

SENATE BILL NO. 109

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT
COMMITTEE

Introduced: 3/7/07
Referred: Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation and permitting of drilling and other operations by the
2 Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the
3 commission, to reconsideration and appeal of decisions and the allocation of costs in
4 investigations and hearings before the commission, and to information filed with and
5 fees of the commission; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 LEGISLATIVE INTENT OF SECS. 10, 15, AND 18 OF THIS ACT. (a) It is the
10 intent of the legislature through secs. 10 and 18 of this Act to confirm by clarification that
11 AS 22.10.020(d), or court rules, have superseded inconsistent provisions of AS 31.05.080(b)
12 as they existed the day before the effective date of this Act.

13 (b) It is the intent of the legislature through sec. 15 of this Act to confirm by

1 clarification the long-standing interpretation of AS 31.05.150(d) by the Alaska Oil and Gas
2 Conservation Commission that civil penalties may be administratively assessed by the
3 commission and if not paid are recoverable by suit in the appropriate superior court as
4 determined by court rules.

5 * **Sec. 2.** AS 31.05.030(d) is amended to read:

6 (d) The commission may require

7 (1) identification of ownership of wells, producing leases, tanks, plants
8 and drilling structures;

9 (2) the making and filing of reports, well logs, drilling logs, electric
10 logs, lithologic logs, directional surveys, and all other subsurface information on a
11 well **for which a permit to drill has been issued by the commission** [DRILLED
12 FOR OIL OR GAS, OR FOR THE DISCOVERY OF OIL OR GAS, OR FOR
13 GEOLOGIC INFORMATION], and the required reports [AND INFORMATION]
14 shall be filed within 30 days **and the logs and other subsurface information shall be**
15 **filed within 60 days** after the completion, abandonment, or suspension of the well;

16 (3) the drilling, casing and plugging of wells in a manner that will
17 prevent the escape of oil or gas out of one stratum into another, the intrusion of water
18 into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water,
19 and prevent blowouts, cavings, seepages and fires;

20 (4) the furnishing of a reasonable bond with sufficient surety
21 conditions for the performance of the duty to plug each dry or abandoned well or the
22 repair of wells causing waste;

23 (5) the operation of wells with efficient gas-oil and water-oil ratios,
24 and may fix these ratios;

25 (6) the gauging or other measuring of oil and gas to determine the
26 quality and quantity of oil and gas;

27 (7) every person who produces oil or gas in the state to keep and
28 maintain for a period of five years in the state complete and accurate records of the
29 quantities of oil and gas produced, which shall be available for examination by the
30 **commission** [DEPARTMENT OF NATURAL RESOURCES OR ITS AGENTS] at
31 all reasonable times;

1 (8) the measuring and monitoring of oil and gas pool pressures;

2 (9) the filing and approval of a plan of development and operation for
3 a field or pool in order to prevent waste, **ensure** [INSURE] a greater ultimate recovery
4 of oil and gas, and protect the correlative rights of persons owning interests in the
5 tracts of land affected.

6 * **Sec. 3.** AS 31.05.030(e) is amended to read:

7 (e) The commission may regulate

8 (1) for conservation purposes **and, to the extent not in conflict with**
9 **regulation by the Department of Labor and Workforce Development or the**
10 **Department of Environmental Conservation, for public health and safety**
11 **purposes,**

12 (A) the drilling, producing, and plugging of wells;

13 (B) the **perforating, fracture simulation,** [SHOOTING] and
14 chemical treatment of wells;

15 (C) the spacing of wells;

16 (D) the disposal of salt water, nonpotable water, and oil field
17 wastes;

18 (E) the contamination or waste of underground water;

19 (F) the quantity and rate of the production of oil and gas from a
20 well or property; this authority shall also apply to a well or property in a
21 voluntary cooperative or unit plan of development or operation entered into in
22 accordance with AS 38.05.180(p);

23 **(G) the underground injection of gas for purposes of**
24 **storage;**

25 (2) the disposal of drilling mud, cuttings, and nonhazardous drilling
26 operation wastes in the annular space of **a** [AN OIL OR GAS] well [OR IN THE
27 ANNULAR SPACE OF A WATER WELL ASSOCIATED WITH OIL OR GAS
28 EXPLORATION AND PRODUCTION]; in this paragraph, a "nonhazardous drilling
29 operation waste" means a waste, other than a hazardous waste identified by the
30 Environmental Protection Agency in 40 C.F.R., Part 261, its regulation identifying and
31 listing hazardous wastes, associated with the act of drilling **a** [AN OIL OR GAS] well

1 for exploratory or production purposes.

2 * **Sec. 4.** AS 31.05.030(f) is amended to read:

3 (f) The commission may classify a well [WELLS] as an exploratory,
 4 development, service, or stratigraphic test well and may classify a development
 5 well as an oil or gas well [WELLS] for purposes material to the interpretation or
 6 enforcement of this chapter.

7 * **Sec. 5.** AS 31.05.030(j) is amended to read:

8 (j) For exploration and development operations involving nonconventional
 9 gas, the commission

10 (1) may not

11 (A) issue a permit to drill under this chapter if the well would
 12 be used to produce gas from an aquifer that serves as a source of water for
 13 human consumption or agricultural purposes unless the commission
 14 determines that the well will not adversely affect the aquifer as a source of
 15 water for human consumption or agricultural purposes; or

16 (B) allow injection of produced water except at depths below
 17 known sources of water for human consumption or agricultural purposes;

18 (2) shall

19 (A) regulate hydraulic fracturing in nonconventional gas wells
 20 to ensure [ASSURE] protection of drinking water quality;

21 (B) regulate the disposal of wastes produced from the
 22 operations unless the disposal is otherwise subject to regulation by the
 23 Department of Environmental Conservation or the United States
 24 Environmental Protection Agency;

25 (C) [REPEALED

26 (D)] as a condition of approval of a permit to drill a well for
 27 regular production [OR PRODUCTION TESTING] of coal bed methane,
 28 require the operator to design and implement a water well testing program to
 29 provide baseline data on water quality and quantity; the commission shall
 30 make the results of the water well testing program available to the public.

31 * **Sec. 6.** AS 31.05.035(a) is amended to read:

1 (a) For all wells for which a permit to drill has been issued by the commission
2 [SINCE JANUARY 3, 1959], the commission may require:

3 (1) the making and filing of reports, well logs, drilling logs, electric
4 logs, lithologic logs, directional surveys, and all other subsurface information on a
5 well **for which a permit to drill has been issued by the commission** [DRILLED
6 FOR OIL OR GAS, OR FOR THE DISCOVERY OF OIL OR GAS, OR FOR
7 GEOLOGIC INFORMATION];

8 (2) the filing of flow test information and all logs, except experimental
9 logs and velocity surveys run on a well and not required by (1) of this subsection; and

10 (3) the operator to make available for copying the digitized log
11 information, if it is available, on any log required to be filed under (1) or (2) of this
12 subsection.

13 * **Sec. 7.** AS 31.05.035(c) is amended to read:

14 (c) The **application for a permit to drill an exploratory or stratigraphic**
15 **test well and the** reports and information required in (a) of this section **that relate to**
16 **an exploratory or stratigraphic test well** shall be kept confidential for 24 months
17 following the 30-day filing period unless the owner of the well gives written
18 permission to release the reports and information at an earlier date. If the
19 commissioner of natural resources finds that the required reports and information
20 contain significant information relating to the valuation of unleased land in the same
21 vicinity, the commissioner shall keep the reports and information confidential for a
22 reasonable time after the disposition of all affected unleased land, unless the owner of
23 the well gives written permission to release the reports and information at an earlier
24 date. Well **surface and bottom hole locations** [LOCATION], **well** depth, **well** status,
25 [AND] production data, and production reports required by the commission to be filed
26 subsequent to the 30-day filing period shall be considered public information and may
27 not be classified confidential. Production data, as used in this subsection, means
28 volume, gravity and gas-oil ratio of all production of oil or gas after the well begins
29 regular production.

30 * **Sec. 8.** AS 31.05.035 is amended by adding a new subsection to read:

31 (f) Subsection (d) of this section does not apply to information submitted in

1 connection with a petition for a commission order or a hearing before the commission.

2 * **Sec. 9.** AS 31.05.080(a) is amended to read:

3 (a) Within 20 days after written notice of the entry of an order or decision of
4 the commission, or such further time as the commission grants for good cause shown,
5 a person affected by it may file with the commission an application for
6 **reconsideration** [THE REHEARING IN RESPECT] of the matter determined by the
7 order or decision, setting **out** [FORTH] the respect in which the order or decision is
8 believed to be erroneous. The commission shall grant or refuse the application in
9 whole or in part within 10 days after it is filed, and failure to act on it within this
10 period is a refusal of it and a final disposition of the application. If **reconsideration**
11 [THE HEARING] is granted, the commission may enter a new order or decision after
12 **reconsideration** [REHEARING] as may be required under the circumstances.

13 * **Sec. 10.** AS 31.05.080(b) is repealed and reenacted to read:

14 (b) A person who has applied for reconsideration and is dissatisfied with the
15 disposition of the application for reconsideration may appeal to the superior court. The
16 questions reviewed on appeal are limited to the questions presented to the commission
17 by the application for reconsideration.

18 * **Sec. 11.** AS 31.05.085(a) is amended to read:

19 (a) During a hearing or investigation held under this chapter, the commission
20 may allocate the costs of the hearing or investigation among the parties, including the
21 commission, as is just under the circumstances. In allocating costs, the commission
22 shall consider the regulatory cost charge paid by a person under AS 31.05.093 and
23 may consider the results, evidence of good faith, other relevant factors, and mitigating
24 circumstances. The costs allocated may include

25 (1) the costs of any time devoted to the investigation or hearing by
26 hired consultants, whether or not the consultants appear as witnesses or participants;
27 [AND]

28 (2) any out-of-pocket expenses incurred by the commission in the
29 particular proceeding; **and**

30 **(3) when the investigation or hearing relates to a violation of this**
31 **chapter, a regulation adopted under this chapter, or an order of the commission,**

1 **the costs of any time devoted to the investigation or hearing by the commission**
 2 **staff.**

3 * **Sec. 12.** AS 31.05.090 is repealed and reenacted to read:

4 **Sec. 31.05.090. Permits to drill wells.** (a) A person must apply for and receive
 5 a permit from the commission before drilling

6 (1) a well in search of oil or gas;

7 (2) a well in support of the recovery or production of oil or gas;

8 (3) an underground injection well for which the state has acquired
 9 primary enforcement responsibility under AS 31.05.030(h).

10 (b) A person must submit a separate permit application for each well. The
 11 permit application must be in the form required by the commission and include all
 12 information required by the commission.

13 (c) After receiving an application under (b) of this section, the commission
 14 shall promptly issue a permit to drill unless the

15 (1) proposed well is contrary to law or an order of the commission; or

16 (2) person is in violation of this chapter, a regulation adopted under
 17 this chapter, or a commission order.

18 * **Sec. 13.** AS 31.05.093(c) is amended to read:

19 (c) The commission shall determine the regulatory cost charges levied under
 20 this section so that the total amount to be collected approximately equals the
 21 appropriations made for the operating costs of the commission under this chapter for
 22 the fiscal year [, LESS THE ESTIMATED TOTAL OF THE FEES TO BE
 23 COLLECTED UNDER AS 31.05.090. IF THE AMOUNT THE COMMISSION
 24 EXPECTS TO COLLECT UNDER THIS SECTION AND UNDER AS 31.05.090
 25 EXCEEDS THE APPROPRIATIONS MADE FOR THE OPERATING COSTS OF
 26 THE COMMISSION UNDER THIS CHAPTER, THE COMMISSION SHALL, BY
 27 ORDER, ADJUST THE REGULATORY COST CHARGES SO THAT THE TOTAL
 28 AMOUNT OF THE REGULATORY COST CHARGES AND FEES THAT ARE
 29 COLLECTED APPROXIMATELY EQUALS THE APPROPRIATIONS MADE
 30 FOR THE OPERATING COSTS OF THE COMMISSION UNDER THIS CHAPTER
 31 FOR THE FISCAL YEAR].

1 * **Sec. 14.** AS 31.05.150(a) is amended to read:

2 (a) A person who **wilfully or** negligently violates a provision of this chapter,
3 or a regulation or order of the commission adopted under this chapter, is liable for a
4 civil penalty of no more than **\$100,000 for a single violation or, in the commission's**
5 **discretion, no more than \$25,000** [\$5,000] a day for each day of violation [,
6 UNLESS THE PENALTY FOR VIOLATION IS OTHERWISE PROVIDED FOR
7 AND MADE EXCLUSIVE IN THIS CHAPTER].

8 * **Sec. 15.** AS 31.05.150(d) is amended to read:

9 (d) The **civil** penalties provided in this section **may be assessed by the**
10 **commission and if not paid** are recoverable by suit filed by the attorney general in
11 the name and on behalf of the commission in the superior court [OF THE JUDICIAL
12 DISTRICT IN WHICH THE DEFENDANT RESIDES OR IN WHICH ANY
13 DEFENDANT RESIDES, IF THERE IS MORE THAN ONE DEFENDANT, OR IN
14 THE SUPERIOR COURT OF THE JUDICIAL DISTRICT IN WHICH THE
15 VIOLATION OCCURS]. The payment of a penalty does not relieve a person on
16 whom the penalty is imposed from liability to any other person for damages arising
17 out of the violation.

18 * **Sec. 16.** AS 31.05.150(e) is amended to read:

19 (e) **In addition to the penalties in (a) - (d) and (f) of this section, the** [THE]
20 commission may impose a **civil** penalty payment on every 1,000 cubic feet of natural
21 gas flared, vented or otherwise determined to be waste as defined in AS 31.05.170.
22 The penalty shall be **two times** the fair market value of the natural gas at the point of
23 waste.

24 * **Sec. 17.** AS 31.05.150 is amended by adding a new subsection to read:

25 (g) In determining the amount of a penalty assessed under this section, the
26 commission shall consider

27 (1) whether the person committing the violation was acting in good
28 faith or bad faith;

29 (2) the extent and seriousness of the violation and the actual or
30 potential threat to public health or the environment;

31 (3) the injury to the public resulting from the violation;

- 1 (4) the benefits derived by the person from the violation;
- 2 (5) the history of compliance or noncompliance by the person with the
3 requirements of this chapter, a regulation under this chapter, and commission orders;
- 4 (6) the need to deter similar behavior by the person and others
5 similarly situated in the future;
- 6 (7) the effort made by the person to correct the violation and prevent
7 future violations; and
- 8 (8) other factors considered relevant to the assessment that are adopted
9 by the commission in regulation.

10 * **Sec. 18.** AS 31.05.080(c) and 31.05.080(d) are repealed.

11 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
14 heading of AS 31.05.080 from "Rehearings and appeals" to "Reconsiderations and appeals."

15 * **Sec. 20.** This Act takes effect immediately under AS 01.10.070(c).