

1 SENATE BILL 418

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Leo Jaramillo

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;
12 ORGANIZING AND AMENDING DEFINITIONS; ADDING MEMBERS TO THE OIL
13 CONSERVATION COMMISSION; CHANGING THE QUALIFICATIONS OF THE
14 DIRECTOR OF THE OIL CONSERVATION DIVISION OF THE ENERGY,
15 MINERALS AND NATURAL RESOURCES DEPARTMENT; AUTHORIZING THE OIL
16 CONSERVATION DIVISION TO PROMULGATE RULES TO PROTECT THE
17 ENVIRONMENT AND TO PROMOTE HEALTH, SAFETY AND THE INVOLVEMENT
18 OF ENVIRONMENTAL JUSTICE COMMUNITIES; CHANGING THE NAME OF THE
19 "STATE PETROLEUM ENGINEER" TO THE "STATE OIL CONSERVATION
20 DIRECTOR"; AUTHORIZING THE OIL CONSERVATION DIVISION TO
21 ESTABLISH MINIMUM SETBACKS FOR THE SITING OF NEW WELLS;
22 CHANGING THE REQUIREMENTS FOR FINANCIAL ASSURANCE; REMOVING
23 VENUE REQUIREMENT FOR ACTIONS TO COMPENSATE FOR COSTS OF OIL
24 AND GAS WELL REMEDIATION; REMOVING THE LIMIT ON CIVIL
25 PENALTIES; ESTABLISHING THE ENVIRONMENTAL JUSTICE ADVISORY

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1 COUNCIL.

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

4 SECTION 1. Section 70-2-33 NMSA 1978 (being Laws 1935,
5 Chapter 72, Section 24, as amended) is recompiled as Section
6 70-2-1.1 NMSA 1978 and is amended to read:

7 "70-2-1.1. DEFINITIONS.--As used in the Oil and Gas Act:

8 [A. ~~"person" means:~~

9 (1) ~~any individual, estate, trust, receiver,~~
10 ~~cooperative association, club, corporation, company, firm,~~
11 ~~partnership, joint venture, syndicate or other entity; or~~

12 (2) ~~the United States or any agency or~~
13 ~~instrumentality thereof or the state or any political~~
14 ~~subdivision thereof;~~

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

20 ~~"Pool" is synonymous with "common source of supply" and with~~
21 ~~"common reservoir";~~

22 C. ~~"field" means the general area that is underlaid~~
23 ~~or appears to be underlaid by at least one pool and also~~
24 ~~includes the underground reservoir or reservoirs containing the~~
25 ~~crude petroleum oil or natural gas or both. The words "field"~~

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1 and "pool" mean the same thing when only one underground
2 reservoir is involved; however, "field", unlike "pool", may
3 relate to two or more pools;

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

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

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

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

23 H. "correlative rights" means the opportunity
24 afforded, so far as it is practicable to do so, to the owner of
25 each property in a pool to produce without waste the owner's

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1 ~~just and equitable share of the oil or gas or both in the pool,~~
2 ~~being an amount, so far as can be practicably determined and so~~
3 ~~far as can be practicably obtained without waste, substantially~~
4 ~~in the proportion that the quantity of recoverable oil or gas~~
5 ~~or both under the property bears to the total recoverable oil~~
6 ~~or gas or both in the pool and, for such purpose, to use the~~
7 ~~owner's just and equitable share of the reservoir energy;~~

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

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

14 [K. ~~"produced water" means a fluid that is an~~
15 ~~incidental byproduct from drilling for or the production of oil~~
16 ~~and gas;~~

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

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

21 C. "correlative rights" means the opportunity
22 afforded, so far as it is practicable to do so, to the owner of
23 each property in a pool to produce without waste the owner's
24 just and equitable share of the oil or gas or both in the pool,
25 being an amount, so far as can be practicably determined and so

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1 far as can be practicably obtained without waste, substantially
2 in the proportion that the quantity of recoverable oil or gas
3 or both under the property bears to the total recoverable oil
4 or gas or both in the pool and, for such purpose, to use the
5 owner's just and equitable share of the reservoir energy;

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

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

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

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

1 or more pools;

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

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

10 J. "person" means:

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

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

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

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

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

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

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

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

17 "70-2-3. WASTE--DEFINITIONS.--As used in [~~this~~] the Oil
18 and Gas Act, the term "waste", in addition to its ordinary
19 meaning, [~~shall include~~] includes:

20 A. "underground waste" as those words are generally
21 understood in the oil and gas business and in any event to
22 embrace the inefficient, excessive or improper use or
23 dissipation of the reservoir energy, including gas energy and
24 water drive, of any pool and the locating, spacing, drilling,
25 equipping, operating or producing of any well [~~or wells~~] in a

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1 manner to reduce or tend to reduce the total quantity of crude
2 petroleum oil or natural gas ultimately recovered from any pool
3 and the use of inefficient underground storage of natural gas;
4 except that "underground waste" does not include the
5 nonproduction of oil and gas from a formation to protect the
6 environment or promote the public interest, health, safety and
7 general welfare;

8 B. "surface waste" as those words are generally
9 understood in the oil and gas business and in any event to
10 embrace the unnecessary or excessive surface loss or
11 destruction without beneficial use, however caused, of natural
12 gas of any type or in any form or crude petroleum oil or any
13 product thereof, but including the loss or destruction, without
14 beneficial use, resulting from evaporation, seepage, leakage or
15 fire, especially such loss or destruction, incident to or
16 resulting from the manner of spacing, equipping, operating or
17 producing ~~[well or]~~ wells or incident to or resulting from the
18 use of inefficient storage or from the production of crude
19 petroleum oil or natural gas in excess of the reasonable market
20 demand;

21 C. the production of crude petroleum oil in this
22 state in excess of the reasonable market demand for ~~[such]~~
23 crude petroleum oil. ~~[Such]~~ Excess production causes or
24 results in waste which is prohibited by ~~[this]~~ the Oil and Gas
25 Act. The words "reasonable market demand", as used ~~[herein]~~ in

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1 that act with respect to crude petroleum oil, shall be
2 construed to mean the demand for [~~such~~] crude petroleum oil for
3 reasonable current requirements for current consumption and use
4 within or outside the state, together with the demand for
5 [~~such~~] amounts [~~as are~~] reasonably necessary for building up or
6 maintaining reasonable storage reserves of crude petroleum oil
7 or the products thereof or both [~~such~~] crude petroleum oil and
8 products;

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

14 E. the production in this state of natural gas from
15 any gas well [~~or wells~~] or from any gas pool in excess of the
16 reasonable market demand from such source for natural gas of
17 the type produced or in excess of the capacity of gas
18 transportation facilities for such type of natural gas. The
19 words "reasonable market demand", as used [~~herein~~] in the Oil
20 and Gas Act with respect to natural gas, shall be construed to
21 mean the demand for natural gas for reasonable current
22 requirements, for current consumption and for use within or
23 outside the state, together with the demand for [~~such~~] amounts
24 [~~as are~~] necessary for building up or maintaining reasonable
25 storage reserves of natural gas or products thereof or both

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1 [such] natural gas and products; and

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

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

12 "70-2-4. OIL CONSERVATION COMMISSION--MEMBERS--TERM--
13 OFFICERS--QUORUM--POWER TO ADMINISTER OATHS.--

14 A. There is created an "oil conservation
15 commission", hereinafter in the Oil and Gas Act called the
16 "commission" [tø]. The commission shall be composed of a
17 designee of the commissioner of public lands who is employed by
18 the state land office, a designee of the secretary of energy,
19 minerals and natural resources, [~~and~~] the director of the [~~oil~~
20 ~~conservation~~] division [~~The designees of the commissioner of~~
21 ~~public lands and the secretary of energy, minerals and natural~~
22 ~~resources shall be persons who have expertise in the regulation~~
23 ~~of petroleum production by virtue of education or training] and
24 two members appointed jointly by the speaker of the house of
25 representatives and the president pro tempore of the senate.~~

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

16 C. No salary or compensation shall be paid any
17 member of the commission for [his] services as a member of the
18 commission; [~~The term of office of each member of the~~
19 ~~commission shall be concurrent with the other office held by~~
20 him] provided that public members shall receive per diem and
21 mileage in accordance with the Per Diem and Mileage Act. The
22 commission shall organize by electing a [chairman] chair from
23 its membership. [~~Two~~] A majority of the members of the
24 commission shall constitute a quorum for all purposes. The
25 commission shall adopt a seal, and the seal affixed to any

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1 paper signed by the director of the [~~oil conservation~~] division
2 shall be prima facie evidence of due execution. The attorney
3 general shall be the attorney for the commission. Any member
4 of the commission or the director of the [~~oil conservation~~]
5 division or any employee of the commission or division shall
6 have power to administer oaths to any witness in any hearing,
7 investigation or proceeding contemplated [~~by~~] pursuant to the
8 Oil and Gas Act or by any other law of this state relating to
9 the conservation of oil and gas.

10 D. The term of office of a designee of the
11 commissioner of public lands shall be concurrent with the term
12 of office held by the commissioner of public lands. The term
13 of office of a designee of the secretary of energy, minerals
14 and natural resources shall be concurrent with the term of
15 office of the governor. The term of office of the two members
16 of the commission appointed jointly by the speaker of the house
17 of representatives and the president pro tempore of the senate
18 shall be four years; provided that the initial term of the
19 member of the commission appointed by the speaker and the
20 president pro tempore to represent the state's interest in a
21 beautiful and healthful environment shall be two years.
22 Members of the commission may serve consecutive terms.

23 E. The members of the commission designated by the
24 secretary of energy, minerals and natural resources or
25 appointed jointly by the speaker of the house of

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1 representatives and the president pro tempore of the senate
2 shall not have had an ownership interest in, been employed by
3 or been under contract with an oil or gas company at any time
4 one year prior to appointment or while serving on the
5 commission. By March 1 of each year, each member of the
6 commission shall disclose to the division all sources of income
7 relating to oil or gas for that member of the commission and
8 the member's spouse, if any, for the previous year, that exceed
9 ten thousand dollars (\$10,000)."

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

12 "70-2-5. OIL CONSERVATION DIVISION--~~[DIRECTOR]~~--STATE OIL
13 CONSERVATION DIRECTOR--~~[STATE PETROLEUM ENGINEER]~~---

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

18 B. The director shall be appointed by the secretary
19 of energy, minerals and natural resources and shall:

20 (1) be a resident of this state; and

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

24 ~~(3)]~~ (2) by virtue of education ~~[and]~~ or
25 experience have expertise in the ~~[field of petroleum~~

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1 ~~engineering]~~ regulation of petroleum oil and natural gas
2 production and knowledge of the environmental, health and
3 social impacts caused by oil and gas production to people and
4 the environment."

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

7 "70-2-11. POWER OF COMMISSION AND DIVISION TO PREVENT
8 WASTE AND PROTECT CORRELATIVE RIGHTS.--

9 A. The division [~~is hereby empowered and it is its~~
10 ~~duty to~~] shall prevent waste prohibited by [~~this~~] the Oil and
11 Gas Act, [~~and to~~] protect correlative rights, protect health
12 and the environment, promote the public interest, health,
13 safety and general welfare and promote the fair treatment and
14 meaningful involvement of the public, including environmental
15 justice communities, as [~~in this act~~] provided in that act. To
16 that end, the division [~~is empowered to~~] may make and enforce
17 rules, regulations and orders and [~~to~~] do whatever may be
18 reasonably necessary to carry out the purpose of [~~this~~] that
19 act, whether or not indicated or specified in any section
20 [~~hereof~~] of that act.

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

25 SECTION 6. Section 70-2-12 NMSA 1978 (being Laws 1978,

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1 Chapter 71, Section 1, as amended) is amended to read:

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

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

- 5 (1) collect data;
- 6 (2) make investigations and inspections;
- 7 (3) examine properties, leases, papers, books
8 and records;
- 9 (4) examine, check, test and gauge oil and gas
10 wells, tanks, plants, refineries and all means and modes of
11 transportation and equipment;
- 12 (5) hold hearings;
- 13 (6) provide for the keeping of records and the
14 making of reports and for the checking of the accuracy of the
15 records and reports;
- 16 (7) limit and prorate production of crude
17 petroleum oil or natural gas or both as provided in the Oil and
18 Gas Act; and
- 19 (8) require either generally or in particular
20 areas certificates of clearance or tenders in connection with
21 the transportation of crude petroleum oil or natural gas or any
22 products of either or both oil and products or both natural gas
23 and products.

24 B. The [~~oil conservation~~] division may make rules
25 and orders for the purposes and with respect to the subject

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1 matter stated in this subsection:

2 (1) to require dry or abandoned wells to be
3 plugged in a way so as to confine the crude petroleum oil,
4 natural gas or water in the strata in which it is found and to
5 prevent it from escaping into other strata; pursuant to Section
6 70-2-14 NMSA 1978, the division shall require financial
7 assurance conditioned for the performance of the rules;

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

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

14 (4) to prevent the drowning by water of any
15 stratum or part thereof capable of producing oil or gas or both
16 oil and gas in paying quantities and to prevent the premature
17 and irregular encroachment of water or any other kind of water
18 encroachment that reduces or tends to reduce the total ultimate
19 recovery of crude petroleum oil or gas or both oil and gas from
20 any pool;

21 (5) to prevent fires;

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

25 (7) to require wells to be drilled, operated

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1 and produced in such manner as to prevent injury to neighboring
2 leases or properties;

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

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

9 (10) to fix the spacing of wells;

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

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

17 (13) to regulate the methods and devices
18 employed for storage in this state of oil or natural gas or any
19 product of either, including subsurface storage;

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

24 (15) to regulate the disposition, handling,
25 transport, storage, recycling, treatment and disposal of

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1 produced water during, or for reuse in, the exploration,
2 drilling, production, treatment or refinement of oil or gas,
3 including disposal by injection pursuant to authority delegated
4 under the federal Safe Drinking Water Act, in a manner that
5 protects public health, the environment and fresh water
6 resources;

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

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

18 (18) to spend the oil and gas reclamation fund
19 and do all acts necessary and proper to plug dry and abandoned
20 oil and gas wells and to restore and remediate abandoned well
21 sites and associated production facilities in accordance with
22 the provisions of the Oil and Gas Act, the rules adopted under
23 that act and the Procurement Code, including disposing of
24 salvageable equipment and material removed from oil and gas
25 wells being plugged by the state;

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

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

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

17 (22) to regulate the disposition of
18 nondomestic wastes resulting from the oil field service
19 industry, the transportation of crude oil or natural gas, the
20 treatment of natural gas or the refinement of crude oil to
21 protect public health and the environment, including
22 administering the Water Quality Act as provided in Subsection E
23 of Section 74-6-4 NMSA 1978;

24 (23) to protect the environment;

25 (24) to promote the public interest, health,

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1 safety and general welfare;

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

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

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

10 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

11 A. Each person, firm, corporation or association
12 [~~who~~] that operates any oil, gas or service well within the
13 state shall, as a condition precedent to drilling or producing
14 the well, furnish financial assurance in the form of an
15 irrevocable letter of credit or a cash or surety bond or a
16 well-specific plugging insurance policy pursuant to the
17 provisions of this section to the [~~oil conservation~~] division
18 [~~of the energy, minerals and natural resources department~~]
19 running to the benefit of the state and conditioned that the
20 well be plugged and abandoned and the location be restored and
21 remediated in compliance with the rules of the [~~oil~~
22 ~~conservation~~] division. The [~~oil conservation~~] division shall
23 establish categories of financial assurance after notice and
24 hearing. Such categories [~~shall~~] may include, for active
25 wells, a blanket [~~plugging~~] financial assurance [~~which shall be~~

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1 ~~set by rule in an amount not to exceed two hundred fifty~~
2 ~~thousand dollars (\$250,000), a blanket plugging financial~~
3 ~~assurance for temporarily abandoned status wells, which shall~~
4 ~~be set by rule at amounts greater than fifty thousand dollars~~
5 ~~(\$50,000), and one-well plugging financial assurance] or a one-~~
6 well financial assurance and for wells that have been inactive
7 more than one year, wells held in temporarily abandoned status
8 for more than one year and wells that produce less than sixty
9 barrels of oil per day or less than one hundred twenty thousand
10 cubic feet of gas per day, a one-well financial assurance, in
11 amounts determined sufficient to reasonably pay the cost of
12 plugging and abandoning the wells and restoring and remediating
13 the locations covered by the financial assurance. In
14 establishing categories of financial assurance, the [oil
15 conservation] division shall consider the depth of the well
16 involved, the length of time since the well was produced, the
17 cost of plugging and abandoning similar wells, the cost of
18 restoring and remediating similar locations, the production
19 level of the well, the risk of well abandonment, the compliance
20 and enforcement history of the well, the proximity of the well
21 to people and communities and such other factors as the [oil
22 conservation] division deems relevant. [The oil conservation
23 division shall require a one-well financial assurance on any
24 well that has been held in a temporarily abandoned status for
25 more than two years or, at the election of the operator, may

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1 ~~allow an operator to increase its blanket plugging financial~~
2 ~~assurance to cover wells held in temporarily abandoned status.]~~

3 All financial assurance shall remain in force until released by
4 the [oil conservation] division. The [oil conservation]
5 division shall release financial assurance when it is satisfied
6 the conditions of the financial assurance have been fully
7 performed.

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

16 C. When any financial assurance is forfeited pursuant
17 to the provisions of the Oil and Gas Act or rules promulgated
18 pursuant to that act, the director of the [oil conservation]
19 division shall give notice to the attorney general, who shall
20 collect the forfeiture without delay.

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

23 E. When the financial assurance proves insufficient
24 to cover the cost of plugging and abandoning oil and gas wells
25 and restoring and remediating the location on land other than

.224488.2

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1 federal land and funds must be expended from the oil and gas
2 reclamation fund to meet the additional expenses, the [~~oil~~
3 ~~conservation~~] division is authorized to bring suit against the
4 operator [~~in the district court of the county in which the well~~
5 ~~is located~~] for indemnification for all costs incurred by the
6 [~~oil conservation~~] division in plugging the well. All funds
7 collected pursuant to a judgment in a suit for indemnification
8 brought under the provisions of this section shall be deposited
9 in the oil and gas reclamation fund.

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

- 14 (1) includes the specific well; [~~and that~~
15 ~~(1)~~] (2) is approved by the office of
16 superintendent of insurance;
17 [~~(2)~~] (3) names the state of New Mexico as owner
18 of the policy and contingent beneficiary;
19 [~~(3)~~] (4) names a primary beneficiary who agrees
20 to plug the specified wellbore;
21 [~~(4)~~] (5) is fully prepaid and cannot be
22 canceled or surrendered;
23 [~~(5)~~] (6) provides that the policy continues in
24 effect until the specified wellbore has been plugged and
25 abandoned and the location restored and remediated;

.224488.2

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1 [~~(6)~~] (7) provides that benefits will be paid
2 when, but not before, the specified wellbore has been plugged
3 and abandoned and the location restored and remediated in
4 accordance with rules of the [~~oil conservation~~] division in
5 effect at the time of plugging, abandoning, restoring and
6 remediating; and

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

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

16 (1) the existing policy benefit equals or
17 exceeds the revised requirement;

18 (2) the operator obtains an amendment increasing
19 the policy benefit by the amount of the increase in the
20 applicable financial assurance requirement; or

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

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

.224488.2

1 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

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

7 (1) issuing a notice of violation;

8 (2) commencing a civil action in district court
9 for appropriate relief, including injunctive relief; or

10 (3) issuing a temporary cessation order if the
11 division determines that the violation is causing or will cause
12 an imminent danger to public health or safety or a significant
13 imminent environmental harm. The cessation order will remain
14 in effect until the earlier of when the violation is abated or
15 thirty days unless a hearing is held before the division and a
16 new order is issued.

17 B. A notice of violation issued pursuant to Paragraph
18 (1) of Subsection A of this section shall state with reasonable
19 specificity the nature of the violation, shall require
20 compliance immediately or within a specified time period, shall
21 provide notice of the availability of an informal review and
22 the date of a hearing before the division and shall provide
23 notice of potential sanctions, including assessing a penalty,
24 suspending, canceling or terminating a permit or authorization,
25 shutting in a well and plugging and abandonment of a well and

.224488.2

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1 forfeiting financial assurance pursuant to Section 70-2-14 NMSA
2 1978.

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

16 D. Any civil penalty assessed by a court or by the
17 division or commission pursuant to this section may not exceed
18 two thousand five hundred dollars (\$2,500) per day of
19 noncompliance for each violation unless the violation presents
20 a risk either to the health or safety of the public or of
21 causing significant environmental harm, or unless the
22 noncompliance continues beyond a time specified in the notice
23 of violation or order issued by the division, commission or
24 court, whereupon the civil penalty may not exceed ten thousand
25 dollars (\$10,000) per day of noncompliance for each violation.

.224488.2

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~~[bracketed material]~~ = delete

1 ~~[No penalty assessed by the division or commission after a~~
2 ~~hearing may exceed two hundred thousand dollars (\$200,000);~~
3 ~~provided that such limitation does not apply to penalties~~
4 ~~assessed by a court.]~~

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

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

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

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

22 (a) make any false entry or statement in a
23 report required by the Oil and Gas Act or by any rule,
24 regulation or order of the commission or division issued
25 pursuant to that act;

.224488.2

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

5 (c) omit or cause to be omitted from any
6 such record, account or memorandum full, true and correct
7 entries; or

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

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

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

18 SECTION 9. A new section of the Oil and Gas Act is
19 enacted to read:

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

21 A. The "environmental justice advisory council" is
22 created and is administratively attached to the energy,
23 minerals and natural resources department. The energy,
24 minerals and natural resources department may provide
25 administrative staff and assistance to the advisory council.

.224488.2

1 The advisory council shall advise the commission and the
2 division on how to identify and address current and historic
3 environmental injustices and inequities in the operation and
4 regulation of oil and gas activities within the authority of
5 the commission and division, including how to identify and
6 address disproportionate, adverse and cumulative risks and
7 impacts of oil and gas operations on environmental justice
8 communities and how to promote the fair treatment and
9 meaningful involvement of environmental justice communities in
10 the permitting, planning, rulemaking and decision making in
11 such activities. The advisory council consists of:

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

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

18 (3) one representative of local governments
19 appointed by the chair of the commission.

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

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