

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 35

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO THE ENVIRONMENT; RESTRICTING OIL AND GAS OPERATIONS
IN CHILDREN'S HEALTH PROTECTION ZONES; REQUIRING OIL AND GAS
OPERATORS TO CREATE A PROTECTION ZONE INVENTORY AND MAP;
REQUIRING OIL AND GAS OPERATORS LOCATED IN A CHILDREN'S HEALTH
PROTECTION ZONE TO DEVELOP AND IMPLEMENT A LEAK RESPONSE AND
DETECTION PLAN AND ALARM RESPONSE PROTOCOL AND CONDUCT WATER
QUALITY SAMPLING AND TESTING; SUSPENDING OIL AND GAS OPERATIONS
IN CHILDREN'S HEALTH PROTECTION ZONES THAT ARE IN VIOLATION OF
THE AIR QUALITY CONTROL ACT; PROVIDING PENALTIES.

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

SECTION 1. 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 (1) ~~[any]~~ an individual, estate, trust,
2 receiver, cooperative association, club, corporation, company,
3 firm, partnership, joint venture, syndicate or other entity; or

4 (2) the United States or ~~[any]~~ an agency or
5 instrumentality ~~[thereof]~~ of the United States or the state or
6 ~~[any]~~ a political subdivision ~~[thereof]~~ of the state;

7 B. "pool" or "common source of supply" means an
8 underground reservoir containing a common accumulation of crude
9 petroleum oil or natural gas or both, ~~[Each]~~ including each
10 zone of a general structure ~~[which zone]~~ that is completely
11 separate from any other zone in the structure ~~[is covered by~~
12 ~~the word "pool" as used in the Oil and Gas Act. "Pool" is~~
13 ~~synonymous with "common source of supply" and with "common~~
14 ~~reservoir"]~~;

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

22 D. "children's health protection zone" means an
23 area extending five thousand two hundred eighty feet from the
24 property line of a school;

25 E. "operator" means a person with the legal right

1 to conduct oil or natural gas operations and includes the
 2 agents, employees and contractors of that person;

3 F. "production facility" means facilities or
 4 equipment attendant to oil or natural gas production or
 5 injection operations and includes tanks, flowlines, headers,
 6 gathering lines, wellheads, heater treaters, pumps, valves,
 7 compressors, injection equipment, production safety systems,
 8 separators, manifolds and pipelines, but does not include fire
 9 suppression equipment;

10 G. "school" means an elementary, secondary, middle,
 11 junior high or high school or any combination of those,
 12 including a public school, state-chartered or locally chartered
 13 charter school or private school that students attend in
 14 person, including a daycare center, and a park, playground or
 15 sports or recreation facility associated with a school;

16 [~~D.~~] H. "product" means [any] a commodity or thing
 17 made or manufactured from crude petroleum oil or natural gas
 18 and all derivatives of crude petroleum oil or natural gas,
 19 including refined crude oil, crude tops, topped crude,
 20 processed crude petroleum, residue from crude petroleum,
 21 cracking stock, uncracked fuel oil, treated crude oil, fuel
 22 oil, residuum, gas oil, naphtha, distillate, gasoline,
 23 kerosene, benzine, wash oil, waste oil, lubricating oil and
 24 blends or mixtures of crude petroleum oil or natural gas or
 25 [any] a derivative thereof;

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

5 ~~[F.]~~ J. "producer" means the owner of a well
6 capable of producing oil or natural gas or both in paying
7 quantities;

8 ~~[G.]~~ K. "gas transportation facility" means a
9 pipeline, in operation, serving ~~[gas wells]~~ a gas well for the
10 transportation of natural gas, ~~[or some other]~~ including an
11 associated device or equipment ~~[in like operation whereby~~
12 ~~natural gas produced from gas wells connected therewith can be~~
13 ~~transported or used for consumption]~~ used for the
14 transportation or consumption of natural gas;

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

25 ~~[I.]~~ M. "potash" means the naturally occurring

1 bedded deposits of the salts of the element potassium;

2 ~~[J-]~~ N. "casinghead gas" means ~~[any]~~ a gas or vapor
3 or both indigenous to ~~[an oil stratum]~~ and produced from ~~[such]~~
4 an oil stratum with oil, including ~~[any]~~ a residue gas
5 remaining after the processing of casinghead gas to remove its
6 liquid components;

7 ~~[K-]~~ O. "produced water" means a fluid that is an
8 incidental byproduct from drilling for or in the production of
9 oil and gas;

10 ~~[L-]~~ P. "commission" means the oil conservation
11 commission; and

12 ~~[M-]~~ Q. "division" means the oil conservation
13 division of the energy, minerals and natural resources
14 department."

15 **SECTION 2.** Section 70-2-12 NMSA 1978 (being Laws 1978,
16 Chapter 71, Section 1, as amended) is amended to read:

17 "70-2-12. ENUMERATION OF POWERS.--

18 A. The ~~[oil conservation]~~ division ~~[of the energy,~~
19 ~~minerals and natural resources department]~~ may:

- 20 (1) collect data;
- 21 (2) make investigations and inspections;
- 22 (3) examine properties, leases, papers, books
23 and records;
- 24 (4) examine, check, test and gauge oil and gas
25 wells, tanks, plants, refineries and all means and modes of

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1 transportation and equipment;

2 (5) hold hearings;

3 (6) provide for the keeping of records and the
4 making of reports and for the checking of the accuracy of the
5 records and reports;

6 (7) limit and prorate production of crude
7 petroleum oil or natural gas or both as provided in the Oil and
8 Gas Act; and

9 (8) require either generally or in particular
10 areas certificates of clearance or tenders in connection with
11 the transportation of crude petroleum oil or natural gas or any
12 products of either or both oil and products or both natural gas
13 and products.

14 B. The [~~oil conservation~~] division may [~~make rules~~
15 ~~and orders for the purposes and with respect to the subject~~
16 ~~matter stated in this subsection~~] adopt rules to:

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

24 (2) [~~to~~] prevent crude petroleum oil, natural
25 gas or water from escaping from strata in which it is found

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underscored material = new
[bracketed material] = delete

1 into other strata;

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

5 (4) [~~to~~] prevent the drowning by water of
6 [~~any~~] a stratum or [~~part thereof~~] a part of a stratum capable
7 of producing oil or gas or both oil and gas in paying
8 quantities and to prevent the premature and irregular
9 encroachment of water or any other kind of water encroachment
10 that reduces or tends to reduce the total ultimate recovery of
11 crude petroleum oil or gas or both oil and gas from [~~any~~] a
12 pool;

13 (5) [~~to~~] prevent fires;

14 (6) [~~to~~] prevent "blow-ups" and "caving" in
15 the sense that the conditions indicated by such terms are
16 generally understood in the oil and gas business;

17 (7) [~~to~~] require wells to be drilled, operated
18 and produced in such manner as to prevent injury to neighboring
19 leases or properties;

20 (8) [~~to~~] identify the ownership of oil or gas
21 producing leases, properties, wells, tanks, refineries,
22 pipelines, plants, structures and all transportation equipment
23 and facilities;

24 (9) [~~to~~] require the operation of wells with
25 efficient gas-oil ratios and to fix such ratios;

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1 (10) [~~to~~] fix the spacing of wells;

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

6 (12) [~~to~~] determine the limits of [~~any~~] a pool
7 producing crude petroleum oil or natural gas or both and from
8 time to time redetermine the limits;

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

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

16 (15) [~~to~~] regulate the disposition, handling,
17 transport, storage, recycling, treatment and disposal of
18 produced water during, or for reuse in, the exploration,
19 drilling, production, treatment or refinement of oil or gas,
20 including disposal by injection pursuant to authority delegated
21 under the federal Safe Drinking Water Act, in a manner that
22 protects public health, the environment and fresh water
23 resources;

24 (16) [~~to~~] determine the limits of [~~any~~] an
25 area containing commercial potash deposits and from time to

1 time redetermine the limits;

2 (17) [~~to~~] regulate and, where necessary,
 3 prohibit drilling or producing operations for oil or gas within
 4 [~~any~~] an area containing commercial deposits of potash where
 5 the operations would have the effect [~~unduly~~] to unduly reduce
 6 the total quantity of the commercial deposits of potash that
 7 may reasonably be recovered in commercial quantities or where
 8 the operations would interfere unduly with the orderly
 9 commercial development of the potash deposits;

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

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

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

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

9 (22) ~~to~~ regulate the disposition of
10 nondomestic wastes resulting from the oil field service
11 industry, the transportation of crude oil or natural gas, the
12 treatment of natural gas or the refinement of crude oil to
13 protect public health and the environment, including
14 administering the Water Quality Act as provided in Subsection E
15 of Section 74-6-4 NMSA 1978; and

16 (23) effectuate the provisions of the Oil and
17 Gas Act that concern an oil or natural gas operation located in
18 a children's health protection zone."

19 SECTION 3. Section 70-2-31 NMSA 1978 (being Laws 1981,
20 Chapter 362, Section 1, as amended) is amended to read:

21 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

22 A. Whenever the division determines that a person
23 violated or is violating the Oil and Gas Act or any provision
24 of any rule, order, permit or authorization issued pursuant to
25 that act, the division may seek compliance and civil penalties

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1 by:

2 (1) issuing a notice of violation;

3 (2) commencing a civil action in district
4 court for appropriate relief, including injunctive relief; or

5 (3) issuing a temporary cessation order if the
6 division determines that the violation is causing or will cause
7 an imminent danger to public health or safety or a significant
8 imminent environmental harm. The cessation order will remain
9 in effect until the earlier of when the violation is abated or
10 thirty days unless a hearing is held before the division and a
11 new order is issued.

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

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

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1 violation should be upheld and whether any sanctions, including
2 civil penalties, shall be assessed. In assessing a penalty
3 authorized by this section, the division shall take into
4 account the seriousness of the violation, any good faith
5 efforts to comply with the applicable requirements, any history
6 of noncompliance under the Oil and Gas Act and other relevant
7 factors.

8 D. When a decision is rendered by the division
9 after a hearing, any party of record adversely affected shall
10 have the right to have the matter heard de novo before the
11 commission pursuant to Section 70-2-13 NMSA 1978.

12 [~~D.—Any~~] E. Except as provided by Subsection F of
13 this section, a civil penalty assessed by a court or by the
14 division or commission pursuant to this section may not exceed
15 two thousand five hundred dollars (\$2,500) per day of
16 noncompliance for each violation unless the violation presents
17 a risk either to the health or safety of the public or of
18 causing significant environmental harm, or unless the
19 noncompliance continues beyond a time specified in the notice
20 of violation or order issued by the division, commission or
21 court, whereupon the civil penalty may not exceed ten thousand
22 dollars (\$10,000) per day of noncompliance for each violation.
23 [~~No~~] A penalty assessed by the division or commission after a
24 hearing [~~may~~] shall not exceed two hundred thousand dollars
25 (\$200,000); provided that [~~such~~] this limitation does not apply

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1 to penalties assessed by a court.

2 F. A civil penalty assessed by a court, the
 3 division or the commission for a violation by an operator
 4 located in a children's health protection zone may not exceed
 5 thirty thousand dollars (\$30,000) per day of noncompliance for
 6 each violation. A penalty assessed by the division or
 7 commission after a hearing pursuant to this section shall not
 8 exceed three million dollars (\$3,000,000); provided that this
 9 limitation does not apply to penalties assessed by a court.

10 [~~E.~~] G. The commission shall make rules, pursuant
 11 to Section 70-2-12.2 NMSA 1978, providing procedures for the
 12 issuance of notices of violations, the assessment of penalties
 13 and the conduct of informal proceedings and hearings pursuant
 14 to this section.

15 [~~F.~~] H. It is unlawful, subject to a criminal
 16 penalty of a fine of not more than five thousand dollars
 17 (\$5,000) or imprisonment for a term not exceeding three years
 18 or both such fine and imprisonment, for any person to knowingly
 19 and willfully:

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

23 (2) do any of the following for the purpose of
 24 evading or violating the Oil and Gas Act or any rule,
 25 regulation or order of the commission or the division issued

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1 pursuant to that act:

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

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

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

13 (d) remove from this state or destroy,
14 mutilate, alter or falsify any such record, account or
15 memorandum.

16 [~~G.~~] I. For the purposes of Subsection [~~F~~] H of
17 this section, each day of violation shall constitute a separate
18 offense.

19 [~~H.~~] J. Any person who knowingly and willfully
20 procures, counsels, aids or abets the commission of any act
21 described in Subsection A or [~~F~~] H of this section shall be
22 subject to the same penalties as are prescribed in Subsection D
23 or [~~F~~] H of this section."

24 **SECTION 4.** A new section of the Oil and Gas Act is
25 enacted to read:

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1 "[NEW MATERIAL] OIL AND GAS DRILLING SETBACKS FROM
 2 SCHOOLS--PERMITS TO DRILL--VARIANCES--ADMINISTRATIVE
 3 PROCEEDING.--

4 A. The purpose of this section is to exercise the
 5 powers provided by Article 11, Section 14 of the constitution
 6 of New Mexico to protect public health from the effects of
 7 pollution from oil and gas operations in children's health
 8 protection zones. This section is not intended, and shall not
 9 be construed as authorizing, the state or an agency of the
 10 state to exercise its power to grant or deny a permit in a
 11 manner that will take private property for public use without
 12 the payment of just compensation.

13 B. Beginning August 1, 2025, the division shall not
 14 approve a permit to drill an oil or natural gas well in a
 15 children's health protection zone, except as provided in
 16 Subsection C of this section.

17 C. An operator or owner may apply with the division
 18 for a variance from the provisions of Subsection B of this
 19 section. Except as provided by Subsection D of this section,
 20 the division shall grant a variance from the provisions of
 21 Subsection B of this section if:

22 (1) the variance is necessary to plug and
 23 abandon or reabandon a well, including an intercept well
 24 necessary to plug and abandon or reabandon a well; or

25 (2) the commission determines at an

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1 administrative proceeding that, based on a preponderance of the
2 evidence, the denial of a permit to drill after August 1, 2025
3 would:

4 (a) result in a loss of all economic
5 value of the applicant's property; or

6 (b) result in a severe adverse economic
7 impact and deprive the applicant of objectively reasonable
8 investment-backed expectations.

9 D. The division shall not grant a variance pursuant
10 to Paragraph (2) of Subsection C of this section if the
11 commission determines that, based on the preponderance of the
12 evidence, granting the variance would harm public health.

13 E. The division shall grant a variance pursuant to
14 this section only to the extent necessary to avoid the effects
15 on the applicant proven pursuant to Paragraph (2) of Subsection
16 C of this section.

17 F. The division shall not be deemed to have reached
18 a final decision regarding the application of this section
19 until the applicant requests a variance and administrative
20 proceedings are complete and final. A decision of the division
21 or a decision of the commission at an administrative proceeding
22 regarding an application for a variance pursuant to this
23 section shall not constitute an adjudication of any claim or
24 cause of action or otherwise have a preclusive effect in a
25 judicial proceeding."

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1 SECTION 5. A new section of the Oil and Gas Act is
2 enacted to read:

3 "[NEW MATERIAL] PROTECTION ZONE INVENTORY AND MAP.--

4 A. In addition to other requirements prescribed by
5 rule or law, an operator applying to the division for a permit
6 to drill shall submit a protection zone inventory and map to
7 the division.

8 B. On or before January 1, 2026, an operator of an
9 oil or natural gas well as of the effective date of this 2025
10 act shall submit to the division a protection zone inventory
11 and map.

12 C. A protection zone inventory and map shall
13 include:

14 (1) a statement as to whether an operator's
15 wellhead or production facility is in a children's health
16 protection zone;

17 (2) a list of the operator's production
18 facilities and wellheads, including a unique, permanent
19 identifier number assigned to a wellhead and the longitude and
20 latitude coordinates for each wellhead and production facility;
21 and

22 (3) if an operator's wellhead or production
23 facility is in a children's health protection zone:

24 (a) a list of schools within five
25 thousand two hundred eighty feet of an operator's wellhead and

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1 production facility, including the type of school and the
2 distance from the operator's wellheads and production
3 facilities to the school; and

4 (b) a map that shows the location of
5 each school in relation to the operator's wellheads and
6 production facilities.

7 D. Beginning January 1, 2027 and in the month of
8 December each year thereafter, an operator shall submit to the
9 division an updated version of the protection zone inventory
10 and map previously submitted; provided that if there are no
11 changes to the information, the operator may submit to the
12 division a statement that there are no changes to the
13 protection zone inventory and map.

14 E. The division shall review a protection zone
15 inventory and map for completeness and accuracy and notify the
16 operator of any deficiencies. Within thirty days of an
17 operator's receipt of the division's notification that a
18 protection zone inventory and map is deficient, the operator
19 shall submit to the division any additional information
20 required by the division.

21 F. The division shall post an operator's protection
22 zone inventory and map on the agency's website."

23 SECTION 6. A new section of the Oil and Gas Act is
24 enacted to read:

25 "[NEW MATERIAL] OPERATION IN A CHILDREN'S HEALTH

1 PROTECTION ZONE--RESTRICTIONS.--

2 A. On or before January 1, 2026, an operator that
3 has a wellhead or production facility in a children's health
4 protection zone shall post contact information for addressing
5 complaints about noise, odor or other concerns on the perimeter
6 of the operator's property, including the responsible persons
7 employed by the operator and enforcement officials in the city
8 and county where the property is located.

9 B. An operator with a wellhead or production
10 facility in a children's health protection zone shall:

11 (1) unless more stringent local requirements
12 apply, employ operational measures to prevent dust and
13 particulates from migrating beyond the operator's property
14 boundaries by limiting vehicle speeds on unpaved roads to
15 fifteen miles per hour and containing or covering stored sands,
16 drilling muds and excavated soil; and

17 (2) provide the division with a representative
18 chemical analysis for produced water transported away from the
19 operator's property. An operator shall conduct water sampling
20 and testing in accordance with the requirements of Subsection B
21 of Section 8 of this 2025 act and shall file the representative
22 chemical analysis with the division within three months of the
23 produced water being transported away from the operator's
24 property and whenever the source of the produced water changes.
25 For the purposes of this paragraph, the source of produced

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1 water changes if the treatment process or additives are
2 changed, if a contributing source is added or removed or if
3 there is a significant change to the relative contribution of
4 individual sources such that the last representative chemical
5 analysis is not representative of the produced water."

6 SECTION 7. A new section of the Oil and Gas Act is
7 enacted to read:

8 "[NEW MATERIAL] SUSPENSION OF OIL AND GAS OPERATIONS.--An
9 operator shall immediately suspend the operation of a well or
10 production facility in a children's health protection zone if a
11 leak of a chemical constituent, as identified in the facility's
12 leak detection and response plan, as set forth in the Air
13 Quality Control Act, is detected and continuous for more than
14 forty-eight hours. Operations shall be suspended until the
15 leak has been corrected and the division has approved the
16 resumption of operations. If an operator can demonstrate to
17 the division that the source of the leak is not the operator's
18 oil and gas operation, the division may waive any additional
19 actions required under the alarm response protocol."

20 SECTION 8. A new section of the Oil and Gas Act is
21 enacted to read:

22 "[NEW MATERIAL] WATER QUALITY SAMPLING AND TESTING--
23 EXCEPTIONS.--

24 A. Beginning August 1, 2025, an operator with a
25 wellhead or production facility in a children's health

1 protection zone that receives a permit to drill from the
2 division under an exception in the Oil and Gas Act shall
3 provide notice of the operator's intent to drill to the
4 property owners and tenants located within five thousand two
5 hundred eighty feet of the property line of the operator's
6 wellhead or production facility and offer to sample and test
7 water wells and surface water on the property owners' and
8 tenants' properties at least thirty days before commencing a
9 drilling operation. If the property owner or tenant requests
10 water sampling and testing within ten days of receipt of the
11 operator's notice and makes the necessary accommodations to
12 enable the collection of a water sample within fifteen days of
13 receipt of the operator's notice, the operator may not commence
14 drilling until a baseline water sample of the property owner's
15 or tenant's well water or surface water has been collected. If
16 the operator collects a baseline water sample, the operator
17 shall collect another water sample of the well water or surface
18 water on the property owner's or tenant's property no sooner
19 than thirty days and no later than sixty days after drilling is
20 complete. Before commencing a drilling operation in a
21 children's health protection zone, an operator shall provide
22 documentation to the division of the operator's notification of
23 property owners and tenants as required by this subsection.

24 B. An operator shall conduct water sampling and
25 testing in accordance with the following requirements:

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1 (1) an appropriately qualified person shall
2 conduct the water quality sampling and testing in a manner
3 consistent with standard environmental industry practice and
4 chain of custody protocols;

5 (2) documentation of the water quality
6 sampling and testing process shall accurately describe the
7 location that the sample was taken from and the process for
8 collecting the sample;

9 (3) a laboratory accredited by the state to
10 perform the tests necessary to complete the required analysis
11 shall perform the water quality analytical testing, except for
12 field tests that may be conducted by a person who is qualified
13 to sample and interpret the results of the required test; and

14 (4) water quality testing shall include
15 testing for total dissolved solids, total petroleum hydrocarbon
16 as crude oil, major cations, major anions, a water contaminant
17 or combination of water contaminants identified as a toxic
18 pollutant by the water quality control commission, appropriate
19 indicator chemicals for drilling mud and fluids used for well
20 cleanout, total alkalinity and hydroxide, electrical
21 conductance, pH and temperature. The division may require
22 testing for additional constituents on a case-by-case basis.

23 C. Within one hundred twenty days of the completion
24 of drilling in a children's health protection zone, the
25 operator shall provide to the division, the property owner and

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1 the tenant the results of any baseline and follow-up water
2 quality testing.

3 D. Water quality data collected pursuant to this
4 section shall be submitted to the division in electronic format
5 within one hundred twenty days after drilling is complete.

6 E. If a property owner or tenant is unable to
7 accommodate the necessary access to perform baseline or follow-
8 up testing pursuant to this section, failure to do the testing
9 is not a violation of this section.

10 F. The division may waive the requirements of this
11 section if the operator demonstrates that a delay in drilling
12 caused by complying with this section is likely to result in
13 significant damage to life, health or natural resources.

14 G. An operator is not required to sample or test
15 water pursuant to this section if a state agency or the United
16 States environmental protection agency has determined that the
17 water within five thousand two hundred eighty feet of the
18 property line of an operator's wellhead or production facility
19 is not an underground source of drinking water, as defined in
20 the federal Safe Drinking Water Act, and the water does not
21 have a beneficial use.

22 H. The costs of sampling and testing required by
23 this section shall be the responsibility of the operator."

24 SECTION 9. Section 74-2-2 NMSA 1978 (being Laws 1967,
25 Chapter 277, Section 2, as amended) is amended to read:

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1 "74-2-2. DEFINITIONS.--As used in the Air Quality Control
2 Act:

3 A. "air contaminant" means a substance, including
4 any particulate matter, fly ash, dust, fumes, gas, mist, smoke,
5 vapor, micro-organisms, radioactive material, any combination
6 thereof or any decay or reaction product thereof;

7 B. "air pollution" means the emission, except
8 emission that occurs in nature, into the outdoor atmosphere of
9 one or more air contaminants in quantities and of a duration
10 that may with reasonable probability injure human health or
11 animal or plant life or as may unreasonably interfere with the
12 public welfare, visibility or the reasonable use of property;

13 C. "children's health protection zone" means an
14 area extending five thousand two hundred eighty feet from the
15 property line of a school;

16 [~~G.~~] D. "department" means the department of
17 environment;

18 [~~D.~~] E. "director" means the administrative head of
19 a local agency;

20 [~~E.~~] F. "emission limitation" or "emission
21 standard" means a requirement established by the environmental
22 improvement board or the local board, the department, the local
23 authority or the local agency or pursuant to the federal act
24 that limits the quantity, rate or concentration, or combination
25 thereof, of emissions of air contaminants on a continuous

1 basis, including any requirements relating to the operation or
2 maintenance of a source to assure continuous reduction;

3 ~~[F.]~~ G. "federal act" means the federal Clean Air
4 Act, its subsequent amendments and successor provisions;

5 ~~[G.]~~ H. "federal standard of performance" means a
6 standard of performance, emission limitation or emission
7 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

8 ~~[H.]~~ I. "hazardous air pollutant" means an air
9 contaminant that has been listed as a hazardous air pollutant
10 pursuant to the federal act;

11 ~~[I.]~~ J. "local agency" means the administrative
12 agency established by a local authority pursuant to Paragraph
13 (2) of Subsection A of Section 74-2-4 NMSA 1978;

14 ~~[J.]~~ K. "local authority" means any of the
15 following political subdivisions of the state that have, by
16 following the procedure set forth in Subsection A of Section
17 74-2-4 NMSA 1978, assumed jurisdiction for local administration
18 and enforcement of the Air Quality Control Act:

19 (1) a county that was a class A county as of
20 January 1, 1980; or

21 (2) a municipality with a population greater
22 than one hundred thousand located within a county that was a
23 class A county as of January 1, 1980;

24 ~~[K.]~~ L. "local board" means a municipal, county or
25 joint air quality control board created by a local authority;

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1 ~~[E-]~~ M. "mandatory class I area" means any of the
2 following areas in this state that were in existence on August
3 7, 1977:

4 (1) national wilderness areas that exceed five
5 thousand acres in size; and

6 (2) national parks that exceed six thousand
7 acres in size;

8 ~~[M-]~~ N. "modification" means a physical change in,
9 or change in the method of operation of, a source that results
10 in an increase in the potential emission rate of a regulated
11 air contaminant emitted by the source or that results in the
12 emission of a regulated air contaminant not previously emitted,
13 but does not include:

14 (1) a change in ownership of the source;

15 (2) routine maintenance, repair or
16 replacement;

17 (3) installation of air pollution control
18 equipment, and all related process equipment and materials
19 necessary for its operation, undertaken for the purpose of
20 complying with regulations adopted by the environmental
21 improvement board or the local board or pursuant to the federal
22 act; or

23 (4) unless previously limited by enforceable
24 permit conditions:

25 (a) an increase in the production rate,

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1 if such increase does not exceed the operating design capacity
2 of the source;

3 (b) an increase in the hours of
4 operation; or

5 (c) use of an alternative fuel or raw
6 material if, prior to January 6, 1975, the source was capable
7 of accommodating such fuel or raw material or if use of an
8 alternate fuel or raw material is caused by a natural gas
9 curtailment or emergency allocation or [~~an other~~] another lack
10 of supply of natural gas;

11 [~~N.~~] Q. "nonattainment area" means for an air
12 contaminant an area that is designated "nonattainment" with
13 respect to that contaminant within the meaning of Section
14 107(d) of the federal act;

15 P. "oil and gas operator" means a person with the
16 legal right to conduct oil or natural gas operations and
17 includes agents, employees and contractors of that person;

18 [~~Q.~~] Q. "person" includes an individual,
19 partnership, corporation, association, the state or political
20 subdivision of the state and any agency, department or
21 instrumentality of the United States and any of their officers,
22 agents or employees;

23 [~~P.~~] R. "potential emission rate" means the
24 emission rate of a source at its maximum capacity to emit a
25 regulated air contaminant under its physical and operational

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1 design, provided any physical or operational limitation on the
2 capacity of the source to emit a regulated air contaminant,
3 including air pollution control equipment and restrictions on
4 hours of operation or on the type or amount of material
5 combusted, stored or processed, shall be treated as part of its
6 physical and operational design only if the limitation or the
7 effect it would have on emissions is enforceable by the
8 department or the local agency pursuant to the Air Quality
9 Control Act or the federal act;

10 [Q-] S. "regulated air contaminant" means an air
11 contaminant, the emission or ambient concentration of which is
12 regulated pursuant to the Air Quality Control Act or the
13 federal act;

14 T. "school" means an elementary, secondary, middle,
15 junior high or high school or any combination of those,
16 including a public school, state-chartered or locally chartered
17 charter school or private school that students attend in
18 person, including a daycare center, and a park, playground or
19 sports or recreation facility associated with a school;

20 [R-] U. "secretary" means the secretary of
21 environment;

22 [S-] V. "significant deterioration" means an
23 increase in the ambient concentrations of an air contaminant
24 above the levels allowed by the federal act or federal
25 regulations for that air contaminant in the area within which

1 the increase occurs;

2 ~~[F.]~~ W. "source" means a structure, building,
3 equipment, facility, installation or operation that emits or
4 may emit an air contaminant;

5 ~~[U.]~~ X. "standard of performance" means a
6 requirement of continuous emission reduction, including any
7 requirement relating to operation or maintenance of a source to
8 assure continuous emission reduction;

9 ~~[V.]~~ Y. "state implementation plan" means a plan
10 submitted by New Mexico to the federal environmental protection
11 agency pursuant to 42 U.S.C. Section 7410; and

12 ~~[W.]~~ Z. "toxic air pollutant" means an air
13 contaminant, except a hazardous air pollutant, classified by
14 the environmental improvement board or the local board as a
15 toxic air pollutant."

16 **SECTION 10.** Section 74-2-5 NMSA 1978 (being Laws 1967,
17 Chapter 277, Section 5, as amended) is amended to read:

18 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT
19 BOARD--LOCAL BOARD.--

20 A. The environmental improvement board or the local
21 board shall prevent or abate air pollution.

22 B. The environmental improvement board or the local
23 board shall:

24 (1) adopt, promulgate, publish, amend and
25 repeal rules and standards consistent with the Air Quality

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1 Control Act to attain and maintain national ambient air quality
2 standards and prevent or abate air pollution, including:

3 (a) rules prescribing air standards
4 within the geographic area of the environmental improvement
5 board's jurisdiction or the local board's jurisdiction or any
6 part thereof; [~~and~~]

7 (b) standards of performance that limit
8 carbon dioxide emissions to no more than one thousand one
9 hundred pounds per megawatt-hour on and after January 1, 2023
10 for a new or existing source that is an electric generating
11 facility with an original installed capacity exceeding three
12 hundred megawatts and that uses coal as a fuel source; [~~and~~]

13 (c) implementation and performance
14 standards for emissions detection systems in children's health
15 protection zones;

16 (d) rules defining additional required
17 components of an oil and gas operator's leak detection and
18 response plan; and

19 (e) other rules necessary to effectuate
20 the provisions of the Air Quality Control Act that concern
21 children's health protection zones; and

22 (2) adopt a plan for the regulation, control,
23 prevention or abatement of air pollution, recognizing the
24 differences, needs, requirements and conditions within the
25 geographic area of the environmental improvement board's

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1 jurisdiction or the local board's jurisdiction or any part
2 thereof.

3 C. If the environmental improvement board or the
4 local board determines that emissions from sources within the
5 environmental improvement board's jurisdiction or the local
6 board's jurisdiction cause or contribute to ozone
7 concentrations in excess of ninety-five percent of the primary
8 national ambient air quality standard for ozone promulgated
9 pursuant to the federal act, the environmental improvement
10 board or the local board shall adopt a plan, including rules,
11 to control emissions of oxides of nitrogen and volatile organic
12 compounds to provide for attainment and maintenance of the
13 standard. Rules adopted pursuant to this subsection shall be
14 limited to sources of emissions within the area of the state
15 where the ozone concentrations exceed ninety-five percent of
16 the primary national ambient air quality standard.

17 D. Rules adopted by the environmental improvement
18 board or the local board may:

19 (1) include rules to protect visibility in
20 mandatory class I areas to prevent significant deterioration of
21 air quality and to achieve national ambient air quality
22 standards in nonattainment areas; provided that the rules shall
23 be at least as stringent as required by the federal act and
24 federal regulations pertaining to visibility protection in
25 mandatory class I areas, pertaining to prevention of

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1 significant deterioration and pertaining to nonattainment
2 areas;

3 (2) prescribe standards of performance for
4 sources and emission standards for hazardous air pollutants
5 that shall be at least as stringent as required by federal
6 standards of performance;

7 (3) include rules governing emissions from
8 solid waste incinerators that shall be at least as stringent as
9 any applicable federal emission limitations;

10 (4) include rules requiring the installation
11 of control technology for mercury emissions that removes the
12 greater of what is achievable with best available control
13 technology or ninety percent of the mercury from the input fuel
14 for all coal-fired power plants, except for coal-fired power
15 plants constructed and generating electric power and energy
16 before July 1, 2007;

17 (5) require notice to the department or the
18 local agency of the intent to introduce or permit the
19 introduction of an air contaminant into the air within the
20 geographical area of the environmental improvement board's
21 jurisdiction or the local board's jurisdiction; and

22 (6) require any person emitting any air
23 contaminant to:

24 (a) install, use and maintain emission
25 monitoring devices;

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1 (b) sample emissions in accordance with
2 methods and at locations and intervals as may be prescribed by
3 the environmental improvement board or the local board;

4 (c) establish and maintain records of
5 the nature and amount of emissions;

6 (d) submit reports regarding the nature
7 and amounts of emissions and the performance of emission
8 control devices; and

9 (e) provide any other reasonable
10 information relating to the emission of air contaminants.

11 E. Any rule adopted pursuant to this section shall
12 be at least as stringent as federal law, if any, relating to
13 control of motor vehicle emissions.

14 F. In making its rules, the environmental
15 improvement board or the local board shall give weight it deems
16 appropriate to all facts and circumstances, including:

17 (1) character and degree of injury to or
18 interference with health, welfare, visibility and property;

19 (2) the public interest, including the social
20 and economic value of the sources and subjects of air
21 contaminants; and

22 (3) technical practicability and economic
23 reasonableness of reducing or eliminating air contaminants from
24 the sources involved and previous experience with equipment and
25 methods available to control the air contaminants involved.

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1 G. Before the environmental improvement board or
2 local board adopts a rule that is more stringent than the
3 federal act or federal regulations, or that applies to sources
4 not subject to regulation pursuant to the federal act or
5 regulations, the environmental improvement board or local board
6 shall make a determination, based on substantial evidence and
7 after notice and public hearing, that the proposed rule will be
8 more protective of public health and the environment."

9 **SECTION 11.** A new section of the Air Quality Control Act
10 is enacted to read:

11 "[NEW MATERIAL] LEAK DETECTION AND RESPONSE PLAN--ALARM
12 RESPONSE PROTOCOL--CHEMICAL ANALYSIS OF PRODUCED WATER--
13 RECORDS--PUBLIC TECHNICAL WORKSHOPS.--

14 A. An oil and gas operator with a wellhead or
15 production facility in a children's health protection zone
16 shall develop a leak detection and response plan, submit that
17 plan to the department by January 1, 2026 and fully implement
18 the plan by July 1, 2026. The department shall review an
19 operator's leak detection and response plan and either approve
20 the plan or provide notice to the operator of the plan's
21 deficiencies within ninety days of the department's receipt of
22 the operator's plan.

23 B. A leak detection and response plan shall:

24 (1) identify the chemical constituents and
25 toxic substances of highest concern in the region as identified

1 by the environmental improvement board or the city or county
2 where the operator is located; provided that methane may serve
3 as a surrogate for chemical constituents identified in the plan
4 that cannot be continuously monitored;

5 (2) include a continuously operating emissions
6 detection system designed to provide for rapid detection of
7 chemical constituents and identify leaks; and

8 (3) include an alarm response protocol that:

9 (a) provides for immediate action to
10 rapidly identify, fix and provide notification of a leak that
11 is continuous for more than forty-eight hours;

12 (b) includes a communication plan to
13 notify local emergency responders, public health officials, the
14 department, the oil conservation division of the energy,
15 minerals and natural resources department and people in the
16 community where the operator is located in languages that are
17 easily understood by the people in the community where the
18 operator is located;

19 (c) complies with local, state and
20 federal requirements for reporting leaks of hazardous
21 materials; and

22 (d) is created in consultation with
23 local emergency response officials.

24 C. The department shall review an operator's leak
25 detection and response plan and request updates to the plan at

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1 least once every five years from the date of the plan's initial
2 approval by the department.

3 D. An operator shall record and maintain records of
4 emissions and meteorological data, including the composition of
5 any samples collected during leak events, for ten years.

6 E. The department shall hold one public technical
7 workshop at least once every two years to provide information
8 and guidance to operators on best practices for the
9 development, review and update of a leak detection and response
10 plan.

11 F. The department shall post an operator's leak
12 detection and response plan on the agency's website."

13 SECTION 12. A new section of the Air Quality Control Act
14 is enacted to read:

15 "NEW MATERIAL] REPORTING.--

16 A. Before December 31, 2026 and in the month of
17 December each year thereafter, an operator located in a
18 children's health protection zone shall provide to the
19 department a report that includes:

20 (1) the number of times and lengths of time
21 the emissions detection system was not operating;

22 (2) the number of validated alarms and the
23 reasons for the alarms;

24 (3) the number of leaks that have occurred,
25 the time needed to repair each leak and a brief description of

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1 each leak that includes the impact on air quality and exposure
2 to the surrounding community;

3 (4) the number of times the surrounding
4 community was notified of a leak that persisted for more than
5 forty-eight hours;

6 (5) the number of times and lengths of time
7 that production and injection operations and other use of the
8 facility were suspended due to a leak; and

9 (6) the results of any baseline and post-
10 drilling ground water testing performed, by location.

11 B. The department shall report annually before
12 October 1 to the appropriate legislative interim committee that
13 studies oil and gas operations in children's health protection
14 zones in the state, including information on the progress
15 achieved on the implementation of operators' leak detection and
16 response plans."

17 **SECTION 13.** A new section of the Air Quality Control Act
18 is enacted to read:

19 "[NEW MATERIAL] OIL AND GAS PRODUCTION FACILITIES--
20 SUSPENSION OF OPERATION.--An oil and gas operator shall
21 immediately suspend the operation of a production facility
22 within a children's health protection zone if:

23 A. the production facility or any associated
24 permanent or temporary equipment is not in compliance with the
25 Air Quality Control Act or a city or county ordinance adopted

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1 pursuant to that act, in which case operations shall be
2 suspended until the production facility attains compliance with
3 the Air Quality Control Act or a city or county ordinance
4 adopted pursuant to that act and the department has approved
5 the resumption of operations; or

6 B. the operator has not implemented a leak
7 detection and response plan for that facility or equipment by
8 July 1, 2026, in which case operations shall be suspended until
9 the operator implements a leak detection and response plan
10 approved by the department."