

NMED

New
Mexico
Environment
Department



ENVIRONMENTAL REGULATORY IMPACTS ON THE ENERGY ECONOMY

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Introduction

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- KPMG and Forbes recently surveyed 400 U.S. CEOs across all major industries on the top issue that has the most impact on a company.
- According to the survey, “regulatory environment” is the single greatest issue impacting companies today.
- Copper & Ozone: 2 controversial, environmental regulatory issues with major impacts on the energy industry in NM



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Copper Rule

Copper Rule

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- Background
 - In 2011, NMED was taking 10+ years to process most mining permits, which are only valid for 5 years
 - 2002-2011: Dispute erupts between Phelps Dodge and NMED over interpretation of the Water Quality Act as it relates to the issuance of discharge permits:
 - 2 administrative hearings before WQCC were held
 - 2 appeals to the NM Court of Appeals were filed
 - 2006: The NM Court of Appeals rejects NMED's position: *“we reject such a broad and impractical interpretation of the Act; so interpreted, it would not reflect a balance between the competing policies of protecting water and yet imposing reasonable requirements on industry.”*



Copper Rule

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- 2009: SB 206 – The NM Legislature amends the Water Quality Act in response to concerns regarding NMED’s handling of water quality permits; requires NMED to develop industry-specific rules to clarify permitting process
- 2013: The WQCC adopts a new copper rule
 - The new rules are the most stringent mining regulations in the country:
 - New criteria for closing a mine, including re-grading land and installing ground cover to minimize infiltration of precipitation into and through mined materials that might otherwise reach ground water
 - New engineering design requirements for waste rock and leach stockpiles, and impoundments
- Challenge to the new copper rule is focused on a single administrative issue: Should permittees be required to obtain a variance from the WQCC each time they renew their permits (every 5 years) or can NMED issue the permits without a variance?



Copper Rule

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- 2015: Court of Appeals affirmed the WQCC's new rule: ***“we conclude that the notions that the Regulations allow widespread pollution or that they allow a mine facility to pollute ground water underlying the entire facility ... are unfounded or otherwise exaggerated.”***
- Rule is currently under review by the NM Supreme Court and the decision will ultimately determine future of mining in New Mexico



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Ozone: Revised Standard

Ozone

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- What is ozone?
 - Ground level ozone is formed near the earth's surface due to chemical interactions involving solar radiation and precursor pollutants including VOCs and Nox
 - Precursor emissions leading to ozone formation can result from man-made sources (cars, electric utilities, boilers) and natural sources (wildfires)
 - Ozone is 1 of 6 pollutants for which EPA has set a national ambient air quality standard (NAAQS)
 - Ozone is a pollutant that must be properly regulated to protect human health



Ozone: Revised Standard

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- EPA must *review* existing NAAQS every 5 years and, *if appropriate*, revise
- 2015: EPA revised the NAAQS for Ozone to be more stringent
 - 0.070 parts per million (previously 0.075 ppm)
- Issue is that a single, uniform national standard for ozone severely impacts certain regions, such as the Mountain West, where attainment cannot be achieved due to factors beyond our control



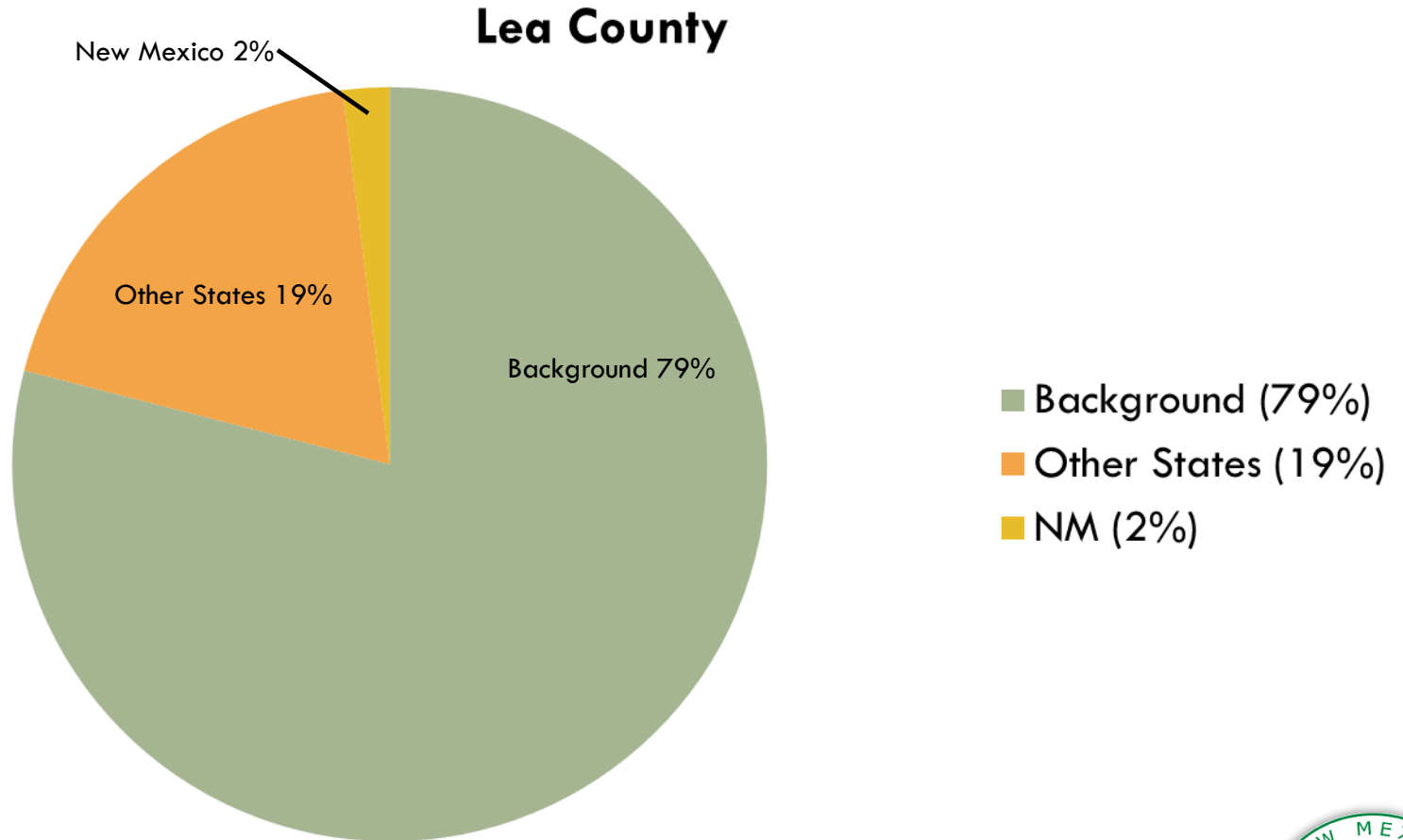
Ozone: Practical Issues

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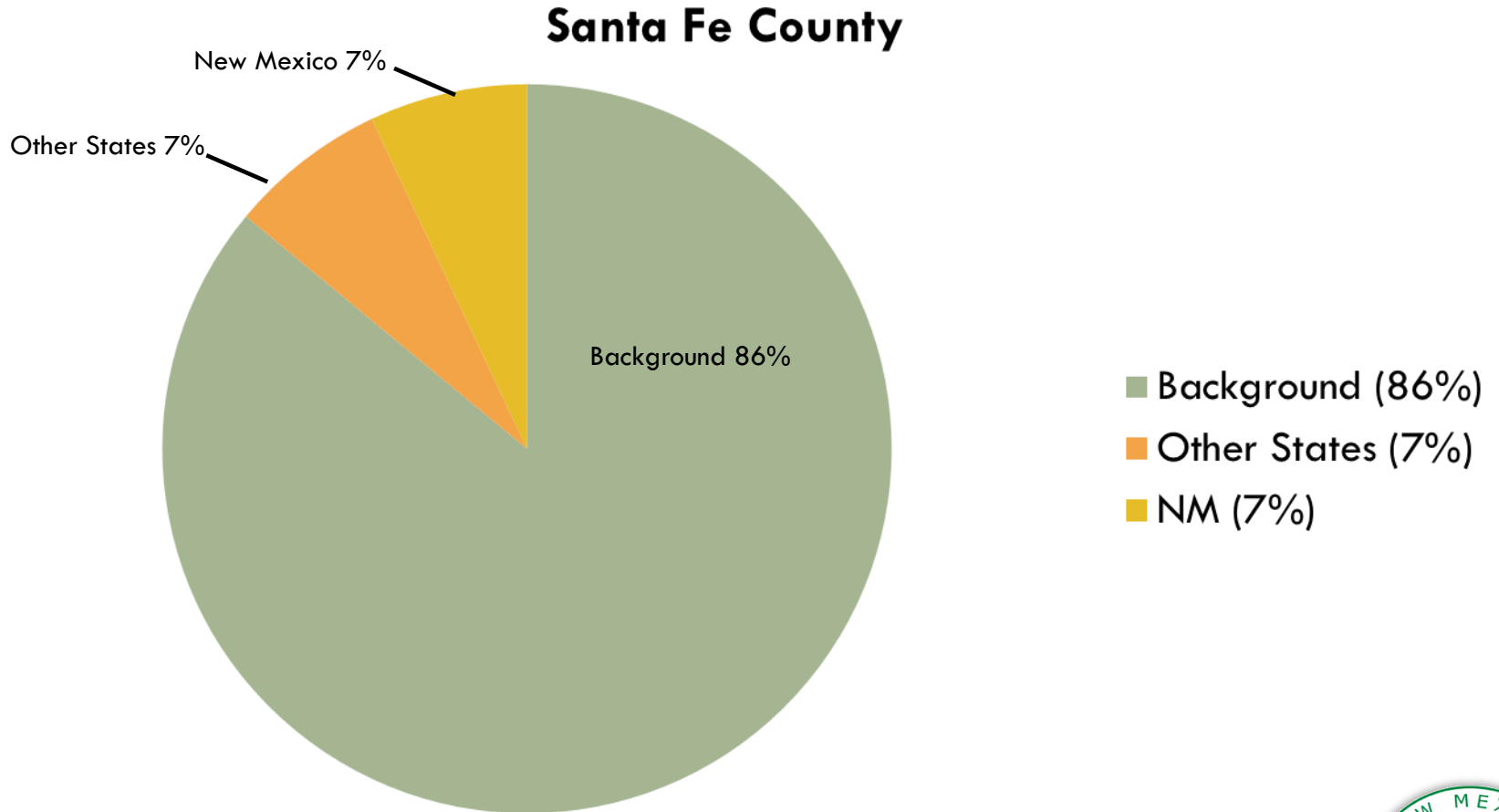
- Key issue in Mountain West: Sources outside the control of state regulatory authorities cause more than 75% of the ozone at some sites, making it difficult if not impossible to comply with the revised NAAQS standard set by EPA
- EPA identified the highest background ozone levels at high-elevation sites in the western U.S. Integrated Science Assessment (US EPA 2013, Section 3.4)
- EPA also notes “the highest background episodic concentrations are typically associated with stratospheric intrusions or wildfires.” Integrated Science Assessment, Appendix 2A, 2A-14.
- Likewise, transported background ozone or the precursor pollutants that cause ozone may originate in another state, in Mexico, Canada or Asia, and EPA does not clearly understand these transport issues in the West



Ozone: Practical Issues

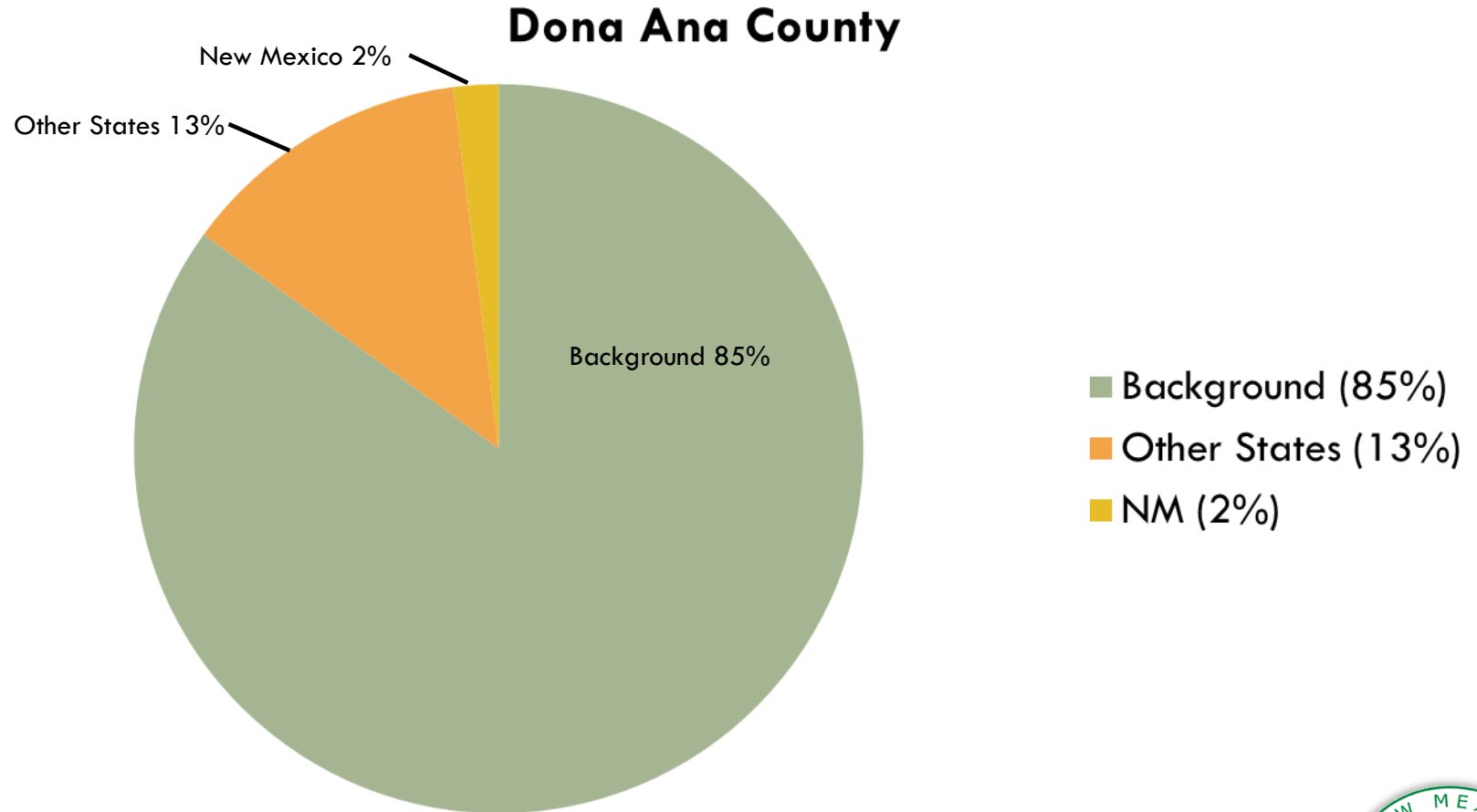


Ozone: Practical Issues



Ozone: Practical Issues

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Challenge: Non-attainment

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- What happens if a county is unable to attain the national standard for ozone?
- State submits an attainment demonstration plan to EPA
 - Plan needs to show how each nonattainment area will attain the primary Ozone standard “as expeditiously as practicable”
 - Air quality permitting process becomes more difficult:
 - Instead of requiring the use of best available emission control technology, which considers cost, EPA requires lowest achievable emission rate determination (LAER)
 - LAER is the most stringent emission limitation and does not consider cost, environmental, or economic factors



Conclusion

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- NMED's primary goal is to protect human health and the environment.
- Over the past 5 years, NMED has proven that it can protect the environment, without hurting the economy, by regulating in a manner that is consistent and fair.

