

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

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

AN ACT

RELATING TO NATURAL RESOURCES; ENACTING THE FLUID OIL AND GAS
WASTE ACT; ESTABLISHING RESPONSIBILITY FOR FLUID OIL AND GAS
WASTE; ALLOWING THE USE OF TREATED OR RECYCLED FLUID OIL AND
GAS WASTE; DECLARING CERTAIN CONTRACT PROVISIONS RELATING TO
FLUID OIL AND GAS WASTE VOID AGAINST PUBLIC POLICY; MAKING
CONFORMING TECHNICAL CHANGES.

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 6 of this
act may be cited as the "Fluid Oil and Gas Waste Act"."

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

"[NEW MATERIAL] DEFINITIONS.--As used in the Fluid Oil and
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1 Gas Waste Act:

2 A. "fluid oil and gas waste" means a fluid that
3 arises out of or is incidental to the drilling for or
4 production of hydrocarbons, including a fluid containing salt
5 or other mineralized, suspended or dissolved substances, brine,
6 hydraulic fracturing fluid, flowback water or produced water;

7 B. "fresh water" means surface or ground water
8 below the land surface in a zone of saturation and does not
9 include produced water; and

10 C. "operator" means a person authorized by the oil
11 conservation division of the energy, minerals and natural
12 resources department to engage in operations to drill,
13 complete, rework, recomplete, plug back, sidetrack, operate or
14 produce an oil or gas well."

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

17 "[NEW MATERIAL] EXCLUSION.--The provisions of the Mine
18 Dewatering Act shall not apply to fluid oil and gas waste."

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

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

22 A. the oil conservation division of the energy,
23 minerals and natural resources department to regulate the
24 disposition, treatment, recycling and reuse of fluid oil and
25 gas waste, including use in the development or production of

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1 hydrocarbons, load construction or maintenance, or other
2 construction, in the generation of electricity or in other
3 industrial processes; and

4 B. the department of environment to regulate all
5 other uses of fluid oil and gas waste."

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

8 "[NEW MATERIAL] FLUID OIL AND GAS WASTE--TRANSFERRED FOR
9 TREATMENT--SUBSEQUENT USE.--

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

12 (1) all fluid oil and gas waste that is
13 produced from an oil or gas well is the responsibility of and
14 under the control of the working interest owner or operator of
15 that oil or gas well. The working interest owner or operator
16 shall have the right to take possession of the fluid oil and
17 gas waste and to transfer, sell, convey, transport, recycle,
18 treat or reuse the fluid oil and gas waste and obtain proceeds
19 from any such uses. The operator of the oil and gas well that
20 the fluid oil and gas waste is produced from shall handle the
21 disposition, treatment, recycling or reuse of the fluid oil and
22 gas waste as a reasonably prudent operator;

23 (2) when fluid oil and gas waste is
24 transferred, sold or conveyed to a person who transports or
25 takes possession of that waste, the transferred fluid oil and

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1 gas waste is considered to be the responsibility of and under
2 the control of the person who takes possession of it until that
3 person transfers the waste to another person. Upon transfer,
4 the transferee shall have the right to take possession of the
5 fluid oil and gas waste and to transfer, sell, convey,
6 transport, recycle, treat or reuse the fluid oil and gas waste,
7 and obtain proceeds from any such uses, and shall be liable for
8 the use, treatment, recycling, reuse or disposition of the
9 fluid oil and gas waste; and

10 (3) when a person who takes possession of
11 fluid oil and gas waste for the purpose of recycling or
12 treating the waste for a subsequent use transfers possession of
13 the treated product or any treatment byproduct to another
14 person for the purpose of subsequent disposal or use, the
15 transferred product or byproduct is considered to be the
16 responsibility of and under the control of the person to whom
17 the product or byproduct is transferred. Upon transfer, the
18 transferee shall have the right to take possession of the fluid
19 oil and gas waste and to transfer, sell, convey, transport,
20 recycle, treat or reuse the fluid oil and gas waste and obtain
21 proceeds from any such uses, and shall be liable for the use,
22 treatment, recycling, reuse or disposition of the fluid oil and
23 gas waste, product or byproduct.

24 B. After fluid oil and gas waste is treated or
25 recycled in compliance with state and federal law, the

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1 liability of the person in possession of the fluid oil and gas
2 waste shall terminate.

3 C. Pursuant to Section 70-2-12.1 NMSA 1978, no
4 permit or other approval from the state engineer is required
5 for the disposition of fluid oil and gas waste. The
6 disposition of fluid oil and gas waste, including disposition
7 by use, is neither an appropriation of water for beneficial use
8 nor a waste of water, and no water right shall be established
9 by the disposition of fluid oil and gas waste."

10 SECTION 6. A new section of Chapter 70 NMSA 1978 is
11 enacted to read:

12 "[NEW MATERIAL] VOID AS AGAINST PUBLIC POLICY--THROUGHPUT
13 FEES--LIMITATIONS ON USE OF RECYCLED OR TREATED FLUID OIL AND
14 GAS WASTE.--A provision of an agreement, covenant or promise,
15 foreign or domestic, contained in, collateral to or affecting
16 an agreement pertaining to a well for oil or gas or fluid oil
17 and gas waste entered into on or after July 1, 2019 is against
18 public policy and void to the extent it:

19 A. imposes throughput or other fees for the
20 presence, transport or movement of fluid oil and gas waste if
21 the agreement does not provide for the transport of the fluid
22 oil and gas waste; or

23 B. requires fresh water to be purchased for oil and
24 gas operations, or otherwise limits an operator's ability to
25 use recycled or treated fluid oil and gas waste in oil and gas

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1 operations."

2 SECTION 7. Section 72-12A-1 NMSA 1978 (being Laws 1980,
3 Chapter 148, Section 1) is amended to read:

4 "72-12A-1. SHORT TITLE.--~~[This act]~~ Chapter 72, Article
5 12A NMSA 1978 may be cited as the "Mine Dewatering Act"."

6 SECTION 8. A new section of the Mine Dewatering Act is
7 enacted to read:

8 "[NEW MATERIAL] FLUID OIL AND GAS WASTE.--The Mine
9 Dewatering Act shall not apply to fluid oil and gas waste
10 regulated pursuant to the Fluid Oil and Gas Waste Act."

11 SECTION 9. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2019.

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