulfill -- or to  
15 fill that position, which is still not full -- filled,  
16 how long do you think it's going to take us to get one of  
17 the five new inspectors on-line, first of all, to fill  
18 the position that's vacant for seven months, and then,  
19 second, to give us that extra inspector that you're  
20 promising with the money?

21 MR. KORANDA: I am familiar with the vacancy in  
22 the Farmington office, that we intend to fill that  
23 vacancy. That is a general fund position. We anticipate  
24 being able to fill the fee-funded positions by the  
25 schedule we presented in testimony.



1           MR. BECKER:  You held meetings around the state  
2     pertaining to what you're trying to accomplish today.

3           Why would you not include, in a major growth  
4     area like Farmington, San Juan County -- why would you  
5     not have a meeting there?

6           MR. WALKER:  We conducted them in Albuquerque,  
7     Santa Fe, Roswell, Las Cruces.  We were -- it was just  
8     the decision that our management made at the time.

9           MR. GHASSEMI:  Let me follow up on that.

10          May I?

11          MR. SIMPSON:  Please.

12          MR. GHASSEMI:  The question that I would like  
13     to follow up on would be, did he have an opportunity to  
14     provide an input to the process before you guys got here  
15     today?

16          MR. WALKER:  He did, but I would have to  
17     qualify that by either traveling to Santa Fe or  
18     Albuquerque, which would have been the two closest  
19     locations of the meetings that were scheduled.  There was  
20     not a meeting in Farmington.

21          MR. BECKER:  And I would have had to be  
22     notified.

23          And this is not the time, but I would ask the  
24     question -- and you didn't bring any of this up, so I'm  
25     not sure I can ask this question, so somebody can jump in



1 and stop me.

2 But it seems like a lot of information is being  
3 fed backwards through the system to your field office.  
4 Your field office is asking San Juan County Home Builders  
5 TAC committee questions about information we're receiving  
6 through our chain about upcoming events in the ED's  
7 movement towards fees and so forth.

8 Would that not seem somewhat backwards to what  
9 we -- it should be coming the opposite way. We shouldn't  
10 be having to push this water uphill. It should be coming  
11 downhill.

12 Could you possibly explain why that's taking  
13 place?

14 I mean -- and I realize that question is  
15 probably not the right time, but it is a question that  
16 seems somewhat bothersome, that the Four Corners area is  
17 not receiving this information through the ED office,  
18 we're receiving it from another chain in a total  
19 different department.

20 MR. KORANDA: I have announced to all the  
21 bureau chiefs and district managers the fact that this  
22 hearing is going to be held today, and I'm puzzled if  
23 that word did not get to all the employees in my  
24 division.

25 MR. BECKER: Did you also announce to every



1 office manager that we're going to conduct these meetings  
2 in the places and locations and at times about fee  
3 structure?

4 In other words, what I'm getting at is a while  
5 back you held meetings in -- I'm sorry, I forget all the  
6 places -- Albuquerque, Las Cruces, lots of different  
7 places.

8 My question is, was that announced to your  
9 office managers?

10 MR. KORANDA: I don't know the answer to that.  
11 I was not here. But perhaps someone else does.

12 MR. WALKER: I do recall talking with Dave  
13 Tomko, who is the supervisor in the Farmington area, of  
14 the meetings in general, and so I know he knew about it.

15 MR. BECKER: Just as a matter of record, and  
16 you can quickly object here, I told Dave Tomko about the  
17 last meeting that was canceled. He didn't even know it  
18 was being put on.

19 The only other question I have is -- one of you  
20 gentlemen made a statement that ED is accepting some  
21 responsibility for systems installed.

22 What portion of responsibility or liability are  
23 you accepting?

24 It's always been standard with the CID and the  
25 State that they were just an inspection agency and they



1 were not accepting any responsibility. We, as  
2 installers, may want to know exactly what part you're  
3 accepting responsibility for, so when problems come  
4 along, we can come back and address it to you.

5 Can you just give me a number, like from 1 to  
6 100, what percentage you're willing to accept?

7 MR. WALKER: I'm not aware that -- I don't  
8 recall saying that we accepted responsibility.

9 MR. BECKER: Actually you said what if ED is  
10 inspections -- inspects a system, they are accepting some  
11 of the responsibility for the system installed. You said  
12 that today.

13 I was just -- you know, I was just wondering  
14 what part of it you were going to accept.

15 MR. SCHALL: The Environment Department's  
16 responsibility for a system is when we do an inspection  
17 that it is installed in accordance with the permit that  
18 was issued and not -- we have no responsibility as far as  
19 the system functioning, because that is a function of  
20 maintenance and operation.

21 You know, what we're saying is that we issued a  
22 permit for a system to be constructed in this manner and  
23 this system was constructed in this manner. And that is  
24 the responsibility of the Department. That is -- then  
25 the homeowner at least knows that the contractor did



1 indeed execute his end of the construction properly.

2 But as far as the system lasting six months,  
3 six years or 60 years, no, unfortunate -- we cannot take  
4 responsibility. And even a contractor really can't take  
5 much responsibility other -- you know, because of the  
6 operating, maintenance issues involved with any of the  
7 systems.

8 MR. BECKER: One last question then. I really  
9 appreciate you bearing with us.

10 When -- I've been putting in systems for 29  
11 years. When the CID inspected our systems, they charged  
12 us \$30. Today you're coming in front of this Board and  
13 asking for \$100.

14 Number one, why did we drop the \$30, and why --  
15 your numbers don't quite work out, so I was curious why  
16 did we get to \$100? Where did the \$100 number come from?

17 MR. KORANDA: The statute put a limit on the  
18 fee level. As I understand, there were public meetings  
19 held, and out of those meetings came the decision to  
20 charge the \$100 amount.

21 I cannot speak to CID or what they charge or  
22 what their other sources of funding may have been or what  
23 conditions were at that time. I don't know that.

24 MS. NOSKIN: I have a follow-up question.

25 So, okay, you got your averages. Okay. And



1 let's say it was a conventional permit. You said it was  
2 \$210.

3 And then at your meeting you said, "Okay. \$100  
4 sounds good. So this is how much money it's going to  
5 generate. So now we're going to get \$700,000 if we get  
6 7,000 permits. So that can pretty much staff up seven  
7 people and gives us a contingency of 25 percent"?

8 Is that how you figured it out, or --

9 MR. KORANDA: I don't know the exact exchange  
10 that took place at the public meetings, but I know that  
11 they ended up with a decision made on the fee amount and  
12 it was based on public input. But I don't know the  
13 details of that input or how they eventually reached that  
14 decision.

15 But we did have for conventional systems, for  
16 example, the option of -- if the average was 210, 209, I  
17 mean, that would be my first choice, considering my  
18 desire to improve the system. We could get more for more  
19 money. But it ended up not that way.

20 MS. NOSKIN: Mr. Walker, you don't have any  
21 recollection of how \$100 -- I'm having a little bit of an  
22 issue over the arbitrariness of these numbers. So --

23 MR. WALKER: Of the -- I think the \$100 --  
24 actually a fee slightly higher than that was chosen as a  
25 starting point, and in the discussion and reaction from



1 the public meetings, the input received, it -- from the  
2 reaction, \$100 seemed to be an agreeable number to most  
3 of the public.

4 And that particular fee produced an adequate  
5 amount of money to enhance the program. We were never  
6 trying to pay for it totally. So we never approached it  
7 in a way of total cost recovery.

8 MS. NOSKIN: Well, then did you come in and  
9 say, "We absolutely -- the bare minimum we need are seven  
10 people, and if we don't get \$100 for this kind of thing,  
11 we can't go below that, and we have some leeway above  
12 that"?

13 Is that -- I mean, it just sounds like you took  
14 this, threw it out to the public, everybody said, "Well,  
15 okay, a hundred bucks," and then that's what you agreed  
16 on. I mean, as opposed to something -- you know, I'm not  
17 convinced that you don't need \$200, and I'm not convinced  
18 you need \$100.

19 You see what I'm saying?

20 MR. WALKER: Correct. Yes.

21 MS. NOSKIN: Because what you've presented is,  
22 "We took this average, and we subtracted some amount by  
23 it, and everybody said, hey, that sounds good, and it's  
24 not based on anything, we need seven people, we need  
25 fifteen people."



1           I don't really know how many people you need,  
2 because, frankly, when you say you're going to increase  
3 this program by five people, what it sounds like is  
4 that's not going to get what you need to get.

5           So even if you do the numbers, you still have a  
6 backlog. So that increases. And even if you get 70  
7 percent of that backlog, you still have a higher number  
8 than you were left with, blah, blah, blah.

9           So if you can give me some basis for your  
10 number, I would really appreciate it.

11           MR. WALKER: Well, we looked at what we would  
12 need to enhance the program in a reasonable and beginning  
13 fashion.

14           And we looked at the counties that were  
15 experiencing high growth and determined approximately,  
16 you know, initially to get the program off the ground,  
17 because, you know, we didn't perceive that we were going  
18 to be able to get 100 percent of what we needed.  
19 Starting at the position of zero permit fee, we were  
20 obviously not going to get the public to agree to some  
21 very high fees.

22           So we approached it in light of looking at what  
23 reasonably we could do to enhance the program,  
24 particularly with the need to provide these services in  
25 these fast-growing counties. Other parts of the state,



1 they were handling quite well. So it was based upon  
2 looking at what the most immediate workload means were.

3 From there, of course, we established a basic  
4 budget. That was actually given to Mr. Koranda's  
5 predecessor, Mr. Tito Madrid. And -- but no decision  
6 really had been made on a particular fee.

7 Once the legislative cycle was over and we had  
8 the authority, we went back and used that information to  
9 choose a starting point basically for public discussion.

10 During the public discussion we had people  
11 that, of course, didn't want any fee, some wanted a lower  
12 fee, and there were people that actually wanted more fee.  
13 So this is somewhat of a compromise of all those points  
14 of view.

15 To be honest, it was not based on a large  
16 cost/benefit calculation type of thing, because we were  
17 looking at more of supplying what might be needed just to  
18 provide that initial basic enhancement to get this  
19 concept off the ground.

20 MR. GHASSEMI: But I'm sure you can appreciate  
21 where she's coming from.

22 MR. WALKER: I certainly can.

23 MR. GHASSEMI: Because if it's not needs  
24 driven, then you will have the comment that was just  
25 earlier mentioned, "What kind of assurances are you



1 giving me?"

2 MR. WALKER: Right.

3 MR. GHASSEMI: And that's what Dr. Noskin has  
4 said, was it a need-driven kind of analysis?

5 MR. WALKER: Partially. But I would also have  
6 to say that we also tried to perceive what the traffic  
7 would bear in beginning a starting point in our  
8 discussions.

9 MR. KORANDA: We did provide for this in a way.  
10 There is a periodic review provision in the regulation  
11 that provides for a report to the EIB every three years.

12 MS. NOSKIN: And I appreciate that. Whether  
13 I'm here or not, I appreciate it.

14 MR. KORANDA: And we do have some ability to  
15 come to the EIB and obtain an increase in fees and still  
16 be within the statutory limit.

17 MS. NOSKIN: Thank you.

18 MR. WALKER: I might just add a slight  
19 follow-up.

20 This is all dependent, of course, each year on  
21 how many applications we receive, and that will, of  
22 course, always be determined by the general condition of  
23 the building industry and how many new houses are built,  
24 these types of things.

25 So we've also tried to plug into that that we



1 are not using 8,000 permits as our basic number, we are  
2 using a much lower amount, so that we can take a more  
3 conservative approach. We don't want our ongoing income  
4 to be from this, because we don't think judging it upon  
5 some very, very good economic years the United States has  
6 had is going to be typical.

7 MR. SIMPSON: Mr. Becker.

8 MR. BECKER: I'm finished.

9 Thank you very much, gentlemen.

10 Thank you, Board.

11 MR. SIMPSON: All right. A couple of things.

12 Let me just ask from members of the public, is  
13 there anybody else who wants to question the Department  
14 witnesses?

15 All right. Okay. There's somebody in the  
16 back.

17 Hang on a second. Just let me sort of give you  
18 a road map here of what's going to go on.

19 Mr. Clarke has expressed interest in asking  
20 some rehabilitative questions of his witnesses after the  
21 public is done questioning them. However, we have  
22 Mr. Felter --

23 MR. FETTER: Fetter.

24 MR. SIMPSON: Fetter. I couldn't tell if that  
25 first one was crossed or not.



1           Mr. Fetter has a time constraint. He needs to  
2 be out of here by 3:30. The Board members need to take  
3 five.

4           So let's do this. Let's have a very quick  
5 break, we'll get back, and we'll take care of Mr. Fetter  
6 first. He's going to give his direct testimony and be  
7 open to questions. Then he can leave. And then we can  
8 have you go ahead and question the witnesses, and then  
9 we'll phase into Mr. Clarke's rehabilitative questions.

10           MR. CLARKE: And, Mr. Hearing Officer, I'm  
11 reserving that right. To expedite the process, the  
12 Department may not have redirect. It's going to be a  
13 long day for everybody.

14           MR. SIMPSON: Okay. Let's take five minutes  
15 then.

16           (Proceedings in recess.)

17           MR. SIMPSON: Back on the record.

18           Ms. Kery, go ahead.

19           MS. KERY: Thank you, Mr. Hearing Officer.

20           Madam Chairwoman, members of the Board, my name  
21 is Susan Kery. I'm a lawyer with the law firm of  
22 Sheehan, Sheehan and Stelzner here in Albuquerque, and I  
23 represent Infiltrator Systems, Incorporated.

24           We filed a notice of intent to present  
25 testimony in a timely fashion, and Mr. Kelley Fetter is



1 here today to present our direct testimony.

2 Thank you very much.

3 KELLEY V. FETTER

4 having been sworn, was examined and testified

5 as follows:

6 DIRECT TESTIMONY

7 MR. FETTER: Madam Chairperson, Mr. Hearing  
8 Officer and members of the Board, thank you for allowing  
9 us to address you.

10 My name is Kelley Fetter, and I work for  
11 Infiltrator Systems, a manufacturer of liquid waste  
12 disposal systems.

13 To summarize my qualifications to testify, I am  
14 a professional engineer registered in the States of New  
15 Mexico, Texas and Colorado. I have a bachelor of science  
16 degree in civil engineering from the Colorado School of  
17 Mines.

18 I've been employed with Infiltrator since  
19 December of 2000 as a zone sales manager, and my primary  
20 duty is to manage liquid waste disposal system sales and  
21 promotion for an 11-state region.

22 In both my capacity as zone sales manager and  
23 along with my engineering experience, I am knowledgeable  
24 of the technology of the liquid waste disposal systems  
25 designed and manufactured by my company. I am also



1 knowledgeable of the permit fees charged by other states  
2 for liquid waste disposal systems.

3 I am here today to offer testimony to show the  
4 reasonableness of the liquid waste treatment and disposal  
5 fee regulation proposed by the Community Services Bureau  
6 of the New Mexico Environment Department.

7 Infiltrator manufactures liquid waste disposal  
8 systems that are conventional options to stone and pipe  
9 leach fields. Like gravel systems, the Infiltrator  
10 product is a soil absorption system installed in a trench  
11 and connected by pipe bringing effluent from a septic  
12 tank.

13 The Infiltrator system includes installation of  
14 a hard plastic chamber to create storage space for the  
15 effluent prior to infiltration. The chamber bottom is  
16 completely open, and the chamber sidewall is louvered,  
17 allowing effluent to infiltrate into the soil with  
18 maximum efficiency.

19 In order to understand Infiltrator's great  
20 interest in any regulation pertaining to liquid waste,  
21 including the fee regulation now before the Board, it is  
22 important to understand Infiltrator's leadership position  
23 in the field of liquid waste disposal.

24 Infiltrator has been in business since 1987.

25 13 million chambers have been installed in all 50 states,



1 Canada and throughout the world. Each month 12,000 new  
2 Infiltrator Systems are installed. Our company provides  
3 more engineering support to the country than the United  
4 States government.

5 Infiltrator has a very strong presence in New  
6 Mexico. After more than 10 years in New Mexico, 440,000  
7 chambers are in use in approximately 27,000 New Mexican  
8 homes with a performance rate better than 99 percent.

9 These statistics show Infiltrator is an industry leader  
10 in liquid waste disposal systems in the state.

11 Infiltrator agrees with the objective of the  
12 liquid waste fee regulation before the Board, which is to  
13 provide fees to meet expenses to administer and operate  
14 New Mexico's liquid waste treatment and disposal program.

15 Groundwater pollution is a major concern in New  
16 Mexico. Funding the Community Services Bureau as  
17 proposed so it can adequately perform all of its  
18 statutory and regulatory functions will help alleviate  
19 groundwater pollution caused by aging or improperly  
20 maintained liquid waste disposal systems.

21 Further, funding the program as proposed will  
22 help meet the purpose of the program to reduce the  
23 potential for hazard to public health from exposure to  
24 disease organisms and contaminants in untreated sewage.

25 Pursuant to the proposed regulation, the permit



1 fee for a conventional system will be \$100. Conventional  
2 system is defined in the proposed regulation as an  
3 on-site liquid waste system consisting of a septic tank  
4 and a subsurface soil absorption system with gravity  
5 distribution of the effluent constructed in accordance  
6 with the liquid waste disposal regulations.

7 Infiltrator chambers are subsurface soil  
8 absorption systems that meet this definition, and,  
9 therefore, persons installing our chambers will be  
10 assessed the \$100 permit fee.

11 We believe this fee is reasonable for the  
12 following reasons.

13 First, the Board and the Environment Department  
14 are under a legislative mandate to establish and collect  
15 on-site liquid waste system fees that are no -- excuse  
16 me -- that are no more than the average charged by the  
17 contiguous states to New Mexico for similar permits and  
18 services.

19 It is our understanding from the Community  
20 Services Bureau staff that the fees proposed by the  
21 Environment Department comply with this legislative  
22 mandate and that the proposed fees are comparable to  
23 similar fees charged to neighboring states.

24 Secondly, Infiltrator chambers are installed in  
25 all 50 states. Therefore, we are knowledgeable of the



1 permit fees charged throughout the nation. Our research  
2 shows that the fees proposed by the Environment  
3 Department clearly are within the range of fees charged  
4 throughout the United States.

5 By way of illustration, the permit fees for  
6 conventional systems in other western states, besides  
7 those that are contiguous to ours, are as follows:  
8 Southern California, the fee ranges anywhere from \$50 to  
9 \$150 depending upon the county.

10 Idaho, the fee is \$100 to \$250 depending upon  
11 the county.

12 Kansas has a fee charge of \$50 to \$150, again  
13 dependent upon the county.

14 Montana, \$100 to \$250, county dependent.

15 Oregon has a flat fee statewide of \$705.

16 In Washington, the fees are set by each of the  
17 39 counties, but by way of illustration, Spokane County  
18 assesses a \$320 application fee and a \$225 installation  
19 permit fee, so that fee totals to over \$500.

20 Wyoming, the fee is \$75 statewide except in  
21 Laramie County, which is where Cheyenne sits. That fee  
22 is \$210.

23 In our experience in all 50 states, we do not  
24 know of any states or counties which do not charge permit  
25 fees.



1           In conclusion, based on the reasonableness as  
2 well as the necessity of these fees, Infiltrator is happy  
3 to support the permit fee for conventional systems as  
4 well as other fees contained in the proposed regulations.

5           On behalf of Infiltrator, I appreciate this  
6 opportunity to present my testimony today supporting the  
7 proposed fee regulation.

8           Thank you.

9           MS. GADZIA: Thank you.

10          MR. SIMPSON: Questions by Board members?

11          Mr. Clarke or anybody from the public?

12          MR. CLARKE: Mr. Hearing Officer, the  
13 Department doesn't have any questions for this witness.

14          MR. SIMPSON: Members of the public?

15          You're finished.

16          MS. KERY: Thank you.

17          MS. GADZIA: Anyways, thank you very much.

18          MS. KERY: Thank you very much, and thank you  
19 for accommodating Mr. Fetter's schedule. I appreciate  
20 that.

21          MR. FETTER: Yes. Thank you very much.

22          MS. KERY: Is Mr. Fetter excused to leave?

23          I'll remain for the rest of the hearing.

24          MR. SIMPSON: I think so. Yes.

25          MR. GHASSEMI: He's leaving?



1           I was going to ask a question, but I was going  
2 to wait until I hear from the rest of them. So I'm going  
3 to ask a question now.

4           May I?

5           MR. FETTER: Sure, please.

6           MR. GHASSEMI: Is there a competitive advantage  
7 that your company will gain by having this fee? Are  
8 there different molds that the other folks would have,  
9 the other manufacturers would have, that would give them  
10 a competitive disadvantage over your system?

11          MR. FETTER: No. Providing the fees are  
12 applied to everyone in an equal fashion. It doesn't give  
13 us an advantage.

14          MR. GHASSEMI: Thank you very much.

15          MR. FETTER: It doesn't give us a disadvantage.

16          MR. GHASSEMI: Thank you very much.

17          MR. FETTER: Um-hum.

18          MR. SIMPSON: Mr. Duran.

19          MR. DURAN: I guess I would just try one  
20 question along the lines of commissioner -- or the  
21 member.

22          MR. SIMPSON: Please.

23                                   CROSS EXAMINATION

24 BY MR. DURAN:

25           Q. Does your company specialize more in advanced



1 treatment product versus conventional?

2 A. Not at this time.

3 Q. Do you have intentions to do that, or is that  
4 the directive?

5 A. I don't know what they're planning in  
6 Connecticut. To further explore that, we do fund a  
7 tremendous amount of research across the board in  
8 environmental waste and liquid waste disposal. So we  
9 have knowledge and understanding of those systems.

10 MR. DURAN: Thank you, Mr. Hearing Officer.

11 MR. SIMPSON: Mr. Crespin.

12 MR. CRESPIN: If I could just -- Mr. Fetter  
13 brought up all this about fees all over the region here.

14 Under the UPC book, which was the foundation of  
15 this when we originally did it, a permit fee for septic  
16 tank is 40 bucks.

17 MS. GADZIA: In what state?

18 MR. CRESPIN: New Mexico. This is the code  
19 book that's adopted in the State of New Mexico, Uniform  
20 Plumbing Code. And the fee schedule is \$40 for a septic  
21 tank.

22 MS. GADZIA: That's a different deal.

23 MR. FETTER: That's different.

24 MR. SIMPSON: All right.

25 Mr. Summers.



1           MR. SUMMERS: A couple questions, since you  
2 raised it in your testimony.

3                           CROSS EXAMINATION

4 BY MR. SUMMERS:

5           Q. One is, has your system been granted a  
6 reduction in drain field size based on your technology?

7           MR. CLARKE: I would object to that question.  
8 I mean, our approval for a reduction is not relevant to  
9 this proceeding. It may become relevant when we look at  
10 the technical regulations. So I would object to that  
11 question.

12           MR. SIMPSON: Mr. Summers, is this related to  
13 the competitive advantage they're --

14           MR. SUMMERS: Yeah. That was the issue that  
15 was raised, and since -- he raised it in his testimony.  
16 I believe he asserted that his system is some percentage  
17 effective and --

18           MR. CLARKE: No. That is not in his testimony.  
19 It's --

20           MR. SUMMERS: Well, I believe we can go back on  
21 the tape.

22                           Was there a statement made about the efficiency  
23 or the effectiveness of the system?

24           MR. SIMPSON: Hold on one second.

25                           Let me take a look at his notice of intent.



1                   MS. NOSKIN: Mr. Hearing Officer, but does that  
2     pertain to the fees?

3                   MR. SIMPSON: Well, the issue is propriety of  
4     the fees, but I think underlying that is Mr. Fetter's  
5     credibility, and part of the credibility analysis is  
6     whether or not he has a financial interest in his  
7     testimony.

8                   MS. NOSKIN: I see. Okay. Thank you.

9                   MR. SIMPSON: All right. If we look at page 2,  
10    he states Infiltrator is an industry leader in liquid  
11    waste disposal systems in New Mexico. He states the  
12    performance rate of his chambers is 99 percent.

13                  And maybe, Mr. Summers, considering the hour,  
14    you'll tell us exactly how we get from that fact to some  
15    inroad into his credibility.

16                  MR. SUMMERS: Well, I think the question I was  
17    raising, again, is whether his company ever received some  
18    sort of different treatment so it would make his system  
19    perhaps more preferable in the scheme of things, his  
20    particular -- and I think someone was just asking him  
21    whether there was an advanced treatment scheme, and if I  
22    understood his answer correctly, correct me if I'm wrong,  
23    it's more conventional-type systems.

24                  Is that correct?

25                  MR. FETTER: Our system in New Mexico is



1 considered a conventional system.

2 MR. SUMMERS: Right. It doesn't work with  
3 advanced treatment.

4 MR. SIMPSON: Okay. Well --

5 MR. FETTER: No, sir --

6 MR. SUMMERS: I'm sorry.

7 MR. SIMPSON: Go ahead and pursue your inquiry.

8 Q. (BY MR. SUMMERS) So I simply ask if your  
9 system would give favorable treatment in leach field size  
10 reduction.

11 A. No. We -- based on the definition that has  
12 been proposed to us -- I say proposed, adopted by the  
13 State -- we are considered with our chambers an  
14 equivalent to a gravel and pipe system, depending --  
15 dependent upon the application of Darcy's Law and some  
16 other things that would make this a technical discussion.

17 Q. Well, let me ask it another way then.

18 So would the size of a gravel and perforated  
19 pipe system and the size of a disposal field for the same  
20 system on the same site be exactly the same, if they used  
21 your product?

22 MR. CLARKE: And I renew my objection on  
23 relevance to this proceeding.

24 MR. SIMPSON: Go ahead and answer.

25 MR. FETTER: The geometry and the footprint is



1 not equivalent. The relative area is based upon  
2 definition from the Department, and that is considered  
3 equivalent.

4 Q. (BY MR. SUMMERS) What I was asking is length  
5 times width times height.

6 Are those exactly the same for the two types of  
7 systems?

8 A. They are not.

9 MR. SUMMERS: Okay. Thank you.

10 MR. SIMPSON: Further questions?

11 MS. KERY: Can I just have one rebuttal  
12 question, please?

13 MR. SIMPSON: Please.

14 MS. KERY: Based on the answer to your question  
15 to Mr. Summers regarding the sizing issue in New  
16 Mexico -- based on that sizing issue, do you get any  
17 advantage with regards to the fee structure now proposed  
18 by the Department?

19 MR. FETTER: We do not.

20 MS. KERY: Thank you.

21 MR. SIMPSON: All right.

22 Mr. Fetter, I think you're finished.

23 MR. FETTER: Okay.

24 MR. SIMPSON: Unless we have other surprises.

25 MR. FETTER: I'm going to wait.



1 MR. SIMPSON: Okay.

2 MS. KERY: Thank you very much.

3 MR. SIMPSON: And I think it's your turn now.

4 Why don't you come up and identify yourself.

5 Mr. Clarke, your witnesses are on the hot seat  
6 again.

7 MIKE KORANDA, STEVE WALKER and BRIAN SCHALL

8 having been sworn, were examined and testified

9 further as follows:

10 MS. SUGGS: I am Bobbie Suggs, Johnny's Septic  
11 Tank Company, Las Cruces.

12 And I just wanted to ask a quick question,  
13 please.

14 CROSS EXAMINATION

15 BY MS. SUGGS:

16 MS. SUGGS: My question is, guys, is there any  
17 way -- if the Board decides to approve the fees, is there  
18 any way that we could somehow get around having to bring  
19 you a certified check or a money order for every permit?  
20 Is there --

21 MR. WALKER: The type -- the type of payment  
22 that we can accept is not dictated by the liquid waste  
23 program. That has been dictated by our Administrative  
24 Services Division within the Department. At this time  
25 this is what they have told us that they will accept.



1                   I do know that other parts of the state accept  
2 payment in other forms, but currently our Administrative  
3 Services Division has limited us to these forms of  
4 payment.

5                   MS. SUGGS: Is there a reason for it, or --

6                   MR. WALKER: I'm not sure exactly. I have not  
7 discussed this in detail with them.

8                   MS. SUGGS: Okay. I really would like to  
9 object to that, you know, if there's any way to work on  
10 that. I think it's going to present a hardship, and I  
11 would really appreciate it if you could maybe do  
12 something about that part of it.

13                  MR. WALKER: Certainly.

14                  MS. SUGGS: Okay. Thanks.

15                  That's all I have.

16                  Oh, I'm sorry. Okay.

17                  MR. SIMPSON: All right.

18                  So have we heard from everybody who has  
19 questions for the Department?

20                  Okay.

21                  Mr. Clarke, do you want to ask any rebuttal  
22 questions?

23                  MR. CLARKE: Mr. Hearing Officer, I think just  
24 to -- out of the sake of brevity, we will forego any more  
25 questions of our witnesses. So we will pass the table



1 to, I guess, opponents or others that wish to speak on  
2 the issue.

3 MR. SIMPSON: Okay.

4 Did you have a question?

5 MS. MOJTABAI: Mr. Hearing Officer, I do have  
6 one final question for the Department.

7 MR. SIMPSON: Oh, please.

8 MS. MOJTABAI: And that is, will the technical  
9 regulation revision that is coming up -- you've kind of  
10 split it. My understanding is that now we're looking at  
11 fees and then later it will be the technical revisions.

12 Will those revisions address some of the  
13 procedural aspects of getting a permit that could address  
14 the accountability, turnover time, service issues, that  
15 many of the folks have raised today?

16 MR. KORANDA: We're going to try to address any  
17 issues like that well in advance of the technical reg and  
18 not wait until that reg is considered before we certainly  
19 address permitting times and notification of customers  
20 that their permit is approved or not. I intend to take  
21 care of that.

22 MS. MOJTABAI: Okay.

23 So what you're -- will you be proposing  
24 additional regs besides just the 10-day reg, you know,  
25 that will put maybe some other checks in place that -- I



1 don't know. I'm just trying to see what your plans are  
2 regarding those accountability and service-type issues.

3 MR. KORANDA: Accountability is critical to me  
4 personally, and maybe it's being very new to government,  
5 but I really am going to pursue any accountability  
6 issues. I think -- I can assure that the employees that  
7 are hired to be retrained to work in this program will  
8 work in this program.

9 We will have an enhancement of the program.  
10 And I have to be certainly honest in my statement,  
11 however, that we will not, even with this fee revenue  
12 enhancement, be able to achieve 100 percent of the  
13 inspections. But I intend to try in other ways to still  
14 do that.

15 I think I have management and organizational  
16 issues that I can consider to help accomplish that on  
17 both sides, both increasing revenue and also reducing  
18 cost.

19 MS. MOJTABAI: Thank you.

20 Thank you, Mr. Hearing Officer.

21 MR. SIMPSON: All right.

22 Anything further for the Department witnesses?

23 This is your last chance.

24 Okay.

25 MR. CLARKE: Mr. Hearing Officer, just as a



1 procedural matter, the regs don't speak to this exactly,  
2 but I would move at this time that the exhibits that the  
3 Department has presented to the Board be made part of the  
4 record or the record proper.

5 MR. SIMPSON: Okay.

6 What Mr. Clarke has done is he's asked that the  
7 Board as a formal matter take into its record the  
8 exhibits that he's offered.

9 If anybody has an objection based on their  
10 authenticity, not necessarily what they say, please state  
11 it now.

12 Okay. I don't see any objection, so they'll be  
13 admitted.

14 (Exhibits NMED 1 through 6 were marked for  
15 identification and admitted into evidence.)

16 MR. SIMPSON: All right. We had the sign-in  
17 sheets up front when -- it's ancient history now, but way  
18 back this morning everybody signed in when they came in,  
19 and that's the way I'm going to call you up so you can  
20 give your direct presentation.

21 We heard from Mr. Fetter, and next on the list  
22 is Randy Traynor.

23 And, Mr. Traynor, if you're representing an  
24 association or something, please identify that.

25







1                   It's like you get your bill from the  
2 restaurant, you find out there's three glasses of wine  
3 that you didn't order. Well, you say something about  
4 that, and they take that off. There's some recourse  
5 there.

6                   And I think what we're being asked to do is  
7 just trust them. That's what this -- that's just  
8 basically what it is.

9                   You know, I have to just state flat out I'm  
10 truly impressed with the presentation that was put forth  
11 by the Department today. They were up here for a solid  
12 five hours, and they were asked a number of questions,  
13 and I could be wrong, I think there was only one question  
14 they couldn't come up with an answer for. That's pretty  
15 impressive.

16                   And I, you know, just -- you know, my gut just  
17 tells me nothing's quite that good.

18                   I do -- I've done a lot of work with making  
19 applications to various authorities, and the response  
20 that, "Well, that application is incomplete," and it's  
21 just like a catch-all. I mean, that's just one that will  
22 cover all my sins.

23                   The statement that, well, after 10 days, if you  
24 don't get that permit, then, by God, you can walk in and  
25 get it. You know, it doesn't work that way. I can



1 promise you.

2 I mean, there are things in the Subdivision Act  
3 that says if a City or a County -- or a County doesn't  
4 act on a subdivision within 60 days, your subdivision is  
5 approved. And that was given to the industry as like,  
6 "Here, we're doing something for you."

7 I can promise you that has never happened, and  
8 that will never happen, because they'll always find a  
9 reason to say, "Well, that application is incomplete."  
10 Something.

11 And I'm not faulting them for it. I'm just  
12 saying there's a basic issue of trust and follow-through  
13 here that we're talking about.

14 You know, we had previous -- the New Mexico  
15 Home Builders had previously stated we'd like to see the  
16 fees brought forth to this Board along with these other  
17 regs that we've been talking about. Let's just see the  
18 whole thing.

19 We spent all day talking about the way things  
20 are today, and there's just some problems. You know,  
21 it's probably just mechanical, about how things get  
22 processed through.

23 You know, my gut tells me that it's not going  
24 to be any easier once we adopt these new regulations, and  
25 we've seen a set of them. Nothing tells me that we're



1 going to increase the standard and improve the  
2 efficiency. It's like taking new standards and plugging  
3 into the same old system. It's going to fail.

4           And we're all going to be back here raising  
5 hell about, you know, "Why didn't this happen? How come  
6 I can't get my inspections? How come I can't get my  
7 permits in time?"

8           And I would like to encourage this Board,  
9 whatever they do today, to really think and encourage the  
10 Department to think about the system that they've  
11 established for doing this.

12           I do a lot of work with builders and  
13 developers, and nine times out of ten they don't really  
14 care what the standards are. Just tell me what they are  
15 and apply them consistently, because time is money, and  
16 that's the enemy here.

17           And if I know if I do this it's going to go  
18 through the process very smoothly, and we can't count on  
19 that. It's very hard to schedule subcontractors to show  
20 up on the sites at the right time, much less an inspector  
21 who may or may not show up based on his workload that  
22 day.

23           Well, that doesn't help me. You know, okay, I  
24 didn't have my inspection. I guess I should be thankful  
25 for that. But I didn't know that until that day when the



1   guy just didn't show up.

2                   And I'm just asking you to really think hard  
3   about the system that we're plugging the fee and all  
4   these programs that we've talked about -- we're going to  
5   plug them into the same old process, the same old CPU or  
6   whatever, and it's going to fail.  It's going to overload  
7   it, and it's going to fail.

8                   And we're all going to be mad, and we're all  
9   going to be disappointed, and we'll all be back here  
10  doing this again.

11                   And, you know, it bothers me by all accounts,  
12  it's 50 percent of our groundwater pollution, it's the  
13  second greatest polluter of -- liquid waste is the second  
14  greatest polluter of, I guess, our groundwater here.  And  
15  I don't see us doing -- I haven't heard anything today  
16  about trying to take care of that.

17                   We've got everything that's set on this fee and  
18  future programs and future permitting, but nothing is  
19  going to go back and take care of this -- if it's such a  
20  terrible problem, it's got to be.  We're all drinking it.  
21  According to Link, it's pretty nasty stuff out there.

22                   Well, shouldn't we really focus on trying to  
23  take care of what's in the ground as we move forward?

24                   I don't see anything, I haven't really heard  
25  much about what we're going to do.



1           And I would just strongly encourage you to do  
2 that. I would prefer that you hold off until we bring  
3 the whole thing together. Let's see what the package  
4 looks like. I think that's reasonable.

5           You know, just a couple of technical things.

6           On the payment of the fees, what Bobbie said  
7 earlier, either through a certified check or money order,  
8 the Administrative Services Division, that department, I  
9 guess, doesn't want it.

10          Well, tough, you know. I mean, just because  
11 they don't want it? I mean, what's practical here? I  
12 mean, even Internal Revenue Service will allow me to  
13 write a check or to pay with my credit card if I want.

14          But for a liquid waste permit fee, I've got to  
15 have a certified check or money order, and I really  
16 haven't had any good reason other than some administrator  
17 says, "We don't want that."

18          I just think from a practical matter that's  
19 just an obnoxious requirement, I think. I think that  
20 could be taken out.

21          The other thing is periodic review. And I get  
22 some sense as to why that's in there, and I think that's  
23 good. But I -- you know. I kept reading it and reading  
24 it, and it says, "Shall review the fee, fees, the fees,  
25 the fees."



1           You know what we really ought to be analyzing  
2   are the services for which the fees are being charged,  
3   not the fee. You know, the fee obviously, it appears,  
4   is -- this is just part one of the fees, because that's  
5   basically what they felt they could get away with, based  
6   on Mr. Walker's comments, I guess. That's kind of what I  
7   gathered from his comment. Okay.

8           It may be two years from now, maybe we'll be  
9   looking at another fee increase. Maybe it's justified.  
10   I don't know.

11           But I'd rather talk about the services that  
12   everybody's getting, because the groundwater is  
13   important. This isn't about, you know, contractors and  
14   people who sell liquid waste treatment services or  
15   consulting or things. It has nothing to do with that.  
16   It's about our groundwater.

17           And I think we ought to be looking at the  
18   services that we're providing rather than just the fees,  
19   that if we could add just "shall review the services for  
20   which the fees are charged and the fees" in this part.

21           And we kind of lose the reason why we're  
22   charging the fee. And I'd like us to focus on that, you  
23   know. As part of the base budgeting -- performance-based  
24   budgeting, they're supposed to make a report to the LFC,  
25   I think, quarterly. You know, maybe that's a good start.



1           I would like to encourage this Board to really  
2 get the Division more proactive in coming up with their  
3 inspectors, how much time do they spend inspecting pools  
4 versus liquid waste, so we can try to get handle on it.  
5 It's just a basic management thing.

6           And I guess finally what I would say is like  
7 there's no reason that we need to split this room. This  
8 isn't us against them. It's kind of cast that way. And  
9 I guess we sometimes kind of want to do that to  
10 ourselves. I'll get in this corner, and you get in that  
11 corner. There's the Department there, and there's the  
12 private sector there, and we're going to go knock heads.

13           You know, we could be the best champion the  
14 Department had. We can help them get fee -- budget  
15 increases. We can help them get employees and improve  
16 their budget. But that's a two-way street.

17           And, you know, I found out about this very  
18 late. And obviously the presentation that was made  
19 earlier, a lot of time was spent talking about the New  
20 Mexico Home Builders Association, and "We met with them,  
21 and we talked with them, and we addressed their  
22 concerns."

23           I'm glad they did. I'm glad they listened to  
24 us. We actually suggested to them that they prepare a  
25 business plan. Think of it like a business plan, like a



1 business. They thought that was a great idea, and they  
2 kind of did it. And I think that was a good first start.

3 Well, they thought it was important enough to  
4 address our comments, but it wasn't important enough to  
5 tell us about this thing.

6 I'm sorry. I don't read the legals every day.  
7 It's not secret who we are. It's no secret that we've  
8 had concerns, because they were prepared today to talk  
9 about things we had talked to them about a year ago. Yet  
10 we didn't find out about this until this week. Maybe  
11 that's my fault as their lobbyist. Maybe. I don't know.

12 But it's like there's no secret out here who  
13 the players are, who the stakeholders are, who the  
14 interested parties are.

15 And again, whatever you decide to do, if you  
16 approve the fee today, you do. That's within your powers  
17 to do that. If you decide to wait until we get the other  
18 set of rules, you know, that would be my preference.

19 But in any event, I would like to get a  
20 commitment from the Department that they're going to  
21 notify everybody who was here today, because we're  
22 basically the stakeholders.

23 We have people that drove in from Farmington,  
24 we have people that drove in from Las Cruces. We've  
25 spent all day here, and they've got a long drive back.



1 And I think some of you have some long drives tonight,  
2 too.

3           So, you know, if we could be involved in this  
4 thing a little earlier. I don't know what's gone on with  
5 this. I've never testified in this format before. It  
6 was a little different. It's interesting. I see some  
7 advantages here for me as a lobbyist here. I have to  
8 think about this a little bit more.

9           I think Pat has done a nice job. He's been  
10 very gentle with us for us rookies here.

11           And I guess that's it. I just want you to  
12 really stop and think about what you heard here today and  
13 are we really ready -- is the Department really ready to  
14 implement this.

15           And I would answer any questions you might  
16 have.

17           MS. NOSKIN: I have some questions.

18           MR. GHASSEMI: Go ahead. I'll come back. Go  
19 ahead.

20           MS. NOSKIN: My -- I have a first question.

21           You've already spent by being here today well  
22 over a hundred bucks. Okay.

23           MR. TRAYNOR: I didn't buy lunch for anybody.

24           MS. NOSKIN: No. I mean just by being here.

25           And I'm assuming most of you that are out



1 there, you know, this is money you're spending here. And  
2 you're fighting a fee of \$100 for a septic tank.

3 And I guess this is my question.

4 And I understand the accountability issue, but  
5 aside from that, aside from that thing, why is it that  
6 you're fighting so hard against what is actually a much  
7 lower fee than any other industry has to deal with in any  
8 other kind of regulated community?

9 MR. TRAYNOR: I think we're trying to get  
10 someone to pay attention to us, and so we're taking every  
11 opportunity we've got to stand up and be heard.

12 MS. NOSKIN: So pay attention on the  
13 accountability issue?

14 MR. TRAYNOR: The accountability. The fee  
15 is -- you know, it's \$100. You're right. It's not a  
16 great deal of money. That will be passed on to the  
17 consumer. It's not the \$100, I don't think. I think  
18 it's the accountability issue.

19 MS. NOSKIN: Okay.

20 MR. TRAYNOR: And this has allowed us a forum  
21 in which to -- we're here -- you know, I will tell you a  
22 lot of discussions has been made on the little Senate  
23 Bill about repealing the fee. We were assured, "We'll  
24 let you know, we'll keep you involved." It didn't  
25 happen. Did not happen. Okay.



1           There's a lot of people that, I guess, are in  
2 charge of that, and it just didn't make its way down.  
3 But it didn't happen.

4           MS. NOSKIN: Okay.

5           Well, just to let you know, I'm kind of  
6 wishy-washy on the fees, whether I think they're  
7 justified or not, but I can tell you the money order  
8 check thing -- the money order, cashier's check thing, I  
9 would never stand up against an administrative office if  
10 that's what -- the kind of money they want, they want.

11           So just to let you know, that's sort of a lost  
12 cause if you're talking to me.

13           But some of this accountability I think is very  
14 interesting.

15           MR. TRAYNOR: That's one no vote.

16           MS. NOSKIN: No. Just the accountability issue  
17 I'm very interested in.

18           So thank you.

19           MR. TRAYNOR: Thank you.

20           MR. SIMPSON: Other questions?

21           MS. GADZIA: Just a couple of quick comments.

22           One of your -- and I understand the  
23 accountability, as well, and I understand that there's a  
24 level of mistrust there, and I -- and I'm surprised that  
25 you didn't get notified about this meeting and kind of



1 kept up to date.

2 But can you relate poor service or slow service  
3 with staffing needs?

4 MR. TRAYNOR: You know, I can't, but I think we  
5 have people that are here that are in the industry that  
6 can. And I've asked them to just tell us about how they  
7 see the world, what they see. They're out in the field  
8 every day, they're out doing this, and I just asked them  
9 to just tell their story, what they see out there. Maybe  
10 that will answer your question.

11 MS. GADZIA: You also used at the beginning a  
12 car analogy, saying, "We're being asked to buy a car that  
13 we've never seen before, pay the money up front."

14 But have any of the contractors that you  
15 represent gotten fee permits and inspections and -- up to  
16 this point? Have you been getting -- has your  
17 industry -- has the organization that you represent been  
18 getting services right now?

19 MR. TRAYNOR: Oh, yeah. What I was referring  
20 to --

21 MS. GADZIA: So you've been driving for free.  
22 You've been driving from the taxpayers. We're taxing for  
23 those. I just want to make that clear, that you've been  
24 getting services already, and --

25 MR. TRAYNOR: Well, I do pay tax. Yeah.



1 MS. GADZIA: Yeah. We all do. We all do.

2 MR. TRAYNOR: Right.

3 MS. GADZIA: So I'm saying -- it hasn't been  
4 for free. I mean, you're not paying and not getting  
5 anything. You have been getting something all along, but  
6 you've been paying. You've been paying indirectly, as  
7 all of you have.

8 MR. TRAYNOR: Through CID, we're paying there.  
9 And I'm not arguing the fee really.

10 MS. GADZIA: And the other issue you brought up  
11 was why aren't we addressing the groundwater  
12 contamination that already exists.

13 And it just seems to me that what the  
14 Department is trying to do is get on top of new septic  
15 tanks that will create -- will add to that, and hopefully  
16 the problem that does exist will get addressed in time.

17 MR. TRAYNOR: I think it's easier for them to  
18 do the new rather than it is --

19 MS. GADZIA: Sure. Yeah. But I just wanted to  
20 make those comments.

21 MR. SIMPSON: Further questions?

22 MR. GHASSEMI: I've got one question. I guess  
23 a comment and then a question.

24 First, as a resident of New Mexico, we  
25 appreciate the kind of effort you put forward to bring in



1 the future brightness into the state in terms of  
2 development and all that.

3 But along that, there's always a concern that I  
4 have that you can't -- well, you can't take the time to  
5 go back and fix the old problems, you've got to stop the  
6 problems from continuing to go forward.

7 And while I have not made up my mind on this  
8 specific activity, I have to tell you that I advocate  
9 that, that you just don't go back and say, "Let's go back  
10 and fix everything else." Just we need to stop it now,  
11 going forward.

12 So that's a comment.

13 And then the question to you is based on the --  
14 some of the exhibits that they've provided, they've been  
15 in communication with the Home Builders Association.

16 Now, specifically related to this meeting, you  
17 didn't know about it, or --

18 MR. TRAYNOR: This meeting.

19 MR. GHASSEMI: Just this meeting only.

20 MR. TRAYNOR: Right.

21 MR. GHASSEMI: Okay.

22 MR. SALOPEK: I got a quick question.

23 MR. SIMPSON: All right. Mr. Salopek.

24 MR. SALOPEK: Were you involved in any of the  
25 task force that set up this -- how much time have you



1 spent prior to this meeting dealing with this issue?

2 MR. TRAYNOR: I believe that the association  
3 got involved with this -- I want to say last summer. And  
4 I know that we've had several of our members -- I think  
5 Bobbie sat on the board several years ago, some task  
6 force several years ago, which kind of faded away, I  
7 guess. So I would say maybe actively since a year ago,  
8 about a year.

9 MR. SIMPSON: Any questions from the public, or  
10 from the Department, as well?

11 Please.

12 MR. CLARKE: Mr. Hearing Officer, the  
13 Department doesn't have any questions for this witness.

14 MR. SIMPSON: Thank you.

15 Mr. Summers.

16 MR. SUMMERS: I relish this. It's so rare that  
17 I get a chance to ask Randy a question.

18 MR. TRAYNOR: We're old friends? Is that it?

19 No.

20 MR. SUMMERS: Let me ask you a couple questions  
21 though of a more serious note.

22 CROSS EXAMINATION

23 BY MR. SUMMERS:

24 Q. Number one, you're a registered lobbyist for  
25 the Home Builders?



1 A. Um-hum.

2 Q. And how long have you been a lobbyist for the  
3 Home Builders?

4 A. About eight or nine years.

5 Q. Did the Home Builders Association and you as a  
6 lobbyist have anything to do with the writing of the  
7 impact fee bill that was passed by the legislature?

8 A. Yes, we did.

9 Q. Does the impact fee bill include things such as  
10 sewer or other kinds of wastewater disposal?

11 A. I believe it does.

12 Q. Now, at the time you folks wrote that bill and  
13 submitted it to the legislature and lobbied it and got it  
14 passed, did you hold yourselves to the same  
15 accountability level that you're asking that the  
16 Environment Department be held to for their fees?

17 A. I'm not sure I understand.

18 Q. That is the exact expectations of where every  
19 dollar that was included on those fees was going to be  
20 spent and to make sure that no dollar was spent for  
21 anything other than what it was earmarked for.

22 A. Well, the bill specifically identifies an  
23 accounting process which the local governments -- if they  
24 adopt a fee, they're supposed to account for their -- the  
25 collection of the fee and the expenditure of the fee.



1 Q. Right.

2 So if they levied a fee in that impact fee bill  
3 which you advocated for a stoplight that never got built,  
4 those governments are all held accountable exactly for  
5 that?

6 A. They're supposed to be.

7 Q. Right.

8 So you get a service delivered for every dollar  
9 that's paid into the impact fee comparable to the service  
10 you're demanding from the Environment Department on this  
11 particular fee.

12 A. I'm not sure I understand your point.

13 Q. Just are you holding -- we talked about  
14 accountability. You mentioned this over and over and  
15 over, about services rendered for the dollars levied and  
16 about accountability for those dollars.

17 A. Um-hum.

18 Q. Okay.

19 And I'm saying, are you holding -- in your  
20 discussion here about the Environment Department's \$100,  
21 are you using the same level of accountability that you  
22 used for the impact fee bill which you guys lobbied and  
23 wrote and passed into law, or are you using a different  
24 standard now?

25 A. I guess I -- the bill was very clear as to when



1 someone -- a local government collected the fee, what  
2 they were supposed to do with that fee.

3 Q. Okay. Now --

4 A. So I guess my question is, is it clear here  
5 what the \$100 is to be spent for? I guess that's the  
6 question.

7 Q. Is it clear what the impact fee dollars are  
8 spent for?

9 A. No.

10 Is it clear what the \$100 is supposed to be  
11 spent for? That would be the analogy there. That would  
12 be the comparison.

13 Q. Is it clear what the impact fee dollars are  
14 spent for?

15 A. Well, if you collect X amount of dollars for a  
16 waterline, it's supposed to be spent on a waterline.

17 Q. It's supposed to be.

18 A. Um-hum.

19 Q. Is it?

20 A. To the best of our knowledge, it is. And --

21 Q. So --

22 A. First off, you need to understand there's only  
23 about a handful of communities that have adopted that  
24 legally.

25 Q. Um-hum.



1           A.    And the local governments -- or the local  
2 builders and developers in those local communities watch  
3 that stuff. I haven't heard too many complaints.

4           Q.    So have you routinely gone back and established  
5 accountability for those funds? Have the Home Builders?

6           A.    The locals have. Yes, they have, in Las  
7 Cruces.

8           Q.    And they submit those numbers to make sure that  
9 those governments are spending the dollars exactly that  
10 way?

11          A.    They review those by statute. They review  
12 those, I believe, every three or five years, and they've  
13 gone through that cycle. In Las Cruces they've done this  
14 just recently.

15          Q.    Okay. But that's --

16               MR. SIMPSON: Mr. Summers, I kind of think  
17 we've exhausted that.

18               MR. SUMMERS: Beat that horse?

19               MS. NOSKIN: Way.

20               MR. SIMPSON: You've made your point.

21               MR. TRAYNOR: Just for the record, Mr. Summers  
22 never liked impact fees. So --

23               MS. NOSKIN: Oh, really?

24               MR. SUMMERS: Well, one final question  
25 concerning that.



1                   MR. TRAYNOR: He just said you can't talk about  
2 that anymore.

3           Q.    (BY MR. SUMMERS) Roughly how many dollars are  
4 involved in impact fees as opposed to the \$100 and the  
5 projected income from this fee?

6           A.    I don't know.

7           Q.    Is it a million dollars that are collected in  
8 impact fees annually --

9           A.    Don't know.

10          Q.    -- in the State of New Mexico?

11          A.    Don't know.

12          Q.    No idea?

13          A.    No idea.

14          Q.    So in your presentation to the bill -- to the  
15 legislature there was no estimation of what that might  
16 cost?

17          A.    No, and -- none.

18          Q.    Would it be fair to characterize this fee as  
19 minuscule compared to the impact fees charged around the  
20 state?

21          A.    I don't understand the -- yeah. The --

22          Q.    Well, yes or no. I mean, you -- would that be  
23 fair to characterize it that way, yes or no?

24          A.    Well, it's all driven by the economy, and so  
25 however many number of permits you issue would indicate



1 that. The answer is probably no, it's not the same.

2 MR. SUMMERS: Thank you.

3 MR. SIMPSON: Okay.

4 Any further questions from Mr. Traynor?

5 Okay. Thanks, Mr. Traynor.

6 MR. TRAYNOR: You bet.

7 MS. NOSKIN: I need to make a clarification,

8 though. We are not the legislature.

9 MR. SUMMERS: Thanks.

10 MS. NOSKIN: Thanks. I just wanted to let you

11 all know that.

12 MR. SIMPSON: Mr. Crespin, you're up next.

13 STEVE CRESPIN

14 having been sworn, was examined and testified

15 as follows:

16 DIRECT TESTIMONY

17 MR. CRESPIN: Madam Chair, Mr. Hearing Officer,

18 members of the commission, I was -- I found out about

19 this very late, also, and I'm not here -- I, too, am an

20 ex-regulator. And I know what these guys are going

21 through, when you don't have enough money to do your job.

22 And it's not so much that I'm against the fee.

23 But what I'm hearing when -- originally when this was

24 done, when we did this, I believe, in 1997 --

25 MR. SIMPSON: Mr. Crespin, just let me have you



1 start over again. Tell the Board who you're affiliated  
2 with.

3 MR. CRESPIN: Oh, sorry.

4 MR. SIMPSON: And just your background.

5 MR. CLARKE: I'm sorry, Mr. Hearing Officer.

6 Before you start, I would just like to state  
7 the only parties that have submitted NOIs in this matter  
8 are the Department and Infiltrator. So if this witness  
9 wants to discuss technical matters or wants to talk about  
10 data, I really think that's inappropriate under this  
11 Board's rules of procedure.

12 MR. SIMPSON: Well, we'll see how he goes.

13 MR. CLARKE: I just wanted to raise that to the  
14 Board.

15 MR. SIMPSON: Okay. I understand.

16 MR. CRESPIN: I originally was appointed to

17 Construction Industries in 1995 as a Mechanical Bureau

18 Chief for Construction Industries. In August of this

19 year, I -- or last year, I took a job with Mechanical  
20 Contractors Association as Executive Director.

21 I was asked to come here by Mr. Addy and  
22 Mr. Becker to provide some type of historical background  
23 and to kind of see what's going on and whatnot. And I'm  
24 not here to provide any technical advice in what -- I'm  
25 just here.



1           One of the things that I would like to make  
2 comment about is when we did this originally in 1997, the  
3 Department and the industry all held hands to do this.  
4 There was not this huge wedge that I see here. It  
5 appears that the Department has pretty much said, "Okay.  
6 Now, it's our ball, you're going to play by my rules."

7           It seems to me if the Department had worked  
8 with this industry, we wouldn't be here today, because I  
9 can assure you these men, if they know they're going to  
10 get a better service for their money, they'll carry your  
11 water, because they carried our water.

12           The previous -- I don't know who in this  
13 administration was here when we did it in '97. But these  
14 people all went to Santa Fe. They carried their water.  
15 And I see the Department has driven this huge wedge  
16 between ED and the industry.

17           And I'm asking this Department to bring this  
18 industry back in with them, reorganize a TAC or do  
19 whatever and make them a part of this game, because  
20 you're not doing it. I mean, there is so much animosity  
21 here. We didn't have it years ago.

22           Another issue I have, I oversaw 24 inspectors  
23 statewide. There was not none of this judgment call. We  
24 had a clear, defined code.

25           I've not seen your new regulation. I don't



1 know what it says. But to allow judgment calls out in  
2 the field when your employees don't have black and white  
3 standards to follow just -- there's no equity. It's not  
4 equitable in any way.

5 What else is there?

6 This thing with the money orders. Who does the  
7 government think they are that they won't take a personal  
8 check? I mean, we took tons of personal checks when I  
9 was there.

10 So -- and, also, as Madam Chair said, the  
11 industry's been taking a free ride for nothing. That  
12 free ride was by choice of the Department. They elected  
13 not to take the fee.

14 MS. GADZIA: Well, I didn't say it was a free  
15 ride. I'm just saying it was --

16 MR. CRESPIAN: You know, I fought like crazy  
17 with the Department. I said transfer that fee. And they  
18 elected not to do it.

19 The industry -- you could have said at that  
20 time, "We're going to do this, and we're going to charge  
21 you 75 bucks as opposed to 30 bucks," and I guarantee  
22 you, if you justified it to these people, they would have  
23 carried your water for you. Why they didn't, I don't  
24 know.

25 So that's all I have to say, and I'll stand for



1 any questions on any historical data, how we got where we  
2 are.

3 MR. SIMPSON: Board members?

4 MS. MOJTABAI: I have a question.

5 Mr. Crespin, I understand the Department is  
6 working on some technical regulation revisions.

7 Are you being -- is the industry being involved  
8 in that?

9 MR. CRESPIN: Not to my knowledge. I don't  
10 know. I told you I just found out about this meeting the  
11 other day. You could ask these industry members.

12 MS. MOJTABAI: Well, now you know about it.

13 That's all I have.

14 MR. SIMPSON: Other questions?

15 Any questions from the Department or from the  
16 public?

17 MS. GADZIA: Can I ask one brief one?

18 When did this wedge happen, as you see it?

19 MR. CRESPIN: I kept hearing about it on and  
20 off when I --

21 MS. GADZIA: Because were you involved in  
22 developing the current fee regulations that were proposed  
23 for -- I think that were finished and ready to go to  
24 hearing like in December of 2000?

25 MR. CRESPIN: No.



1 MS. GADZIA: You weren't involved in that  
2 process?

3 MR. CRESPIN: I wasn't involved in any way.

4 MS. GADZIA: So this was -- okay.

5 MR. CRESPIN: Not at all.

6 MS. GADZIA: Okay.

7 MR. SIMPSON: Questions from the Department or  
8 from the public?

9 MR. CLARKE: Mr. Hearing Officer, just two  
10 quick questions for Mr. Crespin.

11 CROSS EXAMINATION

12 BY MR. CLARKE:

13 Q. Mr. Crespin, you testified that the Department  
14 had sort of chose to forego the collection of fees.

15 Are you aware that it was only in 2000 that we  
16 acquired the statutory authority to go ahead and collect  
17 fees?

18 A. Madam Chair, Mr. Hearing Officer, that may have  
19 been, but originally when the transfer from CID to the  
20 Department was taking place, when we were writing it all  
21 up, and these people were here, Link was there, I urged  
22 Mr. Madrid to transfer that fund, because at that time we  
23 did estimates. We estimated 8,000 tanks. I figured that  
24 was \$240,000 a year that would be transferred to the  
25 Department.



1 Q. But --

2 A. That -- originally I asked that fee be  
3 transferred, and the Department elected not to do it.

4 Q. But you're aware, Mr. Crespin, the Department  
5 can't act without statutory authority? Without the  
6 express statutory authority in the Environmental  
7 Improvement Act, which just recently came about, we could  
8 not collect a fee?

9 A. You could have at that time. You could have  
10 been introduced with the statute when it was transferred.

11 Q. We'll have to disagree or --

12 A. Okay.

13 Q. But my point is we only recently achieved this  
14 statutory authority for that.

15 And as far as the wedge issue that you've  
16 raised, and I -- you know, I don't mean to be smart, but  
17 were you in here when Infiltrator testified in support of  
18 the regulation?

19 A. Yes.

20 MR. CLARKE: Okay.

21 Nothing further, Mr. Hearing Officer.

22 MR. SIMPSON: Other questions?

23 MR. SUMMERS: Yes, one question.

24 MR. SIMPSON: Mr. Summers.

25 MR. SUMMERS: Please.



1 CROSS EXAMINATION

2 BY MR. SUMMERS:

3 Q. Steve, as you mentioned earlier, both you and I  
4 were present and helped lobby the change from CID over to  
5 Environment Department, exclusive authority to administer  
6 this.

7 Were you aware that some of us who were  
8 lobbying that bill were explicitly told that the Governor  
9 would not approve fees at the time that bill was in the  
10 legislature because it was regarded as being a new tax  
11 and he had run on a platform of no new taxes? Were you  
12 aware that we were directly told that?

13 A. I was not aware of that. But, Link, let me do  
14 a follow-up on that.

15 When we were doing that -- I was appointed by  
16 this administration. I met with Mr. Chavez of the Tax  
17 and Rev at the time, and I assured them this was not a  
18 new fee, this was not a new TAC, it was merely a transfer  
19 of fees.

20 And they said, "That sounds good to us."

21 So whatever you were told, I was told  
22 different.

23 Q. Well, Bruce King used to say that was a  
24 promise, not a commitment.

25 A. Okay.



1 Q. Okay. So -- well, I'll leave it at that.

2 Thank you.

3 MR. SIMPSON: Further questions?

4 All right. Thank you, Mr. Crespin.

5 MR. CRESPIN: Thank you.

6 MR. SIMPSON: Mr. Becker, you're next on the  
7 list.

8 DON BECKER

9 having been sworn, was examined and testified  
10 as follows:

11 DIRECT TESTIMONY

12 MR. BECKER: I'm Don Becker with San Juan  
13 County Home Builders Association and Medallion  
14 Corporation.

15 The only issue I have with inspections and the  
16 fees that they're requesting is simply this. I'm a  
17 plumbing and mechanical contractor, electrical contractor  
18 and a building contractor.

19 In the plumbing and mechanical world, or CID  
20 plumbing and mechanical world, if I ask for a permit,  
21 number one, I fill out a permit, send it in with my  
22 check, not a money order, just a personal check, send it  
23 off, and I ask for an inspection. With -- for \$109 I  
24 received seven inspections.

25 In this situation I receive one inspection.



1           For \$109 I get inspections within 48 hours.

2           For \$109 I have technical support from CID.

3           My issue to this point has been we do not  
4           obviously get technical support at our level now. We had  
5           some conversations after I asked some questions, and  
6           they've offered technical support, which I really  
7           appreciate. I think they're trying to make that effort.

8           But I personally feel when we were promised  
9           more education, more current inspections, a TAC committee  
10          that we would -- I think that's when the wedge came  
11          about. I think that's when the wedge formed, and that  
12          started creating a problem, because we felt like we, as  
13          the industry, were out here in no-man's-land.

14          We were being inspected by people, by their own  
15          admission from the ED Department, who said, "We don't  
16          know anything about septic tanks, we don't know anything  
17          about disposal systems, we're just given this burden, and  
18          we're not given any money."

19          The problem I have with it is UPC, which is  
20          what we live under as mechanical and plumbing  
21          contractors, says, "You guys should charge us 40 bucks  
22          for that inspection."

23          The state CID's office is giving me seven  
24          inspections for 109 bucks.

25          All of a sudden we have a \$100 fee. It's too



1 perfect of a number. If it had been 49.95, I would have  
2 accepted it a lot better than 100 bucks. If it had been  
3 109.95, I would have accepted it much better than a  
4 perfect \$100. To me that number was picked out of a hat.

5 And I think we started with a number higher  
6 than that. When this first came about, they put a number  
7 out there to see how the industry was going to respond.  
8 And we did not respond accordingly, and so they lowered  
9 the number to 100.

10 Thank you.

11 MR. GHASSEMI: I've got a question.

12 MR. BECKER: Sure.

13 MR. GHASSEMI: Do your constituents currently  
14 receive inspections from this group, from the --

15 MR. BECKER: Yes, we do.

16 MR. GHASSEMI: How is your relationship with  
17 them?

18 MR. BECKER: In San Juan County only, we have a  
19 superb inspection team, but I can assure you they are not  
20 being compensated for the hours they are working. I can  
21 assure you of that, because last Saturday I had an  
22 inspector out, and I'm positive he was not paid to come  
23 out on Saturday. I am positive of that.

24 MR. GHASSEMI: You know, the people, though,  
25 from our perspective, and -- I sit down and listen to



1 your comment about the fact that there is a wedge, and  
2 you just indicated to me that your relationship with your  
3 inspectors are very good.

4 MR. BECKER: That is correct.

5 MR. GHASSEMI: So then supposedly this wedge  
6 that you're saying that's dividing, at least in your  
7 county, is not very apparent.

8 MR. BECKER: It's not apparent in our county,  
9 but to the state level, which is the higher authority, is  
10 where the issues are.

11 For instance, I belong to the San Juan County  
12 Home Builders Association TAC committee which feeds input  
13 into city, state and county government. We do not get  
14 our information from ED. We give information to ED.

15 To me, there is a breakdown somewhere from the  
16 higher government to the local field office. And

17 consequently, we feel like we're -- the field office and  
18 the actual installers are one group and the State and the  
19 governing body are in another group.

20 MS. MOJTABAI: I have --

21 MR. SIMPSON: Further questions -- please.

22 MS. MOJTABAI: I have another question.

23 You had mentioned you get -- for \$109 you get  
24 six inspections.

25 MR. BECKER: Seven.



1                   MS. MOJTABAI: Seven inspections, like it's a  
2 bulk rate or something.

3                   My question is, how do you respond to the  
4 Department's -- this question was posed to the Department  
5 during cross-examination, you know, why is it that CID  
6 or, you know, other inspectors' fees are a lot less than  
7 this.

8                   And their response was, "Well, we're talking  
9 apples and oranges," basically is what they responded,  
10 that "Our inspections -- you know, we're looking at  
11 different design work and" -- do you see from the  
12 ground -- when you're out there and you have the CID  
13 inspectors out there doing their inspections, and then  
14 you have the New Mexico Environment Department inspectors  
15 out doing their septic tank inspections, do you see that  
16 it's apples and oranges?

17                   Or is it -- or is it basically the same amount  
18 of time involved and the same amount of effort involved  
19 in each of these inspections, from your perspective?

20                   MR. BECKER: How about apples and peaches?

21                   There's a little difference, but there's not a  
22 significant difference. Quite frankly, the groundwork  
23 that I have to lay or -- or that has to be laid between  
24 CID and CID's inspectors, state inspectors, and what  
25 we're doing, generally takes 10 to 15 minutes. The



1 travel time is generally the same distance.

2           The inspection process is probably -- a good  
3 inspection takes between 20 and 35 minutes if everything  
4 goes smooth. If it doesn't go smooth, it can be  
5 considerably longer. I would say up to 45 minutes. And  
6 we're talking seven inspections. Obviously when you have  
7 a utility lines inspection, that does not take that long.  
8 It takes five minutes tops.

9           Final -- generally a final is shorter, also,  
10 because we -- as long as we've complied with everything  
11 along the way, what is there really to look at? Just to  
12 make sure we put everything in, and so it's more of a  
13 taste test, for lack of a better term. They're just  
14 looking to make sure it's substantially complete.

15           So -- but in the total time, I would say -- you  
16 can probably help me here, Steve. Probably it takes  
17 twice as long to do all seven inspections, and, of  
18 course, in travel time, for sure, it takes much longer to  
19 do seven inspections.

20           So my only issue is why did we leave the -- as  
21 I said before, the \$30 go down the tubes?

22           UPC says \$40 is the right amount, and all of a  
23 sudden we have a \$100 amount. That's all I'm asking you  
24 to consider.

25           Do I think we need fees? You bet. I think we



1 need fees, because these guys need more money to do what  
2 they have to do. I'll be the first to admit that. I'd  
3 love to see them go out and get some people that aren't  
4 getting permits, who aren't trying to comply. I want  
5 them to go after those.

6 I'm just simply wondering and asking you, as a  
7 board, as a commission, to find out why it's as high as  
8 it is.

9 MR. SALOPEK: I have a quick question.

10 What would you like to see from the Department  
11 if there was a fee increase? What would you expect as a  
12 consumer of their services?

13 MR. BECKER: Actually, I would think, based on  
14 what they have to do and if they really supply us with a  
15 TAC committee and really supply us with education and  
16 really supply us with better inspections, I would like to  
17 see a tiered inspection rate, say X -- 50 -- not the  
18 numbers, but let's hypothetically say if you're doing a  
19 good job, we'll start out at \$55, you're going to put  
20 somebody else on, we'll go to \$65, if you're going to put  
21 education into the bill, we'll give you \$75, and tier it  
22 into effect.

23 And I wouldn't have a problem with that. Just  
24 like Steve said, if you'd have come along and somebody  
25 would have come and talked to us and said this is the



1 reason we want \$75, I would have carried the water.

2 MR. SALOPEK: Thank you.

3 MR. SIMPSON: Any further questions from  
4 Mr. Becker?

5 MR. BASSETT: I got a question.

6 MR. SIMPSON: And actually we haven't heard  
7 from you before, so could you identify yourself?

8 MR. BASSETT: I'm Gene Bassett with E. C.  
9 Bassett Construction. I'm a septic tank installer or  
10 septic system installer.

11 CROSS EXAMINATION

12 BY MR. BASSETT:

13 Q. Of the systems that you have put in, how many  
14 have got inspected in the last two or three years?

15 A. Very few. Very few.

16 MS. NOSKIN: So most of yours get -- you get  
17 the permit without the inspection?

18 MR. BECKER: Yes.

19 MS. GADZIA: He's good guy.

20 MS. NOSKIN: You're a good guy.

21 Q. (BY MR. BASSETT) If that continues, and you're  
22 having to bill the customer the 100 bucks, then what's  
23 going to happen?

24 I mean, you're not going to get the services if  
25 they haven't been able to perform. It ain't getting any



1 better. They can't fill the field office that you got  
2 the one vacancy.

3           So as in your testimony earlier, what do you --  
4 I mean, is it \$5,000? 50, 60 permits? I mean, that  
5 gives up \$6,000, \$10,000 worth of systems, or permits  
6 that have never been inspected at the current rate, I  
7 mean, if they got their \$100 fee?

8           A. Actually I have an answer for that. I'm afraid  
9 I would come to this Board and cry like a baby and  
10 complain like --

11           MS. GADZIA: Oh, please don't.

12           MR. BECKER: -- unbelievable, because if you  
13 grant those folks \$100 per inspection, and you come along  
14 and allow them only to do 70 percent of those  
15 inspections, I would come to you and ask for 30 percent  
16 of my money back for the inspections you did not perform.

17           Because I have to answer to the contracting  
18 world that I deal with and the homeowners, and it's awful  
19 hard to come in front of this Board and say, "Give me  
20 \$100, and I'm going to give you something back, but some  
21 of you aren't going to get something back. And so you  
22 just contribute to me \$100."

23           Somebody -- there's six of you. Somebody on  
24 that Board is not going to like me, because somebody is  
25 not going to get something for their \$100.



1           MR. GHASSEMI: Let me understand. I want to  
2 ask you a question, because you lost me, and I want to be  
3 very clear.

4           If you apply for a permit, and you spend \$100  
5 to get your permit, how important is it to you or your  
6 clientele to receive an inspection?

7           MR. BECKER: I think it's important. I think  
8 it's very important if I spend \$100 and by their -- by  
9 the ED's admission that that gives me some protection  
10 that I have complied and I have put in a code-complying  
11 system. I think if you take that money for services  
12 rendered, you should give back to me services.

13           So on a 1 to 10, I would feel that would be a  
14 10 in importance.

15           MR. GHASSEMI: Okay.

16           Relatively speaking, if you had limited  
17 resources, you, as a businessman, had limited resources,  
18 and you either could optimize one scenario or another  
19 one, and rather than receiving a permit in 10 days or  
20 getting 100 percent inspection, to you, as a businessman  
21 in San Juan County, which one is more important,  
22 receiving the permit or have 100 percent inspection?

23           MR. BECKER: I want both. There isn't one more  
24 important than the other. If I'm giving you monies, and  
25 I need an inspection, they're equally as important. How



1 can one be less important?

2 As a businessman in San Juan County, I turn  
3 work down daily because I don't have enough personnel to  
4 do more work. We simply pick and choose because we can't  
5 find trained personnel to do the work.

6 Unfortunately, your man -- these folks are  
7 mandated by a different set of regulations than myself.  
8 I'm mandated by the fact that I can't produce more work  
9 with the staff I have, so I have to turn the work away.  
10 Unfortunately, they don't have that same comfort zone.

11 All I'm saying is if you're going to give them  
12 money, make them accountable to you. Make them come back  
13 and show you that if you gave them \$100, that they put an  
14 educational process in the program. Make them do  
15 inspections.

16 How do we go to the citizenry of New Mexico and  
17 say, "Well, you're one of the 30 out of 100 that just  
18 didn't get an inspection. You have to pay the fees, but  
19 you fell through the cracks."

20 How would you -- it's just doesn't work for  
21 telling a contractor or a customer that you're one of the  
22 few that just didn't get inspected.

23 MS. NOSKIN: I have a question now.

24 MR. BECKER: I'm opening my mouth, I'm getting  
25 myself in trouble here.



1 MS. NOSKIN: I'm going to play devil's advocate  
2 here. Okay.

3 I'm trying to build my house. So does -- let  
4 me first ask you this first question.

5 Does an inspection offer you more protection --  
6 you, as a contractor, more protection than a signed off  
7 permit, because a signed off permit is a signed off  
8 permit, or does an inspection actually offer you more  
9 protection?

10 MR. BECKER: Actually a signed off -- I'm  
11 sorry. An actual --

12 MS. NOSKIN: So you get a permit, and one  
13 permit is with an inspection, and one permit is without  
14 an inspection. I'm just talking about you. Don't talk  
15 about services rendered. I'm just saying for you --

16 MR. BECKER: I want the inspection.

17 MS. NOSKIN: No.

18 But does it offer you more protection if you go  
19 into court?

20 MR. BECKER: Absolutely.

21 MS. NOSKIN: Because I have to say, frankly, as  
22 a homeowner, if it's going to take me three weeks less to  
23 not get the inspection, I would have taken the three  
24 weeks for the piece of paper. I would have.

25 MR. BECKER: Quite frankly, I don't know all



1 your circumstances, but I think possibly that the permit  
2 process was started a little late.

3 MS. NOSKIN: Well, no. That's not what I'm  
4 talking about.

5 What I'm talking about is for a customer the  
6 inspection may not be that important. If they get their  
7 permit, they get their permit.

8 MR. BECKER: So basically you're saying it's a  
9 tax to build your house, it's a \$100 tax, because  
10 basically you're saying we're not going to render any  
11 services, we're just going to take the \$100.

12 MS. NOSKIN: No.

13 You've reviewed the -- you've reviewed the  
14 information brought in by the thing, you've done your  
15 site evaluation, you've done your little checklist, and  
16 you sign off on your permit, so you get a permit for the  
17 100 bucks.

18 MR. BECKER: I have to go with that gentleman  
19 right there, because too many times you'll get out on a  
20 job site, and the soil, even though it's sitting right  
21 next to another parcel, is totally different. And  
22 consequently that inspection process helps to determine  
23 to make sure the --

24 MS. NOSKIN: Okay. So now you've answered my  
25 question. Okay. So it is very important.



1 MR. BECKER: To me it's very important.

2 MS. NOSKIN: Okay. Thank you.

3 MS. GADZIA: But isn't that up to you as an  
4 installer to know all that? I mean, you got to know all  
5 that anyway, right?

6 MR. BECKER: I have to know what all?

7 MS. GADZIA: That the soil is different right  
8 here and the -- and you're designing the system. They're  
9 not. You are.

10 MR. BECKER: You're absolutely right. I'm  
11 designing the system.

12 MS. GADZIA: You're knowing the soil. You're  
13 looking at the specific site.

14 MR. BECKER: You're absolutely right. I am  
15 designing the system. And I am also checking for the  
16 soil.

17 But I paid \$100 to have somebody come and make  
18 sure what I see is what they see, which I think, by the  
19 way, is a little overcharged, as I explained to you. And  
20 if I'm not going to get an inspection, right, and if I --  
21 why don't -- then why don't we have a fee set based on  
22 this.

23 If you're not going to do an inspection, if  
24 you're just going to do the formality and the paperwork,  
25 just charge me \$25, because I'm not getting the



1 inspection. All I'm receiving is a paperwork filing fee  
2 and administrative costs.

3 MS. GADZIA: Well, I was under the impression  
4 that they evaluated the design on paper. They're giving  
5 you some technical support every time you get a permit,  
6 because they're evaluating what you've decided -- how you  
7 designed that system into what specific area that you're  
8 putting it in.

9 So they are providing you with some technical  
10 experience there and some technical support and saying  
11 for their concerns this looks designed well.

12 MR. BECKER: And I'm saying I don't have a  
13 problem with the fee in that area. I just don't think  
14 that fee should include travel time, on-site inspections,  
15 which included to be four hours, three to four hours per  
16 trip. If you're not doing all that, if you're just  
17 simply doing some paper, then it should just be a fee for  
18 a paper, not three or four hours of time that they're not  
19 having to expend.

20 MS. GADZIA: I understand.

21 MR. SIMPSON: Mr. Summers, your turn.

22 MR. SUMMERS: I have a couple questions.

23 CROSS EXAMINATION

24 BY MR. SUMMERS:

25 Q. Let me first say that I'm completely



1 sympathetic, because I do what you do. But I think maybe  
2 to help clarify, I'm going to ask you some questions.

3 You said you've been installing for 29 years?

4 A. 29 years.

5 Q. 29 years.

6 So I presume you know how to operate a transit.

7 A. Yes.

8 Q. Measure elevation.

9 A. Yes.

10 Q. You know how to dig a hole to an exact depth.

11 A. Yes.

12 Q. Have you done that a few times?

13 A. Once or twice.

14 Q. You know how to glue pipe together.

15 A. Yes.

16 Q. You know everything basically involved with  
17 wastewater treatment systems, right? Well, I mean as far  
18 as installing septic tanks, you've done enough --

19 A. Sure.

20 Q. -- you feel pretty comfortable?

21 Okay.

22 Have you ever been sued over a septic tank?

23 A. No.

24 Q. Have you ever had a complaint filed against  
25 you?



1 A. Yes.

2 Q. And you worked it out and got it resolved to  
3 the satisfaction of the parties?

4 A. Yes.

5 Q. It doesn't happen every week, does it?

6 A. No.

7 Q. Or every year even?

8 A. One in 29 years.

9 Q. Okay.

10 So should maybe the Department feel some  
11 comfort that you personally have been involved with the  
12 system and that they feel some comfort that maybe they  
13 don't need to come and see if you've glued this pipe  
14 together?

15 A. Yes.

16 Q. Okay.

17 Maybe they don't need to come and inspect and  
18 see if you dug that hole exactly to the depth you said  
19 you did?

20 A. That is correct.

21 Q. Because you live and die by your reputation in  
22 the business, don't you?

23 A. Yes.

24 Q. And do a good job, and you're proud of what you  
25 do?



1 A. Most days.

2 Q. I hear you. Okay.

3 MS. GADZIA: Just that one.

4 Q. (BY MR. SUMMERS) But now the stickier issue

5 is, does everybody who works for you in any aspect of

6 installation have a license?

7 A. No.

8 Q. Okay.

9 And so you're not different than anybody else  
10 in the industry, right?

11 A. Not at all.

12 Q. And you said it's hard to find a work force,

13 true?

14 A. That is true.

15 Q. A trained work force?

16 A. (Nods head.)

17 Q. And so the inspection is not so much for maybe  
18 the things that you do, but it might be for the new guy  
19 you hired who maybe is not at the level that you really  
20 hope for, correct?

21 A. That is correct.

22 Q. Do you oversee each and every job that you've  
23 pulled the permit on and you signed for?

24 A. Sir, in 29 years --

25 Q. I'm not giving you a hard time.



1           A.    -- I am the only person except for one tank and  
2 one system to ever been installed that I didn't put in  
3 myself.

4           Q.    Okay.

5                    And so my point would be so the inspection for  
6 a guy like you, who is eminently qualified by experience  
7 and by reputation and all the rest of it -- is it really  
8 that the inspection is so important -- because you  
9 probably illustrated over the years that you do a good  
10 job and that you do it right time after time after time  
11 after time, year after year after year after year.

12                   Why is it so important for you personally that  
13 somebody who's now been working for the Department for  
14 three years come out and oversee the work that you know  
15 in your heart you've done right? Why is that so  
16 important?

17           A.    It's not important.

18           Q.    Okay.

19           A.    What is important is if you charge me \$100, and  
20 I pass that expense on to the contractor, who then passes  
21 it on to the customer, should not be taxed, charged or  
22 overcharged those fees and their commissions and their  
23 profits to get nothing.

24                   If you're going to charge, you should at least  
25 give a service for the monies you charge, and it should



1 equal or at least be in alignment to what CID charges for  
2 inspections and the City charges for inspections, the  
3 County charges for inspections. It should be in  
4 alignment.

5 My argument has never been, not one time, that  
6 you shouldn't have a fee. My argument is I want a  
7 service. If you charge me a fee, I want it to be in  
8 accordance with the fees that the other state, county and  
9 city regulatory agents charge.

10 Q. So if I just -- on that vein, which seems a  
11 little different, do you have an environmental gross  
12 receipts tax in Farmington?

13 A. No.

14 Q. Do you have other incremental taxes that are  
15 charged on each and every home that gets built and each  
16 and every septic tank that gets built?

17 A. I'm sure.

18 Q. I'm pretty sure, too, as I get older. That's a  
19 different fight, though.

20 The question about whether or not you're  
21 getting exactly a penny for every penny you pay in the  
22 whole scheme of the tax structure is probably not  
23 possible for any of us to keep up with, is it?

24 A. Not at all.

25 MR. SUMMERS: Okay. Thank you.



1 MR. SIMPSON: All right.

2 Further questions for Mr. Becker?

3 I think you're done, Mr. Becker.

4 Thanks.

5 MR. BECKER: Thank you. I'm done.

6 MR. SIMPSON: Mr. Bassett, you're next on the  
7 list.

8 GENE BASSETT

9 having been sworn, was examined and testified  
10 as follows:

11 DIRECT TESTIMONY

12 MR. BASSETT: My name is Gene Bassett, from  
13 Edgewood, and I own and operate E. C. Bassett  
14 Construction, and I, too, am a wastewater operator.

15 I've been in this process since day one, trying  
16 to get out of CID to EID, on a committee to rewrite the  
17 rules and regs, been up to the legislature. The only way  
18 I could ever get a meeting with Pete Maggiore was at the  
19 legislature and stuff like that.

20 I have a problem with the Department charging a  
21 fee and not getting a service, is one.

22 I have a problem with what they -- Link was  
23 there, too. Bobbie and Steve was there at the -- when we  
24 changed -- when we was drafting the new regs and about  
25 getting it out of CID to EID. And so there was Tito



1 Madrid, there was Delbert Bell and some others down  
2 through the line there. They all floated in and out.

3 And, you know, they promised us like the TAC  
4 committee and stuff like that, continuing on the new  
5 rules and regs and stuff like that.

6 And after it got out of CID, we went to the  
7 legislative hearings, and we supported them, because, you  
8 know, they had promised us stuff like that. We had a TAC  
9 committee here with Steve and them that we could get  
10 things -- you know, if we had a new product or stuff like  
11 that, we could go to the TAC committee and ask them for  
12 changes or updates or something like that.

13 We don't have that anymore.

14 And so by them promising us this stuff, as in  
15 the TAC committee and things like that, we -- you know,  
16 they come, and they ask us, "Would you support us?"

17 And we tell them, "Okay. Yeah. We'll support  
18 you." Because we kind of had a deal.

19 Like me and Mike, and I don't know so much  
20 about Bobbie, but you get the CID and the EID, and you  
21 get these conflictions, that, "Well, we're the guys that  
22 do the inspections, but we're not responsible for the  
23 system when it's sitting on top of the ground."

24 So you go to EID, and they say, "Well, that's  
25 CID's problem."



1 Well, you know, that gets to be an old -- beat  
2 that horse every day that nobody's taking responsibility,  
3 and you put it into one agency, maybe you get something  
4 done.

5 So when Delbert and like Tito and them called  
6 and asked, "Well, would you support it going over here?"

7 And Delbert, he was kind of more behind that  
8 than anybody. And I met him up there at the legislature  
9 there in probably '94, '95, and, you know, I told him,

10 "Yeah. That sounds like a pretty good idea. As long as  
11 we get to have the TAC committee and stuff like this, I  
12 have no problem."

13 "Oh, yeah. We'll do all that."

14 Well, that's all history. They don't have a  
15 TAC committee. They have nothing.

16 As far as my inspections, I probably haven't  
17 had over -- since Steve Walker's left, I probably haven't  
18 had over a dozen inspections, and he's been gone two  
19 years or three years in the last two or three years.

20 Well, not so much that I need an inspection,  
21 but if they're going to charge a fee, I would like at  
22 least half of my inspections.

23 And then what my major push is, is there's  
24 nothing in this deal here when -- and I now see that,  
25 that it's not put through the legislation, and into the



1 bill, that this fee is designated out so much. And I  
2 don't want them to squander the fee, this 100 bucks, that  
3 I may get 50 percent inspection. I want some education.

4 Okay?

5 Right now this state has nobody here. There's  
6 not one guy here in this state that is in the liquid  
7 waste department that you can go get education from, that  
8 I can. I mean, I don't know of anybody right now the  
9 Department has.

10 If I want to find something out, I can hop a  
11 plane -- I do, and, you know, I go to like Laughlin,  
12 Texas. They got the training centers and stuff like  
13 that.

14 And I've talked to Koranda, Mike back here, you  
15 know. I says, you know, "This outfit, it's almost sank."

16 And I told Maggiore this up there in my meeting  
17 with him in the legislature. I told Pete, I says,  
18 "You're under 2000, it's just above water, you're over  
19 2000, it's sank. You can't make inspections. You  
20 practically don't have nobody that understands the  
21 systems that I've seen."

22 And so back to the training and stuff, I would  
23 like the fee to be designated so much of it to go to  
24 education. Because you guys, as the women, that sit up  
25 here on the Board, on a monthly basis almost, you can run



1 out here around Moriarty, where I'm from, Edgewood there,  
2 and you see this gal.

3 She's got a mobile home, she's got two or three  
4 kids running around there, her husband's off working, and  
5 she's got a backed up sewer, and she's row -- the kids  
6 are crying, she's crying, and there's -- we ain't got no  
7 inspection. Well, how come? All this.

8 Well, if they just make half the inspections,  
9 and then the other half of the money, use it for  
10 education, to help the installers in the industry and  
11 their people.

12 I mean, we can get a new guy come through their  
13 office, and he come out and look at a septic tank, and he  
14 can't even tell you if it's a septic tank. He don't know  
15 whether it has baffles in it, he don't know whether the  
16 compartments are right. He don't know nothing. It may  
17 have access risers on it, it may not. All that's in the  
18 code book, that it's supposed to have access risers.

19 But here's that lady that's got the kids in the  
20 diapers, can't take a -- go to use the rest room because  
21 it's backed up, and you're out here trying to find a  
22 septic tank that was put in a couple years ago, and it  
23 has no access risers, no inspection, no record of it.

24 You can call Albuquerque office, and, "Well, we  
25 don't even know nothing about it." Don't have any clue.



1           This is just a couple years ago.

2           So as far as the \$100 permit, I told them if  
3 they're -- Tito and them, I says, "We need \$200 or \$300,  
4 as bad a shape as this outfit's in. You got 67 cars on  
5 an average day, only 20 of them can get out of the  
6 parking lot. You guys are in bad shape."

7           "Well, we can't -- Governor Johnson, he did  
8 this and that."

9           And I says, "Well, look, you might as well spit  
10 it out to him."

11           So me and Mr. Addy, we're up there, and them  
12 guys before them hearings, they says, "Why don't you guys  
13 have an organization and get this out to us? We don't  
14 know this. They don't tell us."

15           Well, we says, you know -- I mean, we're  
16 getting screwed in this. Well, we kind of got screwed  
17 around on not having the right wording in there, like on  
18 this fee, what it will be used for. I mean, you got to  
19 spell it right out.

20           Because I think they're going to squander it,  
21 myself, if you guys approve it. We're not going to have  
22 it in the education, where we need it. They're going to  
23 put it out here aside, it's going to go out here. They  
24 may hire the Albuquerque office right here.

25           It's been two months maybe now, maybe it's a



1 month. We ain't got an inspector over there. I don't  
2 know who does the inspections. I haven't seen them.  
3 Maybe they don't do them.

4 Thursday, I was out at Rio Rancho -- no. Let's  
5 see. I was out there Tuesday. Last Thursday I called  
6 for an inspection. I couldn't even get a phone call from  
7 the inspector telling me "I can't show up." I sat there  
8 and sat there.

9 Well, I should have just went ahead and covered  
10 it up. But it was on a new system that I wanted one of  
11 them to show up and look at it.

12 And so, you know, I'm bearing my -- why this  
13 wedge is here, is because they haven't performed like  
14 they promised us, not these guys, they wasn't here. It  
15 was the bunch ahead of them. These guys back here, they  
16 had this -- like the TAC and their guys did make the  
17 inspections for 30 bucks. Most of the time they showed  
18 up. They did pretty good.

19 But I don't want to have a client 100 percent  
20 like I've had of not showing up. I want at least 50  
21 percent or better, and I want something that guarantees  
22 me some type of training center and some type of  
23 education. That's what I want out of this.

24 Okay?

25 That means a lot to me, because I think our



1 industry needs to improve. These guys have all come up,  
2 bounced up here and tells all you guys, well, groundwater  
3 contamination. Well, I don't see it. Okay.

4 They may pull up some study, Las Cruces,  
5 somewheres that, oh, we've got a well that's got a little  
6 bit of nitrates in it. Whoop-de-do. They can't tell me  
7 where it's from.

8 I see most of the septic systems that are in  
9 failure status all surfacing. I can't make my septic  
10 systems -- I can't make most of the water -- the failures  
11 that I see, they're all coming to the ground.

12 So I think they got more problems with the crap  
13 on top of the ground than they got worrying about the --  
14 it will never get to -- most of it will never get down to  
15 the groundwater here in this state. It's too deep.  
16 They've got some report that says it does. I don't  
17 believe it.

18 So on -- as far as my deal is, I need  
19 accountability, just like the rest of these guys. They  
20 haven't showed it. I want something that has something  
21 to do with this education. If they don't show up to  
22 mine, I don't care. I would hope they show up just in  
23 case I have any legal problems, that they did make an  
24 effort to come out and look at it.

25 I know when the guy gets out there he ain't



1 going to know which end of the septic tanks ought to be  
2 front or back. I know he ain't going to be able to  
3 measure the gravel, because they ain't got the equipment.  
4 He ain't going to be able to look at the ditch. They  
5 ain't got the equipment, they ain't going to have it.

6           So I really don't care whether he shows up,  
7 only from that if I ever get sued for some reason, which  
8 I never have been for a septic system, that they would at  
9 least take the time to give the people what they've paid  
10 that 100 bucks for, just a little bit of satisfaction.

11           Because the lady with the kid in the diapers  
12 crying and stuff like that is a miserable sight to see on  
13 a weekly basis or monthly basis.

14           So that's what I got to say. Running out of  
15 air.

16           MR. SIMPSON: All right. Thank you,  
17 Mr. Bassett.

18           Hold on. Hold on just a moment.

19           Any questions from the Board members?

20           MS. GADZIA: Just one quick comment.

21           I have seen men cry over a stopped up sewer.

22           That's all.

23           MR. SIMPSON: Questions from the public?

24           MS. MOJTABAI: I have a quick questions.

25           MR. SIMPSON: Oh, I'm sorry.



1 MS. MOJTABAI: That's okay.

2 The Department proposed a six one -- the five  
3 in-the-field inspectors and, I guess, any  
4 environmentalists that would just look at liquid waste  
5 stuff. They also proposed one full-time position just  
6 for full-time training of Department folks and industry  
7 folks.

8 Do you -- you don't think that's an adequate --

9 MR. BASSETT: Well, they ain't got nobody here  
10 in the state to train them. I mean, it could kind of be  
11 like the guys over here at the city jail -- you know, one  
12 of the guys from the city jail trying to watch the city  
13 jail -- one of the jailers, or what do you call them --  
14 one of the inmates --

15 MS. GADZIA: The fox watching the chicken coop.

16 MR. BASSETT: -- watching the inmates to see  
17 how many would stay in jail.

18 Well, that's about where you would be if you  
19 had one of them. There's nobody in the state that I know  
20 of off the top of my head that could train them.

21 And there may be somebody that could implement  
22 the fee as far as get the fee, you know.

23 And that stupid thing of sending this cashier's  
24 check in, well, you know, that's -- they've all hit on  
25 it. That's stupid. Just let us sign a check like we



1 were always doing with CID. CID would send us a bill  
2 every month on the outstanding ones, and then we'd send a  
3 check in. And they was all numbered.

4 Or you'd go buy so many permits from CID -- you  
5 could give them \$100, \$200, whatever it was, and you  
6 would get like 10 or 15 permits, or, you know, whatever  
7 the deal was.

8 But as far as training, we need some people  
9 from out of state to come in and train these guys,  
10 because there's nobody right here in this state that  
11 can -- that has the knowledge to, you know, train them.  
12 It just doesn't -- it's just not here.

13 MS. MOJTABAI: I have no other questions.

14 MR. SIMPSON: Mr. Summers.

15 CROSS EXAMINATION

16 BY MR. SUMMERS:

17 Q. Gene, you knew you weren't going to get away.  
18 But there are a couple of issues you raised that I think  
19 need to be addressed. One of them is this issue of  
20 liability.

21 Are you familiar with the last paragraph in the  
22 liquid waste rules that says the existence of a valid  
23 permit for a system does not offer any protection against  
24 violation of any other section of the regs except the  
25 existence of a valid permit?



1           Are you familiar with that language that is the  
2 last paragraph in the existing liquid waste rules?

3           A.    A little bit, and that's why I was -- why I  
4 said if they just made 50 percent, it would be okay with  
5 me. I mean, I don't care. I mean, I don't think -- it  
6 doesn't matter to me. If they can't make 20 percent, if  
7 they need to be doing something else, it's fine with me.

8           Q.    If someone -- what I'm asking is, if you have a  
9 valid permit --

10          A.    Um-hum.

11          Q.    -- and there's been an inspection, and you're  
12 still in violation of any other section, or your system  
13 is in violation of any other section, do you have any  
14 other protection from that inspection or that permit?

15          A.    No.

16          Q.    No. Okay.

17                MS. NOSKIN: We get it.

18                MR. SUMMERS: Yeah. It's in the reg, and the  
19 lawyers --

20                MS. NOSKIN: We got it.

21                MR. SUMMERS: -- put it there for a reason, I  
22 presume.

23                There was one other one, but I've forgotten.

24                Thanks.

25                MS. GADZIA: Oh, you got off easy.



1                   MR. SIMPSON: Any further questions for  
2 Mr. Bassett?

3                   Okay. Thank you.

4                   MR. SUMMERS: Can I ask one other one?

5                   I remember what it is now.

6           Q. Gene, have you ever gotten a bad check from any  
7 contractor or home builder in the history of your career?

8           A. No.

9                   MR. BECKER: Attaboy, Gene.

10                  MS. GADZIA: Attaboy, Gene.

11                  MR. SIMPSON: All right.

12                  Okay. Guys, it's getting late. We're going to  
13 try to be concise here.

14                  Dr. Ghassemi has some input.

15                  MR. GHASSEMI: I just want to make a comment  
16 for the record, that I respectfully want to disagree with  
17 you that we don't in the State of New Mexico have the  
18 ability with any of the Environment Department and/or  
19 university system and the other service systems that are  
20 available to provide the leadership to be comparable to  
21 other states.

22                  I respectfully want to disagree with you,  
23 because I think -- knowing what I know of our state, I  
24 think this is a phenomenal state. That doesn't mean we  
25 don't need -- we don't have room for improvement. But I



1 honestly think we do a lot of leading edge material in  
2 this state.

3           And I just wanted to share that with you,  
4 because you are a businessmen in our state, and I want  
5 you to represent our point of view, as well. Just a  
6 comment for you.

7           MR. BASSETT: Can I rebut that a little bit?

8           MR. GHASSEMI: Please do.

9           MR. BASSETT: I'm not saying that there can't  
10 be somebody in the future. I'm saying at the present  
11 time there is nobody. I've talked to the New Mexico  
12 State University, and I've also talked to the extension  
13 service from these other states, as in Texas, Minnesota  
14 and stuff like that. And like Ohio, Minnesota, Texas,  
15 the extension service is like kind of pushing the  
16 industry a little bit along or helping.

17           And so I've contacted the New Mexico extension  
18 about helping the Department, because, I mean, they  
19 can -- the extension service has got a lot of ability to  
20 get out information and stuff like that.

21           And Adrian Hansen and -- the three of us here  
22 the other day, along with Steve and Brian, met with  
23 Adrian Hansen from the State of New Mexico Agricultural  
24 Department and stuff, and we've -- in conversations with  
25 Adrian, you know, they -- we want a training center.



1 Okay. We would like New Mexico State to help with it.

2 And we'd also like to get a contractors'  
3 association going, along with them guys trying to turn  
4 out people down there and that university working at the  
5 training center so that we can bring people up through  
6 the ranks to get them qualified and be the best on the  
7 on-site industry.

8 So it's not that I haven't -- I don't think  
9 there is a place for that. I'm on the telephone at least  
10 weekly to some place looking for help, because I know  
11 this agency needs it.

12 MR. SIMPSON: Okay. Thank you.

13 We're about halfway through.

14 MS. GADZIA: Oh, really?

15 MR. SIMPSON: Mr. Duran, you're up.

16 MR. DURAN: Okay.

17 MS. GADZIA: I'm melting.

18 MARK DURAN

19 having been sworn, was examined and testified  
20 as follows:

21 DIRECT TESTIMONY

22 MR. DURAN: Again, my name is Mark Duran, and  
23 I'm the Executive Director of the New Mexico Manufactured  
24 Housing Association. And the association, of course, is  
25 a trade group. It represents all segments of the



1 manufactured housing industry in New Mexico.

2 I'm sorry I've been back here yawning. I have  
3 a pregnant wife, and last night I was looking for walnuts  
4 and raspberry sauce. I finally found it, and so I  
5 apologize for the yawns.

6 I do want to say that Brian and Mr. Walker have  
7 always been very receptive and had a complete open door  
8 policy to our industry.

9 And as we worked with them, especially Brian,  
10 when we were first -- I'm sorry he can't hear this. When  
11 we were first reviewing these proposed regulations, being  
12 a nontechnical person in this area, Brian stood on his  
13 head, drew pictures, gave analogies, gave examples, did  
14 everything possible to try to help me understand what the  
15 regulations meant, how they were going to be enforced,  
16 why they were being doing -- they were being done the way  
17 they were doing it.

18 So we appreciate that very much.

19 I guess our concern, and it echoes a little bit  
20 what Randy Traynor said, is the -- and I think some of  
21 the commissioners or members, is the arbitrary nature of  
22 the fee, the dollar amount, et cetera. And I think that  
23 you've had some specific examples here as to how  
24 arbitrary that is.

25 I was very disappointed to hear Mr. Walker say



1 that they did a survey and that in the end that survey  
2 included one retailer and that one analysis of that  
3 retailer showed that a manufactured home cost anywhere  
4 from \$62,000 to \$85,000 and that 100 bucks was a small  
5 percentage of that.

6 That doesn't make any sense. That's not  
7 substantive. It doesn't show any comprehensiveness in  
8 terms of the survey. And everything is relative. \$100  
9 to you or I may mean something very different to a person  
10 who is buying a single -- or lower-end multi-section  
11 manufactured home. That just doesn't make sense. That  
12 wasn't a fair statement. That was very, very arbitrary.

13 It's also very arbitrary to say with some so --  
14 some sort of conviction that the Department knows that  
15 there are 30 to 50 percent bad systems out there, yet  
16 when asked a direct question how -- what is their number  
17 of backlog, they can't give the answer. That's  
18 arbitrary. That isn't fair.

19 And I think that that goes -- I bet they'll  
20 come up with those answers, and that's fine. Maybe they  
21 were just kind of hit cold with it, and that's okay. I  
22 mean, they can't have all the answers at any given time.  
23 But it leads to the issue, and that is the arbitrary  
24 nature associated with the process that is taking place  
25 at EID associated with this fee.



1           For one, the site evaluation. The idea that  
2 someone that's had good business practice, someone that's  
3 been known or something like that -- I'm sorry, meaning  
4 about who gets inspected. You know what, let's have 100  
5 percent inspections. Let's inspect everybody. And let's  
6 have nothing associated with sites, reputations, things  
7 like that.

8           Not to say that some people don't have great  
9 reputations and things like that. The world just doesn't  
10 work that way.

11           If there is groundwater contamination, it's not  
12 an issue as to whether or not a permit is more important  
13 than an inspection. The fact is the inspection is going  
14 to help clean up groundwater contamination. I bet there  
15 is groundwater contamination. Let's have 100 percent  
16 inspection to have the best process to help clean up that  
17 groundwater contamination.

18           We can very well -- and maybe we're a little  
19 bit more sensitive in this area, because of the  
20 homeowners that we represent, and you see by some of the  
21 examples it never fails that the poor lady with the two  
22 crying kids lives in a mobile home. We hear that all the  
23 time.

24           But what about the areas where you're saying,  
25 "Oh, that's a good site, it's" -- you know, is it a good



1 site because of the area it's in, because it's sandy or  
2 it's not sandy, or is it -- is it a good site because  
3 it's not okay, maybe we need to do more inspections  
4 because those are maybe lower-income homes?

5           You know, we start to get into some sort of  
6 site profiling and things like that.

7           100 percent inspections, no free ride for  
8 anyone, no -- nothing based on any sort of sites or  
9 anything associated with that.

10           I think the \$100 is very, very important,  
11 because it does mean a lot to a lot of people.

12           It's not fair to sit here and to say that "We  
13 had to start somewhere, and we started higher, and so  
14 everyone should be happy that we're now at a lower  
15 point."

16           The Manufactured Housing Division -- and I'm  
17 sorry that Mark Valenzuela has left. He's the LFC  
18 analyst for EID and used to be the LFC analyst for the  
19 Manufactured Housing Division, knows that the  
20 Manufactured Housing Division is a proven example of a  
21 state agency that has done extensive cost accounting to  
22 show how practically every minute of their inspector's  
23 time is spent, where they're efficient, where they're  
24 inefficient, how long it takes to do an inspection, how  
25 long it takes to do an inspection associated with a



1 complaint, how long it takes to do a permanent foundation  
2 inspection versus another inspection, and then to  
3 associate that with a certain amount of man-hours, to  
4 actually physically show how much more money they'll need  
5 and how many more inspectors they'll need to have 100  
6 percent inspections, and, oh, by the way, if they don't  
7 have that money, they're going to have this amount of  
8 backlog, and once they have this amount of backlog,  
9 here's how they're going to deal with the backlog.

10           And I agree with the member that says at some  
11 point you just wipe it out. That's exactly what the  
12 Manufactured Housing Division did.

13           And so what concerns us, also, is the fact that  
14 there's a lot of arbitrary issues, and it can't be  
15 justified right now what the money is going to be used  
16 for and how many inspections it's necessarily going to  
17 buy us.

18           I guarantee you we're going to -- when the  
19 technical issues come, we're going to be asking more  
20 questions about, oh, now, this \$100 that you really  
21 couldn't explain what it was going to quite get under the  
22 old system, now how are you going to justify enforcing,  
23 interpreting, et cetera, training on these new  
24 regulations for the same 100 bucks?

25           That question's coming. It's going to be the



1 first question we probably pose. And that's why it's  
2 fair to talk about the arbitrary nature associated with  
3 how we came about the \$100, who gets inspected, who  
4 doesn't get inspected, what sites get inspected, what  
5 sites don't get inspected.

6           And for that reason, I'd like to ask you,  
7 whether you vote for the proposal or not, is to place  
8 those standards on the Environmental Improvement Division  
9 to justify, because the standard, as I mentioned earlier,  
10 for them is not just the law had a limit as how high they  
11 could go or that they had to be under what other states  
12 are.

13           I think you and we as citizens hold them to a  
14 higher standard. They have to justify and be reasonable  
15 with the costs they're going to charge and for the  
16 services they're going to provide and, in turn, the  
17 services we're going to receive.

18           So that is the end of my statement.

19           Thank you.

20           MR. SIMPSON: Questions?

21           MS. NOSKIN: I have one question.

22           You said the \$100 -- which I believe is very  
23 difficult. I think it's difficult for anybody if you're  
24 building a house.

25           MR. DURAN: Okay.



1 MS. NOSKIN: But those -- they do a real cost  
2 accounting, and they come up, and they need -- you know,  
3 the least they can get by with is 200 bucks.

4 What happens then?

5 Because that's even more expensive to those  
6 people, to anybody, and those people who can least afford  
7 it. That's even more expensive.

8 MR. DURAN: If -- Madam Chair, if that means  
9 that that's going to throw somebody out of the market for  
10 a manufactured home that is otherwise polluting  
11 groundwater, that is otherwise adding to some sort of  
12 perception that manufactured homes may be in some sort of  
13 way polluting groundwater or have more illegal systems  
14 than anyone else, then so be it. Then so be it.

15 MS. NOSKIN: So you wouldn't have a problem if  
16 the fee is raised as long as it's based on some number?

17 MR. DURAN: That number -- and we've gone  
18 through the same thing with the Manufactured Housing  
19 Division. That permit used to be \$30. They then raised  
20 it to \$60. They do a lot for that inspection. And so  
21 that's why I personally feel that the \$100 is way too  
22 much.

23 If we're -- if the Manufactured Housing is  
24 getting 60, and they're coming in without any cost  
25 accounting and saying it's 100, I think it's too much.



1 But what it is is what it is.

2 We've gone through the same discussion in  
3 regard to impact fees. And I've been asked the same  
4 question by City Councilors and County Commissioners. If  
5 this is what it takes to support infrastructure, or if  
6 this is what it takes to support property taxes for the  
7 school district, for the areas where you guys are  
8 booming, then that's what it takes.

9 MS. NOSKIN: Were you involved in the -- I'm  
10 sorry, I didn't hear, but were you involved in the  
11 meetings a year ago?

12 MR. DURAN: I was involved to a certain extent  
13 in giving our opinions, giving our input, understanding  
14 the regulations. Yes.

15 MS. NOSKIN: And were these numbers brought up  
16 before you or -- the numbers that they planned to  
17 increase the fees to?

18 MR. DURAN: I think at the time it was an  
19 increased number, and now it's a reduced number, and we  
20 were asking the same questions, just in regard to a  
21 different number.

22 MS. NOSKIN: All right. Thank you.

23 MR. DURAN: Sure.

24 MS. NOSKIN: That's it for me.

25 MS. GADZIA: No. That was pretty much my



1 question.

2 But I do need at some point to talk about what  
3 our schedule is.

4 MR. GHASSEMI: I've got a question.

5 MR. SIMPSON: Okay.

6 MR. GHASSEMI: Do you feel -- based on the  
7 statistical data that you may have, do you feel that your  
8 clientele base is being inspected more or less than the  
9 Home Builders Association that we heard from earlier?

10 MR. DURAN: I don't think I have enough  
11 information to answer that. I think I can safely say,  
12 though, that I -- that we think we get more of a bad rap.

13 MR. GHASSEMI: The reason I'm asking this  
14 question is because of the persistence on 100 percent  
15 inspection, which is one of the goals that Mr. Koranda  
16 indicated that would be part of their goal. That's why I  
17 was asking, because you kept on talking about the 100 --

18 MR. DURAN: Oh, I see. I see.

19 No. No. I don't have -- my comments aren't  
20 based on the fact that I think that the site home  
21 industry is getting inspected less than we are, we're  
22 getting more pressure or anything like that.

23 I just -- my experience with the Manufactured  
24 Housing Division has been with their inspection program  
25 was -- is that if inspections are important, and if



1 inspections are important to the health and safety of the  
2 consumer, you can't cut that off at 60 percent or 70  
3 percent or 80 percent.

4 It has to be your objective, it has to be your  
5 directive, go out on the limb, say you're going to do it.  
6 If you can't do it, then be able to say why and what  
7 resources you need to get it to 100 percent.

8 And in some -- in three instances, like someone  
9 mentioned here, we've been at the legislature supporting  
10 increased funding for the Manufactured Housing Division  
11 to achieve their 100 percent inspection goal.

12 MR. GHASSEMI: That's the only question I had.

13 MR. SIMPSON: Questions from the public or the  
14 Department?

15 Mr. Crespin.

16 MR. CRESPIN: Just a quick question for Mark.

17 CROSS EXAMINATION

18 BY MR. CRESPIN:

19 Q. Mark, you said they raised your fees from \$30  
20 to \$60 for a new manufactured home.

21 How many inspections do you get for your 60  
22 bucks?

23 A. We get 100 percent inspections, and at the time  
24 they were able to demonstrate -- at the time they had  
25 about a 5,000 backlog, and --



1 Q. Yeah.

2 But I meant for that one \$60, how many  
3 inspections are involved for that \$60 permit?

4 A. That is usually a permanent foundation  
5 inspection, or it can be a reinspection, or it can be an  
6 inspection associated with a complaint. But it's one  
7 inspection.

8 Q. Yeah.

9 But it includes the plumbing and the hook-up  
10 and all that other stuff going to it, correct?

11 A. Yes.

12 Q. And the electrical inspection also, correct?

13 A. Yes.

14 Q. So it's a grand total of about three  
15 inspections for your 60 bucks. That's where I was going.

16 A. Got it.

17 MR. CRESPIAN: Thank you.

18 MR. SIMPSON: Mr. Summers.

19 CROSS EXAMINATION

20 BY MR. SUMMERS:

21 Q. Do you think any of the fee ought to be used  
22 for enforcement?

23 A. Have the fee used for --

24 Q. Any portion of this \$100 proposed fee -- should  
25 any of it be used for enforcement?



1           A.    I'm not sure I understand the difference  
2    between --

3           Q.    Installation of illegal systems.

4           A.    If there's a regulation on the books that says  
5    that waste systems have to be inspected, then there has  
6    to be enforcement.

7           Q.    Let's say someone doesn't even pull a permit,  
8    they just put a system in.

9                    Should any of this \$100, any one penny of it,  
10   be used for enforcement, yes or no?

11          A.    Yeah, I guess so.

12          Q.    Okay.

13          A.    I'm not sure I understand the question.

14          Q.    A dollar out of this \$100?  Is that reasonable?  
15   Is some percentage --

16          A.    You know, just -- if you'll just get to where  
17   you're going.  It's a little condescending the way you  
18   approach this.  If I'm not understanding your point --

19          Q.    If you'll just answer, I think we can get  
20   there.

21                    Again --

22          A.    I'm not even sure I'm understanding --

23          Q.    -- some portion --

24          A.    -- enforcement versus the regulation.

25          Q.    Some portion of this fee could be used for



1 enforcement as far as you're concerned and your group is  
2 concerned.

3 A. I don't know. Let me ask the Department.

4 Can it be used for enforcement?

5 MR. SUMMERS: Well, if we could just restrict  
6 this --

7 MR. DURAN: He's asking me questions about the  
8 regulation.

9 MR. SUMMERS: Well, now he's questioning the  
10 Department, and that time --

11 MR. SIMPSON: Well, yeah.

12 Mr. Duran, if you're unclear about what the  
13 regulations mean, then maybe you can just state that, and  
14 Mr. Summers can pursue another point.

15 MR. SUMMERS: And we can go on.

16 MR. DURAN: Okay. I'm unclear.

17 MR. SUMMERS: Okay.

18 Q. Manufactured houses, manufactured housing, is  
19 it inspected by anyone before it ever gets to the State  
20 of New Mexico?

21 A. Sure.

22 Q. For instance, what inspection authorities are  
23 there for just, say, Fleetwood or someone else in  
24 manufactured housing?

25 A. Well, to give you a quick lesson on our



1 inspection process, here's how we're different from a  
2 site-built home.

3 A site-built home has all its plumbing,  
4 electrical, structural, framing, foundation, et cetera,  
5 inspections -- when you're building a site-built home,  
6 those inspections are done on-site.

7 When you build a manufactured home in a plant,  
8 all those inspections, the same amount of those  
9 inspections, take place in the manufacturing plant,  
10 usually by what is called a state administrative agency.  
11 That SAA is in a contract situation with HUD to do those  
12 inspections in the plant.

13 And every manufactured home is inspected in the  
14 plant, and then the one inspection that usually takes  
15 place on-site is an installation inspection and then a  
16 utility inspection.

17 Q. So to go back to the manufacturing process,  
18 since they're inspected in the manufacturing process --  
19 again, HUD subcontracts -- is that what I understood  
20 correctly, the HUD subcontracts with someone to do those  
21 inspections?

22 A. Yes, unless HUD is doing them directly and  
23 at --

24 Q. Is there a fee for those inspections?

25 A. Yes.



1 Q. Okay.

2 And that fee is passed along to the purchaser  
3 ultimately?

4 A. People argue that all the time.

5 Q. But -- well, let --

6 A. Retailers say they pay it, manufacturers say  
7 they pay it, and they go back and forth.

8 Q. Yeah. Okay.

9 So once the home is delivered here, all these  
10 inspections have already been accomplished, correct?

11 A. Um-hum, um-hum.

12 Q. And so when someone sees the sticker on the  
13 unit itself, it says it was inspected and it meets these  
14 standards, all those have been done, correct?

15 A. Um-hum.

16 Q. So the inspector here in the State of New  
17 Mexico for \$30 or \$60 doesn't have to concern himself  
18 with any of those issues, does he?

19 A. Not with the structural product, but you have  
20 to understand that although those inspections are  
21 important, the 80 percent of the failure point on a  
22 manufactured home, once it's installed, will be dependent  
23 on its installation. And so that home can be perfect  
24 coming on. If it's not installed properly, that's a very  
25 important inspection.



1           Q.    To your knowledge, are septic systems composed  
2 of these same components that have been inspected by some  
3 other authority?

4           A.    I'm not sure.

5           Q.    Okay. All right.

6                    And you talked about the \$100 fee and how that  
7 was burdensome and oppressive.

8                    Do any of your dealers carry financing on any  
9 of the product that they sell?

10          A.    I don't know if I said if it was oppressive. I  
11 think it's definitely burdensome to certain lower-income  
12 categories.

13                    And understand my point has been that we want  
14 to see it justified in terms of what it's paid for.  
15 That's the main point. But financing, whether it's a  
16 site-built home or a manufactured home, will usually  
17 encompass everything that it takes to get that home to be  
18 at a point of occupancy. So it will include everything.

19          Q.    Well, let's ask this question again. Maybe I  
20 can make it clear.

21                    Do any of your dealers carry the paper on  
22 financing homes that they sell, yes or no?

23          A.    Very few, if any.

24          Q.    So yes, some do?

25          A.    I don't represent any that do. They all



1 represent -- they all work with third-party lenders that  
2 are -- sell in the secondary market to Wall Street.

3 MR. SIMPSON: Mr. Summers, I was actually  
4 corresponding with another Board member about another  
5 issue --

6 MR. SUMMERS: Right.

7 MR. SIMPSON: -- and I popped back into your  
8 conversation, and I hear about carrying paper on loans,  
9 and I'm not sure where the materiality here is.

10 MR. SUMMERS: Okay. Well, I think it goes like  
11 this. There are costs, and the statement was made that  
12 the \$100 is a substantial amount. Okay. Since I also am  
13 a licensed mortgage company, I understand financing, and  
14 so I'm raising this question.

15 MR. DURAN: Wow.

16 MR. SUMMERS: And I'm going to the next  
17 question. I think the answer to his last one was that,  
18 yes, some of his people do, in fact, finance entirely.

19 MR. DURAN: He's putting words in my mouth.

20 MR. SUMMERS: And so the issue will be -- the  
21 next question will be, of course, do they charge fees for  
22 that, and are those fees in excess of \$100, to his  
23 knowledge. He may not know. Okay.

24 And I'm trying to distinguish between one set  
25 of fees as burdensome and oppressive -- or maybe it's not



1   oppressive, maybe that's not the word, but it is some  
2   sort of threshold which creates an impediment to someone  
3   being able to occupy the home. Does that same level of  
4   impediment apply to other things --

5                   MR. SIMPSON: All right. I got your point.

6                   MR. DURAN: Mr. Hearing Officer, my answer to  
7   Member Noskin's question says it all, and that is that if  
8   justified, if that fee was going to end up being more,  
9   then let it be more. That says it all.

10                  MR. SIMPSON: Well, and, also, Mr. Duran -- and  
11   I don't want to steal your thunder, Mr. Summers -- but I  
12   think the point is that \$100 may be a lot to a purchaser  
13   of a manufactured home. Nonetheless, there are many  
14   other costs that are added onto that, like application  
15   fees for financing and so on and so forth.

16                  But in the interest of time, I'm going to ask  
17   for a little bit tighter materiality.

18                  MR. SUMMERS: Okay.

19                  Q. And the final question I'll ask you is, again,  
20   because you're interested in 100 percent inspection, is  
21   your organization interested in supporting -- again, for  
22   each and every unit that's moved down the highway, that  
23   there be evidence that a liquid waste permit has been put  
24   on that unit before it shows up on the highways of the  
25   State of New Mexico?



1                   MR. DURAN: Mr. Hearing Officer, as far as  
2 moving across the highways, that question's already been  
3 answered.

4                   But I'll tell you what, 70 percent of the  
5 counties and cities at our encouragement now require what  
6 is called a placement permit. And that is one of the  
7 disconnects we had, was when we were delivering a  
8 manufactured home on-site, how is the county assessor  
9 notified? How is the planning and zoning official  
10 notified?

11                   We now have Manufactured Housing Division rules  
12 and regulations that puts the onus on the installer to  
13 adhere to all local planning and zoning ordinances.

14                   We then went one step further and encouraged  
15 each city and county to require what's called a placement  
16 permit. They can't inspect the home. They can't offer  
17 an occupancy permit.

18                   But what they can do is to determine whether or  
19 not setbacks are made, whether -- are achieved, whether  
20 or not other local ordinances are allowed, and one of the  
21 things that is consistently required on 100 percent of  
22 those placement permits is that the manufactured home has  
23 obtained their EID permit.

24                   MR. SIMPSON: All right.

25                   Mr. Summers, anything further?



1 MR. SUMMERS: Yeah.

2 Q. So your testimony is that, again, you've  
3 encouraged the installers to contact planning and zoning  
4 and all this?

5 A. We haven't encouraged them. It's a regulation.

6 Q. Again, and the regulation is also to contact  
7 EID and get the appropriate permit?

8 A. The regulation says they have to adhere to all  
9 planning and zoning ordinances. If that planning and  
10 zoning ordinance requires EID -- or if any process  
11 requires an EID permit, they go get the EID permit.

12 Q. Are you aware that the current regulations  
13 required before any unit is transported onto a site, that  
14 there be a liquid waste permit issued? Are you aware of  
15 that, that that's in the current regulations of the State  
16 of New Mexico?

17 A. I'll look into that.

18 Q. Well, take it it's a fact.

19 Thank you.

20 MR. SIMPSON: Well -- okay.

21 Any further questions for Mr. Duran?

22 MR. CRESPIAN: One clarification, Mr. Hearing  
23 Officer.

24 It was pointed out that manufactured homes are  
25 inspected at the factory. That is absolutely correct.



1                   But as a former regulator, I know for a fact  
2 that when they install natural gas in a manufactured  
3 home, wherever it's built, and that home is transported  
4 across the state or across the country, that home tends  
5 to move and tweak and all this other stuff.

6                   Your local utility will not hook that up, even  
7 though it's been inspected, until it's been reinspected  
8 and remerc'd based on his permit.

9                   So, yes, they are inspected there, and they're  
10 inspected again here. I would not want to buy a mobile  
11 home or a manufactured home that had not been remerc'd,  
12 even though it had been checked at the factory, because  
13 they do move and tweak, and they do develop gas leaks.

14                   Thank you.

15                   MR. SIMPSON: And the jurisdictional struggle  
16 between the manufactured site and the bricks and mortar  
17 site will continue.

18                   I'm going to ask the rest of the witnesses and  
19 especially anybody who's asking questions of the  
20 witnesses what we're talking about is fees, justification  
21 for the fees and the accountability of the Department  
22 with respect to the delivery of their services. And  
23 we're really -- we're focusing on that.

24                   We have a Board member -- we're going to lose a  
25 Board member at 5:15. I'm going to call a break.



1                   But let me first ask, Mr. Addy, Mr. Summers and  
2 Dr. Bartlit, you're all three here, hang in there.

3                   I have also on the list of people requesting to  
4 be heard Robert Garcia, a Tip Krepfl and -- and that's  
5 it.

6                   Are those two folks still here?

7                   MR. GARCIA: Yes. Robert Garcia, I'm here.

8                   MR. SIMPSON: Okay. Mr. Garcia. Hang on.

9                   We're going to call a break now. Let's try to  
10 be back in five minutes and ready to go.

11                   Okay?

12                   (Proceedings in recess.)

13                   MR. SIMPSON: Let's reconvene.

14                   All right. We're back on the record.

15                   Here's the plan, folks. We are losing two  
16 Board members right away because of the hour. We're  
17 going to finish up at 6:00. That's our drop dead time.

18                   And I apologize that we're going to be cutting  
19 this short for the last witnesses. The cross-examination  
20 is going to be extremely material, or it's going to be  
21 disallowed. We just have to finish.

22                   And we're going to get the record completed,  
23 we're going to have it produced by Ms. Arreguin for the  
24 two Board members who are leaving, and they'll read the  
25 record. We'll reconvene at a later time, at which point



1 they will deliberate on the record. But we'll have no  
2 more evidence after six o'clock.

3 And that's the plan.

4 MS. GADZIA: That's the plan.

5 MR. SIMPSON: So let's go off the record and  
6 back into the regular meeting so they can decide when the  
7 next meeting date will be.

8 (Proceedings in recess.)

9 MR. SIMPSON: We will go back on the record.

10 And the next witness is Mr. Addy.

11 MIKE ADDY

12 having been sworn, was examined and testified  
13 as follows:

14 DIRECT TESTIMONY

15 MR. ADDY: My name is Mike Addy. I own  
16 Albuquerque Vault.

17 I'm not going to make a long testimony.

18 Mr. Crespin was right when he stated there's  
19 been a wedge driven between our industry and the  
20 Department. The only way I can see the two coming back  
21 together is if the Board would put a stop to the fees for  
22 a minimum of six to eight months and make the Department  
23 work with us.

24 They don't have the tools in place. They don't  
25 have -- they're not using the TAC. They don't have any



1 kind of grievance committee or oversight committee on the  
2 new regs that are coming out. They're not using the  
3 committee that's set up for it, for input.

4 That's about it.

5 The only thing we have in our industry over the  
6 Department right now is the fees. And if they get  
7 approved, then our industry won't have any more input  
8 within that Department. We have no communication with  
9 them now, none. This is the closest communication I've  
10 had with them for over a year.

11 That's it. Thank you.

12 MR. SIMPSON: Any questions from the Board?

13 MR. GHASSEMI: I guess -- go ahead.

14 MR. SALOPEK: It's a repetitive question that I  
15 asked earlier, but if the fee was approved at 100 bucks,  
16 what would you expect for that, for the money?

17 MR. ADDY: I would expect an inspection, 100  
18 percent inspection. And if they can't perform that, then  
19 they don't need any fee.

20 MR. SALOPEK: Is that it, or would you expect  
21 other things out of them?

22 MR. ADDY: Well, I'd like to see a training  
23 center, but I'd like to see them perform, period. It  
24 doesn't matter if it's \$50, \$100, \$200. They can't  
25 accomplish the job that needs to be done right now in the



1 shape that they're in, just like Bassett said.

2           They've done nothing but gone downhill for the  
3 last two years. The program, it stinks. There's -- it's  
4 no good. It's not good for the consumer, it's not good  
5 for our industry. The administration is no good. It's  
6 in sad shape. And \$100 is not going to fix it.

7           They need to wake up and work with the industry  
8 and put the tools in place that we had at one time with  
9 Construction Industries. We had a place to go. The  
10 consumer had a place to go. This Department, we have no  
11 place to go. You make a phone call, and that's it.

12           They don't answer to anybody. They don't  
13 answer to the Lieutenant Governor. They might answer to  
14 Governor Johnson, maybe. But that's it. This Board is  
15 the only one that's got any kind of handle over that  
16 Department. And that's just because they want the money.

17           MR. SIMPSON: Other questions from the public  
18 or Department?

19           All right, Mr. Addy. I think you're off the  
20 hook.

21           Mr. Garcia, you're next.

22           I'm sorry. I forgot about your priorities.

23

24

25



1 ROBERT GARCIA

2 having been sworn, was examined and testified  
3 as follows:

4 DIRECT TESTIMONY

5 MR. GARCIA: Madam Chair, Board members,  
6 Hearing Officer, I'm Robert Garcia with Bernalillo County  
7 Environmental Health Department.

8 And I did not prepare a formal testimony. I'll  
9 try and give you a brief, very brief overview of what we  
10 do.

11 We're kind of a miniature Environment  
12 Department. And in the unincorporated areas of  
13 Bernalillo County, we issue permits for wastewater, which  
14 is different terminology for liquid water -- liquid waste  
15 permits. We issue well permits, and we also have a pipe  
16 program, where we assist indigent people, and we install  
17 wastewater systems, also.

18 But mostly we connect people to the municipal  
19 sewer. We review development subdivisions. Every  
20 subdivision gets signed by -- I'm the permitting manager,  
21 by someone from my shop or myself. We do food  
22 inspections, and we do charge fees. We even have animal  
23 control. We issue tags for dogs, cats and ferrets. And  
24 we charge fees for that, too.

25 And we have a new wastewater ordinance, which



1 we do -- and again, wastewater is a different terminology  
2 for liquid waste. And we do charge fees.

3 And I brought copies for all of you of our fee.  
4 It's a resolution. It's not an ordinance. If you'd  
5 like, I could pass them out.

6 And we charge \$100 per permit.

7 Our old ordinance, which was called 88-1, also  
8 charged fees of \$50, and that ordinance was implemented  
9 in 1988. We have a brown field section, where we review  
10 and work with EPA in cleaning up groundwater pollution  
11 plumes in the county.

12 We also are working on a \$110 million sewer  
13 infrastructure in the Valley, North and South Valley.

14 And basically -- and I'm sure I didn't cover  
15 everything that our department does. Basically that's  
16 what we do. We are a very small county, but we have --  
17 we're highly populated. We're very dense. And  
18 geographically we're very small.

19 I'd like to talk about the new wastewater  
20 ordinance, which was passed in December of last year.

21 In addition to the fees that we charge, which  
22 is \$100, we will be requiring certification for system  
23 evaluators, site evaluators and installers. Our first  
24 certification course and exam will be this October for  
25 system evaluators. We are still working on site



1 evaluators and installers certification program.

2           The basic driving force in our new wastewater  
3 ordinance is we basically issue permits for -- we allow  
4 people to pollute. We have a nomograph in here which  
5 allows 92 pounds of nitrogen per acre. And that's what  
6 the basis of our wastewater ordinance is.

7           We support New Mexico Environment Department in  
8 attempting to get fees. The fees do help. They help our  
9 program. Even though we have a small county, we still  
10 have to pay for gas and cars and whatnot.

11           We have three full-time permitters. They  
12 permit wells, wastewater systems. We have five  
13 inspectors. They inspect everything from wastewater  
14 permits to wells to restaurants to swimming pools and  
15 also complaints, trash complaints, we deal with, fly  
16 complaints, mosquitoes.

17           We issued last year 400 permits. We're, like I  
18 say, a miniature, micro Environment Department.

19           I don't know what more I can add. I'll stand  
20 for questions.

21           MR. SIMPSON: Questions from the Board members?

22           MR. GHASSEMI: Let me --

23           MR. SALOPEK: I don't have any questions.

24           MR. GHASSEMI: Go ahead.

25           MR. SALOPEK: I don't have any question.



1 MR. GHASSEMI: I've got a question.

2 Do you do inspections of every permit that you  
3 issue?

4 MR. GARCIA: I would say we are at probably 95  
5 percent plus. Some do get by for various reasons, but we  
6 are -- just about.

7 Plus our permitting process also includes a  
8 site visit. We visit the site before we issue the  
9 permit, and that's also within that 10-day period if we  
10 can. We try to make a decision within that 10 days.  
11 I've been trying to get the staff to either approve or  
12 deny it. I want a decision within 10 days.

13 We have a boilerplate denial letter where we  
14 tell the applicant what they need to do so it's clear to  
15 them what they need to do. They get that to us, and then  
16 they're ready to go.

17 MR. GHASSEMI: A follow-up question.

18 As a result of your inspection, how many of  
19 these systems get rejected that have been permitted?

20 MR. GARCIA: I would say a low percentage, but  
21 there are some. Some of these installers are very good,  
22 they do a very good job, and I think the inspection isn't  
23 really for these people that do a good job, it's for the  
24 ones that don't, which are very rare.

25 There are some we like to say we have to hold



1 their hand through the whole process, and we do many  
2 inspections, and we're out there many times. That has  
3 not happened with these individuals, but there are some  
4 installers that we've seen tanks go in backwards, basic  
5 things.

6 MR. GHASSEMI: No more questions.

7 MR. SIMPSON: Questions from the public or from  
8 the Department?

9 Ms. Kery.

10 CROSS EXAMINATION

11 BY MS. KERY:

12 Q. Mr. Garcia, I just have one question, and maybe  
13 you said this and I just wasn't listening at the time.

14 But how many permits do you issue a year for  
15 liquid waste disposal systems?

16 A. Last year we issued 400. This year I think we  
17 will probably issue 400 again.

18 MS. KERY: Thank you.

19 MR. SIMPSON: Anything further?

20 All right. Thank you, Mr. Garcia. Thanks for  
21 your patience.

22 MR. GARCIA: Thank you.

23 MR. SIMPSON: Mr. Summers, you're next on the  
24 list, but Dr. Bartlit says he's got a short presentation.

25 Would you --



1 MR. SUMMERS: That's fine.

2 MR. SIMPSON: Dr. Bartlit, were you here to be  
3 sworn in this morning?

4 MR. BARTLIT: No.

5 MR. SIMPSON: Okay. Let's do that first.  
6 Raise your hand, please.

7 JOHN BARTLIT

8 having been sworn, was examined and testified  
9 as follows:

10 DIRECT TESTIMONY

11 MR. SIMPSON: And identify yourself for the  
12 record.

13 MR. BARTLIT: Thank you to the Board for  
14 hearing me.

15 My name is John Bartlit. I'm the State  
16 Chairman of New Mexico Citizens for Clean Air and Water.

17 I've been involved in issues as a volunteer  
18 advocate for the environment since 1969. I've been  
19 involved in issues of air and water in New Mexico.

20 On behalf of our organization, I support the  
21 liquid waste fee regulation proposed at this hearing by  
22 the New Mexico Environment Department.

23 Effluents from septic tanks find their way into  
24 our precious underground water resources to a large and  
25 growing extent. Yet to date this source of contamination



1 has had less scrutiny from the regulators and the public  
2 than have other sources of pollution.

3 In my experience, large and growing effluents  
4 commonly ensue from a low level of scrutiny. This  
5 familiar pattern of growth in a poorly watched program is  
6 why we support the regulation as proposed.

7 The NMED proposal is a well reasoned effort to  
8 bring more oversight where more is needed. Proof of the  
9 need for more oversight is found in the growing number of  
10 illegal liquid waste systems going in statewide.

11 It has been shown over and over that preventing  
12 pollution problems is vastly cheaper than trying to fix  
13 them later. This fact is nowhere more true than when  
14 protecting precious underground water systems.

15 Doubtless the recognition of this fact was the  
16 major reason the 2000 New Mexico legislature voted and  
17 Governor Johnson signed into law a new authority for the  
18 NMED. Against the continued attacks of special  
19 interests, the authority was reaffirmed by the 2001 New  
20 Mexico legislature.

21 This authority was given to the NMED to do  
22 exactly what is now written in this proposal to the  
23 Board. The difficulty of getting a new environmental  
24 initiative through the legislature against the usual  
25 opposition of some association of private interests is



1 well known. Only the strongest and most practical cases  
2 succeed. The case we hear today is one of the few.

3 We support the proposed regulation for the  
4 reasons described to the Board by the NMED, as well as  
5 the regulatory reasons I offer here. The history of  
6 liquid waste disposal systems is like the usual history  
7 of a neglected environmental problem. The problem  
8 continues to spread and grow.

9 We have heard concerns expressed in  
10 cross-examination about the efficiency and accountability  
11 of the Department.

12 As this Board knows, I have consistently  
13 supported and encouraged and pushed for actions that  
14 increase the regulatory efficiency of the Department.  
15 Inefficient regulation is never in the interest of the  
16 public or the environment. I continue to push for  
17 actions to increase regulatory efficiency.

18 For example, this Board knows I've pushed for  
19 the increased automation of data handling and permitting.  
20 I see evidence of progress in this direction, and I  
21 encourage more.

22 For example, one can imagine sharing a permit  
23 data between the NMED and counties, such as Santa Fe  
24 County. We heard that as an issue here. I know this  
25 would be very hard to do, but I push for it, and this



1 Board can push in a similar direction. With enough  
2 pushing, things can change.

3 As in other testimony I've given before to this  
4 Board, I have written a column in my local newspaper on  
5 the subject at issue here. The column talks about the  
6 growing problem of groundwater pollution from septic  
7 tanks, and it also talks about the benefits of education  
8 as a solution to the problem, which we've heard talked  
9 about today.

10 I'd like to offer this column dated May 27th,  
11 2001, as part of my testimony.

12 Thank you for considering my information and  
13 views.

14 And I have copies of both my testimony and that  
15 column, minus some additions I made, which I can provide  
16 to the Board and the record.

17 MR. SIMPSON: Does anybody object to that being  
18 included in the record?

19 All right.

20 Ms. Arreguin, we'll make it part of the  
21 transcript.

22 (Exhibits Bartlit 1 and 2 were marked for  
23 identification and admitted into evidence.)

24 MR. SIMPSON: Thank you, Dr. Bartlit.

25 Does anybody have any questions, from the Board



1 or from the public or from the Department?

2 Thank you, Dr. Bartlit.

3 Last on the list is Link Summers.

4 MR. SUMMERS: Thank you.

5 I'm sure the cross-examination will be  
6 interesting.

7 LINK SUMMERS

8 having been sworn, was examined and testified  
9 as follows:

10 DIRECT TESTIMONY

11 MR. SUMMERS: First of all, let me reintroduce  
12 myself. My name is Link Summers. I'm a certified  
13 wastewater operator in the State of New Mexico. I'm a  
14 licensed contractor, electrician, plumber. I'm a  
15 licensed Installer 2 in the State of Texas and have been  
16 for several years.

17 I served on the Governor's Wastewater Task  
18 Force to rewrite the liquid waste rules. I was also on  
19 the Task Force with the City of Austin, Texas, which  
20 tried to reconcile the rules for the Lower Colorado River  
21 Authority, Travis County, Austin and TNRCC. It took 18  
22 weeks to rewrite and bring those together.

23 It's taken us over seven years to get through  
24 just the first half of the liquid waste regulations here  
25 in the State of New Mexico.



1           My company for which I'm the president, in  
2 addition to installing, we also maintain all the systems  
3 we install. We manufacture a recirculating trickling  
4 filter.

5           Our clients include the State of New Mexico for  
6 the reintegration center at Eagle Nest, for the treatment  
7 center in Alcalde, for the kids up there, for the Town of  
8 North Hurley. We do the entire town wastewater system in  
9 conjunction with Grant County.

10           Albuquerque Public Schools, Moriarty School  
11 System, at the Edgewood schools, Smith in Edgewood, the  
12 Turquoise Trail Business Park in Santa Fe, Las Algonitas  
13 Subdivision, another subdivision in Silver City.

14           We also have systems in Telluride, in Montrose,  
15 Colorado, in Ridgeway, Colorado. We also -- one of our  
16 clients is the State of Texas over in Palo Duro. We did  
17 some work for them.

18           My background is I was a zoology and chemistry  
19 major in college. I worked for a guy who won the Nobel  
20 Prize in chemistry for radiocarbon dating, back when I  
21 was a young sprout.

22           And when I went to medical school, took lots of  
23 courses in parasitology, microbiology, biochemistry and  
24 wastewater science. It's no longer a trade where you go  
25 dig a hole and put a tank in and presume that it works.



1 We deal now with a more complex waste stream.

2 And I want to talk to you a little bit, first  
3 of all.

4 I have two courses that I teach that are  
5 approved by the New Mexico Real Estate Commission. I've  
6 taught about 500 real estate licensees around the state,  
7 from Farmington to Las Cruces to Elephant Butte,  
8 Albuquerque, Santa Fe, Taos, and other scheduled dates,  
9 because most of the folks who sell real estate do not  
10 appreciate the liabilities that they're engaging in by  
11 selling systems that are either nonpermitted, illegal or  
12 nonfunctioning.

13 I'm not an expert on environmental law, but  
14 standing right behind the State of New Mexico's  
15 regulations and law is all the federal law. And there is  
16 no protection for any of these folks from those federal  
17 laws. They're quite broad.

18 And as you know, they also provide for citizen  
19 Attorney General -- they have a citizen Attorney General  
20 provision, which means that any of the folks who do  
21 these, if they create any kind of environmental  
22 liabilities, can be responsible, held personally  
23 responsible. And, of course, there's been a movie, Erin  
24 Brockovich, which was written about that.

25 So what we try and do is educate the folks.



1 And the reason I do this is because right now the  
2 Environment Department has not had sufficient funds to do  
3 the public outreach.

4 And I used to be an officer for the Realtors  
5 Association, a registered lobbyist for them. I helped  
6 lobby the bill that transferred this authority from CID  
7 over to the Environment Department way back when.

8 And so again, we haven't had the funds in the  
9 State Environment Department to educate the public,  
10 number one.

11 The Environment Department is not a consumer  
12 protection agency, number two. They do not handle any  
13 consumer protection types of affairs. They funnel those  
14 through the Attorney General's Office. Okay.

15 But the idea is I went to the Realtors  
16 Association to teach the class because I thought they  
17 were a good connection point. There was about 11,000 of  
18 them, and they talked to a lot of folks.

19 I made a similar offer to the President of the  
20 Home Builders Association, and I make it to all the other  
21 building trades folks, that they need to get  
22 knowledgeable.

23 We have very real issues that cost money. The  
24 environment is not free. It costs money. And we have  
25 lots of needs.



1           I go to lots of the conferences that Gene  
2 Bassett talked about. And they talk about the same  
3 things.

4           And by the way, we have systems in other  
5 states, and so I deal with regulators in Nevada, in  
6 California, in Arizona, in Colorado, New Mexico, Texas,  
7 and I talk with some of the folks in Florida from time to  
8 time, Ohio from time to time, and other states where we  
9 might want to sell our products in the future.

10           And so I'm fairly conversant with other folks'  
11 rules and how they handle it. So I want to say as far as  
12 fees go, what New Mexico is asking for is not anywhere  
13 contrary to what the other states are doing. They  
14 recognize the cost of preserving the environment.

15           And the service is not to contractors to make  
16 sure that someone goes and holds their hand when they put  
17 a system in. Okay. Because they're tested for  
18 competency just like dentists are. We don't go inspect  
19 their work.

20           But what we're looking at is the cost to  
21 protect the environment, because we know what it costs to  
22 fix the environment from improper systems, poorly  
23 designed, located on the wrong properties. It is beyond  
24 most people's wildest imagining.

25           In the State of New Mexico, Bernalillo County



1 has been a leader in establishing what these costs to fix  
2 a contaminated aquifer are.

3           And just to do the basic wastewater thing,  
4 there are five sources of contaminations. There are  
5 solids, there are nutrients, nitrogen and phosphorus,  
6 there are pathogens, okay, there are heavy metals, and  
7 there are organics.

8           Organics right now we currently don't have any  
9 treatment for. Those are the things people dump down the  
10 sink, that are under the sink, that are in the garage,  
11 all those compounds for which no toxicity standards have  
12 been established, which are not illegal, that find their  
13 way straight into groundwater, because we have no  
14 bacteria that will consume those.

15           And eventually on-site liquid waste is going to  
16 have to confront that.

17           And the bigger issue which the Department's  
18 going to have to confront, in addition to training all  
19 these folks who by trade were not equipped to get into  
20 the business that we're going into now, this next area,  
21 when the population will double, in the next 50 years,  
22 and each one of these people is going to use 75 gallons  
23 of water a day, more or less, and they're going to put a  
24 certain amount of contamination into each gallon of water  
25 that they flush down that toilet.



1           In a lot of cases, they're not even going to  
2 think about where their makeup goes, where their  
3 deodorant goes, where the antifungal spray goes, where  
4 the residuals from pharmaceuticals go, where the solvents  
5 go and all the rest. They just presume they went down  
6 the toilet, out into the drain somewhere and disappeared  
7 forever.

8           And we're going to have to contend with this  
9 greater and greater population using the only water we're  
10 ever going to have on this planet, okay, over and over  
11 and over again.

12           We use about 408 billion gallons a day in the  
13 United States. And it also has to be cleaned up before  
14 we can use it again tomorrow, next year and 10 years from  
15 now. So this is one portion.

16           You've heard about the contamination, and the  
17 reason for that is this technology of a septic tank,  
18 which is the predominant technology that we use right  
19 now, this technology was developed in 1860 through 1890  
20 in Italy, France, Great Britain and the United States.

21           In 1860 we didn't know what a pathogen was.  
22 Louis Pasteur was just coming along. Okay. We didn't  
23 know the relationship between disease and contaminated  
24 water. We didn't know anything about heavy metals. We  
25 didn't know anything about organics.



1           Monsanto, Dow, all these other people are  
2   issued hundreds of new patents every week for new  
3   compounds which no bacteria can recognize or eat, okay,  
4   that wind up to make our shirts softer, to make our  
5   clothes, you know, better, to all the things in our  
6   households, all these other items that use water in their  
7   manufacture, and yet we have to use that water, clean it  
8   up and use it again tomorrow.

9           And none of these were anticipated in the  
10   development of this technology that is now, what, 150  
11   years old. So now we're looking at new technologies, and  
12   you've heard people allude to them. They're called  
13   advanced technologies, advanced treatment. In fact, most  
14   of these technologies, none of them are new, they're 100  
15   years old. They're just the next generation.

16           But our challenges are not last generation.  
17   Our challenges are being created today. New and better  
18   drugs, new and better solvents, new and better compounds  
19   that have different properties for which our biological  
20   treatment is not sufficient.

21           And yet our work force is not trained right now  
22   to deal with just 100-year-old technologies. Most of the  
23   folks who are in the industry today didn't really take  
24   that much chemistry or biology, and they're trying to  
25   adapt and make it work.



1           That's why it's essential that we get training  
2 for the folks. Everyone -- every person who is in this  
3 industry has the ability to learn, has the ability to  
4 apply this, but they have to have the resource available  
5 to them. Somehow we have to communicate to the public so  
6 they don't have unreal expectations. Okay.

7           And this fee scheme, this is way too little. I  
8 never -- I didn't argue against it because New Mexico, as  
9 opposed to other states, we have a hard time with this.  
10 Well, like we're in big denial about our waste stream.  
11 We're in -- you know, we're Freudian about it or  
12 something.

13           But we have it. And we're all drinking  
14 groundwater, and we haven't made this connection.

15           And I've watched year after year as the  
16 legislature hasn't dealt with this. And when we passed  
17 this bill that Steve was talking about, we went  
18 through -- the Governor didn't want fees and insisted on  
19 not having fees. So we lobbied it that way, and it  
20 passed it that way.

21           And then he came to the realization later on  
22 and, to his credit, made the mid course correction to fix  
23 that, and he's the one that put it on the call and asked  
24 for the fees to be introduced and who defended it at the  
25 last session when people brought it up, because he



1 realized there's also no free lunch. Okay. We have to  
2 pay for the environment.

3           And without the water resources, the State of  
4 New Mexico is worthless. Your business goes, your towns  
5 go, all the rest.

6           And I sat on the New Mexico First panel that  
7 dealt with this several years ago. And the legislature  
8 has regarded this as kind of the third rail. It's a  
9 tough issue, who gets the water, who gets to contaminate  
10 it and to what degree. And we have tons and tons of  
11 work.

12           And I'll say one final thing. One of the  
13 biggest issues I see coming up is how we're going to  
14 manage fees. Okay.

15           My daughter is a ballerina. Okay. Gene and  
16 all these other folks who install systems that these  
17 owners are relying on to look after these systems --  
18 we're not going to live forever. And who's going to have  
19 a handle on this, and who's going to maintain these?

20           Because the history of on-site wastewater is  
21 once it goes in the ground, it stays in the ground.  
22 Nobody's going to go replace their septic tank every five  
23 years to get the newest and latest model. Once they put  
24 it in, it tends to stay there for 50 years or longer.

25           And systems have to be maintained. We've



1 learned that, that septic tanks unmaintained do not work.

2           And let me make a point about septic tanks.

3 That technology, out of those five contaminants of  
4 concern I talked about, only remove 30 percent of solids,  
5 they do nothing for nutrients, they do nothing for  
6 pathogens, they do nothing for heavy metals or organics.  
7 Those pass unabated through a septic tank into the drain  
8 field.

9           That's why the site evaluation is so critical,  
10 is we're relying on the soil to treat the wastewater, not  
11 the septic tank. And yet we have not outlawed the use of  
12 things like Rid-ex and other compounds. Although they're  
13 outlawed in the regulation, we still allow them to be  
14 sold so that people can get the solids that are collected  
15 in the septic tank, liberate them and move them out to  
16 the leach field.

17           They don't disappear into a black hole in  
18 space. They clog up and destroy the leach fields. It's  
19 a lot easier to pump the tank than it is to clean up all  
20 the gravel in your leach field.

21           And so we have lots and lots and lots of  
22 issues.

23           Now, I'll also say -- I could tell you lots of  
24 great war stories, because we do this all day every day.  
25 We treat wastewater all day every day.



1           Even as we speak, we're treating thousands and  
2 thousands and thousands of gallons of high-strength waste  
3 from Smith's, from the Agora Shopping Center in Eldorado,  
4 where the VODs, the measure of organic material, is 2,200  
5 parts per million, household waste being 240.

6           We do that all day and all night for years and  
7 years, and our systems are in compliance. And we test  
8 them. Okay.

9           Currently the Environment Department has no  
10 provision for testing the alternative systems. They're  
11 going to have to develop one. Because an alternative  
12 system that doesn't work is useless. A septic system  
13 that doesn't work is useless. Okay. It defeats the  
14 purpose.

15           But again, I'm going to encourage you, even  
16 though this fee is completely inadequate, okay, from my  
17 perspective and from what I've seen in all the other  
18 states -- just to make a point, a rookie down in the  
19 Silver City office may have to drive for two hours to  
20 Reserve to do an inspection, two hours going, two hours  
21 coming.

22           Our districts are drawing in such waste that  
23 it's not always convenient. It's not always down the  
24 road 10 minutes. It may be hours away to go inspect the  
25 way -- our state's just big, and that's one of the



1 problems. So -- but I think this is a start.

2 I encourage you to go with this. I think  
3 you're going to have to exercise oversight with the  
4 liquid waste department, and you're going to have to  
5 develop some way of determining that we're getting what  
6 we want.

7 And what we want is not hand holding for  
8 contractors. What we want is not the home building  
9 saying, "Well, I got \$99.99 worth out of my \$100."

10 It's the environment we're concerned about.  
11 It's the water we drink every day and the quality of the  
12 water. Okay.

13 And we see deterioration. I'll just make this  
14 point. We have boiled waters more -- boiled water orders  
15 more freely around the state. The lady who passed away  
16 apparently from nitrate poisoning in Socorro -- there's  
17 events going on now in the news almost every day.

18 The degradation of the groundwater resource  
19 that we have is becoming more apparent. And a lot of  
20 people are in denial about that, you know. Nobody got  
21 sick. I'm not aware of it. Therefore, it doesn't exist.

22 It does exist. It's a real fact that there is  
23 a downside from human habitation. And we have worse and  
24 worse -- I've seen circumstances in Telluride where  
25 people bought a lot -- a Realtor sold a lot that's on a



1 solid cliff with a solid rock base, and all they could  
2 say was, "Look at the view."

3 We said, "Where's the wastewater going?"

4 "Look at that view."

5 And 10 years from now we're going to look back  
6 to the good old days, when we just had the properties we  
7 have to contend with now.

8 What's it going to be like 20 years from now,  
9 when the population has increased substantially again and  
10 there's no hope of sewerage these, and we're going to  
11 confront more and more difficult situations?

12 And what I recommend is that we pass over this  
13 relatively minor hurdle.

14 And I've encouraged the other groups, the Home  
15 Builders, the Realtors and all the rest of these, to get  
16 educated, number one, so that we can get involved in what  
17 the real discussion is, which is how are we going to  
18 protect this one water resource, that our biochemistry  
19 and physiology is never going to let us escape from, no  
20 amount of computers will protect us, and that there's  
21 increased demand for agricultural water, for  
22 manufacturing water, for mining water.

23 Every user of water in the state needs more,  
24 not less water down the road. Okay. And how are we  
25 going to protect this resource?



1           It's not just septic tanks. It's the whole  
2 gamut, and septic tanks are one part. And just because  
3 there's 190,000 -- when I talked to James McCane with  
4 TNRCC and I told him we had 190,000 systems in the State  
5 of New Mexico, he says, "Hell, we have 3 million here.  
6 We have 190,000 fail every month."

7           And I said, "How do you contend with it?"

8           He goes, "We do the best we can."

9           Well, the best we can may not be good enough  
10 for what we're confronting down the road, and I think the  
11 decisions you make here -- if you hamstring the  
12 Department by saying more inspections but no money,  
13 produce and then we'll talk about money, I think that's  
14 illogical.

15           And I think it's not the approach that we would  
16 expect people to take who are bona fide interested in  
17 protecting this resource.

18           So that leaves a minute-and-a-half for  
19 questions.

20           Thank you very much.

21           MR. SIMPSON: Questions from the Board members?

22           MR. SALOPEK: I have a question.

23           MR. SUMMERS: Yes, sir.

24           MR. SALOPEK: What do you propose would be an  
25 adequate fee, and then what should we get out of that fee



1 as far as protecting, doing better systems? What's your  
2 vision?

3 MR. SUMMERS: At a lot of the conferences, the  
4 folks -- Dr. Chapondlis, for example, wrote Metcalf and  
5 Eddy and published 20 works, and he has a full staff at  
6 UC Davis, and he talked about these. Dr. Rubin and I  
7 have talked about it.

8 For instance, the system we have in North  
9 Hurley is fully computerized and interactive. I can go  
10 sit down at my laptop, and I can change the operation of  
11 that system, I can look at dissolved oxygen temperature,  
12 the other parameters that are important for the bacteria  
13 to be able to metabolize the waste stream effectively.

14 For all the systems that are problematic, we're  
15 not sure if they're working or not, I'm pretty sure we  
16 can data log those with sensors and look at them.

17 MR. SALOPEK: Septic tanks with sensors?

18 MR. SUMMERS: I think there is some point where  
19 we can do that. We know the telecommunications link is  
20 there. We -- the weakest link in the whole thing right  
21 now is durable sensors that will tell us is this thing  
22 working. Okay?

23 Which is really what we want to know. And that  
24 goes to the heart of the issue about regulations.

25 Are we going to be design based, so that if you



1 designed it right and put it in, it's presumed to work  
2 forever? Are we going performance based?

3 In my discussions with the Governor, he says --  
4 he told me, "I think we need to go performance based. We  
5 want stuff to just work. That's what we want."

6 And inspecting it doesn't mean it's going to  
7 work. If you're dumping, you know, 50 gallons of Drano  
8 down the pipe once a week in your septic tank, I don't  
9 care how well they installed it or how many times it was  
10 inspected, it's not going to work. If you never pumped  
11 your septic, it's not going to work.

12 Not very many people go into this industry.  
13 People ask me why I went into it, you know. And I'll  
14 tell you now.

15 We pay less for Class 5 operators for treatment  
16 plans in the state than a starting policeman makes. We  
17 don't have this whole work force showing up. We --  
18 that's why the guys who are in it I may disagree about,  
19 but I sure respect them for at least making whatever  
20 effort that they're making to fix it.

21 But we're going to have to start looking at  
22 this. And maybe you need to bring in someone new. You  
23 don't want to hear it from me. These other people who  
24 have been thinking about this for the last 24 years, the  
25 National Environmental Health Association, the National



1 Sanitation Foundation, again Dr. Chapondlis.

2 All these other people are available, and  
3 they'll come talk and explain what the path ought to be  
4 for New Mexico. You folks are the ones who make the  
5 decision, not me. I can provide some input.

6 But in order to address this and to manage  
7 190,000 systems, and to know which ones are problematic  
8 and which ones sit over valuable and vulnerable water  
9 resources, we need to have some serious discussion, not,  
10 "Oh, I don't think I'm getting my money's worth for 100  
11 bucks," those kinds of discussions.

12 We need to talk about what are the areas in the  
13 state that are in trouble right now. Nambe, Pojoaque, I  
14 can name them for you, I have hundreds of pictures that I  
15 showed to the Governor saying, "What do you think about  
16 this? What do you think about this?"

17 We have lots and lots of problems to fix the  
18 dairies, okay, to fix the problems we have in the state.  
19 It's going to cost a ton of money. And I don't want  
20 anybody to have any illusions that the environment is  
21 free or protecting this precious water resource is going  
22 to be free, cheap or anything else.

23 And we need to get ourselves geared up so that  
24 we're ready to address the problems that we really have.  
25 And the problems we have are not inspections and \$99 or



1 \$100 or \$200. And I don't know what the number is.

2           It's how much -- how far do you want to go to  
3 fix things.

4           I was in the Governor's office when part of the  
5 hillside fell away in Los Alamos and they discovered,  
6 what, a hundred drums of unmarked something or another  
7 that were rusting?

8           Okay. We have lots of things. I was at White  
9 Sands Missile Range at the High Energy Laser Test  
10 Facility. Well, there's reason to believe that the liner  
11 on their plant down there is leaking, groundwater is 15  
12 feet down.

13           What's it going to cost to fix that? I don't  
14 know.

15           There's lots of problems in the state. You  
16 could start -- and I won't live to see them all fixed  
17 that are out there right now, but then we have to  
18 remember again, this many more people showing up every  
19 day, 10,000 live births in the United States every day  
20 with each person saying, "Where's my 75 gallons of  
21 water?"

22           MS. NOSKIN: Excuse me. I'm sorry.

23           MR. SUMMERS: Excuse me. That was a  
24 long-winded answer.

25           MR. SIMPSON: Let's move on.



1 Any other questions from the Board members?

2 MR. GHASSEMI: I have one real quick question.

3 MR. SUMMERS: I'll try to be quick.

4 MR. GHASSEMI: We appreciate your compassionate  
5 plea. It was well done, well carried out.

6 MR. SUMMERS: Thank you.

7 MR. GHASSEMI: I have -- the only question I  
8 have is from the fee-based kind of activity that is being  
9 proposed.

10 Do you see a direct impact in terms of the  
11 resource provided and the kind of thing that -- to solve  
12 the issue of lack of personnel, lack of being able to  
13 issue permits, do you see that this is going to solve  
14 that problem?

15 MR. SUMMERS: It's not going to solve it.  
16 You're going to have to pay real money to get qualified  
17 people. If you had someone who was completely conversant  
18 with wastewater, okay, they could eliminate a bunch of  
19 the problems and short -- make the process extremely  
20 short by being completely educated and aware of all the  
21 issues.

22 So this is just going to be a start, and you're  
23 going to have to pick your shots with the limited  
24 resources that you have available.

25 MR. GHASSEMI: Okay.



1 MR. SIMPSON: Further questions from the Board?  
2 How about from the Department or from the  
3 public?

4 MR. BASSETT: Link, I've got a question.

5 CROSS EXAMINATION

6 BY MR. BASSETT:

7 Q. Do you think there's anybody qualified in the  
8 state to take that initiative on and get going with it,  
9 right now in the Department?

10 A. Oh, I think they have resources. Bob Gott,  
11 Haywood Martin. There's lots of folks. The people who  
12 teach the classes for the New Mexico Wastewater  
13 Association.

14 Q. No.

15 But in the Department right now, not outside  
16 the Department, right in the Department, the 2000 and  
17 under Department right now.

18 A. To do what?

19 Q. Get it going, get it -- I mean, this \$100 fee,  
20 get it going, take it off and get going.

21 A. Well, I'll say this. From my discussions with  
22 Mike Koranda, what you're talking about is a management  
23 issue, and I think Mike Koranda brings some real  
24 management skills that are required.

25 And as far as one person being able to do it



1 all, I think they're going to have to make a decision  
2 about what they delegate out. Other states delegate most  
3 of this stuff out to somebody else and set up a  
4 certification program.

5 And I think they're going to have to -- and  
6 they're going to have to have some meaningful discussions  
7 with all of us about how do we do this, how do we  
8 cooperate to get it done, as opposed to this wedge thing  
9 and adversarial thing and all that.

10 Q. You've been there just like I was.

11 A. Hey, I probably have more disagreements with  
12 the Department than anybody. But I've been working with  
13 them for seven years, and I'm going to continue to work  
14 with them, because we don't have another option.

15 MR. SIMPSON: All right.

16 MR. SUMMERS: Thanks.

17 MR. SIMPSON: Further questions?

18 Seeing none, this is -- Mr. Clarke, do you have  
19 anything further from the Department?

20 MR. CLARKE: Mr. Hearing Officer, members of  
21 the Board, I appreciate your patience.

22 The Department has nothing more.

23 MR. SIMPSON: Okay. Thank you.

24 We're going to close the record at this point.

25 And I just want to tell everybody, I appreciate



1 that we've had this sort of cramped process here, and you  
2 did your best with it, and I think we have some good  
3 information for the Board to consider. We're not going  
4 to come up with a decision until the next Board meeting,  
5 as you heard before.

6           And I'll instruct the court reporter,  
7 Ms. Arreguin, to produce a written transcript from our  
8 last break until this point and give it to the Department  
9 for distribution to the Board members.

10           And that's it. We're closed.

11           Thank you.

12           (Proceedings adjourned at 6:04 p.m.)

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1 STATE OF NEW MEXICO )  
2 ) ss.  
3 COUNTY OF BERNALILLO )

4  
5  
6 I, CHERYL ARREGUIN, the officer before whom the  
7 foregoing proceedings was taken, do hereby certify that I  
8 personally recorded the proceedings by machine shorthand;  
9 that said transcript is a true record of the proceedings;  
10 that I am neither attorney nor counsel for, nor related  
11 to or employed by any of the parties to the action in  
12 which this proceeding is taken, and that I am not a  
13 relative or employee of any attorney or counsel employed  
14 by the parties hereto or financially interested in the  
15 action.

16  
17 NOTARY PUBLIC  
18 CCR License Number: 21  
19 Expires: 12/31/01

20 My Commission Expires: 12/10/03

21  
22  
23  
24  
25





SUSANA MARTINEZ  
Governor  
JOHN A. SANCHEZ  
Lieutenant Governor

**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

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RYAN FLYNN  
Cabinet Secretary  
BUTCH TONGATE  
Deputy Secretary

**Liquid Waste Program  
Advanced Treatment Systems  
Roles and Responsibilities  
Policy Guidance**

**Purpose:** To protect public health by clearly defining the various roles and responsibilities of the various professionals involved with onsite advanced treatment systems in New Mexico.

**Policy Guidance**

**Wastewater Technical Advisory Committee (WTAC)**

1. Shall establish and follow procedures, practices and policies governing the committee's activities.
2. Provide standardized objective evaluation of wastewater treatment and disposal technologies and submit their findings to the NMED Secretary for final approval.
3. Conduct periodic review and renewal of approved products to verify compliance with approved treatment standards. This includes products that were approved by NMED prior to the creation of the WTAC.

**ATS Manufacturers**

1. Shall follow NMED Secretary's final approval letter. They shall operate within the scope of work and claims made in their documentation provided to the WTAC during their product approval process.
2. Shall submit periodic performance data to the WTAC and NMED to verify that their units are performing at the required level.
3. Shall provide a written training and certification program, approved by the department, for installers and maintenance service providers of their systems. This training shall be provided at least once per year.
4. Shall maintain a current and active list of certified MSPs and certified Installers in New Mexico. This list shall be provided to NMED upon request. When an MSP is decertified by the manufacturer, NMED shall be promptly informed.
5. For permit applications which include non-domestic waste (high strength, hard-to-treat, commercial etc.) the ATS manufacturer shall provide assistance to their certified installers with the design of these systems. The ATS manufacturer shall provide a letter to both the installer and NMED that makes a clear recommendation as to whether their ATS will be able to treat the

proposed waste to the required permit standards, and they shall provide recommendations for the ongoing operation and maintenance of this system. High strength waste shall be defined as waste that exceeds the primary treatment standards prior to being discharged into a disposal system. Primary treatment standards means the primary treated wastewater does not exceed 200 mg/l BOD, 100 mg/l TSS, 60 mg/l total nitrogen or 60 mg/l fats, oil and grease.

6. Shall actively attempt to certify at least two MSPs in geographic areas where their systems are installed. The number of MSPs should be sufficient to meet the demand of any specific geographic area. This is to assure that the public has options to receive operation and maintenance services.

7. Shall assist their MSPs in troubleshooting ATSs which are not functioning properly or not meeting performance standards. They shall work with their MSPs to bring their systems into compliance with the permit conditions.

8. Shall be responsive to NMED correspondence which reports problematic issues with their MSPs, their installers or their systems.

9. Shall send a company or factory representative from the manufacturer to each bi-annual ATS Manufacturer's Summit meeting in New Mexico.

#### **ATS Installers**

1. Shall maintain their CID license (MM-1, MM-98, MS-1 or MS-3).

2. Shall attend annual ATS training and maintain their certification from ATS manufacturer.

3. For permit applications proposing non-domestic waste (high strength, hard to treat, commercial waste, etc) the installer shall complete forms which characterize the strength and nature of the waste using forms approved by NMED (ie. CIDWT high strength waste forms or manufacturer's forms). These forms shall be submitted to ATS manufacturer when designing these types of systems. The ATS Manufacturer must submit a letter as described in #5 above. This letter and the waste characterization forms shall be submitted as part of the liquid waste permit application.

4. Shall submit ATS applications in accordance with the Liquid Waste Regulations. This includes a design statement which demonstrates the applicability and effectiveness of the technology on the proposed site, and a signed maintenance and sampling contract.

5. Shall follow ATS manufacturer's installation instructions when installing systems;

6. Any design of a conventional or advanced treatment system with site or other limiting conditions that cannot be addressed by following a standard design from alternative resources recognized by NMED shall be designed and sealed by a professional engineer.

7. Shall provide written guidelines and educate property owners on the "Dos and Don'ts" to optimize system performance

#### **Maintenance Service Providers (MSPs)**

1. Shall maintain their CID license (MM-1, MM-98, MS-1 or MS-3) and Small Flow Advanced Small Wastewater Operators Certification (if applicable).

2. Shall maintain their certification from ATS manufacturer by attending annual trainings.

3. Shall inspect, operate and maintain all systems, for which they have active maintenance contracts, in accordance with the manufacturer's recommendations and the permit conditions, the liquid waste regulations and NMED policy guidance documents. These contracts shall clearly disclose all costs to the property owner.

4. Shall properly sample all systems for which they have an active sampling contract in accordance with permit conditions and the liquid waste regulations. These contracts shall clearly disclose all costs to the property owner.

5. Shall notify NMED within 5 working days of any system that does not operate as permitted or that does not provide a level of treatment at least as effective as required by the permit conditions.
6. Shall conduct property transfer evaluations for systems with ATSS. Licensed contractors who are not qualified as MSPs by NMED to work on a specific ATS shall not conduct evaluations on those specific ATSS. Under difficult circumstances, NMED may allow MSPs who are not qualified on a specific system to conduct property transfer evaluations. These allowances must be requested by the MSP and approved by NMED in writing.
7. Shall, on behalf of the property owner, submit monitoring reports, sampling records and maintenance reports/logs to the local field office within 30 days of the maintenance, monitoring or sampling event. They shall also submit all sampling data to the ATS manufacturer and the property owner.
8. Shall, on behalf of the property owner, submit copies of all maintenance and sampling contracts within 30 days of the contract issuance or renewal to NMED.
9. Shall Inform NMED of terminated contracts within 30 days of termination.
10. Shall be able to respond to emergency situations within 48 hours of being notified.
11. Shall have a Quality Assurance and Control Plan (QAQC).
12. Shall provide written guidelines to communicate with and educate property owners on the "Dos and Don'ts" to optimize performance of their on-site system
13. Shall submit MSP applications for each and every ATS that they want to work on. These applications must be approved by NMED prior to servicing these systems.
14. MSPs who want to service "orphaned systems" shall submit applications to NMED to request to be certified on specific orphaned systems. Orphaned advanced treatment systems are defined as "an advanced liquid waste treatment system whose manufacturer no longer exists or that is no longer approved for installation in the state of New Mexico, or for which the manufacturer no longer provides training in maintenance activities."
15. MSPs who are certified as small advanced wastewater systems operators shall also attend certification trainings held by the ATS manufacturers and must be certified by the manufacturers. This does not apply for orphaned systems. For situations where the manufacturer is not actively providing enough MSPs to handle the MSP demand in a specific geographic area, NMED may approve MSP applications for qualified MSPs who have not been formally trained by a specific manufacturer. The MSP must provide proof that they have the experience, tools, manuals and parts necessary to adequately maintain these systems.

#### **Homeowners/Property Owners of ATSS**

1. Shall have maintenance and sampling contracts in effect for the duration of the permit.
2. Shall operate their ATS in accordance with their permit and the liquid waste regulations.
3. Shall allow NMED personnel and MSP personnel right of entry to the property at reasonable times.
4. At the time of transfer of property ownership, the new owner shall submit an "amendment of permit" updating the ownership change and provide NMED with a copy of the valid maintenance and sampling contract in the name of the new owner.
5. Shall follow the written guidelines provided to them from their installer and MSP and consistently follow the "Dos and Don'ts" to optimize the performance of the on-site system.

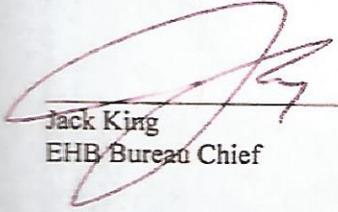
### **Professional On-site Organizations**

1. Shall coordinate with national on-site wastewater organizations (i.e., NOWRA, NAWT, CIDWT, NEHA etc.) and NMED to identify training needs of all onsite wastewater professionals;
2. Shall provide current and relevant trainings to all on-site professionals in New Mexico. These courses shall be taught by professional instructors.
3. Shall coordinate trainings in collaboration with NMED.

### **New Mexico Environment Department (NMED)**

1. Shall provide technical and legal assistance to the WTAC, as needed.
2. The NMED Secretary, after review of WTAC findings, shall issue a final order (approving or denying) all wastewater treatment technologies reviewed by the WTAC.
3. Shall maintain a list of approved advanced treatment wastewater technologies on the NMED website.
4. Shall ensure that ATS Manufacturers meet the conditions set forth in the NMED Secretary's product approval letter or NMED approvals letters that were issued prior to the creation of the WTAC. This includes verification that the ATS is meeting treatment performance levels documented during the WTAC or submittal process.
5. Shall review ATS permit applications within a maximum of 20 working days after receipt of a complete application. Permit conditions shall be in accordance with regulations, manufacturer's specifications and best practices to assure the protection of public health.
6. Shall maintain a current list of active MSPs who have been certified by ATS manufacturers. This list shall be available on the liquid waste program website.
7. Shall review applications from MSPs requesting to work on orphaned systems, and maintain a current and active list of approved MSPs for specific orphaned systems. This list shall be available on the liquid waste website.
8. Shall review and approve ATS manufacturer's written training and certification programs in a consistent and timely manner.
9. Shall require compliance with performance standards specified in liquid waste permits and in accordance with The Liquid Waste Regulations. NMED shall attempt to gain voluntary compliance with the issuance of Notices of Violations (NOVs). Enforcement action will be used when voluntary compliance efforts are not successful, for egregious violators, or for systems which are imminent threats to public health.
10. Shall contact ATS manufacturers when MSPs do not submit maintenance or sampling data or when they are not maintaining the system in accordance with the permit conditions.
11. Shall develop and maintain a database for MSPs to enter maintenance and sampling data.
12. For situations in which the ATS manufacturer does not follow all conditions stated in the Secretary's order, NMED ATS manufacturer approval letters, The Liquid Waste regulations, or NMED policy guidance documents; the EHB liquid waste program manager shall recommend to the NMED Secretary that the ATS manufacturer be removed from the list of approved wastewater treatment technologies.
13. For situations in which the MSPs do not follow all Liquid Waste Regulations or policy guidance documents, their qualification as a MSP may be revoked by the liquid waste program manager. All revocations shall be subject to applicable rights to appeal.

Approved by

  
\_\_\_\_\_  
Jack King  
EHB Bureau Chief

9/9/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jim Vincent  
Liquid Waste Program

9/9/15  
\_\_\_\_\_  
Date

LS Exhibit 3

HOUSE BILL 506

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Roberto "Bobby" J. Gonzales and Harry Garcia

AN ACT

RELATING TO TAXATION; CREATING THE WASTEWATER TREATMENT SYSTEM  
INCOME TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Income Tax Act is enacted  
to read:

"[NEW MATERIAL] WASTEWATER TREATMENT SYSTEM INCOME TAX  
CREDIT.--

A. A taxpayer who is not a dependent of another  
individual and who purchases and installs a wastewater  
treatment system on property owned and occupied by the taxpayer  
as the taxpayer's primary residence may apply for, and the  
department may allow, a credit of up to two thousand five  
hundred dollars (\$2,500) against the taxpayer's tax liability  
imposed pursuant to the Income Tax Act. The tax credit

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underscored material = new  
[bracketed material] = delete

1 provided by this section may be referred to as the "wastewater  
2 treatment system income tax credit".

3 B. A taxpayer may claim a wastewater treatment  
4 system income tax credit for the taxable year in which the  
5 taxpayer purchases and installs a wastewater treatment system.  
6 To receive the tax credit, a taxpayer shall apply to the  
7 department on forms and in the manner prescribed by the  
8 department. The application shall include a certification made  
9 pursuant to Subsection F of this section.

10 C. That portion of a wastewater treatment system  
11 income tax credit that exceeds a taxpayer's tax liability in  
12 the taxable year in which the credit is claimed may be carried  
13 forward for a maximum of three consecutive taxable years.

14 D. Married individuals filing separate returns for  
15 a taxable year for which they could have filed a joint return  
16 may each claim only one-half of the wastewater treatment system  
17 income tax credit that would have been claimed on a joint  
18 return.

19 E. A taxpayer may be allocated the right to claim a  
20 wastewater treatment system income tax credit in proportion to  
21 the taxpayer's ownership interest if the taxpayer owns an  
22 interest in a business entity that is taxed for federal income  
23 tax purposes as a partnership or limited liability company and  
24 that business entity has met all of the requirements to be  
25 eligible for the credit. The total credit claimed by all

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1 members of the partnership or limited liability company shall  
2 not exceed the allowable credit pursuant to Subsection A of  
3 this section.

4 F. The department of environment shall adopt rules  
5 establishing procedures to provide certification of a  
6 wastewater treatment system that shall require compliance with  
7 that department's liquid waste disposal and treatment rules and  
8 that the wastewater treatment system was installed by a  
9 qualifying contractor as determined by that department.

10 G. A taxpayer allowed a tax credit pursuant to this  
11 section shall report the amount of the credit to the taxation  
12 and revenue department in a manner required by the taxation and  
13 revenue department.

14 H. The taxation and revenue department shall  
15 compile an annual report on the wastewater treatment system  
16 income tax credit that shall include the number of taxpayers  
17 approved by the department to receive the credit, the aggregate  
18 amount of credits approved and any other information necessary  
19 to evaluate the effectiveness of the credit. That department  
20 shall present the report to the revenue stabilization and tax  
21 policy committee and the legislative finance committee with an  
22 analysis of the effectiveness and cost of the tax credit.

23 I. As used in this section, "wastewater treatment  
24 system" means an on-site liquid wastewater treatment system  
25 that uses a process of wastewater treatment that removes a

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1 greater amount of contaminant than is accomplished through  
2 primary treatment."

3 SECTION 2. APPLICABILITY.--The provisions of this act  
4 apply to taxable years beginning on or after January 1, 2019.

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Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/19

SPONSOR Gonzales/Garcia, H. LAST UPDATED 2/21/19 HB 506

SHORT TITLE Wastewater Treatment System Tax Credit SB \_\_\_\_\_

ANALYST Iglesias

### REVENUE (dollars in thousands)

| Estimated Revenue |                                 |      |      |      | Recurring or<br>Nonrecurring | Fund<br>Affected |
|-------------------|---------------------------------|------|------|------|------------------------------|------------------|
| FY19              | FY20                            | FY21 | FY22 | FY23 |                              |                  |
| \$0.0             | (Indeterminate, likely minimal) |      |      |      | Recurring                    | General Fund     |

Parenthesis ( ) indicate revenue decreases

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department  
New Mexico Environment Department

### SUMMARY

#### Synopsis of Bill

House Bill 506 creates a \$2,500 income tax credit for the purchase and installation of a residential wastewater treatment system that removes a greater amount of contaminant than is accomplished through primary treatment. The credit applies to systems installed on property owned and occupied by the taxpayer, can be claimed against the taxpayer's liability, and may be carried forward for a maximum of three consecutive tax years. The taxpayer must submit a copy of a certificate received from the New Mexico Environment Department (NMED) and must apply and claim the credit as specified by the Taxation and Revenue Department (TRD). The bill tasks TRD with compiling an annual report of the credit and presenting it to the specified legislative committees.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. The bill applies to taxable years beginning on or after January 1, 2019.

### FISCAL IMPLICATIONS

TRD identifies technical issues with the bill that prevent determination of a fiscal impact, namely the inability to determine how much of the credit taxpayers may claim. The bill states taxpayers

may claim “up to” \$2,500, but does not prescribe how the credit awarded amount is determined. It is possible the bill intends for taxpayers installing a wastewater treatment system to claim the full amount of the credit or some portion of the credit based on unidentified criteria.

A 2006 report by NMED indicated about 29 percent of New Mexico’s residents use on-site sewage systems, including an estimated 215 thousand septic systems, 2,400 advanced wastewater treatment systems, and 24 thousand other systems. The report indicates more than 50 percent of households in Catron, Harding, Mora, Rio Arriba, Taos, Torrance, and Valencia use onsite systems. Generally, installation of residential wastewater treatment systems cost about \$5,000 to \$10,000, and the cost to replace an existing system is about \$3,000 to \$7,000. A concrete septic tank can last 40 years to nearly indefinitely, though poor quality concrete or acidic ground water may result in deterioration. Given the cost and lifetime of such systems, the minimal fiscal impact assumes relatively few installations or replacements to be claimed each year for the credit.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure’s fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

## SIGNIFICANT ISSUES

Current statute allow homeowners to install liquid waste systems. The policy question at issue is whether the state should incentivize installation of these systems through an income tax credit. TRD provides the following policy analysis on this issue:

“Municipalities and other political subdivisions serve the public good by managing municipal wastewater systems that efficiently and safely manage sanitary waste streams for all citizens. Citizens collectively support these systems through taxes and fees. Rural areas often manage sanitary waste with septic systems. These complex sanitary waste management systems address sanitary and environmental risks and protecting surface water and ground water for all individuals. Tax policy that incentivizes individuals to operate independently from a greater public network can place pressure on compliance resources and the financial structures to support public works.”

The bill may incentivize installation of advanced water treatment systems over a conventional “septic system” (see discussion in *Technical Issues* section). However, NMED states advanced treatment systems are not always necessary per the current liquid waste and disposal regulations. These regulations identify when alternative treatment systems must be installed and are determined based on lot size and other site conditions. Therefore, NMED points out the credit may apply to people who choose to install such a system even when it is not required.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

## ADMINISTRATIVE IMPLICATIONS

According to NMED, the bill's requirement to establish procedures for providing certification that the wastewater system was installed in accordance with current Liquid Waste Treatment and Disposal Regulations, can be done through the current permitting and approval process.

TRD recommends added language that requires electronic information sharing for certificates awarded. By receiving electronic files of awarded certificates, data is readily available for annual reporting and increases return processing efficiency and accuracy.

## TECHNICAL ISSUES

For the purpose of claiming this credit, the bill defines wastewater treatment system as "an on-site liquid wastewater treatment system that uses a process of wastewater treatment that removes a greater amount of contaminant than is accomplished through primary treatment." NMED states this language enables taxpayers to claim a credit for installing an advanced treatment system over a conventional septic system, identified as primary treatment. However, TRD states the bill's definition is not sufficient for managing the credit and must be written to conform with NMED's definitions.

TRD is concerned the current bill language could create conflict and litigation as to how it is applied and how much credit a taxpayer can receive. Section 1(A) sets the maximum amount of the credit, up to \$2,500, but the remaining sections do not further detail the measures of the credit such as what costs can be included.

TRD also notes Section 1(E) of the bill states that the credit can be allocated in proportion to a taxpayer's ownership in a business entity which has met all the requirements to be eligible for the credit, but this credit is only available under the income tax act for systems installed at the taxpayer's primary residence.

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

### Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

**Does the bill meet the Legislative Finance Committee tax expenditure policy principles?**

1. **Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

| LFC Tax Expenditure Policy Principle | Met? | Comments   |
|--------------------------------------|------|--|
| <b>Vetted</b>                        | ✘    | Not heard in interim meetings of LFC or RSTP.  |
| <b>Targeted</b>                      |      |  |
| Clearly stated purpose               | ✘    | None.  |
| Long-term goals                      | ✘    | None.  |
| Measurable targets                   | ✘    | None.  |
| <b>Transparent</b>                   | ✔    | The bill requires annual reporting by TRD on the number of taxpayers claiming the credit and the aggregate amount of the credits.  |
| <b>Accountable</b>                   |      |  |
| Public analysis                      | ?    | Because there is no stated purpose for the credit, it is indeterminate whether reported information will allow for analysis of the effectiveness and efficiency of the credit. |
| Expiration date                      | ✘    |  |
| <b>Effective</b>                     |      |  |
| Fulfills stated purpose              | ?    | No stated purpose.   |
| Passes “but for” test                | ?    | Indeterminate.   |
| <b>Efficient</b>                     | ?    | Because there is no stated purpose, it is indeterminate whether the credit is the most cost-effective way to achieve the desired results.                                      |
| Key: ✔ Met ✘ Not Met ? Unclear       |      |  |

## LS Exhibit 5

**James Kenney:** First and foremost, civil servants, public employees, have a tough time. I think one of the things that is really important to me is making sure that people who are at NMED are valued, are respected, are heard. That we're moving forward together, we're listening to each other. That's a really big issue for me. Having been a public employee, and having at moments felt undervalued, I think we need to really hold those folks up and value that they come to work every day and implement this mission.

Beyond that, there are four points I'm going to mention. I'll start with **science**. It's a good word. And we need to rely on science—for regulations, for policies, and for decision-making.

Then, **innovation**. I think it's interesting that we as a society promote [Science, Technology, Engineering and Mathematics, or STEM]—and we should—and yet, as we start to roll out the engineering and technical solutions, we sometimes question those. I want to make sure that we in the Environment Department are cutting-edge and that we're relying on innovation through technology and innovation through engineering to implement good science, to implement good solutions for the environment.

**Collaboration** is the third t. Something I've been very successful with at EPA is ensuring that—whether it's the NGO community or industry, whether [it's] tribes or academia—that we all get in the room and we all work toward a common goal. I don't have any romantic ideas that we will always all agree. But I think we can build upon the science, we can build upon the innovation and we can collaborate and we can work toward solutions.

The final piece of this is **compliance**. Without rules and regulations, and without our permits, and ensuring compliance with those, it's somewhat meaningless. We need to ensure a fair and level playing field—and [ensure] that the folks that we're trusting with that social license to operate, beyond the physical piece of paper, are actually doing what they say they're doing.

Those four areas are 'big picture' for me. Thinking about those, and then thinking about all the things that are at the forefront of NMED, we're certainly going to move on a methane regulation and addressing climate issues.

**Farmington Field Office  
Liquid Waste Permit Audit  
August 31, 2010**

**Introduction**

The Environment Secretary issued an Administrative Order on April 23, 2010 that required the Environmental Health Division to:

“Form a team of liquid waste specialists, to include at least one specialist from each district, to perform a file audit of all the liquid waste permits issued from the Farmington Office between 2005-2010 to ascertain whether permitting was done in accordance with the Regulations and where a site inspection was conducted. The audit should be completed by July 31, 2010. The results of the audit may necessitate further action.”

**Methods**

The Liquid Waste Program Manager and five District Liquid Waste Specialists conducted an audit of Liquid Waste Permits that were issued by the Farmington Field Office (FFO) from January 1, 2005 through May 31, 2010. The audit was performed in the FFO during June 21, 2010 through June 24, 2010. The following records were utilized in the audit:

- Original paper Liquid Waste Permit files maintained by the FFO;
- Liquid Waste permit database records;
- Liquid Waste fee spreadsheet maintained by the Liquid Waste Financial Specialist; and
- FFO log of permits received.

The audit consisted of a review of permit records for completeness and internal consistency. Completeness was determined by checking to see if all applicable parts of the permit application had been filled out, and if accompanying documents such as deed, plat, inspection report and fee documentation were in the permit file. Internal consistency was determined by checking to see if the information provided appeared to comply with the Liquid Waste Regulations. The documents were taken at face value, but inconsistencies were noted. For example, if the applicant indicated a 7 foot depth to groundwater with a disposal trench 6 feet below grade, the permit was identified as not providing the required 4 foot clearance to groundwater.

Gaps in the consecutive numbering of paper permits were cross checked with the database records and with the FFO receipt log.

The following conditions were identified as significant potential violations of regulations and were counted as major deficiencies:

- Paper permit missing, but permit listed in database;
- No deed or proof of ownership in permit file;
- No record of fee payment in permit file;



- New construction with lot size, date of record, depth to groundwater, soil type, source of potable water, tank type and/or drainfield area/specifications not provided on permit application;
- New construction with inadequate clearance to groundwater;
- Lot size too small for design flow;
- Flow greater than 2,000 gpd on single lot;
- RV waste permitted after 9/1/05 with no pretreatment;
- Advanced treatment system not properly permitted:
  - Secondary treatment permitted when tertiary should have been required; and
  - Permit approved without effluent monitoring.

The following conditions were counted as other deficiencies:

- Permit not signed by applicant;
- Permit not signed by NMED;
- Date permit received not provided;
- Site sketch not provided;
- Inspection conducted box checked in final approval box, but no inspection report in file;
- Contractor conducted registration inspection of unpermitted system after December 2007;
- Homeowner exam documentation not in file;
- NMED inspection of homeowner installation not conducted;
- Homeowner photographic self-inspection authorized; and
- Xerox of same partially completed NMED inspection form used for multiple permits.

## **Results**

The results of the audit are summarized in Table 1.

The Liquid Waste Database contained records for 3,112 permits that were administered from January 1, 2005 through May 31, 2010. FFO files contained a total of 3,180 paper permit records for this period. Forty six permit numbers were skipped or otherwise were not assigned to a specific permit application.

Paper records were missing for 106 permits (Table 2, Figure 1), 67 of which were recorded in the database and in the receipt log, and 39 of which were recorded in the receipt log only.

Permit fee records (a NMED receipt and copy of the check received) did not exist in the FFO paper files for 12 permits. The fee spreadsheet maintained by the Liquid Waste Financial Specialist in Santa Fe reflects that fees were paid for 4 of these 12 permits, so fees may not have been paid for a total of 8 permits (Table 2). Permit fees range from \$50-\$150.

During the period covered by this audit, sixty percent of all new or modified liquid waste systems were reported by the FFO to have had a final inspection by NMED, although this percentage varied from a low of 36% in 2005 to a high of 96% in 2006 (Table 1). Virtually all registration inspections of unpermitted systems were done by third party contractors prior to



December 17, 2007. This practice was stopped and currently there are no third party inspectors authorized for unpermitted system inspections.

The percentages of permits approved with major and other deficiencies are compared with the percentages of permits properly issued for each year in Figure 2.

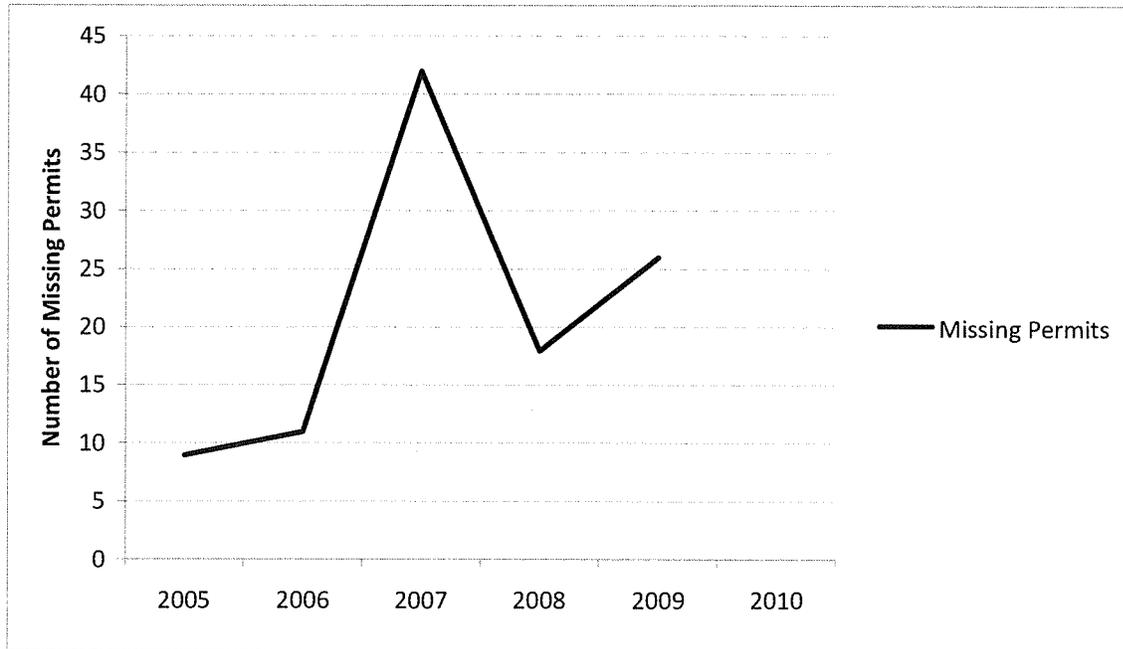
**Table 1. Audit Results Summary.**

|  | 2005       | 2006       | 2007       | 2008       | 2009       | 2010      | Total       |
|--|------------|------------|------------|------------|------------|-----------|-------------|
| Major Deficiencies Identified (%)                              | 802<br>82% | 506<br>85% | 262<br>40% | 164<br>36% | 92<br>23%  | 13<br>17% | 1839<br>58% |
| Other Deficiencies Identified (%)                              | 116<br>12% | 70<br>12%  | 214<br>32% | 153<br>33% | 69<br>17%  | 10<br>13% | 632<br>20%  |
| Permit Properly Issued (%)                                     | 59<br>6%   | 21<br>3%   | 185<br>28% | 144<br>31% | 247<br>60% | 53<br>70% | 709<br>22%  |
| Total Permits (paper files)                                    | 977        | 597        | 661        | 461        | 408        | 76        | 3180        |
| Total Permits (database)                                       | 980        | 593        | 616        | 419        | 369        | 135       | 3112        |
| Percent of new or modified systems inspected by NMED           | 36%        | 96%        | 48%        | 78%        | 82%        | *         | 60%         |
| Paper permit missing, permit in database                       | 3          | 7          | 28         | 10         | 19         | *         | 67          |
| Paper permit missing, permit not in database, permit in ledger | 6          | 4          | 14         | 8          | 7          | *         | 39          |
| No fee record in paper files                                   | 0          | 1          | 4          | 3          | 4          | 0         | 12          |
| No fee record in Santa Fe financial records                    | 0          | 1          | 3          | 2          | 2          | 0         | 8           |

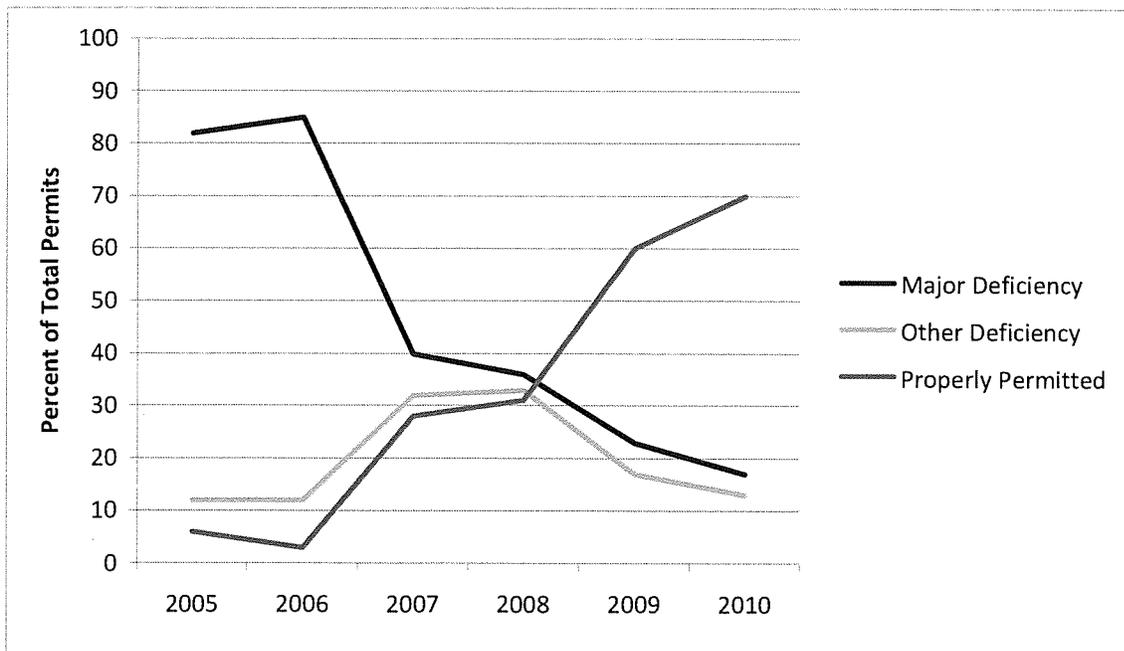
\* Parameter not counted for 2010 since many permits are pending.



**Figure 1. Paper Permits Missing from the FFO.**



**Figure 2. Adequacy of Liquid Waste Permits Issued.**





**Table 2. Missing Paper Permits and Fee Documentation.**

| Paper permit missing, permit in database  | Paper permit missing, permit not in database, permit in ledger   | No fee record in FFO paper files or in Santa Fe financial spreadsheet  |
|---|--|--|
| <p><u>FA05</u>: 313, 630, 631</p> <p><u>FA06</u>: 226, 272, 315, 506, 514, 543, 610</p> <p><u>FA07</u>: 7, 64, 78, 86, 132, 142, 151, 154, 199, 218, 227, 228, 245, 246, 254, 273, 282, 304, 312, 385, 420, 437, 512, 526, 564, 568, 569, 641</p> <p><u>FA08</u>: 52, 53, 71, 95, 97, 271, 278, 406, 351, 352</p> <p><u>FA09</u>: 127, 131, 153, 155, 158, 163, 164, 259, 263, 323, 324, 326, 327, 353, 361, 374, 375, 392, 400</p> | <p><u>FA05</u>: 1, 378, 481, 482, 483, 484</p> <p><u>FA06</u>: 27, 114, 546, 590</p> <p><u>FA07</u>: 11, 92, 102, 122, 203, 258, 271, 315, 396, 397, 467, 605, 607, 622</p> <p><u>FA08</u>: 50, 80, 81, 283, 349, 356, 426, 436</p> <p><u>FA09</u>: 42, 47, 70, 150, 241, 242, 394</p> | <p><u>FA06</u>: 376</p> <p><u>FA07</u>: 318, 438, 642</p> <p><u>FA08</u>: 242, 316</p> <p><u>FA09</u>: 24, 291</p> |

**Discussion**

This audit represents a comprehensive evaluation of liquid waste permitting in the Farmington Field Office. Liquid Waste Program staff from across the state (Albuquerque, Las Cruces, Los Lunas, Roswell and Santa Fe) traveled to Farmington and spent long hours reviewing permit files as outlined previously. Staff departures and the stability of the current work force, as well as standardized procedures have resulted in a significant increase in the percentage of Liquid Waste Permits that were properly issued beginning in about 2008 and extending through today.

Many deficiencies and inconsistencies noted in the audit will be addressed by a Liquid Waste Standard Operating Procedure that has been developed and will be implemented for use state wide.

The fact that the number of missing paper permits peaked in 2007 could indicate that the practices of one or more employees at that time resulted in paper permits not being properly kept in the file. There are anecdotal reports that contractors sometimes left the office with original permit applications after the permit number was assigned and after approval for construction was granted. If so, the permit records may not have been returned to the office after construction was complete and final approval was granted. The practice of allowing contractors to remove



original permit applications from the office has stopped. Another possible explanation is that the permit records still exist in the office, but have been misplaced and not yet located.

The percentage of properly issued permits has increased steadily from a low of 3% in 2006 to a high of 70% in the first 5 months of 2010 (Figure 2). The District I Farmington Office will put a checklist in place to bring the percentage of permits properly issued to 100%. This procedure may result in a delay in issuing permits, but the Department must ensure that permits are issued properly. Any delay will not extend beyond the time allowed by regulation to issue the permit. Additionally, the office is systematically going back through the permits with incorrect information to correct the information or invalidate the permit.

The percent of new or modified systems inspected by NMED was anomalously high (96%) for 2006. Many of the permit documents approved during this year indicated that an inspection was conducted, but the permit files do not contain an inspection form or other documentation that an inspection was actually conducted. Additionally, 2006 coincides with the time when copies of the same completed inspection form were filed for multiple permits. Both of these issues raise doubts as to whether 96% of the systems permitted in 2006 were actually inspected properly, if at all. The office will inspect a representative sample of these sites for compliance with the Liquid Waste Regulations.

### **Corrective Actions**

The following actions have been or are being taken to correct the problems with the Liquid Waste Program administered by the Farmington Field Office:

- Personnel turnover occurred in the Farmington Field Office occurred from 2006 through 2008, but has now stabilized.
- Field inspectors and a staff manager from other offices were temporarily assigned to the Farmington Field Office beginning in 2008 to help with the liquid waste workload, and to bring permitting practices into compliance with the Liquid Waste Regulations. These temporary re-assignments resulted in a significant increase in the percentage of Liquid Waste Permits that were properly issued (Figure 2).
- All Department Field Offices shall use a checklist when issuing liquid waste permits to ensure that every permit is issued properly.
- Liquid Waste Permits issued by the Farmington Field Office from June through August, 2010 will be audited by the District Liquid Waste Specialist using the same methodology as used in this audit, and repeated quarterly, for at least one year. When a year of audit results demonstrate that permits are being issued properly and consistently, the audit frequency will be reduced to an annual basis.
- The database and ledger will continue to be used to contact homeowners and contractors in an effort to obtain copies of the 106 missing paper permit records.



- Liquid Waste program specialists will continue to train and work directly with Farmington staff to keep the Liquid Waste Program running efficiently and in compliance with the regulations.
- An investigation will be conducted into the duplicate copies of inspections that were filed. The office will inspect a representative sample of these sites to determine whether actual inspections were conducted at the time of filing. Field surveys of the liquid waste systems will be conducted as time becomes available for staff in the Farmington Field Office.
- Administrative staff in the Farmington Field Office will do a thorough search of all files to locate missing paper permit records. The Farmington Field office was relocated in September 2008 and files may have been misfiled when setting up the new office location.
- Third party inspections conducted after December 17, 2007 will be reviewed and followed-up with field surveys of the related liquid waste systems.
- Homeowner systems that were approved for photographic self inspections will be reviewed and followed-up with field surveys of the related liquid waste systems. Homeowners systems that weren't inspected will be followed up with field surveys of the related liquid waste system.

