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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-20-07

SPONSOR Jennings LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Gas Storage Facility Low-Interest Loans SB 1083

ANALYST Aubel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$.01*	Recurring	Corrective Action Fund

(Parenthesis ( ) Indicate Expenditure Decreases) \*See Fiscal Impact

Relates to Appropriation in the General Appropriation Act

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	(\$568.0)	(\$568.0)	Recurring	Corrective Action Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Appropriation in the General Appropriation Act

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$100.0	\$100.0	\$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

Department of Finance Administration (DFA)

Energy, Minerals and Natural Resources Department (EMNRD)

## SUMMARY

### Synopsis of Bill

Senate Bill 1083 amends the Ground Water Protection Act (Section 74-6B-7 NMSA 1978) to authorize low interest loans for improving gasoline storage facilities from the Corrective Action Fund (CAF).

## FISCAL IMPLICATIONS

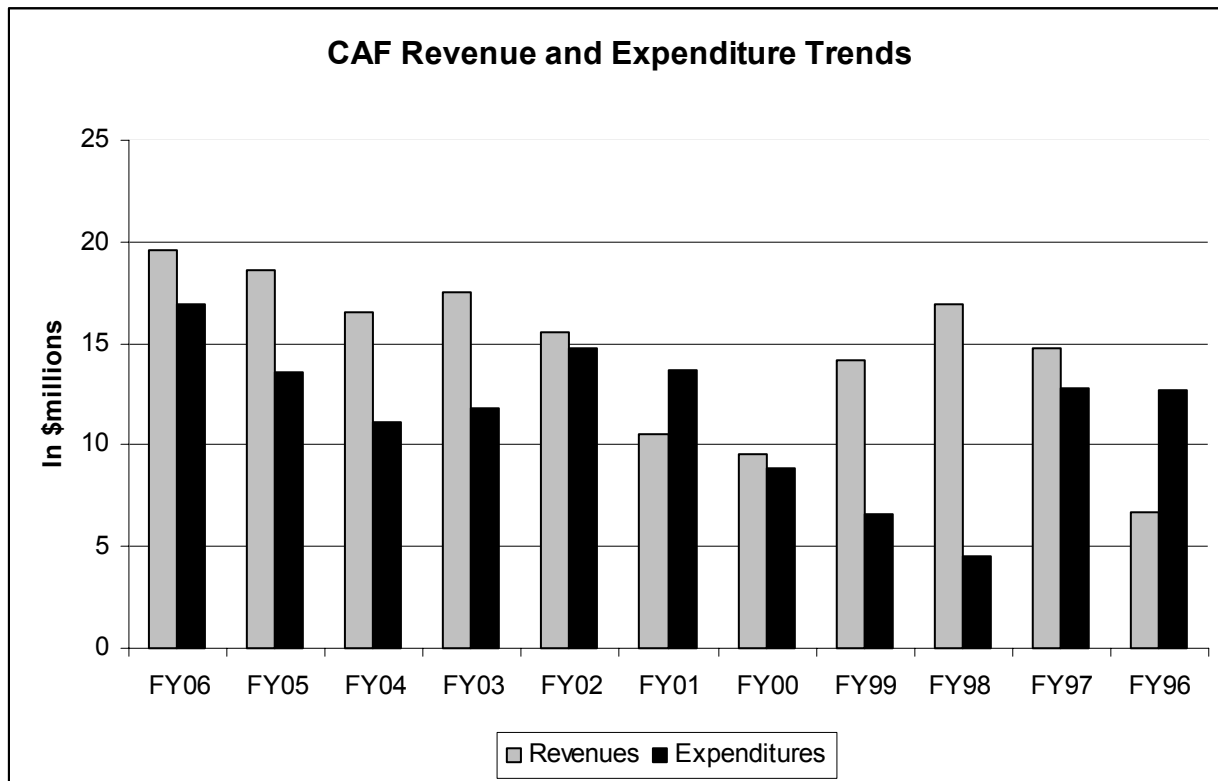
Revenues into the CAF are primarily based upon fees. The level of fees is triggered by the determined level of the un-obligated fund balance at the end of the fiscal year, which has consistently been low enough in the last several years to keep fees at the highest possible level. Thus, while adding loan expenditures to the mix of fund expenditures could potentially positively impact revenues by reducing the level of un-obligated fund balance (and therefore increase the fees), it is not likely that it would change the fund's revenues in the near term. Beyond that expectation, specific revenue or appropriation impacts are indeterminable due to the fact that money in the fund is not automatically available to NMED but is appropriated annually by the Legislature through the budget process. Thus, appropriations to pay for a loan program would appear to be dependent on additional legislative authority.

The Environmental Improvement Board (EIB) has adopted a regulatory requirement for a \$1 million cash reserve in the Fund to be used for emergency purposes. This emergency reserve and all existing obligations are deducted from the fund cash balance to result in the un-obligated balance. Typically this un-obligated balance fluctuates in the range of \$3 million to \$4 million.

The House Appropriations Finance Committee recommendation for NMED includes a total of \$19.1 thousand in direct and indirect expenditures out of the CAF and does not include amounts for the loans proposed by this bill. To maintain both the EIB emergency cash reserve of \$1 million and fund solvency, it is conceivable that setting aside available amounts from the fund for "loans to improve gasoline storage facilities," would mean less money would be available for funding the original CAF mandates.

NMED notes that SB 1083 would provide for an additional use of the CAF not directly related to remediation of environmental contamination. The fund functions as the federally-required financial assurance mechanism as specified in Subtitle I of the federal Resource Conservation and Recovery Act (RCRA, 42 USC 6991). The 2005 Federal Energy Policy Act (Public Law 109-58) prohibits diversions from a state's federally-required financial assurance mechanism for purposes other than environmental remediation. NMED contends that any such diversion will result in the loss of the federal Leaking Underground Storage Tank (LUST) grant, which currently amounts to \$568.0 thousand annually.

NMED maintains that implementing a loan program as contemplated by SB 1083 would require up to two administrative full time employees (FTEs) at an approximate cost of \$100.0 thousand for personal services and benefits because the bureau responsible for the CAF does not currently have that expertise available. SB 1083 makes no provision for increased recurring operating budget resources for this added expense.



**SIGNIFICANT ISSUES**

Background of Existing Statute for the Corrective Action Fund

NMSA 1978, Section 74-6B-7 creates a Fund that is used by the Environment Department (“Department”), to the extent funds are available, to: (1) take corrective action in response to a release; (2) pay for the costs of a minimum site assessment in excess of \$10,000; (3) pay the state’s share of federal leaking underground storage tank trust fund cleanup costs, as required by the federal Resource Conservation and Recovery Act; and (4) make payments on behalf of owners and operators for corrective action taken in accordance with Section 74-6B-13 NMSA. These “direct” expenditures for cleanups have averaged approximately \$11.5 million annually over the last 10 years, leaving between \$3 million and \$4 million in un-obligated funds.

By Legislative appropriation, up to 30 percent of the CAF’s annual distribution may be used to match federal funds for underground contamination cleanup and to address water needs. The indirect disbursements for “addressing water needs” include disbursements to support water-related activities throughout the department.

Background on Underground Storage Tanks (UST) Regulations

Federally-mandated upgrade requirements for underground storage tank (UST) facilities were promulgated with ten-year phased upgrade requirements that became effective in 1998. In 2001, the New Mexico Legislature recognized the need to protect New Mexico’s limited groundwater resources by addressing USTs and accordingly amended the Ground Water Protection Act and the Hazardous Waste Act.

The economic impact of those required upgrades was carefully analyzed during the development and adoption of the current Petroleum Storage Tank regulations (NMAC 20.5), which NMED relates as follows:

The regulations that specify the required upgrades for ASTs were developed following an extensive public participation process. The effective dates of these upgrade requirements are phased in over a ten-year period, with final upgrades not required until 2011. At the hearing on those regulations before the EIB, the executive director of the Petroleum Marketers Association testified in favor of the ten-year upgrade compromise. The executive director told the EIB that the Association had worked closely with NMED's Petroleum Storage Tank Bureau to arrive at the compromise and that the compromise was fair to stakeholders and AST owners. Additional testimony at the regulation hearing demonstrated the following:

1. The ten-year phased approach deadline gives AST owners the same period of time to upgrade that UST owners had for federal/state requirements;
2. The upgrade requirement with the greatest environmental benefit is secondary containment, which is the most effective technical system for preventing releases; secondary containment is usually also the most expensive upgrade requirement;
3. The Corrective Action Fund became available to AST owners for releases starting in June 2002; NMED sought to require secondary containment as soon as possible to reduce claims against the CAF resulting from petroleum leaks into the environment from AST systems, noting that the Petroleum Products Loading Fee, which funds the Corrective Action Fund, was not increased although an entirely new class of tanks gained access to it; and
4. The 10-year deadline balanced the need for effective release prevention with the cost of secondary containment, giving AST owners a 10 year time period to amortize the cost of upgrades.

## **PERFORMANCE IMPLICATIONS**

According to NEMD, loss of the federal LUST grant and increased administrative costs for a loan program would significantly reduce the rate at which environmental remediation is accomplished, resulting in an increased potential for ongoing environmental contamination. A reduced un-obligated balance in the Fund may also reduce the rate of environmental remediation related to water needs.

## **ADMINISTRATIVE IMPLICATIONS**

DFA believes that SB 1083 would potentially add a significant administrative and staffing burden on NMED. Department staff overseeing the fund does not currently have processes in place for acceptance and review of loan applications, nor does it have processes in place to manage and collect loan repayments. The bureau that does handle loans may be transferred to DFA pursuant to HB 781 if enacted.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to HB 781, which would transfer the Construction Programs Bureau to an Office of Water Infrastructure Department administratively-attached to DFA.

## **TECHNICAL ISSUES**

As stated above, SB 1083 will amend the statute to allow the fund to be used for low interest loans to improve gasoline storage facilities. It is assumed that this includes the repair or replacement of storage tanks and equipment.

EMNRD notes that the bill creates an internal conflict with Subparagraph E of the existing Statute that prohibits the use of Fund money to repair or replace storage tanks or equipment. Subparagraph E reads: “[n]othing in this section authorizes payments for the repair or replacement of a storage tank or equipment.” This clause was added to ensure compliance with the federal requirements noted under Fiscal Impact.

DFA points out that it is questionable whether the current fund statutes would allow loan repayments to be deposited into the CAF.

## **OTHER SUBSTANTIVE ISSUES**

According to NMED, many petroleum storage tank facility owners statewide have either already undertaken the required upgrades of their AST systems or are in the process of upgrading them. Establishing a low-cost loan program would result in an uneven playing field between those owners who have already born the expense to upgrade their facilities and those owners who have not yet started the required upgrades.

## **ALTERNATIVES**

The concept of fixing older facilities before they start leaking is an important one and could be considered under a direct appropriation rather than through the CAF. Such a bill could specify which entities that would be eligible to receive these loans; specify purposes, terms, conditions and oversight of loans (possibly through NMFA); and specify the preventative nature of the loans.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Corrective Action Fund will continue to be used to remediate environment contamination from leaking petroleum storage tanks and address water need through indirect funding.

MA/csd