

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 133

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;
ALLOWING THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS
AND NATURAL RESOURCES DEPARTMENT TO REGULATE CERTAIN TRANSFERS
OF OIL AND GAS WELLS AND AUTHORIZE THE CONVERSION OF OIL AND
GAS WELLS FOR ENERGY STORAGE AND GEOTHERMAL DEVELOPMENT;
INCREASING THE AMOUNT OF FEES AND FINANCIAL ASSURANCE
ASSOCIATED WITH OPERATING OIL AND GAS WELLS; INCREASING CIVIL
PENALTIES; ALLOWING FEES TO BE ADJUSTED TO ACCOUNT FOR
INFLATION; REQUIRING THE CAPTURE OF NINETY-EIGHT PERCENT OF
NATURAL GAS PRODUCED BEGINNING IN 2027.

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

SECTION 1. 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.--

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

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

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

- 25 (1) to require dry or abandoned wells to be

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

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

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

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

19 (5) to prevent fires;

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

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

.227498.2

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

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

7 (10) to fix the spacing of wells;

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

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

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

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

22 (15) to regulate the disposition, handling,
23 transport, storage, recycling, treatment and disposal of
24 produced water during, or for reuse in, the exploration,
25 drilling, production, treatment or refinement of oil or gas,

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1 including disposal by injection pursuant to authority delegated
2 under the federal Safe Drinking Water Act, in a manner that
3 protects public health, the environment and fresh water
4 resources;

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

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

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

24 (19) to make well price category
25 determinations pursuant to the provisions of the federal

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

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

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

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

22 (23) to regulate the transfer of oil and gas
23 wells, including limitations on transfers when:

24 (a) the transferor, the transferee or an
25 entity that owns more than a twenty-five percent interest in a

1 transferor or transferee has a significant history of
 2 noncompliance with the Oil and Gas Act or rules adopted
 3 pursuant to that act, including multiple notices of violations
 4 or spills or releases that are not in the process of being
 5 corrected or addressed;

6 (b) the transferee fails to provide
 7 adequate financial assurance as required by the division;

8 (c) the transferee lacks sufficient
 9 financial capacity based on known or projected production to
 10 manage liabilities associated with the oil and gas wells; or

11 (d) the division issues a written
 12 finding that the limitations on transfer are necessary for the
 13 purposes of mitigating risk to the state from potential
 14 inactive or abandoned oil and gas wells; and

15 (24) to authorize the conversion of an oil and
 16 gas well to a facility that supports energy storage or
 17 geothermal development, including establishing fees and
 18 financial assurance requirements specific to an energy storage
 19 or geothermal use."

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

22 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

23 A. Each person, firm, corporation or association
 24 who operates [~~any~~] an oil, gas or service well within the state
 25 shall, as a condition precedent to drilling or producing the

.227498.2

1 well, furnish financial assurance in the form of an irrevocable
2 letter of credit, ~~[or]~~ a cash or surety bond, a well plugging
3 risk pool fee or a ~~[well-specific]~~ plugging insurance policy
4 pursuant to the provisions of this section to the ~~[oil~~
5 ~~conservation]~~ division ~~[of the energy, minerals and natural~~
6 ~~resources department]~~ running to the benefit of the state and
7 conditioned that the covered well be plugged and abandoned in
8 ~~[compliance with the rules of the oil conservation]~~ accordance
9 with division rules. The ~~[oil conservation]~~ division shall
10 establish categories of financial assurance by rule after
11 notice and hearing. Such categories shall include a blanket
12 plugging financial assurance ~~[which shall be set by rule]~~
13 tiered to reflect operator size and relative risk in an amount
14 not to exceed ~~[two hundred fifty thousand dollars (\$250,000), a~~
15 ~~blanket plugging financial assurance for temporarily abandoned~~
16 ~~status wells, which shall be set by rule at amounts greater~~
17 ~~than fifty thousand dollars (\$50,000) and]~~ ten million dollars
18 (\$10,000,000), a well plugging risk pool fee or a one-well
19 plugging financial assurance in amounts determined sufficient
20 to reasonably pay the cost of plugging the well or wells
21 covered by the financial assurance. In establishing categories
22 of financial assurance, the ~~[oil conservation]~~ division shall
23 consider the depth of the well involved, the length of time
24 since the well was produced, the cost of plugging similar wells
25 and ~~[such]~~ other factors ~~[as]~~ the ~~[oil conservation]~~ division

.227498.2

1 deems relevant, such as operator size and relative risk. The
2 [~~oil conservation~~] division shall require a one-well financial
3 assurance on any well that has been held in a temporarily
4 abandoned status for more than two years or, at the election of
5 the operator, may allow an operator to increase its blanket
6 plugging financial assurance to cover wells held in temporarily
7 abandoned status. All financial assurance shall remain in
8 force until released by the [~~oil conservation~~] division. The
9 [~~oil conservation~~] division shall release financial assurance
10 when [~~it~~] the division is satisfied that the conditions of the
11 financial assurance have been fully performed.

12 B. The division may assess a non-refundable monthly
13 well plugging risk pool fee on a per well basis on a subset of
14 an operator's wells not to exceed five hundred dollars (\$500)
15 per well to offset bonding obligations. A well plugging risk
16 pool fee collected by the division shall be deposited in the
17 oil and gas reclamation fund.

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

.227498.2

1 ~~[G.]~~ D. When any financial assurance is forfeited
2 pursuant to the provisions of the Oil and Gas Act or rules
3 promulgated pursuant to that act, the director of the ~~[oil~~
4 ~~conservation]~~ division shall ~~[give notice to the attorney~~
5 ~~general, who shall]~~ collect the forfeiture without delay.

6 ~~[D.]~~ E. All forfeitures shall be deposited in the
7 state treasury in the oil and gas reclamation fund.

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

19 ~~[F.]~~ G. An operator required to file financial
20 assurance for a well pursuant to this section is considered to
21 have met that requirement if the operator obtains a plugging
22 insurance policy that includes the specific well and that:

23 (1) is approved by the office of
24 superintendent of insurance;

25 (2) names the state of New Mexico as owner of

1 the policy and contingent beneficiary;

2 (3) names a primary beneficiary who agrees to
3 plug the specified wellbore;

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

6 (5) provides that the policy continues in
7 effect until the specified wellbore has been plugged;

8 (6) provides that benefits will be paid when,
9 but not before, the specified wellbore has been plugged in
10 accordance with rules of the [~~oil conservation~~] division in
11 effect at the time of plugging; and

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

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

21 (1) the existing policy benefit equals or
22 exceeds the revised requirement;

23 (2) the operator obtains an amendment
24 increasing the policy benefit by the amount of the increase in
25 the applicable financial assurance requirement; or

.227498.2

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

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

6 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

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

12 (1) issuing a notice of violation;

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

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

22 B. A notice of violation issued pursuant to
23 Paragraph (1) of Subsection A of this section shall:

24 (1) state with reasonable specificity the
25 nature of the violation; [~~shall~~]

.227498.2

1 (2) require compliance immediately or within a
2 specified time period; [~~shall~~]

3 (3) provide notice of the availability of an
4 informal review and the date of a hearing before the division;
5 and [~~shall~~]

6 (4) provide notice of potential sanctions,
7 including assessing a penalty, suspending, canceling or
8 terminating a permit or authorization, shutting in a well and
9 plugging and abandonment of a well and forfeiting financial
10 assurance pursuant to Section 70-2-14 NMSA 1978.

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

24 D. Any civil penalty assessed by a court or by the
25 division or commission pursuant to this section may not exceed

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1 ~~[two thousand five hundred dollars (\$2,500)]~~ ten thousand
2 dollars (\$10,000) per day of noncompliance for each violation
3 unless the violation presents a risk either to the health or
4 safety of the public or of causing significant environmental
5 harm, or unless the noncompliance continues beyond a time
6 specified in the notice of violation or order issued by the
7 division, commission or court, whereupon the civil penalty may
8 not exceed ~~[ten thousand dollars (\$10,000)]~~ twenty-five
9 thousand dollars (\$25,000) per day of noncompliance for each
10 violation. ~~[No penalty assessed by the division or commission~~
11 ~~after a hearing may exceed two hundred thousand dollars~~
12 ~~(\$200,000); provided that such limitation does not apply to~~
13 ~~penalties assessed by a court.]~~

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

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

24 (1) violate any provision of the Oil and Gas
25 Act or any rule, regulation or order of the commission or the

1 division issued pursuant to that act; or

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

6 (a) make any false entry or statement in
7 a report required by the Oil and Gas Act or by any rule,
8 regulation or order of the commission or division issued
9 pursuant to that act;

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

14 (c) omit or cause to be omitted from any
15 such record, account or memorandum full, true and correct
16 entries; or

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

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

23 H. Any person who knowingly and willfully procures,
24 counsels, aids or abets the commission of any act described in
25 Subsection A or F of this section shall be subject to the same

.227498.2

1 penalties as are prescribed in Subsection D or F of this
2 section."

3 SECTION 4. Section 70-2-39 NMSA 1978 (being Laws 2019,
4 Chapter 260, Section 1) is amended to read:

5 "70-2-39. FEES--~~[APPROPRIATION]~~ FEE ADJUSTMENTS--OIL
6 CONSERVATION DIVISION SYSTEMS AND HEARINGS FUND CREATED.--

7 A. Beginning January 1, 2027 and on January 1 of
8 each successive year, the fees provided by this section may be
9 adjusted for inflation as provided in Subsection B of this
10 section. The following fees are required to be paid to the
11 ~~[oil conservation] division [of the energy, minerals and~~
12 ~~natural resources department]~~ with each application for:

13 (1) ~~[with each application for]~~ a non-federal
14 and non-Indian permit to drill, deepen, plug back or reenter a
15 well, the applicant shall submit to the division a
16 nonrefundable fee of ~~[five hundred dollars (\$500)]~~ one thousand
17 five hundred dollars (\$1,500);

18 (2) ~~[with each individual application for]~~
19 administrative approval of a non-standard location, downhole
20 commingle, surface commingle, off-lease measurement, release
21 notification and corrective action, change of operator,
22 application for modification to surface waste management
23 facility, request for the creation of a new pool, proposed
24 alternative method permit or closure plan application or
25 authorization to move produced water, the applicant shall

.227498.2

1 submit to the division a nonrefundable fee of [~~one hundred~~
2 ~~fifty dollars (\$150)~~] four hundred fifty dollars (\$450);

3 (3) [~~with each application for~~] a fluid
4 injection well permit, the applicant shall submit to the
5 division a nonrefundable fee of [~~five hundred dollars (\$500)~~]
6 one thousand five hundred dollars (\$1,500) per well;

7 (4) [~~with each application for~~] a permit for a
8 commercial surface waste management facility, landfill or
9 landfarm, the applicant shall submit to the division a
10 nonrefundable fee of ten thousand dollars (\$10,000) per
11 facility;

12 (5) [~~with each application for~~] an
13 administrative hearing, re-hearing or de novo hearing before
14 the division or commission, the applicant shall submit to the
15 division a nonrefundable fee of [~~five hundred dollars (\$500)~~]
16 one thousand five hundred dollars (\$1,500) per application; and

17 (6) [~~with each application for~~] a continuance
18 of an administrative hearing, re-hearing or de novo hearing
19 before the division or commission, the applicant shall submit
20 to the division a nonrefundable fee of [~~one hundred fifty~~
21 ~~dollars (\$150)~~] four hundred fifty dollars (\$450) per
22 application.

23 B. On January 1, 2027 and on January 1 of each
24 successive year, the division may adjust the fees provided by
25 Subsection A of this section by multiplying the fee as of

.227498.2

1 January 1, 2026 by a fraction, the numerator of which is the
2 consumer price index ending in September of the previous year
3 and the denominator of which is the consumer price index ending
4 September 2025; provided that the fees shall not be adjusted
5 below the minimum amounts provided in Subsection A of this
6 section as a result of a decrease in the consumer price index.
7 By November 1, 2026 and by November 1 of each successive year,
8 the division shall post on its website the fees in Subsection A
9 of this section for the next year.

10 [B-] C. An application for an administrative
11 hearing, re-hearing or de novo hearing before the oil
12 conservation division or commission will be considered to be
13 materially amended if the amendment is made for a purpose other
14 than to correct:

- 15 (1) typographical errors; or
16 (2) clerical errors.

17 [E-] D. The "oil conservation division systems and
18 hearings fund" is created in the state treasury as a
19 nonreverting fund. All funds received by the [oil
20 ~~conservation~~] division from fees imposed pursuant to Subsection
21 A of this section shall be delivered to the state treasurer and
22 deposited in the fund. Disbursements from the fund shall be
23 made upon warrants drawn by the secretary of finance and
24 administration pursuant to vouchers signed by the secretary of
25 energy, minerals and natural resources or the secretary's

.227498.2

1 authorized representative. Money in the fund is subject to
 2 appropriation by the legislature to the division to develop and
 3 modernize the division's online application processing system,
 4 online case management system, online data reporting and
 5 visualization systems and online case file system and for other
 6 technological and equipment upgrades necessary to support the
 7 efficient and transparent implementation and enforcement of the
 8 Oil and Gas Act, including hiring necessary information
 9 technology personnel, and for hearing administration costs.

10 Any unexpended or unencumbered balance remaining in the fund at
 11 the end of a fiscal year shall not revert to the general fund.

12 ~~[Money in the fund in fiscal year 2020 may be expended by the~~
 13 ~~division for the purposes of the fund.]~~

14 E. As used in this section, "consumer price index"
 15 means the consumer price index, not seasonally adjusted, for
 16 all urban consumers, United States city average for all items,
 17 or its successor index, as published by the United States
 18 department of labor for a twelve-month period ending September
 19 30."

20 **SECTION 5.** A new section of the Oil and Gas Act is
 21 enacted to read:

22 "[NEW MATERIAL] NATURAL GAS CAPTURE REQUIREMENTS--RULES.--

23 A. Beginning January 1, 2027, an operator shall
 24 ensure that at least ninety-eight percent of the natural gas
 25 produced or gathered by the operator's facilities is captured

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1 in a calendar year; provided that natural gas released during
2 an emergency or that is beneficially used by the operator or is
3 essential for drilling, completion, recompletion, gas gathering
4 or production operations does not count as gas released for the
5 purpose of determining an operator's overall capture
6 percentage.

7 B. The division shall adopt rules necessary to
8 implement the provisions of this section and an application for
9 a permit to drill shall be subject to the rules to be valid.

10 C. As used in this section, "operator" means a
11 person that is duly authorized to construct, manage or operate
12 an oil or gas well or associated facilities or a natural gas
13 gathering system."