

HOUSE BILL 276

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

INTRODUCED BY

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AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;  
AUTHORIZING THE OIL CONSERVATION DIVISION OF THE ENERGY,  
MINERALS AND NATURAL RESOURCES DEPARTMENT TO REQUIRE PROOF OF  
INSURANCE AND FISCAL SOLVENCY WHEN SUBMITTING A PERMIT  
APPLICATION; PROVIDING THAT A PERMIT APPLICATION MAY BE DENIED  
BASED ON POOR COMPLIANCE HISTORY.

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.--

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

(1) collect data;

(2) make investigations and inspections;

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1 (3) examine properties, leases, papers, books  
2 and records;

3 (4) examine, check, test and gauge oil and gas  
4 wells, tanks, plants, refineries and all means and modes of  
5 transportation and equipment;

6 (5) hold hearings;

7 (6) provide for the keeping of records and the  
8 making of reports and for the checking of the accuracy of the  
9 records and reports;

10 (7) limit and prorate production of crude  
11 petroleum oil or natural gas or both as provided in the Oil and  
12 Gas Act; [~~and~~]

13 (8) require either generally or in particular  
14 areas certificates of clearance or tenders in connection with  
15 the transportation of crude petroleum oil or natural gas or any  
16 products of either or both oil and products or both natural gas  
17 and products;

18 (9) require a person submitting a  
19 registration, change of ownership or permit application  
20 pursuant to the Oil and Gas Act to provide proof of sufficient  
21 environmental insurance coverage through a valid policy issued  
22 by a third-party insurance provider approved by the division;

23 (10) require a person submitting a  
24 registration, change of ownership or permit application  
25 pursuant to the Oil and Gas Act to demonstrate fiscal solvency;

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1 and

2 (11) require an applicant or operator to  
3 undergo a fiscal solvency review that is conducted by the  
4 division and funded by the applicant or operator.

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

8 (1) to require dry or abandoned wells to be  
9 plugged in a way so as to confine the crude petroleum oil,  
10 natural gas or water in the strata in which it is found and to  
11 prevent it from escaping into other strata; pursuant to Section  
12 70-2-14 NMSA 1978, the division shall require financial  
13 assurance conditioned for the performance of the rules;

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

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

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

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1 any pool;

2 (5) to prevent fires;

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

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

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

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

15 (10) to fix the spacing of wells;

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

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

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

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

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

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

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

24 (18) to spend the oil and gas reclamation fund  
25 and do all acts necessary and proper to plug dry and abandoned

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1 oil and gas wells and to restore and remediate abandoned well  
2 sites and associated production facilities in accordance with  
3 the provisions of the Oil and Gas Act, the rules adopted under  
4 that act and the Procurement Code, including disposing of  
5 salvageable equipment and material removed from oil and gas  
6 wells being plugged by the state;

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

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

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

23 (22) to regulate the disposition of  
24 nondomestic wastes resulting from the oil field service  
25 industry, the transportation of crude oil or natural gas, the

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

5 SECTION 2. A new section of the Oil and Gas Act is  
6 enacted to read:

7 "[NEW MATERIAL] PERMITS--DENIAL, SUSPENSION AND REVOCATION  
8 FOR POOR COMPLIANCE HISTORY.--

9 A. An applicant for a permit pursuant to the Oil  
10 and Gas Act shall file a disclosure statement with the division  
11 with the information listed in Subsection B of this section on  
12 a form developed by the division. An existing permit holder  
13 shall provide such disclosure upon request by the division or  
14 commission.

15 B. The division may deny a permit application or  
16 revoke or suspend a permit issued pursuant to the Oil and Gas  
17 Act if, within the ten years immediately preceding the date of  
18 submission of the permit application or any time following the  
19 date of submission of the permit application, the applicant or  
20 permittee:

21 (1) has knowingly misrepresented a material  
22 fact in an application for a permit;

23 (2) has refused to disclose the information  
24 required by the provisions of the Oil and Gas Act;

25 (3) has been convicted in any court of any

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1 state or the United States of:

2 (a) a felony relating to environmental  
3 crime; or

4 (b) a crime defined by state or federal  
5 statute as involving or being in restraint of trade, price  
6 fixing, bribery or fraud;

7 (4) owned, constructed or operated an oil or  
8 gas operation or related infrastructure without a permit  
9 required by the Oil and Gas Act, a rule issued pursuant to that  
10 act or by any state or federal law, except when the unpermitted  
11 operation or infrastructure is discovered after acquisition in  
12 the course of a timely environmental audit authorized by  
13 division or commission policy;

14 (5) is out of compliance with a rule, permit  
15 or order issued under the Oil and Gas Act, including an order  
16 requiring corrective action;

17 (6) had a permit revoked or permanently  
18 suspended for cause under the environmental laws of any state  
19 or the United States;

20 (7) failed to provide proof of adequate  
21 environmental insurance coverage from a third-party insurance  
22 provider approved by the division; or

23 (8) failed to provide proof of fiscal  
24 solvency.

25 C. In making a finding under Subsection B of this

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1 section, the division or commission may consider aggravating  
2 and mitigating factors.

3 D. In making a finding under Paragraph (3), (4) or  
4 (5) of Subsection B of this section, the division or the  
5 commission may consider the compliance history of a person who  
6 is substantially affiliated with the applicant or permittee.

7 E. If an applicant or permittee whose permit  
8 application is being considered for denial or whose permit is  
9 being considered for revocation or suspension pursuant to  
10 Subsection A of this section has submitted a corrective action  
11 plan that satisfactorily demonstrates that the basis for permit  
12 denial, suspension or revocation shall be resolved and includes  
13 actions the applicant or permittee shall take to ensure future  
14 compliance, the secretary of energy, minerals and natural  
15 resources or the director of the division may, after public  
16 notice and an opportunity for the public to comment on the plan  
17 during a public comment period of at least thirty days, approve  
18 the plan in writing and allow the applicant or permittee to  
19 operate for a reasonable period of time.

20 F. No ruling shall be made on permit issuance,  
21 suspension or revocation without an opportunity for a public  
22 hearing at which all interested persons shall be given a  
23 reasonable chance to submit data, views or arguments orally or  
24 in writing and to examine witnesses testifying at the hearing;  
25 provided, however, that the division may, pursuant to Section

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1 70-2-31 NMSA 1978, issue a temporary cessation order whenever  
2 the division determines that the violation is causing or will  
3 cause an imminent danger to public health or safety or a  
4 significant imminent environmental harm.

5 G. The authority to deny a permit application or  
6 revoke a permit under this section includes the authority to  
7 deny or revoke a registration, change of ownership or other  
8 authorization to operate under the Oil and Gas Act."

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