SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 186

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

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 TO ADDRESS
VIOLATIONS; 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
.213447.1
of the commissioner of public lands, a designee of the 
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 in the county of the residence of the [defendant or] person, in the county of the residence of any [defendant] person, if there [be] is more than one defendant, [or] in the county where the violation is alleged to have occurred [for penalties, if any are applicable] or in the first judicial district and to restrain [such] the person from continuing [such] the 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) issue a compliance order stating with reasonable specificity the nature of the violation and:

(a) requiring compliance immediately or within a specified time period;

(b) assessing a civil penalty in accordance with Section 70-2-31 NMSA 1978;

(c) suspending or terminating the permit allegedly violated; or

(d) any combination of the foregoing.

B. A compliance order issued pursuant to this section shall become final unless a person named in the compliance order submits a written request to the commission for a public hearing no later than thirty days after the compliance order was served. Rehearings and appeals of a final compliance order shall proceed in accordance with Sections 70-2-25 and 70-2-26 NMSA 1978.

C. 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. [Any] A person who [knowingly and willfully] violates any provision of the Oil and Gas Act or any provision of any rule [et], 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 each 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 shall be recoverable by]  

B. In assessing the penalty, the division or the commission may consider the extent of the violation's impact on waste, correlative rights, public health and the environment, any good-faith efforts to comply with the applicable requirement and any other relevant factors.  

C. If a penalty, including a penalty assessed pursuant to a compliance order, is not paid within thirty days after the order assessing the penalty becomes final or within the time frame prescribed by the order:  

(1) the division, commission or court may assess an additional civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) for each day that the penalty remains unpaid; or  

(2) the penalty may be recovered 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 [be] is more than one defendant, [or] in the district court of any county in which the violation occurred or in the first judicial district.

D. If any final order, including a compliance order, assessing a penalty is appealed to the district court pursuant to Section 70-2-25 NMSA 1978, the division or the commission may seek recovery of the penalty by a counterclaim in that case.

E. The payment of [such] a 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:]

F. A person is guilty of a third degree felony and upon conviction shall be 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 or the division order or permit issued pursuant to that act or
(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; [C. G. For the purposes of Subsection [B] F of .213447.1]
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
   (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 practically 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;

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; [and]

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;

(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; and

   (5) the number and nature of lawsuits filed for a violation of the Oil and Gas Act, including the names of defendants, the nature of the violation and the outcome of the litigation.

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.