

OCD Geothermal Class V Injection Well Legal Determination
(7/8/2014)

Carl Chávez met with Jim Griswold on 7/8/14 to discuss UIC Class V Injection Well Jurisdiction. Jim while working with OCD General Counsel determined that these wells are handled by the OCD exclusively under the Geothermal Regulations. Also, the OCD Primacy Agreement with EPA includes these wells; therefore, EPA UIC Class V Regulations also apply.

WQCC Regulations Exempting Geothermal Wells:

20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT:
Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

A. Effluent or leachate which conforms to all the listed numerical standards of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less, and does not contain any toxic pollutant. To determine conformance, samples may be taken by the agency before the effluent or leachate is discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage through non-natural or altered natural materials, the agency may take samples of the solution before or after seepage. If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;

B. Effluent which is discharged from a sewerage system used only for disposal of household and other domestic waste which is designed to receive and which receives 2,000 gallons or less of liquid waste per day;

C. Water used for irrigated agriculture, for watering of lawns, trees, gardens or shrubs, or for irrigation for a period not to exceed five years for the revegetation of any disturbed land area, unless that water is received directly from any sewerage system;

D. Discharges resulting from the transport or storage of water diverted, provided that the water diverted has not had added to it after the point of diversion any effluent received from a sewerage system, that the source of the water diverted was not mine workings, and that the secretary has not determined that a hazard to public health may result;

E. Effluent which is discharged to a watercourse which is naturally perennial; discharges to dry arroyos and ephemeral streams are not exempt from the discharge permit requirement, except as otherwise provided in this section;

F. Those constituents which are subject to effective and enforceable effluent limitations in a National Pollutant Discharge Elimination System (NPDES) permit, where discharge onto or below the surface of the ground so that water contaminants may move directly or indirectly into ground water occurs downstream from the outfall where NPDES effluent limitations are imposed, unless the secretary determines that a hazard to public health may result. For purposes of this subsection, monitoring requirements alone do not constitute effluent limitations;

G. Discharges resulting from flood control systems;

H. Leachate which results from the direct natural infiltration of precipitation through disturbed materials, unless the secretary determines that a hazard to public health may result;

- I. Leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;
- J. Leachate from materials disposed of in accordance with the Solid Waste Management Regulations (20 NMAC 9.1) adopted by the New Mexico Environmental Improvement Board;
- K. Natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining process; this exemption does not apply to solution mining;
- L. Effluent or leachate discharges resulting from activities regulated by a mining plan approved and permit issued by the New Mexico Coal Surface Mining Commission, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the New Mexico Coal Surface Mining Commission;
- M. Effluent or leachate discharges which are regulated by the Oil Conservation Commission and the regulation of which by the Water Quality Control Commission would interfere with the exclusive authority granted under Section 70-2-12 NMSA 1978, or under other laws, to the Oil Conservation Commission. [2-18-77, 6-26-80, 7-2-81, 12-24-87, 12-1-95; 20.6.2.3105 NMAC - Rn, 20 NMAC 6.2.III.3105, 1-15-01; A, 12-1-01]

Geothermal Regulations:

In order to protect human health and environment, OCD will issue "reasonable requirements or conditions" for any OCD approvals under § 71-5-8(b)(m). For example, WQCC water quality standards and protectable ground water are considered "reasonable conditions". Consequently, OCD is allowing the Lightning Dock Geothermal WQCC Permit to expire in August of 2014.

71-5-8. Enumeration of powers.

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

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

- A. to require noncommercial or abandoned wells to be plugged in such a way as to confine all fluids in the strata in which they are found, and to prevent them from

escaping into other strata; the division may require a bond of not to exceed ten thousand dollars (\$10,000) conditioned for the performance of such regulations;

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

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

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

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

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

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

H. to require the operation of wells efficiently;

I. to fix the spacing of wells;

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

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

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

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

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

History: 1953 Comp., § 65-11-8, enacted by (1979). Laws 1975, ch. 272, § 8; 1977, ch. 255, § 77. Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Geothermal Resources Conservation Act, — Am. Jur. 2d Administrative Law § 8 277 to 287; 38 See 71-5-1 NMSA 1978 and notes thereto. Am. Jur. 2d Gas and Oil § 159. Law reviews. — For comment on geothermal. 58 C.J.S. Mines and Minerals § 230; 73 C.J.S. Pub energy and water law, see 19 Nat Resources J. 445; 19 Administrative Bodies and Procedure § 8 92 to 113.