



August 21, 2023

The Honorable Crystal Diamond Brantley
The Honorable Siah Correa Hemphill
New Mexico State Senate
State Capitol
Santa Fe, New Mexico 87501

Sent via electronic mail only

Re: Environment Department Leased Office Space

Dear Senators Diamond Brantley and Correa Hemphill,

Thank you for your letter regarding the closing of the New Mexico Environment Department's (NMED) Deming field office. I appreciate the concerns you raised in your letter and share them as well. I want to assure you that the closing of any NMED office is a decision of last resort as we understand the adverse impacts on local businesses, the public, and our employees.

As discussed in your letter, NMED's has benefited from your leadership and that of your colleagues in the legislature. I am extremely grateful for the support to improve NMED's budget over the last five years. Respectfully, I offer the following insights regarding NMED's budget.

First, while it appears NMED's general fund increased by \$11.6 million from fiscal year 2019 to fiscal year 2024, the increase was offset by \$6.2 million in unfunded employee compensation packages. As a result, NMED's net general fund increased by \$5.5 million over this time. This means NMED has less funding for on-going expenses like personnel services and employee benefits, contracts, and building leases.

Second, with the support of the Governor's Office, NMED requested \$3.0 million in a special appropriation to fund building leases in fiscal year 2024 (see the enclosed "fiscal year 2024 budget factsheet"). Specifically, our budget factsheet stated: "With the Executive's support, I am seeking an additional increase in general fund above the LFC Recommendation to improve services, avoid adverse federal grant audits and keep NMED field offices from permanently closing [Emphasis Added]."¹ We requested this funding since our building leases rose by 13% in fiscal year 2024 and at the same time the federal government discouraged NMED paying for leased space using federal grant dollars (outside of a small percentage known as indirect costs). Ultimately, the legislature did not fund any of the building leases special appropriation for fiscal year 2024.

Currently, NMED is paying for field office leases by using \$1.2 million from another special appropriation while making up the remainder of our lease expenses by cutting costs, like travel for field work and meetings, supplies for field work, etc. Further, our highly restricted special revenue funds (i.e., permit fees) do not provide us with enough flexibility to spend them on agency-wide overhead. At this point, every dollar NMED cuts in office leases this fiscal year will improve our services in the communities we serve.

¹ See <https://www.env.nm.gov/wp-content/uploads/2023/02/2022-02-01-NMED-FY24-HAFC-and-SFC-Budget-Factsheet-Final.pdf>

In closing, thank you for your letter and commitment to working together on NMED's funding constraints. I look forward to working with you and your colleagues in the upcoming legislative session so we can re-establish a Deming field office in the future.

Sincerely,

James C. Kenney
Cabinet Secretary

Enclosure: Fiscal Year 2024 Budget Factsheet

Cc: Governor Michelle Lujan Grisham
Senator George K. Munoz, Chairman, Senate Finance Committee
Representative Nathan Small, Chairman, House Appropriations and Finance Committee
Mr. Charles Sallee, Director, Legislative Finance Committee



New Mexico Environment Department

Mission and Values

Our mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations.

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 problems.

COLLABORATION



Engaging communities and interested stakeholders in environmental decision-making.

COMPLIANCE



Ensuring meaningful compliance with state regulations and permits.

A Message to the New Mexico Legislature

With the support of the Governor and the Legislature, I proudly lead this Department. I am honored to continue to work with you, the members of the Legislature, on behalf of New Mexicans.

NMED has one of the most complex budgets in state government – over 125 restricted funds spanning five divisions, 16 bureaus and four offices. Over 80% of NMED’s funding sources are for non-discretionary duties related to core functions like permitting and compliance. In other words, over 80% of NMED’s staff must work within their funding source.

Despite small gains by the legislature to fund specific programs on a recurring or one-time basis with general fund, NMED continues to fall behind. Our duties have expanded without requisite funding to keep pace or even fairly compensate our employees who are asked to do more with less day after day. In short, NMED’s workload is unsustainable.

Despite our inability to protect New Mexicans and their environment equally under the law, I am working diligently to optimize our operating budget to better serve New Mexicans. For example, I am proposing to spend \$2.6M more from federal grants and special revenue funds on services that benefit New Mexicans than I could under the LFC Recommendation.

However, this budget optimization is contingent on the legislature appropriating additional general fund so we can continue to operate our 27 offices across the state. With the Executive’s support, I am seeking an additional increase of \$2.6M in recurring general fund above the LFC Recommendation to improve services, avoid adverse federal grant audits, and keep NMED field offices from permanently closing.

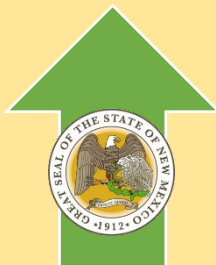
I look forward to working with you on our mission, budget and in service to your constituents.

Sincerely,

James C. Kenney
Cabinet Secretary

New Mexico Environment Department

NMED is underfunded



From FY11 to FY23, New Mexico’s general fund increased **20%** or by **\$1.4 billion**.



NMED’s budget did not keep pace as a percent of the state budget and is now short **\$2.3 million** today, as adjusted for inflation.

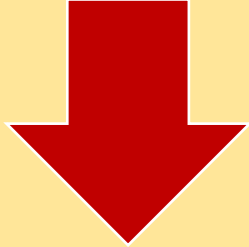
Learn more about our Agency’s performance on our website:



LFC continues to recommend underfunding NMED



LFC's FY24 recommendation for NMED is **15%** or nearly **\$3 million** higher than FY11 levels, adjusted for inflation.



This is still **\$3.5 million** less than if NMED received the same percentage of total recurring general fund appropriations as it received in FY11.

What's at Stake?

Job growth/economic investment in "clean" technology sectors that further our ambitious climate goals.

Securing *and* spending once in a generation levels of federal funds in New Mexico communities.

Maintaining federal permitting programs or risking sanctions, including the loss of federal highway dollars.

Holding polluters accountable for failing our communities, including the federal government.

Certainty for businesses, constituents.

Retaining NMED's expert public servant workforce.

How to fix the LFC recurring budget recommendation in three steps:

- (1) While holding the remainder of the LFC budget recommendation static,
- (2) Increase the "Sources: General Fund Transfers" from 22,309.2 to 23,679.0, and
- (3) Increase the "Uses: Other" from 28,609.4 to 31,200.5.

Subsequent to the Executive Budget Recommendation, NMED was authorized to pursue \$2.6M in recurring general fund to avoid a supplemental appropriation or running a deficiency.

BUDGET SUMMARY (dollars in thousands)

	FY22	FY23	FY24		Percent Inc (Decr)
	2021-2022	2022-2023	2023-2024	2023-2024	
	Actuals	Budgeted	Agency Request	LFC Recommendation	
SOURCES					
General Fund Transfers	15,396.2	20,279.5	23,679.0	22,309.2 23,679.0	10.0
Other Transfers	38,111.2	41,774.2	43,091.1	43,091.1	3.2
Federal Revenues	23,885.8	36,299.2	35,011.0	35,011.0	(3.5)
Other Revenues	48,470.1	44,220.0	38,250.2	38,250.2	(13.5)
Fund Balance	0.0	11,585.7	20,266.7	20,266.7	74.9
TOTAL SOURCES	125,863.3	154,158.6	160,298.0	158,928.2	3.1
USES					
Personal Services and Employee Benefits	46,703.0	63,455.4	64,374.4	64,870.7	2.2
Contractual Services	12,492.6	22,134.4	22,691.7	23,416.7	5.8
Other	19,421.2	29,203.1	31,200.5	28,609.4 31,200.5	(2.0)
Other Financing Uses	35,497.4	39,365.7	42,031.4	42,031.4	6.8
TOTAL USES	114,114.2	154,158.6	160,298.0	158,928.2	3.1
FTE					
Permanent	398.7	311.5	304.6	304.6	(2.2)
Term	291.0	411.0	393.9	393.9	(4.2)
TOTAL FTE	689.7	722.5	698.5	698.5	(3.3)

“New Mexico is experiencing record-high revenues across all major revenue streams. FY22 and early FY23 receipts came in higher than expected and boosted revenue estimates for subsequent years.” - LFC

Executive non-recurring budget recommendation

14 Special Appropriations
Total: \$32,104.70

LFC non-recurring budget recommendation

4 Special Appropriations
Total: \$7,019.7

Special Appropriations (Non-Recurring Funds)

	Short Title	NMED	Executive	LFC	
1	Financial services bureau support	\$150.0	\$150.0	\$0	☒
2	Liquid waste indigent fund	\$1,250.0	\$1,250.0	\$0	☒
3	Targeted workplace safety education in specific sectors, like cannabis, film and oil and gas	\$750.0	\$750.0	\$0	☒
4	Climate related infrastructure, including U.S. DOE matching grant funding	\$4,100.0	\$4,100.0	\$2,000.0 total for items 4 & 5	☒
5	Air quality regulatory changes necessary under federal law	\$2,000.0	\$2,000.0		☒
6	Radioactive materials licenses/compliance	\$1,500.0	\$1,500.0	\$1,500.0	☑
7	Assess business operations, optimize workforce/leased space	\$3,000.0	\$3,000.0*	\$0	☒
8	Business operations improvements for customers and staff	\$825.0	\$825.0	\$0	☒
9	Senior environmental program for private/public sector retirees	\$650.0	\$650.0	\$0	☒
10	Community Revitalization through clean-up of contaminated groundwater sites	\$8,500.0	\$8,500.0	\$0	☒
11	Superfund match/administration	\$2,839.7	\$2,839.7	\$2,839.7	☑
12	To initiate the development of a state surface water permitting program	\$680.0	\$680.0	\$680.0	☑
13	Water reuse, Water Task Force and Produced Water Act implementation	\$5,500.0	\$5,500.0	\$0	☒
14	Water utility operator certification support	\$360.0	\$360.0	\$0	☒

* Subsequent to the Executive Budget Request, NMED was authorized to pursue \$3.0M in non-recurring general fund to avoid a supplemental or deficiency.

Workload Snapshot

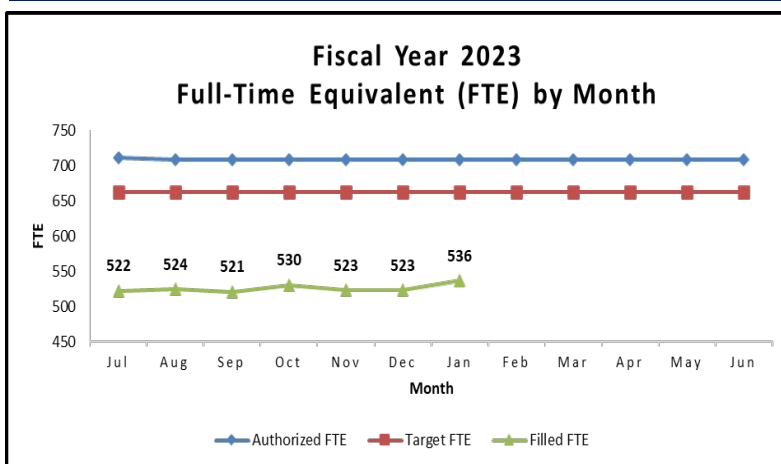
Based on current staffing levels, it would take many of our regulatory programs years to issue permits, assure compliance, or carry out other duties New Mexicans expect NMED is performing routinely.

- ✓ **OSHA** – 5,670 regulated facilities per inspector; it would take this team **24 years** to visit each site.
- ✓ **Petroleum Storage Tanks** – Two staff oversee 4,346 storage tanks; it would take **3 years** to inspect all tanks in the state.
- ✓ **Air Quality Bureau** – 22 filled permitting and enforcement staff spend about 10% of their time on compliance inspections; it would take **6.5 years** to inspect all permittees.
- ✓ **Ground Water Quality Bureau** – 8 filled permitting and enforcement staff spend about 10% of their time on inspections; it would take **2.5 years** to inspect all permittees.
- ✓ **Surface Water Quality Bureau** oversees 6,698 miles of perennial streams and all lakes, with only the equivalent of one staff person responsible for developing water quality standards and six staff persons collecting all water quality data.
- ✓ **Construction Programs Bureau** has five staff managing 126 water infrastructure projects each.
- ✓ **Hazardous Waste Bureau** has 1.3 incident coordination staff who responded to 365 emergency calls in the previous fiscal year.
- ✓ **Drinking Water Bureau** has the equivalent of one person focused on providing infrastructure funding support to the 1,068 public water systems in New Mexico.

Employee Exit Interview Snapshot

- ✓ Private/public sector opportunities with greater compensation/flexibility.
- ✓ Greater earning potential for less complex work at other state agencies.
- ✓ Frustration from lack of proper compensation related to the volume, pace, and complexity of work.

Vacancy Rate: 19% as of January 2023 and trending down (536 staff persons out of 662 funded positions).



Recruitment and Retention Snapshot

Propelled by high vacancy rates and long human resource action processing times, the New Mexico State Personnel Office (SPO) delegated authority to NMED to approve certain personnel transactions, including in-band pay adjustments, without the need for SPO approval. As a part of the delegation, SPO audits transactions to ensure the department meets personnel rules.

- ✓ In FY22, NMED processed approximately 1,262 personnel actions. **2.0x more than FY21.**
- ✓ During the first half of FY23, NMED processed 2,262 personnel actions. **3.5x more than FY21.**
- ✓ The time to fill new and vacant positions has reduced from over 200 days in FY22 to 60 days or less in many cases.
- ✓ NMED also initiated a department-wide recruitment and retention effort providing incentives such as: voluntary duty station changes, personal time off granted upon referral by current employees of candidates who are hired, extra personal time off to the new employee, and cash incentives to eligible retirees who provide 12 months' notice before retiring.

Learn more about our Agency's performance on our website:

