

# CHAPTER 71

## ENERGY AND MINERALS

### ARTICLE 1

#### SOLAR POWER LOANS

(Repealed by Laws 1987, ch. 234, § 84.)

**71-1-1 to 71-1-8. Repealed.**

#### ANNOTATIONS

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 71-1-1 to 71-1-8 NMSA 1978, as enacted by Laws 1983, ch. 281, §§ 1 to 8, relating to solar power loans, effective July 1, 1987. For provisions of former sections, see 1986 cumulative supplement. For present comparable provisions, see 71-6-1 to 71-6-10 NMSA 1978.

Laws 1981, ch. 379, §§ 21 and 22 repealed former 71-1-1 NMSA 1978, as amended by Laws 1979, ch. 100, § 1, relating to the powers and duties of the energy and minerals department and former 71-1-2 NMSA 1978, as enacted by Laws 1977, ch. 255, § 98, relating to the authorization of the energy and minerals department to accept funds and donations. For provisions of the former sections, see the 1978 original pamphlet and the 1980 cumulative supplement.

**Fund transfers.** - Laws 1987, ch. 136, § 1A transfers to the general fund all existing balances and credits belonging to the solar power loan fund in the form of deposits in financial institutions, including principal and interest to be transferred upon maturity of the deposit.

Laws 1987, ch. 136, § 3 provides for the severability of the act if any part or application thereof is held invalid.

Laws 1987, ch. 136, § 4 makes the act effective immediately. Approved April 7, 1987.

Laws 1989, ch. 107, § 12 directs the department of finance and administration to transfer to the general fund the balance in the solar power fund as of June 30, 1989, in accordance with Laws 1987, ch. 136.

### ARTICLE 2

#### ENERGY RESOURCES

**71-2-1 to 71-2-7. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 71-2-1 to 71-2-4, 71-2-6 and 71-2-7 NMSA 1978, as enacted by Laws 1976, ch. 144, § 1, Laws 1978, ch. 61, § 1, and Laws 1978, ch. 62, § 1, and as amended by Laws 1977, ch. 255, §§ 100 to 102 and Laws 1978, ch. 112, § 1, relating to energy sources, effective July 1, 1987. For provisions of former sections, see 1981 replacement pamphlet. For present comparable provisions, see 70-2-1 to 70-2-36 NMSA 1978.

Section 71-2-5 NMSA 1978, as amended by Laws 1977, ch. 255, § 102, relating to severance tax bonds and pipeline systems, was previously repealed by Laws 1985 (1st S. S.), ch. 15, § 23, effective June 7, 1985.

**Fund transfers.** - Laws 1987, ch. 136, § 1B transfers to the general fund all existing balances and credits belonging to the natural gas purchase revolving fund.

Laws 1987, ch. 136, § 3 provides for the severability of the act if any part or application thereof is held invalid.

Laws 1987, ch. 136, § 4 makes the act effective immediately. Approved April 7, 1987.

### **71-2-8. Confidentiality; penalty.**

The provisions of any confidential contract or any other confidential information required or possessed by the energy, minerals and natural resources department shall be held confidential by the department upon written request of the party supplying it, and any employee of the department, whether temporary or permanent, who willfully violates the provisions of this section shall be guilty of a misdemeanor. Nothing in this section shall be construed to prevent statistical information from being derived from the information in the hands of the department or its use in public hearings before the department or in appeals from decisions of the department for which such information is essential. Notwithstanding the provisions of Sections 10-15-1 through 10-15-4 NMSA 1978 or any other act requiring meetings of public bodies to be open, the department may close that part of any meeting where confidential information covered by this section is discussed by the department.

**History:** 1953 Comp., § 65-13-13, enacted by Laws 1975, ch. 289, § 18; 1977, ch. 255, § 105; 1987, ch. 234, § 68.

## ANNOTATIONS

**The 1987 amendment,** effective July 1, 1987, in the first sentence inserted "energy, minerals and natural resources" preceding "department" near the beginning, in the third sentence substituted "Sections 10-15-1 through 10-15-4 NMSA 1978" for "Sections 5-6-23 through 5-6-26 NMSA 1953" and made a minor language change at the end of the first sentence.

## **71-2-9. Notification of contract or production.**

Every producer shall notify the energy, minerals and natural resources department of:

A. the completion of a well capable of producing oil, natural gas or liquid hydrocarbon individually, or any combination thereof, or geothermal energy in commercial quantities within five days after completion of the well and not less than five days before the producer enters into a binding agreement for or otherwise provides for the disposition of the products or geothermal energy of the well under an agreement or disposition which covers any period longer than six months; or

B. his intent to enter into a binding agreement covering the disposition of the products or geothermal energy of a potential well or series of wells at least five days before he enters into the agreement.

**History:** 1953 Comp., § 65-13-14, enacted by Laws 1975, ch. 289, § 19; 1977, ch. 255, § 106; 1987, ch. 234, § 69.

### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, in the opening clause substituted "energy, minerals and natural resources" for "energy and minerals"; in Subsection A deleted "with sufficient detail to allow the department to suggest a manner in which the products could be used in furtherance of a statewide plan" following "or geothermal energy in commercial quantities."

## **71-2-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 71-2-10 NMSA 1978, as amended by Laws 1977, ch. 255, § 108, relating to construction of the Energy and Minerals Department Act, effective July 1, 1987. For provisions of the former section, see 1981 replacement pamphlet. For present comparable provisions, see 9-5A-1 to 9-5A-7 NMSA 1978.

## **ARTICLE 3 FEDERAL LANDS ACTION GROUP**

(Repealed by Laws 1981, ch. 61, § 1.)

## **71-3-1 to 71-3-3. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 61, § 1, repeals 71-3-1 through 71-3-3 NMSA 1978, relating to the federal lands action group.

Laws 1981, ch. 61, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

## **ARTICLE 4 ENERGY RESEARCH AND DEVELOPMENT**

**(Repealed by Laws 1981, ch. 379, § 22; 1986, ch. 38, § 14.)**

### **71-4-1 to 71-4-8. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 379, § 22, repeals 71-4-1 through 71-4-8 NMSA 1978, relating to energy research and development.

Laws 1981, ch. 379, § 23, provides that the effective date of Laws 1981, ch. 379, § 22, is the first day after the date that the secretary of energy and minerals has certified to the governor in writing that a transition plan has been fully implemented pursuant to Subsection B of Section 13 of the Energy Research and Development Institute Act.

Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

### **71-4-9 to 71-4-20. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 38, § 14 repeals 71-4-9 through 71-4-20 NMSA 1978, as enacted by Laws 1981, ch. 379, the Energy Research and Development Institute Act, effective February 28, 1986. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable provisions, see 9-15-16 NMSA 1978 et seq.

**Temporary provisions.** - Laws 1986, ch. 38, § 13 provides that on the effective date of that section, February 28, 1986, any unexpended or unencumbered balance remaining in or appropriations to the energy research and development institute fund shall be transferred to the research and development fund and also that on February 28, 1986, all contracts, projects, powers and duties, money and appropriations and all records or other information undertaken or held by the New Mexico energy research and development institute pursuant to the Energy Research and Development Institute Act shall be transferred to the New Mexico research and development institute.

# ARTICLE 5

## GEOTHERMAL RESOURCES CONSERVATION

### 71-5-1. Short title.

This act may be cited as the "Geothermal Resources Conservation Act."

**History:** 1953 Comp., § 65-11-1, enacted by Laws 1975, ch. 272, § 1.

### ANNOTATIONS

**Meaning of "this act".** - The term "this act" refers to Laws 1975, ch. 272, the provisions of which are presently compiled as 71-5-1 to 71-5-17, 71-5-18 to 71-5-22, 71-5-24.

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

### 71-5-2. Purpose of act.

A. It is hereby found and determined that the people of the state of New Mexico have a direct and primary interest in the development of geothermal resources, and that this state should exercise its power and jurisdiction through its oil conservation commission and division to require that wells drilled in search of, development of, or incident to the production of geothermal resources be drilled, operated, maintained and abandoned in such a manner as to safeguard life, health, property, natural resources and the public welfare, and to encourage maximum economic recovery.

B. To these ends, it is the intent of the legislature that the power and jurisdiction of the commission and the division as given by the Geothermal Resource [Resources] Conservation Act shall be supplemental to the other powers and jurisdiction given the commission and the division by the statutes of this state.

**History:** 1953 Comp., § 65-11-2, enacted by Laws 1975, ch. 272, § 2; 1977, ch. 255, § 73.

### ANNOTATIONS

**Cross-references.** - For provisions relating to energy resources generally, see Article 2 of this chapter.

For provisions relating to energy research and development, see Article 4 of this chapter.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 Am. Jur. 2d Administrative Law §§ 24, 25.

81A C.J.S. States §§ 36, 120 to 123.

### **71-5-3. Definitions.**

As used in the Geothermal Resources Conservation Act:

A. "geothermal resources" means the natural heat of the earth or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or which may be extracted from this natural heat and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances;

B. "commission" means the oil conservation commission;

C. "correlative rights" means the opportunity afforded, insofar as is practicable to do so, to the owner of each property in a geothermal reservoir to produce his just and equitable share of the geothermal resources within such reservoir, 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 recoverable geothermal resources under such property bear to the total recoverable geothermal resources in the reservoir and, for such purpose, to use his just and equitable share of the natural heat or energy in the reservoir;

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

E. "geothermal reservoir" means an underground reservoir containing geothermal resources, whether the fluids in the reservoir are native to the reservoir or flow into or are injected into the reservoir;

F. "geothermal field" means the general area which is underlaid or reasonably appears to be underlaid by at least one geothermal reservoir;

G. "low-temperature thermal reservoir" means a geothermal reservoir containing low-temperature thermal water, which is defined as naturally heated water, the temperature of which is less than boiling at the altitude of occurrence, which has additional value by virtue of the heat contained therein and is found below the surface of the earth or in warm springs at the surface;

H. "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 of New Mexico or any political subdivision thereof;

I. "well" means any well dug or drilled for the discovery or development of geothermal resources or incident to the discovery or development of geothermal resources or for the purpose of injecting or reinjecting geothermal resources or the residue thereof or other fluids into a geothermal reservoir or any well dug or drilled for any other purpose and reactivated or converted to any of the aforesaid uses; and

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

**History:** 1953 Comp., § 65-11-3, enacted by Laws 1975, ch. 272, § 3; 1977, ch. 255, § 74; 1982, ch. 51, § 2; 1987, ch. 234, § 70.

## ANNOTATIONS

**The 1982 amendment** substituted "bear" for "bears" near the end of Subsection C and, in Subsection H, substituted present Paragraphs (1) and (2) for the former definition, which read "any natural person, firm, association or corporation, or any other group or combination acting as a unit, for the exploration, production, transportation, processing or utilization of geothermal resources."

**The 1987 amendment**, effective July 1, 1987, in Subsection D substituted "energy, minerals and natural resources" for "energy and minerals."

**Effective dates.** - Laws 1982, ch. 51, contains no effective date provision, but was enacted at the session which adjourned on February 18, 1982. See N.M. Const., art. IV, § 23.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

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

For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

### **71-5-4. Waste prohibited.**

The production or handling of geothermal resources 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 waste is each hereby prohibited.

**History:** 1953 Comp., § 65-11-4, enacted by Laws 1975, ch. 272, § 4.

## **ANNOTATIONS**

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

### **71-5-5. 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 geothermal business, and in any event to embrace the inefficient, excessive or improper use or dissipation of the reservoir fluids or energy, including the natural energy of the heated fluids or the natural heat of the earth, and the locating, spacing, drilling, equipping, operating or producing of any well or wells in a manner that would reduce or tend to reduce the total quantity of geothermal resources ultimately recovered from any geothermal reservoir;

B. "surface waste" as those words are generally understood in the geothermal business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of geothermal resources of any type or in any form, or any product thereof, and including the loss or destruction of geothermal resources resulting from leakage, evaporation or seepage, especially incident to or resulting from the manner of spacing, equipping, operating or producing of any well or wells, or incident to or resulting from the inefficient transportation, use or storage of geothermal resources;

C. the production from any well or wells in this state of geothermal resources in excess of the reasonable market demand therefor, in excess of the capacity of the geothermal transportation facility connected thereto to efficiently receive and transport such geothermal resources, or in excess of the capacity of a geothermal utilization facility to efficiently receive and utilize such geothermal resources;

D. the nonratable purchase or taking of geothermal resources within a geothermal reservoir in this state. Such nonratable taking or purchasing causes or results in excessive or improper dissipation of reservoir energy and results in waste, as defined in Subsection A of this section, and is in violation of Section 14 [71-5-14 NMSA 1978] of the Geothermal Resources Conservation Act; and

E. drilling or producing operations for geothermal resources 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 development of such potash deposits.

**History:** 1953 Comp., § 65-11-5, enacted by Laws 1975, ch. 272, § 5.

### **ANNOTATIONS**

**Meaning of "this act".** - The term "this act" refers to Laws 1975, ch. 272, the provisions of which are presently compiled as 71-5-1 to 71-5-17, 71-5-18 to 71-5-22, 71-5-24.

### **71-5-6. Commission's and division's powers and duties.**

A. In addition to its other powers and duties, the division shall have, and is hereby given, jurisdiction over all matters relating to the conservation of geothermal resources and the prevention of waste of potash as a result of geothermal 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 the Geothermal Resources Conservation Act or any other law of this state relating to the conservation of geothermal resources and the prevention of waste of potash as a result of geothermal operations. Provided, however, nothing in this section shall be construed to supersede the authority which any state department or agency has with respect to the management, protection and utilization of the state lands or resources and its jurisdiction.

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 the Geothermal Resources Conservation Act. 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:** 1953 Comp., § 65-11-6, enacted by Laws 1975, ch. 272, § 6; 1977, ch. 255, § 75; 1979, ch. 175, § 2.

### **ANNOTATIONS**

**Cross-references.** - As to powers and duties of the oil conservation commission, see 70-2-4 NMSA 1978.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

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

### **71-5-7. Power of commission and division to prevent waste and protect correlative rights.**

The commission and division are hereby empowered, and it is their duty, to prevent the waste prohibited by the Geothermal Resources Conservation Act and to protect correlative rights, as in that act provided. To that end, the commission and division may make and enforce rules, regulations and orders relating to geothermal resources, and to do whatever may be reasonably necessary to carry out the purposes of that act whether or not indicated or specified in any section thereof.

**History:** 1953 Comp., § 65-11-7, enacted by Laws 1975, ch. 272, § 7; 1977, ch. 255, § 76.

## **ANNOTATIONS**

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 277 to 287.

73 C.J.S. Public Administrative Law and Procedure §§ 87 to 114.

### **71-5-8. Enumeration of powers.**

Included in the power given to the division is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge geothermal resources wells and geothermal resources transportation, storage and utilization facilities; to limit and allocate production of geothermal resources as provided in the Geothermal Resources Conservation Act; and to require certificates of clearance for the production or transportation of geothermal resources.

Apart from any authority, express or implied, elsewhere given to or existing in the division by virtue of the Geothermal Resources Conservation Act or the statutes of this state, the division may make rules, regulations and orders for the purposes and with respect to the subject matter stated herein, viz.:

A. to require noncommercial or abandoned wells to be plugged in such a way as to confine all fluids in the strata in which they are found, and to prevent them from escaping into other strata; the division may require a bond of not to exceed ten thousand dollars (\$10,000) conditioned for the performance of such regulations;

B. to prevent geothermal resources, water or other fluids from escaping from the strata in which they are found into other strata;

C. to require reports showing locations of all geothermal resources wells, and to require the filing of logs and drilling records or reports and production reports;

D. to prevent the premature cooling of any geothermal stratum or strata by water encroachment, or otherwise, which reduces or tends to reduce the total ultimate recovery of geothermal resources from any geothermal reservoir;

E. to prevent "blowouts" and "caving" in the sense that such terms are generally understood in the geothermal drilling business;

F. to require wells to be drilled, operated and produced in such a manner as to prevent injury to neighboring leases or properties and to afford reasonable protection to human life and health and to the environment;

G. to identify the ownership of geothermal producing leases, properties, plans, structures, and transportation and utilization facilities;

H. to require the operation of wells efficiently;

I. to fix the spacing of wells;

J. to classify and from time to time as is necessary reclassify geothermal reservoirs and low-temperature thermal reservoirs;

K. to define and from time to time as is necessary redefine the horizontal and vertical limits of geothermal reservoirs and low-temperature thermal reservoirs;

L. to permit and regulate the injection of fluids into geothermal reservoirs and low-temperature thermal reservoirs;

M. to regulate the disposition of geothermal resources or the residue thereof, and to direct the surface or subsurface disposal of such in a manner that will afford reasonable protection against contamination of all fresh waters and waters of present or probable future value for domestic, commercial, agricultural or stock purposes, and will afford reasonable protection to human life and health and to the environment; and

N. to define and from time to time as is necessary redefine the limits of any area containing commercial deposits of potash, and to regulate and where necessary prohibit geothermal drilling or producing operations 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.

**History:** 1953 Comp., § 65-11-8, enacted by Laws 1975, ch. 272, § 8; 1977, ch. 255, § 77.

## **ANNOTATIONS**

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 277 to 287; 38 Am. Jur. 2d Gas and Oil § 159.

58 C.J.S. Mines and Minerals § 230; 73 C.J.S. Public Administrative Law and Procedure §§ 87 to 114.

### **71-5-9. Regulation of geothermal resources production.**

Upon determination by the division that geothermal resources production from a particular geothermal resources reservoir is causing waste or is about to result in waste, the division shall limit, allocate and distribute the total amount of geothermal resources which may be produced from that reservoir.

**History:** 1953 Comp., § 65-11-9, enacted by Laws 1975, ch. 272, § 9; 1977, ch. 255, § 78.

### **71-5-10. Allocation of production.**

A. Whenever, to prevent waste, the total amount of geothermal resources which may be produced from a geothermal reservoir is limited, the division shall allocate and distribute the allowable production among the geothermal wells in the reservoir on a reasonable basis and recognizing correlative rights, including in the allocation schedule any well which it finds is being unreasonably discriminated against through denial of access to a geothermal resources transportation or utilization facility which is reasonably capable of handling the geothermal product of the well. In protecting correlative rights, the division may give equitable consideration to acreage, to the pressure, temperature, quantity and quality of the geothermal resources producible from the wells in the reservoir, 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 the reservoir which is not equalized by counterdrainage.

B. No order limiting, allocating and distributing production from any geothermal reservoir shall be issued except after notice and hearing. In entering such an order the division must find that waste is resulting or is about to result from the unratable taking of geothermal resources or from the production of geothermal resources from a reservoir in excess of the market demand therefor, in excess of the capacity of the available geothermal transportation facilities to efficiently receive and transport such geothermal resources, or in excess of the capacity of the available geothermal utilization facility to efficiently receive and utilize such geothermal resources. When limiting, allocating and distributing production from a geothermal reservoir, the division shall do so on the basis of three-month allocation periods and shall promulgate reasonable rules regarding production tolerances and overproduction and underproduction.

C. After the effective date of any rule, regulation or order fixing the allowable production and establishing permitted tolerances for overproduction, no person shall produce more than the allowable production and permitted tolerance applicable to him, his wells, leases or properties determined as provided in the Geothermal Resources Conservation Act, and the allowable production shall be produced in accordance with the applicable rules, regulations and orders.

**History:** 1953 Comp., § 65-11-10, enacted by Laws 1975, ch. 272, § 10; 1977, ch. 255, § 79.

## ANNOTATIONS

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 397 to 426, 447; 38 Am. Jur. 2d Gas and Oil § 164.

73A C.J.S. Public Administrative Law and Procedure §§ 115, 116, 134 to 145.

### **71-5-11. Equitable allocation of production spacing; pooling.**

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 geothermal reservoir the opportunity to produce his just and equitable share of the geothermal resources in the reservoir, 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 geothermal resources under such property bears to the total recoverable geothermal resources in the reservoir, and for this purpose to use his just and equitable share of the reservoir energy.

B. The division may establish a spacing unit for each geothermal reservoir, 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 unit, or where there are owners of royalty interests or undivided interests in geothermal resources which are separately owned, or any combination thereof, embraced within such spacing 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 geothermal reservoir, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or prevent waste, shall pool all or any part of such lands or interest or both in the spacing 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 geothermal resources. Each order shall describe the lands included in the unit designated thereby, identify the reservoir or reservoirs to which it applies and designate an operator for the unit. All operations for the pooled geothermal resources 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 geothermal resources, 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 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 pro rata reimbursement solely out of production to the parties advancing the costs of 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' pro rata 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 the Geothermal Resources Conservation 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. Whenever it appears that the owners in any geothermal reservoir have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of production from the reservoir, or upon any other plan for the development or operation of such reservoir, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by the Geothermal Resources Conservation Act and is fair to the royalty owners in such reservoir, then such plan shall be adopted by the division with respect to the reservoir; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by the Geothermal Resources Conservation Act.

**History:** 1953 Comp., § 65-11-11, enacted by Laws 1975, ch. 272, § 11; 1977, ch. 255, § 80.

## ANNOTATIONS

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 397 to 426; 38 Am. Jur. 2d Gas and Oil §§ 164 to 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.

58 C.J.S. Mines and Minerals §§ 213, 230; 73A C.J.S. Public Administrative Law and Procedure §§ 115, 116, 134 to 142.

### **71-5-12. Court may authorize pooling or unitization by fiduciaries.**

A. When an existing geothermal resources lease upon property owned by a decedent at the time of his death, by a minor or by an incompetent, does not authorize pooling or unitization thereof with other lands in the vicinity, the district court for the county in which any portion of the lands subject to said lease is situated can authorize the executor or administrator of the estate of the decedent, or the guardian of the minor or incompetent, to execute appropriate instruments authorizing or effectuating such

pooling or unitization, or both, if the court finds it to be in the interest of the owners of such property.

B. An executor, administrator or guardian desiring authorization to execute such instruments shall file a verified petition to the appropriate district court setting forth a description of the lease, the lands subject thereto and the reason that the proposed action is in the interest of the owners of the affected real estate. A copy of the instrument by which such pooling or unitization is proposed to be authorized or effectuated shall be attached to the petition.

C. No notice of the hearing upon the petition shall be required; provided, however, that the court in its discretion may require such notice as it may direct to be given to affected parties.

D. Upon entry of an order of the court authorizing execution of the proposed instrument in the form attached to the petition, or with such modification as the court may direct, and execution thereof by the executor, administrator or guardian, the interest in the property owned by the decedent at the time of death, or by the ward, shall be subject in all respects to the terms of said instrument and the executor, administrator or guardian, without further order of the court, shall be authorized to execute division orders, transfer orders, correction instruments, receipts and other instruments made necessary or desirable by the pooling or unitization so effected.

**History:** 1953 Comp., § 65-11-12, enacted by Laws 1975, ch. 272, § 12.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 38 Am. Jur. 2d Gas and Oil §§ 164 to 167, 172.

58 C.J.S. Mines and Minerals § 213.

### **71-5-13. Spacing unit with divided mineral ownership.**

A. Whenever the operator of any geothermal resources well shall dedicate lands comprising a standard spacing unit to a geothermal resources well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing unit, or where there are owners or royalty interests or undivided interests in the geothermal resources which are separately owned or any combination thereof, embraced within such spacing unit, to obtain voluntary agreements pooling of 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 unit for a geothermal reservoir, or extends the boundaries of such a reservoir, shall require dedication of acreage to existing wells in the reservoir in accordance with the acreage dedication requirements for said reservoir, and all

interests in the spacing 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 unit as required by this section, shall nevertheless be liable to account to and pay each owner of geothermal interests, 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 units may be established by the division and all geothermal 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., § 65-11-13, enacted by Laws 1975, ch. 272, § 13; 1977, ch. 255, § 81.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 38 Am. Jur. 2d Gas and Oil §§ 159, 164, 165, 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.

58 C.J.S. Mines and Minerals §§ 213, 230.

### **71-5-14. Common purchasers; discrimination in purchasing prohibited.**

Any person now or hereafter engaged in the taking or purchasing of geothermal resources from one or more producers within a single geothermal reservoir shall be a common purchaser within that geothermal reservoir, and shall purchase geothermal resources of like quality, quantity and pressure lawfully produced from that geothermal reservoir and tendered to such common purchaser at a reasonable point. Such purchase shall be made without unreasonable discrimination in favor of one producer against another in the price paid, quantities taken, the bases of measurement or the facilities offered.

In the event such purchaser is also a producer, he is prohibited to the same extent from discriminating in favor of himself with respect to geothermal resources wells in which he has an interest, direct or indirect, as against other geothermal resources wells in the same geothermal reservoir.

For the purposes of the Geothermal Resources Conservation Act, reasonable differences in prices paid or facilities afforded, or both, shall not constitute unreasonable discrimination if such differences bear a fair relationship to difference in quality, quantity or pressure of the geothermal resources available or to the relative lengths of time during which such geothermal resources will be available to the purchaser.

Any common purchaser taking geothermal resources produced from wells within a geothermal reservoir shall take ratably under such rules, regulations and orders, concerning quantity, as may be promulgated by the division after due notice and public hearing. The division, in promulgating such rules, regulations and orders may consider the quality and the quantity of the geothermal resources available, the pressure and temperature of the product at the point of delivery, acreage attributable to the well, market requirements and other pertinent factors.

Nothing in the Geothermal Resources Conservation Act shall be construed or applied to require, directly or indirectly, any person to purchase geothermal resources of a quality or under a pressure or under any other condition by reason of which such geothermal resource cannot be economically and satisfactorily used by such purchaser by means of his geothermal utilization facilities then in service.

**History:** 1953 Comp., § 65-11-14, enacted by Laws 1975, ch. 272, § 14; 1977, ch. 255, § 82.

## **ANNOTATIONS**

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

### **71-5-15. Purchase, sale or handling of excess geothermal resources or products prohibited.**

A. The sale or purchase or acquisition, or the transportation, utilization or processing, or handling in any other way, of geothermal resources in whole or in part produced in excess of the amount allowed by any statute of this state, or by any provision of the Geothermal Resources Conservation Act, or by any rule, regulation or order of the commission or division made hereunder, is hereby prohibited, and such geothermal resources are hereby referred to as "illegal geothermal resources."

B. The sale or purchase or acquisition, or the transportation, utilization or processing, or the handling in any other way, of any product of geothermal resources, which product is derived in whole or in part from geothermal resources produced in whole or in part in excess of the amount allowed by any statute of this state, or by any provision of the Geothermal Resources Conservation 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 geothermal resources product."

**History:** 1953 Comp., § 65-11-15, enacted by Laws 1975, ch. 272, § 15; 1977, ch. 255, § 83.

## ANNOTATIONS

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

### **71-5-16. Rules and regulations to effectuate prohibitions against purchase or handling of illegal geothermal resources or illegal geothermal resources product.**

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 71-5-15 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 geothermal resources, or illegal geothermal resources 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 geothermal resources or illegal geothermal resources product, except under circumstances stated in the succeeding provisions of this subsection. Penalties shall be imposed for the division of each transaction prohibited in Section 71-5-15 NMSA 1978 when the person committing the same knows that illegal geothermal resources, or illegal geothermal resources product, are 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 the Geothermal Resources Conservation Act shall apply to any sale or purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal geothermal resources, or illegal geothermal resources 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 geothermal resources or any product thereof without complying with the rule, regulation or order of the commission or division relating thereto.

**History:** 1953 Comp., § 65-11-16, enacted by Laws 1975, ch. 272, § 16; 1977, ch. 255, § 84.

## ANNOTATIONS

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 Am. Jur. 2d Administrative Law §§ 92 to 97.

73A C.J.S. Public Administrative Law and Procedure §§ 161 to 171.

### **71-5-17. Hearings on rules, regulations and orders; notice; emergency rules.**

A. 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 the Geothermal Resources Conservation 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. Any member of the commission or 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 Geothermal Resources Conservation Act.

B. 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:** 1953 Comp., § 65-11-17, enacted by Laws 1975, ch. 272, § 17; 1977, ch. 255, § 85.

### **ANNOTATIONS**

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 277 to 286.

73 C.J.S. Public Administrative Law and Procedure §§ 87 to 91, 103, 108; 73A C.J.S. Public Administrative Law and Procedure §§ 134 to 142.

### **71-5-17.1. Rules of procedure in hearings; manner of giving notice; record of rules, regulations and orders.**

The division shall prescribe its rules of order or procedure in hearings or other proceedings before it under the Geothermal Resources Conservation Act. Any notice required to be given under that act or under any rule, regulation or order prescribed by the commission or division shall be by personal service on the person affected, or by publication once in a newspaper of general circulation published at Santa Fe and once in a newspaper of general circulation published in the county, or each of the counties if there is more than one, in which any land, geothermal resources or other property which may be affected shall be situated. The notice shall issue in the name of "the state of New Mexico" and shall be signed by the director of the division, and the seal of the commission shall be impressed thereon, and it shall specify the number and style of the case, and the time and place of hearing, shall briefly state the general nature of the order or regulation contemplated by the division on its own motion or sought in a proceeding brought before the commission or division, the name of the petitioner or applicant and, unless the order, rule or regulation is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply that may be affected by such order, rule or regulation. Personal service thereof may be made by any agent of the division or by any person over the age of eighteen years in the same manner as is provided by law for the service of summons in civil actions in the district courts of this state. Such service shall be complete at the time of such personal service or on the date of such publication, as the case may be. Proof of service shall be the affidavit of the person making personal service or of the publisher of the newspaper in which publication is had, as the case may be. All rules, regulations and orders made by the commission or division shall be entered in full by the director thereof in a book to be kept for such purpose by the division, which shall be a public record and open to inspection at all times during reasonable office hours. A copy of any rule, regulation or order, certified by the director of the division under the seal of the commission, shall be received in evidence in all courts of the state with the same effect as the original.

**History:** 1978 Comp., § 71-5-17.1, enacted by Laws 1979, ch. 326, § 1.

## **ANNOTATIONS**

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

### **71-5-17.2. 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, may subpoena witnesses, require their attendance and giving of testimony before it and 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 complying with a subpoena, in any hearing, investigation or proceeding held by or before the commission or division or in any cause

or proceeding in any court by or against the commission or division, relative to matters within the jurisdiction of the 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 the commission or division or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before the commission or division, or in compliance with a 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:** 1978 Comp., § 71-5-17.2, enacted by Laws 1979, ch. 326, § 2.

### **71-5-17.3. Failure or refusal to comply with subpoena; refusal to testify; contempt.**

In case of failure or refusal on the part of any person to comply with any subpoena issued by the 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, on the application of the commission or division, may issue an order and compel the person to comply with the 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.

**History:** 1978 Comp., § 71-5-17.3, enacted by Laws 1979, ch. 326, § 3.

### **71-5-17.4. Perjury; punishment.**

If any person of whom an oath shall be required under the provisions of the Geothermal Resources Conservation 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 the Geothermal Resources Conservation Act or by any rule, regulation or order of the commission or division, such person shall be guilty of a felony and, upon conviction, shall be imprisoned for not more than five years nor less than six months.

**History:** 1978 Comp., § 71-5-17.4, enacted by Laws 1979, ch. 326, § 4.

## **ANNOTATIONS**

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

### **71-5-17.5. 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, the division may, in prescribing its rules of order or procedure in connection with hearings or other proceedings before the division, 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. 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 may regulate all proceedings before him and perform all acts and take all measures necessary or proper for the efficient and orderly conduct of the hearing, including the swearing of witnesses, [and] receiving of testimony and exhibits offered in evidence subject to 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 the proceeding, and the 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 may have the matter heard de novo before the commission upon application filed with the division within thirty days from the time the decision is rendered.

**History:** 1978 Comp., § 71-5-17.5, enacted by Laws 1979, ch. 326, § 5; 1981, ch. 63, § 3.

#### **ANNOTATIONS**

**The 1981 amendment** inserted "of record" following "party" near the middle of the last sentence.

**Effective dates.** - Laws 1981, ch. 63, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

### **71-5-18. Rehearings; appeals.**

A. Within twenty days after entry of any order or decision of the division, any party of record adversely affected thereby may file with the commission an application for

rehearing in respect to any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within ten days after the same is filed, and failure to act thereon within such period shall be deemed a refusal thereof and a final disposition of such application. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

B. Any party of record to such rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal therefrom to the district court of the county wherein is located any property of such party affected by the decision by filing a petition for the review of the action of the commission within twenty days after the entry of the order following rehearing or after the refusal of rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the commission or division and shall set forth the order or decision of the commission or division complained of and the grounds in invalidity thereof upon which the applicant will rely; provided, however, that the questions reviewed on appeal shall be only questions presented to the commission by the application for rehearing. Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be without a jury, and the transcript of proceedings before the commission or division, including the evidence taken in hearings by the commission or division, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence. The commission or division action complained of shall be prima facie valid and the burden shall be upon the party or parties seeking review to establish the invalidity of such action of the commission or division. The court shall determine the issues of fact and of law and shall enter its order either affirming or vacating the order of the commission or division. Appeals may be taken from the judgment or decision of the district court to the supreme court in the same manner as provided for appeals from any other final judgment entered by a district court in this state. The trial of such application for relief from action of the commission or division and the hearing of any appeal to the supreme court from the action of the district court shall be expedited to the fullest possible extent.

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

D. The applicable rules of practice and procedure in civil cases for the courts of this state shall govern the proceedings for review and any appeal therefrom to the supreme court of this state to the extent such rules are consistent with provisions of the Geothermal Resources Conservation Act.

**History:** 1953 Comp., § 65-11-18, enacted by Laws 1975, ch. 272, § 18; 1977, ch. 255, § 86; 1981, ch. 63, § 4.

## ANNOTATIONS

**The 1981 amendment** substituted "party of record adversely" for "person" near the beginning of the first sentence of Subsection A, inserted "of record" near the beginning of the first sentence of Subsection B, substituted "the" for "said" preceding "order or decision pending review thereof " near the middle of Subsection C and inserted "and" preceding "any appeal therefrom" near the middle of Subsection D.

**Effective dates.** - Laws 1981, ch. 63, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 520, 535 to 538, 553 to 556, 717 to 720, 738.

Applicability of stare decisis doctrine to decisions of administrative agencies, 79 A.L.R.2d 1126.

73A C.J.S. Public Administrative Law and Procedure §§ 161 to 185.

### **71-5-19. Temporary restraining order or 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 geothermal resources, or any of the provisions of the Geothermal Resources Conservation 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 the Geothermal Resources Conservation 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 or decree

granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of Geothermal Resources Conservation Act, or of any rule, regulation or order hereunder 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 the Geothermal Resources Conservation 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:** 1953 Comp., § 65-11-19, enacted by Laws 1975, ch. 272, § 19; 1977, ch. 255, § 87.

## ANNOTATIONS

**Cross-references.** - As to injunctions and temporary restraining orders, see Rule 1-066.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 42 Am. Jur. 2d Injunctions §§ 186, 187, 189, 194, 310, 311, 314, 315.

Bond as prerequisite to issuance of temporary restraining order, 73 A.L.R.2d 854.

43A C.J.S. Injunctions §§ 114, 116, 126 to 129, 168 to 174, 241.

## 71-5-20. 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 geothermal resources, or any provision of the Geothermal Resources Conservation 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 injunction, 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 geothermal resources, or illegal geothermal resources 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:** 1953 Comp., § 65-11-20, enacted by Laws 1975, ch. 272, § 20; 1977, ch. 255, § 88.

## **ANNOTATIONS**

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

### **71-5-21. Actions for damages; institution of actions for injunctions by private parties.**

Nothing in the Geothermal Resources Conservation Act, contained or authorized, and no suit by or against the division, and no penalties imposed or claimed against any person for violating any statute of this state with respect to conservation of geothermal resources, or any provision of that act, or any rule, regulation or order issued hereunder, 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 this state with respect to conservation of geothermal resources, or any provision of the Geothermal Resources Conservation Act, or any rule, regulation or order issued hereunder. 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 geothermal resources, or of any provision of this act [71-5-1 to 71-5-17, 71-5-18 to 71-5-22, 71-5-24 NMSA 1978], or of any rule, regulation or order made hereunder, 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:** 1953 Comp., § 65-11-21, enacted by Laws 1975, ch. 272, § 21; 1977, ch. 255, § 89.

## **ANNOTATIONS**

**Cross-references.** - As to injunctions, see Rule 1-066.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 43A C.J.S. Injunctions § 129.

### **71-5-22. 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 any geothermal resources well or wells, or of any geothermal transportation, storage or utilization facility, shall be sufficient ground for the appointment of a receiver with power to conduct operations in accordance with the order of the court.

**History:** 1953 Comp., § 65-11-22, enacted by Laws 1975, ch. 272, § 22.

## **ANNOTATIONS**

**Cross-references.** - As to receivers, see Rule 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 65 Am. Jur. 2d Receivers §§ 3 to 5.

75 C.J.S. Receivers § 7.

### **71-5-23. Violations of the Geothermal Resources Conservation Act; penalties.**

A. Any person who knowingly and willfully violates any provision of the Geothermal Resources Conservation Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation. The penalties provided in this subsection shall be recoverable by a civil suit filed by the attorney general in the name and on behalf of the commission or the division in the district court of the county in which the defendant resides or in which any defendant resides if there be more than one defendant or in the district court of any county in

which the violation occurred. The payment to [of] such penalty shall not operate to legalize any illegal geothermal resources or illegal product involved in the violation for which the penalty is imposed or relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

B. 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 provisions of the Geothermal Resources Conservation 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 Geothermal Resources Conservation Act or any rule, regulation or order of the commission or division issued pursuant to that act;

(a) make any false entry or statement in a report required by the Geothermal Resources Conservation 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 Geothermal Resources Conservation 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.

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

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

**History:** 1978 Comp., § 71-5-23, enacted by Laws 1981, ch. 362, § 2.

## **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1981, ch. 362, § 2, repeals former 71-5-23 NMSA 1978 and enacts the above section, relating to the same subject matter.

**Effective dates.** - Laws 1981, ch. 362, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 21 Am. Jur. 2d Criminal Law §§ 168 to 174.

23 C.J.S. Criminal Law §§ 998 to 1001.

### **71-5-24. Seizure and sale of illegal geothermal resources or illegal geothermal resources product; procedure.**

A. Apart from, and in addition to, any other remedy or procedure which may be available to the division, or any penalty which may be sought against or imposed upon any person, with respect to violations relating to illegal geothermal resources or illegal geothermal resources product, [such resources] shall, except [except] under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find in the proceeding provided in this section that the owner of such illegal geothermal resources or illegal geothermal resources product is liable, or in some proceeding authorized by the Geothermal Resources Conservation Act such owner has already been held to be liable, for penalty for having produced such illegal geothermal resources, or for having purchased or acquired such illegal geothermal resources or illegal geothermal resources product. Whenever the division believes that illegal geothermal resources or illegal geothermal resources product 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 such illegal geothermal resources or illegal geothermal resources product. 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 said suit to protect his rights.

B. Whenever the pleading with respect to the forfeiture of illegal geothermal resources or illegal geothermal resources product shows ground for seizure and sale, and such 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 effecting 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 geothermal resources or legal geothermal resources product, 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 lien holder, or any other claimant, may have, because of the forfeiture of the illegal geothermal resources or illegal geothermal resources product, against the person whose act resulted in such forfeiture.

**History:** 1953 Comp., § 65-11-24, enacted by Laws 1975, ch. 272, § 24; 1977, ch. 255, § 91.

## ANNOTATIONS

**Cross-references.** - As to service of process, see Rule 1-004.

As to intervention, see Rule 1-024.

**Emergency clauses.** - Laws 1975, ch. 272, § 27, makes the act effective immediately. Approved April 10, 1975.

**Severability clauses.** - Laws 1975, ch. 272, § 26, provides for the severability of the act if any part or application thereof is held invalid.

**Geothermal Resources Conservation Act.** - See 71-5-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 36 Am. Jur. 2d Forfeitures and Penalties §§ 15 to 20, 36.

Conviction in criminal prosecution as bar to action for seizure, condemnation or forfeiture of property, 27 A.L.R.2d 1137.

Lawfulness of seizure of property as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

79 C.J.S. Searches and Seizures §§ 115 to 117.

# **ARTICLE 6**

## **SOLAR ENERGY DEVELOPMENT**

### **71-6-1. Short title.**

This act [71-6-1 to 71-6-3 NMSA 1978] may be cited as the "Solar Energy Development Act."

**History:** 1953 Comp., § 4-37-1, enacted by Laws 1975, ch. 83, § 1.

### **71-6-2. Purpose.**

The purpose of the Solar Energy Development Act [71-6-1 to 71-6-3 NMSA 1978] is to promote development and use of solar energy in New Mexico, by both industry and government for the benefit of New Mexico citizens and for the citizens of the United States. It is proposed to accomplish this purpose through active measures to encourage the location within this state of the proposed national solar institute, research to discover practical and feasible methods to harness solar energy to supplement existing but limited present sources of energy and development of a vigorous and productive solar energy industrial complex.

**History:** 1953 Comp., § 4-37-2, enacted by Laws 1975, ch. 83, § 2.

### **71-6-3. Duties.**

The commerce and industry department shall:

- A. establish and operate a program of promotion to encourage investment in the research and application of solar energy within New Mexico;
- B. promote and develop in New Mexico a vigorous and productive solar energy industrial complex;
- C. actively seek and promote the state of New Mexico as the proper and ideal site, because of geographical location, climate, research facilities and plentiful supply of scientific and technical expertise, for the location of the proposed national solar institute;
- D. develop necessary promotional material to be used in the process of attracting new investment capital within the solar energy field;
- E. employ sufficient staff to carry out the purpose of the Solar Energy Development Act [71-6-1 to 71-6-3 NMSA 1978]; and
- F. cooperate with private firms and all agencies of the state and federal government in furthering research and investment in solar energy use in New Mexico.

**History:** 1953 Comp., § 4-37-3, enacted by Laws 1975, ch. 83, § 3; 1977, ch. 245, § 17.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1975, ch. 83, § 5, makes the act effective immediately. Approved April 2, 1975.

**Appropriations.** - Laws 1975, ch. 83, § 4, appropriates \$30,000 from the general fund to the department of development (now commerce and industry department) to carry out the act in the sixty-third and sixty-fourth fiscal years.

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

### **71-6-4. Short title.**

Sections 14 through 20 [71-6-4 to 71-6-10 NMSA 1978] of this act may be cited as the "Solar Collector Standards Act."

**History:** Laws 1981, ch. 379, § 14.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

### **71-6-5. Purpose.**

The purpose of the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978] is to develop and implement a program to promote solar industry and stimulate a demand for high quality solar components and systems.

**History:** Laws 1981, ch. 379, § 15.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

### **71-6-6. Definition.**

As used in the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978], "solar collector" means a component which provides for the collection and transfer of incident solar energy, such transfer to be effected through a liquid or air medium primarily by mechanical means for use in water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy

such as petroleum products, natural gas or electricity; but does not include custom installations to be assembled at the site at which installation is to be made nor does it include what are commonly known as "passive systems."

**History:** Laws 1981, ch. 379, § 16.

## ANNOTATIONS

**Emergency clauses.** - Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

### **71-6-7. Energy, minerals and natural resources department; duties relating to solar collector standards.**

A. The secretary of energy, minerals and natural resources or his designee shall promulgate regulations to:

- (1) define minimum standards for the durability and reliability of solar collectors; and
- (2) establish criteria for testing the durability, reliability and thermal efficiency of solar collectors.

B. In promulgating the regulations required by Subsection A of this section, the secretary or his designee shall:

- (1) consult with scientists, engineers and individuals in research centers and professional societies such as the American society of testing and materials who are engaged in the construction of, experimentation with and research of solar energy systems in order to make changes, modifications and improvements to the standards and certification program;
- (2) consider compliance costs to industry and, insofar as practicable, make efforts to reduce such costs; and
- (3) consider similar standards and testing criteria adopted by other states or included in nationally recognized and accepted testing methodologies.

C. The secretary of energy, minerals and natural resources or his designee shall approve testing facilities which meet the criteria established by Paragraph (2) of Subsection A of this section and which have no financial interest in the manufacture, distribution or sale of solar collectors. Any approved testing facility which is partially or wholly supported by state funds may collect a reasonable testing fee sufficient to cover the costs of testing.

**History:** Laws 1981, ch. 379, § 17; 1987, ch. 234, § 71.

## ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" at the beginning of Subsections A and C.

**Emergency clauses.** - Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

**Appropriations.** - Laws 1981, ch. 379, § 21, appropriates \$2,489,100, of which \$37,500 is appropriated by Subsection B from the general fund to the energy and minerals department for expenditure in the sixty-ninth and seventieth fiscal years for the purpose of implementing the provisions of the Solar Collector Standards Act, and provides that any unexpended or unencumbered balance remaining at the end of the seventieth fiscal year shall revert to the general fund.

### **71-6-8. Certification.**

A. Any person who manufactures, distributes or sells solar collectors may apply to the energy, minerals and natural resources department for certification of the collectors. The department shall certify the solar collectors if:

(1) the applicant submits test results performed by an approved testing facility which show that the collectors meet the minimum standards of durability and reliability and which indicate the thermal efficiency of the collectors; or

(2) the applicant submits test results which show that the collectors meet the minimum standards of durability and reliability and which indicate the thermal efficiency of the collectors and the applicant submits proof that the collectors have been certified or approved by another state or the federal government and, in the opinion of the secretary of energy and minerals [secretary of energy, minerals and natural resources], the minimum standards and testing criteria of the other state or the federal government are at least as stringent as those established pursuant to the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978].

B. The energy, minerals and natural resources department shall maintain accurate records of all solar collectors which have been certified pursuant to Subsection A of this section, including the test results submitted to the department. The records shall be available for public inspection.

C. Not more than once every two years, the secretary of energy, minerals and natural resources may require any applicant for which solar collectors have been previously certified pursuant to this section to submit additional or more recent test results. If the applicant continues to meet the requirements of Subsection A of this section, the certification of the solar collectors shall be continued. If the applicant fails to submit the additional or more recent test results or if the applicant fails to continue to meet the

requirements of Subsection A of this section, the secretary shall withdraw the certification previously issued and shall so notify the applicant.

D. The energy, minerals and natural resources department shall promulgate rules and regulations necessary to implement the provisions of this section.

**History:** Laws 1981, ch. 379, § 18; 1987, ch. 234, § 72.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" near the beginning of each of the four subsections.

**Emergency clauses.** - Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

#### **71-6-9. Certification; effect upon income tax credit.**

A. Notwithstanding any provision of Section 7-2-16 NMSA 1978, the credit against personal income tax provided by Section 7-2-16 NMSA 1978, shall not apply to the purchase of any solar collector unless the solar collector:

(1) is certified pursuant to the provisions of the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978]; and

(2) at the time it is purchased by the taxpayer, is accompanied by a statement which states that the solar collector is certified and states the thermal efficiency of the collector.

B. The provisions of Subsection A of this section shall become effective January 1 of the year following the year in which the secretary of energy, minerals and natural resources has certified to the governor that a solar collector certification program has been implemented pursuant to the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978].

**History:** Laws 1981, ch. 379, § 19; 1987, ch. 234, § 73.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" near the middle of Subsection B.

**Emergency clauses.** - Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.

**Compiler's note.** - Section 7-2-16 NMSA 1978, referred to in Subsection A, was repealed by Laws 1990, ch. 49, § 20, effective May 16, 1990.

### **71-6-10. Liability.**

Nothing in the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978] shall be construed to create any liability of malfeasance, misfeasance or nonfeasance in the performance of any duty required of the state, any of its agencies or political subdivisions or any institution controlled by the state.

**History:** Laws 1981, ch. 379, § 20.

### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 379, § 23, provides that the effective date of Laws 1981, ch. 379, § 22, is the first day after the date that the secretary of energy and minerals has certified to the governor in writing that a transition plan has been fully implemented pursuant to Subsection B of Section 13 of the Energy Research and Development Institute Act.

**Emergency clauses.** - Laws 1981, ch. 379, § 24, makes the act effective immediately. Approved April 10, 1981.