

2/11/90

EIB's dismissal
of appeal

BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

STATE OF NEW MEXICO

IN THE MATTER OF
HAZARDOUS WASTE PERMIT
REVIEW PURSUANT TO HAZARDOUS
WASTE MANAGEMENT REGULATION
902(G)

GENERAL ORDER

THIS MATTER came before the New Mexico Environmental Improvement Board (the Board) on February 9, 1990, upon the Board's own motion. On or about July 9, 1989, the Environmental Improvement Board adopted the current Hazardous Waste Management Regulations (HWMR-5). Section 902 of HWMR-5 relates to procedures for granting hazardous waste permits. Section 902(G) is of particular concern to the Board. Section 902(G) provides in relevant part:

Any person adversely affected by the decision of the Director concerning the issuance, suspension, modification or revocation of a permit may submit a petition for review of the Director's decision by the Environmental Improvement Board.

After hearing the argument of various interested parties and being otherwise fully advised in the matter the board FINDS:

1. That Section 74-4-4(A)(7) NMSA, 1978, requires the Board to adopt regulations establishing procedures for the issuance suspension and revocation of permits, subject to any other provisions of the Hazardous Waste Act.


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2. That HWMR-5, Section 902(G) was adopted by the Board pursuant to its authority under Section 74-4-4(A)(7) NMSA 1978.

3. That Section 74-4-4.2(G) NMSA 1978 provides in relevant part:

Any person adversely affected by a decision of the director concerning the issuance, modification suspension or revocation of a permit may appeal the decision by filing a notice of appeal with the court of appeals within thirty days after the date the decision is made....

4. That as an administrative agency, the Board has only those powers and can only act on those matters which are within the scope of the authority granted to it.

5. That the Board may not create a rule or regulation that is not in harmony with its statutory authority nor may it enlarge or modify its authority by enacting rules and/or regulations.

6. That HWMR-5, Section 902(G), is in apparent conflict with Section 74-4-4.2(G) NMSA 1978 Comp.

7. That the enactment of HWMR-5, Section 902(G) was an exercise in excess of the Board's authority pursuant to Section 74-4-4(A)(7) NMSA 1978, and is otherwise ultra vires.

IT IS THEREFORE ORDERED:

1. That all future petitions for review of the Director's decision be commenced in accordance with Section 74-4-4.2(G) NMSA 1978.

2. That all pending petitions for review be and are hereby dismissed by the Board.

3. That this Order of the Board is a final decision of Director, pursuant to HWMR-5, Section 902(F) and for purposes of appealing to the New Mexico Court of Appeals.

Dated: Feb 19th 1990



TRAVIS DOLLAR
Chairman