SENATE BILL 186

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

INTRODUCED BY

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AN ACT

RELATING TO OIL AND GAS; AMENDING AND ENACTING SECTIONS OF THE
OIL AND GAS ACT CONCERNING POWERS OF THE OIL CONSERVATION
COMMISSION AND THE OIL CONSERVATION DIVISION OF THE ENERGY,
MINERALS AND NATURAL RESOURCES DEPARTMENT; PROVIDING FOR CIVIL
AND CRIMINAL PENALTIES; AMENDING AND ADDING DEFINITIONS USED IN
THE OIL AND GAS ACT; MAKING TECHNICAL CONFORMING CHANGES.

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

SECTION 1. Section 70-2-4 NMSA 1978 (being Laws 1935,
Chapter 72, Section 3, as amended) is amended to read:

"70-2-4. OIL CONSERVATION COMMISSION--MEMBERS--TERM--
OFFICERS--QUORUM--POWER TO ADMINISTER OATHS.--There is created
an "oil conservation commission" [hereinafter in the Oil and
Gas Act called the "commission"] to be composed of a designee
of the commissioner of public lands, a designee of the
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secretary of energy, minerals and natural resources and the
director of the oil conservation division. The designees of
the commissioner of public lands and the secretary of energy,
minerals and natural resources shall be persons who have
expertise in the regulation of petroleum production by virtue
of education or training. No salary or compensation shall be
paid any member of the commission for [his] services as a
member of the commission. The term of office of each member of
the commission shall be concurrent with the other office held
by [him] that member. The commission shall organize by
electing a [chairman] chair from its membership. Two members
of the commission shall constitute a quorum for all purposes.
The commission shall adopt a seal, and the seal affixed to any
paper signed by the director of the oil conservation division
shall be prima facie evidence of due execution. The attorney
general shall be the attorney for the commission. Any member
of the commission or the director of the oil conservation
division or any employee of the commission or division shall
have power to administer oaths to any witness in any hearing,
investigation or proceeding contemplated [by] pursuant to the
Oil and Gas Act or by any other law of this state relating to
the conservation of oil and gas."

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

"70-2-28. ACTIONS FOR VIOLATIONS.--"
A. Whenever it [shall appear] appears that any person is violating or threatening to violate any statute of this state with respect to the conservation of oil and gas or both or any provision of [this] the Oil and Gas Act or any rule, [regulation or] order [made thereunder] or permit issued pursuant to that act, the division [through the attorney general shall] may:

(1) bring suit against [such] that person for penalties, if any are applicable, in the county of the residence of the defendant [or], in the county of the residence of any defendant, if there [be] is more than one defendant, [or] in the county where the violation is alleged to have occurred [or] penalties, if any are applicable] or in the county where the division headquarters is located and to restrain [such] the person from continuing [such] violation or from carrying out the threat of violation. In [such] the suit, the division may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil or illegal oil product or illegal gas or illegal gas product, and any or all such commodities or funds derived from the sale thereof may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is
advisable; or

(2) after notice and a public hearing, issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty, or both. A compliance order may also include a suspension or termination of the permit allegedly violated.

B. The remedies provided by this section are cumulative and do not limit any other rights or remedies of the division or the commission with respect to any violation of the Oil and Gas Act or of any rule, order or permit issued pursuant to that act."

SECTION 3. Section 70-2-31 NMSA 1978 (being Laws 1981, Chapter 362, Section 1) is amended to read:

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

A. Except as provided in Subsection B of this section, a person who violates any provision of the Oil and Gas Act or any provision of any rule, order or permit issued pursuant to that act shall be subject to a civil penalty of not more than [one thousand dollars ($1,000)] fifteen thousand dollars ($15,000) for each day of violation. [For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation. The penalties provided in this subsection]
B. If a person fails to comply with a court order or a compliance order issued pursuant to Section 70-2-28 NMSA 1978, the court or the commission may assess a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance.

C. In assessing the penalty, the division or the commission may consider the seriousness of the violation, the extent of the violation's impact on public health and the environment and any good-faith efforts to comply with the applicable requirement.

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

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

(1) violate

E. A person is guilty of a third degree felony and sentenced pursuant to Section 31-18-15 NMSA 1978 if the person knowingly violates any provision of the Oil and Gas Act or any rule, regulation or order of the commission issued pursuant to that act or any rule, regulation or order of the division issued pursuant to that act:

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

(a) make or if the person knowingly:

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

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

(c) omit[record, account or memorandum;]

(2) omits or [cause] causes to be omitted from

[any such] a required form, report, record, account or

memorandum full, true and correct entries; or

[(d) remove]

(3) removes from this state or [destroy, mutilate, alter or falsify any such] destroys, mutilates,

alters or falsifies a required form, report, record, account or

memorandum.

[G–F] F. For the purposes of Subsection [B] E of

this section, each day of violation shall constitute a separate

offense.

[D–G] G. Any person who knowingly [and willfully]

procures, counsels, [aides] aids or abets the commission of any

act described in Subsection A, [or] B or E of this section

shall be subject to the same penalties as are prescribed

[therein] in those subsections."

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

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

A. "person" means:

(1) any individual, estate, trust, receiver,

cooperative association, club, corporation, company, firm,

partnership, joint venture, syndicate or other entity; or

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] REPORTING REQUIREMENT.--

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

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

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

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

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

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

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

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

(e) any other rationale used in
determining the amount and duration of the penalty.

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

SECTION 6. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2019.