

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 189

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO NATURAL RESOURCES; AMENDING THE OIL AND GAS ACT;
INCREASING THE MAXIMUM AMOUNT OF FINANCIAL ASSURANCE REQUIRED
FOR THE PLUGGING OF ABANDONED WELLS; MAKING STYLISTIC AND
CONFORMING CHANGES.

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. ~~[Included in the power given to]~~ The oil
conservation division of the energy, minerals and natural
resources department ~~[is the authority to]~~ may:

- (1) collect data; ~~[to]~~
- (2) make investigations and inspections; ~~[to]~~
- (3) examine properties, leases, papers, books

underscored material = new
[bracketed material] = delete

1 and records; [tø]

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

5 (5) hold hearings; [tø]

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

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

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

17 B. ~~[Apart from any authority, express or implied,~~
18 ~~elsewhere given to or existing in the oil conservation division~~
19 ~~by virtue of the Oil and Gas Act or the statutes of this state]~~
20 The oil conservation division ~~[is authorized to]~~ may make rules
21 ~~[regulations]~~ and orders for the purposes and with respect to
22 the subject matter stated in this subsection:

23 (1) to require dry or abandoned wells to be
24 plugged in a way to confine the crude petroleum oil, natural
25 gas or water in the strata in which it is found and to prevent

.209217.1

underscored material = new
[bracketed material] = delete

1 it from escaping into other strata; pursuant to Section 70-2-14
2 NMSA 1978, the division shall require [~~a cash or surety bond in~~
3 ~~a sum not to exceed fifty thousand dollars (\$50,000)~~] financial
4 assurance conditioned for the performance of [~~such regulations~~]
5 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;

.209217.1

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

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 of water
23 produced or used in connection with the drilling for or
24 producing of oil or gas or both and to direct surface or
25 subsurface disposal of the water, including disposition by use

.209217.1

underscored material = new
[bracketed material] = delete

1 in drilling for or production of oil or gas, in road
2 construction or maintenance or other construction, in the
3 generation of electricity or in other industrial processes, in
4 a manner that will afford reasonable protection against
5 contamination of fresh water supplies designated by the state
6 engineer;

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

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

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

.209217.1

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

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

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

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

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

24 **SECTION 2.** Section 70-2-14 NMSA 1978 (being Laws 1977,
25 Chapter 237, Section 3, as amended by Laws 2015, Chapter 79,

.209217.1

underscored material = new
[bracketed material] = delete

1 Section 1 and by Laws 2015, Chapter 99, Section 1) is amended
2 to read:

3 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

4 A. Each person, firm, corporation or association
5 who operates any oil, gas or service well within the state
6 shall, as a condition precedent to drilling or producing the
7 well, furnish financial assurance in the form of an irrevocable
8 letter of credit or a cash or surety bond or a well-specific
9 plugging insurance policy pursuant to the provisions of this
10 section to the oil conservation division of the energy,
11 minerals and natural resources department running to the
12 benefit of the state and conditioned that the well be plugged
13 and abandoned in compliance with the rules of the oil
14 conservation division. The oil conservation division shall
15 establish categories of financial assurance after notice and
16 hearing. Such categories shall include a blanket plugging
17 financial assurance, which shall be set by rule in an amount
18 not to exceed [~~fifty thousand dollars (\$50,000), except for~~]
19 two hundred fifty thousand dollars (\$250,000), a blanket
20 plugging financial assurance for temporarily abandoned status
21 wells, which shall be set by rule at amounts greater than fifty
22 thousand dollars (\$50,000), and one-well plugging financial
23 assurance in amounts determined sufficient to reasonably pay
24 the cost of plugging the wells covered by the financial
25 assurance. In establishing categories of financial assurance,

.209217.1

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

1 the oil conservation division shall consider the depth of the
2 well involved, the length of time since the well was produced,
3 the cost of plugging similar wells and such other factors as
4 the oil conservation division deems relevant. The oil
5 conservation division shall require a one-well financial
6 assurance on any well that has been held in a temporarily
7 abandoned status for more than two years or, at the election of
8 the operator, may allow an operator to increase its blanket
9 plugging financial assurance to cover wells held in temporarily
10 abandoned status. All financial assurance shall remain in
11 force until released by the oil conservation division. The oil
12 conservation division shall release financial assurance when it
13 is satisfied the conditions of the financial assurance have
14 been fully performed.

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

22 C. When any financial assurance is forfeited pursuant
23 to the provisions of the Oil and Gas Act or rules promulgated
24 pursuant to that act, the director of the oil conservation
25 division shall give notice to the attorney general, who shall

.209217.1

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

1 collect the forfeiture without delay.

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

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

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

19 (1) is approved by the office of superintendent
20 of insurance;

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

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

25 (4) is fully prepaid and cannot be canceled or

.209217.1

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

1 surrendered;

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

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

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

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

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

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

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

25 - 10 -