

History: 1953 Comp., § 65-9-7, enacted by Laws 1963, ch. 139, § 7; 1977, ch. 255, § 72; 1981, ch. 125, § 53.

Cross references. — For telegraph and telephone

companies' right of eminent domain, see 42A-2-2 to 42A-2-4 NMSA 1978. For railroads' right of eminent domain, see 42A-2-3 and 42A-2-4 NMSA 1978.

## 70-6-8. Ownership of injected gas.

All natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage in any strata or formation shall at all times be deemed the property of the injector, his heirs, successors or assigns; and in no event shall such gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein, under which said strata or formation lie, or of any person other than the injector, his heirs, successors and assigns, to produce, take, reduce to possession, waste or otherwise interfere with or exercise any control thereover, provided that the injector, his heirs, successors and assigns shall have no right to gas in any stratum, formation or portion thereof, in which storage rights have not been acquired pursuant to this act [70-6-1 to 70-6-8 NMSA 1978], or otherwise purchased.

History: 1953 Comp., § 65-9-8, enacted by Laws 1963, ch. 139, § 8.

Am. Jur. 2d, A.L.R. and C.J.S. references. —

Rights and liabilities with respect to natural gas reduced to possession and subsequently stored in natural reservoir, 94 A.L.R.2d 543.

## ARTICLE 7

### Statutory Unitization Act

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## 70-7-1. Purpose of act.

The legislature finds and determines that it is desirable and necessary under the circumstances and for the purposes hereinafter set out to authorize and provide for the unitized management, operation and further development of the oil and gas properties to which the Statutory Unitization Act [70-7-1 to 70-7-21 NMSA 1978] is applicable, to the end that greater ultimate recovery may be had therefrom, waste prevented, and correlative rights protected of all owners of mineral interests in each unitized area. It is the intention of the legislature that the Statutory Unitization Act apply to any type of operation that will substantially increase the recovery of oil above the amount that would be recovered by primary recovery alone and not to what the industry understands as exploratory units.

History: 1953 Comp., § 65-14-1, enacted by Laws 1975, ch. 293, § 1.

Law reviews. — For article, "On an Institutional

Arrangement for Developing Oil and Gas in the Gulf of Mexico", see 26 Nat. Resources J. 717 (1986).

## 70-7-2. Short title.

This act [70-7-1 to 70-7-21 NMSA 1978] may be cited as the "Statutory Unitization Act."

**History:** 1953 Comp., § 65-14-4, enacted by Laws 1975, ch. 293, § 4; 1977, ch. 255, § 110.

### **70-7-5. Requisites of application for unitization.**

Any working interest owner may file an application with the division requesting an order for the unit operation of a pool or any part thereof. The application shall contain:

- A. a description of the proposed unit area and the vertical limits to be included therein with a map or plat thereof attached;
- B. a statement that the reservoir or portion thereof involved in the application has been reasonably defined by development;
- C. a statement of the type of operations contemplated for the unit area;
- D. a copy of a proposed plan of unitization which the applicant considers fair, reasonable and equitable;
- E. a copy of a proposed operating plan covering the manner in which the unit will be supervised and managed and costs allocated and paid; and
- F. an allegation of the facts required to be found by the division under Section 70-7-6 NMSA 1978.

**History:** 1953 Comp., § 65-14-5, enacted by Laws 1975, ch. 293, § 5; 1977, ch. 255, § 111.  
**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil §§ 164, 172.

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

### **70-7-6. Matters to be found by the division precedent to issuance of unitization order.**

A. After an application for unitization has been filed with the division and after notice and hearing, all in the form and manner and in accordance with the procedural requirements of the division, and prior to reaching a decision on the petition, the division shall determine whether or not each of the following conditions exists:

- (1) that the unitized management, operation and further development of the oil or gas pool or a portion thereof is reasonably necessary in order to effectively carry on pressure maintenance or secondary or tertiary recovery operations, to substantially increase the ultimate recovery of oil and gas from the pool or the unitized portion thereof;
- (2) that one or more of the said unitized methods of operations as applied to such pool or portion thereof is feasible, will prevent waste and will result with reasonable probability in the increased recovery of substantially more oil and gas from the pool or unitized portion thereof than would otherwise be recovered;
- (3) that the estimated additional costs, if any, of conducting such operations will not exceed the estimated value of the additional oil and gas so recovered plus a reasonable profit;
- (4) that such unitization and adoption of one or more of such unitized methods of operation will benefit the working interest owners and royalty owners of the oil and gas rights within the pool or portion thereof directly affected;
- (5) that the operator has made a good faith effort to secure voluntary unitization within the pool or portion thereof directly affected; and
- (6) that the participation formula contained in the unitization agreement allocates the produced and saved unitized hydrocarbons to the separately owned tracts in the unit area on a fair, reasonable and equitable basis.

B. If the division determines that the participation formula contained in the unitization agreement does not allocate unitized hydrocarbons on a fair, reasonable and equitable basis, the division shall determine the relative value, from evidence introduced at the hearing, taking into account the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

C. When the division determines that the preceding conditions exist, it shall make findings to that effect and make an order creating the unit and providing for the unitization and unitized operation of the pool or portion thereof described in the order, all upon such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners.

**History:** 1953 Comp., § 65-14-6, enacted by  
Laws 1975, ch. 293, § 6; 1977, ch. 255, § 112.

### **70-7-7. Division orders.**

The order providing for unitization and unit operation of a pool or part of a pool shall be upon terms and conditions that are fair, reasonable and equitable and shall approve or prescribe a plan or unit agreement for unit operation which shall include:

A. a legal description in terms of surface area of the pool or part of the pool to be operated as a unit and the vertical limits to be included, termed "the unit area";

B. a statement of the nature of the operations contemplated;

C. an allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost;

D. a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operations;

E. a provision governing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how the costs shall be paid, including a provision providing when, how and by whom the unit production allocated to an owner who does not pay the share of the costs of unit operations charged to that owner or the interest of that owner may be sold and the proceeds applied to the payment of costs;

F. a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon such terms and conditions determined by the division to be just and reasonable and allowing an appropriate charge for interest for such service payable out of the owner's share of production; provided that any nonconsenting working interest owner being so carried shall be deemed to have relinquished to the unit operator all of its operating rights and working interest in and to the unit until his share of the costs are repaid, plus an amount not to exceed two hundred percent of such costs as a nonconsent penalty, with maximum penalty amount in each case to be determined by the division;

G. a provision designating the unit operator and providing for the supervision and conduct of the unit operations, including the selection, removal or substitution of an operator from among the working interest owners to conduct the unit operations;

H. a provision for a voting procedure for the decision of matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to its unit participation;

I. the time when the unit operation shall commence and the manner in which and the circumstances under which the operations shall terminate and for the settlement of accounts upon termination; and

J. such additional provisions as are found to be appropriate for carrying on the unit operations and for the protection of correlative rights and the prevention of waste.

**History:** 1953 Comp., § 65-14-7, enacted by  
Laws 1975, ch. 293, § 7; 1977, ch. 255, § 113;  
1986, ch. 55, § 1.

The 1986 amendment, effective May 21, 1986, at

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

## **70-7-8. Ratification or approval of plan by owners.**

A. No order of the division providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the division has been approved in writing by those persons who, under the division's order, will be required initially to pay at least seventy-five percent of the costs of the unit operations, and also by the owners of at least seventy-five percent of the production or proceeds thereof that will be credited to interests which are free of cost such as royalties, overriding royalties and production payments, and the division has made a finding either in the order providing for unit operations or in a supplemental order that the plan for unit operations has been so approved. Notwithstanding any other provisions of this section, if seventy-five percent or more of the unit area is owned, as to working interest, by one working interest owner, such working interest owner must be joined by at least one other working interest owner in ratifying and approving the plan of unit operations, unless such working interest owner is the owner of one hundred percent of the working interest in said unit area; provided, however, if a single owner is one who, under the division's order will be required initially to pay at least twenty-five percent, but not more than fifty percent, of the costs of unit operation, such owner must be joined by at least one other owner of the same type interest in disapproving, or failure to approve, the plan of unit operations to defeat the plan.

B. If one owner is the owner of at least twenty-five percent, but not more than fifty percent, of the production or proceeds thereof that will be credited to interests which are free of costs, such owner must be joined by at least one other owner of the same type interest in disapproving, or failure to approve, the plan of unit operations to defeat the plan.

C. If the persons owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of further force and effect and shall be revoked by the division, unless the division shall extend the time for ratification for good cause shown.

D. When the persons owning the required percentage of interest in the unit area have approved the plan for unit operations, the interests of all persons in the unit are unitized whether or not such persons have approved the plan of unitization in writing.

**History:** 1953 Comp., § 65-14-8, enacted by  
Laws 1975, ch. 293, § 8; 1977, ch. 255, § 114.

## **70-7-9. Amendment of plan of unitization.**

An order providing for unit operations may be amended by an order made by the division in the same manner and subject to the same conditions as an original order providing for unit operations, provided:

A. if such an amendment affects only the rights and interests of the working interest owners, the approval of the amendment by the royalty owners shall not be required; and

B. no such amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all working interest owners and royalty owners in such tract, or change the percentage for the allocation of costs as established for any separately owned tract by the original order, except with the consent of all working interest owners in such tract.

**History:** 1953 Comp., § 65-14-9, enacted by  
Laws 1975, ch. 293, § 9; 1977, ch. 255, § 115.

## **70-7-10. Previously established units.**

The division, by order, may provide for the unit operation of a pool or parts thereof that embrace a unit area established by a previous order of the division. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production allocated thereto shall then be allocated

among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

History: 1953 Comp., § 65-14-10, enacted by  
Laws 1975, ch. 293, § 10; 1977, ch. 255, § 116.

#### **70-7-11. Unit operations of less than an entire pool.**

An order may provide for unit operation on less than the whole of a pool where the unit area is of such size and shape as may be reasonably suitable for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

History: 1953 Comp., § 65-14-11, enacted by  
Laws 1975, ch. 293, § 11.

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

#### **70-7-12. Operation; expressed or implied covenants.**

All operations, including but not limited to, the commencement, drilling or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portions of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the division providing for unit operations shall constitute a fulfillment of all the express or implied obligations for each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the division.

History: 1953 Comp., § 65-14-12, enacted by  
Laws 1975, ch. 293, § 12; 1977, ch. 255, § 117.

#### **70-7-13. Income from unitized substances.**

The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

History: 1953 Comp., § 65-14-13, enacted by  
Laws 1975, ch. 293, § 13.

#### **70-7-14. Lien for costs.**

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold estate and other oil and gas rights (exclusive of a one-eighth royalty interest or exclusive of the interest provided in the unit operating plan which allocates costs, if it is different than one-eighth) in and to each separately owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract.

History: 1953 Comp., § 65-14-14, enacted by  
Laws 1975, ch. 293, § 14.

#### **70-7-15. Liability for expenses.**

The obligation or liability of each working interest owner in the several separately owned tracts in the unit for the payment of unit expense at all times shall be several and not joint or collective, and a working interest owner shall not be chargeable with, obligated or liable for, directly or indirectly, more than the amount apportioned, assessed or otherwise charged to his interest in the separately owned tract pursuant to the order of unitization.

History: 1953 Comp., § 65-14-15, enacted by  
Laws 1975, ch. 293, § 15.

#### **70-7-16. Division orders.**

A. No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

B. For purposes of this section, "division order" shall mean a contract of sale to the purchaser of oil and gas.

History: 1953 Comp., § 65-14-16, enacted by  
Laws 1975, ch. 293, § 16; 1977, ch. 255, § 118.

#### **70-7-17. Property rights.**

Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the working interest owners within the unit area, and shall be the property of such working interest owners in the proportion that the costs of unit operations are charged.

History: 1953 Comp., § 65-14-17, enacted by  
Laws 1975, ch. 293, § 17.

#### **70-7-18. Existing rights, rights in unleased land and royalties and lease burdens.**

Property rights, leases, contracts and other rights or obligations shall be regarded as amended and modified only to the extent necessary to conform to the provisions and requirements of the Statutory Unitization Act [70-7-1 to 70-7-21 NMSA 1978] and to any valid order of the division providing for the unit operation of a pool or a part thereof, but otherwise shall remain in full force and effect. A one-eighth part of the production allocated to each tract under an order providing for the unit operation of a pool or a part thereof shall in all events be and remain free and clear of any cost or expense of developing or operating the unit and of any lien therefor as an encumbered [unencumbered] source from which to pay the royalties or other cost-free obligations due or payable with respect to the production from such tract. If a lease or other contract pertaining to a tract or interest stipulates a royalty, overriding royalty, production payment or other obligation in excess of one-eighth of the production or proceeds therefrom, then the working interest owner subject to such excess payment or other obligation shall bear and pay the same.

History: 1953 Comp., § 65-14-18, enacted by  
Laws 1975, ch. 293, § 18; 1977, ch. 255, § 119.  
Bracketed material. — The bracketed word "un-

encumbered" was inserted by the compiler as the apparently intended term. It was not enacted by the legislature and is not a part of the law.

#### **70-7-19. Agreements not violative of laws governing monopolies or restraint of trade.**

No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties entered into pursuant hereto or with a view or for the purpose of bringing about the unitized development or operation of such properties shall be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce.

History: 1953 Comp., § 65-14-19, enacted by  
Laws 1975, ch. 293, § 19.

### **70-7-20. Evidence of unit to be recorded.**

A copy of each unit agreement shall be recorded in the office of the county clerk of the county or counties in which the unit is situated.

History: 1953 Comp., § 65-14-20, enacted by  
Laws 1975, ch. 293, § 20.

### **70-7-21. Unlawful operation.**

From and after the date designated by the division that a unit plan shall become effective, the operation of any well producing from the pool within the area subject to said unit plan, by persons other than persons acting under the authority of the unit plan, or except in the manner and to the extent provided in such unit plan, shall be unlawful and is hereby prohibited.

History: 1953 Comp., § 65-14-21, enacted by  
Laws 1975, ch. 293, § 21; 1977, ch. 255, § 120.

## **ARTICLE 8**

### **Emergency Petroleum Products Supplies**

Sec.  
70-8-1. Short title.  
70-8-2. Purpose and findings.  
70-8-3. Definitions.  
70-8-4. Consent as a condition of doing business.

Sec.  
70-8-5. Prohibited acts.  
70-8-5.1. Exemption.  
70-8-6. Right of action; injunction; damages.

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

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

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

Meaning of "this act". — The term "this act" means Laws 1974, Chapter 22, which appears as

70-8-1 to 70-8-5 and 70-8-6 NMSA 1978. However, Laws 1979, Chapter 174 added present 70-8-5.1 NMSA 1978 to the Emergency Petroleum Products Supply Act.

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

The legislature hereby determines that:

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

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

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

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

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