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Resource Conservation and Recovery Act/Hazardous Waste Disposal: Federal District Court Addresses United States Challenge to Scope of Permit Issued by New Mexico

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The United States District Court for the District of New Mexico (“Court”) in a March 31st Order addressed a dispute regarding a state-issued hazardous waste disposal permit. See *United States v. N.M. Env’t Dep’t*, No. CV 19-46 KG/SMV, 2020 WL 1536151 (D.N.M. Mar. 31, 2020).

The question addressed was whether the Court should abstain from exercising jurisdiction over the United States challenge to the State of New Mexico issued permit.

The New Mexico Environment Department (“NMED”) issued a hazardous waste disposal permit to Cannon Air Force Base. The United States challenged the permit on the grounds that the permit exceeds the scope of the Resource Conservation and Recovery Act’s (“RCRA”) waiver of sovereign immunity.

RCRA regulates solid waste treatment, storage, and disposal, and gives the United States Environmental Protection Agency (“EPA”) the authority to regulate “hazardous waste,” (i.e., generation, transportation, treatment storage or disposal). The regulations include a requirement that owners and operators of hazardous waste treatment facilities obtain permits.

EPA may authorize states to implement their own hazardous waste programs. However, the state programs must be as strict as the federal counterpart.

The federal government is required to comply with RCRA and with EPA-authorized state programs. RCRA contains a waiver of sovereign immunity.

EPA authorized New Mexico’s hazardous waste program in 1985. New Mexico implemented its program by enacting the New Mexico Hazardous Waste Act (“NMHWA”). Pursuant to that program, entities apply to the NMED for a RCRA permit.

NMED issued a permit to Cannon Air Force Base on December 19, 2018. The United States filed an action against NMED in federal court (the action addressed here) challenging the permit’s definition of the term “hazardous waste.” It alleged that the definition of “hazardous waste” in the permit “is inconsistent with the NMHWA. Therefore, it was argued to exceed the scope of RCRA’s waiver of sovereign immunity.” The federal government also filed a state action in New Mexico in which it challenged the permit’s definition

of “hazardous waste,” as well as the definitions of “contaminant,” “corrective action,” and “hazardous constituent.”

NMED filed a motion to dismiss the United States’ federal complaint. The state asked the federal district court to abstain from exercising jurisdiction. It asserted that the complaint should be dismissed for failure to state a claim. NMED also moved for a more definite statement in the event its motion to dismiss was denied.

The Court outlined the abstention doctrine. The abstention doctrine allows federal courts to decline to exercise jurisdiction in limited circumstances.

NMED’s first argument with respect to abstention was that the Supreme Court’s *Younger* decision was applicable. Under the *Younger* decision abstention is appropriate only in three types of proceedings:

1. ongoing state criminal prosecutions,
2. certain civil enforcement proceedings, and
3. pending civil proceedings involving certain orders uniquely in furtherance of the state courts’ ability to perform their judicial functions.

The United States argued, and the Court agreed, that the proceeding at hand was not any of the three specified proceedings in which abstention is appropriate. Thus, the Court was not required to abstain.

NMED’s second abstention argument was that abstention was appropriate under the Supreme Court’s *Pullman* and *Colorado River* cases. The Court noted that “*Pullman* abstention is founded on the notion that federal courts should avoid unnecessary federal court review of the constitutionality of state law.” Because this case did not involve a constitutional challenge to a state law, application of the abstention doctrine under *Pullman* was inappropriate.

Under *Colorado River*, abstention is appropriate in certain exceptional circumstances determined by weighing several factors including:

1. whether either court has assumed jurisdiction over property,
2. inconvenience of the federal forum,
3. desirability of avoiding piecemeal litigation,
4. order in which the courts obtained jurisdiction,
5. vexatious nature of the litigation,
6. whether federal law provides the rule of decision, and
7. adequacy of the state court action to protect the federal plaintiff’s rights.

The Court found that this case did not present the exceptional circumstances necessary to abstain from exercising jurisdiction.

After addressing NMED’s abstention arguments, the Court considered whether the complaint should be dismissed for failure to state a claim. It examined the complaint and concluded that the United States had “sufficiently explained the permit is allegedly deficient because its hazardous waste definition exceeds the hazardous waste definitions in the NMHWA and RCRA, and that this deficiency is the reason why the United States alleges it is exempt from RCRA’s waiver of sovereign immunity.” These allegations were sufficient to state a plausible claim for relief, therefore, NMED’s motion to dismiss for failure to state a claim was denied.

Finally, the Court addressed NMED's motion for a more definite statement. In light of the fact that motions for a more definite statement are disfavored, the Court denied NMED's motion. A more definite statement was deemed unnecessary.

The Court declined to abstain from exercising jurisdiction, denied NMED's motion to dismiss for failure to state a claim, and denied NMED's motion for a more definite statement.

A copy of the Order can be downloaded [here](#).