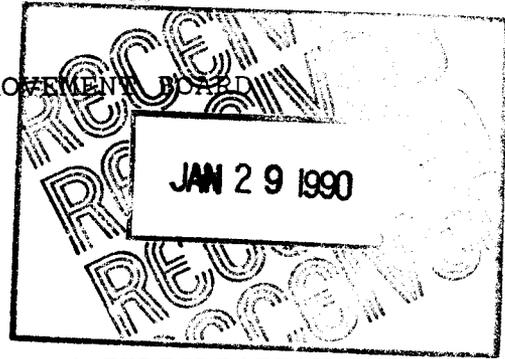


BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF APPEALS OF
HAZARDOUS WASTE FACILITY PERMIT
NO. 0890010515-1 ISSUED TO
LOS ALAMOS NATIONAL LABORATORY



MOTION TO DISMISS APPEALS FOR LACK OF JURISDICTION

The United States Department of Energy ("DOE") and the Regents of the University of California ("the University") on December 20, 1989 filed a Petition For Limited Review with the Environmental Improvement Board ("EIB"). Ms. Barbara Jaramillo on December 12, 1989, and Ms. Joan Berde on December 8, 1989 also filed appeals. The EIB directed all parties who participated in the hearing below to file their responses to the appeals by January 29, 1990. The Environmental Improvement Division ("EID") hereby file a Motion to Dismiss Appeals For Lack of Jurisdiction ("Motion to Dismiss"), with accompanying Memorandum in support of the Motion. EID this same date has filed a separate response to the DOE's, the University's, Ms. Barbara Jaramillo's and Ms. Joan Berde's appeals.

As basis for the Motion, EID states:

1. Jurisdictional issues can be raised at any time and must be decided before issues on the merits.

2. EID moves the EIB to dismiss these appeals for lack of jurisdiction because those portions of HWMR-5 §902 that purport to give the EIB the power to review the EID Director's permit decisions and substitute the EIB's legal and factual conclusions for the EID Director's are ultra vires and therefore void. The reasons for this are set forth fully in Part IV of this Memorandum,



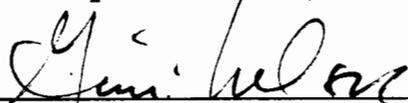
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but summarized here:

- a. The legislature knowingly created EID and the EIB with specific powers and duties delegated between them. These delegated authorities cannot be exceeded.
- b. Under the Hazardous Waste Act, the Legislature delegated:
 - (1) to the EIB, authority to promulgate regulations of general, state-wide applicability; and
 - (2) to EID, the authority to manage and enforce those regulations, and make binding determination directly affecting the legal rights of individuals, e.g., permit decisions.
- c. The legislature did not create a substantive right to appeal the EID Director's permit decisions to the EIB. The EIB's attempt to give itself that power exceeds its statutory grant, and seeks to displace the authority the Legislature granted to EID to make final permit decisions.

WHEREFORE, EID moves the EIB to dismiss the appeals for lack of jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

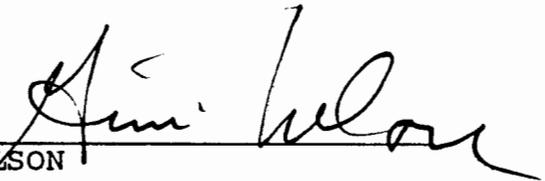
I hereby certify that a copy of the foregoing Motion To Dismiss Appeals For Lack of Jurisdiction was mailed on this 29th day of January, 1990, to the following:

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