

Opinion No. 87-22

May 29, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Andrea L. Smith, Assistant Attorney General

TO: Representative Max Coll, P.O. Box EE, Santa Fe, New Mexico 87502

QUESTIONS

Whether the Environmental Improvement Division is an environmental regulatory and enforcement agency, in addition to being an environmental management agency?

CONCLUSIONS

Yes.

ANALYSIS

The New Mexico Environmental Improvement Act, §§ 74-1-1 through 74-1-10 NMSA 1978 (1986 Repl.) ("the Act"), provides that the Environmental Improvement Division of the New Mexico Health and Environment Department ("EID") is responsible for environmental management programs in New Mexico. § 74-1-7(A) NMSA 1978 (1986 Repl.). EID "shall maintain, develop and enforce regulations and standards in" a number of environmental areas including water pollution, liquid and solid waste disposal, air quality, radiation control, noise control, and nuisance abatement. § 74-1-7(A) NMSA 1978 (1986 Repl.). The Act gives EID the authority to comply with its statutory mandate to regulate and enforce in these areas by filing appropriate actions in courts of competent jurisdiction. § 74-1-6(E) NMSA 1978 (1986 Repl.). In addition, EID has "such other powers as may be necessary and appropriate for the exercise of the powers and duties delegated to" it. § 74-1-6(H) NMSA 1978 (1986 Repl.).

EID's specific environmental regulatory and enforcement responsibilities are spelled out in various New Mexico environmental laws. See e.g., New Mexico Air Quality Control Act, §§ 74-2-1 through 74-2-17 NMSA 1978 (1986 Repl.); New Mexico Radiation Protection Act, §§ 74-3-1 through 74-3-16 NMSA 1978 (1986 Repl.); New Mexico Hazardous Waste Act, §§ 74-4-1 through 74-4-13 NMSA 1978 (1986 Repl.); New Mexico Radioactive and Hazardous Materials Act, §§ 74-4A-1 through 74-4A-14 NMSA 1978 (1986 Repl.); New Mexico Emergency Management Act, §§ 74-4B-1 through 74-4B-11 NMSA 1978 (1986 Repl.); New Mexico Water Quality Act, §§ 74-6-1 through 74-6-13 NMSA 1978 (1986 Repl.); New Mexico Wastewater Facility Construction Loan Act, §§ 74-6A-1 through 74-6A-6 NMSA 1978 (1986 Repl.); New Mexico Environmental Compliance Act, §§ 74-7-1 through 74-7-8 NMSA 1978 (1986 Repl.); and New Mexico Utility Operators Certification Act, §§ 61-30-1 through 61-30-9 NMSA 1978 (1983 Repl.).

EID has discretion in its regulatory and enforcement activities depending on, for example, resources available to it and the cooperation of an alleged polluter. See § 74-2-12(A) NMSA 1978 (1986 Repl.). But a number of statutes leave EID without the discretion to take regulatory or enforcement actions. See e.g., § 74-2-10 NMSA 1978 (1986 Repl.); § 74-3-11(A) NMSA 1978 (1986 Repl.); § 74-4-10(A) NMSA 1978 (1986 Repl.). In addition, the Supreme Court of New Mexico held in 1973 that EID can be compelled to perform the duties enjoined upon it by law. *State ex rel. Norvell v. Arizona Public Service Co.*, 85 N.M. 165, 173, 510 P.2d 98 (1973).

ATTORNEY GENERAL

HAL STRATTON Attorney General