

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 286

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51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO OIL AND GAS; AMENDING SECTIONS OF THE OIL AND GAS
ACT CONCERNING FINANCIAL ASSURANCE, POWERS OF THE OIL
CONSERVATION COMMISSION AND THE OIL CONSERVATION DIVISION OF
THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, CIVIL
AND CRIMINAL PENALTIES, PERMITS FOR THE DISPOSITION OF WASTE
AND APPEALS.

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

SECTION 1. Section 70-2-14 NMSA 1978 (being Laws 1977,
Chapter 237, Section 3, as amended) is amended to read:

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

A. Each person, firm, corporation or association
[who] that operates any oil, gas or service well within the
state shall, as a condition precedent to drilling or producing
the well, furnish financial assurance in the form of an

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

1 irrevocable letter of credit or a cash or surety bond or a
2 well-specific plugging insurance policy pursuant to the
3 provisions of this section to the [~~oil conservation~~] division
4 [~~of the energy, minerals and natural resources department~~]
5 running to the benefit of the state and conditioned that the
6 well be plugged and abandoned in compliance with the rules of
7 the [~~oil conservation~~] division. The [~~oil conservation~~]
8 division shall establish categories of financial assurance
9 after notice and hearing. [~~Such~~] The categories shall include
10 a blanket plugging financial assurance in an amount not to
11 exceed fifty thousand dollars (\$50,000) and one-well plugging
12 financial assurance in amounts determined sufficient to
13 reasonably pay the cost of plugging the wells covered by the
14 financial assurance. In establishing categories of financial
15 assurance, the [~~oil conservation~~] division shall consider the
16 depth of the well involved, the length of time since the well
17 was produced, the cost of plugging similar wells and such other
18 factors as the [~~oil conservation~~] division deems relevant. In
19 addition to the blanket plugging financial assurance, the [~~oil~~
20 ~~conservation~~] division may require a one-well financial
21 assurance on any well that has been held in a temporarily
22 abandoned status for more than two years. All financial
23 assurance shall remain in force until released by the [~~oil~~
24 ~~conservation~~] division. The [~~oil conservation~~] division shall
25 release financial assurance when it is satisfied the conditions

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1 of the financial assurance have been fully performed.

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

9 C. When any financial assurance is forfeited
10 pursuant to the provisions of the Oil and Gas Act or rules
11 promulgated pursuant to that act, the director of the [~~oil
12 conservation~~] division shall give notice to the attorney
13 general, who shall collect the forfeiture without delay.

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

16 E. When the financial assurance proves insufficient
17 to cover the cost of plugging oil and gas wells on land other
18 than federal land and funds must be expended from the oil and
19 gas reclamation fund to meet the additional expenses, the [~~oil
20 conservation~~] division is authorized to bring suit against the
21 operator, in the district court of the county in which the well
22 is located or in the first judicial district for
23 indemnification for all costs incurred by the [~~oil
24 conservation~~] division in plugging the well. All funds
25 collected pursuant to a judgment in a suit for indemnification

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1 brought under the provisions of this section shall be deposited
2 in the oil and gas reclamation fund.

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

7 (1) is approved by the insurance division of
8 the public regulation commission;

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

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

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

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

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

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

24 G. If, subsequent to an operator obtaining an
25 insurance policy as provided in this section, the one-well

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1 financial assurance requirement applicable to the operator's
 2 well is increased, either because the well is deepened or the
 3 rules of the [~~oil conservation~~] division are amended, the
 4 operator is considered to have met the revised requirement if:

5 (1) the existing policy benefit equals or
 6 exceeds the revised requirement;

7 (2) the operator obtains an amendment
 8 increasing the policy benefit by the amount of the increase in
 9 the applicable financial assurance requirement; or

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

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

15 "70-2-28. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~
 16 ~~appear~~] appears that any person is violating or threatening to
 17 violate any statute of this state with respect to the
 18 conservation of oil and gas or both or any provision of [~~this~~
 19 the Oil and Gas Act or any rule, [~~regulation or~~] order [~~made~~
 20 ~~thereunder~~] or permit issued pursuant to that act, the division
 21 through the attorney general shall bring suit against [~~such~~
 22 that] person in the county of the residence of the defendant or
 23 in the county of the residence of any defendant, if there [~~be~~
 24 is] more than one defendant, or in the county where the
 25 violation is alleged to have occurred for penalties, if any are

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1 applicable, or in the first judicial district, and to restrain
2 [~~such~~] the person from continuing [~~such~~] violation or from
3 carrying out the threat of violation. In [~~such~~] the suit, the
4 division may obtain injunctions, prohibitory and mandatory,
5 including temporary restraining orders and temporary
6 injunctions, as the facts may warrant, including, when
7 appropriate, an injunction restraining any person from moving
8 or disposing of illegal oil or illegal oil product or illegal
9 gas or illegal gas product, and any or all such commodities or
10 funds derived from the sale thereof may be ordered to be
11 impounded or placed under the control of an agent appointed by
12 the court if, in the judgment of the court, such action is
13 advisable. The remedies provided by this section are
14 cumulative and do not limit any other rights or remedies of the
15 division or the commission with respect to any violation of the
16 Oil and Gas Act or of any rule, order or permit issued pursuant
17 to that act."

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

20 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

21 A. [~~Any~~] Except as provided in Subsection B of this
22 section, a person who [~~knowingly and willfully~~] violates any
23 provision of the Oil and Gas Act or any provision of any rule
24 [~~or~~], order or permit issued pursuant to that act shall be
25 subject to a civil penalty of not more than one thousand

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1 dollars (\$1,000) for each day of violation. [~~For purposes of~~
 2 ~~this subsection, in the case of a continuing violation, each~~
 3 ~~day of violation shall constitute a separate violation. The~~
 4 ~~penalties provided in this subsection]~~

5 B. If a person violates any provision of the Oil
 6 and Gas Act or any rule, order or permit issued pursuant to
 7 that act, which violation is or causes an unauthorized
 8 discharge of any water contaminant that pollutes or threatens
 9 to pollute water in excess of any state or federal water
 10 quality standard, the civil penalty shall be not more than ten
 11 thousand dollars (\$10,000) for each violation or ten thousand
 12 dollars (\$10,000) for each day of a continuing violation;
 13 provided, however, that this subsection shall apply only to
 14 unauthorized discharges that are not subject to regulation and
 15 penalties under the Water Quality Act.

16 C. The division or the commission may assess the
 17 civil penalties provided in this section after notice and an
 18 opportunity for a public hearing. In assessing the penalty,
 19 the division or the commission may consider the seriousness of
 20 the violation and any good-faith efforts to comply with the
 21 applicable requirement.

22 D. A penalty not paid within thirty days after the
 23 order assessing the penalty becomes final shall be recoverable
 24 by a civil suit filed by the attorney general in the name and
 25 on behalf of the commission or the division in the district

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1 court of the county in which the defendant resides or in which
2 any defendant resides if there [~~be~~] is more than one defendant
3 or in the district court of any county in which the violation
4 occurred, or in the first judicial district; provided that, if
5 any final order assessing a penalty is appealed pursuant to
6 Section 70-2-25 NMSA 1978, the commission may seek recovery of
7 the penalty by a counterclaim in that case. The payment of
8 [~~such~~] the penalty shall not operate to legalize any illegal
9 oil, illegal gas or illegal product involved in the violation
10 for which the penalty is imposed or relieve a person on whom
11 the penalty is imposed from liability to any other person for
12 damages arising out of [~~such~~] the violation.

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

18 ~~(1) violate]~~

19 E. A person shall be guilty of a third degree
20 felony and sentenced pursuant to Section 31-18-15 NMSA 1978 if
21 the person knowingly violates any provision of the Oil and Gas
22 Act or any rule, [~~regulation or order of the commission or the~~
23 ~~division]~~ order or permit issued pursuant to that act [~~or~~

24 ~~(2) do any of the following for the purpose of~~
25 ~~evading or violating the Oil and Gas Act or any rule,~~

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1 ~~regulation or order of the commission or the division issued~~
 2 ~~pursuant to that act:~~

3 ~~(a) make]~~ or if the person knowingly:

4 (1) makes or causes to be made any false entry
 5 or statement in a required form, report, ~~[required by the Oil~~
 6 ~~and Gas Act or by any rule, regulation or order of the~~
 7 ~~commission or division issued pursuant to that act~~

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

12 ~~(c) omit]~~ record, account or memorandum;

13 (2) omits or [cause] causes to be omitted from
 14 [any such] a required form, report, record, account or
 15 memorandum full, true and correct entries; [or

16 ~~(d) remove]~~

17 (3) removes from this state or [destroy,
 18 mutilate, alter or falsify any such] destroys, mutilates,
 19 alters or falsifies a required form, report, record, account or
 20 memorandum; or

21 (4) aids or abets the commission of any act
 22 described in this subsection.

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

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

6 **SECTION 4.** Section 70-2-33 NMSA 1978 (being Laws 1935,
7 Chapter 72, Section 24, as amended) is amended to read:

8 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

9 A. "person" means:

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

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

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

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

23 C. "field" means the general area that is underlaid
24 or appears to be underlaid by at least one pool and also
25 includes the underground reservoir or reservoirs containing the

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1 crude petroleum oil or natural gas or both. The words "field"
2 and "pool" mean the same thing when only one underground
3 reservoir is involved; however, "field", unlike "pool", may
4 relate to two or more pools;

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

14 E. "owner" means the person who has the right to
15 drill into and to produce from any pool and to appropriate the
16 production either for [~~himself~~] the person or for [~~himself~~] the
17 person and another;

18 F. "producer" means the owner of a well capable of
19 producing crude petroleum oil or natural gas or both in paying
20 quantities;

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

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

13 I. "potash" means the naturally occurring bedded
14 deposits of the salts of the element potassium;

15 J. "casinghead gas" means any gas or vapor or both
16 indigenous to an oil stratum and produced from such stratum
17 with oil, including any residue gas remaining after the
18 processing of casinghead gas to remove its liquid components;
19 [~~and~~]

20 K. "produced water" means water that is an
21 incidental byproduct from drilling for or the production of
22 crude petroleum oil and natural gas;

23 L. "commission" means the oil conservation
24 commission; and

25 M. "division" means the oil conservation division

1 of the energy, minerals and natural resources department."

2 SECTION 5. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2013.

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