



STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF:)
)
APPLICATION OF THE UNITED STATES)
DEPARTMENT OF ENERGY AND)
LOS ALAMOS NATIONAL SECURITY LLC)
FOR A HAZARDOUS WASTE FACILITY)
PERMIT FOR LOS ALAMOS NATIONAL)
LABORATORY, and the)
NOTICE OF INTENT TO DENY A PERMIT)
FOR OPEN BURN UNITS TA-16-388 AND)
TA-16-399 FOR LOS ALAMOS NATIONAL)
LABORATORY.)
_____)

Nos. HWB 09-37 (P)
HWB 10-04 (P)
Consolidated



WRITTEN TESTIMONY OF KATHRYN ROBERTS

My name is Kathryn Roberts. I am presenting this written testimony on behalf of the New Mexico Environment Department (the Department) in the hearing concerning the issuance of a renewal permit for storage and treatment of hazardous waste at Los Alamos National Laboratory (LANL), and the denial of a permit to treat hazardous waste at open burn units at LANL. This testimony provides the basis for Permit Section 1.17, *Notice of Demolition Activities*, and Attachment K in LANL's Proposed Permit. This testimony is marked as **NMED Exhibit 182**.

I. QUALIFICATIONS

I am an Environmental Specialist and Supervisor with the New Mexico Environment Department (Department) Hazardous Waste Bureau Permits Management Program. I have worked for the Hazardous Waste Bureau for approximately six years as a project leader for LANL. During that time I have supervised three-four employees functioning as project leaders on corrective action and permitting activities for LANL and



White Sands Missile Range (WSMR). I am responsible for reviewing all assigned documents (permit applications, corrective action work plans, corrective action reports, etc.) submitted by LANL for evaluation of technical adequacy. I have drafted correspondence regarding technical and regulatory adequacy issues and other compliance and enforcement issues.

Prior to employment with the Hazardous Waste Bureau, I had three years experience as an environmental geotechnical specialist working for an environmental engineering firm in upstate New York. My responsibilities included completing Environmental Assessment Forms (EAF), preparing Draft Environmental Impact Statements (DEIS), transmitting inquiry documents to the New York State Office of Parks, Recreation, and Historic Preservation and the New York State Department of Environmental Conservation (NYSDEC) for project approvals and building permits, conducting Phase I Environmental Site Assessments (ESA), completing Injection Well Closure Plans for submittal to the Environmental Protection Agency (EPA), performing annual inspections for landfills involved in post-closure care activities, completing environmental permitting documentation associated with state and federal regulatory processes in New York State (*i.e.*, NYSDEC, RCRA, NEPA, CERCLA). As part of my geotechnical responsibilities, I supervised drilling operations and installation of groundwater monitoring wells and evaluated soil samples. I also performed field tests and groundwater sampling of monitoring wells. My geographic information systems (GIS)/global positioning systems (GPS) were related to creating project-critical maps showing digital elevation using GPS/GIS point, line, and feature data. I also provided GPS data collection; file downloads, and coordinate data conversion for all company projects.

I have a degree of Bachelor of Arts in Environmental Geography from Colgate University (2001) and I am currently working toward a Master of Science in

Environmental Management from Duke University (anticipated May 2011). A copy of my vita is **NMED Exhibit 183**. It is accurate and up-to-date.

II. PROPOSED PERMIT SECTION 1.17 – NOTICE OF BUILDING DEMOLITION ACTIVITIES

Permit Section 1.17 (*Notice of Demolition Activities*) requires the Applicants, on or before September 30 of each year, to provide the Department with a notice in the form of a list of buildings and other fixed structures that may contain hazardous material scheduled to be demolished in the following federal fiscal year. Permit Section 1.17.1 specifies the information that must be included in this list. Permit Section 1.17.2 requires the Applicants to update the list every three months. Permit Section 1.17.3 further provides that for those buildings or structures that the Department identifies in writing, the Applicants must give the Department notice of the demolition 30 days in advance. It also requires the Applicants to submit to the Department a copy of any final demolition completion report.

The purpose of this Permit Section is to give the Department the opportunity to review and evaluate, in advance, any scheduled demolition of a building or structure that may contain hazardous materials. The Permit Section originated in a 2006 Department enforcement action.

On October 25, 2006, the Department sent the Applicants a Notice of Violation (NMED Ex. 18) for staging hazardous waste mixed with building demolition waste in an unapproved staging pile in violation of 20.4.1.500 NMAC (incorporating 40 CFR § 264.554(b)); and for placing hazardous waste mixed with building demolition waste in a land disposal unit (the Sigma Mesa waste pile) without a permit and without meeting the treatment standards for land disposal of hazardous waste, in violation of the existing

permit for LANL. I prepared that Notice of Violation. As a result of that Notice of Violation, on April 10, 2007 the Department and the Applicants entered into a Settlement Agreement and Stipulated Final Order (NMED Ex. 17) (Stipulated Order).

To avoid a recurrence of this problem, the parties agreed that the Department should have the opportunity to review and evaluate any proposed demolition of a structure that might contain hazardous materials. Therefore, the Stipulated Order provides, in section III, paragraph 21.b:

On or before September 30 of each year from 2007 until the effective date of the final renewed hazardous waste facility permit for the Laboratory at which time the permit conditions will control, the Respondents [the Applicants] shall submit to the Department a list of buildings and other fixed structures that may contain hazardous material scheduled to be demolished in the following federal fiscal year (October 1 through September 30).

Thus, the parties also intended that a similar provision would be included in the hazardous waste permit for LANL. The Stipulated Order, in paragraph 21, also required the Applicants to update the list every three months. The Stipulated Order specified the information that the Applicants were to include on the list. It allowed the Department to identify in writing structures for which it would request prior notice of demolition. The Stipulated Order required the Applicants to provide the Department with specific notice 30 days in advance of commencing a demolition of those identified structures. And it required the Applicants to provide the Department with a copy of any completion report that was prepared.

Permit Section 1.17 of the Proposed Permit effectively incorporates the requirements of the Stipulated Order. Once the Permit is issued, Permit Section 1.17 will control, and the Stipulated Order itself will no longer be in effect.

The Stipulated Order states that “[o]n or before September 30 of each year from 2007 until the effective date of the final renewed hazardous waste facility permit for the Laboratory at which time the permit conditions will control...” Therefore, the Proposed Permit, instead of the Stipulated Order, must control submittal of documentation for the demolition of buildings or fixed structures, primarily to minimize the number of enforceable documents. This provision is further supported by the omnibus authority at 40 CFR § 270.32(b)(2).

The Department’s opportunity to have 30 days advance notice of any demolition can be thwarted if the Applicants conduct demolitions in the month of October, the first month of the federal fiscal year. That scenario occurred in 2009. On October 27, 2009, the Applicants informed the Department by telephone that Building 21-167 and Building 21-370 had been demolished. A record of the telephone communication is (AR 32114).

To close this loophole in the original Stipulated Order, the Department included in the Proposed Permit, Permit Section 1.17, the following sentence: “This notice [*i.e.*, the list] shall be provided at least 30 days prior to demolition of any building or structure.”

The Applicants have objected to this sentence in Permit Section 1.17 because they believe the provision is internally inconsistent and substantially changes the requirement from the Stipulated Order (NMED Ex. 17). Therefore, the Department proposes to remove the last sentence of the Permit Section 1.17, and to revise the first paragraph in Permit Section 1.17.3 as follows:

Based on the list, the Department may identify in writing those buildings or fixed structures for which it requires notice. For each identified building or fixed structure or for any building or fixed structure not previously appearing on the Permittees’ list of buildings scheduled for

demolition , the Permittees shall submit to the Department a notice of the commencement of demolition at least 30 days prior to the start of such demolition.

III. PROPOSED PERMIT ATTACHMENT K – LISTING OF SWMUS AND AOCs

Pursuant to 40 CFR § 264.101(a), the Applicants must protect human health and the environment from all releases of hazardous waste or constituents from solid waste management units (SWMUs) at the LANL Facility, as well as such releases from Areas of Concern (AOCs) at the LANL Facility. The March 1, 2005 Compliance Order on Consent (Consent Order) (NMED Ex. 26) is the current enforceable document governing investigation and cleanup activities of SWMUs and AOCs at LANL. However, the existing Permit is the document by which the Applicants and the Department, as well as interested members of the public, track the status of SWMUs and AOCs at the LANL Facility. As corrective action is completed at a particular SWMU or AOC, the permit is modified and the SWMU or AOC is deleted from a list of SWMUs and AOCs requiring corrective action, and added to either a list of SWMUs and AOCs for which corrective action is complete *with* controls, or a list of SWMUs and AOCs for which corrective action is complete *without* controls. Furthermore, once the Consent Order expires, the Permit will be the enforceable document that governs corrective action activities at LANL.

To continue tracking the status of SWMUs and AOCs at LANL, the Department included Attachment K in the Proposed Permit. It will serve as the means of tracking the status of all SWMUs and AOCs at LANL and documenting which SWMUs and AOCs will require corrective action under the Permit. Attachment K is comprised of three lists of SWMUs and AOCs: (a) those requiring corrective action, (b) those for which

corrective action is complete with controls, and (c) those for which corrective action is complete without controls.

In a letter dated February 8, 2010, marked as **NMED Exhibit 184 (AR 33023)**, the Department directed the Applicants to search archival records for information regarding two magazine areas (Magazine Area A (former TA-28) and Magazine Area B (former TA-29)) located in Technical Area 16 (TA-16). The Department also instructed the Applicants to assign AOC number designations for the two magazine areas. The Applicants responded in a letter dated February 26, 2010 marked as **NMED Exhibit 185 (AR 33165)**. The Applicants declined to assign to Magazine Area A and B AOC number as requested. They indicated that no new information had been obtained, and “Therefore, Magazines A and B are not newly identified AOCs subject to notification requirements in Section V.C of the March 1, 2005 Order on Consent.”

The 1990 SWMU Report (**AR 15098**) stated that these two magazine areas were used to store high explosives. The magazine areas are potentially contaminated with RCRA constituents, but they were never assigned AOC numbers. Thus, the Department requested they be assigned AOC numbers so that the sites can be included in Attachment K for tracking purposes and included in future corrective action investigations. The Department never asserted that these two magazines were “newly identified AOCs.”

In a letter dated March 4, 2010 marked as **NMED Exhibit 186 (AR 33193)**, the Department assigned AOC number designations to Magazines A and B. Magazine A is AOC C-16-076, and Magazine B is AOC C-16-077. These magazines are AOCs which require corrective action and have therefore been added to List K-1 (SWMUs and AOCs Requiring Corrective Action) in Attachment K, marked as **NMED Exhibit 187**.

I, Kathryn Roberts, swear under penalty of perjury that the foregoing is true and correct.

Kathryn Roberts
Kathryn Roberts
Environmental Specialist and Supervisor
Hazardous Waste Bureau
New Mexico Environment Department
Santa Fe, New Mexico

Subscribed and sworn to before me this 19th day of March, 2010 by Kathryn Roberts

Melissa Y. Aparicio
Notary Public

My commission expires:

April 3, 2011