CHAPTER 71
Energy and Minerals

ARTICLE 1
Solar Power Loans

(Repealed by Laws 1987, ch. 234, § 84.)

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 Repealed.

ANNOTATIONS

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

Laws 1981, ch. 379, §§ 21 and 22 repealed former 71-1-1 NMSA 1978, as amended by Laws 1979, ch. 100, § 1, relating to the powers and duties of the energy and minerals department and former 71-1-2 NMSA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

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

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

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

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

ARTICLE 2
Energy Resources

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 Repealed.

ANNOTATIONS

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

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1978, as amended by Laws 1977, ch. 255, § 102, relating to severance tax bonds and pipeline systems, was previously repealed by Laws 1985 (1st S. S.), ch. 15, § 23, effective June 7, 1985.

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

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

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

71-2-8. Confidentiality; penalty.

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

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

ANNOTATIONS

The 1987 amendment, effective July 1, 1987, in the first sentence inserted "energy, minerals and natural resources" preceding "department" near the beginning, in the third sentence substituted "Sections 10-15-1 through 10-15-4 NMSA 1978" for "Sections 5-6-

23 through 5-6-26 NMSA 1953" and made a minor language change at the end of the first sentence.

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

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

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

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

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

ANNOTATIONS

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

71-2-10. Repealed.

ANNOTATIONS

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

ARTICLE 3
Federal Lands Action Group

(Repealed by Laws 1981, ch. 61, § 1.)

71-3-1 to 71-3-3. Repealed.

ANNOTATIONS

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

ARTICLE 4
Energy Research and Development

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

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

ANNOTATIONS

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

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

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

ANNOTATIONS

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

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

ARTICLE 5
Geothermal Resources Conservation

71-5-1. Short title.

Chapter 71, Article 5 NMSA 1978 may be cited as the "Geothermal Resources Conservation Act".

History: 1953 Comp., § 65-11-1, enacted by Laws 1975, ch. 272, § 1; 2003, ch. 16, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "Chapter 71, Article 5 NMSA 1978" for "This act".

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

71-5-2. Purpose of act.

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

B. To these ends, it is the intent of the legislature that the power and jurisdiction of the commission and the division as given by the Geothermal Resource [Resources] Conservation Act [71-5-1 NMSA 1978] shall be supplemental to the other powers and jurisdiction given the commission and the division by the statutes of this state.

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

ANNOTATIONS

Bracketed material. — The bracketed material in Subsection B was added by the compiler. It was not enacted by the legislature, and it is not part of the law.

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 24 et seq.

81A C.J.S. States §§ 36, 120 to 123.

71-5-2.1. Exclusion; incidental loss or extraction of heat; limited exception.

A. When the application of potable water to a beneficial use involves the incidental loss or extraction of heat, and the water is two hundred fifty degrees Fahrenheit or less, then that heat is not a geothermal resource for which a royalty is due. In such a case, the use is not governed by laws related to geothermal resources but is simply governed by Chapter 72 NMSA 1978.

B. A permit from the state engineer is not required for the use of ground water over two hundred fifty degrees Fahrenheit as incident to the development of geothermal resources permitted pursuant to the Geothermal Resources Conservation Act when:

(1) the use does not require any diversion of ground water; or

(2) all diverted ground water is reinjected as soon as practicable into the same ground water source from which it was diverted, resulting in no new net depletions to the source; provided that the division shall provide to the state engineer all information available to the division regarding the proposed diversion and reinjection and shall request the opinion of the state engineer as to whether existing ground water rights sharing the same ground water source may be impaired. If the state engineer determines that the information provided is sufficient to render an opinion, and it is the opinion of the state engineer that any existing ground water rights may be impaired, then the division, upon receipt of the opinion of the state engineer, shall require the owner or operator to submit to the division a plan of replacement with regard to any existing ground water rights that are likely to be impaired. In response to a request for an opinion under this subsection, the determination by the state engineer as to whether the information provided is sufficient to render an opinion or the issuance by the state engineer of an opinion shall not constitute a decision, act or refusal to act under Section 72-2-16 NMSA 1978.

C. No ground water right is established through the use of ground water as allowed in Subsection B of this section.

D. As used in this section, "plan of replacement" means a detailed plan for the replacement of water, which may include:

(1) the furnishing of a substitute water supply;

(2) the modification of existing water supply facilities;

(3) the drilling of replacement wells;

(4) the assumption of additional operating costs;

(5) the procurement of documentation establishing a waiver of protection by owners of affected water rights;

(6) artificial recharge; or

(7) any other means to avoid impairment of water rights.

History: Laws 2003, ch. 16, § 2; 2012, ch. 50, § 1.

ANNOTATIONS

The 2012 amendment, effective July 1, 2012, permitted the use of ground water over two hundred fifty degrees in the development of geothermal resources without a permit from the state engineer; provided for the replacement of groundwater if existing groundwater rights are impaired; in the title, after "extraction of heat", added "limited exception"; in Subsection A, in the first sentence, after "and the water is", deleted "250" and added "two hundred fifty degrees"; and added Subsections B, C and D.

This section applies only to royalties payable to the State of New Mexico. Rosette, Inc. v. U.S. Dept. of the Interior, 2007-NMCA-136, 142 N.M. 717, 169 P.3d 704, cert. denied, 2007-NMCERT-003, 141 N.M. 401, 156 P.3d 39.

71-5-3. Definitions.

As used in the Geothermal Resources Conservation Act [71-5-1 NMSA 1978]:

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

B. "commission" means the oil conservation commission;

C. "correlative rights" means the opportunity afforded, insofar as is practicable to do so, to the owner of each property in a geothermal reservoir to produce his just and equitable share of the geothermal resources within such reservoir, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the recoverable geothermal resources under such property bear to the total recoverable geothermal resources in the reservoir and, for such purpose, to use his just and equitable share of the natural heat or energy in the reservoir;

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

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

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

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

H. "person" means:

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

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

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

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

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

ANNOTATIONS

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

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

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

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

71-5-4. Waste prohibited.

The production or handling of geothermal resources of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute waste is each hereby prohibited.

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

ANNOTATIONS

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

71-5-5. Waste definitions.

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

A. "underground waste" as those words are generally understood in the geothermal business, and in any event to embrace the inefficient, excessive or improper use or dissipation of the reservoir fluids or energy, including the natural energy of the heated fluids or the natural heat of the earth, and the locating, spacing, drilling, equipping, operating or producing of any well or wells in a manner that would reduce or tend to reduce the total quantity of geothermal resources ultimately recovered from any geothermal reservoir;

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

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

D. the nonratable purchase or taking of geothermal resources within a geothermal reservoir in this state. Such nonratable taking or purchasing causes or results in excessive or improper dissipation of reservoir energy and results in waste, as

defined in Subsection A of this section, and is in violation of Section 14 [71-5-14 NMSA 1978] of the Geothermal Resources Conservation Act; and

E. drilling or producing operations for geothermal resources within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities or where such operations would interfere unduly with the orderly development of such potash deposits.

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

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

A. In addition to its other powers and duties, the division shall have, and is hereby given, jurisdiction over all matters relating to the conservation of geothermal resources and the prevention of waste of potash as a result of geothermal operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978] or any other law of this state relating to the conservation of geothermal resources and the prevention of waste of potash as a result of geothermal operations. Provided, however, nothing in this section shall be construed to supersede the authority which any state department or agency has with respect to the management, protection and utilization of the state lands or resources and its jurisdiction.

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

History: 1953 Comp., § 65-11-6, enacted by Laws 1975, ch. 272, § 6; 1977, ch. 255, § 75; 1979, ch. 175, § 2.

ANNOTATIONS

Cross references. — As to powers and duties of the oil conservation commission, see 70-2-6 NMSA 1978.

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

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

The commission and division are hereby empowered, and it is their duty, to prevent the waste prohibited by the Geothermal Resources Conservation Act [71-5-1 NMSA 1978] and to protect correlative rights, as in that act provided. To that end, the commission and division may make and enforce rules, regulations and orders relating to geothermal resources, and to do whatever may be reasonably necessary to carry out the purposes of that act whether or not indicated or specified in any section thereof.

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

ANNOTATIONS

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

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

71-5-8. Enumeration of powers.

Included in the power given to the division is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge geothermal resources wells and geothermal resources transportation, storage and utilization facilities; to limit and allocate production of geothermal resources as provided in the Geothermal Resources Conservation Act [71-5-1 NMSA 1978]; and to require certificates of clearance for the production or transportation of geothermal resources.

Apart from any authority, express or implied, elsewhere given to or existing in the division by virtue of the Geothermal Resources Conservation Act [Chapter 71, Article 5 NMSA 1978] or the statutes of this state, the division may make rules, regulations and orders for the purposes and with respect to the subject matter stated herein, viz.:

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

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

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

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

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

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

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

H. to require the operation of wells efficiently;

I. to fix the spacing of wells;

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

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

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

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

N. to define and from time to time as is necessary redefine the limits of any area containing commercial deposits of potash, and to regulate and where necessary prohibit geothermal drilling or producing operations where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities.

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

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 52 et seq.; 38 Am. Jur. 2d Gas and Oil § 159.

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

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

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

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

71-5-10. Allocation of production.

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

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

C. After the effective date of any rule, regulation or order fixing the allowable production and establishing permitted tolerances for overproduction, no person shall produce more than the allowable production and permitted tolerance applicable to him, his wells, leases or properties determined as provided in the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], and the allowable production shall be produced in accordance with the applicable rules, regulations and orders.

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

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 261 et seq.; 38 Am. Jur. 2d Gas and Oil § 164.

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

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

A. The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a geothermal reservoir the opportunity to produce his just and equitable share of the geothermal resources in the reservoir, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable geothermal resources under such property bears to the total recoverable geothermal resources in the reservoir, and for this purpose to use his just and equitable share of the reservoir energy.

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

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

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive

without unnecessary expense his just and fair share of the geothermal resources. Each order shall describe the lands included in the unit designated thereby, identify the reservoir or reservoirs to which it applies and designate an operator for the unit. All operations for the pooled geothermal resources which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled geothermal resources, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the pro rata reimbursement solely out of production to the parties advancing the costs of development and operation which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' pro rata share of the cost of drilling and completing the well.

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

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of the Geothermal Resources Conservation Act [Chapter 71, Article 5 NMSA 1978], seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

D. Whenever it appears that the owners in any geothermal reservoir have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of production from the reservoir, or upon any other plan for the development or operation of such reservoir, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by the Geothermal Resources Conservation Act [71-5-1

NMSA 1978] and is fair to the royalty owners in such reservoir, then such plan shall be adopted by the division with respect to the reservoir; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by the Geothermal Resources Conservation Act.

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

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.; 38 Am. Jur. 2d Gas and Oil §§ 164 to 172.

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

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

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

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

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

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

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

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

ANNOTATIONS

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

58 C.J.S. Mines and Minerals § 213.

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

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

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

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

History: 1953 Comp., § 65-11-13, enacted by Laws 1975, ch. 272, § 13; 1977, ch. 255, § 81.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 159, 164, 165, 172.

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

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

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

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

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

For the purposes of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], reasonable differences in prices paid or facilities afforded, or both, shall not constitute unreasonable discrimination if such differences bear a fair relationship to difference in quality, quantity or pressure of the geothermal resources available or to the relative lengths of time during which such geothermal resources will be available to the purchaser.

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

Nothing in the Geothermal Resources Conservation Act [71-5-1 NMSA 1978] shall be construed or applied to require, directly or indirectly, any person to purchase geothermal resources of a quality or under a pressure or under any other condition by reason of which such geothermal resource cannot be economically and satisfactorily used by such purchaser by means of his geothermal utilization facilities then in service.

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

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

A. The sale or purchase or acquisition, or the transportation, utilization or processing, or handling in any other way, of geothermal resources in whole or in part produced in excess of the amount allowed by any statute of this state, or by any provision of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], or by any rule, regulation or order of the commission or division made hereunder, is hereby prohibited, and such geothermal resources are hereby referred to as "illegal geothermal resources."

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

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

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

A. The division is specifically authorized and directed to make such rules, regulations and orders, and may provide for such certificates of clearance or tenders, as may be necessary to make effective the prohibitions contained in Section 71-5-15 NMSA 1978.

B. Unless and until the division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale or purchase or acquisition, or of transportation, refining, processing or handling in any other way, involves illegal geothermal resources,

or illegal geothermal resources product, no penalty shall be imposed for the sale or purchase or acquisition, or the transportation, refining, processing or handling in any other way, of illegal geothermal resources or illegal geothermal resources product, except under circumstances stated in the succeeding provisions of this subsection. Penalties shall be imposed for the division of each transaction prohibited in Section 71-5-15 NMSA 1978 when the person committing the same knows that illegal geothermal resources, or illegal geothermal resources product, are involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in the Geothermal Resources Conservation Act [71-5-1 NMSA 1978] shall apply to any sale or purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal geothermal resources, or illegal geothermal resources product where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell or purchase or acquire, or to transport, refine, process or handle in any way, any geothermal resources or any product thereof without complying with the rule, regulation or order of the commission or division relating thereto.

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

ANNOTATIONS

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

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

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

A. Except as provided for herein, before any rule, regulation or order, including revocation, change, renewal or extension thereof, shall be made under the provisions of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], a public hearing shall be held at such time, place and manner as may be prescribed by the division. The division shall first give reasonable notice of such hearing (in no case less than ten days, except in an emergency) and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard. Any member of the commission or division, or any employee of the commission or division, shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by the Geothermal Resources Conservation Act.

B. In case an emergency is found to exist by the division which in its judgment requires the making of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with

respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

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

ANNOTATIONS

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

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

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

The division shall prescribe its rules of order or procedure in hearings or other proceedings before it under the Geothermal Resources Conservation Act [71-5-1 NMSA 1978]. Any notice required to be given under that act or under any rule, regulation or order prescribed by the commission or division shall be by personal service on the person affected, or by publication once in a newspaper of general circulation published at Santa Fe and once in a newspaper of general circulation published in the county, or each of the counties if there is more than one, in which any land, geothermal resources or other property which may be affected shall be situated. The notice shall issue in the name of "the state of New Mexico" and shall be signed by the director of the division, and the seal of the commission shall be impressed thereon, and it shall specify the number and style of the case, and the time and place of hearing, shall briefly state the general nature of the order or regulation contemplated by the division on its own motion or sought in a proceeding brought before the commission or division, the name of the petitioner or applicant and, unless the order, rule or regulation is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply that may be affected by such order, rule or regulation. Personal service thereof may be made by any agent of the division or by any person over the age of eighteen years in the same manner as is provided by law for the service of summons in civil actions in the district courts of this state. Such service shall be complete at the time of such personal service or on the date of such publication, as the case may be. Proof of service shall be the affidavit of the person making personal service or of the publisher of the newspaper in which publication is had, as the case may be. All rules, regulations and orders made by the commission or division shall be entered in full by the director thereof in a book to be kept for such purpose by the division, which shall be a public record and open to inspection at all times during reasonable office hours. A copy of any rule, regulation or order, certified by the director of the division under the

seal of the commission, shall be received in evidence in all courts of the state with the same effect as the original.

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

71-5-17.2. Subpoena power; immunity of natural persons required to testify.

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

History: 1978 Comp., § 71-5-17.2, enacted by Laws 1979, ch. 326, § 2.

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

In case of failure or refusal on the part of any person to comply with any subpoena issued by the commission or any member thereof, or the director of the division or his authorized representative, or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court, on the application of the commission or division, may issue an order and compel the person to comply with the subpoena and to attend before the commission or division and produce such documents and give his testimony upon such matters as may be lawfully required.

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

71-5-17.4. Perjury; punishment.

If any person of whom an oath shall be required under the provisions of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], or by any rule, regulation or order of the commission or division, shall willfully swear falsely in regard to any matter or thing respecting which such oath is required, or shall willfully make any false report or affidavit required or authorized by the provisions of the Geothermal Resources Conservation Act or by any rule, regulation or order of the commission or division, such person shall be guilty of a felony and, upon conviction, shall be imprisoned for not more than five years nor less than six months.

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

71-5-17.5. Additional powers of commission or division; hearings before examiner; hearings de novo.

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

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

ANNOTATIONS

Bracketed material. — The bracketed material in the fourth sentence was added by the compiler. It was not enacted by the legislature and it is not part of the law.

The 1981 amendment, effective March 21, 1981, inserted "of record" following "party" near the middle of the last sentence.

71-5-18. Rehearings; appeals.

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

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

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 the proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party to the proceedings, stay or suspend in whole or in part operation of the order or decision pending review on terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; provided that the court, as a condition to any staying or suspension of operation of any order or decision, may require that one or more parties secure, in a form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's or division's order or decision in the event that the action of the commission or division is affirmed.

History: 1953 Comp., § 65-11-18, enacted by Laws 1975, ch. 272, § 18; 1977, ch. 255, § 86; 1981, ch. 63, § 4; 1998, ch. 55, § 88; 1999, ch. 265, § 90.

ANNOTATIONS

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

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

The 1998 amendment, effective September 1, 1998, in Subsection A, deleted "thereby" following "affected", substituted "it" for "the same", deleted "thereon" following "act", substituted "the ten-day" for "such", and substituted "of the application" for "thereof"; rewrote Subsection B; in Subsection C, substituted "to the proceedings" for "thereto", and deleted "thereof" following "review"; deleted former Subsection D, relating to applicable rules of practice and procedure in criminal cases; and made minor stylistic changes throughout the section.

The 1981 amendment, effective March 21, 1981, substituted "party of record adversely" for "person" near the beginning of the first sentence of Subsection A, inserted "of record" near the beginning of the first sentence of Subsection B, substituted "the" for "said" preceding "order or decision pending review thereof " near the middle of Subsection C and inserted "and" preceding "any appeal therefrom" near the middle of Subsection D.

Compiler's notes. — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs,* 120 N.M. 778, 907 P.2d 182 (1995).

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

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

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

71-5-19. Temporary restraining order or injunction; grounds; hearing; bond.

A. No temporary restraining order or injunction of any kind shall be granted against the commission or the members thereof, or against the attorney general, or against any agent, employee or representative of the division restraining the commission, or any of its members, or the division or any of its agents, employees or representatives, or the attorney general, from enforcing any statute of this state relating to conservation of geothermal resources, or any of the provisions of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], or any rule, regulation or order made thereunder, except after due notice to the director of the division, and to all other defendants, and after a hearing at which it shall be clearly shown to the court that the act done or threatened is without sanction of law, or that the provision of the Geothermal Resources Conservation Act, or the rule, regulation or order complained of, is invalid, and that, if enforced against the complaining party, will cause an irreparable injury. With respect to an order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of Geothermal Resources Conservation Act, or of any rule, regulation or order hereunder involved in such suit, must be recited in the order or decree granting the temporary relief, as well as

a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

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

History: 1953 Comp., § 65-11-19, enacted by Laws 1975, ch. 272, § 19; 1977, ch. 255, § 87.

ANNOTATIONS

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

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

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

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

71-5-20. Actions for violations.

Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of geothermal resources, or any provision of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], or any rule, regulation or order made thereunder, the division through the attorney general, shall bring suit against such person in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, for penalties, if any are

applicable, and to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the division may obtain injunction, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal geothermal resources, or illegal geothermal resources product, and any or all such commodities, or funds derived from the sale thereof, may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

History: 1953 Comp., § 65-11-20, enacted by Laws 1975, ch. 272, § 20; 1977, ch. 255, § 88.

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

Nothing in the Geothermal Resources Conservation Act [71-5-1 NMSA 1978], contained or authorized, and no suit by or against the division, and no penalties imposed or claimed against any person for violating any statute of this state with respect to conservation of geothermal resources, or any provision of that act, or any rule, regulation or order issued hereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any statute of this state with respect to conservation of geothermal resources, or any provision of the Geothermal Resources Conservation Act, or any rule, regulation or order issued hereunder. Any person so damaged by the violation may sue for and recover such damages as he may be entitled to receive. In the event the division should fail to bring suit to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of geothermal resources, or of any provision of this act [71-5-1 to 71-5-17, 71-5-18 to 71-5-22, 71-5-24 NMSA 1978], or of any rule, regulation or order made hereunder, then any person or party in interest adversely affected by such violation, and who has notified the division in writing of such violation or threat thereof and has requested the division to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the division could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the division shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the division had at all times been the complaining party.

History: 1953 Comp., § 65-11-21, enacted by Laws 1975, ch. 272, § 21; 1977, ch. 255, § 89.

ANNOTATIONS

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

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

71-5-21.1. Water rights owner; action for impairment.

Any water rights owner may bring a de novo action in the district court of the county in which the water rights are located for damages or injunctive relief with respect to any claimed impairment of existing water rights due to the development of geothermal resources pursuant to Subsection B of Section 71-5-2.1 NMSA 1978.

History: Laws 2012, ch. 50, § 2.

ANNOTATIONS

Effective dates. — Laws 2012, ch. 50, § 3 made Laws 2012, ch. 50, § 2 effective July 1, 2012.

71-5-22. Violation of court order grounds for appointment of receiver.

The violation by any person of an order of the court relating to the operation of any geothermal resources well or wells, or of any geothermal transportation, storage or utilization facility, shall be sufficient ground for the appointment of a receiver with power to conduct operations in accordance with the order of the court.

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

ANNOTATIONS

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

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

75 C.J.S. Receivers § 7.

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

A. Any person who knowingly and willfully violates any provision of the Geothermal Resources Conservation Act [71-5-1 NMSA 1978] or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation. For purposes of this subsection, in the case of a continuing violation, each day of violation shall constitute a separate violation. The penalties provided in this subsection shall be recoverable by a civil suit filed by the attorney general in the name and on behalf of the commission or the division in the district court of the county in which the defendant resides or in which any defendant resides if there be more than one defendant or in the district court of any county in which the violation occurred. The payment to [of] such penalty shall not

operate to legalize any illegal geothermal resources or illegal product involved in the violation for which the penalty is imposed or relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

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

(1) violate any provisions of the Geothermal Resources Conservation Act or any rule, regulation or order of the commission or the division issued pursuant to that act; or

(2) do any of the following for the purpose of evading or violating the Geothermal Resources Conservation Act or any rule, regulation or order of the commission or division issued pursuant to that act;

(a) make any false entry or statement in a report required by the Geothermal Resources Conservation Act or by any rule, regulation or order of the commission or division issued pursuant to that act;

(b) make or cause to be made any false entry in any record, account or memorandum required by the Geothermal Resources Conservation Act or by any rule, regulation or order of the commission or division issued pursuant to that act;

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

A. Apart from, and in addition to, any other remedy or procedure which may be available to the division, or any penalty which may be sought against or imposed upon any person, with respect to violations relating to illegal geothermal resources or illegal geothermal resources product, [such resources] shall, exept [except] under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find in the proceeding provided in this section that the owner of such illegal geothermal resources or illegal geothermal resources product is liable, or in some proceeding authorized by the Geothermal Resources Conservation Act [71-5-1 NMSA 1978] such owner has already been held to be liable, for penalty for having produced such illegal geothermal resources, or for having purchased or acquired such illegal geothermal resources or illegal geothermal resources product. Whenever the division believes that illegal geothermal resources or illegal geothermal resources product is subject to seizure and sale, as provided herein, it shall, through the attorney general, bring a civil action in rem for that purpose in the district court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross-action for injunction or for penalty relating to any prohibited transaction involving such illegal geothermal resources or illegal geothermal resources product. Notice of the action in rem shall be given in conformity with the law or rule applicable to such proceeding. Any person or party in interest who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in said suit to protect his rights.

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

C. The judgment effecting the forfeiture shall provide that the commodity be seized, if not already under the control of the court, and that a sale be had in similar manner and with similar notice as provided by law or rule with respect to the sale of personal property under execution; provided, however, the court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at

one time. Title to the amount sold shall pass as of the date of the seizure. The judgment shall provide for payment of the proceeds of the sale into the common school fund, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal geothermal resources or legal geothermal resources product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing or handling in any other way, of the commodity purchased.

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

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

ANNOTATIONS

Bracketed material. — The bracketed material in Subsection A was added by the compiler. It was not enacted by the legislature and it is not part of the law.

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

As to intervention, see Rule 1-024.

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

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

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

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

79 C.J.S. Searches and Seizures § 220 et seq.

ARTICLE 6
Solar Energy Development

71-6-1. Short title.

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

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

71-6-2. Purpose.

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

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

71-6-3. Duties.

The commerce and industry department shall:

A. establish and operate a program of promotion to encourage investment in the research and application of solar energy within New Mexico;

B. promote and develop in New Mexico a vigorous and productive solar energy industrial complex;

C. actively seek and promote the state of New Mexico as the proper and ideal site, because of geographical location, climate, research facilities and plentiful supply of scientific and technical expertise, for the location of the proposed national solar institute;

D. develop necessary promotional material to be used in the process of attracting new investment capital within the solar energy field;

E. employ sufficient staff to carry out the purpose of the Solar Energy Development Act [71-6-1 NMSA 1978]; and

F. cooperate with private firms and all agencies of the state and federal government in furthering research and investment in solar energy use in New Mexico.

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

ANNOTATIONS

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

71-6-4. Short title.

Sections 71-6-4 through 71-6-10 NMSA 1978 may be cited as the "Solar Collector Standards Act".

History: Laws 1981, ch. 379, § 14; 2007, ch. 38, § 1.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changes the reference to the act from Sections "14 through 20 of this act" to Sections "71-6-4 through 71-6-10 NMSA 1978".

71-6-5. Purpose.

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

History: Laws 1981, ch. 379, § 15.

ANNOTATIONS

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

71-6-6. Definitions.

As used in the Solar Collector Standards Act [71-6-4 NMSA 1978]:

A. "department" means the energy, minerals and natural resources department; and

B. "solar collector" means a component that provides for the collection and transfer of incident solar energy, such transfer to be effected through a liquid or air medium primarily by mechanical means for use in water heating, space heating or cooling or other applications that normally require or would require a conventional source of energy such as petroleum products, natural gas or electricity; but does not include a passive system that uses structural elements of a building to provide for the collection, storage and distribution of solar energy for heating or cooling without the use of a motor-driven fan or pump.

History: Laws 1981, ch. 379, § 16; 2007, ch. 38, § 2.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, in Subsection A, defines "department" and in Subsection B, deletes the exclusion of custom installations to be assembled at the site at which installation is to be made, deletes the exclusion of what are commonly known as "passive systems", and adds the exclusion of a passive system that uses structural elements of a building to provide for the collection, storage and distribution of solar energy for heating or cooling without the use of a motor-driven fan or pump.

71-6-7. Department; duties relating to solar collector standards.

A. The department shall promulgate rules to:

(1) define minimum standards for the durability and reliability of solar collectors; and

(2) establish criteria for testing the durability, reliability and thermal efficiency of solar collectors.

B. In promulgating the rules required by Subsection A of this section, the department shall:

(1) consult with scientists, engineers and individuals in research centers and professional societies such as the American society of testing and materials who are engaged in the construction of, experimentation with and research of solar energy systems in order to make changes, modifications and improvements to the standards and certification program;

(2) consider compliance costs to industry and, insofar as practicable, make efforts to reduce such costs; and

(3) consider similar standards and testing criteria adopted by other states or included in nationally recognized and accepted testing methodologies.

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

History: Laws 1981, ch. 379, § 17; 1987, ch. 234, § 71; 2007, ch. 38, § 3.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, in Subsection A, changes "secretary of energy, minerals and natural resources or his designee" to the "department"; in

Subsection B, changes "secretary or his designee" to "department"; and in Subsection C, changes "secretary of energy, minerals and natural resources or his designee" to "department".

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

71-6-7.1. Construction standards to accommodate solar collectors; rulemaking.

The department, the construction industries division of the regulation and licensing department and the construction industries commission shall jointly promulgate rules, standards or codes that establish requirements for new construction that will accommodate the installation of solar collectors to or on the new construction after that construction is otherwise complete, including roof orientation, roof strength, location of obstructions to sunlight, access to installation locations, built-in conduit, wiring and piping and brackets for attaching solar collectors.

History: Laws 2007, ch. 38, § 5.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 38, § 8 makes the section effective July 1, 2007.

71-6-8. Certification.

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

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

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

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

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

D. The department shall promulgate rules necessary to implement the provisions of this section.

History: Laws 1981, ch. 379, § 18; 1987, ch. 234, § 72; 2007, ch. 38, § 4.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, in Subsection A, changes "energy, minerals and natural resources department" to "department"; in Paragraph (2) of Subsection A, changes "secretary of energy and minerals" to "secretary of energy, minerals and natural resources"; in Subsection B, changes "energy, minerals and natural resources department" to "department"; in Subsection C, changes "secretary of energy, minerals and natural resources" to "department" and in the last sentence, changes "secretary" to "department"; and in Subsection D, changes "energy, minerals and natural resources department" to "department".

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

71-6-9. Repeal.

ANNOTATIONS

Repeals. — Laws 2007, ch. 38, § 7, repeals 71-6-9 NMSA 1978, being Laws 1981, ch. 379, § 19, as amended, relating to credit against personal income tax for solar collectors, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on New Mexico One Source of Law DVD.

71-6-10. Liability.

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

History: Laws 1981, ch. 379, § 20.

ANNOTATIONS

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

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

ARTICLE 7
Advanced Energy Technologies Economic Development Act

71-7-1. Short title.

This act [71-7-1 to 71-7-7 NMSA 1978] may be cited as the "Advanced Energy Technologies Economic Development Act".

History: Laws 2004, ch. 55, § 1.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

71-7-2. Findings.

The legislature finds that advancing the development of hydrogen, fuel cell, renewable energy and energy efficiency technologies is important for the state's economic future and energy stability, and to protect the public health of its citizens and the state's environment. The legislature further finds that there is a need to assist in the development of early market demand that will advance the commercialization and widespread application of these emerging energy technologies. The legislature further finds that New Mexico is ideally positioned to stimulate advanced energy technology economic development due to its abundance of natural and renewable energy sources, a successful research and development track record, an ability to attract significant research and development federal dollars and the establishment of a variety of entrepreneurial support programs.

History: Laws 2004, ch. 55, § 2.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

71-7-3. Purpose.

The Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978] provides funds to stimulate the market for and promote the statewide utilization of advanced energy technologies. That act further provides for a targeted program that advances the creation of a hydrogen and fuel cell industry cluster.

History: Laws 2004, ch. 55, § 3.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

71-7-4. Definitions.

As used in the Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978]:

A. "alternative fuel" means natural gas, liquefied petroleum gas, electricity, hydrogen, a fuel mixture containing not less than eighty-five percent ethanol or methanol, a fuel mixture containing not less than twenty percent vegetable oil or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion;

B. "clean energy" means alternative fuels, energy efficiency, renewable energy and fuel cells;

C. "department" means the energy, minerals and natural resources department;

D. "energy efficiency" means the application of technology resulting in the reduced or improved use of energy;

E. "fuel cell" means equipment using an electrochemical process to generate electricity and heat;

F. "fund" means the clean energy grants fund;

G. "renewable energy" means thermal or electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential, including solar, wind, geothermal, landfill gas or biomass, but does not include fossil fuel or nuclear power; and

H. "secretary" means the secretary of energy, minerals and natural resources.

History: Laws 2004, ch. 55, § 4.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

71-7-5. Clean energy grants fund.

The "clean energy grants fund" is created in the state treasury. The fund shall consist of money appropriated and transferred to the fund and tax revenues distributed to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is subject to appropriation by the legislature to the department for the purpose of administering the clean energy grants program pursuant to the Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978]. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources.

History: Laws 2004, ch. 55, § 5.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

71-7-6. Clean energy grants program.

A. The secretary shall establish the clean energy grants program to provide clean energy grants to:

(1) municipalities and county governments;

(2) state agencies;

(3) state universities;

(4) public schools;

(5) post-secondary educational institutions; and

(6) Indian nations, tribes and pueblos.

B. The secretary may make grants from the fund for physical projects utilizing clean energy technologies and clean energy education, technical assistance and training programs. The department may use no more than one hundred thousand dollars ($100,000) from the fund for the administration of the grants program and to conduct research or studies directly related to the Advanced Energy Technologies Economic Development Act [71-7-1 NMSA 1978].

C. The department may adopt rules establishing the application procedure and required qualifications of projects. No single entity shall receive greater than one hundred thousand dollars ($100,000) from the fund. Factors that may be considered in approving or denying disbursements from the fund are:

(1) the geographic area of the state in which the project is to be conducted in relation to other projects;

(2) percentage of cash or in-kind contributions applied to the total project;

(3) the extent to which the project incorporates an innovative new technology or an innovative application of an existing technology;

(4) the degree to which the project will reduce the entity's energy-related expenditures;

(5) the degree to which the project fosters the general public's, students' or a specific government or industry sector's overall understanding and appreciation of clean energy technologies; and

(6) the extent to which the project stimulates in-state economic development, including jobs creation, and further development of a commercial market for clean energy technologies.

D. Except as provided otherwise in this section, the department shall disburse:

(1) no less than three hundred thousand dollars ($300,000) to municipalities and county governments;

(2) no less than three hundred thousand dollars ($300,000) to state universities and post-secondary educational institutions;

(3) no less than three hundred thousand dollars ($300,000) to Indian nations, tribes and pueblos; and

(4) no more than two hundred thousand dollars ($200,000) to state agencies and public schools.

E. The minimum disbursements designated in this section may be amended by the department if an insufficient number of qualified projects are applied for by entities seeking grant funding within a particular category or categories.

F. The department shall report on disbursements made from the fund to the legislative finance committee prior to each regular legislative session. The report shall include:

(1) a list of recipients receiving disbursements;

(2) the amount of each disbursement;

(3) the date of each disbursement;

(4) a description of each project or expansion funded with a disbursement;

(5) a description of each project's contribution to the state's knowledge and use of clean energy technologies; and

(6) a description of the extent to which the grants program is benefitting the state's environment, public health and economic development.

History: Laws 2004, ch. 55, § 6.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

71-7-7. Hydrogen and fuel cell technologies development program.

A. The secretary of economic development, in collaboration with the department, shall establish a hydrogen and fuel cell technologies development program for the purpose of fostering the development of hydrogen and fuel cell-related commercialization and economic development in the state. The program shall include:

(1) establishing a public-private partnership between the state, national laboratories, nonprofit organizations and the hydrogen and fuel cell technologies industry sector to provide guidance and support for hydrogen and fuel cell initiatives;

(2) supporting activities to adopt uniform hydrogen safety codes and standards and provide education and training to communicate these codes and standards to the appropriate fire and regulatory entities;

(3) developing demonstration projects by pursuing federal funds and other available funds to augment state resources, advancing public education about hydrogen and fuel cell technology and building the necessary infrastructure to support commercial use and adoption of hydrogen and fuel cell technologies; and

(4) coordinating and supporting research and education activities in hydrogen and fuel cells between state universities and federally funded research and development organizations in the state to promote closer cooperation and advance the state's overall capabilities and programs in hydrogen and fuel cell technologies.

B. The economic development department shall report on the status and progress of the hydrogen and fuel cell technologies development program to the legislative finance committee prior to each regular legislative session. The report shall include the type and amount of expenditures made pursuant to the appropriation in this section.

History: Laws 2004, ch. 55, § 7.

ANNOTATIONS

Effective dates. — Laws 2004, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

ARTICLE 8
Sustainable Development Testing Site Act

71-8-1. Short title.

This act [71-8-1 to 71-8-8 NMSA 1978] may be cited as the "Sustainable Development Testing Site Act".

History: Laws 2007, ch. 34, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

71-8-2. Definitions.

As used in the Sustainable Development Testing Site Act [71-8-1 NMSA 1978]:

A. "permittee" means a person who holds a testing site permit;

B. "planning commission" means a county planning commission appointed pursuant to Section 4-57-1 NMSA 1978; provided that, if no county planning commission has been appointed pursuant to that section, "planning commission" means the board of county commissioners;

C. "sustainable development" means a live-in environment composed of structures and systems that inherently produce utilities and life-support systems free of existing conventional grids and disposal systems. "Sustainable development" includes:

(1) the inherent provision of on-site energy needs via renewable resources;

(2) the inherent provision of water needs while minimizing the withdrawals from ground water and surface water systems in accordance with state water law and the rules and policies of the state engineer;

(3) the inherent provision of sewage treatment needs with zero discharge;

(4) the reuse of materials discarded by modern society; and

(5) the development of organic foods and fuel;

D. "sustainable development research" means activities conducted at a sustainable development testing site that test ideas, concepts or inventions designed to lead ultimately to sustainable development;

E. "sustainable development testing site" means an area that is:

(1) two acres or less in size;

(2) situated wholly outside the planning and platting jurisdiction of a municipality; and

(3) subject to a testing site permit and existing federal laws and regulations; and

F. "testing site permit" means a permit, issued by a planning commission, that designates an area as a sustainable development testing site and specifies:

(1) the sustainable development research that can be conducted within the site by the permittee; and

(2) the county codes, ordinances, rules or permits that are not applicable to the permittee and the research.

History: Laws 2007, ch. 34, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

71-8-3. Application for testing site permit; evaluation; notice of public hearing.

A. A person desiring a testing site permit shall submit an application to the planning commission for the county in which the proposed sustainable development testing site is located. The application shall include:

(1) a detailed description of the sustainable development research that will be conducted on the sustainable development testing site, including an explanation of the ideas, concepts and inventions that will be tested;

(2) a schematic layout of the sustainable development testing site;

(3) the number of inhabitants and employees that are expected to occupy the sustainable development testing site;

(4) a water budget detailing the anticipated indoor and outdoor water use for the sustainable development testing site;

(5) an assessment of the county codes, ordinances, rules or permits relating to construction or building requirements, occupancy, zoning or subdivisions that are not practicable for the specific sustainable development testing site and that may inhibit the proposed sustainable development research and an explanation of how the sustainable development testing site will not be damaged if the proposed sustainable development research at the site is allowed;

(6) an application fee, set by the planning commission, equal to the estimated costs of evaluating the application, holding the public hearing and administering the permit;

(7) other information as may be required by rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act [71-8-8 NMSA 1978] or by rule of the planning commission or ordinance of the county; and

(8) copies of all required state permits, including the approval of the wastewater treatment and disposal technology on an experimental basis.

B. Upon receipt of a complete application, the planning commission shall:

(1) forward a copy of the application to the office of the state engineer and to the department of environment;

(2) set a date for a public hearing on the application; and

(3) publish in a newspaper of general circulation in the county an announcement of its receipt of the application, a notice of the public hearing and information concerning where an interested person can obtain a copy of the application.

C. The department of environment and the office of the state engineer shall, prior to the hearing, evaluate the application and the proposed sustainable development research to be performed at the proposed sustainable development testing site and submit comments to the planning commission.

History: Laws 2007, ch. 34, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

71-8-4. Application for testing site permit; public hearing; decision.

A. At the public hearing for a testing site permit application pursuant to Section 3 of the Sustainable Development Testing Site Act [71-8-3 NMSA 1978], the planning commission shall hear comments from all interested persons, federal, state or local agencies and, if appropriate, responses from the applicant.

B. Following the hearing, the planning commission shall, in writing, make its decision. The planning commission may issue a testing site permit if:

(1) the state engineer and the department of environment have determined that the sustainable development testing site or sustainable development research proposed to be conducted at the site will not damage land, water or air adjacent to the site or will not permanently damage the area of the site;

(2) no existing county codes, ordinances, rules or permits, other than those identified in the permit, will be violated by the proposed sustainable development research at the sustainable development testing site;

(3) the applicant has complied with rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act [71-8-8 NMSA 1978];

(4) the proposed sustainable development research at the sustainable development testing site is beneficial to sustainable development;

(5) the sustainable development testing site and proposed sustainable development research are otherwise beneficial to the county and to the state; and

(6) the applicant has provided a cash bond, an irrevocable letter of credit or any other surety, including insurance, satisfactory to the planning commission, in the amount of one hundred thousand dollars ($100,000), to secure payment for damage caused by the sustainable development testing site.

C. A testing site permit shall include:

(1) the specific sustainable development research that may be conducted at the sustainable development testing site;

(2) the maximum number of structures that may be constructed;

(3) the maximum number of individuals that may inhabit the sustainable development testing site;

(4) the specific county codes, ordinances, rules and permits relating to construction or building requirements, occupancy, zoning or subdivisions otherwise applicable to the permittee and the permittee's sustainable development research on the sustainable development testing site but that do not apply to the permittee and research conducted pursuant to the permit; and

(5) other restrictions on the sustainable development testing site and the permittee's activities as required by rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act or as determined by the planning commission.

D. For each testing site permit issued, the board of county commissioners shall designate a nonelected member of the planning commission or a member of the planning commission's staff to monitor the activities conducted pursuant to the permit, share information with appropriate state agencies and represent the county in interpreting the terms and conditions of the permit. The designee or a successor shall serve during the life of the permit and any renewal thereof.

E. The permit shall be filed and recorded in the records of the county clerk for the county in which the sustainable development testing site is located in the same manner as deeds of real estate are filed and recorded.

F. A testing site permit shall be issued for a term specified by the planning commission, not to exceed five years, subject to renewal for a second five-year period with no renewal after the second five-year period.

History: Laws 2007, ch. 34, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

71-8-5. Testing site permit; effect.

As long as a testing site permit is in effect:

A. the permittee, when conducting sustainable development research that is specified in the testing site permit, shall comply with all applicable laws and rules except those county codes, ordinances, rules or permits specified in the permit as inapplicable to the permittee and the research;

B. nothing in the Sustainable Development Testing Site Act [71-8-1 NMSA 1978] or the testing site permit shall be deemed to allow the permittee to appropriate or otherwise use underground or surface water without first obtaining a water rights permit or approval from the state engineer. New appropriations of water and water rights transfers shall in no event be exempted from state water law and the rules of the state engineer;

C. employees and agents of the state or the county may, at all reasonable times, enter the sustainable development testing site for the purpose of inspecting the site and activities conducted on the site to ensure that conditions specified in the testing site permit are being met;

D. the permittee shall annually, no later than the anniversary date of the testing site permit, submit a report to the planning commission, the department of environment, the state engineer, the energy, minerals and natural resources department and the construction industries division of the regulation and licensing department describing the sustainable development research conducted during the preceding twelve months and summarizing the results. The report shall also include all required monitoring data for soil, water, including water quality and quantity, and air. All information contained in the report and all other information learned from activities pursuant to the testing site permit shall be made available to the public;

E. the planning commission may revoke the testing site permit if it finds, after a public hearing, that:

(1) the permittee has violated a testing site permit provision, a provision of the Sustainable Development Testing Site Act or a rule adopted pursuant to Section 8 [71-8-8 NMSA 1978] of that act; or

(2) the sustainable development testing site has not complied with a permit provision, ordinance, rule, regulatory policy or other associated administrative action of the state engineer, the department of environment or another state or federal agency; and

F. a permittee may apply to have a testing site permit amended by submitting a new application pursuant to Section 3 of the Sustainable Development Testing Site Act [71-8-3 NMSA 1978]; provided that, if the planning commission determines that the proposed amendment will not substantially alter the sustainable development research or other activities conducted at the sustainable development testing site, it may waive the requirements of that section for notice and public hearing.

History: Laws 2007, ch. 34, § 5.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

71-8-6. Expiration of testing site permits.

Upon the expiration of the term of a testing site permit or any renewal thereof:

A. all activities within the area of the sustainable development testing site shall comply with all applicable laws, ordinances or rules, including permitting requirements; and

B. the permittee may provide the wastewater treatment and disposal technologies to the wastewater technical advisory committee for review and, if appropriate, for listing by the department of environment as approved for use.

History: Laws 2007, ch. 34, § 6.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

71-8-7. Sale of land within a sustainable development testing site.

Land within a sustainable development testing site shall not be sold in whole or in part unless:

A. the subsequent owner obtains a testing site permit pursuant to the provisions of the Sustainable Development Testing Site Act [71-8-1 NMSA 1978]; or

B. the owner or subsequent owner enters into an agreement with the planning commission to bring the land and improvements within the sustainable development testing site into compliance with all county codes, ordinances, rules or permits that would be applicable to the site in the absence of a testing site permit.

History: Laws 2007, ch. 34, § 7.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.

71-8-8. Promulgation of rules.

A county or planning commission may define a new category of rules applicable to sustainable development testing sites and promulgate rules for the category. A county or a planning commission may also promulgate rules or permit conditions applicable to a specific sustainable development testing site.

History: Laws 2007, ch. 34, § 8.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 34, § 9 makes the act effective July 1, 2007.