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## FISCAL IMPACT REPORT

ORIGINAL DATE 1-26-09

SPONSOR Heaton LAST UPDATED \_\_\_\_\_ HB 108

SHORT TITLE Oil and Gas Water Quality Degradation Rules SB \_\_\_\_\_

ANALYST Woods

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to N/A

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

House Bill 108 seeks to amend the Oil and Gas Act by (1) requiring any rule adopted by the Oil Conservation Division relating to pits to allow for reasonable degradation that does not exceed water quality standards adopted pursuant to the Water Quality Act; and (2) requiring any rule adopted by the Oil Conservation Division regulating the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to allow for reasonable degradation that does not exceed water quality standards adopted pursuant to the Water Quality Act. There is no appropriation attached to the legislation.

### FISCAL IMPLICATIONS

EMNRD indicates that the Oil Conservation Division (OCD) may face costs associated with making its rules consistent with the amendment.

### SIGNIFICANT ISSUES

EMNRD notes that the legislation appears to be intended to allow the oil and gas industry to pollute the ground waters of New Mexico and prohibit the Oil Conservation Division from

requiring protective measures prior to an operator exceeding the standards set by the Water Quality Control Commission. The bill adds qualifying language to the Oil Conservation Division's power to regulate disposition of produced water and oilfield waste which is apparently intended to give an oil and gas industry discharger a right to discharge water containing pollutants to any underground water source until the aquifer is polluted or, possibly, unless the Oil Conservation Division can specifically show that the discharge in question would cause the water source to exceed standards. If so construed, House Bill 108 would require the Oil Conservation Division to allow the oil and gas industry to degrade any water, anywhere, by allowing wastes to migrate to water sources that the industry does not otherwise use, or have any right to use, and would deprive the Oil Conservation Division of the ability to protect those water sources unless the pollution actually exceeded the applicable Water Quality standards. In other words, the purest water sources could be polluted until their quality reached the marginal level of safety. Furthermore, House Bill 108 could limit the ability of the Oil Conservation Division to prevent soil pollution from pits and other oil and gas waste. The apparent intent of the bill appears to preclude the Oil Conservation Division from adopting any waste-disposal rules in the absence of specific demonstration that they are necessary to prevent water from exceeding standards; thus it appears there could be restrictions to prevent constituents in oil field waste from being introduced into soils in toxic concentrations.

#### **ADMINISTRATIVE IMPLICATIONS**

EMNRD states that, "If the intent of the bill is carried forward it will severely restrict the Division in meeting its performance goals." Further, that, "The Oil Conservation Division may have to repeal or amend rules that are inconsistent with the amendment."

#### **OTHER SUBSTANTIVE ISSUES**

NMED notes that, under the Oil and Gas Act, OCD regulates most activities related to the exploration, production, development, transportation, processing, refinement, and treatment of oil and natural gas. This includes the disposition of water produced or used in connection with the drilling for or producing of oil and natural gas in a manner that will afford protection of fresh water supplies designated by the State Engineer, as well as, the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas for the protection of public health and the environment. Further, that HB 108 would limit OCD authority to adopt rules related to the above activities by requiring that the rules allow for reasonable degradation of fresh water supplies as long as that degradation does not exceed water quality standards adopted pursuant to the Water Quality Act. The Water Quality Act in NMSA 1978, §74-6-12.F, allows the reasonable degradation of water quality resulting from beneficial use as long as the degradation does not result in the impairment of water quality to the extent that water quality standards are exceeded. HB 108 appears to be consistent with current limitations in the Water Quality Act.

EMNRD advises that, although the legislation contains language about rules relating to the management of pits, it may not actually impact the Oil Conservation Division's recently adopted pit rule because the standards provided in that rule were adopted based on specific evidence that discharges exceeding those standards would cause water in an aquifer to exceed Water Quality standards. Both the evidence presented to the Oil Conservation Commission in the pit rule hearings and the Oil Conservation Commission's findings demonstrate that the Oil Conservation Commission made that determination

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

EMNRD concludes that OCD will continue to have the discretionary authority to enact rules that adequately address pits and the disposition of nondomestic wastes resulting from oil and gas exploration and production, to protect the underground waters of the state. NMED adds that the powers of the OCD for rulemaking for the protection of water quality related to the disposition of water produced in conjunction with the drilling or production of oil and natural gas, and the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas would not be limited to the reasonable degradation of fresh water supplies.

**AMENDMENTS:**

None suggested.

Woods/mc