

SENATE BILL 418

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Leo Jaramillo

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;  
ORGANIZING AND AMENDING DEFINITIONS; ADDING MEMBERS TO THE OIL  
CONSERVATION COMMISSION; CHANGING THE QUALIFICATIONS OF THE  
DIRECTOR OF THE OIL CONSERVATION DIVISION OF THE ENERGY,  
MINERALS AND NATURAL RESOURCES DEPARTMENT; AUTHORIZING THE OIL  
CONSERVATION DIVISION TO PROMULGATE RULES TO PROTECT THE  
ENVIRONMENT AND TO PROMOTE HEALTH, SAFETY AND THE INVOLVEMENT  
OF ENVIRONMENTAL JUSTICE COMMUNITIES; CHANGING THE NAME OF THE

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"STATE PETROLEUM ENGINEER" TO THE "STATE OIL CONSERVATION DIRECTOR"; AUTHORIZING THE OIL CONSERVATION DIVISION TO ESTABLISH MINIMUM SETBACKS FOR THE SITING OF NEW WELLS; CHANGING THE REQUIREMENTS FOR FINANCIAL ASSURANCE; REMOVING VENUE REQUIREMENT FOR ACTIONS TO COMPENSATE FOR COSTS OF OIL AND GAS WELL REMEDIATION; REMOVING THE LIMIT ON CIVIL PENALTIES; ESTABLISHING THE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL.

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

SECTION 1. Section 70-2-33 NMSA 1978 (being Laws 1935, Chapter 72, Section 24, as amended) is recompiled as Section 70-2-1.1 NMSA 1978 and is amended to read:

"70-2-1.1. 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~~

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~~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 the person or for the person and another;~~

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

~~G. "gas transportation facility" means a pipeline~~

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~~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 the owner's just and equitable share of the oil or 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 oil or gas or both in the pool and, for such purpose, to use 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.] A. "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 a fluid that is an incidental byproduct from drilling for or the production of oil and gas;~~

~~L.] B. "commission" means the oil conservation commission; [and~~

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

C. "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 the owner's just and equitable share of the oil or 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 oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy;

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

E. "environmental justice community" means a community or population of people that experiences or is at risk of experiencing higher or more adverse human health or environmental effects, including communities of color, low-income communities and tribal and indigenous communities;

F. "fair treatment and meaningful involvement" means to avoid or minimize, in developing and implementing a program, policy, practice or activity, disproportionate adverse health or environmental effects on a group of individuals, including environmental justice communities through consultation with, and the participation of, individuals from

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the communities affected;

G. "field" means the general area that is underlaid or appears to be underlaid by at least one pool and 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;

H. "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;

I. "owner" means the person who has the right to drill into and to produce from a pool and to appropriate the production either for the person or for the person and another;

J. "person" means:

(1) an 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;

K. "pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or

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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";

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

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

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

O. "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."

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

"70-2-3. WASTE--DEFINITIONS.--As used in [~~this~~] the Oil and Gas Act, the term "waste", in addition to its ordinary

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meaning, [~~shall include~~] includes:

A. "underground waste" as those words are generally understood in the oil and gas business and in any event to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool and the locating, spacing, drilling, equipping, operating or producing of any well [~~or wells~~] in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool and the use of inefficient underground storage of natural gas; except that "underground waste" does not include the nonproduction of oil and gas from a formation to protect the environment or promote the public interest, health, safety and general welfare;

B. "surface waste" as those words are generally understood in the oil and gas business and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction, incident to or resulting from the manner of spacing, equipping, operating or producing [~~well or~~] wells or incident to or resulting from the use of inefficient storage or from the production of crude

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petroleum oil or natural gas in excess of the reasonable market demand;

C. the production of crude petroleum oil in this state in excess of the reasonable market demand for [~~such~~] crude petroleum oil. [~~Such~~] Excess production causes or results in waste which is prohibited by [~~this~~] the Oil and Gas Act. The words "reasonable market demand", as used [~~herein~~] in that act with respect to crude petroleum oil, shall be construed to mean the demand for [~~such~~] crude petroleum oil for reasonable current requirements for current consumption and use within or outside the state, together with the demand for [~~such~~] amounts [~~as are~~] reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof or both [~~such~~] crude petroleum oil and products;

D. the nonratable purchase or taking of crude petroleum oil in this state. [~~Such~~] Nonratable taking and purchasing causes or results in waste as defined in [~~the~~] Subsections A, B and C of this section and causes waste by violating Section [~~12 (a) of this act~~] 70-2-16 NMSA 1978;

E. the production in this state of natural gas from any gas well [~~or wells~~] or from any gas pool in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas. The

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words "reasonable market demand", as used [~~herein~~] in the Oil and Gas Act with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for [~~such~~] amounts [~~as are~~] necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof or both [~~such~~] natural gas and products; and

F. drilling or producing operations for oil or gas within any area containing commercial deposits of potash where [~~such~~] those operations would have the undue effect [~~unduly~~] to reduce the total quantity of [~~such~~] the commercial deposits of potash which may reasonably be recovered in commercial quantities or where [~~such~~] those operations would interfere unduly with the orderly commercial development of [~~such~~] the potash deposits."

SECTION 3. 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.--

A. There is created an "oil conservation commission", hereinafter in the Oil and Gas Act called the "commission" [~~to~~]. The commission shall be composed of a designee of the commissioner of public lands who is employed by the state land office, a designee of the secretary of energy,

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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]~~ and two members appointed jointly by the speaker of the house of representatives and the president pro tempore of the senate.

B. All commission members shall have knowledge of the regulation of petroleum oil and natural gas production, including the environmental, health and social impacts caused by such production, by virtue of education, training or experience. In addition, one of the members appointed jointly by the speaker of the house of representatives and the president pro tempore of the senate shall have expertise in environmental law, policy or science or in public health law, policy or science and shall represent the state's interest in a beautiful and healthful environment and the other member appointed jointly by the speaker and the president pro tempore shall have expertise in the fair treatment and meaningful involvement of environmental justice communities and shall represent the state's interest in the fair treatment and meaningful involvement of people and communities.

C. 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

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~~commission shall be concurrent with the other office held by~~  
~~him]~~ provided that public members shall receive per diem and  
mileage in accordance with the Per Diem and Mileage Act. The  
commission shall organize by electing a [~~chairman~~] chair from  
its membership. [~~Two~~] A majority of the 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.

D. The term of office of a designee of the  
commissioner of public lands shall be concurrent with the term  
of office held by the commissioner of public lands. The term  
of office of a designee of the secretary of energy, minerals  
and natural resources shall be concurrent with the term of  
office of the governor. The term of office of the two members  
of the commission appointed jointly by the speaker of the house  
of representatives and the president pro tempore of the senate  
shall be four years; provided that the initial term of the

member of the commission appointed by the speaker and the president pro tempore to represent the state's interest in a beautiful and healthful environment shall be two years. Members of the commission may serve consecutive terms.

E. The members of the commission designated by the secretary of energy, minerals and natural resources or appointed jointly by the speaker of the house of representatives and the president pro tempore of the senate shall not have had an ownership interest in, been employed by or been under contract with an oil or gas company at any time one year prior to appointment or while serving on the commission. By March 1 of each year, each member of the commission shall disclose to the division all sources of income relating to oil or gas for that member of the commission and the member's spouse, if any, for the previous year, that exceed ten thousand dollars (\$10,000)."

SECTION 4. Section 70-2-5 NMSA 1978 (being Laws 1977, Chapter 255, Section 40, as amended) is amended to read:

"70-2-5. OIL CONSERVATION DIVISION--~~[DIRECTOR]~~--STATE OIL CONSERVATION DIRECTOR--~~[STATE PETROLEUM ENGINEER]~~---

A. The director of the ~~[oil conservation]~~ division ~~[of the energy, minerals and natural resources department]~~ shall be known as the "state ~~[petroleum engineer]~~ oil conservation director".

B. The director shall be appointed by the secretary

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of energy, minerals and natural resources and shall:

(1) be a resident of this state; and

~~[(2) be registered by the state board of registration for professional engineers and land surveyors as a petroleum engineer; or~~

~~(3)]~~ (2) by virtue of education ~~[and]~~ or experience have expertise in the ~~[field of petroleum engineering]~~ regulation of petroleum oil and natural gas production and knowledge of the environmental, health and social impacts caused by oil and gas production to people and the environment."

SECTION 5. Section 70-2-11 NMSA 1978 (being Laws 1935, Chapter 72, Section 9, as amended) is amended to read:

"70-2-11. POWER OF COMMISSION AND DIVISION TO PREVENT WASTE AND PROTECT CORRELATIVE RIGHTS.--

A. The division ~~[is hereby empowered and it is its duty to]~~ shall prevent waste prohibited by ~~[this]~~ the Oil and Gas Act, [and to] protect correlative rights, protect health and the environment, promote the public interest, health, safety and general welfare and promote the fair treatment and meaningful involvement of the public, including environmental justice communities, as [in this act] provided in that act. To that end, the division ~~[is empowered to]~~ may make and enforce rules, regulations and orders and ~~[to]~~ do whatever may be reasonably necessary to carry out the purpose of ~~[this]~~ that

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act, whether or not indicated or specified in any section  
[hereof] of that act.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law."

SECTION 6. Section 70-2-12 NMSA 1978 (being Laws 1978, Chapter 71, Section 1, as amended) is amended to read:

"70-2-12. ENUMERATION OF POWERS.--

A. The [~~oil conservation~~] division [~~of the energy, minerals and natural resources department~~] may:

- (1) collect data;
- (2) make investigations and inspections;
- (3) examine properties, leases, papers, books and records;
- (4) examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment;
- (5) hold hearings;
- (6) provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports;
- (7) limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act; and

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(8) require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas and products.

B. The [~~oil conservation~~] division may make rules and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way so as to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; pursuant to Section 70-2-14 NMSA 1978, the division shall require financial assurance conditioned for the performance of the rules;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(3) to require reports showing locations of all oil or gas wells and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate



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recovery of crude petroleum oil or gas or both oil and gas from any pool;

(5) to prevent fires;

(6) to prevent "blow-ups" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any

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product of either, including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations;

(15) to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources;

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;

(17) to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash that may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits;

(18) to spend the oil and gas reclamation fund

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and do all acts necessary and proper to plug dry and abandoned oil and gas wells and to restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the Oil and Gas Act, the rules adopted under that act and the Procurement Code, including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state;

(19) to make well price category determinations pursuant to the provisions of the federal Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars (\$25.00) per filing. Such fees shall be credited to the account of the [oil conservation] division by the state treasurer and may be expended as authorized by the legislature;

(20) to regulate the construction and operation of oil treating plants and to require the posting of bonds for the reclamation of treating plant sites after cessation of operations;

(21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; ~~and~~

(22) to regulate the disposition of nondomestic wastes resulting from the oil field service

industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act as provided in Subsection E of Section 74-6-4 NMSA 1978;

(23) to protect the environment;

(24) to promote the public interest, health, safety and general welfare;

(25) to promote the fair treatment and meaningful involvement of the public, including environmental justice communities; and

(26) to establish minimum setbacks for the siting of new wells to protect the environment and public health, safety and general welfare."

SECTION 7. Section 70-2-14 NMSA 1978 (being Laws 1977, Chapter 237, Section 3, as amended) is amended to read:

"70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

A. Each person, firm, corporation or association ~~[who]~~ that operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy pursuant to the provisions of this section to the ~~[oil conservation]~~ division ~~[of the energy, minerals and natural resources department]~~

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running to the benefit of the state and conditioned that the well be plugged and abandoned and the location be restored and remediated in compliance with the rules of the [~~oil conservation~~] division. The [~~oil conservation~~] division shall establish categories of financial assurance after notice and hearing. Such categories [~~shall~~] may include, for active wells, a blanket [plugging] financial assurance [which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars (\$250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars (\$50,000), and one-well plugging financial assurance] or a one-well financial assurance and for wells that have been inactive more than one year, wells held in temporarily abandoned status for more than one year and wells SCONC→, upon transfer,←SCONC that produce less than sixty barrels of oil per day or less than one hundred twenty thousand cubic feet of gas per day, a one-well financial assurance, in amounts determined sufficient to reasonably pay the cost of plugging and abandoning the wells and restoring and remediating the locations covered by the financial assurance. In establishing categories of financial assurance, the [~~oil conservation~~] division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging and abandoning similar wells, the cost of restoring and remediating similar locations,

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the production level of the well, the risk of well abandonment, the compliance and enforcement history of the well, the proximity of the well to people and communities and such other factors as the [oil conservation] division deems relevant.

~~[The oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status.]~~ All financial assurance shall remain in force until released by the [oil conservation] division. The [oil conservation] division shall release financial assurance when it is satisfied the conditions of the financial assurance have been fully performed.

B. If any of the requirements of the Oil and Gas Act or the rules promulgated pursuant to that act have not been complied with, the [oil conservation] division, after notice and hearing, may order any well plugged and abandoned and the location restored and remediated by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

C. When any financial assurance is forfeited pursuant to the provisions of the Oil and Gas Act or rules promulgated pursuant to that act, the director of the [oil conservation]

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division shall give notice to the attorney general, who shall collect the forfeiture without delay.

D. All forfeitures shall be deposited in the state treasury in the oil and gas reclamation fund.

E. When the financial assurance proves insufficient to cover the cost of plugging and abandoning oil and gas wells and restoring and remediating the location on land other than federal land and funds must be expended from the oil and gas reclamation fund to meet the additional expenses, the [~~oil conservation~~] division is authorized to bring suit against the operator [~~in the district court of the county in which the well is located~~] for indemnification for all costs incurred by the [~~oil conservation~~] division in plugging the well. All funds collected pursuant to a judgment in a suit for indemnification brought under the provisions of this section shall be deposited in the oil and gas reclamation fund.

F. An operator required to file financial assurance for a well pursuant to this section is considered to have met that requirement if the operator obtains a plugging insurance policy that:

- (1) includes the specific well; [~~and that~~ ~~(1)~~] (2) is approved by the office of superintendent of insurance;
- [~~(2)~~] (3) names the state of New Mexico as owner of the policy and contingent beneficiary;

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[~~(3)~~] (4) names a primary beneficiary who agrees to plug the specified wellbore;

[~~(4)~~] (5) is fully prepaid and cannot be canceled or surrendered;

[~~(5)~~] (6) provides that the policy continues in effect until the specified wellbore has been plugged and abandoned and the location restored and remediated;

[~~(6)~~] (7) provides that benefits will be paid when, but not before, the specified wellbore has been plugged and abandoned and the location restored and remediated in accordance with rules of the [~~oil conservation~~] division in effect at the time of plugging, abandoning, restoring and remediating; and

[~~(7)~~] (8) provides benefits that are not less than an amount equal to the one-well financial assurance required by [~~oil conservation~~] division rules.

G. If, subsequent to an operator obtaining an insurance policy as provided in this section, the one-well financial assurance requirement applicable to the operator's well is increased, either because the well is deepened or the rules of the [~~oil conservation~~] division are amended, the operator is considered to have met the revised requirement if:

- (1) the existing policy benefit equals or exceeds the revised requirement;
- (2) the operator obtains an amendment increasing



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the policy benefit by the amount of the increase in the applicable financial assurance requirement; or

(3) the operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit."

SECTION 8. Section 70-2-31 NMSA 1978 (being Laws 1981, Chapter 362, Section 1, as amended) is amended to read:

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

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

- (1) issuing a notice of violation;
- (2) commencing a civil action in district court for appropriate relief, including injunctive relief; or
- (3) issuing a temporary cessation order if the division determines that the violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The cessation order will remain in effect until the earlier of when the violation is abated or thirty days unless a hearing is held before the division and a new order is issued.

B. A notice of violation issued pursuant to Paragraph (1) of Subsection A of this section shall state with reasonable

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specificity the nature of the violation, shall require compliance immediately or within a specified time period, shall provide notice of the availability of an informal review and the date of a hearing before the division and shall provide notice of potential sanctions, including assessing a penalty, suspending, canceling or terminating a permit or authorization, shutting in a well and plugging and abandonment of a well and forfeiting financial assurance pursuant to Section 70-2-14 NMSA 1978.

C. If the notice of violation is not resolved informally within thirty days after service of the notice, the division shall hold a hearing and determine whether the violation should be upheld and whether any sanctions, including civil penalties, shall be assessed. In assessing a penalty authorized by this section, the division shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, any history of noncompliance under the Oil and Gas Act and other relevant factors. When a decision is rendered by the division after a hearing, any party of record adversely affected shall have the right to have the matter heard de novo before the commission pursuant to Section 70-2-13 NMSA 1978.

D. Any civil penalty assessed by a court or by the division or commission pursuant to this section may not exceed two thousand five hundred dollars (\$2,500) per day of

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noncompliance for each violation unless the violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond a time specified in the notice of violation or order issued by the division, commission or court, whereupon the civil penalty may not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. [No penalty assessed by the division or commission after a hearing may exceed two hundred thousand dollars (\$200,000); provided that such limitation does not apply to penalties assessed by a court.]

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

F. 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 any provision of the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act; or

(2) do any of the following for the purpose of

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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 any false entry or statement in a 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 or cause to be omitted from any such record, account or memorandum full, true and correct entries; or

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

G. For the purposes of Subsection F of this section, each day of violation shall constitute a separate offense.

H. Any person who knowingly and willfully procures, counsels, aids or abets the commission of any act described in Subsection A or F of this section shall be subject to the same penalties as are prescribed in Subsection D or F of this section."

**SECTION 9.** A new section of the Oil and Gas Act is

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enacted to read:

"[NEW MATERIAL] ENVIRONMENTAL JUSTICE ADVISORY COUNCIL.--

A. The "environmental justice advisory council" is created and is administratively attached to the energy, minerals and natural resources department. The energy, minerals and natural resources department may provide administrative staff and assistance to the advisory council. The advisory council shall advise the commission and the division on how to identify and address current and historic environmental injustices and inequities in the operation and regulation of oil and gas activities within the authority of the commission and division, including how to identify and address disproportionate, adverse and cumulative risks and impacts of oil and gas operations on environmental justice communities and how to promote the fair treatment and meaningful involvement of environmental justice communities in the permitting, planning, rulemaking and decision making in such activities. The advisory council consists of:

(1) four representatives of disproportionately impacted communities appointed by the secretary of Indian affairs, including representatives from communities within the San Juan and Permian basins;

(2) four representatives of tribal governments or entities, appointed by the chair of the commission; and

(3) one representative of local governments

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appointed by the chair of the commission.

B. The members of the advisory council shall elect a chair of the advisory council.

C. Members of the advisory council may receive per diem and mileage pursuant to the Per Diem and Mileage Act."

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