

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 286

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO OIL AND GAS; AMENDING SECTIONS OF THE OIL AND GAS
ACT CONCERNING FINANCIAL ASSURANCE, POWERS OF THE OIL
CONSERVATION COMMISSION AND THE OIL CONSERVATION DIVISION OF
THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, CIVIL
AND CRIMINAL PENALTIES, PERMITS FOR THE DISPOSITION OF WASTE
AND APPEALS.

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

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

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

A. ~~[Included in the power given to]~~ The ~~[oil
conservation]~~ division ~~[of the energy, minerals and natural
resources department is the authority to]~~ may:

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

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

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

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

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

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

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

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

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

25 (1) to require dry or abandoned wells to be

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

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

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

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

22 (5) to prevent fires;

23 (6) to prevent [~~"blow-ups"~~] "blow-outs" and
 24 "caving" in the sense that the conditions indicated by such
 25 terms are generally understood in the oil and gas business;

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

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

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

11 (10) to fix the spacing of wells;

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

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

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

23 (14) to permit the injection of natural gas or
24 of any other substance into any pool in this state for the
25 purpose of repressuring, cycling, pressure maintenance,

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1 secondary or any other enhanced recovery operations;

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

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

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

23 (18) to spend the oil and gas reclamation fund
24 and do all acts necessary and proper to plug dry [~~and~~] or
25 abandoned oil and gas wells and to restore and remediate

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1 abandoned well sites and [~~associated~~] production facilities in
2 accordance with the provisions of the Oil and Gas Act, the
3 rules [~~and regulations~~] adopted under that act and the
4 Procurement Code, including disposing of salvageable equipment
5 and material removed from oil and gas wells being plugged by
6 the state;

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

15 (20) to regulate the construction and
16 operation of oil treating plants and to require the posting of
17 bonds for the reclamation of treating plant sites after
18 cessation of operations;

19 (21) to regulate the disposition of
20 nondomestic wastes resulting from the exploration, development,
21 production or storage of crude petroleum oil or natural gas to
22 protect public health and the environment; and

23 (22) to regulate the disposition of
24 nondomestic wastes resulting from the oil field service
25 industry, the transportation of crude petroleum oil or natural

1 gas, the treatment of natural gas or the refinement of crude
 2 petroleum oil to protect public health and the environment,
 3 including administering the Water Quality Act as provided in
 4 Subsection E of Section 74-6-4 NMSA 1978."

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

7 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

8 A. Each person, firm, corporation or association
 9 [~~who~~] that operates any oil, gas or service well within the
 10 state shall, as a condition precedent to drilling or producing
 11 the well, furnish financial assurance in the form of an
 12 irrevocable letter of credit or a cash or surety bond or a
 13 well-specific plugging insurance policy pursuant to the
 14 provisions of this section to the [~~oil conservation~~] division
 15 [~~of the energy, minerals and natural resources department~~]
 16 running to the benefit of the state and conditioned that the
 17 well be plugged and abandoned in compliance with the rules of
 18 the [~~oil conservation~~] division. The [~~oil conservation~~]
 19 division shall establish categories of financial assurance
 20 after notice and hearing. [~~Such~~] The categories shall include
 21 a blanket plugging financial assurance in an amount not [~~to~~
 22 ~~exceed fifty thousand dollars (\$50,000)~~] less than fifty
 23 thousand dollars (\$50,000) and not more than one hundred
 24 thousand dollars (\$100,000), and one-well plugging financial
 25 assurance in amounts determined sufficient to reasonably pay

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1 the cost of plugging the wells covered by the financial
2 assurance. The amount of the blanket plugging financial
3 assurance required of any operator shall be determined by
4 multiplying the number of wells operated by the operator on
5 January 1 of each year that are not plugged and abandoned or
6 covered by a one-well plugging financial assurance by five
7 thousand dollars (\$5,000), subject to the minimum and maximum
8 amounts provided in this subsection. In establishing
9 categories of one-well financial assurance, the [~~oil~~
10 ~~conservation~~] division shall consider the depth of the well
11 involved, the length of time since the well was produced, the
12 cost of plugging similar wells and such other factors as the
13 [~~oil conservation~~] division deems relevant. In addition to the
14 blanket plugging financial assurance, the [~~oil conservation~~]
15 division may require a one-well financial assurance on any well
16 that has been [~~held in a temporarily abandoned status~~] inactive
17 for more than two years. All financial assurance shall remain
18 in force until released by the [~~oil conservation~~] division.
19 The [~~oil conservation~~] division shall release financial
20 assurance when it is satisfied the conditions of the financial
21 assurance have been fully performed.

22 B. If any of the requirements of the Oil and Gas
23 Act or the rules [~~promulgated~~] or permits issued pursuant to
24 that act have not been complied with, the [~~oil conservation~~]
25 division, after notice and hearing, may order any well plugged

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1 and abandoned by the operator or surety or both in accordance
 2 with division rules. If the order is not complied with in the
 3 time period set out in the order, the financial assurance shall
 4 be forfeited.

5 C. When any financial assurance is forfeited pursuant
 6 to the provisions of the Oil and Gas Act or rules promulgated
 7 pursuant to that act, the director of the [~~oil conservation~~]
 8 division shall give notice to the attorney general, who shall
 9 collect the forfeiture without delay.

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

12 E. When the financial assurance proves insufficient
 13 to cover the cost of plugging oil and gas wells on land other
 14 than federal land and funds must be expended from the oil and
 15 gas reclamation fund to meet the additional expenses, the [~~oil~~
 16 ~~conservation~~] division is authorized to bring suit against the
 17 operator, in the district court of the county in which the well
 18 is located or in the first judicial district for
 19 indemnification for all costs incurred by the [~~oil~~
 20 ~~conservation~~] division in plugging the well. All funds
 21 collected pursuant to a judgment in a suit for indemnification
 22 brought under the provisions of this section shall be deposited
 23 in the oil and gas reclamation fund.

24 F. An operator required to file financial assurance
 25 for a well pursuant to this section is considered to have met

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1 that requirement if the operator obtains a plugging insurance
2 policy that includes the specific well and that:

3 (1) is approved by the insurance division of the
4 public regulation commission;

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

7 (3) names a primary beneficiary who agrees to
8 plug the specified wellbore;

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

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

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

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

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

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

3 (2) the operator obtains an amendment increasing
4 the policy benefit by the amount of the increase in the
5 applicable financial assurance requirement; or

6 (3) the operator obtains financial assurance
7 equal to the amount, if any, by which the revised requirement
8 exceeds the policy benefit."

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

11 "70-2-28. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~
12 ~~appear~~] appears that any person is violating or threatening to
13 violate any statute of this state with respect to the
14 conservation of oil and gas or both or any provision of [~~this~~
15 the Oil and Gas Act or any rule, [~~regulation or~~] order [~~made~~
16 ~~thereunder~~] or permit issued pursuant to that act, the division
17 through the attorney general shall bring suit against [~~such~~
18 that person in the county of the residence of the defendant or
19 in the county of the residence of any defendant, if there [~~be~~
20 is more than one defendant, or in the county where the
21 violation is alleged to have occurred for penalties, if any are
22 applicable, or in the first judicial district, and to restrain
23 [~~such~~] the person from continuing [~~such~~] violation or from
24 carrying out the threat of violation. In [~~such~~] the suit, the
25 division may obtain injunctions, prohibitory and mandatory,

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1 including temporary restraining orders and temporary
2 injunctions, as the facts may warrant, including, when
3 appropriate, an injunction restraining any person from moving
4 or disposing of illegal oil or illegal oil product or illegal
5 gas or illegal gas product, and any or all such commodities or
6 funds derived from the sale thereof may be ordered to be
7 impounded or placed under the control of an agent appointed by
8 the court if, in the judgment of the court, such action is
9 advisable. The remedies provided by this section are
10 cumulative and do not limit any other rights or remedies of the
11 division or the commission with respect to any violation of the
12 Oil and Gas Act or of any rule, order or permit issued pursuant
13 to that act."

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

16 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

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

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1 B. If a person violates any provision of the Oil and
 2 Gas Act or any rule, order or permit issued pursuant to that
 3 act, which violation is or causes an unauthorized discharge of
 4 any water contaminant that pollutes or threatens to pollute
 5 water in excess of any state or federal water quality standard,
 6 the civil penalty shall be not more than ten thousand dollars
 7 (\$10,000) for each violation or ten thousand dollars (\$10,000)
 8 for each day of a continuing violation; provided, however, that
 9 this subsection shall apply only to unauthorized discharges
 10 that are not subject to regulation and penalties under the
 11 Water Quality Act.

12 C. The division or the commission may assess the
 13 civil penalties provided in this section after notice and an
 14 opportunity for a public hearing. In assessing the penalty,
 15 the division or the commission may consider the seriousness of
 16 the violation and any good-faith efforts to comply with the
 17 applicable requirement.

18 D. A penalty not paid within thirty days after the
 19 order assessing the penalty becomes final shall be recoverable
 20 by a civil suit filed by the attorney general in the name and
 21 on behalf of the commission or the division in the district
 22 court of the county in which the defendant resides or in which
 23 any defendant resides if there [be] is more than one defendant
 24 or in the district court of any county in which the violation
 25 occurred, or in the first judicial district; provided that, if

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1 any final order assessing a penalty is appealed pursuant to
2 Section 70-2-25 NMSA 1978, the commission may seek recovery of
3 the penalty by a counterclaim in that case. The payment of
4 [~~such~~] the penalty shall not operate to legalize any illegal
5 oil, illegal gas or illegal product involved in the violation
6 for which the penalty is imposed or relieve a person on whom
7 the penalty is imposed from liability to any other person for
8 damages arising out of [~~such~~] the violation.

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

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

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

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

25 (b) make or cause to be made any false entry

1 in any record, account or memorandum required by the Oil and
 2 Gas Act or by any rule, [~~regulation or order of the commission~~
 3 ~~or division~~] order or permit issued pursuant to that act;

4 (c) omit or cause to be omitted from any
 5 such record, account or memorandum full, true and correct
 6 entries; or

7 (d) remove from this state or destroy,
 8 mutilate, alter or falsify any such form, report, record,
 9 account or memorandum; or

10 (3) aid or abet the commission of any act
 11 described in this subsection.

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

15 [~~D.~~] G. Any person who knowingly and willfully
 16 procures, counsels, [~~aides~~] aids or abets the commission of any
 17 act described in Subsection A or B of this section shall be
 18 subject to the same penalties as are prescribed [~~therein~~] in
 19 those subsections."

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

22 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

23 A. "person" means:

24 (1) any individual, estate, trust, receiver,
 25 cooperative association, club, corporation, company, firm,

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1 partnership, joint venture, syndicate or other entity; or

2 (2) the United States or any agency or
3 instrumentality thereof or the state or any political
4 subdivision thereof;

5 B. "pool" means an underground reservoir containing a
6 common accumulation of crude petroleum oil or natural gas or
7 both. Each zone of a general structure, which zone is
8 completely separate from any other zone in the structure, is
9 covered by the word "pool" as used in the Oil and Gas Act.

10 "Pool" is synonymous with "common source of supply" and with
11 "common reservoir";

12 C. "field" means the general area that is underlaid
13 or appears to be underlaid by at least one pool and also
14 includes the underground reservoir or reservoirs containing the
15 crude petroleum oil or natural gas or both. The words "field"
16 and "pool" mean the same thing when only one underground
17 reservoir is involved; however, "field", unlike "pool", may
18 relate to two or more pools;

19 D. "product" means any commodity or thing made or
20 manufactured from crude petroleum oil or natural gas and all
21 derivatives of crude petroleum oil or natural gas, including
22 refined crude oil, crude tops, topped crude, processed crude
23 petroleum, residue from crude petroleum, cracking stock,
24 uncracked fuel oil, treated crude oil, fuel oil, residuum, gas
25 oil, naphtha, distillate, gasoline, kerosene, benzine, wash

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1 oil, waste oil, lubricating oil and blends or mixtures of crude
2 petroleum oil or natural gas or any derivative thereof;

3 E. "owner" means the person who has the right to
4 drill into and to produce from any pool and to appropriate the
5 production either for [~~himself~~] the person or for [~~himself~~] the
6 person and another;

7 F. "producer" means the owner of a well capable of
8 producing crude petroleum oil or natural gas or both in paying
9 quantities;

10 G. "gas transportation facility" means a pipeline in
11 operation serving gas wells for the transportation of natural
12 gas or some other device or equipment in like operation whereby
13 natural gas produced from gas wells connected therewith can be
14 transported or used for consumption;

15 H. "correlative rights" means the opportunity
16 afforded, so far as it is practicable to do so, to the owner of
17 each property in a pool to produce without waste [~~his~~] the
18 owner's just and equitable share of the crude petroleum oil or
19 natural gas or both in the pool, being an amount, so far as can
20 be practicably determined and so far as can be practicably
21 obtained without waste, substantially in the proportion that
22 the quantity of recoverable crude petroleum oil or natural gas
23 or both under the property bears to the total recoverable crude
24 petroleum oil or natural gas or both in the pool and, for such
25 purpose, to use [~~his~~] the owner's just and equitable share of

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1 the reservoir energy;

2 I. "potash" means the naturally occurring bedded
3 deposits of the salts of the element potassium;

4 J. "casinghead gas" means any gas or vapor or both
5 indigenous to an oil stratum and produced from such stratum
6 with oil, including any residue gas remaining after the
7 processing of casinghead gas to remove its liquid components;
8 [~~and~~]

9 K. "produced water" means water that is an incidental
10 byproduct from drilling for or the production of crude
11 petroleum oil and natural gas;

12 L. "commission" means the oil conservation
13 commission;

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

16 N. "inactive well" means a well that is not being
17 utilized for beneficial purposes such as production, injection
18 or monitoring and that is not being drilled, completed,
19 repaired or worked over; and

20 O. "oil and gas operations" means all activities
21 involving or related to the exploration for, development of,
22 production or storage of crude petroleum oil or natural gas,
23 the oil field service industry, the transportation of crude
24 petroleum oil or natural gas, the treatment of natural gas or
25 the refinement of crude petroleum oil."

1 SECTION 6. EFFECTIVE DATE.--The effective date of the
2 provisions of this act is July 1, 2013.

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