

# NEW MEXICO ENVIRONMENT DEPARTMENT STATE TRIBAL COLLABORATION ACT 2020 ANNUAL REPORT



Photo credit: Region 6 Tribal Operations Committee Meeting in Dallas, April 2019, with NMED's Tribal Liaison in attendance

State of New Mexico

ENVIRONMENT DEPARTMENT

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## I. Executive Summary

Every day the New Mexico Environment Department (“NMED” or “the Department”) works to protect, restore, and foster a healthy and prosperous environment for all New Mexicans. The Department’s work is broad and includes the regulation and oversight of air, solid and hazardous waste, surface and groundwater quality, environmental and public health, drinking water, petroleum storage tank systems, radiation sources, public food establishments, and occupational health and safety. Through its statutory and regulatory programs and operations under both state and federal law, NMED has the chief executive function of protecting the environment and human health across the State. NMED’s extensive regulatory and enforcement authority over state, federal, and private sector entities impact all New Mexicans, directly and indirectly.

This fiscal year NMED leadership took the opportunity in FY20 to travel to tribes and pueblos around the state to meet with tribal leadership as much as possible. Deputy Secretary Jennifer Pruett and Tribal Liaison Kathryn Becker, traveled to Kewa Pueblo, San Felipe Pueblo, Acoma Pueblo, the Navajo Nation, the Jicarilla Apache Nation, and Jemez Pueblo. In each instance, Deputy Pruett jointly developed agendas through her Tribal Liaison and sought to bring staff along that could best engage on the topics proposed. NMED included Dr. Brad E. Lewis of the New Mexico Department of Agriculture in this effort, and he attended all the trips to discuss how the Hemp Rules impact the growing and production of hemp. NMED described how NMED regulates the manufacture and consumption of hemp-based products. Trips to Indian Country planned for this summer have been postponed due to the COVID-19 pandemic but will resume when it is safe to do so.

## 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 through 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 responsible for administering and overseeing the State’s environmental laws and exercising the functions relating to environmental protection, natural resources, and public health and safety. NMED

employs approximately 508 staff across four divisions. Principally, NMED's environmental 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 ("WPD") 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 ("EPD") 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. Specific Tribal Collaboration/Consultation policy NMED has adopted in addition to STCA (NMSA 1978, § 11-18-4(C)(1))

NMED's current tribal collaboration/consultation policy was signed by Secretary Kenney on January 20, 2020. The current policy builds upon the original policy created in response to the STCA on December 17, 2009. NMED continues to expand its outreach to tribal populations beyond any government outreach and participation procedures required by statute or regulation, as required by NMED Policy & Procedure 07-11: Limited English Proficiency Accessibility and Outreach Policy; and NMED Policy & Procedure 07-13: Public Participation Policy for NMED. NMED staff are also trained to use NMED's own GIS mapping tool to identify tribal lands (checkerboard and exterior boundaries) and use the New Mexico Indian Affairs Department's ("IAD") contact information for tribes, pueblos and nations in New Mexico. These 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 such services. Additionally, 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.

III. Agency Efforts to Implement Policy (NMSA 1978, § 11-18-4(C)(3))

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).

**Water Protection Division**

**CONSTRUCTION PROGRAMS BUREAU ("CPB")**

*Consultations and Meetings*

The Construction Programs Bureau Chief participates in regular Tribal Infrastructure Fund ("TIF") Board meetings and assists IAD in streamlining existing programmatic procedures, guidelines, and policies, to increase the efficiency and effectiveness of the TIF program.

*Project oversight and highlights*

CPB provided oversight and technical assistance on twenty-six capital outlay projects awarded to tribal entities with total funding of over \$7.69 million dollars and one planning grant in the amount of \$50,000 for Tesuque Pueblo. Most of the funding was awarded in SFY 2020 legislative session and the projects have not yet started. The projects include water, wastewater and solid waste projects on the Navajo Nation including the Baahaali, Chichiltah, Iyanbito, Lake Valley, Mexican Springs, Sheepsprings, Shiprock, Smith Lake, Tse'ii'ahi', Naschitti, Tse anaozti'ii, Tse'Daa'Kaan, White Rock, Two Grey Hills, and Counselor chapters, and the Fort Sill Apache Nation.

Acoma Pueblo, Sandia Pueblo, Navajo Nation Shiprock Chapter, and Nambe Pueblo all completed capital outlay funding projects in SFY 2020. 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.

#### *Agreements and Protocols*

NMED works with IAD through an Intergovernmental Agreement (IGA), effective in January of 2018, which remains in effect until either party cancels it. Under the IGA, CPB engineering and program staff provide oversight and technical support to tribal and pueblo communities that receive applicable funding.

#### DRINKING WATER BUREAU (“DWB”)

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

#### *Navajo-Gallup Water Supply Project (“NGWSP”)*

The DWB continues to participate in regulatory coordination meetings and 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 (“NNEPA”), Navajo Nation Department of Justice (“NNDJ”), 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 DWB 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. The Cutter Lateral Treatment Plant is currently being designed and constructed and drinking water from this portion of the project is expected to be delivered as early as the 4<sup>th</sup> quarter of calendar year 2020. 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.

Most recently, the regulatory agencies have developed a Memorandum of Understanding (“MOU”) and have tentatively reached an agreement in principal on jurisdiction over the different parts of the system. The purpose of the MOU is to describe the roles and responsibilities of the various agencies with regulatory oversight for different components of the NGWSP, to identify shared expectations and understandings of EPA, NMED, and NNEPA in coordinating their respective oversight obligations, and to foster consistent and ongoing communication between the Parties. The regulatory agencies are in discussion with the Navajo Nation to ensure tribal concerns and needs are included in the MOU concerning authority over the NGWSP’s components and public water systems.

#### *Pojoaque Regional Water System*

The DWB has been working in coordination with 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 whether NMED has any jurisdictional authority for any components of this regional water system.

#### GROUND WATER QUALITY BUREAU ("GWQB")

The GWQB has been involved in numerous meetings related to the Tronox Settlement, and is working collaboratively with EPA Regions 6 and 9 and the Navajo Nation to develop alternatives for disposal of uranium-bearing waste rock from the Quivira Mine, located in 17 miles northeast of Gallup and on the southern border of the Navajo Nation. The parties are investigating locations that would result in disposal of the Quivira Mine waste in areas outside of the Navajo Nation.

In SFY 2020, the GWQB conducted two environmental site assessments with pueblo governments and held meetings with pueblo environmental staff to discuss Brownfields funding opportunities. Santa Ana Pueblo requested a Phase II Environmental Site Assessment for the American Tower Site, and NMED's contractor completed this project on September 5, 2019. At the request of Acoma Pueblo, a Phase II Environmental Site Assessment is underway at the Acomita Day School. The Phase II work follows a Phase I Environmental Site Assessment conducted in 2018 through the NMED Brownfields Program.

NMED Brownfields staff, NMED Petroleum Storage Tank Bureau ("PSTB") staff, and Santa Clara Pueblo staff met on February 6, 2020 to discuss available Brownfields Assessment funds for a travel stop site in Espanola, NM. That project is pending. NMED Brownfields and State Cleanup staff attended an EPA Quality Assurance training, offered at Santa Ana Pueblo on August 27-29, 2019. Environmental staff from various Pueblos also attended. NMED Brownfields staff held an informal meeting with the Eight Northern Indian Pueblos Council ("ENIPC") on December 18, 2019 to update each agency on current activities and determine potential collaborative efforts in the next calendar year.

GWQB staff and Santa Clara Pueblo officials completed an agreement on decommission and demolition ("D&D") activities for the Bio-Curtain treatment system components and piping infrastructure as well as groundwater sampling of existing monitoring wells at the North Railroad Avenue Plume ("NRAP") Superfund site in Espanola. Santa Clara Pueblo Environmental Office personnel worked with GWQB staff to coordinate all D&D and sampling activities on tribal lands. On December 12, 2019, EPA Region 6 management coordinated an informational meeting with the Santa Clara Pueblo, including participation of GWQB staff, to discuss the NRAP site remedial action status and discovery of a second groundwater plume (determined to be separate from the NRAP site plume). On March 3, 2020, EPA-Region 6 management, NMED management and project manager attended a Santa Clara Pueblo Tribal Council meeting to discuss the cleanup status of the NRAP Site, NMED's plans for addressing a new dry-cleaner source, and funding for both cleanup efforts.

As part of a continuing conversation with the Pueblo of Acoma leadership and the Acoma Water Commission, NMED conducted a preliminary field trip with Acoma Pueblo on August 28, 2019 to

the area downstream of the City of Grants Wastewater Treatment Facility (“WWTF”) and a nearby subdivision to evaluate seepage from treated wastewater ponds and the potential impact to the Rio San Jose. After the August trip, NMED developed a scope of work to collect surface water samples from several locations, including the treated wastewater ponds, an unnamed arroyo, and upstream and downstream from the confluence of the unnamed arroyo and Rio San Jose. NMED returned to the area on February 20, 2020, collected surface water samples, and requested the State Scientific Laboratory Division analyze the samples for nutrients, metals, and major ions. The results were inconclusive, and therefore NMED is recommending additional sampling immediately upstream and downstream of the confluence to help the NMED and Acoma Pueblo better understand wastewater influences in the Rio San Jose.

### 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 EPA for those discharges within the State of New Mexico 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 tribes, nations and pueblos to attend the bureau’s Wetlands Roundtables conducted on November 19, 2019, December 9, 2019, March 24, 2020, and April 30, 2020, and several tribes participated. At the December 9 meeting in Santa Fe, Michael Scialdone representing the Pueblo of Sandia presented “Dealing with Ravenna Grass in the Bosque.” Adam Ringia, from Southwest Tribal Fisheries Commission and Pueblo of Laguna, participated on the Advisory Committee for the development of New Mexico Rapid Assessment Methods for Confined Valley Riverine Wetlands on June 10, 2020.

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 on the pueblo along the Rio Grande. The project included removing exotic trees and shrubs, creating low flow channels through high and dry areas, and planting native trees and shrubs. This project was successfully completed in 2020.

Additionally, in SFY 2020 SWQB staff who review and certify Clean Water Act Section 404 permits and authorizations routinely coordinated with environmental staff from tribes, nations and pueblos, regarding four certifications and confirmations for projects located near or crossing onto their lands.

#### *Water Quality Monitoring*

The SWQB provided information to the Pueblo of Jemez regarding the status of historic monitoring stations in the Jemez River watershed located on pueblo land and plans for future monitoring. The Pueblo requested coordination on any future monitoring. A watershed survey of the Jemez River is planned for 2021-2022. SWQB will include the Pueblo in its outreach and seek input during the survey planning process.

Additionally, in response to a concern by Acoma Pueblo regarding water quality impacts to Rio San Jose from the City of Grants wastewater treatment facility, SWQB sampled arroyos downgradient of the facility and locations on the Rio San Jose both upstream and downstream of the area of concern. EPA Region 6 and the GWQB accompanied SWQB staff.

As part of the planning process for the Triennial Review of surface water quality standards, SWQB (through the NMED Tribal Liaison) sent an email to Tribal Environmental Directors introducing the Triennial Review to request feedback and ascertain interest. Tribes also will be included in stakeholder outreach regarding the Triennial Review. Finally, the SWQB will conduct tribal outreach in early 2021 for the upcoming Jemez River, Chama River, and lower Pecos River water quality surveys as well as for planned total maximum daily loads (“TMDLs”) for the Upper Rio Grande and San Juan River watersheds.

### **Resource Protection Division**

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

The 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 staff attend 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. DOE-OB scientists and hydrologists are available to 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.

Working under a Memorandum of Agreement (“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. More recently the DOE-OB updated its attachment in the First Amendment to the MOA with the Pueblo of Santa Clara.

DOE-OB staff continue to provide 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. This coming year, the DOE-OB plans on expanding its environmental outreach and educational opportunities to additional pueblos.

#### HAZARDOUS WASTE BUREAU (“HWB”)

The HWB principally has two large facilities that involve significant outreach and collaboration with tribes: Fort Wingate and Los Alamos National Laboratories (“LANL”).

##### *Fort Wingate*

NMED issued a state Hazardous Waste Facility Permit to the United States Department of the Army (“Army”) in 2005 that requires the Army to close an inactive Open Burn or Open Detonation hazardous waste treatment unit and implement corrective action where necessary to investigate and clean up releases of contaminants from historic operations at the closed Fort Wingate Army Depot. The Permit includes specific provisions for tribal consultation and review of corrective action documents prior to approval of corrective actions by the HWB. 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 in tribal consultation with both tribes by travelling to their lands to discuss ongoing cleanup activities with tribal representatives; however, this interaction has been disrupted by the COVID-19 pandemic. As part of maintaining communication with the Navajo Nation and Pueblo of Zuni, the HWB will consult 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 Laboratories*

The HWB continues to work with Accord Pueblos, 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.

## PETROLEUM STORAGE TANK BUREAU (“PSTB”)

### *Consultations and Meetings*

The PSTB and EPA’s Region 6 Underground Storage Tank program coordinate and conduct joint compliance inspections of underground storage tanks (“UST”) at privately owned or operated facilities on non-pueblo fee lands within the exterior boundaries of pueblos that constitute Indian Country. The PSTB also oversees or directs corrective action at various petroleum storage tank release sites within the exterior boundaries of pueblos and on the Jicarilla Apache Nation (“JAN”) due to a formal agreement with JAN for privately owned or operated facilities on tribal land.

As of SFY 2020 there are currently 13 UST facilities within the exterior boundaries of pueblos in New Mexico at which EPA and PSTB inspectors perform joint inspections. EPA conducts compliance inspections on a three-year cycle. EPA scheduled one compliance inspection at a UST facility in SFY 2020, but it was postponed due to the COVID-19 pandemic. PSTB staff inspected three state-owned above ground storage tank facilities within the exterior boundaries of tribal lands and JAN, two in Dulce and one in Mesita. PSTB also conducts inspections including compliance inspections at petroleum storage tank release sites where PSTB is overseeing or directing the corrective action and where there is an agreement in place with the tribe, pueblo or nation. PSTB inspectors and staff also make themselves available if requested to support and accompany tribal staff or EPA on inspections including oversight of tank installations, tank closures, repairs and modifications or to provide technical assistance and consultation with EPA with agreement of subject tribal governments.

The PSTB coordinates environmental corrective action at various sites within the exterior boundaries of pueblos and JAN and provides updates to the respective pueblo or nation and EPA accordingly and when requested. Currently, corrective action is being performed at the following sites in accordance with a formal agreement and/or site-specific access agreement:

- Pueblo of Laguna:
  - The Laguna Mart release site (Release ID #3613), where an air sparge/soil vapor extraction remediation system is being operated.
  - The Laguna Bus Barn (School Maintenance Yard) (Release ID #24), where continued monitoring and non-aqueous phase liquid (NAPL) removal is being conducted.
- Ohkay Owingeh:
  - A’s 7-11 Mini Mart release site (Release ID # 4043), where continued groundwater monitoring is being performed.
  - Fairview Station state lead site (Release ID# 4657), where groundwater monitoring and NAPL removal are being performed in conjunction with a Final Remediation Plan being submitted for soil excavation and a multiphase remediation system installation.

- Picuris Pueblo:
  - A-1 Auto release site (Release ID #764), where groundwater monitoring is being performed.
- Santa Clara Pueblo:
  - Big Rock state lead site (Release ID # 393), where groundwater monitoring is being performed.
  - Big Rock 66 release site (Release ID #4620), where PSTB has approved an initial investigation. This investigation will help to determine the nature and extent of the petroleum hydrocarbon contamination associated with the release.



Photo: Tank Removal at Ohkay Owingeh Overseen by PSTB



Photo: Remediation system at Laguna Mart on Laguna Pueblo

The PSTB continues to work with and support pueblos, tribes, and nations as well as EPA as requested and provide them regular updates on specific sites or other requested information. The PSTB also meets with pueblos and JAN on occasion to review site status. On February 6, 2020, the PSTB participated in a meeting with representatives from Santa Clara and the Ground Water Quality Bureau to discuss development plans in an area with multiple petroleum storage tank facilities and release sites. Similarly, the PSTB annually reviews facility and release site inventories with EPA Region 6 and during SFY 2020, a comprehensive review was conducted to avoid double counts and to clearly identify the lead the responsible agency.

#### *Agreements and Protocols*

The PSTB maintains signed cooperative agreements with Zuni Pueblo, Laguna Pueblo, and JAN specifically for remediation activities at petroleum storage tank release sites. In addition, the petroleum storage tank facilities and release sites are addressed in the Department-wide MOA with Santa Clara. PSTB has signed access agreements allowing PSTB oversight of remedial activities within the external boundaries of Picuris Pueblo and Ohkay Owingeh.

The PSTB participated in the Department-wide initiative to update the existing MOA with the Pueblo of Santa Clara. During the discussions, Appendix G of the MOA was updated to include all existing releases within the external boundary of the Pueblo and identify regulated facilities that are jointly inspected with EPA Region 6. As part of the PSTB and EPA Region 6 Underground Storage Tank program's ongoing review of the list of releases that are located within the external boundaries of the pueblos or tribes that have been referred to EPA, the following sites were removed from PSTB's inventory and included on EPA's inventory (LUST4 report). EPA Region 6 has provided letters to the PSTB documenting this decision, and the LUST4 report will be corrected at the next reporting period at the end of the federal fiscal year. The subject sites are:

- Pueblo of Laguna: Transwestern Pipeline, Laguna, NM.
- Santa Clara Pueblo: Gonzales Chrysler, Espanola, NM.
- Mescalero Apache Tribe: Chevron Station Number 76082, Mescalero, NM.
- Pueblo of Pojoaque: Sam's Texaco, Pojoaque, NM.

#### SOLID WASTE BUREAU ("SWB")

During SFY 2020, the SWB offered four, three-day Solid Waste Facility Operator Certification Courses, and nine solid waste facility operators from eight different pueblos, tribes, or nations attended. The courses were held in the fall of 2019. Courses were also scheduled for spring 2020 but were postponed due to the COVID-19 pandemic. Solid waste facilities on tribal lands are not required to have a certified operator on staff, but many choose to send operators to the SWB's classes to gain additional training.

The SWB's Outreach Section staff presented information and led a discussion on household hazardous waste management practices for tribal communities at a meeting of the Intertribal Resource Advisory Committee ("IRAC") at Santo Domingo Pueblo on July 30, 2019.

#### **Environmental Protection Division**

#### AIR QUALITY BUREAU ("AQB")

##### *Four Corners Air Quality Group*

The AQB, along with representatives from NNEPA and the Southern Ute Indian Tribe ("SUIT") Air Program participated in the October 23, 2019 Four Corners Air Quality Group Meeting in Durango, CO. NNEPA, 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.

##### *VW Settlement Fund*

NMED is the lead agency for the Volkswagen settlement environmental mitigation funding. Please see our new website at </air-quality/vw-settlement/>. NMED awarded the Pueblo of Sandia \$56,540 from the NM Volkswagen Settlement Fund towards the installation of three electric vehicle charging stations to be located at the Sandia Pueblo Casino.

## ENVIRONMENTAL HEALTH BUREAU (“EHB”)

On August 16, 2019, the EHB participated in a tribally targeted outreach meeting on hemp growing, extraction, and manufacturing hosted by NMED in Albuquerque. The EHB presented on requirements for hemp facilities operating in NMED’s jurisdiction, answered questions, and began dialogue to assist with tribal extraction and manufacturing facility program development. The EHB also participated regularly with NMDA in meetings, with the leadership of New Mexico’s tribes, nations and pueblos regarding updates within each agency that may impact tribal affairs. NMED and NMDA staff were able to meet with leadership of the following: Kewa Pueblo, San Felipe Pueblo, Pueblo of Acoma, Navajo Nation, Jicarilla Apache Nation.

## RADIATION CONTROL BUREAU (“RCB”)

### *Training and Assistance*

The Indoor Radon Outreach Program (“IROP”) received invitations from Sandia and Isleta Pueblos to participate in community outreach events (environmental/health fairs) to be held in Spring 2020, but these were canceled due to the COVID-19 pandemic. In October 2019, the IROP provided 50 free radon test kits to Cochiti Pueblo, and in November 2019, 100 free radon test kits to Pojoaque Pueblo, for use in their environmental programs. In July 2019, IROP staff participated in the Isleta Pueblo Community Environmental Fair, staffing a booth, answering questions, and distributing free radon test kits.



Photo: RCB table setup at the Isleta Fair.

## IV. [Current & Planned Programs and Services for Native Communities \(NMSA 1978, § 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 currently is actively engaged with tribes, nations and pueblos to participate in the development of the following three rules:

#### NEW MEXICO PRODUCED WATER

House Bill 546 (“HB546”), the [Produced Water Act](#), went into effect July 1, 2019, and defines produced water as “fluid that is an incidental byproduct from drilling for or the production of oil and gas.” Most produced water is naturally occurring, highly saline water that is recovered during oil and gas production. Produced water may also include fluids that were used during drilling, such as hydraulic fracturing fluids. Over 42 billion gallons of produced water were created in New Mexico’s Permian Basin in 2018 alone. NMED hosted public meetings in five locations throughout the State in October and November 2019 along with representatives from the Energy, Minerals and Natural Resources Department (“EMNRD”) and the Office of the State Engineer (“OSE”) to provide stakeholders with information on produced water and the upcoming rulemaking process.

Specific to the Department’s effort to build meaningful dialogue and collaboration with tribes, NMED WPD Director Rebecca Roose met with the Coalition of Six Middle Rio Grande Basin Pueblos on March 5, 2020 at their regularly scheduled meeting at the Pueblo of Sandia. In addition, NMED held a meeting for executive tribal leadership on March 12<sup>th</sup> to be hosted by the Pueblo of Sandia; however, due to the imminently advancing COVID-19 pandemic, the meeting was ultimately held by webinar. Leadership from NMED, EMNRD, and OSE all participated in the webinar to address the questions and perspectives of tribal leadership.

These meetings were held ahead of the formal NMED rulemaking process that will lead to regulations over the reuse and treatment of produced water outside of the oil and gas industry, as stipulated in the Produced Water Act. NMED has not set a timeline by which formal rulemaking will commence. Any regulations that are drafted must go through a formal rulemaking process before the state’s Water Quality Control Commission, including the opportunity for the public to comment.

NMED entered into a memorandum of understanding (“MOU”) with New Mexico State University (“NMSU”), which will create a produced water research consortium. Through this consortium, New Mexico will continue to lead the country in advancing scientific and technological solutions related to the treatment and reuse of produced water generated by the oil and gas industry.

The consortium will develop a framework to fill scientific and technical knowledge gaps necessary to establish regulations and policies for the treatment of produced water. Such regulations and policies must be protective of public health and the environment while encouraging the oil and natural gas industry to rely less on fresh water and more on reuse of produced water. The memorandum of understanding spurs economic investment opportunities in New Mexico through NMSU, which will rely on public and private funding to carry out this research. The expertise of NMSU and NMED will be augmented by consortium members from academia, national laboratories, the private sector, non-governmental organizations and state and federal

agencies. NMSU will manage the consortium membership and process, with some assistance from NMED.

NMED's Tribal Liaison continues to reach out to tribal environmental directors with updates as they become available.

#### METHANE REGULATION

NMED and EMNRD were charged by Gov. Michelle Lujan Grisham's [Executive Order on Addressing Climate Change and Energy Waste Prevention](#) to develop administrative rules to regulate methane emissions. NMED focused on promulgating regulations that target ozone precursors, NOx and VOC, as it is statutorily prohibited from directly regulating methane. VOC and methane are emitted in tandem; by regulating VOC, NMED also reduces methane emissions.

NMED and EMNRD presented to the All Pueblo Council of Governors (APCG) in April 2020. In addition, NMED has reached out to leadership and environmental staff with both the Navajo Nation and Jicarilla Apache Nation regarding this effort.

NMED released the first draft rules on July 20, 2020, starting a public comment period until August 20. NMED's Tribal Liaison sent a copy of the first draft of rules to all tribal environmental directors. Once NMED petitions the Environmental Improvement Board for a rulemaking hearing and submits another draft of the rules, NMED and EMNRD will request to be placed on the APCG calendar and notify the tribes, pueblos, and nations of the opportunity for government-to-government consultations on the draft regulations.

#### HEMP MANUFACTURING ACT

The Hemp Manufacturing Act gives NMED authority over hemp manufacturing, and allows the agency to 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 held a tribally-targeted outreach meeting on August 16, 2019 in Albuquerque to develop meaningful regulations that will provide economic benefits to tribal individuals and entities as it relates to hemp. NMDA's Hemp Cultivation Rule, 21.20.2 NMAC and NMED's Hemp Post-Harvest Processing Rule, 20.10.2 NMAC, are now final rules. NMED and NMDA had scheduled a workshop for tribal governments on April 16, 2020 at Hotel Santa Fe; however, due to the COVID-19 pandemic, the workshop was postponed. Due to the high interest in evaluating state and federal implementation plans and market viability, NMED and NMDA plan to host the tribal workshop as soon as it is safe and will again work with the Pueblo of Picuris to host the event. The workshop will include a discussion of general requirements, different types of permits, transportation, testing, recordkeeping, and include a tour of a manufacturing facility.

## **NMED science and grant activities:**

### Gold King Mine (“GKM”)

NMED works closely with the NNEPA and Department of Health on water infrastructure improvements for the Navajo Nation through the 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act). The GKM contamination plume traveled through the Animas and San Juan River watersheds to Lake Powell, Utah, requiring continued long-term efforts to monitor and share gathered data. New Mexico’s and the Navajo Nation’s litigation against the federal government on the spill is ongoing, and the state continues to seek and receive Congressional appropriations to develop a long-term water quality monitoring program for the Animas and San Juan watersheds. The following ongoing WIIN Act-funded activities have benefitted the State of New Mexico and the Navajo Nation:

- Operation of river sondes that provide real-time water-quality data;
- NMED and Navajo Nation 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 2019 and 2020.

### RAID Grants

The Recycling and Illegal Dumping (“RAID”) Act includes pueblos, tribes, and nations as entities eligible to apply for 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. SWB Outreach Section staff were scheduled to present information about RAID Act grants at the EPA Regional 6 Tribal Conference at Santa Ana Pueblo on March 24, 2020, but the event was cancelled due to the COVID-19 pandemic and will be re-scheduled when it is safe to do so.

In SFY 2020, three RAID grants were awarded to three pueblos for a total of \$75,800 (see detail below). All projects were successfully completed.

- Pueblo of Zuni: \$6,900: Purchase of recycling bins, stations, and signage for recycling and recycling awareness at tribal public events.
- Pueblo of Zuni: \$11,800: Purchase of picnic tables made from recycled tires to help raise awareness about the importance of tire recycling.
- Isleta Pueblo: \$57,100: Eliminate stockpiles of illegally dumped tires throughout Pueblo land through purchase of a tire cutter and proper disposal of tires. Surveillance

equipment was purchased and installed as a preventive measure against future illegal dumping of tires.

B. Main agency accomplishments and challenges regarding work with tribes and native organizations including significant state-tribal issues, recommendations and/or priorities addressed in FY20.

Agency accomplishments in FY 2020 include NMED's first joint press release with Picuris Pueblo regarding illegal discharges. In August 2019, NMED and the Picuris Pueblo conducted an effluent investigation and jointly released a press release to ask for assistance identifying the violator. In New Mexico, the illegal discharge of any contaminant without a permit is a 4<sup>th</sup> degree felony and the Governor of Picuris Pueblo offered a financial reward. NMED looks forward to similar communications and collaborations with tribal governments throughout the state.

NMED also worked with the Pueblo of Pojoaque this fiscal year to resolve the improper disposal of wastewater sludge on Pueblo lands by Bishop's Lodge, a Santa Fe hotel. In March 2019, the hotel allegedly transported 135 truckloads of sludge from its decommissioned wetland ponds to sovereign lands within the Pueblo, without Pueblo authorization. NMED cited Bishop's Lodge for failure to properly characterize, test, manifest, transport, and dispose of the sludge, and issued an administrative compliance order ("ACO") with a \$59,000 civil penalty. The enforcement action, issued in January 2020, included the requirement that Bishop's Lodge provide for proper removal of the sludge from the Pueblo lands and for proper transport and disposal at a permitted landfill. Bishop's Lodge has contested the ACO and is awaiting a hearing on the matter.

An accomplishment many months in the making was the successful update of the 2010 MOA between the Pueblo of Santa Clara and NMED. On November 13, 2019, Deputy Secretary Pruett and Governor Chavarria signed the First Amendment to the MOA at the Pueblo of Santa Clara. Over the course of a year, NMED and the Pueblo of Santa Clara met one bureau at a time to ensure changes were reflective of current conditions and access protocols. The MOA with Pueblo of Santa Clara remains 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 employees continue to build professional relationships with tribal environmental staff. NMED's on-call and incident response team continue to build professional relationships with tribal environmental staff this fiscal year as to clarify questions of jurisdiction and to improve shared contact and coordination. During the past year specific incidents that included coordination were the response to contamination in the Rio Pueblo that runs along Picuris Pueblo, as well as coordination on spill responses to highway accidents on or near the Sandia Pueblo and Santa Clara Pueblo.

NMED’s Tribal Liaison continues to participate in the organizational meetings to be more familiar and responsive to issues shared or topics raised with tribal governments, including the *Eight Northern Indian Pueblos Intertribal Resource Advisory Committee (IRAC)*, and the *Regional Tribal Operations Committee (RTOC)* meetings of the 66 Federally recognized Tribes and Pueblos in EPA Region 6

As an ongoing matter, NMED and IAD worked alongside DOH and the Department of Homeland Security and Emergency Management to tour and develop recommend approaches and funding sources to address extensive water damage to homes in the vicinity of the plaza at Kewa Pueblo. It is expected that a state-tribal workgroup led by IAD will continue to address housing needs in the Pueblo.



Photo: DHSEM Acting Secretary Hamilton & NMED Deputy Secretary Pruett at Kewa Pueblo.

Departmental challenges continue to be programmatic underfunding and a high vacancy rate. Underfunding has resulted in fewer resources to offer to coordinate activities and travel. NMED makes every effort 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 continued challenge specific to engagement with tribal nations is the request from communities for additional time to comment on discharge permits beyond 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. An example of NMED's recent effort to meet this challenge has been to reassemble an internal LANL working group to share restoration and permitting efforts among the many bureaus involved in the regulatory oversight of this federal facility. NMED's will reach out to those pueblos that have sustained interest in the actions of NMED related to this facility so that with early notice and involvement, there are less requests for additional time and information.

### C. Goals for fiscal year FY21 relating to tribes and native organizations.

#### ii. Greater engagement:

A continued overarching goal for NMED is to engage New Mexico tribes, nations, and pueblos earlier in the rulemaking process, as described above for each of NMED's forecasted regulations. NMED also seeks in SFY 2021 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 and pueblos, in coordination with other appropriate funders such as the Water Trust Board and New Mexico Finance Authority.

#### ii. More site visits:

There is no better way to build positive relationships than to honor requested meetings and engagements. NMED's goal in SFY 2021 is to hold more onsite meetings with tribal leadership in Indian Country than in recent years. NMED, through Deputy Secretary Pruett, met with tribal leadership in their tribal office eight times this year to show the interest, commitment and value of face to face communications. Deputy Secretary Pruett and Tribal Liaison Kathryn Becker will resume travel once it is safe to do so, or will conduct virtual meetings if preferred.

#### iii. Continued implementation for most effective STCA:

NMED updated its State Tribal Collaboration Act policy in January 2020 and plans to train all current NMED employees on the policy and STCA. NMED will also encourage peer-to-peer sharing of information and ideas in the area of citizen science and tribal ecological knowledge ("TEK").

## II. Training & Employee Notification (NMSA 1978, § 11-18-4(C)(4) and (6))

### A. STCA Training and Certification

NMED continues to find creative ways to track the number of agency employees who have attended required STCA training to date, but at this time there is no data to compare completion records over the last ten years. NMED leadership aids the Tribal Liaison in sending out email communications to make new employees aware of their obligation to attend STCA training and to remind existing staff of the option to attend annually.

### B. Employee Notification about STCA

Over the course of the last three years, NMED's Tribal Liaison has met with each bureau at an all hands meeting to review the contents and significance of the STCA and to offer assistance with communications, points of contact, land status determinations, and other related question. NMED leadership will continue to offer the services of the NMED Tribal Liaison upon request to any bureau chief or division director to aid in the transmission of information.

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

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IV. Relevant Statutes & Mandates

- A. 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 167- An important bill for protecting public health and the environment. This bill secures a \$1.8 million appropriation to leverage about \$9 million in federal funds for grants and loans for wastewater infrastructure, nonpoint source water pollution control projects, and watershed restoration projects to qualified borrowers. This is the annual state match for the Clean Water State Revolving Loan Fund.

*Governing statutes generally:*

NMSA 1978, §9-7A-6; Executive Department, Department of Environment;  
 NMSA 1978, §25-1-1 to 25-1-15; Food Service Sanitation Act  
 NMSA 1978, §50-9-1 to 50-9-25; Occupational Health and Safety Act;  
 NMSA 1978, §§ 74-1-1 to 74-1-10; Environmental Improvement Act;  
 NMSA 1978, §§ 74-2-1 to 74-2-17; Air Quality Control Act  
 NMSA 1978, §§ 74-3-1 to 74-3-16; Radiation Protection Act  
 NMSA 1978, §§ 74-4A-2 to 74-4A-14; Radioactive and Hazardous Materials Act  
 NMSA 1978, §§ 74-6-1 to 74-6-4, 74-6-6 to 74-6-13; Water Quality Act;  
 NMSA 1978, §§ 74-6A-1 to 74-6A-6; Wastewater Facility Construction Loan Act;  
 NMSA 1978, §§ 74-6B-1 to -74-6B-14; Ground Water Protection Act;  
 NMSA 1978, §§ 74-9-1 to 74-9-43; Solid Waste Act;  
 NMSA 1978, §74-13-1 to 74-13-20; Recycling and Illegal Dumping Act;  
 NMSA 1978, §§ 75-1-1 to 75-1-6; Rural Infrastructure Act.

V. Agreements

| Tribe/Pueblo/Nation Government | Agency           | Activity                              | Agreement Name        | Current Status                    | Contact/Phone             |
|--------------------------------|------------------|---------------------------------------|-----------------------|-----------------------------------|---------------------------|
| Pueblo of Pojoaque             | NMED             | Abatement of soil and water pollution | Cooperative Agreement | In effect, effective since 5-1-01 | GWQB Chief (505) 827-2919 |
| Pueblo of Zuni                 | NMED and Federal | Underground Storage Tank              | Cooperative Agreement | In effect, effective since        | PSTB Chief (505) 476-4377 |

| <b>Tribe/Pueblo/Nation Government</b> | <b>Agency</b>   | <b>Activity</b>   | <b>Agreement Name</b>          | <b>Current Status</b>                       | <b>Contact/Phone</b>         |
|---------------------------------------|---|---|--------------------------------|---|------------------------------|
|                                       |   | Cleanup, at Malco site  |                                | 11-9-04                                     |                              |
| Pueblo of Zuni                        | NMED  | Underground Storage Tank Cleanup, at Mustang Store 7256   | Cooperative Agreement          | In effect, effective since 3-20-02          | PSTB Chief<br>(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<br>(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<br>(505) 476-4377 |
| Jicarilla Apache                      | 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<br>Amended 8-16-02 | PSTB Chief<br>(505) 476-4377 |
| Picuris Pueblo                        | NMED  | Underground Storage Tank Cleanup and Petroleum Remediation  | Consent for Access to Property | Effective 6-14-07                           | PSTB Chief<br>(505) 476-4377 |

| <b>Tribe/Pueblo/Nation Government</b> | <b>Agency</b> | <b>Activity</b>  | <b>Agreement Name</b>          | <b>Current Status</b>  | <b>Contact/Phone</b>                             |
|---------------------------------------|---------------|--|--------------------------------|--|--|
| Ohkay Owingeh                         | NMED          | Underground Storage Tank Cleanup and Petroleum Remediation activities                              | Consent for Access to Property | Effective 9-10-08  | PSTB Chief<br>(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<br>(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<br>(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<br>First Amendment to MOA 11-13-19 | Kathryn Becker<br>(505) 827-2054                 |