

NEW MEXICO ENVIRONMENT DEPARTMENT



Office of the Secretary

POLICY AND PROCEDURE 07-11

- SUBJECT:** Limited English Proficiency ("LEP") Accessibility and Outreach Policy.
- PURPOSE:** To provide guidance and direction for the New Mexico Environment Department ("NMED" or the "Department") regarding providing meaningful access for persons and populations in New Mexico who are or who may be identified as being LEP to ensure that adequate public participation opportunities are being offered.
- POLICY:** NMED shall provide LEP persons and populations meaningful access to NMED's actions and proceedings.
- REVISIONS:** New Policy.
- APPLICABILITY:** All NMED programs and employees shall comply with this policy.
- REFERENCES:** 40 C.F.R. Parts 5 and 7; Title VI of the Civil Rights Act of 1964; Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>; Assisting People with Limited English Proficiency, <https://www.epa.gov/ocr/assisting-people-limited-english-proficiency>.
- PROCEDURES:**
- 1.0 Scope
 - 2.0 Definitions
 - 3.0 Determination of the Extent of Obligation to Provide LEP Services
 - 4.0 Identifying LEP Individuals Who Require Language Assistance
 - 5.0 Language Assistance Measures
 - 6.0 Providing Notice to LEP Persons
 - 7.0 Training
 - 8.0 Monitoring and Updating the LEP Accessibility and Outreach Policy
 - 9.0 Discipline

APPROVAL: Butch Tongate DATE: 2/6/18
Butch Tongate
Cabinet Secretary

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1.0 SCOPE

1.1 In accordance with 40 C.F.R. Parts 5 and 7, NMED prohibits unlawful discriminatory practices regarding its decisions that directly relate to or impact its programs. NMED does not condone, tolerate, practice or engage in unlawful discrimination against any external party or parties, nor does it condone retaliation against or intimidation of those alleging discrimination by NMED employees.

1.2 NMED shall include in its consideration and decisions regarding public notice, vital documents,¹ community outreach, and community involvement, the degree to which it may need to modify its communications and public notice practices so that LEP persons and populations will have substantially equal opportunities to learn about and participate in NMED's exchange and interaction with the public.

1.3 New Mexico is a diverse state, and therefore, language needs may vary from region to region. New Mexico's population estimate for 2016 was 2,081,015. Approximately 19.8% of the population lives in poverty. For 35.7% of New Mexico's population, a language other than English is spoken at home. State-wide, 48.5% of the population is Hispanic or Latino, 38.1% are non-Hispanic white, 10.6% are American Indian, and 2.5% are African American.²

1.4 The following regional evaluations, which include data for a 25-mile radius around each listed town or city³, are provided for general reference and exhibit the diversity of New Mexico and the importance of evaluating language needs:

Abiquiu, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 44,296)
 - Speak Only English- 21,023 (47%)
 - Non-English at Home- 23,273 (53%)
 - 7% of the 53% speak English "less than very well."
- Total Households- 17,340
 - Linguistically Isolated Households- 676 (3.8%)
 - 90% of Linguistically Isolated Households speak Spanish, while 8% speak Asian-Pacific Island languages.

Alamogordo, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 50,492)
 - Speak Only English- 40,269 (80%)
 - Non-English at Home- 10,223 (20%)
 - 6% of the 20% speak English "less than very well."
- Total Households- 21,244
 - Linguistically Isolated Households- 1,014 (4.7%)
 - 65% of Linguistically Isolated Households speak Spanish, while 27% of Linguistically Isolated Households speak other Indo-European Languages (the majority of which speak German).

Albuquerque, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 787,987)

¹ Whether or not a document (or the information it disseminates or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. "Vital documents" may include fact sheets, departmental warnings or advisories, public notices, and handouts created for public meetings.

² Statistical information from: <https://www.census.gov/quickfacts/NM> in December 2017.

³ Data extracted from EJScreen: <https://ejscreen.epa.gov/mapper/> in December 2017.

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- Speak Only English- 552,950 (70%)
- Non-English at Home- 235,038 (30%)
 - 8% of the 30% speak English "less than very well."
- Total Households- 322,968
 - Linguistically Isolated Households- 13,958 (4.3%)
 - 84% of Linguistically Isolated Households speak Spanish, while the remainder is distributed between other Indo-European languages, Asian-Pacific Island languages, and "other languages."

Belen, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 94,862)
 - Speak Only English- 58,389 (62%)
 - Non-English at Home- 36,473 (38%)
 - 11% of the 38% speak English "less than very well."
- Total Households- 34,800
 - Linguistically Isolated Households- 2,199 (6.3%)
 - 93% of Linguistically Isolated Households speak Spanish.

Carlsbad, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 38,228)
 - Speak Only English- 27,851 (73%)
 - Non-English at Home- 10,377 (27%)
 - 6% of the 27% speak English "less than very well."
- Total Households- 15,279
 - Linguistically Isolated Households- 625 (4.1%)
 - 97% of Linguistically Isolated Households speak Spanish.

Chama, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 7,793)
 - Speak Only English- 4,772 (61%)
 - Non-English at Home- 3,021 (39%)
 - 3% of the 39% speak English "less than very well."
- Total Households- 3,527
 - Linguistically Isolated Households- 53 (1.5%)
 - 69% of Linguistically Isolated Households speak Spanish, while 30% speak "other languages" (predominantly Native American languages).

Clayton, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 4,859)
 - Speak Only English- 3,504 (72%)
 - Non-English at Home- 1,355 (28%)
 - 10% of the 28% speak English "less than very well."
- Total Households- 1,801
 - Linguistically Isolated Households- 137 (7.6%)
 - 91% of Linguistically Isolated Households speak Spanish.

Clovis, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 67,019)
 - Speak Only English- 48,344 (72%)
 - Non-English at Home- 18,676 (28%)
 - 9% of the 28% speak English "less than very well."
- Total Households- 26,079
 - Linguistically Isolated Households- 1,465 (5.6%)
 - 97% of Linguistically Isolated Households speak Spanish.

Deming, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 20,509)
 - Speak Only English- 9,865 (48%)
 - Non-English at Home- 10,644 (52%)
 - 19% of the 52% speak English "less than very well."
- Total Households- 8,015
 - Linguistically Isolated Households- 1,057 (13.1%)
 - 98% of Linguistically Isolated Households speak Spanish.

Farmington, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 97,566)
 - Speak Only English- 70,545 (72%)
 - Non-English at Home- 27,020 (28%)
 - 6% of the 28% speak English "less than very well."
- Total Households- 34,656
 - Linguistically Isolated Households- 1,095 (3.1%)
 - 56% of Linguistically Isolated Households speak Spanish, while 39% speak "other languages" (predominantly Navajo).

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Gallup, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 49,016)
 - Speak Only English- 24,851 (51%)
 - Non-English at Home- 24,165 (49%)
 - 9% of the 49% speak English "less than very well".
- Total Households- 14,021
 - Linguistically Isolated Households- 1,175 (8.3%)
 - 24% of Linguistically Isolated Households speak Spanish, while 73% speak "other languages" predominantly Navajo).

Grants, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 22,040)
 - Speak Only English- 13,007 (59%)
 - Non-English at Home- 9,033 (41%)
 - 9% of the 41% speak English "less than very well".
- Total Households- 7,175
 - Linguistically Isolated Households- 482 (6.7%)
 - 50% of Linguistically Isolated Households speak Spanish, while 28% speak "other languages" (predominantly Navajo and other Native American languages).

Hobbs, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 64,021)
 - Speak Only English- 35,369 (55%)
 - Non-English at Home- 28,653 (45%)
 - 15% of the 45% speak English "less than very well."
- Total Households- 21,713
 - Linguistically Isolated Households- 1,873 (8.6%)
 - 92% of Linguistically Isolated Households speak Spanish.

Las Cruces, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 170,123)
 - Speak Only English- 89,731 (53%)
 - Non-English at Home- 80,392 (47%)
 - 13% of the 47% speak English "less than very well."
- Total Households- 65,571
 - Linguistically Isolated Households- 5,160 (7.8%)
 - 94% of Linguistically Isolated Households speak Spanish.

Las Vegas, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 23,204)
 - Speak Only English- 10,131 (44%)
 - Non-English at Home- 13,073 (56%)
 - 16% of the 56% speak English "less than very well."
- Total Households- 8,944
 - Linguistically Isolated Households- 1,046 (11.6%)
 - 96% of Linguistically Isolated Households speak Spanish.

Lordsburg, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 4,471)
 - Speak Only English- 2,660 (59%)
 - Non-English at Home- 1,811 (41%)
 - 8% of the 41% speak English "less than very well."
- Total Households- 1,907
 - Linguistically Isolated Households- 95 (4.9%)
 - 100% of Linguistically Isolated Households speak Spanish.

Quemado, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 1,811)
 - Speak Only English- 1,365 (75%)
 - Non-English at Home- 446 (25%)
 - 2% of the 25% speak English "less than very well."
- Total Households- 790
 - Linguistically Isolated Households- 1 (0.1%)
 - 100% of Linguistically Isolated Households speak Spanish.

Raton, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 14,769)
 - Speak Only English- 12,027 (81%)
 - Non-English at Home- 2,741 (19%)
 - 4% of the 19% speak English "less than very well."
- Total Households- 6,501

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- Linguistically Isolated Households- 260 (3.9%)
 - 86% of Linguistically Isolated Households speak Spanish, while 12% speak other Indo-European languages (predominantly French, German, and Italian).

Reserve, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 1,697)
 - Speak Only English- 1,279 (75%)
 - Non-English at Home- 418 (25%)
 - 2% of the 25% speak English "less than very well."
- Total Households- 597
 - Linguistically Isolated Households- 1 (0.1%)
 - 100% of Linguistically Isolated Households speak Spanish.

Roswell, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 58,263)
 - Speak Only English- 36,504 (63%)
 - Non-English at Home- 21,760 (37%)
 - 11% of the 37% speak English "less than very well."
- Total Households- 22,395
 - Linguistically Isolated Households- 1,468 (6.5%)
 - 93% of Linguistically Isolated Households speak Spanish.

Ruidoso, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 20,207)
 - Speak Only English- 15,737 (78%)
 - Non-English at Home- 4,470 (22%)
 - 7% of the 22% speak English "less than very well."
- Total Households- 8,567
 - Linguistically Isolated Households- 396 (4.6%)
 - 87% of Linguistically Isolated Households speak Spanish.

Santa Fe, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 158,700)
 - Speak Only English- 98,811 (62%)
 - Non-English at Home- 59,889 (38%)
 - 10% of the 38% speak English "less than very well".
- Total Households- 69,029
 - Linguistically Isolated Households- 3,292 (4.7%)
 - 92% of Linguistically Isolated Households speak Spanish.

Santa Rosa, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 4,305)
 - Speak Only English- 2,044 (47%)
 - Non-English at Home- 2,261 (53%)
 - 6% of the 53% speak English "less than very well."
- Total Households- 1,192
 - Linguistically Isolated Households- 97 (8.1%)
 - 100% of Linguistically Isolated Households speak Spanish.

Silver City, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 25,446)
 - Speak Only English- 18,177 (71%)
 - Non-English at Home- 7,268 (29%)
 - 5% of the 29% speak English "less than very well."
- Total Households- 11,080
 - Linguistically Isolated Households- 383 (3.4%)
 - 100% of Linguistically Isolated Households speak Spanish.

Socorro, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 13,329)
 - Speak Only English- 8,053 (60%)
 - Non-English at Home- 5,275 (40%)
 - 11% of the 40% speak English "less than very well."
- Total Households- 4,008
 - Linguistically Isolated Households- 430 (10.7%)
 - 76% of Linguistically Isolated Households speak Spanish, while 19% speak "other languages" (predominantly Navajo).

Springer, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 2,870)
 - Speak Only English- 2,212 (77%)
 - Non-English at Home- 659 (23%)

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- 5% of the 23% speak English "less than very well."
- Total Households- 654
 - Linguistically Isolated Households- 18 (2.7%)
 - 82% of Linguistically Isolated Households speak Spanish, while 18% speak Asian-Pacific Island languages (predominantly Chinese).

Taos, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 32,582)
 - Speak Only English- 19,052 (58%)
 - Non-English at Home- 13,530 (42%)
 - 6% of the 42% speak English "less than very well."
- Total Households- 14,173
 - Linguistically Isolated Households- 520 (3.6%)
 - 94% of Linguistically Isolated Households speak Spanish.

Truth or Consequences, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 9,759)
 - Speak Only English- 7,828 (80%)
 - Non-English at Home- 1,931 (20%)
 - 3% of the 22% speak English "less than very well."
- Total Households- 4,583
 - Linguistically Isolated Households- 88 (1.9%)
 - 94 % of Linguistically Isolated Households speak Spanish.

Tucumcari, NM area

- Population Age 5+ Years by Ability to Speak English (Total = 7,605)
 - Speak Only English- 5,721 (75%)
 - Non-English at Home- 1,883 (25%)
 - 5% of the 25% speak English "less than very well."
- Total Households- 3,149
 - Linguistically Isolated Households- 100 (3.1%)
 - 100% of Linguistically Isolated Households speak Spanish.

2.0 DEFINITIONS

2.1 **Limited-English Proficient ("LEP") Individual** means an individual who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English and may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

2.2 **Linguistically Isolated Household** means a household in which no one 14 and over speaks English "very well" or speaks English only.

3.0 DETERMINATION OF THE EXTENT OF OBLIGATION TO PROVIDE LEP SERVICES

3.1 An individualized assessment should be done for each event, activity or proceeding (e.g., a permitting proceeding) by the specific NMED Bureau employees or contractors tasked with implementing NMED Policy 07-13 ("Public Participation") in order to determine the extent to which LEP services are necessary. The individualized assessments shall evaluate and balance the following four factors: 1) the number or proportion of LEP persons estimated to be served or encountered in the community of concern; 2) the frequency with which LEP individuals might come in contact with the program; 3) the nature and importance of the activity or service provided by the subject material of the program; and 4) the resources available to NMED and the associated costs. All assessment activities shall be documented in writing.

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3.2 Factor 1: The Number and Proportion of LEP Individuals Eligible to be Served or Likely to be Encountered in the Community of Concern.

A. In order to assess the number and proportion of LEP individuals in a particular community of concern, employees shall use the data accumulated in the preliminary screening results in the Public Involvement Plan (PIP) created under Public Participation Policy 07-13 for the NMED activity, issue, facility, or event in question. If no PIP plan is required, or is impractical,⁴ for the NMED activity, issue, facility, or event in question, statistical language data shall be accumulated in the manner specified in NMED Public Participation Policy 07-13, Section 3.

B. Employees shall also assess historical participation regarding the issue, facility, or event in question to evaluate whether there was participation by LEP individuals in the past.

3.3 Factor 2: The Frequency with Which LEP Individuals Come in Contact with the Program.

A. Employees shall assess how frequently the program under which the issue or event is occurring, or the facility is regulated, and comes into contact with LEP individuals. The assessment should include programmatic contact generally, and specifically in relation to the matter for which an LEP evaluation is occurring.

B. Employees shall assign an identifier of "frequent," "occasional," or "not frequent" based on situational context combined with professional judgment, and provide a narrative supporting the classification.

3.4 Factor 3: The Nature and Importance of the Activity or Service Provided by the Program.

A. The specific activity, proceeding or service that is necessitating the LEP evaluation should be assessed for both the nature and importance of the activity, proceeding or service.

B. The nature of an activity, proceeding or service and the basic features or characteristics of the activity, proceeding or service. A descriptive paragraph should be provided.

C. The importance of the activity, proceeding or service should be evaluated in relation to the importance to the Department, the importance to the state as a whole, and the importance to the impacted community, with an identifier of "moderately important," "important," or "very important."

3.5 Factor 4: The Resources Available to NMED and the Associated Costs.

A. Employees shall assess the NMED program's or Bureau's level of resources available in the applicable fiscal year(s) and the costs associated with executing the steps necessary to provide services to LEP individuals in relation to the issue, facility, or event in question. Evaluating available resources should also take into consideration whether

⁴ In such instances where a PIP for an activity is not required by statute, rule or regulation, or is impractical, the four factor LEP assessment should be completed, and documented in writing, to determine the extent to which LEP services are necessary for the activity.

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resources can be pulled from another NMED Bureau or Division. NMED Bureau financial staff should assist with the assessment.

B. When evaluating the cost of services, employees should evaluate cost saving measures such as the incorporation of technology, or resources available either within the Department or within another executive agency that can be provided at low or no cost.

3.6 Using the results of the four-factor evaluation, a plan for LEP services to be provided for a particular activity, proceeding, or service will be created. Plans will include, but will not be limited to, outreach efforts, interpretation services to be provided, and translation of vital documents and public notices.

3.7 All evaluation results must be reviewed and approved by the Bureau Chief of the NMED Bureau or Program executing the evaluation. An electronic copy of the final approved evaluation shall be provided to NMED's Non-Discrimination Coordinator.

4.0 IDENTIFYING LEP INDIVIDUALS WHO REQUIRE LANGUAGE ASSISTANCE

4.1 In addition to providing general public notice and outreach to LEP individuals, every effort should be made to identify specific participants who may need LEP language services. It is suggested that NMED employees bring an "I Speak" card (see prototype attached) to every public meeting or hearing so that LEP individuals can inform NMED what language services are needed. Additionally, if correspondence in a language other than English is sent to the Department regarding a specific activity, proceeding or service, NMED employees should determine what language the information has been transmitted in, and include the language in the related LEP service evaluation. Finally, it is recommended that the municipality or county in which the community is located be contacted to determine if either has any specific information or recommendations for specific LEP services.

5.0 LANGUAGE ASSISTANCE MEASURES

5.1 Interpretation.

A. Interpretation services will be acquired from a certified interpreter using the proper procedures mandated by the New Mexico Procurement Code, NMSA 1978, §§ 13-1-1 to -199 and correlated regulations, 1.4.1 NMAC. If interpretive services are needed on short notice, for example if an LEP individual approaches NMED employees during a meeting or gathering in which there is not a certified interpreter, an employee who is fluent in the particular language may be utilized.

B. Upon an assessment of need, as found in Section 3.0 of this Policy, interpretation services shall be acquired for all public meetings and hearings associated with a particular activity, proceeding, or service. Such interpretation services should be adequate for the expected participating audience. It is important that interpreters are comfortable translating scientific and technical terminology, so that LEP individuals receive the most accurate interpretation possible.

C. All NMED Bureaus or other organizational units must have written procedures in place for addressing phone calls and in-person inquiries received from LEP individuals. This is especially necessary when an NMED Bureau contact is provided in a public notice, and

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the public notice has been issued in both English and other relevant languages. NMED Bureaus may arrange for on-call telephone interpretation services, or if there are budgetary constraints, an NMED Bureau may utilize a Department employee who is fluent in a particular language. The written procedures must specifically list employees who may be used to field phone calls or in-person interactions from LEP individuals. The written procedures must be specific enough so that they may be easily followed as they are being utilized. The written procedures must be reviewed and approved by each NMED Bureau's Bureau Chief and Division Director, or in the case of other organizational units, the highest supervisory level.

5.2 Translation.

A. Translation services for the translation of public notices and other vital documents⁵ will be acquired from a certified translator using the proper procedures mandated by the New Mexico Procurement Code, NMSA 1978, §§ 13-1-1 to -199 and its correlated regulations, 1.4.1 NMAC.

B. Google Translate or other similar programs shall not be used to translate NMED vital documents, or documents produced by a regulated entity that were mandated by NMED that may also be classified as vital.

C. When or if e-mails are received by NMED from LEP individuals, if time allows translation services will be used in responding to the e-mail. If the e-mail is time sensitive and must be responded to immediately, an NMED Bureau employee who is fluent in the written form of the particular language in question may be used. Alternatively, if the individual has provided a phone number, interpretation services pursuant to Section 5.1 of this policy can be used to contact the person. If interpretation services are used to respond to an e-mail in lieu of translation services, please make a note of the date and time the communication occurred, and who interpreted on behalf of NMED.

6.0 PROVIDING NOTICE TO LEP PERSONS

6.1 As appropriate based upon the LEP services evaluation contained in Section 3.0 of this Policy, public notice should, at a minimum, be provided to LEP individuals in the same manner in which it is required by statute or regulation for non-LEP individuals. However, it is possible that the normal means of notice contemplated by NMED's controlling statutes are not sufficient in every circumstance to reach the desired population. Extra outreach may include, but is not limited to, publication in alternate newspapers with a proven high LEP readership, public announcement on radio stations with high LEP listenership, posting of public notice in appropriate locations, and in-person notice announcements. Such expanded public notice should be included in any PIP formulated pursuant to NMED policy 07-13, and in the LEP plan found in Section 3.6 of this Policy.

7.0 TRAINING

⁵ Whether or not a document (or the information it disseminates or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. "Vital documents" may include fact sheets, departmental warnings or advisories, public notices, and handouts created for public meetings.

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7.1 All NMED employees shall be required to attend training on this policy. Such training shall occur no later than 120 days after the first signing of this policy. Subsequent trainings will occur at regular intervals, as determined by the NMED's Non-Discrimination Coordinator, including:

- A. When substantive changes are made to the policy;
- B. When new employees begin employment with NMED; and
- C. At three year intervals for all NMED employees.

Such training shall be provided by the Non-Discrimination Coordinator and the Office of General Counsel.

8.0 MONITORING AND UPDATING THE LEP ACCESSIBILITY AND OUTREACH POLICY

8.1 On an annual basis, the NMED Non-Discrimination Coordinator will review the LEP Accessibility and Outreach Policy, which shall include contacting the Bureaus to determine if they have any suggested edits based upon experiences from the past year. The Non-Discrimination Coordinator, with assistance from the Office of General Counsel, will make any necessary updates to the LEP Policy, and provide to the Secretary of Environment or designee for signature. Any revised issuance of this policy shall be disseminated to the entire Department on the date the Secretary or designee signs the revised policy.

9.0 DISCIPLINE

9.1 Any employee who fails to comply in good faith with the terms and provisions of this policy may face disciplinary consequences up to and including dismissal (Please see NMED Policy 02-71, Disciplinary Action).