



**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 DENNIS RITSCHER**

I am a staff attorney with the Office of Laboratory Counsel for Los Alamos National Security, LLC (LANS). Part of my responsibilities includes handling risk management issues for LANS.

The National Nuclear Safety Administration of the United States Department of Energy (DOE/NNSA) has authorized LANS to be self-insured with respect to losses and liabilities incurred in connection with its management and operation of Los Alamos National Laboratory (LANL) pursuant to LANS' contract No. DE-AC52-06NA25396 (Prime Contract) with DOE/NNSA. Under the Prime Contract, and subject to the requirements of FAR Part 31, all losses and liabilities incurred by LANS in the operation of the Laboratory are borne by LANS as allowable costs, with funds provided through a special bank account arranged by DOE/NNSA allowing direct draws on the U.S. Department of the Treasury. The allowability of those costs survive any termination of the Prime Contract and are limited only by the availability of approved funds. LANS' self-insurance for losses and liabilities and DOE/NNSA's obligation to advance funds for such losses and liabilities include, but are not limited to: workers' compensation claims; common law liability, claims for personal injury and/or property damage arising from acts or omissions of LANS, its agents or employees, including claims of automobile liability, and all other losses or liabilities not specifically disallowed under said contract.

When approved by DOE/NNSA or required by law, LANS may also obtain insurance or bonds in limited circumstances to cover potential liabilities. Such approved or required policies currently include life insurance and accidental death and dismemberment insurance for employees engaging in ultrahazardous activities, insurance for the transportation of hazardous material under the Federal Motor Carrier Safety Regulations (40 CFR Parts 350-399), and workers' compensation insurance for LANS employees working outside the state of New Mexico. When insurance or bonds are required, my office contacts an insurance broker, which then obtains quotes from insurance and surety companies for the required coverage. If coverage and price are acceptable, the broker obtains the coverage for LANS.



In May of 2009, I contacted a representative of Aon, an insurance broker frequently used by LANS, for information concerning the purchase of insurance to satisfy the RCRA financial assurance requirements under 40 CFR Part 264, Subpart H. Through Aon, my office obtained information from American International Group, Inc. (AIG) about that company's insurance products. AIG stated that providing insurance for closure under 40 CFR 264.143(e) and postclosure under section 264.145(e), was problematic because when they sign the certificate of financial responsibility, their company becomes responsible for any closure or post-closure activities. Therefore, AIG could only provide LANS with insurance to cover closure or postclosure on a "pre-funded" basis. In other words, LANS would be required to fund the policy at the estimated net present value of the work to be accomplished, with an insurance layer above that for cost overruns. The only other option would be for LANS to front the policy by providing a letter of credit.

In February of 2010, I again contacted Aon and asked them to locate any other insurance companies that might be willing to provide insurance to LANS to satisfy RCRA financial assurance requirements. In response, Aon advised me that, similar to AIG, all of the other companies that could provide this type of insurance to LANS would require LANS to provide a substantial advance payment into a fund or other collateral prior to issuing a policy.

I have reviewed the financial assurance mechanisms for closure/post-closure other than insurance that are authorized by 40 CFR Part 264. The additional mechanisms available to LANS are a trust fund, a surety bond, or an irrevocable letter of credit. All of these mechanisms would require LANS to establish a trust fund in accordance with 40 CFR 264.143(a) to cover closure/post-closure costs of the facility. Under the terms of LANS' prime contract DOE/NNSA would need to approve the expenditure of federal funds for that purpose.

