



LAWS OF KENYA

GEOHERMAL RESOURCES ACT

CHAPTER 314A

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Geothermal Resources
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CHAPTER 314A

GEOTHERMAL RESOURCES ACT

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CHAPTER 314A
GEOHERMAL RESOURCES ACT

[Date of assent: 8th July, 1982.]

[Date of commencement: 1st May, 1990.]

An Act of Parliament to control the exploitation and use of geothermal resources and vest the resources in the Government and to provide for connected purposes

[Act No. 12 of 1982, L.N. 205/1990.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Geothermal Resources Act, 1982.

2. Interpretation

In this Act, unless the context otherwise requires—

“**bore**” means a well, hole, pipe or excavation of any kind which is bored, drilled, sunk or made in the ground for the purpose of investigating, prospecting for, obtaining or providing geothermal resources; and includes any reactivated or converted bore previously capped and abandoned which is employed for re-injecting geothermal resources or their residues;

“**geothermal resources**” means any product derived from and produced within the earth by natural heat; and includes steam, water and water vapour and a mixture of any of them that has been heated by natural heat whether as a direct product or resulting from other material introduced artificially into an underground formation and heated by natural heat;

“**geothermal resources area**” means an area which is declared to be a geothermal resources area under section 4;

“**land**” includes land covered with water;

“**licence**” means a geothermal resources licence granted under section 7;

“**licensee**” means the public or local authority, company or body of persons to whom a licence is granted;

“**the Minister**” means the Minister for the time being responsible for matters connected with energy.

3. Geothermal resources vested in the Government

All un-extracted geothermal resources under or in any land shall be vested in the Government subject to any rights which, by or under any written law, have been or are granted or recognized as being vested in any other person.

4. Declaration of geothermal resources area

The Minister may, by notice in the *Gazette*, declare that any area of land where geothermal resources have been discovered or which is a source or is believed to be a source of geothermal resources shall be a geothermal resources area.

5. Unauthorised use of geothermal resources prohibited

Notwithstanding anything to the contrary in any written law or instrument of title, no person shall sink a bore, tap or take and use or apply geothermal resources for any purpose unless he is first granted an authority or licence under this Act.

PART II – EXPLOITATION OF GEOTHERMAL RESOURCES**6. Minister to authorise search of geothermal resources**

(1) For the purposes of and subject to this Act, the Minister may authorize any person (including a public officer), in writing, to make surveys, investigations, tests and measurements in search of geothermal resources and for that purpose the authorized person may—

- (a) enter upon any land specified in the authority with such assistants, gear, appliances, and equipment as he thinks fit;
- (b) sink any bore on the land;
- (c) make geological surveys and geophysical surveys on the land; and
- (d) generally do all things necessary in connection with the survey, investigation, test or measurement.

(2) When practicable, reasonable notice of the intention to enter upon any land shall be given to the owner or occupier of the land.

(3) Every person who is authorized in writing under subsection (1) to enter upon any land shall produce his authority when required to do so by the owner or occupier of the land on which he intends to enter or has entered.

(4) Every authority granted under this section shall be subject to—

- (a) the condition that every bore made pursuant to the authority shall be—
 - (i) kept under close supervision;
 - (ii) maintained in a safe condition;
 - (iii) finally left in a condition of lasting safety;
- (b) such other conditions as the Minister may impose either at the time of granting the authority or subsequently at the time of closure of the bore.

(5) An authority granted under this section shall not be transferable, and shall be in force for a period of one year from the date of issue, but may be renewed for a period of one year from the date of expiration thereof or from the expiration of any renewal.

(6) An authority granted under this section may be revoked by the Minister on any of the following grounds—

- (a) that the person to whom the authority is granted has not complied with any requirement or condition of his authority;

- (b) that operations being carried on under the authority are, in the opinion of the Minister, affecting detrimentally other specified bores or the supplies of geothermal resources for other specified purposes;
- (c) that it is in the public interest that operations being carried on under the authority should cease.

7. Minister may grant a geothermal resources licence

(1) The Minister may, on application being made to him in respect of any land, grant a licence (to be known as a “geothermal resources licence”) over part or the whole of a geothermal resources area under such terms and conditions as he may determine.

(2) An application for a licence to be issued under this section shall be in the approved form and be accompanied by the prescribed fees.

(3) A licence may be granted under this section for such term, not exceeding thirty years, as the Minister may determine and shall be in the prescribed form.

8. Rights under licence

(1) A licence shall, subject to this Act, confer upon the licensee the right—

- (a) to enter upon the land being the subject of the licence to bore and to extract geothermal resources and to do all such things as are reasonably necessary for the conduct of those operations;
- (b) in so far as it may be necessary for and in connection with the operations referred to in paragraph (a)—
 - (i) to drill and construct all necessary boreholes;
 - (ii) to erect, construct and maintain houses and buildings for his own use and for use by his employees;
 - (iii) to erect, construct and maintain plant, machinery, buildings and other erections as may be necessary;
 - (iv) to utilize the geothermal resources;
 - (v) subject to the Water Act (Cap. 372), to reclaim and utilize any water; and
 - (vi) to construct and maintain roads and other means of communications and conveniences;
- (c) to take and use or apply the geothermal resources for any purpose specified in the licence.

(2) Where any by-product obtained in the production of geothermal resources may be reclaimed for further use or sale and is a mineral within the meaning of the Mining Act (Cap. 306), the licence may be modified so as to allow for the inclusion of a mining lease to enable recovery of that by-product.

9. Renewal and surrender of licence, etc.

The Minister may—

- (a) renew a licence for a term not exceeding five years subject to such terms and conditions as he thinks fit;

- (b) wholly or partly remit all or any of the terms and conditions contained in any licence where, owing to special circumstances, in his opinion, compliance therewith would be impossible or great hardship would be inflicted upon the licensee;
- (c) extend time to the licensee for complying with the terms and conditions of any licence upon such terms and conditions as he may think fit;
- (d) accept, whether with a view to the renewal or re-grant of any licence or otherwise the surrender of any licence or any part of the area comprised therein upon such terms and conditions as he may think fit, but so however that no such surrender shall affect any liability incurred by the licensee before the surrender shall have taken effect.

10. Transfer of licence

The licensee shall not transfer or assign his licence or any part thereof without the consent in writing of the Minister signified by endorsement thereon.

11. Forfeiture of licence

(1) The Minister may, by notice to the licensee, declare a licence to be forfeited

- (a) if the licensee ceases work in or under the land the subject of the licence during a continuous period of six months, without the written consent of the Minister;
- (b) if the licensee commits a breach or is in default of any provision of this Act or of the regulations made thereunder or of any terms or conditions of the licence and the Minister has caused a notice to be served upon the licensee requiring him—
 - (i) in the case of a breach which, in the opinion of the Minister, is capable of being repaired or made good, to repair or make good the breach within a specified period;
 - (ii) in the case of a breach which, in the opinion of the Minister, is not capable of being repaired or made good, to show cause within a specified period why his licence should not be forfeited.

(2) The forfeiture of a licence under subsection (1) shall not affect any liability already incurred by the licensee.

(3) The forfeiture of a licence under subsection (1) shall be published in the *Gazette*.

12. Rent and penalty for non-payment of rent

The licensee shall in respect of his licence pay yearly in advance such rent as may be prescribed by the Minister and, if the rent is not paid within three months of becoming due a penalty of ten *per centum* shall be payable as if it were part of the rent.

13. Licensee to re-enter under certain conditions

(1) Any licensee whose licence has expired or has been surrendered or forfeited may, within ninety days of the date of the expiry, surrender or forfeiture,

apply to the Minister to enter the land which was comprised in the licence to remove the plant, machinery, engines or tools installed or erected on the land.

(2) The Minister may require the licensee to remove the plant, machinery, engines or tools within a reasonable time, and if the plant, machinery, engines or tools are not removed within a reasonable time they may be sold by auction at the risk of the licensee.

(3) The net proceeds of the sale conducted pursuant to subsection (2) shall be held until applied for by the licensee but may be used in the repair of breaches or faults not made goods by the licensee and for the payment of the costs incurred in conducting the sale.

14. Power of licensee in respect of the generation of electricity

The holder of a licence under the Electric Power Act (Cap. 314), may for the purposes of generating, transmitting or supplying electrical power—

- (a) extract, take, use and apply geothermal resources on or under any land which is the subject of licence;
- (b) erect, construct, provide and use such works and appliances as may be necessary for the purpose of generating electricity, and in connection with the transmission, use, supply and sale of electricity.

15. Authorities, etc. to be registered

Every authority and licence issued under this Act shall be registered in the prescribed manner.

PART III – SAFETY AND ACCIDENTS

16. Safety of persons

A licensee shall be liable for any loss, damage or injury to any person or property resulting from his works or operations, whether as a result of negligence or otherwise.

17. Minister may require bore to be closed

(1) Notwithstanding any other provisions of this Act, the Minister may, at any time, order a bore to be closed after giving notice to any person in accordance with subsection (2) on any of the following grounds—

- (a) that the bore is a source of danger to persons or property in the vicinity;
- (b) that the bore is, in the opinion of the Minister, affecting detrimentally other specified bores or a specified tourist attraction or the supplies of geothermal resources for other specified purposes;
- (c) that the bore is a nuisance in law or that it is otherwise in the public interest that the bore should be closed;
- (d) that the bore is no longer necessary for operation in accordance with plans approved by him;

- (e) for the protection of the environment including ground water against contamination; or
- (f) in the interest of conservation of the geothermal resources.

(2) Notice to close a bore may be given under this section by the Minister to the licensee entitled to use or apply the geothermal resources from the bore for any purpose and if there is no licence granted under this Act the notice may be given to any of the following—

- (a) the person authorized by the Minister to make the bore;
- (b) a person who made or assisted to make the bore without any authority;
- (c) the owner of the land if he permitted the bore to be made without the authority of the Minister.

(3) No compensation resulting from the closure of any bore shall be payable by the Government but the Minister may consider the refund of part of the fees which may have been paid in respect of any authority or licence in relation to a bore which he has ordered to be closed under this section, except that no refund of any part of fees shall be made in respect of any bore made without the authority of the Minister.

PART IV – MISCELLANEOUS PROVISIONS

18. Compensation for injury or damage to land

- (1) Except as otherwise provided in this Act every person who—
 - (a) has an interest in any land injuriously affected by the exercise of any of the powers conferred by this Act or conferred by any authority or licence granted under this Act; or
 - (b) suffers any damage from the exercise of any powers so conferred,shall be entitled to compensation, determined by the Minister, for the loss, injury and damage suffered by him.

(2) Any person aggrieved by a determination of the Minister under subsection (1) may appeal against such determination to the High Court.

19. Payment of compensation to land owners and occupiers

(1) Whenever, in the course of searching or boring for geothermal resources, any disturbance of the rights of the owner or occupier of any land or a nuisance or damage to that land or to any crops, trees, buildings, stock or works thereon is caused, the holder of the authority or licence under which such operations are carried out shall pay to the owner or occupier a fair and reasonable compensation for such disturbance, nuisance or damage.

(2) If the person referred to in subsection (1) fails to pay compensation or if an owner or occupier is dissatisfied with the compensation offered to him, the owner or occupier may within one month of the demand having been made refer the matter to the High Court which shall assess and determine the amount of compensation to be paid.

20. Notice in respect of private land

(1) Where a licensee intends to occupy or disturb the surface of any particular area of private land or to disturb or otherwise interfere with any crops, trees, buildings or works thereon, he shall give not less than twenty-one days notice in writing of his intention to the person in visible and immediate occupation of the land affected thereby and, if practicable, to the owner of the land.

(2) When the occupation, disturbance or interference referred to in subsection (1) has continued for a period of thirty consecutive days, the owner or occupier of the land affected may require the licensee to give security, in such sum and by such means as the Minister may direct, for meeting any compensation payable under section 19 to the owner or occupier of the land.

(3) In this section “**owner**” means—

- (a) in case of trust land the county council in which the land is vested;
- (b) in the case of land owned by group representatives under the Land (Group Representatives) Act (Cap. 287), that group;
- (c) in the case of other land, the registered owner, lessee or grantee.

(4) In the case of land owned by group representative under the Land (Group Representatives) Act (Cap. 287), the notice required under subsection (1) to be given to the owner of the land may be sent by post addressed to the postal address of the group representatives or delivered personally to the office of that group.

21. Charges payable for extraction of geothermal resources for certain purposes

The Minister shall levy the prescribed fees, rentals and royalties for the extraction of geothermal resources for industrial or commercial purposes and for any other purposes which may be determined by the Minister.

22. Offences

(1) Every person who sinks any bore or who extracts, takes, uses or applies geothermal resources in contravention of this Act shall be guilty of an offence.

(2) Every person who removes, damages, destroys or otherwise interferes with any survey pegs or beacons placed on the ground in connection with any survey lawfully carried on under this Act or any valve or instrument being used in connection with any such survey or with any bore shall be guilty of an offence.

23. Penalties

Any person who is guilty of an offence under this Act shall be liable to a fine not exceeding ten thousand shillings and if the offence is a continuing one, to a further fine not exceeding one thousand shillings for every day or part of a day during which the offence continues.

24. Regulations

(1) The Minister may make regulations necessary for carrying into effect the provisions of this Act.

- (2) Regulations may be made under this section for the following purposes—
- (a) prescribing any forms that may be required for the purposes of this Act;
 - (b) prescribing conditions upon or subject to which authorities and licences may be applied for, granted or renewed;
 - (c) providing for the keeping of records and the furnishing of information and returns by persons authorized by or under this Act, and prescribing the nature of the records, information, and returns and the form, manner and time in which they shall be kept or furnished;
 - (d) prescribing matters in respect of which fees, rents and royalties are to be payable under this Act and the amount of fees and rents, and persons liable to pay them;
 - (e) authorizing the refund of fees, rents or remission, in such circumstances as the Minister thinks fit, of any fees or rentals payable under this Act;
 - (f) prescribing the responsibilities of licensees and persons to whom authorities are granted by or under this Act, and the operations to be carried out under licences;
 - (g) prescribing the qualifications of persons in charge of the making and closing of bores, and in particular, of persons employed as bore managers, and providing for the examination of any grant of certificates to qualified persons;
 - (h) preventing or abating nuisances in or about bores and industries using geothermal resources;
 - (i) prescribing safety precautions in the making and after the completion of bores, and the treatment of the ground above any bore and of water above and below the ground, and preventing waste or loss of geothermal resources;
 - (j) prescribing drilling machinery, materials, and casting to be used in making of bores and to be available to cope with any emergency in connection with any bore, and prohibiting the use of other classes of materials thereof;
 - (k) prohibiting or regulating the making of bores near other bores;
 - (l) regulating the cessation of boring operations and the abandonment and closing of bores and prescribing precautions against loosening the earth in the vicinity of any bore;
 - (m) providing for bores to be made with due diligence and by safe and satisfactory methods;
 - (n) generally regulating the making of bores;
 - (o) providing for the exemption of licensees and persons to whom authorities have been granted under this Act, either wholly or partially, and either absolutely or conditionally, from any of the requirements of their licences or authorities or of regulations made under this section.
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