

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

CASE NO. 13564
ORDER NO. R-12452

APPLICATION OF THE OIL CONSERVATION DIVISION TO AMEND RULE 7 OF 19.15.1 NMAC; RULES 101 AND 102 OF 19.15.3 NMAC; RULES 201 AND 203 OF 19.15.4 NMAC; RULE 701 OF 19.15.9 NMAC; RULES 1101, 1103, 1104 AND 1115 OF 19.15.13 NMAC; AND THE ADOPTION OF RULES 40 AND 41 OF 19.15.1 NMAC; RULE 100 OF 19.15.3 NMAC; AND RULE 1227 OF 19.15.14 NMAC

APPLICATION FOR REHEARING OF MARBOB ENERGY CORPORATION

This Application for Rehearing is submitted by HOLLAND & HART, LLP, on behalf of Marbob Energy Corporation ("Marbob"), a party of record adversely affected by Oil Conservation Commission Order No. R-12452. In accordance with the provisions of N.M.S.A. § 70-2-25 (2005), Marbob requests the New Mexico Oil Conservation Commission ("Commission") grant this Application for Rehearing in Case No. 13564 and in support of this Application for Rehearing states:

I. BACKGROUND

On September 2, 2005, the New Mexico Oil Conservation Division ("OCD") filed its application for rule adoption and amendment in this case and on that date published notice of the proposed rules. The OCD held a Stakeholders Meeting on September 21, 2005 at which time the rules were reviewed and discussed. Interested parties had until October 4, 2005 (which date was extended from September 28th due to Hurricane Rita per Order No. R-12430) to submit proposed modifications to the rule and until October 5, 2005 to submit comments. An amended application was filed by the OCD on October 3, 2005 which revised the proposed rules. The Division also shortened the time for giving notice of rule making in the Commission Docket to 17 days prior to the hearing citing an

emergency arising from “many pending enforcement cases that cannot be satisfactorily resolved until an appropriate regulatory framework is in place.” See Order No. R-12430-A, Findings 5 and 6. The Commission then heard this matter on October 13 and 14, 2005. Order No. R-12452 was entered by the Commission on November 10, 2005 granting the application of the Division and modifying and then adopting the proposed rules.

Marbob files this Application for a rehearing to address the following issues which have been erroneously decided by the Commission:

- (1) In adopting the new enforcement rules, the Commission acted beyond its delegated authority;
- (2) By amending the proposed rules during the Commission hearing and during deliberations, the Commission failed to follow its own Procedural Rules for (i) proper notice of the proposed rules was not provided, (ii) at no time was a draft published of the rules that were actually considered by the Commission [See, 19.15.14.1201(A)(2)]; and (iii) the Division failed to adopt, reject or adopt in part the proposed rules as required by 19.15.14.1205E(3) but instead adopted rules that contained provisions other than those for which notice had been given in either the newspaper, the OCD website or in the New Mexico Register.
- (3) The provisions in the Division’s new Enforcement Rules concerning compliance with New Rule 40 is based on data maintained by the Division that is so full of error that it renders these rules arbitrary capricious and unreasonable.

I. OCD HAS ACTED BEYOND ITS SCOPE OF AUTHORITY:

In the adoption of this rule, the Oil Conservation Commission has acted beyond its scope of authority. The New Mexico Supreme Court has observed that: “The Oil Conservation Commission is a creature of statute, expressly defined, *limited* and empowered by the laws creating it.” *Continental Oil Company v. Oil Conservation Comm’n*, 70 N.M. 310, 318, 373 P. 2d 809, 816 (N.M. 1962).

When the legislature delegates powers to an agency, “boundaries of authority must be defined and followed.” *Rivas v. Bd of Cosmetologists*, 101 N.M. 592, 593, 686 P.

2d 934, 935 (N.M. 1984). An agency must conform to some statutory standard or intelligible principle. *Id.* An intelligible principle defines the scope of the agency's discretion, pursuant to the legislature's grant of authority. "Where rulings by administrative agencies are not in accord with the basic requirements of the statute relating to those agencies, the decisions of the agencies are void." *Foster v. Bd. of Dentistry*, 103 N.M. 776, 714 P. 2d 580 (N.M. 1986). An agency may not create a regulation or act beyond the power vested to it by statutory authority. *See Gonzales v. New Mexico Educ. Ret. Bd.*, 788 P.2d 348, 350-51 (N.M. 1990). Because agencies are "creatures" of the legislature, attempts at exercising jurisdiction over subject matter not conferred by the legislature are without authority of law and are void. *See In re City of Wichita*, 277 Kan. 487, 525 (Kan. 2004).

The Division, in its Brief in Support of the Application for Rule Adoption and Amendment, relies on the following provisions of the Oil and Gas Act to support its claimed authority to adopt the new rules: NMSA §§ 70-2-6(A), 70-2-11(A), 70-2-12(B) (2005) which in relevant parts give the Division "jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act" and the authority "to make and enforce rules, regulations and orders, and to do whatever may be reasonable necessary to carryout the purpose of this act, whether or not indicated or specified in any section hereof." These provisions permit the agency to fill in the holes in its regulatory framework -- not expand their own jurisdiction in ways contrary to law. *See generally, In re application of Rhino Env'tl. Servs.*, 2005-NMSC-024,117 P. 3d 939, 947 (N.M. 2005). They do not authorize an agency to expand its jurisdiction beyond that authority delegated to it by the legislature. *See City of Santa Fe v. Gamble Skogmo, Inc.*, 73 N.M. 410, 389 P. 2d 13, 20 (N.M. 1964)(A broad mandate to an agency would offer no guidance and would violate the well-settled principle that a legislative body may not vest unbridled or arbitrary power in an administrative agency); *see also Whitman v. American Trucking Ass'n*, 531 U.S. 457, 473 (2001)(discussing the unconstitutionality of any agency's determination of the scope for its own jurisdiction under a "standardless delegation of power.").

The OCD has ignored the directive of our courts and, in its arguments in support of these rules, has selectively cited provisions of the Oil and Gas Act. When the other

applicable penalty provisions in the Oil and Gas Act are considered, it is clear that the Division does not have legislative authorization to access penalties directly against operators. The provisions in the new enforcement rules that authorize fines against operators penalties go beyond the authority delegated to the Commission by the legislature.

NMSA § 70-2-28 (2005) is entitled “Actions for violations” and reads in part:

Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil and gas, or both, or any provision of this act, or any rule, regulation or order made thereunder, the division through the attorney general shall bring suit against such person in the county of the residence of the defendant, or the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, for penalties, if any are applicable, and to restrain such person from continuing such violation or from carrying out the threat of violation. (emphasis added).

NMSA § 70-2-31 “Violations of the Oil and Gas Act; penalties” states:

Any person who knowingly and willfully violates any provision of the Oil and Gas Act [this article] or any provisions of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation...**The penalties provided in this subsection shall be recoverable by a civil suit filed by the attorney general...** (emphasis added).

Current New Mexico law clearly provides that the OCD must seek fines through an action filed by the attorney general in the district court. The language of the statute is unambiguous. If the legislature had intended for this administrative agency to directly impose fines, it would not have required that penalties be obtained through a suit filed in the district court. The Division’s new interpretation of its own power and authority goes beyond the filling in the holes in the regulatory scheme – it goes beyond its statutory authority – it is legislating.

New Mexico courts have reiterated that if the legislature expressly bestows specific authority on an agency, then courts assume that silence means that there is no authority for acts outside the express delegation.. *See generally City of Albuquerque v. New Mexico Public Regulation Comm’n*, 134 N.M. 472, 79 P.3d 297 (N.M. 2003)

(holding that a tariff imposed pursuant to the Public Utility Act exceeded agency authority because the agency acted beyond the legislature's expressed imposition of costs); *State ex. rel. New Mexico State Highway Dep't v. Silva*, 98 N.M. 549, 650 P.2d 833, 836 (1982) ("statutory authority serves as a check on 'arbitrary and capricious action on the part of' the employing agency.") This doctrine is also known as *expressio unius est exclusion alterios*, meaning: "Where authority is given to do a particular thing and the mode of doing it is prescribed, it is limited to be done in that mode; all other modes are excluded." *Bettini v. City of Las Cruces*, 82 N.M. 633, 485 P.2d 967, 969 (N.M. 1971) (holding that the city went outside the scope of its authority when it went beyond what was expressly allowed in the statutes regarding withholding utility services) (*quoting Fancher, et. al. v. County Com.*, 28 N.M. 179, 210 P. 237 (1922)).

At the Commission hearing the Division was asked by Commissioner Bailey if for an assurance that this rulemaking was not a way to get around some prior opposition shown by the legislature and further assurance that enactment of these rules "is not going to duplicate any of those bills." The Division answered that they did not. (*See*, Tr. at 85:12-25) Attached hereto as **Exhibit A** is House Bill No. 871 that was introduced in the 2005 legislative session by the Oil Conservation Division. Section 4 on Page 10 provides:

- "C. The division or the commission may assess the civil penalties provided in this section after notice and an opportunity for a public hearing."

The Compliance Hearing provisions in the rules adopted by Order No. R-12452 read as follows:

"Such sanctions may include but are not limited to....assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A)."

Attached hereto as **Exhibit B** is a draft of the legislation the Division is currently considering for introduction during the 2006 legislative section. It contains the identical language set forth above from its unsuccessful 2005 legislative proposal.

The Division is trying to do by rule what statute does not allow. It argues that under current statute its has power and authority to directly assess fines and at the Commission hearing, did not disclose that it has asked the legislature to expand its

authority to permit it to directly fine operators. However, the Division has not been able to get the legislature to do so. Having been unsuccessful at the legislature, the Division decided to confer this power on itself.

Because of the Division's recognized technical expertise and competence in matters relating to oil and gas, the Oil and Gas Act places all decisions concerning the interpretation of the Act and the rules and regulations adopted pursuant thereto in the hands of the technical staff of the OCD. As currently written, this Act provides a fair hearing to any person accused of violating a provision of the Oil and Gas Act. Under the present system, a party accused of a violation may have a fair hearing before an independent and impartial judge. The Division presents an alleged violation to the district court which determines, based on evidence, if the statutes have been violated.

If the Act is amended as the Division proposes, an operator could receive a Notice of Violation signed by **the Director** or a Division employee responsible to the Director. Compliance meetings with the Division staff could be held where **the Director** attends. The operator could next have the dispute called before the Division for hearing. **The Director** signs the Division order. Appeal would then lie to the Oil Conservation Commission where **the Director** serves as Commission Chairman. If the operator is dissatisfied by the decision of the Commission, it finally may appeal to the courts, on the record made before **the Director** where there is presumption that **the Director** is correct. Where is the fundamental fairness in this process? Where is the fair hearing? Where under the Division's proposed rule or statute does an operator have an opportunity to truly defend itself in an impartial forum?

It is one thing to defer to the expertise of the agency. But under this regulatory scheme, the legislature decided -- at least where fines are imposed -- to have someone other than the person who has made the allegation against an operator decide if in fact that allegation is correct. NMSA § 70-2-28 states that the division "shall" bring suit for penalties in the district court. This language is not permissive or indicative that the Division may or may not bring an action in court. *See Cerrillos Gravel Products, Inc v. Bd. of Cty Com'rs of Santa Fe Cty*, 2005-NMSC-023, ¶12, 117 P. 3d 932, 936 ("By using the word 'may,' instead of 'shall,' the Legislature indicated it was being

permissive, granting the County discretionary authority to enforce violations of ordinances by quasi-criminal prosecution subject to fines and imprisonment.”)

The Division has exceeded its statutory authority. Its Rules establishing Compliance Proceedings and authorizing the Division to directly access fines against operators must be set aside. Rehearing should be granted and the new Enforcement Rules amended to comply with statute.

II. THE DIVISION VIOLATED APPLICABLE PROCEDURAL RULES:

In adopting new Enforcement Rules, the Commission failed to follow its own procedural rules, ignored the limitations on its actions contained therein, and failed to provide reasonable notice of these proposed rules.

A. Notice period was insufficient:

A short time period for notice, comment, and review of proposed rules may be appropriate under some circumstances. However, because of the significant impact these rules will have on oil and gas operators and related industries, and under the circumstances of this case, the notice period was insufficient and violated due process. Even when the original application was released by the Division on September 2, 2005, there was too little time for a reasonable opportunity to review the proposed rules and provide meaningful comments and participation. *New Mexico ex rel Children, Youth & Families Dept. v. Maria C, et al*, 136 N.M. 53, 62, 4 P. 3d 796, 805 (N.M. Ct. App. 2004). The short period of time between the filing of the original application and the Commission hearing and the limited amount of input from the oil and gas industry resulted in the Division having to amend the proposed rules with its amended application, and again during the Commission’s deliberations.

Under these circumstances, operators did not have a reasonable opportunity to participate in the hearing. The hurried way the Division pushed these rules to hearing and the short time period between the date the Division proposed the new Enforcement Rules and the hearing to adopt them caused problems for all involved. Operators had inadequate time to prepare and at the hearing the OCD attorney and the Commissioners were amending the rule under consideration. During the two-day hearing, the Division recommended approximately 3 changes to the rules and, during deliberations, the

Commissioners approved approximately 20 amendments (some ministerial and some substantive changes) to the proposed rules.

The rules substantively changed from the time of publication to such a large extent, that inadequate notice was given. Rehearing should be granted and proper notice should be issued.

B. Inadequate notice of the rules as adopted.

No notice was provided of any of these changes to the rules adopted by the Commission and, accordingly, the due process rights of those affected by the rules have been impaired.¹ Due process requires sufficient and unambiguous notice so that the right parties and interests can be represented at the hearings. *See Nesbit v. City of Albuquerque*, 575 P.2d 1340 (1997); N.M. Atty. Gen. Op. No. 94-07 (1994). Defective notice should reverse the outcome of rule or other administrative proceeding. *Martinez v. Maggiore*, 133 N.M. 472, 64 P.3d 499, 502 (N.M.Ct.App. 2002) (discussing that notice is defective when the agency did not discuss what the type of “special waste” was in the notice publication pursuant to the Solid Waste Act) Omitting a relevant fact in the administrative proceeding may constitute insufficient and therefore invalid notice. *Id.* at 505. When “essential facts” are omitted from a change in an administrative rule, parties that assumed the rule would not apply to them “would never have the opportunity to protest on those grounds and would never even receive public notice of the proposed retirement.” N.M. Atty Gen. Op. No. 94-07 (1994). “The essence of due process is notice and ‘an opportunity to be heard at a meaningful time and in a meaningful manner.’ Fair notice is at bottom effective notice, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *New Mexico ex rel Children, Youth & Families Dept. v. Maria C, et al*, 136 N.M. 53, 62, 4 P. 3d 796, 805 (N.M. Ct. App. 2004)(internal citations omitted). “In general, the right to due process in administrative proceedings contemplates only notice of the opposing party’s claims and a reasonable opportunity to meet them. The importance of the individual’s and administrative body’s interests, together with the ‘risk of an erroneous deprivation of such [private] interest through the

¹ Even the Commission’s legal counsel raised the issue of adequate notice during the deliberation of the rules and cautioned the Commission about the inadequate record and notice in this case. *See* Tr. 659-660.

procedures used, and the probable value, if any, of additional or substitute procedural safeguards,' dictates what additional process, if any, is due in administrative proceedings." *Archuleta v. Santa Fe Police Dept.*, 2005-NMSC-006, 108 P. 3d 1019 (N.M. 2005). (internal citations omitted).

The Division should have considered additional "procedural safeguards" to ensure interested and/or affected parties had sufficient opportunity to be apprised of the rule change and to meaningfully participate.

The amendments include the following matters:

- The discussion of Rule 701 during the hearing included recommendations for changes and additions to the rule from the stand (See Testimony of Will Jones Tr. 139). During deliberations, the Commission adopted those recommendations and further amended the rule to add certain notice provisions. (**See Exhibit C.**)
- The Commission extensively amended Rule 203. The Commission added language to cover both internal and external mechanical integrity testing as well as additional testing requirements. The Commission also added "restoration and remediation" language. (**See Exhibit C.**)
- Rule 1103 was also amended to include "restoration and remediation" language. (**See Exhibit C.**)

C. The Commission failed to follow its own procedural rules:

Under Commission procedural rules, "The division, any operator or producer or any other person may initiate a rulemaking proceeding by filing an application to adopt, amend or repeal a rule. . . ." NMAC 19.15.14.1201(A) (2005). Thereafter the Commission reviews the application and decides whether or not to hear the application. NMAC 19.15.14.1201(C)(2005). The procedural rules of the Division and Commission then provide for notice of the rulemaking and direct that "any person, other than the applicant or a commissioner, recommending modifications to a proposed rule change shall, no later than 10 business days prior to the scheduled hearing date, file a notice of recommended modification with the commission clerk." NMAC 19.15.14.1204(C)(1) (2005).

The applicant in this rulemaking case is the Division. The amended application for rule adoption and amended rule proposal were filed October 3, 2005. This amended

III. THE NEW RULES ARE ARBITRARY CAPRICIOUS AND UNREASONABLE

Administrative actions may not be arbitrary and capricious and must be supported by substantial evidence. Arbitrary and capricious acts are those “that may be considered willful and unreasonable, without consideration, and in disregard of the facts and circumstances.” *Viking Petroleum, Inc. v. OCC*, 100 N.M. 451, 453, 672 P. 2d 280, 282 (1983). Substantial evidence is: “Relevant evidence that a reasonable person might accept as adequate to support a conclusion.” *In Matter of Application of PNM Electric Services v. NM Public Utility Comm’n*, 125 N.M. 302, 961 P. 2d 147, 153 (N.M. 1998).

The new Enforcement Rules were adopted in disregard of the facts. The New rules authorize the Division to take action against an operator that is in violation of its new Rule 40 during the hearing, it was shown by OCD staff and industry witnesses that the data used by the Division to determine if an operator is able to conduct business in New Mexico was flawed. For example, the Division’s Inactive Well List reveals a number of errors in the wells listed. *See* Testimony of Jane Prouty, Tr. 260, 354, 357, 466 & 477. If this list is used to determine whether or not an operator is in “compliance with Rule 40,” it must be accurate. Additionally, the Division testified at the hearing that there had been approximately 4000 wells out of compliance. However, when the Division began to weed out errors and exclude certain types of wells such as wells used for injection, the number of wells out of compliance was actually around 2800 wells. During the Hearing additional errors were discovered in the Division’s data. Limiting the ability of operators to do business in New Mexico based on data that the record establishes is riddled with error is arbitrary, capricious and unreasonable. The Commission should grant rehearing to correct this rule to honor the evidence.

Mr. Carr’s Question: -- it says the division shall post on its website, and update daily, a quote, Rule 201 noncompliant list. Is that what we’re talking about?

Ms. MacQuesten: Objection. Mr. Carr is referring to the version of proposed Rule 37 that appeared in the original application. Since then we have filed an amended application that changes the language in that paragraph. We are no longer recommending the language he’s quoting.

Mr. Carr: Now, this is one of the problems we have. I mean, trying to have notice and know what you’re proposing and what you’re not has become quite a challenge in the time frame that we’re working in.

application did not delay the October 13th hearing on the application. The Division proposed modifications to its own proposed rules 10 calendar days prior to hearing. Although an operator who amends an application in an adjudicatory hearing is required to continue and re-advertise its application until the next hearing docket, the Division interpreted its new Procedural Rules to permit it to proceed to hearing on its amended application with only 10 calendar days notice. Furthermore, since parties are required to submit proposed modifications to rules at least 10 business days prior to the scheduled hearing date, the day the amended rules were released, it was already too late for other parties to propose modifications to the proposed amended rules. NMAC 19.15.14.1204(C)(1)(2005). The procedural rules also require comments on a proposed rule 5 days before the hearing. NMAC 19.15.14.1203 (2005). In fact, however, the notice filed with the original application for rulemaking stated that comments were due October 5, 2005. Therefore, interested parties only 2 days to submit comments on the amended application filed October 3rd.

The Commission's procedural rules state that after hearing "[t]he commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part..." NMAC 19.15.14.1205(E)(3) (2005). The Commission did not follow its own rules. In Order No. R-12452, the Commission states that it "voted to accept the rules with certain changes by the Commission." Order No. R-12452, page 2. Here, the Commission modified the rule as advertised at least 20 times. The Division Attorney also recommended further changes with witnesses on the stand at least 3 times during the hearing. There were approximately 25 changes in the rule as adopted that had never been advertised. While some were ministerial in nature many were not. These changes constituted substantive alterations from what was originally proposed by the Division. While some of the changes were at the request of the industry some were raised by Division witnesses during the hearing and some were raised by the Commissioners themselves during deliberations. The result is that there was insufficient notice of the rule changes and these new rules are therefore voidable.²

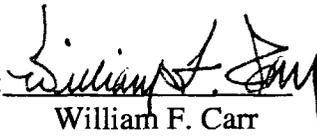
² The shortened time period after the amended application was submitted also led to some confusion at the hearing. For example, when Mr. Carr was cross-examining Mr. Charlie Perrin, he asked several questions regarding the "good standing" list. *See* Tr. p. 343-344.

CONCLUSION

In reaching its decision and promulgating enforcement rules, the Commission went beyond its statutory authority and violated due process by giving inadequate notice. Order No. R-12452 is not supported by substantial evidence and is arbitrary, capricious and unreasonable. The case should be set for rehearing to address each of these errors.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 30, 2005 I served a copy of the foregoing document to the following by:

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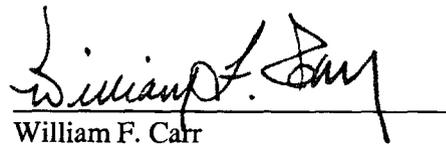
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HOUSE BILL 871

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO OIL AND GAS; AMENDING AND ENACTING SECTIONS OF THE
OIL AND GAS ACT AND AMENDING THE GEOTHERMAL RESOURCES
CONSERVATION ACT; PROVIDING FOR PERMITS FOR THE DISCHARGE OR
POTENTIAL DISCHARGE OF WATER CONTAMINANTS; PROVIDING FOR APPEAL
FROM DECISIONS OF THE OIL CONSERVATION COMMISSION; ESTABLISHING
CERTAIN FINES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. 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. Included in the power given to the oil
conservation division of the energy, minerals and natural
resources department is the authority to collect data; to make

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underscored material = new
~~[bracketed material]~~ = delete

underscored material = new
[bracketed material] = delete

1 investigations and inspections; to examine properties, leases,
2 papers, books and records; to examine, check, test and gauge
3 oil and gas wells, tanks, plants, refineries and all means and
4 modes of transportation and equipment; to hold hearings; to
5 provide for the keeping of records and the making of reports
6 and for the checking of the accuracy of the records and
7 reports; to limit and prorate production of crude petroleum oil
8 or natural gas or both as provided in the Oil and Gas Act; and
9 to require either generally or in particular areas certificates
10 of clearance or tenders in connection with the transportation
11 of crude petroleum oil or natural gas or any products of either
12 or both oil and products or both natural gas and products.

13 B. Apart from any authority, express or implied,
14 elsewhere given to or existing in the oil conservation division
15 by virtue of the Oil and Gas Act or the statutes of this state,
16 the division is authorized to make rules [~~regulations~~] and
17 orders for the purposes and with respect to the subject matter
18 stated in this subsection:

19 (1) to require dry or abandoned wells to be
20 plugged in a way to confine the crude petroleum oil, natural
21 gas or water in the strata in which it is found and to prevent
22 it from escaping into other strata; the division shall require
23 a cash or surety bond in a sum not to exceed fifty thousand
24 dollars (\$50,000) conditioned for the performance of such
25 regulations;

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underscored material = new
[bracketed material] = delete

1 (2) to prevent crude petroleum oil, natural
2 gas or water from escaping from strata in which it is found
3 into other strata;

4 (3) to require reports showing locations of
5 all oil or gas wells and for the filing of logs and drilling
6 records or reports;

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

14 (5) to prevent fires;

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

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

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

25 (9) to require the operation of wells with

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underscored material = new
~~[bracketed material]~~ = delete

1 efficient gas-oil ratios and to fix such ratios;

2 (10) to fix the spacing of wells;

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

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

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

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

17 (15) to regulate the disposition of water
18 produced or used in connection with the drilling for or
19 producing of oil or gas or both and to direct surface or
20 subsurface disposal of the water, including disposition by use
21 in drilling for or production of oil or gas, in road
22 construction or maintenance or other construction, in the
23 generation of electricity or in other industrial processes, in
24 a manner that will afford reasonable protection against
25 contamination of fresh water supplies designated by the state

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underscored material = new
[bracketed material] = delete

1 engineer;

2 (16) to determine the limits of any area
3 containing commercial potash deposits and from time to time
4 redetermine the limits;

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

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

22 (19) to make well price category
23 determinations pursuant to the provisions of the federal
24 Natural Gas Policy Act of 1978 or any successor act and, by
25 ~~regulation~~ rule, to adopt fees for such determinations, which

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1 fees shall not exceed twenty-five dollars (\$25.00) per filing.
2 Such fees shall be credited to the account of the oil
3 conservation division by the state treasurer and may be
4 expended as authorized by the legislature;

5 (20) to regulate the construction and
6 operation of oil treating plants and to require the posting of
7 bonds for the reclamation of treating plant sites after
8 cessation of operations;

9 (21) to regulate the disposition of
10 nondomestic wastes resulting from the exploration, development,
11 production or storage of crude oil or natural gas to protect
12 public health and the environment; [~~and~~]

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

20 (23) to require permits for activities
21 regulated by this chapter, including permits for construction
22 or operation of facilities that may discharge any water
23 contaminant; and

24 (24) to establish a schedule of fees for
25 permits issued pursuant to Section 6 of this 2005 act, not

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1 exceeding the estimated cost of investigation, issuance,
2 modification and renewal of such permits."

3 Section 2. Section 70-2-25 NMSA 1978 (being Laws 1935,
4 Chapter 72, Section 17, as amended) is amended to read:

5 "70-2-25. REHEARINGS--APPEALS.--

6 A. Within twenty days after entry of an order or
7 decision of the commission, a party of record to the proceeding
8 before the commission that is adversely affected by the order
9 or decision may file with the commission an application for
10 rehearing in respect of any matter determined by the order or
11 decision, setting forth the respect in which the order or
12 decision is believed to be erroneous. The commission shall
13 grant or refuse the application in whole or in part within ten
14 days after the application is filed, and failure to act on the
15 application within that period shall be deemed a refusal and
16 final disposition of that application. In the event the
17 rehearing is granted, the commission [~~may~~] shall enter a new
18 order or decision after rehearing as may be required under the
19 circumstances.

20 B. An order of the commission shall become final
21 twenty days after the order is issued if no application for
22 rehearing is filed. If an application for rehearing is filed
23 and not granted, the order shall become final on the day that
24 the application for rehearing is denied or deemed denied. If
25 the commission grants a timely application for rehearing within

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1 ten days after it is filed, the original order shall not become
2 final but the order entered after rehearing shall become final.

3 ~~[B-]~~ C. A party of record to the [rehearing]
4 proceeding [dissatisfied with the disposition of the
5 application for rehearing] before the commission that is
6 adversely affected by a final order of the commission may
7 appeal to the district court pursuant to the provisions of
8 Section 39-3-1.1 NMSA 1978.

9 D. In applying the provisions of Section 39-3-1.1
10 NMSA 1978 for an appeal pursuant to this section:

11 (1) at the time an order is issued, service of
12 a copy of the commission order shall be made upon parties of
13 record to the proceeding, together with a statement of both the
14 time when the order will become final and rights of appeal,
15 which shall constitute compliance with Subsection B of Section
16 39-3-1.1 NMSA 1978; provided that if the commission denies an
17 application for rehearing by written order, a copy of the order
18 denying the application for rehearing shall also be served on
19 each party of record to the proceeding at the time of its
20 issuance;

21 (2) the notice of appeal required by
22 Subsection C of Section 39-3-1.1 NMSA 1978 shall be filed
23 within thirty days after the date when the commission order
24 becomes final; and

25 (3) a final order of the commission adopting

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1 or amending a rule may be appealed in the same manner as any
2 other final order of the commission."

3 Section 3. Section 70-2-28 NMSA 1978 (being Laws 1935,
4 Chapter 72, Section 19, as amended) is amended to read:

5 "70-2-28. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~
6 ~~appear~~] appears that any person is violating or threatening to
7 violate any statute of this state with respect to the
8 conservation of oil and gas or both or any provision of [~~this~~]
9 the Oil and Gas Act or any rule [~~regulation~~] or order [~~made~~
10 ~~thereunder~~] adopted pursuant to that act, the division through
11 the attorney general shall bring suit against [~~such~~] that
12 person in the county of the residence of the defendant or in
13 the county of the residence of any defendant, if there [~~be~~] is
14 more than one defendant, or in the county where the violation
15 is alleged to have occurred for penalties, if any are
16 applicable, and to restrain [~~such~~] the person from continuing
17 [~~such~~] the violation or from carrying out the threat of
18 violation. In [~~such~~] the suit, the division may obtain
19 injunctions, prohibitory and mandatory, including temporary
20 restraining orders and temporary injunctions, as the facts may
21 warrant, including, when appropriate, an injunction restraining
22 any person from moving or disposing of illegal oil or illegal
23 oil product or illegal gas or illegal gas product, and any or
24 all such commodities or funds derived from the sale thereof may
25 be ordered to be impounded or placed under the control of an

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1 agent appointed by the court if, in the judgment of the court,
2 such action is advisable. The remedies provided by this
3 section shall be cumulative and shall not limit any other
4 rights or remedies of the division or the commission with
5 respect to any violation of the Oil and Gas Act or of any rule,
6 order or permit made or issued pursuant to that act."

7 Section 4. Section 70-2-31 NMSA 1978 (being Laws 1981,
8 Chapter 362, Section 1) is amended to read:

9 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

10 A. ~~[Any]~~ Except as provided in Subsection B of this
11 section, a person [who knowingly and willfully] that violates
12 [any] a provision of the Oil and Gas Act or any [provision of
13 any] rule, [or] order or permit issued pursuant to that act
14 shall be subject to a civil penalty of not more than one
15 thousand dollars (\$1,000) for each day of violation. [For
16 purposes of this subsection, in the case of a continuing
17 violation each day of violation shall constitute a separate
18 violation. The penalties provided in this subsection]

19 B. If a person violates any provision of the Oil
20 and Gas Act or any rule or order issued under that act, which
21 violation is an unauthorized discharge into the environment of
22 any water contaminant, the civil penalty for each day of
23 violation shall be ten thousand dollars (\$10,000) for each day
24 of violation.

25 C. The division or the commission may assess the

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1 civil penalties provided in this section after notice and an
2 opportunity for a public hearing. In assessing the penalty,
3 the division or the commission shall take into account the
4 seriousness of the violation and any good-faith efforts to
5 comply with the applicable requirement.

6 D. A penalty not paid within thirty days after the
7 order assessing the penalty becomes final and shall be
8 recoverable by a civil suit filed by the attorney general in
9 the name and on behalf of the commission or the division in the
10 district court of the county in which the defendant resides or
11 in which any defendant resides if there ~~[be]~~ is more than one
12 defendant or in the district court of any county in which the
13 violation occurred. The payment of ~~[such]~~ the penalty shall
14 not operate to legalize any illegal oil, illegal gas or illegal
15 product involved in the violation for which the penalty is
16 imposed or relieve a person on whom the penalty is imposed from
17 liability to any other person for damages arising out of ~~[such]~~
18 the violation.

19 ~~[B.]~~ E. It is unlawful, subject to a criminal
20 penalty of a fine of not more than ~~[five thousand dollars~~
21 ~~(\$5,000)]~~ fifteen thousand dollars (\$15,000) or imprisonment
22 for a term not exceeding three years or both such fine and
23 imprisonment, for any person to knowingly and willfully:

24 (1) violate any provision of the Oil and Gas
25 Act or any rule, ~~[regulation or]~~ order ~~[of the commission or~~

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1 ~~the division~~ or permit issued pursuant to that act; ~~or~~

2 (2) do any of the following for the purpose of
3 evading or violating the Oil and Gas Act or any rule,
4 ~~[regulation or]~~ order ~~[of the commission or the division]~~ or
5 permit issued pursuant to that act:

6 (a) make any false entry or statement in
7 a form or report required by the Oil and Gas Act or by any
8 rule, ~~[regulation or]~~ order ~~[of the commission or division]~~ or
9 permit issued pursuant to that act;

10 (b) make or cause to be made any false
11 entry in any record, account or memorandum required by the Oil
12 and Gas Act or by any rule, ~~[regulation or]~~ order ~~[of the~~
13 ~~commission or division]~~ or permit issued pursuant to that act;

14 (c) omit or cause to be omitted from any
15 such record, account or memorandum full, true and correct
16 entries; or

17 (d) remove from this state or destroy,
18 mutilate, alter or falsify any such record, account or
19 memorandum; or

20 (3) procure, counsel, aid or abet the
21 commission of any act described in this subsection.

22 ~~[G.]~~ F. For the purposes of Subsection ~~[B]~~ E of
23 this section, each day of violation shall constitute a separate
24 offense.

25 ~~[D. Any person who knowingly and willfully~~

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1 ~~procures, counsels, aides or abets the commission of any act~~
2 ~~described in Subsection A or B of this section shall be subject~~
3 ~~to the same penalties as are prescribed therein.]~~

4 G. Penalties assessed and collected pursuant to
5 Subsection A of this section shall be deposited in the oil and
6 gas reclamation fund."

7 Section 5. A new section of the Oil and Gas Act is
8 enacted to read:

9 "[NEW MATERIAL] OIL AND GAS FACILITIES FUND CREATED.--The
10 "oil and gas facilities fund" is created in the state treasury
11 to be administered by the energy, minerals and natural
12 resources department. The fund is composed of all fees
13 collected pursuant to the rules adopted under Subsection B of
14 Section 70-2-12 NMSA 1978 or from the issuance of discharge
15 permits and of earnings from investment of the fund. Money in
16 the fund is appropriated to the energy, minerals and natural
17 resources department for the purpose of administering the rules
18 adopted pursuant to Chapter 70 NMSA 1978 and shall not revert
19 at the end of a fiscal year. Disbursements from the fund shall
20 be made upon warrants drawn by the secretary of finance and
21 administration pursuant to vouchers signed by the secretary of
22 energy, minerals and natural resources."

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

25 "[NEW MATERIAL] DISCHARGE PERMITS.--

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1 A. The commission may require by rule that an
2 operator of any facility subject to the jurisdiction of the
3 division obtain a permit for the disposition of nondomestic
4 wastes.

5 B. The commission shall set by rule the dates for
6 filing applications for the permits authorized in Subsection A
7 of this section and shall prescribe the contents of the
8 application and set the time periods within which the division
9 shall either grant or deny the permit or grant a conditional
10 permit.

11 C. The division may deny any application for a
12 permit if:

13 (1) the wastes would not meet all applicable
14 state or federal rules and regulations, performance standards
15 or limitations;

16 (2) any provision of the Oil and Gas Act or
17 any other statute would be violated; or

18 (3) the disposition of waste would cause or
19 contribute to contaminant levels in excess of any state or
20 federal standard, including any water quality standard adopted
21 by the water quality control commission. Determination of the
22 discharge's effect on ground water shall be measured at any
23 place of withdrawal of water for present or reasonably
24 foreseeable future use. Determination of the discharge's
25 effect on surface waters shall be measured at the point of

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1 discharge.

2 D. The commission shall adopt rules for procedures
3 to ensure that the public and appropriate governmental agencies
4 receive notice of each application for issuance or material
5 modification of a permit and shall provide an opportunity for
6 filing of written comments on the application. If an
7 application is protested or if the division determines that
8 there is substantial public interest in an application, the
9 division may hold a public hearing prior to ruling on the
10 application.

11 E. The commission shall adopt rules for the
12 operation and maintenance of those facilities regulated under
13 Paragraphs (21) and (22) of Subsection B of Section 70-2-12
14 NMSA 1978, including requirements for continuity of operation,
15 personnel training and financial responsibility, including
16 financial responsibility for corrective action.

17 F. Permits shall be issued for fixed terms not to
18 exceed five years, except that new permits shall commence on
19 the date the permitted activity begins, but in no event shall
20 the term of the permit exceed seven years from the date of
21 issuance.

22 G. The division may impose reasonable conditions
23 upon permits, requiring permittees to:

24 (1) install, use and maintain effluent
25 monitoring devices;

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1 (2) sample wastes and receiving waters for any
2 known or suspected water contaminants, in accordance with
3 methods and at locations and intervals as may be prescribed by
4 the division;

5 (3) establish and maintain records of the
6 nature and amounts of effluents and the performance of effluent
7 control devices;

8 (4) provide any other information relating to
9 the discharge or release of water contaminants; and

10 (5) notify the division of the introduction of
11 new water contaminants from a new source and of a substantial
12 change in the volume or character of water contaminants being
13 introduced from sources in existence at the time of the
14 issuance of the permit.

15 H. The issuance of a permit does not relieve a
16 person from the responsibility to comply with all state or
17 federal statutes, rules or regulations or state or federal
18 water quality standards.

19 I. A permit may be terminated or modified by the
20 division prior to its date of expiration for the following
21 causes:

22 (1) violation of a condition of the permit;
23 (2) the obtaining of a permit by
24 misrepresentation or failure to disclose fully all required
25 information;

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1 (3) violation of any applicable statute, rule,
2 performance standard or water quality standard;

3 (4) violation of applicable state or federal
4 effluent rules or regulations; or

5 (5) a change in any condition that requires
6 either a temporary or permanent reduction or elimination of the
7 discharge of waste to ensure that any state or federal
8 standard, including any water quality standard adopted by the
9 water quality control commission, is not exceeded.

10 J. If the division denies, terminates or modifies a
11 permit, other than as requested by the permittee, or grants a
12 permit subject to condition, the division shall notify the
13 applicant or permittee by certified mail of the action taken
14 and the reasons. If the permittee files an application for
15 review of the division's decision within thirty days of the
16 date of the notice, the applicant shall be entitled to a
17 hearing as provided in Section 70-2-13 NMSA 1978."

18 Section 7. Section 70-2-33 NMSA 1978 (being Laws 1935,
19 Chapter 72, Section 24, as amended) is amended to read:

20 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

21 A. "person" means:

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

25 (2) the United States or any agency or

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1 instrumentality thereof or the state or any political
2 subdivision thereof;

3 B. "pool" means an underground reservoir containing
4 a common accumulation of crude petroleum oil or natural gas or
5 both. Each zone of a general structure, which zone is
6 completely separate from any other zone in the structure, is
7 covered by the word pool as used in the Oil and Gas Act. Pool
8 is synonymous with "common source of supply" and with "common
9 reservoir";

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

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

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

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

7 G. "gas transportation facility" means a pipeline
8 in operation serving gas wells for the transportation of
9 natural gas or some other device or equipment in like operation
10 whereby natural gas produced from gas wells connected therewith
11 can be transported or used for consumption;

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

23 I. "potash" means the naturally occurring bedded
24 deposits of the salts of the element potassium;

25 J. "casinghead gas" means any gas or vapor or both

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1 indigenous to an oil stratum and produced from such stratum
2 with oil, including any residue gas remaining after the
3 processing of casinghead gas to remove its liquid components;
4 [and]

5 K. "produced water" means water that is an
6 incidental byproduct from drilling for or the production of oil
7 and gas;

8 L. "commission" means the oil conservation
9 commission as created in Section 70-2-4 NMSA 1978;

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

12 N. "party of record" means a person who is a formal
13 and legal participant in a proceeding before the commission."

14 Section 8. Section 71-5-18 NMSA 1978 (being Laws 1975,
15 Chapter 272, Section 18, as amended) is amended to read:

16 "71-5-18. REHEARINGS--APPEALS.--

17 A. Within twenty days after entry of an order or
18 decision of the [~~division~~] commission, a party of record to the
19 proceeding before the commission who is adversely affected by
20 the order or decision may file with the commission an
21 application for rehearing in respect of any matter determined
22 by the order or decision, setting forth the respect in which
23 the order or decision is believed to be erroneous. The
24 commission shall grant or refuse the application in whole or in
25 part within ten days after it is filed, and failure to act

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1 within the ten-day period shall be deemed a refusal of the
2 application and a final disposition of the application. In the
3 event the rehearing is granted, the commission [~~may~~] shall
4 enter a new order or decision after rehearing as may be
5 required under the circumstances.

6 B. An order of the commission shall become final
7 twenty days after the order is issued if no application for
8 rehearing is filed. If an application for rehearing is filed
9 and not granted, the order shall become final on the day that
10 the application for rehearing is denied. If the commission
11 grants a timely application for rehearing within ten days after
12 it is filed, the original order shall not become final but the
13 order entered after the rehearing shall become final.

14 [~~B.~~] C. A party of record to the [rehearing]
15 proceeding [~~dissatisfied with the disposition of the~~
16 application for rehearing] before the commission who is
17 adversely affected by a final order of the commission may
18 appeal to the district court pursuant to the provisions of
19 Section 39-3-1.1 NMSA 1978.

20 D. In applying the provisions of Section 39-3-1.1
21 NMSA 1978 to any appeal pursuant to this section:

22 (1) at the time an order is issued, service of
23 a copy of the commission order shall be made upon parties of
24 record to the proceeding, together with a statement of both the
25 time when the order will become final and rights of appeal,

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1 which shall constitute compliance with Subsection B of Section
2 39-3-1.1 NMSA 1978; provided that if the commission denies an
3 application for rehearing by written order, a copy of the order
4 denying the application for rehearing shall also be served on
5 each party of record to the proceeding at the time of its
6 issuance;

7 (2) the notice of appeal required by
8 Subsection C of Section 39-3-1.1 NMSA 1978 shall be filed
9 within thirty days after the date when the commission order
10 becomes final; and

11 (3) a final order of the commission adopting
12 or amending a rule may be appealed in the same manner as any
13 other final order of the commission.

14 ~~[G.]~~ E. The pendency of proceedings to review shall
15 not of itself stay or suspend operation of the order or
16 decision being reviewed, but during the pendency of the
17 proceedings, the district court in its discretion may, upon its
18 own motion or upon proper application of any party to the
19 proceedings, stay or suspend in whole or in part operation of
20 the order or decision pending review on terms as the court
21 deems just and proper and in accordance with the practice of
22 courts exercising equity jurisdiction; provided that the court,
23 as a condition to any staying or suspension of operation of any
24 order or decision, may require that one or more parties secure,
25 in a form and amount as the court may deem just and proper, one

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1 or more other parties against loss or damage due to the staying
2 or suspension of the commission's or division's order or
3 decision in the event that the action of the commission or
4 division is affirmed."

5 Section 9. Section 71-5-20 NMSA 1978 (being Laws 1975,
6 Chapter 272, Section 20, as amended) is amended to read:

7 "71-5-20. ACTIONS FOR VIOLATIONS.--Whenever it [~~shall~~
8 ~~appear~~] appears that any person is violating or threatening to
9 violate any statute of this state with respect to the
10 conservation of geothermal resources or any provision of the
11 Geothermal Resources Conservation Act or any rule [~~regulation~~]
12 or order made [~~thereunder~~] pursuant to that act, the division
13 through the attorney general shall bring suit against [~~such~~]
14 the person in the county of the residence of the defendant or
15 in the county of the residence of any defendant if there [~~be~~]
16 is more than one defendant or in the county where the violation
17 is alleged to have occurred for penalties, if any are
18 applicable, and to restrain [~~such~~] the person from continuing
19 [~~such~~] the violation or from carrying out the threat of
20 violation. In [~~such~~] the suit, the division may obtain
21 injunction, prohibitory and mandatory, including temporary
22 restraining orders and temporary injunctions, as the facts may
23 warrant, including, when appropriate, an injunction restraining
24 any person from moving or disposing of illegal geothermal
25 resources or illegal geothermal resources product, and any or

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1 all such commodities or funds derived from ~~[the]~~ their sale
2 ~~[thereof]~~ may be ordered to be impounded or placed under the
3 control of an agent appointed by the court if, in the judgment
4 of the court, such action is advisable. Remedies provided by
5 this section shall be cumulative and shall not limit any other
6 rights or remedies of the division or the commission with
7 respect to any violation of the Geothermal Resources
8 Conservation Act or of any rule, order or permit made or issued
9 pursuant to that act."

10 Section 10. Section 71-5-23 NMSA 1978 (being Laws 1981,
11 Chapter 362, Section 2) is amended to read:

12 "71-5-23. VIOLATIONS OF THE GEOTHERMAL RESOURCES
13 CONSERVATION ACT--PENALTIES.--

14 A. ~~[Any]~~ A person who ~~[knowingly and willfully]~~
15 violates ~~[any]~~ a provision of the Geothermal Resources
16 Conservation Act or any ~~[provision of any]~~ rule, ~~[or]~~ order or
17 permit issued pursuant to that act shall be subject to a civil
18 penalty of not more than two thousand five hundred dollars
19 (\$2,500) for each violation. If the violation results in an
20 unauthorized discharge into the environment of any water
21 contaminant, the applicable civil penalty shall be not more
22 than ten thousand dollars (\$10,000) for each violation. For
23 purposes of this subsection, in the case of a continuing
24 violation, each day of violation shall constitute a separate
25 violation. The ~~[penalties provided in this subsection]~~

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1 division or the commission may assess the penalties provided in
2 this subsection after notice and an opportunity for a public
3 hearing. A penalty not paid within thirty days after issuance
4 of the order assessing the penalty becomes final and shall be
5 recoverable by a civil suit filed by the attorney general in
6 the name and on behalf of the commission or the division in the
7 district court of the county in which the defendant resides or
8 in which any defendant resides if there ~~[be]~~ is more than one
9 defendant or in the district court of any county in which the
10 violation occurred; provided that, if any final order assessing
11 a penalty is appealed pursuant to Section 71-5-18 NMSA 1978,
12 the commission may seek recovery of the penalty by counterclaim
13 in such case. The payment ~~[to]~~ of such penalty shall not
14 operate to legalize any illegal geothermal resources or illegal
15 geothermal resources product involved in the violation for
16 which the penalty is imposed or relieve a person on whom the
17 penalty is imposed from liability to any other person for
18 damages arising out of ~~[such]~~ the violation.

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

- 24 (1) violate any provision of the Geothermal
25 Resources Conservation Act or any rule, ~~[regulation or]~~ order

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1 ~~[of the commission or the division]~~ or permit issued pursuant
2 to that act; ~~[or]~~

3 (2) do any of the following for the purpose of
4 evading or violating the Geothermal Resources Conservation Act
5 or any rule, ~~[regulation or]~~ order ~~[of the commission or the~~
6 ~~division]~~ or permit issued pursuant to that act:

7 (a) make any false entry or statement in
8 a form or report required by the Geothermal Resources
9 Conservation Act or by any rule, ~~[regulation or]~~ order ~~[of the~~
10 ~~commission or division]~~ or permit issued pursuant to that act;

11 (b) make or cause to be made any false
12 entry in any record, account or memorandum required by the
13 Geothermal Resources Conservation Act or by any rule,
14 ~~[regulation or]~~ order ~~[of the commission or division]~~ or permit
15 issued pursuant to that act;

16 (c) omit or cause to be omitted from any
17 such record, account or memorandum full, true and correct
18 entries; or

19 (d) remove from this state or destroy,
20 mutilate, alter or falsify any such record, account or
21 memorandum; or

22 (3) procure, counsel, aid or abet the
23 violation of this section by any other person.

24 C. For the purposes of Subsection B of this
25 section, each day of violation shall constitute a separate

.155060.1

underscored material = new
~~[bracketed material]~~ = delete

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offense.

~~[D. Any person who knowingly and willfully
procures, counsels, aids or abets the commission of any act
described in Subsection A or B of this section shall be subject
to the same penalties as are prescribed therein.]"~~

Section 11. REPEAL.--Section 70-2-26 NMSA 1978 (being
Laws 1977, Chapter 255, Section 60, as amended) is repealed.

- 27 -

BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2006

INTRODUCED BY

Oil Conservation Division
Oil & Gas Act Amendments
Increase Penalties/Appeal Process
11-15-2005

AN ACT

RELATING TO OIL AND GAS; AMENDING AND ENACTING SECTIONS OF THE
OIL AND GAS ACT AND AMENDING THE GEOTHERMAL RESOURCES
CONSERVATION ACT; PROVIDING FOR APPEAL FROM DECISIONS OF THE OIL
CONSERVATION COMMISSION; ESTABLISHING CERTAIN PENALTIES;
PROVIDING FOR FEES FOR FILING APPLICATIONS FOR PERMITS TO DRILL;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. 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. Included in the power given to the oil conservation
division of the energy, minerals and natural resources department
is the authority to collect data; to make investigations and
inspections; to examine properties, leases, papers, books and
records; to examine, check, test and gauge oil and gas wells,

EXHIBIT B

(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"~~] "blow-outs" 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, 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

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) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry [~~and~~] or 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 and regulations 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;

(19) 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 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;

decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse the application in whole or in part within ten days after the application is filed, and failure to act on the application within that period shall be deemed a refusal and final disposition of that application. In the event the rehearing is granted, the commission [~~may~~] shall enter a new order or decision after rehearing as may be required under the circumstances.

B. An order of the commission shall become final twenty days after the order is issued if no application for rehearing is filed. If an application for rehearing is filed and not granted, the order shall become final on the day that the application for rehearing is denied or deemed denied. If the commission grants a timely application for rehearing within ten days after it is filed, the original order shall not become final but the order entered after rehearing shall become final.

[B-] C. A party of record to the [~~rehearing~~] proceeding [~~dissatisfied with the disposition of the application for rehearing~~] before the commission that is adversely affected by a final order of the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. In applying the provisions of Section 39-3-1.1 NMSA 1978 for an appeal pursuant to this section:

(1) at the time an order is issued, service of a copy of the commission order shall be made upon parties of record

restrain ~~[such]~~ the person from continuing ~~[such]~~ the violation or from carrying out the threat of violation. In ~~[such]~~ the suit, the division may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil or illegal oil product or illegal gas or illegal gas product, and any or all such commodities or funds derived from the sale thereof may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable. The remedies provided by this section shall be cumulative and shall not limit any other rights or remedies of the division or the commission with respect to any violation of the Oil and Gas Act or of any rule, order or permit made or issued pursuant to that act."

Section 4. Section 70-2-31 NMSA 1978 (being Laws 1981, Chapter 362, Section 1) is amended to read:

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

A. ~~[Any]~~ Except as provided in Subsection B of this section, a person who knowingly and willfully violates ~~[any]~~ a provision of the Oil and Gas Act or any ~~[provision of any]~~ rule, ~~[or]~~ order or permit issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each day of violation. ~~[For purposes of this subsection, in the case of a continuing violation each day of violation shall~~

imposed or relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of [~~such~~] the violation.

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

(1) violate any provision of the Oil and Gas Act or any rule, [~~regulation or~~] order [~~of the commission or the division~~] or permit issued pursuant to that act; [~~or~~]

(2) do any of the following for the purpose of evading or violating the Oil and Gas Act or any rule, [~~regulation or~~] order [~~of the commission or the division~~] or permit issued pursuant to that act:

(a) make any false entry or statement in a form or report required by the Oil and Gas Act or by any rule, [~~regulation or~~] order [~~of the commission or division~~] or permit issued pursuant to that act;

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

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

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 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 [~~himself~~] the person or for [~~himself~~] the person and another;

L. "commission" means the oil conservation commission as created in Section 70-2-4 NMSA 1978;

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

N. "party of record" means a person who is a formal and legal participant in a proceeding before the commission; "

Section 6. Section 71-5-18 NMSA 1978 (being Laws 1975, Chapter 272, Section 18, as amended) is amended to read:

"71-5-18. REHEARINGS--APPEALS.--

A. Within twenty days after entry of an order or decision of the ~~[division]~~ commission, a party of record to the proceeding before the commission who is adversely affected by the order or decision may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse the application in whole or in part within ten days after it is filed, and failure to act within the ten-day period shall be deemed a refusal of the application and a final disposition of the application. In the event the rehearing is granted, the commission ~~[may]~~ shall enter a new order or decision after rehearing as may be required under the circumstances.

B. An order of the commission shall become final twenty days after the order is issued if no application for rehearing is filed. If an application for rehearing is filed and not granted, the order shall become final on the day that the application for

REHEARINGS
RESOURCES
CONSERVATION

_____ ~~(C-)~~ E. The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of the proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party to the proceedings, stay or suspend in whole or in part operation of the order or decision pending review on terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; provided that the court, as a condition to any staying or suspension of operation of any order or decision, may require that one or more parties secure, in a form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's or division's order or decision in the event that the action of the commission or division is affirmed."

Section 7. Section 71-5-20 NMSA 1978 (being Laws 1975, Chapter 272, Section 20, as amended) is amended to read:

"71-5-20. ACTIONS FOR VIOLATIONS.--Whenever it ~~[shall appear]~~ appears that any person is violating or threatening to violate any statute of this state with respect to the conservation of geothermal resources or any provision of the Geothermal Resources Conservation Act or any rule ~~[regulation]~~ or order made ~~[thereunder]~~ pursuant to that act, the division through the attorney general shall bring suit against ~~[such]~~ the person in the county of the residence of the defendant or in the county of the residence of any defendant if there ~~[be]~~ is more

two thousand five hundred dollars (\$2,500) for each violation. If the violation results in an unauthorized discharge into the environment of any water contaminant, the applicable civil penalty shall be not more than ten thousand dollars (\$10,000) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation. The [penalties provided in this subsection] division or the commission may assess the penalties provided in this subsection after notice and an opportunity for a public hearing. A penalty not paid within thirty days after issuance of the order assessing the penalty becomes final and shall be recoverable by a civil suit filed by the attorney general in the name and on behalf of the commission or the division in the district court of the county in which the defendant resides or in which any defendant resides if there [be] is more than one defendant or in the district court of any county in which the violation occurred; provided that, if any final order assessing a penalty is appealed pursuant to Section 71-5-18 NMSA 1978, the commission may seek recovery of the penalty by counterclaim in such case. The payment [~~to~~] of such penalty shall not operate to legalize any illegal geothermal resources or illegal geothermal resources product involved in the violation for which the penalty is imposed or relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of [~~such~~] the violation.

(d) remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum; or

(3) procure, counsel, aid or abet the violation of this section by any other person.

C. For the purposes of Subsection B of this section, each day of violation shall constitute a separate offense.

~~[D. Any person who knowingly and willfully procures, counsels, aids or abets the commission of any act described in Subsection A or B of this section shall be subject to the same penalties as are prescribed therein.]"~~

Section 9. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] OIL AND GAS FACILITIES FUND CREATED.--The "oil and gas facilities fund" is created in the state treasury to be administered by the energy, minerals and natural resources department. The fund is composed of all fees collected pursuant to the rules adopted under Subsection B of Section 70-2-12 NMSA 1978. Money in the fund is appropriated to the energy, minerals and natural resources department for the purpose of administering the rules adopted pursuant to Chapter 70 NMSA 1978 and shall not revert at the end of a fiscal year. 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."

19.15.4.203 APPROVED TEMPORARY ABANDONMENT:

A. ~~Wells Which May Be Temporarily Abandoned~~ Approved temporary abandonment status.

~~—(1) The Division division may permit any well which is required to be properly abandoned under these rules but which has potential for future beneficial use for enhanced recovery or injection, and any other well for which an operator requests temporary abandonment, to be temporarily abandoned—~~ place any well on approved temporary abandonment status for a period of up to five ~~(5)~~ years. Prior to the expiration of any approved temporary abandonment the operator shall return the well to beneficial use under a plan ~~approved by the Division~~ division approves, permanently plug and abandon said well and restore and remediate the location or apply for a new approval to temporarily abandon the well.

B. ~~Request For Approval And Permit~~ for approval and permit.

(1) Any operator seeking approval for approved temporary abandonment shall submit on ~~Form~~ form C- 103, Sundry Notices and Reports on Wells ~~sundry notices and reports on wells,~~ a notice of intent to ~~temporarily abandon—~~ seek approved temporary abandonment status for the well describing the proposed temporary abandonment procedure to be used. ~~The operator shall not commence any~~ No work shall be commenced until approved by the ~~Division~~ division. ~~The and the operator~~ shall give 24 hours notice to the appropriate ~~District~~ district office of the ~~Division~~ division before ~~work actually begins.~~ beginning work.

(2) ~~The division shall not approve temporary abandonment until the operator~~ No temporary abandonment shall be approved unless evidence is furnished ~~furnishes evidence demonstrating to show that such well's the casing and cementing of such well is mechanically and physically sound and in such condition as to prevent:~~

- (a) damage to the producing zone;
- (b) migration of hydrocarbons or water;
- (c) the contamination of fresh water or other natural resources; and
- (d) the leakage of any substance at the surface.

~~(3) If the well fails the mechanical integrity test required herein, the well shall be plugged and abandoned in accordance with these rules or the casing problem corrected and the casing retested within ninety (90) days.~~

~~(3) The operator shall demonstrate both internal and external mechanical integrity pursuant to Paragraphs (1), (2) and (3) of Subsection C of 19.15.4.203 NMAC.~~

~~—(4) Upon successful completion of the work on the temporarily abandoned well, the operator shall will submit a request for approved~~ Temporary Abandonment ~~temporary abandonment~~ to the appropriate district office on ~~Form~~ form C-103 together with such other information as is required by ~~Rule 1103-E. (4)~~ Subsection E of 19.15.13.1103 NMAC.

~~(5) The Division may require the operator to post with the Division a one well plugging bond for the well in an amount to be determined by the Division to be satisfactory to meet the particular requirements of the well.~~

~~(6)(5)~~ The ~~Division~~ division shall specify the permit's expiration date of the permit, which shall be not more than five ~~(5)~~ years from the date of approval.

C. ~~Tests Required~~ Demonstrating mechanical integrity.

(1) The division may approve the following methods of demonstrating internal casing integrity ~~may be approved for temporarily' abandoning a well for wells to be placed on approved temporary abandonment status:~~

(a) The operator may set a cast iron bridge plug will be set within ~~one hundred (100)~~ feet of uppermost perforations or production casing shoe, ~~and load the casing loaded~~ with inert fluid and pressure tested to 500 pounds per square inch surface pressure with a pressure drop of not more than 10% for ~~thirty (30) minutes~~ over a 30 minute period; ~~or~~

(b) The operator may run a retrievable bridge plug or packer will be run to within ~~one hundred (100)~~ feet of uppermost perforations or production casing shoe, and and test the well tested to 500 pounds per square inch for surface pressure for thirty 30 minutes with a pressure drop of not greater than 10% for ~~thirty (30) minutes~~ over a 30 minute period; ~~or~~

~~(c) for a gas well in southeast New Mexico completed above the San Andres formation, if the operator can demonstrate that the fluid level is below the base of the salt and that a Bradenhead test shows no casing leaks, the Division may exempt the well from the requirement for a bridge plug or packer; or~~

~~(d) a casing inspection log confirming the mechanical integrity' of the production casing may be submitted.~~

(c) The operator may demonstrate that the well has been completed for less than five years and has not been connected to a pipeline.

(2) The division will not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal. Any such test which is submitted must have been conducted within the previous twelve (12) months. During the testing described in Subparagraphs (a) and (b) of Paragraph (1) of Subsection C of 19.15.4.203 NMAC the operator shall:

(a) open all casing valves during the internal pressure tests and report any flow or pressure change occurring immediately before, during or immediately after the 30 minute pressure test;

(b) top off the casing with inert fluid prior to leaving the location;

(c) report any flow during the test in Subparagraphs (a) and (b) of Paragraph (1) of Subsection C of 19.15.4.203 NMAC to the division district office prior to completion of the temporary abandonment of the well.

(3) An operator may use any method approved by the United States environmental protection agency in 40 C.F.R. 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

(4) The divisions shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

~~(3)(5)~~ The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring.

which has been calibrated within the six months prior to conducting the test. All witnesses to the test shall sign the chart. The operator shall submit the chart with the form C-103 requesting approved temporary abandonment ~~status.~~

(4) ~~The Division~~ division may approve other ~~easing tests submitted~~ testing methods the operator proposes if the operator demonstrates that the test will satisfy the requirements of Paragraph (2) of Subsection B of 19.15.4.203 NMAC. ~~on Form C-103 on an individual basis.~~

[7-12-90....7-12-90, 2-1-96; 19.15.4.203 NMAC -Rn, 19 NMAC 15.D.203, 12-14-01]