HOUSE BILL 546

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO NATURAL RESOURCES; ENACTING THE FLUID OIL AND GAS WASTE ACT; ESTABLISHING OWNERSHIP OF FLUID OIL AND GAS WASTE; ALLOWING THE USE OF TREATED OR RECYCLED FLUID OIL AND GAS WASTE; DECLARING CERTAIN CONTRACT PROVISIONS RELATING TO FLUID OIL AND GAS WASTE VOID AGAINST PUBLIC POLICY; MAKING CONFORMING TECHNICAL CHANGES.

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

SECTION 1. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Fluid Oil and Gas Waste Act"."

SECTION 2. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Fluid Oil and Gas Waste Act:"
Gas Waste Act:

A. "fluid oil and gas waste" means a fluid that arises out of or is incidental to the drilling for or production of oil or gas, including a fluid containing salt or other mineralized substances, brine, hydraulic fracturing fluid, flowback water or produced water;

B. "operator" means a person authorized by the oil conservation division of the energy, minerals and natural resources department to engage in operations to drill or rework an oil or gas well; and

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

SECTION 3. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] EXCLUSION.--The provisions of the Mine Dewatering Act shall not apply to fluid oil and gas waste."

SECTION 4. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] JURISDICTION.--It is the exclusive jurisdiction of the oil conservation division of the energy, minerals and natural resources department to regulate the appropriation and disposition of fluid oil and gas waste, including produced water."

SECTION 5. A new section of Chapter 70 NMSA 1978 is enacted to read:
enacted to read:

"[NEW MATERIAL] FLUID OIL AND GAS WASTE--OWNERSHIP--
TRANSFERRED FOR TREATMENT--SUBSEQUENT USE.--Unless otherwise
expressly provided by a contract, bill of sale or other legally
binding document:

A. upon production, all fluid oil and gas waste
that is produced from an oil or gas well is the personal
property of the operator of that oil or gas well. Pursuant to
Section 70-2-12.1 NMSA 1978, no permit or other approval from
the state engineer is required for the disposition of fluid oil
and gas waste;

B. when fluid oil and gas waste is transferred,
sold or conveyed to a person who transports or takes possession
of that waste for the purpose of recycling or treating the
waste for a subsequent use, the transferred fluid oil and gas
waste is considered to be the property of the person who takes
possession of it until that person transfers the waste to
another person for disposal or use; and

C. when a person who takes possession of fluid oil
and gas waste for the purpose of treating the waste for a
subsequent use transfers possession of the treated product or
any treatment byproduct to another person for the purpose of
subsequent disposal or use, the transferred product or
byproduct is considered to be the property of the person to
whom the product or byproduct is transferred."
SECTION 6. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] VOID AS AGAINST PUBLIC POLICY--THROUGHPUT FEES--LIMITATIONS ON USE OF RECYCLED OR TREATED FLUID OIL AND GAS WASTE.--An agreement, covenant or promise, foreign or domestic, contained in, collateral to or affecting an agreement pertaining to a well for oil or gas or fluid oil and gas waste entered into on or after July 1, 2019 is against public policy and void to the extent it:

A. imposes throughput fees for the transportation of fluid oil and gas waste; or

B. requires fresh water to be purchased for oil and gas operations, or otherwise limits an operator's ability to use recycled or treated fluid oil and gas waste in oil and gas operations."

SECTION 7. A new section of the Mine Dewatering Act is enacted to read:

"[NEW MATERIAL] FLUID OIL AND GAS WASTE.--The Mine Dewatering Act shall not apply to fluid oil and gas waste regulated pursuant to the Fluid Oil and Gas Waste Act."

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.