

SENATE BILL 86

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO NATURAL RESOURCES; PROHIBITING CERTAIN USES OF FRESH WATER IN OIL AND GAS OPERATIONS; PROVIDING PENALTIES FOR THE SPILL OR RELEASE OF OIL, ~~SCONC~~→~~GAS OR~~←~~SCONC~~ PRODUCED WATER ~~SCONC~~→**OR OTHER NONDOMESTIC LIQUID WASTES**←~~SCONC~~ ; CREATING THE OIL CONSERVATION DIVISION DATA COMPILATION FUND; DIRECTING THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT TO ADOPT RULES RELATING TO PRODUCED WATER AND NONDOMESTIC WASTES THAT ARE PROTECTIVE OF PUBLIC HEALTH,

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WORKER SAFETY AND NATURAL RESOURCES; REQUIRING THE TRACKING OF PRODUCED WATER; ALPHABETIZING DEFINITIONS AND ADDING DEFINITIONS FOR "FRESH WATER", "WATER POLLUTION", "RECYCLED WATER" AND "TREATED WATER" TO THE OIL AND GAS ACT; AMENDING THE PRODUCED WATER ACT TO CONFORM TO CHANGES IN THE OIL AND GAS ACT; CLARIFYING REQUIREMENTS FOR WATER QUALITY CONTROL COMMISSION RULEMAKING RELATED TO THE USE OF PRODUCED WATER OUTSIDE OF THE OIL FIELD ~~SCONC~~→; **PROHIBITING THE DISCHARGE OR DISPOSITION OF UNTREATED PRODUCED WATER FOR ACTIVITIES UNRELATED TO OIL OR GAS OPERATIONS; REQUIRING CHARACTERIZATION AND PUBLIC DISCLOSURE OF CONTAMINANTS TO USE TREATED PRODUCED WATER OUTSIDE THE OIL FIELD**←~~SCONC~~ .

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

SECTION 1. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] FRESH WATER USE--PROHIBITION.--For oil and gas well drilling and development at depths lower than protected fresh water resource zones, an operator shall use produced water, recycled water or treated water in lieu of fresh water. Use of fresh water in contravention of this section is a violation of the Oil and Gas Act."

SECTION 2. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] SPILLS, LEAKS AND OTHER RELEASES--

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PENALTY.--

A. It is prohibited for a person to cause or contribute to a spill, leak or other release into the environment of oil, ~~SCONC~~→gas,←~~SCONC~~ produced water or other nondomestic ~~SCONC~~→liquid←~~SCONC~~ wastes resulting from the exploration, drilling, production, treatment or refinement of oil or gas.

B. Notwithstanding the civil penalty limitations of Subsection D of Section 70-2-31 NMSA 1978, a person found in violation of this section in accordance with the procedures of Section 70-2-31 NMSA 1978 shall be liable for a civil penalty in the following amounts:

- (1) two thousand dollars (\$2,000) for a release of less than five barrels;
- (2) ten thousand dollars (\$10,000) for a release of five to twenty-five barrels; and
- (3) twenty-five thousand dollars (\$25,000) for a release of more than twenty-five barrels plus two thousand dollars (\$2,000) per barrel for each additional barrel released over twenty-five barrels.

C. Penalties collected pursuant to this section shall be deposited in the state treasury to be credited to the oil conservation division data compilation fund."

SECTION 3. A new section of the Oil and Gas Act is enacted to read:

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"[NEW MATERIAL] OIL CONSERVATION DIVISION DATA COMPILATION

FUND--CREATED.--The "oil conservation division data compilation fund" is created in the state treasury as a nonreverting fund. All funds received by the division from penalties imposed pursuant to Section 2 of this 2021 act shall be delivered to the state treasurer and deposited in the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative. Money in the fund is subject to appropriation by the legislature to the division to compile, organize and analyze data collected pursuant to the Oil and Gas Act, to develop and modernize the division's online databases, to increase public accessibility to the division's data on the division's web page and for technological upgrades to the division's databases and web page. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund. Money in the fund in fiscal year 2021 may be expended by the division for the purposes of the fund."

SECTION 4. 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:

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- (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 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

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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 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,

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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, 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~~

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~~protects public health, the environment and fresh water resources;~~

~~(16)~~] (15) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;

~~[(17)]~~ (16) 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;

~~[(18)]~~ (17) 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; and

~~[(19)]~~ (18) 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]~~ rule, to adopt fees for such determinations, which

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

C. The division shall make rules and orders that protect public health, worker safety and the environment, including fresh water resources, wildlife and domestic animals, using the best available science and technology, for the purposes and with respect to the subject matter stated in this subsection to:

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(1) require the identification of the chemical and radionuclide composition of produced water SCONC→, recycled produced water←SCONC or treated produced water that is spilled, leaked or released into the environment and to make such information available to the public;

(2) regulate the management, disposition, 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; provided that it is prohibited to dispose, recycle or reuse produced water SCONC→, recycled produced water←SCONC or treated produced water in a manner that may result in water pollution;

(3) require tracking and reporting of the movement, transportation and location of produced water SCONC→, recycled produced water←SCONC and treated produced water throughout its production, treatment, reuse and disposition in oil and gas operations and to compile the reported tracking information and make it publicly available;

(4) regulate the construction and operation of oil treating plants and produced water recycling and treatment plants, and to require the posting of bonds for the reclamation of treating and recycling plant sites after cessation of operations; provided that it is prohibited to construct or

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operate oil treating plants or produced water recycling and treatment plants in a manner that may result in water pollution;

(5) regulate the management and disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas; provided that it is prohibited to dispose of nondomestic wastes in a manner that may result in water pollution;

(6) regulate the management and 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, including administering the Water Quality Act as provided in Subsection F of Section 74-6-4 NMSA 1978; and

(7) regulate pits used to store, treat or dispose of nondomestic wastes, including produced water, resulting from the exploration, development or production of crude oil or natural gas; provided that it is prohibited to use pits in a manner that may result in water pollution. The rules shall at minimum include requirements for liners, leak detection, leachate collection, ground water monitoring, closure, financial assurance for closure and post-closure monitoring and maintenance of pits."

SECTION 5. Section 70-2-33 NMSA 1978 (being Laws 1935, Chapter 72, Section 24, as amended) is amended to read:

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"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 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~~

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~~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 the person or for 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 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 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 the~~

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~~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;~~

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

~~L. "commission" means the oil conservation commission; and~~

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

A. "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;

B. "commission" means the oil conservation commission;

C. "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 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

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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 the owner's just and equitable share of the reservoir energy;

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

E. "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;

F. "fresh water" means:

(1) water with less than ten thousand milligrams per liter of total dissolved solids;

(2) water in lakes and playas, regardless of quality, unless the water exceeds ten thousand milligrams per liter of total dissolved solids and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water;

(3) the surface waters of streams regardless of the water quality within a given reach; and

(4) underground waters containing ten thousand

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milligrams or less per liter of total dissolved solids;

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

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

I. "person" means:

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

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

J. "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 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";

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

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

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

N. "product" means a 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;

O. "recycled water" or "recycled produced water" means produced water that is reconditioned by a recycling facility permitted by the division;

P. "treated water" or "treated produced water" means produced water that is reconditioned by mechanical or chemical processes into a reusable form; and

Q. "water pollution" means the introduction into water, either directly or indirectly, of any substance that could alter the physical, chemical, biological or radiological qualities of the water in such quantity and of such duration as may with reasonable probability injure human health, animal or

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plant life or property, or unreasonably interfere with the public welfare or the use of property."

SECTION 6. Section 70-13-5 NMSA 1978 (being Laws 2019, Chapter 197, Section 5) is amended to read:

"70-13-5. VOID AS AGAINST PUBLIC POLICY--THROUGHOUT 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] 2021 is against public policy and void to the extent [of] that 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:

(1) is required to be used pursuant to the Oil and Gas Act; or

(2) is available and able to be used and the operator elects to use that produced water, treated water or 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

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operations when such water is available for the operations."

SECTION 7. 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 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~~] rule that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or [~~regulation~~] rule;

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

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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~~] rules 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 the disposal of septage and sludge and the use of sludge for various beneficial purposes. The [~~regulations~~] rules 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~~] Rules 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~~] rules, the commission shall give weight it deems appropriate to all relevant facts

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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 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~~] rules 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

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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 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 funds made available to the commission;

H. may grant an individual variance from any [~~regulation~~] rule of the commission whenever it is found that compliance with the [~~regulation~~] rule 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~~] rules specifying the procedure under which variances may be sought, which [~~regulations~~] rules shall provide for the holding of a public hearing before any variance may be granted;

I. may adopt [~~regulations~~] rules to require the

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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~~] rules 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~~] rules the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt [~~regulations~~] rules for particular industries. The commission shall adopt [~~regulations~~] rules 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~~] rules 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

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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~~] rules to be proposed for adoption by the commission. The [~~regulations~~] rules 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~~] rules 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 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

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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;

(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

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ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

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. shall adopt [~~regulations to be administered by the department of environment~~] rules based on the best available science and technology for the discharge, handling, transport, storage, recycling, [~~or~~] treatment [for the] and disposition of produced water and 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~~] The rules shall be administered by the department of environment and shall:

(1) prohibit the discharge or disposition of untreated produced water for activities unrelated to oil or gas operations;

(2) require a person who proposes to discharge treated produced water, or to treat produced water for activities unrelated to oil or gas operations, to disclose to the department of environment for public disclosure the water

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contaminants in the untreated produced water, including
constituents added for oil or gas drilling or production;

(3) require a thorough characterization of all
water contaminants, including their toxicity, mobility,
persistence in the environment and propensity to bioaccumulate;
and

(4) permit a discharge of treated produced
water only upon a determination by the department of
environment that such discharge will not result in water
pollution; and

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

SECTION 8. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2021.