

Unit's appeal #

*Copy
Richard*

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

RECEIVED
MAR 13 1990
EID DIRECTOR'S OFFICE

REGENTS OF THE UNIVERSITY OF)
CALIFORNIA,)

Appellant,)

v.)

NO.)

THE ENVIRONMENTAL IMPROVEMENT)
DIVISION OF THE NEW MEXICO)
HEALTH AND ENVIRONMENT)
DEPARTMENT; RICHARD)
MITZELFELT, Director,)
Environmental Improvement)
Division, and THE)
ENVIRONMENTAL IMPROVEMENT)
BOARD,)

Appellees.)

NOTICE OF APPEAL

Pursuant to N.M.S.A. § 74-1-9H., § 74-4-4.2.G.,
§ 74-4-5.F. (1989 Repl. Pamp) and SCRA 1986 12-601, the
Regents of the University of California ("University"), as
operator of the Los Alamos National Laboratory, hereby
appeals the decisions of the Director ("Director") of the
Environmental Improvement Division ("the EID") and the
Environmental Improvement Board ("Board"), made
February 9, 1990, regarding Hazardous Waste Facility
Permit No. NM 890010515-1 ("the Permit") and the
imposition of three conditions in the Permit which are



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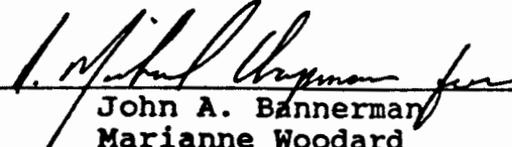
outside the regulatory authority of the EID; and regarding Section 902 of the Hazardous Waste Management Regulations of the Board.

This appeal is a direct appeal from a decision of an administrative agency. Appellant has exhausted its administrative remedies. A copy of the General Order of the Board showing the date of the agency decisions and the subject regulation is attached hereto as Exhibit A.

Appellant submits that the decisions of the Director and the Board are arbitrary, capricious, an abuse of discretion, not supported by substantial evidence in the record, and are not in accordance with the law.

The University hereby certifies pursuant to § 74-1-9H., § 74-4-4.2G. and § 74-4-5.F. that arrangements have been made with the Environmental Improvement Division for a sufficient number of copies of the record on which this appeal depends, including three copies which shall be furnished to the Environmental Improvement Division and the Board.

SUTIN, THAYER & BROWNE
A Professional Corporation

By 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has
mailed copies of this Notice of Appeal to:

Ms. Gini Nelson
Special Assistant Attorney General
Assistant General Counsel
Office of General Counsel for the New Mexico
Environmental Improvement Division
1190 St. Francis Drive
Santa Fe, New Mexico 87503

Mr. Richard Mitzelfelt,
Director of Environmental Improvement
Division
1190 St. Francis Drive
Santa Fe, New Mexico 87503

Mr. Randall D. Van Vleck
Assistant Attorney General
Counsel to the Environmental Improvement
Board
P. O. Drawer 1508
Santa Fe, New Mexico 87503

this 12th day of March, 1990, both of whom are
counsel for Appellees.


JOHN A. BANNERMAN

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.

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

TRAVIS DOLLAR
Chairman