

CHAPTER 38-08 CONTROL OF GAS AND OIL RESOURCES

38-08-01. Declaration of policy.

It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be had and that the correlative rights of all owners be fully protected; and to encourage and to authorize cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources.

38-08-02. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Certificate of clearance" means a permit prescribed by the commission for the transportation or the delivery of oil or gas or product and issued or registered in accordance with the rule, regulation, or order requiring such permit.
2. "Commission" means the industrial commission.
3. "Field" means the general area underlaid by one or more pools.
4. "Gas" means and includes all natural gas and all other fluid hydrocarbons not hereinbelow defined as oil.
5. "Illegal gas" means gas which has been produced from any well within this state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any gas produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any gas produced or removed from the well premises without the knowledge and consent of the operator.
6. "Illegal oil" means oil which has been produced from any well within the state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any oil produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any oil produced or removed from the well premises without the knowledge and consent of the operator.
7. "Illegal product" means any product derived in whole or in part from illegal oil or illegal gas.
8. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
9. "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces therefrom either for that person or others or for that person and others.
10. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.
11. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.
12. "Producer" means the owner of a well or wells capable of producing oil or gas or both.
13. "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one

or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

14. "Reasonable market demand" means the demand for oil or gas for reasonable current requirements for consumption and use within and without the state, together with such quantities as are reasonably necessary for building up or maintaining reasonable working stocks and reasonable reserves of oil or gas or product.
15. "Reserve pit" means an excavated area used to contain drill cuttings accumulated during oil and gas drilling operations and mud-laden oil and gas drilling fluids used to confine oil, gas, or water to its native strata during the drilling of an oil and gas well.
16. "Waste" means and includes:
 - a. Physical waste, as that term is generally understood in the oil and gas industry.
 - b. The inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy.
 - c. The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas.
 - d. The inefficient storing of oil.
 - e. The production of oil or gas in excess of transportation or marketing facilities or in excess of reasonable market demand.
17. The word "and" includes the word "or" and the use of the word "or" includes the word "and". The use of the plural includes the singular and the use of the singular includes the plural.

38-08-03. Waste prohibited.

Waste of oil and gas is prohibited.

38-08-04. Jurisdiction of commission.

The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission. The commission has the authority:

1. To require:
 - a. Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.
 - b. The making and filing with the industrial commission of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys, if taken, and the filing of reports on well location, drilling, and production.
 - c. The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of freshwater supplies by oil, gas, or saltwater, and to prevent blowouts, cavings, seepages, and fires.
 - d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit under such terms and conditions as the industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

- e. That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission.
 - f. The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
 - g. Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
 - h. Metering or other measuring of oil, gas, or product related to production in pipelines, gathering systems, storage tanks, barge terminals, loading racks, refineries, or other places, by meters or other measuring devices approved by the commission.
 - i. Every person who produces, sells, purchases, acquires, stores, transports, refines, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state to keep and maintain within this state complete and accurate records of the quantities thereof, which records must be available for examination by the commission or its agents at all reasonable times, and to file with the commission reports as the commission may prescribe with respect to oil or gas or the products thereof. An oil and gas production report need not be notarized but must be signed by the person submitting the report.
 - j. The payment of fees for services performed. The amount of the fee shall be set by the commission based on the anticipated actual cost of the service rendered. Unless otherwise provided by statute, all fees collected by the commission must be deposited in the general fund of this state, according to procedures established by the state treasurer.
 - k. The filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well.
 - l. The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations. After a well has been in abandoned-well status for one year, the well's equipment, all well-related equipment at the well site, and salable oil at the well site are subject to forfeiture by the commission. If the commission exercises this authority, section 38-08-04.9 applies. After a well has been in abandoned-well status for one year, the single-well bond referred to above, or any other bond covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission.
2. To regulate:
 - a. The drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.
 - b. The shooting and chemical treatment of wells.
 - c. The spacing of wells.
 - d. Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations.
 - e. Disposal of saltwater and oilfield wastes.
 - f. The underground storage of oil or gas.
 3. To limit and to allocate the production of oil and gas from any field, pool, or area and to establish and define as separate marketing districts those contiguous areas within the state which supply oil and gas to different markets, and to limit and allocate the production of oil and gas for each separate marketing district.

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in subsection 8 of section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations under section 57-51.1-01, and the date of qualification for the reduced rate of oil extraction tax for secondary and tertiary recovery operations.
5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and the commission's responsibilities under chapter 57-51.1.
6. To provide for the confidentiality of well data reported to the commission if requested in writing by those reporting the data for a period not to exceed six months.

38-08-04.1. Commission may employ examiners.

The industrial commission may use hearing examiners under such rules and regulations as the commission may prescribe.

38-08-04.2. Director of mineral resources - Director of oil and gas - Delegation to director of oil and gas.

The industrial commission is authorized to appoint a director of mineral resources who shall serve at the pleasure of the commission. The director of mineral resources shall carry out the duties of the director of oil and gas along with the duties of director of mineral resources. The commission may set the salary of the director of mineral resources. The commission may delegate to the director of oil and gas all powers the commission has under this title and under rules enacted under this title.

38-08-04.3. State geologist to assist commission.

Repealed by S.L. 1991, ch. 387, § 2.

38-08-04.4. Commission authorized to enter into contracts.

The commission is hereby authorized to enter into public and private contractual agreements for the plugging or replugging of oil and gas or injection wells, the removal or repair of related equipment, and the reclamation of abandoned oil and gas or injection well sites if any of the following apply:

1. The person or company drilling or operating the well or equipment cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, or cannot be legally required to plug or replug the well or to reclaim the well site.
2. There is no bond covering the well to be plugged or the site to be reclaimed or there is a bond but the cost of plugging or replugging the well or reclaiming the site exceeds the amount of the bond.
3. The well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Reclamation work must be limited to abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads. Sealed bids for any well plugging or reclamation work under this section must be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids must be addressed to the commission and must be opened publicly at the time and place designated in the notice. The contract must be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to mitigate the problem.

The contracts for the plugging or replugging of wells or the reclamation of well sites must be on terms and conditions as prescribed by the commission, but at a minimum the contracts shall

require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund.

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
 - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
 - b. Moneys received from the forfeiture of drilling and reclamation bonds.
 - c. Moneys received from any federal agency for the purpose of this section.
 - d. Moneys donated to the commission for the purposes of this section.
 - e. Moneys received from the state's oil and gas impact fund.
 - f. Moneys recovered under the provisions of section 38-08-04.8.
 - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
 - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
 - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
2. Moneys in the fund may be used for the following purposes:
 - a. Contracting for the plugging of abandoned wells.
 - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
 - c. To pay mineral owners their royalty share in confiscated oil.
3. All moneys collected under this section must be deposited in the abandoned oil and gas well plugging and site reclamation fund. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities.

38-08-04.6. Oil and gas reservoir data fund - Appropriation.

There is hereby established an oil and gas reservoir data fund to be used for defraying the costs of providing reservoir data compiled by the commission to state, federal, and county departments and agencies and members of the general public. All moneys collected pursuant to section 38-08-04 for providing reservoir data under this section must be deposited in the oil and gas reservoir data fund. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of paying the current cost of providing such information as determined by the commission, based on actual costs.

38-08-04.7. Right of entry.

The commission, its agents, employees, or contractors shall have the right to enter any land for the purpose of plugging or replugging a well or the restoration of a well site as provided in section 38-08-04.4.

38-08-04.8. Recovery for costs of plugging.

If the commission, its agents, employees, or contractors, plugs or replugs a well or reclaims a well site under the provisions of sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9, and 38-08-04.10, the state has a cause of action for all reasonable expenses incurred in the plugging, replugging, or reclamation against the operator of the well at the time the well is required to be plugged and abandoned or any or all persons who own a working interest in the well at the time the well is required to be plugged and abandoned as a result of the ownership of a lease or mineral interest in the property on which the well is located. The term "working interest owner" does not mean a royalty owner or an overriding royalty interest owner. The commission shall seek reimbursement for all reasonable expenses incurred in

plugging any well or reclaiming any well site through an action instituted by the attorney general. The liability of any working interest owner under this section shall be limited to that proportion of the reasonable expenses incurred by the commission that the interest of any such working interest owner bears to the entire working interest in the well. Any money collected in a suit under this section must be deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit brought by the commission for reimbursement under this section may be brought in the district court for Burleigh County, the county in which the plugged well or reclaimed well site is located, or the county in which any defendant resides.

38-08-04.9. Confiscation of equipment and salable oil to cover plugging costs.

When the commission intends to exercise or has exercised its right to plug a well or reclaim a well site, the commission, as compensation for its costs, may confiscate any production-related equipment and salable oil at the well site. The equipment subject to confiscation is limited to that owned by the well's operator, former operator, or working interest owner. If the commission exercises its authority under this section and there is salable oil at the well, that oil must be confiscated. The commission shall pay the mineral owners the royalty interest in the oil confiscated. In determining the mineral owners and their royalty interests, the commission may rely upon the most recent division order it is able to obtain. If one is unavailable or the commission finds the order unreliable, the commission may rely upon any other source of information the commission deems reasonable to determine and pay mineral owners. A confiscation must be by an order of the commission after notice and hearing. A confiscation order transfers title to the commission.

38-08-04.10. Penalties and other relief.

The plugging or replugging of a well or reclamation of a well site by the commission, its agents, employees, or contractors, shall not prevent the commission from seeking penalties or other relief provided by law from any person who is required by statutes, rules, or order of the commission to plug or replug a well or reclaim the surface.

38-08-04.11. Cash bond fund for plugging oil and gas wells and reclamation of oil and gas well sites - Appropriation.

1. There is hereby created a cash bond fund for the plugging of abandoned oil and gas wells and the reclamation of abandoned oil and gas well sites.
2. From all moneys held or controlled by the commission under subdivision d of subsection 1 of section 38-08-04, there is to be deposited in the cash bond fund such amount as determined by the commission but such amount may not exceed an amount equal to an annual return of two percent of the cash bond deposit.
3. Moneys in the cash bond fund are hereby appropriated to the commission to be used for the following purposes:
 - a. Defraying costs incurred in the plugging of abandoned oil and gas wells, and related activities.
 - b. Defraying costs incurred in the reclamation of abandoned oil and gas drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads, and related activities.

38-08-05. Drilling permit required.

It is unlawful to commence operations for the drilling of a well for oil or gas without first obtaining a permit from the industrial commission under such rules as may be prescribed by the commission and paying to the commission a fee for each such well in an amount to be prescribed by the commission. The applicant shall provide notice to the owner of any permanently occupied dwelling located within one-quarter mile [402.34 meters] of the proposed oil or gas well. Unless waived by the owner or if the commission determines that the well location is reasonably necessary to prevent waste or to protect correlative rights, the commission may not issue a drilling permit for an oil or gas well that will be located within five hundred feet [152.4 meters] of an occupied dwelling. If the commission issues a drilling permit

for a location within five hundred feet [152.4 meters] of an occupied dwelling, the commission may impose such conditions on the permit as the commission determines reasonably necessary to minimize impact to the owner of the dwelling.

38-08-06. Commission shall determine market demand and regulate the amount of production.

The commission shall determine market demand for each marketing district and regulate the amount of production as follows:

1. The commission shall limit the production of oil and gas within each marketing district to that amount which can be produced without waste, and which does not exceed the reasonable market demand.
2. Whenever the commission limits the total amount of oil or gas which may be produced in the state or a marketing district, the commission shall allocate or distribute the allowable production among the pools therein on a reasonable basis, giving, where reasonable under the circumstances to each pool with small wells of settled production, an allowable production which prevents the general premature abandonment of such wells in the pool.
3. Whenever the commission limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction was imposed, which limitation is imposed either incidental to, or without, a limitation of the total amount of oil or gas produced in the marketing district wherein the pool is located, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonable avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.
4. In allocating the market demand for gas as between pools within marketing districts, the commission shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner as will protect the reasonable use of its energy for oil production.
5. The commission is not required to determine the reasonable market demand applicable to any single pool, except in relation to all other pools within the same marketing district, and in relation to the demand applicable to the marketing district. In allocating allowables to pools, the commission may consider, but is not bound by, nominations of purchasers to purchase from particular fields, pools, or portions thereof. The commission shall allocate the total allowable for the state in such manner as prevents undue discrimination between marketing districts, fields, pools, or portions thereof resulting from selective buying or nomination by purchasers.

38-08-06.1. Natural gas well status determinations and findings.

Repealed by S.L. 1997, ch. 318, § 1.

38-08-06.2. Discrimination in the processing and purchasing of gas prohibited.

Gas produced in this state must be processed and purchased without discrimination between producers in the same reservoir, recognizing the right of the purchaser to establish reasonable quality standards for acceptance of gas, which must be applied without discrimination among producers. After notice and hearing, for good cause, the commission may relieve any person of the duty to process and purchase gas produced in this state without discrimination.

38-08-06.3. Information statement to accompany payment to royalty owner - Penalty.

Any person who makes a payment to an owner of a royalty interest in land in this state for the purchase of oil or gas produced from that royalty interest shall provide with the payment to the royalty owner an information statement that will allow the royalty owner to clearly identify the amount of oil or gas sold and the amount and purpose of each deduction made from the gross

amount due. The statement must be on forms approved by the industrial commission and contain the information that the commission prescribes by rule. A person who fails to comply with the requirements of this section is guilty of a class B misdemeanor.

38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority.

As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well. Thereafter, flaring of gas from the well must cease and the well must be capped, connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well. An electrical generator and its attachment units to produce electricity from gas must be considered to be personal property for all purposes. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas is economically infeasible.

38-08-07. Commission shall set spacing units.

The commission shall set spacing units as follows:

1. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission shall establish spacing units for a pool. Spacing units when established must be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the commission is authorized to divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.
2. The size and shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole.
3. An order establishing spacing units for a pool must specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the commission finds that a well drilled at the prescribed location would not produce in paying quantities, that surface conditions would substantially add to the burden or hazard of drilling such well, or that the drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery of oil and gas, the commission is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the commission shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.
4. An order establishing units for a pool must cover all lands determined or believed to be underlaid by such pool, and may be modified by the commission from time to time to include additional areas determined to be underlaid by such pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing spacing units in a pool may be modified by the commission to increase or decrease the size of spacing units in the pool or any zone thereof, or to permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof, or an additional well on any spacing unit thereof.

38-08-08. Integration of fractional tracts.

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission upon the application of any interested person shall enter an order pooling all interests in the spacing unit for the development and operations thereof. Each such pooling order must be made after notice and hearing, and must be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, that owner's just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order must be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. For the purposes of this section and section 38-08-10, any unleased mineral interest pooled by virtue of this section before August 1, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit, but in no event may the royalty interest of an unleased tract be less than a one-eighth interest. An unleased mineral interest pooled after July 31, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit or, at the operator's election, a cost-free royalty interest of sixteen percent. The remainder of the unleased interest must be treated as a lessee or cost-bearing interest.
2. Each such pooling order must make provision for the drilling and operation of a well on the spacing unit, and for the payment of the reasonable actual cost thereof by the owners of interests in the spacing unit, plus a reasonable charge for supervision. In the event of any dispute as to such costs, the commission shall determine the proper costs. If one or more of the owners shall drill and operate, or pay the expenses of drilling and operating the well for the benefit of others, then, the owner or owners so drilling or operating shall, upon complying with the terms of section 38-08-10, have a lien on the share of production from the spacing unit accruing to the interest of each of the other owners for the payment of the owner's or owners' proportionate share of such expenses. All the oil and gas subject to the lien must be marketed and sold and the proceeds applied in payment of the expenses secured by such lien as provided for in section 38-08-10.
3. In addition to any costs and charges recoverable under subsections 1 and 2, if the owner of an interest in a spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating owner's share of the drilling and operation of a well may recover from the nonparticipating owner a risk penalty for the risk involved in drilling the well. The recovery of a risk penalty is as follows:
 - a. If the nonparticipating owner's interest in the spacing unit is derived from a lease or other contract for development, the risk penalty is two hundred percent of the nonparticipating owner's share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty or overriding royalty.
 - b. If the nonparticipating owner's interest in the spacing unit is not subject to a lease or other contract for development, the risk penalty is fifty percent of the nonparticipating owner's share of the reasonable actual costs of drilling and completing the well and may be recovered out of production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty provided for in subsection 1.

- c. The owner paying for the nonparticipating owner's share of the drilling and operation of a well may recover from the nonparticipating owner a risk penalty for the risk involved in drilling and completing the well only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk and cost of drilling the well. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.

38-08-09. Voluntary agreements for unit operation valid.

An agreement for the unit or cooperative development and operation of a field or pool, in connection with the conduct of repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of operation, including water floods, is authorized and may be performed and may not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the commission as being in the public interest, protective of correlative rights, and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. Such agreements bind only the persons who execute them, and their heirs, successors, assigns, and legal representatives.

38-08-09.1. Legislative finding.

The legislative assembly finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation, and further development of the oil and gas properties to which sections 38-08-09.1 through 38-08-09.16 are applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, the drilling of unnecessary wells eliminated, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights be protected.

38-08-09.2. Power and authority of commission.

The commission is hereby vested with continuing jurisdiction, power, and authority, including the right to describe and set forth in its orders all those things pertaining to the plan of unitization which are fair, reasonable, and equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, and it is 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 sections 38-08-09.1 through 38-08-09.16.

38-08-09.3. Matters to be found by commission - Requisites of petition.

If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the commission shall find:

1. That the unitized management, operation, and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply;
2. That one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste, and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered;

3. That the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and
4. That such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected,

it shall make a finding to that effect and make an order creating the unit and providing for the unitization and unitized operation of the common source of supply 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, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants, and others, as well as the lessees. The petition must set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the commission as hereinabove provided and must have attached thereto a proposed plan of unitization applicable to such proposed unit area and which the petitioner or petitioners consider to be fair, reasonable, and equitable.

38-08-09.4. Order - Units and unit areas - Plan of unitization.

The order of the commission must define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

Each unit and unit area must be limited to all or a portion of a single common source of supply.

A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created, and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

The plan of unitization for each such unit and unit area must be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions, and requirements found by the commission to be reasonably necessary or proper to effectuate or accomplish the purposes of sections 38-08-09.1 through 38-08-09.16, and subject to the further requirements hereof, each such plan of unitization must contain fair, reasonable, and equitable provisions for:

1. The efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan, the actual operations within the unit area may be carried on in whole or in part by the unit itself, or by one or more of the lessees within the unit area as unit operator subject to the supervision and direction of the unit, dependent upon what is most beneficial or expedient. The designation of the unit operator must be by a vote of the working interest owners in the unit in a manner provided by the plan of unitization and not by the commission, and the unit-operating agreement must contain a provision that the owners of a simple majority of the working interest in the unit area may vote to change the unit operator.
2. The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce or receive, in lieu thereof, their fair, equitable, and reasonable share of the unit production or other benefits thereof. A separately owned tract's fair, equitable, and reasonable share of the unit production must be measured by the value of each such 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 [hectarage], the quantity of oil and gas recoverable therefrom, location on structure, its probable 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, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in sections 38-08-09.1 through 38-08-09.16 means and includes all oil and gas produced from a unit area from and after the effective date of the order of the commission creating the unit regardless of the well or tract within the unit area from which the same is produced.
3. The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms, and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and legal rate of interest as may be fair to all concerned, reasonable provision must be made in the plan of unitization for carrying or otherwise financing owners who are unable to promptly meet their financial obligations in connection with the unit and, in addition to the unit expense assessed against each tract and chargeable to each owner, the recovery of a risk penalty from each owner electing not to participate in the unit expense. The recovery of the risk penalty is as follows:
 - a. If the nonparticipating owner's interest in the unit is derived from a lease or other contract for development, the risk penalty is two hundred percent of the nonparticipating owner's share of the unit expense and may be recovered out of, and only out of, production from the unit, exclusive of any royalty or overriding royalty.
 - b. If the nonparticipating owner's interest in the unit is not subject to a lease or other contract for development, the penalty is fifty percent of the nonparticipating owner's share of the unit expense and may be recovered out of production from the unit exclusive of any royalty provided for in section 38-08-09.13.
 - c. The owner paying for the nonparticipating owner's share of the unit expense may recover from the nonparticipating owner a risk penalty for the risk involved in the unit expense only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk of the unit expense. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.
 4. The procedure and basis upon which wells, equipment, and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of unit operation.
 5. The creation of an operating committee to have general overall management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards, or officers to function under authority of the operating committee as may be necessary, proper, or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards, or officers and prescribing their tenure and time and method for their selection.
 6. The time when the plan of unitization shall become and be effective.
 7. The time when and conditions under which and the method by which the unit must or may be dissolved and its affairs wound up; however, the unit may be dissolved ten years after the unit agreement becomes effective upon a petition to the commission by the royalty owners who are credited with at least eighty percent of the production and

proceeds thereof or for units established after August 1, 2001, upon a petition to the commission by the royalty owners who are credited with at least sixty percent of the production and proceeds thereof, and a subsequent hearing and order by the commission. The commission may not dissolve any unit if the dissolution would be likely to result in waste or the violation of the correlative rights of any owner. This provision does not limit or restrict any other authority which the commission has.

38-08-09.5. Ratification or approval of plan by lessees and owners.

At the time of filing of the petition for the approval of a unit agreement and the filing of the unit agreement, the commission shall schedule a hearing. At least forty-five days prior to the hearing, the applicant shall give notice of the hearing and shall mail, postage prepaid, a copy of the application and the proposed plan of unitization to each affected person owning an interest of record in the unit outline, at such person's last-known post-office address. In addition, the applicant shall file with the commission engineering, geological, and all other technical exhibits to be used at the hearing, and further, the notice must specify that such material is filed and is available for inspection. Service is complete in the mailing of the notice of hearing and unit agreement to each interest owner as described in this section and the filing of an affidavit of mailing with the commission. No order of the commission creating a unit and prescribing its plan of unitization becomes effective until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay at least sixty percent of the costs of the unit operation and by the owners of at least sixty percent of the royalty interests, excluding overriding royalties, production payments, and other interests carved out of the working interest, and in addition it is required that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two royalty interest owners, are required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest. If the plan of unitization has not been signed, ratified, or approved by lessees and royalty owners owning the required percentage interest at the time the order creating the unit is made, the commission shall, upon petition and notice, hold such additional hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest and shall, in respect to such hearings, enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest have not signed, ratified, or approved the plan of unitization within six months from the date on which the order creating the unit is made, the order ceases to be of further force and effect and shall be revoked by the commission.

38-08-09.6. Unlawful operation.

From and after the effective date of an order of the commission creating a unit and prescribing the plan of unitization applicable thereto, the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in such plan of unitization is unlawful and is hereby prohibited.

38-08-09.7. Status and powers of unit - Liability for expenses - Liens.

Each unit created under the provisions of sections 38-08-09.1 through 38-08-09.16 is a body politic and corporate, capable of suing, being sued, and contracting as such in its own name. Each such unit is authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage, and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of sections 38-08-09.1 through 38-08-09.16 and by the plan of unitization.

The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately owned tracts for the payment of unit expense is at all times several and not

joint or collective and in no event may a lessee or other owner of the oil and gas rights in the separately owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed, or otherwise charged to that person's interest in such separately owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for within sections 38-08-09.1 through 38-08-09.16.

Any nonsigning working interest owner may withdraw from the unit to which that person's interest is committed by transferring, without warranty of title, either express or implied, to the unit operator on the behalf of the other working interest owners, all of that person's working interest in all unit equipment and in all wells used in unit operations. The instrument of transfer must be delivered to the unit operator. Such transfer relieves the withdrawing working interest owner from any liability for unit operations except any incurred pursuant to sections 38-08-09.1 through 38-08-09.16. The interest so transferred is owned by the other working interest owners in proportion to their respective participation in the unit. The unit operator, on the behalf of the other working interest owners, in proportion to their respective interests so acquired, shall pay the transferor for the transferor's interest in unit equipment and wells the net salvage value thereof as determined by agreement between the transferor and the unit operator. In the event such net salvage value is not agreed upon within sixty days after such transfer, then either party may request a hearing of the matter before the commission, and, after notice and hearing, the commission shall determine such value.

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit has a first and prior lien upon the leasehold production (exclusive of such interests which are free of costs, such as royalties, overriding royalties, and production payments) in and to each separately owned tract, the interest of the owners thereof in and to the unit production 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. The interest of the lessee or other persons who by lease, contract, or otherwise are obligated or responsible for the cost and expense of developing and operating a separately owned tract for oil and gas in the absence of unitization, must, however, be primarily responsible for and charged with any assessment for unit expense made against such tract. Any landowner royalty or any overriding royalty, or any production payment which is a part of the unit production allocated to each separately owned tract must in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to the royalty owners free and clear of all unit expense and free of any lien thereof.

38-08-09.8. Modification of property rights, leases, and contracts - Title to property - Distribution of proceeds - Effect of operations.

Property rights, leases, contracts, and all other rights and obligations must be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of sections 38-08-09.1 through 38-08-09.16 and to any valid and applicable plan of unitization or order of the commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

Nothing contained in sections 38-08-09.1 through 38-08-09.16 may be construed to require a transfer to or vesting in the unit of title to the separately owned tracts or leases thereon within the unit area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor may the unit be regarded as owning the unit production. The unit production and the proceeds from the sale thereof are owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold, or possess may not be acquired, held, or possessed by the unit for its own account but must be so acquired, held, and possessed by the unit for the account and as agent of the several lessees and is the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use, or disposal of the same in the proper conduct of its affairs.

The amount of the unit production allocated to each separately owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately owned tract, must for all intents, uses, and purposes be regarded and considered as production from such separately owned tract, and,

except as may be otherwise authorized in sections 38-08-09.1 through 38-08-09.16, or in the plan of unitization approved by the commission, must be distributed among or the proceeds thereof paid to the several persons entitled to share in the production from such separately owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately owned tract must be delivered in kind to the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners subject to the rights of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such proportions of the gas for operating purposes as may be provided in the plan of unitization.

Operations carried on under and in accordance with the plan of unitization must be regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the development thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located must for all purposes be regarded as wells drilled on each separately owned tract within such unit area.

Nothing herein or in any plan of unitization may be construed as increasing or decreasing the express or implied covenants of a lease in respect to a unit source of supply or lands not included within the unit area of a unit. However, when an oil and gas lease covers and affects lands partially within and partially without the unit area, unit operations and unit production allocated to the lease, as provided in this section, may not be deemed operations on or production from the lease as to the lands covered by the lease lying outside the unit area after two years from the effective date of the order of the commission creating and approving the unit or the expiration of the primary term of the lease, whichever is the later date. After the later date, the lease as to lands outside the unit area may be maintained in force and effect only in accordance with the terms and provisions contained in the lease.

38-08-09.9. Enlargement of area - Creation of new units - Amendment of plan.

The unit area of a unit may be enlarged at any time by the commission, subject to the limitations hereinbefore provided to include adjoining portions of the same common source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation, and further development of such enlarged unit area, or the plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance, except, that where an amendment to a plan of unitization relates only to the rights and obligations as between lessees, or the amendment to a plan of unitization or the enlargement of a unit area is found by the commission to be reasonably necessary in order to effectively carry on the joint effort, to prevent waste, and to protect correlative rights, and that such will result in the general advantage of the owners of the oil and gas rights within the unit area and the proposed enlarged unit area, and the persons and owners in the proposed added unit area have ratified or approved the plan of unitization as required by section 38-08-09.5, then such amendment to a plan of unitization or the enlargement of a unit area need not be ratified or approved by royalty owners of record in the existing unit area provided that written notice thereof is mailed to such royalty owners by the operator of a unit not more than forty days nor less than thirty days prior to the commission hearing. The notice must describe the plan for the unit amendment or enlargement together with the participation factor to be given each tract in the unit area and in the proposed area and must contain the time and place of the commission hearing. An affidavit of mailing verifying such notice must be filed with the commission. Said notice must further provide that in the event ten percent of the royalty interests or working interests in the existing unit area file with the commission at least ten days prior to the commission proceeding an objection to the plan of enlargement, the commission shall require

that the unit amendment or enlargement be approved by sixty percent of all royalty interests and working interests in the existing and proposed areas.

38-08-09.10. Reasonableness of plan.

A plan of unitization may not be considered fair and reasonable if it contains a provision for operating charges which include any part of district or central office expenses other than reasonable overhead charges.

38-08-09.11. Participating by public lands.

The proper board or officer of the state having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state, are hereby authorized and have the power on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land or oil and gas rights, subject to the control and management of such respective body, board, or officer, to consent to or participate in any plan or program of unitization adopted pursuant to sections 38-08-09.1 through 38-08-09.16.

38-08-09.12. Receipts as income.

Neither the unit production, nor proceeds from the sale thereof, nor other receipts may be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts are the income of the several persons to whom or to whose credit the same are payable under the plan of unitization. To the extent the unit may receive or disburse said receipts, it shall only do so as a common administrative agent of the persons to whom the same are payable.

38-08-09.13. Definitions.

For the purposes of sections 38-08-09.1 through 38-08-09.16, unless the context otherwise requires:

1. "Lessee" refers not only to lessees under oil and gas leases but also includes owners of unleased mineral rights having the right to develop the same for oil and gas to the extent of a seven-eighths interest.
2. "Oil and gas" refers not only to oil and gas as such in combination one with the other, but shall have general reference to oil, gas, casinghead gas, casinghead gasoline, gas-distillate, or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source of supply of oil, oil and gas, or gas-distillate.
3. "Person" means and includes any individual, corporation, limited liability company, partnership, common-law or statutory trust, association of any kind, the state of North Dakota, or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind, or any other entity or being capable of owning an interest in and to a unit source of supply of oil and gas.
4. "Unit expense" includes and means any and all cost and expense in the conduct and management of its affairs or the operations carried on by it.
5. Any reference to a separately owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas, shall have reference thereto only in relation to the unit source of supply or portion thereof embraced within the unit area of a particular unit.

38-08-09.14. Severability of provisions.

Repealed by S.L. 1983, ch. 82, § 154.

38-08-09.15. Agreement 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, may 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.

38-08-09.16. Appeals.

Any person adversely affected by an order of the commission made under sections 38-08-09.1 through 38-08-09.16 may appeal from such order to the district court of the county in which the land or a part thereof involved in the unit lies, in the manner provided in section 38-08-14.

38-08-09.17. Unit of more than one pool - Unit source of supply.

The commission upon its own motion may, and upon petition of any interested person shall, after notice therefor, hold a hearing to consider the need for the operation as a unit of two or more pools or parts thereof separated vertically in one field, and has the power to create such a unit and provide for the unitization and unitized operation of the unit source of supply. "Unit source of supply" means those pools or parts thereof to be produced by such unit operation as designated by order of the industrial commission. The petition, the hearing, the commission's findings and order, and all other matters must be in the form and manner and in accordance with the procedure and requirements hereinabove set forth in sections 38-08-09.1 through 38-08-09.16; provided, however, whenever and wherever the words "common source of supply" appear in said sections, the words "unit source of supply" must be substituted in lieu thereof and all other provisions of the sections shall otherwise apply.

38-08-10. Development and operating costs of integrated fractional tracts.

A person to whom another is indebted for expenses incurred in drilling and operating a well on a drilling unit required to be formed as provided for in section 38-08-08, may, in order to secure payment of the amount due, fix a lien upon the interest of the debtor in the production from the drilling unit or the unit area, as the case may be, by filing for record, with the recorder of the county where the property involved, or any part thereof, is located, an affidavit setting forth the amount due and the interest of the debtor in such production. The person to whom the amount is payable may, at the expense of the debtor, store all or any part of the production upon which the lien exists until the total amount due, including reasonable storage charges, is paid or the commodity is sold at foreclosure sale and delivery is made to the purchaser. The lien may be foreclosed as provided for with respect to foreclosure of a lien on chattels.

38-08-11. Rules covering practice before commission.

1. The commission may adopt rules governing the practice and procedure before the commission, which rules must be adopted pursuant to the provisions of chapter 28-32.
2. When an emergency requiring immediate action is found to exist, the commission may issue an emergency order without notice or hearing, reciting the existence of the emergency and requiring that necessary action be taken to meet the emergency, which order is effective upon issuance. No emergency order may remain in effect for more than forty days.
3. Any notice required by this chapter must be given at the election of the commission either in accordance with chapter 28-32 or by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice must issue in the name of the state, must be signed by the chairman or secretary of the commission, and must specify the style and number of the proceeding, the time and place of the hearing, and must briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the commission, in the same manner as is provided by law for the service of summons in civil actions in the courts of the state. Proof of the service by such agent must be by the affidavit of the person making personal service. In proceedings that do not involve a complaint and a specifically named respondent, including agency hearings on applications seeking

some right or authorization from the commission, the notice of hearing must be given at least fifteen days before the hearing, except in cases of emergency.

4. The commission may act upon its own motion or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission must fix a date for a hearing and give notice. Upon the filing of a petition of any interested party, the commission must enter its order within thirty days after a hearing. A copy of any order of the commission must be mailed to all the persons filing written appearances at the hearing.

38-08-12. Commission has power to summon witnesses, administer oaths, and to require production of records.

1. The commission has the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person may be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; provided, that nothing herein contained may 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 court for determination. No natural person may be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of the person's objection, the person may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to its subpoena; provided, that no person testifying may be exempted from prosecution and punishment for perjury committed in so testifying.
2. In case of failure or refusal on the part of any person to comply with the subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which the person may be interrogated, any court in the state, upon the application of the commission, may in termtime or vacation issue an attachment for such person and compel the person to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give the person's testimony. Such court has the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

38-08-13. Party adversely affected may apply for reconsideration.

Any party adversely affected by any order of the commission may file a written petition for reconsideration in accordance with section 28-32-40. The commission shall grant or deny any such petition in whole or in part in accordance with the provisions of section 28-32-40 and rules adopted pursuant to it.

38-08-14. Party adversely affected may appeal to district court.

1. Any party adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.
2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the

amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-48.

3. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence.

38-08-15. Acquisition and handling illegal oil and gas prohibited - Seizure of illegal oil and gas and sale thereof.

1. The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, illegal gas, or illegal product is hereby prohibited. However, no penalty by way of fine may be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, illegal gas, or illegal product unless:
 - a. Such person knows, or is put on notice, of facts indicating that illegal oil, illegal gas, or illegal product is involved; or
 - b. Such person fails to obtain a certificate of clearance with respect to such oil, gas, or product where prescribed by order of the commission, or fails to follow any other method prescribed by an order of the commission for the identification of such oil, gas, or product.
2. Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as herein provided; seizure and sale to be in addition to any and all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. Whenever the commission believes that any oil, gas, or product is illegal, the commission acting by the attorney general, shall bring a civil action in rem in the district court of the county where such oil, gas, or product is found, to seize and sell the same, or the commission may include such an action in rem for the seizure and sale of illegal oil, illegal gas, or illegal product in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. Any person claiming an interest in oil, gas, or product affected by any such action in rem has the right to intervene as an interested party in such action.
3. Actions for the seizure and sale of illegal oil, illegal gas, or illegal product must be strictly in rem and must proceed in the name of the state as plaintiff against the illegal oil, illegal gas, or illegal products as defendant. No bond or similar undertaking may be required of the plaintiff. Upon the filing of the petition for seizure and sale, the attorney general shall issue a summons, with a copy of the complaint attached thereto, which must be served in the manner provided for service in civil actions, upon any and all persons having or claiming any interest in the illegal oil, illegal gas, or illegal product described in the petition. Service must be completed by the filing of an affidavit by the person making the service, stating the time and manner of making such service. Any person who fails to appear and answer within the period of thirty days is forever barred by the judgment based on such service. The posting of copies of the summons and petition as above provided operates to place the state in constructive possession of the oil, gas, or product described in the petition. In addition, if the court, on a properly verified petition, or affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized and directing the sheriff of the county to take such oil, gas, or product into the sheriff's custody, actual or constructive, and to hold the same subject to the further order of the court. The court, in such order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by the sheriff under the order to an agent appointed by the court, as the agent of the court; such agent to give bond in an

amount and with such surety as the court may direct, conditioned upon the agent's compliance with the orders of the court concerning the custody and disposition of such oil, gas, or product.

4. Any person having an interest in oil, gas, or product described in an order of seizure and contesting the right of the state to the seizure and sale thereof may, prior to the sale thereof as herein provided, obtain the release thereof, upon furnishing bond to the sheriff approved by the court, in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released, and conditioned as the court may direct upon redelivery to the sheriff of such product released or upon payment to the sheriff of the market value thereof as the court may direct, if and when ordered by the court, and upon full compliance with the further orders of the court.
5. If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that such oil, gas, or product is contraband, the court shall order the sale thereof by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action, except that the court may order that the illegal oil, illegal gas, or illegal product be sold in specified lots or portions and at specified intervals. Upon such sale, title to the oil, gas, or product sold vests in the purchaser free of the claims of any and all persons having any title thereto or interest therein at or prior to the seizure thereof, and the same is legal oil, legal gas, or legal product, as the case may be, in the hands of the purchaser.
6. All proceeds derived from the sale of illegal oil, illegal gas, or illegal product, as above provided, after payment of costs of suit and expenses incident to the sale and all amounts paid as penalties provided for by this chapter must be paid to the state treasurer and credited to the general fund.

38-08-16. Civil and criminal penalties.

1. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission is subject to a civil penalty to be imposed by the commission not to exceed twelve thousand five hundred dollars for each offense, and each day's violation is a separate offense, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. Any such civil penalty may be compromised by the commission. The penalties provided in this section, if not paid, are recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty may not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.
2. Notwithstanding any of the other provisions of this section, a person who willfully violates any provision of this chapter, or any rule or order of the commission that pertains to the prevention or control of pollution or waste is guilty of a class C felony unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. The criminal penalty provided for in this subsection may only be imposed by a court of competent jurisdiction.

38-08-17. Action to restrain violation or threatened violation.

1. Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule, regulation, or order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court has jurisdiction to grant to the commission, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders, preliminary injunctions, temporary, preliminary or final orders restraining the

movement or disposition of any illegal oil, illegal gas, or illegal product, any of which the court may order to be impounded or placed in the custody of an agent appointed by the court.

2. If the commission fails to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule, regulation, or order of the commission, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in the person's own behalf to restrain such violation or threatened violation in any court in which the commission might have brought suit. The commission must be made a party defendant in such suit in addition to the person violating or threatening to violate a provision of this chapter, or a rule, regulation, or order of the commission, and the action must proceed and injunctive relief may be granted to the commission without bond in the same manner as if suit had been brought by the commission.

38-08-18. Existing regulations still in force.

Omitted.

38-08-19. Common purchasers - Discrimination in purchasing prohibited.

1. Every person, association of persons, corporation, or limited liability company now engaged or hereafter engaging in the business of purchasing crude petroleum in this state shall be a common purchaser thereof.
2. Every common purchaser of crude petroleum shall, without discrimination in favor of one producer or royalty owner as against another in the same marketing district as determined by the commission, purchase all oil tendered to it at the wellhead or at its receiving terminal, which has been lawfully produced, provided that no common purchaser may be required to purchase crude petroleum of inferior quality or grade, or which is unsuitable for its operations.
3. Whenever a common purchaser is unable to purchase all of the oil tendered to it hereunder, it shall purchase ratably from each marketing district, field, pool, or well, with respect to which such tenders are made. As between wells, purchases shall be considered ratable only if such purchases are made in proportion to the allowables which are or would be assigned to such wells under existing commission rules and regulations, and, as between marketing districts or fields or pools, purchases may be considered ratable if such purchases are made in proportion to the sum of the allowables which are or would be assigned to all wells from which tenders are made in each such marketing district or field or pool.
4. Every common purchaser of crude petroleum is hereby expressly prohibited from discriminating in favor of its own production or that of an affiliate as against that of others, and the oil produced by such common purchaser or by an affiliate of such common purchaser must be treated as that of any other producer for the purposes of ratable taking.
5. It is unlawful for any common purchaser to discriminate between oil transported from the wellhead to its receiving terminal in favor of one carrier of crude oil as against another, and nothing herein may be construed to prevent any person, association of persons, corporation, or limited liability company from transporting crude oil from wellhead to receiving terminal of said common purchaser from properties in which such person, association of persons, corporation, or limited liability company may own an interest, and such person, association of persons, corporation, or limited liability company may not be deemed to be in the business of purchasing, or of purchasing and selling crude petroleum within the meaning of this section. Nothing herein may be construed to prohibit any common purchaser from requiring that proper and reasonable facilities be erected and maintained at its receiving terminal by any person, association of persons, corporation, or limited liability company transporting crude oil to such terminal, requiring that a surety bond be posted indemnifying said common purchaser from liability for the transporter's failure to properly account to the owners of

crude oil so transported, or posting a just and reasonable handling charge for accepting delivery at its receiving terminal.

6. The provisions of this section cover the purchase, or purchase and sale of crude petroleum, and that gathering, handling, marketing, and all other charges assessed by a common purchaser against crude oil produced within this state must be just and reasonable. The commission, after notice and hearing as provided in section 38-08-11, may determine the justness and reasonableness of charges on its own motion or upon motion of any interested person.

38-08-20. Commingling of production - Central production facility - Metering of production - Testing of meters.

A producer may not commingle production from two or more oil or gas wells with diverse ownership in a storage facility without prior approval of the commission after notice and opportunity for hearing. If the commingling of production is for the express purpose of separating, metering, holding, and marketing of production, the owner of the wells shall apply to the commission for approval of the proposed commingling of production at a storage facility. If wells producing into a centralized storage facility have diverse ownership, the production from each well must be measured by meters approved and tested by or under the direction of the commission or production must be measured by some other method the commission has approved after notice and opportunity for hearing. If wells producing into a centralized storage facility have common ownership, including the common ownership of the working interest, the common ownership of the royalty ownership, and the common ownership of any overriding royalty owners, the production from each well need not be measured on meters approved by the commission if the owner of the wells demonstrates to the commission that the production from each well can be accurately determined at reasonable intervals by other means.

38-08-20.1. Testing upon request of a royalty owner.

Upon request by a royalty owner to test an oil and gas meter or measuring device, the commission shall test the meter or measuring device or contract for the testing by a qualified meter tester who is independent of any operator or purchaser of production from the metered well.

38-08-21. Regulation of carbon dioxide and nitrogen gas.

The commission is vested with the authority and duty to regulate the exploration, development, and production of carbon dioxide, coal bed methane gas, helium gas, and nitrogen gas within the state, in the same manner, insofar as is practicable, as it regulates oil or gas as defined in this chapter.

38-08-22. Regulation of welders by oil and gas division of industrial commission - Continuing appropriation.

Repealed by S.L. 1995, ch. 358, § 1.

38-08-23. Plats.

Any person reclaiming a reserve pit after the completion of oil and gas drilling operations shall record an accurate plat certified by a registered surveyor showing the location of the well and notice that an abandoned reserve pit may be on the location within six months of the completion of the reclamation with the recorder of the county in which the reserve pit is located. A plat filed for record in accordance with this section may be recorded without acknowledgment or further proof as required by chapter 47-19 and without the auditor's certificate referred to in section 11-18-02.

38-08-24. Carbon sequestration and storage projects - Priority.

Repealed by S.L. 2009, ch. 318, § 2.

38-08-25. Hydraulic fracturing - Designated as acceptable recovery process.

Notwithstanding any other provision of law, the legislative assembly designates hydraulic fracturing, a mechanical method of increasing the permeability of rock to increase the amount of oil and gas produced from the rock, an acceptable recovery process in this state.