



New Mexico Environment Department

State Tribal Collaboration Act Annual Report
Fiscal Year 2019



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State of New Mexico

ENVIRONMENT DEPARTMENT

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I. Executive Summary

The New Mexico Environment Department (“NMED” or “the Department”) has undergone significant changes in the last six months – a new governor, new NMED leadership, new priorities, new processes, and new expectations. Yet, NMED’s mission remains the same: to protect, restore, and foster a healthy and prosperous environment for all New Mexicans. Aligned with NMED’s mission has been an increased effort in the last year to ensure that notice is provided, and meaningful engagement opportunities are available, to tribal leadership in relation to NMED’s actions. NMED staff have received additional training in public outreach to better assess and communicate with communities in and around areas where NMED is proposing to take an action.

Fiscal Year 2019 included formal government-to-government consultations in the areas of surface water quality and ground water quality. In both cases, relationships were enhanced by meeting and talking about shared challenges and how to communicate better and identify possible funding sources and methods to monitor water quality going forward.

Looking ahead, there are several opportunities for NMED to take the lead to improve the public health and environment for all New Mexicans by: 1) implementing the Executive Order on Climate Change and Energy Waste Prevention, which includes oil and natural gas methane stakeholder meetings, minor source emission inventories, and Volkswagen settlement fund eligibility and awards; 2) drafting and issuing hemp manufacturing regulations; 3) initiating oil and natural gas produced water discharge regulations to provide permits for the use of produced water outside of the oilfield per the Produced Water Act; and 4) leading the U.S. to address PFAS (per- and polyfluoroalkyl substances) contamination through litigation against the United States Air Force. Many of these opportunities and initiatives are of interest to New Mexico Tribes and pueblos, with whom NMED looks forward to collaborating as the agency moves forward to implement these areas.

II. Agency Overview & Background

A. Mission Statement

NMED’s mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations. NMED’s mission is guided by Secretary James C. Kenney’s leadership in four tenets: **Science**- Using the best available science to inform our decision-making in protecting public health and the environment; **Innovation**- Employing creative engineering and technological solutions to address environmental challenges; **Collaboration**- Engaging communities and interested stakeholders in environmental decision-making outcomes; and **Compliance**- Ensuring meaningful compliance with state regulations and permits; leveling the playing field through enforcement.

B. Agency Overview

NMED was created by the 40th state Legislature in 1991 under the “Department of Environment Act”. NMSA 1978, §9-7A-1 (1991). As a single, cabinet-level department, NMED is to administer and oversee the State's environmental laws and to exercise the functions relating to environmental protection, natural resources, and public health and safety. NMED employs approximately 635 staff across four divisions. The Administrative Services Division is standard to the agency and state government. Principally, NMED’s work falls into the three areas of environmental protection: The Water Protection Division, the Resource Protection Division, and the Environmental Protection Division.

Water Protection Division

Construction Programs Bureau;
Drinking Water Bureau;
Ground Water Quality Bureau; and
Surface Water Quality Bureau.

The Water Protection Division is responsible for overseeing water infrastructure systems and water quality issues throughout the state. It regulates the quality of New Mexico’s ground and surface water resources to ensure clean and safe water supplies are available now and in the future to support domestic, agricultural, economic, and recreational activities; ensures that drinking water throughout the state is clean and healthy; that wastewater systems and drinking water systems are designed and constructed to meet regulatory standards; and, that public funds are responsibly appropriated to plan, design and construct these systems.

Resource Protection Division

U.S. Department of Energy ("DOE") Oversight Bureau;
Hazardous Waste Bureau;
Petroleum Storage Tank Bureau; and
Solid Waste Bureau.

The Resource Protection Division (RPD) is responsible for overseeing hazardous and solid waste throughout the state; providing technical assistance to support these programs; conducting environmental monitoring at DOE facilities for the purposes of supporting other NMED regulatory programs and keeping the public informed; implements storage tank regulations; and conducts environmental remediation activities to clean-up contaminated sites in a manner that is protective of human health and the environment.

Environmental Protection Division
Air Quality Bureau;
Environmental Health Bureau;
Occupational Health & Safety Bureau; and
Radiation Control Bureau.

The purpose of the Environmental Protection Division is to protect public health and the environment through programs that regulate air emissions; provide public outreach, education, and regulatory oversight for worker safety; regulation of radiation producing materials and equipment; protection of public health through regulation of food service and food processing facilities; regulation of liquid waste treatment and disposal; and regulation of public swimming pools, baths, and spas.

C. Any Department – Specific Tribal Collaboration/Consultation policy your agency might have adopted in addition to STCA (11-18-4.C(1))

NMED developed and signed its tribal collaboration/consultation policy in response to the STCA on December 17, 2009. Currently, the policy is undergoing review and edits and a new policy is anticipated to be signed by Secretary Kenney in 2019.

In early 2018 NMED promulgated two policies to provide proper and appropriate public participation opportunities related to NMED actions and proceedings: NMED Policy & Procedure 07-11 is the Limited English Proficiency Accessibility and Outreach Policy; and NMED Policy & Procedure 07-13 is the Public Participation Policy for NMED. Both are in addition to any public outreach and participation procedures required by statute or regulation and are designed to enhance notice and opportunity to comment on or participate in public meetings and hearings. The policies require NMED staff to conduct an assessment using EPA's "EJSCREEN" to determine if there are minority or low-income populations that are potentially impacted by NMED's activity or whether there is a combination of environmental and demographic indicators that is greater than usual. NMED staff are also trained to use NMED's own GIS mapping tool to identify tribal lands (checkerboard and exterior boundaries) and use the Indian Affairs Department's contact information for tribes, pueblos and nations in New Mexico. In addition, NMED employees are encouraged to contact NMED's Tribal Liaison to give courtesy notifications to tribal and pueblo environmental directors and Navajo Nation Chapter Government officials to ensure notice is directed to those most interested and potentially affected.

The policies aid NMED employees in their determination of whether expanded public outreach is warranted, if diverse means of public outreach are warranted, if Limited English Proficiency services are necessary, and how to provide those services. For example, public notice and communications in areas where there is a high proportion of persons with Limited English Proficiency may result in verbal public notices on local radio stations in languages other than English rather than only written newspaper advertisements. In the case of NMED permitting actions by the Ground Water Quality Bureau and the Air Quality Bureau for the San Juan

Generating Station in San Juan County, both bureaus communicated the proposed actions not only to the Navajo Nation President, but also the proximate five Navajo Nation Chapters and the local KTNN radio station.

III. Agency Efforts to Implement Policy (11-18-4.C(1)(3))

A. Describe agency's efforts to communicate, collaborate and consult with tribes as described in your Tribal Collaboration and Communications policy (Division specific efforts to build meaningful dialogue and collaboration with tribes).

NMED provides an overview and highlights by each division.

Water Protection Division

CONSTRUCTION PROGRAMS BUREAU (CPB)

The NMED Cabinet Secretary has designated the Construction Programs Bureau Chief as the designee to take part in regular Tribal Infrastructure Fund ("TIF") Board meetings and assist the Indian Affairs Department ("IAD") in the development and refinement of existing guidelines, policies and programmatic procedures to streamline and increase the efficiency and effectiveness of the TIF program. Communities that receive funding are provided with guidance and technical support from CPB engineering staff on project oversight and accountability. NMED works with IAD through an Intergovernmental Agreement ("IGA") that took effect January of 2018 and remains in effect until either party terminates the agreement.

Project oversight and highlights

CPB provided oversight and technical assistance on six capital outlay projects awarded to tribal entities with total funding of over seven hundred thousand dollars (\$700,000.00) in State Fiscal Year 2019 (SFY19). These projects included water, wastewater and solid waste projects on the Navajo Nation (including the Baahaali-Chichiltah, Shiprock, and Tahatchi Chapters), Acoma Pueblo, Sandia Pueblo, and Nambe Pueblo. In addition to capital outlay project management, CPB works under a Memorandum of Agreement with the New Mexico Finance Authority to oversee Water Trust Board ("WTB"), Colonias, Drinking Water State Revolving Fund ("DWSRF") and Planning Grants for a variety of entities including tribes and pueblos. During SFY19, CPB provided technical oversight of two WTB projects awarded to tribal entities for watershed restoration projects with \$1,750,000 in funding. CPB worked with the Pueblo of Acoma to complete planning and design activities to expand and upgrade their North Acoma wastewater treatment plant. CPB also worked with the Navajo Nation Shiprock Chapter on a project that funded the acquisition of rights of way and easements for the construction of a wastewater system.

Additionally, CPB consults with all tribes, pueblos and nations regarding historical use and occupancy in New Mexico on proposed construction projects receiving state funding that may disturb areas considered important or culturally significant pursuant to federal law. The Bureau

prepares letters to tribal leadership and Tribal Historic Preservation Officers (THPOs) for the Tribal Liaison's review and the Secretary's signature. Upon receipt of a request for more information, CPB enlists the project sponsors and contractors to share additional information, often a cultural resource survey, and ensures that all questions have been satisfactorily answered, or if not, then CPB begins the process for a government-to-government consultation.

DRINKING WATER BUREAU ("DWB")

The DWB principally has two large projects that involve meaningful involvement and collaboration with tribes:

Navajo-Gallup Water Supply Project ("NGWSP")

The DWB continues to participate in quarterly regulatory coordination meetings and bimonthly design conference calls for the NGWSP to coordinate oversight activities and discuss project progress. Participants include the United States Bureau of Reclamation (BOR), Navajo Tribal Utility Authority, Navajo Nation EPA (NN EPA), Navajo Nation Department of Justice (NN DOJ), United States Indian Health Service (IHS), United States Environmental Protection Agency (EPA), United States Bureau of Indian Affairs (BIA), Jicarilla Apache Nation, and NMED. The Bureau has jurisdictional oversight authority for two of the systems impacted by this project: City of Gallup and Lybrook Mutual Domestic Water Consumers Association, both of which provide water to tribal and non-tribal citizens. As part of its oversight, the DWB ensures that the systems comply with the federal Safe Drinking Water Act and New Mexico Drinking Water Regulations. Discussions continue regarding regulatory authority and construction or engineering review requirements for each portion of the project. Coordination meetings will continue until a Memorandum of Understanding ("MOU") is finalized among regulatory agencies, and as additional agreements for the operation of the pumping plant project are finalized.

Pojoaque Regional Water System

The DWB has had some involvement and coordination with the BOR and EPA to evaluate NMED oversight responsibilities for public water systems that are served by the Pojoaque Regional Water System in its phased approach. Additional involvement will be determined based on the location and ownership of the water system facilities and if NMED has any jurisdictional authority for any components of this regional water system.

GROUND WATER QUALITY BUREAU ("GWQB")

The GWQB is organized into several sections to address the issuance of permits, establish protective water quality standards, approve abatement plans, and monitor ground water quality. In regard to tribal outreach efforts, the Mining Environmental Compliance section is actively participating in the proposed EPA listing of the San Mateo Creek Basin Legacy Uranium Mines site as a Superfund Site and is engaged in conversations with federal agencies and the Navajo Nation in this effort. Staff attended the Navajo Nation Uranium Remediation Advisory Commission Tronox NAUM & Ambrosia Lake Tour on March 27, 2019.

The Brownfields section of GWQB performed several environmental assessments with pueblo governments this fiscal year. At the request of the Pueblo of Laguna, GWQB staff completed a

Brownfields Assessment at the former Mesita Day School Facility and then contracted for a limited Phase II Environmental Site Assessment so that the Pueblo of Laguna can now start on a redevelopment of the property. The Pueblo of Santa Ana requested a Phase 1 Environmental Assessment for the American Tower Site on Santa Ana land and the final report is pending. NMED Brownfields staff met with EPA and a consultant for the Pueblo of Cochiti to discuss potentially using Brownfields Loan funds for Cleanup/Stabilization of the Cochiti Gravel Mine site on March 19, 2019.

On April 5, 2019, the Secretary along with GWQB staff, CPB staff and the Tribal Liaison met with members of the Acoma Pueblo Water Commission, Environmental Director and Tribal Historic Preservation Officer on April 5, 2019 to discuss the impending upgrades to the City of Grants Wastewater Treatment Plan (“WWTP”) with Clean Water State Revolving Loan Funds. The meeting was held after Governor Vallo raised concerns regarding the effluent ponds at the WWTP and requested consultation. The meeting helped to resolve the questions and concerns from the Pueblo of Acoma concerning the lining of the golf course ponds by the City of Grants and the downstream monitoring of the WWTP. As a result of the consultation and additional time to review information, CPB authorized the construction projects and GWQB committed to a site visit in August 2019 to gather on-site information and further aid the conversation about seepage in one area.

Relating to the existing North Railroad Avenue Plume Superfund site in Espanola, an access agreement was arranged between GWQB staff and Santa Clara Pueblo to install and sample two new monitoring wells. The Santa Clara Pueblo Environmental Office personnel worked with GWQB staff to coordinate all sampling activities on tribal lands and conversations to update the current memorandum of agreement were successful.

SURFACE WATER QUALITY BUREAU (“SWQB”)

The SWQB engaged in numerous informal collaborations on specific issues in the following three areas: permitting; watershed protection; and sampling and monitoring.

NPDES Permits

NMED certifies National Pollutant Discharge Elimination System (“NPDES”) permits issued by the U.S. EPA for those discharges within state jurisdiction to ensure permits are protective of the State's Water Quality Standards. NMED also comments as a downstream state on those NPDES permitted facilities located within tribal waters. SWQB Point Source Regulation Section staff periodically receive questions from tribal technical staff related to NPDES permitting and assist as needed when those issues arise. All NPDES permits within the state’s jurisdiction, as well as most tribal permits within New Mexico, can be found on the SWQB website. This information is now easily available to the public and our tribal neighbors at: <https://www.env.nm.gov/swqb/Permits/>.

Watershed Protection

The SWQB invited tribal nations to attend the Bureau’s Wetlands Roundtables and several tribes participated. Additionally, SWQB staff who review and certify Clean Water Act Section 404

permits and authorizations routinely coordinate with environmental staff from tribes, pueblos, and nations regarding 401 certifications and confirmations for projects located near or crossing onto their lands.

The SWQB also oversees the evaluation process, award, and completion of work for the River Stewardship Program of legislatively funded projects. The Pueblo of Santa Ana was awarded a \$133,873 grant agreement through the River Stewardship Program to restore 27 acres within the Pueblo along the Rio Grande. The project includes removing exotic trees and shrubs, creating low flow channels through high and dry areas, and planting native trees and shrubs. Construction was largely completed in spring 2019, and the project is now in its monitoring and reporting phase.

Finally, SWQB staff represent NMED as a member of the Rio Puerco Management Committee (“RPMC”). NMED’s participation in the RPMC is specified, along with “affected tribes and pueblos,” in the federal Rio Puerco Watershed Management Program Reauthorization Act. One of the purposes of the RPMC is to coordinate watershed restoration and management across boundaries. Acoma, Isleta, Laguna, and Jemez Pueblos, the Navajo Nation central government, as well as the Ojo Encino and Torreon chapters of the Navajo Nation, are active RPMC participants. In November 2018, SWQB staff co-presented with NN EPA staff on the completion of a watershed-based plan (“WBP”) for the Rio Puerco Watershed, at the National Nonpoint Source Pollution Workshop in Colorado Springs. The WBP was compiled by SWQB staff with input from RPMC members.

Water Quality Monitoring

SWQB Monitoring staff completed collaborative work in SFY19 with the Jicarilla Apache Nation to collect water quality data on the Navajo River near Dulce, New Mexico, a 2-year survey which began in FY17. Once data are verified and validated, the results will be provided to the Jicarilla Apache Nation.

The SWQB coordinated access through Nambe Pueblo for water quality sampling and datalogger deployment at Rio Nambe in the Pecos Wilderness in the fall of 2018, continuing a 2-year survey. Once data are verified and validated, the results will be provided to Nambe Pueblo.

As part of a formal consultation with the Pueblo of Tesuque to discuss *E. coli* results and contamination in the Rio Tesuque Watershed, the SWQB met with the Pueblo September 4, 2018 to discuss options for a bacterial source tracking (“BST”) study to evaluate the source of bacteria and identify appropriate best management practices for pollutant control in addition to other evaluations of contribution, including septic wastewater. In a letter dated September 24, 2018, NMED agreed to increase the frequency of surface water sampling, dependent on streamflow, in coordination with the Pueblo of Tesuque and offered to integrate their data for inclusion in the State’s biennial water quality assessment (Integrated Report) pursuant to quality assurance and quality control requirements.

Resource Protection Division

DEPARTMENT OF ENERGY OVERSIGHT BUREAU (“DOE-OB”)

The Department of Energy Oversight Bureau (“DOE-OB”) develops and implements vigorous monitoring and assessment programs at Los Alamos National Laboratory (“LANL”), Sandia National Laboratories/New Mexico (“SNL/NM”), the Waste Isolation Pilot Plant (“WIPP”), and areas surrounding these facilities. These monitoring programs include both joint and independent evaluations of analytical and physical environmental data of all media, including air, soils and sediments, water, vegetation and other biota, and gamma radiation. The focus of these evaluations is to closely monitor contaminant levels of heavy metals, organic and inorganic compounds, and radionuclides. DOE-OB attended several tribal outreach events this fiscal year including the Pueblo of Isleta Environmental Fair in July 2018, the Pueblo of Santa Ana Environmental Fair in August 2018, and the Santa Clara Pueblo Annual Kha’p’o Community School Environmental Day in May 2019.



Photo Caption: DOE-OB LANL Oversight scientists Rozellynn Sereda and Seva Joseph instruct children about macroinvertebrates and stream environments during the Kha’p’o Community School Environmental Day at Santa Clara Pueblo in May 2019. (Photo taken by Stephen Yanicak with NMED).

DOE-OB staff attends the monthly Los Alamos Trails Working Group Meeting, which is comprised of members from LANL, Santa Clara Pueblo, Pueblo de San Ildefonso, U.S. Forest Service, National Park Service, Los Alamos County, and members of the public. Bureau scientists and hydrologists provide in-the-field training and mentoring to Pueblo de San Ildefonso staff regarding site selection, installation, operation, and maintenance of NMED’s automated stormwater sampling stations located on Pueblo lands.



Photo Caption: DOE Oversight Bureau staff splitting stormwater samples collected with San Ildefonso scientific environmental field staff.

Working under the MOA between NMED and the Pueblo de San Ildefonso, DOE-OB staff conduct environmental monitoring on Pueblo lands. Environmental monitoring includes the sampling of groundwater wells located in Mortandad and Sandia Canyons, drinking water supply wells located throughout the Pueblo, springs located in Sandia and White Rock canyons, and stormwater located in Los Alamos Canyon and along the Rio Grande at Otowi Bridge. DOE-OB staff work with Pueblo de San Ildefonso environmental managers to coordinate access and escorts necessary to properly install and maintain

NMED monitoring equipment on Pueblo lands.

DOE-OB staff provides automatic email notifications to the Pueblo de San Ildefonso whenever stormwater, groundwater, or spring monitoring data from a sample originating from a location on Tribal lands is loaded into the Environmental Information Monitoring (EIM) database. The email notifies appropriate Pueblo contacts of the 60-day review period prior to the data being publicly accessible via Intellus New Mexico.

HAZARDOUS WASTE BUREAU (“HWB”)

The Hazardous Waste Bureau (“HWB”) principally has two large facilities that involve significant outreach and collaboration with tribes: Fort Wingate and LANL.

Fort Wingate

A state Hazardous Waste Facility Permit was issued to the United States Department of the Army in 2005 that required the Army to close an inactive Open Burn or Open Detonation hazardous waste treatment unit, and to implement corrective action where necessary to investigate and clean up releases of contaminants from historic operations at the closed Ft. Wingate Army Depot. The Permit includes specific provisions for the permittee to consult with the Pueblo of Zuni and the Navajo Nation regarding plans and reports as specified in the permit and for the HWB to attend meetings with the Pueblo of Zuni and Navajo Nation upon request or prior to approval of corrective actions. Most of the land that comprises Fort Wingate is planned for transfer to the BIA and ultimately into tribal trust to either the Pueblo of Zuni or Navajo Nation after cleanup is complete. The HWB routinely engages with both tribes by travelling to their lands to discuss ongoing cleanup activities with tribal representatives. In addition, HWB will meet with both tribes prior to issuing a draft renewal of the Hazardous Waste Facility Permit on issues related to land parcel cleanup and land transfer.

Los Alamos National Laboratory ("LANL")

The HWB continues to work with Accord Pueblos (Santa Clara, San Ildefonso, Cochiti, and Picuris), particularly the Pueblos of Santa Clara and San Ildefonso, to discuss issues related to groundwater contamination and migration of contamination via storm water from operations at LANL. NMED continues to work with the Pueblo de San Ildefonso to investigate and mitigate chromium contamination in the regional water supply aquifer. The chromium contamination in groundwater has migrated from LANL to beneath a portion of the Pueblo that borders LANL. The Pueblo of San Felipe is interested in LANL permitting actions and HWB will work in cooperation with the Pueblo of San Felipe and the US DOE on issues of interest to the Pueblo.

PETROLEUM STORAGE TANK BUREAU (PSTB)

Since October 2006, NMED's Petroleum Storage Tank Bureau ("PSTB") and EPA Region 6 Office of Underground Storage Tank ("OUST") program have coordinated and implemented joint compliance inspections at private facilities owned or operated on fee lands within the exterior boundaries of pueblos that constitute Indian Country. EPA and PSTB inspectors perform joint inspections at 13 active facilities within the exterior boundaries of pueblos in New Mexico. Joint inspections are scheduled at least a month in advance and EPA notifies PSTB, affected tank owners and operators, and affected Pueblos, Tribes, and Nations. Six joint inspections were performed in SFY19, and the underground storage tank systems at one facility were permanently closed during the fiscal year.

In addition, PSTB conducts compliance inspections of facilities that are leaking storage tank sites and performs inspections for tank closures, repairs and modifications within the exterior boundaries of pueblos in New Mexico as necessary. EPA conducts inspections on a three-year cycle. PSTB inspectors will complete courtesy inspections in coordination with EPA, if requested by tribal governments, and all inspection results and reports are provided to EPA.

PSTB also coordinates environmental remediation activities at various sites within the exterior boundaries of pueblos in New Mexico and provides updates to the respective tribe, pueblo, or nation and EPA in accordance with Cooperating Agreements. Currently, corrective action is being performed in accordance with approved workplans at the following two release sites: Mustang 7256 release site located in Zuni, New Mexico (Release ID#3613) where groundwater monitoring and non-aqueous phase liquid (NAPL) recovery is currently being performed; and Laguna Mart release site located in Laguna, New Mexico (Release ID34049) where an air sparge/vent remediation system is currently being operated at this release site.

SOLID WASTE BUREAU ("SWB")

During SFY19, the Solid Waste Bureau ("SWB") offered several three-day Solid Waste Facility Operator Certification Courses and 13 solid waste facility operators from seven pueblos, tribes or nations attended. In addition, SWB's Enforcement Section staff presented on "Special Waste In New Mexico" during a meeting of the Intertribal Resource Advisory Committee ("IRAC") at Tesuque Pueblo in July 2018. SWB plans to attend IRAC again on July 30, 2019 at Santo Domingo Pueblo to talk about household hazardous waste.

Additionally, SWB led discussions involving the Bureau, NMED's Tribal Liaison, and Waste Management of New Mexico regarding the infectious waste incineration facility operated by Monarch Technologies on Nambe Pueblo. After reviewing manifests and related information, Bureau staff approved Waste Management's operations plan for acceptance of ash at the Rio Rancho Landfill.

The Recycling and Illegal Dumping ("RAID") Act includes pueblos, tribes and nations as entities eligible to apply for grants ("RAID grants") that can be used to establish recycling facilities, purchase equipment, perform marketing, purchase products produced by a recycling facility, provide educational outreach, develop recycling infrastructure, or abate illegal dumpsites.

In FY19, seven RAID grants were awarded to six pueblos and tribes for a total of \$111,018 (see detail below). Six of these projects were completed and the total amount spent was \$105,955.

- *Pueblo of Acoma: \$10,000:* Purchase of a covered recycling trailer.
- *Isleta Pueblo: \$21,000:* Purchase of curbside recycling carts and larger recycling containers to expand the existing recycling program pueblo-wide.
- *Isleta Pueblo: \$3,500:* Abatement of an illegal tire dumpsite on Comanche Ranch.
- *Pueblo of Pojoaque: \$2,500:* Abatement of an illegal tire dumpsite.
- *San Felipe Pueblo: \$60,087:* Purchase of outdoor recycling receptacles, cardboard recycling trailers, and signage for cardboard trailers, purchase of a portable cardboard baler, and education and outreach materials.
- *Pueblo of Santa Ana: \$5,931:* Purchase of outdoor signage for transfer station trailers and designated areas, educational and outreach materials, and display center for signage and announcements.
- *Santo Domingo Tribe: \$8,000:* Purchase of a waste oil heater.

Environmental Protection Division

AIR QUALITY BUREAU ("AQB")

The AQB, along with representatives from NNEPA and the Southern Ute Indian Tribe ("SUIT") Air Program, participated in the October 24, 2018 Four Corners Air Quality Group Meeting in Farmington, NM. NN, EPA, and SUIT also presented updates on their tribal programs and participated in the poster session in which agencies highlighted some of their recent important achievements.

Environmental Health Bureau ("EHB")

EHB protects public health and the environment through specific programs that provide public outreach and education and regulatory oversight for food service and food processing facilities, liquid waste treatment and disposal systems, and public swimming pools and baths. EHB operates in 22 field offices throughout the state and collaborates with pueblos, tribes, and nations as needed or requested.

The EHB Bureau Chief and State Food Program Manager continued to work in SFY19 with representatives from IHS, along with other state health agencies, in developing a state-wide plan outlining a coordinated effort with all health agencies in responding to outbreaks and other emergency responses. IHS was a key contributor in providing a framework of contacts which would be used in the event of an outbreak associated with a tribal entity.

OCCUPATIONAL HEALTH AND SAFETY BUREAU (“OHSB”)

On May 8, 2019, a Compliance Assistance Specialist with the Occupational Health and Safety Bureau gave a presentation on fall protection at the 2019 Navajo Nation Insurance/Safety & Health Conference in Albuquerque. The conference goals were to guide participants in the identification and assessment of workplace hazards, and in the development of safety and health programs. The theme for the conference was, as stated by the Navajo Nation Insurance Service Department, “Be safe at work and where you travel” – “Náá nilnishgí dóó náni’náágo’ adaa’áholyá”.

RADIATION CONTROL BUREAU (“RCB”)

Training and assistance:

The Indoor Outreach Radon Program (“IRP”) staff of RCB engaged in numerous trainings with environmental staff from tribes, pueblos and nations regarding testing protocols and sources of information in testing and remediation. Some of the highlights include providing 100 short-term radon test kits to Pueblos of Isleta, Cochiti, Laguna, and Pojoaque; discussing radon test results and the need and protocols for long-term testing with the Navajo Nation Radon Program, consulting with Nambe Pueblo later a consultant from Nambe Pueblo to discuss options and review the design and building plans for radon resistant new construction (RRNC) options for proposed new buildings on the Pueblo.

Outreach:

IRP participated in Radon Awareness Meeting and Training sponsored by the Jicarilla Apache Nation, which was attended by housing and environmental programs from several tribal and pueblo nations. IRP staff also attended the 5th Annual Environmental Fair events at Isleta Pueblo. IRP staffed an information booth, handing out radon awareness information and 48 radon test kits to participants.

IV. [Current & Planned Programs and Services for Native Communities \(11-18-4.C\(5\)\)](#)

[A. A description of current and planned programs and services provided to or directly affecting Native communities and the funding for each program.](#)

NMED Rulemakings: NMED plans to enhance tribal participation in the development of rules that are of shared interest and applicability to tribal governments.

Produced Water Act: During the summer of 2019, NMED will notify all New Mexico tribes/pueblos/nations in writing of the Department’s initial plans for targeted tribal outreach and public engagement on implementation of the 2019 Produced Water Act (HB 546). NMED

will invite tribal leaders to meet with NMED this fall to discuss (1) challenges facing New Mexico associated with current produced water management and disposal practice, (2) current science/technological innovations associated with produced water treatment, and (3) the process for drafting regulations, including opportunities for tribal consultation. During this initial phase of Produced Water Act implementation, NMED invites tribal meetings with individual tribes/pueblos/nations and regional meetings with the Eight Northern Pueblos, Five Sandoval County Pueblos, the Navajo Nation, the Jicarilla Apache Nation and the Mescalero Apache Tribe. The initial implementation phase is in advance of NMED's efforts to draft regulations for the use of treated produced water, treated product, or any byproduct of the produced water to protect water quality in New Mexico

Hemp Manufacturing Act: With the enactment of new legislation for hemp manufacturing, NMED may enter into cooperative agreements or joint powers agreements with federally recognized Indian nations, tribes, and pueblos that seek assistance in developing hemp manufacturing plans. NMED will coordinate meetings with tribes, nations, and pueblos to further develop meaningful regulations that will provide economic benefits to tribal individuals and entities as it relates to hemp. If requested, NMED will also provide technical assistance or training to tribal individuals or entities seeking guidance on the manufacturing of hemp products.

Methane regulation: Through the Governor's Executive Order on Addressing Climate Change and Energy Waste Prevention, NMED and the Energy, Minerals & Natural Resources Department ("EMNRD") began this process by convening a methane strategy stakeholder meeting that tribes, nations, and pueblos were invited to on June 11, 2018 in Santa Fe, NM. Representatives from the Navajo Nation and the All Pueblo Council of Governors participated, and NMED plans to continue the dialog with tribal officials regarding the sources of methane within NM, the statutory authority to regulate methane, and tribal perspectives. The agencies are in the preliminary planning stages, and more information will be forthcoming as the agencies develop a webpage to post information and begin the process of developing methane regulations.

NMED Science and outreach activities: NMED plans to strengthen relationships with tribal nations on the gathering of sampling and monitoring data and communications about that data.

Gold King Mine ("GKM"): NMED, through its Chief Scientist, works closely with the NN EPA and Department of Health on Water Infrastructure Improvements for the Nation ("WIIN") Act projects and other efforts to monitor the long-term effects from the GKM spill and legacy mining issues. Because the GKM contamination plume traveled through the Animas and San Juan River watersheds to Lake Powell, Utah there are continued long-term efforts to monitor and share gathered data. In addition, litigation was filed by the State of New Mexico and Navajo Nation against the federal government which is ongoing. NMED continues to seek and receive Congressional appropriations to develop a long-term water quality monitoring program for the Animas and San Juan watersheds through the WIIN Act. The following WIIN Act funded activities have benefitted the State of New Mexico and the Navajo Nation and are actively ongoing:

- Continued operation of river sondes that provide real-time water-quality data;
- NMED and NN participation in working groups and multi-jurisdictional projects;
- Groundwater-surface water interaction study;
- Agricultural soil and crop testing study;
- Agricultural products safety communication pilot project;
- Farmington Lake sediment coring study; and
- 5th Annual Animas and San Juan Watersheds conference, including teach-ins at the Shiprock Chapter House in 2018 and 2019.

RAID Grants: For FY20, three RAID grants were awarded to two pueblos for a total of \$75,800. The *Pueblo of Zuni* received \$18,700 for the purchase of recycling stations for public events, and to purchase picnic tables made of recycled tires and printed table toppers for use at public events. The *Pueblo of Isleta* received \$57,100 for the purchase of a tire cutter to use in managing scrap tires recovered from illegal dumpsites and to purchase of game cameras to aid in illegal dumping enforcement. In addition, \$103,812 was awarded to McKinley County for an illegal dumping project that will be conducted in collaboration with the Baca-Prewitt Chapter of the Navajo Nation and other partners and includes a Dine Illegal Dumping Educational Curriculum for the Navajo Nation Schools. These projects will begin in July 2019 and will be completed by June 2020.

B. Main agency accomplishments and challenges regarding work with tribes and native organizations including significant state-tribal issues, recommendations and/or priorities addressed in FY19.

NMED employees continue to build professional relationships with tribal environmental staff. This year, NMED's Emergency Response Coordinator worked with the Tribal Liaison to make sure the Coordinator had an environmental point of contact for all tribes, pueblos and nations in case emergency contact had to be made. NMED successfully responded to two emergency incidents concerning a fire on private property immediately adjacent to the Navajo Nation and a spill in the right-of-way off I-40 with the Pueblo of Laguna.

NMED, through environmental staff and the Tribal Liaison, has successfully become more involved with, and participated or spoke at, the following organizational meetings/conferences to be more familiar and responsive to issues shared or topics raised with tribal governments:

- *Navajo Nation EPA 2018 Conference* at Twin Arrows on the NN, June 20-22 (speaker).
- *National Indian Law Workgroup* held in Santa Fe August 29-30 (speaker).
- *Institute for Tribal Environmental Professionals (ITEP) Tribal Superfund Working Group* April 25, 2018 (speaker).
- *Eight Northern Indian Pueblos Intertribal Resource Advisory Committee (IRAC)* (participated November 3, 2016; December 15, 2016; July 19, 2018; and March 28, 2019).
- *Regional Tribal Operations Committee (RTOC)* meetings of the 66 Federally-recognized Tribes and Pueblos in EPA Region 6 (participated July 2017; November 2017; April 2018; July 2018; and April 2019), including participation by the Deputy Secretary on Wednesday, July 17, 2019. Also, NMED and IAD worked alongside federal agencies of EPA, USDA, IHS, and HUD to develop a Tribal Drinking Water and Wastewater Systems Funding Agencies

Do's and Don'ts panel at the RTOC meeting in July 2018 to provide information to tribes, pueblos and nations on different funding opportunities this important infrastructure.

One of NMED's continuous challenges is programmatic underfunding and a high vacancy rate. Underfunding has resulted in fewer resources to offer to coordinate activities and travel. Every effort has been made to honor speaking requests, despite resource issues. NMED leadership is committed to advocating for additional legislative funding while efficiently administering NMED's programs as best as possible.

Another ongoing challenge NMED has specific to engagement with tribal nations is the request for additional time to comment on discharge permits in excess of the standard timeframes. NMED endeavors to learn of the concerns and seek to address them as early as possible to minimize relatively standard requests for more time to comment.

C. Goals for fiscal year FY20 relating to tribes and native organizations.

1. Greater engagement:

An overarching goal for NMED this year is to engage New Mexico tribes, nations and pueblos earlier in the rulemaking process, as described above for each of NMED's forecasted regulations. In addition, the Secretaries for NMED and EMNRD were designated as the chairs of the Climate Change Task Force in the Governor's Executive Order 2019-003. The task force, which includes the Indian Affairs Department, will provide strategic direction for achieving a statewide reduction in greenhouse gas emissions, improved air quality, and other measures that will protect New Mexico's vital natural resources, align with the Paris goals and keep New Mexico within what researchers have described as the upper bound of irreversible CO2 emissions. Those measures include adoption of approaches to reduce greenhouse gas and criteria pollutant emissions from light-duty vehicles sold in New Mexico; adoption of a comprehensive market-based program that sets emission limits across New Mexico; adoption of new building codes; and the identification of transmission corridors needed to transport the state's renewable electricity. NMED will share the report with tribal environmental directors and leadership and offer follow-up discussion if desired. NMED will continue to encourage and train all NMED staff to engage in peer-to-peer communications with tribal environmental staff.

2. Increased collaboration:

Another NMED goal for FY20 is to amend the 2010 MOA between Santa Clara Pueblo and NMED to reflect changes over time. The MOA was entered into to establish a protocol for inter-governmental cooperation and coordination independent of formal requests for consultation and sought to clarify the regulation of lands within the exterior boundary of Santa Clara Pueblo. NMED and Santa Clara Pueblo have been meeting bureau by bureau over the course of the last year to ensure necessary changes and anticipate the Secretary and Governor to have a signing ceremony at the Pueblo in the Fall of 2019. The MOA with Santa Clara Pueblo was the first of its kind in terms of a comprehensive approach to reviewing and identifying environmental regulation within the exterior boundaries of the Pueblo. NMED is interested in collaborating with

other pueblos that have significant non-pueblo fee lands within their exterior boundaries, to work together to protect lands from environmental contamination and address contamination where it has occurred.

NMED also seeks in FY20 to build on its participation and presentations on water and wastewater resources available to tribal governments by hosting a forum that focuses on state specific agencies and their resources for Tribes ad pueblos, in coordination with other appropriate funders such as the Water Trust Board and New Mexico Finance Authority

3. More site visits:

There is no better way to build trusting relationships than to show up when requested and NMED's goal in FY20 is to hold more meetings with tribal leadership in Indian Country than in recent years. NMED is communicating this goal internally by encouraging staff to meet personally when practicable. For example, NMED employees, including staff from the Ground Water Quality Bureau and the Tribal Liaison, have planned to meet with Governor Vallo and the Pueblo of Acoma's Water Commission in late August at the Pueblo of Acoma to better aid in the understanding of the water dynamics between the City of Grants Waste Water Treatment Plant and Pueblo lands.

4. Continued implementation for most effective STCA:

NMED is currently reviewing the agency's existing policy on consultation and collaboration, with the goal of updating the policy by the end of 2019. In addition, NMED plans to review all current NMED employees for compliance with the training of the STCA course in Cultural Competency.

V. Training & Employee Notification (11-18-4.(4)(6))

A. STCA Training and Certification

NMED scheduled a Cultural Competency course administered by the State Personnel Office (SPO) this FY, which was attended by 31 employees. NMED does not have existing data to compare how many current employees have attended to date and plans in FY20 to accurately assess and report the percentage of all current NMED employees that have completed the course. NMED has broadened its requirement for staff attendance and will schedule more Cultural Competency courses in FY20 to facilitate staff attendance.

B. Employee Notification about STCA

Through the Tribal Liaison, global emails are sent to NMED employees several times a year to remind those employees who have not yet attended and remind new employees of their obligation and opportunity to do so.

VI. Key Names & Contact Information (11-18-4.C (2))

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VII. Relevant Statutes & Mandates

Agency specific and applicable state or federal statutes and mandates. (Ex. State Tribal Collaboration Act, Transfer of Water Rights, National Historic Preservation Act, etc.).

Recent legislation signed into law:

House Bill 581 - The Hemp Manufacturing Act, NMSA 1978, §76-24

The Hemp Manufacturing Act provides that federally recognized Indian nations, tribes and pueblos located wholly or partially within New Mexico may, pursuant to Section 10113 of the Federal Agriculture Improvement Act of 2018, and as a matter of their inherent tribal sovereignty, develop their own plans for the regulation of the production of hemp on their own tribal lands, and that those plans shall be developed in compliance with the federal Agriculture Improvement Act of 2018. Specifically NMED and the NM Department of Agriculture (DoA) may enter into cooperative agreements or joint powers agreements with federally recognized Indian nations, tribes and pueblos located wholly or partially within New Mexico that seek the state's assistance in developing hemp production plans that are acceptable to NMED and DoA, or in the regulation

of hemp production on tribal lands, or in the testing of hemp plants for THC, or the transportation of hemp or hemp-derived material; provided that no such agreement shall purport to give the state any jurisdiction over any such activities or material on tribal lands. The Act further provided that a cooperative agreement or joint powers agreement may include provisions recognizing a tribally issued license that authorizes manufacturing on tribal lands, including the extraction, processing or engaging in other manufacturing activities regarding hemp, including manufacturing intermediate hemp-derived products and hemp finished products under Section 6 [76-24-8 NMSA 1978] of the Hemp Manufacturing Act.

House Bill 546 – The Produced Water Act (also known as the Fluid Oil & Gas Waste Act). The Produced Water Act establishes that the Oil Conservation Division of EMNRD has exclusive jurisdiction to regulate the appropriation and disposition of fluid oil and gas waste, including produced water, within the oil and gas exploration and production industry; however, when produced water is *treated for use outside of the oil and natural gas industry*, NMED maintains jurisdiction of these activities. The Produced Water Act has an affirmative requirement for a person to obtain a permit from NMED to use treated produced water, treated product or any byproduct of the produced water, in order to protect water quality in New Mexico, The Act further encourages the oil and natural gas industry to favor reuse, recycling and treatment options over reliance on New Mexico’s limited fresh water resources.

Senate Bill 489 - Energy Transition Act

The Energy Transition Act relates to electricity production and raises state quotas for production of renewable energy, establishes a goal of 100% carbon-free energy by 2045, and eases the financial, employment and other strains anticipated to occur as a result of moving the state away from coal power. This Act is implemented by EMNRD and importantly influences the work of the Climate Change Task Force co-chaired by the secretaries of EMNRD and NMED.

Governing statutes generally:

NMSA 1978, §9-7A-6; Executive Department, Department of Environment;
NMSA 1978, §50-9-19; Occupational Health and Safety Act;
NMSA 1978, §74-1-1 through 74-1-17; Environmental Improvement Act;
NMSA 1978, §74-1-6; Department Powers;
NMSA 1978, §74-4-1 through 74-4-14; Hazardous Waste Act;
NMSA 1978, §74-4A-1 through 74-4A-14; Radioactive and Hazardous Materials Act;
NMSA 1978, §74-4B-1 through 74-4B-14; Emergency Management Act;
NMSA 1978, §74-4C-1 through 74-4C-4; Hazardous Waste Feasibility Study Act;
NMSA 1978, §74-4E-1 through 74-4E-9; Hazardous Chemicals Information Act;
NMSA 1978, §74-6-1; State Water Quality Act;
NMSA 1978, §74-6A-1 through 74-6A-13; Wastewater Facility Construction Loan Act;
NMSA 1978, §74-6B-1 through 74-6B-14; Ground Water Protection Act;
NMSA 1978, §74-6-2 through 74-6-17; Environmental Improvement Act;
NMSA 1978, §74-7-1 through 74-7-8; Environmental Compliance Act;
NMSA 1978, §74-8-1 through 74-8-3; Solid Waste Incineration;
NMSA 1978, §74-9-1 through 74-9-43; Solid Waste Act;

NMSA 1978, §74-10-1 through 74-10-100; Solid Waste Authority Act;
 NMSA 1978, §74-13-1 through 74-13-20; Recycling and Illegal Dumping Act;
 NMSA 1978, §74-13A-1; Petroleum Products Loading Fee Act;
 NMSA 1978, §75-1-1 through 75-1-6; Rural Infrastructure Act.

VIII. Agreements

Tribe/Pueblo/Nation Government	Agency	Activity	Agreement Name	Current Status	Contact/Phone
Pueblo of Pojoaque Environment Department	NMED	Abatement of soil and water pollution	Cooperative Agreement	In effect, effective since 5-1-01	GWQB Chief (505) 827-2919
Pueblo of Zuni EPA	NMED and Federal	Underground Storage Tank Cleanup, at Malco site	Cooperative Agreement	In effect, effective since 11-9-04	PSTB Chief (505) 476-4377
Pueblo of Zuni	NMED	Underground Storage Tank Cleanup, at Mustang Store 7256	Cooperative Agreement	In effect, effective since 3-20-02	PSTB Chief (505) 476-4377
Pueblo of Laguna	NMED	Underground Storage Tank Cleanup at Laguna Mart	Cooperative Agreement	In effect, effective since 6-21-00	PSTB Chief (505) 476-4377
Pueblo of Laguna	NMED, U.S. EPA, the Grants/Cibola County School Board	Underground Storage Tank Cleanup for a former Grants/Cibola County Schools Maintenance Yard, Paraje	Memorandum of Agreement (MOA)	Effective 5-31-16	PSTB Chief (505) 476-4377

Tribe/Pueblo/Nation Government	Agency	Activity	Agreement Name	Current Status	Contact/Phone
Jicarilla Apache Tribe Environmental Protection Office	NMED	Underground Storage Tank Cleanup at the Lodge at Chama, amended to include the Gomez Stop and Go Site	Cooperative Agreement	In effect signed 6-15-00 Amended 8-16-02	PSTB Chief (505) 476-4377
Picuris Pueblo	NMED	Underground Storage Tank Cleanup and Petroleum Remediation	Consent for Access to Property	Effective 6-14-07	PSTB Chief (505) 476-4377
Ohkay Owingeh	NMED	Underground Storage Tank Cleanup and Petroleum Remediation activities	Consent for Access to Property	Effective 9-10-08	PSTB Chief (505) 476-4377
Pueblo of San Ildefonso	NMED	Soil, water, air, and plant monitoring as well as sampling to evaluate LANL activities	MOU	In effect, effective since 2-7-14	DOE Oversight Bureau Chief (505) 383-2074
Navajo Nation and Southern Ute Indian	NMED	Four Corners Air Quality Group Cooperation	MOU	In effect, effective since 12-03-15	Air Quality Bureau, Mark Jones (505) 566-9746
Pueblo of Santa Clara	NMED	Comprehensive description of Regulatory activities within exterior boundary by environmental media	MOA	In effect, effective since 12-20-10	Kathryn Becker (505) 827-2054