

1 HOUSE BILL 176

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Brian F. Egolf

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO NATURAL RESOURCES; AMENDING, REPEALING AND ENACTING  
12 SECTIONS OF THE OIL AND GAS ACT CONCERNING FINANCIAL ASSURANCE,  
13 POWERS OF THE OIL CONSERVATION COMMISSION AND THE OIL  
14 CONSERVATION DIVISION, CIVIL AND CRIMINAL PENALTIES, PERMITS  
15 FOR THE DISPOSITION OF WASTE, APPEALS AND USE OF THE OIL AND  
16 GAS RECLAMATION FUND; AMENDING SECTIONS OF THE GEOTHERMAL  
17 RESOURCES CONSERVATION ACT CONCERNING CIVIL AND CRIMINAL  
18 PENALTIES; CREATING A FUND; MAKING APPROPRIATIONS.

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "70-2-12. ENUMERATION OF POWERS.--

24 A. ~~[Included in the power given to]~~ The ~~[oil~~  
25 ~~conservation]~~ division ~~[of the energy, minerals and natural~~

.184074.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 ~~resources department is the authority to~~ may:

2 (1) collect data; ~~[to]~~

3 (2) make investigations and inspections; ~~[to]~~

4 (3) examine properties, leases, papers, books  
5 and records; ~~[to]~~

6 (4) examine, check, test and gauge oil and gas  
7 wells, tanks, plants, refineries and all means and modes of  
8 transportation and equipment; ~~[to]~~

9 (5) hold hearings; ~~[to]~~

10 (6) provide for the keeping of records and the  
11 making of reports and for the checking of the accuracy of the  
12 records and reports; ~~[to]~~

13 (7) limit and prorate production of crude  
14 petroleum oil or natural gas or both as provided in the Oil and  
15 Gas Act; and ~~[to]~~

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

21 B. Apart from any authority, express or implied,  
22 elsewhere given to or existing in the [~~oil conservation~~]  
23 division by virtue of the Oil and Gas Act or the statutes of  
24 this state, the division [~~is authorized to~~] may make rules  
25 [~~regulations~~] and orders for the purposes and with respect to

.184074.1

underscored material = new  
[bracketed material] = delete

1 the subject matter stated in this subsection:

2 (1) to require dry or abandoned wells to be  
3 plugged in a way to confine the crude petroleum oil, natural  
4 gas or water in the strata in which it is found and to prevent  
5 it from escaping into other strata; the division shall require  
6 ~~[a cash or surety bond in a sum not to exceed fifty thousand~~  
7 ~~dollars (\$50,000)]~~ financial assurance as provided in Section  
8 70-2-14 NMSA 1978, conditioned for the performance of such  
9 ~~[regulations]~~ rules;

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

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

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

24 (5) to prevent fires;

25 (6) to prevent [~~"blow-ups"~~] "blow-outs" and

.184074.1

underscored material = new  
[bracketed material] = delete

1 "caving" in the sense that the conditions indicated by such  
2 terms are generally understood in the oil and gas business;

3 (7) to require [~~wells to be drilled, operated~~  
4 ~~and produced~~] oil and gas operations to be conducted in such  
5 manner as to prevent injury to neighboring leases or  
6 properties;

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

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

13 (10) to fix the spacing of wells;

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

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

21 (13) to regulate the methods and devices  
22 employed for storage in this state of crude petroleum oil or  
23 natural gas or any product of either, including subsurface  
24 storage;

25 (14) to permit the injection of natural gas or

.184074.1

underscored material = new  
[bracketed material] = delete

1 of any other substance into any pool in this state for the  
2 purpose of repressuring, cycling, pressure maintenance,  
3 secondary or any other enhanced recovery operations;

4 (15) to regulate the disposition of water  
5 produced or used in connection with the drilling for or  
6 producing of crude petroleum oil or natural gas or both and to  
7 direct surface or subsurface disposal of the water, including  
8 disposition by use in drilling for or production of crude  
9 petroleum oil or natural gas, in road construction or  
10 maintenance or other construction, in the generation of  
11 electricity or in other industrial processes, in a manner that  
12 will afford reasonable protection against contamination of  
13 fresh water supplies designated by the state engineer;

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

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

25 (18) to regulate the restoration and

.184074.1

underscored material = new  
[bracketed material] = delete

1 remediation of well sites and production facilities;

2 [~~(18)~~] (19) to spend the oil and gas  
3 reclamation fund and do all acts necessary and proper to plug  
4 dry [~~and~~] or abandoned oil and gas wells and to restore and  
5 remediate abandoned well sites and [~~associated~~] production  
6 facilities in accordance with the provisions of the Oil and Gas  
7 Act, the rules [~~and regulations~~] adopted under that act and the  
8 Procurement Code, including disposing of salvageable equipment  
9 and material removed from oil and gas wells being plugged by  
10 the state;

11 [~~(19)~~] (20) to make well price category  
12 determinations pursuant to the provisions of the federal  
13 Natural Gas Policy Act of 1978 or any successor act and, by  
14 [~~regulation~~] rule, to adopt fees for such determinations, which  
15 fees shall not exceed twenty-five dollars (\$25.00) per filing.  
16 Such fees shall be credited to the account of the [~~oil~~  
17 ~~conservation~~] division by the state treasurer and may be  
18 expended as authorized by the legislature;

19 [~~(20)~~] (21) to regulate the construction and  
20 operation of oil treating plants and to require the posting of  
21 bonds for the reclamation of treating plant sites after  
22 cessation of operations;

23 [~~(21)~~] (22) to regulate the disposition of  
24 nondomestic wastes resulting from the exploration, development,  
25 production or storage of crude petroleum oil or natural gas;

.184074.1

underscored material = new  
[bracketed material] = delete

1 ~~[to protect public health and the environment; and~~  
2 ~~(22)]~~ (23) to regulate the disposition of  
3 nondomestic wastes resulting from the oil field service  
4 industry, the transportation of crude petroleum oil or natural  
5 gas, the treatment of natural gas or the refinement of crude  
6 petroleum oil ~~[to protect public health and the environment,~~  
7 ~~including administering the Water Quality Act as provided in~~  
8 ~~Subsection E of Section 74-6-4 NMSA 1978]~~;

9 (24) recognizing the importance of  
10 environmental concerns in oil and gas operations, to regulate  
11 oil and gas operations pursuant to the Oil and Gas Act so as to  
12 protect public health, surface water, ground water, natural  
13 resources and the environment, including administering the  
14 Water Quality Act as provided in Subsection E of Section 74-6-4  
15 NMSA 1978 so as to protect public health, surface water, ground  
16 water, natural resources and the environment;

17 (25) to require permits for activities  
18 regulated by Chapter 70 NMSA 1978, including permits for  
19 construction or operation of facilities that may discharge any  
20 water contaminant; and

21 (26) to establish a schedule of fees for  
22 permits issued for the disposition of nondomestic wastes."

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

25 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

.184074.1

underscored material = new  
[bracketed material] = delete

1           A. Each person, firm, corporation or association  
2 ~~[who]~~ that operates any oil, gas or service well within the  
3 state shall, as a condition precedent to drilling or producing  
4 the well, furnish financial assurance in the form of an  
5 irrevocable letter of credit or a cash or surety bond or a  
6 well-specific plugging insurance policy pursuant to the  
7 provisions of this section to the ~~[oil conservation]~~ division  
8 ~~[of the energy, minerals and natural resources department]~~  
9 running to the benefit of the state and conditioned that the  
10 well be plugged and abandoned in compliance with the rules of  
11 the ~~[oil conservation]~~ division. The ~~[oil conservation]~~  
12 division shall establish categories of financial assurance  
13 after notice and hearing. ~~[Such]~~ The categories shall include  
14 a blanket plugging financial assurance in an amount not ~~[to~~  
15 ~~exceed fifty thousand dollars (\$50,000)]~~ less than one hundred  
16 thousand dollars (\$100,000), nor more than one million five  
17 hundred thousand dollars (\$1,500,000), and one-well plugging  
18 financial assurance in amounts determined sufficient to  
19 reasonably pay the cost of plugging the wells covered by the  
20 financial assurance. The amount of the blanket plugging  
21 financial assurance required of any operator shall be  
22 determined by multiplying the number of wells operated by the  
23 operator on January 1 of each year that are not plugged and  
24 abandoned or covered by a one-well plugging financial assurance  
25 by five thousand dollars (\$5,000), subject to the minimum and

.184074.1



underscored material = new  
[bracketed material] = delete

1 maximum limits provided in this subsection. In establishing  
2 categories of one-well financial assurance, the [~~oil~~  
3 ~~conservation~~] division shall consider the depth of the well  
4 involved, the length of time since the well was produced, the  
5 cost of plugging similar wells and such other factors as the  
6 [~~oil conservation~~] division deems relevant. In addition to the  
7 blanket plugging financial assurance, the [~~oil conservation~~]  
8 division may require a one-well financial assurance on any  
9 inactive well that has been [~~held in a temporarily abandoned~~  
10 ~~status~~] inactive for more than two years. All financial  
11 assurance shall remain in force until released by the [~~oil~~  
12 ~~conservation~~] division. The [~~oil conservation~~] division shall  
13 release financial assurance when it is satisfied the conditions  
14 of the financial assurance have been fully performed.

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

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

.184074.1

underscored material = new  
[bracketed material] = delete

1 ~~conservation~~] division shall give notice to the attorney  
2 general, who shall collect the forfeiture without delay.

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

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

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

22 (1) is approved by the insurance division of  
23 the public regulation commission;

24 (2) names the state of New Mexico as owner of  
25 the policy and contingent beneficiary;

.184074.1

underscoring material = new  
[bracketed material] = delete

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

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

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

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

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

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

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

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

25 (3) the operator obtains financial assurance

.184074.1

underscoring material = new  
[bracketed material] = delete

1 equal to the amount, if any, by which the revised requirement  
2 exceeds the policy benefit."

3 SECTION 3. Section 70-2-28 NMSA 1978 (being Laws 1935,  
4 Chapter 72, Section 19, as amended) is amended to read:

5 "70-2-28. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~  
6 ~~appear~~] appears that any person is violating or threatening to  
7 violate any statute of this state with respect to the  
8 conservation of oil and gas or both or any provision of [~~this~~  
9 the Oil and Gas Act or any rule, [~~regulation or~~] order [~~made~~  
10 ~~thereunder~~] or permit issued pursuant to that act, the division  
11 through the attorney general shall bring suit against [~~such~~  
12 that person in the county of the residence of the defendant or  
13 in the county of the residence of any defendant, if there [~~be~~  
14 is more than one defendant, or in the county where the  
15 violation is alleged to have occurred for penalties, if any are  
16 applicable, and to restrain [~~such~~] the person from continuing  
17 [~~such~~] the violation or from carrying out the threat of  
18 violation. In [~~such~~] the suit, the division may obtain  
19 injunctions, prohibitory and mandatory, including temporary  
20 restraining orders and temporary injunctions, as the facts may  
21 warrant, including, when appropriate, an injunction restraining  
22 any person from moving or disposing of illegal oil or illegal  
23 oil product or illegal gas or illegal gas product, and any or  
24 all such commodities or funds derived from the sale thereof may  
25 be ordered to be impounded or placed under the control of an

.184074.1

underscored material = new  
[bracketed material] = delete

1 agent appointed by the court if, in the judgment of the court,  
2 such action is advisable. The remedies provided by this  
3 section are cumulative and do not limit any other rights or  
4 remedies of the division or the commission with respect to any  
5 violation of the Oil and Gas Act or of any rule, order or  
6 permit issued pursuant to that act."

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

9 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

10 A. ~~[Any]~~ Except as provided in Subsection B of this  
11 section, a person who [knowingly and willfully] violates any  
12 provision of the Oil and Gas Act or any provision of any rule,  
13 [or] order or permit issued pursuant to that act shall be  
14 subject to a civil penalty of not more than one thousand  
15 dollars (\$1,000) for each day of violation. [For purposes of  
16 this subsection, in the case of a continuing violation, each  
17 day of violation shall constitute a separate violation. The  
18 penalties provided in this subsection]

19 B. If a person violates any provision of the Oil  
20 and Gas Act or any rule, order or permit issued pursuant to  
21 that act, which violation is or causes an unauthorized  
22 discharge into the environment of any contaminant, the civil  
23 penalty shall be not more than ten thousand dollars (\$10,000)  
24 for each violation or ten thousand dollars (\$10,000) for each  
25 day of a continuing violation.

.184074.1

underscored material = new  
[bracketed material] = delete

1           C. The division or the commission may assess the  
2 civil penalties provided in this section after notice and an  
3 opportunity for a public hearing. In assessing the penalty,  
4 the division or the commission may consider the seriousness of  
5 the violation and any good-faith efforts to comply with the  
6 applicable requirement.

7           D. A penalty not paid within thirty days after the  
8 order assessing the penalty becomes final shall be recoverable  
9 by a civil suit filed by the attorney general in the name and  
10 on behalf of the commission or the division in the district  
11 court of the county in which the defendant resides or in which  
12 any defendant resides if there [~~be~~] is more than one defendant  
13 or in the district court of any county in which the violation  
14 occurred, provided that, if any final order assessing a penalty  
15 is appealed pursuant to Section 70-2-25 NMSA 1978, the  
16 commission may seek recovery of the penalty by a counterclaim  
17 in that case. The payment of [~~such~~] the penalty shall not  
18 operate to legalize any illegal oil, illegal gas or illegal  
19 product involved in the violation for which the penalty is  
20 imposed or relieve a person on whom the penalty is imposed from  
21 liability to any other person for damages arising out of [~~such~~]  
22 the violation.

23           [~~B-~~] E. It is unlawful, subject to a criminal  
24 penalty of a fine of not more than [~~five thousand dollars~~  
25 (~~\$5,000~~)] fifteen thousand dollars (\$15,000) or imprisonment

.184074.1

underscoring material = new  
[bracketed material] = delete

1 for a term not exceeding three years or both such fine and  
2 imprisonment, for any person to knowingly and willfully:

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

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

10 (a) make, or cause to be made, any false  
11 entry or statement in a form or report required by the Oil and  
12 Gas Act or by any rule, [~~regulation or order of the commission~~  
13 ~~or division~~] order or permit issued pursuant to that act;

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

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

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

25 (3) procure, counsel, aid or abet the

.184074.1

underscored material = new  
[bracketed material] = delete

1 commission of any act described in this subsection.

2 [~~G.~~] F. For the purposes of Subsection [~~B~~] E of  
3 this section, each day of violation shall constitute a separate  
4 offense.

5 [~~D.~~] G. Any person who knowingly and willfully  
6 procures, counsels, [~~aides~~] aids or abets the commission of any  
7 act described in Subsection A or B of this section shall be  
8 subject to the same penalties as are prescribed [~~therein~~] in  
9 those subsections.

10 H. Penalties assessed and collected pursuant to  
11 Subsection A, B or E of this section shall be deposited in the  
12 oil and gas reclamation fund."

13 **SECTION 5.** Section 70-2-33 NMSA 1978 (being Laws 1935,  
14 Chapter 72, Section 24, as amended) is amended to read:

15 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

16 A. "person" means:

17 (1) any individual, estate, trust, receiver,  
18 cooperative association, club, corporation, company, firm,  
19 partnership, joint venture, syndicate or other entity; or

20 (2) the United States or any agency or  
21 instrumentality thereof or the state or any political  
22 subdivision thereof;

23 B. "pool" means an underground reservoir containing  
24 a common accumulation of crude petroleum oil or natural gas or  
25 both. Each zone of a general structure, which zone is



underscored material = new  
[bracketed material] = delete

1 completely separate from any other zone in the structure, is  
2 covered by the word pool as used in the Oil and Gas Act. Pool  
3 is synonymous with "common source of supply" and with "common  
4 reservoir";

5 C. "field" means the general area that is underlaid  
6 or appears to be underlaid by at least one pool and also  
7 includes the underground reservoir or reservoirs containing the  
8 crude petroleum oil or natural gas or both. The words field  
9 and pool mean the same thing when only one underground  
10 reservoir is involved; however, field, unlike pool, may relate  
11 to two or more pools;

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

21 E. "owner" means the person who has the right to  
22 drill into and to produce from any pool and to appropriate the  
23 production either for [~~himself~~] the person or for [~~himself~~] the  
24 person and another;

25 F. "producer" means the owner of a well capable of

underscored material = new  
[bracketed material] = delete

1 producing oil or natural gas or both in paying quantities;

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

18 I. "potash" means the naturally occurring bedded  
19 deposits of the salts of the element potassium;

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

25 K. "produced water" means water that is an

.184074.1

underscored material = new  
[bracketed material] = delete

1 incidental byproduct from drilling for or the production of oil  
2 and gas;

3 L. "commission" means the oil conservation  
4 commission;

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

7 N. "inactive well" means a well that is not being  
8 utilized for beneficial purposes such as production, injection  
9 or monitoring and that is not being drilled, completed,  
10 repaired or worked over; and

11 O. "oil and gas operations" means all activities  
12 involving or related to the exploration for, development of,  
13 production or storage of crude petroleum oil or natural gas,  
14 the oil field service industry, the transportation of crude  
15 petroleum oil or natural gas, the treatment of natural gas or  
16 the refinement of crude petroleum oil."

17 SECTION 6. Section 70-2-38 NMSA 1978 (being Laws 1977,  
18 Chapter 237, Section 5, as amended) is amended to read:

19 "70-2-38. OIL AND GAS RECLAMATION FUND ADMINISTERED--  
20 PLUGGING WELLS ON FEDERAL LAND--RIGHT OF INDEMNIFICATION--  
21 ANNUAL REPORT--CONTRACTORS SELLING EQUIPMENT FOR SALVAGE.--

22 A. The oil and gas reclamation fund shall be  
23 administered by the [~~oil conservation~~] division [~~of the energy,~~  
24 ~~minerals and natural resources department~~]. Expenditures from  
25 the fund may be used by the director of the division for the

.184074.1

underscored material = new  
[bracketed material] = delete

1 purposes of:

2 (1) employing the necessary personnel to  
3 survey abandoned wells, well sites and associated production  
4 facilities and preparing plans for administering and performing  
5 the plugging of abandoned wells that have not been plugged or  
6 that have been improperly plugged, for plugging and replugging,  
7 abandoned wells and for the restoration and remediation of  
8 abandoned well sites and associated production facilities that  
9 have not been properly restored and remediated; ~~and]~~

10 (2) supporting energy education throughout the  
11 state in an amount not to exceed one hundred fifty thousand  
12 dollars (\$150,000) annually and for plugging and replugging  
13 abandoned wells;

14 (3) purchasing computer equipment and software  
15 to support division data, electronic permitting and imaging  
16 systems that are used to track well status and other  
17 information necessary to identify potential oil and gas  
18 reclamation fund expenditures, provided that the amount of the  
19 fund used for this purpose shall not exceed two hundred fifty  
20 thousand dollars (\$250,000) per year.

21 B. The director of the [~~oil conservation~~] division  
22 [~~of the energy, minerals and natural resources department~~], as  
23 funds become available in the oil and gas reclamation fund,  
24 shall reclaim and properly plug all abandoned wells and shall  
25 restore and remediate abandoned well sites and associated

.184074.1

underscored material = new  
[bracketed material] = delete

1 production facilities in accordance with the provisions of the  
2 Oil and Gas Act and the rules [~~and regulations~~] promulgated  
3 pursuant to that act. The division may order wells plugged and  
4 well sites and associated production facilities restored and  
5 remediated on federal lands on which there are no bonds running  
6 to the benefit of the state in the same manner and in  
7 accordance with the same procedure as with wells drilled on  
8 state and fee land, including using funds from the oil and gas  
9 reclamation fund to pay the cost of plugging, restoration or  
10 remediation. When the costs of plugging or replugging a well  
11 or restoring and remediating well sites and associated  
12 production facilities are paid from the oil and gas reclamation  
13 fund, the division is authorized to bring a suit against the  
14 operator, [~~or~~] the most recent owner of the minerals under the  
15 tract or the most recent lessee of the minerals under the tract  
16 in the district court of the county in which the well is  
17 located for indemnification for all costs incurred by the  
18 division in plugging the well or restoring and remediating the  
19 well site and associated production facilities. Any funds  
20 collected pursuant to a judgment in a suit for indemnification  
21 brought under the Oil and Gas Act shall be deposited in the oil  
22 and gas reclamation fund.

23 C. The director of the [~~oil conservation~~] division  
24 [~~of the energy, minerals and natural resources department~~]  
25 shall make an annual report to the secretary of energy,

.184074.1

underscored material = new  
[bracketed material] = delete

1 minerals and natural resources, the governor and the  
2 legislature on the use of the oil and gas reclamation fund.

3 D. Contracts for plugging, reclamation and energy  
4 education pursuant to this section shall be entered into in  
5 accordance with the provisions of the Procurement Code. A  
6 contractor employed by the oil conservation division of the  
7 energy, minerals and natural resources department to plug a  
8 well or restore or remediate a well site or associated  
9 production facility is authorized to sell the equipment and  
10 material or product that is removed from the well, site or  
11 facility and to deduct the proceeds of the sales from the costs  
12 of plugging, restoring or remediating.

13 E. As used in this section, "associated production  
14 facilities" means those facilities used for, intended to be  
15 used for or that have been used for the production, treatment,  
16 transportation, storage or disposal of oil, gas, brine, product  
17 or waste generated during oil and gas operations or used in the  
18 production of oil and gas if that facility is, has been or  
19 would have been subject to regulation by the oil conservation  
20 division of the energy, minerals and natural resources  
21 department or the oil conservation commission pursuant to the  
22 Oil and Gas Act or the Water Quality Act."

23 SECTION 7. A new section of the Oil and Gas Act is  
24 enacted to read:

25 "[NEW MATERIAL] OIL AND GAS FACILITIES FUND CREATED.--The

.184074.1

underscoring material = new  
[bracketed material] = delete

1 "oil and gas facilities fund" is created in the state treasury.  
2 The fund is composed of all fees collected pursuant to the  
3 rules adopted under Subsection B of Section 70-2-12 NMSA 1978.  
4 Unexpended balances in the fund shall not revert at the end of  
5 a fiscal year and money in the fund is appropriated to the  
6 energy, minerals and natural resources department for the  
7 purpose of administering the rules adopted pursuant to Chapter  
8 70 NMSA 1978. Disbursements from the fund shall be made upon  
9 warrants drawn by the secretary of finance and administration  
10 pursuant to vouchers signed by the secretary of energy,  
11 minerals and natural resources."

12 SECTION 8. A new section of the Oil and Gas Act is  
13 enacted to read:

14 "[NEW MATERIAL] PERMITS FOR THE DISPOSITION OF NONDOMESTIC  
15 WASTES.--

16 A. The commission may require by rule that an  
17 operator of any facility subject to the jurisdiction of the  
18 division obtain a permit from the division for the disposition  
19 of nondomestic wastes.

20 B. The commission shall set by rule the dates for  
21 filing applications for the permits authorized in Subsection A  
22 of this section and shall prescribe the contents of an  
23 application.

24 C. The division may deny any application for a  
25 permit if it determines:

.184074.1

underscoring material = new  
~~[bracketed material]~~ = delete

1 (1) the wastes would not meet all applicable  
2 state or federal rules or regulations, performance standards or  
3 limitations;

4 (2) any provision of the Oil and Gas Act, the  
5 Water Quality Act or any other statute, or any rule or permit  
6 issued pursuant to the Oil and Gas Act or Water Quality Act  
7 would be violated; or

8 (3) the disposition of waste would cause or  
9 contribute to contaminant levels in excess of any applicable  
10 state or federal standard, including any water quality standard  
11 adopted by the water quality control commission. Determination  
12 of the wastes' effect on water shall be measured at the point  
13 of discharge.

14 D. The commission shall adopt rules for procedures  
15 to ensure that the public and appropriate governmental agencies  
16 receive notice of each application for a permit or a material  
17 modification of a permit and shall provide an opportunity for  
18 filing of written comments on the application. If an  
19 application is protested or if the division determines that  
20 there is substantial public interest in an application, the  
21 division may hold a public hearing prior to ruling on the  
22 application.

23 E. The commission shall adopt rules for the  
24 operation and maintenance of those facilities regulated under  
25 Subsection B of Section 70-2-12 NMSA 1978, including

.184074.1



underscoring material = new  
~~[bracketed material]~~ = delete

1 requirements for continuity of operation, personnel training  
2 and financial responsibility, including financial  
3 responsibility for corrective action.

4 F. Permits shall be issued for fixed terms not to  
5 exceed five years, except that the term for a new permit shall  
6 commence on the date the permitted activity begins, but in no  
7 event shall the permit be effective for more than seven years  
8 from the date of issuance.

9 G. The division may impose such reasonable  
10 conditions upon permits as may be necessary to protect public  
11 health and the environment, including requirements that a  
12 permittee:

13 (1) install, use and maintain effluent  
14 monitoring devices;

15 (2) sample wastes and receiving waters for any  
16 known or suspected water contaminants, in accordance with  
17 methods and at locations and intervals as may be prescribed by  
18 the division;

19 (3) establish and maintain records of the  
20 nature and amounts of effluents and the performance of effluent  
21 control devices;

22 (4) provide any other information relating to  
23 the discharge or release of water contaminants; and

24 (5) notify the division of the introduction of  
25 new water contaminants from a new source and of a substantial

.184074.1

1 change in the volume or character of water contaminants being  
2 introduced from sources in existence at the time of the  
3 issuance of the permit.

4 H. The issuance of a permit does not relieve a  
5 person from the responsibility to comply with all state or  
6 federal statutes, rules or regulations or state or federal  
7 water quality standards.

8 I. A permit may be terminated or modified by the  
9 division prior to its date of expiration for the following  
10 causes:

- 11 (1) violating a condition of the permit;
- 12 (2) obtaining a permit by misrepresentation or  
13 failure to disclose fully all required information;
- 14 (3) violating any applicable statute, rule,  
15 performance standard or water quality standard;
- 16 (4) violating applicable state or federal  
17 effluent rules or regulations; or
- 18 (5) a change in any condition that requires  
19 either a temporary or permanent reduction or elimination of the  
20 discharge of waste to ensure that any state or federal  
21 standard, including any water quality standard adopted by the  
22 water quality control commission, is not exceeded.

23 J. If the division denies, terminates or modifies a  
24 permit, other than as requested by the permittee, or grants a  
25 permit subject to condition, the division shall notify the

underscored material = new  
[bracketed material] = delete

1 applicant or permittee by certified mail of the action taken  
2 and the reasons. If the permittee files an application for  
3 review of the division's decision within thirty days of the  
4 date of the notice, the applicant shall be entitled to a  
5 hearing as provided in Section 70-2-13 NMSA 1978. The  
6 provisions of Section 70-2-23 NMSA 1978 shall not apply to any  
7 division action terminating or modifying a permit pursuant to  
8 this section."

9 SECTION 9. Section 71-5-20 NMSA 1978 (being Laws 1975,  
10 Chapter 272, Section 20, as amended) is amended to read:

11 "71-5-20. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~  
12 ~~appear~~] appears that any person is violating or threatening to  
13 violate any statute of this state with respect to the  
14 conservation of geothermal resources or any provision of the  
15 Geothermal Resources Conservation Act or any rule, [~~regulation~~  
16 ~~or order made thereunder~~] order or permit issued pursuant to  
17 that act, the division through the attorney general shall bring  
18 suit against [~~such~~] the person in the county of the residence  
19 of the defendant or in the county of the residence of any  
20 defendant if there [~~be~~] is more than one defendant or in the  
21 county where the violation is alleged to have occurred for  
22 penalties, if any are applicable, and to restrain [~~such~~] the  
23 person from continuing [~~such~~] the violation or from carrying  
24 out the threat of violation. In [~~such~~] the suit, the division  
25 may obtain injunction, prohibitory and mandatory, including

.184074.1

underscored material = new  
[bracketed material] = delete

1 temporary restraining orders and temporary injunctions, as the  
2 facts may warrant, including, when appropriate, an injunction  
3 restraining any person from moving or disposing of illegal  
4 geothermal resources or illegal geothermal resources product,  
5 and any or all such commodities or funds derived from ~~the~~  
6 their sale ~~thereof~~ may be ordered to be impounded or placed  
7 under the control of an agent appointed by the court if, in the  
8 judgment of the court, such action is advisable. Remedies  
9 provided by this section shall be cumulative and shall not  
10 limit any other rights or remedies of the division or the  
11 commission with respect to any violation of the Geothermal  
12 Resources Conservation Act or of any rule, order or permit made  
13 or issued pursuant to that act."

14 SECTION 10. Section 71-5-23 NMSA 1978 (being Laws 1981,  
15 Chapter 362, Section 2) is amended to read:

16 "71-5-23. VIOLATIONS OF THE GEOTHERMAL RESOURCES  
17 CONSERVATION ACT--PENALTIES.--

18 A. ~~Any~~ Except as provided in Subsection B of this  
19 section, a person who ~~[knowingly and willfully]~~ violates any  
20 provision of the Geothermal Resources Conservation Act or any  
21 provision of any rule, ~~[or]~~ order or permit issued pursuant to  
22 that act shall be subject to a civil penalty of not more than  
23 two thousand five hundred dollars (\$2,500) for each day of  
24 violation. ~~[For purposes of this subsection, in the case of a~~  
25 ~~continuing violation, each day of violation shall constitute a~~

.184074.1

underscored material = new  
[bracketed material] = delete

1 ~~separate violation. The penalties provided in this subsection]~~

2 B. If a person violates any provision of the  
3 Geothermal Resources Conservation Act or any rule, order or  
4 permit issued pursuant to that act, which violation is or  
5 causes an unauthorized discharge into the environment of any  
6 contaminant, the civil penalty shall be not more than ten  
7 thousand dollars (\$10,000) for each violation or ten thousand  
8 dollars (\$10,000) for each day of a continuing violation.

9 C. The division or the commission may assess the  
10 civil penalties provided in this section after notice and an  
11 opportunity for a public hearing. In assessing the penalty,  
12 the division or the commission may consider the seriousness of  
13 the violation and any good-faith efforts to comply with the  
14 applicable requirement.

15 D. A penalty not paid within thirty days after the  
16 order assessing the penalty becomes final shall be recoverable  
17 by a civil suit filed by the attorney general in the name and  
18 on behalf of the commission or the division in the district  
19 court of the county in which the defendant resides or in which  
20 any defendant resides if there ~~be~~ is more than one defendant  
21 or in the district court of any county in which the violation  
22 occurred; provided that, if any final order assessing a penalty  
23 is appealed pursuant to Section 71-5-18 NMSA 1978, the  
24 commission may seek recovery of the penalty by counterclaim in  
25 that case. The payment ~~to~~ of such penalty shall not operate

.184074.1

underscored material = new  
[bracketed material] = delete

1 to legalize any illegal geothermal resources or illegal  
2 geothermal resources product involved in the violation for  
3 which the penalty is imposed or relieve a person on whom the  
4 penalty is imposed from liability to any other person for  
5 damages arising out of [~~such~~] the violation.

6 [B.] E. It is unlawful, subject to a criminal  
7 penalty of a fine of not more than [~~five thousand dollars~~  
8 ~~(\$5,000)~~] fifteen thousand dollars (\$15,000) or imprisonment  
9 for a term not exceeding three years or both such fine and  
10 imprisonment, for any person to knowingly and willfully:

11 (1) violate any provision of the Geothermal  
12 Resources Conservation Act or any rule, [~~regulation or order of~~  
13 ~~the commission or the division~~] order or permit issued pursuant  
14 to that act; [~~or~~]

15 (2) do any of the following for the purpose of  
16 evading or violating the Geothermal Resources Conservation Act  
17 or any rule, [~~regulation or order of the commission or the~~  
18 ~~division~~] order or permit issued pursuant to that act:

19 (a) make, or cause to be made, any false  
20 entry or statement in a form or report required by the  
21 Geothermal Resources Conservation Act or by any rule,  
22 [~~regulation or order of the commission or division~~] order or  
23 permit issued pursuant to that act;

24 (b) make or cause to be made any false  
25 entry in any record, account or memorandum required by the

.184074.1

underscored material = new  
[bracketed material] = delete

1 Geothermal Resources Conservation Act or by any rule,  
2 [~~regulation or order of the commission or division~~] order or  
3 permit issued pursuant to that act;

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

7 (d) remove from this state or destroy,  
8 mutilate, alter or falsify any such form, report, record,  
9 account or memorandum; or

10 (3) procure, counsel, aid or abet the  
11 violation of this subsection by any other person.

12 [~~G.~~] F. For the purposes of Subsection [~~B~~] E of  
13 this section, each day of violation shall constitute a separate  
14 offense.

15 [~~D.~~] G. Any person who knowingly and willfully  
16 procures, counsels, aids or abets the commission of any act  
17 described in Subsection A, [~~or~~] B or E of this section shall be  
18 subject to the same penalties as are prescribed [~~therein~~] in  
19 those subsections."

20 SECTION 11. REPEAL.--Section 70-2-26 NMSA 1978 (being  
21 Laws 1977, Chapter 255, Section 60, as amended) is repealed.

22 SECTION 12. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2011.