

NEW MEXICO STATUTES ANNOTATED

1978 COMPILATION

(1953 COMPILATION REFERENCED FOR CONVENIENCE)

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70-2-1 SHORT TITLE.--Sections 70-2-1 through 70-2-34 and 70-2-35 and 70-2-36 NMSA 1978 may be cited as the "Oil and Gas Act".

70-2-2 WASTE PROHIBITED.

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

70-2-3 WASTE - DEFINITIONS.

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

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

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

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

D. The non-ratable purchase or taking of crude petroleum oil in this state. Such non-ratable taking and purchasing causes or results in waste, as defined in the subsections (a), (b), (c) of this section and causes waste by violating Section 12 (70-2-16) of this act.

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

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

70-2-4 OIL CONSERVATION COMMISSION--MEMBERS--TERM--OFFICERS--QUORUM--POWER TO ADMINISTER OATHS.--There is hereby created an oil conservation commission, hereinafter in this act called the "commission" to be composed of the commissioner of public lands, the state geologist and the director of the oil conservation division. No salary or compensation shall be paid any member of the commission for his services as a member thereof. The term of office of each member of the commission shall be concurrent with the other office held by him. The commission shall organize by electing a chairman from its membership. Two members of the commission shall constitute a quorum for all purposes. The commission shall adopt a seal and such a seal affixed to any paper signed by the director of the oil conservation division shall be prima facie evidence of the due execution thereof. The attorney general shall be the attorney for the commission. Any member of the commission, or the director of the oil conservation division, or any employee of the commission or division, shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by this act or by any other law of this state relating to the conservation of oil and gas.

70-2-5 OIL CONSERVATION DIVISION--DIRECTOR--STATE PETROLEUM ENGINEER.--

A. The director of the oil conservation division shall be known as the state petroleum engineer.

B. The director shall be appointed by the secretary of the energy and minerals department and shall:

- (1) be a resident of this state; and
- (2) be registered by the state board of registration for professional engineers and land surveyors as a petroleum engineer; or
- (3) by virtue of education and experience have expertise in the field of petroleum engineering.

70-2-6 COMMISSION'S AND DIVISION'S POWERS AND DUTIES.--

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

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

70-2-7 RULES OF PROCEDURE IN HEARING--MANNER OF GIVING NOTICE--RECORD OF RULES, REGULATIONS AND ORDERS.--

The division shall prescribe its rules of order or procedure in hearing or other proceedings before it under this act. Any notice required to be given under this act or under any rule, regulation or order prescribed by the commission or division shall be personal service on the person affected, or by publication once in a newspaper of general circulation published at Santa Fe, New Mexico, and once in a newspaper of general circulation published in the county, or each of the counties if there be more than one, in which any land, oil or gas or other property which may be affected shall be situated. Such 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 orders, rule or rules, or regulation or regulations 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 such 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.

70-2-8 SUBPOENA POWER--IMMUNITY OF NATURAL PERSONS REQUIRED TO TESTIFY.--The commission, or any member thereof, or the director of the division or his authorized representative, is hereby empowered to subpoena witnesses, to require their attendance and giving of testimony before it, and to require the production of books, papers and records in any proceeding before the commission or the division. No person shall be excused from attending and testifying or from producing books, papers and records before the commission or the division, or from obedience to the subpoena of the said commission or division, whether such subpoena be signed or issued by one or more of the members of the said commission, or the director of the division, in any hearing, investigation or proceeding held by or before the said commission or division or in any cause or proceeding in any court by or against the said commission or division, relative to matters within the jurisdiction of said commission or division, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided that nothing herein contained shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry, not pertinent to some question lawfully before such commission or division or court of determination. No natural person shall be subjected to criminal prosecution, or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify, or produce evidence, documentary or otherwise before said commission or division, or in obedience to its subpoena, or in any cause or proceeding, provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

70-2-9 FAILURE OR REFUSAL TO COMPLY WITH SUBPOENA--REFUSAL TO TESTIFY--BODY ATTACHMENT--CONTEMPT.--

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

required, and such court or judge shall have the power to punish for contempt as in case of disobedience of a like subpoena issued by or from such court, or a refusal to testify therein.

70-2-10 PERJURY--PUNISHMENT.--If any person of whom an oath shall be required under the provisions of this act, or by any rule, regulation or order of the commission or division, shall willfully swear falsely in regard to any matter or thing respecting which such oath is required, or shall willfully make any false report or affidavit required or authorized by the provisions of this act, or by any rule, regulation or order of the commission or division, such person shall be deemed guilty of perjury and shall be punished by imprisonment in the state penitentiary for not more than five years nor less than six months.

70-2-11 POWER OF COMMISSION AND DIVISION TO PREVENT WASTE AND PROTECT CORRELATIVE RIGHTS.--

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

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

70-2-12 ENUMERATION OF POWERS.--

A. Included in the power given to the division is the authority to collect data; to make investigation and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, and tanks, plants, refineries, and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy thereof; to limit and prorate production of crude petroleum oil or natural gas, or both, as in this act provided; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products thereof, or both such oil and products, or both such natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the division by virtue of this act or the statutes of this state, the division is hereby authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated herein, viz.:

(1) to require dry or abandoned wells to be plugged in such a way as to confine the crude petroleum oil, natural gas, or water in the strata in which they are found, and to prevent them from escaping into other strata; the division shall require a corporate surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas, or water from escaping from strata in which they are found into another stratum or other strata;

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

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

(5) to prevent fires;

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

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

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

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

(10) to fix the spacing of wells;

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

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

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

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

(15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas, or both, and to direct surface or subsurface disposal of such water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

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

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

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells in accordance with the provisions of the Oil and Gas Act and the Public Purchases Act including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state.

70-2-13. ADDITIONAL POWERS OF COMMISSION OR DIVISION--HEARINGS BEFORE EXAMINER--HEARINGS DE NOVO.--In addition to the powers and authority, either express or implied, granted to the oil conservation commission or division by virtue of the statutes of the state of New Mexico the division is hereby authorized and empowered in prescribing its rules or order or procedure in connection with hearings or other proceedings before the division to provide for the appointment of one or more examiners to be members of the staff of the division to conduct hearings with respect to matters properly coming before the division and to make reports and recommendations to the director of the division with respect thereto. Any member of the commission or the director of the division or his authorized representative may serve as an examiner as provided herein. The division shall promulgate rules and regulations with regard to hearings to be conducted before examiners and the powers and duties of the examiners in any particular case may be limited by order of the division to particular issues or to the performance of particular acts. In the absence of any limiting order, an examiner appointed to hear any particular case shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and transcribed and shall certify the same to the director of the division for consideration together with the report of the examiner and his recommendations in connection therewith. The director of the division shall base the decision rendered in any matter or proceeding heard by an examiner, upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if said 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 adversely affected shall have the right to have said matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

70-2-14 BONDING REQUIREMENT.--

A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish a surety bond to the oil conservation division running to the benefit of the state of New Mexico, conditioned that the well be plugged and abandoned in compliance with the rules and regulations of the oil conservation division. The oil conservation division shall establish categories of surety bonds after notice and hearing. Such categories shall include a blanket plugging bond in an amount not to exceed fifty thousand dollars (\$50,000) and one-well plugging bonds in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by each bond. In establishing categories of bonds, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. In addition to the blanket plugging bond, the oil conservation division may require a one-well bond on any well that has been held in a temporarily abandoned status for more than two years. All bonds shall remain in force and effect until released by the oil conservation division. The oil conservation division shall release a bond when it is satisfied the conditions thereof have been fully performed.

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

C. When any bond is forfeited pursuant to the provisions of the Oil and Gas Act or rules and regulations promulgated pursuant thereto, the director shall give notice to the attorney general who shall collect the forfeiture without delay.

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

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

"70-2-15 ALLOCATION OF ALLOWABLE PRODUCTION AMONG FIELDS WHEN DIVISION LIMITS TOTAL AMOUNT OF PRODUCTION.--Whenever, to prevent waste, the division limits the total amount of crude petroleum oil to be produced in this state, it shall allocate or distribute the allowable productions among the fields of the state. Such allocation or distribution among the fields of the state shall be made on a reasonable basis, giving, if reasonable under all circumstances, to each pool with small wells of settled production, an allowable production which will prevent a general premature abandonment of the wells in the field."

70-2-16 ALLOCATION OF ALLOWABLE PRODUCTION IN FIELD OR POOL.--

A. Whenever, to prevent waste, the total allowable production of crude petroleum oil for any field or pool in the state is fixed by the division in an amount less than that which the field or pool could produce if no restriction were imposed, the division shall prorate or distribute the allowable production among the producers in the field or pool, upon a reasonable basis and recognizing correlative rights.

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

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

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

E. Natural gas produced from gas wells within the allowable as determined as provided in Subsection C of this section shall herein be referred to as "legal gas", and natural gas produced in excess of such allowable shall be "illegal gas".

70-2-17 EQUITABLE ALLOCATION OF ALLOWABLE PRODUCTION--POOLING--SPACING.--

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

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

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

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proration that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the pro rata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' 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 hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

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

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

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

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

70-2-18 SPACING OR PRORATION UNIT WITH DIVIDED MINERAL OWNERSHIP.--

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

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

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

70-2-19 COMMON PURCHASES--DISCRIMINATION IN PURCHASING PROHIBITED.--

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

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

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

D. Any person now or hereinafter engaged in purchasing from one or more producers gas produced from gas wells shall be a common purchaser thereof within each common source of supply from which it purchases, and as such it shall purchase gas lawfully produced from gas wells with which its gas transportation facilities are

connected in the pool and other gas lawfully produced within the pool and tendered to a point on its gas transportation facilities. Such purchases shall be made without unreasonable discrimination in favor of one producer against another in the price paid, the quantities purchased, the basis of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from such wells. In the event any such person is likewise a producer, he is prohibited to the same extent from discriminating in favor of himself on production from gas wells in which he has an interest, direct or indirect, as against other production from gas wells in the same pool. For the purpose of this act reasonable differences in prices paid or facilities afforded, or both, shall not constitute unreasonable discrimination if such differences bear a fair relationship for differences in quality, quantity or pressure of the gas available or to the relative lengths of time during which such gas will be available to the purchaser. The provisions of this subsection shall not apply:

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

(2) to purchases of casing-head gas from oil wells; and

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

E. Any common purchaser taking gas produced from gas wells from a common source of supply shall take ratably under such rules, regulations and orders, concerning quantity, as may be promulgated by the division consistent with this act. The division, in promulgating such rules, regulations and orders may consider the quality and the deliverability of the gas, the pressure of the gas at the point of delivery, acreage attributable to the well, market requirements in the case of unproxated pools, and other pertinent factors.

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

70-2-20 PENALTY FOR VIOLATIONS.--Any person who violates any provision of this act or in any rules, regulation or order of the commission or the division made pursuant to this act shall, upon conviction, be fined not more than one thousand dollars (\$1,000) for each violation. Each day during which said violation is continued shall be considered a separate and complete offense for this purpose.

70-2-21 PURCHASE, SALE OR HANDLING OF EXCESS OIL, NATURAL GAS OR PRODUCTS PROHIBITED.--

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

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

70-2-22 RULES AND REGULATIONS TO EFFECTUATE PROHIBITIONS AGAINST PURCHASE OR HANDLING OF EXCESS OIL OR NATURAL GAS--PENALTIES.--

A. The division is specifically authorized and directed to make such rules, regulations and orders, and may provide for such certificates of clearance or tenders, as may be necessary to make effective the prohibitions contained in Section 70-2-21 NMSA 1978.

B. Unless and until the division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale or purchase or acquisition, or of transportation, refining, processing, or handling in any other way, involves illegal oil or illegal oil product, or illegal gas or illegal gas product, no penalty shall be imposed for the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of illegal oil or illegal oil product, or illegal gas or illegal gas product, except under circumstances stated in the succeeding provisions of this paragraph. Penalties shall be imposed for the commission of each transaction prohibited in Section 70-2-21 NMSA 1978 when the person committing the same knows that illegal oil or illegal oil product, or illegal gas or illegal gas product, is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this act shall apply to any sale or purchase or acquisition, and to the transportation, refining, processing, or handling in any other way, of illegal oil or illegal oil product, or illegal gas or illegal gas product where

administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell or purchase or acquire, or to transport, refine, process, or handle in any way any crude petroleum oil or natural gas or any product thereof without complying with the rule, regulation or order of the commission or division relating thereto.

70-2-23 HEARINGS ON RULES, REGULATIONS AND ORDERS--NOTICE--EMERGENCY RULES.--Except as provided for herein, before any rule, regulation or order, including revocation, change, renewal or extension thereof, shall be made under the provisions of this act, a public hearing shall be held at such time, place and manner as may be prescribed by the division. The division shall first give reasonable notice of such hearing (in no case less than ten days, except in an emergency) and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard. In case an emergency is found to exist by the division which in its judgment requires the making of a rule, regulation or order 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.

"70-2-24 REPORTS OF GOVERNMENTAL DEPARTMENTS OR AGENCIES AS TO MARKET DEMAND TO BE DEEMED PRIMA FACIE CORRECT.—The reports, estimates, findings of fact, or similar documents or findings of the United States bureau of mines, or of any other department or agency of the United States government, or of any bureau or agency under an interstate compact to which the state of New Mexico is a party made with respect to the reasonable market demand for crude petroleum oil, may be considered by the division or by any court and taken as being prima facie correct."

70-2-25 REHEARINGS - APPEALS.

(a) Within twenty (20) days after entry of any order or decision of the Commission, any person affected thereby may file with the Commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The Commission shall grant or refuse any such application in whole or in part within ten (10) days after the same is filed and failure to act thereon within such period shall be deemed a refusal thereof and a final disposition of such application. In the event the rehearing is granted, the Commission may enter such new order or decision after rehearing as may be required under the circumstances.

(b) Any party to such rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal therefrom to the District Court of the county wherein is located any property of such party affected by the decision, by filing a petition for the review of the action of the Commission within twenty (20) days after the entry of the order following rehearing or after the refusal or rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the Commission and shall set forth the order or decision of the Commission complained of and the grounds of invalidity thereof upon which the applicant will rely; provided, however, that the questions reviewed on appeal shall be only questions presented to the Commission by the application for rehearing. Notice of such appeal shall be served upon the adverse party or parties and the Commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be de novo, without a jury and the transcript of proceedings before the Commission, including the evidence taken in hearings by the Commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence, in the same manner as if such evidence was originally offered in the District Court. The Commission action complained of shall be prima facie valid and the burden shall be upon the party or parties seeking review to establish the invalidity of such action of the Commission. The Court shall determine the issues of fact and of law and shall, upon a preponderance of the evidence introduced before the Court, which may include evidence in addition to the transcript of proceedings before the Commission, and the law applicable thereto, enter its order either affirming, modifying, or vacating the order of the Commission. In the event the Court shall modify or vacate the order or decision of the Commission, it shall enter such order in lieu thereof as it may determine to be proper. Appeals may be taken from the judgment or decision of the District Court to the Supreme Court in the same manner as provided for appeals from any other final judgment entered by a District Court in this State. The trial of such application for relief from action of the Commission and the hearing of any appeal to the Supreme Court from the action of the District Court shall be expedited to the fullest possible extent.

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

(d) The applicable rules of practice and procedure in civil cases for the courts of this state shall govern the proceedings for review, and any appeal therefrom to the Supreme Court of this state, to the extent such rules are consistent with provisions of this act.

70-2-26 REVIEW OF OIL CONSERVATION COMMISSION DECISION--APPEALS.--

The secretary of energy and minerals department may hold a public hearing to determine whether an order or decision issued by the oil conservation commission contravenes the department's statewide plan or the public interest. The hearing shall be held within twenty days after the entry of the commission order or decision following a rehearing or after the order refusing a rehearing as the case may be. The hearing shall be a de novo proceeding and the secretary shall enter such order or decision as may be required under the circumstances, having due regard for the conservation of the state's oil, gas and mineral resources, and the commission shall modify its own order or decision to comply therewith. If a rehearing before the commission was granted, the record of the rehearing shall be made part of the record of the hearing before the secretary. If the application for rehearing was denied, the record of the hearing before the commission or the division shall be made part of the record of the hearing before the secretary. Such orders and decisions of the secretary may be appealed by any party to the original hearing or the rehearing before the commission, or by any party to the hearing before the secretary held pursuant to this section, in accordance with the procedure of Subsections (b), (c) and (d) of Section 70-2-25 NMSA 1978 except that the appeal shall not be a de novo proceeding and shall be limited to a review of the record of the hearing held pursuant to the provisions of this section.

70-2-27 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 oil or gas, or any of the provisions of this act, or any rule, regulation or order made thereunder, except after due notice to the director of the division, and to all other defendants, and after a hearing at which it shall be clearly shown to the court that the act done or threatened is without sanction of law, or that the provision of this act, or the rule, regulation or order complained of, is invalid, and that, if enforced against the complaining party, will cause an irreparable injury. With respect to an order to decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the state, or of any provision of this act, or of any rule, regulation or order thereunder involved in such suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

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

70-2-28 ACTIONS FOR VIOLATIONS.--Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this act, or any rule, regulation or order made thereunder, the division through the attorney general shall bring suit against such person in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, for penalties, if any are applicable, and to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the division may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil or illegal oil product, or illegal gas or illegal gas product, and any or all such commodities, or funds derived from the sale thereof, may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

70-2-29 ACTIONS FOR DAMAGES--INSTITUTION OF ACTIONS FOR INJUNCTIONS BY PRIVATE PARTIES.--Nothing in this act contained or authorized, and no suit by or against any person for violating any statute of this state with respect to conservation of oil and gas, or any provisions of this act, or any rule, regulation or order issued thereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any statute of this state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he may be entitled to receive. In the event the division should fail to bring suit to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of this act, or of any rule, regulation or order made

thereunder, then any person or party in interest adversely affected by such violation, and who has notified the division in writing of such violation or threat thereof and has requested the division to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the division could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the division shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the division had at all times been the complaining party.

70-2-30 VIOLATION OF COURT ORDER GROUNDS FOR APPOINTMENT OF RECEIVER.--

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

70-2-31 PENALTIES FOR VIOLATIONS--ACCESSORIES.--

A. Any person who, for the purpose of evading this act, or of evading any rule, regulation or order made hereunder, shall knowingly and willfully make or cause to be made any false entry or statement of fact in any report required to be made by this act or by any rule, regulation or order made hereunder; or who, for such purpose, shall make or cause to be made any false entry in any account, record or memorandum kept by any person in connection with the provisions of this act or of any rule, regulation or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records or memoranda; of all facts and transactions pertaining to the interest of activities in the petroleum industry of such person as may be required by the commission or division under authority given to this act or by any rule, regulation or order made hereunder; or who, for such purpose, shall remove out of the jurisdiction of the state, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper pertaining to the transactions regulated by this act or by any rule, regulation or order made hereunder; shall be deemed guilty of a felony and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than one thousand dollars (\$1,000), or imprisonment for a term of not more than three years, or to both such fine and imprisonment.

B. Any person who knowingly and willfully violates any provision of this act or any rule, regulation or order of the commission or division made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein be subject to a penalty of not to exceed one thousand dollars (\$1,000) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the district court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the district court of the county where the violation took place. The place of suit shall be selected by the division, and such suit, by direction of the division, shall be instituted and conducted in the name of the division by the attorney general or under his direction by the district attorney of the county where the suit is instituted. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil or illegal gas product into legal oil or legal gas product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil or illegal gas, or illegal oil or illegal gas product, but to the contrary penalty shall be imposed for each prohibited transaction relating to such illegal oil or illegal gas or illegal oil or illegal gas product.

C. Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil and gas, or the violation of any provisions of this act, or any rule, regulation or order made thereunder, shall be subject to the same penalties as are prescribed herein for the violation by such other person.

70-2-32 SEIZURE AND SALE OF ILLEGAL OIL OR GAS OR PRODUCTS--PROCEDURE.--

A. Apart from, and in addition to, any other remedy or procedure which may be available to the commission or the division, or any penalty which may be sought against or imposed upon any person, with respect to violations relating to illegal oil or illegal gas or illegal products thereof, all such oil or gas or products thereof shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. The sale shall not take place unless the court finds in the proceeding provided in this section that the owner of such illegal oil or illegal gas or product thereof is liable, or in some proceeding authorized by Sections 70-2-1 through 70-2-34 NMSA 1978, such owner has already been held to be liable, for penalty for having produced the illegal oil or illegal gas, or for having purchased or acquired the illegal oil or illegal gas or product thereof. Whenever the division believes that illegal oil or illegal gas or product thereof is subject to seizure and sale, as provided herein, it shall, through the attorney general, bring a civil action in rem for that purpose in the district court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross-action for injunction or for penalty relating to any prohibited transaction involving the illegal oil or illegal gas or product thereof. Notice of the action in rem shall be given in conformity with the law or rule applicable to such proceeding. Any person or party in interest who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in the suit to protect his rights.

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

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

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

70-2-33 DEFINITIONS OF WORDS USED IN ACT.--

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this act, to-wit:

A. "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary of any kind.

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

C. "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" also includes the underground reservoir or reservoirs containing such crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field" unlike "pool" may relate to two (2) or more pools.

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

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

F. "Producer" means the owner of well or wells capable of producing oil or natural gas or both in paying quantities.

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

H. "Correlative rights" means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practicably determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy.

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

70-2-34 REGULATION, CONSERVATION AND PREVENTION OF WASTE OF CARBON DIOXIDE GAS.--

A. The oil conservation division is hereby vested with the authority and duty of regulation and conserving the production of and preventing waste of carbon dioxide gas within this state in the same manner, insofar as is practicable as it regulates, conserves and prevents waste of natural or hydrocarbon gas. The

provisions of this act relating to gas or natural gas shall also apply to carbon dioxide gas insofar as the same are applicable. "Carbon dioxide gas" as used herein shall mean non-combustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

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

70-2-35 LEGAL REPRESENTATION BEFORE THE FEDERAL POWER COMMISSION.--There may be a special assistant attorney general employed by the energy and minerals department who shall represent the interests of this state before the federal power commission. In addition this attorney shall work closely with other agencies having responsibilities relating to oil and gas matters and shall carry out such additional responsibilities as are delegated to him by the energy and minerals department. All costs incurred in employing such counsel shall be paid out of the oil conservation fund in accordance with provisions of State Budgets Act.

70-2-36 REMOVING OR ALTERING MARKS OF IDENTIFICATION--PENALTY.--

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

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

70-2-37 OIL AND GAS RECLAMATION FUND CREATED--DISPOSITION OF FUND.--There is hereby created the "oil and gas reclamation fund". All funds in the oil and gas reclamation fund and the earnings therefrom are appropriated to the energy and minerals department for use by the oil conservation division in carrying out the provisions of the Oil and Gas Act.

70-2-38 OIL AND GAS RECLAMATION FUND ADMINISTERED--PLUGGING WELLS ON FEDERAL LAND--RIGHT OF IDENTIFICATION--ANNUAL REPORT--CONTRACTORS SELLING EQUIPMENT FOR SALVAGE.--

A. The oil and gas reclamation fund shall be administered by the oil conservation division. The director of the division shall cause to be prepared plans for the plugging of abandoned wells which have not been plugged or which have been improperly plugged. The director, as funds become available in the oil and gas reclamation fund, shall reclaim, and properly plug, all abandoned wells in accordance with the provisions of the Oil and Gas Act, and the rules and regulations promulgated thereunder. The division may order wells plugged on federal lands on which there are no bonds running to the benefit of the state in the same manner and in accordance with the same procedures as with wells drilled on state and fee land, including utilizing funds from the oil and gas reclamation fund to pay the cost of such plugging. When the costs of plugging a well drilled on federal mineral leases are paid from the oil and gas reclamation fund, the division is authorized to bring a suit against the operator or the owner of the minerals under the tract, or both, in the district court of the county in which the well is located for indemnification for all costs incurred by the division in plugging said well. Any funds collected pursuant to a judgment in a suit for indemnification brought under the Oil and Gas Act shall be deposited in the oil and gas reclamation fund.

B. The director shall make an annual report to the secretary of energy and minerals, the governor and the legislature on the use of the oil and gas reclamation fund.

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

70-6-1 PUBLIC INTEREST AND WELFARE.--

The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available our natural gas resources to the domestic, commercial and industrial consumers of this state, and which provides, a better year-round market to the various gas fields, is hereby declared to be in the public interest and welfare of this state and the citizens hereof.

70-6-2 DEFINITIONS.--As used in this act:

A. "underground storage" shall mean storage of natural gas in a subsurface stratum or formation of the earth;

B. "natural gas" shall mean natural gas either while in its original state after withdrawal from the earth or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel;

- C. "native gas" shall mean gas which has not been previously withdrawn from the earth;
- D. "division" shall mean the oil conservation division of the energy and minerals department;
- E. "commission" shall mean the oil conservation commission;

F. "natural gas company" shall mean any person, firm or corporation engaged in the distribution, sale or furnishing of natural gas to or for the public subject to regulation by the public service commission under the Public Utility Act, or any person, firm or corporation engaged in the business of transporting natural gas, subject to regulation by the federal power commission under the Natural Gas Act; and

G. "public body" shall mean the state of New Mexico or any department, board, commission, bureau, institution, public agency, county or political subdivision thereof including bodies corporate, bodies politic, municipal corporations, school districts, conservancy districts and quasi-municipal corporations of all kinds.

70-6-3 ACQUISITION OF LANDS FOR PURPOSES OF UNDERGROUND NATURAL GAS STORAGE - LANDS CONTROLLED BY PUBLIC BODY, EXECUTOR, ADMINISTRATOR, GUARDIAN, RECEIVER, OR TRUSTEE.

Any natural gas company desiring to make use of a formation or stratum as reservoir for the underground storage of natural gas shall attempt to acquire by option, lease, conveyance or other negotiated means, such formation or stratum prior to resorting to the exercise of the power of eminent domain as hereinafter granted. Any public body and any executor, administrator, guardian, receiver or trustee shall be authorized to grant to any such natural gas company rights for underground storage of natural gas in lands subject to its or his control in the same manner as provided by law for entering into oil and gas leases, or if any such public body, executor, administrator, guardian, receiver, or trustee shall not be specifically authorized by law to make oil and gas leases, then the manner provided by law for lease by such public body, executor, administrator, guardian, receiver, or trustee of interests in land, or if any such public body, executor, administrator, guardian, receiver, or trustee shall not be specifically authorized by law to make oil and gas leases or leases for interests in land, then in the manner provided by law for the sale by such public body, executor, administrator, guardian, receiver, or trustee of interests in land.

70-6-4 APPROPRIATION OF UNDERGROUND STORAGE FACILITIES--LIMITATIONS.--By eminent domain proceedings, any natural gas company may appropriate for underground storage of natural gas any subsurface stratum or formation in any land which the division shall have found to be suitable for the underground storage of natural gas, and in connection therewith may appropriate such other interests in the land as may be required to maintain and operate facilities for such underground storage; provided, however, that the right to appropriate underground formations and strata shall be limited as follows:

A. no formation or stratum which is producing or which is capable of producing oil in paying quantities, through any known recovery method, shall be subject to appropriation hereunder;

B. no formation or stratum that contained native gas producible in paying quantities shall be subject to appropriation hereunder, unless the recoverable volumes of native gas originally in place therein shall be substantially depleted, and unless such formation or stratum has a greater value or utility as a gas storage reservoir for the purpose of insuring an adequate supply of natural gas, or for the conservation of natural gas, then for the production of the relatively small volumes of native gas which remain therein;

C. no formation or stratum underlying lands which contain known commercial deposits of potash shall be subject to appropriation hereunder;

D. no formation or stratum shall be subject to appropriation hereunder if its use for underground storage purposes would cause injury to surface or underground water resources;

E. no rights or interest in existing underground gas reservoirs, being used for the injection, storage and withdrawal of natural gas, owned or operated by other than the condemner, shall be subject to appropriation;

F. no dwelling, barn, store, warehouse or other building shall be subject to appropriation hereunder; and

G. the right of appropriation hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or interests therein to drill through the underground stratum or formation so appropriated in such manner as shall comply with orders, rules and regulations of the division issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof.

70-6-5. FINDINGS OF OIL CONSERVATION DIVISION.--Any natural gas company desiring to exercise the right of eminent domain as to any land for underground storage of natural gas shall, as a conditional precedent to the filing of its petition in the district court, obtain from the division a decision finding:

A. that the underground stratum or formation sought to be acquired is suitable for the underground storage of natural gas;

B. that the underground stratum or formation sought to be acquired is incapable of producing oil in paying quantities through any known recovery method;

C. that the formation or stratum sought to be acquired is not underlying lands which contain known commercial deposits of potash;

D. that injury will not be caused to surface or underground water resources;

E. that the underground stratum or formation sought to be acquired, if it contained native gas capable of production in paying quantities, is substantially depleted of recoverable native gas, and that such formation or stratum has a greater value or utility as a gas storage reservoir than for the production of the remaining volumes of native gas therein;

F. the extent of the horizontal limits of the reservoir expected to be penetrated by displaced or injected gas; and

G. that no portion of the formation or stratum sought to be acquired has been appropriated or is being utilized for the injection, storage and withdrawal of natural gas by others.

70-6-6 COMMISSION OR DIVISION PROCEDURE.--The laws, rules and regulations relating to commission or division action in matters pertaining to conservation of oil and gas shall be applicable to commission or division proceedings under this act.

70-6-7 EXERCISE OF RIGHT OF EMINENT DOMAIN.--Any natural gas company having first obtained a decision from the division, as hereinbefore provided, may proceed to appropriate for underground storage of natural gas subsurface strata or formations and such other interests in the land as may be required to maintain and operate facilities for such underground storage in the manner provided by law for the exercise of the right of eminent domain by railroads and telegraph and telephone companies.

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), or otherwise purchased.

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) 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.

70-7-2 SHORT TITLE.

This act (70-7-1 to 70-7-21) may be cited as the "Statutory Unitization Act."

70-7-3 ADDITIONAL POWERS AND DUTIES OF THE OIL CONSERVATION DIVISION.--Subject to the limitations of the Statutory Unitization Act the oil conservation division of the energy and minerals department hereinafter referred to as the "division", is hereby vested with jurisdiction, power and authority and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of the Statutory Unitization Act.

70-7-4 DEFINITIONS.--For the purposes of the Statutory Unitization Act, unless the context otherwise requires:

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

B. "oil and gas" means crude oil, natural gas, casinghead gas, condensate or any combination thereof;

C. "waste", in addition to its meaning in Section 70-2-3 NMSA 1978, shall include both economic and physical waste resulting, or that could reasonably be expected to result, from the development and operation separately of tracts that can best be developed and operated as a unit;

D. "working interest" means an interest in unitized substances by virtue of a lease, operating agreement, fee title or otherwise, excluding royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgages and lien claimants but including a carried interest, the owner of which is primarily obligated to pay, either in cash or out of production or otherwise, a portion of the unit expense; however, oil and gas rights that are free of lease or other instrument creating a working interest shall be regarded as a working interest to the extent of seven-eighths thereof and a royalty interest to the extent of the remaining one-eighth thereof;

E. "working interest owner" or "lessee" means a person who owns a working interest;

F. "royalty interest" means a right to or interest in any portion of the unitized substances or proceeds thereof other than a working interest;

G. "royalty owner" means a person who owns a royalty interest;

H. "unit operator" means the working interest owner, designated by working interest owners under the unit operating agreement or the division to conduct unit operations, acting as operator and not as a working interest owner;

I. "basic royalty" means the royalty reserved in the lease but in no event exceeding one-eighth; and

J. "relative value" means the value of each separately owned tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probably productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, operating or pricing factors, as may be reasonably susceptible of determination.

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.

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 condition 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.

70-7-7 DIVISION ORDERS.--The order providing for unitization and unit operation of a pool or part thereof 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 thereof to be operated as a unit and the vertical limits to be included therein "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 said 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 such owner, or the interest of such owner, may be sold and the proceeds applied to the payment of such 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 such 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, service charge and interest are repaid to the unit operator;

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 such termination; and

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

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 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 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.

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.

"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."

"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."

"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 portion 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."

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.

70-7-14 LIEN FOR COSTS.--Subject to such reasonable limitation 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.

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.

"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."

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.

"70-7-18 EXISTING RIGHTS, RIGHTS IN UNLEASED LAND, AND ROYALTIES AND LEASE BURDENS.--Property rights, leases, contracts, and other rights or obligations shall be regarded as amended and modified only to the extent necessary to conform to the provisions and requirements of the Statutory Unitization Act and to any valid order of the division providing for the unit operation of a pool or a part thereof, but otherwise shall remain in full force and effect. A one-eighth part of the production allocated to each tract under an order providing for the unit operation of a pool or a part thereof, shall in all events be and remain free and clear of any costs or expense of developing or operating the unit and of any lien therefor as an encumbered 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."

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.

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.

"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."

70-30-4 OIL AND GAS CONSERVATION TAX LEVIED--COLLECTED BY COMMISSION--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is levied and shall be collected by the oil and gas accounting commission a tax on all products which are severed and sold. The measure of the tax shall be nineteen one-hundredths of one percent of the taxable value of sold products. Every interest owner shall be liable for this tax to the extent of his interest in the value of such products, or to the extent of his interest as may be measured by the value of such products. Provided, any Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

B. In the event the unencumbered balance in the oil and gas reclamation fund equals or exceeds one million dollars (\$1,000,000) for any one-month period computed after payment of the tax for that month, then the tax levied by Subsection A of this section shall be reduced by one one-hundredths of one percent and no funds collected by the tax shall be deposited in the oil and gas reclamation fund, notwithstanding the provisions of Section 7-30-14 NMSA 1978. When the unencumbered balance in the oil and gas reclamation fund is less than or equal to five hundred thousand dollars (\$500,000), then the tax levied by Subsection A of this section shall be increased by one one-hundredths of one percent and the additional funds shall be deposited in accordance with the provisions of Section 7-30-14 NMSA 1978.

7-30-14 DISPOSITION OF OIL CONSERVATION FUND.--The oil conservation fund, or so much thereof as may be necessary, is hereby appropriated to the energy and minerals department to be by it expended in the performance of its duties; provided, however, that an amount equal to one-hundredths of one percent of the taxable value of sold products shall be deposited in the oil and gas reclamation fund to be used by the oil conservation division in carrying out the provisions of the Oil and Gas Act.

"74-6-2 DEFINITIONS.--As used in the Water Quality Act:

A. "water contaminant" means any substance which alters the physical, chemical or biological qualities of water;

B. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life, or property, or to unreasonably interfere with the public welfare or the use of property;

C. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance which will pollute any waters of the state;

D. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

E. "treatment works" means any plat or other works used for the purpose of treating, stabilizing or holding wastes;

F. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

G. "water" means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

H. "person" means the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer, or governing or managing body of any political subdivision or public or private corporation;

I. "commission" means the water quality control commission;

J. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

(1) the environmental improvement division of the health and environment department;

(2) the state engineer and the interstate stream commission;

(3) the New Mexico department of game and fish;

(4) the oil conservation commission;

(5) the state parks and recreation commission;

(6) the New Mexico department of agriculture;

(7) the state natural resource conservation commission; and

(8) the New Mexico bureau of mines; and

K. "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source."

74-6-3 WATER QUALITY CONTROL COMMISSION CREATED.--

A. There is created the "water quality control commission" consisting of:

(1) the director of the environment improvement division of the health and environment department or a member of his staff designated by him;

(2) the director of the New Mexico department of game and fish or a member of his staff designated by him;

(3) the state engineer or a member of his staff designated by him;

(4) the secretary of the oil conservation commission or a member of his staff designated by him;

(5) the director of state park and recreation commission or a member of his staff designated by him;

(6) the director of the New Mexico department of agriculture or a member of his staff designated by him;

(7) the executive secretary of the state natural resource conservation commission or a member of his staff designated by him;

(8) the director of the New Mexico bureau of mines or a member of his staff designated by him; and

(9) a representative of the public to be appointed by the governor for a term of four years and who shall be compensated from the budgeted funds of the health and environment department in accordance with the provisions of the Per Diem and Mileage Act.

B. No member of the commission shall receive or shall have received, during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit and shall, upon the acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of his gross personal income in each of the preceding two years, that he received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act.

C. The commission shall elect a chairman and other necessary officers and shall keep a record of its proceedings.

D. A majority of the commission constitutes a quorum for the transaction of business, but no action of the commission is valid unless concurred in by five or more members present at a meeting.

E. The commission is the state water pollution control agency for this state for all purposes of the Federal Water Pollution Control Act, the Water Quality Act of 1965 and the Clean Waters Restoration Act of 1966, and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of these acts.

F. The commission is administratively attached, as defined in the Executive Reorganization Act, to the health and environment department.

74-6-4 DUTIES AND POWERS OF COMMISSION.—The commission:

A. May accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality program and develop a continuing planning process;

C. Shall adopt water quality standards as a guide to water pollution control;

D. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area or watershed of the state or in any part thereof, or for any class of waters. Regulations shall not specify the method to be used to prevent or abate water pollution, but may specify a standard of performance for new sources which reflects the greatest degree of effluent reduction which the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge or pollutants. In making its regulations, the commission shall give weight it deems appropriate to all facts and circumstances, including but not limited to:

(1) character and degree of injury to or interference with health, welfare and property;

(2) the public interest, including social and economical value of the sources of water contaminants;

(3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;

(4) successive uses, including but not limited to, domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use; and

(6) property rights and accustomed uses;

E. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act (74-6-2 to 74-6-13). In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The environmental improvement agency shall provide testing and other technical services;

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F. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act, and receive and allocate to constituent agencies funds made available to the commission;

G. may grant an individual variance from any regulation of the commission, whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for a period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

H. may adopt regulations to require the filing with it or a constituent agency, of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with or approval by the federal housing administration of plans for an extension to an existing, or construction of a new sewerage system intended to serve a subdivision substantially residential in nature shall be deemed compliance with all provisions of this subsection;

I. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state; and

J. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants which are not susceptible to treatment by the treatment works or which would interfere with the operation of the treatment works.

74-6-5 PERMITS--APPEALS--PENALTY.--

A. By regulation the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant either directly or indirectly into water.

B. Prior to the issuance of a permit, the constituent agency may require the submission of plans, specifications and other relevant information which it deems necessary.

C. The commission, shall by regulation set the dates upon which applications for permits must be filed and designate the time periods within which the constituent agency must, after the filing of an application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit.

D. The constituent agency may deny any application for a permit if:

- (1) it appears that the effluent would not meet applicable state or federal effluent regulations or limitations;
- (2) any provision of the Water Quality Act 74-6-2 to 74-6-13 would be violated; or
- (3) it appears that the effluent would cause any state or federal stream standard to be exceeded.

E. The commission shall by regulation develop procedures which will ensure that the public, affected governmental agencies, and any other state whose water may be affected, shall receive notice of each application for issuance or modification of a permit. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

F. Permits shall be issued for fixed terms not to exceed five (5) years.

G. By regulation the commission may impose reasonable conditions upon permits requiring permittees to:

- (1) install, use and maintain effluent monitoring devices;
- (2) sample effluents in accordance with methods and at locations and intervals as may be prescribed by the commission;
- (3) establish and maintain records of the nature and amounts of effluents and the performance of effluent control devices;

(4) provide any other information relating to the discharge of water contaminants; and

(5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

H. The commission may provide by regulation a schedule of application fees for permits not exceeding the estimated cost of investigation and issuance of permits. Fees are to be paid at the time the application for the permit is filed. Fees collected pursuant to this section shall be deposited in the general fund.

I. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act and any applicable regulations of the commission.

J. A permit may be terminated or modified by the constituent agency which issued it previous to its date of expiration for any of the following causes:

(1) violation of any condition of the permit;

(2) obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;

(3) violation of any provisions of the Water Quality Act;

(4) violation of any applicable state or federal effluent regulations; or

(5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

K. Permits issued, denied, modified or terminated under this section shall not be deemed a major state action significantly affecting the quality of the human environment within the meaning of section 12-20-6(C) NMSA 1953.

L. If the constituent agency denies, terminates or modifies a permit, or grants a permit subject to condition, the constituent agency must notify the applicant or permittee by certified mail of the action taken and the reasons therefor. If the applicant or permittee is dissatisfied with the action taken by the constituent agency, he may file a petition for hearing before the commission. The petition must be made in writing to the director of the constituent agency within thirty (30) days after notice of the constituent agency's action has been received by the applicant or permittee. Unless a timely request for hearing is made, the decision of the constituent agency shall be final.

M. If a timely petition for hearing is made, the commission shall hold a hearing within thirty (30) days after receipt of the petition. The constituent agency shall notify the petitioner by certified mail of the date, time and place of the hearing. Provided, that if the commission upon receipt of the petition deems the basis for the petition for hearing by the commission is affected with substantial public interest, it shall ensure that the public shall receive notice of the date, time and place of the hearing and shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any public member submitting data, views or arguments orally or in writing shall be subject to examination at the hearing. In the hearing, the burden of proof shall be upon the petitioner. The commission may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the commission shall sustain, modify or reverse the action of the constituent agency.

N. If the petitioner requests, the hearing shall be recorded at the cost of the petitioner. Unless the petitioner requests that the hearing be recorded, the decision of the commission shall be final.

O. A petitioner may appeal the decision of the commission by filing with the court of appeals a notice of appeal within thirty (30) days after the date the decision is made. The appeal must be on the record made at the hearing. The petitioner shall certify in his notice of appeal that arrangements have been made with the commission for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the petitioner, including two (2) copies which he shall furnish to the commission.

P. A person who violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than three hundred dollars (\$300) nor more than ten thousand dollars (\$10,000) per day, or by imprisonment for not more than one(1) year, or both.

Q. In addition to the remedy provided above, the trial court may impose a civil penalty for a violation of any provision of this section not exceeding five thousand dollars (\$5,000) per day.

74-6-6 ADOPTION OF REGULATIONS--NOTICE AND HEARING.--No regulation or water quality standard or amendment or repeal thereof shall be adopted until after a public hearing within the area of the state concerned; provided that the commission may adopt water quality standards on the basis of the record of hearing held by the New Mexico department of public health prior to the effective date of the Water Quality Act

(74-6-2 to 74-6-13) if those hearings were held in general conformance with the provisions of this section. Hearings on regulations of statewide application shall be held at Santa Fe. Notice of the hearing shall be given at least thirty (30) days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or water quality standard. The notice shall be published in a newspaper of general circulation in the area affected. Reasonable effort shall be made to give notice to all persons who have made a written request to the commission for advance notice of its hearings. At the hearing, the commission shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The commission may designate a hearing officer to take evidence in the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the commission. No regulation or water quality standard or amendment or repeal thereof adopted by the commission shall become effective until thirty (30) days after its filing with the Supreme Court law librarian.

74-6-7 VALIDITY OF REGULATION--JUDICIAL REVIEW.--

A. Any person who is or may be affected by a regulation adopted by the commission may appeal to the court of appeals for further relief. All such appeals shall be upon the record made at the hearing, and shall be taken to the court of appeals within thirty (30) days after filing of the regulation under the State Rules Act (71-6-23, 71-7-1 to 71-7-3, 71-7-5 to 71-7-10).

B. The procedure for perfecting an appeal to the court of appeals under this section consists of the timely filing of a notice of appeal with a copy attached of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the commission for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including three(3) copies which he shall furnish to the commission.

C. Upon appeal, the court of appeals shall set aside the regulation only if found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record or reasonably related to the prevention or abatement of water pollution; or
- (3) otherwise not in accordance with law.

74-6-8 DUTIES OF CONSTITUENT AGENCIES.--Each constituent agency shall administer regulations adopted pursuant to the Water Quality Act (74-6-2 to 74-6-13), responsibility for the administration of which has been assigned to it by the commission.

74-6-9 POWERS OF CONSTITUENT AGENCIES.--Each constituent agency may:

A. receive and expend funds appropriated, donated or allocated to the constituent agency for purposes consistent with the Water Quality Act (74-6-2 to 74-6-13);

B. develop facts and make studies and investigations and require the production of documents necessary to carry out the responsibilities assigned to the constituent agency. The result of any investigation shall be reduced to writing and a copy thereof furnished to the commission and to the owner or occupant of the premises investigated;

C. recommend regulations for adoption by the commission;

D. report to the commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report;

E. make every reasonable effort to obtain voluntary co-operation in the prevention or abatement of water pollution; and

F. upon presentation of proper credentials, enter at reasonable times upon or through any premises in which an effluent source is located or in which are located any records required to be maintained by regulations of the commission; provided that entry into any private residence without the permission of the owner shall be only by order of the district court for the county in which the residence is located and that, in connection with any entry provided for in this subsection, the constituent agency may:

- (1) have access to any copy of the records;
- (2) inspect any monitoring equipment or methods required to be installed by regulations of the commission; and
- (3) sample any effluents.

74-6-10 ABATEMENT OF WATER POLLUTION.--

A. If, as a result of investigation, a constituent agency has good cause to believe that any person is violating or threatens to violate any regulation of the commission for the enforcement of which the agency

is responsible, and, if the agency is unable within a reasonable time to obtain voluntary compliance, the commission may initiate proceedings in the district court of the county in which the violation occurs. The commission may seek injunctive relief against any violation or threatened violation of regulations, and such relief shall be subject to the continuing jurisdiction and supervision of the district court and the court's powers of contempt. The attorney general shall represent the commission.

B. In addition, to the remedies provided in this section, the district court may impose civil penalties not exceeding one thousand dollars (\$1,000) for each violation of the Water Quality Act (74-6-2 to 74-6-13) or any regulation of the commission, and may charge the person convicted of such violation with the reasonable cost of treating or cleaning up waters polluted. Each day during any portion of which a violation occurs constitutes a separate violation.

C. Any party aggrieved by any final judgment of the district court under this section may appeal to the court of appeals as in other civil actions.

D. As an additional means of enforcing the Water Quality Act or any regulation of the commission, the commission may accept an assurance of discontinuance of any act or practice deemed in violation of the Water Quality Act or any regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice, signed and acknowledged by the chairman of the commission and the party effected. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished.

74-6-11 EMERGENCY PROCEDURE.—Notwithstanding any other provision of the Water Quality Act (74-6-2 to 74-6-13), if any person is causing or contributing to water pollution of such characteristics and duration as to create an emergency which requires immediate action to protect human health, the director of the environmental improvement agency shall order the person to immediately abate the water pollution creating the emergency condition. If the effectiveness of the order is to continue beyond forty-eight (48) hours, the director of the environmental improvement agency shall file an action in the district court, not later than forty-eight (48) hours after the date of the order, to enjoin operations of any person in violation of the order.

74-6-12 LIMITATIONS UPON OPERATION OF ACT.—

A. The Water Quality Act (74-6-2 to 74-6-13) does not grant to the commission or to any other entity the power to take away or modify property rights in water, nor is it the intention of the Water Quality Act to take away or modify such rights.

B. Effluent data obtained by the commission or a constituent agency shall be available to the public. Other records, reports or information obtained by the commission or a constituent agency shall be available to the public, except upon a showing satisfactory to the commission or a constituent agency that the records, reports or information or a particular part thereof, if made public, would divulge methods or processes entitled to protection as trade secrets.

C. The Water Quality Act does not authorize the commission to adopt any regulation with respect to any condition or quality of water if the water pollution and its effects are confined entirely within the boundaries of property within which the water pollution occurs when the water does not combine with other waters.

D. The Water Quality Act does not grant to the commission any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of water quality.

E. The Water Quality Act does not supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

F. In the adoption of regulations and water quality standards and in any action for enforcement of the Water Quality Act and regulations adopted thereunder, reasonable degradation of water quality resulting from beneficial use shall be allowed.

G. The Water Quality Act does not permit the adoption of regulations or other action by the commission or other constituent agencies which would interfere with the exclusive authority of the oil conservation commission over all persons and things necessary to prevent water pollution as a result of oil or gas operations through the exercise of the power granted to the oil conservation commission under section 70-2-12 WMSA 1978, and other laws conferring power on the oil conservation commission.

74-6-13 CONSTRUCTION OF ACT.—The Water Quality Act (74-6-2 to 74-6-13) provides additional and cumulative remedies to prevent, abate and control water pollution, and nothing abridges or alters rights of action or remedies in equity under the common law or statutory law, criminal or civil. No provision of the Water Quality Act or any act done by virtue thereof estops the state or any political subdivision or person as owner of water rights or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.