STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF THE APPLICATION
OF UNIVERSAL WASTE SYSTEMS, INC.
FOR A SOLID WASTE FACILITY PERMIT
FOR BROADWAY TRANSFER STATION

No. SWB 24-08 (P)

MAXWELL'S NON-TECHNICAL STATEMENT ON THE PROCESS RESULTING FROM THE SECRETARY'S OCTOBER 3, 2024 ORDER

I. INTRODUCTION.

This statement concerns my observations, assessment, and understanding of the process resulting from the Secretary's October 3, 2024 Order in the matter of the proposed Broadway Transfer Station permit application. As a participant in these proceedings and a person physically present for the public meetings conducted pursuant to the Order, I have observed the resulting process firsthand. Unless otherwise indicated, the observations and conclusions contained herein are offered from that perspective.

Several recurring themes emerge from the process resulting from the Secretary's Order.

Foremost among them is procedural justice and meaningful participation. In my view, the fairness of a proceeding cannot be measured solely by whether minimum procedural deadlines are technically met or whether opportunities for participation nominally exist. The practical ability to review evidence, understand evolving materials, protect interests, and participate on reasonably informed footing matters as well. Throughout this matter, I observed recurring issues involving access to the Administrative Record, timing of disclosures, procedural asymmetry, selective flexibility, notice concerns, and institutional dynamics warranting discussion.

Relatedly, this statement addresses the relationship between formal analysis and lived conditions. The public meetings, the CIA, and the amended record repeatedly revealed tension between technical categorization and the broader cumulative realities described by community participants, including environmental burden, transportation conditions, industrial concentration, health concerns, procedural distrust, and questions of fairness associated with continued siting decisions in Mountain View and the South Valley.

This statement also addresses concerns regarding operational and record clarity. Although the CIA process and amended application generated a substantial volume of additional material, important questions remain difficult to readily answer from the record itself, including questions concerning anticipated water use, reliance upon the onsite well system, operational assumptions associated with proposed dust control measures, aspects of facility design and supporting analysis, and the treatment of property ownership information within the amended application.

Finally, this statement addresses an irony revealed through the process itself: how scrutiny arising from the additional public involvement measures ultimately led back to the original notice record and illuminated issues appearing to bear directly upon assumptions reflected in the Secretary's Order.

II. PROCEDURAL JUSTICE, ACCESS TO INFORMATION, AND MEANINGFUL PARTICIPATION.

Procedural justice has been one of the most consequential aspects of the process resulting from the Secretary's Order. The concern is not limited to whether isolated procedural requirements were technically satisfied. Rather, it concerns whether the process, viewed as a whole, provided a fair and meaningful opportunity to review evidence, understand evolving materials, protect interests, and participate on reasonably informed footing within an adjudicatory matter expressly governed by due process objectives.

The governing framework speaks directly to those principles. The adjudicatory rules identify, among their stated purposes, the objective "to ensure due process for all persons." Likewise, the Solid Waste Act requires procedural regulations that provide assurance that procedural due process requirements are satisfied. Within that same framework appears a directive that "[t]he Administrative Record is available for public review at all times." Those provisions must mean something more than technical compliance measured at the outermost edge of procedural deadlines.

A meaningful opportunity to be heard necessarily includes a meaningful opportunity to review evidence.

That principle became especially important in this matter, where the process involved an amended application, additional public involvement, a reopened hearing framework, and an Administrative Record spanning approximately 1900 pages.

Inspection of the Administrative Record was requested on May 1, 2026. Immediate inspection was not permitted. Instead, inspection was delayed until May 18, shortly before hearing. Why that delay occurred remains unclear. One possibility is that the record required assembly or organization despite the governing expectation that it be available for public review "at all times." Another possibility is that inspection was withheld while relying upon a narrow interpretation of scheduling obligations requiring production no later than the day before hearing. Neither explanation sits comfortably with meaningful procedural fairness.

The practical reality matters. Delivering a nearly 1900-page Administrative Record shortly before hearing, despite a demand for its production more than two weeks earlier, is not equivalent to providing a reasonable opportunity to review and process evidence — particularly where the Department itself had possessed, reviewed, and relied upon those materials over many months. Participants and affected members of the public did not occupy that same position, myself included.

The Department's response once the issue of Administrative Record access was placed on the record further illustrates the concern. Rather than substantively engaging with the practical implications of delayed access to a massive record, the Department moved to strike notices concerning the status of Administrative Record inspection.

That motion was not an isolated event. Earlier in the CIA process, the Department filed a response containing statements affecting my interests in connection with a motion to dismiss. Without taking a position on the underlying motion, I filed a reply addressing those statements and offering my understanding of the matters raised. The Department sought to strike that filing as well. Multiple defenses were raised in opposition, including concurrence statement deficiencies bearing resemblance to issues appearing in later Department motion practice. Those arguments were not meaningfully addressed in the resulting order issued under Hearing Officer Richard Virtue. A Motion to Vacate that order has remained pending in the docket for approximately a year without response or ruling, while the Department's own motion practice proceeded without comparable delay.

Viewed collectively, these circumstances raise broader concerns regarding procedural asymmetry.

Those concerns extend beyond motion practice. Throughout this matter, significant flexibility, accommodation, or practical tolerance often appeared available to the Applicant or aligned institutional actors, while adverse participants encountered compressed timelines, procedural objections, aggressive enforcement of procedural expectations, or narrow readings of procedural rights. Issues concerning exhibit labeling and procedural compliance, for example, raised demonstrated concerns regarding prejudice and procedural justice, yet governing requirements often appeared to operate with substantially greater elasticity where Applicant or Department noncompliance was involved.

The process also illustrated how procedural ambiguity and informational imbalance can function within a technically and legally complex proceeding.

This was evident during the CIA process in connection with the Mountain View neighborhood organizations and questions concerning their procedural status following the Secretary's Order. The Order drew an important distinction: intervention in the original proceeding was denied as untimely, but expressly without prejudice to participation in the additional public involvement process established by the Order. That distinction mattered. Yet when questions later arose regarding whether the organizations were "parties," the discussion did not clearly center upon the controlling significance of the Order or the distinction between the original proceeding and the additional process. Instead, emphasis was placed upon the notion that opposition to their status had ceased.

The issue was not whether opposition had ceased. The operative authority remained the Secretary's Order itself.

While opposing counsel may not have viewed it as their obligation to explain procedural nuance to adverse participants, the exchange nevertheless highlighted how procedural ambiguity can become a practical disadvantage where affected participants are navigating complicated legal terrain without immediate legal representation present.

Comparable disparities appeared elsewhere in the administration of the process. During the scheduling conference associated with the present hearing, Applicant's counsel was not timely present at the beginning of the proceeding and, as observed, ultimately joined remotely after Office of Public Facilitation staff made contact following commencement of the conference. Counsel appeared from a gas station. Meanwhile, opponents and other participants had appeared prepared, orderly, and timely.

Viewed individually, some of these incidents might be dismissed as ordinary procedural disagreement, scheduling friction, or isolated irregularities. Viewed together, however, they contribute to a broader concern regarding procedural asymmetry, informational imbalance, and the practical functioning of meaningful participation within the process resulting from the Secretary's Order.

III. COMMUNITY MEETINGS, LIVED CONDITIONS, AND THE LIMITS OF FORMAL ANALYSIS.

The public meetings resulting from the Secretary's Order revealed a recurring tension between technical framing and lived community conditions.

The meetings functioned less as collaborative scoping or consensus-building exercises and more as Applicant-led presentations followed by sustained questioning, criticism, skepticism, and expressions of concern from community participants. The April 22, 2025 meeting primarily consisted of technical presentations by Applicant representatives and consultants concerning the CIA findings, followed by public discussion. The June 23, 2025 meeting shifted somewhat in structure and emphasis, placing greater attention on project history, mitigation measures, operational changes, and Applicant responses to prior community input. Despite those differences, both meetings repeatedly returned to broader concerns that extended well beyond narrow technical mitigation questions.

Participants did not merely ask technical questions about traffic counts, dust, or operational controls. Discussions repeatedly returned to cumulative burden, environmental justice, industrial concentration, health conditions, distrust of enforcement, neighborhood history, fairness of continued siting decisions, and whether additional waste infrastructure should be expanded within Mountain View and the South Valley at all.

The Community Impact Assessment and the Applicant's meeting summaries capture portions of those discussions, but they do not fully convey the atmosphere, detail, context, or tenor of what occurred in the room. The summaries condense lengthy meetings into abbreviated topical descriptions, brief paraphrases, and parenthetical responses. While useful as general outlines, they necessarily compress discussions involving follow-up questions, disagreement, clarification, lived experience, and broader contextual concerns into simplified narrative form.

That distinction matters because much of the community discussion resisted easy categorization.

Participants frequently described surrounding conditions not as isolated technical categories but as overlapping realities — traffic, industrial activity, air quality, noise, health concerns, contamination history, land use patterns, transportation infrastructure, and procedural distrust functioning together as components of a cumulative lived environment. The structure of the CIA, however, necessarily organizes those concerns into formal analytical categories. Throughout the process, a recurring tension emerged between those two ways of understanding community conditions.

That tension was perhaps most vividly illustrated during the June 23, 2025 meeting itself.

Recurring aircraft traffic noise repeatedly interrupted portions of the discussion. Those interruptions were not theoretical descriptions of environmental conditions. They were experienced in real time by everyone present — consultants, Applicant representatives, counsel, community members, and observers alike. The surrounding environmental context was, in a literal sense, intruding into the very meeting convened to discuss cumulative impacts and community conditions.

What makes that circumstance notable is not merely the presence of aircraft noise itself, but its relationship to the resulting analysis.

Despite the fact that recurring aviation noise formed part of the lived environment experienced during the meeting, airport operations and aviation-related transportation conditions do not appear to have received meaningful treatment within the CIA’s transportation analysis ordered by the Secretary. This observation is not offered to suggest that airport activity should be attributed to the proposed transfer station. Rather, it illustrates a broader analytical concern. The Secretary ordered a Community Impact Assessment directed toward cumulative conditions and impacts within an already burdened community. Where aircraft activity was sufficiently frequent and pronounced to repeatedly interrupt the public meeting discussing those very conditions, its relative absence from the transportation analysis raises understandable questions regarding how cumulative realities were selected, framed, and incorporated within the formal assessment.

This broader issue appears repeatedly throughout the process.

Applicant representatives generally emphasized technical compliance, engineering measures, operational controls, mitigation commitments, and comparative operational experience. Community participants frequently responded from the standpoint of cumulative lived conditions, environmental burden, neighborhood history, distrust of enforcement, and concern that mitigation measures did not fully address the more fundamental question of appropriateness of location.

The resulting discussions were therefore not simply debates over operational details. They reflected differing frameworks for understanding impact itself.

One framework emphasized technical mitigation and regulatory management. The other emphasized cumulative experience, historical burden, fairness, and the practical reality of living within an already industrialized environment.

That distinction is important because the Secretary's Order arose precisely from concerns involving meaningful participation, environmental justice, and adequacy of public involvement. The meetings resulting from the Order demonstrated that those concerns were not abstract procedural concepts. They were active, recurring themes shaping how community participants understood and engaged with the process itself.

IV. OPERATIONAL CLARITY, WATER USE, AND THE ONSITE WELL.

The process resulting from the Secretary's Order generated a substantial volume of additional material. Yet despite that expansion of the record, important operational questions remain surprisingly difficult to answer clearly from the filed materials themselves. Questions concerning anticipated water use, reliance upon the onsite well system, and the analytical basis supporting certain operational assumptions illustrate this concern.

The utility plans, both in the original proceeding and in the amended record, depict continued reliance upon an existing onsite well system. The plans reflect an existing well house remaining in service and continued connection to the existing well. The updated utility drawings further expressly identify a "Fresh Water Outlet For Facility Misting System."

Yet the practical implications of those design elements remain difficult to readily discern from the record.

During the first community meeting, a participant asked about anticipated water use associated with operation of the facility. The Community Impact Assessment summarizes the response as "Estimated 1000 gallons per day or less." The underlying discussion, however, reflected that water use had not been quantified and that the estimate was, by the speaker's own characterization, a guess.

That discussion is significant for several reasons.

First, the estimate appears to have been offered before the later utility plans expressly identified a fresh-water outlet associated with a facility misting system. Second, it is not readily apparent from the record what exactly the estimate was intended to include.

The record does not clearly explain whether the "1000 gallons per day or less" estimate contemplated only then-understood dust control measures, or whether it included existing commercial building use, sanitary use associated with facility operations, proposed misting-system demand, washdowns, fire-related operational demands, or other anticipated water consumption associated with the facility.

Nor does the record clearly disclose the misting system's design flow rate, anticipated operating schedule, projected annual demand, or the analytical basis supporting those assumptions.

These are not merely technical curiosities.

Publicly available records associated with the onsite well indicate a longstanding authorization associated with the property, including operational conditions and annual appropriation limitations. At the same time, the current plans appear to continue relying upon the existing well system to support portions of the proposed facility's water infrastructure. Yet the record does not readily provide a clear explanation of the well's current production capacity, whether historical usage has been evaluated, whether the existing system is metered, or how anticipated operational demand relates to the capacity and authorization governing the onsite water source.

This concern becomes more concrete when viewed through the lens of cumulative operational assumptions. Even modest daily water consumption, when annualized, can become significant relative to finite water authorizations. At the same time, the record contemplates multiple possible water uses extending beyond a simple generalized concept of "dust control." The difficulty is not necessarily that the record affirmatively demonstrates incompatibility. The difficulty is that the analytical path connecting proposed operations, anticipated water demand, existing infrastructure, and governing authorization remains difficult to readily identify within the filed materials themselves.

The issue also illustrates a broader pattern present throughout the process: operational assumptions appearing in discussions, plans, summaries, or design references without a correspondingly clear analytical explanation tying those pieces together into an understandable operational picture.

The Secretary's Order resulted in additional public involvement, expanded filings, and an amended record intended to support informed review. Where the record depicts continued reliance upon an existing onsite well system and identifies a fresh-water outlet for a facility misting system, basic operational questions regarding source, demand, capacity, and analytical assumptions should be readily understandable from the materials presented.

Instead, those questions remain among the matters that, despite the expanded process, continue to require reconstruction across plans, community meeting discussions, public records, and supplemental investigation.

V. PROPERTY OWNERSHIP, RECORD CLARITY, AND THE AMENDED APPLICATION.

Another issue arising from the amended application concerns the treatment of property ownership and the manner in which ownership information appears to have changed during the Department's review process.

Volume 1 of the amended application, as first shown in the August 2025 submission, reflects a modification concerning the identity of the "Property Owner." What makes the issue notable is not simply that ownership information changed, but that the basis for the change was not readily apparent from the application materials themselves.

At the same time, materials appearing elsewhere in the record, including survey information retained in the application, continue to reference a 2018 real estate contract involving Mark and Anne Blackburn NM Broadway, LLC. By comparison, the amended application and related transfer materials reference Mark and Anne Blackburn NM, LLC. Publicly available business records reviewed during this matter identified Mark and Anne Blackburn NM Broadway, LLC as a registered entity, but did not reveal a corresponding record for Mark and Anne Blackburn NM, LLC.

This discrepancy may ultimately reflect nothing more than a typographical or naming inconsistency. However, the distinction necessarily invites scrutiny. Entity names matter, and while no record presently indicates that Mark and Anne Blackburn NM, LLC exists, the two names are not identical and could represent distinct entities at some point in the future.

The issue matters because property ownership is not merely a clerical detail in an environmental permitting matter. Questions concerning ownership can bear upon site control, operational authority, existing infrastructure, and responsibility associated with the property.

The concern raised here is not that the record definitively establishes an incorrect ownership statement. Rather, it is that a material ownership modification appeared in the amended application without a clear explanation readily apparent from the record, while related materials appearing elsewhere do not always present an immediately consistent picture.

VI. NOTICE, RADIO ADVERTISEMENTS, AND THE IRONY REVEALED.

One of the more confounding aspects of the process resulting from the Secretary’s Order concerns the evolution of the notice issues themselves and what later scrutiny appears to reveal about the underlying procedural history of the matter.

The Secretary's Order expressly states that "[t]he record reflects that all public notices specified in the Solid Waste Act, the Permit Regulations and the Procedural Rules of the filing of the Application and of the public hearing in this case were given by the Applicant and the Bureau." At the same time, however, the Order recognizes concerns regarding meaningful participation, adequacy of public involvement, environmental justice, and equal access to information sufficient to warrant the extraordinary remedy of requiring a Community Impact Assessment and additional public involvement.

That combination naturally contains a degree of tension.

The later notice history resulting from the CIA process ultimately drew renewed attention to that tension in an unexpected way.

The immediate issue arose during review, over the weekend preceding hearing, of the Applicant's public notice filing placed in the docket the prior Friday concerning the April 2026 filing of the CIA and amended application. Questions centered on the radio advertisement notice, including omitted language associated with the supplemental hearing notice and the relationship between the notice actually disseminated, the notice approved for use, and the accompanying translation documentation.

That scrutiny did not remain confined to the supplemental process.

Instead, examination of the radio advertisement issue led backward into the original notice record itself.

The closer the notice materials were examined, the more difficult it became to ignore similarities between issues appearing in the supplemental process and characteristics already present within the original notice framework, particularly concerning the "Other Media" notice materials. Questions emerged regarding abbreviated notice content, consistency between versions of notices, translation-related documentation, and whether the notices actually disseminated corresponded with the notices appearing elsewhere in the record.

In that sense, scrutiny arising from the additional public involvement process unexpectedly illuminated aspects of the original proceeding that appear difficult to reconcile with the premise reflected in the Secretary's Order that all required notices had been given.

This observation does not eliminate the Secretary's concerns regarding meaningful participation, environmental justice, or additional public involvement. To the contrary, it arguably helps explain the natural tensions within the Order itself.

The Order reflects an understandable concern that, notwithstanding formal notice compliance, affected persons may not have received an adequate opportunity for meaningful involvement. Yet later examination of the notice record suggests that the issue may not have been limited merely to broader questions of engagement, accessibility, or participation. Rather, closer scrutiny appears to indicate that aspects of the underlying notice history itself may have warranted greater attention than the record apparently received at the time.

The irony is difficult to overlook.

The additional public involvement process ordered to address perceived shortcomings in participation ultimately became the mechanism through which scrutiny returned to the original notice record and revealed questions bearing directly upon one of the Order's own stated assumptions.

This also illustrates a broader theme running throughout the process.

In several respects, closer examination of procedural details — whether involving Administrative Record access, operational assumptions, meeting dynamics, or notice materials — did not simply reinforce existing understandings of the process. Instead, it often exposed complexities, inconsistencies, or unresolved questions lying beneath more simplified procedural narratives.

The notice issue provides a particularly striking example because it touches directly upon one of the foundational premises from which the Secretary's Order proceeded. Had the later scrutiny prompted by the latest radio advertisement notice been applied to the original notice record at the outset, the procedural history of the matter might be understood somewhat differently.

At minimum, the evolution of the notice issue suggests that the relationship between formal notice compliance, meaningful participation, and the actual contents of the record may be more complicated than the procedural posture reflected at the time the Order was issued.

VII. CONCLUSION.

This statement is not intended to discuss every dispute arising from the process resulting from the Secretary's Order; nor, I surmise, could it fully do so given the compressed timeline. Documented just past the midnight hour, it is instead intended to capture how that process unfolded as experienced and observed through participation in the matter, and to identify recurring concerns regarding fairness, transparency, accessibility, operational clarity, and the practical functioning of meaningful public involvement in this proceeding.

The Secretary's Order arose from concerns regarding meaningful participation, environmental justice, and equal access to information. The process that followed demonstrated both the importance of those concerns and the continuing difficulty of fully satisfying them within a contested, technically complex, and procedurally layered permitting matter such as this one. After participating in and observing that process firsthand, and considering that its purpose was to provide for meaningful public involvement, I cannot conclude that it succeeded.

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