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F I S C A L I M P A C T R E P O R T

SPONSOR: Aragon DATE TYPED: 03/07/03 HB _____
SHORT TITLE: Environmental Impact Fee for National Labs SB 448
ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$0.1 See Narrative	\$0.1 See Narrative	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Conflict/Relation SB 202

SOURCES OF INFORMATION

LFC Files

Response Received From

Attorney General's Office (AGO)

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 448 imposes an annual environmental impact fee upon national laboratories operated by or for the U.S. Department of Energy. The New Mexico Environment Department (NMED) would base the environmental impact fee on the "net cost" of their oversight and compliance activities. SB 448 also requires the NMED to adopt procedures to provide for dispute resolution regarding the costs or the fee.

Significant Issues

According to NMED, environmental regulation of New Mexico's national laboratories is one of their most complex responsibilities. Virtually all facets of the NMED are involved in regulation of the laboratories, with the majority of regulation under the authority of the state Hazardous Waste Act.

Discovery of toxic and radioactive contamination in regional ground water at Los Alamos, for example, spurred the NMED to develop a mechanism to direct corrective action at both facilities. This activity culminated in the issuance of a corrective action order to Los Alamos in late 2002, and a draft order to Sandia at approximately the same time. Simultaneously, the NMED was engaged in a major effort to reissue permits for both facilities. These new permits, particularly for Los Alamos, are exceedingly complex, indeed more than those for nearly any other waste management facilities in the country. Development and implementation of the permits require highly specialized expertise, and a level of resources not currently available to NMED.

The NMED currently has fee assessment authority through existing regulations allowing them to approximate the cost of regulating permitted facilities. However, these fees have been challenged by federal facilities.

Other NMED functional areas conduct regulatory and oversight activities as well; many without the benefit of fee assessment (i.e., the cost come out of the base regulatory program). These are listed below:

DOE Oversight Bureau – Conducts environmental surveillance of the laboratories, and serves as a “check” on environmental data released by the laboratories to the regulator (i.e., Hazardous Waste Bureau) and the public. The DOE-OB has garnered a great deal of credibility from the public, but is hindered by its funding source: a direct grant from the DOE itself.

The Oversight Bureau is funded under the Agreement in Principle (AIP) between the State of New Mexico and the U.S. Department of Energy. The New Mexico Environment Department is the implementing state agency. The general intent of the AIP is to establish a comprehensive environmental oversight and monitoring program at DOE facilities in New Mexico and to facilitate a better understanding by local and tribal governments and the general public of the State's perspective on environmental impacts and health risks, if any, associated with the facilities' operations.

Funding to the state under the agreement is granted on an annual basis, determined in part on a detailed budget submitted in a grant application to DOE, as well as by decisions made by various entities within DOE as to how much discretionary spending they choose to allocate.

Ground Water Quality Bureau – Oversees discharge plans and other water quality issues, of particular note the Radioactive Liquid Waste Treatment Facility at LANL TA-50, and the Tijeras Arroyo ground water contaminant plume at Sandia. Also monitors overall water quality as it may be impacted by laboratory operations.

Surface Water Quality Bureau – Oversees permitted liquid and solid discharges to can-

yons and other water courses under state and federal regulations. Is heavily involved with storm-water runoff issues at both facilities, particularly with regard to retention post-Cerro Grande. Bureau also has incurred significant costs defending LANL's challenge to New Mexico's Water Quality Control Commission Regulations human health standards and New Mexico's Water Quality Management Plan.

Solid Waste Bureau – Reviews landfill operations, and provides technical assistance on solid waste regulatory matters.

Air Quality Bureau -- Activities restricted to Los Alamos. Reviews new source permits, open burns, conducts inspections of Title V and NSR permits.

Petroleum Storage Tanks – Although neither lab keeps any regulated underground storage tanks, there is a significant aboveground storage tank inventory at each facility. Bureau activities involve inspection to ensure construction and compliance standards are met, and oversight of corrective action should releases occur.

Drinking Water Quality Bureau – Although neither facility owns its own water system, the Bureau conducts compliance sampling of Los Alamos wells within and outside of laboratory property. Source water assessments also involve laboratory property insofar as wells are located on laboratory property.

Field Operations – District offices oversees and issues permits for four food service establishments at Los Alamos. Holding tanks are permitted for domestic sewage at both facilities.

FISCAL IMPLICATIONS

If the NMED does not collect enough fees from the national laboratories during the fiscal year to cover its costs, SB 448 would authorize the recouping of these costs the following fiscal year. Under the existing fee structure, revenue shortfalls for the out years are in the \$100.0 to \$500.0 range and NMED fees have been challenged by federal facilities.. Enhanced program delivery could increase this figure.

ADMINISTRATIVE IMPLICATIONS

SB 448 addresses cost recovery only for wholly dedicated staff. According to NMED, effective management practices involve utilization of staff in a flexible manner such that many staff may work part-time on projects as workload and expertise varies. Also, legal support should not be limited to work on permit applications and draft permits.

CONFLICT/RELATIONSHIP

SB 202 amends the Hazardous Waste Act to authorize the NMED to assess a “permit management fee” to augment existing fee assessment authority.

AMMENDMENTS

The NMED recommends the following amendments to this bill:

Senate Bill 448-- Page 4

Page 2, line 18 – insert “corrective action activities,” between “applications” and “and”.

Page 3 – insert a new section to read:

“Section 2. A new section of the Environmental Improvement Act is enacted to read:

“[NEW MATERIAL] NATIONAL LABORATORY ENVIRONMENTAL IMPACT FUND CREATED; APPROPRIATION.

A. There is created in the state treasury the “national laboratory environmental impact fund” which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in environmental regulation and oversight of New Mexico’s national laboratories.

B. All fees collected pursuant to Section 74-1-16 NMSA 1978 (this section) shall be transmitted to the state treasurer for credit to the national laboratory environmental impact fund.

C. All unexpended or unencumbered balances at the end of the fiscal year shall revert to the national laboratory environmental impact fund.”

RLG/sb