

1 SENATE BILL 361

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO NATURAL RESOURCES; AMENDING, REPEALING AND ENACTING
12 SECTIONS OF THE OIL AND GAS ACT CONCERNING FINANCIAL ASSURANCE,
13 POWERS OF THE OIL CONSERVATION COMMISSION AND THE OIL
14 CONSERVATION DIVISION, CIVIL AND CRIMINAL PENALTIES, PERMITS
15 FOR THE DISPOSITION OF WASTE, APPEALS AND USE OF THE OIL AND
16 GAS RECLAMATION FUND; AMENDING SECTIONS OF THE GEOTHERMAL
17 RESOURCES CONSERVATION ACT CONCERNING CIVIL AND CRIMINAL
18 PENALTIES; CREATING A FUND; MAKING APPROPRIATIONS.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 Section 1. Section 70-2-12 NMSA 1978 (being Laws 1978,
22 Chapter 71, Section 1, as amended) is amended to read:

23 "70-2-12. ENUMERATION OF POWERS.--

24 A. ~~[Included in the power given to]~~ The ~~[oil~~
25 ~~conservation]~~ division ~~[of the energy, minerals and natural~~

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1 ~~resources department is the authority to~~ may:

2 (1) collect data; ~~[to]~~

3 (2) make investigations and inspections; ~~[to]~~

4 (3) examine properties, leases, papers, books
5 and records; ~~[to]~~

6 (4) examine, check, test and gauge oil and gas
7 wells, tanks, plants, refineries and all means and modes of
8 transportation and equipment; ~~[to]~~

9 (5) hold hearings; ~~[to]~~

10 (6) provide for the keeping of records and the
11 making of reports and for the checking of the accuracy of the
12 records and reports; ~~[to]~~

13 (7) limit and prorate production of crude
14 petroleum oil or natural gas or both as provided in the Oil and
15 Gas Act; and ~~[to]~~

16 (8) require either generally or in particular
17 areas certificates of clearance or tenders in connection with
18 the transportation of crude petroleum oil or natural gas or any
19 products of either or both crude petroleum oil and products or
20 both natural gas and products.

21 B. Apart from any authority, express or implied,
22 elsewhere given to or existing in the ~~[oil conservation]~~
23 division by virtue of the Oil and Gas Act or the statutes of
24 this state, the division ~~[is authorized to]~~ may make rules
25 ~~[regulations]~~ and orders for the purposes and with respect to

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1 the subject matter stated in this subsection:

2 (1) to require dry or abandoned wells to be
3 plugged in a way to confine the crude petroleum oil, natural
4 gas or water in the strata in which it is found and to prevent
5 it from escaping into other strata; the division shall require
6 ~~[a cash or surety bond in a sum not to exceed fifty thousand~~
7 ~~dollars (\$50,000)]~~ financial assurance as provided in Section
8 70-2-14 NMSA 1978, conditioned for the performance of such
9 ~~[regulations]~~ rules;

10 (2) to prevent crude petroleum oil, natural
11 gas or water from escaping from strata in which it is found
12 into other strata;

13 (3) to require reports showing locations of
14 all oil or gas wells and for the filing of logs and drilling
15 records or reports;

16 (4) to prevent the drowning by water of any
17 stratum or part thereof capable of producing crude petroleum
18 oil or natural gas or both crude petroleum oil and natural gas
19 in paying quantities and to prevent the premature and irregular
20 encroachment of water or any other kind of water encroachment
21 that reduces or tends to reduce the total ultimate recovery of
22 crude petroleum oil or natural gas or both crude petroleum oil
23 and natural gas from any pool;

24 (5) to prevent fires;

25 (6) to prevent [~~"blow-ups"~~] "blow-outs" and

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1 "caving" in the sense that the conditions indicated by such
2 terms are generally understood in the oil and gas business;

3 (7) to require [~~wells to be drilled, operated~~
4 ~~and produced~~] oil and gas operations to be conducted in such
5 manner as to prevent injury to neighboring leases or
6 properties;

7 (8) to identify the ownership of oil or gas
8 producing leases, properties, wells, tanks, refineries,
9 pipelines, plants, structures and all transportation equipment
10 and facilities;

11 (9) to require the operation of wells with
12 efficient gas-oil ratios and to fix such ratios;

13 (10) to fix the spacing of wells;

14 (11) to determine whether a particular well or
15 pool is a gas or oil well or a gas or oil pool, as the case may
16 be, and from time to time to classify and reclassify wells and
17 pools accordingly;

18 (12) to determine the limits of any pool
19 producing crude petroleum oil or natural gas or both and from
20 time to time redetermine the limits;

21 (13) to regulate the methods and devices
22 employed for storage in this state of crude petroleum oil or
23 natural gas or any product of either, including subsurface
24 storage;

25 (14) to permit the injection of natural gas or

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1 of any other substance into any pool in this state for the
2 purpose of repressuring, cycling, pressure maintenance,
3 secondary or any other enhanced recovery operations;

4 (15) to regulate the disposition of water
5 produced or used in connection with the drilling for or
6 producing of crude petroleum oil or natural gas or both and to
7 direct surface or subsurface disposal of the water, including
8 disposition by use in drilling for or production of crude
9 petroleum oil or natural gas, in road construction or
10 maintenance or other construction, in the generation of
11 electricity or in other industrial processes, in a manner that
12 will afford reasonable protection against contamination of
13 fresh water supplies designated by the state engineer;

14 (16) to determine the limits of any area
15 containing commercial potash deposits and from time to time
16 redetermine the limits;

17 (17) to regulate and, where necessary,
18 prohibit drilling or producing operations for crude petroleum
19 oil or natural gas within any area containing commercial
20 deposits of potash where the operations would have the effect
21 unduly to reduce the total quantity of the commercial deposits
22 of potash that may reasonably be recovered in commercial
23 quantities or where the operations would interfere unduly with
24 the orderly commercial development of the potash deposits;

25 (18) to regulate the restoration and

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1 remediation of well sites and production facilities;

2 [~~(18)~~] (19) to spend the oil and gas
3 reclamation fund and do all acts necessary and proper to plug
4 dry [~~and~~] or abandoned oil and gas wells and to restore and
5 remediate abandoned well sites and [~~associated~~] production
6 facilities in accordance with the provisions of the Oil and Gas
7 Act, the rules [~~and regulations~~] adopted under that act and the
8 Procurement Code, including disposing of salvageable equipment
9 and material removed from oil and gas wells being plugged by
10 the state;

11 [~~(19)~~] (20) to make well price category
12 determinations pursuant to the provisions of the federal
13 Natural Gas Policy Act of 1978 or any successor act and, by
14 [~~regulation~~] rule, to adopt fees for such determinations, which
15 fees shall not exceed twenty-five dollars (\$25.00) per filing.
16 Such fees shall be credited to the account of the [~~oil~~
17 ~~conservation~~] division by the state treasurer and may be
18 expended as authorized by the legislature;

19 [~~(20)~~] (21) to regulate the construction and
20 operation of oil treating plants and to require the posting of
21 bonds for the reclamation of treating plant sites after
22 cessation of operations;

23 [~~(21)~~] (22) to regulate the disposition of
24 nondomestic wastes resulting from the exploration, development,
25 production or storage of crude petroleum oil or natural gas;

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1 ~~[to protect public health and the environment; and~~

2 ~~(22)]~~ (23) to regulate the disposition of
3 nondomestic wastes resulting from the oil field service
4 industry, the transportation of crude petroleum oil or natural
5 gas, the treatment of natural gas or the refinement of crude
6 petroleum oil ~~[to protect public health and the environment,~~
7 ~~including administering the Water Quality Act as provided in~~
8 ~~Subsection E of Section 74-6-4 NMSA 1978];~~

9 (24) recognizing the importance of
10 environmental concerns in oil and gas operations, to regulate
11 oil and gas operations pursuant to the Oil and Gas Act so as to
12 protect public health, surface water, ground water, natural
13 resources and the environment, including administering the
14 Water Quality Act as provided in Subsection E of Section 74-6-4
15 NMSA 1978 so as to protect public health, surface water, ground
16 water, natural resources and the environment;

17 (25) to require permits for activities
18 regulated by Chapter 70 NMSA 1978, including permits for
19 construction or operation of facilities that may discharge any
20 water contaminant; and

21 (26) to establish a schedule of fees for
22 permits issued for the disposition of nondomestic wastes."

23 Section 2. Section 70-2-14 NMSA 1978 (being Laws 1977,
24 Chapter 237, Section 3, as amended) is amended to read:

25 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

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1 A. Each person, firm, corporation or association
2 ~~[who]~~ that operates any oil, gas or service well within the
3 state shall, as a condition precedent to drilling or producing
4 the well, furnish financial assurance in the form of an
5 irrevocable letter of credit or a cash or surety bond or a
6 well-specific plugging insurance policy pursuant to the
7 provisions of this section to the ~~[oil conservation]~~ division
8 ~~[of the energy, minerals and natural resources department]~~
9 running to the benefit of the state and conditioned that the
10 well be plugged and abandoned in compliance with the rules of
11 the ~~[oil conservation]~~ division. The ~~[oil conservation]~~
12 division shall establish categories of financial assurance
13 after notice and hearing. ~~[Such]~~ The categories shall include
14 a blanket plugging financial assurance in an amount not ~~[to~~
15 ~~exceed fifty thousand dollars (\$50,000)]~~ less than one hundred
16 thousand dollars (\$100,000), nor more than one million five
17 hundred thousand dollars (\$1,500,000), and one-well plugging
18 financial assurance in amounts determined sufficient to
19 reasonably pay the cost of plugging the wells covered by the
20 financial assurance. The amount of the blanket plugging
21 financial assurance required of any operator shall be
22 determined by multiplying the number of wells operated by the
23 operator on January 1 of each year that are not plugged and
24 abandoned or covered by a one-well plugging financial assurance
25 by five thousand dollars (\$5,000), subject to the minimum and

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1 maximum limits provided in this subsection. In establishing
2 categories of one-well financial assurance, the [~~oil~~
3 ~~conservation~~] division shall consider the depth of the well
4 involved, the length of time since the well was produced, the
5 cost of plugging similar wells and such other factors as the
6 [~~oil conservation~~] division deems relevant. In addition to the
7 blanket plugging financial assurance, the [~~oil conservation~~]
8 division may require a one-well financial assurance on any well
9 that has been [~~held in a temporarily abandoned status~~] inactive
10 for more than two years. All financial assurance shall remain
11 in force until released by the [~~oil conservation~~] division.
12 The [~~oil conservation~~] division shall release financial
13 assurance when it is satisfied the conditions of the financial
14 assurance have been fully performed.

15 B. If any of the requirements of the Oil and Gas
16 Act or the rules [~~promulgated~~] or permits issued pursuant to
17 that act have not been complied with, the [~~oil conservation~~]
18 division, after notice and hearing, may order any well plugged
19 and abandoned by the operator or surety or both in accordance
20 with division rules. If the order is not complied with in the
21 time period set out in the order, the financial assurance shall
22 be forfeited.

23 C. When any financial assurance is forfeited pursuant
24 to the provisions of the Oil and Gas Act or rules promulgated
25 pursuant to that act, the director of the [~~oil conservation~~]

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1 division shall give notice to the attorney general, who shall
2 collect the forfeiture without delay.

3 D. All forfeitures shall be deposited in the state
4 treasury in the oil and gas reclamation fund.

5 E. When the financial assurance proves insufficient
6 to cover the cost of plugging oil and gas wells on land other
7 than federal land and funds must be expended from the oil and
8 gas reclamation fund to meet the additional expenses, the [~~oil~~
9 ~~conservation~~] division is authorized to bring suit against the
10 operator, the most recent owner of the minerals under the tract
11 or the most recent lessee of the minerals under the tract in
12 the district court of the county in which the well is located
13 for indemnification for all costs incurred by the [~~oil~~
14 ~~conservation~~] division in plugging the well. All funds
15 collected pursuant to a judgment in a suit for indemnification
16 brought under the provisions of this section shall be deposited
17 in the oil and gas reclamation fund.

18 F. An operator required to file financial assurance
19 for a well pursuant to this section is considered to have met
20 that requirement if the operator obtains a plugging insurance
21 policy that includes the specific well and that:

22 (1) is approved by the insurance division of the
23 public regulation commission;

24 (2) names the state of New Mexico as owner of
25 the policy and contingent beneficiary;

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1 (3) names a primary beneficiary who agrees to
2 plug the specified wellbore;

3 (4) is fully prepaid and cannot be canceled or
4 surrendered;

5 (5) provides that the policy continues in effect
6 until the specified wellbore has been plugged;

7 (6) provides that benefits will be paid when,
8 but not before, the specified wellbore has been plugged in
9 accordance with rules of the [~~oil conservation~~] division in
10 effect at the time of plugging; and

11 (7) provides benefits that are not less than an
12 amount equal to the one-well financial assurance required by
13 [~~oil conservation~~] division rules.

14 G. If, subsequent to an operator obtaining an
15 insurance policy as provided in this section, the one-well
16 financial assurance requirement applicable to the operator's
17 well is increased, either because the well is deepened or the
18 rules of the [~~oil conservation~~] division are amended, the
19 operator is considered to have met the revised requirement if:

20 (1) the existing policy benefit equals or
21 exceeds the revised requirement;

22 (2) the operator obtains an amendment increasing
23 the policy benefit by the amount of the increase in the
24 applicable financial assurance requirement; or

25 (3) the operator obtains financial assurance

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1 equal to the amount, if any, by which the revised requirement
2 exceeds the policy benefit."

3 Section 3. Section 70-2-28 NMSA 1978 (being Laws 1935,
4 Chapter 72, Section 19, as amended) is amended to read:

5 "70-2-28. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~
6 ~~appear~~] appears that any person is violating or threatening to
7 violate any statute of this state with respect to the
8 conservation of oil and gas or both or any provision of [~~this~~]
9 the Oil and Gas Act or any rule, [~~regulation or~~] order [~~made~~
10 ~~thereunder~~] or permit issued pursuant to that act, the division
11 through the attorney general shall bring suit against [~~such~~]
12 that person in the county of the residence of the defendant or
13 in the county of the residence of any defendant, if there [~~be~~]
14 is more than one defendant, or in the county where the
15 violation is alleged to have occurred for penalties, if any are
16 applicable, and to restrain [~~such~~] the person from continuing
17 [~~such~~] the violation or from carrying out the threat of
18 violation. In [~~such~~] the suit, the division may obtain
19 injunctions, prohibitory and mandatory, including temporary
20 restraining orders and temporary injunctions, as the facts may
21 warrant, including, when appropriate, an injunction restraining
22 any person from moving or disposing of illegal oil or illegal
23 oil product or illegal gas or illegal gas product, and any or
24 all such commodities or funds derived from the sale thereof may
25 be ordered to be impounded or placed under the control of an

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1 agent appointed by the court if, in the judgment of the court,
2 such action is advisable. The remedies provided by this
3 section are cumulative and do not limit any other rights or
4 remedies of the division or the commission with respect to any
5 violation of the Oil and Gas Act or of any rule, order or
6 permit issued pursuant to that act."

7 Section 4. Section 70-2-31 NMSA 1978 (being Laws 1981,
8 Chapter 362, Section 1) is amended to read:

9 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

10 A. ~~[Any]~~ Except as provided in Subsection B of this
11 section, a person who [~~knowingly and willfully~~] violates any
12 provision of the Oil and Gas Act or any provision of any rule,
13 [~~or~~] order or permit issued pursuant to that act shall be
14 subject to a civil penalty of not more than one thousand
15 dollars (\$1,000) for each day of violation. [~~For purposes of~~
16 this subsection, in the case of a continuing violation, each
17 day of violation shall constitute a separate violation. The
18 penalties provided in this subsection]

19 B. If a person violates any provision of the Oil and
20 Gas Act or any rule, order or permit issued pursuant to that
21 act, which violation is or causes an unauthorized discharge
22 into the environment of any contaminant, the civil penalty
23 shall be not more than ten thousand dollars (\$10,000) for each
24 violation or ten thousand dollars (\$10,000) for each day of a
25 continuing violation.

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1 C. The division or the commission may assess the
2 civil penalties provided in this section after notice and an
3 opportunity for a public hearing. In assessing the penalty,
4 the division or the commission may consider the seriousness of
5 the violation and any good-faith efforts to comply with the
6 applicable requirement.

7 D. A penalty not paid within thirty days after the
8 order assessing the penalty becomes final shall be recoverable
9 by a civil suit filed by the attorney general in the name and
10 on behalf of the commission or the division in the district
11 court of the county in which the defendant resides or in which
12 any defendant resides if there ~~[be]~~ is more than one defendant
13 or in the district court of any county in which the violation
14 occurred, provided that, if any final order assessing a penalty
15 is appealed pursuant to Section 70-2-25 NMSA 1978, the
16 commission may seek recovery of the penalty by a counterclaim
17 in that case. The payment of ~~[such]~~ the penalty shall not
18 operate to legalize any illegal oil, illegal gas or illegal
19 product involved in the violation for which the penalty is
20 imposed or relieve a person on whom the penalty is imposed from
21 liability to any other person for damages arising out of ~~[such]~~
22 the violation.

23 ~~[B.]~~ E. It is unlawful, subject to a criminal penalty
24 of a fine of not more than ~~[five thousand dollars (\$5,000)]~~
25 fifteen thousand dollars (\$15,000) or imprisonment for a term

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1 not exceeding three years or both such fine and imprisonment,
2 for any person to knowingly and willfully:

3 (1) violate any provision of the Oil and Gas Act
4 or any rule, [~~regulation or order of the commission or the~~
5 ~~division~~] order or permit issued pursuant to that act; [~~or~~]

6 (2) do any of the following for the purpose of
7 evading or violating the Oil and Gas Act or any rule,
8 [~~regulation or order of the commission or the division~~] order
9 or permit issued pursuant to that act:

10 (a) make, or cause to be made, any false
11 entry or statement in a form or report required by the Oil and
12 Gas Act or by any rule, [~~regulation or order of the commission~~
13 ~~or division~~] order or permit issued pursuant to that act;

14 (b) make or cause to be made any false entry
15 in any record, account or memorandum required by the Oil and
16 Gas Act or by any rule, [~~regulation or order of the commission~~
17 ~~or division~~] order or permit issued pursuant to that act;

18 (c) omit or cause to be omitted from any
19 such record, account or memorandum full, true and correct
20 entries; or

21 (d) remove from this state or destroy,
22 mutilate, alter or falsify any such form, report, record,
23 account or memorandum; or

24 (3) procure, counsel, aid or abet the commission
25 of any act described in this subsection.

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1 ~~[G.]~~ F. For the purposes of Subsection ~~[B]~~ E of this
2 section, each day of violation shall constitute a separate
3 offense.

4 ~~[D.]~~ G. Any person who knowingly and willfully
5 procures, counsels, ~~[aides]~~ aids or abets the commission of any
6 act described in Subsection A or B of this section shall be
7 subject to the same penalties as are prescribed ~~[therein]~~ in
8 those subsections.

9 H. Penalties assessed and collected pursuant to
10 Subsection A, B or E of this section shall be deposited in the
11 oil and gas reclamation fund."

12 Section 5. Section 70-2-33 NMSA 1978 (being Laws 1935,
13 Chapter 72, Section 24, as amended) is amended to read:

14 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

15 A. "person" means:

16 (1) any individual, estate, trust, receiver,
17 cooperative association, club, corporation, company, firm,
18 partnership, joint venture, syndicate or other entity; or

19 (2) the United States or any agency or
20 instrumentality thereof or the state or any political
21 subdivision thereof;

22 B. "pool" means an underground reservoir containing a
23 common accumulation of crude petroleum oil or natural gas or
24 both. Each zone of a general structure, which zone is
25 completely separate from any other zone in the structure, is

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1 covered by the word pool as used in the Oil and Gas Act. Pool
2 is synonymous with "common source of supply" and with "common
3 reservoir";

4 C. "field" means the general area that is underlaid
5 or appears to be underlaid by at least one pool and also
6 includes the underground reservoir or reservoirs containing the
7 crude petroleum oil or natural gas or both. The words field
8 and pool mean the same thing when only one underground
9 reservoir is involved; however, field, unlike pool, may relate
10 to two or more pools;

11 D. "product" means any commodity or thing made or
12 manufactured from crude petroleum oil or natural gas and all
13 derivatives of crude petroleum oil or natural gas, including
14 refined crude oil, crude tops, topped crude, processed crude
15 petroleum, residue from crude petroleum, cracking stock,
16 uncracked fuel oil, treated crude oil, fuel oil, residuum, gas
17 oil, naphtha, distillate, gasoline, kerosene, benzine, wash
18 oil, waste oil, lubricating oil and blends or mixtures of crude
19 petroleum oil or natural gas or any derivative thereof;

20 E. "owner" means the person who has the right to
21 drill into and to produce from any pool and to appropriate the
22 production either for [~~himself~~] the person or for [~~himself~~] the
23 person and another;

24 F. "producer" means the owner of a well capable of
25 producing oil or natural gas or both in paying quantities;

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1 G. "gas transportation facility" means a pipeline in
2 operation serving gas wells for the transportation of natural
3 gas or some other device or equipment in like operation whereby
4 natural gas produced from gas wells connected therewith can be
5 transported or used for consumption;

6 H. "correlative rights" means the opportunity
7 afforded, so far as it is practicable to do so, to the owner of
8 each property in a pool to produce without waste [~~his~~] the
9 owner's just and equitable share of the oil or gas or both in
10 the pool, being an amount, so far as can be practicably
11 determined and so far as can be practicably obtained without
12 waste, substantially in the proportion that the quantity of
13 recoverable oil or gas or both under the property bears to the
14 total recoverable oil or gas or both in the pool and, for such
15 purpose, to use [~~his~~] the owner's just and equitable share of
16 the reservoir energy;

17 I. "potash" means the naturally occurring bedded
18 deposits of the salts of the element potassium;

19 J. "casinghead gas" means any gas or vapor or both
20 indigenous to an oil stratum and produced from such stratum
21 with oil, including any residue gas remaining after the
22 processing of casinghead gas to remove its liquid components;
23 [~~and~~]

24 K. "produced water" means water that is an incidental
25 byproduct from drilling for or the production of oil and gas;

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1 L. "commission" means the oil conservation
2 commission;

3 M. "division" means the oil conservation division of
4 the energy, minerals and natural resources department;

5 N. "inactive well" means a well that is not being
6 utilized for beneficial purposes such as production, injection
7 or monitoring and that is not being drilled, completed,
8 repaired or worked over; and

9 O. "oil and gas operations" means all activities
10 involving or related to the exploration for, development of,
11 production or storage of crude petroleum oil or natural gas,
12 the oil field service industry, the transportation of crude
13 petroleum oil or natural gas, the treatment of natural gas or
14 the refinement of crude petroleum oil."

15 Section 6. Section 70-2-38 NMSA 1978 (being Laws 1977,
16 Chapter 237, Section 5, as amended) is amended to read:

17 "70-2-38. OIL AND GAS RECLAMATION FUND ADMINISTERED--
18 PLUGGING WELLS ON FEDERAL LAND--RIGHT OF INDEMNIFICATION--
19 ANNUAL REPORT--CONTRACTORS SELLING EQUIPMENT FOR SALVAGE.--

20 A. The oil and gas reclamation fund shall be
21 administered by the [~~oil conservation~~] division [~~of the energy,~~
22 ~~minerals and natural resources department~~]. Expenditures from
23 the fund may be used by the director of the division for the
24 purposes of:

25 (1) employing the necessary personnel to survey

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1 abandoned wells, well sites and [~~associated~~] production
2 facilities and preparing plans for the plugging of abandoned
3 wells that have not been plugged or that have been improperly
4 plugged, for plugging or replugging abandoned wells and for the
5 restoration and remediation of abandoned well sites and
6 [~~associated~~] production facilities that have not been properly
7 restored and remediated; [~~and~~]

8 (2) supporting energy education throughout the
9 state in an amount not to exceed one hundred fifty thousand
10 dollars (\$150,000) annually; and

11 (3) purchasing computer equipment and software
12 to support division data, electronic permitting and imaging
13 systems that are used to track well status and other
14 information necessary to identify potential oil and gas
15 reclamation fund expenditures, provided that the amount of the
16 fund used for this purpose shall not exceed two hundred fifty
17 thousand dollars (\$250,000) per year.

18 B. The director of the [~~oil conservation~~] division
19 [~~of the energy, minerals and natural resources department~~], as
20 funds become available in the oil and gas reclamation fund,
21 shall reclaim and properly plug all abandoned wells and shall
22 restore and remediate abandoned well sites and [~~associated~~]
23 production facilities in accordance with the provisions of the
24 Oil and Gas Act and the rules [~~and regulations~~] promulgated
25 pursuant to that act. The division may order wells plugged and

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1 well sites and ~~[associated]~~ production facilities restored and
2 remediated on federal lands on which there are no bonds running
3 to the benefit of the state in the same manner and in
4 accordance with the same procedure as with wells drilled on
5 state and fee land, including using funds from the oil and gas
6 reclamation fund to pay the cost of plugging, restoration or
7 remediation. When the ~~[costs]~~ cost of plugging or replugging a
8 well ~~[drilled on federal mineral leases]~~ or restoring and
9 remediating well sites ~~[and associated]~~ or production
10 facilities ~~[are]~~ is paid from the oil and gas reclamation fund,
11 the division ~~[is authorized to]~~ may bring a suit against the
12 operator, ~~[or]~~ the most recent owner of the minerals under the
13 tract or the most recent lessee of the minerals under the tract
14 in the district court of the county in which the well is
15 located for indemnification for all costs incurred by the
16 division in plugging the well or restoring and remediating the
17 well site ~~[and associated]~~ or production facilities. Any funds
18 collected pursuant to a judgment in a suit for indemnification
19 brought under the Oil and Gas Act shall be deposited in the oil
20 and gas reclamation fund.

21 C. The director of the ~~[oil conservation]~~ division
22 ~~[of the energy, minerals and natural resources department]~~
23 shall make an annual report to the secretary of energy,
24 minerals and natural resources, the governor and the
25 legislature on the use of the oil and gas reclamation fund.

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1 D. Contracts for plugging, reclamation and energy
2 education pursuant to this section shall be entered into in
3 accordance with the provisions of the Procurement Code. A
4 contractor employed by the [~~oil conservation~~] division [~~of the~~
5 ~~energy, minerals and natural resources department~~] to plug a
6 well is authorized to sell for salvage the equipment and
7 material that is removed from the well in plugging it."

8 Section 7. A new section of the Oil and Gas Act is
9 enacted to read:

10 "[NEW MATERIAL] OIL AND GAS FACILITIES FUND CREATED.--The
11 "oil and gas facilities fund" is created in the state treasury.
12 The fund is composed of all fees collected pursuant to the
13 rules adopted under Subsection B of Section 70-2-12 NMSA 1978.
14 Unexpended balances in the fund shall not revert at the end of
15 a fiscal year and money in the fund is appropriated to the
16 energy, minerals and natural resources department for the
17 purpose of administering the rules adopted pursuant to Chapter
18 70 NMSA 1978. Disbursements from the fund shall be made upon
19 warrants drawn by the secretary of finance and administration
20 pursuant to vouchers signed by the secretary of energy,
21 minerals and natural resources."

22 Section 8. A new section of the Oil and Gas Act is
23 enacted to read:

24 "[NEW MATERIAL] PERMITS FOR THE DISPOSITION OF NONDOMESTIC
25 WASTES.--

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1 A. The commission may require by rule that an
2 operator of any facility subject to the jurisdiction of the
3 division obtain a permit from the division for the disposition
4 of nondomestic wastes.

5 B. The commission shall set by rule the dates for
6 filing applications for the permits authorized in Subsection A
7 of this section and shall prescribe the contents of an
8 application.

9 C. The division may deny any application for a permit
10 if it determines:

11 (1) the wastes would not meet all applicable
12 state or federal rules or regulations, performance standards or
13 limitations;

14 (2) any provision of the Oil and Gas Act, the
15 Water Quality Act or any other statute, or any rule or permit
16 issued pursuant to the Oil and Gas Act or Water Quality Act
17 would be violated; or

18 (3) the disposition of waste would cause or
19 contribute to contaminant levels in excess of any applicable
20 state or federal standard, including any water quality standard
21 adopted by the water quality control commission. Determination
22 of the wastes' effect on water shall be measured at the point
23 of discharge.

24 D. The commission shall adopt rules for procedures to
25 ensure that the public and appropriate governmental agencies

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1 receive notice of each application for a permit or a material
2 modification of a permit and shall provide an opportunity for
3 filing of written comments on the application. If an
4 application is protested or if the division determines that
5 there is substantial public interest in an application, the
6 division may hold a public hearing prior to ruling on the
7 application.

8 E. The commission shall adopt rules for the operation
9 and maintenance of those facilities regulated under Subsection
10 B of Section 70-2-12 NMSA 1978, including requirements for
11 continuity of operation, personnel training and financial
12 responsibility, including financial responsibility for
13 corrective action.

14 F. Permits shall be issued for fixed terms not to
15 exceed five years, except that the term for a new permit shall
16 commence on the date the permitted activity begins, but in no
17 event shall the permit be effective for more than seven years
18 from the date of issuance.

19 G. The division may impose such reasonable conditions
20 upon permits as may be necessary to protect public health and
21 the environment, including requirements that a permittee:

22 (1) install, use and maintain effluent
23 monitoring devices;

24 (2) sample wastes and receiving waters for any
25 known or suspected water contaminants, in accordance with

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1 methods and at locations and intervals as may be prescribed by
2 the division;

3 (3) establish and maintain records of the nature
4 and amounts of effluents and the performance of effluent
5 control devices;

6 (4) provide any other information relating to
7 the discharge or release of water contaminants; and

8 (5) notify the division of the introduction of
9 new water contaminants from a new source and of a substantial
10 change in the volume or character of water contaminants being
11 introduced from sources in existence at the time of the
12 issuance of the permit.

13 H. The issuance of a permit does not relieve a person
14 from the responsibility to comply with all state or federal
15 statutes, rules or regulations or state or federal water
16 quality standards.

17 I. A permit may be terminated or modified by the
18 division prior to its date of expiration for the following
19 causes:

20 (1) violating a condition of the permit;

21 (2) obtaining a permit by misrepresentation or
22 failure to disclose fully all required information;

23 (3) violating any applicable statute, rule,
24 performance standard or water quality standard;

25 (4) violating applicable state or federal

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1 effluent rules or regulations; or

2 (5) a change in any condition that requires
3 either a temporary or permanent reduction or elimination of the
4 discharge of waste to ensure that any state or federal
5 standard, including any water quality standard adopted by the
6 water quality control commission, is not exceeded.

7 J. If the division denies, terminates or modifies a
8 permit, other than as requested by the permittee, or grants a
9 permit subject to condition, the division shall notify the
10 applicant or permittee by certified mail of the action taken
11 and the reasons. If the permittee files an application for
12 review of the division's decision within thirty days of the
13 date of the notice, the applicant shall be entitled to a
14 hearing as provided in Section 70-2-13 NMSA 1978. The
15 provisions of Section 70-2-23 NMSA 1978 shall not apply to any
16 division action terminating or modifying a permit pursuant to
17 this section."

18 Section 9. Section 71-5-20 NMSA 1978 (being Laws 1975,
19 Chapter 272, Section 20, as amended) is amended to read:

20 "71-5-20. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~
21 ~~appear~~] appears that any person is violating or threatening to
22 violate any statute of this state with respect to the
23 conservation of geothermal resources or any provision of the
24 Geothermal Resources Conservation Act or any rule, [~~regulation~~
25 ~~or order made thereunder~~] order or permit issued pursuant to

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1 that act, the division through the attorney general shall bring
2 suit against [~~such~~] the person in the county of the residence
3 of the defendant or in the county of the residence of any
4 defendant if there [~~be~~] is more than one defendant or in the
5 county where the violation is alleged to have occurred for
6 penalties, if any are applicable, and to restrain [~~such~~] the
7 person from continuing [~~such~~] the violation or from carrying
8 out the threat of violation. In [~~such~~] the suit, the division
9 may obtain injunction, prohibitory and mandatory, including
10 temporary restraining orders and temporary injunctions, as the
11 facts may warrant, including, when appropriate, an injunction
12 restraining any person from moving or disposing of illegal
13 geothermal resources or illegal geothermal resources product,
14 and any or all such commodities or funds derived from [~~the~~]
15 their sale [~~thereof~~] may be ordered to be impounded or placed
16 under the control of an agent appointed by the court if, in the
17 judgment of the court, such action is advisable. Remedies
18 provided by this section shall be cumulative and shall not
19 limit any other rights or remedies of the division or the
20 commission with respect to any violation of the Geothermal
21 Resources Conservation Act or of any rule, order or permit made
22 or issued pursuant to that act."

23 Section 10. Section 71-5-23 NMSA 1978 (being Laws 1981,
24 Chapter 362, Section 2) is amended to read:

25 "71-5-23. VIOLATIONS OF THE GEOTHERMAL RESOURCES

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1 CONSERVATION ACT--PENALTIES.--

2 A. ~~[Any]~~ Except as provided in Subsection B of this
3 section, a person who [knowingly and willfully] violates any
4 provision of the Geothermal Resources Conservation Act or any
5 provision of any rule, [or] order or permit issued pursuant to
6 that act shall be subject to a civil penalty of not more than
7 two thousand five hundred dollars (\$2,500) for each day of
8 violation. [For purposes of this subsection, in the case of a
9 continuing violation, each day of violation shall constitute a
10 separate violation. The penalties provided in this subsection]

11 B. If a person violates any provision of the
12 Geothermal Resources Conservation Act or any rule, order or
13 permit issued pursuant to that act, which violation is or
14 causes an unauthorized discharge into the environment of any
15 contaminant, the civil penalty shall be not more than ten
16 thousand dollars (\$10,000) for each violation or ten thousand
17 dollars (\$10,000) for each day of a continuing violation.

18 C. The division or the commission may assess the
19 civil penalties provided in this section after notice and an
20 opportunity for a public hearing. In assessing the penalty,
21 the division or the commission may consider the seriousness of
22 the violation and any good-faith efforts to comply with the
23 applicable requirement.

24 D. A penalty not paid within thirty days after the
25 order assessing the penalty becomes final shall be recoverable

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1 by a civil suit filed by the attorney general in the name and
2 on behalf of the commission or the division in the district
3 court of the county in which the defendant resides or in which
4 any defendant resides if there ~~[be]~~ is more than one defendant
5 or in the district court of any county in which the violation
6 occurred; provided that, if any final order assessing a penalty
7 is appealed pursuant to Section 71-5-18 NMSA 1978, the
8 commission may seek recovery of the penalty by counterclaim in
9 that case. The payment ~~[to]~~ of such penalty shall not operate
10 to legalize any illegal geothermal resources or illegal
11 geothermal resources product involved in the violation for
12 which the penalty is imposed or relieve a person on whom the
13 penalty is imposed from liability to any other person for
14 damages arising out of ~~[such]~~ the violation.

15 ~~[B.]~~ E. It is unlawful, subject to a criminal penalty
16 of a fine of not more than ~~[five thousand dollars (\$5,000)]~~
17 fifteen thousand dollars (\$15,000) or imprisonment for a term
18 not exceeding three years or both such fine and imprisonment,
19 for any person to knowingly and willfully:

20 (1) violate any provision of the Geothermal
21 Resources Conservation Act or any rule, ~~[regulation or order of~~
22 ~~the commission or the division]~~ order or permit issued pursuant
23 to that act; ~~[or]~~

24 (2) do any of the following for the purpose of
25 evading or violating the Geothermal Resources Conservation Act

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1 or any rule, [~~regulation or order of the commission or the~~
2 ~~division~~] order or permit issued pursuant to that act:

3 (a) make, or cause to be made, any false
4 entry or statement in a form or report required by the
5 Geothermal Resources Conservation Act or by any rule,
6 [~~regulation or order of the commission or division~~] order or
7 permit issued pursuant to that act;

8 (b) make or cause to be made any false entry
9 in any record, account or memorandum required by the Geothermal
10 Resources Conservation Act or by any rule, [~~regulation or order~~
11 ~~of the commission or division~~] order or permit issued pursuant
12 to that act;

13 (c) omit or cause to be omitted from any
14 such form, report, record, account or memorandum full, true and
15 correct entries; or

16 (d) remove from this state or destroy,
17 mutilate, alter or falsify any such form, report, record,
18 account or memorandum; or

19 (3) procure, counsel, aid or abet the violation
20 of this subsection by any other person.

21 [~~C.~~] F. For the purposes of Subsection [~~B~~] E of this
22 section, each day of violation shall constitute a separate
23 offense.

24 [~~D.~~] G. Any person who knowingly and willfully
25 procures, counsels, aids or abets the commission of any act

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1 described in Subsection A or B of this section shall be subject
2 to the same penalties as are prescribed [~~therein~~] in those
3 subsections."

4 Section 11. REPEAL.--Section 70-2-26 NMSA 1978 (being
5 Laws 1977, Chapter 255, Section 60, as amended) is repealed.

6 Section 12. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2009.

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