

By AVELINO MAESTAS and MEREDITH PURVIS

District Judge J.C. Robinson this morning denied a Gila Resources Information Project petition for an injunction to halt the demolition of the Hurley smokestacks.

The GRIP petition, filed in 6th Judicial District Court on May 14, alleged Phelps Dodge has not done enough to ensure the health and safety of Hurley residents and the thousands of visitors who are expected to view the demolition.

Phelps Dodge announced in 2005 that it would demolish its Hurley smelter — and the historic smokestacks — because it was obsolete. On Tuesday, the company announced it would postpone indefinitely the demolition project, pending the result of this morning's hearing.

Richard Peterson, Phelps Dodge spokesman, said the company was happy with the outcome.

"We're pleased with the court's decision that allows us to go ahead on this project," Peterson said.

The company will now move forward with preparations for the stack demolition.

"We do not at this time know when that will be," Peterson said. "We know for certain it will not be on Friday, because we need time to prepare the chimneys."

Allyson Siwik, GRIP executive director and one of the petitioners, said the organization was disappointed with the decision.

"We believe we had a clear preponderance of evidence on the side of protection of community health and safety," she said.

Though the court sided against GRIP, Siwik said there were some small gains driven by the process.

"Our petition compelled Phelps Dodge to provide information to the (New Mexico) Environment Department and the public" she said. "The community is now more aware of the issues, and we now have an adequate air monitoring plan for the demolition.

"We hope that this action has caused PD and local authorities to take community concerns more seriously in their planning."

Robinson opened the hearing by laying out some ground rules.

"First, I've read this entire (case) file; I don't expect counsel to go through this with me," he said. "I've also looked at VHS tape — which I believe was provided by the petitioners — of the Morenci stacks demolition."

Robinson also precluded the parties from giving opening statements.

“These pleadings contain a great deal of argument,” he said, referring to the case file. “The purpose of this hearing is evidentiary, to determine whether an injunction will be issued.”

Douglas Littlejohn, representing GRIP, chose to forgo calling witnesses, citing its petition as evidence.

“We feel we’ve presented enough to move forward.”

Anthony J. Trujillo, representing Phelps Dodge, moved that the hearing and any subsequent trial be consolidated. Robinson ruled against the motion.

Jerald Thompson, also representing Phelps Dodge, first called on Doug Loizeaux, a demolition contractor with Controlled Demolition Inc., who testified he has more than 35 years’ experience. He said the company has demolished more than 1,000 structures — including cooling towers for nuclear power plants — and more than 100 chimney-type stacks similar to those in Hurley.

Loizeaux testified that CDI and PD jointly chose the method of destruction for the Hurley stacks.

“This is the preferred method from a safety standpoint,” Loizeaux said, “and offers least amount of inconvenience for the surrounding area, and saves a lot of time.”

According to Loizeaux, the second option — deconstruction — would take months and would release more dust into the air than explosive demolition.

He also testified that his company could guarantee the stacks would fall within 5 degrees of the target trajectory.

Littlejohn questioned why dust suppression would not be employed during the demolition. Loizeaux said it was ineffective.

“Basically, you’re talking about trying to suppress thousands of tons of dust, which will be produced over a matter of ten seconds,” Loizeaux responded. “You just can’t introduce a sufficient amount of water.”

Following the cross examination, Robinson asked several questions regarding Loizeaux’s experience with chimney-type stacks, confirming that he had supervised the demolition of stacks in Ajo, Douglas and Morenci, Ariz. for Phelps Dodge, and of stacks demolished in San Manuel for another company earlier this year. Loizeaux testified that no one was injured during those projects, nor were any other structures damaged.

Thompson also called on John Zamar, who oversees the company’s asset demolition programs. Zamar testified that all federal, state and local laws and regulations were being followed during the preparations for the demolition, save the Federal Aviation Administration.

“We have not (given notice to) them, and will not until the stacks come down,” Zamar said.

Under cross-examination, he testified that the company would release air-monitoring data to the public. Littlejohn questioned if the company would respond if contaminants are found in Hurley residents’ yards.

“Based on the sample monitoring plan, should any monitors identify any constituents ... we will then go and sample yards,” Zamar said. “If we find some contamination, we will clean it up.”

Zamar said that some asbestos abatement occurred on the smaller stack, but that some non-friable material remained at the top.

Lt. Waldo Winborn, with the Hurley Police Department, was the next witness questioned by Thompson. Winborn said he felt confident that residents’ safety would be protected, but admitted that a dust cloud could potentially surround residents and spectators if winds shift suddenly during the demolition.

During closing arguments, Trujillo argued that GRIP failed to meet their burden of evidence for an injunction.

“Phelps Dodge has delayed the demolition out of respect for the judicial process,” Trujillo said. “We’re shooting against a moving target.

“Everything is about speculative, hypothetical injuries that may or may not occur.”

Littlejohn said there is cause for concern for the residents of the Tri-City area.

“The people in the mining industry are used to taking risks,” he said. “Who is being placed at risk here?”

Littlejohn said the citizens are the ones at risk, and although the contractor testified that they do this all the time, “Nobody ever mentions the fact that there’s a town across the street.” According to Littlejohn, that is an important distinction between similar demolition projects in Morenci, Ajo and Douglas.

Robinson reminded the court that the hearing was evidentiary, and not argumentative. He highlighted Loizeaux’s testimony that CDI has completed similar projects, sometimes in urban areas and in other instances where radiated material was involved, and that there were no problems resulting from those projects. Robinson also said GRIP president Sally Smith presented no evidence to contradict Phelps Dodge claims that there is no heavy metal remaining inside the stacks.

“She has no evidence to the contrary,” he said.

According to Robinson, to grant an injunction there must be evidence, or GRIP must show actual or strong likelihood of irreparable harm.

“The mere possibility is not enough,” he said.

Robinson also said GRIP had not produced a single expert witness to show wrongdoing on the part of Phelps Dodge.

“The injunction is denied,” he said.