

US EPA ARCHIVE DOCUMENT

74-1-7

## ENVIRONMENTAL IMPROVEMENT

74-1-8

Am. Jur. 2d, A.L.R. and C.J.S. references. —  
61A Am. Jur. 2d Pollution Control §§ 6, 134.

39A C.J.S. Health and Environment § 133.

### 74-1-7. Environmental improvement agency; duties.

A. The agency is responsible for environmental management and consumer protection programs. In that respect, the agency shall maintain, develop and enforce regulations and standards in the following areas:

- (1) food protection;
- (2) water supply, including regulations establishing a reasonable system of fees for the provision of services by the agency to public water supply systems, and water pollution as provided in the Water Quality Act [74-6-1 to 74-6-4, 74-6-6 to 74-6-13 NMSA 1978];
- (3) liquid waste;
- (4) air quality management as provided in the Air Quality Control Act [Chapter 74, Article 2 NMSA 1978];
- (5) radiation control as provided in the Radiation Protection Act [74-3-1 to 74-3-16 NMSA 1978];
- (6) noise control;
- (7) nuisance abatement;
- (8) vector control;
- (9) occupational health and safety as provided in the Occupational Health and Safety Act [50-9-1 to 50-9-25 NMSA 1978];
- (10) sanitation of public swimming pools and public baths;
- (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;
- (12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978];
- (13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978]; and
- (14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

History: 1953 Comp., § 12-19-10, enacted by Laws 1971, ch. 277, § 10; recompiled as 1953 Comp., § 12-12-10 by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 5; 1977, ch. 122, § 5; 1983, ch. 317, § 13; 1989, ch. 223, § 1; 1989, ch. 289, § 2; 1990, ch. 99, § 64.

Cross references. — For definition of "agency," see 74-1-3 NMSA 1978.

Solid Waste Act. — See 74-9-1 NMSA 1978 and notes thereto.

Agency is not given all-encompassing power to abate nuisances. *Gonzalez v. Whitaker*, 97 N.M. 710, 643 P.2d 274 (Ct. App. 1982).

Because that is within jurisdiction of courts. — It readily falls within the traditional jurisdiction of the court to enjoin, abate or impose damages for creation of a nuisance. *Gonzalez v. Whitaker*, 97 N.M. 710, 643 P.2d 274 (Ct. App. 1982).

No authority to deputize local officials. — The environmental improvement division (EID) may seek assistance from city and county law enforcement agencies to enforce asbestos disposal regulations pursuant to the Mutual Aid Act, 29-8-1 to 29-8-3 NMSA 1978, but it cannot deputize city or county law enforcement officials to act as EID agents to enforce the division's asbestos disposal regulations. 1987 Op. Att'y Gen. No. 87-48.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For note, "State Control of Low-Level Nuclear Waste Disposal," see 17 Nat. Resources J. 683 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39A C.J.S. Health and Environment § 133.

### 74-1-8. Environmental improvement board; duties.

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate regulations and standards in the following areas:

- (1) food protection;
- (2) water supply, including regulations establishing a reasonable system of fees for the provision of services by the agency to public water supply systems;

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To	Stella Montoya		From	Susan McMichael	
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- (3) liquid waste;
- (4) air quality management as provided in the Air Quality Control Act [Chapter 74, Article 2 NMSA 1978];
- (5) radiation control as provided in the Radiation Protection Act [74-3-1 to 74-3-16 NMSA 1978];
- (6) noise control;
- (7) nuisance abatement;
- (8) vector control;
- (9) occupational health and safety as provided in the Occupational Health and Safety Act [50-9-1 to 50-9-25 NMSA 1978];
- (10) sanitation of public swimming pools and public baths;
- (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;
- (12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978];
- (13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978]; and
- (14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Fees collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water supply fund.

**History:** 1953 Comp., § 12-19-11, enacted by Laws 1971, ch. 277, § 11; recompiled as 1953 Comp., § 12-12-11 by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 6; 1977, ch. 122, § 6; 1983, ch. 317, § 14; 1989, ch. 223, § 2; 1989, ch. 289, § 3; 1990, ch. 99, § 65; 1993, ch. 100, § 2.

The 1993 amendment, effective March 31, 1993, rewrote Subsection C which read "Effective July 1, 1992, all fees collected pursuant to Subsection A of this section shall be deposited in the general fund."

**Solid Waste Act.** — See 74-9-1 NMSA 1978 and notes thereto.

**Board has paramount environmental improvement authority.** — It is the intention of the legislature to give the environmental improvement board statewide, paramount authority to enforce regulations and standards in the various areas listed and that all other entities of government and political subdivisions thereof must conform. *New Mexico Mun. League, Inc. v. New Mexico Env'tl. Imp. Bd.*, 88 N.M. 201, 539 P.2d 221 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

**Board promulgates regulations.** — There is no inconsistency or conflict between 3-48-2 NMSA 1978 and this section. The latter gives the board statewide responsibility for environmental management and protection, making the promulgation of regulations and standards by the board in the areas of liquid waste and solid waste sanitation and refuse disposal mandatory. The former merely gives municipalities the option or discretion to enact ordinances governing the collection and disposal of refuse. *New Mexico Mun. League, Inc. v. New Mexico Env'tl. Imp. Bd.*, 88 N.M. 201, 539 P.2d 221 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

**For liquid and solid waste and refuse.** — The phrase "solid waste sanitation," as used in Subsection A(3) is not limited or qualified by the phrase, "refuse disposal." "Liquid waste," "solid waste" and "refuse"

constitute three distinct categories of environmental concern. *New Mexico Mun. League, Inc. v. New Mexico Env'tl. Imp. Bd.*, 88 N.M. 201, 539 P.2d 221 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

**Board's duty to prepare regulations.** — The environmental improvement board has a duty to have the regulations prepared by a staff of its own. It has no right to delegate this authority to one who is an "interested person" at a public hearing. *Kerr-McGee Nuclear Corp. v. New Mexico Env'tl. Imp. Bd.*, 97 N.M. 88, 637 P.2d 38 (Ct. App. 1981).

**Administrative bodies and officers cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character or which require the exercise of judgment.** *Kerr-McGee Nuclear Corp. v. New Mexico Env'tl. Imp. Bd.*, 97 N.M. 88, 637 P.2d 38 (Ct. App. 1981).

**Board cannot act lawfully alone in adopting radiation regulations.** The board must obtain "the advice and consent" of the radiation technical advisory council before it can adopt regulations. *Kerr-McGee Nuclear Corp. v. New Mexico Env'tl. Imp. Bd.*, 97 N.M. 88, 637 P.2d 38 (Ct. App. 1981).

**Liquid waste disposal regulations not vague.** — The revised liquid disposal regulations adopted pursuant to Subsection A(3) of this section are not facially vague. *Climax Chem. Co. v. New Mexico Env'tl. Imp. Bd.*, 106 N.M. 14, 738 P.2d 132 (Ct. App. 1987).

**Requirements of cleaning refuse transportation vehicle.** — Regulations adopted under this article requiring that any vehicle employed in collection or transportation of waste and refuse be cleaned at such times and in such manner as to prevent offensive odors and unsightliness are not constitutionally repugnant for vagueness. The question to be asked is: What might a reasonable person of average sensibilities consider to be an offensive odor or unsightly condition, and the answer is capable of common un-