

Permit
2115110

ENTERED



STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTERS OF THE 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

HWB 09-37 (P)
HWB 10-04 (P)

REVISED SCHEDULING AND PROCEDURAL ORDER

This Scheduling and Procedural Order sets forth the schedule and certain procedures for the hearing on the proposed Hazardous Waste Facility Permit for Los Alamos National Laboratory that the New Mexico Environment Department ("Department"), proposes to issue to the United States Department of Energy and Los Alamos National Security LLC (collectively the "Applicants") under the New Mexico Hazardous Waste Act, NMSA 1978, §§74-4-1 to 74-4-14.

1. Except as otherwise provided in the Scheduling Order, the Department's Permit Procedures, 20.1.4 NMAC, and the permitting procedures of the Hazardous Waste Management Regulations, 20.4.1.901 NMAC, shall apply to this proceeding. However, the provisions of this Scheduling Order, in those cases where it differs, shall supersede the provisions of the Permit Procedures at 20.1.4 NMAC and the Hazardous Waste Management Regulations at 20.4.1.901 NMAC.
2. The Department shall prepare a public notice of the hearing in accordance with the provisions of section 20.4.1.901.C NMAC. Notice shall be given in



accordance with the provisions of section 20.4.1.901.C(3) NMAC by no later than February 2, 2010.

3. The department shall forward or make available online a copy of the Administrative Record at least three weeks before pre-filed written direct testimony is due under this order as specified below.
4. All pre-hearing motions and pre-trial memoranda if any shall be filed in writing by March 19, 2010, except for motions filed later in response to written direct testimony or exhibits, or upon a showing of other good cause. Responses to motions filed by March 15, 2010 shall be filed no later than April 1, 2010. Motions and responses shall otherwise be in accordance with the Department's Permit Procedures, section 20.1.4.200(D) NMAC. This provision does not preclude the filing of motions on legal issues after the conclusion of the hearing.
5. On or before March 19, 2010, the parties shall file and serve on all other parties their statements of intent to present technical testimony. Notices of intent shall otherwise be in accordance with the Department's Permit Procedures, section 20.1.4.300(B) NMAC.
6. On or before March 19, 2010, the parties shall identify all exhibits they intend to offer into evidence at the hearing and, for exhibits that are not part of the administrative record, shall serve a copy on all other parties pursuant to section 20.1.4.300(B) NMAC, except for written direct testimony and demonstrative exhibits.

7. On or before March 19, 2010, the parties shall file and serve on all other parties affidavits setting forth the full written direct testimony of each technical witness the party intends to call during the hearing, other than rebuttal witnesses. Each affidavit shall be signed and sworn by the witness. The parties shall also file and serve on all other parties copies of the demonstrative exhibits they intend to use at the hearing.
8. A hearing will be held commencing on April 5, 2010, at 9:00 a.m., continuing as necessary. The hearing will commence in Santa Fe, and all technical testimony will be presented in Santa Fe. The hearing will continue for at least one day in Española, at least one day in Pojoaque, and at least one day in Los Alamos to allow an opportunity for members of the public who are not parties to the proceeding to present non-technical statements.
9. The scope of the hearing will be limited to the determination of whether the Hazardous Waste Facility Permit for Los Alamos National Laboratory should be issued or denied; whether any permit condition is inadequate, improper, or invalid; whether the permit for open burn units at Technical Area 16 should be denied; and whether any other proposed condition should be included in the permit. This provision does not preclude any party from raising jurisdictional, constitutional, or other legal challenges to any condition included in the permit. The requests of Applicants, Citizen Action New Mexico, Concerned Citizens for Nuclear Safety and Robert Gilkeson for hearing postponement or bifurcation are denied.

10. The order of presentation of witnesses during the hearing shall be as follows:
 - a. The Applicants shall present direct testimony of their witnesses, followed by cross-examination;
 - b. The Department shall present direct testimony of its witnesses, followed by cross-examination;
 - c. Citizen Action New Mexico shall present direct testimony of its witnesses, followed by cross-examination;
 - d. Concerned Citizens for Nuclear Safety shall present direct testimony of its witnesses, followed by cross-examination;
 - e. The Embudo Valley Environmental Monitoring Group shall present direct testimony of its witnesses, followed by cross-examination;
 - f. Robert Gilkeson, Registered Geologist, shall present direct testimony, followed by cross-examination;
 - g. The Natural Resources Defense Council shall present direct testimony of its witnesses, followed by cross-examination;
 - h. Nuclear Watch New Mexico shall present direct testimony of its witnesses, followed by cross-examination;
 - i. The Southwest Research and Information Center shall present direct testimony of its witnesses, followed by cross-examination;
 - j. Any other party that has filed a timely statement of intent to present technical testimony and one or more affidavits in accordance with Paragraphs 5-7 above shall present direct testimony of its witnesses, followed by cross-examination;

- k. The parties may present rebuttal testimony in the same order as direct testimony, followed by cross-examination;
 - l. Time shall be allocated each day for members of the public to present non-technical statements. Non-technical statements by members of the public who are not parties to this proceeding shall be subject to cross-examination.
 - m. The parties may agree to take individual witnesses out of order to accommodate their schedules.
11. No person shall be allowed to present technical or other expert testimony unless that person has filed a timely statement of intent to present technical testimony and one or more affidavits in accordance with Paragraphs 5-7 above.
 12. Parties are allowed to provide direct testimony by panels of witnesses. During the hearing, each technical witness shall be allowed no more than ninety minutes to summarize his or her direct testimony. The witness's summary shall not cover subject matter not covered in that witness's affidavit. Each affidavit shall be marked as an exhibit and offered into evidence, subject to objections by any party.
 13. After a witness has summarized his or her direct testimony, the witness will be subject to cross-examination by the other parties. Cross-examination shall not cover subject matter not covered in the witness's direct testimony. Cross-examination of a witness by any party shall be limited to no more than ninety minutes. The Hearing Officer may also limit redirect examination and recross

examination, as appropriate to expedite the proceeding. Upon motion and a showing of good cause, the Hearing Officer may extend these time limitations. These limitations shall not in any way limit the amount of time for questioning of witnesses by the Hearing Officer, and such questioning by the Hearing Officer and the responses thereto shall not be counted toward any party's cross-examination or redirect-examination time.

14. The requirements for written testimony and the time limitations set forth in Paragraphs 11-13 shall not apply to rebuttal witnesses.
15. At the conclusion of each day's hearing, the party calling witnesses shall notify the Hearing Officer and the other parties of the names of witnesses it anticipates calling the next day.
16. The Hearing Officer may enter a Post-Hearing Scheduling Order after the hearing, providing a schedule for oral closing arguments and a schedule and page limits for written closing arguments and proposed findings of fact and conclusions of law.

Original signed by _____
The Honorable Judge A. Joseph Alarid
Hearing Officer