HB

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NOTIFICATION

BILL	LETTER/PHONE	INFORMED	HEARING DATE
HB 830	2/28/78	Dept. of Natural Resources	3/14,3/15/78
	"	Dept. of Commerce	" "
	"	Dept. of Revenue	" "
	"	Alaska Pipeline Commission	" "
	"	N.W. Alaska Pipeline Co.	" "
	"	State/Fed. Land Use Planning Comm.	" "
	"	Special Committee on Royalty Oil	" "
	"	Div. of Minerals & Energy Mgmt. (Joe Green, Dir.)	" "
	"	Alaska Oil & Gas Association (Keith Arnold)	" "
	"	Jack Roderick, Dept. of Natl.Res.	" "
	"	Exxon (Bob Walker)	" "
	"	Steering Council for Alaska Lands	" "
	"	Keith Specking	" "
	"	Geoff Haynes	" "
	"	Div. of Oil & Gas Conservation	" "
	"	Alaska Federation of Natives	" "
	"	Rep. Chatterton (prime sponsor)	" "
	"	Rep. Malone (co-sponsor)	" "

AGO 935875

an application for extension is filed by the record title holder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval.

(d) The commissioner may provide for extension of the term of a lease whether competitive or noncompetitive, if all or part of the lease is included in an approved unit plan or program of secondary recovery operation to bring about or restore production.

(e) All noncompetitive oil or gas leases issued under this section shall be conditioned upon the payment by the lessee in advance of an annual rental of 50 cents an acre or fraction of an acre. All competitive oil and gas leases issued under this section shall be conditioned upon the payment of an annual rental, before discovery on the leased lands, of $1 an acre or fraction of an acre. A minimum royalty of $1 an acre instead of rental is payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

(f) Repealed by § 7 ch 30 SLA 1964.

(g) An offeror for a federal oil and gas lease whose lease was issued after January 2, 1959, or a qualified applicant for a preference right under the Act of July 3, 1958, (72 Stat. 322) whose application for a preference right was filed before January 3, 1959, has a preference right to a state lease on the shorelands included within the exterior boundaries of the federal lease.

(h) If lands described in the offer for a federal lease are covered by nontidal water and are excluded from the federal lease on the basis of navigability, the state shall, upon application within 60 days after notice of the exclusion, if not previously filed, grant a preference lease for the areas excluded, carrying the same provisions as an ordinary state lease on the same lands, except that the term of the state lease shall conform in all respects to that of the adjoining federal lease including extended terms. The state shall issue a shorelands preference lease where a federal lease has been issued before March 31, 1960, and application is made to the state before July 1, 1960. Where a federal lessee or offeror failed before January 3, 1959, to file a proper application for a preference right under the Act of July 3, 1958, he may apply for a state preference lease under this section, subject to the rights of intervening applicants.

(i) Where the lands are classified as competitive, they shall be leased by competitive bidding. The holder of the preference right has 10 days after receipt of notice in which to submit an amount equal to the highest bid plus the rental for the first year.

(j) Upon timely application as provided by regulation, the state shall issue to the holder of a federal lease a state shorelands lease covering land within the exterior boundaries of the federal lease which has been excluded on the basis of navigability or which are later administratively or judicially determined to be "shorelands." The term of every shoreland lease shall conform to that of the adjacent federal lease including

extended terms. The authority of the state to classify the lands as competitive or noncompetitive shall not be impaired.

(k) Instead of the foregoing procedure, the federal lessee or his assignee may, at his option, exercise his preference right for a state lease on the shorelands included within the exterior boundaries of his federal lease by applying to the division of lands, Department of Natural Resources. If, at the time of applying, the lands are classified as noncompetitive, the state shall, upon application, issue a lease covering whatever shorelands are included within the exterior boundaries of the federal lease. If, at the time of applying, the shorelands included in the federal lease are classified as competitive lands, the lands shall be leased by competitive bidding. The competitive lease shall be issued to the federal lessee or his assignee upon payment to the state of an amount equal to the highest bid for the lease, plus the rental for the first year, payment to be made within 10 days after the lessee's or assignee's receipt of written notice from the director of the division of lands of the amount of the highest bid. These leases, whether competitive or noncompetitive, shall carry the same conditions as an ordinary state lease on the same lands, except that the term of the state lease shall conform to that of the adjoining federal lease, including extended terms, and shall terminate if the federal lease is terminated for any reason. The lease shall provide for annual rental at the rate of $100 a unit of 640 acres or part thereof of the lands included within the federal lease until agreement is reached between the state and the Secretary of the Interior of the United States, or his authorized representative, as to the actual area of the shorelands included in the federal lease, and as to the apportionment between the state and federal government of the rental theretofore paid under the federal lease.

(l) The lease of a record lessee of a federal oil and gas lease who filed, or whose predecessor in interest filed, between July 3, 1958, and January 3, 1959, a proper preference right application under the Act of July 3, 1958, (72 Stat. 322) to have included in the lease the shorelands within the exterior boundaries of the lease and which lease or any part of it has terminated or failed as to the shorelands due to mispayment of or failure to pay the required rental as to the shorelands in advance of the anniversary date of the federal lease, shall be revived and reinstated as to the shorelands upon payment to the Bureau of Land Management of the United States Department of the Interior or to the state of all rental payable as to the shorelands under the lease since January 3, 1959. The rights under this section terminate 60 days after receipt of notice from the director, but not later than March 31, 1961. Nothing herein operates to extend a lease beyond its stated term.

(m) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, (whether or not the part is then subject to a cooperative or unit plan of development or operation), lessees and their representatives may unite with each other, or jointly or separately with

others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, whenever determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, alter, change, or revoke drilling, producing, rental minimum royalty, and royalty requirements of the leases and make regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as he determines necessary or proper to secure the proper protection of the public interest. The commissioner may provide that oil and gas leases issued under this section shall contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and he may prescribe a plan under which the lessee shall operate. The plan shall adequately protect all parties in interest, including the state.

(n) A plan authorized by (m) of this section, which includes lands owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency with authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under § 140 of this chapter. The provisions of this section concerning cooperative or unit plans are in addition to, and do not affect AS 31.05

(o) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of § 140 of this chapter.

(p) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other lands, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement shall be considered as operations or production as to each lease committed to the agreement.

(q) The commissioner may, on conditions which he prescribes, approve drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, whenever, in his discretion, the conservation of natural products or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling, or development contracts, and interests under them are excepted in determining holding or control under § 140 of this chapter.

(r) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas, whether or not produced from state lands, in lands leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced. A lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(s) Each oil or gas lease issued by the state shall contain a provision requiring the lessee to furnish the Department of Labor a quarterly report regarding the employment on the leased property of state residents. The commissioner of labor shall promulgate regulations necessary to carry out the provisions of this subsection. (§ 3(7) art VIII ch 169 SLA 1959; am § 18 ch 61 SLA 1960; am § 1 ch 124 SLA 1962; am §§ 4—7 ch 30 SLA 1964; am § 20 ch 70 SLA 1964; am § 2 ch 91 SLA 1967; am § 1 ch 65 SLA 1969; am § 1 ch 86 SLA 1970)

Revisor's note (1970). — In ch. 86, SLA 1970, subsection (s) of AS 38.05.180 was incorrectly designated (t).

Cross references. — See note to AS 38.05.020. As to establishment of drilling units for pools, see AS 31.05.10[illegible] As to gross production tax, see AS 43.55.010.

Purpose of subsection (a). — The provisions of subsection (a) of this section were intended to insure that leases on valuable oil and gas producing state lands will be made available to the public on a fair and equitable basis, that the state will be adequately compensated for its natural resources, and that the state's resources are developed in an orderly fashion. For the commissioner to decide that these purposes are furthered by providing for bidding by cash bonus cannot be said to be unreasonable. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

And construction thereof. — The only reasonable construction that can be placed on subsection (a) of this section is that the legislature intended to give the commissioner broad authority to determine the kind of bonus he will accept. The legislature at the time it passed subsection (a) was undoubtedly aware that under competitive bidding procedures different forms of bonuses might be offered. It did not itself prescribe a particular form, but instead provided that competitive bidding shall be "under general regulations," and that lands shall be leased upon the payment of "such bonus as may be accepted by the commissioner." The plain language of the statute shows that royalties were to be fixed independently of the acceptance of the highest bonus. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Power to change law respecting lease extensions is vested in state. — The governmental power to change the law respecting the granting of lease extensions, vested in Congress prior to statehood and preserved by § 6(k) of the Alaska Statehood Act, became vested in the state when the lands subject to the lease were granted to the state as its property. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

And has been exercised by the Alaska Land Act. — The state has exercised its power to change the law respecting lease extensions by the Alaska Land Act and by regulations adopted under its authority. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Subsection (c) has no application to pre-statehood federal leases. — Read in the context of article 6 of this chapter, it becomes apparent that subsection (c) of this section, as to extensions, relates only to leases issued by the state under the authority of the Alaska Land Act, and is not pertinent with respect to pre-statehood federal leases. Kirkpatrick v. Commissioner, Dep't of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

Subsection (c) of this section, relating to extensions of state oil and gas leases, has no application to federal leases of lands

Editor's note. — Section 10, ch. 136, SLA 1977, provides, in subsection (a): "If a court of competent jurisdiction invalidates the differential economic limit factor computation under AS 43.55.013(a) and (b), the economic limit factor contained in (b) of that section shall be used for computation of the economic limit for all oil."

Section 11, ch. 136, SLA 1977, provides: "This Act applies to production during the month of July, 1977 and succeeding months."

Sec. 43.55.015. Tax per barrel of oil.

Repealed by § 9 ch 136 SLA 1977.

Editor's note. — The repealed section derived from § 4, ch. 101, SLA 1972; § 2, ch. 4, FSSLA 1973.

Section 11, ch. 136, SLA 1977, provides: "This Act applies to production during the month of July, 1977 and succeeding months."

Legislative committee report. — For report on ch. 101, SLA 1972 (FC CS HCSSB 168), see 1972 House Journal, p. 963.

Sec. 43.55.016. Gas production tax. (a) There is levied upon the producer of gas a tax for all gas produced from each lease or property in the state, less any gas the ownership or right to which is exempt from taxation The tax is equal to either the percentage-of-value amount calculated under (b) of this section or the cents-per-Mcf amount calculated under (c) of this section, whichever is greater, multiplied by the economic limit factor determined for gas production of the lease or property under § 13 of this chapter. If the amounts calculated under (b) and (c) of this section are equal, the amount calculated under (b) of this section shall be treated as if it were the greater for purposes of this section.

(b) The percentage-of-value amount equals 10 per cent of the gross value at the point of production of the taxable gas produced from the lease or property.

(c) The cents-per-Mcf amount equals $.064 per thousand cubic feet of taxable gas produced from the lease or property as adjusted by § 12 of this chapter. (§ 1 ch 136 SLA 1977)

Editor's note. — Section 11, ch. 136, SLA 1977, provides: "This Act applies to production during the month of July, 1977 and succeeding months."

Sec. 43.55.017. Relation to other taxes. (a) Except as provided in this chapter and in ch. 58 of this title, the taxes imposed by this chapter are in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax upon

(1) producing oil or gas leases;

(2) oil or gas produced or extracted in the state;

(3) the value of intangible drilling and exploration expenses.

(b) The taxes imposed by this chapter are in place of all taxes imposed by a municipality upon oil or gas in place or nonproducing oil or gas leases or properties.

(c) The taxes imposed by this chapter are not in place of the tax imposed by ch. 57 of this title or income taxes, franchise taxes or taxes upon the retail sale of oil or gas products. (§ 1 ch 136 SLA 1977)

Editor's note. — Section 11, ch. 136, SLA 1977, provides: "This Act applies to production during the month of July, 1977 and succeeding months."

Sec. 43.55.018. Credit against tax. (a) There shall be allowed as a credit against the taxes levied under this chapter for a lease or property the early development incentive credit accrued for that lease or property under AS 43.58.180. In no event may the credit allowed for a lease or property exceed 50 per cent of the taxes levied under this chapter for that lease or property.

(b) The credit shall be allowed on a monthly basis. (§ 2 ch 159 SLA 1975)

Editor's note. — Section 8, ch. 159, SLA 1975, contains a severability clause.

Section 9, ch. 159, SLA 1975, effective June 26, 1975, provides: "AS 43.58.030, 43.58.180, and AS 43.55.018 are included in this Act so as to avoid double taxation of the same interest in oil and gas and as an incentive for the early production of oil and gas discovered in the state. The legislature believes that the inclusion of these sections granting tax credits does not in any manner change the intent, validity or enforceability of the basic ad valorem tax imposed by the Act. If the inclusion of these sections results in a judicial decision that the ad valorem tax imposed by AS 43.58.010 is invalid, these sections shall be void and of no effect whatsoever and the Act shall be read as if these sections had never been included."

Sec. 43.55.020. Payment of tax. (a) The gross production tax on oil or gas shall be paid monthly. The tax is due on the 20th day of each calendar month on oil or gas produced from each lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

(b) The gross production tax on oil or gas shall be paid by or on behalf of the producer

(c) Repealed by § 7 ch 101 SLA 1972, effective July 1, 1972.

(d) In making settlement with the royalty owner the producer may deduct the amount of the tax paid on royalty oil or gas, or may deduct royalty oil or gas equivalent in value at the time the tax becomes due to the amount of the tax paid.

(e) Gas produced in excess of that needed for safety purposes, except gas used in the operation of a lease or property in drilling for or producing oil or gas, or for repressuring, is considered, for the purpose of this chapter and in the amount used, as gas produced from a lease or property. Gas flared beyond the amount authorized for safety by the Department of Natural Resources under AS 31.05.170(11)(H) is considered as gas produced, except that it is subject to a penalty equal to the tax computed under § 16 of this chapter as adjusted by § 12 of this chapter per thousand cubic feet of gas for the month in which the gas was flared.

STATE OF ALASKA
THE LEGISLATURE

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811

HOUSE OF REPRESENTATIVES

TO RESOURCES

REMARKS:

Please return HB 830. We now have a Sponsor Substitute for this bill.

FROM edith DATE 3/13/78

LAA 25-H

AGO 935879

Alaska Statutes

Title 31. Oil and Gas.

Chapter
05. Conservation (§§ 31.05.010—31.05.170)
15. Common Purchasers of Oil (§§ 31.15.010—31.15.050)
30. Miscellaneous Provisions (§§ 31.30.010—31.30.070)

Chapter 05. Conservation.

Article
1. Administration (§§ 31.05.010—31.05.080)
2. Regulation of Operations (§§ 31.05.090—31.05.120)
3. Levy of Tax and Disposition of Funds (Repealed)
4. General Provisions (§§ 31.05.150—31.05.170)

Article 1. Administration.

Section
10. Application
20. Waste prohibited
30. Powers and duties of department
35. Confidential reports
40. Rules and regulations of department
50. Notice
60. Action by department
70. Attendance and testimony of witnesses
80. Rehearings and appeals

Sec. 31.05.010. Application. This chapter applies to all lands in the state lawfully subject to its police powers. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to carry out the intent and purposes of this chapter and otherwise applies to federal lands so far as an officer of the United States having jurisdiction, or his authorized representative, shall approve any of the provisions of this chapter or orders of the department which affect lands. (§ 14 ch 40 SLA 1955)

Am. Jur., ALR and C.J.S. references. — 34 Am. Jur., Gas and Oil, §§ 1 to 157.
Constitutionality of statute regulating petroleum production, 86 ALR 418.
58 C.J.S. Mines and Minerals §§ 1 to 3.

Sec. 31.05.020. Waste prohibited. The waste of oil and gas in the state is prohibited. (§ 1 ch 40 SLA 1955)

ALR and C.J.S. references. — Constitutionality of statute controlling exploitation or waste of oil and gas, 24 ALR 307; 78 ALR 834.
Constitutionality of statute, ordinance, or regulation limiting rights of surface owner in respect of oil or gas, 67 ALR 1346; 99 ALR 1119.
Construction and effect of statutes regulating production of oil or gas in a manner or under conditions constituting waste, 86 ALR 431.
58 C.J.S. Mines and Minerals § 234.

Sec. 31.05.030. Powers and duties of department. (a) The department has jurisdiction and authority over all persons and property, public and private, necessary to carry out the purposes and intent of this chapter.

(b) The department shall investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it.

(c) The department shall adopt rules, regulations and orders and take other appropriate action to carry out the purposes of this chapter.

(d) The department may require

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

(2) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface information on a well drilled for oil or gas, or for the discovery of oil or gas, or for geologic information, and the required reports and information shall be filed within 30 days after the completion, abandonment, or suspension of the well;

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

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

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

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

(7) every person who produces oil or gas in the state to keep and maintain for a period of five years in the state complete and accurate records of the quantities of oil and gas produced, which shall be available for examination by the department or its agents at all reasonable times.

(e) The department may regulate, for conservation purposes

(1) the drilling, producing and plugging of wells;

(2) the shooting and chemical treatment of wells;

(3) the spacing of wells;

(4) the disposal of salt water, nonpotable water and oil field wastes;

(5) the contamination or waste of underground water.

(f) The department may classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter. (§ 4 ch 40 SLA 1955; am § 2 ch 75 SLA 1960; am § 1 ch 209 SLA 1970)

Applied in Bradley v. State, 2 Alaska L.J. No. 6, pg. 88 (June-July, 1964).

Sec. 31.05.035. Confidential reports. (a) For all wells for which a permit to drill has been issued by the department since January 3, 1959, the department may require:

(1) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface information on a well drilled for oil or gas, or for the discovery of oil or gas, or for geologic information; and

(2) the filing of all logs, except experimental logs, dipmeter surveys, and velocity surveys run on a well and not required by (1) of this subsection.

(b) Reports and information required under (a)(1) and (2) of this section shall be filed within 30 days after the completion, abandonment, or suspension of a well. However, under (a)(1) of this section, the department may not require the making of a log on a well completed, abandoned or suspended before June 19, 1970.

(c) The reports and information marked confidential shall be kept confidential for 24 months following the 30-day filing period unless the owner of the well gives written permission to release the reports and information at an earlier date. Well location, depth, status and production data and production reports required by the department to be filed subsequent to the 30-day filing period shall be considered public information and shall not be classified confidential. Production data, as used in this subsection, means volume, gravity and gas-oil ratio of all production of oil or gas after the well begins regular production. (§ 2 ch 209 SLA 1970)

Sec. 31.05.040. Rules and regulations of department. (a) The department shall prescribe rules and regulations governing practice and procedure before it under this chapter.

(b) All orders issued by the department shall be in writing, shall be entered in full and indexed in books kept by the department for that purpose, and shall be public records open for inspection at all times during reasonable office hours. A copy of an order certified by the department, under its seal, shall be received in evidence in all courts of the state with the same effect as the original. (§ 9 1, 5 ch 40 SLA 1955)

Revisor's note. — Subsection (b) of this section and AS 31.05.050—31.05.080 are generally superseded by the Administrative Procedure Act (AS 44.62).

However, the department seems to have power to hold hearings and make orders relating to "pooling," etc. (AS 31.05.100 and 31.05.110), which may or may not fall under the Administrative Procedure Act. If those hearings and orders do not fall under the Administrative Procedure Act, then the procedure in (b) of this section and in AS 31.05.050—31.05.080 would apply.

Sec. 31.05.050. Notice. (a) A notice required by this chapter shall be given in accordance with the Administrative Procedure Act (AS 44.62).

(b) Procedures to be followed under (a) of this section do not apply if the nature of the notice is not of a statewide or general application but is concerned only with operations on a single well or within a single field and the modification of procedure is within the authority delegated to the department under § 30 of this chapter. A notice required by this chapter shall be given by one publication in a newspaper published in the borough in which the hearing is to be held, or if none is published in the borough, in a newspaper published in this state and circulating within the borough, and posted in at least one public place within the borough, at least 10 days before the date of the hearing. The notice shall be issued in the name of the state, shall be signed by the department, and shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. The department may also give, or require the giving of, additional notice in a proceeding, or class of proceeding, which it considers necessary or desirable. (§ 9 4 ch 40 SLA 1955; am § 1 ch 190 SLA 1968; am § 1 ch 87 SLA 1969)

Revisor's note. — See Revisor's note to AS 31.05.040.

Legislative committee reports. — For report on ch. 190, SLA 1968 (CSHB 595), see 1968 House Journal, p. 748. For report on ch. 87, SLA 1969 (HB 49 am S), see 1969 Senate Journal, p. 897.

Sec. 31.05.060. Action by department. The department may act upon its own motion, or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the department under this chapter, the department shall promptly fix a date for a hearing, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The department shall enter its order within 30 days after the hearing. (§ 9 6 ch 40 SLA 1955)

Revisor's note. — See Revisor's note to AS 31.05.040.

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 242.

Sec. 31.05.070. Attendance and testimony of witnesses. (a) The department may summon witnesses, administer oaths, and require the production of records, books and documents for examination at a hearing or investigation conducted by it. No person may be excused from attending and testifying, or from producing books, papers and

records before the department or a court, or from obedience to the subpoena of the department or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. This section does not require a person to produce books, papers or records, or to testify in response to an inquiry not pertinent to some question lawfully before the department or court for determination. No natural person is subject to criminal prosecution or to a penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the department or court, or in obedience to its subpoena. However, no person testifying is exempt from prosecution and punishment for perjury committed in so testifying.

(b) If a person fails or refuses to comply with the subpoena issued by the department, or refuses to testify as to any matter regarding which he may be interrogated, any court of record in the state, upon application of the department, may issue an attachment for the person and compel him to comply with the subpoena, and attend before the department and produce the records, books, and documents for examination, and give his testimony. The court may punish for contempt as in the case of disobedience to a subpoena issued by the court, or for refusal to testify in court. (§ 10 ch 40 SLA 1955)

Revisor's note. — See Revisor's note to AS 31.05.040.

Sec. 31.05.080. Rehearings and appeals. (a) Within 20 days after written notice of the entry of an order or decision of the department, or such further time as the department grants for good cause shown, a person affected by it may file with the department an application for the rehearing in respect of the matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The department shall grant or refuse the application in whole or in part within 10 days after it is filed, and failure to act on it within this period is a refusal of it and a final disposition of the application. If the hearing is granted, the department may enter a new order or decision after rehearing as may be required under the circumstances.

(b) A party to the rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal from it to the superior court in the judicial district in which any property affected by the decision of the department is located, by filing a petition for the review of the action of the department within 20 days after the entry of the order following rehearing or after the refusal of rehearing as the case may be. The petition shall state briefly the nature of the proceedings before the department and shall set out the order or decision of the department complained of and the grounds of invalidity of it upon

which the applicant will rely. However, the questions reviewed on appeal shall be only questions presented to the department by the application for rehearing. Notice of appeal shall be served upon the adverse parties and the department in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be without a jury, and the transcript of proceedings before the department, including the evidence taken in hearings by the department, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence, in the same manner as if the evidence was originally offered in the superior court. The department's action complained of is prima facie valid and the burden is upon the party seeking review to establish the invalidity of the action of the department. The court shall determine the issues of fact and of law and shall, upon a preponderance of the evidence introduced before the court, which may include evidence in addition to the transcript of proceedings before the department, and the applicable law, enter its order either affirming or vacating the order of the department. Appeals may be taken from the judgment or decision of the superior court in the same manner as provided for appeals from any other final judgment entered by a superior court.

(c) The pendency of proceedings to review does not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of the proceedings, the superior court may, upon its own motion or upon proper application of a party, stay or suspend, in whole or in part, operation of the order or decision pending review, on the terms the court considers just and proper and in accordance with the rules of civil procedure. The court, as a condition to staying or suspension of operation of an order or decision, may require that one or more parties secure, in the form and amount as the court considers just and proper, one or more other parties against loss or damage due to the staying or suspension of the department's order or decision, if the action of the department is affirmed.

(d) The rules of practice and procedure in civil cases govern the proceedings for review and appeal to the extent they are consistent with this chapter. (§ 11 ch 40 SLA 1955)

Revisor's note. — See Revisor's note to AS 31.05.040.

Article 2. Regulation of Operations.

Sec. 31.05.090. Permits and fees to drill wells. A person desiring to drill a well in search of oil or gas shall notify the department of his intent on a form prescribed by the department and shall pay a fee of $100 for a permit for each well sought to be drilled. Upon receipt of notification and fee, the department shall promptly issue a permit to drill, unless the drilling of the well is contrary to law or a regulation or order of the department, or unless the person is in violation of a department regulation, order or stipulation pertaining to drilling, plugging or abandonment of a well. The drilling of a well is prohibited until a permit to drill is obtained in accordance with this chapter. (§ 5 ch 40 SLA 1955; am § 1 ch 120 SLA 1970)

Sec. 31.05.100. Establishment of drilling units for pools. (a) For the prevention of waste, to protect and enforce the correlative rights of lessees in a pool, and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, or the reduced recovery which might result from too small a number of wells, the department shall, after a hearing, establish a drilling unit or units for each pool. The establishment of a unit for gas shall be limited to the production of gas.

(b) Each well permitted to be drilled on a drilling unit shall be drilled under the rules and regulations and in accordance with the spacing pattern as the department prescribes for the pool in which the well is located. Exceptions to the rules and spacing pattern may be granted where it is shown, after notice and hearing, that the unit is partly outside the pool, or for some other reason a well so located on the unit would be nonproductive, or topographical conditions are such as to make the drilling at such a location unduly burdensome. If an exception is granted, the department shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized, and the producer of the well drilled as an exception will be allowed to produce no more than a just and equitable share of the oil and gas in the pool.

(c) When two or more separately owned tracts of land are embraced within an established drilling unit, persons owning the drilling rights in it and the right to share in the production from it may agree to pool their interests and develop their lands as a drilling unit. If the persons do not agree to pool their interests, the department may enter an order pooling and integrating their interests for the development of their lands as a drilling unit for the prevention of waste, for the protection of correlative rights, or to avoid the drilling of unnecessary wells. Orders effectuating such pooling shall be made after notice and hearing, and shall be upon terms and conditions which will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense. Operations incident to

the drilling of a well upon a portion of a unit covered by a pooling order shall be considered for all purposes to be the conduct of the operation upon each separately owned tract in the unit by the several lessees of it. The portion of the production allocated to the lessee of each tract included in a drilling unit formed by a pooling order shall, when produced, be considered as if it had been produced from the tract by a well drilled on it. If pooling is effectuated, the cost of development and operation of the pooled unit chargeable by the operator to the other interested lessee is limited to the actual and reasonable expenditures for this purpose, including a reasonable charge for supervision. As to lessees who refuse to agree upon pooling, the order shall provide for reimbursement for costs chargeable to each lessee out of, and only out of, production from the unit belonging to such lessee. In the event of a dispute relative to the costs, the department shall determine the proper costs upon notice to all interested parties and hearing. Appeals may be taken from the determination as from any other order of the department. If a lessee drills and operates, or pays the expense of drilling and operating the well for the benefit of others, then in addition to any other right conferred by the pooling order, the lessee drilling or operating has a lien on the share of production from the unit accruing to the interest of each of the other lessees for the payment of his proportionate share of such expenses. All the oil and gas subject to the lien, or so much of the oil and gas subject to the lien as is necessary shall be marketed and sold by the creditor, and the proceeds applied in payment of the expenses secured by the lien, with the balance, if any, payable to the debtor.

(d) The department shall, in all instances where a unit has been formed out of lands or areas of more than one ownership, require the operator, upon request of a lessee, but subject to the right of the operator to market production and collect the proceeds with respect to a lessee in default, as provided in (c) of this section, to deliver to the lessee or his assigns his proportionate share of the production from the well common to the drilling unit. The lessee receiving his share shall provide at his own expense proper receptacles for the receipt and storage of it.

(e) If persons owning the drilling or other rights in separate tracts embraced within a drilling unit fail to agree upon the pooling of the tracts and the drilling of the well on the unit, and if the department is without authority to require pooling as provided by this section, then, subject to all other applicable provisions of this chapter, the lessee of each tract embraced within the drilling unit may drill on his tract, but the allowable production from the tract shall be the proportion of the allowable production for the full drilling unit as the area of the separately owned tract bears to the full drilling unit. (§ 6 ch 40 SLA 1955)

Cross reference. — As to oil and gas, see AS 38.05.180.

adjoining owners as to pumping oil, 5 ALR 421.

Sec. 31.05.110. Unitization and unitized operation of pools and integration of interests by agreement. (a) To prevent, or to assist in preventing waste, to insure a greater ultimate recovery of oil and gas, and to protect the correlative rights of persons owning interests in the tracts of land affected, these persons may validly integrate their interests to provide for the unitized management, development, and operation of such tracts of land as a unit. Where, however, they have not agreed to integrate their interests, the department, upon proper petition, after notice and hearing, has jurisdiction, power and authority, and it is its duty to make and enforce orders and do the things necessary or proper to carry out the purposes of this section.

(b) If upon the filing of a petition by the department and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements provided in this section, the department finds that (1) the unitized management, operation and further development of a pool or portion of a pool is reasonably necessary in order to effectively carry on pressure control, pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination of these, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the pool; (2) one or more of the unitized methods of operation as applied to the pool or portion of it is feasible, and will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the pool than would otherwise be recovered; (3) 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) the unitization and adoption of one or more of the 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 pool or portion of it 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 pool or portion of it described in the order, upon the 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 owner, owners of overriding royalties, oil and gas payments, carried interests, mortgages, lien claimants and others, as well as the lessees. The petition shall set out a description of the proposed unit area with a map or plat of it attached, shall allege the existence of the facts required to be found by the department as provided in this paragraph and shall have attached to it a recommended plan of unitization applicable to the proposed unit area and which the petitioner considers to be fair, reasonable and equitable.

(c) The order of the department shall define the area of the pool or

portion of it to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable to it. Each unit and unit area shall be limited to all or a portion of a single pool. Only so much of a pool as has been defined and determined to be productive of oil and gas by actual drilling operations may be so included within the unit area. A unit may be created to embrace less than the whole of a pool only where it is shown by the evidence that the area to be so included within the unit area is of a size and shape as may be reasonably required for the successful and efficient conduct of the unitized method of operation for which the unit is created, and that the conduct of it will have no material adverse effect upon the remainder of the pool. The plan of unitization for each unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect to it. In addition to other terms, provisions, conditions and requirements found by the department to be reasonably necessary or proper to carry out the purpose of this chapter, and subject to the further requirements of this section, each plan of unitization shall 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 pool 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 the 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 shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the department;

(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 and receive, instead thereof, their fair, equitable and reasonable share of the unit production or other benefits of it; a separately owned tract's fair, equitable, and reasonable share of the unit production shall 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, the quantity of oil and gas recoverable from it, location on the structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operations to which the tract will or is likely to be subjected, or so many of these 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 this chapter means all oil and gas produced from a unit area from the effective date of the order of the department 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 of it shall be apportioned among and assessed against the tracts and interests made chargeable with it, including a detailed accounting procedure governing all charges and credits incident to such operations; upon terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provision shall be made in the plan of unitization for carrying or otherwise financing lessees who are unable to promptly meet their financial obligations in connection with the unit;

(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 for it, 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 other subcommittees, boards or officers to function under the 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 the committees, boards and officers, and prescribing their tenure and time and method for their selection;

(6) the time when the plan of unitization becomes effective;

(7) the time when and the conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up.

(d) No order of the department creating a unit and prescribing the plan of unitization applicable to it becomes effective until the plan of unitization has been signed or ratified in writing, or approved by the lessees of record of not less than 62.5 per cent of the unit area affected by it and by the owners of record of not less than 62.5 per cent (exclusive of royalty interests owned by lessees or by subsidiaries of any lessee) of the normal one-eighth landowners' royalty interest in and to the unit area, and the department 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 in and to the unit area. Where the plan of unitization has not been signed, ratified or approved by the lessees and royalty owners owning the required percentage interest in and to the unit area at the time the order creating the unit is made, the department shall, upon petition and notice, hold additional and supplemental

hearings as may be requested or required to determine if and when the plan of unitization has been signed, ratified or approved by lessees and royalty owners owning the required percentage interest in and to the unit area and shall, in respect to the hearing, make and enter a finding of its determination in this regard. If the lessees and royalty owners, or either, owning the required percentage interest in and to the unit area have not signed, ratified or approved the plan of unitization within a period of six months from the date on which the order creating the unit is made, the order creating the unit ceases to be of further force and effect and shall be revoked by the department.

(e) Except as otherwise expressly provided in this section, all proceedings held under this chapter, including the filing of petitions, the giving of notices, the conduct of hearings and other action taken by the department shall be in the form and manner and in accordance with the procedure provided in §§ 40—60 of this chapter. Additional notice shall be given as the department requires.

(f) From the effective date of an order of the department creating a unit and prescribing the plan of unitization applicable to it, the operation of a well producing from the pool or portion of it within the unit area defined in the order by persons others than the unit or persons acting under its authority or except in the manner and to the extent provided in the plan of unitization is unlawful and is prohibited.

(g) The obligation or liability of the lessees or other owners of the oil and gas rights in the several separately owned tracts for the payment of unit expense shall at all times be several and not joint or collective and in no event shall 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 his interest in such separately owned tract under the plan of unitization and then only to the extent of the lien provided for in this chapter.

(h) 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 estate and all other oil and gas rights (exclusive of a one-eighth landowners' royalty interest) in and to each separately owned tract, the interest of the owners in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract. 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 shall, however, be primarily responsible for and charged with any assessment for unit expense made against the tract and resort may be had to overriding royalties, oil and gas payments, royalty interests in excess of one-eighth of the production, or other interests which otherwise are not chargeable with these costs, only in

the event the owner of interest primarily responsible fails to pay the assessment of the production to the credit thereof, or production is insufficient for that purpose. If the owner of any royalty interest, overriding royalty, oil or gas payment, or any other interest which under the plan of unitization is not primarily responsible for it pays in whole or in part the amount of an assessment for unit expense for the purpose of protecting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest, the owner of it is to the extent of the payment or deduction subrogated to all the rights of the unit with respect to the interest or interests primarily responsible for the assessment. A one-eighth part of the unit production allocated to each separately owned tract shall be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the royalty owners free and clear of all unit expense and free of any lien for it.

(i) Property rights, leases, contracts and all other rights and obligations shall be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of this chapter and to any valid and applicable plan of unitization or order of the department made and adopted under this chapter, but otherwise remain in effect.

(j) Nothing contained in this chapter shall be construed to require a transfer to or vesting in the unit of title to the separately owned tracts or leases on them within the unit area, other than the right to use and operate them to the extent set out in the plan of unitization; nor shall the unit be regarded as owning the unit production. The unit production and the proceeds from the sale of it shall be owned by the several persons to whom it is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold or possess, shall not be acquired, held or possessed by the unit for its own account but shall be acquired, held and possessed by the unit for the account and as agent of the several lessees and shall be the property of the lessees as their interests 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, and subject to any lien the unit may have on it to secure the payment of unit expense. Neither the unit production or proceeds of the sale of it, nor the other receipts shall be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts shall be 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 the receipts it shall only do so as a common administrative agent of the persons to whom the receipts are payable.

(k) 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 is more or less than the amount of the production from the well or wells, if any, on any such separately owned tract, shall for all intents, uses and purposes be regarded and considered as production from the separately owned tract, and, except as may be otherwise authorized in this chapter, or in the plan of unitization approved by the department, shall be distributed among or the proceeds of it paid to the persons entitled to share in the production from the separately owned tract in the same manner, in the same proportions, and upon the same condition that they would have participated and shared in the production or proceeds of it from such separately owned tract had not the unit been organized, and with the same legal effect. If adequate provisions are made for the receipt of it, the share of the unit production allocated to each separately owned tract shall be delivered in kind to the persons entitled to it by virtue of ownership of oil and gas rights in it or by purchase from the owners subject to the rights of the unit to withhold and sell the same in payment of unit expense under the plan of unitization, and subject further to the call of the unit on such portions of the gas for operating purposes as may be provided in the plan of unitization.

(l) No agreement or plan for the development and operation of a field or pool of oil or gas as a unit, if approved by the department for the purpose of conserving oil or gas, violates a statute of the state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce.

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

(n) Nothing in this section or in any plan of unitization shall be construed as increasing or decreasing the implied covenants of a lease in respect to a common source of supply or lands not included within the unit area of a unit.

(o) The unit area of a unit may be enlarged to include adjoining portions of the same pool, including the unit area of another unit, and a new unit created for the unitized management, operation and further development of the 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 the amendment to the plan of unitization relates only to the rights and obligations as between lessees the requirement that it be signed, ratified, and approved by royalty owners of record of not less than 62.5 per cent of the unit area

ALR reference. — Operator's or lessee's responsibility for production of oil or gas in excess of allowance as affected by his ignorance of excess production or his failure to profit thereby, 150 ALR 1149.

Sec. 31.05.120. Use of gas from well to manufacture carbon products without permit is prima facie waste. The use of gas from a well producing gas only, or from a well which is primarily a gas well for the manufacture of carbon black or similar products predominantly carbon is declared to constitute waste prima facie, and the gas well shall not be used for this purpose unless it is clearly shown at a public hearing held by the department, on application of the person desiring to use the gas, that waste would not take place by the use of the gas for the purpose applied for, and that gas which would otherwise be lost is now available for such purpose, and that the gas to be used cannot be used for a more beneficial purpose, such as for light or fuel purposes, except at prohibitive cost, and that it would be in the public interest to grant the permit. If the department finds that the applicant has clearly shown a right to use the gas for the purpose applied for, it shall issue a permit upon terms and conditions it finds necessary in order to permit the use of the gas and at the same time require compliance with the intent of this section. (§ 8 ch 40 SLA 1955)

Article 3. Levy of Tax and Disposition of Funds.

Section

130 — 140. [Repealed]

Secs. 31.05.130 — 31.05.140.

Repealed by § 2 ch 247 SLA 1970.

Editor's note. — Section 2, ch. 247, SLA 1970, effective July 1, 1970, provides that this repeal does not prevent the expenditure of funds authorized by other disaster relief legislation.

The repealed article derived from §§ 151, 152, ch. 40, SLA 1955.

Article 4. General Provisions.

Section

150. Penalties
160. Injunctive relief
170. Definitions

Sec. 31.05.150. Penalties. (a) A person who wilfully violates a provision of this chapter, or a rule, regulation or order of the department adopted under this chapter is subject to a penalty of not more than $1,000 for each act of violation and for each day that the violation continues, unless the penalty for violation is otherwise provided for and made exclusive in this chapter.

(b) If a person, for the purpose of evading this chapter, or any rule, regulation or order of the department adopted under this chapter, wilfully makes or has made a false entry in a record, account or memorandum required by this chapter, or by a rule, regulation or order, or wilfully omits, or causes to be omitted, from a record, account or memorandum, full, true and correct entries as required by this chapter, or by a rule, regulation or order, or removes from the state or destroys, mutilates, alters or falsifies such record, account or memorandum, the person is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5 000, or by imprisonment in jail for not more than six months, or by both.

(c) A person who knowingly aids or abets another person in the violation of any provision of this chapter, or a rule, regulation or order of the department adopted under this chapter is subject to the same penalty as that prescribed by this chapter for the violation by the other person.

(d) The penalties provided in this section are recoverable by suit filed by the attorney general in the name and on behalf of the department in the superior court of the judicial district in which the defendant resides or in which any defendant resides, if there is more than one defendant, or in the superior court of the judicial district in which the violation occurs. The payment of a penalty does not relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

(e) The commissioner of natural resources may impose a penalty payment on every 1,000 cubic feet of natural gas flared, vented or otherwise determined to be waste as defined in § 170(11) of this chapter. The penalty shall be the fair market value of the natural gas at the point of waste. (§ 12 ch 40 SLA 1955; am § 1 ch 195 SLA 1968)

C.J.S. reference. — 58 C.J.S. Mines and Minerals § 241.

Sec. 31.05.160. Injunctive relief. (a) Whenever it appears that a person is violating or threatening to violate any provision of this chapter, or any rule, regulation or order of the department, the department shall bring suit against that person in the superior court of the judicial district where the violation occurs or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court shall have jurisdiction to grant to the department, without bond or otherwise undertaking, such prohibitory and mandatory injunctions as the facts warrant.

(b) If the department fails to bring suit to enjoin a violation or threatened violation within 10 days after receipt of written request to do so by a person who is or will be adversely affected by the violation, the person making the request may bring suit in his own behalf to restrain the violation or threatened violation in the court in which the department may bring suit. If the court finds that injunctive relief should be granted, the department shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the department had at all times been the plaintiff. (§ 13 ch 40 SLA 1955)

Sec. 31.05.170. Definitions. In this chapter, unless the context otherwise requires

(1) "and" includes "or" and "or" includes "and";

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

(3) "department" means the Department of Natural Resources;

(4) "field" means a general area which is underlain or appears to be underlain by at least one pool, and includes the underground reservoir containing oil or gas; and the words "pool" and "field" mean the same thing when only one underground reservoir is involved, but "field" unlike "pool" may relate to two or more pools;

(5) "gas" includes all natural gas and all hydrocarbons produced at the wellhead not defined as oil;

(6) "oil" 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;

(7) "owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil and gas he produces from a pool for himself and others;

(8) "person" includes a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes a department, agency or instrumentality of the state or a governmental subdivision of the state;

(9) "pool" means an underground reservoir containing, or appearing to contain, a common accumulation of oil or gas. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool";

(10) "producer" means the owner of a well or wells capable of producing oil or gas or both;

(11) "waste" means, in addition to its ordinary meaning, "physical waste" and includes

(A) the inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well in a manner which results or tends to result in reducing the quantity of oil or gas to be recovered from a pool in this state under operations conducted in accordance with good oil field engineering practices;

(B) the inefficient above-ground storage of oil; and the locating, spacing, drilling, equipping, operating or producing of an oil or gas well in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas;

(C) producing oil or gas in a manner causing unnecessary water channeling or coning;

(D) the operation of an oil well with an inefficient gas-oil ratio;

(E) the drowning with water of a pool or part of a pool capable of producing oil or gas, except in so far as and to the extent authorized by the department;

(F) underground waste;

(G) the creation of unnecessary fire hazards;

(H) the release, burning, or escape into the open air of gas, from a well producing oil or gas, except to the extent authorized by the department;

(I) the use of gas for the manufacture of carbon black, except as provided in this chapter;

(12) "cubic foot" of natural gas means the volume of gas contained in one cubic foot of space measured at a pressure base of 14.65 pounds per square inch absolute and a temperature base of 60 degrees Fahrenheit. (§ 2 ch 40 SLA 1955; am §§ 2, 3 ch 195 SLA 1968)

Chapter 15. Common Purchasers of Oil.

Sec. 31.15.010. Hearing on question of discrimination. (a) Upon the complaint of a person having an interest in the production of oil from a field, the commission shall hold a hearing or hearings, or, at the commission's own discretion, the commission may hold a hearing or hearings to determine if there has been unjust and unreasonable discrimination in purchases of oil offered for purchase within the state,

(1) in favor of one or more owners of oil produced as against another owner in the same field; or

(2) in favor of one or more fields in reasonably close proximity to each other.

(b) In determining whether there has been unjust and unreasonable discrimination in favor of one or more owners of oil produced from a field, the commission shall consider the kind and quality of the oil, the sales prices of the oil, and other related matters.

(c) In determining whether there has been unjust and unreasonable discrimination in favor of one or more fields in reasonably close proximity to each other, the commission shall consider the kind and quality of the oil, the sales prices of the oil, the size and location of the fields, the maximum efficient rate of production from the pools, the cost and mode of transporting the oil from the fields, the term of the offerings, and other related matters. (§ 1 ch 7 FSSLA 1973)

Sec. 31.15.020. Determination of common purchaser. (a) Where a purchaser is purchasing from a field and the commission finds that the purchaser has unjustly and unreasonably discriminated in purchases with regard to oil offered for sale in favor of one or more owners of oil produced in the field, he shall order the purchaser to be a common purchaser with respect to oil offered for sale from the field.

(b) Where a purchaser is purchasing from fields in reasonably close proximity to each other and the commission finds that the purchaser has unjustly and unreasonably discriminated in purchases with regard to oil offered for sale in favor of one or more of the fields, he shall order the purchaser to be a common purchaser with respect to oil offered for sale from each field involved.

(c) A purchaser cannot be ordered to be a common purchaser on the basis of purchases of oil taken in kind by the United States or the State of Alaska, or on the basis of the payment of royalties, overriding royalties, net profits, carried interests or similar interests, whether in kind or in value or on the basis of a producer taking its own production. (§ 1 ch 7 FSSLA 1973)

Sec. 31.15.030. Responsibility of common purchaser. (a) A common purchaser purchasing in this state shall purchase ratably without unjust and unreasonable discrimination in favor of any owner or producer over any other owner or producer offering to sell oil produced from a field where it is a common purchaser or from fields in reasonably close proximity to each other where it is a common purchaser.

(b) If a purchaser is a common purchaser in more than one field in reasonably close proximity to each other, the commission may order the purchaser to purchase ratably from the fields involved in proportions which will prevent unjust and unreasonable discrimination among the fields.

(c) The commission may make inquiry in each field concerning the connections of the various producers and when unjust and unreasonable discrimination is found to be practiced by any common purchaser as defined in this chapter the commission shall issue an order to the common purchaser to make reasonable extensions of their lines and reasonable connections as will prevent the discrimination. (§ 1 ch 7 FSSLA 1973)

Sec. 31.15.040. Penalty. A person violating an order issued under this chapter shall be assessed by the commission a civil penalty of not less

than $1,000 nor more than $10,000. Each day a violation continues constitutes a separate offense. (§ 1 ch 7 FSSLA 1973)

Sec. 31.15.050. Definitions. In this chapter

(1) "commission" means the Alaska Pipeline Commission;

(2) "field" means a general area which is underlain or appears to be underlain by at least one pool, and includes the underground reservoir containing oil or gas; and the words "pool" and "field" mean the same thing when only one underground reservoir is involved, but "field" unlike "pool" may relate to two or more pools;

(3) "oil" 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;

(4) "pool" means an underground reservoir containing oil; each zone of a general structure which is completely seperated from any other zone in the structure is covered by the term "pool";

(5) "purchaser" means a person who purchases oil in the state. (§ 1 ch 7 FSSLA 1973)

Chapter 30. Miscellaneous Provisions.

Sec. 31.30.010. Damages for wrongful extraction of oil or gas. (a) If oil or gas has been or is extracted from any existing or subsequently drilled well by any person without right but who asserts a claim of right in good faith or who is acting under an honest belief as to the law or the facts, the measure of damages, if there is any right of recovery under existing law, shall be the value of the oil or gas at the time of extraction, without interest, after deducting all costs of development, operation, and production. The costs shall include taxes and interest on all expenditures from the date of the expenditures.

(b) In this section "oil or gas" includes all hydrocarbon minerals. (§ 1 ch 73 SLA 1964)

Secs. 31.30.040—31.30.070.

Repealed by § 4 ch 170 SLA 1975.

Editor's note. — The repealed sections derived from § 1, ch. 170, SLA 1975.

Legislative committee report. — For report on ch. 170, SLA 1975 (CSHB 258 am S), see 1975 House Journal, p. 524.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

March 21, 1978

SUBJECT: Draft Resources Committee Substitute for SSHB 830

TO: The Honorable C. V. "Chat" Chatterton

FROM: Gregg K. Erickson
Director of Research

As you directed, we have engrossed the language you presented us yesterday into a work draft committee substitute for SSHB 830. The draft committee substitute is attached herewith.

Although we have incorporated your language into SSHB 830, as you specifically directed, we would caution that doing this has introduced a number of uncertainties into the bill. Among these are the following:

1. Sec. 31.05.015 COMPENSATION OF MEMBERS OF THE COMMISSION. By deleting the phrase "equal to that of a commissioner of a principal executive department" after the word "salary", you are presumably reserving to later legislative action the establishment of commissioners' salaries. If this is to be done in the course of the budgetary process, I would suggest that the staff of the Legislative Finance Division be contacted to insure that the salary allocation is made a separate line item, or that other appropriate steps are taken to insure that legislative intent with respect to salaries, whatever it might be, is fulfilled. If it is the legislative desire to have the members of this commission treated for salary purposes the same way as members of all other regulatory commissions, then it will be necessary to amend the Alaska Salary Commission Act (AS 39.23.060) in order to include the commission in the purview of the salary review body.

2. Sec. 31.05.023(b) and (c). The effect of your change to subsection (b) is to place the professional staff of the commission and the personal secretaries of each commissioner in the exempt service. If this is your intention, it would be desirable, although not strictly required, that a conforming amendment to AS 39.25.110 be adopted as well. The effect of your change will be to give the commission pretty much complete discretion with respect to establishing the salaries of its

professional staff members (with the exception of the executive director) and the commissioner's personal secretaries, subject only to the overall constraint of having to live within their budget. Since you did not delete (d), we assume you wish to leave the executive director's salary pegged to that of a commissioner of a principal executive department.

3. Sec. 31.05.025 CONFLICT OF INTEREST. The language you provided would make employees, consultants and members of the commission subject to AS 39.50 and AS 39.51. We would call your attention to the fact that *Sec. 2 of the bill already brings the commissioners under chapter 50. If it is desired to bring the employees and consultants of the department under this chapter, amendment to AS 39.50 will be required. Bringing consultants and employees under AS 39.50 will, of course, mean that they will be subject to the full public disclosure requirements now imposed on legislators and other "public officials" as defined in that chapter.

Subsection ( ) of this section gives the governor authority to determine whether a conflict of interest exists, presumably based on the disclosures required under AS 39.50. It is not clear, however, what action the governor would take if he determines such a conflict exists, or what authority the governor would have in the event a member, consultant or employee of the commission disagreed with the governor's determination that a particular holding would impair the person's ability to act in the "best interests of the people of Alaska".

AS 31.51 will need to be amended if it is desired to bring consultants under its provisions.

4. Sec. 31.05.026 RELATIONSHIP TO DEPARTMENT OF NATURAL RESOURCES. We are not clear as to your intent in adding subsection (d). If subsection (c) is to be superseded, then it probably should be deleted as well. It would appear that your intent in (d) is to vest all information gathering responsibility in the commission. This could create difficulties for the department if it attempts to require persons conducting geophysical exploration or drilling on state lands to provide it with information to assist the state in planning for and conducting the leasing of oil and gas lands. Furthermore, it is not clear what exemptions would be allowed to "the general rule" that is described in subsection (d).

With respect to subsection (e) we are not clear as to the intent or effect of the first sentence. The second sentence of this subsection appears to encourage interagency agreements, but by enumerating the areas to which such agreements may be

entered into, and by specifying that they may be only for "the sole purpose of efficiency" the sentence could be construed as limiting such agreements to the areas enumerated, and for the purpose specified. Subsection (f) seems to speak to the same material as contained in subsections (a) and (b). We cannot judge what its effect would be, either taken together with (a) and (b) or standing alone.

A prior scheduling commitment to another committee will prevent us from attending your markup hearing this afternoon, but we hope these comments may be helpful.

GKE:jm
Attachment

CC: The Hon. Hugh Malone (co-sponsor)

AMENDMENT

OFFERED IN THE HOUSE: BY: _____

TO: Sponsor Substitute for HOUSE BILL No. 830

SENATE BILL No. _____

PAGE: 4 LINE: Between lines 4 and 5

*Sec. 1 of SSHB 830 is amended by the addition of a new section to read as follows:

Sec. 31.05.026. RELATIONSHIP TO DEPARTMENT OF NATURAL RESOURCES.

(a) The department shall have standing before the commission to raise all issues relating to state owned land without regard to the type of proprietary interest held by the state in that land.

(b) With respect to federal land from which the state or any subdivision of the state is entitled under federal law to receive a share of the federal royalty interest, the department shall have the same standing before the commission as if it were the holder of the equivalent royalty interest.

(c) When both the department and the commission have the authority to require, and do require, the submission of substantially the same information from persons subject to this chapter, the commission, in order to alleviate the administrative burdens placed on those persons, may by regulation enter into an agreement with the department whereby either the commission or the department shall have the responsiblity to collect the information lawfully required by both.

Alaska State Legislature

House of Representatives

Committee on Resources

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 16, 1978

AGENDA

8:00 a.m., Room 118, Capitol Building

Milton Lipton will address the Committee on:

SSHB 830 Alaska Oil and Gas Conservation Commission
HB 878 Oil and gas taxes; effective date

1:30 p.m., Court Room A, Court Building

HB 854 Leasing of State land for oil & gas development

Persons requesting to give testimony:

Robert LeResche, Commissioner, Department of Natural Resources
John Roderick, Chief of Special Projects, Dept. of Natural Resources
Ed Phillips, economist, Department of Natural Resources
Milton Lipton, consultant
(Mark Singletary, Arco, if time permits)

To be continued tomorrow at the same time and location.

(HB 878 - add to it)

AGO 935900