

1 HOUSE BILL 335

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO OIL AND GAS; AMENDING AND ENACTING SECTIONS OF THE
12 OIL AND GAS ACT TO ESTABLISH TESTING TO PROTECT WATER
13 RESOURCES; PROVIDING REMEDIES FOR DAMAGES RESULTING FROM
14 HYDRAULIC FRACTURING; DECLARING AN EMERGENCY.

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

17 SECTION 1. A new section of the Oil and Gas Act is
18 enacted to read:

19 "[NEW MATERIAL] HYDRAULIC FRACTURING.--

20 A. Prior to conducting any hydraulic fracturing in
21 the state for the purpose of extracting oil or natural gas or
22 any other product or substance, an owner shall conduct for each
23 proposed well a geologic and hydrologic assessment to establish
24 the location of all surface waters and ground water within a
25 two-thousand-meter radius of the well head to a depth of one

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1 thousand feet below the well's target depth and to evaluate the
2 structural geology and any potential risks for ground water or
3 surface water contamination that may result from the hydraulic
4 fracturing or other drilling operations.

5 B. As part of this assessment and prior to
6 receiving any permit to drill, an owner shall conduct baseline
7 water testing from the surface to a total depth of one thousand
8 feet below the well's target depth of any surface and ground
9 water resources within a two-thousand-meter radius of the bore
10 hole of the proposed well, the results of which shall be
11 included in the well permit application and made available for
12 public inspection prior to drilling.

13 C. The water testing required by this section shall
14 include quantification of:

- 15 (1) pH;
- 16 (2) specific conductance;
- 17 (3) total dissolved solids;
- 18 (4) dissolved gases, including methane, ethane
19 and propane;
- 20 (5) alkalinity, including total bicarbonate
21 and carbonate as CaCO₃;
- 22 (6) major anions bromide, chloride, fluoride,
23 sulfate, nitrate and nitrite as N phosphorus;
- 24 (7) major cations calcium, iron, magnesium,
25 manganese, potassium and sodium;

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1 (8) other elements, including barium, boron,
2 selenium and strontium;

3 (9) presence of bacteria, including iron
4 related, sulfate reducing and slime forming;

5 (10) total petroleum hydrocarbons and
6 compounds, including benzene, toluene, ethylbenzene and
7 xylenes; and

8 (11) field observations such as odor, water
9 color, sediment, bubbles and effervescence.

10 D. Water testing shall be conducted before the
11 drilling, during the drilling, one week after the conclusion of
12 the hydraulic fracturing operation and six months post-well
13 completion. An independent licensed professional engineer or
14 other professional acceptable to the oil conservation division
15 of the energy, minerals and natural resources department shall
16 certify the test results to the division, paid for by the
17 owner. All results shall be made available to the public on a
18 web site to be provided by the division. All samples shall be
19 maintained by the division at the expense of the owner for a
20 period of three years from the date of the last test.

21 E. Any statistically significant increase in the
22 components listed in Subsection C of this section shall be
23 presumed to have been caused by the hydraulic fracturing
24 operation conducted, allowed or ordered by the owner or
25 another affiliated person, agent, employee or entity. This

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1 presumption may be rebutted in a court of law by clear and
2 convincing evidence.

3 F. A person claiming damage, including the state of
4 New Mexico, shall commence an action to recover from the owner
5 damages resulting from the hydraulic fracturing within three
6 years of the date that the last water test sample results are
7 published by the oil conservation division on its web site.
8 Action shall be brought in the district court of the county in
9 which injury is alleged to have occurred, where the claimant
10 resides, in the county where the owner resides or in Santa Fe
11 county. A prevailing plaintiff shall recover attorney fees and
12 the costs to mitigate and remediate damages to surface water,
13 ground water and other resources and other actual damages. A
14 prevailing plaintiff may recover punitive damages. It shall be
15 no defense that the owner has paid a bond to the oil
16 conservation division in order to receive its permit.

17 G. For the purposes of Subsections E and F of this
18 section, "owner" shall include the owner and the owner's
19 agents, employees, subcontractors, assigns, parent companies,
20 parent partnerships, partners, associates and joint venture
21 participants, all of whom shall be jointly and severally liable
22 for damages arising under Subsection F of this section.

23 H. The oil conservation division shall promulgate
24 rules establishing bonding requirements for all wells on which
25 hydraulic fracturing is planned, which shall be sufficient to

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1 pay all costs associated with remediating contamination to
2 surface water and ground water caused by hydraulic fracturing."

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

5 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

6 A. "hydraulic fracturing" means the process of
7 injecting fluid into an oil- or natural-gas-bearing rock
8 formation adjacent to the borehole of an oil or natural gas
9 well for the purpose of either creating new fractures or
10 expanding existing fractures to stimulate the flow into the
11 well of oil or natural gas that would otherwise remain in the
12 rock formation;

13 [~~A.~~] B. "person" means:

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

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

20 [~~B.~~] C. "pool" means an underground reservoir
21 containing a common accumulation of crude petroleum oil or
22 natural gas or both. Each zone of a general structure, which
23 zone is completely separate from any other zone in the
24 structure, is covered by the word "pool" as used in the Oil and
25 Gas Act. "Pool" is synonymous with "common source of supply"

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1 and with "common reservoir";

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

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

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

22 [F-] G. "producer" means the owner of a well
23 capable of producing oil or natural gas or both in paying
24 quantities;

25 [G-] H. "gas transportation facility" means a

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

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

16 [I.] J. "potash" means the naturally occurring
17 bedded deposits of the salts of the element potassium;

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

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

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SECTION 3. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.