

Permit 3/18/10



**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)**

**No. HWB 09-37(P)
HWB 10-04(P)**

TESTIMONY OF ROGER E. SNYDER

My name is Roger E. Snyder. I am a Federal Government employee, a member of the federal Senior Executive Service, and currently serve as the Deputy Site Office Manager for the Los Alamos Site Office. I have held that position since December 3, 2007. In that capacity, I assist the Site Office Manager in overseeing over \$2 billion annually in programs and projects as well as providing stewardship for the more than 2,000 federal structures on over 23,000 acres that comprise the Los Alamos National Laboratory (LANL or the Laboratory). I joined the Department of Energy (DOE) in 1990 as part of the Defense Programs Technical Intern Program. Since that time I have had assignments at all National Nuclear Security Administration and most DOE Environmental Management sites, as well as serving both programs at Headquarters.

I have completed a Bachelor of Science degree in Civil Engineering from the University of Illinois and a Master of Science Degree in Civil Engineering from the University of Maryland. I have also studied nuclear engineering at MIT and accelerator physics at the US Particle Accelerator School, and have participated in legal courses at Johns Hopkins University, project management courses at Stanford University, and leadership courses at Harvard University. I have also completed a Masters Certificate in Advanced Project Management at George Washington University in Washington, D.C.; been certified as an IT and Construction Federal Project Director; completed the Project Management Professional (PMP) program; and am a Stanford Certified Project Manager (SCPM). Over the course of my work for DOE, I have received several government and industry awards including the American Society of Civil Engineers Award for the Central Illinois Section, and the DOE Pollution Prevention Award for Affirmative Procurement and I was also nominated as the Federal Engineer of the Year by Defense Programs.

Los Alamos National Laboratory is a federal facility, has a federal mission, is located on federal property, is a Federally Funded Research and Development Center and is managed and operated pursuant to a federal contract. The DOE owns all of the land and all of the facilities that comprise the Los Alamos National Laboratory. It is also responsible for all of the waste that has been generated at the Laboratory since the Manhattan Project began operations at Los Alamos in 1943. The National Nuclear Security Administration (NNSA) is a separately organized agency within DOE. In part, NNSA is responsible for



the management and security of the nation's nuclear weapons, nuclear nonproliferation and naval reactor programs. Those responsibilities also entail the operation of several national laboratories, one of which is LANL. Rather than operating the laboratories on its own and using Federal Government employees to perform research and apply the cutting edge science necessary to meet the nation's security needs, DOE and NNSA have chosen to hire Management and Operating (M&O) contractors to provide the personnel, equipment, materials, supplies and services necessary to manage and operate their laboratories effectively, efficiently and safely on behalf of the Federal Government. For over 60 years the University of California was the M&O contractor at LANL. In 2006, the M&O contract was competitively awarded to Los Alamos National Security, LLC (LANS), a limited liability company whose members include the University of California, Bechtel, BWXT and Washington Group International.

The M&O contract is a unique form of agreement that is used primarily by DOE and NNSA. DOE contracts are governed by the Federal Acquisition Regulation (FAR) as well as the Department of Energy Acquisition Regulation (DEAR). Generally speaking, under the DEAR, DOE contracts with entities, such as LANS, that have been created solely for the purpose of performing a specific management and operating contract. When DOE uses an M&O contract, the contract is a Cost-Reimbursement arrangement that includes Fixed Fees and Performance Incentive Fees to the contractor, in this case LANS. Under the terms of the LANL M&O contract, LANS is entitled to be reimbursed for all of the allowable costs it incurs to manage and operate the Laboratory. Each year, through Work Authorizations and the written direction and guidance provided by federal Contracting Officers, NNSA establishes the work that it wants the contractor to accomplish, sets the requirements that the contractor must meet during the year, and provides all of the funding that the contractor may use to accomplish that work. No work can be done at the Laboratory, and no funds can be spent to manage and operate the facility, without the advance approval and written direction of the Government. Thus, the Federal Government not only is responsible for directing and approving all of the work done at the Laboratory but also, and more importantly, for providing all of the funds to be expended at the Laboratory to accomplish that work. Thus, if a financial assurance mechanism is required as a condition of the RCRA permit, the only appropriate source of funding for that mechanism will be the Federal Government and, ultimately, the American taxpayer.

To facilitate the funding of the management and operation of the Laboratory, the Government has established a letter of credit issued by the United States Treasury which LANS draws upon to pay for virtually all operating expenses for LANL. Congress appropriates funding to DOE, then DOE and NNSA allot part of those funds to cover the work they order LANL to accomplish during the federal fiscal year, and LANS then uses the letter of credit to pay for expenses associated with accomplishing all Federal work and any other expenses that are reasonable and necessary to manage and operate the Laboratory for NNSA. Thus, whenever the M&O contractor spends money to operate the Laboratory, it is spending federal dollars and drawing directly on the U.S. Treasury. All funds in the letter of credit account remain federal funds until they are spent and none of the funds in that account are the property of the M&O contractor.

Financial assurance regulations issued by the Environmental Protection Agency (EPA) and adopted by the State of New Mexico require owners or operators of hazardous waste facilities to demonstrate that adequate funds will be available to properly close facilities that treat, store, or dispose of hazardous waste,

and to care for disposal facilities after they have closed. An owner or operator may demonstrate financial assurance for closure and postclosure by choosing from several financial assurance mechanisms, including the posting of a bond or the purchase of insurance. NMED recognizes that the co-applicant, DOE, is exempt, pursuant to 40 CFR 264.120(c), because DOE is an entity of the Federal Government. The EPA exempted the Federal Government from these regulations because EPA recognized that "State and Federally-owned facilities will always have adequate resources to conduct closure and post-closure care activities properly." *"Hazardous Waste Management System: General; Revisions to Final Rule and Interim Final Rule and Request for Comments"* 45 Federal Register 98 (19 May 1980), p. 33198). However, the State of New Mexico has required that NNSA's M&O contractor, LANS, comply with the requirement to demonstrate financial assurance. This requirement should not be imposed on LANS for a number of reasons. To begin with, LANL is a federal facility owned by the United States, and the ultimate financial responsibility for closure and post-closure of units identified in the proposed permit resides with the Federal Government as landowner and owner and operator of LANL rather than with any contractor who is managing and operating LANL for the Federal Government for a limited period of time. As an example, LANS' contract to manage and operate LANL is subject to termination at any time for the convenience of the Federal Government. If NNSA chose to terminate the M&O contract for convenience or chose to perform environmental remediation and management itself, LANS would not have any further part in environmental remediation work at the Laboratory. The Federal Government, however, would remain liable for any closure or post-closure requirements. In addition, it is unnecessary to impose financial assurance requirements on LANS given the funding reimbursement mechanism under the M&O contract. As described above, work done by LANS under the contract essentially is work done on behalf of the United States and funded directly out of the United States Treasury. Imposing financial assurance requirements on LANS will result in a pass-through cost to the United States as it will be reimbursed from the Department of Treasury letter of credit. Because of this unique funding mechanism, the State essentially is imposing indirectly a requirement that is directly exempted from RCRA regulations.

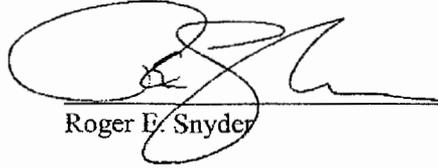
The paradoxical nature of imposing such a requirement on the United States through its M&O contractor has been identified – and resolved – at other DOE owned/M&O operated facilities in New Mexico. Congress has passed legislation, which the President signed into law, to prevent federal dollars of any kind to be used for meeting financial assurance requirements that might be associated with either the Waste Isolation Pilot Plant or Sandia National Laboratory. As a result, NMED has not imposed financial assurance requirements on either of these two New Mexico-based facilities.

It is also worth noting that the management and disposition of all waste generated since 1943 during the accomplishment of Government-directed work on the site by government personnel and employees of its M&O contractors is and has been the obligation of the Federal Government. While the current M&O contractor is responsible for day-to-day operations of all kinds at the Laboratory, the Federal Government provides funding, oversight and prioritization of environmental work relating to legacy waste generated at LANL. In 2005, NNSA entered into a Consent Order with the State concerning cleanup of legacy waste at LANL, and the State has received numerous assurances by Federal agencies and officials that the Federal Government intends to fully comply with its environmental responsibilities at LANL and intends to vigorously pursue environmental remediation at LANL. These assurances have been backed up with ample federal funding; most recently, for example, DOE committed over \$200 million in American Recovery and Reinvestment Act (ARRA) funds for environmental cleanup.

Given the long-term commitment of DOE, and NNSA to fulfilling their environmental responsibilities at LANL, the federal exemption from providing financial assurance through bonds or insurance, and the reality that any financial assurance required from the M&O contractor will ultimately be borne by the Federal Government, I believe it is improper to require LANS to provide such financial assurances to the State.

If this requirement is imposed in the final permit, it could result in the cessation of those activities at LANL which generate hazardous waste and are subject to the permit—including those that are essential to the national security mission of DOE/NNSA. NNSA and LANS would then have to choose between incurring civil penalties of \$10,000 or more per day and not conducting mission-essential operations.

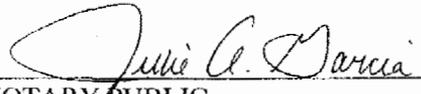
FURTHER AFFIANT SAYETH NAUGHT



Roger E. Snyder

STATE OF NEW MEXICO)
) ss.
COUNTY OF LOS ALAMOS)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 18th day of March, 2010



NOTARY PUBLIC

My Commission Expires:
4-16-12

