

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
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 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
PENALTIES; ADDING DEFINITIONS TO THE OIL AND GAS ACT; REQUIRING
ANNUAL REPORTS; AMENDING, REPEALING AND ENACTING SECTIONS OF
THE NMSA 1978.

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

SECTION 1. 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 person who knowingly and willfully violates
any provision of the Oil and Gas Act or any provision of any
rule or order issued pursuant to that act shall be subject to a~~

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1 ~~civil penalty of not more than one thousand dollars (\$1,000)~~
2 ~~for each violation. For purposes of this subsection, in the~~
3 ~~case of a continuing violation, each day of violation shall~~
4 ~~constitute a separate violation. The penalties provided in~~
5 ~~this subsection shall be recoverable by a civil suit filed by~~
6 ~~the attorney general in the name and on behalf of the~~
7 ~~commission or the division in the district court of the county~~
8 ~~in which the defendant resides or in which any defendant~~
9 ~~resides if there be more than one defendant or in the district~~
10 ~~court of any county in which the violation occurred. The~~
11 ~~payment of such penalty shall not operate to legalize any~~
12 ~~illegal oil, illegal gas or illegal product involved in the~~
13 ~~violation for which the penalty is imposed or relieve a person~~
14 ~~on whom the penalty is imposed from liability to any other~~
15 ~~person for damages arising out of such violation.]~~

16 A. Whenever the division determines that a person
17 violated or is violating the Oil and Gas Act or any provision
18 of any rule, order, permit or authorization issued pursuant to
19 that act, the division may seek compliance and civil penalties
20 by:

- 21 (1) issuing a notice of violation;
22 (2) commencing a civil action in district
23 court for appropriate relief, including injunctive relief; or
24 (3) issuing a temporary cessation order if the
25 division determines that the violation is causing or will cause

1 an imminent danger to public health or safety or a significant
2 imminent environmental harm. The cessation order will remain
3 in effect until the earlier of when the violation is abated or
4 thirty days unless a hearing is held before the division and a
5 new order is issued.

6 B. A notice of violation issued pursuant to
7 Paragraph (1) of Subsection A of this section shall state with
8 reasonable specificity the nature of the violation, shall
9 require compliance immediately or within a specified time
10 period, shall provide notice of the availability of an informal
11 review and the date of a hearing before the division and shall
12 provide notice of potential sanctions, including assessing a
13 penalty, suspending, canceling or terminating a permit or
14 authorization, shutting in a well and plugging and abandonment
15 of a well and forfeiting financial assurance pursuant to
16 Section 70-2-14 NMSA 1978.

17 C. If the notice of violation is not resolved
18 informally within thirty days after service of the notice, the
19 division shall hold a hearing and determine whether the
20 violation should be upheld and whether any sanctions, including
21 civil penalties, shall be assessed. In assessing a penalty
22 authorized by this section, the division shall take into
23 account the seriousness of the violation, any good faith
24 efforts to comply with the applicable requirements, any history
25 of noncompliance under the Oil and Gas Act and other relevant

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1 factors. When a decision is rendered by the division after a
2 hearing, any party of record adversely affected shall have the
3 right to have the matter heard de novo before the commission
4 pursuant to Section 70-2-13 NMSA 1978.

5 D. Any civil penalty assessed by a court or by the
6 division or commission pursuant to this section may not exceed
7 two thousand five hundred dollars (\$2,500) per day of
8 noncompliance for each violation unless the violation presents
9 a risk either to the health or safety of the public or of
10 causing significant environmental harm, or unless the
11 noncompliance continues beyond a time specified in the notice
12 of violation or order issued by the division, commission or
13 court, whereupon the civil penalty may not exceed ten thousand
14 dollars (\$10,000) per day of noncompliance for each violation.
15 No penalty assessed by the division or commission after a
16 hearing may exceed two hundred fifty thousand dollars
17 (\$250,000); provided that such limitation does not apply to
18 penalties assessed by a court.

19 E. The commission shall make rules, pursuant to
20 Section 70-2-12.2 NMSA 1978, providing procedures for the
21 issuance of notices of violations, the assessment of penalties
22 and the conduct of informal proceedings and hearings pursuant
23 to this section.

24 ~~[B.]~~ F. It is unlawful, subject to a criminal
25 penalty of a fine of not more than five thousand dollars

1 (\$5,000) or imprisonment for a term not exceeding three years
2 or both such fine and imprisonment, for any person to knowingly
3 and willfully:

4 (1) violate any provision of the Oil and Gas
5 Act or any rule, regulation or order of the commission or the
6 division issued pursuant to that act; or

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

11 (a) make any false entry or statement in
12 a report required by the Oil and Gas Act or by any rule,
13 regulation or order of the commission or division issued
14 pursuant to that act;

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

19 (c) omit or cause to be omitted from any
20 such record, account or memorandum full, true and correct
21 entries; or

22 (d) remove from this state or destroy,
23 mutilate, alter or falsify any such record, account or
24 memorandum.

25 [~~G.~~] G. For the purposes of Subsection [~~B~~] F of

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1 this section, each day of violation shall constitute a separate
2 offense.

3 ~~[D-]~~ H. Any person who knowingly and willfully
4 procures, counsels, aides or abets the commission of any act
5 described in Subsection A or ~~[B]~~ F of this section shall be
6 subject to the same penalties as are prescribed ~~[therein]~~ in
7 Subsection D or F of this section."

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

10 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

11 A. "person" means:

12 (1) any individual, estate, trust, receiver,
13 cooperative association, club, corporation, company, firm,
14 partnership, joint venture, syndicate or other entity; or

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

18 B. "pool" means an underground reservoir containing
19 a common accumulation of crude petroleum oil or natural gas or
20 both. Each zone of a general structure, which zone is
21 completely separate from any other zone in the structure, is
22 covered by the word "pool" as used in the Oil and Gas Act.

23 "Pool" is synonymous with "common source of supply" and with
24 "common reservoir";

25 C. "field" means the general area that is underlaid

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

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

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

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

23 G. "gas transportation facility" means a pipeline
24 in operation serving gas wells for the transportation of
25 natural gas or some other device or equipment in like operation

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1 whereby natural gas produced from gas wells connected therewith
2 can be transported or used for consumption;

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

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

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

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

25 L. "commission" means the oil conservation

1 commission; and

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

4 SECTION 3. A new section of the Oil and Gas Act is
5 enacted to read:

6 "[NEW MATERIAL] REPORTING REQUIREMENT.--No later than
7 October 1 of each year, the division shall report to the
8 appropriate interim committee of the legislature and to the
9 governor and shall post on the agency website:

10 A. the number of notices of violation that the
11 division issued pursuant to the Oil and Gas Act during the
12 previous fiscal year;

13 B. the total amount of penalties collected by the
14 division for violations pursuant to the Oil and Gas Act during
15 the previous fiscal year;

16 C. for each penalty collected, the following
17 information:

18 (1) the name of the person penalized and the
19 location of the violation; and

20 (2) the nature of the violation and the
21 calculation of the penalty collected; and

22 D. the number and nature of lawsuits filed for a
23 violation of the Oil and Gas Act, including the names of
24 defendants, the nature of the violation and the outcome of the
25 litigation."

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1 SECTION 4. REPEAL.--Section 70-2-28 NMSA 1978 (being Laws
2 1935, Chapter 72, Section 19, as amended) is repealed.

3 SECTION 5. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is January 1, 2020.

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