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BEFORE THE
ENVIRONMENTAL IMPROVEMENT DIVISION
STATE OF NEW MEXICO

IN THE MATTER OF:)
)
LOS ALAMOS NATIONAL LABORATORY)
HEARING ON HAZARDOUS WASTE)
PERMIT)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on to-wit, the eighteenth day of
July, 1989, the above-entitled matter came on for hearing
before the New Mexico Environmental Improvement Division,
taken at the Harold Runnels Building, Santa Fe,
New Mexico, at the hour of nine o'clock in the forenoon.


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A P P E A R A N C E S

FOR THE DIVISION:

MR. WALT YOUNGBLOOD, Hearing Officer
Deputy Director, Public Health Division
Health and Environment Department
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, New Mexico 87503

MS. GINI NELSON
Assistant General Counsel
Health and Environment Department
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, New Mexico 87503

* * * *

MR. YOUNGBLOOD: If you will please take your seats.

Good morning. My name is Walt Youngblood. I am
deputy director of Public Health Division of the Health and
Environment Department.

Can everyone hear me?

I have been asked by the director of the
Environmental Improvement Division, EID, to be the hearing
officer at this hearing this morning. The subject of this
public hearing is EID's proposed draft permit, Los Alamos
National Laboratory, LANL, Resource Conservation & Recovery
Act, RCRA, operating permit NM-00010515-1, to operate a

1 hazardous waste incinerator treatment and storage facility
2 at Los Alamos, New Mexico.

3 There are two parts of this hearing. The first
4 is regarding EID's draft permit, and the second is regarding
5 the US Environmental Protection Agency, EPA, draft permit.

6 We will begin with the hearing on EID's draft
7 permit. At the conclusion of this hearing, we will go on
8 into another hearing on the EPA's draft permit.

9 The EID's hearing -- the purpose of this hearing
10 is to give the public an opportunity to participate in the
11 decision by the director of EID as to whether to issue this
12 permit to LANL. EID will be concerned with seeing that the
13 permit meets the general prerequisites for the issuance of
14 any hazardous waste permit in New Mexico.

15 Please understand that as hearing officer I will
16 not be making any decisions on this proposed draft permit.
17 My job is simply to assemble a record of this public
18 hearing, which will form a part of the total administrative
19 record from which the director of the EID will make the
20 final permit decision, and to conduct this public hearing as
21 to ensure that you, the public, are given a reasonable
22 chance to participate in making this record.

23 Before we start with testimony it may be helpful
24 for me to explain the procedure we will follow during this
25 hearing.

1 Copies of the order of proceedings that we will
2 follow today are available for your use and can be found at
3 the back of the room. If you don't already have one, I
4 suggest you pick up a copy so that you will be able to know
5 what is happening and what will be coming next during the
6 hearing.

7 Another handout you may wish to pick up is the
8 list of EID's prepared exhibits, which it describes exhibits
9 that EID intends to put in the record during this hearing.
10 Additional exhibits may be offered for the record by LANL
11 and by members of the public at appropriate times during the
12 hearing.

13 In addition to written exhibits, testimonies will
14 be taken from anyone who cares to testify. This testimony
15 is taken down by the court reporter. Anyone who wishes to
16 testify as a witness will be asked to sign up on the witness
17 sign-up sheet at the back of the room.

18 Please note that there are separate sign-up
19 sheets for EID's and EPA's draft permits. The procedure I
20 am talking about now applies to EID's draft permit and not
21 necessarily to EPA's. I will discuss the procedures for the
22 EPA part of the hearing when we have finished the EID part.

23 All witnesses will be required to testify under
24 oath or affirming that he or she will testify truthfully
25 should the witness' religious or other problems prevent the

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1 witness from taking the normal oath.

2 Unsworn statements, whether oral or written, will
3 be accepted into the hearing record. However, because such
4 unsworn statements cannot be effectively subjected to cross
5 examination you should be aware that, for obvious reasons,
6 the director may not give as much weight to the views of
7 those who are unwilling to give sworn testimony and who will
8 not subject themselves to cross examination.

9 Part of my job is to make rulings during this
10 hearing whether testimony that people may wish to introduce
11 into the record is or is not relevant to the central issue
12 of whether or not the issuance of this draft permit to this
13 applicant comports with the permit requirements of the
14 Hazardous Waste Act and regulations.

15 I intend to allow a great deal of latitude, but
16 if testimony is clearly not relevant to this draft permit
17 then I may have to rule such irrelevant testimony out of
18 order. All relevant data, views, and arguments will be
19 fairly received but without undue repetition.

20 Because there may well be matters presented at
21 this hearing today that were not foreseen prior to the
22 hearing I reserve the right to hold the hearing record open
23 for further comments in the form of written statements for a
24 limited period of time after the close of this hearing.

25 Whether I will, in fact, hold the record open is

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1 a matter I will not discuss now. I will, however, give you
2 a final decision at the close of the hearing.

3 Just a few brief ground rules for the hearing.

4 Witnesses will be allowed to say whatever they
5 think is relevant to the subject matter of the hearing,
6 although I, as hearing officer, reserve the authority to
7 limit testimony that is repetitious or clearly not relevant
8 to this particular permit.

9 Witnesses will please answer questions as
10 concisely as possible. I intend this will be a courteous
11 and orderly proceeding so please keep in mind that everyone
12 is entitled to respect and that only one person, and that is
13 the witness, will be allowed to speak for the record at any
14 one time.

15 It is impossible for the court reporter to take
16 down what two people are saying at the same time. So let's
17 please speak one at a time. If you have questions of the
18 witness, you will be given an opportunity to ask your
19 questions at the conclusion of the witness' direct
20 testimony, during the cross examination period for that
21 witness.

22 You will not be permitted to interrupt a witness
23 during direct testimony. When you have a question of a
24 witness, please keep in mind the distinction between cross
25 examining the witness and testifying on your own behalf as a

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1 witness.

2 If you have something to contribute, by all means
3 sign in on the witness sheet and say what you have to say.
4 However, please do not try to make a speech in the guise of
5 questioning the witness because I will not permit you to do
6 that. Of course, it may be necessary to make a brief
7 statement of reference to what the witness has testified to
8 in order to make your question understandable. That's
9 perfectly correct as long as you are not speaking as a
10 witness while cross examining someone else. Also please
11 listen to the questions and answers given and do not repeat
12 questions.

13 In the event that you have prepared a written
14 statement, you may simply submit the statement into the
15 record as an exhibit. However, if you wish the statement to
16 be given full weight you should also sign up as a witness
17 and offer to be cross examined on the content of your
18 written statement.

19 If you have comments in the nature of detailed
20 legal arguments that you wish to get into the record, it is
21 more appropriate to submit them as written comments rather
22 than in the form of lengthy oral testimony. If such
23 comments are already prepared, you are invited to enter them
24 into the record as exhibits during the hearing.

25 In the event that you are not prepared to submit

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1 your legal comments as hearing exhibits during the hearing,
2 I will allow you to submit any legal or other written
3 comments you wish to make after the close of the hearing by
4 putting them in writing and mailing them to me in care of
5 the mailing address set forth in the previous public notice
6 of the public hearing.

7 This hearing is being reported by Howard W. Henry
8 of Howard W. Henry & Company, Albuquerque Court Reporters,
9 at 1300 Central, Southwest, Albuquerque, New Mexico, 87102.
10 A transcript will be furnished to all persons for review at
11 EID's main office. If you want a copy you may have one if
12 you request one and pay the cost of the copy from the Howard
13 W. Henry Company.

14 Does anyone have any questions on how we are to
15 proceed?

16 MR. BURNETT: Mr. Youngblood, I am Grove Burnett, the
17 attorney representing the Concerned Citizens for Nuclear
18 Safety. I have a couple of questions, procedural in nature.

19 It is our understanding that the applicant and
20 the operator of this -- of the incinerator is not going to
21 present testimony and is not going to be available for
22 examination by any witness or by any person here today and
23 it is their intention, they announced to us, to submit
24 written testimony responding to the questions raised here
25 today by the public.

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1 Leaving aside for the moment the charade that I
2 submit that plagues this entire public hearing, we request
3 the opportunity, nonetheless, to submit written comments on
4 their written comments, if you will, and an appropriate time
5 the record be left open for an appropriate time following
6 submission of their comments, since we are not even going to
7 be able to hear them today or cross examine them today. At
8 a minimum we should be permitted the opportunity to submit
9 written comments on their written submission.

10 MR. YOUNGBLOOD: Mr. Burnett, we will take this up at
11 the close of the hearing on how long we will leave the
12 hearing record open. At that time I would like to hear from
13 you again on your concerns.

14 MR. BURNETT: All right. My second request has to do
15 with the scope of the examination today and I was heartened
16 to hear your preliminary remarks that you are going to
17 exercise a great deal of latitude in connection with the
18 testimony today.

19 We would request that you not be rigid in your
20 rulings or determinations as to the scope of the hearing
21 presented by the public today. We are all fully aware, and
22 the state has repeatedly pointed out to us today, that this
23 permit is for a hazardous waste permit under RCRA, but the
24 reality of the situation is that this incinerator is
25 designed and is going to be operated for radioactive waste

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1 and this is only part, a component of the permitting
2 process, a need for that end objective.

3 So I think it's inevitable -- it's necessary that
4 you are going to hear testimony regarding the burning of
5 radioactive waste because that's what this facility is
6 intended and, in fact, is going to be used for.

7 So, again, that is a just a request, I think it's
8 helpful to address that issue at the outset before we get
9 under way.

10 MR. YOUNGBLOOD: Thank you, Mr. Burnett.

11 Further discussion on the hearing? Please rise
12 and come forward and state your name.

13 MR. DEYO: Richard Deyo, David Edward Yellow Orange.

14 I was kind of hearing a distinction between EID
15 and EPA. If somebody had comments about just generally both
16 of them, could they just sign up in a general sort -- like
17 anybody here from EPA going to be somebody different than
18 the people up here now?

19 MR. YOUNGBLOOD: Yes, that is correct, there will be a
20 different group up here. I would suggest if you think that
21 you might want to testify on both hearings --

22 MR. DEYO: Are they in the room now?

23 MR. YOUNGBLOOD: Yes.

24 MR. DEYO: So if I wanted to testify and didn't want to
25 say the same thing, I could say it once in front of you and

1 have them -- if they are in the room now, that they have
2 heard it.

3 MR. YOUNGBLOOD: I would suggest that you sign up on
4 both hearing sheets. Then when the hearing comes about you
5 figure out what you want to say, and when we call your name,
6 if you decide that you don't want to testify with EPA, then
7 you can do so.

8 Further?

9 MR. CROSSMAN: We should say there are two sign-up
10 sheets back there, Mr. Youngblood, because I don't think
11 people understand that.

12 MR. YOUNGBLOOD: There are two sign-up sheets back
13 there. One is for the EID portion of the hearing and the
14 other is for the EPA portion of the hearing.

15 MR. CROSSMAN: I don't think anybody understood that
16 when they signed up.

17 MR. YOUNGBLOOD: You will have plenty of time to sign
18 up. We will see that the EPA sign up slip is back there. I
19 am sure before this part of the hearing is concluded, we
20 will have a break and at that time you will will have time
21 to sign up on the EPA portion.

22 Please rise as state your name.

23 UNIDENTIFIED SPEAKER: Mr. Hearing Officer, I was
24 wondering if I heard you correctly. Did you say that the
25 transcripts would be available if we were to contact this

1 company and pay for them? Will they also be available for
2 public review at the state library?

3 MR. YOUNGBLOOD: They will be available for public
4 review at the EID main office. I have not asked the EID if
5 they will be available anywhere else.

6 MS. NELSON: I'm sorry?

7 UNIDENTIFIED SPEAKER: The proceedings of these
8 hearings, the transcript, would it be made available for the
9 public at no cost? Would they be available for public
10 review?

11 MR. CROSSMAN: I believe we can make a copy available
12 here in our file. And the repository at the Espanola Public
13 Library.

14 MS. NELSON: My name is Gini Nelson. I am the Health
15 and Environmental attorney representing the Environmental
16 Improvement Division for this hearing.

17 The transcript will be part of the formal
18 administrative record and is available for public review.

19 The comment about purchasing a copy or paying the
20 cost of copying is if you want one of your own to take away,
21 but it will be available for public review as part of the
22 entire record.

23 MR. YOUNGBLOOD: Further questions? Yes.

24 MS. BONNEAU: Bonnie Bonneau. This public notice
25 number twenty-nine says that written comments had to be

1 submitted both to the EID and to an EPA office in Denver by
2 today. Does this mean that anything we turn in today that
3 hasn't been sent a duplicate -- or rather to Texas? It says
4 you have to send --

5 MR. YOUNGBLOOD: During this hearing, anything that you
6 want the turn in as an exhibit will be accepted.

7 MS. BONNEAU: And it doesn't matter if we haven't sent
8 it to Texas like this says and we don't have to tell you
9 what -- it also says you have to state the nature of issue
10 proposed before you can speak or something.

11 MR. YOUNGBLOOD: Um-hum.

12 MS. BONNEAU: But there is not any place --

13 MR. YOUNGBLOOD: I plan on giving you latitude. If you
14 wish to testify today, if you will sign up on the sheet
15 saying you want to testify, we will see that you get a
16 chance to testify.

17 MS. BONNEAU: This notice didn't say that.

18 MR. YOUNGBLOOD: Yes, ma'am. I want to reiterate again
19 that this hearing is in two parts. The first part will be
20 the EID. The second part will be the EPA. Are there any
21 more questions? Please rise and state your name.

22 MS. WEISSMANN: Stephanie Weissman. I would like to
23 know whether people from Los Alamos are going to speak. I
24 thought I was coming to a meeting where Los Alamos Labs was
25 going to speak about the incinerator, and -- or the

1 incinerators, and that the Environmental Improvement Board
2 were also going to speak. I thought it was going to be more
3 the open conversation.

4 Did I misunderstand the attorney over here when
5 he said that those people aren't going to be giving
6 testimony today?

7 MR. YOUNGBLOOD: No, Ms. Weissman, you did not
8 misunderstand. It's my understanding that the people from
9 LANL will not be testifying today.

10 MS. WEISSMAN: Is there anybody from LANL here?

11 MR. YOUNGBLOOD: There are people from LANL here.

12 MS. WEISSMAN: And are they going to be speaking?

13 MR. YOUNGBLOOD: It's my understanding that they will
14 not be speaking. The people from LANL, if that is incorrect
15 please correct me at this time.

16 MS. BROWN: Sheila Brown, and I represent Los Alamos
17 National Laboratory.

18 Our understanding of the purpose of this hearing
19 is for EID to take public comments on the permit. We are
20 here to have written comments, not to submit ourselves on
21 the permit. We will not be making an oral statement at this
22 time. We see no need to do that.

23 MR. YOUNGBLOOD: Thank you very much. Let's have it
24 quiet now. We are going to have an orderly hearing.

25 Yes, sir?

1 MR. SHULMAN: I think --

2 MR. YOUNGBLOOD: Would you please identify yourself?

3 MR. SHULMAN: My name is Howard Shulman, Santa Fe.

4 Looking at your order of proceedings and with
5 this latest information that just came out, point four,
6 "Submittal of comments by LANL." I, too, was under the
7 impression that I would have a chance to gather more
8 information as well as cross examine the folks at Los
9 Alamos.

10 I see that by your process that limits my right
11 to that type of cross examination. I find that -- I
12 question the validity and any kind of legal basis for this
13 hearing today if the Los Alamos Labs are not present to give
14 the testimony as well as for us to be able to cross examine.
15 I find the process very questionable as well as in the sense
16 of justice, any kind of legal process, any kind of community
17 process.

18 MR. YOUNGBLOOD: Your objections have been so noted on
19 the record.

20 MR. SHULMAN: And is there a response from EID or Los
21 Alamos Labs? I am not just --

22 MR. YOUNGBLOOD: Does EID wish to respond?

23 MS. NELSON: One moment, please.

24 Mr. Crossman is able to respond to that question,
25 if that's allowable.

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1 MR. YOUNGBLOOD: That's appropriate.

2 MR. CROSSMAN: Is this working? It was working
3 earlier. Is it no longer working?

4 UNIDENTIFIED SPEAKER: If you can't work the microphone
5 how are you going to work the incinerator?

6 MR. YOUNGBLOOD: Folks, I want to tell you one more
7 time that this is a serious hearing, and I am not going to
8 stand this type of interruption. Now, let's get on with the
9 hearing and get through with it.

10 Come use this microphone.

11 MR. CROSSMAN: This one working now? I apologize. It
12 was working earlier and someone must have bumped the cables
13 as we were setting it up. It's not working? Is it working
14 now?

15 Please understand that I am not an attorney and
16 can't speak to legal issues. I was, however, the author of
17 the public notice and it was my attempt to -- in the public
18 notice to notify the public that they could speak to the --
19 to the content of the permit, which I believe I stated, or
20 certainly intended to.

21 The application materials which address the
22 technical issues are available in the repository in Espanola
23 and in the library here. I apologize if I conveyed to you
24 that this would be an open forum discussion between the
25 state and Los Alamos. It certainly was not the intent.

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1 MR. YOUNGBLOOD: Please, we will not take
2 interruptions. You will have a chance to ask Mr. Crossman
3 questions.

4 AUDIENCE: We can't hear. Can't hear you.

5 MR. YOUNGBLOOD: I apologize.

6 MR. CROSSMAN: I apologize. I cannot speak to the
7 legal issues so please understand that. I wrote the public
8 notice with the intention to convey that this hearing was to
9 speak to the -- still not working?

10 UNIDENTIFIED SPEAKER: It's not loud enough.

11 MR. CROSSMAN: The public notice was written -- is that
12 better? Okay, I apologize for that. It was working
13 earlier.

14 The public notice was written to invite comment
15 to the draft permit. The application materials were
16 available to the public in the library. I believe if you
17 read closely, I hope I did not convey that this would be an
18 open forum and if you got that impression, then I apologize
19 publicly for that. But --

20 UNIDENTIFIED SPEAKER: It's not a question of
21 open forum. That makes it sort of trivial for what we are
22 here for today. I don't think there is anything that is
23 trivial about this incinerator. By looking at the sheet
24 that was in the back on the proceedings, again, bring your
25 attention to point four, "Submittal of comments by LANL."

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1 There is no part underneath it, as in part three
2 where it includes cross examination. Los Alamos Labs has
3 been left out of the process of cross examination. I see
4 that as a problem. I see that not only as a problem but it
5 limits the effectiveness of this hearing.

6 There has been nothing in here and I would like
7 to ask the hearing officer as well -- and you do have legal
8 help, you know, right at your elbow, you know, and I would
9 like to hear something from that person as well -- but as
10 far as the hearing officer, why has cross examination been
11 left out of this process?

12 MS. NELSON: If I may answer that. The regulations
13 that lay out the procedures on this kind of permit do make
14 it a permit hearing, which is different from other kinds of
15 administrative proceedings. The regulations provide that
16 EID publishes the proposed permit and takes comments and
17 questions and data, et cetera, on it.

18 LANL is almost like any other member of the
19 public under this kind of administrative proceeding. They
20 have the right to testify if they choose to, but they are
21 not obligated to testify, just as any citizen has the right
22 to testify but is not obligated to testify. LANL's choice
23 was to not testify and EID cannot require them to testify.

24 In terms of the greater question of being able to
25 review LANL's submittal, Mr. Burnett earlier indicated that

1 he would want -- or other people may want an opportunity to
2 respond after the hearing. I think that the hearing officer
3 will deal with that issue at the end of the hearing as to
4 whether or not the hearing will be held open.

5 But that is what the regulations provide for and
6 LANL had a choice, just as all of you have a choice.

7 UNIDENTIFIED SPEAKER: LANL is the one asking for the
8 permit. LANL is the ones who are asking for something to be
9 made permanent after about, I assume, nine years of
10 operating under a temporary permit. LANL is not the public.
11 They are not under the same -- I submit they are not under
12 the same kind of regulations the public is. They are not
13 us. They are a weapons research facility and they are
14 asking for permission to do something that may or may not be
15 dangerous to the public health. They are not the public and
16 they need to be part of the process that we are part of,
17 where there is cross examination. They cannot, I believe,
18 step out of that process. They are not that kind of
19 privileged group.

20 I find this whole process questionable and I
21 would like to ask that it be put in the record, that this is --

22 MR. YOUNGBLOOD: That is being taken down by the court
23 reporter. I believe there's a lady back here, first,

24 MS. SOLOMON: I would --

25 MR. YOUNGBLOOD: Please state your name and your

1 affiliation.

2 MS. SOLOMON: My name is Silvi Solomon and I attended
3 the last hearings on the garbage incinerator in which LANL
4 did participate and I remember there was quite a lot of
5 cross examining that went on at that time. I would like to
6 know how are these hearings any different from those?

7 MR. YOUNGBLOOD: Do you wish to answer that?

8 MS. NELSON: No, I am --

9 MS. SOLOMON: And I am directing it to the attorney for
10 the state talking about regulations, I would like to know
11 how this is any different from that other thing.

12 MS. NELSON: What I would like to do is for us to be
13 able to go on. EID has prepared an extensive statement that
14 will make clear some of the differences -- some of the legal
15 differences in what the administrative proceedings are. I
16 think that some of your concerns will be answered as we go
17 through that statement, which we intend to do.

18 MR. YOUNGBLOOD: Lady back here.

19 MS. WEISSMAN: I would like to know what --

20 MR. YOUNGBLOOD: Would you please give us your name?

21 MS. WEISSMAN: Stephanie Weissman.

22 I would like to know what would obligate LANL to
23 testify. Do we need, as a group, to bring suit upon LANL to
24 make them testify, legally? What would make them do that?
25 That is our right and we are here. If we are here, they

1 should be.

2 MS. NELSON: I simply cannot advise you on what you
3 should or shouldn't or can or cannot do.

4 MS. NICHOLS-BOECK: I have a point of clarification in
5 that regard.

6 MR. YOUNGBLOOD: We can't hear you.

7 MS. NICHOLS-BOECK: My name is Sylvia Nichols-Boeck and
8 it's a point of clarification that I tried to research
9 yesterday and couldn't find out if it is a legal question,
10 confusion as to regards the hearing -- these hearings.
11 After the hearing the EPA -- after the hearings -- can start
12 this up. What happens to the public record? Do they go
13 ahead for comments and questions? Is this the final draft?
14 What in fact happens to -- with the hearing?

15 MR. YOUNGBLOOD: The hearing record will be given to
16 the director of the Environmental Improvement Division and
17 he will -- that will serve as a basis for him to make a
18 decision on this incinerator.

19 MS. NELSON: Could we amplify on that?

20 MR. YOUNGBLOOD: Yes.

21 MR. CROSSMAN: If I may amplify on that process a
22 little bit. Being part of my prepared remarks, I think it's
23 appropriate now.

24 After all of the public input is received, the --
25 it is all looked at and each individual input is reviewed,

1 it's evaluated, conscious decision is made as to how is it
2 appropriate, what changes may be appropriate, et cetera.

3 A response will be prepared to everyone who has
4 put their name on our mailing list or provided us in some
5 way a name and address so they will know what the -- what
6 the evaluation of that comment was and how it was used.

7 All of this material will be evaluated. It will
8 all be prepared in a decision to go to the director for his
9 final reading on that. So this is but one step -- if I may
10 conclude, this is but one step in the process that is
11 ongoing. The record is retained.

12 UNIDENTIFIED SPEAKER: Following the hearing, after a
13 lot of very intelligent testimony, scientific testimony and
14 other witnesses in some fashion speak -- we are not
15 intelligent -- some decisions shall be made based on that
16 testimony and cross examination. That's why I question the
17 process now. Is there a way we can be assured? I don't
18 know how to finish this, but there seems to be a gap
19 somewhere. It's kind of lax or something.

20 MR. YOUNGBLOOD: Lady here.

21 MS. AMEERA: My name is Taj Ameera and I would like to
22 to go on record as objecting for the lack of cross
23 examination on our part of LANL officials and I would also
24 like to propose that anyone in this room who feels the same
25 way go on public record right now.

1 Thank you.

2 MR. YOUNGBLOOD: Let the record show that approximately
3 sixty-five percent of those present --

4 AUDIENCE: No, no, wait. Let's have a count. Stand.
5 Stand up.

6 MR. YOUNGBLOOD: Let the record show that approximately
7 ninety percent stood up. I have a gentleman,

8 DR. MOREY: My name is Doctor Robert Morey. The
9 consistency --

10 AUDIENCE: Could you speak up?

11 DR. MOREY: My name is Doctor Robert Morey and in
12 observing --

13 MR. YOUNGBLOOD: I have a microphone here if you would
14 like to step up here.

15 DR. MOREY: My name is Doctor Robert Morey and seeing --

16 AUDIENCE: It doesn't work.

17 MR. YOUNGBLOOD: Let's have quiet, please. Give Doctor
18 Morey a chance.

19 DR. MOREY: Seeing there's inconsistencies in
20 proceedings that point three is testimonies by the EID,
21 point four is submittal of comments, point five again is
22 testimony, there's an inconsistency in the way that this is
23 put together.

24 Mr. Hearing Officer, since you have the authority
25 to do so I would like to request on behalf of possibly

1 ninety percent of the people here, that this be revised and
2 that -- that point three either be stated that this is
3 comments by the EID, point four, "Submittal of comments by
4 LANL, point five, comments by the public, whereby cross
5 examination of point three is allowed and cross examination
6 of point four is allowed.

7 I think I would like to suggest and request that
8 that be interjected in there -- that is, placed in there.
9 That point four have also an "A" and a "B" just as point
10 three and point five have an "A" and "B" and I would like to
11 request that if -- with your authority that you revise this
12 to interject that in the proceedings.

13 MR. YOUNGBLOOD: Let me be sure that I understand.
14 Would you read that back to me, Mr. Henry?

15 (THEREUPON, the record was read back by the reporter.)

16 MR. MOREY: To clarify, making point four equal weight
17 of cross examination as point three and point five do,
18 having all of them stated in the same topical form,
19 testimony by all three or submittal of comments by all three
20 with cross examination allowed.

21 Thank you.

22 MR. YOUNGBLOOD: I will have arguments against this or
23 for it.

24 MS. NELSON: Mr. Hearing Officer, you do not have the
25 legal authority to do that. As I said earlier, EID is

1 required to present testimony and the regulations provide
2 for cross examination of anyone who does testify. However,
3 there is no obligation that somebody testify; therefore, we
4 cannot -- you could not require them to testify nor subject
5 themselves to cross examination.

6 MR. YOUNGBLOOD: Lady over here.

7 MS. PHILLIPS: Cynthia Phillips.

8 I really object to you calling Los Alamos the
9 public. Members of the public here do not have hazardous
10 waste incinerators in their backyard and if my neighbor did
11 I would sure feel the right to question them about it.

12 And you are talking about Los Alamos. If there's
13 an accident there, what about our rights? We have no right
14 to question them? This is not a good process and I really
15 object to it.

16 MR. YOUNGBLOOD: Over here. Please be quiet.

17 MR. CASTRO: Gene Castro.

18 I realize this seems to be a procedural problem.
19 I would like to make a request that if there is any other
20 kind of administrative procedure we may incorporate this
21 hearing into that -- we apply for that as the public applies
22 for an administrative hearing where there's cross
23 examination. In other words, different procedural
24 situation. Is there any --

25 MS. NELSON: There are several things that I can say in

1 answer to that question. One is that in terms of this
2 permit action, per se, and this hearing, per se, that cannot
3 be changed. It doesn't mean that there can't be additional
4 public forum on the issue, but this hearing under the
5 regulations is a different kind of procedure.

6 The public would have several options. The
7 statement that EID has prepared, and which we will go
8 through, suggests several of the options that the public
9 does have, and I think that after we have run this statement
10 and discussed it, it may become clearer what some of these
11 other alternatives are.

12 So the -- in summary the answer is that in terms
13 of this particular hearing, there is not an alternative, but
14 there may be an alternative upon request simply for a forum
15 if nothing else. But I would have to emphasize that there
16 is no obligation under the law for Los Alamos to testify or
17 submit themselves to cross examination.

18 Under the law, the public must comment and
19 critique in terms of the permit proceedings. That means
20 that LANL's submittal is part of the administrative record.
21 The public will have the opportunity to review that
22 submittal and critique it to EID, just as it can critique
23 the draft permit as well.

24 So there are yet options. And I think that as we
25 proceed it will become clearer what some of the other

1 options are.

2 MR. YOUNGBLOOD: Have a gentleman in the back.

3 MR. WILCOX: My name is Wayne Wilcox, and --

4 MR. YOUNGBLOOD: Can everybody hear Mr. Wilcox?

5 MR. WILCOX: On the comments that are going to be given
6 here today, they are going to be addressed by the EID, is
7 the technical side going to be taken to Los Alamos for
8 clarification or are you going to have an unbiased group
9 speak to those comments, the EID comments, or for lack of
10 technical knowledge?

11 MR. CROSSMAN: Procedurally, the division is
12 responsible for obtaining an answer to any questions or any
13 points that come up. If we cannot cope with that in-house
14 we will go to whatever source we find available or
15 necessary. We can use EPA, we can request assistance
16 through EPA, and they have access to contractors through
17 their operation. We can also request input from Los Alamos.
18 We do not go exclusively to one source of information.

19 MR. WILCOX: That's just also like you took care of the
20 microphone system?

21 MR. YOUNGBLOOD: Have a lady back in the back.

22 UNIDENTIFIED SPEAKER: I would like to go on record as
23 requesting that the representatives from LANL today have a
24 little respect and consideration and go up there and talk to
25 us because that's why we are here. That's why I'm here. I

1 want to go on record saying that.

2 MR. YOUNGBLOOD: I have a gentleman here.

3 MR. HOLMES: I submit that this entire procedure
4 demonstrates that with enough money and lawyers the process
5 of democracy can be subverted to purposes that are not in
6 the best interests of our local community or the citizens of
7 the world.

8 MR. YOUNGBLOOD: If we disrupt this hearing by doing
9 this one more time, I am going to recess for ten minutes.

10 Would you state your name, please?

11 MR. HOLMES: My name is James Holmes.

12 MR. YOUNGBLOOD I have a gentleman here.

13 MR. HANSON: My name is Brad Hanson.

14 Los Alamos can cross examine us according to my
15 understanding of the procedure. I don't think it's right
16 that they are hiding. I don't think that's right. I think
17 this hearing is a farce. I further think that you should
18 postpone this and somehow get Los Alamos to come before us.
19 We are the public. They are responsible to us. They are
20 polluting our air, our water, our soil.

21 MR. YOUNGBLOOD: I have someone here.

22 MS. RESON: I am Myla Reson with Citizens for
23 Alternatives to Radioactive Dumping. I would like to say
24 that you do contend that LANL has no obligation to submit to
25 cross examination by the public, but I would like to invite

1 LANL to testify.

2 I would like you to submit your -- make
3 yourselves available for cross examination in the spirit of
4 democracy, in the spirit of fairness, even though the law
5 may be, according to this woman, on your side, I think it
6 would only be fair for you to make yourselves available for
7 cross examination to the public.

8 MR. YOUNGBLOOD: I have a lady --

9 MS. LASER I am Joyce Laser. I am an attorney at the
10 Department of Energy, which is one of the applicants who is
11 on this permit. We are not providing testimony today
12 because we are satisfied with the permit (inaudible). We
13 don't have any other comment other than what we have put in
14 the written comments.

15 However, because of all the concerns I would like
16 to let everyone know that if you would like to come up and
17 tour the incinerator, you may do that. My telephone number
18 is 667-4667.

19 If you would like to come to Los Alamos it would
20 be helpful if you came as a group rather than individually.
21 Or in several groups. There will be people there who can
22 answer your questions at that time.

23 UNIDENTIFIED SPEAKER: Why not answer them now?

24 MR. YOUNGBLOOD: I have a lady over here.

25 MS. WOODALL: My name is Kathy Woodall and I heard the

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1 lawyer say that we have other recourse. I wanted to know if
2 that recourse is after this incinerator is approved or is
3 that recourse now in the process of this hearing procedure?

4 MS. NELSON: If I -- as I suggested, all of this is
5 laid out in the statement that we want to go through with
6 you all. If we could get on to that statement, there would
7 be questions after it, I think that we could have a better
8 directed discussion.

9 MS. WOODALL: I don't think that you answered my
10 question. Would you like me to say that again?

11 MR. YOUNGBLOOD: Would you like to step forward,
12 perhaps, so people can hear you?

13 MS. WOODALL: Sure.

14 I was hearing the lawyer -- I don't know your
15 name, I'm sorry. I was hearing you say that we had -- the
16 public had other recourse to follow to express ourselves on
17 this hearing and my question was is that recourse after the
18 bulk of this hearing, which is our testimony and not LANL's,
19 is decided on? Is that recourse after that decision is
20 made, or do we have recourse now to change the hearing
21 process so that it becomes more democratic?

22 MS. NELSON: My name is Gini, G-i-n-i, Nelson.

23 As I said earlier, I do not believe there are any
24 ways to change the procedure on this permit at this time.
25 There are -- however, the permit is not a final permit.

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1 There will be comments taken during the course of the permit
2 hearing. The record may well be left open for additional
3 comments, et cetera.

4 I mean, just generally in terms of administrative
5 procedure, after that permit action is taken, all interested
6 parties have a right to appeal and so forth.

7 My -- what EID wants to tell you all is that
8 there are several permits that will be required before this
9 incinerator can operate or can continue operating, whatever.
10 It depends on the kind of permit it is. Different states
11 have different laws.

12 One of the things -- there does appear to be -- I
13 simply hate to take this out of context. We have a
14 statement and we would like to go through and explain the
15 different parts of laws that regulate the incinerator.

16 But one thing that I think is misunderstood that
17 I have heard from various comments, this permit does not in
18 any way authorize the incineration of mixed waste. This
19 permit only applies to one hundred percent chemical waste.
20 This permit is not a permit for the chemical part of mixed
21 waste.

22 With many --

23 UNIDENTIFIED SPEAKER: That doesn't make sense.

24 MR. YOUNGBLOOD: At this time -- at this time I am
25 going to ask EID to go through their hand-out. Have each of

1 you been able to get one of these in the back of the room?

2 MR. CROSSMAN: If I may interrupt for a second.

3 Veronca, would you hand those out to anyone that doesn't
4 have one?

5 (THEREUPON, a discussion was held off the record.)

6 MR. YOUNGBLOOD: What I am going to do now is ask the
7 EID to go through this and explain it. I will come back to
8 you for your questions when the explanation is over with. I
9 have a gentleman here that has had his hand up for some
10 time.

11 MR. OWSIANY: Thank you, Mr. Chairman. I would like to

12 MR. YOUNGBLOOD: Would you please state your name?

13 MR. OWSIANY: My name is Daniel Owsiany, O-w-s-i-a-n-y.

14 I would like to request, Mr. Chairman, in the
15 interest of fairness and an appeal to your sense of duty as
16 a protector of the public trust that has been placed in you
17 as administrator under the Environmental Improvement
18 Division that you now state your commitment to this group of
19 people that you are willing to leave the record open after
20 this hearing for a public response and cross examination of
21 Los Alamos National Laboratory. I would like you to make
22 that comment now.

23 MR. YOUNGBLOOD: I am not going to make the commitment
24 right now. We will certainly at the end of the hearing
25 discuss it. From what I have heard so far from Mr.

1 Burnett's request, and now from your request, I am sure we
2 will do it favorably, but I want to wait until we get all
3 the testimony over because we have two questions to
4 consider: One is do we leave it open, and the other is for
5 how long?

6 So I think it's more appropriate that we take
7 that up at the end of the EID portion of the hearing, but I
8 will assure you we will take it up.

9 MR. OWSIANY: I understand that, sir, but I am confused
10 by your reluctance to do so. It would seem in the interest
11 of fairness that you would do that now and take that stand.

12 MR. YOUNGBLOOD: It's not a matter of whether I want to
13 or not. It's a matter of when it fits best into the
14 hearing, okay? And until we -- we receive the comments from
15 Los Alamos and until we receive all of the testimony from
16 both the EID and from the public -- I might at this time
17 decide that five days would be appropriate and when we get
18 to the end of the hearing it may be that fifteen days is
19 more appropriate.

20 MR. OWSIANY: I am not asking you to set a specific
21 timetable. I am asking you to make a commitment to allow
22 the record to be kept open and later I will trust your
23 judgment in the length of time.

24 MS. NELSON: Mr. Hearing Officer, EID does not object
25 to that. I expect that we will want the record open, or

1 have no objection to it being open for a reasonable period
2 of time.

3 MR. YOUNGBLOOD: Yes.

4 MR. OWSIANY: Thank you, sir.

5 MR. YOUNGBLOOD: You are welcome. Okay, let's get on
6 with the EID portion of the statement.

7 MR. YOUNGBLOOD: Now does everyone have a copy of this,
8 which at the top says, "EID July 18th, 1989, statement
9 responding to particular concerns"?

10 MR. OWSIANY: This one is not a very legible one.

11 MR. YOUNGBLOOD: Mine at the top is cut off, but it is
12 only the first sentence.

13 UNIDENTIFIED SPEAKER: There are portions in the center
14 that are cut off.

15 MS. NELSON: Whatever the problems are I am afraid they
16 were made from the same draft.

17 MR. CROSSMAN: I intend to mail a copy of this to
18 everyone.

19 MS. NELSON: As I have indicated earlier, my name is
20 Gini Nelson. I am an attorney with the Health and
21 Environmental Department representing Environmental
22 Improvement Division.

23 I will give the microphone to Kelley Crossman who
24 is the EID Hazardous Waste Bureau permit -- draft permit
25 writer. He will read and we will then be available to

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1 discuss this statement.

2 Because there has been much public comment
3 expressing concern and showing some ignorance about what all
4 of the kinds of laws are, we developed a statement which
5 lays out the different laws. You can see which different
6 areas you can go to.

7 I want to say before I pass this on that I have a
8 back injury. I cannot remain seated for extended periods of
9 time. I will be standing up occasionally. Please do not
10 think that if I stand up it means anything about what anyone
11 is saying at the time. I simply have to move my back.

12 MR. CROSSMAN: As Ms. Nelson indicated, my name is C.
13 Kelley Crossman and I am the principal writer of this draft
14 permit.

15 C. KELLEY CROSSMAN
16 was called as a witness by the EID, and having been first
17 duly sworn, testified upon his oath as follows, to-wit:

18 MR. YOUNGBLOOD: You may proceed.

19 MR. CROSSMAN: While people are finding seats I would
20 like to point out that we intend to reprint this particular
21 piece of correspondence and submit it to everyone on our
22 mailing list. I apologize for the quality of the copies
23 this morning. We just got them done and did not have time
24 to proofread them. You will receive a copy printed in a
25 much better manner. Hopefully this week as soon as we can

1 get our mailing list done.

2 We have received a lot of comments. We have a
3 copy of the mailing list as it existed on Friday afternoon
4 available at the back of the room. Sometime today please
5 check and see if your name and address is correct or sign
6 the mailing list sign-up sheet and some way indicate to us
7 that you want to be -- to receive a copy of this or any
8 other correspondence -- all future mailings on the Los
9 Alamos permitting process.

10 With that preliminary statement, I would like to
11 read this. I will try to make this -- I will try to make
12 this as entertaining as possible.

13 The laws that govern the subject at hand today
14 are complex and difficult to understand. We worked hard
15 trying to reduce it to six pages. Perhaps if we had six
16 hundred pages we could make it a little more understandable.
17 Because of that complexity, please bear with me while I read
18 this. I don't want to inadvertently leave something out
19 that may be important.

20 With that said, this is the EID July 18th, 1989,
21 statement responding to particular concerns expressed by
22 members of the public regarding the LANL mixed waste
23 incinerator.

24 EID has received many comments from the public
25 concerning this draft permit. Regrettably, the laws and

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1 regulations that govern a facility as large as LANL are very
2 complex. Several of the comments received by EID reflect
3 that complexity.

4 As important, the comments reflect concerns some
5 members of the public have regarding operation of the
6 mentioned waste incinerator. In order to better inform the
7 public of the applicable laws and regulations and to better
8 address the public's concern, EID has developed a statement --
9 this statement -- to explain what this draft permit can and
10 cannot do regarding the mixed waste incinerator.

11 This is highlighted. You all have it there.
12 This draft permit can only regulate the chemical waste. It
13 cannot regulate -- let me repeat, it cannot regulate
14 radioactive waste.

15 The federal Atomic Energy Act of 1954 authorized
16 the United States Department of Energy, DOE to all of us, to
17 develop and effectuate its own regulations controlling DOE's
18 management of its own radioactive waste. Other statutes may
19 impose additional requirements on radioactive material
20 handling.

21 Are you all with me?

22 This permit action is under the state Hazardous
23 Waste Act. The state Hazardous Waste Act does not regulate
24 radioactive waste in any way. The Hazardous Waste Act only
25 applies to wastes that meet the legal definition of

1 hazardous waste. And these are basically chemical wastes.

2 The Hazardous Waste Act cannot be applied to
3 source, special nuclear or byproduct radioactive wastes.
4 Thus, EID does not have the authority through its hazardous
5 waste program, and through this or any other hazardous waste
6 management permit, to regulate radioactive waste. This
7 draft permit is a permit that only regulates chemical
8 hazardous waste. It does not and cannot regulate
9 radioactive waste.

10 Let me digress a moment from the prepared letter.
11 My concern -- part of the concern is hazardous waste is a
12 specific term defined in the act. It goes beyond your and
13 my understanding of the English language. To you, of
14 course, radioactivity is hazardous. I understand that, but
15 in the context of the act it has a legal specific definition
16 and that's a point that is confusing to a lot of people.

17 If I may return to the letter, mixed waste
18 regulations:

19 When a waste has both chemical and radioactive
20 components, it is called a mixed waste. Because of the
21 chemical component of mixed waste, the Hazardous Waste Act
22 does apply to mixed waste. It only applies to the chemical
23 part of the mixed waste, however, okay? The Hazardous Waste
24 Act does not apply to the radioactive part. DOE regulates
25 the radioactive part pursuant to the Atomic Energy Act.

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1 State authority to enforce the federal statute
2 and RCRA:

3 This draft permit is a hazardous waste management
4 permit administered by EID's Hazardous Waste Bureau. EID's
5 legal authority to issue this permit under state law is the
6 Hazardous Waste Act. Ultimately, however, EID's legal
7 authority to issue this permit comes from the federal
8 hazardous waste -- from the federal hazardous waste
9 management statute, named the Resource Conservation and
10 Recovery Act, RCRA.

11 Under RCRA, the federal government, through the
12 United States Environmental Protection Agency, our favorite
13 EPA. As everyone knows, EPA gives specific authorization to
14 a state to enforce certain parts of RCRA. The state then
15 enforces those parts of RCRA in the state instead of EPA.

16 New Mexico is an authorized state. That is, New
17 Mexico is authorized by EPA to enforce certain parts of RCRA
18 in New Mexico instead of EPA. This draft permit is an RCRA
19 permit prepared by EID's hazardous waste program staff to
20 address only those specific parts of RCRA that EPA has
21 authorized New Mexico to enforce.

22 Because congress has added requirements to RCRA
23 in stages through amendments, EPA is requiring states to
24 submit their requests for authorization in stages. Thus,
25 New Mexico is authorized by EPA even to enforce some of the

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1 RCRA provisions, but not all -- but not other RCRA
2 provisions.

3 New Mexico does not have RCRA authorization to
4 regulate the chemical part of mixed waste. New Mexico is
5 not yet authorized by EPA to regulate the chemical part of
6 mixed waste through its RCRA hazardous waste management
7 program. New Mexico is in the process of applying to EPA
8 for authorization, however.

9 This draft permit is an RCRA permit. I know I am
10 repeating myself, but please keep that in mind.

11 Because New Mexico is not authorized by EPA to
12 regulate the chemical part of mixed waste through its RCRA
13 program, this draft RCRA permit does not authorize LANL to
14 incinerate the chemical part of mixed waste. This draft
15 permit only authorizes the incineration of purely chemical
16 waste in the incinerator.

17 In order to get an RCRA permit to incinerate
18 mixed waste, LANL will need to develop a mixed waste permit
19 application and submit it to EID. EID expects LANL to
20 submit this application in the late fall of this year. The
21 EID hazardous waste program staff will then review the
22 application.

23 After EID has been authorized by EPA to regulate
24 the chemical part of mixed waste under the RCRA hazardous
25 waste program -- when we get authorization to deal with

1 mixed waste in other words -- EID will draft a proposed RCRA
2 permit based on the LANL application and submit it to the
3 public for public comment, just as this draft permit here is
4 being submitted to the public for comment now at this
5 hearing.

6 RCRA interim status:

7 Interim status confuses -- the interim status
8 confuses a lot of folks and I would like to address that a
9 little bit here.

10 Interim status gives temporary authorization to
11 certain facilities to continue their hazardous waste
12 management activities until their applications for final
13 permit can be acted on. RCRA gave this interim status to
14 facilities that were in existence on certain dates and which
15 submitted or which complied with certain notification
16 requirements. Operations under interim status are regulated
17 by regulations designed for this interim status.

18 The incinerator has this interim status. The
19 LANL incinerator has RCRA interim status and is thus
20 authorized to burn chemical waste without a final hazardous
21 waste RCRA permit. This is true -- this is true for both
22 purely chemical waste and for mixed wastes.

23 The temporary permission to burn purely chemical
24 waste will end when EID takes final action on this draft
25 permit that we are discussing today. Then, burning of

1 purely chemical waste will be allowed only pursuant to the
2 permit.

3 The temporary permission to burn the chemical
4 part of mixed waste will end when EID takes final action
5 onan RCRA permit addressing that waste. That will be a
6 separate proceeding just as this one is today.

7 UNIDENTIFIED SPEAKER: Is it possible to separate --
8 when you have mixed waste is it possible to separate the
9 chemical portion of it and burn that without burning the
10 radioactive portion?

11 MR. CROSSMAN: If I may go on with the statement,
12 perhaps that will be clear and then I will address that
13 subject, if I may.

14 Let me repeat that last sentence. The temporary
15 permission to burn the chemical part of mixed waste will end
16 when EID takes final action onan RCRA permit addressing that
17 waste, which EID will not do until after EPA authorizes EID
18 to do so. Then, burning of the chemical part of the mixed
19 waste will be allowed only pursuant to that permit.

20 If I may summarize, thus, this draft permit does
21 not authorize LANL to incinerate mixed waste, that is,
22 chemically hazardous waste that is mixed with radioactive
23 waste. The draft permit only proposes to authorize the
24 incineration of strictly chemical hazardous waste, and then
25 only under the permit's specified conditions.

1 EID will at a later date propose a draft
2 hazardous waste permit to regulate the incineration of the
3 chemical part of mixed waste. No RCRA hazardous waste
4 permit can regulate radioactive waste.

5 If I may proceed.

6 MR. YOUNGBLOOD: Please do. Proceed.

7 MR. CROSSMAN: Independent state Hazardous Waste Act
8 authority to regulate RCRA.

9 Interim status facilities:

10 EID has two sources of authority under the state
11 Hazardous Waste Act. First, EID is authorized to enforce
12 whatever portions of RCRA that EPA has expressly authorized
13 the state to enforce. Second, EID is authorized to enforce
14 all provisions of the Hazardous Waste Act, even if some
15 particular provision has not yet been approved by EPA as
16 part of the RCRA authorization.

17 In this second case, EID is acting on solely
18 state authority. It is not acting pursuant to its federal
19 RCRA authority.

20 EID has used this state authority in the past to
21 deny LANL's request to beginning construction of a new mixed
22 waste incinerator until after review and approval of the
23 construction phase.

24 Interim status regulations:

25 Under the Hazardous Waste Act, the incinerator,

1 insofar as it burns both mixed waste or -- insofar as it
2 burns mixed waste, has interim status. It has interim
3 status under both the state's federal RCRA program and the
4 independant state authority.

5 That means that it has a temporary permit to
6 operate until a final permit, such as this one presently
7 being considered for purely chemical waste is considered.
8 In the interim, it is regulated under the regulations
9 designed for the interim period and not under the
10 regulations designed for final permits.

11 There are no specific regulations applicable to
12 interim status under either state or federal law addressing
13 the chemical part of mixed waste. EPA intends at this time
14 to regulate all chemical wastes under the same set of
15 regulations.

16 EID's Hazardous Waste Bureau did not develop any
17 interim regulations independent of those required for the
18 federal RCRA program. EID did not develop interim
19 regulations specifically governing the chemical part of
20 mixed waste under its state authority for several reasons.

21 First, the Hazardous Waste Act prohibits the
22 state from regulating hazardous waste more strictly than
23 RCRA does. EID cannot develop regulations covering the
24 chemical part of mixed waste until RCRA covered the chemical
25 part of mixed waste. EPA did not clearly add the chemical

1 part of mixed waste to its RCRA program until July 3rd,
2 1986. EID could not have begun the process promulgating
3 such regulations until after that date.

4 Secondly, the process of promulgating regulations
5 is very resource intensive, and EID's hazardous waste
6 program has extremely limited resources. EPA funds
7 seventy-five percent of the program and requires that those
8 monies go only into RCRA-related activities. The remaining
9 twenty-five percent is paid out of state monies that are the
10 state's required match for getting the EPA grant money.
11 Thus, this hazardous waste program's budget is restricted to
12 federally authorized RCRA activities.

13 The program has developed other extensive
14 regulatory and statutory changes in the interim, in order to
15 maintain current, and seek new, RCRA authorization.

16 Our program, if I may digress for a second, our
17 program is required to maintain a degree of currency with
18 EPA's program in order to retain our authorization.

19 Okay. Going back to the letter, in addition to
20 regulation development the program must meet inspection,
21 enforcement, and permit commitments to EPA for purposes of
22 maintaining this RCRA authorization. There simply have not
23 been enough resources to do everything that EID would like
24 to do, and it chose not to develop interim regulations
25 applying to the chemical part of mixed waste.

1 An important goal of RCRA and the Hazardous Waste
2 Act is to get facilities operating pursuant to permits
3 instead of under interim status, therefore, developing
4 regulations governing the interim status facilities uses the
5 Hazardous Waste Bureau's limited resources less well than
6 developing regulations applying to final permits.

7 EPA has indicated that it does not intend to
8 promulgate any final permit regulations specific to the
9 chemical part of mixed waste.

10 EPA's apparently determined that the present
11 regulations governing the permits are sufficient to protect
12 the public health and environment from the chemical part of
13 mixed waste. The state has adopted these regulations.

14 Thus, EPA will not require EID to develop any
15 additional regulations governing permits specific to the
16 chemical part of mixed waste in order for EID to get and
17 maintain RCRA authorization for the chemical part.

18 EID is authorized by the Hazardous Waste Act to
19 develop additional regulations applicable to permits dealing
20 with the chemical part of mixed waste. However, under the
21 Hazardous Waste Act prohibition -- I mentioned it earlier --
22 we cannot be more stringent than -- such regulations cannot
23 be stricter than whatever RCRA requires through permits
24 dealing with the chemical part of mixed waste. EID is not
25 presently considering developing any such regulations, but

1 welcomes the public input on whether EID should.

2 If I may speak briefly on the air quality
3 regulations.

4 Some members of the public have expressed concern
5 that the state or federal air quality requirements may not
6 adequately regulate the incineration of the radioactive part
7 of mixed waste. As previously stated, this draft RCRA
8 permit does not cover any mixed waste incineration; it is
9 limited to purely chemical waste incineration.

10 Further, no RCRA permit could regulate the
11 radioactive part of the mixed waste. The incinerator has
12 interim status that allows it to operate without a final
13 RCRA permit. Operation of the incinerator must also comply
14 with any other applicable laws and regulations, however.

15 Let me repeat that: Operation of the incinerator
16 must also comply with any other applicable laws and
17 regulations.

18 Thus, the incinerator will not be allowed to
19 operate if it's failed to satisfy the legal requirements of
20 other relevant state and/or federal programs.

21 EID's Air Quality Bureau reviewed the operation
22 of this incinerator in 1988 and determined that a state air
23 quality permit is not required, because if predicted
24 emissions were below the thresholds that require a permit.
25 Under the new state law, state toxic air pollutant

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1 requirements effective December 31, 1988, this incinerator
2 is an existing source and, therefore, is not subject to the
3 new air regulations. Data concerning the incinerator are
4 being collected, however.

5 EID has the authority under the state Air Quality
6 Control Act to regulate the radioactive emissions from this
7 incinerator, but does not have any implementing regulations
8 to do so at this time.

9 EPA enforces other air quality programs in the
10 state. The radionuclide emissions from this incinerator
11 have been reviewed by EPA Region VI for compliance with the
12 regulations that govern -- that's 40 CFR part 61, subpart H
13 in technical jargon -- let me repeat that. The
14 radionuclides from this incinerator have been reviewed by
15 EPA Region VI for compliance with the regulations that
16 govern radioactive -- radionuclides at the time under the
17 federal Clean Air Act.

18 EPA reviewed the emissions from the existing
19 incinerator in November of 1988, as part of reviewing LANL's
20 application for new -- the new proposed mixed waste
21 incinerator.

22 EID expects to develop new air quality
23 regulations for incineration that will include radionuclide
24 emission limits at the stack as opposed to the fence line.
25 Under EID's current schedule for the development of such

1 regulations, a public hearing on the proposed regulations is
2 expected next spring.

3 In the interim, the Air Quality Bureau will be
4 developing and taking to hearing regulations governing
5 municipal and medical waste incineration.

6 That completes the prepared statement. Let me
7 speak extemporaneously for a moment, if I may.

8 The Division does not promulgate our own
9 regulations. We prepare proposed regulations and present
10 them to the Environmental Improvement Board, which is a
11 board appointed by the governor to act as our board of
12 directors. The Environmental Improvement Board will hold
13 hearings on the -- on any regulations we may propose.
14 That's an ongoing process. If you would like to be included
15 in that process, I will make available or you can write to
16 the Environmental Improvement Board using the same mailing
17 address and ask to be added to their mailing list.

18 I would like to make clear, even though this
19 letter speaks about The Division, we do not publish or
20 promulgate our own regulations. We propose and the Board
21 promulgates those to govern our activity.

22 Mr. Chairman, that completes the reading of the
23 letter.

24 MR. YOUNGBLOOD: Do we have questions of Mr. Crossman?
25 I am going to start here. This gentleman was first, I

1 believe.

2 DR. MARCH: I just wonder --

3 MR. YOUNGBLOOD: Would you state your name again,
4 please?

5 DR. MARCH: I am Doctor Robert March.

6 CROSS EXAMINATION

7 BY DR. MARCH:

8 Q I wonder how it's possible, if it is possible --
9 first of all, I wonder why there is so much separation into,
10 you know, the hazardous -- laws governing the chemical
11 portion of mixed. Doesn't seem to be any laws governing the
12 radioactive portion of the mixed.

13 Why all the separation that it doesn't allow the
14 mind to look at it from a whole or clear perspective so I am
15 just -- you know, would like to basically state my
16 objections to that way of dealing with it.

17 My question -- my specific question is, I don't
18 think it's possible to separate the chemical portion from
19 the radioactive portion of mixed waste. And to allow, by
20 some kind of grandfathering to allow LANL to burn mixed
21 waste because it was grandfathered in the chemical portion
22 of it -- if I am understanding that correctly it doesn't
23 seem to make any sense to me at all.

24 MR. YOUNGBLOOD: Doctor, I am going to ask you to
25 confine your questions to questions. I will give you a

1 chance to make a statement when this is over with, but
2 please form your questions to Mr. Crossman in the form of
3 questions.

4 Q Did you hear the question?

5 A The question, as I understand it, was first, is
6 it possible to separate the chemical portion of mixed waste
7 from the radioactive portion? That may or may not be
8 possible. The reason, it depends entirely on the nature of
9 waste, whether it could be separated. That is a question
10 for a later issue.

11 What we have done is to separate the identified
12 wastes, the ones that are strictly chemical without
13 contamination by radionuclides are being addressed by this
14 permit, the ones that are a combination or mixture of
15 radioactive and chemical regulated species, if you will,
16 will be dealt with as a separate permit.

17 It's not that we are physically separating, we
18 are separating the waste streams into this group and that
19 group, and perhaps that clarifies the separation.

20 As far as the legal basis, we are trying to
21 explain in the letter there are several legal basis -- bases
22 for regulation. We have clear authority over the chemical
23 portion, the chemical portion uncontaminated by
24 radionuclides.

25 That's why we are dealing with that here first.

1 When we receive the authority to deal with the mixture of
2 chemical and radioactive waste, then we will revise. We
3 will go through the same process. We will renotify everyone
4 on our mailing list and go through this hearing process
5 again to address that subject.

6 Did that clarify it for you?

7 MS. NELSON: May I add a one-sentence clarification?

8 MR. YOUNGBLOOD: Go ahead.

9 MS. NELSON: May I speak to that?

10 A I think the concern -- I am reading your face,
11 and please correct me if I'm wrong. The concern that you
12 have is that you feel perhaps that it is not being regulated
13 at all. Under RCRA, that law and that set of regulations
14 speak to the chemical portion. Under the Atomic Energy Act,
15 DOE is required to comply with that law and the regulations
16 that flow from that law. I am not an expert on those. I
17 cannot speak to you on those as to what those entail. But I
18 do know they exist.

19 Q Are there any independent like oversight, like
20 the EPA -- does EPA look at what DOE is doing in that case?
21 In other words, EPA -- EID and EPA are somewhat independent
22 of DOE, hopefully, when they are looking at chemical wastes,
23 they are an independent oversight on chemical waste. You
24 quoted the AEC, the act that is governing the radioactivity
25 portion. Is there any oversight on that aspect of it?

1 A The question was is there an independent
2 oversight on the Atomic Energy Act in the way DOE operates?
3 I am not conversant on the Atomic Energy Act and how that
4 operates. I cannot -- I can't tell you how that is. I do
5 know when we have to address the mixed waste -- waste
6 stream, at our permitting we would have to be somewhat
7 observant of the impact of the radionuclides.

8 For example, if it's a chemical waste you take
9 certain precautions before you go up and obtain a sample of
10 it. If it is a radioactive waste as well, you have to take
11 precautions for that breath and that danger. So there will
12 be some interplay. But at this stage we don't know exactly
13 what that would be.

14 As far as an independent agency, such as the EPA
15 or the EID or some other acronym, I am not personally aware
16 of any that act as -- under an authority similar to the
17 Atomic Energy Act to act as an independent agency.

18 MS. NELSON: May I speak to Mr. Crossman?

19 UNIDENTIFIED SPEAKER: This is an open hearing.

20 MR. YOUNGBLOOD: Conferring with his lawyer, it's
21 allowed.

22 A Let me re-emphasize that the Atomic Energy Act is
23 outside of my field of experience or knowledge. I cannot
24 speak to that. There may be activities under that and I
25 certainly, you know, I just don't know. I am not in that

1 area.

2 MR. YOUNGBLOOD: I have a lady right here. Would you
3 like to step up to the microphone?

4 UNIDENTIFIED SPEAKER: I thought you declared this row

5 MS. TOLKIN: Jan Tolkin. I have a question.

6 CROSS EXAMINATION

7 BY MS. TOLKIN:

8 Q It's confusing to me in the interim period. Now,
9 I understand that Los Alamos Labs is burning chemical
10 wastes, am I correct?

11 A Yes, that's correct.

12 Q Is any of this purely chemical waste or is it all
13 mixed waste?

14 A The question addresses the relationship with
15 interim status and permitted status. Under RCRA, the
16 congress, we know they passed the law and EPA, when they
17 promulgated the regulations, understood that there would be
18 many facilities requiring permits and that it would be
19 physically impossible for all permits to be evaluated and
20 issued at one time. That's the reason for -- that is my
21 understanding of the reason for the interim status and
22 permitted status division.

23 If a facility identified itself by completing the
24 appropriate form and notifying EPA of the activities and met
25 all the regulatory activities they were allowed to operate

1 under interim at that time until a permitting decision could
2 be made.

3 Given that background, I hope I didn't bore
4 anyone.

5 At the moment they have interim status to burn
6 mixed waste. They have interim status to burn chemical
7 wastes independent of the radioactive component. This
8 permit will address the second question and until the
9 permitting decision and we go through this process, they
10 will continue to have interim status for mixed waste until
11 the permit decision is made.

12 Q But my question is, are they actually burning any
13 purely chemical wastes or is all -- I am getting the
14 impression that everything they are burning is mixed waste.
15 Are they burning any purely chemical waste that is not
16 radioactively contaminated?

17 A That incinerator has several functions. One is
18 to do research on incinerator ability of various items,
19 would be to burn waste materials, given their requirements
20 for whatever workload they have. What that does at any
21 particular time is a variable. They can burn. They have
22 permission to burn chemical wastes independent of
23 radioactive contamination at this time.

24 Presently, the incinerator is being upgraded to a
25 slightly different quality of materials in it and

1 consequently, as of today it is not burning. It will be
2 physically back on line sometime later this year.

3 Q But --

4 A It does have permission and it could be burning
5 chemical waste.

6 Q But are they? I mean, what's confusing to me as
7 a member of the public and a taxpayer and someone that lives
8 in Santa Fe is that we are talking -- I am beginning to
9 understand all the divisions you are making about the
10 permitting, but it sounds to me that the lab is -- their
11 intention is to burn in the reality of what they need to
12 burn, or saving to burn, is mixed hazardous waste.

13 It's chemical and radioactive, and it doesn't
14 sound like that they are or have any intention of burning
15 just purely chemical wastes, is that correct? I mean, I
16 feel like --

17 A I can't speak for their intentions. They
18 certainly --

19 Q But in reality, at the present are they doing any
20 purely chemical waste?

21 A They have permission to do so. The question of
22 which wastes do they burn and which wastes do they ship off
23 site is colored as well by the laboratory's other
24 requirements, such as economics. It may prove to be, for
25 example, much cheaper for them to ship it somewhere than

1 you on the phone and he said he thinks that the incinerator
2 moratorium covers the Los Alamos incinerator. Are you aware
3 that he wrote Los Alamos and told them they could not get
4 this permit until new air quality standards have been issued
5 by the EID?

6 A If I may, I believe --

7 Q Do you -- did you speak to him?

8 A I believe the concern is to the proposed new
9 incinerator? The air quality?

10 Q Not this one.

11 A I have not seen a letter stating that this
12 specific incinerator could not or would not. I have not
13 seen that letter. I am not aware of it.

14 Q That it should meet air quality standards of some
15 new legislation, the new standards that there is a
16 moratorium and you are supposed to come up with new air
17 quality standards?

18 A Yes, I am aware of house bill fifty-nine.

19 Q And he says -- he thinks this hearing is about
20 the disposal of the fly ash and is fly ash even discussed in
21 the permit?

22 A The permit requires that all effluents, both ash
23 and liquid, be disposed of in accordance with the hazardous
24 waste regulations. Yes, it does address the disposal of ash
25 and any other -- any other residuals from the incineration.

1 Q But not the air quality standards?

2 A I cannot speak to the air quality standards. I --
3 my understanding is that the concern, as I said earlier,
4 applied to the new incinerator, not to this existing
5 incinerator.

6 Q Well, I did read the permit and I was looking for
7 the names of the hazardous waste and I found thirty pages of
8 wastes that were listed under code numbers like "D," "E,"
9 "E-1," and so this is why I -- we ended up calling your
10 office, was because I wanted a translation into what type of
11 the code names, you know, and the permit does not really
12 list the waste, in fact, does it?

13 A The code letters that are standard EPA
14 designation of specific wastes are listed in attachment G.
15 The meaning of those code letters is included in the
16 attachment --

17 Q I didn't find that, obviously. I read attachment
18 G.

19 A -- in the final attachment of the permit and I
20 don't have them in mind. It's the regulations.

21 Q It wasn't in mine.

22 A That spelled that out. It would be -- what is
23 that final attachment? Attachment K is the regulations and
24 those regulations give the definitions and specific chemical
25 species for each of those code letters.

1 Q Because Mr. Kirkpatrick never heard of those code
2 letters and nobody at Taos did, and they were mystery
3 letters.

4 A The laws and regulations are complex and the air
5 quality people are conversant in theirs and I hopefully am
6 conversant in mine.

7 Q Well, also like at Los Alamos they have an
8 acceptable background or radioactivity where the guy with
9 the Geiger counter goes around and checks and there's like a
10 certain what they call low level safe background. Amount of
11 radioactivity obvious there is in all the waste.

12 Whether it's listed as chemical or otherwise,
13 there's going to be miniscule amounts of radionuclides in
14 all of it because they have the quote/unquote safe
15 background level, and I would think this would sort of tend
16 to pile up in certain areas where the smoke blows to, even
17 if they weren't specifically burning it.

18 MR. YOUNGBLOOD: Ma'am, do you have a specific
19 question? Do you have a question of Mr. Crossman?

20 Q Is there any way this can be addressed or are you
21 going to try to monitor it. Are you going to try to
22 research?

23 A Under the law that authorizes my activities and
24 our monitoring, we do not address radioactivity. Its source
25 special nuclear and byproduct materials are specifically

1 excluded and are outside the realm of this permit.

2 Q Uh-huh. And you didn't really consult the guys
3 at the air quality part of the Division, either, about it,
4 right?

5 A The application materials and the draft permit
6 have been provided to the Air Quality Bureau, yes, ma'am.

7 Q Uh-huh. They thought it was something else, you
8 know, and that it wasn't listed at all, an operating permit.
9 I don't know.

10 MR. YOUNGBLOOD: I'm going to take this gentleman here.

11 CROSS EXAMINATION

12 BY MR. SILVERS:

13 Q My name is Arthur Silvers. I am a resident of
14 Santa Fe. I want to thank you, Mr. Youngblood and Ms.
15 Nelson and Mr. Crossman for putting together this document
16 that helps us understand what it is that is spun around
17 these issues of permits and all.

18 This hearing is on LANL's mixed waste
19 incinerator. And on the first page, which you have given us
20 in this document, I don't understand something and I would
21 like you to comment. It's on the last paragraph on the
22 first page. It says, "Mixed Waste Regulations." "When a
23 waste has both chemical and radioactive components it is
24 called a mixed waste. Because the chemical component of mix
25 because of the chemical component of mixed waste, the

1 Hazardous Waste Act does apply to mixed waste."

2 You say it does or does not? I mean that's what
3 looks funny because what it says here, it only applies to
4 the chemical part of mixed waste and then you go on and say
5 the Hazardous Waste Act does not apply to the radioactive
6 part; that the Department of Energy regulates the
7 radioactive part pursuant to the Atomic Energy Act.

8 Well, I am having a lot of difficulty with that.
9 I mean, I don't understand. Is DOE -- I mean, this is
10 dealing with nuclear waste. Obviously, that's what it says.
11 Isn't that what it says?

12 MR. YOUNGBLOOD: Let's wait a moment and see if Mr.
13 Crossman can answer your question.

14 Q I don't understand this. Where is DOE in all of
15 this?

16 A What we are trying to convey is that there are
17 several laws and regulations that govern mixed waste. Mixed
18 waste is subject to the Atomic Energy Act, the federal law,
19 and the regulations that flow from that as well as the
20 hazardous waste Resource Conservation Recovery Act and the
21 regulations that flow from that, as well as the state act
22 and the regulations that flow from that law. So in this
23 case it is subject to three laws and three sets of
24 regulations.

25 It must meet the requirements of all, therefore,

1 it is understandably a complex issue and I can understand
2 your confusion. Did I answer your question?

3 Mr. Henry, would you read the question back?

4 (THEREUPON, the record was read back by the reporter.)

5 THE WITNESS: I apologize. I think perhaps the
6 confusion comes from the title on this letter.

7 This information here is addressed to the overall
8 issues as raised by the letters from the public. The
9 incinerator is a single unit that can burn chemical waste
10 under RCRA, mixed waste under RCRA, or radioactive waste
11 under the Atomic Energy Act.

12 It is one unit and, depending on what it is
13 doing, it's subject to the laws and regulations for that
14 activity and perhaps the confusion comes from the title on
15 this, and we should re-address that title.

16 Q How would you re-address it?

17 A I think I would drop out the term "mixed waste"
18 and put in there the specific incinerator identification so
19 that it would read, "EID July 18, 1989, statement responding
20 to particular concerns expressed by members of public
21 regarding the LANL controlled air incinerator."

22 MR. SILVERS: I just have one final thing to say then.

23 If this incinerator is or can be adapted for the
24 burning of toxic waste as it indicates here, then I feel
25 that this hearing is inadequate. There's just something

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1 that feels very odd and incomplete about it and I just want
2 to express that.

3 MR. YOUNGBLOOD: Have a lady here.

4 CROSS EXAMINATION

5 BY MS. LOGAN:

6 Q My name is Priscilla Logan, and I am a school
7 teacher from the Santa Fe public schools. I thank you, Mr.
8 Chairman, and EID for letting us comment and being a part of
9 the public hearings. However, we do have, as you have heard
10 before, some real questions about the validity of the
11 hearings.

12 I have two questions. They stem from what I do
13 in the classroom. I spend a lot of time teaching children
14 about environment, keeping the environment clean, and
15 democracy, so my two questions are in those two areas.

16 Number one; who is it, specifically? What are
17 the names of the people in EID or what are the names of the
18 people who will be giving this final permit to LANL?

19 A The final permit decision is made by the
20 director, Mr. Richard Mitzelfelt.

21 Q By one person?

22 A That is one person, his --

23 Q That doesn't sound too democratic. It's not a
24 board? One person makes that decision?

25 A That's correct.

1 Q Is there room for making that into a more
2 democratic process or is it an autocratic procedure?

3 A That's based on the state Hazardous Waste Act
4 that says -- says words to the effect that the director will
5 make these decisions. The process and the procedures for
6 gathering the information for that -- the basis of that
7 decision. This hearing is a portion of the process for
8 gathering information upon which he will make that decision.
9 But that's -- that flows from the state Hazardous Waste Act.

10 Q And to change that, to make it more democratic,
11 we would have to go through the democratic process of the
12 legislature?

13 A I believe so, yes, ma'am. Let me expand on that
14 for just a moment.

15 There are state regulations promulgated by our
16 board of governors, as I mentioned earlier. If you wish to
17 address the regulations, then comments should be directed to
18 the Environmental Improvement Board, which is our governing
19 board. If you wish to address the state act, then, of
20 course, you would address that to the legislature.

21 Q But the director does have to follow the
22 regulations and if he is found --

23 A Yes, ma'am.

24 Q -- in error in following the regulations does the
25 public have some kind of recourse?

1 A Yes. In the hazardous waste management
2 regulations, section nine, there is a -- the procedure is
3 outlined as to what we are doing here today. One of those
4 steps is once the director makes a decision, that decision
5 may be appealed to the Environmental Improvement Board for
6 cause and under the procedures spelled out in the
7 regulations.

8 Q And I have another question. It seems to me that
9 what we are talking about is that DOE will have the final
10 permit or the final say on the radioactivity of the waste
11 that is being burned and I have a real question with that.
12 As Senator Rutherford did when he said, "Putting DOE in
13 taking charge of WIPP is inappropriate. It's like putting
14 whether -- the Dillinger gang in charge of taking care of
15 the bank, or making sure no one gets in the bank." I have
16 that question also.

17 And in light of Watkins' front page article where
18 he said that he wants to bring the public into the awareness
19 that DOE is now -- now has a completely new idea about
20 what's happening and is going to really follow as EID has
21 all along, I suppose, and EPA, the safety rules, I would
22 like to apply to DOE and Watkins to allow this hearing to
23 become expanded in the future and have EID have control over
24 the radioactivity, since we all have, as the public, a real
25 question and real doubt, real lack of trust in DOE.

1 And I would like to submit CCNS, which is
2 Concerned Citizens for Nuclear Safety, as a part of any
3 process because we want the public a part of this. I know
4 that you have a limited budget so if you heard that you had
5 to take care of writing regulations for radioactivity, it
6 would be very difficult to include. So I would like to
7 suggest that CCNS would be a possibility.

8 Is it possible for you to ask DOE, I guess not
9 right now -- putting the lady in red on the spot -- is it
10 possible to ask DOE to, in light of Watkins' new ideas of
11 including the public and being concerned about safety, can
12 we ask DOE to please allow the State of New Mexico to have
13 some say-so in the air that's -- that we are going to be
14 breathing because it's going to be radioactive from the
15 incinerator. Can we do that?

16 A I am going to have to speak on a personal note.
17 I presume we can ask them anything. I have not been in the
18 habit of asking them all that much. I have been more in the
19 habit of telling them, and so that's a new way of thinking
20 for me. But, certainly, we would have to deal -- we would
21 have to work within the laws that we are obligated to follow
22 and the regulations that flow from those and whatever
23 appropriate forum would be applicable, certainly that could
24 be explored.

25 Q I would like to ask if DOE could officially ask --

1 I mean the EID -- I am getting all my letters mixed up here --

2 A Understand the -- go ahead. Please go ahead.

3 Q I would like to ask EID then to follow through
4 and ask DOE if we could have a part in the decision-making
5 process of burning radioactive waste in the incinerator?

6 A That is -- dealing with radioactivity is outside
7 of my area of authorization or -- if you will, or -- or
8 authority and a question like that I would have to take to
9 the director. It is in the hearing record here and would be
10 conveyed to the director.

11 Q Would it be appropriate to have the public
12 acknowledge that this is something that we would like? I
13 mean, would you like to know if -- how many people here
14 would support that or -- the fact that it is just from one
15 person asking for that --

16 A The director will be -- will receive the hearing
17 record. On information from that, I think from the reaction
18 you just got, that that's almost evident. My understanding
19 it's always appropriate for the public to write to the
20 director and express their views on any subject.

21 Q And as a lawyer may I ask you a question, also?
22 Would it be appropriate for us, as individuals, to write to
23 this lady that's a lawyer that's been hearing what I am
24 saying, or who is it in DOE that we could write to?

25 I mean, we are going a little bit beyond legality

1 right now and sort of tip-toeing into people's hearts and
2 saying, "Isn't it appropriate?" "Is it a possibility?" And
3 I think maybe if we do it that way instead of take it with a
4 big ball bat and say, "We want it," it might be a little
5 more received.

6 MS. NELSON: May I respond to that?

7 MR. YOUNGBLOOD: Please do.

8 MS. NELSON: Another -- just for you-all's information,
9 another reason why I don't speak more is that I am not sworn
10 to give testimony. Mr. Crossman is the witness who has --
11 who is under oath and that's what our procedure needs. As
12 the attorney, I will not be a witness. I cannot be sworn
13 and, therefore, I have to limit my direct comments.

14 But just generally what I want to respond to, or
15 what I will respond to if you all will allow me then, is
16 that if I understand your question fully enough, I have to
17 repeat that as an attorney I cannot advise anybody on what
18 your legal rights are or are not. What you do or do not
19 have. All I can say is that generally, in the interplay
20 between the public and any regulatory agency, any
21 governmental agency, that the citizens always have the right
22 to make whatever requests they want of that agency.

23 And in terms of who to direct questions to,
24 that's part of why EID developed this statement. It's best
25 if you have identified the correct bureau, the correct

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1 permit, et cetera, because if you put a lot of protests into
2 the permit that doesn't cover something, you certainly get
3 heard, but the law may not allow that permits you to do
4 anything about your concerns.

5 For DOE and DOE's regulation of radioactive
6 waste, I personally do not know a lot of that scheme. It
7 stems from the Atomic Energy Act. DOE is authorized then to
8 develop regulations governing the management of radioactive
9 waste. It has developed regulations that cover how it
10 regulates radioactive waste.

11 I simply do not know how that is overviewed.
12 Just for you-all's information, the Atomic Energy Act split
13 the regulation of radioactive waste between DOE for the
14 federal waste and the Nuclear Regulatory Commission for
15 private radioactive waste. And both have independent sets
16 of regulations governing radioactive waste.

17 When there is mixed waste, that activity will be
18 duly regulated. In other words, it would need to comply
19 with both the regulations for radioactive waste and the
20 regulations for chemical waste.

21 And I just wanted to repeat that in case that had
22 not been understood, that there must be compliance with
23 both. It's just that it is a dual concurrent regulation.

24 In terms of asking DOE, the -- probably in the
25 draft permit is the -- is address for the lab --

1 MR. YOUNGBLOOD: I think that's the fire alarm and we
2 are going to have to go outside.

3 (THEREUPON, the hearing was in recess.)

4 MR. YOUNGBLOOD: We will reconvene the hearing after
5 the fire alarm has stopped, and would you state your name
6 again for the record?

7 Q My name is Priscilla Logan. I have just one
8 final comment and question.

9 My concern over DOE being a part of the decision
10 of radioactivity, it seems that the whole public has been
11 really concerned about this, and there have been changes
12 made. I know a lot of times we feel very proud of this in
13 terms of federal acts and state acts, and I want us to all
14 have faith that if this is really an important thing that
15 needs to be changed that in Colorado, in regard to the Rocky
16 Flats, Watkins did come out and say that the public and the
17 governor can send regulatory people and can set their own
18 standards for Rocky Flats and this will be also for other
19 installations.

20 So I feel that even though this may not be
21 legally possible, that this is the kind of thing with
22 hearings like this that perhaps we can reach the federal
23 government and Watkins and have him allow us to be a part of
24 this process.

25 And my question is, I don't think one letter is

1 going to do it from a school teacher in Santa Fe. I would
2 like to know if a copy of this proceeding, with a cover
3 letter asking them if we could please be a part of the
4 regulatory process for the radioactive burning, is that a
5 possibility? Can we do that? Can we send that to Watkins?
6 Can we send a copy of the proceedings?

7 MR. YOUNGBLOOD: I certainly can, however --

8 Q With your letter asking DOE to allow us and this
9 is nothing to do with legality, but would you please
10 consider the possibility of us being allowed to be a part,
11 the public being allowed to be a part of the decision-making
12 process for the radioactive permit at LANL?

13 MR. YOUNGBLOOD: Certainly, the hearing record here, if
14 you desire to purchase it, can be sent to whoever you wish.
15 I will ask Mr. Crossman to answer the balance of your
16 question.

17 A I don't know that I would be sending a letter to
18 the secretary of the Department of Energy asking for them to
19 participate in something beyond my realm of authority.
20 Certainly, you as a member of public, could. I think --
21 only suggest that perhaps if you would like the state to do
22 so, to address your request to Mr. Mitzelfelt and certainly
23 he acts as the representative of you, the public, and
24 certainly he could decide to do so. On a personal nature,
25 that's outside of my authority.

1 MR. LOGAN: Thank you.

2 MR. YOUNGBLOOD: Thank you very much.

3 This lady here.

4 CROSS EXAMINATION

5 BY MS. WHISENAND:

6 Q First of all, thank you for letting us be here
7 today. My name is Donne Whisenand, W-h-i-s-e-n-a-n-d, from
8 Taos. First of all, I had some of my own questions, but
9 Gene Castro had to leave early just a few minutes ago and
10 asked if I would read his.

11 MR. YOUNGBLOOD: Ma'am, is this in the form of a
12 question or statement?

13 MS. WHISENAND: I will make it into a question.

14 Q Would it be possible, due to the unique nature of
15 the permit application to request a recess until EID may
16 investigate the possibility of changing the order of
17 proceedings as to conclude with Doctor Morey? I believe it
18 was requested changes in the order of proceedings so to
19 allow public cross examination as desired by the public.
20 That's by Gene Castro.

21 MS. NELSON: Mr. Hearing Officer, I will object to that
22 motion as has been stated. EID has no legal authority to
23 require Los Alamos to testify nor to require Los Alamos to
24 be subjected to cross examination.

25 MR. YOUNGBLOOD: Further discussion on the matter?

1 We have no legal right to tell Los Alamos that
2 they have to testify. Okay? If you desire to request Los
3 Alamos to testify, I think it would be in order.

4 MS. WHISENAND: All right. I would desire to do that.

5 MR. YOUNGBLOOD: Okay. Let the record show that Los
6 Alamos has been requested to testify. You may continue.

7 MS. WHISENAND: Yes. Now, I have some questions.

8 Q We are talking about regulating and when we say
9 that, or you say that, what percent of the toxic waste
10 material, whether it's chemical or any other, plutonium,
11 what percent is controlled that comes out of that
12 incinerator? What percent of the time is it -- is it all
13 the time or part of the time? And what are you doing with
14 the wastes of what you are burning? What is the ash? Is
15 that going to be reburned or sent some place else or what?

16 MR. YOUNGBLOOD: Let me stop a moment. Mr. Crossman,
17 do you plan on giving further technical testimony?

18 MR. CROSSMAN: I have prepared a briefing to try to
19 outline what is in the permit to this particular question.
20 That briefing that I have prepared doesn't give answers to
21 specific percentages.

22 MR. YOUNGBLOOD: Then I would ask you to answer it at
23 this time.

24 Answer it at this time.

25 THE WITNESS: Mr. Henry, would you read the question

1 back?

2 (THEREUPON, the record was read back by the reporter.)

3 THE WITNESS: Okay. In response to your first
4 question, the standard for the incineration of hazardous
5 waste under our regulations is to achieve what is called a
6 ninety-nine point ninety-nine percent destruction
7 efficiency.

8 So the answer to your question of what percent
9 comes -- is released, it would be zero point zero zero one
10 percent is allowable release from a hazardous waste
11 incineration under these regulations.

12 As far as the disposal of the ash, that will
13 depend somewhat on the history by -- under which the ash was
14 formed. If -- for the purposes of hazardous waste, if that
15 ash is a hazardous waste, it would continue to be a
16 hazardous waste and would have to be disposed of as a
17 hazardous waste. There are no hazardous waste disposal
18 facilities at Los Alamos or in New Mexico, for that matter,
19 so the ash would be contained and shipped to an authorized
20 RCRA hazardous waste disposal facility.

21 Q Well, will the very small percent that does come
22 out of the incinerator into the air, would that amount have
23 any impact on the health and environment?

24 A I don't believe so, no, ma'am.

25 MR. YOUNGBLOOD: Go to this lady and then the gentleman

1 in the green shirt back here.

2 CROSS EXAMINATION

3 BY MS. BLEAKLEY:

4 Q Thank you. My name is Carolyn Bleakley and I am
5 a concerned citizen living in Santa Fe.

6 Mr. Crossman, I would like for you to tell me, if
7 you could, how many years has the present incinerator been
8 burning waste at Los Alamos?

9 A The incinerator that I believe you are talking
10 about, the controlled air incinerator, built in building
11 thirty-seven, tech area fifty, was installed in the
12 mid-seventies, so approximately '76, I believe. It has been
13 authorized to burn under RCRA since RCRA went into effect in
14 November of 1980.

15 Q I have been aware of some rather sophisticated
16 air quality testing going on in and around Santa Fe. The
17 technicians doing this testing told me that it was for the
18 Department of Energy. Do you get the reports of those air
19 quality tests?

20 A I am not familiar with what reports you are
21 referring to. We are -- was that testing done by the state
22 or some other entity?

23 Q I was told that the testing was requested by the
24 Department of Energy for the laboratory in Los Alamos. And
25 I am aware of this in the last five years. Perhaps there

1 has been -- maybe the Department of Energy attorney could
2 tell us if there has been testing before that, but I just
3 wonder, as concerned citizens of Santa Fe, if we could have
4 the report of those tests or certainly I would think that
5 maybe your office should have received those.

6 A We have received some reports. I am not -- I
7 don't believe I can tell you specifically because I am not
8 sure which reports you are talking about. But if I could
9 say generally, if you could identify to us after the hearing
10 what reports you are speaking of, we could certainly request
11 those, if we do not already have them, and have them
12 available. All of our records and the file on this are
13 available to the public and certainly you could review them.

14 Q So in the last five years have you received any
15 air quality tests done by the Department of Energy?

16 A We have received some, yes, ma'am.

17 Q And those are a matter of public record?

18 A Yes, ma'am. One other thing thing that I wanted
19 to make sure that you understand, I am speaking from the
20 hazardous waste program. The Air Quality Bureau also
21 operates in The Division under the Clean Air Act and the
22 state laws and regulations. I cannot speak for what they do
23 or what they have received.

24 Q So as concerned citizens, how would we go about
25 getting those reports of the testing of the air?

1 A If you wish to come in and see what we have,
2 certainly a phone call to me at the office and we can
3 arrange a mutually acceptable time. You can review any part
4 of our file that you would like to.

5 To direct your questions to the Air Quality
6 Bureau you can use the same mailing address. I don't have
7 their number with me at the moment.

8 Q But that wasn't done by the air quality, it was
9 done by the Department of Energy, so will you have those
10 reports?

11 A Anything that we have you are certainly free to
12 look at. If we do not have it, we can request it from DOE,
13 or you can request or send your request directly to DOE. I
14 presume that some of their reports are available to the
15 public.

16 Q And then my last question is, has there been any
17 statistics gathered about thyroid or thyroid cancer or brain
18 tumor in this area, in the Santa Fe area? Is that data
19 available from any department?

20 A I don't know of any. That particular question
21 you can refer to the health and environment department's of
22 of epidemiology. They conduct those types of studies and
23 they can answer more specifically directly your specific
24 question.

25 Q Thank you.

1 MR. YOUNGBLOOD: Gentleman in the green shirt.

2 CROSS EXAMINATION

3 BY MR. HIGGINSON:

4 Q My name is Robert Higginson. I have a question
5 that was asked an hour ago. It was presumed, but I am going
6 to ask it, anyway.

7 My question has been largely presumed by the most
8 recent questioning, however, I am going to go ahead and say
9 it anyway.

10 Mr. Crossman, on paragraph three of page six you
11 state, "radionuclide emissions from this incinerator have
12 been reviewed by EPA Region VI for compliance" and that the
13 EPA reviewed the emissions from the existing incinerator in
14 November of '88.

15 First of all, as I am sure you are aware, the
16 incinerator has been closed for two years and, therefore, it
17 was not operating in 1988, however, does this mean -- does
18 your choice in wording the word "reviewed," mean that these
19 emissions were actually monitored or, as you have stated
20 elsewhere, is this just an analysis of predicted emissions?

21 Second of all, if these emissions have been
22 monitored, who has been monitoring them exactly? And for
23 how long have the machines been monitored?

24 Finally, as we have already somewhat gone over,
25 how can we obtain records of emissions monitoring that has

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1 been going on for the last fifteen years?

2 A First of all, let me qualify my answer. You have
3 asked questions subject to the Clean Air Act and that is not
4 within my field of experience, so with that caveat I will
5 give you my best understanding. Please accept it in that
6 manner.

7 The region -- EPA region staff did review the
8 application for a new mixed waste incinerator last year. As
9 a part of this review my understanding is that they look at
10 all of the emissions from Los Alamos as a whole. Given
11 that, they look -- it was a paper review of predicted
12 emissions. Does that answer your first question?

13 Q You say that's a review of predicted emissions?

14 A Predicted emissions for new incinerator based in
15 addition to the known -- and the emission from the facility
16 as a whole.

17 Q Well, if these -- if this analysis and conclusion
18 by EPA was based on evidence obtained prior to that
19 conclusion, on what evidence was it based and who collected
20 the data to formulate that evidence?

21 A That question I think you would have to address
22 to the EPA region staff that did that work under the Clean
23 Air Act. To my knowledge, that was done.

24 Q Is that a question I would have to ask --

25 A As to what materials they used, how they went

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1 through their procedures, that's subject to a different law
2 and different regulations done by an EPA staff and I can't
3 I cannot answer to what they did.

4 Q All right.

5 A As far as doing the monitoring, I don't know to
6 my personal knowledge of who is doing radionuclides
7 monitoring other than DOE for Los Alamos.

8 Q So what you are telling me is that if I wished to
9 seek the information about any radionuclide monitoring, I
10 would have to go to Washington and communicate with the EPA
11 in Washington, or is there a state department which I can
12 deal with?

13 A I believe your question would be most
14 advantageously directed to the EPA region staff in Dallas,
15 Texas. Their address is 1445 -- I can give you the address
16 later. It suddenly escaped me, but that was done under the
17 Clean Air Act and by the region staff in Dallas.

18 MR. HIGGINSON: Thank you.

19 MR. YOUNGBLOOD: I have a lady sitting here in front.

20 Please state your name and affiliation.

21 CROSS EXAMINATION

22 BY MS. STEINHOFF:

23 Q My name is Monika Steinhoff and I am going to ask
24 a question, but I want to give you a little background.

25 I am probably the only survivor in this room of

1 the German Nazi regimen, and I came here when I was five
2 years old to New Mexico. My father was at White Sands, and
3 I have watched these proceedings go on and my knees are
4 shaking and my stomach hurts because I feel all my life I
5 asked my parents when I was growing up, once I knew about
6 Nazi Germany and I asked my parents why they did nothing
7 about all these six thousand Jews going to the incinerators
8 and they stated --

9 AUDIENCE: Six million.

10 Q I'm sorry, six million, and they said they did
11 not know what was happening and if you ask the people in
12 Santa Fe, they don't know what is happening right now.

13 If our children look back -- I have an
14 eleven-year-old son and I have a four-year-old boy we
15 adopted from Brazil because Brazil has many street children
16 that they cannot take care of, and if those children ask me
17 when -- I am, all right, forty-seven, you know, so I am old
18 enough to be a grandmother.

19 But if they asked me later, when we have polluted
20 this environment, when people have cancer and everything,
21 why we did nothing, or ask other parents and say, "We didn't
22 understand this process and we don't understand this process
23 because of all this departmentalization" and to all these
24 different categories -- this law is taking care of this,
25 that law takes care of this, this department takes care of

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1 this, and we have --- since Nazi Germany we have gotten
2 infinitely better at clouding up the truth and making the
3 truth, you know, accessible to human beings.

4 I still don't understand at this point, even
5 though I asked privately, and that's -- this is my question,
6 whether there are number one, one or two incinerators
7 existing at this moment in Los Alamos?

8 MR. YOUNGBLOOD: Would you like to answer that
9 question?

10 Q A simple question first.

11 A There are two incinerators in this program in
12 existence at Los Alamos at this time.

13 Q Okay. So -- could you say not permit? I am not
14 interested in permits. I am interested on the ground at Los
15 Alamos. Are there two buildings that are incinerators and
16 ready to run?

17 A There are two permits -- two incinerators at Los
18 Alamos at this time.

19 Q Okay. And are they -- you know, if -- you know,
20 if the circumstances are right, permitwise and everything
21 could those two incinerators start like in an hour or in two
22 hours, whatever it takes? Are they physically ready?

23 A One is physically ready, one is in the completion
24 of some modifications and at the completion of those within --
25 sometime this fall, could physically operate and incinerate

1 waste, yes.

2 Q Then the next question on that issue. The first
3 one was built in 1976?

4 A Approximately that, yes.

5 Q And then when did it begin operating?

6 A It began operating under RCRA in 1980.

7 Q When you say "under RCRA" what does that actually
8 mean? Because, you know it's like under the jurisdiction of
9 RCRA or under the laws of RCRA?

10 A I cannot tell you exactly what date and time it
11 first began under any circumstances. It has been operating
12 under various laws and regulations since it was installed in
13 about 1976, I believe. My jurisdiction applies under RCRA,
14 and that's why I had to phrase it that way.

15 Q Okay. So, in actuality, there has been -- there
16 have been emissions and there have been -- there has been
17 hazardous waste burned up at Los Alamos?

18 A That's correct.

19 Q Because the reason I am asking is a lot of people
20 either don't know it's been happening, as I mentioned
21 privately when we first read about these permits many people
22 were under the understanding that these permits were to give
23 permission to build these incinerators. We did not know
24 they were already existing, number one.

25 Number two, someone mentioned there was a

1 moratorium on the -- that moratorium for both incinerators
2 at the moment?

3 A You are referring to house bill fifty-nine, which
4 was passed by the recent legislature. In that house bill
5 there is a provision that any incinerator in existence as of
6 in existence, and has interim status under RCRA, and had an
7 application pending by January 1st of this year, was
8 exempted from that house bill.

9 So in answer to your question, the house bill
10 fifty-nine did not apply to these two incinerators. Again,
11 please understand that's my opinion as a layman. I am not
12 an attorney, and I am speaking of an air quality law that I
13 am not totally conversant in. That's my understanding of
14 that law.

15 Q Okay. Here, again, I have two masters degrees
16 and you are totally confusing me because I am asking a
17 simple question like -- and I will phrase it differently.

18 If a moratorium existed, has that stopped the
19 incinerators at a certain point in time? And when was that
20 point in time? And when is that moratorium ending when the
21 incinerators will be once more functioning?

22 MR. YOUNGBLOOD: Have it quiet, please. Give Mr.
23 Crossman a chance. I would ask you to be quiet, please, and
24 ask Mr. Crossman to please answer the question.

25 A It's my understanding of house bill fifty-nine

1 that these two incinerators are exempt from that moratorium.

2 Q Okay. So are they still operating then in that
3 case? Are the incinerators at this moment, and have they
4 been, operating in the past several weeks?

5 A I cannot tell you, you know, on a day-to-day
6 basis. They are both batch-type, meaning they operate
7 intermittently. One is operational and could be operating
8 at this time.

9 One is, as I have indicated, undergoing some
10 modification and will be operational this fall, but legally
11 they could operate if they were physically capable of that,
12 at this moment.

13 Q Well --

14 MR. YOUNGBLOOD: Please, have it quiet. You will have
15 your chance.

16 Q I mean, it's very hard. Here we are dealing with
17 a very simple thing, even though what we are dealing with is
18 the air at the moment, Santa Fe's -- our children are
19 breathing, it's the air they will be breathing in five
20 years, ten years -- the air they have been breathing for the
21 last three or four years. This is 1989, and so it's -- if
22 the thing was built, that means it's been going thirteen
23 years or something?

24 Q Mr. Crossman, I believe the question --

25 MR. YOUNGBLOOD: Mr. Crossman, I believe the question

1 is, do you know whether or not the two incinerators in Los
2 Alamos are operating?

3 A I do not personally know that either one is
4 operating at this very moment, no, ma'am. Okay? One is
5 capable of operating and could be operating at this very
6 moment.

7 Q So someone could be putting in radioactive waste
8 and mixed waste, et cetera, et cetera, at this moment and it
9 could be burning?

10 A If that's a question of theoretical, yes, that's
11 probably true.

12 MS. STEINHOFF: Okay. Thank you. Thank you for
13 listening.

14 MR. YOUNGBLOOD: Okay. It's ten minutes until twelve.
15 I am going to adjourn until one o'clock and this lady right
16 here with her hand up is the first person to ask questions
17 when we come back.

18 (THEREUPON, the hearing was in recess.)

19 MR. YOUNGBLOOD: If you will take your seats we will
20 continue with the hearing. When we recessed for lunch there
21 was a lady that had been sitting in this part of the room I
22 said would be next for questions.

23 Is she here?

24 UNIDENTIFIED SPEAKER: I saw her in the cafeteria and I
25 think she will be here in a moment.

1 MR. YOUNGBLOOD: We might tell you before we start this
2 afternoon session that there's some additional testimony
3 that the EID has to get, which will be possibly of more
4 substance than they have given up to this point. I don't
5 want to cut off your questions but I would ask you, however,
6 to ask those questions that you think are absolutely
7 necessary and to listen carefully to the other questions
8 that are asked so that you won't repeat questions that have
9 been asked before.

10 CROSS EXAMINATION

11 BY MR. HANSON:

12 Q My name is Brad Hanson.

13 Earlier in the discussion people were trying to
14 find ways to bring Los Alamos National Laboratories before
15 the public. This Board -- you folks have repeatedly said
16 that you don't have the legal possible power to get them to
17 come up here and speak with us. Who does?

18 MR. YOUNGBLOOD: I don't know of anyone who has that
19 legal power, I will refer that question to the counselor.

20 MS. NELSON: For purposes of this permit proceeding, I
21 don't believe that anybody would, for this permit
22 proceeding.

23 Q Well, for this particular permit proceeding, but
24 seeing as how we are going to be held accountable for their
25 actions, shouldn't they also be held accountable for their

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1 actions?

2 MS. NELSON: Do you want me to continue?

3 Q That's essentially my question.

4 MR. CROSSMAN: Perhaps if I can explain a little bit
5 about the permit and our enforcement of it. My answer to
6 your question of accountability, when a hazardous waste
7 permit is issued, they are subject to inspection under the
8 terms of that permit and they are held accountable in that
9 sense. We will be dropping in on them relatively
10 unannounced from time to time to see if they are following
11 the terms of the permit. In that sense, they are being held
12 accountable.

13 MR. HANSON: Thank you.

14 MR. YOUNGBLOOD: Please.

15 CROSS EXAMINATION

16 BY MR. BATES:

17 Q My name is David Bates from Taos.

18 Mr. Crossman, is there anyone else in your
19 division who has reviewed this permit application? Or are
20 you chiefly responsible for this?

21 A I am the chief writer of the permit. I have made
22 the permit materials available to the air quality division
23 or Air Quality Bureau within The Division as well.

24 Q Okay. Since you are the principal player in
25 this, I presume that you have considerable familiarity with

1 the technical aspects of waste incineration?

2 A That's correct.

3 Q May I ask you some questions of a technical
4 nature?

5 A These are to the permit?

6 Q They are precisely directed toward waste
7 incineration permits.

8 A Okay. Mr. Hearing Officer, do you wish to
9 proceed to the subject of the permit? I will relinquish the
10 briefing if you feel that's appropriate.

11 MR. YOUNGBLOOD: Let me ask what your desire is. Now,
12 there is going to be a technical presentation as quick as
13 the general questions are over with. Do you want to ask
14 your questions now, or do you want to wait until his
15 technical briefing is finished?

16 Q What I am attempting to do is establish the
17 degree of knowledge and credibility of Mr. Crossman. Some
18 of these issues are fairly technical, some are not. Some
19 are just matters of general knowledge and familiarity with
20 waste incineration processes.

21 MR. YOUNGBLOOD: I am going to let you proceed.

22 MR. BATES: Thank you.

23 Q Mr. Crossman, can you or the laboratory provide
24 us with a complete inventory of all the chemical wastes
25 which will be incinerated?

1 A That inventory is in the permit in attachment G.

2 Q All right. Thank you.

3 Does that include the chemical identification,
4 the quantity of chemicals to be disposed of, present
5 location and method of storage of those chemicals, the date
6 and time that each container of waste will be incinerated?

7 A That level of detail is not in the permit. The
8 permit does identify the waste type. As I mentioned earlier
9 in the morning session, attachment G lists the chemicals and
10 attachment K, I believe it was, the regulations in the back
11 define more clearly what those chemicals are.

12 There are quantities also indicated in attachment
13 G which may be subject to incineration.

14 The actual location for storage of wastes prior
15 to incineration is -- or to waste for storage whether for
16 incineration or elsewhere, is listed in the permit, yes.

17 Q So we can assume that the laboratory has an
18 exhaustive and validated and verified inventory of all the
19 material on their premises which will be incinerated?

20 A My hesitation is you're asking me what
21 information the laboratory has, and you are using some terms
22 that I believe have some specific meaning to you. I am not
23 trying to evade.

24 I can't speak as to what the laboratory has on
25 hand. The permit indicates what -- how much quantity they

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1 may have in each of the places of storage on hand.

2 Q Well, where did this information come from? Have
3 you actually gone up there and done this study yourself?

4 A The generation of waste is a dynamic
5 circumstance. This is not something that can be done in one
6 instant and is then forever correct and unchanging. I have
7 been up there numerous times. We, the section, the
8 hazardous waste section, have conducted inspections up there
9 and we do keep tabs in that manner.

10 Q Well, will the laboratory be required to report
11 to you, and in what sort of protocol, how frequently, who
12 will be responsible for that, as to what kinds of wastes are
13 being generated, where they are coming from? Will wastes be
14 provided from other DOE facilities from around the United
15 States? Will that be information which will be subject to
16 public review?

17 A The permit does require them to keep extensive
18 records on the waste and where it's located. I believe that
19 covers most of your questions. Their permit specifically
20 excludes waste from other facilities other than Los Alamos
21 and no other DOE wastes are included in this permit.

22 Those records are required under RCRA to be kept
23 available, so they are open for our inspection at any time
24 under the state Hazardous Waste Act, and I believe would
25 also be available to the citizens or to any member of the

1 public who so asked to see those records.

2 Q Now, in your permit you are likely to provide for
3 the laboratory, will you be specifying certain facility
4 operating conditions?

5 A To some extent, yes, sir.

6 Q Such as the temperature of burn, residence time,
7 duration, contingency plans for accommodating upset
8 conditions, breakdown, start up, and shutdown conditions?

9 A Yes, that's correct.

10 Q Okay. Now, one of the problems with this lack of
11 certainty with what sort of materials will be incinerated is
12 that things like temperature of burn and residency time
13 cannot be established without a full knowledge of what
14 material is to be incinerated. These are very closely
15 correlated. Now, what I am wondering is that if you are
16 uncertain, and it does sound as if you are somewhat
17 uncertain about what sort of materials will be incinerated,
18 how can you specify operating conditions on the permit?

19 A If I can speak to temperature, for example. The
20 permit specifies a minimum temperature that must be
21 maintained in the incinerator any time hazardous wastes
22 subject to the permit are being incinerated.

23 Whether the temperature is maintained by the heat
24 content of the waste, itself, or through auxiliary fuel is
25 of little concern. The temperature must be maintained. Any

1 time the temperature falls below that set value, the waste
2 must be cut off and will be cut off automatically.

3 These conditions were established in the trial
4 burn that was conducted previously by the laboratory under
5 the -- under the eye of the Division and EPA to demonstrate
6 that this incinerator would work under those conditions.

7 Those conditions have been -- would have been
8 reflected in the permit.

9 Q What particular chemicals were burned during that
10 trial burn?

11 A The trial burn was carbon tetrachloride and
12 trichloroethylene.

13 Q And you say that EPA witnessed that? EPA?

14 A That's correct. There was an EPA witness there.

15 Q All right, I think the literature is full of
16 references to the fact that there are hundreds, possibly
17 thousands, of mixed chemical wastes that can be incinerated.

18 You have had a trial burn with two materials
19 under controlled conditions. The literature is also quite
20 clear on the fact that that is an insufficient sampling of
21 incineration conditions.

22 So I would like to know what sort of monitoring
23 on a continuous basis the EID plans to do to insure that
24 this facility is operating properly.

25 A At the present time we have no plans for

1 continuous monitoring by EID of the operation of the
2 incinerator. The permit -- if I can expand on that -- the
3 permit requires the laboratory to monitor and keep careful
4 records, keep records of the conditions under which that
5 burn is being conducted. And those records are all subject
6 to inspection by The Division.

7 Q And which particular emissions will be monitored
8 by the laboratory?

9 A Emissions?

10 Q Right. Not just operating.

11 A Carbon monoxide emissions.

12 Q That's all?

13 A That's the current indicator, right, for
14 emissions.

15 Q Are you familiar with the literature, which I
16 think overwhelmingly indicates carbon monoxide is just a
17 totally inadequate representative of the vast array of
18 emission products that can come out of the hazardous waste
19 incinerator?

20 A Your reference to the literature is so broad that
21 I would have to say "no." Let me correct -- we also monitor
22 oxygen level, so there is oxygen level and carbon monoxide
23 being monitored continuously. I am aware of some literature
24 or some articles, yes, but could you be more specific
25 perhaps?

1 Q Well, I have got boxes of literature, which I am
2 sure you would be fascinated to look at. Sure, I don't want
3 to go into that right now.

4 In your opinion, is the health and the well-being
5 of the people of New Mexico being safeguarded by this
6 somewhat casual response to what in the industry is called
7 the cornerstone of incinerator technology, continuous
8 emissions monitoring?

9 A I believe what you are asking me for is an
10 opinion on the adequacy of the regulations that I don't
11 believe that I could answer. The permit is built on the
12 regulations that have been promulgated by the state for this
13 activity and I believe meets the requirements of those
14 regulations.

15 Q So do you want to give us an opinion or not?

16 A My purpose here is to -- to hear the input from
17 the public. My opinion is perhaps of interest to some
18 people, but I do not believe that it is germane. I am
19 keeping an open mind and my personal opinion is only one of
20 the collective opinions and the collective information
21 coming in.

22 So with that in mind, I would decline to give you
23 my opinion.

24 Q Nevertheless, it's my understanding you will be
25 recommending to Mr. Mitzelfelt whether to proceed with this

1 permit or to deny it, is that correct? That responsibility
2 is on your shoulders and your department's shoulders?

3 A That's correct.

4 Q Thank you.

5 Now, you say that the laboratory will be testing
6 and sampling emissions, is that correct?

7 A They have a monitoring capability for oxygen and
8 carbon monoxide. Those will be operational. If they are
9 not operational, the incinerator will be prohibited from
10 burning hazardous waste under the permit.

11 Q Can you give us specific testing and sampling
12 protocols? For example, will the laboratory be held to EPA
13 and ASME protocols, or is this something that they devise
14 themselves?

15 A The instrumentations that do the continuous
16 monitoring have been identified and are acceptable. The
17 protocols in the permit, we require them to use EPA proven
18 protocols for oxygen and carbon monoxide, for any sampling
19 analysis conducted under the permit.

20 Q Which specific instrumentation, the manufacture,
21 the model number, and so forth, will be specified for this
22 facility?

23 A I can't answer that off the top of my head.
24 That's a detail that I do not recall at this point in time.
25 The instrumentation is not specified in the permit. The

1 standard that they must measure to is.

2 Q And how frequently will this data be reviewed by
3 the EID?

4 A That is subject to the inspection schedule that
5 we develop on -- generally on an annual basis. The record
6 is subject to review at any time. Historically, we have
7 conducted an inspection at the lab approximately once a
8 year.

9 Q Once a year?

10 A Once a year.

11 Q Are you familiar with the fact that there is
12 instrumentation available on the public market for
13 continuous emissions monitoring that is being used
14 throughout the United States on several hundred incinerators
15 now licensed and operating in this country? Off-the-shelf
16 instrumentation manufactured by major manufacturers?

17 A For what parameters?

18 Q For more than oxygen and CO. In fact, every
19 parameter including heavy metals can be monitored. Only
20 dioxins and feurons require laboratory analysis, and why
21 hasn't the state required or requested or suggested that
22 this kind of instrumentation be attached to DOE's facility?

23 A The permit is developed under regulations that
24 specify certain parameters of the guidance that we have
25 developed this permit under. The guidance that we have used

1 to date is to conduct a trial burn to demonstrate that the
2 parameters are being met, the parameters set by the
3 regulations.

4 To date we have not considered requiring specific
5 instrumentation. That's a dynamic field and we have not
6 looked at all of the possible instrumentation combinations.
7 No further action is planned on that. The regulations that
8 the permit is developed under do not require continuous
9 monitoring. That's what the guidance is also built upon, is
10 the regulations. We have not at this point considered
11 continuous monitoring of other parameters.

12 Q So the regulations do not require continuous
13 emissions monitoring. Do the regulations prohibit that?

14 MR. YOUNGBLOOD: Ma'am, just so you know, I am not
15 going to put up with this, okay? No more outbursts, okay?

16 You may continue.

17 A The regulations do not prohibit that monitoring.
18 The state Hazardous Waste Act requires our regulations to be
19 no more stringent than EPA.

20 Q And -- what was that comment?

21 A Okay. The -- the subject is our regulations as
22 opposed to EPA's. If EPA regulations do not require
23 additional monitoring, our state act says our regulations
24 should be equivalent and, therefore, we did not consider any
25 additional monitoring at this time.

1 Q You think it could be argued that particular
2 protocol, such as continuous emissions monitoring, is not
3 really a matter of regulation? It's a matter of validation
4 or verification of whether a facility meets regulations?

5 MS. NELSON: May I have a moment to consult with my
6 witness?

7 MR. YOUNGBLOOD: You certainly may. If you would wish
8 to sit down, you can.

9 MR. BURNETT: Mr. Chairman, I think this is ridiculous.
10 Let's put the lawyer under oath. I have never attended in
11 seventeen years an EID hearing where a witness has been
12 coached to the extent this one is by their attorney. Put
13 her under oath and let her testify.

14 MR. YOUNGBLOOD: I am going to ask you to make the
15 argument again so the EID attorney can hear it.

16 MR. BURNETT: If the lawyer wants to testify, put her
17 under oath and have her testify. I have never in seventeen
18 years attended an EID hearing or EIB hearing or EPA hearing
19 where a witness has been coached to the extent this one is
20 by his attorney. Every single question that is being asked
21 the answer is being counseled by the attorney. It's
22 ridiculous. I mean, this hearing is a charade as it is.
23 This is making it even more so.

24 MR. YOUNGBLOOD: Mr. Burnett.

25 MS. NELSON: I apologize if I appear to be or if I am

1 making too many comments. I am trying to get information
2 out to you all and, as we have said, I am not sworn and I am
3 not a witness. I can refrain from providing information
4 through my witness as I may, in fact, be doing in part, and
5 I will refrain from doing so. But I will object to the
6 characterization of this proceeding as a charade and I will
7 ask you -- that we continue with the proceeding.

8 MR. BURNETT: Mr. Hearing Officer, she has an objection
9 to the question being posed by Mr. Bates, or anybody else,
10 she should make it and you should rule on it. But this
11 constant little exchange here I think violates any notion of
12 fair play and openness that this hearing is supposed to
13 have.

14 MR. YOUNGBLOOD: Mr. Burnett, I believe she stated she
15 would at least attempt to resist. Now, I am not going to --
16 if she thinks that a point has been made then I am not going
17 to keep her from redirect once the questions have been
18 asked. So, if she doesn't coach here and she wants redirect
19 questions, I am going to allow those.

20 MR. BURNETT: Well, I have no objection there. But if
21 we are going to put this whole hearing in a trial context,
22 let the attorney step back to her counsel table, raise her
23 objections to the questions being asked, and then on
24 redirect she can ask the witness questions to clear up any
25 clarifications in a trial proceeding. If that's the way we

1 are going to proceed, the lawyer doesn't sit up there at the
2 witness table or the witness stand whispering in the
3 witness' ear how to answer every question.

4 MS. NELSON: Let me make one additional statement. My
5 purpose here -- my purpose has been to suggest additional
6 clarification in Mr. Crossman's answers. And I think that
7 that should be obvious to people who have heard that. When
8 he has finished with a question he then can go on and
9 provide even more information.

10 That has been my attempt as part of EID's attempt
11 as a whole to provide information to you all that is outside
12 the legal scope of this permit hearing. All of these
13 proceedings to this moment have been focused on getting
14 information to you all that strictly speaking under the law
15 EID does not need to permit. We are doing it because we
16 know the concern is very real and we know that the area is
17 very complex and we have to help get the information out to
18 you.

19 I will be -- I will let my witness answer more,
20 but I think that there may be less information that gets out
21 to you because of that as a consequence, but I think that we
22 can continue that way.

23 MR. YOUNGBLOOD: Let's continue the hearing.

24 Q I would be more than happy to have responses come
25 from the attorney as well as from Mr. Crossman. What I am

1 attempting to do here is to determine whether EID has the
2 will, or the capability, or the information to judge the
3 validity or the worth of this permit application. Now, if
4 that's partly a legal issue and partly a technical issue, I
5 would be happy to have responses from the lawyer as well.

6 MR. YOUNGBLOOD: You may continue to ask your
7 questions.

8 Q All right. Mr. Crossman, we all know that waste
9 incineration involves the exhaust of toxic and hazardous
10 emissions products. I would like to know whether EID and
11 whether your division considers any of these products to be
12 hazardous to health and in what concentrations will they be
13 regarded as unacceptable by the EID? And how will you
14 measure and follow those emissions products?

15 MS. NELSON: May I object. Those are a series of
16 questions, I think.

17 Q Okay, I will ask one at a time.

18 You agree that waste incineration involves the
19 emission of hazardous products into the atmosphere?

20 A I would agree that incineration does involve the
21 emission of combustion products to the atmosphere. The
22 characterization of hazardous depends on the nature of the
23 product and we would have to be more specific. Some
24 products obviously are hazardous, others are not.

25 Q And which emissions products do you and the EID

1 regard as hazardous to the public health, the well-being of
2 echo systems or whatever? How do you make that judgment?

3 A I believe that question is really to the Clean
4 Air Act and the standards that are promulgated under that.
5 I cannot speak to the processing of the Clean Air Act.
6 Under the hazardous waste laws and regulations, our
7 standards are a destruction efficiency and are not addressed
8 to specific constituents in the exhaust gas.

9 Q Now, you mentioned destruction efficiency.
10 Carbon monoxide and oxygen are not products that need to be
11 destroyed to any degree of efficiency. Now, if those are
12 the only two parameters you are measuring on this facility,
13 then what does this mean to talk about the destruction
14 efficiency?

15 A The destruction efficiency is determined by a
16 trial burn where the incinerator is operated under specific
17 conditions and the exhaust gases are sampled and analyzed
18 for the materials being burned.

19 I mentioned earlier they burn
20 carbontetrachloride. During that burn the exhaust gases
21 were sampled and analyzed. As you know, the incineration is
22 an ongoing dynamic process and the procedure is to
23 demonstrate the operating parameters, do the sampling when
24 the analysis results are back, determine whether the
25 regulatory parameters were met, and include those in the

1 permit, which I have done.

2 Q And what destruction efficiencies are you
3 monitoring for and where did you get those numbers of --
4 surely they must have some correlation with health-based or
5 medical-based studies that would indicate that these are
6 emissions products that need to be destroyed to some degree
7 of efficiency. That's what I am trying to get at.

8 A Okay. The efficiency standards were established
9 by EPA as incinerator standards under the hazardous waste
10 law. I did not participate in that decision-making process
11 and I cannot speak to how EPA determined that number. It's
12 a standard in the regulations.

13 Q Can you point us in any -- to any particular
14 studies which would prove the correlation between operating
15 conditions and an incinerator and destruction efficiencies?
16 I want specific references, technical references.

17 A I cannot cite those off the top of my head. I
18 can certainly find some for you and if you will leave your
19 name and address I will give you some citations after the
20 hearing.

21 Q Are you familiar with the EPA literature that
22 came out approximately a year ago in which studies were
23 done, which showed just the opposite, that the operating
24 conditions of a facility had no correlation to emissions
25 destruction percentages?

1 A I don't know what report you are citing. Can you
2 identify it more?

3 Q I will give it to you in written testimony.

4 A All right, I certainly -- once I read it I could
5 certainly comment on it.

6 Q Is the laboratory going to establish any sort of
7 ambient air quality monitoring stations around the site of
8 this facility?

9 A I am unaware of any new ones that they are
10 proposing to install.

11 Q Why has the state not addressed the air quality
12 issues surrounding this permit application?

13 A That's the subject of a separate permitting
14 activity conducted by the Air Quality Bureau and I cannot
15 speak for what they have done.

16 Q Will the Air Quality Bureau be holding a hearing
17 similar to this one to address the issue?

18 A My understanding is that they have -- the Air
19 Quality Bureau staff have looked at this incinerator and
20 determined that it is not subject to their permitting
21 requirements at this time.

22 Q Under what argument?

23 A That the overall emissions -- my understanding is
24 that the overall emissions of this incinerator do not meet
25 their threshold requirements for a permit.

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1 Q How did they determine that?

2 A That question would have to be directed to the
3 engineer or to the staff that made that decision.

4 Q Will these people be subject to public review or
5 is that a decision made without any review by the public?

6 A That decision, I believe, would be subject to the
7 air quality procedures under our -- under our regulations
8 and procedures. It is not in the record because it's a
9 separate law and regulation. Our record addressed the RCRA
10 requirements.

11 Q What sort of operating conditions will trigger an
12 unacceptable performance event at this facility?

13 A May I refer to the permit?

14 Q Sure.

15 A In the permit, for purposes of anyone following
16 this, it's on page thirty-five. They are required to
17 monitor the Ventura's pressure, monitor the HEPA, the high
18 efficiency, the air filter drop operating temperatures, the
19 effluent control system and the recycle rate, the pH, the
20 acidity of the recycle rate and the combustion airflow which
21 includes the carbon monoxide concentration and the oxygen
22 concentration. Upsets or violation of any of those
23 standards would require an automatic shutdown of the waste
24 feed.

25 Q How frequently will these measurements be made by

1 the laboratory?

2 A Those are continuously monitored.

3 Q Now, when I mention unacceptable performance I am
4 referring mainly to EID's oversight of this facility. What
5 sort of activities at the facility will require or prompt or
6 trigger your entering the picture and shutting down the
7 facility?

8 A I perceive that as two questions. One is -- the
9 first question is our inspection of the facility and the
10 second would be what would require an immediate shutdown
11 order, is that correct?

12 Q Right. I understand you will be inspecting the
13 facility perhaps once a year, which is hardly sufficient to
14 review the continuous emissions monitoring and the
15 continuous facility operation parameters. So what I want to
16 know is how are you to be informed of the events that are
17 occurring on a daily basis at the laboratory?

18 A The Division permit here would allow them to
19 operate and require them to maintain records. Any time they
20 have an emergency condition, they, under some circumstances
21 or see how to phrase it -- they are required to report
22 emergencies to the Division within twenty-four hours of the
23 time they occur and if information from that or any other
24 source indicates an emergency order under our act is
25 appropriate, that we would follow the procedures of our

1 state law that allow for the emergency order.

2 I hope -- did that answer your question?

3 Q Well, I think so. I still have a problem, and I
4 think most of the people in this room have a problem, with
5 the credibility of DOE's recordkeeping and reporting
6 procedures and -

7 MR. YOUNGBLOOD: I am going to ask you to quit making
8 speeches and ask questions.

9 Q Well, I think that was intended as a background
10 for my question. My question has to do with what sort of
11 aggressive behavior on the part of the state, EID, which is
12 charged with protecting the public health and welfare, will
13 you take to address this very obvious and chronic problem
14 with recordkeeping and reporting by DOE facilities? How
15 will you validate or verify the recordkeeping at this
16 facility?

17 MS. NELSON: Mr. Hearing Officer, that's a
18 multiquestion again. Could you ask the questioner to say
19 one question at a time?

20 MR. YOUNGBLOOD: I certainly will.

21 Q How will you verify that the recordkeeping is
22 being done properly at this facility?

23 A If by verification you mean separate sampling, we
24 have the option of going in and conducting sampling at any
25 time or at the time of the inspection. At the moment we do

1 not have any specific plans for verification sampling to
2 verify that.

3 I cannot think at the moment of any way to verify
4 that something that was written in the record in the past,
5 how that could be verified.

6 Q Are you familiar with the electronic technology
7 now being used and required by Germany for the reporting of
8 continuous operating parameters to central regulatory
9 agencies?

10 A I have not read any reports specific to German
11 technology, no.

12 Q If I were to provide you with that information,
13 would you regard that as sufficiently interesting to perhaps
14 include in this permit so that EID could verify and validate
15 the kind of recordkeeping that DOE may be doing?

16 A Anything you provide certainly would be -- would
17 be read and evaluated. Its application I cannot speak to
18 until after having read it and discussed it with the staff.

19 Q Okay. I have a few other questions and then I
20 will be through.

21 Has a -- has either the EID or the DOE done an
22 environmental impact statement on this facility?

23 A To the best of my knowledge, no.

24 Q Has --

25 A There is an environmental impact statement for

1 the lab generally, but I cannot -- I don't recall who wrote
2 that.

3 Q Has either the EID or the DOE done an
4 environmental assessment on this facility?

5 A By "facility" do you mean this particular --

6 Q This particular --

7 A This particular incinerator?

8 Q The one that was built in the mid-seventies and
9 is now up for --

10 A To the best of my knowledge, no environmental
11 impact statement was made of that incinerator.

12 Q Can you tell us why not?

13 A I personally cannot tell you why a decision was
14 made in the past.

15 Q What about in the present? What about during
16 your tenure at the EID?

17 A Okay. To my knowledge, environmental assessments
18 are written under a different federal law and I am not
19 familiar with the requirements for that so I cannot tell you
20 why or why not that particular law was or was not applied.

21 Q Is this facility subject to the regulations
22 contained within the national Environmental Policy Act?

23 A It may be. I don't know the specifics of that
24 particular act.

25 Q Is this a federal project?

1 A Yes, it is.

2 Q It's using federal funding?

3 A That's correct.

4 Q It's on federal land?

5 A To the best of my knowledge.

6 Q Federal permitting procedures involved?

7 A Federal permitting procedures? These are state.

8 Q Under RCRA?

9 A Under RCRA. If --- in that sense, if the federal
10 permitting procedures are construed to mean under RCRA,
11 that's correct, the federal proceedings are involved.

12 Q Has EID legal counsel ever reviewed the necessity
13 or nonnecessity of an environmental impact statement or
14 environmental assessment on this facility?

15 MR. YOUNGBLOOD: I am going to ask the counselor to
16 answer that.

17 MS. NELSON: Would you read back the question, please?

18 Q I can ask it again. Has the legal counsel of EID
19 or HED ever reviewed the necessity or nonnecessity of
20 obtaining an environmental impact statement or environmental
21 assessment on this particular facility?

22 MS. NELSON: I don't know that federal act. The NEPA
23 act. So, again, I also do not know what it does or does not
24 require.

25 To the best of my knowledge, the state laws do

1 not require environmental impact statements and I do know
2 that under the Hazardous Waste Act, which is the act that
3 this permit is proceeding under, there is no -- there is not
4 what you would call an EIS required or there are other
5 investigations that RCRA requires as the facility goes
6 through it.

7 So I do not -- I personally do not know of any
8 state law requiring an EIS. I do not know so I may be wrong
9 on that and I do not know what was done before I came to
10 HED.

11 I have been here a little over three years. So I
12 am afraid the answer would be that, to the best of my
13 knowledge, there is not a state requirement that it be done.

14 Q I am not so much concerned about --

15 A If I may add to that: I do not recall, in
16 reviewing the entire Los Alamos file in our office, a legal
17 request asking that the legal staff address the requirements
18 of the federal law under this -- for this application.

19 Q What about the legal staff of the EID requesting
20 of DOE legal staff an opinion on this matter? And the
21 reason I raise the issue, that it seems to me that amongst
22 the discussion this morning, which was very confusing as to
23 who has jurisdiction over this intricate matter, that the
24 EID is working somehow under the authority of certain
25 federal legislation.

1 Now, it seems to me that even though there is not
2 a state requirement, I am wondering why you haven't looked
3 into the various federal requirements for environmental
4 impact statements or assessments?

5 MS. NELSON: May I answer that briefly?

6 MR. YOUNGBLOOD: Please.

7 MS. NELSON: To give a quick answer to that, when -- if
8 the state can -- if it endorses a federal law, it is only
9 when the federal government has expressly and specifically
10 given the state the specific authority.

11 Under this RCRA program, EPA has done that. We
12 have been given specific authority and there are some other
13 programs in the state in EID that are like that.

14 But if we have not been given that authority
15 expressly by the federal government, we cannot enforce it.
16 Only the federal government can enforce it.

17 Therefore, Under RCRA, where the state has
18 authorization, we enforce it through a state act. If there
19 is not a state act comparable to -- like NEPA, and there is
20 not an authorization by the federal government to enforce
21 NEPA instead of them, the state is powerless in that way.

22 The state can only act one of two ways. It has
23 its own state law for it and if it's a federal, it's based
24 on a federal law that the federal government has done, it's
25 procedure to give us the legal permission to enforce instead

1 of them.

2 Q So correct me then if I am wrong, but it sounds
3 as if you are saying that under RCRA the state has the
4 right, and, in fact, the obligation, to issue permits in
5 certain narrowly defined cases but apparently does not have
6 a parallel right or obligation to request or require
7 environmental analyses? Is that correct?

8 A The RCRA application does require an extensive
9 information gathering. It does not require a --
10 specifically under the terms that you are using an
11 environmental impact statement or environmental assessment.
12 As far as enforcing some other law or regulation, no, I have
13 not made attempt to do that.

14 MR. BATES: Thank you. That's all I have got.

15 MR. YOUNGBLOOD: Please be quiet. Please be quiet so
16 we can continue with the hearing.

17 Counsel, do you have redirect?

18 MS. NELSON: That's part of the reason that EID is
19 requesting that we -- that we go on into the substance of
20 the permit, if we are going to do that, is to make redirect
21 easier for everybody involved.

22 I can do some redirect at this time, but I also
23 would urge that we take questions on the procedures, quickly
24 finish that up and go into the guts of the permit and then
25 have people do their questions pursuant to the sign-up list

1 with redirect, da, da, da, and -- but I can ask some
2 questions of Mr. Kelley at this time as a redirect to Mr.
3 Basin's questions.

4 MR. YOUNGBLOOD: Bates.

5 MS. NELSON: Bates. Bates. It's Bates.

6 MR. YOUNGBLOOD: Would you rather do it at this time or

7 MS. NELSON: I would rather wait and have more
8 questions, but --

9 MR. YOUNGBLOOD: That will be fine. Then we will
10 proceed.

11 I am going to ask that we do ask the procedural
12 questions now and that we allow the EID to testify on the
13 technical aspects of the incinerator prior to further
14 technical questions only because I think it will speed
15 things up and make it easier. I see a lady here.

16 UNIDENTIFIED SPEAKER: Are we going to have a second
17 round of questioning, then?

18 MR. YOUNGBLOOD: Yes.

19 CROSS EXAMINATION

20 BY MS. LAGE:

21 Q Hi. I am Katherine Lage and these are my
22 children. They are American children. They are not Russian
23 children or anything or whoever you say our enemy is.

24 When you burn mixed hazardous waste, will there
25 be radioactivity in it? Will it spoil their air? Will it

1 spoil the air for two hundred and forty thousand years?

2 MR. YOUNGBLOOD: I am going to ask that you stop at
3 this time and ask if you would like to attempt to answer
4 that question? The question, as I heard it, was when you
5 burn mixed waste will there be radioactivity in it?

6 A I believe what you are asking is what standards
7 would be imposed under the Clean Air Act to the incineration
8 of radioactive materials whether they are mixed wastes or,
9 at any rate, radioactive wastes.

10 I cannot speak to what standards the state will
11 adopt when they adopt standards under the Clean Air Act. I
12 don't know what standards those will be.

13 The answer to your question may be "yes," there
14 will be some allowable escape of radioactivity or "no,"
15 there may not be any allowable. That question is the
16 subject of a different forum.

17 Q May I ask a personal opinion?

18 A I have indicated earlier that my personal
19 opinion, I am making every effort --

20 MR. YOUNGBLOOD: I'm sorry, ma'am.

21 A I am making every effort to keep my personal
22 opinion out of this. I am acting as the agent of you, the
23 public, and I view that as my principal role. Again, I
24 believe that's addressed to the Clean Air Act.

25 Q May I entrust the health and welfare of my

1 children and the children of New Mexico to you? Would you
2 please take care of the human beings that live here and look
3 out for our safety?

4 You have a more direct line with the people who
5 are making the bombs or -- whatever is causing all this
6 insidious waste, do you not? Can you talk to them? Can you
7 tell them to stop making the bombs. Can you tell them to
8 stop making the waste? Can you tell them to stop killing
9 the children that are American children, Russian children,
10 whoever? Can't you tell them to think of children for me,
11 please?

12 Thank you.

13 MR. YOUNGBLOOD: Ma'am, I have given you a great deal
14 of latitude.

15 Q I know. I had about eighty questions. I'm
16 sorry.

17 MR. YOUNGBLOOD: Do you have any further questions?

18 Q My third question is what about my garden? I
19 have flowers and vegetables growing to feed my family. When
20 you burn the smokestacks in Los Alamos or whatever the
21 building when that point oh oh one escapes, is it going to
22 land on my garden? Is it going to hurt my flowers? Is it
23 going to hurt my children? Is it going to hurt me?

24 MR. YOUNGBLOOD: Would you like to attempt to answer
25 that question?

1 A The standards that are set up are based on the
2 law and the regulations and health standards. Depending on
3 which procedure is used, all of those factors are presented.
4 I can speak only for our state regulations. Those types of
5 concerns are properly -- and I can't say whether they have
6 been -- but those are properly directed to the environmental
7 board when regulations are being adopted.

8 The state does have a procedure for adopting
9 regulations, and to answer that, I cannot give you a
10 specific answer to a general question.

11 The radiation regulations are beyond my scope of
12 authority. The hazardous waste regulations were set up in a
13 public forum and those standards were set up in a public
14 forum and I would have to presume that the public -- the
15 public interest was addressed in that public forum.

16 Q Could we have another one of those -- another
17 public forum? I hope we can.

18 Finally I would like to say that yesterday I was
19 so distraught that I called an acquaintance of mine who has
20 worked in Los Alamos for ten years or so. I asked him, I
21 said, "Did you know that they are getting ready to burn
22 radioactive waste in the incinerators up there?"

23 He had no idea. He has been up in Los Alamos
24 every day for ten years. Oh, he's had his days off, but he
25 works there. He did not know that they were going the burn

1 radioactive waste. He did not know they were burning
2 hazardous chemicals. He thought they were burning local ---
3 the city's trash. That's kind of a snow job.

4 MR. YOUNGBLOOD: Do you have any further questions?

5 Q That's -- I had a further question. I beg your
6 pardon for being so emotional because -- I mean, it's my
7 life, it's my childrens' life.

8 MR. YOUNGBLOOD: I hear you. Thank you.

9 At this time I am going to take about five minutes. I
10 think the EID witness has been very busy for the last hour
11 and give him a little chance to move, and I am sure our
12 court reporter could stand a little bit of a break.

13 (THEREUPON, the hearing was in recess.)

14 MR. YOUNGBLOOD: All right, back on the record.

15 Are there any that have procedural questions
16 regarding the hearing? This gentleman brought up something
17 appropriate to the last bit of testimony. I would ask you
18 to step up to the microphone. Would you state your name and
19 affiliation?

20 CROSS EXAMINATION

21 BY MR. HORAN:

22 Q My name is Michael Horan from Taos. May I submit
23 for the hearing record, evidence from the Department of
24 Energy of the existence of an environmental assessment
25 specific to the CAI under permitting discussion?

1 MR. YOUNGBLOOD: Objection to this being taken into the
2 record? If not --

3 MS. NELSON: No objection, but could Mr. Horan please
4 identify it, who it's to and who it's from, et cetera?

5 Q I submit as evidence a letter from Troy E. Wade,
6 the second, acting assistant secretary for defense programs,
7 undated, to Senator Jeff Bingaman.

8 The letter clearly refers to the existence of a
9 current EA specific to the controlled air incinerator under
10 discussion and it says that this EA is undergoing internal
11 DOE review, and upon completion of the internal review they
12 will make it available to the general public and interested
13 parties such as USEPA and EID.

14 The letter clearly differentiates between the
15 controlled air incinerator now under discussion and the
16 proposed low level mixed waste incinerator. The EA is
17 definitely for the -- for this CAI incineration under
18 discussion.

19 I did verbally ask James Phoenix at DOE and Lisa
20 Cummings in the office of legal counsel at Los Alamos if
21 they could provide this EA to EPA and to EID, and there was
22 they said that it is still under review and not yet
23 available.

24 MR. YOUNGBLOOD: Mr. Horan, I am going to ask that any
25 other statements you have be held until the time for

1 statements.

2 MR. HORAN: May I submit this letter?

3 MR. YOUNGBLOOD: I will accept this as Horan's Exhibit
4 Number One.

5 (THEREUPON, Horan's Exhibit One was marked for
6 identification and admitted into evidence.)

7 MR. YOUNGBLOOD: No other procedural questions? Lady
8 in the back in the blue sweater.

9 MS. WEISSMAN: I would like to know ---

10 MR. YOUNGBLOOD: Would you please stand and come up
11 front?

12 Would you please state your name and affiliation?

13 CROSS EXAMINATION

14 BY MS. WEISSMAN:

15 Q My name is Stephanie Weissman. Concerned
16 Citizens.

17 I would like to know why in that permit you are
18 only going to be monitoring the oxygen and carbon monoxide?
19 Why it's not monitoring the radioactivity coming from that
20 smokestack? Why is that not even in the permit? Why is
21 that not addressed?

22 MR. YOUNGBLOOD: Okay, you have asked your question.

23 A The subject of monitoring for radioactivity was
24 what we have been discussing this morning. It is outside
25 the purview of this particular permit and, therefore, it's

1 not in the permit.

2 Q Who is going to be monitoring the radioactivity
3 that's going to be burned in that stack, in that
4 incinerator? Who is monitoring this? And where is the
5 nonpartial fact-finding committee? We don't have one here.
6 You are not one. Where is this? I want to know.

7 MR. YOUNGBLOOD: Just a moment. Take these one at a
8 time.

9 MS. WEISSMAN: Okay.

10 MR. YOUNGBLOOD: What was your first question?

11 Q I want to know who is going to be monitoring?
12 What division is going to be monitoring the new clear -- the
13 radioactive wastes being emitted into the air? Who is going
14 to be doing this?

15 A The monitoring of radioactivity being emitted
16 from an incinerator may well be monitored under the purview
17 of the Air Quality Bureau and the -- under the Clean Air
18 Act, okay? That is what we were trying to convey this
19 morning, is that set of laws and regulations. When
20 standards -- or when the state adopts standards.

21 I can tell from the look on your face I didn't
22 answer your question.

23 Q You got it.

24 A Okay. At the moment -- at the moment The
25 Division does not have radionuclide standards, to my

1 knowledge, that are applicable to the Department of Energy's
2 activity at Los Alamos.

3 Q Okay. How do we, as the general public, get this
4 to happen? We want this monitored. We want it monitored
5 yesterday. How do we make this happen? Do we go through
6 you? You are supposed to be protecting us. Do we go
7 through you?

8 A The request -- and this is my understanding of
9 the procedures -- a request for new regulations or new
10 standards would be addressed to the Environmental
11 Improvement Board, which is our board of directors.

12 Q And you said there was only one?

13 A No, the Board is made up, I believe, of five
14 people. The Board is our board of directors, as appointed
15 by the governor, to promulgate regulations under state law,
16 the regulations under whichever law would be appropriate,
17 and I can't speak to the law.

18 MS. NELSON: If I may --

19 MR. YOUNGBLOOD: Counsel.

20 MS. NELSON: -- add some additional information? Mr.
21 Crossman may not always be able to answer questions for
22 things outside of his bureau and that is the Hazardous Waste
23 Bureau and a lot of concern that you are expressing is
24 something that is better addressed through the Air Quality
25 Bureau. They are in this building. For that reason I

1 wanted to give a little more information, because I -- I
2 cannot -- being part of EID I may know some of these inner
3 workings a little better.

4 The statement that EID prepared has -- I believe
5 it identifies several options that citizens will have. I do
6 not think it is appropriate for me to say what those options
7 are at this time, but I believe that the options are in the
8 statement.

9 That's all I wanted to add at this point.

10 Mr. Crossman can only speak for the permit. He
11 cannot speak for EID as a whole. He cannot speak for the
12 Air Quality Bureau. He cannot speak for EPA. He cannot
13 speak for DOE.

14 Q What is this hearing about then? I came here to
15 this hearing to talk about -- and to listen -- I didn't even
16 get the listen to LANL, I didn't get to listen to DOE, and I
17 am listening to you guys and my ears are bending every which
18 way because you are double-talking us.

19 First you say that there is this thing -- what
20 did you call this? Oh, God, it's here -- mixed waste, okay?
21 You are telling me that on the one hand you are in charge of
22 this mixed waste and on the other hand you are not.

23 Are you in charge of the mixed waste? You are
24 issuing a permit for mixed waste. In that mixed waste is
25 radioactive stuff being emitted, so now you are telling me

1 you are not.

2 I am confused. I am not stupid, I am confused.
3 That's all I have got to say. Double-talking is terrible.

4 MR. YOUNGBLOOD: The gentleman back here. I am going
5 to ask again, sir, for right now that you hold your
6 questions to procedural things, okay? I will give you some
7 leeway, but if you get really into technical I will probably
8 ask you to stop.

9 CROSS EXAMINATION

10 BY MR. ROSS:

11 Q My name is Ryan Ross from Taos. Most of the
12 questions that I had on procedural were pled ignorance to
13 already, so I won't go through those.

14 First off, on page one you say the draft permit
15 can only regulate chemical waste. And then on page two you
16 say you do not have authorization per RCRA to regulate the
17 chemical part of mixed waste.

18 So who is -- what are you regulating? What is
19 this permitting regulating? I mean, if you -- if you say
20 you can't do hazardous -- all of the hazardous waste, you
21 can only do the chemical portion, and then you say you are
22 not authorized to regulate the chemical portion of the mixed
23 waste, I am real confused.

24 A I can certainly understand and appreciate your
25 confusion. It's a complex issue. If you will allow me a

1 simple analogy. If you take your household trash and you
2 look at it, you can sort it into perhaps aluminum cans,
3 newspapers, glass bottles and other, okay?

4 Each of those is a separate type of waste.

5 In our case, each of those is subject to a
6 different set of -- different law and different set of
7 regulations, or may be, or it may be subject to several.

8 What we are dealing with -- or attempting to deal
9 with in this permit is one of those waste streams.

10 Q Which is --

11 A Does that clarify it? In this case, I am dealing
12 trying to deal with the aluminum cans, and --

13 Q Which is?

14 A Which is the chemical waste uncontaminated by
15 radioactive materials.

16 Q So who is regulating the chemical waste in the
17 hazardous mixed waste?

18 A The mixed waste is also subject to regulation
19 under RCRA, but the state does not yet have authorization to
20 administer that portion of the program, so it would be
21 subject to EPA's regulation.

22 Q So that would become --

23 A Under their rules or procedure, and legal status.

24 Q So that comes under the second part of this
25 hearing, the EPA part?

1 MS. NELSON: If I may add a note of clarification. My
2 understanding of the law of RCRA is that the mixed waste of
3 RCRA can be regulated basically under -- the chemical part
4 of the mixed waste can be regulated two ways right now.

5 One is that it is being regulated under what is
6 called the interim regulations. The other is regulations.
7 That would be pursuant to -- that would apply to a permit.

8 Right now, the mixed waste, the chemical part of
9 the mixed waste, has this interim status and is regulated by
10 the regulations that apply to the interim status, which is
11 not the regulations that will control a permit. Under the
12 state authority and the state act, EID monitors or enforces --
13 it regulates that chemical part under the interim stuff.

14 Your concerns, I believe, when you talk about a
15 permit, go to the permit and the permit regulations. Right
16 now EPA is authorized to enforce a mixed waste permit and to
17 develop a mixed waste in other states. But not in New
18 Mexico, because we are authorized for other parts of the
19 RCRA program.

20 It's one of the additional complexities to this
21 particular act. That means, I think, that the mixed waste
22 cannot be put in a permit by EPA right now and that what
23 must happen for it to be regulated under permit is for EID
24 or the State of New Mexico to get that authorization from
25 EPA for mixed waste and then to have it in a permit.

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1 So I do not believe that EPA can regulate mixed
2 waste to any permit.

3 Q So it's unregulated now?

4 A It is not.

5 MS. NELSON: It is not unregulated, at least not fully.
6 Under the interim standards, the state -- hold on one second
7 and let me ask a question.

8 A I understand your confusion. We have regulations
9 applicable to the interim period before a permit is granted.
10 These are regulations of a broad general nature, which a
11 facility must follow until a permitting decision is made.
12 Those regulations are applicable to the lab for mixed waste
13 as well as for the chemical waste and contaminated by
14 radioactivity.

15 So there are regulations that apply in the
16 interim until a decision is -- a permit decision is made.
17 There are regulations that apply during the -- or upon which
18 a permit is based.

19 So it is not totally unregulated at the moment.
20 It is not being addressed in a permitting decision. It's
21 addressed at this moment under interim regulations or
22 regulations for the interim period.

23 Q And there are standards --

24 A Those regulations are in effect and are codified.

25 Q And there are emission standards in the interim

1 period?

2 A There are standards for -- okay, let me think for
3 a second. I have been working with the standards for the
4 permit and I have to think back.

5 There are standards applicable to incinerators
6 under the interim -- interim period. I would have to look
7 at the regulations and tell you specifically what they are.

8 As a general rule they are not specific
9 radionuclide emission standards in those regulations. That
10 much I can answer now.

11 Q So those are unregulated at this point?

12 A The radionuclides under our regulations are
13 unregulated under hazardous waste laws. They are subject,
14 however, if you recall, to the Clean Air Act and standards
15 and regulations promulgated under that law.

16 MS. NELSON: IF I may supplement a little more. The
17 radioactive portion is not unregulated. It is regulated by
18 the DOE regulations under the Atomic Energy Act. I don't
19 know what is in those regulations, but I know that there are
20 regulations and that they are required to follow them.

21 Q And is there any public review process --

22 MS. NELSON: I don't know.

23 Q -- on these interim regulations?

24 MS. NELSON: The interim regulations are already in
25 law, so they are not being developed, they are not in a

1 process. As with any regulation, they can always be changed
2 and that requires starting amendment procedures.

3 But as it is, they stand because they simply
4 exist. They were passed briefly, and concern about relaxing
5 them or wanting supplemental things in them, will mean
6 starting a process to make changes.

7 So right now they would not be under review but
8 they can come under review if an amendment procedure is
9 started.

10 Q So --

11 A If I can -- let me expand on that. Our practice
12 in the past has been to propose to the Environmental
13 Improvement Board, on an annual basis, that our regulations
14 be updated to remain current with EPA's regulations. That
15 process was just completed and the new regulations went into
16 effect on July 9th.

17 That process, I am quite sure, will be repeated
18 again approximately -- it will start this -- late this fall
19 and we will again go through the procedures or the Board
20 will go through their procedures to advertise that the
21 regulations are up for review and to invite public comment.

22 So if you wish to, the next scheduled opportunity
23 would be sometime late this fall when the regulations are
24 again brought up for review by the Board.

25 MS. NELSON: If I can give one more general

1 clarification for you-all's benefit. EID does not itself
2 pass these regulations. EID and other people draft
3 regulations and propose them to, we referred to it before,
4 the Environmental Improvement Board.

5 The Board is composed of five -- I am not sure
6 how many, perhaps five individuals who are appointed by the
7 governor. They meet monthly and review of the regulations
8 that they pass occurs frequently because they control the
9 regulations for both hazardous waste -- in this case the
10 chemical -- what you think as hazardous is defined legally
11 as chemical, not radioactive.

12 They also do the regulations for air quality and
13 so you will probably want to understand more what the Board
14 is and what its procedures for the regulation amendment
15 might be.

16 Q So those five members promulgate the regulations?

17 MS. NELSON: Correct.

18 Q And if we want to have an influence on that, we
19 have to go through the legislature?

20 A No, the Board hearings are open to the public and
21 are public forum, just as this here, so if you wish to speak
22 to anything the Board is considering, then you could speak
23 directly to the Board at their public meetings.

24 MS. NELSON: Just another clarification on a point.
25 The legs -- I apologize if this sounds too simplistic -- the

1 legislature passes statutes, administrative bodies pass
2 regulations. So if you wanted to seek changes to the
3 hazardous waste statute, you would go to the legislature.
4 If you wanted to seek changes to the hazardous waste
5 management regulations, you would go to the Board.

6 Q Another question on the interim permit, the
7 interim status -- what? Are there three, interim permit,
8 temporary permit, or there's this interim status, temporary
9 permit and then a permanent permit, is that --

10 A Those terms are all easily confused. There's a --
11 in effect a permit by statute or by regulation.

12 If a facility has completed all of the required
13 actions to file, to notify, meet the suspense dates, they
14 are automatically, by the regulations, given an interim
15 status permission to operate until a permit decision is
16 made. It's not a written document as a separate permit,
17 such as we are discussing here. It's a legal status, if you
18 will, not a document.

19 And then under that -- in that status or during
20 that period of time they are subject to regulation specific
21 to that type of status.

22 MS. NELSON: If I may add a point of clarification to
23 that. The interim status is an operation of a statute, not
24 the regulation. And I think that when the term "temporary
25 permit" is used, what the better term is, is this interim

1 status. My understanding is there are two categories,
2 interim status, permitted.

3 Q And it says -- I guess it was page three -- "The
4 LANL incinerator has RCRA 'interim status' and is thus
5 authorized to burn chemical waste without a final hazardous
6 waste RCRA permit. This is true for both purely chemical
7 waste and for mixed waste.

8 "The temporary permission to burn purely chemical
9 waste will end when EID takes final action on this draft
10 RCRA permit. Then, burning of purely chemical waste will be
11 allowed only pursuant to the permit. The temporary
12 permission to burn the chemical part of mixed waste will end
13 when EID takes final action on an RCRA permit addressing that
14 waste, which EID will not do until after EPA authorizes EID
15 to do so."

16 Is there a deadline by which the interim status
17 ends and they must apply for a permit?

18 A Interim status is open-ended to the extent that
19 it continues until either a permitting decision is made or
20 by operation of law, which means they could perhaps close
21 and their terminate -- their interim status could be
22 terminated.

23 There are some limitations imposed by congress in
24 the '84 amendments to the hazardous waste laws that -- and,
25 again, I am talking -- my understanding of that law is that

1 congress indicated that EPA or the states should make
2 permitting decisions on facilities under interim status at
3 that time by certain deadlines. The deadline for
4 incinerator decisions for RCRA chemical waste is November of
5 this year.

6 So congress is asking that permitting decisions
7 be made by November of this year.

8 MS. NELSON: If I may add a point the that. That would
9 be on this permit, which is just on the chemical part.

10 With regard to the mixed waste part, and its
11 interim status, which I think is your concern here, the
12 statute and the law provide that if they gave the proper
13 notification, if they were in existence on a particular date
14 and gave proper notification, they, by operation of the
15 statute, have interim status until there is a final permit
16 action.

17 The responsibility for bringing it to a permit
18 action rests with the state. In other words, the state --
19 it is not open-ended. The state sets a date to call in a
20 permit application, so to speak. It would say to Los
21 Alamos, "okay, you have interim status on that right now.
22 Now it's time. We are going to require that you get your
23 permits by 'X' date.

24 And I will ask Mr. Crossman to discuss what he
25 projects for the LANL mixed waste permit application.

1 A I would like to thank my counsel for putting me
2 on the spot.

3 The application for mixed waste authority under
4 RCRA is -- I believe has just left this building and has
5 gone to EPA for their processing. The mixed waste authority
6 will depend on how soon EPA can evaluate our application and
7 grant that authority.

8 I -- I can't speak for how quickly EPA will
9 operate. LANL is in the process of preparing that permit
10 application for mixed waste authority to operate not only
11 this incinerator, but any other activities that are
12 associated with that mixed waste, storage treatment, or
13 disposal, whatever is associated with that mixed waste. I
14 expect that application to be in the office this fall.

15 We will put out a news release to the media
16 saying that we have received it and put a copy in the
17 Espanola library, which has been kind enough to act as our
18 repository for the public further away from Santa Fe, and we
19 will have a copy available here to anyone that wants to come
20 in and read it, and that will be the first step to inform
21 the public the application has been received. When we will
22 actually start reviewing that and processing it, depends on
23 our staff workload. And at this point I cannot tell you
24 what the staff workload will be.

25 We have other permits that are ahead of this one

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1 that we must address first and it's entirely possible that
2 that application will sit dormant for a period of time.

3 Q So if I --

4 A But we will put out a news release informing the
5 public when we receive it and any time the public can review
6 that material and provide comments to us. The public
7 comment period is somewhat open-ended. We are required by
8 our regulations to provide a minimum of forty-five days.
9 The -- we specify only the termination of that public
10 comment period, so anyone who reads that and wishes to
11 provide a comment certainly may do so, and it will be
12 retained in the file until the staff can address that permit
13 application.

14 Q So is your action on the mixed waste final permit
15 waiting to be prompted by LANL's submission of their
16 application?

17 A It is dependent on their application. Their
18 application will come in. They must first make an
19 application.

20 Q And if they don't?

21 A We have not sent them a letter requiring that yet
22 because we are not yet prepared to do so.

23 Q So if they don't, then they don't have to submit?

24 A If they do not submit it, then we would, you
25 know, we have the capability of sending them a letter

1 telling them to submit it. Certainly. One way or the
2 other, they will submit an application, I can assure you of
3 that.

4 We have adopted a policy within our section to
5 not ask for applications or ask for materials so far or when
6 we are not prepared or -- or available to process them.
7 Otherwise they sit there and become stale and obsolete.

8 That policy is just now going into effect. Our
9 purpose is to -- so that when an application comes in we can
10 then process it on. But it's entirely possible that that
11 application can come in before we have the staff time to
12 process it.

13 Q That seems to be open to the possibility of
14 saying hypothetically LANL is not in compliance and you are
15 only monitoring them once a year, and it would behoove them
16 to put off the permit application as long as they could, and
17 if you are not going to require it, then they're under
18 interim status indefinitely.

19 A I can't speak to motive but your assumption that
20 they are under interim status until a permit decision is
21 made, that is correct.

22 Q And that decision will be prompted only by their
23 submission of the application for permit status?

24 A At the moment there is no decision for them to
25 provide that application. When we receive authorization we

1 can formally and legally request it or require it -- not
2 request, it's a requirement. We can order them to submit an
3 application.

4 Eventually, there will be a permit decision made
5 so in that sense it's not open-ended. It may be an extended
6 period of time, but it's not open-ended. During the interim
7 they are subject to the regulations applicable to the
8 interim status.

9 Q It seems a real odd way to run a permitting.
10 It's like, you know, we say, "Okay, everybody who wants to
11 build a house, you can build and when you want to apply for
12 a building permit you can apply, and if you don't, well, you
13 know, you can have your house and you can be living it and
14 build it any way you want and we are not going to monitor
15 how you build it, we are not going to regulate any building
16 standards."

17 A Did you all hear his analogy? The difference is
18 if you are living in your house now, if you are living in
19 your house now, we do not require you to have a building
20 permit for a house that's already built, but we may come in
21 later and say your house must meet the standards that a
22 building permit would impose.

23 If you wish to build a new house, then you are
24 required to get your building permit first.

25 And that's the distinction that congress

1 draft permit. Many people are aware of a third proposed
2 incinerator, which has not yet been built. This is separate
3 from the incinerators that were the subject of the public
4 hearings last year for dealing with municipal waste.

5 Q Well, then there's a possibility of three and let
6 us say that the three are operating twenty-four hours a day,
7 each, okay? What agency, in these quite a few that we have
8 been discussing, would know and control the volume of smoke
9 or emission anyway coming out of all three and then the two?

10 Because you gave me a percent of -- of the toxic
11 waste that, you know, point zero zero one and I want to know
12 what agency to go to or what agency controls how much comes
13 out because we could be talking about billions of square
14 inches or feet or whatever it is, that in a twenty-four-hour
15 period are emitted.

16 And then if you say point oh oh one percent, that
17 could be a huge amount or it might be a small amount, but I
18 don't know which agency -- when you give a permit do you
19 think about that? And what agency would know and control it
20 or at least give us information?

21 A I think the information that you would want would
22 probably be assembled under the Clean Air Act and the Clean
23 Air Act then in this state is administered by the Air
24 Quality Bureau of our division. Depending -- that is a --
25 that's a broad answer to a somewhat broad question.

1 If you want specific chemical specie or specific
2 monitoring questions, then perhaps there's a more specific
3 answer.

4 But under our procedures, we address this
5 incinerator and does it meet the standards applicable to
6 this incinerator? The Clean Air Act, I understand,
7 addresses all emissions from the facility but, please, that
8 is my understanding of how that law works and, you know,
9 that's an opinion at this stage.

10 Q So the only way I could find out would be to go
11 to the clean air people, air quality?

12 A I think you would have to make your question
13 specific for what parameter or what thing. Are you talking
14 radioactive materials?

15 Q I am talking about --

16 A Then your question should be directed to EPA
17 Region VI who administers that standard. If your question
18 is to a different standard the state may or may not
19 administer that portion of the Clean Air Act. So it would
20 depend on which standard you are concerned with.

21 Q Well, I am -- the standard is the quality of
22 radioactive or any toxic substance and the amount coming out
23 of the incinerators.

24 MS. NELSON: Mr. Hearing Officer, I believe that Mr.
25 Crossman has answered that question and I would request that

1 a new question be asked.

2 MR. YOUNGBLOOD: Let me be sure.

3 Q I must have missed that.

4 MR. YOUNGBLOOD: Was your question answered
5 satisfactorily to you?

6 Q Not really. I could go to all these agencies and
7 I might not ever get the answer.

8 A Again, if your question is as to who is
9 monitoring radioactivity or radioactive materials under the
10 Clean Air Act, that question should be -- it would be
11 answered by EPA Region VI people.

12 If your question is to toxic emissions in the --
13 and, again, I stumble at this point because toxic emissions
14 has specific legal meaning as well as the common English
15 meaning. Toxic emissions under the Toxic Substance Control
16 Act are administered also by EPA Region VI. The state does
17 not administer that law and that set of regulations.

18 If you mean in the common English, you are
19 concerned about materials that may be dangerous or may have
20 a -- may have a bad effect on human beings or the
21 environment, those standards and those questions would
22 probably be most correctly addressed to the Air Quality
23 Bureau of the state.

24 I am trying to read your face. Did I answer your
25 question?

1 Q Well, I would think somebody would know -- maybe
2 it would be Los Alamos -- how much comes out of those
3 stacks, each stack, let's say every twenty-four hours. You
4 know, when you --

5 A This incinerator that we are talking about under
6 our regulations here burns approximately one hundred pounds
7 an hour of waste. If you were to apply a point oh oh one
8 percent -- now remember that's percent, so mathematically
9 it's points oh oh oh oh one times a hundred pounds an hour --
10 that would give you a rule of thumb as to how much of that
11 material could conceivably come out.

12 Q Okay. So a hundred pounds would have how much
13 volume? Say how many lungful of air would the people in
14 Taos be breathing in a twenty-four-hour period?

15 A Now you are talking -- you are asking me to do a
16 lot of mathematics in my head which --

17 Q All right.

18 A -- which -- you know, it is beyond me, quite
19 frankly.

20 MS. NELSON: May I ask a question to clarify? I did
21 not understand from your question and I did not understand,
22 therefore, from the answer when you gave those quantities
23 and I would like that explained for the people. Were you
24 referring to under the permit which would be strictly
25 chemical waste or were you referring in any way to mixed

1 waste?

2 A I am only addressing the chemical waste.

3 Q You are not addressing the mixed?

4 A That standard applies to emissions under the
5 chemical waste thing. That hundred pounds is approximately
6 a rule of thumb. The standards in the permit are
7 technically directed towards other parameters but in common
8 English language the rule of thumb is approximately a
9 hundred pounds an hour.

10 Q So you are just addressing the chemical, not the
11 mixed?

12 A That's correct.

13 Q And you have an answer for the mixed?

14 A At this time I do not. I don't have an answer
15 for the mixed waste issue, which we have been trying to
16 struggle with all morning.

17 MS. WHISENAND: All right. Thank you.

18 MR. YOUNGBLOOD: This gentleman here.

19 CROSS EXAMINATION

20 BY MR. HORAN:

21 Q Michael Horan from Taos.

22 Kelley, do you administer the RCRA stack gas
23 emissions limit of a hundred and eighty milligrams of
24 particulate matter per dry standard cubic meter? That's a
25 stack gas volumetric limit?

1 A Yes, that's one of our standards.

2 Q Was that her question basically, as to -- was her
3 question about -- her question I believe was was there a
4 volume stack gas limit? Was that her question?

5 A In that sense then I apologize to you. Yes, we
6 do have standards for particulate, or the solid materials
7 that come out of the -- of the incinerator. I apologize. I
8 was thinking in terms of the gaseous material.

9 Q Well, independent of the --

10 A Yes, there's destruction efficiencies and
11 particulate and gas use standards. Those are the three
12 standards that your records have.

13 Q Independent DRE efficiencies, does the applicant
14 meet that limit of a hundred and eighty milligrams under
15 RCRA?

16 A Yes, it does. This incinerator meets that
17 standard.

18 Q To your knowledge, do they meet the state of
19 California PM-2 submicron particulate limit?

20 A I am not familiar with the state of California
21 standards and I could not answer whether or not they meet
22 California standards.

23 Q However, is the incinerator operated by the
24 regents of the University of California?

25 A That's correct, they are the principal contractor

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1 for the laboratory.

2 Q Thank you.

3 A They operate the laboratory.

4 MR. YOUNGBLOOD: Folks, again I am going to ask you to
5 ask procedural questions. I don't want to get in this
6 technical testimony because I am afraid we are going to be
7 here for a long time. I am going to start at the back.

8 CROSS EXAMINATION

9 BY MS. RESON:

10 Q Thank you. Good afternoon. My name is Myla
11 Reson, R-e-s-o-n. I am with Citizens for Alternative
12 Radioactive Dumping.

13 I am kind of curious, where is Mr. Richard
14 Mitzelfelt today?

15 A I have no idea where Mr. Mitzelfelt is today.

16 Q He had some other pressing business and he
17 couldn't attend these hearings?

18 A I have no idea what his schedule is today.

19 MR. YOUNGBLOOD: I believe that question has been
20 answered. He doesn't know where Mr. Mitzelfelt is. He
21 doesn't know why he isn't here.

22 Q You don't know why he isn't here? It wasn't
23 discussed that you would be present and he would not be
24 present? There wasn't any kind of decision made?

25 MS. NELSON: If I may give some clarification on that.

1 It is under administrative proceedings the -- where the
2 director of the agency makes the final permit decision he is
3 not involved in the day-to-day process of developing that
4 program. That is done by the staff of the Hazardous Waste
5 Bureau.

6 In this case, Mr. Mitzelfelt will receive a full
7 packet from the Hazardous Waste Bureau; that is, the record
8 compiled here, the permit, as well as other materials that
9 are developed, but until it comes to the final decision --
10 that is why this is a proposed permit, it is a draft permit.
11 At this stage of the proceedings, Mr. Mitzelfelt is not
12 directly involved.

13 When all of the comments are considered and
14 responded to, a final proposal -- I won't call it final
15 permit but final proposal -- this is the first draft, so to
16 speak, then the Bureau will propose to the director what it
17 concludes the final permit should be under the law, and the
18 director, at that time, reviews it and acts.

19 At this stage of the proceedings he does not have
20 a day-to-day role.

21 Q Can I ask, Mr. Crossman, what is your title, your
22 position with the EID?

23 A My present position is supervisor for inspection
24 and enforcement. At the time I wrote the permit I was the
25 supervisor for permitting. Because of the complexity of the

1 permit, I did not try to hand that over to somebody else and
2 walk away from it. So I am carrying that responsibility
3 through to completion in addition to my current position.

4 Q And can I ask you what your credentials are?

5 MS. NELSON: Basic educational background.

6 A Okay. I have a baccalaureate degree in
7 chemistry. I have a master's degree in education. I have
8 six years experience with the hazardous waste program here
9 almost six years experience with the hazardous waste program
10 here, and two years experience with the Radiation Protection
11 Bureau as it existed in The Division.

12 Q Does your -- does your area of expertise include
13 any knowledge of health physics or effects of --

14 A I have some familiarity with health physics. I
15 am a graduate of the health physics course at Oak Ridge
16 University, Oak Ridge, Tennessee.

17 Q It was my understanding that it was stated that
18 the incinerator would be required to destroy ninety-nine
19 point ninety-nine percent of the waste, is that correct?

20 A Yes, four nines; ninety-nine point ninety-nine
21 percent.

22 Q So wouldn't that translate to point oh one, not
23 point oh oh one, that would be left?

24 A You are correct. My arithmetic was wrong. It's
25 zero point oh one percent.

1 Q Okay. In this handout that you read from earlier
2 today, on page four under interim status regulations, in the
3 first paragraph it says, under the Hazardous Waste Act, "the
4 incinerator, insofar as it burns mixed waste, has interim
5 status."

6 And then in the following paragraph you go on to
7 say, "There are no specific regulations applicable to
8 interim status under either state or federal law addressing
9 the chemical part of mixed waste."

10 It seems to me that just a moment ago you
11 contradicted this statement. Was I not hearing you
12 correctly? Both of you contradicted it.

13 A What we are trying to convey there is there are
14 no separate regulations dealing with mixed waste outside of
15 the normal purview. There are regulations under -- for --
16 applicable to the interim status that apply both to the
17 chemical waste stream and the mixed waste stream.

18 What we were trying to convey in that letter was
19 there is not going to be a separate set of regulations, only
20 for mixed waste. That they will be subject to the same
21 standard regulation.

22 Q Which standard regulation?

23 MS. NELSON: If I can add a point of clarification.
24 What that means is that the regulations, as drafted - as
25 promulgated, the lawful regulations at this time -- are

1 simply for chemical waste. It doesn't make a difference
2 between whether the chemical waste is one hundred percent
3 chemical or if it's mixed with radioactive.

4 And so there are the regulations that apply to
5 all chemical waste and that applies to the chemical part of
6 mixed waste, but there are no separate regulations that deal
7 only with mixed waste, with the chemical part of mixed
8 waste.

9 Q Now, am I correct in understanding that the
10 reason given for -- that there are no regulations for the
11 mixed waste which would include radioactive components is
12 because you don't have the money in your budget to
13 promulgate those standards? Is that the point that you were
14 making on the following page?

15 A In that money translates to staff availability,
16 that is correct. We do not have the staff that we feel
17 could be devoted to -- to working towards regulations
18 specific to mixed waste under state authority.

19 Q So am I correct in what I get from this is that
20 you don't have standards for mixed radioactive and chemical
21 waste and yet they are burning mixed radioactive and
22 chemical waste at the labs now? Is that what this says?

23 Is that what this document says, that you don't
24 have regulations specifically for the mixed radioactive and
25 hazardous waste because you don't have the money to

1 promulgate the standards, but they have incinerator interim
2 status where they can, in fact, burn mixed radioactive and
3 hazardous waste?

4 A We do not have unique regulations for mixed waste
5 only. Part six of the state hazardous waste management
6 regulations apply to all interim status facilities.

7 So in that sense there are regulations that apply
8 to the incinerator for both mixed waste and the current
9 period chemical waste. But we have not made an effort at
10 this time to create unique regulations only for mixed waste.

11 Q But those regulations were created simply for
12 hazardous waste and not for mixed waste?

13 A Those were initially created for hazardous waste,
14 without the radioactive component is my understanding.

15 Q Do you think they are adequate?

16 A My understanding is that EPA has made a decision
17 that they will not pursue unique regulations for mixed
18 waste. That they will apply the same interim status
19 regulations to the chemical part of mixed waste and not
20 develop unique regulations for mixed waste.

21 Q Do you think that's adequate -- that those are
22 adequate regulations?

23 A Adequacy is a subjective determination which is
24 best, you know, addressed at the time the regulations are
25 being considered.

1 Q It's my understanding that you have the authority
2 under the New Mexico Air Quality Control Act, section
3 seventy-four point two part ten, to issue emergency orders
4 to prevent Los Alamos from burning mixed radioactive waste
5 until you have regulations and standards in place?

6 MS. NELSON: Let me answer that if I may. Did you say
7 seventy-four dash two dash ten?

8 Q Right.

9 MS. NELSON: Okay, that is the state's air quality
10 regulations and it is not in the state hazardous waste
11 regulations. I don't work with that act on a daily basis.
12 I have a passing familiarity with that emergency provision.

13 What it probably requires is that upon receipt of
14 evidence that there is an emergency, the director has the
15 authority to do several things: One would be an
16 administrative order. It may have -- or it may be required
17 to go to court.

18 I think that the air provision that you are
19 citing would require issuing an order and then going to
20 court within forty-eight hours. And so it becomes a
21 judicial and not just a purely administrative proceeding.

22 The point, there are two points about that that
23 are particularly relevant to what we are talking about.

24 One, that is under the air act and the air
25 bureau. This permit is purely under the Hazardous Waste Act

1 and the Hazardous Waste Bureau.

2 The second issue would be whether the director
3 has received evidence of an emergency, and those are legal
4 determinations and Mr. Crossman certainly does not know
5 either what the air quality bureau has received or what the
6 director has received on those counts.

7 Q Since we are talking about an incinerator that
8 will be emitting, granted, a very small percentage but still
9 will be emitting hazardous materials into the air, I am
10 really confused about why this is not considered --- why air
11 quality isn't relevant in this discussion.

12 MS. NELSON: It's the restriction of the law. The
13 statute that set up this permit is laid out, what would be
14 covered by it. And it didn't cover radioactive materials,
15 period.

16 Q So you don't take into consideration air quality
17 in granting this permit, is that correct?

18 A I am not sure what you mean by air quality. We
19 certainly look at the standards that are available and
20 enforceable under our law and regulations.

21 This permit does not function as a permit under
22 the Clean Air Act. It functions as a permit only under our
23 act. It does not require nor does not allow a facility that
24 doesn't meet other standards and other requirements to
25 operate.

1 If that incinerator or if any incinerator
2 requires a permit under another law, such as the Clean Air
3 Act, they would also be required to get that permit before
4 they could operate. This is one permit out of what might be
5 many, and in that sense, they would be required to have
6 whichever permits are required to operate.

7 Q I am curious about why it is this process is so
8 fragmented.

9 MS. NELSON: The fragmentation comes from the statutes,
10 which means it comes from the legislature for the state
11 at the state level and congress at the federal level. The
12 statutes provide for different kinds of programs, different
13 kinds of regulatory programs, and different kinds of
14 permits. They -- they, therefore, have to be done
15 separately.

16 Q Now, I haven't -- did you want to add something?

17 A If I can add to that: Each of these laws and the
18 regulations that flow from these laws are quite complex.
19 Speaking as a staff member, it would be physically
20 impossible for one person or one group to -- one close
21 group, to try to cover all laws and regulations and be
22 conversant in them.

23 As a practical matter, you know, I -- I am
24 keeping up with the hazardous waste laws and regulations. I
25 personally do not want to try to have to keep up with other

1 laws and regulations. I have more than enough to do right
2 now.

3 Q I had a question about Mr. Bates' testimony or
4 one of the questions that he raised. He mentioned -- he
5 brought up the point of continuous air monitoring and your
6 response was that our state laws couldn't be any more
7 stringent than regulations set down by RCRA.

8 And I guess the question is, is monitoring the
9 air -- it's not actually a regulation or it's just observing
10 it's not -- why would this be considered more stringent or
11 stricter than the requirements set down by RCRA?

12 MS. NELSON: For clarification, I would like to give a
13 little information on that point.

14 The Hazardous Waste Act prohibits that the
15 regulations that are developed be "equivalent to but no more
16 stringent than," I believe is the language, and I think that
17 the point that Mr. Bates raised and which you are raising is
18 a good one.

19 What does it mean? Does not -- it does not
20 necessarily mean that they have to be word-for-word exact.
21 That means that there can be some variations. Whether a
22 particular variation makes it more stringent or not would
23 have -- will have to be considered on a case-by-case basis.

24 I think that any proposed difference would be
25 evaluated to see if the effect was to make it more stringent

1 or if it was just another equal way of getting at the same
2 point.

3 Q Wouldn't more stringent mean that your
4 requirements, your specific requirements like certain
5 percentage of particulate matter being emitted, you couldn't
6 require that a lesser degree of a percentage of particulate
7 matter be emitted, but actually monitor what they are doing --
8 it doesn't seem to me -- it doesn't seem logical that that
9 would be a reason for not monitoring it, that it was too
10 strict or somehow -- I don't know -- I am not clear.

11 MS. NELSON: The point is that under the law, it comes
12 down almost to point by point what is more stringent and
13 what is not is fought in the courts on different points.
14 The particular point that you raise, I don't believe that
15 Mr. Crossman could give an off-the-cuff answer because there
16 are legal considerations of what is or isn't more stringent.

17 I think that I -- that I can -- that the agency
18 has the authority to consider differences, but there would
19 have to be a legal evaluation as to whether those
20 differences were more stringent or not.

21 And I -- no hypothetical can be answered at that
22 time because it would be such an interrelated technical
23 legal analysis.

24 A May I add to that: The purpose of this meeting,
25 this hearing today, is to receive input from the public on

1 just this issue. This is certainly not an immaterial issue
2 or dead issue. If any information is submitted on
3 appropriate or desired monitoring, or any other activity, we
4 would certainly evaluate that and see if it's within the
5 scope of the authority and scope of the law and is
6 appropriate and we can certainly add that to the permitting
7 conditions.

8 We have to be careful in that we do not get in a
9 position of endorsing a particular product and run into the
10 legal complications of that. We can require performance
11 standards or monitoring standards, but we have to be quite
12 careful that we do not endorse or require one manufacturer's
13 product over another.

14 But I would like to emphasize that we are open
15 and wish the public to provide that type of information of
16 what is available out there.

17 Q Now, I haven't read the application, but it's my
18 understanding that on one of the first few pages you state
19 that you intend to grant this permit. Is that true? Is
20 that stated?

21 A I believe the wording is that a tentative
22 decision had been made to grant the permit as drafted and
23 inviting the public comment on that.

24 Again, the purpose of this meeting is to gather
25 input to see if that -- is that a valid decision and at the

1 time that appeared to be the valid decision. That, of
2 course, is not yet a final decision.

3 MS. RESON: Thank you very much.

4 MR. YOUNGBLOOD: I have a gentleman here. Again I am
5 going to ask you to hold your questions to procedural
6 matters.

7 CROSS EXAMINATION

8 BY MR. TOWLE:

9 Q My name is James Towle, T-o-w-l-e. I am an
10 independent businessman here in Santa Fe. I just have a
11 couple of questions.

12 There's a lot of confusion going on and I guess
13 what the -- what I would like to address is the EID by its
14 initials is also the Environmental Improvement Division and
15 that sounds to me that you ought to be going around trying
16 to improve the environment instead of licensing facilities
17 to destroy it.

18 Basically what I would like to propose is backup
19 to what the other testimony says, the independent monitoring
20 from the emissions stack. I think that could be added to
21 the -- to the license right now.

22 I think continuous emissions monitoring is
23 important because a yearly basis is definitely no good.

24 I think another concern I had is that we are
25 talking about this is under somebody else's regulations.

1 This is under EPA or under DOE's concern for monitoring
2 nuclear -- I mean, radionuclide emissions. I think what we
3 really want for the public is where one agency with maybe
4 even multiple departments takes care of all the
5 environmental concerns, whether it's hazardous, whether --

6 MR. YOUNGBLOOD: Mr. Towle, I am going to stop you for
7 a moment. I previously said we were going to ask questions
8 during this period of time and so fashion -- you have been
9 making statements.

10 If you will ask questions at this time I would
11 like to have them, but what has happened is everybody else
12 in the room also signed up, or many of them also signed up,
13 to give testimony and I am asking you if I allow to you to
14 testify plus the fact you are not under oath so if you have
15 questions at this time I would be glad to receive them, but
16 if you want to testify, we will get you on the list and you
17 will certainly be welcome to do that.

18 Q I am definitely on the list already but my
19 question was, I just -- I was putting it in the form of a
20 statement But actually, the whole purpose is what is it
21 going to take for the public to tell the EID the DOE and the
22 EPA that we don't want all these separate bureaus? We don't
23 want having to run across town or across to Washington and
24 down to Dallas?

25 What is it going to take to let people know that

1 we want one person, one agency to take care of this where we
2 can have a public hearing?

3 That's basically it.

4 MS. NELSON: Sorry to answer this in this, but in a
5 sense I think your question is rhetorical.

6 Q Definitely.

7 MS. NELSON: Because the EID cannot speak and EPA
8 cannot speak for and DOE cannot speak for congress and
9 cannot speak for the legislature. The statutes come from
10 the state legislature and the federal congress and they are
11 the ones who create these laws.

12 Q Okay. But basically, your charter is to improve
13 the environment, so just with that charter in mind, don't
14 you think it's your responsibility to ask for that
15 responsibility, to ask for that kind of conglomeration, that
16 kind of consolidation, if it's your basic charter to ensure
17 the improvement of the environment?

18 MS. NELSON: As a matter of information, the EID has
19 several responsibilities under how it's set up and it's also
20 charged with allowing facilities to operate so long as they
21 comply with the law.

22 EID, therefore, does not necessarily have the
23 authority to deny a permit where a permit lawfully has
24 something that other people don't want. EID can go to the
25 legislature and it can go to its congressional delegation

1 just as citizens can.

2 Q So, that's basically what I am asking, yeah.

3 MS. NELSON: But Mr. Crossman cannot speak for the
4 director of the EID.

5 MR. TOWLE: Yeah. I understand, or for the EPA.
6 That's basically what I wanted to put across, is that I
7 think it's -- that we all want that and I think as the EID
8 you should also want that, too.

9 That's it.

10 MR. YOUNGBLOOD: Thank you, Mr. Towle.

11 Further questions on procedures.

12 I am going to ask that we keep these as brief as
13 possible. Again, I want to get into the EID exhibits and to
14 their technical testimony today.

15 CROSS EXAMINATION

16 BY MR. RANE:

17 Q I will do my best to stick to procedure, Mr.
18 Hearing Officer. My name is Jonas Rane and I am AN attorney
19 from Taos, New Mexico. I am here representing members of
20 the Taos Greens Committee, an environmental citizens group.

21 Sir, I would like to ask you what your opinion of
22 the Department of Energy's credibility is at this time?

23 MR. YOUNGBLOOD: Court reporter can't put laughter in
24 the transcript into this machine, so it doesn't do any good.

25 A I have indicated earlier that I am making every

1 effort within my power to exclude my opinion from my
2 technical evaluation of what is going on, and with that in
3 mind, sir, I would decline to answer an opinion-type
4 question like that.

5 Q Is it your testimony then, sir, that the
6 credibility of the Department of Energy is not an issue that
7 should be considered by the State of New Mexico in this
8 process?

9 MS. NELSON: I will ask in effect a question in turn.
10 I am not aware of language that requires or expressly states
11 credibility of the applicant is a factor in this kind of
12 permit proceeding.

13 Q Well, ma'am, I think we have heard that the
14 Department of Energy is going to be responsible for telling
15 you what they are putting into that incinerator. They are
16 going to be responsible for telling you if they have
17 failures in that incinerator. And I just simply want to
18 know, how do you know that they are going to tell you?

19 A They are required to keep records. I am not sure
20 if you are familiar with RCRA and if I insult your
21 knowledge, I apologize. The federal law, RCRA, and the RCRA
22 program as administered is primarily a self-monitoring law
23 and regulation, self-monitoring program.

24 Every facility who operates under the hazardous
25 waste program is required, by law, to keep -- or by the

1 regulations to keep records and to keep honest records.

2 The program is structured that way. There is no
3 particular set of requirements specific to DOE over and
4 above that basic part of our program.

5 Q Well, sir, quite respectfully in view of what you
6 have just told me I would like to suggest whether you trust
7 the DOE or not is an important question, I think as
8 important a question in view of what you have just said and
9 I would like to reiterate my question, do you trust them or
10 are you going to tell me that is your opinion and not
11 relevant? Does the department trust them?

12 MS. NELSON: Mr. Hearing Officer, I think that this
13 question has been asked and answered.

14 Q I think this question has been asked and not
15 answered, ma'am, respectfully. I am curious as to the
16 department's question as to the credibility of the
17 Department of Energy.

18 MR. YOUNGBLOOD: Just one moment. Mr. Crossman, I am
19 going to ask you, do you want to answer anymore to this
20 question or do you want to answer that you don't want to
21 answer this question?

22 A If I may: My concern is, I do not wish to appear
23 to you or to the public here that I am ignoring that concern
24 which the public has expressed in many ways. I am trying to
25 convey to you that my charter is to address the technical

1 aspects and to establish the technical parameters under
2 which a permit could be issued.

3 My personal opinion of credibility is immaterial.
4 I can say to you that I have not documented any case where
5 they have outright lied. I have not documented -- let me
6 repeat that -- I have not documented in our file any case
7 where they have outright lied to us.

8 As you are well aware, these regulations are
9 extremely complex and open to interpretation. There are
10 there are cases where their interpretation of the
11 regulations and the applicabilities differed from the
12 Division and from ours within the -- specifically ours
13 within the program.

14 But as far as trust, that's a subjective thing
15 which I would have to defer to you, the public, and to --
16 perhaps to Mr. Mitzelfelt. He may wish to consider that.

17 Q Do you think that Mr. Mitzelfelt or the
18 department is familiar with the experience of the state of
19 Colorado with the Department of Energy in radioactive
20 emission?

21 A I cannot speak to Mr. Mitzelfelt's experience
22 with the state of Colorado.

23 Q How about to the department? Do you think that
24 the department is familiar with the Department of Energy and
25 their activities in Colorado, Rocky Mountain Flats?

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1 MS. NELSON: If I may provide some information on this
2 point. Mr. Crossman cannot speak as to what the department
3 or what the Division, et cetera, may know, but I can.

4 I can give some information that the Division as
5 a whole, through it's bureaus, learns of activities in other
6 states, depending on the particular activities.

7 The Colorado experiences are known by and large.
8 we would have to see if we all know the same things, but
9 basically they are known by the Division. Mr. Crossman does
10 not necessarily know who knows what on those points. But
11 EID, as a whole, is watching and is aware of what happens in
12 Colorado.

13 Q What is your definition of relatively unannounced
14 visits?

15 A Under the hazardous waste statute we can show up
16 at the door and tell them we are "here to conduct an
17 inspection." We customarily call the facility that morning
18 and say, "The team is on their way. They will be there in
19 ten minutes." We have in the past, when we know we have
20 certain requirements that we need to coordinate ahead of
21 time, perhaps given several days advance notice.

22 But again, it depends on the purpose. We have
23 with Los Alamos shown up on the door with no advance notice.

24 So, relatively, we do not give
25 weeks-in-advance-type of notice. We may give a call that

1 night before and say, "Will you be in the office? We want
2 to talk to you." But it can run in a short period of time.

3 Q And, sir, was it your testimony that you would
4 have one of these visits approximately once a year?

5 A That's been our -- been our experience to date,
6 yes.

7 Q And other than this self-monitoring of the
8 Department of Energy, what other activity on the site does
9 the Environmental Improvement Division plan?

10 A Again, I cannot speak for the Division. Within
11 the hazardous waste program, at the moment our staff
12 projections and staff workload allow us the capability to
13 inspect all of the facilities that are subject to inspection
14 on a scheduled basis.

15 At the moment I do not see any change in my staff
16 that would allow a dramatic change from that past history.

17 Q So as far as the part of the department you are
18 familiar with, it's this one-time-a-year quote/unquote
19 relatively unannounced visit that would be the only
20 regulation other than the self-regulation of the Department
21 of Energy, is that correct, sir?

22 A I believe your use of the word "regulation" is
23 perhaps incorrect. That would be the primary inspection.
24 Certainly if we could do additional unannounced inspections,
25 we ---

1 Q Do you know what --

2 MS. NELSON: Excuse me, please. Let Mr. Crossman
3 finish.

4 Q I would be happy to. Excuse me.

5 A Did that answer your question? I believe you are
6 using regulation in the sense of monitoring and I answered
7 in that sense.

8 Q That's right. What other activity do you plan at
9 the site, other than showing up once a year relatively
10 unannounced for your part of the department or the Division?

11 A Other activities? There are none planned at this
12 point in time.

13 Q Thank you. That does answer my question.

14 MS. NELSON: If I may give a little additional
15 information.

16 Q Please.

17 MS. NELSON: The Hazardous Waste Bureau has a range of
18 activities. It has inspections. It has enforcement. It
19 has permitting. Mr. (sic) Kelley -- to get the clearest
20 question it should be clear that you're talking either about
21 an inspection visit or an enforcement visit or permitting
22 visit, and I am not sure that Mr. (sic) Kelley was clear in
23 answering which he was referring to.

24 So I will ask him to -- to answer your question
25 again and also perhaps to explain to people how many

1 facilities the inspection program must visit.

2 A I apologize if I did not make that clear. As the
3 permit writer, I have visited the site and gone to each of
4 these activities several times.

5 As an inspector, we do a formal inspection on the
6 approximately once-a-year schedule. As counsel pointed out,
7 we have an inspection staff which is required to inspect
8 many of the facilities in the state, not just this one
9 facility.

10 We are required to inspect all federal facilities
11 on at least an annual basis. We have approximately a total
12 of two thousand facilities in the state subject to these
13 regulations. I have four inspectors, counting myself,
14 authorized. It does not -- you know, the arithmetic is
15 obvious to everyone, I think.

16 Q How many of these sites involve nuclear
17 emissions, or the possibility of nuclear emissions? Do they
18 all? Radioactive emissions?

19 A There -- and this is off the top of my head. We
20 have not compiled a listing of the facilities that would be
21 subject to mixed waste.

22 Certainly the two DOE laboratories in the state
23 and some of the facilities at Kirtland. Most of the
24 hospitals in the state generate a mixed waste. Some of the
25 other federal facilities may.

1 Medical facilities, such as the University of New
2 Mexico or any of its divisions, or NMSU, those types of
3 facilities would also be subject to mixed waste.

4 So given all those together -- please don't hold
5 me to this number -- I would guess there's twenty facilities
6 in the state that will be actively involved in the mixed
7 waste program.

8 Q And are they on the same inspection schedule as
9 other facilities?

10 A Again, it depends on their category. All federal
11 facilities we inspect on an annual basis. We inspect within
12 our staff capability other major generators, major
13 facilities, and a certain percentage of minor facilities.

14 Q Sir, I believe you use the analogy of garbage
15 when you talked about what a mixed waste was and you said
16 you know that you can separate the aluminum cans from the
17 glass and the paper. Can you separate this waste, the
18 radioactive waste, from the chemical waste? They are not
19 separatable, are they?

20 A Generally there are three categories of waste,
21 which I believe you are concerned with. It is possible to
22 separate out chemical wastes that are uncomtaminated by
23 radioactivity, radioactive materials. It is possible to
24 separate also radioactive materials, which are
25 uncomtaminated by RCRA regulated materials. There is that

1 third category in the middle where both are present in the
2 container.

3 Q And they cannot ---

4 A And ---

5 Q --- be separated?

6 MS. NELSON: Please --

7 MR. YOUNGBLOOD: Counsel, please give him a chance to
8 answer.

9 A It would depend on the physical nature of that
10 material as to whether or not those could be separated. As
11 a practical matter, the answer may well be, no. As a
12 scientific matter, given a properly equipped laboratory or
13 processing plant, it's entirely possible that radioactive
14 materials could be separated from the chemical constituent.

15 Q Now, sir, in preparing this permit and in
16 reviewing the application for the permit, did you consider
17 the effect of nuclear waste on various chemical wastes,
18 chemical or mixed, on chemical waste?

19 A No, I did not. That is outside the scope of this
20 permit.

21 Q Sir, is it outside the scope of the permit? Sir,
22 if those wastes were to affect chemical waste, wouldn't that
23 be within your authority?

24 A If you refer back to my analogy of separation of
25 your household trash, once you have separated your household

1 trash if you do not remix next it it's entirely possible to
2 deal with one component separately from the others, and the
3 same analogy would apply here. It's entirely possible to
4 deal with the chemical waste as long as there's radioactive
5 materials that are not introduced into that separately from
6 mixed waste.

7 Q As a jurisdictional matter, would you disagree
8 that you have the right to regulate chemical wastes and all
9 of those things which affect chemical wastes?

10 A Mr. Henry, you read that question back?

11 Q I would be happy to read the question.

12 A Okay, that's all right. I am -- you posed it as
13 a negative and I want to say that I am not sure whether I
14 agree or disagree.

15 MR. YOUNGBLOOD: Please read your question again.

16 Q Yes, sir. I say that as a jurisdictional matter
17 would you disagree with the statement that you have the
18 right to regulate chemical wastes and all those things which
19 affect chemical wastes?

20 A With the qualification I am not sure what you
21 have in mind with "all those things that affect it" Under
22 RCRA and the RCRA regulated chemical waste, I think that's
23 correct. At the same time I would agree with that.

24 Q Have you looked for any studies that would
25 document the impact of radioactivity on chemical wastes?

1 A I have not addressed the radioactivity issue in
2 this permitting process.

3 Q You have not addressed the issue of how
4 radioactivity affects chemical wastes?

5 A That's correct.

6 Q Now, sir, you refer to exhibits G and K, I
7 believe, in discussing the amount of chemicals that you are
8 going to -- or that Los Alamos proposes to put into these
9 incinerators. Are you familiar with any studies concerning
10 how those chemicals might mix with each other?

11 A I am familiar with some studies, yeah.

12 Q Does your permit address how these chemicals
13 might be mixed with each other? Does it address that issue
14 in any way?

15 A No, we are not -- the mixing of the chemicals
16 prior to incineration is -- is not addressed in the sense I
17 believe you are meaning incineristic effects. If they are
18 compatible chemicals they can mix prior to incineration as
19 long as they meet the other incinerability standards.

20 Q You refer to compatible materials. Does the
21 permit address what terms are compatible and which ones or
22 not?

23 A Yes, it does.

24 Q And --

25 MR. YOUNGBLOOD: I'm going to stop you just a moment.

1 You have referred to two exhibits which haven't yet been
2 taken into the record. So --

3 A If I may interrupt. I believe your reference to
4 exhibits should have been correctly attachments within the
5 permit.

6 Q That's correct.

7 A That's correct. Okay.

8 MR. YOUNGBLOOD: Thank you.

9 MR. RANE: Yes, thank you, Mr. Hearing Officer, my
10 apologies.

11 MS. NELSON: I also would like to make a statement, Mr.
12 Hearing Officer, or request that questions be limited to
13 procedural at this time and that we go into the permit and
14 the technical presentation at that time.

15 Q I think those questions do go to the procedure of
16 permitting. The question is if in permitting those
17 considerations were taken in by the gentleman. Sir, do you
18 believe you have the power to turn this permit down?

19 A The permitting decision is reserved to and
20 reserved to the director. The director certainly has the
21 option to either issue or deny any permit.

22 Q Is it within your power to suggest to the
23 director that the permit be denied?

24 A Certainly, it's within my power to make that
25 suggestion.

1 MS. NELSON: If I can add another clarification. Mr.
2 Crossman is the technical person in charge of drafting this
3 and he only makes recommendations to the director. He does
4 not have powers himself. It's the director who will act on
5 this permit.

6 Q Well, he certainly has the power to recommend, I
7 would think, apparently.

8 Now, with respect to that recommendation, do you
9 believe you have the ability to say to the director that you
10 would suggest this permit not be issued?

11 MR. YOUNGBLOOD: Counsel, I believe that you have
12 delved into that quite well and the answer I heard a minute
13 ago was that he -- "yes" he has the power.

14 A You asked do I have the ability to recommend to
15 the director. You mean the power? I have the obligation to
16 recommend to the director what I feel would be the most
17 correct supportable decision that he should make.

18 Q Now, this document, which you have been kind
19 enough to make available, does this document represent your
20 department's position? What does the material in this
21 document -- who stands behind this material?

22 MS. NELSON: I can answer that for Mr. Crossman. This
23 document was developed for the Hazardous Waste Bureau for
24 this permit hearing. It has, however, been reviewed by the
25 director's office and has been approved by them as a

1 statement of EID.

2 Q So that this is -- the EID stands behind this
3 document then, is that correct?

4 MS. NELSON: I am not sure you mean "stands behind."
5 This is EID's statement. This is its best statement. It's
6 truest, clearest, fullest statement as coming out of the
7 Hazardous Waste Bureau, as it is under the situation at this
8 time.

9 Q I would like to refer to page three. Is it also
10 your position then -- before I do that, that the director
11 would be within his power to turn down the permit, is that
12 correct?

13 A I believe I answered that. Yes, the director has
14 the authority to issue or deny a permit.

15 Q I would like to refer to the third paragraph or
16 the second full paragraph. It says that LANL has interim
17 status under RCRA and is authorized to burn chemical waste
18 without a final permit.

19 This is true for both purely chemical waste and
20 for mixed waste. The temporary permission to burn purely
21 chemical waste will end when EID takes final action on this
22 permit. Then, burning of chemical waste will be allowed
23 pursuant to the permit. Does that suggest that your
24 division has already decided how they are going the rule on
25 this permit?

1 MS. NELSON: This is a statement of law, and of how the
2 procedure operates. That statement is that -- that's
3 explaining in a general sense what interim status is and
4 when it ends. It does not refer to action on this LANL
5 permit in particular. It does not imply that the permit
6 will or will not be issued. It's a statement of how the law
7 operates for everyone's benefit.

8 Q Might have been wiser to say that thereafter, if
9 a permit is issued, and to continue with that statement?

10 MR. YOUNGBLOOD: You don't need to answer that
11 question.

12 Q Sir, I do believe that although you have been so
13 careful not to give us your opinion, that earlier you stated
14 that you did not believe that these incinerators would have
15 an impact on health and safety. What do you base that
16 opinion on?

17 A My understanding of the regulatory development
18 propose is that regulations are open for all discussions of
19 that nature and I -- I am making the presumption that you
20 know that regulations passed according to law and
21 administrative procedure are proper for enforcement in the
22 state and if they are proper, they are -- should be
23 relatively or should be adequate for the protection of the
24 human health and environment.

25 Q So your opinion is?

1 A My opinion is that -- then, that if their
2 regulations are lawfully adopted, that they are applicable
3 and adequate.

4 Q And they won't hurt anybody, do you think?

5 A I believe you are speaking in absolutes --

6 Q Do you think --

7 A -- and I cannot answer an absolute question.
8 Somebody may be hurt somewhere.

9 Q Do you think that officials in Colorado might
10 have also believed if they followed the administrative
11 procedure that health and safety would not be affected?

12 A I cannot speak for what was in their mind.

13 Q Has the department ever considered a regulation
14 that would require those people that are seeking a permit to
15 appear at public hearings?

16 MS. NELSON: Mr. Crossman might have information for
17 recent hazardous waste regulations development. In my
18 experience with as -- in the office of general counsel for
19 the department as a whole I see the regulation develop as
20 more than a Hazardous Waste Bureau. I am not aware of any --
21 I take that back.

22 There may be regulations for different kinds of
23 permits that set out different kinds of procedures. Not
24 that I have extensive experience with but I am thinking of
25 the groundwater discharge plan program and I am not sure but

1 it may be that under that kind of application, the applicant
2 is the one who goes forward with the public hearing.

3 But that is not the case with the hazardous waste
4 permit regulations and I do not know if in the hazardous
5 waste permit regulations there -- I cannot speak for the
6 department or the Division on whether it has or has not been
7 considered.

8 But just for general information, we all -- you
9 all might want to look at the regulations for some of the
10 other kinds of permits and see how they vary.

11 A I am not personally -- I don't personally know of
12 any attempt by the Division to require the applicant to
13 defend their application. I don't know. That's not to say
14 that has not been thought of in the past, but I am not aware
15 of it.

16 Q When you say that it may have been thought of in
17 the past, my question is simply to your knowledge has that
18 ever been considered in the department?

19 A To my knowledge, no.

20 Q Now, I would like to jump back for a second.
21 Have you considered the effect of radioactive materials on
22 the incinerator itself in any manner?

23 MS. NELSON: I would like to make a point that this
24 permit does not in any way deal with radioactive
25 incineration.

1 Q Well, I understand that, but --

2 MR. YOUNGBLOOD: I am going to allow this question,
3 counselor. I believe your question, if I understand, was
4 have you considered whether radioactivity would affect the
5 incinerators itself?

6 Q Yes, sir.

7 A That is an appropriate question. The -- I looked
8 at it briefly, as would there be any residual effect that
9 would affect the chemical waste. I did not -- could not
10 identify where any residual radioactivity in the incinerator
11 would have any kind of a detectable effect on the
12 incineration of straight RCRA waste.

13 Q And what did you base this on?

14 A On the low levels of radioactivity there and the
15 trial burn demonstrated result.

16 Q Let's talk about that trial burn a second if we
17 might. My understanding is that that happened in November
18 of 1988, is that correct?

19 A I believe the year was '87, not '88, But yes, it
20 did occur in approximately November, about two years ago.

21 Q And, thereafter, more stringent standards were
22 adopted by the EID, is that also correct?

23 A Which standards are you referring to? The
24 radiation or the regulations for incinerators have not
25 changed dramatically. Which ones are you referring

1 specifically to?

2 Q Well, I am getting this out of our little packet.
3 I believe that it says that at some time you had a trial
4 burn and that thereafter "under new state toxic air
5 pollution requirements effective December 31st, 1988, the
6 incinerator accesses source and, therefore, is not subject
7 to new air regulation."

8 A Those regulations are Air Quality Bureau
9 regulations under the Clean Air Act.

10 Q And in that regard do you have any idea whether
11 the trial burn would have passed the new regulations?

12 A I have no idea whether they would meet the new
13 standard.

14 Q We heard some testimony about house bill
15 fifty-nine. Is that the correct number?

16 A Yes, it is.

17 Q And I believe you said that there was a certain
18 exception in that bill?

19 A Yes, there is.

20 Q And my question is, does that exception apply to
21 anyone else, but Los Alamos, to your knowledge, of course?

22 A That exception applies to any incinerator that
23 meets those standards. To my knowledge, the only
24 incinerators that meet that standard are the ones from Los
25 Alamos.

1 Q Now, I don't want to take too much more time
2 here. I would like simply to review with you in a question
3 format all of those places where you are expecting the
4 Department of Energy to go forward and give you information.

5 Now, is it true that one of those places is in
6 giving you a record of what goes in that incinerator?

7 MS. NELSON: Mr. Hearing Officer, I think that this
8 does go into the guts of the permit which will lay out what
9 is required and would be required of Los Alamos pursuant to
10 the permit. I think that he should reserve that question
11 reserve answering that question until we have gone through
12 it.

13 Mr. Crossman is prepared to go through the
14 proposed permit, section by section. That means the
15 monitoring section, the inspection section, the incinerator
16 section and this section and that section, and I think that
17 he should have the opportunity to give the information and
18 then have questions on the information.

19 MR. YOUNGBLOOD: Counselor.

20 Q Well, Mr. Hearing Officer, I think this goes to
21 how the permit was put together and how the application of
22 the permit and parameters of the expected operation under
23 permit. I think certainly the question could be formed in a
24 way that would be procedural in that manner.

25 MR. YOUNGBLOOD: Counselor, do you plan on being here

1 for the balance of the hearing?

2 Q No, sir, I do not actually. I am not going to be
3 with you tomorrow and I regret that, but I do have my own
4 schedule, of course. If you would allow me --

5 MR. YOUNGBLOOD: I am going to allow you to rephrase
6 your question.

7 Q Thank you, sir.

8 MR. YOUNGBLOOD: But I would ask you to stay as much as
9 you possibly can in the previous area that you have been in
10 and not get in the specifics because I agree with the
11 counselor, many of those questions are going to be answered
12 during the presentation. If you were going to be here
13 tomorrow I frankly wouldn't allow you to ask these
14 questions.

15 Q Thank you, sir, I appreciate it.

16 Very simply, I believe that we have gone over at
17 least three areas that in the permit process you are relying
18 on the Department of Energy to give information to the
19 Environmental Improvement Division. Can you outline all of
20 those areas for us?

21 A I am struggling with how best to explain -- I
22 think perhaps if I briefly explain the process that it would
23 be beneficial to answer that question.

24 Q Well, I don't want to --

25 A We rely on their application to be true and

1 accurate. They must certify that it is true and accurate.
2 We have a process where we can require them to submit other
3 information and we have the capability of sitting down with
4 face-to-face technical exchanges and talking about each
5 piece of that information. So in that sense, yes, we do
6 have an exchange with the applicant, any applicant.

7 Q Well, I will be very brief and ask yes or no
8 questions. You are relying on the Department of Energy to
9 inform you what is put in that incinerator, isn't that true?

10 A Yes, they have identified to us which materials
11 they wish to incinerate.

12 Q And you are relying on the Department of Energy
13 to tell you if they have any type of safety problem with
14 this incinerator, isn't that also true?

15 A That's correct. They are required to report any
16 deficiency.

17 Q And other than the fact that they are required
18 to, quote/unquote, what is it that the public should take to
19 heart in knowing that they will? How is the public to know
20 that they will report these things?

21 MS. NELSON: If I can provide some information in that
22 response, again.

23 Mr. Crossman cannot speak for the public and what
24 the public will want or need on point, but I can suggest
25 several areas in which all individuals can get information

1 and how EID can get information on this permit.

2 Q I don't think you understand the question, if
3 that's your response. The question is, how is it that the
4 public can have confidence in the Department of Energy in
5 their duties to the Environmental Improvement Division?

6 I am not interested in general information. I am
7 interested in how the public can rely on the Department of
8 Energy.

9 MS. NELSON: The answer may be that the EID cannot have
10 a position on how the public should trust or not trust DOE,
11 because we have no -- EID has no control over that. The
12 question might better be -- or may need to be in terms of
13 our discussions, may need to be what is it that EID can
14 require, will require, can do, will do, regardless of any
15 intent of DOE's.

16 We cannot -- we cannot speak to what DOE should
17 or should not do in the spirit of engendering trust. So in
18 terms of answering the question I would ask Mr. Crossman to
19 speak, as he had started to speak, to such things as an
20 application, that an application must be certified, that
21 there are inspections, that EID can receive information, and
22 alleging violations, EID can follow-up on allegations of
23 investigations, EID, if and when it learns of violations,
24 can take enforcement action, and enforcement action can be
25 both of known violations and false certification, and so

1 forth.

2 But that's the kind of thing I would suggest the
3 question would better be.

4 Q Fine. Mr. Crossman, simply, how do you
5 anticipate that a member of the general public is going to
6 know if Los Alamos is putting something in that incinerator
7 that they are not telling you? How do you anticipate that
8 somebody on the street is going to know that? You seem to
9 be relying on the public to come tell you when DOE is bad.

10 How --- how in the heck is a member of the general
11 public going to know that what they are putting in that
12 incinerator is not what they are telling you? I tell you,
13 that's a pretty interesting man in the street that is going
14 to come up with that in my opinion, but ---

15 MR. YOUNGBLOOD: I think your question is clear. I
16 don't think you need to elaborate on it.

17 Q Thank you, sir.

18 A I believe your question really should be directed
19 to the audience rather than to me. Because I think -- I
20 think what you are asking is, what type of monitoring would
21 the public be happy with to assure themselves that the
22 circumstances you describe are properly being monitored.

23 That is the purpose of this hearing, is to allow
24 people to review the permit and do they see anything that
25 would be more appropriate or appropriate to change or in any

1 way should this permit be modified.

2 MR. YOUNGBLOOD: Let's go off the record a moment and
3 stand up and stretch.

4 (THEREUPON, the hearing was in recess.)

5 MR. YOUNGBLOOD: Back on the record.

6 Q My question was simply, do you really expect the
7 public to be in a position to monitor these emissions?

8 A I did not mean that the public should do the
9 monitoring. What I was trying to convey is that if the
10 public should ask that we increase the monitoring or provide
11 additional monitoring or whatnot, that would be appropriate
12 for this hearing, and I would welcome suggestions or
13 requirements or any comments to that issue.

14 Q Well, I think you have heard a number of them
15 including continuous monitoring, and I don't want to give
16 testimony, but my question is very simply do you really
17 expect the public to be in a position to independently know
18 what is going on at that incinerator?

19 A No, I do not expect the public to know what is
20 going on at that incinerator.

21 Q In fact, sir, the public is counting on you to
22 know, isn't that right?

23 MS. NELSON: If I could add a little information to
24 that. As you bring up the Colorado Rocky Flats situation, I
25 presume that you are aware -- and it's something that all

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1 citizens will want to become aware of -- is that under other
2 circumstances citizens can have a more direct role in
3 various operations.

4 Under the permit, the obligation will be on EID,
5 should it be granted, to enforce the conditions of the
6 permit. In Colorado, I don't know many of the details, but
7 I believe that there is a public involvement in an oversight
8 role for some of the particular activities going on up
9 there. That is outside of a permit. That is under a
10 separate action enforcement cleanup. I am not sure of the
11 particular details.

12 I believe, therefore, just as a general matter
13 that citizens may have the ability to get direct involvement
14 in different activities, but that EID cannot know what those
15 would be and that it is not within the context of the
16 permit, but EID, I do not believe, can know ultimately what
17 the public will or will not be able to get.

18 Q Well, I am just referring to the comments that
19 you would have the power to investigate an allegation that
20 there's been something happening out there that's not in
21 accordance with the permit. I mean, after all, you are only
22 out there once a year and my point is, that's really not
23 very realistic, I don't think, because how is the public to
24 know? That's the point I am trying to make.

25 But I don't want to get in testimony. I don't

1 want to testify other than Los Alamos informing. How will
2 you know if there are wastes that come from other Department
3 of Energy facilities other than Los Alamos?

4 A All shipments of hazardous waste are required by
5 law to be -- or by the regulations -- to be documented on a
6 hazardous waste manifest. That manifest is prepared by the
7 shipper. It is -- a copy is kept by the transporter and a
8 copy must be kept by the receiving agency.

9 Any one of those agencies or any one of those
10 records could be found or could be used to indicate that
11 they are receiving wastes from off-site.

12 Q And it would not be unrealistic, would it, to
13 believe that the Department of Energy might be the shipper,
14 the transporter, and the receiver of wastes at Los Alamos?

15 A That's entirely possible, yes.

16 Q And you are relying on the Department of Energy
17 to inform you if they have wastes from other Department of
18 Energy facilities?

19 MS. NELSON: If I can provide some additional
20 information there. I do not think that EID can know --
21 certainly it may be possible -- but the EID does not
22 necessarily know at all how shipping is done.

23 My sense of Colorado is that shipping is done by
24 an independent contractor who must comply with all the
25 transportation laws. Whether it were done by a federal

1 agency or by an independent contractor, forms would have to
2 be filled out and submitted to EPA and/or the state and
3 those records are public information and are available upon
4 request.

5 Q Certainly you have no monitoring at the site to
6 know whether such materials are coming onto the site, isn't
7 that correct?

8 A That's correct, we do not have a monitor at the
9 gates to Los Alamos.

10 Q And, likewise, you are relying on the Department
11 of Energy not to burn wastes which are on the exhibit
12 attachments to your proposed permit? And you have no other
13 method of knowing whether other wastes would be incinerated
14 except from the Department of Energy, is that not also true?

15 A That's correct.

16 Q And you are relying on the Department of Energy
17 to record accurately what wastes are put in that incinerator
18 at what times and in what order and you have no independent
19 method of knowing whether that record would be correct?

20 A That's also correct.

21 Q And you are relying on the Department of Energy
22 to let you know if there is an emergency out there of some
23 kind and you have no independent method of knowing except
24 for the Department of Energy informing you, is that also
25 correct?

1 A That's correct.

2 Q Do you still want to tell me that your opinion of
3 whether DOE is truthful or not is not relevant to this
4 proceeding?

5 MS. NELSON: As I said earlier -- as I said earlier,
6 this is not a legal -- to my knowledge, if you can direct
7 information to us showing us provisions of the law that
8 makes that a lawful factor, certainly, EID will consider it.
9 To my knowledge, there is not such a provision.

10 Q So the department doesn't care under law whether
11 someone were to lie to them because there is no provision
12 under law that says they can do anything about that?

13 MS. NELSON: If I may state again, EID is limited to
14 what the statute and the regulations tells it it must and/or
15 can consider when it acts on a permit or other kinds of
16 activities that it does. EID does not have the choice. It
17 does not have the authority to require things that are
18 outside of the lists that the statute and/or the regulations
19 specify.

20 Q Don't you think that as a --

21 A Counselor, may I --

22 Q Absolutely, it's your proceeding.

23 A I would like to add, too, that if we find any
24 evidence of a violation of either the regulations applicable
25 to the interim status or the regulations to the -- or the

1 permit conditions, we have the authority and we have the
2 interest that we will take enforcement action.

3 Failing to follow regulations or the permit are
4 enforceable under our laws and regulations. They can be
5 fined up to ten thousand dollars a day for each violation.
6 Failure to follow the permit could be grounds for permitting
7 revocation or modification.

8 There are certainly many avenues available to
9 take enforcement action. If your questions are directed
10 towards what monitoring is done, I believe we have answered
11 those, but please understand that there are additional
12 enforcement actions available to the Division and we have in
13 the past pursued those with a great deal of vigor.

14 Q So if you happen to go out there once a year and
15 find something wrong, you are definitely going to do
16 something about it? Now?

17 MR. YOUNGBLOOD: Counselor, I don't think that's called
18 for.

19 Q Sir, I want to ask you -- I want to read
20 something from the DOE's materials. Its laboratory does not
21 treat or dispose of any hazardous waste generated by other
22 DOE facilities, other government agencies, or private
23 companies. There are -- the draft permit does not address
24 the issue of these wastes nor does the permit cover
25 radioactive wastes as they are regulated by the Atomic

1 Energy Act. Mixed waste, hazardous waste with radioactive
2 components will be covered in permit modification in the
3 future.

4 Is it your knowledge that DOE intends to modify
5 their permit or just what does that refer to?

6 A That refers to the permitting for mixed waste,
7 which will be the subject of an additional process such as
8 we are going through here. At the time that was written,
9 the thinking was that we would reopen this particular permit
10 and add whatever is necessary to it to address mixed waste,
11 and make it a more total permit. The other operation is to
12 write a separate permit, another book, to address that mixed
13 waste.

14 That's a decision that was tentatively made by me
15 in a discussion that if I were to do that, and I had control
16 of it, I would recommend that we not publish another book,
17 but we reopen this permit to address mixed waste issues.

18 That question, when it comes up in the normal
19 process or flow of the permitting activities, may be changed
20 and there may be a separate permit.

21 MS. NELSON: If I can add a moment of clarification
22 there. Sometimes the term "it may be addressed as a permit
23 modification," and at other points in the discussion it is
24 used "it may be discussed as a new permit."

25 The important point is that there will be an

1 entire process with the public notice of the proposed
2 substance, whether it's called a permit or a permit
3 modification, with the public notice, hearing, comment, et
4 cetera, on the mixed wastes at a future time.

5 If you had been confused by the -- by the
6 modification term, I think -- I think Mr. Crossman has been
7 referring to it as a separate permit procedure, but it's the
8 same thing. It just may be called one thing or the other.

9 Q Well, I am going to close now. I just want to,
10 in view of these four critical areas that we have discussed
11 that you seem to be relying on DOE's information, I would
12 like to remind you after the quote that you made there
13 today, that in view of all the information you are asking
14 from DOE, "I am not used to telling DOE anything" -- I am
15 sorry -- "I am used to telling DOE things. I am not used to
16 asking DOE."

17 Would you dispute that statement now? Would you
18 not agree that you seem to be asking DOE quite a bit?

19 A I wouldn't dispute it. I would -- I was speaking
20 to my attitude that even though I might ask them to provide
21 some information or provide them -- or ask them to do
22 something, I am speaking from a legally strong position,
23 that if they should say, "no," I can then tell them to do
24 so, and in that sense, in my mind, it's a friendly way of
25 telling them to submit that information.

1 requirements of that.

2 I am concerned that -- I am taking a long time to
3 get to my question, but I am concerned that if the
4 Environmental Improvement Board is involved in this, number
5 one, that individual who, as far as I recall, did not do a
6 significant amount of business with Los Alamos National
7 Laboratory or Department of Energy, but with other persons
8 regulated by EPA.

9 I also understand a complaint may be filed with
10 the EPA about his status and status of the Board.

11 And, secondly, that a newly appointed member is a
12 former employee, and perhaps currently employed, of Los
13 Alamos National Laboratories and that -- and that while Los
14 Alamos is not generally regulated by EID, that this
15 involvement between them and the department would also call
16 his status and the Board's ability to act into question, and
17 that the Board, if it's involved in the process at all,
18 because of the involvement of those two members, is not
19 going to be able to act independently.

20 Secondly, that the department may be -- that the
21 department regulates this activity, and that this permitting
22 process is under way only because the EPA permits us as a
23 state to regulate these activities. And that normally this
24 permitting would be a process that the EPA would undertake
25 but we are granted permission to proceed, but that that

1 permission might be revoked because of the activities of
2 these two board members.

3 What is the role of the Board leading up to and
4 what will it be in this permitting process?

5 MS. NELSON: If I may begin to respond to that
6 question. I am not sure that either Mr. Crossman or I can
7 give you a full answer because we are with the department
8 and we are not necessarily at all privy to what goes on at
9 the Board.

10 If you -- we all understand those distinctions.
11 If I may ask you first if you have a copy of the statement
12 that EID prepared in the back of the room. If you do not
13 have it, it lays out some of the issues on this RCRA
14 authorization, what EPA authorizes us to do and what it does
15 not and just as a background to your question --

16 Q I understand.

17 MS. NELSON: -- you should have had that.

18 Q Mine is a procedural question as to the procedure
19 which has been followed and will be and that's as it relates
20 to the Board.

21 MS. NELSON: And I do not know of complaints against or
22 actions against individual board members or whatever. EID
23 has no involvement in that.

24 The regulations on the procedure and the Board's
25 role generally come two ways.

1 One, first the Board promulgated the regulations
2 that governed the permit and the permit process. That's
3 already happened in the past.

4 The Board has potentially a second role. The
5 regulations provide that after the director's final
6 decision, any -- this is quoted from the regulations -- any
7 person adversely affected by the decision may petition the
8 Board. That means that if any person adversely affected
9 does petition to the Board it will start an appeal process
10 where the Board hears it -- the Board is the court of appeal
11 on the permit decision.

12 Q Is it the final court?

13 MS. NELSON: It is not the final court.

14 The final decision by the Board could then be
15 appealed to the real courts, the judicial courts. Does that
16 answer your question?

17 Q Yes. And are the regulations which define the
18 requirements of those items which must be included for
19 compliance with the permit, are they subject to change
20 during this permitting process by the Board?

21 MS. NELSON: Excuse me a minute. Let me confer. If I
22 understand your question, is it that -- Okay. The
23 regulations as they stand now, stand, and is the question
24 "Will there be changes to the regulations before the Board
25 could act if there were an appeal"?

1 Q May the Board change the rules of the game while
2 the game is still underway?

3 MS. NELSON: The Board is required by the statute to
4 give public notice if it will propose any changes to the
5 regulations. And the Board has its own attorney. It has an
6 attorney out of the Attorney General's Office and so that
7 attorney would know better than I what the Board's
8 procedures are.

9 But the Board would not be able to even begin the
10 process until it gave public notice of the proposed change.
11 It's probably a thirty-day public notice, but I don't know.

12 Q If Mr. Crossman or the director as a result of
13 this process came to believe that the DOE, for example, was
14 not to be trusted because of their criminal activities in
15 the past, and instituted requirements upon them as a part of
16 this permit that they found unsuitable, would it then be
17 easier for them perhaps to go to their employee on the Board
18 or some other person on the Board or appear before the Board
19 and change the regulation and, therefore, the eligibility
20 requirements for a permit rather than go through appeal
21 process?

22 MS. NELSON: I can't answer that question because I am
23 not sure that I understand it all. Let me answer what I
24 understand and then you can rephrase the question if I have
25 overlooked something.

1 If the Board were to propose a change in the
2 rules, in the regulations, it would have to give public
3 notice and if there were inquiry, comment, questions, I
4 presume comparable to here, they would have to have a public
5 hearing and the public hearing would also have to be public
6 noticed and all of these things take time and take place
7 under the public. I don't know if that answers your
8 question.

9 A If I can expand on that. The permit decision
10 will be based on the regulations as they exist at the time
11 the decision is presented to the director, or the material
12 is presented to the director for decision.

13 Your first question was, can the Board change the
14 regulations while we are undergoing this? Yes, they can.
15 They do this on an annual basis. The draft permit was
16 prepared under the fifth edition of the regulations and the
17 fifth edition was revised effective July 19th, so it's the
18 fifth-plus revision which I would be considering in the
19 final recommendation.

20 Actually, when I started I think we were on HWMR
21 three, so this is an ongoing process -- but once a permit is
22 issued, then it can only be reopened for certain specific
23 things and requirements and the Board's changing of the
24 regulations would not automatically reopen the permit unless
25 it met certain specific requirements.

1 So it's theoretically possible under certain
2 conditions, but not too likely to occur.

3 Now, I just gave an opinion if everybody will
4 notice that.

5 Q My concern is that your good work and hard work
6 will be undone perhaps by the Board.

7 The Department of Energy -- the Secretary of
8 Energy for the United States was recently in Albuquerque and
9 seemed to confess to the public that the DOE was indeed a
10 horrible disgrace. That it was -- that it had -- was in a
11 terrible mess.

12 That it had gotten too concerned with meeting
13 production deadlines and not about safety and that he was
14 going to make dramatic changes at the DOE and its focus and
15 in its personnel and bring in his own team and clean things
16 up. That was his story in the morning. It changed a little
17 in the afternoon, but nonetheless he indicated that changes
18 were likely.

19 Is it the DOE that is the applicant for this or
20 or Los Alamos and is it likely -- is it prudent for the
21 state to expend your energy and that of others to be going
22 through a process like this which is so dependent upon the
23 Department of Energy and its parent to comply and so forth
24 when we are on notice from the Secretary that dramatic
25 changes are going to take place at the Department of Energy?

1 Is the DOE the applicant? How big a role do they
2 have and wouldn't it be smarter to wait until they make
3 until they undertake the cleanup?

4 A I understood several questions. The application
5 materials were signed by both the Department of Energy and
6 the lab director as the operator, so the permit will be
7 issued to both the University of California as the operator
8 and DOE as the land property owner.

9 As far as prudence, I am sure it will be
10 second-guessed forever. We have been processing and working
11 on this for about approximately three years and we would
12 like to press on to this decision under the mandate given to
13 us by Congress that incinerator decisions should be made by
14 November of this year. Beyond that, certainly, if
15 information comes up that would require this to be reopened,
16 and could be legally done so, we certainly would.

17 Q The legislature on the other hand said
18 incinerator decisions should not be made until sometime
19 after the legislature meets again, although the legislature
20 did provide a clause which exempted this federal facility.

21 Now, whether it was because of a feeling of our
22 inability to regulate or to get into a battle with federal
23 facilities or in deference to our neighbor, I think you
24 almost have a dual mandate to proceed slowly.

25 The President has just returned from an economic

1 summit meeting with a mission of strong intent for
2 environmental cleanup in Europe and I would hope that this
3 is done. The President projected to Congress a new Clean
4 Air Act with stricter standards and I suggest that the
5 federal government, if you feel it has handed you a mandate,
6 may be sending you mixed signals.

7 The secretary overseeing the Department of Energy
8 said there will be massive cleanup in that department. The
9 President said there will be tougher rules about the
10 environment and if someone other than those two are telling
11 you to hurry up in the absence of regulation, I suspect you
12 may be wrong.

13 I watched yesterday as the Congress interrogated
14 a former Secretary of Housing and Urban Development and the
15 subject was a nine-page letter to a client of hers wherein
16 the secretary or the director of HUD recounted nine pages of
17 these horrible acts by this contractor and at the very last
18 said, "But we are going to let you try it one more time."

19 You asked me today how you are doing and I think
20 you are doing very well and I suspect that you have done all
21 you can throughout these last three years to proceed. But I
22 would suggest to you that all the procedure in the world
23 won't protect your director from allowing an agency that has
24 required the Federal Bureau of Investigation to bust down
25 their doors, to make them comply with life-saving laws to

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1 act without his direct scrutiny and I hope through these
2 procedures you will build in safeguards for the director so
3 that he is not required to rely on an agency that has,
4 frankly, been a national disgrace to us and that you will
5 provide this protection to your director.

6 The Environmental Improvement Board has two great
7 conflicts of interest. You will have to protect them and
8 this protection will have to come from you. I know that
9 your authority will provide for you but I don't think it
10 will provide other protections which will insulate him from
11 this second-guessing in the future.

12 MS. NELSON: If I could give a piece of information as
13 well as -- do please get this statement that EID made. It
14 lays out some of the budgetary restraints on EID and on the
15 Hazardous Waste Bureau and a lot of what EID can do is
16 dependent on what the legislature does and Mr. Crossman
17 could perhaps discuss that more if it is appropriate.

18 Q One of the problems is that the legislature can't
19 do everything that it's charged to do. And certainly one of
20 its charges is appropriation of funds and another is conduct
21 of business like this. And so it relies on people like you
22 and Mr. Crossman to tell us when the job you have been given
23 is simply too big for the budget to provide for.

24 And if for no other reason than you just don't
25 have the funds to keep a close enough eye on the Department

1 of Energy, given their past criminal acts, then that should
2 be sufficient reason to deny this permit. And I hope you
3 won't be involved in --

4 (Reporter unable to hear remarks due to applause of
5 audience.)

6 And if you deny it only so long as it takes to
7 come to the legislature and see if we are willing to give
8 you more money so that the permit can proceed, so be it.
9 For some reason we are -- we allowed this exemption for
10 them, perhaps we will provide you sufficient more funds but
11 that certainly should be a consideration, along with the
12 credibility of the DOE and these other details.

13 MS. NELSON: If I can add another piece of information
14 here. One of the restrictions or one of the things that EID
15 will have to consider very carefully when it takes its
16 actions -- you have used the term criminal activities of
17 DOE. I do not know of any convictions for criminal
18 violations of the law. Maybe there are some that I don't
19 know of. But -- but for EID to take so -- any final action
20 that EID takes has to be based on legally sufficient
21 evidence and I know of no convictions for criminal
22 activities.

23 Q I certainly understand that theory as it applies
24 to private citizens, but not that theory as it applies to
25 government agencies and when a government agency behaves in

1 such a way -- an agency of the federal government behaves in
2 such a way that the FBI has to bust down their doors as if
3 it were Al Capone's hideout, I don't think that they deserve
4 that kind of protection.

5 I don't think the constitution provides it, and I
6 think that we are fortunate that some federal official
7 intervened. This is not an activity conducted by
8 individuals. These are activities conducted by an agency
9 and I am sure that the individuals that Mr. Crossman has
10 dealt with and will deal with are honorable people.

11 But the fact of the matter is the -- and in
12 generally the words of the Secretary who oversees that
13 agency, it's a horrible mess now. It has been conducting
14 itself improperly, and perhaps some day individual criminal
15 charges will be brought. But that agency is certainly under
16 indictment by an equal agency of the federal government.

17 MS. NELSON: I think that one of the things I would
18 like to add at this point is that, as the hearing officer
19 said in his opening statement, the record will probably be
20 left open to receive written comments, and that includes
21 legal arguments, and the statement that EID prepared is its
22 best statement of what it understands the lawful operation
23 is and restriction on it at this time.

24 If submittals are made that provide other legal
25 viewpoints and have a legal basis in law, they will also be

1 considered.

2 And when you discuss whether there are different
3 standards for assuming criminality or not, that is a legal
4 that may be a legal issue that someone could submit
5 something on. I am not saying that one should or what would
6 happen if one did, but just generally this statement is what
7 EID understands it can do and if people see other lawful
8 ways to act differently, EID is soliciting that information.

9 Q I appreciate that and I appreciate the
10 opportunity to have provided some and I appreciate your
11 thoughtful consideration.

12 MR. YOUNGBLOOD: Thank you, Senator.

13 At this time we are going to take a ten-minute
14 break.

15 (THEREUPON, the hearing was in recess.)

16 MR. YOUNGBLOOD: The hearing will come to order. There
17 are a couple of procedural things that I would like to talk
18 about before we go back into the hearing.

19 There have been a number of questions on how long
20 the hearing is going to last. My answer has been truthful,
21 I don't know. I would encourage all of you to ask the
22 questions that you want to ask, to give the testimony that
23 you want to give, But too, in the interest of many people
24 who are not going to be able to stay here for the whole
25 time, to keep it as short as possible.

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1 We will begin in the morning at eight thirty.

2 There is a lady here that has some questions that
3 has been waiting all day and she would like to ask them.

4 CROSS EXAMINATION

5 BY MS. ARENDS:

6 Q My name is Joni Arends, A-r-e-n-d-s. I wanted to
7 ask about the chemical waste in that --

8 MR. YOUNGBLOOD: Can you hear in the back?

9 Q I wanted to ask about the chemical waste, and to
10 say I understand that the Nuclear Regulatory Commission did
11 deregulate some percentage of radioactive materials saying
12 that it is below regulatory concern. And that generally is
13 under five millirems an hour or ten millirems an hour.

14 So I wanted to know if you understand in this
15 chemical waste that there is going to be radioactive
16 materials that are considered below regulatory concern that
17 will be burned?

18 A The hazardous waste regulations and law do not
19 have, per se, a de minimis or below-regulatory-concern-type
20 of standard in them. So in that respect, we do not have
21 that type of a standard.

22 As far as radioactivity, that is subject to the
23 Atomic Energy Act and the laws and things that we have tried
24 to explain earlier. So from the chemical point of view, we
25 do not have that standard. Once it's a mixed waste it's a

1 waste, a hazardous waste, and it will be treated as such.

2 MS. NELSON: I think your question, if I could repeat
3 it, I think your question was -- and it's an interesting one
4 something that was once called radioactive it is no longer
5 legally radioactive because of a delisting process?

6 Q Right.

7 MS. NELSON: But there are such things -- which I don't
8 know anything about that. The question is, are there any of
9 those things that once legally were radioactive under
10 another scheme but are not? Are there any of those among
11 these chemicals, if I restated that right?

12 Q Yes, in volume, you know, that -- if something is
13 considered below a certain rate of radioactivity it's
14 considered a hazardous material as opposed to radioactive
15 material. So what I am asking is are there things that used
16 to be called radioactive or below a certain level that may
17 be burned with the chemical portion because they are not
18 included in the -- they are not included in hazardous but in
19 the -- included in the radioactive part?

20 A I have not asked that specific question and my
21 answer to you would be, I don't know. But I am glad you
22 brought that up because I had not applied that concept in
23 this circumstance, but I will certainly ask that question
24 and verify the answer to determine that there -- when we are
25 talking chemical waste with the Department of Energy and the

1 laboratory we are talking chemical waste devoid of any
2 detectable radioactivity.

3 Q But you might want to check on that one a little
4 bit?

5 A Absolutely. I had not applied that additional
6 piece of information.

7 Q Okay. Now, I understand that the waste that is
8 going to be burned in the incinerator is only from Los
9 Alamos. But I understand that Sandia ships its waste up to
10 Los Alamos to be stored. So is waste from Sandia going to
11 be burned in this incinerator?

12 MR. YOUNGBLOOD: I think the question is clear.

13 A Yes. I apologize for the delay. I was making a
14 note of your earlier point.

15 The permit specifies that only waste from the DOE
16 activities at Los Alamos can be handled subject to this
17 permit. Any materials that come from off-site or from off
18 the laboratory property could be in violation of the permit
19 and would lead them to enforcement actions.

20 Unless I know specifically which wastes you are
21 talking about, I can't give a more definite answer. But I
22 have tried to make it very clear in the permit that this is
23 not an open permit to burn anything they can get onto the
24 property.

25 Q Okay. It's just that their procedure now is to --

1 is that Sandia ships its transuranic waste to Los Alamos to
2 be stored, so you might want to check that in terms of
3 theirs because with this criminal investigation that is
4 going on with the Rocky Flats stuff and Sandia being in
5 charge of the DOE operations in terms of the transportation
6 of wastes, who knows what they could be bringing to Sandia
7 and shipping to Los Alamos in order to burn in this
8 incinerator?

9 A If you are discussing transuranic waste, that's
10 outside the scope of this permit and the laws and
11 regulations that I operate under.

12 Q Well, regardless of what comes from Sandia, if it
13 is transuranic or just chemical waste, that might be
14 something that maybe needs to be addressed in the permit
15 also.

16 I was curious about the volume of the incinerator
17 and how much, if it was working twenty-four hours a day,
18 three hundred sixty-five days a year, how much volume could
19 it burn?

20 MR. YOUNGBLOOD: I think that question has been
21 answered. The answer was, as I remember, a hundred pounds
22 per hour.

23 Q Okay. Then I had -- this is a radioactivity
24 question, but do you know what the background radiation
25 level was before the dropping of the bomb at Trinity Site?

1 A I may have read that in the past But no, I don't
2 know what the background was before Trinity.

3 Q Okay. Because when we talk to the Department of
4 Energy they always say it's within background radiation
5 levels, so if we have a background radiation level here in
6 1944 and then we have got Chernobyl and Three Mile Island
7 and all this aboveground testing, the background radiation
8 level obviously rose. So when we have another accident or
9 something, we don't know if the background radiation is
10 measured against what it currently is today or what it was
11 in 1944. Or if they have made adjustments along the way.

12 I think that -- I know it's not part of this
13 chemical part, but I think it's an important question in
14 terms of the overall part of the incinerator.

15 MR. YOUNGBLOOD: I have let you ask this question. I
16 don't believe there's anyone here that can answer the
17 question. I will let the question stand on the record, with
18 no answer. It's really not a portion of this hearing.

19 Q Okay.

20 I would like to propose this question: As we
21 start to learn more and more about what's happened up at Los
22 Alamos over the last forty-five years or so, it seems like
23 there's an incredible level of contamination in all sorts of
24 kinds of air, water, soil and part of the permit talks about
25 module, it talks about the SWMU's, the solid waste

1 management units, and it seems to me that we should wait and
2 see how much contamination is up there right now
3 investigating these six hundred eight SWMU's before we allow
4 them to possibly contaminate another area.

5 And because we have seen the contamination all
6 over the country at other DOE facilities and it seems that
7 we kind of look at Los Alamos out of the corner of our eye
8 and kind of say, "Well, we are only twenty-five miles away
9 from it maybe, but maybe it's safer than all the other
10 facilities," and it seems that we should be able to stop and
11 look at these SWMU's before we allow them to do anything
12 else.

13 A You have brought up the subject of the EPA
14 portion of the permit, which I am not going to talk about to
15 a great extent, but let me say that the operation of the
16 program is such that we have a very strong enforceable
17 handle. We can require them to do things by granting a
18 permit and in that manner requiring them to investigate and
19 clean up those activities which you refer to.

20 For everybody, SWMU is a solid waste management
21 unit. Basically, that is the subject as a portion of RCRA
22 that the state has not yet picked up authority for, so EPA
23 will address it in their portion of the permit.

24 But the -- this permit deals with the operation
25 and the day-to day activities of what will be ongoing.

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1 MR. YOUNGBLOOD: Do you have further questions?

2 Q Yes. I wanted to know how many inspectors you
3 have in your department?

4 A I am authorized a total of four positions,
5 counting myself as supervisor.

6 Q Okay. And then how many people are your -- is
7 your department down from the cuts that were made in the
8 Anaya administration and how many people do you need for
9 your department to run at full force? As Tom Rutherford was
10 talking earlier about what do you need to make your job
11 function properly?

12 MR. YOUNGBLOOD: I believe we might have some
13 terminology problems. When you say "department," what you
14 really mean is his unit?

15 Q Unit.

16 MR. YOUNGBLOOD: That is correct. Answer it that way.

17 A Okay, our section was cut -- I am trying to
18 remember back what happened four years ago. As I recall,
19 our section was cut two people. And we were not allowed to
20 fill some vacancies as they occurred.

21 Don't hold me to the numbers, but I believe we
22 are back to man those management levels equal to what we
23 started with at approximately that time, before those cuts.
24 As far as how many could we use --

25 Q Yeah.

1 A -- there's the principle that the work expands to
2 meet the number of people available. I feel I could keep
3 six more people vary gainfully employed. Obviously, if we
4 had more we could find more to do. I gave some numbers
5 earlier, which I think you can see would bear that out.

6 Q Okay. And then I have one more question.

7 What is the worst case scenario in the permit
8 application, or is there a worst case scenario explained?

9 A I am not sure what you mean by worst case
10 scenario.

11 Q An accident, worst case scenario accident.

12 A An accident? The permit goes -- deals with
13 operating practices and what parameters they can operate
14 each type of unit on.

15 In the permit there is a contingency plan which
16 requires them to have certain levels of management and
17 training.

18 As far as a specific worst case scenario, we did
19 not try to postulate one to see if that would, you know, how
20 that all applied. So --

21 Q Do you think that you will be able to create one
22 in order to do statistics on it or do we have to wait for an
23 accident to happen in order for those kinds of things to
24 come out in paper form, or is it not part of the permit
25 process?

1 MS. NELSON: Let me rephrase the question, if I may.

2 If you could discuss whether there is a worst
3 case scenario discussion, but perhaps also go into the
4 emergency provisions. I don't know if that would get at
5 what you are getting at or not.

6 Q I understand that they don't -- they have
7 twenty-four hours in which to notify you, but we know that
8 the wind can blow at forty miles an hour and be down here in
9 thirty seconds, you know?

10 A They are required to activate an emergency
11 response any time they have a spill or a release that could
12 endanger either health or the environment. I have not
13 looked at any specific scenario of, for example, a truckload
14 of this at this point, that type of evaluation. I have
15 looked over the general plan and it appeared to me to cover
16 to be adequate to cover most contingencies.

17 Q Maybe we could have a siren or something here in
18 Santa Fe that could go off, because I know around other
19 nuclear power plants there are sirens that go off so that
20 people can stay inside. But they don't have to necessarily
21 be outside breathing the air, you know.

22 That might be something that may go into the
23 emergency preparedness part of it. Thank you.

24 MR. YOUNGBLOOD: Are there any other questions on the
25 procedure? Okay. I see three hands. I am going to -- four

1 hands.

2 I am going to allow you to ask those questions.
3 I want to finish this tonight if we can because the first
4 thing in the morning I want to start with the technical
5 testimony from the EID. So we will start with the lady
6 here.

7 CROSS EXAMINATION

8 BY MS. BILLUPS:

9 Q My name is Elizabeth Billups, and my first
10 question is to you, Mr. Hearing Officer.

11 You stated earlier, if I am correct, that if a
12 person had written testimony they could hand it in, but to
13 have more weight you suggested them making oral testimony?

14 MR. YOUNGBLOOD: Yes.

15 Q Would you clarify that?

16 MR. YOUNGBLOOD: Yes. In other words, if you give your
17 testimony here, then you will be sworn. Your testimony will
18 be sworn and you will be able to be cross examined. If you
19 simply hand your testimony in written, it will be
20 considered, as -- generally considered, and I am not -- it
21 is hard for me to talk for the people who will be examining
22 it, but generally there is more attention paid to sworn
23 testimony for which cross examination was given than there
24 is to written testimony.

25 Q Now does that not apply for Los Alamos?

1 MR. YOUNGBLOOD: Yes, it applies to Los Alamos. It's a
2 general statement, okay? It applies to any testimony.

3 Q Because they are obviously going to submit
4 written testimony and not be sworn.

5 MR. YOUNGBLOOD: That's correct.

6 Q Which I regret.

7 My next question is, I would really like to see,
8 and I would like to know why the permit is not available for
9 review in the Santa Fe library. I am a person that works.
10 I can't get over to EID during working hours and it's closed
11 on weekends and I live here and not in Espanola and I
12 wondered if that could be available at Santa Fe library in
13 the future?

14 A We are required by our procedures and guidelines
15 to provide a copy at the area most convenient to the
16 facility. We initially had the materials at the library in
17 Los Alamos and at the request of the public, many of them
18 from Taos, we moved it to Espanola to be more centrally
19 located.

20 The other additional file is available here in
21 the building because that's where the official file has to
22 be kept. I have tried to strike a balance between providing
23 sufficient copies to make them available to the people and
24 live within the budget constraints that our section has to
25 live with.

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1 As you can see, just the permit alone is more
2 than a ream of paper, which is a double-sided copy. I
3 provided one additional copy for a floater to Taos and Los
4 Alamos in an attempt to make it available. I will have to
5 re-evaluate and see, is there, you know -- if it's feasible
6 to make an additional copy available at the library here in
7 Santa Fe.

8 I have also had requests to make it available in
9 Albuquerque.

10 Q But going to your office -- I know how big the
11 permanent application is, but I would just like to request
12 maybe if before some hearings if maybe Saturdays if EID
13 could make a copy available to look at, the permit. As I
14 say, as a working person it's hard to get here.

15 Let's see, my next question is on page six of the
16 document that you handed out today, Mr. Crossman, under the
17 regarding air quality regulations it talks about predicted
18 emissions were below threshold that require a permit. Whose
19 thresholds are those? Is that EID's thresholds?

20 MR. YOUNGBLOOD: Point at what portion of that ---

21 Q The first paragraph under "Regarding air quality
22 regulations."

23 MR. YOUNGBLOOD: Okay.

24 A Please don't take me as an authority on the air
25 bureau. This is information provided -- this is information

1 provided to me from the Air Quality Bureau that this
2 particular incinerator was below the emission standards, and
3 I assumed when they said that, that those were their
4 standards, but that's an assumption I made when I heard that
5 statement from them.

6 Q Then it talks about the new regulations. I know
7 we touched on this earlier but I am wondering why the new
8 more stringent regulations aren't more retroactive for
9 facilities, why an old facility is allowed to have more
10 toxic than a new facility that would come under the
11 regulations?

12 A That one I cannot answer. I don't know what
13 criteria they used for when grandfathering is applicable and
14 when it is not.

15 Q And that decision --

16 MS. NELSON: That's made by the legislature and they --
17 they decide when the law will be applicable and when it will
18 not and whether it will be applied retroactively or not.
19 But if they do not, it violates constitutional rights to
20 apply it retroactively and it's very rare that it is. That
21 is a general statement. Very rare that laws can be applied
22 retroactively because of that concern.

23 Q Okay. Before interim status what was the status
24 of the incinerator before -- before the state took on RCRA?

25 A Interim status is an artifact, if you will, of

1 RCRA. There was no equivalent prior to the effective date
2 of RCRA. So what was its status? Under RCRA there was no
3 status. What was its -- did that answer your question?

4 Q Pretty much. Is there a state -- was there a
5 state permit that it was subject to before RCRA or was it --
6 did the state have a permit with it before RCRA?

7 A No.

8 Q I am not --

9 MS. NELSON: I don't know all the previous laws and I
10 am not sure when the Hazardous Waste Act was effected except
11 that it came out of RCRA. I don't know if there was a
12 Hazardous Waste Act before RCRA, but there were other
13 statutes that protected different parts of the environment.

14 There is and was at that time the water quality
15 act which protects groundwater. Just as a matter of
16 information for people, just -- there may not have been an
17 equivalent of a Hazardous Waste Act, but there have been
18 some environmental statutes on the books since before RCRA.

19 But you would have to look at each one and see
20 what they were at the time, because there have also been
21 changes in them to determine finally what was regulating the
22 facility before RCRA in that area.

23 Q But was the state regulating it under state law?

24 A Under state law it would have been the state and
25 I don't know if there was other federal programming before

1 RCRA. Perhaps Kelley can tell us.

2 A Before the state applied for the RCRA program
3 there was a small hazardous waste staff and a state law and
4 some state regulations that came out prior to the initial
5 publication of the EPA laws. I know they existed. I think
6 I saw a copy at one time, but that was before I came on
7 board with the program.

8 I cannot tell you what -- how they were applied
9 or what the regulation was. I don't know that there was
10 anyone here who actually -- you know, on the staff now, that
11 actually operated under those. I would have to ask and see
12 how old some of your old-timers are.

13 Q Is there a time limit on interim RCRA status? Is
14 there a deadline that you can only be under RCRA status so
15 long or is that -- is there a time limit under which you
16 have to get a final permit?

17 A As a general rule, interim status extends until
18 the permitting decision is made or by some operation of law.

19 That's as a general rule. Congress added some
20 decision point deadlines in the '84 amendment, so in that
21 sense there are some limitations as to how long interim
22 status can continue, but they are very specific.

23 MS. NELSON: Just for clarification, my understanding
24 of RCRA as it applies to mixed waste, my understanding is
25 that there is no -- no end time limit for interim status.

1 It is dependent. Although the state can set a time limit,
2 my understanding is that the federal law did not set one.
3 They left it to the states. The state can set one by means
4 of the permit action, by requiring a permit action, for
5 example.

6 Q Let's see, my other question is, it says here in
7 the last paragraph on page six, "EID expects to develop new
8 air quality regulations for incineration, that will include
9 radionuclide emission limits at the stack as opposed to the
10 fence line. Under EID's current schedule for the
11 development of such regulations, a public hearing on the
12 proposed regulations is expected next spring. In the
13 interim, the Air Quality Bureau will be developing and
14 taking to hearing regulations governing municipal and
15 medical waste incineration."

16 It looks like these are joined together because
17 there is hazardous waste with incineration that will affect
18 air quality. Has EID considered working this permit --
19 these permits together?

20 A The two programs generally operate independently.
21 They are two separate permits. This paragraph is directed
22 towards the concerns that had been expressed in the
23 correspondence about the state radionuclide air emission
24 standard, or lack thereafter. We are -- we will conduct
25 this.

1 We will conduct their permit under our rules and
2 regulations to meet the regulations with the staff available
3 that we have. Air Quality may well require some additional
4 permitting at a later date under their regulations.

5 The question came up, and there was no conscious
6 decision that I know of to try to write one permit under two
7 sets of laws and regulations. I believe if we seriously
8 pursued that we would have run into some serious legal
9 obstacles and, consequently, we are pursuing a single
10 program, single law, single regulation permit.

11 Q Will the new regulations that the state takes on
12 next spring for radioactive emissions, will these apply to
13 this -- to this facility since it's already existing or will
14 it not be retroactive again or will it apply to the new
15 incinerator?

16 MS. NELSON: If I can answer that. It's not a
17 retroactive application. If new regulations, new air
18 regulations are developed, they become effective from "x"
19 date forward. My understanding of the -- maybe in terms of
20 a moratorium, whatever it is. I am afraid I am not
21 understanding fully your question.

22 But I think the answer to what you are asking is
23 that the new regulations will apply to the incinerator.

24 Q So this incinerator would have to have another
25 hearing for the new regulations?

1 MS. NELSON: It would depend on what the regulations
2 required. The regulations -- the regulations are not
3 drafted. The regulations will be drafted and then proposed
4 and then there would be hearings and -- that means that
5 nobody can say today what the regulations will say or the
6 procedure is.

7 Q Okay. I just hate to see you up there alone. I
8 wish there was a group doing this permit and we could
9 address all our concerns at one time. Thank you.

10 MR. YOUNGBLOOD: Thank you very much.

11 UNIDENTIFIED SPEAKER: Excuse me, could I deal with
12 something about the hearing process?

13 MR. YOUNGBLOOD: Surely.

14 UNIDENTIFIED SPEAKER: My butt is sore and I am tired
15 and I would like to give testimony -- not testimony. I
16 would like to ask questions on procedural part, and I would
17 either like to end this process and start tomorrow now or I
18 would like to have the ability to ask my questions tomorrow
19 since I feel that this has gone on. We had a reasonable
20 time set and if people would like -- the gentleman here, if
21 he would like to complete his questions and all, that would
22 be fine. I am not prepared. I am too tired and not clear-
23 thinking enough.

24 MR. YOUNGBLOOD: Your request will be honored. We will
25 start with you the first thing in the morning. How about

1 the lady back here? How long is your --

2 UNIDENTIFIED SPEAKER: I will go to the morning.

3 MR. YOUNGBLOOD: All right.

4 CROSS EXAMINATION

5 BY MR. MORGAN:

6 Q My name is Tom Morgan, White Rock.

7 By its very nature, incinerators produce
8 emissions. It's my understanding that there's an alternate
9 technology that results in the same final progress, namely:
10 Residue, that can be converted to glass or cemented. It's
11 called wet oxidation. It does not have emissions. It does
12 not -- or can be operated in such a manner as to not produce
13 emissions, because the emission affects both the incinerator
14 processes.

15 The greatest concern to the neighbors of Los
16 Alamos and since I am downside from the incinerator myself,
17 if you are aware of the advantages of their wet oxidation
18 process, that doesn't have emissions, consider it far safer
19 for the community and would cause less anxiety for the
20 citizens, would you consider turning down the incinerator
21 permit request?

22 MR. YOUNGBLOOD: I will allow you to answer that.
23 There's two questions. One is, are you aware of it?

24 A I understand two questions here, if I may. One
25 is am I aware of other technology? Yes, I am aware there

1 are other technologies available and wet oxidation is one of
2 them. I have not studied them in any great extent because I
3 have to focus my time and effort.

4 As far as the existence of other technology as
5 being the basis for permit denial, at this point I could not
6 answer that that is or is not a basis. I would have to look
7 at the legal ramifications. I have not in the past
8 considered the existence of other technology a reason to
9 deny one technology. We are obligated to process the
10 applications as the applicant presented them. We are not,
11 to my knowledge, in a position to dictate to them which
12 technology they should apply.

13 We can dictate to them how the technology they
14 wish to apply can be conducted and that in that sense, but I
15 don't -- I don't think that I have the authority to tell
16 them to use any particular technology.

17 MR. YOUNGBLOOD: Further questions?

18 Q Thank you, that's all.

19 MR. YOUNGBLOOD: I am going to ask the lady that wants
20 to ask questions in the morning and the gentleman here to
21 drop up before they leave, please, so I can get your names.
22 That is all the questions on procedure that I will allow
23 prior to the EID testifying on their technical things. Yes.

24 DR. MOREY: I have one question of procedure, but I am
25 going to testify tomorrow. I have got some -- I have got

1 some lab reports or tissue analyses of some of my patients
2 that are high, high toxic and if I present these do I need
3 to leave copies with you or the originals or what do I -- do
4 I need to be prepared to leave them here?

5 MR. YOUNGBLOOD: I will accept -- we would prefer
6 originals. I don't know what your problems are with the
7 originals. If you can't have originals, please have good
8 copies, okay? I declare this hearing adjourned until eight
9 thirty in the morning and in this same building. Please be
10 on time. I will attempt to start at exactly eight thirty.

11 (THEREUPON, the witness was excused the hearing was in
12 evening recess.)

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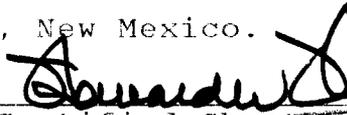
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REPORTER'S CERTIFICATE

I, Howard W. Henry, a Certified Shorthand Reporter and Notary Public, DO HEREBY CERTIFY that I did administer the oath to the witnesses herein prior to the taking of this hearing; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcription of the proceeding had upon the taking of this hearing.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND AND SEAL this 25th day of July, 1989, at my offices in Albuquerque, New Mexico.



Certified Shorthand Reporter
and Notary Public
Certificate Number 9

My Commission Expires: March 2, 1993

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BEFORE THE
ENVIRONMENTAL IMPROVEMENT DIVISION
STATE OF NEW MEXICO

IN THE MATTER OF:)
)
LOS ALAMOS NATIONAL LABORATORY)
HEARING ON HAZARDOUS WASTE)
PERMIT)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on to-wit, the nineteenth day of July, 1989, the above-entitled matter came on for the continuation of hearing before the New Mexico Environmental Improvement Division, taken at the Harold Runnels Building at the hour of eight thirty o'clock in the forenoon.

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FOR THE DIVISION:

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* * * *

MR. YOUNGBLOOD: If you will take your seats we will
resume the hearing.

Silvi Solomon. MS. SOLOMON: Good morning. My
name is Silvi Solomon.

C. KELLEY CROSSMAN
was recalled as a witness by the Division, and having been
previously sworn, testified further upon his oath as
follows, to-wit:

CROSS EXAMINATION

BY MS. SOLOMON:

Q Okay. I would like to know a little bit more
about the interim status. If permission is denied, will

1 interim status continue?

2 A Interim status is terminated upon the permitting
3 decision, so if the permit is denied, interim status would
4 be denied and that incinerator could not burn the chemical
5 waste for which the permit was considered.

6 Q I suggest you deny the permit. It would be a
7 very good way to stop the burning of things that we don't
8 understand yet.

9 I would also like to know, is the Environment
10 Improvement Board measuring the quantities of hazardous
11 substances released during the interim period when the lab
12 was burning? Do we know how much mercury is present right
13 now in Cochiti Lake and the Rio Grande River, in the Santa
14 Fe Reservoir and other bodies of water?

15 Is the EID looking into the impact of what has
16 already been released into the environment -- upon the
17 environment that we are living in? Can you give us any
18 information on that?

19 A I understood several questions there, and if I
20 can break them down.

21 Q Yes.

22 A Is the Hazardous Waste Division monitoring or the
23 Hazardous Waste Bureau monitoring? We are monitoring, as I
24 explained yesterday, through our normal inspection and
25 record-checking-type of thing.

1 Is the Environmental Improvement Division, other
2 agencies, monitoring? There are other programs that I
3 cannot speak to other than in very broad general terms.
4 The Air Quality Bureau does have a monitoring program. The
5 Surface Water Bureau also does some monitoring, but I
6 cannot speak to you as to what specific monitoring they do.
7 Those are two examples.

8 Q What percentage of the wastes are purely chemical
9 in nature, can you say?

10 A I really don't know how much is only in the
11 chemical side because we have not yet gone through and
12 identified all of the mixed waste stream and, of course, we
13 would have to know the total waste stream to break it down
14 into percentages.

15 So there are three broad categories, the RCRA
16 chemical waste, the Atomic Energy Act radioactive waste,
17 and the mixture combination of wastes in the category
18 encompasses both.

19 Q Do you have records of the waste that was burned
20 already during the period of 1980 to '88? I understand
21 that was the period of time in which wastes were burned in
22 that incinerator. Does your department or any department
23 in the EID know what was burned?

24 A I perceive that as two questions. One, are there
25 records of waste being burned? Under RCRA, the standard

1 waste record retention time is three years. So once the
2 records have been retained for three years, they may be
3 filed, destroyed, or whatever, unless they are the subject
4 of some apparent legal qualification.

5 As far as the division keeping records, no, we do
6 not generally keep copies of all of the records from any
7 facility. We require the facilities to keep them and we go
8 out and inspect them at the facility.

9 Q All right. A little bit more on that subject.
10 Then I am trying to trace these wastes, you know, the ones
11 that have already been burned, records of it. Is it
12 required under the interim status that the incinerator keep
13 records of everything that was burned?

14 A Only for the three-year period under RCRA.

15 Q But right now there should be a backlog of three
16 years' records of what was burned over the last three
17 years, somewhere. Where would that be?

18 A That would be kept by LANL, by any facility.

19 Q Who would be able to read those records? Would
20 that require that your department would ask for the
21 information? Could you go or could a member of the public
22 go and read those records?

23 A Under RCRA, we have authority to go up and
24 request to see any of those records and they must provide
25 those to us.

1 You said the permit, we also -- the proposed
2 permit we also require them to keep them and make them
3 available to us.

4 I am not real clear on the procedures for a
5 member of the public to ask to see records. You may have
6 to use a request to see them through the Freedom of
7 Information Act, but I am not an authority on that
8 particular type of access.

9 Q Thank you. And presently how much do we know
10 about the waste inventory that exists at the lab? How are
11 we to learn what the quantities are of wastes that are
12 stockpiled there?

13 A The actual quantity would be a variable as waste
14 is generated and wastes are shipped off site for disposal
15 or recycling, whatever the purpose of the shipment is,
16 therefore, that number changes from day to day, but we
17 certainly can go up -- the Division can go up and inspect
18 any of those facilities and determine what wastes are on
19 hand at that time.

20 Q Can your department give us any idea of how much
21 of the three different categories of wastes that are slated
22 to go into that incinerator? Has the LANL given any
23 indication of the quantities involved? Is there an
24 inventory list of what is planned to go into that
25 incinerator? That's what I am asking.

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1 A The amount is limited by the size of the
2 incinerator. I indicated yesterday approximately one
3 hundred pounds an hour as an approximate rule of thumb.
4 That's when the incinerator is operating for the RCRA
5 chemical waste.

6 We have - in the draft permit we have specific
7 numerical limits of how much can be stored at any one
8 place, but the amount that is being treated is a function
9 of how often that treatment process is operated.

10 Q So you are telling me is that you can tell how
11 much is going to go in daily but you don't know what the
12 mountain is that is waiting to go in? It's just whatever
13 is coming through the door is what you are looking at, is
14 that correct?

15 A Under interim status they are allowed to store an
16 amount that they have notified the Division for. I don't
17 have those numbers readily available, but it's several
18 thousand -- many thousands of pounds of waste.

19 In the permit, in the draft permit, we limit by
20 location how much waste may be stored at each location and
21 they would not be allowed to store anymore at any of those
22 locations without violating the permit.

23 Q Has there ever been an estimate of the amount of
24 curies of radioactivity contained in the waste that would
25 that has already been burned?

1 A I would refer you to the purpose of the Hazardous
2 Waste Act as the basis of all of that and that's Article
3 74-4-2 of the state statutes here, and if I might read it,
4 says, "The purpose of the Hazardous Waste Act -- this
5 article is to help ensure maintenance of quality of the
6 state's environment to conform to minimum health, comfort,
7 and economic and social well-being on its inhabitants and
8 protect the proper utilization of its land."

9 That, I think, would have to be taken at this
10 point as the mission or the purpose of the Division, within
11 our portion of it anyhow. I am sure there must be other
12 laws that govern the total Division, but I am familiar with
13 this one.

14 This statement or this quote just refers to the
15 purpose of the Hazardous Waste Program.

16 Q Thank you.

17 Would you see that being similar to the
18 department as a whole or would there be any differences
19 that you could state today?

20 MS. NELSON: Just as a matter of clarification. I
21 cannot speak for the Division as a whole or the department,
22 but what Mr. Crossman pointed to is an example of where the
23 purpose comes from.

24 Each act that an individual bureau or the
25 Division as a whole enforces sets out a purpose and that --

1 and then the ways to effectuate it and that for your whole
2 answer for the EID you would have to look to each act that
3 it enforces, and its statement of purposes.

4 Q Well, I lead my life, but then if I didn't have a
5 dream and purpose I am not heading really in the direction
6 I want to. I am never going to end up there, so it's good
7 to hear there is a statement at least for the Hazardous
8 Waste Department.

9 I will come back to that later. I think it's an
10 important point to this process and this hearing today. I
11 have been asked to bring up a point about the hearing
12 process connected with Los Alamos by a person from
13 yesterday.

14 I understand you said that due to the budget
15 restraints it would be hard to develop a lot of extra
16 copies of the reports and the permit statement itself. But
17 you did make a copy, floating copy, that specifically went
18 to Los Alamos, and I think you mentioned Taos as well and
19 maybe several other places.

20 Since the incinerator and incineration of
21 hazardous waste will directly and immediately impact the
22 Los Alamos community, what was the reasoning for not having
23 the hearing or -- not having the hearing in Los Alamos
24 rather than in Santa Fe?

25 A This was -- I guess that was my decision as to

1 where to make arrangements for the hearing. We have the --
2 application materials initially were placed in the Los
3 Alamos laboratory or Los Alamos Public Library when we
4 started processing the permit. They were there for
5 approximately one year and we had one input from that
6 activity up there.

7 We had one request from the League of Women
8 Voters to come talk to them about what this application
9 really meant. About that same time when the municipal
10 waste incinerator hearings were being held or being
11 discussed there was a great deal of interest in Taos on
12 that hearing. You may recall that.

13 We had numerous requests from Taos that the
14 repository be moved to Taos from Los Alamos. That would
15 put it at one end of a geographic area that would be
16 affected or could be affected or maybe where people who
17 could be affected would live, and I made the decision that
18 perhaps a more central location, such as the Espanola
19 library, would be more readily accessible to all parties,
20 Los Alamos, White Rock, so on and so forth, as well as
21 Taos. So we made arrangements to move the repository to
22 Espanola.

23 All of the interest of our -- so far has been
24 Santa Fe and Taos, the bulk of the interest just from a
25 quick scan of the mailing list there, so for the

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1 availability of a room and for the convenience of the staff
2 here, availability if a question came up that we need to
3 recess to go dig something out of the file, it was most
4 convenient to have all of the information available for the
5 hearing and that meant it had to be here in Santa Fe.

6 So that was my decision as to where we had it and
7 what rooms were available.

8 Q When you got one response to the information when
9 you had it up in Los Alamos, what year was that?

10 A I believe it was 1987.

11 Q I see. So that was two years ago. I submit that
12 maybe in the future that a two-year-old response you might
13 want to re-evaluate and maybe gather more information.

14 Also suggest about hearings is that they be
15 better publicized. I only heard about this incinerator
16 hearing through the Concerned Citizens organization. I did
17 not see it in the newspaper or it wasn't -- the media
18 wasn't well utilized it seems.

19 A We put out a press release to all the media. We
20 have no control over what the media does with the press
21 releases. We will submit -- later a copy of that press
22 release will be in the official record.

23 Q That's just in response from me?

24 A We can -- we do put out a legal notice. We are
25 required to put out at least one legal notice and we put

1 out two, one in the Los Alamos paper and one in the Journal
2 North, which covers a major part of the northern part of
3 the state.

4 We also mailed to everyone on the mailing list at
5 that time a copy of that material. That is all I have
6 within my capability and my power to do. I would welcome
7 any suggestions that you have on how to better inform the
8 public.

9 Q One way would be a press conference. I found it
10 effective for myself with issues that I would like to, you
11 know, spread further in the community. So that might be a
12 possibility in the future, too.

13 I heard in -- again in a news article that there
14 it was kind of vague so I would like clarification today
15 and it deals with data information submitted by the Los
16 Alamos Labs.

17 I heard that not all of the environmental-
18 assessment-type information -- not formal, but the
19 assessment-type information -- has not all come in at this
20 point. Is that still true? There is some outstanding
21 information that hasn't come to your office?

22 A I am not sure I understand what you are referring
23 to. We have a bookcase full of material that has been
24 submitted to date. Can you identify anything? Do you have
25 anything in particular that you think has not been

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1 submitted?

2 Q Well, according to this article in the last week
3 or so in the New Mexican, it had mentioned that there was
4 some information that was still coming, that your office
5 was still expecting from Los Alamos.

6 A Are you referring to the environmental assessment
7 that Mr. Horan mentioned yesterday?

8 Q As I said, it wasn't clear. I think you would
9 know better. We could go on like this all day, but I would
10 rather not.

11 A Okay. There is -- Mr. Horan mentioned a -- in
12 his submittal yesterday, which I have not yet read, I
13 believe that there is an environmental assessment that is
14 in some stage of preparation and after these hearings I
15 would -- certainly will investigate that to see if that is
16 correct information and to obtain that assessment if it is
17 correct.

18 Yesterday we referred to a new application to
19 address the mixed waste, waste stream identification and
20 what handling places and procedures, et cetera. That
21 material is expected this fall and beyond that I can only
22 speculate as to what was in the mind of the writer.

23 Q I see. Yeah, I have a concern that since the
24 process is being left up to the labs of what they submit to
25 you, I have a question of that process. You know, you

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1 wouldn't know what you are not getting is my concern.

2 One point that kept coming up as the day went on
3 was referring to other agencies, other federal agencies
4 that develop standards, that EID and your department, the
5 Hazardous Waste Department, followed these standards and
6 was not required -- it was required to meet with you, not
7 exceed, if I understand correctly.

8 Could you tell me some of the standards, their
9 current development times, the standard that you are using
10 to develop the permit? How long ago were these standards
11 developed? Were they -- for example, let me give you
12 something to aim at.

13 It was referred to quite a bit of a 1945 nuclear
14 regulatory or some nuclear regulatory agency had developed
15 certain standards. That concerns me a lot if any of those
16 standards are still being considered and used as a, you
17 know, watermark for what you guys do.

18 The other thing is, what I heard yesterday -- and
19 I may have misunderstood -- was that new regulations from
20 EPA were just brought on line just a couple days ago. And
21 that maybe those regulations would affect the development
22 of the permit and that you will look into that and maybe
23 there will be a need to change the wording or the bulk or
24 some part of that permit that you have already developed.
25 I will shut up now and you can respond, I hope.

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1 A I perceive several questions there, so check and
2 see if I have got them, or I may ask you to repeat them.
3 The reference to the 1945, I believe, was a reference to
4 the Atomic Energy Act, which was the law that was passed.

5 The regulations that flow from a law typically
6 are ongoing and can be revised through an administrative
7 procedure, which is spelled out in the federal hierarchy
8 somewhere. The regulations that we follow under the
9 Hazardous Waste Program are promulgated under the authority
10 of the hazardous waste law, RCRA, which we talked about
11 yesterday, and those are being -- they are constantly being
12 reviewed, updated, added to, and in some cases deleted
13 from.

14 The state follows the federal law, the federal
15 government codifies the laws as of -- or the regulations,
16 and I make that distinction, the regulations -- as of July
17 revised as of July 1st and that's done on an annual basis.

18 The state then, once this book is available,
19 reviews it, identifies to the Environmental Improvement
20 Board what the changes are from the previous codification,
21 and suggests to the Board that they adopt the current
22 codfication.

23 It's an involved process and -- did that answer
24 your question?

25 So it is -- not all of them are revised, but the

1 body of regulations are revised and updated on an ongoing
2 basis.

3 Q Yes, thank you. That does add another question
4 to this particular topic.

5 Knowing that July is what probably the federal
6 government desperately aims at to get this done, to get it
7 out in order for your process to begin, it is kind of
8 rough. But I think that's kind of true, that considering
9 that July is that time of year on almost a predictable
10 basis, I have a question as to the timing of the submission
11 of this permit, that the permit comes at the time where
12 normally new regulations will be coming out and that there
13 might be -- we might be rushing and missing something by
14 doing this particular timing.

15 A Keep in mind this is an ongoing process. The
16 regulations that the Board adopted this year are the
17 codification for July 1st, 1988, last year. This book
18 comes out typically in the late fall.

19 The government printing office has to compile it,
20 put it together and, et cetera, so we are always a year to
21 eighteen months behind, due to all of the administrative
22 processes that the state goes through for hearing on these
23 regulations.

24 As far as the federal process, it also takes a
25 long administrative proposal -- proposed recommendations,

1 hearings, input, final regs, type of process, and that can
2 be and in some cases it's gone on for ten years or
3 something and has still not been resolved. So it is a
4 long, slow process, but our codification is typically one
5 year or more behind. So what I --

6 Q That doesn't exactly make me feel comfortable at
7 that point.

8 A The regulations that we have not adopted, EPA has
9 in some cases authority for, so they review to see that
10 anything we have not yet adopted that they can adopt, they
11 will.

12 So it's not like that body is neglected. It is
13 reviewed and will be picked up by the EPA portion of the
14 permit if they can legally do so.

15 Q Okay. I guess that brings me to the next point
16 that I think is real important to this hearing process and
17 permit process.

18 Several times yesterday in addition to the
19 printed material you handed out at a statement, there was a
20 mention on your part and on the lawyer's part of budgetary
21 restraints and limitations because of the budgetary
22 restraints. I would suspect that EPA is not fat right now,
23 either, as far as staffing and ability to do what their
24 mission requires them to do.

25 My concern and my question to you is that because

1 of the stated problems that you see with -- you know,
2 smaller staff, smaller budget than what not -- and these
3 are my words. I don't want you to lose your job -- that
4 you would appreciate the legislature and maybe even a bake
5 sale to increase your budget so you can do more toward the
6 direction of your mission without burning out and
7 overworking your already overworked staff.

8 You don't even have to nod your head on that one.

9 MR. YOUNGBLOOD: Mr. Shulman, I am going to ask you to
10 vocalize a little less and ask more questions.

11 Q Okay. The question is, with the mission that was
12 stated in the beginning of this, and the development under
13 the restraints of your budget of this permit because of
14 these restraints, do you feel that at this point the permit
15 that you have developed and the limits because of your
16 budgetary restraints on the monitoring process connected
17 with the permit, in good conscience and as an administrator
18 of a Hazardous Waste Program, is this the time, considering
19 all those factors -- sorry I continue to do it -- at this
20 time, considering all those factors, is this the time to go
21 ahead with this permit process and, therefore, the
22 monitoring process that follows it?

23 A Again, I think we are back a little bit to
24 philosophy.

25 I am aware of the mandate from Congress that EPA

1 Congress felt that this decision-making process was taking
2 much too long and that Congress is putting on some
3 deadlines and some pressures to make decisions. We cannot
4 study things forever and wait for perfect information, is
5 the message that I have gotten from that input.

6 In answer to your question, I have been working
7 on this for going on three years now and I am comfortable
8 that it's a reasonable product and it is thorough as it can
9 be at this time with the staff that we have. Is it
10 perfect? I would be vain to say, "Of course it's perfect."

11 Could it be improved? I am hoping that people in
12 the audience and the public have read this and are going to
13 offer suggests on how it can be improved. That's the
14 purpose of this hearing. Beyond that, I can only repeat, I
15 am confident that's an adequate permit to meet the intent
16 of the law and the regulations.

17 Q I guess that connects up with an earlier point.
18 The mission, itself, the intent I understand the mission of
19 your department to be, is to look after the safety and
20 health of the people of New Mexico in particular. I keep
21 hearing that you are meeting the standards of different
22 other agencies.

23 My question to you is, is it being -- having the
24 background of an educator and scientist, to accept the
25 minimum, to accept a scattered and incomplete and

1 questionable process to me of the different agencies that
2 are scattered around to do some pretty important monitoring
3 of the health and safety of our country as well as of New
4 Mexico, my question is, how can we accept the minimum? How
5 can we accept the standards that in basic common sense are
6 not adequate for following the mission that has been stated
7 today? And that's not a philosophical question.

8 A In my understanding the standards necessary to
9 meet the purposes of the law are set by the regulations
10 that are passed under that law. The state has the hearing
11 process which we discussed earlier with the Environmental
12 Improvement Board to consider how to properly achieve the
13 purpose of the law and how those regulations will be
14 structured.

15 As an administrator of the program, I can make my
16 input to the content of those regulations through the Board
17 process, but once the Board has acted and adopted the
18 regulations, then I am bound to follow their guidance on
19 what is adequate or what is necessary to meet the intent of
20 the law and -- through their regulations.

21 The proper forum to discuss the adequacy would be
22 in the forum of the regulations in front of the
23 Environmental Improvement Board, not this hearing here.

24 Q I take any opportunity to make the changes that I
25 feel necessary. I would encourage your office to do the

1 same, that if it's not the people in the trenches, the
2 people who are out there initiating and doing the work, you
3 know what works and doesn't work. You know what doesn't
4 feel right.

5 MR. YOUNGBLOOD: Mr. Shulman, you are testifying again.
6 I will give you a chance to testify, but now is the time to
7 ask questions.

8 Q Okay. Would it not be proper, if I could state
9 this as a question -- restate it -- would it not be proper
10 for you and the people in your office to be the ones to
11 challenge the inadequacies of not only the federal laws,
12 but the laws that New Mexico adopts?

13 A We tried to answer that in the the context of the
14 statement yesterday. You ask would it be proper for us to
15 challenge the regulations that we operate under? We do do
16 that to some extent in the discussion and the presentation
17 of the materials to the Board. But the actual staff
18 available -- to be an advocate of certain regulations --
19 there is none.

20 I perceive the mission of the Division, certainly
21 my portion of the Division, to best implement the
22 regulations, not to be an advocate for any particular
23 group, organization or facility, for that matter. We
24 strive to be impartial arbiters of how the regulations will
25 be implemented and leave the advocacy to people who have an

1 interest and have the time and the ability to do that.

2 Q I'm sorry for the complexity of the question, but
3 within your answer did I hear that again, because of
4 staffing and other restraints, that that limits your
5 ability to deal with possibly inadequate structures and
6 regulations?

7 A There's two factors. We have a limited staff,
8 that's correct, but also keep in mind that our purpose is
9 to administer the law, or the regulations, not necessarily
10 to act as an advocate and, therefore, it may well be
11 improper.

12 That's my personal opinion, which I had asked or
13 promised not to give, but that -- the better question -- it
14 would be a better question to refer to the Division as a
15 whole as the level of advocacy that it should take.

16 MR. SHULMAN: I see. Thanks for your patience. Thank
17 you.

18 MR. YOUNGBLOOD: Surely.

19 UNIDENTIFIED SPEAKER: May I speak?

20 MR. YOUNGBLOOD: No, I limited the questions on this
21 portion last night to the two people who had their hands up
22 last night.

23 UNIDENTIFIED SPEAKER: And I did. I had my hand up
24 last night before you adjourned and you said we would speak
25 in the morning.

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1 MR. YOUNGBLOOD: Okay, I will allow you. This is
2 absolutely the last questions on the general -- of the
3 general nature and then we are going to bring the EID in to
4 get exhibits and testify on the technical end of it.

5 I would ask you to keep your questions as short
6 as possible. Time is becoming a factor on this hearing.

7 MR. OWSIANY: I understand.

8 CROSS EXAMINATION

9 BY MR. OWSIANY:

10 Q Good morning, Mr. Crossman. My name is Daniel
11 Owsiany. Once again I heard you yesterday -- there was so
12 much information that you will have to pardon me. I have
13 pages of notes but your current job title with the state is
14 what, sir?

15 A I am the supervisor within the Hazardous Waste
16 Section. My primary duties are for inspection and
17 enforcement.

18 Q Of the regulations?

19 A Of the regulations, correct.

20 Q Okay. And what was your role in the permit
21 writing? You said you had done the permit writing. What
22 does that mean you wrote?

23 A I initially started out as the permit writer,
24 which meant that I was principally responsible for
25 reviewing the materials and composing the permit and during

1 that period of time I was appointed the supervisor of that
2 section, and then just recently I was transferred into
3 inspection and enforcement from permit writing.

4 Q I see.

5 Okay. So would you say that part of your job as
6 the supervisor for -- I am not clear on the terminology
7 here -- hazardous waste control -- is that part of what you
8 do, the control?

9 A I am not sure what you mean by "control." We use
10 inspection and enforcement.

11 Q Okay. Part of your job --

12 A We go out and inspect facilities.

13 Q Part of your job responsibilities for inspection,
14 et cetera, do you feel that part of your role is to
15 safeguard the public health and safety?

16 A That's always any public employee's role.

17 Q Okay. Because before -- I am kind of confused
18 because you said your role is not any particular advocacy
19 for one group or another and -- my sense of your answer to
20 the previous question was that you were very neutral. You
21 had no feelings one way or the other, personal feelings of
22 your responsibility one way or the other.

23 So now, you say that you do feel like you have a
24 responsibility to the public, is that correct?

25 A I tried to indicate that my personal opinion, I

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1 felt, was my responsibility to -- to hold back my personal
2 opinion and to try to act in the -- as a neutral enforcer
3 of the rules and regulations that we operate under, without
4 allowing my personal bent to influence a professional
5 decision.

6 Q Do you think that's possible, given the critical
7 nature of your job?

8 A I will admit it's extremely difficult.

9 Q I would think so. Let me ask you, prior to
10 working for the Environmental Improvement Division, how
11 long a period has that been?

12 A I started with the Division in November of '82,
13 so it's been -- it's going on to seven years now.

14 Q And that employment period has been continuous?
15 There has been no lapse?

16 A That's correct.

17 Q Prior to that who did you work for?

18 A For a short period I was -- attempted to be an
19 independent businessman.

20 Q As a consultant?

21 A Prior to that I was an officer in the United
22 States Air Force.

23 Q And what did you do in the air force? Were you
24 involved with nuclear power, nuclear energy, nuclear waste
25 disposal in any way?

1 A As an officer I had numerous duties. I was in
2 engineering management for a period of time. I was
3 communications management for a time, and crew operations
4 management for a time, as well as some periods of
5 instruction in those areas.

6 Q Okay. My question to you again, because I don't
7 feel it was answered, were you involved in any way with the
8 with nuclear -- either energy generation, waste disposal?
9 Were you involved with the DOE, the Atomic Energy
10 Commission, the Nuclear Regulatory Commission? Did you
11 have interface with them in any way regarding these issues?

12 A Not directly, no, sir.

13 Q What do you mean, "not directly"?

14 A For a period of time the air force had me
15 assigned to missile crew operations and very indirectly, I
16 was associated with the use of nuclear weapons.

17 Q And what time frame was that?

18 A At various times. Earlier in my career and
19 towards the end of my career.

20 Q You had what, twenty, thirty years --

21 A Twenty years.

22 Q And you retired as a colonel from the air force,
23 I would assume?

24 A I retired as a major.

25 Q As a major. Okay. Have you -- you said you

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1 worked for a short time as an independent contractor. Is
2 that what you -- the terminology you used?

3 A When I retired I attempted to get into the solar
4 energy business and discovered that that was not my forte.

5 Q I see.

6 Have you or are you currently or at any time in
7 the past have you acted as a consultant, employee, and
8 received compensation in any way, shape, or form from the
9 Department of Energy, Nuclear Regulatory Commission, the
10 Atomic Energy Commission, or Los Alamos National
11 Laboratories?

12 A Let me go through the list.

13 The Atomic Energy Commission, no. The Nuclear
14 Regulatory Commission, yes, in that when I was an employee
15 of the Division here, the NRC funded -- provided funds for
16 me to go to the school in Oak Ridge. For the other
17 agencies, no.

18 Q Okay. So there is some interface between your
19 agency and the Nuclear Regulatory Commission, correct?
20 Some cooperation?

21 A Within the Division, yes. There is some
22 cooperation in another bureau.

23 MS. NELSON: I'm sorry, I didn't understand that
24 question. When you said, "Division," did you mean EID or
25 back when he was in the military?

1 MR. OWISANY: No, in EID.

2 Q Let me ask you one last question, Mr. Crossman,
3 and then I won't take anymore of your time or this
4 hearing's time.

5 I want to pose a hypothetical situation to you,
6 and I ask for complete candor in your answer to this
7 question.

8 Let us say that this incinerator that we are
9 talking about now, the proposed permit is for, if it were
10 allowed to start up, let's say that all the modifications,
11 et cetera, that are in place currently and are - that will
12 be in place if this permit is issued by EID, if it were to
13 start up today burning mixed waste, given that it's
14 regulated by Department of Energy, AEC, NRC, this
15 conglomeration of agencies, et cetera, et cetera, would you
16 be willing to take fifty deep breaths from the stack of
17 that incinerator?

18 A Yes, I would.

19 MR. OWSIANY: God bless you.

20 MR. YOUNGBLOOD: Take a ten-minute break to allow EID
21 to set up for their technical testimony.

22 (THEREUPON, the hearing was in recess.)

23 MR. YOUNGBLOOD: Resume the hearing.

24 Mr. Crossman, are you ready to give your
25 technical testimony?

1 MR. CROSSMAN: Yes, I am.

2 MR. YOUNGBLOOD: You may proceed.

3 MR. CROSSMAN: I believe we have some exhibits to
4 introduce into the record first.

5 MR. YOUNGBLOOD: Great. Go over the exhibits, please,
6 counselor.

7 DIRECT EXAMINATION

8 BY MS. NELSON:

9 Q Yes. There's a list of EID's prepared exhibits
10 that has been left out on the back table for people who
11 care to follow it.

12 Mr. Crossman, I hand you what has been marked as
13 EID Exhibit Number One. Would you please identify what
14 that is?

15 A This is our public notice number twenty-eight
16 dated May 10th, 1989. This was the initial legal notice of
17 this hearing and the permit availability for public review.

18 Q Would you please identify what is marked EID
19 Exhibit Number Two?

20 A This is public notice number twenty-nine, dated
21 June 11th, 1989. In this public notice we principally gave
22 notice of the rescheduling of this hearing from the
23 original date to the current date.

24 Q Would you please identify what is marked EID
25 Exhibit Number Three?

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1 A EID Exhibit Number Three is the draft permit that
2 was prepared for public review.

3 Q Would you please identify what is marked EID
4 Exhibit Number Four?

5 A EID Exhibit Number Four is the news release,
6 89-038, which was released in connection with the first
7 legal notice.

8 Q Would you please identify for the record EID
9 Exhibit Number Five?

10 A EID Exhibit Number Five is a news release,
11 89-043, which was released in conjunction with the
12 rescheduling of the hearing.

13 Q Would you please identify what has been marked
14 EID Exhibit Number Six?

15 A EID Exhibit Number Six is a copy of the briefing
16 slides, which I will use in a moment, to orient the public
17 or acquaint the public with the content of the permit.

18 Q Would you please identify what is marked EID
19 Exhibit Number Seven?

20 A EID Exhibit Number Seven is the -- is a copy of
21 the computer listing of the names that we had entered into
22 our mailing list as of July 14th, which was Friday
23 afternoon of last week.

24 Q Would you please identify what is marked EID
25 Exhibit Number Eight?

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1 A Exhibit Number Eight is the statement which I
2 read into the record yesterday, entitled "EID July 18th,
3 1989, statement responding to particular concerns expressed
4 by members of the public regarding the LANL mixed waste
5 incinerator."

6 Q Mr. Crossman, regarding number six, the briefing
7 outline, is that a true and correct copy of the overviews
8 that you will be showing this audience?

9 A Yes, it is. It's the master from which the
10 transparencies were prepared.

11 MS. NELSON: Mr. Hearing Officer, I move into the
12 record EID's prepared exhibits numbers one through eight.

13 MR. YOUNGBLOOD: Objections? Please step forward.

14 MR. HANSON: It's not necessarily an objection.

15 Bradley Hanson.

16 You mentioned there were lists, so that we could
17 follow along, on the back tables. There are no such lists
18 back there.

19 MS. NELSON: There were yesterday. I don't know.

20 THE WITNESS: There were this morning. If I may
21 interrupt and recess for a moment I will get copies of
22 those.

23 MS. NELSON: While he is doing that, Mr. Hearing
24 Officer, EID will additionally have exhibit number nine,
25 which is the attendance sign-up sheets. They are marked

1 "A" and "B" to reflect both entrances into the auditorium
2 and there will be "A" and "B" for both day one and day two
3 of this hearing. We will move those into the hearing at
4 the conclusion of the hearing.

5 Exhibit Number Ten will be the witness sign-up
6 sheets, "A" and "B" again for the different entrances into
7 the auditorium, and -- for both day one and day two.
8 Similarly, at the end of the proceedings we will move them
9 into the record.

10 Exhibit Number Eleven will be the mailing list
11 for proceedings for information regarding the hearings "A"
12 and "B" reflecting which door and day one and day two.

13 MR. YOUNGBLOOD: Any other objections?

14 If not, EID Exhibits One through Eight will be
15 taken into the record.

16 (THEREUPON, EID Exhibit One through Eight were marked
17 for identification and admitted into evidence.)

18 MR. YOUNGBLOOD: Counsel, at the end of the hearing if
19 you will present the exhibits nine through eleven then they
20 will be taken into the hearing.

21 THE WITNESS: The gentleman was correct. We ran out of
22 copies of that and I am having more copies of that list
23 prepared and they will be on the table shortly.

24 MR. YOUNGBLOOD: Mr. Crossman, you may proceed with
25 your testimony.

1 I am going to accept Mr. Crossman's testimony in
2 full before questions are asked, so please do not interrupt
3 him.

4 THE WITNESS: Am I close enough to this microphone
5 here? All of the slides are of this nature, where they are
6 large print and are -- if they are not legible, please move
7 a little closer, and if they are legible I will proceed.

8 This is a briefing I prepared to acquaint people
9 with some of the acronyms and the content of the permit. I
10 will run through it more briefly than I had planned to
11 yesterday because we have discussed much of this material
12 yesterday.

13 We have discussed RCRA at length. This is the
14 full identification, Resource Conservation and Recovery
15 Act, and the public law identification of it.

16 We also discussed to some extent the '84
17 amendments which we pronounced as HSWA, which is the
18 Hazardous and Solid Waste Amendments of 1984.

19 We also mentioned the New Mexico Hazardous Waste
20 Act, which is Chapter 74 of the New Mexico statutes.

21 I bring these up because this permit is prepared
22 under law and is subject to those laws. I want to make
23 sure we are all aware of which laws are involved. There's
24 also regulations that are promulgated as a result of those
25 laws, and we have discussed those briefly.

1 I know the hearing officer asked that you don't
2 interrupt me, but, please, if I don't get the slides on
3 where you can see it clearly somebody raise your hand and I
4 will check and make sure it's visible.

5 There are federal regulations which are codified
6 at Title 40 of the Code of Federal Regulations. This is
7 their identification.

8 There are state regulations which are entitled,
9 "New Mexico Hazardous Waste Management Regulations," fifth
10 edition. These are recently revised and the fifth edition
11 went in effect on July 9th of this year.

12 Now, to identify the laws and regulations, let me
13 quickly run through the permitting procedure.

14 RCRA requires permitting for treatment, storage,
15 or disposal facility. We are in that process -- that is a
16 part of the process we are going through right now.

17 Very briefly, the first step is the applicant is
18 required to submit an application. It is made up in two
19 parts. You may hear the term "part A" or "part B."

20 Part A are forms. Part B are the details of all
21 the information on how, what, where, who and, et cetera.

22 After a great deal of technical exchange and
23 determination that the facility may be permittable, a draft
24 permit is prepared. That draft permit is distributed to
25 EPA for their review and comment. It's distributed to the

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1 applicant for their review and comment -- in this case Los
2 Alamos.

3 We maintain a copy here in our official file.
4 And in the case of Los Alamos, we made a copy available at
5 Espanola, as we mentioned earlier.

6 I made an additional copy available for primarily
7 the month of -- end of May and month of June in Taos
8 because of the interest that had been expressed, and then
9 that additional copy was moved to the Los Alamos library.

10 We also put out public notice. We put out legal
11 notice, which goes to all the news media, or to at least
12 one newspaper of general distribution in the area of the
13 facility.

14 We have a requirement that we ask a radio station
15 of general coverage in that area to do a minimum of at
16 least one public announcement. This was -- KOB radio did
17 this for us and we send copies of pertinent documents to
18 anyone on our mailing list at that time.

19 Then establishing a public comment period, which
20 a minimum of forty-five days, or public comment period
21 started officially May 11th. So we are approximately sixty
22 days into that. The official comment period will terminate
23 when the hearing officer so designates.

24 During that period we invite review and comment
25 from the members of the public, such as yourself. We

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1 invite comment from the applicant, and we, of course,
2 receive comment whether we invite it or not from the EPA.
3 They always feel free to comment.

4 My apologies to any EPA folks in here. We do
5 operate in a somewhat friendly manner.

6 The next step is to have a public hearing, if so
7 warranted. This particular public hearing was directed by
8 the director because of the anticipated public interest in
9 this permit.

10 The purpose is to address the permit conditions
11 and to -- for the public to submit any data, views, or
12 arguments that pertain to the permit, and that's exactly
13 what we have been doing for yesterday and will continue
14 through for today.

15 Once all this information is gathered, we must --
16 we go through and review all of the public input. Each
17 comment is -- will be evaluated and considered and a
18 decision will be made as to how that comment, input,
19 whatever it is, will be incorporated, if it is going to be
20 incorporated, or how it will affect the decision.

21 If changes are appropriate in the draft permit,
22 those would be made and in doing all of this, a response to
23 the comments will be prepared. Anyone who provided us a
24 name and address will receive correspondence indicating the
25 result of their input. It may not be tomorrow. I can

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1 assure you I have quite a few inputs and it will take time
2 to go through this step, but this is a mandatory step which
3 we will accomplish.

4 As I mentioned, if it's -- if the input is
5 received which we had overlooked or feel appropriate to add
6 or in any way make changes, the draft permit will be
7 changed. I emphasize that this was a draft permit to the
8 point of discussion and your comments will be considered
9 and, if appropriate, changes made in the permit.

10 Final step is to provide to the director a total
11 package summarizing all the information gathered and
12 recommendation of what decision he should make.

13 Once a permit, any permit, is issued that permit
14 becomes the specific operating rules for that facility,
15 whether it's this laboratory or any other facility that we
16 grant a permit to. Anyone under the laws or regulations
17 as Ms. Nelson read to us all yesterday, anyone who is
18 adversely affected by the decision on the permit may appeal
19 that to the Environmental Improvement Board.

20 That's spelled out in the Hazardous Waste
21 Management Regulations, section nine. Anyone who would like
22 a copy of that, contact our office at any time, 827-2929,
23 and we can make arrangements for you to get a copy of the
24 regulations.

25 UNIDENTIFIED SPEAKER: Is there a time constraint on

1 when you can do that?

2 THE WITNESS: Appreciate the interruption.

3 That appeal is limited during -- by the
4 regulations to a thirty-day period from the decision.

5 Very briefly, that is the permitting process. I
6 think you all -- we have discussed LANL's current status.
7 I hope these terms are understandable at that stage.

8 Under interim status they are currently
9 authorized for long-term storage of the chemical waste and
10 authority for chemical treatment of some of their waste.

11 They are authorized to incinerate their chemical
12 waste. They are authorized to incinerate explosive waste.
13 They also are authorized under interim status to incinerate
14 their mixed waste and they are authorized to burn waste
15 explosives.

16 I apologize to you-all. I found an error in this
17 slide. Okay.

18 MR. YOUNGBLOOD: Please, for the record say what you
19 just did.

20 THE WITNESS: For the record I indicated that I would
21 mark out "incinerate explosive wastes." Under -- we have
22 been discussing one incinerator for the last day and-a-half
23 and I had forgotten there's a second incinerator. This
24 slide is correct.

25 They have a small incinerator, which is

1 authorized to burn trash which may be contaminated with
2 explosives which they wish not to release to anyone and
3 they do burn trash which may be contaminated with
4 explosives. So this slide is correct. Please ignore my
5 outline.

6 Under interim status they are also allowed to
7 incinerate mixed waste and burn in open areas waste
8 explosives. These last two activities we have indicated
9 will not be the subject of this permitting hearing and will
10 be addressed later under similar hearing or similar
11 procedure, which I have just outlined.

12 Very quickly on the content of the permit, the
13 initial application was made in May of 1985, and we are
14 working on the revision through November of '87, with some
15 additional technical input since that '87 date.

16 Very quickly to the structure of the permit,
17 which is divided up in chapters which we call modules.

18 The first module set standard conditions common
19 to all permits, which lays out legal status, provides for
20 review, determines a legal term called severability which
21 refers to judicial judgment on a portion of the permit not
22 affecting all of the permit, or may not affect, lays out
23 some specific duties required by the regulation, and
24 defines any terms that need to be defined in the permit.

25 The second module sets out general facility

1 conditions, which identifies the facility generally,
2 requires that the design remain constant to what we
3 evaluated for the permit, provides for waste analysis,
4 security, inspection, training, et cetera, as shown on this
5 slide. I will slowly move it up for you.

6 Closure refers to the period when the operation
7 of a particular unit is no longer a plan. Then they go
8 through a closure procedure, which means that particular
9 unit must be closed, dismantled, taken out of service by a
10 set procedure and cleaned up to an adequate level so that
11 there is no remaining problem of closure.

12 After the first two general modules, we get into
13 specifics.

14 The module three addresses storage of hazardous
15 waste and containers. Here is where we start specifying
16 who, what, where, when, why, how specifics when they may
17 store, what waste they store, how much waste they store at
18 these points, what type of containers they can store it in,
19 and which closure plan and any special standards for
20 closure.

21 Module four goes to the treatment task. Again,
22 we specify who, where, when, why, what treatment,
23 everything. All of these are detailed in the permit and we
24 can discuss these at your pleasure later.

25 The fifth module controls or addresses the

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1 controlled air incinerator, the one which we have been
2 discussing for the last few days. Again the who-, what-,
3 where-type question, what incinerator are we talking about,
4 which waste, how will it be operated. We specify in the
5 permit the waste feed rate, the airflow rate, temperature,
6 oxygen levels and closure plan, brief, description of the
7 incinerators -- it's a two compartmented burning device
8 connected to an exhaust system cleanup train, which is
9 outlined here.

10 The burning portion has controlled temperature,
11 controlled airflow, and controlled waste feed rate.

12 The scrubber system is made up of -- very
13 quickly, the first column is a device to reduce the
14 temperature to maintain -- prolong the life of the
15 remainder of the equipment. It also scrubs out some of the
16 particulate filter that goes through a mechanical filter
17 device, which captures the major portion.

18 Solid particles go through a wet scrubbing
19 device. A column full of packing -- what is a called
20 packing material and liquids, which absorb the major
21 portion of the waste acid gases that might be formed, goes
22 through high efficiency particulate filters, which capture
23 remaining particles, and goes through a carbon absorber
24 column, which absorbs any fugitive or miscellaneous organic
25 gases, which may have gotten this far and ultimately

1 through a second high efficiency particulate filter to
2 capture -- back up and capture anything that may have
3 gotten this far. Obviously, the purpose is to destroy the
4 waste that can be destroyed and reduce the total volume of
5 the waste.

6 We discussed briefly the standards for
7 incinerators that are spelled out in the regulations and
8 must have a destruction efficiency. For most chemical
9 waste it is ninety-nine point ninety-nine percent
10 destruction efficiency -- that's destruction and removal
11 efficiency -- the full time. The ninety-nine point
12 ninety-nine ninety-nine standard applies to difficult
13 oxygen type waste, which will not be burned in this
14 incineration under this permit.

15 The standard for removal of acid gasses at
16 ninety-nine percent and particulate emission standard,
17 which is spelled out as a hundred and eighty milligrams per
18 cubic meter and one of the -- one of the speakers yesterday
19 converted it into a different standard. But numerically
20 they are the same.

21 The next chapter addresses any storage that may
22 occur in specific tanks. Again, the who, what, where, how,
23 when, so forth, identifying specific units so we can
24 that we can inspect to make sure they are living within the
25 standards that are specified for the permit.

1 And the final module in the state permit is the
2 industrial incinerator, which I earlier forgot and then
3 remembered. This is the small incinerator that burns trash
4 possibly contaminated by explosive waste. Again, we
5 identify the particulates and limit them to burning only
6 the waste that has been identified, ignitable waste,
7 possibly contaminated by high explosives.

8 Common to all of the modules are things that we
9 have included in the permit as attachments, which are an
10 official part of the permit. The entire permit is the
11 entire document.

12 In the attachments we have the waste analysis
13 plan, what waste or what analyses the waste will be subject
14 to, what inspections will occur, what training will be
15 is required for all their employees, the contingency plan,
16 closure plan, et cetera, are listed here.

17 We discussed yesterday Attachment G, the
18 authorized list of wastes and we specified also the
19 operating procedures for the chemical treatment. We have
20 in there a compliance schedule for some additional work
21 that the state is going to require the lab to do, and a
22 copy of the regulations, which will be a copy of the
23 regulations current at the time the permit decision is
24 made.

25 UNIDENTIFIED SPEAKER: Excuse me, Mr. Crossman, this

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1 contingency plan, do they include an emergency contingency
2 plan and effective --

3 MR. YOUNGBLOOD: I am going to ask you to --

4 THE WITNESS: We will discuss that later.

5 MR. YOUNGBLOOD: I am going to ask you to hold those
6 questions.

7 THE WITNESS: We will discuss that later.

8 MR. YOUNGBLOOD: Please write it down and we will get
9 to it.

10 THE WITNESS: That completes my prepared comments on
11 the content of the permit and some of the background that
12 we have -- of how the permit comes about.

13 At this time, if you will allow us to reassemble
14 at the table, we will proceed.

15 MS. NELSON: There's probably a new sign-up for today
16 that we should check.

17 MR. YOUNGBLOOD: Okay. We are now going to open for
18 questions of Mr. Crossman. Yesterday was a little
19 difficult in people raising their hands. I am going to
20 start on this side of the room, and we will just gradually
21 move across for questions.

22 MS. NELSON: That's the testifying witness list.

23 MR. YOUNGBLOOD: It's not that witness list --

24 MS. NELSON: We will leave the testifying witness list
25 back there.

1 MR. YOUNGBLOOD: Is there anyone on this side of the
2 room that has questions of Mr. Crossman? Two of you.
3 Please step up.

4 CROSS EXAMINATION

5 BY MR. ROBINSON:

6 Q Good morning. My name is Paul Robinson. Good
7 morning, Mr. Crossman.

8 I have a number of questions, some of which
9 relate to some things you suggested, and I tried to hold my
10 questions until the end of your complete testimony.

11 With respect to this proposal, when I entered the
12 room I saw a document called Hazardous Waste Incineration
13 at Los Alamos National Laboratory, on the sign-up table.
14 Are you familiar with this document?

15 A I have seen it and read it very briefly. I am
16 not familiar with it, no.

17 Q Is this a document that generally describes the
18 machine that we spent so much time discussing, the
19 controlled air incinerator at Los Alamos lab?

20 A I read it very briefly and other than that I
21 cannot really address that. That document was prepared, I
22 believe, for the Department of Energy and was provided on
23 the table at their -- for their purposes.

24 Q Mr. Hearing Officer, I would like to submit this
25 for the record as an exhibit, if I may.

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1 MR. YOUNGBLOOD: Objection? If not, let's let this be
2 Robinson Exhibit Number One.

3 (THEREUPON, Robinson Exhibit One was marked for
4 identification and admitted into evidence.)

5 MS. NELSON: Could I ask that we get some more
6 identifying information about it, when it was published,
7 such as that? Who did it? What it is.

8 MR. ROBINSON: Yes, this is a document that has
9 information on it, and it indicates that it is a Los Alamos
10 National Laboratory, LALP-89-30, July, 1989. It doesn't
11 identify an author.

12 MR. YOUNGBLOOD: You may proceed.

13 Q Mr. Crossman, could you read the first sentence
14 on the second page under the incinerator?

15 A I believe the sentence you want read is the
16 following: "The Los Alamos controlled air incinerator
17 (CAI), a highly modified commercial incinerator, was
18 originally developed to demonstrate volume reduction of
19 combustible, solid radioactive wastes."

20 Is that the sentence you referred to?

21 Q Yes. Thank you very much. Now, that CAI
22 incinerator is the same machine that is in module five in
23 the permit that you were just describing, isn't it?

24 A That's the same terminology we are using in the
25 permit. I would presume that that's the same incinerator,

1 but, like I said, I have not studied that document. Very
2 likely it is. Very likely it's the same incinerator.

3 Q Do you know of any other incinerators referred to
4 as CAI in Los Alamos?

5 A No.

6 Q Thank you. The concept that you just stated of
7 volume reduction of combustible solid radioactive waste,
8 that's not the function of the machine as addressed in this
9 permit, is that correct?

10 A This permit does not address radioactive wastes
11 so in that sense, yes, you are correct.

12 Q So that would make this chemical waste activity
13 something beyond that originally developed?

14 A It would appear so, yes.

15 Q Is it also reasonable to indicate that the
16 chemical waste handling activity of the machine is a small
17 element of the total waste through-put?

18 A I would characterize that as an element. As to
19 relative size of the activity at this time, as I indicated
20 earlier, until all of the waste streams are identified, we
21 couldn't make a judgment on the relative size of activity.

22 Q So you haven't reviewed any documents to indicate
23 the volume of material historically through this machine,
24 chemical, mixed or radioactive, is that correct?

25 A That's correct.

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1 Q That information is not included in the
2 application?

3 A The total volume of materials that has gone
4 through the machine, that's correct. That material is not
5 available -- that information is not available.

6 Q Neither is the mix of waste historically used in
7 the machine?

8 A That's correct.

9 MR. ROBINSON: Thank you.

10 I am tempted to turn around and use the podium
11 properly, and then I would have my back to you.

12 THE WITNESS: If you speak in the microphone the people
13 can hear what you are saying and so can we. You need not
14 turn to them.

15 MS. NELSON: Please, you are addressing the hearing
16 officer and us here.

17 MR. YOUNGBLOOD: It's fine, Mr. Robinson. Just do as
18 you desire.

19 THE WITNESS: We can hear fine.

20 MR. YOUNGBLOOD: If we can't hear you, we will tell
21 you.

22 Q What was the fee charged for -- to Los Alamos for
23 the processing of this application?

24 A There was no fee assessed to the permit
25 application.

1 Q Are fees attached to other more recent RCRA HSWA
2 permits?

3 A Permits are currently now subject to fees, the
4 fee regulations, that is correct.

5 Q And when was that fee regulation instituted?

6 A I believe the fee regulations went into effect in
7 November of last year.

8 Q And since this application predated that deadline

9 A -- this application predated those fee
10 regulations.

11 Q Thank you.

12 Now, to go back to some of the things that you
13 mentioned in your direct statement yesterday. There were
14 some discussions of the length between the Division,
15 enforcement of various statutes, and I wanted to discuss
16 those. You discussed only the air quality regulations as a
17 set of EIB rules enforced by the Division that may apply to
18 this facility, is that correct?

19 A The air quality regulations were the principal of
20 the regulations that were mentioned in the discussion
21 yesterday.

22 Q Now, might another set of rules that might apply
23 to the waste facility be the solid waste management
24 regulations recently adopted by the Board?

25 A I have not reviewed those. I don't know their

1 applicability.

2 Q Thank you.

3 Now, is it your opinion that the operator under
4 this permit will be required to meet other applicable
5 federal and state laws and regulations in the activities
6 permitted by this document?

7 A Yes, that's my understanding.

8 Q Do you feel -- could you indicate why the permit
9 where in the permit that policy is stated?

10 A That's included in module one, paragraph A.

11 Q Right at the very beginning, as they say?

12 A Absolutely.

13 Q Thank you very much.

14 You indicated yesterday under in response to
15 another question why it may or may not be possible to
16 separate the chemical from the mixed waste in the waste
17 stream at the CAI incinerator. That's still correct?

18 A I believe that's correct. It may or may not be
19 possible to separate the mixed waste component.

20 Q And in the analysis that you are requiring under
21 the permit you are only asking for documented levels of the
22 chemicals in the waste, not the other materials in the
23 waste which might not be regulated, is that correct?

24 A I am not sure I understand your question. Could
25 you repeat your question?

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1 Q Operations, as allowed under the permit, will
2 include the burning of mixed waste for which only the
3 chemical part is --

4 A This does not address or allow mixed waste.

5 Q Of the mixed waste, only a -- only a certain part
6 is subject to regulation of the chemical waste, of the
7 mixed waste, only a -- this permit does not regulate that
8 part, but you are going to be --

9 MR. YOUNGBLOOD: Mr. Robinson, I believe he answered
10 your question. Would you give the answer again?

11 Q I am trying to see how he can --

12 MR. YOUNGBLOOD: Listen to his answer, please.

13 THE WITNESS: We have tried to make it clear that this
14 permit addresses only chemical waste uncontaminated by
15 radioactive materials. This permit does not address mixed
16 waste.

17 Q Okay. Now, this machine is going to be allowed
18 to burn mixed waste after the chemical waste permit is
19 issued under interim status, that is correct?

20 A Right.

21 Q So there will be some batches of chemical wastes
22 and some batches of mixed wastes and some batches of
23 radioactive wastes of various kinds, and some -- in some
24 unknown sequence. Is that basically the operation?

25 A That's correct.

1 Q Now, how were you going to be able to tell what
2 are the ashes, or the effluents from those individual
3 batches?

4 A Okay. The -- any ash that is accumulated would
5 be subject to the applicable regulations that govern the
6 operation that that incineration occurred under. You have
7 posed a theoretical question, I believe, and the ash that
8 is generated from incineration may or may not be of great
9 volume, okay?

10 If the waste has very low ash content, it could
11 be very low volume. It's conceivable that the waste from
12 the one burn could be -- or the ash from one burn could be
13 totally removed before the next burn continues, in which
14 case it would be clearly subject only to the regulations
15 that apply to that particular activity.

16 It's also conceivable, as you just postulated,
17 that the ash could be allowed to continue to operate
18 through a series of burns of different wastes, in which
19 case the ash then would be subject to all of the
20 regulations and it would have to be handled in accordance
21 with all of the applicable regulations.

22 Either procedure is possible. Either procedure
23 is acceptable because our regulations would apply if the
24 waste such as that under the regulations was incinerated.

25 Q I appreciate that explanation. I believe that

1 when I said that with the approval of this permit they
2 would be allowed -- the lab would be allowed to burn
3 chemical waste, mixed waste, and radioactive wastes of
4 various kinds in different batches -- and that that is not
5 a hypothetical -- that that would be the fact if this
6 permit were granted, is that --

7 A That is correct, they could do that.

8 Q Thank you.

9 Now, checking my arithmetic with your arithmetic
10 using the hundred-pound-per-hour figure and a destruction
11 efficiency, DRE, of ninety-nine point ninety nine, we get a
12 point oh one percent residual, that's correct, and so out
13 of a hundred pounds, point oh one of that would be a
14 hundredth of a hundredth of a pound if I am moving the
15 decimal number over -- decimal point over --

16 A I would agree with that.

17 Q And a hundredth of a point is approximately five
18 grams, is it not? Four hundred and fifty-three grams per
19 pound?

20 A I don't carry that conversion figure around in my
21 head, but I would not at this point dispute your
22 arithmetic.

23 Q So a ninety-nine point ninety-nine percent
24 reduction of a hundred-pound batch would leave a residual
25 of a hundredth of a pound, about five grams, is that

1 correct?

2 A Assuming your arithmetic is correct. I won't
3 dispute the numbers.

4 Q And that is the amount that would be the stack
5 emission from the permitted efficiency per batch? Is that
6 the correct way to understand how that efficiency would be
7 utilized?

8 A That would be the emissions, right.

9 Q That's maximum amount?

10 A Right.

11 Q And there will be some monitoring data on a
12 continuous basis to indicate that that efficiency is
13 maintained?

14 A Right. There is monitoring requirements in the
15 permit.

16 Q And that's a continuous reading for the monitor,
17 is it not?

18 A Those are all continuous reading chart
19 recordings,

20 Q Now, this five grams per hour, we are talking
21 about a machine that's going to be permitted for use up to
22 the maximum level, is that correct?

23 A I am not sure I understand your term of "up to
24 the maximum level." They can operate within the parameters
25 of the permit.

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1 Q So the parameters would allow
2 twenty-four hour a day, hundred-pounds-an-hour operation?

3 A Yes, it would.

4 Q Which would be about twenty-four hundred pounds a
5 day, slightly more than a ton on a maximum day?

6 A That's correct.

7 Q And if that was considered to be a ton-a-day, and
8 that operated for three hundred and sixty-five days a year,
9 the nominal three hundred and sixty-five tons would be
10 approximately the full capacity of the machine, as
11 permitted?

12 A That's the ultimate capacity, using the rule of
13 thumb that we have presented earlier.

14 Q And, similarly, which could take the five grams
15 and multiply it four -- have -- there's about a hundred
16 grams, two hundred grams of emission per day at the
17 twenty-four-hour hundredth --

18 MR. YOUNGBLOOD: Mr. Robinson, I would ask you to
19 examine your arithmetic again, please. Five times
20 twenty-four. Hundred and twenty, not two hundred.

21 Q Well, hundred, two hundred -- okay, fine.

22 So a hundred and twenty is the figure, so that's
23 the daily maximum level, and that could also be multiplied
24 for an annual level and that would be the amount allowed?

25 A I will address your procedures. I am not going

1 to address your arithmetic at the moment, but your
2 procedure is correct.

3 Q Any help with the arithmetic is certainly
4 appreciated, Mr. Hearing Officer.

5 Now, another limitation you just indicated in
6 your briefing is the hundred and eighty milligrams per
7 cubic meter particulate emission?

8 A Right. That's an additional standard in the
9 regulation.

10 Q And that is a hazardous waste standard or air
11 quality regulation?

12 A That's from the hazardous waste management
13 regulation.

14 Q But it accomplishes the same type of regulatory
15 goal as particulate emissions under the air quality rules?

16 A I am not familiar with the overall goals. It is
17 somewhat similar to my understanding, but I can't address
18 the goals of the air quality regulations.

19 Q Is it even the same level of particulate control
20 as the air quality, or do you not know?

21 A I have not compared the two.

22 Q Perhaps the director can before his decision.
23 Now, the hundred and eighty milligrams per cubic meter
24 would be the maximum amount of parts of these five grams
25 that could be allowed per unit air out, is that correct?

1 A That's correct.

2 Q So if you have got about two-tenths -- two tenths
3 of a gram in a hundred and eighty milligrams, two-tenths of
4 a gram per cubic meter, five grams per hour, you would be
5 able to only put out so many cubic meters of air at this
6 maximum hundred and eighty milligrams in order to stay
7 within the DRE of ninety-nine point ninety-nine, is that
8 correct thinking?

9 A I believe you are -- I would like to clarify
10 something. First, are you discussing the standards from
11 the regulations or are you discussing the operating
12 requirements in the permit? Could you clarify that for me,
13 please, so I know the context of your question?

14 Q Well, I am discussing the material that you have
15 laid before me and I thought that we were only talking
16 about the permit, that we really haven't addressed the regs
17 in detail. Am I

18 A I presented those three numbers as the standard
19 in the regulations and if I misled you, I apologize for
20 that.

21 Q So isn't it --

22 A Those are standards that must be met by the
23 incinerator from the regulations.

24 Q And there --

25 A There are different parameters that were

1 demonstrated and are included in the permit.

2 Q So that standard is incorporated by reference
3 rather than incorporated with the direct statement in the
4 rules?

5 A Right. The standards were demonstrated in the
6 trial burn, which we discussed briefly yesterday. The
7 incinerator was operated under set conditions, pre planned
8 conditions, and demonstrated as to what was occurring by
9 sampling at that time.

10 Q So the numerical standards that you have been
11 discussing, the ninety-nine point ninety-nine, the one
12 eighty, are regulatory standards, which were demonstrated
13 to be met.

14 Q And the one hundred and eighty milligrams per
15 cubic meter, which is incorporated by reference into the
16 permit, how will that standard be verified?

17 A The trial burn demonstrated that if the
18 incinerator is operated at the condition that it was
19 operated under, that standard is met and improved upon. So
20 we adopted in the permit the operating parameters that were
21 demonstrated to equal or improve upon that standard.

22 Q So there

23 A So, therefore, the standard -- by inference the
24 standard will continue to be met if it's operated under
25 those conditions.

1 Q Thank you.

2 So there will be no sampling of the particulate
3 emission under this permit because the applicant has shown
4 that they can meet the standard, is that a paraphrase of
5 what you said?

6 A There is no direct requirement in the permit for
7 particulate sampling. That does not mean that it cannot
8 occur.

9 Q It could be required by request from the Division
10 as a special condition?

11 A Possibly it could be required. The Division can
12 also go out and conduct sampling during the incinerator
13 operation.

14 Q I would recommend that the Division consider
15 including this as a special condition in the permit.

16 Now, the waste analysis plan that I have reviewed
17 didn't indicate that carbon monoxide was a very significant
18 part of the base stream. What was the basis or the use of
19 that chemical in the trial burn from a waste analysis plan
20 standpoint?

21 A The chemicals that are regulated by RCRA have
22 been ranked by EPA in an order, dependent upon the ease
23 with which they can be incinerated. Carbon monoxide is
24 very near the top of the order. In fact, it's number four
25 in that listing of the materials which could be

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1 incinerated.

2 The order is from the most difficult to the
3 easiest, therefore, in that standard or using that
4 guidance, carbon monoxide is very difficult to incinerate.
5 And if -- the incinerator should be able to demonstrate
6 that it can meet the standards set upon it while
7 incinerating a difficult chemical -- that carbon monoxide
8 was chosen for that reason and because it's readily
9 available as a chemical specie.

10 Q Now, it's difficult to incinerate as compared to
11 the metals and other inorganic or organic chemicals found
12 in the hazardous waste stream at Los Alamos? You say it
13 was ranked number four for EPA's chemical?

14 A The regulated yes, it's ranked on the -- in
15 the listing as number four on difficultness for the organic
16 chemical subject to regulation.

17 Q How about compared to the metals?

18 A Incineration of metals does not change the
19 structure. They are not listed there. They have no
20 incinerability.

21 Q So to the extent that there is incineration going
22 on, the incineration actually does not treat the metals, it
23 merely provides a volume reduction?

24 A The metals would be accumulated in the effluent,
25 or the ash primarily, or in the scrubber device.

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1 Q And we are looking at -- just to review -- we are
2 looking at hazardous waste constituents that would include
3 some chemicals, some metals, and some compounds of metals
4 and chemicals?

5 A I am referring to Attachment G in the permit.
6 Page three-A of the permit lists the regulated
7 metal-bearing materials. There are no metal-bearing
8 materials authorized for incineration in this listing.
9 It's possible some of the organic chemicals, which are
10 listed for incineration as a remainder of this attachment
11 may have -- I can't tell you if they may have some metallic
12 elements in their total organic structure.

13 But, principally, the metal-bearing wastes
14 subject to regulation by the hazardous waste regulations
15 will not be incinerated in this incinerator.

16 Q The metal-bearing wastes will go to the tanks or
17 drum provided for the other modules, to summarize briefly?

18 A Right. Most of them are subject or are coded for
19 treatment in the treatment tanks.

20 Q Thank you.

21 Now, with respect to some of the parts of your
22 most recent briefing, in the records and reports that are
23 required, the records and reports required under module
24 five, the incinerator, are specified under module two, were
25 records and reports listed. Is that correct?

1 A Module two is the principal section where records
2 are - are spelled out, that's correct.

3 Looking to see in module five if there are
4 additional record requirements. I believe there are in the
5 reference to the current strip recorders.

6 Q Okay. Thank you.

7 Now, those records are to be compiled at the
8 facility, is that correct?

9 A Yes, that's correct.

10 Q Is there any particular reason why the Division
11 does not retain those records where it maintains public
12 files?

13 A As a matter of practice, we do not retain records
14 of any facility's activities other than what are generated
15 in the - in our inspection-, enforcement-, or
16 permitting-type activities. So that is correct for Los
17 Alamos. We do not maintain many of the records which we
18 require the facility to maintain.

19 Q And, similarly, the reports that are received,
20 they compile those records but they are provided only to
21 the Division, is that correct?

22 A Those reports that are required by the permit are
23 provided primarily to the Division.

24 Q Would the Division consider including a mailing
25 list of interested citizens as recipients of that report?

1 A Which specific report are you talking about?

2 Q The reports required under module two.

3 A We would certainly take that -- if that's your
4 suggestion, we will take that as a suggestion. At the
5 moment are you aware that the mailing list that we have
6 accumulated is more than two hundred names?

7 Q Yes. Are you aware that requiring it as a
8 condition of permit would put the cost at the applicant's
9 Pitney Bowes machine rather than yours?

10 A I think that's correct, that the cost could well
11 be -- would be the responsibility of the permit holder.

12 Q And that would certainly alleviate any need for
13 the Division to, therefore, bear those unbudgeted costs,
14 would it not?

15 A Looks like that, yes.

16 Q Similarly, requiring the applicants to provide
17 the records to a public repository, such as the Division,
18 could also be done at the applicant's cost?

19 A I would presume the same principle would apply,
20 that is correct.

21 Q Thank you.

22 Now, those records are only maintained for a --
23 the records of the -- under the RCRA permit are only
24 maintained for a three-year period, is that your testimony
25 from yesterday?

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1 A The standard practice under RCRA is records will
2 be maintained for a minimum of the three-year period.
3 That's spelled out in the regulations.

4 There are some special cases to that. If there
5 if the records are subject to any kind of litigation or
6 enforcement, they will be maintained until such time as
7 that issue is settled.

8 Q Thank you.

9 Since the facility has already had a twelve to
10 thirteen-year life and can be seen to be anticipated to
11 last considerably longer, would the Division consider
12 retaining the records for the lifetime of the facility plus
13 the closure period to provide greater completeness?

14 A That certainly is an option that we could look
15 at, if there is a reason to connect -- to require a
16 retention beyond the three-year period. Those records are
17 subject to inspection, which as I indicated we do on
18 approximately an annual basis. We do not -- we retain our
19 records indefinitely. There is no three-year statute on
20 those, or requirement on those.

21 Q So requiring this life of the facility plus
22 closure period would not be an unusual requirement for the
23 Division to therefore include as a condition of permit?

24 A It certainly could be included if it were
25 necessary or served a useful purpose.

1 Q And would you consider a completeness of a
2 monitoring record a useful purpose?

3 A It certainly -- it certainly could be, yes.

4 Q You wouldn't necessarily consider it one, though?

5 A Without knowing specifically what you are
6 referring to, you gave me a general question, I gave a
7 general answer. I apologize for that, Mr. Robinson. Some
8 records

9 Q In the RCRA permit?

10 A Generally, monitoring records are generally kept
11 much longer than the three-year period. The regulations
12 require a minimum of three years. There is no maximum set.

13 Q Thank you.

14 Now, to address some of the other elements of the
15 permit, the industrial incinerator, module seven, the
16 Spronz unit, that burns waste explosives and waste
17 contaminated with explosives?

18 A That's correct.

19 Q And it does not burn the same chemicals as in the
20 CAI machine and does not burn mixed waste, is that correct?

21 A It does not burn mixed wastes. It burns -- may
22 burn some of the same chemicals that are -- could be
23 incinerated in the CAI, the other incinerator.

24 Q But it couldn't burn the radioactive?

25 A That's correct.

1 Q Or the mixed?

2 A Or the mixed.

3 Q What if some radioactive material becomes
4 contaminated with explosives or wastes listed for the CAI
5 become contaminated with Spronz explosives? How would
6 those wastes be handled?

7 A You mean any -- the wastes --

8 Q The wastes going to the Spronz incinerator are
9 not wastes scheduled for the CAI?

10 A That's correct.

11 Q Okay. What happens when wastes are mixed between
12 those two waste streams?

13 A Those waste streams are geographically physically
14 located - the wastes that go through the Spronz
15 incinerator are generated at one technical area, primarily,
16 and are incinerated there.

17 Q So you have to have a spill between containers -

18 MR. YOUNGBLOOD: Mr. Robinson --

19 Q -- and the trackload. You have to get --

20 MR. YOUNGBLOOD: I am going to ask you to let him
21 answer, or our court reporter is going to have a nervous
22 breakdown with both of you talking at the same time, okay?

23 Q Excuse me. Sorry.

24 MR. YOUNGBLOOD: Please go on.

25 Q Sorry. I understand your answer, thank you.

1 Now, the module that relates to tanks refer to
2 some freeboard. I am wondering if those tanks are covered
3 and the freeboard is within that cover?

4 A The covers on those tanks sit on top of the edge
5 or are supported by the edge of the tank, so the freeboard
6 refers to a minimum level that the contents must be below
7 that upper edge.

8 Q So they would --

9 A The cover is over and above the freeboard. It's
10 unrelated to the freeboard.

11 Q So that's the extra space left in the top of the
12 tank?

13 A Yes, freeboard is the extra space left in the top
14 of the tank.

15 Q And these wastes in the tanks are separated so
16 they are not reactive and generate gasses or other
17 nonaqueous chemicals?

18 A The wastes that could be treated or treated or
19 stored in those tanks, could be individually reactive with
20 something else, but the -- I am not exactly sure -- I am
21 hesitating because I am not sure I understand your
22 question, and I think at this point I will ask you to
23 repeat your question.

24 Q The wastes mixed in the tanks have been reviewed
25 for compatibility so they do not generate gases?

1 A Right. The wastes that are processed in those
2 tanks in some cases do generate gasses but they are done
3 under known standards or known conditions.

4 Q Thank you very much. I am almost through, Mr.
5 Hearing Officer, for those interested.

6 The only reference to ash from the CAI
7 incinerator that I see is under effluent control on page
8 thirty-seven of the permit. Is that where you find the ash
9 control?

10 A That's correct.

11 Q Now, it indicates that the ash resulting from a
12 listed waste burn shall be disposed of as hazardous waste,
13 is that what the permit says?

14 A That's correct.

15 Q So that means that any ash from any waste burn
16 with a listed waste will be treated as a hazardous waste?

17 A That's correct.

18 Q It will not be analyzed to see if the waste is
19 not hazardous? It will all become hazardous waste?

20 A Under the regulations, if the waste is a listed
21 waste, the treatment residues from that will remain a
22 listed waste, no matter what level of that chemical remains
23 in those residues.

24 Q Thank you.

25 Now, the ash resulting from incineration of

1 characteristic wastes, those are different than wastes that
2 are called listed wastes?

3 A That's correct. Listed wastes are specific
4 chemicals that are listed by EPA and are parallel in our
5 regulations, specific chemicals assigned specific
6 identification numbers, characteristic waste.

7 If I may take a moment and use this as a vehicle
8 to explain to the audience, characteristic wastes are a
9 broad category of chemicals such as ignitables, acids, or
10 corrosives, reactive wastes which is a broad category and
11 based upon the characteristic of ignitability, P-8 or
12 reactivity.

13 Q That complete your characterization?

14 A Yes.

15 Q Thank you.

16 Now, the wastes from burns with characteristic
17 weights will be analyzed to see if they are still hazardous
18 and, if not, they can be disposed of by alternate means?

19 A Yes, that's correct.

20 Q What does disposition mean to you, the last two
21 words in item V.G.(1) of the permit, page thirty seven?

22 A If I may refer back to your earlier question
23 about sequential burn, this was - this refers to that
24 condition. If the hazardous waste portion of that
25 sequential burn dealt only with characteristic waste and

1 then others in the sequence dealt with other laws and
2 regulations, this waste could well be subject to those
3 additional requirements, but would only be subject to RCRA
4 if it retained that characteristic and was continued to be
5 subject to RCRA.

6 That is what I was trying to convey in this
7 passage.

8 Q Now, those other conditions, those are the other
9 regulatory systems?

10 A Right.

11 Q Such as --

12 A In your example postulated it could be Atomic
13 Energy Act laws and regulations, it could be POSTA or some
14 other laws or regulations which I am not all that familiar
15 with.

16 Q Thank you.

17 Each burn is going to have it's own barrel of ash
18 coming out of the bottom of the incinerator, is that
19 correct?

20 A That may be correct. It depends on the character
21 on the material to be burned. If it has no particulate ash,
22 for example, a liquid by itself generally creates very
23 little ash. A solid material generates much more ash.

24 It's possible that they could have a burn where
25 there was no discernible ash. Or it could be that they

1 would have a burn where there was a great deal of ash.

2 Q Thank you.

3 I noticed on your -- in your briefing on page
4 seven you used the term disposal and I noted in the permit
5 on page twelve that disposal is not one of the permitted
6 activities. I am wondering -- I am wondering what is going
7 on there.

8 Let's say page seven of your briefing indicates
9 permitting actions such as treatment, storage, and
10 disposal.

11 A Right.

12 Q At page twelve of the permit, first sentence
13 indicates permittee is allowed to incinerate, treat, and
14 store hazardous wastes, if in accordance with this permit.

15 A Could you do me a favor and put "incinerator" on
16 so people know what we are talking about?

17 Q Sure, I had to steal Mr. Henry's copy to use one.

18 A Thank you.

19 This is slide seven. This is the one you are
20 referring to?

21 Q Yes, sir.

22 A Okay. This was -- earlier there in my briefing I
23 tried to convey to -- that this was general -- somewhat
24 general permitting requirement. Any facility that treats,
25 stores, or disposes of hazardous waste is subject to the

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1 permitting requirements.

2 You are correct to point out that this permit
3 does not allow the disposal of hazardous waste at Los
4 Alamos. I apologize to the audience if I led them to
5 believe that this did address this disposal. It was
6 intended to only convey that these three types of
7 activities are subject to the permitting process.

8 Q Now, the -- to go back to page thirty seven, ash
9 MR. YOUNGBLOOD: Mr. Robinson, just a moment.

10 Would you turn this off? I think -- thank you.

11 Q Now, the alternate disposition referred to in
12 page thirty-seven under the ash control, that would be --
13 that would be included under other regulatory systems, you
14 were just saying. Now, could the waste from these
15 characteristic waste burns or wastes listed solely due to
16 the characteristics, could those be put in a municipal
17 landfill?

18 A If they were -- were no longer hazardous waste,
19 or no longer subject to our regulations, and that does not
20 mean that they could not be subject to some other
21 regulations. It's conceivable that, you know -- wastes
22 that are not regularly generated at Los Alamos could go to
23 a municipal landfill. I would have to presume that is
24 conceivable.

25 Q And you are not familiar with the history of ash

1 disposal from the CAI incinerator, are you?

2 A That's correct.

3 Q So you don't know whether any of the ash from
4 that from those burns have been disposed of at
5 nonpermitted facilities?

6 A That's correct, I have not investigated that.

7 Q And you don't know if any of that ash has been
8 rendered as nonhazardous, either?

9 A I have not personally looked at those records or
10 any records on that, that's correct.

11 Q Thank you.

12 The -- the phrase Resource Conservation &
13 Recovery Act, is more than just a phrase for forming
14 acronyms. It appears to mean apply a recycling or reuse or
15 recovery of resources. And I am wondering if the ability
16 to recycle or recover the wastes generated by the applicant
17 has been part of the application?

18 A Recycling, as you indicated, has not been
19 included in the permit as a requirement or in the detailed
20 review.

21 Q And hasn't been addressed to the application,
22 either?

23 A That's correct.

24 Q Would the -- would the Division consider
25 including a condition which required the Division to

1 evaluate waste reduction technology or waste recycling
2 technology?

3 A There are provisions in the regulations and
4 several exclusions which apply to recycling efforts. They
5 are difficult to read and understand. I believe you may be
6 aware of them. I will point them out at this time.

7 Certainly, if that's your suggestion the Division
8 would look at that and see if there is some way that that
9 could be applied, but we must operate, again, within the
10 provisions of the regulations.

11 Q Did the concept of issuing a final permit, which
12 encouraged resource recovery prior to incineration to the
13 maximum extent -- it would not limit the ability to use the
14 CAI incinerator, would it?

15 A I understand you to say that requiring recycling
16 would not limit the use of the CAI, and if that -- is that
17 correct?

18 Q Well, require that they consider recycling
19 technologies?

20 A That's correct.

21 MR. ROBINSSON: Thank you. I believe that's all my
22 questions at this time.

23 Thank you, Mr. Hearing Officer.

24 Thank you, Mr. Crossman.

25 MR. YOUNGBLOOD: Mr. Robinson. I believe we will take

1 about a ten minute break at this time.

2 (THEREUPON, the hearing was in recess.)

3 MR. YOUNGBLOOD: If you will take your seats we will
4 get back to the hearing.

5 Mr. Shulman, I believe you are first for
6 questions.

7 CROSS EXAMINATION

8 BY MR. SHULMAN:

9 MR. YOUNGBLOOD: Please state your name again for the
10 record.

11 Q My name is Howard Shulman.

12 I don't know if this needs to be on the record or
13 not, but according to our proceedings we are at part
14 three -- we are still dealing with the EID cross
15 examination. Has part four changed? I understood from
16 yesterday that the Los Alamos Labs would not be making any
17 comments?

18 MR. YOUNGBLOOD: So far as any information that I have,
19 part four that has not changed.

20 Q I see. I have had the experience of knowing that
21 there are a lot of Los Alamos employees who aren't here as
22 public. I was wondering if that process had changed.

23 MR. YOUNGBLOOD: To my knowledge, that process has not
24 changed.

25 Q Can we check that out?

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1 MR. YOUNGBLOOD: No, I don't think we need to check it
2 out. Go ahead with your cross examination of the EID.

3 Q The question I have is the test burn, as it
4 pertains to the development of the permit and the
5 acceptance, you know, of the application, I understand that
6 the facility that was used in the test burn, and correct me
7 if I am wrong, was shut down for a period of time prior to
8 the test burn?

9 A The incinerator does not operate all the time.
10 Prior to the test burn I believe it was --

11 UNIDENTIFIED SPEAKER: The microphone is not working.

12 Q Is that better?

13 A Would you repeat your question?

14 Q Sure.

15 The facility, the incinerator that was used for
16 the test burn I understand had been shut down prior and not
17 had not been used and possibly not used for a year or more,
18 is that correct? Could you give me some specific
19 information on the -- on that?

20 A That incinerator, again, is used at the --
21 according to the scheduling that the laboratory has, to
22 meet the requirements it has. It serves several different
23 functions and/or can serve several different functions.

24 I believe you are correct that it had not been
25 operating for a period of time, possibly extending to a

1 year. It's not a continuously-operated type of device.

2 Q Right, but to your knowledge?

3 A To my knowledge, prior to the test burn that
4 incinerator had been out of service, not operating, for an
5 extended period of time.

6 Q The test itself, the test burn, what was the
7 conditions, the duration, and amount that was tested during
8 that burn?

9 A Okay. The trial burn required the incinerator to
10 be brought up into operation using natural gas fuel, be
11 brought to temperature, hold that temperature for a period
12 of hours to demonstrate that conditions were stable.

13 Then waste was fed at a controlled rate,
14 monitored rate. All the operating parameters were held as
15 stated, as controlled as the instrumentation would allow.
16 At approximately -- I am doing this from memory --
17 approximately a thousand pounds of test material was
18 incinerated. So that there would be sufficient time to
19 gather the samples necessary to demonstrate the operation.

20 Q So that --

21 A Effectively, a long day, each day, for each of
22 the parameters.

23 Q So with the thousand pounds to your rule of thumb

24 A Of carbon monoxide.

25 Q -- would be maybe ten hours in addition to that?

1 A Approximately ten hours, yeah. There were some
2 occasions where the waste feed was stopped or could be.
3 For example, there was an occasion where they had to
4 replace one of the HEPA filters so the waste feed was
5 stopped and things were saved so that the operation could
6 take place. But, approximately ten hours, ten to twelve
7 hours. Like you said, they were long days.

8 Q You said how many days did this test take?

9 A There were four conditions that were demonstrated
10 in the trial burn. Two operating conditions with liquid
11 waste feed and two with solid waste feed for four days of
12 actual testing.

13 Q Were those four continuous days or was there time
14 in between?

15 A Generally they were continuous days. Yes, they
16 were continuous days. There was no break between them.

17 Q Did you feel professionally as a scientist that
18 with the - with that particular incinerator being shut
19 down for a year being extraordinary for a lab facility not
20 to use an incinerator for a year, that that condition would
21 alter the findings that most incinerators, especially of
22 that age, would not be shut down for a year and that it
23 created a special condition that the test was a fairly
24 pristine situation that normally wouldn't have occurred and
25 that that might affect the results of that? Did you - I'm

1 sorry, let me finish --

2 A I perceived several questions there.

3 Q Yeah, I will tag on one more as soon as you
4 finish with that load, okay?

5 A Okay. Is it unusual for the laboratory to have a
6 piece of equipment not operating? I don't believe so. And
7 their workload is a function of their assignments and it's
8 entirely possible that something could not be, you know,
9 assigned for a while.

10 Whether -- incineration generally is not a cheap
11 and inexpensive way to go. It's not the method of choice
12 in many cases. I don't consider it at all unusual if the
13 laboratory should choose not to use the incinerator, even
14 if they could legally do so.

15 As far as setting up unique conditions, that
16 incinerator is -- was brought to normal operating
17 parameters and operated at temperature for a period of
18 hours. I believe it was forty-eight hours prior to the
19 waste testing.

20 I think that would be sufficient to bring it up
21 into the similar conditions as to what would occur during
22 waste burning.

23 Q I am going to try to formulate this as a question
24 and not a statement. What you are -- what your response
25 was, is making -- I don't know if that is based on fact.

1 Did the lab actually say that the reason the
2 incinerator wasn't used for approximately a year was just
3 because it was not cost effective?

4 A No, that was my conjecture. That was a possible
5 reason why it was not used.

6 Q And as a question, in light of new information,
7 if in light of a budget of almost two billion dollars for
8 the lab to clean up its messes, to error on the side of the
9 angels, do you believe that that is something that is
10 legitimate and scientifically based, to assume that the lab
11 only did it for economic reasons, not because it was an
12 unsafe unit or that there were other reasons for that?

13 I would submit that in this permit process and --
14 I would like to request this be copied down for
15 consideration -- that no assumptions be made on what may
16 have affected that test burn, and that the facts on why
17 that unit was closed down for that long, and to me an
18 excessively long period of time -- you know, the weapons
19 facility, it may affect your way of dealing with the permit
20 and the, you know, application.

21 Thank you.

22 The other thing, and hopefully the final question
23 that I have, pertains to contingency plans.

24 I have unfortunately not been able to read the
25 permit or the application. In light of problems in the

1 Rocky Flats facility and assuming that Rocky Flats has the
2 same kind of bureaucracy that deals with different
3 agencies, the state, dealing with the federal regulations,
4 that there is some similarities between the two facilities
5 and the way the facilities were dealt with, that at the
6 Rocky Flats plant there is a history of filters being blown
7 off of their incinerators, with pollutants being, you know,
8 spewed out into the atmosphere.

9 Without getting into the Air Quality Act, which I
10 understand we are not going to deal with here, has the
11 permit and the application dealt with contingency plans for
12 the possibility of filters being blown off, as in the Rocky
13 Flats facility, on an almost regular basis?

14 A I cannot speak to what goes on at Rocky Flats
15 since I am not familiar with their operation. For this
16 incinerator, it has operated in the past at various times
17 and I am not aware of any blowing off of the filters, to
18 use your expression.

19 It is possible that a filter can be breached and
20 bypassed. That is sensed by the pressure drop, the
21 difference in pressure from one side of the filter to the
22 the other, and that is required to be monitored
23 continuously by this permit, this draft permit, and
24 automatically connected to the waste feed system so that if
25 that should occur, the waste would be immediately shut off

1 and not continued to be -- to use your expression, spewed
2 into the atmosphere.

3 Q I guess the point of information is that the
4 Rocky Flats incidents of, you know -- you know, those kind
5 of accidents were not reported, either. They were not
6 reported until the day of or the day before the FBI went
7 into the Rocky Flats plant so I assume since it wasn't
8 reported it didn't happen.

9 I think again it is sort of putting Los Alamos in
10 a kind of unique position that the DOE facility --

11 MR. YOUNGBLOOD: Mr. Shulman, I am being awfully
12 tolerant about questions. Do you have any more questions?

13 Q I appreciate it.

14 What -- in -- could you briefly go through the
15 contingency safety emergency plans that are required by
16 your permit?

17 A Contingency plan is Attachment D to the permit
18 and runs to some forty-two pages. I don't think I could go
19 through it briefly, but it does require that they have a
20 cadre of trained people to respond to hazardous waste and
21 hazardous chemical spills and to report what they have done
22 and it requires them to respond to and contain a spill or
23 release through cleanup. That's briefly forty-two pages,
24 condensed.

25 Q You did well. The question I have in addition to

1 the people - I assume you are talking about the Los Alamos
2 employees who will be trained? They are the cadre you are
3 referring to?

4 A Right, they are.

5 Q Will the permit require Los Alamos or DOE to
6 train emergency response people in the surrounding
7 communities that would be immediately affected by such an
8 emergency?

9 A No, the permit does not require training of
10 people outside the permitted community. I don't believe
11 that I could require them to receive the training. I have
12 no jurisdiction over those communities to require them to
13 receive the training.

14 Q Would it be possible to require the one receiving
15 the permit to offer the training?

16 A That certainly could be considered.

17 Q Could that be considered?

18 A And take -- we will take that suggestion into the
19 record and respond to it.

20 MR. SHULMAN: Thank you.

21 MR. YOUNGBLOOD: Mr. Shulman, thank you.

22 Is there anyone else in the aisle over here that
23 wishes to ask questions?

24 If not, anyone in this group -- I'm sorry, the
25 lady right here. Please step forward. Please state your

1 name and affiliation for the record.

2 CROSS EXAMINATION

3 BY MS. PIERSON:

4 Q I am a concerned citizen, Norah Pierson. This is
5 a little bit off the subject but relevant in another
6 context. For the record and for CCNS and other groups,
7 Southwest Research, I would like a list of the permits that
8 you have issued in this county of Santa Fe for private
9 businesses to handle radioactive wastes.

10 Information is surfacing that there are various,
11 quote, "laundries," here in Santa Fe -- one specifically is
12 behind the Ramada Inn -- that has been essentially
13 laundering radioactive materials for over twenty years, the
14 water of which is going into our sewer system and then
15 being sprinkled onto the polo grounds and used in probably
16 golf courses.

17 For the record I would like you to send a list of
18 the permits you have issued for private businesses to
19 launder radioactive materials here in Santa Fe County?

20 A If you will provide your name and address during
21 the hearing or afterwards I will forward that to the
22 appropriate bureau within the Division.

23 Q Certainly. The address is 115 Don Gaspar, 87501.

24 MR. YOUNGBLOOD: Thank you, Ms. Pierson.

25 Back over here. Please step forward. I'm sorry,

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1 sir, there's two of you coming. There I - I will allow
2 him first, and then you second.

3 CROSS EXAMINATION

4 BY DR. MOREY:

5 Q My name is Robert Morey.

6 MR. YOUNGBLOOD: Would you speak up a little.

7 Q My name is Robert Morey, Comprehensive Pain
8 Clinic.

9 Are there any medical personnel who understand
10 the toxic reaction in the human body who are on the
11 regulatory board that authors the toxic emissions
12 standards?

13 A I understood you are asking for the
14 qualifications of the members of our Environmental
15 Improvement Board that acts as our Board of directors, is
16 that correct?

17 Q Well, I am wondering if there are any medical
18 personnel who deal with pathology of toxic reactions.

19 A I am not familiar with the personal
20 qualifications, I don't know that there is someone with
21 those qualifications on the Board.

22 Q So it's quite possible that there is no one on
23 the Board who is familiar with a toxic reaction in the
24 human body with some of the substances that are emitted?

25 A I can't speak to their qualifications. I am

1 sorry. You would have to direct that question to the
2 secretary of the Board or to the Board chairman.

3 Q Are you aware of any data that is revealed that
4 Los Alamos that the Los Alamos area was revealed as a
5 hot spot of radioactivity after the Chernobyl accident?

6 A I have not looked for nor reviewed any data on
7 the radioactive monitoring of the results of Chernobyl.

8 Q So you wouldn't be aware of any information about
9 the meteorological activity of the Chernobyl accident and
10 the radioactivity that was brought through in connection
11 with the Los Alamos area?

12 A Only what's been published in the media and to
13 some extent I have looked at that.

14 Q Do you know if there was any -- any incineration
15 during that time, of radioactive materials?

16 A I did not check -- I have not checked the dates,
17 but I believe the incinerator was not operating at any time
18 during or immediately after Chernobyl or up to the present
19 time.

20 Q Are there records concerning the dumping of the
21 dumping or burying in shallow areas of waste products from
22 the 1940's to present?

23 A There are some records of past disposal
24 practices, yes. We are in the process of investigating
25 those, and that's included in the permitting process.

1 Q Was there also a recovery plan for that dumping
2 that took place?

3 A The processing that - and, again, I am speaking
4 somewhat out of context in that this is included in the EPA
5 portion of the regulations, but generally, the procedure is
6 to first identify what is involved and then make a
7 conscious decision on what needs to be done rather than
8 starting with the second step first.

9 Q Do you know if there is any record of accidents,
10 of spillage of toxic materials during that time?

11 A There are some materials in our records that
12 allude to spills, releases, et cetera.

13 Q Okay. Now, the new procedures for eliminating
14 these wastes, one of which is incineration, were these
15 practices proposed and taken up because the older practices
16 were considered primitive, unsafe, and unacceptable?

17 A I am not sure which older practices you are
18 referring to.

19 Q The practices of burying and other means of
20 dumping at the time, means or methods that are no longer in
21 use.

22 A Okay. I - you are asking me to speak to the
23 reasoning. You may well be aware that when Congress
24 reauthorized the Hazardous Waste Act in the 1984 amendment,
25 they made it quite clear that they wanted EPA to proceed

1 toward a -- what's called the land ban. Hazardous waste
2 could not be disposed of on the land unless they had been
3 treated to a level to make them no longer hazardous.

4 The reasoning behind that is conjecture. It's a
5 directive from Congress that that is a goal we should be
6 working for.

7 Does that answer your question?

8 Q In part it sounds to me like it was unacceptable
9 before and they are looking for a more acceptable means.

10 That's been about forty years since these
11 practices started. Is it possible that this incinerator
12 will in forty years be considered primitive and
13 unacceptable in light of safer alternatives, just as we
14 have changed in the last forty years our means of disposal?

15 Do you foresee that it is possible that this
16 means will be considered unacceptable and antiquated?

17 A There is a tremendous body of research and
18 investigation going on now in the industry. It's entirely
19 possible that something that is state of the art today can
20 be obsolete tomorrow. Certainly it's possible.

21 MS. PIERSON: Thank you. Thank you. That's all.

22 MR. YOUNGBLOOD: All right. Would you please state
23 your name?

24 CROSS EXAMINATION

25 BY MR. DAVIS:

1 Q Richard Davis, concerned citizen.

2 At the time of the test burn, when were those
3 instruments calibrated that were measuring those emissions,
4 do you recall?

5 A The sampling instruments were provided by a
6 contractor under contract to the laboratory to come in and

7 Q So --

8 A -- and collect the samples and provide them to a
9 laboratory for analysis. As part of that practice, part of
10 the standard procedure, there are calibration standards or
11 samples that are collected and calibration procedures that
12 go -- that are performed as part of the sampling
13 procedures.

14 So as a general rule, they were sampled -- they
15 were calibrated or standardized or in some way checked,
16 depending on the instruments and the procedure at the time
17 of the sampling -- in some cases before and after -- to
18 make sure they had not shifted, this type of thing.

19 But it depends on the specific procedure when
20 that calibration occurred.

21 Q How often do -- I mean, when I look through your
22 thing I saw that it said something to the effect that they
23 would try to keep things up-to-date as far as calibration
24 stuff. Is that part of the permit or is that just at their
25 discretion?

1 A The permit requires that any instrument used to
2 demonstrate compliance with the permit, which has a
3 calibration requirement provided by the manufacturer, must
4 be calibrated in accordance with the requirements
5 established by that manufacturer before it can be used to
6 demonstrate the compliance with the permit.

7 In other words, if the -- if the manufacturer
8 says it should be calibrated on a set schedule, they would
9 have to follow that set schedule.

10 I did not try to put down all of the possible
11 combinations. I required only that they demonstrate
12 compliance and keep records to show that they had done so.

13 Q My last question is the -- it seemed -- I am very
14 worried about computers and everything, and it seems to me
15 that I came across a couple of things being programmed.
16 Okay? And set programs -- I took a couple of notes --
17 Attachment J, page six, program accepting for temperature.
18 Do you know which computers these are, what their programs
19 are that they are supposed to be operating with?

20 A I am not sure which computers you are referring
21 to, but as a general statement I cannot identify to you at
22 this moment what specific computer is being used or what
23 specific computer program is being used for any particular
24 function.

25 Again, we specify performance standards, or

1 attempt to specify performance standards and leave the
2 demonstration to the ---

3 Q To them?

4 A To technology.

5 MR. DAVIS: Thank you very much.

6 MR. YOUNGBLOOD: Thank you.

7 Anyone else in this section over here?

8 Please step up and state your name and your
9 affiliation.

10 CROSS EXAMINATION

11 BY MR. HOLMES:

12 Q My name is Vance Holmes, and I am a concerned
13 citizen.

14 Basically my question is, as I understand it,
15 going back to my high school science classes, that any
16 exposure to excess radiation or natural radioactive
17 radiation presents a possible health hazard, is that
18 correct?

19 A We have discussed radioactivities and radioactive
20 subjects to some extent. If you will allow my comments as
21 not being current or expert in radiation, my understanding
22 of the field is that the direct cause and effect of high
23 intensity radiation is quite clearly established and not
24 subject to much debate within the community.

25 When you are -- when you get down to low exposure

1 rates and small exposure, there is not a consensus in the
2 community, scientific community, that the cause and effect
3 is directly related and discernible.

4 So in answer to your question, any exposure, I
5 would have to say, no, I do not understand that any
6 exposure to any radiation has a direct effect. My
7 understanding is that that's not yet a consensus.

8 Q So, in effect, because there is not a consensus
9 in the scientific community that really means that they
10 don't know?

11 A I can't speak for the scientific community. All
12 I can say is I don't know.

13 Q Okay. And I guess my question is because there
14 is that shadow of doubt, is it proper for an agency to
15 possibly expose the citizens of the community to a possible
16 hazard?

17 MR. YOUNGBLOOD: I am going to please ask you to hold
18 your applause.

19 A I think your question of what is proper and what
20 is emission should be directed to a much higher level than
21 I sit at. My charter is to enforce the regulations which
22 have been promulgated and provided to to our section to
23 address the properness of those regulations. I don't
24 believe that this is the correct forum.

25 MR. HOLMES: Okay. Well, I guess what I am saying is I

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1 feel it is our responsibility, as people, to look at what
2 you are doing and why. That's all.

3 MR. YOUNGBLOOD: Thank you.

4 Anyone else in this area over here?

5 CROSS EXAMINATION

6 BY MR. HANSON:

7 Q My name is Brad Hanson, private citizen, Bradley
8 Hanson.

9 In your presentation this morning, there was a
10 mention of a thirty-day appeal, at least I believe it was
11 appeal, on the decision should you grant the DOE and it's
12 minion labs its permit. That thirty-day decision, that
13 thirty-day appeal, am I correct in believing that it is
14 open for anyone?

15 As a concerned citizen, I wish to file an appeal,
16 can I do that? Can every citizen in this room and the
17 State of New Mexico, each individually file appeal?

18 A You are correct. Let me read you that statement
19 again so that everyone - this is right out of Part IX of
20 the state Hazardous Waste Mangement Regulations.

21 Paragraph ninety-two G one. And I read, "Any
22 person adversely affected by the decision of the director
23 concerning the issuance, suspension, modification, or
24 revocation of a permit may submit a petition for review of
25 the director's decision by the Environmental Improvement

1 Board.

2 So in answer to your question, yes, you have the
3 right under the regulations to appeal a permit decision.

4 UNIDENTIFIED SPEAKER: Would you give the address where
5 we might do so?

6 Q Yes.

7 A Any appeal should be directed to the
8 Environmental Improvement Board, 1190 St. Francis Drive,
9 Santa Fe, 87350.

10 Q I further ask that given the nature of this --
11 given the magnitude and nature of this decision that we are
12 trying to arrive at here, that you, at LANL's expense, mail
13 information concerning the right of appeal to everyone on
14 the mailing list.

15 A Okay. If I can address that procedure for a
16 moment for everybody's education.

17 At the time the paperwork is prepared for a
18 decision, we also prepare a response to comment to everyone
19 who has provided comments or asked to be put on the mailing
20 list, and that is a procedure borne within our regulations.
21 That is an expense borne by the Division, but everyone on
22 our mailing list will receive notice at the same time the
23 director signs the decision papers.

24 They will receive correspondence or
25 correspondence to that effect will be signed and it will be

1 mailed shortly thereafter.

2 Q That --

3 A That we will include reference to the appeal
4 procedures in that, in that correspondence.

5 Q Thank you. Some of the other issues that I had
6 with your presentation as it came up, I am trying to not go
7 into testimony here

8 MR. YOUNGBLOOD: Good.

9 Q Given the fact that this permit started in 1958,
10 I believe it was last revised in November of 1987. Have
11 you, the draft writer, considered new scientific findings
12 on global warming, the ozone destruction, the amount of
13 particulate matter that no matter -- somebody -- somebody
14 was batting around a-half-a-ton-a-year a little while ago.
15 All this has bearing on these -- on the ecological atrophy
16 that we have.

17 Have you considered in the latest revision past
18 November, 1987, any of these other issues? Or are you
19 basing your decisions upon what LANL and it's people tell
20 you?

21 Are you doing -- in your department doing any
22 independent research on your own concerning these issues?

23 A We do not have within our bureau anyone devoted
24 to research on the ozone layer or any of the other subjects
25 that you asked about for research.

1 We are, you know -- we do look at the regulations
2 and the standards that are in effect and I will consider
3 the standards and regulations in effect at the time the
4 permit is issued. The November, '87, date was the
5 application was complete as of that date and which we put
6 in a letter to Los Alamos, but --

7 Q Will you?

8 A Yes, we look at all the regulations and the data
9 that we have available up to the time of the decision.

10 Q Then you will revise before this application,
11 this permit application is approved, new scientific studies
12 up to July, whatever this date is, 1989?

13 A I am obligated by our procedures to accept
14 materials up to the period of time that the hearing officer
15 closes the record. I am obligated as your representative,
16 if I get information at the last instant before decision is
17 made, to run in and say, "Stop, I gave you bad
18 information."

19 I view that as part of my responsibility.

20 Q Then in light

21 A But I have to have some type of a practical limit
22 on how much material is being reviewed. Certainly,
23 anything that -- I am not above saying I made a bad
24 recommendation or I made a bad decision and I should be
25 reversed.

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1 Q The other question that I have come up with is
2 something that keeps nagging at me and keeps bothering me.
3 You say that dioxin waste will not be burned in this
4 incinerator. What will you do? How have you addressed the
5 issue of the dioxins that are known to be formed when you
6 burn toxic waste?

7 You say there are two, I believe you called them
8 well, they were more than that. The examples you said were
9 solid waste and liquid waste. It's known that when you
10 burn plastic you get dioxin.

11 How was this to be disposed of and is it
12 responsible to let these folks burn this stuff, create
13 another hazardous waste that must be addressed without any
14 without any further consideration? I mean, it seems rather
15 short-sighted that you will let them burn and then say, "Oh
16 well, what goes up in the air we can't be bothered about
17 and what comes out of the incinerator," just because it's
18 sealed in a can in a reduced form.

19 It seems that you are not following the waste
20 stream from start to finish.

21 MR. YOUNGBLOOD: Do you have a question, Mr. Hanson?

22 Q Yes, what are you going to do with this dioxin
23 that is created? I mean, are we going to sprinkle it on
24 our Wheaties or what?

25 What are you going to do? It's short-sighted to

1 not plan it.

2 A I am somewhat confused as to exactly what your
3 question is.

4 The overall discussion of incineration as an
5 acceptable form of treatment of regulated chemical
6 hazardous waste was conducted in a public forum through the
7 federal rules making procedures.

8 As far as looking at the products of combustion,
9 that's ongoing research being conducted by EPA to determine
10 what actually occurs and what happens.

11 The information available to us at the moment is
12 in this -- in these circumstances the formation of dioxins
13 is a negligible concern and may well be outside the sphere
14 of the actual law and regulations.

15 Until we have information that has a definite
16 direct bearing on something that is adopted as a state
17 requirement, I can certainly look at the literature and try
18 to remain conversant with all the research, but I must have
19 a basis of things that are firmly founded in state
20 requirements.

21 Q Well, that doesn't quite answer my question --

22 A I was afraid it wouldn't.

23 Q -- concerning dioxins. I suggest that since you
24 insist on passing this off to the EPA, when you pass it off
25 to them maybe you should ask them why they bought out an

1 entire town in Missouri because of dioxin contamination.
2 Ask the EPA about Times Beach, an entire community of
3 several thousand individuals

4 MR. YOUNGBLOOD: Mr. Hanson, are you leading up to a
5 question?

6 Q I am replying to his answer to my question, which
7 was not answered satisfactorily. Thereby proposing

8 MS. NELSON: Perhaps he could restate the question.

9 MR. YOUNGBLOOD: Would you like to restate the
10 question?

11 Q I think it's as clear as it can be. You are not
12 being responsible with what you say is negligible dioxin
13 solid waste matter to continue on throughout all of this
14 process I have heard, and this is my question, that you
15 have all these plans, all these monitorings, yet you have
16 no way to enforce them or to even oversee them.

17 How can you in all honesty recommend this permit
18 be granted when you have neither the staff nor the funding
19 to make sure that Los Alamos Labs and whoever they are
20 working for, are telling you the truth?

21 A I am not sure that your question is an answerable
22 question. The - it came across to me as almost
23 rhetorical. I will attempt to answer.

24 We are required to evaluate any application we
25 get from any facility to see if the operation proposed

1 meets the requirements of the regulations. I believe what
2 you are asking me to discuss is the philosophy of the
3 capabilities of the Division to act as a policeman and if
4 we do not have that capability, to deny any permit.

5 I don't believe that I have any -- any legal
6 basis to deny a permit which is lawfully received, lawfully
7 formed, because the state fails to provide a means to
8 enforce that permit.

9 I would be -- I would welcome any legal input you
10 can provide on that at any future point in time, but beyond
11 that, you are asking me to philosophize a bit and --

12 Q No, sir, I don't think I am. I think I am
13 addressing a very growing concern in the fact that several
14 issues have not been taken into consideration in granting
15 this permit, enforcement and compliance to start with.
16 What you are gambling with is absolutely our lives. And if
17 you can't enforce and make the labs comply with what they
18 say is qualified, then you shouldn't issue them this
19 permit.

20 MR. YOUNGBLOOD: Mr. Hanson, I am going to have to ask
21 you to ask questions.

22 MR. HANSON: I am replying to his answer to my
23 question.

24 MR. YOUNGBLOOD: I am not going to accept your
25 continual trying to testify in the line of asking

1 questions.

2 Q I am not trying to testify in the line of asking
3 questions, anymore than for the past two days we have been
4 witness to a lot of bureaucratic hiding around the rules.
5 The further --

6 The further questions I have, it was stated a
7 little while ago and the folks asked, "Does anyone on the
8 Environmental Improvement Board have any medical training
9 or any medical qualifications whatsoever to determine what
10 this waste will do to us?" The reply, I believe, was, no
11 one on the Board does. Does anyone involved in EID's
12 policy making facilities, or just your Division, have any
13 of these medical qualifications?

14 A Again, you have asked -- you have asked a very
15 broad question. I will try to give you some information on
16 the bureau or the Division as a whole.

17 The Division is staffed by people with many
18 different specialties and we are a portion of the Health &
19 Environment Department. Does anyone have health training?
20 Yes, within the Health & Environment Department, obviously
21 that would have to be, "yes." If you would like to ask
22 questions on the specific qualifications of any one
23 individual, then perhaps we could be more specific.

24 But bear in mind that the standards are
25 promulgated in a public forum outside of this particular

1 forum and that has already been accomplished. I - I can
2 try to explain them to you, but I certainly don't feel that
3 I can repeat all of the justifications for any of the
4 standards.

5 Q I think what I am asking specifically is, does
6 anyone who has helped you compile this report, have any
7 training or background or knows how to do the research of
8 the toxic effects of burning waste, chemical waste, mixed
9 waste, radioactive waste - whatever you want to call it -
10 on me, my children, my garden, my life, New Mexico's life?

11 A We did not submit this application to any medical
12 authority for determination of the medical effects of
13 operation under RCRA.

14 Q Thank you for answering that question. That is a
15 glaring inconsistency.

16 The last question, which you have already pretty
17 much answered in a roundabout way, when you sat down to
18 write this application as -- if I am to assume correctly
19 you were the project writer, correct --

20 A That's right.

21 Q -- of this draft permit proposal, did you rely
22 solely on information provided by the DOE, LANL, and its
23 folks in -- I will break this up into several questions.

24 A No, we had input from EPA and from EPA's
25 contractors as well as from Los Alamos and our own EID's

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1 inspection and records of what we had determined had been
2 going on up there.

3 MR. HANSON: Okay. I believe that's the only questions
4 I have at this time.

5 Thank you.

6 MR. YOUNGBLOOD: Thank you, Mr. Hanson.

7 UNIDENTIFIED SPEAKER: Excuse me, I have a question.

8 MR. YOUNGBLOOD: Who else wants to testify in this area
9 over here?

10 Okay. I am going to call on the two of you then
11 immediately after lunch because I have about five minutes
12 to twelve and, ma'am, you had --

13 UNIDENTIFIED SPEAKER: I had something that related to
14 this last testimony where it was asked if there was any
15 further legal information that he would welcome in regards
16 to the permitting process in general and I had something to
17 say about that.

18 MR. YOUNGBLOOD: I will allow you to say that after
19 lunch. Right now we are going to take a lunch break.
20 Please back in your seats at one o'clock.

21 (THEREUPON, the hearing was in recess.)

22 MR. YOUNGBLOOD: Let's come to order. We have this
23 gentleman.

24 Did you want to ask questions?

25 THE WITNESS: Mr. Hearing Officer, may I --

1 MR. YOUNGBLOOD: I believe you had raised your hand
2 before lunch. You go first and you second.

3 Yes, Mr. Crossman?

4 THE WITNESS: Fine. I am waiting. I wanted to clarify
5 a statement I made prior to the break --

6 MR. YOUNGBLOOD: Okay.

7 THE WITNESS: -- but it can wait.

8 CROSS EXAMINATION

9 BY DR. MARCH:

10 Q My name is Doctor March, Doctor Robert March. I
11 think I have perhaps four questions. Get the right page.

12 My first question is, as the supervisor for
13 inspection enforcement, do you feel that it is adequate for
14 the EID to check out what Los Alamos National Laboratory
15 says it has done, what it has recorded during its
16 operations, on only a once a year basis?

17 A I have tried to address that throughout the
18 hearing. Certainly, if we had more staff we could do more.
19 We do what we can with what we have.

20 If you may permit me a personal viewpoint: I
21 would like to have five more inspectors. Certainly, I feel
22 I could do a more thorough job with more inspection staff.

23 In all honesty, probably it's not adequate for
24 the state to try to enforce statewide regulations on two
25 thousand entities with four inspectors.

1 Q I would like to have you specifically address
2 whether you think it's appropriate to have an inspection
3 once a year at Los Alamos National Laboratory?

4 A I believe I have answered that.

5 MR. YOUNGBLOOD: Mr. Crossman, can you give a "yes" or
6 "no" to that?

7 A My concern in -- and hesitation, if I may explain
8 a little bit, is your use of the word "appropriate".
9 Appropriate under the Hazardous Waste Program and what
10 resources and charter we have been given, I would have to
11 say it's appropriate to inspect within the schedule that we
12 have.

13 Q My second question is, I am sure you won't be
14 able to answer this right now but I would like to get an
15 answer for it. How many former EID or EIB people have ever
16 worked or are now working at Los Alamos National Laboratory
17 since 1976?

18 A You are correct, I cannot answer that. We can
19 request it. I suppose we could request that information
20 from Los Alamos. I would have to check to see if we have a
21 legal basis or a legal I guess "basis" is the best word
22 I can think of, if we can legally request that information.
23 I suspect we probably can, but I would have to ask Los
24 Alamos that question. I don't know how many people are
25 working up there now that have ever worked for EID.

1 Q You would have to ask Los Alamos if it's legal to
2 find out?

3 A No, I would have to find out if I can legally ask
4 that question, if there is any legal limitations on that,
5 but that question I would have to refer to Los Alamos to
6 identify past affiliations.

7 Q All right.

8 A My concern is not -- I am aware of certain
9 Privacy Act laws that may have an impact there and so
10 that's the reason I don't know if I can even ask that
11 question, or if they would have a legal requirement to
12 answer that. But certainly that -- I would have to direct
13 that kind of question to Los Alamos.

14 Q Will you?

15 A Certainly, if you have requested it we will
16 direct that question to Los Alamos, if it can be done.

17 MR. YOUNGBLOOD: I want to clarify your question just a
18 moment. Are you talking about the section that Mr.
19 Crossman is in or are you talking about all of the EID?

20 Q Well, specifically the EIB that governs the EID's
21 behavior or rules or makes decision, specifically EIB that
22 you have referred to five people on the EIB Board?

23 A I believe that's correct.

24 Q Whether the current Board, actually not the
25 current Board but whether past -- is there -- what I am

1 getting at, is there kind of a revolving kind of door set
2 up with Los Alamos? I am sure people go from your Division
3 to their division for higher salary reasons, but what I am
4 getting at is, you know, are they -- is there a type of
5 revolving door where there would be quite an influence on
6 what the EID would rule on, how they would respond to any
7 inspections, any past inspections and present inspections?

8 MR. YOUNGBLOOD: I hear your concern. I was just
9 trying to zero in on whether or not you wanted just the
10 Board or wanted the Board and

11 Q I stated 1976 because I believe that's the date
12 that they started incinerating waste and this is an
13 incineration permit that is being -- so specifically, yes,
14 the EID regarding incineration, you know, since 1976, how
15 many people have left the EID and went to Los Alamos?

16 A Okay. Keep in mind that I have heard Division,
17 EID, and Board, EIR.

18 Q Right.

19 A And I understand you would like to know both.

20 Q Yes.

21 A Board and Division employees that are now or have
22 been --

23 Q Yes.

24 A -- at Los Alamos --

25 Q Yes.

1 A -- since '76?

2 Q Right.

3 MS. NELSON: Another question -- another question of
4 clarification. The hearing officer asked you by the -- by
5 the "Division," did you mean the Hazardous Waste Bureau or
6 everyone?

7 Q I'm sorry, yes, the Hazardous Waste Bureau.
8 Well, it would be good to know everything, but this would
9 be of interest to me right now.

10 My third --

11 A Go ahead.

12 Q My third question I haven't totally formulated
13 it, so, do you see a way to resolve the frustration and the
14 confusion that's the result of having so many different
15 regulatory agencies that are involved in one -- that are
16 involved in the incinerator?

17 For instance, people have asked questions about
18 the air quality and you say, "I can't answer that." People
19 have asked questions about radioactive waste incineration.
20 "I can't answer that."

21 It creates a lot of confusion in my mind and I am
22 sure everybody else that has come to these hearings. Have
23 you thought about resolving that? Have you thought about
24 ways to make it a simpler process, a more understandable
25 process, and a process where the public can access what's

1 going on to their understanding?

2 A I believe I have heard a multiple of questions.
3 I would have to start off with because each of these
4 proceedings that we have tried to explain, each flows from
5 a separate law. Perhaps the solution would be to go back
6 to Congress and for Congress to combine all of the laws
7 into one omnibus law and then tell the administration that
8 "We want you to set up one set of regulations." From
9 that's the only solution that comes to mind readily at this
10 point -- at this moment.

11 DR. MARCH: Thank you.

12 MR. YOUNGBLOOD: You were next.

13 CROSS EXAMINATION

14 BY MR. STRONG:

15 Q My name is Peter Strong and I am a concerned
16 citizen. To continue on that question, is the Los Alamos
17 record of incinerating waste, is that information withheld
18 under the Atomic Energy Act of national security?

19 A I have not been denied access to any information
20 by the citation of either the Atomic Energy Act or national
21 security. You know, any information I have requested, I
22 have not had that.

23 Q Is the burning of radioactive waste authorized
24 under the Atomic Energy Act? If not -- and if so, who and
25 what law authorizes the incineration of this radioactive

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1 mixed waste? And I have a couple of other questions that
2 will follow that up.

3 A I cannot speak to the Atomic Energy Act. I have
4 told the audience here everything I know about the Atomic
5 Energy Act, and that's quite limited.

6 My understanding of the act is that it divided
7 the radioactive world in two increments, the federal and
8 civilian, and that each has its own set of laws or
9 regulations under that law. It is much more complex than
10 that, I am quite sure.

11 Q Uh-huh. So is the burning of this radioactive
12 waste governed under the DOE or the EPA? And is the Air
13 Quality Bureau since it's exempt from these hearings,
14 are they -- is air quality addressed through EPA or DOE, do
15 you know?

16 A I don't know in what manner the Atomic Energy Act
17 applies to incineration through DOE orders. That's again
18 outside. As far as the air bureau, they operate under or
19 in conjunction with the federal Clean Air Act and their
20 regulations would -- could apply or would apply under their
21 rules to this incinerator.

22 MS. NELSON: Let me add a note of clarification, Mr.
23 Strong. I didn't notice you in the audience yesterday. I
24 don't know if you were or were not here, but where he had
25 available on table yesterday -- and I don't know if there

1 are copies still out -- an extensive statement of some of
2 the laws and regulations and which bureaus did this or do
3 not.

4 I do have one. I just wanted to ask the question
5 why some of these people aren't present to understand that
6 possibly through the Atomic Energy Act that there is so
7 much to it, I am just beginning to look into that.

8 And with the WIPP site hearings and the Public
9 Law 96164, which, from what I understood what the DOE paper
10 their interpretation of law and also having read the law
11 myself, is that they could throw out those public hearings.
12 That through -- I believe it's section 190 of the Atomic
13 Energy Act -- makes the public exempt and that only through
14 Congress can we change the Atomic Energy Act so that we are
15 fully protected and our health environmental biosphere is
16 protected. And it seems to me that until we do that, we
17 are going to have problems nationwide through this
18 contamination coming out of all these DOE facilities.

19 MR. YOUNGBLOOD: Do you have further questions?

20 MR. STRONG: I have. I want to submit evidence from a
21 Citizens Guide to Rocky Flats, a paper that's called
22 Environmental Safety Issues at a Nuclear Weapons Plant.

23 MR. YOUNGBLOOD: I am going to ask that you hold that
24 until such time as the members of the audience are asked to
25 testify, and that won't be but just a few minutes and then

1 you can put it in as an exhibit. Do you have further
2 questions?

3 MR. STRONG: No, that's it.

4 MR. YOUNGBLOOD: Mr. Hanson, you have asked questions
5 once. How lengthy do you think you are going to be? Are
6 you asking questions or do you want to submit testimony or

7 MR. HANSON: I am asking questions and in asking that
8 question I don't know, this is a procedural question before
9 I even get anywhere.

10 MR. YOUNGBLOOD: All right.

11 RE-CROSS EXAMINATION

12 BY MR. HANSON:

13 Q At lunchtime I was given a paper that talks about
14 the inherent problems of the HEPA filters. I would like to
15 find out - when I was given this at lunchtime someone also
16 said that the gentleman here has had a chance to look at
17 the paper and I want to make sure that he has reviewed this
18 because I think it's fundamental and I think maybe
19 everybody here that is going to speak should take a look at
20 this, too. So answer me if you want to wait until I
21 testify, that's fine.

22 MR. YOUNGBLOOD: Are you going to submit it into the
23 record?

24 MR. HANSON: Yeah, I think everybody should look at it.

25 MR. YOUNGBLOOD: Then I would suggest that you wait

1 until you testify and you can submit it.

2 MR. HANSON: May I ask the question whether he has had
3 a chance to review that?

4 MR. YOUNGBLOOD: You surely may.

5 Q The subject is high efficiency particulate
6 arrestor HEPA filters in the nuclear industry. Have you
7 had a chance to review this paper at all, sir?

8 A May I see it? I have - I don't recall having
9 reviewed that paper. It does not look familiar to me.
10 It's possible that it has been recently submitted and is in
11 the volume of material that we have just received. But I
12 don't know that we even have that document,

13 UNIDENTIFIED SPEAKER: I have submitted it already.

14 A Okay. Mr. Strong says he has submitted it so
15 it's in that material that was submitted. I certainly
16 would not claim to be familiar with it, no.

17 Q Okay. Well, the other question I had finding
18 that out is, what is the duration of time from when this
19 proceeding and all facts that have to be entered before you
20 release a "yes" or "no" on this permit? Is there a
21 sufficient amount of time to adequately review all of this
22 material?

23 A My goal is to review all the material and have it
24 ready to present to the director by the end of September.
25 That's a goal. I don't know if I will make that goal, but

1 that's my current goal.

2 MR. STRONG: Thank you.

3 And thank you.

4 MR. YOUNGBLOOD: Yes.

5 Have you had a chance to ask questions yet?

6 UNIDENTIFIED SPEAKER: Yes, I was the first speaker.

7 MR. YOUNGBLOOD: Do you have another question?

8 UNIDENTIFIED SPEAKER: Yes, I do.

9 MR. YOUNGBLOOD: All right. I will allow just a few of
10 these because if we start back over and we are answering
11 questions we are going on all day and I want you folks to
12 have a chance to testify and we only have this auditorium
13 until twelve noon tomorrow, so, please, if you have
14 questions, come forward.

15 If you would move forward, too, ma'am, and you
16 can follow her.

17 RE CROSS EXAMINATION

18 BY MS. SOLOMON:

19 Q Thank you, Mr. Hearing Officer, for giving me a
20 chance to speak. My name is Silvi Solomon.

21 I would like to know -- this pertains to what we
22 learned so far today. We learned that the -- as I
23 understood it, the hazardous -- the ash left over from the
24 incineration of mixed wastes, hazardous wastes, during the
25 interim period the last eight years, the ash has not -- is

1 not - is not - its whereabouts is not known, is that
2 correct?

3 A The question was have I looked at where the ash
4 is going under the interim status?

5 Q Yeah.

6 A Our bureau is divided into inspection and
7 enforcement, and permit writing. While I was in the permit
8 writing I was concerned with how to structure a permit to
9 apply to future operations. It may well be in the record
10 of inspection and enforcement, and I do not recall at this
11 point in time specific information, that there are records
12 in there.

13 As a general rule, the mixed wastes generated at
14 Los Alamos has remained at Los Alamos at some point. Now,
15 we have not pursued the mixed waste permitting action.

16 Q Excuse me, I listened to what you said, but I
17 still haven't come to understand it. What has happened to
18 the ash that was generated during the last eight years?

19 A I believe the correct answer to that is that it
20 is still at Los Alamos in a disposal transitory or disposal
21 shaft of some kind.

22 Q Thank you. Do you know where to find it if you
23 wanted to go and inspect it? Could you find out where it
24 is?

25 A I believe I do, yes. We can ask those questions

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1 of those appropriate people.

2 Q Will you please ask those questions, sir?

3 A Yes, ma'am.

4 Q Thank you. I would like to also know if you
5 would please ask the questions that would tell us what has
6 been burned during the last eight years in that
7 incinerator, from whatever records are now presently
8 available to you. Please find out what has been burned,
9 what has happened to the ash, where it is. I think that's
10 the main part that made me come up and use up more time.
11 Thank you.

12 MR. YOUNGBLOOD: Thank you.

13 Please, ma'am.

14 RE-CROSS EXAMINATION

15 BY MS. PIERSON:

16 Q Norah Pierson.

17 You asked if anyone knew of any -- don't know
18 quite how to phrase it -- extra legal advice in terms of
19 you keep saying that you are stuck with the permitting
20 process, and that you are stuck with the current laws on
21 the books in terms of regulating the burning of various
22 waste mix and hazardous and otherwise, and I just want to
23 remind you that after World War II the Nuremberg trials
24 established that to obey an order, even from one's own
25 government, that is morally wrong, is indefensible. I hope

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1 this will come into court in regards to our environment
2 before too long.

3 Nuclear waste is a crime against humanity. As
4 our representative, it is your duty to align your personal
5 opinions -

6 MS. NELSON: I am going to object to this.

7 Q -- with your job.

8 MS. NELSON: I object to the question.

9 MS. PIERSON: They asked if there was any legal way to
10 get around these regulations and I am saying, this is a
11 legal way.

12 MR. YOUNGBLOOD: Just one moment, please, ma'am. Your
13 objection again, counselor?

14 MS. NELSON: My objection is that this is not a
15 question. The witness is testifying.

16 MS. PIERSON: He asked earlier if anyone new of any
17 legal means other than the normal permitting process. He's
18 hiding behind "I am just obeying the law. I am just
19 obeying the regulations as they exist and I can't do
20 anything else," and I am saying, legally there is another
21 option for this man.

22 MR. YOUNGBLOOD: Ma'am, I am going to ask you to hold
23 this until everybody gets a chance to testify. You will at
24 that time get to testify in any manner that you desire.

25 MS. PIERSON: That's fine. I am -- I am -- he asked

1 the audience if they knew of any other legal out, as it
2 were, and I said, yes, I did.

3 MR. YOUNGBLOOD: I hear you and when your time comes to
4 testify, please go into it as deeply as you want to.

5 MS. PIERSON: I just don't want people hiding, you
6 know, behind "I am just doing my job." That's not enough.

7 MR. YOUNGBLOOD: I have heard what you said. Yes.

8 CROSS EXAMINATION

9 BY MS. NICHOLS:

10 Q My name is Jean Nichols. Do you consider
11 yourself an expert on incinerators?

12 A What do you mean, generators?

13 Q Incinerators.

14 A Oh, incinerators. I would -- I would say that I
15 am knowledgeable. I believe an expert would be somebody
16 with far more training than I have.

17 Q Are you familiar with the incinerators in Japan?

18 A No, I have not studied those.

19 Q Are you familiar with the book "Garbage
20 Management" in Japan leading the way?

21 A No, I have not seen that publication.

22 Q Japan seems to be one of the leaders in the world
23 in using incinerators. The reason they use them is because
24 they have a great landfill problem over there, but it seems
25 it would be smart to learn from the experience of Japan.

1 MS. NELSON: Mr. Hearing Officer, I am going to object
2 to this.

3 Q I will ask the question.

4 MR. YOUNGBLOOD: Yes, please do.

5 Q Don't you think that you could learn from a place
6 that does that, you know, the way that they do it? They
7 monitor it continuously. And they also monitor for a lot
8 more things than just the CO and CO2 that you have
9 mentioned that you monitor for.

10 Do you know that they are also in continuous
11 communication with the environmental agency on air quality?
12 That means while they are continuously monitoring the
13 what comes out of the stack, they have a radio right there
14 and they are in continuous communication with the air
15 quality environmental organization.

16 A If you are asking me if I am familiar with the
17 way the Japanese operate, no, I am not familiar with the
18 way the Japanese operate.

19 MS. NICHOLS: Okay. I just wanted to know the level
20 because it seems that in order to grant a permit it would
21 be wise to find out where in the world they are doing these
22 things and get all the information.

23 Also she mentioned, you know, about the
24 incinerators in World War II. Well, at that point they
25 built incinerators and put people in them and now they are

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1 building the incinerators on the outside and just poisoning
2 them.

3 MR. YOUNGBLOOD: Did you have something you wanted to
4 ask?

5 MR. WALKER: Yes.

6 MR. YOUNGBLOOD: I would ask again that you limit your
7 questions at this time - that you limit your appearance to
8 questions only. You will have a chance to testify later
9 on.

10 CROSS EXAMINATION

11 BY MR. WALKER:

12 Q Okay. My name is Frank Walker and I am a
13 concerned citizen. I wasn't here yesterday so I am sure I
14 have missed out on a lot of the information about air
15 quality and so I know that primarily we are not here to
16 cover the air quality.

17 But it's my chief concern and so I want to ask
18 you, in light of the fact that there has been a real fast
19 change in the public awareness of the greenhouse effect and
20 so forth, and in light of the fact that many of the laws
21 that are now on the books are probably not adequate to the
22 situation because our information is - has been coming in
23 so fast in the last decade, are you willing, as a person
24 who is a government functionary, but also has other
25 information at your disposal, which is beyond what the

1 current laws are based on -- I mean, you know, a lot more
2 than what those laws were premised on, are you willing to
3 make a decision as a government person that goes beyond the
4 letter of the law in terms of the strictness, strictness of
5 a decision or the basis for a "yes" or "no" in granting the
6 permit or denying the permit?

7 Are you willing to consider other things than
8 just the question of whether the letter of the law is being
9 addressed or adhered to or being obeyed by the applicants?

10 A Okay. I perceive two questions there.

11 First, the decision making is not my -- not my
12 realm. The decision will be made by the director of the
13 Division. And whether he will or will not consider all
14 these other factors, I cannot answer for. I will give him
15 my best professional judgment on the options available to
16 him and then he takes -- makes the decision from there.

17 Q Okay.

18 A Certainly, I will give him my best professional
19 judgment.

20 Q And your recommendation then, will that be based
21 on this strict adherence to the letter of the law and if
22 the person or if the agency applying for the permit is
23 doing that, you know, if you feel that the honest fact is
24 that there are overriding concerns which are above and
25 beyond the letter of the law, will your recommendation

1 reflect those? Or do you feel procedurally, legally that
2 you cannot include your personal philosophical or your
3 judgment in terms of good judgment but not legal judgment?

4 Are you allowed to make your recommendation on
5 the basis of your full opinion, or does it mainly evolve
6 around the question of legal technicalities?

7 A I think it's obvious I am not an attorney and I
8 don't get hung up on legal interpretations. I will give my
9 best professional judgment, given all the information
10 available to me, and I can I can't promise beyond that.

11 Q Okay.

12 A Certainly, the purpose of this hearing is to
13 gather additional information and I will consider all the
14 information that is presented or available to me.

15 Q Are you willing to go out on a limb and make your
16 recommendation based upon just hard evidence, aside from
17 whether it's in the law or not or whether it has to do with
18 the law or not, if there are general, not yet proven
19 theories about the greenhouse effect or whatnot, if there
20 are just good reasons to be worried but not provable, not
21 something which would necessarily stand up in court as
22 complete scientific consensus but things which are the
23 basis for real concern?

24 Have you been instructed to ignore most of those
25 things, which are not considered hard evidence, or do you

1 generally consider these borderline or so-called fringe
2 considerations, which to me are simply, you know, very,
3 very important, but not necessarily provable for the next
4 decade or twenty years because a lot of these things are on
5 the edge of your understanding?

6 A I don't believe I can answer your question. I
7 will give every consideration I can to every piece of
8 information I have. I can only promise I will give my best
9 professional judgment and I have to be prepared to stand up
10 and explain that, why that judgment came about or to
11 explain the judgment.

12 You bring up a multitude of different possible
13 subjects. The only charter that I have been given is I am
14 being paid to render my best professional opinion, and I
15 will do so.

16 Q Okay. I know it's not the province of this
17 hearing to discuss air quality very much. I have just one
18 quick question about that. If the two things that are
19 being checked or monitored are in -- somebody said this to
20 me at lunch so I don't know if this is accurate -- but I am
21 told you are going to monitor for carbon monoxide and
22 oxygen once a year.

23 Why not -- in case the incinerator isn't
24 functioning properly and you are not monitoring for other
25 toxic airborne wastes, how does somebody like myself, who

1 lives downside of this idea, this project, feel? How am I
2 going to feel safe that maybe months might go by how do
3 you know that months couldn't go by without there being,
4 you know, a release of toxins through the smokestack
5 because these things aren't being covered daily, weekly,
6 hourly, or whatever?

7 And this is the kind of question I had in mind
8 when I asked you if you feel in your guts that this thing
9 just doesn't make sense but still they are complying with
10 the rules as they are now on the books, which rules might
11 be very inadequate just by common sense, then how do you
12 assure us? How do we feel safe about the resulting toxic
13 waste coming out of that stack, even though theoretically,
14 if everything works just fine, most of it will be
15 incinerated down to the ash?

16 How do you feel that we are supposed to feel
17 confident that this is going to work just fine? There are
18 so many things that you say are safe, that the government
19 says are safe, and ten or twenty years later it's a
20 complete catastrophe.

21 So I feel that the burden of proof is upon
22 you-all to know ahead of time that it's safe, not just to
23 comply with rules that were written ten years ago when our
24 information was so limited.

25 So how do you assure me? How do you convince me

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1 that everything is going to go fine and once a year is
2 adequate?

3 It just doesn't make sense to think -- everybody
4 in this room knows that's common sense and not adequate?

5 MR. YOUNGBLOOD: I think you have asked the question.

6 MR. WALKER: Okay.

7 MR. YOUNGBLOOD: Do you want to attempt to answer the
8 question?

9 THE WITNESS: I -- if I understand your question to be
10 how do we assure you that this operation will proceed and
11 is safe? We have attempted to do that by requiring in the
12 permit monitoring of more than two parameters, that
13 monitoring an automatic shutdown of waste feed if any of
14 those parameters that are being monitored are out of
15 tolerance. That's how we are attempting to assure you that
16 that will work as planned.

17 Q In other words, this twice-a-year or once-a-year
18 thing of two -- that's just not accurate that only two
19 gases will be monitored once-a-year? This was

20 A Those are continuous monitors, any time the
21 incinerator is operating to burn hazardous waste.

22 Q So, in other words, there are -- there's built-in
23 equipment, which is continuously testing the air, is what
24 you are saying rather than somebody?

25 A For certain parameters, that is correct.

1 Q And does this include all the possible compounds,
2 gaseous compounds that could be released from whatever is
3 being burned? In other words, how many -- how many
4 compounds are there that have been proven to be poisonous
5 which are permeation or combinations of these particulates,
6 you know, of this mixed waste?

7 And do you have a sensor for each one of these
8 compounds? How many things might fall between the cracks?
9 How difficult is it to know that all the possible point of
10 impact zones are being tested on a daily basis and that
11 this doesn't turn into some kind of airborne Love Canal or
12 something?

13 And that's what I am asking and I haven't heard
14 convincing evidence yet.

15 A I believe you have asked a multitude of
16 questions. Let me give you a direct answer.

17 There are sensors that will monitor the resulting
18 oxygen level and the carbon monoxide level in the gas.
19 There are sensors that monitor pressure drops across
20 filters and temperatures in the combustion chamber.

21 During the trial burn those operating parameters
22 were shown to result in acceptable performance of the
23 incinerator. That is the monitoring that will be done on a
24 continuing basis, any time the incinerator is operating
25 with regulated waste.

1 We will come up and inspect the records in our
2 inspection program and that is the way the permit is
3 structured to propose to meet those requirements you have
4 postulated.

5 Q Do you mean, then, that any time those levels,
6 those readings go down or up too much, it means that in
7 general the thing is not working properly and that,
8 therefore, you would start checking for performance?

9 A No. That means that any time those standards are
10 not met, the waste feed will be cut off and that
11 incinerator will not be incinerating hazardous waste until
12 the proper operating parameters are restored.

13 Q Okay. So even without the sensors for all the
14 permeations of combinations of gaseous toxic wastes, you
15 are saying that you are so confident if the levels of CO2
16 and oxygen are being maintained properly, that you can be
17 you are confident if those are correct then there's not
18 going to be any other toxic - there's not going to be too
19 much of other toxic stuff coming out? But am I right in
20 understanding that you are saying you don't have to monitor
21 all those specific toxic gases? You just need to know
22 about those two sort of index or indices, and that if
23 they are okay, everything else is okay? Is that the
24 assumption?

25 I still don't know exactly what you are saying.

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1 It sounds like you are not going to be testing for poisons.
2 You are going to watch the overall performance of the thing
3 and if it looks good, generally, then you are confident
4 that everything is okay and you are not going to be
5 checking for specific toxin pollutants. Am I correct? I
6 am not sure that's what you are saying.

7 A You have asked a multiple question and let me
8 address the last one. We do not monitor for specific
9 chemical species other than the ones that I mentioned.
10 Does that answer your question?

11 Q Those two --

12 A We do not monitor for any other products of
13 combustion at this time.

14 Q Besides what?

15 A Besides oxygen and carbon monoxide level as an
16 indicator of the complete combustion of the waste.

17 Q So you don't monitor for any poisons, per se?

18 A That's correct.

19 Q Okay. And I guess I would like to see the
20 evidence, not being a scientist, but I would still like to
21 see the evidence that proves conclusively that if those two
22 levels are within certain parameters that there's a
23 guarantee that the other toxic wastes will be at minute
24 levels. Because it just doesn't make sense to me that that
25 would be completely conclusive evidence, but -- I could be

1 wrong, but I would like to see that, so how can I get that
2 information from you?

3 A If you can -- you could call after the hearing
4 and my number is 827-2923, and we can make arrangements to
5 get together and I will show you the material available to
6 me at this time.

7 MR. WALKER: Thank you very much.

8 MR. YOUNGBLOOD: Thank you. Yes.

9 UNIDENTIFIED SPEAKER: Could I ask one question?

10 MR. YOUNGBLOOD: Yes, ma'am. Would you please come
11 forward so everyone can hear you. Would you state your
12 name and affiliation?

13 RECROSS EXAMINATION

14 BY MS. BONNEAU:

15 Q Bonnie Bonneau.

16 It seems to me that oxygen burns very readily.
17 Is there really much oxygen that comes out of the
18 smokestack? I mean don't you have to pump oxygen in to
19 make the thing burn, oxygen and gas, and put a torch to it?
20 Isn't that how it works?

21 A The principle of an incinerator is to provide
22 more oxygen than is necessary to -- to completely burn the
23 material being consumed.

24 By measuring the amount of oxygen coming out, you
25 can determine that there was at least that much oxygen and

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1 it was available for the incineration of the material, yes.

2 Q So there's some left over?

3 A It always operates in an oxygen-rich or excess of
4 oxygen to allow complete combustion, or as complete
5 combustion as possible.

6 Q You compute how much you put in and how much
7 comes out and figure how much you got, right?

8 A I'm sorry, I interrupted you.

9 Q You can compute how much you put in and how much
10 comes out the stack and you can figure out how much you
11 destroyed?

12 A That's correct. We do have a requirement that a
13 minimum amount or I have forgotten minimum or maximum, but
14 we do address the amount of air going in and the amount of
15 oxygen coming out, so it's monitored at both ends.

16 Q And if there was no oxygen coming out, then that
17 would

18 A If it dropped below six percent, they would have
19 to shut off the waste feed.

20 MS. BONNEAU: Thank you.

21 MR. YOUNGBLOOD: Would you state your name and
22 affiliation, please?

23 UNIDENTIFIED SPEAKER: One question: They would have
24 to shut it off or automatically shut off? Is this one of
25 the automatic ones?

1 THE WITNESS: It would automatically shut off.

2 MR. YOUNGBLOOD: Please step forward and state your
3 name.

4 CROSS EXAMINATION

5 BY MS. HAVEY:

6 Q My name is Maureen Havey, and I am a
7 definitely a concerned citizen and a small business owner
8 here, and it makes me very nervous to speak in front of a
9 lot of people so I will try not to talk too fast.

10 MR. YOUNGBLOOD: Go ahead and ask your question.

11 Q What I want to know is, first of all, how you are
12 separating these hearings so that now you are doing it on
13 hazardous waste and later you are going to do it on the
14 radioactive portion, when in reality they could be burned
15 at the same time because they are mixed wastes that we all
16 know about, so I don't understand why this hearing is being
17 held right now when we can't really address the most
18 important issue?

19 MR. YOUNGBLOOD: You weren't here yesterday, were you?

20 MS. HAVEY: I couldn't afford to be here.

21 MR. YOUNGBLOOD: We went over this in depth. I will
22 allow you to attempt to answer the question, and I would
23 ask that you keep it rather short. It is in the record and
24 we went into it in great length yesterday.

25 THE WITNESS: If you will allow me to reduce it to an

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1 analogy, if you were to take your household waste this
2 is an analogy we used -- and you can separate it aluminum
3 cans, glass bottles, newspapers and other categories, for
4 example. Each of those can be handled separately.

5 What we are doing here is handling one of those
6 waste streams. The others will be handled under similar
7 proceedings at a later date.

8 As long as you don't throw all your trash back
9 together once you separated it, you can handle each
10 independently, and that's what we are doing here.

11 We have some legal limitations and please pick up
12 that six page document that was distributed yesterday.
13 It's available at the back of both rooms. And it was our
14 attempt to explain how this all fits together.

15 Q Okay. But it was my understanding that there is
16 a lot of waste in barrels that is not really certain
17 exactly what it is, so is that something that is going to
18 be put aside and not burned at some future date or
19 something?

20 A That's handled under -- it may be mixed waste and
21 it will be handled separately under other proceedings. We
22 have not yet addressed the mixed waste stream. That's
23 that is the glass bottles or newspaper portion. We are
24 dealing with the aluminum cans in my analogy today and that
25 is incinerated and subject to another set of regulations,

1 not a subject of this draft.

2 Q Is there something that you are personally - or
3 someone from your department is inspecting that this waste
4 is not being burned to try to get it out quickly before the
5 laws change? How do you know what is being burned there.

6 It doesn't seem that the EID has the resources
7 and the ability to actually go and monitor this stuff, so
8 how are we to have any credibility in what you are doing?

9 A Your question is how much work how much do we
10 need to do for you to be confident that we are doing
11 enough, and I really don't know. We obviously do not have
12 somebody stationed at the incinerator all the time to
13 watch.

14 We do require them to keep records under various
15 sets of regulations. We do go up and inspect those records
16 to see are they consistent or do they appear to be
17 accurate? Do we have any other information that would lead
18 us to question anything there? If that - your question
19 was, how much do I need to do to make you confident that I
20 am doing my job, and I really don't know.

21 Q Well, the reason I am asking that is because it
22 just seems to me that in the past there has not been a lot
23 of this honor system doesn't really seem to work and so
24 I would suggest that you might go on a different system,
25 such as having somebody there all the time.

1 And then one other question that really bothers
2 me is should there be some kind of accident -- and I know
3 we can't talk about radioactive waste because we are not
4 really burning it here -- so if there was a hazardous waste
5 accident, which would be some kind of explosion or fire
6 because an incinerator is a very hot thing, what are your
7 procedures for dealing with this type of accident?

8 MR. YOUNGBLOOD: Ma'am, that question was asked this
9 morning and was answered quite well in the record again.

10 MS. HAVEY: Okay.

11 MR. YOUNGBLOOD: Go ahead and give a very short answer.

12 THE WITNESS: Very briefly, the contingency plan is
13 contained in the draft permit and it runs to forty some odd
14 pages. Briefly the laboratory is required to have on hand
15 a cadre of trained people to respond to contained cleanup
16 and control any kind of an accident or incident involving
17 hazardous waste.

18 As a part of that, then they also are required to
19 inform the Division of the occurrence and what has
20 accomplished -- what has occurred to the point of the
21 reports and we would, of course, do whatever we could
22 within our capabilities to go up and monitor what was going
23 on and look over their shoulder.

24 MS. HAVEY: Okay. Thank you.

25 MR. YOUNGBLOOD: At this time does LANL have questions

1 of this group?

2 MS. BROWN: We have no questions, Mr. Hearing Officer.

3 MR. YOUNGBLOOD: No questions. Okay. I am going to
4 yes.

5 MR. ROBERT: Are all the laboratories burning in the
6 United States?

7 MR. YOUNGBLOOD: I'm sorry, sir. If you have to ask
8 questions, please step up.

9 MR. ROBERT: Okay.

10 MR. YOUNGBLOOD: Please state your name.

11 CROSS EXAMINATION

12 BY MR. ROBERT:

13 Q My name is Robert.

14 Are all the laboratories in the United States
15 burning or incinerating; that is, Sandia, Livermore, on and
16 on and on?

17 A The DOE Laboratories?

18 Q I don't know. I am asking you.

19 A You said, "all the laboratories." Do you mean
20 the Department of Energy Laboratories?

21 Q That create waste, laboratories that create
22 waste. Do they all burn or how do they handle it?

23 A Okay. There are numerous laboratories. There
24 are numerous ways that can be handled. If you mean
25 Department of Energy Laboratories the two in New Mexico are

1 Los Alamos, which has applied for an incinerator permit,
2 and Sandia, which has not applied for an incinerator
3 permit.

4 MR. YOUNGBLOOD: Are there further questions by those
5 of you who have not asked questions before? If not, thank
6 you very much for your testimony.

7 (THEREUPON, the witness was excused.)

8 MR. YOUNGBLOOD: At this time does the LANL have
9 written comments that they want to submit into the record?

10 MS. BROWN: Yes. My name is Shiela Brown. I represent
11 Los Alamos National Laboratory and I would like to submit
12 these comments and ask that it be admitted in the record.

13 MR. YOUNGBLOOD: Okay. Let this be marked LANL Exhibit
14 Number One.

15 UNIDENTIFIED SPEAKER: How do we know what that says?

16 UNIDENTIFIED SPEAKER: Could this be read?

17 MR. YOUNGBLOOD: No, ma'am, I am not going to read
18 this.

19 MS. NELSON: We can arrange for copies to be made.

20 MR. YOUNGBLOOD: We will arrange for copies and at the
21 present time if anybody would like to pick this one up,
22 they certainly may pick it up and look at it.

23 MS. NELSON: Why don't we give that for immediate
24 photocopying? Go across and get it immediately
25 photocopied.

1 We need to get the new witness sign-up sheet for
2 you.

3 MR. YOUNGBLOOD: Right after this short break.

4 MR. SHULMAN: Before the photocopy process I would like
5 to comment on this new process that affects this hearing.

6 My name is Howard Shulman, for the record.

7 The technology of copying this and making several
8 more copies available to the audience here I think
9 interferes with the process that -- which are about to move
10 into testimony, introduced evidence I think could influence
11 possible testimony by the public. The idea if we are going
12 to have to quickly read from a limited amount of copies
13 prior to our testimony, I think subverts the process of a
14 public hearing.

15 I think it's outrageous that it has been given
16 without being presented. It's handed to you folks and I am
17 having a lot of problems with the way Los Alamos is
18 treating this hearing process. This is -- even the fastest
19 reader in this room would have difficulty reading that in
20 the next half hour or hour in order to present testimony
21 and then have to pass it on to the rest of the people.

22 I'm sorry, this -- this is not okay. I would
23 like to lodge that complaint for maybe possible appeal
24 later because I have a feeling that you guys are going to
25 let this go. Los Alamos is getting sweetheart treatment

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1 here, and I protest that.

2 MR. YOUNGBLOOD: You are on the record.

3 MR. SHULMAN: Thank you.

4 MS. BROWN: Mr. Hearing Officer, I think under the New
5 Mexico Hazardous Waste Act and regulations that it is clear
6 that any party may submit written or oral comments in the
7 record, and that's merely what we have done today.

8 I would also like you to know that over the
9 period of the past three years we have submitted numerous
10 comments to the EID that are in the record that Mr.
11 Crossman has, and in the bureau files. Those, together
12 with the final comments that we are submitting today, are
13 our comments on the draft permit and a perfectly and
14 appropriate practice under the Hazardous Waste Act.

15 I would want to add, because I recognize the
16 concerns of everyone here, and I recognize the question
17 that has been asked -- and I want to say that we are taking
18 notes of all those questions and comments and that we want
19 to provide thorough and accurate answers to the extent that
20 we can on relevant questions that are being asked and we
21 are going to provide those for the record if you decide to
22 leave the hearing record open so that everyone can study
23 and analyze those answers and have an opportunity to look
24 at that again.

25 We are noting them down and going to try to

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1 answer them as thoroughly and accurate as we can in the
2 record in writing as soon as the hearing record is
3 available. Thank you.

4 MR. YOUNGBLOOD: Thank you.

5 In regards to your concerns, Mr. Shulman, we mean
6 to make the copies of this, I in no way was trying to say
7 you should be able to testify or to counter this particular
8 comment today. I am going to leave the record open. I
9 stated that yesterday. It's just a matter of waiting to
10 the end of the hearing and deciding how long we want to
11 leave it open. You will have a chance to give your own
12 written comments as a rebuttal to what LANL has just said
13 sent in.

14 MR. ROBINSON: Mr. Hearing Officer, I didn't hear the
15 exhibit and I was --

16 MR. YOUNGBLOOD: Yes, Mr. Robinson.

17 MR. ROBINSON: -- waiting for you to request objections
18 before you go through a process of accepting that document
19 as an exhibit and I was --

20 MR. YOUNGBLOOD: I hear you, Mr. Robinson.

21 MR. ROBINSON: I am concerned about the process. I
22 believe that this document is being submitted without a
23 witness to support it, so it is more in the line of the
24 written comment addressed by Ms. Brown than a statement
25 with sworn witnesses in support of it.

1 MR. YOUNGBLOOD: That is correct. The question was
2 asked to me late yesterday afternoon if this also would not
3 have as much weight as sworn testimony and the answer in
4 the record is, that was correct, it wouldn't have as much
5 weight as though it were sworn testimony and cross
6 examination had been given on it.

7 MR. ROBINSON: Thank you. If I can go ahead

8 UNIDENTIFIED SPEAKER: I came from Taos yesterday and
9 today and I am not sure if I will be here at the very end.
10 I can't stay until the middle of the night to hear when you
11 decide how long we have to get our written comments in.
12 But I have gone to a lot of public hearings and I, too,
13 would like to learn and absorb things and then, you know,
14 assimilate and research them and then write my comments.

15 And I hope that you will give us like three or
16 four weeks or something to study the LANL report and do
17 whatever research we can do.

18 MR. YOUNGBLOOD: I will hear arguments on this at the
19 end of this hearing.

20 UNIDENTIFIED SPEAKER: But what if we are not here?
21 How will we know how long we have to send in our comments?

22 MR. YOUNGBLOOD: Would it be possible for you to mail
23 them something that says how long they have?

24 MS. NELSON: We can. They could also telephone.

25 UNIDENTIFIED SPEAKER: The paper comes out Thursday of

1 next week so if people in Taos could have at least a week
2 or two or ten days through next Thursday when we can print
3 it in the paper to them then they can write comments.

4 MR. YOUNGBLOOD: I hear you and we will arrange to get
5 the information on how long the hearing record will be kept
6 open to you. A gentleman in the back, I believe.

7 UNIDENTIFIED SPEAKER: I wanted to ask, I don't
8 understand why what Ms. Brown had was any different from
9 what some of these other people had. They wanted to
10 present stuff and you basically said, "Hold it off we will
11 consider it later." Is that - how does this relate to
12 what she just handed you differs from what they wanted to
13 put in the record when they were trying to put something in
14 the record previous?

15 MR. YOUNGBLOOD: It doesn't. We accepted last night
16 into the record at least one if not a second document, and
17 anyone who wishes to put written material into the record
18 without testimony can do so.

19 Okay, we are going to take about a five minute
20 break while we get these - we need to do something first,
21 okay? Is there any objections to this going into the

22 IANL Exhibit Number One going into the record?

23 UNIDENTIFIED SPEAKER: On what basis, the fact that it
24 wasn't read to us? Or beforehand, yes? I will second
25 that.

1 MR. YOUNGBLOOD: What is your objection?

2 UNIDENTIFIED SPEAKER: The fact this was not available
3 ahead of time.

4 MR. YOUNGBLOOD: Okay, those have been noted.

5 UNIDENTIFIED SPEAKER: Will there be a copy for each
6 one of us?

7 MR. YOUNGBLOOD: He is making copies. They will be
8 placed in the back.

9 UNIDENTIFIED SPEAKER: Maybe thirty people or more
10 here.

11 MR. YOUNGBLOOD: There's more than that. We will see
12 that each one of you gets a copy before you leave today.
13 You had something?

14 UNIDENTIFIED SPEAKER: I think that it should be noted
15 that everybody in this room, with the exception of people
16 from LANL and DOE, probably object to the fact that LANL
17 and DOE officials are not testifying here.

18 MR. YOUNGBLOOD: This was noted yesterday, and I read
19 into the record that there was at least ninety percent of
20 those of you who stood objecting to it. Okay, yes?

21 UNIDENTIFIED SPEAKER: Not wanting to prolong anything
22 longer, after public testimony is given then you will also
23 take testimony on why and how the hearing should be left
24 open?

25 MR. YOUNGBLOOD: Exactly. At the end of all of the

1 testimony, and the reason for that is, as I explained
2 yesterday, is I don't know what is going to come up in the
3 testimony. I could make an arbitrary decision now and say
4 we will leave it open for ten days. It may well be that
5 somebody comes up with a good reason to leave it open
6 thirty days. As a matter of fact, with the introduction of
7 the LANL exhibit, if I had made a decision very early
8 yesterday, I probably would have decided too few days.

9 UNIDENTIFIED SPEAKER: Thank you.

10 MR. YOUNGBLOOD: Okay, let's take our break. That
11 exhibit is admitted to the record.

12 (THEREUPON, LANL Exhibit One was marked for
13 identification and admitted into evidence.)

14 (THEREUPON, the hearing was in recess.)

15 MR. YOUNGBLOOD: Ladies and gentlemen, if you will take
16 your seat we will go back to the hearing, in the portion on
17 the agenda where the public can testify. Again, let me
18 reiterate what I said yesterday at the beginning, you will
19 be asked to come forward and the court reporter will swear
20 you in. You will be able to give your testimony and at
21 that particular time then you will be subject to cross
22 examination.

23 The way I am going to do this since door A has a
24 great number of people who have signed up, and door B only
25 has about eight, I am going to take four or five off of

1 door A and then I will take one off of door B. I have
2 moved the better microphone over to this table, and I would
3 ask that when you come forward to testify, that you sit at
4 the table. This will enable you to bring your documents or
5 whatever and spread them out and get to them better.

6 Are there any questions on this segment of the
7 hearing?

8 If not, we will will Doctor Robert Morey come
9 forward.

10 ROBERT MOREY, MD

11 was called as a witness, and having been first duly sworn,
12 testified upon his oath as follows, to-wit:

13 DR. MOREY: I am going to have to I would like to
14 use the slide projector.

15 MR. YOUNGBLOOD: Okay. Dr. Morey, anything that you
16 show on the overhead projector, then I am going to have to
17 have copies to go into the record. Thank you very much.

18 DR. MOREY: They are right here.

19 MR. YOUNGBLOOD: All right. Would you make a statement
20 then to me that this is the same material that you are
21 going to show on the overhead?

22 DR. MOREY: The material that I have given in this
23 folder is the same material that I am showing on the
24 overhead projector.

25 MR. YOUNGBLOOD: Let this be marked as Morey Exhibit

1 Number One. Are there any objections to Morey Exhibit
2 Number One? You may proceed, Doctor Morey.

3 (THEREUPON, Morey Exhibit Number One was marked for
4 identification and admitted into evidence.)

5 DR. MOREY: Are there any requests for credentials?

6 MS. BROWN: May I have the name and address? We have
7 to get his name and address if we want to respond to the
8 people. I am not sure that we are getting everybody's
9 address that makes comments, because we are supposed to
10 answer

11 MR. YOUNGBLOOD: I am going to take that as a good
12 suggestion. I would ask you to begin with it, Doctor
13 Morey, and to give your name and address.

14 DR. MOREY: My name is Doctor Robert Morey. My
15 business address, Comprehensive Pain Clinic, is 3012-A
16 Cielo Court, Santa Fe, New Mexico, 87550.

17 Basically I am a neurologist. I deal with pain
18 problems in my practice. I have to resolve pain problems.
19 Many pain, chronic pain conditions stem from and are added
20 to by other conditions, such as the collection of poisons,
21 toxins if you will, in a person's system. These particular
22 substances are irritants and they compound pain.

23 They add additional irritation to the system, so
24 I must address these questions.

25 That's how I got into this field. This was not

1 my original intent when I got into medicine, but it has
2 become very obvious that it needs to be addressed.

3 I brought with me a series of lab reports that
4 are tissue analyses from a private laboratory from Doctor's
5 Data - that's the name of the laboratory in west
6 Chicago, Illinois.

7 These tissue reports show many things.
8 Basically, they are taken from the hair. Hair analysis.
9 This same data can be derived from skin and nail and
10 epithelium. In general, these are the areas where
11 residuals collect in the body, and hair is one of the best
12 indicators of these residuals.

13 There's many pieces of data that these reports
14 deliver, deficiencies, mineral deficiencies such as calcium
15 and such, mineral deficiencies and also toxic minerals.
16 That content is the primary piece of information that is
17 delivered in the report.

18 I would like to demonstrate some of these and
19 show you these. This is what it looks like before it goes
20 on overhead.

21 Now, I have been concerned about this for about
22 three - three years since I have been noticing some of my
23 chronic pain patients that there's correlations between the
24 buildup of toxic materials in their system and the chronic
25 pain and the difficulty of resolution of their disease or

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1 condition.

2 First, for simplicity sake, I didn't bring all of
3 them. About five percent of my patients are highly
4 sensitive people and I drew from basically this population
5 because they tend to -- it appears they tend to retain
6 toxic materials more strongly than people who are less
7 sensitive.

8 I am not going to get into depth as to how these
9 reports are set up, but I will try to be as brief as
10 possible and get across as much information as I can in a
11 short period.

12 This line right here indicates a healthy person's
13 level. They should have the different minerals and toxins.
14 Okay. Any variation from the mean, this is the direction
15 of excess, and this is direction of deficiency.

16 Now, the two substances that I have been most
17 interested in are strontium -- you can see the excess here
18 and barium, and this particular patient it goes into the
19 third standard deviation. Most pathology surfaces at about
20 into the second deviation about thirty percent -- right
21 about this level, and if you watch these two lines,
22 strontium and barium -- and I am not too sure the strontium
23 is one of my primary concerns -- but barium definitely is
24 because there's a high correlation of information that I am
25 going to give you. Now, I have noticed that over the past

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1 three years, since I have been studying this, whenever
2 these excesses are present, there's going to be quite a
3 number of deficiencies in this area.

4 Now, these are essentially minerals to life.
5 Cells don't work unless they have this stuff to operate on.

6 One of the characteristics of a barium deficiency
7 is the inability for the body to absorb and assimilate
8 calcium, which is necessary for the nervous system and for
9 the bones, obviously, and for muscles. During muscular
10 activity --

11 UNIDENTIFIED SPEAKER: Barium excess?

12 DR. MOREY: Barium excess. Now, you will notice up
13 here that there appears to be a calcium excess. This is
14 calcium. There appears to be a calcium excess. This is
15 the only indicator on the scale whereby there's excess
16 amount of calcium in the hair, which indicates there's
17 deficiency in the body.

18 And you will notice wherever there's an excess
19 amount of barium, there had been, and will be, an excessive
20 amount of calcium indicated in the hair, which means
21 there's exactly an extreme deficiency in the body --
22 osteoporosis, which if viewed through x-ray is usually
23 present. You will notice that this person has barium just
24 about off the chart and calcium deficiency is off the
25 chart.

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1 This particular person also - here are the toxic
2 mineral levels that have accumulated since, and cadmium is
3 one of the highest. Here is cadmium. You will notice it
4 is past the standard - third standard deviation and is
5 very high. The total toxins, which is accumulation of all
6 these, again, is off the chart.

7 I am going to go through these relatively quickly
8 to point out some of these.

9 UNIDENTIFIED SPEAKER: Are these people that live in
10 New Mexico?

11 DR. MOREY: These people live in Santa Fe and Santa
12 Fe and Espanola and some of my patients come from Penasco,
13 which is north. I am not sure about the meteorological
14 current there. That would be interesting to look into.

15 But now, I want to emphasize that there were many
16 sources of toxic wastes, industrial sources, automobile
17 paints, solvents - there's many sources, and the presence
18 of the incinerator is not the only possible source.

19 Okay. You will notice here again there is very
20 high barium, and strontium is moderately high. It's in the
21 second standard deviation. All these patients have very
22 serious, moderate to serious pathologies, different types
23 diseases and complaints ranging all the way from chronic
24 pain to chronic fatigue syndrome - can be a whole series
25 of gastrointestinal problems.

1 And my hypothesis is that because of these high
2 levels of these substances that inhibit digestion and it's
3 known that these toxins and some of these other substances
4 inhibit digestion, the body does not secrete, does not
5 produce the enzymes necessary to break the food down so it
6 can be absorbed in the body and still be functioning
7 properly, therefore, pathology disease.

8 Here are those levels. If you will watch those
9 areas here you will notice the imbalances that are there.

10 I took the patient's names off of these. Some of
11 them have given me permission to use their names and others
12 you will notice where it says "patient" I removed that
13 because I wasn't able to contact them and that same
14 condition exists in the files that have been submitted.

15 This patient, same: Barium, strontium, extreme
16 deficiencies.

17 You will notice that in the calcium, too - now
18 these patients, they exhibit symptoms of nervousness,
19 hyperactivity, extreme irritability, inability to cope.
20 Most of them are very unhappy people.

21 The total toxins down here, up into the second
22 standard deviation. You can see that.

23 Okay. Off the chart again, these two. You will
24 notice extreme calcium deficiencies, and others.

25 Now, I am going to deal with some people that

1 didn't get their drinking water from here. They are from
2 Penasco. They are from a distance away.

3 Now, drinking water is a factor in barium. There
4 is some barium in drinking water and it's been hypothesized
5 by some of members of the profession that I confer with in
6 town, that drinking water is the culprit of barium. I
7 wonder.

8 It may or may not be, because I have sent in to
9 independent laboratories water samples to see how much
10 barium is in there and I haven't received one test back
11 that has barium in the water.

12 My sampling is not complete. I have only sampled
13 a limited number of sources. Some of these people drink
14 bottled water, so water is a questionable source of barium.

15 This next sample is from patients up on the
16 mountain where the water should be relatively clean. I
17 assume, again, you notice barium and strontium here, and
18 another calcium deficiency and the whole body relies upon
19 the absorption of calcium. It's very necessary.

20 Okay. This person is also from this region.
21 She's from Penasco. She has very moderate high barium. It
22 doesn't show - it is real light here, and here it is a
23 higher level. Strontium is much lower.

24 She's much younger than the others I presented.
25 She's only sixteen. Age is not always a factor, as I will

1 show you later.

2 Total toxics here in the second stand definite
3 here with the pathology showed.

4 High barium, calcium deficiency. Excess
5 deficiencies, demonstrated here. Now, this person drinks
6 bottled and spring water. I wanted to point that out
7 because the water coming through the pipes has been pointed
8 at as a culprit and that is not always the case. Some
9 people have been drinking this for years. And Okay.
10 This thirty-nine-year-old male, high barium. Most of these
11 people have been here for all of their life to more than
12 ten years.

13 And not all cases, but most of them have, you can
14 see these extreme deficiencies over here. This person has
15 extreme anger. He's a very angry person and I have noticed
16 with these deficiencies a spontaneous anger. Deficiencies
17 are affected. We are complete people. We are not only the
18 physical stuff here. We are mind and emotions and our
19 emotions are equally important to our health as the
20 material content in our systems.

21 Now, I am getting into some sensitive people.
22 People have been classified as normal sensitive and
23 hypersensitive. Personally I don't like that
24 classification because I think it labels people, for all
25 relatively sensitive people and some are more materially

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1 sensitive than others, and I would like to address this
2 point because it's relevant with what is going on with the
3 incineration question.

4 I can eat a peanut butter sandwich and it doesn't
5 bother me at all. My wife can take one bite of whole wheat
6 bread and she develops incredible headaches, anxiety, whole
7 series of problems. And if my wife weren't an
8 extrasensitive type person - she has substance
9 sensitivities - I could not completely appreciate the
10 plight the handicapped extrasensitive people have.

11 I would say there's about five percent of the
12 population - that means out of every one hundred in this
13 first grade there's probably five that are extrasensitive
14 and they are not only physically sensitive but probably
15 emotionally and mentally sensitive. Many are gifted
16 people, very gifted people, so their situation needs to be
17 looked at and not overlooked.

18 I have heard people say if it's only five percent
19 that are not very important. That's not true. Some are
20 the greatest contributors to our society.

21 Now, this is - we are getting to some of the
22 extrasensitive people, the sensitive levels.
23 Extrasensitive will come later. You also notice strontium,
24 barium, calcium deficiencies. Other toxics weren't that
25 high.

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1 Okay, again, two more indications and calcium
2 deficiency extreme. Barium inhibits calcium absorption.

3 This is the thirty-three-year-old male. His name
4 is Jed. These are real people like your neighbors, people
5 you work with, people who may seem upset around you all the
6 time, perpetually angry and you don't know why, perpetually
7 irritated and you don't know why, perpetually sick and
8 nobody knows why.

9 That's one of my questions, why? And I think
10 this reveals some of that information.

11 Again you will notice calcium barium,
12 strontium, calcium deficiencies and moderately high toxics.

13 Here is a lady from Espanola. She's lived there
14 for fifteen years. You will notice higher strontium than
15 barium. But also extremely high calcium deficiency and
16 very, very sensitive to anything environmental.

17 Speaking for sensitivities again, you know that
18 some people can smoke cigarettes and it doesn't seem to
19 bother them. Some other people can be in the room and have
20 headaches and that sort of problems. Some of us have
21 allergies and some of us are never bothered. Allergies,
22 that's sort of a gross type of sensitivity, one that is
23 common, but there are other types of sensitivities, like my
24 daughter. For example, you can touch her skin with metal
25 and she will break out in rash. In a few minutes I will

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1 show you why.

2 Okay. This is me. I am affected by this. My
3 barium level is high, and increased since I moved to Santa
4 Fe. It's increased by about, oh, this much. And I put in
5 a water filter, carbon water filter hoping that had
6 something to do with it. It increased.

7 My calcium is low. I have been examined. I have
8 osteoporosis. I have other deficiencies.

9 This is my daughter. My daughter is
10 two and-a-half years old. She was born and raised here the
11 last two and a-half years. And if you will notice here her
12 barium is just about off the chart in two-and-a-half years.
13 She's and you can see her deficiencies. She has quite a
14 few and is on the way of developing calcium deficiency at
15 two and a half years old.

16 You will notice that her total toxics are quite
17 high, too. This is disturbing to me for a person so young.

18 My daughter is - you know, I love her. I think
19 she's a cute little girl. She has screaming fits, mental
20 screaming fits. She's two-and-a-half years old and she has
21 some abnormal screaming fits. Sometimes she's very
22 unhappy.

23 One of her common complaints is her skin
24 irritation. She has excessive vaginal irritations. She
25 will say the first thing in the morning, "My vagina hurts,"

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1 you know, and that bothers me and I want to know why.

2 This is my son. He's four and-a-half. You will
3 notice that his total toxics are into the standard
4 deviation. Barium level is almost off the chart.
5 Strontium isn't quite. Calcium is extremely low, too.

6 You can see the other deficiency he has, and
7 there are a few excesses. This little boy was one year old
8 when this was taken, right up there in age. I don't know
9 if that shows one year old.

10 I have been informed that -- that by one of the
11 personnel from LANL here, absent today, that one of the
12 incinerators has -- does burn barium content materials from
13 explosives. One of them does. The other one has not, I
14 understand, in the last two years, or has not at all.

15 Okay. So you will notice here that this young
16 man, this boy, this baby that his barium in one year is
17 almost a third standard deviation. Here's normal again,
18 that high, and total toxins are that high.

19 Now, in the interest of science, I know there's a
20 lot more involved. In the interest of fairness, I don't
21 want to point at the incinerator. I don't want you to get
22 the impression today that is why. My question is, why?
23 Where did this come from?

24 Until last Wednesday when I saw a notice in the
25 newspapers there was going to be this permit hearing. I

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1 didn't know this stuff was being burned up there and it
2 popped in my mind, "Aha, a possibility." No final
3 judgments, but a possibility that it should be looked into.

4 Now, this young man is twenty-three years old.
5 You will notice here that his sample from body hair, why,
6 he's absolutely bald. Came in my office last year and
7 within, I believe he said, six months he went from having a
8 full head of hair to being absolutely bald, at
9 twenty-three.

10 You will see why. You will see there's barium,
11 strontium. You will see that he has an excess of aluminum,
12 cadmium. All of his total collected toxins has accumulated
13 off the chart.

14 Some of these can be managed and some of them I
15 am attempting to manage now and some of them I don't know
16 what to do with. If anyone has any information as to how
17 to manage them, please call me.

18 That's the first part of my presentation. I am
19 interested in representing any patient who has toxic
20 accumulations in their system and the hypersensitive or
21 more sensitive individual.

22 Quite a number of my patients fall in that
23 classification and tend to be overlooked or pointed out as
24 hypochondriacs, complainers, one thing or another. They
25 are not happy people and there's a real pathology behind

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1 their unhappiness. One of my fears is that this number
2 this type of symptom is growing, becoming more and more
3 hypersensitive people due to environmental reasons.

4 My children are becoming - are following that
5 classification that possibly their children will be even
6 more so, and I think we have to find out what is causing
7 this and stop it, because I know that that the divorce
8 rate is a part of this. I have seen people, due to their
9 hyposensitivity, due to their physical problems, have
10 relationship problems, and I can see this as a degeneration
11 not only of physical body but of the marital relationship
12 and overall culture.

13 Just as in the Roman civilization, lead plates
14 were considered very vogue at the time. Everybody ate off
15 lead plates until they went absolutely stark raving crazy,
16 and that civilization fell apart.

17 Well, I don't want that happening to us and we
18 have to do something about it.

19 I am disappointed that I am the only - well, I
20 was told that I am the only physician here. I am hoping
21 more physicians will come forward. Excuse me, there are
22 more physicians, but I am hoping more physicians will come
23 forward with information that they have accumulated in
24 their clinical situation and present it, if necessary. We
25 have to find some answer to this.

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1 MR. YOUNGBLOOD: I am going to hold questions until the
2 testimony is complete, and then everybody will have a
3 chance to ask questions.

4 DR. MOREY: That first portion was dedicated to the
5 material content of the human body. That which is
6 physical.

7 Next part is equally as important, but it's not
8 dealing with material remedies or content. It's dealing
9 with another phase of medicine that is now being looked
10 into called energetics.

11 Most people are familiar with acupuncture and we
12 don't completely know how it works, but we know it deals
13 with energy.

14 Homeopathy, another branch of medicine that is
15 not quite as old as acupuncture. It's been proven for
16 approximately a hundred years or more. That deals with
17 stopping symptoms and curing disease with very dilute
18 substances.

19 This particular one is thirty-X which means that
20 a mother's sample was taken and diluted. One portion of
21 that taken out and diluted like ten times. One portion out
22 of that taken out and diluted ten times and potentized in
23 between.

24 There's a procedure they do for increasing the
25 power of that, and that -- that process will go on, I

1 believe the highest potency now is about five hundred. So
2 the more dilute the substance, the more powerful the
3 remedy. You cannot start with a high -- high number remedy
4 like thirty-X like -- excuse me, like five hundred X in the
5 beginning. You must start with a very low potency like
6 five X and work up to it or it will not be effective.

7 This form of medicine has been proven. It's used
8 by, MDs, by DCs, osteopaths -- quite a number of health
9 care professionals. It's been proven it's not a
10 theoretical forum anymore and it's effective on these
11 sensitive people that I was talking to you about.

12 Now, we are dealing with energetics. We are not
13 dealing with substances that are in here because there are
14 some substances that are toxic that are used that in the
15 dilute form obviously they are not going to hurt anyone.

16 With the incineration question, the major focus
17 has been on the content that comes out of the top of those
18 stacks. The volume, the weight. I believe that's not the
19 only question we should look at. I believe the energetics
20 of that is important because the final product that leaves
21 the stacks is going to be highly diluted as it hits the
22 atmosphere, just as these homeopathic substances are highly
23 diluted when they are applied to the human body to cure.
24 Quite often the more diluted, the stronger it is.

25 Now, I wonder, the more diluted these pollutants

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1 are that come out of those stacks in terms of energetics,
 2 how do they affect the human body? Does anyone have an
 3 answer to that? Could it affect the human body in the more
 4 intense form much as homeopathics do? It's energetics.
 5 This is a whole realm of science that we have just barely
 6 scratched the surface, and I wonder if it is wise to permit
 7 this sort of activity without knowing those answers.

8 In the 1940's waste products were deposited
 9 underground. These hazardous waste repositories were
 10 underground and we didn't realize what we were doing then.
 11 That was forty years ago. Later we realized and dug up
 12 much of it up as we could and redeposited it or whatever,
 13 and now in forty years are we going to look back at the
 14 process being used right now and call that equally as
 15 primitive and equally as potentially catastrophic?

16 I don't have the answers to these questions. But
 17 there are alternatives presently. We have been made aware
 18 of those.

19 Mr. Crossman, you said that you had no hesitation
 20 in breathing fifty deep breaths of that air coming out of
 21 there. In the interest of energetics, homeopathy,
 22 acupuncture and intensification of a substance to dilution,
 23 I would seriously suggest that you don't do that, and if I
 24 thought you really would, I would get down on my knees and
 25 beg you not to.

1 I believe there would be some long-term effects
2 from these fifty breaths that you may not realize.

3 In terms of dilution, there's been some
4 information presented concerning low level radiation and
5 mortality. I would suggest that you want to look into that
6 more. There is data on that and there are people in here
7 who can get you that data, real data on infant deaths and
8 low level radiation.

9 I am finished. If there are any questions.

10 MR. YOUNGBLOOD: Does anyone - gentleman back here.

11 CROSS EXAMINATION

12 BY MR. BROWN:

13 Q Phillip Brown. Can you hear?

14 Could I ask Doctor Morey a question? Do you know
15 of strontium 90 that used to be in the milk in the fifties
16 when they had the atom bomb test in the fifties and,
17 strontium 90 was in milk animals all over the country?

18 A I am not expert in that.

19 Q Have you heard of strontium 90 in the milk?

20 A I have heard of it.

21 Q Now, it seems that milk has a lot of calcium in
22 it, right? Now, if people we have drinking calcium and
23 they weren't getting calcium in their body, but they were
24 getting strontium 90, that seems to contradict what you
25 say, you know.

1 Q Doctor Morey, is the barium in the do you
2 think that the barium is airborne or in the water? Can we
3 breathe it in through the air? I don't know too much about
4 barium, but I see the correlation between barium and
5 calcium. That's not difficult to follow.

6 A Barium does come through water. Barium deposits
7 are - barium is dispersed to water that is filtered
8 through. Water is a medium for barium. It can also be
9 absorbed through the skin.

10 Q So it has a gaseous state, and is it soluble?

11 A Yes, it comes in several forms.

12 CROSS EXAMINATION

13 BY UNIDENTIFIED SPEAKER:

14 Q Have you studied people that, say, don't live
15 near a bomb factory. I mean, what are their levels?

16 A The only people I have studied in this area, is
17 Santa Fe and surrounding.

18 Q I would be curious to see where it is?

19 A Well, barium can be absorbed into the body from
20 other sources, too. There are industrial sources. But I
21 don't know of any factories in Santa Fe.

22 Q I am talking about Los Alamos. I am referring to
23 that bomb?

24 A I have only had a few patients from Los Alamos
25 that had, and they did have a high barium content. One

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1 lady had dysplasia, which is a predecessor of cervical
2 cancer, and I don't know that there was a correlation. I
3 do know that she had dysfunction due to excesses and
4 deficiencies.

5 MR. YOUNGBLOOD: Further questions? Please come
6 forwards.

7 CROSS EXAMINATION

8 BY MS. NELSON:

9 Q MR. Morey, I have a question about how this will
10 reflect itself in the hearing record. You -- when you were
11 pointing on your overviews that's not going to show up in
12 the transcript of this proceeding. Do you have a written
13 summary or will you -- can you write a written summary of
14 what should be looked at when those overviews reproduced
15 are looked at? Would EID be able to look at the copy and
16 look at the transcript of what you said, but not
17 necessarily know what in particular to look for between the
18 two?

19 A I verbalized. As I pointed to the areas I
20 verbalized the element and the level.

21 Q So do you believe it's sufficient for us or --

22 A It should be. If you have any questions, call
23 me.

24 Q Okay. Second question, or second thing, did you --
25 you may have said it and I didn't hear, did you mention or

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1 do you know what the baseline for these barium and other
2 matters you are referring to, are? Is that in the
3 materials that you have given as your exhibit?

4 A No, it's not.

5 Q Could you explicate that or make it available?

6 A They vary from element to element. Would you
7 like me to verbalize that now? I can make a submittal, if
8 you prefer it, on paper.

9 Q Whatever you prefer.

10 MR. YOUNGBLOOD: I believe it would be easier if you
11 would put it on paper and submit it. We will talk about
12 when you submit it later on in the hearing.

13 CROSS EXAMINATION

14 BY MR. SEELEY:

15 Q I was wondering -

16 MR. YOUNGBLOOD: Would you state your name, please,
17 sir?

18 Q Ted Seeley. I was wondering, sir, if you are
19 aware of Doctor Kopedral's studies that indicates very low
20 dosages of radioactivity, that is more alarming (inaudible)
21 more deadly and larger doses in short small doses over long
22 periods of time?

23 A I am familiar with the idea that's cumulative.

24 Q Well, perhaps this is not the right time to
25 explain the whole process, but I would like to know for the

1 record if it's --

2 MR. YOUNGBLOOD: No, we will allow you to testify later
3 on if you want to testify.

4 Q That Doctor Kopedral's studies speak to this in
5 his pre radical study on the degeneration with low dosages
6 much as the homeopathy does.

7 MR. YOUNGBLOOD: Further questions?

8 If not, thank you very much.

9 (THEREUPON, the witness was excused.)

10 RICHARD DEYO

11 was called as a witness, and having duly affirmed his
12 testimony, testified upon his affirmation as follows,
13 to wit:

14 MR. DEYO: I am Richard Deyo, D-e-y-o, Post Office Box
15 2605, Santa Fe.

16 UNIDENTIFIED SPEAKER: Use the mike.

17 MR. YOUNGBLOOD: You may proceed.

18 MR. DEYO: First, I am a human being to start out with
19 and not a long time ago.

20 MR. YOUNGBLOOD: You are going to have to speak up.

21 MR. DEYO: When somebody said, "You have to say the
22 truth," you know in the dictionary the word "truth" the
23 words are undisputable fact. And there's a lot of facts,
24 but it's like so to swear to the truth you have to say
25 something that is undisputable.

1 Sometimes it can be very difficult. And I think
2 this is one of them.

3 I would love the government to do, as all the
4 citizens love, you know, I would love it to make its
5 decision like unanimously so it's like everything that you
6 have to say and I have to say and that everybody has to say
7 in that is what we love, you know, and it seems very unfair
8 to me, criminal beyond any and all reasonable doubt, is how
9 they say in legal terminology, that when like an applicant
10 of something, you know, I referred to a couple of LANL
11 people yesterday, about a building permit, or Santa Fe,
12 stuff like that, where it isn't fair to LANL, it isn't fair
13 to me, it isn't fair to anybody else.

14 What that I mean, I am very sorry that EID had
15 to face a lot of the questions that I felt were directed
16 more to LANL. I have I have what I call my basic
17 feeling to LANL comes very close to that trend, sometimes,
18 and it wasn't always that way.

19 You know, I will remember the very first time I
20 ever met somebody who purported to be somebody from LANL,
21 you know, and I hope nobody has to face that. I don't know
22 if it's relative to this thing or not, but I mean, they are
23 not even fair to their lawyers. You know, they are not
24 fair to themselves.

25 And it seems to me I would love to have them stop

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1 what they are doing and if they would like to think about
2 what they are doing I would much rather have them care what
3 they are doing and assume some responsibility for it and I
4 feel if they would do that they would at least stop what
5 they are doing. My ideals are I heard the lawyer up here
6 for EID. She was talking about nobody convicted anybody
7 from DOE. My ideal of society is that nobody should ever
8 have to go to jail, nobody should be convicted.

9 I would hope that everybody has enough "blight"
10 in themselves, and sense of justice to themselves, to
11 realize that.

12 You know, LANL has betrayed a lot of trust. They
13 some of the so-called - please - the people that have
14 worked there, they set down and they thought about blowing
15 the world's atmosphere right off the face of the planet.
16 You know, the very first person I talked to I showed him
17 this report about nuclear bombs being stolen, or possibly
18 stolen, and his only reaction was, "Thank God." They are
19 in the wrong hands now.

20 The director of that lab, Harold Agnew by name,
21 his ideal or what I understand - it might be just hearsay
22 in a court of law or whatever, but I have heard it from
23 several sources - that I take from several people from up
24 there, they talk about having ever - he talks about every
25 potential world leader experience a nuclear bomb going off

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1 in their face.

2 I mean, everyone here, he is a potential world
3 leader. I have read things like the bulletin of an atomic
4 scientist and they sit back and talk about how "we
5 scientists are to develop mechanisms of running people."
6 That may be I don't know if this is the right format or
7 not.

8 MR. YOUNGBLOOD: Mr. Deyo, I am going to ask you to tie
9 up what you are saying to this particular hearing and, in
10 particular, to that incinerator, and I will leave you some
11 laxity insofar as mixed waste is concerned, but I would
12 like to not talk about the whole laboratory unless you can
13 specifically tie it to this hearing.

14 MR. DEYO: Okay. Some of the things that I have read
15 in documentation seemed to me they were gotten into the
16 computers and stuff and I don't complain -- I don't profess
17 to be an expert in computers by any stretch of the
18 imagination, but one of the things that has always worried
19 me very recently, it was an article in "Science Magazine"
20 sometime ago -- about six months ago, I think -- in which
21 some computers had killed some people and some computer
22 genius decided to say that they were trying to get the
23 computers to tell on the one hand, "We are not to harm and
24 not to kill people," but within the same article, there
25 were things about how they are trying to get the computers

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1 to think and act like human beings.

2 And - and there was talk about creating a
3 friendly computer virus that would affect all the computer
4 networks all over the world to do these things.

5 The people up at Los Alamos, they cannot trust
6 their computers. Or I should I would not trust their
7 computers because they are some of the most sophisticated
8 things and they are doing some things that I would not want
9 them to do, and I think they should just stop.

10 I don't know, I mean, just think about it and
11 care about it, and, I don't know, maybe -

12 MR. YOUNGBLOOD: Thank you. Questions of Mr. Deyo?
13 Thank you, Mr. Deyo.

14 (THEREUPON, the witness was excused.)

15 MR. YOUNGBLOOD: I have, I believe, a Bradley Hanson.
16 That may be

17 BRADLEY HANSON

18 was recalled as a witness, and having been previously
19 sworn, testified further upon his oath as follows, to-wit:

20 MR. HANSON: To start things off, I had a letter to the
21 folks who were responsible at Los Alamos Lab for the permit
22 for the incinerator. I wish that to be entered as my first
23 piece of evidence.

24 MR. YOUNGBLOOD: Let's enter it as Hanson Exhibit One.
25 If there is no objection, let it be entered.

1 (THEREUPON, Hanson Exhibit Number One was marked for
2 identification and admitted into evidence.)

3 MR. HANSON: I am entering a letter to the folks who
4 are responsible at EID for Los Alamos National Laboratory
5 for the permit for this incinerator.

6 Folks, please do not grant this or any other
7 permit to the University of California or its master, the
8 Department of Energy.

9 The DOE and its puppets have all shown us by its
10 operations of its facilities in Rocky Flats, Colorado;
11 Cleveland, Ohio; Savannah River, Georgia; and Hanford,
12 Washington, that they cannot be trusted with our fragile
13 New Mexican environment. They, the DOE and its minions,
14 are blatant criminals. The death toll of the DOE will be
15 far greater than all the lives either the Los Angeles
16 gangs, the Bloods and Crimps, will ever take in their gang
17 wars.

18 If the DOE is so responsible, why has it
19 suppressed information on the cancer rates around Three
20 Mile Island? Why has the FBI chosen to investigate them at
21 Rocky Flats? What about its negligent handling of its
22 civilian program of the Seabrook, New Hampshire, power
23 station and its evacuation plans for Massachusetts?

24 It is important that you, EID, do not issue any
25 permits and find a way to revoke their interim permit until

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1 the DOE undergoes massive changes. It is, in all reality,
2 outrageous that LANL, whose own people have helped to
3 compile a very bleak report on the greenhouse effect, can
4 willfully help to bring about a disaster of that magnitude.
5 If, as Representative Richardson says, LANL and Sandia Labs
6 are on the forefront of environmental cleanup research?

7 Again, I would refer everyone to read the "New
8 Mexican" lead article today.

9 Why would LANL and folks consider using such a
10 disastrous method as burning? Once again it is imperative
11 that no permit be issued because of the known dangers of
12 incineration and the unknown effects of this incineration
13 on the greenhouse effect.

14 I find it preposterous that you do not look for
15 sulfides that cause acid rain, heavy metals that have been
16 linked to various birth defects, and both dioxins and
17 radionuclides that can cause cancer and wreak ecological
18 havoc for hundreds of thousands of years.

19 And in testimony given yesterday it was shown
20 that off-the-shelf technology does exist to monitor these
21 emissions. Once again, you must not grant the DOE any
22 permit to incinerate until the complete nonbiased
23 technological assessment is done.

24 I would also like to take this time to submit a
25 piece of evidence that was given to me, and I ask that the

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1 EID make as many copies as they made of LANL's written
2 whatever they gave us today, so that everyone here can take
3 this home. This was given to me earlier today. It is the
4 "High Efficiency Particulate Arrestors, HEPA Filters, In
5 The Nuclear Industry."

6 I have only had a chance to glance at this
7 report, so I am anxious to have a copy myself. It was
8 compiled in Denver in September of last year.

9 The things I have noticed in this is first, the
10 environment in which these filters operate, they can't.
11 And I really want this to be disseminated to every one here
12 today, so here's this piece of evidence.

13 MR. YOUNGBLOOD: Are you suggesting that this be put in
14 as your exhibit two?

15 MR. HANSON: Exhibit Number Two, and I think it is of
16 such important magnitude that everyone here have a copy to
17 read.

18 MR. YOUNGBLOOD: Objections to it being taken as an
19 exhibit? Let it be entered into the record.

20 (THEREUPON, Hanson Exhibit Number Two was marked for
21 identification and admitted into evidence.)

22 MR. YOUNGBLOOD: Do we have the ability to copy that in
23 here now?

24 MR. CROSSMAN: We will do that if you wish.

25 MR. YOUNGBLOOD: I would like that to be done.

1 MR. HANSON: I wish to thank EID and this hearing for
2 allowing this to be done.

3 Through yesterday's repeated examples of
4 bureaucratic babble it is clear that a major reorganization
5 of New Mexico Environmental Improvement Division is
6 absolutely necessary. Until enabling legislation is
7 passed, it is imperative that you, EID, issue no permits.

8 The EID has admitted and demonstrated that the
9 left hand does not always know what the right hand is doing
10 because of fragmentation, budgetary constraints, lack of
11 communication between divisions and education of their
12 staff members.

13 Once again, I feel that it is in the best
14 interest of the people who are responsible to the people of
15 the State of New Mexico to not issue anymore permits and
16 revoke their temporary licenses to burn.

17 I find it morally reprehensible that one man, the
18 director of EID, will decide whether or not a known
19 criminal agency will be granted a permit knowingly to
20 poison us based on the recommendation of a small group of
21 appointed officials, two of whom it has been suggested that
22 they have affiliation with LANL and the DOE. Must we also
23 die like our sisters and brothers in China so recently
24 have, fighting tyranny?

25 We will not be WIPPed into submission.

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1 Until the DOE reforms its waste, even their
2 bosses, Secretary Watkins and Mr. Bush, admit that reform
3 is necessary. No permit should be granted. Existing ones
4 should be revoked.

5 Just by LANL's not being available to be cross
6 examined verbally at these hearings should serve as a
7 reminder to their lack of responsibility and
8 accountability.

9 In keeping with the President's apparent desire
10 to review some environmental issues, the EID should
11 exercise restraint in the speed of their decision. A
12 permit should not be granted until a clear national policy
13 has been defined. Haste could well mean millions of beings
14 suffering needless agony for ages to come.

15 Please carefully and thoughtfully review our
16 sworn testimonies. Given the many concerns that we and
17 everyone else has exposed and remain unresolved, I urge
18 you, the EID, to be brave and to do the morally correct
19 thing, by just saying "no" to LANL and the DOE.

20 I further urge that we be given at least thirty
21 days to assimilate LANL's written testimony and then have
22 another hearing as this one.

23 Thank you.

24 MR. YOUNGBLOOD: Questions of Mr. Hanson? Does EID
25 have questions?

1 MS. NELSON: Yes.

2 CROSS EXAMINATION

3 BY MS. NELSON:

4 Q Mr. Hanson, I heard you to say criminal
5 convictions. I don't know of any criminal convictions. Do
6 you have any information? If so, EID would be interested
7 in knowing that.

8 A I didn't say criminal convictions. My words
9 were, the DOE and its minions are blatant criminals. One
10 look at the headlines about its operation of Rocky Flats
11 and the FBI exposure would address that issue. John
12 DeLorean was hung on a lot less.

13 MR. YOUNGBLOOD: Any further question?

14 MR. CRISSWELL: Mr. Hanson, could you state for the
15 record your mailing address, if it is not already on your
16 submittal.

17 A Yes, I can. It is on my submittal, but I will
18 state it anyway. It is PO Box 657, La Madera, New Mexico,
19 87539.

20 MR. YOUNGBLOOD: Further questions of Mr. Hanson? If
21 not, thank you very much, Mr. Hanson.

22 (THEREUPON, the witness was excused.)

23 MR. YOUNGBLOOD: Next person I have on my list is
24 Sharon Rawlins Bauch, B a-u-c-h.

25 UNIDENTIFIED. SPEAKER: I saw her yesterday. She was

1 here for the whole day and she has to be at work today. I
2 don't know if she was able to submit a statement or not.
3 So I guess she is not here.

4 MR. YOUNGBLOOD: Okay.

5 UNIDENTIFIED SPEAKER: She lives in Taos.

6 MR. YOUNGBLOOD: And I am going to take a short break
7 and the next person and then I have a Hugh Jennings. Is he
8 here? Fine, we will take your testimony immediately after
9 the break.

10 (THEREUPON, the hearing was in recess.)

11 MR. YOUNGBLOOD: We will resume the hearing. Would you
12 please state your name and affiliation and then you may
13 testify.

14 HUGH JENNINGS

15 was called as a witness, and having been first duly sworn,
16 testified upon his oath as follows, to wit:

17 MR. JENNINGS: My name is Hugh Jennings. I am a
18 retired engineer from Los Alamos. My affiliation at
19 present I guess is as a concerned citizen.

20 I claim no expertise in the field of hazardous
21 waste technology. As I say, I am testifying here only as a
22 citizen.

23 Today's news from Mr. Slater of the EPA about the
24 two-billion-dollar waste cleanup bill for Los Alamos makes
25 seem to me makes this incinerator hearing rather

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1 irrelevant.

2 The news about LANL's six hundred uncharted
3 burial grounds has certainly stolen the show.

4 Now, I came to the hearing yesterday, armed with
5 some technical questions about the incinerator. But I
6 followed the suggestion of Mr. Breno, a LANL spokesman, who
7 suggested that one study the LANL handout about the
8 incinerator, and that I did and I find that most of my
9 technical questions have been answered.

10 But, as I say, I am not an incinerator
11 technologist. For me, I think it's very hard for anybody
12 really on the outside to fault what I call the technical
13 overkill that's gone into this four-million-dollar machine.
14 I would like to mention, as it has been mentioned again
15 has been mentioned previously by Mr. Crossman, that this
16 machine has operated under trial burn conditions and
17 apparently meets the EPA destruction and removal efficiency
18 standards. This is somewhat impressive to me.

19 Now, another claim they make in this LANL handout
20 about the CAI incinerator is about the HEPA filters. I
21 understand some testimony has been introduced about these
22 filters and I will be very interested to take a look at
23 that.

24 But the claim, the LANL claim about these filters
25 to me is rather awesome and I would just like to mention

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1 this as a -- as to introduce this into the hearing
2 testimony.

3 They claim that these HEPA filters will remove
4 all but one part in ten billion of the particulate waste
5 from the stack. Now, my comment about that is, in fact,
6 about the CAI in its entirety, if it really works actually
7 in practice as well as it does on paper, I think it's
8 really awesome. As far as the regulations, the draft
9 permits are concerned, I have spent some hours studying
10 this permit and my feeling is that it is also awesomely
11 complete.

12 But at present I am left with a rather broader
13 question. In trying to understand LANL's motivation in
14 building this incinerator, my best guess, and this is just
15 a hunch, is that they threw their best technology and their
16 best technologists into it to attempt to prove to the world
17 that they can really make something that works, something
18 other than bombs. Maybe this perhaps -- maybe this
19 incinerator is somewhat of a public apology for past sins.

20 The -- however, the LANL's worries about cleanup
21 I think overshadow the considerations about this machine.
22 Four million-dollar machine is really no fix for a
23 multi billion-dollar problem. One fact emerges, I think:
24 The fact that high technology is no fix for LANL's waste
25 troubles, which, by the way, are practically at our back

1 door. Now, I am sure with regard to this overall fix, that
2 LANL's expertise will help us locate the six hundred waste
3 dump sites which happen to be on and off their land. But
4 after that, really, it's a matter of load technology,
5 pick-and-shovel technology to clean it up.

6 As a matter of fact, we may have some unemployed
7 high technologists doing pick-and-shovel work as a solution
8 to this massive problem.

9 I have been trying to second-guess LANL's
10 reluctance to appear at this hearing. I would think that
11 there would be dozens of technologies lined up eager to
12 appear and discuss their advanced state of the art toy. In
13 my view, it's probably the best one in the country. But I
14 think that they made a poor decision in choosing not to
15 appear. What it really has done, it appears to me, is to
16 further discredit LANL's public image and cast doubts about
17 LANL's concern for the public.

18 Now, as far as my stand on the incinerator issue,
19 I would like to say if I had any authority, I would suggest
20 that the EFD withhold the incinerator permit until LANL
21 demonstrates a willingness and abilities to solve its
22 massive waste problems and stop dealing with inadequate
23 technology fixes, such as the incinerator.

24 And finally, in closing, I would like to commend
25 Mr. Crossman for his patience and also for his valiant

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1 efforts, I feel, to field the many questions, many
2 technical questions, which I feel really should have been
3 fielded by LANI, which chose not to appear here.

4 Thank you very much, for giving me the chance to
5 express my views.

6 MR. YOUNGBLOOD: Questions from the EID?

7 MR. CROSSMAN: Mr. Jennings, could you or would you
8 like to give your address for the record so we can answer
9 to your mailing address?

10 THE WITNESS: Yes, my address is 329 Sanchez Street,
11 Santa Fe, 97501.

12 MR. YOUNGBLOOD: Questions from anyone else? Questions
13 of Mr. Jennings? If not, thank you, Mr. Jennings.

14 (THEREUPON, the witness was excused.)

15 MR. YOUNGBLOOD: Mr. Shulman you are next on my list,
16 but I believe you want to wait until tomorrow.

17 Mr. Robinson, You are the next after Mr. Shulman.

18 PAUL ROBINSON

19 was called as a witness, and having been first duly sworn,
20 testified upon his oath as follows, to-wit:

21 MR. ROBINSON: My name is Paul Robinson. I am research
22 director of Southwest Research and Information Center, a
23 community oriented research office located in Albuquerque,
24 New Mexico.

25 I also teach in the Community and Regional

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1 Planning program at the University of New Mexico.

2 For those interested, I received my bachelor's
3 degree from Washington University in St. Louis from their
4 technology and human affairs program and have done graduate
5 work in environmental engineering at John Hopkins
6 University and environmental design at the University of
7 New Mexico.

8 I have been asked to review this permit and the
9 application by the Concerned Citizens for Nuclear Safety
10 based here in Albuquerque. Or here in Santa Fe. I also
11 participated in the licensing hearing for the solid waste
12 boiler, also proposed by Los Alamos.

13 I would like to address the proposed permit, some
14 conditions which I believe are reasonable and prudent to be
15 appended to that permit, and other relevant relationships.

16 This permit has been written based on an
17 application which is, in large part, two years old and
18 dates from 1987. I believe that it inaccurately reflects
19 the proposed activities at the site by the applicant. The
20 state should adjust its process to accurately reflect the
21 proposed operations.

22 I base this statement on the letter identified as
23 the Horan Exhibit Number One, which states that the letter
24 is written by Troy E. Wade, acting assistant secretary for
25 defense programs of the Department of Energy.

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1 Mr. Wade states "The incineration of PCB's and
2 RCRA hazardous waste has led to corrosion of the CAI; thus,
3 the department decided to dedicate the CAI to the
4 incineration of TRU wastes only."

5 Now TRU wastes are a class of radioactive wastes.
6 It is not the chemical waste that is the subject of the
7 permit. I think that if this is indeed the case, then the
8 permit is not necessary to provide authority for chemical
9 waste treatment at the incinerator.

10 The other modules of the permit, the chemical
11 waste treatment at the tanks, the storage in barrels, the
12 industrial incineration at the Sprouz unit, those are
13 appropriate RCRA activities, but it doesn't appear from
14 this letter that the Department of Energy is planning on
15 using this facility for what we are now discussing.

16 It might be nice to have an extra permit in the
17 pocket just in case they change their mind, but it's a very
18 expensive process from the standpoint of state resources
19 and it's a very expensive process from the standpoint of
20 the public and members of the public who are in the class
21 of advocates who have the time and ability to do this, as
22 well as the general members of the public.

23 So I think that the Division should re-evaluate
24 the necessity of the permit and the waste characterization
25 for this machine prior to approval based on this

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1 representation by Department of Energy officials, which
2 postdate the current application.

3 The statement I just read also indicates that
4 there was corrosion of the CAI and the incineration of
5 PCB's and RCRA hazardous waste has led to corrosion. CAI
6 is the acronym for the controlled air incinerator, the
7 nickname for the machine we have been discussing. There
8 has been no discussion of the causes of this corrosion in
9 the material that I have reviewed and there does not appear
10 to be a record among the EID staff as to what the past
11 practices are, or were, at the controlled air incinerator.

12 I believe it would be appropriate to determine
13 what were the wastes and the waste chemistry of processes
14 that led to this corrosion and some assurance that those
15 have all been taken care of prior to allowing for the
16 burning of these wastes which have led to corrosion at the
17 machine. I think that would be reasonable and prudent for
18 the Division to require prior to allowing continuing
19 operation of CAI.

20 A third point related to this statement in the
21 letter is that the - if the hazardous waste has led to the
22 corrosion, as stated by the acting assistant secretary.
23 Their machine is being redesigned or changed. The phrase
24 used is restoration. LANL has recently begun restoration
25 activities to return the CAI to its original capacity to

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1 incinerate the TRU waste.

2 Now, that change will let the machine be changed
3 in ways that will nullify the test burn conducted in 1986
4 and a test burn should be conducted under the conditions of
5 the permit under the existing -- under the proposed
6 configuration of CAL, prior to operation under the permit.

7 I understand that there is a significant cost
8 involved in a test burn, but we would be relying on data
9 from a configured machine, which is not the one that will
10 be operated and indeed is a machine that had failed if
11 corrosion is a failure mechanism, which often is the case
12 because of the hazardous waste incineration.

13 So I would certainly recommend those various
14 conditions be added to the permit.

15 One, revising the waste characterization, to
16 accurately reflect that proposed by the operator, two,
17 ensure that the machine has been redesigned to prevent
18 corrosion from RCRA waste and, three, to require test burn
19 to see that the new configuration is as necessary under the
20 permit.

21 During my cross examination of the EID witness
22 the witness indicated that compliance with other rules and
23 laws of the state and federal level is one of the
24 conditions of operation under the permit and that certainly
25 seems reasonable.

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1 I would suggest that there be greater specificity
2 to that. I believe that the incinerator should operate in
3 compliance with rules adopted by the Board for incinerator
4 operation and those rules are being adopted, and, indeed,
5 they are in the process of being drafted now and will go to
6 hearing. That the Division should require the operator to
7 meet those rules when they are adopted.

8 And if we are anticipating a set of regulations,
9 the operator should be able to anticipate this set of
10 regulations and the facility not become a grandfather with
11 respect to those rules that where we all are aware are
12 in development stage. So recommend that condition be
13 added.

14 It appears to me that the phrase "alternative
15 disposition," which occurs on page thirty seven, I believe
16 it is, of the permit, allows for some -- yes, page
17 thirty seven, item V.G.(1), indicates that ash resulting
18 from incineration may be disposed of through alternate
19 disposition, and there is no clear indication of what
20 requirements that alternate disposition will have to meet
21 and the condition should be added to permit to require
22 that any alternate disposition meet, at a minimum, the
23 state's solid waste management regulations.

24 Number two, the recent state regulations adopted
25 or other appropriate waste management standards at the

1 state and federal level. So the alternate disposition is
2 not left as a general term, that it refers specifically to
3 a regulatory system.

4 I had asked Mr. Crossman about some record
5 keeping or record requirements and feel that the record
6 keeping and reporting is an essential element of
7 verification of performance by their machine, as well as
8 other emitters of contaminants into the environment.

9 There is no reason that I can find or I could
10 think of for not requiring copies of documentation to be
11 kept at a public repository other than to limit access to
12 those documents and that the Division should be encouraging
13 the review of documents required under those permits, and
14 would facilitate that by requiring the submittal of
15 monitoring data to the Division for maintenance of a public
16 repository.

17 These documents are going to be building up very
18 rapidly, more rapidly than I can speak, and I believe that
19 the proper record keeping should require the applicant to
20 submit a file cabinet to put the records in.

21 We are going to be wanting to look at their file
22 cabinet for twenty, thirty, forty, fifty years and
23 maintaining a pertinent repository where they are public
24 records, I don't I don't believe would be a significant
25 expense and would certainly facilitate review of this

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1 relevant material and I recommend this be included as a
2 factor in the conditions in the license.

3 The documents that are to be provided to the
4 Division are referred to as reports, which are a summary of
5 the individual record keeping activities and in order to
6 provide information to the public, which may be concerned
7 about the health effects of emittants from facilities as
8 well as the same public that pays for Los Alamos.

9 We both receive the benefits of applying the
10 costs, assuming we are all taxpayers, that there ought to
11 be reports made available to a list of interested parties
12 at the cost of the applicant and it's one of the prices of
13 operation, would be to report to the public in a written
14 form what a summary of monitoring data might be so there is
15 an opportunity to for an individual member of the public
16 to maintain records and provide a comprehensive review of
17 actual monitoring data.

18 There are a number of different kinds of data
19 that are going to be required if the operating permit is
20 adopted as written. I believe that the most important data
21 from the incinerator is not data which is called out in the
22 permit application. The data that I think is most
23 important is the more detailed chemistry of the air
24 emissions, and the chemicals in those emissions can be
25 identified through several convenient lists.

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1 The list that was the point of discussion in the
2 Los Alamos solid waste boiler hearing, the municipal waste
3 hearing, was the new source performance standard list,
4 which can be found at page five dash five of the
5 application for that solid waste boiler and was also the
6 focus of the analytic modeling done by Goss Nicholson, the
7 EID air quality specialist, and would recommend that the
8 permit require the monitoring of stack emissions for these
9 pollutants.

10 Now, if it only requires monitoring, it would not
11 require that the effluent meet those standards, would be
12 the way I recommend these be incorporated, so there is some
13 data gathered and we have an idea what is coming out of the
14 machine at a detailed chemistry level. When we find out
15 what those levels are, there may be a need to set some of
16 those standards, but I think that the data base is a unique
17 data base and would be very valuable.

18 This was similar to a condition that I had
19 recommended at the solid waste boiler hearing. For those
20 that went to those hearings they will recognize the style,
21 at least, and I believe it was something that the Division
22 felt that - the lab felt that it was capable of handling
23 from a technical standpoint, though there were costs
24 involved in the staffing and the analytic work, but that
25 they - the lab was interested in gathering data about the

1 machines they operate and I believe that that list would be
2 an excellent list to have added to the data monitored for
3 this machine.

4 For Mr. Henry's benefit I will go through this
5 list of eighteen. They are carbon monoxide,
6 nitrogenoxides, NO2, sulphur oxides, hydrocarbons, as
7 methane, hydrochloric acid, PCDD (dioxins), and PCDF
8 (furans), polycyclic aromatic hydrocarbons, PAH, chlorobenzene, CB,
9 chlorophenol, particulate matter, cadmium, lead, chromium,
10 nickel, mercury, and antimony.

11 These are all pollutants for which other
12 incinerators have been analyzed and would allow the
13 chemical emissions from this facility to be compared in a
14 detailed way with the emission from other representative
15 incinerators, both municipal and hazardous waste.

16 And I believe that that would be a wise condition
17 to require to broaden the data gathering in the permit.

18 I believe that it's important to have the
19 operators under RCRA permits to evaluate waste reduction
20 and reuse strategies and waste incineration which generates
21 an emission, both at the stack and at the bottom.

22 Ash emissions is a step which should be
23 considered only after all efforts to recycle or reduce have
24 been accomplished, and it requires the Division
25 requiring the lab to evaluate resource recovery and

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1 conservation mechanisms for each of the listed wastes would
2 be a wise condition and would encourage the reduction of
3 emission, as well as reuse of what are waste constituents.
4 Many wastes are reuseable by other processes, and I did not
5 see a waste waste reuse evaluation in the application.

6 Such an evaluation, I believe, would be a study
7 which the lab would be capable of doing and may result in
8 some economic efficiencies but we are not here to talk
9 about economic efficiency.

10 So I believe that requiring an assessment of
11 resource recovery mechanisms on an annual basis would be a
12 way to ensure that the Division is aware of resource
13 recovery efforts taken by its applicants.

14 There are a number of ways for an entity to
15 provide independent verification of its own work. It could
16 have samples that are analyzed or to be analyzed by an
17 in house lab, split those samples and send them to an
18 independent lab. So the Division may want to consider that
19 as a mechanism for verifying the quality assurance and
20 quality control procedures, used by the lab in its analysis
21 under the permit.

22 Shift some of the samples out to open labs and
23 compare the analysis. They might want to require that
24 members of the public be allowed to inspect along with the
25 director's designated representative, so that there was

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1 some public inspection opportunity and that it was not
2 merely the bureaucrats working for the people who are
3 allowed to review this on annual basis, but that the
4 members of the public as well.

5 Talking to a number of lab employees over the
6 last couple of days, in the many breaks provided by the
7 hearing officer, it appears that there is some willingness
8 to provide some visual inspection opportunity amongst lab
9 personnel and I think incorporating that into the permit
10 would be - would be a reasonable and prudent action.

11 I will try to talk primarily about the permit
12 itself, Mr. Hearing Officer, but I believe that some of the
13 processes are worth evaluating.

14 I think that this is an inappropriate time to
15 have scheduled this hearing and I believe that the Division
16 was premature in scheduling the hearing. The fluid nature
17 of the waste management regulatory system in the state is
18 is something that the Division did not recognize and, as a
19 result, this facility is proposed for licensing before the
20 rules that would provide some of the better protection for
21 the state are adopted.

22 We can incorporate some of those rules by
23 reference, but the by the process that I mentioned
24 earlier of citing that process and recognizing it, or we
25 can defer the permitting information, a particular part of

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1 the waste treatment storage activity, until those rules are
2 in place.

3 Those rules relate to the radioactive wastes and
4 the air emissions. They don't, from what Mr. Crossman was
5 saying, they don't really relate much to the mixed waste
6 because what he testified to was that the mixed waste
7 chemicals were going to be held to the same standard as the
8 nonmixed waste chemicals. The state just hasn't gotten
9 permission to make that particular transfer.

10 That condition indicates the inability of the
11 state to respond to changes in a regulatory system that is
12 derived from federal authority and it also indicates an
13 inability of the state to provide reasonable and prudent
14 protection. It's limited to the no more stringent than the
15 EPA standards and points out two very important limitations
16 to the statutory base that the legislature has provided the
17 Division.

18 We are not here to develop legislation, but I
19 want to point out that these are -- some of the
20 difficulties in the hearing are the result of the laws that
21 have been passed that have not provided the optimum
22 mechanism for hazardous waste management but optimum is
23 found in the statute and, obviously, in the rules.

24 I think further that that LANL is taking
25 advantage of the low state of New Mexico's regulatory

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1 system.

2 All is fair in love, war, and regulation, I
3 guess, and the applicant is allowed to do what they think
4 is best, but I believe that they are proposing a machine,
5 and licensing a technical support for that proposal, which
6 the state does not have the resources to evaluate.

7 We have a two year long review process, not
8 necessarily because that's what was best but the state did
9 not have the resources to do it, as many heard earlier.
10 This permit was done free by the state and the RCRA permits
11 are going to be billed for, a thousand dollars is the
12 filing, I believe.

13 That has been cited on the RCRA permit and I
14 believe that the state that is, by failing to charge the
15 appropriate fees has hamstrung itself in terms of being
16 able to provide an adequate technical review. It's not
17 much of a problem of the individual involved in the review
18 but that gives the bureau inability to higher particular
19 expertise and really dedicate resources to this project. I
20 think that a condition of the permit could include a review
21 fee to ensure that the Division has adequate recourse,
22 either under contract or on staff, to conduct a review of
23 the review of the monitoring data and other information
24 pertinent to the permit.

25 I would recommend that any - any changes in the

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1 approval for the incinerator be limited to the monitored
2 five parts of the permit and that if indeed the incinerator
3 is going to be not allowed to act until the corrosion is
4 evaluated or until the DOE clarifies whether they are going
5 to burn any chemical waste in it, that they not allow the
6 whole permit because the whole permit includes the
7 assessments of hazardous management waste practices on the
8 lab.

9 That's the meat of the matter that the EPA still
10 has authority for, and I believe that it would be wise to
11 defer all permitting simply because this one element in the
12 treatment and storage system has not been kept up to date,
13 and I believe that the director would have discretion to
14 to make that decision.

15 Just so you don't think I am concerned only about
16 incinerators, I think that the other places where wastes
17 are treated is in a set of tanks that are shown in a
18 picture in a document called hazardous waste management
19 activities at Los Alamos Laboratories, a partner no doubt
20 to the hazardous waste incinerator at Los Alamos, which was
21 entered as Robinson Exhibit One, the second has a picture
22 of the tanks in back, and looks to me like the tanks could
23 use some fencing. And that they could use some sturdier
24 covers and that they are not well designed long-term waste
25 storage facilities.

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1 There really hasn't been many things of the facts
2 in the discussion. One, what level of detailed review the
3 Division has conducted of those tanks. There are four
4 tanks with a sixteen hundred-gallon normal capacity so we
5 are talking about five thousand gallons worth of storage
6 capacity.

7 But I believe these tanks should be hardened with
8 respect to intrusion and emission since they are - play an
9 element in long-term - play a role in long-term waste
10 management at the lab.

11 The reason for introducing the hazardous waste
12 incineration at Los Alamos document in the record is that
13 this document is the only concise, brief discussion of the
14 controlled air incinerator that I am aware of and that it
15 provides a concise introduction for the director, who I
16 hope will be reading this record, much more concise than
17 the arm busting load of documents in the actual application
18 itself.

19 There are some important statements in the
20 document. It is prepared by the lab and while there is no
21 lab witness to support the document nor even author cited,
22 I am assuming that it was accurate.

23 It stated, as I asked Mr. Crossman to say, that
24 this machine was developed for the reduction - by
25 reduction of combusting some radioactive waste, and the

1 Horan exhibit indicates that DOE is trying to return the
2 controlled air incinerator to its original capacity to
3 incinerate the TRU waste, the chemical waste and hazardous
4 waste is not what the machine was originally designed for

5 It has led to corrosion significant enough, I
6 believe, to take the machine out of operation and that if
7 we are going to be incinerating the hazardous wastes, we
8 ought to be incinerating them in the machine designed for
9 that purpose. And we will be seeing in the second test
10 burn the -- acquired by the Division in the new -- or in
11 the beneficial for the chemical waste or still has those
12 corrosion problems.

13 In the types of waste generated under the title,
14 hazardous waste, Los Alamos identified as transuranic low
15 level waste, has chemical waste and mixed waste. The
16 hazardous chemical waste is only one very small portion of
17 the total waste volume generated by the lab.

18 I was -- this hearing officer is not here to
19 please me, but I was astonished to find that the Division
20 staff was not aware of the volumes of the different waste
21 categories that have been used in the incinerator during
22 this operational period nor what the ratio of the different
23 wastes were.

24 But I believe that this indication that the
25 original purposes for -- was for radioactive waste

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1 treatment and is one way to indicate that the chemical
2 waste is only a minor part of the activities of this
3 incinerator.

4 The degree of destruction efficiency, ninety nine
5 point ninety nine percent, certainly is pure if you are
6 comparing it to Ivory soap, but it's not very pure when you
7 are comparing it to removal efficiency of either the HEPA
8 filters or other air pollution control technology and
9 presents a very superficial standard, in my opinion, to
10 present air pollution emissions.

11 The ninety-nine point ninety nine ninety-nine
12 the six nines standard which applies to what I refer to as
13 the FO 27 waste stream, that waste stream is the waste
14 stream with the PCB's in it.

15 PCB's are a chemical closely related to dioxins,
16 and so there is a tighter restriction by a factor of a
17 hundred on the dioxin-related waste streams. I believe
18 that that higher degree of efficiency could be obtained for
19 other waste streams.

20 The HEPA filters are asserted on page three of
21 what is called Robinson Exhibit One, but has the waste
22 incinerator in talk about filters alone with a I
23 can't my eyes do not work it's ten nines, ninety nine
24 point eight nines, and the filters are represented as
25 having a much higher degree of efficiency that is not

1 required for the PCB waste stream. I understand that RCRA
2 limits the DRE standard to ninety nine point ninety nine,
3 and in order to be strictly as stringent as we cannot
4 require a higher limit of efficiency.

5 The way to address that, or finesse that for
6 those who play bridge, would be to require a maximum
7 efficiency, but no less than ninety-nine point ninety nine,
8 so there would be some encouragement to do a better job but
9 they would be doing no worse than the ninety-nine point
10 ninety nine, and I believe that the filters are the
11 technology is able to handle a higher degree of containment
12 than that required, though it is not likely to provide a
13 perfect containment.

14 I think the final point I would make relates to
15 the volume of emissions that would be permitted under this
16 controlled efficiency of ninety nine point ninety-nine
17 percent, and that being that five grams per hour, that the
18 one in ten thousand, it's the ratio would provide out of
19 the hundred-pound-waste stream. That, I believe, is a
20 large amount of material. That material - that five grams
21 is all very small because the filters only allow very small
22 particles through, so we are talking about submicron
23 particles.

24 A micron is a millionth of a meter. It doesn't
25 weigh very much. So if all the material is a micron in

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1 size, and waste, just for conversion sake, is a millionth
2 of a kilo, then we are talking about a hundred of thousands
3 of particles per gram every hour that I believe are going
4 to be containing some of the hazardous chemicals which are
5 regulated at very low levels.

6 We would be gathering some information about the
7 actual chemicals in the waste stream if the Division were
8 to require the monitoring of the eighteen chemicals listed
9 as part of the operation condition.

10 Again, they are allowed to emit this five grams.
11 We would be finding out what is in the five grams. We may
12 or may not be able to then enforce some limitation on those
13 chemicals once we know what we are. But I believe that
14 limiting the chemistry of the emission testing to carbon
15 monoxide and oxygen is an inappropriate way to limit the
16 data gathering from this machine.

17 I believe that concludes my statement. I
18 appreciate the opportunity, Mr. Hearing Officer.

19 MR. YOUNGBLOOD: Thank you, Mr. Robinson.

20 Are there any questions from the EID?

21 Questions from anyone?

22 The gentleman here.

23 CROSS EXAMINATION

24 BY MR. ROBERT:

25 Q Are you aware of the fines that are being levied

1 against Los Alamos right now? I think it's a hundred and
2 seventy thousand dollars a day right now for ten violations
3 and I think they have already violated this and whatever
4 they do now, it's just more violations. Are you aware of
5 that?

6 A No, personally, I am not. The disclosure of past
7 performance by the permittee with respect to other
8 environmental rules and regulations is not part of the
9 permit, as I read it, and it may be that if what you say is
10 the case, that the disclosure should be one of the
11 conditions applied to the permit so that there is a sense
12 of a track record as part of the permitting activity, since
13 it did not appear that that track record was one of the
14 areas the EIB prepared for transcript hearing.

15 MR. YOUNGBLOOD: Would you state your name for the
16 court reporter?

17 MR. ROBERT: Just Robert. Robert.

18 MR. YOUNGBLOOD: Okay.

19 CROSS EXAMINATION

20 BY MR. BROWN:

21 Q My name is Phillip Brown.

22 Doesn't it sound reasonable if they spend untold
23 billions to make bombs, billions to make chemical warfare,
24 which they have stockpiled and now they have supposedly
25 destroyed along with Russia, and then they spent twenty-two

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1 billion for a Stealth bomber for defense, that really we
2 don't have any enemies outside of economically, right? So
3 why can't they spend four, four million is nothing, why
4 can't they spend five or ten million more to monitor these
5 incinerators and find out what they are actually emitting
6 into the air?

7 A Well, in my view the costs of monitoring are
8 appropriate costs of operation, and we were not likely to
9 be spending more in the monitoring than the construction.
10 But I think that there is not an adequate monitoring system
11 required by the permit that could be required and have the
12 costs laid at the door, or, in this case, the pocketbook of
13 the proponent.

14 The idea I think it would be reasonable to
15 have Los Alamos hiring a full time independent monitoring
16 office, so that they had some nonlab employees who are up
17 there all the time doing daily inspections and not just
18 having the once a year, if there's time, frequency.

19 Q They should be here.

20 A That might be a couple of hundred thousand
21 dollars a year cost. I believe that while that's expensive
22 in the real world, it's small compared to the lab's
23 monitoring expenses and would provide a great deal of
24 goodwill in terms of demonstrating the lab's willingness to
25 allow others to assess its work.

1 Q Do you think they should have a moratorium until
2 they have these controls or monitoring?

3 A Sounds to me like they have a moratorium until
4 they get their environmental assessment out.

5 Q How can they operate now if they are not

6 A The permit, as I understand the permit, allows
7 operation at this moment. The fact that the incinerator
8 has treated hazardous waste, which led to corrosion, is
9 among the causes, may be the dominant cause, for the
10 machine being shut down. The machine, as I understand it,
11 does not work right now.

12 Q I thought they had two?

13 A The machine that handles the chemical wastes and
14 also handles the mixed waste, the controlled air
15 incinerator, is the one shut down. The industrial
16 incinerator, this Spronz machine, as I understand from the
17 permit, only handles chemical waste.

18 It only handles wastes which are contaminated
19 with certain listed explosives so it is not part of the
20 radioactive waste treatment system or the mixed waste
21 treatment system.

22 Q Just chemically. Thank you.

23 MR. YOUNGBLOOD: I have a question from the lady back
24 here. Please state your name.

25 CROSS EXAMINATION

1 BY MS. HALL:

2 Q My name is Mary Hall. I have a question about
3 the alternative method of disposal and I wonder if Mr.
4 Robinson could address himself to any connection that could
5 be made between that and the permit, alternative to
6 incinerating?

7 A I believe there are several alternatives to
8 incinerating. One of the alternatives - the most
9 conventional one, is land disposal, which is fraught with
10 problems and is one that I would not recommend as a primary
11 alternative without significant volume reduction.

12 Basically, the incinerator provides volume
13 reduction with a bit of air pollution prior to land
14 disposal because the ash is land disposed somewhere, but
15 it's in a smaller volume of more hazardous material than
16 that which was fed to the incinerator.

17 One treatment technique was mentioned yesterday.
18 The wet oxidation, which does have some extensive track
19 record over the last ten years and is a chemical treatment
20 rather than a combustion, just to simply state a complex
21 process, and that I believe would provide some
22 alternatives.

23 There may be some liquids that can be evaporated
24 in the waste stream and so the liquid waste stream may be
25 able to reduce in size by some evaporation.

1 I think that some of the wastes may be able to be
2 reused as process chemical or reagent in other activities,
3 maybe in the lab or with another lab or elsewhere in the
4 state, and that those reuse technologies would be waste
5 reduction, if accomplished.

6 There may be some compaction methods, which can
7 accomplish volume reduction without having the stack
8 emission, which is the trade off, I believe, that you get
9 with an incinerator.

10 So the compaction, wet oxidation, waste reuse,
11 those would be the main alternatives that I would think
12 should be considered.

13 MR. YOUNGBLOOD: I have a question from the lady right
14 here in the green dress.

15 CROSS EXAMINATION

16 BY UNIDENTIFIED SPEAKER:

17 Q I want to thank you for answering some of my
18 questions. Was it F zero twenty seven was the PCB number?
19 Is that what you said?

20 A I believe that's correct.

21 Q And do we suppose when they burn more PCB's it is
22 going to continue to corrode and spew out the smokestack
23 again?

24 A It appears from this Moran One Exhibit that the
25 incineration of PCB's and hazardous waste has led to

1 corrosion of the CAT as a cause and effect statement, and
2 so there would need to be a remedy to that corrosion
3 problem prior to operation. That is something the state
4 should be sure it's aware of the remedy.

5 Q And there are PCB's on lots of things to be
6 burned?

7 A There are PCB's for which this facility has been
8 approved to burn. That is under - correct me if I am
9 wrong, Mr. Crossman, that is under a different permit than
10 the RCRA permit. That has already been approved. It is
11 not subject to disapproval at this hearing.

12 So there were PCB incineration and there is the
13 RCRA hazardous waste incineration. Two activities
14 regulated under different systems that were occurring at
15 the same machine. Both of those are implicated in the
16 corrosion, according to this letter.

17 CROSS EXAMINATION

18 BY UNIDENTIFIED SPEAKER:

19 Q I thought PCB's were defined as hazardous waste.
20 Not here?

21 A These were a subset of the total class of PCB's.

22 Q That were excluded at some point?

23 A Those - they were included. There is permission
24 for this machine to burn generally low level PCB's.

25 Q That's the context subject matter of this hearing

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1 and the permit (inaudible)?

2 A I believe that's the case.

3 Q When did that occur?

4 MR. YOUNGBLOOD: Question here?

5 A I don't know the answer.

6 MR. YOUNGBLOOD: Yes. Name again, please, sir?

7 CROSS EXAMINATION

8 BY UNIDENTIFIED SPEAKER:

9 Q Would you take a large amount of toxic waste, but
10 which is not the most concentrated form of toxic, it's just
11 the waste with all the other stuff also -- I mean, it's the
12 toxic stuff but with all the other stuff that is not so bad
13 and you burn it, get a little bit of very toxic ash, you
14 know, and if you bury that in the ground then you have got
15 some a little bit of very toxic waste in the ground,
16 which I assume will eventually find its way in the water
17 table?

18 A And I had the same concern about that as I do the
19 radioactive stuff.

20 Q So is there any consideration of just creating
21 less of this stuff in the first place? In other words,
22 replacing some of the processes or technologies that are
23 happening at Los Alamos, and I don't mean -- I realize they
24 are not going to stop doing all that stuff, but is there
25 any consideration in their plan over the years to reduce

1 the processes that creates all this stuff in the first
2 place rather than focusing on trying to create a little
3 tiny bit of ash, making it look like they are reducing the
4 problem when they are not, they are making a small amount
5 of very, very toxic ash which has to go somewhere, and
6 there's nowhere to put it that can guarantee it's not going
7 to get in the water table some day?

8 So do you know of any plans to reduce the
9 manufacture of this stuff or any plans to be able to bury
10 it in such a way that it is, quote, relatively, you know,
11 it looks like it won't get into the water table quite so
12 readily as it has in other cases around the country and
13 around the world? That's a broad question, I know, but

14 A Let me answer it in two parts.

15 In terms of the ash disposal, the page four of
16 the hazardous waste incineration in Los Alamos document,
17 Robinson One Exhibit, it says that the ash is solidified in
18 a drum sedimentation process and stored on site pending its
19 ultimate disposition.

20 That sedimentation process is not referred to in
21 the permit. Were that referred to, that would greater
22 provide a reduction on the ability of the ash to disperse
23 where it is disposed of.

24 So I think that there are ways to handle the ash
25 better than stated in the permit, such as solidification,

1 which should reasonably be part of the permit to reduce the
2 dispersion of the ash that is generated.

3 Now, to get to the other part of your question,
4 should they make less or none of this material? I am I
5 am no LANL fanatic, but from what I have gathered, the
6 waste going through this waste stream is a very small
7 amount of the waste that is generated in either the solid,
8 the hazardous, or the radioactive category, which covers
9 the universe.

10 So we are not getting rid of much other waste
11 with this machine, a hundred-pound per day through-put is a
12 tiny machine from an incinerator perspective. And so we
13 are not looking at the body of an elephant, we are looking
14 at a couple of hairs on the tail with this particular
15 machine.

16 And so I think that if they can reduce the waste
17 going into the machine, that would be very constructive,
18 but reducing the waste that they generate from other
19 categories, which are much more dominant concerns from a
20 radioactive standpoint, then I think from a solid and
21 hazardous standpoint that would be more constructive and
22 these are issues to address outside of this hearing from my
23 standpoint.

24 Q Have you seen any signals from them that they are
25 looking at that point of view to reducing the reduction of

1 these wastes in the first place, or is this something that
2 looks like a big deal, but, as you say, it's the toenail of
3 the elephant to take your attention away from the big
4 problem in the first place?

5 A I think that there are some signals. One is the
6 inclusion of the concept of a recycling program for the lab
7 and the community as part of a discussion of the municipal
8 waste boiler last year. That is one type of waste
9 reduction that could be done. I believe that it's a signal
10 and a half. I don't believe that plan has been adopted by
11 Los Alamos County, Los Alamos city, or the lab, but it's a
12 signal.

13 I believe that the fact that Secretary Watkins,
14 who is the Secretary of Energy, has signaled that he wants
15 to be in the lead in the waste management area, and the
16 reduction of waste is a very significant part of any
17 management technology. So there are some signals.

18 I don't believe that that indicates a commitment
19 or is action. It's merely an indication.

20 I have not reviewed the application in adequate
21 detail to talk about each of the waste generation streams
22 and say which of those are already at a maximum waste
23 reduction level and which could be tweaked around and
24 around to accomplish better reduction. And I think that
25 that's a task that is appropriately laid at the door of the

1 generator, which is the lab. This is their case.

2 MR. YOUNGBLOOD: Further questions of Mr. Robinson?

3 Lady here. Please state your name.

4 CROSS EXAMINATION

5 BY MS. TIBBETTS:

6 Q Nancy Tibbetts.

7 I agree and understood your idea about having in
8 the permit asking that LANL fund an independent monitoring
9 person or system and the only clarification I am looking
10 for has to do with sometimes when people are being paid by
11 someone, then they can be under pressure to not always give
12 all the facts of whatever.

13 So I was just wondering in that idea, if you had
14 any way to keep that clean? I am not expressing this well.

15 UNIDENTIFIED SPEAKER: Are you addressing the
16 independent monitoring?

17 Q Yeah, address the independent monitoring and
18 could there be any ways that the public could be involved
19 with this independent monitor that is funded by LANL?

20 A I think that there are ways to address that
21 concern. Conceptually, the way to address this concern is
22 to talk about it directly and say you are doing something
23 about it, rather than acting like people can't be
24 cooperative.

25 Q Actually

1 A would be subject to scrutiny and also quality
2 assurance and quality control mechanisms and it may be that
3 it takes having someone independent to describe how
4 verification has occurred because analytic chemistry is
5 subject to the quality assurance and quality control
6 mechanism.

7 So the lab operator, he doesn't want to lose his
8 certification by fudging numbers that the sampler would
9 like to see because they have I am not experienced
10 there are individuals who have their own integrity and not
11 just there for the bucks.

12 So I think there are minimums to accomplish this,
13 but endowing the fund would be a much more difficult
14 hurdle, I think, than finding independent monitors.

15 MR. YOUNGBLOOD: Further questions of Mr. Robinson? If
16 not, thank you very much, Mr. Robinson.

17 (THEREUPON, the witness was excused.)

18 MR. YOUNGBLOOD: May I see the hands of those folks who
19 have to testify today?

20 All right.

21 NANCY TIBBETTS

22 was called as a witness, and having been first duly sworn,
23 testified upon her oath as follows, to-wit:

24 MR. YOUNGBLOOD: Please state your name and address for
25 the record.

1 MS. TIBBETTS: My name is Nancy Tibbetts. My address
2 is Route 1, Box 88, Taos, New Mexico. I am nervous.

3 MR. YOUNGBLOOD: Just be calm. Take a few deep
4 breaths.

5 MS. TIBBETTS: The reason I wanted to testify under
6 oath rather than hand in my testimony was because some of
7 a portion of what I have to say is, you know, you just have
8 to take my word for it. Therefore, I wanted to be under
9 oath.

10 I am just starting to be a concerned citizen.
11 I'm sorry I am - this is difficult.

12 MR. YOUNGBLOOD: Just take a moment and take a deep
13 breath or two and someone will get you a glass of water.
14 Would that help?

15 MS. TIBBETTS: No, I will get it okay.

16 I am just upset because it's hard for a lot of
17 people to become informed or to know how to ask for their
18 rights in environmental issues. And in the last year at
19 least, if not more, there has been more media to help the
20 public understand the position that we all are in.

21 Therefore, when I was trying to get information
22 on this permit and I was having some difficulty, and I have
23 had some help, I decided that I wanted to approach my
24 community with a petition so that people would become aware
25 of this issue when they read the statement or that they

1 would be able to sign their name if they agreed with the
2 statements.

3 So that's what I did, and this I will read the
4 statement which I just tried with the information I had to
5 make a simple clear statement that I would hope would work,

6 And this is it. "We, the undersigned concerned
7 citizens, ask that the Environmental Improvement Division
8 not issue a permit to Los Alamos National Laboratories for
9 an incinerator to burn hazardous or radioactive waste until
10 legislation passes for radioactive incineration."

11 Now that I become informed, I realize this is
12 somewhat of a generalization, but it still works for the
13 situation of this permit or any of the other ones that are
14 being asked for.

15 What I wanted to show now, I collected, you know
16 we all have our own lives as concerned citizens, and we can
17 only spend a certain amount of time on the issues, getting
18 educated, writing letters, coming to hearings.

19 So I was only able to spend about twenty hours,
20 which included - I was shopping for my groceries, driving
21 that car, on the - a few of those two hours was devoted to
22 standing in the post office approaching people and I
23 figured if I generally - in that two hours I got about
24 sixty signatures, which means it took me about two minutes
25 per person to approach them, let them read the sentence and

1 then decide if they wanted to sign and then sign, and,
2 meanwhile, there would be, of course, lots of people
3 passing that didn't even get to read the statement, because
4 there was just me.

5 So, anyway, I collected three hundred and
6 ninety eight signatures before I was completely burned out
7 on it. And of - let's see, while I was doing that, there
8 were six people who did not want to sign. Two of those
9 people did not want to read the permit, so they didn't even
10 know - get the petition, so they didn't know what was in
11 it. Two people read and just stated "no," and then two
12 people read and then said that they didn't feel they were
13 informed enough and, therefore, didn't want to sign.

14 So, one thing that I think is very important that
15 I wanted to bring up in my testimony, is that another
16 reason I did this not only to inform some people or give
17 some people a chance to sign that couldn't be at the
18 hearing or couldn't write a letter, is that I could see how
19 many people were concerned. And so it ends up that I
20 collected six more signatures here by chance, people
21 sitting next to me asking if they could sign and I said
22 "all right" so what I am wondering is instead of using the
23 figure two hundred and ninety-eight, since I actually have
24 on this three hundred and four, could I possibly use the
25 figure of three hundred for a mathematical advantage?

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1 MR. YOUNGBLOOD: Or more than - slightly more than
2 three hundred. Either one is fine.

3 MS. TIBBETTS: Let's just say that I collected three
4 hundred signatures and out of three hundred six people
5 let's see, three hundred six people, three hundred said
6 "no," three hundred signed, so, therefore, had I been able
7 to spend or had if I had a hundred and ninety people
8 helping me, and we had this same response, then it sort of
9 is like six thousand people said that they wanted
10 regulations before this permit is issued and I think it's
11 sixty, then it would have been, twenty times.

12 MR. YOUNGBLOOD: Is one twenty.

13 MS. TIBBETTS: Is one twenty, so it would have been six
14 thousand wanting regulation and one hundred and twenty not
15 wanting regulation or not wanting to be involved with the
16 petition.

17 And so I think that the - I expressed that idea
18 and that's why I did that because there's plenty of people
19 that are still learning how to get involved.

20 I think I have just a few other points - let me
21 see if it is important for me to mention anything else
22 because our last speaker covered quite a bit of ground that
23 I was concerned with, and I think he actually may have
24 covered most points.

25 So I did want to say that at this time in history

1 it's important that everyone works together, the public,
2 the government, the scientists, the lawyers, we need to
3 support each other to help keep our environment together.

4 Oh, another point that is important is in
5 relation to working together, the people and the government
6 really being closely knitted, because the people are going
7 to be needing to change part of their life-style, I mean,
8 you know, we all need to be doing recycling more, we have
9 to address the emissions of cars more, and this includes
10 the public shouldn't be put in a position where they have
11 to raise money to have a lawyer to fight these
12 environmental issues, especially when where we are
13 fighting the government, which we are paying to go to court
14 to fight us.

15 This seems very inefficient. I don't think we
16 should be in this position. And also the sad fact that the
17 taxpayers end up paying for the cleanups that are that
18 are necessary from either government irresponsibility, for
19 example with the DOE issues, or even from things like the
20 oil spill which was commercial, and people are being asked
21 by Audubon and various other environmental groups, "Can't
22 you give us money to help because this commercial company
23 can't seem to clean it up."

24 So I am just saying, we have to get this
25 together. We have got to use our money better. Not in

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1 suits, not in the suits including the public fighting the
2 environmental issues and also the suits of the people that
3 are sick from radiation poisoning in Ohio and Washington.
4 We need to get this all cleared up so that these suits
5 don't have to happen, because it's a waste of money and we
6 don't need to be wasting money on this.

7 See if I have covered everything.

8 I did want to mention that possibly Mr. Crossman
9 could look into some information because apparently you
10 weren't aware of the fact that it is becoming recognized in
11 the that the threshold amounts of radiation are no
12 longer being accepted as I remembered off the top of my
13 head of Doctor Kaufmann from Livermore has made some
14 studies on this, an associate of his, and someone else
15 today mentioned Doctor Petkan. I have read some
16 information that he had from the Chernobyl accident about
17 low level radiation and how it affects the immune system
18 and miscarriages and things like this.

19 Let's see oh, and I know that you could get
20 some information, or I am not sure if you need this
21 information, but David Bates, who was here yesterday, has a
22 lot of information on an incinerator in Sweden that I hear
23 is a better quality than anything in America, and then
24 another woman, Jess Nichols, today mentioned one in Japan.

25 So I would think the officials around, you would

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1 be interested in looking into that, and I imagine both of
2 these people are on your mailing list and, if not, I am on
3 your mailing list and I can get the information for you
4 through these people, although I don't actually know Jean
5 Nichols, but I am sure I could get ahold of her.

6 Let's see and I agree that it would be nice
7 for the Air Quality Bureau to be involved with this. Or
8 with incinerators in general, that I would like the Air
9 Quality Bureau involved with permitting the incinerators.

10 And then I would like to just add before I finish
11 that I appreciate the work of Southwest Research
12 Information Center and that they have done a lot of work in
13 the last ten or whatever years and I was very glad to
14 listen to Mr. Robinson and I basically backed personally
15 everything, or mentally everything that he said, that if I
16 had his information I would have said the same thing, or if
17 I had his time to do all that research.

18 And I also agreed with what Tom Rutherford said
19 yesterday about let's not hurry through this permit. If we
20 don't have enough people on the EID to monitor, although I
21 would prefer Paul Robinson over having Los Alamos fund a
22 independent -- what did he call that?

23 UNIDENTIFIED SPEAKER: Endowment.

24 MS. TIBBETTS: Yeah, endowment so it won't come
25 directly from LANL but it would be there from them and then

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1 this monitoring system would work through that endowment.

2 And before I leave I just wanted to say, there's
3 been many wonderful people involved and I appreciate the
4 work also. Mr. Crossman listening to us and trying to help
5 us become informed on how to deal with this legally and
6 such.

7 And so I am grateful to the people that have been
8 here who learned more and to want to speak and give their
9 opinions and I would also like to support the group of
10 Concerned Citizens for Nuclear Safety. I think they are a
11 good group. I support them, along with the Southwest
12 Research Information Center and all the other concerned
13 citizens that have spoken.

14 MR. YOUNGBLOOD: Does that finish your testimony, Ms.
15 Tibbetts?

16 MS. TIBBETTS: Yes, but I would like to hand in my
17 signature right now.

18 MR. YOUNGBLOOD: All right, let's make this Tibbetts'
19 Exhibit One.

20 (THEREUPON, Tibbetts' Exhibit Number One was marked for
21 identification and admitted into evidence.)

22 MR. YOUNGBLOOD: Does anyone have any discussion on the
23 exhibit? If not, let it be taken into the record.

24 EID have questions? Anyone have questions of Ms.
25 Tibbetts?

1 UNIDENTIFIED SPEAKER: Do you need more signatures?

2 MS. TIBBETTS: Well, a woman who was here yesterday who
3 was just starting to get informed on these issues really
4 freaked out kind of and she said, "Can I have some of you"
5 because I thought, "Well, I will get five hundred like
6 this," but what happened was that I got tired of that, you
7 know, of doing it kind of and I could see that I was
8 getting the response I had assumed I would get, so,
9 therefore, I stopped when I did.

10 And plus I had to clean my house and get ready to
11 come here, you know, and so I have two right now I have
12 three that are empty. I don't know if this is the right
13 way to go about this, just what I did at the time. You can
14 have one of these if you want.

15 UNIDENTIFIED SPEAKER: Sure.

16 MS. TIBBETTS: Then you can always go like to a printer
17 and get new ones made up.

18 MR. ROBERT: As many as possible, signatures I mean.

19 MS. TIBBETTS: Oh, I forgot to say something. Can I
20 say one more thing on testimony?

21 MR. YOUNGBLOOD: Yes.

22 MS. TIBBETT: You will just have to mail it in to the
23 EID. It is great that he asked that because you know what
24 I forgot to say? I forgot to ask you to give us three
25 weeks or four weeks because I don't know if I am going to

1 collect more signatures.

2 My friends maybe, but I want to -- like I have
3 been taking notes for the last two days and I need to talk
4 to our mayor of Taos about the notes I have taken so that
5 he can be very informed and then there's a few other people
6 like our senator, Fred Daulta, signed my petition. He
7 wants more information.

8 Our pro tem mayor, Eloy Jeantete, also signed the
9 petition and he would like more information. So if the
10 hearing is -- if the comment period could be extended
11 several weeks then some of the information we have all
12 gathered here can be extended to other people and it will
13 be better benefit. Okay. I just wanted to add that.

14 MR. YOUNGBLOOD: It's in the record.

15 (THEREUPON, the witness was excused.)

16 MR. YOUNGBLOOD: There was someone else's name I called
17 a moment ago. Please step up and would you state your name
18 and address for the record?

19 BONNIE BONNEAU

20 was called as a witness, and having been first duly sworn,
21 testified upon her oath as follows, to-wit:

22 MS. BONNEAU: My name is Bonnie Bonneau and my address
23 is Box 351 El Prado.

24 I represent the Legions of Living Light, which is
25 the group of guiding elders for the Intergalactic

1 Federation for Interplanetary Peace and one of my first
2 comments yesterday was that I spoke to Mr. Robert
3 Kirkpatrick on the phone who had been in the clean air
4 quality Division of the EID here and he assured me he had
5 written a letter to Los Alamos and told them that they
6 could not have this permit because of the incinerator
7 moratorium, and I would like to formally ask, did somebody
8 contact Mr. Kirkpatrick and get a copy of that letter for
9 the record of this hearing?

10 That's one of the things. I am going to skip
11 most and turn in my written comments before the deadline,
12 which I am hopeful will be three or four weeks away.

13 MR. YOUNGBLOOD: That will be fine, and you will have
14 plenty of notice.

15 MS. BONNEAU: One thing I would like to say, I had a
16 friend, Clyde Read, who used to work at Los Alamos and he
17 told me how they would dig trenches and put the barrels in
18 and bury them, and he said it would be virtually impossible
19 to trace all the pollutants that are coming out of the
20 smokestacks because some of them are gaseous.

21 It would be almost impossible to identify them
22 and then you would have to trace where they go and how they
23 accumulate and it would be a very massive job, but without
24 that you don't really know what you are doing by burning
25 those many numbers of toxins.

1 And when I testified at the incinerator hearings
2 on the garbage incinerator last year, I asked for third
3 generation studies that each toxin be studied and its
4 effect on the third generation of various species like
5 myself or something, so that they could see, you know, if
6 there were a lot of mutant babies who were overdosed to
7 pure cadmium, or however you pronounce all these things.

8 And so because you can't tell from somebody
9 standing breathing the smoke out of the incinerator what it
10 is going to do three generations down the line, we don't
11 want anybody to breathe it because it's too hot and they
12 will pass out and fall into the incinerator.

13 But I - they said that they thought third
14 generation studies would be valuable and they needed
15 funding and so I hope that we can arrange for some funding
16 to study third generation effects of the various toxins.

17 Those lovely tanks in the photographs that are
18 supposed to be one-thousand six hundred-sixty-gallon tanks
19 and four of them are supposed to be five thousand seven
20 hundred twenty gallons, but four times one thousand six
21 hundred sixty happens to be like six thousand six hundred
22 forty and so it's really a five thousand seven hundred
23 twenty in four tanks and only one thousand four gallon
24 tanks. So there's something mathematically wrong there.

25 But back in an Attachment G, after saying there's

1 not more than five thousand seven hundred gallons of any
2 toxin in Attachment G where they had the list of all the
3 code names, think of it as having three hundred gallons of
4 toxins zero zero zero one and zero zero two and there's a
5 hundred thousand gallons of some toxins and twenty five or
6 thirty thousand gallons.

7 So one part of the permit says the maximum number
8 quantity is that at those four tanks that are the five
9 thousand seven hundred twenty or six thousand six hundred
10 sixty, whatever, there's another part tells you it was a
11 hundred thousand gallons of certain elements, and that's
12 kind of confusing.

13 It should be cleared up for the record, whether
14 the attachment G is right or the other part.

15 That's all the comments. Those are the things I
16 specifically wanted to say.

17 MR. YOUNGBLOOD: If you wait a moment we will see if
18 there are any questions.

19 Any questions?

20 If not, thank you.

21 (THEREUPON, the witness was excused.)

22 MR. YOUNGBLOOD: Let me continue reading names here and
23 if you have to testify today, just stand up when your name
24 is read. Wayne Wilson, James Holmes, Robert Higginson,
25 Grove Barnett, Joni Arends, Craig Anderson, Michael Heron,

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1 Mary Lou Cook, Priscilla Logan, I can't read the next name.
2 I believe the last name is R e s s o n. Sandra Spies, Ryan
3 Ross, Doctor Robert C. March.

4 Please state your name, full name, and address
5 for the record.

6 ROBERT C. MARCH, MD

7 was called as a witness, and having been first duly sworn,
8 testified upon his oath as follows, to-wit:

9 DR. MARCH: My name is Doctor Robert Chamberlain March.
10 My address is PO Box 932, Santa Fe, New Mexico, 87501.

11 I want to give a further address where I have a
12 I receive mail at 712 Griego, Santa Fe, 87501.

13 I want to state a little bit of my background for
14 the record.

15 I have a BS in geology, minor in philosophy. I
16 have a Naturopathic doctorate in natural medicine and a
17 degree in massage therapy.

18 I think what I would like to do first is read
19 what I have written and then be a little extemporaneous.

20 MR. YOUNGBLOOD: All right.

21 DR. MARCH: Starting off on a positive note, I want to
22 thank the democratic system that allows its citizenry the
23 opportunity to tell our government what we think of the job
24 they are doing for us as paid for by our tax dollars.

25 I do not choose to be bound by narrow minded

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1 separatist thinking that, in my opinion, has contributed to
2 the huge environmental problems that humanity is faced with
3 today. Therefore, I have not chosen to stick exclusively
4 to the separatist guidelines of considering only the
5 hazardous waste portion being considered at this hearing.

6 I hope that this hearing is not merely a
7 formality, that pays only lip service to democracy, having
8 already arrived at the foregone conclusion promoted by the
9 seemingly powerful - and this is an analogy that Mr.
10 Crossman is fond of making analogies - the seemingly
11 powerful religion on the hill.

12 I say religion on the hill because basically I
13 feel that many people hold them almost as somewhat a sacred
14 institution. It is very secretive, and scientists there
15 speak in very many arcane scientific terms, which are
16 incomprehensible to the general public, which I think are
17 some of the characteristics of traditional religion.

18 So I believe that this religion on the hill has
19 continually assured the EID and the general public that
20 technology is protecting us from harm.

21 Not to have the opportunity to talk directly to
22 and to hear directly from the protagonists, namely: The
23 devotees of the religion on the hill, and to be limited to
24 expressing my wrath to the victims of the hearing process,
25 namely: Kelley Crossman and the EID, is, to me, another

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1 example of the bitter, unwholesome fruit of separatist,
2 narrow minded thinking.

3 These indeed are trying times that we live in.
4 Some people, and some people at this hearing, have said
5 that we have not - we don't have a long time to begin to
6 make the right choices, the truthful choices. The
7 environment is in such a sad state that we may not have
8 much time left to begin making the right choices: Is
9 burning hazardous waste, is burning radioactive waste, is
10 burning mixed waste the best choice?

11 LANI seems to think that it is. They have not
12 convinced me that it is the best choice, or even a
13 partially correct choice. Why, in my mind, is it the wrong
14 choice?

15 First of all, you can't hide from air. If toxic
16 pollutants are added to the air, eventually we all ingest
17 them, either through inhalation, drinking, or eating.
18 Accidents do happen. People and the machines people create
19 are not infallible, no matter what the proponents of the
20 religion on the hill would like to assure us to the
21 contrary.

22 Second of all, as a society, we are "dis-eased"
23 from the imbalance that the process of exploding and
24 burning have already created.

25 We do not need more exploding and burning.

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1 Burning and exploding are part of the problem. They cannot
2 be the solution. Burning and exploding destroys oxygen.
3 Burning hazardous, radioactive, and mixed wastes destroys
4 oxygen and simultaneously adds toxin pollutants, some that
5 live as long as two hundred forty thousand years in the
6 air, the very air that sustains all aerobic life on the
7 planet. And the adding of these pollutants to the
8 atmosphere leads eventually to the price that must be paid,
9 the burden of compromising the gene pool and compromising
10 the food chain that creates --

11 MR. YOUNGBLOOD: Just take your time and compose
12 yourself. We have time.

13 DR. MARCH: the food chain that creates and sustains
14 all life as we know it.

15 Thirdly, there is too much secrecy on the hill.
16 The deck is stacked too heavily in your favor. LANL has,
17 itself, too greatly influenced the rules. And you assess
18 whether or not you are complying with the rules. The EPA
19 and the EID has relatively few resources at its disposal to
20 keep a needed, ever-present watchful eye on the religion on
21 the hill.

22 How many times has LANL lied to the public?
23 Hidden your mistakes, denied your errors, hidden behind the
24 veils of national security and top-secret classification?
25 How many times has LANL leaked radiation into the

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1 atmosphere under cover of Chernobyl, Three Mile Island, or
2 the Nevada test releases?

3 At what price does the madness stop? How many
4 immune systems will be compromised, damaged, or destroyed?
5 How much ozone will be destroyed? How much of humanity's
6 gene pool will be experimented with? How many people will
7 die as a result of the fear that drives the religion on the
8 hill. And the fear that fuels the public's acceptance of
9 the actions of the religion on the hill?

10 What is the effect of hazardous chemical and
11 radioactive releases into the atmosphere on ozone
12 depletion? There was a NASA attempt to study the ozone
13 depletion as a direct result of above ground radioactive
14 testing. They determined that as a result of the
15 above-ground radioactive testing on over a period of
16 approximately ten years two percent of the ozone layer was
17 depleted.

18 After they made that discovery, there was
19 conflicting statements about that discovery. Some people
20 said that, "No, no, radiation had nothing to do with the
21 two percent depletion." Other, people said, "Yes, it did."

22 So we need to find out the truth about adding
23 radioactivity to the atmosphere, the creation of acid rain,
24 the destruction of the ozone layer, and this needs to be
25 made public.

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1 Why has information on the Petkau effect been
2 suppressed since 1972? Doctor Abraham Petkau was hired by
3 the Canadian Atomic Energy Commission to study the effects
4 of low dose, long protracted radiation on health. His
5 research showed that the effect of low dose, long
6 protracted radiation was up to a thousand times more
7 dangerous than radiation released accidentally as a result of
8 Hiroshima, Nagasaki as a result of Three Mile Island,
9 Chernobyl, and other accidental releases. He discovered
10 that there is a different action of low dose, long
11 protracted radiation.

12 The action is that it creates less of a number of
13 free radicals in the body. These less of a number of free
14 radicals have a more harmful effect on immune system.
15 High-dose radiation also creates freeads, radiation creates
16 freeads and freeads are negative chemicals. Antiminds are
17 positive chemicals.

18 Petkau discovered antiminds being recreated out
19 of the oxygen molecules and as all of you know in this
20 room, we breathe oxygen. Oxygen has an affinity for all
21 cells in the body. Oxygen is particularly used by the
22 immune system. So when we create freead cells out of
23 oxygen molecules, what it does is it has membranes of white
24 blood cells, and breaks them down and they die. So we have
25 less. We compromise your immune system.

1 So we need to find out why this data has been
2 suppressed since 1982. We need to ask the Canadian Atomic
3 Energy Commission to release that data and we need to look
4 into that data on our own.

5 Why was there an increase in radionuclides
6 radionuclides released in the environment in Santa Fe
7 around the time of Chernobyl?

8 From what I know of Chernobyl, there was no
9 rainfall that brings radiation to the ground here in Santa
10 Fe around that time. So, meteorologically, there shouldn't
11 have been increased incineration during the time of
12 Chernobyl, which there was. So we need to find out what
13 happened at that time in Los Alamos, perhaps or, I don't
14 know where to look at besides Los Alamos, for that effect.

15 What role did Los Alamos play in determining the
16 acceptable levels of radiation for workers and general
17 public? Why should workers be allowed to receive more
18 radiation than the general public?

19 Are their immune systems stronger? Are their
20 gametes more resistant to radiation? Does Los Alamos make
21 the health data on their workers available to those workers
22 and to the general public?

23 These questions that I have raised throughout
24 this testimony are not the paranoid delusions of a
25 communist new age thinker. I am your brother. I am

1 concerned for our future, and the future of our children's
2 children's children, down through the next three thousand
3 five hundred generations.

4 These questions deserve our utmost careful
5 consideration and our honest answers.

6 The price we pay for nuclear gamble needs to be
7 accurately assessed without any mere lying, denying, and
8 suppressing any information concerning any part of the
9 nuclear cycle. Generalist thinking needs equal billing
10 along with separatist thinking. We all have two brain
11 hemispheres. Let's begin to acknowledge the value of the
12 Holistic right brain activity and use both hemispheres as
13 we seek to arrive at more than just partial and expedient
14 solutions.

15 I just wanted to introduce into the record some
16 information that's found in the book called "No Immediate
17 Danger, Prognosis for a Radioactive Earth" by Rosalie
18 Bertell. Review of the professional health literature
19 concerning the effective radiation makes several factors
20 clear.

21 One, numerical projections of health effects have
22 been made primarily for selected causes of death and ill
23 health, namely malignant solid tumors, leukemia, and
24 serious transmittable genetic diseases.

25 Two, analysis and reporting of more generalized

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1 ill health, earlier occurrence of chronic diseases, and
2 most especially, wild mutations in offspring, have been
3 superficial or nonexistent.

4 Three, the measurements of fatal
5 radiation-induced cancers and severe congenital
6 malformations or disease syndromes in offspring are highly
7 imprecise and probably underestimate the problems.

8 Four. The prestigious US NAS Committee on the
9 Biological Effects of Ionizing Radiation, when deadlocked
10 on the issue in 1979, asked Doctor Edward Radford and
11 Doctor Harold Rossi, the two principal contenders for
12 opposing estimates, to leave the committee. In their
13 absence the committee decided on what the press described
14 as a marvelous compromise estimate of the expected number
15 of excess cancer deaths per rad exposure to ionizing
16 radiations.

17 Five. The prediction, the "marvelous
18 compromise," is used as a basis for legal liability in case
19 of accidents such as Three Mile Island or for environmental
20 impact statements prior to licensing a new nuclear
21 installation, such as WIPP.

22 Six. The "marvelous compromise" is also used for
23 deciding risks versus benefits, and the level of ill health
24 which is deemed acceptable to the public. It forms the
25 basis for denying veterans' claims and worker compensation

1 cases.

2 Seven. Actual deaths and radiation related
3 illnesses other than those officially selected in exposed
4 individuals and their children, still go unmeasured.

5 Eight. No major study has been undertaken to
6 resolve the scientific controversy and no public debate has
7 demonstrated the human acceptability of the value of
8 judgments made by the experts.

9 Nine. A compromise between two estimates of the
10 number of radiation induced fatal cancers reached by a
11 committee will have little or no effect in the real world
12 of sickness and death.

13 Ten. These estimates only affect the legal and
14 political world. It is a bizarre way to solve a problem
15 which has such tragic human consequences.

16 I could go on, but I am going to submit this
17 whole thing as evidence. I just wanted to

18 MR. YOUNGBLOOD: Would you like to submit that now?

19 DR. MARCH: Let me look it over and see how many notes
20 I have in it. I would like to put into the record a
21 request that there is a baseline health data study before
22 the permit happens.

23 In other words, we need to start getting baseline
24 data about the health of the people who work at these DOE
25 facilities, who work at nuclear power plants, and the

1 people who live near them so we can more honestly and more
2 realistically assess the effect of accidents, assess the
3 effects of routine releases of radiation, and so we are not
4 lost in the cloud, we are not using Hiroshima, Nagasaki
5 data. We are not using indirect data. We are using data
6 that concerns the area in which we live in.

7 Thank you.

8 MR. YOUNGBLOOD: Okay. Do you want to submit
9 something? Make that March Exhibit Number One.

10 (THEREUPON, March Exhibit One was marked for
11 identification.)

12 MR. YOUNGBLOOD: Are there questions to ask Doctor
13 March?

14 If not, we thank you.

15 (THEREUPON, the witness was excused.)

16 MR. YOUNGBLOOD: How many names do we have now?

17 Let's take a ten minute break.

18 (THEREUPON, the hearing was in recess.)

19 MR. YOUNGBLOOD: Folks, take your seats and we will
20 resume the hearing.

21 I believe at this time we have announcement on
22 the EPA hearing.

23 MR. GALLAGHER: My name is Bill Gallagher, and I am
24 with the RCRA permits program, Region VI, EPA, chief of the
25 section that covers New Mexico and three other states.

1 We have finally been able to schedule this room
2 for our hearing that will be rescheduled, the extension of
3 this hearing, which will be rescheduled for August 7th and
4 8th. For those that aren't here we are going to try to get
5 it in every newspaper we can possibly get ahold of and,
6 again, we will probably ask you to use your networking to
7 get it out to the people that aren't here and might not get
8 the word.

9 UNIDENTIFIED SPEAKER: Question. Exactly what will the
10 hearing address at that point?

11 MR. GALLAGHER: It's primarily to discuss EPA's portion
12 of the permit.

13 UNIDENTIFIED SPEAKER: And by that we can assume
14 radioactive waste incineration or what?

15 MR. GALLAGHER: The EPA portion of the permit does not
16 directly deal with the incinerator. However, we will take
17 testimony on that issue.

18 UNIDENTIFIED SPEAKER: Could you outline for us,
19 please, exactly what would be covered in this hearing?

20 MR. GALLAGHER: The primary requirement of the EPA
21 permit is the cleanup of the past disposal site that DOE
22 has been using over the past forty-three years, or
23 whatever.

24 UNIDENTIFIED SPEAKER: So how are you going to spend
25 one point ninety six billion dollars?

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1 MR. GALLAGHER: Not us, how DOE is going to spend their
2 money.

3 UNIDENTIFIED SPEAKER: Okay.

4 MR. GALLAGHER: Under our direction.

5 UNIDENTIFIED SPEAKER: And that's it?

6 MR. GALLAGHER: That's primarily it. There are about a
7 dozen other EPA requirements that will be that are in
8 the permit that the state is not authorized to enforce yet.

9 UNIDENTIFIED SPEAKER: And excuse me, I think you have
10 been pretty clear but are there any issues you will discuss
11 that were based some way on incineration?

12 MR. GALLAGHER: Yes. It's not in the permit yet but
13 from the comments we have received, we will be discussing
14 what our authority is and I am afraid in many cases is not,
15 under a relatively new authority that Congress gave us,
16 that were calling the omnibus authority, which basically
17 says we can add permit conditions to the permit to protect
18 public health and the environment.

19 We are still trying to determine exactly what
20 Congress meant by that. What we are being told is it's not
21 as broad as we hoped.

22 UNIDENTIFIED SPEAKER: Putting notices in the paper
23 would be more specific about what you are going to address.

24 MR. GALLAGHER: Yes, we will.

25 UNIDENTIFIED SPEAKER: Could I ask, am I correct that

1 when you have your hearing on August 7th and 8th that you
2 will be operating under EPA's rules of hearing rather than
3 the state of New Mexico's rules.

4 MR. GALLAGHER: That's correct.

5 UNIDENTIFIED SPEAKER: What does that mean?

6 MR. GALLAGHER: That means that we will be taking
7 testimony it's a hearing designed to collect
8 information, so we will be taking testimony or comments,
9 whatever ever you want to call it, primarily. We may take
10 limited questions.

11 UNIDENTIFIED SPEAKER: In other words, what you are
12 saying you will have a presentation which you will offer
13 and there will be a limited opportunity for the public to
14 question you on that information or what?

15 MR. GALLAGHER: Correct, and then you will have an
16 opportunity to make comments which we will respond to in
17 writing as part of the permit process.

18 UNIDENTIFIED SPEAKER: Will you have a greater
19 clarification of your range of power in terms of effecting
20 the permit process for consideration by the time of the
21 presentation in August?

22 MR. GALLAGHER: Yes.

23 MR. YOUNGBLOOD: Further questions of Mr. Gallagher?

24 UNIDENTIFIED SPEAKER: You mentioned that the priority
25 in that hearing would be discussion of the cleanup involved

1 up there. And then if I understand correctly you said
2 something that there would be a dozen other issues or

3 MR. GALLAGHER: There are a dozen or - I don't know
4 exactly the number but there are other authorities that are
5 in the permit requirements of LAMB that the state does not
6 have authority for and, therefore, not in their portion of
7 the permit.

8 UNIDENTIFIED SPEAKER: I still don't understand it
9 correctly. What are these dozen other topics or issues?

10 MR. GALLAGHER: I can discuss that with you after the
11 close of this hearing. So you can prepare accordingly.

12 DR. MARCH: And could you be a little more specific
13 about how much time or opportunity there will be to ask
14 questions?

15 MR. GALLAGHER: What we are planning to do is prior to
16 the hearing have another public meeting, not a hearing, for
17 discussion among everyone that wants to ask us questions
18 off the record. We will answer - very similar to our
19 meeting the other night - for an exchange of information
20 both ways.

21 UNIDENTIFIED SPEAKER: You referred to the permit.
22 What permit are you talking about? Is it

23 MR. GALLAGHER: It's a joint permit. This -

24 UNIDENTIFIED SPEAKER: The one here?

25 MR. GALLAGHER: Yes.

1 UNIDENTIFIED SPEAKER: So it will deal with another
2 incinerator as well as taking care of the little burial
3 sites up there?

4 MR. GALLAGHER: Our portion of the permit takes care of
5 the burial sites and a few other requirements of LANL. It
6 does not specifically address the incinerator. But we will
7 accept comments and concerns about the state portion of the
8 permit for several reasons, one, because we have oversight
9 responsibility of the state to make sure that they are
10 doing the best job that possibly can be done with the
11 authority that we have been given, and, two, there may be
12 some very limited things that we can do that the state
13 cannot do to address some portions of mixed waste.

14 MR. YOUNGBLOOD: Mr. Gallagher, I think I am going to
15 ask you to hold the rest of the questions until we are
16 through tomorrow. We have a number of people here that
17 need to testify today, because they can't be here tomorrow
18 and I am afraid we are going to run out of the time.

19 MR. GALLAGHER: Okay. Thank you. I will be available
20 back there.

21 UNIDENTIFIED SPEAKER: One more question, I realize you
22 have done a complete job in answering. Would you state
23 briefly state why there is a limitation on the amount of
24 public inquiry on the record?

25 MR. GALLAGHER: Well, our hearing process is completely

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1 different than EID. We are not required at all to take
2 questions, but if we feel it's necessary, we can do that.

3 MR. YOUNGBLOOD: Resume the EID portion of the hearing.

4 If you -- how many of you raised your hands a
5 while ago when I asked how many had to absolutely testify
6 tonight? I am going to ask you if you don't absolutely
7 have to, please let those people who must testify tonight
8 testify first.

9 I don't think we are going to get through with
10 the list of people that are testifying. I think we are
11 going to have to come back in the morning. But at least we
12 agreed earlier in the day that we would allow those people
13 to testify that couldn't be here tomorrow, so let's be fair
14 to them and do so.

15 Okay. I believe it's Paula Seaton.

16 DR. MARCH: Mr. Hearing Officer, there's a woman here
17 who has to fly to New Orleans in what? -- soon. Would you
18 mind if she did that first?

19 MS. SEATON: Not at all.

20 MR. YOUNGBLOOD: I believe you have got a legitimate
21 excuse for not being able to testify in the morning.
22 Please be sworn.

23 ELIZABETH BILLUPS

24 was called as a witness, and having been first duly sworn,
25 testified upon her oath as follows, to-wit:

1 MR. YOUNGBLOOD: Would you please state your name and
2 address for the record?

3 MS. BILLUPS; My name is Elizabeth Billups, 1397 Old
4 Pecos Trail, Santa Fe, 87501.

5 I am the official speaker for Concerned Citizens
6 for Nuclear Safety, although as a group we didn't write
7 this testimony. I just want to clarify that it's my
8 testimony, but I am speaking for the group.

9 I want to thank the lady for letting me speak
10 before you.

11 I want to start off by objecting to the fact that
12 Los Alamos did not testify or would not allow us to ask
13 questions. They are the applicant here and the fact that
14 they don't participate in the public process is astounding
15 to me. After what Watkins said about his twelve point plan
16 or ten point safety, how the public was going to be
17 involved, the fact that they didn't involve themselves in
18 this is real amazing. They are responsible to the public.
19 They are not another member of the public like the lawyer
20 spoke about yesterday.

21 I would like to read the table of contents from a
22 report by the Subcommittee on Oversight and Investigations
23 by the Committee on Energy and Commerce. It's called
24 Health and Safety at the Department of Nuclear Energy's
25 Nuclear Weapon Facilities, dated June, 1989.

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1 "The table of contents is very revealing.

2 "Energy Department's policy not being followed.

3 "DOE fails to acknowledge its problems.

4 "Health and safety problems are real.

5 "Why is health and safety so bad?

6 "DOE rewards the wrong people.

7 "DOE fails to reward the right people.

8 "DOE suffers from attitude problem."

9 And that's what I feel like we really have here,
10 DOE is suffering from an attitude problem. Even if it is
11 not required by EIS law that the applicant must answer
12 questions from the public, it is their responsibility and
13 if they had a better attitude about participating in the
14 public process, they would have been here today and
15 yesterday to answer our questions. Their complaint was
16 that it was so technical and this involves a panel of
17 people.

18 I say get a panel of people. That's fine. Get
19 twelve people up here to answer the questions. But we are
20 very much denied our rights by being able to ask questions.
21 And I would like to submit this for testimony.

22 MR. YOUNGBLOOD: Okay, that will be Billups' Exhibit
23 One. Objections to this being taken in the record? All
24 right, it will be in the record.

25 (THEREUPON, Billups' Exhibit Number One was marked for

1 identification and admitted into evidence.)

2 MR. YOUNGBLOOD: Proceed.

3 MS. BULLUPS: I would like to object to the way EID is
4 handling the hearing. I understood there would be one
5 straight hearing on that, but I don't understand why air
6 quality isn't also here, which this radioactive protection
7 bureau hasn't been here.

8 We need a lot of answers and there hasn't been
9 enough and Mr. Crossman couldn't answer all of it because
10 it's not his department, and EID should furnish a panel to
11 address these issues. Otherwise, you get pieces of things
12 instead of an overview, comprehensive overview of what is
13 going on.

14 Again, I have to say again to Los Alamos, they
15 are so proud of this incinerator as being such great
16 technology that I don't understand why they are not here to
17 defend it. Defend their own creation.

18 I went up and visited the incinerator and I must
19 say, it may be the finest incinerator in the country, I
20 don't know. Technologically, it seems like a marvel and at
21 the same time I started thinking, you know, the Challenger,
22 the Titanic, these were all things that were technological
23 marvels but by the human error, technological error, went
24 down, you know.

25 So technology has its flaws, you know. I hope.

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1 that DOE is right, that this is going to function as
2 efficiently as they say. I don't want to move. I don't
3 want to leave New Mexico. But it only takes one accident
4 to totally destroy our air, and I don't feel they have
5 enough emergency procedures in place. I don't trust that
6 they can build these.

7 You know, there was an accident. People from
8 Chernobyl were not let know there was an accident for days
9 afterwards, and I don't trust DOE and I don't trust they
10 are going to let us know there's a problem and I feel like
11 the EID has to become part of this and have the continuous
12 monitoring, have independent monitoring so we know what is
13 going on and have a public group at Los Alamos work and
14 corroborate these findings.

15 DOE again I will speak to the EPA - DOE's
16 favoring incineration all across the country in its
17 findings, and yet they are not EPA standards, specifically.
18 They are stack emission.

19 And my question is, what is the impact of all
20 these incinerators across the country burning at one time?
21 Are they equal to above ground tests?

22 Where are the health studies on incinerators?
23 They are going in as fast as DOE can build them.

24 EPA needs to get on top of this promptly and get
25 some standards that we feel, as public, we are protected,

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1 and EPA, that's their job.

2 I am not I am not going to talk very long, but
3 what I the main thing that I am really concerned with is
4 that we are on the verge and I say this optimistically
5 I hope we are not on the verge of a great ecological crisis
6 here and we need to see what the impact is of what has
7 already been done.

8 We are living in the chemical soup, as it is,
9 right now and we need to see what's been done and what we
10 can do to clean it up before we can allow one more particle
11 of radioactivity in air. If it is depleting the ozone, we
12 need to find out. We need health studies. We need to be
13 very specific about what we are doing to the planet,
14 otherwise, you know, I don't know how long we have here.

15 I have a statement from the Gary Knowles' show,
16 which is a radio show, that I will supply more written
17 testimony at a later date. Eisenhower was quoted as saying
18 in the fifties to the Department of Energy, "Be sure and
19 confuse the public about dangers of radioactivity," and
20 that's what we are still dealing with, is the veil of
21 secrecy.

22 That was started back when the atomic bomb was
23 built. We have to change this policy. We have to know the
24 impact on our health and chromosomes and what we are doing
25 to life on this planet.

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1 American Indians don't make a decision without
2 figuring what the impact is on the seventh generation, and
3 that's the way we have to make our own decision, is what
4 impact it's going to have on the seventh generation.

5 And I would just like to end by saying, honor to
6 earth and honor all our relations. Thank you.

7 MR. YOUNGBLOOD: Are there questions of Ms. Billups?

8 CROSS EXAMINATION

9 BY MR. BROWN:

10 Q My name is Phillip Brown. I liked that angle,
11 what you said about the chemical soup. It's like the
12 permit seems to look through many phases. It's an alphabet
13 soup, EID, EPA, EIB

14 A M e n s e

15 Q M e n s e. But why can't they have one panel
16 instead of all these, you know, lateral panels? If the
17 government can't sit down and talk, how did they expect us
18 to have any confidence in them if they can't communicate
19 and say, "This is the good part and this is the bad part
20 and this is what is involved and this is how we are going
21 to run it"?

22 Because it seems that they are looking at us as
23 citizens of the planet that we all have. I am not a
24 citizen of New Mexico, but I am a citizen of this planet
25 and I believe that they have not even researched what

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1 Hiroshima and Nagasaki I never heard statistics about
2 what kind of babies were born

3 MR. YOUNGBLOOD: Mr. Brown, do you have a question or
4 do you want to testify?

5 MR. BROWN: No.

6 MR. YOUNGBLOOD: No, but I mean, if you are going to
7 testify, I am going to have to put you up here and put you
8 under oath.

9 MR. BROWN: Well, I don't have the answer. I am
10 looking for the answers.

11 MR. YOUNGBLOOD: I hear you.

12 Any other questions?

13 Gentleman in the back of the room.

14 CROSS EXAMINATION

15 BY UNIDENTIFIED SPEAKER:

16 Q Elizabeth, I understand you had gained access to
17 certain information on an unacceptable increase in
18 radioactive levels following the Chernobyl accident which
19 could not be explained in physical terms by the projected
20 diffusion from Chernobyl to Santa Fe?

21 A Yes, we did. Originally came from a woman who
22 has a PhD in meteorology. She testified at the WIPP
23 hearings and said from her knowledge of weather problems
24 there was no way the air would be double. It was in her
25 studies that the radiation and it was in the paper,

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1 there was a graph how the radiation went up, and it was
2 stated in the paper it was from Chernobyl. That is our
3 question. We are trying to verify if it came from
4 Chernobyl or didn't.

5 Q Do you know how many times greater than what the
6 projected levels would be?

7 A I don't remember the numbers. It was a real high
8 graph. If you want to come by the office I can give you a
9 copy of the graph.

10 MR. YOUNGBLOOD: Further questions. If not, thank you.

11 (THEREUPON, the witness was excused.)

12 MR. YOUNGBLOOD: When you are asking questions, the
13 court reporter cannot always hear you, so I am going to ask
14 you to move forward when you ask questions, or to speak up.

15 Please state your name and your address.

16 PAULA SEATON

17 was called as a witness, and having been first duly sworn,
18 testified upon her oath as follows, to-wit:

19 MS. SEATON: Paula Seaton, 3 e-a-t-o-n, PO Box 93,
20 Embudo, 87531.

21 I value my health very much, and as someone with
22 lung and allergy problems I am very concerned about the
23 incinerator burning at LANL. Yesterday I left the hearing
24 very depressed and I couldn't help but wonder as I left how
25 many toxic furans and dioxins I might be breathing. I was

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1 so depressed that when I got home I decided, "Well, I will
2 jump in the river and feel better," and I got home and
3 jumped in and I couldn't help but wonder how many furens
4 and things that could be in the river.

5 I just couldn't believe that for nine years I
6 hadn't known about the incinerator burning in LANL and what
7 kinds of things might be in our atmosphere. I couldn't
8 help but wonder about the human race and how long we might
9 survive.

10 I feel that at this time the EID doesn't have
11 adequate information to accept the short-term and long term
12 health effects of incinerator burning at LANL. The toxic
13 incinerator ash, when mixed with ordinary earth forms,
14 salts and heavy metals, it could cause rapid groundwater
15 contamination. This can contaminate the food chain by
16 being absorbed into tissues and into living organisms.

17 High levels of cadmium and lead are common in the
18 fly ash and the EPA has found that excess lead in the human
19 body from a from a variety of sources can increase blood
20 pressure. EPA investigation calculates if you lowered
21 everybody's lead level by a third, there would be sixty
22 thousand to seventy thousand fewer heart attacks over a
23 decade.

24 The Center for Biology of Natural Systems, CBNS,
25 has found large amounts of dioxins and fatty tissues of

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1 people in parts of the country and we should not allow
2 anymore discharge of dioxins in the air.

3 A test run of the incinerator does not seem
4 adequate for the incinerator that will operate for years.
5 One inspection per year by the EID hardly seems sufficient
6 and it is appalling to think that only two are monitored,
7 the oxygen and carbon monoxide. There is no independent
8 monitoring for the Los Alamos Labs and I believe there
9 should be.

10 Scientists conducting research for the EPA are
11 concerned that formation and release of products of
12 complete combustion or PIC during incineration may pose a
13 significant risk to the public and, as stated in the EPA's
14 report, inhalation pathway risk and assessment of hazardous
15 waste incineration facilities. The scientists also warn
16 that the human health risk from incineration of
17 carcinogenic heavy metal, such as chromium, cadmium, and
18 barium may be significant.

19 The products burned may produce a more toxic
20 compound than the parent compound and may be harder to
21 destroy, the EPA study states. I recommend at this time
22 that the EID do not give a permit to LANL because I feel it
23 poses an immediate threat to our health and environment and
24 could produce a bigger problem.

25 Thank you.

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1 MR. YOUNGBLOOD: Just a moment.

2 Any questions for Ms. Seaton?

3 If not, thank you very much.

4 (THEREUPON, the witness was excused.)

5 MR. YOUNGBLOOD: Sheena Cameron.

6 SHEENA CAMERON

7 was called as a witness, and having been first duly sworn,
8 testified upon her oath as follows, to wit:

9 MR. YOUNGBLOOD: Would you give your name and address
10 for the record?

11 MS. CAMERON: My name is Sheena Cameron. The address
12 is Box 383, Dixon, New Mexico, 87527. I am here
13 representing a group called the Taos Area Advocates for
14 Chemically Ill and Environmentally Sensitive.
15 Environmental illness is basically a new disease caused by
16 technology.

17 It's basically it's the people's immune
18 systems have become usually due to being overstressed
19 with chemicals or radiation even. The immune systems are
20 just not functioning or have been permanently damaged so
21 that they it's really debilitating to the people
22 involved, and it's physical and it's mental. It's a total
23 debilitating thing and there's really nothing that can be
24 done about it, except for staying away from the pollutants.

25 And that's a reason why a lot of people,

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1 including me, have come to this area because we thought it
2 was safe.

3 And it's rather a joke for people like me to
4 believe that this incinerator is going to be safe. So far
5 nothing has been safe.

6 Well, this this condition is estimated
7 conservatively estimated at about fifteen percent of the
8 population and the bad news is that it doesn't seem to be
9 something that is really unusual that's affecting a few
10 individuals that happen to have some bizarre genetic
11 makeup.

12 It seems to be something that affects everybody
13 and is starting to affect just about everybody to a certain
14 extent, and it's I know I know for a fact that there
15 is very little known about this. The medical doctors don't
16 know much about it. I am sure the EPA and the EID don't
17 know much about it. The only people that do seem to know
18 much about it are the people affected and there's extensive
19 networking.

20 I suggest our group suggests that the
21 incinerator definitely shouldn't be granted the permit
22 until more studies are being made and groups like us can
23 really provide a lot of information about - well, for one
24 thing, we don't think it's fair that the condition of
25 people that are very sensitive is not being taken into

1 account.

2 You are sort of taking into account the average.
3 We feel very vulnerable about this and we also know know
4 a lot about this condition and we could, you know,
5 cooperate in some studies, which we feel are very much
6 needed and there needs to be a lot more public education on
7 this, also.

8 And because of this networking, you know, like we
9 know how many people are involved and we know some of the
10 people and we happen to know there's a lot of people in Los
11 Alamos that have this condition and that is really
12 something that should be looked into.

13 As a matter of fact, there is a pediatrician in
14 Los Alamos who was having so many patients come to her, so
15 many children come to her with strange allergy problems
16 really, like people being allergic to everything, that
17 and she didn't know how to treat them and so she finally
18 she herself was getting a lot of problems.

19 She had the same environmental illness and she
20 finally stopped treating these people for a while and
21 researched it to try to find out how to deal with it and
22 then went back in practice and is now treating people with
23 a -- with chemical sensitivities. She's in Los Alamos and
24 she's so busy you can barely get an appointment with her.

25 And also somebody else in Los Alamos that's

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1 selling products that are specifically made for people with
2 chemical sensitivities. And the fact that she is selling
3 them there must mean there's lots of business there.

4 And if there isn't a national security issue, I
5 mean, if this isn't a national security issue, I don't know
6 what is. There are people getting sick. It's a condition
7 that is very -- you can never really recover from it. It's
8 a permanent damage to the immune system.

9 I guess I am going to make this fairly brief. I
10 am going back to my group and send written comments from
11 the rest of the people after I have told them what's
12 happened here.

13 But, anyway, I would like to stress that this is
14 a very serious thing and I would really like you to take it
15 into consideration.

16 Thank you.

17 MR. YOUNGBLOOD: Questions of Ms. Cameron? Come
18 forward.

19 CROSS EXAMINATION

20 BY UNIDENTIFIED SPEAKER:

21 Q Do you have an address for where we can reach
22 your group for maybe in the future doing some studies?

23 A Yes. As a matter of fact, one of the reasons the
24 group formed was partly just to exchange medical
25 information and survival information. But the other thing

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1 is we do educate the public. We do want to, you know, do
2 some networking, and you can contact through me at Box 383,
3 and that's 87527, and I don't have a phone at the moment.
4 Shenna Cameron.

5 CROSS EXAMINATION

6 BY MR. CROSSMAN;

7 Q Ms. Cameron, more of a request, but I indicated
8 that you give us some further submittal and would you make
9 as much definite information as you can to provide names
10 and sources of the statistics that you cited?

11 A Sure.

12 Q So that we can go directly to the source
13 documents and see them in their entirety?

14 A Yes, I would be glad to.

15 MR. YOUNGBLOOD: Further questions?

16 If not, thank you very much.

17 (THEREUPON, the witness was excused.),

18 MR. YOUNGBLOOD: Again, I would like to ask you that
19 when your name is called, if you can possibly testify
20 tomorrow, please do not come up but wait.

21 Susan Grab, Katherine Pettus, Jonas Rana, Daniel
22 Owsiany, Susan, I believe it is McCarthy, Avril Fogden.

23 I am unable to read the next name.

24 Norah Pierson, Stan Walters, Tirjan, David
25 Trujillo, Glivis Tsosic, Vance Holmes, Liz Roadol, Norah

1 Pierson, Maureen Hovey, Katherine Logi.

2 Katherine, you would be unable to testify
3 tomorrow?

4 MS. LOGI: No, I won't.

5 MR. YOUNGBLOOD: Okay. Would you please state your
6 full name and address.

7 MS. LOGI: I would like --

8 MR. YOUNGBLOOD: Please state your name, full name and
9 address.

10 KATHERINE LOGI

11 was called as a witness, and having been first duly sworn,
12 testified under oath as follows, to-wit:

13 MS. LOGI: My name is Katherine Logi, General Delivery,
14 Llano, 87245.

15 I would like to speak on behalf of the children.
16 My children, the children of New Mexico, the children of
17 America and the children of the entire earth.

18 I would like to speak on their behalf because
19 their bodies are small and they are more sensitive to
20 dioxin, radioactivity, poisons.

21 We have invented some pretty powerful bombs up
22 there in Los Alamos. They say it's for our national
23 security that we have these weapons pointed at innocent
24 children in Russia. Oh, well, after all, they have a
25 different ideology than ours.

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1 Now we are burning hazardous waste from making
2 the bombs and endangering the lives of American children.
3 It will not help our national security to have a generation
4 of American children stricken with cancer and other
5 diseases from breathing toxic air from this incinerator.

6 I know a man that worked at Los Alamos and he
7 worked there ten years and I called him the other night to
8 ask him about the incinerator. He had no idea they were
9 applying for a permit to burn radioactive waste. For the
10 past for decades the DOE has been operating in secrecy
11 with the attitude "What they don't know won't hurt them,
12 and we know what is best."

13 The DOE does not know what's best. I wish they
14 would forget about our national security. We want clean
15 air that we can breathe and water to drink. We don't want
16 a new generation of weapons aimed at people because their
17 philosophy is different from ours. We want to grow our
18 gardens without fear of getting food poisoned, toxic, and
19 radioactive waste.

20 I don't care how lucrative the weapons industry
21 is, it is not worth the loss of lives. For the sake of
22 children stop making the bombs. We need the scientists at
23 Los Alamos to discover a way of dealing with the hazardous
24 wastes that are not destructive to human life and life on
25 the planet.

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1 Also, I don't see her but I wanted the makeup
2 oh, I don't think a point of clarification to Gini
3 Nelson that although the DOE has no convictions, they are,
4 nevertheless, guilty of the crimes against humanity.

5 MR. YOUNGBLOOD: Questions?

6 If not, thank you very much.

7 (THEREUPON, the witness was excused.)

8 MR. YOUNGBLOOD: How many folks do we still have left
9 that absolutely must testify tonight? I see two.

10 I am going to let you go first and then you go
11 second, if that's acceptable. Please come forward.

12 Please state your name and address for the
13 record.

14 KATHY WILSON

15 was called as a witness, and having been first duly sworn,
16 testified upon her oath as follows, to-wit:

17 MS. WILSON: My name is Kathy Wilson, Post Office Box
18 926, Santa Cruz, New Mexico. I don't remember the zip code
19 right now.

20 This is very nerve racking for me. I stayed away
21 from speech classes because I don't like to talk in front
22 of people. I'm better in a small group, or one or two.

23 I am very concerned, and I have been for a long
24 time, about the chemical and nuclear issue on this planet,
25 not just in this country, but on this whole planet. I

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1 recently, was kind of pushed into a situation. Since then I
2 decided it's time for me to become active and find out what
3 really is going on.

4 Through the WIPP hearings and this one so far,
5 has been a real education. Our system is riddled with
6 inadequacies. We have a hearing on a permit to burn
7 chemicals, and we all know that radiation is going to be
8 involved with that, too. It is just this particular
9 thing doesn't deal with that, even though it's going to
10 happen even though it's the same incinerator.

11 Nobody was here to address air quality. Nobody
12 was here to address groundwater. The air, especially when
13 we are burning something, it's obviously going to go in the
14 air and they go up to air quality control department and
15 find out that New Mexico state air quality regulations I
16 saw a date on it.

17 I think it was '82, '84, '85, something like
18 that, a number of years ago, and was informed it's in the
19 process of being updated. In the end the information is
20 out, but a lot of the regulations are still on nuclear
21 regulatory things of 1954. 1954? That seems like a long
22 time ago to be talking about how we are going to be
23 controlling what we are doing today.

24 We don't have any idea what is behind the closed
25 doors at Los Alamos. They didn't know years ago when the

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1 bomb was first starting to be developed up there.

2 I think they need to let us know, and I object
3 for them not being here to answer questions. We have
4 people from the state environmental department answering
5 for Los Alamos, it seems. They are supposed to be
6 protecting the public, but sometimes I feel by the way the
7 regulations are written they are really protecting the
8 established makers of war. I find that very distressing.

9 I have a long ways to go. I have a lot to
10 educate myself on and where to go with this?

11 But I can tell you I am only just beginning. I'm
12 sorry for some of the positions that the individuals have
13 been placed in in this -- and myself, I was recently put in
14 a precarious situation because of my job and what I was
15 told to do.

16 However, sometimes we have to go outside the
17 regulations that are put to us and do what we think is
18 right as human beings, even though there's not a regulation
19 to cover that.

20 And I ask the EID, the Hazardous Waste
21 Department, consider that when they consider this permit.
22 From my understanding, there really is no way set up right
23 now to even begin to know what is being burned out of that
24 smokestack and this trial burn that has been referred to.

25 There is a lot of chemicals that will be burned

1 in that and we need to know what those chemicals are going
2 to do to the atmosphere before we burn them. It's like
3 everybody is running around like a chicken with their head
4 cut off.

5 What are we going to do with this big pile of
6 messy establishment? I suggest that we stop production and
7 go from there. We are endangering not only human lives,
8 which this silly weapons race started for, and egos and
9 pride, and start making environment the priority.

10 I work outside. I breathe just about everything
11 that comes along. I work with the soil. I work with the
12 water. So I am very concerned. I don't want to think that
13 the fresh air that I am breathing is really very dirty, but
14 it's just the little tiny particles that I can't see and
15 can't smell.

16 And to think that the Environmental Improvement
17 Division, the Air Quality Control Board, or Hazardous Waste
18 Department is not or cannot do what they were intended to
19 do when they were supposed to be set up, which was to
20 protect the environment.

21 Seems like there are a lot of other issues that I
22 wanted to address. I saw everybody making notes and trying
23 to put this together in somewhat of an intelligent format,
24 but this is not an intelligent issue.

25 I may be rambling. But I find that there really

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1 is no intelligent way for me to broach it at this point.
2 Once I get a copy of the air quality control regulations,
3 both the state and federal, and some of the other
4 regulations that are written, maybe I can go through those
5 and point out what I feel are real inadequacies that can be
6 read between the lines.

7 I worked for the government a long time and I
8 know how they do it on many levels and I know how to go
9 through it and find the illogic that is supposed to be in
10 the logic in there. And I think that we, as people, need
11 to start addressing those. Until it comes to the time that
12 sanity takes place over insanity again and we quit making
13 bigger, more destructive bombs. I found recently, as I
14 spoke to acquaintances in France that I was becoming
15 involved with this, some of the reaction was that there's a
16 paranoid antinuclear concern out there.

17 Well, I happen to think it's the other way
18 around. It's paranoid unerasable fear that we should spend
19 every dollar and cent taken away from human services, from
20 the old people, to the fetuses and babies of this world,
21 and put it in destructive purposes. That's where the
22 paranoia lies, and that's where it's got to stop and bring
23 some sanity back to this earth.

24 That's all I have.

25 MR. YOUNGBLOOD: Are there questions?

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1 If not, thank you very much.

2 (THEREUPON, the witness was excused.)

3 MR. YOUNGBLOOD: Please come forward. Please state
4 your full name and address for the record.

5 JEAN NICHOLS

6 was called as a witness, and having been first duly sworn,
7 testified upon her oath as follows, to-wit:

8 MS. NICHOLS: Jean Nichols, Box 30, Llano, 87543. I
9 will try to keep this real short.

10 MR. YOUNGBLOOD: Okay.

11 MS. NICHOLS: You know, it was my intention to bring up
12 a lot more props and have you use this space as a example
13 of the air and have a little box that was emissions and
14 somehow burst forth all these Ping Pong balls that were
15 labeled sulfur dioxide and oxygen and this and that, and a
16 few of them black and labeled plutonium and see who they
17 hit. However, I didn't get that together.

18 MR. YOUNGBLOOD: You would have had a little trouble
19 getting that in the record anyway, I think.

20 MS. NICHOLS: So, you know, I hope everybody at least
21 has kept their senses intact because this has been Politics
22 101, an unreal example of bureaucracy, having everything
23 fragmented between these agencies, and I am sure that this
24 was on purpose, you know, that the air quality, you know,
25 da, da, da.

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1 I think maybe all these organizations should get
2 together for group therapy and if they need help doing this
3 one thing that we have been doing up in Bonasco I am
4 part of an environmental group called La Comunidad and we
5 have been working with the forest service trying to find an
6 alternative to cutting down all the forest, and we have
7 we are working with them, not against them, you know?

8 It's a matter that all these people are just
9 people, and they are not our enemies. There are no enemies
10 out there, there are only other frightened people.

11 So we have people on every ID team and we're
12 working on each logging sale and we are really making good
13 progress because we are trying to show them another way of
14 doing it. And we are willing to do this here.

15 We are willing to - or at least I am, I am
16 willing to join the Environmental Improvement Division
17 because I would like to help improve the environment, and I
18 think that a lot of people in by trying to do their job
19 they are doing a little narrow thing and they don't realize
20 that they can make a difference and that they can do
21 something according to their conscience. They think that
22 they have to be locked into this system.

23 I would like to put as part of the testimony the
24 third part of a book by Chris Maser. It's called "The
25 Redesigned Forest," and it's basically about forests, but

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1 it's much more general. He was a member of the forest
2 service and the BLM and he knows a lot about bureaucracy.

3 I would like to read one little thing.

4 "Organizations tend to systematically distort
5 information in self serving ways. Such distortions do not
6 depend... (on) deliberate falsifications by individuals.
7 Instead people who are competent, hard-working, and honest
8 can sustained systematic distortions by merely carrying out
9 their organizational roles. Unchecked by outside
10 influences or the undeniable realities of catastrophic
11 failures, organizational systems can sustain self serving
12 distortions. The potential for catastrophic consequences
13 is significant.

14 "A technological culture faces two choices.

15 "First, it can wait until the catastrophic
16 failures expose systemic deficiencies, distortions, and
17 self deceptions.

18 "Secondly, a culture can provide social checks
19 and balances to correct for systemic distortions prior to
20 catastrophic failures. This second more desirable
21 alternative, however, requires the active involvement of
22 independent engineers and scientists (and other dedicated
23 professionals and lay people.) They must ask 'unfavorable'
24 questions and pursue 'unfavorable' inquiries. Without such
25 initiatives, checks and balances are undermined and

1 catastrophic possibilities are likely to increase as the
2 scope and power of organizational technology expands."

3 We are willing to help you. We are willing to
4 come up with ways to unravel this bureaucratic mess because
5 that's what it is.

6 I don't want to take up, you know, much more time
7 except to say that I think the scientists at Los Alamos
8 have it within their capacity to come up with good
9 alternatives to incineration. They can use
10 super compaction, wet oxidation, recycling plutonium.

11 I saw it on television that they can recycle
12 ninety five percent of the plutonium out with what is there
13 already and stop making more. We can do this.

14 I think it's a matter of national security that
15 we address this issue, you know, begin to really take a
16 grip on not doing this anymore. Security is not about
17 keeping people out or pointing missiles at them, it's about
18 making people feel safe.

19 Tomorrow's the 20th Anniversary of quant day,
20 which otherwise is known as the First Man of the Month. I
21 think we should dedicate that day to a new dream, which is
22 incinerator environment. It's obvious that all of the
23 plausible you know, it's the people's primary concern. We
24 have to do that first before we can get on with any of the
25 other issues.

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1 So, you know, I think that should be the full time
2 priority of the government, and if they need help and want
3 some lay people to come in all the departments and help
4 them see it through and figure out a way to do it, then we
5 will do that.

6 I would like to close with one more quote that
7 relates directly to that. "It's impossible to conceive of
8 any problem beyond the reach of human intelligence that is
9 definable, because to define a problem gives you access to
10 the answer.

11 We went to the moon, not because of our
12 technology. We went to the moon because of our
13 intelligence, because of our imagination. Someone had to
14 imagine that it was worth doing. When we imagined that it
15 could be done and that it ought to be done, then everything
16 else became the servant. The technology became the servant
17 of the imagination.

18 "It is unscientific and unhistorical, therefore,
19 to say that we are locked in. We are not locked in as long
20 as (A) we can define the problem, and (B) we are willing to
21 attack it.

22 "The thing that separates fatalists from other
23 people is that the fatalist is unwilling to struggle, he's
24 willing to make the attempt. So the real issue of our
25 time, it seems to me, is that the human race today is

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1 divided between those who are willing to make the fight and
2 those who are not.

3 "It has nothing to do with knowledge. Both sides
4 I think, are equally well-informed. Both sides have access
5 to a wide body of knowledge. But, ultimately, it's a
6 philosophical problem. Are we going to make an attempt?
7 The answer, of course, depends on what our view of the
8 human species is, what our understanding of the human
9 spirit is...the question before all of us is, 'can we have
10 an inspired response to our problem beginning with the
11 environment?'

12 "Again, it can be done if enough people wish it
13 to be done. The crisis...is in the will and the
14 imagination."

15 MR. YOUNGBLOOD: All right. Let this be Nichols'
16 Exhibit One. Any objections to taking this in the record?

17 (THEREUPON, Nichols' Exhibit One was marked for
18 identification and admitted into evidence.)

19 Any questions from Ms. Nichols?

20 If not, thank you very much.

21 (THEREUPON, the witness was excused.)

22 MR. YOUNGBLOOD: Is there anyone else that has to
23 testify tonight?

24 If not, I would accept your desires for what you
25 want to do. Do you want to continue? I believe there are

1 people that left already that expect to testify in the
2 morning.

3 UNIDENTIFIED SPEAKER: I would like to continue.

4 MR. YOUNGBLOOD: What is that?

5 UNIDENTIFIED SPEAKER: I would like to continue.

6 MR. YOUNGBLOOD: You would you like to continue?

7 How about the rest of you?

8 Counselor?

9 MR. NELSON: EID will go either way. I think that it
10 is to the people's benefit to finish, if we can, but EID
11 has no position on whether to reconvene in the morning or
12 continue at this time.

13 MR. YOUNGBLOOD: May I ask a reason why you'd like to
14 go on?

15 UNIDENTIFIED SPEAKER: I am worried without finishing
16 up in the morning. There might be a lot of people show up,
17 and if there are a lot of people that show up, I might get
18 compressed out. I am not on the list yet, but I would like
19 to speak.

20 MR. YOUNGBLOOD: What about the rest of you? Will you
21 have difficulty as far as .

22 We will start at eight in the morning.

23 UNIDENTIFIED SPEAKER: What happens if at twelve
24 o'clock you still have a list of people to testify?

25 MR. YOUNGBLOOD: We will have to make arrangements to

1 find another place so they can testify. We are not going
2 to cut anyone off who wants to testify. Okay?

3 UNIDENTIFIED SPEAKER: I have a question? I am glad
4 you want to testify, but I am going to go, but can I get
5 ahold of my T-Lo's BID to find out how long a period we will
6 be open.

7 MR. YOUNGBLOOD: I am going to ask if that's possible.

8 MR. CROSSMAN: We will make every effort to send out a
9 notice to the people on the mailing list of what's going
10 on. We will try to keep you informed. You saw we have
11 received a lot more names that may or may not be on that
12 list, so we will mail out to what we have on our mailing
13 list at that time, but that's a continuing update process.

14 So we will make every effort and we will put the
15 information out to all of our field offices, and you can
16 always call our office, 327 2929.

17 UNIDENTIFIED SPEAKER: You will try to get another

18 MR. CROSSMAN: Another mailing.

19 UNIDENTIFIED SPEAKER: And then I to have to go to the
20 BID office to see that draft again?

21 MR. CROSSMAN: We have had many questions and will
22 we will try to move it around.

23 UNIDENTIFIED SPEAKER: So we can check out what the EPA
24 part is about before we come back for another hearing?

25 MR. CROSSMAN: I will double-check and make sure the

1 EPA portion of it. They have written their draft to be
2 module additional module in the permit. I believe it
3 was provided to them. I will double-check and make sure.
4 It may not have been that readily apparent.

5 UNIDENTIFIED SPEAKER: I didn't have time to read the
6 whole thing.

7 MR. CROSSMAN: Our field staff doesn't deal with this
8 and certainly they don't know anymore about it than you
9 folks do. We try to ask them to make it available and give
10 out our phone number.

11 MR. YOUNGBLOOD: Okay. I am accepting the testimony of
12 these three folks and I am asking who wants to go first?

13 UNIDENTIFIED SPEAKER: I thought you meant in general.
14 I would rather testify in the morning.

15 MR. YOUNGBLOOD: Okay. How about you, sir?

16 UNIDENTIFIED SPEAKER: I don't have anything to say
17 right now.

18 MS. NICHOLS: Could I say something I forgot to say?

19 MR. YOUNGBLOOD: You could, but you will have to come
20 forward. The court reporter can't hear it back there.

21 MS. NICHOLS: I forgot to say one thing that I wanted
22 to add to that, which was in the matter of efficiency,
23 economic efficiency. I had an idea that we could take that
24 exhaust, the smokestack from the incinerator, and recycle
25 that through into the air conditioning and the heating of

1 the Los Alamos Labs and that the public might feel better
2 knowing that the exhaust that finally comes out of that
3 system, that maybe the particulates would have lodged
4 somewhere on their way out.

5 MR. YOUNGBLOOD: I had three folks that wanted to
6 testify. There was was there someone else? Just the
7 two of you?

8 Now, I am going to ask you, would you rather
9 testify tonight or in the morning?

10 UNIDENTIFIED SPEAKER: Yes.

11 MR. YOUNGBLOOD: You would like to. Please come
12 forward and state your full name for the record.

13 FRANK WALKER

14 was called as a witness, and having been first duly sworn,
15 testified upon his oath as follows, to-wit:

16 MR. WALKER: My name is Frank Walker, PO Box 120, Ojo
17 Sarco, Ojo Sarco, New Mexico.

18 It's ironic that the person I was going to
19 address first just left the room, you know. Just one
20 moment ago. I wanted to speak to the people from Los
21 Alamos to recognize that in any case, at least, the
22 paranoia cuts both ways.

23 Somebody talked about how they thought the whole
24 arms race and so forth was just a product of our paranoia,
25 but, in my opinion, people like myself also are certainly

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1 capable of paranoia, and in my own case I have often met
2 and talked with people in government and my initial
3 assumption that these people are just, you know, complete
4 jerks usually evaporates in about ten minutes and I find
5 out they are wonderful people that I like and I find that I
6 do have differences of opinion or different values or
7 different attitudes in some cases, but it's more a product
8 of my experience and so forth. It's not a result of their
9 being less a good person than I am.

10 So we make a lot of assumptions about the people
11 on the hill and most of them, if we meet them as people
12 one on one, are likeable, good people who care about a lot
13 of things that we care about.

14 But what I did want to say to the woman who just
15 walked out, is that on the face of it, it still looks
16 pretty bad for Los Alamos not to make itself available for
17 our whatever, cross examination.

18 It looks to me -- and I assume it looks this way
19 to a lot of people -- that because they weren't required to
20 be here, they opted not to be here. Because they might
21 show up and say something embarrassing. They avoided that
22 gift that they didn't make the gift to the public. It was
23 less important to them to make themselves available and
24 help educate us than it was for them to avoid shooting
25 themselves in the foot and saying something that might be

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1 embarrassing on the record.

2 So I would like to say that although I felt
3 pretty angry a few hours ago when I noticed that they
4 weren't really actively participating, I do not feel such
5 anger any more, but I want to notify them, I think it is
6 arrogance and I presume it isn't any kind of avoidance and
7 elusiveness that people have seen in governmental agencies
8 characteristic for years and years and years, and it
9 doesn't help at all to build trust to see them avoid these
10 confrontations. Okay.

11 I am going to say a couple of things now which
12 are not specifically about this incinerator.

13 But and their platitudinous, but let's take a
14 look at the forest use, not the trees, what the platitudes
15 are. This issue is just one symptom of the entire problem
16 of the premises of our civilization, we have to change our
17 life style we have to change our attitudes.

18 Most of the people in this room are already
19 converts, so I am not preaching to you, but for the
20 record whether it's nuclear waste or other kinds of waste
21 we have to change how we live, and in my opinion even more
22 important than that is the fact that all the scientific
23 caution in the world is not going to solve that problem.

24 The problem we have about toxic waste. We need
25 all the scientific education that we can get and all the

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1 circumspection and all the intelligence. But, to me,
2 that's not the fundamental problem. The fundamental
3 problem is we live in a world in which, as Robert March
4 said, we are separated, ourselves from the holiness of the
5 land and of life.

6 The universe, including the plants and the
7 animals and even the atmosphere, is sacred and we lost that
8 because we live in this scientific world, 19 - 20th
9 century world, but also was because we take the people that
10 talk about these mystical things are considered sort of
11 fringe and wild-eyed poets and so forth, and any
12 information that they have that seems a little bit on the
13 fringe is call anecdotal and not pertinent and
14 unscientific.

15 And that's basically part of the problem. We
16 don't respect our artist, our poets, our philosophers, our
17 intuitants, our mystics that know at a gut level a lot of
18 things that are we are doing and he waits for some
19 knight in shining armor to come along and prove it
20 scientifically, and my knowledge, when we are defacing our
21 planet and soil, I hope the government will begin to listen
22 to these people because there's a lot of them in this state
23 and we have to stand together but not be paranoid that
24 nobody else asks or care because if we are communicating
25 with them generally they are hearing us.

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1 Something else that strikes me as obvious and it
2 would be hilarious if it weren't so serious.

3 We are talking in-lu-er-ator with no experts on air
4 quality. Here I know I am repeating what everyone else
5 says, but this is not good for your state's image. We
6 should think about how this must look to people in New York
7 that read in the headlines there is no air quality person
8 here to answer questions. It's unbelievable.

9 It also bespeaks the arrogance of these
10 departments that feel they don't have to be available
11 because they are not scheduled, and let the public be
12 damned, as far as information goes.

13 It's a shame and a tragedy and a crime that EID
14 doesn't have the funding to do what they have to do, and I
15 feel sorry for you because I know you are doing the best
16 you can with what you have to do. I really do.

17 Some of the best gaseous pollutants that might
18 come out of the stack are unprecedented in human history,
19 because the products that we are burning have not been
20 around for thousands of years. They are brand new
21 products. They are temperatures that they are going to be
22 burned that are unprecedented in human culture.

23 So even if we catch all but parts per billion of
24 particulate matter, what about the gaseous products that we
25 and our kids are going to be burning for the next ten

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1 thousand years? We have no idea what these are going to do
2 to any of us, to the most human aura, to the plants, to any
3 of the life forms and the planet, and it is ultimately
4 ridiculous, presumptions to say because you are not sure
5 now it is deviating to do this.

6 Now each of these things, we're going to go ahead
7 and do it as an experiment. That's ultimately presumptions
8 and criminal to make these experiments, and we are talking
9 about how we are not going to be around much longer, and we
10 are going to die and we joke about it, but I am concerned
11 about the health of my grandchildren's grandchildren. We
12 are all going to die, but what about the health of the
13 planet in the meantime? We are all going to live before we
14 die, and we have no right to do this to our children's
15 children's children.

16 So I hope that we all remember to love each other
17 as much as we love the plants, I hope this kind of dialogue
18 continues, ad nauseam, because they are boring sometimes
19 and we all have other demands on our time.

20 But we are talking with each other, reducing the
21 paranoia, and beginning to realize this is only the tip of
22 the iceberg and we can only really deal with the
23 probably change our head and helping other people be
24 educated and not talking down to them as if they are stupid
25 or ignorant or anything because we have our own kind of

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1 stupidity and ignorance and if they talk down to people,
2 they will reject our proposition.

3 Thank you very much.

4 MR. YOUNGBLOOD: Do we have questions?

5 If not, thank you very much.

6 MR. WALKER: One comment, before you walk out, I said
7 that I wanted to let the Los Alamos people know, I don't
8 feel hostility for you, but - and, you know, as a little
9 bit of advice would be, even if you are not required to
10 bring expert witnesses or expert panels or whatever you
11 want to call them, to meetings like this where you are not
12 scheduled or you are not required by law to answer
13 questions and so forth, I think it would behoove your
14 organization to make that public educational tool
15 available, because it looks like you are avoiding being
16 confronted or being pinned down.

17 It looks like concerns that you might have about
18 shooting yourself in the foot take precedence over a
19 sincere desire to make yourself absolutely available for
20 public scrutiny, so I would appreciate it if Los Alamos
21 would do more than they are required by law to do in future
22 meetings of this kind.

23 That's all.

24 MR. YOUNGBLOOD: Thank you very much.

25 (THEREUPON, the witness was excused.)

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MR. YOUNGBLOOD: At this time we will recess until eight o'clock in the morning in this room.

(THEREUPON, the proceedings were in recess at seven o'clock in the evening.)

REPORTER'S CERTIFICATE

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I, Howard W. Henry, a Certified Shorthand Reporter and Notary Public, DO HEREBY CERTIFY that I did administer the oath to the witness herein prior to the taking of this hearing; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcription of the proceeding had upon the taking of this hearing.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND AND SEAL this 30th day of July, 1989.



Certified Shorthand Reporter
and Notary Public
Certificate Number 9

My Commission Expires: March 3, 1993

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BEFORE THE
ENVIRONMENTAL IMPROVEMENT DIVISION
STATE OF NEW MEXICO

IN THE MATTER OF:)
)
LOS ALAMOS NATIONAL LABORATORY)
HEARING ON HAZARDOUS WASTE)
PERMIT)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on to-wit, the nineteenth day of July, 1989, the above-entitled matter came on for hearing before the New Mexico Environmental Improvement Division, taken at the Harold Runnels Building at the hour of eight thirty o'clock in the forenoon.

VOLUME 3

1 to be changed, by law, so that the defendant will sit in
2 the dock and be questioned by the public, otherwise it's a
3 farce and I feel that this whole -- these whole two days
4 have been like a kangaroo court with the defendant hardly
5 present at all.

6 I feel that Los Alamos has been in a very
7 difficult position, but compared to the position that the
8 citizens of the state of New Mexico have been in, they are
9 sitting in the catbird's seat and they have us in their
10 power.

11 I feel that these hearings are not going to
12 change anything, although I would hope that some of the
13 ideas that have come out could possibly influence Mr.
14 Crossman to recommend to Mr. Mitzenfelt that the permit not
15 be given.

16 I haven't heard a single person speak in favor of
17 the incinerator, and I think that the bulk of the people
18 share with me a sense of outrage that this incinerator has
19 been burning off and on for nine years without the public
20 really being aware of it.

21 I have the feeling that we are so used to having
22 a nuclear priesthood in our midst that we have not been the
23 watchdogs that we need to be. I am not blaming them for
24 being present because I believe since I am involved in
25 psychological matters it is very easy to have tunnel vision

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1 and I think that's what's been going on and that the public
2 is really uninformed.

3 So to have a hearing in this forum, where Los
4 Alamos did not provide information to the people here so
5 that we could question them under oath, what is the point
6 of questioning us under oath? We do not have the
7 expertise. Nevertheless we do have some very common
8 sensical ideas and I should like to present a couple of
9 them.

10 One of them is that I should like to see the
11 permit changed to require test burning at appropriate
12 intervals, maybe six months, because it seems absurd to
13 have one test burn and then run the plant for years just on
14 that one test burn. There is such things as embrittlement
15 from contact with radioactive materials. There is
16 deterioration and there's already been shown to have been
17 corrosion in the plant by Mr. Robinson's testimony.

18 I think that the Los Alamos Laboratory itself is
19 so discredited in the eyes of the public that their
20 assurances that everything is all right is not helping us
21 at all. I should like to see the laws changed so that the
22 EID would be able to protect the public and I felt very
23 sorry for Mr. Crossman who had to field all these questions
24 and I marvel at his command of detail and I thank him for
25 his courtesy to the public.

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1 This is the kind of public servant we need in the
2 EID, who should protect us from what is going on in Los
3 Alamos. As my husband said yesterday, the incinerator is
4 merely a very small part of what has been going on in Los
5 Alamos, and I think the public really feels very
6 distrustful of a place that requires an almost
7 two billion dollar cleanup.

8 That is not good science, in my amateurish view.
9 I believe that we need to require a great deal more of our
10 state and I intend to work on the legislature to see if we
11 can get more money for the EID and beef up the inspection
12 programs.

13 I ask you, Mr. Crossman, if you will really
14 seriously consider the alternatives, which were only hinted
15 at during the hearings. I am sure that there is a great
16 deal more information out there, if scientists can present
17 it, and I should hope that you would be able to require the
18 LANL to provide the look at the alternatives, just as it
19 was suggested many times in the WIPP hearings that the
20 alternatives of not burying the waste were also demanded by
21 the public.

22 I think this state has a sophomoric effect on
23 those of us who live here, it's such a beautiful place we
24 can't believe that it can be as you said, but it can be,
25 and I think that we see that since the burning has been

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1 going on for nine years and the public not being aware of
2 it that we are not being trusted by the Los Alamos to have
3 any opinions about our own fate.

4 So I ask you very, very sincerely, Mr. Crossman,
5 to consider advising Mr. Mitzelfelt that there's a bad
6 political decision. I believe that these are not just
7 scientific decisions, that there is ethical and moral and
8 political matters to be considered here.

9 So I thank you very much to have the opportunity
10 to appear.

11 MR. YOUNGBLOOD: Questions?

12 If not, thank you very much.

13 (THEREUPON, the witness was excused.)

14 MR. YOUNGBLOOD: How many folks do we have in the
15 audience that want to testify this morning?

16 UNIDENTIFIED SPEAKER: There are a lot more people that
17 want to testify, as you recall from your count, but they
18 are just not here yet.

19 MR. YOUNGBLOOD: I have a great number of people who
20 have signed up but -- I am not sure they will all show up.
21 I will start.

22 Would you please state your name and your address
23 for the record?

24 JEAN MAC FARLAND-ALTSHULER
25 was called as a witness, and having been first duly sworn,

1 testified upon her oath as follows, to-wit:

2 MS. MAC FARLAND-ALTSHULER: My name is Joan MacFarland
3 Altshuler, Post Office Box 3791, Pojoaque Station, Santa
4 Fe, 87501.

5 I am speaking as a recent resident to the Santa
6 Fe area. I recently purchased a home a year ago in
7 Pojoaque and I do spend most of my time in Massachusetts.

8 I have been very concerned about the nuclear
9 issue here and have appreciated being able to participate
10 in the public concern about what is happening in this
11 state.

12 I, too, love this state very much and have been
13 drawn here for its cultural and spiritual properties.

14 I am here at this particular time because of
15 these hearings. I came out specifically to see what I
16 could do to educate myself regarding the activities at Los
17 Alamos.

18 In Massachusetts the activities that go on in New
19 Mexico are also fairly well-known, and perhaps this is
20 because of my interest that I can find these things outside
21 the state, but I find that New Mexico is gaining a
22 reputation as a state who is willing to accept the nuclear
23 wastes of the rest of the country and for some degree is
24 willing to wholesale its environment.

25 I think that the process here in these hearings,

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1 there is an opportunity for the state to really take
2 take seriously what some of the ideas have been. I realize
3 that. And I do agree that the formalities and the way that
4 it has been structured does appear to be a farce, but I do
5 believe that the human spirit can kind of rise above the
6 limitations that have been set here and some of the
7 individuals who can make a difference can possibly change
8 things in this particular instance with the incinerator
9 process at Los Alamos.

10 New Mexico citizens are really concerned and I am
11 extremely inspired by the constant participation of the
12 citizens and I think that they need to be listened to.

13 While I said earlier that the state is gaining a
14 reputation outside the state as one who is willing to
15 wholesale its environment, on the other hand, there is a
16 lot of inspiration to be gained from what the citizens are
17 trying to do to change things. I believe New Mexico could
18 become an example and set a precedent for turning the tide
19 on its own environmental self-destruction.

20 On the property which I purchased there are five
21 other individuals who have moved here, also from out of the
22 state, and moved their businesses here also. All of us are
23 aware of many other people who would like to do the same.
24 But these people are scrutinizing very carefully their
25 relationship of the state to Los Alamos and the

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1 environmental record of the state. Their health, their
2 concern for their families, they're concerned about these
3 issues.

4 Los Alamos, through its aura of secrecy, has
5 succeeded in creating a most suspicious fear which I have
6 found has kept many valuable citizens from relocating and
7 contributing to this community. I have to say that it's
8 very difficult to even look at the decision to have moved
9 here myself without reconsidering the wisdom of it. I
10 believe it's a grave mistake for the EID, or as a state
11 resident at large.

12 To consider LANL or the military industrial
13 complex that has such a foothold in this state, in the long
14 run essential means of the economic security in the state.
15 The cost of this view is the continued growth of a
16 population which can help balance the overweighted military
17 economy, and an economy that in the future I believe will
18 not be a particularly viable one with the global attitude
19 shifting toward more responsibility priorities.

20 It's a lot harder to monitor the people who have
21 decided not to come here, the people who are financially
22 sound and wish to contribute. It's perhaps impossible to
23 create statistics on lost economic opportunity to the state
24 because of unseen hazards of the endangered and poisoned
25 environment that will also be contributed to by unmonitored

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1 emissions from these incinerator stacks.

2 I implore you in your decisions, Mr. Crossman, to
3 recommend to Mr. Mitzelfelt not to issue this permit and to
4 do whatever is necessary to give time for the state to
5 re-examine its regulations and to help bring the agency
6 that you represent back in alignment with the priorities of
7 its name, which has to do with environmental improvement.

8 Thank you.

9 MR. YOUNGBLOOD: Questions?

10 If not, thank you very much.

11 (THEREUPON, the witness was excused.)

12 MR. YOUNGBLOOD: Do you want to put this in the record?

13 MS. MAC FARLAND ALTSHULER: This is a letter to Mr.
14 Mitzelfelt.

15 MR. YOUNGBLOOD: Yes, we should put that in. Let's
16 call this MacFarland-Altshuler Exhibit Number One.

17 Objections to it being taken in the hearing?

18 (THEREUPON, MacFarland-Altshuler Exhibit Number One was
19 marked for identification and admitted into evidence.)

20 MR. YOUNGBLOOD: Yes, ma'am.

21 MS. HALL: I would like to put a statement into the
22 record, too, if I may, but my husband took notes and I will
23 write it up and send it in, if that's all right.

24 MR. YOUNGBLOOD: Yes, ma'am, when all the testimony is
25 over we are going to discuss how long we will leave the

1 record open and at that time, then you will know when to
2 get it in.

3 We have a gentleman back here that wants to
4 testify. Will you please come forward?

5 Please state your name and address for the
6 record.

7 PETER STRONG
8 was called as a witness, and having been first duly sworn,
9 testified upon his oath as follows, to-wit:

10 MR. STRONG: My name is Peter Strong, and I live at 727
11 Camino Santa Ana, Santa Fe, 87501.

12 Get set up here.

13 MR. YOUNGBLOOD: Surely.

14 MR. STRONG: I think, first of all, I want to talk
15 about the health effects.

16 MR. YOUNGBLOOD: I am going to ask you to talk to the
17 mike. They are having trouble hearing you.

18 MR. STRONG: First of all, I want to talk about the
19 health effects of low level radiation and mortality, and
20 there's a paper by J. M. Gould and Ernest J. Sternglass
21 that I wish to submit into the record.

22 This talks about the fallout of Chernobyl and the
23 mortality rate of infants in North America, which is
24 halfway around the world.

25 The June of 1986 mortality rate for infants

1 almost went off the graph and it's based from 1932 to the
2 present.

3 MR. YOUNGBLOOD: Let this be Strong Exhibit Number One.

4 Objections to it before it is taken into the
5 record?

6 Let it be entered. Continue.

7 (THEREUPON, Strong Exhibit Number One was marked for
8 identification and admitted into evidence.)

9 MR. STRONG: I also have another -- I have been in
10 touch with people in the Rocky Flats area of Colorado and
11 there is presently the Sierra Club is filing a lawsuit
12 against Rocky Flats for their incinerator. It presently
13 can't get permitted and I have been talking with a man who
14 is a specialist on the high efficiency particulate
15 arrestors for HEPA filters, Joseph Goldfield.

16 I talked with him on the phone this morning about
17 the efficiencies and inefficiencies of particulate
18 arrestors and he was mentioning some points that when this
19 material is burned, it's combined -- he's a chemist and I
20 am not a chemist -- and he was talking about combining
21 these elements with air.

22 So that when you burn one pound of waste, you are
23 increasing the volume by ten pounds or more of gas. And
24 that the -- we also get into I would like to get more
25 information on the actual incinerator itself and the

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1 scrubbing device.

2 A lot of these materials that are in the gas,
3 from what I understand it's a water scrubber device, and
4 that only the soluble gases will be removed with this water
5 scrubber and that the insoluble gases will pass through and
6 he found -

7 UNIDENTIFIED SPEAKER: Speak closer to the mike,
8 please. It's hard to hear you back here.

9 MR. STRONG: Sorry. He found that the -- he found that
10 the scrubbers at the most could be eighty to ninety percent
11 efficient and that high efficiency of filters, particulate
12 filters filter out particles. They don't filter out gases.

13 And so we got in the subject of certain types of
14 salts. He was asking me if there were types of sodium, and
15 he was meaning that chlorides, fluorides, and PCB's have --
16 he said the basis for an environmental lawsuit is that
17 there is no environmental impact statement and right there,
18 under some act - I don't know where it is.

19 The Environmental Defense Fund up in Colorado
20 hasn't uncovered this, I have yet to be in touch with them
21 that they have a lawsuit. Presently Rocky Flats cannot get
22 a permit because they had so many obstacles that they gave
23 up trying. And that they have thousands of citizens in the
24 Denver area with massive contamination, who put up such a
25 fuss and such -- so much concern and panic over birth

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1 defects, brain tumors with Rocky Flats employees, this
2 massive he said that the papers -- the HEPA filter paper
3 it's only a sixteenth-of-an-inch thing. It's only paper.
4 It's not a concrete wall to keep gases from exploding out
5 of the chimney.

6 There have been recorded over two hundred fires
7 at Rocky Flats. The 1957 fire released, I think, fourteen
8 kilograms of plutonium into the Denver area.

9 I will say again that the paper is a sixteenth
10 of-an-inch thick, made of a Fiberglas material. Does the
11 paper -- it has been tested to seven hundred degrees
12 Fahrenheit and with -- can withstand, according to
13 Goldfield -- that five minutes of this temperature is the
14 maximum time.

15 Very little, there will be a complete failure of
16 the HEPA filters above this temperature and the mass
17 particulate, which sticks the filter down, can withstand
18 maybe four to five hundred degrees Fahrenheit and can
19 withstand no more than probably five minutes at this
20 temperature.

21 So that the cooling device, cooling of the gases
22 before it reaches the HEPA filters, is of extreme
23 importance.

24 From what I see, you know, we have this waste,
25 which is safe in its -- it's safely in containers right now

1 and if we put it in an incinerator and burn it, not only
2 increase the volume, but there's also the possibility of
3 plutonium in and these different compounds being
4 concentrated to a massive criticality, which can bring out
5 spontaneous reaction and they are trying to find out if
6 they had nuclear fission in the incinerator at Rocky Flats,
7 possibly coming from the ash compartment.

8 Also with the trust of the Department of Energy
9 I have a newspaper clipping. This is from the Sunday
10 Camera, being -- I believe it's a Boulder newspaper.

11 It says the Washington -- in Washington:

12 "The Department of Energy, in a major shift, has
13 agreed to make public the health records of an estimated
14 six hundred thousand Americans who have worked at US
15 nuclear reactors and weapons facilities since the dawn of
16 the atomic age. Scientists consider the data the world's
17 best source of information on the risks of exposure to low
18 levels of man-made radiation.

19 "Legislators and scientific researchers hailed
20 the department's decision to turn over a twenty-five year
21 government policy that kept the records -- that the records
22 must be kept secret. They predicted it will help them
23 determine whether workers at weapons facilities and
24 civilian nuclear power plants could have been silently
25 poisoned by radiation over the past forty years.

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1 "The decision was disclosed in a letter from
2 Secretary of Energy James D. Watkins to Senator John Glenn
3 of Ohio, chairman of the Governmental Affairs Committee and
4 a critic of environmental and occupational health hazards
5 at the agency's weapons facilities.

6 "Senator Tim Wirth of Colorado has been among
7 several congressmen pushing for release of the records.
8 'This is a significant opportunity to learn more about the
9 potential health effects of working in or living near Rocky
10 Flats and other nuclear weapons production facilities,'
11 Wirth said.

12 "DOE spokesman Jeff Sherwood said the agency
13 hoped the records would be open by fall.

14 "DOE officials said the medical information has
15 been collected on workers at roughly fifty government
16 facilities since the beginning of the Manhattan Project to
17 develop the atomic bomb in the early 1940's, providing an
18 unparalleled glimpse of radiation's potential toll in the
19 American workplace.

20 "Some of the facts have been assessed by
21 scientists under contract to DOE, but the department until
22 now has refused all study requests by independent
23 researchers, some of whom -- some of whom have charged the
24 government with concealing high rates of cancer and other
25 diseases associated with radiation among the workers.

1 "Doctor Arthur C. Upton, a former director of the
2 National Cancer Institute who now runs New York
3 University's Institute of Environmental Medicine, said the
4 DOE's records involved 'a large number of workers and a
5 larger cumulative exposure to low levels of radiation than
6 any other body of information' in the world.

7 "It's important to make this information
8 scientifically available, to establish that the government
9 has nothing to hide"

10 What -- the woman I am talking with back east,
11 Doctor Judith Johnerud, who lives in Harrisburg,
12 Pennsylvania, who suffered the fallout of Three Mile
13 Island, is a specialist, she has a PhD in geology and she's
14 a specialist in isolating nuclear wastes from our
15 biosphere, from our environment, she is presently working
16 with Alice Stewart, an eighty-three-year-old epidemiologist
17 from England, and Rita Fellers, they presently have a
18 million-and-a-half-dollar grant to work with the
19 six hundred thousand health documents that the DOE
20 hopefully will release.

21 Also to get back with the HEPA filters, I think
22 the factor of human error wasn't covered, that HEPA filters
23 are extremely difficult to install and that from -- it's my
24 understanding that the frames are made out of some kind of
25 wood and that the -- see if I can find this -- here's the

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1 filtered paper - leakage in the paper.

2 "The danger of high HEPA filter penetration may
3 be due to electrostatic effects. If the filter materials
4 and assembled filters pass penetration tests due to
5 electrostatic effects, then the loss of the electrostatic
6 charge will cause unacceptable levels of filter
7 penetration.

8 Since there is no way of detecting such
9 deterioration of efficiency after the filter is installed
10 in the field, great care must be exercised in the test of
11 filter materials and of assembled filters by means of the
12 hot DOP test to ensure that electrostatic charges are not
13 affecting the results. Discharging electrostatic effects
14 with high humidity air has been discussed.

15 "Cracking of filter papers at fold may prove to
16 be a source of filter leakage. Great care must be
17 exercised to ensure that papers are manufactured that are
18 soft and pliable - not brittle.

19 "Damaged during packaging, shipment, unpacking or
20 installation can cause holes to be poked through the filter
21 material.

22 "Leakage of filter assembly.

23 "The leakage of the assembled filter is proven by
24 the fact, as recorded before, that the paper, of which the
25 assembled filter is made, has lower penetration, by a

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1 factor of ten - " I can't anyway, there's information,
2 scientific information here I won't get into.

3 "The difficulty of sealing the many running feet
4 of filter material edge to the filter casing has already
5 been discussed.

6 "The corners of the filter frame are a weak point
7 of the assembly design. Leakage can occur at the corners
8 where the side of frame may be joined.

9 "Distortion of the filter, due to stresses
10 introduced in shipment or more probably when clamping the
11 filter to the filter mounting frame, can cause leaks to
12 develop. Temperature changes can set up similar stresses
13 and cause filter assembly leakage."

14 "Filter mounting frames must be designed so they
15 are rigid, can take the forces required due to air flow and
16 filter clamping bolts with minimum deflection. They must
17 have a minimum of welded joints. Each welded joint
18 introduces a chance for leakage and a rough surface that
19 can cause a leak when the filter is installed.

20 "Leakage between the walls of the air flow plenum
21 and the filter mounting frame can easily develop. If the
22 plenum is made of concrete, eliminating leakage is
23 especially difficult. Cracking of concrete would cause a
24 continuing concern with the integrity of the filter
25 assembly.

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1 "Even when the air plenum is made of steel,
2 welding the filter mounting frames to the walls of the
3 plenum is an area where leaks can easily appear due to
4 improper welds, or breaks in the continuity of the welds.
5 Only after the most careful testing can unacceptable
6 leakage be ruled out."

7 "Catastrophic filter failure."

8 "Normally it is thought that radioactive
9 processes are fully contained by walls of steel and
10 concrete. Frequently that is true. However, all
11 radioactive processes that have gas emissions have chinks
12 in the armor surrounding the process. These chinks take
13 the form of banks of HEPA filters. The HEPA filter
14 material is a relatively weak paper. An assembled filter
15 wall fail at pressure differentials of ten inches of water
16 gauge or fifty pounds per square foot. Explosions can
17 build up pressures of fifty pounds per square inch or one
18 hundred forty-four times as great.

19 "The mastics, gases, frames, and filter materials
20 have temperature limitations. Sustained temperatures
21 exceeding the temperature limitations of HEPA filter
22 materials can cause massive failures.

23 "Wetting the filters will cause pressure
24 differentials to develop that exceed the capabilities of
25 the filter and it will fail.

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1 "Fires and explosions will cause filters to fail
2 with possibly very serious consequences. On September
3 11th, 1957, a fire and explosion at the Rocky Flats Plant
4 in Colorado damaged or destroyed all the HEPA filters in
5 one of the prefiltering systems and in the main filter
6 plenum which contained about six hundred and twenty HEPA
7 filters. The event was caused by spontaneous combustion in
8 plutonium "skulls" or casing residuals. From ten PM on
9 September 11th till dawn black smoke billowed from the
10 stack of the exhaust air system.

11 For an added six days no measurement is available
12 to estimate the discharge of dangerous, radioactive
13 plutonium, due to electrical failures associated with the
14 test equipment. On September 19, 1957, eight days
15 following the accident, average readings of radioactivity
16 taken for the day were sixteen thousand times higher than
17 allowable.

18 "It is estimated that fourteen to twenty
19 kilograms of plutonium burned in the fire. In addition,
20 plutonium that had accumulated on the banks of prefilters
21 and on the six hundred twenty main plenum filters, which
22 had not been changed in four years, was emitted to the
23 outside atmosphere. The main plenum filters still had
24 plutonium deposits from catastrophic events that occurred
25 in July, 1954, September, 1955, and June, 1957. No

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1 estimates are available of the quantity of plutonium
2 retained on the main plenum filters. About one point five
3 kilograms of plutonium were estimated to have accumulated
4 on the prefilters. Several kilograms of plutonium may have
5 accumulated on the main filter.

6 The seriousness of this event may be judged from
7 the fact that one UG, or one millionth of a gram, of
8 plutonium can be a fatal dose. One kilogram is one billion
9 UG. At least twenty kilograms were emitted to the
10 surrounding community.

11 MR. YOUNGBLOOD: Mr. Strong, would you give for us the
12 name of the document that you were just reading out of?

13 MR. STRONG: "High Efficiency Particulate Arrestors,
14 HEPA Filters, in the Nuclear Industry," Joseph Goldfield,
15 consulting engineer.

16 Also, I would like to mention that Joseph
17 Goldfield helped develop the HEPA filter in World War II.
18 He's had hands-on experience with the design of the HEPA
19 filter for many, many years.

20 There are fifteen environmental organizations in
21 the state of Colorado, Coalition of Environmental Groups,
22 and he is the head. My mother, Christine Tygason, through
23 the Environment Defense Fund, and the American Friends
24 Service Committee, and American National Toxics Campaign
25 Peace Network, were the ones that she -- this is where she

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1 found his address, and has been talking with him. I talked
2 with him on the phone this morning.

3 Also, I have another paper here that says - to
4 my understanding it's the plutonium will be part of the
5 material in the waste.

6 Also, with Joseph Goldfield, he was saying that
7 I think I had said this before - that the scrubbers only
8 can be expected to filter out eighty to ninety percent at
9 the most of the gases that are generated from the burning
10 of this material and that these filters do not filter
11 gases, they filter particulates.

12 This is a paper here, Plutonium 239, accumulation
13 in valleys around Rocky Flats in Denver, by Kim R. Brice in
14 Westminster, Colorado. This is compiled by him and he is
15 here's a paragraph I would like to read.

16 "Burning Plutonium forms submicron sized
17 particles of plutonium oxide. Exhaust, HEPA, filters in
18 series similar to those at Rocky Flats Plant can remove
19 only plutonium particles larger than point oh three
20 micrometers in diameter. Studies of plutonium particle
21 size in the soil, suggested that single plutonium atoms and
22 plutonium particles with diameters less than the minimum
23 detectable equivalent diameter of point oh micrometers
24 accounted for the majority of plutonium-239 and
25 plutonium 240 activity in the Denver area soil."

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1 Also, in Colorado the background level of
2 plutonium released during global atmosphere weapons testing
3 has been estimated to be on point on eight DPM per gram of
4 whole soil. The control sample was collected about
5 twenty three kilometers south and southeast of Rocky Flats
6 Plant. Many residential areas north and south of Stanley
7 Lake are built on radioactive contaminated soils that were
8 twenty seven to fifty-five times normal background levels.

9 In 1985 Rocky Flats workers still employed,
10 retired, or deceased since 1980, it was down eight fold.
11 Excess of plutonium or three-fold excess of malignant
12 melanoma, and twenty-five compared to all Colorado. Denver
13 area residents now have a thirty percent chance of getting
14 a non-skin cancer before the age of seventy five. If we
15 include skin cancers, the risk would go above forty percent
16 probably be close to one in two.

17 Also, Joseph Goldfield was saying that he is
18 available for consultation to the EID if they would like to
19 hire him. I have his address in front of me if you would
20 like to get in touch.

21 I would like to say from what I have been reading
22 in newspapers that we are suffering the equivalent fallout
23 of an all out world war three and from what these are
24 just things that I read in the newspaper. The fallout is
25 coming from 1950's weapons testing incineration, like Rocky

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1 Plate' toxic waste dump weapon plants and research facility
2 laboratories like Los Alamos food irradiation. Presently
3 the NRC is trying to deregulate and declassify the
4 definition of high level nuclear waste so they can
5 reprocess it and take out cesium 137 to massively irradiate
6 food nationwide.

7 And also they wanted to redefine the definition
8 of radiation so that they can put it, from what I
9 understand, so that they can put it in metal objects like
10 refrigerator plants refrigerator cars, and basically spread
11 it around.

12 Since they can't deal with this waste they want
13 to spread it around in everyone's home, and that will deal
14 with the problem in some sick way.

15 Also the nuclear submarine incident one sank off
16 the coast of Norway, missing nuclear bomb off the coast of
17 Japan. Who knows where other bombs are missing, nuclear
18 satellite fall out of orbit, the test site, and others.

19 I believe we should leave this material where it is and
20 not incinerate it. It's safely sitting in a container. To
21 put this stuff off in our atmosphere, let alone the
22 combination of burning.

23 I am presently a ceramics artist. I'm presently
24 studying ceramic chemistry and when you fire, when you
25 create, burn materials you create new compounds within. I

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1 don't know a lot what is in these containers and when they
2 come in combination with each other new compounds are being
3 formed.

1 Also, I haven't seen this waste incinerator, but
5 I think about flue first and creosote build up. Is there
6 some sort of cleaning, internal cleaning? How do we know
7 that some chemical residue doesn't buildup and
8 spontaneously combust through this incinerator, inside this
9 machine?

10 And how do we know? Is there a monitor outside
11 the last bank of HEPA filters to show the breach and to
12 show the release of toxic materials into our atmosphere?

13 And as to DOE, do they have a task force to clean
14 up a disaster, to clean up a mess like at Rocky Flats?

15 In the "Citizen's Guide to Rocky Flats" by Marcia
16 Klotz and this is published by the Rocky Mountain Peace
17 Center, they have had -- I am focusing on Rocky Flats
18 because they have had numerous lawsuits and subpoenaed DOE
19 documents and in a court of law so they are filed. This is
20 not secret.

21 Rocky Flats is public -- has become very public.

22 The secrecy that I have seen in this hearing with
23 the DOE not participating and the University of California
24 not participating, LANL not participating, they have me
25 really worried. I put a tremendous amount of energy into

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1 tracking this down and I am not through.

2 This is "Plutonium effects on human body."

3 "Plutonium emits alpha particles, energetic
4 particles that travel about five cell diameters in tissue.
5 Skin effectively blocks alpha radiation from plutonium
6 sources outside the body. But when plutonium enters the
7 body by means of inhalation, ingestion through food or
8 drinking water or through open wounds, the continuous
9 emission of alpha particles can do great injury. Even
10 though alpha particles only penetrate a small amount of
11 tissue, they carry enough energy to kill the cells they
12 encounter or to cause mutations that can result in cancer.

13 "The amount of radiation given off by Rocky Flats
14 plutonium does not remain constant, but increases with
15 time. This is because some plutonium spontaneously
16 disintegrates into americium, a much more active alpha
17 particle emitter. After seventy years the radiation level
18 will have increased by about fifty percent.

19 "It is difficult for the human system to flush
20 out plutonium. In fact, half of the original mass will
21 still remain in the body a century after its entry.

22 When inhaled, plutonium particles are deposited
23 in the lung. From there, they slowly migrate via the
24 lymphatic system to the tracheobronchial lymph nodes. Over
25 many months, plutonium is redistributed to other organs.

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1 principally the liver and bones. Plutonium's tendency to
2 concentrate in certain organs makes it more damaging than
3 if it were evenly distributed throughout the body.

4 Allowable exposure standards have often been set too high,
5 assuming uniform distribution."

6 MR. YOUNGBLOOD: Mr. Strong, I think I have given a lot
7 of latitude here because you have been tying some of this
8 back into the incinerator. Do you expect to tie this in to
9 the incinerator?

10 MR. STRONG: Yes. It's my understanding that they are
11 going to be burning plutonium up there, plutonium handling
12 facility.

13 MR. YOUNGBLOOD: I want you to know that this
14 particular hearing is on the burning of hazardous waste and
15 does not include the radioactive material. I have given
16 the latitude for people to bring in the radioactive
17 material in small ways, but I am not sure

18 MR. STRONG: It has been -

19 MR. YOUNGBLOOD: - that the medical aspects of
20 plutonium are germane to this particular hearing. I am
21 going to let you go on, but I wanted you to get through
22 with this portion as quickly as you can. Your comments on
23 the incinerator are well taken.

24 MR. STRONG: Okay. This has to do also with - okay, I
25 will continue - this is a nuclear liability having to do

1 with the Price Anderson Act.

2 "What would happen if a major fire accompanied by
3 a nuclear chain reaction at Rocky Flats contaminated
4 surrounding homes and property with radioactive fallout
5 spreading death and disease? Who would pay for such a
6 disaster?

7 "Not the nuclear contractor. Rockwell would not
8 have to pay, even if such an accident resulted from gross
9 negligence.

10 "Taxpayers would have to pick up most of the tab,
11 because the DOE is responsible for up to seven billion
12 dollars for nuclear accidents. But it is quite likely the
13 damages would greatly exceed this amount, in which case
14 homeowners would simply be unable to collect. Concerned
15 property owners cannot prepare for such a contingency
16 beforehand by buying nuclear insurance, because no
17 insurance agencies sell it.

18 "Nuclear contractors maintain a unique position
19 of immunity from the ominous financial risks of operating
20 their facilities because of 1957 Price-Anderson Act. This
21 legislation was originally intended to promote the peaceful
22 atom" by helping the infant nuclear power industry get on
23 its feet.

24 "For a decade, the government agreed to assume
25 liability for nuclear power plant accidents. After that

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1 time, bill supporters expected in nuclear industry to be
2 financially capable of carrying its own insurance. But
3 instead of expiring in 1967, the act was renewed for
4 another decade and expanded to cover nuclear weapons
5 factories like Rocky Flats.

6 "Congress renewed the Price Anderson Act again in
7 1977. When it expired in 1987, some legislators tried to
8 amend it to increase contractor responsibility for safety
9 at nuclear facilities. In the Senate Energy Committee,
10 Senator Howard Metzenbaum, Democrat Ohio, proposed an
11 amendment that would allow full recovery of damages for
12 accidents resulting from contractor's gross negligence.
13 The amendment was narrowly defeated in committee, with
14 Senator Tim Wirth voting in favor of the amendment.

15 "When the committee settled on a compromise to
16 fine contractors thirty million dollars for willful safety
17 violations resulting in an accident, DOE fought back. It
18 called a meeting of its twelve largest contractors, who
19 sent letters to the committee threatening to stop operating
20 their plants unless penalty provisions were removed.

21 "Rockwell's letter to the committee states: "The
22 broad scope of Price-Anderson indemnity provisions, which
23 cover any public liability that could arise from an nuclear
24 accident, has been a key factor in Rockwell's interest in
25 serving as the management contractor for the Rocky Flats

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1 Plant. Terms such as 'gross negligence' or 'willful
2 misconduct' would inject great and unacceptable uncertainty
3 into indemnity coverage.

4 "Fearing a lengthy floor debate, the senate
5 proposed the decision to extend the Price-Anderson Act,
6 effectively allowing indemnity coverage to expire in
7 August, 1978, when the act ran out. Despite nuclear
8 contractors' threats to halt production, those contracts
9 that expired after that date were renewed under a different
10 piece of legislation, Public Law 805804. This law
11 guarantees limited indemnity coverage, excluding cases of
12 intentional misconduct or bad faith on the contractor's
13 part.

14 "The Rocky Flats contract expires on December
15 31st, 1988. By that time, Washington analysts expect the
16 Price Anderson Act will have been renewed, either in its
17 present or in an amended form. A similar bill containing
18 no indemnity exclusions has already passed the House floor.

19 "As it now stands, the Price-Anderson Act places
20 nuclear contractors in a unique position in the industrial
21 world. If any other corporation operates in an unsafe,
22 irresponsible manner, its insurance premiums rise. Federal
23 nuclear contractors are shielded from this risk minimizing
24 mechanism. Regardless of the type of mistakes these
25 contractors make, taxpayers and homeowners will pay for the

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1 damage."

2 This is opposition, you know, to the mixed waste
3 at Rocky Flats. Some opponents of the incineration fear
4 any increase in plutonium releases from the plant, no
5 matter how small. Others are particularly concerned about
6 accidents, especially those that might breach the HEPA
7 filters releasing many respirable plutonium oxide particles
8 into the air and chemical particles. They point to
9 shortcomings in the monitoring system, which might not
10 detect an accident until too late. For example, the
11 monitor for radioactive emissions is located in the
12 incinerator stack has a response time of one hour. If
13 levels are too high it sounds an alarm in the control room
14 and investigation then takes place before the incinerator
15 is turned off.

16 In the event of fire, the operator is supposed to
17 push a stop button and telephone the fire department while
18 high temperatures could destroy the filtering system.

19 The 1957 fire blew out all six hundred HEPA
20 filters although temperature monitors would probably shut
21 off the waste feed into the first combustion chamber. All
22 the material already in the incinerator could continue to
23 burn, sending unfiltered gases into the environment. The
24 Sierra Club Citizens Against Rocky Flats Contamination have
25 charged that plant officials have not examined all

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1 alternatives and on-site changes and the investigations of
2 the burn have not been done and has not been done here.
3 These are required according to their suit under the
4 national Environmental Policy Act. This suit could set
5 is an important precedent. Such cases pressure DOE and its
6 contractors to take health and environmental concerns
7 seriously, the opportunity to subpoena relevant information
8 for such a suit can yield valuable information about the
9 plant, which might not otherwise be attainable.

10 For example, most of the information now known
11 about the 1957 fire was revealed in the course of a suit
12 brought by landowners against Rocky Flats operators,
13 claiming the fire had severely contaminated their property.
14 The plaintiffs were able to subpoena documents and worker
15 testimony about the accident. At the end of the trial the
16 DOE tried to retrieve all documents related to the fire for
17 shredding. Luckily, some documents escaped this fate.

18 In the oversight at DOE nuclear facilities
19 everyone knows what happens when a teacher asks their
20 students to grade their own papers. The same is true for
21 government agencies.

22 The position of the DOE as a self-regulator has
23 resulted in a giraffe situation that is by no means limited
24 to Rocky Flats. The 1981 General Accounting Office report
25 asked and answered the following questions about DOE

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1 nuclear weapons facilities:

2 "Is DOE's program adequate to assure the
3 employees at DOE nuclear facilities are provided with safe
4 and healthful working conditions?"

5 "The short answer is 'No.'"

6 "Is DOE providing adequate emergency preparedness
7 assuring that DOE facilities are prepared to respond to
8 nuclear accident?"

9 "The short answer is 'No.'"

10 I wish to submit this into the record, "A
11 Citizen's Guide to Rocky Flats."

12 MR. YOUNGBLOOD: Okay. That will be Strong Exhibit
13 Number Two.

14 MS. NELSON: I have a question.

15 MR. YOUNGBLOOD: Let's get these exhibits.

16 MS. NELSON: Could you identify more the HEPA filters
17 article?

18 MR. STRONG: That's already in.

19 MS. NELSON: Was that one or two?

20 MR. STRONG: It's been xeroxed upstairs before the
21 hearing has taken place.

22 MS. NELSON: That was the one from -- I'm sorry, what
23 was the article from NNRDC?

24 MR. STRONG: NRDC? This was the HEPA filters article.
25 I got the address of Joseph Goldfield through my mother,

1 who has been working hard up in Colorado. We have a cabin
2 thirty miles - between thirty and forty miles from Rocky
3 Flats. I spent my entire life growing up within the
4 fallout zone of that area. I'm sort of worried that I am
5 contaminated. I am also very worried here that I am
6 contaminated.

7 MR. YOUNGBLOOD: Did you have other exhibits?

8 MR. STRONG: Yes, I do. This is from Deadly Defense.
9 It's a portion - this has to do with the Rocky Flats in
10 Colorado.

11 MR. YOUNGBLOOD: Any objection? If not, let this be
12 entered as Strong Exhibit Number Three.

13 (THEREUPON, Strong Exhibit Number Two and Three were
14 marked for identification and admitted into evidence.)

15 MR. YOUNGBLOOD: You may continue.

16 MR. STRONG: I would like to comment on what was said
17 in the last couple days that I think only monitoring carbon
18 dioxide and oxygen is outrageous. I want to say that
19 carbon dioxide and oxygen are only two elements being
20 emitted from the top of the stack. And outrageous that
21 there are going to be many other gases. I am going to try
22 to get Joseph Goldfield to speak at the EPA hearing. I
23 may not be present for that - in August to speak on the
24 HEPA filters, as he has in Colorado. He's been a key
25 person in the lawsuit filed against Rocky Flats up there.

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1 If this was done safely, you know, I would like
2 to see a safe way that this material can be dealt with. I
3 really do. But this isn't safe. Burning it just you
4 can't filter out all the stuff and I can't get away from
5 the air we breathe. Air is everywhere. We all breathe it.
6 Fallout over Rocky Flats, it has been estimated to be
7 equivalent of ten Nagasaki-type bombs in the Denver area.
8 Fifteen thousand cubic or two hundred fifty kilograms.
9 That's the estimated dispersion. I would submit this as an
10 exhibit into the record.

11 MR. YOUNGBLOOD: Okay, objection? If not, let this be
12 Strong Exhibit Four.

13 (THEREUPON, Strong Exhibit Number Four was marked for
14 identification and admitted into evidence.)

15 MR. YOUNGBLOOD: You may continue.

16 MR. STRONG: I think I am going to be finishing up here
17 in a minute.

18 I would also like to say that from what I have
19 seen with the WIPP hearings and other DOE facilities that
20 they go for the lowest price contractors, people who
21 possibly have no idea of the hazards of radioactive
22 material. I can't imagine who would climb inside the stack
23 to reinstall HEPA filters. I can't imagine who would do
24 this. I mean, maybe people in Espanola who don't know any
25 better, but, I mean, I can't imagine how they are going

1 these things are bolted in place by hand.

2 I called my friend, Doctor Johusrud, who lives in
3 Harrisburg, Pennsylvania, and asked her permission to read
4 a paper that she wrote. This is an introductory position
5 paper on a proposal to amend the Atomic Energy Act.

6 "Since 1954, the US Atomic Energy Act, Public Law
7 83 703, 42 USC 2011 (f)(f), has contained provisions that
8 mandate the commercial uses of commercial energy. So long
9 as that mandate remains in law, the Nuclear Regulatory
10 Commission, the Environmental Protection Agency, Department
11 of Energy, and all other agencies of the federal government
12 will be required, by law, to continue to promote the
13 commercial uses of atomic energy over the protection of the
14 public health and safety, including support for nuclear
15 power reactors and the rapidly expanding industrial uses of
16 nuclear materials. Although all uses of nuclear energy
17 result in some kind of wastes, the agencies will always put
18 their obligation to continue the activities that create
19 hazardous radioactive wastes ahead of the more reasonable
20 decision to cease production of wastes until and unless we
21 have a proven capable to isolate such wastes from the
22 biosphere for their full hazardous life.

23 "It has become clear that the costs of waste
24 isolation, along with the cost of nuclear reactor
25 construction, are astronomical, and can only get worse.

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1 Decommissioning of nuclear facilities lies ahead. Food
2 irradiation and the uses of radioactive materials in other
3 consumer goods production will expand the problems of safe
4 isolation of these materials manifold, in factories, on the
5 highways, in production facilities, in weapons development
6 and deployment, in research in medicine, and in power
7 plants. In all instances of licensing, regulation, and
8 enforcement we may expect the regulatory agencies to
9 calculate their decisions on the basis of the clear
10 directive in the Atomic Energy Act to develop and use
11 atomic energy to the maximum extent, with the 'paramount
12 objective of making the maximum contribution to the common
13 defense and security.'

14 "For the first time in the history of the atom,
15 large numbers of Americans are questioning the advisability
16 of continuing the production activities that generate both
17 'low level' and 'high level' spent fuel radioactive wastes.
18 Now that the congress has directed the Department of Energy
19 to select sites in both the eastern and western states for
20 the geologic disposal of high-level waste, many former
21 advocates of nuclear power are proclaiming 'not in my
22 backyard,' but are also coming to understand that it is not
23 just or fair to accept the alleged benefits of the use of
24 nuclear energy and dump the wastes elsewhere.

25 "Citizens can reasonably and logically argue now

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1 that the time has come to remove the promotional mandate to
2 continue to develop the commercial uses of the atom from
3 federal law. The dangers of high activity wastes are well
4 understood by most Americans. The additional hazards
5 associated with adding ever-increasing quantities of lower
6 activity wastes into the environment are somewhat more
7 difficult for most of us to relate directly to the health
8 and well being of our own families. But nationwide
9 communities are rejecting disposal facilities for various
10 kinds of hazardous toxic wastes and their residents are
11 highly skeptical of the ability of regulatory agencies to
12 assure their safety.

13 "We suggest that you may want to study the exact
14 wording of the Atomic Energy Act and to consider how best
15 that language could now be altered to provide, instead, for
16 a congressional mandate that 'it shall be the policy of the
17 United States that the control and regulation of atomic
18 energy shall protect to the maximum extent the health and
19 safety of the public.'"

20 That's it for me.

21 MR. YOUNGBLOOD: All right. Any questions? There
22 being no questions of Mr. Strong, thank you very much.

23 MR. STRONG: Also I wish to submit into the record,
24 which was drawn up by Concerned Citizens for Nuclear
25 Safety. It may speak a lot of my concerns. They outline

1 them very well.

2 MR. YOUNGBLOOD: Objections to this being taken in the
3 record? If not, let this be Strong Exhibit Number Five.

4 (THEREUPON, Strong Exhibit Number Five was marked for
5 identification and admitted into evidence.)

6 MR. STRONG: And may I say one more thing in the
7 record?

8 MR. YOUNGBLOOD: Surely.

9 MR. STRONG: I would like to say that realizing that
10 Garrey Carruthers, the pro WIPP, and from what I
11 understand, that the director of this department of the EID
12 was appointed by Garrey Carruthers and I see that he
13 possibly believes -- Garrey Carruthers possibly believes
14 that any opposition to expansion of nuclear facilities or
15 of dumping wastes in our beautiful land of enchantment, New
16 Mexico, is anti American. He may believe that. I am
17 appalled that he is our governor, that he seemingly has no
18 concern for the health and well being of the citizens of
19 the state, being in such a position of power.

20 That's all I have to say.

21 MR. YOUNGBLOOD: Thank you.

22 (THEREUPON, the witness was excused.)

23 MR. YOUNGBLOOD: I know I have two other people who
24 wanted to testify. Does anyone else wish to testify? I am
25 trying to --

1 MS. CAVANAGH: Am I one of the two people?

2 MR. YOUNGBLOOD: Yes.

3 Would you like to testify now, ma'am?

4 MS. CAVANAGH: Okay.

5 MR. YOUNGBLOOD: I will take this testimony and then we
6 will take a short break.

7 MS. CAVANAGH: Actually --

8 MR. YOUNGBLOOD: Well, do you want to wait?

9 MS. CAVANAGH: Yes, it would be nice to get a short
10 break. I would love to have a cup of coffee.

11 MR. YOUNGBLOOD: We will take a short break at this
12 time and come back.

13 (THEREUPON, the hearing was in recess.)

14 MR. YOUNGBLOOD: Are you read to testify?

15 MS. CAVANAGH: Yes.

16 JOAN CAVANAGH

17 was called as a witness, and having first duly affirmed her
18 testimony, testified upon her affirmation as follows,
19 to-wit:

20 MR. YOUNGBLOOD: State your name and address for the
21 record.

22 MS. CAVANAGH: My name is Joan CAVANAGH. The address
23 where I live is 132 Duran Street, Santa Fe, New Mexico. My
24 mailing address is PO Box 15967, Santa Fe, New Mexico,
25 87506.

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1 I am living in Santa Fe for the summer with the
2 intention of eventually moving out here once I complete my
3 graduate work in Connecticut. I loved New Mexico for many,
4 many, years and have returned here repeatedly.

5 I have lived in New Haven, Connecticut, for
6 twelve years. Connecticut is another state whose economy
7 is a slave to the nuclear industry. We host four nuclear
8 power plants and the General Dynamics boat facility in
9 southeastern Connecticut. In New London County, produced
10 the first Strideot subs and fast attack nuclear power
11 submarines. I believe in 1979 a study by Doctor Sternglass
12 found that cancer rates in our little state were three
13 times the national average. I don't want to see this
14 happen to New Mexico.

15 I -- when I prepared this presentation I wanted
16 to begin by registering a protest, which has been repeated
17 many times over the past three days but has never been
18 adequately addressed. That is that the Los Alamos National
19 Laboratory and Department of Energy representatives have
20 been sitting quietly through these hearings, scattered
21 throughout the audience, incognito, with the exception of
22 one whom -- oh, yes, I do see -- who had to take the heat
23 for entering their written comments in the record yesterday
24 while Mr. Grossman (sic) and his counselor have been
25 sitting on the spot.

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1 These people have sat quietly. Most of us can
2 guess who you are, but we don't know you by name. It is,
3 of course, right. Mr. Grossman Crossman, I'm sorry,
4 that the EIS be held accountable to it as a charge to
5 protect and improve the environment, but they are not the
6 only players here, and as they have stated, themselves,
7 they are by no means the most significant ones.

8 That doesn't let you off the hook by any means.
9 But the significant players, the initiators of our dilemma,
10 refuse to be held accountable. That is unacceptable. They
11 sit -- their representatives sit here quietly and their
12 bosses in Washington do not attend.

13 So I would like now before I continue with my
14 presentation to have any Department of Energy
15 representatives and Los Alamos National Laboratory
16 employees and reps who are here, if there are any, stand up
17 and give us your names and your functions, please. I would
18 finally like to see some names and faces behind the
19 policies and practices which deny the right to choice of
20 all the people of the earth. Bureaucracy is, after all, a
21 man made invention and its primary function is to cloak
22 reality.

23 Are there representatives of LANL and the
24 Department of Energy in this room? And, if so, would you
25 please stand up and give us your names and functions?

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1 MS. BROWN: My name is Sheila Brown. I think I
2 introduced myself before. I am the attorney of the
3 licensee.

4 We have -- I have three people who are here today
5 helping me. My legal assistant, Marsha Sheena, and Jim
6 White who works at HSE, which is Health, Safety,
7 Environmental group and Dave Hutchins, who also works in
8 that same group. I asked them to be here and take notes on
9 me for technical issues so we can provide answers for the
10 record of this hearing.

11 MR. YOUNGBLOOD: Thank you.

12 MS. CAVANAGH: Thank you.

13 Are there any representatives of Department of
14 Energy in this room?

15 Thanks.

16 I would like to say a word about credentials,
17 so called. In addition to the fact and the most important
18 credentials that any one of you comes here with is that we
19 have to breathe this stuff, we have to live in this
20 environment, and we have to leave a legacy for generations
21 to come that is more than a nuclear garbage dump.

22 But in addition to those very basic and important
23 credentials, I am also a lifelong anti-intervention,
24 antinuclear activist beginning in the late 1960's with the
25 struggle against the US incursion into Indochina.

1 By profession I am a historian and writer, not a
2 scientist, and it is the historical and political
3 perspective that I would choose to bring to these
4 proceedings, and it is a perspective that I feel has been
5 lacking over the last several days and it is a sketchy
6 perspective because I haven't had a lot of time to prepare
7 this presentation, but it's beginning and I hope people
8 will think about it.

9 Before the Trinity test was conducted in mid July
10 of 1945, forty four years ago Enrico Fermi predicted that
11 the odds of the test itself destroying the planet were one
12 in one thousand. The odds of the test destroying New
13 Mexico were one in thirty, he calculated. No ordinary
14 citizens were asked whether or not they chose to be put at
15 such risk, whether or not they considered the risk of one
16 in thirty or one in one thousand odds of annihilation to be
17 acceptable.

18 We can only speculate as to what the results of
19 such a worldwide or statewide public opinion poll would
20 have been. But, in the interest of "national security," no
21 choice was offered. As we know, the scientists were
22 vindicated. The Trinity test did not destroy the planet or
23 even New Mexico, and the primitive, by today's standards,
24 bombs which were dropped on August 6th and August 9th,
25 1945, on Hiroshima and Nagasaki merely incinerated two

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1 hundred thousand Japanese civilians going about their daily
2 lives and brought about an endless stream of casualties,
3 radiation sickness, days and months later of cancer and
4 genetic mutations down through the years, effects that are
5 still being experienced by that population. And we know
6 that a high disproportionately high number of people who
7 were witnesses to this, to this Trinity test and later
8 nuclear tests here in the desert, subsequently died of
9 cancer.

10 I have those figures, but I don't have them
11 available to me. They are at home in Connecticut.

12 The Pentagon, which employs the nuclear
13 physicists, calls these and projected casualties of a
14 nuclear war, collateral damage.

15 The people who sit on the boards of the big
16 corporations, which guide the arms race, people who make
17 six and seven digit salaries and hold stocks in the
18 "defense and nuclear industry" worth again six or seven
19 digits, justify the endeavor which makes them wealthy by
20 calling it the price of freedom and democracy, a democracy
21 which makes them, of course, democratically billionaires.

22 What do scientists from LANL who have sat in
23 guarded silence here in this hall, what do they call their
24 endeavor? And the state, as always, buckles down under all
25 the pressure, protecting the economic interests of the few,

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1 refusing to protect its own citizens from the health
2 results of the greed and power of those few.

3 It is not a nice package. War-for-profit fallout
4 at home, fallout, which is killing us but apparently at a
5 slow enough rate at this time as to be deemed acceptable.
6 I do not find it acceptable. Most of the people who have
7 spoken do not find it acceptable.

8 To return to nuclear politics in historical
9 perspective back in the 1950's, about the year I was born,
10 the first nuclear power plants came on line. At the time
11 the scientists admitted that they really had no idea what
12 to do to contain the waste generated. But in their logic,
13 since the power plants could be produced, it must be done
14 if it can be done. It must be done.

15 And, after all, atoms for peace was a useful
16 political cover to present to a war weary population, a
17 cover for the real endeavor, a lucrative, profitable for
18 some, atoms for war boondoggle, which we have lived with
19 since 1945.

20 So the scientists said, "We don't know yet what
21 to do with the waste, but by the time it becomes a problem
22 we will know."

23 Another calculated risk, which to the mind of
24 this citizen says it all, tells us why we are faced with
25 the current situation, tells me why the people at LANL now

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1 whine at us. "Well, what do you want us to do with the
2 waste?" The minds who brought us Trinity, Hiroshima, and
3 Nagasaki, Three Mile Island, Rocky Flats, Hanford,
4 Washington, and on and on, are admitting the fact that once
5 again, they don't quite know what to do but they have got
6 to do something, and that this incineration process is so
7 safe that they, themselves, would snort the ashes.

8 I suggest that their historical track record
9 indicates something quite different. I suggest that it
10 indicates we believe them to our own peril. Further, I
11 submit that Los Alamos and the nuclear industry are by
12 their very nature antidemocratic because with the arrogance
13 of the scientist's supposed expertise, they removed us from
14 the element of choice.

15 The scientists collaborate with the government
16 because they know without the big money the government
17 provides they would have no ability to pursue their
18 research. It is a very sad state of affairs.

19 The bottom line is that we are not willing to
20 permit the willful risk to the human experiment that the
21 generals, the corporate heads, and the scientists involved
22 in nuclear experimentation would foist upon us. Greed, the
23 lust for power, the United States' quest for hegemony, are
24 anathema to the values of cooperation, just distribution
25 and determined conservation of shared resources to which we

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1 must all aspire if the human experiment is to continue or
2 even deserve to continue.

3 I stated at the outset that I was not a
4 scientist. This is not entirely true, if by science we
5 mean a desire to understand what works, what doesn't, and
6 why. Historians, too, are very much above this project and
7 historians, too, can be bought, and have been bought and
8 convinced to tell lies and half truths to write history for
9 the victors, those with the money and the power.

10 I chose to write not the history of the victors
11 but history for those who must win if the human race is to
12 survive, if the human experiment is to overcome the
13 persuasive social Darwinism ethic which guides what a lot
14 of activist called "this filthy rotten system," a system which
15 at its heart denies the life as a whole for the greed of
16 the few at the top.

17 Over the past few days we have participated in a
18 transparent attempt by the United States government to make
19 us believe that its policies are truly guided by principles
20 of democracy, but most of the people in this room, I
21 believe, have seen through this lie. This is the only
22 heartening thing which has come out of these hearings for
23 me, but it is not by any means a trivial matter. It should
24 give pause to the six and seven digit salaried corporation
25 heads and Pentagon general and all who collaborate with

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1 them in any way by acts of commission or acts of omission.
2 A word of old caution; sleep light and with one eye open.

3 We have seen the deliberate fragmentation of
4 these hearings. We are not content. The hearing officer
5 said to me over break yesterday that he felt that people
6 had learned a great deal about how things work. I tend to
7 agree. But I would say it a bit differently. I say they
8 have learned a great deal about how the democratic system,
9 as we want to believe in it, is subverted by deliberate
10 fragmentation and mystification.

11 We have been dealing here with one part, one
12 millionth percent of the possible. I am not a
13 mathematician so this could seriously understate the case.

14 I close by addressing a word to those of us who
15 have hung out here for three days or come back or came for
16 the first time. It is good, but not enough to defend our
17 own health, our own lives and choices, to defend the
18 wonderful State of New Mexico against assaults, radioactive
19 hazardous mixed whatever you want to call them, to defend
20 our sweet, relatively clear, I hope, environment.

21 But we are dealing with a much larger problem
22 here, a problem with global implications. Our sisters and
23 brothers throughout the world want life, choices, a sweet,
24 clear environment just as we do.

25 The people in the ghettos of New York, New Haven,

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1 all over this country, the people of Nicaragua, El
2 Salvador, Africa, and all over the so-called third world
3 want a life which the policies of -- want a life on
4 choices, which the policies of our government deny them.

5 It is good and right and healthy that we should
6 fight for the safety and well-being of our children and
7 their children and their childrens' children. Our elderly
8 parents, our friends, lovers, brothers and sisters and
9 ourselves. Our cats and dogs, plants, flowers, food, our
10 air, but we must go beyond this. We must recognize that it
11 is policies, which in relative terms are just now beginning
12 to threaten us, have threatened others for at least the
13 last half of this century, since the inception of the
14 nuclear age and since the United States became the world's
15 first in nuclear power.

16 We must go from here determined to end the
17 production of the weapons and the policies which require
18 them and the mindsets which carry them out. For these are
19 the things which have created the immediate problem to
20 which these hearings are addressed.

21 MR. YOUNGBLOOD: Questions of Ms. Cavanagh?

22 If not, thank you very much.

23 (THEREUPON, the witness was excused.)

24 MR. YOUNGBLOOD: I believe a gentleman over here.
25 Please state your name and address for the record.

VANCE HOLMES

was called as a witness, and having been first duly sworn, testified upon his oath as follows, to-wit:

MR. HOLMES: My name is Vance Holmes. My address is 1710 Lena Street, Santa Fe, New Mexico, 87501.

Basically, I guess I just want to take the opportunity to point out to Mr. Crossman and to the representatives of Los Alamos who are here that one of the great questions which has created this hearing to ever exist is the question of trust and it's interesting to note that during the hearing, Los Alamos has announced that they need almost two billion dollars to clean up a problem, which for many, many years they claimed didn't exist.

When I first moved to New Mexico, in the early seventies, I heard rumors of all these dumps, but yet government officials said, "No, it didn't exist, don't worry about it." It's sort of interesting that now they need two billion dollars to clean up a problem that doesn't exist.

That does not create trust in the public. And I think that the regulating body in this instance should take that into account, that that is who they are dealing with.

It even goes on with the paper that was submitted by Los Alamos yesterday. They don't trust themselves. One of the requests in it is that under here, under module

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1 seven, section seven A dash two, page forty-three, Los
2 Alamos National Laboratory is subject to and must comply
3 with the state and federal air standards and regulations
4 under federal Clean Air Act and the New Mexico Air Quality
5 Control Act.

6 There is no authority, however, for EID to
7 include compliance with such requirements as part of this
8 hazardous waste permit. This provision could unfairly
9 subject Los Alamos to double penalties under both the acts
10 and the hazardous waste regulations.

11 Obviously, they are concerned that they are going
12 to let stuff out that they will have to be penalized for
13 and that does not make me feel confident that they should
14 be given a permit. I want to see people that are confident
15 that what they do doesn't have to have a legal cloak of
16 trying to get out of responsibilities for their actions.

17 And I feel that the information regarding this
18 type of burning is in doubt. And I want that to be taken
19 into consideration by those people involved.

20 Thank you.

21 MR. YOUNGBLOOD: Questions of Mr. Helmes?

22 UNIDENTIFIED SPEAKER: I'm sorry, let the EID legal
23 section go first.

24 CROSS EXAMINATION

25 BY MS. NELSON:

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1 Q Would you read the cite of that LANL comment
2 again, please?

3 MR. HOLMES: It's on the third page - this was handed
4 out after it was redone.

5 MS. NELSON: That's enough, thank you.

6 MR. YOUNGBLOOD: Question?

7 CROSS EXAMINATION

8 BY MS. HALL:

9 Q Did you say two billion or two million cleanup?
10 I wasn't quite sure.

11 A Approximately two billion.

12 Q Billion?

13 A Billion.

14 Q I just wanted to make sure that was right.

15 CROSS EXAMINATION

16 BY MR. STRONG:

17 Q I was wondering where you got a copy of that.

18 A They passed them out earlier.

19 MR. YOUNGBLOOD: There in the back.

20 CROSS EXAMINATION

21 BY MR. CROSSMAN:

22 Q Vince, I may not have the terminology correct but
23 I couldn't get it written down, your last statement. You
24 said words to the effect that this information is in doubt.
25 We could have Mr. Henry read that back. Could you be a

1 little more explicit as to what information you were
2 referring to, so that I can perhaps answer your question?

3 A Okay. The information that is in doubt, as I see
4 it, is the possible emissions from the incinerator. I am
5 trying to stay within the limits of the chemical releases
6 rather than the radioactive, since that is the intent of
7 this hearing.

8 MR. CROSSMAN: Thank you.

9 A Basically, they are saying that a certain amount
10 of gaseous material will discharge and a certain amount of
11 solid material will get through the system. My question
12 is, is that safe? And if it was safe, I feel that this
13 hearing wouldn't exist.

14 MR. YOUNGBLOOD: Further questions of Mr. Holmes?

15 If not, thank you, Mr. Holmes.

16 (THEREUPON, the witness was excused.)

17 MR. YOUNGBLOOD: I believe you were next. Would you
18 please state your name and address for the record.

19 CRAIG ANDERSON

20 was called as a witness, and having been first duly sworn,
21 testified upon his oath as follows, to-wit:

22 MR. ANDERSON: My name is Craig Anderson, and I live at
23 Route 14, Box 216 Y, Santa Fe, 87505.

24 MR. YOUNGBLOOD: Would you like to submit this to the
25 record?

1 MR. ANDERSON: Like to submit that to the record.

2 MR. YOUNGBLOOD: Okay, then this will be Anderson
3 Exhibit Number One.

4 Objection to its being taken in the record? If
5 not, let it be taken into the record.

6 (THEREUPON, Anderson Exhibit Number One was marked for
7 identification and admitted into evidence.)

8 MR. ANDERSON: Mr. Hearing Officer, Ms. Nelson, Mr.
9 Crossman.

10 I am holding up my wallet. This is the reason
11 that Mr. Crossman and Ms. Nelson and the hearing officer
12 and the people from Los Alamos are still here today while
13 the room is relatively empty compared to the way it was the
14 first day.

15 It's also the reason that I am here, because,
16 fortunately, I am in the situation where I do not need to
17 be at work today, or yesterday, or the day before. And the
18 real reason that I am here is right here, my
19 three-year old. It's also the reason that I have got
20 yogurt stains on the front of my jacket, and I am wearing a
21 different shirt today because of what happens when you have
22 three-year-old kids around.

23 Something else that I would like to put into the
24 record before I go to my prepared comments.

25 I would like to read this. This was in the Santa

1 To newspaper on Wednesday, 19th of July, the same day that
2 the article regarding the Los Alamos Lab two billion-dollar
3 cleanup was on page one. This was buried somewhere back in
4 the inner section of the "New Mexican."

5 The title is "Figure it out."

6 Says, "Why are there so many tourists in Santa Fe?"

7 "Well, it's a very spectacular place for one. We
8 are blessed with great people, wonderful scenery,
9 exceptional culture, art, food, and a unique sense of
10 style. The world has found out about us and they want to
11 come and experience Santa Fe.

12 "We are very lucky, because we live here, and
13 because we receive the benefits of having the tourists
14 here. Estimates are that more than fifty percent of the
15 total gross receipts tax collected in Santa Fe is directly
16 related to tourism.

17 "Lodgers tax collections are up eighteen percent
18 from last year. Every dollar a tourist spends in Santa Fe
19 rolls over at least two point eight times.

20 "It isn't hard to figure out. If you live in
21 Santa Fe, you are benefitting from that tourist dollar even
22 if you don't work in the industry.

23 "Figure it out. Tourism is good for our
24 economy."

25 This is prepared by the Santa Fe Convention and

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1 Visitors Bureau.

2 MR. YOUNGBLOOD: Objections to this being entered into
3 the record? If not, let it be Anderson Exhibit Number Two.

4 (THEYERUPON, Anderson Exhibit Number Two was marked for
5 identification and admitted into evidence.)

6 MR. ANDERSON: Don't get the idea that I am
7 independently wealthy. I work for a living. I am an
8 artist. I live in Santa Fe. I am not a doctor or
9 scientist. And I hope that won't diminish what I have to
10 say today.

11 Before I go to my prepared text, I would like to
12 thank all the people that have come here to speak and
13 people that have researched all the scientific data and
14 brought it before the public. I think it's been a very
15 illuminating three days. Joseph Campbell, one of my heroes
16 and who is now deceased but has been the subject of many
17 installments on the public television station, said
18 something that I think is really not only poignant, but
19 also true, and that is that the brain is the secondary
20 organ.

21 You can fill this table with documents that
22 support the fact that everything will be okay with the
23 incinerator and with the WIPP site and yet if you feel
24 right here between your throat and your belly button, there
25 is a spot that will tell you what's right and what's

1 probably not right. I suggest that if you haven't already
2 discovered that that you take a little time and spend it
3 alone, by yourself, and contemplate that area of your body.

4 So I will go to my prepared text.

5 Since its inception nearly fifty years ago,
6 nuclear fission and its by product, radioactive wastes,
7 have produced alarming situations which our environment and
8 consequently the public health is at risk from the
9 extremely toxic nature of the process of nuclear fission,
10 the resulting by product, and attempts to clean up and
11 dispose of the waste.

12 "It may rightfully be called alarming and an
13 outrageous situation because, if one takes the information
14 now available to the public, combined with common sense and
15 respect for nature and public health, one arrives at the
16 conclusion that private industry and government continue to
17 conduct nuclear fission on a business-as-usual basis and to
18 handle, store and dispose of the resulting radioactive
19 waste in a manner which has now repeatedly been proven to
20 be lax, inadequate, dangerous, and indeed an absolute
21 threat to public health and the well being of our natural
22 environment.

23 "Examples are Rocky Flats, Hanford, and you can
24 add after yesterday, the Los Alamos National Laboratory to
25 the list.

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1 "In the public domain, land, water, and air, the
2 very elements which sustain us, are being repeatedly
3 contaminated with radioactive waste. This is an
4 outrageous, but well documented fact.

5 "Perhaps some of the most fascinating aspects of
6 this business as usual scenario are only now coming to
7 light. Within its context, a basic premise is quite
8 axiomatic. And that is that ipso facto, a human being is a
9 human being; and in this lifetime, as we know it, life is
10 game of percentages. With humans, there is no absolute
11 perfection.

12 "Human beings make mistakes. Consider a
13 hypothetical relationship between a lawyer or a scientist
14 representing the nuclear industry, or a government official
15 representing the DOE, EPA, EID, or EIR, and a lay person
16 with a family concerned with the eroding effect for public
17 health and well being of our natural environment
18 demonstrated by the very agencies charged with protecting
19 us, and those in the pursuit of science, business, and
20 industry who would compromise public health and safety.

21 "Who can be trusted to provide accurate and
22 truthful information? False statements have been made by
23 government agencies which have been accepted at face value
24 as fact by the general public. Who truly has the public
25 interest uppermost on its agenda?

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1 "What surfaces from this scenario is the stark
2 realization that government is currently willfully and
3 knowingly allowing the unthinkable, unconscionable act of
4 contaminating for thousands of years to come the soil,
5 water, and air, which, and only which, sustains all life on
6 this planet.

7 "As twisted as it seems, this apparently is
8 happening very casually on a day-to-day business-as-usual
9 basis across the land.

10 "Allowing that to maintain ourselves as healthy
11 human beings, we have many needs, perhaps most of all we
12 need to feel the sense of nurturance and a sense of safety
13 and security for our families and ourselves. And thus, in
14 the pursuit of our daily lives, how can we continue our
15 somnambulant acceptance of the obvious threats posed not
16 only by the continued pursuit of nuclear fission by the
17 nuclear industry, and scientific experimentation by the
18 government, producing more and more toxic waste, but also
19 the absolute danger posed by the past ineptitudes of the
20 very government agencies charged with regulating and
21 protecting us from this madness?

22 "We have now reached the point at which we, as
23 citizens, are being asked to accept an absolutely
24 ridiculous balance between madness and absurdity.

25 "We know atomic wars are unthinkable, let alone

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1 unwinable. It is the equivalent of planetary suicide. We
2 know atomic energy provides electricity, but at the highest
3 cost, with the greatest danger, and the most deleterious
4 side effects, and for the longest period of time.

5 "Hence the question must soon willy-nilly be
6 asked: From the viewpoint of safety, economics, and
7 politics who supports this madness and who maintains this
8 absurdity?

9 "The daily news tells us with increasing
10 frequency that safety issues are being compromised and
11 facts to this effect are repeatedly presented and
12 substantiated. Financially, investors have lost hundreds
13 of thousands of dollars and large corporations have been
14 brought to their knees by nuclear projects and have sought
15 governmental support for their predicaments, and government
16 has continued to support these Frankensteinian
17 entrepreneurialships. Why? Ask Frankenstein.

18 "Government for all its many virtues in this
19 great system of democracy, has perhaps been flawed from the
20 beginning in its association with the nuclear energy. It
21 was the handmaiden at the birth of this Frankenstein
22 monster, and it annihilated two foreign metropolises with
23 devices which now pale as primitive in the face of today's
24 megaton weapons. Perhaps government in a rapt embrace with
25 the industry somehow feels that it can right its part

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1 wrongs by proving to its constituents that it has been
2 right all along, and that Frankie is really a good boy in
3 spite of all his transgressions.

4 "Since it has been nearly fifty years already,
5 this situation may continue to be accepted by the duck and
6 cover somnambalists as they chaffle along ever closer to
7 the waiting precipice. But those of us now awake feel
8 thrust into an unacceptable situation, an untenable balance
9 between madness and stupidity when considering the whole of
10 the nuclear issue today.

11 By not attending to the details early on in the
12 nuclear game, namely how to effectively neutralize the
13 waste, we are faced now with the realization that we must
14 stop and reconsider the business-as-usual position that has
15 brought us into the current predicament. We must accept
16 this responsibility and rethink our priorities in light of
17 the glaring facts and truths now present. Otherwise,
18 history will record us as having presided over the sealing
19 of our fate, as well as that of many future generations.

20 "Science now accepts the premise of the mutual
21 interconnectedness of all things. Couple this fact to the
22 understanding that many radioactive particles have half
23 lives of many thousands of years, plutonium two hundred and
24 forty thousand years, and it becomes clear why people are
25 demanding that tough, responsible accountable restrictions

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1 and guidelines be placed on the experimentation,
2 production, storage, and disposal phases of all nuclear
3 projects, public and private.

4 "In order to better preserve our planet and
5 provide for the health and well-being of our human race by
6 minimizing the hazards of producing, storing, and disposing
7 of radioactive materials, consider the following proposals:

8 "One. Within the nuclear system, shift human
9 time, energy, and funding away from the current emphasis on
10 research for and production of nuclear weapons systems and
11 the promotion of domestic nuclear power plants. At great
12 cost, this path has brought minimal successes in the
13 medical field, and some innovation in military systems.
14 But it is fast becoming recognized as the path of the past
15 and the road to ruin.

16 "Two. Dedicate an equivalent amount of human
17 time, energy, and money to solving the fifty-year riddle of
18 how to neutralize and render harmless all radioactive
19 materials. These elusive but essential steps toward
20 achieving a neutralization process for all radioactive
21 hazards can surely be effectively accomplished by the same
22 collaboration between government, science, and industry
23 that has brought us to this crisis point. We have now come
24 full circle, back around the spiral, enabling us to see our
25 current predicament from a higher vantage point.

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1 "We the public must remain vigilant, but we must
2 also now be forthcoming and willing to accept conservation
3 measures. Government regulatory agencies must clean house,
4 renounce this balance of madness and absurdity and
5 recognize and rise to a place of truly being custodians of
6 the public health and the well being of the planet. And
7 science and industry must begin anew the search for
8 renewable, safe, effective, and affordable energy sources.

9 "We are at a beginning place once again. We must
10 let go of the old and embrace the search for the new, the
11 safe, and the whole.

12 "For the present, in light of the NIPP proposal
13 and the Los Alamos incinerator now before the public, and
14 in regard to the ongoing problems of storage and disposal
15 of radioactive waste already generated by various programs
16 around the country, consider the following proposals:

17 "Take immediate steps toward providing safe,
18 accessible retrievable storage areas onsite at the various
19 locations where nuclear projects have been undertaken.
20 Consider super compaction in place of incineration. Adopt
21 a policy of absolutely minimal movement of highly
22 radioactive substances from one location to another. The
23 risk of accident is increased exponentially each time these
24 substances are handled, while the cost to clean up the
25 inevitable transportation accidents would be simply

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1 staggering.

2 "The proposed incineration of radioactive wastes
3 must be thoroughly scrutinized by a public review process.
4 Current environmental controls and regulations are
5 hopelessly wired in a bog of ineffectual process for lack
6 of funding and political expediency. Facts and claims
7 brought forth by permit applicants, who, in the past have
8 virtually regulated themselves, must be substantiated by
9 reputable sources outside the influence of those submitting
10 permit applications, and both parties must be held
11 accountable to the public through our legislative branches
12 of governments, local, state, and national.

13 "Again, the paramount issues should be protecting
14 the public health and retrieving and securing for the
15 future, the well being of our natural environment.

16 "In closing, if in the process of pursuing the
17 projected program of neutralizing the nuclear nightmare it
18 becomes clear that we have reached an impasse and no
19 neutralization solution is possible, we must then embrace
20 the impasse, let go of the nuclear monster we have created,
21 and look ahead to more suitable forms of energy those
22 that serve rather than destroy.

23 MR. YUONGBLOOD: Any questions of Mr. Anderson? Anyone
24 have any questions of Mr. Anderson?

25 Thank you very much.

1 MR. ANDERSON: Thank you for the opportunity to speak.

2 (THEREUPON, the witness was excused.)

3 MR. YOUNGBLOOD: Is there anyone else who wishes to
4 testify? If not, at this time I would entertain discussion
5 of how long the hearing record should be kept open.

6 Does the FID have a recommendation?

7 MS. NELSON: FID would recommend that the hearing
8 record be left open for three or four weeks.

9 MR. YOUNGBLOOD: Members of the audience? Several of
10 you were interested in the hearing record and how long it
11 would be open. Yes?

12 MS. BROWN: I was talking to the former witness. What
13 was the

14 MS. NELSON: FID recommends it be left open for a
15 period of three to four weeks.

16 MS. BROWN: Can I ask, I think at the very beginning

17 MR. YOUNGBLOOD: I'm sorry, you are going to have to
18 stand up.

19 MS. BROWN: Did you say at the beginning you were going
20 to put a copy of the transcript out when it's available for
21 public perusal?

22 MS. NELSON: The transcript will be available for
23 public review. It will be available. I don't know what
24 you mean by "put out."

25 MS. BROWN: I thought Kelley was asked the question the

1 very first day and he said something about it being in the
2 EID for review. I guess the reason I ask is whether or not
3 it may extend the length of the closing of the hearing -- I
4 mean the closing of the record to the preparation of the
5 transcript.

6 MS. NELSON: I don't believe so. I think that we are
7 not linked, and EID believes that it is appropriate to
8 close the record at the end of the three- or four-week
9 period.

10 MS. BROWN: So you don't want to give an opportunity to
11 have people be able to review the whole record of the three
12 days?

13 MS. NELSON: I think there's enough in the record for
14 EID to act.

15 MR. YOUNGBLOOD: Yes, sir.

16 MR. HALL: Does EID have any notion as to how long it
17 will take to provide the transcript?

18 MS. NELSON: An additional comment, if I may. The
19 reason for the extended time is to get comments on the
20 permit, not comments on the hearing. Therefore, it is not
21 necessary and appropriate to leave it open for the period
22 of reviewing the transcript.

23 UNIDENTIFIED SPEAKER: You mean, the transcript of all
24 these proceedings?

25 MS. NELSON: Right.

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1 MR. YOUNGBLOOD: Do you have a question that is still
2 on the board, I believe?

3 MR. HALL: My question is, do you have an estimate how
4 long it will take to provide a transcript?

5 MR. YOUNGBLOOD: I am going to ask Mr. Henry.

6 THE REPORTER: About three weeks.

7 MR. CROSSMAN: Then I think we would have to prudently
8 add another week to get an additional copy prepared and
9 make it available in the repository. As I recall, I
10 indicated we would make every effort to put a copy of the
11 transcript in the repository at Espanola and have a
12 copy here. So please allow us some copying time.

13 MR. YOUNGBLOOD: Are there any other -- yes?

14 MR. STRONG: I would like a detailed copy of the actual
15 incinerator and its process, so that I can analyze it with
16 some engineers up in the state of Colorado and see if it
17 really functions in a safe way and look for possible
18 failings of the incinerator itself.

19 MR. CROSSMAN: If you could contact me directly, Peter,
20 I can make arrangements for that.

21 MR. YOUNGBLOOD: Are there any other comments or
22 requests on how long to keep the hearing record open?

23 UNIDENTIFIED SPEAKER: If I understand you correctly,
24 the testimony of everybody here, including Mr. Crossman,
25 the expert testimony about the functioning of this machine

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1 and so forth, will not be available to the public before
2 the time expires when we can submit more testimony, is that
3 correct?

4 MS. NELSON: Most likely.

5 UNIDENTIFIED SPEAKER: That somehow seems inappropriate
6 because, in my opinion, information about the machine is
7 not total until it's - it still isn't total, but I
8 wouldn't even approximate totality until we could hear from
9 people like Mr. Crossman in these proceedings. Therefore,
10 how can the public know what it wants to say about this
11 whole issue without being able to review what Mr. Crossman
12 and others have said at this meeting and be able to reply
13 to that information that's been shared at these meetings.
14 That doesn't seem to make sense to me that this is
15 prohibited now.

16 I think under - this could go on forever, but
17 you are saying even an first order reappraisal of Mr.
18 Crossman's testimony is for the - going to be possible
19 where we can make further comment, that doesn't make sense.
20 I protest that.

21 MS. NELSON: The bulk of the information is in the
22 permit application, which is still available for public
23 review during the entire period. There could as well be
24 inquiry and questions asked of Mr. Kelley in the interim.

25 MR. YOUNGBLOOD: I guess there's one other problem with

1 waiting for it to be available, is just one of logistics,
2 and that is, I expect a huge record here and I am not sure
3 that Mr. Greenman has said he could put it at least in the
4 Espanola library, but it's going to take a great deal of
5 time for any single individual to review that particular
6 record. So that for all the public to get to that record
7 and review it, you know, you are talking about a tremendous
8 amount of time.

9 UNIDENTIFIED SPEAKER: I understand that. It just
10 seems personally unreasonable to me that it takes a month
11 to get this information out and that that also happens to
12 be the exact length of time that is going to be left for me
13 to make further testimony. It doesn't seem right that it
14 should take a month if this is really a high priority. Why
15 couldn't that be expedited at least a week or two after
16 that for people who really care enough to seek out that
17 document to examine it again to look at very important new
18 information, which has come out.

19 And I haven't been in all these proceedings so it
20 would be especially important for people like myself who
21 missed the first day and a half. It doesn't seem again in
22 keeping with the stated desire of the government agencies
23 involved to fully inform the public.

24 It just doesn't make sense on the face of it that
25 that is not available before people can make further

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1 testimony and I think it's obvious to anybody that really
2 thinks about it.

3 UNIDENTIFIED SPEAKER: I would like to go on record as
4 concurring with this gentleman. I think it's only right
5 that the public should have further time to explore the
6 facts that have come up during the hearing before the next
7 phase begins.

8 MR. YOUNGBLOOD: Counselor, do you have any

9 MS. NELSON: It seems there has been enough information
10 provided there is enough information available through
11 several sources, which would include the permit
12 application, the LANL comments that were submitted, other
13 kinds of information that have been circulated, notes that
14 have been taken by various people who can get together and
15 talk, and the opportunity to get more in the interim and to
16 talk with Mr. Crossman, if necessary. I think that that
17 answers that part of the issue.

18 For the other part, I think it is true that there
19 is enough through the course of entire proceedings. Mr.
20 Crossman has been here for the entire period of time and he
21 has heard every word that has been said. He -- the purpose
22 of the comment period being left open is only to supplement
23 the hearing.

24 It is not to go back and review the hearing, and
25 I think that we need -- there's a need to have a cutoff

1 point, which would be much too long if we didn't cut it off
2 after three or four weeks, which Mr. Crossman has concluded
3 is sufficient in terms of reviewing the LANL submission,
4 which was the initial basis for the request for the hearing
5 being left open.

6 I believe that the citizens' concerns have been
7 very fully, and fairly, addressed, spoken, related through
8 the course of hearings and that their concerns are
9 protected.

10 MR. YOUNGBLOOD: Anyone else?

11 MS. CAVANACH: I want to know what the need for this
12 four week deal is. I don't fully understand that. What is
13 the need? What will be the objection to keeping what is
14 your bottom line objection to keeping the record open for
15 two or three weeks longer than that?

16 MS. NELSON: Let me confer.

17 MR. YOUNGBLOOD: You may answer that.

18 MS. NELSON: Let me confer. The program that is the
19 commitment under its grant program with EPA is to take
20 certain actions within certain time frames, including
21 actions on a permit. And if the period of time if the
22 record was left open for longer than a three- or four week
23 period the bureau is concerned that it cannot,

24 It will not be able to meet its grant
25 commitments, which jeopardizes its authorization with EPA.

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1 MR. CAVANAGH: Could you specify what those commitments
2 are?

3 MR. CROSSMAN: The commitment is to have a permit
4 decision made by September 30th. Which means I have to
5 have the information reviewed, evaluated, all of the
6 appropriate paperwork completed in time for the director to
7 review it and make a decision.

8 MR. YOUNGBLOOD: I have a gentleman back here first and
9 then you are next, ma'am.

10 MR. ANDERSON: It seems to me that there are on the
11 one hand there are deleterious effects for prolonging this
12 period of time that Los Alamos operates under the interim
13 permit because we are subject to the effluent of the stack
14 in the meantime. But, on the other hand, I think that some
15 of the comments made by this gentleman today are
16 substantive to the place where they are very important for
17 the public to be aware of and, as you see, the hearing room
18 is nearly empty today.

19 I think that somehow, you know, some arrangements
20 could be made. I would simply like to go on record as
21 being concerned that the SWMU's brought up by this
22 gentleman this morning have not been given exposure to the
23 public at large.

24 MR. YOUNGBLOOD: Question, ma'am?

25 MS. HALL: I just have a question. That since the EPA

1 portion of this hearing is postponed for a month, would
2 that not automatically postpone things in general for a
3 month and, therefore, extend the period of time to examine
4 the hearing or the reports of this the transcript of
5 these hearings would be appropriate anyhow?

6 MS. NELSON: Mr. Hearing Officer, that is a different
7 proceeding. EPA is different from the EID proceeding and
8 there is no relationship.

9 MR. HALL: Is there in issuing the permit?

10 MS. NELSON: No, they have two permits. It's a dual
11 permit. EPA's permit is independent. It's drafted as
12 addendum, so to speak, but it really is an independent
13 permit. We have no relationship with it and their timings,
14 et cetera.

15 MR. HALL: But this would allow more time for this part
16 of the permit to be worked on?

17 MS. NELSON: The problem for EID with this is that it
18 needs to act on this permit and I think that there are good
19 reasons for it to act.

20 One is that it ends the interim status on the
21 chemical handling and puts it under permit, but another
22 thing I would like to add for everybody here, that ending
23 the record only means the record of hearing and allows Mr.
24 Crossman to proceed with his activities.

25 It does not end the citizens' opportunity or

1 anyone's opportunity to submit additional information to
2 EID for its consideration. It will take Mr. Crossman a
3 period of time, perhaps a long period of time, to review,
4 analyze, and respond to all of the issues raised in the
5 hearing and then formulate what his proposal to the
6 director is.

7 This is the closing of the hearing record simply
8 sets that off so he can proceed with that. In the interim,
9 the public can still seek information from Mr. Crossman and
10 provide information to Mr. Crossman, and/or to the
11 director. It's just that it is not done pursuant to the
12 hearing and it may be I am not sure what effect -- how that
13 affects the consideration if there should be appeal or not.
14 But it can still be submitted, it can still be considered.
15 The director makes the final decision. That consideration
16 and decision will come in a period of time after Mr.
17 Crossman has made his proposal to the Director.

18 MR. YOUNGBLOOD: Gentleman here.

19 MR. STRONG: I have a question. It is my understanding
20 that the EPA and the EID are to have these regulations come
21 out in a somewhat harmonious way. That there is supposed
22 to be a balance between the regulations that the EPA issues
23 and the EID and if you don't hear what they say at their
24 hearing, I mean, I don't see that you are communicating
25 with each other. I don't see that EID is communicating

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1 with the EPA to know what their level of regulation for
2 this incinerator is going to be and that's not scheduled
3 for another month.

4 MR. WALKER: Can I say something? What I hear this
5 concern about.

6 MS. NELSON: I am sorry, may I respond to his question
7 first or would you like to make yours first?

8 MR. WALKER: No, go ahead.

9 MS. NELSON: I'm sorry. I didn't mean to cut you off
10 but I was talking with Mr. Crossman. With regard to the
11 EPA hearing, for all your information, it is just as this
12 permit covers only chemical waste and not the air bureau,
13 the EPA covers issues that are not the same issues as the
14 ETD permit. Someone from ETD will observe the entire EPA
15 proceedings as well.

16 EPA and ETD are talking about their joint
17 permitting action.

18 MR. STRONG: Aren't you somewhat funded by the EPA?

19 MS. NELSON: Yes, we are.

20 MR. STRONG: To you are guided, is that right? Is that
21 my understanding? Don't they somewhat guide?

22 MS. NELSON: Yes, they do, but the issues in their
23 permit, they are doing it because we cannot. We don't have
24 the authority for the things that they are doing. That's
25 why they are doing them and so it doesn't affect what we do.

1 in this permit.

2 MR. STRONG: That doesn't make sense to me.

3 MR. CROSSMAN: You might maybe I can add one thing.
4 We used an analogy yesterday. I believe it was on a
5 building permit. In Santa Fe, portions of Santa Fe, you
6 need two permits to build or work on your house. One is
7 from the city, a building permit, and the other is an
8 approval from the Historical Review Board, commission,
9 whatever they are called. This is a parallel-type thing.

10 A complete RCRA permit will need both actions,
11 but we have to proceed with ours and we proceed on our
12 schedule. EPA will proceed with theirs and they will
13 proceed on their schedule. Once both are complete, then it
14 will be a complete RCRA permit.

15 Does that help clarify it?

16 MR. STRONG: So you are under no monitoring of the EPA
17 for your actions concerning these regulations? They don't
18 check you for correctness?

19 MR. CROSSMAN: They do.

20 MR. STRONG: Do they have standards that apply to you?

21 MR. CROSSMAN: They have also submitted comments in
22 response to the draft permit. I have not yet reviewed
23 those either, yet.

24 MR. YOUNGBLOOD: Yes.

25 MR. WALKER: I just want to say that something about

1 this whole thing of trying to fight this process into a
2 schedule or a projected schedule that you have a commitment
3 or having to do with some grant or something that you made
4 weeks or months ago. It just strikes me as preposterous
5 and completely backward. I mean, I was sitting here
6 thinking, "Man, you know, man wasn't made for the Sabbath,
7 the Sabbath was made for man."

8 The bureaucracies were not designed to put you in
9 a straitjacket so that the processes you are involved with
10 have to be tailored to fit into a certain time frame, which
11 maybe made sense two months ago but doesn't make sense
12 anymore. The processes are primary, the bureaucracy and
13 its straitjacket time frame is secondary.

14 The Sabbath was made for man. It takes as long
15 as it takes to get to the truth and hear the public input,
16 to consider all the ramifications of new information. If
17 you made a schedule two months ago, or if you are going to
18 use the SWMU's or grant money or something, I don't give a
19 damn. I want you to consider all the technical and
20 emotional, philosophical information that is coming in,
21 including replies to this person's information that come in
22 today for the first time.

23 I would like people to be able to review it who
24 weren't here. They can't do that, if they can't get a
25 public record and have at least a week or two to look at

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1 that. I understand your job is a technical job, but I also
2 understand that you are supposed to -- you are supposed to
3 listen to what people feel about these things. Even if
4 that doesn't completely, totally change the technical
5 considerations. It's important how people feel about
6 something.

7 If everybody in this state were adamant about not
8 wanting this, then you wouldn't give a damn about all the
9 technical considerations. If there were an overwhelming
10 feeling that this is wrong, you would have to listen to it.

11 Now, this person's information might engender
12 such a feeling. I mean, not a total feeling -- not
13 everybody in the state -- but it's important to listen to
14 the reaction to this person's information.

15 It can't be done if you say that you have a
16 preordained schedule that you are bound and determined to
17 follow. That doesn't abide by the spirit of these
18 hearings.

19 These are not just for your education, there are
20 so that people can say what's in their hearts. And say it
21 with enough time that they don't feel pressured or enough
22 time that they can say it completely and adequately, and I
23 think three days (sic) is just scratching the surface. We
24 have to have time to chew the cud, the cud was, you know,
25 the grain that got into the system. People have to have

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1 time to chew the cud.

2 You can't do that in three days or even three
3 weeks. It just is obvious to them that the spirit of this
4 thing is to expedite it so people don't have all the time
5 to do all the thinking they have to do about this. The
6 spirit is not at all. I mean, this thing has gone on for
7 eight years without public input, now you are being too
8 guardedly.

9 You won't give us an extra two weeks to think
10 about these things that are so crucial to me and my kids
11 and my garden and everybody in this room and I think it's
12 absolutely bullshit.

13 MS. NELSON: Mr. Hearing Officer, if I may add some
14 additional information.

15 The grant commitment is pursuant to the mandate
16 from congress that permit actions be completed by November
17 of 1989. The grant commitment is not just through EPA and
18 not just through EIP. It comes from congress.

19 The EIP has given an extensive opportunity to the
20 public for commenting and testifying and the presentation
21 of data of much beyond the scope of what this permit
22 hearing under law is. EIP has provided yet provided
23 citizens the opportunity to get information and provide
24 information to EIP, albeit potentially outside of the
25 hearing record. It does not cut them off from getting

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1 information and providing information. Therefore, EID
2 retains its position, which is that three or four weeks is
3 acceptable to EID and is sufficient for public comment to
4 this hearing.

5 MR. YOUNGBLOOD: Yes.

6 MS. BROWN: I want to ask are -- for clarification
7 something about what the report is now and maybe we could
8 I understand you to say before that this is the record of
9 the hearing you are talking about closing now. There's a
10 bigger administrative record that includes everything that
11 has gone before and some things that will go after?

12 MR. NELSON: That is correct. The permit decision is
13 based on the entire record, not just what happens in the
14 hearing. This what EID has in its administrative file up
15 to the time of the official hearing, the hearing, and after
16 the hearing.

17 MS. BROWN: So you are saying Mr. Crossman and the
18 director can make his decision based on information
19 submitted after the record of this hearing closes as well?

20 MS. NELSON: I believe, so. I may be incorrect, but
21 certainly -- certainly information can be submitted and
22 certainly it can be read and considered. I believe that
23 the consideration can go into the permit decision as well,
24 although I am not sure on that point.

25 MS. BROWN: That's the point I am not sure of, either.

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1 I thought at some point there had to be a closure. Does it
2 go right up to the minute the director makes his decision
3 or the hearing record?

4 MS. NELSON: I am not sure on that point.

5 MR. CROSSMAN: I get the feeling you all are talking
6 about me and I ought to stand up and talk for myself. So
7 with your permission, counselor, I will do that.

8 I believe I tried -- Gini tried to explain that a
9 portion of the total administrative record is the
10 information gathered pursuant to the hearing process. And
11 she's absolutely correct. We have to have a start and we
12 have to have a finish to define that portion of the record.

13 But the total decision is based on the total data
14 input, the total administrative record of all the
15 information gathered pursuant to the permitting process.
16 And that would have to go up to the point where the
17 director puts his signature on the -- on a decision. That
18 is the entire record.

19 That is the information available to him. And
20 certainly, any information that comes in afterwards will
21 have to be looked at. Keep in mind that this is a process
22 being conducted by human beings and everything takes some
23 time.

24 There may be a cutoff point where we can not
25 just cannot physically cope with more information. It

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1 doesn't mean that it won't be considered. It would
2 certainly have to be scrutinized to see is there the
3 Rosetta stone that translates something totally
4 differently. Certainly, we do that in every case, but if
5 it is not something now that hasn't already been
6 considered, it would very likely have to set that aside and
7 say that came in too late to be considered in the formal
8 process.

9 MR. YOUNGBLOOD: Counselor?

10 MR. CROSSMAN: Let me assure you that I am not going to
11 put on blinders and say, as of a particular date, "I am not
12 going to look at that."

13 MR. NELSON: I wanted to add that the director always
14 has the authority, under the law, when he has received
15 sufficient evidence of alleged violations of law or any
16 significant information that should cause him to modify any
17 decision he makes, he has the lawful authority to do so.
18 The director can always receive and consider information.

19 MR. STRONG: I have a question for the EID. Do you
20 have intentions of issuing an environmental impact
21 statement?

22 As from what I understand, through either RCRA or
23 in other acts, a friend of mine that I talked to on the
24 phone in Colorado, that is a violation of public right and
25 that presently there's a lawsuit going through in the state

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1 of Colorado with the Sierra Club leading it. I have full
2 intentions of getting the Sierra Club down here to start a
3 similar lawsuit unless this environmental impact report is
4 issued.

5 MS. NELSON: I am not sure under what law what kind of
6 environmental impact statement it is.

7 MR. STRONG: I am not sure either, but I will find it.

8 MS. NELSON: I don't know of any legal requirement for
9 a separate environmental impact study to be done on
10 issuance of a permit under RCRA. If you can provide
11 reference to one, please do so, at any time.

12 MR. STRONG: I think it goes under the Hazardous Waste
13 Act. There's got to be something out there that protects
14 us. I know there is. And we have rights, you know, in
15 hearing. Is it spelled out that we have no rights? That
16 we are to be contaminated like up in Denver and that's
17 unacceptable. This has got to change. Unbelievable.
18 State of New Mexico. Lawless state. Third world country.

19 MR. YOUNGBLOOD: Further requests or discussion on the
20 hearing record? If not, I will rule that the hearing
21 record will be closed five weeks from today. If you want
22 to submit things into the hearing record, you can send them
23 directly to me in this building. This is and I am going
24 to have to ask for help for my own address. What is it?
25 Post Office Box 968.

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1 MS. NELSON: You don't have one.

2 MR. CROSSMAN: 1190 St. Francis Drive.

3 MR. YOUNGBLOOD: At 1190 St. Francis Drive, Santa Fe,
4 87503. My name again is Walt Youngblood and if you would
5 put it beneath my name put Public Health Division, it
6 sometimes keeps the mail from getting into another channel
7 and being delayed for a day or two.

8 If you begin to get on to the end of this five
9 weeks period of time, I will accept it in my office and if
10 I am not there my secretary will and stamp the document in,
11 up until five PM five weeks from today.

12 MR. WALKER: Is there any way that the record,
13 this record of the proceedings the last three days can be
14 gotten out to the public before three to four weeks?

15 MR. YOUNGBLOOD: I asked Mr. Henry, and his best
16 estimate a moment ago was three weeks.

17 MR. WALKER: I know that was his estimate. I am asking
18 if it can be expedited. I am asking if this can be looked
19 at as a special case, which would make sense to expedite.

20 MR. YOUNGBLOOD: Mr. Henry, I will allow you to answer
21 that question.

22 (THEREUPON, the proceedings were in recess.)

23 MR. YOUNGBLOOD: I think what I have heard from the
24 court reporter is he will expedite it as fast as he can.

25 MR. WALKER: I am asking you, the EID, or one who has

1 the funds and responsible to aid him by hiring additional
2 people and not putting the burden on him, which he seems to
3 think I am putting on him. I am saying that it's EID's
4 responsibility or the state or whoever is involved here to
5 do what they have to do to make it easier for him to get
6 this out sooner and I don't hear any willingness on their
7 part to do it.

8 MR. YOUNGBLOOD: Do you have an answer, counselor, Mr.
9 Crossman?

10 MR. NELSON: We don't know if there are funds. We can
11 check and see if there are funds. It is under contract and
12 budgetary constraints. We have no answer to what EID can
13 do.

14 MR. STRONG: I make a motion to extend the period of
15 time from the day these transcripts are issued to the
16 public so that we can review them so that we have adequate
17 time.

18 MR. YOUNGBLOOD: It would appear to me, and that was in
19 this five weeks that I believe this gentleman said - now,
20 wait a moment - I believe he asked that the public have
21 them for a couple of weeks, if Mr. Henry can get them out
22 in three weeks then you will have a couple of weeks to look
23 at them.

24 I also call to your attention that it's going to
25 be a large, difficult task once it comes out, because I

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1 review hearing records all the time, and it's going to be a
2 very difficult job for those of you who want to review it.
3 I realize that.

4 MR. WALKER: The problem is I don't want to read the
5 whole thing. I want to be able to read certain parts,
6 which I could do in a few hours, such as this information.
7 And I want other people to be able to see the other parts.
8 They don't have to read the ten thousand parts.

9 MR. YOUNGBLOOD: I hear you. I made my decision. The
10 hearing will be closed the hearing record will be closed
11 at five PM five weeks from today.

12 I declare this hearing adjourned.

13 MS. NELSON: No, no, Mr. Hearing Officer. We still
14 have to get in the record

15 MR. YOUNGBLOOD: Thank you.

16 MS. NELSON: various exhibits.

17 MR. YOUNGBLOOD: Okay.

18 MS. NELSON: You have the witness lists?

19 MR. YOUNGBLOOD: I do.

20 MS. NELSON: I have EID Exhibit Number Nine, which is
21 the attendance sign in sheets marked "A" and "B" which
22 reflect the different doors they referred to earlier. And
23 the EID mailing sheet, mailing sign up sheet, which is EID
24 Exhibit Ten, "A" and "B," reflecting different doors. The
25 witness sign up sheets, EID witness sign up sheets, both

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1 "A" and "B," reflecting all three days of witnesses
2 sign up, which is EID Exhibit Number Eleven.

3 MR. YOUNGBLOOD: Let the record show on EID Number
4 Eleven the letters PR were written to the left of each
5 person who testified.

6 MS. NELSON: In addition, Mr. Hearing Officer, as you
7 requested, you had been - as you requested of me, EID
8 received a statement entitled Testimony of Katherine
9 Pettas, dated July 18th, 1989, and you asked that it be
10 taken into the EID file as a comment, even though she could
11 not give it as testimony at the hearing. And I wanted to
12 make a record that we have received that.

13 MR. YOUNGBLOOD: All right.

14 MS. NELSON: And that's all.

15 MR. YOUNGBLOOD: I believe, counsel, we will make her
16 letter EID Exhibit Fourteen. Then I am sure that it will
17 be in the record and easier for the record.

18 MS. NELSON: Number twelve I think, EID Exhibit Number
19 Twelve, Katherine Pettas' testimony.

20 MR. YOUNGBLOOD: Objections to those being taken into
21 the record?

22 If not, let them both be entered.

23 (THEREUPON, EID Exhibits Nine, Ten, Eleven and Twelve
24 were marked for identification and admitted into
25 evidence.)

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MR. YOUNGBLOOD: Is there anything further?

If not, I declare this hearing is adjourned.

(THEREUPON, the hearing was concluded.)

REPORTER'S CERTIFICATE

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I, Howard W. Henry, a Certified Shorthand Reporter and Notary Public, DO HEREBY CERTIFY that I did administer the oath to the witness herein prior to the taking of this hearing; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcription of the proceeding had upon the taking of this hearing.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND AND SEAL this 3rd day of August, 1989.



Certified Shorthand Reporter
and Notary Public
Certificate Number 9

My Commission Expires: March 2, 1993

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