



**Report  
to  
The LEGISLATIVE FINANCE COMMITTEE**



Department of Finance and Administration  
Evaluation of Selected Capital Outlay Projects  
July 12, 2012

**Report # 12-06**

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July 12, 2012

Dr. Tom Clifford, Secretary  
Department of Finance and Administration  
407 Galisteo Street – Room 180  
Santa Fe, NM 87501

Dear Secretary Clifford:

On behalf of the Legislative Finance Committee (committee), I am pleased to transmit the *Evaluation of Selected Capital Outlay Projects* for the Environment Department, Department of Finance and Administration, and the Higher Education Department. The evaluation team assessed the cost-effectiveness of project planning, management and oversight of each project. The following projects were selected for this evaluation:

- *Corrective Action Fund*
- *Santa Fe Bikeways*
- *Mesalands Wind Center*

The report will be presented to the committee on July 11, 2012. Discussions were held with each agency to address any concerns before the exit conference, which were conducted May 22, 2012 and May 23, 2012. The committee would like a corrective action plan from the departments within 30-days from the date of the hearing. Staff will continuously monitor your progress.

I believe that this report addresses issues the committee asked us to review. We appreciate the cooperation and assistance from the agencies' staff.

Sincerely,

A handwritten signature in black ink that reads "David Abbey".  
David Abbey, Director

Cc: Mr. F. David Martin, Secretary, Environment Department  
Mr. David Coss, Mayor of Santa Fe  
Dr. Jose Z. Garcia, Secretary, Higher Education Department  
Dr. Mildred P. Lovato, President of Mesalands Community College

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**Selected Capital Projects**  
(in millions)

Agency	Name	Cost
NMED	Corrective Action Fund*	\$18.8
DFA	Santa Fe Bikeways	\$3.5
HED	MCC Wind Center	\$9.1
<b>Total</b>		<b>\$31.4</b>

\*CAF is an annual cost.  
Source: State Agencies

**Corrective Action Fund Revenue by the Truckload**

Estimated Gallons of Gas Consumed in NM 2009	1,400,000,000
Estimated Tribal Gallons Exempt From Load Fee	57,000,000
Net Gallons Subject to Load Fee	1,343,000,000
Divided by Gallons of Gas per Tanker Truck Delivery	8,000
Number of Deliveries per Year	167,875
Loading Fee per Delivery	\$110
Approximate 2009 Annual Revenue	\$18,466,250

source: FHWA

***In FY11, the most common source of UST contamination in NM was caused by overfilling during delivery.***

This LFC evaluation focuses on capital outlay and represents the seventh report since 2003. Projects and programs evaluated include the corrective action fund, Santa Fe Bikeways, and the Wind Center at Mesalands Community College.

Projects were selected based on the following criteria:

- Large appropriation amounts
- Completed or near-completed projects
- Legislative interest, request or known risk
- Representative combination of agencies and sponsorships

The evaluation assessed:

- Agency compliance with applicable laws, rules, and regulations;
- The cost effectiveness of project planning, design, construction and administration; and
- Achievement of the intended purpose of the project.

**KEY FINDINGS**

**Corrective Action Fund.**

**Most, if not all, of New Mexico's 3,880 underground petroleum storage tanks have released or will release petroleum into the environment through spills, overfills, or failures in the tank or piping system.** New Mexicans use an estimated 1.4 billion gallons of gasoline per year. Gas is transported from refineries in 8,000 gallon tanker trucks and pumped into underground storage tanks (USTs) at service stations for retail sale. With an estimated 90 percent of the state's 2.1 million people dependent on groundwater as a source of drinking water, the threat of contamination is serious.

The Taxation and Revenue Department (TRD) imposes a loading fee of 1.875 cents per gallon in addition to the 17 cents per gallon for the state gasoline tax. Every 8,000 gallon delivery has a \$110 loading fee allocated to the New Mexico Environment Department (NMED) corrective action fund (CAF). Tribal entities are exempt from the fee.

The NMED Petroleum Storage Tank Bureau (PSTB) oversees the administration of the CAF and has a dual responsibility of preventing new leaks by tank inspections, and for cleaning up existing leaks by contracting with environmental consultants. While both above ground and underground storage tanks are included in the PSTB oversight, the majority of data and releases are attributed to USTs. This evaluation focuses primarily on preventing spills from the USTs, and on cleaning up the UST inventory of 739 spill sites.

The PSTB Inspection Section performs a critical function in preventing new spills by inspecting tanks and training operators to prevent and respond to releases when they occur.

**Increasing UST registration fees above \$100 per year would allow the inspection function to be self-sustaining.**

**In 2003, the EPA reported more than 14 states had implemented pay-for-performance contracting resulting in faster and more effective cleanups.**

**The PSTB reports in the FY12 - FY13 NMED Strategic Plan, the performance measure goal of 30 site closures for FY12 and FY13.**

*In FY11, the PSTB Inspection Section reported 66 percent of USTs were in compliance with regulations, trailing the national average of 71 percent.* The UST inspections indicate that compliance declined from FY05 through FY09, suggesting a decreased regard for safety by the owners. As a result of increase inspection criteria and operator training, this trend reversed in FY11 when the PSTB measured a 9 percent improvement, increasing compliance to 66 percent. This improvement still trails behind the national average of 71 percent for FY11.

*The state will spend an estimated \$263 million over the next 20 years to eliminate 739 contaminated UST sites.* With an average of 56 closures and 19 new spills per year, the department would need 20 years and \$263 million to eliminate the current UST inventory. This rate of closure is supported by the average revenue stream of \$18.8 million, of which the PSTB uses approximately 70 percent to support payments to environmental contractors and oversight of the program. This \$13.2 million results in the average remediation cost of \$235 thousand per site.

*The PSTB remediation process does not follow the U. S. Environmental Protection Agency (EPA) recommendations for expedited site assessments and pay-for-performance contracts.* The PSTB postpones the full site assessments and hires vendors using a request for proposal with limited scope. Once the vendor is selected, mobilized on site and begins work, the opportunity to extend the scope of work exists for the contractor. Using time and materials contracts, the incentive for an expeditious remediation is removed with minimal business risk to the vendor. The EPA recommends using pay-for-performance contracts which many states in the country successfully use.

*The Government Accountability Office (GAO) reported in 2005 that New Mexico transfers more CAF monies than any other state for purposes other than those related to the Underground Storage Tank (UST) Program.* The 2005 amount of \$5.4 million represented 30 percent of the total CAF annual revenues. Only seven states in the nation reported such transfers with New Mexico reporting the highest amount. Mississippi transferred the second most at \$3.1 million. The NMED continues to transfer 30 percent of the annual revenues, as provided for in statute, to address water needs and to provide required state match for federal grants. The FY11 amount was \$5.6 million.

#### **Santa Fe Bikeways.**

**The City of Santa Fe (city) received \$3.5 million in state funding for local bicycle and horse trails.** The city when it received the initial funding in 2006 stated in a letter to the Department of Finance and Administration, it understood that the governor's office envisioned at least one major use for the funding, to fund construction of a trail crossing at St. Francis Drive near Cerrillos Road and the city's railyard. By July 2007, the city's plan for use of state funding included other trails as well. Much of recent trail construction by the city of Santa Fe has been the result of a \$30 million Capital Improvement Program (CIP) bond for parks and trails that passed in 2008. Seven bike and shared-use trail projects approved by the Bicycle and Trail Advisory Committee (BTAC) are funded by the city's 2008 parks and trails bond fund.

**State funding was part of a larger \$18.8 million city project for seven bicycle and trail projects.**

Since 2000, the city has added 10 miles of paved, off-road hike and bike trails and another 12 miles of designated bike routes. In addition, another five miles of roadway along Rodeo Road and Airport Road have been striped to easily accommodate bicyclists. Equestrian trails consist of nine miles of multi-use wilderness trails and three miles of arroyo trails within the La Tierra Trails system. Santa Fe's four major multi-use trails are the River Trail, the Acequia Trail, the Rail Trail, and the Arroyo de los Chamisos Trail.

*The \$3.5 million state appropriation was allocated to various bike trail projects at different stages, including the seven projects mentioned above, and not one specific trail.* As a result, the city's computation of the state's cost allocation per trail was difficult to determine but overall state funding paid for 19 percent of the city's total estimated cost of \$18.8 million for the trails approved by the BTAC. The city captured expenditures by business unit in a "trail" account and in specific trail accounts. Although the trail projects have their own identification number, the accuracy of total cost by trail might be difficult to determine without subsidiary tracking by project identification number. This was evident when the LFC requested the city provide the cost per mile. While the city provided the information, it was not easily accessible and in some instances unavailable.

**The state's role in local government capital projects should be clearer to ensure taxpayer dollars are spent efficiently and effectively and enhance oversight to avoid mismanagement of funds and misinterpretation of the legislation.** The project description in the grant agreements for the state appropriation was limited to the legislative language. The agreements did not include a project estimate or specify which trail or how many trails were going to be planned, designed and constructed with the \$3.5 million. Although the agreements state the local government is strictly accountable for receipt and disbursement of the funds, details of what type of expenditures are allowed is not defined. The lack of detail makes it difficult for DFA to detect duplicate spending.

**DFA reimbursed almost \$67 thousand of questionable expenditures that were not in accordance with the legislation.**

*The DFA Local Government Division project oversight and monitoring needs improvement.* Although oversight was limited to ensuring reimbursement requests were in accordance with the legislation by reviewing the detail descriptions of the invoices submitted, the LFC identified \$67 thousand of questionable expenditures. These included right-of-way and easement purchases, equipment (a heavy duty car hauler), maps, tools for maintenance and paint for graffiti removal on trails.

The legislative authorizing language states the funding is "to plan, design and construct bikeways and horse trails in Santa Fe county." The DFA used the "special meaning in road or street context" of the bond project disbursement rule (NMAC 2.61.6) as the closest definition to a trail which at the agency's discretion could allow for acquisition of right-of-way when improving a road. However, when constructing a road it does not include planning, designing, right-of-way activities and acquisition and other pre-construction project development tasks. It appears the DFA may have taken a broader interpretation of the rule to allow reimbursement of right-of-way and easement purchases.

***The city spent \$769 thousand for six-tenths of a mile for the Arroyo Chamiso West Rodeo Road Crossing or \$1.1 million per mile.***

***Santa Fe trail use data is limited.***

***The Wind Center received an award of excellence from the commercial real estate development association (NAIOP) in 2011.***

**The cost of new trail construction varies because of an assortment of factors.** Trail surface, width, location, needed structures, signage, and amenities all affect total construction cost. Comparison to other states shows the cost per mile ranges from \$250 thousand to \$1.8 million, depending on the type of trail and local conditions. The city's new trail construction includes asphalt surface for some trails and concrete in others. Surfacing trail with asphalt cost \$381 thousand per mile that should last for seven to 15 years and \$635 thousand per mile for concrete lasting for 20 or more years.

**The city of Santa Fe does not have a formal trail maintenance plan or dedicated budget even though it has a large investment in the bicycle and multi-use trail infrastructure.** Maintenance of bikeways is important for user safety and for protection of public funds invested in these facilities. Well-maintained facilities minimize hazards and increase usage of bicycle facilities. Currently the city's multi-use trails are maintained with three to six parks maintenance workers depending on the time of year, special requests and events. There is not a separate trail maintenance budget for operational supplies, any operating expenses beyond the trail maintenance workers come from the parks maintenance (business unit #3754) general operations funds, currently \$120 thousand a year.

***Without accurate and consistent usage and demand data it is difficult to measure the positive benefits of the taxpayer's investment.*** While bicycle traffic may be included in specific intersection studies, bicyclists have never been systematically counted in order to shed light on broader traffic patterns and trends. In June and July 2009, the city's traffic engineers conducted trail usage data counts at the Rail Trail Crossings but those counts did not distinguish between pedestrians and bikes, combining them instead.

**Mesalands Community College North American Wind Research and Training Center, also known as the Wind Center.**

**The state appropriated more than \$9.1 million for the plan, design and construction of the Wind Center located in Tucumcari.** In 2010, the Mesalands Community College (MCC) completed the new 26 thousand square foot Wind Center to provide facilities for training students in wind energy technology and to host visiting students and research staff.

A General Electric 1.5 megawatt wind turbine was constructed for the Wind Center which provides training and research opportunities, powers the Wind Center and earns \$100 thousand in revenue annually for Mesalands. A large blade maintenance shop, comprising almost half of the facility, includes high bay doors at each side for pull through capabilities of trucks carrying 120 foot turbine blades. The Wind Center also contains electronic laboratories, an 84-seat inclined lecture hall, portable industrial classrooms, a conference room, a student lounge and offices.

***The Wind Center Building was constructed at twice the average Tucumcari construction cost of similar projects.*** Reed Construction Data, a nationally recognized provider of construction cost data, estimated the Tucumcari average cost per square foot (psf) for college laboratories at

\$117. A comparable college classroom would cost \$119 psf. At \$234 psf, the Wind Center's cost was nearly double. With the blade maintenance shop accounting for 47 percent of the entire floor plan, a comparison to vocational schools could be made, which cost an estimated \$107 psf.

*Although only one bid was received for the purchase of the 1.5 megawatt wind turbine, it was purchased and installed at a fair cost to the state.* The 2009 Wind Technologies Market Report stated that projects below five megawatts, such as the 1.5 megawatt MCC turbine, cost substantially more to procure and install, relative to larger scale projects. The study projected the cost per kilowatt for installed projects below five megawatts at \$2,700 per kilowatt. Using this projection, the MCC turbine was procured and installed at a cost savings of approximately \$838 thousand. An additional confirmation included a statement from a competing manufacturer which verified both the RFP process and the price received by the MCC were fair for 2007.

### **KEY RECOMMENDATIONS**

The Environment Department should

- Report the number of cleanup sites in inventory, by priority one, two, or three, as an effective remediation measure for the Accountability in Government Act. This should be compared with the previous years' inventory levels.
- Conduct complete site assessments prior to executing work plans for remediation as suggested by the EPA.
- Execute pay-for-performance contracts and work plans that provide incentives for achieving expeditious contamination reduction levels as suggested by the EPA.

The Department of Finance and Administration should

- Consider grant agreements that specify what types of expenditures are allowed under the legislation to prevent mismanagement of funds and misinterpretation of the legislation.
- Evaluate its reimbursement process to ensure funds are spent in accordance with the legislation.

The city of Santa Fe should

- Return funds to the state for expenditures outside of the legislative language.
- Establish a formal bike trail maintenance plan and budget to ensure the infrastructure is safe and accessible.
- Coordinate with the Santa Fe Metropolitan Planning Organization to develop and implement systematic bicyclist count and survey program.

The Legislature should

- Consider funding capital outlay projects as a two-step process. The first step is funding the planning and design phase which provides an accurate estimate of the cost. The second step involves approval for the funding of construction.

## FINDINGS AND RECOMMENDATIONS

**THE STATE WILL SPEND AN ESTIMATED \$263 MILLION OVER THE NEXT 20 YEARS TO ELIMINATE 739 CONTAMINATED GASOLINE SITES.**

**Most, if not all, of New Mexico's 3,880 underground storage tanks have released or will release petroleum into the environment through spills, overfills, or failures in the tank or piping system.** New Mexicans use an estimated 1.4 billion gallons of gasoline per year. Gas is transported from refineries in 8,000 gallon tanker trucks and pumped into underground storage tanks (USTs) at service stations for retail sale. With an estimated 90 percent of the state's 2.1 million people dependent on groundwater as a source of drinking water, the threat of contamination is serious.

The New Mexico corrective action fund (CAF) was created in 1990 to provide the financial mechanism required by the federal Resource Conservation and Recovery Act (RCRA), Subtitle I. The majority of states have a similar state fund to ensure financial responsibility of service station owners to comply with the federal laws. The fund resides with the New Mexico Environment Department (NMED) to remediate spills. The department can allocate up to 30 percent of the annual distribution to match federal funds and to address water needs. While the CAF works very similar to an insurance policy when spills occur, it is not defined as one and not subject to the Insurance Commission or its regulations.

The Taxation and Revenue Department (TRD) imposes a \$150 loading fee at the refinery loading rack for each 8,000 gallon truckload. Tribal entities are exempt from the fee. The fee equates to 1.875 cents per gallon in addition to the 17 cents per gallon for the state gasoline tax. Forty dollars of the fee is allocated to the New Mexico Department of Transportation and the remainder goes to the CAF. The \$150 load fee is adjusted annually, based on the unobligated fund balance of the CAF. As required by statute, the secretary of the NMED verifies the unobligated balance to the TRD by the end of the fiscal year. The amount has consistently remained at \$150 and the fee generates an average of \$18.8 million per year.

The NMED Petroleum Storage Tank Bureau (PSTB) is responsible for the registration of all above ground and underground storage tanks and enforcing compliance with regulations. This compliance includes the cleanup of contaminated sites and is achieved through the use of the CAF. The PSTB has approximately 45 staff divided into the inspection, remediation, and financial sections. The inspection staff performs the work directly; the remediation staff provides oversight and approves eligible costs for remediation, and the financial staff processes payments to contractors, tracking all revenues and expenditures.

*The PSTB has a dual responsibility of preventing new leaks and for finding and cleaning up existing leaks.*

### What is a UST?

An underground storage tank (UST) system includes a tank and any underground piping connected to it that has at least 10 percent of its combined volume underground. The federal UST regulations apply only to underground tanks and piping storing either petroleum or certain hazardous substances. The RCRA required all tanks installed after December 22, 1998, to include leak detection, spill and overfill protection, and corrosion protection.

**Table 1. 1986 UST Federal Regulations Required as of December 1998**

	Monthly monitoring or inventory control
Leak Detection	Automatic shutoff device or flow restrictor or continuous alarm system
Spill and Overfill Protection	Catchment basins and automatic shutoff devices or overfill alarms or ball float valves
Corrosion Protection	Coated and cathodically protected steel or fiberglass reinforced plastic, or steel tank clad with FRP (fiberglass reinforced plastic)

Source: U.S. EPA

**The PSTB Inspection Section reported 66 percent of USTs were in compliance with regulations, trailing the national average of 71 percent for FY11.** The PSTB Inspection Section is charged with inspecting all USTs, above ground storage tanks (AST's) and ensuring compliance. The Inspection Section is funded from the storage tank fund which receives revenue from the \$100 registration fee, paid by storage tank owners each year. Of the 11 positions available to regulate more than 5,000 storage tanks, nine positions are staffed. Inspectors meet three to four times a year to discuss compliance issues, improve statewide inspection consistency, and training for service station operators. The PSTB issues a notice of violation to non-compliant facilities.

Compliance with UST regulations is an important measurement for the PSTB. An increase in compliance would suggest that UST owners are doing a better job in preventing and detecting petroleum spills. The PSTB reports this measure to the U.S. Environmental Protection Agency (EPA) for benchmarking against other states and also publishes the compliance percentage on the NMED website. The measurement is reported as a performance measure required by the Accountability in Government Act, and stakeholders benefit from strong performance. This measurement was absent from the second and third quarterly performance reports for FY12.

Between FY05 through FY09, the compliance measure has shown a worsening trend, suggesting a decreased regard for safety. Fiscal year 2009 marked the lowest measure of compliance with a steep drop of 12 percent, which the PSTB explained as the result of elevated inspection and compliance criteria to increase the quality of inspections and reporting. The trend reversed in FY11 when the PSTB measured a 9 percent improvement, increasing compliance to 66 percent. This improvement still trails behind the national average of 71 percent for FY11.

**Table 2. New Mexico UST Compliance Measured Against National Average**

FYE	New Mexico*	National Average*
2005	87%	66%
2006	86%	62%
2007	81%	63%
2008	69%	66%
2009	57%	66%
2010	57%	69%
2011	66%	71%

\* reflects both release prevention and detection  
Source: EPA

***The Prohibition of Delivery amendment to regulations is a success for New Mexico.*** Effective March 17, 2012, regulations were amended to allow the “prohibition of delivery” which would prevent noncompliant operators to continue to receive gasoline deliveries. While this new regulation adds significant strength to force compliance, it is considered a last resort because the prohibition of delivery would likely cause the business to close.

As owners of USTs increase compliance with spill, overfill and corrosive protection, the U.S. EPA and the PSTB expect the number and severity of releases to decline. The Inspection Section reinforced this expectation with increased operator training in FY10 and FY11 to prevent and react to spills when they occur. The most common source of contamination in New Mexico in FY11 was caused by overfilling during delivery.

**Table 3. Summary of UST Releases and Causes October 2010 - September 2011**

Source			Cause									
			Spill		Overfill		Phys/Mech Damage		Corrosion		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%
Tank	2	20%	1	10%					1	10%		
Piping	2	20%					1	10%	1	10%		
Submersible Turbine Pump (STP)	1	10%					1	10%				
Delivery Problem	3	30%			3	30%						
Other	2	20%									2	20%
<b>Total</b>	<b>10</b>	<b>100%</b>	<b>1</b>	<b>10%</b>	<b>3</b>	<b>30%</b>	<b>2</b>	<b>20%</b>	<b>2</b>	<b>20%</b>	<b>2</b>	<b>20%</b>

Source: NMED

*Between FY06 and FY11, the PSTB has reduced the UST inventory of cleanup sites by 14 percent but trails the 23 percent progress made nationally.* The PSTB Remediation Section is charged with administering the cleanups of reported UST and AST spills. As the majority of spills are USTs, the majority of data from the EPA addresses the underground tanks. This evaluation focuses primarily on USTs.

The Remediation Section has 19 positions and one vacancy. The 739 active UST sites in New Mexico are classified by priority one, two and three. Unlike some other states in the nation, the PSTB will remediate not only the soil directly contaminated but also contaminated ground water. According to the PSTB and the EPA, this requirement, along with higher ground water protection regulations, contributes to higher costs and longer remediation times to clean up contaminated sites.

Statute requires the PSTB to take corrective action in the order of priority, unless an emergency threat to public health exists. A priority one site is identified as an actual or imminent hazard to public health and requires corrective action to protect the water supply, prevent explosion, or remediate toxic vapors.

**Table 4. UST Priority Ranking and Cleanup Stages Selected Categories**

Priority Ranking	Aggressive Cleanup Completed, Responsible Party	Aggressive Cleanup Completed, State Lead	Cleanup, Responsible Party	Cleanup, State Lead	No Further Action, Confirmed Release	Grand Total All Categories
1	3		11	6		22
2	29	1	123	11		213
3	109	33	183	15		504
Not Ranked	4		17	2	1,678	1,955
<b>Total</b>	<b>145</b>	<b>34</b>	<b>334</b>	<b>34</b>	<b>1,678</b>	<b>2,694</b>

Source: NMED CAF Database

*Although the PSTB has closed 116 contaminated UST sites during the period from 2006 to 2011, more than 700 contaminated sites remain.* The number of contaminated sites is referred to as inventory by the PSTB but referred to as backlog by the EPA. The EPA recognizes the term backlog can be misleading if it is interpreted to mean that nothing has been done. This interpretation is not supported by the EPA. The EPA defines cleanup backlog as new releases plus those releases that have not reached “cleanup completed” status. With an average of 19 new spills per

year and an average of 56 cleanups per year, the New Mexico UST inventory has decreased from 838 sites in 2006 to 722 sites in 2011 (see **Table 5** below). In FY09 a data error was corrected, caused by double counting the number of site closures. The correction caused an inventory increase of 85 sites in 2009. Since this spike in FY09, the PSTB achieved marginal inventory reductions of 3 percent in FY10 and 2 percent in FY11. The national UST inventory decrease was 7 percent in 2010 and 6 percent in 2011.

**Table 5. New Mexico UST Cleanup Inventory**

as of 9/30/XX	Beginning Inventory	New Spills per Year	Cleanups Completed per Year	Ending Inventory	Net Reduction	Percentage Net Reduction
06	838	19	73	784	54	6%
07	784	18	81	721	63	8%
08	721	16	65	672	49	7%
09	672	18	41	757	-85	-13%
10	757	23	43	737	20	3%
11	737	19	34	722	15	2%
6 Year Average		19	56			
6 Year Reduction						14%

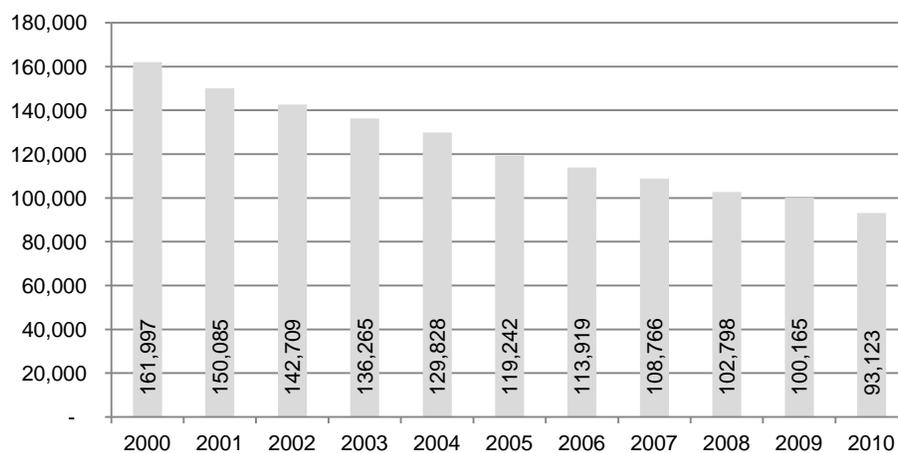
Source: EPA

**Table 6. Inventory Reduction by Percentage**

Year	National	New Mexico
2006	4%	6%
2007	5%	8%
2008	5%	7%
2009	3%	-13%
2010	7%	3%
2011	6%	2%

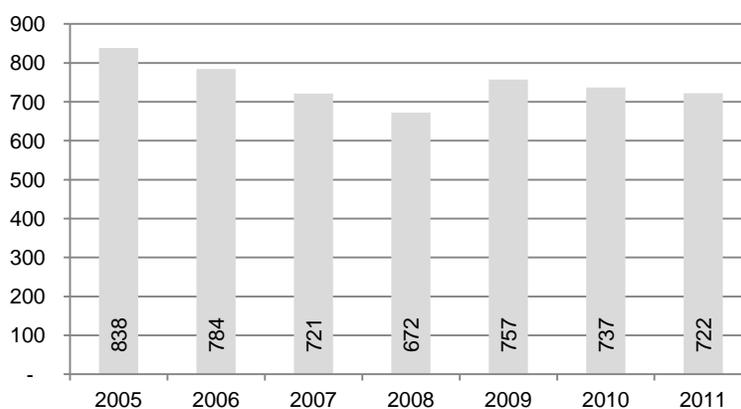
Source: EPA

**Graph 1. National UST Cleanup Inventory**  
(Confirmed Releases Minus Cleanups Completed)



Source: EPA

**Graph 2. New Mexico UST Cleanup Inventory**  
(Confirmed Releases Minus Cleanups Completed)



Source: EPA

*The PSTB regularly reports progress made in cleaning up UST spills to the EPA but could also report progress through the Accountability in Government Act.* While the EPA requires progress reports biannually, New Mexico taxpayers, decision-makers and oversight committees would also benefit from seeing the inventory levels over time. Of most concern is how fast the priority one sites are cleaned up because those have the greatest risk to human health and the environment. Also useful for stakeholders would be an estimate of the year in which the inventory is expected to be eliminated and identify annual goals to achieve that success.

The PSTB reports 22 priority one UST sites. Of these sites, two are still in the investigative status after being reported in 2003 and 2005. The remaining 20 are in cleanup or aggressive cleanup completed status. The PSTB classifies cleanup as either aggressive, normal or no further action. Aggressive cleanup completed means that aggressive activities, such as soil or non-aqueous phase liquid removal has been completed, with groundwater monitoring used to track the natural degradation of any remaining contamination. Cleanup means the project is at some stage in the cleanup process. In addition to ranking the spills according to priority, the PSTB gives a total score to each site.

**Table 7. Top Priority UST Sites for New Mexico Site Remediations**

Current Rank	Total Score	Site Description	City	Status	Report Year
1	10789	Cibola Chevron (Triple Site)	Grants	Cleanup, State Lead with CAF	1990
2	10629	Grants Maverik 139 (Triple Site)	Grants	Cleanup, State Lead with CAF	1991
3	8896	Arroyo Hondo	Santa Fe	Cleanup, Responsible Party	1975
4	8745	Pauls Place	Tome	Cleanup, Responsible Party	1983
5	8599	Love's Country Store 257	Milan	Cleanup, Responsible Party	2009
6	8439	Marvin Burrows	Milan	Cleanup, State Lead with CAF	1998
7	8397	Moberg's Garage	Watrous	Cleanup, State Lead with CAF	1992
8	8360	Lea County Elect Coop, Lovington	Lovington	Cleanup, Responsible Party	2004
9	8283	Midway Chevron	Sapello	Cleanup, Responsible Party	1996
10	8157	Gasamat 889/559	Bosque Farms	Aggr Cleanup Completed, Responsible Party	1992
11	8123	Sierra Ice & Water	Las Cruces	Cleanup, Responsible Party	1995
12	8112	Sunshine Service Station	Ribera	Cleanup, Responsible Party	1999
13	8032	Texaco Station	Watrous	Cleanup, State Lead with CAF	1992
14	7928	Pats Service Station	Mosquero	Cleanup, Responsible Party	1997
15	7456	Midway Grocery	Jarales	Investigation, Responsible Party	2003
16	7125	Four D Country Stores	Berino	Aggr Cleanup Completed, Responsible Party	1997
17	7094	Lovington Hiway GW	Hobbs	Investigation, State Lead, CAF	2005
18	7075	Price-Black Dairy	Arrey	Cleanup, Responsible Party	1994
19	7016	Former Fairacres Post Office	Fairacres	Cleanup, Responsible Party	2001
20	7013	Canoncito Grocery	Canoncito	Cleanup, Responsible Party	1994
21	7008	Lovelace Property	Fairacres	Aggr Cleanup Completed, Responsible Party	1998
22	7008	Indian Hills/Canyon Auto	Tijeras	Cleanup, State Lead with CAF	1991

Source: NMED CAF Database

Of the 22 priority one sites listed above, 17 were reported prior to the year 2000. The older sites are likely to be the more difficult remediation projects, because the contamination plume is typically deeper, having had longer to move through the soil.

**The PSTB remediation process does not follow EPA recommendations for expedited site assessments and pay-for-performance contracts.** When performed correctly, site assessments provide accurate information about the concentration and movement of contaminants, critical for cost-effective and efficient remediation. The EPA recognizes that inaccurate and incomplete site assessments can delay effective remediation and increase overall cost. It is also very difficult to determine when a site assessment is complete and when the information has been accurately interpreted. As a result, a tremendous amount of data is needed to determine where contaminants are located and how best to remediate them. This data collection process takes time and can typically incur from 10 percent to 50 percent of the total remediation cost.

*The PSTB does not conduct complete site assessments, identified by the EPA as the critical first step for planning the remediation and selecting the appropriate technology.* The EPA promotes expedited site assessments to be used as a basis for “pay-for-performance” contracting with vendors. A pay-for-performance cleanup agreement sets a firm, fixed price for the cleanup at a leaking underground storage tank site. Unlike the traditional time and materials approach used by the PSTB, the cleanup contractor would be paid in stages based on meeting predetermined contamination-reduction goals. The specific price, interim payment milestones, contamination level goals, and time for reaching the goals are all agreed to before cleanup begins. Contractors are rewarded for quickly and efficiently reaching cleanup goals, rather than rewarded for prolonging the work.

*The PSTB does not disburse payments based on attainment of contamination reduction levels.* The PSTB remediation process postpones the site assessments and hires vendors using a limited scope request for proposal. Once the vendor has been selected and begins the work at the site, the PSTB states that time and up-front site assessment expense can be saved by quickly containing the spill and reducing the extent of the damage. However, once a vendor begins cleanup, the contractor may extend the length and scope of work depending on the extent and conditions of the spill. The incentive for an expeditious remediation is removed with minimal business risk to the vendor.

Contracts are executed between the PSTB and the environmental consultants identifying a dollar amount limit. The PSTB payments are tied to deliverables identified in work plans and typically include time and materials. The work plans are approved by the project manager or bureau chief. As site work progresses and contamination level is determined, change orders are common. Work plans and change orders are approved in writing, prior to starting the work. Formal approval authorities are identified for specific dollar amounts within the PSTB.

**Table 8. PSTB Approval Authority  
Work Plans and Change Orders**

Work Plan Amount	Approval Required
\$100,000 or more	Bureau Chief
Between \$30K and \$100K	Program Manager
Between \$10K and \$30K	Team Leader
Less than \$10,000	Project Manager

Source: NMED

*Most states require site assessments and approve cleanup plans, budgets, or both, prior to remediation implementation.* In March 2003, the EPA reported that more than 14 states had implemented pay-for-performance contracts resulting in faster and more effective cleanups. A 2008 survey of all states, conducted by the Vermont Department of Environmental Conservation, reported that 45 states approved cleanup plans, budgets, or both, prior to remediation implementation.

*The PSTB provides acceptance letters for approved deliverables, recognized as a best practice for state government.* Each request for payment includes the work plan identification number, the dollar amount, and an acceptance letter from the PSTB that confirms acceptance of the deliverable. This practice is also required by regulation. Compliance with petroleum storage tank regulations and current registration fees are also confirmed prior to disbursing funds to the vendor or owner, also considered a good business practice.

**The Grants Triple Site is the number one priority for the PSTB and one of the most expensive and lengthy remediation sites in the state.** A review of the competitive selection of the vendor demonstrated compliance with the regulations. After providing adequate public notice, a pre-proposal conference was held with vendors representing 11 companies on August 18, 2005. Brown Environmental Inc. registered as a corporation on this same date. The limited scope request for proposal (RFP) was for the monitoring and reporting of 38 wells, removal and disposal of four USTs, and the cost of operation and maintenance of the proposed remediation system for one year. Four proposals were received and scored with the winning proposal awarded to Brown Environmental Inc., with a best and final offer of \$1,385,371.

**Table 9. Triple Site Bid Evaluation Scores**

Bid Criteria	Total Possible	Weight	Brown	CDM	Haller	SMA
Project Approach	550	55%	480	267	467	214
Experience and References	150	15%	145	114	144	122
Cost Effectiveness of Services Provided	300	30%	42	183	26	102
<b>Total</b>	<b>1,000</b>	<b>100%</b>	<b>667</b>	<b>564</b>	<b>637</b>	<b>438</b>
Best & Final Offer (in millions)			\$1.39	\$0.20	\$2.18	\$0.31

Source: NMED

The NMED executed a four year contract with Brown Environmental Inc. on February 20, 2006, that included compensation not to exceed \$4 million. The contract was later amended on May 4, 2009, to remediate contamination that had reached the deep water aquifer, increasing the compensation by another \$3.5 million, not to exceed \$7.5 million.

**Table 10. Triple Site Cleanup Contract**  
(in millions)

Contract	Term Begins	Term Ends	Amount	\$ Increase	% Increase	Cumulative Increase	Cumulative % Increase
Best and Final Offer 11/15/05	One year	One year	\$1.39				
06-667-3500-0009	2/20/2006	2/15/2010	\$4.00	\$2.61	189%		
06-667-3500-0009 Amendment No. 1	5/4/2009	2/15/2010	\$7.48	\$3.48	87%	\$6.09	440%

Source: NMED

*Change orders are allowed in the remediation process as provided by the regulations.* The PSTB vendor selection process was based on a limited scope RFP and selection done prior to a complete site assessment. Once the vendor was selected and mobilized on site, the scope and cost of the project escalated. For example, work plan #3095 for the Grants Triple Site was originally approved on June 6, 2006. Four change orders approved during the next 12 months increased the original amount by 87 percent.

**Table 11. Change Orders**  
**Work Plan 3095**

Date	Amount	Increase	Incremental Increase	Cumulative Increase	Cumulative Increase
6/6/2006	\$420,155.70				
4/25/2007	\$473,036.03	\$52,880.33	13%	\$52,880.33	
5/23/2007	\$638,068.59	\$165,032.56	35%	\$217,912.89	52%
5/30/2007	\$669,059.67	\$30,991.08	5%	\$248,903.97	59%
6/6/2007	\$785,698.56	\$116,638.89	17%	\$365,542.86	87%

Source: NMED Invoice #21776

In another example, the vendor completed work for deliverables 3096-1 and 3096-3 and invoices were submitted on April 21, 2007 and April 28, 2007. On April 30, 2007, the same deliverables were increased by 54 percent.

**Table 12. Change Order**  
**Work Plan 3096**

Date	Amount	Increase	Incremental Increase
6/15/2006	\$19,028.66		
4/30/2007	\$29,254.90	\$10,226.24	54%

Source: NMED Invoice # 21535

Although the Triple Site change orders were the largest examples reviewed, the average PSTB change order was \$11 thousand.

When a spill occurs, the PSTB requires owners to pay a deductible for the minimal site assessment. The New Mexico deductible is capped at \$10 thousand. While many states have similar levels of deductibles, other states increase the deductible in terms of percentage of the total cost, providing incentive to prevent future spills. Other approaches include South Carolina's example of providing a bonus to the vendor for meeting aggressive performance deadlines. California provides limits on how much the state will pay for labor hours, similar to New Mexico's approach. The labor rates between the California and New Mexico are comparable.

As inventories decline, many states are considering retiring the corrective action funds. Twenty-four states either already have or will be transitioning to private insurance mechanisms.

**Table 13. States that Have or Will Transition to Private Insurance**

State	Sunset Year	State	Sunset Year
Alaska	2004	Missouri	2020
Arizona	2013	Nebraska	2012
California	2016	New Hampshire	2015
Colorado	2018	New Jersey	2010
Delaware	2011	New York	none
Florida	none	South Carolina	2026
Illinois	2025	Texas	2012
Iowa	2016	Utah	2018
Maine	2015	Vermont	2016
Maryland	2010	Washington	2013
Michigan	1995	West Virginia	2000
Minnesota	2017	Wisconsin	1998

Source: 2011 Vermont DEC

**The Santa Fe County Judicial Complex (SFCJC) is the second most expensive petroleum cleanup for the CAF.** The cleanup at the SFCJC is a shared responsibility between the county and the state. The county agreed to clean up the construction site, with the state cleaning up the perimeter outside the site. As of mid-April 2012, the combined payments for the cleanup exceed \$14.9 million. This includes an estimated \$8.5 million from Santa Fe County and \$6.4 million paid from the state CAF. Only the Triple Site spill in Grants, at \$10.7 million, has exceeded this cost for the CAF. With the majority of the contamination successfully removed, a “no further action” status is close to being achieved (see **Appendix B** for the contamination and cleanup technology used at the SFCJC).

***Tracking of fixed asset inventories could be improved.*** A site visit conducted on February 16, 2012, of the SFCJC confirmed the entire inventory identified on the PSTB inventory list. However, two of the more expensive pieces of equipment at the site, the thermal oxidizer valued at \$99,895 (item #16187) and the hot air injector blower valued at \$40,625 (item #16186), both belonging to NMED, were not identified on the inventory list. While the vendor communicated the item description, purchase date, serial number and value, the equipment did not appear on the NMED inventory list, suggesting a lack of internal control in this area.

**The GAO reported in 2005, that New Mexico transfers more CAF monies than any other state for purposes other than those related to the Underground Storage Tank (UST) Program.** The 2005 amount of \$5.4 million represents 30 percent of the total CAF annual revenues. Only seven states in the nation reported such transfers with New Mexico reporting the highest amount. Mississippi transferred the second most at \$3.1 million. The NMED continues to transfer 30 percent of the annual revenues, as provided for in statute, to address water needs and to provide required state match for federal grants. The FY11 amount was \$5.6 million.

**Table 14. FY11 Corrective Action Fund  
30 Percent Allocation**  
(in millions)

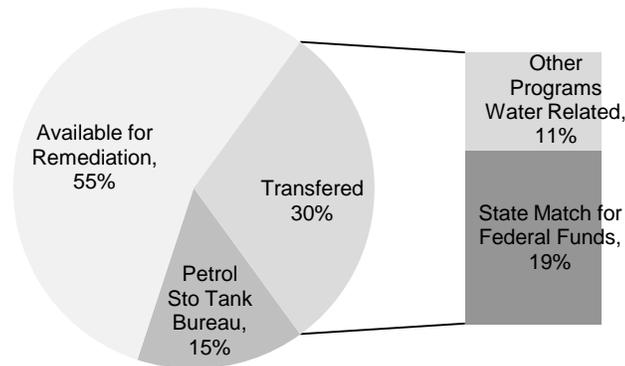
Program	FY11 Expenses	Amount	Percent	Type of Expense
P567	Program Support	\$0.1	0.5%	Administrative
P568	Water Quality	\$1.6	8.8%	Water Related
P569	Environmental Health	\$1.1	5.7%	Water Related
P774	Water and Wastewater Infrastructure & Development	\$1.8	9.6%	Water Related
P570	Environmental Protection (without PSTB, DD)	\$1.0	5.3%	Water Related
	<b>Total</b>	<b>\$5.6</b>	<b>30%</b>	

Source: NMED

An additional \$2.8 million, or 15 percent, was allocated to support the PSTB which includes the Inspection, Remediation and Financial sections, and the division director’s operating budget. After allocating 45 percent of the annual CAF revenue, approximately \$10.2 million remains to contract with environmental firms for remediation.

**A self-sustaining Inspection Section would reduce the annual transfer from the CAF.** Owners of USTs pay a flat \$100 per year for tank registration fees, which directly support the tank inspection function. This rate is applied regardless of the capacity of the tank. States such as Florida charge a fee commensurate to tank size. Wyoming, Massachusetts, and Ohio charge annual tank registration fees of up to \$200, \$250, and \$600, respectively to support the inspection function. Increasing the New Mexico UST registration fees, or creating a graduated fee based on capacity, would allow the inspection function to be self-sustaining and reduce the dependence on the CAF.

**Graph 3. Use of CAF Revenues  
FY11**



Source: NMED

**Budgeting for the CAF could be improved.** A review of budget history indicates budget adjustment requests (BARs) were processed in four of the past six years and large budget balances exist as unexpended or unencumbered budget balances at the end of the fiscal year.

**Table 15. Corrective Action Fund Operating Budget**  
(in millions)

Fund 99000	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012*
Approved Budget	\$21.1	\$21.2	\$20.8	\$24.5	\$17.4	\$17.8
BAR	\$4.0	\$2.6	\$0.0	\$0.0	\$3.0	\$4.4
Adjusted Budget	\$25.1	\$23.8	\$20.8	\$24.5	\$20.4	\$22.2
Expended to Date	\$19.9	\$21.2	\$19.5	\$21.7	\$18.2	\$10.5
Unexpended Budget Balance	\$5.2	\$2.6	\$1.4	\$2.8	\$2.2	\$11.7
Outstanding Encumbrance	\$3.3	\$0.1	\$0.0	\$1.8	\$0.3	\$2.4
Unexpended/Unencumbered Budget Balance	\$2.0	\$2.5	\$1.3	\$0.9	\$1.8	\$9.3

\*FY12 Incomplete

Source: SHARE

A more predictable approach is to budget according to projected revenues and commit work plans up to this amount. Annual revenue to the fund averages \$18.8 million. The cleanup inventory far exceeds the annual budget, so increasing the size and number of work plans should be achievable. Budgeting up to the available revenues might also allow the PSTB to accelerate remediations.

**Table 16. Corrective Action Fund Revenues**  
(in millions)

Fund 99000	2007	2008	2009	2010	2011	Average
TRD Revenues	\$19.2	\$19.4	\$18.5	\$18.5	\$18.5	\$18.8

Source: SHARE

After satisfying the required \$1 million reserve, New Mexico law limits the state’s commitments for payments in excess of funds available. Therefore, the CAF cash balance should equal the \$1 million reserve plus the short-term work plans which average \$9.4 million. With an average work plan liability for one year of \$9.4 million, the target cash balance could be liberally estimated at \$11 million.

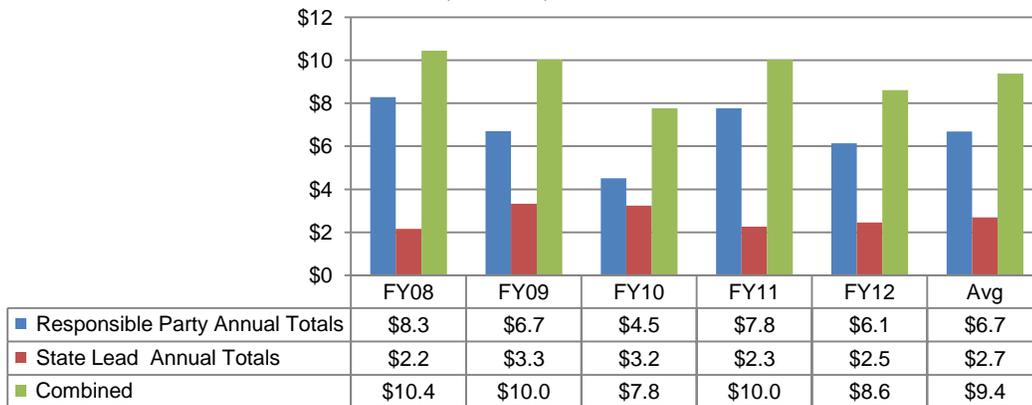
**Table 17. Corrective Action Fund Cash and Fund Balances**  
(in millions)

	FY07	FY08	FY09	FY10	FY11	Average
Total Cash	\$17.6	\$14.1	\$14.5	\$11.8	\$13.4	\$14.3
Total Fund Balance	\$16.2	\$15.8	\$14.1	\$13.3	\$11.7	\$14.2

Source: SHARE

PSTB work plans are typically one-year commitments. Matching work plan expiration dates to the fiscal year-end would greatly improve the ability to plan the budget and manage cash. Current cash balances have averaged \$14.3 million. This excess of \$3.3 million could be included in the budget to allow the PSTB to accelerate remediations.

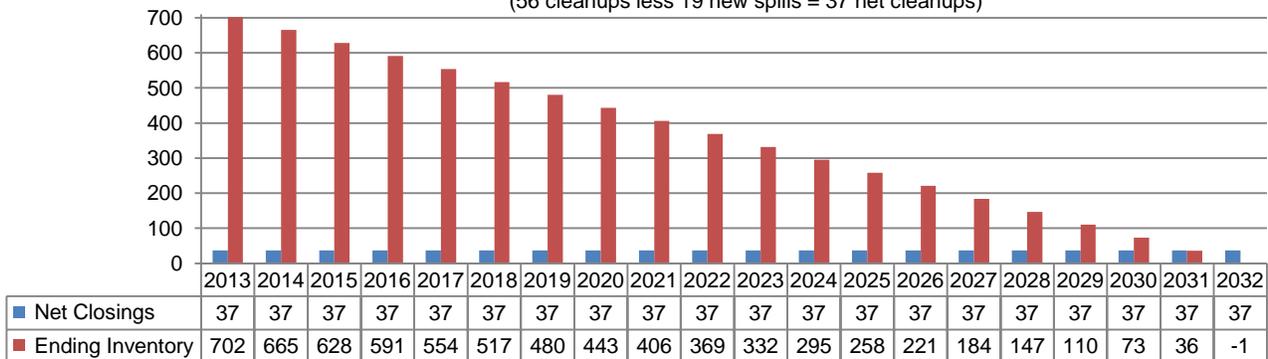
**Graph 4. Corrective Action Fund Active Workplans**  
(in millions)



Source: NMED

*The current UST inventory would be eliminated by 2032 at a cost of \$263 million.* With an average of 56 closures and 19 new spills per year, the projected cost to eliminate the 739 UST sites is \$263.2 million. This projection is within 5 percent of the NMED FY11 audit amount which projects total liabilities of \$249 million. The NMED audit does not include a projected year for eliminating the sites.

**Graph 5. Projected Inventory Using Net Avg Closings of 37 per year**  
(56 cleanups less 19 new spills = 37 net cleanups)

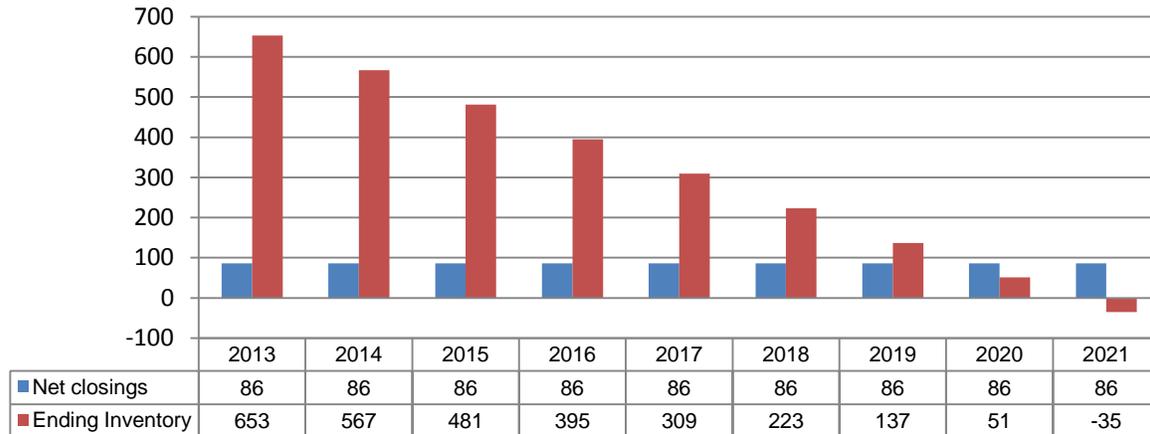


Source: LFC

The EPA estimates fully cleaning up a release costs an average of \$125 thousand, almost half the PSTB average. Assuming the EPA average clean-up expense per site of \$125 thousand, the CAF could support 86 net closings per year ( $\$18.8 \text{ million} \times 0.7 / \$125,000 = 105$  closures per year). Reducing this number by the estimated 19 new spills annually gives a net closure rate of 86 per year. In theory, if the EPA average closure cost were realized, the inventory could be eliminated in nine years rather than 20 years.

**Graph 6. Projected UST Inventory Using EPA Cost Estimate of \$125K Per Site**

(105 closings less 19 new spills = 86 net closings)



Source: LFC

Accelerating the pace of remediation could be accomplished by improving a number of variables such as increasing the load fee, reducing the average cost, increasing the deductible paid by UST owners, allocating more funding towards remediation, or decreasing the number of new spills. It is likely that efforts of the Inspection Team, such as increasing compliance rates and improving operator training, would reduce the number and severity of new spills.

The PSTB includes goals, objectives and strategies in the NMED strategic plan. These goals, objectives, and strategies include preventing and cleaning up contamination from USTs. They do not include the goal of eliminating the inventory by a specific year. The 20-year projection provided in graph 5 assumes 56 closures per year while the NMED strategic plan targets 30 closures per year. At this rate, the same progress toward the goal of eliminating the inventory would be accomplished in 20 years only if new releases were reduced by half, to nine per year.

Regardless of the assumptions used, success would allow a reallocation of future revenues from the corrective action fund to other need areas or possibly the elimination of the fee altogether. This is similar to proposals in 24 states that would sunset their funds and transition to third-party insurance providers. Recent concerns from states that use insurance providers include claims that insurance provided less than full reimbursement for remediation expenses. Possible reasons suggested were inadequate coverage and inappropriate denying of claims. A recent report titled *EPA Study on the Effectiveness of UST Insurance as a Financial Responsibility Mechanism, December 2011*, stated that findings were inconclusive as to whether UST insurance is effective or not.

**The Storage Tank Committee has not met for 18 months and is without a chairperson.** The Storage Tank Committee (STC) was created at the same time as the fund, in 1990. The STC consists of seven members who include the NMED secretary, and six members appointed by the governor, to be chosen from six distinct groups. With one vacancy, the five current members, and the groups they represent are:

- Ruben Baca (independent retailer), Albuquerque;
- Ryan L. Briggs (fire protection), Farmington;

- Bruce Thomson (private citizen), Albuquerque;
- Joseph Chavarria (corrective action expert), Santa Clara Pueblo; and
- Paul Aguilar (local elected official), Carlsbad.

According to statute, “Members shall serve until their successors are appointed.” Also in statute, “Vacancies in the membership shall be filled by the Governor for the remainder of the unexpired term.” Neither has occurred and has caused a void of leadership and oversight for the STC. As strictly an advisory committee, review and oversight are optional. The committee met regularly for eight years, holding quarterly meetings from 2002 until the last meeting held in November 2010. The message on the NMED website states the meetings are postponed until further notice.

The PSTB bureau chief position has changed five times in the past 22 months. The current bureau chief and section managers have substantial experience with the PSTB.

### **Recommendations.**

The Petroleum Storage Tank Bureau should:

1. Report quarterly compliance percentages as an effective inspection measure for the Accountability in Government Act (AGA). This should be compared with the national average reported by the EPA.
2. Report the number of cleanup sites in inventory, by priority one, two, or three, as an effective remediation measure for the AGA. This should be compared with the previous years’ inventory levels.
3. Report annual goals for the number of closed sites from inventory, by priority. This should include an assumption of annual new spills.
4. Annually report the projected year for the elimination of cleanup inventory.
5. Conduct complete site assessments prior to executing work plans for remediation as suggested by the EPA.
6. Execute pay-for-performance contracts and work plans that provide incentives for achieving expeditious contamination reduction levels as suggested by the EPA.
7. Implement a procedure to improve tracking of fixed assets owned by the PSTB.
8. Request annual budget to match projected revenues plus excess cash balance.
9. Execute annual work-plans for the fiscal year, equal to the annual budget for contracting.
10. Set work plan termination dates at the end of the fiscal year.
11. Budget and spend down excess cash balance.
12. Re-establish the Storage Tank Committee to increase oversight of key performance measures addressed above.



SUSANA MARTINEZ  
Governor  
JOHN A. SANCHEZ  
Lieutenant Governor

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**ENVIRONMENT DEPARTMENT**  
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DAVE MARTIN  
Secretary  
BUTCH TONGATE  
Deputy Secretary

June 6, 2012

Legislative Finance Committee  
David Abbey, LFC Director  
325 Don Gasper, Suite 101  
Santa Fe, New Mexico 87501

Dear Mr. Abbey:

The Department offers the following clarification to provide a context for the finding of the Audit.

- The New Mexico Petroleum Storage Tank Regulations apply to both underground and aboveground storage tanks. Of the 4753 registered tanks, 1,381 are aboveground tanks which constitute approximately one third of the regulated tanks. Similarly of the 917 contaminated sites 178, approximately 20%, are releases from aboveground tanks. Because the audit focused on underground storage tanks and did not account for the aboveground tank population, the analysis is skewed and under represents the success of the program.
- New Mexico's ground water protection regulations mandate complete cleanup of soil and ground water. Many states leave concentrations of contaminants in place that would be unacceptable in New Mexico such that a direct comparison of both clean up statistics as well as cost comparisons do not accurately represent the cost benefit and effectiveness of the program.
- Site assessments are conducted in accordance with the Petroleum Storage Tank Regulations and are determined to be complete when the extent and magnitude of the contamination in all media has been characterized and sufficient data has been collected to identify and develop and design an effective and efficient remedial strategy. In some cases remedial activities are initiated while the assessment is in progress in an effort to address the source and reduce the impact to human health and the environment as well as the cost of long term remedial action.
- Although the US Environmental Protection Agency advocated pay for performance approach as a cost control tool in the late 1990's through 2003, very few states adopted

the approach. New Mexico was the first State to implement pay for performance approach that relies on payments to a remediation contractor being tied to reduction in contaminant level milestones. This typically includes up-front payment for capital expenditures for remediation equipment followed by additional payments to the contractor as contaminant level reduction milestones are met. In the nine (9) intervening years, states including New Mexico identified difficulties and inherent inefficiencies in administering and implementing pay for performance contracts and consequently most states either eliminated the pay for performance option or modified the approach to suit each individual state's financial framework and minimize the inefficiencies associated with approach. Some of the inefficiencies include the need to obligate the funds for multiple years to cover the life of the project and the loss of cost control as the contractor assumes the risk but should the strategy fail the capital costs will have been expended and additional funds will be required to be expended to clean up the site.

- The last State Fund Survey (2011) conducted by the Association of State and Territorial Solid Waste Managers Association documents that only 13 States, New Mexico included, still report using a form of pay for performance as a cost control approach. Vermont and New Mexico are recognized as examples of effective modified pay for performance approaches. Many states use a professional services fixed price list.
- The Agency appreciates the concern with the cash balance but maintains it must be evaluated in the context of liabilities and the required \$1 million reserve and thus the actual "cash balance" is significantly less. A more accurate measure which is also consistent with statute is the unobligated balance. The unobligated balance is generally in the range of \$2.5 to \$4.5 million

In addition the Department offers the following comments on the audit recommendations for the Committee's consideration:

1. *Report quarterly compliance percentages, as an effective inspection measure for the Accountability in Government Act (AGA). This should be compared to the national average reported by the EPA.*
2. *Report the number of cleanup sites in inventory, by priority one, two, or three, as an effective remediation measure for the AGA. This should be compared to the previous years' inventory levels.*
3. *Report annual goals for the number of closed sites from inventory, by priority. This should include an assumption of annual new spills.*

Department Response: Given the complexity of remediation, the department cannot affect and increase or predict clean up rates. An alternative goal for consideration would be to report goals that measure a reduction in number of priority 1 sites which would demonstrate effective protection of human health and the environment from imminent threats.

4. *Report the projected year for the elimination of cleanup inventory.*

Department Response: Such a projection would require numerous unquantifiable assumptions, and thus would not be an accurate measure. An alternative measure for consideration would be a comparison of the numbers of closed sites vs. new releases.

5. *Conduct complete site assessments prior to executing work plans for remediation as suggested by the EPA.*

Department Response: This is currently being implemented and is a regulatory requirement. In some cases remedial activities are initiated while the assessment is ongoing in order to address the source and reduce the impact to human health and the environment and the cost of long term remedial action.

6. *Execute pay for performance contracts and work plans that provide incentives for achieving expeditious contamination reduction levels as suggested by the EPA.*

Department Response: New Mexico was the first state to implement such a program but has since modified the approach to eliminate inherent inefficiencies and improve cost effectiveness of the program.

7. *Create a procedure to improve tracking of fixed assets owned by PSTB.*

Department Response: The Department will improve the accuracy of the procedure in place.

8. *Request annual budget to match projected revenues plus excess cash balance.*

Department Response: The Department supports this recommendation.

9. *Execute annual work plans for the fiscal year, equal to the annual budget for contracting.*

Department Response: Implementation of this recommendation would adversely affect the program as it would result in a suspension of ongoing remedial action during June and July and could result in sporadic periods of high and low activity. Current workflow is more consistent, manageable and effective and supports effective remedial action.

10. *Work plan terms should expire at fiscal year end.*

Department Response: Implementation of this recommendation would adversely affect the program as it would result in a suspension of ongoing remedial action during June and July and could result in sporadic periods of high and low activity. Current workflow is more consistent, manageable and effective and is supports effective remedial action.

11. *Budget and spend down excess cash balance.*

Department Response: The Department maintains that there is no excess cash balance as the Bureau spends down the cash balance as reflected by the work plan liabilities and the reserve. The Department recommends that the Bureau budget be based on revenue projections. A more accurate measure which is consistent with statute is the unobligated balance.

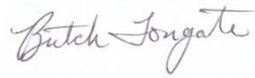
12. *Re-establish Storage Tank Committee to increase oversight of key performance measures addressed above.*

Department Response: The Department supports this recommendation.

The Department also suggested changes to the report as provided in the attached document.

We would like to thank you and your staff for conducting a thorough and professional audit of the Corrective Action Fund and will consider recommended improvements to the overall effectiveness of the program.

Sincerely,

A handwritten signature in cursive script that reads "Butch Longate". The signature is written in dark ink on a light-colored background.

F. David Martin  
Cabinet Secretary  
New Mexico Environment Department