

1 SENATE BILL 307

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Richard C. Martinez

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10 AN ACT

11 RELATING TO OIL AND GAS; AMENDING AND ENACTING SECTIONS OF THE  
12 OIL AND GAS ACT CONCERNING POWERS OF THE OIL CONSERVATION  
13 COMMISSION AND THE OIL CONSERVATION DIVISION OF THE ENERGY,  
14 MINERALS AND NATURAL RESOURCES DEPARTMENT; PROVIDING FOR CIVIL  
15 AND CRIMINAL PENALTIES; AMENDING AND ADDING DEFINITIONS USED IN  
16 THE OIL AND GAS ACT.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 70-2-28 NMSA 1978 (being Laws 1935,  
20 Chapter 72, Section 19, as amended) is amended to read:

21 "70-2-28. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~  
22 ~~appear~~] appears that any person is violating or threatening to  
23 violate any statute of this state with respect to the  
24 conservation of oil and gas or both or any provision of [~~this~~  
25 the Oil and Gas Act or any rule, [~~regulation or~~] order [~~made~~

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

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

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1 "70-2-31. VIOLATIONS OF THE OIL AND GAS 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 Oil and Gas Act or any provision of any rule  
5 ~~[or]~~, order or permit issued pursuant to that act shall be  
6 subject to a civil penalty of not more than one thousand  
7 dollars (\$1,000) for each day of violation. ~~[For purposes of~~  
8 ~~this subsection, in the case of a continuing violation, each~~  
9 ~~day of violation shall constitute a separate violation. The~~  
10 ~~penalties provided in this subsection]~~

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

22 C. The division or the commission may assess the  
23 civil penalties provided in this section after notice and an  
24 opportunity for a public hearing. In assessing the penalty,  
25 the division or the commission may consider the seriousness of

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1 the violation and any good-faith efforts to comply with the  
2 applicable requirement.

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

19 ~~[B. It is unlawful, subject to a criminal penalty~~  
20 ~~of a fine of not more than five thousand dollars (\$5,000) or~~  
21 ~~imprisonment for a term not exceeding three years or both such~~  
22 ~~fine and imprisonment, for any person to knowingly and~~  
23 ~~willfully:~~

24 ~~(1) violate]~~

25 E. A person shall be guilty of a third degree

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1 felony and sentenced pursuant to Section 31-18-15 NMSA 1978 if  
2 the person knowingly violates any provision of the Oil and Gas  
3 Act or any rule, [~~regulation or order of the commission or the~~  
4 ~~division~~] order or permit issued pursuant to that act [~~or~~

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

9 ~~(a) make~~] or if the person knowingly:

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

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

18 ~~(c) omit~~] record, account or memorandum;

19 (2) omits or [~~cause~~] causes to be omitted from  
20 [~~any such~~] a required form, report, record, account or  
21 memorandum full, true and correct entries; [~~or~~

22 ~~(d) remove~~]

23 (3) removes from this state or [~~destroy,~~  
24 ~~mutilate, alter or falsify any such~~] destroys, mutilates,  
25 alters or falsifies a required form, report, record, account or

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1 memorandum; or

2 (4) aids or abets the commission of any act  
3 described in this subsection.

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

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

12 **SECTION 3.** 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  
23 a 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

1 covered by the word "pool" as used in the Oil and Gas Act.

2 "Pool" is synonymous with "common source of supply" and with

3 "common 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  
10 relate 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 crude petroleum oil or natural gas or both in paying

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1 quantities;

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

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

19 I. "potash" means the naturally occurring bedded  
20 deposits of the salts of the element potassium;

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

25 [~~and~~]

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

4           L. "commission" means the oil conservation  
5 commission; and

6           M. "division" means the oil conservation division  
7 of the energy, minerals and natural resources department."

8           SECTION 4. A new section of the Oil and Gas Act is  
9 enacted to read:

10           "[NEW MATERIAL] REPORTING REQUIREMENT.--

11           A. No later than October 1 of each year, the  
12 division shall report to the legislature and to the governor:

13                   (1) the number of violations that the division  
14 has investigated pursuant to the Oil and Gas Act during the  
15 previous fiscal year;

16                   (2) the total amount of penalties imposed by  
17 the division for violations pursuant to the Oil and Gas Act  
18 during the previous fiscal year;

19                   (3) the total amount of penalties collected by  
20 the division for violations pursuant to the Oil and Gas Act  
21 during the previous fiscal year; and

22                   (4) for each penalty assessed, the following  
23 information shall be provided:

24                           (a) the name and location of the person  
25 penalized;

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1 (b) the actual penalty assessed,  
2 including the number of days for which the penalty was assessed  
3 and the amount of the penalty per day of the violation;

4 (c) the reasons underlying the  
5 determination of the amount of the penalty, including  
6 mitigating circumstances;

7 (d) whether the violation was part of a  
8 pattern of violations by the same person;

9 (e) whether the violation was based on  
10 negligence or knowing or willful misconduct; and

11 (f) any other rationale used in  
12 determining the amount and duration of the penalty.

13 B. The annual report required pursuant to  
14 Subsection A of this section shall simultaneously be made  
15 available to the public, including on a website maintained by  
16 the division."

17 SECTION 5. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2017.