

AFFIDAVIT OF ALLYSON SIWIK

STATE OF NEW MEXICO)
) **ss.:**
COUNTY OF GRANT)

Allyson Siwik, being duly sworn, upon her oath deposes and says as follows:

1. My name is Allyson Siwik. I am the Executive Director of Gila Resources Information Project (commonly referred to in the Grant County community as “GRIP”). I joined the GRIP operation in May of 2003 as interim Executive Director. Before signing on as Staff at GRIP, I was a GRIP member, beginning in 1999. By means of this Affidavit, I would like to establish the basis for GRIP’s involvement in this demolition issue, and what steps GRIP has taken to obtain information from *Phelps Dodge* concerning the details and specifics of the demolition.

2. My duties as Executive Director include setting goals and priorities for GRIP, and developing positions on environmental and health issues. I also represent GRIP on local and statewide community and environmental health bodies.

3. GRIP is a tax-exempt New Mexico nonprofit organization established in 1998. GRIP has approximately 300 members.

4. GRIP’s mission is to promote community health by protecting the environment and natural resources of Grant County. Its “Mission Statement” declares that:

Recognizing that human and environmental systems are inseparable and interdependent, Gila Resources Information Project pursues two goals:

To protect and nurture human communities by safeguarding the natural resources that sustain us all; and

To safeguard natural resources by facilitating informed public participation in resource use decisions.

5. The vast majority of GRIP's members live in Grant County, including areas in the immediate and near vicinity of the Chino, Tyrone, and Continental mines, and the Hurley Smelter, all of which are owned and operated by Phelps Dodge. We have a certain number of members who reside in Hurley, but we have a firm policy re privacy and we do not release the names of GRIP members absent compulsion to do so.

6. GRIP members use and enjoy the natural resources of Grant County and Southwest New Mexico, including the areas in the vicinity of *Phelps Dodge's* three mines.

7. GRIP engages in a wide variety of educational/information activities, and regularly acts as a regulatory watchdog on behalf of all citizens of the Gila Regional area. These activities and regulatory involvement include, but not limited to: public outreach, education and advocacy, periodic newsletter publication, sponsoring informational open houses, issuing press releases, placing event and other display advertisements, taping and broadcasting public hearings on Public-Access Cable Television, participating in advisory committees and regulatory deliberations regarding the mines, and encouraging and facilitating full and robust public participation in regulatory deliberations regarding the mines.

8. GRIP has participated in numerous proceedings over the past ten years involving water-quality discharge permits for the above-mentioned mines.

9. GRIP has also actively participated in and is currently participating in administrative proceedings before the New Mexico Environment Department, the New Mexico Mining Commission, and the New Mexico Water Quality Control Commission, regarding discharge and mining permits relating to all *Phelps Dodge*-owned mines in Grant County.

10. GRIP has participated, again for ten (10) years, as a member of the “Community Work Group for the Administrative Order on Consent” (a citizen panel that has been reviewing testing and cleanup of historic waste in and around the Chino Mine since 1997).

11. GRIP is most properly viewed *neither* as an administrative body with authority to grant or approve mining discharge permits, nor as an owner/operator of a mine or operator likely to apply for a discharge permit. Instead, GRIP is a community organization seeking to provide a public-interest perspective to the administrative agencies that authorize and approve the grant or denial of discharge permits in the state, again with a view to insuring that New Mexico’s environment and communities are well protected.

12. Given GRIP’s historical and traditional involvement in *most* of the environmental issues that have arisen at the mines since inception in 1997, all either with *Phelps Dodge’s* active *concurrence* or, at minimum, its *acquiescence*, GRIP believes it has a direct and substantial interest in this announced demolition, the outcome of which *may* have enormous and longstanding impact upon the very community health and environmental protections GRIP has worked so hard over the years to improve and enhance. In light of those efforts, I would like to recount chronologically the efforts that I personally have made in the past year to determine what, exactly, *Phelps Dodge* has had in mind with respect to the Hurley demolitions, and what information *Phelps Dodge* had released, to *whomever*.

13. September 22, 2006: I had a conversation with Mr. Erik Aaboe, of the New Mexico Environment Department Air Quality Bureau. Mr. Aaboe wanted to get a summary from GRIP on what was happening with the Hurley smelter demolition he had heard about. In an e-mail dated September 22, 2006, I sent Mr. Aaboe a 2006 GRIP newsletter article on

the smelter demolition, which seemed to me to be the most current information available at that time.

14. I also expressed to Mr. Aaboe GRIP and the Hurley community's concerns from an air quality perspective: 1) need for air quality monitoring during and following the demolition event; 2) deposition of copper and other metals to yards during/after the demolition event, thus *re*-contaminating yards that may have already been cleaned up. We expressed our desire for NMED to conduct "speciated" monitoring so that ambient concentrations of metals could be measured.

15. I recall personally attending a face-to-face meeting with certain *Phelps Dodge* representatives, on or about September 20, 2006 – concerning the demolition. I do not recall the substance of the meeting, and defer to our President, Sally Smith's recollection of that face-to-face event.

16. January 17, 2007: I personally read an article in the *Silver City Daily Press* this date where a *Phelps Dodge* spokesperson, Mr. Richard Peterson, gave an update on the Hurley stack demolition. Mr. Peterson acknowledged in the article that questions had come up at the Community Work Group (CWG) Meeting about the remediation of Hurley soils. Mr. Peterson is quoted as saying, "We are planning for remediation and soil cover, and have been meeting with contractors in connection to the soil cover." The article states: "He [Mr. Peterson] stressed that because a date has not been set, although it is anticipated for this summer, the formulation of plans has not begun. Once Phelps Dodge has the opportunity to work closely with the demolition contractor, the company will have more answers." Mr. Peterson is further quoted as saying, "Before removal of the stacks, we will continue to observe wind patterns, same as when we removed the buildings. If breezes are coming into

Hurley, we will wait until they're blowing away from town. During structure demolition we kept the dust down with water and spraying, and received no complaints." In response to concerns regarding the direction of the *fall* when the stacks came down, Mr. Peterson is quoted as saying, "we will ensure that the homeowners are well aware of the process. We will ensure that it is safely done. Safety is our primary focus."

17. February 21, 2007: Time passed and GRIP was involved in other aspects of mine operations and clean-up. The next salient event for me re smelter demolition was February 21, 2007. On or about this date I personally attended a face-to-face meeting with *Phelps Dodge* representatives concerning a variety of issues at the mines, as well as the proposed demolition. Present at this meeting were Tim Eastep, Sally Smith, PD consultant, Gordon Chenaie, and myself. To summarize the discussion, in essence *Phelps Dodge* told us that the smelter demolition was scheduled for the "end of the second quarter of 2007," but that no firm date had been set. The company assured us there would be lots of communication beforehand, and that nothing would come as a surprise. (My personal notes to this effect are available upon reasonable request for inspection and copying.)

18. March 12, 2007: On or about this date I personally contacted members of the NMED Permitting Staff, to inquire about the existence of permitting requirements or other regulation for the Hurley demolition. I was trying to find out if NMED had regulatory *authority* over potential air emissions caused by the demolition. I know from personal involvement in permitting issues that issuance of a permit would probably require submission by *Phelps Dodge* of appropriate information, and review and approval/approval with conditions/denial by NMED. I received a message back from Mr. Aaboe, on or about April 13, 2007, that Staff did not believe that a permit was required.

19. March 13, 2007: On or about this date I personally attended another face-to-face meeting with *Phelps Dodge* representatives on other subjects that *evolved* into a discussion about the Hurley demolition. Present were: Rick Mohr, Tim Eastep, Tom Shelley for *Phelps Dodge*, and Sally Smith, Harry Browne, and myself on behalf of GRIP. The original purpose of the meeting was to discuss the “Lee Hill” Variance Petition; however, *Phelps Dodge* also informed us in the course of the discussion that the demolition was now set to take place during the *third* quarter of 2007 (July-September). I have this representation written down in my personal notes. At the time, I mentioned to Tim Eastep (as we were leaving the meeting room) that we had been in contact with the Air Quality Bureau (the day before), and that they had expressed interest in coordinating with *Phelps Dodge* on the air quality monitoring.

20. April 17, 2007: On or about this date I personally attended another face-to-face meeting with *Phelps Dodge* representatives. Present were: Tim Eastep, Rick Mohr, Sally Smith, and myself. There was *no mention* of the smelter demolition by *Phelps Dodge*. We did *not* ask for status this date, frankly because we were preoccupied with the Lee Hill variance issues we were discussing. Phelps Dodge itself offered no smelter information.

21. April 17, 2007: I personally read another *Daily Press* article this date, reporting that the previous evening (April 16th – the day *prior* to our face-to-face meeting last mentioned), *Phelps Dodge* representatives had met with the Hurley Town Council regarding the demolition, apparently concerning PD’s plan for a *raffle for who would push the ceremonial detonating plunger*. The article stated that the demolition is “***scheduled for the last week in May.***” Despite our repeated requests to be “kept in the loop,” this article was GRIP’s first hint that the demolition date had been advanced and was now fast approaching.

22. April 18, 2007: In an e-mail, Mr. Aaboe of the NMED Air Quality Bureau notified me that *Phelps Dodge* had informed him that the stacks would “drop” May 30th, 31st, or June 1st, depending on weather conditions. Per Mr. Aaboe, *Phelps Dodge* had indicated to the AQB that they would work with them on an air monitoring plan. I have this e-mail available upon reasonable request.

23. May 3, 2007: This date I attended the NMED Community Meeting in Silver City. NMED Secretary Ron Curry, Deputy Secretary Cindy Padilla, senior managers, and staff had called a meeting to “communicate” with Silver City/Grant County residents about the ongoing activities of the Department, and to listen to community concerns. As GRIP’s Executive Director, I made public comments related to our major concerns: 1) Chino mine dilution issue and GRIP’s appeal of the Chino closure/closeout permit; 2) how PD had done a great job on Tyrone mine reclamation to date, and that GRIP wanted to see this reclamation continue as it benefits our air and water quality; 3) given the recent reported merger of *Phelps Dodge* and *Freeport McMoran*, we were concerned about the enormous debt the combined company had undertaken. I stated that GRIP wanted the State to stay on top of the financial assurance requirements for the new combined company.

24. At this meeting I then introduced Sally Smith, GRIP’s President and Director of GRIP’s “Responsible Mining Program.” Sally stated that she had communicated to the NMED that GRIP and the Hurley community shared concerns about the upcoming demolition, including: 1) no one had seen a “contingency plan” yet; 2) GRIP had not seen any air quality monitoring plans; and, 3) we still did not know know if PD would be testing soils before and after the demolition, to determine if yards were recontaminated. Subsequent to the meeting I had a short conversation with Mr. Jim Norton, Director of NMED’s

Environmental Improvement Division, relaying to him GRIP's concern that the Air Quality Bureau and *Phelps Dodge* had still not gotten together to coordinate their air quality monitoring for the demolition. Mr. Norton said he would look into it and take it to senior management if it did not happen shortly.

25. May 10, 2007: I personally received and listened to a voice mail message on the GRIP answering machine in our office, located at 305A N. Cooper Street, from Mr. Tim Eastep of *Phelps Dodge*, letting us know that the smelter demolition had been *advanced again*, this time to May 25th, with a community meeting set for May 22nd. Mr. Eastep and I talked again later this date, and I requested a meeting with Mr. Rick Mohr and him to discuss the air quality monitoring plan and other details. Mr. Eastep replied that the air quality plan was still in "draft form," and that PD wouldn't finalize it until after they met with NMED, which was scheduled for May 17th. Mr. Eastep would "see" if *Phelps Dodge* would be able to release the plan to us prior to its finalization. He said he would "get back" to us with a time to meet with Mr. Mohr and him. Mr. Eastep called us back *after* 6 p.m. this date to set up a meeting proposed for 9:00 a.m. the following morning.

26. May 10, 2007: I personally received a call from Sally Smith. Ms. Smith advised that it looked like time had run out, and that if GRIP was going to *do anything* about the Hurley situation, it had better act fast. On this date our attorney, Mr. Littlejohn, agreed to work on our behalf, and to file the necessary pleadings to get a court hearing to review the demolition.

27. May 11, 2007: I set up a meeting with Mr. Eastep and Mr. Mohr for 12 p.m. this date, at which time Sally Smith and I hand-delivered a letter of this date from our attorney, addressed to Mr. Mohr, stating our intention to file this Petition, and that *Phelps*

Dodge should cease and desist all demolition activity until the matter was heard in court.

When I personally handed the letter to Mr. Mohr and told him what it was about, as instructed, he said to me, “We are *very* disappointed by this.” To my recollection Sally and I did say a few short words in parting, to the effect that PD had rushed this, and that three days from the Open House to the demolition did not give the public enough time to gather information about it. Mr. Mohr and Ms. Eastep pressed us for information about the Petition, but we did not respond further.

28. Also this date, after returning to the GRIP Office from the meeting just mentioned, I personally faxed, between 2:30 and 4:00 p.m., a copy of our attorney’s letter to the following individuals: Hon. Bill Richardson, Governor, State of New Mexico, Secretary Ron Curry, New Mexico State Environment Department, Secretary Michelle Lujan Grisham, New Mexico State Department of Health, Hon. Gary King, Attorney General, State of New Mexico, and Regional Administrator Richard Greene, U.S. EPA, Region 6.

29. Yesterday, Saturday, May 12th, 2007, I received an email with attachment from *Phelps Dodge* of a draft Air Monitoring Plan- not from PD, but from NMDH – which was transmitted to PD by NMED, and entitled “AMBIENT AIR MONITORING DURING THE CHINO SMELTER STACK DEMOLITION,” by *Guardian Consulting Company, Inc.* of Phoenix, Arizona, dated May 1st, 2007 (**Exhibit “#”** hereto).

30. Finally, as GRIP’s Chief Executive Officer, I am personally familiar with and responsible for GRIP’s financial wherewithal with respect to the posting of any injunction damages bond. In this regard I would respectfully like to point out that GRIP is a voluntary-

donation, not-for-profit organization only, as defined under the Internal Revenue Code. GRIP is far from being a wealthy organization. I would be more than happy to tell the Court and Phelps Dodge “off-the-record” what GRIP’s current financial status is, but due to the sensitive nature of the information, would prefer not to state any specific amounts in this public document. I can say that GRIP operates on *very* limited grant and donation funds.

I declare under penalty of perjury the foregoing to be true and correct of my own personal knowledge (except as to those matters stated on information and belief; and, as to those matters, I believe them to be true), and that this Affidavit was executed this _____ day of May, 2007, at Silver City, New Mexico.

Dated: _____, 2007

Allyson Siwik

STATE OF NEW MEXICO)
) **ss:**
COUNTY OF GRANT)

Subscribed and sworn to me this _____ day of May, 2007, by Allyson Siwik, personally known by me to be the person stated.

NOTARY PUBLIC – State of New Mexico

My commission expires: _____

(seal)