

4. Between its inception in 1997 to the present, GRIP has been involved in the very complicated state permitting of Closure / Close-out Reclamation Plans and Financial Assurance bonding, for all three mines – Chino, Tyrone, and Cobre – here in Grant County. We also have been actively involved in review of all three mines’ operational permits, as well as being involved in a variety of community issues, including planning, water quality and sustainable quantity issues, forest health, and general overall environmental health for the Gila region.

5. In or about June of 1997, I read the AOC Agreement dated some time in 1994, which stated that the purpose of the Agreement was to, “protect the public health and the environment at the Investigation Area through an Remedial, Feasibility Study, the development, design and implementation of a Remedial Action plan or plans consistent with the National Contingency Plan (NCP).”

6. As far back as 1997, I understood the mission of the CWG (as recorded in the June 25, 1997 and July 2, 1997 combined Recorded Minutes taken by me [available upon reasonable request for production, copying, and examination]), to be: ” ... to provide a way for the public to participate in making recommendations to the New Mexico Environment Department and Chino Mines Company about Human Health and environmental concerns associated with historical mining on Chino mines company property and effected areas.”

7. On or about September 28, 2005 Harry Browne, GRIP’s Treasurer and former Executive Director, sent me a copy of a recent *Silver City Daily Press* article (no date) with the headline “*End of an Era – Phelps Dodge to Dismantle Hurley Smelter.*” In the article, *Phelps Dodge* (“PD”) Spokesperson, Richard Peterson, is quoted as saying, “I don’t know when the stacks will be

taken down.” He also said,” I understand they are a landmark, but they are an *expensive* landmark to maintain.” (**Exhibit “1”** hereto.)

8. In the article just mentioned, Richard Peterson went on to say, “We’ll be using salvage teams and contractors to bring (the smelter) down ... and we’ll have monitoring and reporting take place during the dismantling.” *Ibid.*

9. In the October 18, 2005 Recorded Minutes of the CWG, as Secretary, I recorded that the recent news of the smelter removal, expected to begin that November, had changed cleanup plans for Hurley. The **residential yards slated to be cleaned first** (in orange on the handout sheet map – **Exhibit “2”** hereto) **nearest the smelter were to be postponed so that dust from the smelter removal could be included in any remediation efforts.** I asked how Hurley residents would be informed, and suggested that the **handout** be rewritten and redistributed. I was concerned that the plan had changed and the handout as written for the Open House did not explain the health risk. I have all these Minutes available on reasonable request.

10. In the same October 18, 2005 CWG Minutes, I see that I recorded a discussion about a CWG member’s request for CWG to review a health advisory required by the (now amended) AOC Agreement, under the Dispute Resolution Process mechanism, dated July, 28, 2005, which required *approval* from the New Mexico Department of Health (“NMDH”) and the Grant County Health Council.

11. In the November 15, 2005 Minutes, I recorded that, “Chino is collecting baseline air quality data to compare with the data collected during the demolition of the smelter....” The November 15th Minutes go on to say, “The monitors are currently around the fence line and downwind, north and south of the smelter. They are also on the baseball field and the elementary

school. If comparison of monitoring shows there is a change in air quality during the demolition procedures of the smelter and associated facilities the procedure would be altered.”

12. I also recorded in the November 15th Minutes that a member asked if PD was working out the details with the NMED. Mr. Robert Quintanar of *Phelps Dodge Chino* said, “...they are working cooperatively on asbestos removal and an inventory, and Chino has started removing transformers and florescent light bulbs. The process should take *about two years* to completion.” {My emphasis.} I also recorded that, “[Name withheld – member of group] asked if the smelter demolition would delay cleanup of residential yards? *Robert Q. said that Chino has reconsidered the change of sequence discussed at the October (CWG) meeting and will go ahead as originally planned cleaning yards closest to the smelter and with higher levels of copper first.*” (My emphasis)

13. In the November 15 Minutes, I further recorded that a CWG member asked if residents were to be informed of the smelter demolition, and Mr. Quintanar said that, “Chino spoke to the Town council and will be delivering Quarterly Reports to them. Chino has hired a spokeswoman to go door to door explaining the cleanup of yards and asking for permission to test yards.” So far as I know as reported at recent CWG meetings, PD has done exactly that for months now – gone door to door, canvassing the Hurley neighborhoods – to ask residents for voluntary permission to test their yards with a view to soil re-mediation.

14. Also in the November 15 Minutes is a notation by me that a member asked if PD was working out the smelter demolition details with NMED. Mr. Quintanar said, “they are working cooperatively on asbestos removal and an inventory and Chino has started removing transformers and florescent light bulbs. The process should take about two years to completion.”

15. In these same Minutes I recorded that a member asked, “if the smelter demolition would delay cleanup of residential yards? *Mr. Quintanar answered that Chino had reconsidered the change of sequence discussed at the October CWG meeting, and planned to go ahead as originally planned, remediating yards closest to the smelter and with the highest levels of copper first.*

16. In these Minutes I see that I suggested that an updated news article on the testing be released by PD when ready.

17. To the best of my present knowledge, the NMED Air Quality Bureau was *not* consulted by PD on air quality monitoring being done by PDCMC at the time of the November 15, 2005 Meeting, or thereafter, up to and including the present.

18. During the period after the announcement of the Smelter demolition, from approximately September, 2005 up to the present, in phone calls, in discussions with NMED Staff, and at numerous CWG meetings, I have asked NMED representatives repeatedly if they had reviewed any contingency plans, or safety plans, or evacuation plans related to the Smelter demolition or stack removal, and asked to have copies of said documents forwarded to me as soon as they were available. To date I have received nothing from PD or NMED, beyond what is publicly available.

19. In my March 21, 2006 CWG Minutes as Secretary, I see it states that a member, “asked about the smelter dismantling project. He said that the smelter is considered historical landmark and encourages regional tourism. Two local families spoke to him about concerns that toxins inside the smelter are not released during the dismantling. Pam (Pinson) from PD Environmental Services explained that the smelter will be cleaned out prior to

removal. There is a consultant (*Guardian Consulting Co., Inc*) who manages the whole removal for safety. The stacks will be removed within the next eighteen months.”

20. To the best of my recollection, PD claims that *Guardian Consulting Co.*, whom I understand is contracted with and paid by PD, will be present to conduct ambient air monitoring testing at the demolition. To date no one from PD has ever broached the subject with me or other members of GRIP of the existence of any interest or funding for any remediation after the demolition.

21. In the March 21, 2006 Meeting, I recall asking about an “Open House” for the smelter demolition, which apparently had occurred while I was out of town in early 2006. I said at the CWG meeting that I was very disappointed and shocked that the CWG was not even told about the Open House for smelter removal. I recall being very emphatic about this point at the time.

22. In a conversation with Mr. Chris Eustice, AOC “Point person” for NMED, this past Friday, May 11, 2007, Mr. Eustice mentioned recalling nothing about an Open House for the demolition in 2006, nor did he know if his affiliate, Mr. Phil Harrigan, another local NMED AOC Point person, had attended the meeting.

23. On December 14, 2005, I attended a Grant County Health Council meeting in which Richard Peterson, spokesperson for PD, gave a presentation on the demolition of the smelter.

24. In his December 14, 2005 presentation Mr. Peterson said that 10 special air quality monitors were currently being used at the smelter site.

25. To the best of my recollection the number of monitors PD claims to use over the years has ranged from 5-10 monitors.

26. In his December 14, 2005 presentation Mr. Peterson said most of the asbestos has been removed, and that the stacks would be laid on their sides and buried in place.

27. In the January 17, 2006 CWG Meeting, the Minutes reflect that, “the smelter involves an existing operational permit with NMED. The AOC may find historic impacts within the smelter area.”

28. In the April 18, 2006 CWG Meeting Minutes I see recorded that, “five dust monitors are in place in Hurley to monitor smelter dismantling dust.”

29. In the same Minutes it says, “Sally asked if yards near the smelter would be retested after removal.” PD replied, “Retesting is not planned but could occur during the five-year review process.”

30. In a July 19, 2006 e-mail to Chris Eustice of NMED, I asked, “What can you tell me about assurance against recontamination of remediated yards and the potential for release when dropping the stacks. Phil Harrigan (of NMED) had said there is no plan to retest yards. In the light of recent deaths of 9/11 workers, I’m thinking, what if something goes wrong?” There was no reply as I recall to my last question.

31. In a return e-mail Mr. Eustice told me that Mr. Kevin Myers of the NMED Groundwater Department was the now the NMED “lead” on the smelter dismantling.

32. On or about July 19, 2006, I had a telephone call with Mr. Myers about the AOC/Discharge permit overlap, and regarding who at NMED was doing over-site of the smelter demolition. From this and other calls to NMED, I believed and was relieved to know that the agency was waiting for contingency, safety, and possibly evacuation plans for the

demolition from PD, and would be approving those documents – as is the process with other Operational Discharge and Closure and related documents, studies and reports.

33. After a phone call on or about July 20, 2006, Mr. Myers told me in a follow-up email that date that the smelter demolition is similar to the mill demolition at Tyrone, he said there will be significant effort of sampling followed by recovery of soils greater than 0.5% copper. Mr. Myers went on to say Chino will scrape, vacuum or otherwise collect a great deal of copper rich material. Mr. Myers said the effort should reduce the amount of contaminated soils available for suspension into the air when the stacks come down. He also said after the copper recovery, there will be testing to identify areas that need to be covered versus potential areas that may remain uncovered. ... **Mr. Myers said that he guessed that dust suppression measures will be used prior to, during and after the final demolition. He was not sure. He went on to say that there would most likely be some dust from blowing up a lot of bricks, mortar and cement.** Mr. Myers said he would pass along information as it becomes available on the stack demolition safety plan and dust mitigation. {My emphasis added.}

34. To the best of my knowledge to this date Mr. Myers has not reviewed any formal safety or contingency or evacuation plan, and has not sent me any such plans.

35. In the summer of 2006, I wrote an article in the Gila Resources information Project Newsletter, *GetaGRIP* titled “Goodbye Smelter.” (**Exhibit “3”** hereto.)

36. In the summer 2006 article “Goodbye Smelter” I say that at a PD “Open House” we were told that “special care is being taken to keep the smelter area wet and to avoid wind-blown dust during the demolition. Baseline air quality was taken prior to the project initiation in the area around the south of the smelter fence line, north and south of the smelter down wind, as

well as at the ball field and Hurley School. This data will be used for comparison to the air quality measured during the removal. “ I compiled this article from local newspaper articles.

37. In the summer 2006 article “*Goodbye Smelter*” (Exhibit 3), I say, “Retesting of already remediated yards after smelter removal is not planned according to the NM Environment Department but there will be retesting conducted during the five-year review process of the AOC residential cleanup.”

38. In a July 18, 2006, e-mail to Mr. Harrigan of NMED, I say, “I think PD should commit to retesting of remediated yards if there are releases of dust that exceed the test levels prior to demolition of the smelter. Looking back on my notes I have that you said retesting is not planned, there will be a five year review. Is that correct? No plans to test at least those yards near the smelter? Is there an evacuation plan in case of mishap during the “dropping” of the stacks? Do you have a copy of the safety plan or have you seen one? Was there a model of where the dust from demolition of the smelter might go? PD and consultants seem confident that air quality issues are not a factor. Are you confident?” In my records I see no indication of a response.

39. On or about July 20, 2006, Mr. Myers of NMED contacted me about the details of laying the smelter stacks on their sides. Mr. Myers indicated that he was unaware of any air modeling during the event, but would inquire as to details and would pass them along.

40. On or about July 24, 2006, Mr. Myers again contacted me about how an alternative way toppling the stacks had emerged. Now PD had a plan where it could place clean fill in a “mound” that would be pushed over the stacks after being knocked down.

41. The August 15, 2006 CWG Meeting Minutes reflect that, “Sally suggested having another open house, possibly to address concerns about the cleanup **and** the smelter demolition. PD is not decided yet on exactly how to handle the demolition of the stacks. PD and consultants

were asked about an evacuation plan for Hurley. **If demolition of the smelters is announced PD expects a potentially large crowd of spectators which could be a problem.** Residents would have to be notified.” {My emphasis added.}

42. On Sept. 22, 2006, I was cc'd an e-mail from Allyson Siwik to Erik Aaboe, NMED, expressing our concerns about an air quality monitoring plan. (See her affidavit.)

43. In the January 16, 2007 CWG Meeting Minutes, we recorded that over thirty (30) members of the Hurley Pride Club attended the meeting, and asked questions and expressed concern about the smelter demolition.

44. In the January 16, 2007 CWG Minutes it states that a citizen asked if additional testing for contaminants would occur after the Smelter stacks come down. Mr. Byron Belew [PD's then-AOC Manager and then-Manager of smelter demolition] responded that 90% of the dangerous materials had been removed and air filters would determine if air quality levels had been exceeded. PD expected the stack demolition to occur in the 2nd or 3rd quarter of 2007. Mr. Belew said the demolition would occur when the wind was blowing away from town, and that there would be means for dust suppression on-hand. Residents were to be notified of the event, and those close to the smelter would be asked to leave their homes during the demolition. *Control Demolition, Inc.* was to manage the dropping of the stacks, which would fall to the northeast, away from town. These Minutes also state, “Residents expressed concern about potential damage to homes from the vibration and impact of the falling stacks. Byron said he doesn't see that as a problem and that PD will clean homes if they dust infiltrates them. PD may install meters to detect any seismographic activity. Byron also reported that the same contractor will be dropping the PD San Miguel stacks, and members asked to see the video of that event.” Despite several requests from CWG members, at more than one meeting, the tape was never provided by PD. The Minutes

also state, “Sally complained that residents should be kept more informed about the demolition of the stacks. Byron offered to attend a Hurley Pride meeting.”

45. Between August, 2006 and January, 2007, when asked at CWG Meetings about the date of the stack demolition, PD’s Mr. Belew said the date would either be the world’s “best kept secret” or a “major public event.”

46. On or about February 20, 2007, in a meeting with Mr. Rick Mohr, General Manager of Tyrone Mine, and Mr. Tim Eastep, head of Chino Mine Environmental Services, I asked if there were any news on the stack demolition. They reported there was none.

47. Between approximately March 12 and April 16, 2007, GRIP Executive Director, Allyson Siwik informed me about her communications on air quality monitoring issues with Mr. Erik Aaboe, NMED AQB, and EPA, Region 6. (See Allyson’s affidavit.)

48. On or about April 17, 2007, Ms. Siwik and I met with Mr. Mohr and Mr. Eastep on a different matter than the smelter demolition. They did not inform us that they had announced the May 30th and May 31st dates for scheduled demolition. Instead we learned that night in the *Daily Press* about these dates. After I heard about the article with the new dates, I was quite shocked that PD had not mentioned this important issue at our earlier meeting that same day, on a matter about which we had repeatedly requested information.

49. On or about April 17, 2007, I read a second article in the *Daily Press*, stating that the demolition was scheduled for the last weekend in May, saying the company would be sure to announce the exact time of the event so the public may attend. The article went on to say the stacks will come down on a, “day when the wind is blowing away from town,” and, “most of the paint containing asbestos has been sandblasted from the outside of the stacks, according to the company. The impact of the implosion is expected to compress the stacks.” Mr. Mohr added his

understanding that the state would require testing where. “they [the stacks] are compressed into the ground. ... If we find asbestos, we will remediate. In any case, that part of the stack will fall the farthest away from the town. The stacks are 501 and 625 feet tall.”

50. On or about April 20, 2007, I sent an e-mail to a Ms. Pesina of EPA, Region 6, stating that at the CWG Meeting the previous night, “Daniel Galindo was there from the local NMED AQ Division. They plan to have 3 particulate monitors to set up and ask for resident willing to let them install the monitors. They asked for suggestions from residents for test locations. ... I am hopeful that there is a more scientific approach and that they will also install the filters to test for potential pollutants if released. ... I still want to know if EPA has any CAA requirements or any other governing regulations for this type of demolition?”

51. Ms. Pesina contacted me soon thereafter and said I might want to contact Messrs. Alan Shar and Mr. Thomas Diggs of EPA. Also on or about April 20, 2007, I sent these gentlemen my initial e-mail stating my concerns.

52. On or about April 24, 2007, Ms. Pesina re-contacted me, stating that she had contacted Ms. Debra McElroy of NMED. Ms. McElroy had said that PD had selected a time window of demolition in the last week of May/first week of June. Also, PD had apparently agreed to work with NMED on setting up an unspecified number of portable monitors for the event. She further stated that the State of New Mexico did not have nuisance regulations.

53. On this same date I met with Mr. Kevin Myers from NMED, after his meeting with *Phelps Dodge*, including with Mr. John Zamora, PD’s demolition expert. At this meeting Mr. Myers informed me about many details that I had *never* heard about the smelter cleanup and demolition. He explained how the stacks would be felled, somewhat like trees, and that air movement would be expelled through the tops of the stacks. Mr. Myers explained to me that a

berm of approximately 20 feet high would be constructed where the top end of the smelter stack was expected to fall, that it would be placed in such a way so as to stop the flow of contaminants that *explodes* out the end of the stack. Mr. Myers also said that PD had not been able to remove the asbestos from approximately 23 feet of the *Kennecott* smelter stack. Mr. Phil Harrigan of NMED seemed to believe however that the actual figure was more like 25 feet. Mr. Myers said PD was still removing copper from 20 to 30% copper-laden soils from the smelter area, and were removing soils over 5,000 ppm of concentration of copper. NMED had asked PD to test three holes that now test at less than 5,000 ppm on the northwest side of the smelter area after demolition. Mr. Myers also informed me that two open house meetings on the same day would be held regarding the demolition. Mr. Myers also mentioned that PD expected to have their first meeting with NMED AQB “next week.” Mr. Myers told me that, according to PD, they were to have on hand a monitor for seismographic activity, and were considering the inspection of residential foundations near the stacks for existing cracks before demolition. He further advised that in his opinion the *evacuation plans were vague*. He thought PD would only ask or invite residents in the first block nearest the smelter to evacuate or stay in their homes. In previous conversations with PD in 2006 and 2007, they had apparently indicated to him evacuation would be voluntary and residents would have the option of staying indoors during demolition. PD had also indicated that Hurley residents would be informed of potential evacuation by *flyers*.

54. On or about May 1, 2007, in an e-mail from me to Mr. Aaboe at AQB, I stated I was surprised to hear the *Kennecott* stack still had asbestos in 20-odd feet near the top, and asked him, “Can you test for asbestos?” Furthermore, in my May 1, 2007 e-mail to Mr. Aaboe, I also noted that I had heard he would be meeting with PD “this week.”

55. On or about May 3, 2007, at an NMED Community Meeting, I spoke as President of GRIP to the group, which included NMED Secretary Curry and other ED Staff and Bureau Chiefs, about the residents' and my concerns about the lack of planning and information available on the demolition. I said that as far as I knew, neither NMED nor GRIP had seen any formal contingency, safety, air quality monitoring, or evacuation plans for a demolition scheduled to occur at the end of May, only a few weeks away. I said words to the effect that, "as far as I know there is no Open House date yet to inform the residents." I also said I had recently learned that there was still asbestos on one of the stacks.

56. By early May, 2007, PD still had not informed GRIP about the *dates* of the demolition, *or* the Open House, despite repeated questions and concern expressed by all in being informed.

57. In April or May, 2007, I had a brief chat with PD's Mr. Tim Eastep at the gym. In the course of that conversation he indicated knowing that I was interested in seeing what I called a contingency plan. Mr. Eastep made no offer to supply one.

58. On or about May 5, 2007, I telephoned Mr. Aaboe's colleague at AQB, Mr. Terry Herfel, and suggested that he contact Mr. Myers to get the aerial photographs of Hurley and the smelter that PD had given Mr. Myers at the April 24th meeting.

59. On or about May 6, 2007, I emailed Mr. Aaboe, noting that five residents had offered their yards for testing. I had asked the President of Hurley Pride Club to ask for volunteers, and she faxed me these five names. I also noted that "*PD still hasn't selected a date for an Open House prior to demolition.*" {My italic added.}

60. On or about May 7, 2007, Mr. Aaboe recontacted me, saying that AQB was **proceeding to develop a monitoring plan with or without any cooperation from the [PD] facility.** {My emphasis added.}

61. On or about May 11, 2007, after hearing from AQB's Mr. Aaboe that the stack demolition date had been moved up to May 25th, I called CWG member Carol Ketcherside to advise her of the dates. Ms Ketcherside has breathing problems, lives near the smelter, and is on oxygen. She told me she was afraid for her health and the health of her family, and was unhappy with how this process had been handled by PD.

62. Also on or about May 11, 2007, after hearing from Mr. Eastep of PD by phone about the new date for demolition, I called Ms. Savanne Kilgore, President of the Hurley Pride Club. She had been contacted by PD's spokesperson, Mr. Richard Peterson, about the new May 25th date, and was told by the Hurley Fire Department that the Open House would be held ***three days prior***, on May 22nd. She also told me that people in Hurley were *not happy about the way the demolition was being handled, but didn't know anything about regulations or regulatory process.*

63. On or about May 11, 2007, I asked Mr. Chris Eustis of NMED *why* the AOC had not sampled inside the smelter facility. I wondered because, earlier, AOC had stated in documents provided to our CWG as far back as 1997, that AOC would test and take samples at the facility (in an undated document entitled, "Regulatory Overlap between Discharge Permits and AOC"), and remediate as necessary. "AOC will also address investigation and remediation of other media in the smelter area (for example, soils) not usually addressed by Discharge Permits." Mr. Eustis indicated that Chino had refused AOC sampling, and insisted that the smelter was covered instead by Discharge Permit-214 [which are *water* quality permits]. (**Exhibit "4"** hereto.)

64. It appears to me therefore that a regulatory loophole exists, and that *no state regulatory scheme controls the demolition of a smelter smoke stack*. It is also still unclear to me when or why responsibility for soil testing and activities within the smelter facility were transferred from regulatory authority of the AOC, to the authority of the Ground Water Discharge Permit-214. I mention this because the AOC process, unlike the Discharge Permit process PD seems to prefer, *would* have had active public review through ongoing community involvement *via* our CWG group, on issues that I believe are of great concern to the well-being of the residents of Hurley.

65. The transfer of statutory authority from the AOC process to the Discharge Permit process appears to have left a regulatory and public information “black hole.” As a result, GRIP is unable to pinpoint any regulatory oversight authority in New Mexico over the demolition in question. We believe this is one reason why PD is moving so fast on the demolitions, to avoid anyone placing statutory requirements on them while “the coast is clear.”

66. I plan to attend the demolition itself, whenever it finally occurs. I want to be personally assured that my presence at the site will not result in any threat to my own health, safety, or welfare.

I declare 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 13th day of May, 2007, at Silver City, New Mexico.

DIANE G. “Sally” SMITH,
Affiant

SUBSCRIBED AND SWORN to before me this _____ day of May, 2007, by
Diane G. "Sally" Smith, known to me by personal knowledge whose signature appears above.

NOTARY PUBLIC, State of New Mexico

My Commission expires: 10/4/09

(seal)