

How a State and Federal Retreat on Environmental Safeguards Threatens New Mexicans' Health and Prosperity

More than 2 million New Mexicans depend on a safe and healthy environment to live a good life. They need clean water, air and soil to raise healthy children and create jobs. But New Mexico is struggling to deal with a variety of serious environmental problems that threaten public health, including air that has been fouled by industrial pollution and challenged by climate change, Superfund-level pollution and other dangerous substances fouling the state's land and agricultural sector, and multiple threats to clean drinking water.

Unfortunately, as environmental threats to New Mexico's families and prosperity grow more challenging, some political leaders in Santa Fe and Washington, DC have been in retreat. New Mexico's Environment Department (NMED) saw its general fund budget drop more than 20 percent after Governor Martinez took office, and has remained flat since. Meanwhile in Washington, DC, the Administration has been slashing the EPA's budget, hiring polluters who will protect their industries, rolling back environmental safeguards, and putting politics over science.

This report summarizes the threats facing New Mexico's families, how a lack of policy leadership is making things worse, and what New Mexico can do to protect the health of its children and families. Although much must be done to repair the damage that has been done, five steps in particular are critical:

1. **Fully fund the Environment Department:** Stop hobbling and handcuffing NMED as it works to protect public health.
2. **Hold violators accountable:** The state's capacity to levy effective fines and enforce the Oil and Gas Act is broken, and must be fixed.
3. **Reduce greenhouse gas emissions:** Enact policies consistent with securing reductions in climate pollution necessary to avoid the worst effects of climate change—reducing total greenhouse gas emissions at least 26-28% below 2005 levels by 2025 and 83% by 2050, on a path to zero net emissions.
4. **Step up when the feds step back:** The retreat by the EPA in Washington leaves New Mexico's children and families more vulnerable to growing threats. New Mexico's leaders need to fill the gap, including a methane rule for new and existing oil and gas sources statewide.
5. **Stand up for a functioning EPA:** New Mexico's leaders and families need to join the chorus to protect the EPA from the assault it has been enduring, so that the agency can help protect our health and environment.

New Mexico's Air at Risk

Many New Mexicans have reason to worry about how threats to their state's air and climate can harm their health, their water supply, and their agricultural sector.

According to the American Lung Association, seven counties with 60 percent of New Mexico's population must endure Code Orange days where children and people with asthma should stay inside, and only three received a grade of B or higher.¹ For grandmother Diane Martinez, that means knowing that her asthmatic grandson will have trouble breathing when they drive through what she calls the "brown haze" that hangs over Bernalillo County.²

Smog, or ground-level ozone, can cause coughing, wheezing and throat irritation, asthma, and permanent damage to lung tissue.³ Fortunately, most American cities endure only one day of elevated smog pollution a year. But Albuquerque had 113 days in 2015—22nd-highest in the country. Farmington and Las Cruces each had more than 100, and Carlsbad-Artesia, Espanola, Hobbs and Santa Fe had more than 50.⁴

San Juan and Eddy counties—centers of New Mexico's oil and gas development activities, each earned a grade of only C from the American Lung Association for ozone.⁵ "A lot of it comes from burning dirty fuels, like coal, oil and gas," said Hannah Perkins of Environment New Mexico.⁶

These conditions could get worse. It has been reported that the New Mexico Association of Commerce and Industry will press to weaken⁷ state standards during the upcoming legislative session for air pollution that can damage lungs and trigger heart attacks, strokes, premature births, and increased risk of autism, asthma and stunted lung development in children.⁸

Meanwhile, New Mexico has the 14th highest level of per capita carbon dioxide emissions in the country, which fuel climate change.⁹

In 2014, NASA satellites discovered that a giant methane "hotspot" the size of Delaware was hovering over New Mexico's San Juan Basin.¹⁰ The San Juan Basin is home to one of the most productive natural gas fields in North America, and natural gas is composed almost entirely of methane. That's why a series of studies have confirmed that the "hot spot" is tied to natural gas production, even though the industry and its allies in the New Mexico government have attempted to deny it.¹¹

The hotspot is a serious issue because of the disproportionate impact that methane pollution has on climate change – more than 80 times more powerful than carbon dioxide at warming the climate in the short term – and on rural, indigenous and Latino families in the Four Corners region.¹² And as federal rules limiting methane pollution are rolled back by the Trump Administration, the state will be left with no backstop since it has not acted to regulate this pollution from oil and gas wells. (The hotspot also costs New Mexicans between \$182-244 million worth of natural gas every year, and another \$27.6 million in lost in taxes and royalty revenues.¹³)

That's why it's so worrisome that Governor Martinez is responding by proposing some of the weakest oil and gas air quality standards in the nation. Over the New Year's holiday, the state released a proposal that doesn't even include emission limits or performance standards for oil and gas sources, and exempts

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methane altogether. And it initially gave the public just *four business days* to comment on a proposal of almost 16,000 words. The proposal also lags behind policies in neighboring states like Utah and Colorado.¹⁴ As a letter from 23 different organizations put it, “On its way out the door, the Martinez administration is attempting to ram through a gift to the oil and gas industry—the weakest air protections in the nation.”¹⁵

Leadership in a better direction has been offered by New Mexico Attorney General Hector Balderas and consumer advocates, who have proposed that electric utilities reduce carbon dioxide emissions from power plants serving New Mexicans by 4 percent a year through 2040, which could help cut carbon dioxide levels by several million tons.¹⁶

New Mexico’s policies need to be consistent with securing reductions in climate pollution necessary to avoid the worst effects of climate change—reducing total greenhouse gas emissions at least 26-28% below 2005 levels by 2025 and 83% by 2050, on a path to zero net emissions. (These numbers are based on what’s needed to do our part to reduce climate pollution at the pace and scale required to avoid the worst effects of climate change—nationally and globally).

As the world adjusts to climate change, New Mexico is also suffering from growing droughts. By late December 2017, nearly 90 percent of the state was dealing with some form of dryness, much worse than a year before—even as Albuquerque had gone for 10 weeks without New Mexico any measurable rain.¹⁷ Indeed, local experts are projecting decades of water shortages ahead, which will impact drinking and critical irrigation supplies needed by agriculture.¹⁸

The Threat to New Mexico’s Soil

Clean soil is critical to everything from strong agriculture to healthy play spaces for children, and especially to keeping water supplies clean. Unfortunately, in many places land-based environmental hazards poses significant threats to New Mexico’s families and economic development.

For example, in 2014, one of the costliest nuclear accidents in U.S. history occurred just 26 miles from Carlsbad, New Mexico, when a drum filled with radioactive waste exploded inside the Waste Isolation Pilot Plant (WIPP).¹⁹ Twenty-one plant workers were exposed to plutonium, which can lead to cancer of the lungs, liver, and bones.²⁰ Afterwards, workers were required to wear protective gear, including respirators.



Superfund: New Mexico is home to 16 Superfund sites on the National Priorities List.²¹ Without proper cleanup, toxic chemicals like lead, mercury, arsenic, and dioxin can render entire locations dangerous or uninhabitable, and leak into the water and soil. And since 44 percent of people living within a one-mile radius of a Superfund site nationwide are minorities, Superfund cleanups are also critical to helping minority communities build better lives.

For example, Albuquerque’s Fruit Avenue Plume site suffered almost half a century of hazardous contamination from dry cleaning and laundry waste, including chlorinated solvents that leaked into local groundwater. With support from EPA, three years of cleanup—including soil vapor extraction, hot spot treatment, institutional controls, extraction and treatment of contaminated groundwater—have left the site in “standby mode.” Groundwater monitoring is ongoing.²²

Since it was opened in 1919, a molybdenum mine near Questa, New Mexico generated 328 million tons of acid-generating waste rock, contaminating soil, sediment, surface water and groundwater. Molybdenum can damage the liver and kidneys, and trigger headaches, fatigue, loss of appetite, and muscle and joint pain. Repeated exposure can cause anemia.²³ As part of a 2016 Superfund settlement with EPA, Chevron Mining Inc. (which closed the mine in 2014) will provide \$143 million to prevent contamination of the Red River and other water resources, operate a water treatment plant, and replant 275 acres of spoiled land.²⁴

More recently, the EPA has proposed that the 321-square mile San Mateo Creek Basin, one-time home to at least 85 uranium mines and 4 uranium mills,²⁵ be added to the Superfund National Priorities List, given evidence that hazardous substances have contaminated private drinking water wells and could threaten public water supplies.²⁶

Recent EPA Superfund grants are also supporting cleanups of dangerous substances at the United Nuclear Corporation site in McKinley County, the South Valley site in Albuquerque, and the Prewitt Abandoned Refinery site.²⁷ And preventing hazardous releases from New Mexico's Superfund sites could become more complicated in the future as threats from more intense and frequent storms grow, according to a 2014 EPA report.²⁸

Brownfields: Another key to New Mexico's economic development and family health are brownfield sites, properties where contamination prevents development and threatens public safety. "They are often areas that no community, business or industry would redevelop because of environmental concerns or even just the perception of an environmental concern," notes Senator Tom Udall. "Without this type of assistance, many communities would be forced to rely entirely on their own public resources for cleanup, often when the previous occupant who contaminated the property is gone."²⁹

For example, by the 1980s the historic Santa Fe Railyard was blighted with lead, other metals, and petroleum and petroleum products.³⁰ With the support of EPA's Brownfields cleanup program—which leveraged \$200,000 into more than \$125 million from public and private sources—the Railyard has been restored into a thriving city space with job-generating museums, art galleries, shops, a farmer's market and a hub for commuter trains that connects Santa Fe to Albuquerque and the I-25 corridor.³¹

In Albuquerque's Sawmill neighborhood, EPA support helped clean up a 27-acre particle-board manufacturing site and transform it into affordable housing.³² Indeed, research has shown that residential property values near restored brownfield sites increased between 5 and 15 percent and can increase property values in a 1.24-mile radius of that site.³³

Leaking Underground Storage Tanks: New Mexico has a backlog of more than 830 leaking underground storage tanks (or LUSTs).³⁴ These tanks and accompanying pipes—many of them made from older corroded steel—hold and carry a variety of fuels and chemicals.³⁵ When tanks are at risk of leaking harmful chemicals such as oil, gas, benzene and toluene into soil and ground water, drinking water is fouled, backyards and businesses become dangerous, community health is jeopardized, and economic development is crippled.

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For example, when historic Route 66 was bypassed by interstates, leaks from underground fuel tanks at abandoned service stations and dormant motels contaminated the soil. EPA Brownfield grants helped clean up the pollution, clearing the way for mixed-use redevelopment that can boost Route 66's revitalization and help New Mexico's tourism economy.³⁶

Dirty Water is a Growing Danger to New Mexico's Health

Clean drinking water is essential to everyday life, and because New Mexico is so arid, 87 percent of its public water supply comes from ground water.³⁷ But New Mexico's groundwater faces multiple threats.

More than 1,100 of New Mexico's water systems received safety violation notices between 2004 and 2016, an average of 50 per system. Santa Cruz had more drinking-water violations than it has people. And a recent report from the Environmental Working Group revealed that more than 4 in 5 New Mexicans are exposed to radioactive metals and toxic chemicals in their water at levels that may pose health risks.³⁸

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The state Environment Department's Ground Water Quality Bureau reports more than 60 ongoing cleanups of water contamination from chemicals including diesel, nitrates and volatile organic compounds.³⁹

For example, for decades, up to 24 million gallons of jet fuel—double the amount of oil spilled by the Exxon Valdez in 1989—has been leaking from pipes at the Kirtland Air Force base into aquifers near Albuquerque, where several feet of fuel have been spotted sitting atop the water. Dubbed “the environmental disaster you've never heard of,” the jet fuel and aviation gas contain a brew of toxic chemicals including benzene, toluene and various aliphatic hydrocarbons—along with ethylene dibromide (EDB), a potent trigger of cancers

and mutations (EPA considers no amount of EDB in drinking water safe for human health). A plume of EDB-contaminated groundwater more than a mile long has been moving towards Albuquerque drinking water wells for years.⁴⁰

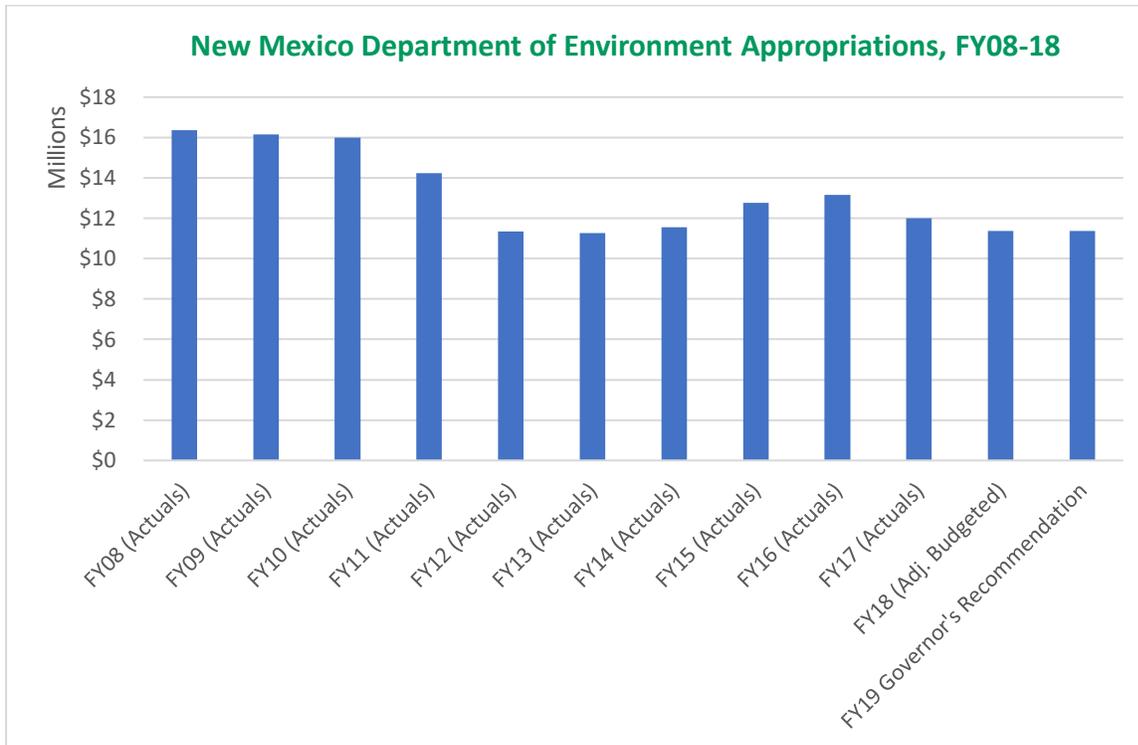
Further north, Los Alamos County's water supply is threatened by hundreds of thousands of pounds of highly carcinogenic hexavalent chromium that have leaked out from the Los Alamos National Laboratory into the Sandia Canyon and a regional aquifer over two decades. But more than a dozen years after the New Mexico Environment Department pledged to take “aggressive action” to deal with the spill, the plume continues to move closer to the Los Alamos water supply.⁴¹

Amid all of these problems, it's unfortunate that Governor Martinez led New Mexico to join 13 states in suing to stop the federal government from applying the anti-pollution provisions of the 1972 Clean Water Act to man-made waterways, including canals and ditches.⁴²

Directional Challenges: Environmental Policy in New Mexico

Cutting the Department of Environment's Budget

Unfortunately, Governor Martinez slashed the New Mexico Environment Department's general fund budget more than 20 percent shortly after taking office, and has kept it flat since, even as the state's energy production and environmental challenges have been growing. And the Department's work has been politicized and opened up to influence from industry polluters.



Handcuffed: The state’s inability to properly enforce violations of the Oil and Gas Act

As oil and gas production have grown in New Mexico, dangerous spills have increased even faster. As oil production grew 70 percent between 2008-2015, and the number of active wells across the state grew to 60,000, just 14 inspectors were assigned to inspect them. ("I have almost 8,000 wells, just me," said inspector Ron Harvey.)⁴³ And the impact of leaks can last for generations: after a 1950s spill leaked an estimated 300,000 barrels of crude oil into the Ogallala aquifer, oil residue was still present when inspectors returned 50 years later.⁴⁴

But in 2009, the New Mexico Supreme Court ruled that the state’s Oil Conservation Division can’t directly issue fines for the Oil and Gas Act. Enforcement duties were moved to the Attorney General’s office, which would have to prove criminal intent in court, a higher standard than for any other environmental law in New Mexico.⁴⁵ The result? Fines dropped from \$597,000 to \$14,000 the following year.⁴⁶

"You could bark but you didn't have any teeth," Buddy Hill, a retired inspector. "Like an old junkyard dog out there, you know, with a short chain."⁴⁷ And when it can issue a fine, the maximum is \$1,000, a figure set in 1935. Legislation to restore the Division’s ability to penalize oil and gas companies and increase the penalties has been introduced, but was not enacted in 2017.⁴⁸

"The public cannot have confidence that oil and gas development is occurring or will occur responsibly in the state of New Mexico," said Earthworks, which promotes sustainable solutions that addresses the adverse impacts of mineral and energy development.⁴⁹

State at Risk: Why New Mexico Also Needs a Strong EPA

Since its creation in the 1970s, under administrations of both parties, the Environmental Protection Agency's successes have been critical to helping New Mexicans live longer and healthier lives. Americans no longer need fear DDT poisoning. Acid rain and lead levels in the air are down, and cars emit 75%-90% less pollution. Numerous waterways have been made safe again for swimming and drinking. Communities know more about nearby chemical threats. Millions of children are protected from second-hand smoke. The private sector has been spurred to create cleaner fuels, cleaner engines, and more effective manufacturing processes.

Support from the U.S. Environmental Protection Agency (EPA) is essential to protecting New Mexico's air, water and land. Unfortunately, new Administrator Scott Pruitt's policies are threatening New Mexico's children and families by slashing the EPA's budget, hiring polluters who will protect their industries, rolling back environmental safeguards, and putting politics over science.

Slashing the EPA's Budget: From cleaning up polluted air and waters to supporting tribal environmental programs, EPA grants provided the state with more than \$111 million in funding from 2012 to 2016. Unfortunately, the Trump Administration and many Members of Congress are working to hollow out the EPA and cut its budget to its lowest level since the 1970s, posing threats to millions of New Mexicans who depend on the agency to protect their health and the state's tourism and business climate.

The Trump/Pruitt EPA budget would mean cuts of 30 percent or more in funding for Superfund cleanups and enforcement, along with grants for Air Pollution Control, Water Pollution Control, State Public Water System Supervision, and Indian Environmental Assistance and State and Tribal Response Programs. The House and Senate are also proposing numerous cuts that would move our nation's public health and environmental quality backwards.

"The stakes could not be higher for New Mexico or the nation: for millions of us who depend on a safe and healthy environment to live a safe and healthy life and support good jobs, undermining EPA's work would move us backward to a dirtier and more dangerous era," wrote Former Santa Fe Mayor David Coss recently. "We can't let the EPA's budget be bargained away in back room. Our children's health and the health of our beautiful New Mexico landscape depend on it."⁵⁰

Rolling back environmental safeguards: The Trump Administration has been working to roll back and delay environmental safeguards that protect New Mexicans' health and environment, including rules involving clean car standards, methane reporting, chemical disaster planning, the elimination of the chemical safety board, mercury and air toxics standards, smog standards, and the Clean Power Plan.

In the case of methane, EPA Administrator Scott Pruitt and Interior Secretary Ryan Zinke are both working to overturn rules designed to cut waste and pollution from oil and gas wells. Zinke is trying to halt a rule that would reduce wasteful leaking, venting and flaring of natural gas on federal and tribal lands,⁵¹ despite a series of rulings that have blocked his efforts to scrap the rules.⁵² A new suit challenging the Administration's delay in implementing the rule was filed in December 2017 by nearly 20 environmental and Native American tribal groups.⁵³

In March, EPA denied a petition to ban the chemical chlorpyrifos, a neurotoxin used as an agricultural insect-killer that has been found to cause brain damage in children. New Mexico Senator Tom Udall and seven other senators introduced a bill to outlaw chlorpyrifos.⁵⁴ "Chlorpyrifos damages children's brains,"

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Udall said on the floor of the U.S. Senate. “When moms and dads feed fruits and vegetables to their children, they are trying to do the right thing....In his first decision at the EPA, the administrator has shown his hand. He did not respect the science—not even from his own scientific team. And not even when the science is overwhelmingly decisive.”⁵⁵

The EPA is also reconsidering mercury and air toxics standards that the Agency itself projected to save 24 lives and create \$200 million in health benefits for New Mexico.⁵⁶ In late 2017 it indefinitely delayed bans on three toxic substances—methylene chloride, N-methylpyrrolidone, and trichloroethylene—that are found in paint strippers and dry cleaning solvents.⁵⁷

EPA Administrator Pruitt is trying to repeal America’s Clean Power Plan—which would limit carbon pollution from power plants and is the single largest step the U.S. has ever taken to address the threat of climate change⁵⁸—even as the EPA purges references to climate change on its website.⁵⁹

The EPA is also working to rescind Waters of the United States rule, which was enacted to help the more than 117 million Americans who receive drinking water from public systems that draw supply from headwater, seasonal, or rain-dependent streams. The rule prevents industries and sewage plants from dumping waste into these waters without permits.⁶⁰

The Assault on Science: Under Pruitt, the EPA has been jettisoning and suppressing scientific and public health expertise. It has sought to create bogus debates over established climate science. It has even purged its website of scientific data and language. Pruitt dismissed numerous scientists from EPA’s Board of Scientific Counselors, and a political operative with little environmental policy experience in the EPA Public Affairs office vets grant applications and eliminates references to climate change.

Pruitt’s EPA has also used discredited methods to hide the health benefits of reducing dangerous power plant pollutants particulate matter — or soot. Its political appointees ordered career scientists to erase the economic benefits to wetlands of a regulation protecting waterways. Pruitt has even raised the idea of convening a team of researchers to challenge the well-established scientific consensus that CO₂ and other fossil fuel emissions are the primary drivers of climate change.

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