

# 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.

**Cross-references.** - As to recording deeds, see 14-9-1 NMSA 1978.

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

**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*, 75 N.M. 726, 410 P.2d 948 (1966).

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*, 75 N.M. 726, 410 P.2d 948 (1966).

**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; 54 Am. Jur. 2d Mines and Minerals § 106.

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.

**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.

**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.*, 87 N.M. 294, 532 P.2d 590 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 38 Am. Jur. 2d Gas and Oil § 212; 54 Am. Jur. 2d Mines and Minerals § 141.

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, 65 A.L.R.3d 804.

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.

**Cross-references.** - As to 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.

**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. Resources 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.

**Cross-references.** - As to 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*, 76 N.M. 268, 414 P.2d 496 (1966).

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

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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. United States*, 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*, 55 N.M. 335, 233 P.2d 204 (1951).

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

For article, "'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 *Nat. Resources 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.

**Cross-references.** - For definitions used in act, see 70-2-33 NMSA 1978.

**Meaning of "this act".** - 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.

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

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

For article, "'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 *Nat. Resources 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.

**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.

**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. 1951-52 Op. Att'y Gen. No. 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. 1951-52 Op. Att'y Gen. No. 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. 1951-52 Op. Att'y Gen. No. 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. 1953-54 Op. Att'y Gen. No. 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. 1951-52 Op. Att'y Gen. No. 5397.

**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).

**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. 1935-36 Op. Att'y Gen. 75.

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

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

For article, "'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 *Nat. Resources 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.

**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.

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

As to powers and duties under Geothermal Resources Conservation Act, see 71-5-6 to 71-5-8 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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*, 72 N.M. 186, 382 P.2d 183 (1963).

**And 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. 1959-60 Op. Att'y Gen. No. 59-186.

**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).

**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. 1959-60 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. Resources J. 355 (1962).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources 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.

**Cross-references.** - As to filing rules and regulations, see 14-4-1 NMSA 1978 et seq.

As to publication of notice, see 14-11-1 NMSA 1978 et seq.

As to service of summons in civil actions, see Rule 1-004 SCRA 1986.

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

**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. New Mexico Oil Conservation Comm'n*, N.M., 817 P.2d 721 (1991).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 340 to 366.

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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 420, 421.

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.

**Cross-references.** - As to 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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 NMSA 1978.

**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*, 72 N.M. 186, 382 P.2d 183 (1963).

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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 72 N.M. 186, 382 P.2d 183 (1963).

**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. 1951-52 Op. Att'y Gen. 5397.

**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, 70 N.M. 310, 373 P.2d 809 (1962).

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, 70 N.M. 310, 373 P.2d 809 (1962).

**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, 70 N.M. 310, 373 P.2d 809 (1962).

**Law reviews.** - For comment on Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources 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. Included in the power given to the oil conservation 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 oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports; to limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act [this article]; to 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. 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, the division is authorized to make rules, regulations 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 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; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;

(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 which 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 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 in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

(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 which 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 in accordance with the provisions of the Oil and Gas 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 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 [74-6-1 to 74-6-4, 74-6-6 to 74-6-13 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.

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

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

**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.

**The 1986 amendment** 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.

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

**Effective dates.** - Laws 1986, ch. 76 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Natural Gas Policy Act of 1978.** - The federal Natural Gas Policy Act of 1978, referred to in Subsection B(19), appears as 15 U.S.C. § 3301 et seq.

**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. *Continental 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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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.

### **70-2-13. 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. Bonding requirement.**

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 a cash or surety bond to the oil conservation division running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules and regulations of the oil conservation division. The oil conservation division shall establish categories of bonds after notice and hearing. Such categories shall include a blanket plugging bond in an amount not to exceed fifty thousand dollars (\$50,000) and one-well plugging bonds in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by each bond. In establishing categories of bonds, 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. In addition to the blanket plugging bond, the oil conservation division may require a one-well bond on any well that has been held in a temporarily abandoned status for more than two years. All bonds shall remain in force and effect until released by the oil conservation division. The oil conservation

division shall release a bond when it is satisfied the conditions of the bond have been fully performed.

B. If any of the requirements of the Oil and Gas Act [this article] or the rules and regulations 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 and regulations. If the order is not complied with in the time period set out in the order, the bond shall be forfeited.

C. When any bond is forfeited pursuant to the provisions of the Oil and Gas Act or rules and regulations 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 bond 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.

**History:** 1953 Comp., § 65-3-11.2, enacted by Laws 1977, ch. 237, § 3; 1978, ch. 117, § 1; 1986, ch. 76, § 2.

**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.

**Effective dates.** - Laws 1986, ch. 76 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 21, 1986.

**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.

**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.** - 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.

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

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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. United*

States, 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 *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

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

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.** - 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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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, 70 N.M. 310, 373 P.2d 809 (1962).

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, 70 N.M. 310, 373 P.2d 809 (1962).

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, 76 N.M. 268, 414 P.2d 496 (1966) (explaining Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962)).

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, 70 N.M. 310, 373 P.2d 809 (1962).

**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, 100 N.M. 451, 672 P.2d 280 (1983).

**As to forced pooling of multiple zones with an election to participate** in less than all zones. See Viking Petroleum, Inc. v. Oil Conservation Comm'n, 100 N.M. 451, 672 P.2d 280 (1983).

**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, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**Law reviews.** - For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 *Nat. Resources 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. Resources J.* 425 (1967).

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.** - 38 *Am. Jur. 2d Gas and Oil* §§ 159, 161, 164.

38 *C.J.S. Mines and Minerals* §§ 229, 230.

## **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.

- 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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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. New Mexico Oil Conservation Comm'n*, N.M., 817 P.2d 721 (1991).

**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.** - 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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 NMSA 1978.

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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.

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.

### **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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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.

**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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 277 to 288.

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 any order or decision of the commission, any party of record adversely affected thereby may file with the commission an application for rehearing in respect of 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 or [of] rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the commission and shall set forth the order or decision of the commission complained of and the grounds of 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, including the evidence taken in hearings by the commission, 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 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. 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. 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 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 an 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 order or decision, in the event that the action of the commission 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 the state to the extent such rules are consistent with provisions of the Oil and Gas Act [this article].

**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.

**Cross-references.** - For Rules of Appellate Procedure, see Judicial Pamphlet 12.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 NMSA 1978.

**Constitutionality.** - Insofar as Subsection B of this section purports to allow district court, on appeal from commission, to consider new evidence, to base its decision on preponderance of evidence or to modify orders of commission, it is void as unconstitutional delegation of power, contravening N.M. Const., art. III, § 1. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962) (decided under prior law).

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, 65 N.M. 384, 338 P.2d 113 (1959) (decided under prior law).

**"Entry of an order,"** as it appears in the law dealing with the commission, means entering order upon a minute book or other proper book used to record the official acts of the commission. 1953-54 Op. Att'y Gen. No. 5927.

**"Substantial evidence"** means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In resolving these arguments of appellant, supreme court will not weigh evidence. By definition, inquiry is whether, on the record, administrative body could reasonably make the findings, and special weight and credence will be given to experience, technical competence and specialized knowledge of the commission. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

**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, 75 N.M. 36, 399 P.2d 932 (1965).

**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 such 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, 75 N.M. 36, 399 P.2d 932 (1965).

**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).

**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, 87 N.M. 286, 532 P.2d 582 (1975).

**Sufficiency of commission's findings.** - Where 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*, 87 N.M. 292, 532 P.2d 588 (1975).

In cases where 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*, 87 N.M. 292, 532 P.2d 588 (1975).

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*, 87 N.M. 205, 531 P.2d 939 (1975).

**Lack of jurisdiction.** - Where 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*, 75 N.M. 36, 399 P.2d 932 (1965).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 *Am. Jur. 2d Administrative Law* §§ 520 to 538, 553 to 560.

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.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 539 to 552.

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

## **70-2-27. Temporary restraining order or injunction [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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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.

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

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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.

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

**Meaning of "this act".** - See same catchline in notes to 70-2-3 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.

**Cross-references.** - As to appointment of receivers, see Rules 1-065 and 1-066 SCRA 1986.

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

A. Any person who knowingly and willfully violates any provision of the Oil and Gas Act [this article] or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. 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 of such penalty shall not operate to legalize any illegal oil, illegal gas 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 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.

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., § 70-2-31, enacted by Laws 1981, ch. 362, § 1.

**Cross-references.** - As to disposition of fines and forfeitures under general laws, N.M. Const., art. XII, § 4.

**Repeals and reenactments.** - Laws 1981, ch. 362, § 1, repeals former 70-2-31 NMSA 1978 and enacts the above section, relating to the same subject matter.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 NMSA 1978.

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

## **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.

**Cross-references.** - As to sale on execution, see 39-5-1 NMSA 1978.

**Repeals and reenactments.** - Laws 1978, ch. 58, § 1, repeals 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 enacts the above section.

### **70-2-33. Definitions.**

As used in the Oil and Gas Act [this article]:

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

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

E. "owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or for himself 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 his 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 his just and equitable share of the reservoir energy;

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

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.

**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.

**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 1986 amendment** added Subsection J and made stylistic changes throughout the section.

**Effective dates.** - Laws 1986, ch. 56 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 NMSA 1978.

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 87 N.M. 286, 532 P.2d 582 (1975).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

**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*, 70 N.M. 310, 373 P.2d 809 (1962).

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

For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 *Nat. Resources 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. Resources 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 gas.**

A. The oil conservation division is hereby vested with the authority and duty of regulation and conserving the production of and preventing waste of carbon dioxide gas within this state in the same manner, insofar as is practicable as it regulates, conserves and prevents waste of natural or hydrocarbon gas. The provisions of this act relating to gas or natural gas shall also apply to carbon dioxide gas insofar as the same are applicable. "Carbon dioxide gas" as used herein shall mean noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

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, § 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.

**Meaning of "this act".** - See same catchline in notes to 70-2-3 NMSA 1978.

## **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.

**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.

**State Budgets Act.** - The State Budgets Act, referred to in the last sentence, apparently means those provisions found in Article 3 of Chapter 6.

## **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**

**Temporary provisions.** - Laws 1991, ch. 9, § 43, effective July 1, 1991, provides that all money in the oil conservation fund in excess of any money to be transferred to the oil and gas reclamation fund shall be transferred to the general fund.

**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". 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 [this article].

**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.

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

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

### **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. Expenditures from the fund may be used by the director of the division for the purpose of employing the necessary personnel to survey abandoned wells and to prepare plans for the plugging of abandoned wells which have not been plugged or which have been improperly plugged. The director, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug all abandoned wells in accordance with the provisions of the Oil and Gas Act [this article] and the rules and regulations promulgated pursuant to that act. The division may order wells plugged 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 utilizing funds from the oil and gas reclamation fund to pay the cost of plugging. When the costs of plugging a well drilled on federal mineral leases are paid from the oil and gas reclamation fund, the division is authorized to bring a suit against the operator or the owner of the minerals under the tract, or both, in the district court of the county in which the well is located for indemnification for all costs incurred by the division in plugging the well. 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.

B. The director 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.

C. All contracts for well plugging shall be entered into in accordance with the provisions of the Procurement Code. Any contractor employed by the division to plug a well is authorized to sell for salvage the equipment and material which is removed from the well in plugging it.

**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.

**Procurement Code.** - See 13-1-28 NMSA and notes thereto.

**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.

## **ARTICLE 3**

### **PIPELINES**

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

The corporation 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.

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

**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 and shall be accompanied by the license fee determined as hereinafter provided. On receipt of such application and license fee, the corporation 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.

**Supreme court lacked jurisdiction to review order of corporation 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. *Murchison & Co. v. SCC*, 51 N.M. 285, 183 P.2d 155 (1947).

**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[s] 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.

**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 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.

**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 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 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.

**Cross-references.** - As to extension of pipelines, see 70-2-19 NMSA 1978.

As to eminent domain by public utilities, see 42A-1-1 NMSA 1978 et seq.

**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 note.** - 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 amended by Laws 1987, ch. 310, § 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.*, 101 N.M. 268, 681 P.2d 53 (1984).

**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.*, 104 N.M. 596, 725 P.2d 572 (1986).

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

For case comment, "Eminent Domain - Review of Route Selection Made by Public Utility Through Private Wildlife Refuge," see 8 Nat. Resources 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. Resources J. 829 (1985).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Eminent Domain § 55; 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 §§ 24, 57.

### **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.

**Meaning of "this act".** - 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. Resources 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.

**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. 1957-58 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. Resources J. 360 (1964).

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

**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. [Forms relative to use of highways by pipelines.]**

The state highway commission shall cause to be prepared the necessary blank forms for carrying out the provisions of this act [70-3-7 to 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.

### **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.

### **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.

**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. [Definition of terms.]**

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

A. "person" means any 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 state corporation 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 therefrom;

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 which 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 which 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; and

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

**History:** 1953 Comp., § 65-4-16, enacted by Laws 1969, ch. 71, § 2.

### **70-3-13. Powers of commission.**

The commission may:

A. promulgate, amend, enforce and repeal reasonable regulations establishing minimum safety standards for the transportation of oil and gas, and for the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of oil or gas pipeline facilities. Safety standards shall not be applicable to oil 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 or gas pipeline facility is hazardous to life or property, it may

require the person operating the oil 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 regulations promulgated for gas pipeline facilities or the transportation of gas shall be consistent with federal law and with rules and regulations promulgated under authority of the Natural Gas and Pipeline Safety Act of 1968, being Public Law 90-481; safety regulations adopted hereunder shall not apply to any transportation of oil or oil pipeline facilities regulated by the federal department of transportation;

B. 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 or gas pipeline facilities and the transportation of oil and gas and administer the authority delegated to the commission by any contract with the federal government or any agency thereof;

C. 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. make investigations consistent with the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978], 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 or gas pipeline facilities investigated, before any enforcement action is initiated; and

E. 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 or gas pipeline facilities as the commission may, by regulation, require for proper administration of the Pipeline Safety Act; provided, however, the use of the term "rights-of-way" does not authorize the commission to prescribe the location or routing of any oil or gas pipeline facility.

**History:** 1953 Comp., § 65-4-17, enacted by Laws 1969, ch. 71, § 3.

**Natural Gas and Pipeline Safety Act.** - The Natural Gas and Pipeline Safety Act of 1968, referred to in the last sentence of Subsection A, above, is compiled as 49 U.S.C. § 1671 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 69 to 84.

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

### **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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 278 to 286.

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 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 553 to 560.

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.

**Natural Gas Pipeline Safety Act.** - Section 3 (e) of the Natural Gas Pipeline Safety Act of 1968, referred to at the end of the section, is compiled as 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 Section 8A [70-3-18A NMSA 1978] of the Pipeline Safety Act or any regulation adopted by the commission under the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978], 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. In any action to enforce the provisions of the Pipeline Safety Act, or any regulation of the commission, the commission and the state shall be represented by the attorney general.

C. 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.

D. Any person owning or operating gas pipeline facilities or engaged in the transportation of gas who shall have been determined by order of the commission after hearing to have violated any provision of Section 8A [70-3-18A NMSA 1978] of the Pipeline Safety Act or any regulation promulgated under the Pipeline Safety Act applicable to gas pipeline facilities or the transportation of gas shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed two hundred thousand dollars (\$200,000) for any related series of violations. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business charged, the gravity of the violation and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. Judicial review of any provision of this section may be accomplished in the same manner as is found in Section 5 [70-3-15 NMSA 1978] of the Pipeline Safety Act.

E. Any person owning or operating oil pipeline facilities or engaged in the transportation of oil who shall have been judicially determined to have violated any provision of Section 8A [70-3-18A NMSA 1978] of the Pipeline Safety Act or any regulation promulgated under the Pipeline Safety Act applicable to oil pipeline facilities or the transportation of oil shall be subject to a civil penalty to be assessed by a court in an amount not to exceed five hundred dollars (\$500) for each such violation. The continued violation for each thirty-day period after such judicial determination shall be considered as a separate violation.

**History:** 1953 Comp., § 65-4-23, enacted by Laws 1969, ch. 71, § 9; 1971, ch. 89, § 1.

### **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 [10-9-1 to 10-9-25 NMSA 1978].

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

**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.

## **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.

**Effective dates.** - Laws 1988, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

**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 [70-3A-1 to 70-3A-7 NMSA 1978]:

A. "mineral developer" means a mineral owner, operator or lessee who is engaged in the production 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.

**Effective dates.** - Laws 1988, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

#### **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 [70-3A-1 to 70-3A-7 NMSA 1978], 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.

**Effective dates.** - Laws 1988, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

**Cross-references.** - As to the Rules of Civil Procedure for the District Courts, see Judicial Pamphlet 1.

#### **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] 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.

**Effective dates.** - Laws 1988, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

**Cross-references.** - As to the Rules of Civil Procedure for the District Courts, see Judicial Pamphlet 1.

### **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.

**Effective dates.** - Laws 1988, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

### **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.

**Effective dates.** - Laws 1988, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

### **70-3A-7. Abandonment of easement.**

When an easement is acquired pursuant to the Gathering Line Land Acquisition Act [70-3A-1 to 70-3A-7 NMSA 1978] 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.

**Effective dates.** - Laws 1988, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

## **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 [70-4-1 to 70-4-15 NMSA 1978], 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.

**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.*, 89 N.M. 679, 556 P.2d 835 (1976).

**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.

Description of well in mechanic's lien notice or claim, 52 A.L.R.2d 75.

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 [70-4-1 to 70-4-15 NMSA 1978] 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.

### **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 one hundred twenty 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, save the original contractor, claiming the benefits of the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978], within ninety days after the performance of the last labor or the furnishing or hauling of the last item of material, tools, machinery, equipment or supplies, must file for record with the county clerk of the county in which the property upon which the lien is claimed, or some part thereof, is situated, a claim setting forth the name and residence of the claimant, the amount claimed and the items thereof, as nearly as practicable, 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.

**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.

**Cross-references.** - As to recording fees, see 14-8-12 NMSA 1978.

#### **70-4-6. Liability of owner limited to contract price.**

Nothing in this act [70-4-1 to 70-4-15 NMSA 1978] shall be deemed to fix a greater liability upon an owner than the amount contracted by such owner to be paid the original contractor; provided, that the risk of all payments made to the original contractor shall

be upon such owner until the expiration of the ninety (90) days hereinbefore specified within which persons other than the original contractor may fix their liens by the filing of the claim as therein provided, and no owner shall be liable to an action by such contractor until the expiration of said ninety (90) days' period, and owners may pay subcontractors the specific contract or agreed upon charge due them from such contractor for work, labor, material, tools, machinery, equipment and supplies, and the amount so paid shall be held and deemed a payment of said 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.

**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 [70-4-1 to 70-4-15 NMSA 1978] 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.

**Cross-references.** - As to 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.

**Cross-references.** - As to joinder of parties, see Rule 1-020A SCRA 1986.

As to consolidation of actions, see Rule 1-042C SCRA 1986.

### **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 [70-4-1 to 70-4-15 NMSA 1978], 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.

**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.

**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 [70-4-1 to 70-4-15 NMSA 1978] 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.

**Compiler's note.** - 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.*, 89 N.M. 679, 556 P.2d 835 (1976).

**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.*, 89 N.M. 679, 556 P.2d 835 (1976).

## **ARTICLE 5**

### **LIQUEFIED GASES**

#### **70-5-1. Liquefied petroleum gas bureau; definitions. (Effective until July 1, 1998.)**

As used in the LPG Act [70-5-1 to 70-5-22 NMSA 1978]:

A. "liquefied petroleum gases", "LPG" and "LP gas" means and includes any material which is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butanes (normal butane or iso-butane) and butylenes;

B. "product" or "products" are considered to be LP gas;

C. "qualified instructor" means an employee who has passed the required examination and performed for at least one year the work being taught;

D. "inspector" means a person hired by the bureau to enforce under administrative direction the laws and safety rules and regulations of the LP gas industry;

E. "division" means the construction industries division of the regulation and licensing department;

F. "bureau" means the liquefied petroleum gas bureau of the division; and

G. "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.

**Delayed repeals.** - Section 60-13-58 NMSA 1978, as amended by Laws 1991, ch. 33, § 1, repeals Chapter 70, Article 5 NMSA 1978, effective July 1, 1998.

**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. 70-8.

**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. 1953-54 Op. Att'y Gen. No. 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. 1953-54 Op. Att'y Gen. No. 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. 70-8.

**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. (Effective until July 1, 1998.)**

Sections 70-5-1 through 70-5-22 NMSA 1978 may be cited as the "LPG Act."

**History:** 1953 Comp., § 65-7-1.1, enacted by Laws 1973, ch. 362, § 2.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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. 1963-64 Op. Att'y Gen. No. 63-53.

## **70-5-3. Rules and regulations for design, construction, assembling, equipping and installing of containers and equipment. (Effective until July 1, 1998.)**

All containers and pertinent equipment used or to be used in this state for the storage, transporting or dispensing of LP gases 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 Act [70-5-1 to 70-5-22 NMSA 1978].

**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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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. 1953-54 Op. Att'y Gen. No. 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.

## **70-5-4. Manufacture or sale of LP gas equipment, loan or lease of containers and storage or handling of LP gas subject to commission rules and regulations. (Effective until July 1, 1998.)**

The selling, exposing 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 Act [70-5-1 to 70-5-22 NMSA 1978] shall be a violation of the LPG 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, substituted "commission" for "committee" in the catchline 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. (Effective until July 1, 1998.)**

A. The commission may adopt and promulgate rules and regulations as are necessary to carry out the purpose of the LPG Act [70-5-1 to 70-5-22 NMSA 1978] 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection A, substituted "commission" for "committee" in the first sentence and made several minor stylistic changes.

**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. 1955-56 Op. Att'y Gen. No. 6260.

**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).

### **70-5-6. License; exceptions. (Effective until July 1, 1998.)**

A. No person, firm or corporation shall engage in this state in the manufacturing, assembling, repairing, selling or installing of containers or appliances 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 Act [70-5-1 to 7-5-22 NMSA 1978]. 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 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 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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). 1957-58 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. 1955-56 Op. Att'y Gen. No. 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. 1949-50 Op. Att'y Gen. No. 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. 1951-52 Op. Att'y Gen. No. 5384.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 38 C.J.S. Gas § 4.

### **70-5-7. Requiring competent employees in transporting, dispensing, installation, service or repair. (Effective until July 1, 1998.)**

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 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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 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. 1961-62 Op. Att'y Gen. No. 61-11.

### **70-5-8. Authority of inspectors. (Effective until July 1, 1998.)**

A. An inspector of the LP gas 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.

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 LP gas 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. Such representative may remove any item which may have been a factor in the accident and such 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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.

**70-5-9. Annual license fees; inspection fees. (Effective until July 1, 1998.)**

A. For the purpose of defraying the expenses of administering the laws relating to 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 license [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 this act [70-5-1 to 70-5-22 NMSA 1978] is intended to alter the jurisdiction of the New Mexico state corporation 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 bulk storage plant and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities. Such 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 such proposed annual license fees in the manner provided by Section 70-5-14 NMSA 1978. At the conclusion of any such hearing, the bureau shall enter its findings and decision in writing as a regulation and such regulation shall be filed as provided by the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

**History:** 1953 Comp., § 65-7-8, enacted by Laws 1970, ch. 65, § 2; 1973, ch. 362, § 9; 1977, ch. 245, § 131.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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.

**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. 1961-62 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. 1961-62 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. 1947-48 Op. Att'y Gen. No. 5013.

**Where 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. 1963-64 Op. Att'y. Gen. No. 63-53.

### **70-5-10. LP gas revenue; suspense fund. (Effective until July 1, 1998.)**

All fees and moneys collected under the provisions of the LPG Act [70-5-1 to 70-5-22 NMSA 1978] shall be remitted forthwith 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 and [any] 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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. 1961-62 Op. Att'y Gen. No. 61-101.

### **70-5-11. Proof of responsibility. (Effective until July 1, 1998.)**

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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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. (Effective until July 1, 1998.)**

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 Act [70-5-1 to 70-5-22 NMSA 1978], that an applicant or licensee has violated or failed to comply with any provision of law relating to LP gas 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 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, substituted "commission" for "committee" in the catchline 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. (Effective until July 1, 1998.)**

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 Act [70-5-1 to 70-5-22 NMSA 1978] 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 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 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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 §§ 397 to 424.

73A C.J.S. Public Administrative Law and Procedure § 115 et seq.

### **70-5-14. Notice; hearing. (Effective until July 1, 1998.)**

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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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 §§ 398 to 404.

73A C.J.S. Public Administrative Law and Proceedings §§ 134, 135, 139, 142.

### **70-5-15. Finding; record. (Effective until July 1, 1998.)**

At the conclusion of any hearing held to consider a complaint filed against any licensee under the LPG Act [70-5-1 to 70-5-22 NMSA 1978], 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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 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 § 434.

73A C.J.S. Public Administrative Law and Proceedings §§ 151, 160.

### **70-5-16. Appeal. (Effective until July 1, 1998.)**

Any licensee whose license is canceled or suspended by order of the commission may appeal the decision by filing with the court of appeals a notice of appeal within thirty days after the date the order is made. The appeal must be on the record made at the hearing. The licensee shall certify in his notice of appeal that arrangements have been made with the commission for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the licensee, including two copies which he shall furnish to the commission. Upon appeal, the court of appeals shall set aside the decision and order of the commission only if found to be:

A. arbitrary, capricious or an abuse of discretion;

B. not supported by substantial evidence in the record; or

C. otherwise not in accordance with law.

**History:** 1953 Comp., § 65-7-16, enacted by Laws 1973, ch. 362, § 16; 1977, ch. 245, § 138; 1989, ch. 6, § 61.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**Cross-references.** - For Rules of Appellate Procedure, see Judicial Pamphlet 12.

**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.

**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 §§ 553 to 560.

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. (Effective until July 1, 1998.)**

The same procedure, rights and penalties as herein specified 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 be 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 at Santa Fe county in all cases where an application for a license hereunder is denied.

**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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

### **70-5-18. Civil penalty for failure to comply with act or any order, rule or regulation. (Effective until July 1, 1998.)**

The failure of any person, firm or corporation or any association engaged in any LP gas 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 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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. (Effective until July 1, 1998.)**

Nothing contained in the LPG Act [70-5-1 to 70-5-22 NMSA 1978] 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 Act are specifically exempted from application of the Construction Industries Licensing Act [60-13-1 to 60-13-56 NMSA 1978] insofar as their LP gas operations are concerned.

**History:** 1941 Comp., § 71-823, enacted by Laws 1947, ch. 214, § 20; 1953 Comp., § 65-7-20; Laws 1973, ch. 362, § 19.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

### **70-5-20. Enforcement. (Effective until July 1, 1998.)**

The bureau may enforce the laws relating to LP gases and any rules, regulations or orders promulgated 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 Act [70-5-1 to 70-5-22 NMSA 1978]. The chief and the inspectors of the bureau may issue citations for violation of the LPG 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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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. (Effective until July 1, 1998.)**

Any person violating any provision of the LPG Act [70-5-1 to 70-5-22 NMSA 1978] 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 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.

**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.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**The 1989 amendment**, effective July 1, 1989, substituted "commission" for "committee" and made minor stylistic changes.

### **70-5-22. Penalty assessments. (Effective until July 1, 1998.)**

The bureau 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 of the bureau.

**History:** 1953 Comp., § 65-7-23, enacted by Laws 1973, ch. 362, § 22; 1977, ch. 245, § 143.

**Delayed repeals.** - See same catchline in notes to 70-5-1 NMSA 1978.

**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.

**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. 1953-54 Op. Att'y Gen. No. 5627.

# **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.

**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 which 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 service 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.

**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 Natural Gas Act is compiled as 15 U.S.C. §§ 717 to 717z.

### **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.

**Cross-references.** - As to eminent domain, see N.M. Const., art. II, § 20 and 42A-1-1 NMSA 1978.

**Repeals and reenactments.** - Laws 1978, ch. 59, § 1, repeals 65-9-4, 1953 Comp. (former 70-6-4 NMSA 1978), relating to appropriation of underground storage facilities and limitations, and enacts the above section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Eminent Domain § 56.

29A C.J.S. Eminent Domain § 57.

### **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.

### **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.

**Cross-references.** - As to railroads' right of eminent domain, see 42A-2-3 and 42A-2-4 NMSA 1978.

As to telegraph and telephone companies' right of eminent domain, see 42A-2-2 to 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.

**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 [70-7-1 to 70-7-21 NMSA 1978] 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.

**Law reviews.** - For article, "On an Institutional Arrangement for Developing Oil and Gas in the Gulf of Mexico", see 26 Nat. Resources 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 [70-7-1 to 70-7-21 NMSA 1978], 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.

**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 [70-7-1 to 70-7-21 NMSA 1978], 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.

**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.

**The 1986 amendment,** at the end of Subsection F, added the language following "in and to the unit until" and made minor stylistic changes throughout the section.

**Effective dates.** - Laws 1986, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

### **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.

**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.

### **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 [70-7-1 to 70-7-21 NMSA 1978] 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.

### **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**

### **70-8-1. Short title.**

This act [70-8-1 to 70-8-6 NMSA 1978] may be cited as the "Emergency Petroleum Products Supply Act."

**History:** 1953 Comp., § 65-10-1, enacted by Laws 1974, ch. 22, § 1.

**Meaning of "this act".** - The term "this act" means Laws 1974, Chapter 22, which appears as 70-8-1 to 70-8-5 and 70-8-6 NMSA 1978. However, Laws 1979, Chapter 174 added present 70-8-5.1 NMSA 1978 to the Emergency Petroleum Products Supply Act.

### **70-8-2. Purpose and findings.**

The legislature hereby determines that:

A. shortages of petroleum products caused by discontinuance or significant reductions of normal and customary availability in New Mexico of petroleum supplies create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods;

B. such hardships and dislocations are a threat to the public health, safety and welfare and can be averted or minimized through the operation of the Emergency Petroleum Products Supply Act [70-8-1 to 70-8-6 NMSA 1978];

C. the purpose of the Emergency Petroleum Products Supply Act is to avert or minimize such threats to the public health, safety and welfare; and

D. the preservation of existing marketing and distribution facilities of petroleum products in the state is necessary to prevent chaos and promote the public health, safety and welfare.

**History:** 1953 Comp., § 65-10-2, enacted by Laws 1974, ch. 22, § 2.

### **70-8-3. Definitions.**

As used in the Emergency Petroleum Products Supply Act [70-8-1 to 70-8-6 NMSA 1978]:

A. "petroleum products" means gasoline, aviation gasoline, kerosene, diesel fuels, heating oils, propane, butane and all other liquefied petroleum gases other than natural gasoline;

B. "supplier" means any person, except a small refiner, who sells, markets or distributes petroleum products in a refined state to any distributor in New Mexico;

C. "distributor" means any distributor, wholesaler, jobber, consignee, commission agent or other person, except a supplier's employee, who purchases or otherwise acquires possession of or an interest in petroleum products in New Mexico from a supplier for wholesale sale and not for retail sale or ultimate consumption;

D. "small refiner" means a refiner whose total refinery capacity, including the refinery capacity of any firm which controls, is controlled by or is under common control with such refiner, does not exceed fifty thousand barrels per day;

E. "monthly allocation" means the monthly amount of petroleum products sold or otherwise supplied to, for or in connection with a distributor in the same month of the calendar year next preceding the calendar year of the intended reduction or discontinuance. Reduction or increase in a monthly allocation shall not be considered in determining the monthly allocation for succeeding periods;

F. "to discontinue" means the failure or refusal to deliver a monthly allocation to a distributor for a period of six consecutive months unless such failure or refusal is the direct and proximate result of force majeure;

G. "to reduce" means the failure or refusal to deliver at least seventy-five percent of a monthly allocation to a distributor for a period of two consecutive months unless such failure or refusal is the direct and proximate result of force majeure; and

H. "force majeure" means an act of God or any other cause not reasonably within the control of the supplier.

**History:** 1953 Comp., § 65-10-3, enacted by Laws 1974, ch. 22, § 3; 1979, ch. 174, § 1; 1983, ch. 196, § 1.

#### **70-8-4. Consent as a condition of doing business.**

Any supplier who commences business or continues to do business in New Mexico for a period of thirty days after the effective date of the Emergency Petroleum Products Supply Act [70-8-1 to 70-8-6 NMSA 1978] is deemed to have consented to all the terms of the Emergency Petroleum Products Supply Act as a condition of doing business in New Mexico.

**History:** 1953 Comp., § 65-10-4, enacted by Laws 1974, ch. 22, § 4.

**Law reviews.** - For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 10 N.M.L. Rev. 169 (1979-80).

#### **70-8-5. Prohibited acts.**

Except in case of failure by any New Mexico distributor to substantially comply with the requirements imposed upon him by a contract or agreement with the supplier or except as first authorized by an agency of the federal government responsible for regulating allocations of petroleum products or except as provided in Section 70-8-5.1 NMSA 1978, it is unlawful for any supplier:

A. to discontinue monthly allocations of petroleum products to a New Mexico distributor, his successors in interest or qualified assigns; or

B. to reduce monthly allocations of petroleum products to a New Mexico distributor, his successors in interest or qualified assigns.

**History:** 1953 Comp., § 65-10-5, enacted by Laws 1974, ch. 22, § 5; 1979, ch. 174, § 2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 38 Am. Jur. 2d Gas and Oil §§ 153, 161.

#### **70-8-5.1. Exemption.**

A supplier is authorized to reduce or discontinue monthly allocations of petroleum products with any New Mexico distributor if the supplier:

A. furnishes the distributor with an alternative source of monthly allocations of petroleum products of equal type, grade, quantity and equivalent delivery location or, in the event the distributor refuses to accept the alternative source; and

B. agrees to supply the distributor with monthly allocations of petroleum products for a period of thirty months after furnishing the distributor and the governor with notice of the tender of the alternative source of monthly allocations of petroleum products and of its intention to discontinue or reduce such allocations.

**History:** 1978 Comp., § 70-8-5.1, enacted by Laws 1979, ch. 174, § 3.

### **70-8-6. Right of action; injunction; damages.**

Whenever the attorney general of New Mexico, after complaint has been filed by any person alleging injury hereunder or upon his own initiative after investigation made, believes any supplier has violated, or is knowingly in violation of, the provisions of the Emergency Petroleum Products Supply Act [70-8-1 to 70-8-6 NMSA 1978], the attorney general shall bring an action to enjoin the violation in any district court of the state. Additionally, any person who shall be injured in his business or property by a violation of this act may bring an action to enjoin the violation and to recover all damages sustained thereby, including cost of suit and a reasonable attorney's fee, in any district court of the state. In an action for money damages, the court or jury may award punitive damages not to exceed three times the actual damages, if the violation is found to be willful.

**History:** 1953 Comp., § 65-10-6, enacted by Laws 1974, ch. 22, § 6.

## **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.

**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 [70-10-1 to 70-10-3, 70-10-4, 70-10-5 NMSA 1978]:

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.

**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.

### **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.

**Effective dates.** - Laws 1991, ch. 235 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **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.

**Repeals and reenactments.** - Laws 1991, ch. 235, § 3 repeals former 70-10-4 NMSA 1978, as enacted by Laws 1985, ch. 55, § 4, relating to interest on late payments, and enacts the above section, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

## **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.

**Repeals and reenactments.** - Laws 1991, ch. 235, § 4 repeals former 70-10-5 NMSA 1978, as enacted by Laws 1985, ch. 55, § 5, relating to application, and enacts the above section, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

## **70-10-6. Attorneys' fees.**

The prevailing party in any proceedings brought pursuant to the Oil and Gas Proceeds Payment Act [70-10-1 to 70-10-3, 70-10-4, 70-10-5 NMSA 1978] 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.

**Effective dates.** - Laws 1991, ch. 235 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

# 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.

**Effective dates.** - Laws 1989, ch. 189 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### 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.

**Effective dates.** - Laws 1989, ch. 189 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

**Compiler's note.** - Laws 1988, ch. 27, § 3, referred to in this section, is 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.

**Effective dates.** - Laws 1989, ch. 189 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **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.

**Effective dates.** - Laws 1989, ch. 189 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

**Compiler's note.** - See note under same catchline following 70-11-2 NMSA 1978.

### **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.

**Effective dates.** - Laws 1989, ch. 189 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **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.