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CHAPTER 43

Oil and Gas Exploration, Drilling, Transportation, and Production

ARTICLE 1

General Provisions

**SECTION 48‑43‑10.** Definitions.

Unless the context otherwise requires, the terms defined in this section shall have the following meaning when used in this chapter:

(A) “Waste” means and includes:

(1) physical waste, as that term is generally understood in the oil and gas industry;

(2) the inefficient, excessive, or improper use, or the unnecessary dissipation of, reservoir energy;

(3) the inefficient storing of oil and gas;

(4) the locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss or destruction or oil or gas;

(5) the production of oil or gas in excess of

(a) transportation or marketing facilities;

(b) the amount reasonably required to be produced in the proper drilling, completing or testing of the well from which it is produced; or

(c) oil or gas otherwise usefully utilized but gas produced from an oil well or condensate well pending the time when, with reasonable diligence, the gas can be sold or otherwise usefully utilized on terms and conditions that are just and reasonable shall not be considered waste if the production of such gas has been approved by order of the department;

(6) underground or above ground waste in the production or storage of oil, gas, or condensate, however caused, and whether or not defined in other subdivisions hereof.

(B) “Department” means the South Carolina Department of Health and Environmental Control.

(C) “Person” means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representatives of any kind, and includes any government or any political subdivision or any agency thereof.

(D) “Oil” means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(E) “Gas” means all natural gas and all other fluid hydrocarbons not hereinabove defined as oil, including condensate because it originally was in the gaseous phase in the reservoir.

(F) “Condensate” means liquid hydrocarbons that were originally in the gaseous phase in the reservoir.

(G) “Pool” means an underground reservoir containing a common accumulation of oil and gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool.

(H) “Field” means the general area underlain by one or more pools.

(I) “Owner” means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom, either for himself or for himself and others.

(J) “Producer” means the owner of a well or wells capable of producing oil or gas or both.

(K) “Just and Equitable Share of the Production” means, as to each person, that part of the authorized production from the pool that is substantially in the proportion that the amount of recoverable oil or gas or both in the developed areas of his tract or tracts in the pool bears to the recoverable oil or gas or both in the total of the developed areas in the pool.

(L) “Developed Area” means a spacing unit on which a well has been completed that is capable of producing oil or gas, or the acreage that is otherwise attributed to a well by the department for allowable purposes.

(M) “Protect Correlative Rights” means that the action or regulation by the department should afford a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in his tract or tracts or the equivalent thereto, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent.

(N) “Product” means any commodity made from oil or gas, and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubrication 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.

(O) “Illegal Oil” means oil that has been produced from any well within the State in excess of the quantity permitted by any rule, regulation, or order of the department.

(P) “Illegal Gas” means gas that has been produced from any well within the State in excess of the quantity permitted by any rule, regulation, or order of the department.

(Q) “Illegal Product” means any product derived in whole or in part from illegal oil or illegal gas.

(R) “Certificate of Clearance” means a permit prescribed by the department for the transportation or the delivery of oil or gas or product.

(S) “Pollutant” means any emission that significantly derogates the quality of the air, water or land.

(T) “Pollution” means the act of emitting pollutants into the air or water or onto the land.

(U) “Royalty owner” means the person who pursuant to a lease arrangement with another has the right to receive, free of costs, an allocation of production or payments based upon the value of production.

(V) “Geothermal resources” mean the resources defined in Section 10‑9‑310 of the 1976 Code.

(W) “Sanitary landfill” means a solid waste disposal facility regulated by the Department of Health and Environmental Control.

(X) “Board” means board of the department.

HISTORY: 1977 Act No. 179, Part 1, Section 1; 1984 Act No. 375, Section 2; 1989 Act No. 162, Section 1; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑20.** Waste and pollution prohibited.

The waste of oil and gas and the pollution of the water, air or land is prohibited.

HISTORY: 1977 Act No. 179, Part 1, Section 2; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑30.** Application of chapter; authority of department.

(A) This chapter shall apply to all lands however owned, including the submerged lands, both inland and offshore, tidelands and wetlands located within the jurisdictional limits of the State and any lands owned or administered by any government or any agency or political subdivision thereof, over which the State, under its police power has jurisdiction; and to that end the department is authorized to:

(1) Prevent waste of oil and gas, to protect correlative rights and to prevent pollution of the water, air and land by oil or gas, and otherwise to administer and enforce this chapter. It has jurisdiction over all persons and property necessary for that purpose. In the event of a conflict, the duty to prevent waste is paramount.

(2) Make such investigations as it deems proper to determine whether action by the department in discharging its duties is necessary.

(3) Hire personnel to carry out the purposes of this chapter.

(B) Without limiting its general authority, the department shall have specific authority:

(1) To require:

(a) identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas;

(b) the preparing and filing of well logs and samples, directional surveys and reports on well location, drilling and production, provided, however, that the log and samples of an exploratory or wildcat well need not be filed before one year after the completion of the well and upon the filing of the log and samples of such well the department shall keep the log and samples and information contained therein confidential for one year from the date of filing if requested by the operator in writing to do so and the department may keep the log and samples and information contained therein confidential for an additional year at its discretion if the operator requests in writing that the department keep such log and samples and information confidential for an additional year.

(c) the drilling, casing, operation, and plugging of wells in such manner as to prevent (a) the escape of oil or gas out of one pool into another, (b) the detrimental intrusion of water into an oil or gas pool that is avoidable by efficient operations, (c) the pollution of fresh water supplies by oil, gas, or salt water, and (d) blowouts, cavings, seepages, and fire;

(d) the taking of tests of oil or gas wells;

(e) the furnishing by all persons who apply for a drilling permit a reasonable performance bond with good and sufficient surety with the State of South Carolina as beneficiary to indemnify the State from loss or expense resulting from such person’s failure to comply with the provisions of this chapter or the rules, regulations or orders of the department including the duty to plug each dry or abandoned well and to repair each well causing waste or pollution if repair will prevent waste or pollution; a performance bond may cover more than one drilling operation of the same person provided that the amount of such performance bond is increased to cover the additional well each time an application for a drilling permit is submitted to the department by that person.

(f) that the production from wells be separated into gaseous and liquid hydrocarbons, and that each be measured by means and upon standards that may be prescribed by the department;

(g) that wells not be operated with inefficient gas‑oil or water‑oil ratios, to fix these ratios, and to limit production from wells with inefficient gas‑oil or water‑oil ratios;

(h) certificates of clearance in connection with the transportation or delivery of oil, gas, or product;

(i) the metering or other measuring of oil, gas, or product;

(j) that every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this State keep and maintain complete and accurate records of the quantities thereof, which records shall be available for examination by the department or its agents at all reasonable times;

(k) the filing of reports or plats with the department that it may prescribe;

(l) permits for the onshore and offshore exploration of oil and gas both on public and private lands whether highlands, wetlands or submerged land;

(m) the placing of meters approved by the department which shall at all times be under the supervision and control of the department wherever the department may designate on all pipelines, gathering systems, barge terminals, loading racks, refineries, or other places deemed necessary to prevent the transportation of illegally produced oil and gas;

(n) payment of reasonable fees for all publications, materials, charts, services and similar items furnished to persons at their request;

(o) that all persons who desire to drill wells for oil or gas obtain a permit from the department prior to the commencement of any drilling operations;

(p) that all pipelines placed in the Atlantic Ocean, its harbors, bays and other bodies of water which are a part of the Atlantic Ocean to transport oil, gas, condensate or product that cross the lands and under waters that are within the territorial jurisdiction of the State of South Carolina be located under the bottom of the Atlantic Ocean, its harbors, bays and other bodies of water which are a part of the Atlantic Ocean so that the pipelines will not interfere with navigation, fishing, shrimping, and other lawful recreational and commercial activities.

(2) To regulate:

(a) the drilling, testing, completing, stimulating, producing, reworking and plugging of wells, and all other operations associated with the production of oil and gas;

(b) the spacing or locating of wells;

(c) operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, and the introduction of gas, water or other substances into a producing formation;

(d) the disposal of salt water and oil‑field wastes;

(e) the exploration for oil or gas in the waters and on the lands that are within the jurisdictional limits of the State regardless of ownership;

(f) the transportation of oil and gas, as defined by this chapter and as distinguished by the definitions from product, from whatever source to gathering systems, refineries, and other storage and processing facilities which handle oil and gas;

(g) the commingling of oil and gas produced from wells having different owners or producers and to adopt such rules and regulations applicable to such commingling as may be necessary to protect the rights of the owners, producers and royalty owners of the wells from which the commingling oil or gas is produced.

(3) To limit the production of oil, gas, or condensate from any field, pool, area, lease, or well, and to allocate production.

(4) To classify and reclassify pools as oil, gas and condensate pools and to classify and reclassify wells as oil, gas or condensate wells.

(5) To promulgate, after hearing and notice as hereinafter provided, such rules and regulations, and issue such orders reasonably necessary to prevent waste and oil discharges from drilling and production platforms, pipelines, gathering systems, processing facilities, storage facilities, refineries, port facilities, tankers and other facilities and vessels that may be a source of oil spills and to protect correlative rights, to govern the practice and procedure before the board and to fulfill its duties and the purposes of this chapter.

(6) To regulate the exploration, drilling, production, and transportation of methane gas in and related to sanitary landfills. The department is authorized to exercise discretion in regulating such activities and may impose any requirement of this chapter as is necessary, in the opinion of the department, to prevent waste of oil and gas, to protect correlative rights and to prevent pollution of the water, air, and land by oil and gas. The department is further authorized to require any person applying for a drilling permit or otherwise producing methane gas in a sanitary landfill to comply with one of the following requirements for financial responsibility in an amount deemed sufficient by the department in its discretion in order to achieve the purpose specified in Section 48‑43‑30(A)(1):

(i) furnish a bond consistent with the requirements of Section 48‑43‑30(B)(1)(e); or

(ii) furnish proof of insurance with the State of South Carolina as beneficiary. Before the issuance of drilling permits for methane gas recovery from sanitary landfills, the department must certify that the proposed activity is consistent with the Department of Health and Environmental Control regulations governing the operation, monitoring, and maintenance of the landfills and applicable permit conditions.

HISTORY: 1977 Act No. 179, Part 1, Section 3; 1989 Act No. 162, Section 2; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑40.** Matters on which public hearings are held; emergency orders; method of giving notice; rules, regulations, and orders.

(A) No rule, regulation or order, or amendment thereof, except in an emergency, shall be made by the department without a public hearing upon at least twenty days’ notice, exclusive of the date of service. No permit for the construction of a deep water port shall be granted by the department without a public hearing upon at least twenty days’ notice, exclusive of the date of service. At least twenty days prior to the invitation for bids for the leasing of state lands for the purpose of oil and gas exploration and production, a public hearing shall be held. 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.

(B) When an emergency requiring immediate action is found to exist, the department may make an emergency order without notice of hearing, which shall be effective when made. No emergency order shall be effective for more than sixty days.

(C) Any notice required by this chapter shall be given by the department. Any such notice, at the election of the department, may be given by any one or more of the following methods: (a) personal service, (b) publication in one or more issues of a newspaper in general circulation in the state capital or of a newspaper of general circulation in the county where the land affected or some part thereof is situated, or (c) by United States 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 be issued in the name of the State, shall be signed by the chairman, secretary or executive director of the department, shall specify the style and number of the proceedings, 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 an 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 action in the courts of the State. Proof of the service by such agent shall be by the affidavit of the agent making personal service.

(D) All rules, regulations and orders made by the Department of Health and Environmental Control 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 office hours. In addition, all rules and regulations shall be filed with the Secretary of State. A copy of any rule, regulation or order, certified by any member of the department or the department, under its seal, shall be received in evidence in all courts of this State with the same effect as the original.

(E) 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 that requires a hearing, the department shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the application. The department shall make its order within thirty days after the conclusion of the hearing.

HISTORY: 1977 Act No. 179, Part 1, Section 11; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑50.** Authority to conduct hearings, summon witnesses, administer oaths, and issue subpoenas; effect of failure to comply.

(A) The board or an Administrative Law Judge shall have the power to conduct hearings, to summon witnesses, to administer oaths and to require the production of records, books and documents for examination at any hearing or investigation.

(B) Upon failure or refusal on the part of any person to comply with a subpoena issued by the board pursuant to this section, or upon the refusal of any witness to testify as to any matter regarding which he may be interrogated and which is pertinent to the hearing or investigation, any circuit court in the State, upon the application of the board, may issue an order to compel such person to comply with such subpoena, and to attend before the board and produce such records, books and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

HISTORY: 1977 Act No. 179, Part 1, Section 12; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑60.** Appeals.

Any person, who is aggrieved and has a direct interest in the subject matter of any final order issued by the board, may appeal such order to the circuit court.

HISTORY: 1977 Act No. 179, Part 1, Section 18; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑80.** Chapter inapplicable if act is done pursuant to federal or state permit.

Nothing in this chapter shall be deemed to apply to the storage or transportation of liquefied petroleum gas or to industrial effluents discharged into the waters or atmosphere of the state pursuant to either a federal or state permit.

HISTORY: 1977 Act No. 179, Part 2, Section 34; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑90.** Construction of chapter with Federal Water Pollution Control Act.

This chapter shall be liberally construed to effect the purposes set forth herein and the Federal Water Pollution Control Act, as amended.

HISTORY: 1977 Act No. 179, Part 2, Section 35; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑100.** Approval of rules and regulations by General Assembly.

All rules and regulations adopted by the Department of Health and Environmental Control, as provided for in this chapter, must be approved by the General Assembly before they shall be effective; provided, however, no regulation approved by the General Assembly shall conflict, at the time of approval, with any requirement or be in excess of any statute, rule or regulation of the Federal Government or any department or agency thereof.

HISTORY: 1977 Act No. 179, Part 2, Section 36; 1993 Act No. 181, Section 1236.

ARTICLE 2

Exploration and Production

**SECTION 48‑43‑310.** Exploration permit required; disposition of funds collected.

The department shall require that all persons who explore for oil or gas within the jurisdiction of the State of South Carolina obtain an exploration permit from the department. The department may include in the permits such conditions and restrictions as the department deems to be desirable or necessary and may charge a reasonable fee for the issuance of the permit.

All monies collected by the department pursuant to this section shall be forwarded to the State Treasurer who shall place such monies in an account for the department and such monies shall be used by the department in carrying out its duties imposed by this chapter.

HISTORY: 1977 Act No. 179, Part 1, Section 4; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑315.** Application of article to geothermal resources.

All provisions of this article regulating the leasing for, exploration for, drilling for, transportation of, and production of oil and gas and their products apply to geothermal resources to the extent possible. The provisions of this article do not apply to wells drilled for water supply only.

HISTORY: 1984 Act No. 375, Section 3; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑320.** Allocation of allowable production.

(A) Whenever the department limits the amount of oil that may be produced in the State, the department shall allocate the allowable production among the pools on a reasonable basis.

(B) Whenever the department limits the total amount of oil, gas, or condensate that may be produced in any pool to an amount less than the amount that the pool could produce if no limitation were imposed, the department shall, subject to the reasonable necessities for the prevention of waste, allocate the allowable production among the several wells or producing properties in the pool so that each person entitled thereto will have a reasonable opportunity to produce or to receive a just and equitable share of the production.

(C) In allocating oil allowables to pools, the department may consider, but shall not be bound by, nominations of purchasers to purchase from particular pools or groups of pools. The department shall allocate the oil allowable from the State in such manner as will prevent undue discrimination among pools that would result from selective buying or nomination by purchasers.

HISTORY: 1977 Act No. 179, Part 1, Section 5; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑330.** Establishment of spacing units for pools.

(A) The department may, upon application or on its own motion and after a hearing, establish spacing units for each pool.

(B) 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. The size of the spacing units shall not be smaller than the maximum area that can be efficiently and economically drained by one well; provided, that if, at the time of a hearing to establish spacing units, there is not sufficient evidence from which to determine the area that can be efficiently and economically drained by one well, the department may make an order establishing temporary spacing units for the orderly development of the pool pending the obtaining of the information required to determine what the ultimate spacing should be.

(C) Except where circumstances reasonably require, spacing units shall be of approximately uniform size and shape for the entire pool. The department may establish spacing units of different sizes or shapes for different parts of a pool or may grant exceptions to the size or shape of any spacing unit or units or may change the size or shape of one or more existing spacing units. Where spacing units of different sizes or shapes exist in a pool, the department shall, if necessary, make such adjustment of the allowable production from the well or wells drilled thereon so that each person entitled thereto in each spacing unit will have a reasonable opportunity to produce or receive his just and equitable share of the production.

(D) 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 notice of the hearing to consider spacing. If the department finds that a well drilled at the prescribed location would not be likely to 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 such spacing order. In so doing, the department shall, if necessary, make such an adjustment of the allowable production from the well drilled thereon so that each person entitled thereto in such spacing unit shall not produce or receive more than his just and equitable share of the production.

(E) An order establishing spacing units for a pool shall cover all lands determined or believed to be underlain by such pool, and may be modified by the department from time to time to include additional lands determined to be underlain by such pool or to exclude lands determined not to be underlain by such pool.

(F) An order establishing spacing units may be modified by the department to change the size and shape of one or more spacing units, or to permit the drilling of additional wells on a reasonably uniform pattern.

(G) 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.

HISTORY: 1977 Act No. 179, Part 1, Section 6; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑340.** Integration of separately owned tracts or separately owned interests.

(A) When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration, the department upon the application of any interested person, shall make an order integrating all tracts or interests in the spacing unit for the development and operation thereof and for the sharing of production therefrom. The department, as a part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the interest of the royalty owners in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the interest of the royalty owners. Each such integration order shall be upon terms and conditions that are just and reasonable.

(B) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit for which an integration order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract or interest in the spacing unit by the several owners thereof. That portion of the production allocated to a separately owned tract or interest included in a spacing unit shall, when produced, be deemed, for all purposes, to have been actually produced from such tract or interest by a well drilled thereon.

(C) Each such integration order shall authorize the drilling, equipping, and operation, or operation, of a well on the spacing unit; shall provide who may drill and operate the well; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate therein; and shall make provision for the payment by all those who elect to participate therein of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest. If requested, each such integration order shall provide for one or more just and equitable alternatives whereby an owner who does not elect to participate in the risk and cost of the drilling and operation, or operation, of a well may elect to surrender his leasehold interest to the participating owners on some reasonable basis and for a reasonable consideration which, if not agreed upon, shall be determined by the department, or may elect to participate in the drilling and operation, or operation, of the well, on a limited or carried basis upon terms and conditions determined by the department to be just and reasonable. If one or more of the owners shall drill, equip, and operate, or operate, or pay the costs 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 except in the event that the state is the royalty owner in which case the royalty shall not exceed one‑sixth of production until the market value of such other person’s share of the production, exclusive of such royalty, equals the sums payable by or charged to the interest of such other person. If there is a dispute as to the costs of drilling, equipping, or operating a well, the department shall determine such costs. In instances where a well is completed prior to the integration of interests in a spacing unit, the sharing of production shall be from the effective date of the integration, except that, in calculating costs, credit shall be given for the value of the owner’s share of any prior production from the well.

HISTORY: 1977 Act No. 179, Part 1, Section 7; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑350.** Hearing and orders concerning need for unit operation of one or more pools or parts.

(A) 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 one or more pools or parts thereof in a field.

(B) The department shall make an order providing for the unit operation of a pool or part thereof if it finds that:

(1) such operation is reasonably necessary to increase the ultimate recovery of oil or gas; and

(2) the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operations.

(C) The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) a description of the pool or pools or parts thereof to be so operated, termed the unit area;

(2) a statement of the nature of the operations contemplated;

(3) 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 not such agreement, the department shall determine the relative value, from evidence introduced at the hearing, of the separately owned tracts 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 relative value of each tract so determined bears to the relative value of all tracts in the unit area;

(4) 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;

(5) a provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how such costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interests of such owner, may be sold and the proceeds applied to the payment of such costs;

(6) a provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charged for such service payable out of such person’s share of the production;

(7) 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 costs of unit operations chargeable against the interest of such person;

(8) the time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(9) such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of a correlative rights.

(D) 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 those persons who, under the department’s order, will be required to pay at least seventy‑five percent of the costs of the unit operation, and also by the owners of at least seventy‑five percent of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties and production payments, 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. For purposes of calculating the requisite percentages necessary to effectuate an order of the department when unleased acreage is effected by such order, the owner of the acreage shall be considered to be an owner and royalty owner in respective proportions of seven‑eighths as owner and one‑eighth as royalty owner except in a case when the acreage is owned by the State in which case the proportion shall be five‑sixths as owner and one‑sixth as royalty owner. If the plan for unit operations has not been so approved 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 persons owning 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 be ineffective, and shall be revoked by the department unless for good cause shown the department extends such time.

(E) 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 the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning oil and gas rights in such tract, or change the percentage for the allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in such tract.

(F) The department, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace 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.

(G) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

(H) 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 the several owners thereof. The portion of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the department providing for unit operations 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.

(I) The portion of the unit production 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.

(J) 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.

(K) 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.

HISTORY: 1977 Act No. 179, Part 1, Section 8; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑360.** Submission of agreement for unit or cooperative development or operation to department.

An agreement for the unit or cooperative development or 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 or protect correlative rights. Such approval shall constitute a complete defense to any suit charging violation of any statute of the State relating to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto. The 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.

HISTORY: 1977 Act No. 179, Part 1, Section 9; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑370.** Permit required for drilling oil or gas well.

(A) The department shall require that all persons who desire to drill oil or gas wells obtain a permit for each well proposed to be drilled prior to the commencement of any drilling operations. The drilling of any well is hereby prohibited until a permit is granted by the department.

(B) No permit to drill a gas or oil well shall be granted within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly approved the issuance of such permit by resolution.

(C) No permit to drill a gas or oil well on any beach shall be granted by the department.

HISTORY: 1977 Act No. 179, Part 1, Section 10; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑380.** Lessee’s duty to lessor as to termination of oil or gas lease.

Whenever by reason of the termination of the full period within which an optional gas and oil lease which is of record may be kept alive by the payments of rentals, or at the termination of any of the options in such lease by reason of failure on the part of the lessee to comply with the condition therein for the prevention of forfeiture, such lease shall lapse, the lessee shall, on request in writing by the lessor, with an instrument, duly acknowledged, direct the cancellation of such lease on the records or shall supply the lessor with such instrument.

Any lessee failing or refusing to supply the lessor with such an instrument, or failing or refusing to cancel any lease on the records within thirty days after receiving written demand as above, shall be liable to such lessor for a reasonable attorney’s fee incurred by the lessor in bringing suit to have such forfeiture and cancellation adjudged, and in addition thereto shall be liable to the lessor for all damages suffered by the lessor by reason of his inability to make any lease on account of the first lease not having been canceled.

This section shall be construed to apply to all leases for oil or gas heretofore entered into.

HISTORY: 1977 Act No. 179, Part 1, Section 19; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑390.** Lease of state lands for drilling for and producing oil and gas; permits to construct deep water port facilities.

(A) The South Carolina State Fiscal Accountability Authority, upon review by the Joint Bond Review Committee as necessary, hereinafter referred to as the authority, is hereby designated as the State Agency with the authority, responsibility and power to lease all State lands to persons for the purpose of drilling for and producing oil and gas. The Department of Health and Environmental Control is hereby designated as the exclusive agent for the authority in selecting lands to be leased, administering the competitive bidding for leases, administering the leases, receiving and compiling comments from other state agencies concerning the desirability of leasing the state lands proposed for leasing and such other activities that pertain to oil and gas leases as may be included herein as responsibilities of the authority.

(B) Upon resolution adopted by a majority of the authority, the authority may lease any of those lands heretofore enumerated if the authority finds that the lease of the lands would not be detrimental to the State and its citizens and if the department recommends that a lease of the lands be granted. The Governor as chairman of the authority shall execute all oil and gas leases. The leases shall be filed in the county in which the land is situated as all other instruments conveying real estate are filed except leases of offshore lands shall be filed in the offices of the department as a public record. The department shall have the responsibility of administering all such leases for the authority.

(C) Any lease executed pursuant to this section shall be for a term of no more than five years unless substantial drilling operations have been commenced on the property in which case the lease shall be extended from year to year so long as substantial drilling operations continue unless the well drilled upon the leased property becomes a producing well, in which case the lease shall be extended from year to year for as long as production continues or the leased property has a known capacity to produce oil or gas and the production has been discontinued with the prior approval of the department under such terms as the department has prescribed. The leases granted pursuant to this section shall include no more than two thousand five hundred acres (1,000 hectares) but a person is not prohibited from holding a leasehold interest in more than two thousand five hundred acres (1,000 hectares) under two or more leases. The leases shall be granted under such terms and conditions as the authority shall deem to be in the best interest of the citizens of the State. However, no lease shall provide for a lesser royalty than one‑sixth of the oil and gas produced from the leased property or one‑sixth of the monetary value of such oil and gas at the wellhead.

(D) No property shall be leased except by sealed bid. The property shall be leased to the bidder submitting the bid which provides for the highest bonus payment. The bonus payment shall be in addition to any rental payments established by the department in the lease agreement and royalties provided for herein.

Any person desiring that a certain tract or tracts of property be submitted for bidding shall nominate such tract or tracts by so informing the department in accordance with the procedure for nominating established by the department.

If the department determines that the tract nominated as provided herein or upon its own motion determines that a tract should be submitted for bidding, it shall invite all interested persons to submit bids for leasing the designated tract. Invitations for bids shall be published in a newspaper of general circulation within the county or counties where the tract proposed to be leased is located and in a newspaper of statewide circulation, at least twenty‑five days before the final date for submitting bids. Invitations for bids shall also be mailed twenty‑five days before the final date of submitting bids to the last known address of all persons who have filed a statement in accordance with the procedure established by the department indicating a desire to bid upon tracts put up for leasing. The invitation to bids shall contain:

(1) a description, location and approximate acreage of the tract to be leased;

(2) the address to which the bids are to be submitted;

(3) the time and place at which the bids will be opened;

(4) the date and time by which the bids must be received;

(5) any special provisions of the lease or special rules and regulations promulgated by the department for the tract to be leased and

(6) any other matters that the department may deem pertinent.

The bids shall be opened publicly at the time and date prescribed by the department in the offices of the department by the person designated by the department to open bids. The department shall furnish to persons who request a copy of the lease agreement for the tract submitted for bidding. The lease of any tract shall be granted to the highest responsible bidder but the department and the authority may reject all bids when it determines that the public interest will be served thereby. The department and the authority must accept the most advantageous offer or reject all bids within twenty days from the date the bids were opened.

(E) All monies collected by the department and the authority as bonuses, rental payments or royalties shall be deposited with the State Treasurer in a special account and expended as the General Assembly may direct.

(F) Prior to the mailing and publication of invitations to bid, the department shall advise the appropriate State agencies by notice of the tract proposed to be submitted for bidding. The agencies wishing to comment on the desirability of leasing such tract shall do so within thirty days following receipt of the notice.

The department shall consider the comments of the agencies in determining the advisability of leasing the tract. If the department determines to lease the tract on which it has received unfavorable comment from the agencies, the department and authority shall require such special provisions in the lease agreement and promulgate such rules and regulations for each individual tract that is leased as may be necessary to safeguard against particular hazards or detrimental effects that may result from drilling oil or gas wells and the production of oil or gas on the tract.

In considering the special provisions, rules and regulations needed for a specific tract, the department and authority shall specifically include such provisions, rules and regulations shown by the commenting agency to be necessary (1) for the protection of the environment, (2) to minimize the detriment to aesthetics, (3) for the protection of the property rights of other persons and the public, (4) to avoid obstructing navigable streams, (5) to prevent interference with recreation, (6) to protect the public beaches, and (7) to maintain the quality of underground water.

The construction of drilling platforms in the Atlantic Ocean is permitted except that such drilling platforms shall not be located within one mile (1.6 kilometers) of the mean high water mark of any beach within the territorial jurisdiction of the State of South Carolina.

(G) The department is authorized to promulgate such rules and regulations as may be necessary to fulfill its duties set forth in this section and implement the provisions and purposes of this section.

(H)(a) Any person as defined herein who intends to construct a deep water port facility within the territorial jurisdiction of the State of South Carolina for the purpose of loading or unloading oil, gas or other products as defined by this chapter shall apply for and obtain a permit to construct such facility from the department prior to the commencement of construction.

(b) The department shall promulgate such rules and regulations to govern the construction of deep water port facilities as may be necessary (1) for the protection of the environment, (2) to minimize the detriment to aesthetics, (3) for the protection of the property rights of other persons and the public, (4) for the protection of the rights of the fishing industry, (5) for the protection of the recreational activities of the public, (6) to avoid obstructing shipping channels, (7) to protect the public beaches, and (8) in general, to protect the public interest and rights of the state and its industries. In promulgating such rules and regulations, the department shall take into consideration the comments of other state agencies concerning the potential hazards present in constructing deep water port facilities and shall follow the procedure set forth in Section 48‑39‑390(F) in soliciting and receiving the comments from such state agencies.

HISTORY: 1977 Act No. 179, Part 1, Section 20; 1993 Act No. 181, Section 1236.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

ARTICLE 3

Pollution Control

**SECTION 48‑43‑510.** Definitions.

When used in this article unless the context clearly requires otherwise:

(1) “Department” means the Department of Health and Environmental Control.

(2) “Director” means the director of the department.

(3) “Barrel” means 42 U. S. gallons at 60° Fahrenheit.

(4) “Other measurements” means measurements set by the department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.

(5) “Discharge” shall include, but not be limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the State or outside of the territorial limits of the State and affects lands and waters within the territorial limits of the State.

(6) “Pollutants” shall include oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof.

(7) “Pollution” means the presence in the outdoor atmosphere or waters of the States of any one or more substances or pollutants, in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(8) “Terminal facility” means any waterfront or offshore facility of any kind, other than vessels not owned or operated by such facility, and directly associated waterfront or offshore appurtenances including pipelines located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi‑governmental body. A vessel shall be considered a terminal facility only in the event of a ship‑to‑ship transfer of pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility. For the purposes of this article “terminal facility’ shall not be construed to include waterfront facilities owned and operated by governmental entities acting as agents of public convenience for operators engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of, pollutants; however, each operator engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such governmental entity shall be construed as a terminal facility.

(9) “Owner” means any person owning a terminal facility; “operator” means any person operating a terminal facility, whether by lease, contract, or other form of agreement.

(10) “Transfer” or “transferred” includes onloading or offloading between terminal facility and vessel, vessel and vessel, or terminal facility and terminal facility.

(11) “Vessel” includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self‑propelled or otherwise, and includes barges and tugs.

(12) “Discharge cleanup organization” means any group, incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the State, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of pollutants through cooperative efforts and shared equipment and facilities.

(13) “Board” means the Department of Health and Environmental Control.

(14) “Person” means any individual, partnership, joint venture, corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(15) “Registrant” is a terminal facility required to possess a valid registration certificate to operate as a terminal facility.

HISTORY: 1977 Act No. 179, Part 2, Section 23; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑520.** Findings and declarations of General Assembly.

(1) The General Assembly finds and declares that the highest and best use of the seacoast of the State is as a source of public and private recreation.

(2) The General Assembly further finds and declares that the preservation of this use is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) Furthermore it finds and declares that:

(a) The transfer of pollutants between vessels, between onshore facilities and vessels, between offshore facilities and vessels, and between terminal facilities within the jurisdiction of the State and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the State, to owners and users of shore front property, to public and private recreation, to citizens of the State and other interests deriving livelihood from marine‑related activities, and to the beauty of the coast;

(c) Such hazards have frequently occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as herein set forth; and

(d) Such state interests outweigh any economic burdens imposed upon those engaged in transferring pollutants and related activities.

(4) The General Assembly intends by the enactment of this article to exercise the police power of the State by conferring upon the Department of Health and Environmental Control power to:

(a) Deal with the hazards and threats of danger and damage posed by such transfers and related activities;

(b) Require the prompt containment and removal of pollution occasioned thereby; and

(5) The General Assembly further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the State in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the state’s interest in such preservation outweighs any burdens of liability imposed herein upon those engaged in transferring pollutants and related activities.

(6) The General Assembly further declares that it is the intent of this article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

HISTORY: 1977 Act No. 179, Part 2, Section 22; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑530.** General powers and duties of department.

(1) The powers and duties conferred by this article shall be exercised by the Department and shall be deemed to be an essential governmental function in the exercise of the police power of the State. The Department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate with the Department.

(2) Registration certificates required under this article shall be issued by the Department subject to such terms and conditions as are set forth in this article and as set forth in rules and regulations promulgated by the Department as authorized herein.

(3) Whenever it becomes necessary for the State to protect the public interests under this article it shall be the duty of the Department to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(4) The Department may bring an action on behalf of the State to enforce the liabilities imposed by this article. The Attorney General shall represent the Department in any such proceeding.

HISTORY: 1977 Act No. 179, Part 2, Section 24; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑540.** Registration certificate required to operate terminal facility; issuance of certificates; fees.

(1) No person shall operate or cause to be operated a terminal facility as defined in Section 48‑43‑510 (8) without a registration certificate.

(2) Registration certificates shall be issued on a five‑year basis and shall expire on December thirty‑first of the fifth year, such certificates shall be subject to such terms and conditions as the Department may determine are necessary to carry out the purposes of this article.

(3) As a condition precedent to the issuance or renewal of a registration certificate, the Department shall require satisfactory evidence that the applicant has implemented, or is in the process of implementing, state and federal plans and regulations for prevention, control and abatement of pollution when a discharge occurs.

(4) Registration certificates issued to any terminal facility shall include vessels used to transport pollutants between the facility and vessels within state waters.

(5) The Department shall require, in connection with the issuance of a terminal facility registration certificate, the payment of a reasonable fee for processing applications for registration certificates.

The fee shall be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining the certificates and reasonable inspections; however, the fee shall not exceed two hundred fifty dollars per terminal facility per year.

(6) No later than January 1, 1978 every owner or operator of a terminal facility shall obtain a registration certificate. The department shall issue a registration certificate upon the showing that the registrant can provide all required equipment to prevent, contain, and remove discharges of pollutants or is a member of a Discharge Cleanup Organization.

(7) On or after a date to be determined by the Department, but in no case later than January 1, 1978 no person shall operate or cause to be operated any terminal facility without a terminal facility registration certificate issued by the Department. Registration certificates shall be valid for five years; provided however, they shall be subject to annual inspection.

Each applicant for a terminal facility registration certificate shall pay the registration certificate application fee and shall submit information, in a form satisfactory to the Department, describing the following:

(a) The barrel or other measurement capacity of the terminal facility.

(b) All prevention, containment, and removal equipment, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices to which the facility has access, whether through direct ownership or by contract or membership an an approved discharge cleanup organization.

(c) The terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs.

(8) Upon showing of satisfactory containment and cleanup capability under this section, and upon payment of the registration certificate application fee, the applicant shall be issued a registration certificate covering the terminal facility and related appurtenances, including vessels as defined in Section 48‑43‑510(11).

HISTORY: 1977 Act No. 179, Part 2, Section 25; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑550.** Regulations as to removal of discharges of pollutants.

The Department shall from time to time adopt, amend, repeal, and enforce reasonable regulations relating to the cleanup and removal of discharges of pollutants into the waters or onto the coasts of this State.

Such regulations shall include, but not be limited to:

(a) Operation and inspection requirements for terminal facilities, vessels, and other matters relating to certification under this article but shall not require vessels to maintain spill prevention gear, holding tanks of any kind, and containment gear in excess of federal requirements.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by this article.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by this article on the removal of pollutants.

(d) Development and implementation of criteria and plans to meet pollution occurrences of various degrees and kinds.

(e) Creation by contract or administrative action of a state response team which shall be responsible for creating and maintaining a contingency plan of response, organization, and equipment for handling emergency cleanup operations. The state plans shall include detailed emergency operating procedures for the State as a whole and the team shall from time to time conduct practice alerts. These plans shall be filed with the Governor and all Coast Guard stations in the State and Coast Guard captains of the port having responsibility for enforcement of federal pollution laws within the State, on or before January 1, 1978. The contingency plan shall include all necessary information for the total containment and cleanup of pollution, including but not limited to an inventory of equipment and its location, a table of organization with the names, addresses, and telephone numbers of all persons responsible for implementing every phase of the plan, a list of available sources of supplies necessary for cleanup, and a designation of priority zones to determine the sequence and methods of cleanup. The state response team shall act independently of agencies of the federal government but is directed to cooperate with any federal cleanup operation.

(f) Requirements that, before being granted entry into any port in this State, the master of a vessel shall report:

(1) discharges of pollutants the vessel has had since leaving the last port;

(2) mechanical problems on the vessel which creates the possibility of a discharge;

(3) denial of entry into a port during the current cruise of the vessel.

A person who makes or causes to be made a false statement with a fraudulent intent in response to requirements of any provision of this article is guilty of a misdemeanor and, upon conviction, must be imprisoned two years or fined five thousand dollars, or both.

(g) Requirements that any registrant causing or permitting the discharge of a pollutant in violation of the provisions of this article and at other reasonable times, be subject to a complete and thorough inspection. If the Department determines there are unsatisfactory preventive measures or containment and cleanup capabilities, it shall, a reasonable time after notice and hearing, suspend the registration until such time as there is compliance with the Department requirements.

(h) Such other rules and regulations as the exigencies of any condition may require or as may reasonably be necessary to carry out the intent of this article.

HISTORY: 1977 Act No. 179, Part 2, Section 26; 1993 Act No. 184, Section 103; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑560.** Removal and abatement of discharge; use of federal funds; liability and rights of persons rendering assistance.

(1) Any person discharging pollutants in violation of this article shall immediately undertake to contain remove, and abate the discharge to the Department’s satisfaction. Notwithstanding the above requirement, the Department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the Department.

(2) If the person causing a discharge, or the person in charge of facilities at which a discharge has taken place, fails to act, the Department may arrange for the removal of the pollutant, except that if the pollutant was discharged into or upon the navigable waters of the United States, the Department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, and the costs of removal incurred by the Department shall be paid in accordance with the applicable provisions of the law. Federal funds provided under this act shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) In the event of discharge the source of which is unknown, any local discharge cleanup organization shall, upon the request of the Department or its designee, immediately contain and remove the discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the Department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the Department or its designee, renders assistance in containing or removing pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions or such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in this article shall affect in any way the right of any person who renders assistance in containing or removing pollutants to reimbursement for the costs of the containment or removal under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutants.

HISTORY: 1977 Act No. 179, Part 2, Section 27; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑570.** Cooperation and responsibilities of state agencies.

(a) The Department of Transportation, the Department of Natural Resources, and any other agency of this State, shall cooperate with and lend assistance to the Department of Health and Environmental Control by assigning, upon request, personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil discharged upon the land or into the waters of this State.

(b) Subsequent to July 1, 1977, and prior to September 1, 1977, designated representatives of the department, the Department of Transportation, and the Department of Natural Resources , and any other agency or agencies of the State which the department shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this article.

(c) Every state agency participating in the containment, collection, dispersal or removal of an oil discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency’s personnel and the use of the agency’s equipment and material. A copy of all records shall be delivered to the department upon completion of the project or activity.

HISTORY: 1977 Act No. 179, Part 2, Section 28; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑580.** Unlawful acts; exceptions; permit for discharge of oil.

It shall be unlawful, except as otherwise provided in this article, for any person to discharge or cause to be discharged, pollutants into or upon any waters, tidal flats, beaches or lands within this State or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the pollutants or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

This section shall not apply to discharges of pollutants in the following circumstances:

(1) When the discharge was authorized by an existing regulation of the Department.

(2) When any person subject to liability under this article proves that a discharge was caused by any of the following:

(a) An act of God.

(b) An Act of war or sabotage.

(c) Negligence on the part of the United States government or the State or its political subdivisions.

(d) An act or omission of a third party, whether any such act or omission was or was not negligent; provided, however, nothing herein shall be construed as limiting the liability of such third party.

(e) Any act or omission by or at the direction of a law enforcement officer or fireman.

Any person who desires or proposes to discharge oil into the land or into the waters of the State shall first make application for and secure a permit from the Department. Application shall be made under such terms and conditions adopted by the Department. Any permit granted pursuant to this section may contain such terms and conditions as the Department shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein.

HISTORY: 1977 Act No. 179, Part 2, Section 29; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑590.** Financial responsibility of owners or operators of terminal facilities.

All persons operating or owning terminal facilities, within the territorial jurisdiction of the State shall furnish, under such conditions as may be prescribed from time to time by the Department, evidence of financial responsibility of fourteen million dollars to meet any and all liabilities to all persons caused by the operations of any such terminal facilities. Evidence of financial responsibility may be established by an insurance or surety bond issued by an insurance or bonding company authorized to do business in the State, qualifications of a self‑insurer or other evidence of financial responsibility acceptable to the Department. This provision shall not be construed as limiting the liability of any person operating or owning terminal facilities.

HISTORY: 1977 Act No. 179, Part 2, Section 30; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑600.** Filing of claims for damages.

Any person claiming to have suffered damage as a result of an unlawful discharge under Section 48‑43‑580 may file a claim pursuant to the Administrative Procedures Act.

HISTORY: 1977 Act No. 179, Part 2, Section 31; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑610.** Violations and penalties.

(1) It is unlawful for any person to violate any provision of this article or any rule, regulation of the department, or order of the department made pursuant to this article. Except as otherwise provided, a violation shall be punishable by a civil penalty of up to ten thousand dollars per violation per day to be assessed by the department. Each day during any portion of which the violation occurs constitutes a separate offense.

(2) Penalties assessed herein for a discharge shall be the only penalties assessed by the State, and the assessed person or persons, shall be excused from paying any other penalty for water pollution for the same occurrence.

(3) The penalty provisions of this section shall not apply to any discharge promptly reported and removed by a registrant or vessel in accordance with the rules, regulations and orders of the Department.

HISTORY: 1977 Act No. 179, Part 2, Section 32; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑620.** Department’s budget for responsibilities under article; accounting for appropriated funds.

The department shall submit to each regular session of the legislature a proposed budget for carrying out its responsibilities under this article and shall also account for all funds appropriated by the legislature for carrying out its responsibilities under this article for the previous year.

HISTORY: 1977 Act No. 179, Part 2, Section 33; 1993 Act No. 181, Section 1236.

ARTICLE 4

Violations and Penalties

**SECTION 48‑43‑810.** Unlawful acts.

It shall be unlawful for any person to:

(a) willfully violate any provision of this chapter, or any rule, regulation or order of the department;

(b) commence operations for the drilling of a well for oil or gas without first obtaining a permit from the department, under such rules and regulations as may be prescribed by the department;

(c) do any of the following for the purpose of evading or violating this chapter, or any rule, regulation or order of the department; make any false entry or statement in a report required by this chapter or by any rule, regulation of the department or order of the department; make or cause to be made any false entry in any record, account or memorandum, required by this chapter, or by any such rule, regulation or order; omit, or cause to be omitted, from any such record, account or memorandum full, true and correct entries as required by this chapter, or by any such rule, regulation or order; or remove from this State or destroy, mutilate, alter or falsify any such record, account or memorandum;

(d) refuse to attach or install a meter as prescribed by the department pursuant to Section 48‑43‑30B(1)(m) herein when ordered to do so by the department or in any way to tamper with such meter so as to produce a false or inaccurate reading, or to have any bypass at such a place where the oil or gas can be passed around;

(e) permit through negligence or willfulness any gas or oil well to go wild or to get out of control.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars or be imprisoned for not more than six months, or both.

HISTORY: 1977 Act No. 179, Part 1, Section 13; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑820.** Civil penalties; correction of detrimental conditions; liability to third persons.

(A) Any person who violates any provision of this chapter, or any rule, regulation or order of the department, shall also be subject to a civil penalty of not more than five thousand dollars for each act of violation and for each day that such violation continues.

(B) Any person who negligently or willfully permits an oil or gas well to go wild or to get out of control, to cause pollution or waste, or to create other conditions that are detrimental to the property rights of others or the public shall be liable to the department for the expense incurred in correcting the detrimental conditions and the civil penalties imposed by Section 48‑43‑820A and the department is hereby authorized to take whatever action it deems necessary, including operation of the well, to correct the detrimental conditions and charge the owner or producer, or both, of the well for the expenses incurred.

(C) The penalties and liabilities provided in this section shall be recoverable by civil suit filed by the Attorney General in the name and on behalf of the department in the court of common pleas of the county in which the defendant resides or in which any defendant resides, if there be more than one defendant, or in the court of common pleas of any county in which the violation occurred. The payment of any such penalty shall not operate to legalize any illegal oil, illegal gas or illegal product involved in the violation for which the penalty is imposed or relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

(D) In addition to any civil and criminal penalties imposed by this chapter, any person who violates any provisions of this chapter, or rules, regulations and orders of the department, shall be liable to all third parties who may incur damage or injury because of such violations.

HISTORY: 1977 Act No. 179, Part 1, Section 14; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑830.** Punishment and penalties for aiding or abetting violations.

Any person knowingly aiding or abetting any other person in the violation of any provision of this chapter, or any rule, regulation of the department or order of the department, shall be subject to the same punishment and penalty prescribed by this chapter for the violation by such other person.

HISTORY: 1977 Act No. 179, Part 1, Section 15; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑840.** Sale, purchase or the like of illegal oil, gas, or products prohibited; actions for seizure and sale.

(A) The sale, purchase, acquisition, transportation, refining, processing or handling of illegal oil, illegal gas or illegal product is hereby prohibited. However, no penalty by way of fine shall be imposed upon a person who sells, purchases, acquires, transports, refines, processes or handles illegal oil, illegal gas or illegal product unless (1) such person knows, or is put on notice of, facts indicating that illegal oil, illegal gas or illegal product is involved, or (2) such person fails to obtain a certificate of clearance with respect to such oil, gas or product if prescribed by an order of the department, or fails to follow any other method prescribed by an order of the department for the identification of such oil, gas or product.

(B) Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as herein provided. Seizure and sale shall be in addition to any and all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. Whenever the department believes that any oil, gas, or product is illegal, the department, acting by the Attorney General, shall bring a civil action in rem in the court of common pleas of the county where such oil, gas, or product is found, to seize and sell the same, or the department may include such an action in rem in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. Any person claiming an interest in oil, gas, or product affected by such action in rem shall have the right to intervene as an interested party in such action.

(C) Actions for seizure and sale of illegal oil, illegal gas or illegal product shall be strictly in rem, and shall proceed in the name of the state as plaintiff against the oil, gas or product as defendant. No bond or similar undertaking shall be required of the plaintiff. The action for seizure and sale shall be commenced in the court of common pleas for the county in which the oil, gas or product is situated by a summons and complaint which shall be verified or supported by affidavits. When the verified complaint or complaint and supporting affidavits set forth sufficient facts to support the seizure and sale of the illegal oil, illegal gas or illegal products, the clerk of court of the county in which such oil, gas or product is situated or the judge of the judicial circuit which has jurisdiction to hear matters arising in the county shall issue a warrant directed to the sheriff of the county for service upon any and all persons having or claiming any interest in the oil, gas or product described in the complaint. The warrant shall direct the sheriff to take such oil, gas or product into his custody until such time as the court has heard the action on its merits and the matter has been fully adjudicated. The original summons and complaint and warrant shall be filed with the clerk of court for the county by the plaintiff with the sheriff’s affidavit of service attached when service has been accomplished in the manner set forth herein by the sheriff. All persons having or claiming any interest in the oil, gas or product described in the complaint must appear and answer the complaint within twenty days after the service of such summons and complaint. Service of the summons and complaint and warrant by posting copies on the door of the courthouse for the county in which the oil, gas or product described in the complaint is situated, by posting copies in the immediate vicinity of the place where such oil, gas or product is located and by publishing the summons and complaint and warrant in any newspaper of general circulation in the county in which such oil, gas or product is located in four consecutive issues of the newspaper shall constitute valid and sufficient service on all persons having or claiming any interest in the such oil, gas or product.

Any person who fails to appear and answer the complaint within twenty days after service of the summons and complaint and warrant shall be forever barred by any judgment obtained by the plaintiff. The service of the summons and complaint and warrant as provided herein shall place the State in constructive or actual possession, as the case may be, of the oil, gas or product.

(D) Any person having an interest in any oil, gas or product which has been seized in accordance with the provisions of Section C may, prior to the sale thereof, obtain the release thereof, upon furnishing bond to the sheriff, approved by the clerk of court, in an amount equal to one hundred and fifty percent of the market value of the oil, gas or product to be released pending a final adjudication of the action on its merits.

(E) If the court, after a hearing upon the complaint for the seizure and sale of oil, gas, or product, finds that such oil, gas, or product is contraband, the court shall order the sale thereof by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action, except that the court may order that the oil, gas, or product be sold in specified lots or portions and at specified intervals. Upon such sale, title to the oil, gas, or product sold shall vest in the purchaser free of the claims of any and all persons having any title thereto or interest therein at or prior to the seizure thereof, and the same shall be legal oil, legal gas, or legal products, as the case may be, in the hands of the purchaser.

(F) All proceeds derived from the sale of illegal oil, illegal gas, or illegal product, as above provided, after payment of costs of suit and expenses incident to the sale and all amounts paid as penalties provided for by this chapter, shall be paid into the State Treasury for the use of the department in defraying its expenses in the same manner as other funds provided by law for the use of the department.

HISTORY: 1977 Act No. 179, Part 1, Section 16; 1993 Act No. 181, Section 1236.

**SECTION 48‑43‑850.** Injunctions.

Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule, regulation of the department or order of the department, the Attorney General may, at the request of the department, bring suit in the name of the department against such persons in the court of common pleas of the county where the violation occurs or is threatened, or in the county in which the defendant resides or in which any defendant resides if there is more than one defendant, 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 without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

HISTORY: 1977 Act No. 179, Part 1, Section 17; 1993 Act No. 181, Section 1236.