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Revised

# **OIL, GAS AND SOLUTION MINING LEGISLATION IN NEW YORK**

  
**As Amended Through September 1985**

**Compiled by  
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OIL, GAS AND SOLUTION MINING LEGISLATION IN NEW YORK STATE  
As Amended Through June 1985  
Compiled by  
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Since the oil embargo of the early '70's, there has been a heightened interest in the oil and gas resources of New York State. Abrupt increases in energy prices combined with the uncertainty caused by continued dependence upon foreign supplies inevitably turned attention to developing new domestic sources of energy.

New York has produced oil and gas for more than a century. Traditionally, most of the oil and gas activity has been concentrated in the southwestern portion of the state. Recently, new activity is occurring in the central and eastern areas of New York. The new interest has resulted in leasing and exploratory activity from Sullivan to Washington Counties in the so-called Eastern Overthrust Region.

Before 1970 New York was primarily an oil rather than a gas producing state. However, because of the increasing prices of foreign oil and the increasing prices of natural gas due, in large part, to the Natural Gas Policy Act of 1978, natural gas drilling has greatly accelerated. For example in 1970 there were only eight gas wells drilled. By 1981 that number increased to over 550.

Natural gas production was estimated at 27 billion cubic feet in 1984, an increase of about 32% over 1983 output. This amount of natural gas represents about 4.5% of the state's current needs.

Oil production also increased in 1984 over 1983. The estimated 952,000 barrels produced in 1984 represented a 6% increase over the previous year.

The Department of Environmental Conservation estimated the 1984 market value of oil and gas at the wellhead to be about \$184 million. With recent declines in prices for both oil and gas there is concern as to the economic impacts that may result not only to the industry but also to the communities that benefit from the industry.

In 1981, Governor Hugh Carey proposed a series of reforms to better manage the development of the oil and gas resources of the state. These changes were warranted by a number of factors including the demands for services by the industry and the public concern for the wise and environmentally safe management of the state's oil and natural gas resources.

Agreement was reached with legislative leaders on a compromise package that was eventually signed into law by the Governor with an effective date of August 26, 1981. These amendments to the oil, gas and solution mining law were the first major changes since 1963.

These legislative developments, coupled with increasing concern over demand - supply relationships for petroleum products within the state, make it imperative that all interests and groups are involved in deliberations over energy policy. Information bearing on these policy issues must be widely disseminated if orderly and environmentally sound solutions are to be found for promoting the development of oil and gas resources.

This educational publication is intended to provide interested people an introduction to oil, gas and solution mining laws operating in New York State. It is not intended as a "do-it-yourself" legal guide. Hopefully, the user of this publication will be able to become more familiar with the definitions, provisions and resources provided by the law.

However, any person involved either as a private citizen, elected official, appointed official or agency representative is advised to seek legal counsel before consummating any action related to these laws.

Oil, Gas and Solution Mining Legislation in New York  
As Amended Through June 1985

Summary of Provisions:

Environmental Conservation Law:

Section 23-0301 states that..."It is hereby declared to be in the public interest to regulate the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected, and to provide in similar fashion for the underground storage of gas and the solution mining of salt."

To achieve this stated policy, the Environmental Conservation Law provides the following mechanisms:

- . Treats all oil and gas fields in the state in the same manner.
- . Provides for a single state law to regulate the development of the oil and gas resources.
- . Mandates the plugging of abandoned oil and gas wells.
- . Maintains production records.
- . Requires security bonding of all new wells.
- . Requires notification of landowners and local government officials by drillers of intention to begin drilling operations.
- . Creates a thirteen member New York State oil, gas and solution mining advisory board.
- . Establishes procedures for well spacing in oil and natural gas pools and fields.
- . Establishes procedures for both voluntary and compulsory integration and unitization in oil and gas pools and fields.
- . Establishes procedures for leasing state lands for the production and storage of oil and natural gas.
- . Collects regulation and reclamation fees to pay for administrative costs.
- . Enforces the oil, gas and solution mining law.

In addition to the Environmental Conservation Law, the Real Property Tax Law, the State Tax Law, the Agriculture and Markets Law, the General Obligations Law, and the Lien Law were amended to deal with various aspects of the Oil, Gas and Solution Mining Law. These additional provisions are found beginning on Page 29 of this document.

For additional information concerning provisions of the Oil, Gas and Solution Mining Law, the reader is referred to the nearest office of the Department of Environmental Conservation. The counties served and location of the D.E.C. offices are shown on the back cover of this publication.

Your local county Cooperative Extension office can also provide additional assistance. A list of Cooperative Extension offices is printed inside the back cover.

Oil, Gas and Solution Mining Legislation  
As Amended Through June 1985<sup>1</sup>/  
The New York State  
Environmental Conservation Law

ARTICLE 23 - MINERAL RESOURCES

Title 1 - DEFINITIONS

Sec. 23-0101. Definitions.

Sec. 23-0102. Short title.

Sec. 23-0101. Definitions

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

1. "Buffer zone" means all that area outside and surrounding the underground gas storage reservoir which the department approves as appropriate to protect the integrity of the reservoir, no part of which shall be more than thirty-five hundred linear feet from the boundary thereof.

2. "Cavity" means an open or partially open space left after a salt has been solution mined.

3. "Commissioner" means the commissioner of environmental conservation.

4. "Department" means the department of environmental conservation.

5. "Fund" means the oil and gas fund as established in section eightythree-a of the state finance law.

6. "Field" means the general area underlaid by one or more pools.

7. "Gas" means all natural, manufactured, mixed, and by product gas, and all other hydrocarbons not defined as oil in this section.

8. "Local agency" means any local agency, board, authority, school district, commission or governing body, including any county, city, town, village or other political subdivision of the state.

9. "Metered" means the physical measurement of gas by means acceptable to the department.

10. "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced at the well head in liquid form by ordinary production methods and that are not the result of condensation of gas.

11. "Owner" means the person who has the right to drill into and produce from a pool or a salt deposit and to appropriate the oil, gas or salt he produces either for himself or others, or for himself and others.

12. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency or instrumentality of the state or any of its governmental subdivisions.

13. "Plug and abandon" means the plugging, replugging if necessary, and abandonment of a well bore including the placing of all bridges, plugs, and fluids therein and the restoration and reclamation of the surface in the immediate vicinity to a reasonable condition consistent with the adjacent terrain.

14. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool.

15. "Producer" means the owner of a well or wells capable of producing oil, gas, or salt; or any salt or hydrocarbon mixture.

16. "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, naturalgas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether herein enumerated or not.

17. "Reservoir" means any underground reservoir, natural or artificial cavern or geologic dome, sand or stratigraphic trap, whether or not previously occupied by or containing oil or gas.

18. "Salt" means sodium chloride, evaporite or other water soluble minerals, either in solution or as a solid or crystalline material in a pure state or as a mixture.

19. "Solution mining" means the dissolving of an underground salt by water to produce a brine for transport to another underground or surface location for sale, processing or storage.

20. "Waste" means

a. Physical waste, as that term is generally understood in the oil and gas industry;

b. The inefficient, excessive or improper use of, or the unnecessary dissipation of reservoir energy;

c. The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

d. The inefficient storing of oil or gas; and

e. The flaring of gas produced from an oil or condensate well after the department has found that the use of the gas, on terms that are just and reasonable, is, or will be economically feasible within a reasonable time.

L. 1972, C. 664, Sec. 2; amended L. 1973, C. 922, Sec. 1; L. 1981, C. 846, Sec. 3; L. 1984, C. 891, Sec. 1.

Sec. 23-0102. Short title.

This article shall be known and may be cited as the "oil, gas and solution mining law."

Added L. 1973, C. 922, Sec. 2.

## Title 3 - GENERAL PROVISIONS

Sec. 23-0301. Declaration of policy.  
 Sec. 23-0303. Administration of article.  
 Sec. 23-0305. Powers and duties of the commissioner and the department.  
 Sec. 23-0307. Judicial review.  
 Sec. 23-0309. Severability.  
 Sec. 23-0311. New York State oil, gas and solution mining advisory board.

Sec. 23-0301. Declaration of policy

It is hereby declared to be in the public interest to regulate the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected, and to provide in similar fashion for the underground storage of gas and the solution mining of salt.

L. 1972, C. 664, Sec. 2; L. 1973, C. 922, Sec. 3; L. 1978, C. 396, Sec. 1.

Sec. 23-0303. Administration of article

1. Except to the extent that the administration of this article is specifically entrusted to other agencies or officers of the state by its provisions, such administration shall be by the department. Geological services for the department in connection with the administration of this article shall be provided by or in cooperation with the state geologist. Within appropriations therefor the department is authorized to employ such personnel as may be necessary for the administration of this article and may also employ or secure the services of such engineering, technical and other consultants as it may require from time to time.

2. The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.

3. a. The commissioner shall accept from municipalities requests for funds from the oil and gas fund to reimburse the municipality for costs incurred in repairing damages to municipal land or property. Such requests shall include such explanatory material and documentation as the commissioner may require.

b. The commissioner and director of the budget, may recommend payment to the municipality to satisfy the request for the reimbursement upon finding that:

(1) The municipality has made a bona fide effort to seek relief and recover its costs from those deemed to be responsible and any other appropriate avenues, but has been unsuccessful;

(2) The damage was a direct result of activities regulated under this article and that the amount of funds requested is reasonable in view of such damages; and

(3) The costs were incurred after the effective date of this subdivision.

L. 1972, C. 664, Sec. 2; amended L. 1981, C. 846, Sec. 4.

Sec. 23-0305. Powers and duties of the commissioner and the department

1. The provisions of this section shall apply only to rules, regulations, orders and hearings made or conducted in the administration of this article.

2. No rule, regulation, order or amendment thereof, except in an emergency, shall be made by the department without a public hearing upon at least ten days' notice, exclusive of the date of service. The public hearing shall be held at such time and place as may be prescribed by the department and any interested person shall be entitled to be heard.

3. When an emergency requiring immediate action is found to exist, the department may make an emergency order without notice or hearing, which shall be effective when made. No emergency order shall be effective for more than fifteen days.

4. Any notice required by this article shall be given by the department by any one or more of the following methods: (a) personal service, (b) publication in one or more issues of a newspaper of general circulation in the county where the land affected or some part thereof is situated, or (c) by registered or certified mail addressed, postage prepaid, to the last known mailing address of the person or persons affected. The date of service shall be the date on which service was made in the case of personal service, the date of first publication in the case of notice by publication, and the date of mailing in the case of notice by mail. The notice 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. Should the department elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the department in the same manner as is provided by law for the service of process in civil actions in the courts of the state.

5. All rules, regulations and orders made by the department shall be in writing, shall be entered in full and indexed in books to be 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 any department rule or regulation shall be received in evidence in all courts of this state with the same effect as the original, if certified by a member or duly authorized employee of the department.

6. The department may act upon its own motion or upon the application of any interested person. On the filing of an application concerning any matter within the jurisdiction of the department, pursuant to this article, the department shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearings shall be held without undue delay after the filing of the petition. The department shall make its order within sixty days after the conclusion of the hearing.

7. To aid in the administration of this article, the commissioner may issue subpoenas in his name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence for any hearing, proceeding or investigation conducted or to be conducted by or before the department. Service of such a subpoena, enforcement of obedience thereto, and punishment for disobedience thereof shall be had as and in the manner provided by the Civil Practice Law and Rules relating to enforcement of a subpoena issued by a board or committee except that in the case of hearings, proceedings or investigations before or conducted by the department neither the holder of a permit or lease issued pursuant to this article, nor an employee of such permit holder or lessee, nor an officer or stockholder in a permittee or lessee corporation, when required to attend as a witness, shall be entitled to any subpoena fee or mileage. Any member of the department or any person who may be designated by the department to hold hearings may administer oaths to witnesses. The department also may provide for the taking of depositions of witnesses for the purpose of any such hearing. In such case such officer, employee or other person may administer oaths to the witnesses whose depositions are to be taken. Each deposition shall be reduced to writing and

subscribed by the deponent. The provisions of this subdivision shall apply only to the administration of this article.

8. With respect to oil pools or fields and natural gas pools or fields the department shall have power to:

a. Make such investigation as it deems proper to determine whether waste exists or is imminent.

b. Require identification of ownership of producing leases, tanks, plants, structures and facilities for the transportation and refining of oil and gas.

c. Classify and reclassify pools as oil or gas pools, or wells as oil or gas wells, including the delineation of boundaries for purposes material to the interpretation or administration of this article.

d. Require the drilling, casing, operation, plugging and replugging of wells and reclamation of surrounding land in accordance with rules and regulations of the department in such manner as to prevent or remedy the following, including but not limited to: the escape of oil, gas, brine or water out of one stratum into another; the intrusion of water into oil or gas strata other than during enhanced recovery operations; the pollution of fresh water supplies by oil, gas, salt water or other contaminants; and blowouts, cavings, seepages and fires.

e. Enter, take temporary possession of, plug or replug any abandoned well as provided in the rules and regulations, whenever any owner or operator neglects or refuses to comply with such rules and regulations. Such plugging or replugging by the department shall be at the expense of the owner or operator whose duty it may be to plug the well and who shall hold harmless the state of New York for all accounts, damages, costs and judgments arising from the plugging or replugging of the well and the surface restoration of the affected land. Primary liability for the expense of such plugging or replugging and first recourse for the recovery thereof shall be to the operator unless a contract for the production, development, exploration or other working of the well, to which the lessor or other grantor of the oil and gas rights is a party, shall place such liability on the owner or on the owner of another interest in the land on which the well is situated. When an operator violates any provision of this article, any rule or regulation promulgated thereunder, or any order issued pursuant thereto in reference to plugging or replugging an abandoned well, he may not transfer his responsibility therefor by surrendering the lease. Prior to the commencement of drilling of any well, the operator shall be required to furnish to the department a bond acceptable to it conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Upon the approval of the department, in lieu of such bond, the operator may deposit cash or negotiable bonds of the United States Government of like amount in an escrow account conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Any interest accruing as a result of the aforementioned escrow deposit shall be the exclusive property of the operator. The aforementioned bonding requirements shall remain the obligation of the original operator regardless of changes in operators unless a subsequent operator has furnished the appropriate bond or substitute as herein provided acceptable to the department and approval for the transfer of the well plugging responsibilities to the subsequent operator has been granted by the department. The cost of plugging or replugging any well, where such action is necessary or incident to the commencing or carrying on of storage operations pursuant to sections 23-1103 or 23-1301 shall be borne by the operator of the storage facility.

f. Require that every person who produces, sells, purchases, acquires, stores or transports oil or gas in this state shall keep and maintain complete and accurate records of the quantities thereof. True copies or duplicates shall be kept or made available for examination within this state by the department or its agents at all reasonable times and every such person shall file with the department such reports concerning production, sales, purchases, transportation or storage on a form acceptable



to the department. Any such records or reports, and any information obtained therefrom shall be only for the confidential use of the department and other departments, agencies and officers of the state government until six months after the period to which said records or reports apply, unless the person furnishing the same shall expressly agree to their earlier publications or availability to the general public, except as provided in subdivision five of section five hundred ninety-five of the real property tax law. Nothing herein shall be construed to prevent the use of such records, reports or information obtained therefrom by any department, agency or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the industry, the economy, or the condition of the natural resources of this state, provided that such analyses or summaries do not involve the publication of records, reports or information relating to a single firm or business enterprise.

g. In addition to the powers provided for in titles 1, 3, 5 and 13 of article 71, order an immediate suspension of drilling or production operations whenever such operations are being carried on in violation of this article or any rule or regulation promulgated thereunder or order issued pursuant thereto. Any order issued pursuant to this paragraph may be reviewed upon application of an aggrieved party by means of an order to show cause which order shall be issued by any justice of the supreme court in the judicial district in which any order applies and shall be returnable on the third succeeding business day following the issuance of such order. Service of such show cause order shall be made upon the regional office of the department for the region in which such order applies, and upon the attorney general by delivery of such order to an assistant attorney general at an office of the attorney general in the county in which venue of the proceeding is designated, or if there is no office of the attorney general within such county, at the office of the attorney general nearest such county. Except as hereinabove specified, the proceeding to review an order under this paragraph shall be governed by article seventy-eight of the civil practice law and rules.

h. Require the immediate reporting of any non-routine incident including but not limited to casing and drill pipe failures, casing cement failures, fishing jobs, fires, seepages, blowouts and other incidents during drilling, completion, producing, plugging or replugging operations that may affect the health, safety, welfare or property of any person. The department may require the operator, or any agent thereof, to record any data which the department believes may be of subsequent use for adequate evaluation of a non-routine incident.

i. Require the taking and making of well logs, well samples, directional surveys and reports on well locations and elevations, drilling and production, and further require their filing pursuant to the provisions of this article. Upon the request of the state geologist, the department shall cause such duplicate samples or copies of records and reports as may be required pursuant to this article to be furnished to him.

j. Give notice to persons engaged in underground mining operations of the commencement of any phase of oil or gas well operations which may affect the safety of such underground mining operations or of the mining properties involved. Rules and regulations promulgated under this article shall specify the distance from underground mining operations within which such notice shall be given and shall contain such other provisions as in the judgment of the department shall be necessary in the interest of safety. The department shall not be required to furnish any notice required by this paragraph unless the person or persons engaged in underground mining operations or having rights in mining properties have notified the department of the existence and location of such underground mining operations or properties.

k. (1) Except as to production of gas from lands under the waters of Lake Erie, in order to satisfy the financial security requirements contained in paragraph e of this subdivision for wells less than six thousand feet in depth for which the department either shall have issued or shall issue permits to drill such wells or, on or after June fifth, nineteen hundred seventy-three, shall have issued acknowledgements of notices of

intention to drill such wells, without any way affecting any obligations to plug such wells, the operator shall provide a bond or other financial security acceptable to the department in the following amount:

(i) for wells less than two thousand five hundred feet in depth:

(a) twenty-five hundred dollars per well, provided that the operator shall not be required to provide financial security under this item exceeding twenty-five thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, twenty-five thousand dollars, plus twenty-five hundred dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars;

(c) for fifty-one to one hundred wells, forty thousand dollars, plus twenty-five hundred dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding seventy thousand dollars;

(d) for over one hundred wells, seventy thousand dollars, plus twenty-five hundred dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred thousand dollars.

(ii) for wells between two thousand five hundred feet and six thousand feet in depth:

(a) five thousand dollars per well, provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, forty thousand dollars, plus five thousand dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding sixty thousand dollars;

(c) for fifty-one to one hundred wells, sixty thousand dollars, plus five thousand dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred thousand dollars;

(d) for over one hundred wells, one hundred thousand dollars, plus five thousand dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred fifty thousand dollars.

(2) In the event that an operator shall have wells described in clauses (i) and (ii) of subparagraph (1) of this paragraph, in lieu of providing financial security under the provisions of each such clause, such operator may file financial security as if all such wells were between two thousand five hundred feet and six thousand feet in depth.

(3) For wells greater than six thousand feet in depth, the operator may be required to provide additional financial security consistent with criteria contained in rules and regulations to be adopted to implement this subparagraph.

9. With respect to solution mining areas the department shall have the power to:

a. Require identification of ownership of producing leases and solution mining

equipment such as structures, tanks, gathering systems and facilities for the transportation of salt brine.

b. Require the drilling, casing, operation and plugging of wells in accordance with rules and regulations of the department in such a manner as to prevent the loss or escape of oil or gas reserves to the surface or to other strata; the intrusion of brine or water into commercial oil or gas reserves; the pollution of fresh water supplies by oil, gas or salt water, and to facilitate the efficient use of ground and surface waters in solution mining.

c. Give notice to persons engaging in underground mining operations of the commencing of any phase of solution mining well operations which may affect the safety of such underground mining operations or of the mining properties involved. Rules and regulations of the department adopted pursuant hereto shall specify the distance from such underground mining operations within which such notice shall be given and shall contain such other provisions as in the judgment of the department shall be necessary in the interest of safety. The department shall not be required to furnish any notice pursuant hereto unless the person or persons engaged in underground mining operations or having rights in mining properties have notified the department of the existence and location of such underground mining operations or properties.

d. Require metering or other measuring of brine produced by solution mining, and the maintenance of the records from each cavity or group of interconnected cavities until the wells in a cavity have been abandoned and plugged. These records shall be given to the department on request and shall not be released by the department for publication or be available to the general public without consent of the producer.

e. Enter, take temporary possession of, plug or replug any abandoned well as provided in the rules and regulations, whenever any operator neglects or refuses to comply with such rules and regulations. Such plugging or replugging by the department shall be at the expense of the owner or operator whose duty it shall be to plug the well and who shall hold harmless the state of New York for all accounts, damages, costs and judgments arising for<sup>1</sup> the plugging or replugging of the well and the surface restoration of the affected land. Primary liability for the expense of such plugging or replugging and first recourse for the recovery thereof shall be to the operator unless a contract for the production, development, exploration or other working of the well, to which the lessor or other grantor of the solution salt rights is a party, shall place such liability on the owner or on the owner of another interest in the land on which the well is situated. When an operator violates any provision of this article, any rule or regulation promulgated thereunder, or any order issued pursuant thereto in reference to plugging or replugging an abandoned well, he may not transfer his responsibility therefor by surrendering the lease. Prior to the commencement of drilling of any well to which this subdivision applies, the operator shall be required to furnish to the department a bond acceptable to it conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Upon the approval of the department, in lieu of such bond, the operator may deposit cash or negotiable bonds of the United States Government of like amount in an escrow account conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Any interest accruing as a result of aforementioned escrow deposit shall be the exclusive property of the operator. The aforementioned bonding requirements shall remain the obligation of the original operator regardless of changes in operators unless a subsequent operator has furnished the appropriate bond or substitute as herein provided acceptable to the department and approval for the transfer of the well plugging responsibility to the subsequent operator has been granted by the department. Any order issued pursuant to this paragraph may be reviewed upon application of an aggrieved party by means of an order to show cause which order shall be issued by any justice of the supreme court in the judicial district in which any such order applies and shall be returnable on the third succeeding business day

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<sup>1</sup>So in original. Probably should read "from."

following the issuance of such order. Service of such show cause order shall be made upon the regional office of the department for the region in which such order applies, and upon the attorney general by delivery of such order to an assistant attorney general at an office of the attorney general in the county in which venue of the proceeding is designated, or if there is no office of the attorney general within such county, at the office of the attorney general nearest such county. Except as hereinabove specified, the proceeding to review an order under this paragraph shall be governed by article seventy-eight of the civil practice law and rules.

f. (1) In order to satisfy the financial security requirements contained in paragraph e of this subdivision for all wells for which the department either shall have issued or shall issue permits to drill such wells or, on or after June fifth, nineteen hundred seventy-three, shall have issued acknowledgements of notices of intention to drill such wells, without in any way affecting any obligation to plug such wells, the operator shall provide a bond or other financial security acceptable to the department in the following amount:

(i) for wells less than two thousand five hundred feet in depth:

(a) twenty-five hundred dollars per well, provided that the operator shall not be required to provide financial security under this item exceeding twenty-five thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, twenty-five thousand dollars, plus twenty-five hundred dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars;

(c) for fifty-one to one hundred wells, forty thousand dollars, plus twenty-five hundred dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding seventy thousand dollars;

(d) for over one hundred wells, seventy thousand dollars, plus twenty-five hundred dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred thousand dollars.

(ii) for wells between two thousand five hundred feet and six thousand feet in depth:

(a) five thousand dollars per well provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, forty thousand dollars, plus five thousand dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding sixty thousand dollars;

(c) for fifty-one to one hundred wells, sixty thousand dollars, plus five thousand dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred thousand dollars;

(d) for over one hundred wells, one hundred thousand dollars, plus five thousand dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred fifty thousand dollars.

(2) In the event that an operator shall have wells described in clauses (i) and (ii) of subparagraph (1) of this paragraph, in lieu of providing financial security under the provisions of each such clause, such operator may file financial security as if all such wells were between two thousand five hundred feet and six thousand feet in depth.

(3) For wells greater than six thousand feet in depth, the operator may be required to provide additional financial security consistent with criteria contained in rules and regulation to be adopted to implement this subparagraph.

10. The case of any well legally plugged pursuant to subdivision nine hereof, the responsibility for the cost of replugging or reinforcing the plugging of any well, whenever such replugging or reinforcing is made necessary by reason of the commencement or expansion of storage operations, shall be borne by the operator of the storage facility.

11. The department may use any of its powers for the purpose of cooperating with any other state or jurisdiction in regulating or otherwise affecting the development or production of oil, gas or salt at any location where such development or production may have a physical affect<sup>1</sup> on development or production in such other state or jurisdiction.

12. With respect to the production of gas from lands under the water of Lake Erie:

a. This state shall indemnify all municipalities adjacent to Lake Erie within the state of New York for expenses of restoration of fresh water supplies, cleanup of beaches, piers, and similar facilities, and for liability claims arising from any discharge or spill occasioned by exploration, drilling or production of operations.

b. If any oil or other hazardous substance is discharged in the course of drilling for or piping natural gas so as to pollute the waters or endanger other natural resources of the state, the department shall immediately act to remove or arrange for the removal of such substance and to terminate or arrange for the termination of such discharge, unless the department determines that such removal or termination will be done properly and expeditiously by the lessee, owner or operator of the drilling or piping operation.

c. Whenever the department acts to remove or arrange for the removal of any substance, or terminates or arranges for the termination of any discharge, the department may draw upon moneys that may be set aside for the department for such purposes from the governmental emergency fund, under such terms and conditions as the governor and the legislature have established for use of such moneys.

d. No action taken by any person to contain or remove a discharge shall be construed as an admission of liability for said discharge. Provided that any person who undertakes removal or cleanup operations shall, at the request of the department or an appropriate federal agency, coordinate his actions with ongoing state or federal operations. No person who renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions in rendering such assistance except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup operations, no person shall discharge any detergent into the waters of this state without prior authorization of the commissioner.

13. Every person granted a permit to drill pursuant to this section shall give notice by certified mail to any local government affected of the location of the drilling site prior to the commencement of drilling operations. Such prior notice shall also be

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<sup>1</sup>So in original. Probably should read "effect."

given by certified mail to any landowner whose surface rights will be affected by drilling operations.

L. 1972, C. 664, Sec. 2; amended L. 1973, C. 400, Secs. 51-55; L. 1973, C. 922, Secs. 4-7; L. 1977, C. 722, Sec. 3; L. 1981, C. 846, Secs. 5, 6; L. 1984, C. 891, Secs. 4, 5; L. 1985, C. 869, Sec. 6.

#### Sec. 23-0307. Judicial review

Any act, omission, or order of the department or of any of its officers or employees, pursuant to or within the scope of this article, may be reviewed in accordance with article 78 of the Civil Practice Law and Rules, but application for such review must be made not later than sixty days from the date of such action, omission or order.

L. 1972, C. 664, Sec. 2.

#### Sec.23-0309. Severability

The provisions of this article shall be severable and if any phrase, clause, sentence or provision of this article, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this article and the application thereof shall not be affected thereby.

L. 1972, C. 664, Sec. 2.

#### Sec.23-0311. New York state oil, gas and solution mining advisory board

1. A thirteen member New York state oil, gas and solution mining advisory board shall be created within the department to advise and assist the commissioner and other state agencies on activities and policies related to the development, operation and regulation of the oil, gas and solution mining industry. The members shall be appointed by the governor, with a majority representative of the respective industries. Three of the members shall be appointed upon recommendation of the majority leader of the senate and three of the members shall be appointed upon recommendation of the speaker of the assembly. Appointments shall be made for three-year terms. Members shall continue in office until their successors have been appointed and qualified. The governor shall select a chairman from among the members. The board shall meet at least twice yearly and the members shall receive reimbursement for expenses. The department shall provide the board with secretarial services.

2. The chairman of the public service commission, the commissioner of the energy office, the state geologist, and the commissioner of environmental conservation shall serve the board in an ex-officio capacity.

3. The commissioner shall seek the views of the board on matters within their scope of concern and shall specifically request the board's participation at an early developmental stage of any new rules, regulations and policies being contemplated or developed. In addition to such other duties as the commissioner may suggest or the board on its own volition may choose to undertake, the board shall:

a. Review and comment on the criteria to be used by the department in selecting abandoned wells for plugging or replugging.

b. Review and comment on proposed rules and regulations and department activities affecting the industry.

c. Recommend to the governor, the commissioner, and other state agencies program directions or modifications related to the development, operation, and regulation of the oil, gas, and solution mining industry.

Added L. 1981, C. 846, Sec. 7; L.1985, C. 184, Sec. 1; L. 1985, C. 185, Sec. 1.

#### Title 5 - WELL SPACING IN OIL AND NATURAL GAS POOLS AND FIELDS

Sec. 23-0501. Well spacing in oil and natural gas pools and fields.

Sec. 23-0501. Well spacing in oil and natural gas pools and fields

1. Well spacing in oil pools or fields and in natural gas pools or fields shall be subject to the provisions of this section.

2. Whenever the department finds after notice and hearing that the spacing of wells in any field is necessary to carry out the policy provision of section 23-0301, it shall promptly establish spacing units for each pool in the field, except in those pools that have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Oil fields or pools which have been discovered, developed and operated prior to January first, nineteen hundred eighty-one, shall be considered to have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units.

3. Spacing units shall be of approximately uniform size and shape for the entire pool, except that where circumstances reasonably require, the department may grant variances from the size or shape of any spacing unit or units, provided that in so doing the department shall, if necessary, make such adjustment of the allowable production from the well or wells drilled thereon so that the owners of each spacing unit shall receive their just and equitable shares of the production from the pool. The department may grant variances without conducting a hearing but shall not issue a variance without a hearing unless reasonable efforts have been made to notify, and an opportunity for comment has been provided to all owners whose interest would be affected by the proposed variance, and a finding has been made that no facts are in dispute.

4. An order establishing spacing units shall specify the size and shape of the units, which shall be such as will, in the opinion of the department, result in the efficient and economical development of the pool as a whole, and no unit shall be smaller than the maximum area that can be efficiently and economically drained by one well.

5. An order establishing spacing units shall specify the location for the drilling of a well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the issuance of the spacing order. If the department finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, or for other good cause shown, the department is authorized to make an order permitting the well to be drilled at a location other than that prescribed by the spacing order, provided that in so doing the department shall, if necessary, make such adjustment of the allowable production from the well drilled so that the owners of such spacing unit shall receive no more than their just and equitable shares of the production from the pool.

6. An order establishing spacing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the department from time to time to include additional lands subsequently determined to be underlaid by such pool.

7. An order establishing spacing units may be modified by the department to change their size, or to permit the drilling of additional wells on a reasonably uniform pattern.

8. After the date of the notice for a hearing called to establish spacing units, no additional well shall be commenced for production from the pool until the order establishing spacing units has been made, unless the commencement of the well is authorized by order of the department.

9. An order establishing spacing units shall, unless the spacing be related to unit operation of an entire pool or part thereof pursuant to the provisions of subdivisions 4 through 12 of section 23-0901, specify the procedure to be followed for compulsory integration of interests within the individual spacing units. Such procedure shall be consistent with the provisions of subdivisions 2 and 3 of section 23-0901. The order also shall provide for a time interval of not less than ninety days, nor more than that which the department regards as consistent with the objectives of well spacing and unitization, during which voluntary integration pursuant to section 23-0701 shall be permitted before the compulsory integration procedure of subdivision 3 of section 23-0901 becomes effective.

10. The department, without considering correlative rights, may grant a drilling permit and variance to those entities described in paragraphs b and c of subdivision 3 of section 23-1901 of this article for the purposes of natural gas development if the department determines, after notice and hearing, that the natural gas resource would not be developed by any other entity within twelve months of the close of the hearing record. In the event that the department shall not receive timely notice of appearance prior to the scheduled date of hearing, it may dispense with such hearing. In making its determination the department shall require that the entity described in paragraphs b and c of subdivision 3 of section 23-1901 of this article submit a finding made by such entity that such drilling is likely to be economically sound, and that the entity in question utilize the resource for its exclusive use when granting such a permit and variance.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Secs. 8, 9; L. 1984, C. 891, Sec. 3.

#### Title 7 - VOLUNTARY INTEGRATION AND UNITIZATION IN OIL AND NATURAL GAS POOLS AND FIELDS

Sec. 23-0701. Voluntary integration and unitization in oil and natural gas pools and fields.

Sec. 23-0701. Voluntary integration and unitization in oil and natural gas pools and fields.

Voluntary integration and unitization in oil pools or fields and in natural gas pools or fields shall be subject to the provisions of this section. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interest in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. An agreement for the unit or for the cooperative development and operation of a field, pool, or part thereof, may be submitted to the department for approval as being in the public interest or reasonably necessary to prevent waste. Such approval shall constitute a complete defense to any suit charging violation of any statute of this state relating to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto. Failure to submit such an agreement to the department for approval shall not for that reason imply or constitute evidence that the agreement or operations conducted pursuant thereto are in violation of laws relating to trusts and monopolies.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 10.



Title 9 - COMPULSORY INTEGRATION AND UNITIZATION IN OIL  
AND NATURAL GAS POOLS AND FIELDS

Sec. 23-0901. Compulsory integration and unitization in oil and natural gas pools and fields.

Sec. 23-0901. Compulsory integration and unitization in oil and natural gas pools and fields.

1. Compulsory integration and unitization in oil pools or fields and in natural gas pools or fields shall be subject to the provisions of this section with subdivision 3 to be specifically applicable to integration within individual spacing units and subdivisions 4 through 12 to be specifically applicable to unit operation of an entire pool or part thereof.

2. The department shall not make any order requiring the integration of interest in any spacing unit or requiring the development or operation of any field, pool or part thereof as a unit unless it finds, after detailed study and analysis, notice and hearing, that the integration of interests in spacing units, under conditions then existing in this state, or in the field or pool to be affected, is necessary to carry out the policy provisions of section 23-0301. The hearing may be coincidental with that required prior to the spacing of wells as provided in subdivision 2 of section 23-0501.

3. In the absence of voluntary integration as permitted by section 23-0701 and after finding as required by subdivision 2 of this section, the department shall make an order integrating all tracts or interests in the spacing unit for development and operation. Each such integration order shall be upon terms and conditions that are just and reasonable. All operations including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit covered by an integration order shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the owner or several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by an order of integration shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. Each such integration order shall authorize the drilling, equipping and operation or operations of a well on the spacing unit, and make provision for the payment of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest. If there is any dispute as to such costs, the department shall determine the proper costs. If one or more of the owners shall drill, equip and operate, or operate, or pay the expenses of drilling, equipping and operating, or operating, a well for the benefit of another person as provided for in an order of integration, then such owner or owners shall be entitled to the share of production from the spacing unit accruing to the interest of such other person, exclusive of a royalty not to exceed one-eighth of the production, until the market value of such other person's share of the production, exclusive of such royalty, equals twice such other person's share of the reasonable actual cost of drilling, equipping and operating, or operating the well, including a reasonable charge for supervision and interest.

4. The department upon its own motion may, and upon the application of any interested person shall, hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof.

5. The department shall make an order providing for the unit operation of a pool or part thereof if it finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

- a. A description of the unitized area, termed the unit area.

b. A statement of the nature of the operations contemplated.

c. An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the department shall determine the value, from evidence introduced at the hearing, of each separately owned tract in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the value of each tract so determined bears to the value of all tracts in the unit area.

d. A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

e. A provision providing how the expenses of unit operations, including capital investment, shall be determined and charged to the separately owned tracts and how said expenses shall be paid.

f. A provision, if necessary, for carrying or otherwise financing any person who is unable to meet his financial obligations in connection with the unit, allowing a reasonable interest charge for such service.

g. A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of such person.

h. The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate.

i. Such additional provisions as are found to be appropriate for carrying on the unit operations, and for the protection or adjustment of correlative rights.

6. No order of the department providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the department has been approved in writing by the owners of sixty per cent or more in interest as the costs of such unit operations are shared under the order of the department, and by owners of record of a like percentage of a one-eighth royalty interest in and to the unit area, and the department has made a finding, either in the order providing for unit operations, or in a supplemental order, that the plan for unit operations has been so approved by the required number of owners and royalty owners. If the plan for unit operations has not been so approved by owners and royalty owners at the time the order providing for unit operations is made, the department shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the owners and royalty owners, or either, owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of force and shall be revoked by the department.

7. An order providing for unit operations may be amended by an order made by the department, in the same manner and subject to the same conditions as an original order providing for unit operations, provided

a. if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners shall not be required, and

b. no such order of amendment shall change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning interest in such tract.

8. The department, by an order, may provide for the unit operation of a pool or a part thereof that embraces a unit area established by a previous order of the department. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

9. Oil and gas allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from such tract, and all operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by its several owners. The operations conducted pursuant to the order of the department shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the department.

10. Oil and gas allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

11. No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

12. Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

L. 1972, C. 664, Sec. 2; amended L. 1981, C. 1020, Sec. 1.

#### Title 11 - LEASES FOR PRODUCTION AND STORAGE OF OIL AND GAS ON STATE LANDS

Sec. 23-1101. Procedure for obtaining oil and gas production lease.

Sec. 23-1103. Procedure for obtaining gas storage lease.

Sec. 23-1101. Procedure for obtaining oil and gas production lease

1. The department may make leases on behalf of this state, upon such terms and conditions including consideration as to the department seem just and proper for:

a. The exploration, development and production of gas in state owned lands, except state park lands and the lands under the waters of Lake Ontario or along its shoreline; and

b. The exploration, development and production of oil in state owned lands, except state park lands and the lands under the waters of Lake Erie and Lake Ontario or along their shorelines.

2. All oil and gas leases shall:

a. Be limited in duration to a period not to exceed ten years and as long thereafter as oil and gas is produced in commercially paying quantities;

b. Provide for payment to the agency having jurisdiction over the leased lands of such consideration, royalties, rentals, bonuses and other compensation as shall, in the discretion of the department, be in the best interests of the people of the state of New York;

c. Provide for prompt exploration followed within a reasonable time by operations for the production of oil and gas, if such be found, and shall also contain provisions for the termination of such lease by reason of the lessee's failure to so explore or operate;

d. Be invalid unless they shall have the prior approval of such state department, division, bureau or agency thereof, or state agency having jurisdiction over the land in question; and authority to give such consent is hereby conferred upon the head of any such state department, or a division, bureau or agency thereof, or any state agency, and with respect to lands under water held by the state in its sovereign capacity, jurisdiction is deemed to be in the Commissioner of General Services; and

e. Be inapplicable to any state park lands and to any lands the leasing of which is prohibited by the State Constitution.

3. In addition to the requirements contained in paragraphs a, c and e of subdivision two of this section, all gas leases with respect to the lands under the waters of Lake Erie shall:

a. Provide for payment to the general fund of the state such consideration, royalties, rentals, bonuses or other compensation as shall, in the discretion of the department, be in the best interests of the people of the state of New York.

b. Require that no well shall be permitted nearer than one-half mile from the shore, two miles from public water intake areas, and one thousand feet from any other structure or installation in or on Lake Erie.

c. Require that the following procedures be established if there is evidence suggesting that liquid hydrocarbons may exist in a stratum penetrated by the well bore:

(i) Drilling or completion operations shall cease immediately.

(ii) The department shall be notified of the evidence indicating the presence of liquid hydrocarbons, pursuant to such notification arrangements as the department shall prescribe.

(iii) A formation test shall be conducted in the presence of a department representative.

(iv) If the formation test indicates the presence of appreciable liquid hydrocarbons, the well bore shall be permanently plugged and abandoned from total depth to the lake bottom with cement.

(v) If the formation test does not indicate the presence of appreciable liquid hydrocarbons, drilling may be resumed after an intermediate string of casing has been set, cemented and tested.

(vi) If there is any further indication of liquid hydrocarbons the procedures outlined in paragraphs one through five hereof shall be repeated.

d. Require that each lessee, or other person desiring to install a pipeline, bury the most shoreward portion of each pipeline, in accordance with rules and regulations which shall be promulgated by the department, to obviate the risk of damage from ice, wave and wind conditions.

e. Be conditioned upon the posting by the responsible parties of a liability bond or liability insurance coverage in such form as the department may by regulation require and in such amount as the department shall deem to be reasonably sufficient to correct, repair or remedy to the satisfaction of the department any environmental damage or hazardous discharge resulting from gas exploration or recovery.

f. Provide that each lessee shall be strictly liable to the state for all reasonable expenses involved in the restoration of fresh water supplies, cleanup of beaches, piers and other similar facilities, which may be required as a result of exploration, drilling or production operations, and for liability claims arising therefrom.

g. Require each lessee to immediately notify the department of any discharge of oil or other pollutant, to act expeditiously to terminate such discharge and to remove the substance discharged.

h. Provide for the use and regular inspection of modern anti-pollution devices, including blow-out preventors on every drilling rig.

i. Provide that when a well is permanently abandoned for any reason it shall be permanently plugged by filling the well bore for its total depth, with cement or other suitable material.

j. Provide that, where in the department's opinion, damage to the environment is imminent or an emergency exists, the department shall order the immediate plugging and abandonment, either temporary or permanent, of any well on lands beneath Lake Erie.

4. Any such oil, gas, or oil and gas lease or leases made and granted pursuant to this section shall be awarded to the highest responsible bidder after advertisement for sealed bids. Such advertisements for bids shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose. Such advertisement shall contain a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read. All bids received shall be publicly opened and read at the time and place specified. At least thirty days shall elapse between the first publication of such advertisement and the date specified for the opening and reading of bids. Bids shall be submitted on forms provided by the department, which forms shall indicate the method or methods for computing compensation to the state for the lease and shall contain such other directions as may be appropriate to secure comparability of bids submitted for any given lease. The department, in its discretion, shall determine the highest bid after taking into consideration the anticipated compensation to be returned to the state under any such lease by way of royalty payments, delayed lease rental payments, bonuses or other compensation or consideration, or by a combination of any or all of the same. In cases where two or more responsible bidders submit identical bids, the department in its discretion, may award the lease involved to any of such bidders. The department in its discretion, may also reject any or all bids and readvertise for new bids. The department may disallow any bid if the bidder upon request fails to furnish satisfactory evidence of responsibility.

5. Notwithstanding the requirements contained in subdivision four of this section, the department may negotiate and grant an oil or gas lease on small parcels of state owned land without public bid in order to consolidate large drilling or production units controlled by a single entity. The department shall make a determination that public bid

of such property is unreasonable or impracticable and publish such determination in the state register prior to the granting of any such lease.

L. 1972, C. 664, Sec. 2; amended L. 1974, C. 707, Sec. 2; L. 1977, C. 722, Secs. 1, 2; L. 1981, C. 846, Sec. 11.

Sec. 23-1103. Procedure for obtaining gas storage lease

1. The department may make leases on behalf of this state for the storage of gas, and liquefied petroleum gas, in state owned lands upon such terms and conditions including consideration as to it shall seem just and proper.

2. All leases made pursuant to this section shall:

a. Provide for payment to the agency having jurisdiction over the leased lands of adequate and reasonable consideration;

b. Be invalid unless they shall have the prior approval of such state department, division, bureau or agency thereof, or state agency having jurisdiction over the land in question, and authority to give such consent is hereby conferred upon the head of any such state department, or a division, bureau or agency thereof, or any state agency; and with respect to lands under water held by the state in its sovereign capacity, jurisdiction is deemed to be in the Commissioner of General Services;

c. Contain such other terms and provisions as may be necessary or appropriate in order to promote the purposes of this article and the public policy of this state; and

d. Be inapplicable to any lands the leasing of which is prohibited by the State Constitution.

L. 1972, C. 664, Sec. 2.

### Title 13 - UNDERGROUND STORAGE OF GAS

Sec. 23-1301. Procedure for obtaining underground storage permit.

Sec. 23-1303. Authority to acquire property.

Sec. 23-1305. Procedure for abandoning storage reservoir.

Sec. 23-1307. Ownership of storage gas and storage rights.

Sec. 23-1301. Procedure for obtaining underground storage permit

1. No underground reservoir shall be devoted to the storage of gas, or liquefied petroleum gas unless the prospective operator of such storage reservoir shall have received from the department, after approval in writing of the state geologist, an underground storage permit which shall be in full force. The application for said permit shall include the following:

a. A map showing the location and boundaries of the proposed underground storage reservoir.

b. A report containing sufficient data to show that the reservoir is adaptable for storage purposes.

c. An affidavit signed by the prospective operator to the effect that he has acquired by grant, lease or other agreement at least seventy-five percent of the storage rights in said reservoir and in the buffer zone established to protect the reservoir as approved by the department, calculated on the basis of surface acreage; and such affidavit

shall also set forth that the applicant will agree as a condition to the issuance of such permit that it will thereafter within a reasonable time either acquire by negotiation, or file and proceed with condemnation proceedings to acquire, any outstanding storage rights in the remaining reservoir and buffer zone acreage.

d. Such other information as the department may require.

2. The permit shall be granted within ninety days of application unless the department finds that the application and the information submitted with it do not meet the requirements of this section. The department may revoke or suspend any underground storage permit in force hereunder for failure to comply with any of its provisions or for failure to comply with subdivision 4 of this section.

3. Subdivisions 1 and 2 of this section shall not apply to underground storage reservoirs or the storage of gas therein provided that such reservoirs have been placed in operation prior to October 1, 1963 and so long as such operation is not abandoned.

4. Every operator shall file with the department on or before December 31 of each year, a report with respect to each underground storage reservoir operated by him showing any change in:

a. The estimated size in surface acreage or shape of the reservoir and the buffer zone if any;

b. His estimate of total capacity of the reservoir;

c. His estimate of working capacity of the reservoir; and

d. Any other engineering, geological or operational data that may be requested by the department.

5. The applicant for a permit for the following purposes shall submit with his application the following fees:

a. for a new underground storage reservoir, a fee of ten thousand dollars.

b. for a modification of the storage capacity of an existing underground storage reservoir, a fee of five thousand dollars.

6. No permit issued hereunder and no provision of this article shall be construed to diminish or impair the jurisdiction of the Public Service Commission with respect to regulation of the manufacture, transportation, distribution or sale of gas.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 12; L. 1984, C. 891, Sec. 6.

#### Sec. 23-1303. Authority to acquire property

1. Any corporation empowered to produce, transport, distribute or store gas within this state for ultimate public use, which holds an underground storage permit from the department or which is otherwise lawfully operating an underground storage reservoir and its buffer zone, and which after reasonable effort is unable to obtain rights in real property and wells thereon necessary for activation, operation, or protection of the storage reservoir and its buffer zone shall, subject to the applicable provisions of the eminent domain procedure law, have the authority to acquire such rights as may be required adequately to examine, prepare, maintain, operate and protect, and for access to such underground storage reservoir and its buffer zone; provided that no right of acquisition under this section shall extend to any lands or interests therein which have been acquired, or, in the hands of the present holder, could have been acquired by acquisition; and, provided further, that any acquisition of cemetery lands or burial

grounds shall be in the sound discretion of the court and with due provision for the relocation of human remains.

2. Underground gas storage operators authorized by this section to maintain acquisition proceedings before filing a suit for such acquisition shall have filed with the department a map showing the location, boundaries and estimated size of surface acreage of the underground storage reservoir and its buffer zone.

3. Any operator of an underground gas storage reservoir who at any time controls less than one hundred per cent of the storage rights within that reservoir and its buffer zone and is authorized by this section to maintain a proceeding shall acquire the storage rights remaining in the reservoir and its buffer zone acreage by negotiation or file and proceed with acquisition proceedings within a reasonable time but not to exceed a two year period after the first injection of gas, or after the effective date of this section, whichever is later or within any extension granted by the department.

4. Any operator who seeks to acquire underground gas storage and buffer zone rights as authorized by this section shall name as parties defendant all the owners of all the parcels of property located within the boundaries of the reservoir and its buffer zone from whom storage rights have not previously been legally acquired by grant, lease, or other voluntary agreement; provided, however, that a failure to join the owners of any parcel in the reservoir and its buffer zone due to inadvertence shall not constitute a jurisdictional defect in any proceeding of acquisition.

5. The value of any property acquired pursuant to this section shall include the value of any commercially recoverable native oil and gas in place to the extent that the holder of the property interest being acquired has a right thereto. The same provision shall apply to the holder of salt rights.

6. The cost of, or possible necessity for, plugging any well or wells, when such plugging or replugging is or may be made necessary by reason of the storage use made possible or facilitated by acquisition shall not be considered in computing the value of property or any interest therein taken under this section.

7. The use of salt cavities for the storage of gas or other petroleum products or byproducts shall be at the discretion of the owner of the salt deposits at the location of the cavity. Salt cavities may be used for salt recovery and storage with the consent and agreement of the owners of the salt cavity and the stored material. Conversion of any salt cavity for the storage of gas or other petroleum products or byproducts shall be in accordance with section 23-1103 or 23-1301 of this article.

L. 1972, C. 664, Sec. 2; L. 1973, C. 922, Secs. 8, 9; L. 1977, C. 840, Sec. 26; L. 1981, C. 846, Sec. 13.

#### Sec. 23-1305. Procedure for abandoning storage reservoir

In connection with the abandonment of any underground storage reservoir for which a permit has been granted pursuant to this article or in connection with the revocation of any such permit, the department shall require the premises to be placed in a condition which, to the extent practicable, shall assure the continuance of the same in a condition which does not constitute a menace to the present or future health or safety of persons, or safety or value of property. In case the operator shall fail to put the premises in a satisfactory condition prior to any such abandonment or immediately upon revocation of a permit, the department may do or cause to be done all things necessary to place the premises in satisfactory condition and the operator shall be liable for the cost.

L. 1972, C. 664, Sec. 2.



Sec. 23-1307. Ownership of storage gas and storage rights

1. All gas and liquefied petroleum gas, which has previously been reduced to possession, and which is lawfully injected into an underground storage reservoir, shall be deemed the property of the injector, his heirs, successors or assigns, provided that the injector, heirs, successors or assigns, shall have no right to reserves of native gas or oil remaining in any stratum or portion thereof which have not been condemned hereunder or otherwise acquired by such injector, his heirs, successors or assigns. Nothing contained in this subdivision shall be construed to confer on any operator any storage rights not otherwise acquired or held by him.

2. No production lease shall be construed to include rights to store oil or gas unless the lease includes a provision granting such storage rights. The rule of construction provided in the subdivision is not intended to alter any law or rule of construction applicable to leases made prior to October 1, 1963 or to imply any rule of construction for such leases.

L. 1972, C. 664, Sec. 2.

Title 19 - OIL, GAS AND SOLUTION MINING REGULATION  
AND RECLAMATION FEE

Sec. 23-1901. Construction of title.

Sec. 23-1903. Imposition of oil, gas and solution mining regulation and reclamation fees.

Sec. 23-1901. Construction of title

1. Nothing contained herein shall release a person from any obligation imposed by the provisions of this article or rules and regulations promulgated thereunder.

2. This title shall supersede all other laws enacted by local governments or agencies concerning the imposition of a fee relating to circumstances described in this title. Nothing in the preceding sentence or in this title shall be construed as superseding or in any way limiting the right of any local government to impose real property taxes pursuant to the real property tax law.

3. Except as otherwise provided in subdivision 4 of this section, the following owners shall not be subject to the fees imposed in this title:

- a. The United States of America or any of its agencies or instrumentalities;
- b. The state of New York or any of its agencies; and
- c. Local Agencies.

4. Agencies shall be subject to the fees imposed in this title when such agencies produce oil or gas, or engage in solution mining, for sale or exchange.

L. 1981, C. 846, Sec. 14; amended L. 1981, C. 1020, Sec. 2.

Sec. 23-1903. Imposition of oil, gas and solution mining regulation and reclamation fees

1. When a permit is granted to a person by the department pursuant to section 23-0305 of this article, to drill a natural gas, oil or solution mining well, such person shall pay to the department:

a. A one hundred dollar fee to be credited to the oil and gas fund pursuant to section eighty-three-a of the state finance law; and

b. A fee in accordance with the depth expected to be drilled as set forth below:

0- 500ft. - \$ 125	5501-6000ft. - \$1500
501-1000ft. - \$ 250	6001-6500ft. - \$1625
1001-1500ft. - \$ 375	6501-7000ft. - \$1750
1501-2000ft. - \$ 500	7001-7500ft. - \$1875
2001-2500ft. - \$ 625	7501-8000ft. - \$2000
2501-3000ft. - \$ 750	8001-8500ft. - \$2125
3001-3500ft. - \$ 875	8501-9000ft. - \$2250
3501-4000ft. - \$1000	9001-9500ft. - \$2375
4001-4500ft. - \$1125	9501-10,000ft.-\$2500
4501-5000ft. - \$1250	over 10,000ft.-\$2625
5001-5500ft. - \$1375	

The fee for well deepening permits pertaining to wells for which a well drilling permit was issued after August twenty-fifth, nineteen hundred eighty-one, shall be calculated on the basis of the additional depth drilled. In the event the actual depth drilled exceeds the depth expected to be drilled, an additional amount shall be paid such that the total fee paid shall be in accordance with the schedule set forth in this paragraph.

2. Upon requesting from the department any determination under the Natural Gas Policy Act, such person shall pay a fifty dollar fee per well for each such determination.

L. 1981, C. 846, Sec. 14; L. 1984, C. 891, Sec. 7.

#### Article 71 - ENFORCEMENT

##### Title 13 - ENFORCEMENT OF ARTICLE 23

- Sec. 71-1301. Applicability of this title.
- Sec. 71-1303. Subpoenas, testimony and enforcement thereof.
- Sec. 71-1305. Offenses.
- Sec. 71-1307. Sanctions.
- Sec. 71-1309. Aiders and abettors.
- Sec. 71-1311. Injunction against violations.

Sec. 71-1301. Applicability of this title

In addition to the provisions of sections 71-0101 and 71-0301 of this article, the provisions of this title shall be applicable to the enforcement of article 23 of this chapter except as otherwise provided in article 23 of this chapter.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 15.

Sec. 71-1303. Subpoenas, testimony and enforcement thereof

1. To aid in the administration of article 23, the commissioner or any person designated by him may issue subpoenas in his name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing, proceeding or investigation conducted or to be conducted by or before the department. Service of such a subpoena, enforcement of obedience thereto, and punishment for disobedience thereof shall be had as and in the manner provided by the civil practice law and rules relating to enforcement of any subpoena issued by a board or committee

except that in the case of hearings, proceedings or investigations before or conducted by the department neither the holder of a permit or lease issued pursuant to article 23, nor an employee of such permit holder or lessee, nor an officer or stockholder in a permittee or lessee corporation, when required to attend as a witness, shall be entitled to any subpoena fee or mileage. Any member of the department or any person who may be designated hereunder by the department to hold hearings may administer oaths to witnesses. The department also may provide for the taking of depositions of witnesses for the purpose of any such hearing. In such case such officer, employee or other person may administer oaths to the witnesses whose depositions are to be taken. Each deposition shall be reduced to writing and subscribed by the deponent.

2. The provisions of this section shall apply only to the administration of article 23.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 16.

#### Sec. 71-1305. Offenses

It shall be unlawful for any person to:

1. Waste oil or gas.
2. Violate any of the provisions of or fail to perform any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto.
3. Abandon a mine without the approval of the department before all affected land has been reclaimed. A mine shall be considered as abandoned when mining and reclamation activities shall cease on land affected by mining without prior notification to the department or without describing such cessation in a mined land use plan approved by the department.
4. Commence operations for the drilling or redrilling of a well for oil or gas or solution mining, or an intake well, or for the storage of oil or gas without first obtaining a permit from the department as required.
5. Abandon any oil, gas or solution mining well, or an intake well, or a well for the storage of oil or gas without first obtaining a permit from the department.
6. Store gas underground in any manner, unless the storage operator has received such right by grant, lease or other agreement or is operating in compliance with section 23-1301 of this chapter and is authorized to maintain condemnation proceedings pursuant to section 23-1303 of this chapter.

L. 1981, C. 846, Sec. 17; L. 1984, C. 891, Sec. 8.

#### Sec. 71-1307. Sanctions

1. Administrative sanctions. Any person who violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be liable to the people of the state for a civil penalty not to exceed one thousand dollars and an additional penalty of five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard. The commissioner, acting by the attorney general, may bring suit for collection of such assessed civil penalty in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner. In addition, the commissioner shall have the power, following a

hearing conducted pursuant to rules and regulations adopted by the department, to direct the violator to cease the violation and reclaim and repair the affected site to a condition acceptable to the commissioner, to the extent possible within a reasonable time and under the direction and supervision of the commissioner. Any such order of the commissioner shall be enforceable in any action brought by the commissioner in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner under this subdivision shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules.

2. Civil sanctions. In lieu of seeking administrative sanctions, the commissioner may refer any violation described in subdivision 1 of this section to the attorney general who shall be empowered to bring a civil suit to seek any of the sanctions described in subdivision 1 of this section. Any such sanctions imposed may be released or compromised or the action may be settled and discontinued by the attorney general with the consent of the commissioner.

3. Criminal sanctions. Any person who, having any of the culpable mental states defined in sections 15.05 and 20.20 of the penal law, violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

4. This section shall not affect the rights of any other person seeking damages arising out of a violation.

L. 1981, C. 846, Sec. 17.

Sec. 71-1309. Aiders and abettors

Any person knowingly aiding or abetting any other person in the violation of any provision of article 23, or any rule, regulation, or order of the department made pursuant thereto shall be subject to the same punishment and penalty as that prescribed by this title for the violation by such other person.

L. 1972, C. 664, Sec. 2.

Sec. 71-1311. Injunction against violations

1. Whenever it appears that any person is violating or threatening to violate any provision of article 23 of this chapter or is committing any offense described in section 71-1305 of this title, the department, acting by the Attorney General, may bring suit against such person in any court of competent jurisdiction to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the department without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

2. If the department, acting by the Attorney General, shall fail to bring suit to enjoin a violation or threatened violation of any provision of article 23, or any rule, regulation, or order of the department made pursuant hereto, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the department might have brought suit. The department shall be made a party in such suit in addition to the person violating or threatening to violate a provision of article 23, or a

rule, regulation or order of the department, and the action shall proceed and injunctive relief may be granted to the department without bond, or other undertaking in the same manner as if suit had been brought by the department.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 18.

1/ For more detailed information the reader is referred to McKinney's Consolidated Laws of New York - Annotated, Book 17 1/2: Environmental Conservation Law, West Publishing Company, St. Paul, Minn. 1984. In addition for amendments for 1985 see chapters 184 and 185 of McKinney's 1985 Session Laws of New York.

## STATE FINANCE LAW

### ARTICLE 6 - FUNDS OF THE STATE

Sec. 83-a. Oil and gas fund.

Added L. 1981, C. 846, Sec. 2. Repealed L. 1982, C. 58, Sec. 4, eff. April 1, 1982. added proviso "That any money required by law to be deposited to the credit of funds abolished by the repeal of these sections shall hereafter be deposited to the credit of such fund or funds as the comptroller with the concurrence of the director of the budget shall designate or establish".

### ADDITIONAL PROVISION OF THE LAWS OF 1981, CHAPTER 846

Chapter 846 of the Laws of 1981 made modifications in other laws of the state. Among the laws amended are:

- 1) The Real Property Tax Law.
- 2) The State Tax Law.
- 3) The Agriculture and Markets Law.

In addition, other provisions included:

Sec. 25. The sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as may be necessary, is hereby appropriated in the first instance from any moneys in the state treasury in the general fund to the credit of the state purposes fund not otherwise appropriated as an advance to the department of environmental conservation for the purposes of carrying out the provisions of this act, including payment for personal services and the purchase of automobiles and transportation. The amount hereby appropriated shall be payable on the audit and warrant of the comptroller on vouchers approved by the commissioner of the department of environmental conservation. Such appropriation shall be repaid to the state purposes fund from any revenues derived from the administration of the provisions of this act pursuant to a repayment schedule established by the state director of the budget.

Sec. 26. The sum of one hundred twenty-five thousand dollars (\$125,000), or so much thereof as may be necessary, is hereby appropriated to the state board of equalization and assessment out of any moneys in the state treasury in the general fund not otherwise appropriated for the purpose of staffing an oil and gas valuation unit. The amount hereby appropriated shall be payable on the audit and warrant of the comptroller on vouchers approved by the chairman of the state board of equalization and assessment.

Sec. 27. This act shall take effect on the thirtieth day after it shall have become a law.

L. 1981, C. 846, Secs. 25, 26, 27.

ADDITIONAL PROVISIONS OF THE  
LAWS OF 1984, CHAPTER 891

Sec. 9. This act shall take effect January first, nineteen hundred eightyfive.

L. 1984, C. 891, Sec. 9.

ADDITIONAL PROVISIONS OF THE LAWS OF 1984  
CHAPTERS 565 AND 566

GENERAL OBLIGATIONS LAW

Title 3 - CERTAIN PROHIBITED CONTRACTS AND PROVISIONS OF CONTRACTS

Sec. 5-333. Validity of oil, gas or mineral leases.

Sec. 5-333. Validity of oil, gas or mineral leases

1. Any oil, gas or mineral land lease given on land situated in this state shall be deemed to incorporate subdivisions two and three of this section and any provisions to the contrary shall be void and unenforceable.

2. Any oil, gas or mineral land lease which provides for delay rental payments, such payments being periodic payments to the lessor for the right to delay drilling or excavation upon the leased property, shall provide that the first such payment shall be due and payable no later than one hundred eighty days after the effective date of the lease. Any bonus or up front payment made by the lessee equal to or greater than the first delayed rental payment shall constitute compliance with this subdivision.

3. Any oil, gas or mineral land lease shall contain a statement advising the lessor of the provisions of section 15-304 of this chapter. Such statement shall be printed in at least ten point bold type and shall read as follows:

IF THIS LEASE BECOMES FORFEITED, TERMINATED OR EXPIRES, THE LESSEE, OR IF THE LEASE HAS BEEN ASSIGNED, THE ASSIGNEE IS REQUIRED TO PROVIDE A DOCUMENT CANCELLING THE LEASE AS OF RECORD, AT NO COST TO THE CURRENT LANDOWNER. IF THE LESSEE OR ASSIGNEE FAILS TO CANCEL THE LEASE, THE CURRENT LANDOWNER MAY COMPEL A CANCELLATION PURSUANT TO SECTION 15-304 OF THE GENERAL OBLIGATIONS LAW.

4. For the purposes of this section, the term "mineral" shall not include salt, as defined by subdivision eighteen of section 23-0101 of the environmental conservation law.

5. This section shall apply to leases entered into on or after January first, nineteen hundred eighty-five.

Added L. 1984, C. 565, Sec. 1; L. 1984, C. 566, Sec. 1.

Title 3 - REQUIREMENTS FOR EFFECTIVENESS OR ENFORCEABILITY  
OF MODIFICATION OR DISCHARGE

Sec. 15-304. Forfeiture and cancellation of oil, gas or mineral land leases.

Sec. 15-304. Forfeiture and cancellation of oil, gas or mineral land leases

1. When any oil, gas or mineral land lease given on land situated in any county of New York state and recorded therein becomes forfeited, terminates or expires by its own terms, the lessee, or where the lessee has assigned its interest, the assignee, within

thirty days after the date of the forfeiture, termination or expiration, shall provide to the current owner of the land which is subject to the lease, without cost to such owner, a document in recordable form cancelling the lease as of record in the county where the leased land is situated.

2. If any lessee, or its assignee fails to cancel a lease, as provided for in subdivision one of this section, the current owner of the land which is subject to the lease may:

(a) serve notice upon the lessee, and if actual or record notice of their identity exists, to its assignee, that such lease be cancelled as of record, and stating that if such release is not executed within thirty days of the service of such notice, the lease will be terminated and no longer of any effect. Such notice shall also state;

(i) the names and addresses of the lessor and lessee if contained in the lease;

(ii) the name and address of the person giving notice and a statement as to his interest;

(iii) the state, county and city or town where the leased premises is located along with the location and a general description of the property as contained in the lease;

(iv) if located in a unit, the name or description of the unit if known;

(v) if there is a well on the leased land, the name or number of the well if known;

(vi) the date of the execution of the lease; and

(vii) the date of termination of the lease and the basis of such termination.

(b) service of such notice demanding a release shall be effected either personally, by certified mail to the lessee's, and where the lease has been assigned, the assignee's, last known business address, or, if service cannot be made with due diligence by the prior two methods, by publication once a week for three weeks in a newspaper of general circulation in the county where the leased land is situated;

(c) If the lessee or its assignee claims that the lease is still in full force and effect, either of these parties shall, within thirty days of the service of such notice of demand to cancel the lease, file an affidavit with the recording offices of the county wherein the land is situated. Such affidavit shall state that the lease is in full force and effect and a copy of such affidavit shall be delivered to the person serving the demand within ten days of the filing of the affidavit;

(d) If such affidavit is not filed within the required time, the current landowner may file a copy of the original notice to the lessee or assignee and an affidavit of service thereof with the recording officer of the county in which the leased land is situated, and by such filing the lease shall be cancelled and of no further effect.

3. If any lessee, or its assignee fails to provide a document cancelling a lease, as provided for in subdivision one of this section, and the current landowner has fully complied with subdivision two of this section, but has not effected a cancellation of the lease because of the filing of an affidavit on the part of the lessee, or its assignee, then the current landowner may bring an action pursuant to article fifteen of the real property actions and proceedings law to obtain such a release. If judgment is rendered in favor of the plaintiff, he shall also be awarded costs. The plaintiff may

also, in the discretion of the court and as warranted by the evidence, recover from the defendant reasonable attorney's fees and any additional damages.

4. For purposes of this section, the term "mineral" shall not include salt, as defined by subdivision eighteen of section 23-0101 of the environmental conservation law.

5. For the purposes of this section, where the landowner is not the owner of the oil, gas or mineral rights, the reference to "landowner" shall be deemed to mean the owner of such oil, gas or mineral rights.

6. This section shall apply to all leases entered into before, on or after the effective date of this section.

L. 1984, C. 565, Sec. 2; L. 1984, C. 566, Sec. 2.

#### ADDITIONAL PROVISIONS OF THE LAWS OF 1984

##### CHAPTER 565

Sec. 3. Nothing contained in section 15-304 of the general obligations law, as added by section two of this act, shall diminish the legal remedies any party may have under article fifteen of the real property actions and proceedings law.<sup>1</sup>

<sup>1</sup>RPAPL Sec. 1501 et seq.

L. 1984, C. 565, Sec.3; L. 1984, C. 566, Sec. 3.

Sec. 4. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 5. This act shall take effect September first, nineteen hundred eighty-four, provided that section one of this act shall take effect January first, nineteen hundred eighty-five and shall apply to all oil, gas or mineral land leases entered into on or after January first, nineteen hundred eighty-five and section two of this act, shall apply to all oil, gas or mineral land leases entered into before, on or after September first, nineteen hundred eighty-four.

L. 1984, C. 565, Secs 4 and 5.

#### ADDITIONAL PROVISIONS OF THE LAWS OF 1984, CHAPTER 566

Sec. 4. This act shall take effect on the same date as such chapter of the laws of nineteen hundred eighty-four<sup>1</sup> takes effect.

<sup>1</sup>1984 McKinney Session Laws, C. 565.

L. 1984, C. 566, Sec. 4.



ADDITIONAL PROVISIONS OF THE LAWS OF 1985  
CHAPTER 869  
REAL PROPERTY TAX LAW  
Article 5 - ASSESSMENT PROCEDURE

Title 5 - OIL AND GAS ECONOMIC UNITS

- Sec. 590. Definitions.
- Sec. 592. Determination of unit of production values.
- Sec. 594. Assessment of oil and gas economic units.
- Sec. 595. Reporting to assessors.
- Sec. 596. Taxable status; judicial review.
- Sec. 597. Confidentiality.

Sec. 590. Definitions

1. "Economic profile" means a net cash flow analysis of a financial summary of an average or typical oil or gas economic unit, based upon average or typical income and expense items pertaining to one or more oil or gas economic units of one or more producers.

2. "Economic unit" means all the real property subject to taxation and assessed pursuant to this title associated with the exercise of oil and gas rights, including the unextracted oil and gas, oil and gas rights and any and all equipment, fixtures and pipeline, regardless of size, length or pressure rating necessary to drill, mine, operate, develop, extract, produce, collect, deliver or sell the oil or gas to a point of sale to a commercial purchaser or the pipeline or equipment of a user, including wells, well-head equipment, pipes, compressor stations, related equipment and buildings used to store equipment. Each economic unit may include either a single well and the associated property, or a group of wells and the associated property under common ownership and operated as a unit. No economic unit shall extend beyond the point of sale or where the gas or oil is delivered to the pipe or equipment of a user, nor shall an economic unit include special franchise property, or the percentage of any pipe, pipelines, equipment or fixtures such as cogeneration equipment, which generates income from activity which is not associated with or necessary for the extraction, collection, delivery and sale of oil and gas from the economic unit to a user or commercial purchaser.

3. "Oil and gas rights" means any right to drill, mine, operate, develop, extract, produce, collect, deliver or sell oil or gas located on or below real property.

4. "Producer" means any person, partnership, corporation or other association or entity owning or operating the working interest in any oil or gas property.

5. "Production year" means the calendar year immediately preceding the applicable taxable status date, except that for final city assessment rolls required to be filed between January first and May first, inclusive, and for all final village assessment rolls, production year means the second calendar year preceding the applicable taxable status date.

6. "Unit of production value" means the value established by the state board for purposes of this title for each barrel of oil or thousand cubic feet of gas produced in the production year.

7. "Exercise of oil and gas rights" means the act or acts of drilling, mining, operating, developing, extracting, producing, collecting, delivering or selling oil or gas located on or below real property and such other acts as are deemed necessary and appropriate for the proper operation and development of oil and gas wells.

## Sec. 592. Determination of unit of production values

1. (a) The state board shall annually develop one or more economic profiles for gas and one or more economic profiles for oil for use in the determination of unit of production values. The establishment of more than one economic profile for either gas or oil shall be based upon common factors such as geologic formation, geographic region, type of recovery method used, economic and cost characteristics of such profiles and such other criteria as the state board may deem appropriate.

(b) At least forty-five days prior to the tentative roll date each year, the state board shall establish a tentative unit of production value for each economic profile and shall provide to appropriate local officials and industry representatives notice of the tentative unit of production values. The board shall conduct at least one public hearing to receive comments on the tentative unit of production values. At least fifteen days prior to the tentative roll date, the state board shall certify to each assessor appropriate unit of production values for use in the assessment of oil and gas economic units.

(c) Unit of production values shall be based upon the average of typical income, expense and operating data for the five calendar years preceding the year in which the unit of production values are to be certified. In determining unit of production values, the state board shall use a discounted net cash flow approach in which gross income shall be reduced by the following: windfall profits taxes paid or accrued; operating expenses; landowner royalty payments, which the state board shall deem to be the value of one-eighth of the economic unit's production; and other costs, if any, such as overriding royalty interests not retained by the owners of the working interest, additional capital investment required, depletion and depreciation. The minimum discount rate or rates shall be the sum of

(1) the average of the discount rates established by the United States federal reserve board on the first business day of each month of the calendar year preceding the year in which the unit of production values are to be certified, plus

(2) a seventeen and one-half percent factor to account for risk, nonliquidity, management, real property taxes, intangible drilling costs and income taxes.

2. For the purpose of developing economic profiles and determining discounted net cash flow, the state board may require producers to submit statements of income and expenses related to the economic units for the five calendar years preceding the year in which the unit of production values are to be certified, consisting of information usually kept in the ordinary course of business. This subdivision is not applicable to producers of one thousand barrels of oil or two hundred million cubic feet of gas per year or less.

3. The state board shall promulgate rules establishing the methodology for determining unit of production values pursuant to subdivision one of this section. Such rules shall include a description of the economic data to be compiled, the method for their compilation and a delineation of the process to be followed in applying the discounted net cash flow methodology. Such rules shall provide that, subject to the availability of suitable economic data, the establishment of unit of production values shall take into account and reflect varying economic and operating conditions and characteristics.

L. 1985, C. 869, Sec. 2.

## Sec. 594. Assessment of oil and gas economic units

1. Oil and gas economic units shall be assessed only in the manner provided in this title. Notwithstanding the provisions of subdivision two of section five hundred two of this article, oil and gas economic units shall be assessed in the name of the producer

and shall be described on a separate subsection of the taxable section of the assessment roll by such identifying characters as the state board may prescribe by rule. For purposes of assessments under this title a producer may certify to each assessor the address to which the assessment for an economic unit and the notice pursuant to subdivision one of section five hundred ninety-five of this title shall be sent.

2. Upon receipt of the appropriate unit of production values certified by the state board, each assessor shall compute and determine, in accordance with rules promulgated by the state board, the assessed value of oil and gas economic units located in that assessing unit. Any local officers, including school authorities, having custody and control of the assessment roll when final unit of production values are certified by the state board, shall make the changes, if any, occurring as a result of such certification. Except as otherwise provided for in this subdivision and subdivision three of this section, oil and gas economic units shall be assessed as follows: multiply (1) the appropriate unit of production value; times (2) the amount of production from that economic unit in the production year; times (3) the latest state equalization rate or special equalization rate, except that where such rate exceeds or would exceed one hundred, a special equalization rate of one hundred percent shall be established by the state board for purposes of this section. The value of all elements in an oil and gas economic unit shall be deemed to be included in the value of such economic unit and shall not be separately assessed. Assessment of gas economic units shall be based on actual measured annual production during the life of the well or wells in that unit even though such annual production may be non-existent due to non-connection, non-completion, shut-in or other circumstances which prevent production of oil and/or gas. Annual production of the economic unit shall be based on the production year. The foregoing notwithstanding, upon the exercise of gas rights, each gas economic unit shall be subject to a minimum assessment for two one year periods based on a minimum annual production equivalent of two million four hundred thousand cubic feet. Such minimums shall be applied during the life of the well in consecutive or non-consecutive years, whenever such well has an annual production of less than two million four hundred thousand cubic feet. Upon completion of the second year minimum tax assessment, a gas economic unit shall be assessed on actual measured annual production of gas. For purposes of assessing gas economic units, no minimum assessment shall be applied to any gas economic unit existing on or before January first, nineteen hundred eighty-six and such economic units shall be assessed only on actual measured annual production. Oil economic units shall be assessed on the basis of actual measured annual production.

3. Economic units including oil and gas rights contained therein shall not be eligible for any exemption from taxation except as provided in the following circumstances:

(a) Oil and gas rights and other elements of economic units shall be exempt from taxation if owned by a school district or board of cooperative educational services;

(b) Oil and gas rights and other elements of economic units shall be exempt from taxation if owned by an organization whose property is exempt from taxation pursuant to section four hundred twenty-a of this chapter, except that such property shall be taxable to the extent that the oil and gas produced is sold rather than used by the owner, regardless of the use to which the revenues are devoted; and

(c) Unless a local law, ordinance or resolution has been adopted pursuant to paragraph (a) of subdivision one of section four hundred twenty-b of this chapter, oil and gas rights and other elements of economic units shall be exempt from taxation if owned by an organization whose property is exempt pursuant to section four hundred twenty-b, except that such property shall be taxable to the extent that the oil and gas produced is sold rather than used by the owner, regardless of the use to which the revenues are devoted.

4. Where an oil or gas economic unit is located within more than one assessing unit, the appropriate county director or county directors shall certify to the assessors

the percentage of capital investment in property located within each such assessing unit. The assessor shall apportion the assessment of economic units among school districts and special districts based upon the percentage of capital investment located within each such district.

L. 1985, C. 869, Sec. 2.

#### Sec. 595. Reporting to assessors

1. No less than sixty days before the taxable status date, the assessor shall cause to be sent, by registered or certified mail, a notice to each known producer, setting forth the provisions of this subdivision and stating that producers are required to report annual production pursuant to this title and that a true and accurate copy of the production report for the production year required to be filed with the department of environmental conservation must be provided to the assessor forty-five days before the tentative roll date. Such notice shall also contain the tentative roll date on or before which the production data is due, and the name and complete address of the responsible office, person or agency to whom such production report data shall be provided. If such notice is provided but the producer does not so comply, this title shall not be applicable to the property of that producer.

2. Each oil and/or gas producer shall report to each appropriate assessor the total amount of oil and gas produced in the production year from each oil and gas well and the physical structures and buildings within the economic unit or units that the producer considers to be part of the economic unit or units for assessment under this title. Physical structures and buildings designated by the producer and accepted by the assessor to be a part of the economic unit shall be assessed as part of the economic unit pursuant to this title and not separately under other provisions of this chapter.

3. If requested by the assessor, each producer shall submit to the assessor, maps or other information reasonably indicating the location of gas and oil wells, pipeline and other equipment and fixtures. In lieu of submitting the foregoing information a producer may refer and direct the assessor to any local government authority, including a town or village municipality, where such or similar information has already been filed or supplied to such authorities.

4. The local government official who receives notice from the producer, pursuant to subdivision thirteen of section 23-0305 of the environmental conservation law, of the issuance of drilling permits and location of the drilling site, shall promptly provide a copy of each such notice received to the assessor.

5. (a) Notwithstanding the provisions of paragraph f of subdivision eight of section 23-0305 of the environmental conservation law, the commissioner of the department of environmental conservation shall, on or before April first of each year or as soon thereafter as possible, provide to each county director of real property tax services a copy of each production report received by the department relating to production in that county in the applicable production year, or a compilation of such information in a form usable for purposes of this title. The commissioner shall also provide to each county director of real property tax services, on or before April first of each year or as soon as possible thereafter a list identifying and containing all oil and gas drilling well permits, if any, issued by the department during the immediate preceding calendar year for each affected county. Information provided by the commissioner pursuant to this subdivision shall not be subject to the provisions of article six of the public officers law (the freedom of information law), and no person shall disclose or otherwise make known any such information submitted by the department, except in an administrative or judicial proceeding to review a unit of production value or the assessment of an oil or gas economic unit only after providing twenty days written notice to the producer whose information is the subject of the proposed disclosure affording such producer with opportunity to submit written grounds for any objections to such disclosure.

(b) The county director of real property tax services shall promptly provide to each assessor, production data relating to oil and gas economic units within that assessor's assessing unit.

6. Each gas producer shall notify the appropriate assessor in writing of the conversion or alteration of any producing well within an economic unit to a storage well or of the plugging and abandonment of a well.

L. 1985, C. 869, Sec. 3.

#### Sec. 596. Taxable status; judicial review

1. (a) Notwithstanding the provisions of subdivision one of section three hundred two of this chapter, the value of oil and gas economic units to be assessed pursuant to this title shall be determined according to condition, measured by the amount of production, as of the production year specified in section five hundred ninety of this title.

(b) A final determination of the state board relating to unit of production values may only be reviewed in a proceeding commenced against the state board in the manner provided by article seventy-eight of the civil practice law and rules upon application of an affected assessor or producer. Notwithstanding any provision of law to the contrary, such a proceeding shall be defended by counsel to the state board.

L. 1985, C. 869, Sec. 4.

#### Sec. 597. Confidentiality

Information submitted by producers to the state board and to assessors pursuant to this title shall not be subject to the provisions of article six of the public officers law (the freedom of information law), and no person shall make known any such information submitted, except in an administrative or judicial proceeding to review a unit of production value or the assessment of an oil or gas economic unit, after providing twenty days written notice to the producer who submitted the information affording such producer with an opportunity to submit written grounds for any objection to such disclosure.

L. 1985, C. 869, Sec. 5.

### ADDITIONAL PROVISIONS OF THE LAWS OF 1985 CHAPTER 704 LIEN LAW

#### Sec. 4. Mechanics' lien on land leased for production of gas or oil

(2) Such lien shall not extend to the owner's right, title or interest in real property and improvements, existing at the time of filing the notice of lien if such lien arises from the failure of a lessee of the right to explore, develop or produce natural gas or oil, to pay for, compensate or render value for improvements made with the consent or at the request of such lessee by a contractor, subcontractor, materialman, equipment operator or owner, landscaper, nurseryman, or person or corporation who performs labor or furnishes materials for the exploration, development, or production of oil or natural gas or otherwise improves such leased property. Such lien shall extend to the improvements made for the exploration, development and production of oil and natural gas, and the working interest held by a lessee of the right to explore, develop or produce oil and natural gas.

(3) Notwithstanding subdivision two if a property owner is also a developer of oil and gas resources and is a party to an agreement with a person or firm authorized to perfect a lien arising out of the failure of such developer to compensate or render

value for improvements to the property upon which an oil or gas well is drilled or established, the lien shall extend to the owners' right or interest in such real property.

L. 1985, C. 704, Sec. 2.

For more detailed information the reader is referred to McKinney's Consolidated Laws of New York - Annotated, Book 2B; Agriculture and Markets Law: Book 23A; General Obligations Law: Book 49A; Real Property Tax Law: Book 55; State Finance Law, West Publishing Company, St. Paul, Minn. 1984.

Additional sources of information include:

\*New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

\*New York State Department of Law  
The Capitol  
Albany, New York 12224

\*New York State Division of Equalization and Assessment  
Agency Building #4, Empire State Plaza  
Albany, New York 12223

\*New York State Department of Agriculture and Markets  
Building 8, State Campus  
Albany, New York 12235

\*New York State Department of Audit and Control  
Alfred E. Smith State Office Building  
Albany, New York 12236

\*Department of Agricultural Economics  
New York State College of Agriculture and Life Sciences  
Cornell University  
Ithaca, New York 14853-7801

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Region 9  
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