



The University of New Mexico

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I. Environmental Counseling

You represent a cement company that wants to locate a new facility for the growing city of Albuquerque, New Mexico. The factory has come to you to seek advice about where to site the plant. The company has come to you because of your expertise in environmental law: you have worked for EPA, the State Environment Department, and in a private firm representing individuals and corporations. Nonetheless, you have never handled a cement factory case. You carefully interview the new client and assure him that you will get back to him in just a few days with your thoughts.

What do you want to know about the operation?

Based on what the cases in our textbook have told us about environmental aspects of cement plants, what considerations would be relevant in siting in a metropolitan area? (You do not need to consider PSD- Prevention of Significant Deterioration- which we skipped in class.) Please be complete, pointing out what you need to know and the legal implications of that information.

II. Risky Waters?

Newly elected Mayor Marty Chavez has asked you, the City Attorney, whether the City should continue its legal protest of the new EPA arsenic standard.

First, you must locate the EPA decision. You may use any electronic research sources, but you may not call or contact anyone for assistance. Where is the new standard (citation)? What numeric standard must EPA meet and by what date?

Second, the Mayor wants your advice about whether the City should continue to fight the standard. You tell the Mayor that you will help him to understand the pros and cons of the new standard. Please do so.

Third, the Mayor wants to know whether the EPA has violated the Safe Drinking Water Act by setting the arsenic number at such a restrictive level. He wants to know if the EPA was aware how much arsenic removal would cost Albuquerque? Does the statute require EPA to take the cost to Albuquerque into account? In what fashion? Please answer this question based on the statutory language as found in your statutory supplement.

III. Upstream, Downstream

Los Alamos National Laboratories discharges various wastewater streams into arroyos. These arroyos occasionally run with rain during the summer months and during heavy rains a few times during the remainder of the year. They eventually drain into the Rio Grande. The Lab discharges are year round, resulting in surface water flows for a few hundred feet, but they do not. The Lab has NPDES permits for these discharges. The

discharges contain various constituents, but include heavy metals, such as nickel and selenium. State water quality standards protect the Rio Grande for primary contact recreation (swimming). LANL argues that it is absurd to impose water quality standards on dry arroyos to protect swimmers' health. As LANL's attorney, your attempts to get relief from the state standards have been unavailing.

Is there an avenue for relief that LANL can pursue before the EPA? What would it be and how would you pursue it?

A number of dischargers to intermittent streams in the West have banded together with respect to western water quality standards. Does SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. CORPS OF ENGINEERS give them hope for relief? What argument would LANL make under that case?

IV. First Day of Work at EPA

Congratulations on your new job as EPA counsel in the Air Program. The Secretary of the Department has called for urgent advice, and you were standing around the phones, drinking coffee. She wants to know what the Agency is supposed to do under 42 U.S.C. 7412 (k) (3) (B) and (C) (also referred to as CAA s. 112) and what the purposes of these subsections are. The Secretary comes to the position with a strong scientific background in physics, not law. Please explain the rationale of the Congress, linking this rationale to the overall approach for hazardous air pollutants.