



## Environmental Non-Compliance as a Public Nuisance

In *State of New Mexico ex rel. Bigney v. City of Rio Rancho*<sup>1</sup>, the New Mexico Court of Appeals recently clarified the relationship between environmental non-compliance and public nuisance liability. The court held that consistent failure to obtain the necessary authority to conduct industrial operations and to ensure the proper oversight of industrial operations in accordance with state environmental law constituted a public harm that may be remedied through public nuisance litigation by individual plaintiffs. The case suggests that public nuisance law can be a powerful means of enforcing environmental law and land use restrictions where government authorities repeatedly fail to enforce permitting requirements.

### Facts and Procedural History

Harold's Grading & Trucking, Inc. (HGT), is a grading, excavation, and building materials company that operates a gravel pit, rock crusher, and screening plant for processing engineered fill. When it began operations at its current location in approximately 1975, the surrounding land was predominantly vacant. Thereafter, the City of Rio Rancho experienced substantial growth. In 1994, the city adopted residential zoning for the area, but by the time of the litigation, the immediately surrounding parcels remained largely vacant.

The plaintiffs are the owners of adjoining parcels of undeveloped land. They sued HGT and the city for, *inter alia*, public nuisance and inverse condemnation, respectively. Against HGT, the plaintiffs sought a temporary and permanent injunction preventing it from continuing to operate the gravel pit and related operations.

After a trial, the District Court for Sandoval County entered a permanent injunction concluding that HGT created, performed, or maintained a public nuisance in fact. In

relevant part, the District Court found that HGT “purposefully evaded” oversight by the New Mexico Environment Department (NMED) “through misrepresentations, broken promises, and feigned ignorance.” It repeatedly “fail[ed] to respond to [n]otices of [v]iolation from NMED,” including its refusal or inaction to abate the violating conditions in response to notices of infraction in 1990, 1995, 1997, 2002, 2013, 2018, 2020, and 2021.

## **Analysis in the Court of Appeals**

HGT appealed, arguing, in relevant part, that the public nuisance determination should be reversed because the District Court’s findings did not establish that its operations affected a considerable number of people in the generally vacant and undeveloped area surrounding the gravel pit.

The question concerned liability under New Mexico’s public nuisance statute:

A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

- injurious to public health, safety, morals, or welfare; or
- interferes with the exercise and enjoyment of public rights, including the right to use public property.<sup>2</sup>

Under existing New Mexico precedent, the statute merely codifies the common law prohibitions on public nuisance; it does not create a new liability standard. What constitutes a public nuisance is governed by common law principles.

Applying these principles, the Court of Appeals affirmed the District Court with respect to nuisance liability. The Court of Appeals reasoned that conduct may constitute a public nuisance not merely because it interferes with the use and enjoyment of a large number of people but because it interferes with a public right. Thus, a nuisance may be actionable if it affects any number of citizens. Applying this standard, the Court of Appeals rejected HGT’s argument on appeal. The District Court’s findings were sufficient to conclude that HGT’s operations “negatively affected the interests of the community at large by degrading the public benefits derived from the statutes, ordinances, and regulations that HGT has consistently ignored and violated,” irrespective of whether a considerable number of people

were affected. Responding to HGT’s argument that “criminal acts or violations of an ordinance” cannot form the basis for an injunction, the Court of Appeals reasoned that “[t]he public nuisance findings . . . are based not on the violations themselves, but on a pattern of disregard for the public interest as demonstrated by knowing, repeated, and unresolved infractions.”

## **Implications**

The holding in *Bigney* suggests that a pattern of environmental law violations may be actionable as a public nuisance irrespective of substantial effects on any sizeable nearby community. The case raises substantial questions about the limits of the primary jurisdiction of agencies like NMED to bring enforcement actions and the ability of private plaintiffs to enforce public rights against a repeated violator whom an agency fails to regulate in an effective manner.

*This blog was drafted by [Kaleb Brooks](#), an attorney in the Spencer Fane Santa Fe, New Mexico office. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).*

<sup>1</sup>  
2025-NMCA-\_\_\_\_\_, \_\_\_\_\_ P.3d \_\_\_\_\_, 2025 WL 227194

<sup>2</sup>  
NMSA 1978, § 30-8-1 (1963).

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