

ENTERED

FEB 21 2008

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
SANTA FE COUNTY

ENDORSED
First Judicial District Court

NEW MEXICO ENVIRONMENT DEPARTMENT,

FEB 20 2008

Plaintiff,

vs.

Santa Fe, Rio Arriba &
Los Alamos Counties
No. D0101-CV-2007-02626
Santa Fe, NM 87504-2208

CITIZEN ACTION NEW MEXICO,
a New Mexico organization,

Defendant.

**PLAINTIFF NEW MEXICO ENVIRONMENT DEPARTMENT'S
MOTION TO DISMISS DEFENDANT'S SECOND CLAIM FOR RELIEF**

Pursuant to Rule 1-012.B(1) NMRA, plaintiff New Mexico Environment Department ("Department") moves to dismiss defendant Citizen Action's second claim for relief based on lack of subject matter jurisdiction over the claim. As grounds for this motion, the Department states:

1. In Defendant's Answer to Complaint for Declaratory Judgment and Counterclaim Pursuant to the New Mexico Inspection of Public Records Act and the New Mexico Hazardous Waste Act, Defendant pleads in its second claim for relief that the Department is required to hold a public hearing on Sandia National Laboratories' ("SNL") proposed Corrective Measures Implementation Plan ("CMI Plan") under the New Mexico Hazardous Waste Act ("HWA"), the New Mexico Open Meetings Act, and the New Mexico Constitution, art. 2, §§ 2, 4, and 18. Answer, ¶¶ 47, 48. Defendant further requests the Court to issue a Writ of Mandamus directing the Department to hold a public hearing on the CMI Plan. Answer, p. 10, ¶ 3.

2. A court has subject matter jurisdiction in an action if the case is within the general class of cases that the court has been empowered, by constitution or statute, to hear and determine. *Marchman v. NCNB Texas Nat. Bank*, 120 N.M. 74, 83-84, 898 P.2d 709, 718-19

SNL1053



(1995) (citing Robert C. Casad, *Jurisdiction in Civil Actions*, § 1.01[1] (2d ed. 1991)).

3. The source of the district court's jurisdiction is the New Mexico Constitution, art. VI, § 13, which provides that, "The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as may be conferred by law."

4. While the district court is a court of general jurisdiction, it does not exercise jurisdiction over matters expressly consigned to other courts. *Marchman*, 120 N.M. at 83-84, 898 P.2d at 718-19 (citing T.E. Occhialino, *Walden's Civil Procedure in New Mexico* 1-5 (2d ed. 1988)).

5. With respect to appeals of or challenges to "final administrative action" of the Department under the HWA, the HWA expressly consigns jurisdiction to the Court of Appeals. NMSA 1978, § 74-4-14.A. The HWA provides: "Any person who is or may be affected by any final administrative action of the [Environmental Improvement Board] or the secretary [of the Department] may appeal to the court of appeals for further relief within thirty days after the action." *Id.*

6. Thus, under the HWA, the exclusive avenue for appeal of or challenges to final administrative action of the Department is through filing an appeal with the Court of Appeals within thirty days of the action. *See id.*

7. Therefore, this Court does not have subject matter jurisdiction over defendant's appeal of or challenge to the Department's final administrative action not to hold a public hearing on SNL's CMI Plan.

Because of the nature of this motion, counsel for the Department did not seek the concurrence of defendant. Rule 1-007.1.C NMRA.

Based on the foregoing, the Department respectfully requests dismissal of defendant's second claim for relief, seeking a public hearing on SNL's CMI Plan.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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Department

Certificate of Service

I certify that on February 20, 2008 a copy of the foregoing pleading was mailed to Nancy L. Simmons, 120 Girard SE, Albuquerque, New Mexico 87106; David McCoy, Citizen Action New Mexico, Post Office Box 4276, Albuquerque, New Mexico 87916-4276; and Scott Fuqua, Assistant Attorney General, Office of the Attorney General, P.O. Drawer 1508, Santa Fe, New Mexico 87504-1508.



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