

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

**FISCAL IMPACT REPORT**

**SPONSOR** Lundstrom **DATE** 02/16/04 **TYPED** 02/16/04 **HB** 19/aHTRC/aSFC  
**SHORT TITLE** Corrective Action Fund Expenditures **SB** \_\_\_\_\_  
**ANALYST** Koplik

**APPROPRIATION**

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$2,139.7			Recurring	Other State Funds

Duplicates SB 55

Relates to General Appropriation Act. See Narrative.

**REVENUE**

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	(\$2,139.7)		Recurring	Corrective Action Fund
	\$1,500.0		Recurring	Federal Funds

**SOURCES OF INFORMATION**

LFC Files

Response Received From  
Environment Department

**SUMMARY**

Synopsis of SFC Amendment

The Senate Finance Committee amendment makes the following changes to the proposed language in Section 74-6B-7:

“The Legislature may appropriate up to thirty percent of the annual distribution to the fund pur-

suant to Section 7-1-6.25 NMSA 1978 to the department to match federal funds, for underground contamination cleanup, and to address water needs.”

This amendment will limit use of the Corrective Action Fund to projects impacting water quality, including surface water and construction programs. All current fiscal impact assessments will remain the same.

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment makes the following changes to the proposed language in Section 74-6B-7:

“The Legislature may appropriate up to thirty percent of the annual distribution to the fund pursuant to Section 7-1-6.25 NMSA 1978 to the department to match federal funds for underground contamination cleanup and ground water needs.”

The way this language is constructed, it is uncertain if the Corrective Action Fund is to be used:

**A)** to match federal funds, cleanup underground contamination, and remediate ground water pollution, or if

**B)** the amendment limits the Corrective Action Fund to activities *solely* matching federal funds.

If the intent of the amendment is **A**, it will somewhat change the Environment Department’s plans to use the Corrective Action Fund. All projects currently planned would not be able to be implemented. The Department would lose \$161.9 thousand in new funding for the Surface Water Bureau, and \$1 million in existing funding for the Construction Bureau (\$300 thousand) and Program Support (\$700 thousand). Instead of accessing \$3.14 million, the Department would be able to use \$2 million from the Corrective Action Fund.

If, on the other hand, the intent of the amendment is **B**, that the Corrective Action Fund should be limited to matching federal funds, the total sum used would only be \$491 thousand.

**TECHNICAL AMENDMENT**

If the committee’s intent is **A**, two commas should be inserted in the following manner:

“The Legislature may appropriate up to thirty percent of the annual distribution to the fund pursuant to Section 7-1-6.25 NMSA 1978 to the department to match federal funds, for underground contamination cleanup, and ground water needs.”

If the amendment was designed to limit use of the Corrective Action Fund to projects impacting water quality, including surface water and construction programs, then the amendment should be changed as follows:

“The Legislature may appropriate up to thirty percent of the annual distribution to the fund pursuant to Section 7-1-6.25 NMSA 1978 to the department to match federal funds, for under-

ground contamination cleanup, and to address water needs.”

### Synopsis of Original Bill

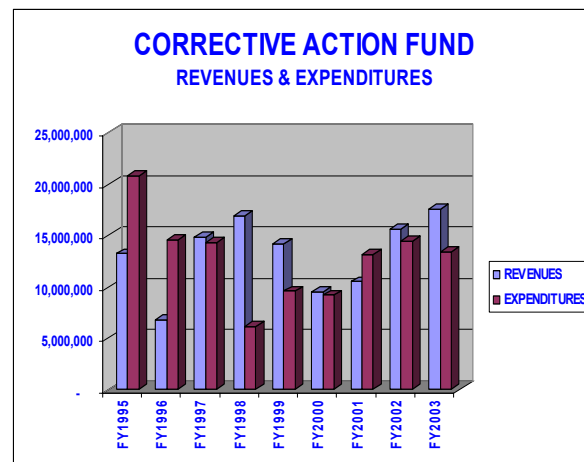
House Bill 19 amends the Groundwater Protection Act to appropriate up to 30% of the annual distributions to the Corrective Action Fund to the Environment Department for the administration of programs focusing on water quality.

### Significant Issues

The Corrective Action Fund (Fund) was created to provide funding to clean up pollution from leaking petroleum storage tank systems, particularly at retail gasoline stations. The Fund also provides federally-required financial assurance coverage for tank owners and operators so they do not have to secure private insurance to cover the liability created by their business practices. Financial assurance coverage for owners and operators will continue under this bill and leaks from underground and aboveground petroleum storage tanks will continue to be cleaned up. The chart below shows the trends in revenues and expenditures, and describes how this bill will support ongoing program efforts.

## **CORRECTIVE ACTION FUND NINE YEAR ANALYSIS OF REVENUES & EXPENDITURES**

- The CAF was created to fund clean up of pollution from leaking petroleum storage tank systems.
- The fund also provides financial assurance coverage for operators so they don't have to secure private insurance to cover liabilities created by their business practices.
- The proposed change allows the department use of up to 30% of the annual collections to cover the costs of administering the fund and to fully fund other environmental programs within the Department.
- These programs are directly related to the “Ground Water Protection Act” for which the fund was created.
- Clean up of contaminated sites will continue at current levels without interruption.
- This change gives the legislature appropriation authority via the annual budget request process.



### **FISCAL IMPLICATIONS**

The appropriation of up to 30% of the annual distributions to the Corrective Action Fund is recurring. Any unexpended or unencumbered balance remaining at the end of each fiscal year shall not revert. At the 30% level, this increase will generate an additional \$2,139.7 for the De-

partment, for a total of \$5,383.4, from the Fund.

If this bill is enacted, the general fund appropriation in the proposed General Appropriation Act for the Environment Department would decrease by \$497.9 thousand for FY05. Further, the Department would not request an increase in general fund dollars in the immediate future. With these dollars, approximately 70 vacant positions in the department will be filled, and program clear up efforts substantially enhanced. Further, as discussed below, the additional \$2.13 million from the Fund will generate approximately \$1.5 million in federal funds on a recurring basis.

This bill would allow the department to distribute corrective action funds in multiple bureaus for the purpose of protecting the state's limited water resources. Currently about \$18 million is distributed to the Corrective Action Fund annually.

Under this proposal, at least 70% (\$12.6 million) would continue to be used for cleaning up petroleum leaks and up to \$5.4 million would be used for other Environment Department programs with a focus on water quality.

Under the proposed General Appropriation Act, \$3.24 million from the Corrective Action Fund has been appropriated to the Environment Department for FY05 operating costs. The additional \$2,139.7 of the new funding proposed by this bill would be distributed throughout the department in the following manner:

Ground Water Bureau <i>(funds inspectors and enforcement)</i>	\$386.3
Surface Water Bureau <i>(funds the Operators Certification Program)</i>	\$161.9
Drinking Water Bureau <i>(match for \$1.2m federal grant, Public Water Supply Supervision)</i>	\$370.4
Field Operations Division <i>(funds multiple vacant inspector positions for the New Mexico Liquid Waste Program)</i>	\$793.8
Hazardous Waste Bureau <i>(match for multiple federal grants)</i>	\$121.0
Environmental Protection Division <i>(funds vacant positions in OSHA &amp; Solid Waste Bureaus)</i>	\$306.3
TOTAL	\$2,139.7

The proposed amendment requests up to 30% in increased distributions from the Fund to attain a consistent level of funding from the Legislature every year regardless of the amount collected into the Fund. The Department will still need budget adjustment request language in order to access this revenue.

## **FEDERAL FUNDS MATCH**

The appropriation of \$2.13 million will leverage approximately \$1.5 million of federal dollars as outlined below:

### **HAZARDOUS WASTE BUREAU**

The proposed \$121 thousand increase requested for the department's FY05 budget is sought to leverage greater federal funds received through the Resource Conservation and Recovery Act (RCRA). A 25% state match is required and the \$121 thousand will leverage more than \$360 thousand of federal monies, which will nearly double the 56 annual inspections at non-permitted

facilities to 100 annual inspections. This increase will promote better handling of hazardous waste and enhance the program of pollution prevention through outreach activities. The proposed additional funds will be for compliance, inspections and administrative costs at hazardous waste generator facilities.

### **FIELD OPERATIONS DIVISION**

The Public Water Supervision Grant (PWSS) is a federal grant provided under the Safe Drinking Water Act to ensure that drinking water systems in New Mexico adequately protect the health of consumers. The PWSS requires a 25% state match or \$375 thousand. This amount leverages \$1.1 million in federal funds for the Department. The PWSS grant funds 19 employees to support primacy requirements. The Drinking Water Bureau has not received general fund money for a number of years. Previously, the PWSS match was appropriated out the Water Conservation Fee revenues. Because of the implementation of seven new rules by EPA, including an exigent arsenic standard, sampling costs have increased to the point that the department can no longer fund sampling activities as well as the federal match from Water Conservation Fee revenues.

### **ADMINISTRATIVE IMPLICATIONS**

The Environment Department has the resources to effectively administer this increase in dollars and program functions.

The Environment Department states that it will be better able to meet its mandates to protect the environment by enactment of this bill, which would make Corrective Action Fund monies available to fund other, chronically under-funded programs. Approximately 70 vacancies in the Department will be filled if the bill passes, increasing water quality protection and allowing it to better meet its performance measures with respect to all water quality programs. Clean up of contamination from leaking storage tanks will continue under the proposed legislation, and the Department will continue to meet its performance targets.

### **OTHER SUBSTANTIVE ISSUES**

#### **Petroleum Products Loading Fee**

The costs associated with cleaning up petroleum spills can be high, and a conservative leak rate is 35%. Approximately 800 remediation projects are underway, and most last several years. The

fee currently levied is 1.875 cents per gallon. Gas tankers usually carry 8,000 gallons per load, and hence pay \$150 per load. The Environment Department receives 73.33% of this fee, or \$110 per load. The remaining 26.67% or \$40 goes to the Local Government Road Fund.

The petroleum products loading fee is graduated, according to the amount of *unobligated* funds certified by the cabinet secretary every year. In November 2003, there was \$4.28 million of unobligated revenue in the Fund. The following table shows information related to the Fund.

Unobligated cash in Corrective Action Fund	Fee/tank of 8000 gallons
\$0-\$6 million	\$150 (\$110 to NMED)
\$6-12 million	\$120 (\$80 to NMED)
\$12-18 million	\$80 (\$40 to NMED)
Over \$18 million	\$40 (\$0 to NMED)

### **Site Prioritization**

The Petroleum Storage Tank Bureau prioritizes leaking storage tank sites based on the effect or potential effect on public health, safety and welfare or the environment, and approves corrective action based on priority.

A site is considered first, or the highest, priority when a water supply has been contaminated or is at imminent risk of becoming contaminated, or when toxic or explosive vapors are present. These sites require immediate and aggressive attention.

Second priority sites have non-aqueous phase liquid (gasoline or diesel in most cases, also called product) or contaminant-saturated soil on site. Product and contaminant-saturated soil are an ongoing source for groundwater contamination and toxic and explosive vapors. Aggressive remediation of these sites is required.

Third priority sites have soil and/or groundwater contamination that does not pose an imminent threat to human health, safety and welfare or the environment, but require some level of corrective action in order to mitigate all potential risk.

The department also ranks sites within the priority groups based on the size and severity of the contaminant plume and the potential impact on receptors such as drinking water supply wells.

**SK/dm**