



Synopsis of SJC Amendment

The Senate Judiciary Committee amendment makes changes in the Oil and Gas Act to provide that when a person violates the Act or any rule, order, permit or authorization issued under the Act, the Oil Conservation Commission (OCD) of EMNRD may seek compliance and civil penalties by:

(1) Issuing a notice of violation;

(2) Commencing a civil action in district court for appropriate relief; or

(3) Issuing a temporary cessation order, if OCD 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 remains in effect until the earlier of when the violation is abated or thirty days, unless OCD holds a hearing and a new order is issued.

If a notice of violation is not resolved informally within 30 days after service, OCD must hold a hearing and determine whether the violation should be upheld and whether any sanctions, including civil penalties, should be assessed. In assessing a penalty, OCD must consider the seriousness of the violation, any good faith efforts to comply, any history of noncompliance with the Oil and Gas Act, and other relevant factors. A party of record adversely affected by the OCD's decision order has the right to a de novo appeal before the Oil Conservation Commission.

Civil penalties assessed after a hearing may not exceed \$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 the noncompliance continues beyond a time specified in the notice of violation or order. Under those circumstances, the civil penalty may not exceed \$10,000 per day of violation. No penalty, unless assessed by a court, may exceed \$200,000.

The SJC amendment adds a new section of the Oil and Gas Act, which requires OCD to provide an annual report to the legislature and the governor regarding the number of notices of violation, the total amount of penalties collected, specific information for each penalty collected, and the number and nature of lawsuits filed.

The SJC amendment provides that the effective date of Sections 1 – 6, 8, 10, 11 and 13 of the bill is July 1, 2019. The effective date of Sections 7, 9 and 12, which were added by the amendment, is January 1, 2020.

The provisions added by the SJC amendment mostly duplicate the Senate Judiciary Committee substitute for the Senate Conservation Substitute for Senate Bill 186. The SJC amendment makes a different change to the definition of “produced water” in Section 70-2-33 NMSA 1978(K) and imposes a \$200,000 cap on civil penalties, while SB 186 imposes a \$250,000 cap.

Penalties collected by OCD are deposited in the current school fund, as required by Article XII, Section 4 of the New Mexico Constitution. At the end of each month, balances in the current school fund are transferred to the public school fund. Money in the public school fund is then distributed to appropriations for public schools, including the state equalization guarantee distribution and other categorical appropriations. Balances remaining in the public school fund revert at the end of the year to the general fund.

Synopsis of Original Bill

The House Judiciary Committee Substitute for the House Energy, Environment and Natural Resources Committee Substitute for House Bill 546 creates the “Produced Water Act” to provide for agency jurisdiction over produced water and possessory interest and transfer interests in produced water and to declare agreements that preclude the use of recycled or treated water void. Sections 1 and 2 cite a new Section of Chapter 70 NMSA 1978 (Oil and Gas) and provide for definitions such as “operator” to mean a person authorized by the Oil and Conservation Division (OCD) to operate an oil or gas well or facility and “produced water” to mean a fluid that is an incidental byproduct from drilling or producing oil and gas.

Section 3 recognizes the jurisdiction of OCD under the Oil and Gas Act and the Water Quality Control Commission (WQCC) under the Water Quality Act to regulate produced water.

Section 4 provides that produced water from an oil or gas well is the responsibility of the working interest owner or operator of that well. These parties have a possessory interest in the produced water including the right to dispose of, sell, recycle, or treat - and may obtain proceeds for any uses, as long as acting prudently, until conveyed to another operator who is provided the same possessory interest and liability. This section concludes by stating a permit from the State Engineer is not required to dispose of produced water, including after recycling or treatment, because no water is wasted and no water right is established by the disposition. For uses regulated under the Water Quality Act, a person must obtain a permit from the New Mexico Environment Department (NMED) before using the produced water or recycled or treated byproducts.

Section 5 voids any agreement between parties entered into after July 1, 2019, that allows a fee to transport produced, treated or recycled water across state lands; requires fresh water to be purchased for oil and gas operations when produced, treated or recycled water is available which the operator wants to use; or that preclude an operator from purchasing or using produced, treated or recycled water in oil and gas operations, if available.

Section 6 amends the Oil and Gas Act, 70-2-12 NMSA 1978, to provide for OCD authority over produced water during oil and gas operations, and over disposal through injection wells, in a manner that protects public health, the environment and fresh water resources. This Section also removes OCD’s authority over disposition of produced water in road construction and maintenance, electricity generation and industrial processes.

Finally, the bill amends the Water Quality Act, 74-6-4 NMSA 1978, to add to the duties and powers of WQCC the authority to adopt rules to be administered by NMED for the discharge, handling, transport, storage, recycling, or treatment for disposition of treated produced water, including disposition for road construction or maintenance; and in the application to land, for activities unrelated to oil and gas activities, and surface water discharges.

**FISCAL IMPLICATIONS**

EMNRD reported OCD currently regulates the handling and disposition of produced water under the Oil and Gas Act, therefore, no additional fiscal impact is expected. Because NMED will have

new responsibilities related to regulating uses of produced water outside the oil field, the department reported that additional FTE and resources over time would likely be needed.

**SIGNIFICANT ISSUES**

The substitute bill clarifies OCD’s jurisdiction over all handling, recycling, and disposal of produced water during the exploration, production, and refinement of oil and natural gas; gives NMED authority over treated produced water used outside the oil and gas industry; and provides that no permit is required from the State Engineer for the disposition of produced water, because such disposition is not an appropriation of water for beneficial use nor establishing a water right.

Below are some of EMNRD’s comments on the substitute bill:

HB546cs provides for identical definitions of “produced water” in 3 statutes. Produced water is mostly water from the same formation as the hydrocarbons; it can also include some fluids from the drilling operation. Produced water generally contains high levels of minerals, particularly salts, and cannot be easily reused for most purposes without treatment. Produced water from the Permian Basin may have salt (as chloride and sodium) exceeding 100,000 milligrams per liter. The average salinity for sea water is 34,700 mg/L.

The growth in oil production in New Mexico has resulted in significant growth in produced water production. For every barrel of oil produced, there are 5 to 7 barrels of produced water. In 2018, the volume of produced water production in New Mexico exceeded one billion barrels (over 40 billion gallons).

Most produced water is either disposed through deep injection wells or used in enhanced recovery (ER) projects (e.g., secondary/tertiary recovery, pressure maintenance). A small portion is recycled and reused in oil and gas operations. No produced water is currently being reused outside of the oil industry.

In the last several years, OCD has amended its regulations to remove impediments and encourage the reuse of produced water. However, economic constraints have limited the recycling and reuse of produced water.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to SB592 moving the regulation of produced water from EMNRD to NMED.

**TECHNICAL ISSUES**

EMNRD noted the definition of “operator” does not track with the existing definition under the Oil and Gas Act rules 19.15.2.7(O)(5) NMAC.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Jurisdictional issues regarding handling, recycling and disposal of produced water and waste from oil and natural gas exploration and for other industries would still be in question.

AHO/sb/gb