

General

May 30, 1990

John Bannerman, Esq.
Sutin Thayer & Browne
P.O. Box 32500
Albuquerque, NM 87190

Re: No. 12,190

Dear Mr. Bannerman:

This responds to your letter dated April 26, 1990.

The Environmental Improvement Division (EID) is concerned that the record has not yet been filed with the Court of Appeals. I am also concerned by the tone of your letter, which implies that EID is responsible for the University's delay in filing the record.

Rule 12-209.A of the Rules of Appellate Procedure states in relevant part that "[t]he papers and pleadings filed in the district court (the court file), or a copy thereof shall constitute the record proper." Rule 12-601.B specifies that "[w]henever in these rules ... reference is made to the district court ... the board, commission, administrative agency or official whose action is appealed from shall be substituted for the district court" Thus, the administrative record upon which the EID Director based his decision is the necessary record for the Court of Appeals. Because the appeal is limited to the incinerator, EID will agree that those portions of the administrative record limited to the incinerator are appropriate for filing with the Court of Appeals. That portion is exactly the same administrative record which EID filed with the Environmental Improvement Board. Thus, you may arrange with EID to have a copy made of those same materials for filing with the Court of Appeals.

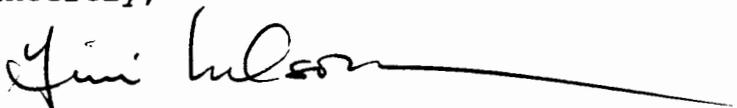
It is the appellant's duty to have the record prepared and filed with the Court of Appeals. See, e.g., State ex rel. State Hwy. Comm'n v. Sherman, 82 N.M. 316, 481 P.2d 104 (1971); Westland Dev. Co. v. Saavedra, 80 N.M. 615 459 P.2d 141 (1969). While I understood you to have requested EID's concurrence in filing something different from this with the Court of Appeals, you have still not put the University's [and the Department of Energy's, according to your letter] proposal in writing for my client to



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consider. EID will not condone any additional delay in your filing the record. If you believe filing anything less or greater than the Director's administrative record as indicated above is legally supportable, and do so, my client will respond as appropriate at that time.

Sincerely,

A handwritten signature in cursive script, reading "Gini Nelson", followed by a long horizontal line extending to the right.

GINI NELSON
Assistant General Counsel

cc: Elizabeth Gordon, EID Hazardous Waste Program
Randall Van Vleck, Assistant Attorney General