CHAPTER 70
Oil and Gas

ARTICLE 1
Assignments and Leases

70-1-1. [Production of oil, gas or other minerals; assignments of royalties to be recorded.]

That all assignments and other instruments of transfer of royalties in the production of oil, gas or other minerals on any lands in this state, including lands operated under lease or contract from the United States and from the state of New Mexico, shall be recorded in the office of the county clerk of the county where the lands are situated.

History: Laws 1927, ch. 76, § 1; C.S. 1929, § 97-501; 1941 Comp., § 69-101; 1953 Comp., § 65-2-1.

ANNOTATIONS

Cross references. — For recording deeds, *see* 14-9-1 NMSA 1978.

For recording contracts relating to oil and gas rights in state lands, *see* 19-10-33 NMSA 1978.

Interpretation of ambiguous assignment. — Where, in dispute over the meaning of an ambiguous conveyance of interests in oil wells in a well spacing unit, the assignor claimed that the conveyance was a wellbore assignment of only one well in the unit and the assignee claimed that the conveyance was a conveyance of all of the assignor's operating interest in the unit which consisted of two wells; the first version of the conveyance, which was prepared by the assignee, conveyed all of the assignor's operating rights in the unit to the assignor; a second conveyance, which the parties signed and which was ambiguous, was prepared by the assignor with the intent to convey only the wellbore of one well to the assignee; the assignor did not inform the assignee that the assignor intended to convey only the wellbore of one well; the assignor was not aware that there was more than one well in the unit; and wellbore assignments were uncommon, because the assignor was aware of the assignee's intent, but the assignee was not aware of the assignor's intent, the district court's finding of fact that the conveyance conveyed all of the assignor's operating interest in the two wells in the unit was supported by substantial evidence. *Chisos, Ltd. v. JKM Energy, LLC*, 2011-NMCA-026, 150 N.M. 315, 258 P.3d 1107.

Substantial evidence of bad faith. — Where plaintiff and defendant disputed the ownership of a fifty percent interest in an oil well that was subject to a joint operating agreement; the agreement provided a procedure for parties to elect to participate in the

reworking of the well and required thirty-days' notice of operations on the property; when plaintiff received notice from the state that the well had shown no production for a year, plaintiff determined to rework the well to bring it back into production; when defendant claimed that plaintiff was trespassing on defendant's well, plaintiff obtained a limited term assignment from the other fifty per cent owner in the well to continue reworking the well; for two months, plaintiff did not give defendant notice of the operation; plaintiff sent an election letter to defendant which gave defendant forty-eight hours to commit $176,000 or elect not to participate in the reworking of the well; the forty-eight hour deadline was based on a provision of the joint operating agreement that allowed a reduced deadline if a drilling rig was on the property; plaintiff claimed that a "drilling/workover" rig was on the property; and plaintiff knew that the rig was not a drilling rig, substantial evidence supported the district court's finding that plaintiff acted in bad faith. *Chisos, Ltd. v. JKM Energy, LLC*, 2011-NMCA-026, 150 N.M. 315, 258 P.3d 1107.

Commencement clauses in the context of oil and gas lease agreements construed. — Unless the parties include language in their contract indicating otherwise, to prove than an operator has actually commenced drilling operations, actual drilling is conclusive proof, but is not necessary, obtaining a permit is not essential, activities such as leveling the well location, digging a slush pit, or other good-faith commitment of resources at the drilling site will suffice as evidence of the parties' present intent to diligently carry on drilling activities until completion, and the off-site commitment of resources, such as entering into an enforceable drilling contract requiring the diligent completion of the well, will also suffice as evidence that the operator actually commenced drilling operations. *Enduro Operating LLC v. Echo Prod., Inc.*, 2018-NMSC-016, *rev'g* 2017-NMCA-018, 388 P.3d 990.

Interpretation of a commencement clause provision in a joint operating agreement for development of an oil well. — Where the parties entered into a joint operating agreement (JOA) for development of an oil and gas property, requiring that a party to the JOA who desired to drill an oil well provide written notice of its proposed operation to the other JOA parties, giving the parties an opportunity to become consent parties that are able to participate in the drilling operation, and requiring that the party providing notice commence drilling within 120 days, or if that party does not commence the proposed operation within 120 days but still desires to conduct the operation, then the party wishing to proceed must re-propose the operation to the non-consenting parties as if no prior proposal had been made, and where defendant issued a proposal to drill a well, to which plaintiff's predecessor in interest elected to not participate, and where defendant surveyed and staked the well site, entered into a contract for drilling services, prepared and submitted a drilling permit, consulted with a geologist regarding the design of the well, and obtained a commitment for fracking services, and where plaintiff, a non-consent party, filed suit, asserting that defendant failed to commence drilling operations and was therefore required to resubmit the proposal, thereby providing plaintiff an opportunity to consent to defendant's proposal and receive proceeds from the well, summary judgment was improper because if defendant entered into a binding drilling contract before the 120-day deadline, defendant would have

commenced drilling operations as a matter of law, but whether defendant entered into a binding contract before the 120-day deadline was a genuine issue of material fact, and summary judgment should not be granted if there is a genuine issue of material fact in dispute. *Enduro Operating LLC v. Echo Prod., Inc.*, 2018-NMSC-016, *rev'g* 2017-NMCA-018, 388 P.3d 990.

Interpretation of a non-consent provision in a joint operating agreement for development of an oil well. — Where defendant entered into a joint operating agreement (JOA) with a number of parties, including plaintiff, for development of an oil and gas property, requiring that a party to the JOA who desired to drill an oil well provide written notice of its proposed operation to the other JOA parties, giving the parties an opportunity to become consent parties that are able to participate in the drilling operation, and requiring that the party providing notice commence drilling within 120 days, and where defendant issued a proposal to drill a well, but did not take any on-site action other than conducting surveys and staking the site, and where plaintiff, a non-consent party, filed suit, asserting that defendant failed to commence operations and was therefore required to resubmit the proposal, thereby providing plaintiff an opportunity to consent to defendant's proposal and receive proceeds from the well, the district court erred in granting defendant's motion for summary judgment, because the lack of any on-site activity during the 120-day period did not, as a matter of law, constitute commencement sufficient to satisfy a commencement clause in a JOA. *Enduro Operating LLC v. Echo Production, Inc.*, 2017-NMCA-018, cert. granted.

Constructive notice of prior assignment of federal leases. — Plaintiff was an innocent purchaser for value, under 14-9-1 to 14-9-3 NMSA 1978, of oil and gas lease interests since the records at federal land office did not constitute constructive notice to purchaser of a prior assignment; rather, to constitute such notice, this section requires assignments of interests and royalties in federal oil and gas leases to be recorded in the appropriate county clerk's office. *Bolack v. Underwood*, 340 F.2d 816 (10th Cir. 1965).

Severance of mineral estate from surface property. — A grant or reservation of underlying oil and gas, or royalty rights therein, is a grant or reservation of real property that may be severed from the surface. Such severance may be effected by a conveyance of mineral estate, or by a reservation or exception of the mineral estate, or by a conveyance, reservation or exception of the surface estate, or it may be accomplished by judgment. *Johnson v. Gray*, 1966-NMSC-020, 75 N.M. 726, 410 P.2d 948.

A conveyance or reservation of a fractional interest in the minerals by the owner of a fee simple estate will only effect a severance of the fractional interest so conveyed or reserved. *Johnson v. Gray*, 1966-NMSC-020, 75 N.M. 726, 410 P.2d 948.

Recording of assignment of oil or gas lease is necessary under New Mexico law in order to be effective against subsequent assignees or purchasers. 1980 Op. Att'y Gen. No. 80-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 19; 53A Am. Jur. 2d Mines and Minerals § 197.

What constitutes oil or gas "royalty" or "royalties" within language of conveyance, exception, reservation, device or assignment, 4 A.L.R.2d 492.

Necessity that mortgage covering oil and gas lease be recorded as real estate mortgage, and/or filed or recorded as chattel mortgage, 34 A.L.R.2d 902.

Production on one tract as extending term on other tract, where one mineral deed conveys oil or gas in separate tracts for as long as oil or gas is produced, 9 A.L.R.4th 1121.

Meaning of, and proper method for determining, market value or market price in oil and gas lease requiring royalty to be paid on standard measured by such terms, 10 A.L.R.4th 732.

Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

58 C.J.S. Mines and Minerals §§ 193, 221.

70-1-2. [Effect of recording or failure to record.]

Such records shall be notice to all persons of the existence and contents of such assignments and other instruments so recorded from the time of filing the same for record, and no assignment or other instrument of transfer affecting the title to such royalties not recorded as herein provided shall affect the title or right to such royalties of any purchaser or transferee in good faith, without knowledge of the existence of such unrecorded instrument.

History: Laws 1927, ch. 76, § 2; C.S. 1929, § 97-502; 1941 Comp., § 69-102; 1953 Comp., § 65-2-2.

ANNOTATIONS

Constructive notice of prior assignment of federal leases. — Plaintiff was an innocent purchaser for value, under 14-9-1 to 14-9-3 NMSA 1978, of oil and gas lease interests since the records at federal land office did not constitute constructive notice to purchaser of a prior assignment; rather, to constitute such notice, 70-1-1 NMSA 1978 et seq., requires assignments of interests and royalties in federal oil and gas leases to be recorded in the appropriate county clerk's office. *Bolack v. Underwood*, 340 F.2d 816 (10th Cir. 1965).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 20.

70-1-3. [Forfeiture of oil, gas or mineral lease; release from record.]

Whenever any oil, gas or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his, or its heirs, executors, administrators, successors or assigns, within thirty days from the date this act [70-1-3 to 70-1-5 NMSA 1978] shall take effect, if the forfeiture occurred prior thereto, and within thirty days from the date of the forfeiture of any and all other leases, to have such lease released from record in the county where the leased land is situated, without cost to the owner thereof.

History: Laws 1925, ch. 118, § 1; C.S. 1929, § 97-301; 1941 Comp., § 69-103; 1953 Comp., § 65-2-3.

ANNOTATIONS

Proof of substantial damage from undrilled tract. — Irrespective of standard of duty which should be imposed upon lessee of two oil and gas leaseholds when he has drilled one leasehold, or which remedies are available to the lessor, there must first be proof of substantial drainage from undrilled tract, and where there was substantial evidence to support trial court's finding that little or no drainage had occurred, that finding would not be overturned on appeal. *Cone v. Amoco Prod. Co.*, 1975-NMSC-007, 87 N.M. 294, 532 P.2d 590.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 212; 53A Am. Jur. 2d Mines and Minerals §§ 226, 228.

Surrender clause as affecting validity of oil or gas lease, 3 A.L.R. 378.

Commencement of development within fixed term as extending term of oil and gas lease, 67 A.L.R. 526.

Acceptance of rents or royalties under oil and gas lease as waiver of forfeiture for breach of covenant or condition regarding drilling of wells, 80 A.L.R. 461.

Lessor's acceptance of royalty under gas and oil lease after lease has expired as precluding him from insisting upon expiration, 113 A.L.R. 396.

Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil and gas lease for failure to complete well or commence drilling, 5 A.L.R.2d 993.

Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.

Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 A.L.R.2d 885.

Gas and oil lease force majeure provisions: construction and effect, 46 A.L.R.4th 976.

58 C.J.S. Mines and Minerals §§ 173, 184, 205.

70-1-4. [Failure to execute release; action to obtain release; damages; attachment.]

Should the owner of such lease neglect or refuse to execute a release as provided by this act [70-1-3 to 70-1-5 NMSA 1978], then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his, or its heirs, executors, administrators, successors or assigns, the sum of one hundred dollars ($100.00) as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases.

History: Laws 1925, ch. 118, § 2; C.S. 1929, § 97-302; 1941 Comp., § 69-104; 1953 Comp., § 65-2-4.

ANNOTATIONS

Cross references. — For attachment, *see* 42-9-1 NMSA 1978.

70-1-5. [Demand for release must precede action.]

At least twenty days before bringing the action provided for in this act [70-1-3 to 70-1-5 NMSA 1978], the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease (if such demand by ordinary diligence can be made in this state) that said lease be released of record. Such demand may be either written or oral. When written, a letterpress or carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

History: Laws 1925, ch. 118, § 3; C.S. 1929, § 97-303; 1941 Comp., § 69-105; 1953 Comp., § 65-2-5.

ARTICLE 2
Oil Conservation Commission; Division; Regulation of Wells

70-2-1. Short title.

Chapter 70, Article 2 NMSA 1978 may be cited as the "Oil and Gas Act".

History: 1953 Comp., § 65-3-1.1, enacted by Laws 1977, ch. 237, § 1; 1989, ch. 130, § 13.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "Chapter 70, Article 2 NMSA 1978" for "Sections 65-3-1.1 through 65-3-31 and 65-3-35 and 65-3-36 NMSA 1953".

Law reviews. — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Res. J. 283 (1977).

70-2-2. [Waste prohibited.]

The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited.

History: Laws 1935, ch. 72, § 1; 1941 Comp., § 69-202; Laws 1949, ch. 168, § 1; 1953 Comp., § 65-3-2.

ANNOTATIONS

Cross references. — For regulation and conservation of carbon dioxide gas, *see* 70-2-34 NMSA 1978.

Legislative intent. — Primary concern of oil and gas legislation is eliminating and preventing waste in the pool so far as it can practicably be done, and also the protection of correlative rights of producers from the pool. *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 1966-NMSC-092, 76 N.M. 268, 414 P.2d 496.

Two fundamental powers and duties of commission are prevention of waste and protection of correlative rights. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Elements of property rights of natural gas owners. — The legislature has stated definitively the elements contained in property rights of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Protection of correlative rights. — Although subservient to prevention of waste and perhaps to practicalities of the situation, the protection of correlative rights must depend upon the commission's findings as to the extent and limitations of the right. This the commission is required to do under legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Keeping of false records actionable offense. — The Connally Hot Oil Act (15 U.S.C. § 715 et seq.) applies only to those states which have in effect proration statutes for the

purpose of preventing waste of oil and gas resources, encouraging conservation of oil and gas deposits, etc., and New Mexico is among those states which has enacted a valid comprehensive oil conservation law; since Connally Act applies to this state, keeping of false records, though not in violation of any New Mexico proration order, constitutes an actionable offense under Connally Act. *Humble Oil & Ref. Co. v. U.S.*, 198 F.2d 753 (10th Cir.), cert. denied, 344 U.S. 909, 73 S. Ct. 328, 97 L. Ed. 701 (1952).

Forfeiture of lease denied. — Lessors of oil and gas lease could not declare balance of 40-acre tract (i.e., all except 10-acre tract a producing well was on) retained after selling interests without reservation in another undrilled 40-acre area included in the original lease, as forfeited because of lease provision that lessee was to drill or start to drill a second well or forfeit the lease, in view of order promulgated pursuant to this act which prevented drilling of second well on the retained 40-acre tract. *Thompson v. Greer*, 1951-NMSC-050, 55 N.M. 335, 233 P.2d 204.

Law reviews. — For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 Nat. Res. J. 316 (1963).

For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Res. J. 283 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 157, 158.

Constitutionality of statute limiting or controlling exploitation or waste of oil and gas, 24 A.L.R. 307, 78 A.L.R. 834.

Constitutionality of statute or ordinance limiting production and preventing waste, 67 A.L.R. 1347, 99 A.L.R. 1119.

Constitutionality of statute regulating petroleum production, 86 A.L.R. 418.

Construction, application, and effect of statutes regulating production of oil or gas in a manner or under conditions constituting waste, 86 A.L.R. 431.

Rights and remedies of owner or lessee of oil or gas land on mineral or royalty interest therein, in respect of waste of oil or gas through operations on other lands, 4 A.L.R.2d 198.

58 C.J.S. Mines and Minerals § 234.

70-2-3. Waste; definitions.

As used in this act the term "waste," in addition to its ordinary meaning, shall include:

A. "underground waste" as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

B. "surface waste" as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas in excess of the reasonable market demand;

C. the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil. Such excess production causes or results in waste which is prohibited by this act. The words "reasonable market demand," as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil for reasonable current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

D. the nonratable purchase or taking of crude petroleum oil in this state. Such nonratable taking and purchasing causes or results in waste, as defined in the Subsections A, B, C of this section and causes waste by violating Section 12(a) [70-2-16A NMSA 1978] of this act;

E. the production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas. The words "reasonable market demand," as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products;

F. drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably

be recovered in commercial quantities or where such operations would interfere unduly with the orderly commercial development of such potash deposits.

History: Laws 1935, ch. 72, § 2; 1941, ch. 166, § 1; 1941 Comp., § 69-203; Laws 1949, ch. 168, § 2; 1953 Comp., § 65-3-3; Laws 1965, ch. 58, § 1.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Cross references. — For definitions, *see* 70-2-33 NMSA 1978.

Allowable production not to exceed market demand. — When 70-2-16C and 70-2-19E NMSA 1978 are read together, one fact is evident: even after a pool is prorated, market demand must be determined, since, if allowable production from the pool exceeds market demand, waste would result if the allowable is produced. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Change of allowable production to meet market demand. — The enabling of gas purchasers to more nearly meet market demand is not an authorized statutory basis upon which a change of allowable production may be placed. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Law reviews. — For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 Nat. Res. J. 316 (1963).

For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Res. J. 283 (1977).

70-2-4. Oil conservation commission; members; term; officers; quorum; power to administer oaths.

There is created an "oil conservation commission", hereinafter in the Oil and Gas Act [this article] called the "commission", to be composed of a designee of the commissioner of public lands, a designee of the secretary of energy, minerals and natural resources and the director of the oil conservation division. The designees of the commissioner of public lands and the secretary of energy, minerals and natural resources shall be persons who have expertise in the regulation of petroleum production by virtue of education or training. No salary or compensation shall be paid any member of the commission for his services as a member of the commission. The term of office of each member of the commission shall be concurrent with the other office held by him. The commission shall organize by electing a chairman from its membership. Two members of the commission shall constitute a quorum for all purposes. The commission shall adopt a seal and the seal affixed to any paper signed

by the director of the oil conservation division shall be prima facie evidence of due execution. The attorney general shall be the attorney for the commission. Any member of the commission or the director of the oil conservation division or any employee of the commission or division shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by the Oil and Gas Act or by any other law of this state relating to the conservation of oil and gas.

History: Laws 1935, ch. 72, § 3; 1941 Comp., § 69-204; Laws 1949, ch. 168, § 3; 1953 Comp., § 65-3-4; Laws 1975, ch. 289, § 13; 1977, ch. 255, § 39; 1987, ch. 234, § 58.

ANNOTATIONS

The 1987 amendment, effective July 1, 1987, in the first sentence, substituted "a designee of the commissioner of public lands, a designee of the secretary of energy, minerals and natural resources" for "the commissioner of public lands, the state geologist and the director of oil conservation division", inserted the present second sentence, and made minor changes in language and punctuation throughout the section.

Judicial decisions preclusive. — Commission was acting in a judicial capacity when it approved a proposed unitization plan; its decision was therefore entitled to preclusive effect. *Amoco Prod. Co. v. Heimann*, 904 F.2d 1405 (10th Cir. 1990), cert. denied, 498 U.S. 942, 111 S. Ct. 350, 112 L. Ed. 2d 314 (1990).

Former Oil Conservation Act was not unconstitutional on ground that since legislature had named the members of the commission there had been an invasion of the executive power of appointment in violation of N.M. Const., art. III, § 1. 1951 Op. Att'y Gen. No. 51-5397.

Appointments contemplated in the former Oil Conservation Act were appointments "otherwise provided for" as those words are used in N.M. Const., art. V, § 5, and did not invade governor's power of appointment. 1951 Op. Att'y Gen. No. 51-5397.

Former Oil Conservation Act was not violative of N.M. Const., art. IV, § 16 for failure to have the subject matter expressed clearly in the title. 1951 Op. Att'y Gen. No. 51-5397.

Duties delegated to commission member. — Under laws and constitution of the state, commission, by proper authority, may delegate to member of the commission the duty of holding a hearing and transcribing testimony for submission by proper report to commission for its order based upon evidence and material properly in that record. 1954 Op. Att'y Gen. No. 54-5900.

Quasi-judicial powers of commission are limited to hearing and consideration of evidence and ascertainment of certain facts in performance of its statutory duties. 1951 Op. Att'y Gen. No. 51-5397.

Commission has jurisdiction of public domain owned by federal government held merely in proprietary capacity to prevent waste of gas and oil, so far as such regulations do not conflict with congressional enactments. 1935 Op. Att'y Gen. No. 35-1110.

Law reviews. — For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 Nat. Res. J. 316 (1963).

For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Res. J. 283 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 148.

70-2-5. Oil conservation division; director; state petroleum engineer.

A. The director of the oil conservation division of the energy, minerals and natural resources department shall be known as the "state petroleum engineer".

B. The director shall be appointed by the secretary of energy, minerals and natural resources and shall:

(1) be a resident of this state; and

(2) be registered by the state board of registration for professional engineers and land surveyors as a petroleum engineer; or

(3) by virtue of education and experience have expertise in the field of petroleum engineering.

History: 1953 Comp., § 65-3-4.1, enacted by Laws 1977, ch. 255, § 40; 1987, ch. 234, § 59.

ANNOTATIONS

The 1987 amendment, effective July 1, 1987, in Subsection A, inserted "of the energy, minerals and natural resources department" following "the director of the oil conservation division" and, in Subsection B substituted "energy, minerals and natural resources" for "the energy and minerals department".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 148.

70-2-6. Commission's and division's powers and duties.

A. The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law. In addition, any hearing on any matter may be held before the commission if the division director, in his discretion, determines that the commission shall hear the matter.

History: Laws 1935, ch. 72, § 4; 1941 Comp., § 69-205; Laws 1949, ch. 168, § 4; 1953 Comp., § 65-3-5; Laws 1965, ch. 58, § 2; 1977, ch. 255, § 41; 1979, ch. 175, § 1.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Cross references. — For powers and duties under Statutory Unitization Act, *see* 70-7-3 NMSA 1978.

For the Natural Gas and Crude Oil Production Incentive Act, *see* Chapter 7, Article 29B NMSA 1978.

Basis of commission's powers. — Commission is a creature of statute, expressly defined, limited and empowered by laws creating it. It has jurisdiction over matters related to conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights. Prevention of waste is its paramount power, inasmuch as this is an integral part of the definition of correlative rights. *Sims v. Mechem*, 1963-NMSC-103, 72 N.M. 186, 382 P.2d 183.

Judicial powers. — Commission was acting in a judicial capacity when it approved a proposed unitization plan; its decision was therefore entitled to preclusive effect. *Amoco Prod. Co. v. Heimann*, 904 F.2d 1405 (10th Cir. 1990), cert. denied, 498 U.S. 942, 111 S. Ct. 350, 112 L. Ed. 2d 314 (1990).

Authority held not exceeded. — When an oil well was located so that it could produce oil from the top portion of the pool, thereby avoiding waste that would have occurred unless the well was allowed, but the well was located so that it could effectively drain the entire pool, and the oil conservation commission, charged with the protection of correlative rights of the other lease owners in the pool, placed a production penalty on the well to protect these rights, the commission did not exceed the broad statutory

authority granted by the Oil and Gas Act. *Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, 114 N.M. 103, 835 P.2d 819.

Restrictions on commission's powers. — The power and authority of the commission is general in nature but commission is restricted to the end that it cannot act arbitrarily, unlawfully or capriciously in carrying out administrative functions imposed upon it. 1959 Op. Att'y Gen. No. 59-186.

Use of rental funds for commission's aircraft. — Commission, when it rents its department aircraft to other state agencies, may retain rental payments, when made, in a fund to be used by commission to defray expense of continued operation of the aircraft by placing rental payments in a working capital fund set up in department for the purpose of defraying operating expenses of aircraft. 1959 Op. Att'y Gen. No. 59-186.

Law reviews. — For note, "State Regulation of Oil and Gas Pools on State, Federal, Indian and Fee Lands," see 2 Nat. Res. J. 355 (1962).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 145 to 163.

58 C.J.S. Mines and Minerals § 229.

70-2-7. Rules of procedure in hearings; manner of giving notice; record of rules, regulations and orders.

The oil conservation division of the energy, minerals and natural resources department shall prescribe by rule its rules of order or procedure in hearings or other proceedings before it under the Oil and Gas Act [this article].

History: Laws 1935, ch. 72, § 5; 1941 Comp., § 69-206; Laws 1949, ch. 168, § 5; 1953 Comp., § 65-3-6; Laws 1977, ch. 255, § 42; 1987, ch. 234, § 60.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

For publication of notice, *see* 14-11-1 NMSA 1978 et seq.

For service of summons in civil actions, *see* Rule 1-004 NMRA.

The 1987 amendment, effective July 1, 1987, rewrote this section to the extent that a detailed comparison is impracticable.

Notice of proceedings. — Commission's order increasing spacing requirements for deep wildcat gas wells in certain areas of the state was invalid as to individual holders of working interests and operating rights affected thereby because the holders were not afforded reasonable notice of the proceedings as required by the New Mexico Oil and Gas Act and its implementing regulations. *Johnson v. N.M. Oil Conservation Comm'n*, 1999-NMSC-021, 127 N.M. 120, 978 P.2d 327.

Oil well spacing increase application. — A proceeding on an oil and gas estate lessee's application for an increase in oil well spacing was adjudicatory, and the lessor was entitled to actual notice under the due process requirements of the New Mexico and United States constitutions. *Uhden v. N.M. Oil Conservation Comm'n*, 1991-NMSC-089, 112 N.M. 528, 817 P.2d 721.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 294 et seq.

73A C.J.S. Public Administrative Law and Procedures §§ 134, 135.

70-2-8. Subpoena power; immunity of natural persons required to testify.

The commission, or any member thereof, or the director of the division or his authorized representative, is hereby empowered to subpoena witnesses, to require their attendance and giving of testimony before it, and to require the production of books, papers and records in any proceeding before the commission or the division. No person shall be excused from attending and testifying or from producing books, papers and records before the commission or the division, or from obedience to the subpoena of the said commission or division, whether such subpoena be signed or issued by one or more of the members of the said commission, or the director of the division, in any hearing, investigation or proceeding held by or before the said commission or division or in any cause or proceeding in any court by or against the said commission or division, relative to matters within the jurisdiction of said commission or division, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided that nothing herein contained shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry, not pertinent to some question lawfully before such commission or division or court for determination. No natural person shall be subjected to criminal prosecution, or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify, or produce evidence, documentary or otherwise before said commission or division, or in obedience to its subpoena, or in any cause or proceeding, provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

History: Laws 1935, ch. 72, § 6; 1941 Comp., § 69-207; Laws 1949, ch. 168, § 6; 1953 Comp., § 65-3-7; Laws 1977, ch. 255, § 43.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 338 et seq.

73A C.J.S. Public Administrative Bodies and Procedure §§ 131, 132.

70-2-9. Failure or refusal to comply with subpoena; refusal to testify; body attachment; contempt.

In case of failure or refusal on the part of any person to comply with any subpoena issued by said commission or any member thereof, or the director of the division or his authorized representative, or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court in this state, or any judge thereof, on application of said commission or division, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the commission or division and produce such documents and give his testimony upon such matters as may be lawfully required, and such court or judge shall have the power to punish for contempt as in case of disobedience of a like subpoena issued by or from such court, or a refusal to testify therein.

History: Laws 1935, ch. 72, § 7; 1941 Comp., § 69-208; Laws 1949, ch. 168, § 7; 1953 Comp., § 65-3-8; Laws 1977, ch. 255, § 44.

ANNOTATIONS

Cross references. — For contempt of court, *see* 34-1-2 to 34-1-5 NMSA 1978.

70-2-10. Perjury; punishment.

If any person of whom an oath shall be required under the provisions of this act, or by any rule, regulation or order of the commission or division, shall willfully swear falsely in regard to any matter or thing respecting which such oath is required, or shall willfully make any false report or affidavit required or authorized by the provisions of this act, or by any rule, regulation or order of the commission or division, such person shall be deemed guilty of perjury and shall be punished by imprisonment in the state penitentiary for not more than five years nor less than six months.

History: Laws 1935, ch. 72, § 8; 1941 Comp., § 69-209; Laws 1949, ch. 168, § 8; 1953 Comp., § 65-3-9; Laws 1977, ch. 255, § 45.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

70-2-11. Power of commission and division to prevent waste and protect correlative rights.

A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law.

History: Laws 1935, ch. 72, § 9; 1941 Comp., § 69-210; Laws 1949, ch. 168, § 9; 1953 Comp., § 65-3-10; Laws 1977, ch. 255, § 46.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

No authority to assess civil penalties. — Neither the oil conservation commission nor the oil conservation division has the statutory authority to assess civil penalties because 70-2-28 NMSA 1978 requires the attorney general to bring an action to establish liability and assess penalties for violations of the Oil and Gas Act, 70-2-1 NMSA 1978 et seq., or related rules or orders. *Marbob Energy Corp. v. Oil Conservation Comm'n*, 2009-NMSC-013, 146 N.M. 24, 206 P.3d 135.

Authority based on power of prevention of waste. — The statutory authority of the commission to pool property or to modify existing agreements relating to production within a pool under either 70-2-17C or 70-2-17E NMSA 1978 must be predicated on prevention of waste. *Sims v. Mechem*, 1963-NMSC-103, 72 N.M. 186, 382 P.2d 183.

Commission has jurisdiction over matters related to conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights, as set forth in this section. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Powers of proration and creation of spacing units remain intact. — The standards of preventing waste and protecting correlative rights, as laid out in this section, are sufficient to allow commission's power to prorate and create standard or nonstandard spacing units to remain intact, and 70-2-18 NMSA 1978 is not an unlawful delegation of legislative power. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Prevention of waste by pooling. — Commission's finding that most efficient and orderly development of the subject acreage could be accomplished by force pooling is not equivalent to a finding that this pooling will prevent waste. *Sims v. Mechem*, 1963-NMSC-103, 72 N.M. 186, 382 P.2d 183.

Protection of correlative rights. — The prevention of waste is of paramount interest to the legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes the term "without waste." However, protection of correlative rights is a necessary adjunct to the prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Although subservient to prevention of waste and perhaps to practicalities of the situation, protection of correlative rights must depend upon the commission's findings as to extent and limitations of right. This the commission is required to do under legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Property rights of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Authority held not exceeded. — When an oil well was located so that it could produce oil from the top portion of the pool, thereby avoiding waste that would have occurred unless the well was allowed, but the well was located so that it could effectively drain the entire pool, and the oil conservation commission, charged with the protection of correlative rights of the other lease owners in the pool, placed a production penalty on the well to protect these rights, the commission did not exceed the broad statutory authority granted by the Oil and Gas Act. *Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, 114 N.M. 103, 835 P.2d 819.

The judicial branch is precluded from interfering with administrative rule-making proceedings. — A court may not intervene in rule-making proceedings before the adoption of a rule or regulation, because the separation of powers doctrine forbids a court from prematurely interfering with the administrative processes created by the legislature, and therefore pending appeals of the New Mexico oil conservation commission’s rules did not preclude the commission from exercising its authority to promulgate additional rules. *Earthworks’ Oil & Gas Accountability Project v. N.M. Oil Conservation Comm’n*, 2016-NMCA-055, cert. denied.

Requirements for adopting new rules. — In adopting a new rule, an administrative agency is required to provide a statement of reasons for doing so, and the law requires only that the public and the reviewing courts are informed as to the reasoning behind

the new rule, so where the New Mexico oil conservation commission (commission) adopted a rule in 2013 that differed from a rule adopted in 2008, despite being based on identical evidence, the new rule was not arbitrary and capricious where the commission enumerated its reasons for adopting the 2013 rule, gave detailed explanations for the standards and requirements that it created in the 2013 rule and, in its order promulgating the rule, provided additional basis for, and reasoning behind, adopting the 2013 rule. Petitioners failed to meet their burden of demonstrating that the 2013 rule is not reasonably related to the commission's legislative purpose. *Earthworks' Oil & Gas Accountability Project v. N.M. Oil Conservation Comm'n*, 2016-NMCA-055, cert. denied.

Former act to prohibit waste. — There was no delegation to the commission of power to make law or determine what it shall be in the former Oil Conservation Act, but act was, in effect, a prohibition against waste. 1951 Op. Att'y Gen. No. 51-5397.

Law reviews. — For comment on Cont'l Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Res. J. 178 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 145 to 148, 157.

58 C.J.S. Mines and Minerals §§ 229, 234.

70-2-12. Enumeration of powers.

A. The oil conservation division of the energy, minerals and natural resources department may:

(1) collect data;

(2) make investigations and inspections;

(3) examine properties, leases, papers, books and records;

(4) examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment;

(5) hold hearings;

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

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

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

B. The oil conservation division may make rules and orders for the purposes and with respect to the subject matter stated in this subsection:

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

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

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

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

(5) to prevent fires;

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

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

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

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

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

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

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

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

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

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

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

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells and to restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the Oil and Gas Act, the rules adopted under that act and the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], 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, 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;

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

(22) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act [Chapter 74, Article 6 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

History: 1953 Comp., § 65-3-11, enacted by Laws 1978, ch. 71, § 1; 1986, ch. 76, § 1; 1987, ch. 234, § 61; 1989, ch. 289, § 1; 1996, ch. 72, § 2; 2004, ch. 87, § 2; 2018, ch. 16, § 1; 2019, ch. 197, § 6.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 71, § 1, repealed 65-3-11, 1953 Comp. (former 70-2-12 NMSA 1978), relating to enumeration of powers, and enacted a new 70-2-12 NMSA 1978.

Cross references. — For filing rules and regulations, *see* 14-4-3 NMSA 1978.

For public utilities commission's lack of power to regulate sale price at wellhead, *see* 62-6-4 NMSA 1978.

For the federal Natural Gas Policy Act of 1978, *see* 15 U.S.C. § 3301 et seq.

The 2019 amendment, effective July 1, 2019, authorized the oil conservation division of the energy, minerals and natural resources department to make rules and orders to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water; and in Subsection B, Paragraph B(15), after "regulate the disposition", deleted "of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water, including disposition by use in drilling for or production of oil or gas, in road construction or maintenance or other construction, in the generation of electricity or in other industrial processes, in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer" and added the remainder of the paragraph.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

The 2018 amendment, effective May 16, 2018, aligned the financial assurance requirements of this section with Section 70-2-14 NMSA 1978 for the plugging of dry or abandoned wells, and made stylistic changes throughout; in Subsection A, in the introductory clause, deleted "Included in the power given to", and after "natural resources department", deleted "is the authority to" and added "may", and added paragraph designations "(1)" through "(8)"; and in Subsection B, in the introductory clause, deleted "Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of

this state", after "The", added "oil conservation", after "division", deleted "is authorized to" and added "may", and after "rules", deleted "regulations", in Paragraph B(1), after "other strata", added "pursuant to Section 70-2-14 NMSA 1978", after "shall require", deleted "a cash or surety bond in a sum not to exceed fifty thousand dollars ($50,000)" and added "financial assurance", and after "the performance of", deleted "such regulations" and added "the rules", and in Paragraph B(18), after "the rules", deleted "and regulations".

The 2004 amendment, effective May 19, 2004, amended Paragraph (15) of Subsection B to add: "including disposition by use in drilling for or production of oil or gas, in road construction or maintenance or other construction, in the generation of electricity or in other industrial processes".

The 1996 amendment, effective May 15, 1996, inserted "of the energy, minerals and natural resources department" in the first sentence of Subsection A; and in Subsection B, substituted "that reduces" for "which reduces" in Paragraph (4), and inserted "and to restore and remediate abandoned well sites and associated production facilities" and "the rules and regulations adopted under that act" in Paragraph (18).

The 1989 amendment, effective June 16, 1989, added Subsections B(21) and B(22).

The 1987 amendment, effective July 1, 1987, in Subsection B(18), substituted "Procurement Code" for "Public Purchases Act"; added Subsection B(20); and made minor changes in language and punctuation throughout the section.

The 1986 amendment, effective May 21, 1986, substituted "oil conservation division" for "division" in Subsection A and in the introductory paragraph of Subsection B; substituted "provided in the Oil and Gas Act" for "in this act provided" in Subsection A; substituted "the Oil and Gas Act" for "this act" in the introductory paragraph of Subsection B; substituted "cash or surety bond" for "corporate surety bond" in Subsection B(1); added Subsection B(19), and made minor stylistic changes throughout the section.

Burden of production. — An applicant for a permit to drill an oil and gas well in a commercial potash area has the burden of demonstrating that the oil and gas well will not waste commercial potash deposits. *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, 148 N.M. 516, 238 P.3d 885, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

Correlative rights. — The oil conservation commission is not required to ensure that holders of potash rights and holders of oil and gas rights are entitled to retrieve their equitable share of the resources in a given area, but is required to examine the competing interests for resources and make a determination whether a proposed oil and gas well would unduly impact potash development. *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, 148 N.M. 516, 238 P.3d 885, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

Substantial evidence supported denial of applications to drill oil and gas wells in potash areas. — Where oil and gas operators applied for permits to drill oil and gas wells on private land that was not included in the potash operator's designated life of mine reserve area, but was located within the buffer zone of the life of mine reserve area; the applications were opposed by the potash operator; and the oil and gas operators did not challenge the potash operator's designation of the life of mine reserve area or the potash operator's evidence that the proposed oil and gas wells would prevent the mining, and therefore cause the waste of, commercial deposits of potash because the wells would block access to potash reserves, and because the potash operator could not, due to the increased risk of methane gas caused by the oil and gas well, mine within one-half mile of an oil and gas well; that the oil and gas operators had alternative means to develop the oil and gas reserves by horizontal or directional drilling; and that the proposed wells were within the buffer zone and were, therefore, prohibited by the oil conservation commission's order which prohibited the drilling of oil and gas wells within the buffer zone unless a clear demonstration was made that commercial potash would not be wasted unduly by the drilling of the wells, the oil conservation commission's orders denying the applications were supported by substantial evidence. *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, 148 N.M. 516, 238 P.3d 885, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

Denial of applications to drill oil and gas wells in potash areas did not deny applicants due process of law. — Where oil and gas operators applied for permits to drill oil and gas wells on private land that was not included in the potash operator's designated life of mine reserve area, but was located within the buffer zone of the life of mine reserve area; the applications were opposed by the potash operator; the oil conservation commission's order provided that the oil conservation commission should deny any application to drill an oil and gas well in commercial potash areas unless a clear demonstration was made that commercial potash will not be wasted unduly by the drilling of the well; the oil and gas operators were given an opportunity to review the geologic basis for the designation of the potash operator's life of mine reserve area; the oil and gas operators were given the opportunity to either challenge the designation of life of mine reserve area or to demonstrate that the proposed wells would not unduly waste potash; and the oil and gas operators had the opportunity to use the subpoena powers of the oil conservation commission before the hearing, the oil and gas operators were not denied due process of law. *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, 148 N.M. 516, 238 P.3d 885, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

Award of equitable compensation to landowner. — Where the oil conservation division ordered oil and gas lessee to drill and oversee monitoring wells on the landowners' land, and the oil and gas lease on the land did not include express language that permitted the lessee to drill and oversee monitoring wells on the land, and the implied easements by necessity included in the lease did not create any right that permitted the lessee to drill and oversee the monitoring wells on the land, the district court had authority to order the lessee to pay the landowners an annual access fee to

drill and oversee the monitoring of the monitoring wells. *Smith & Marrs, Inc., v. Osborn*, 2008-NMCA-043, 143 N.M. 684, 180 P.3d 1183.

Powers pertaining to oil well fires. — The lawmakers intended commission not only to seek fire prevention to conserve oil, but also to conserve other property and lives of persons peculiarly subject to hazard of oil well fires. *Cont'l Oil Co. v. Brack*, 381 F.2d 682 (10th Cir. 1967).

The terms "spacing unit" and "proration unit" are not synonymous and commission has power to fix spacing units without first creating proration units. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 145 to 163.

58 C.J.S. Mines and Minerals §§ 229 to 243.

70-2-12.1. Disposition of produced water; no permit required.

No permit shall be required from the state engineer for the disposition of produced water in accordance with rules promulgated pursuant to Section 70-2-12 NMSA 1978 by the oil conservation division of the energy, minerals and natural resources department.

History: Laws 2004, ch. 87, § 1.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 87 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

70-2-12.2. Adoption of rules; appeals.

A. No rule shall be adopted pursuant to the Oil and Gas Act until after a hearing by the commission.

B. Any rule adopted under the Oil and Gas Act shall be filed and published in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. No rule shall be filed until the latter of twenty days after the commission has entered an order or has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978.

C. Any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within thirty days after filing of the rule under the State Rules Act. All such

appeals shall be upon the record made by the commission. Upon appeal, the court of appeals shall set aside the rule only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

D. As used in this section, "rule" includes an amendment or repeal of a rule.

History: Laws 2015, ch. 133, § 1.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 133 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

70-2-13. Additional powers of commission or division; hearings before examiner; hearings de novo.

In addition to the powers and authority, either express or implied, granted to the oil conservation commission or division by virtue of the statutes of the state of New Mexico, the division is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the division to provide for the appointment of one or more examiners to be members of the staff of the division to conduct hearings with respect to matters properly coming before the division and to make reports and recommendations to the director of the division with respect thereto. Any member of the commission or the director of the division or his authorized representative may serve as an examiner as provided herein. The division shall promulgate rules and regulations with regard to hearings to be conducted before examiners, and the powers and duties of the examiners in any particular case may be limited by order of the division to particular issues or to the performance of particular acts. In the absence of any limiting order, an examiner appointed to hear any particular case shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and transcribed and shall certify the same to the director of the division for consideration together with the report of the examiner and his recommendations in connection therewith. The director of the division shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if the hearing had been conducted before the director of the division. When any matter or

proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

History: 1953 Comp., § 65-3-11.1, enacted by Laws 1955, ch. 235, § 1; 1961, ch. 62, § 1; 1977, ch. 255, § 48; 1981, ch. 63, § 1.

70-2-14. Requirement for financial assurance.

A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond or a well-specific plugging insurance policy pursuant to the provisions of this section to the oil conservation division of the energy, minerals and natural resources department running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division. The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars ($250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. The oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status. All financial assurance shall remain in force until released by the oil conservation division. The oil conservation division shall release financial assurance when it is satisfied the conditions of the financial assurance have been fully performed.

B. If any of the requirements of the Oil and Gas Act or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

C. When any financial assurance is forfeited pursuant to the provisions of the Oil and Gas Act or rules promulgated pursuant to that act, the director of the oil conservation division shall give notice to the attorney general, who shall collect the forfeiture without delay.

D. All forfeitures shall be deposited in the state treasury in the oil and gas reclamation fund.

E. When the financial assurance proves insufficient to cover the cost of plugging oil and gas wells on land other than federal land and funds must be expended from the oil and gas reclamation fund to meet the additional expenses, the oil conservation division is authorized to bring suit against the operator in the district court of the county in which the well is located for indemnification for all costs incurred by the oil conservation division in plugging the well. All funds collected pursuant to a judgment in a suit for indemnification brought under the provisions of this section shall be deposited in the oil and gas reclamation fund.

F. An operator required to file financial assurance for a well pursuant to this section is considered to have met that requirement if the operator obtains a plugging insurance policy that includes the specific well and that:

(1) is approved by the office of superintendent of insurance;

(2) names the state of New Mexico as owner of the policy and contingent beneficiary;

(3) names a primary beneficiary who agrees to plug the specified wellbore;

(4) is fully prepaid and cannot be canceled or surrendered;

(5) provides that the policy continues in effect until the specified wellbore has been plugged;

(6) provides that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with rules of the oil conservation division in effect at the time of plugging; and

(7) provides benefits that are not less than an amount equal to the one-well financial assurance required by oil conservation division rules.

G. If, subsequent to an operator obtaining an insurance policy as provided in this section, the one-well financial assurance requirement applicable to the operator's well is increased, either because the well is deepened or the rules of the oil conservation division are amended, the operator is considered to have met the revised requirement if:

(1) the existing policy benefit equals or exceeds the revised requirement;

(2) the operator obtains an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement; or

(3) the operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit.

History: 1953 Comp., § 65-3-11.2, enacted by Laws 1977, ch. 237, § 3; 1978, ch. 117, § 1; 1986, ch. 76, § 2; 2000, ch. 12, § 1; 2006, ch. 59, § 1; 2015, ch. 79, § 1; 2015, ch. 99, § 1; 2018, ch. 16, § 2.

ANNOTATIONS

Cross references. — For oil conservation division, *see* 70-2-5 NMSA 1978.

For oil and gas reclamation fund, *see* 70-2-37 NMSA 1978.

The 2018 amendment, effective May 16, 2018, increased the maximum amount of financial assurance the oil conservation division could require of oil and gas well operators; in Subsection A, after "plugging financial assurance", added "which shall be set by rule", and after "not to exceed", deleted "fifty thousand dollars ($50,000), except for" and added "two hundred fifty thousand dollars ($250,000)".

The 2015 amendment, effective April, 8, 2015, required operators to provide additional financial assurance for wells held in temporarily abandoned status, and provided that blanket plugging financial assurance for temporarily abandoned status wells shall be set by rule at amounts greater than fifty thousand dollars; in Subsection A, after "(50,000)", added "except for a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000)", after "deems relevant.", deleted "In addition to the blanket plugging financial assurance", after "oil conservation division", changed "may" to "shall", and after "more than two years", added "or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status"; in Subsection F, Paragraph 1, after "approved by the", added "office of superintendent of", and after "insurance", deleted "division of the public regulation commission".

Laws 2015, ch. 79, § 1 and Laws 2015, ch. 99, § 1 enacted identical amendments to this section, both effective April 8, 2015. The section was set out as amended by Laws 2015, ch. 99, § 1. *See* 12-1-8 NMSA 1978.

The 2006 amendment, effective May 17, 2006, provided in Subsection A that a well-specific plugging insurance policy may be furnished; added Subsection F to provide the criteria for an acceptable well-specific plugging insurance policy; and added Subsection G and Paragraphs (1) through (3) of Subsection G to provide the criteria for an acceptable well-specific plugging insurance policy or financial assurance if a one-well financial assurance requirement is increased.

The 2000 amendment, effective May 17, 2000, changed the section heading which formerly read "Bonding requirement"; inserted "financial assurance in the form of an

irrevocable letter of credit or" in the first sentence in Subsection A; and substituted "financial assurance" for references to "bonds" and deleted "and regulations" following "rules" throughout the section.

The 1986 amendment substituted "cash or surety bond" for "surety bond" in the first sentence and "bonds" for "surety bonds" in the second sentence of Subsection A; substituted "oil conservation division" for "division" in the first sentence of Subsection B; substituted "bond" for "surety bond" in the second sentence of Subsection B and near the beginning of the first sentence of Subsection E; inserted "of the oil conservation division" following "director" in Subsection C; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 C.J.S. Mines and Minerals § 230.

70-2-15. Allocation of allowable production among fields when division limits total amount of production.

Whenever, to prevent waste, the division limits the total amount of crude petroleum oil to be produced in this state, it shall allocate or distribute the allowable productions among the fields of the state. Such allocation or distribution among the fields of the state shall be made on a reasonable basis, giving, if reasonable under all circumstances, to each pool with small wells of settled production, an allowable production which will prevent a general premature abandonment of the wells in the field.

History: Laws 1935, ch. 72, § 11; 1941 Comp., § 69-212; Laws 1949, ch. 168, § 11; 1953 Comp., § 65-3-12; Laws 1977, ch. 255, § 49.

ANNOTATIONS

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Res. J. 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 161, 164 to 173.

Validity of compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 A.L.R.2d 434.

58 C.J.S. Mines and Minerals § 240.

70-2-16. Allocation of allowable production in field or pool.

A. Whenever, to prevent waste, the total allowable production of crude petroleum oil for any field or pool in the state is fixed by the oil conservation division in an amount less than that which the field or pool could produce if no restriction were imposed, the

division shall prorate or distribute the allowable production among the producers in the field or pool upon a reasonable basis and recognizing correlative rights.

B. Crude petroleum oil produced within the allowable as fixed by the oil conservation division shall herein be referred to as "legal oil" and crude petroleum oil produced in excess of the allowable shall be "illegal oil".

C. Whenever, to prevent waste, the total allowable natural gas production from gas wells producing from any pool in this state is fixed by the oil conservation division in an amount less than that which the pool could produce if no restrictions were imposed, the division shall allocate the allowable production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights and shall include in the proration schedule of the pool any well which it finds is being unreasonably discriminated against through denial of access to a gas transportation facility which is reasonably capable of handling the type of gas produced by that well. In protecting correlative rights, the division may give equitable consideration to acreage, pressure, open flow, porosity, permeability, deliverability and quality of the gas and to such other pertinent factors as may from time to time exist and, insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage. In allocating production pursuant to the provisions of this subsection, the division shall fix proration periods of not less than six months. It shall, upon notice and hearing, determine reasonable market demand and make allocations of production during each proration period. Insofar as is feasible and practicable, gas wells having an allowable in a pool shall be regularly produced in proportion to their allowables in effect for the current proration period. Without approval of the division or one of its duly authorized agents, no natural gas well or pool shall be allowed to produce natural gas in excess of the allowable assigned to such source during any proration period; provided that during an emergency affecting a gas transportation facility, a gas well or pool having high deliverability into the facility under prevailing conditions may produce and deliver in excess of its allowable for the period of emergency, not exceeding ten days, without penalty. The division may order subsequent changes in allowables for wells and pools to make fair and reasonable adjustment for overage resulting from the emergency. The provisions of this subsection shall not apply to any wells or pools used for storage and withdrawal from storage of natural gas originally produced not in violation of the Oil and Gas Act [this article] or the rules, regulations or orders of the division.

D. In fixing the allowable of a pool under Subsection C of this section, the oil conservation division shall consider nominations of purchasers but shall not be bound thereby and shall fix pool allowables to prevent unreasonable discrimination between pools served by the same gas transportation facility by a purchaser purchasing in more than one pool.

E. Natural gas produced from gas wells within the allowable as determined as provided in Subsection C of this section shall be referred to in the Oil and Gas Act as

"legal gas" and natural gas produced in excess of the allowable shall be referred to as "illegal gas".

History: Laws 1935, ch. 72, § 12; 1941 Comp., § 69-213; Laws 1949, ch. 168, § 12; 1953 Comp., § 65-3-13; Laws 1977, ch. 255, § 50; 1985, ch. 6, § 1.

ANNOTATIONS

Cross references. — For duties of oil conservation division, *see* 70-2-6 NMSA 1978.

New proration formula to be based on recoverable gas. — Lacking a finding that a new gas proration formula is based on amounts of recoverable gas in pool and under tracts, insofar as these amounts can be practically determined and obtained without waste, a supposedly valid order in current use cannot be replaced. Such findings are necessary requisites to validity of the order, for it is upon them that the very power of the commission to act depends. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Findings required before correlative rights ascertained. — In order to protect correlative rights, it is incumbent upon commission to determine, "so far as it is practical to do so," certain foundationary matters, without which correlative rights of various owners cannot be ascertained. Therefore, the commission, by "basic conclusions of fact" (or what might be termed "findings"), must determine, insofar as practicable: (1) amount of recoverable gas under each producer's tract; (2) total amount of recoverable gas in the pool; (3) proportion that (1) bears to (2); and (4) what portion of arrived at proportion can be recovered without waste. That extent of correlative rights must first be determined before commission can act to protect them is manifest. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Relationship between prevention of waste and protection of correlative rights. — Prevention of waste is of paramount interest to legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes term "without waste." However, protection of correlative rights is necessary adjunct to prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Production must be limited to the allowable even if market demand exceeds that amount, since the setting of allowables was made necessary in order to prevent waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

When Subsection C of this section and 70-2-19E NMSA 1978 are read together, one fact is evident: even after a pool is prorated, market demand must be determined, since, if allowable production from the pool exceeds market demand, waste would result if allowable is produced. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Commission to prevent drainage between producing tracts. — In addition to making findings to protect correlative rights, commission, "insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage," under the provisions of Subsection C of this section. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Property rights of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Keeping of false records as actionable offense. — The Connally Hot Oil Act (15 U.S.C. § 715 et seq.) applies only to states which have in effect proration statutes for the purpose of preventing waste of oil and gas resources, encouraging conservation of oil and gas deposits, etc., and New Mexico is among those states which has enacted a valid comprehensive oil conservation law; since Connally Act applies to this state, keeping of false records, though not in violation of any New Mexico proration order, constitutes an actionable offense under Connally Act. *Humble Oil & Ref. Co. v. U.S.*, 198 F.2d 753 (10th Cir.), cert. denied, 344 U.S. 909, 73 S. Ct. 328, 97 L. Ed. 701 (1952).

Law reviews. — For comment on Cont'l Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Res. J. 178 (1963).

For article, "State Conservation Regulation and the Proposed R-199," see 6 Nat. Res. J. 223 (1966).

For comment on geothermal energy and water law, see 19 Nat. Res. J. 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 161, 164.

Rights and obligations, with respect to adjoining landowners, arising out of secondary recovery of gas, oil, and other fluid minerals, 19 A.L.R.4th 1182.

58 C.J.S. Mines and Minerals § 240.

70-2-17. Equitable allocation of allowable production; pooling; spacing.

A. The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without

waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

B. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the prorata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk

shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well.

In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

D. Minimum allowable for some wells may be advisable from time to time, especially with respect to wells already drilled when this act takes effect, to the end that the production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

E. Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

F. After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties determined as in this act provided, and the allowable production shall be produced in accordance with the applicable rules, regulations or orders.

History: Laws 1935, ch. 72, § 12; 1941 Comp., § 69-2131/2; Laws 1949, ch. 168, § 13; 1953, ch. 76, § 1; 1953 Comp., § 65-3-14; Laws 1961, ch. 65, § 1; 1973, ch. 250, § 1; 1977, ch. 255, § 51.

ANNOTATIONS

Compiler’s notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

The terms "spacing unit" and "proration unit" are not synonymous and the commission has power to fix spacing units without first creating proration units. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Determination of recoverable gas. — The commission is not required, as a prerequisite to the entry of a valid proration order, to first determine the amount of gas underlying each producer's tract and in the pool, in a case in which the commission's findings demonstrate that such determinations are impracticable, and such findings are sustained by the record. *Grace v. Oil Conservation Comm'n of N.M.*, 1975-NMSC-001, 87 N.M. 205, 531 P.2d 939.

Where the commission adopted a 100% surface acreage formula for allocating allowable production in a new pool that was not developed and had little production history; there having been sufficient production from the pool to accurately measure gas reserves using the pressure decline curve method; and data obtained at the well bore, such as effective feet of pay, water saturation, and deliverability were not sufficiently reliable to determine gas reserves under each tract, the commission was not required to determine the amount of gas underlying each tract as a prerequisite to entering of the proration order. *Grace v. Oil Conservation Comm'n of N.M.*, 1975-NMSC-001, 87 N.M. 205, 531 P.2d 939.

Proration formula required to be based on recoverable gas. — Lacking a finding that new gas proration formula is based on amounts of recoverable gas in pool and under tracts, insofar as these amounts can be practically determined and obtained without waste, a supposedly valid order in current use cannot be replaced. Such findings are necessary requisites to validity of the order, for it is upon them that the very power of the commission to act depends. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Findings required before correlative rights ascertained. — In order to protect correlative rights, it is incumbent upon commission to determine, "so far as it is practical to do so," certain foundationary matters, without which the correlative rights of various owners cannot be ascertained. Therefore, the commission, by "basic conclusions of fact" (or what might be termed "findings"), must determine, insofar as practicable: (1) amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in pool; (3) proportion that (1) bears to (2); and (4) what portion of arrived at proportion can be recovered without waste. That the extent of the correlative rights must first be determined before commission can act to protect them is manifest. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

In addition to making such findings the commission, "insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage," under the provisions of 70-2-16 NMSA 1978. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Four basic findings required to adopt a production formula under this section can be made in language equivalent to that required in previous decision construing this section. *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 1966-NMSC-092, 76 N.M. 268, 414 P.2d 496 (explaining *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809).

Although subservient to prevention of waste and perhaps to practicalities of the situation, protection of correlative rights must depend upon commission's (now division's) findings as to extent and limitations of the right. This the commission is required to do under the legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Division found not to have primary jurisdiction over suit seeking an order to join in an oil well free of risk penalty. *Mountain States Natural Gas Corp. v. Petroleum Corp.*, 693 F.2d 1015 (10th Cir. 1982).

Grant of forced pooling is determined on case-to-case basis. — The granting of or refusal to grant forced pooling of multiple zones with an election to participate in less than all zones, the amount of costs to be reimbursed to the operator, and the percentage risk charge to be assessed, if any, are determinations to be made by the commission (now the division) on a case-to-case basis and upon the particular facts in each case. *Viking Petroleum, Inc. v. Oil Conservation Comm'n*, 1983-NMSC-091, 100 N.M. 451, 672 P.2d 280.

Forced pooling of multiple zones with an election to participate in less than all zones. *Viking Petroleum, Inc. v. Oil Conservation Comm'n*, 1983-NMSC-091, 100 N.M. 451, 672 P.2d 280.

Division's findings upheld. — Commission's (now division's) findings that it would be unreasonable and contrary to the spirit of conservation statutes to drill unnecessary and economically wasteful well were held to be sufficient to justify creation of two nonstandard gas proration units, and the force pooling thereof, and were supported by substantial evidence. Likewise, participation formula adopted by commission, which gave each owner a share in production in same ratio as his acreage bore to acreage of the whole, was upheld despite limited proof as to extent and character of pool. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Relation between prevention of waste and protection of correlative rights. — Prevention of waste is of paramount interest to the legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of

"correlative rights" emphasizes the term "without waste." However, protection of correlative rights is necessary adjunct to the prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Division's authority to pool separately owned tracts. — Since commission (now division) has power to pool separately owned tracts within a spacing or proration unit, as well as concomitant authority to establish oversize nonstandard spacing units, commission also has authority to pool separately owned tracts within an oversize nonstandard spacing unit. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Elements of property right of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Law reviews. — For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 Nat. Res. J. 316 (1963).

For comment on El Paso Natural Gas Co. v. Oil Conservation Comm'n, 76 N.M. 268, 414 P.2d 496 (1966), see 7 Nat. Res. J. 425 (1967).

For comment on geothermal energy and water law, see 19 Nat. Res. J. 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 159, 161, 164.

70-2-18. Spacing or proration unit with divided mineral ownership.

A. Whenever the operator of any oil or gas well shall dedicate lands comprising a standard spacing or proration unit to an oil or gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil or gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production. Any division order that increases the size of a standard spacing or proration unit for a pool, or extends the boundaries of such a pool, shall require dedication of acreage to existing wells in the pool in accordance with the acreage dedication requirements for said pool, and all interests in the spacing or proration units that are dedicated to the affected wells shall share in production from the effective date of the said order.

B. Any operator failing to obtain voluntary pooling agreements, or failing to apply for an order of the division pooling the lands dedicated to the spacing or proration unit as required by this section, shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including owners of overriding royalty interests and other payments out of production, either the amount to which each interest would be entitled if pooling had occurred or the amount to which each interest is entitled in the absence of pooling, whichever is greater.

C. Nonstandard spacing or proration units may be established by the division and all mineral and leasehold interests in any such nonstandard unit shall share in production from that unit from the date of the order establishing the said nonstandard unit.

History: 1953 Comp., § 65-3-14.5, enacted by Laws 1969, ch. 271, § 1; 1977, ch. 255, § 52.

ANNOTATIONS

Constitutionality. — Standards of preventing waste and protecting correlative rights, as laid out in 70-2-11 NMSA 1978, are sufficient to allow commission's power to prorate and create standard or nonstandard spacing units to remain intact, and this section is not unlawful delegation of legislative power under N.M. Const., art. III, § 1. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

The terms "spacing unit" and "proration unit" are not synonymous and commission has power to fix spacing units without first creating proration units. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Authority to pool separately owned tracts. — Since commission has power to pool separately owned tracts within a spacing or proration unit, as well as concomitant authority to establish oversize nonstandard spacing units, the commission also has authority to pool separately owned tracts within an oversize nonstandard spacing unit. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Creation of proration units, force pooling and participation formula upheld. — Commission's (now division's) findings that it would be unreasonable and contrary to spirit of conservation statutes to drill an unnecessary and economically wasteful well were held sufficient to justify creation of two nonstandard gas proration units, and force pooling thereof, and were supported by substantial evidence. Likewise, participation formula adopted by commission, which gave each owner a share in production in same ratio as his acreage bore to the acreage of whole, was upheld despite limited proof as to extent and character of the pool. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Proceedings to increase oil well spacing. — A proceeding on an oil and gas estate lessee's application for an increase in oil well spacing was adjudicatory, and the lessor was entitled to actual notice under the due process requirements of the New Mexico and United States Constitutions. *Uhden v. N.M. Oil Conservation Comm'n*, 1991-NMSC-089, 112 N.M. 528, 817 P.2d 721.

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Res. J. 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 159, 164, 172.

58 C.J.S. Mines and Minerals §§ 230, 240.

70-2-19. Common purchasers; discrimination in purchasing prohibited.

A. Every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines shall be a common purchaser thereof and shall, without discrimination in favor of one producer as against another in the same field, purchase all oil tendered to it which has been lawfully produced in the vicinity of, or which may be reasonably reached by pipelines through which it is transporting oil, or the gathering branches thereof, or which may be delivered to the pipeline or gathering branches thereof by truck or otherwise, and shall fully perform all the duties of a common purchaser. If any common purchaser shall not have need for all such oil lawfully produced within a field or if for any reason it shall be unable to purchase all such oil, then it shall purchase from each producer in a field ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portions; provided, however, nothing herein contained shall be construed to require more than one pipeline connection for each producing well. In the event any such common purchaser of oil is likewise a producer or is affiliated with a producer, directly or indirectly, it is hereby expressly prohibited from discriminating in favor of its own production or in favor of the production of an affiliated producer as against that of others, and the oil produced by such common purchaser or by the affiliate of such common purchaser shall be treated as that of any other producer for the purposes of ratable taking.

B. It shall be unlawful for any common purchaser to unjustly or unreasonably discriminate as to the relative quantities of oil purchased by it in the various fields of the state; the question of the justice or reasonableness to be determined by the division, taking into consideration the production and age of wells in the respective fields and all other factors. It is the intent of the Oil and Gas Act [this article] that all fields shall be allowed to produce and market a just and equitable share of the oil produced and marketed in the state, insofar as the same can be effected economically and without waste.

C. It shall be the duty of the division to enforce the provisions of the Oil and Gas Act, and it shall have the power, after notice and hearing as provided in Section 70-2-23 NMSA 1978, to make rules, regulations and orders defining the distance that extension of the pipeline system shall be made to all wells not served; provided that no such authorization or order shall be made unless the division finds, as to such extension, that it is reasonably required and economically justified or, as to such extension of facilities, that the expenditures involved therein and the expense incident thereto are justified in relation to the volume of oil available for transportation through said extension; and such other rules, regulations and orders as may be necessary to carry out the provisions of the Oil and Gas Act, and in making such rules, regulations and orders, the division shall give due consideration to the economic factors involved. The division shall have authority to relieve such common purchaser, after due notice and hearing as herein provided, from the duty of purchasing crude petroleum oil of inferior quality or grade or that is not reasonably suitable for the requirements of such common purchaser.

D. Any person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells or casing-head gas produced from oil wells shall be a common purchaser thereof within each common source of supply from which it purchases, and as such it shall purchase gas lawfully produced from gas wells or casing-head gas produced from oil wells with which its gas transportation facilities are connected in the pool and other gas lawfully produced within the pool and tendered to a point on its gas transportation facilities. Such purchases shall be made without unreasonable discrimination in favor of one producer against another in the price paid, the quantities purchased, the bases of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from such wells. In the event any such person is likewise a producer, he is prohibited to the same extent from discriminating in favor of himself on production from gas wells or casing-head gas produced from oil wells in which he has an interest, direct or indirect, as against other production from gas wells or casing-head gas produced from oil wells in the same pool. For the purposes of the Oil and Gas Act, reasonable differences in prices paid or facilities afforded, or both, shall not constitute unreasonable discrimination if such differences bear a fair relationship to differences in quality, quantity or pressure of the gas available or to the relative lengths of time during which such gas will be available to the purchaser. The provisions of this subsection shall not apply:

(1) to any wells or pools used for storage and withdrawal from storage of natural gas originally produced not in violation of the Oil and Gas Act or of the rules, regulations or orders of the division; or

(2) to persons purchasing gas principally for use in the recovery or production of oil or gas.

E. Any common purchaser taking gas produced from gas wells or casing-head gas produced from oil wells from a common source of supply shall take ratably under such rules, regulations and orders, concerning quantity, as may be promulgated by the division consistent with the Oil and Gas Act. The division, in promulgating such rules,

regulations and orders, may consider the quality and the deliverability of the gas, the pressure of the gas at the point of delivery, acreage attributable to the well, market requirements in the case of unprorated pools, and other pertinent factors.

F. Nothing in the Oil and Gas Act shall be construed or applied to require, directly or indirectly, any person to purchase gas of a quality or under a pressure or under any other condition by reason of which such gas cannot be economically and satisfactorily used by such purchaser by means of his gas transportation facilities then in service.

History: Laws 1935, ch. 72, §§ 12a, 12b, and 12c, added by 1941, ch. 166, § 2; 1941 Comp., §§ 69-214, 69-215 and 69-216; Laws 1949, ch. 168, § 14; 1953 Comp., § 65-3-15; Laws 1977, ch. 255, § 53; 1983, ch. 94, § 1.

ANNOTATIONS

Relationship between prevention of waste and correlative rights. — The prevention of waste is of paramount interest to the legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes the term "without waste." However, protection of correlative rights is a necessary adjunct to prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Allowable not to exceed market demand. — When 70-2-16C NMSA 1978 and Subsection E of this section are read together, one fact is evident: even after a pool is prorated, the market demand must be determined, since, if allowable production from the pool exceeds market demand, waste would result if allowable is produced. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Basis for change of allowables. — Enabling of gas purchasers to more nearly meet market demand is not an authorized statutory basis upon which change of allowables may be placed. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Elements of property rights of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines § 5.

58 C.J.S. Mines and Mineral § 239.

70-2-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 362, § 3, repeals 70-2-20 NMSA 1978, relating to penalty for violations. For present provisions, see 70-2-31 NMSA 1978, effective June 19, 1981.

70-2-21. Purchase, sale or handling of excess oil, natural gas or products prohibited.

A. The sale or purchase or acquisition, or the transportation, refining, processing or handling in any other way, of crude petroleum oil or natural gas in whole or in part produced in excess of the amount allowed by any statute of this state, or by any provision of this act, or by any rule, regulation or order of the commission or division made thereunder, is hereby prohibited, and such oil or commodity is hereby referred to as "illegal oil" or "illegal gas," as the case may be.

B. The sale or purchase or acquisition, or the transportation, refining, processing or the handling in any other way, of any product of crude petroleum or any product of natural gas, which product is derived in whole or in part from crude petroleum oil or natural gas produced in whole or in part in excess of the amount allowed by any statute of this state, or by any provisions of this act, or by any rule, regulation or order of the commission or division made thereunder, is hereby prohibited, and each such commodity or product is herein referred to as "illegal oil product" to distinguish it from "legal oil product," or "illegal gas product" to distinguish it from "legal gas product."

History: Laws 1935, ch. 72, § 13; 1941 Comp., § 69-219; Laws 1949, ch. 168, § 15; 1953 Comp., § 65-3-18; Laws 1977, ch. 255, § 56.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 161.

58 C.J.S. Mines and Minerals §§ 239, 240.

70-2-22. Rules and regulations to effectuate prohibitions against purchase or handling of excess oil or natural gas; penalties.

A. The division is specifically authorized and directed to make such rules, regulations and orders, and may provide for such certificates of clearance or tenders, as

may be necessary to make effective the prohibitions contained in Section 70-2-21 NMSA 1978.

B. Unless and until the division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale or purchase or acquisition, or of transportation, refining, processing or handling in any other way, involves illegal oil or illegal oil product, or illegal gas or illegal gas product, no penalty shall be imposed for the sale or purchase or acquisition, or the transportation, refining, processing or handling in any other way, of illegal oil or illegal oil product, or illegal gas or illegal gas product, except under circumstances stated in the succeeding provisions of this paragraph. Penalties shall be imposed for the commission of each transaction prohibited in Section 70-2-21 NMSA 1978 when the person committing the same knows that illegal oil or illegal oil product, or illegal gas or illegal gas product, is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this act shall apply to any sale or purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil or illegal oil product, or illegal gas or illegal gas product where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell or purchase or acquire, or to transport, refine, process or handle in any way any crude petroleum oil or natural gas or any product thereof without complying with the rule, regulation or order of the commission or division relating thereto.

History: Laws 1935, ch. 72, § 14; 1941 Comp., § 69-220; Laws 1949, ch. 168, § 16; 1953 Comp., § 65-3-19; Laws 1977, ch. 255, § 57.

ANNOTATIONS

Cross references. — For filing rules and regulations, *see* 14-4-3 NMSA 1978.

70-2-23. Hearings on rules, regulations and orders; notice; emergency rules.

Except as provided for herein, before any rule, regulation or order, including revocation, change, renewal or extension thereof, shall be made under the provisions of this act, a public hearing shall be held at such time, place and manner as may be prescribed by the division. The division shall first give reasonable notice of such hearing (in no case less than ten days, except in an emergency) and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard. In case an emergency is found to exist by the division which in its judgment requires the making of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than fifteen days from its

effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

History: Laws 1935, ch. 72, § 15; 1941 Comp., § 69-221; Laws 1949, ch. 168, § 17; 1953 Comp., § 65-3-20; Laws 1977, ch. 255, § 58.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Notice of proceedings. — Commission's order increasing spacing requirements for deep wildcat gas wells in certain areas of the state was invalid as to individual holders of working interests and operating rights affected thereby because the holders were not afforded reasonable notice of the proceedings as required by the New Mexico Oil and Gas Act and its implementing regulations. *Johnson v. N.M. Oil Conservation Comm'n*, 1999-NMSC-021, 127 N.M. 120, 978 P.2d 327.

Reasonable notice mandate. — The reasonable notice mandate of this section should circumscribe whatever rules are promulgated for the purpose of notifying interested persons, so where the New Mexico oil conservation commission's notice for promulgating a new rule was issued on behalf of the state of New Mexico, was given under the commission's seal, was signed by the chairman of the commission, stated the date, time, and place of the hearing, and gave the date by which written comments were required to be submitted, was published in the *Albuquerque Journal*, on the commission docket, which was mailed electronically to those who requested it, in the *New Mexico Register*, and on the oil conservation division's website, and all notices were timely, the commission satisfied all notice requirements prescribed by statute and regulation. *Earthworks' Oil & Gas Accountability Project v. N.M. Oil Conservation Comm'n*, 2016-NMCA-055, cert. denied.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 294 et seq.

73 C.J.S. Public Administrative Law and Procedure §§ 103 to 106.

70-2-24. Reports of governmental departments or agencies as to market demand to be deemed prima facie correct.

The reports, estimates, findings of fact or similar documents or findings of the United States bureau of mines, or of any other department or agency of the United States government, or of any bureau or agency under an interstate compact to which the state of New Mexico is a party made with respect to the reasonable market demand for crude

petroleum oil, may be considered by the division or by any court and taken as being prima facie correct.

History: Laws 1935, ch. 72, § 16; 1941 Comp., § 69-222; Laws 1949, ch. 168, § 18; 1953 Comp., § 65-3-21; Laws 1977, ch. 255, § 59.

70-2-25. Rehearings; appeals.

A. Within twenty days after entry of an order or decision of the commission, a party of record adversely affected 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 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 enter a new order or decision after rehearing as may be required under the circumstances.

B. A party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1935, ch. 72, § 17; 1941 Comp., § 69-223; Laws 1949, ch. 168, § 19; 1953 Comp., § 65-3-22; Laws 1979, ch. 133, § 1; 1981, ch. 63, § 2; 1998, ch. 55, § 85; 1999, ch. 265, § 87.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For Rules of Appellate Procedure, *see* Rule 12-101 NMRA et seq.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection B.

The 1998 amendment, effective September 1, 1998, rewrote this section.

Constitutionality. — De novo judicial review of agency action or proration of gas production is not unlawful delegation of power in violation of the basic theory of separation of powers among legislative, executive and judicial branches of government. *State ex rel. Oil Conservation Comm'n v. Brand*, 1959-NMSC-038, 65 N.M. 384, 338 P.2d 113 (decided under prior law).

Subsection A specifically requires filing of application for rehearing setting forth the claimed invalidity of order entered by commission. Its purpose is to afford

commission an opportunity to reconsider and correct erroneous decision. *Pubco Petroleum Corp. v. Oil Conservation Comm'n*, 1965-NMSC-023, 75 N.M. 36, 399 P.2d 932.

Subsection B relates solely to dissatisfied applicant and what he may do following entry of an order on rehearing or refusal of a rehearing. The term "party of record to the rehearing proceeding," as used in Subsection B, means a party who has applied for a rehearing and is dissatisfied with disposition of his application. *Pubco Petroleum Corp. v. Oil Conservation Comm'n*, 1965-NMSC-023, 75 N.M. 36, 399 P.2d 932.

Lack of jurisdiction. — Where plaintiff asked the Oil Conservation Commission to suspend proceeds from two gas wells in conjunction with plaintiff's objection to applications to pool mineral interests; the commission denied the request; plaintiff did not appeal the commission's decision; and plaintiff filed a motion in a quiet title action to suspend proceeds, the district court lacked subject matter jurisdiction to rule on the motion. *Edwin Smith, LLC v. Clark*, 2011-NMCA-003, 149 N.M. 249, 247 P.3d 1134, *rev'd, Edwin Smith, LLC v. Synergy Operating, LLC*, 2012-NMSC-034, 285 P.3d 656.

Commission's judicial decision preclusive. — Commission was acting in a judicial capacity when it approved a proposed unitization plan; its decision was therefore entitled to preclusive effect. *Amoco Prod. Co. v. Heimann*, 904 F.2d 1405 (10th Cir. 1990), cert. denied, 498 U.S. 942, 111 S. Ct. 350, 112 L. Ed. 2d 314 (1990).

Supreme court review of commission's action. — The supreme court makes same review of commission's action as did district court. It is restricted to considering whether, as a matter of law, commission's action is consistent with and within scope of its statutory authority, and whether administrative orders are supported by substantial evidence. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

Sufficiency of commission's findings. — Since appellant had filed two applications with the commission seeking either establishment of certain property within a gas pool as separate and distinct pool with special pool rules for production or, as an alternative, exemption of his wells from prorationing within gas pool and establishment of special production allowables, and at commission hearing appellant elicited evidence from his sole witness tending to support his applications, but commission did not put on any testimony, merely cross-examining appellant's witness, the record failing to provide any illumination as to why the testimony was wrong and should be disregarded, and nevertheless, commission found there was single common source of supply, that granting the applications would violate correlative rights and that their denial was necessary to prevent waste, it was held that administrative findings sufficiently extensive to show basis of commission's order was utterly lacking and reversal was thereby required. *Fasken v. Oil Conservation Comm'n*, 1975-NMSC-009, 87 N.M. 292, 532 P.2d 588.

In cases when sufficiency of the commission's findings is in issue or their substantial support is questioned, it must appear: (1) that commission made findings of ultimate facts which are material to the issues, having to do with such ultimate factors as whether a common source of supply exists, prevention of waste, protection of correlative rights and matters relative to net drainage, (2) that commission made sufficient findings to disclose reasoning of the commission in reaching its ultimate findings, and (3) findings must have substantial support in the record. *Fasken v. Oil Conservation Comm'n*, 1975-NMSC-009, 87 N.M. 292, 532 P.2d 588.

Question whether commission's order instituting prorationing in a pool was arbitrary, unreasonable, unlawful and capricious because of lack of substantial evidence that wells were producing from same pool and because commission failed to determine amount of recoverable gas under each tract or in the pool was question of fact and not one of jurisdiction. *Grace v. Oil Conservation Comm'n*, 1975-NMSC-001, 87 N.M. 205, 531 P.2d 939.

Lack of jurisdiction. — Since corporation failed to exhaust its statutory administrative remedies, trial court was without jurisdiction to entertain review of the order of commission. *Pubco Petroleum Corp. v. Oil Conservation Comm'n*, 1965-NMSC-023, 75 N.M. 36, 399 P.2d 932.

Commission is necessary adverse party to an appeal of one of its decisions and it was error for trial court to refuse to allow commission to participate as such. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

"Entry of an order" means entering order upon a minute book or other proper book used to record the official acts of the commission. 1954 Op. Att'y Gen. No. 54-5927.

Law reviews. — For comment on Cont'l Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Res. J. 178 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 392 et seq., § 415 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 161, 162, 172 to 190.

70-2-26. Review of oil conservation commission decision; appeals.

The secretary of energy, minerals and natural resources may hold a public hearing to determine whether an order or decision issued by the commission contravenes the public interest. The hearing shall be held within twenty days after the entry of the commission order or decision following a rehearing or after the order refusing a rehearing. The hearing shall be a de novo proceeding, and the secretary shall enter such order or decision as may be required under the circumstances, having due regard for the conservation of the state's oil, gas and mineral resources, and the commission shall modify its own order or decision to comply therewith. If a rehearing before the

commission was granted, the record of the rehearing shall be made part of the record of the hearing before the secretary. If the application for rehearing was denied, the record of the hearing before the commission or the oil conservation division shall be made part of the record of the hearing before the secretary. Orders and decisions of the secretary may be appealed by any party to the original hearing or the rehearing before the commission or by any party to the hearing before the secretary held pursuant to this section, in accordance with the procedure of Subsections B, C and D of Section 70-2-25 NMSA 1978, except that the appeal shall not be a de novo proceeding and shall be limited to a review of the record of the hearing held pursuant to the provisions of this section.

History: 1953 Comp., § 65-3-22.1, enacted by Laws 1977, ch. 255, § 60; 1987, ch. 234, § 62.

ANNOTATIONS

The 1987 amendment, effective July 1, 1987, in the first sentence substituted "energy, minerals and natural resources" for "energy and minerals department" near the beginning and substituted "commission contravenes the public interest" for "oil conservation commission contravenes the department's statewide plan or the public interest" at the end; in the fifth sentence substituted "the commission or the oil conservation division" for "commission or the division"; in the middle of the sixth sentence substituted "Subsections B, C and D of Section 70-2-25 NMSA 1978" for "Subsections (b), (c) and (d) of Section 65-3-22 NMSA 1953"; and made minor changes in language throughout the section.

Section 70-2-225 NMSA 1978. — Section 70-2-225 NMSA 1978, as rewritten by Laws 1998, ch. 55, § 85, effective September 1, 1998, no longer contains a Subsection C or D, or specific procedures for appeal of commission orders or decisions.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 369 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 166 to 171.

70-2-27. Temporary restraining order or injuction [injunction]; grounds; hearing; bond.

A. No temporary restraining order or injunction of any kind shall be granted against the commission or the members thereof, or against the attorney general, or against any agent, employee or representative of the division, restraining the commission, or any of its members, or the division or any of its agents, employees or representatives, or the attorney general, from enforcing any statute of this state relating to conservation of oil or gas, or any of the provisions of this act, or any rule, regulation or order made thereunder, except after due notice to the director of the division, and to all other defendants, and after a hearing at which it shall be clearly shown to the court that the

act done or threatened is without sanction of law, or that the provision of this act, or the rule, regulation or order complained of, is invalid, and that, if enforced against the complaining party, will cause an irreparable injury. With respect to an order to [or] decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the state, or of any provision of this act, or of any rule, regulation or order thereunder involved in such suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

B. No temporary injunction of any kind, including a temporary restraining order against the commission or the members thereof, or the division or its agents, employees or representatives, or the attorney general, shall become effective until the plaintiff shall execute a bond to the state with sufficient surety in an amount to be fixed by the court reasonably sufficient to indemnify all persons who may suffer damage by reason of the violation pendente lite by the complaining party of the statute or the provisions of this act or of any rule, regulation or order complained of. Any person so suffering damage may bring suit thereon before the expiration of six months after the statute, provision, rule, regulation or order complained of shall be finally held to be valid, in whole or in part, or such suit against the commission, or the members thereof, or the division, shall be finally dismissed. Such bond shall be approved by the judge of the court in which the suit is pending, and shall be for the use and benefit of all persons who may suffer damage by reason of the violation pendente lite of the statute, provision, rule, regulation or order complained of in such suit, and who may bring suit within the time prescribed by this section; and such bond shall be so conditioned. From time to time, on motion and with notice to the parties, the court may increase or decrease the amount of the bond and may require new or additional sureties, as the facts may warrant.

History: Laws 1935, ch. 72, § 18; 1941 Comp., § 69-224; Laws 1949, ch. 168, § 20; 1953 Comp., § 65-3-23; Laws 1977, ch. 255, § 61.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

70-2-28. Actions for violations.

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 or 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 in 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. In such 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.

History: Laws 1935, ch. 72, § 19; 1941 Comp., § 69-225; Laws 1949, ch. 168, § 21; 1953 Comp., § 65-3-24; Laws 1977, ch. 255, § 62.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Cross references. — For forfeiture and sale of illegal oil or gas, *see* 70-2-32 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 C.J.S. Mines and Minerals § 242.

70-2-29. Actions for damages; institution of actions for injunctions by private parties.

Nothing in this act contained or authorized, and no suit by or against the commission or the division, and no penalties imposed or claimed against any person for violating any statute of this state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any statute of the state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he may be entitled to receive. In the event the division should fail to bring suit to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of this act, or of any rule, regulation or order made thereunder, then any person or party in interest adversely affected by such violation, and who has notified the division in writing of such violation or threat thereof and has requested the division to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the division could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the division shall be made a party and shall be substituted for the person who brought the suit, and

the injunction shall be issued as if the division had at all times been the complaining party.

History: Laws 1935, ch. 72, § 20; 1941 Comp., § 69-226; Laws 1949, ch. 168, § 22; 1953 Comp., § 65-3-25; Laws 1977, ch. 255, § 63.

ANNOTATIONS

Compiler's notes. — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Cross references. — For when indemnity agreements are void, *see* 56-7-2 NMSA 1978.

70-2-30. [Violation of court order grounds for appointment of receiver.]

The violation by any person of an order of the court relating to the operation of a well or wells, or of a pipeline or other transportation, equipment or facility, or of a refinery, or of a plant of any kind, shall be sufficient ground for the appointment of a receiver with power to conduct operations in accordance with the order of the court.

History: Laws 1935, ch. 72, § 21; 1941 Comp., § 69-227; Laws 1949, ch. 168, § 23; 1953 Comp., § 65-3-26.

ANNOTATIONS

Cross references. — For appointment of receivers, *see* Rules 1-065 and 1-066 NMRA.

70-2-31. Violations of the Oil and Gas Act; penalties.

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

(1) issuing a notice of violation;

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

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

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

C. If the notice of violation is not resolved informally within thirty days after service of the notice, the division shall hold a hearing and determine whether the violation should be upheld and whether any sanctions, including civil penalties, shall be assessed. In assessing a penalty authorized by this section, the division shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, any history of noncompliance under the Oil and Gas Act and other relevant factors. When a decision is rendered by the division after a hearing, any party of record adversely affected shall have the right to have the matter heard de novo before the commission pursuant to Section 70-2-13 NMSA 1978.

D. Any civil penalty assessed by a court or by the division or commission pursuant to this section may not exceed two thousand five hundred dollars ($2,500) per day of noncompliance for each violation unless the violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond a time specified in the notice of violation or order issued by the division, commission or court, whereupon the civil penalty may not exceed ten thousand dollars ($10,000) per day of noncompliance for each violation. No penalty assessed by the division or commission after a hearing may exceed two hundred thousand dollars ($200,000); provided that such limitation does not apply to penalties assessed by a court.

E. The commission shall make rules, pursuant to Section 70-2-12.2 NMSA 1978, providing procedures for the issuance of notices of violations, the assessment of penalties and the conduct of informal proceedings and hearings pursuant to this section.

F. It is unlawful, subject to a criminal penalty of a fine of not more than five thousand dollars ($5,000) 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 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 issued pursuant to that act:

(a) make any false entry or statement in a report required by the Oil and Gas Act or by any rule, regulation or order of the commission or division 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 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

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

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

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

History: 1978 Comp., § 70-2-31, enacted by Laws 1981, ch. 362, § 1; 2019, ch. 197, § 7.

ANNOTATIONS

Repeals and reenactments. — Laws 1981, ch. 362, § 1, repealed former 70-2-31 NMSA 1978 and enacted a new section, relating to the same subject matter.

Cross references. — For disposition of fines and forfeitures under general laws, *see* N.M. Const., art. XII, § 4.

The 2019 amendment, effective January 1, 2020, revised certain penalty provisions for violations of the Oil and Gas Act; deleted former Subsection A, added new Subsections A through E and redesignated former Subsections B through D as Subsections F through H, respectively; in Subsection G, after "Subsection", deleted "B" and added "F"; and in Subsection H, after "Subsection A or", deleted "B" and added "F", and after "prescribed", deleted "therein" and added "in Subsection D or F of this section".

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 C.J.S. Mines and Minerals § 241.

70-2-31.1. Reporting requirement.

No later than October 1 of each year, the division shall report to the appropriate interim committee of the legislature and to the governor and shall post on the agency website:

A. the number of notices of violation that the division issued pursuant to the Oil and Gas Act during the previous fiscal year;

B. the total amount of penalties collected by the division for violations pursuant to the Oil and Gas Act during the previous fiscal year;

C. for each penalty collected, the following information:

(1) the name of the person penalized and the location of the violation; and

(2) the nature of the violation and the calculation of the penalty collected; and

D. the number and nature of lawsuits filed for a violation of the Oil and Gas Act, including the names of defendants, the nature of the violation and the outcome of the litigation.

History: Laws 2019, ch. 197, § 9.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 197, § 13 made Laws 2019, ch. 197, § 9 effective January 1, 2020.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

70-2-32. Seizure and sale of illegal oil or gas or products; procedure.

A. Apart from, and in addition to, any other remedy or procedure which may be available to the commission or the division, or any penalty which may be sought against or imposed upon any person, with respect to violations relating to illegal oil or illegal gas or illegal products thereof, all such oil or gas or products thereof shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. The sale shall not take place unless the court finds in the proceeding provided in this section that the owner of such illegal oil or illegal gas or product thereof is liable, or in some proceeding authorized by Sections 70-2-1 through 70-2-34 NMSA 1978, such owner has already been held to be liable, for penalty for having produced the illegal oil or illegal gas, or for having purchased or acquired the illegal oil or illegal gas or product thereof. Whenever the division believes that illegal oil or illegal gas or product thereof is subject to seizure and sale, as provided herein, it shall, through the attorney general, bring a civil action in rem for that purpose

in the district court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross-action for injunction or for penalty relating to any prohibited transaction involving the illegal oil or illegal gas or product thereof. Notice of the action in rem shall be given in conformity with the law or rule applicable to such proceeding. Any person or party in interest who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in the suit to protect his rights.

B. Whenever the pleading with respect to the forfeiture of illegal oil or illegal gas or product thereof shows ground for seizure and sale, and the pleading is verified or is supported by affidavit or affidavits, or by testimony under oath, the court shall order such commodity to be impounded or placed under the control, actual or constructive, of the court through an agent appointed by the court.

C. The judgment affecting the forfeiture shall provide that the commodity be seized, if not already under the control of the court, and that a sale be had in similar manner and with similar notice as provided by law or rule with respect to the sale of personal property under execution; provided, however, the court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the seizure. The judgment shall provide for payment of the proceeds of the sale into the common school fund, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil or legal gas or product thereof, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing or handling in any other way, of the commodity purchased.

D. Nothing in this section shall deny or abridge any cause of action a royalty owner, or any lienholder, or any other claimant, may have, because of the forfeiture of the illegal oil or illegal gas or product thereof, against the person whose act resulted in such forfeiture.

History: 1953 Comp., § 65-3-28, enacted by Laws 1978, ch. 58, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 58, § 1, repealed 65-3-28, 1953 Comp. (former 70-2-32 NMSA 1978), relating to procedure for seizure and sale of illegal oil or gas or products, and enacted a new section.

Cross references. — For sale on execution, *see* 39-5-1 NMSA 1978.

70-2-33. Definitions.

As used in the Oil and Gas Act:

A. "person" means:

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

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

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

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

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

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

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

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

H. "correlative rights" means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under

the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy;

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

J. "casinghead gas" means any gas or vapor or both indigenous to an oil stratum and produced from such stratum with oil, including any residue gas remaining after the processing of casinghead gas to remove its liquid components;

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

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

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

History: Laws 1935, ch. 72, § 24; 1941 Comp., § 69-230; Laws 1949, ch. 168, § 26; 1953 Comp., § 65-3-29; Laws 1965, ch. 58, § 4; 1982, ch. 51, § 1; 1986, ch. 56, § 1; 2004, ch. 87, § 2; 2019, ch. 197, § 8.

ANNOTATIONS

Cross references. — For definition of "waste," *see* 70-2-3 NMSA 1978.

For definition of "carbon dioxide gas," *see* 70-2-34 NMSA 1978.

The 2019 amendment, effective July 1, 2019, defined "commission" and "division", and revised the definition of "produced water", as used in the Oil and Gas Act; in Subsection K, after "means", deleted "water" and added "a fluid"; and added Subsections L and M.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

The 2004 amendment, effective May 19, 2004, added Subsection K.

The 1986 amendment, effective May 21, 1986, added Subsection J and made stylistic changes throughout the section.

Relationship between prevention of waste and protection of correlative rights. — The prevention of waste is of paramount interest to the legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes the term "without waste." However, protection of correlative rights is a necessary adjunct to the prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Protection of correlative rights. — Although subservient to prevention of waste and perhaps to the practicalities of the situation, protection of correlative rights must depend upon commission's findings as to extent and limitations of the right. This the commission is required to do under legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Required findings by commission to protect correlative rights. — In order to protect correlative rights, it is incumbent upon commission to determine, "so far as it is practical to do so," certain foundationary matters, without which correlative rights of various owners cannot be ascertained. Therefore, the commission, by "basic conclusions of fact" (or what might be termed "findings"), must determine, insofar as practicable: (1) amount of recoverable gas under each producer's tract; (2) total amount of recoverable gas in the pool; (3) proportion that (1) bears to (2); and (4) what portion of the arrived at proportion can be recovered without waste. That extent of the correlative rights must first be determined before commission can act to protect them is manifest. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Commission's findings upheld. — When commission exercises its duty to allow each interest owner in a pool his just and equitable share of the oil or gas underlying his property, mandate to determine the extent of those correlative rights is subject to the qualification as far as it is practicable to do so, and where commission established participation formula giving each owner in the unit a share in production in the same ratio as his acreage bore to the acreage of the whole units, the supreme court found that such a formula was reasonable and logical, if perhaps not the most complete or accurate method that may be used when more subsurface information becomes available. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 87 N.M. 286, 532 P.2d 582.

New proration formula to be based on recoverable gas. — Lacking a finding that a new gas proration formula is based on the amounts of recoverable gas in the pool and under the tracts, insofar as these amounts can be practically determined and obtained without waste, a supposedly valid order in current use cannot be replaced. Such findings are necessary requisites to the validity of order, for it is upon them that the very power of commission to act depends. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Prevention of drainage between producing tracts. — In addition to making findings to protect correlative rights, commission, "insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage," under the provisions of 70-2-16C NMSA 1978. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Elements of property rights of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2)

only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809.

Law reviews. — For comment on Cont'l Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Res. J. 178 (1963).

For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 Nat. Res. J. 316 (1963).

For comment on El Paso Natural Gas Co. v. Oil Conservation Comm'n, 76 N.M. 268, 414 P.2d 496 (1966), see 7 Nat. Res. J. 425 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 145, 157.

58 C.J.S. Mines and Minerals §§ 229, 240.

70-2-34. Regulation, conservation and prevention of waste of carbon dioxide, helium and other non-hydrocarbon gases.

A. The oil conservation division shall adopt and administer rules on the conservation, the production and the prevention of waste of carbon dioxide, helium and other non-hydrocarbon gases in the same manner as it regulates, conserves and prevents waste of natural or hydrocarbon gas. Where applicable, the provisions of the Oil and Gas Act relating to gas or natural gas shall also apply to carbon dioxide, helium and other non-hydrocarbon gases.

B. The commission shall have concurrent jurisdiction and authority with the oil conservation division to the extent necessary for the commission to perform its duties as required by law.

C. As used in this section:

(1) "carbon dioxide" means a noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks;

(2) "helium" means a gas composed of the elemental gas helium and found in underground rocks, often along with other gases; and

(3) "other non-hydrocarbon gases" means noncombustible gases found in underground rocks, often along with other gases.

History: Laws 1935, ch. 72, § 28, enacted by Laws 1937, ch. 193, § 1; 1941 Comp., § 69-232; Laws 1949, ch. 168, § 28; 1953 Comp., § 65-3-31; Laws 1977, ch. 255, § 66; 2003, ch. 12, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, rewrote the section to include coverage of helium and other non-hydrocarbon gases and to add Subsection C.

70-2-35. Legal representation before the federal energy regulatory commission.

There may be a special assistant attorney general employed by the energy, minerals and natural resources department who shall represent the interests of this state before the federal energy regulatory commission. In addition, this attorney shall work closely with other agencies having responsibilities relating to oil and gas matters and shall carry out such additional responsibilities as are delegated to him by the energy, minerals and natural resources department. All costs incurred in employing such counsel shall be paid out of the oil conservation fund in accordance with provisions of the State Budgets Act.

History: 1953 Comp., § 65-3-35, enacted by Laws 1973, ch. 347, § 1; 1977, ch. 255, § 67; 1987, ch. 234, § 63.

ANNOTATIONS

Compiler's notes. — The State Budgets Act, referred to in the last sentence, apparently means those provisions found in Article 3 of Chapter 6 NMSA 1978.

The 1987 amendment, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" in the first sentence, at the end of the second sentence, substituted "federal energy regulatory commission" for "federal power commission", and made minor changes in language throughout the section.

70-2-36. Removing or altering marks of identification; penalty.

A. No person shall remove, alter or attempt to remove or alter, any serial number, brand name, trademark or any other mark of identification from any tool or any other item of construction or oil field equipment by grinding, filing, welding or any other method with the intent to deprive its lawful owner of positive identification.

B. Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000) or imprisoned for a definite term of not more than one year or both.

History: 1953 Comp., § 65-3-36, enacted by Laws 1975, ch. 73, § 1.

70-2-36.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 9, § 45A repeals 70-2-36.1 NMSA 1978, as amended by Laws 1989, ch. 130, § 12, relating to creation and disposition of the conservation fund, effective July 1, 1991. For provisions of former section, *see* 1989 Cumulative Supplement.

70-2-37. Oil and gas reclamation fund created; disposition of fund.

There is created the "oil and gas reclamation fund". In addition to other sources, money in the fund may consist of donations. All funds in the oil and gas reclamation fund are appropriated to the energy, minerals and natural resources department for use by the oil conservation division in carrying out the provisions of the Oil and Gas Act.

History: 1953 Comp., § 65-3-37, enacted by Laws 1977, ch. 237, § 4; 1978, ch. 117, § 2; 1987, ch. 234, § 64; 1989, ch. 324, § 33; 2010, ch. 98, § 3.

ANNOTATIONS

The 2010 amendment, effective May 10, 2010, added the second sentence.

The 1989 amendment, effective April 7, 1989, deleted "and the earnings therefrom" following "gas reclamation fund" in the second sentence.

The 1987 amendment, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" and made a minor language change.

70-2-38. Oil and gas reclamation fund administered; plugging wells on federal land; right of indemnification; annual report; contractors selling equipment for salvage.

A. The oil and gas reclamation fund shall be administered by the oil conservation division of the energy, minerals and natural resources department. Expenditures from the fund may be used by the director of the division for the purposes of:

(1) employing the necessary personnel to survey abandoned wells, well sites and associated production facilities and preparing plans for administering and performing the plugging of abandoned wells that have not been plugged or that have been improperly plugged and for the restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated; and

(2) supporting energy education throughout the state in an amount not to exceed one hundred fifty thousand dollars ($150,000) annually.

B. The director of the oil conservation division of the energy, minerals and natural resources department, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug all abandoned wells and shall restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the Oil and Gas Act and the rules and regulations promulgated pursuant to that act. The division may order wells plugged and well sites and associated production facilities restored and remediated on federal lands on which there are no bonds running to the benefit of the state in the same manner and in accordance with the same procedure as with wells drilled on state and fee land, including using funds from the oil and gas reclamation fund to pay the cost of plugging. When the costs of plugging a well or restoring and remediating well sites and associated production facilities are paid from the oil and gas reclamation fund, the division is authorized to bring a suit against the operator or district court of the county in which the well is located for indemnification for all costs incurred by the division in plugging the well or restoring and remediating the well site and associated production facilities. Any funds collected pursuant to a judgment in a suit for indemnification brought under the Oil and Gas Act shall be deposited in the oil and gas reclamation fund.

C. The director of the oil conservation division of the energy, minerals and natural resources department shall make an annual report to the secretary of energy, minerals and natural resources, the governor and the legislature on the use of the oil and gas reclamation fund.

D. Contracts for plugging, reclamation and energy education pursuant to this section shall be entered into in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978]. A contractor employed by the oil conservation division of the energy, minerals and natural resources department to plug a well or restore or remediate a well site or associated production facility is authorized to sell the equipment and material or product that is removed from the well, site or facility and to deduct the proceeds of the sales from the costs of plugging, restoring or remediating.

E. As used in this section, "associated production facilities" means those facilities used for, intended to be used for or that have been used for the production, treatment, transportation, storage or disposal of oil, gas, brine, product or waste generated during oil and gas operations or used in the production of oil and gas if that facility is, has been or would have been subject to regulation by the oil conservation division of the energy, minerals and natural resources department or the oil conservation commission pursuant to the Oil and Gas Act or the Water Quality Act [Chapter 74, Article 6 NMSA 1978].

History: 1953 Comp., § 65-3-38, enacted by Laws 1977, ch. 237, § 5; 1978, ch. 117, § 3; 1981, ch. 372, § 1; 1987, ch. 234, § 65; 1996, ch. 72, § 3; 2003, ch. 433, § 3; 2010, ch. 98, § 4.

ANNOTATIONS

The 2010 amendment, effective May 19, 2010, in Subsection A(1), after "preparing plans for", added "administering and performing"; in Subsection B, in the third sentence, after "plugging a well", deleted "drilled on federal mineral leases"; in Subsection D, in the second sentence, after "to plug a well", added "or restore or remediate a well site or associated production facility"; after "authorized to sell", deleted "for salvage"; after "equipment and material", added "or product"; and after "removed from the well", deleted "in plugging it"; and added the remainder of the sentence; and added Subsection E.

The 2003 amendment, effective July 1, 2003, inserted the Paragraph A(1) designation and added Paragraph A(2); inserted the Subsection B designation and redesignated the remaining subsections; in Subsection B, added the descriptive language following "director" near the beginning; inserted "Contracts for plugging, reclamation and energy education pursuant to this section" at the beginning of Subsection D.

The 1996 amendment, effective May 15, 1996, rewrote this section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Duty of oil or gas lessee to restore surface of leased premises upon termination of operations, 62 A.L.R.4th 1153.

70-2-39. Fees; appropriation.

A. The following fees are required to be paid to the oil conservation division of the energy, minerals and natural resources department:

(1) with each application for a non-federal and non-Indian permit to drill, deepen, plug back or reenter a well, the applicant shall submit to the division a nonrefundable fee of five hundred dollars ($500);

(2) with each individual application for administrative approval of a non-standard location, downhole commingle, surface commingle, off-lease measurement, release notification and corrective action, change of operator, application for modification to surface waste management facility, request for the creation of a new pool, proposed alternative method permit or closure plan application or authorization to move produced water, the applicant shall submit to the division a nonrefundable fee of one hundred fifty dollars ($150);

(3) with each application for a fluid injection well permit, the applicant shall submit to the division a nonrefundable fee of five hundred dollars ($500) per well;

(4) with each application for a permit for a commercial surface waste management facility, landfill or landfarm, the applicant shall submit to the division a nonrefundable fee of ten thousand dollars ($10,000) per facility;

(5) with each application for an administrative hearing, re-hearing or de novo hearing before the division or commission, the applicant shall submit to the division a nonrefundable fee of five hundred dollars ($500) per application; and

(6) with each application for a continuance of an administrative hearing, re-hearing or de novo hearing before the division or commission, the applicant shall submit to the division a nonrefundable fee of one hundred fifty dollars ($150) per application.

B. An application for an administrative hearing, re-hearing or de novo hearing before the oil conservation division or commission will be considered to be materially amended if the amendment is made for a purpose other than to correct:

(1) typographical errors; or

(2) clerical errors.

C. The "oil conservation division systems and hearings fund" is created in the state treasury as a nonreverting fund. All funds received by the oil conservation division from fees imposed pursuant to Subsection A of this section shall be delivered to the state treasurer and deposited in the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative. Money in the fund is subject to appropriation by the legislature to the division to develop and modernize the division's online application processing system, online case management system and online case file system and for other technological upgrades and hearing administration costs. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund. Money in the fund in fiscal year 2020 may be expended by the division for the purposes of the fund.

History: Laws 2019, ch. 260, § 1

ANNOTATIONS

Effective dates. — Laws 2019, ch. 260, § 2 made Laws 2019, ch. 260, § 1 effective July 1, 2019.

ARTICLE 3
Pipelines

70-3-1. [Rates for pipeline common carriers transporting oil or products between points in New Mexico.]

The corporation commission [public regulation commission] may prescribe reasonable maximum rates for the transportation of oil and the products derived

therefrom, where such products are transported by a pipeline common carrier from any point in New Mexico to an ultimate destination in New Mexico, provided, in the event the reasonableness of such rates are [is] contested in the manner provided by law, the burden of proof to show the unreasonableness of such rates shall be upon the person, firm, association or corporation contesting the same.

History: 1941 Comp., § 69-315, enacted by Laws 1953, ch. 42, § 2; 1953 Comp., § 65-4-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Law reviews. — For note, "The Use of Eminent Domain for Oil and Gas Pipelines in New Mexico," see 4 Nat. Res. J. 360 (1964).

For article, "Memories and Miracles Housing the Rural Poor along the United States-Mexico Border: A Comparative Discussion of Colonia Formation and Remediation in El Paso County, Texas, and Dona Ana County, New Mexico," see 27 N.M.L. Rev. 33 (1997).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines § 4.

13 C.J.S. Carriers §§ 138 to 194.

70-3-2. License; fees; disposition.

Each operator of a pipeline or pipelines operated in the state of New Mexico for the transportation of crude oil, natural gas or the products derived therefrom shall, during the month of July, obtain a license for the operation of such pipeline. Application for such license shall be made upon a form to be provided by the corporation commission [public regulation commission] and shall be accompanied by the license fee determined as hereinafter provided. On receipt of such application and license fee, the corporation commission [public regulation commission] shall issue a license to the applicant for the current fiscal year. All license fees so collected shall be paid to the state treasurer, and by him credited to the general fund.

SCHEDULE OF ANNUAL LICENSE FEES

A. Each person, firm, association or corporation transporting natural gas or the products derived therefrom by pipeline or pipelines in New Mexico, and operating a pipeline or pipelines and appurtenant facilities within New Mexico, shall pay an annual

license fee of five hundred dollars ($500) at the time of making the application required by this section. An additional fee shall be paid, measured by the aggregate installed rated horsepower of compression facilities located within New Mexico, and operated by the licensee in accordance with the following schedule:

(1) not exceeding 10,000 horsepower, the minimum fee with no additional fee;

(2) more than 10,000 horsepower and not more than 30,000 horsepower, the minimum fee plus $2,275.00;

(3) more than 30,000 horsepower and not more than 50,000 horsepower, the minimum fee plus $4,000.00;

(4) more than 50,000 horsepower and not more than 75,000 horsepower, the minimum fee plus $5,000.00;

(5) more than 75,000 horsepower and not more than 100,000 horsepower, the minimum fee plus $5,500.00;

(6) more than 100,000 horsepower, the minimum fee plus $5,925.00 and plus $75.00 additional for each 10,000 horsepower or fraction thereof in excess of 100,000 horsepower.

B. Each operator of a pipeline or pipelines for the transportation of oil or the products derived therefrom shall pay the following fees, based on the number of miles of such line operated in New Mexico:

A basic fee of five hundred dollars ($500) and in addition fees computed in accordance with the following schedule:

(1) for all lines up to and including eight inches in diameter:

$13.00 per mile for the first 50 miles;

$7.00 per mile for the next 25 miles;

$4.00 per mile for the next 25 miles;

$1.00 per mile for each mile in excess of 100 miles;

(2) for all lines more than eight inches in diameter:

$18.00 per mile for the first 25 miles;

$13.00 per mile for the next 25 miles;

$9.00 per mile for the next 25 miles;

$6.00 per mile for the next 25 miles;

$2.00 per mile for each mile in excess of 100 miles.

For purposes of determining the license fees payable under the provisions of this Subsection B, any pipeline owned by two or more persons, firms or corporations shall be considered to be a separate pipeline operation to be licensed as such in the name of the operator or owners thereof. The basic fee to be paid in the licensing of such lines under the foregoing fee schedule shall be:

$500 on lines less than twenty inches in diameter;

$850 on lines twenty inches or more in diameter.

History: 1941 Comp., § 69-316, enacted by Laws 1953, ch. 42, § 3; 1953 Comp., § 65-4-3; Laws 1957, ch. 64, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Supreme court lacked jurisdiction to review order of corporation commission (now public regulation commission) requiring oil pipeline company to procure license to operate pipeline and pay the license fee since right to remove orders to court for review was limited to orders made under powers granted commission by N.M. Const., art. XI, § 7 (now repealed). *Murchison & Co. v. State Corp. Comm'n*, 1947-NMSC-040, 51 N.M. 285, 183 P.2d 155.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 25.

15 C.J.S. Commerce § 118.

70-3-3. Exceptions.

The foregoing provisions of Section 70-3-2 NMSA 1978 shall not apply to gathering lines or systems operated exclusively for the gathering of oil or gas in any field or area; to any gas distribution system; or to pipelines constituting a part of any tank farm, plant facilities of any processing plant, gasoline plant, refinery, carbon-black plant, pressure maintenance, underground storage projects, recycling system or other similar

operations and such lines and systems shall not be included in computing the fees payable under the licensing provision of Section 70-3-2 NMSA 1978.

History: 1941 Comp., § 69-317, enacted by Laws 1953, ch. 42, § 4; 1953 Comp., § 65-4-4; Laws 1969, ch. 71, § 11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Railroad company's right to permit laying of oil and gas pipeline under its right-of-way, 94 A.L.R. 532, 149 A.L.R. 378.

70-3-4. Pipelines; crossing of railroads and highways.

The crossing of any pipeline operated for the conveyance of oil, natural gas, carbon dioxide gas or the products derived therefrom under any railroad or public road or highway in this state, outside of the confines of any municipal corporation, shall be constructed and maintained according to reasonable rules and regulations adopted by the corporation commission [public regulation commission] of New Mexico, not inconsistent, however, with the applicable requirements of the state highway department.

History: 1941 Comp., § 69-319, enacted by Laws 1953, ch. 42, § 6; 1953 Comp., § 65-4-6; Laws 1980, ch. 20, § 20.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

70-3-5. Eminent domain power.

A. Any person, firm, association or corporation may exercise the right of eminent domain to take and acquire the necessary right-of-way for the construction, maintenance and operation of pipelines, including microwave systems and structures and other necessary facilities for the purpose of conveyance of petroleum, natural gas, carbon dioxide gas and the products derived therefrom, but any such right-of-way shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. Pursuant to the requirements of Sections 42A-1-8 through 42A-

1-12 NMSA 1978, the engineers, surveyors and other employees of such person, firm, association or corporation shall have the right to enter upon the lands and property of the state and of private persons and of private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for such pipelines, microwave systems, structures and other necessary facilities, subject to responsibility for any damage done to such property in making surveys and examinations.

B. The authorization provided for pursuant to Subsection A of this section for pipelines conveying petroleum, natural gas, carbon dioxide gas and products derived therefrom shall apply to trunk lines, including lines owned or operated by public utilities or interstate pipelines connecting a well or wells under a purchase or conveying contract, and shall not apply to gathering lines other than pipelines owned or operated by public utilities or their affiliates or interstate pipelines or to operators of pipelines whose rates are prescribed or whose operations are licensed by the state corporation commission [public regulation commission] pursuant to Section 70-3-1 or 70-3-2 NMSA 1978. For the purposes of this subsection, the term "trunk line" is defined as the main transmission line which transports petroleum, natural gas, carbon dioxide gas and the products derived therefrom from a producing area to the area where the petroleum, natural gas, carbon dioxide gas and the products derived therefrom are to be used. All other pipelines used in connection with such transportation of petroleum, natural gas, carbon dioxide gas and the products derived therefrom are defined as "gathering lines".

History: 1941 Comp., § 69-321, enacted by Laws 1953, ch. 42, § 8; 1953 Comp., § 65-4-8; Laws 1980, ch. 20, § 21; 1981, ch. 125, § 52; 1987, ch. 310, § 1; 1993, ch. 338, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Cross references. — For extension of pipelines, *see* 70-2-19 NMSA 1978.

For eminent domain by public utilities, *see* 42A-2-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, inserted "or conveying" near the middle of the first sentence of Subsection B.

The 1987 amendment, effective July 1, 1987, substituted "petroleum, natural gas, carbon dioxide gas and products derived therefrom" for "carbon dioxide gas" several times in Subsection B; added all of the language beginning with "other than" in the first sentence of Subsection B; and made minor stylistic changes throughout the section.

Compiler's notes. — Laws 1988, ch. 26, § 8, effective May 18, 1988, repeals Laws 1987, ch. 310, § 2, a delayed repeal and reenactment of this section, which was to take effect July 1, 1988. As a result of this repeal, the current provisions of this section, as subsequently amended by Laws 1993, ch. 338, § 1, will remain in effect.

Real and substantial relation to public use must be demonstrated. — In eminent domain proceedings instituted under this section by a private corporation, a real and substantial relation to public use must be demonstrated to the court prior to an affirmative determination of eminent domain authority. *Kennedy v. Yates Petroleum Corp.*, 1984-NMSC-033, 101 N.M. 268, 681 P.2d 53.

Gathering lines not excluded from exercising right of eminent domain. — The legislature could have chosen to exclude gathering lines from exercising the right of eminent domain, but it did not, as revealed by the clear and unambiguous language of this section. *Kennedy v. Yates Petroleum Corp.*, 1986-NMSC-064, 104 N.M. 596, 725 P.2d 572.

Law reviews. — For note, "The Use of Eminent Domain for Oil and Gas Pipelines in New Mexico," see 4 Nat. Res. J. 360 (1964).

For case comment, "Eminent Domain - Review of Route Selection Made by Public Utility Through Private Wildlife Refuge," see 8 Nat. Res. J. 1 (1968).

For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

For note, "Natural Gas Pipelines and Eminent Domain: Can a Public Use Exist in a Pipeline?", see 25 Nat. Res. J. 829 (1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain § 87; 61 Am. Jur. 2d Pipelines §§ 20 to 38.

Correlative rights of dominant and servient owners in right-of-way for pipeline, 28 A.L.R.2d 626.

Condemnor's acquisition of, or right to, minerals under land taken in eminent domain, 36 A.L.R.2d 1424.

Elements and measure of compensation for oil or gas pipeline through private property, 38 A.L.R.2d 788, 23 A.L.R.4th 631.

Construction and effect of provision for payment of damage to "crops" or "growing crops" in mineral deed or lease, or in conveyance of pipeline or other underground easement, 87 A.L.R.2d 235.

Liability of one maintaining pipeline for transportation of gas or other dangerous substances for injury or property damage sustained by one using surface, 30 A.L.R.3d 685.

29A C.J.S. Eminent Domain §§ 25, 48.

70-3-6. [Private telegraph or telephone line along right-of-way of pipeline.]

The owners or operators of any pipelines for which any right-of-way is obtained under the provisions of this act shall be entitled to erect and construct a telephone or telegraph line upon and along such right-of-way for use in the operation of such pipeline, and shall not be required to operate said telegraph or telephone line as a toll line, or to open same to the use of the public; provided, that the construction and maintenance of said telephone or telegraph line shall not unduly interfere with the cultivation of any agricultural land.

History: 1941 Comp., § 69-322, enacted by Laws 1953, ch. 42, § 9; 1953 Comp., § 65-4-9.

ANNOTATIONS

Compiler's notes. — The term "this act" refers to Laws 1953, ch. 42, the provisions of which are presently compiled as 70-3-1 to 70-3-6 NMSA 1978.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Res. J. 840 (1970).

70-3-7. [Use of public highways by pipeline; grant of right by county commissioners.]

The county commissioners of the various counties in the state are hereby empowered and authorized to grant rights-of-way for laying and maintaining pipelines for oil and gas transportation in, on or over public highways in their respective counties to all applicants upon such terms and conditions as such county commissioners deem to be for the best interests of their respective counties, and as prescribed by the terms of this act [70-3-7 to 70-3-9 NMSA 1978].

History: Laws 1921, ch. 22, § 1; C.S. 1929, § 33-4249; 1941 Comp., § 69-310; 1953 Comp., § 65-4-11.

ANNOTATIONS

Application of act. — So far as use of roads is made for transportation alone but not for distribution, 70-3-7 NMSA 1978 will apply, and in event commodity is being

transported on public ways for resale to public utility, and not directly by owner of pipe for distribution to general public, a charge can be made under this section. 1957 Op. Att'y Gen. No. 57-124.

Law reviews. — For note, "The Use of Eminent Domain for Oil and Gas Pipelines in New Mexico," see 4 Nat. Res. J. 360 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines § 27.

73A C.J.S. Public Lands § 70.

70-3-8. [Application for use of highway for pipeline; investigation; rejection; appeal; permit; bond.]

Applicants for any such right-of-way shall present to the county commissioners of the county in which such right is desired an application in writing giving the name and address of both the applicant and the person, or persons, who will own said pipeline or lines when installed, the highway or highways where it is desired to locate such pipeline or lines, and whether the same will be in, on or over such highway or highways, the place of beginning and ending of such line or lines; the purposes for which the same are to be used; and such further information as the county commissioners may deem to be necessary to enable them to take proper action on said application. The application shall contain an agreement by the applicant to pay all expenses which may be incurred by the county commissioners in making such examination as they shall deem necessary to determine whether the right-of-way applied for should be granted. Upon receipt of such application by the county commissioners, they shall determine the probable expense which it will be necessary for them to incur to enable them to properly pass upon such application, and shall require the applicant to deposit for their use the amount of such probable expenses before taking further action on said application. After such deposit has been made, the county commissioners shall take such action and make such investigation as they may deem necessary to enable them to properly pass upon such application, and they shall, without unnecessary delay, pass upon such application and allow the same upon such reasonable requirements as they find will adequately safeguard and protect the highway or highways where such pipeline or lines are to be located, and that will fairly compensate the county for the use and occupancy of such highway or highways by said pipeline or lines, unless the county commissioners find that said application cannot be granted without impairing the usefulness of such highway or highways for purposes of travel by the public. In the event that such application is rejected, the county commissioners shall enter of record their reasons for such action, and such action shall be subject to review, reversal or modification by the district courts of this state on appeal by the aggrieved party in the same manner as provided for appeals from orders of the board of county commissioners by Sections 4-45-5 and 4-45-6 NMSA 1978.

Where an application is allowed, the county commissioners shall, before the issuance of a permit, require the applicant to enter into an undertaking with adequate

sureties conditioned that the applicant, his, her or its successors or assigns will pay all extra expense which the county shall incur by reason of the location of said pipeline or lines in, on or over such highway or highways, and that applicant will save the county harmless from any and all damage it may be caused to pay, or sustain by reason of the laying or maintaining of such pipeline or lines upon said highway or highways, and that the applicant will pay all sums due, or to become due, the county, for the use of said highway or highways, and such other conditions as may be found necessary to fully protect the interests of the county issuing the permit. Upon the presentation of such undertaking and the approval thereof by the county commissioners, they shall issue to the applicant a permit to lay and maintain a pipeline or lines in, on or over the highways and for such period of time, not to exceed ten years, as shall be designated in said permit, and such permit so issued shall operate to give the one to whom it shall be issued, or assigned, with the consent of the county commissioners, full right and authority to use the highway or highways in the manner and for the purpose designated in such permit.

History: Laws 1921, ch. 22, § 2; C.S. 1929, § 33-4250; 1941 Comp., § 69-311; 1953 Comp., § 65-4-12.

70-3-9. Pipeline highway use forms.

The state transportation commission shall cause to be prepared the necessary blank forms for carrying out the provisions of Sections 70-3-7 through 70-3-9 NMSA 1978.

History: Laws 1921, ch. 22, § 3; C.S. 1929, § 33-4251; 1941 Comp., § 69-312; 1953 Comp., § 65-4-13; Laws 2003, ch. 142, § 90.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "Sections 70-3-7 through 70-3-9 NMSA 1978" for "this act".

70-3-10. [Attachment of articles to pipeline which may cause leakage or loss; disturbance of pipeline; penalty.]

Any person who shall wilfully or maliciously affix, attach to or connect with any natural or artificial gas or liquefied petroleum pipeline in the state of New Mexico any article or thing whereby leakage or loss of gas from said line shall or may be affected [effected], and any person who shall wilfully or maliciously by any means disturb a natural or artificial gas or liquefied petroleum pipeline or cause leakage or loss of gas from any such gas pipeline shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $100.00 or by imprisonment in the county jail not more than 60 days, or by both such fine and imprisonment.

History: 1941 Comp., § 69-313, enacted by Laws 1951, ch. 134, § 1; 1953 Comp., § 65-4-14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

70-3-11. Short title.

This act [70-3-11 to 70-3-20 NMSA 1978] may be cited as the "Pipeline Safety Act."

History: 1953 Comp., § 65-4-15, enacted by Laws 1969, ch. 71, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines §§ 9, 10.

Oil and gas tanks, pipes and pipelines, and apparatus and accessories thereof as constituting attractive nuisance, 23 A.L.R.2d 1157.

70-3-12. Definitions.

As used in the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978]:

A. "person" means an individual, firm, joint venture, partnership, corporation, association, state, municipality, political subdivision, cooperative association, joint stock association or any combination thereof and includes any receiver, trustee, assignee or personal representative thereof;

B. "commission" means the public regulation commission;

C. "gas" means natural gas, flammable gas or gas that is toxic or corrosive;

D. "oil" means crude oil and liquid hydrocarbons and manufactured products derived from either;

E. "transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage, except that it shall not include the gathering of gas in those rural locations that lie outside the limits of any municipality or unincorporated city, town or village or any residential or commercial area such as a subdivision, a business or shopping center, a community development or any similar populated area that the commission may define by order as a nonrural area;

F. "transportation of oil" means the transmission of oil by pipeline, except pipelines operated exclusively for the gathering of oil in any field or area or pipelines constituting

a part of any tank farm, plant facilities of any processing plant, gasoline plant, refinery, carbon-black plant, recycling system or similar operations;

G. "gas pipeline facilities" means new and existing pipeline rights of way and any equipment, facility or structure used in the transportation of gas or the treatment of gas during the course of transportation;

H. "oil pipeline facilities" means new and existing pipeline rights of way and any equipment, facility or structure used in the transportation of oil;

I. "intrastate pipeline facilities" means oil pipeline facilities or gas pipeline facilities within the state that are not gas pipeline facilities subject to the jurisdiction of the federal energy regulatory commission pursuant to the federal Natural Gas Act or oil pipeline facilities used in the transportation of oil in interstate or foreign commerce, except that it shall include pipeline facilities within the state that transport gas from an interstate gas pipeline to a direct sales customer within the state purchasing gas for its own consumption;

J. "distribution main" means a pipeline other than a gathering or transmission line that serves as a common source of supply for more than one service line;

K. "master meter" means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The master meter system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as by rents, as more fully set forth in federal laws and regulations; and

L. "service line" means a pipeline that transports gas from a common source of supply, such as a distribution main, to:

(1) a customer meter or the connection to a customer's piping, whichever is further downstream; or

(2) the connection to a customer's piping if there is no customer meter. A "customer meter" is the meter that measures the transfer of gas from an operator to a consumer.

History: 1953 Comp., § 65-4-16, enacted by Laws 1969, ch. 71, § 2; 1993, ch. 185, § 1; 1998, ch. 108, § 79; 2004, ch. 80, § 3.

ANNOTATIONS

Cross references. — For the federal Natural Gas Act, *see* 15 U.S.C. § 717 et seq.

The 2004 amendment, effective July 1, 2004, added Subsections J, K and L.

The 1998 amendment, effective January 1, 1999, substituted "an" for "any" in Subsection A; substituted "public regulation" for "state corporation" in Subsection B; and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, added the section heading; substituted "from either" for "therefrom" at the end of Subsection D; and added Subsection I, making related grammatical changes.

70-3-13. Powers and duties of commission.

The commission:

A. shall promulgate, amend, enforce and repeal reasonable regulations establishing minimum safety standards for the transportation of oil, hazardous liquids as defined in 49 CFR 195.2 and gas and for the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance, including internal and external surveillance for pipe integrity and installation of emergency flow restricting devices, of oil, hazardous liquid and gas pipeline facilities as may be required by federal law. Safety standards shall not be applicable to oil, hazardous liquid or gas pipeline facilities in existence on the date the safety standards are adopted; provided, however, that whenever the commission upon investigation and hearing determines that an oil, hazardous liquid or gas pipeline facility is hazardous to life or property, it may require the person operating the oil, hazardous liquid or gas pipeline facility to take the steps necessary to remove the hazards. Safety regulations shall be practicable and designed to meet the need for pipeline safety. Safety rules promulgated for oil, hazardous liquid and gas pipeline facilities or the transportation of oil, hazardous liquids and gas shall be consistent with federal law and rules. Safety rules adopted hereunder shall not apply to any transportation of oil or oil pipeline facilities regulated by the federal department of transportation. Rules adopted pursuant to the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978] shall substantially conform to federal pipeline safety rules;

B. may advise, consult, contract and cooperate with any agency of the federal government or any other state in projects of common interest in the regulation of safety of oil, hazardous liquid and gas pipeline facilities and the transportation of oil, hazardous liquids and gas and administer the authority delegated to the commission by any contract with the federal government or any agency thereof;

C. may accept, receive, apply for or administer grants or other funds or gifts from public or private agencies, including the federal government, or from any other person;

D. may make investigations consistent with the Pipeline Safety Act and, in connection therewith, enter private or public property at all reasonable times. The results of investigations shall be reduced to writing if any enforcement action is contemplated and a copy thereof furnished to the operator of the oil, hazardous liquid or gas pipeline facilities investigated before any enforcement action is initiated; and

E. may require persons subject to the Pipeline Safety Act to maintain the records, file the reports and develop the plans for inspection and maintenance of oil, hazardous liquid or gas pipeline facilities as the commission may, by rule, require for proper administration of the Pipeline Safety Act; provided, however, that the use of the term "rights of way" does not authorize the commission to prescribe the location or routing of any oil, hazardous liquid or gas pipeline facility.

History: 1953 Comp., § 65-4-17, enacted by Laws 1969, ch. 71, § 3; 2001, ch. 298, § 2.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, deleted "may" from the preliminary language; in Subsection A, inserted "shall" at the beginning of the subsection, inserted "hazardous liquids as defined in 49 CFR 195.2", substituted "including internal and external surveillance for pipe integrity and installation of emergency flow restricting devices, of oil, hazardous liquid and gas pipeline facilities as may be required by federal law" for "of oil, gas pipeline facilities" in the first sentence, inserted "hazardous liquid" three times in the second sentence, rewrote the fourth sentence to add oil and hazardous liquids; deleted "and regulations promulgated under the Natural Gas and Pipeline Safety Act of 1968 being Public Law 90-481" after "shall be consistent with federal law and rules," and added the last sentence; and inserted "may" to the beginning and "hazardous liquid" throughout Subsections B, C, D and E; and substituted "rules" for "regulations" throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 52 et seq.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 86.

70-3-13.1. Master meter outreach and education.

On the effective date of this legislation, the commission shall:

A. commence a continuing industry outreach to coordinate and conduct education and certification programs concerning pipeline safety laws and regulations with respect to master meters;

B. develop agreements with the building and construction oversight divisions of the state and of local governments with the intent of minimizing dual jurisdiction of master meters; and

C. apply the waiver provisions of Section 70-3-16 NMSA 1978 to violations of safety regulations pertaining to master meters occurring prior to July 1, 2004.

History: Laws 2004, ch. 80, § 2.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 80, § 5, made the act effective July 1, 2004.

70-3-14. Adoption of regulations; notice and hearing.

No regulation or amendment or repeal of any regulation shall be adopted by the commission under the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978] until after a public hearing by the commission. Hearings on regulations shall be held at Santa Fe. Notice of hearing shall:

A. be given at least thirty days prior to the hearing date;

B. state the subject of the hearing;

C. indicate the time and place of the hearing;

D. state the manner in which interested persons may present their views; and

E. state where interested persons may secure copies of any proposed regulation.

The notice shall be published in a newspaper of general circulation in the state. Reasonable efforts shall be made to give notice to all persons who have made a written request to the commission for advance notice of hearings conducted under the Pipeline Safety Act. At any hearing, the commission shall give all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. A complete record of the proceedings at any hearing shall be made and preserved by the commission. A copy of the transcript shall be furnished upon demand of any party to the hearing, upon payment of a reasonable charge for reproducing the record. The fee shall be fixed by regulation of the commission. After the conclusion of any hearing, the commission shall make and file its findings of fact and order. Any person heard or represented at the hearing shall be given written notice of the findings and order of the commission. No regulation adopted by the commission shall become effective until thirty days after its filing according to the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978] or any later date as set forth in the commission's order adopting the regulation.

History: 1953 Comp., § 65-4-18, enacted by Laws 1969, ch. 71, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.

73 C.J.S. Public Administrative Law and Proceedings §§ 103 to 106.

70-3-15. Validity of regulation; judicial review.

A. Any person who is a party to any proceeding before the commission and who is or may be adversely affected by a regulation adopted by the commission, or by any order of the commission, may appeal by petition to the court of appeals for such relief as may be granted by the court, charging in the petition that the regulation or order is unreasonable, unlawful, capricious, arbitrary, inappropriate for the particular type of pipeline transportation or fails to contribute to the public safety. The petition shall name the New Mexico corporation commission [public regulation commission] as the appellee therein and shall state briefly the nature of the proceeding before the commission and shall set forth the regulation or order complained of and the grounds upon which the petitioner will rely. Appeals shall be upon the record made at the commission hearing on the regulation or order, and shall be taken:

(1) within thirty days after the regulation is filed in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978]; or

(2) within thirty days after the effective date of the commission's order, whichever is the later date.

B. An appeal does not stay the operation of the commission's order or regulation, unless the court of appeals orders a stay of the operation of the order or regulation on such terms as it deems just and in accordance with the practice of the courts exercising equity jurisdiction.

History: 1953 Comp., § 65-4-19, enacted by Laws 1969, ch. 71, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Res. J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 415 et seq.

73A C.J.S. Public Administrative Law and Proceedings § 172 et seq.

70-3-16. Waiver of regulations.

Upon application by any person engaged in the transportation of gas or oil or owning or operating gas or oil pipeline facilities, the commission may, after notice and opportunity for hearing, and under such terms and conditions, and to such extent as the commission deems appropriate, waive compliance with any regulation established under the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978], if the commission determines that a waiver of compliance with the regulation is not inconsistent with pipeline safety. Any waiver for the transportation of gas or for gas pipeline facilities shall be subject to approval by the federal agency having jurisdiction as provided in Section 3(e) of the Natural Gas Pipeline Safety Act of 1968, being Public Law 90-481.

History: 1953 Comp., § 65-4-20, enacted by Laws 1969, ch. 71, § 6.

ANNOTATIONS

Cross references. — For Section 3 (e) of the Natural Gas Pipeline Safety Act of 1968, *see* 49 U.S.C. § 1672(d).

70-3-17. Continuity of service.

When a proposed regulation or commission order will, or may, affect continuity of any gas service, the commission shall consult with any other state or federal agency having jurisdiction over the affected transportation of gas or gas pipeline facility before adopting the regulation or order and shall defer the effective date of the regulation or order until the other state or federal agency has had reasonable opportunity to take such action as it shall deem necessary.

History: 1953 Comp., § 65-4-21, enacted by Laws 1969, ch. 71, § 7.

70-3-18. Compliance.

A. Each person who engages in the transportation of oil or gas or who owns or operates oil or gas pipeline facilities shall:

(1) at all times after the effective date of any regulation, comply with the requirements of the regulation;

(2) comply with any plan of inspection and maintenance required to be filed with the commission by the person; and

(3) permit the commission access to or the copying of pertinent records, and make reports or provide information to the commission as may be reasonably required, and permit entry to or inspection of its gas or oil pipeline facilities by the commission.

B. Nothing in the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978] shall affect the common law or statutory tort liability of any person.

History: 1953 Comp., § 65-4-22, enacted by Laws 1969, ch. 71, § 8.

70-3-19. Enforcement; penalties.

A. If, as a result of investigation, the commission has good cause to believe that any person is violating any provision of Subsection A of Section 70-3-18 NMSA 1978 or any regulation adopted by the commission under the Pipeline Safety Act, the commission shall, when practicable and except in the case of a knowing and willful violation, give the person notice of the violation and an opportunity to comply. If the commission is unable within a reasonable time to obtain voluntary cooperation to prevent the continuing violation, the commission may apply for an injunction in the district court of the county in which the violation occurs to secure compliance. The failure to give notice and afford an opportunity to comply shall not preclude the granting of injunctive relief.

B. The trial before the district court shall be before the court without jury, and the court shall enter judgment and orders enforcing the judgment as the public interest and equities of the case may require.

C. Any person owning or operating gas pipeline facilities or engaged in the transportation of gas or owning or operating oil pipeline facilities or engaged in the transportation of oil who has been determined by order of the commission after hearing to have violated any provision of Subsection A of Section 70-3-18 NMSA 1978 or any regulation promulgated under the Pipeline Safety Act applicable to intrastate pipeline facilities shall be subject to a civil penalty in an amount not to exceed the maximum civil penalty provided pursuant to 49 U.S.C. Section 60122 and 49 C.F.R. 190.223.

D. In determining the amount of the penalty, the commission shall consider the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty and other matters as justice may require.

E. Judicial review of any provision of this section may be accomplished in the same manner as is found in Section 70-3-15 NMSA 1978.

F. Any person who willfully and knowingly injures or destroys or attempts to injure or destroy an intrastate pipeline facility shall upon conviction be subject for each offense to a fine not to exceed twenty-five thousand dollars ($25,000) or imprisonment for a term not to exceed fifteen years, or both.

G. Any person who willfully and knowingly damages, removes or destroys any pipeline sign, right-of-way marker required by the Pipeline Safety Act or any regulation or order issued pursuant to that act shall upon conviction be subject for each offense to a fine of not more than five thousand dollars ($5,000) or imprisonment for a term not to exceed one year, or both.

History: 1953 Comp., § 65-4-23, enacted by Laws 1969, ch. 71, § 9; 1971, ch. 89, § 1; 1993, ch. 185, § 2; 2007, ch. 223, § 2; 2017, ch. 128, § 1; 2025, ch. 136, § 1.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, enhanced civil penalties for violation of the Pipeline Safety Act to conform to federal guidelines; in Subsection C, after "an amount not to exceed" deleted "one hundred thousand dollars ($100,000) for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed one million dollars ($1,000,000) for any related series of violations" and added "the maximum civil penalty provided pursuant to 49 U.S.C. Section 60122 and 49 C.F.R. 190.223".

The 2017 amendment, effective July 1, 2017, enhanced the civil penalties for violations of the Pipeline Safety Act; in Subsection C, after "civil penalty in an amount not to exceed", deleted "twenty-five thousand dollars ($25,000)" and added "one hundred thousand dollars ($100,000)", and after "shall not exceed", deleted "five hundred thousand dollars ($500,000)" and added "one million dollars ($1,000,000)".

The 2007 amendment, effective June 15, 2007, eliminated the provision that in an enforcement action of the Pipeline Safety Act or regulations of the commission, the commission shall be represented by the attorney general.

The 1993 amendment, effective June 18, 1993, substituted "Subsection A of Section 70-3-18 NMSA 1978" for "Section 8A of the Pipeline Safety Act" in the first sentence of Subsection A; designated the former second and third sentences of Subsection D as Subsections E and F; deleted former Subsection E, which provided for a civil penalty for violation of Section 8A of the Pipeline Safety Act or certain regulations and redesignated the remaining subsections accordingly; rewrote Subsections D and E; substituted "Section 70-3-15 NMSA 1978" for "Section 5 of the Pipeline Safety Act" in Subsection F; and added Subsections G and H.

70-3-20. Pipeline safety engineer and staff.

The commission shall appoint a professional engineer who shall have at least five years' actual experience in the design, construction, maintenance and operation of oil or gas pipeline facilities and who shall be designated "pipeline safety engineer." The commission shall retain such other personnel as may be necessary to carry out the provisions of the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978], and the commission shall, subject to state laws and regulations covering classification and compensation of state employees, be empowered and authorized to fix the compensation to be paid the pipeline safety engineer, and the compensation of other personnel employed under the authority of this section shall be subject to the state Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: 1953 Comp., § 65-4-24, enacted by Laws 1969, ch. 71, § 10.

ANNOTATIONS

Appointment of engineer. — This section does not expressly designate the professional engineer head of pipeline department; it merely commands commission to appoint an engineer. 1971 Op. Att'y Gen. No. 71-28.

70-3-21. Pipeline safety fund; created; assessment and collection of fees.

A. The "pipeline safety fund" is created in the state treasury for the purpose of enhancing the staffing and training of the pipeline safety bureau of the commission with the goal of assuming the function of inspection of interstate as well as intrastate pipelines. The fund shall consist of fees collected pursuant to Subsection D of this section, appropriations, gifts, grants, donations and earnings from investment of the fund. Balances in the fund shall not be transferred to the general fund at the end of any fiscal year.

B. The pipeline safety fund shall be administered by the commission. Money in the fund is appropriated to the commission to carry out its duties pursuant to the provisions of the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978] and Chapter 62, Article 14 NMSA 1978. Not more than five percent of the fees collected pursuant to Subsection D of this section shall be used by the commission for administrative purposes.

C. Payments from the pipeline safety fund shall be made upon vouchers issued and signed by the director of the administrative services division of the commission or the director's authorized representative upon warrants drawn by the secretary of finance and administration.

D. The commission shall collect annual pipeline safety fees for the duties relating to inspection of intrastate pipelines from persons subject to the Pipeline Safety Act in accordance with and not to exceed the following amounts:

(1) for the transportation of gas:

(a) two dollars ($2.00) per domestic service line;

(b) thirty-five dollars ($35.00) per commercial service line;

(c) thirty-five dollars ($35.00) per mile of line for the transportation of gas subject to inspection by the pipeline safety bureau, with a minimum assessment of four hundred dollars ($400); and

(d) one hundred dollars ($100) per master meter, direct sales lateral or liquified petroleum gas system; and

(2) for the transportation of oil, thirty-five dollars ($35.00) per mile of transmission line subject to inspection by the pipeline safety bureau, with a minimum assessment of four hundred dollars ($400). A fee shall not be assessed on mileage under the jurisdiction of or inspected by the federal department of transportation.

E. The commission shall annually conduct a public review of the fees collected and payments made from the fund and provide a summary to the legislative finance committee and the department of finance and administration. Based upon its findings, the commission shall adjust the annual fee rates authorized by Subsection D of this section in order to collect only that amount estimated to be necessary to carry out the provisions of the Pipeline Safety Act and Chapter 62, Article 14 NMSA 1978; provided that the fees shall not be greater than the amounts set forth in Subsection D of this section.

History: Laws 2004, ch. 80, § 1.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 80, § 5 made the act effective July 1, 2004.

70-3-22. Pipeline safety fee.

A public utility that is assessed a pipeline safety fee shall be entitled to collect the fee from its rate payers without the requirement of a request for a change in rates. The utility shall notify the commission in writing of the imposition and amount of the fee and, if practicable, shall show the fee as a separate line item on its bill statements to consumers.

History: Laws 2004, ch. 80, § 4.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 80, § 5 made the act effective July 1, 2004.

ARTICLE 3A
Gathering Line Land Acquisition

70-3A-1. Short title.

Sections 1 through 7 [70-3A-1 to 70-3A-7 NMSA 1978] of this act may be cited as the "Gathering Line Land Acquisition Act".

History: Laws 1988, ch. 26, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines §§ 20 to 38.

70-3A-2. Definitions.

As used in the Gathering Line Land Acquisition Act:

A. "mineral developer" means a mineral owner, operator, lessee or natural gas or petroleum pipeline company that is engaged in the production or conveyance by pipeline of natural gas or petroleum; and

B. "property owner" means the person who holds an ownership interest in the property to be acquired for the purpose of constructing a natural gas or petroleum gathering line or an associated disposal line, other than the property on which the well to be connected to a natural gas or petroleum gathering line or to be connected to an associated disposal line is to be located.

History: Laws 1988, ch. 26, § 2; 1993, ch. 338, § 2.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "lessee or natural gas or petroleum pipeline company that" for "or lessee who" and inserted "or conveyance by pipeline" in Subsection A.

70-3A-3. Easement; offer and counterproposal.

A. If an easement is sought to be acquired by a mineral developer for the purpose of constructing a natural gas or petroleum gathering line as defined in Subsection B of Section 70-3-5 NMSA 1978 or an associated disposal line and the mineral developer and the property owner cannot agree concerning the terms, including locations, conditions or compensation for that acquisition, the mineral developer may make a written offer to the property owner to include proposed terms, locations, conditions and compensation for the easement. The offer shall be made by mailing a copy thereof by certified mail, return receipt requested, or by service of a copy thereof in the manner provided by the Rules of Civil Procedure for the District Courts for service of summons and complaint. The offer submitted by the mineral developer shall also include notice of the property owner's duty to submit a counterproposal as provided in Subsection B of this section.

B. Within twenty days after receipt of the mineral developer's offer, the property owner shall submit either a notice of acceptance or a counterproposal to each term, including locations, conditions or compensation, in the offer of the mineral developer. The acceptance or counterproposal shall be made in the same manner as set forth in Subsection A of this section for the delivery of the mineral developer's offer.

C. Except as provided in Subsection D of this section, if the parties are unable to negotiate a settlement, the mineral developer may, after ten days from the date of receipt of the counterproposal by the property owner, petition the district court in the county in which the property is located or any part lies to appoint a hearing officer to review the matters relating to the proposed property acquisition and to have the hearing officer submit a report to the district court.

D. If the property owner does not submit an acceptance or a counterproposal to the mineral developer within the time period specified in Subsection B of this section and the mineral developer has complied with all other provisions of the Gathering Line Land Acquisition Act, the mineral developer may file a copy of the offer submitted to the property owner with the district court and that offer shall be binding on all parties.

History: Laws 1988, ch. 26, § 3.

ANNOTATIONS

Cross references. — For the Rules of Civil Procedure for the District Courts, *see* Rule 1-001 NMRA et seq.

70-3A-4. Petition; appointment of hearing officer.

A. The petition filed by the mineral developer pursuant to Subsection C of Section 3 [70-3A-3 NMSA 1978] of the Gathering Line Land Acquisition Act shall include:

(1) a designation as petitioner, the person on whose behalf the easement is sought to be acquired;

(2) a statement by the petitioner of his authority to petition the court;

(3) an allegation that the petitioner has been unable to negotiate a settlement in good faith with the property owner;

(4) a map, plat or plan included with or attached to the petition showing the proposed route of the easement;

(5) a request for the appointment of a hearing officer;

(6) a copy of the offer submitted to the property owner by the petitioner;

(7) a copy of the counterproposal, if any, submitted to the petitioner by the property owner; and

(8) the name of the property owner and his address.

B. Upon the filing of the petition, if the route of easement is not an issue, the court shall grant, upon the request of the petitioner, an order of immediate possession of the easement sought to be acquired by the mineral developer.

C. Within fifteen days of receipt of the petition, the district court shall issue and give notice of the action which shall contain a demand that the property owner and the mineral developer submit to the court, within ten days, the names of any persons which the parties jointly agree to have the court select from in its appointment of a hearing officer.

D. Within fifteen days after providing notice of the action to the parties the district court shall appoint a hearing officer from the list of names provided pursuant to Subsection C of this section. If the parties are unable to agree on the selection of a hearing officer, the court shall appoint a hearing officer who is knowledgeable in property valuation techniques and administrative hearing procedures.

E. Subject to any limitations in the order of appointment, the hearing officer has and shall exercise the power to regulate all proceedings in any hearing before him and to do all acts and take all measures necessary and proper for the efficient performance of his duties under the order, including requiring the production of all books, papers, vouchers, documents and writing applicable thereto, the swearing of witnesses and receiving testimony and exhibits offered in evidence subject to such objections as may be imposed.

F. Upon receipt of the order of appointment, the hearing officer shall set a time and place for a hearing of parties or their attorneys to be held within twenty days after the date of the order of appointment and shall notify the parties or their attorneys. If a party fails to appear at the time and place appointed, the hearing officer may proceed ex parte or, in his discretion, adjourn the proceedings for a future date, giving notice to the absent party of the adjournment.

G. The parties may procure the attendance of witnesses before the hearing officer by the issuance and service of subpoenas as provided in the Rules of Civil Procedure for the District Courts. If without adequate reason a witness fails to appear or give evidence, he may be cited by the district judge for contempt or be subject to other court sanctions.

H. The compensation to be allowed to a hearing officer shall be fixed by the court and shall be apportioned equally among the parties.

History: Laws 1988, ch. 26, § 4.

ANNOTATIONS

Cross references. — For the Rules of Civil Procedure for the District Courts, *see* Rule 1-001 NMRA et seq.

70-3A-5. Scope of review by the hearing officer.

The report of the hearing officer shall include findings concerning the following:

A. when the route of easement is in issue, a full consideration of all other access available to the mineral developer, including the cost of construction for alternative routes, safety, obstructions and any other economic and noneconomic factors;

B. the cost of acquisition or any contract to acquire comparable easements if the transaction or contract was freely made in good faith within a reasonable time before or after the date the petition was filed or other credible evidence of the market value of the easement to be acquired; and

C. amount of damages sustained by the property owner for:

(1) loss of agricultural production and income;

(2) lost value of improvements;

(3) cost for surface reclamation including revegetation, soil treatment, reshaping of topography, drainage systemizing, waste disposal, removal of any equipment, structures and obstacles and the return of the property to its approximate original contour;

(4) inconvenience to the property owner in use of his property; and

(5) burden on the property owner of continued inspection and repair of the gathering line by the mineral developer.

In no case shall the total amount of compensation or damages awarded pursuant to Subsections B and C of this section be greater than one-half of the sum of the reasonable cost of surface reclamation plus twice the market value of the easement to be acquired as determined in Subsection B of this section.

History: Laws 1988, ch. 26, § 5.

ANNOTATIONS

Standard of review. — Where a party maintained that the hearing officer made findings incorrectly under Subsections B and C of this section, the determination of whether the hearing officer's decision was in accordance with the Gathering Line Land Acquisition Act was a question of law to be decided by the appellate court de novo. *El Paso Field Servs. Co. v. Montoya Sheep & Cattle Co.*, 2003-NMCA-113, 134 N.M. 375, 77 P.3d 279.

Compensation and damages are distinct. — To include elements of damages from Subsection C of this section in the determination of the compensation due under Subsection B of this section is contrary to the statute. *El Paso Field Servs. Co. v. Montoya Sheep & Cattle Co.*, 2003-NMCA-113, 134 N.M. 375, 77 P.3d 279.

Findings regarding both compensation and damages are required. — This section requires the hearing officer to make findings concerning both the amount of compensation due under Subsection B and the amount of damages due under Subsection C. *El Paso Field Servs. Co. v. Montoya Sheep & Cattle Co.*, 2003-NMCA-113, 134 N.M. 375, 77 P.3d 279.

Annual payments. — Nothing in the Gathering Line Land Acquisition Act precludes the award of damages in the form of annual payments, but if a hearing officer awards damages to be paid annually, the hearing officer must calculate the present value of the amount awarded. *El Paso Field Servs. Co. v. Montoya Sheep & Cattle Co.*, 2003-NMCA-113, 134 N.M. 375, 77 P.3d 279.

Statutory cap as written is meaningless. — Applying the statutory cap in Subsection C of this section as written is meaningless because, where surface reclamation costs are zero, applying the cap exactly as written eliminates any further recovery for damages under Subsection C. A more reasonable interpretation is that damages under Subsection C cannot exceed the sum of half the surface reclamation costs plus twice the market value. *El Paso Field Servs. Co. v. Montoya Sheep & Cattle Co.*, 2003-NMCA-113, 134 N.M. 375, 77 P.3d 279.

70-3A-6. Report; appeal.

A. Within forty-five days after the appointment of the hearing officer:

(1) the hearing officer shall prepare a report upon the matters submitted to him by the order of his appointment and shall make findings of fact and conclusions of law. He shall file the report with the clerk of the court and unless waived by the parties he shall file with it a transcript or other authorized recording of any proceedings and of the evidence and the original exhibits. The clerk shall mail notice of the filing to all parties; and

(2) the district court shall accept the hearing officer's findings of fact unless clearly erroneous. Within ten days after being served with notice of the filing of the report, either party may appeal the decision of the hearing officer to the district court. The court, after review, may adopt or modify the report.

B. If the appealing party does not prevail in his appeal, the court shall award the other party reasonable attorneys' fees and court costs incurred on appeal.

C. If an appeal is not filed within ten days of the parties being served with notice of the filing of the report or at the conclusion of any appeal, the district court shall enter a

final judgment granting or modifying the easement sought to be acquired including the terms and compensation of the easement.

History: Laws 1988, ch. 26, § 6.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

Standard of review. — Where a party maintained that the hearing officer made findings incorrectly under 70-3A-5(B) and (C) NMSA 1978, the determination of whether the hearing officer's decision was in accordance with the Gathering Line Land Acquisition Act was a question of law to be decided by the appellate court de novo. *El Paso Field Servs. Co. v. Montoya Sheep & Cattle Co.*, 2003-NMCA-113, 134 N.M. 375, 77 P.3d 279.

Scope of review of district court. *Zamora v. Village of Ruidoso Downs*, 1995-NMSC-072, 120 N.M. 778, 907 P.2d 182.

70-3A-7. Abandonment of easement.

When an easement is acquired pursuant to the Gathering Line Land Acquisition Act and the use for which the easement is acquired is subsequently abandoned, the easement is extinguished and the property interest reverts to the landowner or his successor in interest of the fee, free from any rights in the mineral developer.

History: Laws 1988, ch. 26, § 7.

ARTICLE 4
Liens on Wells and Pipelines

70-4-1. Liens for labor and material furnished or hauled for use of oil and gas wells or pipelines.

Every person who shall, by contract, express or implied, or partly expressed or implied, with the owner of any land, oil and gas permit, leasehold, lease for oil and gas purposes, or with the owner of any gas, oil, or gasoline pipeline, or with a purchaser under executory contract, or with the trustee or agent of the owner, or with one whom the owner has authorized or knowingly permitted to contract, or with a receiver appointed for any of the property of the owner, perform labor or furnish or haul material, equipment, tools, machinery or oil well or gas well supplies, used or employed, or to be used, or to be employed in the digging, drilling, torpedoing, completing, maintaining, equipping, operating or repairing any oil or gas well, or in the construction, operation, maintenance or repairing any gas, oil, or gasoline pipeline, or who shall furnish or haul

any oil or gas well supplies, or perform any labor in constructing or putting together any of the equipment or machinery used or employed, or to be used or to be employed, in drilling, torpedoing, completing, maintaining, equipping, operating, or repairing any oil or gas well, shall have a lien upon the whole of that land, oil and gas permit, leasehold, lease for oil and gas purposes, oil pipeline, gas pipeline, or gasoline pipeline, and right-of-way therefor, the buildings and equipment thereon, and the appurtenances thereto, the proceeds from the sale of oil and gas produced therefrom inuring to the working interest, and upon the materials, tools, machinery, equipment and supplies so furnished or hauled, and upon the oil and gas well for which they were furnished or hauled, and upon all the other oil and gas wells, fixtures, machinery, tools, equipment and appliances, used or employed in operating or developing, for oil and gas purposes, upon the land, oil and gas permit, leasehold, or lease for oil and gas purposes, for which the material, tools, machinery, equipment or supplies were furnished or hauled, or labor performed, for the amount due to him for the materials, tools, machinery, equipment, oil and gas well supplies, hauling, or labor, and interest from the date the amount is due; provided, however, the lien herein created shall not extend to the underlying fee or royalty interest unless expressly provided by contract, nor shall it extend to the property, leasehold, or working interest of any owner who does not have a working interest in the well upon which the labor was performed or for which the materials were furnished or hauled.

The lien shall be preferred to all other liens or incumbrances which may attach to or upon the land, oil and gas permit, leasehold, lease for oil and gas purposes, and the buildings, machinery, equipment and appurtenances, or upon any oil pipeline, gas pipeline, or gasoline pipeline, and the right-of-way therefor, or such oil or gas wells, the proceeds from the sale of oil and gas produced therefrom inuring to the working interest, and the material, tools, machinery, equipment and supplies so furnished or hauled and the fixtures and appliances thereon, subsequent to the commencement of the labor performed, or the furnishing, or hauling, or putting up of the material, tools, machinery, equipment or supplies; and the lien shall follow the property and each part thereof, and be enforceable against the property wherever it may be found. The taking of any note or additional security by the contractor or subcontractor, or the person having the lien shall not effect, or be a waiver of, any lien he may have by virtue of the Oil and Gas Lien Act, unless made a waiver by express agreement in writing of the parties; and the lien hereby given shall attach as of the date on which the first of the material, tools, machinery, equipment or supplies is furnished or hauled, or the first of the labor is performed. Any purchaser of oil or gas in the ordinary course of business without actual knowledge of the filing of a lien covering the proceeds from the sale of oil or gas shall take the oil or gas free of the lien.

History: Laws 1931, ch. 11, § 1; 1941 Comp., § 69-401; 1953 Comp., § 65-5-1; Laws 1961, ch. 199, § 1; 1963, ch. 12, § 1; 1987, ch. 147, § 1.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, inserted "proceeds from the sale of oil and gas produced therefrom inuring to the working interest" in the middle of the first paragraph following "the buildings and equipment thereon, and the appurtenances thereto" and in the middle of the first sentence of the second paragraph following "and the right-of-way therefor, or such oil or gas wells", and added the last sentence to the second paragraph.

Lien acquired upon leasehold. — A leasehold estate, including all rights, powers and privileges contained therein or appurtenant thereto, is subject to a time dimension, and upon expiration of that dimension nothing is left; there can be no merger of mineral rights with the fee upon termination of the lease, because all mineral rights were already contained in and were part of the fee. Thus, claim that lien acquired by construction company upon a leasehold under act was not extinguished by terms of the leasehold, but, rather, that it contained a lien upon an interest in any oil and gas and followed that interest, even though leasehold estate had terminated, was without merit. *Butt v. Vermejo Park Corp.*, 1976-NMSC-075, 89 N.M. 679, 556 P.2d 835.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 135 to 140.

Rights and duties as between owner of land and owner of timber or of mineral in place as regards liens covering both interests, 26 A.L.R. 1031.

Casing of oil and gas well as subject to mechanic's lien, 39 A.L.R. 1260.

Oil, gas or other mineral rights in land subject as real estate to judgment lien against owner of mineral interest, 52 A.L.R. 135.

Interest of owner of land as subject to lien for material or service engaged by holder of mineral rights, 59 A.L.R. 548.

Mechanic's lien as to drilling of oil wells, 92 A.L.R. 756.

Right or interest subject to, and priority of, statutory lien for labor or material in developing property for oil and gas, 122 A.L.R. 1182.

Sufficiency of notice, claim, or statement of mechanic's lien with respect to description or location of real property, 52 A.L.R.2d 12.

Assertion of statutory mechanic's or materialman's lien against oil and gas produced or against proceeds attributable to oil and gas sold, 59 A.L.R.3d 278.

58 C.J.S. Mines and Minerals §§ 259 to 269.

70-4-2. Labor, hauling and materials considered under continuous contract.

Any labor performed, or materials, machinery, tools, equipment or supplies so furnished or hauled by any person entitled to a lien under the provisions of the Oil and Gas Lien Act for the land, oil and gas permit, leasehold, lease for oil and gas purposes, or oil pipeline, gas pipeline or gasoline pipeline, shall be considered as having been furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided no more than one hundred twenty days shall have elapsed between the date of performance of the labor or the date of the furnishing or hauling of any part or parts of the material, tools, equipment, machinery or supplies and the date on which labor or materials, tools, equipment, machinery or supplies are next performed, hauled or finished [furnished].

History: Laws 1931, ch. 11, § 2; 1941 Comp., § 69-402; 1953 Comp., § 65-5-2; Laws 1963, ch. 12, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

70-4-3. Liens of subcontractors.

Any person who furnishes or hauls the material, tools, equipment, machinery or supplies as, or to, a subcontractor, or any person who performs the labor for, or under, a subcontract with a contractor or subcontractor shall have a lien upon the whole of the land, oil and gas permit, leasehold, lease for oil and gas purposes, or oil pipeline, gas pipeline or gasoline pipeline, and the right-of-way therefor, buildings and equipment thereon, and the appurtenances thereto, and upon the materials, tools, machinery, equipment and supplies so furnished or hauled, and upon the oil and gas well for which they were furnished or hauled, and upon all the other oil and gas wells, fixtures, machinery, tools, equipment and appliances used in operating or developing for oil and gas purposes upon the land, oil and gas permit, leasehold, or lease for oil and gas purposes, for which the material, tools, machinery, equipment or supplies were furnished or hauled, or labor performed, to the same extent, with the same preferences and priorities, and on an equality with the lien of an original contractor as provided in Sections 70-4-1 and 70-4-2 NMSA 1978, for the amount due him for the labor, hauling or materials, tools, machinery, equipment or supplies.

History: Laws 1931, ch. 11, § 3; 1941 Comp., § 69-403; 1953 Comp., § 65-5-3; Laws 1963, ch. 12, § 3.

70-4-4. Claim of lien; contents and filing.

Every original contractor, within two hundred ten days after the performance of the last labor or the furnishing or hauling of the last item of material, tools, machinery, equipment or supplies, and every person, except the original contractor, claiming the benefits of the Oil and Gas Lien Act within one hundred eighty days after the

performance of the last labor or the furnishing or hauling of the last item or material, tools, machinery, equipment or supplies shall file for record with the county clerk of the county in which the property upon which the lien is claimed or situated, a claim setting forth the name and residence of the claimant, the amount and the items claimed, the name of the person to whom the materials, tools, machinery, equipment or supplies were furnished or hauled or for whom the labor was performed, the name of the owner and a description of the property upon which the lien is claimed, verified by affidavit.

History: Laws 1931, ch. 11, § 4; 1941 Comp., § 69-404; 1953 Comp., § 65-5-4; Laws 1963, ch. 12, § 4; 1993, ch. 6, § 1.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "two hundred ten days" for "one hundred twenty days" and "one hundred eighty days" for "ninety days", and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 139.

58 C.J.S. Mines and Minerals § 264.

70-4-5. Recording; index; fees.

The county clerk shall record the claim in a book kept by him for that purpose, and shall index such record as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other conveyances.

History: Laws 1931, ch. 11, § 5; 1941 Comp., § 69-405; 1953 Comp., § 65-5-5.

ANNOTATIONS

Cross references. — For recording fees, *see* 14-8-12 NMSA 1978.

70-4-6. Liability of owner limited to contract price.

Nothing in the Oil and Gas Lien Act shall be deemed to fix a greater liability upon an owner than the amount contracted by the owner to be paid the original contractor; provided that the risk of all payments made to the original contractor shall be upon the owner until the expiration of the one hundred eighty days specified in Section 70-4-4 NMSA 1978 within which persons other than the original contractor may fix their liens by the filing of the claim as provided in that section, and no owner shall be liable to an action by the contractor until the expiration of the one hundred eighty day period. Owners may pay subcontractors the specific contract or agreed upon charge due them from the original contractor for work, labor, material, tools, machinery, equipment and

supplies, and the amount so paid shall be held and deemed a payment of that amount to the original contractor.

History: Laws 1931, ch. 11, § 6; 1941 Comp., § 69-406; 1953 Comp., § 65-5-6; Laws 1963, ch. 12, § 5; 1965, ch. 184, § 2; 1993, ch. 6, § 2.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "one hundred eighty days specified in Section 70-4-4 NMSA 1978" for "ninety (90) days hereinbefore" and "the one hundred eighty day period" for "said ninety (90) days" in the first sentence, and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 C.J.S. Mines and Minerals § 263.

70-4-7. Limitation of action to enforce.

No lien provided for in this act shall bind any property subject thereto for a longer period than one year after the date on which the same is filed, unless proceedings be commenced in the district court within that time to enforce the same, or, if a credit be given, then one year after the expiration of such credit, but no such lien shall continue in force for a longer time than two years from the time the lien is filed by any agreement to give credit unless action to enforce the same shall have been commenced within that time.

History: Laws 1931, ch. 11, § 7; 1941 Comp., § 69-407; 1953 Comp., § 65-5-7.

ANNOTATIONS

Cross references. — For sales under execution and foreclosure, *see* 39-5-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 C.J.S. Mines and Minerals § 269.

70-4-8. Enforcement of lien.

The liens herein created may be enforced by proper action in the district court in the county in which the property is situate to which the lien attaches, provided that if the property to which the lien attaches is situate in more than one county the action may be brought in any county where a part of the property is situate. If the lien is foreclosed there shall be no redemption, and the sheriff or other officer shall make a formal conveyance of the property sold under foreclosure to the purchaser as provided by law.

History: Laws 1931, ch. 11, § 8; 1941 Comp., § 69-408; 1953 Comp., § 65-5-8.

70-4-9. Joinder of actions; attorney's fees; costs.

Any number of persons claiming liens may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow as a part of the costs the moneys paid for filing and recording the lien, and reasonable attorney's fees in the trial and appellate courts.

History: Laws 1931, ch. 11, § 9; 1941 Comp., § 69-409; 1953 Comp., § 65-5-9.

ANNOTATIONS

Cross references. — For joinder of parties, *see* Rule 1-020A NMRA.

For consolidation of actions, *see* Rule 1-042C NMRA.

70-4-10. Definition of words "person" and "subcontractor".

The word "person" as used in this act [70-4-1 to 70-4-15 NMSA 1978] shall include one or more individuals and corporations and copartnerships.

The word "subcontractor" as used in this act shall include every person entitled to the benefits thereof other than an original contractor.

History: Laws 1931, ch. 11, § 10; 1941 Comp., § 69-410; 1953 Comp., § 65-5-10.

70-4-11. Preference to laborers; no preference to first contractors.

Upon all questions arising between different persons having liens under the Oil and Gas Lien Act, no preference shall be given to him who first performed labor or furnished, or hauled, materials, tools, machinery, equipment or supplies, except that the claim of any person for labor by him personally performed is a preferred lien.

History: Laws 1931, ch. 11, § 11; 1941 Comp., § 69-411; 1953 Comp., § 65-5-11; Laws 1963, ch. 12, § 6.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 140.

58 C.J.S. Mines and Minerals § 268.

70-4-12. Materials exempt from attachment.

Whenever materials, tools, machinery, equipment or oil and gas supplies shall have been furnished for use or employment in the digging, drilling, torpedoing, completing, operating or repairing of any oil or gas well, or in the construction, operation or repairing of any gas pipeline, oil pipeline or gasoline pipeline, such materials, machinery, equipment or oil and gas supplies shall not be subject to attachment, execution or other

legal process to enforce any debt due by the purchaser of such materials, machinery, tools, equipment or supplies, except a debt due for the purchase price thereof so long as such purchase price, or any part thereof, remains unpaid, and such materials, tools, machinery, equipment or supplies are in good faith about to be used for the purposes for which they were so furnished, until after the expiration of the time for filing a lien for such purchase price under the provisions of this act [70-4-1 to 70-4-15 NMSA 1978].

History: Laws 1931, ch. 11, § 12; 1941 Comp., § 69-412; 1953 Comp., § 65-5-12.

ANNOTATIONS

Cross references. — For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, *see* Rules 1-065.1, 2-801, and 3-801 NMRA, respectively.

For form for claim of exemptions on executions, *see* Rule 4-803 NMRA.

For form for order on claim of exemption and order to pay in execution proceedings, *see* Rule 4-804 NMRA.

For form for application for writ of garnishment and affidavit, *see* Rule 4-805 NMRA.

For form for notice of right to claim exemptions from execution, *see* Rule 4-808A NMRA.

For form for claim of exemption from garnishment, *see* Rule 4-809 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 137.

58 C.J.S. Mines and Minerals § 262.

70-4-13. Personal liability.

Nothing in the Oil and Gas Lien Act shall be construed to impair or affect the right of any person, to whom any debt may be due for work done or materials, tools, machinery, equipment or supplies furnished or hauled, to maintain a personal action to recover the debt against the person liable therefor.

History: Laws 1931, ch. 11, § 13; 1941 Comp., § 69-413; 1953 Comp., § 65-5-13; Laws 1963, ch. 12, § 7.

70-4-14. Name of act.

This act [70-4-1 to 70-4-15 NMSA 1978] shall be known as the Oil and Gas Lien Act.

History: Laws 1931, ch. 11, § 15; 1941 Comp., § 69-414; 1953 Comp., § 65-5-14.

70-4-15. Conflicting laws repealed, Chapter 82, "1929 New Mexico Statutes Annotated" excepted.

This act [70-4-1 to 70-4-15 NMSA 1978] shall not in any way affect, modify or repeal Chapter 82 of the "1929 New Mexico Statutes Annotated." All other laws in conflict with the provisions of this act are hereby repealed.

History: Laws 1931, ch. 11, § 16; 1941 Comp., § 69-415; 1953 Comp., § 65-5-15.

ANNOTATIONS

Compiler's notes. — Chapter 82 of the 1929 Compilation referred to in this section is presently compiled as 48-2-1 to 48-2-8, 48-2-10 to 48-2-16, 48-3-1, 48-3-2, 48-3-4, 48-3-5, 48-3-7 to 48-3-15, 48-5-1 to 48-5-3 and 48-6-1 to 48-6-16 NMSA 1978.

Purpose of declaration of cumulative effect was not to make other statutory provisions applicable to those things covered by this act itself, but to show that the things for which liens were given by this act were not intended to nullify other lien statutes in favor of mechanics, laborers, clerks and others performing services in the oil industry, and materialmen who might furnish material in the oil or mining industry not covered by the act. *Butt v. Vermejo Park Corp.*, 1976-NMSC-075, 89 N.M. 679, 556 P.2d 835.

Lien on fee owner's interest. — Under the Mechanics' Lien Act (48-2-1 NMSA 1978 et seq.), a lien may be imposed upon fee owner's interest if he has knowledge of the construction and fails to disclaim responsibility therefor in manner and within time therein provided, while under this act, fee owner's interest is subject to lien only if he expressly so contracts, an obvious conflict, and it was held that company which built roads, leveled land, hauled water and provided gravel and load pipe in connection with certain oil and gas exploration and drilling were entitled to assert a lien only under this act. *Butt v. Vermejo Park Corp.*, 1976-NMSC-075, 89 N.M. 679, 556 P.2d 835.

ARTICLE 5
Liquefied and Compressed Gases

70-5-1. Definitions.

As used in the LPG and CNG Act:

A. "liquefied petroleum gases", "LPG" or "LP gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butanes (normal butane or iso-butane) and butylenes;

B. "compressed natural gases", "CNG", "liquefied natural gases" and "LNG" means mixtures of hydrocarbon gases, vapors or liquids consisting principally of methane that has been compressed for vehicular fuel;

C. "product" or "products" of liquefied petroleum gases or compressed natural gases are considered to be liquefied petroleum gases or compressed natural gases, respectively;

D. "qualified instructor" means an employee, owner or other qualified individual who has passed the required examination and performed for at least one year the work being taught;

E. "inspector" means a person hired by the bureau to enforce under administrative direction the laws and safety rules and regulations of the bureau with respect to the LP gas industry and the use of CNG and LNG in motor vehicles;

F. "division" means the construction industries division of the regulation and licensing department;

G. "bureau" means the liquefied petroleum and compressed gas bureau of the division; and

H. "commission" means the construction industries commission.

History: 1941 Comp., § 71-804, enacted by Laws 1947, ch. 214, § 1; 1953 Comp., § 65-7-1; Laws 1955, ch. 97, § 1; 1973, ch. 362, § 1; 1977, ch. 245, § 124; 1989, ch. 6, § 50; 1993, ch. 186, § 1; 2017, ch. 57, § 1.

ANNOTATIONS

Repeals. — Laws 2005, ch. 208, § 27, repealed 60-13-58 NMSA 1978, effective June 17, 2005, which would have repealed Chapter 70, Article 5 NMSA 1978 effective July 1, 2006.

The 2017 amendment, effective June 16, 2017, defined "liquefied natural gases" and "LNG", and revised the definitions of "compressed natural gases", "qualified instructor", and "inspector" as used in the LPG and CNG Act; in Subsection B, after "gases'", deleted "and", after "'CNG'", added "'liquefied natural gases' and 'LNG'", after "hydrocarbon gases", deleted "and", after "vapors", added "or liquids", and after "methane", deleted "in gaseous form which" and added "that"; in Subsection D, after "an employee", added "owner or other qualified individual"; and in Subsection E, after "rules and regulations of the", added "bureau with respect to the", and after "CNG", added "and LNG".

The 1993 amendment, effective July 1, 1993, deleted "Liquefied petroleum gas bureau" preceding "Definitions" in the section heading; substituted "means any material

that is composed" for "means and includes any material which is composed" in Subsection A; inserted Subsection B; redesignated former Subsections B through G as Subsections C through H; in Subsection C, inserted "of liquefied petroleum gases or compressed natural gases" following "'products'" and substituted the language beginning "liquefied petroleum gases" at the end of the subsection for "LP gas"; added "and the use of CNG in motor vehicles" at the end of Subsection E; and inserted "and compressed" in Subsection G.

The 1989 amendment, effective July 1, 1989, in Subsection E, substituted "regulation and licensing" for "commerce and industry"; in Subsection F, substituted "division" for "construction industries division of the commerce and industry department"; and, in Subsection G, twice substituted "commission" for "committee".

Intent of the legislature when it passed this act was, because of inherent dangers involved in use or misuse, of liquefied petroleum gas and its appliances, that the state should have reasonable regulatory control to insure the health, safety and welfare of its citizens. 1970 Op. Att'y Gen. No. 70-08.

Jurisdiction of Mobile Housing Act and this act. — The Mobile Housing Act (now the Manufactured Housing Act), Chapter 60, Article 14 NMSA 1978, does not supersede or repeal by implication the Liquefied Petroleum Gas Act, with respect to jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit. 1976 Op. Att'y Gen. No. 76-38.

The Mobile Housing Act (now the Manufactured Housing Act) in no way confers on mobile housing commission exclusive jurisdiction over liquefied petroleum gas line installations within mobile housing units. Both mobile housing commission (now mobile housing division) and the liquefied petroleum gas commission (now liquefied petroleum gas bureau) have jurisdiction to regulate and inspect the installation of liquefied petroleum gas lines in mobile homes. 1976 Op. Att'y Gen. No. 76-38.

There is no substantial difference between installation of heating equipment in a house trailer and installation of liquefied petroleum gas equipment in a permanent residence. The danger to the occupants is present in a house trailer, and if anything, is more pronounced therein than in a permanent domestic residence. Sections 70-5-1 to 70-5-22 NMSA 1978 were emergency acts passed by the legislature for protection of health and safety of people of New Mexico. The act intended to include all persons engaged in sale of liquefied petroleum appliances and installations thereof, regardless of manner in which those appliances were sold. 1953 Op. Att'y Gen. No. 53-5627.

Persons or firms selling house trailers equipped with liquefied petroleum appliances and piping are covered by the act and fully subject to all license fees and regulations promulgated by public service commission. 1953 Op. Att'y Gen. No. 53-5627.

Licensing requirement. — A retail seller of preassembled camping trailers in which liquefied petroleum gas appliances were installed is required to obtain a retail sales

license from the liquefied petroleum gas commission (now liquefied petroleum gas bureau) if equipment installed is being fed from reservoir of more than five pounds of liquefied gas. 1970 Op. Att'y Gen. No. 70-08.

Law reviews. — For note, "Gabaldon v. Sanchez: New Developments in the Law of Nuisance, Negligence and Trespass," see 9 N.M.L. Rev. 367 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of one selling or distributing liquid or bottled fuel gas, for personal injury, death or property damage, 41 A.L.R.3d 782.

70-5-2. Short title.

Chapter 70, Article 5 NMSA 1978 may be cited as the "LPG and CNG Act".

History: 1953 Comp., § 65-7-1.1, enacted by Laws 1973, ch. 362, § 2; 1993, ch. 186, § 2.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "Chapter 70, Article 5 NMSA 1978" for "Sections 65-7-1 through 65-7-23 NMSA 1953" and inserted "and CNG".

Liquefied Petroleum Gas Act is for protection of public from the dangers which are inherent in liquefied petroleum gas if it is not properly handled. 1963 Op. Att'y Gen. No. 63-53.

70-5-3. Rules and regulations for design, construction, assembling, equipping and installing of containers and equipment.

All containers and pertinent equipment used or to be used in this state for CNG equipment when attached to motor vehicles or for the storage, transporting or dispensing of LP gases or CNG by industrial, commercial or domestic users, together with appliances used or to be used in this state with LP gases as fuel, shall be designed, constructed, assembled, equipped and installed as specified by the rules and regulations of the commission, adopted and promulgated as provided in the LPG and CNG Act [this article].

History: 1941 Comp., § 71-805, enacted by Laws 1947, ch. 214, § 2; 1953 Comp., § 65-7-2; Laws 1955, ch. 97, § 2; 1973, ch. 362, § 3; 1977, ch. 245, § 125; 1989, ch. 6, § 51; 1993, ch. 186, § 3.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "for CNG equipment when attached to motor vehicles or" near the beginning of the section, "or CNG" near the middle of the section, and "and CNG" near the end of the section.

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" near the end of the section.

Persons or firms selling house trailers equipped with liquefied petroleum appliances and piping are covered by act and fully subject to all license fees and regulations promulgated by the public service commission. 1953 Op. Att'y Gen. No. 53-5627.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 Am. Jur. 2d Products Liability § 834.

Products liability: sufficiency of evidence to support product misuse defense in actions concerning bottles, cans, storage tanks, or other containers, 58 A.L.R.4th 160.

Products liability: recovery for injury or death resulting from intentional inhalation of product's fumes or vapors to produce intoxicating or similar effect, 50 A.L.R.5th 275.

70-5-4. Acts concerning LP gas or CNG subject to commission rules and regulations.

The selling, offering for sale, constructing, assembling, repairing, equipping, installing, filling with fuel, storage of fuel within, dispensing of fuel from or transporting fuel within containers described in Section 70-5-3 NMSA 1978 without the containers having been designed, constructed, assembled, equipped, maintained, tested and inspected as specified by the rules and regulations of the commission pursuant to the LPG and CNG Act shall be a violation of the LPG and CNG Act and shall be subject to the fines, penalties and restrictions provided.

History: 1941 Comp., § 71-806, enacted by Laws 1947, ch. 214, § 3; 1953 Comp., § 65-7-3; Laws 1973, ch. 362, § 4; 1977, ch. 245, § 126; 1989, ch. 6, § 52; 1993, ch. 186, § 4.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, rewrote the section heading, substituted "offering" for "exposing" near the beginning of the section, and inserted "and CNG" twice near the end of the section.

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" in the section heading and near the end of the section, inserted "described in Section 70-5-3 NMSA 1978" near the middle of the section, and made minor stylistic changes throughout the section.

70-5-5. Power to adopt and promulgate rules and regulations; exceptions to act.

A. The commission may adopt and promulgate rules and regulations as are necessary to carry out the purpose of the LPG and CNG Act [this article] and for the public peace, health and safety as affected by the use of such materials. The regulations made shall substantially conform with the standards as published by the national fire protection association covering the same subject matter. Nothing contained in this section is intended to alter the specifications for manufacturing or testing of containers established by the interstate commerce commission or the U.S. department of transportation or of containers installed in refineries, gas processing plants, underground storage terminals, natural gas distributing plants and pipeline terminals.

B. The bureau may adopt a schedule of reasonable fees to be charged for furnishing any printed matter or forms, for filing or recording any data sheets, blueprints, drawings, plans, specifications, reports and any other instrument or document and for making and furnishing copies of any record, report, regulation, rule, law or any other matter on file with the bureau.

History: 1941 Comp., § 71-807, enacted by Laws 1947, ch. 214, § 4; 1953 Comp., § 65-7-4; Laws 1957, ch. 221, § 1; 1973, ch. 362, § 5; 1977, ch. 245, § 127; 1989, ch. 6, § 53; 1993, ch. 186, § 5.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "and CNG" in the first sentence in Subsection A.

The 1989 amendment, effective July 1, 1989, in Subsection A, substituted "commission" for "committee" in the first sentence and made several minor stylistic changes.

Rules and regulations apply to the public. — Where employees of a repair shop that specialized in the repair of utility equipment, including liquid propane delivery trucks, were severely injured when a propane tank they were repairing leaked liquid propane and exploded, the LPG and CNG Act imposed a duty on the employees to adhere to the Liquified Petroleum Gasses Handbook of the National Fire Protection Association, which had been adopted by the commission at the time of the accident. *Apodaca v. AAA Gas Co.*, 2003-NMCA-085, 134 N.M. 77, 73 P.3d 215, cert. quashed, 2004-NMCERT-003, 135 N.M. 321.

Violations of regulations adopted under this section held negligence per se. — Since this act was in full force and effect when an accident involving liquid gas occurred, regardless of its delayed repeal, violation of regulations for storage and handling of liquefied petroleum gas adopted under this section constituted negligence per se. *Ray v. Aztec Well Serv. Co.*, 748 F.2d 888 (10th Cir. 1984).

Authority to charge reasonable fee. — Subsection B of this section gives liquefied petroleum gas commission (now liquefied petroleum gas bureau) authority to charge a reasonable fee for filing a form required of licensees for the purpose of indicating that any installation, testing or modification of liquefied gas containers, piping or appliance has been inspected. 1969 Op. Att'y Gen. No. 69-94.

Requirements of insurance. — The commission (now liquefied petroleum gas bureau) would not be exceeding statutory authority to require one type of insurance, all types of insurance mentioned or combination thereof. Since commission (bureau) deals with an activity in which public safety factor is so important, it would appear that legislature has left to commission's discretion the evidence to be submitted of types of insurance carried by licensees under the act. 1955 Op. Att'y Gen. No. 55-6260.

70-5-6. License; exceptions.

A. No person, firm or corporation shall engage in this state in the manufacturing, assembling, repairing, selling or installing of containers or appliances or of equipment for CNG attached or to be attached to motor vehicles to be used with LP gases as a fuel, nor shall any person, firm or corporation engage in the manufacture, sale, transportation, dispensing or storage of LP gases within this state, except where stored by the ultimate consumer for consumption only, without having first obtained from the bureau a license to do so for each main and branch office or business operated within the state pursuant to the LPG and CNG Act [this article]. No license shall be issued until the bureau has determined that the applicant meets all safety requirements provided for in that act and required by the rules and regulations of the commission and the bureau finds that the applicant is fit and able to perform the work for which a license is requested. Provided that household appliances and any other appliance, container or equipment being fed from a reservoir less than five pounds shall not be subject to the LPG and CNG Act. Provided, further, that retail sale of LP gas appliances, including factory installed LP gas appliances and equipment on campers, mobile homes and recreational vehicles, shall be exempt from this section.

B. When LP gas or CNG is to be the source of fuel, the installation of piping, appliances and equipment shall be made by installers qualified by the bureau. Property-owner installed systems, when certified by qualified installers or inspectors of the bureau, are exempt from the provisions of this subsection.

History: 1941 Comp., § 71-808, enacted by Laws 1947, ch. 214, § 5; 1949, ch. 122, § 1; 1953 Comp., § 65-7-5; Laws 1955, ch. 97, § 3; 1973, ch. 362, § 6; 1977, ch. 245, § 128; 1989, ch. 6, § 54; 1993, ch. 186, § 6.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, in Subsection A, inserted "or of equipment for CNG attached or to be attached to motor vehicles" and "and CNG" in the

first sentence, and "and CNG" in the third sentence; and inserted "or CNG" in the first sentence of Subsection B.

The 1989 amendment, effective July 1, 1989, in Subsection A, made minor stylistic changes in the first and second sentences and substituted "commission" for "committee" in the second sentence.

Licensing requirements. — Any dealer who sells motor vehicles equipped with liquefied petroleum fuel tanks and carburetion assemblies for purpose of utilizing liquefied petroleum gas as a motor fuel is subject to licensing by liquefied petroleum commission (now liquefied petroleum gas bureau). 1957 Op. Att'y Gen. No. 57-157.

Legislature intended that all licensees were to file evidence of financial responsibility with the commission (now liquefied petroleum gas bureau) irrespective of whether they were old or new licensees. Therefore, there is no reason why licensees who have secured their license under the old act should not be required to immediately comply with the new act. 1955 Op. Att'y Gen. No. 55-6260.

Since the purpose of this section is to place close supervision over places where LP gas is handled, a corporation which with its principal office in Clovis, maintains an employee at Vaughn for purpose of distributing LP gas in Vaughn area from gas stored there, must obtain license for Vaughn office. 1949 Op. Att'y Gen. No. 49-5246.

Regulation by public service commission. — Public service commission has authority to require licensees to inspect liquefied gas systems as a condition to their servicing and to require licensees to report unsafe conditions found to the end that such systems may be tagged and not used until made safe. 1951 Op. Att'y Gen. No. 51-5384 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38A C.J.S. Gas § 20.

70-5-7. Requiring competent employees in transporting, dispensing, installation, service or repair.

A. The bureau may require each person, firm or corporation that transports or dispenses LP gas or that installs, repairs or services appliances, containers, equipment or piping for the use of LP gas to have all persons who perform these activities pass an appropriate examination based on the safety requirements of the commission.

B. A trainee employee shall be exempt from such examination for a period of forty-five working days and until examined by a representative of the bureau. A trainee employee, during the forty-five day period, shall be under supervision of a qualified instructor. Any LP or CNG gas licensee hiring a trainee shall, within forty-five days of the commencement of employment, notify the bureau of this fact so that an examination may be scheduled. If the trainee fails to pass the examination, he may retake it after additional instruction.

C. The bureau shall set a reasonable fee for administering an examination.

History: 1953 Comp., § 65-7-6, enacted by Laws 1970, ch. 65, § 1; 1973, ch. 362, § 7; 1977, ch. 245, § 129; 1989, ch. 6, § 55; 1993, ch. 186, § 7.

ANNOTATIONS

Repeals and reenactments. — Laws 1970, ch. 65, § 1, repealed former 65-7-6, 1953 Comp., relating to the requirement of competent employees and enacted a new 70-5-7 NMSA 1978.

The 1993 amendment, effective July 1, 1993, inserted "or CNG" in the next-to-last sentence of Subsection B.

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" at the end of Subsection A and deleted "such" preceding "employment" in the next-to-last sentence of Subsection B.

Substitution of names in examination application. — Liquefied petroleum gas commission (now liquefied petroleum gas bureau) has no authority to permit substitution of names in application for examination by licensee for his employees, unless commission (division) requires payment of additional application fee. 1961 Op. Att'y Gen. No. 61-11.

70-5-8. Authority of inspectors.

A. An inspector of the bureau may enter any building or proceed on to any premises at any reasonable time in the discharge of his official duties for the purpose of making an inspection of work performed or of testing any installation within the jurisdiction of the bureau.

B. An inspector may cause immediate discontinuance of service to any installation or device, appliance or equipment found to be dangerous to life or property because it is defective, of faulty design, not properly qualified or incorrectly installed, until the installation, device, appliance or equipment is made safe. Any device, appliance or equipment that is dangerous to life or property and cannot be made safe shall be removed by the bureau and properly disposed of.

C. The inspector shall order the correction of any defects or of any incorrect installation and shall issue a notice to the owner, lessee or renter outlining the corrections to be made in order to meet bureau requirements.

D. Any authorized representative of the bureau may enter any building or proceed on to any premises for investigation where an accident has occurred in which LP gas may have been a factor. The representative may remove any item which may have

been a factor in the accident, and the item shall be retained by the bureau until all questions regarding the accident are resolved.

History: 1953 Comp., § 65-7-7, enacted by Laws 1973, ch. 362, § 8; 1977, ch. 245, § 130; 1993, ch. 186, § 8.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 362, § 8, repealed former 65-7-7, 1953 Comp., relating to licensing of operators and dealers and enacted a new 70-5-8 NMSA 1978.

The 1993 amendment, effective July 1, 1993, deleted "LP gas" preceding "bureau" in Subsection A; added the second sentence in Subsection B; and in Subsection D, deleted "LP gas" preceding "bureau" in the first sentence and substituted "the" for "such" twice in the second sentence.

70-5-9. Annual license fees; inspection fees.

A. For the purpose of defraying the expenses of administering the laws relating to the use of CNG in motor vehicles or the LP gas industry, each person, firm or corporation, at the time of application for a license and annually thereafter on or before December 31 of each calendar year, shall pay to the bureau reasonable license fees as set, classified and defined by the bureau for each operating location. Provided, the total annual fees charged any one licensee for a combination of LP gas activities at one location and subject to licensure under this section shall not exceed three hundred fifty dollars ($350), and the fee charged for any single activity or operation as set, classified and defined by the bureau shall not exceed one hundred fifty dollars ($150).

B. Nothing in the LPG and CNG Act is intended to alter the jurisdiction of the state corporation commission [public regulation commission], pipeline safety department.

C. In addition, there shall be paid a reasonable fee for the safety inspection, made by a representative of the bureau, of each LP gas bulk storage plant, LP gas liquid transfer facility and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities. The fee shall be set by the bureau and shall not be assessed more frequently than once in each twelve months. The bureau may also charge a reasonable fee for late payment of any fees.

D. No annual license fee fixed by the bureau as provided in this section shall become effective until after notice to each licensee has been made and hearing held on the proposed annual license fees in the manner provided by Section 70-5-14 NMSA 1978. At the conclusion of any hearing, the bureau shall enter its findings and decision in writing as a regulation, and the regulation shall be filed as provided by the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 65-7-8, enacted by Laws 1970, ch. 65, § 2; 1973, ch. 362, § 9; 1977, ch. 245, § 131; 1993, ch. 186, § 9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Repeals and reenactments. — Laws 1970, ch. 65, § 2, repealed former 65-7-8, 1953 Comp., relating to annual license and inspection fees and enacted a new 70-5-9 NMSA 1978.

The 1993 amendment, effective July 1, 1993, in Subsection A, inserted "the use of CNG in motor vehicles or" in the first sentence and substituted "licensee" for "license" in the second sentence; in Subsection B, substituted "in the LPG and CNG Act" for "in this Act" and deleted "New Mexico" preceding "state"; in Subsection C, in the first sentence inserted "LP gas" preceding "bulk storage plant" and "LP gas liquid transfer facility", and substituted "The fee" for "Such fee" in the second sentence; and, in Subsection D, substituted "Section 70-5-14 NMSA 1978" for "Section 65-7-14 NMSA 1953" and made minor stylistic changes throughout the subsection.

Residence building contractor included. — A building contractor who builds residences for sale and equips them with liquefied petroleum gas appliances must pay a license fee to the liquefied petroleum gas commission (now liquefied petroleum gas bureau) if the equipment installed is being fed from a reservoir of more than five pounds of liquefied gas. 1961 Op. Att'y Gen. No. 61-70.

A building contractor installing liquefied petroleum gas appliances and equipment in the houses he builds for sale must have a retail sale license as well as an installation license. 1961 Op. Att'y Gen. No. 61-70.

Payment of fees. — The legislature intended the payment of $50.00 to cover the balance of the calendar year for which license is issued and payments thereafter would cover fees for each calendar year. 1947 Op. Att'y Gen. No. 47-5013 (rendered under prior law, now repealed).

When license required of person transporting for own use. — A person who transports liquefied petroleum gas in bulk quantities over public roads to a farm or ranch for his own use is required to be licensed under the Liquefied Petroleum Gas Act. 1963 Op. Att'y. Gen. No. 63-53.

70-5-10. Revenue; suspense fund.

All fees and money collected under the provisions of the LPG and CNG Act shall be remitted by the bureau to the director of the division to be deposited in the general fund of the state. The bureau may maintain a "special suspense fund" with the division in an amount of one thousand dollars ($1,000) budgeted by the bureau for the purpose of making any necessary refunds. The bureau shall, with the advice and consent of the director of the division, employ inspectors, assistants and other necessary help as may be required to carry out its lawful duties.

History: 1941 Comp., § 71-812, enacted by Laws 1947, ch. 214, § 9; 1953 Comp., § 65-7-9; Laws 1957, ch. 221, § 4; 1973, ch. 362, § 10; 1977, ch. 245, § 132; 1993, ch. 186, § 10.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted "LP gas" preceding "Revenue" in the section heading; in the first sentence, substituted "money" for "moneys", inserted "and CNG", and deleted "forthwith" following "remitted"; and deleted "and" preceding "inspectors" in the third sentence.

Refund of fee denied. — A license fee paid by a company that was illegally operating in the state without a license prior to the time fee was paid should not be refunded when licensee chooses not to operate in the state. 1961 Op. Att'y Gen. No. 61-101.

70-5-11. Proof of responsibility.

A. The bureau shall require each licensee to have combined single limit public liability insurance of a reasonable amount determined by the commission. Such coverage shall be filed on a certificate to be prescribed by the commission, and the coverage shall be effective until canceled by either the carrier or the licensee. The provisions of this subsection do not apply to manufacturers of LP gas.

B. The licensee may file as an alternative to insurance described in Subsection A of this section a corporate surety bond of a reasonable amount determined by the commission.

C. The insurance or the surety bond shall be purchased from a company licensed to do business in New Mexico.

D. The certificate of insurance or the surety bond filed with the bureau shall continue to be effective until thirty days after the date the bureau is notified in writing of the cancellation of the insurance or surety bond.

History: 1953 Comp., § 65-7-11, enacted by Laws 1973, ch. 362, § 11; 1977, ch. 245, § 133; 1989, ch. 6, § 56.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 362, § 11, repealed former 65-7-11, 1953 Comp., relating to proof of financial responsibility, and enacted a new 70-5-11 NMSA 1978.

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" and made minor stylistic changes throughout Subsections A and B, and inserted "described in Subsection A of this section" in Subsection B.

70-5-12. Power of bureau and commission to refuse to grant, suspend or cancel a license.

The bureau may refuse to grant a license to any applicant and may request the commission to suspend or cancel the license of any licensee if it appears to the bureau upon hearing, as provided in the LPG and CNG Act, that an applicant or licensee has violated or failed to comply with any provision of law relating to LP gas or CNG or with any rule, regulation or order of the bureau or commission or that any licensee has demonstrated that he is incompetent or lacks knowledge in matters relevant to a license to such an extent that, in the judgment of the bureau, it would endanger the public safety to allow the licensee to continue to engage in LP gas or CNG activities or operations.

History: 1941 Comp., § 71-815, enacted by Laws 1947, ch. 214, § 12; 1953 Comp., § 65-7-12; Laws 1957, ch. 221, § 7; 1973, ch. 362, § 12; 1977, ch. 245, § 134; 1989, ch. 6, § 57; 1993, ch. 186, § 11.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "and CNG" near the beginning of the section, "or CNG" near the middle of the section, and "or CNG" near the end of the section.

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" in the section heading and throughout the section, and "as provided in the LPG Act" for "as herein provided" near the middle of the section, and made minor stylistic changes throughout the section.

70-5-13. Provisions for hearings.

Upon receipt of written complaint from one of its representatives or by any person or party affected, the bureau may, if it finds probable cause for such complaint, request the commission to hold a hearing to consider the complaint under the provisions of the LPG and CNG Act and under such rules and regulations not inconsistent with that act. If at the hearing the commission finds that the licensee has violated or failed to comply with any of the provisions of the LPG and CNG Act or the rules and regulations of the bureau or commission, then the commission may revoke or suspend the license of the licensee. The bureau may investigate on its own motion any matters pertaining to the subject of

the LPG and CNG Act and may hold such hearings as it deems necessary. The bureau may also summon and compel the attendance of witnesses, require the production of any records or documents deemed by it to be pertinent to the subject matter of any investigation and provide for the taking of depositions of witnesses under such rules as it may prescribe.

History: 1941 Comp., § 71-816, enacted by Laws 1947, ch. 214, § 13; 1953 Comp., § 65-7-13; Laws 1973, ch. 362, § 13; 1977, ch. 245, § 135; 1989, ch. 6, § 58; 1993, ch. 186, § 12.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "and CNG" in the first, second, and third sentences.

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 261 et seq.

73A C.J.S. Public Administrative Law and Procedure § 115 et seq.

70-5-14. Notice; hearing.

Notice of any hearing and of its time and place shall be given by certified mail not less than ten days, exclusive of the day of mailing, before the hearing. The notice shall be sent to the licensee and all persons involved. Any licensee against whom a complaint has been filed shall have the right to file answer, appear at the hearing, introduce evidence and be heard both in person and by counsel. In the hearing before the commission, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented.

History: 1941 Comp., § 71-817, enacted by Laws 1947, ch. 214, § 14; 1953 Comp., § 65-7-14; Laws 1973, ch. 362, § 14; 1977, ch. 245, § 136; 1989, ch. 6, § 59.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" in the last sentence and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 283 et seq.

73A C.J.S. Public Administrative Law and Proceedings §§ 134, 135, 139, 142.

70-5-15. Finding; record.

At the conclusion of any hearing held to consider a complaint filed against any licensee under the LPG and CNG Act, the commission shall enter its finding and order in writing, and the finding and order shall be recorded in a permanent record to be kept by the division. A copy of the commission's finding and order shall be furnished to the licensee complained of.

History: 1953 Comp., § 65-7-15, enacted by Laws 1973, ch. 362, § 15; 1977, ch. 245, § 137; 1989, ch. 6, § 60; 1993, ch. 186, § 13.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 362, § 15, repealed former 65-7-15, 1953 Comp., relating to findings, judgment and appeals and enacted a new 70-5-15 NMSA 1978.

The 1993 amendment, effective July 1, 1993, inserted "and CNG" in the first sentence.

The 1989 amendment, effective July 1, 1989, substituted "under the LPG Act" for "hereunder" and "commission" for "committee" in the first sentence and "commission's finding" for "committee's finding" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 376 et seq.

73A C.J.S. Public Administrative Law and Proceedings §§ 151, 160.

70-5-16. Appeal.

A licensee whose license is canceled or suspended by order of the commission may appeal the decision by filing an appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 65-7-16, enacted by Laws 1973, ch. 362, § 16; 1977, ch. 245, § 138; 1989, ch. 6, § 61; 1998, ch. 55, § 86; 1999, ch. 265, § 88.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 362, § 16, repealed former 65-7-16, 1953 Comp., relating to appeals to the supreme court, and enacted a new 70-5-16 NMSA 1978.

Cross references. — For Rules of Appellate Procedure, *see* Rule 12-101 NMRA et seq.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section.

The 1989 amendment, effective July 1, 1989, in the undesignated introductory paragraph, substituted "canceled" for "cancelled" in the first sentence and "commission" for "committee" throughout the paragraph.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 415 et seq.

73A C.J.S. Public Administrative Law and Proceedings §§ 172 to 201.

70-5-17. No formal notice required of hearing on application for license; appeal.

The same procedure, rights and penalties as specified in the LPG and CNG Act in the cases of revocation or suspension of licenses are available, where applicable, in cases where the bureau refused to grant a license, except that no formal notice of hearing on an application for license need be given an applicant, other than that he is given a reasonable opportunity to appear in support of his application before the bureau renders its order refusing him a license. Appeal shall be to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1941 Comp., § 71-820, enacted by Laws 1947, ch. 214, § 17; 1953 Comp., § 65-7-17; Laws 1973, ch. 362, § 17; 1977, ch. 245, § 139; 1993, ch. 186, § 14; 1998, ch. 55, § 87; 1999, ch. 265, § 89.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in the last sentence.

The 1998 amendment, effective September 1, 1998, inserted "; appeal" in the section heading and rewrote the second sentence.

The 1993 amendment, effective July 1, 1993, substituted "as specified in the LPG and CNG Act in the cases" for "as herein specified in the cases" and substituted "he is given" for "he be given" in the first sentence, and "a license under the LPG and CNG Act is denied" for "a license hereunder is denied" in the second sentence.

70-5-18. Civil penalty for failure to comply with act or any order, rule or regulation.

The failure of any person, firm or corporation or any association engaged in any LP gas or CNG activity or operation requiring a license by the bureau to comply, within forty-eight hours after the receipt of any certified order of the bureau or commission requiring compliance, with the laws relating to LP gases or CNG or any order, rule or regulation of the bureau or commission shall subject the person or the officers of the corporation to a civil penalty of one hundred dollars ($100) for each day the violation continues, and the attorney general may institute civil actions in the district court of the county in which the violation occurs to recover penalties in the name and on behalf of the state.

History: 1941 Comp., § 71-821, enacted by Laws 1947, ch. 214, § 18; 1953 Comp., § 65-7-18; Laws 1957, ch. 221, § 8; 1973, ch. 362, § 18; 1977, ch. 245, § 140; 1989, ch. 6, § 62; 1993, ch. 186, § 15.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "or CNG" following both "any LP gas" and "to LP gases".

The 1989 amendment, effective July 1, 1989, inserted "to comply" near the beginning of the section, twice substituted "commission" for "committee", and made minor stylistic changes throughout the section.

70-5-19. Municipalities; taxes; license fees.

Nothing contained in the LPG and CNG Act shall be construed as preventing any municipality from collecting local occupation taxes or license fees under the provisions of any local ordinance, but licensees under the LPG and CNG Act are specifically exempted from application of the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978], the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] insofar as their LP gas operations or CNG equipment attached to or to be attached to motor vehicles are concerned.

History: 1941 Comp., § 71-823, enacted by Laws 1947, ch. 214, § 20; 1953 Comp., § 65-7-20; Laws 1973, ch. 362, § 19; 1993, ch. 186, § 16.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "and CNG" preceding "Act" near the beginning and near the middle of the section, and substituted the language beginning "the Uniform Licensing Act" for "insofar as their LP gas operations are concerned" at the end of the section.

70-5-20. Enforcement.

The bureau may enforce the laws relating to LP gases and CNG and any rules, regulations or orders adopted by it or the commission pursuant to those laws by injunction in the district courts, which remedy shall be in addition to the civil and criminal penalties provided in the LPG and CNG Act. The chief and the inspectors of the bureau may issue citations for violation of the LPG and CNG Act.

History: 1941 Comp., § 71-824, enacted by Laws 1947, ch. 214, § 21; 1953 Comp., § 65-7-21; Laws 1957, ch. 221, § 9; 1973, ch. 362, § 20; 1977, ch. 245, § 141; 1989, ch. 6, § 63; 1993, ch. 186, § 17.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, in the first sentence, inserted "and CNG", substituted "adopted" for "promulgated" and inserted "and CNG"; and inserted "and CNG" in the second sentence.

The 1989 amendment, effective July 1, 1989, substituted "commission pursuant to those laws" for "committee pursuant thereto" in the first sentence.

70-5-21. Misdemeanor.

Any person violating any provision of the LPG and CNG Act or the rules, regulations or orders of the bureau or the commission issued pursuant to that act is guilty of a misdemeanor and shall be punished pursuant to Subsection A of Section 31-19-1 NMSA 1978.

History: 1941 Comp., § 71-825, enacted by Laws 1947, ch. 214, § 22; 1953 Comp., § 65-7-22; Laws 1957, ch. 221, § 10; 1963, ch. 7, § 1; 1973, ch. 362, § 21; 1977, ch. 245, § 142; 1989, ch. 6, § 64; 1993, ch. 186, § 18; 2017, ch. 57, § 2.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, increased the potential penalty for violating any provision of the LPG and CNG Act or the rules, regulations or orders of the liquefied petroleum and compressed gas bureau or the construction industries commission issued pursuant to that act; after "shall be punished", deleted "by a fine levied in a magistrate court of not less than fifty dollars ($50.00) or more than five hundred dollars ($500) or by imprisonment for not more than ninety days or both" and added "pursuant to Subsection A of Section 31-19-1 NMSA 1978".

The 1993 amendment, effective July 1, 1993, inserted "and CNG".

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" and made minor stylistic changes.

70-5-22. Administrative penalty assessments.

The bureau may charge an administrative penalty for any violation of the LPG and CNG Act or the rules, regulations, codes or orders of the bureau.

History: 1953 Comp., § 65-7-23, enacted by Laws 1973, ch. 362, § 22; 1977, ch. 245, § 143; 1993, ch. 186, § 19.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 362, § 22, repealed former 65-7-23, 1953 Comp., pertaining to penalty assessments, and enacted a new 70-5-22 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "may charge an administrative penalty for any violation of the LPG and CNG Act or the rules, regulations, codes or orders" for "may charge a reasonable fee for failure to file any written report or other document required by law or by the rules, regulations, or orders".

Act to include all installations, sales of liquefied petroleum appliances. — There is no substantial difference between installation of heating equipment in a house trailer and installation of liquefied petroleum gas equipment in permanent residence. The danger to the occupants is present in a house trailer, and if anything, is more pronounced therein than in a permanent domestic residence. Sections 70-5-1 to 70-5-22 NMSA 1978 were emergency acts passed by the legislature for protection of health and safety of the people of New Mexico. The act intended to include all persons engaged in the sale of liquefied petroleum appliances and installations regardless of manner in which those appliances were sold. 1953 Op. Att'y Gen. No. 53-5627.

70-5-23. Containers to be filled only by owner or upon the owner's authorization; emergency exception; list of customers.

A. As used in this section:

(1) "emergency" means a situation in which the state, a county or municipality or a tribal government issues a declaration finding in whole or in part that a lack of LP gas for heating, cooling or refrigeration is endangering customers' health or safety; and

(2) "LP gas dispenser" means a person that delivers LP gas to an ultimate consumer for consumption only.

B. Except as provided in Subsection C of this section, an LP gas container shall be filled only by the owner or upon the owner's authorization.

C. When the bureau receives customer complaints about nondelivery of LP gas, the bureau shall contact the LP gas dispenser to determine the reason for the nondelivery

and shall work with the LP gas dispenser to ensure timely delivery to customers. In an emergency, the bureau may require the LP gas dispenser that owns the containers used by customers to deliver LP gas within twenty-four hours or authorize one or more other LP gas dispensers to deliver and fill the owner's containers that are leased to customers; provided that if there is not enough LP gas to fill all containers, the bureau and the LP gas dispensers shall determine priorities and proportional deliveries, as appropriate. The LP gas dispenser shall provide its customer list to the bureau and the delivering LP gas dispenser. The customer list is not a public document subject to the provisions of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. If a container holds LP gas for which a customer has paid either the owner or another dispenser, the owner of the container shall not remove the fuel or remove the container from a customer's premises without paying the customer the fair market price of the LP gas.

History: 1978 Comp., § 70-5-23, enacted by Laws 1993, ch. 186, § 20; 2022, ch. 34, § 1.

ANNOTATIONS

The 2022 amendment, effective March 2, 2022, provided an emergency exception to an existing provision stating that an LP gas container may be filled only by the owner or upon the owner's authorization; in the section heading, added "emergency exception; list of customers"; added a new Subsection A and new subsection designation "B."; in Subsection B, added "Except as provided in Subsection C of this section, an"; and added Subsections C and D.

ARTICLE 6
Underground Storage of Natural Gas

70-6-1. Public interest and welfare.

The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available our natural gas resources to the domestic, commercial and industrial consumers of this state, and which provides a better year-round market to the various gas fields, is hereby declared to be in the public interest and welfare of this state and the citizens hereof.

History: 1953 Comp., § 65-9-1, enacted by Laws 1963, ch. 139, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights and liabilities with respect to natural gas reduced to possession and subsequently stored in natural reservoir, 94 A.L.R.2d 543.

58 C.J.S. Mines and Minerals § 229.

70-6-2. Definitions.

As used in Chapter 70, Article 6 NMSA 1978:

A. "underground storage" means storage of natural gas in a subsurface stratum or formation of the earth;

B. "natural gas" means natural gas either while in its original state after withdrawal from the earth or after it has been processed by removal of component parts not essential to its use for light and fuel;

C. "native gas" means gas that has not been previously withdrawn from the earth;

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

E. "commission" means the oil conservation commission;

F. "natural gas company" means any person, firm or corporation engaged in the distribution, sale or furnishing of natural gas to or for the public and subject to regulation by the New Mexico public utility commission under the Public Utility Act or any person, firm or corporation engaged in the business of transporting natural gas and subject to regulation by the federal energy regulatory commission under the Natural Gas Act; and

G. "public body" means the state or any department, board, commission, bureau, institution, public agency, county or political subdivision thereof, including bodies corporate, bodies politic, municipal corporations, school districts, conservancy districts and quasi-municipal corporations of all kinds.

History: 1953 Comp., § 65-9-2, enacted by Laws 1963, ch. 139, § 2; 1977, ch. 255, § 68; 1987, ch. 234, § 66; 1993, ch. 282, § 42.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "that" for "which" in Subsection C and "New Mexico public utility commission" for "New Mexico public service commission" in Subsection F.

The 1987 amendment, effective July 1, 1987, in the opening clause, substituted "Chapter 70, Article 6 NMSA 1978" for "this act"; in Subsection D, substituted "energy,

minerals and natural resources" for "energy and minerals"; in Subsection F, substituted "federal energy regulatory commission" for "federal power commission"; and made minor changes in language throughout the section.

Public Utility Act. — *See* 62-13-1 NMSA 1978 and notes thereto.

Natural Gas Act. — The federal Natural Gas Act is codified as 15 U.S.C. § 717 et seq.

70-6-3. Acquisition of lands for purposes of underground natural gas storage; lands controlled by public body, executor, administrator, guardian, receiver or trustee.

Any natural gas company desiring to make use of a formation or stratum as a reservoir for the underground storage of natural gas shall attempt to acquire by option, lease, conveyance or other negotiated means, such formation or stratum prior to resorting to the exercise of the power of eminent domain as hereinafter granted. Any public body and any executor, administrator, guardian, receiver or trustee shall be authorized to grant to any such natural gas company rights for underground storage of natural gas in lands subject to its or his control in the same manner as provided by law for entering into oil and gas leases, or if any such public body, executor, administrator, guardian, receiver or trustee shall not be specifically authorized by law to make oil and gas leases, then in the manner provided by law for lease by such public body, executor, administrator, guardian, receiver or trustee of interests in land, or if any such public body, executor, administrator, guardian, receiver or trustee shall not be specifically authorized by law to make oil and gas leases or leases for interests in land, then in the manner provided by law for the sale by such public body, executor, administrator, guardian, receiver or trustee of interests in land.

History: 1953 Comp., § 65-9-3, enacted by Laws 1963, ch. 139, § 3.

70-6-4. Appropriation of underground storage facilities; limitations.

By eminent domain proceedings, any natural gas company may appropriate for underground storage of natural gas any subsurface stratum or formation in any land which the division shall have found to be suitable for the underground storage of natural gas, and in connection therewith may appropriate such other interests in the land as may be required to maintain and operate facilities for such underground storage; provided, however, that the right to appropriate underground formations and strata shall be limited as follows:

A. no formation or stratum which is producing or which is capable of producing oil in paying quantities, through any known recovery method, shall be subject to appropriation hereunder;

B. no formation or stratum that contained native gas producible in paying quantities shall be subject to appropriation hereunder, unless the recoverable volumes of native gas originally in place therein shall be substantially depleted, and unless such formation or stratum has a greater value or utility as a gas storage reservoir for the purpose of insuring an adequate supply of natural gas, or for the conservation of natural gas, than for the production of the relatively small volumes of native gas which remain therein;

C. no formation or stratum underlying lands which contain known commercial deposits of potash shall be subject to appropriation hereunder;

D. no formation or stratum shall be subject to appropriation hereunder if its use for underground storage purposes would cause injury to surface or underground water resources;

E. no rights or interest in existing underground gas reservoirs, being used for the injection, storage and withdrawal of natural gas, owned or operated by others than the condemner, shall be subject to appropriation;

F. no dwelling, barn, store, warehouse or other building shall be subject to appropriation hereunder; and

G. the right of appropriation hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or interests therein to drill through the underground stratum or formation so appropriated in such manner as shall comply with orders, rules and regulations of the division issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof.

History: 1953 Comp., § 65-9-4, enacted by Laws 1978, ch. 59, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 59, § 1, repealed 65-9-4, 1953 Comp. (former 70-6-4 NMSA 1978), relating to appropriation of underground storage facilities and limitations, and enacted a new section.

Cross references. — For eminent domain, *see* N.M. Const., art. II, § 20 and 42A-1-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain § 79.

29A C.J.S. Eminent Domain § 48.

70-6-5. Findings of oil conservation division.

Any natural gas company desiring to exercise the right of eminent domain as to any land for underground storage of natural gas shall, as a conditional [condition] precedent to the filing of its petition in the district court, obtain from the division a decision finding:

A. that the underground stratum or formation sought to be acquired is suitable for the underground storage of natural gas;

B. that the underground stratum or formation sought to be acquired is incapable of producing oil in paying quantities through any known recovery method;

C. that the formation or stratum sought to be acquired is not underlying lands which contain known commercial deposits of potash;

D. that injury will not be caused to surface or underground water resources;

E. that the underground stratum or formation sought to be acquired, if it contained native gas capable of production in paying quantities, is substantially depleted of recoverable native gas, and that such formation or stratum has a greater value or utility as a gas storage reservoir than for the production of the remaining volumes of native gas therein;

F. the extent of the horizontal limits of the reservoir expected to be penetrated by displaced or injected gas; and

G. that no portion of the formation or stratum sought to be acquired has been appropriated or is being utilized for the injection, storage and withdrawal of natural gas by others.

History: 1953 Comp., § 65-9-5, enacted by Laws 1963, ch. 139, § 5; 1977, ch. 255, § 70.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

70-6-6. Commission or division procedure.

The laws, rules and regulations relating to commission or division action in matters pertaining to conservation of oil and gas shall be applicable to commission or division proceedings under this act [70-6-1 to 70-6-8 NMSA 1978].

History: 1953 Comp., § 65-9-6, enacted by Laws 1963, ch. 139, § 6; 1977, ch. 255, § 71.

70-6-7. Exercise of right of eminent domain.

Any natural gas company having first obtained a decision from the division may proceed to appropriate for underground storage of natural gas subsurface strata or formations and such other interests in the property as may be required to maintain and operate facilities for such underground storage in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 65-9-7, enacted by Laws 1963, ch. 139, § 7; 1977, ch. 255, § 72; 1981, ch. 125, § 53.

ANNOTATIONS

Cross references. — For telegraph and telephone companies' right of eminent domain, *see* 42A-2-2 to 42A-2-4 NMSA 1978.

For railroads' right of eminent domain, *see* 42A-2-3 and 42A-2-4 NMSA 1978.

70-6-8. Ownership of injected gas.

All natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage in any strata or formation shall at all times be deemed the property of the injector, his heirs, successors or assigns; and in no event shall such gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein, under which said strata or formation lie, or of any person other than the injector, his heirs, successors and assigns, to produce, take, reduce to possession, waste or otherwise interfere with or exercise any control thereover, provided that the injector, his heirs, successors and assigns shall have no right to gas in any stratum, formation or portion thereof, in which storage rights have not been acquired pursuant to this act [70-6-1 to 70-6-8 NMSA 1978], or otherwise purchased.

History: 1953 Comp., § 65-9-8, enacted by Laws 1963, ch. 139, § 8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights and liabilities with respect to natural gas reduced to possession and subsequently stored in natural reservoir, 94 A.L.R.2d 543.

ARTICLE 7
Statutory Unitization Act

70-7-1. Purpose of act.

The legislature finds and determines that it is desirable and necessary under the circumstances and for the purposes hereinafter set out to authorize and provide for the unitized management, operation and further development of the oil and gas properties

to which the Statutory Unitization Act is applicable, to the end that greater ultimate recovery may be had therefrom, waste prevented, and correlative rights protected of all owners of mineral interests in each unitized area. It is the intention of the legislature that the Statutory Unitization Act apply to any type of operation that will substantially increase the recovery of oil above the amount that would be recovered by primary recovery alone and not to what the industry understands as exploratory units.

History: 1953 Comp., § 65-14-1, enacted by Laws 1975, ch. 293, § 1.

ANNOTATIONS

Law reviews. — For article, "On an Institutional Arrangement for Developing Oil and Gas in the Gulf of Mexico," see 26 Nat. Res. J. 717 (1986).

70-7-2. Short title.

This act [70-7-1 to 70-7-21 NMSA 1978] may be cited as the "Statutory Unitization Act."

History: 1953 Comp., § 65-14-2, enacted by Laws 1975, ch. 293, § 2.

70-7-3. Additional powers and duties of the oil conservation division.

Subject to the limitations of the Statutory Unitization Act, the oil conservation division of the energy, minerals and natural resources department, hereinafter referred to as the "division", is vested with jurisdiction, power and authority and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of the Statutory Unitization Act.

History: 1953 Comp., § 65-14-3, enacted by Laws 1975, ch. 293, § 3; 1977, ch. 255, § 109; 1987, ch. 234, § 67.

ANNOTATIONS

The 1987 amendment, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" and made minor changes in language.

70-7-4. Definitions.

For the purposes of the Statutory Unitization Act, unless the context otherwise requires:

A. "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 herein. Pool is synonymous with "common source of supply" and with "common reservoir";

B. "oil and gas" means crude oil, natural gas, casinghead gas, condensate or any combination thereof;

C. "waste," in addition to its meaning in Section 70-2-3 NMSA 1978, shall include both economic and physical waste resulting, or that could reasonably be expected to result, from the development and operation separately of tracts that can best be developed and operated as a unit;

D. "working interest" means an interest in unitized substances by virtue of a lease, operating agreement, fee title or otherwise, excluding royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgages and lien claimants but including a carried interest, the owner of which is primarily obligated to pay, either in cash or out of production or otherwise, a portion of the unit expense; however, oil and gas rights that are free of lease or other instrument creating a working interest shall be regarded as a working interest to the extent of seven-eighths thereof and a royalty interest to the extent of the remaining one-eighth thereof;

E. "working interest owner" or "lessee" means a person who owns a working interest;

F. "royalty interest" means a right to or interest in any portion of the unitized substances or proceeds thereof other than a working interest;

G. "royalty owner" means a person who owns a royalty interest;

H. "unit operator" means the working interest owner, designated by working interest owners under the unit operating agreement or the division to conduct unit operations, acting as operator and not as a working interest owner;

I. "basic royalty" means the royalty reserved in the lease but in no event exceeding one-eighth; and

J. "relative value" means the value of each separately owned tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, operating or pricing factors, as may be reasonably susceptible of determination.

History: 1953 Comp., § 65-14-4, enacted by Laws 1975, ch. 293, § 4; 1977, ch. 255, § 110.

70-7-5. Requisites of application for unitization.

Any working interest owner may file an application with the division requesting an order for the unit operation of a pool or any part thereof. The application shall contain:

A. a description of the proposed unit area and the vertical limits to be included therein with a map or plat thereof attached;

B. a statement that the reservoir or portion thereof involved in the application has been reasonably defined by development;

C. a statement of the type of operations contemplated for the unit area;

D. a copy of a proposed plan of unitization which the applicant considers fair, reasonable and equitable;

E. a copy of a proposed operating plan covering the manner in which the unit will be supervised and managed and costs allocated and paid; and

F. an allegation of the facts required to be found by the division under Section 70-7-6 NMSA 1978.

History: 1953 Comp., § 65-14-5, enacted by Laws 1975, ch. 293, § 5; 1977, ch. 255, § 111.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 164, 172.

Compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 A.L.R.2d 434.

70-7-6. Matters to be found by the division precedent to issuance of unitization order.

A. After an application for unitization has been filed with the division and after notice and hearing, all in the form and manner and in accordance with the procedural requirements of the division, and prior to reaching a decision on the petition, the division shall determine whether or not each of the following conditions exists:

(1) that the unitized management, operation and further development of the oil or gas pool or a portion thereof is reasonably necessary in order to effectively carry on pressure maintenance or secondary or tertiary recovery operations, to substantially

increase the ultimate recovery of oil and gas from the pool or the unitized portion thereof;

(2) that one or more of the said unitized methods of operations as applied to such pool or portion thereof is feasible, will prevent waste and will result with reasonable probability in the increased recovery of substantially more oil and gas from the pool or unitized portion thereof than would otherwise be recovered;

(3) that the estimated additional costs, if any, of conducting such operations will not exceed the estimated value of the additional oil and gas so recovered plus a reasonable profit;

(4) that such unitization and adoption of one or more of such unitized methods of operation will benefit the working interest owners and royalty owners of the oil and gas rights within the pool or portion thereof directly affected;

(5) that the operator has made a good faith effort to secure voluntary unitization within the pool or portion thereof directly affected; and

(6) that the participation formula contained in the unitization agreement allocates the produced and saved unitized hydrocarbons to the separately owned tracts in the unit area on a fair, reasonable and equitable basis.

B. If the division determines that the participation formula contained in the unitization agreement does not allocate unitized hydrocarbons on a fair, reasonable and equitable basis, the division shall determine the relative value, from evidence introduced at the hearing, taking into account the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

C. When the division determines that the preceding conditions exist, it shall make findings to that effect and make an order creating the unit and providing for the unitization and unitized operation of the pool or portion thereof described in the order, all upon such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners.

History: 1953 Comp., § 65-14-6, enacted by Laws 1975, ch. 293, § 6; 1977, ch. 255, § 112.

70-7-7. Division orders.

The order providing for unitization and unit operation of a pool or part of a pool shall be upon terms and conditions that are fair, reasonable and equitable and shall approve or prescribe a plan or unit agreement for unit operation which shall include:

A. a legal description in terms of surface area of the pool or part of the pool to be operated as a unit and the vertical limits to be included, termed "the unit area";

B. a statement of the nature of the operations contemplated;

C. an allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost;

D. a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operations;

E. a provision governing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how the costs shall be paid, including a provision providing when, how and by whom the unit production allocated to an owner who does not pay the share of the costs of unit operations charged to that owner or the interest of that owner may be sold and the proceeds applied to the payment of costs;

F. a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon such terms and conditions determined by the division to be just and reasonable and allowing an appropriate charge for interest for such service payable out of the owner's share of production; provided that any nonconsenting working interest owner being so carried shall be deemed to have relinquished to the unit operator all of its operating rights and working interest in and to the unit until his share of the costs are repaid, plus an amount not to exceed two hundred percent of such costs as a nonconsent penalty, with maximum penalty amount in each case to be determined by the division;

G. a provision designating the unit operator and providing for the supervision and conduct of the unit operations, including the selection, removal or substitution of an operator from among the working interest owners to conduct the unit operations;

H. a provision for a voting procedure for the decision of matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to its unit participation;

I. the time when the unit operation shall commence and the manner in which and the circumstances under which the operations shall terminate and for the settlement of accounts upon termination; and

J. such additional provisions as are found to be appropriate for carrying on the unit operations and for the protection of correlative rights and the prevention of waste.

History: 1953 Comp., § 65-14-7, enacted by Laws 1975, ch. 293, § 7; 1977, ch. 255, § 113; 1986, ch. 55, § 1.

ANNOTATIONS

The 1986 amendment, effective May 21, 1986, at the end of Subsection F, added the language following "in and to the unit until" and made minor stylistic changes throughout the section.

70-7-8. Ratification or approval of plan by owners.

A. No order of the division providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the division has been approved in writing by those persons who, under the division's order, will be required initially to pay at least seventy-five percent of the costs of the unit operations, and also by the owners of at least seventy-five percent of the production or proceeds thereof that will be credited to interests which are free of cost such as royalties, overriding royalties and production payments, and the division has made a finding either in the order providing for unit operations or in a supplemental order that the plan for unit operations has been so approved. Notwithstanding any other provisions of this section, if seventy-five percent or more of the unit area is owned, as to working interest, by one working interest owner, such working interest owner must be joined by at least one other working interest owner in ratifying and approving the plan of unit operations, unless such working interest owner is the owner of one hundred percent of the working interest in said unit area; provided, however, if a single owner is one who, under the division's order will be required initially to pay at least twenty-five percent, but not more than fifty percent, of the costs of unit operation, such owner must be joined by at least one other owner of the same type interest in disapproving, or failure to approve, the plan of unit operations to defeat the plan.

B. If one owner is the owner of at least twenty-five percent, but not more than fifty percent, of the production or proceeds thereof that will be credited to interests which are free of costs, such owner must be joined by at least one other owner of the same type interest in disapproving, or failure to approve, the plan of unit operations to defeat the plan.

C. If the persons owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of further force and effect and shall be revoked by the division, unless the division shall extend the time for ratification for good cause shown.

D. When the persons owning the required percentage of interest in the unit area have approved the plan for unit operations, the interests of all persons in the unit are unitized whether or not such persons have approved the plan of unitization in writing.

History: 1953 Comp., § 65-14-8, enacted by Laws 1975, ch. 293, § 8; 1977, ch. 255, § 114.

70-7-9. Amendment of plan of unitization.

An order providing for unit operations may be amended by an order made by the division in the same manner and subject to the same conditions as an original order providing for unit operations, provided:

A. if such an amendment affects only the rights and interests of the working interest owners, the approval of the amendment by the royalty owners shall not be required; and

B. no such amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all working interest owners and royalty owners in such tract, or change the percentage for the allocation of costs as established for any separately owned tract by the original order, except with the consent of all working interest owners in such tract.

History: 1953 Comp., § 65-14-9, enacted by Laws 1975, ch. 293, § 9; 1977, ch. 255, § 115.

70-7-10. Previously established units.

The division, by order, may provide for the unit operation of a pool or parts thereof that embrace a unit area established by a previous order of the division. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

History: 1953 Comp., § 65-14-10, enacted by Laws 1975, ch. 293, § 10; 1977, ch. 255, § 116.

70-7-11. Unit operations of less than an entire pool.

An order may provide for unit operation on less than the whole of a pool where the unit area is of such size and shape as may be reasonably suitable for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

History: 1953 Comp., § 65-14-11, enacted by Laws 1975, ch. 293, § 11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 164, 172.

70-7-12. Operation; expressed or implied covenants.

All operations, including but not limited to, the commencement, drilling or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portions of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the division providing for unit operations shall constitute a fulfillment of all the express or implied obligations for each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the division.

History: 1953 Comp., § 65-14-12, enacted by Laws 1975, ch. 293, § 12; 1977, ch. 255, § 117.

ANNOTATIONS

Communitization agreement entered into with permission of prior fee owner supports implied surface access right over land subject to that agreement but not over land that is not subject to agreement. *Kysar v. Amoco Prod. Co.*, 2004-NMSC-025, 135 N.M. 767, 93 P.3d 1272.

70-7-13. Income from unitized substances.

The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

History: 1953 Comp., § 65-14-13, enacted by Laws 1975, ch. 293, § 13.

70-7-14. Lien for costs.

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold estate and other oil and gas rights (exclusive of a one-eighth royalty interest or exclusive of the interest provided in the unit operating plan which allocates costs, if it is different than one-eighth) in and to each separately owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract.

History: 1953 Comp., § 65-14-14, enacted by Laws 1975, ch. 293, § 14.

70-7-15. Liability for expenses.

The obligation or liability of each working interest owner in the several separately owned tracts in the unit for the payment of unit expense at all times shall be several and not joint or collective, and a working interest owner shall not be chargeable with, obligated or liable for, directly or indirectly, more than the amount apportioned, assessed or otherwise charged to his interest in the separately owned tract pursuant to the order of unitization.

History: 1953 Comp., § 65-14-15, enacted by Laws 1975, ch. 293, § 15.

70-7-16. Division orders.

A. No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

B. For purposes of this section, "division order" shall mean a contract of sale to the purchaser of oil and gas.

History: 1953 Comp., § 65-14-16, enacted by Laws 1975, ch. 293, § 16; 1977, ch. 255, § 118.

70-7-17. Property rights.

Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the working interest owners within the unit area, and shall be the property of such working interest owners in the proportion that the costs of unit operations are charged.

History: 1953 Comp., § 65-14-17, enacted by Laws 1975, ch. 293, § 17.

70-7-18. Existing rights, rights in unleased land and royalties and lease burdens.

Property rights, leases, contracts and other rights or obligations shall be regarded as amended and modified only to the extent necessary to conform to the provisions and requirements of the Statutory Unitization Act and to any valid order of the division providing for the unit operation of a pool or a part thereof, but otherwise shall remain in full force and effect. A one-eighth part of the production allocated to each tract under an order providing for the unit operation of a pool or a part thereof shall in all events be and

remain free and clear of any cost or expense of developing or operating the unit and of any lien therefor as an encumbered [unencumbered] source from which to pay the royalties or other cost-free obligations due or payable with respect to the production from such tract. If a lease or other contract pertaining to a tract or interest stipulates a royalty, overriding royalty, production payment or other obligation in excess of one-eighth of the production or proceeds therefrom, then the working interest owner subject to such excess payment or other obligation shall bear and pay the same.

History: 1953 Comp., § 65-14-18, enacted by Laws 1975, ch. 293, § 18; 1977, ch. 255, § 119.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

70-7-19. Agreements not violative of laws governing monopolies or restraint of trade.

No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties entered into pursuant hereto or with a view or for the purpose of bringing about the unitized development or operation of such properties shall be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce.

History: 1953 Comp., § 65-14-19, enacted by Laws 1975, ch. 293, § 19.

70-7-20. Evidence of unit to be recorded.

A copy of each unit agreement shall be recorded in the office of the county clerk of the county or counties in which the unit is situated.

History: 1953 Comp., § 65-14-20, enacted by Laws 1975, ch. 293, § 20.

70-7-21. Unlawful operation.

From and after the date designated by the division that a unit plan shall become effective, the operation of any well producing from the pool within the area subject to said unit plan, by persons other than persons acting under the authority of the unit plan, or except in the manner and to the extent provided in such unit plan, shall be unlawful and is hereby prohibited.

History: 1953 Comp., § 65-14-21, enacted by Laws 1975, ch. 293, § 21; 1977, ch. 255, § 120.

ARTICLE 8
Emergency Petroleum Products Supplies (Recompiled.)

70-8-1. Recompiled.

ANNOTATIONS

Recompilation. — The Emergency Petroleum Products Supply Act has been recompiled by Laws 2005, ch. 22, § 4 as part of the Chapter 12, Article 12 NMSA 1978. Former Section 70-8-1 NMSA 1978 has been recompiled as 12-12-10 NMSA 1978, effective July 1, 2005.

70-8-2. Recompiled.

ANNOTATIONS

Recompilation. — The Emergency Petroleum Products Supply Act has been recompiled by Laws 2005, ch. 22, § 4 as part of the Chapter 12, Article 12 NMSA 1978. Former Section 70-8-2 NMSA 1978 has been recompiled as 12-12-11 NMSA 1978, effective July 1, 2005.

70-8-3. Recompiled.

ANNOTATIONS

Recompilation. — The Emergency Petroleum Products Supply Act has been recompiled by Laws 2005, ch. 22, § 4 as part of the Chapter 12, Article 12 NMSA 1978. Former Section 70-8-3 NMSA 1978 has been recompiled as 12-12-12 NMSA 1978, effective July 1, 2005.

70-8-4. Recompiled.

ANNOTATIONS

Recompilation. — The Emergency Petroleum Products Supply Act has been recompiled by Laws 2005, ch. 22, § 4 as part of the Chapter 12, Article 12 NMSA 1978. Former Section 70-8-4 NMSA 1978 has been recompiled as 12-12-13 NMSA 1978, effective July 1, 2005.

70-8-5. Recompiled.

ANNOTATIONS

Recompilation. — The Emergency Petroleum Products Supply Act has been recompiled by Laws 2005, ch. 22, § 4 as part of the Chapter 12, Article 12 NMSA 1978. Former Section 70-8-5 NMSA 1978 has been recompiled as 12-12-14 NMSA 1978, effective July 1, 2005.

70-8-5.1. Recompiled.

ANNOTATIONS

Recompilation. — The Emergency Petroleum Products Supply Act has been recompiled by Laws 2005, ch. 22, § 4 as part of the Chapter 12, Article 12 NMSA 1978. Former Section 70-8-5.1 NMSA 1978 has been recompiled as 12-12-15 NMSA 1978, effective July 1, 2005.

70-8-6. Recompiled.

ANNOTATIONS

Recompilation. — The Emergency Petroleum Products Supply Act has been recompiled by Laws 2005, ch. 22, § 4 as part of the Chapter 12, Article 12 NMSA 1978. Former Section 70-8-6 NMSA 1978 has been recompiled as 12-12-16 NMSA 1978, effective July 1, 2005.

ARTICLE 9
Petroleum Recovery Research Center

70-9-1. New Mexico petroleum recovery research center.

There is hereby established a "New Mexico petroleum recovery research center" which shall be a division of the New Mexico institute of mining and technology and under the direction of its board of regents.

History: 1953 Comp., § 73-27-28, enacted by Laws 1977, ch. 143, § 1.

70-9-2. New Mexico petroleum recovery research center; duties.

The objectives and duties of the New Mexico petroleum recovery research center shall be as follows:

A. to engage in theoretical and practical research into the recovery of petroleum and other energy resources;

B. to disseminate the knowledge acquired;

C. to assist, in all legal ways, persons and entities in the state in their efforts to effect additional recovery of petroleum and other energy resources from the state;

D. to perform any and all tasks in the area of petroleum recovery and other energy research as directed by the board of regents of the New Mexico institute of mining and technology; and

E. to cooperate with all other state and federal agencies as may be beneficial in carrying out the work of the New Mexico petroleum recovery research center.

History: 1953 Comp., § 73-27-29, enacted by Laws 1977, ch. 143, § 2.

70-9-3. Reports.

A. The board of regents shall cause to be prepared such reports showing the progress and condition of the center as the board may deem necessary or useful.

B. The reports of the center shall be printed as the board of regents may direct and the reports may be distributed or sold by the board as the interest of the state or science may demand and the money obtained by the sale of the reports shall be paid into the account of the New Mexico institute of mining and technology.

History: 1953 Comp., § 73-27-30, enacted by Laws 1977, ch. 143, § 3.

70-9-4. Sources of income.

The center may receive appropriations from the state directly or through the board of regents and may receive any or other items of value from public or private sources.

History: 1953 Comp., § 73-27-31, enacted by Laws 1977, ch. 143, § 4.

ARTICLE 10
Oil and Gas Proceeds Payments

70-10-1. Short title.

This act [70-10-1 to 70-10-3, 70-10-4, 70-10-5 NMSA 1978] may be cited as the "Oil and Gas Proceeds Payment Act".

History: Laws 1985, ch. 55, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 77, 86, 91, 141, 189 et seq.

Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

58 C.J.S. Mines and Minerals §§ 185 to 192, 213 to 219, 239.

70-10-2. Definitions.

As used in the Oil and Gas Proceeds Payment Act:

A. "oil and gas" means crude oil, natural gas, casinghead gas, condensate or any other related hydrocarbons;

B. "oil and gas proceeds" means all payments derived from oil and gas production from any well located in New Mexico, whether royalty interest, overriding royalty interest, production payment interest or working interest, expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas produced thereunder or the cash value thereof, subject to all taxes withheld therefrom pursuant to law, but excluding "net profits interests", and other types of interest the extent of which cannot be determined with reference to a specified share of such proceeds; and

C. "payor" means the party who undertakes to distribute oil and gas proceeds to the parties entitled thereto, including, but not limited to, the first purchaser of such production or as operator of the well from which such production was obtained or as lessee under the lease on which royalty is due.

History: Laws 1985, ch. 55, § 2; 1991, ch. 235, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "including, but not limited to" for "whether as" in Subsection C.

70-10-3. Payment of oil and gas proceeds; time for payment.

The oil and gas proceeds derived from the sale of production from any well producing oil, gas or related hydrocarbons in New Mexico shall be paid to all persons legally entitled to such payments, commencing not later than six months after the first day of the month following the date of first sale and thereafter not later than forty-five days after the end of the calendar month within which payment is received by payor for production unless other periods or arrangements are provided for in a valid contract with the person entitled to such proceeds.

Payment shall be made directly to the person or persons entitled thereto by the payor and payment shall be deemed to have been made upon deposit in the United States mail.

History: Laws 1985, ch. 55, § 3.

ANNOTATIONS

Allegations for claim. — Based on the plain language of the statute, in order to maintain an Oil and Gas Proceeds Payment Act claim, a party must allege a potentially successful claim for underpayment of royalties or theory of liability showing that it is legally entitled to such payments, independent of any claim under the Oil and Gas Payment Act. *Elliott Indus. Ltd. P'ship v. Conoco, Inc.*, 407 F.3d 1091 (10th Cir. 2005).

70-10-3.1. Duty to locate.

A. The operator or lessee arranging for the sale of oil and gas shall furnish the payor with the name, the address and the percentage of interest of each person to whom payment is to be made, as well as proof of marketable title to all of the oil and gas to be sold.

B. The payor shall make a diligent effort to furnish each interest owner with a reasonable division or transfer order that will set forth the proper interest to which the interest owner is entitled, as well as the mailing address to which payment may be directed.

C. If the purchaser or payor is unable to locate any person listed by the operator or lessee then the purchaser or payor shall notify the operator or lessee that he has been unable to locate or obtain the address of the person entitled to payment.

History: 1978 Comp., § 70-10-3.1, enacted by Laws 1991, ch. 235, § 2.

70-10-4. Interest on late payments.

A. Any delay in determining any person legally entitled to an interest in the proceeds from production shall not affect payments to all other persons entitled to payments. In instances where payments cannot be made within the time period provided in Section 70-10-3 NMSA 1978, the payor shall create a suspense account on his books for such interest or may interplead the suspended funds into court.

B. The person entitled to payment from the suspended funds shall be entitled to interest on the suspended funds from the date payment is due under Section 70-10-3 NMSA 1978. The interest awarded shall be the discount rate charged by the federal reserve bank of Dallas to member banks plus one and one-half percent on the date payment is due. Payment of principal and interest on the suspended funds shall be made to all persons legally entitled to the funds within thirty days from the date that the persons are determined to be entitled to the suspended funds by a final legal determination.

History: 1978 Comp., § 70-10-4, enacted by Laws 1991, ch. 235, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 235, § 3 repealed former 70-10-4 NMSA 1978, as enacted by Laws 1985, ch. 55, § 4, relating to interest on late payments, and enacted a new section, effective June 14, 1991.

Contractual provision denying payment of interest is unenforceable. — This section of the Oil and Gas Proceeds Payments Act supports a strong public policy that entitles payees to receive interest on the oil and gas production proceeds that are held in suspense for a period longer than six months, and this statutory provision cannot be contracted away. *First Baptist Church of Roswell v. Yates Petroleum Corp.*, 2015-NMSC-004, *rev'g* 2012-NMCA-064, 281 P.3d 1235.

Where interest owners in oil and gas leases signed form division orders which allowed petroleum company to withhold payment of oil and gas royalties pending the resolution of title issues, and when company eventually disburses royalties, to pay the proceeds without interest, the contractual waiver of interest in the division order violated the strong public policy designed to equalize the bargaining power between parties in oil and gas transactions and was not enforceable. *First Baptist Church of Roswell v. Yates Petroleum Corp.*, 2015-NMSC-004, *rev'g* 2012-NMCA-064, 281 P.3d 1235.

Contractual waiver of interest is valid. — Contractual agreements in division orders to waive compensatory interest on delayed payments of oil and gas proceeds are valid and enforceable. *First Baptist Church of Roswell v. Yates Petroleum Corp.*, 2012-NMCA-064, 281 P.3d 1235, cert. granted, 2012-NMCERT-006.

Where owners of mineral rights in an oil and gas well, which was placed in production in 2002, signed division orders which provided that when there was a question of title, the owners would provide the payor with evidence of title acceptable to the payor and cure any defects of title and that in the event of a failure to furnish evidence of marketable title, the payor was authorized to withhold payments without interest until the claim was settled; the division order listed the title requirements to entitle the owners to proceeds from the well and specifically requested that the owners provide a copy of the trust document that established their interests in the well; the owners failed to provide the trust document; in 2006, the operator placed the owners on pay status despite their failure to provide the trust document; and pursuant to the division order, the operator refused to pay interest, the contractual waiver of interest in the division order did not violate New Mexico public policy and was valid and enforceable. *First Baptist Church of Roswell v. Yates Petroleum Corp.*, 2012-NMCA-064, 281 P.3d 1235, cert. granted, 2012-NMCERT-006.

Interest owners are entitled to interest on funds that are rightfully owed to them. — Where Appellants, several living trusts that held royalty interests on oil and gas leases (Trusts), brought a putative class action in state court against Defendant, the owner and operator of natural gas wells on the leases, claiming that Defendant had not timely paid royalties or interest on the leases, as required by the New Mexico Oil and Gas Proceeds Payments Act, the district court erred in granting Defendant's motion for summary judgment, because Subsection B of this section clearly reflects the

legislature's intent to mandate that interest owners who are legally entitled to proceeds, but who are not paid on time, shall receive interest on funds that are rightfully owed to them. Anderson Living Trust v. Energen Resources Corp., 886 F.3d 826 (10th Cir. 2018).

70-10-5. Application; penalty.

If a payor fails to make payment to the person entitled to payment within the period provided in Section 70-10-3 NMSA 1978 and after the payor has been furnished with the information required by Section 70-10-3.1 NMSA 1978, the payor shall pay the person the unpaid amount of the payment and in lieu of the interest provided in Section 70-10-4 NMSA 1978 shall pay interest at the rate of eighteen percent per year on the unpaid balance due, unless payment is excused by the happening of one or more of the following:

A. the payor fails to make payment in good-faith reliance upon a title opinion by a licensed New Mexico attorney making objection to the lack of good and marketable title of record in the party claiming entitlement to payment and furnishes a copy thereof to such party for curative action required thereby;

B. the payor receives information that in his good-faith judgment brings into question the entitlement of the person claiming the right to the payment to receive the payment or that has rendered the marketable title of record unmarketable or that may expose the payor to the risk of multiple liability or liability to third parties if the payment is made;

C. the total amount of oil and gas proceeds in the possession of the payor owed to the owner of the oil and gas proceeds making claim to payment is less than one hundred dollars ($100) at the end of any month; or

D. the party entitled to payment has failed or refused to execute a reasonable division or transfer order acknowledging the proper interest to which he claims to be entitled and setting forth a mailing address to which payment may be directed.

History: 1978 Comp., § 70-10-5, enacted by Laws 1991, ch. 235, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 235, § 4 repealed former 70-10-5 NMSA 1978, as enacted by Laws 1985, ch. 55, § 5, relating to application, and enacted a new section, effective June 14, 1991.

70-10-6. Attorneys' fees.

The prevailing party in any proceedings brought pursuant to the Oil and Gas Proceeds Payment Act shall be entitled to recover all court costs and reasonable attorneys' fees.

History: 1978 Comp., § 70-10-6, enacted by Laws 1991, ch. 235, § 5.

ARTICLE 11
Office of Interstate Natural Gas Markets

70-11-1. Purpose.

The purpose of this act [70-11-1 to 70-11-6 NMSA 1978] is to protect the economic well-being of New Mexico's interstate natural gas markets and revenues derived from those markets by conducting economic and legal studies of the federal energy regulatory commission and regulatory agencies and local distributing companies lying outside New Mexico and by authorizing the newly created office of interstate natural gas markets to take steps to protect those interests.

History: Laws 1989, ch. 189, § 1.

70-11-2. Office created; duties.

There is created the "office of interstate natural gas markets" to be located in the energy, minerals and natural resources department. The office shall:

A. conduct economic and legal studies of the interstate natural gas markets, of the trade policies and practices of the federal energy regulatory commission and regulatory agencies and local distributing companies lying outside New Mexico;

B. determine the impact of those practices on the economic well-being of New Mexico, especially as it relates to severance tax, royalty and general fund income of the state;

C. develop and implement marketing strategies and, if applicable, prepare legislation to promote the use of natural gas produced in New Mexico by markets in other states;

D. employ legal counsel and initiate or enter lawsuits as appropriate for the purpose of protecting and promoting the public interest in matters involving interstate natural gas markets;

E. initiate or intervene in cases before the federal energy regulatory commission, the California public utility commission and other regulatory agencies lying outside New Mexico to protect and promote the public interest of the state;

F. present two progress reports to the legislative finance committee each year; and

G. contract with state agencies and other appropriate entities and persons as may be required to carry out the purposes of this act [70-11-1 to 70-11-6 NMSA 1978] and those purposes outlined in Laws 1988, Chapter 27, Section 3.

History: Laws 1989, ch. 189, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1988, ch. 27, § 3, referred to in this section, was an uncodified provision relating to economic and legal studies.

70-11-3. Director.

There shall be a director for the office of interstate natural gas markets. The director shall be experienced in the areas of natural gas resources and marketing and may be the director of natural gas programs.

History: Laws 1989, ch. 189, § 3.

70-11-4. Duties and general powers.

The director is responsible for the operation of the office of interstate natural gas markets. It is the director's duty to manage all operations of the office and to administer and enforce the provisions of Section 2 [70-11-2 NMSA 1978] of this act and the purposes outlined in Laws 1988, Chapter 27, Section 3.

History: Laws 1989, ch. 189, § 4.

ANNOTATIONS

Compiler's notes. — Laws 1988, ch. 27, § 3, referred to in this section, was an uncodified provision relating to economic and legal studies.

70-11-5. Technical advisory committee; composition; duties.

A. A "technical advisory committee" to the office of interstate natural gas markets is created. The committee shall consist of four members as follows:

(1) the secretary of energy, minerals and natural resources or his designee;

(2) the director of natural gas programs or his designee;

(3) the commissioner of public lands or his designee; and

(4) the director of the oil conservation division of the energy, minerals and natural resources department or his designee.

B. The secretary of energy, minerals and natural resources, the director of natural gas and the commissioner of public lands shall be voting members. The director of the oil conservation division shall be an ex-officio advisory member of the committee. The committee shall select a chairman and meet at the call of the chairman.

C. The committee shall review and make recommendations to the director on how the office of interstate natural gas markets can perform the duties assigned to the office in Section 2 [70-11-2 NMSA 1978] of this act.

History: Laws 1989, ch. 189, § 5.

70-11-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 65, § 1 repeals 70-11-6 NMSA 1978, as enacted by Laws 1989, ch. 189, § 6, relating to termination of the article on June 30, 1991, effective June 14, 1991. For provisions of former section, see 1989 Cumulative Supplement.

70-11-7. Findings and purpose.

A. The legislature finds that:

(1) the natural gas industry is an important contributor to the New Mexico economy, as a significant source of both employment and direct state revenues;

(2) New Mexico ranks second among the states in onshore natural gas reserves and will likely continue to be a major producer of natural gas for the foreseeable future;

(3) a study funded by Laws 1996, Chapter 7 concluded that an additional pipeline capable of transporting New Mexico natural gas to additional markets was, at that time, not economically feasible; and

(4) the study should be updated on a regular basis and the results reported to the legislature.

B. The purpose of this act is to provide a mechanism for monitoring the need for an additional natural gas pipeline in New Mexico.

History: Laws 2003, ch. 196, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 196 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

70-11-8. Natural gas pipeline study; additional duties.

A. The energy, minerals and natural resources department and the economic development department shall jointly study the need for additional natural gas pipelines to transport natural gas produced in New Mexico to additional markets. The study shall include:

(1) the economic feasibility of the proposed pipeline;

(2) the necessity of the proposed pipeline; and

(3) alternatives to the proposed pipeline and the environmental or economic benefit of the alternatives.

B. If, at any time, the study concludes that an additional natural gas pipeline is necessary, the energy, minerals and natural resources department shall give notice to all persons the department finds, in its sole discretion, to be interested in or affected by the pipeline. If, after six months from the notice, the department finds that the need still exists and persons capable of meeting the need for the pipeline have not acted or proposed to act in a manner capable of meeting the need, the energy, minerals and natural resources department and the economic development department shall report to the legislature on funding alternatives for the pipeline.

C. The energy, minerals and natural resources department and the economic development department shall annually report to the legislature on the results of the study required by Subsection A of this section and on any activities conducted pursuant to this section.

History: Laws 2003, ch. 196, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 196 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

ARTICLE 12
Surface Owners Protection

70-12-1. Short title.

This act [70-12-1 to 70-12-10 NMSA 1978] may be cited as the "Surface Owners Protection Act".

History: Laws 2007, ch. 5, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

Relocation of access road. — Where the oil and gas lessee's existing access road was washed out by the adjacent river and made impassable; the lease granted the lessee authority to utilize the surface property as was reasonably necessary to carry out its business; and there was a strong likelihood that erosion would continue in the future if the river bank were rebuilt and the existing road repaired, the court did not abuse it discretion when it authorized the lessee to relocate the portion of the eroded road in an alignment that had the least impact on the landowner's surface rights and ordered the lessee to compensate the landowner on the basis of the value of hay that the landowner would have grown on the area occupied by the relocated road. *XTO Energy, Inc. v. Armenta*, 2008-NMCA-078, 144 N.M. 212, 185 P.3d 383.

70-12-2. Applicability.

The Surface Owners Protection Act applies to:

A. private fee surface land; and

B. leasehold interests in any land on which oil and gas operations are conducted when the tenant incurs damages to leasehold improvements as a result of oil and gas operations.

History: Laws 2007, ch. 5, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

70-12-3. Definitions.

As used in the Surface Owners Protection Act:

A. "oil and gas operations" means all activities affecting the surface owner's land that are associated with exploration, drilling or production of oil or gas, through final reclamation of the affected surface;

B. "operator" means a person with the legal right to conduct oil and gas operations and includes the agents, employees and contractors of that person;

C. "reclaim" means to substantially restore the surface affected by oil and gas operations to the condition that existed prior to oil and gas operations, or as otherwise agreed to in writing by the operator and surface owner;

D. "surface owner" means a person who holds legal or equitable title, as shown in the records of the county clerk, to the surface of the real property on which the operator has the legal right to conduct oil and gas operations;

E. "surface use and compensation agreement" means an agreement between an operator and a surface owner specifying the rights and obligations of the surface owner and the operator concerning oil and gas operations; and

F. "tenant" means a person who occupies land or premises belonging to another in subordination to the owner's title and with the owner's assent, express or implied.

History: Laws 2007, ch. 5, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

A geophysical seismic survey falls within the definition of an oil and gas operation. — A geophysical seismic survey is an exploratory activity and is therefore an oil and gas operation under the Surface Owners Protection Act. *Woody Inv., LLC v. Sovereign Eagle, LLC*, 2015-NMCA-111, cert. denied, 2015-NMCERT-010.

Where plaintiffs brought claims under the Surface Owners Protection Act (SOPA), 70-12-1 to -10 NMSA 1978, after defendants conducted geophysical seismic surveys on land owned or leased by plaintiffs in order to evaluate potential future oil and gas operations, the district court erred in granting defendants' motion for summary judgment on the ground that defendants' geophysical survey is a non-surface disturbing activity and therefore not an oil and gas operation as defined in SOPA. A geophysical survey is an exploratory activity, whether it disturbs the surface or not, and is therefore a part of oil and gas exploration. *Woody Inv., LLC v. Sovereign Eagle, LLC*, 2015-NMCA-111, cert. denied, 2015-NMCERT-010.

70-12-4. Compensation for oil and gas operations.

A. An operator shall compensate the surface owner for damages sustained by the surface owner, as applicable, for loss of agricultural production and income, lost land value, lost use of and lost access to the surface owner's land and lost value of improvements caused by oil and gas operations. The payments contemplated by this section only cover land affected by oil and gas operations.

B. An operator shall not be responsible for allocating compensation between the surface owner and any tenant, except that an operator shall compensate a tenant of the

surface owner for any leasehold improvements damaged as a result of the operator's oil and gas operations if the improvements are approved and authorized by the surface owner. The compensation shall equal the cost of repairing or replacing the improvements.

C. An operator shall reclaim all the surface affected by the operator's oil and gas operations.

History: Laws 2007, ch. 5, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 5, § 11 made Laws 2007, ch. 5, § 4 effective July 1, 2007.

Only damages due to a mineral lessee's unreasonable, excessive or negligent use of a surface estate are compensable. *McNeill v. Burlington Res. Oil & Gas Co.*, 2008-NMSC-022, 143 N.M. 740, 182 P.3d 121.

Negligent injury to a surface estate. — In determining the damages for negligent injury to a surface estate by a mineral lessee, the jury should determine the most reasonable means of making the surface owner whole, without regard to whether the injury was permanent or temporary, and in doing so, may rely on evidence of the cost of repair or diminution in value of the property. *McNeill v. Burlington Res. Oil & Gas Co.*, 2008-NMSC-022, 143 N.M. 740, 182 P.3d 121.

A geophysical seismic survey falls within the definition of an oil and gas operation. — A geophysical seismic survey is an exploratory activity and is therefore an oil and gas operation under the Surface Owners Protection Act. *Woody Inv., LLC v. Sovereign Eagle, LLC*, 2015-NMCA-111, cert. denied, 2015-NMCERT-010.

Where plaintiffs brought claims under the Surface Owners Protection Act (SOPA), 70-12-1 to -10 NMSA 1978, after defendants conducted geophysical seismic surveys on land owned or leased by plaintiffs in order to evaluate potential future oil and gas operations, the district court erred in granting defendants' motion for summary judgment on the ground that defendants' geophysical survey is a non-surface disturbing activity and therefore not an oil and gas operation as defined in SOPA. A geophysical survey is an exploratory activity, whether it disturbs the surface or not, and is therefore a part of oil and gas exploration. *Woody Inv., LLC v. Sovereign Eagle, LLC*, 2015-NMCA-111, cert. denied, 2015-NMCERT-010.

Where plaintiffs brought a breach of contract claim after defendants conducted geophysical seismic surveys on land leased by plaintiffs in order to evaluate potential future oil and gas operations, the district court erred in granting defendants' motion for summary judgment on the ground that plaintiffs' complaint did not plead damages to the "range," but alleged that the permits and licenses issued to defendants required

compensation to the surface owner or lessee for damage done to the “surface estate”. Damages to the range do not exclude all damages to the surface of the land, and plaintiffs’ complaint was sufficient to place defendants on notice that plaintiffs were seeking damages provided for in the permits and leases, which provided that defendants must settle with and compensate state land office surface lessees for actual damages to or loss of livestock, authorized improvements, range, crops, and other valid existing rights recognized by law. *Woody Inv., LLC v. Sovereign Eagle, LLC*, 2015-NMCA-111, cert. denied, 2015-NMCERT-010.

70-12-5. Notice of operations; proposed surface use and compensation agreement.

A. Prior to initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements and general evaluation of proposed routes and sites for oil and gas operations, the operator shall provide at least five business days' notice by certified mail or hand delivery to the surface owner.

B. No less than thirty days before first entering the surface of the land to conduct oil and gas operations, an operator shall, by certified mail or hand delivery, give the surface owner notice of the planned oil and gas operations. The notice shall include:

(1) sufficient disclosure of the planned oil and gas operations to enable the surface owner to evaluate the effect of the operations on the property;

(2) a copy of the Surface Owners Protection Act;

(3) the name, address, telephone number and, if available, facsimile number and electronic mail address of the operator and the operator's authorized representative; and

(4) a proposed surface use and compensation agreement addressing, at a minimum and to the extent known, the following issues:

(a) placement, specifications, maintenance and design of well pads, gathering pipelines and roads to be constructed for oil and gas operations;

(b) terms of ingress and egress upon the surface of the land for oil and gas operations;

(c) construction, maintenance and placement of all pits and equipment used or planned for oil and gas operations;

(d) use and impoundment of water on the surface of the land;

(e) removal and restoration of plant life;

(f) surface water drainage changes;

(g) actions to limit and effectively control precipitation runoff and erosion;

(h) control and management of noise, weeds, dust, traffic, trespass, litter and interference with the surface owner's use;

(i) interim and final reclamation;

(j) actions to minimize surface damages to the property;

(k) operator indemnification for injury to persons caused by the operator; and

(l) an offer of compensation for damages to the surface affected by oil and gas operations.

C. The notices required by this section shall be given to the surface owner at the address shown by the records of the county clerk at the time the notice is given. If legal title and equitable title are not held by the same person, notice shall be given to both the holder of legal title and to the holder of equitable title at the addresses shown by the records of the county clerk at the time the notice is given.

D. Upon receipt of the notice required by Subsection B of this section, the surface owner may:

(1) accept the proposed surface use and compensation agreement within twenty days; or

(2) reject the proposed surface use and compensation agreement; provided that, failure to accept the proposed agreement within twenty days shall be deemed to be a rejection by the surface owner. If the proposed agreement is rejected, the surface owner may enter into negotiations with the operator, including, if the parties agree, binding arbitration or mediation.

E. Notices required by the Surface Owners Protection Act shall be deemed to have been received five days after mailing by certified mail or immediately upon hand delivery.

F. The operator and the surface owner may enter into a mutually acceptable agreement that sets forth the rights and obligations of the parties with respect to the surface activities conducted by the operator.

History: Laws 2007, ch. 5, § 5.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

70-12-6. Entry without agreement; bond.

If, after thirty days from a surface owner receiving notice pursuant to Subsection B of Section 4[5] [70-12-5 NMSA 1978] of the Surface Owners Protection Act, no surface use and compensation agreement has been entered into, the operator may enter the surface owner's property and conduct oil and gas operations:

A. after depositing a surety bond, letter of credit from a banking institution, cash or a certificate of deposit with a New Mexico surety company or financial institution for the benefit of the surface owner in the amount of ten thousand dollars ($10,000) per well location. The surety bond, letter of credit, cash or certificate of deposit shall only be released by the surety company or financial institution if:

(1) the surface owner provides notice that compensation for damages has been paid;

(2) the surface owner and the operator have executed a surface use and compensation agreement or otherwise agreed that the security should be released;

(3) there has been a final resolution of the judicial appeal in any action for damages and any awarded damages have been paid; or

(4) all wells have been plugged and abandoned and the operator has not conducted oil and gas operations on the surface owner's property for a period of six years; or

B. after posting a blanket surety bond, letter of credit from a banking institution, cash or a certificate of deposit with a New Mexico surety company or financial institution in the sum of twenty-five thousand dollars ($25,000) subject to the following criteria:

(1) the surety company or financial institution shall hold the corporate surety bond, letter of credit, cash or certificate of deposit for the benefit of the surface owners of this state and shall ensure that such security is in a form readily payable to a surface owner awarded damages in an action brought pursuant to the Surface Owners Protection Act;

(2) the bond, letter of credit, cash or certificate of deposit shall remain in full force and effect as long as the operator continues oil and gas operations in New Mexico;

(3) the bond, letter of credit, cash or certificate of deposit shall not be released until six years after the operator has deposited with the surety company or financial institution a certified statement from the oil conservation division of the energy, minerals and natural resources department that, according to the records of the division,

the operator is not the operator of record of any well in New Mexico and does not hold any outstanding drilling permits in New Mexico; and

(4) in the event that, pursuant to a judgment, all or a portion of the bond, letter of credit, cash or certificate of deposit has been used to pay a surface owner, the operator shall immediately post additional security so that the total amount posted equals twenty-five thousand dollars ($25,000) and, if the operator does not post the additional security, the surety or financial institution shall publish notice to that effect in a paper of general circulation in each county of the state in which oil or gas is produced.

History: Laws 2007, ch. 5, § 6.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The reference in the first paragraph to notice pursuant to Subsection B of Section 4 should be notice pursuant to Subsection B of Section 5, compiled as 70-12-5 NMSA 1978.

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

70-12-7. Damages.

In an action brought pursuant to the Surface Owners Protection Act, if the court finds that compensation is owed under Section 3[4] [70-12-4 NMSA 1978] of the Surface Owners Protection Act the court may also award the prevailing party:

A. attorney fees and costs if:

(1) the operator conducted oil and gas operations without providing notice as required by Subsection B of Section 4[5] [70-12-5 NMSA 1978] of the Surface Owners Protection Act;

(2) the operator conducted oil and gas operations without a surface use and compensation agreement and before depositing a bond or other surety as required by Section 5[6] [70-12-6 NMSA 1978] of the Surface Owners Protection Act;

(3) the operator conducted oil and gas operations outside the scope of a surface use and compensation agreement and, when entering into the agreement, knew or should have known that oil and gas operations would be conducted outside the scope of the agreement; or

(4) the surface owner failed to exercise good faith in complying with the provisions of the Surface Owners Protection Act or the terms of a surface use and compensation agreement; or

B. attorney fees, costs and treble damages if the court finds, by clear and convincing evidence, that:

(1) the operator willfully and knowingly entered upon the premises for the purpose of commencing the drilling of a well:

(a) without giving notice of the entry as required by Subsection B of Section 4[5] of the Surface Owners Protection Act; or

(b) without a surface use and compensation agreement with the surface owner and before depositing a bond or other surety pursuant to Section 5[6] of the Surface Owners Protection Act; or

(2) either the surface owner or the operator willfully and knowingly violated the surface use and compensation agreement.

History: Laws 2007, ch. 5, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The references to Sections 3, 4 and 5 appear to be erroneous references. The references should be to Sections 4, 5 and 6, compiled as 70-12-4, 70-12-5 and 70-12-6 NMSA 1978.

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

70-12-8. Remedies not exclusive.

The remedies provided by the Surface Owners Protection Act are not exclusive and do not preclude a person from seeking other remedies allowed by law.

History: Laws 2007, ch. 5, § 8.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

70-12-9. Emergency situations.

Notwithstanding any provisions of the Surface Owners Protection Act to the contrary, no notice, surface use and compensation agreement or bond shall be required in emergency situations for activities to protect health, safety or the environment.

History: Laws 2007, ch. 5, § 9.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

70-12-10. Temporary provision; applicability.

The provisions of the Surface Owners Protection Act apply to all oil and gas operations commenced on or after July 1, 2007 except:

A. maintenance and ongoing production activities related to an oil or gas well producing or capable of producing oil or gas on June 30, 2007 for which the operator has a valid permit from the oil conservation division of the energy, minerals and natural resources department, provided that:

(1) reentries, workovers and other oil or gas operations are subject to that act if the activities disturb additional surface; and

(2) the duty to reclaim, as stated in Subsection C of Section 3[4] [70-12-4 NMSA 1978] of that act, is applicable to such a well that is not plugged and abandoned on July 1, 2007; and

B. oil and gas operations conducted within the scope of an agreement, entered into prior to July 1, 2007, between a surface owner and an operator that sets forth the rights and obligations of the parties with respect to surface activities conducted by the operator.

History: Laws 2007, ch. 5, § 10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The reference to Subsection C of Section 3 appears to be erroneous. The reference should be to Subsection C of Section 4, compiled as 70-12-4 NMSA 1978.

Effective dates. — Laws 2007, ch. 5, § 11 made the act effective July 1, 2007.

ARTICLE 13
Produced Water

70-13-1. Short title.

Sections 1 through 5 [70-13-1 to 70-13-5 NMSA 1978] of this act may be cited as the "Produced Water Act".

History: Laws 2019, ch. 197, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 197, § 13 made Laws 2019, ch. 197 effective July 1, 2019.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

70-13-2. Definitions.

As used in the Produced Water Act:

A. "operator" means a person authorized by the oil conservation division of the energy, minerals and natural resources department to operate a unit for an oil or gas well or other oil or gas facility;

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

C. "recycled water" or "recycled produced water" means produced water that is reconditioned by a recycling facility permitted by the oil conservation division of the energy, minerals and natural resources department; and

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

History: Laws 2019, ch. 197, § 2.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 197, § 13 made Laws 2019, ch. 197 effective July 1, 2019.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

70-13-3. Jurisdiction.

It is the jurisdiction of:

A. the oil conservation division of the energy, minerals and natural resources department to regulate produced water as provided in the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978]; and

B. the water quality control commission to regulate produced water as provided in the Water Quality Act [Chapter 74, Article 6 NMSA 1978].

History: Laws 2019, ch. 197, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 197, § 13 made Laws 2019, ch. 197 effective July 1, 2019.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

70-13-4. Produced water; transferred for treatment; subsequent use.

A. Unless otherwise provided by law, a contract, bill of sale or other legally binding document:

(1) all produced water that is produced from an oil or gas well is the responsibility of and under the control of the working interest owners and operator of that oil or gas well. The working interest owners and operator shall have a possessory interest in the produced water, including the right to take possession of the produced water and to use, handle, dispose of, transfer, sell, convey, transport, recycle, reuse or treat the produced water and to obtain proceeds for any such uses. The operator of the oil and gas well that the produced water is produced from shall handle the use, disposition, transfer, sale, conveyance, transport, recycling, reuse or treatment of the produced water as a reasonably prudent operator;

(2) when produced water is transferred, sold or conveyed to another operator, transporter, pipeline, midstream company, plant, processing facility, refinery or entity that provides recycling or treatment services for produced water, the transferee shall have control of and responsibility for the produced water until the water is transferred to another operator, transporter, pipeline, midstream company, plant, processing facility, refinery or recycling or treatment facility. A transferee shall have a possessory interest in the produced water, including the right to use, possess, handle the disposition of, transfer, sell, convey, transport, recycle, reuse or treat the produced water and to obtain proceeds for any such uses. Upon transfer of the produced water, transferees shall be liable for the use, disposition, transfer, sale, conveyance, transport, recycling, reuse or treatment of the produced water; and

(3) when an operator of an oil or gas well or a transferee listed in Paragraph (2) of this subsection takes possession of produced water for the purpose of recycling or treating the water, the operator or transferee may transfer recycled or treated water, treated product or any byproduct to another operator, transporter, pipeline, midstream company, plant, processing facility, refinery or entity that provides recycling or treatment services for produced water. Upon transfer, the transferee shall have control and responsibility for the produced water, recycled or treated water or treated product or byproduct. A transferee shall have a possessory interest in the produced water, recycled or treated water or treated product or byproduct, including the right to use, possess, handle disposition of, transfer, sell, convey, transport, recycle, reuse or treat

the produced water, and to obtain proceeds for any such uses. Upon transfer, a transferee shall be liable for the use, disposition, transfer, sale, conveyance, transport, recycling, reuse or treatment of the produced water, recycled or treated water or treated product or byproduct.

B. Subsection A of this section only applies to transfers of produced water between an operator, transporter, pipeline, midstream company, plant, processing facility, refinery or recycling or treatment entity and shall not affect liability in an action brought by other persons for damages, including damages for personal injury, death or property damage, arising from exposure to produced water, recycled or treated water or treated product or byproduct.

C. A permit or other approval from the state engineer is not required for the disposition of produced water, recycled water or treated water. The disposition of produced water, recycled water or treated water, including disposition by use, is neither an appropriation of water for beneficial use under Chapter 72 NMSA 1978 nor a waste of water, and no water right shall be established by the disposition of produced water, recycled water or treated water.

D. For uses regulated by the water quality control commission pursuant to the Water Quality Act [Chapter 74, Article 6 NMSA 1978], a person shall obtain a permit from the department of environment before using the produced water, the recycled or treated water or treated product or any byproduct of the produced water.

History: Laws 2019, ch. 197, § 4.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 197, § 13 made Laws 2019, ch. 197 effective July 1, 2019.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.

70-13-5. Void as against public policy; throughout fees; limitations on use of recycled or treated produced water.

A provision of an agreement, covenant or promise, foreign or domestic, between private parties, entered into on or after July 1, 2019 is against public policy and void to the extent of it:

A. allows a private party to charge a tariff or fee for the movement or transport of produced water, treated water or recycled water on surface lands owned by the state, if the agreement does not provide for transportation services;

B. requires fresh water resources to be purchased for oil and gas operations when produced water, treated water or recycled water is available and able to be used and the operator elects to use that produced water, treated water or recycled water for the oil and gas operations; or

C. relates to the purchase of water and precludes an operator from purchasing or using produced water, treated water or recycled water in the operator's oil and gas operations when such water is available for the operations.

History: Laws 2019, ch. 197, § 5.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 197, § 13 made Laws 2019, ch. 197 effective July 1, 2019.

Applicability. — Laws 2019, ch. 197, § 12 provided that the provisions of Laws 2019, ch. 197 apply to contracts entered into on and after July 1, 2019.