

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 546

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO NATURAL RESOURCES; ENACTING THE PRODUCED WATER ACT;  
ESTABLISHING CONTROL AND RESPONSIBILITY FOR PRODUCED WATER;  
ALLOWING THE USE OF TREATED OR RECYCLED PRODUCED WATER;  
DECLARING CERTAIN CONTRACT PROVISIONS RELATING TO PRODUCED  
WATER VOID AGAINST PUBLIC POLICY; AMENDING AND ADDING  
DEFINITIONS; AMENDING THE DUTIES OF THE OIL CONSERVATION  
DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES  
DEPARTMENT AND THE WATER QUALITY CONTROL COMMISSION; MAKING  
CONFORMING TECHNICAL CHANGES CC→SJC→; ~~AMENDING THE OIL AND GAS~~

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~~ACT REGARDING VIOLATIONS; PROVIDING FOR PENALTIES; REQUIRING ANNUAL REPORTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978~~ ←SJC←CC CC→; AMENDING THE OIL AND GAS ACT REGARDING VIOLATIONS; PROVIDING FOR PENALTIES; REQUIRING ANNUAL REPORTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 ←CC.

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

SECTION 1. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Produced Water Act"."

SECTION 2. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Produced Water Act:

A. "operator" means a person authorized by the oil conservation division of the energy, minerals and natural resources department to operate a unit for an oil or gas well or other oil or gas facility; Sfl→and←Sfl

B. "produced water" means a fluid that is an incidental byproduct from drilling for or the production of oil and gas Sfl→. " ; ←Sfl

Sfl→C. "recycled water" or "recycled produced water" means produced water that is reconditioned by a recycling facility permitted by the oil conservation division

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of the energy, minerals and natural resources department; and

D. "treated water" or "treated produced water"

means produced water that is reconditioned by mechanical or chemical processes into a reusable form."←Sf1

SECTION 3. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] JURISDICTION.--It is the jurisdiction of:

A. the oil conservation division of the energy, minerals and natural resources department to regulate produced water as provided in the Oil and Gas Act; and

B. the water quality control commission to regulate produced water as provided in the Water Quality Act."

SECTION 4. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] PRODUCED WATER--TRANSFERRED FOR TREATMENT--SUBSEQUENT USE.--

A. Unless otherwise provided by law, a contract, bill of sale or other legally binding document:

(1) all produced water that is produced from an oil or gas well is the responsibility of and under the control of the working interest owners and operator of that oil or gas well. The working interest owners and operator shall have a possessory interest in the produced water, including the right to take possession of the produced water and to use, handle, dispose of, transfer, sell, convey, transport, recycle, reuse or treat the produced water and to obtain proceeds for any such uses. The operator of the oil and gas well that the produced water is produced from shall handle the use,

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disposition, transfer, sale, conveyance, transport, recycling, reuse or treatment of the produced water as a reasonably prudent operator;

(2) when produced water is transferred, sold or conveyed to another operator, transporter, pipeline, midstream company, plant, processing facility, refinery or entity that provides recycling or treatment services for produced water, the transferee shall have control of and responsibility for the produced water until the water is transferred to another operator, transporter, pipeline, midstream company, plant, processing facility, refinery or recycling or treatment facility. A transferee shall have a possessory interest in the produced water, including the right to use, possess, handle the disposition of, transfer, sell, convey, transport, recycle, reuse or treat the produced water and to obtain proceeds for any such uses. Upon transfer of the produced water, transferees shall be liable for the use, disposition, transfer, sale, conveyance, transport, recycling, reuse or treatment of the produced water; and

(3) when an operator of an oil or gas well or a transferee listed in Paragraph (2) of this subsection takes possession of produced water for the purpose of recycling or treating the water, the operator or transferee may transfer recycled or treated water, treated product or any byproduct to another operator, transporter, pipeline, midstream company,

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plant, processing facility, refinery or entity that provides recycling or treatment services for produced water. Upon transfer, the transferee shall have control and responsibility for the produced water, recycled or treated water or treated product or byproduct. A transferee shall have a possessory interest in the produced water, recycled or treated water or treated product or byproduct, including the right to use, possess, handle disposition of, transfer, sell, convey, transport, recycle, reuse or treat the produced water, and to obtain proceeds for any such uses. Upon transfer, a transferee shall be liable for the use, disposition, transfer, sale, conveyance, transport, recycling, reuse or treatment of the produced water, recycled or treated water or treated product or byproduct.

B. Subsection A of this section only applies to transfers of produced water between an operator, transporter, pipeline, midstream company, plant, processing facility, refinery or recycling or treatment entity and shall not affect liability in an action brought by other persons for damages, including damages for personal injury, death or property damage, arising from exposure to produced water, recycled or treated water or treated product or byproduct.

C. A permit or other approval from the state engineer is not required for the disposition of produced water, Sfl→~~including produced water that has been recycled or treated.~~ recycled water or treated water.←Sfl The disposition of produced water, Sfl→recycled water or treated water,←Sfl including disposition by use, is neither an appropriation of

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water for beneficial use under Chapter 72 NMSA 1978 nor a waste of water, and no water right shall be established by the disposition of produced water Sfl→, recycled water or treated water←Sfl.

D. For uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the department of environment before using the produced water, the recycled or treated water or treated product or any byproduct of the produced water."

SECTION 5. A new section of Chapter 70 NMSA 1978 is enacted to read:

"[NEW MATERIAL] VOID AS AGAINST PUBLIC POLICY--THROUGHPUT FEES--LIMITATIONS ON USE OF RECYCLED OR TREATED PRODUCED WATER.--A provision of an agreement, covenant or promise, foreign or domestic, between private parties, entered into on or after July 1, 2019 is against public policy and void to the extent it:

A. allows a private party to charge a tariff or fee for the movement or transport of produced water, treated water or recycled water on surface lands owned by the state, if the agreement does not provide for transportation services;

B. requires fresh water resources to be purchased for oil and gas operations when produced water, treated water or recycled water is available and able to be used and the operator elects to use that produced water, treated water or

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recycled water for the oil and gas operations; or

C. relates to the purchase of water and precludes an operator from purchasing or using produced water, treated water or recycled water in the operator's oil and gas operations when such water is available for the operations."

SECTION 6. 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;
- (3) examine properties, leases, papers, books and records;
- (4) examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment;
- (5) hold hearings;
- (6) provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports;
- (7) limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act; and
- (8) require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas

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and products.

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

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

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

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

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

(5) to prevent fires;

(6) to prevent "blow-ups" and "caving" in the

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

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

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

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

(10) to fix the spacing of wells;

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

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

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

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

(15) to regulate the disposition, [~~of water produced or used in connection with the drilling for or~~

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~~producing of oil or gas or both and to direct surface or subsurface disposal of the water, including disposition by use in drilling for or production of oil or gas, in road construction or maintenance or other construction, in the generation of electricity or in other industrial processes, in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer]~~ handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources;

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

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

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

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

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

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

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

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protect public health and the environment, including administering the Water Quality Act as provided in Subsection E of Section 74-6-4 NMSA 1978."

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

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

~~[A. Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation. The penalties provided in this subsection shall be recoverable by a civil suit filed by the attorney general in the name and on behalf of the commission or the division in the district court of the county in which the defendant resides or in which any defendant resides if there be more than one defendant or in the district court of any county in which the violation occurred. The payment of such penalty shall not operate to legalize any illegal oil, illegal gas or illegal product involved in the violation for which the penalty is imposed or relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.]~~

A. Whenever the division determines that a person

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violated or is violating the Oil and Gas Act or any provision of any rule, order, permit or authorization issued pursuant to that act, the division may seek compliance and civil penalties by:

- (1) issuing a notice of violation;
- (2) commencing a civil action in district court for appropriate relief, including injunctive relief; or
- (3) issuing a temporary cessation order if the division determines that the violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The cessation order will remain in effect until the earlier of when the violation is abated or thirty days unless a hearing is held before the division and a new order is issued.

B. A notice of violation issued pursuant to Paragraph (1) of Subsection A of this section shall state with reasonable specificity the nature of the violation, shall require compliance immediately or within a specified time period, shall provide notice of the availability of an informal review and the date of a hearing before the division and shall provide notice of potential sanctions, including assessing a penalty, suspending, canceling or terminating a permit or authorization, shutting in a well and plugging and abandonment of a well and forfeiting financial assurance pursuant to Section 70-2-14 NMSA 1978.

C. If the notice of violation is not resolved informally within thirty days after service of the notice, the division shall hold a hearing and determine whether the

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violation should be upheld and whether any sanctions, including civil penalties, shall be assessed. In assessing a penalty authorized by this section, the division shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, any history of noncompliance under the Oil and Gas Act and other relevant factors. When a decision is rendered by the division after a hearing, any party of record adversely affected shall have the right to have the matter heard de novo before the commission pursuant to Section 70-2-13 NMSA 1978.

D. Any civil penalty assessed by a court or by the division or commission pursuant to this section may not exceed two thousand five hundred dollars (\$2,500) per day of noncompliance for each violation unless the violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond a time specified in the notice of violation or order issued by the division, commission or court, whereupon the civil penalty may not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. No penalty assessed by the division or commission after a hearing may exceed two hundred thousand dollars (\$200,000); provided that such limitation does not apply to penalties assessed by a court.

E. The commission shall make rules, pursuant to

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Section 70-2-12.2 NMSA 1978, providing procedures for the issuance of notices of violations, the assessment of penalties and the conduct of informal proceedings and hearings pursuant to this section.

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

(1) violate any provision of the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act; or

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

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

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

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

(d) remove from this state or destroy,

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mutilate, alter or falsify any such record, account or memorandum.

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

[D.] H. Any person who knowingly and willfully procures, counsels, aids or abets the commission of any act described in Subsection A or [B] F of this section shall be subject to the same penalties as are prescribed [therein] in Subsection D or F of this section."←SJC

SECTION SJC→7. 8.←SJC Section 70-2-33 NMSA 1978 (being Laws 1935, Chapter 72, Section 24, as amended) is amended to read:

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

A. "person" means:

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

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

B. "pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure, which zone is completely separate from any other zone in the structure, is

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covered by the word "pool" as used in the Oil and Gas Act.

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

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

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

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

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

G. "gas transportation facility" means a pipeline in operation serving gas wells for the transportation of natural gas or some other device or equipment in like operation

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whereby natural gas produced from gas wells connected therewith can be transported or used for consumption;

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

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

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

SJC→~~and~~←SJC

K. "produced water" means [~~water~~] a fluid that is an incidental byproduct from drilling for or the production of oil and gas SJC→~~,"~~ ;←SJC

SJC→L. "commission" means the oil conservation commission; and

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

SECTION 9. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] REPORTING REQUIREMENT.--No later than October 1 of each year, the division shall report to the appropriate interim committee of the legislature and to the governor and shall post on the agency website:

A. the number of notices of violation that the division issued pursuant to the Oil and Gas Act during the previous fiscal year;

B. the total amount of penalties collected by the division for violations pursuant to the Oil and Gas Act during the previous fiscal year;

C. for each penalty collected, the following information:

(1) the name of the person penalized and the location of the violation; and

(2) the nature of the violation and the calculation of the penalty collected; and

D. the number and nature of lawsuits filed for a violation of the Oil and Gas Act, including the names of defendants, the nature of the violation and the outcome of the litigation."←SJC

SECTION SJC→8. 10.←SJC Section 74-6-2 NMSA 1978 (being Laws 1967, Chapter 190, Section 2, as amended) is amended to read:

"74-6-2. DEFINITIONS.--As used in the Water Quality Act:  
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A. "gray water" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

B. "water contaminant" means any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or ~~[by-product]~~ byproduct material as defined by the federal Atomic Energy Act of 1954;

C. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

D. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance that may pollute any waters of the state;

E. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices,

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appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

F. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

G. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

H. "water" means all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

I. "person" means an individual or any other entity, including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

J. "commission" means the water quality control commission;

K. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

- (1) the department of environment;
- (2) the state engineer and the interstate stream commission;
- (3) the department of game and fish;

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- (4) the oil conservation commission;
- (5) the state parks division of the energy, minerals and natural resources department;
- (6) the New Mexico department of agriculture;
- (7) the soil and water conservation commission; and
- (8) the bureau of geology and mineral resources at the New Mexico institute of mining and technology;

L. "new source" means:

(1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or

(2) any existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

M. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

N. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;

O. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution

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control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;

P. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

(1) to human beings; or

(2) that amounts to more than ten thousand dollars (\$10,000) damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; ground water or surface water; or the lands of the state;

Q. "federal act" means the Federal Water Pollution Control Act, its subsequent amendment and successor provisions; [and]

R. "standards of performance" means any standard, effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act; and

S. "produced water" means a fluid that is an incidental byproduct from drilling for or the production of oil and gas."

SECTION SJC → 9. 11. ← SJC Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.---The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other

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sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall not adopt or promulgate a standard or regulation that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or regulation;

D. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. The standards shall include narrative standards and, as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

E. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern

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the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

- (1) the character and degree of injury to or interference with health, welfare, environment and property;
- (2) the public interest, including the social and economic value of the sources of water contaminants;
- (3) the technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;
- (4) the successive uses, including [~~but not~~

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~~limited to~~] domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use;

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

F. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies.

The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by ~~[this]~~ the Water Quality Act;

G. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies

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funds made available to the commission;

H. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

I. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

J. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

K. shall specify in regulations the measures to be

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taken to prevent water pollution and to monitor water quality. The commission may adopt regulations for particular industries. The commission shall adopt regulations for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection E of this section, the best available scientific information. The regulations may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

L. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

M. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such

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irrigation that documentation or actual case history has shown to be hazardous to public health or the environment or for the use of produced water;

N. shall not require a permit for applying less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

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(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978; [and]

O. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act;

P. SJC → ~~may~~ **shall** ← SJC adopt regulations to be administered by the department of environment for the discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas; and

Q. may adopt regulations to be administered by the department of environment for surface water discharges."

CC → ~~SJC → SECTION 12. — REPEAL. — Section 70-2-28 NMSA 1978~~

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~~(being Laws 1935, Chapter 72, Section 19, as amended) is repealed.~~←SJC←CC

SECTION CC→SJC→10. 13.←SJC 12.←CC APPLICABILITY.--The provisions of this act apply to contracts entered into on and after July 1, 2019.

SJC→SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.←SJC

CC→SJC→SECTION 14. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 6, 8, 10, 11 and 13 of this act is July 1, 2019.

B. The effective date of the provisions of Sections 7, 9 and 12 of this act is January 1, 2020.←SJC←CC

CC→CC→SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.←CC←CC

CC→Section 13. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 6, 8, 10 and 11 of this act is July 1, 2019.

B. The effective date of the provisions of Sections 7 and 9 of this act is January 1, 2020.←CC