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**Through:** James C. Kenney, Cabinet Secretary

**cc:** Sydney Lienemann, Deputy Cabinet Secretary of Administration  
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**To:** New Mexico Environment Department (“NMED” or “Department”) Managers

**Date:** October 31, 2023

**Re:** Guidance on Administrative Compliance Costs

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## **INTRODUCTION**

This document provides guidance for managers at NMED for the recovery of administrative costs necessary to ensure compliance with the laws and regulations governing NMED programs.

Compliance is one of the key tenets by which NMED implements its mission. Compliance ensures NMED achieves the objectives and intent set forth in its statutory mandates. Compliance also ensures fair and equitable treatment of the regulated community.

An important set of statutes serve as the foundation by which NMED exercises its authority to assure compliance. These statutes include: the Air Quality Control Act (NMSA 1978, Sections 74-2-1 to -22); Water Quality Act (NMSA 1978, Sections 74-6-1 to -17); Hazardous Waste Act (NMSA 1978, Sections 74-4-1 to -14); and Occupational Health and Safety Act (NMSA 1978, Sections 50-9-1 to -25), as well as their implementing regulations. A full list of state authority governing NMED’s programs is attached at Appendix A.

The intent of this guidance is: (a) to be detailed enough to allow individual NMED programs to develop policies and procedures that will consistently further NMED’s compliance goals; and (2) to be general enough to allow each program to tailor its policies and procedures to the particular statutory and regulatory priorities of each program.

## **ADMINISTRATIVE COMPLIANCE COSTS**

### **A. Background**

NMED relies on funding from the federal government and the New Mexico Legislature to administer its permitting, licensing and compliance verification programs. NMED may also establish and assess fees and costs for these programs commensurate with federal and state law.

That said, there are instances in which NMED must take resource-intensive compliance actions beyond simply permit or license compliance verification. For example, NMED may conduct a routine inspection and

uncover an alleged violation that requires additional investigation; or NMED may identify reporting discrepancies that require information requests and further analysis. In these instances, the costs of ensuring compliance may substantially increase. Such compliance matters – whether at a stage of post-inspection notice, investigation, negotiation, or formal administrative proceedings – require significant technical and legal resources of NMED. The time and expense for NMED to investigate, obtain additional data and review materials to actively address open compliance matters can reach hundreds of hours, depending on the matter’s complexity, the responsiveness of the regulated party, and other factors.

The resource-intensive nature of resolving compliance matters at NMED puts the ability of NMED to fulfill its statutory and regulatory directives at risk.

### **B. Assessment**

To ensure that NMED retains the ability to fulfill its statutory mandates, each NMED program shall assess administrative compliance costs on permittees, licensees or other potentially responsible parties in accordance with applicable state law. Such costs shall be assessed in addition to any permit fees, license fees or civil penalties that may otherwise be due. The compliance cost calculation set forth at Section C of this guidance for the Air Quality Bureau can be one option an NMED program may follow.

Once assessed, each NMED program shall transmit the administrative compliance costs through a separate invoice to a permittee, licensee or other potentially responsible party with a deadline for payment. Failure to pay administrative compliance costs may result in loss of permit or license, referral to a collection agency, and additional legal action.

Additional administrative compliance costs may accrue depending on how a specific compliance matter proceeds.

Fees and costs accrued pursuant to judicial proceedings will be separately assessed pursuant to any separate applicable procedures.

### **C. Example Program: Air Quality Bureau Administrative Compliance Costs**

By way of example, NMED’s Air Quality Bureau (AQB), assesses administrative compliance costs as follows:

1. AQB and the Office of General Counsel (OGC) identify a predetermined number of conservative person-hours for AQB and OGC to complete each step along AQB’s administrative compliance timeline based on experience.
2. AQB and OGC then multiply the person-hours by the average hourly wages, including the calculation of indirect costs and state benefits, for those AQB and OGC staff involved in the process.
3. Next, AQB and OGC multiply the resulting number based on the following factors:
  - (a) number of potential violations identified;
  - (b) number of violations alleged;

- (c) number of settlement offers between the parties; and
  - (d) number of administrative compliance steps necessary to move forward to compliance resolution.
4. Finally, AQB and OGC take the number and apply an adjustment factor to account for additional circumstances that may decrease or increase the calculation. Additional circumstances shall include:
- (a) quality of information submitted to NMED;
  - (b) completeness of information submitted to NMED;
  - (c) compliance status;
  - (d) quality of negotiations; and
  - (e) complexity of the compliance matter.

This adjusted number is the amount of administrative compliance costs that AQB will transmit via invoice.

**DISCLAIMER**

This guidance does not represent a final agency action and is intended as guidance only. The guidance does not create any right, duty, obligation, or defense in any person. AQB may revise, amend, supplement, or revoke all or part of the guidance without public notice or comment.

**APPENDIX A**

- NMSA 1978, §§ 3-29-1 to -21 – Sanitary Projects Act
- NMSA 1978, §§ 9-7A-1 to -17 – Department of Environment Act
- NMSA 1978, §§ 10-15-1 to -4 – Open Meetings Act
- NMSA 1978, §§ 13-1-1 to -199 – Procurement Code
- NMSA 1978, §§ 14-2-1 to -12 – Inspection of Public Records Act
- NMSA 1978, §§ 14-3-1 to -24 – State Records Act
- NMSA 1978, §§ 14-4-1 to -11 – State Rules Act
- NMSA 1978, §§ 14-4A-1 to -6 – Small Business Regulatory Relief Act
- NMSA 1978, §§ 14-16-1 to -21 – Uniform Electronic Transactions Act
- NMSA 1978, §§ 25-1-1 to -16 – Food Service Sanitation Act
- NMSA 1978, §§ 25-2-1 to -21 – Adulterated or Misbranded Food Act
- NMSA 1978, §§ 26-2C-1 to -42 – Cannabis Regulation Act
- NMSA 1978, §§ 50-9-1 to -25 – Occupational Health and Safety Act
- NMSA 1978, §§ 61-33-1 to -10 – Utility Operators Act
- NMSA 1978, §§ 70-13-1 to -5 – Produced Water Act
- NMSA 1978, §§ 71-8-1 to -8 – Sustainable Development Testing Site Act
- NMSA 1978, §§ 74-1-1 to -17 – Environmental Improvement Act

- NMSA 1978, §§ 74-2-1 to -22 – Air Quality Control Act
- NMSA 1978, §§ 74-3-1 to -16 – Radiation Protection Act
- NMSA 1978, §§ 74-4-1 to -14 – Hazardous Waste Act
- NMSA 1978, §§ 74-4G-1 to -12 – Voluntary Remediation Act
- NMSA 1978, §§ 74-4H-1 to -4 – San Juan Generating Station Facility and Mine Remediation and Restoration Study Act
- NMSA 1978, §§ 74-6-1 to -17 – Water Quality Act
- NMSA 1978, §§ 74-6A-1 to -15 – Wastewater Facility Construction Loan Act
- NMSA 1978, §§ 74-6B-1 to -14 – Ground Water Protection Act
- NMSA 1978, §§ 74-9-1 to -43 – Solid Waste Act
- NMSA 1978, §§ 74-13-1 to -20 – Recycling and Illegal Dumping Act
- NMSA 1978, §§ 76-24-1 to -10 Hemp Manufacturing Act