

1 SENATE BILL 186

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Richard C. Martinez and Matthew McQueen

5  
6  
7  
8  
9  
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; MAKING TECHNICAL CONFORMING CHANGES.

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

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

21 "70-2-4. OIL CONSERVATION COMMISSION--MEMBERS--TERM--  
22 OFFICERS--QUORUM--POWER TO ADMINISTER OATHS.--There is created  
23 an "oil conservation commission" [~~hereinafter in the Oil and~~  
24 ~~Gas Act called the "commission"~~] to be composed of a designee  
25 of the commissioner of public lands, a designee of the

.211793.2

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 secretary of energy, minerals and natural resources and the  
2 director of the oil conservation division. The designees of  
3 the commissioner of public lands and the secretary of energy,  
4 minerals and natural resources shall be persons who have  
5 expertise in the regulation of petroleum production by virtue  
6 of education or training. No salary or compensation shall be  
7 paid any member of the commission for [~~his~~] services as a  
8 member of the commission. The term of office of each member of  
9 the commission shall be concurrent with the other office held  
10 by [~~him~~] that member. The commission shall organize by  
11 electing a [~~chairman~~] chair from its membership. Two members  
12 of the commission shall constitute a quorum for all purposes.  
13 The commission shall adopt a seal, and the seal affixed to any  
14 paper signed by the director of the oil conservation division  
15 shall be prima facie evidence of due execution. The attorney  
16 general shall be the attorney for the commission. Any member  
17 of the commission or the director of the oil conservation  
18 division or any employee of the commission or division shall  
19 have power to administer oaths to any witness in any hearing,  
20 investigation or proceeding contemplated [~~by~~] pursuant to the  
21 Oil and Gas Act or by any other law of this state relating to  
22 the conservation of oil and gas."

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

25 "70-2-28. ACTIONS FOR VIOLATIONS.--

.211793.2

underscored material = new  
[bracketed material] = delete

1           A. Whenever it [~~shall appear~~] appears that any  
2 person is violating or threatening to violate any statute of  
3 this state with respect to the conservation of oil and gas or  
4 both or any provision of [~~this~~] the Oil and Gas Act or any  
5 rule, [~~regulation or~~] order [~~made thereunder~~] or permit issued  
6 pursuant to that act, the division [~~through the attorney~~  
7 ~~general shall~~] may:

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

.211793.2

underscored material = new  
[bracketed material] = delete

1 advisable; or

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

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

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

15 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

16 A. ~~[Any]~~ Except as provided in Subsection B of this  
17 section, a person who [knowingly and willfully] violates any  
18 provision of the Oil and Gas Act or any provision of any rule  
19 [or], order or permit issued pursuant to that act shall be  
20 subject to a civil penalty of not more than [one thousand  
21 dollars (\$1,000)] fifteen thousand dollars (\$15,000) for each  
22 day of violation. [For purposes of this subsection, in the  
23 case of a continuing violation, each day of violation shall  
24 constitute a separate violation. The penalties provided in  
25 this subsection]

.211793.2

underscored material = new  
[bracketed material] = delete

1           B. If a person fails to comply with a court order  
2 or a compliance order issued pursuant to Section 70-2-28 NMSA  
3 1978, the court or the commission may assess a civil penalty of  
4 not more than twenty-five thousand dollars (\$25,000) for each  
5 day of noncompliance.

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

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

.211793.2

underscored material = new  
[bracketed material] = delete

1 to any other person for damages arising out of [~~such~~] the  
2 violation.

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

8 (~~1~~) ~~violate]~~

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

14 (~~2~~) ~~do any of the following for the purpose of~~  
15 ~~evading or violating the Oil and Gas Act or any rule,~~  
16 ~~regulation or order of the commission or the division issued~~  
17 ~~pursuant to that act:~~

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

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

23 (~~b~~) ~~make or cause to be made any false~~  
24 ~~entry in any record, account or memorandum required by the Oil~~  
25 ~~and Gas Act or by any rule, regulation or order of the~~

.211793.2

underscored material = new  
[bracketed material] = delete

1 ~~commission or division issued pursuant to that act;~~

2 ~~(c) omit~~ record, account or memorandum;

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

6 ~~[(d) remove]~~

7 (3) removes from this state or ~~[destroy,~~  
8 ~~mutilate, alter or falsify any such]~~ destroys, mutilates,  
9 alters or falsifies a required form, report, record, account or  
10 memorandum.

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

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

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

21 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

22 A. "person" means:

23 (1) any individual, estate, trust, receiver,  
24 cooperative association, club, corporation, company, firm,  
25 partnership, joint venture, syndicate or other entity; or

.211793.2

underscored material = new  
~~[bracketed material] = delete~~

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

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

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

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



underscored material = new  
[bracketed material] = delete

1 petroleum oil or natural gas or any derivative thereof;

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

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

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

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

.211793.2

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

17 "[NEW MATERIAL] REPORTING REQUIREMENT.--

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

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

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

.211793.2

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

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

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

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