NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

PERFORMANCE REPORT CARD: Fourth Quarter, FY20

Environment

The New Mexico Environment Department (NMED) adapted quickly to the circumstances of the COVID-19 pandemic, finding efficiencies through the technology required for telework and reassigning staff to keep up with the demands of protecting public health in food establishments and workplaces. NMED also 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'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.

Water Protection

Approximately 1.98 million New Mexicans receive their drinking water from community public water systems, and about 1.96 million, or 98 percent, receive water that meets all health-based standards. Of the community water systems that were issued health-based violations during the fourth quarter of FY20, ten were issued violations based on a failure to correct deficiencies noted during sanitary survey inspections. 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 FY20, NMED inspected 47 percent of facilities operating under a groundwater discharge permit. The agency reports it was unable to meet its target because staff were occupied with hearing preparation, permit writing, and public engagement related to several controversial proposed permits, as well as the impact of COVID-19 on the ability to perform inspections. NMED plans to increase permit fees in FY21 to generate additional revenue that can be used to fund vacant positions. Current Ground Water Quality Bureau fee revenue covers approximately 10 percent of the program's costs.

Budget: $28,828.9 **FTE: 189**

	FY18 Actual	FY19 Actual	FY20 Target	FY20 Actual	Rating
Facilities operating under a groundwater discharge permit inspected annually	54%	68%	63%	47%	Y
Facilities in compliance with groundwater standards*	N/A	N/A	N/A	439	

ACTION PLAN

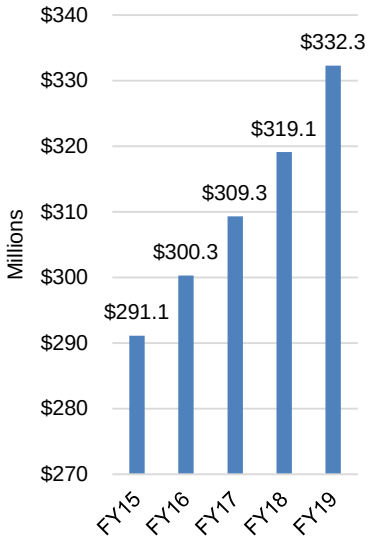
Submitted by agency?	Yes
Timeline assigned?	No
Responsibility assigned?	No

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

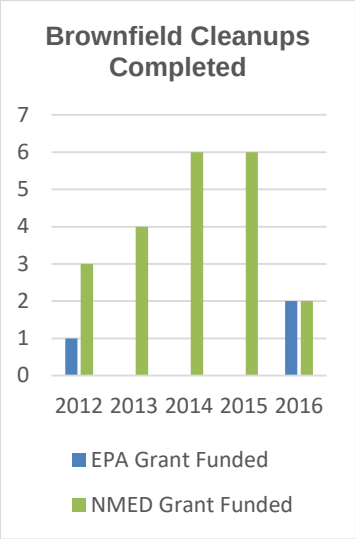
The governor signed into law Chapter 32 (House Bill 312), which creates the environmental health fund to consolidate fees collected from four NMED programs.

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.

Wastewater Facility Construction Loan Fund Ending Net Position FY15-19



Source: State Auditor's Office



A brownfield is a property whose expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Source: Environmental Council of the States

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.

There are an estimated 930 leaking petroleum storage tanks throughout New Mexico that require and are in various stages of corrective action and are potentially eligible for reimbursement from the corrective action fund.

Population served by community water systems that meet health-based drinking water standards*	92%	97%	N/A	99%	
EPA clean water state revolving loan fund capitalization grant and matching state funds that are for wastewater infrastructure	100%	100%	100%	100%	G
Capital outlay dollars disbursed, in millions*	$25.6	$8.9	N/A	$13.0	
Loan program dollars disbursed, in millions*	$25.7	$18.1	N/A	$17.7	
Program Rating	Y	G			Y

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

Resource Protection

There are 3,071 underground storage tank systems at 1,164 regulated facilities across the state, of which 176 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 continued to perform other regulatory and oversight activities remotely and are now gradually returning to field activities. In the fourth quarter of FY20, the Solid Waste Bureau shifted its focus to inspections of medical waste generators related to the public health emergency and conducted 41 inspections compared to the usual 12-15 per quarter. One hundred percent of medical waste generators inspected in the fourth quarter were in compliance with solid waste rules, indicating the state's medical facilities have been properly managing infectious waste during the COVID-19 pandemic.

New Mexico currently has 78 large quantity hazardous waste generators (LQGs), four of which were inspected during the fourth 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.

This year, NMED and the New Mexico Attorney General's Office 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**

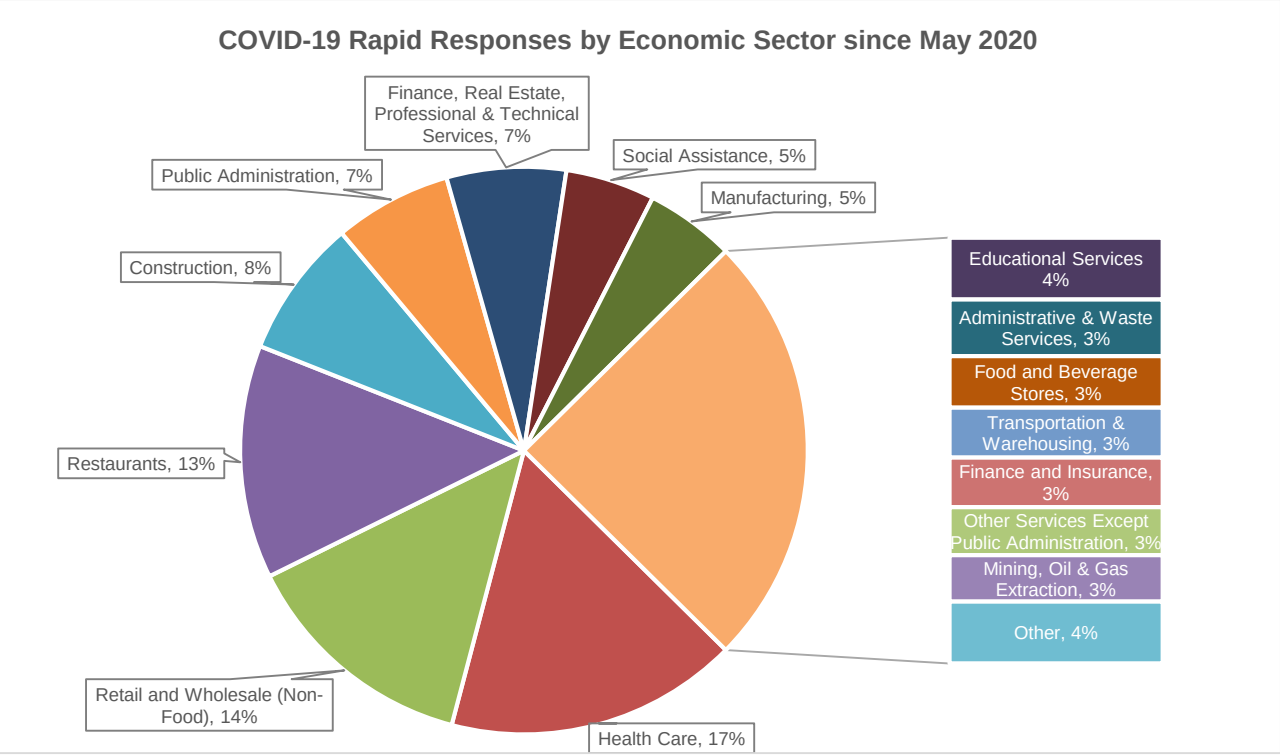
	FY18 Actual	FY19 Actual	FY20 Target	FY20 Actual	Rating
Large quantity hazardous waste generators inspected and in compliance, cumulatively*	32%	39%	N/A	25%	R
Underground storage tank facilities compliant with release prevention and release detection requirements	88%	86%	90%	83%	R
Solid waste facilities and infectious waste generators found in compliance with solid waste rules	94%	95%	95%	95%	G
Landfills compliant with groundwater sampling*	96%	99%	N/A	97%	

Program Rating Y Y G

*Measures is classified as explanatory and does not have a target.

Environmental Protection

The Environmental Protection Division, through its Food Program and Occupational Health and Safety Bureau (OHSB), has been heavily involved in managing the COVID-19 public health emergency. The Food Program is responsible for protecting employees, consumers, and the public from adverse health and safety conditions in food establishments, and thus enforces statewide restrictions on indoor dining per public health orders and provides guidance to food establishments on safely operating during the pandemic. OHSB is responsible for protecting employees of private industry and state, county, and city governments from workplace hazards. As a result, OHSB leads the majority of the state's rapid responses, which ensure employers are following proper safety precautions to prevent the transmission of COVID-19 within their workplaces. NMED has conducted 1,149 of the state's 1,871 rapid responses since May.



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 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.

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

	FY18 Actual	FY19 Actual	FY20 Target	FY20 Actual	Rating
Priority food-related violations from inspections that are corrected	100%	100%	100%	95%	Y
Days with good or moderate air quality index rating	90%	87%	100%	96%	Y
Radioactive material licensees inspected within timeframes due	NEW	100%	95%	95%	Y
Swimming pools and spas in compliance with state standards	100%	100%	100%	100%	G
Program Rating	G	G			Y