

**ACTION PLAN**

- Submitted by agency? Yes
- Timeline assigned? No
- Responsibility assigned? No

Two bills were introduced during the 2020 legislative session to address some of NMED's revenue challenges.

The governor signed into law Chapter 32 (House Bill 312), which creates the environmental health fund to consolidate fees collected from four NMED programs.

Senate Bill 209, which did not pass, proposed to increase the maximum fees for food service licenses. NMED estimated that fee change would result in an additional \$2.3 million in annual revenue for the agency.

**Department of Environment**

The New Mexico Environment Department (NMED) has quickly adapted to the circumstances of the COVID-19 pandemic, finding efficiencies through the technology required for telework and shifting the focus of its food and occupational safety programs to ensuring compliance with the state's emergency public health orders. NMED developed COVID-19 resources for all employers, drinking water treatment plant operators, food manufacturers, infectious waste management, oil and gas operators, restaurants, and wastewater treatment operators.

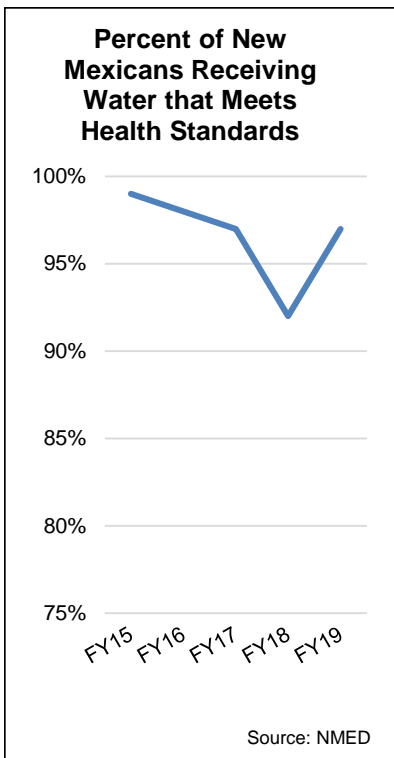
NMED reports continued difficulty competing with the private sector and federal government on recruitment and retention for engineer positions in water-related programs. To address these challenges, in the first quarter of FY20 NMED launched a social media campaign to highlight the differences its staff makes in communities, began advertising positions nationwide through social media, announced vacancies through various organizations of environmental professionals, partnered with in- and out-of-state institutions to recruit staff, and reclassified positions. The agency has also had some success with rapid hire events, though the current statewide hiring freeze will halt this progress. NMED is also removing unneeded vacant term positions from its organizational listing so that its vacancy rate is more accurate and meaningful.

NMED's overall performance is difficult to assess because nearly half of the measures are classified as explanatory and do not have a target to measure progress against, and other measures focus more on inputs and outputs than outcomes. NMED has committed to collaborating with LFC staff to improve key measures and provide data more representative of program performance. The Environment Secretary recently initiated a restructuring effort that focuses on creating more uniform, outcome- and output-based measures for all programs, and has invited LFC staff to participate in the process.

The agency received FY20 special appropriations of \$2 million to support the state's ongoing environmental litigation associated with the Gold King Mine release that occurred in 2015. NMED also received \$1.2 million to match federal funds for the management and cleanup of a number of Superfund sites across the state. The discovery of per- and poly-fluoroalkyl substances (PFAS) in groundwater near Cannon and Holloman Air Force Bases required regulatory enforcement from NMED in FY19 and is expected to be an ongoing challenge for the foreseeable future. In the General Appropriation Act of 2020, NMED received FY20 supplemental appropriations of \$125 thousand for water pollution prevention and control programs and \$169 thousand for shortfalls in the environmental protection program

**Water Protection**

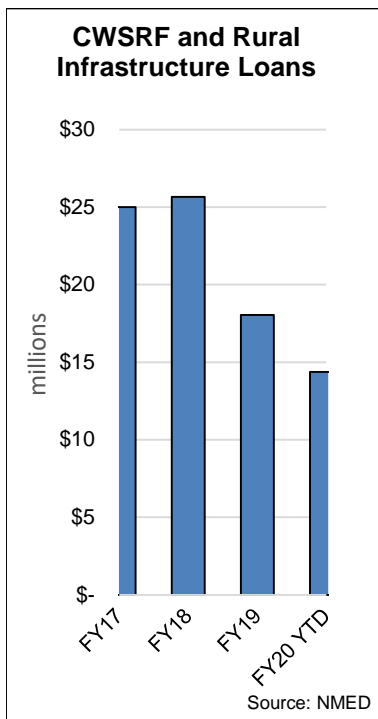
Approximately 1.93 million New Mexicans receive their drinking water from community public water systems, and about 1.83 million receive water that meets all health-based standards. Of the community water systems that were issued health-based violations during the third quarter of FY20, 22 were issued violations based on a failure to correct deficiencies noted during sanitary survey inspections. Two of those water systems received capital outlay funding for FY20 and FY21; one received capital funding for FY21 only. In many cases, these deficiencies are easily correctable and only require the water systems to provide compliance documentation showing that the issue



has been corrected. Seventeen other community water systems were issued more serious violations that often require major infrastructure improvements to treat contaminants. The Drinking Water Bureau works to help water systems understand and comply with drinking water standards that protect public health rather than merely issuing violations.

In the third quarter, NMED inspected 11 percent of facilities operating under a groundwater discharge permit. Inspections are behind schedule because staff were occupied with hearing preparation, water fairs, permit writing, and IPRA responses related to several controversial proposed permits, as well as the impact of COVID-19 on the ability to perform inspections. Staff do not expect to meet the FY20 target, but do plan to increase permit fees to generate additional revenue in FY21 that can be used to fund vacant positions. Current Ground Water Quality Bureau fee revenue covers approximately 10 percent of the program’s costs.

A large portion of surface water quality impairments identified in New Mexico are due to nonpoint source pollution (e.g., land runoff). Watershed-scale changes to improve surface water is a long-term investment. The Surface Water Quality Bureau produces the NonPoint Source (NPS) Annual Report, which evaluates reductions in NPS pollutant loading.



**Budget:** \$28,828.9 FTE:

189

**Measure**

Facilities operating under a groundwater discharge permit inspected annually

Facilities in compliance with groundwater standards\*

Population served by community water systems that meet health-based drinking water standards\*

EPA clean water state revolving loan fund capitalization grant and matching state funds that are for wastewater infrastructure

Capital outlay dollars disbursed, in millions\*

Loan program dollars disbursed, in millions\*

**Program Rating**

	FY18 Actual	FY19 Actual	FY20 Target	FY20 Q1	FY20 Q2	FY20 Q3	Rating
Facilities operating under a groundwater discharge permit inspected annually	54%	68%	63%	11%	23%	11%	Y
Facilities in compliance with groundwater standards*	1,482	1,582	N/A	401	402	436	
Population served by community water systems that meet health-based drinking water standards*	92%	97%	N/A	95%	98%	95%	
EPA clean water state revolving loan fund capitalization grant and matching state funds that are for wastewater infrastructure	100%	100%	100%	19%	76%	100%	G
Capital outlay dollars disbursed, in millions*	\$25.6	\$8.9	N/A	\$1.8	\$4.0	\$3.1	
Loan program dollars disbursed, in millions*	\$25.7	\$18.1	N/A	\$3.0	\$7.6	\$3.8	
<b>Program Rating</b>	Y	G					G

\*Measures are classified as explanatory and do not have targets.

## Resource Protection

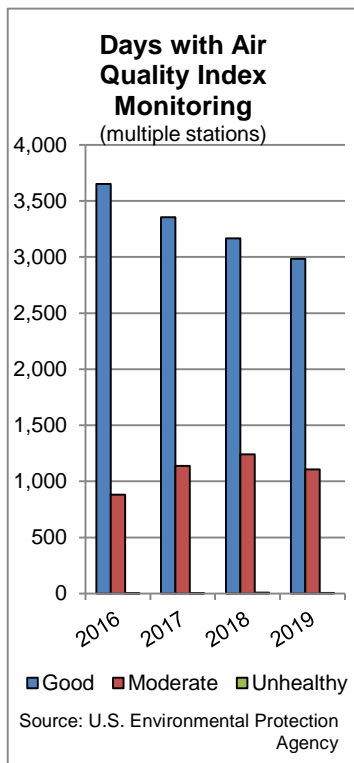
There are 3,087 underground storage tank systems at 1,168 regulated facilities across the state, of which 233 have outstanding violations that can threaten groundwater. New Mexico's compliance rate is above the national average of 70 percent. Inspections of underground storage tanks stopped in mid-March to comply with the COVID-19 public health order, but staff continue to perform other regulatory and oversight activities remotely. In the solid waste program, one facility out of 12 that were inspected during

The Petroleum Storage Tank Bureau is increasing outreach and assistance to the regulated community to help improve compliance with regulatory requirements for underground storage tanks. Staff report that tank owners may still be learning about new regulations that were passed in 2018.

the third quarter failed inspection, resulting in a 92 percent compliance rate. For the third quarter of FY20, all but two permitted municipal landfills in New Mexico complied with regulatory and permit-specific requirements for groundwater and/or vadose zone monitoring and reporting at the time of the inspection.

New Mexico currently has at least 78 large quantity hazardous waste generators (LQGs), four of which were inspected during the third quarter of FY20. Only one inspected generator was found to be in compliance with permit requirements. When the Hazardous Waste Bureau finds an LQG in violation of regulations, it issues an enforcement document and conducts formal enforcement if the responsible party is recalcitrant or the violations are egregious; monetary penalties may be imposed if the enforcement action is elevated to an administrative compliance order.

NMED and the New Mexico Attorney General’s Office recently reached an agreement with ExxonMobil to settle a lawsuit that alleges the company obtained reimbursement from the state’s corrective action fund (CAF) to clean up leaking petroleum storage tanks while collecting insurance money for the same costs. ExxonMobil will pay \$500 thousand into the CAF as part of the settlement. In addition to holding the industry accountable with state and federal laws, NMED is evaluating options to ensure corrective action funds are primarily used for small, independent facilities and abandoned sites.



**Budget:** \$14,031 **FTE:** 133

Measure	FY18 Actual	FY19 Actual	FY20 Target	FY20 Q1	FY20 Q2	FY20 Q3	Rating
Large quantity hazardous waste generators inspected and in compliance, cumulatively*	32%	39%	N/A	25%	17%	25%	<b>R</b>
Underground storage tank facilities compliant with release prevention and release detection requirements	88%	86%	90%	83%	84%	80%	<b>Y</b>
Solid waste facilities and infectious waste generators found in compliance with solid waste rules	94%	95%	95%	93%	93%	92%	<b>Y</b>
Landfills compliant with groundwater sampling*	96%	99%	N/A	100%	96%	92%	<b>Y</b>
<b>Program Rating</b>	<b>Y</b>	<b>Y</b>					<b>Y</b>

\*Measures are classified as explanatory. Ratings are based on performance compared with prior years.

**Environmental Protection**

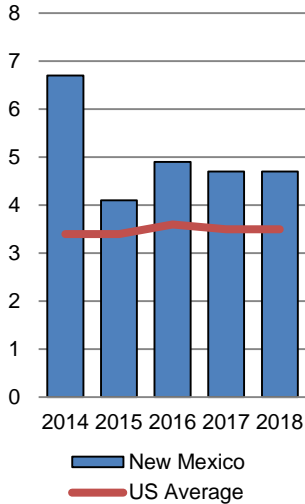
In the third quarter of FY20, 99 percent of days had good or moderate air quality ratings. Although this measure has a target of 100 percent, NMED reports it as explanatory data because it does not regulate air quality in all areas of the state and significant emissions can be transported from outside NMED’s jurisdiction. NMED reports that air quality permitting grew by 256 percent between 2008 and 2018, but the Air Quality Bureau did not increase inspection or permitting staff during that time, leading to difficulties meeting inspection goals. The lack of oversight may contribute to poorer air quality as

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unpermitted emissions go undiscovered and violations are not addressed by Air Quality Bureau staff. NMED reports that the larger impact on air quality, however, is the increased oil production and related facilities in the state.

**Fatal Work Injury Rate Per 100,000 Workers**



Source: US Bureau of Labor Statistics

**Budget:** \$23,381.5 **FTE:** 238.5

Measure	FY18 Actual	FY19 Actual	FY20 Target	FY20 Q1	FY20 Q2	FY20 Q3	Rating
Priority food-related violations from inspections that are corrected	100%	100%	100%	100%	100%	97%	G
Days with good or moderate air quality index rating	90%	87%	100%	92%	100%	99%	Y
Radioactive material licensees inspected within timeframes due	NEW	100%	95%	100%	100%	97%	G
Swimming pools and spas in compliance with state standards	100%	100%	100%	100%	100%	100%	G
<b>Program Rating</b>	<b>G</b>	<b>G</b>					<b>G</b>