

ACTION PLAN

Submitted by agency?	Yes
Timeline assigned?	Yes
Responsibility assigned?	Yes

The Environment Department’s (NMED) regulatory programs continued to demonstrate mixed results on compliance levels in the third quarter of FY23. However, NMED is prioritizing compliance enforcement and continues to make progress toward achieving its performance goals despite maintaining a vacancy rate of 19 percent.

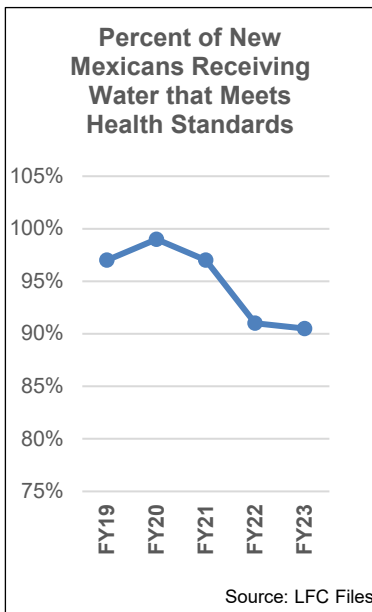
NMED announced a couple of major settlements in the third quarter, including with Rust Movie Productions LLC (“RMP”) regarding two citations following the October 2021 workplace fatality and injury on the set of the film “Rust.” Under the settlement, RMP agreed to withdraw its contest of the citations and pay \$100,000, the largest OSHA penalty in the New Mexico since 2010. NMED also agreed to a \$6.2 million-valued settlement with Matador Production Company, an oil and gas producer, including a civil penalty of \$1.15 million and at least \$1.25 million on a diesel engine replacement project to reduce nitrogen oxide and carbon dioxide emissions. Matador will also spend \$500 thousand to conduct aerial monitoring of its New Mexico facilities and to address leaks of methane and other pollutants identified. Finally, Matador will spend an estimated \$2.5 million in injunctive relief and \$800 thousand in mitigation costs to offset the harm caused by the alleged violations by reducing emissions from its operations.

Water Protection

The Water Protection Division continues to assist communities seeking in developing internal capacity to utilize state and federal funding for infrastructure improvement and water resource management. Understaffing in the Drinking Water Bureau continues to cause delays in delivering compliance determinations and violation notices. The bureau is in the final stages of filling several critical positions in its compliance and assistance sections. However, the department reported concerns about the potential of losing several experienced employees to other entities, specifically the national labs.

During the third quarter of FY23, the Construction Programs Bureau processed disbursements for 38 new projects, totaling approximately \$9.7 million. Additionally, the bureau disbursed funding for 34 capital outlay projects totaling approximately \$7 million and four clean water state revolving fund projects totaling roughly \$2.7 million.

The decline in the percentage of New Mexicans receiving water that meets health standards since FY21 was impacted mainly by stricter guidelines rather than more systems falling out of compliance. This trend will likely continue because of a rule proposed by the U.S. Environmental Protection Agency (EPA) limiting per- and polyfluoroalkyl substances (PFAS) in drinking water, which will likely go into effect in late 2023 or early 2024. Many public water systems throughout New Mexico struggle to comply with current drinking water requirements due to a lack of operational capacity, requiring NMED staff to provide more technical and compliance assistance.



	FY21 Actual	FY22 Actual	FY23 Target	FY23 Q1	FY23 Q2	FY23 Q3	Rating
Budget: \$34,875.0 FTE: 191.6							
Percent of population served safe and healthy drinking water	97%	97%	92%	89.4%	90.5%	89.2%	Y
Percent of surface water permittees inspected	N/A	N/A	10%	20%	20%	15%	G
Percent of groundwater permittees inspected.	19%	21.1%	65%	3.5%	5.6%	3.6%	R
Number of new water infrastructure projects	N/A	154	75	31	80	38	G
Program Rating	G	Y		Y	Y		Y

Environmental Protection

While inspections are valuable for determining whether regulated entities comply with applicable laws, rules, or permits, NMED’s regulatory compliance programs continually struggles to meet its target percentage of applicable entities inspected. The Environmental Protection Division’s Air Quality (AQB) and Radiation Control Bureaus (RCB) are responsible for enforcing regulatory and compliance measures to protect the environment and prevent harm to human health.

In addition to inspections and monitoring, the RCB’s work includes assisting nuclear workers who have become ill due to occupational exposures received while working for contractors or subcontractors at U.S. Department of Energy facilities or in the uranium industry. NMED contends that reaching the target of inspecting 85 percent of radiation sources would require 209 inspections from each staff member and is unachievable, given current staffing levels.

The AQB has deployed new air monitoring instruments that improve connectivity, efficiency and remote access to air quality data. The bureau worked with the New Mexico Climate Change Task Force to develop rules for reducing volatile organic compounds and oxides of nitrogen emissions in the oil and gas industry. After hiring a new manager for its inspections unit in November 2022, the bureau added two additional inspectors and improved the rate of inspections in the third quarter by more than 50%.

Q3 Inspections Showing Regulatory Compliance, by NMED Program	
Ground water	100.0%
Surface water	100.0%
Liquid waste	99.4%
Radiation sources	88.9%
Restaurants/food manufacturers	65.3%
Solid & infectious waste	62.5%
Air emitting sources	37.5%
Hazardous waste	29.2%

	FY21 Actual	FY22 Actual	FY23 Target	FY23 Q1	FY23 Q2	FY23 Q3	Rating
Budget: \$33,261.2 FTE: 304.1							
Percent of ionizing and nonionizing radiation sources inspected	N/A	12.6%	85%	2.9%	4.3%	3.1%	R
Percent of air emitting sources inspected	N/A	20.5%	50%	12.4%	3.9%	6.3%	R
Percent of population breathing air meeting federal health standards	N/A	98.4%	95%	97%	99.9%	99.5%	G
Program Rating		R		Y	Y		Y

Environmental Health

The Environmental Health Division (EHD) continued to administer the state hemp extraction and manufacturing program, ensuring public health protection while supporting the growth and sustainability of the cannabis industry. EHD is also responsible for working to prevent workplace injuries and fatalities and avoiding unnecessary risks to public health from commercially prepared foods.

The Occupational Health and Safety Bureau conducts thousands of inspections annually and targets workplaces with the greatest expectations of noncompliance to reduce illness, injuries, and fatalities. The bureau inspects approximately 1 percent of all workplaces each year. Still, it expects that a much higher percentage of workplaces are out of compliance at any given time, necessitating continuous refinement of the strategy by which the highest-risk workplaces are targeted.

The Environmental Health Bureau’s (EHB) Food Safety Program inspections increased drastically in the third quarter but is still on track to fall short of its target for FY23 overall due to insufficient staff to perform the necessary inspections. Ideally, each restaurant and food manufacturer in the state should be inspected once per year. However, the same inspectors cover restaurants, food manufacturers, pools, and spas. Bureau staff currently have a compliance and enforcement workload of approximately

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Environment Department
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355 facilities per inspection FTE, well above federal Food and Drug Administration guidance that retail food inspectors (a much narrower role than EHB's inspectors) are assigned 280-320 inspections.

Budget: \$28,466.1	FTE: 281.6	FY21 Actual	FY22 Actual	FY23 Target	FY23 Q1	FY23 Q2	FY23 Q3	Rating
Number of employers that did not meet occupational health and safety requirements for at least one standard compared to the total number of employers.		N/A	63.5%	55%	59.3%	60.0%	75.3%	Y
Percent of restaurants/food manufacturers inspected.		N/A	90.2%	80%	18.7%	18.6%	22.4%	Y
Percent of new or modified liquid waste systems inspected.		N/A	82.1%	85%	83%	84.5%	82.3%	Y
Program Rating			R		Y	Y		Y

Resource Protection

The Resource Protection Division (RPD) also failed to reach its inspection target in the third quarter. Solid Waste Bureau staff inspected eight of 45 active permitted solid waste facilities in the third quarter, well below the trajectory needed to inspect every permitted facility each year or meet the performance target of 85%. The bureau continues to work to reclassify existing vacancies to higher-level positions to improve recruitment and retention but reports that additional staffing is needed to improve on the rate of inspections.

In the third quarter of FY23, the Petroleum Storage Tank Bureau issued no further action (NFA) status determinations to 12 petroleum release sites. The total number of open underground storage tank (UST) sites is 873, and the total number of UST and above-ground storage tank release sites is 956. Notably, NFA status determinations are fluid throughout the year, based on the specific site conditions, staffing levels, and the availability of funding from the corrective action fund.

Budget: \$17,925.9	FTE: 146.6	FY21 Actual	FY22 Actual	FY23 Target	FY23 Q1	FY23 Q2	FY23 Q3	Rating
Number of completed cleanups of petroleum storage tank release sites that require no further action.		N/A	1,964	1,948	1,984	1,984	1,996	G
Percent of solid and infectious waste management facilities inspected.		N/A	47%	85%	13.3%	13.3%	17.8%	R
Percent of hazardous waste facilities inspected.		N/A	4%	6%	0.7%	1%	1%	R
Program Rating			R		Y	Y		Y